Civ. App. 60/2025

IN THE COURT OF APPEAL OF SIERRA LEONE

Between

JA - AB (SL) Limited -
APPELLANT/Respondent

v.

PSG Shipping & Logistics - RESPONDENT/Applicant

Coram: *Justice Reginald Sydney Fynn JA (Presiding)*
Justice Sulaiman Ahmad Bah JA
Justice Samuel Omodele Taylor JA

Representation: **O Jalloh Esq. & Z. Kamara Esq. (Ms.) of OJP Legal** for the Plaintiff
I Jalloh Esq. (Ms.) of Bangura & Macauley for the Respondent

Ruling dated 28th July 2026

Background

1. The Notice of Appeal herein describes this appeal as being in respect of an interlocutory ruling below *"seeking interim measures that will safe guard ...interests, pending amicable settlement ...between the parties".*
2. The grounds of the appeal allege that the Learned Trial Judge (LTJ)
   "...failed and or refused to:
   i) hear the application in its entirety before deciding the same on its merits and
   ii) hear counsel for the Appellant in opposing the application contrary to the principles of natural justice"
3. However before the Court could proceed to hear and determine the appeal the Respondents filed an application dated 3rd December 2025 in which they claimed in brief that the records before the court were incomplete. They now requested that the Court inter alia admits into the records *"the transcript of the hand written notes of counsel"* or that the Court directs *"the High Court presided over*

by the Hon. Mr. Justice S C Johnson J to certify whether the hand written notes as transcribed ...represents what transpired in the proceedings before him on 18th September 2025". This ruling is with respect to that application.

4. Reproducing the material paragraphs of the affidavit in support of the application, which was sworn to by Osman Jalloh Esq. will be helpful;

> *"That I have reviewed the records of the court of appeal Registry and note that it is very scanty and I verily believe that they did not adequately reflect the nature of what transpired in Court on 18th September 2025.*
>
> *That having regard to the matters aforesaid I had to take possession of the record of proceedings we made of the hearing, cause the same to be transcribed and personally checked the transcript with the notes to confirm the transcript is a true representation of the same; I verily believe that the transcript made of the said notes to be a true and correct representation of what transpired of the proceedings of 18th September 2025."*

5. The other side, i.e. the appellants, is opposed to this application. They have filed an affidavit in opposition dated 8th December 2025

Submissions

6. The applicants submit that their efforts to have the judge verify the additional notes have been frustrated by the respondents. They are therefore left with no other option than to ask the court to make the orders they now pray for.
7. The Appellants urge that, appeals usually include the possibility of a re-hearing. The accuracy of the records from below is therefore vital to the appellate process. Those records the appellant submits should form the foundation of every appeal. They note that the parties both are in agreement on the issue of the incompleteness of the Judge's notes.
8. The appellants submit further that R31 of the Courts Rules provide authority to the Court wide enough to include powers to amend settled records, especially so where as in this case the records of the Court are allegedly incomplete. Additionally the Applicants cite the unreported Supreme Court case of The State vs. I M Iscandari SC CR APP 3/79.
9. The Respondents on their part have argued that the practice is for the court to hold the balance and record all of the proceedings including the submissions and

arguments of the parties. It is that record which should ordinarily remain so as to be used in the event of an appeal or any post judgment application.

10. The respondent submits that in the instant case the LTJ failed to make such a complete record of the proceedings, which is the primary reason giving cause for this appeal. The respondent/ appellant is relying on the state of the settled records to prove the grounds of the appeal. Allowing the respondent the opportunity to belatedly amend the court records with counsel's hand written notes will undermine the appeal significantly.

11. The respondent submits further that The State vs. Iscandari ought to be distinguished as in that case it was a tape recording that was used to supplement the court records and this is not to be treated as the same as opposing counsel's hand written notes which may be subject to counsel's bias or prejudice, known and unknown.

