IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ATUGUBA, JSC (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
YEBOAH, JSC
PWAMANG, JSC

CIVIL MOTION
NO. J8/66/2018

7TH JUNE, 2018

1. KWADWO DANKWA
2. FRANCIS ADOM
3. KWAKU ADDAE
4. YAW BOATENG ….. PLAINTIFFS/APPELLANTS/RESPONDENTS/RESPONDENTS

VRS

ANGLOGOLD ASHANTI LTD ….. DEFENDANT/RESPONDENT/APPELLANT/APPLICANT

RULING

PWAMANG, JSC:-

By a motion on notice filed on 8th March, 2018, the Applicant herein prayed the court to make an order staying proceedings pending before the High Court, Kumasi in Suit No C3/4/2011 intituled Kwadwo Dankwa & 252 Ors V Anglogold Ashanti Ltd. The background to the application is as follows; The respondents are persons who between 1994 and 2001 worked for the applicant at its mine at Obuasi in the Ashanti Region. The applicant treated them as casual or temporary workers and

when their services ended they were disengaged as such without terminal benefits. Respondents subsequently became aggrieved by the terms on which they were disengaged by the applicant. They contend that in substance they worked as permanent workers during the period they were at applicant's mine but were treated as casual or temporary workers when they exited. In 2011 they decided to challenge their status as casual or temporary workers but were under the impression that an action in court for declaration of their proper status would be caught by the provisions of **Limitation Act 1972, (NRCD 54).** Therefore, they applied *ex parte* under the Act to the High Court, Kumasi for extension of time to bring an action against the applicant. The High Court extended the time for them and they filed the suit under reference in these proceedings.

When applicant was served with the writ of summons, it decided to attack the order granting extension of time to the respondents. It filed a motion in the High Court and argued that the court had no jurisdiction to extend time stating that the cause of action of the respondents was in contract and Section 4 of the Act pursuant to which the judge extended the time did not authorise extension of time for claims based on contract. The High Court acceded to the applicant's prayer, set aside the order extending time and dismissed the action of the respondents. The respondents appealed the decision of the High Court and the Court of Appeal allowed their appeal and directed the applicant to file a defence to the action wherein it may raise its defence that the action is statute barred. The applicant has appealed against the decision of the Court of Appeal to the Supreme Court.

In the meantime, proceedings in the High Court resumed and the respondents applied for leave to file interrogatories to be answered by the applicant and directions for trial. In order to forestall the proceedings in the High Court, the applicant filed a motion praying the High Court to stay its own proceedings in the case pending the determination of its appeal in the Supreme Court. The High Court refused that application but applicant has not appealed against the refusal. Applicant's next move was this present application.

At the hearing of the application we enquired from learned Counsel for the applicant, Kizito Beyuo, the jurisdiction of the Supreme Court under which the application was brought since there can be no appeal in this court against a decision of the High Court the proceedings of which applicant was seeking to have stayed. Counsel said he would rely on Article 129(4) of the Constitution, 1992 and the inherent jurisdiction of the Supreme Court. He contended that under Article 129(4) the Supreme Court can assume the powers of any court in Ghana so we should assume the powers of the High Court and stay its proceedings. Counsel argued that their appeal in the Supreme Court was likely to succeed so to save cost of litigation the proceedings in the High Court ought to be stayed. Article 129(4) of the Constitution, 1992 that has been relied on as conferring jurisdiction on the court states as follows;

"129(4) For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgement or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and Jurisdiction vested in any court established by this Constitution or any other law."

It has been stated repeatedly by this court that Article 129(4) does not confer on the Supreme Court a distinct jurisdiction but that the powers given to the court in that provision are to compliment the court's jurisdictions as provided for in the Constitution or any other enactment.

In **Republic v Duffour; Ex parte Asare [2007-2008] SCGLR 394** at 403 Atuguba JSC said as follows;

"....article 129(4) is auxilliary to the Supreme Court, but it is not the ***fons et origo*** *of jurisdiction over a matter over which it has no jurisdiction."*

In the case of **GFA V Apaade Lodge Ltd [2009] SCGLR 100**, Sophia Adinyira, JSC, in an erudite judgment reviewed this court's jurisprudence on article 129(4) and concluded as follows at page 110;

"We wish to emphasise that article 129(4) of the 1992 Constitution cannot be used as a springboard to clothe us with jurisdiction where there is no appeal against the judgment sought to be stayed."

See also **Edusei (No 2) v Attorney-General [1998-99] SCGLR 753**

Article 129(4) states that the powers therein are given to the Supreme Court for **"the purposes of hearing and determining a matter within its jurisdiction….and for the purposes of any other authority expressly or by necessary implication given to the Supreme Court by this Constitution or any other law.."** So a party who invites the court to exercise its powers under Article 129(4) in his favour must first and foremost point to a substantive jurisdiction of the court he has invoked or a provision of the Constitution or other law that confers authority on the court to do what he has prayed the court to do. If that condition precedent is not satisfied, Article 129(4) cannot be relied on in aid by the party.

Admittedly, counsel for the applicant did not press the issue of inherent jurisdiction with any conviction but we wish to underscore the point that the inherent jurisdiction of a superior court to stay proceedings can only be exercised in respect of proceedings pending before the court itself. The power of a superior court to stay proceedings pending before a lower court is conferred by statute and must be exercise in accordance with the statute which, in the case of the Supreme Court, is **Rule 20** of the **Supreme Court Rules, 1996 (C.I.16).**

In this case, the applicant was not able to point to any jurisdiction of the Supreme Court it was invoking or specific statutory authority of the court as basis of its application for of stay proceedings in the High Court. Consequently, we have no jurisdiction in this matter.

Besides the question of jurisdiction, we wish to observe in respect of the grounds urged by the applicant for the exercise of discretion to stay proceedings in this case that, the defence of limitation is dependent on the facts in a case and the Limitations Act, 1972 contains a number of general exceptions where time does not run. It would therefore be inappropriate to stay proceedings at the stage where leave was being sought to deliver interrogatories which may reveal more information that could impact the course of proceedings in the case.

In the circumstances, we are unable to grant the application and same is dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ATUGUBA, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS), JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

COUNSEL

KIZITO BEYUO FOR THE APPLICANT.

KWAME ASARE BEDIAKO FOR THE RESPONDENTS.