IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)

DOTSE, JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J8/68/2019

30TH MAY, 2019

SETHI BROTHERS GHANA LIMITED ……. RESPONDENT/RESPONDENT

VRS

REGENCY ALLIANCE INSURANCE LIMITED ……. APPELLANT/APPLICANT

RULING

YEBOAH, JSC:-

On the 22nd of June 2018, the High Court, Accra (Commercial Division) entered judgment against the applicant herein in favour of the respondent herein to recover an amount of US$2,355,135.14 arising from an insurance claim. As some facts of the case appear to be contentious this court in determining this application is to limit itself to the facts which both parties before us admit in various affidavits filed after the judgment in this case to the present application.

On the very day that judgment was delivered at the High Court, the applicant lodged an appeal to the Court of Appeal, Accra. According to the applicant, it proceeded to file a motion for stay of execution of the judgment on 28/6/2018. On 25/07/2018 the learned High Court judge granted the motion on terms and ordered that the applicant herein should pay thirty percent of the judgment debt and costs to the respondent. The applicant, repeated the motion for stay of execution at the Court of Appeal, Accra, as it formed the view that the terms granted by the learned High Court judge was onerous. The Court of Appeal heard the motion and granted the stay on terms by ordering the applicant herein to pay fifteen percent of the judgment debt being US$353,270.27 within thirty days from 19/11/2018 together with costs which had already been assessed at the High Court to be Gh₵50,000.00.

The applicant was again dissatisfied with the ruling of the Court of Appeal which had by it's ruling reduced the amount from thirty percent to fifteen percent of the judgment debt. The applicant therefore lodged an appeal against the Court of Appeal's ruling of 19/11/2018 to this court.

In the notice of appeal several grounds have been canvassed purposely to attack the discretion of the Court of Appeal's ruling, – While the appeal is pending, the applicant on 20/03/2019 filed this application before us for our determination. For a fuller record it would be worthwhile to show how the motion was couched:

"NOTICE OF MOTION FOR STAY OF PROCEEDINGS PENDING APPEAL, RULE 20(1) OF CI 16

TAKE NOTICE that this Honourable Court will be moved by counsel for and on behalf of the applicant/appellant/ applicant herein, praying for an order for STAY OF PROCEEDINGS UNDER THE DECISION OF THE COURT OF APPEAL OF THE 19TH OF NOVEMBER 2018 upon the grounds contained in the accompanying affidavit and for any further order(s) as this honourable court may deem fit"

In support of this application, one Olabode Oseini the managing director of the applicant's company, swore to an affidavit which demonstrates clearly that the depositions therein support an application for stay of execution. In the said affidavit, it was made clear that the applicant wanted to avoid the payment of the money which the Court of Appeal had in its ruling of 19/11/2018 ordered it to pay. The applicant therefore prays this court for an order to stay proceedings under Rule 20(1) of CI 16.

To appreciate the reasons for this ruling Rule 20 (1) of CI 1 is hereby stated in full:

"20(1) A civil appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except in so far as the court or the court below may otherwise order"

It appears from the wording of the rule that there are two orders that may be sought under the rule; stay of execution or of proceedings. Procedurally they are conceptually different. A stay of execution was defined in **OPPAN** V **FRANS & CO LTD** [1984-86] 1GLR 281 CA by Adade JSC at page 286 thus;

"…staying execution means suspending the enforcement of a judgment under the procedure prescribed by law for enforcing judgments i.e. in the case of the High Court, Order 42 of LN 140 A"

Staying proceedings is different. The nature of stay of proceedings has been stated in Atkin's Encyclopaedia of Court Forms in Civil Proceedings (Second edition) at page 189 thus:

> "A stay of proceedings arises when under an order of the court proceedings which are pending in that court are brought to a halt at the stage which they have reached, so that while the stay is in operation the parties are precluded from any further step in the proceedings"

However, it appears that the grant of any of the two orders may practically operate to hold in abeyance the execution process. In this application, it appears that after the dismissal of several applications for stay of execution, the applicant has resorted to stay proceedings of the Court of Appeal by this court under the said Rule 20(1) of CI 16. Reliance has been placed on this court's decision in the case of **STANDARD CHARTERED BANK LIMITED V WESTERN HARDWOOD LIMITED** [2009] SCGLR 196 to demonstrate that this court can stay proceedings of the Court of Appeal in appropriate cases.

