

CIV. APP. 4/2008

N THE HIGH COURT OF SIERRA LEONE

BETWEEN:

JEAN PIERRE ELEADY-COLE

- DEFENDANT/APPLICANT

AND

N. I K. ELEADY-COLE & ANOTHER - PLAINTIFF/RESPONDENT

CORAM

HON MRS JUSTICE P. O. HAMILTON, JSC

HON MRS JUSTICE S. BASH-TAQI, JSC

HON MR. E. E. ROBERTS, JA

*BARRISTERS*

J B Jenkins-Johnston Esq. for the 2<sup>nd</sup> Defendant/Applicant

Yada H. Williams Esq. & Osman Jalloh, Esq. for the Plaintiff/Respondent

RULING DELIVERED ON 30<sup>TH</sup> DAY OF JUNE 2009

The Applicants by this Notice of Motion dated 18<sup>th</sup> February 2008 seeks, inter alia, the following Orders:

1. That the 2<sup>nd</sup> Defendant/Applicant be granted a Stay of Execution of the Ruling and Orders of Hallway, J, made herein on 11<sup>th</sup> January 2008 pending the hearing and determination of the 2<sup>nd</sup> Defendant/Applicant's application herein, and also pending the Appeal to the Court of Appeal.
2. That the 2<sup>nd</sup> Defendant/Applicant herein be granted a Stay of all proceedings in the action herein consequent upon the Ruling and Orders of Hallway, J. made herein on the 11<sup>th</sup> day of January 2008 pending the hearing and determination of the application herein, and also pending the Appeal to the Court of Appeal.

The Motion is supported by the Affidavit of James Blyden Jenkins-Johnston sworn on 18<sup>th</sup> February 2008, annexed to which are several exhibits, namely:

- Exh. "A"- Writ of Summons dated 16<sup>th</sup> January 2007; in the matter entitled Civ. App.6/93;  
 Exh. "C" - Defence & Counterclaim of the Applicant dated 26<sup>th</sup> March 2007;  
 Exh. "D" - Writ of Summons dated 10<sup>th</sup> April 2007 filed on behalf of the Plaintiff/Respondents seeking directions from the Court on a number of orders;  
 Exh. "E" - Order of the High Court dated 18<sup>th</sup> May 2007 ordering the filing of questions of law;  
 Exh. "F" - Submissions on questions of law filed on behalf of the 2<sup>nd</sup> Defendant/Applicant dated 3rd July 2007;



Exh. "G" – The Ruling of the Trial Judge on the questions of law in Exh. "R" dated 11<sup>th</sup> January 2008;

Exh. "H" – Notice of Appeal filed pursuant to the Order of the Trial Judge made on 18<sup>th</sup> January 2008 granting leave to appeal and the Notice of Appeal.

Exh. "J" – Order refusing Stay of Execution and Stay of proceedings dated 13<sup>th</sup> February 2008.

The application is made pursuant to Rules 28 & 64 of the Court of Appeal Rules 1985.

### **BACKGROUND**

A brief background to this application is that the Plaintiff/Respondent instituted proceedings in the High Court against the Defendant/Applicant, claiming inter alia, (a) revocation of a Deed of Conveyance made between Dr. Reginald Eleady-Cole (the Applicant's father) and the Applicant granting the Applicant the property at 14 Spur Loop Wilberforce Freetown, (b) an Account of all rents accrued from the said property for the period 22<sup>nd</sup> August 1984, (c) an Order that the said property be sold by public or private treaty and the proceeds of such sale to be divided equally between the Plaintiff and the Estate of Dr. Eleady-Cole, (d) recovery of possession of the portion of the property in the occupation of the Defendant/Applicant, and (e) an Injunction restraining the Defendant/Applicant from disposing, etc of the said property, (See Exh. "A"). The 2<sup>nd</sup> Defendant/Applicant filed a Statement of Defence and Counter claim on 26<sup>th</sup> March 2007. On 20<sup>th</sup> April 2007 the Plaintiff/Respondent's Solicitors filed a Summons for directions and discovery seeking a number of Orders, to which Hallway. J. on 18<sup>th</sup> May 2007 ruled that the issues raised in the Defence and Counterclaim should be determined before discovery. Both Counsel argued the issues before the Trial Judge, who, on the 11<sup>th</sup> January 2008 struck out the 2<sup>nd</sup> Defendant/Applicant's defence and dismissed his Counter Claim. The 2<sup>nd</sup> Defendant/Applicant appealed against the Ruling pursuant to the leave granted by the Trial Judge, and applied for a stay of execution of the Judgment and Orders of the Trial Judge and a Stay of the proceedings. The application was refused, hence the present application in this Court.

