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Misc.App.17/2004

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

CHIDI THOMAS - APPLICANT

AND

A.B. DOLLAH & ANOR - RESPONDENTS

CORAM
Hon. Sir John Muria JA
Hon. Ms. U.H. Tejan-Jalloh JA
Hon Mrs. N. Tunis J

HEARING: 29 June 2004
RULING: 5 November 2004

Advocates:
Applicant: *M.A. Luseni Massaquoi*
Respondents: *D.G. Thompson*

RULING

Delivered this 5th day of November 2004.

MURIA, TEJAN-JALLOH JJA and TUNIS J: In this application, Mr. Massaquoi of Counsel for the appellant/applicant seeks to set aside the Order made by this Court on 28th May 2004 dismissing the applicant's appeal. The application further seeks to stay all proceedings in this matter.

Brief Background

It would be useful to set out the brief background to this case. Following the consolidation of the actions in CC349/88 and CC927/86, the High Court (Alghali J) held on 20th July 1994, inter alia, that Chidi Thomas, the applicant herein, had

period of stay granted by the trial judge was sufficient to allow the defendant opportunity of removing from the premises while waiting for his appeal to be heard. Graham Paul, CJ, said this (among other things) in that case:

> "If this application were granted it would be a precedent which would have the effect of making every appeal against a judgment for possession in this class of case *ipso facto* a stay of execution."

That case has some resemblance of the present case. The judgment in the present case is for recovery of possession and although stay of execution was refused, the learned trial judge granted suspension of the execution of warrant of ejectment until 1st July 2004 (almost a month after it was issued). Like in *Ernest Farmer and Another v Mohamed Labi* case, the property in the present case is that of a solid premises which cannot disappear or be dissipated. If the appeal is successful it would be quite within the power of the Court to order possession of the premises to be given up to the appellant.

The cases cited clearly established that the requirement of "special circumstances" had been strictly applied. The question to be asked is: has the applicant shown special circumstances in the present case? Counsel for the applicant argued that this is an unusual case. True it is an unusual case in a sense that here is a case where the Government is alleged to have demonstrably neglected or failed to meet its legal obligations under statutes, namely the Judges' Conditions of Service Act, 1983 and the Judges' Conditions of Service Regulations, 1986, resulting in an embarrassing position in which the applicant now finds himself. But whether the Government had indeed neglected or failed in their legal obligations is a contention that is yet to be established. One thing is clear, though, to this Court and that is, that the thrust of the applicant case or complaint is against the manner in which the Government had treated him in view of his service then as Chief Justice of this country. In my view this is where the principles of 'legitimate expectation' would be appropriately considered if raised. Unfortunately, the Government has no part in these present proceedings, and any complaint against them can only be addressed when such complaint is properly placed before the Court. The

acquired no property right in 31 Victoria Street, Freetown, the property which he is presently occupying; that the conveyance of the said land made to him by one Albert Bleah Dollah, the first respondent in 1986 was null and void; and that the applicant should vacate the premises within 14 days. Unhappy with these and other orders stated in the judgment, the applicant filed his notice of appeal on the same day 20th July 1994. The appeal had been fixed for hearing and despite a number of adjournments, the appeal has not been heard for about ten (10) years since it was filed. In the meantime the applicant continues to be in occupation of the premises thereby depriving the first respondent of the benefit of the Court's judgment.

The appeal was again fixed for hearing and was set down for 8th April 2004. Counsel for the appellant was absent. Only Counsel for the respondent was present. The case was adjourned to 5th May 2004. The case was again adjourned to 28th May 2004 as Counsel for both parties were not present on 5 May. Counsel for the appellant had written to say that he was not well. On 28th May 2004, Counsel for the respondent appeared but counsel for the appellant again, did not. Having heard Counsel for the respondent, the Court ordered the appeal to be dismissed with reasons to be published later. After the Court had made the order dismissing the appeal, Counsel for the appellant then entered the Court and asked that the matter be re-listed for him to be heard. His request was not granted. He now seeks to set aside the order of the court made on 28th May 2004.

Should the Order be set aside?

The onus is on the applicant to show by satisfactory reasons why this court ought to set aside its order once made and sealed. The principle is clear that the Court of Appeal has power to alter its decision before its order has been perfected, but has no power to rehear an appeal once its order has been passed and entered: See *Hession v Jones* [1914] 2 KB 421 which was applied in *Vivat Davies v*

Archie Benson James and Ors. (16th July 2004) Court of Appeal, Misc.App.18/04. The Court is thus possessed of the power, and it is discretionary, to set aside its own order provided the order has not been perfected yet. In the present case, the appeal was called on and Counsel for the respondent was present but not Counsel for the appellant. The Court heard the respondent's case, though briefly. The respondent's case was that the appeal had no merit. Having heard Counsel and having considered the appeal points, together with the circumstances of the appeal, the Court dismissed the appeal. The order dismissing the appeal was also drawn up and perfected on 28 May 2004. There is no power to set aside the order made on 28 May 2004 and have the appeal re-entered for hearing. It is a final order and the only course open to the applicant is to appeal to the Supreme Court.

The justice of the case

The principle which legal practitioners are well acquainted with is that justice delayed is justice denied. In the present case, the applicant/appellant filed his notice of appeal on 20th July 1994 the same day the High Court gave judgment against him. Despite the Court order that he should deliver up possession of the property in question, the applicant continues to this date to occupy the very same property. Thus for ten (10) years while his appeal lies in the court the applicant continues to enjoy the use of the property concerned while the respondent languished being deprived of the fruit of his judgment, simply because the appeal is allowed to be kept alive in the files of the Court. We reiterate what has been said in *Vivat Davies v Archie Benson James* (above):

> "We all know of the salutary principle that justice delay is justice denied. The present case is in our view an instance of such a case. The Court is under a duty to ensure that parties coming before it obtain justice within a reasonable time. Legal practitioner are equally under the same obligation. We are of the firm view that the justice of this case is in the achievement of finality of litigation, a principle that the Courts must be vigilant in applying it.

We must apply it in this case and we do so".

We do not see the need to differentiate this case from what the court has said in *Vivat Davies* case. The justice of this case is in ensuring that it is brought to a finality and this court can help achieve that by refusing the appellant's application.

The appellant's application is refused with costs.

BY THE COURT