IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

CIVIL APPEAL
No.J4/21/2014

10TH APRIL 2014

CORAM: R.C OWUSU (MS) JSC (PRESIDING)
J. V. M. DOTSE JSC
ANIN-YEBOAH JSC
P.BAFFOE-BONNIE JSC
N. S. GBADEGBE JSC

ALEX ADU - **PLAINTIFF/RESPONDENT**
SUING PER HIS LAWFUL ATTORNEY **RESPONDENT/APPELLANT**
AUGUSTUS OSAE AKONNOR

VRS

THE COMMISSIONER-GENERAL - **DEFENDANT/APPELLANT/**
GHANA REVENUE AUTHORITY **APPLICANT/RESPONDENT**

JUDGMENT

DOTSE JSC:

The main issue raised in this appeal revolves around the principles that an appellate court faced with an application for Stay of Execution must consider and apply.

FACTS OF THIS CASE

The Plaintiff/Respondent/Respondent/Appellant, hereafter referred to as the Plaintiff claimed the following reliefs in the High Court against the Defendant/Appellant/Applicant/Respondent, hereafter referred to as the Defendant:

PLAINTIFF'S CLAIM AGAINST THE DEFENDANT:-

a. "General damages for the illegal and unlawful detention of his vehicle from **19th February 2008** to **9th August 2010**.

b. Loss of use on the two vehicles at the rate of GH¢30 per diem on the Nissan Primera and GH¢600 per diem on the Tipper Truck from 19th February 2008 to 9th August 2010.

c. Interest on the above sums at the prevailing bank rate.

d. Any further order or orders as this Honourable Court would deem fit in the circumstances."

Basically, the Plaintiff herein averred in his statement of claim that sometime on or about the 5th day of October, his lawful Attorney, one Augustus Osae Akonnor shipped one used Nissan Primera Saloon car and one Foden 3000 Tipper Truck from London with appropriate shipping documents to Ghana as transit with the final destination being Burkina Faso.

However, the clearing Agent of the Plaintiff, Trafix Limited of Tema upon Plaintiff's instructions applied to the Assistant Commissioner of CEPS, Tema for permission to pay the necessary import duties to enable him clear the said vehicles in Ghana.

Pursuant to the above, the Plaintiff's agents were permitted by the Defendant's representatives in Tema to pay duty on the two vehicles on 19th February 2008.

However, after the payment of the duties on the said vehicles and an acknowledgment of same by the Defendant's representatives, agents of the Defendants seized the two vehicles claiming they were conducting investigations into their ownership.

The Defendants contested the said case, **even though from their defence, it was clear and apparent that they had no credible defence to offer**.

In view of the issues raised in this appeal, we have decided to quote in extenso paragraphs 3, 4, 5, 6 and 8 of the Plaintiff's statement of claim filed in support of the writ already referred to supra.

PLAINTIFF'S STATEMENT OF CLAIM

3. "Plaintiff says that on or about 5th October 2006 his Lawful Attorney Augustus Osae Akonnor shipped one used Nissan Primera-Saloon Car with Chassie No. SJNFCAP11UO257367 and one Foden 3000 Tipper Truck with Chassis No. SFNC104TOP300587 from London (with a Bill of Lading No. S.3009443890 to Ghana in transit with the final destination being Burkina Faso.

4. Plaintiff says that on 15th February 2008 his clearing agent by name Trafix Limited of Tema applied on his behalf to the Assistant Commissioner – CEPS, Tema for the payment of the necessary import duties in order to clear the said vehicle in Ghana.

5. Pursuant to the Plaintiff's agent's letter of 15th February 2008 and pursuant to the agreement of the Defendant, Trafix Limited on behalf of the Plaintiff paid all duties on the two vehicles on 19th February 2008 per receipt No. 2008060483.

6. Three days after paying all the duties on the vehicles aforesaid, the Defendant served him with a seizure notice through his agent on the ground that the vehicles have being seized pending investigations as to ownership of the said vehicles.

8. Plaintiff says that he has suffered serious loss and injury as a result of the conduct of the Defendant."

In similar vein, we deem it appropriate to refer to the following paragraphs 7 and 8 of the Defence of the Defendants.

