IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2013

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

CIVIL MOTION

No. J8/49/2013

3RD MAY,2013

1. JONAS ADDO McKAY - - - RESPONDENTS

2. MR. OKU

3. MRS. OKU

VRS.

1. DANIEL MENSAH - - - APPLICANTS

2. NATIONAL LOTT RECEIVERS UNION,ACCRA

RULING

BENIN, J.S.C.:-

This is an application for an order of interlocutory injunction brought by the 1st Defendant/Appellant/Applicant, hereinafter called the 1st Defendant against the Plaintiffs/Respondents/Respondents, hereinafter called the Plaintiffs. The main point in the application is that the Plaintiffs have taken steps to execute a judgment obtained against the 1st and 2nd Defendants at the High Court. The judgment is the subject of an appeal which is still pending. That if the plaintiffs and the Deputy Sheriff are not restrained they will execute the judgment to his detriment. The application was opposed on stated grounds, among which is the fact that the appeal is out of time; that the Defendants have had the use of Plaintiffs' money for too long and should thus be made to pay; that this is actually a stay of execution brought under the guise of an interlocutory injunction.

The case started at the High Court when the Plaintiffs sued out a writ of summons claiming a specific amount of GH₵41,700.00 being the balance of the sum of money advanced to the defendants at the interest rate of 7%. They also claimed 7% interest on the said amount from a specified date until date of final payment. The Defendants did not deny receiving some money from the Plaintiffs. What they said was that it was a money-lending transaction whereby the Plaintiffs loaned them the total sum of GH₵33,000.00. The money was given to the 1st Defendant to be distributed to members of the 2nd Defendant association.

On 25th October 2010 the trial court gave a judgment, without deciding how much the Defendants owed, if at all, on both the principal and the interest. Even the rate of interest was not decided in that judgment. All these matters were left to the Registrar of the Court to go into. Following a submission of the Registrar's report, the trial court gave a judgment on 19th January 2011, in which it found that the defendants had paid GH₵20,980.00 to date, leaving a balance of GH₵36,606.40, on the principal with interest at the rate of 20.5%.

On 14th April 2011 the 1st Defendant filed a notice of appeal against the judgments of 25th October 2010 and 19th January 2011 on several grounds of appeal which prima facie appear weighty; especially those on breach of laws

governing money-lending transactions and the rate of interest applied by the trial court.

The 1st Defendant applied for a stay of execution but it was refused by the Court of Appeal on the ground that the appeal was filed out of time. An application to review that decision was also rejected by the same court. The court held that the judgment of 25th Octobber 2010 was the final judgment. This is what the court said per Dennis Adjei, J.A.: "The issue to pose is, which of the judgments is the final one and which one is interlocutory? We do not have any doubts in our minds that the judgment delivered on 25th October 2010 is the final judgment. The judgment was delivered and the Registrar of the Court was only tasked by the Court to work out some arithmetics as to the interest payable on the judgment debt."

The question posed by the Court of Appeal is still at the centre of the ongoing proceedings, and will be the core issue to resolve if eventually the appeal is to be allowed to proceed on merits. In arguing this point in support of their respective position in this application, both Counsel made references to some decided authorities to confirm what in their view was the correct position of the law. The position of the 1st Defendant's Counsel is that the decision of 25th October 2010 was not a final judgment; it is the decision of 19th January 2011 which finally decided the case. He cited a number of authorities in support including the following: IN RE MENSAH (DECD); MENSAH & SEY v. INTERCONTINENTAL BANK (GH) LTD. (2010) SCGLR 118 SC; REPUBLIC v. HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE STATE HOUSING CO. LTD. (NO.2) (KORANTEN-AMOAKO, INTERESTED PARTY) (2009) SCGLR 185; POMAA v. FOSUHENE. (1987-88) 1 GLR 244 SC.

For his part, Counsel for the Plaintiffs submitted that the judgment of 25th October 2010 determined the rights of the parties so it was final. His position followed that of the Court of Appeal which I quoted above. He relied on the Supreme Court decision in XL INSURANCE SWITZERLAND CO & OTHERS v. GEMINI MARITIME SERVICES & GHANA PORTS AND HARBOURS AUTHORITY, Civil Appeal no. J4/7/2012, dated 25th April 2012, unreported.

I have read these authorities and others in similar vein and I do not see any inconsistency, let alone conflict, in their ratio. They all seem to agree that the correct test to apply is whether the order of the court disposes of the rights of the parties. Certainly it's going to be an interesting issue before the apex court when the two judgments are considered. I will refrain from stating an opinion on this as I have not considered it necessary in deciding the application at hand. This issue certainly raises an important question of law to be considered and that will aid the development of the law so in my view nothing should be done to frustrate the apex court from having a say in the matter.

Turning next to the affidavits and arguments, there is no suggestion that either party is impecunious such that money paid or unpaid cannot be recovered in the aftermath of the appeal. There is no suggestion that either party seeks to leave the jurisdiction or dispose of their assets to frustrate the recovery of any money if the court decides to hear and determine the appeal.

I have taken into consideration the fact that the 1st Defendant admits receiving GH₵33,000.00 from the Plaintiffs; whether as financial assistance, or loan, or however described is not material for our present discussion. The trial court found the Defendants had paid GH₵20,980.00 as at 19th January 2011. It is my decision that the 1st Defendant should pay the balance of GH₵12,020.00 on the principal sum to the Plaintiffs. The payment of interest is placed on hold in view of the material difference between what was claimed on the writ and what the trial court applied to the transaction, which is an important issue for the appellate court to consider should the appeal be heard on merits.

According to the authors of Halsbury's Laws, 5th edn. Vol 11 para. 479, where property has been directed to be sold by decree, the court will sometimes stay the sale, in an application for injunction, pending appeal. Also at para. 338 of the same reference book, they write that an injunction may be granted in aid of or in lieu of equitable execution.

At any rate, an injunction may be sought to restrain the performance of some act. Thus the Deputy Sheriff could be restrained by an injunction from carrying out an execution of a court decree of sale.

For reasons given above I think it's just and convenient to allow the application on terms. The 1st Defendant is ordered to pay the sum of GH₵12,020.00; payment should be made on or before the 31st day of May 2013, to Counsel for the Plaintiffs who shall acknowledge receipt on their behalf. The Registrar of the court should be notified of payment, if and when it is effected. As soon as the payment is made all properties of the 1st Defendant attached in execution should be released to him.

The record of appeal, we were told in the course of the argument, has been settled. The Registrar is accordingly directed to issue the required process/es without delay to enable the appeal to be listed for hearing.

There will be no order as to costs.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

BAFFOUR ASSASIE GYIMAH FOR THE APPLICANTS.

FELIX QUARTEY FOR THE RESPONDENTS.