

CIV. APP 4/2012

IN THE SUPREME COURT OF SIERRA LEONE

(CIVIL JURISDICTION)

BETWEEN:

MAMIE KARGBO
(AS ADMINISTRATRIX OF THE
ESTATE OF PA MURRAY KARGBO
(DECEASED)
3 COMBEMA ROAD, KENEMA -

APPELLANT/APPLICANT

AND

SAIO L. TURAY
7 SANI ABACHIA STREET
FREETOWN

1ST RESPONDENT/RESPONDENT

AND

THE PARAMOUNT CHIEF
NONGOWA

- 2ND RESPONDENT/RESPONDENT

AND

THE PRESIDING MAGISTRATE
MAGISTRATE COURT KENEMA -

3RD RESPONDENT/RESPONDENT

AND

AHMED YOUNES
LEBANON, MIDDLE EAST

- 4TH RESPONDENT/RESPONDENT

CORAM:

HON. JUSTICE P.O. HAMILTON - JSC (PRESIDING)

HON. JUSTICE V.A.D. WRIGHT - JSC

HON. JUSTICE N. MATTURI-JONES - JA

SOLICITORS

F.B. KAIFALA Esq. for Appellant/Applicant

A.F. SERRY KAMAL Esq. for Respondent

Ruling Delivered on the 17th Day of October, 2012

HON. JUSTICE P.O. HAMILTON - JSC

This is an application by notice of motion dated the 17th day of July, 2012 pursuant to *Rule 60 of the Supreme Court Rules 1983* for the following Orders:

1. That this Honourable Court grants a Stay of Execution of *Orders 2 and 3 of the Court of Appeal Order* dated the 3rd day of May, 2012 pending the hearing and determination of this Application pursuant to *Rule 60 of the Supreme Court Rules, 1982 (Public Notice No.1 of 1982)*, which are as follows:
 - (a) "The Appellant is to vacate the premises at No.3 Combema Road, Kenema, Nongowa Chiefdom, Kenema District within one month of the date of this Order".
 - (b) "The Respondent is hereby granted vacant possession of the premises at No.3 Combema Road, Kenema in the Kenema District, Nongowa Chiefdom, Eastern Region of Sierra Leone to complete the unexpired term of his Lease".
2. That this Honourable Court grants a Stay of Execution of *Orders 2 and 3 of the Court of Appeal Ruling* dated the 3rd day of May, 2012 pending the hearing and determination of the substantive Appeal before the Supreme Court of the Republic of Sierra Leone, to wit; *SC CIV APP. 4/2012 Appeal pursuant to Rule 60 of the Supreme Court Rules, 1982 (Public Notice No.1 of 1982)*, which are as follows:

(c) "The Appellant is to vacate the premises at No.3 Combema Road, Kenema, Nongowa Chiefdom, Kenema District within one month of the date of Order".

(d) "The Respondent is hereby granted vacant possession of the premises at No3. Combema Road, Kenema in the Kenema District, Nongowa Chiefdom, Eastern Region of Sierra Leone to complete the unexpired term of his Lease".

3. That this Honourable Court grants a Stay of Execution of the Order of the Court of Appeal dated the 5th day of July, 2012 pending the hearing and determination of this Application, to wit;

"In respect of these Orders, all paying tenants should continue to occupy the premises and future rents to be paid to the 4th Respondent/Respondent".

4. That this Honourable Court grants a Stay of Execution of the Order of the Court of Appeal dated the 5th day of July, 2012 pending the hearing and determination of the substantive appeal, to wit;

"In respect of these Orders, all paying tenants should continue to occupy the premises and future rents to be paid to the 4th Respondent/Respondent".

5. Any further or other Order(s) that this Honourable Court may deem fit and just.

An earlier application for a stay of execution was made to the Court of Appeal wherein *Orders 2 and 3* of the Judgment dated 3rd May, 2012 were refused whilst that of the *Orders 4 and 5* in the said Judgment were granted.

The application is supported by the affidavit of Mamie Kargbo sworn to on 17th July, 2012.

