

CIV. APP.59/2008

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

ALISON SHEKA KANU - APPELLANT/
(A.K.A. ALISON SHEKA KANU) APPLICANT

AND

DEMBA ABDULAI BARRIE - RESPONDENT/
(A.K.A. ABDULAI BARRIE) RESPONDENT

CORAM

HON. MR. JUSTICE P.O. HAMILTON J.S.C. Presiding
HON. MR. JUSTICE S.A. ADEMOSU J.A.
HON. MRS. JUSTICE C.L. TAYLOR J.

RULING DELIVERED ON THE 3rd DAY OF March 2009.

This is an application by Notice of Motion dated 28th January, 2009 for the following Orders:-

1. That this Honourable Court grants a Stay of Execution of the Judgment dated 21st October, 2008 and all subsequent proceedings pending the hearing and determination of this application.
2. That this Honourable Court do grant a Stay of Execution of the Judgment dated 21st October, 2008 and all subsequent proceedings pending the Appeal.

The supporting affidavit is sworn to by Alison Sheka Kanu and attached to it are several exhibits including Exhibit ASK₆ the Judgment dated 21st October, 2008, Exhibit ASK_{7,1-2} the Notice of Appeal and Amended Grounds of Appeal against the said Judgment to the Court of Appeal and Exh. ASK₁₁ the Order of the High Court refusing to grant a Stay of Execution of the said Judgment.

It is against this brief background that the Appellant/Applicant has applied to this Court for a Stay of Execution pursuant to Rule 64 of the Court of Appeal Rules 1985 (Public Notice No.29 of 1985).

In support of the application Elvis Kargbo Esq. of Counsel for the Appellant/Applicant relied on the contents of the supporting affidavit especially paragraphs 4 to 18. He relied on them to highlight the special circumstances justifying the grant of a Stay of Execution. Counsel relied heavily on paragraphs 7, 13, 15 and 16 as enough special circumstances. Similarly that if the stay is not granted irreparable damage and high financial loss would be cause to the Appellant/Applicant since he relies on the rent from the building in support of himself and his family. Counsel further submitted that Exhibit ASK 7₁₋₁₂ of the Notice of Appeal discloses substantial good grounds of appeal with prospects of succeeding.

M.P. Fofana, Esq. of Counsel for the Respondent did file an affidavit in opposition in which he relied on the entire affidavit. Counsel relied on paragraphs 5, 6 and 7 and submitted that the res which is the

subject matter is different in that all documents of the applicant relates to No.

73 and the judgment upon which execution is levied is No.73^B.

Counsel further submitted that Exhibit SA₇ is between the Applicant and Sahid Gibril Kargbo and it speaks of premises situate lying and being at No. 73 Siaka Stevens Street and not 73^B and referred to paragraph 10 of the affidavit in opposition. Counsel further submitted that on damages resulting in hardship paragraphs 8 and 9 of the affidavit in opposition is clear.

Counsel finally submitted that paragraphs 4 to 18 of the Supporting Affidavit does not disclose special circumstances but rather raises issues to re-open the case and they are more for the substantive appeal.

Paragraphs 7, 13, 15 and 16 of the supporting affidavit reads as follows:-

- "7. That I have a valid defence on the merits in this matter. The said land belongs to the Government of Sierra Leone made an offer of lease to me through the Ministry of Lands and I have accepted same. That since 2002 the said Ministry encouraged me to develop same and I used my resources to build the shop in question.

13. That I have been in occupation of the same shop for over eight years and I let same to one Annie Yae a Chinese national doing business and that any eviction to be carried out will affect third party right.
15. That the property in question is out upon which I rely on and I have spent high amount of money in developing and constructing same and that for any execution to be carried out, it will cause serious financial ruin and hardship on my past and my family as a whole.
16. That on 20th November 2008, the Respondent together with certain persons went and demolished the basement of my garage and on Saturday the 13th day of December the said Respondent took certain persons and causes destruction on my building and he is confirming to cause further damage on my property."

