

IN THE CIRCUIT COURT (8) HELD IN ACCRA ON THE 16TH DAY OF JUNE,
2023, BEFORE H/H JOJO AMOAH HAGAN

SUIT NO.C5/315/2015

BETWEEN

ENYONAM GOTHA AGYEMANG....PETITIONER/JUDGMENT
CREDITOR/RESPONDENT
H/NO. 33, MATAHEKO
ACCRA.

AND

JOSHUA NANA AGYEMANG.....RESPONDENT/JUDGMENT
DEBTOR/APPLICANT
H/NO. 47A, KORNEY AKPO
CLOSE, ADENTA-ACCRA.

RULING

1. The parties to this application used to be a married couple whose marriage was dissolved by this Court differently constituted. As part of the decree, the Court, inter alia, ordered for the equal sharing of the marital property described as House No. 72, Millennium City, Sector 5, Kasoa, and settled a Vauxhall Astra vehicle in favour of the judgment creditor. Additionally, the Court ordered the judgment debtor to pay a monthly sum of GHC800.00 towards the maintenance of the child of

the marriage. After over a 7-year-lull by reason of an alleged attempt by the parties to compromise the judgment without success, the judgment creditor applied for leave to issue a writ of execution. The Court duly granted the said application. The judgment creditor proceeded to issue a writ of *feri facias* (*fi.fa.*) to attach the marital property. Being aggrieved by the procedure adopted and alleging that he had satisfied the judgment, the judgment debtor filed a motion on 3 May 2023 for an order to set aside the order for leave to issue a writ of execution and all subsequent execution processes.

On the issue of an entry of judgment being a condition precedent to leave to issue a writ of execution

2. Regarding the procedure adopted, the judgment debtor averred, which averment was reinforced by his counsel that he ought to have been served with an entry of judgment as a condition precedent to the order for leave to issue the writ of execution and the enforcement of the judgment of the Court. In her response, the judgment creditor submitted in her affidavit in opposition filed on 6 June 2023 that there was evidence that the judgment debtor had notice of the judgment since he had taken steps in tandem with the judgment creditor to compromise the judgment. Therefore,

considering that the purpose of an entry of judgment was to bring sufficient notice of the decision of the Court to a party there was no need for the judgment to be entered as a precondition for execution. Her counsel in her submissions in support of the case for the judgment creditor was prepared to invite the Court to set aside the writ of execution but not the order for leave to issue the Writ considering that there was nothing irregular about the process by which the order was obtained. Her client was out of time and had to seek leave to issue the writ of execution.

3. I am not swayed by the averments and submissions of the judgment debtor that the order for leave to issue the writ of execution ought to be vacated. The first step in the execution process is the entry of the judgment of the Court. Therefore, a party who fails to execute a judgment within time ought to obtain the leave of the Court before purporting to commence the process of execution. Accordingly, there is nothing irregular about the impugned order. However, the leave granted did not absolve the judgment creditor from entering the judgment as a condition precedent for the issuance of the writ of *fi. fa.* A judgment creditor is not excused from entering a judgment on the basis that the judgment debtor had notice of the judgment either by being in Court when the judgment was pronounced or by any means

otherwise, neither is a judgment debtor excused from obeying the judgment despite want of entry. However, for a judgment to be effective for purposes of enforcement, it ought to be entered. Justice Bennin in *Abireh v the Attorney-General & Anor* [1975] 1 GLR 467 on this issue held that

“execution cannot issue until after actual entry of the judgment is made ... the entry of judgment is a formality performed by the successful party himself which makes the judgment executable ...the successful party cannot go into execution on the judgment if he has not first entered same.”

See also the case of the *Republic v Court of Appeal, ex parte Ghana Commercial Bank Pensioners Association* [2001-2002] SCGLR 883 where the Supreme Court held that *“...until a judgment directed or pronounced by a judge is entered, it is not effective.”*

4. Admittedly, these two cases are based on rule (1) of Order 41 of L.N. 140A which provided that *“[e]very judgment shall be entered by the proper officer in the book to be kept for the purpose.”* That provision was expressed in mandatory terms and accorded with the received rules from England. However, sub-rules (1) and (2) of rule (7)

of Order 41 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended is not exactly *in pari material* with its predecessor. The said rules provide that

“(7) (1) [t]he party seeking to have a judgment entered shall draw up the judgment and present it to the Registrar for entry.

(2)[w]here the judgment is presented for entry in accordance with this rule, the Registrar shall enter it in the book kept for that purpose...”

