

IN THE COURT OF APPEAL OF SIERRA LEONE

CIV. APP. 82/2019

FREETOWN CITY COUNCIL

17 WALLACE JOHNSON STREET

FREETOWN

APPELLANT/APPLICANT

AND

HELEN CAESAR

4 RIDLEY STREET

FREETOWN.

-RESPONDENT/RESPONDENT

REPRESENTATION:

TAMBA KELLY ESQ

- COUNSEL FOR THE APPELLANT/APPLICANT

FRANCIS GERBER ESQ

- COUNSEL FOR THE RESPONDENT/RESPONDENT

CORAM:

HON. JUSTICE SENGU M KOROMA

-JSC (PRESIDING)

HON. JUSTICE FATMATTÀ B ALHADI

- JA

HON. JUSTICE KOMBA KAMANDA

- JA

RULING DELIVERED BY HON. MR. JUSTICE SENGU M.KOROMA JSC DATED  
THE 13<sup>th</sup> DAY OF <sup>July</sup> JUNE, 2022.

1. The Appellant/Applicant approached this court by way of a Notice of Motion dated the 23<sup>rd</sup> day of July, 2020 seeking the following orders:-

- i) That this Honourable Court grants an interim Stay of Execution of the Judgment of "His Honour" Mr. Justice Alusine Sesay JSC dated 28<sup>th</sup> June, 2019 and all subsequent proceedings including the Order dated 2<sup>nd</sup> December, 2019 pending the hearing and determination of this application.
- ii) That this Honourable Court grants a Stay of Execution of the Judgment of "His Honour" Mr. Justice Alusine Sesay dated 28<sup>th</sup> June, 2019 and all subsequent proceedings, pending the hearing and determination of the Appellant/Applicant's appeal dated 18<sup>th</sup> December, 2019.
- iii) Any further or other Orders that this Honourable Court may deem fit and just.
- iv) Costs in the cause.

1. The Application was supported by the affidavit of Tamba Kellie Esq. sworn to on the 23<sup>rd</sup> day of July, 2020.

2. The Respondent opposed the Application and relied on the affidavit in opposition dated 26<sup>th</sup> day of March, 2021 and a Supplemental Affidavit dated 31<sup>st</sup> May, 2021.

3. In the course of oral submissions by Tamba Kelly Esq., Counsel for the Applicant and Francis Gerber Esq., Counsel for the Respondent, the latter informed the court that an *Application for a Stay of execution* was made to the Hon. Mr. Justice Alusine Sesay JSC (sitting as a High Court Judge) and granted on terms. A perusal of the exhibits attached to the Application herein revealed that by Exhibit "TK3" dated 2<sup>nd</sup> day of December, 2019, the Hon. Mr. Justice Alusine Sesay gave the following Orders:-

"I shall exercise my discretion based on all these facts to grant a Stay of Execution of the Judgment and Orders of this Court on terms. I shall make the following Orders:

- I. That the Defendant, Freetown City Council shall pay to the Plaintiff, Le 208, 903, 956.97 as part of adjudged sum to be paid to the Plaintiff.

II. That the Plaintiff shall give a written undertaking to refund the said sum of Le 208, 903, 956.97 in the event that the Appeal succeeds.

III. Each party shall bear its own costs.

4. It is clear from the foregoing that a Stay of Execution had already been granted and so the application herein amounts to an abuse of process. The Rules are clear as to how to proceed if a party is dissatisfied with Ruling of the Court below. Rule 64 of the Court of Appeal Rules, 1985 is clear on this point.

“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 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.”

5. In the instant case, the Applicant made an application to the Court below and it was granted on terms. The Applicant has not complied with the terms though the Respondent complied with hers by making an undertaking in the manner ordered by the Learned Trial Judge. By Exhibit “T.K 5” attached to the Affidavit in Support, the Applicant purported to introduce its own terms and concluded that “...in the meantime note that the undertaking as presented is totally unacceptable to our client”. It does not lie within the powers of Counsel to unilaterally vary terms ordered by the Learned Trial Judge; that would amount to a usurpation of judicial function. The Applicant could have applied to the Court below for a variation of the Order dated the 2<sup>nd</sup> day of December, 2019 stating the grounds communicated to the Respondent by Exhibit “T.K 5” or the Applicant could appeal to this Court against the said Ruling. What could be gleaned from Exhibit “T.K. 5” is an attempt by the Applicant to ignore the Order of the LTJ contained in Exhibit “T.K. 3”. This amounts to a contumelious disobedience of the lawful Orders of a Court of competent jurisdiction.

6. In the circumstance, we hold that the Application before us does not fulfil the requirements of the Rules and Practice, ought to be dismissed, and is hereby dismissed.

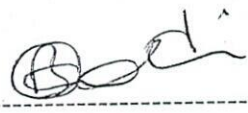
7. Considering the unnecessary delay caused by this Application, it is the duty of this Court to make consequential Orders consistent with the obligation placed on it by the overriding objective to ensure that justice is done.

8. We therefore Order as follows:-



1. That the Appellant/Applicant complies with the Orders of His Lordship Hon. Justice Alusine S. Sesay JSC dated the 2<sup>nd</sup> day of December, 2019 within a period of one month from the date of this Order.
2. Costs to the Respondent, such costs to be taxed if not agreed.

  
Hon. Justice Sengu M. Koroma JSC

Hon. Justice Fatmatta Bintu Alhadi JA-----  


Hon. Justice Komba Kamanda JA-----  
