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IN THE SUPREME COURT OF SIERRA LEONE
SC. MISC. APP. 1/94

BETWEEN:-

THE STATE

- RESPONDENT

VS

ALGHASSIM JAH

- APPLICANT

A.F. Serry-Kamal Esq. for the Applicant
Attorney-General & SOS for the State/Respondent

CORAM:-

| | |
|-----------------------------------------------|-------------|
| Hon. Mr. Justice S. Beccles Davies - Ag.-C.J. | - Presiding |
| Hon. Mr. Justice S.C.E. Warne | - J.S.C. |
| Hon. Mr. Justice E.C. Thompson-Davis | - J.S.C. |
| Hon. Mr. Justice M.O. Adophy | - J.A. |
| Hon. Mr. Justice A.B. Timbo | - J.A. |

JUDGMENT

BECCLES DAVIES AG. C.J.:- This is an application for an Order of Certiorari to remove the indictment preferred against Lance Corporal SIA/18166316 Corporal Sidique Sallu Jah and Lance Corporal 18163974 Alghassim Jah and all proceedings subsequent thereto at the Republic of Sierra Leone Military Forces Court Martial Holden at Freetown and the ruling of the Honourable Mr. Justice E.A. Thomas, Judge Advocate, before the said Court Martial dated the 16th day of August 1993 ... for the same to be quashed; and that the entire proceedings including the conviction and sentence be set aside.

This application is made on behalf of Lance Corporal Alghassim Jah who was tried and convicted on the following indictment:-

/statement

STATEMENT OF OFFENCE

Committing a Civil Offence that is to say Robbery with Aggravation, contrary to Section 23 (1) (a) of the Larceny Act 1916 (as amended).

PARTICULARS OF OFFENCE

- SIA/18163974 Lance Corporal Alghassin Jah and SIA/18166316 Lance Corporal Sidique Sallu Jah soldiers of the Republic of Sierra Leone Military Forces being subject to Military law under the Republic of Sierra Leone Military Forces Act, 1961 (as amended) on Sunday the 18th day of April 1993 at Murraytown Freetown in the Western Area of the Republic of Sierra Leone being together robbed Berthan Macmuley (Jnr.) of a Car (Mercedes Benz 190E) registration No. SB 333 with its contents; that is to say one spare tyre with rim, two Ray Ban sunglasses and one radio cassette player of the value of Le8,209,000.00.

S. FANDAY

STATE COUNSEL

20. The applicant seeks relief on the following grounds:

1. The applicant being subject to military law, was charged with a criminal offence under the general criminal law and prosecuted before a military court-martial.
2. The applicant being subject to military law was charged on an indictment which was signed by a State Counsel and tried before a military Court-martial.
30. 3. The applicant being subject to military law was charged on an indictment before a military

court-martial which did not comply with military law."

Can this court grant the application? It is made under the provisions of Section 125 of the Constitution ~~of~~ Sierra Leone 1991 ('the Constitution') which provides -

"125 The Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authority; and in exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing and securing the enforcement of its supervisory powers."

The Court-martial in which the applicant was tried has its foundation in the Republic of Sierra Leone Military Forces Act 1961. It is part of 'the existing law' of Sierra Leone which is defined in Section 170 (4) of the Constitution as comprising

".....the written and unwritten laws of Sierra Leone as they existed immediately before the date of the coming into force of this Constitution and any statutory instrument issued or made before that date which is to come into force on or after that date."

The effect of the existing law after the commencement of "the Constitution" is set out in subsection (5) of Section 170 thus

"(5) subject to the provisions of this section ~~the operation of the existing laws after the coming into force of this Constitution shall not be affected by such commencement;~~ and accordingly the existing law shall be construed with such modifications, adaptations, qualifications and exceptions as

may be necessary to bring it into conformity with the provisions of this Constitution or otherwise to give effect to or enable effect to be given to any changes effected by ~~this~~ Constitution." (Emphasis supplied)

The provisions of the Republic of Sierra Leone Military Forces Act 1961 therefore continue to be operative after the commencement of "the Constitution".

Under the law of England, there is a right of appeal to the Court of Appeal in addition to that of applying for the writs of habeas corpus and orders of mandamus, certiorari and prohibition. A similar situation existed in the law of Sierra Leone until 15th April 1971. ~~Sec~~ 129 of the Sierra Leone Military Forces Act 1961 ("the principal Act") which was operative until its subsequent repeal had contain

the following provisions -

"129 Subject to the following provisions of this Part, an appeal shall lie from decisions of a court-martial to the Court of Appeal with the leave of that Court:

Provided that an appeal as aforesaid shall be as of right without leave from any decision of a court-martial involving a sentence of death."

The "Part" (Part VI) referred to in section 129 spans Sections 129 to 147.

It deals with the right of appeal and procedure in appeals from courts-martial.

Section 6 of the Republic of Sierra Leone Military Forces (Amendment) Act 1971 ('the amending Act') which became operative on 16 April 1971, repealed Part VI of the /principal.....

principal Act thereby extinguishing the right of appeal to the Court of Appeal.

Section 5 of 'the amending Act' brought into existence a new section 129. It reads -

"The principal Act is hereby amended by the insertion of the following new section immediately after section 128 thereof -

129. The decisions of a court-martial shall not be questioned in any court of law."

The marginal note to that new section states -

"No appeal from decisions of Courts-martial".

I find Section 129 to be much wider in scope than its portrayal by the marginal note.

The language of the section is clear and unambiguous; it forbids any excursion in any form whatsoever, to any court for the purpose of examining decisions of courts-martial.

This application therefore in the light of the above provision cannot be entertained by this Court or any other Court. It is therefore dismissed.

(Sgd.) Mr. Justice S. Beccles Davies Ag. C.J.
Mr. Justice S. Beccles Davies Ag. C.J.

I agree

(Sgd.) Mr. Justice S.C.E. Warne J.S.C.
Mr. Justice S.C.E. Warne J.S.C.

I agree

(Sgd.) Mr. Justice E.C. Thompson Davis J.S.C.
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(Sgd.) Mr. Justice M.O. Adophy J.A.
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(Sgd.) Mr. Justice A.B. Timbo J.A.
Mr. Justice A.B. Timbo J.A.