

IN THE SUPREME COURT OF SIERRA LEONE

CIV.APP /2000

BETWEEN:

IN THE MATTER OF PRECIOUS MINERAL MARKETING COMPANY
(SIERRA LEONE) LTD)

AND

PRECIOUS MINRALS MARKETING COMPANY (SIERA LEONE) LTD.

- APPELLANTS

AND

IN THE MATTER OF THE COMPANIES ACT CAP.249

SHEIK ABDULAI ALEDULKALIQ BIN- RAFAAH - RESPONDENT

CORAM:

✓ Hon. Justice Dr. A.B. Timbo	-	C.J.
Hon. Mr. Justice S.C.E. Warne ✓	-	JSC
Hon. Mr. Justice E.C. Thompson-Davis ✓	-	JSC
✓ Hon. Mr. Justice M.O. Adophy	-	JSC
Hon. Mrs. Justice P.E. Macaulay ✓	-	JA
F. M. Carew Esq. for the Appellants		
D.S. Vincent Esq. for the respondent		

RULING OF THE HONOURABLE MR. JUSTICE S.C.E. WARNE
DELIVERED ON 23RD DAY THE MARCH 2005

HISTORY OF THE CASE

The process of law culminating in this appeal is as follows:- on the 23rd day of April

1997 a Petition was ^{filed} filed in the High Court of Sierra Leone by one Sheikh Abdullai A. Bin Raffah in respect of the Precious Minerals Marketing Company (Sierra Leone) Ltd. Incorporated on 15th September 1984 under the Companies Act (Cap 249). The Petitioner is the Respondent herein.

For the several reasons stated in the Petition, the Petitioner prayed for the following orders:

- " i. That the Company be wound up by the Court under the provisions of the Companies Act Chapter 249 of the laws of Sierra Leone.
- ii That the Petitioner may be granted such order as in the premises may be just "

On the 29th day of April 1997, Notice of Intention to oppose the Petition was filed by the late Mr. Terrence Terry a Solicitor ^{of} for the High Court on behalf of M.J. & J. Development Company Ltd. A contributory (Share Holder) of Precious Minerals Marketing Company (SL) Ltd. On the 13th day of May 1997 a sworn affidavit by one Max-Dixon, a clerk in the office of Mr. Terry challenging the jurisdiction of the court to hear the Petition for non-compliance with the mandatory provision of Rule 32 of the Winding-up Rules 1929. On the 23rd October 1998, there was a Ruling on the Preliminary objection by Stronge ^{as} (as he then was):


- " 1. That the Petition dated the 23rd day of April 1997 for the winding-up of the Precious Minerals Marketing Company (S.L) Limited be removed from the file in the Companies (Winding-up) office Registry. The effect of my order is that the Petition is struck out.

2. That the costs be paid by the Petitioner, such costs to be taxed. On the 24th November, 1998, Mr.D.S. Vincent, Solicitor for Respondents wherein made an application before Stronge J. (as he then was) for the Petition to be re-instated; this was opposed by Mr.F.M.Carew Solicitor for Appellants ~~therein~~. On the 18th May 1999 Mr.Justice Stronge dismissed the Motion for the re-instatement of the Petition.

On the 4th January 1999, the Respondent herein filed a Notice of Appeal against the Order of Mr. Justice Stronge ^{which was} dated 23rd day of October 1998.

Let me pause here and make certain observations. After the Order which was made to strike out the Petition made on 23rd October 1998, there was another Order made on 18th May 1999 dismissing the application for the re-instatement of the Petition. Be that as it may, was the Notice of Appeal within the time prescribed by the Rules of the Court of Appeal? I will address that matter in due course. It is to be noted that the Order of 23rd October 1998 was an Interlocutory decision. Let me also observe that, inter alia, one of the reliefs sought in the Notice of Appeal is:

- (ii) "That the Petition dated the 23rd day of April 1977⁹ for the Winding-up of the Precious Minerals Marketing Company (SL) Limited which the Honourable Mr.Justice A.N.B. Stronge ~~ordered~~ to be struck out on the 23rd day of October 1998 be reinstated in the Companies winding-up office registry"

There is no appeal against that Order ~~for~~ dismissing the application for the re-instatement of the Petition. Can this relief be granted, when there is no appeal? I will also consider this in due course. Let me continue with the History of events. Proceedings in the Court of Appeal went on before a Court made up of Alhadi, (Deceased) Tolla Thompson, Gbow 

J A, who delivered their Ruling on 29th day of May, ²⁰⁰⁰ Alhadi and Gbow J.A. allowed the Appeal and Tolla-Thompson dismissed the Appeal.

