

CIV.APP 47/2012

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

KENNETH WELLER - APPELLANT/APPLICANT
(Suing by his Attorney MR.IDRISSA BUSU DARAMY)

AND
AKMED TURAY - RESPONDENT

CORAM

HON. JUSTICE A. SHOWERS, J. A.
HON. JUSTICE V. M. SOLOMON, J. A.
HON. JUSTICE N. F. MATTURI-JONES J.A.

Advocates

E. N. B. Ngakui Esq. for the Appellant/Applicant
R. A. Nylander Esq. for the Respondent

RULING DELIVERED THE 19th DAY OF March 2013

The Applicant herein has filed a Notice of Motion dated 13th September 2012 in which he seeks a stay of execution of the judgment of the High Court dated 16th July 2012 and all subsequent proceedings thereto pending the hearing and determination by the Court of Appeal of the appeal against the said judgment.

In support of the application is the affidavit of **IDRISSA BUSU DARAMY** sworn to on 13th September 2012. The facts as gleaned from the said affidavit are that the Applicant applied for and obtained a lease of a piece of land along Lumley Beach from the Sierra Leone National Tourism Board (NTB) in August 2001.

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The said piece of land was allocated beacon numbers BP55-BP56 and measured 300 ft by 100 ft. The Applicant submitted a project proposal which was in two phases. Phase 1 was for the construction of a Bar and Restaurant Entertainment Complex and phase 2 was for the construction of a Boutique.

He was able to complete the first phase and to construct the said Bar and Restaurant which is now operating under the name and style of "Beach Apple Bar and Restaurant." He then attempted to commence phase 2 of his project when he was stopped by the National Tourist Board and was told that they intended to do a re-survey of the Lumley Beach area.

In 2007 the Applicant was informed that someone was doing some construction work on the part of the land allocated to him and he then referred the matter to the NTB. The General Manager of NTB told him to hold on whilst the matter was investigated. Nothing further was heard from him and in 2010 the Applicant reverted to the NTB on the issue and he was told he could proceed with work on phase 2 of his project. He thereupon got a building permit from the Ministry of Works to enable him to commence construction work when he was again informed that the Defendant had gone on the land. He subsequently instituted court action against the said Defendant which culminated in judgment being given in favour of the said Defendant. He now urges the court to grant a stay of execution of the said judgment.

The reasons for requesting a stay are set out in the said affidavit. They are mainly that the Respondent's workmen have made use of the tons of earth the deposited on the said plot of land in order to commence his project. Further that he had made payments amounting to over one hundred million Leones for building materials for the construction work on phase 2 of his project. Those payments he stated are non-refundable and as proof of the said transaction exhibited the relevant invoices. He stated that if a stay is not granted he will not have any use for the said building materials and he will not be able to recover the monies he has paid for them which would result in a big financial loss to him.

The Respondent opposed the application and swore to an affidavit in opposition on 28th September 2012 which was filed on his behalf. He deposed that the NTB had withdrawn the plot of land from the Applicant by letter dated 29th January 2007 because of his failure to develop same since it was allocated to him in 2001. He stressed that the plot he is occupying is BP58-BP59 whereas the Applicant's plot is BP55-BP56 and that the plots are separate and distinct. Further that the said allocations are confirmed by the NTB by their letter dated 13th October 2012.

There is attached to the Respondent's supplemental affidavit sworn to on 15th January 2013 a copy of the lease of the said plot BP58-BP59 from the Government of Sierra Leone executed in his favour. He explained that the lease dated 13th November 2012 was already going through the process before the court action was instituted and was only executed on the conclusion of the said court action in his favour.

The Respondent referred to the injunction granted by the court against him resulting in his stopping further work on the land in December 2011, and thereby causing him financial loss. He opined that the Applicant has not shown the special circumstances required for the grant of the stay of execution prayed for. Further that if a stay is granted the Respondent would continue to suffer loss as work on his project would be further delayed. Furthermore the Applicant resides out of the jurisdiction and it would be difficult to recover any damages and costs awarded against him should the appeal fail.

In an application for a stay of execution of a judgment, the court has an absolute and unfettered discretion as to the granting or refusing the stay prayed for. It is well established that as a rule the court will only grant it if there are special circumstances shown and the burden is on the Applicant to convince the court that there are special circumstances that should weigh in his favour.

In the 2002 unreported decision of the Court of Appeal intituled **Misc. App. 13/2002 Mrs. Lucy Decker vs. Goldstone Decker**, Mr. Justice Gelaga King, J. A. stated as follows:

“What then do we mean by special circumstances in the context of a stay of execution? Before answering this question it is well to bear in mind the fundamental principle that neither the lower court nor this court will grant a stay unless satisfied that there are good reasons for so doing.

This follows from the basic principle enunciated in **THE ANNOT LYLE** (1886) 11 P. 114 at 116 that the court does not make a practice of depriving a successful litigant of the fruits of his judgment --- pending an appeal. Good reasons go hand in glove with special circumstances. Viewed in that light, special circumstances must mean circumstances beyond the usual; a situation that is uncommon and distinct from the general run of things”.

Has the Applicant therefore shown special circumstances within the above context? He has expressed his fears that if a stay is not granted the Respondent will go ahead and erect structures on plot BP55-BP56 allocated to him. The Respondent has provided the court with evidence that the plot leased to him is BP58-BP59. See Exh AAT5 attached to his supplemental affidavit in Opposition.

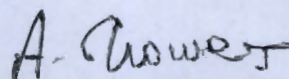
The Applicant also complained that he has expended a huge amount of money in building materials, amounts which are non-refundable. But what he has shown to the court as proof of this are mere invoices for building materials and not receipts for payments made.

In our judgment these are not special or exceptional circumstances required for the grant of a stay. We are not clear in our mind of the actual loss the Applicant would suffer if the stay he prays for is not granted.

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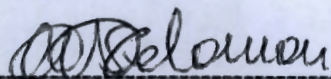
The Applicant has therefore not made out a strong case for depriving the Respondent of the benefit of the judgment made in his favour.

The application is therefore refused. No order as to costs.



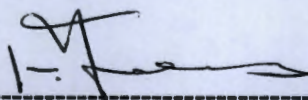
HON. JUSTICE A. SHOWERS, J. A.

I AGREE



HON. JUSTICE V. M. SOLOMON, J. A.

I AGREE



HON. JUSTICE N. F. MATTURI-JONES J. A.