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. J7/12/2020

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

BAFFOE BONNIE JSC:-

This ruling is in respect of the application for Clarification and Review filed by the Plaintiff/Judgment Creditor/Applicant. Following an application for review of this court's judgment, delivered on 25th July, 2018, this court gave a final order as follows:

1. *The* GH¢ *6,162,240 was to attract interest at the rate of 30% from 2nd June 2008 till date of the Supreme Court judgment (25/7/18), and thereafter, at the statutory rate of interest prevailing at the time of the main judgment.*

2. *The* GH¢ *7,600,000 was to attract interest at the statutory rate as at 25/7/2018 from 2nd June, 2008 till date of payment.*

Subsequent to the review ruling of the court, the plaintiff filed a motion on notice seeking to amend its entry of judgment filed on the basis of the main judgment. In the attached proposed entry of judgment, the plaintiff calculated the interest rate on the investment amount of GH¢ 6,162,240.00 on the basis of compound interest. Secondly he stated the statutory rate of interest as at 25/7/1018 as 22%. In its affidavit in answer, the 1st defendant calculated the interest on the investment at simple interest and stated the prevailing rate of interest as at 25/7/2018 as 13.34%. It is this difference between the parties that the 1st defendant prayed the court to resolve that culminated in the ruling of this court dated 17th June 2020.

Their grounds for their respective positions were canvassed in exhaustive statements of case ordered by the court, together with any oral submissions that counsel wanted to add. In a reasoned ruling filed in the registry, the court held among other things as follows:

"the wording of the statute is such that once there is a dispute as to the prevailing bank rate, the treasury bill rate is applicable. So the defendant shall pay interest at 13.34% on GH¢ *7,600.000 at simple interest from 2/6/2008 to date of final payment*

So our final orders will be

1. *The invested capital i.e. the* GH¢ *6,162,240 is to attract interest at the rate of 30% at compound interest from 2nd June, 2008 till date of the Supreme Court judgment (25/7/2018), and thereafter at the statutory rate of interest prevailing at the time of the main judgment 25/7/2018, that is,, 13.34% at simple interest till date of final payment*

2 The defendant shall also pay interest on the amount of GH¢ *7,600,000 at the Treasury bill rate of 13.34% from 2/8/2008 till date of final payment"*

In that ruling, the Court explained that since the statutory rate of interest prevailing at the time was not discernible from the many different rates of interest existing at the time, the court was going to choose the Treasury bill rate at the time.

However, when the final orders were being drawn this is how it appeared:

"We hold that the manner for calculating interest on the involved amount of* GH¢ *6,120,240 shall be at thirty per cent compound interest from 2nd June, 2008 to 25th July 2018, the day of the main judgment. We also state that the 1st defendant shall pay interest at 13.34 % on* GH¢ *6,120,240.00 at simple interest from 25th July, 2018 to date of payment. Then the defendant shall pay interest at 13.34 on the* GH¢ *7,600,000.00 to be calculated at simple interest from 2nd June 2008 till day of final payment."

The Plaintiff has filed an application for clarification of the orders and review of part of the ruling of the court dated 17th June 2020.

He is seeking the following clarifications:

A. Whether the 13.34% rate of interest applied to the post judgment debt is the statutory rate of interest or the Treasury bill rate as at the date of the main Judgment of the court dated 25th July 2018. This is because the court used the description 'statutory rate of interest' when setting out its order on post judgment interest to be applied to the invested sum of GH¢ 6,162,240. However, when setting out its order on interest to be paid on the un-invested sum of GH¢ 7,600,000, the court used the description Treasury bill rate of 13.34%.

B. Clarification of the sum on which interest is to be calculated in respect of the sum of GH¢ 6,162,240.00 as at the date of judgment being 25th July 2018.

He is seeking this clarification because the words of the court in the final orders described the value on the invested sum of GH¢ 6,120,240 as being GH¢ 6,120,240 by the date of judgment, when interest on that sum from June 2008 should have changed it by 25th July 2018 when judgment was entered in favor of Plaintiff.

Regarding the application for review, the applicant herein prays the court for:

1. Review of the manner for calculating interest with the Treasury Bill rate of 13.34% on:
   A. GH¢ 6,162,240.00 from 26th July 2018 to the date of final payment, and,

   B. GH¢ 7,600,000.00 form 25th July 2018 till the date of final payment

Review

Counsel for Plaintiff submits that *'a reading of the ruling of the court will confirm that the 13.3% interest rate affirmed by the court is the Treasury bill rate and not the statutory or prevailing interest rate*'.

