IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA, GHANA.AD. 2016

CORAM: ANIN YEBOAH, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

NO. J8/9/2017

16TH NOVEMBER 2016

BETWEEN:

MARTIN ALAMISI AMIDU

PLOT 355, NORTH LEGON

RESIDENTIAL AREA

ACCRA

VRS

1. **THE ATTORNEY GENERAL - 1ST DEFENDANT/ RESPONDENT**
   MINISTRY OF JUSTICE
   MINISTRIES, ACCRA

2. **WATERVILLE HOLDINGS (BVI) LTD - 2ND DEFENDANT**
   P.O. BOX 3444, ROAD TOWN
   TORTOLA, BRITISH VIRGIN ISLANDS

3. ALFRED AGBESI WOYOME **HOUSE NO. 16B,** **6TH STREET TESANO, ACCRA**	**-**	**3RD DEFENDANT/ RESPONDENT**

RULING

ANIN YEBOAH JSC:-

The plaintiff/Applicant herein has moved this court on notice for leave to examine the 3rd Defendant/Respondent herein pursuant to the order of this court dated the 19th October 2016.

To fully appreciate the basis for this ruling I have to fully set out the facts leading to this application which warranted this action against the three defendants for several reliefs which are not necessary to be repeated in this ruling for sake of brevity. The action was brought under Article 2 of the 1992 Constitution which obviously invoked our original jurisdiction for the interpretation and enforcement of constitutional provisions, precisely Article 181 thereof.

On or about 14/06/2013, this court unanimously granted several reliefs sought on the writ. The plaintiff/Applicant herein was dissatisfied with parts of the judgment and therefore applied for review of the judgment of the ordinary bench above referred to. This court on 29/07/2014 reviewed its decision of the ordinary bench by a unanimous decision by a panel of eleven Justices. It would be worthwhile to fully state the orders made by this Court which has culminated in this application.

BY COURT:

"By unanimous decision of this court, the application for review succeeds and is hereby granted. Consequently, the applicant is entitled to have the decision of the ordinary bench reviewed in the following terms:

Reliefs 9, 10, 13 and 14 are granted. Reliefs 6 and 7 are subsumed in the main ruling of the court dated the 14 June, 2014.

We therefore make the following declarations and orders:

(1) A declaration that the then Honourable Attorney-General , the 1st Defendant Respondent , in this case in paying or ordering the payment by the Republic of Ghana of claims by the 3rd Respondent and Austro-Invest, premised upon a purported foreign international agreement dated 26 April 2006, and other international business agreements arising out of the said agreements with the Government of Ghana which were never laid before parliament for approval is inconsistent with and in contravention of Article 181(5) of the constitution 1992 in terms of the interpretation already rendered by the ordinary bench and are accordingly declared null, void and without effect whatsoever.

(2) A declaration that the High Court which purported to and assumed jurisdiction in the action commenced by the 3rd Respondent (as plaintiff) on 19 April 2010 in suit No RPC/152/10 against the 1st Respondent claiming damages for breach of contract is an international business transaction contrary to Article 181(5) of the Constitution 1992 and entering judgment in default of defence

against the 1st Respondent, therein, 1st Defendant, acted without jurisdiction , consequently those proceeding and others consequent upon the said proceedings and orders of the High Court are thereby declared null, void and without effect whatsoever.

(3) A declaration that the conduct of the 3rd Respondent, therein plaintiff jointly with Austro-Invest Management Limited in making claims upon and including the issuance of a writ of summons with the support of the second defendant therein and receiving payment premised upon breaches of the two inoperative agreements dated 26th April 2016 between the Government of Ghana , which are International business or economic transaction which had not been laid and approved by parliament is inconsistent with and in contravention of Article 181 (5) of the constitution.

(4) An order directed at the 3rd Respondent herein to refund to the Republic of Ghana all sums of money paid to him upon or as a result of the unconstitutional conduct of the 1st Respondent; therein 1st Defendant in purported pursuance of the said inoperative Agreement dated 26 April 2006.

After the review application which the Plaintiff/ Applicant herein successfully obtained from this court, the Attorney-General as the first Defendant, sought to enforce the orders referred to above as order (4). The first attempt to levy execution from this court was for garnishee proceedings which I granted leave and invited the garnishees to appear in court which they complied. Indeed it turned out that the amount realised from the garnishee proceedings was ridiculously low and below the expectation of the court and the 1st defendant /Respondent herein who levied the execution.

