The Court of Appeal –
A path to consolidation, convalescence and recovery!
- Reginald Sydney Fynn JA

This offering attempts to capture the legal framework of the Court of Appeal of Sierra Leone tracing its constitutional and factual composition, mentioning also some of its existing processes whilst exploring ideas and recommendations that may provide alternatives which may strengthen the court and generally make it a more effective adjudicating forum. Whilst some of the ideas flow from the experience and practices in other jurisdictions the bulk of them are informed by the author's appreciation of the existing rules as well as his experience appearing before the court as a legal practitioner and later sitting as a member.

Composition:
The 1991 constitution provides that the court “shall consist of no less than 7 (seven) Justices of the Court of Appeal” and this is in addition to the Hon. CJ and “such Justices…” as he may request to sit in the court “for the determination of any particular cause or matter”. At the moment the Court is comprised of 9 (nine) Court of Appeal Justices; to wit Reginald Sydney Fynn JA, Monfred Momoh Sesay JA, Musu Damba Kamara JA, John Bosco Allieu JA, Eldred Frank Taylor-Camara JA, Miatta Maria Samba JA, Jamesina Leonora King JA, Sulaiman Bah JA and Ivan Ansumana Sesay JA. This possibly is the highest number of Justices in the court at a given time since the court's creation. Despite its large number this is still a significantly young court. None of the five most senior Justices in the court was appointed prior to 2015 whilst the youngest members were elevated in 2019.

This youthfulness provides an opportunity as well as any to give some attention to organizing and shaping the work and character of the court for greater impact and effectiveness and that is what has spurred the present offering.

A quick Google search of countries with a similar Judicial stratification shows that with a population of almost 30(thirty million) Ghana has 36 (thirty six) Justices of Appeal whilst Nigeria has 66 (sixty-six) federal Justices of Appeal. The UK has 39 (thirty-nine) and Uganda with a population of about 42.7(forty two point seven) million has 15(fifteen) Justices of Appeal. In comparison Sierra Leone with a population of 7 (seven) million is arguably at a convenient place with 9 (nine) Justices of Appeal. And with the 2(two) most junior Supreme Court Justices and the two most senior High Court Judges standing by to assist in the Court of Appeal the number of Justices available for empaneling in the Court of Appeal stands at a commendable 13 (thirteen).

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1 The Constitution of Sierra Leone Act No 6 (1991) Section 128(1)
2 Justice Fynn was appointed in July 2015, Justice MM Sesay in 2016
Panels:
Ordinarily, the court sits in panels of three Justices to conduct its business but a single member of the court can sit for the dispatch of interlocutory processes. To date this has meant that once a case is assigned to a panel that panel must always sit as such to hear even the interlocutory arguments in such a case. This has caused many a case to stall and urgent applications to impede unnecessarily the process. Can the panel not have speedy informal discussions after receipt of the file and where such an assignment is interlocutory, cannot one of its members especially if they are agreed on their thoughts go ahead hear and rule on the application. It will not detract from the rules, where the panel is unanimous on such a ruling for the whole panel to concur on it and issue a unanimous outcome though heard by one. Where there is no such consensus there will be no harm done if the whole panel sits and rules or the application can later be presented to the full panel for reconsideration in the event a party is dissatisfied with the outcome.

Who Presides?
The principle of seniority is embedded in the processes of the court. The constitution provides (S.128 (2)) that in every panel the most senior Justice must preside. The statute also provides that the court is bound by its previous decisions. One will suggest that the principle of seniority should be observed so as to ensure that the court is presided over always by the most senior of its members. The risk otherwise may materialize where, contrary to the seniority tradition, the most junior judges may soon bind their seniors and the court. Put differently one would suggest that panels should be set so as to allow the senior judges the opportunity to shape the courts character and posture on emerging issues.

This suggestion draws from the arrangements in the UK where it is the Heads of the various divisions of the Court of Appeal who preside over the panels of the court. A similar system is practiced in Ghana. In Sierra Leone statute makes it possible for the Court to sit “in two or more divisions” this has not been the case for a quite a while now and until this provision is given effect the above suggestion may prove a more logical and predictable system.

