

IN THE HIGH COURT OF SIERRA LEONE
(LAND AND PROPERTY DIVISION)

CC: 94/18

AGRICULTURAL PRODUCTS MANUFACTURING - PLAINTIFF
COMPANY LIMITED

AND

SAHID KOROMA

MANAGING DIRECTOR

MARIKA ENTERPRISES

WELLINGTON INDUSTRIAL ESTATE

FREETOWN

-1ST DEFENDANT/APPLICANT

AND

MARIKA ENTERPRISES

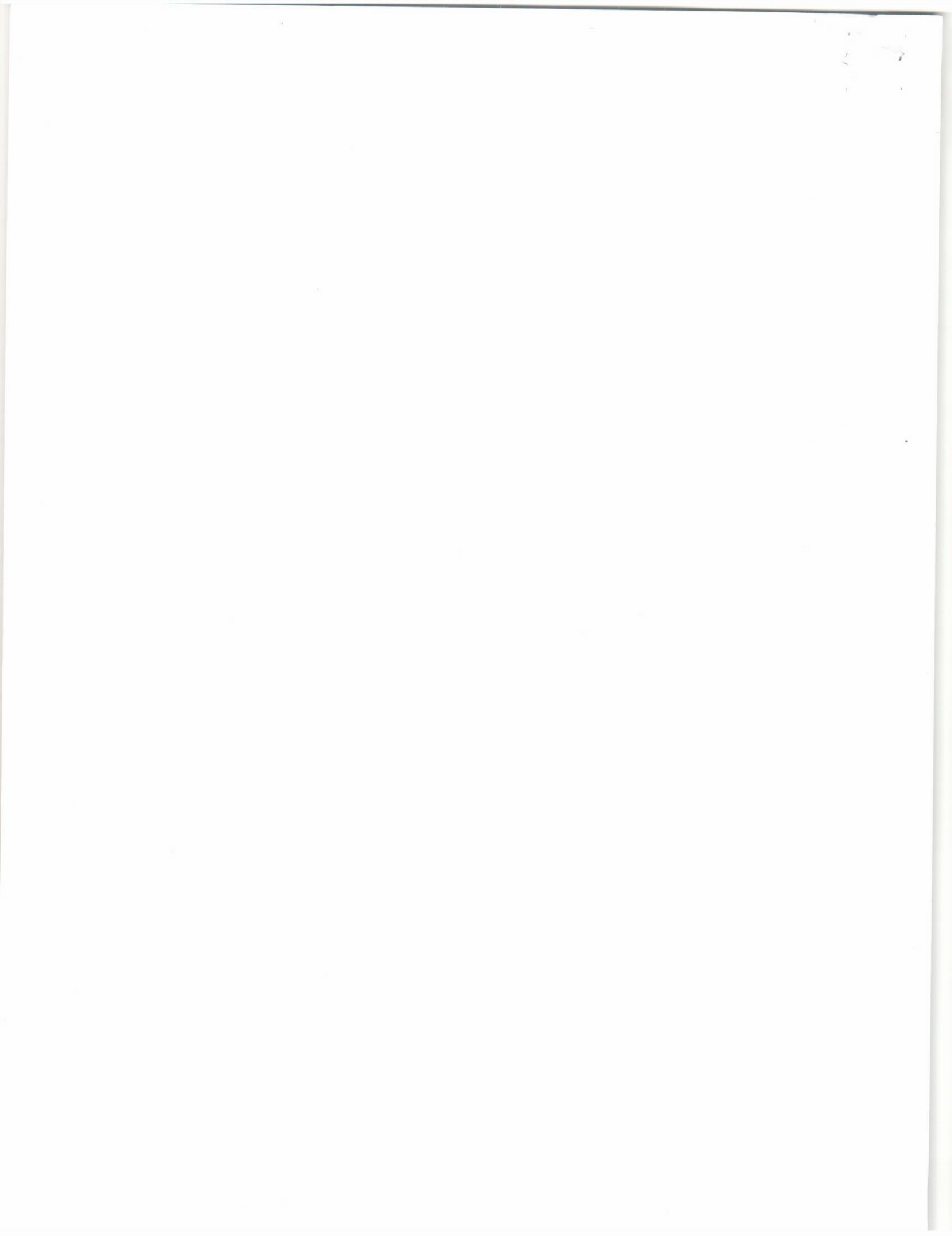
WELLINGTON INDUSTRIAL ESTATE

FREETOWN

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2ND DEFENDANT/APPLICANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA – JSC
RULING DELIVERED ON THE 28TH DAY OF MARCH, 2019



