IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: BENIN, JSC SITTING AS A SINGLE JUDGE

CIVIL MOTION

NO. J8/03/2018

27TH JUNE, 2019

MARTIN ALAMISI AMIDU

VRS

1.THE ATTORNEY GENERAL

2.WATERVILLE HOLDINGS (BVI) LTD

3. ALFRED AGBESI WOYOME

AND

UT BANK LTD (IN RECEIVERSHIP) ……. 1ST CLAIMNANT

AND

ANATOR HOLDINGS COMPANY LIMITED
ANATOR QUARRY COMPANY LIMITED } **2ND CLAIMANTS**

RULING

BENIN, JSC:- BENIN, JSC:- The facts of this application are quite straightforward. The Anator Holding Company Limited and its subsidiary Anator Quarry Company

Limited, called the Companies or 2nd Claimants, as the case may be, put in a claim of interest in respect of certain properties which have been attached in execution of a judgment rendered by this court in July 2014 in Suit number J7/10/2014 reported as Amidu (No. 3) v. Attorney-General; Waterville Holdings (BVI) Ltd & Woyome (No. 2) (2013-2014) 1 SCGLR 606. Their claim is also founded on a claim of interest by the UT Bank in some of the assets, which claim is also before this court in post-judgment proceedings arising from the action cited above. The execution is at the instance of the 1st defendant, described as the judgment creditor, who is the beneficiary of the judgment given in favour of the plaintiff in the said suit. The 2nd Claimants assert that the buildings attached in execution are owned by their Executive Chairman, Mr. Alfred Agbesi Woyome, the 3rd Defendant, who is the judgment debtor. They also claim that the movable assets comprising Plant and Machinery of the quarry situate at Mafi Tswala in the Adidome District of the Volta Region are owned by them and not the judgment debtor. They proceeded to claim that these assets, movable as well as immovable, were used as collateral to secure a loan facility from the UT Bank. They served copy of the notice of the claim on the UT Bank, describing the Bank as the 1st claimant, whilst they are the 2nd Claimants.

In paragraph 4 of the supplementary affidavit, deposed to by Mr. Siade Puplampu, and filed on 14th December 2018, the real reason for the claim was stated that those properties are subject of collateral security for loans contracted by the companies with the UT Bank and "until such liabilities are discharged those assets or collaterals remain encumbered."

I must state from the onset that the said Siade Puplampu deposed to four separate affidavits in this matter on behalf of the companies. In all four affidavits he deposed that he has "the authority of the Board of Directors of Anator Holding Company Limited and Anator Quarry Company Limited, Joint Claimants herein" to depose to each affidavit. He described himself as the Administrative Officer of the Companies. These affidavits are:

(1) Affidavit of interest of the Companies, filed on 22nd November 2018.

(2) Supplementary affidavit of interest of the Companies, filed on 14th December 2018.

(3) Affidavit in support of motion on notice for leave to file further supplementary evidence of interest by the companies, filed on 8th January, 2019.

(4) Further supplementary affidavit of interest, filed on 14th June, 2019.

They show the extent of his knowledge and authorization given him to speak on behalf of the companies. And from exhibits 1, 2 and 4 attached to his affidavit filed on 14th June 2019, there are four directors of these two companies and they include the judgment debtor and one Stephen Kwashie Woyome, who is said to be the owner of Anator Holding LLC.

The judgment creditor filed a notice disputing the claims. The UT bank did not contest the claim at all, despite the fact that they were made party to the application and were offered the opportunity to be heard. They were served with all processes filed in the proceedings, according to court registry records.

Objection by judgment creditor

Let me start by dealing with what appears to be an objection to the inclusion of the immovable properties owned by the judgment debtor, in the affidavit filed by the 2nd Claimants. The reason proffered by the judgment creditor was that in the Notice of Claim, the 2nd Claimants laid claim of ownership to only the quarry plant and machinery, and nothing more. Consequently, it is their view that the claim should be confined to the quarry and not extended to include the immovable assets. The 2nd Claimants did not address this issue at all, so the court did not receive any assistance from them in dealing with this particular question, whether a claimant must be confined to only the property or properties he mentions in his Notice of Claim.