5. Thus, unlike the old rule a party is mandated to draw up a judgment only when he seeks to have it entered. The Registrar [or proper officer as the old rules put it] is not mandated to enter “every judgment” to give effect to the judgment. This is reinforced by sub-rule (1) of rule (5) of Order 41 of C.I. 47 which provides that “[a] judgment or order of the Court ... takes effect from the day of its date.” This notwithstanding, it is doubtless that the filing of an entry of judgment as a condition precedent to the commencement of execution of a judgment has attained the status of a rule of practice “declared by the [superior] courts [which is not] ... abrogated by reason of a change in the Rules of Court.” — *The Trustees of the Synagogue*

Church of All Nations v Agyeman [2010] SCGLR 717, 722. Accordingly, to the extent that the judgment creditor caused to be issued a writ of *fi.fa.* on 22 March 2023 to attach the marital property in question when she had not entered the judgment, the said writ and the attachment thereof are void.

On the issue of the satisfaction of the judgment of the Court

6. The judgment debtor as indicated earlier alleged by his affidavit that he had settled his indebtedness under the judgment given by the Court and therefore bears the burden of producing evidence on that allegation. In his opinion, his indebtedness in respect of the fifty per cent share of the judgment creditor in the marital property was based on a forced sale value of GHC74, 343.00 in a valuation report in respect of the marital property prepared before the judgment. If this figure is acceptable, then it would mean that the judgment creditor was entitled to GHC37, 171.05.

7. In seeking to substantiate his allegation of having settled his indebtedness to the judgment creditor respecting the marital property, the judgment debtor averred that he paid GHC20, 000.00 towards the purchase of the Corolla saloon he bought for the

judgment creditor. He alleged further that he paid various sums of money to the judgment creditor and offered to advance GHC30, 000.00 in full and final settlement of her interest in the marital property when her lawyer notified him of her intention to proceed against the said property. However, he did not indicate that he did pay the GHC30, 000.00 to the judgment creditor.

8. It is apparent that if I am to accept the claims of the judgment debtor it would lead me to the conclusion that despite the judgment creditor being entitled to GHC37, 171.05, the judgment debtor was prepared to pay GHC50,000.00 excluding the various sums he advanced to the judgment creditor to defray her interest in the marital property. I will not allow myself to be lured into believing such a fantastic gesture of altruism and munificence.

9. The judgment creditor admitted that he did pay some money to her but that there was no indication that same was to settle her interest in the marital property. As far as she was concerned the monies advanced were to settle part of the maintenance of the child in question. She did admit that the judgment debtor replaced her Vauxhall Astra with the Corolla and by reason of that, I am prepared to find on the preponderance of probabilities that it is more likely than

not that the judgment debtor did advance GHC20, 000.00 of his money for that purpose in satisfaction of the interest of the judgment creditor in the marital property. I am, however, disinclined to find that the judgment debtor has discharged his obligations under the judgment. A debtor is at liberty to instruct his creditor to apply monies advanced by the debtor to a particular debt owed. However, in the absence of any such instruction, the creditor is at liberty to apply the monies to whatever portion or category of the debt owed. In the instant case the judgment debtor claims to have paid various sums without stating the exact amount. And he claims the payments were to dispose of the judgment creditor's interest in the marital property. This has been denied, thereby making the claim of the judgment debtor a mere averment.

10. There is no evidence before me that the judgment debtor expressly informed the judgment creditor to apply the monies towards defraying her interest in the marital property. Therefore the judgment creditor was at liberty to apply the monies advanced to settle whatever debt owed her and she chose to apply it to settle the maintenance due and owing. Additionally, there is no evidence of an agreement to rely on the forced sale value contained in the valuation report exhibited by the judgment debtor nor is there any evidence

that the judgment debtor paid the sum of GHC30,000.00 beyond the self-serving letter of his counsel. Therefore, in my opinion, the judgment debtor has more probably than not paid GHC20, 000.00 towards settling the interest of the judgment creditor in the marital property. Accordingly, the judgment debtor has not fully discharged his obligations under the judgment of this Court.

11. Having found that the writ of *fi. fa.* issued out of the Registry of this Court on 22 March 2023 is void, I hereby set aside the said writ, the attachment thereof of House No. 72, Millennium City, Sector 5, Kasoa, and all subsequent execution processes. Since the judgment debtor has not fully discharged his obligations under the judgment of this Court the necessary processes for the execution of the said judgment may proceed taking due account of the GHC20, 000.00 earlier advanced by the judgment debtor. To that extent, the motion on notice for an order to set aside the order for leave to issue writ of execution and all subsequent execution processes is dismissed. No order as to costs.

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JOJO AMOAH HAGAN
JUDGE, CIRCUIT COURT.

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