Sitting below or above:
Members of the court are at the pleasure of the Hon. CJ qualified to sit below as well as above. Here also the guiding principle ought to be seniority. The Supreme Court maintains its apex standing where it is the most Senior Appeal Court Justices that should be invited to sit thereon. The constitution does give the CJ a free hand and does not at all limit his power to choose any Justice to so move up or down the ladder. However one will urge that discretion may be used as a possible indication, that a Justice(s) so invited to sit in the

\[\text{\textsuperscript{3}}\text{i}bid\text{ 1. S.128(2)}\]
\[\text{\textsuperscript{4}}\text{i}bid\text{ 1. S.130}\]
\[\text{\textsuperscript{5}}\text{i}bid\text{ 1 S.128(3)}\]
\[\text{\textsuperscript{6}}\text{i}bid\text{ 1 S. 128 (4), see also The Court’s Act 1965 (S. 35)}\]
higher tier are ready for or are being prepared for a seat in that superior Court. If any Justice of the Appeals even the most junior can sit in the Supreme Court then the message and symbolism becomes mixed opening the door to flamboyant and unsavory speculations for the choice of a particular Court of Appeal Justice in a given case. The reasons for such an invitation to sit in an upper court, as far as are possible when predictable evokes the true spirit of the enabling provision and this usually is temporary; either for a specific case or for a specific period. Similarly the standing of the Court of Appeal is maintained when it is only it's most Junior Justices that need to step down to the High Court to hear first instance cases. Needless to mention that where Supreme Court Justices are primarily engaged with presiding in the Court of Appeal or Justices of the Court of Appeal in the High Court, it does not convey a complimentary report of the competence of the court accommodating the "visiting" Justices nor on the Court hosting them.

Generally, the provisions which allow Justices to step up or down should be less frequently employed and its use kept to the barest possible minimum. The justices, especially where the court enjoys a full bench, are best engaged in performing roles and duties in the court of their appointment. Where Justices are found to have more cases in a court other than that to which they are appointed, the message becomes blurred. Is it that the particular Justice is not quite ready to handle assignments in the court of his appointment? Or is it that the Justices below lack the skills necessary to execute their tasks thus being in constant need of help from above. Special assignments being especially excepted but even there jumping two tiers up or down may be far from complimentary.

**Fixed Panels:**

At my last count there are in excess of 65(sixty five) live panels in the Court ie including recently reserved judgments and ongoing applications and appeals. The permutations of the membership in these existing panels do not follow any known and or predictable pattern. Whilst this method may have a lot of advantages not yet documented, which speak to its favour, it is well known that this is the method used for far too long now and that the result has not been the agile dispatch of the court’s business at all.

A rough calculation will suggest that at present each Judge is in about six panels or more. With this number of panels there is too often an overlap or clashes in calendars. These overlaps require Justices to be at more than one place at the same time. Some justices are in early and ready but yet have to wait out the whole of the day whilst others on whom they wait are busy attending to other panels in the court or in the ones below and or above all in the same day. The existing system makes for immense waste of judicial time.

With 9 (nine) substantive justices presently available it is possible to have a total of 10 (ten) fixed panels. The four most senior Justices in the Court and the most Junior Supreme Court Justice may each preside over two panels. The rest of the Justices will then be divided into these panels and days assigned to each.
More work, it is hoped, will be done and in an orderly manner. I attach an example of what the panels can possibly look like (previously shared). If three panels each heard three cases a day nine cases will be heard in a day and no less than 36 (thirty-six) in a week. In four weeks, the possibility of hearing 144 (one hundred and forty four) cases effectively or even if merely for mention or part hearing becomes not only real but surpass-able.

It is also hoped that the panels being clear and fixed it will be easier to organize the work. Hold discussions and assign tasks. The Presiding will now keep a record of the developments in each case both in and out of court and with an eye on who is drafting a given judgment or ruling aiming to ensure that all have a fair share of the work over and above participating in the sittings.

