IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT ACCRA

CORAM: AKOTO BAMFO (MRS), J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION NO.J8/79/2014
12TH NOVEMBER 2014

RICHARD ADOM FRIMPONG **PLAINTIFF/APPLICANT**

VRS.

MAJOR McDORBIE **DEFENDANT/RESPONDENT**

RULING

AKOTO BAMFO (MRS), J.S.C:-

On the 14th of July 2014, the applicant herein filed this motion for an order ''to stay execution of the Ruling of the court of Appeal'' on the grounds stated in the supporting affidavit.

The said affidavit sets out in detail the events that culminated into the present application

The applicant averred that 2 suits involving him, the respondent and one other over the same subject matter, the land in dispute, were consolidated and tried by the High Court. Judgment went in favour of the respondent herein. The applicant appealed against the decision to the Court of Appeal which reversed same. Upon an appeal filed by the respondent, the Supreme Court, on 30th January 2013

pronounced on the matter, set aside the judgment of the Court of Appeal and restored the decision of the High Court.

Thereafter the applicant made a discovery that the High Court judgment was obtained by fraud and therefore commenced a fresh action in the High Court for these declaratory reliefs namely;

(1) A declaration that the judgment of the High Court confirmed by the Supreme Court was obtained through a fraudulent document and therefore is null and void
(2) A declaration that the title of the plaintiff to the land is good and valid as it came genuinely from the Lands Commission.

During the pendency of the application for Directions, the defendant applied to the court for an order dismissing the suit on these 2 grounds: an abuse of the court's processes and estoppel.

The High Court, on the 2nd of December 2013 acceded to the request and dismissed the suit. The applicant promptly filed a Notice of appeal dated the 2nd of December 2013 against the order of dismissal.

When the High Court refused to grant an order for stay of execution pending the hearing of the appeal, the applicant made a repeat application to the Court of Appeal .The application suffered the same fate, for it was again refused.

Dissatisfied with the ruling, the applicant lodged an appeal against the ruling of the Court of Appeal and subsequently filed the instant application.

The applicant submitted that there were serious issues to be determined and there was therefore the need for staying the orders made by the Court of Appeal. According to him, he stood to suffer greater hardship should the application be refused.

The respondents strenuously opposed the application. It was submitted that the substantive matter and the application founded on it smacked of bad faith since the suit had ended in the Supreme Court but nonetheless the applicant had commenced re-litigating over the same issues before the High Court.

Generally, this court has the discretion to grant or refuse an application of this nature. The factors which should weigh on the court in the exercise of its discretion have been settled in a long line of cases including,

BAIDEN V ANSAH 1973 1 G L R 3

MENSAH V GHANA FOOTBALL ASSOCIATION 1989-90 1 G L R 1 and

REPUBLIC V COURT OF APPEAL, ACCRA EXPARTE GHANACABLE LTD (BARCLAYS BANK LTD INTERESTED PARTY 2005-2006 SCGL R 107

In N. D. K. FINANCIAL SERVICES LTD V YIADOM CONSTRUCTION & ELECTRICAL WORKS (2007-2008 1SCGLR 93, the Supreme Court set out the guide lines in these terms ''…the main principle adopted by the courts was what the position of the appellant would be if the judgment were to be enforced and the appeal were successful. In effect, the essential point in considering such an application was whether the applicant would be returned to the status quo ante should the appeal succeed. Another determining principle was which of the parties would suffer greater hardship should the application be granted or refused.''

Another principle in considering applications for stay of execution was that if the judgment or order sought to be stayed was not executable, the right of stay would not exist.''

Thus aside from the issues relating to hardship and the seriousness of the issues to be raised, the applicant has to satisfy the court that the orders made were executable

Order 20 of the Supreme Court Rules CI16 is the statutory frame work governing interlocutory applications in the exercise of the Supreme Court's appellate jurisdiction.

It provides:

Effect of appeal

(1) A civil appeal shall not operate as a stay of execution or proceedings under the judgment or decision appealed against except in so far as the Court or the court below may otherwise order.
(2) Subject to these rules, and to any other enactment governing appeals, an application for stay of execution or of proceedings shall first be made to the court below and if the court refuses to grant the application, the applicant may repeat the application before the court for determination.

It is obvious from the wording of the rule cited above that it relates to the stay of execution in respect of the judgment or decision appealed against.

In circumstances where the judgment or ruling appealed against only dismissed an appeal from a lower court, such judgment cannot be brought within the ambit of rule 20(1) of C I16 because it is not the judgment or decision appealed against.

On the Notice of Appeal filed in this court appears the following:

'' Take Notice that the appellant being extremely aggrieved with the ruling of the court of Appeal delivered on 17th March 2014 do hereby appeal to the Supreme Court''.

The ruling delivered on the 17th of March 2014 states:

''we have read the motion paper and supporting affidavit in the opposition and we think there is no merit in the application. Consequently the application is refused and same is dismissed''

In terms of Rule 20 of C I 16 therefore the only appeal properly pending before this Court is the process filed against the ruling of the 17th of March 2014. It is therefore only in respect of that ruling that an invitation could properly be extended to this Court to exercise its discretion provided the order is executable.

The issue is whether the orders made by the Court of appeal are executable.

The order in question simply dismissed the application for stay. How then does one go into execution in respect of a dismissal or refusal order?

The ruling, the subject matter of the appeal, merely dismissed the application; such orders are not executable and therefore cannot come within the ambit of the rule.

For these reasons I am unable to grant the order.

It is accordingly refused and same is dismissed.

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

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