STATEMENT OF DEFENCE

7. "In further answer to paragraphs 6 and 7 of the Statement of claim, the Defendant says that after the necessary investigation

and procedures had been completed and which are in the interest of safeguarding the safety of goods including vehicles and that the true owners take delivery of their goods, the vehicles were duly released to the plaintiff.

8. In further answer to paragraph 8, the Defendant states that clearing of goods, at the port is a process (and not an event) the duration of which depends on circumstances of each situation and the Plaintiff cannot blame **Customs for having engaged in a cumbersome transaction involving transit and home consumption and getting involved in changing from one regime to another."**

After trial, the learned trial Judge, on the 6th day of July, 2012 delivered judgment in which the plaintiff's reliefs as per the writ of summons were granted in terms as appear's hereunder.

In view of the antecedents of this case which resulted into the Court of Appeal granting an application for Stay of Execution of the judgment of the High Court of even date, despite the fact that the High Court refused a similar application, we consider it appropriate to quote in extenso, portions of the erudite judgment rendered by the High Court on 6th July 2012 aforesaid, as follows:

> *"By paragraphs 3 and 4 of the Statement of Defence, the Court finds that the defendant herein has admitted the following facts averred in paragraphs 2 to 6 of the Statement of Claim.*
>
> 1. *That on the 5th October 2006 Augustus Osae Akonnor shipped one Nissan Primera Saloon Car and one Foden Tipper Truck from London to Ghana in transit with the final destination being Burkina Faso.*
>
> 2. *That on the 15th February 2008 the clearing agent of the plaintiff applied to the defendant for the payment of the necessary customs duties.*
>
> 3. *That on the 19th February 2008 the plaintiff through his agent paid all the customs duties on the two vehicles.*
>
> 4. *Three days after paying all the duties on the two vehicles the defendant served the plaintiff with a seizure notice on the ground*

that the vehicles have been seized pending investigations as to the ownership of the said vehicles.

The main question for determination is whether or not the seizure and detention of the vehicles herein is ***lawful*** *and* ***reasonable****.*

The functions of the defendant as far as the Department of Customs, Excise and Preventive Service is concerned is quite clearly stated in Section 2 of the Customs, Excise and Preventive Service (Management) Act, 1993 PNDCL 330. The said section 2 states that:

2. "Object and function of the Service

The object and function of the Customs, Excise and Preventive Service is to collect and account for the duties, taxes, revenue and penalties payable under this Act."

Indeed nowhere under the Customs, Excise and Preventive Service (Management) Act, 1993 PNDCL 330 is the defendant authorized to seize or detain an imported vehicle for a period of two years and over on the basis of an allegation that the vehicle whose customs duties and taxes have been duly paid did not belong to the importer or the person whom the importer had transferred his interest therein.

The evidence before the court show quite clearly that the vehicles in question were exported by the plaintiff's attorney herein from the United Kingdom to Ghana and that the plaintiff's attorney after sometime transferred his interest in the vehicles to the plaintiff who paid the necessary customs duties and taxes imposed by the defendant as endorsed by Exhibits A and A1.

The Defendant's Representative had testified that after the payment of the relevant duties and taxes the importer was supposed to have the vehicles released to him at most five days thereafter.

There is ample evidence before the court that the taxes were paid on the two vehicles herein on the 19th February 2008. Nevertheless the vehicles were not released to the plaintiff who testified to making several follow ups to the offices of the defendant to no avail. On the 15th June 2010 the

plaintiff sent Exhibit 'B' to the defendant for the release of the vehicles to him. On the 9th July 2010 the plaintiff wrote Exhibit 'C' to the defendant in which he questioned the defendant's right and authority to seize and detain the two vehicles through its employees and servants.

Then on the 9th August 2010 the Commissioner for Customs wrote Exhibit 'D' in which he ordered the release of the two vehicles to the plaintiff. The question is if the vehicles were not detained by the defendant as contended by the defendant's representative why was Exhibit 'D' written?

Indeed throughout the evidence, the defendant's witness/representative could not offer any tangible explanation for the detention/seizure of the two vehicles since 19th February 2008 to 9th August 2010 when they were ordered to be released to the plaintiff."

