

CIV. APP. 6/2019

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

ZUBAIRU KAMARA - APPELLANT/ APPLICANT
AND
MR SAIDU SESAY - RESPONDENT

CORAM:

HON. MR. JUSTICE REGINALD S FYNN – JA (PRESIDNG)

HON. MR. JUSTICE JOHN BOSCO ALLIEU – JA

HON. MR. JUSTICE SULAIMAN A. BAH – JA

COUNSEL:

E T KOROMA for the Appellant/Applicant.

B KOROMA for the Respondent.

RULING DELIVERED ON THE 4th DAY OF MAY 2021.

The Application

1. By a Notice of Motion dated the 24th October 2019, the Appellant/Applicant is seeking for five Orders, stated thereon as follows:

“ 1. That this Honourable Court grants an interim stay of the execution of the Judgment dated the 24th January, 2019 and the Ruling dated the 15th February, 2019 respectively and all subsequent proceedings pending the hearing and determination of this application.

2. That leave be granted for the Notice of Appeal dated the 31st January, 2019 to be amended accordingly as verged in the Proposed Amended Notice of Appeal.

3. That if order 2 is granted, that this Honourable Court grants a stay of execution of the Judgment dated the 24th January, 2019 and the Ruling dated the 15th February, 2019

respectively and all subsequent proceedings pending the hearing and determination of the said appeal against the Judgment in the Court of Appeal.

4. Any further order(s) that this Honourable Court may deem fit and just.
5. That the costs of this application be cost in the cause.”
2. The Motion is supported by the Affidavits of Zubairu Kamara (the Appellant/ Applicant herein), sworn to on the 24th October 2019 and the 21st February 2020, respectively, together with the exhibits attached thereto.

Submissions of Counsel for the Appellant/Applicant

3. Counsel for the Appellant/Applicant, E T Koroma Esq., commenced by submitting that the granting of a stay is entirely the discretion of the Court; and, that discretion should be exercised judiciously in view of the special circumstances being deposed to in the Affidavit, and the appeal having a prospect of success. He went on to submit that the issue of special circumstances are not limited: for it varies from case to case. He further submitted that special or exceptional circumstances were deposed to in the Affidavit and relied on paragraphs 12-43 of the said Affidavit in support of the application.

Further, Counsel submitted that if the judgment is not stayed in respect of the property situate at Goderich, the Appellant/Applicant's only property, execution would occasion extreme hardship on an elderly man with over 9 (nine) dependents, thereby rendering him a destitute and completely homeless. To further show exceptional circumstances, Counsel referred the Court to exhibit ZK1 and submitted that it was the Appellant/Applicant who instituted the action against the Respondent for a Declaration of him being the fee simple owner of all that property situate at Peninsula Road, Goderich; a property totally different from and not being the subject matter of what was agreed upon. Further, Counsel did submit that the appeal as filed stands a chance of success. He also submitted that the current application for a stay of execution is to preserve the property until the appeal is determined; and, that the Court should exercise its discretion in favour of the Appellant/Applicant. Also, Counsel sought the leave of the Court to amend the Notice of Appeal filed in this matter.

Submissions of Counsel for the Respondent

4. In opposing the application, Counsel for the Respondent, B. Koroma Esq., filed an Affidavit in Opposition sworn to by Saidu Sesay on the 5th day of November 2019. He relied on the entirety of the affidavit. Counsel submitted that special circumstances are clearly within the Court's wide discretion. He advanced that the Appellant/Applicant Counsel's submission relating to the age of the Appellant has not been convincing as the transaction was done just a few years ago. He continued by submitting that special circumstances were not sufficiently canvassed. Further, Counsel did submit that the Respondent has executed partly and is restrained from doing anything on the land with due deference to the Court. He went on to state that the stay was refused by a Single Judge of the Court of Appeal. Finally, Counsel submitted that the grounds of appeal are

not good enough and the current application is a ploy to deny the Respondent in enjoying the fruits of his Judgment.

Issues and Findings

5. There are two issues for determination in this application: (i) Has the Appellant/Applicant shown special circumstances to warrant the granting of a stay of execution? (ii) Is the Court of Appeal amenable in granting the Appellant/Applicant leave to amend the grounds in the Notice of Appeal?
6. In dealing with the issue as to whether the Appellant/Applicant has shown special circumstances to warrant the granting of a stay of execution, it is worthy to note that “[t]he principles applicable in determining whether a stay should be granted or not are well known and have been applied in numerous cases by the Courts in this jurisdiction” (per Muria JA in *Patrick Koroma Vs Sierra Leone Housing Corporation and Dolcis Beckley Misc App 9/2004*).

