IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA

CORAM: BROBBEY, JSC (PRESIDING)
ANSAH, JSC
DOTSE, JSC
YEBOAH, JSC
BAFFOE-BONNIE, JSC

CIVIL APPEAL
NO.J4/33/2009
19TH MAY, 2010

IDDRISU AYAA TETTEH ... PLAINTIFF/RESPONDENT/REPONDENT

V

1. WINFRED OTUAFRO ARYEH

2. TENMOTE AKAKPO ... DEFENDANTS/APPELLANTS/APPELLANTS

J U D G M E N T

ANIN YEBOAH, JSC:

The facts of this appeal appear not to be in controversy. The plaintiff/Respondent (who shall hereafter be referred to as the plaintiff) commenced an action against the defendant/appellants (who shall be referred to as the defendant) in this appeal at the Fast Track High Court, Accra. The action was brought in a representative capacity by the plaintiff suing as the head and lawful representative of Ayaa Kwabla family.

It appeared that in a previous suit titled: suit № 1/2001: IDDDRISU AMAA TETTEY V. WINFRED OTUATO ARYEH & OR, the trial judge, His Lordship Mr. Justice Victor Ofoe

had on 22/08/2002 determined a land suit in favour of the plaintiff herein and made far-reaching consequential orders in favour of the plaintiff against the defendants.

For a fuller record, the order which the learned judge made that resulted in the commencement of this case on appeal before us is as follows:

> *"The understanding I will put on Exhibit "c" is that defendants' site plan showing an area of 336.26 acres has plaintiff's land of about 200 acres. On each acre of 200 acres the parties agree that the defendants are to pay ¢2000. Defendants have occupied further plots of the plaintiff the parties describe these as residential plot. A superimposition of the defendants site plan and that of the plaintiff's and a survey of defendants' site plan in Exhibit 1 of area 336.26 acres on the ground should be able to carve out the 200 acres the subject matter of Exhibit C. This survey work should also be able to carve out the average on which the residential plots are for the appropriate compensation to be paid by the defendants to the plaintiff. I will order that completion of the survey work by a surveyor agreed upon by the parties the defendants pays the balance if any on the 200 acres or more after deduction of the ¢5 million already paid by the defendants"*

We have quoted ad longum, the order made by the learned trial judge which the defendants herein did not find it necessary or refused to carry out. The plaintiff commenced this action more than three years after the order in the previous suit was made. In the present action it is the contention of the plaintiff that the value of the land in the area in dispute had not been the same after the delivery of the judgment as the defendant had failed or refused to carry out the order the amount of ¢2,000 per acre as rent was meaningless as at the time the writ culminating in this appeal was issued. It was further pleaded in the statement of

claim that the extra land of the plaintiff was not covered by the agreement and had not been formally granted to the defendants' compensation which should be commensurate to the present value of land around New Ashongman, Accra where the land in dispute is situate.

Indeed on the plaintiff's side of the case very few issues emerged for determination. Notable amongst them were: whether or not ever since 29/09/1993 the defendants have paid the ¢2000.00 amount as rent to the plaintiff, whether in the present circumstances the agreed ground rent of ¢2000 per acre as amount rent ought to be received, and lastly whether it is not lawful for defendants to pay compensation for the extra land taken by the defendants at the current value in the neighborhood.

If the defendants had complied with the orders made by the learned trial judge in the earlier suit it would have been obvious that the matter would have rested there. The judgment declared what was to be given to the plaintiff by the defendants. Looking at the orders made, it was up to the plaintiff who was adjudged to recover from the defendants the land and ground rent to have resorted to any known process of execution provided by the Rules of Court.

In our opinion, the judgment merely declared the existing liability between the parties. In the case of AMOAKO ATTA IV .V. NUAMAH [1963] IGLR 432, the Supreme Court relying on the cases in RE CHINERY; EXPARTE CHINERY [1884] 12 QBD 342 and RE RIDELL, EX PARTE EARL OF STRATHMORE [1888] 20 QBD 512 said of a judgment as follows;

"A judgment must ascertain or establish a previously existing liability of a defendant to a plaintiff or it must determine in favour of a plaintiff or of a defendant the question whether there was a pre-existing right of a plaintiff against a defendant"

For purposes of this opinion we adopt the above statement as regards what a judgment must establish or ascertain. The learned trial judge who by chance was the same trial judge in the first suit said in his judgment as follows:

