

SC.CIV.APP.5/2018

IN THE SUPREME COURT OF SIERRA LEONE
CIVIL JURISDICTION

BETWEEN

SHANG DONG STEEL (SL) LTD
FOR AFRICAN MINERALS (SL) LTD
154 WILKINSON ROAD
FREETOWN

- APPELLANT

AND

MUSTAPHA JOSEPH KAMARA
18 NYLANDER STREET
ABERDEEN
FREETOWN

- RESPONDENT

RULING DELIVERED THIS 15th DAY OF JULY 2019

The application

1. By Notice of motion dated the 20th day of March 2018 the Appellant in this case applied to this Honourable Court for stay of execution of the Judgment of the Court of Appeal dated 1st March 2018 as follows:
 1. A stay of execution of the Judgment of the Court of Appeal dated 1st March 2018 until the hearing and determination of Appellant/Applicant's Appeal by this Hon Court which said Judgment upheld the Judgment of the High Court delivered on the 9th of May 2016 by the Hon Justice M Samba J
 2. A Stay of the Garnishee proceedings presently underway before Justice Samba J which said proceedings were brought about by the Court of Appeal Judgment of 1st March 2018 and in respect of which a Garnishee Order Nisi was made on 6th March 2018, the same to be made final on 15th March 2018.
 3. That the said stay of execution of the respective judgments of the High Court and the Court below , and the stay of the said Garnishee proceedings be granted for the following reasons :

i) The Appellant/applicant herein has good and arguable grounds of Appeal which might succeed in the Supreme Court and these grounds form part of this Application.

ii) If the sum awarded the respondent herein together with interest element added thereon, were paid over to him, it is likely the same may be dissipated before the hearing and determination of the Appellants/Applicants Appeal to the Supreme Court; and in the event that the Appeal is upheld, the judgment of the Supreme Court will be rendered nugatory by such dissipation. On the other hand, the Appellant /Applicant will still be in business in Sierra Leone and will be in a position to satisfy the judgment debt should its appeal to the Supreme Court fail. Additionally, the Appellant/Applicant has sufficient capital investment here in Sierra Leone to satisfy the said judgment debt in the event its appeal to the Supreme Court is dismissed

iii) The respondent has proceeded with inordinate speed to garnishee or sequester the funds of the Appellant/applicant, so as to render the Application herein nugatory. If such proceedings were not stayed, the Appellant/applicant's present liquidity position will be seriously affected with hundreds of Sierra Leonean Staff to look after, with no prospect of recovering the same should its Appeal to the Supreme Court succeed.

iv) That this Honourable Court grant any further or other order it may deem fit;

v) That this Honourable Court do make any order as to costs as it may deem just and appropriate

Interim Stay Of Execution

2. At the first hearing of this matter on the 23rd of March 2018, the Application could not be heard to its fullest whereupon the Supreme Court decided to grant an interim stay of execution of the said judgment pending the hearing and determination of the Application for stay of execution, with "liberty to Apply". The full text of the orders of 23rd March 2018 is as follows:

1. An Interim Stay of Execution of the Court of Appeal (Order of 1st March 2018) confirming the Judgment of Justice M.M. Samba J dated 9th May, 2016 in respect of the sum of Le1, 204,874,704.45 with interest at the rate of 10% per annum from 25th October 2013 to 9th May 2016 and thereafter at the rate of 4% per annum until payment is hereby granted pending the hearing and determination of this Application.

2. That the Garnishee banks be served with this order of Court.

3. That the accounts held at Standard Chartered Bank and Guaranty Trust Bank do remain frozen

4. Liberty to Apply

5. Matter stands adjourned to Thursday 26th April 2018.

3. Further, however, the appellant availing itself of the opportunity provided by "Liberty to Apply" granted by the order of 23rd March 2018, on the 24th of March 2018 applied to this Honourable Court seeking orders which included, inter alia, that the sum totaling Le 928,735,000.00 which had been paid to solicitors for the respondent by Guaranty Trust Bank Ltd pursuant to the Garnishee Order being made absolute be returned and/or reversed to the Appellant pursuant to the Order of this Honourable Court dated 23rd March 2018 as the Supreme Court had ordered an interim stay of execution of the judgment of the Court of Appeal confirming the Judgment of Miatta Samba J dated 9th day of May 2016. Secondly, that this Honourable Court grants an Order that the Appellant be at Liberty to use Monies in its Accounts held with Guaranty Trust Bank that are in excess of the sum of Le 928,735,000.00 and that the said sum be ring fenced until the determination of the Application dated 23rd March 2018, to wit, the full stay of execution Application before this court .

