IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

KUMASI, A. D. 2022

CORAM:

ANGELINA M. DOMAKYAAREH (MRS.) J A (PRESIDING)

ALEX B. POKU-ACHEAMPONG, J A

SAMUEL K. A. ASIEDU, J A

CIVIL APPEAL NO.: H1/34/2022

DATE: 28TH JULY, 2022

BEST ASSURANCE COMPANY LTD. - DEFENDANT/APPELLANT

VRS.

ALHAJI MOHAMMED ABASS - PLAINTIFF/RESPONDENT

J U D G M E N T

DOMAKYAAREH (MRS.), JA:

[1] We have before us an interlocutory appeal against two Rulings of the High Court, Kumasi dated 29th January, 2019 and 20th December, 2018. In this judgment, the Plaintiff/Respondent/Respondent will be called the Respondent while the

Defendant/Applicant/Appellant will be called the Appellant. The Respondent commenced his action against the Appellant on 5th November, 2018 and by an Amended Writ of Summons on the same day accompanied by a Statement of Claim, he claimed the following reliefs against the Appellant; namely: -

RELIEFS AS PER AMENDED WRIT OF SUMMONS AND STATEMENT OF CLAIM:

a. Liquidated sum of GH¢300,000.00

b. Special damages of GH¢15,000.00 per month from April 2018 till date of final payment

c. Interest

d. Costs

THE CASE OF THE RESPONDENT AT THE TRIAL COURT:

[2] The salient facts of the Respondent's case as averred per his Statement of Claim are that he obtained a 50 seater Yutong vehicle with Registration Number GT 5924 – 17 with a loan facility and he was required to work and pay the loan at Gh¢15,000.00 per month. In 2017 he took out a comprehensive insurance policy for the said vehicle with Registration Number GT 5924 – 17 with the Appellant Insurance Company to cover the full replacement value of the said vehicle in the event of theft and accident. The Respondent averred that on 16th April, 2018 the said vehicle was involved in an accident on the Kintampo to Tamale road which rendered the said vehicle unrepairable and was completely written off. The Respondent averred that he made a claim under the Policy and on 2nd August, 2018, the Appellant Company wrote to him and advised that they had completed the Claim validation and that they were going to issue the Discharge Form within a week.

[3] The Respondent further averred that despite the representations made to him by the Appellant Company, the Appellant did not comply with its obligations under the Insurance contract and as a result of its failure to pay the claim, he defaulted in the payment of the loan. The Respondent also averred that due to the Appellant's conduct

he became subjected to pay interest daily and his debts kept accruing daily. The Respondent also averred that he lodged a complaint with the National Insurance Commission who wrote to the Appellant but the Appellant refused to pay the claim. The Respondent also averred that the Appellant wrote to the National Insurance Commission to request that he the Respondent should produce the Driving Licence of the driver Alhassan Seidu which he did through the National Insurance Commission but the Appellant still refused to pay the claim. The Respondent also averred that subsequently, the Appellant wrote to the National Insurance Commission on 30th October, 2018 stating that it required further time to validate the Driver's Licence. It is the case of the Respondent that the Appellant does not want to pay the claim and is merely playing games with him while his business is suffering; and that the Appellant will not pay unless compelled by the court to do so, hence his action against the Appellant for the reliefs claimed.

THE CASE OF THE APPELLANT AT THE TRIAL COURT:

[4] The Appellant Company on its part while admitting that the Policy took effect on 27th March, 2018, denied the claims of the Respondent. The Appellant averred that the Comprehensive Policy indemnified the Respondent for loss subject to policy excess and contribution towards betterment and that a bill of GH¢237,800.00 was submitted to it as claim for the repairs of the vehicle. The Appellant also averred that following its letter of 2nd August, 2018 to the Respondent, it appointed a surveyor to inspect the vehicle and adjust the claim bill. However there was no driver's licence of the driver in charge of the vehicle when it had the accident. The Appellant stated that the representation in its letter of 2nd August, 2018 was not complied with because the Respondent had not satisfied a condition precedent to liability by not submitting a valid driving licence of the driver in charge of the vehicle as at the time of the accident, pointing out that the Policy provided under the **"We will not pay Section"** that the Appellant will not pay any claim if the vehicle is driven by a driver who is not licensed to drive the vehicle. The Appellant emphasized that even though the driver of the vehicle died in the

accident, it was still incumbent on the Respondent who was the owner of the vehicle to submit a valid driver's licence of the driver.

