

IN THE COURT OF APPEAL OF SIERRA LEONE

**BETWEEN:**

PENINSULAR FISHING AGENCY LTD  
EMMANUEL POND  
KENT VILLAGE

- RESPONDENT/RESPONDENT

AND

THE OWNERS AND/OR PERSONS  
INTERESTED IN THE VESSEL  
"MV MAHAWA (EX-TIMA No. 1)"  
NOW LYING AT EMMANUEL POND  
KENT

- APPELLANT/APPLICANT

WOO DONG SEOG  
CONAKRY, GUINEA.

- RESPONDENT

**CORAM:**

CC

HON. MR. JUSTICE J. B. ALLIEU, J. A.

HON. MR. JUSTICE K. KAMANDA, J. A.

HON. MR. JUSTICE A. M. J. STEVENS, JA

RULING DELIVERED THIS 25<sup>th</sup> DAY OF AUGUST 2020

I

BY THE HON. MR. JUSTICE J. B. ALLIEU - J.A.

BY

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1. Counsel for the Respondent/Respondent, O. Jalloh Esq, raised both Preliminary and Jurisdictional objection to Notice of Motion dated 1<sup>st</sup> July 2020 sought to be moved by Counsel for the Appellant/Applicant, M.P. Fofanah Esq.
2. The first ground of objection, according to Counsel for the Respondent/Respondent, is that this Honourable Court does not have jurisdiction to hear and determine the Application.
3. He submitted that as provided in Rule 64 of the Court of Appeal Rules 1985, Applications of this nature has to be made in the Court below at the first instance and if refused, then the Application can be made before this Honourable Court.
4. He referred to "Ex D" attached to the Notice of Motion dated 1<sup>st</sup> July 2020 which prayed inter alia, for an Order to set aside a Default Judgment. An Interim Stay pending the hearing and determination of the action was sought but refused.

5. He submitted that when the Notice of Appeal was filed dated 26<sup>th</sup> June 2020, "Ex F", and having regard to the provisions of Rule 64 of the Court of Appeal Rules 1985, Counsel for the Appellant/Applicant ought to have applied for a Stay of Execution pending the hearing and determination of the Appeal filed.
6. He further submitted that the papers filed before this Honourable Court do not inform us in so far as the Appeal is concerned, that Counsel for the Appellant/Applicant applied for and did not obtain an Order for the Stay of Execution but rather came straight to this Honourable Court seeking for a Stay of Execution.
7. Failure in these circumstances, to seek a stay pending the Appeal, according to Counsel for the Respondent/Respondent, deprive this Honourable Court of the jurisdiction to hear the Application.
8. In support of his submission, he referred to the case of Kabia Vs. Rahman (1974-82) 1 SLB ALR 272 particularly the Judgement of Warne J.A. at Page 274, a Court of Appeal Judgement delivered on 23<sup>rd</sup> May 1980.
9. The second ground of objection is submission by Counsel for the Respondent/Respondent that the principle basis for a Stay of Execution is that there has to be prima facie good grounds of Appeal and special circumstances.
10. He referred to "Ex F", the Notice of Appeal dated 26<sup>th</sup> June 2020 filed by the Appellant/Applicant which is an Appeal against a ruling dated 15<sup>th</sup> June 2020.
11. However, the prayers for Stay of Execution sought in the present circumstances relate to a Judgement and Order dated 8<sup>th</sup> October 2019 and 16<sup>th</sup> January 2020 respectively.
12. No Appeal had been filed in respect of the said Judgement or Order.
13. The Stay of Execution sought ought to have been in respect of a Judgement dated 15<sup>th</sup> June 2020.
14. He invited this Honourable Court to dismiss the Application with Costs.
15. In his response, Counsel for the Appellant/Applicant, M.P. Fofanah Esq, submitted that Rule 64 of the Court of Appeal Rules 1985 does not invoke the requirement for a double Stay of Execution.
16. According to "Ex D", an Application was made in the Court below but when the Application was refused, as in "Ex E", then resort cannot be sought in the Court below for a second Stay but to this Honourable Court as it is an Interlocutory Appeal-an Appeal within the action.
17. Counsel for the Appellant/Applicant maintained that he had filed for a Stay of Execution and for the Default Judgement to be set aside in the Court below and when refused, resort cannot be sought in the same Court as Rule 64 do not require a double Application in the same Court for a Stay of Execution.
18. He referred to the case of Civ/App 17/17 No. 8, Voytovich Rostislav -Appellant/Applicant Vs Momoh Ansumana -Respondent/Respondent.



