

CR. APP. 1/2012

IN THE SUPREME COURT OF SIERRA LEONE

**BETWEEN:**

**EZZAT BASMA**

**APPELLANT/APPLICANT**

**AND**

**THE STATE**

**RESPONDENT**

**CORAM:**

Hon. Mrs. Justice S. Bash-Taqi, JSC

Hon. Mrs. Justice V. A. D. Wright, JSC

Hon. Mrs. Justice A. Showers, JA

**COUNSEL:**

N. D. Tejan-Cole, Esq. for the Appellant/Applicant

D. J. Soyei, Esq. for the Respondent

**RULING DELIVERED ON THE 12<sup>th</sup> DAY OF Dec 2012**

**S. BASH-TAQI, JSC:-** By Notice of Motion dated 14<sup>th</sup> day of May 2012 filed by the Appellant/Applicant in this matter, he seeks leave to appeal to the Supreme Court against the Ruling of the Court of Appeal delivered on 3<sup>rd</sup> May 2012 on the grounds appearing on the face of the Motion.

Before the application was moved, Counsel Mr. D. J. Soyei, for the State drew our attention to what he considers are irregularities in the Records of the proceedings in this matter.

He drew the Court's attention to the Notice of Appeal addressed to the Registrar of the Court of Appeal appearing at Pages 74 & 75 of the Records and to the date on the said Notice which reads:

"DATED THE 6<sup>TH</sup> DAY OF DECEMBER 2011",

and submitted that that document was never part of the records of the proceedings at any time. To buttress his submission, he referred to the copy of the same Notice of Appeal appearing at Pages 83 & 84, wherein the date "6<sup>th</sup> "

was omitted from the document and submitted that this document reflect the correct state of the records and not what appears at Pages 74 & 75. He also referred to the submissions he made in the Court of Appeal when he first took the objection before their Lordships and to the fact that the Court of Appeal struck out the appeal for that reason (See bottom of Page 25).

Mr. Soyeyi's second objection is to do with the title of the appeal appearing at Pages 81 & 82 of the Records. He submitted that the Notice of Appeal at Page 81 which is the subject matter of these proceedings is entitled: **CRIM. APP. 23/11**, whereas Page 82 has another Notice of Appeal entitled **CRIM. APP. 24/2011**. He submitted that the actual appeal in these proceedings is entitled: **CRIM. APP. 24/2011**, as appears in the Notice of Appeal at Pages 83 & 84. He submitted that the Court of Appeal Ruling was not in respect of the Notice of Appeal appearing at Pages 81 & 82. Mr. Soyeyi concluded that in view of the irregularities the appeal be dismissed. Alternatively, he asked that we proceed with the appeal without reference to Pages 74 & 75. He relied on the inherent jurisdiction of the Court.

Mr. Tejan-Cole's response is that there is no authority for the Court to proceed without portions of the Records or to strike out portions thereof.

The question we have to ask is: does the Court have inherent jurisdiction to order to proceed with the appeal without Pages 74 & 75 of the Records or to strike out those portions of the Record?

Counsel Mr. Soyeyi has not given us any authority for his submission that we can ignore parts of the records of the appeal or that we have the authority to strike out parts thereof, save that we can do so under the inherent jurisdiction of the Court. We are however reminded that the Supreme Court is a Court of Statute; we can find no rule that gives us the power to strike out portions of appeal records once they have been prepared by the Court Registry and put before us. In the premises, we hold that the appeal can proceed with the material before us.

Having heard the arguments of Counsel from both sides, it seems to us that the points of contention are twofold, namely: (i) whether the appeal is entitled **CRIM. APP. 23/11** or **CRIM. APP. 24/2011** and secondly whether the absence of the date "6<sup>th</sup>" nullifies the Notice of Appeal at Pages 83 -84. The Registrar of both the Court of Appeal and the Supreme Court Registries confirmed that what the Records portray is what was passed on to them for processing.

It seems to us that the number which is given to an appeal is a matter for the Registry which first processed the appeal papers. In our view, whether the appeal is entitled, "**CRIM. APP. 23/11** or **CRIM. APP. 24/2011**, is neither here nor there.

The Appeal documents filed in both cases refer to the same matter and have the same contents. It is the duty of the registry to number appeals when Notices of

Appeal papers are filed in the Registry. In this case, the Registry gave the two Notices of Appeal two different criminal appeal numbers, that is: **CRIM.APP. 23/11**, at Page 81, which is the Notice of Appeal filed by the Appellant/Applicant's Solicitor, and **CRIM. APP. 24/2011** which is the Notice of Appeal made by the Appellant/Applicant dated 6<sup>th</sup> December 2011.

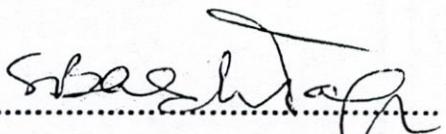
The Notice of Appeal appearing at Pages 83 & 84, is a copy of the Notice of Appeal appearing at Page 74, but without the figure "6<sup>th</sup>". Looking at the several documents in the Records, both appeal numbers appear on all the documents, including the documents containing the Court Ruling. We refer especially to the titles on the documents at Pages 1 -27 & 29, and at Pages 75-85. The impression given from their Lordships' Ruling is that both appeals were either consolidated at some point or at best considered together as a single appeal. †

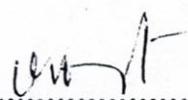
In our view, therefore the appeals, **CRIM. 23/11**, and **CRIM.APP. 24/2011**, are one and the same, as they refer to the same Appellant and the same subject matter.

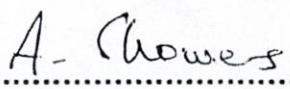
As regards the absence of a date on the Notice of Appeal entitled CR. 24/2011 appearing at Page 84, this is again a matter for the Registry since it is the duty of the Registrar to make copies of all documents appearing in the Court bundle. There is Notice of Appeal dated "6<sup>th</sup> December 2011, and a copy of the same in which the number "6<sup>th</sup>" is absent but whose contents are the same as those on the Notice of Appeal bearing the date 6<sup>th</sup> December 2011. In our view, the two documents are one and the same as they refer to the same appeal.

We do not see any substance in the objections raised by Counsel for the State and the Preliminary Objection is therefore overruled.

We will hear the substantive appeal.

  
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Hon. Mrs. Justice S. Bash-Taqi, JSC

I Agree.....  
  
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Hon. Mrs. Justice V. A. D. Wright, JSC

I Agree.....  
  
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Hon. Mrs. Justice A. Showers, JA