

In the High Court of Sierra Leone
Commercial & Admiralty Division)

Between:

International Construction Company (ICC)	-	Plaintiff
And		
Financial Secretary	-	1 st Defendant
Ministry of Finance & Economic Development		
The Governor of the Bank of Sierra Leone	-	2 nd Defendant
The Hon Minister Ministry of Finance &		
Economic Development	-	3 rd Defendant
The Attorney-General & Minister of Justice	-	4 th Defendant

Advocates:

M. P. Fofanah Esq. for the Plaintiff

O. I. Kanu Esq. for 1st, 3rd and 4th Defendant

E. Pabs-Garnon Esq. for the 2nd Defendant.

3rd June 2015

Justice V. M. Solomon JSC.

Ruling

- 1) The 2nd defendant/applicant has filed a motion paper dated 24th October 2014 in which he is seeking the following orders:
 1. That leave be granted to the 2nd Defendant to appeal against the Ruling/Decision of the Learned Judge in this matter the Honorable Justice Vivian M. Solomon JA which is dated the 14th day of October 2014.
 2. That this Honorable Court grants an interim stay of execution of the Judgment in Default of Defence dated the 26th day of May 2014 in this matter pending the hearing and determination of this application.

3. That this Honorable Court grants an interim stay of execution of the Judgment in Default of Defence dated the 26th day of May 2014 in this matter pending the hearing and determination of the proposed appeal to be filed.
4. That the costs of this application be costs in the cause.

In support of the motion herein are the affidavits of Editayo Pabs-Garnon Esq of counsel on behalf of the 2nd defendant. The plaintiff has filed an affidavit in opposition deposed to by Mohamed Pa Momo Fofanah Esq of counsel on behalf of the plaintiff.

2. Mr. Pabs-Garnon relied on the affidavits as filed. He submitted that the plaintiff can levy execution against the 1st, 3rd, and 4th defendants and they will not be prejudiced. He submitted that the plaintiff's claim will only be settled on the debt buyback program (hereinafter called "the program") as such the sum claimed is still to be determined and quantified. He submitted that his appeal shows good grounds of appeal and that the program raises special circumstances to warrant a stay of execution of the judgment. Counsel relied on Orders 22 Rule 7; Order 48 Rule 12 of the High Court Rules 2007 (hereinafter called "The Rules"). Counsel further submitted that the program is funded by the IMF and used for developing countries including Sierra Leone. He further submitted that even if the debt owing is acknowledged it can only be paid on this program which sum is still to be quantified. He further submitted that the 1st and 3rd defendants are the primary obligors and referred to the cases of Patrick Koroma v Sierra Leone Housing Corporation C/A 26th May 2004 and Firetex International v Sierra Leone Telecommunication C/A 6th June 2004.
3. In his reply to Mr. Fofanah, he submitted that exhibit "F" is not an admission of the debt, it merely states that the debt will be considered, though the amount to be paid was never quantified. He referred to the supplemental affidavit and submitted that it shows special

circumstances. He submitted that the primary obligors have not denied the debt owing and a fortiori the judgment can be executed thereby not depriving the plaintiff the fruits of its judgment. He finally submitted that even though the debt exists it is over 30 years and its economic impact is to be considered as special circumstances.

4. Mr. Fofanah relied on his affidavit in opposition. He submitted that no special circumstances have been shown to warrant a stay of execution. He submitted that the program is not special circumstances and the said program and that the debt itself was denied by the 2nd defendant in his defence. He submitted that the mechanics on how the program is processed cannot be regarded as special circumstances to warrant a stay. He referred to the notice of proposed appeal which makes no reference to the program. The 2nd defendant is the guarantor on the promissory notes and it plays a strategic financial role in ensuring that payments from the consolidated funds are made to judgment creditors against the State. The 2nd defendant has to sign and endorse all payments made from the consolidated fund, and so to try to execute the judgment will be an act in futility if a stay is granted. He further submitted that the proposed notice of appeal does not show good grounds of appeal. The program is not applicable as this matter is in court and is not one that was settled out of court.

Mr. Kanu adopted the arguments of counsel for the 2nd defendant.

