

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION, HELD IN ACCRA ON WEDNESDAY THE 15TH DAY OF
NOVEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.

SUIT NO. CM/BFS/0060/2023

ECOBANK GHANA LIMITED - PLAINTIFF/RESPONDENT

Vs

1. TOTAL LOGISTICS LTD - DEFENDANTS/APPLICANTS
2. EMMANUEL PERCY-BROWN

RULING

I have listened to the submissions for and against the motion by the Defendants/Applicants (hereinafter called the Applicants) praying the Court to set aside the consent judgment entered by the High Court differently constituted on 8th March, 2023.

I have read the documents filed in support and in opposition to the application as well as the supplementary affidavit.

The consent judgment in this case was entered by the High Court differently constituted on 8th March, 2023. The consent judgment was predicate upon terms of settlement filed on 2nd March, 2023. It was signed by the 2nd Applicant for himself and on behalf of the 1st Applicant. It was also signed by a representative or an officer of the Plaintiff/Respondent (hereinafter called the Respondent).

It was further signed by counsel for the Applicants then and counsel for the Respondent herein.

Counsel for the Applicants herein is contending that there are absurdities in the terms of settlement which was adopted as consent judgment by the High Court on 8th March, 2023. Therefore, same should be set aside. Counsel for the Respondent contends otherwise.

As I have stated already, the parties signed the terms of settlement which was adopted as consent judgment by the court.

Consent judgment is deemed as a mutual contract between the parties before the court. Therefore, where the terms of such consent judgment are proper and sound, same should not be disturbed.

The law is settled, that where terms of a contract such as consent judgment in this case have been reduced into writing, the court would give effect to the terms in the consent judgment which have been signed by the parties.

See: POKU v GHANA COMMERCIAL BANK [1989-1990] 2 GLR 37 CA

Consent judgment binds the parties, and is not even appealable, unless there are vitiating factors such as fraud, duress, undue influence, mistake, misrepresentation etc which are apparent on the face of it. However, even in that situation, the innocent party has to issue a Writ of Summons and lead evidence to have it set aside, which is not the situation in this case.

See: THE REPUBLIC V. HIGH COURT (COMMERCIAL DIVISION) ACCRA EX PARTE THE TRUST BANK LTD. (AMPOMAH PHOTO LAB LTD. AND 3 OTHERS - INTERESTED PARTIES) [2009] SCGLR 164

Again, as I have stated, the parties who signed the terms of settlement are presumed to be of age and sound mind. The law is settled that a person of full age, and of sound mind would be bound by the contents of a document he has signed, whether he read it or not. This is particularly in the absence of any evidence that he was misled to sign it.

See: INUSAH v D.H.L WORLDWIDE EXPRESS [1992] 1 GLR 267

YAW OPPONG v ANARFI [2011] 32 GMJ 118 SC

TWUM v SGS. LIMITED [2011] 30 GMJ 92 CA

Therefore, facts recited in a written document such as the terms of settlement filed on 2nd March, 2023 are presumed to be true as between the parties to the document and their successors, privies, assigns etc. under section 25 of NRCD 323.

See: ATIA v BOAKYEM [2006] 9 MLRG 1 SC

KUSI & KUSI v BONSU [2010] SCGLR 60

Again, it is the duty of the courts to ensure that the doctrine of sanctity of mutual terms of agreement such as consent judgment between parties is maintained. The court therefore cannot intervene and substitute any other interpretation of the consent judgment for the parties, but must give effect to what the parties themselves have agreed.

See: SOFTSHEEN CARSON v WILLIAM – FUGAR [2014] 79 GMJ 162 CA

The exception to the above principle is where there is fraud, duress etc. which has been established which is however absent in this situation.

Furthermore, it is not the duty of the court to rewrite an agreement such as the terms of settlement in this case for the parties by inserting terms which would have been beneficial but were overlooked by the parties.

See: ALLAN SUGAR (PRODUCTS) LTD. v GHANA EXPORT CO. LTD [1982-83] 2 GLR 922 CA

In my opinion, there is no absurdity or ambiguity in the terms of settlement which was adopted by the court as consent judgment on 8th March 2023.

Therefore, in considering every agreement such as the consent judgment, the paramount consideration is what the parties themselves intended or desired to be contained in the agreed terms. This intention of the parties should prevail at all times. The general rule is that a document, such as the terms of settlement which gave birth to the consent judgment should be given its ordinary meaning. If the terms used therein are clear and unambiguous.

See: P.Y ATTA AND SONS v KINGSMAN ENTERPRISE LTD. [2007-2008] SCGLR 946

Consequently, since the contents of the terms of settlement in my opinion are proper and sound, same cannot be changed by a one-sided averment by the Applicants.

See: DONKOR v MAYE KOMM MEHWE ONYAME ASSOCIATION [2007-2008] SCGLR 179

It is the law, that generally, a court of coordinate jurisdiction cannot make an order to subvert a valid subsisting order by another coordinate Court.

See: WILSON KOFI KUTSOKEY v E. SOWA NARTEY AND 2 OTHERS [2006] 9 MLRG 90 CA

I have already indicated, that the Applicants counsel at the time the terms of settlement were adopted also signed it. It means, the Applicants were assisted by their counsel in arriving at the agreed terms.

