**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2021**

**CORAM: DOTSE JSC (PRESIDING)**
**DORDZIE (MRS.) JSC**
**AMEGATCHER JSC**
**OWUSU, JSC**
**LOVELACE-JOHNSON (MS) JSC**
**HONYENUGA JSC**
**AMADU, JSC**

**CIVIL MOTION**
**NO. J7/19/2021**

**30TH NOVEMBER, 2021**

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| **1. MOST REV. DR. ROBERT A. MENSAH** | |
| **2. MOST REV. DR. JOSEPH OSEI BONSU** | **PLAINTIFFS/APPELLANTS/** |
| **3. RT. REV. DANIEL YINKAH SARFO** | **RESPONDENTS/RESPONDENTS/** |
| **4. EDWARD OSEI BOAKYE TRUST FUND** | **RESPONDENTS** |

**VRS**

**YAW BOAKYE ..... DEFENDANT/RESPONDENT/APPELLANT/ APPLICANT/APPLICANT**

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**RULING**

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**DORDZIE (MRS.) JSC**

The respondents in this application are the executors and trustees of the estate of the late Edward Osei Boakye. They instituted an action in the High Court against the applicant herein, seeking among other things a restraining order, restraining him from entering, developing or carrying out any transaction in respect of the property known

asPlot Number 6 and 7, Airport Commercial Centre, Accra, which property forms part of the estate of the late Edward Osei Boakye. The suit travelled all the way to the Supreme Court when the parties agreed to settle the dispute out of court. They did,and filed terms of settlement upon which a consent judgment was entered by this court presided over by a single judge on 12 November 2014. The relevant clauses of the agreed terms of settlement upon which the parties obtained the consent judgment are

1. "The Plaintiffs shall pursuant to these terms of settlement execute a sub-lease in favour of the Defendant within Thirty (30) days after the execution and adoption of these terms of settlement as consent judgment.
2. The sub-lease to be granted shall be for a term of fifteen (15) years certain with effect from 1st May 2015 to 30thJune 2030. PROVIDED always that the obligation of the Plaintiffs to continue the sub-lease from 31st October, 2024 shall be contingent and/or subject to the renewal of the Head-lease from the Government of Ghana on 30th October, 2024
3. That during the term of the sub-lease, the Defendant shall pay rent to the Plaintiffs as follows:
    i. In the initial period of five (5) years, the sum of Ghana Cedis equivalent of Thirty-five Thousand United States Dollars ($35,000) per month at the prevailing commercial bank forex rate payable annually in advance and year one (1) rent has already been paid to the Plaintiffs by the Defendant (receipts of which payment the Plaintiffs hereby acknowledged.
    ii. After the initial period of five (5) years, rent for year six (6) to year ten (10) shall be mutually determined by the parties.
    iii. Rent for the last five (5) years, being year eleven (11) to year fifteen (15) shall similarly be mutually agreed by the parties.
    iv. Rent for the next four (4) years following the exhaustion of the year one (1) rent paid under 2(i) as well as any additional period within the term of the sub-lease shall be paid by the Defendant annually in advance not later than sixty (60) days of the commencement of each year of the sub-lease.

4. The Defendant shall complete all construction and finishing works on the Property on or before the expiration of the moratorium period of ten (10) months from the date of the execution of the terms of settlement which shall be on or before 1st July, 2014 and the effective date of the sublease hereby granted shall be 1st May, 2015 or on the date of completion of constructional works, whichever occurs first.
5. The Defendant shall require prior written consent of the Plaintiffs before he creates in a mortgage, encumbrance or charge on the property or assigns the whole of his interest in the property or the whole of his interest in any part thereof. Provided that such consent shall not be unreasonably withheld.
6. The Defendant shall permit the Plaintiffs or their duly authorized agent during the period of construction, with prior written notice as to the date and time, to enter and inspect the Property during normal business hours. Such duly authorized agent shall be accompanied at all times by the Defendant or the Defendant's representative.
7. The Defendant shall allocate to the Plaintiffs for their benefit or for the benefit of any other person they may designate, one (1) shop/office on the ground floor of the Property upon completion of constructional works or by 1st May, 2015 whichever occurs first.
8. The Property shall be named Edward Osei Boakye Trust House (Boakye Mattress Building).

**Provided always that:**

The Defendant, performing all of his obligations under these terms of settlement, shall retain possession and quiet enjoyment of the Property without interruption or disturbance by the Plaintiffs or any person claiming through the Plaintiffs.

**6. Default Clause**

Where either Party defaults in the performance of any of the terms aforementioned:

a. In respect of any/or all sums outstanding at the time of the default, the Plaintiffs shall serve one (1) month notice on the Defendant demanding payment failing which the Plaintiff shall be entitled to go into execution with leave of Court.
b. In respect of the execution of the sub-lease, the defendant shall be entitled to specific performance of the execution of the sub-lease."

