IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA- AD 2015

CORAM: ATUGUBA JSC (PRESIDING)
AKUFFO (MS) JSC
ADINYIRA (MRS) JSC
GBADEGBE JSC
BENIN JSC

CIVIL MOTION
NO.J8/47/2015

7TH MAY2015

ADM COCOA GHANA LIMITED ... RESPONDENT

VRS

INTERNATIONAL LAND DEVELOPMENT. ... APPLICANT COMPANY LIMITED

RULING

ATUGUBA JSC:

The brief facts of this application are that a judgment for US$2 million damages was given by the High Court in favour of the respondent against the applicant. Upon the transmission of the record of appeal to the Court of Appeal the applicant unsuccessfully thereat applied for a stay of execution of the said judgment pending the determination of the appeal by the court of Appeal. Having appealed to this court against the said refusal the applicant again applied unsuccessfully to the Court of Appeal for a stay

of execution. The course of events from that stage is best captured in paragraphs 9 to 17 of the applicant's affidavit in support of its present application before this court.

They are as follows:

"9. That pending the determination of the Interlocutory Appeal to this Court, the Applicant filed an Application before the Court of Appeal seeking to suspend any steps on the Entry of Judgment by the Plaintiff/Respondent pending the determination of the Interlocutory Appeal (Exhibit KBA "4")

10. that on the 25th of February, 2015 the Court of Appeal Coram, Marfo Sau J.A. (Presiding), Aduamah Osei J.A. and L. L. Mensah J.A. heard the Application and dismissed same on the ground that the decision of the Court of Appeal (Exhibit KBA "2") was binding upon them and therefore the appropriate place for the Application is the Supreme Court. The Applicant has since applied for the ruling of the Court of Appeal. Attached and marked as Exhibit "KBA 5" is evidence of same.

11. That in the circumstances, this Application is thus a repeat Application.

12. That the Applicant is of the respectful position that the "nugatory test" adopted by the Court of Appeal in Exhibit KBA "3" did not take into consideration the clear fact that the Respondent's position that it was a going concern capable of refunding the Judgment debt in the event that the Applicant succeeded in the Appeal, was a bald claim for there *was nothing supportive of same.*

13. That at all material times, the issue between the parties was whether or not the warehouse floor had failed because of inferior materials and workmanship (Plaintiff/Respondent/Respondent's contention) or because the

Plaintiff/Respondent had allowed trucks to come into the warehouse without regard to the concrete strength of the warehouse floor. (Defendant/Appellant/Applicant's contention.)

14. That the High Court awarded the Plaintiff/Respondent/Respondent the sum of Two Million United States Dollars (US$2,000,000) and that in the event that the Appeal succeeds, the Defendant/Appellant/Applicant will be saddled with a worthless warehouse. Attached and marked as Exhibit "KBA 6" is a copy of the Judgment of the High Court.

15. That above all, the recovery of any sums paid as Judgment debt from the Plaintiff/Respondent may lead to further litigation which can easily be avoided by a stay of execution.

16. That in the circumstances, the Applicant respectfully, states that the Court of Appeal in the application of the "nugatory test" thereby violated the integrity of the Appellate process.

17. That the Court of Appeal did not consider the fact that the Grounds of Appeal raised an arguable Appeal and the prospect that a successful Appeal would be rendered nugatory because an examination of the Record of Appeal does not show that the Plaintiff/Respondent/Respondent has any security upon which the Applicant can fall to recover the Judgment debt if same is paid before the determination of the Appeal."

In arguing the application before us Mr. Kwame Akuffo relied on the cases of *Golden Beach Hotels (Ghana) Ltd v Pack Plus International Ltd.* [2012] SCGLR 452 and *Merchant Bank Ghana Ltd. v Similar Ways Ltd*, [2012] 1 SCGLR 440.

However as explained by our respected brother Dotse JSC in a paper presented by him at the 2013/14 Annual Conference of the Ghana Bar Association held at Ho Polytechnic on 17/9/2013 on the topic "EXECUTABLE – NON EXECUTABLE ORDERS – THE PREDICAMENT OF THE

JUDGMENT DEBTOR IN STAYING EXECUTION OF JUDGMENT PENDING APPEAL" there are "cases where the court has taken some different positions all aimed at addressing the cardinal issues of justice raised in the cases. But this trend appears to have been gently criticized, refined and fine tuned by the decision of the Supreme Court in the case of *Golden Beach Hotels (Ghana) Ltd v Pack Plus International Ltd.* [2012] SCGLR 452, where my respected and learned brother, Date-Bah JSC, speaking on behalf of the Court on issues relating to executable and non-executable orders stated as follows:-

> "In the wake of these two authorities namely, *Merchant Bank Ghana Ltd. v Similar Ways Ltd*, [2012] 1 SCGLR 440 and *Standard Chartered (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 Standard Chartered Bank case (per Atuguba JSC) 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. Thus, the preconditions for a successful application for an order for suspension of the order of a court below or for the stay of proceedings (including execution process) need to be spelt out clearly and authoritatively, otherwise the received learning on executable and non-executable orders would be rendered irrelevant. Logically, the preconditions for triggering orders for suspension of orders of Lower Courts and stay of proceedings pending under rule 20 of the Supreme Court Rules, 1996 C.I 16 have to be stricter and narrower than those for an ordinary application for stay of execution. Otherwise, this court is likely to wallow in a semantic morass".