Flowing from this, he says that the court committed a fundamental and basic error of law when it declared the 13.34% interest rate as the statutory or prevailing bank rate of interest as at the date of the judgment on 25th July 2008. Second, that it was a fundamental error on the part of the court when it ordered that the mode for calculating the post judgment interest rate of 13.34% should be by simple interest.

He went on to urge that the statutory interest rate or prevailing bank rate of interest and Treasury bill are separately regulated by CI 52. While the statutory interest rate or

prevailing bank rate of interest are provided for in Rules 1(1)(a), 2(1) and 4(1) of CI 52, the treasury bill is a default rate that is uniquely provided for in rule 4(2) of CI 52. From his submissions, the proper mode for calculating interest on the treasury bill rate as provided for in rule 4(2) of CI 52 is not in simple interest but in the established manner for calculating interest on the basis of the 91 day treasury bills.

It was his submission that the description of 13.34% as the statutory interest rate is therefore per incuriam the provisions of rule 4(2) of CI 52, and the order that the Treasury bill rate should be calculated at simple interest is per incuriam of CI 52.

The miscarriage of justice he complains of is that without a review, the interest on the judgment debt would be calculated in a manner that gives him less than he is statutorily due.

We have had a look at the rather lengthy submissions and we find that the plaintiff applicant is being unnecessarily fussy about the use of the terms ''statutory rates of interest'' and ''Treasury bill rates of interest''. Yes, the terms might have been misused erroneously or interchangeably in the final orders of the ruling of 17th June 2020. But a thorough reading of the ruling of even date will clearly show that the plaintiff is splitting hairs over nothing.

In the ruling of 17/6/2020 this is what the court said.

''….We therefore hold that the manner of calculating interest on the invested amount of GH¢ 6,120,240,000.00 shall be at 30% compound interest from 2nd June,2008 to 25th July 2018, the day of our main judgment

''The next issue is the rate to be applied in calculating the post judgment interest. C.I.52 defines statutory rate as the ''prevailing bank rate''. However, that definition itself is ambiguous. In the banking industry there are more than one prevailing bank rates at any particular time and they differ significantly. The statute does not say whether it is the prevailing borrowing rate of the bank or prevailing lending rate. To complicate matters

further, the definition does not mention any particular bank prevailing rate is applicable even though the rates differ among the banks and even in one particular bank the prevailing rate differs depending on the sector of the economy the transaction relates to.

The Statute says Where there is a doubt as the prevailing bank rate the 91 days treasury bill rate a determined by the Bank of Ghana shall be the prevailing bank rate"

After discussing the respective submissions on this subject the court concluded as follows:

'The wording of the statute is such that once there is a dispute as to the prevailing bank rate, the Treasury bill rate is applicable. So the defendant shall pay interest at 13.34% on GH¢ *7,600,000.00 at simple interest from 2/6/2008 to date of final payment"*

This was the gravamen of our ruling as far as the computation of post judgment interest was concerned.

We wish to emphasize that we might have used the words 'statutory rate', 'prevailing bank rate' and 'treasury bill rate' interchangeably, but it does not detract from our conclusion. What we meant by our ruling of 17/6/2020 was that:

1. The invested capital i.e. the GH¢ *6,120.240.00 is to attract interest at the rate of 30% at compound interest from 2nd June, 2008 till date of Supreme Court judgment (25/7/2018), and thereafter at the Statutory rate of Interest prevailing at the time of the main judgment (25/7/2018) that is, TREASURY BILL RATE OF 13.34%, at simple interest till date of final payment.*

2. The defendant shall also pay interest on the amount GH¢*7,600,000.00 at Statutory rate of Interest prevailing at the time that is, TREASURY BILL RATE OF 13.34%, at simple interest from 2/6/2008 till date of final payment.*

We do not think that the applicant has made a case for a review of this our ruling beyond what we have done and the application for review is dismissed.

CLARIFICATION

The second part of applicant's application is for clarification. We think this application uncontestable, and indeed we put it down to printer's devil that needs to be clarified

In the main ruling the court held as follows

2. The GH¢ 6,162,240 was to attract interest at the rate of 30% from 2nd June 2008 till date of the Supreme Court judgment (25/7/18), and THERAFTER, at the statutory rate of interest prevailing at the time of the main judgment.

