IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2017

CORAM: DOTSE, JSC (PRESIDING)
YEBOAH, JSC
AKOTO-BAMFO, JSC
BENIN, JSC
APPAU, JSC

CIVIL MOTION
NO. J8/08/2018

28TH NOVEMBER, 2017

MARTIN ALAMISI AMIDU ……. PLAINTIFF

VRS

1. THE ATTORNEY GENERAL ……. 1ST DEFENDANT/RESPONDENT

2. WATERVILLE HOLDINGS (BVI) LTD. …… 2ND DEFENDANT

3. ALFRED AGBESI WOYOME ……. 3RD DEFENDANT/APPLICANT

RULING

YEBOAH, JSC:-

On the 21/11/2017 we heard arguments in this matter which was for stay of proceedings in this court and given the nature of the case, we adjourned it to today for our ruling.

To appreciate the reasons for this ruling, some brief facts of this case may suffice. The applicant herein, Mr. Alfred Agbesi Woyome was sued together with the first two defendants in this case by Mr. Martin Alamisi Amidu under Article 2 of the 1992 Constitution by invoking our original jurisdiction. The review bench of this court in a

unanimous ruling delivered by my worthy brother Dotse, JSC on 29/07/2014 as: **AMIDU No.3 v ATTORNEY-GENERAL, WATERVILLE HOLDINGS (BVI) & WOYOME (No.2)** [2013-2014] ISCGLR 606 ordered the applicant herein to pay to the Government of Ghana an amount of money to the tune of GH51,283,480.59 which appears to be substantial. As the sole and Constitutional body entrusted with the responsibility to represent the Government of Ghana in Civil proceedings, the Attorney-General, the first respondent in this application proceeded to levy execution by resorting to judicial processes regulating execution of judgments.

In course of executing the judgment, the applicant herein filed for our determination, this motion and headed same as:

> MOTION ON NOTICE PURSUANT TO ARTICLES 40 & 134 OF THE CONSTITUTION, 1992 & THE SUPREME COURT RULES, 1996 (C.I.16) RULE 73 FOR THE STAY OF FURTHER EXECUTUON PROCEEDINGS PENDING THE FINAL DETETERMINATION OF MATTER BEFORE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Learned counsel for the applicant Mr. Osafo-Buabeng, drew our attention to various exhibits clearly showing that the applicant had actually filed an application on 4/09/2017 at the African Court on Human and Peoples' Rights and same had been responded to by the respondent to this application. The pendency of the application is therefore free from doubt.

Learned counsel for the applicant Mr. Osafo-Buabeng in moving the application submitted that as the matter is actively pending before the African Court on Human and Peoples' Rights to determine the issues of human and peoples' rights affecting the applicant, it would be fair and just for the Government of Ghana as a signatory to the Protocol of the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights which Ghana had ratified in its Parliament on 25th August, 2004 to stay the proceedings till the final determination of the proceedings pending at Arusha, Tanzania.

We have given this submission by learned counsel serious thought. However, in our opinion, this submission clearly lost sight of the fact that the action by Martin Alamisi Amidu, which culminated in this execution process as pointed out was brought under Article 2 of the Constitution. This court gave orders for payment of the money by the applicant to the Government of Ghana. (The Government of Ghana) and the Respondent herein must as a matter of course enforce the judgment in compliance with Article 2 clauses (2) (3) and (4) of the Constitution which for a fuller record is reproduced thus:

> 2 (2). The Supreme Court shall for the purposes of a declaration under clause (1) of this article, make such orders and give such directions as it
>
> may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.
>
> (3). Any person or group of persons to whom an order or direction is addressed under clause (2) <u>of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction</u>

(4). Failure to obey or carry out the terms of an order or direction made given under clause (2) of this article constitutes a high crime under this constitution and shall in the case of the President or Vice-President, constitute a ground for removal from office under this constitution. [emphasis ours].

This is a clear and ambiguous provision of the Constitution, which imposes strict compliance by President and the Vice-President. The failure to comply with the directions from this court could lead to their impeachments. The breach of the above directions therefore has far-reaching consequences. It therefore follows that an ordinary citizen like the applicant herein must strictly comply with the directions given by this court in the exercise of its original jurisdiction.

