

C.C.11/10                      2010                      W.                      NO. 1

**IN THE HIGH COURT OF SIERRA LEONE**  
**(GENERAL CIVIL DIVISION)**

BETWEEN: -

DONALD BOLA WILLIAMS                      -PLAINTIFF/RESPONDENT  
4, PADEMBA ROAD  
FREETOWN

AND

CHRISTIAN HEALTH ASSOCIATION                      -DEFENDANT/APPLICANT  
OF SIERRA LEONE (CHASL)  
4B, KINGHARMAN ROAD  
RICHMOND'S COMPOUND  
BROOKFIELDS  
FREETOWN

**C. Macauley Esq. for the Plaintiff/Respondent**  
**R. B. Kowa Esq. for the Defendant/Applicant**

**RULING DELIVERED THE 12<sup>th</sup> DAY OF July, 2016.**

This is an application by Notice of Motion dated 16<sup>th</sup> May 2016 filed on behalf of the Defendant/Applicant herein seeking a stay of execution of the judgment of this court dated 20<sup>th</sup> April 2016 pending the hearing and determination of the appeal against the said judgment to the Court of Appeal. In support of the application is the affidavit of **MR. WALTER CAREW**, Executive Director CHASL sworn to on 16<sup>th</sup> May, 2016. He deposed that the Defendant Institution CHASL is a charitable institution caring and providing socially and medically for the under privileged through funds from donors.

That the said Institution is a non-Governmental Organisation solely relying on these funds from donors meant for specific purposes. That an execution of the judgment will bring hardship on all its beneficiaries which may necessitate a halt in their activities and affect them adversely to perform their responsibilities. That the Defendant/Applicant would find it difficult to retrieve the judgment sum from the Plaintiff/Respondent should the appeal succeed. That the stay of execution will in no way cause hardship to the Plaintiff/Respondent.

The Plaintiff/Respondent opposed the application and an affidavit in opposition sworn to by Miss Isatu Jalloh, Solicitor on 23<sup>rd</sup> May 2016 was filed on his behalf. She deposed that the Defendant/Applicant has failed to disclose any special circumstances in its affidavit warranting the grant of a stay of execution and that the Notice of Appeal filed on behalf of the Applicant discloses no prima facie good grounds of appeal.

By a supplemental affidavit in support of the application sworn to by the said **MR. WALTER CAREW** on 24<sup>th</sup> May 2016 he deposed that bailiffs from the office of the Under Sheriff had proceeded to levy execution of the judgment on the Defendants and had seized two vehicles found in their premises. That one of the vehicles so seized is a project vehicle provided by a German NGO for effecting the said project which supported affected persons, communities and their health structures following the 2014 Ebola virus disease outbreak in Sierra Leone. That the said seizure of the vehicles has caused a halt in the operations of the project. That the deponent is informed by the bailiffs that the vehicles will be sold by public auction after two weeks from the date of seizure if the Defendant fails to pay the full judgment sum plus the execution fee.



The Plaintiff then filed a supplemental affidavit in opposition sworn to by Miss Isatu Jalloh on 1st June, 2016. She deposed that garnishee proceedings were earlier on taken against the Defendant and of the several Banks that responded only a sum just over seven million Leones was held by them to the credit of the Defendant when the judgment sum amounted to over seventy million Leones. That as a result of this the Plaintiff proceeded to levy execution by writ of fieri facias resulting in the seizure of the two vehicles. That this situation discloses that the Defendant is impecunious and therefore unlikely to fulfill the terms of the judgment. That the application for a stay is made to deprive the Plaintiff of the fruits of his judgment. That in the event that the court is minded to grant the stay prayed for the Plaintiff suggests that it be granted on the following terms "(a) payment of the judgment sum and interest thereon into an interest bearing account at a Commercial Bank nominated by the Plaintiff within 7 days of the date of the Order (b) that the signatories to the said account be the Plaintiff, the Defendant and the Master and Registrar, High Court with any two to sign and (c) that the cost of this application and of the action be paid within 7 days of the date of the Order."

These then are the facts as disclosed by the several affidavits filed herein.

The question to be asked, as is often the case in these applications is have special circumstances been disclosed here to warrant denying the Plaintiff, the successful litigant in this case the fruits of his judgment?

