e

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT ACCRA

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

CIVIL MOTION NO.J8/3/2015
14TH NOVEMBER 2014

ALLIANCE MARINE SERVICES **PLAINTIFF/APPELLANT /APPLICANT**

VRS.

1. THE VESSEL M/V JAMESTOWN OWNERS

2. DWC EXPLORATION & PRODUCTION CO. LTD **DEFENDANTS/APPELLANTS /RESPONDENTS**

RULING

BENIN, JSC:-

On June 6 2013, the Court of Appeal gave judgment in this action against the Defendants/Appellants/Appellants/Respondents who are hereafter described as the appellants/respondents and in favour of the Plaintiff/Respondent/Respondent/Applicant who is hereafter described as the respondent/applicant. The facts in that action are not relevant to recount in this application which is for an order directed at the appellants/respondents to provide bank guarantee pending the hearing and determination of their appeal to this court, as ordered by the Court of Appeal in an earlier decision. What matters is that the losing party filed an appeal against the Court of Appeal judgment to

e

this court. In view of what transpired in court when counsel for the respondent/applicant sought to argue the present application, it has become necessary to dispose of some preliminary but fundamental procedural matters before proceeding to consider the application.

In order to appreciate the preliminary issue/s it is necessary to reproduce material parts of the Notice of Appeal here for their full force and effect. They provide thus:

'PLEASE TAKE NOTICE that the Defendants/Appellants/Appellants herein being dissatisfied with and aggrieved by the judgment dated 6th June 2013 delivered by the Court of Appeal…….DO HEREBY appeal to the Supreme Court upon the grounds set out in paragraph 2 hereof and will at the hearing of the appeal seek the reliefs set out in paragraph 3 hereof.

1. PART OF THE JUDGMENT AND RULING COMPLAINED OF…….
2. GROUNDS OF APPEAL…….
3. RELIEF SOUGHT FROM THE SUPREME COURT……
4. THE ADDRESS FOR SERVICE OF THE APPELLANT
   KUENYEHIA & NUTSUKPUI
   Legal Practitioners & Notaries
   No. 35, Labone Crescent
   Labone. Accra
5. PERSON DIRECTLY AFFECTED BY THE APPEAL
   ALLIANCE MARINE SERVICES LTD.
   c/o 10497 Town & Country Way, Suite 310
   Houston. Texas.

It was signed by the appellants/respondents' lawyers, mentioned in paragraph 4 of the notice of appeal, supra.

Subsequent to the filing of the notice of appeal, a Form 6 was issued and the appellants/respondents' copy was served on their aforementioned lawyers. Apart from the Form 6 the application on notice was also caused to be served on the appellants/respondents per their lawyers mentioned in paragraph 4 of

e

the Notice of Appeal, supra. At the hearing of the application on 6th November 2014 Mr. Nutsukpui, one of the lawyers in the law firm KUENYEHIA AND NUTSUKPUI who had filed the appeal for and on behalf of the appellants/respondents, craved the court's indulgence to be heard. He had appeared as a representative of the law firm on whom the Form 6 and the application for guarantee had been wrongfully served, in his view, since they had no instructions from the appellants/respondents to accept service and moreover the plaintiff/applicant was aware the appellants/respondents were based in Lagos, Nigeria. He made reference to rule 14 of the Supreme Court Rules, 1996 (C.I.16) and said by the said rule the party was required to be served personally with the Form 6. It was for the foregoing reasons that they as Solicitors returned both the Form 6 and the application for guarantee to the registry of the court when they were served on them. For his part Counsel for the respondent/applicant made reference to paragraph 4 of the Notice of Appeal, supra, and said that as long as the Solicitors put their address as the address for service, then the service that was effected on them was good service. He made reference to the definition of 'party' in the rules which include 'counsel'. Counsel for the respondent/applicant therefore urged the court to grant the application for the guarantee.

The rule 14(1) under reference provides thus:

When the record of appeal is ready the Registrar of the court below shall cause notice to be served on parties to the appeal in the Form 6 set out in Part 1 of the Schedule to these Rules.

It is true, as Mr. Nutsukpui submitted, that Form 6 should be served on the parties. But the question is: who is meant by 'party' in rule 14(1)? Rule 82 of C.I. 16 defines a 'party' to ***include any party to an appeal or other proceedings and his counsel.***

From the definition of 'party' to include 'counsel', it means that in certain situations or circumstances, counsel could be treated as a party. Each case should thus be treated as unique for the intention of the rule is not to treat or regard counsel as a party for all purposes. But it is certain that where counsel

e

provides his/her address as that of his/her client, he/she places himself/herself in the position of a party for purposes of service of processes per that address. It is no defence to say he has no instructions to accept service, his instruction is embodied in the address provided. If counsel has no more instructions, he knows what to do to get out of the case. Until then he has placed himself in the position of a party to accept service. At the point of appeal, it is not the address that a party provided for service during the trial which is applicable, as Mr. Nutsukpui sought to say, but the address for service provided in the Notice of Appeal which is material for the registrar to use for service. Rule 6(2)(a) of C. I. 16 is very clear on this. And counsel who is served in such situation is a party within the meaning of rule 82 of C.I. 16 and cannot therefore refuse service. Service in these situations is good service. Thus the fact that the appellants/respondents are in Lagos to the knowledge of the respondent/applicant and the fact the appellants/respondents' solicitors have not heard from them to be instructed and the fact that the appellants/respondents' address at the trial court was known on the record are matters of no moment as already explained, so long as the solicitors on appeal whose address is that of the appellants have not withdrawn from the appeal. In the English case of **WRIGHT v. KING (1846) 9 Beav. 161; 15 L.J. Ch. 178; 6 L.T. O.S. 498; 50 E.R. 305,** a party had some time since left home, and had not been heard of, and it was not known whether he was living or dead. His solicitor ceased to act for him, but no order had been made for changing solicitors. It was held that notices served on such solicitor were regular. Thus so long as the solicitor remains on record service on him/her will be deemed proper.

And as long as the solicitors on record have not withdrawn their representation the court would be justified to proceed to hear any application which has been served on such solicitors. Again reference is made to an English case namely **DAVIDSON v. LESLIE (1845) 9 Beav. 104; 50 E.R. 282**. On the application of defendant's counsel, a motion stood over. When it came on again, it appeared that the defendant had since changed his solicitor, but

e

without orders, and no counsel appeared for him. The motion was granted on an affidavit of service.

In the instant case there is undeniable evidence the application by the respondent/applicant was served on the appellants' solicitors KUENYEHIA & NUTSUKPUI who, on this court's record, are still the solicitors for the appellants/respondents. Thus the service is effective for all purposes and they have no justification to return same to the registry. The application is thus regular and ripe for hearing.

I have read all the documents in support of the application and also heard counsel in argument. The first observation I made was that the guarantee provided did not satisfy the terms of the Court of Appeal's order which was to the effect that the guarantee should be valid until this court has determined the appeal filed with it. But the guarantee provided by the appellants/respondents was valid for only one year and it lapsed at the end of October 2014. Thus there was no need for a fresh application since the previous order of the Court of Appeal dated 28th October 2013 was still subsisting and has not been vacated. The appellants/respondents are therefore ordered to comply with it or face the consequences of non-compliance.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

KWAME NYANKOM TETTEH ESQ. FOR THE APPLICANT.

JOEL ANNOR-AFARI ESQ REPRESENTING KUEYEHIA & NUTSUKPUI FOR THE RESPONDENT