CIV. APP. 76/2025

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:

KADIATU KAMARA — 1ST APPELLANT/APPLICANT
MUSU TURAY — 2ND APPELLANT/APPLICANT
EJATU KANU — 3RD APPELLANT/APPLICANT
KADIATU KARGBO — 4TH APPELLANT/APPLICANT
RUGIATU KAMARA — 5TH APPELLANT/APPLICANT
IBRAHIM KAMARA — 6TH APPELLANT/APPLICANT
ALIMATU KAMARA — 7TH APPELLANT/APPLICANT
FATMATA KAMARA — 8TH APPELLANT/APPLICANT
All C/O 14E & 14F Koroma Street, calaba Town, Freetown

AND

UMARU KAMARA — 1ST RESPONDENT/ RESPONDENT
Schweinauer StraBe 60 90439, Germany

IYE FOFANAH — 2ND RESPONDENT/ RESPONDENT
MARIE DUMBUYA — 3RDRESPONDENT/RESPONDENT
ISSA KAMARA — 4TH RESPONDENT/ RESPONDENT
All of Bama Junction, Waterloo – Masiaka Highway

CORAM:

HON. MR. JUSTICE SULAIMAN AHMAD BAH, JA, PRESIDING,

HON. MR. JUSTICE M.A.J. STEVENS, JA.

HON. MR. JUSTICE A T GANDA, JA.

COUNSEL:

E.T. Lassayo and H.M. Fofanah for the Appellants/Applicants.

B.J. Reffell for the Respondents/ Respondents.

RULING DELIVERED ON THE 2ND DAY OF JULY, 2026.

The Application

1. This application is by way of a Notice of Motion dated the 8th day of January,2026, filed by the appellants/applicants seeking reliefs stated thereon as follows:

> 1. *That an interim stay of execution be granted in respect of the [Ruling] of the Hon Justice Hannah Bonnie, J. delivered orally on the 17th December 2025 but the written version of which is dated the 18th December 2025 in the matter* ***intituled CC. 8/25. 2025 K No. 9 Kadiatu Kamara & Others AND Umarr Kamara & Others*** *and all subsequent proceedings pending the hearing and determination of this application;*
> 2. *That a stay of execution be granted in respect of the [Ruling] of the Hon Justice Hannah Bonnie, J. delivered orally on the 17th December 2025 but the written version of which is dated the 18th December 2025 in the matter* ***intituled CC. 8/25. 2025 K No. 9 Kadiatu Kamara & Others AND Umarr Kamara & Others*** *and all subsequent proceedings pending the hearing and determination of the [a]ppellants/[a]pplicants' appeal herein;*
> 3. *Any further Order(s) that this Honourable Court may deem fit and just in the circumstance."*

2. In support of the application is the affidavit of Hassan Muctar Fofanah Esq sworn to on the 8th day of January, 2026, together with the exhibits attached thereto. The Court will be referring to certain paragraphs of the affidavit later, as it deems fit.

Submissions

3. E T Lassayo Esq., commenced by relying on the entirety of the affidavit and the exhibits attached thereto. Counsel made the following submissions:
    - That the Court is vested with jurisdiction to hear and determine his application for stay of the Ruling of the Learned Trial Judge (hereinafter referred to LTJ) and relied on Rules 28 and 64 of the Court of Appeal Rules 1985 (hereinafter referred to as **CAR**). He also relied on paragraph 17 of the affidavit in support, which state "*... the refusal of the [L]earned [T]rial [J]udge to hear the application for stay yet proceeding to hear and grant the application for leave to issue writ of possession amounts to constructive refusal of the application for stay.*"

    - That the Notice of Appeal dated the 19th December 2025, exhibited as RKq [1-5], contain grounds of appeal that are good and strong enough to warrant the Court to exercise its discretion in staying the Ruling of the Learned Trial Judge (hereinafter referred to LTJ).

