

IN THE SUPREME COURT OF SIERRA LEONE

CORAM: Hon. Mr. Justice S.C.E. Warne - JSC
 Hon. Mr. Justice E.C. Thompson-Davis - JSC
 Hon. Mrs. Justice V.A.D. Wright - JSC

SC.CIV.APP.5/2005

BETWEEN: EVELYN AYO PRATT (ADMINISTRATRIX OF
 THE ESTATE OF BETSY ROBERTS PARKINSON
 (DECEASED) - APPLICANT
 AND
 JACQUELINE CAREW & OTHERS - RESPONDENTS
 AND
 ISHEKA DEEN SESAY - INTERVENER

A.F. Serry Kamal for Appellant
 Berthan Macaulay Jr. Esq., for the Intervener

RULING DELVIERED ON *Thursday 28 March 2006* **2006**

Warne JSC: Counsel for the Appellant Mr. Serry Kamal filed a Notice of Motion dated 30th March 2006 praying for certain orders to wit:

- (1) An interim stay of execution of judgment of the High Court dated the 14th day of February 1995 and all subsequent proceedings thereto pending the hearing and determination of this application.
- (2) An order granting a stay of execution of the judgment of the Court Dated 14th day of February 1995 and all subsequent proceedings thereto pending the hearing and determination of the Appellants appeal to the Supreme Court of Sierra Leone.

(3) Such further ^{or} order as the court shall deem fit.

The application is supported by an affidavit sworn to by one Elizabeth Parkinson on the 30th day of March 2006 together with exhibits annexed and filed herein.

At the hearing ^{of} the Notice of Motion on the 9th day of May, 2006, Mr. Serry Kamal sought leave to amend the aforementioned Notice of Motion of 30th March 2006. The amendment is underlined in red that is to say:

- (1) An order granting an interim stay of execution of the judgment of the High Court dated the 14th day of February 1995 and the Order of the Court of Appeal dated the 14th day of November 2004 and all subsequent proceedings thereto be stayed pending the hearing and determination of this application.
- (2) An order that the judgment of the High Court dated the 14th day of February, 1995 and the order of the Court of Appeal dated 24th day of November, 2004 and all subsequent proceedings thereto be stayed pending the hearing and determination of the appeal.

This amended Notice of Motion is dated 11th day of April 2006.

Leave was accordingly granted by the Court for ^{the} hearing of the amended Notice of Motion ^{there} ~~there~~ being no objection by ^{the} counsel for the Intervener.

Mr. Serry-Kamal, Counsel for the applicant submitted that the motion is supported by the affidavit of Elizabeth Parkinson sworn to on the 30th day of

March, 2006 with particular reference to paragraphs 6 and 7. Counsel further submitted that if the application is not granted, the appeal will be rendered nugatory. Counsel further relies on paragraphs 4,6,7,8 of the said affidavit and *said* they afford ^{ed} special circumstances why stay should be granted. The application is made pursuant to Rule 60 of the Supreme Court Rules No. 1 of 1982.

Mr. Berthan Mcaulay Jr. Counsel for the Intervener, is opposing the application for the orders prayed for. He has referred to the affidavit sworn to by himself on the 25th day of April. Counsel has submitted that the affidavit of Elizabeth Parkinson in support of the application is made in her name but not on behalf of the appellant.

He submits that the applicant is Evelyn Ayo Pratt, Administratrix of the estate Of Betsy Rogers Parkinson, and it is clear she comes to the court in a representative capacity, as Administratrix of the estate of Betsy Rogers Parkinson. Counsel further submitted that the affidavit in support of the application is not sworn to by the Appellant Evelyn Ayo Pratt. Counsel also submitted that the averment in paragraph 4 of the affidavit of Elizabeth Parkinson is not supportive of the application. Counsel also referred to paragraph 7 of the said affidavit and submitted that being occupants of the property in no way made them parties to the appeal.

Counsel went on to submit that the appeal to this court is by Betsy Rogers Parkinson by her Administratrix – The appeal Counsel submitted is made in the name of Betsy Rogers Parkinson who has no locus standi in this court.

Counsel finally submitted that there are no special circumstances disclosed to warrant this court to grant the application.

Mr. Serry Kamal replied.

The application of Serry Kamal is seriously flawed in many respects. The purported Notice of Motion dated 11th April 2006 is not a Notice of Motion but a Notice. The Court granted leave that it cannot ^{be entertained} meet in the proceedings; however, the order sought does not bear any relationship to the Exhibits EP1 and EP2 respectively referred to in the affidavit of Elizabeth Parkinson sworn to on the 30th day of ^{or} March 2006.

There is ^{no} supplemental affidavit in support of the Notice which contained the amendment sought, nor is there any notice on the purported Notice dated 11th day of April, 2006 that the affidavit of Elizabeth Parkinson sworn to on 3rd March 2006 was intended to be used at the hearing of the amended Notice. In order ^{to} exacerbate the shortcomings in the application to the court by Mr. Serry Kamal the title of the interlocutory application is not the same as that on the order of the Court of Appeal dated 24th day of November 2004 sought to be stayed. In the interest of ^{clarity} ~~clarity~~ the Order sought to be stayed is Intituled.

IN THE COURT OF APPEAL OF SIERRA LEONE
(CERTIFICATE OF THE ORDER OF THE CORUT Rule 35(1))

IN THE CORUT OF APEPAL OF SIERRA LEONE
(PROBATE JURISDICTION)

IN THE MATTER OF THE ADMINISTRATION OF THE
ESTATE OF FLORENCE ROBERTS
(DECEASED) ITNESTATE

AND

IN THE MATTER OF THE ADMINISTRATION OF
ESTATES ACT CAP.45

AND IN THE MATTER OF AN APPLICATION UNDER
ORDER XLV OF THE HIGH COURT RULES

BETWEEN:

BETSY ROGERS PARKINSON

¹
ELINE PRATT

CYNTHIA DAVIES (MAUDE ROBINSON)

CLARENCE ROBINSON - APPELLANTS

DESMOND ROBINSON

AND

JACQUILINE CAREW

GEORGE ADEKUNLE ROBINSON - RESPONDENTS

AND

ISHEKA DEEN SESAY - INTERVENER

The TITLE on the Interlocutory application is: CIV.APP. 5/2005

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

EVELYN AYO PRATT (ADMINISTRATRIX OF THE ESTATE
OF BETSY ROGERS PARKINSON (DECEASED) - APPLICANT

AND

JACQUILINE CAREW & ORS. - RESPONDENTS

AND

ISHEKA DEEN SESAY - INTERVENER

There has been no application for a substitution of parties pursuant to Rule 37 Rules of the Supreme Court No.1 of 1982 neither does the affidavit of Elizabeth Parkinson sworn to on 30th day of March 2006 aver that she had authority to swear to the affidavit on behalf of ^{the} several persons named therein nor exhibited ^{that she} the death certificate of the parties who had died.

To compound the defect in the application, there is no Letters of Administration ^{submitted that Elizabeth Parkinson is} established as being the Administratrix of the estate of Betsy Rogers Parkinson.

In my opinion, there is no merit in the application and it must needs be dismissed and I dismiss it with costs assessed at ^{Le 350, 000 to be paid} by the applicant to the ^{intervener/respondent} *Sylvestre*

