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S.C. Misc. App. 4/2006-~~1140~~

BETWEEN:

ALHAJI ABDULAI BANGURA

APPLICANT

AND

THE COURT OF APPEAL OF SIERRA LEONE PRESIDED BY HON.  
MS. JUSTICE U.H. TEJAN-JALLOH, J.A, HON. MR. JUSTICE P.O.  
HAMILTON J.A. AND HON. MS. JUSTICE S. KOROMA J.A.

AND

TOUFIC HUBALLAH  
SIERRA LEONE NATIONAL PETROLEUM COMPANY LIMITED  
UMARU SAWANEH  
MOHAMED KAMARA

AND

THE ATTORNEY-GENERAL &  
MINISTER OF JUSTICE

RESPONDENT

CORAM:

Hon. Mr. Justice S.C.E. Warne J.S.C.  
Hon. Mrs. Justice V.A.D. Wright J.S.C.  
Hon. Mr. Justice M.E.T. Thompson J.S.C.  
Hon. Mr. Justice A.N.B. Stronge J.A.  
Hon. Mr. Justice S.A. Ademosu J.A.

A.F. Serry-Kamal Esq. for Applicant  
E. Pabs-Garnon Esq. for 2<sup>nd</sup> Respondent  
C. Taylor Esq. for 3<sup>rd</sup> Respondent  
E.E. Roberts Esq. with O. Kanu for 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents

Delivered this 23 day of Nov. 2006

WARNE JSC



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**RULING**

This is an application by way of Notice of Motion dated 18<sup>th</sup> September 2006 for an Order of certiorari to remove to the Supreme Court the Order of the Court of Appeal dated the 13<sup>th</sup> day of July 2006. IN THE MATTER Civil Appeal 60/2005 for the same to be quashed.

Before the Motion could be heard, Mr. E. Pabs-Garnon, Counsel for the 2<sup>nd</sup> respondent, raised a preliminary objection which had been filed; that the Court lacked jurisdiction to entertain the Motion. In this argument, he referred to the definition of certiorari as per Jowitt English Dictionary, 2<sup>nd</sup> Edition, page 307.

He submitted that an inferior court does not include the Court of Appeal, which is the 1<sup>st</sup> Respondent. In support of this submission, he referred to the following sections 123, 125, more particularly, 120 subsection (4). Counsel further submitted that the Court of Appeal as defined in 120(4) of the Constitution of Sierra Leone Act No. 6 of 1991 is a superior Court not an inferior Court and is not subject to an Order of Certiorari.

Counsel submitted that the order is normally sought in the High Court. He argued that a matter of this nature, is normally on appeal. Counsel conceded that this Court has supervisory jurisdiction over all other Courts: However that jurisdiction is limited to its appellate jurisdiction, he argued. Counsel cited several authorities in support of his submissions.

Counsel submitted that there is a defect in the Order being sought, that is to say, that the Court must be seised of the proceedings of the Court of Appeal.

Finally, Counsel submitted that Section 125 is only limited for the purpose of the Supreme Court exercising its supervisory powers under Rule 88 of Supreme Court Rules No. 1 of 1982.



In the interest of coherence I will now consider the submissions of Mr. E. Roberts for the 1<sup>st</sup>, 4<sup>th</sup> and 6<sup>th</sup> Respondents and that of Mr. C. Taylor for the 3<sup>rd</sup> Respondent.

Mr. Roberts submitted that he relies on the submission of Mr. Pabs-Garnon and that the full and entire procedure to be applied, is to be found in Order 59 of the White Book 1960.

Mr. Taylor, for his part, also relied on the argument of Mr. Pabs-Garnon. He would wish to address Section 125 of the Constitution. Counsel cited Section 120 of Act No. 6 of 1991 and Section 74 of the Courts Act No. 31 of 1965 and added that the Common Law of England applies in Sierra Leone.

Mr. Serry-Kamal submitted that by Section 122(1) of the Constitution the Supreme Court is the final Court of Appeal and Section 125 of Act No. 6 of 1991 gives the Supreme Court supervisory jurisdiction over all other Courts in Sierra Leone. He submitted that Rule 88 gives the Court additional power of supervision over all other Courts.

