

SC. MISC. APP. NO. 2/93

CORAM:-

Hon. Mr. Justice S.M.F. Kutubu, C.J. - Presiding

Hon. Mr. Justice S. Beccles Davies - JSC.

Hon. Mrs. Justice V.A. Wright - JA.

BETWEEN:-

AMADU KANU - APPELLANT /APPLICANT

VS.

CYRIL WALTER SAWYERR - RESPONDENTS.

SAIDU KAMARA

ALHAJI WURIE JALLOH

SOLICITORS:-

R. AWOONOR-RENNER ESQ., with him SHEKU M.

TOURE ESQ., for Appellant/Applicant.

DR. H.M. JOKO-SMART, for Respondents.

RULING DELIVERED THIS 16TH DAY OF MARCH, 1993 BY
KUTUBU, C.J. - PRESIDING -

This is an application by R. Awoonor-Renner Esq., counsel for Appellant/Applicant for stay of execution of the order contained in the Ruling of the Honourable Thompson-Davis J.S.C. delivered in the Court of Appeal of Sierra Leone on the 4th day of March, 1993 and for all subsequent proceedings to be stayed until the determination of Appeal in the Court of Appeal. The application is supported by the Affidavit of Amadu Kanu Applicant herein, sworn at Freetown on 10th day of March, 1993 and filed.

At the threshold of this application preliminary objection was taken by Dr. H.M. Joko-Smart counsel for Respondents on the ground of non-compliance by counsel for Applicant of the mandatory provisions of Rule 60 of the Rules of the Supreme Court, 1982 (P.N. No. 1 of 1982).

Rule 60 (1) states:-

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"A civil appeal shall not operate as stay of execution or of proceedings under the judgment or decision appealed against except in so far as the Supreme Court or the Court of Appeal may otherwise order".

Rule 60 (2) states:-

"Subject to the provisions of these Rules and to any other enactment governing the same, an application for stay of execution or proceedings shall first be made to the Court of Appeal and if that Court refuses to grant the application the Applicant shall be entitled to renew the application before the Supreme Court for determination."

Has counsel for Applicant complied with the mandatory provisions of the afore-mentioned Rules in the instant application? If the answer is in the negative can the Supreme Court entertain this Application without causing violence to the Rules? Has the Court any discretion in the matter if it takes the view that the mandatory provisions have not been complied with?

Counsel for Applicant with candour conceded the point that resort was not had to the Supreme Court Rules in the instant application, but nevertheless, based his application on the grounds of concurrent jurisdiction of both the Supreme Court and the Court of Appeal in this regard. Afortiori, that as time was of the essence he proceeded under the provisions of the Constitution of Sierra Leone 1991 Act. No. 6 of 1991 namely, Section 123 which overrides the Rules. What does the Section say?

Section 123 (1) (a) states:-

"An appeal shall lie from a judgment, decree or order of the Court of Appeal to the Supreme Court (a) as of right in any civil cause or matter.

Section 123 (2) -

"Notwithstanding the provisions of subsection (1) the Supreme Court shall have power to entertain any application for special leave to appeal in any cause or matter civil or criminal, to the Supreme Court, and to grant such leave accordingly".

The purported application before this Court is for stay of execution of the order contained in the Ruling of the Honourable Thompson-Davis delivered in the Court of Appeal of Sierra Leone on the 4th day of March, 1993. It is not an appeal or an application for special leave to appeal. I cannot therefore see how this provision of the Constitution can avail counsel in this application.


Rule 60 is of obvious advantage to an applicant in stay of execution proceedings. The rationale behind it is to give an applicant two chances, one in the Court below, the Appeal Court in this instance and another in the Supreme Court, should the Court of Appeal refuse to grant the Application sought. Applicant will therefore have the advantage of a second bite rather than jumping his gun to his detriment or risk.

The order of the Court of Appeal was given on 4th March to take effect on the 15th March, 1993 eleven days from the date of the said order. Counsel for Applicant depressed that since time was of the essence compliance with Rule 60 of the Supreme Court Rules would not have been to his advantage, as execution would have been effected, thereby making the proceedings nugatory. In our view eleven days was a reasonable time within which an application for stay would have been made to the Court of Appeal in the first instance. On refusal a second application would be made to the Supreme Court.

In an application for stay of execution this Court has always taken the view that there should be no short cut to the procedure; the mandatory provisions should be complied with. Nothing has changed the view of this Honourable Court in that regard.

Now what are the consequences of failure to comply with the mandatory provisions of Rule 60 of the Supreme Court Rules? In the instance case has the proper foundation been laid, a condition precedent for us to entertain this purported application. The answer is in the negative. In the circumstances the application is struck out.

Court - Costs awarded Le30,000.00.


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S.M.F. KUTUBU - CHIEF JUSTICE

I agree S. BECCLES DAVIES - JSC.

I agree *Qu A* V.A. WRIGHT - JA.