In the above case, the court formed the view that the exercise of the power conferred on it to stay proceedings should be literally interpreted to refer to steps or any steps that were required or were necessitated, not merely occasioned by the judgment appealed

from. It sought to distinguish stay of proceedings from stay of execution. The above case was decided on 20/05/2009 and reference was made to an earlier decision of this court decided on 14/01/2009 in the case of **ANAN SOWAH** V **ADAMS** [2009] SCGLR III which appears to be the first reported case from this court when Rule 20(1) of CI 16 of 1996 came into force. It is therefore clear that this court in appropriate cases may stay proceedings in respect of steps that are undertaken to execute the judgment. This appears to be different from stay of proceedings in a pending action in which judgment has not been delivered by the court. In such a case the stay may arise from statute or inherent jurisdiction of the court and parties or the court itself may invoke it to hold in abeyance the progression of the case.

The application before us is post-judgment one in respect of steps that may be taken to enforce a judgment of a trial court. As pointed out earlier, it is a procedure different from stay of proceedings in pending trials. This court in the **STANDARD CHARTETED BANK GHANA LTD** V **WESTERN HARDWOOD LTD** and another (supra) for the first time had the opportunity to throw light on the scope of Rule 20(1) of C16. It proceeded to adopt, as it said, a liberal interpretation by expanding the scope of the rule as referring to any step that were required or were necessitated not merely occasioned by the judgment appealed from.

In the later case of **GOLDEN BEACH HOTELS (GH) LTD** V **PACK PLUS INTERNATIONAL LTD** [2012] SCGLR, 452 this court after referring to all the previous cases on Rule 20 (1) found it appropriate to state the dangers inherent in adopting the more liberal interpretation of the scope of the rule. Date-Bah JSC said at page 456 thus:

> "In the wake of these two authorities, namely **MERCHANT BANK GHANA LTD** V **SIMILAR WAYS LTD** [2012] 1 SCGLR 440 and **STANDARD CHARTERED BANK GHANA LTD** V **WESTERN HARDWOOD LTD** [2009] SCGLR 196 we think that this court needs to spell out the boundaries between orders for stay of execution and orders for suspension of the orders of courts below or for stay of proceedings (which have been construed by the Supreme Court in the Chartered

Bank case (per Atuguba) as including steps required to be taken pursuant to orders of the court below.) There is a risk of this court descending into a morass of sophistry with applications for orders for stay of execution formulated as applications for suspensions of the orders of the court below or as applications for stay of proceedings"

In practice any of the grant of the orders which derive their source from Rule 20 (1) could put a halt to execution process. Care must be taken as pointed out by Date-Bah JSC to spell them out clearly and authoritatively. In cases when there is an order for payment of money, any aggrieved party adjudged to satisfy the judgment debt may resort to several applications to abuse the judicial process if care is not taken to restrict the applications brought under the rule.

Date-Bah JSC later in the judgment formed the view that for this court to order suspension of the order of the Court of Appeal or stay of proceedings consequent on that order the applicant must demonstrate such exceptional circumstances as to justify the exercise of the extraordinary discretion to suspend the orders of courts below or to stay proceedings liberally construed by the earlier cases.

This court must thus be satisfied that extraordinary circumstances exists for the grant of the order to stay proceedings under the applicable rules. Any liberal approach to the applicability of the rule will as pointed out may lead to repetitions of applications some of which may have the potential to abuse the judicial process, especially in monetary claims.

Even though the rule imposes on us the power to grant stay of proceedings, extreme care must be taken when this discretion is to be exercised in favour of an applicant.

