IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DORDZIE (MRS.) JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC

CIVIL MOTION
NO. J7/05/2022

16TH MARCH, 2022

1. MOST REV. DR. ROBERT ABOAGYE-MENSAH
2. MOST REV. DR. JOSEPH OSEI BONSU — PLAINTIFFS/APPELLANTS/
3. RTD. REV. DANIEL YINKA-SARFO — RESPONDENTS/RESPONDENTS
4. EDWARD OSEI BOAKYE TRUST FUND

VRS

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

RULING

AMEGATCHER JSC:-

The applicant in this motion is invoking this court's review jurisdiction under Article 134(b) of the Constitution, 1992. The application seeks to discharge or reverse the order of a single Justice of this Court dated 12th November 2014. The basis for the application as captured in the affidavit of Yaw Boakye in support of the motion is that the record of proceedings was not transmitted to the Supreme Court in accordance with C.I. 16 and, because the Supreme Court was not seized of the appeal, the single Justice had no jurisdiction to hear the application and enter the consent judgment. In his view, the orders made by the single Justice were, thus, a nullity and all proceedings and processes flowing from the consent judgment were, as well, all nullities including the garnishee nisi order issued against FBN Bank and

the order for recovery of possession of shop no 3 Liberation Road, Airport Shopping Centre.

To appreciate the basis for this application and its merit, we would delve into events that brought the parties back into this court.

This case has had a chequered history in the courts. It started in the High Court, Accra in 2008, went on appeal to the Court of Appeal and finally ended in another appeal to this Court on 19th July 2011. While the appeal to this Court was pending, the parties voluntarily reached an agreement to resolve the appeal. They filed terms of settlement for entry as a consent judgment. On 11th September 2014, the applicant herein applied by motion on notice praying this court to adopt the terms filed as consent judgment under the inherent jurisdiction of the court. Paragraphs 9, 10, 11 and 12 of the affidavit in support are instructive. We reproduce them verbatim as follows:

9. That pursuant to negotiations intended to achieve an amicable settlement of the issues joined in the Appeal and all consequential matters, the parties have resolved this suit amicably on the terms contained in the Terms of Settlement as filed in the registry of this Court on 11th September 2014.

10. That I am advised by Counsel and verily believe same to be true that, if the parties had to abide with the rules of this Honourable Court to mature the matter for hearing, it will occasion needless expense, hardship and delay.

11. That I am advised by Counsel and verily believe same to be true that per clause (A)11 of the said Terms of Settlement filed in the registry of this Court on 11th September 2014, the parties herein agreed to have the terms filed and adopted by this Honourable Court as the consent judgment of the parties. Attached hereto marked as Exh "GAL" is a photocopy of the Terms of Settlement filed in the registry of this Court.

12. That I am advised by counsel and verily believe same to be true that, in the premises, this is a proper case where this Honourable Court ought to grant this application as prayed.

This application was by administrative fiat of the learned Chief Justice fixed before a single Justice of the Court, i.e. Baffoe-Bonnie JSC per article 134 of the Constitution, 1992. On 12th November 2014, Baffoe-Bonnie JSC adopted the terms of settlement as consent judgment of this Court. The congeniality which propelled the parties into signing the terms suffered a setback when after a year the applicant defaulted in discharging his obligations under the consent judgment. The respondent's reaction was to file a notice of entry of judgment detailing the obligations imposed by the consent judgment. This was followed by an application by the respondent for leave to go into execution and recover the outstanding rent due under the consent judgment. This application came before Pwamang JSC who on 14th February 2018 struck out the application as withdrawn but indicated that the High Court was the proper forum to execute the consent judgment of the Supreme Court.

The respondent took another action on 18th January 2019 by issuing a writ for recovery of possession of the property for non-payment of rent. The respondent, then, applied to the High Court for leave to execute the consent judgment but this application was dismissed on 25th October 2019. The respondent appealed against the dismissal to the Court of Appeal on 1st November 2019. On 18th January 2019, the respondent issued a writ of recovery of possession for non-payment of rent. On 26th June 2019, the High Court issued an order for interim preservation and inspection of the property on Liberation Road and this occasioned several interlocutory appeals and applications in the various superior courts.

