IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2021

CORAM: APPAU, JSC (PRESIDING)
OWUSU, JSC
L-JOHNSON, JSC
HONYENUGA, JSC
AMADU, JSC

CIVIL MOTION
NO. J8/83/2021

21ST JULY, 2021

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

VRS

YAW BOAKYE ..... DEFENDANT/RESPONDENT/APPELLANT/RESPONDENT

RULING

AMADU JSC:-

INTRODUCTION

(1) The key question for determination in this application is not entirely novel, yet recondite because the paucity of decisions of this Court have not settled the question whether or not within the meaning and effect of Article 129(4) of 1992 Constitution, this Court has the power to enforce its own judgments and orders without necessarily referring same to any lower court.

BACKGROUND FACTS

(2) On 17th October, 2008 the Plaintiffs/Appellants/Respondents/ Applicants *(hereinafter referred to as "the Applicants"),* acting in their capacity as executors and trustees of the Late Edward Osei Boakye *(hereinafter referred to as "the deceased")*, issued a writ of summons against the Defendant/Respondent/Appellant/Respondent *(hereinafter referred to as "the Respondent")*. By this writ, the Applicants challenged the validity of a letter dated 21st January, 2008 addressed by the executors of the estate of the deceased to the Respondent authorizing him to enter plot numbers 6 & 7, Airport Commercial Centre, Accra, the subject matter of dispute *(hereinafter referred to as "the property")* to complete the uncompleted building thereon belonging to the deceased.

(3) On 13th November, 2009 on the Respondent's application, the Applicants' action was dismissed by the High Court on the grounds that it did not disclose any cause of action against him. Subsequently, on 23rd June, 2011 in a judgment delivered by the Court of Appeal, the decision of the High Court was reversed and judgment entered in favour of the Applicants on the grounds that the letter dated 21st January, 2008 was invalid as it violated the provisions of section 105(1) of the Administration of Estates Act, 1961 (Act 63), among other reasons. Consequently, the Respondent was ordered to stop all constructional works on the property. It was further held that the 4th Applicant was entitled to take possession of the property as directed in the last Will and Testament of the deceased.

(4) Aggrieved by and dissatisfied with the judgment of the Court of Appeal, the Respondent appealed to the Supreme Court. During the pendency of that appeal, the parties agreed to compromise the judgment of the Court of Appeal on terms they had negotiated and agreed upon, as shown in the terms of settlement executed and witnessed by their respective lawyers. By a motion on notice filed in the Registry of this Court on 11th September, 2014 the Respondent notified this Court about the completion and execution of terms of settlement by the

parties. The settlement reached therefore effectively ended the dispute submitted to this Court for determination.

(5) On 12th November, 2014 this Court constituted by a single justice adopted the terms of settlement as consent judgment in accordance with the wishes of the parties and the advice of their lawyers. The obligations of the Applicants under the consent judgment include the waiver of their rights under the judgment of the Court of Appeal by forfeiting recovery of possession and granting the Respondent a sub-lease over the property for a term of fifteen years from 1st May, 2015 expiring on 30th April, 2030. In return, the Respondent became bound to pay the Cedi equivalent of US$35,000.00 per month to the Applicants as yearly rent from 1st May, 2015. The Respondent paid and the Applicants acknowledged receipt of the Cedi equivalent of US$420,000.00 as rent for one year from 1st May, 2015 to 30th April, 2016. The Respondent also agreed to allocate one shop or office space on the ground floor of the property *(hereinafter referred to as "the office space")* to the Applicants on completion of works.

