

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

BETWEEN:

VINCENT LAMIN KANU (JNR) - PLAINTIFF/RESPONDENT
(SUING AS THE ADMINISTRATOR OF THE ESTATE OF VINCENT KANU) (DECEASED)

AND

BENJAMIN JUXON SMITH - DEFENDANT/APPLICANT

Counsel:

P. Fofanah Esq. for the Plaintiff/Respondent

G. M. Kutubu Esq. for the Defendant/Applicant

**RULING DELIVERED THIS 22ND DAY OF JANUARY 2024 BY HONOURABLE MRS. JUSTICE
JAMESINA E. L. KING J.A**

1. The Defendant/Applicant applied to this Court by Notice of Motion dated 19th October 2022 for a stay of execution of the Ruling of this Court dated 7th October 2022 pending the hearing and determination of this application and of the appeal filed in the Court of Appeal.
2. In support of the application is the affidavit of Benjamin Juxon Smith with the following exhibits: the writ; defence & counter-claim; summons & affidavit; the ruling of the Court; notice of appeal; compendium of receipts; certificates and other documents regarding the existence and operation of the Defendant/Applicant's garage, copies of pictures of numerous vehicles and machines at the said garage and the structures erected for residence and business purposes.
3. The application is made pursuant to Rule 28 & 64 of the Court of Appeal Rules. An order of interim stay of execution was granted pending the hearing and determination of this application.

4. The appeal is against the Ruling of this Court that Plaintiff/Respondent as Administrator of the Estate of Vincent Kanu (Deceased) is entitled to possession and is to recover from the Defendant/Applicant the land situated lying and being at Sir Samuel Lewis Road Aberdeen in the Western Area of the Republic of Sierra Leone based on the Conveyance of the said Vincent Kanu (Deceased). It is the Defendant/Applicant's case that the land is his given to him by the Deceased and he operated a garage on it for over 20 years.

Submissions of Counsel for the Defendant/Applicant

5. In relation to the appeal, Counsel for the Defendant/ Applicant, Mr. Kutubu submitted that the Court did not have the proper opportunity of hearing the Defendant's case as the Ruling was made pursuant to an Order 17 application for determination on a point of law, determined by affidavit evidence. He stated that there are equitable principles that could have guided any reasonable tribunal to not have concluded as this Court did and therefore the grounds of appeal are not fictitious or vexatious.
6. On special circumstances, relying on *Richard Owiredu v Beijing Urban Construction* 2008 Misc. App 4/2008 he stated that an issue of law had been raised, in that the Plaintiff/Respondent's supplemental affidavit in opposition to this application exhibited a will of Vincent Kanu when the Ruling was obtained on the basis of Letters of Administration in respect of his estate. He questioned the Defendant/Respondent's case that the Deceased died intestate when in fact there was a will.
7. He also urged the Court to consider the Defendant's affidavit and the following special circumstances deposed to:
 - the Defendant/Applicant's investment of an entire life in the said property with structures housing some of his employees and family members to the knowledge of the Plaintiff and all other beneficiaries;
 - the said garage being one of the best and biggest in Freetown servicing at least 50 vehicles at each point;
 - Difficulty of removing some of the vehicles which are defective and the huge liability he will incur;
 - over 50 employees and Defendant rely on the existence and operation of the said garage for a livelihood;
 - the property serves as a residence for a number of employees;

- the relationship between the Plaintiff's father and the Defendant/Applicant whereby the latter was regarded as the son of the former, thus he was a family member and not a stranger and
 - that execution would cause irreparable loss and adverse hardship to the Defendant/Applicant.
8. Based on the above facts in support of his application he relied on *Commercial Enterprises Ltd v Whittaker Properties & Other* Misc. App 12/91, *Toufic Huballah v Chernor Sow* Civ. App 67/2005 and *Decker v Decker* Misc. 13/2002 among other authorities cited.
 9. He maintained that if the appeal fails the Respondent will have sufficient remedy in damages and a stay is warranted to prevent injustice, homelessness and irreparable loss to the Defendant/Applicant.

