

IN THE COURT OF APPEAL OF SIERRA LEONE

Civ App 6/2009

68.
Registry 8/04/19

BETWEEN:

MOMODU JALLOH

- APPELLANT

AND

JOSEPHINE MACFOY

- RESPONDENTS

OSMAN MANSARAY

ABDUL AZIZ

CORAM:

THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE E E ROBERTS

JUSTICE OF THE SUPREME COURT

THE HONOURABLE MR JUSTICE S A ADEMOSU, JUSTICE OF APPEAL (Now deceased)

COUNSEL:

I KANU ESQ for the Appellant

D G THOMPSON ESQ, (now deceased) for the Respondents

JUDGMENT DELIVERED THE 8th DAY OF APRIL, 2019

BROWNE-MARKE, JSC

THE APPEAL

1. This is an appeal brought by the Appellant, Momodu Jalloh against a decision of KONOYIMA, J, now deceased dated 7th November, 2008. ROBERTS, JSC was a member of the panel which struck out an earlier appeal brought by the Appellant - see page 73 of the Record. The grounds of appeal are at pages 85 - 87 of the Record. The decision appealed against is at pages 50 and 81 of the Record. The purport of the appeal is that the Learned Judge was wrong to have upheld an Order made by His Worship A E Fanday, esq, now deceased, staying execution of an order granting possession of property

at 21 Victoria Street, Freetown, to the Appellant, which said Order was made by His Worship Binneh Kamara Esq (now BINNEH KAMARA, J).

2. The argument in the Court below was whether execution of an Order made by one Magistrate, could be stayed by another Magistrate, when both had the same jurisdiction and the same powers. The Record shows that the application for a stay of execution was assigned to Mr Fanday by the appropriate authority at the time. There has been no argument before us that the Learned Magistrate, Mr (now Justice) Binneh Kamara was wrong to have granted possession to the Appellant herein, as he, the Appellant fell squarely within the definition of Landlord in Sections 2 and 7(4) of the Summary Ejectment Act, Chapter 49 of the Laws of Sierra Leone, 1960 - hereafter, "Cap 49". The Learned Magistrate was therefore right to have granted possession to the Appellant. The sole contention in this appeal, is whether having done so, another Magistrate could stay the execution of that Order. The subsidiary argument, as we see it, is whether the alleged wrongness in ordering a stay of execution of the eviction order could be challenged in the High Court by way of a Notice of Motion be it originating or, interlocutory.

SUMMARY EJECTMENT ACT, CAP 49

3. Section 9 of Cap 49 provides for an appeal against an order for eviction, but without prejudice to the wider provisions relating to appeals against the decisions of Magistrates. Section 9 reads: *"Any person aggrieved by the decision of the Magistrate may, within 8 days, appeal to the High Court. An appeal shall not operate as a stay of execution: Provided that, in cases where an appeal is by a tenant ordered to be ejected, the Magistrate shall grant a stay of execution upon the tenant giving security for costs, and a bond or security in such sum as the Magistrate shall deem sufficient against any act of damage or waste to the premises. Save as aforesaid, the procedure, on appeal. Shall be in accordance with the provisions of the laws of Sierra Leone in relation to appeals from the decisions of the Magistrate."* In our view, this specific provision was enacted for a specific purpose: to protect the interests of tenants in the very low income group. Thus the limitation in the Magistrate's jurisdiction to tenants paying just 200 pounds per annum, in 1904, when that Act became Law, and now Le5million as amended by Act No. 1 of 2006.

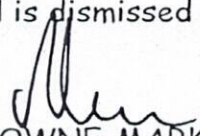
4. There is of course a much wider right of appeal conferred on persons aggrieved by the decision of a Magistrate in Section 41 of the Courts' Act, 1965 as amended. The relevant portion states: "*41(1) An appeal shall lie to the High Court - (a) from any final judgment or order given or made by a Magistrate in civil proceedings;.....(2) any such appeal shall not operate as a stay of execution or, or proceedings, but the Magistrate's Court or, the High Court, may Order a stay of execution, or, of the proceedings upon such terms, if any, as to the Court may seem fit.*" But the statutory provision does not stipulate the time within which an appeal could be brought, unlike in the case of criminal appeals, where section 42(4) stipulates that the time limit is 21 days.
5. It seems to us, that subject to the Rules, which we shall advert to hereafter, both the Magistrate's Court, and the High Court, do have concurrent jurisdiction when it comes to applications for stay of execution of judgments. This position could be contrasted with the position where the application is made to the Court of Appeal for stay of execution of the judgment or order of the High Court. In the latter respect, Rule 64 of the Court of Appeal Rules, 1985 expressly states that such an application should first be made to the High Court, before it could be made to the Court of Appeal. Rule 20(1) of the Appeals from *Magistrates' Courts Rules, 1969 - S.I. 25 of 1969* confirms the concurrent jurisdiction of both the Magistrates' Courts and the High Court, when it comes to matters relating to the stay of execution of judgments. The applicant is free to choose which Court he first wishes to go to.
6. But this Court has borne in mind that in the present appeal, the Appellant's application in the High Court, was not against the final decision of Magistrate Binneh Kamara, (now The Hon Dr Justice Binneh Kamara); but was in respect of the order staying execution of his final judgment, made by the late Mr Fanday. Magistrates' Courts, are creatures of statute. They do not possess jurisdiction or powers other than those conferred on them by the statute creating them. In this respect, they are unlike the High Court which has inherent jurisdiction to deal with matters before it, not specifically provided for by statute.

