

## IN THE HIGH COURT OF SIERRA LEONE

BETWEEN:

MAMI KARGBO (AS -- PLAINTIFF  
ADMINISTRATRIX OF THE  
ESTATE OF MURRAY KARGBO (DECEASED)

AND

SAIO L. TURAY

AND

THE PARAMOUNT CHIEF

NONGOWA CHIEFDOM

– Defendant

KENEMA DISTRICT

AND

THE PRESIDING MAGSTRATE

MAGISTRATE COURT KENEMA

AND

AHMED YOUNES

Thursday 8<sup>th</sup>

June 2006

Before Mrs. Justice

A. Showers, J.

Case Called

Same Representation

F. Sesay Esq. deputising R.S.V. Wright Esq.

RULING

In this matter after the court had heard an application for a stay of execution of judgment dated 13<sup>th</sup> January 2006 in the said matter and had delivered its Ruling granting the stay of execution prayed for, counsel for the 1<sup>st</sup> Defendant applied that the stay of execution granted should be

on terms. I must explain that counsel for the 1<sup>st</sup> Defendant was absent when the Ruling was read but turned up later and had the case recalled and made the said application. He proceeded to state the terms that the rent collected by the plaintiff be paid into court.

Counsel for the 1<sup>st</sup> Defendant has drawn the court's attention to the second order in the Judgment dated 13<sup>th</sup> January 2006 where the trial Judge stated that the first defendant has proved his counterclaim to the extent of US \$20,000 per annum with interest at the rate of 20% per annum with effect from 1<sup>st</sup> April 1998 until payment and submitted that this amount is rent which has accrued to the 1<sup>st</sup> defendant and that if a stay is granted that rent ought to be paid directly to the 1<sup>st</sup> defendant. He therefore prayed that the said rent be paid directly to the first defendant within 21 days of the date of this Order and secondly that the interest ordered to be paid thereon be paid into court. He submitted that a third term of the stay ought to be that the 1<sup>st</sup> Defendant remains in possession of the third house in which he now resides. Fourthly, that the plaintiff pays the taxed costs of this action with the solicitor for the 1<sup>st</sup> Defendant giving the usual undertaking to refund the costs in the event that the Appeal succeeds.

He submitted that stay of execution is always granted on terms and that it is a cardinal principle that the successful litigant should not be deprived of the fruits of his judgment. He stressed that this court can properly entertain his application even after Ruling has been given and he referred to 22 Halsbury's Laws of England at para. 1664 of page 784 which states that a judgment or order can be withdrawn, altered or modified before the judgment or order is drawn up. He submitted that the application was made on the same day as the Ruling was delivered and the Order has not yet been entered, drawn up and perfected. He also referred to the case of *Pittalis vs Sherefittin* [1986] 2 All E R. 227 where it was held by the Court of Appeal that a judge could always recall and reconsider his decision up until the time it was drawn up or perfected. In that case it was held that the county court judge had been entitled to recall his judgment and allow the application after previously announcing that he intended to dismiss it. In the circumstance he submitted the court has jurisdiction to entertain his application.

Counsel for the plaintiff strenuously objected to the application and stressed that after the court has delivered its Ruling, it becomes functus officio and ought not to have entertained the application. He further submitted that counsel ought to have canvassed this point when making the substantive application but he rather concentrated on arguing only against the granting of a stay and failed to argue in the alternative that if a stay of execution was to be granted it should

be on terms. He further pointed out that there is nothing before the court that supports any fiduciary relationship between the plaintiff and the Defendant upon which the application is based for the rent to be paid into court. He stressed that the plaintiff is not a tenant or agent of the 1<sup>st</sup> Defendant and therefore there is no foundation by which rents collected should be paid into court particularly as the rents are by tenants of the plaintiff and not tenants of the p[plaintiff and not tenants of the defendant. He submitted that it has been stated that the rents collected represent a major source of income of the extended Kargbo family and the rents so far collected have already been shared amongst the said family members. The court would therefore be acting in vain if it makes the order prayed for. In the circumstance, he prayed that the application be refused.

These are the submissions of counsel in this matter. Let me start by referring to 22 Halsbury's Law of England already cited. It states at para. 1664 at page 784 under the rubric "Amendment before judgment or order drawn up" -- "Until a judgment or order has been entered or drawn up there is inherent in every court the power to withdraw, alter or modify it, either on the application of one of the parties or on the initiative of the judge himself." I shall also rely on the case of *Pittalis vs. Sherefittin* [1986] cited by counsel for the 1<sup>st</sup> defendant and also the case of *In re Harrison's Settlement* [1986] 1 All E R at 185 in support of this principle.

In this case the application was made by the Defendant on the day of the Ruling when the order had not yet been drawn up. I can therefore entertain the application. The court is therefore not yet functus officio as counsel for the plaintiff has sought to canvass. Using my inherent powers, I can alter or modify the orders made in this application.

I must concede that at the time the application was made the emphasis was on the issue of granting a stay of judgment for possession of premises. My attention was not drawn to the question of rents accrued and ordered to be paid. Now that counsel for the defendant has brought the issue up, I believe he has made a proper case for the issue of rents to be considered and for certain terms to be imposed in that regard. In as much as I had stated in my Ruling that the defendant can wait for a few months to enjoy the fruits of his judgment and gain possession of the premises, it is a different situation where the judgment involves money, in this case in the form of rents, which can easily be dissipated and the successful litigant indeed deprived of the fruits of his judgment. However I do not agree with counsel for the defendant that the rent found to be due the 1<sup>st</sup> defendant should be paid to the 1<sup>st</sup> defendant. I believe it should be paid

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into court pending the outcome of the appeal. In the circumstance I make the following Orders:

A stay of execution of the judgment dated 13<sup>th</sup> January 2006 pending the hearing and determination of the applicant's appeal is hereby ordered on the following terms:

- (1) That the plaintiff pays into court within 30 days from the date hereof the sum of US \$20,000 per annum with interest at the rate of 20% per annum with effect from 1<sup>st</sup> April 1998 until payment.
- (2) That the plaintiff also pays into court all rents collected after 1<sup>st</sup> April 2006.
- (3) That the plaintiff pays the taxed costs of this action with the solicitor for the defendant giving the usual undertaking to refund if the appeal succeeds.

I make no order with regards the third term prayed for as I have no such evidence before me.

*A. Showers*

A. Showers J

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