The crucial issue before us is whether or not the applicant has demonstrated any exceptional circumstance to warrant the exercise of our discretion in his favour. In our view the extraordinary circumstances that should exist on the authority of the **GOLDEN**

BEACH HOTELS (GH) LTD case (supra) is squarely on the applicant. Its exercise should not be resorted to just because an applicant is unable to pay the judgment debt. The applicant in his affidavit is not demonstrating any exceptional circumstances after various applications which he filed at the lower courts.

To invoke our powers to halt the steps in execution process without any exceptional circumstance would amount to inviting this court to just liberalise the scope of the rule which in our respectful view should be narrowed in its application.

For the reasons canvassed the application ought to be dismissed as without merits.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

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

DISSENTING OPINION

PWAMANG, JSC:-

I have read beforehand the erudite opinion just delivered by my respected brother Anin-Yeboah, JSC whereby he dismissed the application by the appellant praying for stay of proceedings of execution of the judgment of the High Court in this case dated 19th November, 2018. I am of a different persuasion as far as this application is concerned so I hereby present my view of the case.

The background to the application is that the parties have been business partners for sometime. The respondent is an importer of irons rods and has been using the services of the appellant as its insurer. They entered into a written insurance contract dated 16th October, 2009 whereby the appellant granted marine insurance cover for the respondent's importation of iron rods. In July, 2014, while the contract was in force, a ship conveying respondent's iron rods from China to Ghana was involved in an accident causing damage to the iron rods. Respondent made a claim to the appellant for the value of the damage which was processed and, initially, the appellant agreed to pay the respondent the valuated cost of the loss. Subsequently, the appellant refused to pay claiming that the contract of insurance contained a clause limiting its liability to USD120,000.00. The respondent disputed this and sued in the High Court for payment by the appellant of USD2,355,135.14 being the value of the loss it sustained from the accident.

After a trial, the High Court entered judgment for the respondent and the appellant appealed against the judgment and filed a motion in the High Court for stay of execution pending the determination of the appeal. The High Court granted the application on the condition that the appellant would pay 30% of the judgment debt plus the costs of GHS50,000.00 to the respondent. The appellant considered the conditions as onerous so it repeated the application for stay of execution before the Court of Appeal. The Court of Appeal also granted the application on the terms that the appellant should pay 15% of the judgment debt plus the costs to the respondent within 30 days. It is against this ruling of the Court of Appeal that the appellant has filed an appeal in this court and followed it

up with a motion in the Court of Appeal for stay of proceedings of execution of the judgment pending the determination of its appeal by the Supreme Court. The Court of Appeal dismissed that application and the appellant has repeated it before us. The appellant has exhibited garnishee proceedings that were initiated by the respondent after the appellant failed to take advantage of the order to pay 15% of the judgment plus the costs.

The grounds of the application are contained in the 22-paragraph affidavit in support and 6-paragraph supplementary affidavit. The case of the appellant is that the Court of Appeal erred when it failed to limit its conditions for the stay of execution to payment of the amount of USD120,000.00 which was the limit of liability stated in the insurance contract. The appellant then deposed that if it is made to pay 15% of the judgment debt and the costs, it will suffer irreparable damage. The substantive answer of the respondent to the application is contained at paragraphs 20 to 25 of its affidavit in opposition. It is thereat deposed as follows;

"20. That, the Respondent company is the largest iron rod and steel company in the Republic and has been valued to be worth over 30 (Thirty) Million United States Dollars.

21. That, on the 30th day of November, 2018, the respondent was issued with an invoice in the sum of USD850,481.73 (Eight Hundred and Fifty Thousand, Four Hundred and Eighty-One, Seventy-three) and was settled by the Respondent with Bank of Baroda transfer.

22. Exhibited hereto and marked as "Exhibited GGG" is a copy of the said invoice and the bank transfer under reference.

23. That, the Applicant's averment in paragraph 20 of their Affidavit in support is without foundation.

24. That, the current Motion for Stay of Proceedings pending the hearing and determination of the Appeal is an abuse of the court process.