The law is settled, that it sounds ill in the mouth of a party who came to court with full professional assistance and invited it to pronounce judgment on terms he had fully agreed with his opponent, to return later and complain that in acceding to his or their joint wishes, the court had committed an irregularity or portions of the consent judgment are absurd. Unless the court is persuaded, that it had done something or the parties have done something which is clearly illegal or offensive to any principle of justice, it ought resolutely to turn a deaf ear to such a plea.

See: OWUSU v KUMAH AND ANOTHER [1984-1986] 2 GLR 29 CA

It is therefore my view, that since the Applicants were assisted by counsel in writing the terms of settlement, it is too late in the day for them to complain about the contents of the terms of settlement in this application. I do not find anything illegal or offensive with the terms of settlement which was adopted by the court in this case.

In my opinion, the contents of the terms of settlement filed on 2nd March, 2023 will be deemed as conclusive estoppel against the Applicants under section 26 of NRCD 323.

This is because, per the terms of settlement, the Respondent was made to believe in its validity and correctness. Therefore, the Applicants would be estopped by their conduct and admission to assert otherwise in this application.

See: AGO SAI & OTHERS v KPOBI TETTEH TSURU III [2010] SCGLR 762

AFRIKANIA MISSION CHURCH v SEBA CONSTRUCTION LIMITED [2013] 59 GMJ 194 CA

NARTEY v MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314 SC

GREGORY v TANDOH IV & HANSON [2010] SCGLR 971

T.K. SERBEH & CO. LTD v MENSAH [2005-2006] SCGLR 341

OBENG AND OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300

ASIA v AYEDUVOR AND ANOTHER [1987-1988] 1 GLR 175 CA

From the above analysis, I do not find any merit in the application. I do not think it should have been filed in the first place.

I will therefore proceed to dismiss it and same is accordingly dismissed. I will award cost of GH¢5,000.00 in favour of the Respondent against the Applicants. I will order that one half (1/2) of the cost should be paid personally by the Applicants counsel.

I am fortified under Order 74 Rule 9 of C.I. 47, and the case of **REPUBLIC v HIGH COURT (HUMAN RIGHT DIVISION) ACCRA, EX PARTE; SWAYNE (AMOABENG-INTERESTED PARTY) [2015-2016] 2 SCGLR 1130 at 1143.**

I also order, that the Applicants and their counsel should pay the cost before they will take any fresh step in this case. I am fortified in this direction by the case of **RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA.** I order accordingly.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

ALFRED BANNERMAN-WILLIAMS JNR FOR THE PLAINTIFF/ RESPONDENT

D. K. NYAMEKOR FOR THE DEFENDANTS/APPLICANTS

AUTHORITIES

- 1.** POKU v GHANA COMMERCIAL BANK [1989-1990] 2 GLR 37 CA
- 2.** THE REPUBLIC V. HIGH COURT (COMMERCIAL DIVISION) ACCRA EX PARTE THE TRUST BANK LTD. (AMPOMAH PHOTO LAB LTD. AND 3 OTHERS -INTERESTED PARTIES) [2009] SCGLR 164
- 3.** INUSAH v D.H.L WORLDWIDE EXPRESS [1992] 1 GLR 267
- 4.** YAW OPPONG v ANARFI [2011] 32 GMJ 118 SC
- 5.** TWUM v SGS. LIMITED [2011] 30 GMJ 92 CA
- 6.** ATIA v BOAKYEM [2006] 9 MLRG 1 SC
- 7.** KUSI & KUSI v BONSU [2010] SCGLR 60
- 8.** SOFTSHEEN CARSON v WILLIAM – FUGAR [2014] 79 GMJ 162 CA
- 9.** ALLAN SUGAR (PRODUCTS) LTD v GHANA EXPORT CO. LTD [1982-83] 2 GLR 922 CA
- 10.** P.Y ATTA AND SONS v KINGSMAN ENTERPRISE LTD. [2007-2008] SCGLR 946
- 11.** DONKOR v MAYE KOMM MEHWE ONYAME ASSOCIATION [2007-2008] SCGLR 179

- 12.** WILSON KOFI KUTSOKEY v E. SOWA NARTEY AND 2 OTHERS [2006] 9 MLRG 90 CA
- 13.** OWUSU v KUMAH AND ANOTHER [1984-86] 2 GLR 29 CA
- 14.** AGO SAI & OTHERS v KPOBI TETTEH TSURU III [2010] SCGLR 762
- 15.** AFRIKANIA MISSION CHURCH v SEBA CONSTRUCTION LIMITED [2013] 59 GMJ 194 CA
- 16.** NARTEY v MECHANICAL LLOYD ASSEMBLY PLANT LIMITED [1987-88] 2 GLR 314 SC
- 17.** GREGORY v TANDOHO IV & HANSON [2010] SCGLR 971
- 18.** T.K. SERBEH & CO. LTD v MENSAH [2005-2006] SCGLR 341
- 19.** OBENG AND OTHERS v ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300
- 20.** ASIA v AYEDUVOR AND ANOTHER [1987-88] 1 GLR 175 CA
- 21.** REPUBLIC v HIGH COURT (HUMAN RIGHT DIVISION) ACCRA, EX PARTE; SWAYNE (AMOABENG-INTERESTED PARTY) [2015-2016] 2 SCGLR 1130
- 22.** RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA