S.C. CRIM. APP. NO.2/2008

IN THE SUPREME COURT OF SIERRA LEONE
(CRIMINAL JURISDICTION)

BETWEEN:

THE STATE - RESPONDENT/ RESPONDENT

AND

FRANCIS A. GABBIDON - APPELLANT/ APPLICANT

CORAM:

HON. MRS. JUSTICE S. BASH-TAQI JSC

HON. MR. JUSTICE G.B. SEMEGA-JANNEH JSC

HON. MR. JUSTICE P.O. HAMILTON JSC

COUNSEL:
DR. BU-BUAKIE JABBI ESQ. AND LEON JENKINS-JOHNSTON ESQ. FOR THE APPELLANT/APPLICANT

MR. ABDUL TEJAN-COLE ESQ. AND MS. GLENNA THOMPSON FOR THE RESPONDENT

RULING DELIVERED ON THE 27th DAY OF FEBRUARY 2009

SEMEGA-JANNEH JSC:

1. This Ruling embodies the decisions of the Court in relation to the objection taken in respect of Dr. Bu-Buakie Jabbi's practising status and his representation for the Applicant and the main application for a stay of proceedings.

2. On the 9th day of December 2008, Mr. Francis A Gabbidon, the Applicant herein, filed a Notice of Motion dated the 4th, December 2008 applying for the following reliefs or orders.

(1) AN ORDER FOR INTERIM STAY OF TRIAL PROCEEDINGS in the matter of The State vs. Francis A. Gabbidon at present taking place in the High Court before the Honourable Mrs. Justice M. Sey J, pending the hearing and determination of the above application now pending before this honourable Supreme Court.

(2) AN ORDER FOR STAY OF TRIAL PROCEEDINGS in the matter of The State vs. Francis A. Gabbidon at present taking place in the High Court before the Honourable Mrs. Justice M. Sey J, pending the hearing and determination of both the above appeal in S.C. Crim. App. No. 2/2008 now pending before the Supreme Court and that other appeal in S.C. Crim. App. No. 19/2008 at present pending before the Court of Appeal.

(3) ANY FURTHER OR OTHER ORDERS that this honourable Court may deem fit.

3. When the Notice of Motion came up for hearing on the 19th December 2008, Mr. Abdul Tejan-Cole, of counsel, Director of the Anti-Corruption Commission, objected to the application in that the application was prepared and signed by Dr. Bu-Buakei Jabbi as solicitor; and that, unless Dr. Bu-Buakei Jabbi can prove to this Court that he is entitled to practice and has the requisite practicing certificate from the General Legal Council in accordance with section 19 of the

Legal Practitioners Act, 2000, with particular reference to subsections 1 and 5, he cannot act as a Legal Practitioner.

4. The Court was of the view that as Mr. Abdul Tejan-Cole was making the allegations, he should provide the Court with the appropriate evidence in support of his oral assertions in court. Mr. Abdul Tejan-Cole therefore applied to the Court for an adjournment for the purpose of acquiring and adducing before the Court the relevant evidence. The Court declined the application because the Court was of the view that Mr. Abdul Cole had ample time to have acquired the evidence and give adequate notice to both Dr. Bu-Buakei Jabbi and the Court of his intention to raise the objection. The Court therefore proceeded with the hearing of the application filed by Dr. Bu-Buakei Jabbi and at the same time leaving it open for Mr. Abdul Tejan-Cole to raise again the objection at a future date. Dr. Bu-Buakei Jabbi was allowed to move the Notice of Motion and he proceeded to do so. After Dr. Bu-Buakei Jabbi rested his arguments, Mr. Abdul Tejan-Cole applied for an adjournment to allow time in order for him to prepare a written reply. Accordingly, the matter was adjourned to the 19th January 2009 for further hearing.

5. On the 19th January 2009, Ms. Glenna Thompson, now appearing for the Respondent, renewed or raised the preliminary objection that counsel for the Applicant (Dr. Bu-Buakei Jabbi) is unqualified (to practice) and this objection she embodied in her argument titled: *ARGUMENTS SUBMITTED ON BEHALF OF THE RESPONDENT IN RESPECT OF MOTION DATED 4TH DECEMBER 2008 FOR STAY OF TRIAL PROCEEDINGS,* which was filed in the morning of

the 19th January 2009 and supported by an affidavit sworn to by Mr. Abdul Omoranike Babatunde Tejan-Cole, of counsel, dated the 15th January 2009 and filed in the morning of the 19th January 2009. Before she could argue her objection, Mr. Leon Jenkins-Johnson, of counsel, objected to the preliminary objection on the ground that rule 55(1), (2) and (3) of the Supreme Court Rules required notice to be given. Ms. Glenna Thompson retorted that the section speaks of civil matters and Leon Jenkins-Johnson countered that what mattered was the principle of giving notice.