I have examined this objection in the light of Order 44 Rules 12 and 13 of the High Court Rules, 2004, C. I. 47 and come to the conclusion that the objection, though genuine and worth the effort, is, nonetheless, untenable. Rules 12 and 13 of Order 44 provide in material terms as follows:

12(1) A person who makes a claim to or in respect of a property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of

any such property, shall give notice of the claim to the Registrar and shall include in the notice a statement of the person's address for service.

(2) On receipt of claim made under subrule (1), the Registrar shall forthwith give notice of it to to the execution creditor who shall within four days after receiving the notice, give notice to the Registrar informing the Registrar whether the execution creditor admits or disputes the claim.

(3) Where

(a) the Registrar receives a notice from the execution creditor under sub-rule (2) disputing a claim, or the execution creditor fails to give the required notice within the period mentioned in that sub-rule, and

(b) the claim made under sub-rule (1) is not withdrawn, the Registrar may apply to the Court for relief.

(4) An application for relief by the Registrar under this rule shall be made ex parte to the Court seeking an order that the claimant and the execution creditor shall appear before the Court on a date specified in the order for the issue between them to be determined.

(5) Where the Registrar receives a notice from an execution creditor under subrule (2) admitting a claim, the Registrar shall forthwith withdraw from possession of the property claimed and having withdrawn the Registrar may apply to the Court for an order restraining the bringing of an action against the Registrar in respect of the Registrar having taken possession of that property.

13. Powers of Court hearing application for relief.

(1) Where the hearing of proceedings pursuant to an order made under rule 12(4) all the persons by whom adverse claims to the property in dispute, in this rule referred to as ‘the Claimants’ appear, the Court may

(a) summarily determine the question in issue between the Claimants and execution creditor and make an order accordingly on such terms as may be just.

(b) order that any issue between the claimant and execution creditor be stated and tried and may direct which of them is to be plaintiff and which defendant.

Scope of the applicable rules

Rule 12 requires a claimant to file his claim by way of notice, and it also requires the court to make a determination if the execution creditor disputes the claim. It is reasonable to say that the court cannot make a determination just by looking at the notice of claim, it requires some form of evidence, by affidavit (if it opts to do a summary hearing under rule 13(1)(a) or viva voce evidence if it directs a triable issue and thus decides to conduct a full-blown trial in complex cases, under rule 13(1)(b). Consequently, the court is duty bound to have regard to both the notice and affidavit of interest filed by a claimant in making a determination of his claim. Thus, where a claimant fails to disclose his right to, or interest in, some property in the notice of claim but does so in the affidavit of interest, it is not a fatal mistake or omission, and could be cured applying the provisions of Order 81 of C. I. 47. The reasons are two-fold: (1) that the judgment creditor has sufficient notice and the opportunity to react to the affidavit of interest by claimant before the court takes a decision under rule 13; (2) to avoid multiplicity of such claims. Admittedly, it is advisable for a claimant to disclose whatever interest he has in the Notice of Claim to enable the execution creditor admit or dispute the claim; yet failure to do so, as already stated, is not fatal in the light of the reasons given herein. I reject the objection accordingly and proceed to consider the claim on its merits.

Ownership of properties numbered 260 and 267 at Trassaco Valley

The affidavit deposed to by Siade Puplampu, on behalf of the companies, affirms the judgment creditor's position that the judgment debtor was the owner of properties numbered 260 and 267, situated at the Trassaco Valley, Adjiriganor, Accra. That the judgment debtor had not at any time encumbered these properties prior to his releasing them to the companies to secure the loan facility from the UT Bank, 1st Claimant. I accept this evidence which affirms the judgment creditor's position and find as a fact that the judgment debtor is the owner of these two houses, numbered 260 and 267, Trassaco Valley, Adjiriganor, Accra. The evidence of Siade Puplampu also affirms the judgment debtor's ownership of House number 327/7, Kpehe, Accra, and I find this as a fact.

