

C.C. 277/08

2008

W. NO. 8

IN THE HIGH COURT OF SIERRA LEONE  
(COMMERCIAL AND ADMIRALTY DIVISION)

BETWEEN: -

MR. PERCY BUNTING WATERS-BRIGHT  
(Trading as WATERS ENTERPRISES)

-PLAINTIFF/  
APPLICANT

AND

SIERRA LEONE BREWERY LTD

- DEFENDANT/  
RESPONDENT

E. N. B. Ngakui Esq. for the Plaintiff/Applicant  
E. Beoku Betts Esq. for the Defendant/Respondent

RULING DELIVERED THE 3<sup>rd</sup> DAY OF October, 2012

The Plaintiff/Applicant herein is by Notice of Motion dated 18<sup>th</sup> April 2012 seeking a stay of execution of the judgment of this court dated 2<sup>nd</sup> April 2012 and all subsequent proceedings pending the hearing and determination of an appeal to the Court of Appeal. In support of the application is an affidavit sworn to by the Plaintiff/Applicant herein, **MR. PERCY BUNTING WATERS-BRIGHT** on the 18<sup>th</sup> April 2012. He therein deposed to the precarious state of his finances at present. There is no doubt from the averments in his affidavit that he is likely to lose his home as well in addition to his business being in ruins.

The Defendant opposed the application and filed an affidavit in opposition sworn to by Ernest Beoku Betts Esq. on 30<sup>th</sup> April 2012. His contention is that a stay of execution would not stop the Plaintiff/Applicant's bank from proceeding with the sale of the Plaintiff/Applicants property as the action for sale has already been instituted by the Bank in March 2012. Counsel strongly believed that if a stay is granted all the remaining assets of the Plaintiff/Applicant would be depleted by his other creditors. Further he submitted that the Plaintiff/Applicant's appeal lacks merit and when it fails there would be no other assets for execution by the Defendant/Respondent who will be deprived of the fruits of their labour which is contrary to the interest of justice.

Counsel for the Defendant/Respondent further submitted that no special circumstances have been shown to the court to warrant the grant of a stay. He contended that no proper claim or link has been shown to the court to establish that if the said stay is not granted the Bank will cease the application to enforce the mortgage on the Plaintiff's property. Counsel relied on the notes found in the **Supreme Court Practice 1999** on Order 59 rule 13 (2) under the rubric "when will a stay of execution be granted."

He submitted that the notes are in support of his contention that a stay should not be granted if its effect will be directly locking up funds to which the Defendant is entitled thereby depriving him of the fruits of his judgment.

He urged the court not to grant the stay prayed for but added that if the court were minded to grant it, then it should be on terms. He submitted that so as to protect the Defendant's right to enjoy the fruits of his judgment that the Court orders the Plaintiff to pay the judgment sum into an account in one of the commercial banks and that such an account be controlled by solicitors for both parties to ensure that if the appeal fails the judgment sum will be available to the Defendant.

The principles on which a stay of execution of a judgment are granted have been well established and there are a number of cases in our jurisdiction in which those principles have been applied. It is therefore quite settled that the court has an absolute and unfettered discretion as to granting or refusing a stay and as to the terms upon which it will grant it. The court will as a rule only grant it where the special circumstances of the case so require.

The Plaintiff/Applicant in this case has deposed to his present dire financial straits. In my view it is immaterial whether he finds himself in that state because of the conduct of the Defendant or as a result of the mismanagement of his business. Suffice it to say that he has sufficiently disclosed that he stands the risk of having the mortgage on his house enforced and thereby be rendered homeless. He states that he is positive that his appeal stands a good chance of success.

In the notes found in the **Supreme Court Practice 1999** on Order 59 rule 13(2) (*supra*) relied upon by counsel for the Defendant, it states, *inter alia*, as follows:

“Nowadays the court may be prepared (provided that the appeal has sufficient merit) to grant a stay, --- if enforcement of the money judgment under appeal would result in the appellant’s house being sold or his business being closed down.”

This was the decision in **Linotype-Hell Finance Ltd vs. Baker** {1992} 4 All E. R. 887.

Counsel for the Defendant has urged that if a stay is granted it should be on terms and suggested that it be on terms that the Plaintiff/Applicant pays the judgment sum into an account. It is clear from the Applicant’s circumstances that he is no financial position to comply with such terms if imposed.

It is however within the court’s discretion whether or not to impose terms on the grant of a stay. But if a stay is granted the court should as far as possible ensure that the respondent is paid without delay. In this case it is clear that there are creditors with competing claims on the Plaintiff/Applicant’s assets. Counsel for the Defendant has expressed his fears that if the Applicant’s



only asset is sold by the Bank, the Defendant will have nothing to fall back on. The court therefore ought in that case to give him some assurance that he will not be barred from enjoying the fruits of his judgment.

Accordingly I grant a stay of execution of the judgment of this court dated 2<sup>nd</sup> April 2012. I further direct that if the appeal fails, the Defendant is to have the first claim on the assets of the Plaintiff/Applicant to ensure that he is paid the judgment debt without delay. No order as to costs. Ash

A - Showers  
SIGNED: - A. SHOWERS 3/10/2012  
JUSTICE OF COURT OF APPEAL