

IN THE HIGH COURT OF SIERRA LEONE

HOLDEN AT FREETOWN

THE STATE

VS

1. ANDREAS HOPFENBLATT
2. JAN PETER VIEREGG EMDEN

C. F. MARGAI ESQ, for the Applicant

N D TEJAN-COLE Esq for the Respondents

DECISION

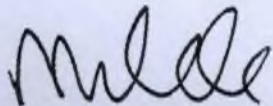
1. By Notice of Motion dated 13 January, 2010 C F MARGAI & ASSOCIATES applied to this Court for Leave to make an application to this Court notwithstanding the time lapse, and for Leave to appeal against the Judgment and Order of this Court dated 30 November, 2009. *The* Application is supported by the affidavit of MR MARGAI himself. Exhibited to that affidavit are "A", a copy of the Order of this Court dated 30 November, 2009; "B" proposed Notice and Grounds of Appeal; "C", a copy of the Indictment in respect of which the Respondents herein were discharged. *Mel*
2. In arguments before me on the 21st ultimo, Mr Margai cited the civil case of J T CHANRAI v PALMER [1970-71] ALR SL 402 CA in support of his argument that a litigant ought not to suffer because of the inadvertence of his Solicitor. I accept the proposition of law.
3. Mr N D TEJAN-COLE, Counsel for the Respondents forcefully opposed the Application in Court. His argument simply put, is that Mr Margai is not a person aggrieved in the sense stated in Section 57(2) of the Courts' Act, 1965 as amended, in that he is not a Law Officer, and he has not been expressly authorised by the Attorney-General and Minister of Justice or the Acting Director of Public Prosecutions to appeal on behalf of the State. Therefore, his Application has no merit. Mr Tejan-Cole cited case law, and statutory provisions, Section 3 of the Law Officers' Act, 1965 and Section 66 of the Constitution of Sierra Leone, 1991.
4. I have studied the arguments of, and the authorities cited by both Counsel, but I do not intend to deal with them in depth because I am of the view that the issue before this Court is quite simple. Does Mr Margai

require leave to appeal against the discharge of the Respondents by this Court on 30 November, 2009. The answer is clearly 'No'. Section 57(2) as amended states that: *"Any person aggrieved by the acquittal or discharge of the accused or defendant before the High Court may appeal to the Court of Appeal against such acquittal or discharge: provided that no such appeal shall lie except on a question of law."* Unlike a person convicted who, in the circumstances described in Section 57(1)(b)&(c), has to seek the Leave of the Court of Appeal, before he could appeal, the Appellant appealing against ~~the~~ an acquittal or discharge requires no such leave. He could appeal directly to the Court of Appeal as he has a right to do so, provided he does so within 21 days of the date of the acquittal or discharge.

5. In any event, I hold the view that Mr Margai is not a person aggrieved in this particular case, as the prosecution is a public prosecution, and is brought in the name of the State. I have already held on 30 November, 2009 that he had no Fiat from the Attorney-General and Minister of Justice nor from the Acting Director of Public Prosecutions to prosecute the matter before me. If he did not have it then, Section 66(9) of the Constitution is of no avail. As of now, I have no evidence that he is authorised to appear before me in the terms stated in Section 66(5) of the Constitution or in Section 3 of the Law Officers' Act, 1965.
6. As regards the question of who is a person aggrieved, as contemplated in Section 57(2) of the Courts' Act, I have gained some assistance from WOOLF, LJ in the civil case of *COOK v SOUTHBEND BOROUGH COUNCIL* [1990] 1 All ER 243 CA at page 246 Paras b-d: *"I hope (it is useful) if I set out certain general propositions which I would expect to apply where the expression "a person aggrieved" is used in relation to a right of appeal in the absence of a clear contrary intention in a particular statutory context. (a) A body corporate, including a local authority, is just as capable of being a person aggrieved as an individual. (b) Any person who has a decision decided against him (particularly in adversarial proceedings) will be a person aggrieved for the purposes of appealing against that decision unless the decision amounts to an acquittal of a purely criminal offence. In the latter case, the statutory context will be all important. (c) The fact that the decision against which the person wishes to appeal reverses a decision which was originally taken by that person and does not otherwise adversely affect that person does not prevent that person from being a person aggrieved. On the contrary, it*

indicates that he is a person aggrieved who is entitled to exercise the right of appeal in order to have the original decision restored." Mr Margai, regrettably, does not fall into any of these categories. The proviso in (b) supra does not of course apply in this country, as here there is a right of appeal against an acquittal.

7. This Court's decision of 30 November,2009 was against the State, and not against Mr Margai. As Mr Margai is not a Law Officer, he cannot bring an appeal in the name of the State, nor seek leave to bring one, if that were necessary. And for the avoidance of doubt, though this point has not been fully argued before me, there are no interlocutory appeals in criminal cases: see: Cr App 19/2008 THE STATE v FRANCIS GABBIDON CA Judgment delivered 11 November,2008 following JAMES ALLIE & OTHERS v THE STATE Misc App No 3/81 a Constitutional Reference to the Supreme Court, Judgment delivered on 24 February,1982.
8. The Application dated 18 January,2010 is therefore dismissed without Costs.



N C BROWNE-MARKE

Justice of Appeal

Friday 4 February,2010.