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.J8/97/2014

14TH NOVEMBER 2014

ATAA ASHIE NIKOI PLAINTIFF/APPELLANT/APPLICANT

VRS.

CHARLES QUIST DEFENDANT/RESPONDENT/RESPONDENT

RULING

BENIN, JSC:-

On 24th May 2013 the ordinary bench of this court gave judgment against the plaintiff/appellant/applicant hereinafter called the applicant in favour of the defendant/respondent/respondent hereinafter called the respondent. The applicant sought a review but was out of time, so he applied for extension of time

to do so. He was granted leave by this court presided over by a single judge, Akamba JSC. He was granted ten days from 26th June 2013, the date of the order, in which to file the application for review. He filed the application within time on July 5 2013. When the application came up for hearing before the review panel, Counsel for the applicant decided to withdraw it apparently because it was filed in disregard to the rules of practice and procedure in the sense that no reference was made therein to the Judge who had made the order and the date thereof. The court accordingly struck it out as withdrawn.

Thereafter the applicant took some other steps to bring into fruition his desire to have the court's judgment of 24th May 2013 reviewed, but he failed at each and every attempt made. This is the third bite at the cherry. One wonders whether the applicant does not know what he is doing for the impression is that he is just gambling around the rules in the hope that one will be favourable to him. One should not lose sight of the fact that the principles against vexatious litigation and abuse of process should equally apply to applications to the court especially when the object sought by them is the same, as in this case. Nonetheless in the interest of justice I have decided to consider the application on its merits.

By the present application filed on 29th August 2014, the applicant is asking for two reliefs from this court, viz: (i) for an order to relist the application for review filed on 5th July 2013, and (ii) for leave to amend the said application. Counsel's argument was simply that the application was withdrawn and was not dismissed on merit so they could apply to relist same. On the other hand counsel for the respondent cited rule 79 of the Supreme Court Rules, 1996 (C.I.16) and submitted that the applicant was barred from coming back since the court did not waive the irregularity in the application when it struck it out.

Rule 79 of C.I.16 provides:

Where a party to any proceedings before the court fails to comply with any provision of these Rules or with the terms of any order or direction given or with any rule of practice or procedure directed or determined by the Court, the failure to comply shall be a bar to further prosecution of proceedings unless the Court considers that the non-compliance should be waived.

Under this provision the Court could decide to dismiss an application for non-compliance with the terms of its order, or it could disregard the non-compliance and admit the application, or postpone it and allow the applicant to comply with it. In this case the applicant decided to withdraw and the court allowed him. The Court at this stage could have barred him from further prosecution of the application but it did not; it only struck it out. When an application is struck out unconditionally it leaves the party with liberty to come back. Thus the application which was struck out could be revived upon appropriate steps being taken.

I have taken into consideration the fact that a review process is the ultimate step which is open to a party to seek redress from the Court; thus unless there is no means legally permissible to salvage an application for review a party should not be shut out from court. I am equally mindful of the hardship and inconvenience the tardiness in bringing the application will cause the respondent. But I think the respondent could be compensated by way of costs. I would accordingly grant the application and restore the application filed to the cause list. The second relief to amend is also granted. The applicant will be allowed seven days to effect the amendment. The applicant is ordered to pay costs of GH¢5,000.00 to the respondent.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

BRIGHT AKWETEY ESQ. PLAINTIFF/APPELLANT/APPLICANT.

BRIGETTA OSEI OWUSU ESQ.WITH HER OBENG SEKYI FOR THE DEFENDANT /RESPONDENT/RESPONDENT.

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