IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

CIVIL MOTION

NO. J8/29/2016

10TH MARCH 2016

CORAM: WOOD, CJ (PRESIDING)
ANSAH, JSC
DOTSE,JSC
BAFFOE–BONNIE, JSC
AKAMBA, JSC

NDK FINANCIAL SERVICES LTD PLAINTIFF/APPELLANT

/RESPONDENT

VRS

1. AHAMAN ENTERPRISES LTD	**1ST DEFENDANT**
2. ATTORNEY GENERAL	**2ND DEFENDANT/RESPONDENT /APPLICANT**
3. ALEX A. ADUKO	**3RD DEFENDANT**

RULING

AKAMBA, JSC:

On the 28th November 2013 this court gave its decision dismissing an appeal brought against a judgment of the Court of Appeal of the 28th March 2013 which had reversed the judgment of the High Court entered in favour of the Plaintiff/appellant/ respondent, hereinafter simply referred to as the respondent.

The 2nd Defendant/Respondent/Applicant, hereinafter simply referred to as the Applicant, invoking the inherent jurisdiction of this court, seeks a clarification of parts of the judgment dated 28th November 2014. By the application filed on 25/11/2015, pursuant to rule 5 of CI 16, the following three areas have been set down as lacking clarity and thereby warranting our intervention. These are:

(a) The use of the word "jointly" and "jointly and severally" in the judgment and the certificate of the order of this Honourable Court respectively.
(b) The appropriate computation of the interest (whether compound or simple interest) as regards the contract signed on 26th August, 2005 between Plaintiffs, NDK Financial Services and the 1st Defendant, Ahaman Enterprises Ltd.
(c) The period for the computation of the interest exigible.

When the motion came up for hearing, the counsel for the respondents, Kwasi Afrifa, discounted the applicability of rule 5 of CI 16 to the present motion, contending that the applicant was merely trying to seek a further review after a failure of an earlier review application. According to respondent's counsel, the inherent jurisdiction of this court must be expressly invoked.

It is sufficient in this instance that the applicant placed reliance on rule 5 of CI 16 which states:

"Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any cause or matter before the Court, the Court shall prescribe such practice and procedure as in the opinion of the Court the justice of the cause or matter may require".

This being the last and final court of the land, in a situation in which the rules of court or any other relevant statute, do not prescribe particular practices or procedure as the justice of a cause or matter may require, it is appropriate to grant the application, provided there is substance in it and regardless of the form in which it has been intituled. This is in consonance with the duty of the courts to do substantial justice on the issue/s before it. A court of justice has a duty to render its decisions with sufficient clarity so as not to leave parties in any doubt/s as to the outcome of its pronouncements. Where doubts are evident or uncertainties obvious from the court's orders, rulings or judgments, it is appropriate to seek the intervention of the court in appropriate circumstances to clarify the doubts. (See Okofoh Estates Ltd vs Modern Signs Ltd & Anor (1996-97) SCGLR 224, holding 1).

There is no merit in the Respondent's objection to the propriety in invoking the inherent jurisdiction of this court to clarify areas of doubt or ambiguity as per the applicant's motion paper and supporting affidavit of 25/11/2015.

The decision of this court the subject of the application concludes as follows:

"The net result is that, the appeal herein fails and is accordingly dismissed.

In its place, the Court of Appeal judgment, of 28th March 2013 is hereby affirmed as follows:-

1. The appellant is asking the Ministry of Energy to render accounts of all payments made to 1st defendant under the haulage contract from 19th August 2005, up to date filing this suit and we so order. This Account is to be rendered by the current Chief Director and The Principal Accountant of the Ministry of Energy within thirty days (30) of this order. In coming to this conclusion we have noted that the Plaintiffs admit some of the payments were made in its name jointly with that of the 1st defendant (Ahamah Enterprises). The controversy that culminated in the instant action arose because the Ministry of Energy paid some of the monies due under haulage contract to Ahaman Enterprises Limited alone.

2. From the Plaintiff's writ of summons, it is also seeking a consequential order that defendants herein pay to it all sums together with interest at the rate of 6.5% per month paid to 1st defendant, Ahaman Enterprises Limited by the Ministry of Energy in contravention of the letters of undertakings dated 19th August 2005, 22nd September 2005, 13th October 2005, 2nd February 2006, 27th April 2006 to date of filing the appeal in the Court of Appeal. We will grant the Plaintiffs prayer except to add that all the sums due under the haulage contract together with interest at 6.5% per month that were paid to the 1st defendant in contravention of the letters of undertakings after the Accounts had been rendered by the Ministry of Energy should be paid jointly by Ahaman Enterprises and the defendants herein to the Plaintiffs."