- That all the parties to the action except the 2nd and 3rd Respondents are members of the family of the deceased Lamin Kamara; and consequently, that special relationship between them qualifies as a special circumstance warranting this Court to exercise its discretion. In support of this submission he referred to paragraphs 18, 19 and 21 of the affidavit in support and then relied on **Mrs Lucy Decker & others vs. Goldstone Decker Misc App 13/2002** (hereinafter referred to the **Decker vs Decker case**).

- That the subject matter of this appeal houses the grave containing the remains of the deceased intestate and a Mosque for which the appellants/applicants have a static attachment to the property potentially to be lost where a stay is not granted, does amount to a special circumstance. The Court was referred to paragraphs 35 & 38 of the affidavit in support.

4. In opposition, B.J. Reffell commenced by referring to the affidavit in opposition sworn to by Ibrahim Kamara Esq on the 17th April 2026. Counsel relied on the entirety of the affidavit and the exhibits attached thereto. Counsel submitted the following:

- That there is nothing to stay as execution was complete and vacant possession handed over to the defendants (now respondents). In furtherance of this submission, Counsel referred to paragraph 11 of the affidavit in opposition exhibiting a copy of the Returns (exhibit H) under the hand of the Under Sheriff and dated the 7th day of February 2026. Further, Counsel submitted that asking the Court to grant a stay after the said execution was completed is like supplying medicine to a dead man or it can also be equated to closing the stable after the horses have bolted. In support of this submissions he relied on a Nigerian Supreme Court authority **Zenith Bank Plc Vs Chief Arthur John and Others** ((SC.519/2012) [2015] NGSC 7-30th day of January 2015) (hereinafter referred to the **Zenith Bank Plc case**). He further submitted that the authority, though foreign, should be considered as the basis of the above submission that there is nothing before this Court to Stay.

- That the orders in the drawn up Order of the written Ruling dated the 18th December 2025 exhibited as RKe[1-3], now sought to be stayed are Declaratory Orders and therefore, they do not fall within the category of orders that can be stayed. In support of this submission Counsel referred to **Tanios Gebran Chaghoury V Jamal Kamel Wanza Civ. App. 57/24** – dated 20th day of April 2025 (hereinafter referred to the **Tanios Geran Chaghoury case**).

- That the non-hearing and non-determination of the application for a stay of execution dated 19th day of December 2025, by the LTJ does not *ipso facto* give the appellants/applicants the reason to come to this Court as the said non-hearing and non-determination does not amount to an order refusing the stay. In support of this submission Counsel referred to **Betty Mansaray & Other V Marie Kamara-Williams Misc.**App 4/2017 (hereinafter referred to the **Betty Mansaray** case).

Deliberations.

5. There is no contention that Rules 28 and 64 of CAR governs the stay of execution regime. However, Counsel are at variance as to what amounts to a refusal by the Court below; and, how the said refusal would vest jurisdiction on this Court to hear and determine a stay application. The appellants/applicants, via paragraph 17 of the affidavit in support have stated that: "... *the refusal of the [L]earned [T]rial [J]udge to hear the application for stay yet proceeding to hear and grant the application for leave to issue writ of possession amounts to constructive refusal of the application for stay.*" This averment by the appellants/applicants, is what Counsel for the respondents would want this Court to believe does not amount to a refusal by the Court below. Counsel's submission is that the non-hearing and non-determination of the application for a stay of execution dated the 19th day of December 2025, does not *ipso facto* give the appellants/applicants the reason to come to this Court as the said non-hearing and non-determination does not amount to an order refusing the stay. In support of his submission, Counsel for the respondents relied on the ***Betty Mansaray*** case. That case most certainly cannot be a helpful authority to Counsel's submission, as it deals with the '***refusal to decide a point of law'***, a ***'judge's alleged bias' and*** the ***'delay in delivering judgment'***.

