

MISC/APP. 1/96

IN THE COURT OF APPEAL FOR SIERRA LEONE
(PROBATE JURISDICTION)

IN THE MATTER OF THE ADMINISTRATION OF THE ESTATE OF
FLORENCE ROGERS (DECEASED) TESTATE

AND

IN THE MATTER OF AN APPLICATION UNDER ORDER XIV OF
THE HIGH COURT RULES.

BETWEEN: **BETSY ROGERS PARKINSON**
ELAINE PRATT
CYNTHIA DAVIES (MAUD ROBINSON)
-- PLAINTIFFS/ APPLICANTS

AND

CLARENCE ROBINSON--1st. DEFENDANT
DESMOND ROBINSON-----2nd. DEFENDANT
JACQUINE CAREW-----3rd. DEFENDANT
GEORGE ADEKUNLE ROBINSON 4th. DEFENDANT

AND

ISHEKA DEEN SESAY -----INTERVENER.

CORAM: HON. MR. JUSTICE M. E. T. THOMPSON J.A. PRESIDING
HON. MR. JUSTICE A.N.B. STRONGE-----J.A.
HON. MR. JUSTICE A.B. RASCHID-----J.A.

A. F. SERRY--KAMAL, ESQ. FOR APPLICANT
BERTHAN MACAULAY Jnr. ESQ. FOR INTERESTED PARTY.

RULING DELIVERED THIS 13th DAY OF FEBRUARY, 2002.
A.N.BANKOLE STRONGE J.A.

In their notice of motion dated the 9th. February, 1996, the Applicants proposed to apply to this Court for the following Orders:

1. That execution of the Judgment dated the 14th. day of February, 1995, and the Order of Court dated the 5th. day of OCTOBER, 1995, be stayed pending the hearing and determination of this application.
2. That execution of the judgment dated 14th. day of February, 1995, and the Order dated the 5th. of October, be stayed pending the hearing and determination of the applicants' Appeal to the Court of

Appeal for Sierra Leone.

3. That the costs of and occasioned by this application be in the cause.

The affidavits in support of the motion are those of Betsy Rogers Parkinson sworn on the 9th. February, 1996, and Abdul Franklin Serry-Kamal sworn on the 19th. day of December, 2001.

The affidavit of Betsy Rogers Parkinson discloses that she is the executrix and trustee of the Estate of the property situate lying and being at 29, 29a, and 29b Sanders Street, Freetown. She further deposes that she engaged the professional services Mr. M.K. Riby-Williams, Solicitor, (deceased) to apply to the High Court for an Order for the sale of the said property. The said Order was granted by the High Court. She claims in her affidavit that after the said Order was granted, she withdrew her instructions to Mr. Riby-Williams, Solicitor (deceased). She further claims in her affidavit that notwithstanding the cancellation of her instructions her erstwhile Solicitor applied on her ostensible behalf to the High Court for an Order approving the sale of the said property to a stranger. She deposes that she had instructed her former Solicitor to ensure that she had the first option to purchase the said property as it was a family heritage. The High Court approved the sale to one Isheka Deen Sessay of No. 98 Blackhall Road Kissy, Freetown on the 14th. day of February, 1995.

The affidavit of Abdul Franklin Serry-Kamal discloses that the applicants had to the Court below for the Orders now being sought in this Court. By Order dated the 1st. day of February, 1996, the Court below "refused and dismissed the applicants' application for a stay of execution."

The Interested Party, Isheka Deen Sessay swore an affidavit in opposition on the 26th. October, 2001. This affidavit discloses that the deponent, Isheka Deen Sessay, pursuant to a Court Order paid the sum of Le: 18,000,000.00 (eighteen million leones) as purchase price for the property Nos. 29, 29a, and 29b Sanders Street, aforesaid, and that the same was conveyed to him by a Deed of Conveyance dated 16th. day of October, 1995, and registered as No. 1177/95 at Page 8 in Volume 490 of the Book of Conveyances kept in the Office of the Registrar-General, Freetown----- EXH"IDSI" to the said affidavit. He further deposes that since the execution of the said Conveyance he has not been able to take possession of the said premises and has not received any income by way of rent or otherwise therefrom.

