

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: ASIEDU JSC SITTING AS A SINGLE JUDGE.

CIVIL MOTION

NO. J8/162/2023

14TH JULY, 2023

THE REPUBLIC

VS

HIGH COURT, TARKWA

- RESPONDENT

EX-PARTE: ABISHEK ASHWINKUMAR SONEJI -

APPLICANT

RICHARDSON NYANFUL

- INTERESTED PARTY

RULING

ASIEDU, JSC:-

In this application, the applicant seeks the leave of this Court, pursuant to Article 132 of the Constitution, 1992 and rule 62 of the Supreme Court Rules, 1996, CI.16 to apply, out of time, to invoke the Supervisory jurisdiction of this Court. The application was filed on the 29th June 2023.

The applicant says in paragraph 5 of the supporting affidavit that summary judgment, exhibit 'EA' herein was entered by the High Court, Tarkwa on the 12th day of December, 2022. The application for summary judgment was served on the applicant on the 7th December 2022. An alleged search conducted on the 30th April 2022 was exhibited by the applicant. This deposition which was made in paragraph 7 of the supporting affidavit is very strange to this Court in that I find it humanly impossible for a search to be conducted on 30th April 2022 in respect of proceedings which occurred in December 2022. I think it is the product of lack of care by the lawyer in the drafting of the supporting affidavit.

The complaint of the applicant is found at paragraph 9 of the affidavit and that is that the applicant had only two (2) clear days' notice of the application for summary judgment before it was heard and granted by the High Court on the 12th of December 2022. The applicant says that is contrary to Order 14 rule 2(3) of the High Court (Civil Procedure) Rules, 2004, CI.47 (as amended).

The applicant says that he is desirous of invoking the Supervisory jurisdiction of this Court and therefore prays for time to be extended for him to apply to this Court.

It is clear from the affidavit in support that the applicant herein was aware that the application for summary judgment was fixed for hearing on the 12th day of December 2022 and the fact that the applicant had been served on the 7th of December 2022, which he claimed to be short service, was no excuse for the applicant herein to absent himself from attendance at the High Court on the 12th December 2022. At any rate the record of proceedings on the 12th December 2022, exhibit 'EA' herein shows that the applicant was

represented by one Emmanuel Obumselu. Hence, the applicant was very much aware of the proceedings that occurred on the 12th December 2022. Assuming for purposes of argument that the proceedings of 12th December 2022 is susceptible to the Supervisory jurisdiction of this Court, rule 62 of the Supreme Court Rules, CI. 16 enjoins the applicant to file his application within ninety days from the date of the impugned proceedings. Rule 62 provides that:

“62. Time limits

An application to invoke the supervisory jurisdiction of the Court shall be filed within ninety days of the date when the grounds for the application first arose unless the time is extended by the Court.”

In the instant matter the alleged grounds for the application arose from the 12th December 2022 and ninety days from that date will be the 13th March 2023. It therefore follows that the applicant should have filed his application to invoke the Supervisory jurisdiction of this Court latest by the 13th March 2023.

Now, the applicant prays this Court to extend the time to enable him apply to invoke this Court’s Supervisory jurisdiction. That application can only be made under rule 66 of CI. 16 which states that:

“66. Application for extension of time

An application for the extension of time within which to invoke the supervisory jurisdiction of the Court under rule 62 shall not be made after the expiration of the three months period within which an application, seeking to invoke the supervisory jurisdiction may be filed.”

The effect of rule 66 above is clear. It means that an applicant who desires that this Court extends time to enable him apply to invoke the Supervisory jurisdiction of this Court shall file his application for leave for extension of time within the ninety days or the three

months given under rule 62 for the filing of the application to invoke this Court's supervisory jurisdiction. Put differently, an application for leave for extension of time to apply to invoke the Supervisory jurisdiction of the Supreme Court cannot be filed or made after the ninety days or the three months within which the substantive application to invoke the Supervisory jurisdiction could have been filed. The effect of rule 66 on the instant application is that the application for leave for extension of time is itself out of time. It is thus incompetent and cannot be entertained by this Court. See **Republic vs. High Court Ho; Ex parte Awuku Adopley (Sara Aku Wadza – Interested Party) [2019-2020] 1 SCLRG 615.**

In coming to this conclusion, I am not unaware of various decisions of this Court to the effect that time does not run if the matter or proceedings sought to be quashed is a nullity. See: **Republic vs. Court of Appeal & Thomford; Ex parte Ghana Chartered Institute of Bankers [2011] 2 SCGLR 941; Republic vs. High Court (Financial Division), Accra; Ex parte Odonkor (Executive Director of Economic and Organised Crime Office EOCO), Bank of Ghana & Ecobank Ghana Ltd. Interested Parties. [2015-2016] 1 SCGLR 312; Republic vs. High Court (Financial Division), Accra; Ex parte Tweneboah-Koduah (Executive Director of Economic and Organised Crime Office (EOCO) Interested Party. [2015-2016] 1 SCGLR 535.**

Nonetheless, I wish to state in emphatic terms that judgment given following an application which is short served is not a nullity. If the applicant had not been served at all with the application for summary judgment and yet the High Court had gone ahead to hear the application and given judgment, the said judgment would be a nullity. But a judgment is not a nullity because the application filed for that purpose was short served.

I am satisfied, as stated above, that the instant application for leave for extension of time to enable the applicant apply to invoke the supervisory jurisdiction of this Court is incompetent for the reason that it was filed on the 29th June 2023 which is more than three

months from the 13th March 2023 when it should have been filed. The application is therefore dismissed.

S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

JOHN AGBOTEY ESQ. FOR THE APPLICANT.

ENOCH ABOAGYE AMPONSAH ESQ. FOR THE INTERESTED PARTY.