IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – AD 2013

CORAM: DR. DATE BAH, J.S.C. (PRESIDING)
ANIN YEBOAH, J.S.C.
BAFFOE BONNIE, J.S.C.
BENIN, J.S.C.
AKAMBA, J.S.C.

CIVIL APPEAL.
No J4/52/2011

24TH MAY, 2013

FOOTPRINT SOLUTIONS CO. LTD … PLAINTIFF/APPELLANT /APPELLANT

VRS

LEO & LEE COMPANY LTD DEFENDANT/RESPONDENT /RESPONDENT

JUDGMENT

AKAMBA, J.S.C

The Court of Appeal delivered a ruling on 25th day of January 2010 in which it granted a stay of proceedings pending appeal, filed by the defendant/appellant/respondent, herein after simply referred as the respondent, against a decision of the High Court, Kumasi in favour of the Plaintiff/Appellant/ Appellant, hereinafter simply referred as the Appellant. Dissatisfied with the aforesaid ruling, the appellant has filed a number of grounds before this court for determination.

FACTS

Before dealing with the grounds and merits of this appeal, a brief overview of the facts leading to the case is necessary in order to appreciate the present matter. It all begun when the Appellant as plaintiff issued a writ of summons at the High Court Kumasi seeking a recovery of the sum of GHC 20,000 being part payment it made to the respondent for the supply of a printer which proved mechanically faulty and/or malfunctional upon delivery. It also claimed interest on the amount. The respondent entered conditional appearance and filed an application for a change in venue from Kumasi to Accra stating reasons from the terms of their written contract among others. The motion for change in venue was argued on 15th May 2009 and dismissed by the court for lack of merit. Obviously displeased with the said ruling, the respondent appealed to the Court of Appeal on 21st May 2009 against same. (See pages 19-20 of ROA). The respondent also filed a motion on notice to stay the proceedings in the trial court pending hearing of the appeal on 7th July 2009. (See page 1 of ROA). The respondent's Notice of Appeal was couched as follow:

"Take Notice that the Defendant/Appellant herein being dissatisfied with and aggrieved by the ruling of the High Court, Kumasi, given on 15th May, 2009…..does hereby appeal to the Court of Appeal on the grounds stated in paragraph 4 and the Appellant further states that the name and address of the person directly affected by this appeal is that set out in Paragraph 5.

3. RELIEFS SOUGHT

i. The Ruling to be set aside.

ii. An order referring the suit to the Chief Justice for transfer to Accra.

4. GROUNDS OF APPEAL

The ruling was against the weight of evidence

(ii) The learned judge erred in law in holding that the convenient forum for the hearing of the suit is Kumasi in the teeth of overwhelming evidence provided by the said agreement exhibited which was executed by the parties and which showed that the contract was performed in Accra.

(iii) The learned judge erred in law in holding that the convenient forum for the hearing of this suit is Kumasi when there was unchallenged evidence on the record that defendant carried on business in Accra only and nowhere else in Ghana."

Whilst the above appeal was pending, the Appellant as plaintiff applied for summary judgment before the trial court. The court heard the application and entered judgment for the appellant on 22nd July 2009. The respondent as defendant appealed against the summary judgment also to the Court of Appeal and then applied to the trial High Court on 30th July 2009 to stay execution of that judgment, i.e. the summary judgment pending appeal. The application to stay execution was fixed for hearing on 20th October 2009.

The result was that there were two applications in the same matter pending at the same time – the one for the stay of execution before the trial High Court and the other for a stay of proceedings before the Court of Appeal. The record shows that the application for stay of proceedings before the Court of Appeal was filed first, this being the 7th July 2009. This was before the grant of the summary judgment by the trial court on 22nd July 2009. On 25th January 2010, the Court of Appeal ordered a stay of all proceedings in the trial court and rejected the argument that there was nothing to stay in view of the High Court having given final judgment in the case on 22nd July 2009. It is therefore against the above ruling of the Court of Appeal that this appeal has been filed as indicated in the opening paragraph in this judgment.

