IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, AD-2019

CORAM: ANSAH, JSC (PRESIDING)
DORDZIE, JSC
KOTEY, JSC

CIVIL MOTION
NO. J7/05/2019

27TH MARCH, 2019

MARTIN ALAMISI AMIDU ..... PLAINTIFF

VRS

1. THE ATTORNEY-GENERAL ..... 1ST DEFENDENT/RESPONDENT
2. WATERVILLE HOLDINGS (BVI) LTD. ..... 2ND DEFENDANT
3. ALFRED AGBESI WOYOME ..... 3RD DEFENDANT/APPLICANT

AND

U.T. BANK LIMITED (UNDER RECEIVERSHIP) ..... CLAIMANT/RESPONDENT

RULING

DORDZIE (MRS), JSC:-

This application is brought under Article 134 (b) of the 1992 Constitution of the Republic of Ghana. The applicant herein is praying this court to reverse the decision of the single judge of this court delivered on the 3rd of December 2018.

Article 134 of the 1992 Constitution of the Republic of Ghana empowers a single justice of the Supreme Court to exercise the powers vested in the Supreme Court in matters that do not involve the decision of the cause or matter before the Supreme Court; and any order, decision or direction made or given by the single judge under Article 134 may be varied, discharged or reversed by a three member panel of the Court. Article 134 reads:

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 -

> ***(a) in criminal matters, where that Justice refuses or grants an application in the exercise of any such power, a person affected by it is entitled to have the application determined by the Supreme Court constituted by three Justices of the Supreme Court and***
>
> ***(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.***

To effectively accommodate the benefit of the above provisions of the Constitution the procedural rules of this Court C. I 16 were amended. The Supreme Court (Amendment) Rules, 2016 C. I 98 amended C. I. 16 by substituting Rule 73.

The amended Rule 73 reads:

"Review of decision of single justice

73. (1) A person dissatisfied with the decision of a single justice of the Supreme Court in respect of an application determined under article 134 of the

Constitution, may apply to the Supreme Court to have the application determined by three justices of the Court.

(2) The application to have the cause or matter determined by the three justices shall be by motion on notice and shall be served on any other party who has an interest in the cause or matter"

The applicant therefore, in exercising the right conferred on him by Article 134(b) of The Constitution brought this application for the reversal of the single judge's decision of 3rd December 2018 which did not go in his favour.

Background leading to the application

In a review decision of this court dated 29th of July 2014 in Suit N0: J7/10/2013 titled:

Martin Alamisi Amidu v 1. The Attorney General

2. Waterville Holdings (BVI) Ltd.

3. Alfred Agbesi Woyome,

the applicant herein Alfred Agbesi Woyome was ordered to refund a sum of GHc 51,283,480.59 to the state. In executing the said judgment The Attorney General, the 1st defendant/respondent in the suit issued a writ of Fieri Facias and attached properties it believed belong to the 3rd defendant / applicant, situate at East Legon. U T Bank (in receivership) the Claimant, maintains it has interest in the properties attached, therefore, it filed a Notice of Claim. The 1st defendant disputed the claim, this set in motion interpleader proceedings. The matter was placed before a single judge of the Supreme Court who adopted the High Court (Civil Procedure Rules) 2004, C. I. 47 in hearing the interpleader summons. Order 48 of. C.I. 47 regulates interpleader proceedings.

The applicant herein raised objection to the jurisdiction of the single judge of the Supreme Court hearing the matter. He maintained that the execution process of this court should be carried out by the High Court. His reason being that whichever party loses in the

interpleader suit would have the right to appeal if the execution process is carried out in the High Court. In the Supreme Court the parties have no right to appeal.

The single judge overruled the objection, the ruling of the single judge is the subject matter of this application.

Though this application is not a review application as prescribed by Rule 54 of the Supreme Court Rules, 1996 C. I. 16, the import of the application is a prayer for review of the decision of the single judge. Rule 73 of C. I. 16 as amended unlike rule 54 does not make any provision as to how the review jurisdiction of a panel of 3 judges would be exercised. However Rule 5 of C. I. 16 takes care of matters not expressly provided for by the rules of procedure. Rule 5 of C. I. 16 reads:

"Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any cause or matter before the Court, the Court shall prescribe such practice and procedure as in the opinion of the Court the justice of the cause or matter may require."

