

IN THE CIRCUIT COURT (11) HELD IN ACCRA ON THE 10TH DAY OF MAY 2023
BEFORE H/H HALIMAH EL-ALAWA ABDUL-BAASIT.

SUIT NO.: C2/1633/2022

ALLIANCE MOTORS GHANA LTD.

PLAINTIFF/RESPONDENT

VS.

MARTINAS COMPANY LTD.

DEFENDANT/APPLICANT

RULING

NOTICE OF MOTION: APPLICATION FOR LEAVE TO ENTER APPEARANCE AFTER JUDGMENT AND FOR AN ORDER TO STAY EXECUTION PENDING THE DETERMINATION OF THE APPLICATION UNDER ORDER 9 R 6 (1) OF C. I. 47.

BACKGROUND

The Plaintiff on the 29th of June 2022 issued a Writ of Summons with a Statement of Case against the Defendant seeking for the following reliefs;

- a) An Order for the recovery of the principal sum of Ninety-One Thousand Seventy-Two United States Dollars, Thirty-One Cents (US\$91,072.31) at the prevailing inter-bank exchange rate or in the alternative, repossession of the Two (2) vehicles for judicial sale to settle the indebtedness;

- b) An order for interest at the prevailing commercial bank interest rate on relief (a) supra with effect from 28th May, 2022 till the date of final payment;
- c) General damages for breach of agreement; and
- d) Costs including Solicitors fees of 10% on reliefs (a) & (b).

On the 9th of August 2022, the Court differently constituted granted an Application for Judgment in default of Appearance in respect of reliefs (a), (b), and (d). Counsel Plaintiff prayed to abandon relief 'c' and same was struck out as withdrawn. The Plaintiff then commenced execution processes and subsequently filed an Application for the Determination of Reserve Price on the 1st of March 2023 with a return date of 10th March 2023. However, before the Application could be heard, a Notice of Appointment of Lawyers was filed by the Defendant herein on the 9th of March 2023 and on the same day, this instant Application was filed.

The Defendant/Applicant's Case

The basis of the Defendant/Applicant's (hereinafter referred to as 'Defendant') instant Application as deposed to by Audrey Twum, Esq in the Affidavit in Support is that the instant action was brought to the attention of the Defendant company after Judgment had been entered and long after the time limited for Appearance. She deposed further that a Search conducted indicates that the process was served on one Samantha Aidoo on behalf of the Defendant but the said Samantha Aidoo is not known to the Defendant, neither did she bring the process to the attention of the Defendant. The Deponent continued that the

Defendant's inability to enter Appearance was not wilful hence the instant prayer for leave to enter Appearance after Judgment to enable the proper defence of its interest in the case. She concluded by deposing further that the Defendant cannot be heard until leave is granted for the Defendant to enter Appearance to enable the defence of its interest to be catered for.

The Plaintiff/Respondent's Case

The Plaintiff/Respondent (hereinafter referred to as the 'Plaintiff') filed an Affidavit in Opposition and same was deposed to by Thomas Mbawin Asaana. The Deponent deposed among others that the present Application is not only unmeritorious but it was also groundless and manifestly brought in bad faith. He deposed further that the Defendant failed to respond to all processes served on them. Thus, Judgment in default of Appearance was entered against the Defendant on 9th August 2022, a Notice of Entry of Judgment and Costs was filed and served on the Defendant who as usual failed to take any action. Again, the Plaintiff filed a Request for Fieri Facias and a Writ of Fieri Facias on the 25th of October 2022 which was duly approved and execution commenced. He deposed further that there is no Application pending before the court or an Appeal which ought to be determined assuming the Stay of Execution was to be granted. He concluded that even if such an Application or suit is pending before the court, the Defendant has not demonstrated any exceptional circumstances to warrant this court to exercise its discretion in its favour. He prayed the court to dismiss the Application and the Applicant mulcted with hefty costs to prevent the failure of justice.

Issues

In view of the above, the issues for determination are

- (a) **Whether or not the Defendant can enter Appearance after Judgment;**
- (b) **Whether or not Execution can be stayed pending the determination of the Application.**

It will be observed that the second issue is a prayer pending the determination of the Application. The Application for Stay of Execution ought to have been determined prior to the determination of whether the Defendant can enter Appearance after Judgment. However, Counsel for the Defendant did not make any argument to that effect and in fact his Written Address to the Court was only in respect of the Application for leave to enter Appearance after Judgment. As such, the court can safely assume that the Defendant has abandoned the prayer for Stay of Execution. This therefore leaves us with just one issue of **whether the Defendant can enter Appearance after Judgment.**

Analysis

It is trite that a Writ of Summons contains a command to the Defendant to enter appearance within Eight (8) days after service, failing which judgment would be entered for the Plaintiff. *See Order 9 Rule 5 of the High Court Civil Procedure Rules; C. I. 47.* The Defendant herein failed to enter appearance within the stipulated period as required by law and as such the Plaintiff proceeded to apply for judgment in default of appearance and same was granted by the court. However, in his Written Address in support of the Application filed on the 18th of April 2023, Counsel for the Defendant submitted, among others, *that the instant Application seeks to invoke the discretion of the Court to enable the*

Defendant fight the case or any Application thereof, on the merits. He submitted further that the Defendant has a constitutional right to defend this action and to do so by the appointment of a counsel. The discretion of the Court, according to Counsel, is available to aid the defence of the Applicant insofar as there are pending proceedings before the court. Counsel for the Plaintiff, on the other hand, also submitted among others, in his Written Address filed on the 20th of April 2023 that the Defendant does not need leave of court except that the Applicant intends to file a Statement of Defence which is utterly contrary to the rules of Court. He submitted further that even if the Applicant intends to set aside the Judgment, it does not need leave of the court to enter appearance before taking any action.

The Court respectfully disagrees with Counsel for the Plaintiff and his position that the Defendant does not need the leave of court to enter appearance. This is because Order 9 Rule 6 of C. I. 47 specifically provides for Late Appearance and further provides in Order 6(1) that ‘...a Defendant may not file appearance after Judgment has been entered in the action except with leave of court...’ The wording of Order 9r6(1) gives the court the discretion on whether to allow the Defendant to enter late appearance depending on the period from the date of Judgment and the stage of execution as well as whether execution has reached a completed stage or not. In this instant action, the record shows that the Plaintiff has since commenced execution but is yet to complete execution. In fact, there is an Application for Reserve Price which is yet to be determined by this court. Since the Plaintiff is still in the process of execution as there is still an Application for Reserve Price is yet to be determined. It would be observed that the Application for Reserve Price was on Notice to the Defendant and assuming without

admitting that the Defendant wants to respond to the Application, and intends to do same through Counsel, the rules require that Counsel announces himself by entering appearance. However, in view of the fact that judgment has been entered against the Defendant, Counsel for the Defendant may enter appearance only with leave of court.

DECISION:

The Application for leave to enter Appearance after Judgment is hereby granted and the suit shall take its normal course.

COUNSEL

1. Liman A. Mohammed Esq. for the Plaintiff/Respondent present.

2. Kwame Boafo Akuffo Esq. for the Defendant/Applicant present

SGD

**H/H HALIMAH EL-ALAWA ABDUL-BAASIT
CIRCUIT COURT JUDGE**