IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: BENIN, JSC SITTING AS A SINGLE JUDGE

CIVIL MOTION
NO. J8/115/2017

4TH JULY, 2017

MARTIN ALAMISI AMIDU

VRS

1. THE ATTORNEY ..... RESPONDENT

2. WATER VILLE HOLDINGS (BVI) LTD & 2 OTHERS

3. ALFRED AGBESI WOYOME ..... APPLICANT

RULING

BENIN, JSC:-

This is an application for a stay of proceedings in respect of two orders made by this court on the 8th of June 2017. The first order granted a temporary charging order in respect of the shares held by the judgment/debtor, now applicant, in certain listed companies. That order was made under Order 49 of the High Court (Civil Procedure) Rules, 2004, C.I. 47. The second order

which was made under Order 46 rule 2 of C.I. 47 granted leave to the judgment/creditor, now respondent, to orally examine the applicant in respect of matters specified in the order. The applicant was not satisfied with the orders as made. He has therefore applied on notice to this court, duly constituted by a panel of three, by virtue of article 134(b) of the Constitution, 1992 to have another look at the orders and to set same aside. That application is yet to be determined. For the time being, the applicant is asking the court to stay the two orders referred to above.

The application for a stay of proceedings has been brought under article 134(b) of the Constitution and Rule 73 of the Supreme Court Rules, 1996 C.I. 16. Article 134(b) of the Constitution provides that:

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, except that-

(b) in civil matters, any order, direction or decision made or given under this article may be varied, discharged or reversed by the Supreme Court constituted by three justices of the Supreme Court.

Rule 73 of C.I. 16 provides:

An application made pursuant to article 134 of the Constitution in respect of any cause or matter, civil or criminal shall be by motion on notice and shall be served on any party who has an interest in the cause or matter.

Neither article 134(b) of the Constitution nor rule 73 of the CI 16 even remotely permits a party to apply to the court for a stay of proceedings. Indeed both provisions give direction to a person who is aggrieved with a decision rendered by a single justice of the Supreme Court and who desires a revision by three justices of the court. Thus an application to stay proceedings cannot be made under these provisions as they are completely unrelated.

At the hearing which took place on the 29th June 2017 Counsel for the applicant sought to make amends by saying they were also coming under the court's inherent jurisdiction. Since CI 16 has no specific provision that deals with a stay of proceedings the court may accept an application invoking the court's inherent jurisdiction to stay proceedings. Such an application may also be received by the court under the common law. The correct procedure then is to state in the motion paper that you are seeking the court to exercise its inherent jurisdiction in the matter. Here again the applicant did not do so. The question that arises is whether the court should throw out the application for the failure to disclose that they were proceeding under the court's inherent jurisdiction. I consider that the court's avowed aim is to do justice if it has any jurisdiction to hear and determine the cause or matter before it. When we talk of justice, we look at all the facts and circumstances of the case in order to decide on the justice of the particular matter. In this case the applicant wants the court to take a second look at the orders made, so to them there will be justice if nothing is done to frustrate the said application. To the respondent justice will be served if no further delay occurs in their desire to reap the fruits of the judgment made in their favour. In my view throwing out this application on this technical ground will not achieve justice because the applicant cannot be debarred thereby from coming back with a similar application which will have the effect of further delaying proceedings, which the respondent does not desire. I have therefore decided that, in the interest of justice to both parties, it is desirable to deal with the application exercising the court's inherent jurisdiction.

Counsel for the applicant agrees that an application for stay of proceedings is an exercise in discretion. Thus the applicant who seeks the court's discretion must be forthcoming with grounds to satisfy the court that it is not devoid of merit. The only point that the applicant argued is the fact that he has applied for an expanded bench to set aside the orders. He does not complain that the orders are working any hardship or inconvenience on him. He does not argue that they will cause him any irreparable damage if they are not stayed. These points were raised by the learned Deputy Attorney-

General but learned counsel for the applicant failed to address these important considerations when he was offered the opportunity to do so.

