

Misc. App. 22/2004

**IN THE COURT OF APPEAL OF SIERRA LEONE**

**BETWEEN:**

**DESMOND LUKE**

**APPLICANT/ APPELLANT**

**AND**

**BANK OF SIERRA LEONE**

**RESPONDENT**

**CORAM:**

***Hon. Sir. John Muria JA***

***Hearing:*** 13<sup>th</sup> July 2004

***Ruling:*** 14<sup>th</sup> July 2004

***Advocates:***

***Applicant/Appellant:*** J.B. Jenkins-Johnston Esq., Dr.

***Respondent:*** Ade Renner- Thomas

**RULING**

**Delivered the 14<sup>th</sup> day of July 2004.**

**MURIA JA:** On the 7<sup>th</sup> of June 2004 the High Court (Doherty J) gave judgment in favor of the complainant. Bank of Sierra Leone. The respondent in this application ordering that the applicant deliver up possession of the property in question to the respondent. A Warrant of Ejectment was issued against the applicant pursuant to Section 9 of the Summary Ejectment Act (Cap.49) on 8<sup>th</sup> June 2004. An application to the High Court to stay execution of the Order of 7<sup>th</sup> June 2004 and Ejectment Warrant was refused on 14<sup>th</sup> June 2004 and the applicant now comes to this Court seeking to stay execution of the same.

### ***Brief Background***

The brief background to this case is that the applicant, then Chief Justice of Sierra Leone in 1998, was accommodated at the Leone Lodge, Signal Hill, Freetown under Government arrangement as no residence was available to the Chief Justice due to the rebel war. The Government's obligation to provide suitable accommodation to the applicant was a statutory one being obliged under Statutes, namely the Judges' Conditions of Service Act, 1983 (No.12 of 1983) and the Judges' Conditions of Service Regulations 1986 (Public Notice No.3 of 1986). The relevant provision is regulation 11 which provides, inter alia, that the Government shall provide each judge with a rent-free, fully-furnished residence or housing allowance of Le.300.00 (three hundred Leones) per month, and to maintain and up-keep that residence. The applicant, on the evidence before the High Court and this Court, ceased to be Chief Justice in 2002 but, has continued to occupy the property to this present moment. In the meantime, the said property had been conveyed to the respondent by a Conveyance dated 25th July 2002 by the Government of Sierra Leone. Since July 2003, written requests were given to the applicant to leave the premises and deliver up possession. The applicant failed or refused to vacate the premises and hence, the proceedings in the High Court and in this Court.

### ***Notice of Appeal to the Court of Appeal***

Being aggrieved by the decision of the High Court, the applicant filed his Notice of Appeal to the Court of Appeal. Three grounds of Appeal were advanced, namely:

- (1) That the learned Trial Judge was wrong to have assumed Jurisdiction in a matter which had been commenced in the Magistrate Court under the SUMMARY EJECTMENT ACT CAP 49 OF THE LAWS OF SIERRA LEONE which vests exclusive Jurisdiction in such matters in the Magistrates Court. thereby making the whole trial in the High Court A NULLITY.
- (2) That the learned Trial Judge was wrong to have ordered an Ejectment Warrant to issue forthwith, contrary to the express provision of Section 7 of

the Act which provides that such a warrant may be issued “.....WITHIN A PERIOD NAMED THEREIN...”, AND NOT FORTHWITH as the

Learned Trial Judge seemed to think she was obliged to do.

- (3) That the learned Trial Judge was wrong to have found that the Appellant was a Tenant-at-will, their being no such evidence before the Court.

The applicant contends in paragraph 11 of his affidavit that there is an important question of law involve in this case, namely, whether a statutory tenancy can be avoided by a Conveyance to a wholly owned subsidiary. The suggestion is that a stay of execution is necessary to have this legal issue first determined by the Court of Appeal.