4. That application, the Supreme Court was informed was predicated on the fact that there was still no access to the Appellants Accounts held at the Standard Chartered Bank (SL) Ltd and Guaranty Trust Bank SL Ltd and it coming to the end of the month, the Appellant needed to pay salaries of its over 2000 workers. That Application was heard on the 26th of March 2018 and during the course of hearing it was found out that the sum of Le 928,735,000.00 had already been executed upon with the money as directed by the Court, Justice Samba J presiding, already in the Account of the respondent's solicitors prior to it granting even its Interim Stay of execution on the 23rd of MARCH 2018, this having happened on the 22nd of MARCH 2018. The Supreme Court was moved to granting the application of 24th March 2018 on the 26th of March 2018 on these terms

1. That all sums outstanding in the accounts of the Appellant /Applicant held at Standard Chartered Bank and Guaranty Trust Bank be unfrozen to allow the applicant to pay salaries to the employees.
2. That the appellant do give an undertaking that in the event the appeal filed fails then it will immediately pay all sums owing and due to the respondent.
3. That the sum of Le 928,735,000/00 which has been paid into the account of the Respondents solicitor held at Guaranty Trust Bank be dealt with as follows, that is the respondent solicitors do give an undertaking in writing which is to be filed in this court and served on Guaranty Trust Bank that the sum of Le 928,735,000.00 will not be withdrawn or defrayed pending the hearing and determination of this Application.
4. Adjourned to 26th April 2018.

Application to Vacate Interim Orders

5. Before the Appellant could continue with the substantive application for stay of execution, the respondent brought an application before this court seeking to vacate the said orders of 26th March 2018. The Supreme Court in its majority Ruling in Shang Dong Steel (SL) Ltd V Mustapha Kamara dated 5th September 2018 decided that the said orders cannot be vacated.

As against the said orders and the aforesaid background this court is now faced with the substantive application for stay.

Appellant's Argument For Stay of Execution to be Granted

6. On Tuesday 7th May, 2019 the application for stay was heard in full. The application for stay of execution was supported by the affidavit of Kweku Melvin Lisk sworn to on the 20th of March 2018. It had Exhibits KML1-KML5. Exhibit KML 1 is the order of court dated 1st March 2018; Exhibit KML2 is the Order of Justice Samba J dated 6th March 2018; Exhibit KML3 is order of the Court of Appeal dated 13th March 2018 refusing stay of execution of the Judgment of 1st March 2018; Exhibit KML4 is the Judgment of the Court of Appeal dated 1st March 2018 while Exhibit KML5 is the Notice of Appeal dated 20th March 2018.

7. The argument of the Appellant was that prima facie he had good grounds of appeal and that his Affidavit in support deposed special circumstances warranting a stay of execution of the

Judgment of the Court of Appeal dated 1st March and any garnishee order that emanated therefrom. On the issue of good Grounds of Appeal he claimed the Learned Judge erred in law in coming to certain unsupported conclusions including summary judgment. He also hyped the issue of AML being under administration and the effect the same should have had on the claim by the Respondent against SDS Ltd, the Appellant herein. On the issue of special circumstances the Appellant Solicitor Mr. Kweku Melvin Lisk claimed the respondent was a man of straw, such that if the whole judgment debt was paid to him as part of the judgment the same could not be refunded if the Appeal succeeds against him.

Respondent Oppose Stay of Execution

8. The respondent on his part opposed the Application by filing an affidavit in opposition to which was exhibited exhibits MJK 1 to MJK7. The argument of the Respondents solicitor was on 2 fronts. Firstly that execution had long taken place before this courts interim orders of 23rd March 2018 pursuant to which the sum of Le 928,735,000/00 was paid by Guaranty Trust Bank (SL) Limited to the Respondents Solicitors Account held at the said Bank and that this Supreme Court should not now order stay when the horse had bolted.

9. Counsel for the respondent observed that with reference to orders 2&3 prayed for it was wrong for the appellant to come straight to the Supreme Court to apply to stay a garnishee proceedings, as a garnishee proceeding being a separate proceedings pursuant to Order 50 of the HCR C.I.No8 2007, it was required that the Appellant, in order to have stayed the garnishee proceedings to have applied for stay of same in the High Court presided by Justice Samba J or any other High Court Judge. Not to have done that was wrong in law meaning in effect that the garnishee order absolute cannot be stayed, was not stayed, and is in effect a fait accompli. To amplify this point he referred to Order 50 Rules 5 and 6 of the High Court which gives the High Court first instance upon an application to summarily determine the issues. He also made references to the Supreme Court Annual Practice 1999@p1016 para 59/1A/23 and Section 56(1) (b) of the Courts Act No31 of 1965.