6. The Court was of the view that the status of counsel raised by the objection (I rather use the word "objection" rather than "Preliminary Objection" in the circumstances to differentiate it from the meaning of the technical term: Preliminary Objection) was not inherent to the issues of the application (which is not the hearing of the appeal in any case and to which section 55 refers and relates to) but relates to the Legal Practitioner's Act, 2000, and concerns the payment and non-payment of practicing fees to the General Legal Council with the attendant consequences. The Court was of the further view that what mattered was bringing the issue to the attention of the Court with the supporting evidence in a timeous manner; and adequate notice given to the Court, the parties and their counsel. In the result, the Court adjourned the hearing to the 26th January 2009 to afford counsel for the Respondent time to react to the objection raised by Ms. Glenna Thompson.

7. On the 19th January 2009, Dr. Bu-Buakei Jabbi swore to an affidavit filed on the 20th January 2009, in which he exhibited two practicing

certificates (Exh. BJ 9 and BJ 10) for the years ending 2008 and 2009 respectively issued by the General Legal Council. This was followed later by the Applicant's reply filed and dated the 26th January 2009 to the argument of the Respondent. On the 26th January 2009, the status of Dr. Bu-Buakei Jabbi was argued by Dr. Bu-Buakei Jabbi and Ms. Glenna Thompson on opposing sides. Ms. Glenna Thompson argued that the issuing of a practicing certificate is not retrospective, and since the practicing certificate for 2008 (Exh. BJ 9) was issued to Dr. Bu-Buakei Jabbi subsequent to the time that Dr. Bu-Buakei Jabbi acted for the Applicant and filed pleadings on behalf of the Applicant, such documents, as a result, are null and void and of no effect. The Court disagreed with counsel's submission.

8. The sanction for non compliance with subsection (1) and (2) of section 19 of the Legal Practitioners Act 2000, is refusal of audience by the Court and incapacity "of maintaining an action for the recovery of any fee or reward on account of or in relation to any act or proceeding done or taken by him in the course of such practice" as provided for in sub-section (5) of section 19. Clearly, the subsection does not state, or by implication, that pleadings and other documents prepared by an offending Legal Practitioner are null and void. The sub-section merely directs sanction against the offending Legal Practitioner and not to his/her client.

9. The Court had granted audience to Dr. Bu-Buakei Jabbi on the 19th December 2008 and, up to and inclusive of the hearing, despite objection raised regarding his status because no evidence was before the Court of non compliance by him with sub-section (1) or (2) of

section 19, I feel certain that no one can seriously argue that the audience already granted to Dr. Bu-Buakei Jabbi, physically experienced by both the Court and Dr. Bu-Buakei Jabbi, can now be withdrawn restropectively. I am of the view that sub-section (5) of section 19 intends that audience be refused by the Court at the time after it receives the evidence of non-compliance with sub-sections (1) and (2) of section 19. The idea of declaring all pleadings, documents, (including assignments and conveyances) acts etc. by all offending Legal Practitioners raises the fear of an unacceptable and unimaginable catastrophy and chaos, spreading over and adversely affecting, all aspects of the national economy and body politic. I am absolutely certain in my view that the drafters of section 19 had no such intention. The purpose of section 19 is clearly directed at creating a revenue source for the General Legal Council and at the enforcement of payment of practicing fees thereof by Legal Practitioners.

10. There was no evidence that reminders have been sent to Dr. Bu-Buakei Jabbi, and that the Court has been notified by the secretary of the General Legal Council of any contravention or continuing contravention of sub-sections (1) and (2) of section 19. Such reminder (or reminders) and notification are prerequisite for bringing into operation the penalising sub-section (5) of section 19.

Let me now deal with the main application.

11. Ms. Glenna Thompson's argument, as I understand it, is not that this court lacks the general jurisdiction to hear the application for stay of

proceedings but that the court cannot, or should not, grant the application because there is no interlocutory appeal, in law, in criminal trials or cases before the High Court of Sierra Leone; a fortiori, since the basis of the application is "illusory" or "non existent", that is to say, there is no appeal, in law, pending before the Court of Appeal, any order for stay of proceedings cannot be hinged on that "illusory" and "non existent" or "purported" appeal.