The appellant has raised the following grounds of appeal for the consideration of this court namely:

"(i) Their Lordships at the Court of Appeal erred when they granted the Defendant/Appellant/Respondent's application for stay of proceedings pursuant to Rule 27A of the Court of Appeal Rules, 1996 (C.I. 19) as amended when the High Court had completely adjudicated upon the entire matter on its merits in the nature of summary judgment and therefore there were no pending proceedings in fact and in law at the said High Court as at 25th January 2010 capable of being stayed under Rule 27A of CI 19 as amended.

(ii) The ruling of the Court of Appeal dated 25th January 2010 was a complete nullity on the compendium ground that the Court of Appeal purported to stay non-existing proceedings at the High Court when the Court of Appeal made the said orders.

(iii) The ruling was preponderantly against affidavit evidence on record."

The counsel for the appellant argued the first and second grounds together and eventually failed to deal with the third ground. I will equally consider this appeal in the same order. Appellant counsel based his argument on Rule 27A of CI 21 which provides that: *the court may in any interlocutory appeal civil or criminal before it, grant stay of proceedings pending the determination of the interlocutory appeal subject to such terms as the court considers fit*. According to counsel for the appellant the judgment entered in favour of the plaintiff was a final judgment and not interlocutory so as to bring the application within the purview of Rule 27A. Counsel went to great length in explaining the difference between a final and interlocutory judgment citing decided cases. It is however unnecessary to have embarked on that meandering route to no avail. This is because there is no dispute as to what the nature of the judgment of 22nd July 2009 was. What is at issue is not the judgment of the court dated 22nd July 2009, which is a final judgment, but rather the interlocutory appeal arising from the refusal of the court to grant the application to change the venue. That explains why it was important to set down the contents of the notice of appeal before the Court of Appeal, following which the application to stay proceedings was filed. The Court of Appeal

had no doubt what they were dealing with. They were focused on the proceedings in respect of the change of venue. This is what the Court of Appeal stated (at page 53 of the ROA):

"*We have carefully read the application and the supporting affidavit as well as the affidavit in opposition and we think this is a proper case to grant stay of proceedings. This is because; application was filed on the 7th day of July 2009 before the Summary judgment given at the court below on 22nd day of July 2009. Secondly, both Counsel for Applicant and Respondent have agreed there is an application for stay of execution pending at the court below. Thirdly from the Sales Agreement, exhibit LP1 attached to the motion paper and the supporting affidavit, paragraph 6 thereof, the place of execution of the contract is Accra…."*

The Court of Appeal did not err procedurally in granting the stay under Rule 27A of CI 21 because the application before them was an interlocutory appeal.

On the merits of the application, there is evidence on record in the nature of a search report at page 57 of the record of appeal confirming that counsel for the appellant was served with the application for stay of proceedings on 15/07/2009, one week before he moved the court below for summary judgment. I gather from the appellant counsel's written submissions that he denies knowledge of the service of respondent's application for stay of proceedings pending appeal dated 7th July 2009. Without any prejudice to whatever the appropriate court may decide on the issue, for our present purposes the search report serves as evidence, albeit prima facie, that the appellant was aware of the pendency of the application before they moved the High Court for summary judgment. The Court of Appeal, upon due consideration of available evidence before it, held the view that the appeal has a reasonable chance of success. This court does not have to upset that opinion since there is evidence on record to support such conclusion.

For the foregoing reasons we find that the Court of Appeal was justified in staying all processes in the High Court pending the determination of the appeal.

