IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ADINYIRA (MRS), JSC (PRESIDING)

YEBOAH, JSC

BAFFOE-BONNIE, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/40/2018

17TH OCTOBER, 2018

1. ZIKPUITOR AKPATSU FENU
2. BENJAMIN ATSU
3. EDWARD MARSHAL KOBLAH PENU
4. KAREEM ABU
5. ALEXANDER PONS PETRO …….. PLAINTIFFS/RESPONDENTS/APPELLANTS

VRS

1. THE ATTORNEY GENERAL
2. MINISTRY OF WATER RESOURCES
3. DREDGING INTERNATIONAL LTD. ….. 3RD DEFENDANT/APPELLANT/RESPONDENT
4. ENVIRONMENTAL PROTECTION AGENCY

JUDGMENT

YEBOAH, JSC:- This appeal before this court is from the judgment of the Court of Appeal, Koforidua which stayed the proceedings of the High Court, Ho.

The case did not proceed to trial on the merits and therefore the facts for the determination of this interlocutory appeal are captured only from the pleadings, the affidavits of parties and the courts' records before us as an appellate court.

The respondent herein and three other defendants (who appeared not to contest the matter), were sued by the appellant before the High Court, Ho. The respondent is a foreign firm engaged in marine reclamation and was engaged by the Government of Ghana to undertake the salvaging of coastlines at Ada and other areas in the Volta Region to prevent further erosion of the coastline. The respondent, executed the contract and in course of so doing, the appellants sued them at the Ho, High Court on 11/08/2014. The basis of the claim was that the execution of the contract had resulted in substantial damage to their properties and affected an island known as Gamewu Island rendering it inhabitable. The respondent therefore claimed damages for the loss of properties and sought other reliefs to restrain the respondent. As said earlier, the 1st, 2nd and 4th defendants did not enter any appearance and the respondent herein who was at the material time physically on the site entered appearance and contested the action. As expected, the respondent denied any damage caused by his activities. The appellant sought and order of mandatory injunction against the respondent on the grounds that the "natural calm flow" of the Volta River into the sea had been disturbed by the activities of the respondent.

After hearing the interlocutory application the trial court made far-reaching consequential order directing the 2nd and 3rd defendants to act within forty days to dredge sand and to protect with groins the partly submerged island and the main land. A further order was made directing the respondent to pay into court Gh₵8, 000.000.00 as security for its presence in

Ghana, which order the respondent appealed. The appellant further applied for an order directing the respondent to file "the full and complete authentic page by page Ada Coastal Protection Works contract documents and other related documents regarding insurance, contingency, environmental guarantee to the project financing Bank". This interlocutory order was opposed by the respondent and after it was granted respondent again appealed against it. As these far-reaching orders were not being complied with, the appellant applied to have the statement of defence of the respondent struck out for judgment to be accordingly entered against the respondent. It is against this order that the respondent applied for stay of proceedings at the Court of Appeal, Koforidua and same was granted on 26/04/2016.

The appellants feeling aggrieved by the stay ordered by the Court of Appeal, Koforidua has appealed to us on a number of grounds.

GROUNDS OF APPEAL

1. The ruling is against the weight of the evidence
2. The holding that the 3rd defendant/appellant/applicants grounds of appeal against the High Court order for Discovery , alleging that:
    i. "The Ada Coastal Protection Contract documents ordered to be produced are not necessary to dispose fairly of the cause or matter or to save cost"
    ii. "The respondent was not a party to the Ada Coastal Protection Works neither are the terms of the contract relevant to the matters in dispute"
    iii. "The Ada Coastal Protection Contract Documents ordered to be produced are cumbersome, bulky and large, covering various matters including technical drawings, elevations, specifications, insurance, contingency, environmental

issues, project financing and many other matters that will complicate and protract a fair disposal of the action"

iv. "Reproducing the Ada Coastal Protection Contract documents will impose unnecessary financial burden on the 3rd defendant.

Are arguable points of law for staying the entire proceedings in the suit at the High Court is a wrongful exercise of judicial discretion and not supported by law or the facts.