(6) The Applicants filed an entry of judgment detailing the obligations imposed by the consent judgment. Subsequently, on account of some default on the part of the Respondent, an application was filed in this court seeking leave to go into execution to recover accrued rent due under the consent judgment. The ruling delivered by our respected brother Pwamang JSC on 14th February, 2018 indicated the High Court as the proper forum for seeking leave to execute the consent judgment, although the said application was, on the record, struck out as withdrawn. Subsequently, leave to execute the consent judgment was sought from the High Court, but same was refused on 25th October, 2019. This decision resulted in an appeal filed on 1st November, 2019. On 18th January, 2019 the Applicants also issued a writ for recovery of possession for non-payment of rent, among other reliefs. An order of interim preservation and inspection made by the High Court on 26th June, 2019 occasioned several interlocutory appeals and motions in this and other courts. Therefore,there is no doubt that by the terms of

settlement which resulted in the consent judgment, the parties agreed to resolve their disputes amicably.

(7) By motion on notice filed on 18th January, 2021 brought pursuant Article 134(b) of the 1992 Constitution, the Respondent applied to this Court to have the order adopting the terms of settlement set aside on the grounds that the single justice of this Court lacked the jurisdiction to adopt the terms of settlement as consent judgment. In the Respondent's view, the application for the adoption of the terms of settlement should have been placed before this Court constituted by five justices. The Applicants opposed the application on the basis, *inter alia*, that there was no longer a dispute when the parties executed the terms of settlement and filed same on 11th September, 2014 for adoption. Therefore, the adoption by a single justice of this Court was made within jurisdiction as this court did not determine the merits of the appeal which had been settled by the parties and was no longer pending.

(8) On 20th May, 2021 a review panel of this Court dismissed the application by the Respondent challenging the validity of the adoption order made by this Court constituted by a single justice. The review panel found no merit in the argument of the Respondent, since there was no cause or matter pending after the terms of settlement had been filed in the Registry of this Court. Accordingly, the adoption of the terms of settlement as consent judgment in the compromised suit before the single justice of this Court was found to have been made within jurisdiction. The status of the consent judgment was thus affirmed to be valid and the agreed terms therein binding on the parties.

THE INSTANT APPLICATION

(9) The Applicants filed the instant application on 17th March, 2021 pursuant to Article 129(4) of the 1992 Constitution, on the ground that the Respondent has defaulted in his obligations under the consent judgment. Accordingly, the

Applicants seek leave of this Court to enforce the outstanding obligations of the Respondent. Article 129(4) of the Constitution provides:

"129(4) 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 by this Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law".The Applicants argued in support of their application that, the framers of the constitution in empowering this Court to directly enforce its decisions, orders or judgments under this provision envisioned a situation where litigants before this Court would prefer enforcement in the High Court to enable fresh round of litigation from the High Court, through the Court of Appeal and ultimately back to this Court. In their view, this is the very mischief which is cured by the constitutional provision that vests us with the full enforcement powers of any other court.

(10) In support of the above arguments, Counsel for the Applicants relied on the decision of this Court in **Republic Vs. High Court (Fast Track Division), Accra (Attorney-General Interested Party) Ex Parte Forson [2013-2014] 1 SCGLR 690**and contended that, this court has the jurisdiction to enforce its own decisions applying any existing rules of procedure or practice available in any court by virtue of Article 129(4) of the Constitution. Counsel also referred to the opinion of Benin JSC, applying the decision in **Ex Parte Forson,** In **Amidu (No. 1) Vs., Attorney-General &Others [20017-2018] 1 SCLRG 477** at page 485,expressed in these words**: "*. . . It is not the business or duty of counsel for a judgment debtor to tell this Court how to enforce or direct the enforcement of its decisions, orders and judgments. The mode of selecting an enforcement mechanism is the preserve of the judgment creditor. Rule 28 is not mandatory for the Court to comply with, it may invoke it if it so desires. Thus, the fact that the Court did not refer the enforcement to the High Court is a matter of no*

consequence, as the Court has decided that it has the right, the means and the power to enforce its own judgments and orders applying any existing rules of practice available in any court in Ghana by virtue of Article 129(4) of the Constitution."