Panels can be disbanded and reorganized periodically, every six months or annually, as the workload turnout and other circumstances may demand. The work will be better organized with fixed panels and a lot more will be achievable.

**Panel Venues:**

There may be three possible locations where sittings can go on simultaneous with panels that do not share Judges. There may be one at Roxy Building, another at Guma Building and a third at the Law Courts Building. Whilst the Judges who have residency in these locations may find it convenient to have their panels sitting where their chambers are this however need not always be the guiding principle of where a panel sits or who should be on a panel. It goes without saying and many words need not be spent on that here; the accommodation of the Justices both in Chambers and in court ought to be catered for at a significantly high standard, such as will enable their output. The security and transportation needs of Justices should not ever be compromised but being a prerequisite; should always be given the highest possible attention.

The Court has for too long been and continues to be housed in a dispersed manner; chambers being allocated to Justices as and where they may be found. The dignity, effectiveness and cohesion of the court will be complemented by the court’s residence. Ideally speaking it may well be time to pursue a home for the Court of Appeal. A location which can have in it most if not all of the Justices, the Court Registrar as well as have Courtrooms primarily dedicated to the Court. A modest building with 10(ten) to 15 (fifteen) office spaces and with 4 (four) courtrooms would be a great start. It will not be too much to expect that such designated and enhanced circumstances will necessarily impact the courts work positively.

**Submissions & Time for Writing Judgments:**

Having live hearings may not leave us immediately however the prevailing times demand that they must be kept to the barest minimum. Already submissions are receivable in written synopsis. R.23 provides for the party who does not wish to appear to make such a filling of written submissions but such written submissions are now used by almost all
parties. These synopsis are often skeletal arguments and it is expected that they should be filed within the time allowed and must include copies of the authorities on which a party relies and which ought to have been cited in the synopsis.

Parties should be encouraged to make full use of this filing and even so for interlocutory applications where it appears to the panel that the subject matter may require several days for hearings. At the hearing of oral submissions which should become less frequent and only held if a party insists on the right to have one it will be quite unseemly for counsel to dictate from his synopsis or go from paragraph to paragraph. Oral submissions give the party the opportunity to clarify highlight and or underscore aspects of his already filed arguments. Panels are encouraged therefore to make every effort to have read over the filed arguments before the day for oral submissions, then being in a position to guide counsel to the areas in which further submission may better assist the court.

Whilst with the implementation and use of fixed panels it becomes possible for the court to effectively sit on every working day of the week it is advised that no one panel should do so. Each panel may consider sitting for three days saving one day for meetings and deliberations and another for judgment writing.

E-Courts or virtual courts as some will have it are already being rolled out extensively in some countries whilst many others are taking tentative steps towards it. Discussions have started at home to adopt a similar path and this is quite a welcome development. The necessary internet capabilities being available both in equipment and “savviness” the court’s output and effectiveness will certainly benefit tremendously from this possibility.

The constitution gives no less than three months after reserving judgment for the same to be delivered. Whilst achievable the strain of the work load, extenuating personal circumstances and indeed on occasion the complexity of the case may cause Judgments or Rulings to be delayed. There is in fact currently a huge backlog. A cut-off date for the completion of outstanding judgments should be urgently agreed on with judges. The end of 2020 has been mooted as the cut-off but this may need to be clearly restated.

After the cut-off date no effort should be spared to ensure compliance with the constitutionally stated period. Any panel experiencing difficulties should be able at least once, and in open court, to enlarge the time granted by way of a court order but this cannot be extended more than once and never in excess of three months. The Court can order an extension of the time within which to file a Notice of Appeal. The court routinely uses its inherent powers to extend time or grant leave to the parties to file their arguments of for

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7 The court should give the necessary directions to this effect. It is now accepted practice that a single Justice can give directions relating to hearing of the appeal.
8 It should also be considered that word or page limits be set for skeletal arguments so that the process is not abused and Judges not be over burdened with deliberately verbose skeletals.
9 Ibid 1 S.120(16)
10 Court of Appeal Rules 1985 see Rs.10(2) and 11
doing almost all of the processes and things required to be done before the court. In like manner it will cause little if any harm if the court can order an extension of the time within which it is required to deliver it judgment or ruling. Provided always that clear and justifiable reasons (in the spirit of R 611) are set out and that panel will now be obliged to return a ruling or judgment on the date it has now stated.

