

BETWEEN:

THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF SIERRA LEONE

- APPELLANT/APPLICANT

AND

CAPT. (RTD MICHAEL F. SPENCER)

-
RESPONDENT/RESPONDENT

CORAM:-

HON. MR. JUSTICE S.A. ADEMOSU

- J.A.

HON. MR. JUSTICE N.C. BROWNE-MARKE

- J.A.

HON. MR. JUSTICE E.E. ROBERTS

- J.A.

ADVOCATES:-

MRS. S.V. KHATUMAL FOR THE APPELLANT/APPLICANT

J.B. JENKINS-JOHNSTON ESQ. FOR THE RESPONDENT/RESPONDENT

RULING DELIVERED ON 12th DAY OF FEBRUARY, 2009

ADEMOSU J.A.

This is an Application for a Stay of Execution pending the Hearing and Determination of the Appeal by the Appellant/Applicant.

In support of the application are Affidavit and a Supplemental Affidavit and an affidavit in reply. Mrs. Khatumal representing the Appellant/Applicant relied on Paragraph 9 of the Affidavit in Support sworn to on the 30th day of October, 2008 and Paragraphs 5 to 10 of the Supplemental Affidavit sworn to on the 26th day of November, 2008 for the Special circumstances.

Paragraph 9 is as follows:-

9. "That in asking the Council to enroll the Respondent/Respondent as per Paragraph 8 above, would be in clear contravention of the Act. That if a Stay

Of further proceedings and execution of the judgment is not granted costs of the action having already been paid, Council would be compelled to carry out an Act which would be illegal."

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In my opinion, the story being told in the above paragraph will be incomplete if Paragraph 8 referred to is left out. It is for this reason that I have added the averments in Paragraph 8 which reads as follows:

8. That His Lordship however adjudged that the plaintiff is eligible for a different and even a higher category of membership Pursuant to Sections 3(1) (b) and 5(a) of the Act that was not prayed for; that the plaintiff should "be enrolled for forthwith" ^{and} be issued with a practising certificate" without the approval of Council which has the authority under the Act to approve eligibility for membership of the Appellant/Applicant, is Contrary to the provisions of the Act.

Turning to the Supplemental Affidavit paragraphs 5 to 10 are in these terms:-

- 5 That if a Stay of Execution is not granted by the Honourable Court and the Respondent/Respondent herein is allowed to enroll as a Chartered Accountant and a Fellow under ICASL Act No.5 of 1988 and he is issued with a practising certificate, he will be entitled to practice and serve the public. That should the Appeal become successful thereafter there would be far reaching implications and serious damage will have been done in the interim.
6. That the validity of the work done by the Respondent/Respondent in the interim would become questionable and the reliance of members of the public on any such work done will cause hardship to the public when he will have to be dis-enrolled should he lose the Appeal.
7. That from the time a certificate is issued to the Respondent/ Respondent he will be in a position to prepare financial statements for clients who would not be aware that an Appeal is underway whereby his eligibility for such membership and to holding such practising certificate is to be determined, especially if he were to lose in the Appeal filed in this Honourable Court by the Appellant/

Applicant. That he would be required to sign such financial statements and that the same would be published. That additionally this can have an adverse effect on the reputation of the Institute especially if the client were to seek recourse from the Institute(emphasis mine)

8. That the Respondent/Respondent will be receiving moneys from the public and where deadlines fall after the Appeal may have become successful and he will be required then to dis-enrol, this will not only cause hardship to members of the public but will also expose the Institute and its Council the regulating body of the Institute to inconvenience and ridicule.
9. That the enrolment certificate which is the membership certificate of the Institute might be very costly to the Institute to recover the same from the Respondent/Respondent upon his dis-enrolment if the Appeal is successful and he refuses to return it.
10. That if the Appeal before this Honourable Court were to become successful the Institute will have to embark on an informative dissemination exercise to ensure that the public both nationally and persons outside the Country relying on documents prepared by the Respondent/Respondent, are made fully aware of the reversal of his membership and withdrawal of his practicing certificate. That the dissemination of such informative will be very costly to the Institute.

J.B.Jenkins-Johnston Esq., for the Respondent relied on the content of the Affidavit in Opposition. He submitted that the three affidavits filed for and on behalf of the Applicant tend to argue the Appeal rather than making a case for a stay. The Affidavit in Opposition is to the effect that since judgment was delivered in his favour the Appellant/Applicant has refused and/or neglected to comply with the judgment of the court. That by the Appellant/Applicant's conduct they have willfully deprived him of his only means of livelihood thereby putting him and his family in financial jeopardy. By refusing to allow him to practice his profession (emphasis mine)

There is an affidavit in reply sworn to by Sally Vinod Khatumal on 19th day of November, 2008 putting forward a counter averment that the Respondent/Respondent has

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been practising as an Accountant when he is not a member of the Institute and does not hold the Institute's practising certificate thus acting in contravention of ICASL Act No.5 of 1988 and has been receiving remuneration. There are several exhibits attached to this affidavit. I refer in particular to exhibit "SVK.9" dated 4th November, 2005 addressed to the Respondent/Respondent by one H.M.Nelson-Okarafor headed.

' Re Illegal Practice as Accountant'

In that letter Respondent/Respondent's attention was drawn to Section 21(1) of the Institute of Chartered Accountants of Sierra Leone Act No.5 of 1988 of the Laws of Sierra Leone which states that:

" No person who is not a member of the Institute shall carry on practice as an Accountant" (emphasis mine)

From the Affidavit and Affidavit in Opposition it is clear that the Institute of Chartered Accountants of Sierra Leone (Appellant/Applicant) is a professional body governed by an Act of Parliament which clearly spells out that no person who is not a member of the Institute shall carry on practice as an Accountant. The Respondent/Respondent has not denied the averment that he is not yet a member of the Institute and that he has been practicing as an Accountant without a practising certificate.

The bases of the Appellant/Applicant's application for a Stay of Execution are (a) that an Appeal has been lodged against the decision of the High Court in respect of which the Respondent/Respondent was pressing for enforcement of the decision or judgment and (b) that the Grounds of Appeal filed against the decision showed prima facie good grounds.

I have read the Grounds of Appeal and propose to refrain from making any comments about them.

Now the facts outlined above which are material for the consideration of the application are:

1. That the Grounds of Appeal reveal substantial issue of law on which the competing rights of the parties depend so that it is desirable to resolve it on Appeal.
2. That an application for a Stay of Execution should not be refused if the

effect of such a refusal would be to render the appeal nugatory but that is not the case here.

- 3 That the assertion that the Respondent/Respondent is not yet a member of the Institute of Chartered Accountants of Sierra Leone and that he is practicing as an Accountant is not denied.
- 4 The essence of granting a Stay of Execution pending appeal is to maintain a status quo ante pending the determination of the appeal.


The idea is to look at and maintain the respective positions of the parties before judgment was entered (not after).

I am of the opinion that in the circumstances justice demands that I should make an order for a Stay of Execution pending the determination of the Appeal. The Respondent may take whatever steps he deems necessary and proper to ensure that the Appeal is heard as soon as possible. In the circumstances, I make the following Orders:

- (a) Stay of Execution of the Judgment of Hon.Mr. Justice D.B.Edwards dated the 11th day of July, 2008 pending the hearing and determination of the Appeal.
- (b) That the Costs of the Application be costs in the cause.

(SGD) HO. MR.JUSTICE S.A.ADEMOSU- J.A.

I AGREE.....HON.MR.JUSTICE N.C.BROWNE-MARKE - J. A.

I AGREE. .....HON. MR.JUSTICE E. ROBERTS - J. A.