

MISC. APP. 3/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN: -

AUGUSTINE SANKOH - APPELLANT/APPLICANT

AND

MAMOUD ABU-BAKARR SESAY RESPONDENT

A. Macauley Esq. for the Appellant/Applicant
J. Fornah-Sesay Esq. for the Respondent

RULING DELIVERED THE 21st DAY OF June 2012

The Appellant/Applicant herein has filed a Notice of Motion dated 13th April 2012 in which he seeks an Order to set aside the Order of Court dated 19th July 2011 dismissing the appeal Civ. App. 8/2010 and to restore the said appeal for hearing pursuant to rule 16(3) of the Court of Appeal Rules 1985. He also seeks a stay of execution of the judgment of the High Court dated 5th February 2010 and all subsequent proceedings thereto pending the hearing and determination of the appeal.

In support of the application is the affidavit of Ady Macauley Esq. Solicitor. He deposed inter alia that a notice of appeal was lodged at the Court of Appeal Registry on 3rd March 2010 appealing against the judgment of the High Court dated 5th February 2010.

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That an application was made in the said High Court for a stay of execution of the said judgment which was refused. That since the Notice of Appeal was lodged on 3rd March 2010; no direction was given relating to the appeal inspite of repeated inquiries made by the deponent at the Court of Appeal Registry in that regard. That on the 5th April 2012 the Appellant/Applicant informed him that he had been served with a Court Order granting leave to the Plaintiff (the Respondent herein) to issue a writ of possession for the recovery of the property, the subject matter herein. That the solicitor then searched the court records and discovered that a certificate of non-compliance had been filed resulting in the dismissal of the appeal in accordance with the Rules of the Court of Appeal.

The deponent further averred that neither he nor the Appellant received any notice from the Registry notifying them of conditions to be fulfilled. Furthermore the solicitor for the Respondent also informed him he had not himself received any such notification nor was he involved in the application to the Court for the dismissal of the appeal.

The deponent went on further to depose that he was able to establish from the Assistant Registrar that he did not send out any directives relating to the conditions of appeal. That on 10th April 2012 he was served with directions from the Court of Appeal. He therefore prayed that the application be granted in the interest of justice. All the relevant documents referred to in the affidavit were exhibited thereto.

The Respondent opposed the application and an affidavit in opposition sworn to by James M. Fornah Sesay Esq. Solicitor was filed on his behalf. He deposed that he was served with a copy of the directions relating to the appeal sometime in March 2010 and the said directions was dated 17th March 2010 and that he heard nothing further from the Registry until he learnt that the appeal had been dismissed on 19th July 2011. Thereafter the Respondent proceeded to apply and did obtain leave to issue a writ of possession for the recovery of possession of the premises. He concluded by stating that the appeal was lawfully and rightfully dismissed by the Court of Appeal.

A supplemental affidavit in support of the application was filed sworn to by the Appellant/Applicant^{NE} in which he principally deposed that the Notice of Appeal filed on his behalf contains good grounds of appeal with a reasonable chance of success. He also deposed that since he purchased the property in issue which he currently occupies he has spent considerable amount of money to develop same and if a stay is not granted the Respondent will take possession of the property. That he believes the Respondent has evinced an intention to dispose of same thereby causing ruin to both his finances and family life. Further that he has disposed of a portion of the said land to a third party who is not a party to the said proceedings and who is already demanding a refund of the purchase sum.

That his wife who is also very much involved in this matter has suffered considerable stress over it and her condition may likely worsen if the judgment is allowed to be executed. For all these reasons he prayed the court to grant a stay of execution of the said judgment.

The first relief prayed for herein is for the appeal to be restored pursuant to the provisions of rule 16(3) of the Court of Appeal Rules 1985. The rule gives the court the discretion to set aside the order of dismissal and restore the appeal for good and sufficient cause.

Counsel for the Applicant has explained that he was not served with the directions given by the court dated 17th March 2010, non-compliance of which resulted in the appeal being dismissed. He has alleged that he only received directions dated 10th April 2012 which he duly proceeded to comply with. See Exh F and G attached to his affidavit in support. Counsel has stressed that he could not possibly comply with directions which he did not receive. Counsel for the Respondent however did receive a copy of the said conditions dated 17th March 2010.

I shall however give the Applicant the benefit of the doubt since there is no evidence to the contrary that the said conditions were duly served on him and grant his application for the appeal to be restored.

The second relief prayed for is for a stay of execution of the judgment appealed against. The principles on which a stay is granted are well established. The applicant must show special circumstances for depriving the successful litigants of the fruits of his judgment.

The Applicant has deposed that he has spent considerable sums of money on the construction of a wall fence on the said property and has expressed his fear that the property may be sold before the determination of the appeal. I believe his fear in that regard ought to be allayed by the Order dated 12th March 2010 refusing the stay, Exh C in which the successful Plaintiff therein was ordered not to sell, lease, mortgage or otherwise dispose of, or part with the possession of the land in issue pending the determination of the appeal. The said Court Order in addition orders the Plaintiff not to demolish any structure now on the land or alter same pending the hearing and determination of the appeal.

It is my view that in essence the High Court had already ordered that the status quo regarding the land be maintained. In my judgment that order is quite appropriate and is hereby endorsed. In the circumstance the Order for a stay is refused.

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I shall set out the Orders made herein as follows

1. That the Order of Court dated 19th July 2011 dismissing the Appeal No. Civ. App. 8/2010 is hereby set aside.
2. That the said Appeal No. Civ. App. 8/2010 is hereby restored for hearing.
3. That the application for a stay of execution of the judgment dated 5th February 2010 and all subsequent proceedings thereto is refused.
4. That the Respondent herein is hereby ordered not to sell, lease, mortgage or otherwise dispose of or part with the possession of the land situate off Pipe Line Road Juba Lumley the subject matter of the appeal pending the hearing and determination of the Appeal No. Civ. App. 8/2010
5. That the Respondent is hereby ordered not to demolish any structure now on the land or alter same pending the hearing and determination of Appeal No. Civ. App. 8/2010
6. The cost of this application to be borne by the Appellant/Applicant. *agreed of £500,000. at 9/2.*

A. Showers

SIGNED: - A. SHOWERS *21/6/2012*
JUSTICE OF COURT OF APPEAL