IN THE SUPREME COURT OF SIERRA LEONE

CORAM:-

The Hon. Mr. Justice S.M.F. Kutubu - Chief Justice - Presiding

The Hoh. Mr. Justice C.A. Harding - Justice of the Supreme Court

The Hon. Mr. Justice S. Beccles Davies - Justice of the Supreme Court

SC. MISC. APP NO. 2/87

BETWEEN:

RICHARD ZACHARIAH - APPELLANT/APPLICANT

VS

JAMAL MOROWAH - RESPONDENT/RESPONDENT

E.A. Halloway Esq. for the Appellant/Applicant

A.F. Serry Kamal Esq. for the Respondent/Respondent

RULING DELIVERED THIS 23RD DAY OF JUNE, 1987

BECCLES DAVIES, J.S.C.:- The Appellant/Applicant by his Notice of Motion dated 24th April 1987 as amended has sought the following orders:-

"1. That the order of the Court of Appeal dated the 8th day of April 1987 and all proceedings thereof be stayed pending the hearing and determination of the Appellant/Applicant's appeal to this Honourable Court - Civ App 4/87

2. That the order of the High Court dated the 17th day of March 1987 and all proceedings thereof be stayed ponding the hearing and determination of the Appellant/Applicant's appeal to this Honourable Court Civ App No 4/87.

3. An order setting aside the Writ of ~~Possession issued~~ pursuant to an ex parte order of the High Court dated the 29th day of April 1987 in that the said Honourable Court lacked jurisdiction to grant such an order in interlocutory proceedings and furthermore the said Writ of Possession was irregular in that it was not attested in the name of the Chief Justice of Sierra Leone.

4. An order that possession of this said shop numbered 30 Goderich Street Freetown in the Western Area of the Republic of Sierra Leone be given by the Respondent to the Appellant/Applicant and for leave to issue a Writ of Restitution in that behalf.

5. An interim stay of 1 and 2 aforementioned pending the hearing and determination of this application.

6. Any other further order as to this Honourable Court may seem just.

7. That the costs of this application be costs in the cause."

Mr. Serry Kamal raised a preliminary objection to the hearing of the application on the ground that Counsel for the Applicant had applied to the Court of Appeal under Section 56(1) (b) of the Court's Act and Rule 10 of the Court of Appeal Rules. The appeal was not properly before the Court.

47

I shall now state the facts as they appear from the papers filed by Counsel for the applicant.

The applicant as the plaintiff in the High Court had obtained judgment in default of Appearance against the Respondent (as defendant) in the High Court. That judgment was set aside by the High Court on the application of the respondent. The applicant then applied to the High Court for leave to appeal to the Court of Appeal against the order setting aside the judgment in default of appearance. Leave was refused. An application for leave to appeal was thereafter made to the Court of Appeal. That application was also refused. The applicant lodged an appeal as of right to this Court. It is on the basis of the purported appeal to this Court that the applications there set out are founded.

As I understand Mr. Serry Kamal's objection, the appeal filed in this Court is improperly before it therefore this Court cannot properly entertain and grant the orders sought. Mr. Halloway's reply was that the judgment of the High Court was final. He consequently had a right to file an appeal without seeking leave to do so.

The perfected order of the High Court is in the following terms:-

"1. That the judgment in default of appearance dated the 26th day of January 1987 be set aside.

2. That the plaintiff/respondent restores possession of the premises the subject matter of the application to the defendant/applicant within 21 days

3. That the application for leave to appeal against this order is refused.

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48

4. That the application for stay of execution is refused."

Was the above order final or interlocutory? I desire assistance in answering this question from the judgment of Cotton L J in GILBERT v ENDEAN (1875) 9 Ch D 259 at pp 268, 269. The Learned Lord Justice said:-

> "These applications are considered interlocutory which do not decide the rights of the parties, but are made for the purpose of keeping things in status quo till the rights can be decided, or for the purpose of obtaining some direction of the Court as to how the cause is to be conducted, as to what is to be done in the progress of the cause for the purpose of enabling the Court ultimately to decide upon the rights of the parties."

The application made by the defendant was to obtain an opportunity of appearing before the Court in order to enable that Court to decide the rights of the plaintiff and himself, in respect of the subject matter of the action. The order granting that application was in my view interlocutory. It did not dispose of the rights of the parties. It endeavoured to preserve the status quo until the rights of the parties were determined.

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There should have been an application to this Court for special leave under Rules 7 and 8 of the Rules of this Court against the Order. Had special leave been granted, this Court could have properly entertained an application for a stay of proceedings. The appeal on which the present application is based is a nullity. I would uphold Mr. Serry-Kamal's objection and strike out the application.

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Hon. Justice S. Beccles Davies, J.S.C.

I agree .....

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Hon. Justice S.M.F. Kutubu, Chief Justice

I agree .....

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Hon. Justice C.A. Harding, J.S.C.