[5] The Appellant admitted that the National Insurance Commission, in a letter dated 28th September, 2018, sought clarification on the Respondent's claim from it and the Appellant explained that a valid driver's licence was required from the Respondent. The Appellant also conceded that the Respondent subsequently submitted the driving records of a driver named Alhassan Seidu from the DVLA to it through the National Insurance Commission but added that there was no photo of the person. The Appellant also admitted that the Respondent later submitted the confirmation page of the driver's licence of the said Alhassan Seidu whose details had been submitted earlier through the National Insurance Commission but it refused to pay the claim because in the process of validating the information on the driver's licence submitted, an investigator was sourced to investigate the authenticity of the documents. The investigator traced the relatives of the actual deceased driver in charge of the Bus at the time of the accident who indicated that the photo on the confirmation page of the driver's licence submitted, though named Alhassan Seidu, was not that of the deceased. The Appellant added that there were distinct differences in a photo of the deceased provided by the relatives and that on the DVLA documents as well as differences in the date of birth provided on a National Health Insurance Card provided by the relatives and the DVLA documents. The Appellant said it requested for ample time to conclude the investigations since it had referred the matter to the Police CID for investigation. The Appellant gave an assurance that it was prepared to pay all valid claims once conditions precedent to liability such as the requirement for a valid driver's licence have been met. To this end, the Appellant averred that assuming without admitting that it was liable, it would pay an adjustment of the repair bill of GH¢237,800.00 by deducting contribution to betterment and 15% Policy excess by way of Liquidated sum while it would not pay any Special Damages because the Policy has no business interruption extension.

REPLY:

[6] In a Reply to the Appellant's Statement of Defence, the Respondent averred that the Appellant's letter of 2nd August, 2018 was not subject to any condition precedent and that the Appellant's reference to non-fulfillment of a condition precedent was an afterthought created to make a defence for the Appellant's unlawful conduct. The Respondent also averred that the Appellant lacks the legal capacity to challenge the driver licence of the Respondent's driver when the DVLA had confirmed those details as valid.

MOTION ON NOTICE FOR PAYMENT INTO COURT:

[7] On 6th December, 2018, the Respondent filed a Motion on Notice for an Order for the Appellant to pay the amount of the sum insured which was GH¢300,000.00 into court pending the outcome of the case.

On 20th December, 2018, the Appellant, having failed to file an Affidavit in Opposition to the motion despite having been given the opportunity to do so, and also the failure of counsel for the Appellant to attend court despite having been given the said Hearing date following his request, the trial court heard the Application, granted same and ordered the Appellant to pay the said sum of GH¢300,000.00 into court by 28th December, 2018 pending the final determination of the case.

MOTION ON NOTICE FOR AN ORDER STAYING THE ORDER OF 20/12/2018 AND ALSO FOR AN ORDER VACATING THE SAID ORDER OF 20/12/2018:

[8] On December 27, 2018, the Appellant filed a "Double Header" Motion praying the trial court for an Order staying the Order of 20/12/2018 and also for an Order vacating the said Order of 20/12/2018 on the ground that the said Order will work untold hardship to the Appellant who is the owner of the said sum which it uses as part of its working capital. This Application was opposed by the Respondent and following a number of adjournments, the trial judge heard the Application on 29th January, 2019 and dismissed same. The trial judge further granted an extension of time for the Appellant to comply with the court Order of 20/12/2018 by 8th February, 2019 and also ordered the Respondent to sign an undertaking that if he is not able to prove his case

against the Appellant, he will pay all incidental expenses to be incurred by the Appellant towards the deposit of the sum insured into court pending the final determination of the case.

