

CIV. APP. 9/2011

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

MOHAMED ALEX BANGURA & OTHERS - APPELLANT/APPLICANTS

AND

ROKEL COMMERCIAL BANK (SL) LTD - RESPONDENTS

CORAM:

Hon: Mrs. Justice S. Bash-Taqi, JSC

Hon. Ms. V. M. Solomon, JA

Hon. Mr. A Charm, J,

J. B. Jenkins-Johnston Esq. for the Applicants
Berthan Macaulay (Jrn), for the Respondents

Dated 13/12/12

HON. MRS. JUSTICE S. BASH-TAQI, JSC: - By their Notice of Motion filed on 10th October 2012, the applicants herein are seeking a Stay of Execution of the Judgment of the Court of Appeal dated 15th June 2012 pending the hearing and determination of their appeal to the Supreme Court.

The brief background to this case is that the Appellants/Applicants by a Writ of Summons dated 31st August 1998 claimed, inter alia, damages for breach of contract, and a declaration that the redundancy exercise carried out by the Respondents (who were then their employers) in which the Appellants/Applicants were made redundant was not done in accordance with the provisions of the Collective Agreement governing their employment.

Roberts, J. A, who presided over the action, gave Judgment in their favour on 9th March 2011 and ordered each of the Plaintiffs to recover damages assessed by the Learned Judge at Le 40, 000,000.00.

The Respondents appealed to the Court of Appeal against the High Court Judgment and further applied for a stay of Execution of the Judgment pending the hearing and determination of the appeal. The High Court, on 13th April 2011 granted a Stay of Execution on terms, namely that, the Respondents should pay Le 20,000,000.00 (that is say, 50% of the Judgment sum) awarded to each of the

Appellants/Applicants to each of the Appellants/Applicants and the 30% of the remaining Judgment sum awarded to the rest of the Applicants/Plaintiffs to be deposited into an interest bearing account to be opened and operated by Counsel for the Plaintiffs and Defendants within 4 weeks. When the appeal came up before the Court of Appeal, this Court reversed the Judgment of the High Court and ordered, *inter alia*, that all the monies received by the Appellants/Applicants as damages in the High Court be refunded to the Respondents.

The Appellants/Applicants have now appealed to the Supreme Court against the Court of Appeal Judgment and have come to this Court seeking, (i) an Order to stay of execution of the Court of Appeal Judgment pending the hearing of this application and (ii) a similar Order to stay execution pending the hearing of the Appeal to the Supreme Court. The application is supported by the joint Affidavit of Claudia Osei and Allieu Fomba, sworn on the 10th October 2012 together with the exhibits attached thereto. The Appellant/Applicants rely particularly on **Paragraphs 18 to 20** of the said Affidavit. At Paragraph 18 of the Affidavit, the Appellants/Applicants deposed that they intend to proceed speedily with their appeal to the Supreme Court and they had already complied with the conditions of appeal, and are pleading with the Court to maintain the status quo until the Supreme Court hears and gives Judgment on their appeal.

The Respondents filed an Affidavit in Opposition sworn to by Michael Augustus Collier on the 18th October 2012 attached to which are nine cheques for the sum of Le 20,000,000.00 each made out to the nine Appellant/Applicants pursuant to the Judgment of the High Court and an additional cheque for Le 75,000,000.00 made out to their Solicitor as agreed costs of the High Court action. Also exhibited¹⁵ a Statement of Account of the amount deposited in the Account.

There are many cases in our jurisdiction governing applications of this nature referring to certain general principles which should guide the Court in its decision as to whether or not to grant a stay of execution of a Judgment. It has always been recognised that the Court's power to grant a Stay of Execution is entirely discretionary, but that discretion should be exercised based on legal principles. This is so, because of the principle of law that a Judgment of a Court is presumed to be correct and rightly made until the contrary is proved or established. Courts will not therefore make the practice of depriving a successful litigant of the fruits of his success.

The discretion therefore to grant or refuse a stay must take into account the competing rights of the parties (*See Okafor & Ors. V. Nnaife (1987) 4 NWLR. 129*). The legal basis for the exercise of the Court's discretion in a case such as this is that the Applicant must establish that there are 'special' or 'exceptional

circumstances' justifying the grant of a stay of execution, the reason being, as I have already stated, that in a contested action the successful plaintiff should not be deprived of the fruits of his judgment given in his favour.

