

**CIV. APP 42/2011**

**IN THE COURT OF APPEAL OF SIERRA LEONE**

**EDWARD GARNEM**

**- APPELLANT/APPLICANT**

**vs.**

**FANAH JAWARA & THE JAWARA FAMILY**

**- RESPONDENTS**

**Counsel:**

**M. P. Fofanah Esq. for the Appellant/Applicant**

**S. O. Taylor Esq. for the Respondents**

**RULING DELIVERED ON THE 9<sup>TH</sup> DAY OF JUNE, 2015 BY THE HON. JUSTICE A. H. CHARM, JA**

By a Notice of Motion dated 30<sup>th</sup> day of March, 2014 the Appellant/Applicant has applied to this Court for inter alia the following:

1. That this Honourable Court stays the execution of its Judgment and Orders made on the 12<sup>th</sup> day of March, 2015 against the Appellant/Applicant herein pending the hearing and determination of the Appeal filed herein against the said Judgment and Orders in the Supreme Court of Sierra Leone.

The affidavit in support of this application is deposed and sworn to on the 30<sup>th</sup> day of March, 2015 by the Appellant/Applicant herein, Edward Garnem, whilst that in opposition is deposed and sworn to by Fanah Jawara, the 1<sup>st</sup> Respondent on the 8<sup>th</sup> day of April, 2015.

This action was commenced in the Kakua Local Court No.1 in the Bo District in the Southern Province of Sierra Leone. Due to series of applications for transfer, the action was never determined by the said Local Court nor by the Group Local

Appeal Court (Magistrate) sitting in Bo, but was eventually determined by the High Court in Bo. As judgment was given in favour of the Respondents, the Appellant/Applicant appealed to the Court of Appeal. The Court of Appeal again found for the Respondents and made certain amendments to the orders granted by the High Court. It is against the Judgment of the Court of Appeal that the Appellant/Applicant has appealed to the Supreme Court and is seeking a stay of execution of that judgment until the determination of the appeal.

The principles upon which a Court may exercise its discretion to grant a stay of execution of a judgment pending the determination of an appeal are well settled in this jurisdiction; they are that the applicant must show by affidavit evidence the existence of special or exceptional circumstances and also that the Notice of Appeal must disclose good grounds of appeal that have reasonable prospect of success. See the cases of ***African Tokeh Village Vs. John Obey Development Company Limited Misc. App 2/94*** and ***Misc.App 6/95 Fatu Bangura Vs. Mohamed Kamara (unreported)***.

Counsel for the Appellant/Applicant submitted by their affidavit evidence they have disclosed special circumstances to warrant this Court to grant a stay of execution of the Judgment of 12<sup>th</sup> March, 2015. The paragraphs of the affidavit relied on as constituting special circumstances are paragraphs 3, 4, 6 and 7 which I will reproduce hereunder:

3. *That I was born in the disputed property at 20 Bojon Street, Bo and have lived there with my entire family (wife and children). My wife does business on the ground floor of the building and I use part of the top floor apartment as office. My family has strong family*

*attachment to the property, which my father had occupied since 1950 on a long term lease.*

*4. That in view of the fact that this Honourable Court had adjudged that the interest which the Respondents have in the Deed of Assignment was that of late Mr. Garnem's Leasehold interest, I aver that as at 1<sup>st</sup> January 2015, only the Dodo Landholding Family was entitled to absolute ownership and possession of the disputed property, and not the Respondents or the Jawara family. This is because late Mr. Garmen's Lease with the Gberie Family commenced from 1<sup>st</sup> January, 1970 for an initial period of 25 years with an option to renew for 20 years, totaling 40 years. It thus follows that by my Deed of Conveyance dated 3<sup>rd</sup> December 2001 made between the Dodo Family and myself, I am the only one now entitled to absolute ownership and possession of the said property. True copies of the Respondents' Lease and my Conveyance are exhibited as "C & D".*

*6. That I have myself already invested a lot of money in refurbishing the house thereon, which building will not dissipate if the Respondents are to succeed on Appeal. Besides, a stay will grant all parties herein a level ground in furtherance of justice and fairness.*

*7. Above all, I verily believe that I have good/meritorious Grounds of Appeal, the outcome of which will be lost if the Defendants are to evict me and my family from our home.*

The Appellant/Applicant has relied on the above facts, especially what is deposed to at paragraph 4 above as constituting special circumstances. I note the fact that the Appellant/Applicant is claiming to have bought the property in 2001 which to him entitles him not only to be the owner of the property but also the person entitled to possession of the same. The Respondent and his family have on the other hand been adjudged to be the persons entitled to possession of the property. As to who is entitled to what, that is for the Supreme Court to determine. What I have to determine at this stay is whether special circumstances have been shown by the Applicant in his affidavit evidence to warrant a stay of the execution of the judgment of this Court dated 12<sup>th</sup> March, 2015.

In the case of ***Yusufu Bundu Vs. Mohamed Bailor Jalloh Misc. App 23/2004*** in which the appellant/applicant was in occupation of a portion of the premises whilst he rented out the other portion, it was held that those facts did not amount to special circumstances to warrant a stay of execution of the judgment. In the recent case of ***RUB SAYIE (SL) LTD. VS. FIRST INTERNATIONAL BANK (SL) LTD CIV. APP 17/2012*** in which the appellants were also in occupation of the premises and had canvassed that if a stay of the execution of the judgment was not granted the Appellant's family would be rendered homeless, it was held that that did not constitute special circumstances to warrant the Court's discretion to grant a stay.

In this instant case, the applicant contends that besides residing in the premises, his wife is using the ground floor as a shop whilst he is using part of the top floor apartment as an office. Therefore evicting them from the property would create hardship on them, more so as he is claiming to have bought the said property in

2001. An averment in the affidavit in opposition which the applicant has not contradicted is that he has another property at Bo-Tiama Highway which is empty and which he could easily move into with his family. See paragraph 10 of the affidavit in opposition.

It is settled law that a successful litigant should not be deprived of the enjoyment of the fruit of his judgment unless the Court is satisfied that the other party has made out a good case for doing so. In this instant case, taking all facts into consideration, it is my considered judgment that the appellant/applicant has not shown special circumstances to warrant the Court exercise its discretion in granting a stay and I so hold. In the circumstances, I therefore make the following orders:

1. That application for stay of execution of the judgment of this Court dated <sup>12<sup>th</sup></sup> March 2015 is refused.
2. That the records be settled within one month of this order and same be put before the Hon. Chief Justice for constituting a panel for the speedy determination of the appeal herein.
3. That the costs of this application be costs in the cause

  
**HON. JUSTICE ABDULAI H. CHARM JA**