

125

DIV. C. 9/10 2010 S. NO. 3

IN THE HIGH COURT OF SIERRA LEONE
(DIVORCE JURISDICTION)

IN THE MATTER OF A PETITION BY CHRISTAINA SAAD FOR
DISSOLUTION OF MARRIAGE.

BETWEEN: -

CHRISTIANA SAAD -PETITIONER/RESPONDENT
(NEE ABOUD)

AND

SAMIR SAAD - RESPONDENT/APPLICANT
FATME SHALLOP - CO-RESPONDENT

Mrs. B. Michael for the Petitioner/Respondent
M. P. Fofanah Esq. for the Respondent/Applicant

RULING DELIVERED THE 26th DAY OF November, 2012

Mrs. B. Michael of counsel for the Petitioner/Respondent has raised a preliminary objection to an application by Notice of Motion dated 18th October 2012 filed on behalf of the Respondent/Applicant seeking a stay of execution of the Judgment and Orders of the court dated 14th June 2012 and for variation of same. The application for a stay of execution of the said Judgment and Orders is made pursuant to Order 46 rule 11 and Order 48 rule 12 of the High Court Rules 2007.

Counsel for the Petitioner's objection is on the ground of jurisdiction. She submitted that the court cannot entertain the application because to do so would be tantamount to circumventing the Court of Appeal.

She went on further to submit that hearing the application would be a breach of the fundamental principle that except by way of appeal, no court or judge has power to rehear, review, alter or vary any judgment or order after it has been drawn up and entered. She submitted that the object of the rule is to bring litigation to finality.

Counsel maintained that there are certain exceptions to the said rule, but this case does not fall within those exceptions and she referred the court to **Halsbury's Laws of England** 3rd ed. Vol. 22 paragraph 1665 at page 785.

I must at this stage point out that this matter is a matrimonial cause and its practice and procedure are quite specific. Let me therefore refer to the provisions of s. 26 of the Matrimonial Causes Act, Cap 102 of the Laws of Sierra Leone which gives the court power to vary Orders. It states as follows:

“The court may from time to time vary or modify any order for the periodical payment of money made under the provisions of this Act either by altering the times of payment or by increasing or diminishing the amount, or may temporarily suspend the order as to the whole or any part of the money ordered to be paid and subsequently revive it wholly or in part as the court thinks just.”

Furthermore Rule 43 of the Matrimonial Causes Rules, Cap 7 of the Laws of Sierra Leone provides that “A petitioner or a respondent if he has entered an appearance to the petition may at any time apply for a modification order.”

In **Halsbury's Laws of England**, 4th ed. Vol. 13 at paragraph 1168 under the rubric "What orders may be varied," there is a list of such orders and listed amongst them is "an order for periodical payments to be made or secured for a spouse or former spouse or a child of the family on the granting of a decree of divorce, nullity or judicial separation".

The court in this instance therefore has jurisdiction to entertain an application for a variation of its Order.

With regard the application for a stay of execution of the judgment, counsel for the Petitioner contended that the stay cannot be granted as there is no appeal and the circumstances of this application do not fall within Order 46 rule 11 and Order 48 rule 12 of the High Court Rules 2007. She submitted that Order 46 rule 11 does not apply to judgments or Orders given in matrimonial causes which involve maintenance of families and dependants. She contended that the said rule touches and concerns delivery of property or recovery of lump sums payments.

With respect to the provisions of Order 48 rule 12 relied on by the Respondent, counsel for the Petitioner submitted that the said rule should be read in the context of where a writ of execution has been issued or taken out against a Respondent which is not the case here. She therefore urged that the Notice of Motion be struck out.

The question is therefore can the judgment or Orders be stayed pursuant to the provisions of Order 46 rule 11 and Order 48 rule 12?

Or ^{de} 46 rule 11 makes provision for a party against whom judgment has been given to apply to the court for a stay of execution of the judgment or other relief on the ground of matters which have occurred since the date of the judgment.

Order 48 rule 12 provides for a party against whom judgment is given for the payment of money and the court is satisfied on his application at the time of the judgment or at any time thereafter that a) there are special circumstances which render it inexpedient to enforce the judgment or b) that the applicant is unable for any just cause to pay the money, the court may order stay of execution of the judgment.

Are these rules applicable to matrimonial cause?⁷ There are no specific provisions in our Matrimonial Causes Act, Cap 102 and Matrimonial Causes Rules, Cap 7 of the Laws of Sierra Leone for applications for stay of execution of judgments. However in **Halsbury's Laws of England**, 4th ed. Vol. 13 the volume on Divorce at paragraph 1212, page 571 under the rubric "Staying Execution" it states as follows

"At the time when an order for payment is made by the High Court or the divorce County Court or at any time thereafter a party who is liable to make payment under the order may apply to a judge or registrar for an order staying execution by writ of fieri facias or warrant of execution.

Upon such application, if the judge or registrar is satisfied either that there are special circumstances rendering it inexpedient to enforce the order or that the debtor is unable to pay the money, he may stay execution either absolutely or for such period and subject to such conditions as he thinks fit.”

The authority cited for the above rule or principle is Order 47 rule 1(i) of the Rules of the Supreme Court of England. The said Order found in the **1999 Supreme Court Practice** is *ipsissima verba* our Order 48 rule 12(i) relied on by the Respondent.

In the light of the above it is clear that Order 46 rule 11 and Order 48 rule 12 are applicable to matrimonial causes. The court can therefore entertain the application. The objection raised by counsel for the Petitioner is therefore overruled.

A. Showers

SIGNED: - A. SHOWERS 26/11/2012

JUSTICE OF COURT OF APPEAL