Misc. App. 323 / 05 2005 G. No. 11

IN THE HIGH COURT OF SIERRA LEONE

IN THE MATTER OF AN APPLICATION BY WILLIAM GEORGE

AND

IN THE MATTER OF A RULING MADE BY THE MAGISTRATE SITTING AT MAGISTRATE COURT NO. 1A IN THE EJECTMENT SUMMONS MATTER BETWEEN WILLIAM GEORGE (APPLICANT) VS. REBECCA WILLIAMS (RESPONDENT)

BETWEEN:

William George --- Plaintiff / Applicant

And

Rebecca Williams --- Defendant / Respondent

Wednesday 3rd May 2006

Before Mrs. Justice A. Showers

Case Called

E. Kargbo Esq for the Applicant

S.K. Koroma Esq. for the Respondent -- Absent

JUDGMENT

This is an application by way of originating Summons dated 15th November 2005 on behalf of the Plaintiff / Applicant for the determination of the following questions:

1. Whether or not the presiding Magistrate at Magistrate Court No. 1A has power to set aside a final judgment of a Magistrate court wherein both the Applicant and the Respondent testified.

2. Whether or not the Magistrate has the power to withdraw a matter for judgment wherein there has been an unnecessary delay by the Defence.

3. Whether or not the Magistrate has power to set aside a Judgment and order a retrial of the matter that has been properly concluded.

And that the court makes the following Orders if the court so finds:

1. That the ruling made by the presiding Magistrate at Court No. 1A in the said matter between Williams George and Rebecca Williams be set aside for irregularity.

2. that the Judgment dated 14th June 2005 still stands.

In support of the Originating Summons is the affidavit of Elvis Kargbo, the Solicitor for the Applicant herein. In the said affidavit Mr. Kargbo deposed to the fact that the Applicant was the complainant in the Magistrate Court and instituted proceedings against the Respondent herein for possession of certain premises situate at 15 Lewis Street Freetown. He deposed that after the complainant had closed his case, the case for the defence proceeded until it got to a stage where the defence had to produce certain documents. He stated that the matter was adjourned on two consecutive hearings for the defence to continue and on their failing to do so, the Magistrate adjourned for judgment and subsequently gave judgment in favour of the Applicant giving him possession of the said premises. Thereafter the Solicitor for the Respondent applied to the court for the judgment to be set aside for irregularity. The application was heard by a different Magistrate who granted the application and set aside the judgment. The applicant has therefore applied to this court for the determination of the questions set out above.

In his submission to the court, Counsel for the applicant submits that the Judgment was a final judgment as evidence was heard on behalf of both parties and judgment given. He therefore submits that the Magistrate was wrong in law and had no jurisdiction to set aside

the said judgment as it was not a judgment entered in default. He submitted that the respondent ought to have sought redress by appealing against the judgment. He therefore urged the court to grant the orders prayed for.

Counsel for the respondent did not turn up to reply to the submissions of Counsel for the Applicant. However having heard the submission of Counsel for the applicant, I have perused the records of the proceedings at the Magistrates Court No.1A it is clear from the records that the defence did not close its case. There was further evidence to be heard and the Magistrate had to close the case because of the absence of Counsel for the defendant and the defendant herself.

Now the question to be determined is, can the judgment be said to be a final judgment arrived at after hearing all the issues in the matter ? I think not. The defence did not complete its case. In that vein, I do not believe the judgment can be said to have been given on the merits of the case. All the possible evidence was not put before the court. In this regard, it is my view that the judgment can be termed a judgment in default of defence, in the sense that the defendant has failed to comply with the rules of court in putting his defence before the court.

The presiding Magistrate therefore had the power to set aside the judgment as it was not a final judgment.

Having perused the records of the court, it is observed that the Magistrate did not order a retrial of the matter as canvassed by counsel for the applicant. He ordered that the Defendant be allowed to proceed with her defence in the said matter. This was a proper order to make in the circumstance.

I must however observe that where an order is made to set aside a judgment, it is usually granted on terms that the defaulting party pays costs thrown away by reason of the trial becoming abortive. In this way the other party is compensated for his efforts. This order was however not made in this instant.

I shall now answer the questions as follows:

1. Having held that the judgment dated 14th June 2005 is not a final judgment the Magistrate at Magistrate Court No.1A had the power to set it aside.

2. The Magistrate has power to withdraw a matter for Judgment when there has been unnecessary delay on the part of the defence.

3. The Magistrate has power to set aside a Judgment obtained in default and order that the matter be restored to the list for further hearing. I order that it be put before the panel of Justices of Peace who initially heard the matter.

In the event, the application for the Order setting aside the ruling made by the Magistrate presiding in Magistrate Court No.1A setting in the matter between William George and Rebecca Williams is refused.

The order of the Magistrate presiding in Magistrate Court No.1A setting aside the Judgement dated 14th June 2005 is upheld.

I shall now grant costs to the Applicant for the setting aside of the Judgment. I shall assess costs at Le500,000.

A. Showers

A. Showers J.

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