10. On the other front, counsel for the respondent argued that no special circumstances has been shown in the affidavit in support to warrant a stay of execution. He observed that what the appellant did by his affidavit in support was to bring in matters of law, see paragraphs 1-6 thereof, which do not amount to special circumstances. On the respondent being referred to as a man of straw, Mr. Yillah noted paragraph 11 of the affidavit in opposition and exhibit MJK6 thereof to say he is not a man of straw. He argued further, that the respondent would be ready and willing to give an undertaking that the money will be refunded in the event the Appeal succeeds. Counsel for the Respondent noted the case of **FIRETEX INTERNATIONAL CO LTD V SIERRA LEONE EXTERNAL TELECOMMUNICATIONS & ANOTHER** MISAPP19/2002 CA where it was held that the court has ability to direct/order that the respondent gives and files an undertaking of this nature.

Can this Court grant or refuse Stay?

11. This matter as is expressly indicated concerns stay of execution and the circumstances in which it could be granted. It is well settled by a long line of cases in our courts viz. i) **LUCY DECKER v GLADSTONE DECKER COURT OF APPEAL MISCAPP 13/2002 UNREPORTED**; ii) **AFRICANA TOKEH VILLAGE LIMITED VS JOHN OBEY DEVELOPMENT INVESTMENT COMPANY LIMITED 26TH APRIL 1994 COURT OF APPEAL MISC APP 2/94 (UNREPORTED)**; iii) **PATRICK KOROMA VS SIERRA LEONE HOUSING CORPORATION AND DOLCIE BECKLEY 26TH MAY 2004 COURT OF APPEAL, MISC APP9/94 (UNREPORTED)**; iv) **DESMOND LUKE VS BANK OF SIERRA LEONE 14 JULY 2004 COURT OF APPEAL MISC/ APP22/04 (UNREPORTED)** v) **YUSUFU BUNDU V MOHAMMED BAILOR JALLOH 23RD JULY 2004 COURT OF APPEAL MISC APP 23/04 (UNREPORTED)** and vi) **EVELYN AYO PRATT ADMINITRATRIX OF THE ESTATE OF BETSY ROGERS PARKINSON (DECEASED) INTESTATE V JACQUILINE CAREW & OTHERS AND ISHEKA DEEN SESAY 14TH JULY 2005 COURT OF APPEAL MISC APP 7/05 (UNREPORTED)** to name just but a few that, it is in the discretion of the Court to grant or refuse a stay and that this stay will only be exercised in favour of the applicant where he can convince the court that the special circumstances of the case so warrant.

12. In HALSBURY'S LAWS OF ENGLAND 3RD EDITION VOL 16 PARA 51 AT PAGE 35 the wide discretionary powers of the courts and the principle on which it will act when considering an application for a stay of execution were stated thus:

"The Court has an absolute and unfettered discretion as to the granting or refusing of a stay and as to the terms upon which it will grant it, and will as a rule, only grant it if there are special circumstances which must be deposed to in an affidavit"

13. In the Lucy Decker and others case, Hon Justice Gelaga King JA now of blessed memory said and I quote

"It seems to me that at arriving at a decision, the crux of the matter is whether the applicants have shown convincing special circumstances to enable this court to grant a stay. This principle of special circumstances is now flowing with increasing momentum through applications for a stay of execution and the ingenuity with which special circumstances have been invented boggles the imagination; to give a few examples pneumonia, deadly diseases, inducement to move from rented premises to disputed property and huge expenses in repairing part of disputed property; building a shop in the property and obtaining a business registration certificate. In my judgment most of the matters relied on in the affidavits in support as special circumstances relate to the issues in the pleadings which were dealt with in the court below. No doubt they may be argued in the pending appeal. They are best brought up when the appeal is argued; they are not, in my opinion special circumstances in the context of stay of execution

14. In that case he then went on to establish the parameters for a grant of stay, noting in particular the ANNOT LYLE (1886)11 CP114 p 116 principle that the court does not make a practice of depriving a successful litigant of the fruits of his judgment pending an appeal; good reasons go hand in hand with special circumstances. Viewed in that light, "special circumstances must mean circumstances beyond the usual; a situation that is uncommon and distinct from the general run of things".

