CIV. APP. 70/05

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

AHMED AMADU KAMARA)
ALUSINE SERRY KAMARA)
24,LUMLEY ROAD,)
WILBERFORCE.)
)
AUGUSTINE B. CONTEH)
26, WATER LANE)
CONGO CROSS)
FREETOWN.)
)
PATRICK SAMURA)
MOMOH BANGURA)
27C,LUMLEY ROAD,)
WILBERFORCE,)
FREETOWN)
)
ALFRED S.FORNAH)
63B, LUMLEY ROAD) APPELLANTS/
WILBERFORCE APPLICANTS
FREETOWN.)
)
ABDUL KAMARA)
PATRICK KAMARA 220, BAI BUREH ROAD,)
FREETOWN)
)
MOHAMED A. FOFANAH)
14B,BLACKHALL ROAD,)
FREETOWN.)
)
MADAM ZAINAB SACCOH)
118F KISSY ROAD,)
FREETOWN .)
)
AND)
Cornelius)
~~CORNELIUS~~ AUGUSTINE HARDING)
30,LUMLEY ROAD,)
WILBERFORCE,)
GREATER FREETOWN) RESPONDENT

CORAM:

HON .MR. JUSTICE P.O.HAMILTON - J.A.

HON. MR. JUSTICE S.A.ADEMOSU - J. A.

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

ADVOCATES:-

E.E.SHEARS-MOSES ESQ., FOR THE APPELLANTS

N.D.TEJAN-COLE ESQ., FOR THE RESPONDENT

12 Feb

RULING DELIVERED ON DAY OF ~~JANUARY~~, 2009

ADEMOSU J.A.

This is an application by way of Notice of Motion dated the 7th day of May,2008 brought on behalf of the Appellants for a Stay of Execution of the judgment dated the 27th day of October,2005.

In support of the application are the Affidavits in Support and Supplemental and Affidavits in Opposition.

For the Affidavit in Support sworn to by Alusine Serry Kamara on the 7th day of May,2008 our attention was drawn to paragraphs 5, 6, 8 and 9 which are in these terms.

5. That I was born in the premises which was owned by my late father where I presently reside which is the subject matter of the action in the High Court.
6. That I verily believe that a Stay of Execution of the judgment if granted will not destroy the subject matter (house and land) in the event that my appeal fails. And that I presently do not have any other place to go to together with my family and numerous Dependants.
8. That I have been reliably informed by strangers who go on to the said property to survey same after the said judgment that the Plaintiff intends to dispose of the same to a third party.
9. That portions of the property claimed by the Plaintiff/Respondent are owned by different persons against whom no action was brought nor did they have notice of the proceedings.

In the Supplemental Affidavit sworn to by the same Deponent on the 18th day of June,2008 reliance was placed on paragraphs 2,3,4 and 9 where the deponent deposed as follows.

2. That I live at 24, Lumley road, Wilberforce but my siblings stay on the disputed property and have built structures on it.

3. that I have been responsible for the upkeep of the property which the respondent will be at liberty to interfere with if there is no Stay of Execution.

4. That if there is no Stay of Execution those of my siblings who have built structure and live on the property will be thrown into the Streets, with no where to go.

and

9 That the addresses on the face of the Motion was (sic) supplied by the Respondent when the actions was instituted but are presently residing on the lands in disputes most of the addresses are business addresses.

The Affidavit in opposition of N.D.Tejan-Cole Esq., sworn on the 15th day of May,2008 the salient paragraph there is paragraph 2 which reads as follows:-

2. That I have examined the Notice of Motion dated 7th day of May, 2008 which was served on me on the 9th instant and I find that it is identical to the one dated 25th day of April,2006 filed in the High Court for a Stay of Execution. A copy each of the said Notice of Motion and the order of the Court dated 13th July, 2006 is shown to me produced and marked "NTDC 1' and 'NTDC2' respectively. The grounds for the application are the same. I pause here to say that this is factually correct having perused 'NDTC1' and 2 respectively.

There is also another Affidavit in Opposition sworn to by Cornelius Augustine Harding(the Respondent) on the same 15th of May,2008. it is to the effect that Alusine Serry Kamara(2nd Appellants) lives at 24, Lumley Road, Freetown which is opposite the land in dispute in this action which is numbered 25, 27, (a) (b) and (c) Lumley Road, aforesaid and that the judgment of the High Court covers all parties purporting to claim ownership in the said disputed land.

Finally, there is another Affidavit in Opposition sworn to by the same Deponent on the 23rd October, 2008 to counter the averments in the affidavit of the 2nd Appellant/Applicant of the 18th June, 2008.

In paragraph 5 of the said affidavit the Deponent categorically averred that none of the siblings of the Applicant is living or has ever lived in disputed property and that at no time ever has any structure been erected thereon by the Applicant or by any of his siblings. The Deponent also averred in paragraph 6 that all the other beneficiaries of the estate of the Applicant's father- Pa Alimamy Serry Kamara a.k.a. Amadu Serry dissociated themselves from the conduct of the Applicant and there is also an averment that the 7th and 8th Defendants have since entered into a compromise with the Respondent. All these serious averments are not denied by the 2nd Appellant/Applicant. It is noted that all the assertions made by the 2nd Appellant/Applicant have been debunked by the Respondent's side affidavit in opposition. The sum total of acceptable evidence is that none of those affected by the judgment of the High Court is before this court and that there are no structures on the land.

In considering this application we bear in mind that in the absence of Special Circumstances the Court does not make a practice of depriving a successful litigant of the fruits of his litigation. In T.C.Trustees Ltd.v.J.S.Darwen (Successors) Ltd.(1969) 2 Q.B. 295 the Court of Appeal laid down that the "Special Circumstances" in which execution may be stayed on grounds on 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. Suffice it to say that on the facts before us, I am of the opinion that no Special Circumstances have been put forward by the Appellant/Applicant. I would therefore refuse the application for a Stay of Execution.

Execution of the judgment of the High Court dated the 27th day of October, 2005 and it is hereby dismissed with costs to the Respondent. of Le2 mthn

Hon. Mr. Justice S.A.Ademosu-J.A.

I agree.....Hon.Mr.Justice P.O.Hamilton - J.A.

I agree.....12/02/09.....Hon.Mr.Justice N.C.Browne-Mark- J.A.