

MISC.APP. 26/93

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

REV. ARCHIBALD GAMBALA JOHN (Executor of the
estate of the late Rev Gustavus John) -APPELLANT/RESPONDENT

AND

ABU BLACK

ALIE FOFANAH

&

LAMIN DANKEH

-RESPONDENTS/APPLICANTS

CORAM:-

HON.MR. JUSTICE E.C. THOMPSON-DAVIS - JSC

HON.MR. JUSTICE M.O. ADOPHY - JA

HON.MR. JUSTICE G. GELAGA-KING - JA

Edward M. Turay, Esq., for the applicants

Dr. W.S. Marcus Jones for the respondent.

RULING DELIVERED ON THE 19TH DAY OF APRIL, 1994.

G. GELAGA KING J.A.: The applicants, by notice of motion dated 25th June, 1993, moved this Court for an interim stay of execution pending the hearing and determination of their application for a stay of execution and also for a stay of execution of the judgement herein, pending the hearing and determination of their appeal to the Supreme Court. We granted the interim stay and reserved our ruling on the other application. The principle on which the Court acts on an application for a stay is succinctly stated as follows in Halsbury's laws of England 3rd edition vol 16 para 51 p.35:

"The Court has an absolute and unfettered discretion as to the granting or refusing a stay. So also as to the terms upon which it will grant it, and will as a rule, only grant it if there are special circumstances, which must be deposed to in an affidavit unless the application is made at the hearing." In this application, the supporting affidavit purporting to show special circumstances is sworn to by one illiterate calling himself Abu Black Lugbu. He states in paragraph 6:

"The area claimed by me is 18 7317 acres and the area claimed by the plaintiff/appellant is only 7,6250 acres. This is borne out by the exhibits tendered in the High Court which are now produced and shown to

me marked exhibits "E" and "F" respectively. The judgement delivered by the Court of Appeal does not specify the area affected by the said judgement. Considering the history of this case it will be in the interest of all concerned that the said judgement is stayed until the Supreme Court finally determines the matter between us". My first observation is that either this illiterate does not understand that an affidavit is a serious document which must contain nothing but the truth, or he was deliberately and mischievously misled by his adviser into perverting his affidavit by the inclusion of palpably false and scandalous allegations. He swears that the exhibit "E" which he annexes to his affidavit (and which I shall hereinafter refer to as "the affidavit ex "E") was tendered in the High Court. Now the date of the judgement in the High Court is 18th October, 1984. The date the affidavit ex "E" (which is an Indenture) was made is stated on the document to be 25th August, 1986! How a document made in 1986 could have been tendered in Court in a case in which judgement was delivered in 1984 is certainly beyond my comprehension and that of some persons. Obviously no such document was tendered in the High Court. What was in fact tendered as Ex "E" is an indenture made the 4th day of June, 1930 and made between Abdu Rahman Lewally and Gustavus Ademu-John nothing at all to do with the illiterate deponent. It really is a matter of great concern that a party who is represented by an experienced solicitor should be attempting unashamedly and blantly to mislead this Court in this way with the obvious intention of perverting the course of justice.

He also stated that this Court did not specify the area affected by its judgement, but in the Certificate of this Court's orders exhibited by the deponent as ex "C", not only is the area involved described in detail the area of the land is stated to be 7,6270 acres.

Enough time has been wasted on this application which is clearly frivolous, vexatious and scandalous and does not merit the time spent in considering it. No special circumstances whatsoever have been shown why a stay of execution should be granted and I shall, therefore, refuse it with costs against the applicants. Such costs to be taxed.

..... (SGD) HON. MR. JUSTICE E.C. THOMPSON-DAVIS
 JSC (Presiding)

..... (SGD) HON. MR. JUSTICE M.O. ADOPHY JA

..... (SGD) HON MR. JUSTICE G. MELAGA-KING J.A.