



IN THE HIGH COURT OF SIERRA LEONE
COMMERCIAL AND ADMIRALTY DIVISION
FAST TRACK COMMERCIAL COURT

Case No: Misc. App. 302 /15

THE HUMBLE PETITION OF CATERING INTERNATIONAL AND SERVICES (Sierra Leone)
LTD -PETITIONER

REPRESENTATION

Renner-Thomas & associates for the petitioner

BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.
RULING DELIVERED ON THE 17TH DECEMBER, 2015

The Petitioner/Applicant herein filed a Notice of Motion dated the 24th day of November, 2015, praying for the following reliefs:

1. That all further proceedings against the Petitioner/Applicant instituted by the creditors be restrained in the High Court.
2. That pursuant to Section 359 of the Companies Act ,No. 5 of 2009, the aforementioned suits not to be continued without leave by this Honourable Court
3. That in lieu of the said pending actions all the creditors of the Petitioner should prove their debts or claims at a time fixed by this Honourable Court pursuant to Section 389 of the Companies Act, No.5 of 2009.
4. Further or other relief as to the court may deem fit.

BACKGROUND

By a Notice of Motion dated 26th day of June, 2015, the Applicant herein applied to this Honourable Court for an order that in the absence of an official Receiver and/or Registrar as provided for under the Companies Act, No. 5 of 2009, Mr. David Carew Esq. a Chartered Accountant be appointed Provision Liquidator in respect of the winding up of the Applicant Company herein pursuant to section 365 of the said companies Act, 2009. On the 14th day of July, 2015, the Applicant had filed a petition for the winding up of Catering International and Services Sierra Leone Limited ("the company").the orders sought was granted by this Honourable Court on the 16th November, 2015.

THE PRESENT APPLICATION

Before counsel for the Applicant could move the court, Counsel for the Judgment Creditors raised a preliminary objection on the ground that there had been an Originating Notice of Motion filed by the Applicant in the Supreme Court in which a ruling was made bordering on the present application.

In the said application, the Applicant prayed for the following orders, amongst others:-

- I. That an interim stay be granted of the Garnishee proceedings currently in the High Court pending before Justice Sesay J. until the hearing and determination of the application herein.
- II. That the High Court be prohibited from continuing the said Garnishee proceedings currently pending before it on the grounds that the said court lacks jurisdiction to entertain the said proceedings in violation of the Provisions of Section 356 of the Companies Act, No. 5 of 2009.

Mr. Kabba Koroma submitted that at the hearing of the above application, the Supreme Court refused to grant a stay meaning therefore that the Garnishee proceedings against the Applicant herein were allowed to proceed. He further submitted that the Applicant has failed to disclose this fact in the present application. Mr. Koroma argued that the refusal of the Supreme Court to stay of the Garnishee Proceedings means that the High Court cannot restrain the Judgment Creditors from enjoying the fruits of their victory.

In addition to this objection, E.E.C Shears Moses Esq. Counsel for one of the Judgment Creditors, had filed an affidavit sworn to on the 22nd day of November, 2015 averring as follows, amongst others:-

- i. That the action against the petitioner was commenced some two months before the petition for winding up by them.
- ii. That the petitioner admitted they had no defence and did the Honourable thing, but did not state their impecunious state which would have led to more enquiries. Judgment was given against the Petitioner on the 23rd October, 2015.

Mr. Mohamed P Fofanah Counsel for the Applicant in his response argued that the present application was separate and distinct from that made in the Supreme Court. The application in the Supreme Court was in respect of the violation of section 356 of the said Companies Act.

I have listened keenly to Counsel on both sides and it is my view that the main issue for determination is the effect of the ruling of the Supreme Court on any of the creditors of the Applicant attempting to

execute judgment against it. I have included the other creditors apart from Respondent in the application before Supreme Court because the benefits of any ruling in its favour would equally be available to the rest of them.

Pursuing that line of reasoning, has the High Court got the right to stop the creditors, from executing their judgments (that is by granting the Orders prayed for herein) against the Applicant after the Supreme Court has refused to stay the said execution? It gives away no secret to observe that lawyers have their own unique discipline and approach to the resolution of legal problems. Not surprisingly, there are laws about determining the law. One of the most important of these laws is the law of precedent or stare decisis. The operation of this doctrine is best explained by reference to the English translation of the Latin phrase "stare decisis literally translate as "to stand by decided matters". The phrase "stare decisis" is itself an abbreviation of the Latin phrase "stare decisis quieta movere" which translate as "to stand by decisions and not to disturb settled matters".

This brings me to the question of whether the refusal of the Supreme Court in an interlocutory application to grant a stay is binding on the lower courts. The doctrine of stare decisis appears at first glance to relate to only trials and settled judgments of the higher courts and even at that, only the ratio decidendi and not an orbiter dictum or dicta.

However, in the instant case, I hold that the ruling of the Supreme Court in refusing to stay the Garnishee proceedings is binding on any lower court faced with the present application, the purpose of which is to restrain a party from doing what the said court has allowed it to do. This court lacks the power to restrain for example Food Land Super Market from all further proceedings in this matter. It follows that this court cannot at this stage restrain any of the other creditors as any action by any of them would enjoy the benefit of the doctrine of stare decisis which is usually justified by arguments which focus on the desirability of stability and certainly in the law and also by notions of justice and fairness.

I will finally touch on the issue of full and frank disclosure. To my mind, the Applicant ought to have disclosed to this court that there had already been an order by Justice Alusine Sesay which the Supreme Court has refused to stay. The Applicant has not done so. In SIPOREX TRADE SA-V- COMDEL COMMODITIES LTD

(1986) 2 LLOYD'S REP. 428 at 437, Bingham J. stated that an "an Applicant must show utmost good faith and disclose his case fully and fairly". This requires the Applicant to disclose all material facts and matters and "it is no excuse for the Applicant to say that he was not aware of the importance of matters he has omitted to state".

In the circumstances, this Honourable hereby stays the matter instituted MIS APP. 302/15 2015 C NO. 18 now pending before this court until the determination of the matter MIS. APP. 5/15 2015 pending in the Supreme Court



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Hon. Mr. Justice Sengu Koroma (J.)