ALHAJI M.KAMARA ESQ. for the Plaintiff

A. MOISIA ESQ. and F. MOIGULA ESQ. deputizing ROBERT.B. KOWA ESQ. for the Defendant

1. The Defendants/Applicants applied to this Court by way of Notice of Motion dated the 8th day of October, 2018 seeking the followings orders: -
 - 1) That this court grants an interim stay of execution of the judgment of this court delivered on the 21st September, 2018 pending the hearing of this application.
 - 2) That leave be granted to the Defendant/Applicant to appeal against the judgment dated 21st September, 2018 in the matter herein to the Court of Appeal of Sierra Leone
 - 3) That this court grant a stay of execution dated 21st September, 2018 pending the hearing and determination of this application and subsequently of the Defendant's counterclaim
 - 4) That this court gives direction as to the further conduct of the action relating to the counterclaim
 - 5) Costs i
3. The application is supported by the affidavit of Sahid Koroma sworn to on the 8th day of October, 2018 together with the exhibits attached thereto
4. In the said affidavit, the deponent averred as follows, amongst others:
 - a) The second Defendant is a local industry carrying on manufacture of soap powder, vegetable cooking oil, fertilizer and recycled plastics and the purchase of agriculture products in different parts of the Country thus creating employment for 500 people. It

further contributed to the Supply of energy to the country by proving biomass (Palm Kernel Shells) to Addax bio –energy for the production of electricity.

- b) That the 2nd Defendant has installed a substantial number of machines and other manufacturing equipment on the premises, the subject matter of this action. The machines and equipment which were installed over a period of One year could be easily damaged and rendered useless if removed. As proof of this, the deponent exhibited a brochure showing off the production machines installed on the premises.
 - c) That over 200 citizens in the rural arrears in the provinces mainly relied on products sold to the 2nd Defendant as the source of their livelihood.
 - d) That if the said equipment are removed, it will cost a huge sum of money to either re-install or replace them if it turns out that the Defendants become victorious in the matter.
 - e) That it will be in the interest of justice if the Orders prayed for are granted.
5. The Plaintiffs/Respondents opposed the application by an affidavit sworn to by Allie E Bangura on the 9th day of October, 2018.
6. In the said affidavit, the deponent averred as follows: -
- a) That the Applicants have not shown special circumstances.
 - b) That the Applicants are not engaged in any meaningful production as the machines are not utilised.
 - c) That the Applicants installed only one Chinese machine which works only periodically and so the cost of installing it is minimal.
 - d) That the Applicants have a property neighbouring the Respondent's property where the machines when uninstalled can be easily relocated. A copy of a map illustrating the positions of the respective properties of the Applicants and Respondents was exhibited and marked "AEB 1".

- e) That the application is merely a ploy to deprive the successfully litigant of the fruit of his judgment.
 - f) That it will be in the interest of justice if the application is refused.
7. In his oral submission, Robert B. Kowa Esq., relied on the entire contents of the affidavit in support. He referred to the various exhibits attached to the affidavit in support, particularly Exhibit" A- Proposed NOTICE AND GROUNDS of Appeal.
8. Mr. Kowa made the Application pursuant to the inherent jurisdiction of this Court and the Rules of the Court of Appeal. He referred to paragraphs 5-14 of the affidavit in support as establishing special circumstances. Mr. Kowa submitted that there were substantial issues that would likely succeed on appeal.
9. Counsel for the Applicants referred to Exhibit "D"¹⁻⁶ – the judgment herein and the drawn up order and submitted that the counter claim had not been dismissed. It would therefore be necessary for the stay to be granted whilst the counterclaim is considered.
10. Counsel relied on the case of AFRICANA TOKEY VILLAGE -V – JOHN OBEY DEVELOPMENT COMPANY (MISC. APP CA (Unreported)).
11. In this response, Counsel for the Plaintiff/Respondent A.M. Kamara Esq. relied on the entirety of the affidavit in opposition and submitted that the Applicant had not shown special circumstances why this Court should exercise its discretion to grant a stay. This goes hand in glove with good grounds of appeal.
12. Mr. Kamara submitted that the deponent herein in the affidavit in opposition had denied each and every allegation contained in the affidavit in support. He cited the **CASES OF PATRICK KOROMA V**

SALHOC Misc. App. 9/2004 and DEMOND LUKE V BANK OF SIERRA LEONE.

