

IN THE HIGH COURT OF SIERRA LEONE**(CIVIL JURISDICTION)**

BETWEEN:

MR. JACKSON

- RESPONDENT/APPLICANT

AND

MADAM SAMUELA

- RESPONDENT/RESPONDENT

MADAM MARIATU BANGURA

- INTENDED APPLICANT

Counsel:

F.W. Campbell Esq. & S.A. Conteh Esq. for the Applicant

A. D. Achatoh Esq. for the Respondent

**JUDGEMENT DELIVERED THIS 12th DAY OF OCTOBER 2022 BY HONOURABLE
MRS. JUSTICE JAMESINA E. L. KING J.A****Introduction**

1. By an Exparte Originating Notice of Motion dated 16th November 2021 supported by the affidavit of the Intended Applicant Mariatu Bangura sworn to on 16th November 2021 and a supplemental affidavit in support of Franklyn Campbell together with the exhibits attached thereto seeking inter alia a stay of the Judgment of the Magistrate Court delivered on the 21st day of October 2021 pending the hearing and determination of the application and that the Intended Applicant be added as an interested party to the action.
2. On the 23rd November 2021 the Court ordered that the Intended Applicant be added as a party to this action and to the action in the Magistrate Court No. 4 ES/05/21 between Mr. Jackson as Applicant and Madam Samuella as Respondent. The Court also granted an interim stay of execution of the said judgment and ordered that the Originating Notice of Motion be duly served on the Undersheriff and Counsel for Mr. St. Clair-Jackson the Applicant in the Magistrate Court and hearing between the parties was adjourned to 6th December 2021.

3. According to the affidavit evidence, the Intended Applicant now the Applicant in this Court rented the premises at 15 Doherty Street from the wife of Mr. Jackson the Applicant at the Magistrate Court. She produced the receipt and tenancy agreement signed. The tenancy agreement is between Mrs. Haja Fatmata Jackson and the Applicant Miss Mariatu Bangura dated 1st November 2021 in respect of a one year tenancy at the annual rent of Le10,000,000 in respect of No.15 Doherty Street commencing 1st November 2021 - 31st October 2022 and thereafter on a yearly basis.
4. After the Applicant entered the said premises she was served with the said Judgment dated 21st October 2021 and she noted that her name was not mentioned in it. She stated that on 13th November 2021 that she was wrongfully evicted from the said premises by bailiffs. On 15th November 2021 her Solicitors wrote to Mr. Jackson Solicitors, the applicant in the Magistrate Court offering Le10,000,000 notwithstanding the previous sum already paid to the wife of Mr. Jackson in order to allow her tenancy to be maintained as evidenced in the letter exhibited.
5. She concluded that it will be most fair and just for the Court to grant her application on equitable grounds as she has expended lots of money and is an innocent party, that she would be destitute and desolate as she has no alternative or available home or accommodation to relocate and reside with her family, and these are special and or exceptional circumstances in her favour.
6. In his submission Counsel for the Applicant submitted that the Court has an unfettered power to grant a stay and the affidavit has disclosed that such special circumstances exist. The supplemental affidavit exhibited a Notice of Appeal dated 3rd March 2022 by the Madam Mariatu Bangura as Appellant and Mr. St Clair Jackson as Respondent against the said Judgment. Counsel submitted that there are good grounds of appeal as the appellant is a bona fide tenant who had paid rent and was not a party to the proceedings to evict her, that Mr. Jackson misdirected the court by failing to bring certain facts to the knowledge of the Magistrate court during the ejectment proceedings.
7. Counsel for the Respondent made a preliminary objection on the grounds that the application is an aberration of due process and an infraction of the Rules in that the Applicant to apply for a stay in the Magistrate Court before having recourse to this Court relying on Order 59 Rule 13 (9) of the Supreme Court Practice 1999 Vol. 1 at page 1078 under the rubric "application for a stay", and

Cap. 49 of the Laws of Sierra Leone 1960 Rule 9. He also referred to the Magistrate Court Rules 1969 Rule 20(1) to buttress the fact. He noted that the application gives no clue of such an application in the Magistrate Court. He also submitted that the mode of commencement of this matter by way of Exparte Originating Notice of Motion is a procedural blunder to suffocate justice as the Judgment predates the tenancy and the Applicant could not have been a party to the action. He asked the Court to dismiss the application with costs.

8. He also referred to the affidavit in opposition to the application sworn to on 7th February 2022 noting that the supplemental affidavit of 9th March 2022 without leave of the Court and which raises fresh issues, mainly, the appeal exhibited which was filed out of time contrary to Rule 2 of the Appeal from Magistrate Court Rules 1969 which provides that the appeal must be filed within 21 days after the decision, and Rule 9 of the Cap 49 stipulating within 8 days after the decision. He submitted that Counsel is in breach of the statutory procedures.
9. In response Counsel for the Applicant stated that Counsel had taken a fresh step by filing an affidavit in opposition after becoming aware of the irregularity and relied on Order 2 (2)(1) of the High Court Rules 2007 for the objection to be discountenanced. Replying to the other issues he emphasized that the application was an emergency application as his client was never a party to the proceedings and came to the court to be applied as a party.
10. With leave of the Court Counsel for the Respondent submitted that his objection was based on law and not fact and which can be raised at any time during the course of the proceedings. He also submitted that the Court had not granted the Appellant leave to appeal out of time which was in breach of the Rules

