

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:-

KORA SESAY & ORS

- APPELLANTS

AND

ALLIE N. KAMARA & ORS

- RESPONDENTS

A.F. Serry-Kamal for Appellants

Renner Thomas & Co. for Respondents

Hon.Mr.Justice D.N.F. Luke

- Chief Justice

Hon.Mr. Justice H.M. Joko-Smart

- JSC

Hon.Mr. Justice N.D. Albadi

- JA

By a Notice of Motion dated the 31/7/96 the Applicants/Appellants applied for leave to appeal out of time and an enlargement of time within which to do so.

The judgment sought to appeal against was delivered on the 2/4/96 by the Court of Appeal. By Rule 26(1) of Supreme Court Rules 1982, where an appeal lies as of right the appellant shall lodge his notice of appeal within three months from the date of the judgment appealed against unless this court enlarges the time. It is clear from the application before us that no appeal has been lodged within the stipulated time referred to above. It is this failure that has necessitated this application.

Rule 26(4) provides..... "No application for enlargement to time in which to appeal shall be made after the expiration of one month from the expiration of the time prescribed within which an appeal may be brought. Every application for enlargement of time shall be by motion supported by an affidavit setting forth good and substantial reasons for the application and by grounds of appeal which *prima facie* show good cause for leave to be granted. When time is so enlarged a copy of the order granting such enlargement shall be annexed to the notice of appeal."

The first part of this sub-rule is not under consideration in this application before us, since this Notice of Motion has been filed within the one month from the expiration of the time to appeal.

The whole issue now is what are the circumstances in which this court can exercise its discretion for an enlargement of time within which to file an appeal. The second part of the sub-rule requires that the affidavit in support must set forth good and substantial reasons for the application and by grounds of appeal which prima facie show good cause for leave to be granted.

The good and substantial reasons given for the application are those stated in the affidavit in support by Kora Sesay wherein she deposed that in June Abdul Sesay (which also I take to be the 2nd Appellant) fell ill and she took him to the provinces where he died. That she stayed on the provinces to await the 40th day Ceremony. That she did not inform her solicitor when she was leaving. That if Abdul Sesay had not died and the roads were safe she would not have stayed in the provinces for the length of period she took. That she was not expecting the judgment to be delivered at that time since the judgment had been reserved for over two years. This in my view is an indictment against the court for it is provided in Section 120(16) of the constitution following-----"

Every Court established under this Constitution deliver its decision in writing not later than three months after the conclusion of the evidence and final addresses or arguments of appeal, and furnish all parties to the cause or matter determining with duly authenticated copies of the decision on the date of delivery thereof."

In my view the court should not readily refuse an application under this provision of the Rules other than good reasons for the delay not been disclosed in the supporting affidavit and or the ground or grounds of appeal do not disclose arguable issues. The fact that the only ground of appeal in this case is on the facts does not impinge its validity for consideration by this court. Otherwise a refusal on such ground would be interpreted as this court prejudging the issues to be argued on the appeal. There might be issues where it can be shown that the trial court did not take into account all the relevant facts or that the trial judge misapprehended the evidence or drawn an inference which there is no evidence to support it - See *Lofthouse vs. Leicester Corporation* (1948) 64 T.L.R. 604. Again it might be that the plaintiff, the respondent herein was unable to establish his claim with that degree of certainty that is required in a Civil Suit, that is with that preponderance of probability for him to succeed in his claim. In which case this court is bound to interfere with the finding of fact by the court.

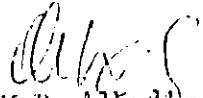
The question of good reasons for not lodging the appeal within the stipulated time has to be considered not with reference to the length of time ipso facto but with reference to the circumstances of the case. The delay in this case is not unconnected with the then prevailing insecurity of the country in the provinces where the bulk of the population were held behind rebel lines and the non-availability of transportation to the capital

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city. The facts deposed to by Korn Jessay in her affidavit, in my view are credible.

In conclusion I will say that as long as there are arguable issues disclosed on the Notice of Appeal, and sufficient and ~~Relevant~~ explanation given for the delay, a refusal to enlarge the time will manifestly prejudice the appellant's right to have his appeal adjudicated upon thereby cause manifest injustice to him.

In the light of all what I have said I will grant the application.

  
Hon. Justice M.D. Akbar - J.A.