Court name
Court of Appeal
Case number
MISC APP 16 of 2015

Santigie Fofanah v Isata Fofanah (2) (MISC APP 16 of 2015) [2016] SLCA 16 (01 July 2016);

Law report citations
Media neutral citation
[2016] SLCA 16

Coram Fynn, JA

Counsel for Defendant:

A.Marrah Esq of Yada Williams and Associates

Counsel for Plaintiff:

E.T Koroma Esq

Misc. App 16/2015

IN THE COURT OF APPEAL OF SIERRA LEONE

SANTIGIE FOFANAH	-	RESPONDENT/APPELLANT
	AND	
ISATA FOFANAH	-	APPLICANT/RESPONDENT

PRESIDING;

THE HON MR. JUSTICE REGINALD SYDNEY FYNN JA (SITTING ALONE)

Counsel;

E. T Koroma Esq for the Appellant/Applicant

A. Marrah of Yada Williams & Associates for the Respondent

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(*M. Mewa Esq* representing the interests of a court summoned witness)

RULING dated ..... July 2016

FYNN JA

On Friday 17th June 2016 after hearing submissions from both sides and testimony from the witnesses whom the court had called, I made the orders herein and reserved the reasoned ruling, on the application, which now follows:

1. On 22 January 2015 the High Court had given judgment against Mr. Santigie Fofannah the Respondent to the effect that his wife Mrs. Isata Fofannah, the applicant was entitled to one third of properties specified in the said judgment. The Court later refused him leave to appeal against that judgment him being out of time. He then came to this court asking for enlargement of the time within which he is to appeal. He was able to demonstrate that his was a special circumstance and that Justice will best be served if he were granted an extension of time within which to appeal and also for the execution of the judgment against him to be stayed. On 17th December 2015 Mr. Fofanah was granted enlargement of time within which to appeal and the execution of the High Court judgment was stayed. The stay of execution was however granted on terms and in my opinion if those terms are not obeyed by the beneficiary of the stay then the stay ought to be removed.

1. By an application dated 26th May 2016 Mrs. Isata Fofannah has now returned to this court to complain that her husband was not abiding fully with the terms upon which the stay of execution had been granted. In her affidavits of 28th May 2016 and 7th June 2016, she alleges that Mr Fofannah is cherry-picking the terms of the order which he would obey. In particular she alleges that he had failed or refused to declare or truthfully declare the total rent he was receiving in respect of premises situate at # 379 Bai Bureh Road Freetown. She maintains further that he had failed to pay a third of the full rent received into court as he had been ordered to do by the court.

1. Mrs. Fofannah set out in her affidavit in support of her application for the Stay of Execution to be vacated the various tenants on the premises and the rent which she had discovered each has paid to her husband who had failed to deal with the rent as ordered by the Court. Significantly she maintains in her affidavit that :

"5. That the Appellants indication in his supplemental affidavit that the tenant Nickie pays the sum of Le 25,000,000 for the shops and warehouse he occupies is not correct. The said Nickie pays an annual rent of USD 16,000 for the stores and Le 7,000,000 for another apartment

6. The said tenant Nickie paid the appellant the sum of USD 32,000 and Le 14,000,000 at the end of February 2016 for two years"

1. The relevant conditions of the stay of execution that Mrs. Fofannah alleges are being disregarded by Mr. Fofannah are the following :

iv. The stay of execution granted herein is granted on the following terms and it is further ordered that:

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a. .....

b. that the applicant shall continue to maintain and care for his children by the respondent

c. that the applicant files an affidavit exhibiting a chart showing: the names of all his tenants, the amount that each pays as rent and the term each tenant holds

d. that the applicant shall pay one third of all rents collected into court

1. Mr. Fofannah in opposing the application filed affidavits dated 30th May 2016 and 7th June 2016 to which he exhibits copies of receipts he purportedly gave to tenants for the rent he has received, most of them bearing dates prior to the order of the court. Significantly he deposes as follows:

"7. I have not been resident in Freetown as I have been seriously sick and most of the time collecting rents in bits from the tenants to pay for my medical bills.

8. The payment for this year I had collected since 2015 long before this Ruling as I had become cash trapped and needed money to facilitate my treatment".

