**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA**

**CORAM: ATUGUBA, J.S.C. (PRESIDING)**

**BAFFOE BONNIE, J.S.C.**
**AKOTO BAMFO (MRS), J.S.C.**
**BENIN , J.S.C.**
**AKAMBA, J.S.C.**

**CIVIL MOTION**

**NO.J5/29/2014**

**5TH NOVEMBER 2014**

**IN THE MATTER OF**

**THE REPUBLIC**

**VRS.**

**THE HIGH COURT (FAST TRACK DIV.) ACCRA**

**EX PARTE: ANANE AGYEI FORSON - - - APPLICANT**

**THE ATTORNEY - GENERAL - - - INTERESTED PARTY**

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# RULING

**BENIN, JSC**:-

The application has been brought before this court seeking a prohibiting order against the High Court on ground that the said court has no jurisdiction in the matter brought before it by the Attorney-General, Interested Party herein, against a foreign firm called Isofoton SA, represented by a Ghanaian citizen called Anane Agyei Forson. The basis of the claim by the Attorney-General is that this court ordered Isofoton to refund some sums of money that the Government of Ghana had paid to the said Isofoton under a contract which the court had

declared void. That judgment was obtained in an action brought against Isofoton and two others by a private Ghanaian citizen named Martin Amidu, a former Attorney-General of Ghana. In order to secure the benefit of that judgment the Attorney-General brought an action by way of a writ of summons at the High Court to recover the sums of money Isofoton was ordered to refund to the Ghana Government.

It is undisputed that the action before the High Court arose out of this court's judgment in suit number J1/23/2012 intituled:

MARTIN ALAMISI AMIDU

V.

1. ATTORNEY-GENERAL

2. ISOFOTON, SA

3. ANANE-AGYEI FORSON

dated 21st June 2013, unreported. The material part of the said judgment reads: "……..It is consequentially ordered pursuant to article 2(2) of the 1992 Constitution that the 2nd Defendant is to pay or refund to the Government of Ghana the cedi equivalent of US$325,472.00 received from the Government of Ghana and any subsequent payments thereafter made so far pursuant to the contracts declared void by this court.

Interest is to paid on the sum adjudged above from the date of its receipt by the 2nd defendant, in accordance with the Court (Award of Interest and post judgment interest Rules)….."

The reliefs sought by the Attorney-General at the High Court against Isofoton are exactly the awards made by the Supreme Court in favour of the Government of Ghana in the above quoted judgment. Thus, as rightly pointed out by the High Court in its ruling dismissing an application to set aside the writ of summons, "there is …no doubt that this writ is to enforce the judgment of the Supreme Court referred to above." The High Court concluded that the Attorney-General, plaintiff in the suit before it could maintain the action notwithstanding that it seeks to enforce a judgment of this court.

The applicant could have appealed against the said ruling but instead it chose to invoke this court's supervisory jurisdiction for an order of prohibition to stop the High Court from hearing the said suit for lack of jurisdiction.

Thus the issue or question raised in this application is very limited to matters of practice and procedure. Is a person in whose favour an order has been made by this Court justified in issuing a writ of summons at the High Court to enforce it?

Admittedly, unlike the High Court rules which make adequate provisions as to the modes of implementing its decisions and orders, the Supreme Court rules do not contain such provisions. However, what is important to note is whether the Supreme Court has the power and ability to implement its own decisions. Before we address this it is pertinent to make reference to what pertains in some other common law jurisdiction. In the English case of CHEETAM V. HOLLINGWORTH, (1914) W.N. 25, D.C., an application to the county court to enforce a High Court judgment was not allowed on ground that the county court judge had no jurisdiction to try the case under existing legislation. In the case of Re NATERS, AINGER V. NATERS (1919), 88 L.J.Ch. 521; 122 L.T. 154; 63 Sol. Jo. 800 where the court making the order had no means of enforcing it, an action, enforceable by execution, was allowed. In the case of TAFF VALE RLY. CO. V. AMALGAMATED SOCIETY OF RLY. SERVANTS, (1901) A.C. 426; 50 W.R. 44 H.L. a judgment or order was made against a trade union. To enforce the order only the property of the trade union could be attached. Thus in order to reach the property an action was commenced against the trustees of the trade union and Lord Lindley took the view that such an action was necessary and maintainable.