6. What amounts to refusals by the Court below was well answered by this Court in ***Leonoil Company Limited vs Jaffer Zeghir*** Civ App 13/2024, where R S Fynn JA opined:

> *"The answer according to the authorities appears to lie with two possibilities; firstly, when there is an actual or outright denial of the stay application resulting in the clear dismissal of the application. And secondly* ***when there is a constructive or indirect refusal of the stay application.***" Emphasis added.

The authorities considered by his Lordship in the ***Leonoil Company Limited*** case includes: **Firetex International Co Ltd vs Sierra Leone External Co Ltd** Misc app 19/2002, **Adama Mansaray vs Brima Mansaray** Civ App 31/81, **Africana Tokeh Village Ltd Vs John Obey Development Investment Co Ltd** Misc App 2/1994 (herein after referred to the Africana Tokeh Village case), **Hassan Turay vs Bintu Mansaray** Misc App 3/2016, and **Aiah Fengai & 73 others & Marginalised Affected Property Owners vs Octea Ltd & The Managing Director of Octea Limited & Others**

(hereinafter referred the **Aiah Fengai & others vs Octea** case). These named authorities provided instances of constructive refusal: i.e, where the Court below grants a stay but on onerous terms; and when there is an inordinate delay in the hearing and determination of the application for stay.

7. This Court, will now consider the facts deposed to in the affidavit in support of the application to ascertain and determine whether there was constructive refusal by the Court below. Paragraphs 12 – 17 of the affidavit in support provides as follows:

> *"12. The Appellants/Applicants are concerned about the risk of the 1st Respondent/Respondet disposing of the property herein so they instructed us to apply for a stay of execution herein even without the printed copy of the said [Ruling]which we did by Ex Parte Notice of Motion dated the 19th December 2025. Acopy of the said motion is exhibited hereto and marked RKg1-4.*
>
> *13. Unfortunately however, the said motion has yet to be heard and determined despite its urgent nature.*
>
> *14. The [L]earned [T]rial [J]udge (Justice Boi Hannah Bonnie J) proceeded to hear and grant an application for the issue of a writ of possession on the 7th January 2026 despite the pendency of the said application for stay which has been filed weeks before the application for leave to issue writ of possession. Exhibited hereto is a copy of the said motion for leave to issue writ of possession marked RKh1–2.*
>
> *15. A copy of the order by which the [L]earned [T]rial [J]udge granted leave to issue the said writ of possession is exhibited hereto and marked RKj1–2.*
>
> *16. A copy of the writ of possession itself is exhibited and marked RKk1–3.*
>
> *17. I verily believe the refusal of the [L]earned [T]rial [J]udge to hear the application for stay yet proceeding to hear and grant the application for leave to issue writ of possession amounts to constructive refusal of the application for stay.'*

8. Courts ordinarily have a right to regulate and control their proceedings; but whilst this may be so, there is also a general expectation that motions and applications will be usually heard and considered in the sequence that they are received. A Court choosing to hear and determine an application received in any other order will be expected to clearly state the reasons for the departure from that which is the normal.

9. The facts deposed to in paragraphs 12 – 17 in the affidavit in support, already quoted in paragraph 7 *supra*, reveal that there was a swift filing of a stay application dated the 19th day of December 2025 which did not attract the attention of the Court below. And whilst the stay application is still pending, the Court below not only heard but granted an ***ex parte*** application for leave to issue writ of possession and writ of assistance on the 7th day of January 2026 - the very day it was slated for hearing, some 19 (nineteen) days after the application for stay was slated for hearing. This conduct of the Court below ignoring or avoiding to hear and determine an already filed application for a stay of execution and preferring instead to hear an ***ex parte*** application for a writ of possession is nothing short of a constructive refusal of the stay application. The Court below is encouraged to be extra vigilant whenever there is an application for leave to issue writ of possession, more particularly so, where it is made ***ex parte*** (as was in this instance).

