

IN THE COURT OF APPEAL OF SIERRA LEONE  
Misc. App. 9/2004

BETWEEN:

PATRICK KOROMA

- Applicant

AND:

SIERRA LEONE HOUSING CORPORATION -  
DOLCIS BECKLEY

Respondents

CORAM:

Hon Sir John Muria JA

Hon. U.H. Tejan-Jalloh JA

HEARING: 1 April 2004

JUDGMENT: 26 May 2004

Advocates:

Appellant: C.F. Edwards

Respondent: Y.H. Williams

**COURT OF APPEAL:** *Application for stay of execution of judgment – principles applicable – supporting affidavit to demonstrate “special circumstances” justifying grant of stay – the need to balance the interest of a successful party with that of the applicant.*  
**Held:**

1. *The principles upon which a stay of execution are well settled in this jurisdiction, that is to say, the applicant must show prima facie good grounds of appeal and that there are special circumstances justifying a stay of execution. These special circumstances must be shown by the supporting affidavit.*
2. *The Court in considering whether to grant a stay or not, will also taken into consideration the need to balance the interest of the successful party with those of the applicant.*



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**Judgment**

**BY THE COURT:** This is an application for Stay of Execution of the judgment of the High Court (Nylander J) made on 18<sup>th</sup> February 2004, and all subsequent proceedings arising out of that judgment, pending the determination of the appellant's appeal to this Court. This application originally came before the full panel of the Court. After objection by the appellant to one of the members of the panel (who had dealt with a matter relating to the case), the application had to be considered by the remaining two members of the Court.



The circumstances giving rise to this application are that the second respondent was and still is the owner of the premises known as N100 Low Cost Housing Estate, Kissy, Freetown obtained from the Sierra Leone Housing Estate Corporation on mortgage. This was accepted by the appellant who was permitted to occupy the premises by the second respondent at the time of the action. The second respondent gave notice to the appellant to quit on 30<sup>th</sup> October 2001. This was also accepted by the appellant, although he argued that the notice was improper and unlawful. The respondent has refused to vacate the premises giving rise to Civil Case No.936/01 and now this appeal. This application seeks to stay execution of judgment and all other proceedings in this case pending the determination of the appeal.

The principles applicable in determining whether a stay should be granted or not are well known and have been applied in numerous cases by the courts in this jurisdiction. The applicant must show that he has *prima facie* good grounds of appeal and that there are special circumstances justifying a stay: *Firetex International Co. Ltd. Vs. Sierra Leone Telecommunications and Anor.* 6 August 2003. (CA) Misc. App.19/2002. One of the underlying reasons for imposing such condition on the applicant is that the successful litigant should not be deprived of the fruits of the judgment in his favour, a principle that is equally well known in this jurisdiction. See *Firetex International* (above). The question to be determined, therefore, is: Has the applicant demonstrated that there are special circumstances present in this case justifying the grant of a stay? The onus is on the applicant.

The circumstances of the case show that the second respondent was and still is the owner of the premises at N100 Low Cost Housing Estate at Kissy, Freetown. The applicant admitted that fact in his defence. The applicant further admitted being served with a notice to quit, but alleged that the said notice was improper and unlawful. We note, however, that the notice to quit was given on 30<sup>th</sup> October, 2000 and thereafter followed up by a number of correspondence to that effect. There was no tenancy between the applicant and second respondent who only gave permission for the applicant to occupy the premises until such time as she decided to retake possession. Despite repeated demands for the applicant to



vacate the premises, he refused to do so. In his affidavit in support of the application, he deposed that he expended moneys to rehabilitate the premises. In addition he stated that arrangement had been made with the second respondent to have the tenancy changed to his name. These allegations were denied by the second respondent. These are not circumstances that are so special to warrant a stay of execution of judgment, nor do we feel that the argument on shortage of accommodation in Freetown is a special circumstance in itself. Having accepted that the second respondent is the owner of the property concerned and having been told to vacate the premises since October 2000, it would seem that the owner's generosity has waned and no purpose would be served in extending her anguish over her rightful property. Exhibits "I" (Letter dated 20<sup>th</sup> March 2002 from the General Manager of first Respondent to the second Respondent approving Mortgage sale of property to her and her mortgage account on payments) and "J" (copies of Receipts of mortgage payments made by second Respondent) confirmed that she had been making her mortgage repayments over the property.

In so far as any rightful claim over the property, there is nothing in the supporting affidavit by the applicant to show that he has any. The most he can hope for is a claim for money spent (if any) on the premises. Demonstrating "special circumstances" in an application for stay of execution involves consideration of, among other things, the need to balance the interest of the successful litigant and applicant's claim for stay. In the present application we are not persuaded that there are special circumstances present to warrant a grant of stay of execution. That being the case, the application for stay is refused with costs to be taxed, if not agreed.

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Muria JA

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Tejan-Jalloh JA