



IN THE COURT OF APPEAL OF SIERRA LEONE
CIVIL DIVISION

MISC. APP. 39/16

ALPHA MOHAMED LAMIN TARA WALLY

MRS AMINATA SAPATEH

FATHER MUCAS

ANDRAN ENTERPRISES

- APPLICANTS

AND

DR. SAHR MBONNE MARRAH

(SUING THROUGH HIS LAWFUL ATTORNEY

SORIE KAMARA)

- RESPONDENT

REPRESENTATION:

AUGUSTINE MARAH

COUNSEL THE APPELLANT

MOHAMED P. FOFANAH ESQ.

COUNSEL FOR THE RESPONDENT

RULING DELIVERED BY THE HON. MR SENGU MOHAMED KOROMA JSC ON THE MARCH, 2020.

1. The Appellant/Applicant (hereinafter referred to as the "Applicant") by a Notice of Motion dated 23rd September, 2019 applied to this Honourable Court for the following Orders:-

- An interim and/or Interlocutory Stay of Execution of the Judgment dated 13th May, 2016 and all subsequent proceedings be granted pending the hearing and determination of this application and/or appeal.
- An Order to set aside the execution levied on the 30th day of May 2018 against the Appellant/Applicants during the pendency of the application for stay of Execution in the Court below on the grounds that the execution was irregular, unfair and an abuse of the process of the Court.
- An interim and/or interlocutory Order of restitution be granted permitting the Appellant/Applicant to be reinstated into the property situated 15 Horse Shoe Road, Kissy Dockyard Freetown pending the hearing and determination of this application and/or appeal.
- Any further or other Order(s) that this Honourable Court may deem fit and just.
- Costs.

1. The Application is supported by the affidavit of Aminata Sapateh sworn to in Freetown on the 23rd day of September, 2019 together with the exhibits attached thereto.
2. This application is opposed by the Respondent by the affidavit of Sorie Kamara sworn to on the 12th day of November, 2019 together with the exhibits attached thereto.
3. The Applicant responds to the affidavit in opposition by an affidavit in reply sworn to on the 21st day of November, 2019.
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THE APPLICATION

5. The application is moved by Augustine S Marah Esq. on the 27th November, 2019. He refers to the twelve exhibits in support of the Applicant's case. These exhibits range from the Death certificate of the late Foday Lamin Tarawallie, Exhibit A S¹, the Conveyance in respect of the property in dispute – A S², Letters of Administration granted to the Applicant A S⁴, Vesting Deed dated 19th November, 2019 vesting the property in the 1st and 2nd Applicants – Exhibit A S⁵, Writ of Summons issued against the Applicants by the Respondent, Exhibit A S⁶, Summary Judgment in favour of the Respondent, Exhibit A S⁸, Copy of Application for stay of Execution of the said Judgment, Exhibit A S¹⁰, Order refusing stay of execution marked Exhibit A S¹² to copy of Notice and Grounds of Appeal dated 18th May, 2016 Exhibit A S¹³.
6. Germaine to this application are paragraphs 5, 6, 7, 15, 16 and 17 of the affidavit in support. In the said paragraphs, the Deponent avers that the Deceased husband Foday Lamin Tarawallie orally told her that the property

in dispute would be allocated to the First Applicant and her whilst the first wife, Nana Tarawallie would be allocated the property at Wilkinson Road. She also avers that she jointly built the four shop apartment with her husband between 2002 and 2003 and after his demise in 2007 she built the three shop premises and a store on the upper floor of the said property. She also avers that it was while the application for a stay of execution was pending before Kamanda J that the Applicants were evicted from the premises in dispute.

7. It is also averred that the 2nd Applicant in her affidavit sworn that she had been leaving on the said property for the last fifteen years before her eviction which has occasioned considerable hardship on her family since the property was the source of income for her and the 1st Applicant who is a minor.
8. In his oral submission, A S Marah Esq., emphasises on the issues averred in the affidavit in support and restated the matters referred to in the foregoing paragraph as Special Circumstances. He cites the AFRICANA TOKEH case and relies on Rules 28 and 64 of the Court of Appeal Rules, 1985.
9. In opposing the Application, M. P. Fofanah Esq., for the Respondent relies on the affidavit of Sorie Kamara sworn to on the 12th November, 2019.
10. In the said affidavit, Sorie Kamara refers to himself as the Lawful Attorney for the Respondent herein, Dr Sahr Bannie Marah. He exhibits Exhibit A- True copy of the Respondent's Title Deeds. The last Will of the late Foday Lamin Tarawally which under Clause 19 left the property in dispute to his only widow, Mrs. Nana Tarawally through whom he acquired title to the premises- Exhibits B and C, the purported Deed of Gift used by the 2nd Applicant - Exhibit "E" and purported Letters of Administration and Vesting Deed issue to the 2nd Applicant-exhibit A S^{4 and 5} respectively.