From the above rendition of the facts by the learned trial Judge in the judgment, it is apparent that there was absolutely no basis whatsoever for the detention of the vehicles by agents of the defendants.

Granting that the seizure notices were issued in error, the defendants should have realised their mistake or errors by the series of attempts made by the plaintiff to draw attention to the wrongful seizure of the vehicles. These attempts found expression in the letters written by the Plaintiffs to the Defendants as in Exhibits "B" and "C" of 15/6/2010 and 9/7/2010 respectively. Indeed the length of time taken by the defendants to investigate a simple issue of ownership of vehicles is an indictment on the efficiency of the defendants in the performance of their functions as prescribed under PNDCL 330.

What is also apparent from the facts as had been narrated by the learned trial Judge is that the officials of the defendants who handled this matter were either not concerned with the plight of the plaintiff or were just interested in showing brute force and power in their actions.

This clearly epitomizes the frequent show and display of naked power by public officials in the discharge of their duties. These phenomenom normally leads to the public entities incurring huge liabilities for the state. By this, funds which should be channeled for development of social amenities for the country are used to pay avoidable judgment and needless debts as has happened in the

instant case. We believe the time has indeed come for public officials, who recklessly incur liabilities for their establishments through their acts of omission or commission must be surcharged for their actions.

This no doubt will serve as a warning to all other public officials and indeed the general public to be circumspect in their conduct of official business. It was not surprising therefore for the learned trial Judge to conclude his judgment in the following terms:-

> *"From the foregoing the only conclusion that the Court can come to is that the detention or seizure of the plaintiff's vehicles* ***was most unreasonable in the circumstances and this is supported by Exhibit 'F' a*** *memorandum written by a Principal Collector/Legal to the Assistant Commissioner Legal of the defendant institution on the 5th August 2010. I will hold in the circumstances that the defendant is liable in damages to the plaintiff."*

The monetary awards which the learned trial judge gave were as follows:

> *"The Court will allow the plaintiff to recover damages in respect of the two vehicles for four days (4) a week in the sum of GH¢30 per day for the Nissan Primera and ¢600 per day for the Tipper Truck beginning from 20th day of February 2008 to 9th August 2010 from the 20thFebruary 2008 to the 9th August 2010. I will give 74 weeks and an allowance of 4 days a week will give a total of 296 days working therefore to the following:-*

1. ***Nissan Primera***

   GH¢30 a day multiplied by 296 days gives ***GH¢8,880.00***

2. ***Tipper Truck***

   GH¢600 a day multiplied by 296 days gives ***GH¢177,660****"*

The Court then entered judgment for the plaintiff against the defendant for loss of use as follows:

1. *"Nissan Primera GH¢8,880*

2. *Tipper Truck GH¢177,600*

The Plaintiff will also recover interest on the above sums of money at the current bank rate from 20th February 2008 to the date of final payment. Cost of GH¢10,000.00 to the Plaintiff against the defendant."

The Defendant's felt aggrieved with the above judgment and appealed on the 31st July 2012 with the following as the grounds of appeal:-

1. The judgment is against the weight of evidence.

2. The trial Judge erred in law by entering judgment for loss of use on figures given by the Plaintiff for assessment of "loss of use" without any corroborative evidence whatsoever.

3. That the award of damages and interest simultaneously without basis or justification was wrong in law.

4. Other grounds to be filed upon receipt of a copy of the judgment.

In the Notice of Appeal, it is interesting to observe that the Defendants prayed the Court of Appeal to set aside the part of the judgment awarding the Plaintiff Damages for *"loss of use"* and interest at the same time.
Our understanding of the above is that, the Defendant's relief is against the grant of the *"loss of use"* and interest at the same time. This might give the indication that the Defendant's concede that the plaintiff is entitled to some damages albeit without interest.

What is also worth noting is the fact that, to date, this appeal is still pending and has not been listed for hearing.