(11) The Applicants in their affidavits in support of this application, claimed that the Respondent has been in default of the consent judgment from 1st May, 2016 to date and that in respect of the Respondent's rent obligation, the Cedi equivalent of US$2,520,000.00 representing accrued rent for six years from 1st May, 2016 to 30th April, 2022 being the quantum of payment that is overdue for settlement. In the view of the Applicants, this being a debt under the consent judgment, it is executable as judgment debt. Also, the office space the Respondent agreed to allocate to the Applicants upon completion of the building is an undischarged liability which is also executable. It was further submitted by Counsel for the Applicants that by the provisions of Article 129(4) of the Constitution, this Court is the proper forum for enforcement of the duties under the consent judgment.

(12) The Respondent in his affidavit in opposition challenged the competence of the application on the premise that the earlier application filed by the Applicants in this Court was refused. The Respondent further contended that the ruling of this Court per Pwamang JSC, as a single justice of this Court, was not challenged by the Applicants by way of an application for review as required under Article 134(b) of the Constitution. The Respondent further asserted that on 28th March, 2018, another application filed by the Applicants in the High Court, Commercial Division was refused. Thereafter, an appeal was lodged by the Applicants and written submissions already filed by the parties. In the view of the Respondent, the present application is an abuse of the process and amounts to forum shopping by the Applicants. Counsel for the Respondent also argued that this Court exercises concurrent jurisdiction with the High Court when it comes to enforcement of its decisions. So the process already initiated by the Applicants in

the High Court culminating in the appeal before the Court of Appeal bind the Applicants, rendering this application unmeritorious.

(13) An examination of the earlier ruling of this Court per Pwamang JSC sitting as a single justice, shows that the application before the court was not determined on the merits as it was withdrawn by the Applicants. For this reason, the ruling which followed the withdrawal of that application could not have been a determination of the application on the merits. Consequently, the said ruling cannot bar the Applicants from invoking our jurisdiction under the Constitution. The law is that, previous conduct would not constitute an estoppel preventing the exercise of a constitutional right or enjoyment of a constitutional remedy. In **New Patriotic Party Vs. Electoral Commission &Anor. [1993-1994] 1 GLR 124** this Court stated as follows: ***"Our first reaction is that such equitable defences - acquiescence and inaction or conduct - must not be allowed to operate as a shield to prevent a citizen from ventilating and enforcing his constitutional rights. Otherwise, sooner or later, the good intentions of the framers of the Constitution, as enshrined in Article 2(1) of the Constitution, will be defeated."***

(14) Further, in **In Re Kwabeng Stool; Karikari Vs. Ababio II (2001-2002) SCGLR 515,** this Court stated the principle that, for an earlier decision to constitute an estoppel, it must have been delivered on the merits by a court of competent jurisdiction. Further, estoppel was said to be wholly inapplicable if it is meant to cure non-compliance with statute. At page 531 of the report in the case under reference, this Court held as follows: ***"Estoppel of all kinds, however, are subject to one general rule: they cannot override the laws of the land. Thus, where particular formality is required by statute, no estoppel will cure the defect and jurisdiction cannot be given to the court by estoppel, where statute denies it. In order that estoppel by record may arise out of a judgment, the court which pronounced the judgment must have had the jurisdiction to do so."*** Therefore, the earlier

application having been struck out as withdrawn, the opinion which followed the acknowledgment of the withdrawal, does not have any legal consequence and cannot disable the Applicants from asserting a constitutional right or remedy not already pronounced upon by this Court.

(15) The Respondent's counsel also opposed the application before us on the ground that it was an abuse of the process considering the earlier opinion of Pwamang JSC (supra). In **Attorney-General Vs. Sweater & Socks Factory Limited [2013-2014] 2 SCGLR 946 at 969,** this Court opined that the abuse of the process principle does not apply if in the new action, the court's attention is being drawn to either a breach of the constitution or a jurisdictional error. In the case under reference this Court per Wood (CJ) stated as follows: ***"More importantly, it is very clear from the abuse of process doctrine as discernible from all the decisions of this court, without a single exception, that special circumstances, would justify its exclusion or applicability and allow the litigation of issues which could have or ought to have been brought up for adjudication in a previous action, but were not. Given that estoppels of all kinds cannot override the laws of this land, I would include, constitutional questions, jurisdictional questions, arising from alleged constitutional or statutory violations, such as the one raised before us, as some of the exceptional grounds on which, in a fresh action involving the same parties or privies, a defendant cannot successfully rely on the plea of abuse of process in defence."***