13. On Mr. Kowa's submission regarding the Counterclaim filed, Counsel referred the Court to Order 16 (3) (1) of the High Court Rules, 2007. It was for the Applicant to satisfy the Court that there were triable issues. The Application was for a stay and not trial of a counterclaim.
14. Mr. Kowa in his reply also relied on the **DESMOND LUKE CASE**. He agreed with his colleague on the remit of Order 16 Rule 3(1) of the High Court Rules, 2007 but went on to rely on Order 16 Rule 3 (2). Counsel also referred to Exhibit B⁴- the Defence and Counterclaim.
15. Mr. Kowa finally prayed that the Court exercises its discretion in granting a stay.
16. Both Counsel are in agreement that in order for the Court to grant a stay, special circumstances have to be sworn. In **FEMI HEBRON AND WHITE LION COMPANY LTD and BAMI BAKER CIV. APP. 50/17**, after reviewing various Sierra Leonean Rulings on the need for special circumstances, I had this to say at paragraph 31
"My research has reveled that whilst most of our cases on this point mention special circumstances, most if not all have not clearly established the boundaries thereof. Whilst I agree that the categories of special circumstances are not closed, it is my view that there must be a general standard, a benchmark in determining what it is".
17. I continued in the same paragraph, "special circumstances" to my mind means any circumstances if not considered could lead to injustice".

18. At paragraph 37 of the said judgment, I said that in granting or refusing a stay, the Court should also consider whether the grounds of appeal are likely to succeed. The grounds of appeal must be cogent and arguable. The Judge need not consider (and in fact should not do so) the merits of the appeal. It should however be noted that the fact that an appellant has a wonderful, substantial, impressive and arguable grounds of appeal is not a special circumstance for granting a stay. In other words, it is not in every case where the grounds of appeal raise a point or points of law that a stay will be granted.

APPLICATION OF THE LAW

19. This matter concerns recovery of possession of property, rent interest and costs. Summary judgment was delivered in favour of the Respondent herein. The Applicants have exhibited a Notice and Grounds of Appeal. The special circumstances relied on by the Applicant are that employment for 500 persons would be lost; machines would be very expensive to be uninstalled or reinstalled. The Respondents on the other hand argued that the business is - un-operational; only one machine was installed and would not be expensive to remove. The Respondent also argued that the Applicant has property nearby and could easily move there.
20. In the strict sense, most of the issues raised by the Applicants do not amount to special circumstances. The grounds of appeal raises questions of law, but as I have already said, it is not in every case where the grounds of appeal raise point or points of law that a stay will be granted. I however also said that special circumstances means circumstances if not considered could lead to injustice.

21. Where do I strike the balance in this case? This Court visited the subject matter of this action. It was found out that there were installed machinery and equipment and workers at the factory. The Respondent showed the Court dilapidated tanks, buildings as evidence that the factory was not in operation.

22. Having considered this, I am not inclined to grant the stay in the manner requested by Applicants. However, considering that there are installed machinery on the premises, large number of employees and a factory that appeared to be in operation, I will grant relief to the Applicant against immediate repossession by the Respondent. This Court has the power to grant such relief at the hearing of an Order 16 Application. Ordering otherwise would be unconscionable and could only lead to a chaotic transfer of possession of the property. The best interest of both parties would be served when there is cooling off period between this Ruling and the recovery of possession by the Respondent.

23. On the application for leave to appeal, the Judgment of this Court dated the 21st September, 2018 was a final judgment from which the Applicants can appeal as of right. They need not apply for leave from the Court.

24. As regards the trial of the counterclaim Order 18 Rule 2 (3) provides that 'a counterclaim may be proceeded with notwithstanding that judgment is given for the Plaintiff in the action or that action is stayed, discontinued or dismissed. "Action" here to my mind includes application for summary judgment. This rule, I hold is applicable in this case.

25. In the circumstance I Order as follows: -

1. That the Defendants/Applicants herein deliver and give up possession of all that piece or parcel of land situate, lying and being at P.K. Oil and Fad mill, Wellington Industrial Estate,

Freetown in the Western a Area of the Republic of Sierra Leone
on the expiration of a period of six (6) months from the date of
this Order

2. Costs of Le5, 000,000/00 to be paid by the Defendant/Applicant
to the Plaintiff/Respondent.



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Hon. Mr. Justice Sengu Koroma (JSC

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