

Between:

Brima Kargbo - Plaintiff/Respondent.

81 Leicester Road

Freetown

And

Albert Sesay - Defendant/Applicant.

Off Old Leicester Road

Freetown

Counsels:

E. Kargbo Esq. for the Defendant/Applicant.

J. Grant Esq. for Plaintiff/Respondent.

Ruling on an Application for an Order of a Stay of Execution of the Judgment of the High Court of Justice, dated 19th March, 2019 and all Subsequent Proceedings, Pending the Hearing and Determination of the Application, delivered by the Hon. Dr. Abou B. M. Binneh-Kamara, on Thursday, 8th July, 2021.

1.1 Background and Context.

This ruling is predicated on an application by notice of motion, filed for and on behalf of the Defendant/Applicant (hereinafter referred to as the Applicant), by

Betts and Berewa Solicitors, on 27th March, 2019. The motion is signed by E. Kargbo Esq., (hereinafter referred to as Counsel for the Applicant) and it is bolstered by the affidavit of Alfred Sesay, sworn to and dated the 27th March, 2019. The said affidavit encompasses nine (9) exhibits marked AS1-9. The motion prays for the following orders:

1. That this Honourable Court grants leave to the Applicant herein to move this application notwithstanding the fact that two clear days' notice has not been given.
2. That this Honourable Court grants an interim stay of execution of the judgment of the High Court of Justice dated 19th March 2019 and all subsequent proceedings pending the hearing and determination of the application.
3. That this Honourable Court grants an order staying the execution of the judgment of the High Court of Justice dated 19th March 2019 and all subsequent proceedings pending the hearing and determination of the Appeal.
4. Any other order that this Honourable Court may deem just in the circumstances.
5. Costs.

Nonetheless, an affidavit in opposition sworn to by Ibrahim Kargbo (the Plaintiff, but hereinafter referred to as the Respondent) and dated 11th April 2019, was filed by J. Grant Esq. (hereinafter referred to as Counsel for the Respondent), negating the facts deposed to by the Applicant in his affidavit in support of the application. The said opposing affidavit contains only one exhibit marked IK1.

1.2 The Arguments of Counsel for the Applicant.

Meanwhile, E. Kargbo Esq., put forward the following arguments, to convince the Bench to grant the orders as prayed:

1. The affidavit of the Applicant contains a number of exhibits, which the Bench should look at critically in arriving at its decision. Exhibit AS1 is the writ of summons. Exhibit AS2 (1-2) are copies of the appearance and defence. Exhibit AS3 (1-3) are copies of the reply, the court's orders for direction and that which sets down the matter for trial. Exhibit AS4 is the Judgment of the High Court of Justice. Exhibit AS5 is the notice for appeal. Exhibit AS6 is the Applicant's first conveyance. Exhibit AS7 (1-3) are copies of receipt of payment and the Applicant's survey plan. Exhibit AS8 (1-6) are receipts showing payments of rent to the Applicants. Exhibit AS9 (1-4) are copies of a criminal summons and city rates in respect of the property in question. The affidavit is relied on in its entirety; and particularly paragraphs 2-14 are singled out as the most salient.
2. Exhibit AS5 puts forth a very good ground of appeal that this Bench should consider in the determination of the application. That those grounds, if argued in the Court of Appeal, will bring the much needed success the Applicant would want to achieve in that court.
3. The affidavit supporting the application is indicative of so many special circumstances. On this point, a concentrated emphasis is placed on the contents, between paragraphs 11 and 14 of the said affidavit.
4. Finally, the Applicant's case is that the land on which we have property and have built a house over 25 years, was sold to us by the very person, objecting

to a stay. Even the Judge acknowledged the fact that the Applicant paid the purchase price and constructed houses, but the Respondent only objected after 25 years, after the sale of the realty had been done. This point alone is constitutive of a very good ground of appeal. The case of Albert Gomez and Others v. Sierra Leone National Shipping Company Limited is instructive on this. But it should be noted that E. Kargbo Esq. did not furnish the court with the apposite citation of the said authority.

1.3 The Arguments of Counsel for the Respondent.

Contrariwise, J. Grant Esq., canvassed the following arguments to sway the Bench's decision not to grant the application:

1. The Bench should balance off the interest of the Applicant with that of the Respondent, in whose favour the Judgement of the High Court of Justice was handed down.
2. The courts should not under any circumstance, deprive a successful litigant of the fruits of his successful litigation, culminating in a Judgement, which he is prepared to execute.
3. The court cannot just grant a stay of execution. There are requirements, which the Applicant must prove. One such requirement is that the Applicant must establish a special circumstance, depicted in the affidavit in support of the application. Paragraphs 9 – 14 of the Applicant's affidavit do not depict any special circumstance (s). Having tenants on property that have paid rents for up to two years, does not amount to any special circumstance. More so, when the property does not legally belong to the person laying claim to it. The case of Dr. J. D Rogers v. Mrs. Kadijah Daffae (Nee Kamara), is referenced,

but a thorough examination of the ratio decidendi of this case, really strikes a chord with this matter, which this Bench must determine. Thus, the other points raised in the other paragraphs of the affidavit as special circumstances, are not legal; they either constitute moral or socio-political considerations. And such considerations are mere fanciful explanations, in an effort to justify special circumstances.