3. The GH¢ 7,600,000 was to attract interest at the statutory rate as at 25/7/2018 from 2nd June, 2008 till date of payment.(Emphasis added)

However when the orders were being drawn this is what appeared:

"We hold that the manner for calculating interest on the involved amount of GH¢ *6,120,240 shall be at thirty per cent compound interest from 2nd June, 2008 to 25th July 2018, the day of the main judgment.*

We also state that the 1st defendant shall pay interest at 13.34 % on

GH¢ *6,120,240.00 at simple interest from 25th July, 2018 to date of payment"*

Clearly, there is the need to clarify. Because while the orders as drawn indicates that the interest of 13.34% applies to the original amount of GH¢ 6,120,240.00 from 25/7/2018 till date of final payment, the ruling as delivered suggests and rightly so, that, the 13.34% interest rate is applicable to the judgment debt as it stood at 25/7/2018. That is after the computation of the 30% compound interest from 2/6/2008 till 25/7/2018.

We put this seeming anomaly down to a mistake that was made when the order was being drawn. Post judgment interests are not calculated from the original amounts. The

use of the words ' and thereafter' in the original ruling indicates that the 13.34 percent at simple interest, will be called into play only after the original amount of GHC 6,120,240.00 has attracted the 30% compound interest from 2/6/2008, to 25/7/2018.

So by way of clarification we shall redraw the order as follows

1. The invested capital i.e. the GH¢ 6,120,240.00 is to attract interest at the rate of 30% at compound interest from 2nd June, 2008 till date of Supreme Court judgment (25/7/2018), and thereafter at the Statutory rate of Interest prevailing at the time of the main judgment (25/7/2018) that is, TREASURY BILL RATE OF 13.34%, at simple interest till date of final payment.

2. The defendant shall also pay interest on the amount GH¢ 7,600,000.00 at Statutory rate of Interest prevailing at the time, that is, TREASURY BILL RATE OF 13.34%, at simple interest from 2/6/2008 till date of final payment.

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

TORKORNOO (MRS.) JSC:-

On the 25th July 2018 the Supreme Court delivered its judgment reversing the decisions of both the High Court and Court of Appeal that had been in favour of the defendants in this suit. The final executable orders of the Court were that the plaintiff was entitled to payment of a total amount of **GH¢13,762,240.00** with interest.

On 17th July 2020, following an application to determine the proper manner for calculating interest on the judgment sum awarded in this suit, the court ruled that "...*the manner for calculating interest on the invested amount of GH¢6,120,240.00 shall be at 30% compound interest from 2nd June, 2008 to the 25th day of July 2018, the day of the main judgment*."

The court ended the decision with the following orders:

1. *The invested capital i.e. the GH¢6,162,240.00 is to attract interest at the rate of 30% at compound interest from 2nd June, 2008 till date of the Supreme Court judgment (25th July 2018), and thereafter at the statutory rate of interest prevailing at the time of the main judgment (25th July 2018) that is, 13.34%, at simple interest, till date of final payment.*
2. *The defendant shall also pay interest on the amount of GH¢7,600,000 at the treasury bill rate of 13.34% from 2nd June 2008 till date of final payment*.

The summary of the first order was stated in these words:

'We hold that the manner for calculating interest on the involved (sic) Amount of shall be at thirty per cent compound interest from 2nd June 2008 to 25th July 2018, the day of the main judgment. We also state that the 1st defendant shall pay interest at 13.34% on ***GH6,120,240.00*** *at simple interest from 25th July 2018 to date of payment*'

It is this decision, orders, and the highlighted mistake in the summary of the final orders that has led to the filing of the current motions by Plaintiff for clarification of the orders and review of part of the ruling of the court dated 17th June 2020.

He is seeking the following clarifications:

C. Whether the 13.34% rate of interest applied to the post judgment debt is the statutory rate of interest or the Treasury Bill rate as at the date of the main Judgment of the court dated 25th July 2018. This is because the court used the description 'statutory rate of interest' when setting out its order on post judgment interest to be applied to the invested sum of GHS6,162,240. However, when setting out its order on interest to be paid on the un-invested sum of GHS7,600,000, the court used the description treasury bill rate of 13.34%

D. Clarification of the sum on which interest is to be calculated in respect of the sum of GH¢6,162,240.00 as at the date of judgment being 25th July 2018. He is seeking this clarification because the words of the court in the final orders described the value on the invested sum of GHS6,120,240 as being GHS6,120,240 by the date of judgment, when interest on that sum from June 2008 should have changed it by 25th July 2018 when judgment was entered in favor of Plaintiff.