These findings have been facilitated by the failure of the UT Bank to resist the obvious adverse claim of interest put in by the Companies on behalf of the judgment debtor which he duly authorized as a director of the companies.

A mortgage deed is by law a registrable instrument, by virtue of section 3(2) and (4) of the Mortgages Act, 1972, NRCD 72. Section 3 of this Act sets out what the requirements should be for the mortgage instrument to be registrable under the Lands Registry Act, 1962, (Act 122). Among others, the requirements are:

(a) the name and address of each mortgagor and of each mortgagee;

(b) the nature of the mortgagor's interest in the property which is mortgaged and the extent to which that interest is subject to the mortgage;

(c) identity of the mortgaged property by reference to its location and boundaries ....

As a condition for the release of the loan, the mortgage deed required the borrower to produce to the lender a copy of the company resolution authorizing the borrowing, among other documents. The parties agreed in the mortgage deed as follows: “The facility shall become available for draw down upon receipt of the following documents in all respects satisfactory to UT Bank:

1. Receipt of formal letter of request for the consolidation of all the facilities.....

3. Execution of legal Mortgage over two residential properties at Adjiriganor Trassaco Valley Residential area.....

7. Receipt of board resolution authorizing the consolidation.....”

The UT Bank had earlier filed an affidavit of interest in respect of this very execution process and relied on this same mortgage deed. I must mention that it is this same mortgage deed that Anator Holding Company Ltd. and its subsidiary Anator Quarry Ltd are relying on per their affidavit of interest, deposed to by Siade Puplampu, Administrative Officer. It was copied to the Claimant bank and they were served on 23 November 2018, according to court Registry records. To my mind it constituted notice to be heard on this matter, which was in their own interest to react to it, as they are the other contracting party to the mortgage, and more importantly

because of the adverse claim to these two houses. The mortgage deed is at the center of these two proceedings wherein the Claimant bank is the lever on which they hinge. Consequently, it behoved the Claimant bank to tell the court their position in respect of the affidavit depositions by Anator companies. As the apex court wherein ultimate justice is required to be done, the court cannot shut its eyes to such important piece of evidence which has a direct bearing on the case on hand, when its attention has been drawn to it. Parties have a duty to assist the court to bring finality to the matter.

The Bank was joined as the 1st Claimant whilst the Anator companies were the second claimants. And they were a necessary party since they and the Anator companies were the contracting parties to the mortgage deed. I think they ought to have been joined as an interested party and not as claimant, since a person cannot be compelled to commence an action. But this does not amount to a miscarriage of justice, as the title could be amended to reflect their correct position in the process. What is important is that they were served to appear which invitation they spurned. I fail to appreciate why they did not contest the adverse claim by the judgment debtor.

It is stated for emphasis that even during execution proceedings, every person, whether a party in the original action or not, but who stands to be adversely affected by the execution, must be heard by the court if he so wishes. That justifies the Anator Companies' joinder of the UT Bank as a party to their notice of claim since they had mortgaged their property with the Bank, and the latter is relying on the same mortgage deed in its claim against the judgment creditor.

The court is also able to come to this conclusion because the mortgage deed required the Anator companies, as the borrower, to present a board resolution authorizing the consolidation of the loans. Besides, it is a legal requirement under the Mortgages Act that the deed must state the mortgagor's interest in the property as well as its clear identity and precise location. Further, since the landed properties did not belong to Anator companies as the borrowers, the consent of the real owner was required to support the loan application. All these relevant pieces of information which would facilitate the loan and satisfy the legal requirements are contained in the affidavit under reference. Consequently, any

reference to this affidavit is legitimate and material as it relates solely to the mortgage deed in question.

