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

10TH APRIL,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 JSC:

On 16th January 2012 the Court of Appeal dismissed an application filed and moved by the 1st defendant/appellant/applicant hereinafter called the applicant praying the court to stay execution of judgment delivered by the High Court, Accra, on the sole ground that it was out of time. Nine days later the applicant applied to the Court of Appeal to review its decision. The record shows that it was not until 8th November 2012 that the Court of Appeal delivered its opinion dismissing the application for review. Dissatisfied with this ruling, the applicant appealed to this court by notice dated 15th November 2012. The applicant then filed what they termed repeat application for interlocutory injunction pending appeal. The plaintiffs/respondents/respondents, hereinafter called the respondents, raised a preliminary objection to the application for interlocutory injunction. It is the preliminary objection which is the subject of this ruling.

Three grounds were raised in the notice of preliminary objection. These are:

1. That this court is not seised with jurisdiction to hear and determine the application for interlocutory injunction.
2. That this court is not seised with an appeal in this cause and therefore not clothed with jurisdiction to hear the application.
3. That this court is not seised with jurisdiction to hear a REPEAT MOTION for interlocutory injunction.

The parties filed their statements in respect of the preliminary objection on the court's directive. Counsel for the respondents argued the second ground to begin with. Counsel's submission was that in reality the decision of the Court of Appeal which the applicants are appealing against is that of 16th January 2012, and not the Ruling on the Review of 8th November 2012. According to Counsel, time to appeal against the January 16 decision had ran out so the appeal against the Review Ruling was a disingenuous way of circumventing the rules on appeal in respect of time. A review could not be substituted for an appeal, Counsel submitted, citing the Court of Appeal decision in Swaniker v. Adotei Twi II (1966) GLR 151.

For his part, Counsel for the applicant pointed out that the appeal is not against the 16th January decision but that of 8th November 2012. Counsel submitted that the mere fact that there is a good ground upon which a judgment could be set aside on appeal is not itself a ground for granting review.

It seems to me that this ground of objection is untenable for the simple reason that at this stage the court only has to examine the notice of appeal to find out if it satisfies the rules of court including time of filing. On the face of the notice of appeal the applicant appealed against the ruling of 8th November 2012. The respondents are not saying that the applicants cannot appeal against the ruling of 8th November alone, to the exclusion of the 16th January ruling. If they have the right to appeal against the 8th November ruling then the notice of appeal is valid as it satisfies the rules of court, on the face of it.

Next, Counsel argued Ground 1 followed by Ground 3 but I propose to consider them together. The main thrust of his argument is that the applicant did not indicate under what rule he is bringing the application. In reality, the application is not founded under any rule of this court, and as such the court does not have jurisdiction in this matter, Counsel submitted. Moreover, this court has no jurisdiction to hear a repeat application for interlocutory injunction, since it is not provided for under the Rules of this court. Counsel relied on the Court of Appeal decision of Republic v. Tutu II (2008) 7 MLRG 238 where an application for interlocutory injunction was rejected.

In his response, Counsel for the applicants submitted that by virtue of Article 129(4) of the 1992 Constitution, the Supreme Court is empowered to exercise all the powers, authority and jurisdiction vested in any court in Ghana. It is for this reason they applied for the court to exercise the jurisdiction which the Court of Appeal has under Rule 31 of the Court of Appeal Rules, C.I.19.

I find it hard to appreciate the rationale for the objection. Under Rule 20 (2) of C.I 16 the applicant was obliged to apply to the Court of Appeal to hear the application first before repeating it before this court upon refusal. This is precisely what he has done. An application for interlocutory injunction of this nature has the effect of staying execution of the decision appealed against; see paragraphs 28 and 29 of the affidavit in support of the application. Thus the

language employed in the heading of the application is of no consequence as long as the object is clearly discernible from the facts and law governing the application. A stay of execution can be applied for under Rule 20(2) of C.I.16, therefore this application is in order as the object thereof is to stay execution of the decision of the court below.

More importantly, Rule 20(2) does not foreclose the court's right to receive other interlocutory applications in order to do substantial justice in a matter, under its inherent jurisdiction.

I accordingly dismiss the objection without costs, and order the application for interlocutory injunction to be heard on its merits. The respondents are hereby granted ten days to file whatever papers they wish to file in response to the application.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

BAFFOUR ASSASIE GYIMAH FOR THE APPLICANTS.

FELIX QUARTEY FOR THE RESPONDENTS.