

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

DR A R FOFANAH (Administrator of the estate of
of ALHAJI FODAY FOFANAH, DECEASED INTESTATE)

- PLAINTIFF

AND

AHMADOU SOSSOH- FOFANAH

- DEFENDANT

COUNSEL:

MS W S

SERRY-KAMAL for the Plaintiff

ELVIS KARGBO ESQ (before me) for the Defendant

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE

JUSTICE OF THE SUPREME COURT

RULING DELIVERED THE 30 DAY OF JANUARY, 2017

1. This is an Application dated 16 January, 2017 filed by the Plaintiff, seeking a stay of execution of the Judgment of this Court delivered the same day, pending the hearing and determination of the Plaintiff's appeal to the Court of Appeal.
2. The Application is supported by the affidavit of MsSerry-Kamal, deposed and sworn to the same day. Exhibited to her affidavit are the following documents: a copy of the Judgment of this Court, together with the drawn-up Court Order; a copy of the Plaintiff's Notice of Appeal filed the same day, i.e. 16 January; a witness statement made by one SulaimanFofanah on 6 November, 2014; and another witness statement made by Pa BassieFofanah.
3. In her affidavit, MsSerry-Kamal has deposed that the property in dispute is very valuable and will not be replaced if it were handed over to the Defendant who has no discernible income worth mentioning, and who will immediately sell the same, as he had done to the property given to him and to a cousin of his, at Newcastle Street, Kissy. He had absconded with the proceeds of sale of that property without giving his cousin a share in the same. MsSerry-Kamal deposes further that the Defendant has been to the

property with potential buyers, thereby manifesting an intention to sell the same even before judgment was delivered.

4. MsSerry-Kamal claims also, in her paragraph 11, that the Statutory Declaration tendered by the Defendant during the course of the trial was false and that a proposed witness, Pa BassieKoroma would have testified to the alleged falsity, but the Court had not allowed her to call that witness. It is true that when the Plaintiff made that particular application, the Court did refuse to allow Counsel to call Pa BassieKoroma, as set out at pages 62 & 63 of my minutes and at paragraph 24 of my Judgment; both MsSerry-Kamal and her late Senior had together, been allowed to re-open Plaintiff's case on four previous occasions, and to have allowed her to have done so for a fifth time, would, in my view, have amounted to over-indulgence and to the wrong exercise of judicial discretion.
5. Paragraphs 1 & 2 of my Ruling on that application at page 62 of my minutes, read as follows: *"1. I have read the Application filed by the Plaintiff and dated 19/03/15. The Plaintiff applies once more for his case to be re-opened so that he could call one Pa BassieKoroma, who, it is claimed, was a witness to the Statutory Declaration dated 14/06/2007. This Pa BassieKoroma has now stated in a witness statement that he was never a witness to any such document. 2. The existence of the Statutory Declaration must have been known to Counsel, and to the late MrSerry-Kamal who original appeared for the Plaintiff. I have bent backwards on several occasions to accommodate the Plaintiff. On two separate occasions I have allowed him to re-open his case in order to lead further evidence. I do not think it would be in the interests of justice to re-open the Plaintiff's case one more time."*
6. As regards what MsSerry-Kamal deposes in her paragraph 7 was said by PW4, SulaimanFofanah, his evidence appears at pages 47 - 48 of my minutes, and is dealt with at paragraph 20 of my Judgment, exhibited to MsSerry-Kamal's affidavit as "WSSK1". It is my view that MrSulaimanFofanah's out-of-Court assertions about what the Defendant did in relation to another property in the deceased's intestate's estate, has no bearing on the Application herein.
7. MsSerry-Kamal also deposes in her paragraph 11 that the Plaintiff's appeal has a good chance of succeeding because I did not allow her to call the said Pa BassieKoroma. As he was not called to testify, it would not make sense for

me, in this sort of Application, to speculate about what he may have had to say in the witness box, and, which would have persuaded me in favour of the Plaintiff. His statement was made on 19 March, 2015, nearly 8 years after action was instituted by the Plaintiff. I have to keep in view at all times, that the Plaintiff's case was not directed at the Defendant's Statutory Declaration; rather it was directed at the Defendant's claim to legitimacy.

8. The Plaintiff claimed, firstly, a declaration that the property at 46 Malamah Thomas Street, Freetown formed part of the estate of Alhaji Foday Fofanah. In a claim for a declaration of title to land, the Plaintiff can only succeed on the strength of his title, and not on the weakness of the Defendant's. This was confirmed over 35 years ago by the Supreme Court in SEYMOUR-WILSON v MUSA ABESS, and re-confirmed by the same Court in 2006 in Sup Ct Civ App 7/2004 - SORIE TARAWALLY v SORIE KOROMA. The Plaintiff himself tendered in evidence the lease in respect of the property which showed that it had expired in 1993 and had not been renewed. Alhaji Foday Fofanah's estate therefore had no claim on and to that property. How then could this Court declare that he, the Plaintiff, was the legal owner of the property in his capacity as Administrator of his late father's estate? I reached the conclusion at paragraph 28 of my Judgment that the Plaintiff had himself together with his Counsel, destroyed the basis of his claim. The Plaintiff and his Counsel, in my view, were more concerned with the parentage of the Defendant than with proving the Plaintiff's case on a balance of probabilities.
9. Another of the Plaintiff's contention, it seems, is that the Defendant's Statutory Declaration has no basis, and that the Defendant, if not restrained by this Court, will immediately sell the property. But the Plaintiff did not pray for the Statutory Declaration to be cancelled or annulled. For present purposes, it stands, until it is set aside or annulled or cancelled by a Court of competent jurisdiction. The right to pray for, or, to apply for such Orders lies with whoever is able to prove a better title to the property; and that person is certainly not the Plaintiff who has himself said conclusively that the lease given to his late father had expired by effluxion of time. The Plaintiff has, by his evidence, and by his Counsel's presentation of his case, deprived himself of the right to a stay of execution of the Judgment of this Court.

10. The Defendant did file an affidavit in opposition deposed and sworn to by MrKargbo on 19 Janaury,2017. As I have often said, it is not really for the winning party to argue against the grant of a stay; if the applicant shows that there are special circumstances warranting a stay of execution, this Court will always lean towards granting such a stay, irrespective of the grounds for opposing the same. That has not been the case here. The Plaintiff has not shown any special circumstances; nor, has he shown that he is otherwise entitled to a stay of execution of the Judgment of this Court pending the hearing and determination of his appeal to the Court of Appeal.
11. Before concluding, I believe I must deal with one issue which was raised by MsSerry-Kamal in her paragraph 12: the position of the tenants living in the premises. She is not representing them or their interests, and it is not competent for her to use their likely predicament as support for the Plaintiff's extremely weak application. However, because of the length of time which has elapsed since the lease expired in 1993, and the institution of the action herein in 2007, the best I can do in the circumstances is to direct that the tenants deal directly with the Defendant who has been the winner in this contest, and that they remain in occupation until the Court of Appeal hears an identical application in the event that the Plaintiff makes one. Also, all rents due must be paid into Court by such tenants.
12. The Plaintiff's Application for a stay of execution of the Judgment of this Court dated 16 January,2017 is hereby dismissed with Costs to the Defendant, such Costs to be taxed if not agreed.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF THE SUPREME COURT