On or about the 12/10/2016, the first defendant /respondent herein filed a motion ex parte under Article 129(4) of the 1992 Constitution and Order 46 of the High Court Civil Procedure Rules 2004, (CI 47). I granted the leave and fixed the application for the 10th November 2016 to enable the 3rd Defendant /Respondent herein to personally appear before this court to be examined orally on oath to assist the Attorney-General who had sought to levy execution to know or ascertain whether the 3rd Defendant/Judgement debtor has any property or other means of satisfying the judgment. However, on the 31/10/ 2016 the Attorney-General filed a **Notice of Discontinuance with Liberty**. For a fuller record and given the magnitude of the judgment debt, I reproduce the said notice ad longum:

"NOTICE OF DISCONTINUANCE WITH LIBERTY

> PLEASE TAKE NOTICE that the 1st Defendant Judgment Creditor herein has this day discontinued the present application to orally examine the 3rd Defendant Judgment Debtor with liberty to reapply.
> DATED AT THE ATTORNEY-GENERAL'S CHAMBERS, ACCRA THIS 26TH DAY OF OCTOBER 2016."

On 4/11/2016, the plaintiff/Applicant herein filed this instant application praying this court for leave to examine the 3rd Defendant/Respondent herein pursuant to the order of this Court dated 19th October 2016 under Articles 2 and 129(4) of the 1992 Constitution and Order 46 of the High Court Civil Procedure Rules 2004, (CI47).

This application which was duly served on the defendants was met with fierce resistance by affidavits in opposition sworn to by the Honourable-Attorney General herself and the 3rd Defendant herein, Mr. Alfred Agbesi Woyome.

At the hearing of the application, the, Deputy Attorney-General who led for the first defendant /Respondent raised legal objections to the propriety of some paragraphs in the affidavit in support of the application sworn to by the Plaintiff/Applicant himself. He referred particularly to paragraphs 8-12 inclusive of the affidavit in support and submitted that as the deposition therein offend Order 20 rule 9 of C.I 47 of 2004 same ought to be struck out by the court.

I examined the said paragraphs in detail and in the course of entertaining his legal objections as to the propriety of the depositions in those paragraphs, I asked learned counsel (The Deputy Attorney-General) whether all the said paragraphs sin against Order 20 rule 9 which he answered in the affirmative.

I must confess that I was not comfortable with some of the depositions in the paragraphs under attack. In some of the depositions, the deponent, a distinguished member of the bar did not go further to disclose his source of information as required by Order 20 rule 8 which states thus:

8 (1) "An affidavit shall contain facts that the deponent can prove, unless any provision of these Rules provides that it may contain a statement of information or belief thereof.

(2) An affidavit sworn for the purpose of being used in interlocutory proceeding may contain **a statement of information or belief or**

both with the source of the information and the grounds of the belief."

It is my thinking that as the deponent did not disclose his source of information in paragraphs 10, 12, 13,16,19 and the fact that all the said depositions, in my respectful view offend Order 20 rule 9 for being scandalous, I will in the exercise of the jurisdiction conferred by the said rule proceed to strike out the said depositions. I think a short passage from **Atkins Encyclopaedia of Court Forms in Civil Proceedings 2nd Edition volume 3** at 441 supports my position and same states as follows:

"The court may order to be struck out any affidavit any matter which is scandalous, irrelevant, or otherwise oppressive. Matter is scandalous if it is indecent or offensive, or is included for the purpose of abusing or prejudicing the opposite party or is unduly lengthy."

In support of this proposition of law are cases like ***Christie v Christie*** [1873] 8 Ch App 499 and ***Cashin v Cradock*** [1876] 3 ChD 376CA. I have observed that only those paragraphs ought to be struck out and not the entire depositions as urged by counsel for the first defendant.

On the merits of this application, both counsel for the defendants/respondent contended that due process must be followed in the execution of the judgment under consideration. According to the Deputy Attorney-General, as the matter under consideration relates to public funds, the Attorney-General under Article 88 of the 1992 Constitution and State Proceedings Act, Act 555 of 1998 is the only person clothed with power to enforce the judgment. He contended further that it is not a judgment which the Plaintiff/Applicant has a personal interest. According

to learned counsel for the third defendant, Mr. Anku, Article 2 of the 1992 Constitution does not in anyway mandates Plaintiff/Applicant to proceed to levy execution. He submitted further that the Plaintiff has no locus standi to enforce the judgment under Order 46 of C. I. 47 and relied on the case of **Boyefio V NTHC Properties Ltd.** [1996-97] SCGLR 531.

