

IN THE SUPREME COURT OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION UNDER SECTION 125 OF THE CONSTITUTION OF SIERRA LEONE, ACT NO. 6 OF 1991 AND RULE 5 (1) & (2) OF THE SUPREME COURT RULES 1982 FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI, MANDAMUS, PROHIBITION AND DECLARATION AND FOR ANCILLARY ORDERS OR DIRECTIONS.

IN THE MATTER OF A RULING GIVEN ON 11TH OCTOBER 1999 BY THE PRESIDING JUDGE IN HIGH COURT NO. 3, THE HONOURABLE MR. JUSTICE M.O. TAJU-DEEN (JUDGE), IN PROCEEDINGS ON THE CRIMINAL INFORMATION DATED 30TH AUGUST 1999 PENDING IN THE SAID HIGH COURT HOLDEN IN FREETOWN AND INTITULED "THE STATE Vs. DR. HARRY WILL, LAMINA FEIKA, BOCKARIE KAKAY (TRADING AS MARIAMA & SONS (A FIRM))".

BETWEEN:-

DR. HARRY WILL

- APPLICANT

AND

ATTORNEY-GENERAL & MINISTER OF JUSTICE - RESPONDENT

CORAM:-

HON. MR. JUSTICE D.E.F. LUKE - C.J.

HON. MR. JUSTICE M.O. ADOPHY - J.S.C.

HON. MR. JUSTICE A.B. TIMBO - J.S.C.

HON. MR. JUSTICE H.M. JOKO-SMART - J.S.C.

HON. MR. JUSTICE S.C.E. WARNE - J.S.C.

DR. BU-BUAKEI JABBI - FOR THE APPLICANT

A.G. SOLOMON BEREWAH, D.P.P. B. KEBBIE AND P. SCHWARZ - FOR THE RESPONDENT

RULING DELIVERED ON THE 23<sup>rd</sup> DAY OF MARCH 2000

LUKE, C.J.:- This is an application by way of motion for leave to apply for orders of certiorari, mandamus, prohibition and related declarations and directions in respect of the ruling given on 11th October 1999 by the learned Presiding Judge in proceedings on the aforesaid Criminal Information dated 30th August 1999.

Stay of Proceedings founded on the Criminal Information aforesaid and at present pending in the High Court aforesaid, until determination by the Supreme Court of the substantive application for which leave is being sought herein, if and when such leave is granted, or until further order in respect thereof by this honourable Court.

A direction, if necessary, as to the appropriate format for citation of parties in the title or heading of an application for leave to apply for orders of certiorari, etc., other than the format as to citation of parties to this application as set out in the above title or heading hereof, in circumstances where the leave being sought is in respect of a decision, judgment or order made or given by a Judge presiding in a matter pending in the High Court of Sierra Leone, in view of the provisions in section 125 and subsection 120 (9) respectively of the Constitution of Sierra Leone 1991; <sup>Act No 6 of</sup> and that the format as directed hereby by this honourable Court, if different from the citation of parties hereto in the above title or heading, be used in the substantive application for orders of certiorari, etc. for which leave shall have been granted to the Applicant herein if and when so granted.

Notice was given that at the hearing of the motion, Applicant will seek, by Counsel Dr. Bu-Buakei-Jabbi, to use and rely on the statement accompanying the application and the Affidavit of Dr. Bu-Buakei-Jabbi sworn on the 25th day of November 1999 and filed herewith.

However, when this matter first came before the Court on the 20th January 2000 Dr. Jabbi for the Applicant could not proceed and requested an adjournment since he wished to ask leave to amend both the Notice of Motion paper as well as the Statement accompanying the Motion paper. An adjournment to the 9th February 2000 was consequently granted.

On the adjourned date, the leave to amend both the Motion paper and the Statement accompanying it was requested. Taking cognizance of the papers filed the leave to amend sought herein and other related proceedings, the Court ordered Service of the Motion and other papers herein on the Respondent the Attorney General and Minister of Justice against the adjourned date - Tuesday 15th February 2000.

On the said date the Applicant's request for leave to amend both the Notice of Motion paper and the Statement accompanying it was granted.

The Applicant's Counsel's request for an adjournment to file the necessary amended papers was granted and the matter further adjourned to Thursday 17th February 2000.

Counsel for the Applicant on the 17th February urged the Court to grant the leave to apply for the prerogative orders of certiorari, mandamus and prohibition and related directions in respect of the ruling given on the 11th October 1999 by the learned Presiding Judge in proceedings on the aforesaid Criminal Information dated 30th August 1999; to grant a Stay of Proceedings in the Court below founded thereon and directions. Counsel sought to rely on Sec. 125 of the 1991 Constitution, Rules 5 (1) & (2) and Rule 98 of the Rules of the Supreme Court 1982 Ord. 52 r. 1 of the High Court Rules and English Rules 1960 Ord. 5 and especially 3, 4 to 10. In seeking to persuade the Court to grant the reliefs sought, Counsel relied on the Affidavit sworn on the 25th November 1999 by Dr. Bu-Buakie Jabbi especially paras to 9 thereof and the accompanying statement as amended. Counsel went on to cite White Book 1960 Ord. 59 r. 3 at p. 1725, stating that at this the leave stage of application for the prerogative orders his duty to make a plausible case had been discharged. Consequently, he prayed the Court to grant the leave and the Stay of Proceedings.

