S.C CIV. APPEAL NO. 2/19

IN THE SUPREME COURT OF SIERRA LEONE

BETWEEN:

WHITELION COMPANY LIMITED

BRUNA BERARDI

ADMINISTRATRIX OF THE ESTATE OF

THE LATE BERARDU GIOVANNI (DECEASED INTESTATE)

(THROUGH HER ATTORNEY MATTEO CIPOLLINA)

45 SACKVILLE STREET

IOANNIS PAPAIOANNOU

C/O CAPE SIERRA HOTEL

ABERDEEN

FREETOWN - APPELLANTS/RESPONDENTS

And

FEMI HEBRON - RESPONDENT/APPLICANT

Coram:

Hon. Justice G. Thompson JSC - Presiding

Hon. Justice M. F Deen-Tarawally JSC

Hon. Justice A. M. Bangurah JSC

Hon. Justice F.B. Alhadi JSC

Hon. Justice S. Bah JA

Counsel: A. Showers for the Appellants/Respondents

C.C.V. Taylor and C.J.E.J. Taylor for the Respondents/ Applicants

Ruling: dated 6th day of July 2026.

G. Thompson JSC

1. By a Notice of Appeal dated 8th October 2019, the Appellants appealed to this Court against the judgment of the Court of Appeal. Sadly, the second Appellant, Barardu Giovanni, died on the 11th February 2020, before the appeal could be heard. Thereafter, on the 10th March 2020, Letters of Administration were granted by the High Court of Sierra Leone to Matteo Cipollina, being the attorney of the deceased's sister and next of kin, Ms. Bruna Barardi, who resides in Italy. No assets were disclosed within the jurisdiction of Sierra Leone, and a nil grant of Letters of Administration was accordingly granted. It appears that the sole purpose of the grant was to enable the continuation of this appeal. That inference is reinforced by the order of this Court made on 4th November 2020, whereby the name of the second Appellant, Barardu Giovanni, was substituted with that of Bruna Barardi, Administratrix of the estate of the late Barardu Giovanni, acting through her attorney, Matteo Cipollina.

2. In the meantime, the 1st Appellant, a company incorporated in Sierra Leone on 17h January 2006 under the repealed Cap. 249 of the Laws of Sierra Leone 1960, had allowed its registration to lapse, having failed to re-register under the Companies Act 2009 until the 20th January 2026. This is evidenced by the certificate of registration exhibited as CCVT7B, to the affidavit sworn to by Chukwuemeka Charles Valentine Taylor to which I shall refer later in this ruling.

3. It is against this background that the Respondents, by a Notice of Motion dated 9th June 2026, applied to this Court for the following orders:
    1. That the Appellants/Respondents, jointly and severally, be required to provide security for costs in the sum of not less than NLe600,000.00 (Six Hundred Thousand New Leones).
    2. Such further or other order(s) as this Honourable Court may deem fit and just in the circumstances.
    3. Costs of this application be awarded to the Respondents/Applicants.

4. The application is supported by the affidavit of Chukwuemeka Charles Valentine Taylor, sworn to on the 9th June 2026, together with the exhibits annexed thereto, a supplemental affidavit sworn to on the 12th June 2026, and an affidavit in reply sworn to on the 15th June 2026 and the respective exhibits attached to each.

5. The application is opposed by the Appellants/Respondents, who rely on the affidavit of Adewale Showers, sworn to on the 11th June 2026, together with the exhibits attached thereto.

The Arguments

6. Counsel for the Respondents, Mr. C. J. A. J. Taylor, submitted that there are cogent reasons for believing that the Appellants will be unable to satisfy any order for costs should the appeal fail. He argued that the Appellants have demonstrated a consistent unwillingness to meet costs obligations, pointing out that it took them seven years to pay costs of Le15,000,000.00 old leones awarded by the Court of Appeal, as shown in Exhibit CCVT 5. Learned counsel further drew the Court's attention to paragraph 19 of the Appellants' affidavit in opposition, wherein the second Appellant expressly stated that she would be unable to pay costs. He submitted that there is no evidence of assets within this jurisdiction or of any present capacity to satisfy an adverse costs order. It was also submitted that the Respondents have been bearing the costs of storage of the gold-processing plant awarded to the Appellants by the Court of Appeal.

