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MISC. APP. 6/95

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN: -

FATU BANGURA

DEFENDANT/APPLICANT

AND

MOHAMED KAMARA

PLAINTIFF/RESPONDENT

CORAM: -

HON. MR. JUSTICE M.O. ADOPHY
HON. MR. JUSTICE G. GELGA-KING
HON. MR. JUSTICE A.B. TIMBO

- JUSTICE OF APPEAL
- JUSTICE OF APPEAL
- JUSTICE OF APPEAL

C.F. EDWARDS ESQ., FOR THE APPLICANT

A.F. SERRY-KAMAL, ESQ., FOR THE RESPONDENT

RULING DELIVERED ON THE 28TH DAY OF MARCH, 1995

TIMBO J.A.: - By Notice of Motion dated the 9th day of February 1995 the Applicant has applied to the Court for inter alia the following order,

"(3) That this Honourable Court do grant a Stay of the Judgment of the Honourable Mr. Justice L.B.O. Nylander J. dated the 25th day of November 1994 and all subsequent proceedings pending the hearing and determination of the Appeal against the said Judgment to the Court of Appeal.."

The Application is supported by the Affidavit of Fatu Bangura sworn to on the 6th day of February 1995 to which is annexed several Exhibits.

Paragraph 5, 6 & 11 in particular of the Affidavit in support aver as follows:

"5 That notwithstanding the pending appeal to the Court of Appeal and the order of occupation of the said premises for 90 days the Plaintiff/Respondent is in the habit of coming to the said premises with prospective purchasers claiming that judgment has been given in his favour and that I should vacate immediately".

"6 That further to paragraph 5 of this Affidavit the Plaintiff/Respondent has caused a valuation of the said premises to be prepared and addressed same to my solicitor C.F. Edwards Esq. Copy of Valuation Certificate is shown to me and exhibited hereto marked C.F.3"

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"7 That I know for a fact from a conversation I over-heard between the Plaintiff Mohamed Kamara and Mr. Abu Sesay that the Plaintiff intends to dispose of the premises at 4A Mill Street immediately possession of the same is delivered to him."

As against these averments, we have the Affidavit in Opposition of Mr. A.F. Serry-Kamal, Solicitor dated the 15th day of February 1995 paragraph 13 of which categorically states that,

"13 That Plaintiff does not intend to sell his only property in Freetown. He needs a house in Freetown now more than at any other time in view of the security situation in the Provinces. He is a businessman and needs a base in Freetown instead of renting a hotel room anytime he is in Freetown."

NOTE
This Court has said on several occasions that in an application for a Stay of Execution pending an appeal to the Court the onus is on the applicant to show prima facie good Grounds of Appeal and the existence of special circumstances to justify the grant of the stay sought - See African Tokel Village Ltd. V. John Obey Development Investment Co. Ltd, Misc App. 2/94 (Unreported) Domain De Baw Baw Beach V. Mohamed K. Wansa, Misc. App. 10/94 (Unreported); Chernor Sesay & Anor V. Abdul Jalil & Anor, Misc. App. 18/94 (Unreported).

These two requirements have not in my opinion been satisfied to warrant a Stay of Execution of the Judgment of Nylander J dated the 25th day of November 1994 and all subsequent proceedings pending the hearing and determination of the appeal against the said judgment in the Court of Appeal.

In any case, I believe the fears expressed by the Applicant in her Affidavit that the property the subject-matter of the appeal may be disposed of before the determination of the appeal if the Stay is not granted have been allayed in view of what Mr. Serry-Kamal has said in paragraph 13 of his Affidavit of 15th February, 1995 that the Respondent has no intention of selling the property in question but to occupy it himself.

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I have no doubt that Mr Serry Kanai will stand by what he has deposed in his Affidavit regarding his client's desire to reside in the said house.

The Application is accordingly refused. Costs in the Cause.

(Sgd) Hon. Mr. Justice A.B. Timbo Justice of Appeal

(Sgd) Hon. Mr. Justice M.O. Adophy Justice of Appeal

(Sgd) Hon. Mr. Justice G. Gelaga-King Justice of Appeal