Is the failure of the UT bank to take part in the claim by Anator companies to be construed as an admission? The legal position, as stated by the authors of Phipson on Evidence, 15th Edition, paragraph 30-09 at page 740, is that "statements made in a party's presence in the course of judicial proceedings are not generally receivable against him merely on the ground that he did not deny them, for the regularity of such proceedings prevents the free interpretation allowed in ordinary intercourse."

However, this is not an invariable rule for, as the learned authors explained in the same paragraph, "…..cases may occur in which the refusal of a party to repel a charge made in a court of justice, or to cross-examine or contradict a witness or to reply to an affidavit, may afford a strong presumption that the imputation made against him are correct."

The material depositions made in the affidavit of Siade Puplampu on behalf of the Anator companies are these:

"15. That on 29th October, 2013, UT Bank granted yet another facility to Anator Holding Company Limited as additional working capital to purchase equipment for Quarry operation.....

16. That as security for the payment of the facilities granted to Anator Holding Company Limited, 3rd Defendant Judgment/Debtor in a Statutory Declaration agreed and released the property known as 372/17 off Comcam Crescent.....Accra to Anator Holding Company Limited to be used as collateral security for the loan facility from UT Bank .....A copy of the Statutory Declaration dated 30th day of October 2013 is annexed as exhibit AHCL 11.

17. That Claimant, UT Bank Limited (in receivership).....filed a witness statement through one Eric Nana Nipa.....that the properties belonging to the.....judgment debtor attached in execution of the judgment of this Honourable Court, to wit: (a) two residential properties at Trassaco Valley Phase 2, plots numbered 260 and 267; (b) Hse no. 327/7;Kpehe, Accra Newtown, Accra; (c) moveable assets of Anator Quarry Company Limited.

18. That on 15th January, 2014, Anator Holding Company Limited in a letter captioned consolation (sic) of loan facilities for Anator Quarry Company Limited addressed to the Managing Director of UT Bank Ltd., Anator Holding Company resolved to deal with the loan facility granted to it and 3rd Defendant by consolidating all the loan facilities and transfer to Anator Quarry Company Limited. A copy of the letter together with extract from the minutes of meetings of the Board of Directors of Anator Holding Company held on 3rd January 2014 held at its head office in East Legon, Accra is hereby attached as exhibit AHCL 12.

19. That thereafter the.....judgment debtor in a Statutory Declaration dated 16th day of January, 2014 agreed to release and released properties known as No. 260 and 267 at Trassaco Valley, Adjiriganor to Anator Quarry Company to be used as security for the consolidated loan facility from UT Bank Ltd.

20. That for all intents and purposes the 3rd Defendant ceased to hold any interest in the above-mentioned properties so long as the properties remain in the hands of Anator Quarry Company Limited. A copy of the Statutory Declaration dated 16th January 2014 is hereby attached and marked as exhibit AHCL 13."

This affidavit is very revealing in terms of the dealings between the Claimant bank and the Anator companies. It states very succinctly that the judgment debtor owns properties numbered 260 and 267 situate at the Trassaco Valley, inter alia. It disclosed the course of doing business between the parties notably that the borrower provides a statutory declaration confirming ownership of the properties to be secured for the loan, before the Claimant releases the facility. Thus, the Claimant had possession of the Statutory Declaration, exhibit ACHL 13 before agreeing to consolidate the loans.

For its full force and effect, I will reproduce the judgment debtor's statutory declaration dated 16th January 2014. It reads:

"IN THE SUPERIOR COURT OF JUDICATURE

HIGH COURT OF JUSTICE, ACCRA. GHANA. A.D. 2014

STATUTORY DECLARATIONS ACT 389 OF 1971

IN THE MATTER OF STATUTORY DECLARATION BY ALFRED AGBESI WOYOME GIVING HIS CONSENT FOR THE USE OF HIS PROPERTIES, NO. 260 AND 267 AT TRASSACO VALLEY ADJIRIGANO ACCRA, AS COLLATERAL SECURITY FOR A CONSOLIDATED LOAN FACILITY FROM UT BANK.

