

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE, LAW COURT COMPLEX
(CRIMINAL COURT '2') HELD IN ACCRA ON 29TH DAY OF NOVEMBER,
2023

CORAM: HER LADYSHIP JUSTICE MARIE-LOUISE SIMMONS (MRS)
JUSTICE OF THE HIGH COURT

CASE NO. CR/0316/2021

THE REPUBLIC - APPLICANT

VS

1. KWASI NYANTAKYI }
2. ABDULAI ALHASSAN } **RESPONDENTS**

RULING ON STAY OF PROCEEDINGS

On the 8th October 2022 the Republic/Applicant hereinafter referred to as the Applicant filed an application before this Court differently constituted praying to have its principal witness, Anas Aremeyaw Anas testify in camera citing issues of personal safety for the said witness in the ongoing case. The application was opposed by both counsel for the Accused persons.

On the 17th May 2023, this Court gave its ruling and granted the prayer of the Applicant in part. The ruling allowed the said witness who is known to publicly disguise himself with a beaded mask to wear the said mask in open Court and testify but showing his real identity in chamber to the judge in the presence of the prosecutors, the Accused person and their lawyers before testifying in open Court on each occasion of testimony. With the delivery of this ruling, the way had been paved for the Applicant to begin to call its witnesses

Then on the 7th July 2023, the Republic/Applicant, dissatisfied with the decision of the Court, filed an application for extension of time for leave to appeal against the ruling of the Court together with a supplementary affidavit since the statutory one month for filing criminal appeals had elapsed.

This application was served on both counsel for the Accused/Respondents per affidavits of service on the 12th and 13th July 2023 respectively. This Court granted the said application with no opposition from counsel for the Respondents. The Notice of Appeal to the Court of Appeal was subsequently filed on the 20th July 2023. Meanwhile proceedings had been adjourned to the 26th July for the Applicant to call a witness for the trial which had stalled to proceed.

Prior to the hearing of the case, and since an appeal does not operate as a Stay of Proceedings, this present application was filed on the 20th July 2023 seeking a Stay of Proceedings in the above stated case. There is proof of service of same on both counsel for the 1st and 2nd Accused persons on the 24th July 2023. The application has been opposed by the 1st Accused/1st Respondent hereinafter referred to as 1st Respondent in his affidavit in opposition filed on the 6th November 2023. There was however, no response filed by the 2nd Respondent.

I have read the Applicant's affidavit filed as well as the affidavit in opposition filed by counsel for the 1st Respondent. I have in addition considered the *viva voce* submissions made by both counsel on the 27th November 2023 as well as the case law provided in support, and I am grateful to both counsel.

It is the argument of the Applicant per his supporting affidavit and *viva voce* submission made on the 27th November 2023 that, the appeal has a bright chance of success and that the appeal borders on the Applicant's ability to call its principal witness or 'central character' (as this Court has been Accused of describing the witness), Anas Aremeyaw Anas whose investigations led to the charging of the Respondents.

It has been further deposed, that the ruling of the Court which is being appealed against does not afford the witness the needed protection to enable him testify especially as his investigations are conducted in a covert way and as such the Applicant being the Prosecution, is finding it difficult to procure the attendance of the said witness at the trial. This notwithstanding, the counsel for the Applicant admits that, the said witness is not the only witness the prosecution wishes to call and that witness statements of about three (3) or more witnesses have been filed. It has further been argued that the present application if granted will not occasion any miscarriage of justice to the Respondents nor delay the final determination of the trial

In his *viva voce* submission, the learned Assistant State Attorney added that, the fact that both the Applicant and 1st Respondent have filed or intend to file Notices of

Appeal against the said ruling of this Court must be considered as an exceptional circumstance and urges the Court to halt the trial of the Respondents before this Court to enable both parties pursue their appeals which outcome may be beneficial to all parties and the Court, which may even affect the subsequent prosecution of the trial.

In a sharp rebuttal, the counsel for the 1st Respondent in his affidavit in opposition stated that after perusal of the affidavit in support of the application, the said application fails to demonstrate any special circumstance warranting the grant of this application. The affidavit in opposition further canvasses the point that a grant of this application would certainly undermine the speedy trial of the case and cause undue hardship, delay and inconvenience to the Respondents. Both in his affidavit and *viva voce* submissions, counsel for the 1st Respondent has submitted that having filed witness statements for four (4) other witnesses besides Anas Aremeyaw, the trial can continue while the appeal is pursued.