These three cases cited give an indication as regards in what type of circumstance that a court will allow a fresh action to enforce a judgment, in other words it is permissible to start a fresh action in order to enforce a judgment or order obtained by a party in some situations and circumstances. In RE NATERS, supra, the fresh action was allowed because the original court that made the order had no means of enforcing it.We have said the Supreme Court rules do not provide the means of enforcing its judgment or order. However, there are two relevant provisions which are applicable to this court's power of enforcement. Firstly, rule 28 of the Supreme Court Rules, 1996 (C.I. 16). It reads:

**'Where the Court directs any judgment or order to be enforced by any other court, certificate in the Form 12 set out in Part 1 of the Schedule to these Rules under the seal of the Court and the hand of the presiding justice setting out the judgment or order shall be transmitted by the Registrar to that other court, and the latter shall enforce the judgment or order in the terms of the certificate.'**

This rule provides an indirect means to this court to enforce its judgments and orders by another court. The court can do this on its own initiative or at the request of a person entitled to the benefit of the judgment or order. The court that is directed to enforce the judgment or order is required then to apply the means available to it by appropriate rules of procedure and practice to enforce the judgment or order.

Then Article 129(4) of the 1992 Constitution which provides:

**For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or enforcement of a judgment or order made on any matter, and for purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law.**

This constitutional provision gives this court a direct authority to enforce its own decisions including judgments and orders applying any relevant rules of practice and procedure available in any court in the country. One can readily envisage are course to this constitutional provision particularly in cases where the court exercises its original jurisdiction.

It is thus clear that there are means available to this court to enforce its judgment. For this reason it is not open to a person to commence a fresh action in a lower court for the sake of enforcing this court's judgment or order, unless for some stated reason the judgment or order cannot be directly enforced against the defeated party or the person against whom the order was made in the action, like the situation in the TAFF VALE RLY CO case, supra.

The action mounted by the Attorney-General at the High Court will amount to re-litigating the issue of the liability of Isofoton all over notwithstanding that issue estoppel operates as between the parties and moreover the fresh action is

contrary to the public policy principle '*interest rei publicaeut finis sit litium'*; literally meaning that in the interest of the public there must be an end to litigation. Citing the dicta of Wigram V-C in HENDERSON V. HENDERSON (1843) 3 Hare 100 at pp 114-115, the Court of Appeal held in the case of FOLI and Others v. AGYA-ATTA and Others (Consolidated) (1976) 1 G.L.R. 194 C.A. that it was a rule of law that a person could not bring an action where the issue which he sought to have determined had as between the parties or their privies already been disposed of by a competent court. The same principle has been affirmed by this court in the case of FOSUHENE V. ATTA WUSU (2011) SCGLR 273, at p. 283, per Baffoe-Bonnie, JSC, citing this court's earlier decision of DAHABIEH V. S A TURQUI & BROS. (2001-2002) SCGLR 498, holding 2. The High Court is thus bereft of jurisdiction to entertain the suit the issues having been determined by this court already. For these reasons and the reason that the Supreme Court is capable of enforcing or ensuring the enforcement of its own judgments and orders, we hold the application for a prohibiting order is apt and must therefore be granted.

**(SGD) A. A. BENIN**

**JUSTICE OF THE SUPREME COURT**

**(SGD) W. A. ATUGUBA**

**JUSTICE OF THE SUPREME COURT**

**(SGD) P. BAFFOE BONNIE**

**JUSTICE OF THE SUPREME**

**(SGD) V. AKOTO BAMFO (MRS)**

**JUSTICE OF THE SUPREME COURT**

**(SGD) J . B. AKAMBA**

**JUSTICE OF THE SUPREME COURT**

**COUNSEL**

THADDEUS SORY ESQ. WITH HIM KWAKU AFRIFA NSIAH ASARE AND EDZE AGBEVEY FOR THE APPLICANT.

HELENA FRENCH ( STATE ATTORNEY) FOR THE INTERESTED PARTY.