The Attorney-General on behalf of the Respondent submitted that the Applicant's application for leave for the prerogative orders to issue was misconceived. He further submitted that the High Court presided over by Justice M.O. Taju-Deen has jurisdiction under Sec. 132 (1) of the 1991 Constitution, and that jurisdiction has not been exceeded to justify an application such as being currently made: that prerogative orders in Sec. 125 of the Constitution should not be used to frustrate the work of the Courts below especially the High Court: And that the mere couching of the matter as a Constitutional matter does not automatically entitle an accused person to have the matter referred to the Supreme Court. The Attorney-General further submitted that it is not every infringement of the law or the Constitution that amounts to a violation of fundamental rights of Sections 16-27 of the Constitution to justify a reference to the Supreme Court under Sec. 28 (3).

The Attorney-General argued that "if the Judge erred at all it is an appealable matter" thus laying no foundation for granting leave for the prerogative order of certiorari which applies only for an error of law apparent on the face of the record quoting -

The Republic Vs the High Court of Kumasi 1986 L.R.C. (Const.) 610  
at p. 618.

The Attorney-General then followed Applicant's Counsel into the labyrinth of whether or not a fair hearing had been obtained in High Court No. 3 presided over by Hon. Mr. Justice M.O. Taju-Deen; whether or not "the 1st proviso to sub-section (1) of Sec. 136 of the Criminal Procedure Act No. 32 of 1965 as amended by Act No. 14 of 1970 -

- (a) was enacted in excess or ultra vires of the powers thereto conferred on Parliament by law at the time;
  - (b) was and is incompatible with the provisions in Sec. 15 (a) and sub-section (1) of Section 23 of the Constitution of Sierra Leone Act No. 6 of 1991;
  - (c) violates the principle of contradiction vis-avis the substantive part of subsection (1) of Section 136 of the said Criminal Procedure Act 1965 as amended;
- and was and is accordingly invalid, null and void in terms of subsection (4) of the Interpretation Act No. 7 of 1965 and of subsection 15 of Section 171 of the Constitution of S.L. 1991, respectively, as the case may be."

The learned Attorney finally submitted that the present matter was not a proper case to come before this Court as the Applicant has not even made out a prima facie case for granting the leave. That the High Court acted properly and within its jurisdiction in refusing to quash the indictment on the grounds given by the Applicant. And the High Court properly refused the reliefs sought.

Counsel for the Applicant in reply submitted that most if not all of the Counsel for the Respondent's arguments were premature in that they raised issues and dealt with matters belonging to the second stage of the application for prerogative writs i.e. the stage after leave has been granted, whereas the motion presently being argued related to the leave or threshold stage.

In my opinion this Court is not required to enter the labyrinth constructed by Applicant's Counsel. For this the leave stage of the application for the prerogative writs of certiorari, mandamus and prohibition a prima facie arguable case for leave to be granted will suffice.

The Court must first be satisfied that the Applicant has "some genuine locus standi" to appear before it - whether as "a person aggrieved" or one "having a particular grievance" or one having a "specific legal right" or "a sufficient interest." If so satisfied and a prima facie case, albeit a somewhat flimsy one exists, this could suffice to allow the Court to exercise its discretion in granting the leave to apply for the Orders.

In the words of Lord Diplock in the case of *I.R.C. v Federation of Self Employed* 1981 2 A.E.R. 93 at p. 106:

(At the leave stage) "If on a quick perusal of the material then available, the Court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion to give him leave to apply for that relief."

In my view this dictum is a correct statement of what is required at the leave stage; and I adopt it.

In this case, the applicant Dr. Harry Will is one of the three accused persons standing trial in High Court No. 3 as such I find that he is a person having a sufficient interest in the matter to which the application relates. Having looked at the papers filed herein and listened to the submissions of learned counsel, I also find that a prima facie arguable case exists.

As such, I will grant the leave requested to apply for the Orders of Certiorari, Mandamus and Prohibition in respect of the Ruling given on 11th October 1999 by the learned Presiding Judge in proceedings on the aforesaid Criminal Information dated 30th August 1999.


I do not grant the Stay of Proceedings requested.

In respect of the request for directions:- It is my opinion that no one single format for citation of parties in the title or heading of an application for leave to apply for Orders of Certiorari etc. will necessarily fit each and every set of circumstances. Counsel seeking to appear before the Supreme Court would be well advised not to violate the Constitution or any other substantive law, rules or customs or settled practice.