Counsel further submitted that the fact that they could have appealed cannot be a basis for an objection but only a factor whether the Court could grant the relief. In support of his submissions Counsel has cited Halsbury's Laws of England 3<sup>rd</sup> Edition Vol. 11 at page 130 and the case of the King v Postmaster General ex parte Carmichael (1928) 1 KB 291 at 297.

Counsel finally submitted that the Order of the Court of Appeal was a nullity and an excess of jurisdiction.

The submissions of Mr. Roberts and Mr. Taylor did not advance the submissions of Mr. Pabs-Garnon beyond the issue of lack of jurisdiction of this Court to entertain the Notice of Motion. Be that as it may, I will consider all the submissions for what they are worth.



I believe the starting point of this Ruling turns on the jurisdiction of the Supreme Court which is to be found in Section 122(1) of the Constitution Act No.6 of 1991, which provides:

*"The Supreme Court shall be the final Court of Appeal in and for Sierra Leone and shall have such appellate and other jurisdiction as may be conferred upon it by this Constitution or any other law".*

The Motion before this Court is being prosecuted pursuant to section 125 of the Constitution herein mentioned. Section 125 is a further jurisdiction conferred by this Constitution, vide Section 122(1). Section 125 provides *"The Supreme Court shall have supervisory jurisdiction over all other Courts in Sierra Leone and over any adjudicating authority; and in exercise of its supervisory jurisdiction shall have power to issue such directions, orders or writs including writs of habeas corpus, orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers"*.

Unlike the jurisdiction of the High Court which is provided for in Section 134 of the Constitution Act No. 6 of 1991:

*"The High Court of justice shall <sup>have</sup> supervisory jurisdiction over all inferior and traditional Courts in Sierra Leone and any adjudicating authority, and in the exercise of its supervisory jurisdiction shall have power to issue such directives, writs and orders, including writs of habeas corpus, and orders of certiorari, mandamus and prohibition as it may consider appropriate for the purposes of enforcing or securing the enforcement of its supervisory powers",*

The Supreme Court has supervisory jurisdiction over the Court of Appeal. Section 125 is clear and unequivocal. The fact that the matter is appealable does not detract from the powers conferred on the Court. In my view, the preliminary objection is a mixture of a preliminary issue and issues touching and concerning the merits of the Motion.



I have no doubt that by virtue of Section 122(1) and Section 125, this court has jurisdiction to entertain the motion, Rule 88(1) is irrelevant to the motion.

The amplitude of the supervisory power of the Supreme Court as conferred by Section 125 is as wide and far-reaching as to cover any matter which is property before the Court.

Vide; "In the matter of the SC Misc. App. 6/2000

Anti Corruption Act 2000

And in the matter Between Exparte Muctaru Ola Taju Deen  
Respondent and

Commissioner of the Anti Corruption Commission 1<sup>st</sup> Applicant

And the Anti Corruption Commission 2<sup>nd</sup> Applicant

And the State; This is an exparte Notice of Motion where the Supreme Court granted leave to the applicant for an Order of Certiorari to issue pursuant to Section 125 of the Constitution, Act No. 6 of 1991.

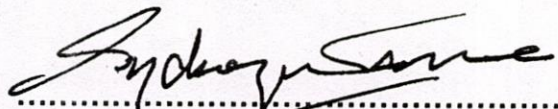
The leave having been granted the Motion for the Order of Certiorari to issue was sub-sequently heard by the full Supreme Court. (Unreported)"

Albeit, this was a Motion concerning an Order made by the High Court. The Court of Appeal is subordinate to the Supreme Court and by virtue of Section 125 herein before mentioned, has supervisory jurisdiction over it.

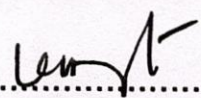
The objection is untenable.

Let the Motion be heard.

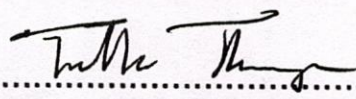




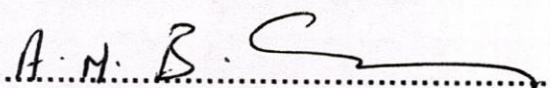
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