The applicant defaulted in performing his obligations as provided in the terms of the consent judgment in accordance with the default clause stated above. Attempts by the executors to execute the consent judgment resulted in many other applications through the High Court up to this court. Eventually, on 17/3//2021,the executors filed an application pursuant to Article 129 (4) of the 1992 constitution seeking leave to enforce the outstanding obligations of the respondent under the consent judgment.

The ordinary bench of this Court identified the crucial issue in determining the application to be whether this court is vested with the power and authority to enforce its own decisions. The ordinary bench held the view, which conforms to earlier decisions of this court that, by virtue of the provisions of Article 129 (4) of the Constitution, this Court is vested with the power and means to enforce its ruling, orders and judgments. The cases of ***Amidu vs. Attorney General and others, Suit No. (J7/05/2019 dated 27/3/2019 (unreported) and The Republic vs. High Court Accra, Ex-Parte Peter Sangber-Dery [2017-2018] ISCLRG 552 referred.***

It is a further decision of the Ordinary Bench that the order of the court adopting the terms of settlement between the parties as consent judgment brings the executable terms thereof within the enforcement powers of the Court. By the terms of the agreement between the parties, the applicant herein took a sub-lease of the property for a term of 15 years commencing 1st May 2015. The monthly rent payable for the first 5 years of the sub-lease was fixed at the cedi equivalent of USD 35,000.00. The applicant had defaulted in rent payment for 6 years.

The outstanding accrued rent for the period therefore is USD 2,500,000.00. This became a judgment debt open to execution. The applicant also defaulted in providing

an office space in the building to the executors. The court granted the application ordering the respondent herein to execute the judgment by any of the known enforcement procedures under the High Court (Civil Procedure) Rules 2004 (C. I. 47).

The ordinary bench further made it clear that apart from its jurisdiction under Article 129 (4) of the Constitution it has the inherent jurisdiction to enforce legal obligations between parties. The court therefore went a step further to prohibit the parties from reopening matters already settled under the consent judgment and re-litigating same.

The applicant herein Yaw Boakye is back in this court invoking the review jurisdiction of the court pursuant to Article 133 of the 1992 constitution and Rule 56 of the Supreme Court Rules, 1996 (C.I. 16).

The applicant is praying the Court to review the order of the ordinary Bench dated 21st July 2021 granting leave to the executors/trustees, the respondents herein to execute the consent judgment obtained by the parties from this court.

The grounds of the application are that:

1. The Ordinary Bench of the Supreme Court erred which error has occasioned applicant substantial miscarriage of justice when the Court granted Respondents' application for leave to execute Consent Judgment of the Supreme Court when indeed and in fact the said Consent Judgment of the merged or overtaken or otherwise compromised by a post-judgment agreement (the Sub-lease) executed between the Respondent and the applicant and dated 29th April 2016.
2. The Ordinary Bench erred which error has occasioned the applicant a substantial miscarriage of justice when the Court ordered Respondents to execute the terms of Consent Judgment which had ceased to be in existence as the parties had compromised same in subsequent agreement referred to as Deed of Sublease dated 29thApril 2016.
3. The Ordinary Bench erred which error has occasioned applicant substantial miscarriage of justice when it assumed jurisdiction to grant the application for leave to execute the terms of the non-existent consent judgment which had

been compromised by a Sub-Lease agreement dated 29th April 2016 which has, at clause 11 (c) in particular adequately provided remedies for default of payment of rent and other obligations which did not include resort to the Supreme Court.

4. The Supreme Court lacked jurisdiction to entertain or grant the respondents leave to enforce terms of the Consent Judgment when any breach of the compromised agreement i.e. the Deed of Sub-lease entitled the parties to commence proceedings in the High Court (Commercial Division) thereby availing the parties the pre-trial settlement mechanism available at the Commercial Division of the High Court, after the parties had failed to resolve any dispute amicably.

In his affidavit accompanying the motion for review, the applicant deposed that the consent judgment entered by this court between the parties ceased to exist. That the said consent judgment was compromised by an agreement between the parties referred to as a sub-lease dated 29thApril 2016.That the ordinary bench violated the terms of the sub-lease when they granted the respondent leave to execute the consent judgment.

The parties have modified substantially some of their rights and obligations under the consent judgment especially provisions governing dispute resolution mechanism.

The applicant further deposed that there is a dispute between the parties regarding rent payments, such dispute could only be resolved in the High Court in a fresh suit.

In the statement of case, counsel for the applicant has repeatedly argued the same point, that the ordinary bench committed an error when it granted leave to execute a consent judgment, which no longer existed. The said consent judgment ceased to exist when the parties executed a sub-lease varying the terms of the consent judgment.