The Hon. CJ may also consider the following as immediate remedies to assist a panel deliver its rulings - withholding his approval for leave and or other travel requests which may accrue to the member(s) of a defaulting panel. Prior to any such action the Hon CJ may even consider assigning no further cases to a panel that has pending judgments or rulings in default of this constitutional provision and the guidelines adopted to give it efficacy.

Support: Clerks/Interns/Electronic Resources
The Court may wish to consider interns/Law clerks to help the Justices with their research and the sourcing of cases and references. This may well be a pupillage position for the purposes of the Legal Practitioners’ Act. As a start the court may experiment with three Legal Officers or law clerks. The possible accretion to turnover time that this will create is significant. Also whilst there are many free sources of law out in the worldwide web these are not always as organized and user friendly as the leading paid subscription tools are. The Court will do very well if an institutional subscription is made to one such paid up electronic web-based library or tool. Whilst this may not now be ready it may be useful if Justices are provided with guidance on how and where to find and use the available free resources. This can be done at organized training sessions.

The Registrar, the Cause List etc..
For the longest possible time the Court has operated without a Registrar. Commendably in December 2019 the Judicial and Legal Service Commission approved and recruited a Registrar for the Court. To ensure that the new officer brings the desired impact her tasks and expectations should be clearly spelt out with reporting channels free from blur.

The cause list will importantly fall on the Registrar to develop ensuring there are no clashes or when they do occur they are not major pile ups. The need for consultation with Presiding Justices cannot be over emphasized if we are to get this right.

Traditionally the Court sits at 10 am but nothing prevents the session from being held much earlier especially when a Justice is sitting alone or where summons are to be heard in chambers. With the advent of more digital possibilities, electronic filing of papers, and this needs not be limited to synopsis of arguments, should now be increasingly encouraged. Urgent applications can be heard via electronic messaging and or conferencing platforms.

11 Rule 6 of the Court of Appeal Rules provides that all rulings and judgments must be delivered within a reasonable period of time. No exact period was stipulated. Noting that this provision predates the constitutionally fixed period it is not fanciful to suppose that this generous ambit had not been an effective guide. Combined though with the provided stipulation coupled with a renewed will to get the issue of delayed judgments resolved there may be created some room for positive change.
Panels may consider giving necessary directives on a case by case basis under R 31\textsuperscript{12} of the Court of Appeal Rules 1985 to achieve the swift determination of the issues before it until the rules are amended to generally provide for the use of electronic possibilities in the filing and hearing of causes.

Settling court records\textsuperscript{13} is an important part of the appellate process. The fees\textsuperscript{14} associated with this are in need of attention, the vacuum left by archaic fees is open to be filled by speculative personnel and eager litigants. What a waste of cost, time and paper it is to find the same document repeated no less than five times in a set of records. Counsel should be encouraged to participate in this process and the rules envisage counsel’s participation\textsuperscript{15}. With counsel present and impacting record settling the result will more likely be a more efficient and less winding record.

Also some room for initiating action should be provided together with a small reserve of essential supplies, and even possibly a revolving imprest. Nothing much would have been gained if the members of this court must still chase down the Master and Registrar or use their personal resources each time they need a packet of paper, a bulb change or stare down a door knob challenge. Such routine and seemingly mundane matters which have the tendency to significantly distract a Justice must be readily addressable by our own Registrar and her enabled staff.

**Training /Orientation**

In keeping with the Bangalore Principles especially as they relate to competence and diligence there is a continuing need for the training of Justices. However the need for targeted training/orientation for a youthful Court is over and above the general requirement. This need has to be met at the earliest possible opportunity and thereafter repeated with respectable frequency.

