

KAMARA v GRAHAM

(1961) SIERRA LEONE ONLINE JUDGMENTS (SLOJ)-XX

In the Supreme Court of Sierra Leone
On Monday, the 14th day of August, 1961
Suit No: [C. C. 88/61]

CORAM

Luke Ag.

Justice of the Supreme Court of Sierra Leone

BETWEEN
SHEKU KAMARA
Appellant

AND
T.H.A.GRAHAM
Respondent

Ratio/Holding:

1. *Practice-Appeal from judgment of magistrate's court-Appeal dismissed for noncompliance with procedural requirements-Application for extension of time limit for lodging appeal-Whether appellant should have appealed to Court of Appeal against order dismissing appeal-Whether order final or interlocutory.*

Cases cited

Grimble & Co. v. Preston [1914] 1 K.B. 270

Salaman v. Warner [1891] 1 Q.B. 734;

Vint v. Hudspith (1885) 29 Ch.D. 322.

Legislation Referenced

Other Sources Referenced

Luke AG. PJ

This is an application by motion for an order that the time limit for lodging an appeal be extended and also that in the meantime all further proceedings be stayed pending the determination of the appeal by the Supreme Court. This motion paper was listed for hearing on March 15 last but owing to several incidents did not come up before me for argument till June 14 last. Perhaps it may be of interest to state that this appeal was originally lodged on February 7 last but when it came before the court a preliminary objection was raised that the appellant had not complied with the requirements for lodging appeal and so it was dismissed with costs. When it was listed it did not come before me for some time. At the hearing solicitor for the appellant argued that the case has not been argued on its merits as the dismissal was on a preliminary objection which is

more or less a default to comply with procedure or practice and that the merits have not been gone into and determined as the appellant feels that he is aggrieved as the point he wishes to raise is of substance and cited the case of Grimble & Co. v. Preston [1914] 1 K.B. 270. He then went on to argue that decision was not final and referred to the case of Salaman v. Warner [1891] 1 Q.B. 734. Solicitor for the respondent, in arguing against relisting the case, referred to the fact that the case having been dismissed, appellant's next step was to go to the Sierra Leone Court of Appeal and not before the same court of first instance. This point was resolved in the case of Vint v. Hudspith (1885) 29 Ch. 322. It was a case of practice where plaintiff failed to appear when the case came up for hearing and so his claim was dismissed with costs. The plaintiff appealed to the Court of Appeal, and, when the case came before that court, both judges held that although the Court of Appeal has power to entertain an appeal from a judgment given by default, it is bad practice for parties to go to the Court of Appeal without first going to the court of first instance which made the order. It is clear that this appeal was not heard on its merits and therefore it cannot be said that a final order has been pronounced. The real test of what is a final order was defined by Lord Esher M.R. in the case of SaJaman v. Warner & ors. [1891] 1 Q.B. 734, where he said at p. 735: " Taking into consideration all the consequences that would arise from deciding in one way and the other respectively, I think the better conclusion is that the definition which I gave in Standard Discount Co. v. La Grange, 3 C.P.D. 67 at 71, is the right test for determining whether an order for the purpose of giving notice of appeal under the rules is final or not. The question must depend on what would be the result of the decision of the Divisional Court, assuming it to be given in favour of either of the parties. If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it IS final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but, if given in the other, will allow the action to go on, then I think it is not final, but interlocutory." In this matter before me, had I ruled against the preliminary objection the appeal would have gone on for argument. Such being the case the matter has not yet been finally decided and the application is in order and is granted. Having decided to grant the application the only point is to extend the period for appellant to put down his appeal before court. I allow him 10 days within which he should lodge his appeal.

Appearances

W. S. Marcus Jones
For Appellant

Gershon B. O. Collier
For Respondent