

IN THE SUPREME COURT OF SIERRA LEONE

CORAM: Hon Mr., Justice S.C.E. Warne - JSC  
 Hon. Mrs. Justice V.A.D. Wright - JSC  
 Hon Mr. Justice ME.T. Thompson - JSC  
 Hon. Mr. Justice A.N.B. Stronge - JA  
 Hon Mrs. Justice U.H. Tejan-Jalloh - JA

SC.CIV. APP 5/2000

The Owners of the Ship  
 " M.V. Macsho Star" - Appellants

And

Richab S.A. & Anor - Respondents

A.J.B. Gooding Esq., for the Appellants

N.C. Browne-Marke Esq. for the Respondents

*Sydney* RULING DELIVERED THE 1 DAY OF <sup>June</sup> ~~MAY~~ 2005.

WARNE JSC. Counsel for the Appellants is asking this Court to deliver a ruling on a preliminary objection, which was not made, before this Court. Is this Court competent to deliver such a ruling? In answer to this question, I will refer to the Constitution of Sierra Leone Act. No 6 of 1991. The Supreme Court is a creature of statute and its composition and jurisdiction are spelt out by the said Constitution, We are well aware that the Supreme Court is the most senior Court in the State and its decision binds all other inferior Courts We certainly do not have to be reminded that it is the highest Court in the Land. Be that as it may, I will consider some of the relevant sections of the Constitution of Sierra Leone touching and concerning the Supreme Court.

Composition Section 120 (1) provides: -

- (a) The Chief Justice
- (b) Not less than four other Justices of the Supreme Court and



- (c) Such other Justices of the Superior Court of Judicature or of the Superior Courts in any State practicing a body of laws similar to Sierra Leone not being more in number of Justices of the Supreme Court sitting as such as the Chief Justice may for the determination of any particular case or matter by writing under his hand request to sit in the Supreme Court may specify or until the request is withdrawn ( emphasis mine )
2. The Supreme Court shall save as otherwise provided in paragraph (a) of Sub-section (6) of section 28 and section 126 of this Constitution be duly constituted for the dispatch of its business by not less than three Justices thereof" (emphasis mine)

These provisions are very clear and <sup>un</sup>equivocal. In my view who <sup>is</sup> requests who sits in the Supreme Court at any time? It is the Chief Justice.

*By the way*  
This Court has been requested to hear and determine the appeal SC. CIV. App. 6/2000. Counsel for the Appellant is urging the Supreme Court to give a ruling on a preliminary objection on certain grounds of appeal. This Court as composed, is not competent to give a ruling on a matter of which it is not seised <sup>neither was</sup> ~~neither was~~ the preliminary objection argued before it? Practice Directions notwithstanding Counsel has quoted several legal authorities but are they relevant to the present issue? I say no. With respect I am of the view that the whole exercise has been an academic excursion.

Litigation must come to an end. The Respondents cannot be deprived of the decision of the Court of Appeal indefinitely. I hasten to observe that this exercise in my opinion is an abuse of due process. This, the Supreme Court ought not to encourage and <sup>shall</sup> not encourage. I therefore order that the appeal <sup>shall</sup> proceed.

*S. C. E. Warne*

S.C.E. Warne

*With the court*  
*Well the...*



CC. AP. 6/2000

BETWEEN:-

**THE OWNERS OF THE SHIP  
"M.V. MASHO STAR"**

**AND**

**RICHAB S.A. AND ANOR.**

A. J. GOODING ESQ. AND BERTHAN MACAULEY ESQ. FOR THE PLAINTIFFS  
N. BROWNE-MARKE ESQ. FOR THE RESPONDENTS

CORAM:

HON. JUSTICE S.C.E. WARNE	-	J.S.C.
HON. MRS. JUSTICE V.A.D. WRIGHT	-	J.S.C.
HON. JUSTICE M.E. TOLLA-THOMPSON	-	J.S.C.
HON. JUSTICE U.M. TEJAN-JALLOH	-	J.A.
HON. JUSTICE A.N.B. STRONGE	-	J.A.

On the 17<sup>th</sup> March 2005, A. J. Gooding Esq, stated that at the last hearing on the 2<sup>nd</sup> February 2002 this case was adjourned for ruling pursuant to a preliminary objection dated 1<sup>st</sup> August 2002 after being argued by both sides.

