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

CIVIL APPEAL
NO. J4/33/2014

30TH JULY 2014

CORAM: ADINYIRA (MRS.) JSC PRESIDING
ANIN YEBOAH JSC
BAFFOE-BONNIE
AKOTO-BAMFO (MRS.) JSC
AKAMBA JSC

ZOOMLION GHANA LTD - - PLAINTIFF/APPELLANT /APPELLANT

VRS.

MERSKWORLD COMPANY LTD - - DEFENDANT/RESPONDENT /RESPONDENT

JUDGMENT

SOPHIA ADINYIRA (MRS.) JSC (PRESIDING):

Facts

Plaintiff-Appellant (Plaintiff) and Defendant-Respondent (Defendant) are both engaged in the business of waste management. On 13 October 2008, Plaintiff entered an agreement with the Accra Metropolitan Assembly (AMA), under which the Plaintiff was to pre-finance the construction of a refuse disposal facility at the disused stone quarry located at Sarbah, North-West of Oblogo, and operate the pit for a period of 3 years, subject to renewal. On 15 October 2008, the Plaintiff obtained an Environmental Permit (No. 2004) from the Environmental Protection Agency (EPA) for the construction and operation of the pit, and proceeded to do so.

Meanwhile, on 23 February 2009, Defendant negotiated with members of the Gbawe Kwartei family, which said that the land belonged to them, and paid GHC 200,000, a cow, a sheep and assorted drinks, for the right to use the pit for a period of 99 years. On 25 February 2009, the Kwartei family granted the Defendant access and right of entry to the land.

On 3 December 2009, Defendant entered the Sarbah landfill with police personnel and vehicles, and removed Plaintiff's workmen, servants and agents on the Sarbah pit, leading to the present dispute. Both sides sought a declaration of their exclusive right to enter and operate the pit, an order for recovery of possession of land, a perpetual injunction restraining the other party from entering and dumping refuse in the pit, and damages.

At the time the action was commenced, the Sarbah pit was empty. While the High Court initially granted an interlocutory injunction restraining both parties from using the pit until the final determination of the suit, new evidence submitted by the Plaintiff and concerns for public health caused the High Court to revise the interlocutory injunction to allow the Plaintiff alone to use the pit. The Plaintiff alone operated the Sarbah pit as a commercial dumping site until June 2012, when it became full with refuse and was closed.

On April 9, 2013, the High Court entered judgment in favor of the Defendant. The Court ordered the Plaintiff to vacate the site and to pay: (1) special damages of GHC 17,581,010 with interest, (2) Gh 20,000 in

damages for trespass, and (3) GHC 20,000 in costs. The Plaintiff's appeal against the judgment is pending.

On May 20, 2013, the Court of Appeal granted a Stay of Execution on the judgment of the High Court, pending the Plaintiff's appeal, on the condition that it pays 50% of the judgment debt to the Court within 30 days, to be invested by the Registrar in a good interest-yielding bond.

The Plaintiff appeals against the Stay awarded by the Court of Appeal, on the basis that the conditions imposed were onerous and therefore amounted to a wrongful exercise of judicial discretion.

Grounds of Appeal

1. The Court of Appeal erred in not carefully evaluating the evidence and the judgment of the trial court.
2. The Court of Appeal erred in granting the application for Stay of Execution on such onerous terms as to amount to a refusal of the application.
3. The Court of Appeal failed to give due consideration to the principles governing applications for stay of execution.
4. The Court of Appeal erred in not considering the obvious hardship, which will fall on the plaintiff if it was unable to comply with the onerous terms imposed as a condition for the grant of the application for Stay of Execution.

Submissions of Plaintiff

The Plaintiff submits the Court of Appeal erred in granting the application for Stay of Execution on such onerous terms as to amount to a refusal of the application. The execution of this order has the potential of affecting the very survival of the plaintiff. The plaintiff submits further that the substantive appeal raises arguable points of law on the issues of liability of the plaintiff and the quantum of special damages. The Plaintiff therefore argues that it will only be fair for both sides that a stay should be ordered. The Plaintiff finally contends that it will suffer greater hardship than the Defendant if the appeal is denied.

Submissions of Defendant

The Defendant submits that the Court of Appeal's ruling was reasonable and not onerous. The Defendant further submits that Plaintiff-Appellant's appeal has no chance of success. Finally the Defendant contends the application is only an attempt by the Plaintiff to delay or prevent the Defendant from reaping the fruits of its judgment.

Consideration

The only issue worthy of consideration in this appeal is whether the conditions imposed on the grant of stay of execution were onerous, and amount to a wrongful exercise of judicial discretion.

It is the jurisprudence of this Supreme Court that an order of payment of the whole or a portion of a judgment debt into court, pending an appeal, is a reasonable order and a lawful exercise of judicial discretion. We recall the oft cited case of ***Joseph v. Jebeile*** **[1963] 1GLR 387,** SC where this Supreme Court, held at 390, that:

> *"Generally speaking, it is not our view that the policy of the law in this country should be against staying execution pending appeal especially where large sums of money are involved and we would urge that when execution is stayed it should, where the circumstances permit, be on the condition that the judgment-debtor pay into court the amount of money involved, or, when refused, on the condition that the judgment-creditor give security as aforesaid and approved by the judge."*

It is our considered opinion that the Court of Appeal's order was reasonable as it relates to only 50% of the judgment debt; and, especially where it was further ordered that the Registrar invest the amount paid in a good interest-yielding bond. Therefore it cannot be the case that if the Plaintiff won the appeal, the judgment of the Court of Appeal would be rendered nugatory.
The appeal lacks merit and is therefore dismissed.

(SGD) ***S. O. A. ADINYIRA(MRS)***
JUSTICE OF THE SUPREME COURT

(SGD) ***ANIN YEBOAH***
JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE BONNIE**
JUSTICE OF THE SUPREME COURT

(SGD) **V. AKOTO BAMFO (MRS)**
JUSTICE OF THE SUPREME COURT

(SGD) ***J. B. AKAMBA***
JUSTICE OF THE SUPREME COURT

COUNSEL

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