12. The respondent has referred the court to the case of *Ellington v. Clark, Bunnet & Co (1886) E 1127* in which case the court had rejected notes of a solicitor's clerk to be used or "to be relied on" by the court.

Deliberations

13. On the first appearance and in the absence of the appellants the Court suggested that the parties may have done well to have, together, approached the LTJ and put this request to him before seeking orders of this nature. The court was later copied on a letter from the applicants' Solicitors OJP Legal, inviting the other side for them, together, to approach Justice Johnson with a request for him to consider augmenting his records with the applicant's notes. The Court is similarly copied on the reply from Macauley, Bangura & Co, Solicitors for the Appellant /Respondents declining the invitation to approach the Judge.

14. On the refusal to join them in approaching the Judge the applicants abandoned that line of action; erroneously concluding that it would be unethical to approach the Judge alone. I take the opportunity to make it clear that the Code of Conduct does not prohibit a party from approaching the Judge without the other side where sufficient opportunity has been given to that other side to be part of the visit. In fact the Code makes it an exception to the general rule and sets it apart as a situation, when a party can in fact legitimately visit a Judge without the other side being present.

15. As long as all parties are aware of the intended visit and the reason for it the party declining to be in attendance demurs at his client's risk. The party requesting the meeting nor the Judge or the cause of justice should be made to lose out on the benefits (if any) that such a visit to the Judge would present. The relevant provision is R6 of THE LEGAL PRACTITIONERS (CODE OF CONDUCT) RULES, 2010 and it would make for ease of reference that I reproduced it here:

> *6. "A legal practitioner shall not, unless permitted by these Rules or a Judge –*
> *a) ...*
> *b) ...*
> *c) make contact with a judge in the absence of the other side* ***except the other side has expressly communicated his refusal to meet the judge*** *or has given his consent for the legal practitioner to meet with the Judge in his absence." (emphasis mine)*

16. The opportunity to hear from the LTJ was thereby lost and counsel for the applicant moved the Court.
17. Should the Court make orders touching a party that is not before it? This is a question that has to be asked and answered in as much as this application requests the Court to order the Court /Judge below to elect whether he will or will not certify the notes of counsel.
18. The Judge below is however, not before us. His attitude and posture towards the present request is therefore unknown. As a general principal of law a court will not ordinarily issue orders to persons who are not parties to the action before it. Where a person/institution is likely to be the subject of an order of the court it is the practice that he is made a party to such a process even if only nominally. Should a Judge or Court be treated any differently? I think not.
19. Even though this application has not been presented as a review or as a supervisory question it is in its essence calling into question the manner in which a court/ Judge had performed his role. The present application also does seek to call upon the Judge to make a choice which to some, may, be asking, whether the Judge had in fact, in the first instance, performed his duties up to the required standard.
20. I do not find this an appropriate call to make on a Judge, especially considering he has not been heard and is in no way apprised of the ongoing process. It is my opinion that the orders sought would tend not only to embarrass this particular Judge but also more generally the administration of Justice. It is also my opinion

that this is also related to the principles of natural justice which require that the other side be heard.

21. That being said it is not lost on the court that both counsel are in agreement that the Judge may have failed to record fully the proceedings, whatever the reasons may be, for this shortcoming; this court has a duty to condemn such a failing. The Judge need not record submissions verbatim but a Judge is expected to have a fair record, representative of the submissions of all the parties that are before him.

22. The Iscandri Case and Floodgates: The Court has reviewed the Iscandari case cited by the applicants and the court notes first that, that case was a criminal case and second, that the transcript that was being suggested that the court use in that case to augment the records was from a tape recording. I have to observe the obvious, that a piece of tape recording, is an impartial record secured through a mechanical device. The neutrality of a tape recorder is assured. It does not paraphrase nor does it omit words, extrapolate or make a choice in what it records; as humans are many a time prone to do, even when we are completely disinterested in the subject matter.