Paragraphs 5, 6; 7, 8, 9 and 10 of the affidavit in opposition reads:

- "5. That I have carefully read the affidavit filed by the Appellant/Applicant dated 28h January, 2009 and I verily believe that it lacks merit, in the sense that firstly, the reliefs sought in the application are spent as execution of the Judgment dated 21st October 2008; secondly, that the

application seeks to reopen the case upon which Judgment was delivered in lieu of waiting for the Appeal to be heard; and thirdly, that I verily believe that the said application fails to give meritorious reasons why a stay of execution may have been granted.

6. That the documents exhibited by the Appellant/Applicant are all referable to No.73 Siaka Stevens Street, Freetown upon which Judgment was delivered and execution made by the Under Sheriff as reflected in the Returns.
7. That notwithstanding the execution of the Court's Orders and Judgment by the Under Sheriff, I am informed by the Respondent's caretakers and I verily believe that the Appellant/Applicant is still interfering with the ground floor shop/store situate at No. 73B Siaka Stevens Street, Freetown which forms part of the Court's Judgments, by entering upon the said premises and claiming it as his property contrary to the Court's Judgment Order.
8. That in order to stop the Appellant/Applicant from further interfering with the Respondent's repossessed property; I am informed by the Respondent that he recently constructed a wall between the basement to his property and the basement of the Appellant's garage.

9. That I am also informed by the Respondent that the pictures displayed by the Applicant as Exhibits Ask 10 in the affidavit of 28th January 2009 are pictures of part of the wall to the Applicant's new building constructed on top of the Respondent's repossessed land including the ground floor shop/store thereof; the said building was put up by the Applicant in spite of several warnings to him by the Respondent to stop. The Respondent informs me that he pulled down the said under pole protection as the wall was in his repossessed land and that it blocked the ventilation and view to his storey building situate at No.73B Siaka Stevens Street, Freetown which was the subject-matter of the High Court Judgment dated 21st October, 2008.
10. That I am aware that the Third Party referred to in the Applicant's said affidavit vacated the Respondent's ground floor premises at No.73B Siaka Stevens Street, Freetown shortly before Bailiffs proceeded to execute the High Court Judgment against the Applicant herein."

Counsel for the Appellant/Applicant relied on the paragraphs quoted above in his supporting affidavit as constituting special circumstances whereas Counsel for the Respondent relied on the above quoted paragraphs in the affidavit in opposition to aver that they do not amount to special circumstances.

It has been held in a number of case in our jurisdiction that this Court has unfettered powers and discretion to grant a stay of execution provided the applicant can satisfy it that special or exceptional circumstances exist to warrant the granting of the Stay – see *Africana Tokeh Village Limited v. John Obey Development Company Limited* Misc. App.2/94 (unreported). The Applicant must also show that he has a prima facie good grounds of appeal. The reasons behind this is that the Court must not make it a practice to deprive a successful litigant of the fruits of his Judgment – See. *Patrick Koroma v. Sierra Leone Housing Corporation and Dolcie Beckley* Misc. App.9/2004 (Unreported). In my humble view it is the duty of the appellate Court in considering the grounds of appeal proposed and filed by an Appellant in support of an application by motion for a stay is limited to whether the grounds of appeal are substantial and arguable. It is therefore not the duty of the Court at this stage to decide the merits of such grounds as filed in support of the application for to do so would amount to deciding the substantive matter in an interlocutory application which the law frowns upon (Emphasis mine). This has been emphasised because of Counsel for the Appellate/Appellant emphasis on the grounds of appeal filed in support of his application for stay.