N.B. Browne Marke Esq. said that he was before the court for the appeal to be argued to which A. J. Gooding replied that this court is not properly constituted to proceed with the pending appeal since this preliminary objection was heard by a panel of five judges who adjourned the preliminary objection proceedings for a ruling. The original panel has been reduced by the retirement of two judges and a new panel of five judges including three judges of the original panel has been empanelled to proceed with the appeal. He submitted that even though one or two of the Judges no longer sit on the panel of the court that was dealing with a particular matter so long as the arguments have been completed the Supreme Court has jurisdiction to deliver the judgment or ruling. He further said that the consensus of the authorities is that in the Appellate Court the diminution of the panel by death or otherwise ought not to prevent the delivering of judgment/ruling. He cited a list of authorities including Hallam 1930 47 TLR 207 Re Leslie 1883 23CLD P.559 and the ruling dated 23<sup>rd</sup> March 2005 in S C. CIV.APP.5/2000. In the matter of Precious Mineral Marketing (Sierra Leone Ltd.) and Minerals Marketing Company (S. L.) Ltd unreported to establish that a judgment/ruling can be given by three Judges even though a panel of five judges heard the arguments.

N.B. Browne-Marke Esq. for the Defendants submitted that the panel of three remaining judges cannot deliver the ruling .



Learned Counsel further referred the Court to sections 122(2) and 126 of the Constitution 1991 Act N0.6 of 1991 and stated that all five justices should deliver the ruling. He also referred to section 120 of the Constitution and stated that the Supreme Court can depart from its own previous decision.

To my mind the question that is to be resolved is whether the present panel is properly constituted to proceed with the appeal without the resolution of the preliminary objection proceeding.

The preliminary objection dated 2<sup>nd</sup> July 2000 was argued before the original panel on various dates and adjourned for ruling. Since Ruling had yet to be delivered it is a pending interlocutory matter which needs to be resolved.

The relevant sections of the Constitution that have been referred to during the argument, these are sections 121(2), section 122(3) and 26(a) of the Constitution of Sierra Leone 1991 (Act N0,6 of 1991).

It is not uncommon for the machinery of Justice to experience break down by death resignation and removal. In the absence of specific provisions in the Rules of the Supreme Court to cater for such eventualities resort will have to be made to other sources to enable us to resolve the issue.

From the authorities cited the death or otherwise of one of the members of the panel ought not to prevent the delivering of judgment/ ruling. This is re enforced by section 40 of the Interpretation Act 1973, Lord Robert Megarry in a chapter under the rubric "a unanimous Dissent", in his book *A second Miscellany-at-law* exhaustively dealt with the issue of death, resignation, elevation and retirement of members of a panel in Court.

He said "The difficulty of ascertaining whether a written judgment represents the judge's final views will not normally apply where the judge has not died but merely resigned: and in one such case after the retirement of Hill J. his reserved judgment was by consent, read by Lord Merrivale P. See *Hallam vs. Hallam* (1930) 47 T.L. 207 and *Re Leslie* (1883) 23 Ch D 552 at page 559 where Pearson adopted as his own judgment of Fry. who had became L.J.

In Volume 10 3<sup>rd</sup> Ed Halsburys Laws of England paragraph 830 under the rubric death of a judge 2<sup>nd</sup> paragraphs reads – where one of the members of an appellate Court dies after the hearing but before judgment has been delivered, it would seem that a Judgment written by his deceased members before death may be adopted by one of the other members as his own, if it is to stand as part of the decision of the Court.

I have considered sections 121(2), 122(3) and 126 of the Constitution of Sierra Leone Act N0.6 OF 1991. In the case of CV.APP.5/2000 In the matter of Precious Mineral Marketing Company (Sierra Leone) Ltd and Precious Minerals Marketing Company (Sierra Leone) Ltd. unreported in which a panel of five judges heard the arguments and



the panel was reduced by the the death of the late Hon. Justice Adophy and the retirement of the Hon. A.B. Timbo yet the ruling was delivered by the remaining three judges.

I therefore do not see any reason for this court to depart from its previous decision when this matter is similar to this one.

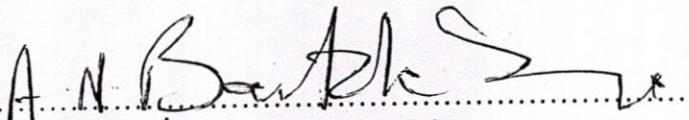
I am re-enforced by the decision in Hallam v Hallam cited above. I am further strengthened by SC. Civ. App N0.4/88 Rokel Resources (S.L.) Ltd. vs. Bittanol International Trading Company and Associates delivered on the 31<sup>st</sup> May 2005 unreported, in which two of the five judges are dead, and a retired judge concurred to the judgment.

For the reasons given I hold that the remaining judges in the original panel could deliver the ruling. Let me however state that in my opinion had Counsel for the defendants asked the Court to withdraw the preliminary objection before the appeal is heard then, the question of delivering a ruling would not have arisen.



Justice V. A. D. Wright  
J.S.C.

I agree



A. M. Bankole Stronge J A