



**IN THE HIGH COURT OF SIERRA LEONE**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**FAST TRACK COMMERCIAL COURT**

**Case No: FTCCo76 /15**

**XINGWONG BUSINESS LIMITED**

**-PLAINTIFF**

**AND**

**KINGHO INVESTMENT COMPANY**

**-DEFENDANT**

**REPRESENTATION**

**C. F. MARGAI & ASSOCIATES**

**-COUNSEL FOR THE PLAINTIFF**

**TANNER LEGAL ADVISORY**

**-COUNSEL FOR THE DEFENDANT**

**BEFORE THE HON. MR. JUSTICE SENGU M. KOROMA J.A**

**RULING DELIVERED ON THE 24<sup>TH</sup> FEBRUARY, 2017**

The Defendant/Applicant (hereinafter referred to as the "Applicant") filed an Application in this Honourable Court dated 22<sup>nd</sup> day of December, 2016 for five Orders. The first and second Orders were not pursued as they were not deemed to be necessary. The remaining Orders prayed for were as follows:-

- 1) That this Honourable Court grants a stay of execution of the Judgment dated 1st December, 2016 and all subsequent proceedings in this matter pending the hearing and determination of the Notice of Motion dated 21<sup>st</sup> December, 2016.
  - 2) That this Honourable Court do grant any further or consequential Order (s) it may deem fit in the circumstance.
  - 3) That the costs of this Application be costs in the cause.
2. The Notice of Motion referred to in 1 above prayed this Court to grant an interim stay of execution of the Judgment dated 1<sup>st</sup> December, 2016 and all subsequent proceedings pending the hearing and determination of this matter in the Court of Appeal.
  3. Mr. Sesay submitted that Exhibit JMC 7 attached to the Affidavit in Support disclosed prima facie goods grounds of Appeal which he believed would succeed in the Court of Appeal. By paragraphs 20, 22, and 24 of the said Affidavit, the Applicant had disclosed special circumstances that would warrant the exercise of the Court's discretion to grant a stay. The special circumstance Counsel referred to was that the execution of the Judgment would stifle the operations of the Applicant Company.
  4. Mr. Sesay relied on Order 46 Rule 11 of the High Court Rules, 2007 and the decided cases of AFRICANA TOKEY VILLAGE LIMITED -V- JOHN OBEY DEVELOPMENT INVESTMENT CO. LTD (Misc.App. 2/94) C.A (Unreported); REV. ARCHIBALD GAMBALA JOHN (Executor of the Estate of the Late Gustavus John) and ABU BLACK, ALIE FORFANA & LAMIN DAINKEH (Misc.App. 26/92) C.A (Unreported); FIRETEX INTERNATIONAL CO. LTD and SIERRA LEONE EXTERNAL TELECOMMUNICATIONS CO. LTD (Misc.App. 19/2002) C.A (Unreported).
  5. Robert B. Kowa Esq. Counsel for the Plaintiff/Respondent (hereinafter referred to as the "Respondent") at this point sought an adjournment. The matter was adjourned to Tuesday, 24<sup>th</sup> January, 2017. On that date, Mr. Kowa informed this Court that his learned



- friend on the other side had indicated to him that a representative of his firm would be in Court for the Respondent's submissions. No representative from Tanner Legal Advisory turned up and the matter was again adjourned to Wednesday, 25<sup>th</sup> January, 2017.
6. Mr. Kowa acting on behalf of the Respondent opposed the Application on the 26<sup>th</sup> January, 2017. He referred to his Affidavit dated the 17<sup>th</sup> January, 2017 and relied on its entire contents. Mr. Kowa noted that Garnishee Proceedings were in progress but had so far not yielded any dividend.
  7. Mr. Kowa submitted that the Applicant's claim that the settlement of the Judgment debt would affect their operations regarding payment of salaries was not tenable. The payment of salaries was an essential part of the Applicant Company's operations. It could not amount to special circumstances. Counsel relied on the case of MRS. LUCY DECKER, GISBORNE DECKER, OLIVE DECKER (Misc.App. 13/2002) C. A (Unreported).
  8. In conclusion, Counsel submitted that a stay of execution was at the discretion of the Judge and that if the Court were minded to grant a stay, it must be on terms. He referred to paragraph 10 of the Affidavit in Opposition in which he proposed the terms on which it should be granted. He stated that there was distinction between the AFRICANA TOKEY VILLAGE CASE and the facts of the instant case.
  9. On Monday, 30<sup>th</sup> January, 2017, Mr. Sesay in reply, relied to the Affidavit in Opposition. The first line of attack was on the attempt by Mr. Kowa to usurp judicial functions by suggesting terms of an Order. I agree with Mr. Sesay though I may forgive Mr. Kowa for his professional exuberance. Mr. Sesay concluded by submitting that a prima facie case for appeal had been made and there exists special circumstances to warrant a stay.