23. This court is particularly mindful of the caution that the Supreme Court expressed even in the Iscandari case:

> ***" it should not be regarded as a general practice as otherwise it would definitely lead to a situation where the Supreme Court and the Court of Appeal in every case would be called upon not only to admit transcripts to tape recordings but also to allow amendments of their records in this way.*** *It is only in exceptional circumstances and for cogent reasons that this court would entertain such applications"* (Emphasis mine)

24. The present application in my opinion is at the cusp of the realization of the danger that the Supreme Court cautioned about in *Iscandari.* This application seeks, at once, to expand what was intended to be a very rare occurrence in a criminal case and with respect to tape recordings; not only into the civil domain but also to have the space widened and applied to the notes of the Counsel of a party in the action. Once that door is opened, where the notes of counsel become a possible source for augmenting the court records, then the sum total of the fears of the Supreme Court will be manifest. Not long thereafter it will be no surprise when Courts would be called upon *"in every case to admit...*

transcripts to amend records". It is my opinion that, that door should remain closed.

25. Importance of Settling the records; It must be pointed out that the records which have been settled constitute a true reflection of what was in the file below. The compiling authority did not leave things out. R13 (1) of the Court of Appeal Rules makes room for the parties to participate in the settling of court records. Ordinarily an issue such as the present one would have been raised at that part of the process and not after the records have been settled and directions issued for the progress of the appeal.
26. The Court takes the opportunity to underscore the importance of this exercise – "settling the record of appeal" and will hereby encourage counsel to participate in it, and thereby improve the quality of the records which eventually come before the court, avoiding unnecessary duplication of exhibits and other filed processes.
27. The LTJ made a record of the proceedings. When the LTJ retired to deliberate his ruling, he had before him, the records which have now been settled. That the other side may have been heard but not recorded does not change the record which the court had. I would agree with Counsel opposing, that the issue of whether the other side was actually heard or whether the other side's submissions impacted at all the deliberations and conclusions of the Judge would be the substance of this appeal. Therefore, adding to or supplementing the record at this stage will not change the fact of what the record is, nor what it was, when the LTJ deliberated before delivering the ruling subject of this appeal.
28. In *Aiah Fengai v. Octea (Feb.2024 unreported Ruling)*, commenting on the importance of giving reasons for judgments I opined and now reiterate that:

> *"Evaluations and reasons for decisions provide much insight into the deciders thinking and will aid the parties in their appreciation of the decision. ...and maybe more importantly they will provide also the material on which any future appeal will be anchored"*

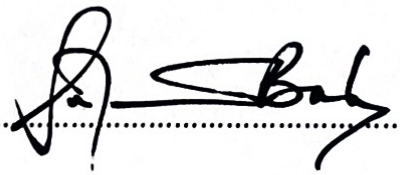
29. It is similarly just as important for Judges to keep an accurate record of the proceedings before them. The absence of an accurate record like the absence of the reasoning supporting the outcome will very likely leave the court of appeal at a disadvantage if it is called upon to consider an appeal from those proceedings.

30. Recording long hand; the continued challenge of recording long hand is brought to the fore by this case. Every Judge including the tired but willing Judge and the Judge who despite being under the weather is braving the discomfort of his illness still has a duty to record long hand. I take the opportunity to note that the age of tape recordings is now gone. In its space are now electronic technology, digitization and Artificial Intelligence.
31. The Judiciary of Sierra Leone will do well to embrace any of the new tools which do not only record in audio but which also possesses the capacity to automatically transcribe into text. The use of such tool(s) will not only relieve Judges of the burden of long hand recording but will also make disputes of the present kind completely unlikely to arise at all in the future.
32. For the forgoing reasons I will refuse this application and the respondent is directed to file the synopsis of his submissions no later than 30th July 2026
33. I will make no order as to costs.



.....Justice Reginald Sydney Fynn JA (Presiding)

Justice Sulaiman Ahmad Bah JA.....



Justice Samuel Omodele Taylor JA.....