In our respectful opinion, the Attorney-General in representing the Government of Ghana by executing the judgment under Article 88 of the Constitution is carrying out the constitutional duties imposed on it and no more. The constitution of a sovereign state like Ghana is supreme and all institutions of state derive their authority from it. We find the execution of the judgment by the respondent herein as a step to fulfill a constitutional mandate imposed on it when Article 2 is read in conjunction with Article 88. We therefore find no merit in the submission by learned counsel for the applicant herein.

Another interesting point raised by counsel was the fact that if proceedings are not stayed and execution proceeds before the application is heard by the African Court on Human and Peoples' Rights, his client would be a loser as the enforcement of the judgment is against his human rights. In applications of this nature, a court of record

expects an applicant who claims an infringement of his human rights to demonstrate by evidence, be it in the affidavit or in any accepted form to furnish the court of record with such violations, if any. Our constitution, under chapter 5 of the Constitution titled: FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS, has spelt out copious provisions from Articles 12 to 33 affording the citizenry exhaustive human rights and freedoms never before known in our previous constitutions. The applicant, however, could not refer to any of the provisions in the constitution or any statutes whatsoever to demonstrate any breaches of such rights and freedoms. We accordingly find such submissions factually unsupported by any evidence on record to assist this court to determine its relevance in favour of the applicant. We therefore cannot determine any such rights or freedoms which have been breached by the respondent.

We would have rested the determination of this application at this stage but the resort to applications for stay of proceedings in our courts on regular basis by parties has dawned on us the need to state the basis for such applications. An application for stay of proceedings is to prevent or put on hold a case that is progressing in court and is regarded as a very serious step and should not ordinarily be invoked at will. It is part of a superior courts' inherent jurisdiction which should be invoked with utmost care. In Atkin's ENCYCLOPEDIA OF COURT FORMS IN CIVIL PROCEEDINGS (second edition, volume 35), the reknowned author stated the law succinctly at page 150 thus:

> "A stay of proceedings arises when under an order of the court proceedings which are pending in that court are brought to a halt at the stage which they have reached, so that while the stay is in operation the parties are precluded from taking further step in the proceedings"

The learned author continues at the same page thus:

"For this reason a stay of proceedings is always a very serious and grave step, for its consequences may be of far-reaching importance for the parties. The general rule of procedural law is that a litigant is entitled to have his claim to the relief or remedy which he seeks tried on the substantive merits of the case, and therefore a stay of proceedings is a discretionary jurisdiction which ought to be very sparingly exercised and only in very exceptional cases" [emphasis ours]

The law on stay of proceedings has been settled in cases like **REPUBLIC v COMMITTEE OF INQUIRY (R.T. BRISCOE (GHANA LTD)); EXPARTE R.T. BRISCOE GHANA LTD** [1976] IGLR 166 CA and **BRUTUW v AFERIBA & ORS** [1979] GLR 566 which affirm the common law principles that a stay of proceedings would be granted if there were special circumstances for its grant. The burden is thus on the applicant to show by available materials that there exists the grounds for its grant to allow a court to put a temporal halt to the proceedings.

In our respectful view, it behoves the applicant to demonstrate convincing and sufficient reasons for us to halt the levying of execution under Article 2 of the Constitution which enjoins the Attorney-General to strictly obey the orders of this court and proceed to enforce them.

We have given serious thought to the submissions urged before us but we find no merits in this application. We accordingly, for the reasons canvassed supra, proceed to dismiss this application and same is thus dismissed.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

V. AKOTO-BAMFO (MRS)
(JUSTICE OF THE SUPREME COURT)

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

OSAFO- BUABENG FOR THE 3RD DEFENDANT/APPLICANT.

GODFRED YEBOAH-DAME, DEPUTY ATTORNEY GENERAL WITH HIM IS MRS. DOROTHY AFRIYIE-ANSAH, CHIEF STATE ATTORNEY FOR THE 1ST DEFENDANT/RESPONDENT.