On a rather interesting twist, as the Applicant seeks under paragraph 12 of his affidavit to state that the grant of this applications is important for both the Republic and the 1st Respondent who not satisfied with the Court's ruling have filed Appeals against the Court's ruling. Counsel for the 1st Respondent in his responses both in his affidavit in opposition at paragraph 8 and his *viva voce* submission in Court, have rather stated that notwithstanding the filing of an appeal against the ruling, he has not filed nor seek to file an application to stay this trial in the interest of justice for his client.

A prayer for an application of this nature is an invitation to the Court to exercise its discretionary power as under **Article 296 of the 1992 Constitution**, which power must be exercised according to law and in the interest of justice.

In the case of **ALI YUSSIF ISSAH VS. THE REPUBLIC (2003-2004) SCGLR 174**, it was held *inter alia* per GAESAYOR JA that:

“the grant or refusal of the Appellant's application for an order of Stay of Proceedings was entirely within the discretion of the Court. As with all such discretion, it must be exercised judicially, not whimsically or capriciously.”

This principle has been supported by other case law including the case of **THE REPUBLIC VS. STEPHEN KWABENA OPUNI & 2 OTHERS, REPORTED IN DENNNIS LAW AS (2019) DL CA6373 DATED 8TH APRIL 2019, CA**

It must be noted that the apex Court has determined that an application for Stay of Proceedings in either civil or criminal trial especially in criminal trials, must demonstrate very exceptional circumstances to warrant the grant of same.

See cases such as **EDMUND ADDO VS. THE ATTORNEY GENERAL (2019) JELR 107221, ISA VS. THE REPUBLIC (2003-2005) SCGLR** aptly referred to by the Applicant's counsel also reported in Dennis law and **THE REPUBLIC VS. STEPHEN KWABENA OPUNI & 2 OTHERS, REPORTED IN DENNNIS LAW AS (2019) DL CA6373 DATED 8TH APRIL 2019, CA**

In the concurring judgment of TANKO AMADU JA (as he then was) in the case of **ALI YUSIF (SUPRA)** gave a more detailed exposure of the law on Stay of Proceedings when he stated *inter alia* :

“an application for Stay of Proceedings is one which invokes the discretionary jurisdiction of the Court based on the peculiar facts placed before the Court. Therefore, that jurisdiction cannot be exercised from a vacuum. Since it is discretionary, it must be judicious and ought to take into consideration a judicial balancing of any alleged imminent injury or prejudice to the respective rights and interests of the parties pending the determination of the interlocutory appeal.

(5) In criminal proceedings as in the instant case, that exercise would involve the balancing of the public interest which the Respondent (in this case , the Applicant, My emphasis) represents in the expeditious prosecution of alleged criminal conduct, as against the interest of an Accused who is presumed innocent until otherwise pronounced by a Court of competent jurisdiction

That is why the consensus of judicial authority require an Applicant seeking a Stay of Proceedings pending the determination of an interlocutory appeal to establish a case of a special kind often referred to as ‘exceptional’ in order to succeed. The meaning and scope of the word ‘exceptional’ is imprecise. Suffice it to say that it admits of a circumstance or situation which is unique and beyond the ordinary course of events. It will involve the consideration of some collateral circumstances and to some extent inherent matters which may, unless a stay is granted paralyze one way or the other the Applicant’s constitutional or statutory rights in the pending appeal.

(7) Therefore, where the situation is embellished in such terms to appear as though there is a restriction on legal avenues albeit within acceptable judicial practice, that situation cannot be said to be ‘exceptional’. In my view, for a situation be exceptional, it must be

specifically tied up to an imminent development in the judicial proceedings which if not stayed, would irreparably prejudice the case of the Applicant. It must be one for which the rights of the Applicant to a fair trial will suffer a limitation or restriction which is unwarranted by law. In other words, the Applicant has a duty to demonstrate that if a stay is not granted, it would overwhelmingly suffocate the tenets of justice while the interlocutory appeal is pending."

I cannot help, but seek to rely on the erudite decision in the above cited case which has been supported by some current cases including that of THE REPUBLIC VS. STEPHEN KWABENA OPUNI (supra). In this particular case, the Applicants so called exceptional circumstances enumerated, are not in any way exceptional. There has been no ground stated that establishes an imminent development in the judicial process, for which reason if the trial is not stayed would cause irreparable damage to the case of the Applicant.

