IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: GBADEGBE, JSC (PRESIDING)
PWAMANG, JSC
DORDZIE (MRS.), JSC
KOTEY, JSC
LOVELACE-JOHNSON, JSC

CIVIL APPEAL
NO. J4/60/2019

22ND JULY, 2020

APRO GHANA LTD. …….. PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. MICHAEL ASANTE AKUFFO
2. CALISTER N. AKUFFO
3. AKUFFO K. ASANTE …….. DEFENDANT

AND

1. GENEVIEVE A. AWARE
2. TOP PRINCIPLES LTD
3. NICE THINGS LTD
4. GLORIA OFOSU KORANTENG
5. AKWASI APPIAH …….. CLAIMANTS/APPELLANTS/RESPONDENTS

J U D G M E N T

AVRIL LOVELACE-JOHNSON:-

The designation of the parties in the High Court will be maintained in this appeal.

At the hearing of this appeal both counsel were directed to address this court on whether the high court had jurisdiction to make the order granting extension of time to the claimants on 29th July 2016 to file an appeal against the judgment and ruling of the high court dated 30th October 2015 and 7th April 2016 respectively.

This directive was made pursuant to Rule 6 sub rules 7(b) and 8 of the Supreme Court Rules 1996, C. I. 16 which provide as follows:

> *(7) Notwithstanding sub rules (1) to (6) of this rule the Court-*
>
> *(a) ……*
>
> *(b) Shall not, in deciding the appeal, confine itself to the grounds set forth by the appellant or be precluded from resting its decision on a ground not set forth by the appellant.*
>
> *(8) Where the Court intends to rest a decision on a ground not set forth by the appellant in his notice of appeal or on any matter not argued before it, the Court shall afford the parties reasonable opportunity to be heard on the ground or matter without reopening the whole appeal.*

Both counsel did so and counsel for the claimants further addressed us on whether the judgment arising out of the interpleader proceedings was final or interlocutory.

The background of this matter is undisputed and in sum is as follows: The plaintiffs sued the defendants for an amount owed them. The matter was submitted for mediation at the end of which process a judgment based on a "Memorandum of agreement" reached between the parties was entered against the defendant by the High court, Commercial Division, Kumasi.

Upon the failure of the defendants to abide by the terms of the said judgment, the plaintiffs attempted to go into execution.

In the course of execution the plaintiffs caused certain properties to be attached by the Sheriff of the court on 10th September 2009. It was at this stage that the claimants herein on 21st October 2009 filed a joint notice of claim as required by order 44 r 12 of the High Court Civil Procedure Rules 2004 C. I 47 in respect of the said attached properties.

A hearing of the matter commenced. At the end of the hearing, the learned trial judge gave judgment on 30th October 2015 by which he "*accordingly discharged the subject matter from further execution"* and refused to grant the special and general damages he had assessed on the ground that such damages could not be granted in an interpleader action.

He ordered the claimants to institute a fresh action to claim same.

Being dissatisfied with these final orders, the claimants sought a review which was refused on 7th April 2016. They then sought and were granted extension of time to file an appeal against both the original judgment and the ruling refusing their application for review.

The court of appeal upheld the appeal against the judgment of the high court, set aside the part which stated that damages could not be awarded in an interpleader action and awarded damages to each claimant on the basis of assessments set out in their judgment.

Being dissatisfied with the judgment of the court of appeal, the plaintiffs have filed the present appeal to this court on the following grounds:

1. The whole of the judgment of the Court of Appeal (Civil Division), Kumasi and dated 21st May 2018 is against the weight of evidence presented before the Court of Appeal.

2. As an appeal is by way of rehearing the court of appeal as the first appellate court in this matter, failed or refused to carry out her duty to revisit the whole of the evidence (including documents and exhibits) on record,

analyse and evaluate same and come to its own independent findings or conclusions.