(16) On the basis of this opinion, the abuse of the process argument by Counsel for the Respondent must fail. In **Sweater & Socks Factory Limited case (supra),** estoppel could not have been applicable against the Attorney-General as Plaintiff upon raising a constitutional issue for the first time, despite an earlier dispute in which it was not raised. In the same vein, the Applicants in this case

can bring for our consideration a constitutional remedy they think they are entitled to, their previous application, notwithstanding. The ruling of Pwamang JSC following the withdrawal of the application did not provide the opportunity to examine the merits of the application relative to Article 129(4) of the Constitution. Accordingly, we dismiss Respondent's counsel's contention on this point and we hold that bringing up this application which raises for the first time both a constitutional and jurisdictional argument for our consideration, cannot constitute an abuse of process.

(17) In this application, the key issue for determination is whether this Court is vested with the power, and authority to enforce its own decisions using rules of procedure of available in any court. In **Amidu Vs. Attorney-General & Water Ville [2017-2018] 2 SCLRG 615**, this Court overruled an objection by the claimant who opposed a direct enforcement by this Court under Article 129(4) and preferred enforcement at the High Court in order to enable enjoyment of its constitutional right to appeal if necessary. This Court held that if the objection was upheld, that will clearly undermine the effectiveness and purpose of Article 129(4) of the Constitution. Further, the Supreme Court will be surrendering its jurisdiction as conferred by the Constitution to a lower court and that step in itself will be unconstitutional. This decision delivered by our respected brother, Benin JSC, sitting as a single justice of this Court was, in a subsequent review application, affirmed in **Amidu Vs. Attorney-General &Others (J7/05/2019) (27thMarch 2019, unreported)**. **InRepublic Vs. High Court, Accra (Industrial & Labour Division Court 2); Ex-Parte Peter Sangber-Dery [2017-2018] 1 SCLRG 552,** that a court has no jurisdiction to surrender or decline jurisdiction it is vested with.

(18) Clearly therefore, by virtue of the provision of Article 129(4) of the Constitution as applied by this Court in the decisions referred to above, this Court is vested with the power and means of enforcing its rulings, orders or judgments. Thus, the opinion proffered by Pwamang JSC regarding the High Court being the

proper forum for the enforcement of our orders or decisions as expressed in the ruling dated 14th February, 2018 must not be construed to mean that under the provisionof Article 129(4) of the Constitution, this court lacks the power in appropriate circumstances to grant leave for enforcement of its own judgments and orders.

(19) Having established the existence of the constitutional power and mandate of this Court to directly enforce its decisions or orders, the order of this Court adopting the terms of settlement between the Applicants and the Respondent as consent judgment, brings the executable terms thereof within the enforcement powers of this Court. From the processes filed by the parties, there is no doubt that the sub-lease for a term of fifteen years from 1st May, 2015 was granted by the Applicants and same was received by the Respondent as revealed by the sub-lease executed by the parties. The monthly rent payable in the first five years of the sub-lease was fixed by the parties at the Cedi equivalent of US$35,000.00 from 1st May 2015. It is not in dispute that one year rent was paid by the Respondent for the period 1st May, 2015 ending 30th April, 2016.

(20) The Respondent has also not denied the allegation that no payment has been made by him since the initial payment resulting in outstanding rent in the sum of US$420,000.00 per annum from 1st May, 2016. On 1st May, 2021 rent for six years for the period 1st May, 2016 ending 30th April, 2022 in the total sum of US$2,520,000.00 had accrued for payment by the Respondent to the Applicants. Based on the payment obligations of the Respondent in the consent judgment, the rent outstanding for settlement by the Respondent thereunder became judgment debt which is open to execution by any of the known enforcement procedures under the High Court (Civil Procedure) Rules, 2004 (C.I. 47). The Respondent has also not discharged his obligation under the consent judgment to allocate the office space to the Applicants. This default is also executable.

