

IN THE HIGH COURT OF SIERRA LEONE
FAMILY AND PROBATE DIVISION

IN THE MATTER OF THE ESTATE OF DR SIKA PROBYN STEVENS
(DECEASED)

IN THE MATTER OF THE ADMINISTRATION OF ESTATES ACT, CAP 45 OF
THE LAWS OF SIERRA LEONE, 1960

BETWEEN:

JAMES STEVENS

- APPLICANT

THE ALBERT ACADEMY SCHOOL

- PLAINTIFF

(Suing by its Chairman The Bishop of the United
Methodist Church, Sierra Leone)

AND

DR JENGO STEVENS (As Executor & Trustee of
the Will of Dr S P Stevens, deceased)

- DEFENDANTS

MANIKA CONTEH (As Executor & Trustee of
the Will of DR S P Stevens, deceased)

THE ADMINISTRATOR AND REGISTRAR-GENERAL

BEFORE THE HONOURABLE MR JUSTICE N C BROWNE-MARKE
JUSTICE OF APPEAL

JUDGMENT DELIVERED THE 1 DAY OF JUNE, 2012.

INTRODUCTION

1. By Notice of Motion dated 25 April, 2012 JAMS STEVENS² has applied to this Court for stay of execution of the Orders contained in the Judgment of this Court dated 3 April, 2012; and for any other Order this Court may deem just and expedient.

APPLICANT'S AFFIDAVIT

2. The Application is supported by the affidavit of Mr James Stevens himself, deposed and sworn to on 25 April, 2012. Mr Stevens deposes in his affidavit that he is a beneficiary and a person concerned in the estate

of the late President Stevens, the surviving Executor of whose estate is the 1st Defendant herein. On 3 April, 2012 it was adjudged that the Plaintiff was the owner of the property at 1 Kingharman Road, Freetown in terms of the last will and testament of the deceased testator, Dr Stevens. A copy of the Judgment is exhibited as "JS1". The Applicant has appealed against that judgment to the Court of Appeal by way of Notice of Appeal dated 24 April, 2012 a copy of which he has exhibited as "JS2." He says ^{he} has been advised by his Solicitor that he has a strong and good chance of succeeding on appeal. Also, that he has lived continuously on the property for upwards of 22 years 'without violence, stealth and entreaty.'

PLAINTIFF OPPOSES APPLICATION

3. His application is opposed by the Plaintiff, represented by Mr Centus Macauley. Mr Macauley contends that there is no basis for the Application as the Applicant was not a party to the action in which judgment was given. His Application to be joined had been dismissed by the Court. I pointed out to Mr Macauley during the course of argument that I had myself said the same thing to Mr Barber while he was presenting his arguments in favour of the Application.

PRINCIPLES RELATING TO STAY OF EXECUTION OF JUDGMENT

4. In the case of CIV APP 6/2002, ABERDEEN BEACH RENDEVOUS v ALEX HEROE & 2 others, the Court of Appeal re-stated the principles applicable to an application of this nature. There I said, inter alia, "*The principle on which a stay of execution of judgment could be granted is too well known to warrant the citation of cases: It is, that the Applicant must show special circumstances why the successful litigant in the Court below, should be deprived of the fruits of his or her judgment. There is no burden on the Respondent to satisfy the Court that a stay should not be granted. If the Appellant can show that there are such circumstances which should warrant that the judgment of the Court below should not be executed, this Court will grant a stay of execution. The circumstances are wide and varied, and this Court cannot, and will not close the categories. One such is that if the Appellant were to succeed in his appeal, such success would be rendered nugatory because the res would have disappeared, or, would be no longer available.*" Another principle is

that if the Applicant has good grounds of appeal which are likely to succeed, the Court might be persuaded to decide in his favour.

APPLICANT NOT A PARTY TO ACTION

JURISDICTION OF THE COURT OF APPEAL

5. The problem with the appeal filed on behalf of the Applicant is that he is not a party in the action in which judgment was delivered on 3 April, 2012. He was indeed an interested party because he had filed an Application dated 25 October, 2011 asking to be joined as ^gparty. That was an interlocutory application. In paragraph 20 of my judgment of 3 April, 2012 I dismissed that Application. So, in order to become a party, Mr James Stevens should first get over the hurdle of what he should do about that part of my decision. I do not consider him, notwithstanding his filing of a Notice of Appeal, as an appellant, because he was not a party to the main action. *Section 129 of the Constitution of Sierra Leone, 1991* provides as follows: "(1) *The Court of Appeal shall have jurisdiction throughout Sierra Leone to hear and determine, subject to the provisions of this section and of this Constitution, appeals from any judgment, decree or order of the High Court of Justice or any Justice thereof and such other appellate jurisdiction as may be conferred upon it by this Constitution or any other law. (2) Save as otherwise provided in this Constitution or any other law, an appeal shall lie as of right from a judgment, decree or order of the High Court to the Court of Appeal in any cause or matter determined by the High Court of Justice.*" This provision has clearly saved any other law. One such law is *Section 56 of the Courts' Act, 1965*. It provides as follows: "(1) *Subject to the provisions of this section, an appeal shall lie to the Court of Appeal - (a) from any final judgment, order or other decision of the High Court given or made in the exercise of its original, prerogative or supervisory jurisdiction in any suit or matter; and (b) by leave of the Judge making the order or of the Court of Appeal, from any interlocutory judgment, order or other decision, given or made in the exercise of any such jurisdiction as aforesaid....*"
6. An Appellant is described in Rule 1 of the Court of Appeal Rules, 1985 as such: "'appellant' includes the party appealing from a judgment order or decree and his solicitor or counsel." A non-party to litigation is not

ejusdem generis a party or his solicitor or counsel, and so, cannot fall within the inclusive definition of an appellant.

GROUND OF APPEAL

7. Further, I have examined the Notice of Appeal in order to appreciate the strength of the Applicant's grounds of Appeal. He has not appealed against the specific finding that he is not a party to the action herein. In any event, to do so, he has to seek the leave of this Court as provided for in Section 56(1)(b) of the Courts' Act, as that part of my decision was interlocutory, and not final. It was a decision on an interlocutory application brought on Mr James Stevens' behalf.

FINDINGS

8. In the premises, I hold that the Applicant James Stevens is not an Appellant within the meaning of 'Appellant' in Section 129 of the Constitution of Sierra Leone, 1991, Section 56(1) of the Courts' Act, 1965 and Rule 1 of the Court of Appeal Rules, 1985. Further, the provisions of Order 48 Rule 12 of the High Court Rules, 2007 cited by Mr Barber, do not apply to this Application, as the judgment in respect of which the Applicant purports to appeal, is not one for the payment of money. The Applicant's Application dated 25 April, 2012 is therefore dismissed with Costs to the Plaintiff, such Costs to be taxed if not agreed.



THE HONOURABLE MR JUSTICE N C BROWNE-MARKE, JUSTICE OF APPEAL