Following the refusal of an earlier application to the High Court for Stay of Execution of the judgment of 6th July 2012, a repeat application to the Court of Appeal found favour with the said court which expressed itself in the following terms:-

"BY COURT: This is a motion for stay of execution pending appeal. We have heard both counsel and come to the conclusion that this is an

appropriate case to stay execution of the decision of the trial court delivered on 6th July 2012. ***The main subjects of the litigation have been released to the Respondent hence the only outstanding issues pertain to the awards that the trial judgment made. We accordingly stay execution as prayed."***

Feeling naturally aggrieved with the decision of the Court of Appeal as has been stated supra, the Plaintiff appealed to the Supreme Court against the ruling of the Court of Appeal which granted the stay of execution as stated supra on the following grounds of appeal:-

GROUNDS OF APPEAL

a. *"The learned Judges with all due respect to them failed in applying the time Honoured Principles in* ***Joseph v Jebeille [1963] 1 GLR 387*** *when they granted the Defendant/Appellant/Appellant/Respondent's application for stay of execution pending appeal*

b. *The excuse that the vehicles in question being the main subject of litigation had been released to the Respondents therein was with all due respect untenable since the release of the vehicles was never an issue before the trial Court given the fact that the Plaintiff/Respondent therein sued for damages for loss of use for the $2^{1/2}$ years that the vehicles were unlawfully detained by the Defendant.*

c. *The Court of Appeal with all due respect wrongfully exercised its discretion in granting the stay of execution pending appeal in favour of the Defendant/Appellant/Applicant/Respondent."*

From the ruling of the Court of Appeal, and also by the grounds of appeal as filed by the defendants it is clear that the Court of Appeal took extraneous matters into consideration when they delivered their ruling of 24th October 2012. This is because, it is very clear that the release of the vehicles has never been made part of the case of the Plaintiff from the trial Court. This is because the vehicles had been released prior to the commencement of the suit as the case was fought on the grounds of the loss of use of the said wrongfully detained vehicles. Refer to the reliefs of the writ of summons.

A perusal of the writ of summons gives the clearest indication that the release of the vehicles was never made an issue before the trial court. With the greatest respect, the Court of Appeal acted under the wrong appreciation of the facts of the case.

With the above observation as a guide, the issue that calls for determination in this appeal is whether the Court of Appeal in granting the stay of execution applied the principles for grant of Stay of Execution and exercised their discretion properly in the matter.

In the celebrated case of **Joseph v Jebeile & Anr. [1963] 1 GLR 387,** Akufo-Addo JSC (as he then was) speaking for the Supreme Court stated on Stay of Execution where payment of large sums of money are involved in these terms:-

> *"Generally, where an application for stay of execution pending appeal is considered in a case involving, inter alia, payment of money, the main consideration should be not so much that the victorious party is being deprived of the fruits of his victory as what the position of a defeated party would be who had had to pay up or surrender some legal right only to find himself successful on appeal. Generally where large sums of money are involved the policy of the law would not be against staying execution; but on condition that the judgment-debtor pays into court the amount of money involved, or, when refused, on the condition that the judgment-creditor gives security which is approved by the judge."*

The above principle has been followed by the Courts for so many years that it has almost become an accepted case law. We believe that explains why learned Counsel for the plaintiff referred to it in his grounds of appeal.

As a matter of fact, the judgment that has been stayed, remains valid until set aside by a Court of competent jurisdiction. For now save for the grant of the stay of execution, the judgment of 6th July 2012 is still valid and subsisting.
The Plaintiff as the judgment creditor should have been made to enjoy parts of the fruit of the successful litigation. The Court of Appeal unfortunately did not

give any consideration to the plight of the Plaintiff who had to endure 2 1/2 long years for the Defendants to release his vehicles to him for no just cause.

Persons and institutions who fall foul of the law must be made to pay adequate compensation for their acts of omission or commission. That is the only way we can strive to build a just and fair society.

It is in the blanket grant of stay of execution by the Court of Appeal without any corresponding awards to cushion the plaintiff where judgment remains valid that is untenable considering the circumstances of this case.

We have as a Court come to observe that many applications for stay of execution are just delay strategies designed to prevent and or delay the judgment creditors from enjoying the fruits of their judgment. We do realise that there may be some really genuine concerns and the need to stay execution of some judgments. Each application must be considered on a case by case basis.

For example, when an application for stay of execution is granted, then it must be granted on terms to ensure that the beneficiaries of the grant of such applications do not go to sleep. Quite often, such beneficiaries of these applications go to sleep especially if no conditions have been imposed on them.

