

CIV.APP.71/2017

IN THE COURT OF APPEAL OF SIERRA LEONE

**BETWEEN:**

HORSE FISHING CO. LTD  
JUI HASTINGS

—

APPELLANT/RESPONDENT

GREATER FREETOWN

AND

THE ATTORNEY-GENERAL  
MINISTER OF JUSTICE  
3<sup>RD</sup> FLOOR, GUMA BUILDING  
LAMINA SANKOH STREET  
FREETOWN

—

RESPONDENT/APPLICANT

**CORAM:**

1. HON. JUSTICE ANSUMANA IVAN SESAY, JA (PRESIDING)
2. HON. MR. JUSTICE SULAIMAN BAH, JA
3. HON. MR. JUSTICE KOMBA KAMANDA, J

**SOLICITORS:**

MOHAMED PA. MOMOH FOFANAH ESQ., FOR THE APPELLANT  
I.O. KANU ESQ., FOR THE RESPONDENT/APPLICANT

RULING OF HON. MR. JUSTICE A.I. SESAY, JA  
DELIVERED THE 4<sup>th</sup> DAY OF June 2020.

**BRIEF INTRODUCTION:**

By a Writ of Summons dated the 17<sup>th</sup> day of June, 2016 the Plaintiff now the Appellant/Respondent instituted a cause of action in the High Court (Fast Track Commercial Division) seeking for various orders. A Judges summons dated the 10<sup>th</sup> July,

2017 together with an affidavit attached thereto prayed for the orders contained therein, was filed by the Defendant in the High Court. An Affidavit in opposition dated 28<sup>th</sup> July, 2017, was also filed.

On the 12<sup>th</sup> day of September, 2017, Hon. Mrs. Justice Amy Wright delivered a Ruling against the Respondent. Dissatisfied with the said Ruling, the Respondent filed a Notice of Appeal dated 21<sup>st</sup> September, 2017. On the 6<sup>th</sup> November, 2017, the Respondent filed additional grounds of appeal.

~~Subsequently, on the 20<sup>th</sup> April, 2018, the Court of Appeal delivered a unanimous judgment. The~~  
Applicant herein being dissatisfied with the said Court of Appeal judgment filed an appeal to the Supreme Court by way of Notice of Appeal dated 25<sup>th</sup> June, 2018.

On the 10<sup>th</sup> day of July, 2018 the Applicant herein filed a Notice of Motion to this court asking that the execution of the judgment of the court of Appeal dated 20<sup>th</sup> April, 2018 be stayed pending the hearing and determination of this application and the appeal filed in the Supreme Court.

In support of the application is the affidavit of PRECIOUS V.K. FEWRY (Ms.) State Counsel attached to the Law Officer's Department, Guma Building, Lamina Sankoh Street, Freetown sworn to on the 10<sup>th</sup> day of July, 2018 with the under mentioned exhibits attached.

- a. Exhibit PVKF 1 - a copy of the Court Order from the judgment of the Court of Appeal dated 20<sup>th</sup> day of April, 2018
- b. Exhibit PVKF 2 and PVKF 3 - copies of evidence of funds expended on the erection of a perimeter wall on the premises totaling the sum of Five Hundred Thousand United States Dollars (\$500,000.00) respectively.
- c. Exhibit PVKF 4 - a copy of the Notice of Appeal to the Supreme Court dated the 25<sup>th</sup> day of June, 2018

Counsel for the Applicant further submitted that if a stay is not granted in this application and the judgment is executed, there will be serious financial loss and damage to the leasee SABCO FISHING COMPANY and the loss of employment of over Two Hundred and Fifty (250) Employees employed by the leasee and this will cause untold hardship to the present state of the economy. Additionally, being that, it was the Government of Sierra Leone that granted the Lease to the said SABCO Fishing Company, Government stands exposed to serious financial loss in terms of damages, where a stay of execution is not granted.



Reference was made to Section 60(2) of the Supreme Court Rules. Counsel also made reference to the AFRICANA TOKEH CASE.

In opposition to the said application, the Respondent relied on the entirety of his affidavit in opposition sworn to 28<sup>th</sup> day of January, 2020. Attached to the said Affidavit are the under mentioned exhibits.