**Basis for grant of stay of execution**

The Court's power to grant a stay of execution is discretionary and it must be exercised

based on legal principles. Moral, social, or political considerations are often raised in arguments by an aggrieved party to support his or her plea for stay of execution of an order of an order Court. Such considerations, however, do not and ought not to form the basis

For the exercise of the Court's discretion to grant or refuse a stay of execution of the Order of the Court. The legal basis for the exercise of the Court's discretion in a case such as this, is that the applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. This is because in a contested case the successful party ought not to be deprived of the fruit of a judgment given in his favor: *Firetex International Company Limited v Sierra Leone External*

*Telecommunications and Sierra Leone Telecommunications Company Limited (26 June 2003) Court of (Appeal. Misc.App.19.102 (Unreported)*. In the same vein, the lodgment of a notice of appeal does not operate as a stay of execution. See r 28, court of Appeal Rules, 1985. Hence the party seeking a stay of execution pending appeal must show special or exceptional circumstances justifying the grant of stay of execution. The onus is on the applicant in the present case to demonstrate that such circumstances exist in his favor.

Period of stay granted by the trial judge was sufficient to allow the defendant opportunity of removing from the premises while waiting for his appeal to be heard. Graham Paul, CJ. said this (among other things) in that case:

“If this application were granted it would be a precedent which would have the effect of making every appeal against a judgment for possession in this class of case *ispo facto* a stay of execution.”

That case has some resemblance to the present case. The judgment in the present case is for recovery of possession and although stay of execution was refused, the learned trial judge granted suspension of the execution of warrant of ejection until 1st July 2004 (almost a month after it was issued) like in *Ernest Farmer and Another v Mohamed Labi* case, the property in the present case is that of a solid premises which cannot disappear or be dissipated. If the appeal is successful it would be quite within the power of the Court to order possession of the premises to be given up to the appellant.

The cases cited clearly established that the requirement of "special circumstances" had been strictly applied. The question to be asked is: has the applicant shown special circumstances in the present case? Counsel for the applicant argued that this is an unusual case. True it is an unusual case in a sense that here is a case where the Government is alleged to have demonstrably neglected or failed to meet its legal obligations under statutes, namely the Judges' Conditions of Service Act, 1983 and the Judges' Conditions of Service Regulations, 1986, resulting in an embarrassing position in which the applicant now finds himself. But whether the Government had indeed neglected or failed in their legal obligations is a contention that is yet to be established. One thing is clear, though, to this Court and that is, that the thrust of the applicant case or complaint is against the manner in which the Government had treated him in view of his service then as Chief Justice of this country. In my view this is where the principles of 'legitimate expectation' would be appropriately considered if raised. Unfortunately, the Government has no part in these present proceedings, and any complaint against them can only be addressed when such complaint is properly placed before the Court.

The present case is between the respondent bank and the applicant and it is not related to the terms and conditions of service of the applicant. The dispute here is over the property owned by the respondent and occupied by the applicant. There is no dispute that the property in question belongs to the respondent, conveyed to it by the Government in or about 25th July 2002. The High Court confirmed that this was the case. That the applicant continues to occupy the said property to date is also not disputed.

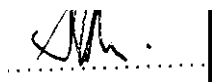
***Decision and Order***

In the light of finding of facts and conclusion of the trial judge on the status of premises here concerned, it would be difficult to see what special circumstances are there to justify

a stay of execution after 1st July 2004. As Counsel for the respondent submitted, the applicant has no legal or equitable right over the property in view of the finding of the trial judge. See *Patrick Koroma v Sierra Leone Housing Company and Another* (above). On the evidence before this Court, in this application, no special circumstances have been shown.

This Court's hands are tied in view of the authorities cited and consequently, the application for stay must be refused. As justice must be tempered with mercy, and having the power to do, so I shall extend the period within which the Ejectment Warrant not to be executed to 31<sup>st</sup> July 2004. I so order.

- Order: 1. Application for stay of execution of the order of the High Court elated 7<sup>th</sup> June 2004 and Ejectment Warrant issued on 8<sup>th</sup> June 2004 is refused.
2. Period within which not to execute the said Ejectment Warrant is extended to 31<sup>st</sup> July 2004.



Hon. Justice Sir John Muria JA