

IN THE SUPREME COURT OF SIERRA LEONE
(CIVIL JURISDICTION)

CORAM:

HON. JUSTICE S. BASH-TAQI - JSC - PRESIDING
HON. JUSTICE P.O. HAMILTON - JSC
HON. JUSTICE M.E.T. THOMPSON - JSC

BETWEEN:

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| (1) | SIERRA LEONE PEOPLES PARTY, S.L.P.P. | - 1 ST PLAINTIFF/
APPLICANT |
| (2) | ALHAJI USMAN N.S. JAH | - 2 ND PLAINTIFF/
APPLICANT |
| (3) | JACOB JUSU SAFFA | - 3 RD PLAINTIFF/
APPLICANT |

AND

- | | | |
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| (1) | DR. CHRISTIANA THORPE | - 1 ST DEFENDANT/
RESPONDENT |
| (2) | NATIONAL ELECTORAL COMMISSION
(NEC) | - 2 ND DEFENDANT/
RESPONDENT |

Dr. Bu-Buaki Jabbi Counsel for the Plaintiffs/Applicants
 Mr. R. Fynn Counsel for the Defendants/Respondents

RULING DELIVERED ON 8TH DAY OF APRIL 2011
HONOURABLE JUSTICE M. E. TOLLA THOMPSON, JSC.

This Motion brought by the 1st, 2nd and 3rd plaintiff/applicant is for the following orders:

- (1) Leave and enlargement of time within which to appeal against the Decision/or order of the court of appeal dated 8th January 2009 in the above titled matter;

- (2) Enlargement of time within which the application for leave may be made to appeal against the decision and or order of the Court of Appeal dated 8th January 2009 in the above titled matter.

Dr. Bu-Buaki Jabbi ; learned counsel for the applicant was about moving the Court when learned counsel for the respondent Mr. Fynn interjected and said he was taking an objection to the Motion on two grounds:-

- (1) That the application brought by the plaintiff/applicant is in the wrong Court and ought not to be heard;
- (2) That the application for the enlargement of time is out of time.

On the 1st objection Mr. Fynn relied on rule 7 of the Supreme Court Rules. He said the power to grant leave must be done by the court where the decision or appeal emanated. In this case the application for leave must first be made to the Court of Appeal if refused then to the Supreme Court. The rule does not say that the applicant should come to this court as of right. He cited rule 6 1(c) of the Supreme Court Rules which states that the applicant should come to this court with leave of the Court of Appeal.

For enlargement of time he relied on rule 26 of the Supreme Court Rule. The only process to come to this Court is by special leave. In answer to Dr. Jabbi's reply he said that rule 6 1(a) of the Supreme Court Rule is an aid to section 123 (1) (a) of the Constitution and without rule 6 (1)(a) section 123 of the Constitution will have an unreserved effect. The combined effect is to resolve an otherwise inconsistent resolution. It qualifies the class of civil matters that should come as of right.

Dr. Jabbi in reply referred this court to Sec. 123 (i) (a) of the Constitution and rule 6 1(a) of the Supreme Court Rules and submitted that since Sec. 123 of the Constitution modifies rule 6 1(a) of the Supreme Court

rule and as it stands rule 6 must be read within the context and is subject to the provision in Sec. 123 (1) (a) of the Constitution. Continuing he submitted that applying Sec. 123 (1), the appeal is against the decision of the Court of Appeal in this matter is an appeal as of right being a civil case, and strictly speaking it does not require to be pursued by leave.

As regard the 2nd objection Dr. Jabbi submitted that it does not apply to the application before the Court. It is applicable to an application for Leave. He said his application for enlargement of time is within the prescribed time.

Finally he submitted that rule 69 of the Supreme Court Rule does not apply, it does not when there is an appeal as of right. It only applies when the appeal is by leave. The application before this court is in respect of an appeal as of right.

