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

CORAM: DR. DATE-BAH, JSC (PRESIDING)
ADINYIRA (MRS), JSC
DOTSE, JSC
ANIN YEBOAH, JSC
BAFFOE-BONNIE, JSC

CIVIL APPEAL
NO. J4/24/2009
27TH JANUARY, 2010

NOVA COMPLEX LIMITED ... PLAINTIFF/RESPONDENT

- VRS -

GHANA PORT & HARBOURS AUTHORITY .... DEFENDANT/APPELLANT

J U D G M E N T

DR. DATE-BAH, J.S.C:

This is the unanimous judgment of the Court.

FACTS

This case relates to a dispute about the amount of interest due from a judgment-debtor to a judgment creditor.

The respondent in this case filed a motion ex parte on 16th July 2007 for a garnishee order nisi directed at banks where the appellant has accounts. In her affidavit in support of this motion, the Managing-Director of the respondent deposed to the fact that the respondent had obtained judgment in the Supreme Court against the appellant on 15th November 2006 and that the appellant had on 3rd January 2007 paid into court 905,735,855.00 cedis and a further $1,535,437.50 by March 2007.These payments had been made in satisfaction of a Supreme Court order in this case which was in the following terms:

> "The decision of this court is unanimous. The appeal fails in part and succeeds in part only ie on the ground dealing with the award of the sum of $2,658,300 as an indemnity for the respondent's tort, as well as interest etc.

The cross appeal succeeds in part only, that is on question of costs only and fails on all the other grounds. In this regard, the cost awarded in the Court of Appeal is assessed as c50 million cedis.

Costs would be assessed at c50m.

This Court awards interest only on the replacement value of the vessel assessed at $600,000 at the US dollar rate as stipulated by the Bank of Ghana and as per the Court of Appeal decision; from the date of beaching – 9th March 2001- to the date of judgment, 29th July 2004 or its cedi equivalent and at the 440,649,992.25 cedis together with interest at the prevailing bank rate from the date of beaching – 9th March 2001 – to the date of judgment, 29th July 2004.

Loss of Use

This Court assesses the loss of use as $900,000 (NINE HUNDRED THOUSAND DOLLARS ONLY)."

On receiving copies of the letters accompanying the appellant's payments into court, the respondent wrote to the appellant drawing its attention to the fact that post judgment interest was also payable on the amounts and, in the case of the US dollar amounts, not at the Bank of Ghana dollar base rate, but at a US dollar prime rate. The deponent referred to above stated that the appellant did not reply to this letter. The deponent further averred that as at 29th January 2007 what remained unpaid of the judgment debt was US £204,095.00 and 690,959,127.00 cedis (being mainly post-judgment interest and the use of the wrong rate of interest in the calculation of the US dollar interest rate.) It was in relation to these amounts that the respondent had applied for the garnishee order *nisi.*

The order *nisi* was granted by the High Court on 17th July 2007, but it was subsequently discharged, on 31st July 2007, by the court subject to the court's order that interest be paid on the sum of 440,649,992.25 cedis at the 91 day treasury bill rate from 1st August 2004 to 31st December 2006 and further that interest be paid on the sum of $600,000 at the US dollar rate as stipulated by the Bank of Ghana from 1st August 2004 to 31st December 2006. The respondent, being aggrieved by the ruling of the High Court containing these orders, appealed to the Court of Appeal. It complained about the learned trial judge's application of "the US dollar rate as stipulated by Bank of Ghana" as the applicable post-judgment rate of interest, instead of what it considered to be the statutorily sanctioned post-judgment rate of interest. It also complained about the trial judge's refusal to apply the statutorily sanctioned

post-judgment rate of interest on the damages of $ 900,000 awarded it for loss of use. The Court of Appeal allowed the appeal and set aside the orders of the High Court relating to the dollar component of the judgment debt. It ordered that post judgment interest be paid on the dollar component at the current prevailing rate in the United States of America till final payment.