I, ALFRED AGBESI WOYOME of PMB 100 GPO ACCRA in the Greater Accra Region of the Republic of Ghana, do hereby solemnly and sincerely declare as follows: -

1. That I am the declarant herein and a Ghanaian by birth and Nationality.

2. That I am the owner of properties known as Plot no. 260 and 267 at Trassaco Valley Estates Adjirigano, Accra.

3. That I have agreed and released my said property to Anator Quarry Company Limited to be used as collateral security for the consolidated loan facility from UT Bank Limited, Airport City Branch, Accra.

4. That the said property has not been mortgaged or involved in any financial transaction whatsoever and can therefore be used for its intended purpose.

5. That I shall hold trust for my said property until such time Anator Quarry Company Limited is able to fully liquidate its repayment obligation to UT Bank Limited, Airport City Branch, Accra.

6. That UT Bank Limited is at liberty to confiscate my property (ies) should Anator Quarry Company Limited renege on its repayment obligations.

7. Wherefore, I make this solemn declaration conscientiously believing same to be true and correct in accordance with Statutory Declaration Act 389 of 1971.

This statutory declaration which was given to the 1st Claimant as collateral exposed the dealings between the 1st Claimant and the judgment debtor in respect of properties numbered 260 and 267. Even when common sense is brought to bear on these dealings, it will dictate that the 1st Claimant would not accept their own properties to be used as collateral by a borrower to secure a loan from them. Why then did the Bank not challenge these affidavit depositions by the companies? Their stoic silence, in the face of all the opportunities they had to react, raises a very strong presumption that they had no answer to offer. The evidence supports the

judgment creditor's position that the two houses were not sold. The court cannot be used as an instrument of fraud. In one breadth, the 1st Claimant is saying the properties have been sold, and in another breadth, the judgment debtor says the properties have been mortgaged. The aim is clear to me that whichever story the court chooses to believe, the properties are saved. But which of them was speaking the truth? None, I find. What the court believes and is convinced about is that the properties numbered 260 and 267, situate at Trassaco Valley were neither sold nor used as collateral, both claims were a sham.

Registration and Stamping of documents

In this matter the mortgage document suffers from lack of registration. Indeed section 25(1) of Act 773 specifically requires, inter alia, the borrower, in this case the Companies, to register the deed within twenty-eight days of its creation. Section 72 of PNDCL 152 also requires registration of a mortgage before effect could be given to it. The Companies failed to comply with these statutory provisions. Thus, for reason of lack of registration I reject the mortgage deed as ineffectual to convey any interest. The mortgage deed also fails for lack of stamping under section 32 of Act 689, (as decided in Lizori Ltd v. Mrs. Boye (2013-2014) 2 SCGLR 889), rendering it ineffectual. Thus, whatever interest the 2nd Claimants claimed through this deed has completely failed, I so hold.

But from the undisputed evidence, I find as a fact that the judgment debtor owns house number 327/7, Kpehe, Accra.

Ownership of the movable assets

The Claimants did not place reliance solely on the mortgage documents. They tendered other evidence to show that the quarry and its plant and machinery situate at Mafi Tswala, are owned by the companies. They also tendered evidence to show that the judgment debtor is not hundred percent owner of these companies. Indeed, they say he has transferred all his interest in the companies to another person, called Anator Holding LLC of the USA.

In respect of the movable assets, namely the quarry plant and machinery, there is no dispute that they are owned by the companies. The bone of contention is the ownership of the companies. It is the case of the judgment/creditor that the 2nd

Claimants have stated that the judgment/debtor owns 100% shares in the companies, which enabled him to permit the companies' assets to be used as collateral for the loan facility. It thus lies ill in their mouth to say the entire shares have been transferred to another person.

