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. J8/129/2016

FILED ON 4TH NOVEMBER 2016

ERIC TEI AKWETEY SIAW **DR. DANIEL NARH SIAW** **EMMANUL THOMAS SEKOU**	**-**	**PLAINTIFFS/APPELLANT RESPONDENTS**
VRS.		
TETTEH SIAW-SAPPORE **NARTEH SIAW-SAPPORE** **SIAW-SAPPORE OTUBUAH**	**-**	**DEFENDANTS/RESPONDENTS APPLICANTS**

RULING

ANIN YEBOAH JSC:-

On the 27th November 2016, I dismissed this application for special leave to appeal to this court and for stay of proceedings under Section 1 (2) of the Courts Act, 1993 (Act 459) as amended and Rule 7 (4) Supreme Court Rules, 1996, C. I. 16 as amended. As these proceedings touched on the pendency of interlocutory application, the facts could be easily gleaned from the affidavits filed in this application. On 12th March 2009 the Plaintiffs commenced an action against the Defendants before the High Court, Tema, for revocation of letters of administration granted to them in respect of the estate of Baby Angelina Manle Siaw-Sappore. The case was heard to finality when judgment was delivered on 22nd November 2011 in favour of the Plaintiffs and accordingly, the letters of administration so granted was revoked and the trial court instead granted the letters of administration to the first and second plaintiffs.

Subsequent to the revocation and the grant of letters of administration to the first and second Plaintiffs, the Plaintiffs who are now the Respondents in this application on 18th November 2012 filed an application for an order to punish Tetteh Siaw-Sappore, Narteh Sappore-Siaw and Siaw Sappore Otuabuah for intermeddling under Order 66 Rule 3 of the High Court Civil Procedure Rules, C. I. 47 of 2004. When the application was listed for hearing on 9th September 2012 the learned Judge had to determine a preliminary objection on whether Order 66 rule 3 of C. I. 47 which creates a criminal offence could be enforced by an application of such nature. In a ruling dated 30th November 2012, the learned trial Judge upheld the objection and dismissed the application. Not satisfied with the ruling the

Plaintiffs lodged an appeal to the Court of Appeal, Accra. The Court of Appeal on 16th June 2016 allowed the appeal on the grounds that Order 66 rule 3 of C.I. 47 does not create a criminal offence and can be tried by an application.

It is as a result of the Court of Appeal's ruling that this application is brought to seek leave of this court to appeal to the Supreme Court. Counsel for the appellant has argued that there is the need for Special leave to appeal to this court and that same ought to be granted in the interest of substantial justice as the point of law under consideration raises an issue of importance in estate matters.

Counsel for the respondent contended otherwise and sought reliance on the unreported case of ***Kwasi Owusu and Anr v Joshua Nmai Addo & Anr*** Civil Appeal No. J4/50/2014 dated 30th July 2015 and submitted that the application for special leave to appeal is misconceived in the light of the decision of this Court in which I was on the panel. He further submitted that as the matter originated from the High Court the applicants ought to appeal as of right. He finally submitted that the said request in the nature of Stay of proceedings ought to be refused as there is no appeal pending at this court or elsewhere.

In my respectful view, the determination of the first ground if this application could only be made if one considers the statutes conferring appeals on this court from the Court of Appeal. It is trite learning that all appeals are statutorily conferred and could not be inferred from decisions of the appellate courts. In this application, I think it would suffice if I limit

myself to Section 4(1) and (2) of the Courts Act, Act 459 of 1993 which is reproduced in full thus:-

> "4 (1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court
>
> **(a) as of right, in any civil or criminal course or matter in respect of which an appeal has been brought to the Court of Appeal from a Judgment of the High Court or a Regional Tribunal in exercise of its original jurisdiction.**
>
> (b) with the leave of the Court of Appeal, in any other course or matter where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.
>
> (c) as of right in any course or matter relating to the issue or refusal of writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.
>
> 2. Notwithstanding subsection (1) of this section, the Supreme Court may entertain an application for special leave to appeal the Supreme Court in any course or matter (including interlocutory matter) civil or criminal, and may grant leave accordingly."

It is clearly plain that the matter on appeal to the Court of Appeal was commenced at the High Court and therefore the only provision worth considering should be section 4 (a).

In my considered opinion the applicant could appeal as of right to the Supreme Court without resort to this application for Special leave which was erroneously brought under Section 1 (2) of Act 459 of 1993.

The provisions of section 4 (1) (a) appears to be clear and unambiguous to call for any interpretation by this court. I therefore proceed to dismiss this application in this first ground as leave is not required to appeal to this Court in this matter under consideration.

Leaned counsel for the respondent argued the issue of whether or not the application for stay of proceedings was properly before this court in such a manner that I think I owe him a duty to answer that point. Stay of proceedings connotes a temporary halt to proceedings, usually brought to test a ruling on appeal or suspend the hearing of a matter till some steps are taken. In the proceedings there is nothing showing that an appeal has been lodged against the decision of the Court of Appeal out of which leave is being sought to appeal to this court. There is no available material to show that any step ought to be taken to warrant proceedings to be stayed. Nothing substantial has been shown to warrant the grant of the Stay of Proceedings.

In Atkins Encyclopedia of Court Form in Civil Proceedings 2nd Edition Volume 37 on page 171 the learned authors were categorical in how to stay proceedings and the danger inherent in the grant as follows:-

> *…a stay of proceedings is always a very serious and grave step for its consequences maybe of far-reaching importance for the parties. The general rule of procedural law is that a litigant is entitled to have his*

claim to the relief or remedy which he seeks tried on the substantive merits of the case, and therefore a stay of proceedings is a discretionary jurisdiction which ought to be very sparingly exercised and only in very exceptional cases."

I have considered the circumstances of this case and I do not think that a stay ought to be granted. I therefore exercised my discretion to refuse the application.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

COUNSEL

GEORGE ABORGA FOR DEFENDANT/RESPONDENT/APPLICANT
ISAAC OFOSU BOATENG WITH HIM NANA AKOSUA KORANKYE ANKRAH AND D.A. AKROFI FOR RESPONDENT APPELLANT RESPONDENT,