It is from this unanimous judgment of the Court of Appeal that the appellant has appealed to this Court. Before this Court, the appellant has based its case on the following two Additional Grounds of Appeal:

"ADDITIONAL GROUND A

Their Lordships erred in applying Court (Award of Interest and Post Judgment Interest) Rules 2005 (CI52) retroactively.

ADDITIONAL GROUND B

Their Lordships holding that post judgment interest rate payable is the rate prevailing as at the date of payment is unsupportable in law."

THE LAW

The appellant's case in its appeal to this Court is constructed on a false premise, namely, that the judgment referred to in the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52) is necessarily the judgment of the trial court, rather than that of the appellate court which gave the final judgment in the case. Rule 2(1) of the Court (Award of Interest and Post-Judgment Interest) Rules 2005 provides that "Subject to subrule (2) each judgment debt shall bear interest at the statutory interest rate from the date of delivery of the judgment up to the date of final payment." Because an appeal, in the Ghanaian jurisdiction, is by way of rehearing, the operative judgment for the purposes of this provision of CI 52 should ordinarily be the final judgment of the appellate court. There are several Supreme Court judgments which impliedly affirm this proposition. The statutory pre-judgment interest rate applies between the date of accrual of the cause of action till the date of final judgment by the final appellate court, when so ordered by the court. The post-judgment interest rate then applies from that date, by operation of law. Thus, for instance, in *CCWL v Accra Metropolitan Assembly [*2007-2008] SCGLR 440-441 the Supreme Court said:

"Accordingly, we order that the defendant should pay the plaintiff the net award made by the learned trial court judge in the passage quoted above. In accordance with the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52), the Defendant is ordered to pay interest on the amount awarded to the Plaintiff at the bank rate prevailing today with effect from the date of termination of the contract, that is, 29th June 2001 till the date of payment."

Clearly, the Supreme Court's holding here implies that the judgment by reference to which any post-judgment interest rate should apply is its own judgment. It holds that the pre-judgment interest rate should apply from the date on which the cause of action arose till the date of its own judgment, not the date of the High Court judgment. There are other Supreme Court judgments to the same effect.

For instance, the Supreme Court in *Da Costa v Ofori Transport Ltd.* [2007-2008] SCGLR 602, unanimously held (at p. 609-610) as follows:

"In the result, after a diligent perusal of the plaintiffs' Statement of Case, we have not found any reason why the judgment of the Court of Appeal should, subject to the order we are about to make on interest, be disturbed and we accordingly dismiss this appeal as being without merit.

However, we have decided to modify the judgment of the Court of Appeal by awarding interest on the damages ordered by the Court. In accordance with Rule 1 of the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52), we order that the damages of four million cedis awarded by the Court of Appeal are to bear interest at the prevailing bank rate from the date of the accrual of the cause of action, namely, the date of the first breach of the covenant to inform about sublets, till judgment today.

…

From today, the plaintiffs are, of course, automatically entitled to the payment of interest on the judgment debt at the post-judgment statutory interest rate specified in Rule 2 of CI 52, namely, the prevailing bank rate again, or where there is doubt as to the prevailing rate, the 91 days Treasury Bill rate as determined by the Bank of Ghana, till the date of payment.

The appeal is dismissed, subject to this new order as to interest."

Other Supreme Court decisions to like effect include: *Dupaul Wood Treatment (Ghana) Co. Ltd & Duffour v Asare* [2005-2006] SCGLR 667 at p. 695; *Antwi v NTHC* (Suit No. 54/12/2008, unreported judgment, delivered on 4th February 2009 and *Yungdong Industries Ltd v Roro Services & Ors* [2005-2006] SCGLR 816, at p. 848 where Justice Date-Bah said:

> "Accordingly, the damages that I would award are what would be equivalent to the value, as at 25 March 1994, of the goods converted, together with interest from that date to the date of the final orders of this court."

