

**CC 16/19 2019 K. NO. 4**

**In the High Court of Sierra Leone**

**(Land and Property Division)**

**Between:**

**Gibrilla Ameen Kamara - Plaintiff/ Respondent.**

**51 Off Bai Bureh Road**

**Freetown.**

**And**

**Alhassan Kamara - 1<sup>st</sup> Defendant/ Applicant.**

**Mohamed Bangura - 2<sup>nd</sup> Defendant/Applicant.**

**Abdulai Bangura - 3<sup>rd</sup> Defendant/ Applicant.**

**51 Off Bai Bureh Road**

**Freetown.**

**Counsels:**

**Amadu Koroma Esq. for the Plaintiff/Respondent.**

**Abdulrahman Kamara Esq. for Defendants/Applicant.**

**Ruling on an Application for a Stay of Execution of the Judgment of This Honourable Court of Tuesday, 6<sup>th</sup> October, 2020, Delivered by The Honourable Dr. Justice Abou B. M. Binneh-Kamara, on Monday, 1<sup>st</sup> March, 2021.**

**1.0 Background and Context.**

The foregoing application was made, pursuant to Order 46 Rule 11 of the High Court Rules, 2007, Constitutional Instrument N0.25 of 2007 (hereinafter referred to as The HCR, 2007) by Abdulrahman Kamara Esq. (hereinafter referred to as Counsel for the Applicant) of Yoni Chambers, by notice of motion, dated 12<sup>th</sup> October, 2020, supported by a fifteen (15) paragraph affidavit of Hassan Kamara, sworn to and dated 12<sup>th</sup> October, 2020. Thus, ten exhibits (marked A1-10) are attached to the affidavit, supporting the application.

Meanwhile, Exhibits A1-5 are the writ of summons, memorandum of appearance entered and notice of appearance entered, defence and counter claim, notice of motion dated 12<sup>th</sup> March, 2019 and affidavit in opposition, sworn to and dated 10<sup>th</sup> June, 2019. Further, Exhibit A6-10, are This Honourable Court's order, dated 6<sup>th</sup> October, 2020, notice of appeal, dated 12<sup>th</sup> October, 2020, a private criminal summons between Hassan Kamara and Gibrilla Kamara, which first came up for hearing in the Magistrate Court at Ross Road, on the 29<sup>th</sup> November, 2018, a

committal warrant, dated 22<sup>nd</sup> February, 2019 and the indictment, predicated on an allegation of larceny of document of title to land and other legal document, contrary to section 7 of the Larceny Act, 1916. Counsel for the Respondent (A. Koroma Esq.) opposed the application for a stay of execution; and pontificated that the applicant has shown neither a good ground of appeal; nor any special circumstance. He also argued that his colleague has not complied with the provision of Order 46 Rule 11 of The HCR, 2007.

Nevertheless, from the papers filed and the circumstances that culminated in the application that is to be determined, one will conclude that the provision of the said rule 46 is accordingly complied with, because Counsel for the Respondent, immediately the judgment of 6<sup>th</sup> October, 2020 was delivered, filed another application for a writ of possession and a writ of 'fie fae' to be issued by This Honourable Court; which if granted, would have been counter-productive for the applicant. However, Counsel for the Applicant, thus raised a number of reasons why he thinks This Honourable Court is obliged to grant the application for stay.

Nonetheless, having scrutinized Counsel's papers, I came to the conclusion that the only issue raised therein that is cognate with the foregoing application, is how he has attempted to show, what he calls 'a

special circumstance’, regarding the reason why, This Honourable Court, should stay the execution of its order of 6<sup>th</sup> October, 2020. I will thus restrict this analysis to that point alone, to the exclusion of the others, which do not in any way resonate with an application for a stay of execution.

### **1.1 Analytical Exposition of Stay of Execution.**

The main point which I must now discern in this ruling, revolves around the issue of stay of execution. Analytically, the literature on stay of execution in and out of our jurisdiction is enormous; and seemingly straightforward. I shall thus endeavor to summary the relevant legal literature on stay of execution; as it has continued to evolve with the determination of monumental cases in and out of our jurisdiction. However, in as much as the literature on stay of execution, is replete with well-articulated and incisive judicial decisions that I should put into context.

Thus, a stay of execution is an intermediate act ordered by a court of competent jurisdiction between judgment and the hearing of an appeal. Thus, an order granting a stay of execution must be specific and unambiguous. Again, it has to be made on terms subject to the usual ‘undertaking,’ made by the party seeking for it. Thus, if it is a monetary judgment and money is ordered to be paid to the other side, based on

the undertaking, that money has to be refunded, should the appeal succeed. This principle was clearly enunciated in *James International v. Seaboard West Africa* (Misc. App. 5/97) and *Firetex International Co. Ltd. and Sierra Leone External Telecommunications v. Sierra Leone Telecommunication Co. Ltd.* (Misc. App. 19/2002) and *Basita Mackie Dahklallah v. The Horse Import and Export Co. Ltd.* (Misc. App. 21/2005). However, in circumstances that do not relate to monetary judgments, no amount of money, can be ordered to be paid, on an undertaking that if the appeal succeeds the payment, should be accordingly refunded (see *Patrick Koroma v. Sierra Leone Housing Corporation*).

Essentially, an application for a stay of execution is made pursuant to Rules 28 and 64 of the Court of Appeal Rules of 1985. Thus, it is clear in Rule 28 that an appeal to the Court of Appeal does not amount to a stay of execution of a judgment, order, ruling or decision; and that an order for a stay is specifically obtained from the Court of Appeal. It is Rule 64 that contains the procedure, pursuant to which an application for a stay of execution can be made. That is, the applicant files the application to the High Court of Justice; and should that court refuse the application, they are at liberty to apply to the Court of Appeal for it.