Let me say right away that my assessment of the argument and submissions by both counsel went beyond the objections raised by Mr. Fynn and the reply thereto by Dr. Jabbi. In my opinion, therefore, this ruling will not be confined to the objections alone instead it will encompass the original motion/application brought by Dr. Jabbi.

As regards the first objection, rule 6 (1) (a) of the Supreme Court Rules it stipulate that to appeal on any cause or matter emanating from the Court of Appeal leave must first be obtained if it involves substantial question of law or public importance and such application be pursuant to rule 7 of the Supreme Court Rules. This is a restrictive provision. I am sure this is the rule Mr. Fynn had in mind when he took the first objections to the motion. There is no evidence before us to suggest that the decision of the Court of Appeal which is the subject matter of the motion involves a "substantial question of law or of public importance" which necessitated an application for leave to appeal to this court.

In the result the 1st objection is untenable and cannot be sustained.

As regards the 2nd objection quite clearly Sec. 123 (1) (a) and rule 6 (1) (a) confer a right of appeal to the Supreme Court and the right is unfettered i.e. it is not subject to any impediment unless the appellant had exceeded the time within which to appeal. See rule 26 (1) of the Supreme Court Rules, even then in a proper case, leave for enlargement of time will be granted see rule 26 (4) of the Supreme Court Rules. I note from the affidavit evidence of the applicant that time has not yet elapsed for the enlargement of time within which to appeal.

I now come to Dr. Jabbi's motion. It cannot be overlooked that in his application Dr. Jabbi is asking for Leave either to appeal or for the enlargement of time within which to appeal. I am tempted to ask what Leave. When in his own very words he conceded that he can appeal as of right to the Supreme Court pursuant to the relevant provision of the Constitution. I take it, he is here referring to Sec. 123 of the Constitution. Sec.123 (1)(a) of the Constitution and it states:-

“An appeal shall be from the judgment decree or order of the Court of Appeal to the Supreme Court as of right in any civil cause or matter.”

It is obvious to me that the judgment in question is a substantive judgment of the Court of Appeal: and for the purpose's of appeal, is within the ambit of the above section of the constitution and also a litigant desirous to appeal, should utilize Sec. 26 (1) of the Supreme Court Rules, which states:-

“Where an appeal lies as of right the appellant shall lodge his Notice of Appeal within 3 months from the date of the Judgment unless the Supreme Court enlarges time.”

Is there an appeal against the judgment to the Supreme Court? I opine not. In fact if the applicant intends to appeal such appeal will be out of time as the 3 months stipulated by the rules have elapsed. The judgment was delivered on the 8th January 2009.

However the applicant can avail himself of rule 26 (4) of the Supreme Court rules which states:-

“No application for enlargement of time in which to appeal shall be made after the expiration of one month from the expiration of the time prescribed within which an appeal may be brought. Every application for enlargement of time shall be by motion supported by affidavit setting forth good and substantial reason for the application and by the grounds of appeal which prima facie show good cause for leave to be granted. Where time is so enlarged a copy of the order granting such enlargement shall be annexed in that notice of appeal.”

The above rule suggests that leave to appeal will be granted within one month after the expiration of the 3 months provided by rule 26(1); in other words, time to appeal will be enlarged by a month after the expiration of the 3 months.

In my judgment therefore the submission and the argument canvassed by Dr. Jabbi are more in tune with the second order prayed for in the notice of motion i.e. “an order granting enlargement of time etc”. On perusal of the motion, it is clear to me that though the three months had elapsed since the judgment was delivered by the Court of Appeal, yet the applicant is within time to apply for leave for an enlargement of time within which to appeal.

In the result I am inclined to grant the 2nd order prayed for.

The order is accordingly granted.

I AGREE

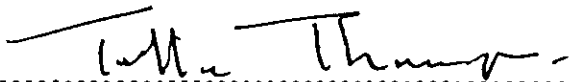
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HON. JUSTICE S. BASH-TAQI - JSC - PRESIDING

I AGREE.....

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HON. JUSTICE P.O. HAMILTON - JSC

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HON. JUSTICE M.E.T. THOMPSON - JSC