1. There are significant disparities in the receipts presented by either side from those presented by the other. The first noticeable is that all the receipts produced by Mrs. Fofanah bear the name of the issuer as Yamapa Agricultural Enterprises whilst those produced by Mr. Fofanah bear the name Polley Agricultural Enterprises as the issuer. It turns out that Yamapa Argricultural Enterprises and Polley Agricultural Enterprises are business names used by Mr. Fofannah at one time or the other. These disparities are but the tip of the iceberg. The dates on the sets of receipts are different so also are the amounts alleged to have been received.

1. I will zero in on the tenant Nicky (Nikkie/ Nickie/Saiko Enterprises) a businessman and foreign national who occupies a shop, a store and an apartment on the Fofannah's property. According to Mr. Fofannah's receipt exhibited this gentleman paid Le 35,000,000 as *"rent for both two shop and warehouse"* the date of payment is unclear except as guided in the body of the affidavit (see exhibit SF4-1).

1. For her part Mrs. Forfanah exhibits receipts which show that Nickie paid on 25th February 2016 the sum of Le 76,000,000 in respect of a store (store 1) for three years, the sum of Le 76,000,000 in respect of a shop (Store 2) for three years(see Exhibit C-2); paid on 23rd February 2016 the sum of Le 60, 000, 000 *"for two years in respect of rentage of the back store (store 3)"* (see Exhibit C-3) and on 15th March 2016 the sum of Le 50,000,000 (see Ex C-4)

1. Additionally Mrs Fofannah has exhibited a receipt in respect of Nicky for last year which show that Nickie paid Le 88,000,000 or USD$ 20,000 on 31st January 2012 in respect of *"five thousand dollars each year for four years for shop"*(see Ex C-1).

1. There are similar discrepancies with the receipts of the other tenants each as severe as Nicky's with respect to the measure of manifest dishonesty and deceitfulness but none so with respect to the amount of money involved. It appears that someone must be telling a deliberate lie intending to mislead the court.

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1. In the face of these glaring inconsistencies the court ordered the tenants at the premises to be in attendance and for them to bring their receipts for rent paid with them. Not all of the tenants were in attendance. I examined those who attended on oath. I asked Counsel if there were any further questions they would wish me to put to these Court Witnesses (CW); Counsel had none. I will now summarize the testimonies of the witnesses.

CW1: **Ms. Saminatu** informed the court that she pays Le 1,300,000 per annum. She submitted her receipts.

CW2: **Ms. Khadija** informed the court that she pays the sum of Le 1,600,000 per annum. She paid in two installments the second being in May 2016. She submitted her receipts.

CW3: **Baby Fofannah** turned out to be a relation of the Fofannah's. The Court thanked her for attending but dispensed with the need for her to testify.

CW4: **Mr Francis Bendu** could not attend but sent his brother James Bagie Bio who after being sworn submitted Mr. Bendu's letter of apology and receipt which shows he paid Le 8,000,000 in respect of "both shop and house rent" on 1st September 2015" then said he was unable to give furtherdetails of his Uncle's tenancy. He was promptly released. I believe that this receipt sent to the court purportedly by Mr. Francis Bendu is fictitious. There is already on record Exhibit D-5 which is a letter from a solicitor dated 24th June 2015 informing this same tenant of an increase in his rent for both these premises from Le 14, 000,000 to Le 20,000, 000.

1. The tenant Nicky did not attend on the court however M. Mewa Esq. informed the court that he had instructions from Nicky to convey his apologies for absence and to inform the court about the details of his tenancy. With the leave of the court and *"speaking from the bar"* Mewa Esq. proceeded to inform the court about those details which I then directed him to restate in an affidavit and file the same for the records. Mewa Esq promptly filed an affidavit as directed and the same is dated 16th day of June 2016.

1. Mewa's affidavit exhibits three unregistered tenancy agreements backed by solicitors and purporting to be agreements made between Mr. Santigie Fofanah and one Nerraj Nandwani trading as Saiko Enterprise (both the real and business names of Nicky). The agreements are in respect of a store, a shop and an apartment. Each agreement has a corresponding receipt attached. The receipts have as issuer Yamapa Enterprises. They are dated 25th February 2016 and they acknowledge receipt of the following amounts: Le 76,500,000, Le 50, 000, 000 and Le 50, 000, 000.

