

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

MARCO KOROMA  
LAMIN KOROMA  
BORBOR KAMARA

- APPELLANTS/APPLICANTS

AND

ALHAJI BABA ALLIE  
MAHMOUD ALLIE  
HAJA MARIATU KEBE

- RESPONDENTS

CORAM:-

Hon. Mr. Justice P.O. Hamilton, J.A. (Presiding)  
Hon. Mrs. Justice S. Bash-Taqi  
Hon. Mr. Justice E.E. Roberts, J.A.

A.F. Serry-Kamal Esq. for Applicants  
Patrick Lambert Esq. for Respondents

RULING DELIVERED ON THE 18<sup>TH</sup> DAY OF DECEMBER, 2007.  
HAMILTON J.A.:

This is an application by Notice of Motion dated the 2<sup>nd</sup> day of May, 2007 for the following Orders:-

1. An interim order that the order of the court dated the 25<sup>th</sup> day of October, 2006 and or all subsequent proceedings thereto be stayed pending the hearing and determination of the application.
2. An order that the order of the court dated the 25<sup>th</sup> day of October, 2006 and or all subsequent proceedings thereto be stayed pending the hearing and determination of the Appellants/Applicants appeal to the Court of Appeal.

On the 7<sup>th</sup> day of March 2007 the High Court did refuse a similar application. However when this application came for hearing both Counsel agreed that the status quo be maintained until this application is heard and determined. In this regard therefore Order one (1) on the face of the Notice of Motion was therefore discarded.

The materials before this court upon which a decision may be reached as to the grant or refusal of a stay is contained in the affidavits filed by both sides.

The applicants filed two affidavits in support of this motion. One by their Solicitor Abdul Franklyn Serry -Kamal Esq. with eight (8) exhibits attached to it and the other by Marco Koroma the 1<sup>st</sup> Appellant/Applicant with two(2) exhibits attached to it. The Respondents (1<sup>st</sup> Respondent herein) Alhaji Baba Allie filed an affidavit in opposition.

Counsel for the Appellants/Applicants did submit that at the commencement of this matter there were seven (7) Plaintiffs and at its conclusion there are now only two survivors. He went on that as regards the undertaking if all die then there would be nobody to enforce on in case the appeal succeeds. Exhibits MK 1 and MK2 shows that part of the land close to the subject matter of this appeal was sold by seven vendors of which only two are now available. Counsel finally submitted that paragraphs 4 and 5 of the affidavit of Abdul Franklyn Serry-Kamal and paragraph 3, 8 and 9 of the affidavit of Marco Koroma disclose special circumstances to warrant a stay.

Mr. Patrick Lambert Solicitor for the Respondents opposes the application relying on the affidavit in opposition and submitted that the affidavits in support is a mere speculation not supported by evidence that the property would be sold. Paragraph 4 refutes sending anybody on the land and paragraph 5 gives an undertaking not to sell. Counsel further submitted that the fact that the Appellants/Applicants have resided for forty-five (45) years on the land and is their ancestral home does not amount to special circumstances.

It cannot be doubted that in applications of this nature there are certain general principles which should guide the court in deciding to grant or refuse a stay of execution. The court has an unfettered discretion but that unfettered discretion ought to be exercised judicially. A discretion to grant or refuse a stay of execution ought to take into consideration the compelling interests of the parties. It must be borne in mind that a winning or successful party in a litigation has the right to enjoy the fruits of his litigation. See Ghana Supreme Court in the case of Joseph V Jebeile (1963) 1 GLR 387 at 389.

Therefore the courts will in no circumstance form the practice at the instance of the unsuccessful litigant of depriving the successful party of the fruits of the litigation until such a judgment is set aside. It is accepted that the legal basis for the exercise of the court's discretion to grant or refuse a stay of execution, is that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. The onus is on the applicant to demonstrate that such circumstances exist in his favour.