Analysis & Decision


11. This is an application for a stay and this Court notes that at the time the application was filed there was not an appeal filed or a proposed appeal exhibited. However, Counsel in a supplemental affidavit exhibited an appeal which was later filed. The substance of the application is for a stay of a judgment of the Magistrate Court following an ejection proceeding which the Applicant was not a party to.
12. She complained that she was only served the judgment and was wrongfully evicted from the premises which she is a tenant of. It is quite grave and an injustice to a party to suffer eviction without notice of the proceedings or being

- given a right to be heard. This the Applicant complains has been her plight in this matter. However, Counsel for Mr. Jackson has pointed out that the said Applicant was never in possession of the premises even at the date of Judgment.
13. This Court has reviewed the documents filed by the Applicant in particular both receipt and tenancy agreement and notes that indeed the Applicant entered into possession after the judgment had been obtained. What is not clear is whether the Landlord of the Applicant was in possession or occupation of the premises or whether the premises was in fact vacant as the Landlord's name Mrs. Jackson, wife of Mr. Jackson on the face of the Magistrate Court Proceedings, ES/05/21 is not a party to the ejectment proceedings.
 14. In the absence of the facts before the court, in particular records of the proceedings in the Magistrate Court it is difficult to ascertain the status of Mrs. Jackson and whether she had a right to let out the premises to the Applicant.
 15. This is not the appeal and this Court will limit itself to the stay of execution of the judgment applied for. Suffice it to note that in the affidavit in opposition at paragraph 5, Mr. Achatoh states that Mr. Jackson is the legitimate landlord of the property and that the Respondent at the Magistrate Court Madam Samuella after service of the Judgment, vacated the premises and machinated the renting of the premises to the Applicant. This is confusing as the Respondent in the Magistrate Court is Madam Samuella and the landlord of the Applicant in this Court as evidenced by the receipt and tenancy agreement is Mrs. Jackson. Is Madam Samuella and Mrs. Jackson one and the same person?
 16. Because of this lack of clarity on whether Madam Samuella is the same person as Mrs. Jackson it becomes difficult to believe the allegation that the tenancy to the Applicant was machinated or to suffocate justice and deprive Mr. Jackson the fruit of his judgment. Paragraph 7 of the affidavit in opposition seems to suggest that Madam Samuella had no authority to live in the said premises but was placed there by the wife of Mr. Jackson and this gave reasons for the ejectment proceedings. This suggests that Mrs. Jackson was not a party to the ejectment proceedings and no judgment was obtained against her therefore it will be difficult to make a finding that the tenancy given to the Applicant was machinated.
 17. What is now clear is that the Judgment was not against the Applicant Madam Mariatu Bangura or her landlord Mrs. Jackson. The Judgment of 21st October 2021 was obtained in the absence of the Respondent Madam Samuella.

18. A stay of execution may be granted where there exists justifiable circumstance to grant a stay pending an appeal. The Appeal filed has been challenged as it was allegedly filed without leave to file it out of time. Until that appeal is struck out by the court having jurisdiction to do so this Court cannot discountenance the said Appeal filed which has been exhibited.
19. There is also a challenge that this application for a stay ought to have been made in the Magistrate Court which the Applicant failed to do. The Applicant was not a party to the action and only knew when the Judgment was executed and when she was never a party to the action and faces an eviction.
20. This court cannot shut its doors for relief in the circumstances when such an application is made on the grounds of equity and the interest of justice demands that due process be afforded the Applicant and notice by initiating an action for possession or being given notice of such proceedings which ought to be done prior to execution of a judgment.
21. In this case the affidavit in opposition does not state that the Applicant had notice of the proceedings or was party to the ejection proceedings. The fact that the Respondent at the Magistrate Court had vacated the premises as stated in paragraph 6 of the affidavit in opposition and thereafter another person was put in possession confirmed by the date of the tenancy, though allegedly unauthorized, the proper course of action was for Mr. Jackson to initiate proceedings against this new occupier, the Applicant which was not done. There is no evidence before this Court that the Applicant was in possession at the time of the Judgment which could not have applied to her.
22. In the circumstances, special circumstances have been made for this Court to order that a stay of execution of the Judgment against the Applicant, Madam Mariatu Bangura who was never a party to the ejection proceedings or in possession at the time of the proceedings or when Judgment was obtained. To allow execution of such a Judgment will be an abuse of the processes of the court.
23. In the premises, I therefore make the following orders:
 1. That the application for a stay of execution of the Judgment of the Magistrate Court in ES/05/21 dated 21st October 2021 to evict the Applicant Madam Mariatu Bangura in respect of 15 Doherty Street is

granted as she was never a party to the proceedings and entered into possession after the said judgment had been obtained.

2. Costs of this action is awarded to the Applicant to be taxed if not agreed

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HON. MRS. JUSTICE JAMESINA E. L. KING J.A.