However, it should be noted that Page 35 of the Third Edition of Halsbury's Laws of England (Volume Sixteen), is very much instructive on stay of execution. Paragraph 51 thus states:

'The court has an absolute and unfettered discretion as to the granting or refusing of a stay. So also as to terms upon which it will grant it, and will as a rule, if there are special circumstances, which must be deposed to in an affidavit, unless the application is made at the hearing'.

Significantly, in so many instances, Sierra Leone's Court of Appeal in developing the jurisprudence in this area of the law, has refused to make orders for stay of executions, because the parties seeking for them, were unable to convince judges about the peculiarity of the circumstances, pursuant to which such orders should have been granted; bearing in mind that it is very unfair for successful litigants to be deprived of the fruits of their judgments {see Annot Lyle (1886)11 P.D. 114 at page 116}.

So, neither the High Court of Justice, nor the Court of Appeal, can make an order for a stay of execution, unless there is a good reason for doing so. However, some of the notable instances in which the Court of Appeal has refused applications for stay of execution, include S.M. Saccoh v. Ibrahim A. H. Dahklallah and Sons (Misc. App. 16/93), Reverend Archibald Gambala John (Executor of the Estate of Gustavus John) and

Others v. Lamin Denkeh (1994) Misc. App. 26/93, Desmond Luke v. Bank of Sierra Leone (Civ. App. 22/2004), Ernest Farmer and Another v. Mohamed Lahai SLLR Vol. 3 P. 66 (1945) etc.

Conversely, there are also a plethora of instances, in which the Court of Appeal in its wisdom, has handed down a number of landmark decisions, in favour of applicants who showed, pursuant to their requisite affidavits' evidence, special circumstances, that warranted the Hon. Justices of that court to make numerous orders on stay of execution. Some of the Court of Appeal's decisions that are quite instructive on this point, are found in the cases of Africana Tokeh Village v. John Obey Development Investment Co. Ltd. (op. cit), Firetex International Co. Ltd. and Sierra Leone External Telecommunications v. Sierra Leone Telecommunication Co. Ltd. (op. cit), Lucy Decker v. Goldstone Dicker (Misc. App. 13/2002) etc.

The reasonable inference that can be drawn from the foregoing authorities, is rationalised in the following considerations:

1. The grant and refusal of a stay of execution is subject to the discretion of the court.
2. The court's discretion must be justly, fairly and reasonably exercised in accordance with established principles.

3. In circumstances wherein a stay of execution is granted on terms, the terms must not be onerous.
4. The applicant must show a special (peculiar) circumstance, on the basis of facts deposed to in an affidavit, concerning the reason why the stay, should be granted.
5. The applicant must also show a good ground of appeal.

Thus, the question that is to be addressed at this stage is what really constitute a special circumstance that should be established by the applicant for a stay of execution, in a bid to deprive the other side of the fruits of their judgments? This obviously depends on the specificities of the facts of each case. What may constitute a special circumstance in one case may not amount to a special circumstance in another case. Thus, the Hon. Justice George Gelaga King, J A., defines a special circumstance as 'a circumstance beyond the usual; a situation that is uncommon and distinct from the general run of things'. In *Monk v. Bartram* (1891) 1 AB 346, Esther M.R. in clarifying what is meant by special circumstance, stated:

It is impossible to enumerate all the matters that might be considered to constitute special circumstances, but it may certainly be said that the allegation that there had been a misdirection or that the verdict was against the weight of the evidence or that

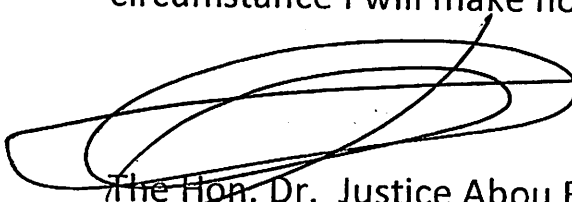


there was no evidence to support it are not special circumstances on which the court will grant a stay of execution.

Furthermore, in *TC Trustees Limited v. J. S. Darwen (Successors) Limited* 2 Q.B 295, the Court of Appeal, in inter alia establishing the special circumstances, pursuant to which a stay of execution can be ordered, affirmed that the circumstances must be relevant to a stay, and not to a defence in law, or belief in equity, which must be raised in the action. The special circumstances must be relevant to the enforcement of the judgment; and not the judgment itself. However, in the instant case, the so-called allegation of fraud or larceny of document of title to land and other legal documents, contrary to section 7 of the Larceny Act, 1916, does not relate to stay.

In fact, it does not constitute a legitimate defence, rationalised in any provision of The HCR, 2007, regarding the relief that This Honourable Court has granted, which would have been considered as a good ground of appeal. Thus, how relevant is this allegation to the enforcement of the judgment; as opposed to the content of the judgment? The submissions in the grounds and particulars of appeal that there has been a misdirection on the part of This Honourable Bench and that the verdict was against the weight of the evidence are as unthinkable to amount to 'a special circumstance', as they are moribund.

Further, an intense scrutiny of the affidavit in support of the application, does not depict anything amounting to 'a special circumstance' that should warrant this Bench to stay the execution of the Judgment of 6<sup>th</sup> October, 2020. An attempt to so do will deprive the Plaintiff/Respondent of the fruits of his judgment. I will thus dismiss the application (in its entirety), as untimely, unjust, unfair and unreasonable, but in the circumstance I will make no order as to cost. I so order.



1/3/2021

The Hon. Dr. Justice Abou B. M. Binneh-Kamara, J.

Justice of the Superior Court of Judicature of

Sierra Leone.