

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA – GHANA, A.D. 2004

CM. 261-2002

DATED 30TH DAY OF JANUARY, 2004

CORAM – R.C. OWUSU, JA (PRESIDING)
J.B. AKAMBA, JA
ANIN-YEBOAH, JA

KOFI ANIM AKUAMUAH DARTEH & ORS. ... PLTS\APPLTS.

VRS.

1. VINCENTIA ASANTE ... DEFTS\RESPS
2. ALHAJI ASUMA ABUBANDA

R U L I N G

R.C. OWUSU, JA -

The Plaintiffs\ Applicants are in this application, praying for an order of stay of Execution of the ruling of His Lordship Asare Korang J(as he then was) dated 14th May 2002 and by necessary implication, the Judgement of the Accra High Court dated 13th June, 1995 in suit No. 657\94 between Vincentia Asante and Grace Osafoa Akuamoah Darteh and Another , pending appeal against the ruling of 14th May 2002.

In the affidavit attached to the motion paper, Akosua Asantewaa Akuamoah Darteh, the 2nd Plaintiff\ Applicant, averred in paragraph 3 as follows:

“On 14th May, 2002, this Honourable Court gave a ruling dismissing our suit on the basis that it does not disclose any reasonable cause of action. We are dissatisfied with the said ruling and we have accordingly lodged an appeal against same.....” Attached to the affidavit is the Notice of Appeal marked Exhibit “A”

In paragraph 5 of the affidavit, the applicant avers that “ if this ruling and by necessary implication the Judgement of the court described in the motion paper is not stayed, the appeal shall be rendered nugatory in the event of it succeeding. Moreover, we live in the premises the subject matter in dispute and we will suffer untold hardship, embarrassment and oppression if this application is refused.”

Arguing the application, counsel submitted that the ruling of the court delivered on 14th May 2002 by Asare Korang J (as he then was) cannot be divorced from the Judgment of the Accra High Court dated 13th June 1995, delivered by His Lordship Apalloo J. in suit No. 657\94

Counsel further contended that the ruling of the court cannot be divorced from the judgement and that if the Judgment is executable, then the ruling is also executable. He submitted that the case is appealable and that there are serious issues of law which will be canvassed on appeal and therefore was of the view that this is a proper case in which stay must be granted.

Counsel for the Respondent opposed the application and referred to the affidavit in Opposition. Paragraph 5 of the affidavit filed on 10\1\2003, states as follows:

“That the current application is merely yet another contrived attempt to frustrate the ends of justice and to deprive the respondents of the fruits of their Judgement.”

In reply to counsel for the Applicants’ submission, counsel for the Respondent’s contended that the application is woefully misconceived. Counsel argued that every judgment stands on its own and there is no known rule of practice or procedure by which a judgment can be stayed by necessary implication.

Counsel referred to the Notice of Appeal, relief 3(ii) and submitted there is no appeal pending against the judgment of the High Court, delivered on 13th June 1995.

It was counsel's submission that the ruling against which the appeal has been filed is not Executable and that there is nothing that they can be stopped from doing.

Before I proceed to consider the merits of the application, I deem it necessary to state briefly the events that led to the filing of the present application.

On 13th July 1994, the 1st defendant issued out a writ of summons against Mrs. Grace Akuamoah Dartey and a Limited Liability Company, Waras Limited claiming the following reliefs:

- (i) \$13,000.00 US being money paid by the Plaintiff to the Defendant for the supply of fish to the Plaintiff in November, 1993 which the Defendant has failed to supply.
- (ii) Interest on the said sum of \$13,000.00 US from 18th November, 1993 to the date of judgment at the prevailing bank rate.

On 13th June 1995, the 1st defendant obtained judgment against the defendants in that action for the recovery of US\$13,000.00 with interest and costs.

By a writ of fieri facias, House No. 889\5 No. 3 Mayara Lane Awudome Estates was attached in satisfaction of the judgment debt.

On 11th August 1999, the reserved price of the house No 889\5, No. 3 Mayara Lane, Awudome Estate was set down by the court as ₵235 million .

On 10th August 2001, exactly two years after the reserved price had been determined and fixed the sheriff of the court purported to have auctioned the property for ₵300 million.

The 2nd Defendant\Respondent herein happened to be the purchaser.