19. With reference to the aforementioned case, he submitted that the Court of Appeal heard and entertained an Application for a Stay of Execution in respect of certain Orders which were not Appealed against.
20. The Judges in the Court of Appeal agreed that since they were seised of the said matter, the Application for Stay of Execution was heard and granted even though the Application was not made in the Court below.
21. Counsel for the Appellant/Applicant submitted that the Stay of Execution sought in relation to "all subsequent Orders" would refer to all Orders granted after the 8<sup>th</sup> day of October 2019.
22. The objections raised by Counsel for the Respondent/Respondent, according to him, is untenable.
23. In Reply, Counsel for the Respondent/Respondent maintained that the powers of this Honourable Court as vested in Rule 64 of the Court of Appeal Rules 1985 cannot be exercised without the High Court's Jurisdiction being invoked.
24. He further maintained that the Application made in the High Court, that is "Ex D", relates to setting aside a Default Judgement and not for a Stay of Execution pending an Appeal.
25. Therefore, the objections raised in relation to this aspect has not been answered by Counsel for the Appellant/Applicant.
26. With reference to the case, Civ/App17/17 No.58, Voytovich Rostislav -Appellant/Applicant Vs Momoh Ansumana -Respondent/Respondent referred to by Counsel for the Appellant/Applicant, Counsel for the Respondent/Respondent submitted that in the aforementioned case, an Application had been made in the Lower Court for a Stay of Execution of parts of the Judgement but which was refused.
27. Based on the said refusal by the Lower Court, it was therefore proper to come before the Court of Appeal.
28. Counsel for the Respondent/Respondent reiterated that Counsel for the Appellant/Applicant filed an Appeal against a ruling dated 15<sup>th</sup> June 2020 but he now seeks for Stay of Execution of a Judgement and Order dated 8<sup>th</sup> October 2019 and 16<sup>th</sup> January 2020 respectively.
29. According to him, Counsel for the Appellant/Applicant should have requested for a Stay of Execution of the Judgement dated 15<sup>th</sup> June 2020 in respect of which an Appeal was filed and not against the Judgement and Order dated 8<sup>th</sup> October 2019 and 16<sup>th</sup> January 2020 respectively in respect of which an appeal was not filed.
30. He invited this Honourable Court to uphold the objections and Order costs against the Appellant/Applicant.

31. Having carefully considered the submissions made by the Respective Counsel and having read the Authorities referred to, I will now refer to Rule 64 of the Court of Appeal Rules 1985 which states as follows:

"Except where otherwise provided in these rules or by any other enactment, where any Application may be made either to the Court below or to the Court, it shall be made in the first instance to the Court below, but if the Court below refuses the Application, the Applicant shall be entitled to have the Application determined by the Court."

32. In effect, I am of the humble opinion that an Application for a Stay of Execution under the abovementioned Rule should first be made to the Court below and if the same is refused, then the Application can be made in the Court of Appeal.
33. In the case of Civ/App 17/17 No. 58, Voytovich Rostislav- Appellant/Applicant Vs. Momoh Ansumana – Respondent/Respondent, cited by Counsel for the Appellant/Applicant, the Judges before whom it was pending did not differ in respect of how an Application under Rule 64 of the Court of Appeal Rules 1985 should be made.
34. Their differences were in consideration for a Stay of Execution not just for the 2 (two) Orders refused in the Court below but for further 9 (Nine) Orders which were not presented before the said Court.
35. Hence, the dissenting ruling primarily on the basis that Rules 31 and 32 of the Court of Appeal Rules 1985, though wide and extensive, could not have applied in the circumstances.
36. The case of Cropper vs. Smith (1883) 24CH.D.305, recognised that the jurisdiction given to the Court of Appeal requires that it shall not be exercised till an Application has first been made to the Court below, and that the Application to the Court of Appeal to Stay Proceedings can only be exercised when an Order for that purpose has been refused by the Court below.
37. The case of Kabia Vs Rahman (1974-82) 1 SLB ALR 272 cited by Counsel for the Respondent/Respondent recognised that in an Application of this nature before this Honourable Court, its Jurisdiction with the Court below is Co-ordinate and alternative, yet the Court of Appeal will not exercise its Jurisdiction until it knows whether the co-ordinate Jurisdiction of the Court below has been exercised and how.
38. In the instant case pending before us, Counsel for the Appellant/Applicant made an Application in the Court below to specifically Stay Execution of a Default Judgement dated 8<sup>th</sup> October 2019 including an Order made on the 16<sup>th</sup> January 2020.



39. In its ruling dated 15<sup>th</sup> June 2020, the court below dismissed the Application.
40. Counsel for the Appellant/Applicant did not apply for a Stay of Court's ruling dated 15<sup>th</sup> June 2020.
41. Rather, he filed a Notice of Appeal against the said Ruling of 15<sup>th</sup> June 2020.
42. Now, Counsel for the Appellant/Applicant requests this Honourable Court to grant a Stay in respect of the same Judgement and Order dated 8<sup>th</sup> October 2019 and 16<sup>th</sup> January 2020 respectively and which were dismissed in a Ruling dated 15<sup>th</sup> June 2020 delivered in the Court below.
43. I am of the considered view that where Counsel for the Appellant/Applicant has filed a Notice of Appeal against the ruling dated 15<sup>th</sup> June 2020, then, he ought to have applied for a Stay of Execution of that Ruling before this Honourable Court, provided of course, that such an Application had been made and refused in the Court below. But this has not been the case.
44. Counsel for the Appellant/Applicant had submitted that in relation to "all subsequent Orders" sought in his Notice of Motion dated 1<sup>st</sup> July 2020, the same would refer to all Orders granted after the 8<sup>th</sup> day of October 2019. I humbly disagree. An Application for a Stay of Execution before this Honourable Court against an Order ought to be specifically against the Order Appealed against and which stay was heard and refused in the Court of first instance. 1
45. In fact, taking into consideration the circumstances of this case coupled with all the Authorities cited and analysed, I am of the candid opinion that this Honourable court lacks Jurisdiction to hear and determine the Application dated 1<sup>st</sup> July 2020. : t Ju
46. In effect, the objections raised by counsel for the Respondent/Respondent are hereby upheld. el
47. The Notice of Motion dated 1<sup>st</sup> July 2020 is hereby accordingly dismissed. 10 i
48. I will however Order costs in the cause. *No Order is made as to costs*  
*JB Allieu* 21

HON. MR. JUSTICE J. B. ALLIEU, JA. *JB Allieu*

HON. MR. JUSTICE K. KAMANDA, JA. (I AGREE) *Kamanda*

HON. MR. JUSTICE A. M. J. STEVENS, JA. (I AGREE) *AMJ Stevens*