On 18th January 2021, the applicant seeking to stop the execution of the terms of the consent judgment applied to this Court under article 134(b) of the Constitution, 1992 to have the order made by Baffoe-Bonnie JSC adopting the terms of settlement as a consent judgment discharged or reversed because the application he filed to adopt the terms of the settlement should have been placed before a duly constituted panel of five Justices of the Court and that because this was not done, Baffoe-

Bonnie JSC lacked the jurisdiction to adopt the terms of the settlement as a consent judgment. Article 134(b) provides that:

"A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of the cause or matter before the Supreme Court, except that -

(b) in civil matters, any order, direction or decision made or given under this article may be varied, discharged or reversed by the Supreme Court constituted by three Justices of the Supreme Court."

That application was placed before a review panel of three Justices of the Court made up of Appau, Kotey and Amadu JJSC. In a ruling dated 20th May 2021, the Court per Amadu JSC concluded as follows:

"The application before us fails on all the applicable tests. This Court constituted by a single Justice duly exercised its power in adopting the terms of settlement, which did not involve the issues which originally existed in the case as same had been compromised by the parties themselves. There be no jurisdictional or other error giving rise to some exceptional circumstances which have occasioned any form of injury or injustice to the Applicant, the application wholly fails and we accordingly dismiss same."

Before this ruling, the respondent had also filed another application on 17th March 2021 drawing this Court's attention to the fact that the applicant had defaulted in his obligations under the consent judgment and for leave to enforce the outstanding obligations of the applicant. The application was to determine the question of whether this court had the power to enforce its judgments and orders without necessarily referring the same to the trial courts.

In a ruling dated 21st July 2021, a duly constituted panel of this court ruled per Amadu JSC that the Supreme Court had power under the Constitution to enforce its orders. The Court, in the same ruling, granted leave to the respondent to go into execution and enforce the outstanding obligations owed by the applicant under the

consent judgment, i.e. rent outstanding from 2016 to 2022 and recovery of the office space. The applicant was dissatisfied with the ruling. He applied for a review of that ruling on the ground that this Court lacked jurisdiction to entertain or grant the application for leave to enforce the consent judgment. The application came before a review panel of seven Justices. In a ruling dated 30th November 2021 the Court per Dordzie JSC ruled as follows:

"The applicant herein has not demonstrated any exceptional circumstances that bring 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 needless protracted litigation. The application has no merit and it is hereby dismissed."

This Court, then, proceeded to grant two applications to enable the respondent to execute the consent judgment. On 16th December 2021, a Garnishee Nisi order was made by Amadu JSC sitting as a single Justice compelling the Managing Director of FBN Bank Ghana Limited or his representative to appear before the Court and show cause why the sum of US$3,000,000.00 should not be applied in satisfaction of the judgment debt. On the same day 16th December 2021, Amadu JSC again sitting as a single Justice granted an application for a writ of possession to issue for the recovery of shop number 3 situate at numbers 6 and 7, Airport shopping Centre, Liberation Road.

The applicant's reaction to the applications granted in favour of the respondent on 16th December 2021 is the filing of the current process. There is no doubt that the ultimate aim of this application is to stop the execution processes for the recovery of the rent and possession of the shop ordered by this Court.

The heading of the motion accompanying this application is "**MOTION ON NOTICE FOR AN ORDER TO DISCHARGE OR REVERSE ORDER OF SINGLE JUSTICE OF THE SUPREME COURT**" This heading is a verbatim reproduction of the heading used in the earlier application filed on 18th January 2021 which sought similar relief from this Court.

In dealing with this application, the first question we posed was whether a party has an unfettered right to invoke the jurisdiction of this Court under article 134(b) at any time at all appearing to the party convenient. Admittedly the Constitution and the Rules of Court are all silent on the time limit for invoking the jurisdiction of this court under Article 134(b). The closest the Rules came to on the procedure for invoking that jurisdiction is Rule 73 of C.I. 16 (as amended by C.I. 98). It provides that:

"Review of decision of single Justice

73. (1) A person dissatisfied with the decision of a single Justice of the Supreme Court in respect of an application determined under article 134 of the Constitution, may apply to the Supreme Court to have the application determined by three Justices of the Court.

(2) The application to have the cause or matter determined by the three Justices shall be by motion on notice and shall be served on any other party who has an interest in the cause or matter."

It is clear that unlike other provisions in the Rules, no time limit was provided for applying to the court under Article 134(b).