These cases show that the application of CI 52 to the facts of this case does not involve retroactivity. The relevant legislation applicable on the date of the judgment of the Supreme Court, on 15th November 2006, was CI 52. That legislation authorised the Supreme Court to award pre-judgment interest on the judgment debt that it adjudged. Post-judgment interest would then follow as a matter of law. The fact that the Supreme Court chose to limit the period of the pre-judgment interest it awarded so that it would terminate on the date of the judgment of the High Court does not take away its statutory authority to award the said pre-judgment interest rate. In view of the interpretation given by the Supreme Court to CI 52 (*supra)*, it was open to the Supreme Court to have decided that the interest payable by the appellant should be up to the date of the judgment of the Supreme Court. The fact that it did not do so does not derogate from the applicability of CI 52 to its judgment, even though the enactment came into force after the giving of the High Court judgment in this case. Accordingly, in our view, the appellant's Additional Ground A is misconceived. Additional Ground A, as already stated, is to the effect that: "Their Lordships erred in applying the Court (Award of Interest and Post Judgment Interest) Rules 2005 (CI 52) retrospectively." The appellant's case is that

the judgment of the High Court was given on 29th July 2004, at which date the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52) had not yet come into force. The applicable rate for post-judgment interest rate at the date of the High Court judgment was 4% interest under Order 42 r15 of the High Court (Civil Procedure) Rules 1954 (LN 140A).

The appellant expresses the quintessence of its argument as follows (in paragraphs 2 and 3 of its Statement of Case):

"2. The controversy between the parties concerned the post judgment interest payable on the above debts. The controversy arose because on 29 July 2004 when the High Court pronounced its judgment, the post judgment interest rate was no more than 4% under Or 42 r 15, LN 140A. In the course of the appellate proceedings, the High Court (Civil Procedure) Rules 2004 (CI 47) repealed LN 140A on 3 January 2005 and substituted a higher rate of interest in the Court (Award of Interest and Post Judgment Interest) Rules 2005 (CI 52). In its written submissions in the Court of Appeal, the respondent herein insisted on the application of CI 52 from 29 July 2004 although it came into effect much later. The respondent explained the basis of such retroactive application of CI52 in its written submissions in the Court of Appeal that:

> "though the judgment was dated 29 July 2004, and at the relevant time Order 42 r 15 of the High Court (Civil Procedure) Rules 1954 (LN 140A) was applicable, as yet by virtue of the appeals lodged by the respondent, by the time execution or the enforcement of the judgment was sought to be performed, LN 140A had been repealed. And CI 52 is applicable and no court of law could allow a repealed legislation to be used. It would amount to a situation of suing a dead person ..."

1. Their Lordships in the Court of Appeal held that CI 52 was a procedural legislation and operated retroactively from 29 July 2004 to date; further, that post judgment interest was payable at the current prevailing rate in the USA as at the date of payment."

The culmination of the appellant's argument is that the Court of Appeal's alleged retroactive application of CI 52 is unconstitutional. This is how it puts its case in its Statement of Case (at paragraph 6):

> "Indeed, the retroactive application of CI 52 is unconstitutional. For, article 107 of the 1992 Constitution prohibits such retroactive legislation as would impose a burden, obligation or liability on any person except as permitted under the Constitution. The provision in effect prohibits retroactive interpretation and application of any statute. Admittedly, there would be no objection to retroactivity so long as no burden, obligation or liability is imposed on any person, and this explains the exception of procedural legislation..."

There are at least two answers to this argument. The first is that article 107 is inapplicable to the facts of this case, since it refers exclusively to Parliament, whilst CI 52 is made by the Rules of Court Committee, pursuant to power conferred upon it by Article 157(2) of the 1992 Constitution. Article 107 provides as follows:

> "Parliament shall have no power to pass any law –
>
> (a) to alter the decision or judgment of any court as between the parties subject to that decision or judgment; or
>
> (b) which operates retrospectively to impose any limitations on or to adversely affect the personal rights and liberties of any person or to impose a burden, obligation or liability on any person except in the case of a law enacted under article 178 to 182 of this Constitution."

