

2 C.C APP 52/22

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

BENJAMIN JUXON SMITH- APPRLLANT/APPLICANT
(BANDA THOMAS & CO)

AND

VINCENT LAMIN KANU (JR)- RESPONDENT/RESPONDENT
(LAMBERT & PARTNERS)

CORAM:

HON. MR JUSTICE REGINALD S. FYNN JA. PRESIDING

HON. MR JUSTICE MONFRED M. SESAY JA.

HON. MRS JUSTICE MUSU D. KAMARA JA.

ADVOCATE: ~~S.W.~~ KUTUBU Esq FOR THE APPELLANT/APPLICANT
P. FOFANAH Esq FOR RESPONDENT/RESPONDENT

RULING DELIVERED ON THE 13th JUNE, 2024

By Notice of Motion dated the 6th day of February, 2024, the Appellant/Applicant seeks a stay of execution of the Judgement of the High Court dated the 7th day of October, 2022 pending the hearing and determination of the appeal to the Court of Appeal.

A brief background is that the Respondent/Respondent as Plaintiff on the 7th September, 2023 issued a Writ of Summons against the Appellant/Applicant herein as Defendant.

An appearance was entered on his behalf and a defence and counter-claim were also filed on his behalf.

That after the defence and counter-claim had been filed, an application for determination on a point of law dated 2nd November, 2022 was made by the Respondent/Respondent. That the ruling dated 7th October, 2022 was delivered in favour of the Respondent/Respondent by the trial Judge granting him an order for the recovery of possession of the disputed res at Sir Samuel Lewis Road, Aberdeen, Freetown in the Western Area of the Republic of Sierra Leone.

Being aggrieved with that ruling, the Appellant/Applicant filed an appeal against the said, Judgement and also filed an application for a stay of execution in the High Court but same was refused.

Under the said High Court Judgement, the Respondent/Respondent (as Administrator of the estate of Vincent Kanu) had been granted an order for the recovery of possession of all that piece and parcel of land situate lying and being at Sir Samuel Lewis Road aforesaid the portion dimensions and boundaries delineated on survey plan No. LS 3710/ 2000 measuring 0.8788 acres, same having been declared to form part of the estate of Vincent Kanu (deceased) on the 22nd January 2024.

He now applies to this Court for a stay of execution of same and argues that if this Court were to allow the Respondent/Respondent to execute, that in the event his appeal succeeds, he would have suffered grave injustice and irreparable damage thereby rendering his appeal nugatory. In his affidavit in support, the Appellant/Applicant main reasons for seeking a stay of execution are; his long stay for over two decades on the land including development he has undertaken on the land. He further alluded to the deceased having a special relationship with

his sister etc, as special circumstances to be considered. Furthermore, that his workers will lose their source of earning and that he deals with very expensive vehicles and machinery that cannot be easily relocated. He expressed his fear to incur significant and crippling amounts of money to find alternative location for the expensive vehicles kept at his garage during the subsistence of the appeal which by his status is unachievable. That he can only maintain the payment of salaries of his workers if the garage is operational and execution will render his workers unemployed.

This Court has repeatedly emphasized that for it to order a stay of execution of a regular judgment, the rules require that the Applicant must show that there are special circumstances in the case and that the grounds of appeal proffered are prima facie strong grounds of appeal: (Firetex International Co. Ltd. vs. Sierra Leone External Telecommunications Ltd. Misc. App. 19/02) is illustrative of these principles:

"The general rule is that a stay of execution will be granted upon proof of prima facie good ground of appeal and the existence of special or exceptional circumstances. The onus is on the applicant to show by affidavit evidence that the two requirements do exist. "

"The legal principle for the exercise of the Court's discretion has always been that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. This is so because in a contested case the successful party should not be deprived of the fruits of a judgment given in his favor" (see also Yusuf Bundu v. Mohamed Bailor Jalloh MisApp 23/2004(Unreported) and Bindoru & Others v. Emerica & Others Civ.App 58/2013(Unreported))

The Court has not found the averments relating to the business arrangements of the Appellant/Applicant convincing. As these may be merely economical on the one hand and sentimental on the other. On their own the difficulties of removing the garage to another location together with the employment challenges which such a move may result in cannot support an application such as this one.

