

IN THE COURT OF APPEAL OF SIERRA LEO NE

BETWEEN:-

JOYCE DUNIE JOHNSON (nee Davies)

AND

GEORGE AGIBADE JOHNSON

(Substituted herein in place of

Mrs. Georgiana Elizabeth Cole (Decd) - APPELLANTS/APPLICANTS

AND

BASITA MAKI DAKLALAH (MRS.)

(Suing by Her Attorney SAHID DAKLALLAH) - RESPONDENT

RULING DELIVERED ON THE 19<sup>th</sup> DAY OF March 2009

ADEMOSU J.A.

This is an application by Notice of Motion dated 11<sup>th</sup> March, 2009 for the following orders:

1. That the Court do grant a stay of execution of the judgment and orders of the High Court (Sesay J) made on the 20<sup>th</sup> day of October 2008 and all subsequent proceedings pending the hearing and determination of the application.
2. That the Court do grant a stay of execution of the judgment and orders of the High Court (Sesay J) made on the 20<sup>th</sup> day of October 2008 and all subsequent proceedings pending the hearing and determination of the Appeal (Civ. App. 64/2008) lodged in this Court on the 12<sup>th</sup> day of November 2008 by the Appellants/Applicants herein.
3. That the costs of this application be costs in the cause.

The application is supported by the joint affidavit of Joyce Dunic Johnson (Mrs.) nee Davies and George Agibade Johnson sworn on the 11<sup>th</sup> March 2009 and attached to it are several exhibits marked Exhibit A to S1 and 2 inclusive. For the purposes of the application I will refer to exhibit G which is the Notice and Grounds of appeal and exhibit R which is the order of the High Court refusing to grant a stay of execution of the judgment.

In support of the application J.B. Jenkins-Johnston Esq., relied paragraphs 7 and 8, 14,15,16 and 17 of the affidavit in support for special circumstances justifying the grant of a stay of execution. The paragraphs relied on reads as follows:

(7) That the land subject-matter of this appeal is land which has been in our family at least since 1895 the same having been acquired by our Great, Grandfather Revd. John Abayomi Cole as follow:

- (a) Indenture dated 21<sup>st</sup> day of February 1895 between Basil Alexander Wright and Samuel Macaulay (of the one part) and Rev. Dr. John Abayomi Cole (of the other part) registered as No. 86 of 1895 in respect of land situate lying and being at Leicester Road in the Colony of Sierra Leone.
- (b) Indenture dated 22<sup>nd</sup> March 1895 between Mormodoo (of the one part) and Rev. Dr. John Abayomi Cole (of the other part) registered as No. 87/1895 in respect of land situate lying and being at Leicester Road in the colony of Sierra Leone.
- (c) Indenture dated 20<sup>th</sup> day of September 1917 between Janet Temple (of the one part) and John Abayomi-Cole (of the other part) registered as No. 2365/1238/17 in respect of land lying and being at George Brook in the Colony of Sierra Leone.

Copies thereof are exhibited hereto and marked 11 1-3 respectively

(8) That in his Last Will and Testament dated 17<sup>th</sup> September 1943 the said John Abayomi-Cole devised his property at George Brook measuring about 150 acres more or less to his children including Edmond Parkinson and Kezia Cole (both now deceased). A copy of the said Last Will and Testament is now exhibited hereto and marked "J".

(14) That on the 6<sup>th</sup> June 2007 after the action had been commenced the said Edmond Parkinson (now deceased) caused an encroachment plan to be produced showing the encroachment of the Respondent's land alleged to be 15.051 acres in the land forming part of the Estate of John Abayomi-Cole comprising 96,6189 acres as on LS2064/97. A copy of the Encroachment Plan is exhibited hereto and marked "P".

(15) That over and above the fact that this property has been in our family for well over 100 years, the late Madam Georgiana Elizabeth Cole had before her death started the construction of a dwelling house on her own portion of the said land before this action was commenced and which the Respondent is now

threatening to demolish. Copies of her Site Plan some of the Receipts for building materials, a photograph of the building as it is now, and the Drawing for the building are all exhibited hereto and marked Q1-13.

- (16) That in the judgment which we have appealed against our case was not properly or comprehensively considered by the learned trial judge and the said judgment was delivered in circumstances which have attracted the attention of the Anti-Corruption Commission who have since invited one of us (Joyce Dunie Johnson (Nee Davies) to make a statement to them concerning the said case.
- (17) That we very much fear that of execution of this unfortunate judgment is not stayed at least three (3) generations of the Abayomui-Cole family who are entitled to benefit under the Will of Rev. Dr. John Abayomi-Cole dated 17<sup>th</sup> September 1943 (Exhibit J herein) will be disinherited and deprived of their inheritance.

E.A. Halloway Esq. of counsel for the Respondent relied on the affidavit in opposition sworn by one Sahid Daklallah – the Attorney for the Respondent on the 17<sup>th</sup> March 2009. Apart from the fact, that this affidavit seemed to have been hurriedly prepared because apart from wrong numbering of the paragraphs I observe that the first paragraph 3 which the learned counsel placed great reliance upon refers to a wrong exhibit. The exhibit E referred to therein is not a land or property but only a copy of the Letters of Administration granted to the Appellants/Applicants on 10<sup>th</sup> October 2008. In my opinion, a very important averment in the affidavit in support which is not denied and which ought to have been denied <sup>is</sup> ~~the~~ where the Appellants/Applicants asserted in paragraph 15 thereof that the late Madam Georgiana Elizabeth Cole before her death had started the construction of a dwelling house on her portion of the land before the action was commenced and which the Respondent was threatening to demolish if a stay is not granted.

With due respect to the learned counsel for the Respondent the issues raised in the affidavit in opposition leave the assertions on the affidavit in support substantially undenied and yet he urged the Court to refuse the application for a stay.


I am very much aware of the well established principle that unless very good reasons exist, a successful litigant ought not to be deprived of the fruits of his judgment merely because of the pendency of an appeal. But where a party is appealing,

exercising his undoubted right of appeal, the Court ought not see that that appeal if successful is not nugatory. See *Wilson v Church (No.2)* (1891) 1 Q.B. 346 *Becker V Earl's Court Ltd.* (1911) 56 S.J. 206 C.A.

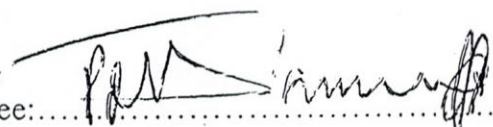
I note that the Respondent has not said anything to allay the fears expressed by the Appellants/Applicants. Bearing in mind that the essence of granting a stay of execution pending appeal is to maintain a status quo pending the determination of the appeal. We have therefore looked at the positions of the parties before judgment was entered.

We are satisfied that the grounds of appeal filed disclose prima facie good grounds. We are of the opinion that in the circumstances justice demands that we should intervene in this matter and make an order for a stay of execution pending the determination of the appeal. In the circumstances we make the following orders:

1. Stay of Execution of the judgment and orders of the High Court on the 20<sup>th</sup> day of October 2008 and all subsequent proceedings pending the hearing and determination of the Appeal (Civil Appeal 64/2008).
2. That the appeal be speeded as fast as possible and the records be prepared within three weeks.
3. That the costs of this application be costs in the cause.



Hon. Justice S.A. Ademosu, J.A.

I agree: 

Hon. Justice P.O. Hamilton, J.S.C.

I agree: 

Hon. Justice Mrs. A. Showers, J.