

Civ: app 6/2013

In the Court of Appeal of Sierra Leone

Between: Andrew Rogers
 Aloysius Rogers - Appellant/Applicants
 And
 Ann Marie Rogers - Respondent

Coram:

Hon V. M. Solomon J.A

Hon A. Showers J.A

Hon N. Matturi-Jones J.A

Counsel:

B.E.T. Cummings (Ms) for the Appellant/Applicants.

E.E.C. Shears Moses Esq. for the Respondent.

RULING DELIVERED THE 19th DAY OF November 2013 BY
THE HONOURABLE MRS. JUSTICE V. M. SOLOMON J.A.

RULING

- 1) The Appellants/Applicants have filed a motion paper dated 13th February 2013 in which they are seeking the following orders to wit:-
 1. That this Honorable Court grants an interim stay of execution of the judgment of the Honorable Mr. Justice D. G. Thompson J dated the 22nd day of January 2013 and all other subsequent proceedings in the High Court in Bo relating to this matter pending the hearing and determination of the Application.
 2. That this Honorable Court grants an interim stay of execution of the judgment of the Honorable Mr. Justice D. G. Thompson J dated the 22nd day of January 2013 and all other subsequent proceedings in the High Court in Bo relating to this matter pending the hearing and determination of the Appeal.

3. That this Honorable Court grants the Applicants/Appellants herein leave to file additional grounds of Appeal.
 4. That the cost of this Application be cost in the cause.
 5. Any other orders that this Honorable Court may deem fit and just. The Appellants/Applicants filed two affidavits, one sworn by Samuel Omodele Taylor Esq. and another by Andrew Rogers the first Appellant/Applicant herein. There is an affidavit in opposition deposed to by Mrs. Ann Marie Rogers the Respondent herein.
- 2) The facts of this matter are deposed to in the affidavit as filed. This matter was commenced in the Magistrate Court in Bo and transferred to the High Court in Bo. The High Court delivered judgment in favour of the respondent on the 22nd January 2013. The appellants were given 14 days to vacate the property known as No. 1 Mannah Street, Bo (hereinafter called "The Premises"). Execution was levied by a Bailiff Mohamed Sivali. The appellants/applicants filed a motion for a stay of execution of the judgment. This motion was not heard and there is evidence that the appellants/applicants even after eviction re-entered the said property. The orders of court are marked "SOT3A" and "SOT4A" respectively.
 - 3) The respondent in her affidavit in opposition deposed that the appellants/applicants were evicted pursuant to the judgment but they unlawfully re-entered the property. She further deposes that she is 95 years old and will be made homeless as the appellants/applicants are forcefully keeping her out of the property.
 - 4) Miss Cumming's submissions on behalf of the appellants/applicants are that her clients have good prima facie grounds of appeal which will succeed in the Court of Appeal. She submitted that the judgment was irregularly obtained. That there are special circumstances to warrant a stay of execution of this judgment. She further submitted that the

appellants/applicants failed to comply with Order 28 Rules 1 (a) (b) and 2 (3) and Order 43 Rule (6) of the High Court Rules 2007 as no directions were given on the conduct of the matter. They failed to apply for leave to issue a writ of possession. On the issue of special circumstances she submitted that Alfred Rogers is the fee simple owner of the property who died intestate leaving behind the parties herein and other persons as beneficiaries who have a beneficial interest in the property. She submitted that the refusal of the Trial Judge to hear the application for a stay is tantamount to a refusal of the stay. She relied on Misc.app 2/94 Africana Tokeh Village V John Obeid Development Company.

- 5) Mr. Shears-Moses opposed the application and submitted that Rule 64 of the Court of Appeal Rules 1985 was not complied with as a stay as not refused in the High Court. We agree with the submissions of Miss Cummings that the Trial Judge by refusing to hearing the application for a stay is tantamount to a refusal of a stay. He distinguished the Africana Tokeh case which was relied upon on the basis that a stay was granted ~~was~~ not to do so would be tantamount to hardship and loss of business. He finally submitted that the property is the matrimonial home and the appellants/applicants have acted in flagrant disregard of the judgment.
- 6) It is established that the legal basis for a stay of execution of a judgment is that the Applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. The court's unfettered discretion whether or not to grant a stay is to be exercised judiciously after due consideration of the facts as presented. This is so because the successful party ought not to be deprived of the fruits of the judgment. I refer to the case of Desmond Luke v. Bank of Sierra Leone and Firetex International Co. Ltd v. SLET Court of Appeal ruling in which it is stated thus:

“One of the underlying reasons for imposing such condition on the applicant is that the successful litigant should not be deprived of the fruits of the judgment in his favor, a principle that is well known within the jurisdiction.....

The question to be determined therefore is; has the applicant demonstrated that there are special circumstances present in this case justifying the grant of a stay? The onus is on the applicant”

(Emphasis added)

- 7) In this case, the appellants appeal is grounded on the irregularity of the proceedings in the High Court culminating in the refusal of the Trial Judge to hear the application for a stay. The argument is that the entire process commencing in the Magistrate’s Court in Bo is irregular. The reasons for granting of the stay are stated in the affidavits in support and reply. The appellants are all beneficiaries to the estate of Alfred Rogers; the respondent too is a beneficiary. There are other beneficiaries besides the parties. This is not disputed. It is our view that in light of the relationship between the parties and the nature of the claim that a stay of execution of the judgment ought to be granted pending the hearing and determination of the appeal. To order otherwise would cause hardship on the Appellants as they would have to vacate the property to which they claim to be beneficial owners. This is matter for the appeal in the Court of Appeal.
- 8) We are satisfied that the appellants/applicants have shown special circumstances to warrant a stay of the execution of the judgment of 22nd January 2013. In the premises we hereby order as follows:

1. The application for a stay of execution of the judgment of the 22nd January 2013 is hereby granted.
2. The appellants/applicants are at liberty to file additional grounds of appeal within 10 days of the order.
3. Each party to bear its own costs.

V. M. Solomon

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Hon. Justice V. M. Solomon J. A.

A. Showers

I agree.....

Hon. Justice A. Showers J. A.

N. Matturi-Jones

I agree.....

Hon. Justice N. Matturi-Jones J.A.