Submissions of Counsel for the Defendant/Applicant

10. In opposing the application, Mr. Fofanah, Counsel for the Respondent, relied on the affidavit in opposition of Patrick Fofana sworn to on 28th October 2022 and the supplemental affidavit of Alhaji Mohamed Babatunde Cole sworn to on 18th November 2022 and the exhibits attached thereto.
11. He submitted that the Defendant's occupation of the land for 20 years, rendering service to the Plaintiff/Respondent's late father, his development of the property used as his garage as well as the workers who live there were all not new issues as they had been considered by the Court prior to the decision. He also stated that there is no evidence to substantiate that 50 people are in the Defendant/Applicant's employment as indicated in his affidavit.
12. Regarding the document that Counsel for the Defendant/Applicant has described as a will, he submitted that the document does not in any way meet the requirement of a will but was used to show the state of the mind of the Plaintiff's father whilst he was alive, which was to build a structure on the property and that it was not for sale. This document he maintained also countered the Defendant/Applicant's assertion that the Plaintiff's father had given him the property 20 years ago, because on 6th July 2015 he stated the said property was part of his assets before he died on 11th January 2016.
13. He submitted that the Plaintiff should not be deprived of the fruits of his judgment because of the Defendant's business relying on *Mrs. Bindora*

Mary Koroma v Mrs. Emerica Kadie Janneh & Others Civ. App 58/2013. Unlike that case where the Applicant had a conveyance, in this case he submitted the Defendant did not have a conveyance and there is no justification that the Plaintiff should be deprived of the fruits of his judgment.

14. He further submitted that the property will not dissipate during the appeal and noted that the Court took a different view when it comes to monetary judgment and solid premises in granting a stay and referred to *Desmond Luke v Bank of Sierra Leone* Misc App 22/2004, *Yusufu Bundu v Mohamed Bailor Jalloh* Misc. App 23/2004 and *Patrick Koroma v S. L. Housing Corporation & Dolcis Beckley* Misc. App. 9/2004.
15. He concluded that the Defendant had not provided the Court with any special circumstance neither with any reasonable ground that the appeal will be successful. He urged the Court to refuse the application.

Reply by Counsel for the Defendant/Applicant

16. In response Mr. Kutubu reiterated his earlier submissions and distinguished the case of *Bindowa* relied on by Counsel for the Plaintiff/Respondent in that the issue was not that the property in that case was used as a business but the denial of a stay was because the defendant had actual knowledge that the property was not theirs but during the pendency of the action started building structures on it which did not apply in the current case. In this case he submitted, over two decades the Defendant/Respondent had been on the land and all the family members of the Plaintiff/Respondent acquiesced to his stay. He also distinguished the facts in the cases of *Yusufu Bundu* and *Patrick Koroma* in relation to the facts of the present case.

Analysis & Decision

17. The law relating to stay of execution is well settled. The filing of an appeal does not operate as a stay. The Court has an absolute and unfettered discretion in granting or refusing a stay and as to the terms upon which it will grant it. It will as a rule, only grant it if there are special or exceptional circumstances, which must be deposed to in an affidavit unless the application is made at the hearing. See Halsburys Laws of England 3rd Edition Vol. 16 at p.35. Hon. Mr. Justice Gelaga-King JA in *Africana Tokeh Village Limited v John Obey Investment Co. Ltd* Misc. App 1/94 stated that "Where the Court is shown special circumstances it will use its discretion

in favour of a stay. It is for the applicant to bring before the court those facts on which he relies on as constituting special circumstances."

18. Special circumstances depend on the peculiar circumstances and the facts of each case. Moral, social or political considerations do not and ought not to form the basis for the exercise of the Court's discretion. See *Desmond Luke v Bank of Sierra Leone Misc. App. 22/2004*.
19. A distinction in the application of the principles governing proceedings for a stay of execution must be drawn between those involving monetary and non-monetary judgment. See *Luke v Bank of Sierra Leone*. For such non-monetary judgments, the Court of Appeal in the case of *Boblyn Augustine v Abdul Koroma* (Misc app 38/2004) held that for a judgment for recovery of land the Court will refuse a stay unless the applicant can establish a strong case for depriving the respondent of the fruits of the judgment obtained in his favour. This is because land does not dissipate or disappear which is a risk associated with money judgment.
20. In addition to showing special circumstances the appeal filed must show prima facie good grounds of appeal. See *Patrick Koroma v S. L. Housing Corporation & Dolcis Beckley Misc. App. 9/2004*. These two requirements must exist for the Court to exercise its discretion in favour of the applicant. This is because, a Court must ensure that a successful litigant is not deprived of the fruits of his judgment and that it may be wrong to grant a stay of execution of a judgment pending appeal where an appeal is frivolous or which will inflict hardship on the successful party; see *Firetex International Co. Ltd vs Sierra Leone External Communication and Sierra Leone Telecommunications Co. Ltd. Misc. App. 19/2002*. Subject to this however, is the principle that when a party is appealing exercising his undoubted right of appeal, the Court ought to see that the appeal if successful shall not be rendered nugatory, see *Wilson v. Church No.2 1879 12 Ch. D 454*.
21. Hon. Mr. Justice Admosu JA in the case of *Richard Owiredu v Beijing Urban Construction Group Limited (carrying on business as Bintumani Hotel) Misc. App. No. 4/2008* stated as follows:
"As this Court has said before, it is not every ground of law that qualifies as a special circumstance for a stay of execution. For a ground of law to so qualify it ought to be shown it is substantial; that a decision on it one way or the other will affect the substratum of the whole case and the applicant has some chance of success."