ISSUES FOR CLARIFICATION

Three issues were filed for our consideration. The first issue raised by the applicant is about the use of the expression 'jointly' and 'jointly and severally' in reference to the transaction. Whereas the court order was made jointly against the parties, the certificate issued for enforcement of the judgment Exhibit AGNDK 3 sub paragraph 2 (b) makes the order "jointly and severally" against the parties.

It is important to state that there is no principle of equity that a joint covenant or promise is to be treated as joint and several. (See Sumner vs Powell (1816) 2 Mer 30 affirmed (1823) Turn & R 423; Halsbury's Laws of England, 3rd Ed. Vol. 18 p. 462).

Nowhere in this court's decision of 28th November 2014 was the expression "jointly and severally" used. It is not for parties or their counsel to choose or substitute words or expression for a court of law. It is the mandate of the court to express itself as best it can to bring out its intentions for the parties. It is thus clear from a comparison of what is therein stated in Exhibit AGNDK 3 sub paragraph 2 (b) and the judgment quoted supra that the court's order had consequently been altered. There is therefore merit in the first issue raised by the applicant. We accordingly order a rectification of the certificate to reflect that payment under the haulage contract together with interest at 6.5% per month be

paid to the 1st defendant in contravention of the letters of undertakings after the Accounts had been rendered by the Ministry of Energy be paid JOINTLY by Ahaman and the defendants herein to the Plaintiffs.

The next issue raised is about the appropriate computation of interest. It is clear from the contract document that the interest was expressed to be in compound interest. As per Exhibit AGNDK 7 the "loan shall attract an interest rate of 6.5% per month calculated on a thirty (30) days per month basis, collectible monthly in arrears." There is no ambiguity about this issue and same is dismissed.

The next and last point of issue is about the period for the computation of interest. Whereas Exhibits AGNDK 4, 6 and 8 computed the compound interest from January 2009 up to 30th September 2015, the order of this court of 28/11/2014 granted that "all sums together with interest at the rate of 6.5% per month paid to 1st defendant, Ahaman Enterprises Limited by the Ministry of Energy in contravention of the letters of undertakings dated 19th August 2005, 22nd September 2005, 13th October 2005, 2nd February 2006, 27th April 2006 to date of filing the appeal in the Court of Appeal. We will grant the Plaintiffs prayer except to add that all the sums due under the haulage contract together with interest at 6.5% per month that were paid to the 1st defendant in contravention of the letters of undertakings after the Accounts had been rendered by the Ministry of Energy should be paid JOINTLY by Ahaman Enterprises and the defendants herein to the plaintiffs." (Underlined for emphasis)

To the extent therefore that the period for the payment quoted in Exhibits 4,6 and 8 derogate from the orders of this court above quoted we order a correction or rectification thereof to comply with the orders as per the judgment of 28/11/2014.

Save for the refusal of the second relief raised before us, we grant an order for the rectification of the offending exhibits to strictly comply with the judgment of this court. Accordingly ordered.

In conclusion the unanimous decision of this Court is that the application by the 2nd Defendant/Applicant filed on 25/11/2015 is granted as follows:

1. The expression "*Jointly and Severally"* was not used in this Court's judgment of 28th November, 2014. We accordingly order a rectification of the certificate of payment to reflect that payment under the haulage contract be paid to plaintiffs **Jointly** by the 1st Defendant, Ahaman Enterprises and the 2nd Defendants/Applicants herein.

2. The second relief as per the motion paper is refused. For the avoidance of doubt, the interest payable under the contract is compound interest.

3. The computation of interest shall run from the date of the contract up to the date of filing the appeal in the Court of Appeal at the rate of 6.5% per month calculated on a 30 day per month basis collectible monthly in arrears.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) G. T. WOOD (MRS)

CHIEF JUSTICE

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE

JUSTICE OF THE SUPREME COURT

COUNSEL

SYLVESTER WILLIAMS (CHIEF STATE ATTORNEY) WITH MRS EWOOL (PRINCIPAL STATE ATTORNEY) FOR THE 2ND DEFENDAN/ APPLICANT.

KWASI AFRIFA ESQ. FOR THE PLAINTIFF/RESPONDENT