

Misc.App.17/2004

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

CHIDI THOMAS -APPLICANT

AND

A.B. DOLLAH & ANOR -RESPONDENT

CORAM

Hon.Sir John Murcia 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 background to this case. Following the consolidation of the actions in CC349/88 and CC927/86, the High Court (Alghali J) held on the 20th July 1994, inter alia, that Chidi Thomas, the applicant herein, had 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 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 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 5th May. Counsel for the appellant had written to say that he was not well. On 28th May 2004, Counsel for 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 it's order has been perfected, but has no power to rehear an appeal once it's 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 yet been perfected yet. In the present case, the appeal was called on and Counsel for 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 and have the appeal re-entered for hearing. It is a final order and only the course open to the applicant is to appeal to the Supreme Court.

The justice of the case

The principle which the 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 they he should deliver up possession of the property in question, the applicant continues to this date to occupy the very same property. This 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 case. The Court is under a duty to ensure that parties coming before it obtain justice within a reasonable time. Legal practitioner is 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 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