"From the judgment in the earlier suit, I believe I determined the issue of the 200 acres and its payment at ¢2000 per acre. Thus there was a judgment clothing the plaintiff with authority to go into execution. It is my view that, the judgment is still outstanding for him to enforce. I do not see my way clear granting an upward review of ground rent which the parties agreed upon at ¢2,000 and accepted by the court in the earlier judgment. Why should a judgment creditor fail for unknown reason to go into execution and after almost 4 years go back to court for an upward review of the judgment debt? I think I will refuse the plaintiff claim (a) asking for an upward review of ground rent for the 200 acres"

The resort to the trial court for another judgment to enforce a subsisting judgment to us is inappropriate. It was up to the plaintiff in the earlier suit to have enforced it against the defendant. In cases in which a court of competent jurisdiction decrees an act to be done forthwith and there is clear non-compliance by a party directed to do the act, the courts jurisdiction is usually invoked to ensure compliance by known judicial processes. It was therefore an abuse of the court's process for learned counsel the plaintiff to have endorsed the writ in this case for relief (a) to seek an upward review of rent almost four years after the order in favour of the plaintiff was made.

It has not been pointed out to us that a stay of execution was granted by any court of competent jurisdiction. We find the remark by the trial judge condemning the step to enforce the order by a fresh writ appropriate.

We find from the record of proceedings before us that no effort in procedure was made to have the relief (a) endorsed or the writ of summons to be struck out as an abuse of the court's process. If parties elect to enforce an order from a court of competent jurisdiction by resorting to a fresh action as in this case before us, litigation would never end. It is a principle of law that: it is for the common good that there should be an end to litigation – *Interest rei publical ut sit finis litum?*

In this appeal, counsel for the defendant filed only one ground of appeal to seek the reversal of the judgment of the Court of Appeal, that, the judgment is against the weight of evidence on record. We found that no attempt was made to show that the judgment was against the weight of evidence even though the onus was squarely on the defendant.

In his written submission before us, learned counsel, with due respect to him, could not convince us that the evidence led on behalf of his client was such that it could have tilted the scales in his favour. It was also not pointed out that the evidence from the plaintiff did not match up to the standard required in law. In KOJO V. BONSIE [1953] 14 WACA 242-243, FOSTER – SUTTON P said;

> "The presumption is that the decision of the trial court on the facts was right, and in order to succeed, the appellant must displace that presumption"

We have considered the evidence led in this case by both parties and it appeared to us that there was sufficient evidence from the judgment of the first suit to clearly support the claim of the plaintiff. Both courts find against the defendant on the facts and we have not been convinced in the least to disturb this findings in favour of the appellant. See: ACHORO V. AKANFELA [1996-97] SCGLR 209, KOGLEX LTD Nº 2 V. FIELD [2000]

SCGLR 175, ADU V. AHAMAH [2007 – 2008] SCGLR 143 which support the above principle that as final appellate court, we should be slow in disturbing the concurrent findings of facts unless genuine grounds for doing so exists.

In our respectful view, the learned trial judge who dealt with the case at the High Court ought to have struck out relief (a) when the learned trial judge himself found same to be an abuse of the court's process. It is a principle of law that the court must invoke its inherent jurisdiction to save itself from abuses. This case offers a glaring example in so far as relief (a) is concerned. We also observed that the plaintiff after waiting for about four (4) years and asking for an upward review of rent was seeking to take advantage of his own wrong, something the law has always frowned upon, as was made clear by Fletcher – Moulton L. J in KISH V. TAYLOR [1911] I KB 624 as follows;

> *"A man may not take advantage of his own wrong. He may not plead in his own interest a self –created necessity"*

We think that both the learned trial judge and the Court of Appeal were right when they rejected the upward review of the ground rent, which was as a result of plaintiff's own inability to enforce the order made in his favour.

On the claim for compensation, it was obvious that this claim was borne out by the available evidence on record. At the Court of Appeal, the learned judges based the award on the available evidence before the trial court. The Court of Appeal stated in its judgment as follows;

> *"Based on the above evidence and the fact that the Defendants testified that they were businessmen and have spent a lot improving the land with facilities, the trial court awarded ¢50,000,000.00 per acre as compensation for the plaintiff.*
>
> *From the evidence on record, I have no good cause to disturb the award made by the trial judge…"*

It is the duty of the party who complains against an award as excessive to demonstrate to the appellate court that the trial court proceeded on wrong principles of law or did not take into consideration the circumstances of the case. The discretion vested in the trial court could only be overturned if it is shown that the Lower Court failed to exercise the discretion fairly or proceeded on wrong principles of law. The appellant failed to convince this court that there was unfair exercise of judicial discretion in making the award for compensation. We deem it fit not to disturb the award which was endorsed by the Court of Appeal.

We find no merit in the appeal and we dismiss same.

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

J. ANSAH
JUSTICE OF THE SUPREME COURT

J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

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