If I understood counsel for the applicant well, he thinks that the expanded court ought to deal with the review before any further step may be taken. With that position he should have come out with the reasons why the application stands a chance of succeeding, in other words that it raises serious legal and arguable points. Such points must be canvassed in this application, but counsel said they would reserve them when that application is argued. The only points relied on in the affidavit in support of the application are contained in the following depositions:

"6. That I am informed and verily believe same to be true that in terms of the Constitution, 1992 article 134(b) and…..C.I. 16 Rule 73, the ex parte applications to examine me orally and for a temporary charging order to be placed on any or all of my shares in the above listed companies were incompetent.

7. That I am informed and verily believe same to be true that in terms of the Constitution, 1992 article 134(b) a single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court in civil matters.

8. That I am informed and verily believe same to be true that in terms of…..C.I. 16 Rule 73, an application made pursuant to the Constitution article 134(b) in respect of any civil cause or matter shall be by motion on notice and shall be served on a party who has an interest in the civil cause or matter.

10. That the applications by the respondent and the Orders……were made ex parte, without notice to me in flagrant violation of the Constitution…..and the Supreme Court Rules…..

15. That accordingly, the Orders for my oral examination under the High Court Rules, 2004 C.I. 47 Order 46 cannot be sustained and ought to be

stayed pending the determination of my application to set aside the Orders dated 8th June 2017.

These are some of the very points raised in the application to set aside the orders slated for hearing on the 18th of July 2017 before a panel of three. I do not wish to state an opinion thereon, even though I am entitled to do so as they have canvassed in support of this application. It suffices to say that the applications before the court were neither founded on the Constitution nor the Rules of this Court.; both were brought under C.I. 47 as earlier mentioned. Thus it would be expected that an application such as this would make reference to those provisions and point out where the error occurred. The applicant in paragraph 12 of the affidavit in support of his application to set aside the orders made herein-exhibit AAW3- concedes that an application made pursuant to order 46 of C.I. 47 could be made ex parte, yet he failed to make a similar admission in the instant affidavit and insists he should have been served with notice. This is quite absurd, to say the least. When a party has approached a court with an application and properly invoked its jurisdiction, another party who seeks to take steps in the matter must not select his own laws and rules of practice which have no bearing on the earlier application. The court has dealt with this matter under C.I. 47 which the applicant concedes was right, yet he seeks to stop the process invoking different set of laws and rules.

It appears the position taken by the learned counsel for the applicant was based on the rather erroneous view that the court should have applied rule 28 of C.I. 16 and asked the High Court to enforce the judgment. I think it is not the duty or business of Counsel for a judgment debtor to tell this court how to enforce or direct the enforcement of its decisions, judgments and orders. The mode of selecting an enforcement mechanism is the preserve of the judgment creditor. Rule 28 is not mandatory for the court to comply with, it may invoke it if it so desires. Thus the fact that the court did not refer the enforcement to the High Court is a matter of no consequence, as the court has decided that it has the right, the means and the power to enforce its own judgments and orders applying any existing rules of practice available

in any court in Ghana by virtue of Article 129(4) of the Constitution, in the absence of rules of enforcement under the Supreme Court Rules, C.I. 16. That was in the matter of THE REPUBLIC v. THE HIGH COURT (FAST TRACK DIV.) ACCRA; EX PARTE ANANE AGYEI FORSON-Applicant; THE ATTORNEY-GENERAL, Interested Party, Civil Motion JS/29/2014, dated 5th November 2014. It was on the strength of this clear authority that the applications brought under the High Court Rules, C.I. 47, in seeking to enforce this court's judgment and order in question, were admitted and determined by the Court.

The result is that there is no basis for this application, meaning there is nothing advanced before me on which I can exercise discretion in favour of the applicant. It is not sufficient for the court to stay proceedings simply because an application for a review has been filed, in the absence of a rule of law or practice to that effect. For these reasons I find no merit in the application and accordingly dismiss same.

A. A. BENIN

(JUSTICE OF THE SUPREME COURT)

COUNSEL

KEN ANKU FOR THE APPLICANT

GODFRED ODAME, DEPUTY ATTORNEY GENERAL FOR THE RESPONDENT