For their part, the companies tendered a resolution of the Board of Directors of Anator Holding Company approving the transfer of all the shares in this company to Anator Holding LLC of the USA owned by one Stephen K. Woyome.

This matter is being heard summarily because parties relied solely on the affidavit evidence; Rule 13(1)(a) of Order 44 of C. I. 47 permits this procedure.

The only question to answer is this: who owns the shares in Anator Holding Company Ltd? I intend to discuss this question first with regard to the facts and then on the law. Company law in this country is largely governed by the provisions of the Companies Act, 1963, (Act 179), and to some extent by the Regulations of a registered company. I was therefore expecting counsel in the case to address the court on whether or not there was transfer or valid transfer of shares from the original owner Alfred Agbesi Woyome to the new owner Anator Holding LLC, having regard to the law and the Regulations of the Anator Holding Company Ltd.

The facts.

The Board resolution earlier referred to forms part of exhibit AHCL 19 and it reads:

"BOARD RESOLUTION

EXTRACT FROM THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

The following appears as an extract from the Minutes of the meeting of the Board of Directors of Anator Holding Company Limited held on Friday, the 3rd day of January 2014.

100% TRANSFER OF THE ORDINARY SHARES OF ANATOR HOLDING COMPANY LIMITED TO ANATOR HOLDING LLC

It was resolved that the Board of Directors had no objection to the 100% transfer of the ordinary shares of Anator Holding Company Limited to Anator Holding LLC"

It was signed jointly by the Executive Board Chairman and Company Secretary/ Director.

It was on the strength of this resolution, which on the face of it was affirming a prior transaction, that the Companies are resisting the attachment of the companies' assets on ground that the judgment debtor does not own the companies, and for that matter their assets.

The judgment creditor appeared handicapped as they were not privy to these purely internal business dealings of the companies. Hence even though they insisted that the companies are still owned by the judgment debtor, their assertion was not based on any facts of their own. But the law permits a party to rely on any admissible evidence on the record provided the person against whom it is used, has had the opportunity to be heard thereon. The court will therefore consider the totality of the evidence on record in arriving at its decision.

The Board resolution does not disclose when and in what manner and for what consideration the shares were transferred. I therefore have to examine the other documents tendered on behalf of the companies by Siade Puplampu. These documents are contained in the affidavit to adduce supplementary evidence filed on 14th June 2019. According to paragraph 4 of the said affidavit, the documents were obtained through a search they conducted at the office of the Registrar-General. In this country, matters pertaining to company registration and related matters are the core business of the office of the Registrar-General, hence the court can safely apply section 37(1) of the Evidence Act, 1975, NRCD 323 and conclude that these documents are authentic and contain accurate information in respect of the Companies as at the date they bear. These documents are:

(i) the Regulations of Anator Holding Company Limited, exhibit 1;

(ii) the Regulations of Anator Quarry Company Limited, exhibit 2;

(iii) Re-registration profile of Anator Holding Company Limited, exhibit 3; and finally,

(iv) Re-registration profile of Anator Quarry Company Limited, exhibit 4.

Exhibits 1 and 3 have several common features on one hand and so do exhibits 2 and 4, on the other.

In exhibit 1 the following are listed as the Directors of Anator Holding Company Limited: Joseph Tackie, Stephen Kwashie Woyome, Alfred Agbesi Woyome and

Michael Kofi Amedi. It states the number of ordinary shares as 400,000,000, all of which are owned by Alfred Agbesi Woyome, judgment-debtor herein. It bears the date 2 June 2014. Exhibit 3 which is the re-registration profile in respect of this same company names Joseph Tackie, Alfred Agbesi Woyome, Stephen Kwashie Woyome and Michael Kofi Amedi as the Directors. The number of ordinary shares also remained unchanged as well as the owner. All the 400,000,000 paid up shares stand in the name of the judgment debtor. It bears the date 3 January 2019.

