

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

MOHSON TARAF

JUDGMENT CREDITOR/
APPLICANT

AND:

NATIONAL INSURANCE
COMPANY LIMITED & ORS

JUDGMENT DEBTOR/
RESPONDENT

CORAM:

Hon. Sir John Muria JA
Hon. Ms. U.H. Tejan-Jalloh JA
Hon. Ms. T.A. Doherty J.

HEARING: 29th April 2004
RULING: 29th April 2004

Advocates:

Applicant: Dr. A. Renner-Thomas

Respondent: A.F. Serry-Kamal and Ms. V.M. Solomon

4th Garnishee: Ms. M. Sesay

Reasons for Ruling

Delivered this 16th day of June 2004.



Muria, Tejan-Jalloh JJA, Doherty J: The order on this application by the applicant was granted on 29th April, 2004 and we said we would give our reasons. This we now do.

This application can be disposed of very briefly. On 12th January 2004, the High Court made a Garnishee Order Nisi in favour of the Judgment creditor/applicant, which order was made absolute on 21st January, 2004.

By a Notice of Motion filed on 26/1/04 the judgment debtor sought to set aside the Order Nisi and Order Absolute. Following a hearing on 27th February 2004

the High Court set aside the Orders of 12th and 21st January 2004. The basis for setting aside the two orders was that they were irregular. Subsequently the judgment creditor/applicant applied on 31st March 2004 for leave to appeal against the order of 27th February 2004 and for stay of execution of the said order pending appeal. The High Court granted leave to appeal but refused stay of execution. As a result of that refusal, the judgment/creditor applicant now comes to this Court.

We have not been furnished with the learned trial Judge's notes at the hearing before him. We note, however that one of the grounds of appeal complains that the learned Judge erred in law when he held that there was a conflict of interest when Counsel who appeared for the first and fifth Garnishees at the garnishee hearing were from the same firm of Solicitors as Counsel for the judgment creditor. As this is an issue to be decided on appeal we will not say anymore on this matter. Suffice to say that it is an issue that lends weight in the Court's mind when considering what are the "special circumstances" warranting a stay of execution of a judgment of the Court. In as much as good cause has been shown for leave to appeal to be granted it is equally important to show that the 'good cause' forms part of the special circumstances justifying the grant of a stay of execution. In this case, the 'good cause' for the grant of leave to appeal and 'special circumstances' for the grant of a stay execution are part of the circumstances of the same case. This is all borne out of the general principle that a stay of execution will be granted upon proof of prima facie good ground of appeal and the existence of special or exceptional circumstances. There has been a long string of cases decided by the Courts in this jurisdiction upholding this general principle.

Counsel for the applicant/judgment creditor conceded that the Counsel for the parties concerned are all members of the same chambers. The question before the Court of Appeal is whether such legal representation of the parties in proceedings, such as a garnishee proceeding, is proper or not. It is test case for

the firm of Solicitors concerned and also for future conduct of cases generally. As we have said, we do not say anymore on the issue except to say that in our opinion, the issue warrant the Court exercising its discretion to grant a stay of execution of the order of 27th February, 2004 and all proceedings in the High Court in this matter pending the hearing and determination of the Appeal in Civil Appeal No. 10 of 2004.

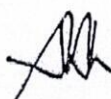
The application is granted, but it will be on terms.

Order:

1. Application for stay of execution of the order dated 27th April, 2004 and all proceedings in the High Court is granted on the following terms:

The whole of the judgment debt be paid into an Interest Bearing Deposit (IBD) Account in the joint names of the solicitors for the Judgment Creditor/Applicant and Judgment debtor/respondents.

2. No order as to costs including today's costs.



BY THE COURT