

IN THE COURT OF APPEAL OF SIERRA LEONE

TIMIS MINING CORPORATION - **2ND DEFENDANT/APPELLANT**
AND

DANIEL C. ADAMS & 39 OTHERS. - **PLAINTIFF/RESPONDENT**
VIVIAN BELL - (*joined as 2nd Plaintiff by Court Order dated 11th May 2016*)

AND
THE MANAGING DIRECTOR USP&E - **DEFENDANT/RESPONDENT**

CORAM;

HON. MR. JUSTICE REGINALD SYDNEY FYNN JA

HON. MR. JUSTICE DESMOND BABABATUNDE EDWARDS JA

HON. MR. JUSTICE MONFRED MOMOH SESAY JA

Mohamed Pa Momoh Fofanah Esq. for the Applicant
Musa Pious Hermor Sesay Esq. for the Respondent

RULING dated 3rd June 2017

FYNN JA

1. This application is for a stay of execution of the ruling/judgment of the court below delivered on 11th May 2016 and 13th July 2016 respectively. The applicant has argued that the grounds of the appeal are strong and predicated on questions of law. This being an appeal from the Industrial Court the Industrial Relations Act of 1971 will only permit the appeal against an award if it is based on law.
2. The applicant argues that the circumstances surrounding the case are exceptional in that the bulk of the respondents are unknown and there was no evidence below to ascertain that these are real persons. The applicant also submitted that the inclusion of Vivian Bell as a party to the action brought significant confusion this person having acted at some point on either side of the matter.

3. The applicant relied on the affidavit in support sworn to by Mohamed P Fofannah dated 20th October 2016 to which is exhibited inter alia Judgement/ Rulings of the court below dated 3rd February 2016, 11th May 2016 and 13th July 2016. These are marked A1, A2 and A3(b) respectively. Also exhibited to the affidavit in support is the Notice of Appeal mark C.
4. The appellant/Respondent opposes the application; firstly on what could be rightly perceived as a preliminary point to wit that the applicant/intended appellant is late and needs first to seek an enlargement of time, as he ought to have filed his notice of appeal earlier.
5. The respondent argues that the applicant's grounds of appeal are anything but strong. He submits that even if they were strong, strong grounds of appeal do not automatically entitle an applicant to a stay of execution.
6. Arguing in the alternative the respondent submitted that the court may wish to consider terms if a stay of execution is granted
7. The principles which govern a stay of execution in this jurisdiction are much settled and well known and we need not reiterate them. A court will not deprive a successful party of the fruits of his judgment in a contested action except of course there are special circumstances coupled with strong grounds of appeal. (see Africana Tokeh Village Limited v. John Obey, Firetex International Co Ltd v. Sierra Leone External Communications, Decker v. Decker etc. (all unreported))
8. We are similarly mindful of Sir John Muria's admonition that sentimental considerations of a "moral. Social or political" kind ought not to form the basis on which the court's discretion to grant or refuse a stay of execution" is grounded. (see Desmond Luke v. Bank of Sierra Leone (2004) (unreported).
9. The applicant's difficult financial circumstances in and of itself has not been accepted as special circumstances by the court. The court has however found the words of Justice A Ademusu in Oweridu v. Bejeing Urban Construction (2008) very helpful. There he referred favourably to Tuck v. Southern Counties Deposit Bank (1889) and said "*that the court should consider all the facts before deciding whether they constitute proper facts for its discretion to be exercised*"
10. We have therefore considered the several rulings /judgments that had become necessary below and find that these may need to be clarified and made certain as to which is the overriding and or controlling order. This coupled with the alleged confusing status of the party Vivian Bell as well as the need for some clarity as to the identity of the other thirty plus respondents in our opinion jointly presents compelling circumstances on which a stay of execution may be granted.

11. The court also notes that this Appeal relates to an Industrial award and that whilst the total amount awarded is being contested the applicant does not and cannot wholly deny liability for some benefits due to the defendants. The court notes Exhibit A which is a summary of the findings of the Commissioner of Labour in respect of the respondent's terminal benefits. The Commissioner had this to say in his concluding paragraph there;
- "Forty(40) complainants are claiming Seven Hundred and seventy-three million six hundred and eighty-one thousand six hundred and forty leones (Le 773,681,640) as end of service benefit for the period they were in employ of the Defendant"*
12. We note also that with respect to the Commissioner of Labour's findings the plaintiff/respondent has deposed in their further affidavit in opposition as follows:
- "the payment in paragraph (2) above has the tendency to pacify the plaintiffs/respondents and has the tendency to resolve this long drawn litigation"*
13. Having considered all these facts and circumstances we will grant a stay of the execution of the judgments/rulings below as prayed but will do so on the condition that the applicant pays the amount of **Seven Hundred and seventy-three million six hundred and eighty-one thousand six hundred and forty leones (Le 773,681,640)** as assessed by the Commissioner of Labour over to the respondents.
14. We order further that the said payment shall be made no later than three working days of this order. The appellants shall keep a strict account of the amount received and shall on the request of the court or any of the parties produce same.

Ordered Accordingly

HON. MR. JUSTICE REGINALD SYDNEY FYNN JA

HON. MR. JUSTICE DESMOND BABABATUNDE EDWARDS JA.....

HON. MR. JUSTICE MONFRED MOMOH SESAY JA.....