It is clear from these exhibits that even after the Board resolution which authorized the transfer of the shares in this company on 3 January 2014, nothing has been done to effect the change, five years down the line. Exhibits 1 and 3 are both later in time to the Board Resolution. If indeed the transfer had taken place as at 3 January 2014 when the Board Resolution was passed, the transfer would have reflected in the documents tendered as exhibits 1 to 4, which they got from the Registrar- General. And as earlier stated, there is no evidence as to when and how and for what consideration these shares were transferred, prior to the Board resolution. Thus, it is safe for the court to find as a fact that there was no transfer of shares in Anator Holding Company Limited owned 100% by Alfred Agbesi Woyome to Anator Holding LLC.

What of Anator Quarry Company Limited? Exhibit 2 lists Joseph Tackie and Alfred Agbesi Woyome as the two Directors. It states that all the shares in this company are owned by Anator Holding Company Limited. It bears the date 4th June 2014. In exhibit 4 the owner of all paid up shares remains the same as in exhibit 2. But the named Directors are increased to four with the addition of Stephen Kwashie Woyome and Michael Kofi Amedi. It bears the date 3rd January 2019. The same conclusion is reached in the instance as ownership has never changed hands. All its shares are owned by the parent company.

The applicable law.

Company shares are movable assets, and their ownership is required to be documented. They cannot therefore be transferred orally, neither can they be validly transferred without a record of it in the company's register. The transfer is to be entered at the office of the Registrar-General. The latter is involved because a transfer of shares will of necessity involve a rectification or amendment of the company's regulations to include the transferee of the shares, after the company

has registered the transfer and issued share certificate to the transferee; and these changes are to reflect in the company's profile at the office of the Registrar-General.

The legal requirements are contained in the Companies' regulations, exhibits 1 and 3 and more importantly in Act 179; sections 30, 32, 53 and 98.

For their full force and effect, I reproduce the material portions of these provisions of Act 179 at this stage:

Section 30

(4) In the case of a company with shares each member shall be a shareholder and shall hold at least one share, and every holder of a share shall be a member of the company.

(5) Membership of a company with shares shall continue until a valid transfer of all the shares held by the member is registered by the company, or until all such shares are transmitted by operation of law to another person or forfeited for non-payment of calls under a provision in the Regulations, or until the member dies.

Section 32

(1) Every company shall keep in Ghana a register of its members and shall enter therein the following particulars, that is to say:

(a) the names and addresses of its members and, in the case of a company having shares, a statement of the shares held by each member distinguishing each share by a number so long as the share has a number, and of the amount paid or agreed to be considered as paid on the shares of each member and of the amount, if any, remaining payable on such shares;

(b) the date on which each person was entered in the register as a member;

(c) the date on which any person ceased to be a member.

(2) The entry required under paragraph (a) or (b) of subsection 1 of this section shall be made within twenty-eight days of the conclusion of the agreement with the company to become a member or, in the case of a subscriber, within twenty-eight days of the registration of the company.

(3) The entry required under paragraph (c) of subsection 1 of this section shall be made within twenty-eight days of the date when the person concerned ceased to be a member.....

Section 53 Issue of share certificate

(1) Every company shall, within two months after the issue of any of its shares or after the registration of the transfer of any share, deliver to the registered holder thereof a certificate under the common seal of the company, stating

(a) the number and class of shares held by him, and the definitive numbers thereof, if any;

(b) the amount paid on such shares and the amount, of any, remaining unpaid;

(c) the name and address of the registered holder.

These provisions in addition to section 98(2) provide the requirements and what steps to follow in creating a valid transfer of shares. An agreement is reached between the transferor and transferee on the number of shares and what consideration to pay. These terms must be reduced into writing, called an instrument. This is communicated to the company which must approve. The company then registers the shares transfer in its register. It then issues a share certificate to the new holder. These particulars are then notified to the Registrar-General for approval and entry into the official records, aptly described by the then Acting Registrar-General, Mrs. Jemima Oware, as validation and consummation of the process of transfer of shares, by her office. This was in an interview she granted the Editor of Joy Business on 30 September 2016, published by Myjoyonline.com/Joy Business. She explained in detail all the legal requirements for transferring shares.