### **THE LAW**

10. Both Counsel in varying degrees relied on the same set of authorities. Whilst those authorities illustrated the well-known grounds on which a Court would grant a stay of execution of Judgment, the special circumstances relied on were peculiar to each of those cases.

11. In the case of Mrs. Lucy Decker and 3 others and Goldstone Decker (Misc.App. 13/2002, Gelega-King JA. had this to say regarding special circumstances “*what do we mean by special circumstances in the context of a stay of execution? Before answering the question, it is well to bear in mind the fundamental principle that neither the lower Court nor this Court will grant a stay unless satisfied that there are good reasons for so doing.*” This follows from the basic principle enunciated in the “THE ANNOT (1886) 11 P. 114, p.116 that the Court does not “*make practice of depriving a successful litigant of the fruits of his Judgment.....pending appeal*”. “Good reasons” go hand in glove with “special circumstances”. Viewed in that light, special circumstances must mean circumstances beyond the usual; a situation that is uncommon and distinct from the general run of things. As I stated in the AFRICANA TOKEH’s Case supra, “*it is for the Applicant to bring before the Court the facts on which he relies for the Court to decide whether they constitute special circumstances and, of course, each case will depend on its merits.*” I have quoted Gelaga-King JA. in extensio on this point as this Ruling is the locus classicus in Sierra Leone on Applications for stay of Execution of Judgment. More importantly, this case reviewed all well known cases on this aspect such as AFRICANA TOKEH VILLAGE LTD-V- JOHN OBEY DEVELOPMENT CO. LTD; ADAMA MANSARAY V IBRAHIM MANSARAY, SACCOH-V-DAKLALA and REV. ARCHIBALD GAMBALA JOHN-V- ABU BLACK & OTHERS. It follows that this decision is binding on this Court and I will accordingly apply its ratio decidendi herein.
12. The Affidavit in Support did not clearly state any special circumstance to warrant a stay. The only circumstance mentioned was in paragraph 11 of the said Affidavit in which it was deposed that “*if the appeal succeeds, it shall be unable to retrieve monies paid to the Plaintiff/Respondent in compliance with the Judgment*”. In his oral submission, A.S Sesay Esq. for the Applicant argued that the Application was not meant to deny the Plaintiff the fruits of the Judgment but that an execution of the said Judgment would stifle employment and have an effect on investment. I do not see how this would amount



to special circumstances. The Applicant is engaged in a capital intensive investment to wit mining. There is no way the payment of a Judgment debt regarding work done in furtherance of the objectives of the Company stifle employment. Special circumstances, to repeat the words of Gelega-King JA. in the LUCY DECKER CASE means “*circumstances beyond the usual: a situation that is uncommon and distinct in the general run of things*”. I hold that special circumstances have not been established in this case.

13. As regards the submission that there was a prima facie goods grounds of Appeal, I would say that save an aspect which I shall refer to shortly, I am not convinced about the strength of the grounds of Appeal. These are technical grounds which could have been properly established at the trial but the Applicant failed to do so and would now want the Court of Appeal to retry the matter as though it were a Court of first instance. To my mind, the only reasonable ground of Appeal is that aspect relating to the case of MIRZA-V-PATEL. The principles laid down in that case which I applied in my Judgment introduces a new approach to the effect of vitiating factors on contracts where there had been performance by one party. Since this has not been determined by a Higher Court, it is my view that testing it would develop the jurisprudence of our Courts.
14. For the one reason mentioned above, this Court will grant a stay of execution of the Judgment of this Court dated the 1<sup>st</sup> December, 2017 on the following terms:-
  1. The Applicant to pay the sum of US\$1,100,000/00 into an interest bearing account in one of the well established Commercial Banks in Sierra Leone with solicitors for the Applicant and Respondent as co-signatories within ten (10) days from the date of this Order.

2. That the said sum of US \$ 1, 100, 00/00 shall be paid out to whoever shall succeed on the Appeal.
3. Payment of the taxed or agreed costs to the Respondent's solicitor subject to an undertaking by the said solicitor to refund same if the appeal succeeds.
4. Respondent to have cost of this Application which is assessed at Le 10,000,000/00.



Hon. Justice Mr. Sengu M. Koroma JA