IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 13TH DAY OF OCTOBER, 2022 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI DORGU

CM/MISC/0381/2020

DUTCH AFRICAN TRADING COMPANY } PLAINTIFF

VRS.

WEST AFRICA MILLS CO LTD } DEFENDANTS

PARTIES: ABSENT

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RULING

This case that emanated from the High Court was seeking leave of the Court to enforce a foreign arbitral award. The High Court presided over by Justice Doreen G. Boakye Agyei (Mrs) on 20th March 2020 refused to grant the application, in other words dismissed the Applicant's case and gave judgment for the Respondent therein West Africa Mills Co. Ltd. The Applicant dissatisfied with the decision of the High Court filed an appeal to the Court of Appeal.

On the 20th of January, 2022, the Court of Appeal heard the appeal and gave judgment for the Applicant by allowing the appeal and set aside the judgment of the High Court. Subsequently, the Applicant herein, Dutch African Trading Company filed on the 11th

of March 2022 an Entry of Judgment based on the Court of Appeal Judgment and have same served on the Respondent/applicant herein. The details of the process reads:-

"JUDGMENT AFTER TRIAL DATED AND ENTERED THE 20TH JANUARY, 2021.

Upon this matter coming before their Lordships of the Court of Appeal for trial and the Justices of the Court of Appeal having unanimously upheld the appeal and held that the award of the Tribunal be enforced in Ghana against the Respondent herein, judgment is hereby entered for the Applicant against the Respondent as follows:

Summary of amount due as of January 2022

		GPB,	EUROS,	GH¢
Award AAO36A	Principal	£2, 048, 770.00	Nil	Nil
	Interest	£ 397, 498.25		
	Cost	£ 3, 135.00		

Now, when this entry of Judgment document was served on the Respondent, he promptly filed the instant motion under Order 81 rule 2(1) of the C.I 47 and Rules 36 and 37 of C.I 19, the Court of Appeal Rules. The gravamen of the application is that the Entry of Judgment process filed on the 11th of March, 2020 does not comply with Rules 36 and 37 of the C.I 19. Per paragraphs 8 through 11 of the Affidavit in support which I reproduce hereunder, the Applicant set down the following as the basis for the application.

"8. That I am advised by Counsel and verily believe same to be true that where the judgment is to be enforced in Court other than the Court of Appeal, a Certificate signed by the presiding Judge shall be transmitted to that other Court.

9. That I am further advised by Counsel and believe same to be true that the Applicant/Appellant/Respondent filed the Entry of Judgment at the High

Court without obtaining a Certificate from the Court of Appeal before doing so, thus making the Entry of Judgment defective.

10. That as a result of the matters aforesaid, the Entry of Judgment is a nullity and ineffective and ought to be set aside by the Court.

11. That I am advised by Counsel and believe same to be true that this Court has the power to set aside the defective entry of Judgment"

Naturally, the Applicant/Respondent herein opposed the application and filed a 13 paragraph Affidavit in Opposition. I will again set down paragraphs 9 to 11 of the said Affidavit in Opposition for their full effects:-

"9. I say that the application herein filed before this Honourable Court is most misconceived as the Entry of Judgment filed at the Registry of this Honourable Court is most appropriate and in accordance with the Rules. By the Rules of our courts, it is the High Court that enforces arbitral awards noting that appeals are by way of rehearing.

10. I say further that the application herein is just a ploy by the Applicant herein to frustrate the Respondent from enjoying the fruits of its judgment with the filing of this most incompetent application

11. The reason therefore proffered by the Respondent/Applicant as the reason for setting aside the Entry of Judgment is untenable in law"

Now, I must also add that in addition to the Affidavits filed, both Counsel were equally given the opportunity to argue viva voce their respective position on the 15th of June, 20. Both Counsel maintained their position as canvassed in the various Affidavits and summarized above.

Now, to put the application into perspective, I hereby state the Orders under which the application was brought.

