

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA - A.D. 2005

CORAM - AKAMBA , JA [PRESIDING], OSEI, JA, ASAMOAH, J

H3/494/2005
26TH JULY, 2005

ANTARTIC CONTRACT WORKS LTD ... PLAINTIFF/RESPONDENT

V E R S U S

PLANT POOL LIMITED ... DEFENDANT/APPELLANT

R U L I N G

ASAMOAH, J - In this application, the Defendant/Judgment /Debtor/Applicant (Applicant hereafter) seeks a stay of execution in respect of the decision of His Lordship Yaw Appau given on the 23rd December 2004 in favour of the Plaintiff/Judgment/Creditor/Respondent (Respondent hereafter)

The Respondent had applied for and obtained summary judgment in a liquidated claim. And the Applicants motion for stay of execution in the Court below having been refused, the repeats the same before this Court.

This Court in such applications merely exercises concurrent jurisdiction with the Court below.

We are here to see

- (1) whether the Court below erroneously rendered Summary Judgments in the face of triable issues raised by the applicant, and
- (2) in the main, to see also whether the Applicant's Appeal if successful shall be rendered nugatory if this application is refused. See **JOSEPH VRS. JEBEILE** 1963] 1 GLR 387 SC.

In an attempt to demonstrate that the Judge in the Court below erred, Mr. Rex Bruce, Counsel for the Applicant, contended that a comparison of the of the Statement of Defence with the Statement of Claim would show that the applicant had

raised a number of triable issues for the case to go to trial.

He forgot however that the Judge below was entitled to rely on all the papers before him to come to a decision; not only the Writ, Statement of Claim and the Statement of Defence.

We have examined all the papers and annexures or exhibits of all the parties herein, and we are of the firm opinion that the defences being put up by the Applicant are afterthought and a sham. A look at Exhibit “KD” reveals that some five months before the Respondent started his action, she had caused her Solicitor to write to the applicant making specific demands on her on 11th June, 2004.

The sums of money being demanded in that letter from the applicant then are in identical terms with the sums of money claimed on the face of the Writ of Summons issued by the Respondent herein.

The Applicant’s Solicitor in response on the 18th of June, 2004 in pertinent parts stated as follows:-

“I am instructed to inform you that Plant Pool Limited is very much aware of its indebtedness to your client – Antartic Contract Works Limited.

It is also very much aware of the cordial relationship between the companies and would sincerely appreciate if nothing is done by way of court action to disturb it until the financial problems that have engulfed Plant Pool Limited resolved by the company. The Board is doing everything possible to resolve financial problems including that of your client-----

Please bear with Plant Pool Limited and give it reasonable time to handle the financial crises that the company is going through now. The seven (7) days mentioned in your letter under reference is very short and frightening.....”

This is a clear and total admission of the Respondent’s claim yet Mr. Rex Bruce will have us not to see it that way? Juxtapose this admission to the Statement of Defence; it clearly belies it. Applications for leave to defend which can be stigmatized as afflicted with afterthoughts, inconsistencies and prevarications are always refused.

See the case of **SAM JONAH VRS LORD DUODU-KUMI, S.Ct** per Sophia Akuffu J.S.C. Unreported 22-10-03.

Secondly, Mr. Rex Bruce contended that the Respondent had wrongfully taken advantage of the US dollar component of the judgment-debt. She had converted the US dollars into cedis and thereafter had exacted the Ghana rate of interest for the judgment-debt.

The short answer of Mr. Kulendi for the Respondent was that she had on the face of her Writ of Summons claimed for the cedi equivalent of all the US dollar component of the debt. We think he is right.

The Applicant has not therefore demonstrated to this Court this she has a plausible or genuine defence to the action.

But will the applicant's appeal if successful be rendered nugatory if this application is refused? We think not.

Mr. Rex Bruce came out to say during the course of the arguments before us that at the end of the day the Respondent shall be entitled to no more than ₵1.2 billion from the applicant, and not ₵1.8 being claimed. That tacit admission came out like a cat out of the bag, as he was arguing that the Respondent was not entitled to convert the US dollars component of the judgment-debt into cedis – which argument has not found favour with us.

It appears that the Respondent is a reputable Company – having been able to undertake all these works at so much costs for the applicant. We consider that she can refund the sum of ₵600 million which, according to Mr. Rex Bruce, is the real sum in contention – to the applicant in the unlikely event of the appeal succeeding.

Be that as it may, the Respondent may suffer a set back in business due to contingencies of life, and thus be unable to refund any sum of money recoverable if the appeal is successful.

Accordingly, to preserve the substance of the decision in the court below until the appellate view of the matter is pronounced, we shall order two Directors of the Respondent/Company to file undertakings with this court, within eight days from this days, to pay back any such sum in such an event. See **THE REPUBLIC VRS. COURT OF APPEAL, ACCRA; EX PARTE SIDI [1987-88] GLRD 71 S.Ct per Francois J.S.C.**

In the result, subject to the condition imposed upon on the Respondent herein, we shall refuse this application.

Application refused on terms.

R. ASAMOAH
JUSTICE OF THE HIGH COURT

I agree.

J.B. AKAMBA
JUSTICE OF APPEAL

I also agree.

J.A. OSEI
JUSTICE OF APPEAL

**COUNSEL - YONNY KULENDI WITH CHARLES POUZUUNG FOR
RESPONDENT.**

REX BRUCE FOR APPLICANT.

~eb~