

CC. 280/2000

2000

S.

NO.20

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

SHEKU SANKOH

-

PLAINTIFF

ABASS SESAY

AND

FATU BANGURA

-

DEFENDANT

AND

FULLAH KAMARA

-

APPLICANT

Counsels:

S. M. SESAY Esq for the Plaintiffs

E. KARGBO Esq for the Applicant

JUDGMENT DELIVERED THIS

7<sup>th</sup>

DAY OF February 2012

BY

HONOURABLE MRS. JUSTICE V. M. SOLOMON J. A.

JUDGMENT

The action herein was commenced by Writ of Summons against the Defendant and Judgment was delivered in favour of the Plaintiff by order dated 10<sup>th</sup> March 2009. The said Judgment was delivered in respect of property situate lying and being at 4 Mill Street Freetown (hereinafter called "The Demised Premises"). By a subsequent order dated 7<sup>th</sup> April 2009 the Plaintiffs were granted leave to issue a writ of possession against the Defendant and for recovery of the demised premises. On the 23<sup>rd</sup> July 2009 this Court granted leave to the Applicant herein to amend the title of the action and all related documents. On the same date this Court also ordered a visit to the locus sine quo to ascertain whether No.4H Mill Street is part of No. 4A Mill Street, Freetown, the demised premises.

The present application is by Motion Paper dated 15<sup>th</sup> July 2009 in which the applicant is seeking inter alia a Stay of execution of the judgment dated 10<sup>th</sup> March 2009, damages for wrongful execution, further and/or any other orders and costs.

In support is the affidavit of the Applicant Fullah Kamara. There is no affidavit in opposition. Mr. E. Kargbo Esq. of Counsel for the Applicant relied on the affidavit in support and exhibits attached thereto. He

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submitted that this Applicant has been in possession of the demised premises for a period over 50 years and referred particularly to exhibit "FK9 1-4": Counsel submitted that the Applicant's property is separate and distinct from that of Fatu Bangura, the Defendant herein. He further urged this Court to exercise its discretion in his favour and grant the orders sought.

Mr. S.M. Sesay Esq. of Counsel on behalf of the Plaintiff submitted that the Applicant has not adduced any evidence to show that execution was levied on the No.4A Mill Street Freetown, the demised premises herein. He further submitted that there are no returns from the office of the Undersheriff and that this is a fundamental flaw. He further submitted that this Application is in breach of Order 41 Rule 2 of the High Court Rules 2007 (hereinafter called "The Rules"). He relied on case of Yamide Sesay v. Abdulai Bangura unreported and urged this Court to dismiss the application with costs.

The present application is basical for two orders to wit; that the Execution of the Judgment is irregular and for damages for wrongful execution. The first two orders are already spent. The question for my consideration is whether execution was levied on property at 4H Mill Street, Freetown instead of and/or in addition to 4A Mill Street Freetown. From the evidence these two pieces of property are distinct with different owners. Counsel for the Plaintiff has submitted that the applicant has not complied with Order 41 Rules 2 of the High Court Rules 2007. This application is not for setting aside of a judgment but for wrong execution of a judgment. The only evidence adduced is that of the Applicant himself. This application is one in which the Undersheriff's Office ought to have made a party so as to enable him file the relevant papers. As it is, this Court has not been furnished with all the facts in that there are no returns, no evidence from the Undersheriff and no sufficient facts to prove the averments of the Applicant. The Applicant deposes in paragraph 10 of his

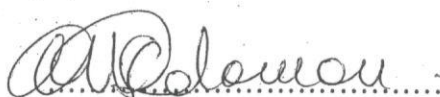
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Affidavit that there was damage and destruction caused but did not specifically give the particulars. Also, with the Undersheriff not being a partly and/or heard any order given would directly affect him to which he is not a party. There is no evidence that the Plaintiffs participated in the said execution.

In the interest of justice and considering all the circumstances, I am unable to grant the orders sought on the Motion Paper.

I hereby order as follows to wit:-

1. That the Orders sought on the Motion Paper dated 15<sup>th</sup> July 2009 are refused.
2. That the status quo is to be preserved in that there should not be any further execution of the judgment dated 10<sup>th</sup> March 2009 till a further order from this court.
3. Costs in the cause.
4. liberty to apply.



HON. JUSTICE V. M. SOLOMON J. A.