APPEAL:

[9] The Appellant filed its Notice of Appeal on 8th February, 2019 complaining that it is dissatisfied with the said Rulings of the trial court dated 29th January, 2019 and 20th December, 2018. Per the Notice of Appeal, the Appellant is seeking before this court the vacation of the said Orders of the trial court dated 29/01/19 and 20/12/18 on three grounds.

GROUNDS OF APPEAL:

(a) That the trial court erred when it relied on speculations deposed in the Plaintiff/Respondent/Respondent's affidavit in support to order the Defendant/Applicant/Appellant on 20/12/18 to pay an amount of GH¢300,000.00 into court.

(b) That the trial court failed to consider the guiding principles for a grant or otherwise of an application for vacating its orders dated 20/12/18 when it dismissed the Defendant/Applicant /Appellant's Application on 29/01/19

(c) That the trial court erred when it held the Defendant/Applicant/Appellant did not advance reasons convincing it to vacate its orders dated 20/12/18

(d) Additional ground(s) of appeal to be filed on receipt of the record of proceedings.

We place on record that no additional grounds of appeal have been filed.

CONSIDERATION OF THE GROUNDS OF APPEAL:

[10] We shall consider the submissions by counsel for the Respondent since he raised a preliminary issue which we are duty bound to consider first before evaluating the grounds of appeal if need be.

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

[11] Counsel for the Respondent raised an objection relating to the jurisdiction of this court to entertain this interlocutory appeal. Counsel rightly submitted that the question of whether or not the appeal is properly before this court is a fundamental issue which must be determined first before the court can entertain the proceedings.

[12] Counsel contended that the Appellant did not meet the threshold to invoke the jurisdiction of this court in this matter and therefore, the appeal is void. Counsel referred to Rule 9(1) of the Court of Appeal Rules, 1997 (C I 19) which provides that: -

"9. Time limits for appealing

(1) Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of-

(a) <u>twenty-one days</u> in the case of an appeal against an interlocutory decision; or

(b) three months in the case of an appeal against a final decision unless the court below or the Court extends the time."

Counsel pointed out that the decision of the trial court that ordered the Appellant to pay the money into court was made on 20th December, 2018. Counsel submitted that the decision being an interlocutory decision, the Appellant had twenty-one days to lodge an appeal if it was aggrieved by same and same should have been done by 10th January, 2019. Counsel contended that by lodging this appeal on 8th February, 2019, (fifty days after the date of the Ruling), the Appellant breached Rule 9(1)(a) of C I 19 and therefore failed to invoke the jurisdiction of this court.

[13] Counsel for the Respondent relied on the case of **TINDANA (NO. 1) V. CHIEF OF DEFENCE STAFF & ATTORNEY GENERAL (NO. 1) [2011] SCGLR 724 at 729** et seq, wherein the Supreme Court, in striking out an appeal for want of jurisdiction, spoke through GBADEGBE JSC in these words at page 729 et seq of the judgment: -

"… we observed in regard to the notice of appeal filed in the Court of Appeal that resulted in the decision now on appeal to us that, it was filed out of time. While the judgment of the trial court in the matter was delivered on 19 June 2007, the notice of

appeal to the Court of Appeal was settled by learned counsel for the appellant on 15th November, 2007; and actually filed in the registry of the Court of Appeal on 16th November 2007. By a simple computation of time, we think in the absence of an order of either the High Court or the Court of Appeal, extending the time within which to appeal from the High Court's decision of 19 June 2007, the appeal was improperly constituted having regard to rule 9(1) – (3) of the Court of Appeal Rules, 1997 (C I 19). … we came to the view after a careful perusal of the record of appeal that, the instant appeal was filed clearly outside the time frame provided in rule 9 of C I 19; and consequently unable on the ground of absence of jurisdiction to consider the appeal on the merits."