The Grounds of Appeal

The Ruling and Orders of the Court of Appeal are dated 29th May 2000. The grounds of appeal are:

- i. That the Majority Decision/Ruling the Court is per incuriam as it failed or ignored the recognized and laid down Higher Judicial authorities on the effect of non-compliance of statutory provisions and case Law on this issue.
- ii. That the Majority Court's Decision/Ruling is wrong in Law in waiving the Mandatory Provisions of Rule 11(5) of the current Rules of the Court of Appeal.
- iii. That the Majority Decision/Ruling erred in Law in holding that the non-compliance with Rule 11(5) by the Appellant was not wilful and that the Court has inherent jurisdiction to waive the non-compliance of Rule 11(5) under the Court's Powers in Rule 66 of the Rules of the Court of Appeal.
- iv. That Rule 14(4) of the West African Court of Appeal Rules 1950 were ^{similar} dismissed to Rule 11(5) of the current rules of Court of Appeal.
- v. That the Majority decision/ruling of the Court is unreasonable and cannot be supported by the facts and Law before the Court"

Before the Court, both Counsel ^{were} ~~were~~ given opportunity to make their submissions.

Their main focus were on the Ruling of Mr. Justice Stronge. ^{of 23rd October, 1998} Was it a final ruling or an Interlocutory one? In my opinion, the Ruling was an interlocutory one. What was the issue before the Court of Appeal? It seems to me that the arguments on the Ruling of Mr. Justice Stronge was not really addressed in the Court of Appeal. The decisions in

The Court of Appeal ruled on the preliminary objection by Counsel for the appellant (herein) "That the appeal before the court was out of time and that deprived the Court of Jurisdiction".

I have already observed that the order appealed against was dated 23rd October 1998.

The Appeal was filed and dated 4th day of January 1999. The relevant Rule in the Court of Appeal Rules P.N. 29 of 1985 is Rule 11(1).

This rule provides: "No appeal shall be brought after the expiration of fourteen days in the case of an appeal against an interlocutory decision (emphasis mine) or of three months in the case of an appeal against a final decision unless the Court enlarges the time". I have held that the ruling of Mr. Justice Stronge of 23rd October 1998 was an Interlocutory decision. As a result the appeal before ^{the} Court of Appeal was out of time. However there was this huddle, that among the reliefs sought was an order for the reinstatement of the Petition. There was no specific appeal before the court addressing that order which was one subsequently made dismissing the application for the reinstatement of the Petition of 23rd April 1997.

The grounds of Appeal before the Court were:

- i. The Learned Judge erred in law when he ordered that the Petition dated 23rd day of April, 1997 for the Winding-up of the Precious Minerals Marketing Company (Sierra Leone) Limited be removed from the file in the Companies (Winding up) office registry.
- ii. The Learned Judge erred in law when he ordered that the said Petition be struck out".

How can reliefs be sought for a non-existence appeal. In my view, that cannot be done.

On this point alone, I can safely say it will be inappropriate to accept the ruling of the Court of Appeal. The Proceedings in the Court of Appeal, with respect to the Learned Justices, ^wWere unsatisfactory. There was the filing of the Appeal out of time. The notice of appeal was infelicitously worded. There was no amendment to the grounds of appeal. The Ruling was based on the Preliminary Objection of Counsel for appellants (herein). There was no decision on the grounds of appeal before the Court for what they were worth. In this situation what ought this Court to do. I will resort to the Constitution of Sierra Leone Act No.6 of 1991 more particularly Section 122(3) which provides the following: "For the purposes of hearing and determining any matter within its jurisdiction and the amendment, execution or the enforcement of any judgment or order made on such matter, and for the purpose of any other authority, expressly, or by necessary implication given to it, the Supreme Court shall have all the powers, authority and Jurisdiction vested in any Court established by this Constitution or any other law". As a result I am tempted to remit the matter to the Court of Appeal, but it will serve no useful purpose.

These proceedings have been prolonged for sometime. Justice demands that litigation must come to an end. I will therefore make the following orders:-

- (1) The decision and the Orders made in the Court of Appeal are set aside.
- (2) The Orders of the High Court made on the 23rd day of October 1998 are hereby restored.

Each party shall bear it own costs.

SYDNEY WARNE

J.S.C.