

IN THE COURT OF APPEAL OF SIERRA LEONE -MISC APP'18/2019

BETWEEN:

COMMERCE & MORTGAGE BANK (SL) PLC

(B. JONES OF C/OYADA WILLIAMS & ASSOCIATE) - PLAINTIFF

AND

DR. J.A.J JACKSON-COLE

(A. SHERIFF OF TEJAN-COLE, YILLAH AND BANGURA) DEFENDANT

Coram:

Hon. Justice M.D Kamara JA Presiding

Hon. Justice J. B Aliu JA

Hon. Justice S A Bah JA

Ruling Delivered 9th June, 2020

The application dated 30th October, 2019 is for an enlargement of time within which to appeal against the ruling of Justice M.M. Samba-JA dated 16th April, 2019.

The application is supported by affidavit and supplemental affidavit of Mr. Abdul Malik Koroma deposed to on the 30th October, 2019 and 18th day of November, 2019 respectively.

Respondent/Applicant contends that the ruling of Hon. Justice M.M. Samba was final and not an interlocutory order, as such, they made their application to this court as they had no obligation to go to the court of first instance.

Furthermore, respondent/applicant contends that they have good grounds of appeal against the court order dated 16th April, 2019. A copy of their proposed notice and grounds of Appeal is hereby exhibited and marked Ex A.M.K.5. In sum, the respondent/applicant does not contest her indebtedness to the plaintiff/respondent herein, but vehemently challenge the quantum of money claimed by the plaintiff/respondent herein.

Respondent/applicant contends that their request for enlargement of time to appeal is in good time due to the nature of the application- which was ex-parte, and the outcome came to their knowledge at the time of execution i.e. 14th October, 2019.

By virtue of order 43 r3 (2) of the High Court Rules, 2007, possession relating to mortgage property are executed without service of the order on the occupants. As such, both the occupants and counsel for the respondent/applicant herein only became aware of the existence of the Hon. Justice M. M. Samba's order on the 16th April, 2019 after execution (i.e. 14th October, 2019) as they were not served copies of the judgement/ruling before then.

That to grant enlargement of time to appeal is a discretion of this court to be exercised based on principles. Counsel canvassed that it would serve the best interest of justice and fairness if this application is granted.

In response, B. Jones, counsel for the plaintiff/respondent herein says he is opposed to the application for the following reasons:

1. That this application does not fall within what is prescribed in R 11 (6) of the Court of Appeal Rules, that the application is brought after six months has elapsed. That Hon. Justice Joko Smart had held a similar provision in the Supreme Court rules in an unreported matter: Sesay and others vs Kamara and others misc. App6/96 delivered on the 30th September, 1999 that the provision is mandatory. That the applicants herein could have applied within a maximum of one month, that they had up to the 17th August, 2019 to have filed their application for enlargement of time.
2. That the respondent / applicant has not given good and substantial reason for the delay.
3. On the issue of good grounds of appeal, that the issue raised in the appeal are issues they could have argued in the court below.

That they could have applied to set it aside and argue why. That the applicant is only trying to deprive the plaintiff/respondent to possess the mortgaged property-which in his submission is an exercise of their legal right. The Court was referred to s12 of the Home Mortgage Finance Act, Act No.4 of 2004. Furthermore, he refers to s 13(2) of the same Act, saying that, the right to sell is different from the right to possess.

Counsel B. Jones assured the court that they are not contemplating on the sale of the mortgaged property. And he made an undertaking that the mortgaged property will not be sold until after the determination of this appeal.

In reply, A. Sheriff says that the court of Appeal has always granted enlargement of time to appeal if there are good and sufficient reasons for the delay and he referred the court to exhibit A.M.K. 5 reiterating the chronology of the events from the date of the ruling in the ex-parte application 16th October 2019 to date of perfecting on the 2nd July, 2019 and execution on the 14th October 2019 (the effective date of when the order came to their attention)

In light of the narrative and authorities submitted by the respondent/applicant's counsel, in the matter, Mabinty Timbo & Wurroh Timbo 17/2015 SLCA 17 (10 September, 2015) where time was enlarged within which to file an appeal against a judgement of 29th July, 2015 on 1st September, 2015 such time to run out on 30th January, 2016 R. A Fynn-JA had this to say "That there can be no tailor-made, template of what would constitute special circumstances that every set of facts must be evaluated separately and a decision reached as to whether in fact they would constitute good and sufficient reasons."

