

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN: ABU BLACK LUGBU
ALLIE FOFANAH
LAMIN DAINKEH - APPLICANTS

AND

REV. ARCHIBALD GAMBALA
JOHN (EXECUTOR OF THE
ESTATE OF THE LATE REV.
GUSTAVUS ADEMU JOHN - RESPONDENT

CORAM: HON. MR. JUSTICE D.E.F. LUKE - C.J.
HON. MR. JUSTICE A.B. TIMBO - JSC
HON. MR. JUSTICE H.M. JOKO SMART - JSC
HON. MR. JUSTICE S.C. WARNE - JSC
HON. MRS. JUSTICE V.A.D. WRIGHT - J.A

A.F. SERRY-KAMAL, ESQ., FOR APPLICANTS
R.A. CAESAR, ESQ., FOR THE RESPONDENT

RULING DELIVERED THE 20th DAY OF JANUARY 2000

JOKO SMART JSC

A Motion Paper allegedly taken out by E.M. Turay but signed by A.F. Serry Kamal for E. M. Turay as Solicitor for the Applicants dated the 20th day of October 1999 and filed in the Registry of the Supreme Court on an application made pursuant to section 126(b) of the Constitution of Sierra Leone, Act No.6 of 1991 (hereafter called the Constitution) and Rule 103 of the Rules of the Supreme Court, Public Notice No.1 of 1982 (hereafter called the Rules) seeks an order from this Honourable Court that the order made by this Court dated the 22nd day of September 1999 be varied, discharged or reversed and that the appeal be restored.

The grounds on which the application is made are:

1. That the Court failed to consider that an application for a stay of execution had been argued by the appellants and respondent before the full court and the court had granted a stay of execution of the judgment of the Court of Appeal.
2. That in the light of the above proceedings there was abundant evidence before the court to show that the appeal was being prosecuted by the appellants.
3. That there was evidence before the court that both the court and the respondent had waived compliance with Rule 35 of the Supreme Court Rule

The Motion is supported by the affidavit of A.F. Serry Kamal dated the 20th day of October 1999 and it contains seven exhibits numbered A to G.

On the 4th day of November 1999, at the hearing of the application Counsel sought to amend the Motion Paper by the substitution of grounds in place of the grounds in the original Notice of Motion and to use two affidavits in addition to the original affidavit in support of the Motion. The application for amendment was refused.

All the papers filed in the application appear to have been engrossed and signed by Serry Kamal describing himself in paragraph one of his affidavit as Solicitor for the second and third applicants but generally signing for E.M. Turay in the body of the Notice of Motion and the backing of all the papers.

Before I go into the merit of the application, I find it necessary to address what has become the unorthodox practice of some solicitors, possibly as a matter of convenience, to sign notices of motion, summonses, pleadings and other court documents "for" other solicitors. When one solicitor acts as such for another, whose document is it? Is the signatory acting as agent for the other? If so, does he or his principal have the authority of the client? A solicitor/client relationship is personal and sometimes it may have adverse effect on the solicitor, for example, liability for negligence and breach of trust, a thing which one solicitor cannot transfer to another. Besides, the solicitor/agent signing for another will be acting without the authority of the client and in addition to his being liable to the client as an intermeddler he may also find himself liable to a third party for breach of implied warranty of authority. A solicitor in a firm can sign for the other solicitors in his firm since it is an incidence of partnership that he is both principal and agent for the others. The current practice whereby one solicitor signs for another when they are not in partnership which I have highlighted is not supported by law. There are certain situations as in the case of appeals in which the Rules of court permit a solicitor to sign on behalf of his client. But a rule which allows one solicitor to act as an agent for another when they are not in partnership to enable him to act on behalf of the other's client still has to be drawn to my attention. I opine that in order to avoid any noxious consequences, the Rules of the High Court which are applicable in this case by virtue of Rule 98 of the Supreme Court 1982 provide for change of solicitor whereby the client gives his written consent to the appointment of a new solicitor in substitution for the old thus severing the personal relationship with him and establishing a new one with the present. This practice should be followed rather than the current one.

Having said that, I will proceed to the heart of the application. Mr. Serry Kamal vigorously argued the original application underlining the fact that there was a reserved judgment of the Court on an application for a stay of execution when the appeal was struck out for non-compliance with Rule 35(2). This was the central plank of his complaint and he infers that both the court sitting with three Justices and the respondent were aware of it at the time that the appeal was struck out. This is a serious indictment of the Court which Counsel could not substantiate since neither he nor a member of his firm nor his clients appeared. The papers in which the applicants endeavoured to comply with Rule 35(2) were filed after the appeal had been struck out for non-compliance with the Rule. It was like shutting the stable after the horse had bolted.

This application is in my view on all fours with that made before this Court in Mohamed Juma Jalloh v. T. Krishnakumar, unreported, Sc. Misc. App. 2/99 ruling delivered on the 26th day of October 1999, except that the grounds in support were different. In that case, there was no appearance by the applicant when the appeal was struck out for non-compliance with Rule 35 and he later applied to the full Court invoking section 126(b) of the Constitution and Rule 103 leading fresh evidence in support of the restoration of the appeal.

Section 126(b) of the Constitution provides for an application to be made to the full court consisting of five Justices when an applicant is not satisfied with an order made by the court comprising three Justices and Rule 103 gives a discretion to the Court to allow an appeal to proceed even though there has been non-compliance with Rules or any other rule or practice if the non-compliance is not wilful and it is in the interest of justice that the non-compliance is waived.

In the Mohamed Juma Jalloh case hereinbefore referred to Warne JSC delivering the unanimous ruling of the Court had this to say:

"There is no evidence before this Court to show that when the matter came up before the court made up of three Justices that Rule 35(1) & (2) of the Rules had been complied with; consequently the court struck out the appeal"

On the interpretation of section 126(b) of the Constitution, Warne JSC further said:

"In my view this sub-section presupposes that the three Justices erred in law or otherwise to enable the applicant to invoke the provision of section 126(b) of the Constitution. On the record of proceedings as it stands before the court of three Justices, there was no submission or argument before the court of three Justices before the court struck out the appeal."

In the instant case, the grounds on which the applicants are relying presuppose that there was an appearance by them before the three justices and there was an argument of the application. This was not the case. The argument now put forward is new as was in the Mohamed Juma Jalloh case. Such argument could have been relevant when the application came up before the three Justices but by then the applicants and their Solicitor had not shown up. The Rules must be strictly observed. It is only in a situation where an applicant appears or he is represented by counsel at the hearing for striking out the appeal and reasons are adduced to the satisfaction of the court that the appeal should stand despite non-compliance with the Rules as was the case in Castrol Ltd. v. John Michael, SC. 1/98, unreported, a ruling of this court dated the 30th day of September 1999, that the court might be persuaded to exercise its discretion and save the appeal.

In the light of what I have said, the application is dismissed with costs assessed at Le. 500,000 to the respondent herein.

CERTIFIED COPY
 SUPREME COURT
 REGISTRAR SUPREME COURT

[Handwritten signature]
 22.12.2000