

CIV. APP 04/2019

IN THE COURT OF APPEAL SIERRA LEONE  
(GENERAL CIVIL DIVISION)

**BETWEEN:**

UNION TURST BANK LIMITED -  
APPELLANT/APPLICANT

AND

MOHAMED KAKAY -  
RESPONDETN/RESPONDENT

**CORAM:**

HON JUSTICE M. M. SAMBA	-	JA
HON JUSTICE A. I. SESAY	-	JA
HON JUSTICE S. A. BAH	-	JA

**ADVOCATES**

O. JALLOH ESQ	-	COUNSEL FOR APPELLANT/APPLICANT
E. KARGBO	-	COUNSEL FOR THE RESPONDENT

**RULING DELIVERED THIS 7th DAY OF JUNE 2019**

**A I. SESAY JA.** This is an application for an interim stay of execution of the Judgment of the High Court dated the 15<sup>th</sup> January 2019 pending the hearing and determination of the application and stay of execution of judgment of the said Judgment pending the hearing and determination of the appeal.

**Background:** A brief background of the application is that the Respondent herein who apparently was the Plaintiff in the High Court issued out of the High Registry an action contained in a Writ of Summons dated the 13<sup>th</sup> March 2013 against the Appellant/Applicant herein who was the Defendant in the High Court for the recovery of the sum of Three Hundred and Forty-One Thousand and Fifty Six United States Dollars and Forty Cents (\$341,056.40) damages for breach of contract and interest.

On the 15<sup>th</sup> January, 2019 Judgment was entered in favour of the Plaintiff who is the Respondent herein against the Defendant who is the Appellant/Applicant herein for the payment of the total sum contained in the said Judgment. The Appellant/Applicant herein be dissatisfied with the said Judgment filed an appeal to this Court dated the 22<sup>nd</sup> day of January, 2019 and by Notice of Motion dated 15<sup>th</sup> day of May 2019 and it attached affidavits sworn to on the same date came before this Honourable court for an interim stay of execution and stay of execution of the High Court ruling dated the 3<sup>rd</sup> day of May 2019. On the 20<sup>th</sup> day of May 2019 an interim stay of execution of the said Judgment was granted by this Honourable Court.

## THE APPLICATION AND THE LAW

As I understand it a stay is the act of temporarily stopping a Judicial proceeding through the Order of a Court. In other words, a stay of execution is a court Order to temporarily suspend the execution of Court Judgment.

The principles upon which a stay of execution could be granted are well settled and continuously exhausted in our legal jurisprudence or jurisdiction, that is to say the applicant must show prima face good grounds of appeal and that there are special or exceptional circumstances justifying a stay of execution. These special circumstances must be shown by the supporting affidavit (see the case of **Patrick Koroma AND Sierra Leone Housing Corporation Misc., App 9/2004**. See also **Firetex Int. Co, Ltd vs- Sierra Leone Telecommunication and Another (CA) Misc app 19/2002**.

However in considering whether to grant a stay or not I will also take into consideration the need to balance the interest of the successful party with those of the Applicant.

Counsel for the Applicant referred us to Rules 64 and 28 of the Court of Appeal Rules 1985. For purpose of clarity I will reproduce verbatim the words of the said Rules:-

### RULE 28 STATES

“An Appeal shall not operate as a stay of execution of the proceedings under the Judgment or decision appealed from except in so far as the Court below or the Court may order and no intermediate act or proceedings shall be invalidated except so far as the Court below or the Court may direct”.

### RULE 64 STATES

“Except where otherwise provided in these rules or by any other enactment, where any application may be made either to the Court below or to the Court it shall be made in the first instance to the Court below, but if the Court below refuses the application, the applicant shall be entitled to have the application determined by the Court”.



In summarising Rule 28, I can safely deduced firstly that an appeal to the Court of Appeal does not operate as a stay of execution of the judgment or decision and secondly that an Order for a stay must be specifically obtained from the Court of Appeal. With regards to Rule 64 that in procedural rule which shows the usual manner in which proceedings should be conducted i.e. appeal to the High Court and upon refusal, aggrieved party or applicant can now apply to the Court of Appeal. Therefore an application for a stay of a judgment in this Court must have the combined effect of Rules 28 and 64 of the Court of Appeal Rules. No doubt that O Jalloh Esq has invoked the aforementioned to come to this Court as a result of the ruling of Hon Justice A B Halloway JSC.

As I said earlier a stay of execution is an immediate act ordered by a Court of competent jurisdiction between judgment and the hearing of the appeal and therefore the order granting a stay must be clear, specific and unambiguous and is normally made on terms subject to the usual undertaking and if it is a money judgment as in this present case and money is ordered to be paid to the other side that money to be refunded if the appeal succeeds. See the case of **James International and Seaboard West Africa Misc, App. 5/97.**

**ANALYSIS OF THE APPLICATION:** As I said earlier, as a general rule a stay of execution will be granted upon proof of prima facie good grounds of appeal and the existence of special or exceptional circumstances. The onus is on the applicant to show by affidavit evidence that the two requirements exist. Several case law authorities were referred to by both the applicant's solicitor and the respondent solicitor. Key to the cases is the popular case of **Linotype Hall Finance Ltd and Baker (1992) 4 AER P887.** The authorities referred to by both Counsel represent the correct position with regards the grant or refusal of stay of execution subject to some modifications which will be captured in my judgement.