3. The Court of Appeal erred in upholding the finding of the trial court that the Plaintiff/Respondent/Appellant did not exercise due diligence in causing the attachment of the claimants properties and that the attachments were (including documents & exhibits) on record.

4. The Court of Appeal exceeded her jurisdiction and breached the rules of natural justice when she exclusively used the evidence of the claimants/appellants/respondents in assessing and awarding the respective quantum of damages for each attached property.

5. The Court of Appeal erred in awarding interest retrospectively for each attached property when she made the award of damages for respective properties.

6. Additional grounds may be filed upon receipt of the record of proceedings.

Regarding the issue raised by this court for address, counsel for the claimants takes the position that commonsense dictates that where an application for review is refused a person should be able to file an appeal against the judgment for which a review was sought. Further that even if Order 42 of C.I.47 which governs review applications does not envisage an appeal after such an application is refused then regarding the said refusal, time to appeal against it starts running from the date the ruling in that regard was given, that is 7th April 2016. This would make the extension of time granted by the high court in respect of the review ruling proper since it would fall within the time limits set by the rules of the court of appeal. Counsel also submits that the judgment of 30th October 2015 was final because it determined the rights of the parties in re the subject matter and that, *"its finality was postponed till the application for review had been ruled upon"*.

Counsel for the plaintiffs argues that Order 44 rule 13 (5) clearly sets out the time for appealing a judgment arising out of a Sheriff interpleader action and the claimants, having chosen the option of applying for a review as was their right, they are to bear

the consequences of that choice which was that the time for appeal had elapsed by the time their application for review was ruled upon.

The record shows that as was indeed within their right so to do, within fourteen days from the date of the judgment of the high court, the claimants elected to apply for a review of the said judgment by virtue of Order 42 rule 1(1),(2) and 2(2) of C. I. 47 on 11th November 2015.

As stated earlier the application for review was refused on 7th April 2016. Thereafter the claimants filed an application for extension of time in the high court to enable them appeal against both the judgment **and** the ruling refusing its review to the court of appeal on 17th June 2016. The said application was granted on 29th July 2016.

A question which needs to be answered at the onset is whether the said application, to the extent that it related to the original judgment was proper in the light of the fact that there was a ruling on the review application of the same judgment.

The position at law is that the ruling of 7th April 2016 regarding the application for review supersedes the judgment of 10th October 2015 so that was what could properly be the subject matter of an application for extension of time within which to appeal and not the original judgment on the interpleader action itself. This court in the case of

Nii Kojo Danso II vrs The Executive Secretary, Lands Commission & 2 0rs and Joshua Attoh Quarshie Civil Appeal No J4/35/2017 28th November 2018 stated per Benin JSC (as he then was) as follows

"I would only add that under order 42 of C. I. 47 a party is only debarred from appealing against a decision when he has applied for a review of the same decision. After a court has ruled on the review application, the aggrieved person may exercise his right of appeal……not against the original decision which was the subject matter of the review but against the ruling in the review application"

This position makes any grounds of appeal filed which are unrelated to the ruling on the review application incompetent which would be all the grounds of appeal.

Order 42 regulating applications for review is silent on whether and within what time an appeal can be lodged against a ruling refusing an application for review. The answer to the first is answered shortly by reference to Article 137(2) of the Constitution which provides as follows

> *Except as otherwise provided in this Constitution, an appeal shall lie as of right from a judgment decree or order of the High Court and a Regional Tribunal to the Court of Appeal*

Regarding the second, the ruling in question, having arisen out of proceedings relating to an execution process can only be interlocutory. While interpleader proceedings may determine the rights of the parties in relation to the ownership of the items seized in execution, such proceedings have been held to be interlocutory *"since it arises out of some other matter"* See

***Netw*ork Computer System (NCS) Ltd vs Intelsat Global Sales and Marketing Ltd [2012] 1 SCGLR 218@226** citing **Agoti v Agbenoku [1978] GLR 14**

Similarly, an order refusing to review a judgment arising out of such proceedings can only be an interlocutory one. That being so an appeal against such a judgment or order can only be an interlocutory one.

