IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2013

CORAM: BENIN, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION

No. J8/49/2013

15TH APRIL,2013

ABED NORTEY, suing for himself and on behalf of the Osuwem family of Prampram---Plaintiff/Respondent/Appellant/Applicant

v.

1. AFRICAN INSTITUTE OF JOURNALISM & COMMUNICATION---1st defendant

2. STEPHEN NARTEY----2nd defendant/appellant/respondent

3. DANIEL NARTEY-------3rd defendant/appellant/respondent

RULING

BENIN, JSC:-

The plaintiff/respondent/appellant/applicant, hereinafter called the applicant, brought the present application to this court seeking an order of injunction pending appeal to restrain all the parties by themselves, servants, agents, workmen, assigns or otherwise dealing with the land in any way till the final determination of the appeal pending before this court.

The facts giving rise to this application are briefly stated as follows. The applicant sued the three defendants before the High Court claiming declaration of title to a piece of land described in the writ, among other reliefs. The applicant got judgment at the High Court. Dissatisfied with the decision of the High Court, the defendants appealed to the Court of Appeal which overturned the judgment of the High Court, by its judgment dated 14th June 2012. The applicant appealed against the entire judgment of the Court of Appeal on the sole ground that the judgment is against the weight of evidence.

The applicant applied to the Court of Appeal to stay execution pending appeal to this court, but the court below dismissed the application for stated reasons. A repeat application to this court was struck out as withdrawn with costs of GHC2,000.00, according to the court's record dated 11th December 2012. The effect of this order is that there was no stay in force, but the applicant could come back to this court with a similar application in the same proceedings.

However, the applicant did not file another application for stay of execution but rather filed the present application for interlocutory injunction. The grounds for this application are deposed to in an affidavit in support, particularly paragraphs 8 to 16 thereof. Briefly stated, the applicant complains that despite the pendency of the appeal, the land is being disposed of and developed at a fast rate. It will be in the interest of justice and the parties that all parties be restrained, according to the applicant.

The 2nd and 3rd defendants/appellants/respondents, hereinafter called the respondents, opposed the application. Among other grounds, the respondents raised what appears to be a legal objection to the application. Counsel for the respondents cited Rule 16(1) of the Supreme Court Rules, (1996) C.I. 16, and submitted that the application was incompetent in so far as the court was not seized with the appeal at the time the application was filed.

Rule 16(1) provides that *'After the transmission of the record of appeal from the court below to the court, the Court shall be seized of the appeal and any application relating to the appeal shall subsequently be made to the Court'.*

The meaning of this Rule is clear and it is this: the court below should not hear any aspect of the case once the record of appeal has been transmitted to this court; hence all applications shall be addressed to this court.

This Rule should be considered alongside Rule 20(2) which reads thus: *'Subject to these Rules and to any other enactment governing appeals an application for stay of execution or of proceedings shall first be made to the court below and if that court refuses to grant the application, the applicant shall be entitled to repeat the application before the court for determination'.*

Whereas Rule 20(2) applies where the record of appeal has not been transmitted to this court, Rule 16(1) applies from the moment the record is transmitted to this court. The application for stay of execution which was made to the court below which that court dismissed as well as the repeat application to this court which was withdrawn were both made under Rule 20(2). What of the instant application? At the time the present application was filed, the record of appeal had not yet been transmitted to this court. It followed that this court was not seized with the appeal, therefore all interlocutory applications, not only those for stay of execution and stay of proceedings, should first be made to the court below, before a repeat application could be brought before this court. This is because the court is not acting within its original jurisdiction and is not seized with the appeal yet. Hence the court below should have the benefit of having a first look at all the interlocutory applications in the case, since by rules of court the matter is still pending in that forum until the record has been transmitted to this court.

The instant application was not brought before the court below in the first place; it was brought directly to this court. By virtue of Rule 16(1) the applicant did not have the right to come directly to this court when the court was not seized with the appeal.

For the foregoing reasons, it is my view that the application is incompetent. It cannot be saved by the fact that the court is now seized with the appeal, what is material to consider is that at the time of filing the court was not seized with

the appeal. There is thus no reason to go into the merits of the application. The application is accordingly dismissed with costs of GHC1,000.00 against the applicant in favour of the 2nd and 3rd respondents.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

KWAME YENKYERE FOR THE APPLICANT.

CHARLES HAYIBOR FOR THE 2ND AND 3RD RESPONDENTS.

NOTE: THIS RULING HAS BEEN OVERTURNED BY G. T. WOOD (MRS) C.J (PRESIDING), ANIN YEBOAH AND J. B. AKAMBA JJS.C ON THE 17TH DAY OF MAY, 2013 IN A REVIEW APPLICATION FILED ON THE 23RD DAY OF APRIL, 2013.