It is my opinion that there has been an assumption that possessing the minimum qualifications set down in the constitution is a definite pointer that an appointee knows how to be a Court of Appeal Justice or that one is competent enough to quickly learn how to become one. This may have been proved correct to a larger extent, however direct targeted and shared peer to peer training or orientation may still better shape and bring forward a near identical understanding to each member of the court as to what the general role, duties and aspirations of the court are. This may in turn, one will hope be translated to shared work ethics and improved output. Whilst such high level training with significant quality may be organized in country by the JLTI a lot can be said for exposure to the

\textsuperscript{12} The rule empowers the court to make any orders necessary for the resolution of the issues before it. This in my opinion must necessarily include orders which will aid the process of laying-bare and presenting the issues.

\textsuperscript{13} Court of Appeal Rules, R 13

\textsuperscript{14} Court of Appeal Rules, R 13(4)

\textsuperscript{15} Ibid 12 R13(3)
practices of the Court in sister jurisdictions through study tours or other exchange possibilities.

**Appointment to the Court:**
The constitution provides that to qualify for a seat in the court\(^\text{16}\) a candidate must amongst other things have been entitled to practice as counsel for a period not less than 15 (fifteen) years. These I hold are but the barest minimum qualifications that a candidate must possess. Whenever a vacancy exists every effort ought to be made to ensure that it is taken up by the best available and willing talents. Those possessing the barest minimum will only be considered when there are no other better qualified and aspiring candidates. Appointment to any of the courts is not ever a routine promotion from one tier to the other. Every opportunity for the appointment of a Justice of the Superior Court of Judicature and indeed to any court will evoke the need for sourcing the very best.

Long and distinguished service on a lower tier in the judicial hierarchy certainly will always accrue significantly to a candidate's favour but this must be weighed against the need occasionally to inject fresh ideas from outside the existing pool of judicial officers. Such injection of freshness, difference in thought, integrity, independence and professional experience even at the highest cadres of judicial service has in the past proved particularly beneficial to the Judiciary and indeed to the whole of the legal system.

The head hunt is currently the preferred method for sourcing candidates for positions in the Court of Appeal and in the Supreme Court. The constitution tasks the Judicial and Legal Service Commission\(^\text{17}\) with the duty to make recommendations for appointment to the office of a Justice of the Court of Appeal as with the other Judicial Offices. It is recommended that every effort should be made for the headhunters in the Judicial and Legal Service Commission to access and shortlist candidates of the highest caliber and proven mettle. This is always a very important task and should never be treated lightly.

**Conclusion;**
The Court of Appeal remains possibly the highest court to which most cases will reach before they terminate. It may well be the last opportunity for the facts and the law relevant to the original dispute to continue to have mutual relevance to the litigants. Beyond it the Supreme Court will almost always answer legal questions only. It is important that this court adopts practices that are clear and effective; supplementary to the existing rules of procedure. It is also important that the court remains an independent court which is able primarily on its own, to develop its character and occupy its rightful place in the hierarchy of the legal system. This is a good time to properly organize the work and systems of this court. The thoughts expressed herein may provide the launch pad for this essential growth or at the very least provide the impetus for discussing these and other possibilities leading to a path towards consolidation, convalescence and recovery!

\(^{\text{16}}\)Ibid 1, S.135(3)(b)  
\(^{\text{17}}\)Ibid 1 S.135(2)
# Suggested Panels for the Court of Appeal

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<th>Law Courts</th>
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<td>➢ Panel - 1</td>
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<td>Most Senior HCJ</td>
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<td>Most Senior HCJ</td>
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**Proposal:**

*Where A, B, C, D E etc being Justices,*

**Nine** fixed panels, that may sit at three separate locations; Law Courts Building, Roxy Building and Guma Building and on separate days. Each of the identified locations may house a panel as indicated. All three panels in a particular colour band may sit on the same day at the indicated locations with no discomfiture to the Justices in any of the panels.

After a specified period the panels may be reconstituted. The other members of the panel may be changed.

27th May 2020