IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: BENIN, J.S.C. SITTING AS A SINGLE JUSTICE OF THE SUPREME COURT

CIVIL MOTION NO.J8/9/2015
19TH DECEMBER 2014

IN THE MATTER OF

THE REPUBLIC

VRS.

THE HIGH COURT (COM. DIV.) KUMASI

EX PARTE: ***FIRST ATLANTIC BANK LIMITED*** **- - - APPLICANT**

1. ***AGYEI BAFFOUR AND SONS LTD.***
2. ***BAFFOUR YAW AGYEI***
3. ***JAMES KWAKU OPPONG*** **- - - INTERESTED PARTIES**

RULING

BENIN, JSC:-

This is an application seeking an order restraining the interested parties from executing the order of the High Court pending the determination of an application for certiorari brought to the Supreme Court to quash the decision of the High Court, Commercial Division, Kumasi. The applicant recounted the facts leading up to the application for certiorari which is yet to be heard and determined by this

court. The applicant herein caused to be issued from the High Court in Kumasi a writ of summons against the interested parties herein. The action could not be heard on merits because on 25th July 2014 the High Court presided over by Yartey J. dismissed the action because the writ of summons did not disclose the chamber registration number of the firm which issued the writ. The court also awarded costs of GHc4,000.00 against the applicant. The applicant has since filed an application for certiorari in this court to quash the said decisions of the High Court.

It appears the only executable order made by the High Court is the costs awarded. The applicant is complaining that the interested parties have taken steps to enforce the order for costs notwithstanding the pendency of the application for certiorari before this court. The applicant therefore applied to the High Court for an order to stay execution of the order for costs. However, the High Court dismissed the application upon a preliminary objection raised by the interested parties that as long as there was no appeal pending against the court's decision, an application for a stay of execution could not lie.

Following the High Court's refusal to grant the stay of execution, the applicant filed an application in this court seeking an order to restrain the interested parties herein from seeking to enforce the order for costs awarded by the High Court. This appears to be a repeat application for a stay of execution though described as an application to restrain the interested parties from enforcing the High Court's order for costs. Whatever description is given to the application, the object sought is the same: to stay execution in respect of the order for costs.

The grounds for the application may be found in paragraphs 7 and 8 of the affidavit in support of the application. These read thus:

7. That in order not to render the success of the application for certiorari nugatory, we pray for an order for injunction directed at the interested parties to restrain them from carrying on with any further proceedings which instigated the pending certiorari proceedings.

8. That the Applicant's application for certiorari before the Supreme Court raises serious issues relating to violations of the Applicant's constitutional rights as well as allegations of fundamental errors which go to jurisdiction of the High Court and I therefore pray that the interested parties be restrained until the determination of the application for certiorari.

Arguing the application, Counsel for the applicant said they were coming under Article 129(4) of the 1992 Constitution, as interpreted by this court in the case of **Ghana Football Association v. Apaade Lodge Ltd. (2009) SCGLR 100**. He also cited the case of **Edusei (No. 2) v. Attorney-General (1998-99) SCGLR 753**and also **Merchant Bank (Ghana) Ltd. v. Similar Ways Ltd. (2012) 1 SCGLR 440.** Counsel's view was that though the Supreme Court rules make no explicit provision for interim orders in a matter like certiorari, yet the court is not helpless for under its inherent jurisdiction it could make appropriate orders to ensure that justice prevailed.

For his part counsel for the interested parties simply argued that since the applicant did not appeal against the High Court's decisions, an application for a stay of execution would not lie. The rules of court make adequate provisions for a stay of execution only where there is an appeal against a lower court's decision.

Arguing further, Counsel for the applicant said the issue of the High Court's jurisdiction was a serious one so the court should exercise its discretion in their favour.

I think the case of **Ghana Football Association v. Apaade Lodge Ltd.** (supra) which Counsel for the applicant cited provides an answer to this application. In that case the court made it clear that the Supreme Court had no jurisdiction to entertain an application for stay of execution of a judgment which is not on an appeal. The court went on to explain that Article 129(4) of the Constitution would be invoked only where the Supreme Court is clothed with jurisdiction over a matter in which case it would be clothed with the powers of the court from which the appeal was brought.

The High Court rules do not confer on the court any right to make a restraining order against a successful party thereby preventing him from enforcing the court's order when there is no appeal against it. Under the High Court rules the court has jurisdiction to assist a successful party enforce the court's orders when there is no appeal against same. Thus under Article 129(4) of the constitution this court is disabled from granting a restraining order in the absence of an appeal since the High Court lacks such jurisdiction.

It was part of the applicant's case that if the order for stay is not granted the certiorari application will be rendered nugatory should it succeed. I do not think so because the application for certiorari is not in respect of the costs, which was only a consequential order. The Supreme Court may decide to set aside the order dismissing the suit but not touch the costs at all, which is not likely though. But the point is that the main purpose of the application for certiorari is to ensure a restoration of the writ of summons which the High Court dismissed. Therefore the application would not be rendered nugatory if the costs are paid. No reason has been given why the costs should not be paid to the interested parties. I am therefore unable to grant the application which I dismiss accordingly.

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

DANIYAL ABDUL KARIM ESQ. FOR THE APPLICANT.

KWASI AFRIFA ESQ. FOR THE INTERESTED PARTIES.