10. The particularly nuanced refusal of stay application identified herein is suggestive of the fact that door to what would amount to constructive refusal is not foreclosed, as it is still evolving, and the determination as such would be informed by the facts and evidence peculiar to the given case, as is the case by the aforementioned paragraphs 12 – 17 of the affidavit quoted *supra*. In other words, such determination of what amounts to constructive refusal would be made as the need arise based on the facts/evidence of each case.

11. Therefore, the hearing and granting of an ***ex parte*** **application for leave to issue a writ of possession** whilst a stay of execution application is still pending is akin to a refusal, a trigger mechanism that permits the appellants/applicants to file the application for stay in this Court pursuant to Rules 28 and 64 of the CAR.

12. It is settled principle of law in this jurisdiction that in order for the Court to grant an order for a stay of execution of any ruling/judgment, it is a must for the applicant to demonstrate that the grounds of appeal are *prima facie* strong grounds and there are special circumstances in the case. Counsel are in agreement on this principle of law and the Court is saved from venturing in to a legal excursion of the settled principles of law.

13. The Notice of Appeal dated the 19th December 2025, and exhibited as RKq[1—5] contain five (5) grounds of appeal summarised thus:
    - that the LTJ erred in fact and in law and misdirected herself by holding that "[t]he property situate lyimg and being at Old Waterloo – Masiaka Highway … does not form part and parcel of the estate of Mohamed Lamin Kamara, whereas there was no legal or factual basis for so holding";
    - that the LTJ erred in fact and in law and misdirected herself by exceeding her jurisdiction; and,

- that the LTJ erred in fact and in law and misdirected herself by holding that the 1st respondent is entitled to take out Letters of Administration.

14. The aforesaid grounds of appeal are *prima facie* arguable grounds, and therefore meet the threshold of being strong and good grounds of appeal.

15. In respect of the special circumstance requirement, Counsel referred to paragraphs 18,19 and 21 of the affidavit in support of the application which states:

> "*18. All the parties herein; with the exception of the 2nd and 3rd Respondents/Respondents are beneficiaries of the estate of Lamin Kamara (deceased intestate who was survived by 4 (four) spouses and 9 (nine) children.*
>
> *19. In order of seniority; Deceased surviving spouses include the 1st, 2nd, 3rd and 4th Appellants/Applicants. The 2nd Respondent/Respondent is the deceased ex-wife but their marriage was dissolved years before the deceased's demise.*
>
> *21. That in order of seniority; the Deceased's surviving children include the 5th Appellant/Applicant, the 1st Respondent/Respondent, Brima Kamara, the 4th Respondent/Respondent, Marie Kamara, the 6th Appellant/Applicant, the 7th Respondent/Respondent, Hawanatu Kamara and the 8th Appellant/Applicant."*

16. The facts as disclosed in the quoted paragraphs of the affidavit in support *supra* and which remains uncontroverted, clearly display a family relationship between the parties save for the 2nd and 3rd Respondents/Respondents. Undoubtedly, this relationship of marriage as between the deceased and the 1st – 4th appellants/applicants – the step mothers of the 1st & 4th respondents/respondents; and consanguinity as between the appellants/applicants and the 1st & 4th respondents/respondents, being siblings and children of the deceased, indeed, demonstrates a special circumstance within the context of the **Decker vs Decker** case. The Court's position is strengthened by the dictum of G Gelaga King JA in the said **Decker vs Decker** case, where his Lordship opined that:

> "***The family relationship is distinct from the great majority of the usual cases where litigants are strangers in the sense that they are not related either by marriage consanguinity or at all. But for this peculiar and overriding and special circumstance,*** *I would have been disinclined to exercise my discretion in favour of the applicants …*" **Emphasis added.**

17. The averments in paragraph 35 & 38 of the affidavit in support stating the 1st respondent/respondent's intention of alienating the said property, which said property houses the grave containing the mortal remains of the deceased (a family member of all the parties to the action save the 2nd and 3rd Respondents/Respondents), supports the

possibility and the potential risk of the appellants/applicants being denied access to the grave site and their physical link to the memories of the deceased wiped out. This situation or state would be considered as a 'peculiar', 'uncommon' and extra ordinary special circumstance, 'distinct from the general run of things'.