- |               |   |   |
|---------------|---|---|
| a. Exhibit A1 | - | copy of the judgment of the Hon. Justice E. Taylor-Kamara, JA<br>Dated the 20 <sup>th</sup> April, 2018 |
| b. Exhibit A2 | - | a copy of judgment of Hon. Justice Sengu Koroma dated 20 <sup>th</sup> April, 2018                      |
| c. Exhibit A3 | - | a copy of judgment of Hon. Justice R. Fynn, JA dated 20 <sup>th</sup> April, 2018                       |
| d. Exhibit B  | - | a copy of drawn up judgment   |
| e. Exhibit C1 | - | a copy of an Order for Writ of Possession and Assistance dated the 25 <sup>th</sup> April, 2018         |
| f. Exhibit C2 | - | a copy of a Writ of Fifa dated 26 <sup>th</sup> April, 2018   |
| g. Exhibit D  | - | a copy of a letter addressed to the Chief Minister dated 25 <sup>th</sup> June, 2018                    |
| h. Exhibit E  | - | a copy of a letter from the Respondent/Applicant dated the 30 <sup>th</sup> November, 2018              |
| i. Exhibit F  | - | affidavit in opposition filed earlier sworn to this same motion on the 22 <sup>nd</sup> February, 2019  |

Counsel for the Respondent further submitted that the grounds of Appeal contained in exhibit PVKF 4 are no good grounds of Appeal. According to him there are no special circumstances to warrant a stay of execution of the judgment especially with regards exhibit E in his affidavit in opposition.

Counsel for the Applicant by way of reply submitted that exhibit E written by the Learned Attorney-General was a legal opinion and therefore not law.

#### THE LAW ON STAY OF EXECUTION OF JUDGMENT:

Stay of execution is Court Order which brings litigation or enforcement of other court orders to a standstill temporarily. It is normally granted during the course of litigation to postpone or suspend the whole or any part of the proceedings and whilst is in force no substantive step may be taken in the proceedings. Order rule 28 of the Court of Appeal Rules 1985 provides that an appeal shall not operate as a stay of execution of proceeding under the judgment or decision appealed from except so far as the court below or the court may order and no intermediate act or proceedings shall be invalidated except so far the court below or the court may direct. This means that an appeal is not tantamount to a stay of execution unless it is so ordered by the court below or this court. No doubt that the Applicant has come before this court to make such application. See also Rule 64 of the Court of Appeal Rules 1985. Order 59 Rule 13(2) of the Annual Practice 1999 under the Rubric "When will a stay of Execution be granted at page 1074 provides that the court does not make a practice of depriving a successful litigant of the fruits of his litigation to which he is prima facie entitled pending an appeal. See the case of **DESMOND LUKE VS. BANK OF SIERRA LEONE MISC.APP.22/2004**. See also **FIRETEX INTERNATIONAL CO. LTD VS. SIERRA LEONE EXTERNAL TELECOMMUNICATIONS LTD MISC.APP.19/02**.

As a rule fundamental to the principle of stay of execution of judgment the Court will not grant a stay unless it is satisfied that there are good reasons for doing so. According to the late Justice Gelaga King in the case of DECKER and DECKER good reason goes with special circumstances. What then is special circumstance? Special circumstance is a circumstance beyond the usual: a situation that is uncommon and distinct from the general run of things says the late Justice Gelaga King of blessed memory.

Supplemental to the aforementioned principle of special circumstances as required by law, the applicant must also show that he has a good grounds of appeal so that the appeal if successful is not rendered nugatory.

It is in the discretion of the Court to grant or refuse a stay and the court will grant a stay where the special circumstances of the case so require.

**Therefore**, the circumstances of this case that the leasee SABCO FISHING COMPANY was granted a lease by the Government of Sierra Leone being represented by the Applicant, is such that, if the judgment is executed there is likelihood that the Appeal if successful will cause irreparable harm, hardship and injustice to the leasee (i.e. Sabco Fishing Company) in the event



of the Appeal succeeding. And also, the fact that the said company employed several people who would be adversely affected should be taken into consideration. Additionally, the fact that the Applicant had established with the leasee a good will at their current location at Jui and the Leasee had expended the sum of Five Hundred Thousand United States Dollars (\$500,000/00) and such good will might disappear if a stay is refused. Furthermore, being that unemployment is high in Sierra Leone at the current moment, any attempt by this court to refuse the stay will cause untold hardship to those Two Hundred and Fifty (250) current employees of the lease. In the circumstances, I am with the view that this is an appropriate situation to grant the stay.

**In addition,** I have carefully examined the grounds of Appeal of the Applicant/Appellant and without attempting to go to the merits of the appeal, would hold that they are good grounds.

#### CONCLUSION

**Taking all these facts into consideration,** the court is satisfied that these special circumstances of this particular case as aforementioned requires that a stay of execution be granted. This court will therefore exercise its unfettered discretion and grant a stay of execution of the Judgment of the 20<sup>th</sup> April, 2018 (Cost in the cause) pending the hearing and determination of the Appeal in the Supreme Court.

1. Hon. Justice Ansuman Ivan Sesay (Presiding Judge)
2. Hon. Justice Sulaiman Bah, JA I AGREE
3. Hon. Justice Komba Kamanda, J. I AGREE

