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STAY of Execution 160

MISC.APP.38/2004

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BOBLYN AUGUSTIN

APPELLANT/APPLICANT

AND

ABDUL KOROMA

RESPONDENT

CORAM: Hon. Justice Sir John Muria J.A (Presiding)
Hon. Justice U.H. Tejan-Jalloh J.A
Hon. Justice P.O. Hamilton J.A

Hearing: 19th January, 2005
Judgment: 28th January, 2005

Advocates:

J.B. Jenkins-Johnston Esq.; for Appellant/Applicant
Y.H. Williams for Respondent

JUDGMENT

Delivered this 28th day of January 2005. *MJ*

MURIA, TEJAN-JALLOH AND HAMILTON JJA: By his notice of motion, the appellant seeks a stay of execution of the judgment of this Court delivered on 19th November 2004 pending his appeal to the Supreme Court. The respondent was successful in the High Court which ordered, inter alia, the appellant to execute a conveyance of the property at No. 36 Sackville Street, Freetown in favour of the respondent. The appellant appealed to the Court of Appeal which dismissed the said appeal on 19th November 2004.

The principles upon which the court acts in cases of stay of execution are well settled in this jurisdiction. The applicant for a stay must establish "special

"circumstances" justifying a stay of execution. In addition, the court also bears in mind, the distinction between a monetary and a non-monetary judgment, the real risk of damages and costs not being refunded if the appeal succeeds constitutes 'special circumstances' justifying a stay. In a non-monetary judgment, as that of a judgment for delivery of possession, of a land, the 'special circumstances' that the applicant for a stay has to establish are those factors which make out a strong case for depriving the respondent of the benefit of the judgment obtained in his favour. A further consideration which the court will take into account in an application for a stay especially in cases concerning land, is that of the non-perishable nature of the property. The cases of *Ernest Farmer and Another* (1945) Vol. 3, *Sierra Leone Law Recorder*, 66, *Bank of Sierra Leone v. Desmond Luke*. (14th July 2004) CA, Misc.App.22/2004; and *Yusuf Bundu v Mohamed Bailor Jalloh* (23rd July 2004) CA, Misc App. 22/2004 have clearly established the principle that in cases where the judgments sought to be stayed are for recovery of possession of land, the Court of Appeal will refuse to grant a stay unless the applicant can establish a strong case for depriving the respondent of the fruit of the judgment obtained in his favour. We are firmly of the view that principles laid down in the cases referred to must also apply in the present.

Mr. Jenkins-Johnston of Counsel for the appellant relied on the case of *Adama Mansaray v Ibrahim Mansaray* (4th March 1982) CA Civ.App.No.31/1981. In that case, the Court of Appeal said that in cases involving conveyance of land or site of land. And an appeal is pending before the court; a stay should not be readily refused because the land in question might have passed on to another purchaser who is not aware of the pending appeal. We appreciate the view taken by the court in that case. We feel however, that to adhere without more to the position stated in that case would likely to lead to a situation where a presumption in favour of a stay may well develop, something which the case law authorities do not support. It also unnecessarily throws the burden on the party in whose favour the judgment of the court having to show that he would not part with the property while the appeal is pending. The position in law in cases of this

nature is that the presumption, if there is to be one, must always be in favour of the judgment of a competent court, and the burden is on him who seeks challenge that judgment to establish the grounds for doing so whether in the form of a stay or setting aside. To hold otherwise would also lead to the situation warned against by Gaham Paul CJ in *Ernest Farmer and another v Mohamed Labi* (above) where His Lordship said;

"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."

This we re-iterate the position which we feel strongly that the courts in Sierra Leone should take in cases of involving recovery of possession of land: an applicant for stay must establish a strong case for depriving the respondent of the benefit of the judgment obtained in his favour.

The grounds advanced on behalf of the appellant/applicant range from saying the property was a family home and that he was sentimentally and emotionally attached to it; that he was traumatized, confused and in great panic and fear at the time of the transaction in 1997 because of the AFRC Military Junta; that he was under too much pressure; and that his former solicitors poorly handled his case. We consider the factual circumstances against the grounds or reasons advanced by the appellant/applicant and we found that they cannot stand in the way of the judgment granted by the court to the respondent in this on 19th November 2004.

For the reasons given, we are of the opinion that the application for a stay in this case should be refused and we so refuse it.

We feel, however, that this court ought to take account of the point expressed by the appellant/applicant of the possibility of the respondent passing the land to another hand in the meantime. That in our view can be accommodated by an order that the respondent must not dispose of the property to another person or whatsoever while the appeal is pending before the Supreme Court. Mr. Williams accepted that such an order can be made in this case. The court accepts that a restraining order would be useful in the case before the court. We therefore make the order that the respondent be restrained from selling or otherwise disposing the property in 36 Sackville Street Freetown until the determination of the appeal by the Supreme Court in this matter.

The order of the court therefore are

1. Application for Stay of Execution of the judgment of Court of Appeal dated 19th November 2004 is refused.
2. The respondent is restrained, from selling or otherwise disposing of the property in 36 Sackville Street, Freetown until the appeal to the Supreme Court is determined.
3. Each party to bear his own costs.



BY THE COURT