18. The Court is alive to the fact that execution is complete as evidenced by the returns signed by the Under Sheriff (**exhibit H** of the affidavit in opposition), certifying that on the 6th day of February 2026, the said Under Sheriff did execute on the said property – the subject matter and hand vacant possession of same to the respondents/respondents. Counsel for the respondents/respondents would want this Court to believe that since execution has been completed and vacant possession handed to the respondents/respondents, there is nothing left for this Court to stay; as granting same is similar to 'supplying medicine to a dead man' or closing the stable after the horses have bolted. In support of his submission Counsel referred to the **Zenith Bank Plc case, a** Supreme Court case from Nigeria. This Court was quick to draw Counsel's attention to our own **Africana Tokeh Village Limited case,** where G Gelaga King JA opined:

> *In my judgment and in the light of the authorities, ...* ***this Court 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,*** *provided, of course, that the application for stay was first made to the Court below as provided by Rule 64 of our Rules.*" **Emphasis added.**

This dictum is binding authority on this Court pursuant to section 128(3) of the Constitution of Sierra Leone 1991, Act No 6 of 1991; and therefore, the **Zenith Bank Plc case** is of no moment.

19. Whilst this Court will not make it a habit of staying rulings/judgments already executed, it will in rare situation like it was in the **Africana Tokeh Village Limited** case be persuaded that the justice of the circumstances require just that.

20. The Court has considered the ruling dated 18th December 2025 and the drawn up order, exhibited as RKd^{1--13}& $RKe^{1—3}$, respectively. For clarity and ease of reference, the declarations of the LTJ, as concisely captured in $RKe^{1—3}$, is hereby reproduced:

> "IT IS THIS DAY DECLARED AS FOLLOWS:
>
> 1. That the application dated the 21st day of February 2025 seeking determination of several matters herein on points of law and related reliefs is hereby refused in its entirety.
> 2. **That the property situate, lying and being at Old Waterloo Highway** (measuring about 1.9214 acres as delineated on survey plan PLS 2273/2019 attached to the Deed of Conveyance

registered as Instrument 226/2020 at Page 52 in Volum 854) **is the property of the 1st Defendant, Umar Lamin Kamara (1st Defendant).**"

21. These declarations are what Counsel for the respondents/respondents referred to as 'Declaratory Judgment' and went on to submit that they cannot be stayed. He relied on the **Tanios Gebran Chaghoury** case.

22. In that case, the High Court in its judgment dated the 22nd day of July 2024 declared inter alia: "*the agreement between the Plaintiff and the Defendant dated the 7th February 2023 is void and of no effect.*" The judgment of the High Court was affirmed on appeal save for Order 3 which was varied.

23. The appellant/applicant in the **Tanios Gebran Chaghoury** case applied for a stay of execution of the judgment and that application was denied by this Court, where M A J Stevens JA opined:

> *"I must state that giv[en] the parameters as set out as to what constitute a declaratory order or judgment, I must state unequivocally ... that the said order is declaratory as it proclaims a right in favour of the [r]espondent/[r]espondent which said right remains dormant and only a subsequent proceeding would be taken to protect a threat to its violation.*
> *Therefore, in line with the ratio in the case supra which we find instructive and persuasive to the instant application the order which the [a]ppellant/[a]pplicant seeks to stay by its nature cannot be stayed and by extension cannot be the basis for an application of this nature."*

24. The questions that arises in this instant case are: firstly, whether the declaration made by the LTJ in the ruling of the 18th December 2025, as captured in the drawn up order stating that "the property situate, lying and being at Old Waterloo Highway … is the property of the 1st Defendant, Umar Lamin Kamara (1st Defendant)" the 1st respondent/respondent, represent a "dormant right" and the protection of which from a threat of violation is dependent only on further or subsequent proceeding? And secondly, whether the declaration that "the property situate, lying and being at Old Waterloo Highway … is the property of the 1st Defendant, Umar Lamin Kamara (1st Defendant)" the 1st respondent/respondent, by its nature cannot be stayed?

