IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: BENIN, JSC SITTING AS A SINGLE JUDGE

CIVIL MOTION
NO. J8/03/2018

3RD DECEMBER, 2018

MARTIN ALAMISI AMIDU

VRS

1. THE ATTORNEY

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

3. ALFRED AGBESI WOYOME

AND

UT BANK (IN RECEIVERSHIP) ..... CLAIMANT

RULING

BENIN, JSC:- Ordinarily, this Court does not permit oral applications to be made. However, I permitted Counsel for the 3rd Defendant/judgment/debtor

herein to make an oral application that goes to jurisdiction of the Court to entertain application for a claim of interest by a party affected in the process of execution. I allowed the oral application partly because the lead Counsel for the 1st Defendant/judgment/creditor did not disapprove of it and was ready to reply to the arguments. But I must caution that oral application is not the normal practice of this Court and this should be taken as an exception and not as precedent.

Counsel's argument was based on Order 44 rules 12 and 13(4)(5) of the High Court (Civil Procedure Rules) 2004, C. I. 47. He stated that under the said rule 13(5) a party aggrieved by the court's decision has the right to appeal within 14 days. He submitted therefore that the rules of appeal cannot be invoked since there is no right to appeal against the decision of the Supreme Court. Consequently, he submitted that the execution processes should be carried out in the High Court. Counsel for the claimant UT Bank added his voice to these submissions and stressed that in the context of interpleader proceedings the party must have the right to appeal.

In response to these arguments, lead counsel for the 1st Defendant/judgment/creditor argued that the court is exercising its right to enforce its decision which is not inspired by the High Court rules. That the Court derives its jurisdiction from article 129(4) of the Constitution. The original matter derived from the Court's exclusive jurisdiction and the Court decided to enforce its own judgment. Counsel stated further that it is not the rules of court which confer right to appeal. To him, this application is a red-herring.

In the case of Republic v. High Court (Fast Track Division), Accra; Ex parte Anane Agyei Forson (Attorney-General Interested Party) (2013-2014) 1 SCGLR 690, this court decided that it has jurisdiction and power to enforce its own decisions. Following that decision, the court embarked on the process of enforcing the decision made in favour of the 1st Defendant/judgment/creditor. In the course of the enforcement proceedings, the UT Bank acting per its Receivers, brought a claim of interest against some properties attached in execution. The present objection is in regard to the Court's jurisdiction in respect of the interpleader claim which counsel believes will deny a losing party the right to appeal.

This objection throws into question the decision in Ex parte Anane Agyei-Forson, supra, wherein the Court decided that it has the jurisdiction to enforce its own decisions. In that decision the court acknowledged that it does not have rules of enforcement. But article 129(4) permits the Court to assume any power that any court possesses in dealing with a matter before it. The said article 129(4) provides:

'For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law.'

In assuming such power it is not envisaged or contemplated that this Court has thereby been placed in the same status or position as the court whose

power, authority or jurisdiction it has assumed. The Court retains its status as the apex court whose decisions are not subject to appeal. This is a constitutional edict and so whether assumption of the lower court's power curtails a party's right of appeal or not, is a matter of no moment.

Let me pause here and refer to Rule 5 of the Supreme Court Rules, 1996, C. I. 16 which provides that:

"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."

It is because the Court has no rules of enforcement, that exercising the powers granted it under article 129(4), it decided to prescribe the enforcement provisions applicable under C. I. 47 bearing in mind rule 5 of C. I. 16. The Court is only applying the procedure, but is unaffected by rules on appeal.

When this Court exercises its power under any jurisdiction that it has, the party affected has only a right of review, as the Constitution does not grant the right to appeal. If this objection is upheld, it would clearly undermine the effectiveness and purpose of article 129(4) of the Constitution in the sense that the Court will have to look beyond its shoulders to find out whether a party's right to appeal is truncated by the assumption of the power, authority or jurisdiction and if does then it should refrain from the exercise and refer the matter to that court. The clear import of this scenario is that this Court

will then be surrendering the jurisdiction it has to hear the matter to a lower court. This in itself is unconstitutional.

In short, when this Court acts under article 129(4) of the Constitution or under rule 5 of C. I. 16 and applies the rules and practice applicable to a particular court, it does not assume the status or position of that court; it is exercising an original jurisdiction in that regard, and its decision is not subject to the post-judgment process applicable in the court below, but subject to only the right of review available in this court.

For these reasons, I overrule the objection as misplaced and misconceived.

A. A. BENIN

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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OSAFO BUABENG WITH HIM PETRONA DEFIA AND BENEDICTA ANTWI FOR THE 3RD DEFENDANT/JUDGMENT/DEBTOR.