MAG/APP NO.13/16

IN THE HIGH COURT OF SIERRA LEONE
HOLDEN IN FREETOWN

BETWEEN:

FATMATA FANGAWA - APPELLANT
8 GIBBON LANE
OFF SYKE STREET
FREETOWN

AND

JOSEPHINE LAMBOI - RESPONDENT
8 GIBBON LANE
OFF SYKE STREET
FREETOWN

D. FOFANAH FOR THE RESPONDENT

JUDGMENT DELIVERED ON THE 7th DAY OF FEB. 2017 BY THE HONOURABLE MR JUSTICE ERNEST GOODING

JUDGMENT

This is a private criminal summons appeal to the High Court.

The Appellant was charged together with FatmataFangawa with five counts at the Pademba Road Magistrate Court as Follows:

Count1- Abusive Language, contrary to Section 3 (ii) of the Public Order Act No.46 of 1965.

Count2- Public Insult and Provocation contrary to Section (ii) of the Public Order Act No. 46 of 1965.

Count3- Insulting Conduct, contrary to Section 3 (ii) of the Public Order Act No.46 of 1965.

Count4- Disorderly Behaviour, contrary to Section 12 of the Public Order Act No.46 of 1965.

Count5- Threatening Language, contrary to Section 3 (i) of the Public Order Act No.46 of 1965.

The Appellant pleaded not guilty on all counts and was found not guilty of Count 3 and Count 4 and was acquitted and discharged.

In respect of Count1 – Abusive Language, Count 2 Public Insult and Provocation and Count 5- Threatening Language, the accused was found guilty.

On the 29th March 2016, the Appellant was sentenced as follows:

COUNT 1- Abusive Language Le.250,000//00 (Two Hundred and Fifty Thousand Leones) fine or serve one month's imprisonment.

COUNT 2- Public Insult and Provocation, bound over to keep the peace for twelve (12) months in the sum of Le.1,000,000//00 (One Million Leones)

COUNT 5- Threatening Language- Le. 250,000//00 (Two Hundred and Fifty Thousand Leones) fine or serve one month's imprisonment.

The Appeal is against the above mentioned conviction and sentence imposed by His Worships Justices of the Peace F. Graham and Julius J. Coker on the 29th day of March 2016 at the Pademba Road Court in Freetown.

1. **THE DECISION COMPLAINED OF:**

   The whole

2. **GROUNDS OF APPEAL:**

A. The Justice of the Peace erred in law to hold the appellant guilty for the offence of

i. Abusive Language, contrary to Section 3 (ii) and

ii. Threatening Language contrary to Section 3 (i) of the Public Order Act No. 46 of 1965

In that each particulars of offence charged contained two separate offences in one count. Hence they are bad for duplicity.

B. The Justice of the Peace seriously erred in law to find the appellant guilty of the offence of Public Insult and Provocation, in that there is / are no such offence in the Public Order Act No.46 of 1965.

3. RELIEF SOUGHT FROM THE COURT OF APPEAL

a. The Appellant therefore prays that his conviction and sentence BE SET ASIDE and a verdict of Acquittal be entered in his favour.
b. And that any fines paid be returned to him.

The abovementioned appeal was listed before me on the 18th January 2017, 26th January 2017, 2nd February 2017 and 7th February 2017.

NOTICES OF HEARING was sent to both Appellant and Respondent regarding the above dates of hearing.

Despite notices been sent to the Appellantshe was absent and was not represented at the hearing.

Counsel for the Respondent on the 7th February invited me to dismiss the appeal as the Appellant has not been attending court despite notices sent out.

In criminal proceedings an Accused including an Appellant who is charged with a Criminal Offence is presumed innocent until proven guilty, the Prosecution is required by law to prove the guilt of an Accused or an Appellant who is appealing against conviction and sentence, in this matter from a decision of the Magistrate beyond reasonable doubt as enshrined in the Case of Woolmington vs. DPP (1935) A.C. 462.

In pursuant of this task the Prosecution inevitably calls witnesses to assist the court in its deliberation unless the Accused pleads guilty unequivocally.

Criminal appeals against conviction and sentence from Magistrates usually takes the form of a complete rehearing of the case.The Respondent who incidentally in an Appeal against conviction and sentence is the Prosecutor or his legal representative must be present to discharge the burden of proving its case beyond reasonable doubt.

In the instance in this case, the Prosecutor who is the Respondent attended court to discharge this burden, but the Appellant failed to attend.

The constant absence of the Appellant without reasonable or no excuse whatsoever has left me with no alternative but to dismiss the appeal.

Having perused the entire file including the transcript of evidence and taking into consideration that in Criminal Cases a person is presumed innocent until proven guilty, and the fact that the Appellant has failed to attend court despite the attendance of the Respondent to prosecute this matter, I hereby dismiss the Appeal in accordance with the provision of Section 45 (2) (b) of the Courts Act 1965.

I award the Respondent cost of Le.1,000,000//00 (One Million Leones) payable by the Appellant.

HON MR. JUSTICE ERNEST GOODING J.