IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD 2021

CORAM: YEBOAH, CJ (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC
TORKORNOO (MRS.)
HONYENUGA, JSC

CIVIL MOTION

NO. J8/114/2020

24TH MARCH, 2021

DANIEL OFORI ……. PLAINTIFF/APPELLANT/APPELLANT/RESPONDENT

VRS

1. ECOBANK GHANA LIMITED …… 1ST DEFENDANT/RESPONDENT/ RESPONDENT/APPLICANT
2. SECURITIES AND EXCHANGE COMMISSION
3. GHANA STOCK EXCHANGE

RULING

THE MAJORITY DECISION OF THE COURT WAS READ BY YEBOAH CJ

YEBOAH CJ:-

We are of the opinion that the application for Stay of Execution was filed to stay execution pending the hearing and determination of the motion for Review Application. We think that as the motion for Review has been

determined by the full Bench, the application for Stay of Execution pending Review is moot.

ANIN YEBOAH
(CHIEF JUSTICE)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

THE DISSENTING DECISION OF THE COURT WAS READ BY DOTSE JSC

DOTSE JSC:-

This is an application for stay of execution pending the determination of Applicant's review application. With the determination of the review, this application should have been considered moot but for the matters that have been placed before us with the application for review.

The 1st defendant has filed affidavits presenting evidence of the Plaintiff receiving dividend on the very Cal Bank shares that he came to this court to pursue payment for. In an affidavit in response filed on 22nd March 2021, the Plaintiff has admitted to this venerable court that indeed, he still owns the shares he came to court to pursue payment for, and he has been receiving

dividend on the same shares. He stated particularly in paragraphs 6, 10 and 11 of the affidavit as follows:

6. "*That my cause of action against 1st defendant therefore arises from 1st defendant's wrongful conduct as my bankers for which the law requires 1st defendant to pay the interest in the manner settled by law,* ***my relationship with the purchaser of the shares being completely irrelevant in the instant proceedings***".

10. "*That between the judgment of the high court and court of appeal, therefore, the shares as per the said judgment remained my shares BUT THAT the high court reached the conclusion that I remained the owner of the shares EVEN THOUGH the Registrar of the shares had confirmed by way of an exhibit H that the shares had been transferred by me (as vendor) to the purchaser*.

11. *That it is following the judgment of the high court that the shares were then re-registered in my name and following the judgment, to be registered back in the purchaser's name, for which reason, the question as to whether or not the purchaser of the shares is entitled to the dividend which at the time was paid as the owner of the shares which yielded them as determined by the high court and the court of appeal,* ***is a totally distinct and separate cause of action not arising out of the judgment of the court and the applications for review pending before the court*****. "**

I must say that these submissions are very difficult to understand, especially in the face of the exhibits that millions of Ghana cedis have actually been received by the Plaintiff as dividend over the years that he has been in court insisting that the shares have been sold, and the tacit admission that these exhibits speak truth. For if 'following the judgment of the high court, the shares were then re-registered in his

name and following the judgment in this court, they were to be registered back in the purchaser's name, under what circumstances does the Plaintiff explain the evidence that since the judgment in this court, he has actually been receiving payment for dividend on the same shares that this court gave him judgment to execute payment from 1st defendant?

We are unable to agree that there would be a separate cause of action between him and the purchaser of the shares regarding whether the Plaintiff has been wrongly collecting dividend on the shares that he knew did not belong to him Plaintiff, and so the only duty of the Supreme Court is to assist him execute judgment for the purchase price for the shares - while we ignore the facts brought to our notice. That will amount to justice being buried.

It would be wrong for the Plaintiff to appeal to this court for an order that he had sold his shares, when he knew that the shares remained in his name and dividend was being computed on the shares for him to enjoy. And if even these activities were implemented on the blind side of the Plaintiff - and his averments just quoted show that he followed all the proceedings around his shares with the judgments rendered at the various levels of court **- it would also be wrong for the Plaintiff to actually seek to execute the judgment that this court gave him without knowledge of this state of affairs, after collecting the dividend for the same shares that he had led the court to accept that he sold in 2008.**

I do not think any court of equity and justice will agree with the positions espoused by Plaintiff that the fact of his enjoying dividend on the same shares that he is deemed to have sold and for which he came to this court to sign affidavits that he is entitled to payment for, is a matter irrelevant to the determination of rights between the parties.

I believe that, the Supreme Court as the apex Court should not put itself in a pigeon hole to avoid doing substantial justice at all times. Doing substantial justice therefore requires that this Court should ensure that there is no failure of justice of what we do as a Court. In our resolve to do substantial justice, I recommend that we order the following extra ordinary measures designed to ensure that these court's orders are based on depositions that have been admitted before the Court and which should not be glossed over.

In the circumstances, it is only fit and just that the application for stay of execution should be granted, and further execution of the judgment of this court be stayed. Further, it is ordered that Plaintiff is to return every payment received from the judgment of this court into an escrow account to be held in Bank of Ghana pending a resolution of who is entitled to payment from defendant for the shares in issue.

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

TORKORNOO (MRS.) JSC:-

I agree with the position of my learned brother Dotse JSC and will grant the application for stay of execution beyond this decision on review. Further, I agree that the Plaintiff should return all moneys paid for the alleged sale of the shares, which have now been proved to be a false position by the time he came to the Supreme Court.

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

HONYENUGA, JSC: -

I have just read the opinion of my respected brother Dotse JSC that the motion for stay of execution be granted. I am in total agreement with the opinion expressed by my respected brother.

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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THADDEUS SORY WITH NANA BOAKYE MENSAH-BONSU FOR THE PLAINTIFF/APPELLANT/APPELLANT/RESPONDENT.