

MISC. APP. 3/2014.

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

MOHAMED IBRAHIM BASMA
MR FAWSI ANTAR

-APPELLANTS

AND

TOUFIC HUBALLAH

-RESPONDENT

CORAM:

The Hon. Mr. Justice V. V. Thomas, JSC. - Presiding
The Hon. Mr. Justice P. O. Hamilton, JSC.
The Hon. Mrs. Justice A. Showers, JA.

COUNSEL:

S. S. Thomas Esq., for the Appellants.
E. A. Hallaway Esq., for the Respondent

RULING DELIVERED ON THE 10th DAY OF December 2014

The Appellants, who are the Applicants herein, by Notice of Motion dated 17th November 2014, have applied to this Court for the following orders:-

1. That this Honourable Court do grant an interim stay of execution of the judgment of the High Court dated the 4th February, 2014 and the Order of Court of Appeal dated the 7th November, 2014 and all subsequent proceedings pending the hearing and determination of this Application.
2. That this Honourable Court do grant a stay of execution of the judgment of the High Court dated the 4th February, 2014 and the Order of Court of Appeal dated the 7th November, 2014 and all subsequent proceedings pending the hearing and determination of the Appeal on its merits.
3. Any further and/or other Order (s) that this Honourable Court may deem fit and just in the circumstances.

4. That the costs of this application be costs in the cause.

Counsel for the Appellants stated that this application is made pursuant to Rule 36 of the Supreme Court Rules, 1982, Public Notice No. 1 of 1982 (the Rules) which is as follows:

“36. An application not relating to any appeal of which the record has been registered in the Registry of the Supreme Court and any other application containing allegations of fact which cannot be verified by reference to the registered record or any certificate or duly authenticated statement of the Court of Appeal shall be supported by affidavit. Where the appellant or respondent prosecutes or defends in person, the said affidavit shall be sworn by him and shall state that, to the best of his knowledge, information and belief, the allegations contained in the application are true. Where he is represented by a legal practitioner the said affidavit shall be sworn to by such legal practitioner and shall, beside stating that, to the best of his knowledge, information and belief, the allegations contained in the applications are true, show how he obtained his instructions and the information enabling him to present the application.”

Clearly this Rule is most inappropriate as the provision pursuant to which this application is made. In fact an application of this nature cannot be made directly to the Supreme Court and there is nothing in the Rules of the Court which is authority for the application herein. The Constitution of Sierra Leone, Act No. 6 of 1991 (the 1991 Constitution) makes provision in sections 128 (2) and 130 (b) thereof for the composition of the Court of Appeal and the power of a single justice of that Court for the purpose of hearing and determining appeals from decisions of the High Court as follows:

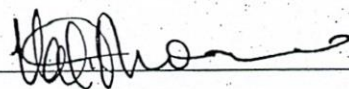
“128. (2) The Court of Appeal shall be duly constituted by any three Justices thereof and when so constituted the most senior of such Justices shall preside”.

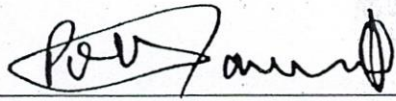
"130. A single Justice of the Court of appeal may exercise any power vested in the Court of Appeal not involving the decision of any cause or matter before the Court of Appeal save that--

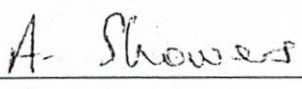
(b) in civil matters, any order, direction or decision made or given in pursuance of the power conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted."

The effect of the above provisions is that when a litigant is dissatisfied with the decision of a single Justice sitting in the Court of Appeal pursuant to section 130 of the 1991 Constitution, the avenue open to him/her for a review of that decision with a view to having it varied, discharged or reversed is to apply for the full court of three Justices to hear and determine the decision of that single Justice. The jurisdiction of the Supreme Court to review decisions of the Court of Appeal is in my judgment limited to decisions made by that Court duly constituted and not decisions of a single Justice sitting in the Court of Appeal pursuant to section 130 of the Constitution, vide section 123 of the 1991 Constitution.

In the circumstances, I will dismiss this application for the orders prayed for in the application herein. The costs of this application to be paid by the Appellants to the Respondent assessed at Le 1,500,000.


HON MR. JUSTICE V. V. THOMAS, JSC.

I agree 
HON MR. JUSTICE P.O. HAMILTON, JSC.

I agree 
HON MRS. JUSTICE A. SHOWERS, JA.