4. Finally, the notice of appeal does not raise any prima facie ground of appeal; and it has no realistic prospect of success. The property in question is a realty; which cannot easily dissipate or fall into disrepairs. Refusing this application, does not presuppose that they can be left, without whatever perceived remedy they want. Should they be successful in the Court of Appeal, they can always recover the property.

1.4.1 The Analysis.

In circumspect, it should be reckoned, that it would be unreasonable of this Bench, should it attempt in this ruling, to address the first two orders as prayed. They are factually redundant at this stage. First, E. Kargbo Esq. was allowed to move the foregoing motion, notwithstanding the fact that the requisite two clear days' notice was not given to the other side. Secondly, the second order was granted on the 30th May, 2019. Therefore, the focus of this analysis, is particularly on the third order, which E. Kargbo Esq. is in dire need of and which is simultaneously being opposed by J. Grant Esq. Nevertheless, this analysis is predicted on a simple legal method. It examines the affidavit that bolstered the notice of motion; together with Counsel for the Applicant's submissions. It further puts into context the contents of the affidavit in opposition; alongside Counsel for the Applicant's submission; while

relating the existing law to the above facts, to determine whether the application should or should not be granted. However, since the facts, underpinning this application, have already been presented, I will now proceed to unpick the apposite law that will guide this Honourable Court in reaching its decision, on the application, with which it is faced.

1.4.2 The Law on Stay of Execution in Sierra Leone.

The principal concern which I must now address in this ruling, purls around stay of execution. Analytically, the literature on stay of execution in and out of our jurisdiction is enormous; and seemingly straightforward. I will 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 thought out and instructive judicial decisions, which I am bound to contextual herein; there is indeed a salient point that is cognate with the issue of stay of execution that I think, I should also clarify here.

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. Meanwhile, 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 (Miscellaneous Applications 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 Decker (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 establish that there exists 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. Nonetheless, this raises the concern of whether it is possible to stay the execution of a Judgment, which has either been partially or completely executed. This point was clearly addressed in *Africana Tokeh Village v. John Obey Development Investment Company Limited* (op. cit). The Court of Appeal thus inter alia held in this case that it has an unfettered jurisdiction and power to order a stay of execution and may even do so when, though a writ of possession may have been issued and executed; provided that the application had been made and rejected in the High Court of Justice, pursuant to Rules 28 and 64 of the Court of Appeal Rules of 1985. On this authority, I will affirm the position that in the event that there has been a partial or complete execution of a default judgment, an application for a stay of execution, can still be granted by a court of competent jurisdiction.

1.5 An Application of the Aforementioned Law to the Facts Deposed to in the Affidavits.

However, an intense scrutiny of the affidavit in support of the application, does clearly depict a special circumstance, that is cognate with the enforcement of and not the very judgement¹, with which the application is concerned. It is clear on the

¹ 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.

face of that affidavit that the Applicant has put quite a number of persons into occupation of the realty in question, who were not aware that the property that is rented to them, pursuant to the Judgement of the High Court of Justice, did not belong to the Applicant. Meanwhile, an enforcement of this judgement, at this stage, will definitely cause undue hardships to the numerous third parties, who have considered themselves as contractual licensees (in the context of their landlord-tenant relationship with the Applicant). This is against the backdrop of the ground of appeal that:

The Defendant (Applicant herein) contends that he has been in occupation of the disputed land for a period of over twelve years and as he paid the purchase price of the land in 1993 for a portion, the action herein is statute barred. From the evidence he alleges that the disputed land was sold to him in 1993, but he did not commence construction till 2000, and he only got a signed survey plan in 2009. A question I posed is when did this right of action against the Defendant arise? The deceased commenced this action in 2009 before the signed survey plan. Even before the commencement of this action the parties were in the Magistrate's Court in 2008.

However, the facts deposed to in the affidavit in opposition, regarding why the application for a stay of execution should not be granted are quite good, but they are not sufficient to convince this Bench, in the light of the foregoing analysis, to refuse the application. I will thus grant the third order as prayed. I will also make no order as to cost. I so order.

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

Justice of the Superior Court of Judicature of Sierra Leone.