Despite the above conclusion there is a lingering stalemate or practical dilemma arising from the final judgment entered by the High Court. As long as that decision

subsists, even if the Court of Appeal decides to uphold the interlocutory appeal as to the venue, there will be no pending suit to transfer to Accra to be heard. The appeal against the summary judgment should thus be dealt with first, and if it succeeds, this interlocutory appeal will become purposeful. And with the stay of proceedings in place as well as a stay of execution on hold, there is no incentive to the respondent to pursue that appeal. In the interest of justice we order the respondent to take all practical steps to settle the record of appeal, fulfill conditions imposed therein and generally ensure that the appeal record is ready on the summary judgment for transmission to the Court of Appeal within three months from today. A copy of this order is to be served on the Registrars of the trial High Court and Court of Appeal in Kumasi. Any problem in implementing this order should be dealt with by the High Court Kumasi. Nothing herein should prevent the interlocutory appeal from being pursued.

Accordingly, save for the concluding orders, the appeal is dismissed.

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

ANIN YEBOAH J.S.C

I have had the advantage of reading beforehand the opinion of the court from my worthy brother, Akamba JSC in the matter herein and I am in agreement that the appeal be dismissed. I, however, wish to add a few words of my own touching the inherent jurisdiction of the court of Appeal. Learned counsel for the appellant has strenuously argued that the court of Appeal lacked or rather exceeded its jurisdiction when it granted the respondent's application for stay of proceedings.

It is settled at law that orders of stay of proceedings and stay of execution are conceptually different. Whereas a stay of proceeding may bring a temporary halt to proceedings, an order of stay of execution on the other hand operates to bring the processes of execution to a temporary halt. In fact, while rule 27A of CI 21 regulates the exercise by the Court of Appeal of its inherent jurisdiction, the exercise of the jurisdiction itself as the designation imports is innate to the court itself.

To the extent that the process of execution was not completed, the action was actively pending by virtue of the processes that had been filed by the parties and in respect of which lawful steps were pending to be taken thereon by either the court or the parties it was competent for the court to make an order staying proceedings in the matter.

In his article on : The Inherent jurisdiction of the Court, 1970 Current Legal problems, Sir I. H. Jacob, a renowned contributor to Civil Procedure in the Common Law said at page 25 as follows:

> "The inherent jurisdiction of the court may be exercised in any given case, notwithstanding that there are Rules of Court governing the circumstances of such case. The powers conferred by the Rules of Court are generally speaking, additional to, and not in substitution of, powers arising out of the inherent jurisdiction of the court. The two heads of powers are generally cumulative and not mutually exclusive, so that in any given case, the court is able to proceed under either or both heads of jurisdiction."
> [Emphasis mine].
>
> The inherent jurisdiction could be invoked at any stage of the proceedings in so far as the action is pending. In the article under reference, the learned author proceeded to state at page 33 as follows:

> "The exercise of this power has been pervasive throughout the whole legal machinery and has been extended to all stages of proceedings, pre-trail, trial and post trial" See: (1) Republic v Committee of Inquiry) (R. T. Briscoe Ghana) Ltd. Ex parte R.T. Briscoe (Ghana) Ltd. [1976] 1 G. L. R. 166; (2) Acheampong v Asare-Manu [1976] 1 G.L. R 28 at 29 per Osei Hwre J (as he then was). [Emphasis mine]

In the Acheampong case (supra) at page 29, the learned judge observed of the inherent jurisdiction thus:

> "……One of such areas where the court's inherent powers can be invoked is where necessary to prevent injury being inflicted by its own judgment……"

Instances of the exercise of the inherent jurisdiction include orders dismissing actions on grounds of vexation or frivolity, striking out pleadings and either staying the proceedings based thereon or dismissing the action. It is interesting to note that orders for stay of execution are made in the exercise of the inherent jurisdiction of the court.

It does appear therefore that the submission of learned counsel for the appellant that the Court of Appeal erred in granting the application for stay of proceedings is misconceived. As pointed out above, as there was no finality in execution and the action was deemed in law as actively pending at the High court, Kumasi, the court of Appeal in the exercise of both jurisdiction under the court rules and inherent jurisdiction was well capable of staying proceedings which obviously affected the process of execution. It could not therefore be in error in granting the application for stay of proceedings which to me was regular both under the existing rules of court and its inherent jurisdiction.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) DR. S. K. DATE BAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
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