

C.C 609/05 2005 J. NO. 33

IN THE HIGH COURT OF SIERRA LEONE

BETWEEN: -

PRINCE A. JOHNSON - PLAINTIFF/RESPONDENT
(SUING BY HIS ATTORNEY
VERONICA ABA JOHNSON

AND

PA. ALIMAMY DUMBUYA - 1ST DEFENDANT/APPLICANT
KABBA DUMBUYA - 2ND DEFENDANT
SULAIMAN JALLOH - 3RD DEFENDANT
HAWA THORONKA - 4TH DEFENDANT

A. Y. Brewah Esq. for the Plaintiff/Respondent
S. M. Sesay Esq. for the Defendants/Applicants

RULING DELIVERED THE 24th DAY OF April 2012

This is an application by Notice of Motion dated 23rd January, 2012 filed on behalf of the Defendant/Applicant seeking principally a stay of execution of the judgment of the High Court dated 26th October 2011 and all subsequent proceedings pending the hearing and determination of the appeal to the Court of Appeal. In support of the application are the affidavits of the 1st Defendant/Applicant, PA. ALIMAMY DUMBUYA and S. M. Sesay Esq. Solicitor.

PA.ALIMAMY DUMBUYA in his affidavit sworn to on 23rd January 2012 deposed inter alia that judgment was given against him by the High Court on 26th October 2011 in a matter relating to recovery of possession of certain lands situate at 77 Byrne Lane, off Wilkinson Road, Freetown. That being dissatisfied with the said judgment, he has filed an appeal in the Court of Appeal and that he is informed by his solicitor that the grounds of appeal are strong and have good prospects of success.

He went on to depose that he and his family have been in continuous undisturbed and uninterrupted occupation of the said land for upwards of 50 years including the land now claimed by the Respondent. He deposed further that over the years he has built several houses on the land which now provides accommodation for a number of families and he and these families would be rendered homeless if execution is carried out.

The deponent referred to the poor state of his health having suffered several strokes and the fact that he is an old man aged over 90 years and that being deprived of his home at this late stage of his life would result in disastrous consequences to his health. He also expressed his fears that if the stay prayed for is not granted the Respondent may dispose of the property and that it will be in the interest of justice if the status quo is maintained until the determination of the appeal.

/3

Application

The Respondent opposed the appeal and an affidavit in opposition sworn to by **VERONICA ABA JOHNSON**, his Attorney and Agent on 6th March 2012 was filed on his behalf. She deposed that the affidavit in support does not disclose any special circumstances warranting the grant of a stay and that the application was meant to deprive the successful Plaintiff of the fruits of his judgment. She deposed further that the judgment had already been executed and that the Applicant after filing the present application broke into the premises and reoccupied same.

Counsel for the Respondent urged the court not to grant the application and submitted that the Respondent is prepared to give an undertaking not to dispose of the property pending the hearing and determination of the appeal.

It is quite settled that in an application for stay of execution of a judgment of the court, the Applicant must establish that there are special or exceptional circumstances existing for depriving the successful litigant of the fruits of his judgment. Several cases in this jurisdiction have established this principle.

In this case counsel for the Respondent has informed the court that bailiffs have already evicted the Applicants from the premises. In response to this, counsel for the Applicant has submitted that execution is not a bar to the grant of a stay.

He relied on the celebrated case on the issue, namely, **Africana Tokeh Village Ltd. vs. John Obey**, 1994 unreported decision of the Court of Appeal. In that case, Gelaga King JA stated as follows "The Court (Court of Appeal) has unfettered power and jurisdiction to order a stay of execution and may do so even though a writ of possession may have been issued and executed." The same principle applies to the High Court. The fact that the writ of possession has been issued and executed is therefore no bar to the granting of a stay.

I have already set out the plea made by the Applicant for praying for a stay of execution of the judgment herein. In my judgment they amount to special circumstances. The advanced age of the Applicant and the precarious state of his health added to the number of families who would be affected if the stay is not granted make the circumstances herein exceptional. The Applicant has in my view discharged the onus resting on him to demonstrate that such special circumstance exists in his favour.

I therefore grant the application and make the following Orders:

1. A Stay of execution of the Judgment of the High Court dated 26th October 2011 and all subsequent proceedings is granted pending the hearing and determination of the Defendant/Applicant's appeal to the Court of Appeal.

/5

2. The stay is granted on terms that the Defendant/Applicant pays the costs of the action when taxed or agreed upon and the costs of this application which are assessed at Le1 million. Both costs are to be paid within two weeks of the date of this Ruling.

A. Showers

SIGNED: - A. SHOWERS 24 / 4 / 2012
JUSTICE OF COURT OF APPEAL