IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
DORDZIE (MRS.) JSC
PROF. KOTEY JSC
LOVELACE-JOHNSON (MS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/63/2021

6TH APRIL, 2022

AMA PINAMANG
(a.k.a ALICE OSEI) …… PLAINTIFF/RESPONDENT/RESPONDENT/RESPONDENT

VRS

1. S. K. BOAFO
2. KWAME AGYAPONG BOAFO ESQ.
3. KWABENA BOADI
4. AGYA YAW
5. ADUHENE
6. AMOAKOWA

…… DEFENDANTS/APPELLANTS/ APPLICANTS/APPELLANTS

JUDGMENT

DOTSE JSC:-

This is an appeal by the Defendants/Appellants/Applicants/Appellants hereafter referred to as the Defendants against the Ruling of of the Court of Appeal, Kumasi dated 22nd

February 2021 refusing a repeat application for Stay of Execution filed at the Court of Appeal.

FACTS

The Plaintiffs/Respondents/Respondents/Respondents hereafter referred to as Plaintiffs instituted a probate action against the Defendants in the High Court Kumasi.

The Defendants contested the suit. After trial, the learned High Court Judge on 28th May 2020 delivered judgment in favour of the Plaintiff.

APPEAL BY DEFENDANT TO COURT OF APPEAL

The Defendants aggrieved by and dissatisfied with the judgment of the High Court appealed against the said judgment to the Court of Appeal on 27th August 2020.

Whilst the appeal was pending at the Court of Appeal, the Defendants filed an Application for Stay of Execution of the judgment of the High Court.

REFUSAL OF APPLICATION FOR STAY OF EXECUTION

The High Court refused the application for Stay of Execution on 17th day of December 2020.

APPEAL AGAINST REFUSAL OF STAY OF EXECUTION

The Defendants appealed yet again against the dismissal of their application for Stay of Execution of the High Court decision to the Court of Appeal on 23rd December 2020.

The Court of Appeal on 22nd February 2021 refused this further appeal or repeat application.

APPEAL TO THE SUPREME COURT

The Defendants on the 15th day of March, 2021 appealed to the Supreme Court against the refusal of the Court of Appeal to grant the repeat application for Stay of Execution.

The following are the grounds of appeal that the Defendants have filed.

a. The Honourable Court of Appeal erred as it failed to consider third party rights that have accrued and continue to accrue relative to the disputed property in its said ruling.
b. The Honourable Court of Appeal erred in the manner in which it exercised its discretion by dismissing Defendants/Appellants/Applicants/Appellants application for stay of execution.
c. The Honourable Court of Appeal erred when it dismissed the application for Stay of Execution contrary to the known principles grounding the grant of same were in favour of Defendants/Appellants/Applicants/Appellants.
d. The ruling of the Honourable Court of Appeal is against the weight of affidavit and documentary evidence before it, as well as the legal arguments advanced by counsel for the Defendants/Appellants/Applicants /Appellants.
e. Futher grounds of appeal to be filed upon receipt of the Record of Appeal.

From the above narration, it bears emphasis that, the appeal being pursued by the Defendants, in this court is in respect of an Interlocutory matter in respect of the refusal to grant the Stay of Execution by the High Court through to the Court of Appeal and finally to this court.

PRELIMINARY LEGAL OBJECTION

Learned counsel for the Plaintiff in his Statement of Case has raised a preliminary legal objection that the instant appeal is not properly before the court.

This objection has been premised on the fact that, the defendants having lost the application for Stay of execution twice ought to have obtained leave of the court before filing this appeal.

PRINCIPLE OF LAW DECIDED IN THE CASE OF OWUSU V ADDO [2015-2016] 2 SCGLR 1479 AT 1481 - 1483

The Supreme Court speaking with unanimity through Georgina Wood C.J, stated the principle on instances where a trial court and the intermediate appellate court have both dismissed applications for Stay of Execution and the right of further appeal to the Supreme Court not being automatic but exercisable by special leave as follows:-

> *"The right to appeal to this court in respect of an order of the Court of Appeal, dismissing a repeat application for Stay of Execution, is not an automatic right but one carefully circumscribed by article 131 (2) of the 1992 Constitution and Section 4 (2) of the Courts Act, 1993 (Act 459). Thus an appellant would have no direct access to the Supreme Court without first satisfying the leave requirement."*

Explaining in detail at page 1490, the policy reasons behind the said constitutional and statutory provisions and why the court rendered the decision, Wood C. J stated further as follows:-

> *"It follows that the appellants ought to have first obtained special leave, per Section 4 (2) of Act 459, before proceeding to submit their appeal to this forum. Understandably, this places on them a rather onerous burden, given that they have to convincingly argue the likely success of their intended appeal within the special leave application process.* ***Anything short of this would not meet the just demands of the law, a sound judicial policy intended to weed out unnecessary, frivolous and vexatious applications for stay, when obviously at this point in time, the potential appellant would have had two bites at the legal cherry." Emphasis***

Having considered the preliminary legal objection raised by learned counsel for the plaintiff in terms of the above sound exposition of the law which we have no intention to depart from, we conclude that this appeal is incompetent, as it has been filed without the due process as required.

The appeal is thus dismissed as being incompetent.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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KWASI AFRIFA ESQ. WITH HIM AMA ASENSO ESQ. FOR THE PLAINTIFF/RESPONDENT/RESPONDENT/RESPONDENT.