

C.C. 759/2004 2004 A. NO. 21

IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

BETWEEN: -
CHO JOSEPH ANSU - PLAINTIFF/RESPONDENT

AND
THE EXECUTOR AND/OR -1ST DEFENDANT/APPLICANT
ADMINISTRATOR OF 19C, BYRNE -2ND DEF/APPLICANT
LANE, OFF ABERDEEN ROAD
FREETOWN.

E. Pabs Garnon Esq. for the Defendants/Applicants
G, K, Tholley Esq. for the Plaintiff/Respondent

RULING DELIVERED THE 25th DAY OF February, 2011

The Defendants/Applicants herein have filed a Notice of Motion dated 23rd November, 2010 in which they seek the following Orders:

1. That the execution levied on premises situate lying and being at No. 19 Byrne Lane off Sir Samuel Lewis Road Freetown pursuant to a Writ of Possession and Fieri Facias dated 22nd December 2009 and all subsequent proceedings be set aside for irregularity to wit: -
 - a) That there was an extant stay of execution of all proceedings granted by the High Court on 14th, July 2010 which said stay was violated by the action of the Under Sheriff of the High Court.

2. That the execution of the Under Sheriff be reversed and the property returned to the persons in possession of the said property.
3. That the Under Sheriff of the High Court be ordered to pay all damages suffered by the occupants of No.19 Byrne Lane consequent upon the said wrongful execution.
4. That all costs occasioned by the Applicants be borne by the Under Sheriff of the High Court.
5. Any further or other Orders.

In support of the application are the affidavits of E. Pabs Garnon and Sadia Pratt. The deponent, E. Pabs Garnon in his affidavit deposed to the facts leading to the application which are briefly as follows: - That a stay of execution of the judgment of the High Court dated 1st April 2008 was ordered on 14th July, 2010, a copy each of the Notice of Motion, Order of Court and undertaking filed on behalf of the Defendants consequent upon the stay were exhibited to the said affidavit and marked Exh. "EPG2a-y," EPG3 and EPG4" respectively. That the Order granting the stay was served on the Under Sheriff. That the deponent when he became aware of the action of the Under Sheriff made a report of the unlawful execution to the Master and Registrar of the High Court and it was eventually decided that the

keys to the property should be returned to the occupants thereof but would not be returned unless an application was made to the court to protest the unlawful action of the Under Sheriff.

The substance of the facts deposed to in the affidavit of **SADIA PRATT** relate to the activities of the bailiffs who went to execute the writ of possession and fifa which caused loss and damage to her personal property. She deposed that she lost Le500,000 of her personal money and Le96,000 which were monies belonging to her Church and the damage caused to her goods are estimated at Le20,000,000, in addition to substantial emotional and physical distress.

Counsel for the Applicants drew the court's attention to Exh. "EPG2s a letter addressed to the Applicants former solicitor dated 14th April 2008 and written by the solicitor for the Plaintiffs in which he confirmed that they would not press for the mesne profits awarded by the court in view of the solicitor's co-operation in the matter. Counsel submitted that in the light of that understanding it was improper for execution to be levied for amounts calculated as mesne profits. He maintained that the fact that the Plaintiffs already had possession of the premises at the date of the writ of possession and fifa meant that execution could only have been levied for mesne profits which had earlier been waived. He therefore contended that the execution was improper.

Counsel further submitted that the writ of *fifa* could not have been said to be issued pursuant to the provisions of the Execution against Real Property Act Cap 22 of the Laws of Sierra Leone which provided a specific format to be used for the sale of real property under the said Act. He referred the court to **Halsbury's Laws of England** 3rd ed Vol. 16 and submitted that real property cannot be seized under a normal writ of possession and *fifa* and that the only way real property can be sold under a writ of *fifa* is if the execution is done pursuant to the provisions of Cap. 22.

Counsel further referred to the letter from the Applicant's solicitors dated 12th July 2010 addressed to the Under Sheriff- Exh "EPG2x" in which they informed him that the auction conducted on the premises in issue was unlawful on the grounds that the writ of possession was contrary to the provisions of the said Cap 22 and advised them to hold up all further action until the lawfulness or otherwise of their action was determined. The said solicitors then proceeded to obtain a stay of execution of the said judgment on 14th July 2010, which was served on the Under Sheriff on the 16th July 2010. He maintained that on the 10th November 2010 therefore when the bailiffs entered the premises and forcefully evicted the occupants thereof, the said execution was unlawful.

The Plaintiff opposed the application and an affidavit in opposition was sworn firstly by **OSMAN IBRAHIM KANU**, State Counsel and Solicitor for the Under Sheriff.

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The said affidavit in opposition was sworn to on 17th December 2010. The deponent therein deposed that the sale of the premises was conducted on 10th July 2010 after a Notice of Sale of Premises had been issued by the Under Sheriff pursuant to the provisions of Cap 22 and that the Order for a stay of execution had been obtained on 14th July 2010 after the sale. It was further deposed that the Applicants had failed to make their application to the court promptly since the court re-opened in September 2010 after the court's long vacation.

The second affidavit in opposition was filed by G.K. Tholley, who inter alia, swore that the judgment in the matter was lawfully executed by the Under Sheriff and that the Defendants had voluntarily vacated the said premises and given up the keys to the bailiffs even before the said execution of the judgment. He deposed that the averments contained in the affidavit of **MRS. SADIA PRATT** that they were forcefully evicted from the premises were not true as he was informed that the bailiffs did not interfere with the goods and possessions of the occupants of the said premises. He deposed that the Order of Court dated 14th July 2010 was not a final order and the Plaintiff was not expected to wait in perpetuity to enjoy the fruits of his judgment.

