

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

ABU BLACK LUGBO

- DEFENDANT/APPLICANT

AND

REV. ARCHIBALD GAMBALA JOHN

- PLAINTIFF/RESPONDENT

CORAM:

HON. MR. JUSTICE S. BECCLES DAVIES - C.J.

HON. MR. JUSTICE S.C.E. WARNE - J.S.C.

HON. MR. JUSTICE A. B. TIMBO - J.S.C.

Att. Say Kene Esq.
~~E. Turay, Esq.~~, for Applicant

Dr. Marcus Jones for Respondent

R U L I N G

BECCLES DAVIES

This application is made under Rule 60 of the Rules of this Court, for a stay of execution of a judgment of the Court of Appeal dated 17 June 1993.

The history

The Reverend Archibald Gambala John as executor of the estate of the late Reverend Gustavus Adem John, instituted proceedings against the defendants Abu Black, Allie Fofana and Lamin Dankeh (the applicants' herein) that he is entitled in fee simple in possession to all that piece or parcel of land lying and being at Floregusta Farm, Off Kissy Road, Freetown in the Western Area of Sierra Leone and bounded as follows - On the North by a stream 1065 feet and by property now or lately in the possession of W. Cole and otherwise 545 feet, on the East by private property and State property 406.1 feet, on the South by State property 1527.8 feet, and on the West by property now or lately in the possession of Fourah Bay College 237.2 feet and as to its position dimension and boundaries is more particularly shown verged RED in survey plan numbered L.S. 517/81 comprising in all an area of 7.6270 acres.

2.

The matter was heard by Golley J in the High Court. The learned Judge dismissed the plaintiff's claim on the ground that the latter had "failed to prove his claim."

The plaintiff appealed to the Court of Appeal against the learned Judge's judgment. The appeal was heard by the Court (Thompson-Davis, J.S.C., Adophy and Gelaga-King, JJ.A). The Court reversed Golley J's judgment, declaring the plaintiff the owner of the land in dispute.

The defendants have appealed to this Court, on four grounds. An application was then made to the Court of Appeal for a stay of execution of its judgment; the application was refused.

The application

This application is made in consequence of the Court of Appeal's refusal to grant a stay of execution. Rule 60 under which this application is made provides -

- "60(1) A civil appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except in so far as the Supreme Court or Court of Appeal may otherwise order.
- (2) Subject to the provisions of these Rules and to any other enactment governing the same, an application for stay of execution or proceedings shall first be made to the Court of Appeal and if that Court refuses to grant the application, the applicant shall be entitled to renew the application before the Supreme Court for determination."

The defendants seek the following orders -

- "1. An interim stay of execution of the judgment of this Honourable Court dated the 17 day of June 1993 pending the hearing and determination of this application.

2. An Order that the execution of the judgment dated the 17 day of June 1993 and all subsequent proceedings thereto be stayed pending the hearing and determination of the Defendants/Respondents appeal to the Supreme Court of Sierra Leone.
3. And also for an Order that the costs of and occasioned by this application be costs in the cause."

The Issue

The issue here is whether from the facts deposed, this Court can grant a stay of execution pending the determination of the substantive matter before it. Dr. Marcus-Jones, Counsel for the plaintiff has submitted that there must be exceptional circumstances arising out of the application to enable this Court to grant the application. Dr. Marcus-Jones has urged this Court to adopt the practice in appeals from the English Court of Appeal to the House of Lords. The notes to Order 58 rule 12 (1960 English Practice) under the rubric 'Stay pending appeal to the House of Lords' state -

"A stay will not be granted save in very exceptional circumstances, such as where execution would destroy the subject matter of the action or deprive the appellant of the means of prosecuting the appeal"

Mr. Turay for the defendants (applicants) submitted that there were exceptional circumstances in this case, as untold hardship would be done to 'bona fide purchasers for value' who are not parties to the action.

The expression 'very exceptional circumstances' has not been defined. The example given in the notes in my view are not exhaustive. Each application must turn on its own peculiar facts. THE SHORTER OXFORD ENGLISH DICTIONARY defines 'exceptional' as

"Of the nature of or forming an exception; unusual."

Some twenty-eight Deeds of Conveyance had been executed by the defendant Abu Black to different purchasers since 1982. There is contention as to the quantum of the land he owned. I am of the view that the circumstances on this case are very unusual and that a stay of execution of the judgment of the Court of Appeal ought to be granted pending the determination of the substantive appeal by this Court.

I would grant the application and make the following Orders -

1. The damages of Le500,000 awarded by the Court of Appeal to be paid to plaintiff respondent; the amount to be refunded in case the appeal succeeds.
2. The costs awarded by the Court of Appeal in that Court and in the Court below if already taxed should be paid to the plaintiff's solicitor on his personal undertaking to refund them if the appeal succeeds.
3. The costs of this application to the plaintiff in any event.

Ruling delivered 22nd Sept. 1999.
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Hon. Justice S. Beccles Davis C.J.

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Hon. Justice S.C.F. Harne JSC.

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Hon. Mr. Justice L.B. Timbo JSC.