It is therefore safe to conclude that, moral, social, or political considerations should not and ought not to form the basis for the exercise of the Court's discretion to grant or refuse a stay of the Judgment of a Court. (See **Desmond Luke vs. Bank of Sierra Leone, Misc. App. 22/2004. C.A. (unreported) Delivered 14th July 2004**). In other words, a litigant applying for a stay of execution must show 'special or exceptional circumstances' pleading eloquently the balance of justice weighing in his favour, even though what constitute special or exceptional circumstances may vary from case to case.

In the case of **John Michael vs. Adnan Abbess, Misc. App. 7/96 (unreported)**, it was held in that case that:

"It is for the Court to determine what circumstances are special. It will look at all the facts and circumstances and decide whether or not they are so far above the usual and normal run of things to the extent of making it absolutely necessary and incumbent on it, in the interest of justice to intervene and stay proceedings"

In this regard, therefore before coming to a conclusion as to whether or not the Appellants/Applicants have adduced evidence of 'special' or 'exceptional circumstances', we must first of all examine the reasons advanced in the supporting affidavit to ascertain whether these or any of them amount to "special or exceptional circumstances" to warrant the granting of the Stay of Execution. The Affidavit in support, apart from giving the history of the matter from its inception to the present state of the proceedings, referred to the Notice of Appeal filed in the Supreme Court against the Judgment of the Court of Appeal.

We have been reminded that Rule 28 of the Court of Appeal Rules and Rule 60 of the Supreme Court Rules make it clear that an appeal does not operate as a Stay of Execution or of proceedings under the judgment or decision appealed against. It is therefore left for the party requiring a Stay of Execution pending an appeal to show 'Special' or 'exceptional circumstances' justifying the grant of a stay of execution; and one of the ways of doing this is to show that execution would provide a situation in which even if the appellant succeeds in his appeal, there could not be a return to the status quo.

In other words, the Affidavit evidence must show that there is real risk that the damages and cost as ordered by the Court would not be refunded if the appeal

succeeds. This is one of the factors that has received judicial approval as amounting to 'special circumstances' justifying a stay of execution in a liquidated Judgment or Order. In this regard the onus is on the Applicant to demonstrate that such 'special' or 'exceptional circumstances' exist for the Court to exercise its discretion in his favour. In the case of **John Michael vs. Adnan Abbess, Misc. App. 7/96** (unreported), it was held in that case that:

"It is for the Court to determine what circumstances are special. It will look at all the facts and circumstances and decide whether or not they are so far above the usual and normal run of things to the extent of making it absolutely necessary and incumbent on it, in the interest of justice to intervene and stay proceedings"

As stated above, the reasons relied on by the Appellants/Applicants are contained in paragraphs 18, 19 and 20 of the supporting Affidavit. It is obvious from these paragraphs that the main reason for seeking a stay of execution hinges only on the fact that there is an appeal pending in the Supreme Court against the Judgment of the Court of Appeal which they intend to pursue speedily.

The question to be asked, is has the Appellants/Applicants shown 'special circumstances' in the present case? Apart from pleading that there is an Appeal pending in the Supreme Court which they believe should be given an opportunity to be heard, Counsel for the Applicants says that the Applicants are throwing themselves at the mercy of the Court. The Judgment in this case is for recovery of money which the Appellants/Applicants have received since May 2011. It must be emphasised that the grounds raised, are by themselves, not sufficient to found an order for a stay. It seems to us that the practical effect of granting a stay in the Appellants/Applicants' favour in this case is to permit them to continue to enjoy the benefits derived from the said Judgment. They have not disputed the fact that the Respondents are able to repay back the money should the appeal succeed.

In the circumstance, the justice of this case does not lie in a grant of a stay of execution of the Judgment of the Court of Appeal but rather in the speedy disposal of the appeal now before the Supreme Court. This Court will assist in the speedy disposal of the matter by observing the salient principle that there must be finality in litigation; the matter has already been before the Courts for the past 14 years and a stay of execution will only serve to prolong it further.

The Court has not lost sight of the fact that the Respondent is a Bank operating within the Jurisdiction. If the appeal is successful it would be within the Court's power to order the monies to be repaid to the Appellants/Applicants.

In the premise, as no special circumstances have been shown, this application is refused. We order as follows:

- (a) The Application for a stay of execution of the Judgment of the Court of Appeal dated 15th June 2012 is refused with costs.
- (b) The Supreme Court Registry is hereby requested to prepare the records of this appeal within one month for its speedy disposal.

Hon. Justice S. Bash-Taqi, JSC

..... *S. Bash-Taqi* 13/12/2012

Hon. Justice V. M. Solomon, JA.

I agree..... *V. M. Solomon* 13/12/12

Hon. Justice A. Charm, J

I agree..... *A. Charm* 13/12/12