25. That, the Applicant's Motion of Stay of proceedings is not supported by Case Law and by the Rules of Court in that their substantive appeal nor the appeal to the Supreme Court does not automatically justify an order staying proceedings before the court pending the determination of the Appeal."

From the above quoted depositions, if they can be called so, the respondent has taken issue with the appellant on the procedure it resorted to by this application and claims that it is not supported by case law or the rules of the court. This ground of objection ignites the age-old debate as to whether the court can entertain an application for stay of execution or proceedings pending an appeal where the decision appealed from is not executable. The debate arises from the very wording of Rule 20 (1) of the Supreme Court Rules, 1996 (C.I.16) and statutes of similar wording that preceded it. The Rule provides as follows;

"20 (1) A civil appeal shall not operate as a stay of execution or of proceedings *under the judgment or decision appealed against* except in so far as the Court or the court below may otherwise order."

"Execution or of proceedings under the decision appealed against" was construed in a long line of cases to mean where the decision appealed against is executable then execution or proceedings may be stayed. If not, the court had no jurisdiction to interfere. The list includes **Eboe v Eboe [1961] GLR 432; Mosi v Bagyina [1963] 1 GLR 337; Standard Chartered Bank of West Africa v Boaitey [1971] 2 GLR 308, Mensah v Ghana Football Association [1989-90] 1 GLR 1, N B Landmark Ltd v Lakiani [2001-2002] SCGLR 318.** The effect of that view of the law was that a party who appealed against an executable judgment given by a trial court but the appellate court dismissed the appeal without making any order may further appeal against the decision of the first appellate court, but irrespective of the circumstances of the case and any error committed by the first appellate court, he would have no interim remedy against execution of the decision of the trial court. If there was a fundamental error apparent on the face of the judgments of the lower courts and if execution would extinguish any chance of restoration to the appellant should she win the second appeal, it did not matter.

This situation was obviously unsatisfactory, particularly in the Supreme Court, the final court of the land where substantial justice must be done. Consequently, in the case of **NDK Financial Services Ltd v Yiadom [2007-2008] SCGLR 93**, this court by majority decision, Brobbey, Sophia Adinyira and Asiamah, JJSC; Atuguba and Ansah, JJSC dissenting, charted a new path and granted a stay of execution of a judgment of the High Court pending appeal when the decision on appeal to the Supreme Court was that of the Court of Appeal which only affirmed the judgment of the High Court. In his dissenting opinion, Atuguba, JSC felt restrained by the weight of the earlier decisions on the issue which he considered very clear. However, in the majority opinion authored by Brobbey, JSC he made this very important observation at page 98 of the Report;

"In considering an application for stay, the court should endeavor to do substantial justice. The court should consider the essence of the order more than the form in which it is couched. The most important point is what would happen if the order of the Court of Appeal were not obeyed by the party. If the consequences would be the same as refusing to obey the High Court order, and the High Court order is executable, then it is my view that the order in the repeat application before the Court of Appeal is equally executable."

What partly informed this revolution was stated by the learned jurist at page 99 of the Report as follows;

"At this stage of the proceedings, the merits of the case cannot be considered. However, it is apparent from the grounds of appeal that serious points have been raised for consideration in the substantive appeal. The appeal can therefore not be said to be frivolous."

This changed position of the court granting interim relief to an appellant in the Supreme Court when the decision appealed from was not executable appeared to be commending itself to the court and in the case of **Anang Sowah v Adams [2009] SCGLR 111**, Atuguba, JSC, delivering the ruling of the court, commented as follows at page 115 of the Report;

"In recent times there have been dicta in this court that by reason of Article 129(4) of the Constitution and also the alternative part of rule 20(1), a stay can be ordered by this court of proceedings that do not relate to execution of the judgment appealed from. On reflection, we respectfully think that is possible but such proceedings should be in respect of proceedings that stand to be taken by reason of the terms of the judgment appealed from…"

Nonetheless, the court held that it had no jurisdiction to grant an order for stay of execution unlike was held in NDK Financial Services Ltd v Yiadom.