F.B. Kaifala Esq. of Counsel for the Appellant/Applicant referred to paragraphs 8, 9, 10, 11, 12 and 13 of the said supporting affidavit as the special circumstances to justify the granting of the application. Counsel then submitted that the special circumstances are that the Appellant/Applicant is impecunious and has ill health and that the execution of the judgment will destroy or render nugatory the substance of the appeal to be considered by the Court. Therefore a stay needs to be granted so that the substantive appeal could be heard. Counsel further submitted that the poverty of the Appellant/Applicant is a special circumstance to warrant granting the stay.

Counsel for the 1st Respondent A.F. Serry-Kamal Esq. in opposition to the application filed two affidavits in which the first one was sworn to by Abdul Franklyn Serry-Kamal on 1st August, 2012 to which is attached Exh. AFSK¹ the ruling of the High Court dated 6th June, 2006 granting a stay of execution on terms. The second affidavit is that of Saio L. Turay to which is attached exhibits ranging from SLT¹ to SLT⁴. Counsel further submitted that there are no special circumstances to assist the appellant to violate the Order of the Court.

Orders 2 and 3 as contained in Exh. MK2¹ reads as follows:

2. *"The Appellant is to vacate the premises at No.3 Combema Road Kenema, Nongowa Chiefdom, Kenema District within one month of the date of this Order.*

3. *The Respondent is hereby granted vacant possession of the premises at No.3 Combema Road, Kenema, in the Kenema District, Nongowa Chiefdom, Eastern Region of Sierra Leone to complete the unexpired term of his Lease".*

The Court has an absolute and unfettered discretion as to the granting or refusing a stay grant the application and will as a rule if there are special circumstances which must be deposed to on an affidavit. It is quite clear to me from the supporting affidavit filed that the special circumstances contained in the said affidavit such as the poverty or impecuniousness and ill health of the Appellant are not special circumstances to warrant a stay of execution of the orders sought to be stayed. In the unreported case of Lucy Decker & Ors. V. Goldstone Decker Misc. App. 3/2002C.A. it was stated by the Court of Appeal that it will not grant a stay of execution to deprive a successful litigant of the fruits of his judgment pending an appeal, unless good reasons are shown and special circumstances proved. Gelaga King J.A. said in the instant case:

"Good reasons go hand in glove with special circumstances: viewed in that light special circumstances must mean circumstances beyond the usual: a situation that is uncommon and distinct from the ordinary run of things".

In this application it must be made clear that eviction in the circumstances as this case is not an uncommon situation nor is it against the ordinary cause of things. It is therefore clear that a stay ought to be refused.

As regards *Orders 3 and 4* on the face of the motion dated 17th July, 2012 the position of the 4th Respondent/Respondent is completely irrelevant in relation to the said Orders. He is not a party nor was he served; therefore there is no reason why an order should be made that the rent be paid to the said 4th Respondent/Respondent.

This matter has been too long in Court and although the Appellant/Applicant did not take the opportunity to apply for speedy hearing of the appeal I think it could be accommodated since it is in the interest of justice that this matter be finally determined without any due delay.

For the reasons given above I make the following Orders:

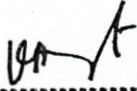
1. *That a stay of execution is refused in relation to Orders 2 and 3.*
2. *That all rents be paid into Court including those already received by the 4th Respondent/Respondent.*
3. *That the appeal be speedily heard*
4. *That the costs of this application be paid by the Appellant/Applicant assessed at Le1,500,000/00 to the 1st Respondent/Respondent.*



HON. JUSTICE P.O. HAMILTON

- JSC

I AGREE:.....



HON. JUSTICE V.A.D. WRIGHT

- JSC

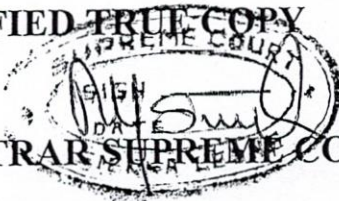
I AGREE:.....



HON. JUSTICE N. MATTURI-JONES

- JA

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REGISTRAR SUPREME COURT