The basis of the application which the Applicant contends is for the application to be granted to enable the Republic pursue its appeal at the Court of Appeal in order for one witness, who is deemed the "central character" in the prosecution's story to be allowed to testify in camera. That per se is not sufficient ground for the grant of same.

This is bearing in mind that the Applicant is the ever powerful Republic, the Prosecutor, who is represented by the Attorney General and as per **Article 88 of the 1992 Constitution** and is responsible for the initiation, conduct and even the discontinuance of criminal cases in this Country.

Assuming without admitting, that the Applicant succeeds in the Appeal before the Court of Appeal for the witness, Anas to be allowed to testify in camera, how would his testimony in camera or not, reasonably affect the testimony of the other proposed witnesses whose statements have been filed to testify.?

Are they not all witnesses whose testimonies in totality with that of the most material witness are to aid the prosecution to establish the elements of the offences they have charged the Respondents with? This Court is of the firm opinion that the normal process of criminal prosecution can continue with the calling of the other witnesses, if the prosecution choses to continue the trial. No matter how inconsequential the evidence of these other witnesses are or will be, as portrayed by the Applicant, they have been listed as witnesses. There cannot reasonably and foreseeably be any irreparable damage to the prosecution's case if the trial is not stayed.

The Prosecution as by law, has the right to seek to have their charge sheet or witness statements amended in the course of the trial even if the outcome of the appeal seeks to have any effect on the ongoing trial as submitted by the state Attorney, counsel for the Applicant. Such a procedure if adopted, will not or must not be affected by the existence of an interlocutory appeal. I cannot agree more with counsel for the 1st Respondent that the Courts have determined that the mere fact of an existence of an appeal should not affect a criminal trial leading to a stay of same, which this application seeks to do.

In the case of ALI YUSSIF ISSAH VS THE REPUBLIC as stated supra, the Court further stated that:

“the mere fact that the interlocutory appeal by the Appellants was pending did not necessarily justify or compel the exercise of the discretion by the trial judge. The particular circumstances of the case must be taken into account and such circumstances must include some special circumstances ... ”

Cases such as GARRETT VS. GARRETT (1991) 2GLR 366, BRUTUW VS. AFRERIBA AND ANOR (1979) GLR 566, and THE REPUBLIC VS. STEPHEN KWABENA OPUNI & 2 ORS also support this principle.

So far as submitted by counsel for the 1st Respondent, no evidence has been provided before this Court by the Applicant who is the initiator of this criminal trial that their appeal filed before the Court of appeal on the 20th July is being pursued or that any steps are being taken procedurally to have it determined.

The peculiar circumstances of this case will not permit a judicious use of discretion if this application is granted. The case has gone through much delays which on an occasion led to the discharge of the Accused by a High Court differently constituted

Of course, the delays have not all been unreasonable knowing that both sides have used it one way or the other to exercise their inalienable rights. However, it is the duty of a Court to try as much as possible to prevent and avoid unnecessary delays and to promote expeditious trials. This Court also, cannot, and is not enjoined to adjourn this case *sine die*.

With the prosecution, therefore having filed the witness statements of as many as five (5) witnesses, with the case ready for trial, I do not fathom why any of the other listed witnesses cannot be called while the said appeal is pursued. It is my considered opinion, and I agree with the counsel for the 1st Respondent in his submission that the

pending appeal affects only the testimony, and even the mode of testimony of **one out of the five** witnesses listed and should therefore not be made to curtail the entire trial.

Consequently, the application does not in my view attract the requisite favor of this Court and it is accordingly refused and dismissed. The trial is to continue while the appeal is pursued.

(SGD)

**JUSTICE MARIE-LOUISE SIMMONS (MRS)
(JUSTICE OF THE HIGH COURT)**

COUNSEL:

DERRICK ACKAH-NYAMIKE (ASA) FOR THE REPUBLIC/APPLICANT.

**BAFFOUR GYAU BONSU ASHIA HOLDING BRIEF OF THADDEUS SORY
FOR THE 1ST ACCUSED PERSON/RESPONDENT.**

CHARLES LUANGA POUZING FOR THE 2ND ACCUSED/RESPONDENT.