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

CORAM: AKUFFO (MS), JSC (PRESIDING)
DR. DATE-BAH, JSC
ADINYIRA (MRS), JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC

CIVIL APPEAL
NO. J4/5/2010
7TH JULY, 2010

1. OFEI BOSOMPEM)
2. EMMANUEL OPARE-BOSOMPEM)
SUING FOR THEMSELVES AND AS).. PLAINTIFFS/RESPONDENT
LAWFUL ATTORNEYS OF MANUKARE) APPLICANTS/APPELLANTS
BOSOMPEM & ORS.

VRS

STEPHEN TETTEH KWAME ... DEFENDANT/APPELLANT/
RESPONDENT/RESPONDENT

J U D G M E N T

BAFFOE-BONNIE, JSC:

The facts in the current appeal are fairly simple. The applicants herein instituted an action at the High Court claiming;

(a) Possession of the premises housing the Pan Africa Hotel ¢300,000 monthly rent from the 27/07/1999 up to date of service of the writ.

(b) Mesne profits at the rate of ¢800,000 per month from the date of the service writ till delivery of possession to the plaintiff and

(c) Costs.

The trial High Court Judge found for the appellants in this action and among other things stated as follows;

"It would therefore be unconscionable to allow the defendants to retain possession without paying economic rent for the premises in favour of the plaintiff and not grant the plaintiff vacant possession of the premises housing the Pan African Hotel. I shall also allow the plaintiffs claim for ¢800,000 as mesne profits from the 27th July 1999 to date. I shall accordingly enter judgment for the plaintiff for that sum since that sum would in my view be a fair rent for the said premises. Costs of ¢20,000,000 in favour of plaintiff".

This judgment was delivered on 22/02/2006; i.e 7 years after the writ was issued. Dissatisfied, the Respondents herein, immediately filed appeal which is still pending at the Court of Appeal.

After filing of the appeal, he also applied to the High Court for stay of execution pending appeal, but same was dismissed. The application was repeated and granted by the Court of Appeal which on 31/03/2008 held as follows:

"……..At least half of the judgment debt should be paid as this would not work any hardship on the judgment debtor…… For this reason, the application is granted on terms. i.e., half of the judgment debt must be paid while the applicant remains in possession as he pursues his appeal. The amount is to be paid on or before the 15th of May 2008."

Even though he is yet to complete the payment so ordered the respondents have made substantial payments, most of which were made after the deadline given by the Court. Following the failure of the Respondent herein to beat the deadline given by the Court of Appeal, the appellant herein went to the High Court which on 16/7/2008 granted them leave to issue a writ of possession.

That leave to go into execution is still pending. However, for reasons that are not apparent on the face of the record, the appellants filed another motion, this

time before the Court of Appeal, for "leave to go into execution of Judgment of High Court dated 22/2/2006 "

This application came up for hearing at the Court of Appeal on 7th April 2009. For proper effect let me quote in extenso the proceedings of the day.

"Mr. Antonio,(counsel for Appellant herein): This is application for leave to go into execution. This court granted the application for stay on terms. The applicant was to pay half of the judgment debt. They have not fully complied with the orders of the Court. They have not been paying rent

Mr. Ahenkorah: We have paid a total of GH¢5,340.00

"By Court: We are of the view that since the Respondent has made substantial payment into Court, we would not grant the application for leave to go into execution, we dismiss the application. We make no order as to costs."

It is the appellants' dissatisfaction with this decision of the Court of Appeal which has culminated in this appeal before us.

Before turning to the substance of this appeal, I want to make a small comment on how time in this case has been managed so far.

This action was instituted in November 1999 and it took seven years for judgment to be delivered in February 2006. Since we do not have the full record of proceedings before us, it cannot easily be discerned who or what actually caused the delay for 6-7 years. Be that as it may, the judgment was delivered on 22/02/96 and immediately an appeal was filed against it. Four (4) years on, and the appeal on the substantive suit has not seen the light of day. In the interim a motion for stay of execution has been granted by the CA after the first one was refused by the High Court. Then after leave to issue writ of possession had been granted by the High Court, the beneficiary of the said leave strangely, did not pursue it but chose to file a similar process at the Court of Appeal for the same relief.

Based on the affidavits before them, the learned Justices of the Court of Appeal, in their discretion, refused the application. And now the appellant has carried his

fight in respect of the leave to issue writ of possession, to this Court.

Why the appellant herein, is expending his energies on nibbling at the bones i.e. these interlocutory matters, instead of ensuring that the respondents herein, pursue and conclude the appeal on the substantive action, beats my imagination. It is as if none of the Counsel is interested in the appeal, to the detriment of the parties, especially, the plaintiffs in this case.

GROUNDS OF APPEAL

Against the decision of the Court of Appeal to disallow their application for leave to issue writ of possession the appellants herein have filed two grounds of appeal.

1. That their Lordships erred in law in refusing/dismissing plaintiffs/ appellants application to be granted leave to go into execution of the Court of Appeal orders dated 31/3/2008.

2. Further grounds of appeal may be filed on receipt of the record of proceedings (No additional grounds have been filed or argued)

In his statement of case Counsel has submitted that the respondent herein failed to honour the Court's orders by the deadline of 15/5/2000 without any explanation.