15. It is for the applicant to bring or place before this court those facts which he believes constitute special circumstances. But it is for that court to decide whether those facts indeed constitute special circumstances as to warrant it exercising its discretion in favour of granting the application. Each case stands on its own and will depend on its merits. Where the facts are in the opinion of the court special circumstances then Stay of Execution will be granted but if not stay will be refused; and it is left with the discretion of the COURT as with the decision to grant or refuse it as to the terms under which it would grant it

16. In its search for what constitutes special circumstances the court would try to consider from the applicant's affidavit(s)

“whether a case has been made out for depriving a litigant the benefits of the judgment which he has obtained. It is for the applicant for a stay to make that case before the court.”

See the case of **WILSON VS CHURCH LR 12 CHANCERY 454 PER LORD GRAHAM PAUL C J.**

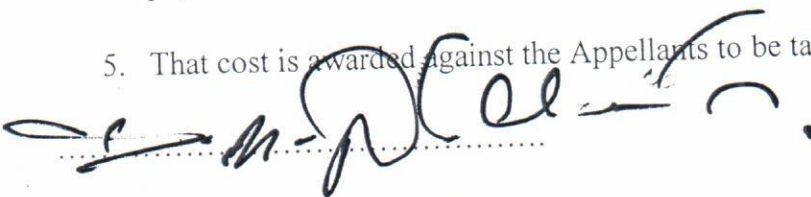
17. Looking at the affidavit before me in this case, a lot has been made about the wrongness of the Judge's decision in the case which is appealed against. Whether right or wrong the same is better handled in the Appeal and does not in any way in the opinion of this court constitute special circumstances which I dare say is the only substantial reason for which stay can be granted. 'Prima facie good grounds of Appeal' is often cited as reason for granting a stay of execution. Three 3 things ought be said on this; firstly, of itself "prima facie good grounds of Appeal" will not grant a stay of execution and secondly, it is only relevant as a prerequisite, that is to say, you cannot ask for a stay when there has been no "Notice of Appeal" filed and thirdly, that which is filed as Notice of Appeal must at least be arguable, prima facie arguable. The effect here is once this prima facie test is invariably satisfied, there ought always must be special circumstances and unless there are circumstances which constitute the special circumstances the Application ought be refused.

18. In the case before me the Annote Lyle principle is paramount -The court does not make a practice of depriving a successful litigant of the fruits of his judgment pending an appeal. At the time of the Application for Stay the 20th of March 2018 the Garnishee Nisi had been made

absolute and by the time the Application was being heard on the 23rd March 2018 an amount flowing/ accruing from the said garnishee order absolute in the sum of Le 928,735,000/00, had passed on to the respondents Solicitor's Account at Guaranty Trust Bank Ltd. Any stay of this amount would be tantamount to breach of the ANNOTE Lyle principle and even goes beyond that as there is strictly speaking nothing to stay on this Amount

19. Against the forgoing, all things considered this court hereby orders as follows:

1. Stay of Execution of the Court of Appeal Judgment of 1st March 2018 confirming the Judgment of Justice M.M. Samba J dated 9th May, 2016 in respect of the sum of Le1, 204,874,704.45 with interest at the rate of 10% per annum from 25th October 2013 to 9th May 2016 and thereafter at the rate of 4% per annum until payment is partly and largely refused pending the hearing and determination of this Appeal
2. That the sum of Le 928,735,000/00 which has been paid into the account of the Respondents solicitor held at Guaranty Trust Bank be dealt with as follows, that is, be and is regarded as part of the Judgment debt as reflected in 1 supra (to wit Le1, 204,874,704.45 with interest at the rate of 10% per annum from 25th October 2013 to 9th May 2016 and thereafter at the rate of 4% per annum until payment) and be paid over to the respondent forthwith through his solicitors.
3. That before withdrawing the sum of Le928,735,000.00 the respondent gives and files an undertaking that he will repay the sum of Le 928,735,000.00 if the Appeal succeeds against him and he is required to repay this amount .
4. That execution of the balance of the Judgment debt being the difference between the sum of Le 928,735,000.00 and Le1, 204,874,704.45 with interest at the rate of 10% per annum from 25th October 2013 to 9th May 2016 and thereafter at the rate of 4% per annum until payment be and is hereby stayed pending the Appeal
5. That cost is awarded against the Appellants to be taxed



Hon Justice D. B. Edwards CJ

A. Delamen
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Hon Justice V.M.Solomon JSC

A.B. Hallway
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Hon Justice A.B. Hallway JSC-