In **Bansah v GB Ollivant [1954] WACA 408,** cited in **Bosompem v Tetteh Kwame** supra, the court held as follows:

> *"A judge's refusal to review his judgment is an interlocutory decision and if special leave to appeal from the refusal has not been obtained, the appeal from the refusal is not properly before the court of appeal; therefore the court has no power to grant leave to amend the notice of appeal"*

The Court of Appeal Rules 1997, C.I. 19 clearly provide in Rule 9 (1) as follows:

'Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of –

(a) Twenty-one days in the case of an appeal against an interlocutory decision

or

(b) three months in the case of an appeal against a final decision unless the court below extends time

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

These are the conditions to be fulfilled by an appellant if he is to gain access to the court of appeal. Rule 9 (1) (a) especially relates to appeals regarding interlocutory decisions and that is what is applicable to an appeal from the ruling under discussion since it is an interlocutory one.

As stated earlier, order 42 does not prescribe a time frame for lodging an appeal against a ruling obtained under the said order and an appellant can clearly not seek refuge under order 80 rule 4 which only seeks to ***extend or reduce*** times set down by the provisions of C. I. 47.

Order 80 rule 4 provides as follows

Extension or reduction of time

(1) The Court may, on such terms as it thinks just, by order extend or reduce the period within which a person is required or authorized by these Rules, or by any judgment, order or direction, to do any act in any cause or matter

(2) The Court may extend any such period although the application for extension is not made until after the expiration of that period

The mandatory rules governing interlocutory appeals to the court of appeal clearly limit the Defendants to twenty-one days and make no provision for extension of this period. It is this prescribed period, set by the rules of the court of appeal, a court, higher in hierarchy to the high court that is applicable to the Defendant's appeal against the review ruling and not the extension of time purportedly granted by the high court even if the said extension could have found legitimacy under order 80 rule (4) of C I 47.

The ruling refusing the application for review was delivered on 7th April 2016. The appeal against the said ruling to the court of appeal was filed on 26th August 2016, a date clearly falling outside the twenty-one days prescribed by rule 9 (1)(a) the court of appeal rules, thus rendering it out of time.

Section 11(7) of the Courts Act, 1993, Act 459 provides that

*The court of appeal **shall** not entertain any appeal unless the appellant has fulfilled all the conditions prescribed in that behalf by rules of court.*

In **National Investment Bank Limited & 2 Ors v Standard Bank Offshore Trust Co Ltd etc. [2017] 113 G M J 174**

this court stated that:

> *"Where a rule is mandatory by the use of the expression "shall", it should be so regarded in view of section 42 of the Interpretation Act, 2009, (Act 792)."*

Again in ***Frim*pong v Nyarko [1998-99] SCGLR 734 @ 750**, this court underscored the fact that defaults regarding matters such as the rules relating to times within which to file an appeal or obtaining leave are fundamental and go to the root of an appeal and so the court has no discretion but to dismiss the appeal when such defaults occur. They *"affect the notice itself, invalidate it and render the appeal void" per Acquah JSC (as he then was)*

In such circumstances, this court has stated that the appellate court's jurisdiction has not been properly invoked. It is only when the court has jurisdiction, which clothes it

with competence, that parties can have a matter in dispute between them adjudicated upon. See the case of

Bosompem v Tetteh [2011] 1 SCGLR 397@ 405.

For this reason, we find that the proceedings before the court of appeal in respect of the review ruling, having been initiated upon a notice of appeal filed outside the statutory period of twenty-one days, are a nullity because that court's jurisdiction was not properly invoked and so those proceedings were conducted without jurisdiction. The said proceedings and all orders made as a result are hereby set aside.

The lack of jurisdiction on the part of the court of appeal to hear the said appeal also taints the appeal before this court in similar manner. Consequently, it is struck out.

AVRIL LOVELACE-JOHNSON

(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

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