3. The Court of Appeal holding that the 3rd defendant/appellants refusal to make discoveries by the High Court is a special circumstance to stay the entire proceedings in the pending suit is not supported by
    i. Law
    ii. The facts
4. The Court of Appeal staying the entire proceedings in the suit without considering the stage the appeal against the order for discovery which has been cause with non-compliance is wrongful of judicial discretion.
5. The Court of Appeal's ruling staying the entire proceedings in the pending suit without paying due regard to the stage of the appeal which has been caught by non-compliance is wrong in law and a nullity.
6. The ruling staying the entire proceedings in the suit is a wrongful exercise of discretion which has resulted in gross miscarriage of justice to the respondents/appellants
7. Further grounds of appeal will be filed upon receipt of the appeal records.

The respondent has raised objection to the ground 1 of the grounds of appeal which seeks to criticize the judgment on the basis that it is against the weight of evidence and the

invitation by the appellant for this court to conduct a fresh enquiry or rehear the entire application for the stay of proceedings.

The omnibus ground is usually common in cases in which evidence was led and the trial court was enjoined to evaluate the evidence on record and make its findings of facts in appropriate cases. In cases in which no evidence was led but the order which has been appealed against is interlocutory, such ground of appeal are not canvased at all. This has been settled long ago by this court in three notable cases; ASAMOAH v MARFO [2011] 2 SCGLR 832, REPUBLIC v CONDUAH; EX PARTE AABA substituted by ASMAH [2013 – 2014] SSCLR 1032 and RE SUHYEN STOOL; WIREDU & OBENEWAA v AGYEI & ORS [2005 – 206] SCGLR.

We think this ground is clearly misconceived and same is hereby strucked out as there were no disputed factual matters which called for findings by the lower court which merely determined the application for stay of proceedings on affidavit evidence which was not in controversy.

Learned counsel for the respondent has seriously criticized the formulation of ground 2 of the grounds of appeal on the grounds that it offends Rule 6(4) of CI 16. Counsel is of the view that the ground is verbose, narrative and impeding comprehension. We have given same thought to the argument raised against this ground, however, given the nature of this case, we have decided to consider the ground of appeal regardless of the fact that the framing of same falls short of the procedural standard of this highest court. We accordingly do so to advance substantial justice in this appeal. Our only serious objection to the ground is the fact that the learned counsel for the appellant has quoted a passage and attributed same to the learned justices of the Court of Appeal. We do not find this statement to have

been made by the Court of Appeal in the ruling of 26/04/2016 which is on appeal before us. Indeed the court's ruling was tense but this does not take away the reasons for the grant of the application. For a fuller record we reproduce the order on appeal:

> "we have considered the entire application and we are of the considered opinion that the 3rd defendant has raised an arguable point which could have an impact on the decision by the trial High Court, looking at the exceptional circumstances of the case and the grounds of appeal raised in the Notice of Appeal, we shall stay proceedings of the substantive matter pending before the High Court, Ho until the interlocutory appeal filed on 6th November, 2015 is heard. There will be no order as to costs"

No where in the proceedings of the court dated 26/04/2016 were the above statement quoted as a ground of appeal was stated by the court on record. We find this ground as clearly misleading and proceed to dismiss same as unmeritorious. The appeal before us is against the order staying proceedings by the Court of Appeal. It is not a second appeal for us to reopen the entire matter under the guise of rehearing. On record, the High court judge did not grant any order for stay of proceedings which any of the parties appealed to this court as a court of first instance in determining the application for stay of proceedings and no more.

Another complaint against the ruling which appeared in the ground 2 of the Notice of Appeal is an invitation by the appellant "to conduct a fresh inquiry or rehear the entire application for stay of proceedings pending the interlocutory appeal which has brought the suit at the trial High Court to an abrupt end and same to the conclusion as to whether or not on all the available evidence put before the Court of Appeal Koforidua …"