Citing the case of **THE REPUBLIC V HIGH COURT ACCRA; EXPARTE AFODA, [2001-2002] SCGLR 768 SC,** counsel submitted that it is the position of the law that all orders of court of competent jurisdiction ought to be obeyed. Indeed it has been held that no litigant has the right to determine for himself whether or not a court's order is valid to command his disobedience to it. He concluded that the consequences of the respondent having failed or refused to obey the lawful orders of the Court of Appeal, was for the Court of Appeal to have granted leave to go into execution. Consequently the Court of Appeal had erred in law and this had occasioned a miscarriage of justice and ought to be reversed.

In his one page statement in response, Counsel for the respondent submitted that, the decision to refuse the application to go into execution was interlocutory and

since same was given on 7th April 2009, the rules allows only 21 days to file an appeal against same. By waiting till 7th July 2009 (3 months after the decision) to file an appeal, the application was incompetent.

Rule 8(1) a of the Supreme Court rules C.I 16 as amended reads

1) Subject to any other enactment governing appeals, a civil appeal shall be lodged within

(a) twenty-one days, in the case of an appeal against an interlocutory decision;

(b) three months, in the case of an appeal against a final decision unless the Court below or the court extends the period within which an appeal may be lodged.

The appellant herein has submitted that by the nature of the application and the outcome of same the appeal is sustainable because the decision is not interlocutory but rather final.

A determination as to whether or not the decision appealed from is interlocutory or final is at the heart of this appeal because as has often been said no right of appeal exists save such as is conferred by statute.

In the case of **In re Amponsah (1960) GLR140** the Court of appeal held

"We are clearly of the opinion that an appellate court has no inherent jurisdiction to entertain an appeal from an order or decision given by a court below it. In all causes or matters an appeal lies only if given by statute."

AkuffoAddo JSC (as he then was) in case of **Frimpong v Poku 1963 GLR 1** said,

"a right of appeal is always conferred by statute, and when the statute conferring the right lays down conditions precedent to the vesting of that right in a litigant it is essential that those conditions must be strictly performed otherwise the right does not become vested"

In the present appeal the rule that regulates the appellate jurisdiction of this court is Rule 8(1) sub rules (a) and (b). It is 21 days if interlocutory and three months, if final. Interestingly whilst the three months in respect of final judgment can be

extended when leave is sought and granted, no such extension is countenanced by the rule regulating interlocutory appeals.

Was the decision final as claimed by the appellant herein? Without a doubt the answer is a definite no!

Whether a decision is interlocutory or final has been the subject of several judicial decisions. In the case of **Karletse-Panin v. Nuro [1979]GLR 195**, both Sowah and Francois JJA(as they then were) gave insights into how to determine whether a decision is interlocutory. But the simple test is whether the decision determines the case or still leaves certain issues to be determined. This is how Apaloo JA (as he then was) put it in the case of **Atta Kwadwo v.Badu [1977] 1 GLR 1 at pg 4**

"The criterion for distinguishing a final from an interlocutory order has come before the courts a number of times and the test generally accepted is that the judgment or order to be final must finally dispose of the rights of the parties"

This court in the case of POMAA & OTHERS VRS. FOSUHENE (1987-88)1 GLR244 said,

"An inference whether a decision or order was final or interlocutory was dependent essentially on the nature of the decision or order and consequently on the answer to the question whether the decision or order disposed of the rights of the parties or the matter in controversy. An interlocutory decision did not assume finally to dispose of the rights of the parties. It was an order in procedure to preserve matters in status quo until the rights of the parties could be determined. The test was not to look at the nature of the application but at the nature of the order made."

In the case of **Bansah v. G.B. Ollivant 1954 WACA 408**, the court held that,

"A judge's refusal to review his judgment is an interlocutory decision and if special leave to appeal to appeal from the refusal has not been obtained, the appeal from the refusal is not properly before the court of appeal; therefore the Court has no power to grant leave to amend the notice of appeal."

In the appeal before us the rights of the parties will be finally determined by the

courts decision on the principal issues of whether or not the appellant herein is entitled to recovery of possession of the premises occupied by the respondent etc. This is what was determined by the trial high court judge and is the subject of the substantive appeal before the Court of Appeal. Stay of execution pending appeal, leave to go into execution or payment of monies pending appeal, are all interlocutory and do not dispose of the rights of the parties.
Having decided that the decision being appealed from was interlocutory, then pursuant to rule 8(1)(a) of C.I. 16,this appeal having been brought outside the statutory 21-day period, this court's jurisdiction has not been properly invoked. As Francois JA (as then was) said in the **Karleste-Panin case** (op cit) page 209,

"In such an event, the court is not called upon to view the hardships that might flow in consequence. It may be said that the courts judicial vision is circumscribed by statutory blinkers."

The appeal is not properly before this court and same is dismissed.

P. BAFFOE-BONNIE
JUSTICE OF THE SUPREME COURT

S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

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

S. O. A. ADNYIRA (MRS)
JUSTICE OF THE SUPREME COURT

N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

COUNSEL:

W. L. ANTHONIO FOR THE PLAINTIFFS/RESPONDENTS/APPLICANTS/APPELLANTS

JAMES AHENKORA FOR THE DEFENDANT/APPELLANT/RESPONDENT/ RESPONDENT