Solicitors for the Defendants filed a Notice of Intention to cross-examine the deponent G. K. Tholley on the contents of his affidavit and he was duly cross-examined.

In this application the issue to be determined is whether or not the execution of the judgment of the court dated 1st April 2008 by the bailiffs on 10th November 2010 pursuant to a writ of possession and fifa dated 22nd December 2009 was lawful.

It is therefore necessary to examine the said writ of possession and fifa which gave the bailiffs the relevant authority to execute the said writ. It is clear from the said writ that the bailiffs were authorised to levy execution on the goods and chattels of the Defendants in the sum of US\$ 3000 per annum from 1st January 2000 as mesne profits until possession is delivered, costs of Le500, 000 as well as costs of Le3, 000,000 ordered by the court on 11th December 2009. The complaint is that the bailiffs on the 10th November 2010 well after a stay of execution of the said judgment had been obtained and the Under Sheriff duly notified, entered the premises and forcibly evicted the occupants therefrom and threw out their possessions causing damage to them in the process. The Defendants now want the execution reversed, the occupants put back in possession with their goods returned to them and the Under Sheriff ordered to pay all damages suffered by the occupants.

Every writ of execution is directed to the Sheriff and recites the judgment or order under which it is issued and then commands the Sheriff what he is to do. The wording of the command must carefully follow that of the judgment.

Such a writ is the Sheriff's justification for the acts done under it and he is not bound to execute it unless it is in the proper form and properly indorsed; but if the writ is regular he is bound to execute it without question and it gives him an absolute justification for all acts done under it. See the case of **Williams vs. Williams & Nathan** {1937} 2 All E. R. 559. In that case Greer, L.J. stated at page 561 as follows:

“I think it is clear to demonstration from the case that has been cited of **Woollen v Wright** and other cases, and from a well known rule of law that a sheriff and a sheriff's officer, executing a judgment of the court, are acting, as one may say, on behalf of the court. Each is doing his duty as an officer of the court and is not a servant or agent of the Plaintiff who has recovered judgment in the action. Of course, there may be circumstances which show that the Plaintiff by intervention had made the sheriff his agent to do something which was not covered by the judgment or by the writ of execution”.

In this case there is evidence that on 14th July 2010 the court ordered a stay of execution of the judgment pursuant to which the writ of possession and fifa was executed. In **Halsbury's Law of England** 4th ed Vol. 17 paragraph 457 under the rubric “Wrongful execution”, it states as follows:

“An execution is wrongful where it is neither authorised nor justified by the writ of execution or by the judgment under which it is issued”.

In the case of **Moore vs. Lambeth County Court Registrar** {No. 2} {1970} 1 All E. R. 980 it was held that executions are wrongful when levied after a stay has been ordered by the court, which is the case here.

Further there is evidence that the solicitor for the Plaintiff had waived the payment of mesne profits as disclosed by Exh “EPG2r. From all the evidence available here it is clear that the execution carried out by the bailiffs is wrongful.

The next issue to be determined is the liability or otherwise of the Plaintiff and the Under Sheriff in these circumstances. The Defendants have prayed that the Under Sheriff pay all damages suffered by the occupants of the premises in issue. Let me again turn to the principle set out in **Halsbury’s Law of England** Vol. 17, 4th ed at paragraph 431 where it states that “a wrongful execution is a trespass and the judgment creditor and his solicitor are liable in damages to the judgment debtor.” See also the case of **Clissold v Cratchley** {1910} 2 K. B. 244 where a writ of *fifa* in respect of a judgment was issued after the judgment had been satisfied and the subsequent seizure of goods was held actionable trespass.

Here there is clear evidence that the Plaintiff had waived the payment of mesne profits and the subsequent issue of writ of fifa for the payment of mesne profits is therefore improper.

It is however noted that the writ of fifa was issued for mesne profits and costs. From the evidence it is apparent that the amount claimed for mesne profits ought not to have been so claimed. Therefore the amount authorised to be levied was more than what the Plaintiff is entitled to.

There is no evidence before the court that the Plaintiff's solicitor was not aware of the said waiver. No explanation has been given for the endorsement of the mesne profits in the said writ. In the circumstance the bailiffs using the said writ as their authorization were entitled to levy for the amount indorsed therein and cannot be held liable for the excessive execution. It seems to me that in this case it is the Plaintiff's solicitor who issued the writ in the first place who is liable in damages. As was held in the **Williams vs. Williams & Nathan** case referred to supra the bailiffs are bound to execute the writ without question as officers of the court and in this case they cannot be said to be servants or agents of the Plaintiff. The execution is therefore wrongful and the writ of possession and fifa combined dated 22nd December 2009 is accordingly set aside.

Having set aside that wrongful execution of the said writ of fieri facias an order for restitution ought to be made to the successful party. In the circumstance the Under Sheriff is hereby ordered to return to persons in possession of the said property all goods and chattels levied in execution.

In sum the application is granted and the following Orders are made

1. The Writ of Possession and fieri facias dated 22nd December 2009 and execution levied on the premises situate ~~levied on~~ ~~premises~~ situate lying and being at No. 19 Byrne Lane off Sir Samuel Lewis Road Freetown pursuant to the said writ of possession and fieri facias are hereby set aside for irregularity.
2. That the property seized in the said execution be returned to the persons in possession of the said property.
3. That the damages consequent upon the wrongful execution suffered by the occupants of the said property be paid by the Plaintiff and his solicitor. Such damages to be assessed.
4. That the costs of the application be borne by the Plaintiff. *to be assessed.*

SIGNED: - A. SHOWERS
JUSTICE OF COURT OF APPEAL

A. Showers

25/2/2011