It seems to me that the circumstances relied on by the Defendant is that their Institution is a charitable NGO funded by donors and that their beneficiaries are the

under privileged. They also allege that execution of the judgment could cause hardship to these beneficiaries and may necessitate a halt in the activities of the Institution.

In the case of **Desmond Luke vs. Bank of Sierra Leone**, a 2004 unreported decision of the Court of Appeal, in dealing with the basis for the grant of stay of execution, the Court of Appeal held that

*“Moral, social or political considerations are often raised in arguments by an aggrieved party to support his or her plea for stay of execution of an order of court. Such considerations however do not and ought not to form the basis for the exercise of the court’s discretion to grant or refuse a stay of execution of the Order of the court. The legal basis for the exercise of the court’s discretion in a case such as this is that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution.”*

I believe this is a case where the court ought to balance the interests of the successful litigant and that of the Defendant. See the case of **Patrick Koroma vs. S. L. Housing Corporation & Anor** (2004 unreported decision of the Court of Appeal) The Plaintiff has been deprived of his terminal benefits since he left the Defendant’s Institution in 2009. If the stay is granted he would have to wait for quite some time before the appeal is heard and determined.



In addition to an applicant establishing that there are special circumstances, he must also show that he has prima facie good grounds of appeal. See the case **Patrick Koroma vs. S. L. Housing Corporation & Another**, already referred to supra.

In this case the Defendant has exhibited its Notice of Appeal. I have perused the grounds of appeal and in my view they do not reveal strong grounds which stand a good chance of success. In that vein I do not believe it would be in the Plaintiff's interest for him to be deprived further of the terminal benefits due him and to have to await the determination of an appeal which does not have much chance of success.

In the case of **Alhaji Abdul Wahid (Jnr) vs. Fatmata Floode & Others**, 2003 unreported decision of the Court of Appeal, Mr Justice Tolla Thompson, JA had this to say

*"This court has a wide and unfettered power to grant a stay of execution and may do so even though a writ of possession has been issued. But in granting such a stay the court must ensure that the successful litigant is not deprived of the fruits of his judgment and therefore it may be wrong to grant a stay of execution of a judgment pending appeal, where for instance, the appeal is frivolous or a grant of a stay will inflict hardship on a successful party than avoid it."*

I believe this *dicta* is applicable in this instant. In my judgment the Plaintiff who is the successful party will suffer hardship if he has to continue to go without the monies to which he is entitled.

Now the Defendant has argued that the chances of it retrieving the monies from the Plaintiff are quite slim should the appeal succeed. Counsel for the Defendant has relied heavily on the case of the **Sierra Leone National Shipping Co. vs. Albert Gomez and others** 2009 unreported decision of the Court of Appeal.

It is my view that the Defendants fear can be allayed by getting the Plaintiff to undertake to refund the monies in the event of the appeal succeeding.

Let me mention that the Plaintiff has submitted that if the stay is granted it should be on certain terms which include payment of the judgment sum in an interest bearing account at a commercial bank, within 7 days of the date of the Order. The Defendant after consideration of these terms asked for a longer period within which to comply and requests 21 days, which means that it does have sufficient finances to satisfy the judgment.

In the light of all the foregoing in my view the Defendant has failed to disclose that there are special circumstances warranting the grant of a stay and that there are *prima facie* good grounds of appeal in its notice of appeal. The application is therefore refused.

I make the following Orders

1. The application for a stay of the judgment of this court dated 20<sup>th</sup> April 2016 is refused.
2. The Plaintiff/Respondent is to enter into a bond with one guarantor guaranteeing the refund to the Defendant/Applicant of the judgment sum and interest if the appeal succeeds. The guarantor is to be a citizen of Sierra Leone and owner of real property in the Western Area.
3. The payment of the judgment sum and interest thereon by the Defendant/Applicant and the execution of the bond by the Plaintiff/Respondent to be done contemporaneously within 21 days of the date of this Order.
4. Costs of the application to be borne by the Defendant/Applicant to be taxed if not agreed upon.

*A. Showers*  
**SIGNED: - A. SHOWERS**

**JUSTICE OF THE SUPREME COURT**