There are abundant authorities on the aspect of special circumstances in our jurisdiction. In Africana Tokeh Village Ltd. V John Obey Development Investment Co. Ltd. (26<sup>th</sup> April, 1994) Court of Appeal, Misc. App. 2/94 (unreported), it was held that this Court has unfettered discretion to grant stay of execution provided the applicant can

satisfy the court that special circumstances do exist to warrant the grant of a stay. See also Alhaji Abdul Wahid (Jr.) V Fatmata Floode and others (11<sup>th</sup> November 2003) Misc. App. 7/2003, Patrick Koroma V Sierra Leone Housing Corporation and Dolcie Beckley (26<sup>th</sup> May 2004), Court of Appeal, Misc.App. 9/2004, Yusufu Bundu V Mohamed Bailor Jalloh (23<sup>rd</sup> July 2004) Court of Appeal Misc. App. 23/2004 and Evelyn Ayo Pratt Administratrix of the Estate of Betsy Rogers Parkinson (Deceased) Intestate V Jacqueline Carew and others (16<sup>th</sup> July 2005) Misc. App. 7/05. It must be pointed out that the principle governing the grant of a stay of execution were expressed in the cases cited above. In each of those cases it must be pointed out had their own peculiar circumstances and each case depends on its own facts.

The question to be asked at this stage is: have the applicants here in shown special circumstances in their own case to warrant a stay of execution? Counsel for the applicants did argue that this matter started off with seven Plaintiffs and presently there are now only two surviving and secondly that lands close to this one on appeal which is the subject matter was sold by seven vendors and there are now only two surviving.

Considering these facts even with an undertaken given if eventually the land is sold by the two survivors who are now old, on whom can this undertaken be enforced? Counsel for the applicants did submit that to recover the land following such a sale would be rather expensive in case the appeal succeeds and in my opinion this is rightly so.

Counsel for the Respondent did rely on the case of Evelyn Ayo Pratt Administratrix of the Estate of Betsy Rogers Parkinson (deceased) Intestate V Jacqueline Carew and others Misc.App. 7/05 supra in which an application for a stay of execution was refused in relation to a house which was claimed as an ancestral home and the property was one that could not disappear nor be dissipated and if the appeal should succeed it could be within the court's power to order it to be restored to the successful party.

This application relates to land unlike that of the case of Evelyn Ayo Pratt supra which relates to a house. If a sale is effected even with an undertaken by the Respondents a bona fide purchaser for value without notice of this appeal would have incurred a lot of expenses on the land and would suffer if the appeal succeeds.

In order to save such unwarranted future expenses and having examined the grounds of appeal that is herein exhibited appears to be substantial as is therein contained.

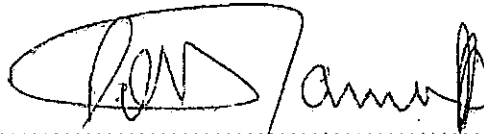
I am quite satisfied that the applicants herein have adduced good and sufficient reasons for the grant of this application.

I do therefore grant the application and make the following orders:

1. Execution of the judgment of the High Court dated 25<sup>th</sup> day of October 2006 is hereby stayed pending the hearing and determination of the appeal filed therefrom.
2. I order that the parties hereto be restrained from parting with the property or any interest therein or thereunder until the final determination of the appeal.
3. I make no order as to costs.

Because of the special circumstances of this application, I further order that the Registrar of the Court of Appeal do see that this appeal comes up expeditiously or hearing by the Court of Appeal within a period of two (2) months and which hearing I shall now fix for the 18<sup>th</sup> day of February, 2008.

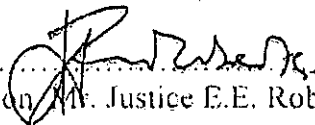
Order accordingly.



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Hon. Justice P. O. Hamilton, J.A.



I agree: .....  
Hon. Mrs. Justice S. Bash Taqi, J.A.



I agree: .....  
Hon. Mr. Justice E.E. Roberts, J.A.