IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA, GHANA.AD. 2016

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

CIVIL MOTION

NO. J8/90/2016

17TH NOVEMBER 2016

GHANA COMMERCIAL BANK PLAINTIFF/RESPONDENT

VRS.

EASTERN ALLOYS COMPANY LTD DEFENDANT/APPLICANT

RULING

PWAMANG, JSC.

This is an application by the Defendants/Judgment Debtors/Appellants/Applicants, hereinafter referred to as "the Applicants" praying for an order of stay of proceedings under the

judgment of the Court of Appeal dated 17th December, 2015 pending the determination of an appeal they have lodged in this court. The background to this application is that on 24th May, 2006 the Plaintiff/Judgment Creditor/Respondent/Respondent, to be referred to as "the Respondent", obtained judgment in the High Court, Accra against the Applicants for payment of various sums of money owed in respect of a loan taken from the Respondent bank. Respondent went into execution, attached and sold the factory premises of the Applicant at an auction. The factory building was bought by the Word Prayer Centre. Applicant filed several motions to set aside the execution but failed. It would appear that the purchaser at the auction subsequently was able to recover possession of the premises and removed the plant and machinery of the Applicant therefrom. Then on 20/3/2012 Applicant filed yet another motion in the High Court seeking to set aside the auction and for its machinery to be placed back in the factory premises. That motion was based on a number of grounds alleging procedural breaches which the Applicants claimed were fundamental and had the effect of nullifying the auction. The main breach complained of by applicants was that by the provision of Order **44 Rules 2(3) and (4) of the Civil Procedure Rules 2004, C.I. 47** the Respondent ought to have first sold its moveable properties and if that was not sufficient to liquidate the judgment debt, it is only then that it could lawfully levy execution against its immoveable property. Applicant contented that that breach of made the auction illegal and void and same could be set aside at any time. Respondent resisted the

motion but, in a 24-page ruling, the High Court granted the motion and set aside the auction.

Respondent being obviously aggrieved, appealed against that ruling and the Court of Appeal allowed the appeal, set aside the decision of the High Court and confirmed the Certificate of Purchase that had been issued to the purchaser. Applicants have appealed against the judgement of the Court of Appeal and is praying that the ruling of the High Court be restored. Applicants applied to the Court of Appeal for a stay of execution of its judgement and the application was granted by a Single Justice but his ruling was reversed by the Court of Appeal duly constituted on the ground that its decision in the substantive appeal did not contain an executable order. Applicant has now filed this motion praying for stay of proceedings under the judgement of the Court of Appeal pending the final determination of their appeal by this Court.

To my understanding, the Applicant filed the present motion instead of the usual motion for stay of execution in view of the decisions of this court to the effect that where a judgement does not grant any executable relief or make any executable order then there can be no stay of execution pending an appeal. See the case of **Anang Sowah v Adams [2009] SCGLR111.**

However in **Standard Charted Bank (Ghana Ltd) v Western Hardwood Ltd & Anor [2009] SCGLR 196** this court made a distinction between stay of execution and stay of proceedings under the decision appealed against as provided for in Rule 20 (1) of the

Supreme Court Rules, 1996(C.I.16). The court speaking through the inimitable Atuguba JSC said as follows at page 200 of the report;

> *"In this regard we would, in this modern era of functional or purposive justice liberally interpret the word proceedings in rule 20(1) as referring to any steps that are required or are necessitated, and not merely occasioned, by the judgment appealed from."*

In that case the court held that in exceptional circumstances it could, in the interest of doing justice, stay proceedings of execution pending appeal against a judgement which did not make an executable order. This reasoning of the court was followed in the case of **Merchant Bank Ghana v Similar Ways Ltd [2012]1SCGLR 440**. The authorities on this subject so far point to the need for the Supreme Court's jurisdiction to stay proceedings of execution under a judgement that did not make an executable order to be kept extremely narrow in scope and operation in order to maintain the distinction between executable and non-executable judgements. See **Golden Beach Hotels (Gh) Ltd v Packplus International [2012]1 SCGLR 452.** I see good sense in keeping this jurisdiction narrow so as to avoid interminable applications for stay of execution which would undermine the effectiveness of judgements of the courts. In my considered opinion, this jurisdiction ought to be exercised in only those plain cases where irreparable injury will be suffered by an applicant who has demonstrated a prima facie case on appeal

such that there will be a miscarriage of justice if the proceedings are not stayed.

In this application the parties in their affidavits and submissions at the hearing have raised points of law on which they claim the Court of Appeal was either right or wrong in upholding the validity of the auction but I have decided not to express any opinion on those points of law. The Respondent has even contested the legal existence of an appeal before this court in this case on the ground that the decision being appealed against is an interlocutory one and any appeal ought to have been filed within 21 days which was not complied with.

Rule 21 of C.I. 16 provides as follows;

"Whenever any doubt arises as to whether any judgment, order, decree or decision is final or interlocutory the question shall be determined by the court."

My jurisdiction as a single justice of the court is provided for as follows in Article 134 of the 1992 Constitution;

"A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of the cause or matter before the Supreme Court,"

It is obvious that a decision on whether the judgement appealed against was interlocutory or final may conclusively determine the pending appeal and to my understanding, Article 134 does not

allow me sitting as a Single Justice of the court decide such a matter.

In any case, what appears to me to be the main issue to resolve this application is whether, in the absence of any executable order, there are nevertheless any proceedings that have been necessitated by the decision of the Court of Appeal that may be stayed by this court in the exercise of its limited jurisdiction?

In the case of **Standard Chartered Bank Ghana Ltd v Western Hardwood Ltd (supra),** this court refused an application for suspension of a decision granting stay of execution on terms on the ground that no proceedings were necessitated by that decision. In **Merchant Bank Ghana Ltd v Similar Ways Ltd** (Supra) the proceedings necessitated by the decision of the Court of Appeal was the enforcement of the judgment of the High Court for the payment of the judgment debt by the deputy sheriff. On the exceptional circumstances in that case the court granted the injunction. In the present case the Respondent has deposed as follows at paragraph 36 of the affidavit in opposition;

> *"36. That with the certified of purchase having been issued and the purchaser already in possession of the property as of date, no further proceedings or steps are required to be taken by the Respondent who has long been paid the judgment debt about 4 years ago from the proceeds of the auction sale."*

In the face of this deposition I am unable to appreciate the contention in Applicant's affidavit that Respondent and the purchaser are making frantic efforts to recover possession. The term "proceedings" under the decision appealed against in Rule 20(1) of C.I. 16 to my mind can only refer to lawful proceedings within the ambit of the rules of procedure of the court. In the case of **Agbemabiese v Dzisam [1973] 1 GLR 291 at 295 Ata-Bedu J** quoted the definition of proceedings in the case of Cheney v. Spooner (1929) 41 C.L.R. 532, Isaacs and Gavan JJ. at pp 536-537, in the following terms;

"'proceeding' used broadly as it is used in section 16 of the Federal Service and Execution of Process Act (Australia), is merely some method permitted by law for moving a court or judicial officer to some authorised act, or some act of the court or judicial Officer."

Since in this case no such proceedings are impending under the judgement of the Court of Appeal, the limited jurisdiction of the court to stay proceedings of execution under a judgement appealed against has not been properly invoked. The courts are not given to making orders in vain. Accordingly the application will be refused.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

COUNSEL

OSAFO BUABENG WITH HIM STEPHEN CHARWAY FOR THE APPLICANT.

MRS. REBECCA BOAKYE WITH HER MISS. JANE ADDO FOR THE RESPONDENT.