22. I have considered the submissions of both Counsel for the parties and the affidavits filed. I have carefully considered the special circumstances as deposed to in the affidavit. The use of the property by the Defendant/Applicant as a garage for over 20 years, the loss of investments and livelihood of himself and his employees if evicted without more are not compelling enough to warrant this Court to deprive the Plaintiff/Respondent the property which forms part of the estate he is administering. By doing so will also deprive the beneficiaries of the estate entitled to the said property which will be contrary to law and the wishes of the deceased.
23. The Defendant has had sufficient notice and opportunity before this matter was instituted and even after this Court's Ruling to secure alternative accommodation and premises to operate his garage and house all of the cars, machines and his employees.
24. On the issue of family ties or relationship, the Defendant is not related to the Plaintiff/Respondent's father or the Plaintiff, and even if he was, that without more does not constitute special circumstances for consideration in an application for a stay. In *Alhassan Kamara & Others v Gibrilla Ameen Kamara* Civ. App 41/20 the Court of Appeal stated that being related however strong the family ties are or the relationship by blood, does not of itself, constitute special circumstance to warrant a stay. In the *Decker* case, it was not only the fact that the parties were related but the property in question had been inherited and occupied by the applicant. The Defendant/Applicant has not and cannot claim that the property in question is inherited.
25. Regarding the appeal, without going into its merits, the Defendant/Applicant was given the opportunity to present his case in this Court and did so as required by Order 17 of the High Court Rules 2007. His Defence and affidavit evidence did not justify the Court to have ruled in his favour or to have allowed the matter to go on trial. The fact remains that the said property forms part of the estate of Vincent Kanu as evidenced by his Conveyance. The production of a document described as a will during this application does not assist the Defendant/Applicant's case or alter the fact that the property is not part of the said estate.
26. The subject matter in question relates to land which is not likely to dissipate pending the appeal and will be available to be re-possessioned in the event that the Defendant/Applicant succeeds on appeal. This is in line

with the position taken by the Courts in the cases cited above, who are more likely to decline applications for a stay relating to land as opposed to monetary judgments with the difficulty to recover monies paid.

27. In view of the above, the Defendant/Applicant has not made out a case to meet the threshold for granting a stay. The delay in the delivery of this Ruling is regrettable and I hope it has given the Defendant/Applicant time to relocate his garage. If he has not already done so given that eviction will involve mainly the removal of cars and machines, eviction will take place after 30 days of this order to enable him to safely remove them.

28. The Plaintiff/Respondent or beneficiaries must not sell the property pending the hearing and determination of the Appeal so that should the Appellant succeed such judgment should not be rendered nugatory as a result of the right of a third party purchaser.

29. In the result, I make the following orders

1. The Defendant/Applicant's application for a stay of execution of the Ruling of this Court dated 7th October 2022 is refused.
2. The Plaintiff/Respondent and or beneficiaries of the said Estate are restrained from selling or otherwise disposing of the said property pending the hearing and determination of the appeal.
3. The Plaintiff/Respondent shall not proceed with execution until after 30 days of this order to enable cars and machines to be safely removed from the said property.
4. The appeal is to be heard speedily and the Registrar of the Court of Appeal is directed to ensure that the records are settled and conditions of appeal fulfilled for hearing to proceed.
5. Costs of the application to the Plaintiff/Respondent to be taxed if not agreed.


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HON. MRS. JUSTICE JAMESINA E. L. KING J.A.