

Stay

176

CIV. APP.32/2007

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

CLEMENT BANKOLE COX

- APPELLANT/APPLICANT

AND

SUNNY EDUWU

- RESPONDENT/RESPONDENT

CORAM:

Hon. Mr. Justice P.O. Hamilton J.A. (Presiding)

Hon. Mr. Justice N.C. Browne-Marke J.A.

Hon. Mr. Justice E.E. Roberts J. A.

SOLICITORS:

E. E.C. Shears-Moses Esq. and Mrs. M.A.P. Davies for Applicant

R. Johnson Esq. for Respondent

RULING DELIVERED ON THE 31st DAY OF January 2008

This is an application by Notice of Motion dated 5th October, 2007 for the following Orders:-

- (1) That there be an interim stay of execution of the Judgment dated 13th July, 2007 pending the hearing and determination of this application.
- (2) That there be a stay of execution of the Judgment dated 13th July, 2007 pending the hearing and determination of an appeal to the Court of Appeal intituled Civ.App. 32/2007 lodged on the 2nd August, 2007.
- (3) That this Honourable Court grant such further or other orders as it may deem fit.

The applicant herein filed an affidavit in support of this application sworn to on 5th October 2007 to which was attached eight (8) exhibits (CBC¹ to CBC⁸). The Respondent herein filed an affidavit in opposition sworn to on 10th October, 2007 by Patrick Lambert.

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Counsel for the applicant Mr. E.E.C. Shears-Moses submitted that there are two principles to be considered thus:-

- (i) Looking at the appeal and the existence of success and
- (ii) the existence of special circumstances to grant the stay.

Counsel then submitted that if the respondent goes on to administer the estate he will be at liberty to do what he wishes relying on Exhibit CBC6. Counsel finally referred to the affidavit in opposition especially paragraph 4 in which Exhibits CBC4 1-6 fully satisfies it.

Counsel for the Respondent Mr. R. Johnson opposes the application relying on the entire affidavit in opposition. He then submitted that paragraphs 5 – 7 discloses no special circumstances since the accounts in Exhibit CBC4 1-6 is disputed as a sham in that there are no documents to support it.

Mr. Shears-Moses in his reply submitted that there is no locus to administer the Estate of Mabel Cox. He referred to Exhibits CBC2 and CBC7 and submitted that the respondent has no fixed abode therefore enforcement of the appeal if it succeeds would be difficult as such a stay is necessary.

Paragraphs 5, 6 and 7 of the affidavit in support of the application reads as follows:

- “5. That pursuant to the Judgment of the 13th July, 2007, several orders were made by the High Court inter alia that I give an account of all the properties, real and personal including rents and profits collected, and monies in the Bank which I received whilst acting as Administrator of the estate of Mabel Cox deceased. I have complied with this order. Produced and shown to me is a copy of the account tendered and marked CBC4 1-6.

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- "6. That the matter pertains to a deceased person which if in the wrong hands could lead to serious repercussions later on.
- "7. That the Respondent was meddling with the estate of Mabel Cox and selling properties belonging to it even before he purportedly obtained a grant for Cynthia Eduwu which had several defects. Produced and shown to me is a copy of the grant marked CBCs."

Paragraph 4 of the affidavit in Opposition reads:

- "4. That the Appellant/Applicant is occupying one of the properties forming part of the Estate of Mabel Cox situated at 4 Nurse Horton Drive Brookfields Freetown and has been solely collecting the rent from the other property situate at 35H Beckly Lane off Tengbeh Town Freetown since the death of Mabel Cox in 2005."


It is clear that the principles to be applied in determining whether to grant or refuse a stay of execution are well known and have been applied in numerous cases by the Courts in this our jurisdiction. The Applicant must show that he has a prima facie good grounds of appeal and also that there are special circumstances justifying a stay. The main reason for this is based on the fact that a successful litigant should not be deprived of the fruits of his judgment; See Patrick Kororma v Sierra Leone Housing Corporation and Dolcie Beckley Misc.App.9/2004 C.A. (unreported). It will be wrong to grant a stay of execution where an appeal is frivolous or where a grant of a stay will create hardship on the successful litigant. See: Firetex International Co. Limited Vs. Sierra Leone External Communications and Sierra Leone Telecommunications Misc.App.19/2002 C.A. The applicant therefore must show that there are special circumstances to justify the granting of a stay of execution and this involves a consideration of the need to balance the interest of the successful litigant and the Applicant's claim for a stay - See Patrick Koroma v SALHOC Supra.

4.

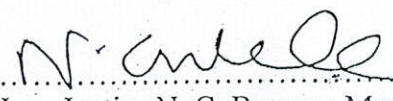
From the affidavit in support and especially paragraphs 5, 6, 7 and Exhibit CBC1 and the submissions of Counsel for the Applicant the question to be determined is whether the averments constitute special circumstances to warrant a stay of execution.

The Respondent has not stated in his affidavit evidence or show that a stay of execution would cause him any hardship nor has he demonstrated that in case the appeal succeeds he would be in a position to restore the Applicant to his normal position.

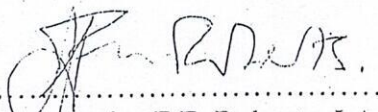
I have considered the submissions of both Counsel and carefully examined the averments in the Affidavits in support and opposition. I am satisfied that if a stay is not granted extreme hardship would be caused to the Applicant. I am satisfied that the Applicant has shown that special circumstances do exist for this Court to exercise its unfettered discretion to grant a stay of the execution of the Judgment dated 13th July, 2007 pending the hearing and determination of the Appeal to the Court of Appeal, and would therefore grant the stay. I shall make no order as to cost.



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

I agree 

 Hon. Justice N. C. Browne-Marke, J.A.

I agree 

 Hon. Justice E.E. Roberts, J.A.