Regarding the application for review, the applicant herein prays the court for:

2. Review of the manner for calculating interest with the Treasury Bill rate of 13.34% on:
   C. GH¢6,162,240.00 from 26 July 2018 to the date of final payment, and,
   D. GH¢7,600,000.00 form 25the July 2018 till the date of final payment

I believe that it is expedient to consider the Review application first, since it will determine the final word on the rates, dates and modes of arriving at the sums adjudged as due to the Plaintiff in the judgment of 25th July 2018.

Review

Counsel for Plaintiff submits on pages 13 (and also on page 15) of their statement of case that *'a reading of the ruling of the court will confirm that the 13.35% interest rate affirmed by the court is the treasury bill rate and not the statutory or prevailing interest rate*.

Flowing from this, he urges that the court committed a fundamental and basic error of law when it declared the 13.34% interest rate as the statutory or prevailing bank rate of interest as at the date of the judgment on 25th July 2008. Second, that it was a fundamental error on the part of the court when it ordered that the mode for calculating the post judgment interest rate of 13.34% should be by simple interest.

He went on to urge that the statutory interest rate or prevailing bank rate of interest and treasury bill are separately regulated by CI 52. While the statutory interest rate or

prevailing bank rate of interest are provided for in Rules 1(1)(a), 2(1) and 4(1) of CI 52, the treasury bill is a default rate that is uniquely provided for in rule 4(2) of CI 52. From his submissions, the proper mode for calculating interest on the treasury bill rate as provided for in rule 4(2) of CI 52 is not in simple interest but in the established manner for calculating interest on the basis of the 91 day treasury bills.

It was his submission that the description of 13.34% as the statutory interest rate is therefore per incuriam the provisions of rule 4(2) of CI 52, and the order that the treasury bill rate should be calculated at simple interest is per incuriam of CI 52.

The miscarriage of justice he complains of is that without a review, the interest on the judgment debt would be calculated in a manner that gives him less than he is statutorily due

Consideration

My simple view of these submissions is that Plaintiff has taken an unnecessarily romantic view of **Rule 4(2) of CI 52** that the statute never intended. **Rule 4(2)** is precisely part of what Rule 4 is supposed to provide in the law - interpretation of what constitutes 'statutory rate', and nothing more.

No part of Rule 4 creates a new regime for determination of applicable interests as counsel for Plaintiff suggests in his submissions. The regulation of applicable interests is done in Rules 1 and 2 of CI 52. While Rule 1 deals with rates and mode of calculation of interest on debts awarded in a judgment, Rule 2 deals with how post judgment interest on such debts are to be calculated. Rule 3 moves on to how interests awarded under CI 52 may be executed, and Rule 4 interprets the applicable rates of interest under the statute, termed as 'statutory rate of interest'. It provides:

Rule 4 – Interpretation of statutory rate

4 (1) In these Rules statutory rate of interest is the bank rate prevailing at the time the judgment or order is made by the court

(2) Where there is doubt as to the prevailing bank rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana shall be the prevailing bank rate

It must be noted that CI 52 takes note of different circumstances under which a court would award of interest in a judgment. In Rule 1, the statute directs that in the absence of an enactment, instrument or agreement between the parties from which a specified rate of interest and a particular manner for calculating interest is set out, courts should award interest at the bank rate prevailing at the time of judgment and at simple interest. There is no reference to 'statutory rate' in Rule 1, because, in my considered opinion, it is in Rule 1 that the statute sets the rates it regulates.

The term 'statutory rate' is introduced in Rule 2. It is therefore to be understood that the statutory rate described in Rule 2 is the rate of interest that the court identifies as applicable by reason of Rule 1 of this statute. In Rule 2 (1), CI 52 directs that this statutory rate of interest (applied from Rule 1), which presumably will be the prevailing bank rate unless an enactment, instrument or agreement has specified otherwise, will remain applicable up to the date of final payment.

Rule 2(2) makes provision for the rate that is provided for by an instrument, a writing or admission by the parties, and directs that if the parties specify in that instrument, writing or admission the rate of interest to be applied to their transaction and the parties go on to specify that the specified rate shall be payable until the final payment, then the court is to award that specified rate of interest until the final payment.

