

MISC. APP 11/2024

2024

S.

NO.3

IN THE HIGH COURT OF SIERRA LEONE

GENERAL CIVIL DIVISION

IN THE MATTER OF AN APPLICATION OF THE NEW BOARD OF THE SIERRA LEONE

ASSOCIATION OF NON-GOVERNMENTAL ORGANISATION (SLANGO)

AND

IN THE MATTER OF AN APPLICATION PURSUANT TO ORDER 35 OF THE HIGH COURT RULES

2007

BETWEEN:

THE SIERRA LEONE ASSOCIATION OF NON-
GOVERNMENTAL ORGANISATION (SLANGO)
(suing through its National Coordinator Edward Yokie) - 1ST PLAINTIFF/APPL

HOPE FOR THE CHIDREN FOUNDATION - 2ND PLAINTIFF/APPL

NATIVE CONSORTIUM AND RESEARCH CENTER - 3RD PLAINTIFF/APPL

KATANYA WOMEN'S DEVELOPMENT ASSOCIATION - 4TH PLAINTIFF/APPL

SIERRA LEONE FRIENDS OF HUMANITY - 5TH PLAINTIFF/APPL

REPTILE AND AMPHEBIAN PROGRAM SIERRA LEONE
AND - 6TH PLAINTIFF/APPL

CHRISTIAN M. KAMARA (Former Board Chairman -
SLANGO) YMCA - 1ST DEFENDANT/RESP

FRANCIS ANTHONY REFELL CENTRE OF DIALOGUE
ON HUMAN SETTLEMENT AND POVERTY ALLEVIATION - 2ND DEFENDANT/RESP

PATRICK OSEDO ANALO
SAVE THE CHILDREN INTERNATIONAL - 3RD DEFENDANT/RESP

COUNSEL

S. WILL for the Plaintiffs/Applicants

B.J. REFFELL for the Defendants/Respondents

RULING

HONOURABLE MR. JUSTICE

ABDUL RAHMAN MANSARAY J.

13TH DAY OF FEBRUARY 2024

BACKGROUND AND SUBMISSIONS

1. S. Will, counsel for the plaintiffs/applicants, on Tuesday 13th of February 2024 moves this court on a notice of motion dated the 6th of February 2024, seeking for an interim stay of the execution of the ruling dated 24th of January and subsequent proceedings thereto; leave to the applicant to appeal on the costs in the said order; leave to appeal against the said order; and where leave is granted an order to stay proceedings pending the hearing and determination of the appeal at the Court of Appeal; and of course costs. The application is supported by the affidavit of Edward John Yokie and Edmond Abu Jr. sworn to on the same date as the motion.

2. Mr. Will relies on the entire affidavit in support and stresses that exhibit “M” thereto (the notice of appeal) contained meritorious grounds of appeal. He submits further that the affidavit in support also contained special circumstances enumerated particularly in paragraphs 16 – 20. He relies on rr. 10, 11(1), 28 and 64 of the Court of Appeal Rules 1985¹ (hereafter called the Rules); and also O. 59/1b/11 of the Supreme Court Practice 1999, vol.1; and craves for the inherent powers of the court that the orders prayed for to be granted. B. J. Reffell, of counsel for the defendants was not in attendance but according to Mr. Will, Mr. Reffell, had asked for a date to respond.

3. On Wednesday 28th February 2024, Mr. Reffell made the following submissions. I must note at this stage that the defendants challenge

¹ Court of Appeal Rules, 1985 (PN No.29 of 1985) as amended by the Court of Appeal (Amendment) Rules, 2003 (CI No.1 of 2003).

the application but do not file an affidavit in opposition. Mr. Reffell in answer to the application submits that the application lacked the requirements for a stay of execution and leave to appeal. He argues on this point that the applicants failed to show to the court what were the special circumstances they relied upon and the good reason of their grounds of appeal. He then refers the court to two local authorities - the Firetex case and Decker vs Decker (unreported).

4. He maintains that the entire affidavit in support had no special circumstances. Also, he submits that the applicants failed to satisfy rule 10(1) and (2) of the Rules. He contends that the grounds of appeal indicated in the proposed notice of appeal were insufficient to warrant a stay and leave. Mr. Reffell closes by submitting that the application hinges on costs. So, he submits that costs cannot be stayed. Rather the remedy available to the applicants was to request the defendants to make an undertaking. In reply, Mr. Will argues that the defendants failed to oppose the application, so he adopted his previous submission. As regards staying the costs, he submits it was within the discretion of this court or the Court of Appeal to do so. He refers to the second prayer in the motion and submits that it was so requested as per procedures. He again urges the court to grant the application.

CONSIDERATION

5. I now turn to the question to be determined by this court in such an application. There is a long list of authorities both local and international establishing two key principles for the consideration of the court in the exercise of its discretion. Firstly, the court would only grant a stay order, upon being satisfied that there are good grounds for doing so. This principle flows from the basic principle in The Annot Lyle (1886) that the court is not in the habit or does not “make a

practice of depriving a successful litigant of the fruit of his litigation, and locking up funds to which he is prima facie entitled pending an appeal.”² This principle is now captured in r. 10(2) of the Rules.

