IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA, GHANA.AD. 2016

CORAM: ANIN YEBOAH, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

NO. J8/125/2016

FILED ON 4TH NOVEMBER 2016

1**. ANTHONIO OLIMPIO**
2. SANTOS FELIX **PLAINTIFFS/RESPONDENTS/ RESPONDENTS**

VRS

1. GIOVANN ANTONELI
2. BIGLEBB CONSTRUCTION. & CRUSHING LTD **DEFENDANTS/ APPELLANTS /APPLICANTS**

RULING

ANIN YEBOAH, JSC :

The applicant herein has moved this court praying for special leave to appeal and for stay of execution and/or suspension of execution pending the determination of this application. In an affidavit supporting this

application sworn to by one Giovani Antonelli, the managing director of the 2nd applicant herein, it was deposed to that on the 27th of June 2016, the Court of Appeal; Coram: Marful-Sau JA sitting as a single judge dismissed the applicants' motion for stay of execution and/or suspension of execution of the order of interim preservation of vehicles, machines and equipments handled down by the High court Accra dated the 26th of April 2016.

The applicant felt aggrieved by that decision of the single judge and filed a motion to discharge the order of the single judge.

The Court of Appeal on 20/11/2016 after hearing the parties dismissed the application and affirmed the single judge's ruling.

The applicant has mounted this application for special leave to appeal against the order of the Court of Appeal. In his affidavit in support of this application, the deponent in paragraphs 10-13 inclusive, has deposed to certain facts which should influence this court in this ruling. For a more detailed record I reproduce the said paragraph:

> "10. I am advised by counsel and verily believe same to be true, that this case is a novelty in terms of pronouncement on the law

relating to interim preservation of property by the highest court of the land”

11. Furthermore, the case raises the issue of the exercise of the equitable jurisdiction of the court in the nature of preserving property pending trial without regard to irredeemable hardship and irreparable loss to a corporate body who must use the equipments and machines to discharge its obligation to third parties.

12. There is yet the need for an authoritative pronouncement on what the subject-matter of a litigation constitutes as to whether it is borne out of the pleadings as cleverly settled by lawyers or the

substance therefrom as can be gleaned by the written bargains of the parties prior to the litigation.

13. I am further advised that there are weighty and not fanciful grounds of appeal which should be a major consideration for the grant of this application”

As it could be gleaned from the above paragraphs forming the crux of the depositions in support of this application, the applicant was questioning the judges' pronouncements on interim preservation and the exercise of the discretion which went against the applicant.

The onus was respectfully in my view, squarely on the applicant. The applicant was enjoined to satisfy the court that the special leave to appeal was being sought to raise contentious points of law and not just to prolong the litigation involving preservation of the machinery. It turned out that the applicant, irrespective of the fact that he was adversely affected by the orders of preservation could not in my respectful opinion demonstrate that there was
any special circumstances warranting the grant of special leave. It was on the basis of that, that I refused the grant of special leave.

The remaining prayer by the applicant was "an order for stay of execution or suspension of execution pending appeal". In arguing the application, learned

counsel for the applicant was of the view that serious irreparable would be caused to his client if the applicant was not granted and indeed

proceeded to demonstrate that the damage was apparent. Learned counsel for the respondent thinks otherwise.

Carefully reading the reliefs under consideration leads me to hold that the two reliefs are not different in substance. The effect of the grant of one of the two reliefs would in my view operate to put on hold the orders in operation granted by the High Court which was affirmed by the Court of Appeal. As learned counsel for the applicant rightly pointed out, the two reliefs sought are all discretionary. In my respectful view, the applicant before this second appellate court was enjoined by law to demonstrate to this court that the discretion of the Court of Appeal in affirming the ruling of the single justice was wrongful exercise of discretion. The applicant could only do so if he could demonstrate that the discretion was exercised on wrong or inadequate material or that the court acted on misapprehension of fact either by given weight to irrelevant or unproved matters or omitted to take relevant matters into account: See KOJACH LTD v MULTICHOICE GHANA LTD [2013-2014] 2 SCGLR 1494.

It has never been the case that an exercise of discretion could not be reversed or varied on appeal. The appellate court could do so if the

circumstances exist for this intervention. See OWUSU v OWUSU ANSAH [2007-

2008] 2 SCGLR 870 which relied on the previous cases like BALLMOSS v MENSAH [1984-86] I GLR 724 and BLUNT v BLUNT [1943] AC 517 HL.

In my respectful opinion, I do not think that the applicant demonstrated to my satisfaction that the discretion exercised by the two lower courts was wrong and warranted a stay or suspension of the orders. It is for the above reasons that I refused the application.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

COUNSEL

HON. ATTA AKYEA WITH HIM STANLEY ADJEI FOR THE DEFENDANTS /APPELLANTS/APPLICANTS.

GEORGINA ARTHUR WITH HER STEPHEN OBENG DARKO AND JOSEPH OFORI MENSAH FOR THE PLAINTIFFS RESPONDENTS/ RESPONDENTS.