The Court however recalls its ruling in Lucy Decker Et al v. Goldstone Decker Civ App, 11/2002 (unreported) cited by the Appellant/Applicant and in particular the dictum of G. Gelaga-King JA where his Lordship had this to say:

"This family relationship is distinct from the great majority of the usual cases where the litigants are strangers in the sense that they are not related either by marriage, consanguinity or at all"

The Appellant/Applicant has alluded to a very close family-like relationship with the deceased and his family. The affidavit in support has averments, inter alia, as follows (and it is important to note that this is not controverted):

"That I was so frequent in the household of the deceased intestate that even the Respondent/Respondent would always award me the greatest respect as his elder in the family. That I am well known and accepted as part of the deceased intestate's family and the deceased trusted me with more affairs of his life than even many other members of his family"

It is worth reiterating that the above evidence remains uncontroverted. It is also worth noting, and for the avoidance of any doubt, that the Court does not wish to convey, as of right any of the interests which can only accrue to a family member to a non-family member. The Court however does hold for the limited purposes of special circumstances relating to a stay of execution, as in the present application, that a relationship such as the one which the Appellant/Applicant has described will be sufficient when uncontroverted to bring a person under the

Decker v. Decker distinction even though marriage and consanguinity may be absent.

The Court also recalls its ruling in Fofanah v. Fofanah Misc.App.16/25 (unreported) where a mix of circumstances each on its own not being sufficiently special but with all found in the same case were held to be cumulatively satisfactory to fulfil the special circumstance requirement. This is what the Court said then:

"Each of the issues recently mentioned (ie the uncontested action, the polygamous family situation and the applicant's illness) arguably taken on their own may not amount to an "uncommon" situation which is "distinct from the general run of things (See Lucy Decker and Others vs. Goldstone Decker Misc. App. 13/2002 (Judgment of G. Gelaga-King, JA however finding them all together, in one place and in the same case as we have them here in my opinion, satisfies the requirement of special circumstances and I so hold.

The proposed grounds of appeal have also not escaped the Court attention especially in so far as they relate to the technical nature of the impugned judgment which is one given under Order 17 of the High Court Rules, 2007 and without the need for a full blown trial.

The suitability for the application of Order 17 in the circumstances of this case is being called into question. Allegations are being made in these grounds, inter alia, that disputed factual issues which would ordinarily require a hearing with testimony were erroneously decided upon affidavit evidence.

It is similarly alleged that the judge below "relied on hearsay evidence to ground her decision on fundamental issues in the dispute between the parties"

Without commenting on the merits or otherwise of the grounds of appeal, the Court is of the opinion that these are arguable grounds which if they were to succeed may likely have serious implications for the judgment. In addition to this the Respondent/Respondent has brought before us a hotly contended document (the purported unsigned Will of the deceased intestate) which was never produced below.

The Court must stress that in an Order 17 judgment, the Court must have had the opportunity to interact with and assess all the documents which are relevant to the case and especially the point of law on which the Court is being called upon to decide the case. A similar opportunity should also be given to opposing counsel who will then have the opportunity to comment on such a document or even bring evidence of its own with respect to any such document.

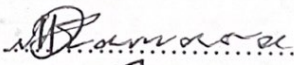


The foregoing considerations lead to the compelling conclusion that we should grant this application and make the following orders in the interest of justice and fair play:

- a. That the Court hereby grants a stay of the execution of the Judgment of 7th October, 2022 pending the hearing and determination of this appeal on the following terms:
 - i. The Appellant/Applicant shall forthwith pay a reasonable rent for the disputed premises such as will be agreed by the parties failing which the Court will proceed to fix a yearly rent;
 - ii. This matter shall be taken out of turn and be speedily heard;
 - iii. The costs of this application shall be costs in the cause.

That the Court now also gives directions for the future conduct of the appeal as follows:

1. That the parties shall immediately attend on our Registrar to settle the records of appeal if they have not already done so. They shall attend against the 21st of June, 2024.
2. That the parties shall file written synopsis of the submissions supporting their case as follows:
 - a. The Appellant no more than two weeks of the date of this ruling.
 - b. The Respondent no later than four weeks of the date of this ruling.
 - c. Oral hearing shall be held five weeks after the date of this ruling or at the date of the Registrar's notice for the same.

PANNEL:

1. Hon. Mrs. Justice Musu D. Kamara JA.....
2. Hon. Mr. Justice Reginald S. Fynn JA.....
3. Hon. Mr. Justice Monfred M. Sesay JA.....

13/6/2024