This is not the first time the Court has been confronted with a provision of the Rules in which no time limit has been provided for invoking its jurisdiction. In **Republic v. High Court, Accra; Ex parte Puplampu I [1991] 2 G.L.R. 472, S.C** the Supreme Court Rules, 1970 (CI 13) which regulated the invocation of the supervisory jurisdiction and other related matters made no provision to govern the practice and procedure for prerogative orders and in particular the time limit for bringing such applications. The court per Wuaku JSC at the time applied the provisions of Order 59, r. 3 of the High Court (Civil Procedure) Rules, 1954 (L.N. 140A) which regulated the procedure for the various prerogative orders by the High Court and held that any such application must be made within six months no matter for what purpose the application is brought.

In a subsequent decision of this court in the case of **Republic v High Court, Accra; Ex parte Darke XII (No 2) [1992] 2 GLR688, SC,** a case also cited by

the applicant in his submissions, the Court, by a majority decision refused to follow **Ex-parte Puplampu 1** (supra) and held that as the Supreme Court Rules, 1970 (C.I. 13) was silent on the issue of time for making an application for an order by way of certiorari, the application could be brought at any time although the grant being discretionary, it may be refused because of unreasonable delay for making the application.

We have reviewed these and other decisions on the subject. In the first place, the **Ex-parte Darke XII (No 2)** decision did not lay down any general rule that in all cases where no time limit is provided for in the Rules for invoking the court's jurisdiction, an aggrieved party could do so at any time.

Secondly, the 'no time limit' for such applications did not survive the test of time. For, when an opportunity afforded the Rules of Court Committee to come out with new Supreme Court rules under the 1992 Constitution, the omission to provide for a time limit was rectified in Rule 62 of C.I. 16(as amended). It provides that an application to invoke the supervisory jurisdiction of the Court shall be filed within 90 days of the date when the grounds for the application first arose unless time is extended by the Court. The change is in line with the dynamism of the Rules and the law and goes to confirm that while in the past, timelines were not a requirement in applications for invoking the supervisory jurisdiction of the court, the same cannot be said of the modern era. Thus, to use the position pertaining thirty years ago to justify why the same position should be maintained in the third decade of the 21st century is retrogressive and will not find favour with this Court.

Thirdly, the consent judgment of the single Justice sought to be discharged or reversed in this application was made on 12th November 2014, approximately seven years before the application was filed. Is a party permitted to bring an application of this nature at his whims and at any time appearing to him convenient especially when other parties or third parties have derived benefits under the order made by the single Justice? We think not. Justice would not be served to permit parties to choose the times suitable for them for taking steps which under the rules of equity would be classified as indolence.

The general proposition then is that where no time limit is provided for performing an act under the Rules, the act must be performed within a reasonable time. Reasonableness is the key factor in such applications. What is a reasonable time to invoke this jurisdiction will depend on similar provisions in the Rules on the subject at hand and the special circumstances of each case. Thus, it has been held that the jurisdiction the court is called upon to perform under Article 134(b) is one of review of the decision of the single Justice and not that of an appeal over the decision of the single Justice.

In **Mass Projects Ltd v Standard Chartered Bank & Anor. (No. 2) [2013-2014] 1 SCGLR 309** Dotse JSC opined that applications under article 134(b) of the Constitution is a special review application separate and distinct from the review application provided for in article 133 of the Constitution. Being a review application, it must have been an oversight on the part of the Rules of Court Committee when it did not provide a time limit within which to file such applications as provided for in applications for a review of the decisions of a duly constituted panel of this court under article 133 and rule 55 of C.I. 16. Even if it were not an oversight, we think the intervention of third-party rights and benefits enjoyed by other parties under the orders made by a single Justice should constitute a basis for placing a one-month limitation on such reviews in the same way as the Rules provide for reviews under article 133. While we acknowledge that it is the role of the Rules of Court Committee and not this Court to fix time limits in the Rules for invoking the Court's jurisdiction as held by the majority of this Court in **Ex-parte Darke XII (No 2)** case(supra), it is still our opinion that this application should fail. This Court will not bend over backwards and aid an indolent applicant who fails to act timeously. In this application, we consider seven years delay in invoking this court's jurisdiction under Article 134(b) unreasonable for us to grant the prayer of this indolent applicant.