In *Olualayo v Adeniran* (2000) 37 W.R.N. SC 89/1999 Kutigi JSC(as he then was) now Chief Justice of Nigeria (C.J.N.) held:

“A discretion to grant or refuse a stay must therefore take into account the competing rights of the parties. A discretion to grant or refuse a stay must only be taken after considering the facts of the case to see whether special circumstances exist to invoke the Courts power and jurisdiction.” See also *Commercial Enterprises Limited v Whitaker Properties and Anor.* Misc. App 12/91 (Unreported).

Where special circumstances do exist the Court has the unfettered power to grant a stay of execution and may do so even though a Writ of Possession has been issued and execution has taken place – see *Richard Zachariah v Morowah* Misc. Ajop 12/87 and *Africana Tokeh Village Limited v. John Obey Supra* (Unreported).

Where there is an Appeal pending as in this situation the special circumstances which have received approval are when execution would:

- (i) destroy the subject matter of the proceedings.
- (ii) foist upon the Court a situation of complete helplessness; or
- (iii) render nugatory any order or orders of the Appeal Court;

- (iv) paralyzes in a way or the other, the exercise by the litigant of the litigant of his constitutional right of Appeal; or
- (v) provide a situation in which even if the appellant succeeds in his appeal there could be n return to the status quo (see: Kutigi JSC in Olualayo v Adeniran (2000) 37 W.R.N. SC89/1999).

It is clear that a litigant applying for a stay of execution must show special or exceptional circumstances pleading eloquently the balance of justice weighing in his favour even though what constitutes special circumstances may vary from case to case. A discretion to grant or refuse a stay must only be taken after considering the facts of the case to see whether special circumstances exist to invoke the Court's power and jurisdiction – See Radar v. Jaber 1950-56 ALR S.L. 115.

In the affidavit in opposition paragraphs 6 and 7 avers that the Judgment is in respect of No.73B Siaka Stevens Street, Freetown and not 70 Siaka Stevens Street, Freetown. Exhibit SA3 does not specify the number of the property nor did the letter of acceptance specify it but the Judgment Exhibit SA6 specifically gives Judgment in respect of No.73B not 73 Siaka Stevens Street as that of the property of the Respondent herein. This is the res or subject matter of this action and it is an issue for determination of the substantive appeal but it must be taken into account in this application.

The contention by the Appellant/Applicant that a refusal of a stay would lead to financial hardship has been held in most cases in our jurisdiction as special circumstances – see *Africana Tokeh Village supra* wherein the Court recognized the fact that the land and premises constituted business and a refusal would result in financial loss to the business as such a stay was granted as it amounts to special circumstances.

Paragraph 15 of the supporting affidavit avers: That the property is one upon which I rely on and I have spent huge amount of money in developing and constructing same and that for any execution to be carried out, it will cause serious financial ruin and hardship on my part and my family as a whole”. Unlike *Africana Tokeh Village supra* the Appellant/Applicant did not demonstrate or show proof to satisfy this averment in his supporting affidavit in order that it can be classified as special circumstances to warrant a stay.

With respect to the Appeal filed, while we are not entitled to go into the merits, it is the duty of the Court to consider whether the grounds disclose prima facie good grounds with reasonable prospects of success. This is all what this Court is concerned with and since it has raised serious issues for consideration by the Court of Appeal it is enough. The case of *Clement Cox v. Sunnuy Eduwu Civ. App. 32/2007* is based on a different situation from this present application and cannot be applied in this case.

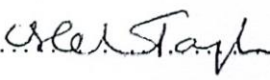
In the result the Appellant/Applicant's application for a stay of execution of the Judgment dated 21st October, 2003 is refused and is therefore dismissed on the following terms:

1. That in view of the nature of this action, there be a speedy hearing of the appeal and that the Records be prepared and settled by the Court of Appeal Registry within three (3) weeks from the date of this Ruling.
2. That the Appellant/Applicant pays the cost of this application assessed as at Le.1,000,000.00.

Hon. Justice P.O. Hamilton JSC

I Agree 

Hon. Justice S.A. Ademosu J.A.

I Agree 

Hon. Justice C.L. Taylor J.A.