In the instant case, the Defendants were not given any conditions upon the grant, and no doubt have gone to sleep.

Judgment was delivered on 6th July 2012, the Notice of Appeal was filed by the Defendant against the judgment on 31st July 2012 and the Court of Appeal granted the stay of execution on 24th October 2012.

To date, the appeal has not been listed for hearing at the Court of Appeal. We are of the conviction that, courts to which applications for stay of execution are made should impose stringent conditions for the grant of such applications whenever they were minded to, in order to ensure that the beneficiaries of such applications do not go to sleep, abuse the judicial process and inconvenience the judgment creditors.

We are indeed fortified in our thinking by the following statement of Apaloo C.J, in the case of ***Dzotepe v Hahormene III & Others [1984-86] 1 GLR 289 at 293***

> *"Recent experience shows that appellants who obtain a stay of execution thereafter go to sleep and show very little interest in the prosecution of the appeal. On that account, we intend to grant the stay for a limited duration and on terms. From what we read of the judgment and bearing in mind the deprived conditions in the country, we think it should not take more than three months for the preparation and transmission, of the record of appeal to this court. Accordingly, we order that the applicant shall use his best endeavours, including the provision to the registry of the court below of stationery to have the record of appeal and the service of Form 7 completed on or by 10 March 1985. If by that date the record of appeal has not been forwarded to this Court, we would consider whether the order granting a stay should not be revoked. If by that date the record is transmitted and all the appeal formalities are concluded, we will proceed to hear the appeal on its merits."*

From the above, it will not be out of place for trial and appellate courts who intend to grant applications for stay of execution to do so on terms such as will expedite the appeal process. In this regard, may be desirable to impose time lines for the settlement of records of appeal, fulfilling of the conditions of appeal therein and a further directive on the registries of the trial Courts or first appellate courts to endeavour to complete the preparation and transmission of the records of appeal to the appellate courts for hearing of the appeals.

If such conditions had been imposed in this case, we believe the appeal would have been heard at the Court of Appeal by now.

One of the grounds of appeal urged before this court is the wrong exercise of discretion by the Court of Appeal.

In the case of **Ballmoos v Mensah [1984-86] 1GLR 725**, holding I, the Court of Appeal stated quite clearly the circumstances under which the Court would interfere in the exercise of the discretion of the court. In the above case, the court, whilst dismissing the appeal, held as follows:-

> "*The Court of Appeal would not interfere with the exercise of the trial court's discretion save in exceptional circumstances.* ***An appeal against the exercise of the Court's discretion might succeed on the ground that the discretion was exercised on wrong or inadequate materials if it could be shown that the court acted under a misapprehension of fact in that it either gave weight to irrelevant or unproved matters or omitted to take relevant matters into account; but the appeal was not from the discretion of the court to the discretion of the appellate tribunal.***"

Flowing from the above decision, it is apparent that the misapprehension of the facts by the Court of Appeal in the release of the detained vehicles weighed very heavily on them in their decision. Now that it is clear that the narration and appreciation of the facts of the case is wrong, the discretion must be set aside.

In the same vein, the Court of Appeal must have taken those extraneous and irrelevant matters into consideration when they gave their ruling which is on appeal.

Basing ourselves on those authorities, we hereby interfere with the Court of Appeal's exercise of discretion in the matter.

In the premises, we hereby allow the appeal, set aside the orders of the Court of Appeal dated 24th October 2012 and vacate them accordingly. In their place, we order that the Defendants pay 50% of the judgment awards plus the costs without the interest charges. Out of abundance of caution, we order that the Defendants pay 50% of GH¢8,880.00 as award for the Nissan Primera and also 50% of GH¢177,660.00 as awards for the Tipper Truck in addition to the costs of GH¢10,000.00 inclusive of costs of this appeal.

We further direct that, two months from the date of this judgment, the Registrar of the trial High Court should transmit the record of appeal to the Registrar of the Court of Appeal.

The Defendants are therefore to ensure that all the steps necessary to give effect to the preparation of the appeal record, to wit, settlement of record, fulfilling conditions of appeal are complied with to enable the trial Court Registrar comply with the orders made herein.

Save as directed supra, the rest of the judgment is stayed as ordered.

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

(SGD) R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
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