12.I disagree with counsel in her submission. There is in fact an interlocutory appeal in the Court of Appeal numbered 19/2008 and the issue whether there can be an interlocutory appeal in criminal cases before the High Court is an appeal before this Court and is numbered 2/2008. Both appeals are yet to be heard and determined; the appeals are alive and breathing until the life in them is snuffed by decisions of the appellate courts or some other judicial process. The purpose of the application is to stay the proceedings before the High Court until the said appeals are heard and determined. In my considered view the application can be refused or granted without prejudice to the hearing and determination of the appeals. Counsel's conclusion that this Court cannot, or should not, grant the application presupposes that her submission that the laws of Sierra Leone do not allow for interlocutory appeals in criminal proceedings is the correct statement of the law. This may well be so but at this stage it is a very contentious matter and has first to be determined by the Highest Court of the land. In dealing with the application for stay of proceedings, the Court is entitled to consider the likelihood of success of the appeals, particularly that which relates to the issue of whether the criminal charges the Applicant is facing in the High Court are statute or time

barred, without determining the issues of the appeals in this application.

13. In this application for a stay of proceedings, Dr. Bu-Buakei Jabbi's argument revolves around the contention that the charges the Applicant is being tried for in the High Court before the Hon. Justice Mrs. M. Sey, are time barred by reason of the provisions of sub-sections 2(1) and (2) of the Public Officers Protection Act, 1936, of Cap. 172 (as amended by subsection 34(3) of the Limitation Act, No.51 of 1961), and the varied factors that he urged on the Court as lending support to the application and captioned: "Special Circumstances", in the main, relate to that issue. The use of the term itself in the context of this application, for that matter, in any application of this nature, be it in a criminal or civil proceedings, is of no moment or significance; what is relevant for consideration in such applications is the factor(s) and circumstance(s) that the Court has to consider in coming to a reasonable exercise of its jurisdiction, assuming always the Court has the jurisdiction to grant the application, in arriving at a just decision. The term is sometimes used interchangeably with the term: "Exceptional Circumstances".

14. Broadly and in brief, Dr. Bu-Buakei Jabbi argued that time would be saved if the trial before the High Court is stayed pending the hearing and determination of the said appeals before the Court of Appeal and this Court. Further, he argued, if the trial before the High Court proceeds and the said appeals finally succeed, the Applicant would have unnecessarily suffered the consequences of a long trial, thereby, resulting in oppression on the Applicant and an abuse of the process

of the Court. Furthermore, Dr. Bu-Buakei Jabbi argued that what he described as egregiously (or shockingly) wrong decisions by the Hon. Justice Mrs. M. Sey of the High Court and also by the Court of Appeal in its Ruling of the 11th November 2008 by the Hon. Justice Mr. N.C. Browne-Marke, compound and amplify the factors of time saving, oppression and abuse of the Court's process. A further factor advanced by Dr. Bu-Buakei Jabbi is what he described as the novelty of the appeal. Underlying the application for a stay, the argument went, is in the "the best interest of Justice, of the integrity of the judicial system itself, of cost-effective criminal adjudication, and also fairness to the Accused (Applicant)".

15. Clearly, the force of Dr. Bu-Buakei Jabbi's argument assumes the eventual decisions of the appeals in favour of the Applicant, that is to say, establishing the right to an interlocutory criminal appeal from the High Court and, more particularly, dismissal of the indictment before the High Court for being time barred by reason of subsections 2(1) and (2) of the Public Officers Protection Act, Cap. 172 of the laws of Sierra Leone 1960 as amended by subsection 34(3) of the Limitation Act no.51 of 1961 or the permanent staying of the High Court Criminal Proceedings. The problem with Dr. Bu-Buakei Jabbi's argument is that its like a double edged sword; there is an inverse to his argument. What is the likely scenario in the event a stay of proceedings is ordered by this Court and, in all probability after a long waiting for the hearing and determination of the appeal before this Court and the appeal before the Court of Appeal, which, whatever way the decision goes, is likely to come before this Court for a final hearing and determination of the issues of that appeal? Obviously, in

that case, the criminal trial of the Applicant before the High Court would be bound to take an even longer time with attendant consequences. The alleged "egregiously wrong decisions" are not, in my view, really relevant to the application and will, no doubt, be dealt with, if raised, in the appeals in due course. As to the "novelty" factor, it seems to me, there is no relationship between the novelty of the appeal and staying the proceedings. The novelty does not and would not impact the trial at the High Court but would have been a relevant issue for consideration in an application for leave to appeal.