[14] Counsel also referred to the following cases to buttress his submission, namely: - **GOOD NEWS COOPERATIVE V GRACE AMOYAW AND FREDERICK AMOYAW [2019] 131 GMJ 220 CA AT 244;** ODONKOR V. EOCO [2016] 93 GMJ 195 and **SANDEMA-NAB V ASANGALISA and Others. [1996 – 1997] SCGLR 302 at 307.**

In the **GOOD NEWS COOPERATIVE** case relied on by counsel for the Respondent and cited supra, the Court of appeal in considering the issue raised by counsel for the respondent about the fact that the appeal was filed out of time, in respect of Order 44 r 13 (5) of C I 47, which provides that an appeal against any judgment or order given or made under sub rule (4) shall be filed within fourteen days from the date of the judgment or order, had this to say at page 244 of the Report: -

"The judgment of the High Court was 5th day of July 2015 and the appeal was filed on 23rd July 2015; 14 days after 5th July is19th or 20th July and not 23rd July. There is nothing on record showing time had been extended or enlarged for the appellant by any court.

The law is trite that any appeal filed outside the statutory period without any valid extension of time was void … The courts are there to enforce the law and it is our avowed duty to make sure litigants play the game by the rules. Order 44 makes it obligatory, a shall and so has no exceptions. Technically, there is therefore no appeal before this Honourable court since that notice of appeal is void by law."

In the **SANDEMA-NAB** case also relied upon by counsel for the Respondent and cited supra, the Supreme Court posited thus at page 307 of the Report: -

"Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for a right of appeal, no court has jurisdiction to confer that right in a dispute determined under that statute. Similarly where a right of appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and the relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute. … A court of law has no power to grant a dispensation from obedience to an act of Parliament."

REPLY:

[15] In Reply to the Respondent's Submission on the issue of the lack of jurisdiction of this court to entertain this appeal, counsel for the Appellant pointed out that contrary to the submission by counsel for the Respondent that the Appellant was aggrieved by only the decision of the trial court dated 20th December, 2018, the Appellant was aggrieved by the said decision of 20th December, 2018 as well as the decision of 29th January, 2019 as clearly stated in the Notice of Appeal. Counsel for the Appellant therefore disagreed with the submission by counsel for the Respondent that this court lacks the jurisdiction to entertain the instant appeal by relying only on the decision of 20th December, 2018. Counsel further submitted that as the Notice of Appeal shows, the first decision being appealed against is that of 29th January, 2019 and that of 20th December, 2018 listed as the second decision being appealed against. Counsel pointed out that the link between the two decisions is that the decision of 29th January, 2019 is the decision on the Application to vacate the Ruling of 20th December, 2018. Counsel for the Appellant submitted that by the decision of 29th January, 2019, even though the trial judge dismissed the Application to vacate its decision of 20th December, 2018, the trial court nevertheless varied the decision of 20th December, 2018 to the effect that due to the fact that the date granted to the Appellant to make the deposit into court had long elapsed, the Appellant was granted up to 8th February 2019 to comply with the order it

made on 20th December, 2018. In the decision of 29th January, 2019, the trial judge further added a condition that if the Respondent is not able to prove his case against the Appellant, the Respondent will pay all incidental expenses to be incurred by the Appellant towards the deposit of the said insured sum into court pending the final determination of the case. See page 59 of the Record of Appeal.

[16] Counsel therefore contended that the decision of 20th December 2018 was thereby merged into the decision of 29th January, 2019. Counsel then contended that the Notice of Appeal, having been filed on 8th February, 2019 was ten (10) days (not 20 days) after the decision of 29th January, 2019 and therefore fell within Rule 9(1)(a) of C I 19 which requires interlocutory appeals to be filed within twenty-one (21) days from the date of the Ruling appealed against. Counsel therefore submitted that this court is properly clothed with the jurisdiction to entertain the instant appeal.

