Misc.App.7/2024

IN THE COURT OF APPEAL OF SIERRA LEONE

Between;

SHEIK MOHAMED CONTEH & Others - PLAINTIFF/RESPONDENT
(Suing as the Administrator of the Estate of Brima Roke Conteh)

vs.

REV. DR. FR. GABRIEL KOROMA & Others - DEFENDANT/APPLICANT

Coram:
Hon. Justice Reginald Sydney Fynn JA

Counsel:
C M B Jalloh Esq with him D. Fofannah for the Defendant/Applicant
Boniface Kamara Esq for the Plaintiff/Respondent

Fynn JA

RULING dated 8th October 2025

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1. This application is brought by Notice of Motion and the applicant seeks as follows:
    a) leave to appeal against the Judgment of Bawoh J delivered on 20th February 2024
    b) An Interim Stay of the High Court Orders made in said judgment pending the ruling herein
    c) An Interlocutory Stay pending the judgment of the Appeal should leave be granted as requested
2. The facts of the case in brief as disclosed in the affidavit in support of the motion are that after a writ of summons had been filed, defence and counter claim filed an application was made for the matter to be struck out on the ground that the court lacked the jurisdiction to hear it. The alleged lack of jurisdiction was ascribed to the fact that estate property subject matter of the action was alleged to be governed by customary law. This application came in the form of an order 17 application.
3. The application under Order 17 was not successful and it is that ruling that the proposed appeal is against. The applicant believes it is an interlocutory ruling

court below for leave. He argues that did not get a response in a timeous manner so he applied to this court for leave to appeal.

4. The Respondent in answer submits that the applicant cannot be properly before this court as he already has a live application for leave below. The respondent urges that it is only when the application for leave is refused below, that the jurisdiction of this court is ignited to allow the applicant access to apply before this court.
5. The respondent also argues in part that an Order 17 application results in a final order that does not require need for an application for leave to appeal. He submits that the applicant can appeal the ruling as of right.

Deliberations

6. The issue relating to whether the impugned ruling is final requiring an application for leave to appeal or none is fundamental to the existence of this application. I will therefore address that first.
7. There are several tests that have been advanced to provide guidance to judges faced with this question. The one I find most appropriate in the present circumstances is the test which seeks to establish whether the ruling or order in question resolves conclusively the dispute between the parties. Where a ruling brings the dispute to an end with no outstanding questions then that ruling is a final ruling. Where on the other hand the ruling leave some questions unanswered or some further action to continue in the court then the ruling is interlocutory.
8. In the present situation the ruling does not answer all the questions. In fact the ruling itself orders "that this course or action proceeds to a full blown trial". This therefore cannot be a final order. I hold that the ruling was interlocutory such as requires for leave to appeal to be granted either below or by this court before the appeal could be heard.
9. The next issue relates to whether the court below refused the application for leave. This court has recently ruled on the issue of constructive refusal by the court below with respect to applications for the stay of execution or proceedings on the one hand and for leave to appeal on the other. The Court identified possible constructive refusal not only via acceptance coupled with the imposition of onerous terms but also recognized refusal in circumstances where there has been inordinate delay to deliver a ruling on the leave or stay application.
10. I will reproduce here what the court said in *Leone Oil Company v Jaffer Zeghir*;

10. I will reproduce here what the court said in *Leone Oil Company v Jaffer Zeghir*;

a) *In the former case the applicants had actually filed a fresh application for stay in this court before the ruling below was delivered rendering the need to rule on refusal by inordinate delay unnecessary. In the latter case it was in the arguments of another application before us (for leave to appeal) that the facts of the inordinate delay came to the court's attention.*

b) *Notwithstanding the fact that the court was not required to rule on any of those two occasions mentioned the issue did not fail to make an impression on the collective mind of the court; sufficient for the court to form an opinion on the issue. This court is of the opinion, that in a proper case, the inordinate delay to hear and determine an application for a stay of execution may be deemed as a refusal igniting the court's jurisdiction under rules 28 and 64 of the Court of Appeal Rules.*

c) *It should be crystal clear by now that it is not only when a court pronounces that "the application for a stay is refused" that it would be deemed to have refused an application for a stay of the execution of a judgment. The several options mentioned in the preceding paragraphs can each in a proper case with the factual context permitting be deemed to have resulted in a refusal.*

d) *Having opined that a refusal of a stay of execution may in law take on a constructive visage; the court will now consider the facts specific to this case and the present application to see if in the context of this case the stay of execution granted below was in fact a refusal. For this purpose it will be helpful if the orders of the court below are reproduced in the least for ease of reference. (see Leone Oil Company v Jaffer Zeghir Civ.App 13/2024 unreported)*

