

Misc. App. 22/2004

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

DESMOND LUKE

- APPLICANT/APPELLANT

AND

BANK OF SIERRA LEONE

- RESPONDENT

CORAM:

Hon. Sir. John Muria JA

Hearing: 13th July 2004


Ruling: 14th July 2004

Advocates:

Applicant/Appellant: J.B. Jenkins-Johnston Esq.,

Respondent: Dr. Ade Renner-Thomas

RULING

Delivered the 14th day of July 2004. 

MURIA JA: On the 7th of June 2004 the High Court (Doherty J) gave judgment in favour of the complainant, Bank of Sierra Leone, the respondent in this application ordering that the applicant deliver up possession of the property in question to the respondent. A Warrant of Ejectment, was issued against the applicant pursuant to Section 9 of the Summary Ejectment Act (Cap.49) on 8th June 2004. An application to the High Court to stay execution of the Order of 7th June 2004 and Ejectment Warrant was refused on 14th June 2004 and the applicant now comes to this Court seeking to stay execution of the same.

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Brief Background

The brief background to this case is that the applicant, then Chief Justice of Sierra Leone in 1998, was accommodated at the Leone Lodge, Signal Hill, Freetown under Government arrangement as no residence was available to the Chief Justice due to the rebel war. The Government's obligation to provide suitable accommodation to the applicant was a statutory one being obliged under Statutes, namely the Judges' Conditions of Service Act, 1983 (No.12 of 1983) and the Judges' Conditions of Service Regulations 1986 (Public Notice No.3 of 1986). The relevant provision is regulation 11 which provides, inter alia, that the Government shall provide each judge with a rent-free, fully-furnished residence or housing allowance of Le.300.00 (three hundred Leones) per month, and to maintain and up-keep that residence. The applicant, on the evidence before the High Court and this Court, ceased to be Chief Justice in 2002 but, has continued to occupy the property to this present moment. In the meantime, the said property had been conveyed to the respondent by a Conveyance dated 25th July 2002 by the Government of Sierra Leone. Since July 2003, written requests were given to the applicant to leave the premises and deliver up possession. The applicant failed or refused to vacate the premises and hence, the proceedings in the High Court and in this Court.

Notice of Appeal to the Court Of Appeal

Being aggrieved by the decision of the High Court, the applicant filed his Notice of Appeal to the Court of Appeal. Three grounds of Appeal were advanced, namely:

- (1) That the learned Trial Judge was wrong to have assumed Jurisdiction in a matter which had been commenced in the Magistrate Court under the SUMMARY EJECTMENT ACT CAP 49 OF THE LAWS OF SIERRA LEONE, which vests exclusive Jurisdiction in such matters in the Magistrates Court, thereby making the whole trial in the High Court A NULLITY.
- (2) That the learned Trial Judge was wrong to have ordered an Ejectment Warrant to issue forthwith, contrary to the express provision of Section 7 of

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the Act which provides that such a warrant may be issued ".....WITHIN A PERIOD NAMED THEREIN", AND NOT FORTHWITH as the Learned Trial Judge seemed to think she was obliged to do.

- (3) That the learned Trial Judge was wrong to have found that the Appellant was a Tenant-at-will, their being no such evidence before the Court.

The applicant contends in paragraph 11 of his affidavit that there is an important question of law involved in this case, namely, whether a statutory tenancy can be avoided by a Conveyance to a wholly owned subsidiary. The suggestion is that a stay of execution is necessary to have this legal issue first determined by the Court of Appeal.

