

CIV.APP 75/2018

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN

DAVID CHAMBERS

-

APPELLANT/RESPONDENT

AND

YADA HASHIM WILLIAMS

-

RESPONDENT/APPLICANT

CORAM:

HON. MR. JUSTICE JOHN B. ALLIEU J.A. (PRESIDING)

HON. MRS. JUSTICE JAMESINA E. L. KING J.A

HON. MR. JUSTICE SULAIMAN A. BAH J.A.

COUNSEL:

Y. H. WILLIAMS ESQ. AND O. JALLOH ESQ - RESPONDENT/APPLICANT

E. T. KOROMA ESQ - APPELLANT/RESPONDENT

RULING DELIVERED THIS 11th DAY OF FEBRUARY 2021

1. This is an application by Notice of Motion by the Respondent/Applicant dated 26th February 2020 seeking orders to vary discharge or reverse the order/decision of a single justice of Appeal granting a stay of execution of a Judgment dated 29th October 2018 pending the hearing and determination of an appeal to the Court of Appeal.
2. The application is supported by the affidavit of Osman Jalloh sworn to on 26th February 2020, the affidavit of Yada Hashim Williams sworn to on 18th June 2020 and the supplemental affidavit of Osman Jalloh sworn to on 24th June 2020 together with the exhibits attached thereto.
3. There are affidavits in opposition to the application by David Chambers sworn to on 17th June, 25th June and 30th June 2020 respectively together with the exhibits attached thereto.
4. The orders sought by the Respondent/Applicant are inter alia as follows:

1. That the full Court of the Justices of Appeal be duly constituted in the exercise of the powers vested in the Court of Appeal of Sierra Leone pursuant to section 128 (2) and section 130(b) of the Constitution of Sierra Leone Act No.6 of 1991, in regard the order/decision of the Honourable Mr. Justice M. Deen Tarawally J.S.C. of 10th February 2020 sitting as a single Justice of Appeal, in which he made inter alia the following order:
 "1. That the execution of the Judgment in this consolidated action dated 29th October 2018, be stayed pending the hearing and determination of an appeal to the Court of Appeal of Sierra Leone."
 for the said order/decision to be varied, discharged or reversed on the following grounds:
 - i. That the Learned Justice improperly exercised his discretion in granting a stay of execution of the Judgment of the High Court in the absence of prima facie good grounds of appeal and special circumstances shown by the Appellant.
 - ii. That the Learned Justice failed to relate the law to the facts of the matter before him thereby acting on the wrong principles of law to arrive at a flawed decision.
 - iii. That the Learned Justice exercised his discretion to grant a stay of execution of the Judgment of the High Court based on the wrong principles of law.
5. The Appellant/Respondent being, dissatisfied with the Judgment of the High Court of Hon. Mr. Justice Alusine Sesay J.A., as he then was, dated 29th October 2018, filed an appeal and applied to this Court for a stay of execution of the said Judgment in favour of the Respondent/Applicant for damages for libel assessed at Le100,000,000.00 (One Hundred Million Leones), damages for slander assessed at Le100,000,000.00 (One Hundred Million Leones), publication of a retraction and apology of the said libel, a perpetual injunction and costs to be taxed if not agreed. The said application for a stay was determined by a single Justice of Appeal and was granted on the basis that special circumstances existed which was a client/solicitor relationship between the parties. It is this decision that the Respondent/Applicant, is seeking to vary, discharge or reverse.

6. It is not in dispute that this Court has jurisdiction to entertain this application as provided in section 128(2) and section 130(b) of the aforesaid Constitution which respectively states as follows:
- "128(2) The Court of Appeal shall be duly constituted by any three Justices thereof and when so constituted the most senior of such Justice shall preside.*
- 130. A single Justice of the Court of Appeal may exercise any power vested in the Court of Appeal not involving the decision of any cause or matter before the Court of Appeal save that-*
-(b) in civil matters, any order, direction or decision made or given in pursuance of the power conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted."*
7. The crux of the application before this court as duly constituted is whether in granting the application for a stay the Learned Justice sitting as a single Justice of Appeal exercised his discretion properly. This court has considered the decision granting the stay, the Notice of Motion for the stay on behalf of the Appellant/Respondent dated 14th December 2018 and his affidavit supporting it together with the exhibits attached thereto. The Learned Justice correctly cited the principles for granting a stay of a judgment. He however applied the principles to the fact that a client/solicitor relationship existed between the parties which amounted to special circumstances and granted a stay of the judgment.
8. Having carefully reviewed the records before the single Justice of Appeal and transcript of the proceedings in the lower court, this court is unable to find the facts on which the Learned Justice relied on for holding that a solicitor/client relationship existed which amounted to special circumstances. In the absence of a Solicitor /client relationship established in the affidavit in support of the application, this court finds that the exercise of the Learned Justice's discretion in granting the stay was therefore improperly exercised and the order of 10th February granting a stay is hereby discharged.
9. In the interest of justice this court *suo moto* proceeded to consider whether the Appellant/Respondent is in fact entitled to a stay based on the principles of law in settled authorities, including: *Firetex International Company Limited v Sierra Leone External Telecommunications and Sierra Leone Telecommunications Company Limited* (26 June 2003) Court of Appeal, Misc. App. 19/02 (Unreported), *Patrick Koroma v Sierra Leone*

Housing Corporation and Dolcis Beckley (26th May 2004), Court of Appeal, Misc. App. 9/2004 (Unreported) and Desmond Luke v Bank of Sierra Leone (14th July 2004) Court of Appeal Misc. App. 22/2004 (Unreported).