[17] Counsel also reiterated his position that the decision of 20th December 2018 though based on the exercise of the discretionary power of the court was nevertheless based on speculation and hence arbitrary and unfair. In that regard counsel submitted that the decision of 20th December, 2018 sinned against Article 296 of the 1992 Constitution which stipulates thus: -

"Where in this Constitution or in any other law discretionary power is vested in any person or authority -

(a) that discretionary power shall be deemed to imply a duty to be fair and candid;

(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and

(c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power."

Counsel submitted that failure to comply with a Constitutional provision results in nullity as expatiated by the Supreme Court in the well-known cases of **REPUBLIC V. HIGH COURT, ACCRA; EX PARTE ALLGATE CO. LTD. (AMALGAMATED BANK LTD. INTERESTED PARTY) [2007 – 2008] 2 SCGLR 1041** and **REPUBLIC V. HIGH COURT, ACCRA; EX PARTE SALLOUM & Others (SENYO COKER INTERESTED PARTY) [2011] 1 SCGLR 574.**

[18] Counsel for the Appellant also submitted that time does not run in void judgments/orders and that an appellate court may entertain and vacate same no matter how and in what shape or form the appeal has come to it. Counsel relied on the cases of **TAKYI V. GHASSOUB (GHANA) LTD. [1987 – 88] 2 GLR 452 S C at 459** and **REPUBLIC V. HIGH COURT, (FAST TRACK DIVISION), ACCRA; EX PARTE STEVEDORING CO. LTD. (DOLPHYNE INTERESTED PARTY) [2007 – 2008] 1 SCGLR 102.** In the **TAKYI V. GHASSOUB (GHANA) LTD.** Case, the Supreme Court posited at page 459 thus: -

"Having come to the conclusion that the Court of Appeal gave the ruling without jurisdiction this court is bound ex debito justitiae to vacate it, no matter how, and in what shape or form the appeal has come to us."

The Supreme Court, in granting an application for certiorari, further held in the **EX PARTE STEVEDORING CO. LTD.** case cited supra at page 106 that: -

"But we do not think that even if the certiorari decision by this court was founded on an application brought out of time same was thereby vitiated as a nullity. This is because time limits cannot apply to cases or judgments or orders which are a nullity. … The principle has been developed to the stage that no matter by what means an invalid order of a court comes to the notice of a superior court, the same has to be set aside. … even if the court had no jurisdiction to entertain the appeal because the requisite leave was not obtained yet:

'Having come to the conclusion that the *Court of Appeal gave the ruling without jurisdiction this court is bound ex debito justitiae to vacate it, no matter how, and in what shape or form the appeal has come to us.' "*

Counsel concluded by submitting that granted arguendo that even if the time for appealing has lapsed, the decision being null and void, the time for appealing against same did not run.

[19] We do not accept the submission by counsel for the Appellant that the decision of 20th December 2018 was merged into the decision of 29th January, 2019 as same is untenable. The two Rulings delivered on different dates remain two distinct Rulings in their own right irrespective of any similarities in them. That being the case, the appeal against the Ruling of 20th December, 2018 on 8th February, 2019 was definitely filed out of time and consequently cannot be entertained by this court. Having run out of time, the Appellant did not and does not even have the right or the privilege to apply for an extension of time to appeal against the interlocutory Ruling of 20th December, 2018. In the case of **OPOKU & Others V. AXES CO LTD [2011] 1 SCGLR 50,** at **59** BAFFOE-BONNIE JSC put it succinctly thus:

"The interpretation that has been put on these provisions i.e. rule 9(1) – (3) of the Court of Appeal Rules, 1997 (C I 19) is that, while time can be extended by the court in the case of a final decision, no such extension is permitted under the rules in respect of interlocutory decisions. In effect unless one strictly complies with the time limits and files his appeal against an interlocutory decision within twenty-one days, he is out of time and cannot be heard on the matter."