After the attachment of the property and before it was auctioned, the 1st Defendant\Judgment debtor, mother of the plaintiffs in this application, applied to the court to have the Execution of the Judgment stayed and for an Order to pay the judgment debt by installments. The application was dismissed because same was found to be unmeritorious by the court.

On 30/4/99, Ama Konadu Akuamoah and her brother Kofi Anim Akuamoah Dartey, Co-owners of house No. 889\5, No. 3 Mayara Lane, Awudome Estate which had been attached in Execution of the judgment debt against Grace Osafoa Akuamoah Dartey and Waras Limited filed Notice of their claim upon which the Deputy Sheriff issued an Interpleader summons.

On 27th February 2001, the Interpleader summons was struck out because the claimants who had by then not filed any affidavit of Interest were absent in court and that appeared to be a consistent behaviour.

The house in question was devised to Akuamoah Darteh, the 1st judgment debtor, the claimants and their uterine sisters and brothers under the WILL of late Codjoe Anim Appah alias Nana Codjor Akuamoah Dartey, husband and father of the beneficiaries as co-owners. Probate of the said WILL was obtained on 12th January 1987 and the property subsequently vested in the beneficiaries.

On 25th July 2001, the High Court presided over by Her Lordship Agnes Dordzie J. had the occasion to dismiss an application to set aside the judgment of Apaloo J. again for want of prosecution and the court was of the view that the application was brought in very bad faith and same was unmeritorious.

In suit No. MISC. 2546\2001, the 1st judgment debtor, Grace Akuamoah Darteh issued a writ against Asuma Abu Banda, Justice Edward K. Wiredu, the then Chief Justice and W.K. Abowu, a High Court Registrar.

By a ruling dated 19th February 2002, His Lordship Dr. John K. Ebiasah J. set aside the writ and all processes including service of same aside as being incompetent and mischievous.

Other applications on behalf of the judgment debtor having been struck out by the court for want of prosecution, the judgment debtor was banned from repeating applications of the same nature before the court by an Order of His Lordship J.K. Ebiasah J delivered on 20th December 2001.

Thereafter, a writ of summons was issued by the present plaintiffs\Appellants\Applicants against the Defendants. The 2nd defendant entered a Conditional Appearance and thereafter filed a motion to set aside plaintiff's Amended writ and statement of claim pursuant to Order 25 rule 4 and under the inherent Jurisdiction of the court.

By the amended writ of summons, the plaintiff's claim against the defendants is for the following reliefs:

- (i) A declaration that House No. 889\5, No. 3 Mayara Lane, Awudome Estates, Accra is the bona fide property of Mrs. Grace Osafoa Akuamoah Darteh, alias Grace Akuamoah Darteh, Kofi Anim Akuamoah Darteh, Akosua Asantewaa Akuamoah Darteh, Ama Konadu Akuamoah Darteh, Akua Boatemaa Akuamoah Darteh, Kofi Acheampong Akuamoah Darteh.
- (ii) A declaration that Waras Limited is a distinct legal personality separate from Mrs. Grace Osafoa Akuamoah Darteh, alias Grace Akuamoah Darteh.
- (iii) A further declaration that the purported judgment of the Accra High Court in Suit No. 657\94 against Mrs. Grace Osafoa Akuamoah Darteh, alias Grace Akuamoah Darteh dated 13th June 1995 is a nullity as the same is not warrant by any rule of law nor procedure and the same should be set aside.

- (iv) A declaration that the attachment of H\No. 889\5 No. 3 Mayara Lane, Estates, Accra in execution of the judgment of the court dated 13th June 1005 is wrong in law.
- (v) A further declaration that the auctioning of House No. 889\5, No. 3 Mayara Lane, Awudome Estates, Accra on the basis of the 1999 reserved price in the sum m ₵235 million without a current reserved price to reflect Current property values in the area offends against the public auction law And the same is null and void.
- (vi) A further declaration that the non-publication of the so-called auction of House No. 889\5, No. 3 Mayara Lane, Awudome Estate, Accra in a newspaper was in contravention of the Auction Sales Law PNDCL 230 and the contrived auction is accordingly null and void.
- (vii) And order that the certificate of purchase issued to the 2nd defendant The Registry of the court be brought up for cancellation.
- (viii) An order of perpetual injunction restraining the defendants, their agents, Assigns, privies, whosoever from interfering with the plaintiffs' use and Occupation of House No. 889\5, No. 3 Mayara Lane, Awudome Estate, Accra or doing anything inconsistent with the plaintiffs' interest in the said dwelling house.
- (ix) Costs.

