

BLYDEN v. GRANT and BOYDEN
BLYDEN v. FOURAH BAY COLLEGE COUNCIL

SUPREME COURT (Bairamian, C.J.): October 24th, 1957
(Civil Cases Nos. 141/56 and 142/56)

[1] Civil Procedure—appeals—stay of appeal—no stay granted on ground that trial costs unpaid: An appeal will not be stayed on the ground that the taxed costs in the trial court have not yet been paid and that the appellants have no means of payment (page 39, lines 24–29).

[2] Civil Procedure—costs—unpaid costs—no stay of appeal granted on ground that trial costs unpaid: See [1] above.

The defendants applied to the Supreme Court for an order that the plaintiff's appeal be stayed until the taxed costs in the trial court were paid.

The plaintiff brought two separate actions in the Supreme Court. Judgment was given for the defendants with costs in both cases. The plaintiff gave notice of appeal in one of the cases; the defendants in both actions applied for an order that he should not proceed with his appeal until he paid the taxed costs in the court of trial. The plaintiff had stated during both trials that he was unemployed and had no means of paying his costs.

Legislation construed:

West African Court of Appeal Rules, 1950 (P.N. No. 17 of 1951), r.17:

"The appellant shall within such time as the Registrar of the Court below shall fix, deposit such sum as shall be determined by such Registrar or give security therefor by bond with one or more sureties to his satisfaction as such Registrar may direct for the due prosecution of the appeal and for the payment of any costs which may be ordered to be paid by the appellant.

r.18: The Court may, where necessary, require security for costs . . . in addition to the sum determined under rule 17."

K.O. During for the plaintiff;

R.E.A. Harding for the defendants.

BAIRAMIAN, C.J.:

This is an application by the defendants in two actions that the plaintiff should pay the defendants the taxed costs in both actions and that until they are paid the plaintiff's appeal to the West African Court of Appeal in one of the two actions be stayed. The

grounds put forward were that the plaintiff said at the trial of one case that he was unemployed; and at the taxing of the bill of costs in the other action, his solicitor said that the plaintiff was still unemployed and that there was no hope of his satisfying the taxed costs. The notice of motion winds up with the statement that there is no object in the plaintiff accumulating costs he cannot pay.

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I have known of applications in cases at first instance that a party be ordered to give security for costs; and I have also known of applications that the party appealing against a judgment should give security for costs: see, for example, rr. 17 and 18 of the West African Court of Appeal Rules, 1950. I have also known of applications to strike out an appeal because the conditions for appealing had not been fulfilled. What I have never seen is an application that the losing party shall be ordered not to proceed with his appeal unless he first pays the taxed costs in the court of trial. I have asked Mr. Harding to point to some authority in support of his application, but the two rules he cited from the English Rules of the Supreme Court, namely, O.65, r.6 and O.58, r.9 relate to security for costs in a cause or matter and security for the costs of an appeal respectively. They do not help the defendants.

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What normally happens after judgment when there is an appeal is this: the losing party asks for a stay of execution of the judgment and, if he is not granted such a stay, the winning party is at liberty to take steps for the execution of the judgment. I do not think that the winning party can ask the trial court to stay an appeal to the Court of Appeal on the ground that the costs of the trial have not been paid. I do not know of any authority for this to be done, nor have the applicants furnished any authority for their request; and the application is therefore refused with costs to the plaintiff. The costs are to be taxed as on a judge's summons and deducted from the costs due from the plaintiff in the trial court.

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Application dismissed.

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