1. Invited to respond to M. Mewa,s affidavit, Counsel for the Respondent informs the court that he has confronted his client with the contents of the said affidavit and that Mr. Fofannah can only admit receiving amounts in two of the agreements and that he is unaware of the third. Counsel also indicates that Mr. Fofannah wishes to avail himself at this stage of a proposal earlier discussed (of which this court is unaware) to settle the whole matter with a single lump sum payment of Le 250, 000, 000 (two hundred and fifty million leones).

1. I believe Mr. Mewa's affidavit in its entirety. He and his client Nicky have no bone in this fight. They have merely responded to a court order and have done their civic duty as is expected of every peaceable citizen in assisting the cause of the administration and pursuit of justice.

1. I find that in 2012 Nicky was paying rent as is set out in Ex C-1 and I hold that his rent will ordinarily not decrease but will remain in that region for 2016 and the future if not increased. I also hold that the cycle of

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his term makes his rent due on or after 1st February annually.

1. I can safely conclude from the agreements and receipts produced by the tenant Nicky through his counsel that Mr. Fofannah received rent from Nicky on the 25th February 2016 totaling the sum of Le 176,500,000.00 and as follows, and I so hold:
    1. In respect of the shop Le 50, 000, 000
    2. In respect of another shop Le 76, 500,000
    3. In respect of the back store Le 50,000,000

1. I have observed that all the receipts provided by the tenants who attended court (including those produced by Nicky)as what was given to them by Mr. Fofanah have the issuer as Yamapa Agricultural Enterprises. Not one of them bear the name Polley Agricultural Enterprises as Mr. Fofannah would have me believe. Except of course that purportedly sent by the tenant Mr. Francis Bendu which I find to be palpably untrue.

1. The terms of the court order are clear. Mr Fofannah is to fully declare the total of all the rent he receives and he was to pay one third of same into court. Mr. Fofannah has not done this. He has attempted to under declare the rent received. He has also attempted to deceive the court with respect to the date he received the various rent with a view to placing the same outside the period envisaged by the court order.

1. I am satisfied that Mr. Fofannah deliberately misled this court and in sworn affidavits. I note that after the affidavit in support was received first on the 26th of May 2016 and then on the 7th of June 2016, considering the weight of the allegations therein Mr. Fofannah was severally admonished by the court and invited to reply. Despite the opportunity given to him to be forthright Mr. Fofannah chose instead with a poker face to despicably produce false receipts to the court. He lied blatantly when he swore that *"The payment for this year I had collected since 2015 long before this Ruling....."* Lying similarly with respect to the amounts he had received as rent.

1. I have already indicated in my verbal reprimand to him that but for his apparent poor state of health, his conduct being such that is not only contemptuous of the court but is also on the verge of perjury and forgery if not out rightly so should ordinarily be fully accounted for. I will again enjoin Mr. Fofannah's Counsel to take some time to explain the full implications of Mr. Fofannah's conduct to him and to further admonish him.

1. This court will not accept nor place any reliance on the word of Mr. Fofannah as I am convinced that he will continue to lie and perpetrate deception to avoid the conditions of the stay of execution. It is my opinion that considering Mr. Fofannah's conduct the interests of justice will best be served if the stay of execution granted by this court on the 17th day of December 2015 were vacated and the applicant, Mrs. Fofannah be at liberty to enjoy the fruits of the Judgment of the Hon. Justice Alusine Sesay dated 22nd day of January 2015.

1. It is also my considered opinion that but for the Stay of Execution granted on 17th December 2015 Mrs. Fofannah would have directly benefited from one third of all rent paid in February 2016 in the spirit of the Judgment of 22nd January 2015. I shall keep this in mind and correct that situation in the orders I make herein.

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1. I will now applaud Mr. Mewa for advising his client to do the proper thing. I also applaud his client, Nicky, for accepting to stay on the moral and ethical path. I also commend the tenants who came before me for their bravery and truthfulness even though my observations of the demeanour of the respondent as they testified suggest strongly that they may have been asked not to attend or even to give untrue accounts. They helped the court discover the full expanse of the web of lies and deceit which was being spun by Mr. Fofannah. I commend them all with the exception of Mr. Francis Bendu. As long as they keep their obligations as tenants they shall enjoy the protection of this court from any reprisals from their landlord.