In my judgment, and in the light of a long line of authorities;

this Court has unfettered power power and jurisdiction to order a stay of execution and may do so even though the subject matter of the litigation had been conveyed pursuant to an Order of Court. Indeed, abundant power is given to this Court by rr.31 and 32 of our Rules:

Rule 31:- provides that this Court may make an Interim order----- and generally shall ^{have} full a jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court as a Court of first instance-----”

Rule 32: provides that this Court shall have power to give any judgment and to make such further or other order as the case may require----- ”

The issue now to be considered is under what circumstances this Court will order a stay of execution. It is well settled that the COURT has wide discretionary powers to grant or refuse a stay.

The applicants, if they should succeed must convince this Court that there are special circumstances that warrant a stay.

The wide discretionary powers of the Court and the basic principles which guide it in considering an application for a stay are clearly and unambiguously laid down in **HALSBURY'S LAWS OF ENGLAND, 3RD. ED. VOL.16, PARA.51 at PAGE 35** as follows:-

“The Court has an absolute and unfettered discretion as to the granting or refusing a stay and 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”.

Where special circumstances are shown the Court will use its discretion and grant a stay. The burden is on the applicant to convince the Court that there are **SPECIAL CIRCUMSTANCES** that should weigh in his favour. In the instant case, the affidavit in support and the exhibits disclose that the applicants are all very closely related. They all of them derive their beneficial interest from a common ancestor, Florence Rosaline Rogers. Property at Nos. 29 29a & 29b Sandres Street, Freetown, was originally one property, to wit No. 29, Sanders street, Freetown. That property was family property and some of the descendants of Florence Rosaline Rogers have strong sentimental connection with that property. Indeed the first applicant claims her initial instructions to her former Solicitor, M.K. Riby-Williams (deceased) was for him to arrange for the sale of her house at Murray Town in order that she will have sufficient money to purchase the family property

at 29, 29a, & 29b Sanders Street, Freetown. She gave instructions that she would want the first option when the family property is put out for sale. Her solicitor she claims flouted her instructions and applied and obtained, on her ostensible behalf, a Court Order for the property to be sold to a stranger. This is indeed a very grave allegation. It amounts, in my judgment to a betrayal by a solicitor of his client's interest.

I have read and considered the affidavit in opposition together with the exhibits and also taken into consideration the submissions of counsel on both sides. This Court's duty has been made easier by the usual candour of Mr. Berthan Macaulay Jnr. He concedes that a stay could be granted but that such a stay should be on terms. This Court is satisfied that the applicants have shown special circumstances which merit the exercise of its discretion in the granting of a stay of execution in their favour.

We grant a stay of execution of the judgment of the High Court dated the 14th day of February, 1995 and of the Court Order dated the 5th day of October, 1995, on the following terms:-

1: That the first applicant herein, Betsy Rogers Parkinson submits a Statement of Account of all rents collected and disbursements made in respect of premises Nos. 29, 29a & 29b, Sanders Street, Freetown, in the Western Area of the Republic of Sierra Leone as from the 31st day of October, 1995. to the Solicitor of the Interested Party within Fifteen (15) days of this Ruling with Liberty to the Interested Party to Surcharge and Falsify.

2: That the Registrar of this Court is hereby ordered to settle the records for CIVIL APPEAL 80/95 within five (5) days hereof and that the appeal be speedily heard and that the said Records be prepared printed and bound and be ready within FOUR WEEKS of the date of this RULING.

3: LIBERTY TO APPLY.

4: COSTS OF THIS APPLICATION BE COSTS IN THE

CAUSE.

M.E.T. THOMPSON--J.A. PRESIDING

A. N. Bankole Stronge
A.N. BANKOLE STRONGE--J.A.

A. B. RASCHID *A. B. Raschid* J.A.