

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA-GHANA**

CORAM: Sowah, JA. (PRESIDING)
Oppong, J.A
Ackaah-Boafo, J.A.

SUIT NO: H3/161/2023

8th February, 2023

Dilys Hobenu ***Plaintiff/Respondent/Respondent***

Vrs.

ABSA Bank Ghana Ltd. ***Defendant/Appellant/Applicant***

RULING

SOWAH, J.A.:

The application before us is a repeat application for stay of execution pending the determination of an Interlocutory appeal filed on 17th March, 2022 against an Order of interlocutory injunction made on 25th February 2022 by the High Court, Labour Division.

The Court below granted an interlocutory injunction restraining the defendant/applicant Bank [hereafter “Applicant”] from reviewing downwards the remuneration of the plaintiff/respondent. The plaintiff/respondent [hereafter the “respondent”] had been on sick leave for many months due to what she contends is a spinal injury

linked to her long hours of sitting while working for the Applicant Bank.

Counsel for the Applicant submitted that at the time the application was filed on 31st August 2021, the Respondent was receiving half of her salary in accordance with the Collective Bargaining Agreement (CBA) after she had been paid full salary for one year. According to Counsel, at the time the application was heard and granted on 25th February 2022, the period for the payment of the half-salary had elapsed, and therefore a legal objection was raised but same was overruled. It is the Applicant's case that if the ruling is not stayed the payment made would be in breach of the CBA (**Article 11 B (iv)**) and would also mean the Court has re-written a new contract for the parties.

It is contended that the order made is ambiguous and in contravention of the Collective Bargaining Agreement (CBA) signed between the Bank and the Plaintiff as an employee. The ambiguity argument is based on the fact that though the court below restrained the Applicant from reviewing the remuneration of the Respondent downwards, it at the same time ordered that payment of half salary/remuneration to the Plaintiff continues pending the final determination of the case.

Counsel further submitted that the Bank will suffer hardship as it could pay the respondents' salary for an indefinite period and she may not be in a position to refund if she is to lose the case after trial or the award made is less than payments she had received.

It is also the argument of Counsel that directors of the Bank stand the risk of being cited for contempt should they fail to comply with the order. Counsel submits that these are exceptional circumstances that warrant the grant of the application.

Responding to the arguments of Counsel for the Applicant, Counsel for the Respondent submitted that the instant application is a ploy by the Applicant to delay the suit. According to Counsel granting the instant application and thus stopping any payment to the Respondent would have serious effects on the respondent because she would not have any money to support herself as she undergoes treatment for the injury sustained while working for the Applicant Bank. Respondents' Counsel further submitted that Articles 35 and 36 of the CBA are applicable as the combined reading of both show that the Bank ought to have continued with the full payment of the salary because the Plaintiff is on sick leave based on medical advice and documents submitted to the Bank. Counsel submitted that the Plaintiff agreed to accept the half salary based on the Court order and not on Section 36 of the CBA. He therefore prayed the Court to dismiss the application.

Now, it is worth recalling that this is an application for Stay of execution, and the Order sought to be stayed is about the payment of money. The principles upon which an application of such nature are granted are well defined. The underlying principles include the fact that the Applicant must demonstrate that there are exceptional circumstances to warrant a stay. The court ought also to consider

whether the grant or refusal of the application will work greater hardship on either party and also, whether a successful appeal would be rendered nugatory among others.

See **Joseph vs Jebeille**[1963] 1 GLR 387 SC., **Djokoto & Amissah vs. BBC Industrial Co (Ghana) Ltd. & City Express Bus Services Ltd** [2011] 2 SCGLR 825.

Based on the law and the facts presented, we are satisfied that the grounds upon which this application is brought raises some fundamental issues such as; whether the learned judge below considered the issue of privity of contract and the fact that the CBA is what regulates the relationship between the Applicant Bank and the Plaintiff, as an employee. It is without doubt that the principle of mutuality of engagement is an integral part of any employer-worker relationship. The question, therefore, is by the order made, did the Court re-write the relationship between an employer and an employee? Also, was the order oppressive to the management of the Defendant Bank because it took away the right of the management to exercise the discretion to grant or refuse the Plaintiff further sick leave as provided for by Article 11 (c) of the CBA? Together with the order for the payment to be made *ad infinitum* to the Plaintiff pending the determination of the suit, these are issues raised in the Notice of Appeal which the appellate court will have to consider. That being so, it is our opinion that the threshold test is met by the Applicant who has demonstrated exceptional circumstances.

We shall consequently grant the application as prayed.

Pending the determination of the Appeal filed by the defendant/ applicant herein on 17th March 2022, we hereby stay execution of the Order of Interlocutory injunction dated 25th February 2022 whereby the Defendant was restrained from reviewing downwards the remuneration of the Plaintiff which Order was to take effect from 27th September 2021.

(Sgd.)
CECILIA H. SOWAH
[JUSTICE OF APPEAL]

Oppong, (J.A.) *I agree* (Sgd.)
ANTHONY OPPONG
[JUSTICE OF APPEAL]

Ackaah-Boafo, (J.A.) *I also agree* (Sgd.)
KWEKU TAWIAH ACKAAH-BOAFO
[JUSTICE OF APPEAL]

COUNSEL:

- ❖ Godlove Kotei for Plaintiff/Respondent/Respondent
- ❖ Evans Dzikunu for Defendant/Appellant/Applicant