Order 81 Rule 2(1) of the C.I 47 states

"Setting aside for irregularity"

Order 81 rule 2(1)

An application may be made by motion to set aside for irregularity any proceedings, any step taken in the proceedings or any document, judgment or order on it, and the grounds of it shall be stated in the notice of the application"

"(2). No application to set aside any proceedings for irregularity shall be allowed unless it is made within a reasonable time and the party applying has not taken fresh steps after knowledge of the irregularity.

Clearly, the application here is competent and well-grounded in the Rules of Court under which the jurisdiction of the Court is being invoked. That said, I will now set down the Rules of the Court of Appeal cited as infringed and for which the applicant is invoking the Court's jurisdiction to set aside the Entry of Judgment so filed. Rules 36 and 37 of the Court of Appeal Rules, 1997 C.I 19 (as amended by C.I 21 and C.I 25) provides:-

36. Enforcement of Judgments

"Any judgment given by the court may be enforced by the Court, the Court below or any other Court which has been seized of the matter or as the Court may direct

37. Where the Court directs any judgment to be enforced by any other Court, a certificate under the seal of the Court and the hand of the presiding judge setting out the judgment as specified in form 15 in Part 1 of the Schedule shall be transmitted by the Registrar to that other Court and the latter shall enforce the judgment in terms of the certificate" (emphasis mine).

These two provisions are the key to the determination of this application. On this, I hold the view that in interpreting these provisions, they must be read as a whole and not isolated. On this, I tend to agree with the Learned Lawyer for the Respondent

when he submitted that Rule 36 of the C.I 19 provides for four (4) different fora where a Court of appeal Judgment could be enforced.

They are: the Court, which is the Court of Appeal

(2) The Court below (which is the High Court or Circuit Court from which the appeal is coming

(3) Any other Court seized of the matter and

(4) Any other Court as the Court of Appeal may direct.

What this means is the venue will then kick in Rule 37 and the condition precedent which is the certificate signed by the presiding judge.

In this particular case, there is no specific Court of Appeal judgment that requires execution since the appeal was only allowed and the High Court judgment refusing the enforcement of the arbitral award set aside. In default, what the Court of Appeal judgment said was that the prayer of the Appellant/Respondent herein could be enforced and should be enforced by the High Court. Clearly, therefore, the Court of Appeal as a venue for enforcement is not an option,

In the same vein, since there was no executable Court of Appeal judgment, it equally could not have directed any other Court to enforce the judgment of the Court of Appeal. Since it is also not in contention however that it is the High Court that has jurisdiction to enforce arbitral awards as conceded by the Learned Counsel for the Applicant herein, the appropriate forum is therefore "the Court below" where the case emanated from. It is also not in doubt that by parity of reasoning, then it is the High Court that is equally seized with this matter and by extension this very Court. Since I find that the appropriate Court for the enforcement of any judgment of the Court of Appeal in this very case is the High Court, Rule 37 becomes redundant and irrelevant. This is so because the opening clause of Rule 37 is that "where the Court directs any judgment to be enforced by any other Court…." Reading through the judgment of the

Court of Appeal, I do not see anywhere in it where the Court directed that their judgment should be enforced at any specific Court.

In the meantime, the Court below is a priori the venue of first option if it is not in the Court of Appeal. I do not therefore see any irregularity in the Applicant filing the Entry of Judgment in the High Court where the case emanated from. It is this same Court that is seized with the matter. I therefore hold that the filing of the Entry of Judgment in the High Court is neither irregular, out of place, void nor fatal. Quite apart from that, I find the Entry of Judgment filed as in tandem with the final award in Exhibit JA3, page 31.

From the above, I hold that the Entry of judgment filed by the Applicant in this case on the 11th of March, 2022 is proper and regular and so I refuse the application to set aside same. Deciding otherwise will be extending the interpretation of the Rules to near absurdity in aid of a judgment/debtor not interested in satisfying a judgment debt.

Cost of GH¢2, 000.00 against the Applicant.

(SGD)

JUSTICE JUSTIN K. DORGU

JUSTICE OF THE HIGH COURT

LEGAL REPRESENTATION

K. AMOFA WITH PAUL KOFI BOAKYE FOR THE APPLICANT

MIRACLE ATTACHEY HOLDING BRIEF FOR JUSTIN AMENUVOR FOR THE RESPONDENT