Then in the case of **Standard Charted Bank (Ghana) Ltd v Western Hardwood Ltd & Anor [2009] 196,** the appellant who had appealed against a non-executable decision of the Court of Appeal applied to the Supreme Court for the suspension of the order of stay of execution granted on terms by the Court of Appeal. Though the court did not grant the prayer of the applicant, the court clearly asserted jurisdiction to stay proceedings in respect of execution process. In the Headnote of the Report the court held as follows;

"The court can, under rule 20(1) of the Supreme Court Rules, 1996 (C.I.16) grant, in an appropriate case, not only stay of proceedings under the judgment or decision appealed against but also stay in respect of execution process."

In the unanimous judgment of the court authored by Atuguba, JSC, with Ansah, Sophia Adinyira, R. C. Owusu and Baffoe-Bonnie, JJSC concurring, he referred to the court's decision in Anang Sowah v Adams (supra) and said as follows at page 200 of the Report;

"In this regard we would, in this modern era of functional or purposive justice liberally interpret the word proceedings in rule 20(1) as referring to any steps that are required or are necessitated, and not merely occasioned, by the judgment appealed from."

This new trend whereby the court accepted that, in appropriate cases, it could grant interim relief against execution of a judgment that was not the one on appeal before the

Supreme Court was adopted in the case of **Merchant Bank Ghana v Similar Ways Ltd [2012]1SCGLR 440** where the Supreme Court granted suspension of entry of judgment of the High Court when that judgment was not the one on appeal before the court. **In Golden Beach Hotels (Gh) Ltd v Packplus International [2012]1 SCGLR 452** the court in a unanimous decision authored by Dr Date-Bah, JSC approved Standard Chartered Bank (Ghana) Ltd v Western Hardwood Ltd (supra) and Merchant Bank Ltd v Similar Ways (supra). The court however cautioned that the jurisdiction to stay or suspend enforcement of a judgment not on appeal would be exercised only in special circumstances.

There is the small matter of whether this court can entertain the present application since the record of the appeal has not been transmitted. This issue is resolved by rule 20(2) which allows the appellant to repeat the application in this court if the Court of Appeal refuses to grant it. From the record before us, the appellant first applied to the Court of Appeal but the application was refused.

From the above background of the jurisdiction of the court that has been invoked in this case, the respondent is not right when it stated that the procedure is not justified by case law and the rules of the court. However, the respondent's contention that stay of proceedings of execution pending appeal such as we have in this case would not be automatic is correct. The first legal hurdle, in my view, must be that the grounds of appeal of the substantive appeal must raise serious points of law for the consideration of the appellate court. If that hurdle is crossed, then the court would consider the balance of convenience.

In this case, the trial judge relied on **Section 26 of the Evidence Act, 1975 (NRCD 323)** and held that the appellant was estopped by the entry of the name Yvonne Hoolbrook in a part of the insurance contract, entered into ostensibly by the parties, from contending that the provision in the contract limiting liability of the insurer was binding against the respondent. However, without prejudice to the appeal, Section 26 of NRCD 323 that the trial judge hinged his judgment on is stated to be subject to other laws including the principles of equity and it is well known that the principles of equity may

grant relief under certain conditions. The appellate court would be required to resolved serious points of law arising in the substantive appeal.

On the balance of convenience, the fact that the appellant has exhibited a cheque for the payment of USD120,000.00 being what it claims to be the limit of its liability means that the respondent would have partial relief while it waits for the determination of the appeal by the Court of Appeal. In the circumstances, I will grant an order staying proceedings of execution of the judgment of the High Court dated 19th November, 2018 pending the determination of the appeal in the Court of Appeal and order that the amount of USD120,000.00 be paid to the respondent.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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