The policy rationale is the well-known and accepted maxim in all civilized countries that **interest republicae ut sit finis litium** i.e. that it is in the interest of the state that litigation should come to an end after proceedings are concluded according to the Rules of Court and more particularly when they terminate at the apex court of

the land. Again, one important maxim which is still good law in our jurisdiction is that equity aids the vigilant and not the indolent.

Another question which came up when we were considering this application was whether our jurisdiction under article 134(b) could be properly invoked by the filing of multiple applications. We posed this question because the exhibits presented to us and the submissions canvassed revealed that on 18th January 2021, the applicant exercised his constitutional right and applied to this Court to discharge or reverse the order of the single Justice dated 12th November 2014 adopting the terms of settlement by the parties as a consent judgment. The grounds for bringing that application was that the single Justice of this Court did not have jurisdiction to hear and determine the application because it should have been listed before a duly constituted panel of five Justices. The present application also seeks to review the order of the single Justice because the matter before him being an appeal, he was not clothed with jurisdiction to hear and make the consent order because the Record of Appeal had not been transmitted to the Supreme Court.

In a ruling dated 20th May 2021, the review panel of three Justices held that the single Justice had jurisdiction to hear and make the orders for the consent judgment. Having failed in his attempt to review the consent judgment of the single Justice, it was inappropriate for the applicant after a few months to file the same application before this Court for a review of the same single Justice order for lack of jurisdiction, albeit on a different leg. The Rules of Court do not permit parties to file multiple applications in the same matter seeking redress and shifting the goalpost after an earlier application had been dealt with. The remedy permitted by the Rules is an appeal or a repeat application to a higher court. It is conducts like this that the principle enunciated by this Court in **Sasu v Amua-Sekyi and Another [2003-2004] SCGLR 742** find its relevance. In that case, Bamford Addo JSC speaking on behalf of the court did not mince words deprecating the conduct of the appellant in the following words:

"In any case, the appellant had contravened the rule that litigation must end by filing multiplicity of actions which had delayed the case from reaching finality despite findings of estoppels by the Court against him.

Thus in his counterclaim before Apaloo J, the appellant should have brought forth his full case and the rule in Henderson vrs Henderson would not permit him to present his case piecemeal by bringing a subsequent case seeking to set aside the Court of Appeal's judgment for fraud. Consequently, the appellant's conduct in bringing a fresh action amounted to abuse of judicial process."

The learned Justice then concluded:

"Although he was not allowed by the Court to proceed, he was able to continue this conduct which should be deprecated and discouraged since public policy demands that litigation be brought to a speedy end in the interest of Justice"

Piecemeal presentation of one's case as held above constitutes an abuse of the judicial process. The principle of abuse of process is well recognised and shunned upon by this Court. Thus, in the case of **Naos Holding Inc v Ghana Commercial Bank Limited [2011] SCGLR 492** one of the parties to proceedings before the court kept on filing multiplicity of suits, applications and appeals on the same issue before the court. Dotse JSC disapproving the conduct of the party in the litigation contest remarked at pages 500-501 as follows:

"This principle of abuse of process had been formulated years ago by the English Courts as was evident in the statement of the principle in Date-Bah JSC's opinion which had been accepted and applied by the Courts in Ghana……. In all the above cases, the principle of abuse of process that is discernible has been postulated on the fact that the matters in controversy have been determined by a Court of competent jurisdiction between the same parties and basically on the same subject matter and that it would therefore be an abuse of the process of the Court to allow a suitor to have an open-ended opportunity to be litigating and relitigating over and over again in respect of the same issue which has over the period and in previous decisions been decided against him…… To permit the appellants to succeed in their present endeavour is to allow them to

launch a collateral attack on the decision of the Supreme Court given on the said date…… In such a situation it would clearly be unfair and unjust to a party in the earlier proceedings that the same matters would be relitigated again. To allow such a litigation to remain on the table of the parties and the court in our view would not only be tantamount to bringing the administration of Justice into scorn, opprobrium and ridicule but also into serious disrepute."