The procedure here is no different from the English practice. In the case of **LYLE AND SCOTT LTD. V. SCOTT'S TRUSTEES (1959) 2 All ER 661 at 668 HL**, also reported in **(1959) AC 763 at 778,** Lord Reid said that “transferring a share involves a series of steps, first an agreement to sell, then the execution of a deed of transfer and finally the registration of the transfer.” Thus, transferring a share is not one-time event, but it is a process.

Proof of transfer

The 2nd Claimants appeared to have overlooked the relevance and importance of the company's register and a shares certificate in proof of transfer of shares. The relevance and importance of the company's register is stated in Section 36 of Act 179 which provides that “the register of members shall be prima facie evidence of any matters by this code directed or authorized to be inserted therein.”

The relevance and importance of a share certificate is stated in section 54(1) of Act 179. It provides that 'Statements made in a share certificate under the common seal of the company shall be prima facie evidence of the title to the shares of the person named therein as the registered holder and of the amounts paid and payable thereon'

These provisions provide the best evidence of transfer of shares that a company can produce in court, besides the instrument of transfer.

Effect of lack of contract of transfer

Section 98(2) provides a ready-made answer. It reads thus: Notwithstanding anything contained in the Regulations of a company or in any contract, it shall not be lawful for the company to register a transfer of shares.....unless a proper instrument of transfer duly stamped, if chargeable to stamp duty, has been delivered to the company.

The register and share certificate provide prima facie evidence of what they state, thereby shifting the burden of proof on the other party to rebut the evidence. And without an agreement, it is illegal to register a transfer of shares.

Analysis

In this case it is certain that there was no written contract to transfer the shares, no consideration was provided, no share certificate was issued. And once there was no instrument of transfer of shares, there could legally not be any registration of the shares to the transferee in the company's register. Consequently, there could be no notification of the transfer to the Registrar-General, hence exhibits 1 to 4 do not reflect any such transfer. The Board Resolution approving the transfer, has no probative value standing on its own, I so hold. The result is that on grounds of law there has been no transfer of the shares in Anator Holding Company Limited to Anator Holding LLC. By law, viz, section 98(1) of Act 179, the judgment debtor remains the holder of all the shares in Anator Holding Company Limited, and by

operation of law, the owner of the shares in Anator Quarry Company Limited as well.

Conclusion

From the foregoing, I am able to decide that both on the facts and the law, there has been no transfer of shares of the companies. Consequently, since the judgment debtor owns these companies 100% and since the assets of the companies are unencumbered, the mortgage having failed, I order the execution process to go on in respect of House number 327/7, Kpehe, Accra as well as the plant and machinery including the quarry situate at Mafi Tswala. I dismiss the application accordingly.

(SGD) A.A. BENIN

(JUSTICE OF THE SUPREME COURT)

COUNSEL

A. A. ACKUAKU JUNIOR FOR THE 1ST CLAIMANT WITH HIM GODFRED ANIM NYARKO

AGYEI LARTEY FOR 2ND CLAIMANT

OSAFO BUABENG FOR 3RD DEFENDANT/JUDGEMENT / DEBTOR WITH HIM

BENEDICTA ANTWI.

GODFRED YEBOAH DAME, DEPUTY ATTORNEY GENERAL FOR 1ST DEFENDANT/JUDGEMENT /CREDITOR WITH HIM MRS HELEN ZIWU (SOLICITOR GENERAL) MRS STELLA BADU, (C.S.A), MS YVONNE BANNERMAN, (S.S.A) AND MRS AURIELLE ASARE BOATENG, (A.S.A).