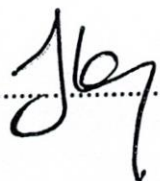
10. For a stay to succeed the applicant must show special or exceptional circumstances that warrant a stay of execution to deprive a successful party from the fruits of his judgment. The onus is on the applicant in the present case to demonstrate that such circumstances exist in his favour. This court is guided by these principles and will apply them as it considers this application and reviews the case as set out in all the numerous affidavits of both parties in support and in opposition to the application.
11. The Appellant/Respondent reasons for a stay have been consistent as set out in all of the affidavits in support of his application, which points to financial hardship which will be experienced if a stay is not granted based on the fact that; the payment of a total sum of Le200,000,000 ordered as damages is a colossal amount, which cannot be paid without adequate preparations and savings; that he was a pastor of a church living on the goodwill of members of his congregation and execution will cause great hardship to him and his family, may result in closure of his ministry and that those in need who he is engaged in taking care of will be in jeopardy. He also stated that his grounds of appeal have very good chance of success, but should the Court of Appeal affirm the judgment he would be able to gather up funds to satisfy the court's decision.
12. The affidavits in opposition of Osman Jalloh and Yada Hashim Williams suggest a different picture of the means of livelihood of the Appellant/Respondent and his financial ability or capacity to honour the judgment, and that the failure to comply with the said judgment is wilful and a flagrant violation. In the affidavit in opposition, ~~the~~ Mr. Williams recounted that the Appellant/Respondent told the High Court that he had hundreds of acres of land in the Western Area which he has been selling over the years and which he continues to sell and so he should not be in any financial difficulty paying the said amount. He also stated that no financial or any other harm would be caused to him if he complies with the said judgment.
13. In the current application, both sides have expounded on their submissions and assertions. The Appellant/Respondent highlighted that his financial situation has been made worse by Covid 19 and he exhibited publications of his retractions and apologies to the Respondent/Applicant

in different newspapers demonstrating his respect for the law and Judgment in question without prejudice to his appeal. In further opposition to a stay and to controvert the Appellant/Respondent's claim of financial hardship, Osman Jalloh in his affidavit of 24th June 2020 exhibited over 21 registered conveyances executed by the Appellant/Respondent following searches conducted at the Registrar-General's Office. In response, the Appellant/Respondent in his supplemental affidavits stated that some of the documents exhibited purportedly signed by him as Vendor, are not to his knowledge and he sought an expert opinion through his lawyer from the Scientific Support Department of the Sierra Leone Police for verification of the signatures on six of the registered conveyances. The report indicates that two of the documents were not executed by the same persons. In addition the Appellant/Respondent drew attention to the fact that he was not the sole owner of the lands sold as some of the documents were signed by his sister and himself.

14. This court notes that all of the said Conveyances are duly registered evidencing transactions for the sale of land and even with the allegations of forgery there is no evidence that proceedings have been initiated by the Appellant/Respondent to get the affected Conveyances expunged from the records. Suffice it to state that there is a presumption of regularity in respect of the conveyances and they do not in any way support the Appellant/Respondent's case that he is solely dependent on his congregation, as he wants this court to believe. It is not in dispute that he clearly has an active business in selling land in the Western Area. This court will not make any pronouncement on the allegation of forgery as the said conveyances are still duly registered and kept in the Registrar-General's Office at Walpole Street Freetown.
15. The other issue to consider is the prospect of repayment should the appeal succeed. The success or otherwise of the appeal filed will be the substantive issue that another panel of this court will determine and it is not expedient to comment at this stage on the grounds of appeal. In his affidavit of 25th June 2020 the Appellant/Respondent acknowledges that the Respondent/Applicant is a reputable lawyer of good financial standing and will be in a position to refund the said damages awarded if his appeal succeeds.

16. Applying the principles of granting a stay this court does not find any support for the special circumstances as put forward by the affidavits of the Appellant/Respondent to justify a stay of execution of the judgment and the application is refused.
17. In order to ease the burden if any on the Appellant/Respondent, this court will order execution of the judgment debts as follows:
- Damages for libel assessed at Le100,000,000/00 (One Hundred Million Leones) to be paid by Appellant/Respondent to Respondent/Applicant with immediate effect.
 - Damages for slander assessed at Le100,000,000/00 (One Hundred Million Leones) to be paid within two months of this order.
 - Costs in the cause.
18. This Court directs the Registrar of the Court of Appeal to expedite the hearing of the appeal.

HON. MRS. JUSTICE JAMESINA E. L. KING J.A

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HON. MR. JUSTICE JOHN B. ALLIEU J.A. (PRESIDING)

I AGREE

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HON MR. JUSTICE SULAIMAN A. BAH J.A.

I AGREE

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