25. To answer the questions posed *supra*, it is but fitting to appreciate the context in which the ruling in the **Tanios Gebran Chaghoury** case was written and delivered. And in doing so, the word 'dormant' used in describing a 'declaratory order/judgment' should be fully understood before describing or declaring it as such.

26. The word 'dormant' in the COLLINS ENGLISH DICTIONARY & THESAURUS 21ST CENTURY EDITION is defined "as quiet and inactive, as during sleep; latent or inoperative; neither extinct nor erupting; in a sleeping position. Inactive, sleep, comatose, fallow, hibernating, inert, inoperative latent, quiescent, sleeping, sluggish, slumbering, suspended, torpid". Additionally, as per goggle search, the word 'dormant' means stagnant, dead, deactivated, not in use, sleeping.
Frequent in the definitions is the idea of latent or inoperative or deactivated or being deferred. The order declaring the 1st respondent/respondent as the owner of property, indisputably, is an assertive or operative or "reactivated" and not a slumbering right.

27. The answer to the first question posed *supra* is in the negative. The declaration by the LTJ the declaration made by the LTJ in the ruling and drawn up order of the 18th December 2025, stating that "the property situate, lying and being at Old Waterloo Highway … is the property of the 1st Defendant, Umar Lamin Kamara (1st Defendant)" the 1st respondent/respondent, cannot anywise be a "dormant right" requiring further or 'subsequent proceeding' to give effect to it or 'protect it from a threat of violation'.
And the answer to the second question is also in the negative as the said declaration that "the property situate, lying and being at Old Waterloo Highway … is the property of the 1st Defendant, Umar Lamin Kamara (1st Defendant)" the 1st respondent/respondent, by its very nature, can be stayed. That is so because; the declared or proclaimed ownership is a right not remaining dormant only to be activated by some further or subsequent proceedings. And should it not be stayed, the situation would avail the 1st respondent/respondent the unbridled power of dealing with the property as he wishes at any time of his choosing. Additionally, in the absence of a stay, particularly after considering paragraph 35 of the affidavit in support presenting an uncontroverted fact that the 1st respondent/respondent intend to alienate the property, there is the possibility for third party rights to accrue as well as the possibility of rendering a successful appeal nugatory. Based on the above, the Court holds that the declaration under review cannot be held as a declaratory order/judgment.

28. In the circumstance therefore, the Court hereby order as follows:

(1) A stay of further execution is granted in respect of the Ruling/Judgment dated the 18th day of December 2025, pending the hearing and determination of the appeal;

(2) Order (1) herein is not a revocation or reversal of the already executed aspects of the Ruling/Judgment. The current status quo shall be maintained;

(3) The parties (either by themselves or their servants or agents or privies or howsoever described) are hereby restrained from alienating, selling or otherwise disposing of the piece or parcel of land and hereditaments situate lying and being at Old Waterloo – Masiaka Highway measuring an area approximately 1.9214 acres which is more particularly delineated on survey plan PLS 2273/2019 attached to the Deed of Conveyance registered as instrument number 226/2020 at page 52 in volume 854 of the Book of Voluntary Conveyances kept in the Office of the Administrator and Regisrar General in Freetown in the Western Area of Sierra Leone.

(4) This Order shall be served on the Administrator and Registrar-General of Sierra Leone

(5) Costs shall be costs in the cause.

Hon. Justice Sulaiman Ahmad Bah JA

I Agree ----------

Hon. Justice M.A.J. Stevens JA

I Agree ----------

Hon. Justice Alfred T Ganda JA