

IN THE SUPREME COURT OF SIERRA LEONE

CORAM:

The Hon. Mr. Justice C.A. Harding, J.S.C. - Presiding

The Hon. Mrs. Justice A.V.A. Awunor-Renner - J.S.C.

The Hon. Mr. Justice S. Beccles Davies - J.S.C.

S.C. Misc. App. 3/84

BETWEEN:

Donald Macaulay - Applicant

vs.

Emmanuel Shallop

and

Mirib Shallop - Respondents

T.S. Johnson, Esq., for the Applicant

A.J.B. Gooding, Esq., for the Respondents

RULING DELIVERED ON THE 17TH DAY OF MAY, 1984.

HARDING, J.S.C.:- The respondents in proceedings instituted in the High Court obtained judgment, with costs to be taxed, on 3rd February, 1984 against the applicant for "the sum of U.S. Dollars 129,566.15 or Le323,915.38 plus interest thereon at the rate of 18% from the 8th day of September, 1980 until the date of judgment". On 10th February, 1984, the applicant through his solicitor, filed a Notice of Appeal against the said judgment in the Court of Appeal, and on the following day i.e., 11th February, he applied to the Court of Appeal for a stay of execution of the judgment of the High Court pending the hearing and determination of the appeal. On 27th February, 1984, the Court of Appeal refused the application for a stay; likewise it turned down a subsequent application for leave to appeal to the Supreme Court against the order of refusal of stay.

The applicant has now applied to this Court for the following Orders:

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- "(i) An Order granting the applicant special leave to appeal against the order of the Court of Appeal contained in its Ruling of 27th February, 1984;
- (ii) An Order granting a stay of execution and all further proceedings of the judgment and order of the High Court dated February 3, 1984 already appealed against by Notice of Appeal filed in the Registry of the Court of Appeal on 10th February, 1984, pending the hearing and determination of the said appeal;
- (iii) An Order that the costs of and occasioned by this application may be costs in the intended appeal."

I have listened carefully to the arguments of counsel on both sides and read the various affidavits and exhibits thereto filed herein. As regards the first order applied for, I do not think that this is a proper case calling for the exercise of my discretion to grant special leave; accordingly, I would refuse special leave to appeal to this Court. Special leave to appeal to this Court having been refused it necessarily follows that no order for a stay of execution of the judgment can be ordered by this Court.

I would dismiss the application with costs to the respondents.

Sgd:
(Hon. Mr. Justice C.A. Harding, J.S.C. -
Presiding)

I agree
Sgd:
(Hon. Mr. Justice S. Beccles Davies, J.S.C.)

AWUNOR-RENNER, J.S.C.:- I have arrived at a different conclusion from that reached by my learned brothers on the question of granting special leave to appeal to this Court in this matter.

The applicant applied to this Court on the 24th day of March, 1984 for the following Orders on a Notice of Motion dated the 24th March, 1984.

- (1) An Order granting the applicant special leave to appeal against the Order of the Court of Appeal contained in its ruling of the 27th February, 1984.
- (2) An Order granting a stay of execution and all further proceedings of the judgment an order of the High Court dated February 3, 1984 already appealed against by Notice of Appeal on 10th February, 1984, pending the hearing and determination of the said appeal.
- (3) An order that the costs of and occasioned by this application may be costs in the intended appeal.

The said Notice of Motion contains the grounds upon which special leave to appeal is sought.

A short history of this matter discloses that on the 3rd day of February, 1984, the High Court gave judgment and ordered the applicant herein to pay the sum of Le.323,915.38 plus interest thereupon at the rate of 18% from the 8th day of September, 1980 until the date of the said judgment to the Respondent herein.

On the 11th February, 1984 the applicant applied to the Court of Appeal for a stay of execution of the said judgment of the High Court dated 3rd February, 1984. In a ruling delivered on February 27th 1984 the Court of Appeal refused the application for a stay.

I think that it would be convenient for me at this stage to set out the ruling in question. I quote.

" SHORT, J.A.

This is an application by T.S. Johnson Esq., of Counsel for the Appellant/Applicant herein for an order granting a stay of execution of the judgment and order of the High Court contained in the decision of Mr. Justice William A.O. Johnson Judge, dated the 3rd day of February, 1984. The judgment referred to amounts to the payment of the sum of U.S. dollars 129,566.15 or Le.323,915.38. Rule 28 of the Appeal Court Rules is bare. Order 42 rule 19(1) of the White Book states inter alia "where a judgment is given or an order made for the payment of money by any person and the Court or judge is satisfied an application made at the time of the judgment or order or at any time thereafter by the judgment debtor or other party liable to execution that there are special circumstances which renders it inexpedient to enforce the judgment or order or that the judgment debtor is unable from any cause to pay the money, then the Court or judge may order stay of execution of the judgment or order by Writ of Fieri Facias etc."

