

IN THE COURT OF APPEAL FOR SIERRA LEONE

BETWEEN:

EJATU JALLOH

APPELLANT/APPLICANT

AND

ABDUL TURAY

RESPONDENT

CORAM;

Hon. Mrs. Justice S. Bash-Taqi, JSC (Presiding)

Hon. Mr. Justice E. E. Roberts, JA

Hon. Mrs. Justice V. M. Solomon, JA

Barristers

J. B. Jenkins-Johnston Esq. for the Appellant/Applicant

D. G. Thompson, Esq. for the Respondent

RULING DELIVERED ON THE 21ST DAY OF MAY 2010S. BASH-TAQI, JSC:

On the 26<sup>th</sup> day of January 2010, the Court of Appeal gave Judgment in favour of the Respondent, Mr. Abdul Turay, ordering that the Appellant/Applicant deliver up possession of the property at 16 Betham Lane Freetown to the Respondent. The Appellant/Applicant being aggrieved by the decision filed a Notice of appeal against the Judgment. She now comes before us seeking a stay of execution of the said Judgment.

The background of the case can be found in the Records of the proceedings and in the Judgments of the High Court and of this Court dated 26<sup>th</sup> January 2010.

The Appellant/Applicant referred to certain facts deposed in her Affidavit in Support of the Application sworn to on 10<sup>th</sup> March 2010 as evidence of the special circumstances she is relying on in this case. I shall refer to some of these facts later in this Ruling.

Mr. Thompson for the Respondent vehemently opposed the application. He filed an Affidavit in Opposition sworn to by the Respondent on 18<sup>th</sup> March 2010. He submitted that no special circumstances have been shown to warrant this Court exercising its discretion in favour of the Appellant/Applicant.

The power of the Court to grant a stay of execution is discretionary and it must be exercised based on legal principles. The legal principle for the exercise of the Court's discretion has always been that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. This is so because in a contested case the successful party should not be deprived of the fruits of a judgment

In the case of *Africana Tokey Village Co. Ltd. vs. John Obey Investment Development Co. Ltd.* Misc. App. 2/04 (unreported) it was held that this Court has an unfettered discretion to grant a stay of execution provided the applicant can satisfy the Court that special circumstances do exist to warrant the grant of a stay of execution. The same principle has been expressed in a number of cases in our jurisdiction, namely: *Alhaji Abdul Wahid (Jr.) vs. Fatmata Floode and Others* (11<sup>th</sup> November 2003) CA Misc. App. 7/03; *Betsy Rogers Parkinson and others vs. Clarence Robinson and others* (13<sup>th</sup> February 2002) CA Misc. App. 1/96; also see *Patrick Koroma vs. Sierra Leone Housing Corp. and Dolcis Beckley* (26<sup>th</sup> May 2004) CA Misc. App. 9/2004. Although the principles governing the grant of a stay of execution were expressed in the cases cited above, each of those cases depended on their own circumstances.

It seems to me that in arriving at a decision, what we have to decide is whether the Appellant/Applicant in this case has shown special circumstances to enable us to grant the stay of execution she is seeking. The onus is thus on the Appellant/Applicant to demonstrate in this application, that such special or exceptional circumstances exist in her favour.

To discharge the burden, as I stated earlier, the Appellant/Applicant has referred to certain facts deposed in her Affidavit in Support as constituting special circumstances. I shall endeavour to refer to some of the pertinent ones here. These are:

- (1) That the premises in question is the matrimonial home of the parties and their son;
- (2) That the premises are jointly owned by the parties and that she contributed to the construction thereof although the legal title to the property is in the name of the Respondent;
- (3) That since the commencement of this action the Respondent has not supported her and their 23 year old son;
- (4) That according to Fullah custom she 'always preferred to have the man in front with her behind supporting him', and this is the reason she did not object to the Conveyance being made in the Respondent's name;
- (5) That she has no where else to live and she would be destitute and homeless;
- (6) That she has dedicated her life to the Respondent for the past 20 years and she has a claim of 50% in the property; and
- (7) That she has an appeal against the Judgment pending;

Having examined the matters deposed in the Appellant/Applicant's Affidavit as constituting special circumstances, we have to determine whether these facts constitute special or exceptional circumstances to justify the granting of a stay of execution of the



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Judgment. It has been noted that "Moral, Social, or Political considerations are often raised in arguments by an applicant to support his/her application for a stay of execution of the Judgment or Order of the Court. Such considerations however do not and ought not to form the basis of the exercise of the Court's discretion to grant or refuse a stay of execution". (See **Desmond Luke vs. Bank of Sierra Leone, Misc. App. 22/2004** (Muria JA as he then was) (unreported)).