The learned Justice, then, referred to the time tested doctrine of abuse of process, commonly referred to as the rule in **Henderson v Henderson (1843) Hare 100** whose essence was set out by the English Court of Appeal in **Barrow v Bankside Agency Ltd [1996] 1 WLR 257 at 260** as follows*:*

"The rule in **Henderson vrs Henderson** requires the parties, when a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the Court so that all aspects of it may be finally decided, (subject of course, to any appeal) once and for all. **In the absence of special circumstances, the parties cannot return to the Court to advance arguments, claims or defences which they could have put forward for decision on the first occasion but failed to raise.** The rule is not based on the doctrine of res judicata in a narrow sense, or even on any strict doctrine of issue or cause of action estoppels. It is a rule of public policy based on the desirability, in the general interest as well as that of the parties themselves, that litigation should not drag on forever and that a defendant should not be oppressed by successive suits when one would do"

We are aware that since the formulation of this rule in **Henderson v Henderson**, exceptions have been developed to enable parties to file applications and suits already canvassed before the courts on strictly limited grounds. Thus **in Attorney-General v Sweater & Socks Factory Limited [2013-2014] 2 SCGLR 946 at 969**, this court per Wood CJ held that abuse of the process principle does not apply where the court's attention is being drawn to a breach of the Constitution or a jurisdictional matter. She opined:

"**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**."

To these exceptions, we would add injunction related applications. An initial application for an injunction may be dismissed because the condition precedent for the grant such as irreparable damage to the subject matter did not exist. However, subsequent to the application, a novus actus intervenes (i.e. new intervening circumstances) could provoke the same application being brought before the same court but on different factors. The court will have jurisdiction to deal with such a second or third application focussing on the principles guiding the grant or refusal.

In this application, the applicant had previously exercised the right given him under the Constitution and the Rules of Court to apply to a panel of three Justices to review the decision of the single Justice. That application was founded on the jurisdiction of the single Justice to make the consent order. The applicant was enjoined by the Rules to bring his whole case on jurisdiction to be argued and adjudicated upon before the panel of three Justices. The applicant chose to argue part or was not diligent enough to discover all the grounds required to be argued under the jurisdictional error. The panel of three Justices determined the matter and ruled that the single Justice had jurisdiction to make the consent orders. Having had a bite attacking the jurisdiction of the single Justice resulting in a ruling against him, it was not open to the applicant or his counsel by the use of some legal ingenuity to craft another leg of attack on jurisdiction in this fresh application. It is not permitted by the rules; it does not fall under any of the exceptions discussed above and an

abuse of the process of the court as enunciated in the cases above and also in the Privy Council case of **Venkata Narasimha Appa Row v. Court of Wards 1886 (II) AC 660** where **Gwyer, C.J.** speaking for the Federal Court observed:

'This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: 'There is a salutary maxim which ought to be observed by all courts of last resort -- *Interest reipublicae ut sit finis litium* (It concerns the state that there be an end of law-suits. It is in the interest of the State that there should be an end of law-suits.) Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this.'

After reviewing the legal issues which militate against the success of this application we also directed our minds to the merits of the jurisdictional arguments urged on us by the applicant. The applicant argues that the registry did not transmit the Records of Appeal to this Court before the single Justice made the consent order. That assertion was completely deflated by exhibit FB 11 attached to the supplementary affidavit in opposition deposed to by Frank Beecham. This exhibit is Form 6 which is the notice to parties of the dispatch of the Record of appeal to the Supreme Court. Exhibit FB11 is dated 26th November 2013, signed by the Registrar of the Civil Division of the Court of Appeal and addressed to the parties and their counsel. Since this exhibit is an official record of the Court, in the absence of any other evidence disputing its veracity, we accept it as an authentic and genuine official record under sections 148, 151 and 162 of the Evidence Act, 1975 (NRCD 323).

Thus, when that record of appeal was dispatched on 26th November 2013, the Supreme Court became seized of the appeal from that date. A consent judgment subsequently delivered by the single Justice on 12th November 2014, a year after the

transmission of the record to the Supreme Court could not be questioned on the basis that the Court was not clothed with jurisdiction as the applicant purported to argue in this application.

In any case during the pendency of the appeal in the Supreme Court, it was the same applicant crying foul in this application who applied to the court on 22nd October 2014 notifying the Court that the parties had amicably resolved all the issues in the appeal and so to avoid the needless expense, hardship and delay, the court should waive the administrative processes and rules for listing the appeal for hearing and exercise its inherent powers to deliver the consent judgment.