In our opinion the forum provided by article 134(b) of the constitution for a panel of three justices of this court to vary, discharge or reverse the decision of a single judge is not intended to be a forum where the applicant would reargue his case, rather it is a forum where lapses that may result in miscarriage of justice may be corrected. As such like any review application it would be in the interest of justice to examine the decision complained of to determine if there are any special circumstances to warrant a reversal, varying or a discharge of the subject decision.

The learned deputy Attorney General took objection to the standing of the applicant in bringing this application. It is a preliminary objection which we need to deal with first and foremost. It is submitted by the 1st defendant/respondent that the applicant has no locus standi in bringing this application because he is not a party in the interpleader proceedings. Looking at the ruling, the subject matter of this application, which is the

only process from the interpleader proceedings from the single Judge sittings available to us, the applicant participated in the proceedings, in whatever capacity he did that is not disclosed. In fact the objection that led to the ruling we are being asked to reverse was taken by counsel for the applicant, counsel for the claimant only added his voice to the arguments of counsel for the applicant. If the respondent took no objection to the applicant being a party to the proceedings before the single judge then the argument that he has no locus standi in bringing a review application in respect of a ruling given against him in the said proceedings cannot be a valid argument. If the applicant was a party in the said proceedings then he has the right to apply for a review of the decision of that proceedings which affects him. We would therefore dismiss the preliminary objection and go on to determine the application on the merit.

The main ground of the present application as disclosed in the depositions in the accompanying affidavit is that the continued hearing of the interpleader suit by the Supreme Court infringes on the rights of the parties expressly provided for in the High Court (Civil Procedure) Rules, 2004 C. I. 47 because neither of the parties affected by the decision of the single judge can appeal against same. This was the same ground the applicant presented to the single judge resulting in the decision under review.

One difficulty the court experiences due to the practice followed in bringing this kind of applications is that the review panel save for the ruling, has no access to the record of adequate facts on the proceedings before the single judge. In this application we could only capture the ground of the application made before the single judge from the ruling. This in a way places limitation on the review panel's appreciation of what actually transpired at the single judge hearing. We deem it fit to give directions, at the end of this ruling as to how the practice should be in the future.

Counsel for the applicant argued in a written submission he filed on the 13th of February 2019 that the single judge has no jurisdiction to preside over the enforcement/execution proceedings of the Supreme Court decision. It is counsel's view that determining the correctness or otherwise of a single judge's jurisdiction over interpleader proceedings

involves interpretation of article 134 of the constitution. Counsel therefore urged upon the court to stay proceedings and refer the issue of interpretation of article 134 to the ordinary bench of the court for determination.

Article 130(2) of the constitution provides for references to the Supreme Court, it reads: ***130(2) "Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings <u>in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination</u>; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court." (Emphasis mine)***

Rule 67 of C. I. 16 provides the procedure to follow in making references to the Supreme Court for interpretation. Rule 67 (1) & (2) read:

(1) A reference to the Court for the determination of any question, cause or matter pursuant to any provision of the Constitution or of any other law shall be by way of a case stated by the court below, or by the person or authority making the reference.

(2) A case stated under sub-rule (1) of this rule shall contain- (a) a summary of the action or matter before the court below or the person or the authority from which the reference is made;

(b) the issue involved in the matter before the court or that person or authority;

(c) the matter or question referred for determination by the Court;

(d) any findings of fact relevant to the matter or question referred to the Court;

(e) the arguments of counsel, if any;

(f) the ruling or decision of the court below or of that person or authority; and

(g) A statement by the court below that the determination of the constitutional matter or question is necessary to a decision of the action, where the reference is made under clause (2) of article 130 of the Constitution.

As demonstrated from the quotations above, neither the constitution nor the rules of procedure of this court contemplate a situation where the Supreme Court will make references to itself.

Much as we commend learned counsel for the industry he has put in the submissions he filed in support of this application, the fact remains that this application has the character of a review application and as such the jurisdiction of this panel is very limited in scope. We therefore decline the invitation to delve into the issue of referral for interpretation of article 134 of the constitution

The age long principle developed by the court in considering review applications is to examine the decision under review to find out if there are any exceptional circumstances that would result in miscarriage of justice. The Supreme Court per Francois JSC puts this principle this way in the case of ***Agyekum v Asakum Engineering & Construction Ltd. [1992]2GLR635 at 651 "The Supreme Court has expressed the view many times before, that the review jurisdiction does not provide a platform for rehearing previous legal positions, whatever new learning and erudition are thrown into the melting pot, the acid test remains as always the existence of exceptional circumstances and the likelihood of a miscarriage of justice that should provoke the conscience to look at the matter again***."