In a ruling of his Lordship Asare Korang J. (as he then was) delivered on 14\5\2002 he granted the 2nd Defendant\Respondent's application to set aside the plaintiff's amended writ of summons and statement of claim.

Having recounted the events preceding the filing of the writ and statement of claim this is what his Lordship said:

“Accordingly I find that the plaintiffs herein are using the processes of this court to pursue a frivolous, vexatious and unmeritorious agenda and the only way to

halt them on their track is to dismiss the suit commenced by them against the defendants herein.

The application filed by the 2nd defendant is therefore granted and the plaintiffs' amended writ of summons and statement of claim hereby dismissed."

On 14/5/2002, the same day that the ruling was delivered, the Plaintiffs/Applicants were dissatisfied with the ruling and filed Notice of Appeal against it.

In a Supplementary affidavit in support of this application, counsel in paragraph 2 averred that on 11/2/2002, the Accra High court presided over by Asare Korang J. (as he then was) dismissed an earlier application for stay of execution pending the hearing of the appeal filed and that the dismissal necessitated the repeat application.

From the Notice of Appeal filed, the appeal is against the ruling of the High Court, delivered on 14th May, 2002 and the relief sought in respect of that ruling as stated in paragraph 3(1) of the notice is –

"Reversal of the ruling of the High Court dated 14th May 2002 and restoring the plaintiff's case to the cause list.

Counsel's objection to the application with regard to staying execution of the ruling is that the ruling is not executable.

The ruling of the court, against which the appeal is filed is of course appealable but does the ruling require any person to do anything or abstain from doing anything? Can the ruling be enforced by any of the processes provided under order 42 rules 7 and 8. To my mind the answers to these questions are in the negative.

In the case of EBOE VRS. EBOE [1961] GLR p. 432, Ollenu J. (as he then was) of blessed memory held that:

“The declaration that the defendant is a trustee does not require any person to do anything or abstain from doing anything and there is no method of executing it---

Consequently no question of stay of execution can arise.”

The ruling of the court just dismissed the writ of summons and the statement of claim without more and there is no method by which the ruling can be enforced. The issue of execution does not therefore arise.

In the case of MENSAH VRS. GHANA FOOTBALL ASSOCIATION [1989-90] 1 GLR p.1 at p.2, Taylor JSC in a dissenting view had this to say that:

“The concept of stay of Execution in our law-----is founded on the idea that where the person against whom the order is directed is in no position to Execute the Judgment by the various execution processes [provided under order 42 rs 7 & 8] then stay of Execution is meaningless and logically pointless.....”

See also the case of DZOTEPE VRS. HAHORMENE & ORS. NO. 3 [1984-86] 1 GLR 305.

In his submissions counsel for the Applicants told the court that the ruling cannot be divorced from the judgment of 13th June 1995 and since that judgment is Executable, the ruling is also Executable.

Regrettably , there is no appeal filed against the judgment of 13th June, 1995 which is rather Executable and as a result, neither the court below nor this court has jurisdiction to

entertain an application for stay of its Execution. Under rule 27(1) of the Court of Appeal Rules (C.I. 19).

“An appeal shall not operate as a stay of Execution or of proceedings under the Judgment or decision appealed against except where the court below or the court otherwise orders —”

There must first be filed a Notice of Appeal before an application for stay can be entertained by the court below or the court as stated in the rule.

Having come to this conclusion, that the ruling against which an appeal has been filed is not enforceable by any known made of execution and that the court has no jurisdiction to Stay Execution of the Judgment of Apaloo J. delivered on 13th June 1995, this court is of the view that the application is indeed misconceived and same is therefore dismissed.

JUSTICE R.C. OWUSU
JUSTICE OF APPEAL

J.B. AKAMBA, JA - I agree

J.B. AKAMBA
JUSTICE OF APPEAL

ANIN-YEBOAH, JA - I also agree.

ANIN-YEBOAH
JUSTICE OF APPEAL

COUNSELS:

KISSI AGYEBENG FOR ATTA AKYEA FOR APPLICANTS.

CHARLES ZNENNES WITH BARRY FOR RESPONDENT.