I have considered the elegant but succinct submissions made by O Jalloh Esq and O Kargbo Esq. I have also examined the relevant averments in the affidavits in support and its supplementary and that of the affidavit in support which it various attached exhibits.

Counsel for the applicant conveniently relied on paragraphs 10, 13 and 14 of this supporting affidavits and for purposes of clarity I will reproduce the paragraph 10 of the affidavit of Millicent Macauley James (Mrs) sworn to on the 15<sup>th</sup> day of May 2019 reads:-

"That I verily believe that the appellant's operations are funded on an annual budget which is secured primarily by taking from depositors funds and loans hence paying the sum ordered to be paid by the Court at this stage would have a materially adverse effect on the appellant's operation which could have adverse consequences for its customers, the banking industry and the Sierra Leone Economy".

With regards to this averment, I want to say at this stage that I entirely agree with the analysis given in respect of the same by the learned Judge in the Court below as contained in this Ruling pronounced on the 3<sup>rd</sup> of May 2019 at Pages 6-9 which I need not repeat here but to affirm it.



Besides special or exceptional circumstances must be captured in the applicant supporting affidavit and in this present case the applicant has not shown how the operation of the applicants will be affected adversely if the judgment is executed on them.

Besides, the applicant has averred in his supplemental affidavit in support sworn to on the 22<sup>nd</sup> day of May 2019 at paragraph 4 that the applicant own a significant interest in real estate in Sierra Leone which include its head office at No 2 Howe Street Freetown valued in excess of USD 1,000,000.00. Suffice it to say that the aforementioned property of the applicant is money's worth far above the judgment debt. The question I will ask myself is how the execution of the judgment on the applicant would affect the depositor's money. I will conclude that there is no way the execution of the judgement will affect the applicant/appellant because there are other means through which the bank can raise income.

Moreover, Millicent Macauley-James deposed in paragraph 3 of her supplementary affidavit that Applicant made a loss for the 2018 financial year and I cannot grant a stay of execution of monetary judgment without this applicant paying into an account the judgment debt pending the hearing and determination of the appeal on terms. I will repeat the said paragraph 3 and I quote

**"That I verily believe that the applicant made a loss for the 2018 financial year. Having regard to the loss suffered and in view of the reporting obligations and financial Standards (FRS) applicable to the applicant the Bank of Sierra Leone has to approve the applicant financial statement before the same could be published. A copy of the state of comprehensive income for the period is now exhibited and marked "EXK" "**

I will now turn my attention to paragraph 13 of the affidavit of Millicent Macauley-James (Mrs) and for purposes of clarity I repeat verbatim what she deposed to as follows:-

**"This if the appellant's prayers are not granted and this Honourable Court allows the Respondent to execute the said judgment the entire appeal process could be rendered redundant and nugatory in the event that appeal is successful".**

With regards this averment, I will refer to the affidavit in opposition sworn to by Mohamed Kakay, businessman of No 1 Kakay Drive Off Regent Road Lumley Freetown as a counter-part to paragraph 13 aforementioned contained in the affidavit of Millicent Macauley James with specific references to paragraph 10 & 11 of the affidavit in opposition sworn to one the 20<sup>th</sup> May 2019. In these paragraphs, the Respondent has perfectly allay the fears of the applicant that if the appeal is successful, it will be nugatory. I want to say at this juncture that this is a monetary judgment and if it turns out that the appeal is successful the respondent in the aforementioned paragraphs has exhibited his several realties worth over One Million Five Hundred Thousand United States Dollars (USD 1,500,000,000.00) which far exceeds what the applicant is to pay as judgment debt. Besides the respondent has exhibited not only his Conveyances of those properties but also its monetary value.



In the light of the above, I have, undoubtedly, see no reason why the Respondent should be deprived of his fruit of his judgment. Mind you the court do not make a practice of depriving a successful litigant of the fruits of his/her 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 see the case of **Lucy decker & Others and Gold stone Decker Misc App 13/2002** and also the **ANNOT LYLE** case (1886) 11P114 at page 116.

It is my view that the applicant's affidavits in support are not supportive for the grant of a stay of execution of judgment.


I will now turn my attention to paragraph 14 of the affidavit in support sworn to by the same Millicent Macauley-James (Mrs) where she averred that the Respondent has since let out the property hitherto demised to the appellant. With regards to this averment, the learned trial Judge who refused the stay clearly made a significant interpretation and meaning to an extent that it could not be regarded as special circumstance or good ground of appeal. I do agree with him and I join him in refusing the application for a stay.

#### CONCLUSION:

In the circumstances, and having considered both the affidavits in support and its supplemental together with the exhibits attached thereto and also the affidavit in opposition with its attached exhibits, I am with the view that the applicant has not shown special or exceptional circumstances to warrant the grant of a stay of execution of the judgment of Hon Justice A B Halloway JSC who sat as the trial Judge dated the 15<sup>th</sup> January 2019 and I will therefore make the undermentioned Orders:

1. The application for stay of execution of Judgment dated 15<sup>th</sup> January 2019 contained in the Notice of Motion dated the 15<sup>th</sup> day of May 2019 is refused.
2. That the interim stay of execution pronounced by this Honourable Court dated the 20<sup>th</sup> May 2019 is vacated forthwith.
3. The costs occasioned by this application herein which this Court assess at Le15,000/00/00 to be borne by the Defendant/Applicant

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Hon Justice Ansumana Ivan Sesay JA.