(21) Having regard to the clear provisions of Article 129(4) of the Constitution, and the unqualified and unconditional duties of the Respondent under the consent judgment to pay rent and to allocate the office space, we are obliged to grant the Applicants leave to execute all or any of the outstanding obligations of the Respondent. In granting this application, we are also minded to prevent a situation of re-litigation of issues already settled by the consent judgment. Enforcement of specific obligations under the consent judgment and enforcement of the consent judgment as a whole are not separable.

(22) The enforcement of outstanding obligations and enforcement of the consent judgment as a whole by preventing the parties from re-opening matters already settled thereunder are consistent with the letter and spirit of Article 129(4) of the Constitution and the public policy discouraging endless litigation. Anything otherwise, may result in an untidy situation where lower courts will exercise the discretion whether or not the final orders of this Court referred for enforcement be carried out. In cases where issues already settled are re-litigated with outcomes contradicting the terms contained in the final orders from this Court, such a conceivable situation will certainly result in an absurdity where our superior jurisdiction properly exercised will be subjected to the discretion of a court of inferior jurisdiction with the resultant possibility of re-litigation of the same issues through the hierarchy of the courts.

(23) Apart from our jurisdiction under Article 129(4) of the Constitution, it is also trite that a court of law does not have the jurisdiction to sanction a breach of contract by a party to the contract. One of the inherent duties of a court is to enforce legal obligations assumed by parties. Granting the Applicants leave to enforce the consent judgment and not permitting re-litigation of issues resolved in the terms of settlement leading to the consent judgment are also in line with this inherent duty. In **Republic Vs. High Court, Accra, Ex-Parte Deborah Atakorah (Billy Cudjoe – Interested Party) [2015-2016] 1 SCGLR 298,**this court decided that terms of settlement signed by parties whether in or

out-of-court are binding and that a court will lack the jurisdiction to grant a party a dispensation to break his own contract arbitrarily. At page 338 of the report, Atuguba JSC had this to say: ***"The parties' terms of settlement are binding upon them because they are contractual. That being so we find it difficult to see how when one of the terms of such settlement is that they be made a consent judgment, such a term should not also have contractual binding effect. By allowing the interested party to overthrow that term the trial judge in effect granted him a dispensation to break his own contract arbitrarily. A court has no such jurisdiction."***

(24) Therefore,based on the enforcement mandate given to this court by the Constitution, coupled with the inherent duty of the courts to enforce legal obligations of parties before it, failing to enforce the terms of the consent judgment, will be unconstitutional and an abdication of our judicial duty. In granting the Applicants' leave to execute the consent judgment by enforcing the obligations of the Respondent thereunder, we have also taken note of the decision of this court in **Ex-parte Atakorah (supra)** whereat page 333 it was held that: ***"Where, however the terms of settlement by consent of the parties are entered by the court as a consent judgment then it becomes, like any other judgment an executable judgment of the court if it contains executable orders."***

(25) For all the reasons set forth, the application filed by the Applicants for leave to go into execution for the enforcement of any of the outstanding obligations of the Respondent in this Court ought to succeed. On the terms of the consent judgment, the undischarged payment obligations of the Respondent which include payment of the Cedi equivalent of US$2,520,000.00 being unpaid total rent due at the monthly rate of US$35,000.00 from 1st May, 2016 to 30th April, 2022 and the recovery of the office space agreed to be allocated to the Applicants by the Respondent are enforceable by this Court directly.

(26) Accordingly, the application for leave to go into execution is hereby granted. The Applicants are at liberty to enforce any and all the outstanding obligations of the Respondent under the consent judgment aforesaid, by applying the judgment enforcement rules of any court as provided under Article 129(4) of the Constitution.

I.O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

M. OWUSU
(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)
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