It is obvious from the express language of this provision that it has no applicability to this case. Secondly, the statutory power to award interest that was exercised by the Supreme Court in its order quoted *supra* was not deployed retroactively. Rule 1 of CI 52 provides as follows:

> "If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action, that interest shall be calculated
>
> (a) at the bank rate prevailing at the time the order is made, and
>
> (b) at simple interest
>
> but where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner."

When the Supreme Court decided on 15th November 2006 to award pre-judgment interest on the sum representing the replacement value of the vessel the subject-matter of the original suit in this case, it was in effect exercising power under rule 1 of CI 52, which was in force then, although it did not say so expressly. It was open to the Supreme Court to award interest from the date the cause of action arose up until the date of their judgment, pursuant to rule 1. The fact that the court, in exercising its discretion, limited the period for the payment of interest to end on the date the High Court gave its judgment does not convert its award into a retroactive award. This Court has no power in this appeal to disturb that award by the Supreme Court. In my view, however, any post-judgment interest which is payable by operation of law (under rule 2 of CI 52) became payable from the date of the Supreme

Court's judgment (and not that of the High Court). Therefore, the interpretation put by the respondent on rule 2 of CI 52 for the purposes of levying execution in this case was erroneous and should not have been supported by the Court of Appeal. Kusi Appiah JA, delivering the unanimous judgment of the Court of Appeal on this point said (at p. 109 of the Record):

> "Guided by the decision in DUPAUL WOOD TREATMENT case (supra), I hold that the sums or judgment debt, (i.e. $600,000.00 replacement value of vessel and US $ 900,000.00 damages for loss of use) adjudged payable by the Supreme Court to the Plaintiff/Appellant are to bear post judgment interest in accordance with the Court (Award of Interest and Post Judgment Interest) Rules, 2005 (CI 52) from 29 July, 2004 to date of final payment that is January, 2007."

Clearly, the starting date for the calculation of this post-judgment interest is erroneous. It is hereby amended to 15th November 2006, the date of the delivery of the Supreme Court's judgment and orders. Subject to this amendment, we would dismiss Additional Ground A of the appellant's appeal. The Court of Appeal was not in error in applying CI 52 to this case and, in any case, that application was not retroactive.

We will next consider Additional Ground B. There is merit in this ground in that the Court of Appeal erred in ordering that "Post Judgment interest on the Dollar component should be paid at the current prevailing Bank rate in the USA as at the date of payment." (See p. 109 of the Record.) Rule 2 of CI 52 provides that each judgment debt shall bear interest at the statutory interest rate from the date of delivery of the judgment up to the date of final payment. This statutory interest rate is defined in Rule 4 as "the bank rate prevailing at the time the judgment or order is made by the court." On the facts of this case, that would be the bank rate prevailing on 15th November 2006, when the Supreme Court made its order. The appeal thus partially succeeds on this point and the Court of Appeal's order is hereby varied to conform with rule 4 of CI 52. In other words, the US dollar rate of interest to be applied to the dollar component of the judgment debt should be that prevailing as at the date of the delivery of the Supreme Court's judgment and orders.

The appellant also sought to argue its original ground (i) to the effect that the Court of Appeal erred in awarding post judgment interest rate on the US dollar debt at the prevailing interest rate in the US and urged that the 4% exigible under Order 42 rule 15 of LN 140A should be the applicable rate. In the light of the exposition of the law above, it is obvious that this ground has no merit and it is hereby dismissed.

Thus, subject to the variations (*supra)* of the Court of Appeal's orders relating to the payment of post-judgment interest on the dollar component of the judgment debt, the appeal is dismissed.

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

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(JUSTICE OF THE SUPREME COURT)

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