

SC.MISC. APP 2/2012

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

OSMAN SULAIMAN MANSARAY - APPELLANT/APPLICANT

AND

ALICE FATMATTA KENNY
ISATU BANGURA
ELIZABETH BANGURA - RESPONDENTS/DEFENDANTS

CORAM:

HON. MRS. JUSTICE V.A.D. WRIGHT
HON. MR. JUSTICE TOLLA THOMPSON
HON. MRS. N.F. MATTURI-JONES

RULING DELIVERED ON THE 1ST AUGUST 2012

This is an application by way of motion for the following orders:

1. For an order granting the Applicant an enlargement of time within which to file an Appeal to the Honourable Court against the judgment of the Court of Appeal dated the 11th day of July 2009.
2. That this Honourable Court grant an interim stay of execution of the judgment of the High Court presided over by the Hon. Mr. Justice L.B.O. Nylander Judge dated the 11th day of July 2002 and all

subsequent proceedings pending the hearing and determination of this application.

3. That this Honourable Court grant a stay of execution of the Judgment of the High Court presided over by the Hon. Mr. Justice L.B.O. Nylander Judge dated the 11th day of July 2002 and all subsequent proceedings pending the hearing and determination of the Appellant/Applicant's Appeal in the Supreme Court of Sierra Leone.
4. That the costs of and incidental to this application be costs in the cause.

The application is supported by the affidavits of Osman Mansaray and Sahid Mohamed Sesay both sworn on the 19th June 2012 together with the exhibits filed herein.

At the hearing A.S. Sesay Esq. said that he relied on the exhibits filed and that he considered this appeal as of right under Section 123(a) of the Constitution.

N.P. Fofana Esq. relied on his affidavit of opposition. He said that the applicant had delayed in making this application to the court since the ruling had been given on the 8th July 2009 as in exhibit F, and no leave was sought from the Court of Appeal to appeal to the Supreme Court. He said that the construction of the Constitution does not exclude the Court of Appeal and Supreme Court Rules.

In reply S.M. Sesay Esq. told the Court that he did not first go to the Court of Appeal for leave to come to the Supreme Court since it was not applicable in this case.

Counsel for the Defendant/Respondent submitted that the court was not competent to grant the orders prayed for.

It appears that both the High Court and Court of Appeal, held different views as to whether the case is an interlocutory matter or final.

All the arguments raised by Counsel for the Defendant/Respondent were on procedural grounds and the delay in bringing this action.

Counsel for the Defendant/Respondent stated that the Appellant/Applicant did not seek leave from the Court of Appeal to the Supreme Court under the Supreme Court Rules P.N. No.1 of 1982. In other words according to him this court has no power to grant the orders prayed for because the Appellant/Applicant had not followed the practice and procedure laid down by the rules to bring the matter before the Supreme Court.

On the other hand Counsel for the Plaintiff/Applicant said that this was an appeal as of right under Section 123 Sub-section 1(a) of the Constitution which states:

“An appeal shall lie from a judgment, decree or order of the Court of Appeal to the Supreme Court”:

(a) As of right, in any civil cause or matter.

Perhaps it will be useful to refer to the relevant rule and provision of the Supreme Court Rules and the 1991 Constitution respectively.

Rule 6(1) © states "An appeal shall lie from the judgment decree or order of the Court of Appeal to the Supreme Court with leave of the Court of Appeal in any cause or matter civil or criminal where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance".

Section 123(1) (a) of the Constitution states that " an appeal should lie from a judgment decree or order of the Court of Appeal to the Supreme Court as of right in any civil cause or matter".

Section 123(1) © of the Constitution makes provision for leave from the Court of Appeal to appeal to the Supreme Court but this is limited to criminal matters. It is not applicable here, this case being a civil matter.

The main flaw in Section 6(1) © of the Supreme Court Rules is that the matter or cause must involve "a substantial question of law or is of public importance" I daresay this matter before us does not involve a substantial question of law or of public importance. Another flaw in Section 6(1) © of the Supreme Court Rules is that the Constitution with regard to the above provisions came into operation subsequently and it is trite if a rule is inconsistent with the Constitution, the constitution prevails.

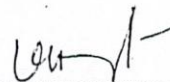
Further I am persuaded by the Supreme ruling in Civ. App. 4/2007 between IBRAHIM AN BASMA Applicant and ADNAN YOUSSEF WANSA RESPONDENT AND BASAM IBRAHIM BASMA Applicant and ADNAN YOUSSEF WANZA

unreported in which Justice M.E.T. Thompson JSC said "procedural rules are intended to serve as handmaiden of justice and not to defeat it and invoke the court's discretionary power waive the strict application of the rules in order to ensure that the parties have a fair opportunity to argue their respective case in the Supreme Court"

On the issue of a stay of execution of the judgment of Nylander J we do not think that this is the proper forum. The application for a stay ought to be refused and is hereby refused.

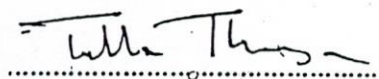
Finally in the circumstances I grant an enlargement of time within which to file the appeal to the Supreme Court within seven day's from today's date.

Costs in the cause.

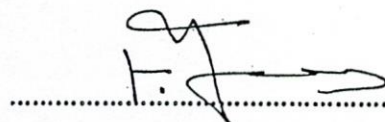


HON. MRS. JUSTICE V.A.D. WRIGHT JSC

HON. MR. JUSTICE M.E. TOLLA THOMPSON JSC

 I AGREE

HON. MRS. N.F. MATTURI-JONES JA

 I AGREE