

**IN THE DISTRICT COURT HELD AT WEIJA, ACCRA ON WEDNESDAY THE 16TH
DAY OF NOVEMBER, 2022 BEFORE HER WORSHIP RUBY NTIRI OPOKU (MRS),
DISTRICT MAGISTRATE**

SUIT NO. G/WJ/DG/A9/59/21

**GHANA INDUSTRIAL
& COMMERCIAL
ESTATE LIMITED (GICEL)**

PLAINTIFF/ RESPONDENT

VRS

**TLC COMPANY LIMITED
& 8 OTHERS**

DEFENDANTS/APPLICANTS

PLAINTIFF/RESPONDENT IS PRESENT AND REPRESENTED BY DR. ALEXANDER
AMANKWAA ESQ.

DEFENDANTS /APPLICANTS ARE PRESENT AND REPRESENTED BY JONATHAN
ANTWI ESQ.

RULING

This ruling is in respect of an application filed at the registry of this court on 21st July 2021 by counsel for the defendants/applicants hereinafter called the applicants praying the court to set aside the Writ of Summons and particulars of claim filed on 25th March 2021 on the ground that the said Writ has been filed in bad faith to frustrate the appeal processes filed by the applicants before the Court of Appeal.

On 11th August 2021, the plaintiff/ respondent hereinafter called the respondent filed an affidavit in opposition to the said motion.

The thrust of applicants' case as deduced from the affidavit in support of the motion is that the applicants are members of the Ghana National Association of Garages which Association instituted a court action against the plaintiff herein and another in suit no. G1/227/18 at the High Court in Accra. It is the further case of the applicants that judgment was entered against the Ghana National Association of Garages (the plaintiff therein) in favour of the respondent (the 2nd defendant therein)

The Ghana National Association of Garages filed Notice of Appeal at the Court of Appeal following which the Association further filed an application for Stay of Execution pending appeal which is yet to be moved after some adjustments.

Counsel for the applicants contends that the issue of rent was one of the reliefs that came up for determination by the trial court and which the Association will be contesting at the Court of Appeal.

He submitted further that plaintiff is fully aware of the processes before the Court of Appeal and has brought an action against members of the Association on the same subject matter. Counsel prayed the court to set aside the Writ to allow the appeal process to take its full course.

In support of his motion, Counsel has exhibited a copy of the notice of appeal marked as Exhibit AC1, the application for leave to amend Notice of Appeal and Notice of Motion, Application for Stay of Execution marked as Exhibit AC 2.

The respondent is vehemently opposed to the present application. He contends that the defendants are not members of the Ghana Association of Garages as claimed by the applicant. He added that the judgment being referred to by the applicants has nothing to do with the instant suit as defendants were not parties to the said suit and has presently been sued in their personal capacity.

The respondent contends further that Exhibit AC 1 does not operate to stay execution even if defendants were to be part of the suit referred to by the applicant and that Exhibit AC 2 is motion on notice to amend Notice of Appeal and not stay of execution.

The respondent adds that the applicants have brought this application in bad faith and should not be entertained by this court as the said application is intended to frustrate the matter pending before the court. The respondent has furnished the court with a copy of the judgment of the High Court in support of his affidavit in opposition.

The issue set down for determination by this court is whether or not the Writ of summons and particulars of claim presently filed before this court by the respondent should be set aside.

Order 16 of the District Court Rules 2009 (C.I. 59) provides for dismissal of suit on grounds of law.

Order 16 rule 1 of C.I.59 provides as follows;

“The defendant may apply to the Court by motion to dismiss the suit without requiring the defendant to answer questions of fact where the defendant has a good legal or equitable defence to the suit so that even if the allegations of the plaintiff were admitted or established, the plaintiff would not be entitled to any decree against the defendant.”

At page 926 of the book, **CIVIL PROCEDURE, A PRACTICAL APPROACH BY S. KWAMI TETTEH**, the learned writer stated as follows;

“A judicial decision takes effect upon its delivery. It does not lose efficacy because it is appealable or appealed but remains final, conclusive and enables an action to be brought on it. It is therefore no defence to an action brought on a judgment that an appeal against the judgment is pending.”

He opined further that execution of a judgment may be stayed by the operation of the Rules or by a Court Order and that during the pendency of an application for stay of execution pending appeal and upon determination of such application, execution is stayed.

Order 51 r 9(2) of the High Court (Civil Procedure) Rules, 2004 (C.1. 47) as amended provides as follows;

“During any period when an application is pending for determination under sub rule (1), any proceedings for execution of the judgment or order to which the application relates shall be stayed

- (a) For a period of seven days immediately following the judgment or the making of the order;
- (b) During any period when an application under sub rule (1) is pending for determination; or
- (c) For a period of seven days immediately following the determination by the court below of any application under subrule(1) where the application is refused by the court below.

At page 927 of the book by S. Kwami Tetteh cited supra, the learned author states as follows;

“Rules 9(2) (a), (b) and (c) come into operation only when an application for stay of execution pending appeal has been filed and is pending. It follows that the judgment or order must have been appealed. Rule 9(2)(b) imposes a stay while an application for stay of execution is filed and pending for determination.”

Upon considering the affidavit in support of the present application with the attached exhibits, the affidavit in opposition and the submissions of both counsel, I find that the

subject matter of the present suit has already been determined by the High Court and there is a notice of appeal and application for stay of execution pending for determination.

The present application therefore succeeds and same is **GRANTED**.

The writ of summons is accordingly set aside. Costs of GHC1, 000.00 is awarded in favour of the applicants against the respondent.

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H/W RUBY NTIRI OPOKU (MRS.)

(DISTRICT MAGISTRATE)