### **SUBMISSIONS**

In his submissions in support of his application, Mr. Jenkins-Johnston said that the matters raised in the Applicant's appeal are serious and substantial, especially so in the light of the contents of the Supreme Court Judgment; that having regard to the contents of the Order, Exh. "G" striking out the substantial points of law raised in the defence, the 2<sup>nd</sup> Defendant/Applicant's case would be rendered nugatory if a stay is not granted; that the Trial Judge in his Ruling of 11<sup>th</sup> January 2008, re-opened most of the matters that were dealt with by the Supreme Court in their Judgment, and by dismissing the 2<sup>nd</sup> Defendant/Applicant's defence and striking his Counterclaim, the Trial Judge deprived the 2<sup>nd</sup> Defendant/Applicant of his case or course of action. He submitted that the circumstances shown by this case are exceptional warranting the exercise of the Court's discretion to grant a stay of proceedings pending the hearing of the appeal.

In his reply, Mr. Yada Williams submitted that the averment in paragraph 11 of the Supporting Affidavit is erroneous; that at no time in the Supreme Court judgment did that declare that the legal estate in the property is vested on the 2<sup>nd</sup> Defendant/Applicant; that on



the contrary the Supreme Court held that the property is held in trust for the Plaintiff/Respondent. Furthermore, what the 2<sup>nd</sup> Defendant/Applicant is relying on special circumstance that was fraudulently obtained by him from his father, in that while the matter was still being adjudicated in Court in the divorce action in which the Plaintiff/Respondent was claiming a 50% interest in the property, the 2<sup>nd</sup> Defendant/Applicant's father, on 30<sup>th</sup> June 1982, fraudulently purported to dispose of the property. In these circumstances, the Court cannot and should not transform that fraudulent conduct into special circumstances. He submitted the Supreme Court held in that Judgment, that the legal estate in the property was at all material times vested in the 2<sup>nd</sup> Defendant/Applicant's father on trust for the father and the Plaintiff/Respondent in equal shares. In addition, he submitted that Counsel for the 2<sup>nd</sup> Defendant/Applicant has not mentioned any issue that was re-opened by the Trial Judge; that the Plaintiff/Respondent's intention here is to enforce the Supreme Court judgment and not to re-open any issues that had been dealt with by that Court.

With regards the Statement of Defence, Mr. Williams, submitted that there is no issue raised in the defence save for Sec 191(b) of the Statute of Limitation 1971; but submitted that the Judgment of the Supreme Court having confirmed the existence of the trust, the Statute of Limitation is not applicable to Trust property, and therefore, the Trial Judge had good reason for striking out the Defendant/Applicant's defence. He stressed that the Defendant/Applicant has not shown any special circumstances to warrant the exercise of the Court's discretion to grant a Stay of Execution, and moreover, he has not given any good and substantial grounds of appeal. He relied on the case of **Desmond Luke vs. Bank of Sierra Leone, Misc. App. 22/04 (unreported)**.

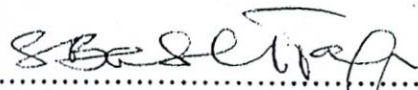
He argued that the Plaintiff/Respondent in this case has been deprived of her right to the property and it would be unconscionable for this Court at this stage to grant a Stay of Execution. He explained that the reason the Plaintiff/Respondent brought the fresh proceedings was because the Supreme Court declined to revoke the 2<sup>nd</sup> Defendant/Applicant's Conveyance saying that he was not a party to the action before that Court.

The exhibits in this matter show that in fact the Supreme Court made a declaration in their Judgment as to the issues in dispute on the 7<sup>th</sup> September 2006. We have read and considered the Orders made by Halloway, J, on 11<sup>th</sup> January, 2008.

We believe that in order to decide the matters pertinent in determining the issues in this action, a Stay of proceedings as prayed for by the 2<sup>nd</sup> Defendant/Applicant should be granted and we therefore make the following Orders:

1. The 2<sup>nd</sup> Defendant/Applicant is granted a Stay of Execution of the said Ruling and Orders of Halloway, J. made on 11<sup>th</sup> January 2008, pending the hearing and determination of the 2<sup>nd</sup> Defendant/Applicant's appeal to the Court of Appeal.
2. The 2<sup>nd</sup> Defendant/Applicant is granted a Stay of all proceedings in the action herein consequent upon the Ruling and Orders of Halloway, J, pending the hearing and determination of the Appeal to the Court of Appeal.
3. That the costs of this application be costs in the Cause.

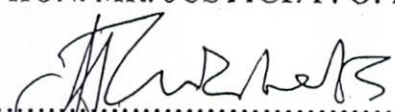
4. In view of the nature of this case and the length of time it has taken in the Courts, the Appeal be tried speedily and in this regard, the Court of Appeal Registry is hereby ordered to prepare the Records of the Appeal within Twenty-Eight (28) days from the date of this Order.
5. The 2<sup>nd</sup> Defendant/Applicant is to file his Skeleton Arguments within 14 days after the preparation of the records and the Plaintiff/Respondent to respond within 14 days thereafter
6. The substantive appeal is fixed for hearing on 8<sup>th</sup> October 2009.



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HON MRS JUSTICE S. BASH-TAQI, JSC



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HON. MR. JUSTICE P. O. HAMILTON, JSC



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HON. MR/ JUSTICE E. E. ROBERTS, JA