IN THE COURT OF APPEAL- SIERRA LEONE

Lincoln Construction & Logistics & Another - **Appellant**

vs.

Umaru Zoker & Another - **Respondents**

Coram:

Hon. Justice Reginald Sydney Fynn JA
Hon. Justice Monfred Momoh Sesay JA
Hon. Justice Sulaiman Ahmad Bah JA

Counsel:
Messers Osman Jalloh, Z D Kamara, F Bockarie and A B Kamara for the Appellant/Applicant
M H Bangura Esq for the Respondent

RULING DATED Wednesday 30th April 2025

Fynn JA

Background

1. The Parties were in the High Court by way of Originating Summons dated 4th August 2022. On 28th February 2024 the Court, the Hon Justice M P Mami presiding pronounced its judgment on the Originating Summons. The Appellants herein not being satisfied with that judgment on 18th March 2024 filed a Notice of Appeal in this Court. On 19th March 2024 the Appellant also filed an application below requesting the Learned Trial Judge (LTJ) amongst other things to stay said judgment whilst the appeal is being heard and determined.
2. The LTJ on 18th November 2024 granted the application for a stay. He granted the application on terms. The terms were as follows:
    a. *That the Solicitors costs of NLe 30,000 to be paid to counsel for the plaintiff/ respondent*
    b. *The defendant to provide a bank guarantee from any of the commercial banks in like judgment sum of $121,000 within thirty (30) working days effective the grant of this order failing which the stay lapses.*

3. On 16th December 2024 the Appellant applicant filed the present Notice of motion. In this motion the Applicant requests us to grant a stay of the execution of the Judgment of Justice M P Mami dated 28th February 2024.

The Application

4. The present Application is for a stay of execution. A perusal of the application below dated 19th March 2024 (which was granted) compared with the present application shows that the two are identical but for the date and the forum.
5. The Applicant submits that the application though granted below had been granted on onerous terms. The applicant directs the courts attention to the text of the judgment of 28th February 2024 and the text of the terms on which that judgment was stayed on 18th November 2024. The applicant points out that the texts are identical.
6. He urges the terms of the stay require that a guarantee be provided in the full sum as is set out in the judgment. He submits that those terms on which the stay was granted amount to a request for compliance with the judgment which is being appealed against.
7. Counsel submits that where the terms of the stay require a compliance with the impugned judgment then there has been a refusal such as would invoke the jurisdiction of the Court of Appeal. The appellant/applicant referred the court to Adama Mansaray v Ibrahim Mansaray Civ App 31/86 ,
8. The Applicant also made submissions on the strength of the grounds of appeal as justification for the stay. The court was satisfied to rely on the finding of the LTJ on that question. The court limits the argument to the question of whether the stay was granted on onerous term amounting to a refusal invoking the court's jurisdiction.
9. The respondent in reply relied on the affidavit in opposition filed. He stressed that the terms on which the stay was granted are not onerous. He submitted that the applicant is a Company of sufficient means. He urged that in any event that the terms of the stay are but a request to give a guarantee and that this should not be confused with a request to perform the terms of the judgment.

Determination

10. The Court has perused the terms on which the stay was granted. It is satisfied that they are almost *ipsissima verba* with those in the judgment.
11. The authorities both in this and in the Supreme Court have reiterated that the terms of a stay should not mirror the judgment that is being stayed. Recently this court had the opportunity to address this issue in *Leone Oil Company Ltd vs Jaffer Zeghir Civ App13/2024 unreoprted*. In that case the court extensively discussed what would amount to a term being onerous and invoking the jurisdiction of the

Court of Appeal. In the more recent case of ***Sierra Leone Commercial Bank v. Daniel Caulker Civ App 12/2024*** the court restates the *LeoneOil* position at the same time quoting the still instructive ruling of Justice George Gelaga King in ***Africana Tokeh Village Ltd v John Obey Development Investment Co.Ltd Misc App 2/94.*** The court held that constructive refusal would reside where *"the terms are so onerous and unreasonable as to amount to the performance of the judgment which was being sought to be stayed".*

12. In the present case the terms on which the stay is granted amounts to the defendant putting up the exact amount the judgment ordered this it appears to me falls squarely in the scope of what the earlier rulings and judgments on the subject guide against.
13. In ***Mansaray v. Mansaray Civ App. 31/81*** one of the older dictum on this subject the court agreed with the position that the court granting the Stay of Execution to the appellant was not in law and fact granting a stay of execution since it ordered in the terms a compliance with the very judgment which was being appealed against . Such a term has since been treated as a refusal such as would invoke the jurisdiction of this court for a further consideration of the application for a stay.
14. The defendant has raised the question of the appellant's financial standing. He urges that the appellant is a viable company with the means to fulfill the terms of the stay. He urges that they are by no means onerous considering the appellants means. The respondent has also referred the court to the Ghanaian case of ***Joseph v Jebeile & Another 1963 GLR*** where the court stressed the fact that in a money judgment a court granting a stay of execution of Judgment should be particularly mindful that in the event the appeal fails the judgment sum had been preserved.
15. The Respondent Counsel also cited the Nigerian case of ***Lingo Nig. Ltd & Another v Julius Nwodo Esq (CA/A/25/M/2003)[2003] NGCA 1*** in which case the court *"frowned at the proposition that that the judgment sum should be in the hands of the judgment debtor".*
16. The Court notes the non-binding but persuasive nature of foreign authorities. The court has also said and reiterates that whilst the general principles on which terms are evaluated will remain binding courts will on occasion assess the factual circumstances of the specific parties before them to come to a just conclusion in a particular case.
17. The court is also ~~mindful~~ fully aware that it has said before that where the execution of a monetary judgment is being stayed the Court must remain mindful of "*the utmost importance to safeguard the judgment sum pending the hearing and determination of the appeal so that it is readily available and payable in the event that the respondent succeeds in obtaining judgment.*" (see ***Civ App 53/2021 Sierra Rutile v. Transcend International*** pg 4 para19)

18. The Affidavit in opposition before us directs the courts attention to financially significant receipts that the appellant has received in the not too distant past. However, whilst these are not denied but they cannot be testimony of the appellant's present financial standing. The court cannot on the evidence presented in this affidavit in opposition be persuaded to abandon the principles on which it has so far acted.
19. The Court must therefore find that delicate balance between the two principles. The Court cannot allow an onerous term that demands compliance with the judgment to stand. It must at the same time grant terms that will not risk the frittering away of the fruits of a successful monetary judgment which is upheld by this court.
20. This court is satisfied that the terms on which the stay herein was granted are onerous amounting to a refusal we would grant the stay but will vary the terms using the principles already mentioned as our guide.

It is hereby ordered therefore as follows:

a. *That a Stay of the Execution of the judgment of Hon. Justice M P Mami below dated 28th February 2024 is hereby granted on condition that the defendant shall within 20 working days of this order:*
    I. *Pay over to the respondent the sum of USD 20,000*
    II. *Provide a bank guarantee from any of the commercial banks in the sum of $50,000*
b. *That this appeal shall be taken out of turn and be speedily heard*
c. *That costs below shall remain as ordered by the Learned Trial Judge*
d. *Costs of this application shall be costs in the appeal*

Reginald Sydney Fynn JA ……

……*Monfred Momoh Sesay JA*

……*Sulaiman Ahmad Bah JA*