It would appear that the only grounds on which under the above rule the Court can stay execution on a judgment debt or order for payment of money are either that there are special circumstances which render it inexpedient to enforce the judgment or order or that the judgment debtor is unable from any cause to repay the money. Neither the affidavit of Thomas Sigismund Johnson sworn to on the 11th day of February nor the affidavit of Donald Marius Alison Macaulay sworn to on the 21st day of February, 1984 discloses any special circumstances which might render it inexpedient to enforce the judgment or order or that the judgment debtor is unable from any cause to pay the money.

In our view there are no supporting grounds and the application for a stay of execution is refused with costs assessed at Le.100 to be paid by the appellant/applicant to the Respondent."

On the 5th March, 1984 a notice of Motion was filed in the Court of Appeal for leave to appeal against the order contained in the ruling of the 27th February, 1984.

The application for leave to appeal was refused on the 19th March, 1984. It was against that refusal for leave to appeal that the applicant has now applied inter alia, to this Court for special leave to appeal.

The rules applicable to an application for special leave to appeal and which ought to be considered are contained in Rules 6(2) of the Supreme Court Rules 1982. Rules 7 and 8 also of the Supreme Court Rules 1982 and Sections 103 Sub-section (1)c and 103 sub-sec (2) of the Constitution of Sierra Leone Act No.12 of 1978.

Counsel for the applicant in his argument for special leave to appeal urged this Court to consider the question of granting special leave. He claimed that his reasons are contained in his notice of motion and further stated that apart from that the decisions of the Court of Appeal are binding on itself and that was one reason why he was asking that the ruling of the Court of Appeal of 27th February, 1984 should not be allowed to stand.

Mr. Gooding on the other hand contended that before special leave is granted there must be a substantial question of law which must be a serious question of law and cited several cases to support his proposition. He also referred us to the Supreme Court Rules and the Constitution as regards the powers of the Supreme Court to grant special leave to appeal.

Sec. 6(1)c of the Supreme Court Rules states as follows -

"An appeal shall lie from the judgment decree or order of the Court of Appeal to the Supreme Court with leave of the Court of Appeal in any other cause or matter, civil or criminal where the Court of Appeal is satisfied that the case involves a substantial question of law or is of public importance."

Section 6(2) of the Supreme Court Rules states as follows -

"Notwithstanding the provisions of the preceding sub rules (as contained in Rule 6 sub rule 1, a, b, c, d, e and g) the Supreme Court shall have power to entertain any application for special leave to appeal in any cause or matter civil or criminal to the Supreme Court and to grant such leave accordingly."

Apart from the fact that Rule 6(1)c states under what conditions leave can be granted to appeal to the Supreme Court. In no part of Rule 6(2) can I find what conditions should be satisfied before special leave to appeal can be granted by the Supreme Court. To me it appears as if the powers conferred by this section to the Supreme Court to grant special leave is quite an extensive one.

In my view I think that as regards the question of special leave to appeal to this Court the trouble arose from the ruling of the Court of Appeal on the 27th day of March, 1984 when it refused to grant the stay of execution applied for, Counsel for the applicant is contending that it was made under the wrong rule, Order 42 rule 19 of the English Rules when it should have been made under Order 58 rule 12. He further stated that Order 42 rule 19 does not apply in this instance. In my opinion it is a short point but one of importance and I think that in such cases it is extremely desirable for this Court to make some sort of pronouncement on the issue of granting special leave for the guidance of applicants, so as to inform them as to what the proper yardstick is.

The ruling of Short J.A. on the 27th March, 1984, contains the refusal to grant a stay of execution and there is no doubt that he was influenced by the provisions of Order 42 rule 19 of the English Rules this in my opinion is a prima facie case that an error has been made on a question of law which is likely to affect other members of the public until it is either set aside or reversed. I would therefore hold that this is a proper case for which special leave to appeal ought to be granted.

In my opinion if I am wrong in the view I have expressed as regards the question of special leave to appeal then it is the way I see it and nothing more.

As regards the application for a Stay of Execution I express no opinion as to whether this order ought to be granted or otherwise.

I would allow the application for special leave to appeal and make no order as to costs.

Sgd.
(Hon. Mrs. Justice A.V.A. Awunor-Renner, J.S.C.)