IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

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

CIVIL MOTION
No. J8/51/2013

30TH APRIL,2014

DR. LAWRENCE BOAKYE ---- PLAINTIFF/RESPONDENT /RESPONDENT

VRS.

YAW BOAKYE ---- DEFENDANT/APPELLANT /APPLICANT

R U L I N G

This is a motion on Notice for an order to suspend the refusal of the grant of stay of execution pending appeal and for stay of proceedings consequent upon the order of refusal to stay execution delivered by the Court of Appeal on 19th March, 2014.

The Respondent in this application invoked the original jurisdictions of the high court seeking a number of reliefs. After a closely contested trial between the parties, the High Court entered judgment in favour of the Respondent declaring him owner of the property Plot No. 61A Airport Residential Area Accra and damages for trespass. The Applicants counter claim was also dismissed. Dissatisfied with the said judgment the Applicant filed a Notice of Appeal and subsequently an application for stay of execution pending the hearing of the Appeal. The trial judge dismissed the application which was then repeated at the Court of Appeal. The Court of Appeal on 19th March, 2014 dismissed the application.

The Applicant who labels the court of Appeal decision as erroneous and occasioning a miscarriage of justice has filed the present motion for an order to suspend the order of

refusal and for a stay of proceedings consequent upon the order of refusal to stay execution.

I have carefully considered the arguments of both counsel in this application as well as read the motion paper and the supporting affidavits and annexures and those in opposition. I have come to the view that no exceptional circumstances beyond or additional to those elements summarised by Akufo Addo JSC in the case of Joseph V. Jebeille (1963) I GLR 387 have been urged on me to warrant a grant of this prayer. This is a necessary requirement for the grant of an order to suspend an order of a lower court or a stay of proceedings consequent upon an order refusing an application for stay of execution as pithily stated by my respected brother, Dr. Date Bah, JSC in Golden Beach Hotels (GH) Ltd. vs. Pack Plus Int. Ltd (2012(SCGLR 452 at 459 thus : "According to the argument we earlier advanced in this ruling, the criterion for suspending an order of a lower court should not be identical with the criterion summarised by Akufo Addo JSC in the Jebeille case in relation to applications for stay of execution, but should embody an additional element or requirement. The precise nature of this additional element or requirement we would leave to subsequent cases to develop. However, subject to fine-tuning in the light of the facts of subsequent cases we would propose that a possible test could be the nugatory effect referred to in the Jebeille case (supra), combined with the need for exceptional circumstances. If this test of a "nugatory effect-plus more" is not insisted upon, there would be no point in maintaining the distinction between the two kinds of orders, namely, stay of execution and suspension of orders of lower courts".

From the affidavit evidence before me especially, the affidavit in opposition filed on 8th April, 2014 paragraphs 13, 19 and 26 which have not been discounted, the applicant does not live in the premises himself and will thus not suffer any hardship should this application be refused. On the contrary it is the Respondent who would be frustrated and deprived of the fruits of his victory for no good reason, should this application be granted. Accordingly this application fails and it is dismissed.
I make no order as to costs.

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

COUNSEL
MR. YONI KULENDI FOR DEFENDANT/APPELLANT/APPLICANT WITH HIM DENNIS ADJEI DWUMOH, GEORGINA ARTHUR AND ROSENBERG OWUSU ADOKOH.
JUSTINA TETE-DONKOR WITH HER CHRIS YEBOAH FOR PLAINTIFF/RESPONDENT /RESPONDENT PRESENT.