7. In reply, Mr. A. Showers for the Appellants reminded the Court that the jurisdiction to order security for costs is discretionary and must be exercised judiciously, having regard to all the circumstances of the case. He contended that the present application was brought solely to stifle a bona fide and arguable appeal. While conceding that the Appellants are impecunious, learned counsel argued that their financial position arose from the conduct of the Respondents together with Bami Baker. It was further noted that Bami Baker is not a party to these proceedings, and that the award of the Court of Appeal was made against Bami Baker. Learned counsel also submitted that there is nothing before the Court to justify the quantum of security sought.

8. The Respondents relied on Aeronave S.P.A. & Anor. v. Westland Charters Ltd & Ors., 3 All ER 531, Huawei Technologies v. Christian Ogoo & Datatel, SC.CIV.APP

3/2012, ruling delivered on 31 July 2012, and Halsbury's Laws, Vol. 30 (3rd ed.), paragraph 706. The Appellants relied on Absolute Living Developments Ltd (in liquidation) v. DS7 Limited & Ors., EWHC 1432 (Ch), Keary Developments Ltd v. Tarmac Construction Ltd & Anor., 3 All ER 534, and Porzelack KG v. Porzelack (UK) Ltd., 1 All ER 1074.

Deliberation

9. It is not disputed that, if unsuccessful, the Appellants would be unable to satisfy any order for costs. Paragraph 19 of the affidavit in opposition states that the second Appellant is a pensioner with no available funds from which to provide the sum sought, and that she is wholly unable to furnish the security requested in respect of proceedings which devolved upon her only by reason of her brother's death. Although the Appellants attribute their present financial difficulty to the conduct of Bami Baker, that explanation does not answer the fundamental question as to how they would satisfy any adverse costs order should this appeal fail.

10. The Court is also troubled by the fact that, notwithstanding the Court of Appeal's award against Bami Baker of €374,626.94 as replacement cost of the processing refinery, US$9,000 for a generator, general damages in the sum of Le1,000,000,000.00, and costs in the sum of Le100,000,000.00, no steps appear to have been taken to recover any part of those sums. The Appellants nevertheless continue to prosecute this appeal, which they admit they cannot afford, relying only on the assertion that they have an arguable case.

11. It further appears that the Appellants have no external source from which funds may be obtained. They have admitted that the Le15,000,000.00 costs paid some seven years after the award was borrowed from their attorney, who has stated that he can contribute no more than a few hundred dollars towards the present proceedings, as stated in paragraphs 26 and 27 of the affidavit in opposition.

12. The Court is required to undertake a balancing exercise. It must be careful not to make an order that would unfairly prevent the Appellants from pursuing what they genuinely consider to be an arguable appeal. At the same time, litigation is inherently uncertain, and the Appellants' subjective belief in the merits of their case cannot outweigh the cogent evidence of their impecuniosity. It would be unjust were the Respondents to succeed on appeal only to find that the Appellants are unable to satisfy any costs order.

13. Moreover, the Appellants are foreign nationals domiciled abroad and have no assets within this jurisdiction. The 1st Appellant, being a company, likewise has no assets within the jurisdiction. In such circumstances, it would be unjust to rely solely on the Appellants' own assessment of their prospects in determining whether security for costs should be ordered.

Order

Accordingly, IT IS HEREBY ORDERED as follows:

1. The Appellants/Respondents, jointly and severally, shall provide security for costs in the sum of NLe600,000.00 (Six Hundred Thousand New Leones), to be paid into Court or secured by a bond issued by any local bank and remaining valid until the final determination of this matter.
2. No further step shall be taken in the appeal until security has been duly provided within 30 days of the date of this Order.
3. In default of compliance with this Order within the time stipulated, the appeal shall stand struck out as of right, and the Respondents shall be at liberty to apply for such consequential orders as may be appropriate.
4. Costs of this application shall be costs in the cause.

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Hon Justice Glenna Thompson - Presiding

I agree

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Hon. Justice M.F. Deen – TarawallyJSC

I agree

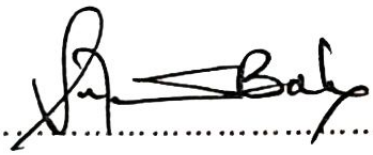
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Hon. Justice A. M. Bangurah JSC

I agree 

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Hon. Justice F.B. Alhadi JSC

I agree 

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Hon. Justice S. Bah JA