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SC CIV APP NO.3/2010

IN THE SUPREME COURT OF SIERRA LEONE

NOTICE OF APPEAL

**BETWEEN:**

ALHASSAN PAUL KARGBO - AN INTERESTED PARTY/APPELLANT

AND

SANNOH VICTOR MUSTAPHA - APPELLANT

AND

BRIMA JALLOH - RESPONDENT

**CORAM:**

HON. JUSTICE P.O. HAMILTON - JSC

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

HON. JUSTICE M.E.T. THOMPSON - JSC

HON. JUSTICE A. SHOWERS - JA

HON. V.M. SOLOMON - JA

A.F. Serry-Kamal Esq. and E.E.C. Shears-Moses Esq. for Appellant/Applicant

D.G. Thompson Esq. for Respondent

Ruling Delivered on the 31<sup>st</sup> Day of July, 2012

HON. JUSTICE P.O. HAMILTON - JSC

This is an application on behalf of the Applicant in which Counsel for the Applicant A.F. Serry-Kamal Esq. seeks leave to proceed with the Notice of

Motion dated 12<sup>th</sup> February, 2012 and another dated 9<sup>th</sup> January, 2012. Counsel for the Applicant also seeks leave to amend the words "An Interested Party" to read "Appellant" anywhere it does appear in the papers filed.

Counsel for the Applicant stated that this was an Appeal against the decision of the Court of Appeal refusing leave to add the "Appellant" herein as a party to the action. He further stated that there is one Notice of Motion dated 11<sup>th</sup> November, 2011 which is the one for which leave is being sought to amend.

D.G. Thompson Esq. Counsel for the Respondent in opposing this application for leave to amend based his opposition on three grounds:

*(1) That this matter was heard and determined by a panel of three (3) Justice with a ruling dated 6<sup>th</sup> October, 2011. The Applicant requested a panel of five (5) Justices which is a full panel of the Court. He submitted that the same matter which was heard by the panel of three Justices should be the same that should be heard by the panel of five Justices. Therefore if this application is granted new issues will be brought into play which will change the nature of the matter heard before the panel of three Justices.*

*(2) If the application is granted Alhassan Paul Kargbo will become a party automatically when he was not a party in the High Court not even in the Court of Appeal.*

*(3) It is clear that the Court of Appeal has not given a ruling as such an aggrieved party is unknown. Finally reliance is place on the affidavit in opposition filed by the respondent.*

A.F. Serry-Kamal Esq. in reply submitted that this is only an application for leave to amend the title of the proceedings. He further submitted that there should be a distinction between the main case refusing the applicant's application to be joined as a party and finally submitted that *Rule 6(1)* of the Supreme Court Rules 1982 gives an aggrieved party the right to come to the Supreme Court.

*Rule 6(1)* of the Supreme Court Rules 1982 provides:

*"An appeal shall lie from a judgment, decree or order of the Court of Appeal to the Supreme Court .....*"

Considering this application it must be made clear that the Applicant requested a full panel of five (5) Justices to hear this matter although it had been heard and determined by three (3) Justices. I do agree with Counsel for the Respondent that the application if granted would automatically make Alhassan Paul Kargbo an Appellant when he was not a party in the High Court nor in the Court of Appeal.

In my humble opinion if this application for leave to amend is granted it would change the nature of the matter that was heard by the panel of three Justices before this full panel of five Justices.

In the final result therefore the leave sought by Counsel for the Applicant A.F. Serry-Kamal Esq. is refused. I make no order as to cost.

*[Handwritten signature: P.O. Hamilton]*

.....  
HON. JUSTICE P.O. HAMILTON - JSC

I AGREE:.....*[Handwritten signature: V.A.D. Wright]*.....

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

I AGREE:.....*[Handwritten signature: M.E. Tolla Thomapson]*.....

HON. JUSTICE M.E. TOLLA THOMAPSON- JSC

I AGREE:.....*[Handwritten signature: A. Showers]*.....

HON. JUSTICE A. SHOWERS - JA

I AGREE:.....*[Handwritten signature: V.M. Solomon]*.....

HON. JUSTICE V.M. SOLOMON - JA

REF: POH/HJ