

69
Misc. App. No. 15/94

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

JOHN OBEY DEVELOPMENT INVESTMENT CO LTD - APPLICANTS

AND

AFRICANA TOKEH VILLAGE LIMITED - RESPONDENTS

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.

Terence Terry, Esq., for the applicants
Francis A. Gabbidon, Esq., for the respondents.

RULING DELIVERED THE 14TH DAY OF JULY, 1994

G. GELAGA KING, J.A.: On the 26th day of April, 1994, this Court set aside the Order of Macauley J. herein dated the 4th day of February, 1994, together with all subsequent proceedings and granted a stay of execution on terms to the respondents, who were the defendants in the lower Court, pending the hearing and determination of their appeal to this Court.

By notice of motion dated the 13th day of May, 1994, made under Misc. App. 11/94, the applicants herein (the plaintiffs in the Court below) attempted, inter alia, to apply to us to grant a stay of execution of our said Order of 26th April, 1994, on the ground that they were proposing to appeal to the Supreme Court against our Order granting a stay of execution. The respondents took a preliminary point which we upheld and we struck out that motion.

Now, by another notice of motion dated 21st June, 1994, the applicants are again seeking, inter alia, a stay of execution of this Court's Order of 26th April, 1994, pending the hearing and determination of an appeal they say they have lodged in the Supreme Court against our Order granting a stay of execution on terms.

At the hearing of the motion, counsel for the respondents, quite rightly in my opinion, took a preliminary objection and submitted that if the applicants were dissatisfied with our Order of 26th April, 1994, their only remedy was to appeal

and certainly not to apply to us to stay our Order for a stay. He submitted, again quite rightly, I opine, that the effect of the application is that this Court is being asked to grant a stay of its own stay!

When viewed in practical terms, what the applicants are asking this Court to do is to order that they be allowed to carry out execution despite and in spite of the fact that we have stopped them, pending their appeal against our Order granting a stay. If we allow them, we will then have the ludicrous situation where execution would have been carried out by them and yet, they, the applicants, would be purporting to appeal against our Order staying execution even though execution had been carried by them! Nothing could be more absurd, or frivolous and vexatious.

Counsel for the applicants submitted that they were making this novel application under r.60 (1) & (2) of the Supreme Court Rules P.N. No. 1 of 1982, which state as follows:

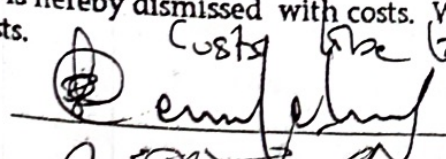
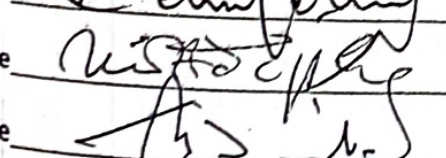
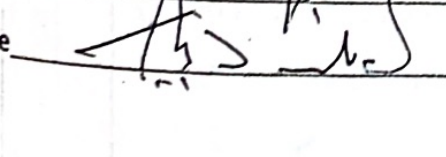
"60 (1) A civil appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except in so far as the Supreme Court or the Court of Appeal may otherwise order.

(2) ... an application for a stay of execution or proceedings shall first be made to the Court of Appeal and if that Court refuses to grant the application, the applicant shall be entitled to renew the application before the Supreme Court for determination."

In my judgment, what these provisions envisage are those cases where the judgment appealed from requires the appellant to pay money or perform a duty; not the instant case where no such order has been made against the appellants who are the applicants herein. This Court's Order granting a stay of execution does not require the appellants to pay money or perform a duty. It only prevents them, as judgment creditor, from putting into operation the legal processes of execution and does not affect rights acquired independently of the process stayed. Vide Clifton Securities Ltd. v. Huntley [1948] 2 All ER 283.

As I said earlier, these repeated applications to this Court asking us to stay our own stay smirks of an abuse of process and must, in those circumstances, be made short shrift of. This Court has an inherent jurisdiction to control its own proceedings so as to prevent an abuse of process and we have the power to stay proceedings which are frivolous, vexatious or harassing, or which are manifestly groundless, or where the justice of the case so requires. Vide Metropolitan Bank Ltd. v. Pooley (1885) 10 App. Cas. 210, HL.

This Court cannot be asked to stay its own stay of execution order. The application before us is, therefore, an abuse of process and ought to be dismissed and it is hereby dismissed with costs. We will now hear Counsel on the question of costs.

Costs to be taxed.
 Hon Mr Justice G. Gelaga King JA
I agree  Hon Mr Justice MOAdophy JA (Presiding)
I agree  Hon Mr Justice A B Timbo JA