GBADEGBE JSC, also put it thus at **page 71** of the Report: -

"It is settled beyond any conflict of opinion that having regard to the very clear words contained in rule 9(1) of the Court of Appeal Rules, 1997 (C I 19), after the expiry of the period of twenty-one days that is allowed for interlocutory appeals, there is no power in the trial court or the Court of Appeal to grant to any party

extension of time within which to lodge an appeal from an order that is not final but interlocutory."

[20] The appeal against the Ruling of 29th January, 2019 although apparently filed within time, nevertheless suffers from a fatality thus making the appeal against same also incompetent. Every appeal must be directed at a separate judgment or order and not at judgments/orders. In other words combining appeals of more than one judgment/order in one Notice of Appeal renders the Notice of Appeal incompetent which results in a failure to evoke the jurisdiction of the Appellate court. In the case of **THE REPUBLIC V. HIGH COURT (COMMERCIAL DIVISION), ACCRA; EX PARTE ATTORNEY-GENERAL (ZENITH BANK INTERESTED PARTY [2018 – 2019] 1 GLR 825** at **844 – 845,** the Supreme Court, in dismissing an application by the Attorney-General by a majority decision for an Order of Certiorari to quash two orders made on different dates by the High Court related to the same subject matter, namely, a Garnishee Order Nisi made on 25th September, 2018 by the High Court (Commercial Division), Accra and a Ruling delivered on 6th November, 2018 refusing the Application of the Applicant to set aside the Garnishee Order Nisi of the High Court (Commercial Division), Accra, had this to say through GBADAGBE JSC:

"The making of the application related to two separate orders of the High Court that are directed at different judges also brings in its wake problems such as computation of the timeframe allowed under the rules in respect of each order for the initiation of the application. The requirement of the Rules limiting the application to be directed at an order instead of orders arises from the fact that every order made by a court has separate consequences regarding the right to appeal or initiate as in this case, collateral proceedings in respect of it. This explains why in regard to notice of appeals; the objection is filed in relation to a judgment or order and not judgments or orders. See: Rule 6 of CI 16. It is only a court properly constituted that may after either several appeals or collateral proceedings have been filed in the exercise of its discretion direct that they be heard together. Concomitantly is the requirement of rule 61 sub-rule 1 (b) of the Supreme Court Rules, CI 16 regarding the filing of a

copy of the order against which the application is made, the effect of which is that properly speaking the application need be made only in respect of an order and not orders. And perhaps more concerning is the fact that the remedies sought are directed at two different judges of the High Court and if the application were to succeed have resulted in this Court making two separate orders, each being directed at a different judge of the High Court."

[21] The argument by counsel for the Appellant that the Rulings of the trial court are a nullity and therefore time does not run in appeals against them and that irrespective of the manner in which the matter comes to the notice of the court, the court has a duty to entertain same does not arise as no court has determined that the Rulings of the trial court are a nullity. It is trite that until a decision of a court of competent jurisdiction is set aside on appeal or by other proper legal processes, the decision remains valid.

In conclusion, once we have come to the finding that the Notice of Appeal filed on 8th February, 2019 is incompetent, we are duty bound not to consider the merits of the Appeal as same will serve no useful purpose. The Appeal is accordingly dismissed.

(SGD.)
ANGELINA M. DOMAKYAAREH (MRS.)
JUSTICE OF APPEAL

(SGD.)
I agree **ALEX B. POKU-ACHEAMPONG**
JUSTICE OF APPEAL

(SGD.)
I also agree **SAMUEL K. A. ASIEDU**
JUSTICE OF APPEAL

COUNSEL:

ENOCH AMOAH for the Defendant/Appellant

KWAME ADOFO for the Plaintiff/Respondent.