Basis for grant of stay of execution

The Court's power to grant a stay of execution is discretionary and it must be exercised based on legal principles. Moral, social, or political considerations are often raised in arguments by an aggrieved party to support his or her plea for stay of execution of an order of the Court. Such considerations, however, do not and ought not to form the basis for the exercise of the Court's discretion to grant or refuse a stay of execution of the Order of the Court. The legal basis for the exercise of the Court's discretion in a case such as this, is that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. This is because in a contested case the successful party ought not to be deprived of the fruit of a judgment given in his favour: *Firetex International Company Limited v Sierra Leone External Telecommunications and Sierra Leone Telecommunications Company Limited* (26 June 2003) *Court of Appeal, Misc.App.19/02 (Unreported)*. In the same vein, the lodgment of a notice of appeal does not operate as a stay of execution. See r 28, *Court of Appeal Rules, 1985*. Hence the party seeking a stay of execution pending appeal must show special or exceptional circumstances justifying the grant of stay of execution. The onus is on the applicant in the present case to demonstrate that such circumstances exist in his favour.

Special Circumstances

There are abundant authorities in this area of the law, both in this jurisdiction and elsewhere. I need only to refer to few of the cases decided by our Courts here including the case of *African Tokeh Village Limited v John Obey Development Investment Company Limited* (26th April 1994) Court of Appeal, Mis.App.2/94 (unreported) where it was held that this Court has unfettered discretion to grant a stay of execution provided the applicant can satisfy the Court that special circumstances do exist to warrant the grant of a stay. See also *Alhaji Abdul Wahid (Jr) v Fatmata Floode and others* (11th November 2003) Court of Appeal, Mis.App.7/03, and *Betsy Rogers Parkinson and others v Clarence Robinson and others* (13 February 2002), Court of Appeal, Miss.App.1/96 where the same position was expressed after referring to *Halsbury Laws of England* (3rd edition) volume 16 paragraph 51 at page 35. Recently this Court had to deal with this issue again in *Firetex International Company Limited v Sierra Leone External Telecommunications (SLET) and Sierra Leone Telecommunications Company Limited* above and more recently in the case of *Patrick Koroma v Sierra Leone Housing Corporation and Dolcis Beckley* (26th May 2004) Court of Appeal, Misc.App.9/2004. Although the principles governing the grant of a stay of execution were expressed in the cases cited, each of those cases had their own circumstances. But a distinction in the application of the principles governing proceedings for a stay of execution must be drawn between those involving monetary (*Firetex v Sierra Leone External Telecommunications*) non-monetary (*Patrick Koroma v Sierra Leone Housing Corporation*) judgments. *AK*

To the authorities cited, I need add one more: *Ernest Farmer and Another v Mohamed Labi*; a 1945 case, reported in the Sierra Leone Law Recorder Vol.3, page 66. This is a case where the Plaintiff obtained judgment against the defendant in the High Court. The Defendant filed a Notice of Appeal and applied for stay of execution. The trial judge granted a stay for a limited time to allow the defendant to find alternative accommodation pending the hearing of his appeal. The defendant later applied to the Court of Appeal to grant a further stay pending appeal which was yet to be heard some months away. The Court of Appeal in refusing a further stay of execution, was clearly of the opinion that the

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
present case is between the respondent bank and the applicant and it is not related to the terms and conditions of service of the applicant. The dispute here is over the property owned by the respondent and occupied by the applicant. There is no dispute that the property in question belongs to the respondent, conveyed to it by the Government in or about 25th July 2002. The High Court confirmed that this was the case. That the applicant continues to occupy the said property to date is also not disputed.

Decision and Order

In the light of finding of facts and conclusion of the trial judge on the status of premises here concerned, it would be difficult to see what special circumstances are there to justify a stay of execution after 1st July 2004. As Counsel for the respondent submitted, the applicant has no legal or equitable right over the property in view of the finding of the trial judge. See *Patrick Koroma v Sierra Leone Housing Company and Another* (above). On the evidence before this Court, in this application, no special circumstances have been shown.

This Court's hands are tied in view of the authorities cited and consequently, the application for stay must be refused. As justice must be tempered with mercy, and having the power to do, so I shall extend the period within which the Ejectment Warrant not to be executed to 31st July 2004. I so order.

- Order: 1. Application for stay of execution of the order of the High Court dated 7th June 2004 and Ejectment Warrant issued on 8th June 2004 is refused.
2. Period within which not to execute the said Ejectment Warrant is extended to 31st July 2004.


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Hon. Justice Sir John Muria JA