

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BASITA MACKIE DAKHLALLAH - PLAINTIFF/RESPONDENT  
BY HER ATTORNEY S. DAKHLALLAH  
TRADING UNDER THE NAME AND  
STYLE OF D.M. DAKHLALLAH

AND

THE HORSE IMPORT AND EXPORT - 1ST DEFENDANT/APPLICANT  
COMPANY LIMITED/EL HOSAN  
20 QUEEN ELIZABETH ROAD  
KISSY DOCKYARD  
FREETOWN

EL HOSAN - 2<sup>ND</sup> DEFENDANT  
FOR IMPORT & EXPORT CO. SAE  
9 EL SHAHID MOH GAMEL  
BOVEI, ST. GULF CAIRO  
REPUBLIC OF EGYPT

EMAD EL GALADA - 3<sup>RD</sup> DEFENDANT  
9 EL SHAHID MOH GAMEL  
BOVEI, ST. GULF CAIRO  
REPUBLIC OF EGYPT

CORAM:

Hon. Justice U.H. Tejan-Jalloh, JA (Presiding)  
Hon. Justice P.O. Hamilton JA  
Hon. Justice A.N.B. Stronge JA

HEARING:

JUDGMENT: *Advocates:*

*Appellant: S. Macaulay; Esq.;*

*Respondent: A.J.B. Gooding; Esq.;*

RULING

Delivered this 14<sup>th</sup> day of February, 2006

TEJAN-JALLOH JA: This is an application by way of Notice of Motion brought on behalf of the first Defendant/Applicant for the following orders:-

1. For leave to appeal to the Court of Appeal of Sierra Leone against the Order of the Hon. Justice Sir John Muria J.A. dated 22<sup>nd</sup> March 2005 on *Notice of Appeal* <sup>provided</sup> *so far as in the notice of appeal.*
2. The second Order is already spent.
3. For a Stay of Execution of the Judgment in Default dated 4<sup>th</sup> November 2004; Judgment dated 19<sup>th</sup> January 2005 and Order of Hon. Sir John Muria J.A. dated 22<sup>nd</sup> March 2005 be granted pending the hearing and determination of the appeal, if leave be granted.
4. Any other order as may be deemed fit and just.
5. That the cost of this application be cost in the cause.

This application is supported by a twenty-five (25) paragraph affidavit of TEREK YOUNESS the Managing Director of the applicant sworn to on the 24<sup>th</sup> day of May, 2005. It is relevant to observe that most of the Averment relate to the history of the matter.

The paragraphs which I consider germane to the application are paragraphs 21, 22 and 23 which are as follows:-

21. That I verily believe that the applicant have very good grounds of Appeal which might be to naught if a stay is not granted and execution is levied against the applicant. A copy of the proposed notice to appeal is now shown to me exhibited and marked TJ21.
22. That I verily believe that unless a stay of execution of the Default Judgment dated 4<sup>th</sup> November 2004, Judgment dated 19<sup>th</sup> January 2005 and Order of Hon. Justice Sir John Muria J.A. dated 22<sup>nd</sup> March 2005 is granted, the appeal if successful would be rendered nugatory.

23. That the interest of justice will best be served if the orders prayed for in the Notice of Motion are granted.

In considering the application, it must be borne in mind that the Court does not make a practice of depriving a successful litigant of the fruits of his litigation and locking up funds to which he is prima facie entitled pending appeal. *The Annot Lyle (1886) 11 P.D. 114 at page 116*. See also *Monk v Bartram (1891) 1 AB 346* where Lord Esther M.R. said inter alia at Page 346:

"It is impossible to enumerate all the matters that might be considered to constitute special circumstances, but it may certainly be said that the allegation that they had been a misdirection or that the verdict was against the weight of the evidence or that there was no evidence to support it are not special circumstances on which the Court will grant a stay of execution."

In *T.C. Trustees Limited vs. J.S. Darwen (Successors) Limited (1969) 2 QB 295* the Court of Appeal laid down that special circumstances in which execution may be stayed on grounds other than inability to pay must be circumstances relevant to a stay, and not to matters of defence in law or relief in equity, which must be raised in the action, they must be relevant to the enforcement of the judgment and not to the judgment itself.

The most important factor that must weigh with any Court dealing with motion for stay of execution is the question whether the Judgment Creditors will be able to refund the Judgment debt if the appeal succeeds. See *Baker v Lavery (1885) 14 QB D 769*, *Brandford v Young Re Falconer and Trusts (1884) 28 CH.D. 18* and *Wilson v Church (No.21) (1870) 12 Ch.D.454*.

A defendant cannot obtain a Stay of Execution by arguing that he would be ruined and that he has an appeal which has some prospect of success – *Lino Type Hell Finance Limited v Baker (1992) 4 All ER 887 CA*.

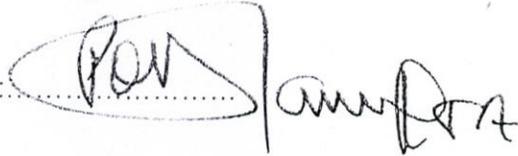
The only question before this Court is whether a case has been made out for depriving the plaintiff of the benefit of the Judgment which has already been obtained.

This is a Judgment for payment of money. The applicant has not proffered any reason how the appeal if successful can be nugatory. He has not said that if paid the Judgment award it would be impossible for him to recover it from the plaintiff. How grounds of appeal can be brought to naught is not explained. It is not every ground of law that qualifies as special circumstances for a Stay of Execution. For a ground of appeal to be so qualified it ought to be shown that a decision on it will one way or the other affect the substratum of the whole case substantially.

The sum total of the material before us is that the applicant has failed to establish special circumstances. We are of the opinion that the justice of the case is on the side of the Respondent that he be left free to his legal remedies to recover his money.

In the circumstances, the application for stay of execution is refused with costs against the applicant such costs to be taxed if not agreed upon. However, as the applicant is exercising his constitutional right of Appeal, leave to appeal is granted.

Hon. Justice U.H. Tejan-Jalloh 

Hon. Justice P.O. Hamilton: JA: 

Hon. Justice A.N.B. Stronge JA: 