And fortunately, both Counsel for the Applicant/Appellant and the Respondent made submissions affirming these principles by referring this Court to the authorities establishing same. The authorities mentioned (amongst others) are: *Radar Vs Jaber 1950-56 ALR SL 115-117; Misc App 2/94 Africana Tokeh Village Limited Vs John Obey Development Investment Co. Ltd; and, Misc App 13/2002 Mrs Lucy Decker and Others Vs Goldstone Decker*. Therefore, the Court do not consider it necessary to pursue a ‘determining’ excursion on the principles of ‘stay of execution’. To that end, this Court will now consider whether the Appellant/Applicant has in his Affidavits shown special circumstances.

7. The application is praying for the stay of the execution of the Judgment of Justice Musu D Kamara JA, dated the 24th January, 2019 and her Ruling dated the 15th February, 2019, respectively – a ‘non-monetary judgment for the recovery of ... possession’ of land. In that regard, the case of *Boblyn Augustine Vs Abdul Koroma (Misc App 38/2004* – hereinafter referred to as “*The Boblyn Case*”), is very instructive, where Muria JA., *inter alia* stated:

“ ... [I]n a non-monetary judgment, as that of a judgment for delivery of possession, of a land, the ‘special circumstances’ that the applicant for a stay has to establish are those factors which make out a strong case for depriving the respondent of the benefit of the judgment obtained in his favour. A further consideration which the court will take into account in an application for a stay especially in cases concerning land, is that of the non-perishable nature of the property. The cases of *Ernest Farmer and Another (1945) Vol. 3 Sierra Leone Recorder 66, Bank of Sierra Leone v. Desmond Luke (14th July 2004) CA, Misc App 22/2004; Yusuf Bundu v. Mohamed Bailor Jalloh (23rd July 2004) CA Misc App 23/2004* have clearly established the principle that in cases where the judgments sought to be stayed are for recovery of possession of land, the Court

of Appeal will refuse a stay unless the applicant can establish a strong case for depriving the respondent of the fruit of the judgment obtained in his favour."

8. Counsel for the Appellant/Applicant relied on the Affidavits of Zubairu Kamara to show special circumstances. And in his submissions, he alluded to paragraphs 28 -29, set out as follows:

" 28. That this is the only property that I have and I am over 80 years now, find[ing] an alternative accommodation will be very impracticable if not impossible. See copy of my title deed shown to me exhibited and marked ZK15.

29. That if this Judgment is not stayed it will amount to injustice to me and my children of over 8 who are all staying with me."
9. Considering the above quoted paragraphs of the said Affidavit, highlighting the 'old age' of the deponent, the subject matter being his only property housing over eight (8) of his children; and, the 'impracticability' and 'impossibility' of finding alternative accommodation, it is apt to hold that the said Affidavit expressed a sentimental and emotional attachment to the said property. This Court of Appeal has in the *Boblyn Case*, cited above, rejected a stay of execution, where *'[t]he grounds advanced on behalf of the appellant/applicant range from saying the property was a family home and that he [the Applicant/Appellant] was sentimentally and emotionally attached to [the property].'* (Per Muria JA).
10. So also did this Court refused a stay of execution in respect of a house claimed as an ancestral home in the case of *Evelyn Ayo Pratt Administratrix of the Estate of Betsy Rogers Parkinson (Deceased) Intestate Vs Jacqueline Carew and Others - Misc App 7/05*.
11. And as recent as the 26th day of January 2021, in the case of *Ivan Davies & Others Vs Ms Olabisi Barber – Civ App 7/2020* (hereinafter referred to as **the Ivan Davies case**), this Court also refused a stay in respect of a land said to be 'family heritage' and being in the possession of the Appellants/Applicants (therein) for well over fifty (50) years.
12. Additionally, the submission by Counsel for the Appellant/Applicant that the very act of instituting an action against the Respondent for a Declaration that the Appellant/Applicant is the fee simple owner of all that property situate at Peninsula Road, Goderich - a property totally different from and not being the subject matter of what was agreed upon - constitute a special circumstance, cannot, be deemed as such.
13. Considering the submissions made, the Affidavits filed (and more particularly paragraphs 2, 28 & 29) and the authorities on stay of execution, this Court is of the view that there is no evidence of a strong case being established *'... for depriving the respondent of the fruit of the judgment obtained in his favour'*; consequently, no special circumstances have been shown.

14. It is in evidence that the Appellant/Applicant was physically evicted from the property as per *paragraph 41* of the said Affidavit of Zubairu Kamara, the said Appellant/Applicant. Also, there is confirmation from both Counsel that the Respondent is in possession. That notwithstanding, the Court notes Counsel's submission of the case of **Africana Tokeh Village Limited vs John Obey Development Ltd**, urging it to grant a stay – which in effect would result in the Appellant/Applicant re-possessing the property.

Therefore, there is need to distinguish the case under review from the **Africana Tokeh case**. In the **Africana Tokeh case**, this Court ordered that the applicants therein should regain possession of the land and premises after an execution of the judgment regarding a lease. That Order to regain possession was as a result of a stay of execution being granted on the basis that “... *the applicants have shown special circumstances which merit the exercise of th[e] Court's discretion*” (Per Hon Mr Justice G Gelaga-King J.A). The situation in this instant case, is however different from that in the Africana Tokeh case, as this Court maintains that no special circumstances have been shown to merit the exercise of its discretion in favour of the Appellant/Applicant.