6. It reads: “10(2). Any application for leave to appeal or for enlargement of time within which an application for leave to appeal may be made, shall be supported by an affidavit setting forth good and sufficient reasons for the application and by proposed grounds of appeal which prima facie show good cause for leave to appeal or enlargement of time within which to apply for such leave should be granted.” In regard this subrule the applicants herein have two hurdles to surmount before this court may exercise its discretion in their favour. First, the applicants would have to show that their affidavit in support contained good and sufficient reasons for the application. Second, the applicants would have to demonstrate by a proposed ground of appeal that they have a prima facie good cause for leave to appeal.

7. Once this is determined, that is the first limb, the court then moves to the second principle, whether there are special circumstances which militate in favour of granting the order of stay. Again, on this second limb the onus is on the applicants to demonstrate or prove special circumstances. In *Mrs. Lucy Decker et al v. Goldstone Decker*, Justice Gelaga King JA had this to say on special circumstances: “special circumstances must mean circumstances beyond the usual: a situation that is uncommon and distinct from the general run of things.”³ The applicants in paragraphs 16 – 20 of their affidavit in support depose to what they assume to be special circumstances. I shall enumerate them hereinunder and give my consideration of the

² The Annot Lyle (1886) 11 P. 114 at 116

³ *Mrs. Lucy Decker et al v. Goldstone Decker*

said acclaimed special circumstance pursuant to the definition stated supra, per Gelaga King JA.

8. The paragraphs are as follows:

“16. That on the 4th day of January, 2024, the Board of SLANGO met and approved to institute an action as against the defunct Board Members and it was in that meeting that Edward John Yokie was authorized to sue on behalf of the Sierra Leone Association of Non-Government Organization (SLANGO) LG. A copy of the board munities [sic] is marked and exhibited as L.”

“17. That SLANGO is a non-governmental organization member based organization meaning a person should represent an organization before he/she becomes a member and or attained a position in the board.”

“18. That the plaintiffs are aggrieved with the ruling of the court dated the 24th day of January, 2024 and we are verily believed that same was wrongly ordered by the learned trial judge and thus have desired to appeal against the said ruling and order. Copy of the proposed notice of appeal is marked and exhibited as M.”

“19. That the proposed grounds of appeal contained triable issues without attempting to go into the merits which same could be determined by the Court of Appeal.”

“20. That the jurisdictional objection raised is flaw with procedural incongruities as they have failed to file a notice of

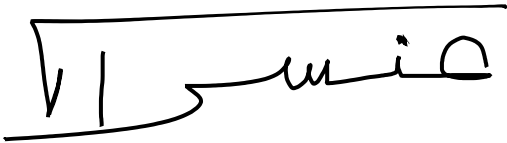
motion and do not strictly comply with the High Court Rules 2007.”

9. Firstly, in para. 16, there is nothing special of members of a board to resolve and instruct, in a meeting, one of its members in the name of the institution to initiate a suit. Second, the crux of the objection, which was sustained and led to the ruling, striking out the application of the 19th of January 2024, now the subject of an appeal and the application herein, is predicated on the absence of exhibit L which was not existing then. In my opinion exhibit L is an afterthought created after the fact. In any event, it is not uncommon to see institution giving instruction to initiate a suit. In para. 17, again there is nothing special in that paragraph that is outside the normal running of things.

10. In para. 18, it must be noted that in every decision, most of the time, if not all, the losing party is always aggrieved. That is why the judicial system set up the various levels of the courts to address those grievances. This is nothing out of the ordinary. It bears no special circumstances. In para. 19, the proposed grounds of appeal may be discussed on the first limb aforementioned in this ruling. But as it is, this paragraph in and of itself displays no special circumstances. In para. 20, assuming without conceding that this paragraph is correct. Erring in the law be it procedural or substantive is by no means a special circumstance. At its best, it could form a ground of appeal which this application seeks. There is nothing special or out of the ordinary running of things.

11. In all of those paragraphs mentioned herein above, there is nothing therein out of the ordinary run of things. In my opinion they are not

special circumstances in respect for a stay of execution. In that respect, I find no need to make determination whether there is good reason to grant or refuse an order for stay. Because good reason and special circumstances, in the words of Justice Gelaga King, in the authority mentioned supra, go hand in glove. In my opinion, in the absence of one the other is bound to fail and will not sustain. Consequently, I hold and conclude that the notice of motion dated the 6th of February 2024 is incompetent and immature and therefore the prayers set out on its face are refused with costs to be borne by the applicants to be taxed if not agreed.

A handwritten signature in black ink, appearing to read 'V. Mansaray', is written over a horizontal line.

HONOURABLE MR. JUSTICE
ABDUL RAHMAN MANSARAY J.