

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL - A C C R A

CORAM - A. ASARE KORANG, JA [PRESIDING]
G.M. QUAYE, JA
I.D. DUOSE, JA

CIVIL MOTION NO. H3/525/05
24TH JANUARY, 2008

ELIZABETH AMELEY STEPHEN ... PLAINTIFF/APPELLANT/APPLICANT
V E R S U S
ALL BROTHERS BOOKS &
STATIONERY LIMITED ... DEFENDANTS/RESPONDENTS/
RESPONDENTS

J U D G M E N T

A. ASARE KORANG, JA:- In this application, the plaintiff/appellant/applicant (Applicant for short) prays this court to appoint a Receiver and Manager in respect of House No. 583/4, South Liberia Road/Accra, the subject matter of a dispute between her and the defendants/respondents/respondent (respondents for short).

The duties to be performed are spelt out in the applicant's motion on notice as follows:

“Collect arrears of rent from the Respondents from the date of Judgment in Suit No, L634/98, have regard to Legitimate Tenancy agreements, Power to review or evaluate rents from the Respondents and other inmates living in the house, insure the property;
Manage all outgoings, take in new tenants and generally to manage the House in dispute until the final determination of the suit.”

It is contended by the applicant, who says she is 90 years old, that after the date of the judgment, she wrote to the Respondents to attorn tenants to her but they refused to do so. The respondents have also refused to pay rents to the applicant and property rates on the house in dispute remain unpaid. There is no insurance cover taken in respect of the house which is also in need of repairs and decoration and what is more galling or

offensive, some people have entered some of the rooms free of charge claiming there is no person to deal with.

It is clear from the drift of this application that the dispute between the parties is pending in the High Court as the applicant claims she has sued the respondents thereat for recovery of possession.

The applicant moved the court below to strike out the Defence filed by the respondents and her application was dismissed by Mrs. Inkumsah-Abban, J, on 17th December, 2003.

Earlier, the High Court, per R.K. Apaloo, J (as he then was) had in respect of the same premises in dispute, entered judgment in favour of the applicant herein on 27th August 2002, when she sued the Respondents principal or privy one Kingsley Owusu Achau for the abrogation of the lease of the premises and damages for breach of contract.

Counsel for the applicant submitted before us that the application for the appointment of a Receiver and Manager, had been instituted under Rule 21 of the Court of Appeal Rules, 1997, C.I. 19 which deals with “Control of Proceedings during Pendency of an Appeal.” It reads:

“After an appeal has been entered and until it has finally been disposed of, the court shall be seised of the whole of the proceedings as between the parties and every application shall be made to the court and not to the court below, but any application may be filed in the court below for transmission to the court.”

This Rule is couched in the same language as the old rule 21 of the Supreme Court Rules, 1962 [L.I. 218] as amended by the court of Appeal (Amendment) Rules, 1969 [L.I. 618].

In **SHARDEY V. ADAMTEY AND SHARDEY V. MARTEY & Another (CONSOLIDATED) [1972] 2 GLR 380 at p. 384**, the Court of Appeal had occasion to interpret rule 21 of L.I. 218 as amended by L.I. 618. The opinion expressed by the court was that where an appeal has been entered by the Registrar, the court below becomes “functus officio” not only as regards the judgment in the case, but also concerning all proceedings that may be taken by either party after delivery of judgment. The jurisdiction of the court below would then have been ousted and the mandatory words of

rule 21 are that “every application therein shall be made to the court and not to the court below.”

And the fact of rule 21 directing that applications may be filed in the court below for transmission to the court relates to applications meant for hearing by the court and not by the court below.

Rule 21 of C.I. 19 has since been amended by the Court of Appeal (Amendment) Rules 1998 (C.I. 21), by the deletion of the words “After an appeal has been entered and until it has finally been disposed of” and the insertion of the words “After the record of appeal has been transmitted from the court below to the court.”

It appears that under rule 21 of C.I. 19 and its subsequent amendment by C.I. 21, there must be proof or evidence of the entry of the appeal by the Registrar or the transmission of the record of appeal from the court below to the court, as the case may be, in terms of rule 14 of C.I. 19 in the sense of a transmission of the record by the Registrar of the court below to the Registrar of the court and, among other processes, a certificate of service of the Notice of Appeal, service of the notice in Form 6 set out in Part One of the Schedule to C.I. 19 that the record has been forwarded to the Registrar and that the Registrar shall in due course enter the appeal in the cause list.

On the affidavits filed by the applicant in the instant application, there was no evidence offered of a compliance with rule 14 of C.I. 19.

It further appears in the matter before us that the court below has not completely disposed of the case before it. The court below, as already indicated, refused or dismissed an application to strike out the Defence of the respondents. For Rule 21 of C.I. 19 as amended to apply the court below is considered as having washed its hands of the case before it.

The court below, evidently, is still seised of the dispute between the parties.

More ominously, it is clear that the instant application is incompetent and misconceived as this court exercises only appellate powers, based on a notice of appeal duly and properly filed.

The application for the appointment of a Receiver and Manager has apparently been filed pursuant to the judgment of R.K. Apaloo, J., (as he then was) in Suit No. L. 634/98. This is clear from the language of the application filed.

However there is no appeal pending in respect of the said (Suit No. L. 634/98) and since no appeal has been taken from that suit, we have no jurisdiction to entertain any application in relation to same.

The applicant, by his notice of appeal, has appealed against the ruling dismissing his motion to strike out the Defence of the Respondents in the court below in Suit No. L. 357/2003.

As it has not been established that the record of that appeal has been transmitted from the court below to this court in accordance with rule 14 of C.I. 19, the court below is still vested with jurisdiction to deal with post-judgment applications and it is to the court below that the applicant should have applied for the appointment of a Receiver and Manager. In the event that his application was refused by the court below, the applicant would then have had recourse to this court under Rule 28 of C.I. 19 which provides:-

“28. Subject to these Rules and to any other enactment, where under an enactment an application may be made to the court below or to the court, it shall be made in the first instance to the court below, but if the court below refuses to grant the application, the Applicant his entitled to have the application determined by the court.”

Calling in aid rule 28 would of course be subject to a proper notice of appeal having been filed in this court.

In the instant application there being no appeal brought against the judgment to which the application relates and no application having been made at first instance to the court below, the application is dismissed.

**A. ASARE KORANG
JUSTICE OF APPEAL**

I agree.

**G. M. QUAYE
JUSTICE OF APPEAL**

I also agree.

**I.D. DUOSE
JUSTICE OF APPEAL**

**COUNSEL - T.A. NELSON-COFIE FOR PLAINTIFF/APPELLANT/APPLICANT
JOSHUA NIMAKO FOR ACQUAH SAMPSON FOR DEFENDANTS/
RESPONDENTS/RESPONDENTS.**

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