The above reasoning was derived from the arguments advanced by Hon. Justice Gelaga King JA in the case of Africana Tokeh Village Limited vs John Obey, Halsbury's Laws of England 3rd Edition vol.16 and Hon. Justice John Maria JA in an unreported case: Desmond Luke vs Bank of Sierra Leone Misc. App 22/2004.

Similarly, in the matter of Onyibuvhi Itorlibu, Gilbert Nwadiukwu of themselves and as representing the chiefs and people of

Avokwu Ibeku Appellants

AND

Richard Okowordu Tobias Nwubani (for themselves and as representing the chiefs and people of Eruete Ibeku) respondents.

In this matter the delay was occasioned by counsel being caught in the booby difficult points of procedure, they held that the delay which derived from those difficulties, cannot be visited on the applicants.

In the same vein I hold that the applicants' application herein is in good time, as it came to their knowledge only at the time of execution, it being an ex-parte application for which the ruling was delivered on the 16th April, 2019, the court order perfected on the 2nd July, 2019 and same executed on the 14th October, 2019. The delay in the perfection and service of the order cannot be visited on the applicants herein.

And the application for the enlargement of time is dated 30th October, 2019, filed on the same day.

Furthermore, I hold the view that it raises a serious question as to when does time begin to run in an inter-party's application when inordinate delay occurs in perfecting and serving same. Is it on the date of the judgement or worse still immediately after perfection and service of the order? Whilst in the case of ex-parte applications, could it be said that time strictly begins to run immediately the order is granted or perfected and brought to the absent party's attention? This is one such case, the latter seems plausible. This Honourable Court do hold that this application was made in good time in consequence whereof I hereby grant an enlargement of time to appeal the ruling of Hon. Justice M.M. Samba JA dated 16th April, 2019, such time to run out within two weeks after the delivery of this ruling.

The Plaintiff/Respondent who has undertaken not to sell is hereby restrained from offering for sale/selling the possessed mortgage property until after the determination of this appeal.

Cost occasioned by this application shall be cost in the cause.

Hon. Justice M.D Kamara JA 

Hon. Justice J. B Aliu JA 

Hon. Justice S A Bah JA 

I agree

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Furthermore, respondent/applicant contends that they have good grounds of appeal against the court order dated 16th April, 2019. A copy of their proposed notice and grounds of Appeal is hereby exhibited and marked Ex A.M.K.5. In sum, the respondent/applicant does not contest her indebtedness to the plaintiff/respondent herein, but vehemently challenge the quantum of money claimed by the plaintiff/respondent herein.

Respondent/applicant contends that their request for enlargement of time to appeal is in good time due to the nature of the application which was ex-parte, and the outcome came to their knowledge at the time of execution i.e. 11th October, 2019.

By virtue of order 13 r3 (2) of the High Court Rules, 2007, possession relating to mortgage property are executed without service of the order on the occupants. As such, both the occupants and counsel for the respondent applicant herein only became aware of the existence of the Hon. Justice M. M. Samba's order on the 16th April, 2019 after execution i.e. 11th October, 2019. They were not served copies of the judgement ruling before then.

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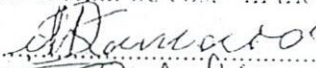
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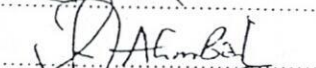
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The Plaintiff/Respondent who has undertaken not to sell is hereby-restrained from offering for sale/selling the possessed mortgage property until after the determination of this appeal.

Cost occasioned by this application shall be cost in the cause.

Hon. Justice M.D Kamara JA 

Hon. Justice J. B Aliu JA 

Hon. Justice S A Bah JA 

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