The consent judgment then handed over possession of property numbers 6 and 7, Airport shopping Centre, Liberation Road, Accra to the applicant under a sub-lease for a period of fifteen years from 1st May 2015. In consideration, applicant was required to make monthly rent payments of the Cedi equivalent of US$35,000.00 to respondents. This rent payments, applicant has defaulted, but under the terms of the same consent judgment has his grips over the fifteen year sub-lease of the property. It lies ill in the mouth of the applicant while enjoying the benefits to fail to discharge his obligations, make a volte-face and complain about the nullity of the order made by the single Justice.

The best answer to applications of this nature is what Apaloo CJ opined in a similar application which came before the Court of Appeal in the case of **Owusu v Kumah [1984-86] 2 GLR 29 at 38-40:**

"It was finally contended for the applicant that the consent judgment ought to be vacated because its true effect was to allow the appeal contrary to the rules and practice of the court. When counsel was invited to draw the court's attention to the rule infringed thereby, he said it was the court's inherent jurisdiction to set aside an irregularity. It sounds ill in the mouth of a party who came to court with full professional assistance and invited it to pronounce judgment on terms he had fully agreed with his opponent, to return later and complain that in acceding to his or their joint wishes, the court had committed an irregularity. Unless the court

was persuaded that it had done something that was clearly illegal or offensive to any principle of Justice, it ought resolutely to turn a deaf ear to such a plea……In acceding to the mutual request of the parties and in entering judgment on the terms agreed by them, this court acted in accordance with sound judicial tradition and in the letter and spirit of section 67 of Act 372. Such a judgment cannot properly be set aside."

Apaloo CJ's description of the applicant, in that case, is spot on and fits perfectly the situation in this case. The applicant must have had an apprehension that if the appeal was heard to its logical conclusion in this Court, the "winner take all" right will work against his interest and he may lose out completely. To avert that uncertainty, the applicant entered into the consent judgment with the respondent by which certain limited rights and obligations were shared over the property then in dispute. The law is that when parties enter into terms of settlement freely and under no compulsion which is subsequently reduced into a consent judgment, in the absence of any evidence of mutual mistake, fraud, undue influence or other vitiating factors, that judgment brought finality to the pending matter. Any cold feet or second thoughts developed after the judgment is no basis to set the judgment aside.

We cannot end this ruling without expressing our disappointment at the applicant fornon-disclosure of critical information necessary for justice to be done in this application. Previous applications filed in this case such as the 18thJanuary 2021 application for a review of the single Justice's consent judgment on jurisdictional grounds and the dismissal of that application were all not disclosed to this Court. But for the affidavit in opposition filed by the respondent which disclosed the application and the ruling delivered against the applicant, this court would have been kept in the dark about the prior application made to the Court.

Counsel has a duty to disclose all information to the Court even if it is adverse to the position of his client-see rules 35 and 63 of the Legal Profession (Professional Conduct and Etiquette Rules, 2020 L. I. 2423). In **Gyimah v Abrokwa, [2011] SCGLR 406,** Rose Owusu JSC blurted out when she was confronted with a similar behaviour by counsel at pages 413-414 as follows:

"**That averment is a deliberate falsehood to put the reason for the delay at the doorstep of the court in order to sway the court in the exercise of its discretion in favour of the Applicant. We must express the court's utter disgust at such conduct of both counsel and litigants that tend to disable the court from exercising its discretion in such matters judicially. As officers of the court our avowed duty is to see to it that Justice is done at all cost**. **How does the Applicant expect the court to exercise its discretion in his favour when he is not candid with the court? For this reason alone, the application for special leave ought to be dismissed."**

Litigation must end at a point. Once the apex court of the land has spoken, parties must comply and move on. That is how democracy works and that is the path we have chosen as a country. In view of the fact that in this case, the apex court has spoken and various applications for a review of the decisions have been exhausted, in the interest of justice and to emphasise the public policy interest by which the court system operates which is that litigation must be seen to end, we deem it fit to make the following orders:

1. The applicant is hereby restrained from filing any further processes to frustrate the execution of the consent judgment in this Court or any other court without first obtaining the leave of this Court.
2. The respondent is granted leave to proceed with the execution of the consent judgment as per the orders for Garnishee and recovery of possession earlier made by this Court.
3. Because we frown upon the conduct of counsel in this case by failing to advise his client properly which has resulted in gross abuse of the court process, we award costs of Ghc15, 000.00against the applicant in favour of the respondents to be paid personally by counsel for the applicant.

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

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

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