15. Counsel's desire for a stay, as he did submit, was for the preservation of the property until the appeal is determined. Having stated that no special circumstances were shown and being strengthened by the submission of Counsel for the Respondent that ‘with due deference to the Court’ they will maintain the *status quo*; it is but just to order that the Respondent must not dispose of the property by whatever means while the appeal is pending in this Court. This position is reinforced by the **Boblyn case**, where this Court, after refusing an application for a stay of execution, ordered that the ‘*respondent [be] restrained from selling or otherwise disposing of the property ... until the appeal ... is determined*’. This position was followed by this Court in the **Ivan Davies case**.
16. The Court will now turn to the other issue raised, that is: whether this Court is amenable to granting the Appellant/Applicant leave to amend the grounds in a Notice of Appeal? In support of the application for leave to amend the grounds in the Notice of Appeal, Counsel referred to **exhibit ZK 22**, the Ruling dated the 23rd November 2019 of Justice Sengu Koroma JSC (sitting as a Single Judge of this Court), where the Judge *inter alia*, ordered:

“2. *That the application for amendment of the Notice and Grounds of Appeal dated the 31st day of January, 2019 must be made to the full panel of the Court of Appeal.*”

17. The Court is vested with the discretionary power to grant leave to amend the grounds in a notice of appeal pursuant **Rule 9(5) of the CAR 1985** which states:

“*The appellant shall not, without the leave of the Court, urge or be heard in support of any ground of objections not mentioned in the notice of appeal, or cross appeal, but the Court may in its discretion allow the appellant or cross-appellant to amend the grounds of appeal upon such terms as the Court may deem just.*”

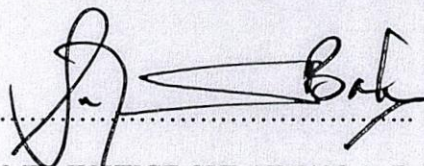
18. Also, the Court is aware that Counsel for the Respondent did not oppose the application for amending the Notice of Appeal. And having considered the submission of Counsel for the Appellant/Applicant on the issue of 'Leave to Amend' the grounds in the Notice of Appeal dated the 31st day of January 2019, and paragraphs 30 & 31 of the Affidavit of the Appellant/Applicant and Exhibits **ZK 16¹⁻³** and **ZK 17¹⁻³** (the Notice of Appeal and the Proposed Amended Notice of Appeal, respectively), this Court will exercise its discretion by allowing the Appellant/Applicant to amend the grounds of appeal as prayed for.

19. In the circumstances therefore, it is ordered that:

- (a) The application for a stay of execution is refused;
- (b) The Respondent herein (either by himself or his servants) is hereby restrained from selling or otherwise disposing of the piece or parcel of land situate lying and being at Peninsula Road, Goderich Village in the Western Area of the Republic of Sierra Leone; enclosing an area of 0.2191 acre more particularly delineated on the Survey Plan numbered L.S 4686/14 dated the 23rd day of December 2014; attached to a Deed of Conveyance expressed to be made on the 31st of December 2014, between Zubairu Kamara and Saidu Sesay; and, numbered 36 at page 54 in volume 743 of the Books of Conveyances kept at the Office of the Administrator and Registrar General, Walpole Street, Freetown in the Western area aforesaid;
- (c) Leave is hereby granted to the Appellant/Applicant to amend the grounds of appeal in the Notice of Appeal dated the 31st January, 2019 and file the amended Notice of Appeal no later than the 18th May 2021;
- (d) The following directions are also given with respect to the conduct of the appeal:
 - (i) The Appellant is at liberty to file the written synopsis of his submissions no later than the 8th June 2021;
 - (ii) The Respondent is also at liberty to file the written synopsis of his submissions no later than the 29th June 2021;
 - (iii) Oral hearing is fixed for the 13th July 2021;
 - (iv) The parties have liberty to apply;

(e) The costs of this application shall be costs in the cause.

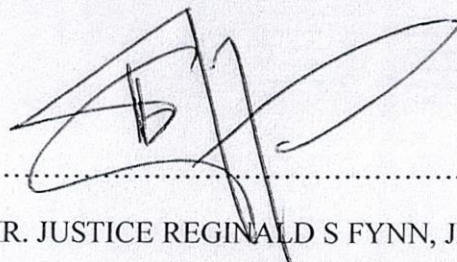
Signed:



HON. MR. JUSTICE SULAIMAN A. BAH, JA

I AGREE:

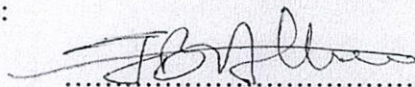
Signed:



HON. MR. JUSTICE REGINALD S FYNN, JA (Presiding)

I AGREE:

Signed:



HON. MR. JUSTICE JOHN BOSCO ALLIEU, JA;