

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

S.M. SACCOH

APPLICANT/DEFENDANT

AND

IBRAHIM A.H. DANKALA &  
SONS

RESPONDENTS/PLAINTIFF

CORAM: HON. MR. JUSTICE M.O. ADOPHY, J.A.  
HON. MR. JUSTICE G. GELAGA KING, J.A.  
HON. MR. JUSTICE A.B. TIMBO, J.A.

J.O.D. COLE, ESQ., FOR THE APPLICANT  
E. LABIB MICHAEL, ESQ., FOR THE RESPONDENTS.

RULING DELIVERED ON THE 17<sup>th</sup> DAY OF JUNE, 1993.

G. GELAGA KING, J.A.: By Notice of Motion dated 27th May, 1993, the applicant moved this Court principally for :

1. An Order for a stay of proceedings in the action: C.C. 12/93 (S) 1993 D No.1 in the High Court between the above-named parties, pending the hearing and determination of the appeal contained in the Notice of Appeal herein dated 22nd May, 1993.
2. An Order for a stay of execution of the Order of A.B. Rashid, J., dated 6th May, 1993, requesting the applicant to pay to the respondents costs assessed at Le.1,500,000/00 as costs thrown away. The motion was supported by the affidavit of Joseph Omodele Dominic Cole sworn to on 27th May, 1993 and filed herein with 8 exhibits annexed. An affidavit in opposition sworn to on 29th May, 1993, by Charles Francis Margai with one exhibit was also filed.



Briefly the facts are that the respondents had instituted action in the High Court, Bo, claiming against the applicant the sum of Le. 15, ~~43~~ 981,020/00 and interest at 59% per annum from 6/6/92 until payment, as money due and owing.

The respondents took out a Judge's Summons apparently under O.X1. of the High Court Rules and upon reading the affidavit of service on S.A. Conteh Esq., who was stated to be solicitor for the applicant but who failed to appear at the hearing of the summons, final judgement was entered for the said sum against the applicants with costs on 31.3.93 - See Ex. "JODC3".

The applicant then moved <sup>the</sup> High Court, presided over by Rashid J., for an Order to set aside the Judgement on the grounds that the applicant has a good defence and that the Order for Judgement was made per incuriam. He also applied for unconditional leave to defend the action. The learned Judge on the 6th day of May, 1993, ordered that "upon being told that both sides are agreed that the Judgement dated the 31st day of March, 1993, be set aside on terms", made certain consequential orders. As there is an appeal pending herein, I shall at this stage refrain from making any comments on such procedure. The consequential orders just referred to included the following:

- (a) That the judgement dated 31.3.93 be set aside.
- (b) That the applicant do file a defence and counterclaim within 14 days from the date of the Order setting aside the Judgement.
- (c) That the applicant do pay to the respondents the sum of Le. 1,500,000/00 being costs thrown away, before the defence and counterclaim is filed.

By notice of motion dated 13th May, 1993, the applicant applied for leave to appeal against (c) supra and for a stay of proceedings. Orders on the notice of motion were made by the learned Judge on 18th day of May, 1993, as follows:-



- "(a) The applicant/defendant is hereby granted leave to appeal against that part of the order dated 6th May, 1993, whereby Le.1,500,000/00 was awarded as costs thrown away.
- (b) The application for a stay of proceedings is refused.
- (c) The condition that the defendant pays the said costs of Le.1,500,000/00 before the filing of his defence and counterclaim is hereby removed.
- (d) No order as to costs."

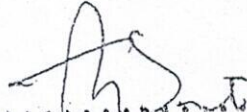
It is in those circumstances that the applicant has come to this Court asking for a stay of proceedings pending the hearing and determination of the appeal that I have already referred to. One salient fact that stands out glaringly in considering this application is this: that the learned Judge on application for leave to appeal made to him against condition in his Order that the Le.1,500,000/00 be paid before the applicant can file his defence and counterclaim took it upon himself to remove the said condition, when that was the very complaint for which leave to appeal was being sought from him.

*Now* In these circumstances, it is in the interest of justice, that this Court grant a stay of proceedings pending the hearing and determination of the appeal herein, and I so order. The sum of Le.1,500,000/00 if already paid must be deposited in the Judicial Sub-Treasury, <sup>the date of</sup> within 7 days of this Order, pending the hearing and determination of the appeal herein.

I will now hear counsel as to the costs of this application. *Costs awarded at Le.1,500,000/00 to the applicant*

*George Gelaga-King*.....George Gelaga-King  
Justice of Appeal

*M.O. Adephay*.....M.O. Adephay  
Justice of Appeal



A.B. Timbo

Justice of Appeal