In the instant case, although I am still not fully convinced that it is entirely necessary to give such directions, Counsel would do well to ensure that the forms used in the substantive application sufficiently identifies the matter pending in the High Court for any Orders that might issue to apply to and only to the said proceedings.

Suffice it to say that in the instant case the parties shall be

The State vs. High Court No. 3 (ex parte Dr. Harry Will)



D.E.F. Luke

Chief Justice.

I agree ..... *M.O. Adophy* ..... Hon. Mr. Justice M.O. Adophy, JSC  
 I agree ..... *A.B. Timbo* ..... Hon. Mr. Justice A. B. Timbo, JSC  
 I agree ..... *H.M. Joko-Smart* ..... Hon. Mr. Justice H.M. Joko-Smart, JSC  
 I agree ..... *S.C.E. Warne* ..... Hon. Mr. Justice S.C.E. Warne, JSC

(THURSDAY 23RD MARCH 2000)

CORAM:

HON. MR. JUSTICE D.A.F. LUKO	-	C.J.
HON. MR. JUSTICE M.O. ADOPHY	-	JSC
HON. MR. JUSTICE A.B. TIMBO	-	JSC
HON. MR. JUSTICE H.M. JOKO-SMART	-	JSC
HON. MR. JUSTICE S.C.L. WARNE	-	JSC

SC. MISC. APP. 7/99

DR. HARRY WILL

AND

ATTORNEY-GENERAL & MINISTER OF JUSTICE

DR. BU-BUAKKI JABBI FOR THE APPLICANT

ATTORNEY-GENERAL WITH HIM A.S. BAH FOR THE RESPONDENT

RULING DELIVERED - DESMOND LUKO, C.J.:

- (1) Leave granted to apply for certiorari. (2) I do not grant a Stay of execution.  
(3) Applicant to ensure that the title is amended.

CONTEMPT PROCEEDINGS

The Court draws attention of Dr. Jabbi to a letter dated 15.3.2000 asking him to show cause why the contents thereof should not be deemed to be contemptuous of the Court.

Letter read part of proceedings.

Dr. Jabbi defends his letter and apologised.

A.G. as an officer of the Court states the gravity of the contempt.

Contempt proceedings are stood down.

Court resumes at 11.30 a.m.

Court: The matter was stood down. Dr. Jabbi's letter written on the 15.3.2000 has been read out. Dr. Jabbi was given the opportunity to purge his contempt.

Dr. Jabbi is given an opportunity to say something before the judgment of this court is delivered.

Dr. Bu-Buakei Jabbi - As I said earlier, the letter was not by any stretch of the imagination intended to be contemptuous. I have profoundest respect not only for the Supreme Court of Sierra Leone but for every member individually and personally of the Supreme Court of Sierra Leone and indeed for all Courts, Justices and officers of the Judiciary of Sierra Leone. Far be it from me to ever contemplate the contempt towards

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any of the officers of the Court. I have not consciously or intentionally done so in the said letter of 15th March, 2000. However, the effect of the said letter having being what to my surprise it has turned out to be, I have to accept your Lordship's view of that effect. And I crave the indulgence of your Lordships to accept that very sincere apology and to treat the contempt though unintended, as sincerely and effectively purged. As a Practitioner before this Court, I have always shown the greatest courtesy and respect in my appearance before your Lordships. I believe the same is true in my relationship and appearances before other jurisdictions. I urge your Lordship to take Judicial notice of that past conduct of mine both in this Court and in my other interaction with your Lordships. I did not intend to be contemptuous towards this Court. I very much regret that the said letter has given that effect. I accept that view of the matter. And I unreservedly withdraw the parts of the letter that have given that effect. The contempt in the letter is not a contempt in the face of the Court. I would never knowingly commit such a contempt in the face of the Court. The said contempt being what it is, I respectfully urge your Lordships to accept my unreserved apologies for it and to also accept my plea that it be totally withdrawn and effaced both from the records and your memories. And I hereby make a solemn undertaking that neither in my thought nor in my conduct before this or any other Court in this jurisdiction or towards any judicial officer in that capacity nor in any other form whatsoever will I ever do anything smacking of such contempt or indeed amounting to such contempt. My Lords, on the basis of my acceptance of the effect of the letter as unintentionally amounting to a contempt and on the basis of my unreserved acceptance of that effect and the parts of the letter and on the basis of my apology and undertaking I urge your Lordships to graciously treat the contempt as purged and you withhold the ultimate sanction that you might otherwise be inclined to impose. I can only finally leave myself at your mercy.

The Court by a unanimous verdict finds you guilty of contempt of this Court. Do you have anything to say before sentence?

Jabbi: I am at the mercy of the Court.

Sentenced to 1 day's imprisonment.

*[Signature]*  
D. I. Luke  
Chief Justice  
*[Signature]*  
M.O. Adophy, JSC  
*[Signature]*  
A.B. Tiabo, JSC  
*[Signature]*  
H.M. Joko-Mart, JSC