The legal principle, as already stated in this Ruling, for the exercise of the Court's discretion, has always been that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. In the same vein the lodgement of a Notice of Appeal does not operate as a stay of execution. (See **Rule 28 of the Court of Appeal Rules 1985**), hence the party seeking a stay of execution pending appeal must not only show special or exceptional circumstances, but must also show prima facie good or substantial grounds of appeal to justify the grant of a stay.

Mr. Jenkins-Johnston in his oral submissions before us has not added anything new to what the Appellant/Applicant has deposed to in her Affidavit; he merely emphasised the moral and social aspect of the situation and the relationship between the parties, and we have already stated that the moral and social considerations cannot be special circumstances for the purpose of this application. It is our considered view that most of the matters referred to in the Appellant/Applicant in her Affidavit in Support and by Mr. Jenkins-Johnston in his oral submissions, as special circumstances, were issues that had been dealt with in the trial in the Court below and the Court of Appeal and they will no doubt be argued again in the substantive appeal. It would therefore be best for the Appellant/Applicant to bring them up when the appeal is being argued. They are not, in our opinion, special or exceptional circumstances in the context of a stay of execution.

In coming to the above conclusion we have reminded ourselves of two fundamental principles of law, namely, that neither the lower Court nor this Court will grant a stay unless satisfied that there are good reasons for doing so and, that the Court will not make a practice of depriving a successful litigant of the fruits of his Judgment. This principle of law was enunciated in **THE ANNOT LYLE (1886) 11 p. 114 p.116**.

We are not convinced that the special circumstances in this particular case relied on by the Appellant/Applicant are "beyond the usual circumstances": or that 'the situation is uncommon and distinct from the general run of things' (See **Lucy Decker and Others vs. Goldstone Decker Misc. App. 13/2002** (Judgment of G. Gelaga-King, JA (as he then was)).

The Appellant/Applicant has relied heavily on the previous relationship between herself and the Respondent. In our judgment, the relationship stemming from the marriage which she is emphasising and relying on, does not exist. While not going into the merits of the appeal, we can however comment on the evidence before us. The parties, from the evidence, are 'divorced' and have been so for the past 7 years. The property was bought after their first 'divorce' in 1988; the Respondent said he bought it on 23<sup>rd</sup> October 1995, and this is not disputed. The parties' son is now 23 years old. His now an adult and can no doubt take care of himself. There is therefore no family relationship in the real sense of the word. Furthermore, it is not clear from the affidavit whether the Appellant/Applicant is still on the property. In her affidavit she is suggesting that she was



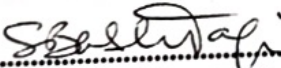
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thrown out of the property together with her son, but she gave her address on the affidavit in support as No 16 Betham Lane Freetown, but then she is asking us to restore her on the property, thereby implying that she is not living on the premises. We are not told the by what means she was removed from the property. Mr. Jenkins-Johnston himself does not seem to know his client's present circumstances from his answers to our questions.

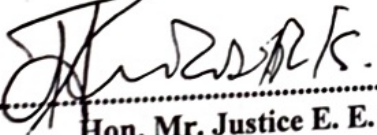
On the other hand, we are told that the Respondent is presently living on the property with his son, (who we are told is employed), having been forced to vacate the premises following Showers' J, (as she then was)'s Ruling of 13<sup>th</sup> February 2008 given as a consequence of an application for a stay of execution in the High Court. This has not been disputed. The property is a solid structure which will not disappear or dissipate. If the Appellant/Applicant's appeal succeeds, it will be quite within this Court's power to order possession of the premises to be given to the Appellant/Applicant.

In the light of the findings of facts and the conclusions of both the trial Judge and the Court of Appeal on the issues and the status of the premises, it would be difficult for us to find what special circumstances there are to justify depriving the Respondent of the fruits of his Judgment. This is a case where we think that the Appellant/Applicant has no legal or equitable right over the property according to the findings of both the Trial Judge and the Court of Appeal. In view of the authorities on the topic, we cannot convincingly grant the Appellant/Applicant's request. The applicant for a stay must therefore be refused and we make the following orders.


1. The Application for a Stay of Execution of the Order of the Court of Appeal dated 26<sup>th</sup> January 2010 is refused.
2. Cost of this application assessed at Le 1,000, 000.00 (One Million Leones) to be paid by the Appellant/Applicant to the Respondent.

  
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Hon. Mrs S. Bash-Taqi JSC.

I agree.....

  
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Hon. Mr. Justice E. E. Roberts, JA

I agree.....

  
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Hon. Mrs. V. M. Solomon, JA