Date-Bah JSC continued to elucidate the unanimous decision of the Court in the said case in the following hallowed terms:-

> "On the facts of the present case, we are not inclined to grant an order for suspension of the order of the Court of Appeal nor to stay any proceedings consequent on that order. The applicant has not demonstrated such exceptional circumstances as to justify, in our view, the exercise of the extraordinary discretion to suspend the orders of Courts below or to stay proceedings, liberally construed, on the lines established in the two cases cited above, namely, *Merchant Bank Ghana Ltd v Similar Ways Ltd (supra)* and *Standard Chartered Bank (Ghana) Ltd v Western Hard Wood Ltd supra.* We would like to reiterate that the range of such exceptional circumstances would have to be kept narrow in order not to overthrow the rule that there can be no stay of execution of non-executable orders."

We do not see anything that contradicts this court's unanimous decision in the *Golden Beach Hotel* case when it held as per the headnote (6) in *Ofosu-Addo v Graphic Communications Group Ltd* (2011) 1 SCGLR 355 that:

> "(6) The court in granting or refusing an application for stay of execution pending the determination of an appeal would act according to well-settled principles, enabling the court to bridge the gap in the intervening period between the delivery of the judgment in the court below and the time that the appeal would finally be determined; that would enable the court to deal with the rights of the parties in the pending appeal by the grant of interim or provisional remedies, which among others, would ensure that a successful appeal was not rendered nugatory by the making of orders such as that made in the instant case."

A statement of Dotse JSC in his aforequoted erudite paper however can evoke such an impression. He said:

> "From the facts of the Merchant Bank case, it appeared my respected brethren therein were confronted with peculiar facts and circumstances of that particular case and were desirous of ingeniously designing a legal proposition to manage the situation as a Court of last resort. This practice is not uncommon, as it was done by us in the recent consolidated unreported case of *Republic v High Court, Kumasi, Ex Parte Bank of Ghana, Mr. Kwesi Amissah-Arthur & Franklin Belnye-Applicants, Rev. Rocher De-Graft Sefa & Another – Interested Parties*, suit number J5/14/2013 and *Republic v High Court, Kumasi, Ex Parte Bank of Ghana Mr. Kwesi Amissah-Arthus & Franklin Belnye* – Applicants, Samuel Gyamfi & 693 Others-Interested Parties, Suit No. J5/15/2013 dated 10th April 2013 coram, Wood C.J., Dotse, Yeboah, Benin, Akamba JJSC"

However those powers were exercised under the supervisory jurisdiction of this court whereunder this court has very wide powers, as explained by this court in several cases, under article 132 of the constitution, which provides as follows:

> "The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power." See for example *British Airways v Attorney-General* (1996-97) SCGLR 541 and *Accra Recreational Complex v Lands Commission* (2007-2008)1 SCGLR 108.

One would nonetheless have to scrutinize those judgments carefully, so as to ascertain their real ambit and to avoid conflicts with other statutory provisions.

Conclusion

In view of this court's decision in the *Golden Beach* case which clearly explained the ambit of this court's decision in the *Similar Ways case*, the

applicant's counsel was not entitled to indulge in the wild brilliance he sought to exhibit before this court in relation to that decision.

This application does not come within the exceptional categories of cases referred to in the *Golden Beach* case and therefore fails.

It is clear that rule 20 of the Supreme Court Rules, 1996 (C.116) seeks to cater for the interest, on the one hand of the judgment debtor in ensuring that his worthy appeal is not rendered nugatory and the interest, on the other hand, of not denying the judgment creditor the fruits of his victory, by providing a tabulated procedure on the issue of an effect of an appeal on a judgment. Like any statute, this court has sought to grant relief where to deny the same would be absurd or dehors the reasonable contemplation of the legislature but it cannot negate the legitimate ambit and purport of the legislation on stay of execution, which the applicant erroneously thinks this court has held that it can do.

The true remedy is a simple amendment of the procedural rules on stay of execution by simply having it legislated that an appellate court may grant any interlocutory relief it deems just pending the determination of any appeal before it.

For all the foregoing reasons we dismiss this application.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

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