1. I now make the following orders;
    1. The orders made on 17th December 2015 granting a Stay of Execution of the Judgment of the Honorable Mr. Justice Alusine Sesay (dated 22nd January 2015) are hereby vacated.
    2. The Respondent (Santigie Fofannah) shall pay the sum of Le 57,700,000.00 to the applicant (Isata fofannah) the same representing one third of the rent collected from the tenant Nickie after the Court's order of 17th December 2015.
    3. That the tenants at # 379 Bai Bureh Road Freetown shall pay their rent directly into court pending the execution of the Judgment of 22nd January 2015
    4. The Applicant shall have the cost of this application assessed by the Court at Le 5, 000,000.
    5. This appeal shall be taken out of it turn and be heard expeditiously.

..... **The Hon. Mr. Justice Reginald Sydney Fynn JA**

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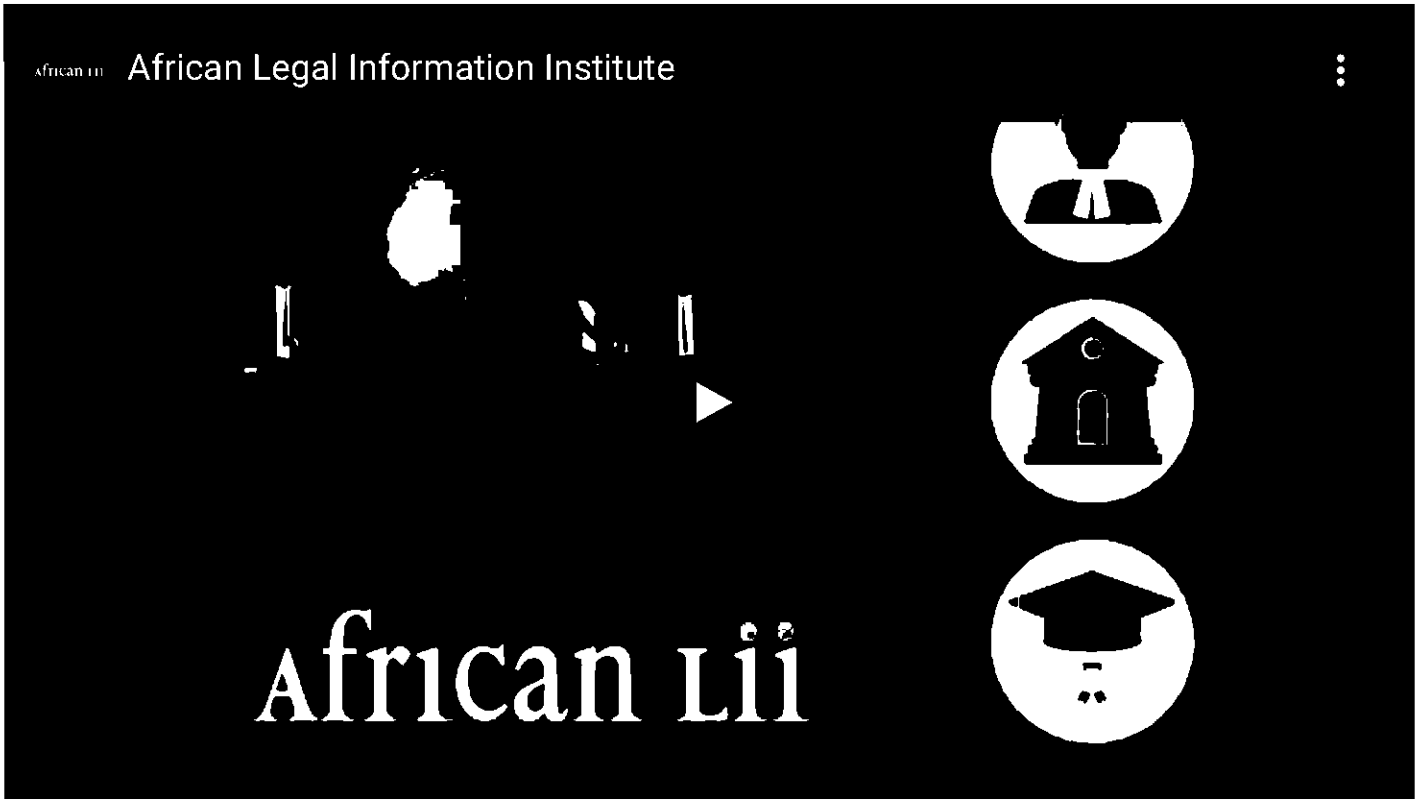

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