In reply, the Plaintiff/Applicant contends that Article 2 of the 1992 Constitution which was invoked entitles him to enforce the judgment against the 3rd Defendant/Respondent herein.

This application was argued on the 10th of November 2016 and given the novelty surrounding it, I adjourned the ruling to consider the legal points raised.

It must be made abundantly clear that the Plaintiff/Applicant herein is not the direct beneficiary of the judgment debt which this court ordered the 3rd Defendant/Respondent to pay to the Republic of Ghana. He is a citizen of the Republic of Ghana who was clothed with locus standi under article 2 of the Constitution 1992 to invoke our original jurisdiction in this matter. He prosecuted this action to finality by way of reviewing our ordinary bench's decision. His complaint is that after two years when the judgment was delivered, no serious effort has been made to execute it. In my respectful opinion, Article 2 of the 1992 Constitution which was invoked by the Plaintiff/Applicant must be given such meaning that will carry out the aspiration of the framers of the Constitution mindful of the fact that the preamble clearly speaks of probity and accountability.

A Constitution must be interpreted in such a way as to advance the aspirations of the framers. I remind myself of the observations of Sowah JSC (as he then was) in the case of ***Tuffour v Attorney-General*** [1980] GLR 637 at page 647 as follows:-

"A written Constitution such as this is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people's search for progress. It contains within it aspirations and their hopes for a better and fuller life."

The learned Judge further observed at the same page thus:

"It's language, therefore, must be considered as if it were a living organism capable of growth and development. Indeed, it is a living organism capable of growth and development as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring consideration to bear, ***in bringing it into conformity with the needs of the time."***

I have observed that article 2 of the Constitution 1992 under which the action was brought gives every citizen of Ghana the right to invoke this court's original jurisdiction when the necessity arises.

This was what the Plaintiff/Applicant exactly did. The 1st defendant/respondent after the order of this court on 29/7/2014 sought to enforce the judgment against the 3rd defendant/respondent herein. The processes of execution was placed before me. But on the 10th of November, 2016 the 1st defendant by a notice sought leave to discontinue the execution process which was in operation. I granted the application and accordingly struck, out the execution process under Order 46 of C. I. 47. Now before this court, there is no execution process in motion for upon the striking out the first defendant/respondent is at liberty to either repeat the application or abandon the whole execution process altogether

by not coming back to court. See ***Atta Kwadwo v Badu*** [1977] I GLR CA which throws light on the effect of discontinuance of actions and its revival. It follows that in the eyes of the law there is no execution process pending at the instance of the first defendant/respondent herein or any party for that matter, save this application brought by the Plaintiff/Applicant.

I have considered the entire provisions of the State Proceedings Act, Act 555 of 1998 but find no provision therein which could support the position taken by the learned counsel for both parties opposing this application.

Given the circumstances of this case, the colossal amount of the judgment debt, and the fact that for more than two years (since 29/07/2014) no serious effort has been made to levy execution and no execution process is pending in court, I am prepared to offer an opportunity to the Plaintiff/Applicant to proceed accordingly to execute the judgment as a party who initiated the action for the benefit of all the citizens of Ghana. My liberal approach to article 2 of the Constitution 1992 would, in my view, substantially advance the course of justice in this case. After all, any money that may be realized from the execution is entirely for the Republic of Ghana and the Plaintiff/Applicant does not, indeed, stand to benefit directly from it.

The application is thus granted and the 3rd Defendant/Respondent herein Mr. Alfred Agbesi Wogome is hereby ordered to appear before me in this Court on Thursday, the 24th of November 2016 at 10.00 in the forenoon to be examined orally on oath by the Plaintiff/Applicant herein.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

COUNSEL

PLAINTIFF/APPLICANT APPEARS IN PERSON.

DR. DOMINIC AYINE (DEPUTY ATTORNEY GENERAL).WITH HIM STELLA BADU (CHIEF STATE ATTORNEY) AND ZEINAB AYARIGA (ASSISTANT STATE ATTORNEY) FOR THE 1ST DEFENDANT/RESPONDENT.

KEN ANKU WITH HIM GLORIA DEDE TEYE FOR THE 3RD DEFENDANT /RESPONDENT.