And it is easy to understand why the law makes this distinction between applicable rates and also the times for applying rates of interest. If the debt arises out of a transaction, the terms of that transaction may lead to a termination of liability before or by reason of a judgment. The sum payable after judgment (and sometimes before), may therefore enter a regime of obligations that are different from what the parties were operating under in the *'instrument or agreement'*.

So clearly, the words of Rule 2(2) were carefully thought through, allowing rates of interest specified in instruments, agreement or admissions to continue beyond

judgment only if parties had agreed or admitted that they were to apply 'until final payment'. And as described earlier, this is the reason why the judgment of this honorable court directed on 25th July 2018 that the agreed interest rate from the record was to terminate at judgment, because there was no evidence that the parties had agree that it should continue until date of payment.

With this, it is also very clear that Rules 1 and 2 closed CI 52's directions on applicable interest and modes of calculating interest. Rule 3 deals with execution of a judgment on interests, and Rule 4 simply provides interpretation of the applicable interest rates created by the statute.

So what does Rule 4 mean? Rule 4.1 means simply that the statutory rate of interest provided for implementation of CI 52 is the bank rate prevailing at the time of the judgment or order (as provided for in Rule 1), or where there is doubt as to that bank rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana will be the statutory rate of interest (Rule 4.2).

Put simply, whether it is the bank rate prevailing at the time the court order is made, or the 91day treasury bill rate if there is doubt as to the bank rate prevailing on the day the order is made, CI 52 calls these two rates by the generic name '*statutory rate*' under Rule 4. CI 52 provides no other statutory rates apart from the bank rate prevailing or the 91 day treasury bill rate.

There are therefore no internal inconsistencies in the ruling of 17th June 2020 when it described 13.34% as the statutory rate in the first order relating to GH6,120,240 and treasury bill rate in the second order relating to GHS7,600,000

Further, to order the calculation of this 13.34% rate of interest in simple interest mode on the judgment award of 7,600,000 from 2nd June 2008 to date of final payment is not per incuriam Rule 4(2) of CI 52, because it is in conformity with Rule 1 and the legislative intent of CI 52 as shown earlier in this ruling. The Plaintiff's application for review in Application no J/12/2020 is dismissed.

Application for Clarifications

I think two important legal viewpoints need to be applied in responding to this application. The first is the very fundamental rule of law that documents, agreements and statutes must always be read as a whole to obtain their true meanings. **Republic v High Court Accra (Commercial Division); Ex parte Hesse (Investcom Consortium Holdings SA & Scancom Ltd Interested parties 2007-2008 SCGLR 1230** where this court stated at page 1242 *'on the construction of statutes, the literalist, that is the ordinary, plain or grammatical meaning, should be adhered to if it clearly advances the legislative purpose or intent and does not lead to any outrageous consequences*', is referred to.

This rule ensures that integrity and validity is maintained in interpretation, and a perverse result is not arrived at by not interpreting part of a document without recourse to the rest.

The second is the necessary understanding that the primary document on which the ruling of 17th June 2020 was built is the judgment of 25th July 2018 and its review of 27th February 2019, and could be nothing more. In that judgment, the court awarded interest on the GHS 6,160,240 at the rate of 30% per annum from 2nd June 2008 up to the date of the judgment and at the bank rate prevailing at that date till final payment.

It is the cut off date for application of interest of 30% that led to the review of 27th February 2019, and that ruling applied CI 52 to cut off that date on 25th July 2018, when the Supreme Court entered judgment for payment of the debt as judgment debt. The orders of 17th June 2020 therefore have to be read to reflect the ruling of 17th June 2020, 27th February 2020 and the judgment of 25th July 2018. In doing so, there will be no difficulty in appreciating that interest is to run on both components of the judgment debts from 2nd June 2008. The value of the GHS6,162,000 would definitely include the adjudged interest of 30% applied to the debt from 2nd June 2008 to the date of judgment on 25th July 2018, and the statutory rate of 13.34% would be applied thereafter to the sum due as at 25th July 2018 and apply from 25th July 2018.

I will therefore grant the application for clarification of the requisite dates for calculating interest on the invested sum of GHS 6,160,240 in the terms stated in the paragraph above.

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

ANIN YEBOAH
(CHIEF JUSTICE)

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

Y. APPAU
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