11. In paragraph 11 of the affidavit in opposition, the Attorney denies the claim of the 2nd Applicant in her affidavit in support that the execution was levied on the premises during the pendency of the Application for a stay of Execution. The Deponent avers that it was after the execution of the Judgment evicting all the tenants on the premises that the 2nd Appellant broke into the shops and restored her tenants therein. It is this contemptuous conduct of the 2nd Applicant that caused the Court to Order the re-entry of the property by Bailiffs.
12. In paragraphs 15 and 16, the Deponent avers that the Applicants have not shown Special Circumstances to warrant a stay and that the grounds of Appeal have little prospect of success.
13. The Oral submission of M P Fofanah Esq. added flesh to the averments in the affidavit in opposition.
14. In the affidavit in reply, the 2nd Applicant avers that she got married to the Deceased, Foday L Tarawallie on the 13th August, 1995 and had an issue with him named Alpha Mohamed Lamin Tarawallie who was born on the 15th January, 2005. She avers that her husband died intestate and that the purported Last will and Testament exhibited by the Respondent is a forgery.
15. Both Counsel cross-examined the respective deponents on their affidavits. To my mind, the answers elicited from the said deponents are more suited to determining the matters raised in the Notice and Grounds of Appeal and not for this application.
16. It has been established in our jurisdiction that in determining an application for a stay of the judgment of the Court below, the Appellate Court must be guided by whether the Applicant has shown Special Circumstances and has exhibited good grounds of Appeal. In deciding whether Special

Circumstances have been shown, I have expanded on the description given to it by earlier cases such as the AFRICANA TOKEY CASE, the LUCY DECKER case etc etc in the cases of FEMI HEBRON & ORS -V- WHITE LION CO LTD, Misc. App 50/17 FATME MOURTADA -V- FADEL ABASS MOURTADA & DAYOUB TRADING CO Mis App 13/17; and VITAFOAM (SL) LTD -V- LEON CONSTRUCITON- 75/2017 (unreported). In the latter case, I had this to say: "My research has revealed that whilst most of our decisions mention "Special Circumstances" are not closed, it is my view that there must be a general standard, a bench mark in determining what it is. "In FATME MOURTADA case, I considered that general standard as "Circumstances if not considered could lead to injustice". I shall apply this test in the instant case.

17. In determining whether the grounds of Appeal lack merit, this Court is not expected to go into the details of the grounds but must find out whether the grounds are arguable and have a reasonable prospect of success.
18. In the instant case, the Applicants have argued that through the affidavit in support that she and her family have been on the property for almost fifteen years before eviction. Their eviction has caused considerable hardship on them especially when the proceeds of renting the property have been used for their living expenses and payment of the school fees of the 1st Applicant, an infant. The Applicants who were the Defendants in the Court below are claiming ownership of the said premises as against that of the Respondent (then Plaintiff). There is a dispute as to the validity of the Will purportedly executed by the Late Foday L Tarawally.
19. The Respondent on the other hand is claiming title from the Late Nana Tarawally who had sold the premises to him thereby making him an innocent purchaser for value, he is also contesting the existence of a

marriage between the 2nd Applicant and the said Foday L Tarawally (deceased).

20. I have perused the Notice and Grounds of Appeal. These grounds in their totality tend to contest the title of the Late Nana Tarawally in the premises in dispute thus implying that the transfer to the Respondent was invalid, for as the maxim goes "Nemo dat quod non habet".
21. It is my conclusion, on a balance of probabilities that the Applicants have shown Special Circumstances to warrant a stay of execution of the judgment dated the 13th day of May, 2016. I also hold that the Notice and Grounds of Appeal raise arguable grounds. This is based on the expanded meaning of special circumstances established in the VITAFIOM CASE. That is refusing the application at this stage would lead to injustice.
22. I note that the Records of Appeal have been settled and the matter assigned for hearing. It will be in the interest of the parties that the Appeal be heard expeditiously. This is because this Ruling does not settle any issue in dispute between the parties.
23. In the circumstances, I order as follows:-
 - That an Interlocutory Stay of execution of the judgment dated 13th May, 2016 is hereby granted pending the determination of the Appeal filed in this matter.
 - That the status quo in respect of the premises lying, situate and being at 15 Horse Shoe Road, Kissy Dock Yard Freetown remain the same pending the determination of the Appeal filed in this matter
 - That the cost of this application be costs in the cause.



Hon Mr. Justice Seng M. Koroma JSC

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RULING