

CIV.APP 43/12

2012

M. NO.

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

MR. JAMIRU MOMOH - DEFENDANT/APPELLANT

AND

1. MRS. ANNIE LANSANA -1ST PLAINTIFF/RESPONDENT
2. AMOS LANSANA -2ND PLAINTIFF/RESPONDENT
3. SOLOMON BEREWA JNR -3RD PLAINTIFF/RESPONDENT
(Suing by his lawful Attorney
AMOS LANSANA)

CORAM

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

HON. JUSTICE A. SHOWERS, J.A.

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

Advocates

G. K. Tholley Esq. for the Defendant/Appellant

F. B. Kelfala Esq. for Plaintiffs/ Respondents

RULING DELIVERED THE 20th DAY OF June 2013**SHOWERS. J. A:**

The Defendant/Appellant herein filed a Notice of Motion dated 29th October 2012 in which he seeks a stay of execution of the Judgment of the High Court dated 5th day of November 2009 in the matter intituled CC 112/09 2009 L. No. 4 together with all subsequent proceedings pending the hearing and determination of the Appeal filed by the Defendant/Appellant herein at the Court of Appeal.

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The brief background to this case as gleaned from the affidavit in support is that the Plaintiffs issued a writ of Summons dated 9th June, 2009 against the Defendant claiming inter alia the recovery of the sum of US\$ 214,663 being payment made to the said Defendant by the Plaintiffs for the construction of two houses. Judgment was given against him for the said amount. Thereafter moves were made by solicitor for the said Defendant to have the matter amicably resolved.

The Plaintiffs appear to have given the Defendant their undertaking that they would not enforce the said Judgment if the Defendant embarked on the work and completed the construction of the premises, one of which is now occupied by the 1st and 2nd Plaintiffs. Relying on the said undertaking the Defendant took out a loan from the Sierra Leone Commercial Bank Ltd to enable him complete the said premises. He was also pressurised into constructing a perimeter wall fence although that was not part of the agreement.

The Plaintiffs did not adhere to their undertaking but proceeded to have the Judgment enforced.

The Defendant deposed that the Plaintiffs have partially levied execution on his personal effects, household goods and furniture including the vehicle he used to carry on his trade. In addition he stated that members of his household and himself have been exposed to unwarranted harassment, hardship, molestation and deprivation as a result of this court action and the execution of the said Judgment.

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Furthermore he went on to state that his construction business has also suffered irreparable loss of goodwill and that any further execution of the said Judgment would cause more hardship and deprivation to his family and himself particularly as he is now striving to revive his business.

The Defendant further explained that the successive Orders of the High Court dated 16th May 2012 and 17th October 2012 dismissed his applications for leave to amend his Defence and for a stay of execution respectively.

The Defendant filed a Notice of Appeal to the Court of Appeal against the Order dismissing his application for leave to amend his Defence. He now prays the court to grant him a stay of execution of the said Judgment.

The Plaintiffs opposed the application and an affidavit in opposition sworn to by their solicitor, F. B. Kelfala Esq. was filed on their behalf. The thrust of the affidavit in opposition is that the Defendant has not got a Defence to the action with any likelihood of success and that this application is merely calculated to delay and/or embarrass the realization of the fruit of the Plaintiffs Judgment. Further that the Defendant has failed to show special circumstances required for the grant of the stay of execution prayed for.

It is well established in this jurisdiction and elsewhere that the legal basis for granting a stay of execution and thereby exercising the court's unfettered discretion in favour of the Applicant is that he/she must establish that there are special or exceptional circumstances justifying the grant of a stay of execution.

This is because in a contested case the successful party ought not to be deprived of the fruit of a judgment given in his favour. See **Desmond Luke vs. Bank of Sierra Leone 2004** unreported decision of the Court of Appeal.

In this case the Defendant's appeal is grounded on the court's refusal to grant him leave to amend his Defence. The Judgment in this instance is a summary judgment.

That said, let us now look at the reasons given by the Defendant for wanting a stay. His reasons are set out in his affidavit and have been rehearsed above. There is evidence that execution has already been levied on the Defendant. He has already lost his personal effects, his household goods and furniture including the vehicle he used to ply his trade. He is now trying to revive his business and his main fear is that further execution of the said Judgment would cause him more hardship, deprivation to his family particularly at the time he is striving to revive his business. It is our view that there is sufficient evidence as disclosed by the Defendant of the harm he would suffer if further execution is levied against him. He has already suffered hardship and deprivation. Should he be allowed to suffer more now that he is trying to revive his business? Rather we believe he should be put in a position to be able to pay his debts.

In the much cited case of **Africana Tokeh Village Ltd. vs. John Obey, 1994** Court of Appeal decision, a stay was granted where the Applicants showed that they would suffer irreparable damage and financial loss if deprived of the use of their restaurant during peak tourist season.

In this case the Appellant has deposed to all the harm that he and his family would suffer if further execution is done on his properties and more particularly the loss that would be caused to his business and his means of livelihood.

We are satisfied that he has shown special circumstances which merit the exercise of this court's discretion in granting the stay of execution prayed for. The application for a stay of execution of the judgment of the High Court dated 5th November, 2009 is granted on terms that the Defendant pays the costs of the application. *to be taxed if not agreed upon.*

*A. Showers
for
Defendant*

A. Showers

HON. JUSTICE A. SHOWERS, J. A.

I AGREE

V. M. Solomon

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

I AGREE

N. F. Matturi-Jones

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