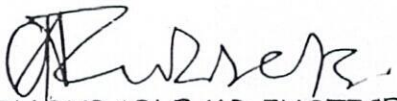
JURISDICTION AND POWERS OF MAGISTRATES IN CIVIL CASES

7. Magistrates Courts were established by Section 3 of the Courts' Act, 1965 as amended. Section 5 of the Act provides for the jurisdiction of Magistrates. It states: "*A Magistrate shall have jurisdiction as a Magistrate throughout Sierra Leone and may be assigned to any judicial District, or transferred from one Judicial District to another by the Chief Justice, and any Magistrate so assigned or transferred shall exercise jurisdiction as a Magistrate of the Magistrate's Court constituted in and for such Judicial District.*" Undeniably, both Messrs Binner Kamra (as he then was) and Mr Fanday were Magistrates within the Freetown Judicial District as defined and delimited within section 3(1)(a) of, and paragraph (b) of the First Schedule to the Courts' Act, 1965 as amended. It follows that each Magistrate had the same jurisdiction, and one could do what another could do, unless forbidden by statute from doing so. It is acknowledged that in practice, an application for stay of execution is usually sent to the Magistrate or Judge who decided the matter, but there is no law nor punctilio which demands that it be so in all cases. For administrative purposes, the Chief Justice might decide to assign such an application to another Bench. His decision cannot be challenged when he does so, unless there is clear evidence that such a re-assignment amounted to an attempt to manipulate the system. No such allegation was made in this case. It follows that there was nothing wrong with the hearing of the application for a stay of execution being assigned to Mr Fanday. This hypothesis could be contrasted with the position of a convict applying for bail pending his appeal to the Court of Appeal. Section 67(2) states as follows: "*The Court of Appeal or the Court before whom he was convicted may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.*" There is room here to infer that the '*Court*' in this provision must be the '*Court*' before which the prospective appellant was convicted, and no other Court.
8. Following on this discourse, is the question, '*what should the Appellant in this appeal have done?*' We are quite satisfied that instituting proceedings in the High Court by way of a notice of motion, be it originating or otherwise, was not the proper course to employ, if the aim was to set aside the stay granted by Mr Fanday. The use of Originating Notices of Motion is governed by Order 8 Rule 1 of the High Court Rules, 2007. The application under consideration is not one authorized by the Rules, nor by any enactment.

OPTIONS OPEN TO THE AN AGGRIEVED PARTY

9. There were other options open to the Appellant. He could have applied to Mr Fanday to state a case for the consideration of the High Court pursuant to section 51 of the Courts' Act, 1965 provided the issue for consideration was a question of law. Alternatively, he could have applied to the High Court pursuant to the powers conferred on it by Section 134 of the Constitution of Sierra Leone, 1991 to exercise its supervisory jurisdiction over Mr Fanday's Court. Further, and/or alternatively, he could have appealed against Mr Fanday's Order to the High Court. The High Court could, in the exercise of its supervisory jurisdiction, or, if the circumstances so warranted, in the exercise of its appellate jurisdiction, whichever was invoked, have ordered or directed that conditions for a stay be imposed by the Magistrate's Court, failing which the appeal could have been liable to be dismissed for non-compliance, pursuant to Rule 8 of S.I. No 25 of 1969. What the Appellant certainly could not do, was to institute proceedings by way of Originating Notice of Motion. If his grievance was that Mr Fanday had failed to impose the conditions for granting a stay, authorized and mandated by Section 9 of Cap 49, he could have applied to the Master, for instance, pursuant to Rule 6 of S.I. No 25 of 1969 for the Master to invoke the powers conferred upon him by that Rule. The Appellant could have made out a case in that respect, because the Respondents herein, where the Appellants in the appeal to the High Court. Rule 6 applies to all appeals. That would have enabled the High Court to make an Order relating to the kind and quantum of security which the Respondents herein should have provided as security for their appeal to the High Court. KONOYIMA, J was right in dismissing the Appellant's Application, though he did so for the wrong reasons.
10. In the result, the Appellant's appeal is dismissed without any Order as to Costs because of the lapse of time.


THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT


THE HONOURABLE MR JUSTICE E E ROBERTS
JUSTICE OF THE SUPREME COURT