We think counsel, with due respect, is not appreciating the procedure and principles governing stay of proceedings. A stay of proceedings pending in a court of law is procedurally derived from three sources: the courts' inherent jurisdiction, the rules of court (if any, is provided by statute) and the provisions of a particular statute e.g. in arbitration statutes. It is an application made usually to the court where proceedings are actively pending. See Re: Artistic Colour Printing Co. [1880] 14 chD.502. In his authoritative book, Atkins Encyclopedia of Court Forms in Civil Proceedings (Second Edition, volume 37 page 189 said of stay of proceedings as follows:

> "A stay of proceedings arises when under an order of the court proceedings which have been 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 taking any further step in the proceedings" [emphasis ours]

It is a discretionary remedy granted by the court in very exceptional circumstances after having taken all relevant matters into consideration. See REPUBLIC v COMMITTEE OF INQUIRY (R.T. BROSCOE (GHANA) LTD); EX PARTE R.T.BRISCOE (GHANA) LTD. [1976] IGLR 166 CA and SELDON v DAVIDSON [1968] IWLR 1038, CA. and GARRET v GARRETT [1991] 2 GLR 366 CA. Learned counsel for the appellants complaint that the order for Discovery and Security for appearance should be reconsidered by this court, is with due respect misconceived. As an appellate court, we could only intervene in the exercise of that discretion in limited circumstances as has been settled on authority. See OWUSU v OWUSU-ANSAH [2007-2008] 2 SCGLR 870, CRENSTIL v CRENSTIL [1962 2 GLR 171 SC and BLUNT v BLUNT [1943] AC 517, HL.

In the same Atkin's Encyclopedia of Court Forms in Civil Proceedings (second Edition, Volume 37, at page 195 the learned author proceeds to discuss appeals on orders staying proceedings as follows:

> "An order staying proceedings will be treated as interlocutory order… moreover, the making of the order to stay proceedings is discretionary and the Court of Appeal will not in general interfere with the exercise of the discretion by the judge except where serious injustice might otherwise result" [emphasis ours]

See HADMOR PRODUCTIONS LTD v HAMILTON [1983] I AC 191 HL.

It was the duty of the appellants in this appellate court, to demonstrate that the discretion exercised for the grant of the stay of proceedings by the Court of Appeal was made on wrong or inadequate materials or that it acted under a misapprehension of fact by giving weight to irrelevant or unproved matter as it ignored relevant matters which ought to have been taken into consideration thereby leading the Court of Appeal to erroneously deciding the application against the appellants. We have given sufficient time to discuss in detail the grounds for the grant of the application by the Court of Appeal and we have found that even though the ruling appears to be terse, there was nothing wrong with the order made given the circumstance of the case before it.

Another point raised as a ground of appeal was the fact that the Court of Appeal granted the order to stay the whole proceedings at the High Court. It appeared in the submissions of counsel for the appellant that no cogent reasons was offered in support of the ground of appeal. The order made was temporarily to halt proceedings and in practice could be

removed by an order of the court which granted the stay. See COOPER v WILLIAMS [1963] 2 QB567.

As we have pointed out above, that, the discretion is exclusively vested in the Court of Appeal which was seized with the matter, as a court of first instance. It must be made clear that there were about three interlocutory applications that were appealed against in a case at the High Court in which, from the record of proceedings pleadings had not even closed. It appears that virtually all the interlocutory orders made by the learned High Court judge adverse to the respondent herein are on appeal before the Court of Appeal. The Court of Appeal could therefore not be faulted for the grant of the application to halt all the proceedings given the fact that the determination of all the interlocutory orders were on appeal could probably have serious effect on the case before the High Court, Ho.

We have come to this conclusion without seeking to make any pronouncements which may prejudice the determination of any of the appeals pending at the Court of Appeal even though from the submissions of counsel for the appellants in would appear that he was inviting this court to do so from a close reading of the submissions and the grounds of appeal filed. We are of the considered opinion that the determination for the few grounds of appeal should suffice to dispose of this appeal.

We accordingly proceed to dismiss this appeal 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)

BAFFOE-BONNIE, JSC:-

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

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

APPAU, JSC:-

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

EDWARD MARSHALL KOBLAH PENU FOR THE PLAINTIFFS/RESPONDENTS/APPELLANTS.

S KWAMI TETTEH FOR THE 3RD DEFENDANT/APPELLANT/RESPONDENT.