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. J8/03/2018

20TH OCTOBER, 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:-

The 3rd defendant/Judgment-debtor/respondent/applicant, called the applicant complains that the 1st defendant/Judgment-creditor/applicant/respondent, called the respondent, is taking wrongful steps in seeking to enforce a Judgment of this court. The respondent applied to go into execution through the process known as fieri facias, fi.fa for short. An attempt was made to evaluate the landed properties of the applicant, a necessary step in the execution process. Believing that

the evaluation was embarked upon pursuant to an order of this court dated 24th July, 2017, and believing that it was done in violation of the said order of this court, the applicant has brought this application to challenge the execution process in question.

The respondent filed an affidavit in opposition challenging the factual basis of the application, inter alia. The respondent deposed to the fact that the execution process commenced with a writ of fi.fa issued in January 2015 and repeated in January 2016. Consequently, the execution is a continuing one.

The depositions in the affidavit in opposition offered the applicant ammunition with which to launch an attack against the entire execution process, thereby abandoning his original grounds in support of the application. Counsel for the applicant made some interesting points which are worth considering, especially having regard to the dearth of authority in this area of practice in this country and even in other common law jurisdictions.

I shall consider the various points that Counsel for the applicant raised one after the other, and the responses thereto. To begin with, Counsel made reference to Order 44 rule 9 sub-rules 1 and 2, and said the writ of fi.fa issued in January 2015 was renewed in January 2016 without an order of the court, and was thus void, thereby rendering all the ensuing execution processes null and void.

In his response, the Honourable Deputy Attorney-General said the condition precedent for the renewal of a writ of fi.fa had not arisen, at the time the second one, exhibit AG 3 was issued. This is so because the first one, viz Exhibit AG 2 had not expired before the second one was issued. Consequently, all the execution processes following the issuance of Exhibit AG 3 were valid. And once the writ of fi.fa has been executed by attachment, there was no need for a renewal, on the strength of the authority of ACKAH v GHANA COMMERCIAL BANK (2013-2014) 2 SCGLR 1157.

The relevant provisions in the High Court (Civil Procedure) Rules, 2004 (C. I. 47) are the following:

> 44(9)(1) For the purpose of execution, a writ of execution shall be valid in the first instance for twelve months beginning with the date of its issue.
>
> 44(9)(2) Where a writ has not been wholly executed the court may by order extend the validity of the writ from time to time for a period of twelve months at any one time beginning with the day on which the order is made if an application for extension is made to the court before the day on which the writ would otherwise expire.

These provisions are very clear and leave no room for any ambiguity. They apply when an applicant intends to renew a writ of execution which is due to expire. They have nothing to do with a freshly issued writ of execution, albeit a second one**.** I have considered the fact that the rules do not talk of another writ of execution being issued whilst an earlier one has not

expired and could thus be renewed. The maxim is that 'one judgment, one execution'. I have placed such a scenario vis-à-vis the situation whereby an applicant is still entitled to apply for another writ of execution to be issued even after the first one has expired through the effluxion of time. In other words, an applicant for a second writ of execution is not shut out because a writ has expired. And even where he has committed a blunder in procedure, such defect or default may be cured under the provisions of Order 81 of the High Court Rules. The issuance of a fresh writ of fi.fa before the first one has expired is not illegality per se and should thus be treated as an irregularity when no execution has taken place in respect of the first one. I would venture to suggest that implementation of any action on the second writ would be put on hold by the Registrar until after the expiry of the first writ. If any property has been attached under the first writ of fi.fa, then legally execution has taken place and must continue to the end under that writ.

What are the facts in this case? On 9th January, 2015 the respondent filed an application for a writ of fieri facias to issue, at the Supreme Court. A copy was directed for service on the applicant. It appears from the submissions of both counsel that the said writ was legally valid as of that date, 9th January 2015. By existing law on interpretation it was due to expire on 8th January 2016. Barely two or three days for the said writ to expire, the respondent filed another writ of fi.fa on 6th January 2016 again at the Supreme Court. Mindful of the fact that the Supreme Court rules do not contain execution forms and in line with existing practice, the Registrar of the Supreme Court normally uses the forms at the High Court to enforce judgments and orders of this court. The writ of fi.fa was

enforced at the High Court Sheriff Office. On 6th January 2016, the High Court Sheriff filed a notice that his office had seized the applicant's property in execution under writ of fi.fa dated the 9th day of January, 2015; that is the first writ filed by the respondent herein at this court's registry

The import of this endorsement was four-fold, viz (a) no execution took place under the second writ filed on 6th January, 2016; (b) attachment of the applicant's property took place under the first writ of fi.fa filed on 9th January 2015; (c) the seizure of the applicant's property in execution took place within the period of validity of the first writ; (d) the second writ was thus rendered otiose and ineffectual. Thus once the execution had commenced before the expiry of twelve months, there was no need for a renewal of the first writ, on the strength of the authority of Ackah v GCB, supra. The principle is the same in England.

Counsel also said the writ of fi.fa was issued by the High Court without an order of this court. A look of the document shows a notice of due attachment of property by the Sheriff of the High Court. It is not the same thing as the High Court issuing the writ of fi.fa. The application for a writ of fi.fa was filed at the Supreme Court Registry, therefore in the absence of clear evidence to the contrary, the court should accept that the writ was issued from this court's registry but was executed by the Sheriffs attached to the High Court at the instance of the Registrar of this court. The Registrar of this court may seek the aid of the Police as well as other court officials or other recognized persons including valuers to help him carry out execution of the court's judgment which has been duly entered,

and where the appropriate execution process has been invoked at this court's registry. These are purely administrative steps which do not require an order of the court.

Further, counsel referred to exhibit AG 4 and said there is nothing therein attaching the applicant's property and so should be set aside. This argument is not factually correct because on the face of Exhibit AG 4 it is stated that "one residential property at Kpehe, Accra" was attached by the Sheriff.

In sum, I find no merits in the application and I dismiss same accordingly.

A. A. BENIN

(JUSTICE OF THE SUPREME COURT)

COUNSEL

OSAFO BUABENG FOR THE APPLICANT

GODFRED YEBOAH ODAME, DEPUTY ATTORNEY-GENERAL FOR THE RESPONDENT