The particular variation in the sub-lease the applicant alleged the decision of the ordinary bench violates reads as follows:

"All disputes between the parties shall first be settled (sic) by negotiations aimed at amicable resolution of the differences between the parties and failing that, the aggrieved party shall be entitled to commence proceedings in the High Court [Commercial Division] thereby availing the parties the pre-trial settlement mechanism." A violation the applicant maintainsconstitutes a special circumstance for which the review jurisdiction of this court could be invoked.

**Respondent's Response**

In responsethe respondent submitted that the review jurisdiction of the court had not been properly invoked, the application must therefore fail. Counsel referred to a number of decisions of this court that had stated the circumstances in which this court could exercise it review jurisdiction and argued that the applicant herein is only rearguing issues already decided by the ordinary bench and had introduced new facts. The applicant has not demonstrated any special circumstances to warrant the grant of the application.

The Rules of Court, which regulates the scope of this court's review jurisdiction, is Rule 54 of the Supreme Court Rules, 1996 C. I. 16. This rule is clear in its wording and emphasizes the narrow scope of the grounds upon which this court exercises its review jurisdiction. It reads:

***"The Court may review any decision made or given by it on any of the following grounds:***

***(a) Exceptional circumstances which have resulted in miscarriage of justice;***

***(b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him .at the time when the decision was given."***

The applicant herein per the grounds for this application, is not in court seeking a review of the judgment the subject matter of the application because he has discovered a new and important matter or evidence which was not within his knowledge though he exercised due diligence at the time the decision of the ordinary bench was given. His application is based on Rule 54 (a) the existence of exceptional circumstances which had led to miscarriage of justice.

He identified the exceptional circumstances as follows: The parties compromised the consent judgment by the execution of a sub-lease. The consent judgment does not exist therefore the ordinary bench could not grant leave for its execution. The grant of the leave to go into execution is an error on the part of the court. The terms of the sub-lease gave the parties opportunity to resolve disputes amicably and that can only be done in the High Court. A dispute has arisen between the parties concerning the issue as to whether the applicant should pay rent to the respondent or not.

**Consideration of submissions of the parties**

The application for leave that led to the subject judgment was decided on affidavit evidence. The affidavits of both parties are exhibited by the respondent and marked Exhibit FB5. The respondents in their deposition to facts in the affidavit stated clearly the obligation of each party in respect of the consent judgment. Executing a sub-lease in favour of the applicant in respect of the property is one of the terms of the consent judgment. The applicant herein in his affidavit opposing the application never raised any issue of the sub-lease replacing the consent judgment, and non-existence of the consent judgment.

The interpretation the applicant has put on the consent judgment and the sub-lease is indeed very absurd. It is totally a new issue the applicant is raising in this review application, an issue which the ordinary bench had no chance to consider because it was not part of the issues before it.

This court in a review application has no jurisdiction to consider these new facts raised by the applicant. The application before us is based on facts that are totally different from the facts upon which the 21st July 2021 Ruling of this court was based.

Sub rule (a) of Rule 54 of C. I. 16 does not define the exceptional circumstances the rule envisages, however case law has over the years developed what is considered exceptional circumstance depending on the circumstance of each case. Thus in the case of Afranie II vs. Quarcoo [1992] 2 GLR561 the second holding in the head notes, this court numerated some of the circumstances that ought to be considered as exceptional. ***"Although what exactly constituted exceptional circumstances had not been spelt out, on the authorities the court had found exceptional circumstances where (a) the circumstances were of a nature as to convince the court that the judgment should be reversed in the interest of justice and indicated clearly that there had been a miscarriage of justice; or (b) the demands of justice made the exercise extremely necessary to avoid irremediable harm to the applicant; or (c) a fundamental and basic error might have inadvertently been committed by the court resulting in a grave miscarriage of justice; or (d) a decision had been given per incuriam for failure to consider a statute or a binding case law or a fundamental principle of practice and procedure relevant to the decision and which would have resulted in a different decision; or (e) the applicant had sought for a specific relief which materially affected the appeal and had argued grounds in support but the appellate court had failed or neglected to make a decision on it."***

In arriving at circumstances that the court considers exceptional, the ultimate aim of the court, in my view is to uphold the sanctity of justice; at the same time bearing in mind the need to protect the public interest by avoiding needless protracted litigation.

The applicant herein has not demonstrated any exceptional circumstance that brings him to this court, praying the court to invoke its review jurisdiction in his favour. This

application at its best is an attempt to prolong a needless protracted litigation. The application has no merit and it is hereby dismissed.

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

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

**N. A. AMEGATCHER**
**(JUSTICE OF THE SUPREME COURT)**

**M. OWUSU (MS.)**
**(JUSTICE OF THE SUPREME COURT)**

**A. LOVELACE-JOHNSON (MS.)**
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