In paragraph 7 of the applicant's affidavit he deposed that hearing of the interpleader proceedings before the single judge had been completed and the judge is yet to deliver his decision. A further deposition in paragraph 13 of the affidavit indicates that the

decision, the subject matter of this application was given at an earlier stage of the proceedings. The question we would want to ask is if indeed the decision which is under review was given earlier in the proceedings what then is required from this court? Pursuing this application after the applicant had participated in the interpleader proceedings and hearing had ended and the parties are awaiting judgment amounts to an attempt to arrest the judgment of the single judge. Not only that, the applicant is urging this court to abandon its execution process and refer the matter to the High Court for hearing.

It is admitted that the applicant has the constitutional right to bring this application, however this matter involves issues that are of grave public interest; this court and its officers have the duty to bring to an end this suit that had remained in the domain of the courts since 2013. The judgement of the court which is being executed was delivered by this court on the 29th of July 2014, nearly five years ago. It would be in the interest of justice to bring to an end this protracted litigation. Secondly it must be borne in mind that this is a judgment of this court arising from its constitutional and original jurisdiction upon review. This court must therefore enforce its own decision.

Apart from the preliminary point the Attorney General raised on the locus standi of the applicant, which we have already dealt with; the 1st defendant respondent, opposed the application on the ground that the application is meant to frustrate the execution of the judgment of this court, and that the application is incompetent and should be dismissed.

The learned Deputy Attorney General, Godfred Yeboah Dame who represents the 1st defendant respondent argued inter alia as follows: that the applicant herein the 3rd defendant is not the claimant in the interpleader proceedings and therefore has no locus standi to bring this application. Apart from that the applicant has no right of appeal that he may be deprived of. Counsel further argued that the application was brought beyond the one month period allowed by the rules for review applications. That no time limit is provided by the rules for this type of application does not give room for abuse. The

application therefore must be dismissed for incompetency; even if the court finds the application to be properly before it, it lacks merit and ought to be dismissed.

The rules of procedure of this court do not provide any time limit to apply for reversal, varying or discharge of a single judge's decision. The applicant herein is exercising a constitutional right, moreover we do not consider the time lapse to be an abuse of the process.

Having sufficiently dealt with the preliminary issues raised by the Attorney General we would now go ahead and state our opinion on the merits of the application.

The single judge in the ruling before us carefully restated the position of the law so far as the powers conferred on the Supreme Court by article 129(4) of the constitution to execute its own decisions are concerned. The court made particular reference to an earlier decision of this court in the case of ***Republic v High Court (Fast –Track Division), Accra; Ex Parte Anane Adjei Forson (Attorney General Interested Party) [2013-2014]1 SCGLR 690 where this court held as follows: "the provision in article 129(4) of the 1992 constitution has given the Supreme Court a direct authority to enforce its own decisions including judgements and orders, applying any relevant rules of procedure available in any court"***

We do not find any special circumstance that empowers us to tamper with the decision of the single judge. We therefore dismiss the application

The practice in respect of applications under article 134 (b) of the constitution to this court has been to apply by motion, setting out the facts in an affidavit, and exhibiting the ruling of the single judge and nothing more. We have in this ruling expressed the difficulty the panel had experienced in ascertaining the true position of related facts that was placed before the single judge. We take note of the existing practice that in review applications the record of proceedings is not made available to the review panel; however we think there should be exceptions to this practice. Where the need arises as we

experienced in this application, the 3 panel court should be in a position to call for any process that was before the single judge which it would need to do justice in the matter. We therefore recommend amendment in the rules of procedure to take care of this situation.

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my sister Dordzie, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

KOTEY, JSC:-

I agree with the conclusion and reasoning of my sister Dordzie, JSC.

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

COUNSEL

OSAFO BUABENG FOR THE 3RD DEFENDANT/APPLICANT.

GODFRED YEBOAH-DAME, DEPUTY ATTORNEY GENERAL WITH HIM STELLA BADU (MRS.), CHIEF STATE ATTORNEY, NANCY NETTEY TWUMASI ASIAMAH (MRS.), CHIEF STATE ATTORNEY, YVONNE BANNERMAN (MS) ASSISTANT STATE ATTORNEY AND ZEINAB AYARIGA (MS.), ASSISTANT STATE ATORNEY FOR THE IST DEFENDANT/RESPONDENT.

A. A. ACKUAKU FOR THE CLAIMANT/RESPONDENT.