5. The present application is for a stay of execution of the judgment in default of defence dated the 26th May 2014. It is established that the legal basis for the stay of execution of a judgment is that an applicant must establish that there are special or exceptional circumstances justifying the grant of a stay of execution. This court's unfettered discretion whether or not to grant a stay is to be exercised judiciously after due consideration of the facts as presented. This is so because the successful party ought not to be deprived of the fruits of his

judgment. There is however a distinction between a monetary and a non-monetary judgment. I refer to the cases of Desmond Luke and Firetex both of which are Court of Appeal rulings in which it is held thus:

"One of the underlying reasons for imposing such condition on the applicant is that the successful litigant should not be deprived of the fruits of the judgment in his favor, a principle that is well known within the jurisdiction.....

The question to be determined therefore is; has the applicant demonstrated that there are special circumstances present in this case justifying the grant of a stay? The onus is on the applicant."

(Emphasis mine)

In the instant case there are 4 defendants. The 1st, 3rd and 4th defendants have not contested the default judgment; did not file a defence; nor have they filed any papers in respect of this application. On the one hand the 2nd defendant/applicant has argued that a stay of execution will not affect the execution of the judgment and that the plaintiff/respondent can proceed to execute, but on the other hand he has argued that the judgment debt can only be paid on the program and that the sum is not quantified. Mr Fofanah's argument is that it is not feasible to levy execution if a stay is granted as the 2nd defendant signs and endorses all payments on behalf of the Government of Sierra Leone. A question I pose, is how can any sum of money be paid out of the consolidated fund without the approval of the 2nd defendant? All payments are forwarded to him for his approval. He is the Chief Executive of the Bank of Sierra Leone. Mr. Pabs-Garnon has laid great emphasis on the program and submitted that under that program the sum claimed by the plaintiff is still unliquidated. In the defence

of the 2nd defendant there is no mention of this program. In particular, paragraph 3 reads thus:

"3. Save that the 2nd defendant admits that the Director of International Finance of the Bank of Sierra Leone wrote the letter dated 17th November 2008 the 2nd defendant denies the averments made in paragraph 5 of the Particulars of Claim of the Statement of Claim and puts the plaintiff to strict proof thereof."

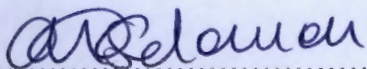
I shall refer to the proposed grounds of appeal in exhibit "E". There is no mention of the program in the proposed appeal and the alleged mis-directions therein are based on the capacity of the 2nd defendant vis-a-vis the State Proceedings Act 2000. In the premises therefore, I do not find the "program" as constituting special circumstances which should warrant a stay of execution of the judgment.

6. From the aforesaid, a question I pose is what effect will a stay of execution have on the judgment of 26th May 2014? The defendants herein are all officials of the Government of Sierra Leone and they are not sued in their private capacities. The 1st, 3rd and 4th defendants have not sought a stay of execution nor have they filed a defence to the action herein. The 4th defendant is sued as the Government of Sierra Leone. The 1st and 3rd defendants executed the promissory notes, the subject matter herein, whilst the 2nd defendant guaranteed the payments. It is my considered view that the 2nd defendant/applicant has not shown any special circumstances to warrant a stay of execution of the judgment. The 2nd defendant is not sued in his private capacity. He has guaranteed the payments of all sums on the promissory notes. The 2nd defendant has failed to discharge the burden imposed upon him by law. I refer to the cases of Misc.app 3/2002 Mrs Lucy Decker et al v Goldstone Decker unreported ruling of 9th July 2002; Misc.app 38/2004 Boblyn Augustin v Abdul

Koroma unreported ruling of 28th January 2005. In spite of the fact that this judgment herein is monetary it is not feasible for this court to order a stay of execution on the basis that the 2nd defendant enters into a bond or that the judgment sum be paid into an interest bearing account pending the hearing and determination of the appeal. The sums claimed in the promissory notes were sums already owing and due to the plaintiff by the 4th defendant duly executed on its behalf by the 1st and 3rd defendants and guaranteed by the 2nd defendant. To make such an order will be in futility. Any payment of any of the sums in the judgment sum and/or the promissory notes will need the approval of all the defendants.

7. In the premises therefore, after due consideration of the evidence and submissions herein, the 2nd defendant has not shown any special circumstances to warrant a stay of execution of the judgment. I hereby order as follows:

1. A stay of execution is therefore refused.
2. Leave is granted to the 2nd defendant to appeal to the Court of Appeal.
3. No order as to costs.



Hon. Justice Vivian M. Solomon JSC.