11. Nothing more needs to be said on the issue of whether our jurisdiction was properly invoked by the applicant. In the present application it did not seem as if the ruling on the question of leave would be forth coming and duties to the client would require that an endless wait not be embarked on. I hold that a resort to the jurisdiction of this court citing constructive refusal was available to the applicant.

12. The non-payment of costs previously ordered has also been raised as an issue. It is my opinion that this may be one of the main issues for the court to consider as it comes to decide the appeal. The LTJ had given an UNLESS order (not drawn up

but the written notes of the judge are exhibited as RP9 at para. 11 of the affidavit in opposition.

13. The application discloses that the LTJ declined to hear a subsequent application from the applicant on the ground that the costs that the court had ordered against the said applicant had not been paid. The respondent captures this position in his affidavit in opposition at para 11:

> *"That after the ruling of 20th February 2024 the Defendants/Applicants filed a Notice of Motion seeking the leave of the court to appeal against its ruling. While Counsel for the Defendants/Applicants was about to move the said motion B S Kamara Esq who is in conduct of this matter objected on the basis there is an unless order granted by the court against the Defendant/Applicants that unless the accumulated costs on this matter is paid they will not be allowed to take further actionon this matter. The said portion of the Judges note is hereby produced shown to me me marked as exhibit"RP9" ".*

14. Whilst courts should not act in vain. I find this order denying access to the protection of the courts because of unpaid costs a bit unusual. O 57 of the High Court Rules deals with costs extensively, and various writs of execution are available to a party to assist them to execute an order of costs made in a parties favour. I find that this in itself provides for an unusual circumstance in this case that would persuade me to grant leave to appeal.

15. Counsel for the respondent provided as his authority under this head the case of Hadkinson v. Hadkinson 1952 EWCA Civ J0725-3. I am grateful to counsel for this case which underscores the point no doubt that courts should not act in vain and that court orders are meant to be obeyed. Counsel appears to have missed in his reading though that even in that case, the options available are first a writ of attachment or contempt: the second option which counsel relies on is indeed that such a person cannot be heard in the court but this becomes operational after some or other execution process. Counsel missed the part of the judgment which clearly noted as follows:

> *"There upon a further Order was made for attachment of the wife for contempt and another order for her committal.....she subsequently appealed. The Court of Appeal entertained her appeal..."*

16.

17. It must be noted the cited this case had nothing to do with paying costs. I hold that this is a significant distinction which I cannot overlook and which may require the full panel's weigh in.
18. Additionally; the questions that the appellant raised around Order 17 and the manner the court exercised its discretion to refuse to determine the action on a question of law has disclosed a triable ground of appeal.
19. I have held before that Or17 confers a wide discretion on the court and that an applying party cannot force the court to exercise its jurisdiction under this rule in only a given way. A court can legiti ıately decline the invitation to answer questions posed to it (see Betty Mansaray v. Williams 4/2017 unreported);

> *"The court can so decline where in the courts opinion one or both of the already mentioned situations is present ie where it appears to the court that it would be more suitable in the particular instance for that question to be answered after a full trial or if the court is of the view that even if it were to determine the question raised the subject of the litigation will not be fully disposed of."*

20. Even though I still maintain the post ıre recently mentioned however in the present circumstances I find it just that ∠TJ decision be tested;

I therefore hereby grant the applicant leave to appeal on the following terms:

I. A stay of the proceedings in any and all matters below between these parties or touching any of the properties being part of the disputed estate property herein forthwith pending the hearing and determination of this appeal.
II. This Appeal shall be taken out of it turn, the records settled and be speedily heard
III. An Interlocutory Injunction is granted restraining the Parties to this action their privies and assigns from dealing with the estate property; they shall not in any way whatsoever deal with the estate property or any part of it. Including that they shall not alienate the property or create any interest over and or upon it.
IV. The costs of this application shall be part of the costs of the appeal

Reginald Sydney Fynn JA.....