16. The conflict inherent in Dr. Bu-Buakei Jabbi's argument and its inverse ordinarily should invite consideration of the likelihood of success of the appeals. In respect of the issue of the availability of interlocutory appeals in criminal trials and the matter of the time-bar, detailed arguments have been canvassed in the Court below and, as regards the issue of interlocutory criminal appeals, in this application. The issue of the time-bar is on appeal before the Court of Appeal and that of the interlocutory criminal appeal is currently before the Supreme Court. It is difficult in the circumstances to give adequate consideration of these appeals without inadvertently determining the issues on appeals. Such determinations may be prejudicial to the appeals. Dr. Bu-Buakei Jabbi argued that his detailed arguments are not intended for the determination of the issue but to highlight the importance of determining the issue on appeal as being a good reason for ordering a stay of proceedings pending the determination of the appeals by the Appellate Courts. This is taken into account.

behalf of the Applicant. Now I am to deal with the application from the perspective of weighing the interest of the Applicant against the public interest in the peculiar circumstances of this case. The charges against the Applicant are being prosecuted by the Anti-Corruption Commission. The circumstances leading to the enactment of the Anti-Corruption Act, 2000, and its subsequent replacement by the Anti-Corruption Act, 2008, are in the public domain and very much a common knowledge to even the common or ordinary person. The Anti-Corruption Commission was established in the fight against, and to combat, corruption which was, and is, generally perceived, rightly or wrongly, by both the local and international communities as pervasive, cancerous and corrosive; a disease that has been destroying and continues to destroy the morals, mores and economic health of the body politic. There was also the perception that the Anti-Corruption Commission was toothless; offences were not being investigated and prosecuted, and where prosecution was taking place, it was not vigorously prosecuted. In short, there was a perception of stagnation and hardly any results; and the public, consequently, was very unhappy and dissatisfied with the situation. It was this background that prompted the enactment of the Anti-Corruption Act, 2008 in order to enhance the powers of the Anti-Corruption Commission and to give it prosecutorial authority independent of the approval or sanction of the Attorney-General. In the light of the pervasive knowledge of these perceptions and circumstances as described earlier, I feel obliged to take judicial notice of them and to recognise the public interest in avoiding unnecessary delays.

20. There is the absolute need, in the public interest, to avoid these criminal trials being clogged or delayed by various or multible or needless interlocutory appeals or applications or otherwise and thereby allow for the smooth and speedy trial of these cases. This, and similar reasons, underpin the principle that applications for stay of proceedings should only be granted sparingly and for very good reasons. The opinion expressed must not be interpreted as a basis for precluding or denying a litigant of his/her rights at trial or on appeal; a litigant must bc accorded his/her full rights and entitlements throughout the proceedings, be it at the trial or on appeal.

21. I see no difficulty or existing oppressive circumstances for the Applicant or an abuse of the Courts process. The Applicant is not asking for a stay (permanently or otherwise) because of an existing external factor which, if the trial is allowed to proceed, would amount to oppression and an abuse of the Court's process. These kind of circumstances are distinguishable from the instant case. In the case at hand, the argument does not rely on any existing factor – external or internal – but on an uncertain eventuality whose outcome depends on the conclusion of a judicial process. The two processes of the trial and the appeals in question are not mutually exclusive and I see no obstruction, prejudicial or otherwise, in having both prosecuted contemporaneously and, if I may add, assiduously and expediously. In short, placing the two competing interests on the balance, the public interest, in all the circumstances, outweighs that of the Applicant.

22. In the premise, I give the following Orders/Directions:-

(1) That the application is hereby refused and, accordingly, dismissed.

(2) That the hearing of the Appeal before the Court of Appeal and that before the Supreme Court be expedited.

(3) That the relevant Registries of the Courts expedite the preparation of the records of proceedings for the hearing of the respective appeals.

(4) That the parties bear their own costs.

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HON. MR. JUSTICE GIBRIL B. SEMEGA-JANNEH – JSC

I AGREE .....

HON. MRS. JUSTICE S. BASH-TAQI – JSC

I AGREE .....

HON. MR. JUSTICE P.O. HAMILTON – JSC

REF: G.B.SJ/HJ

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Registrar Supreme Court.