

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF
JUSTICE, COMMERCIAL DIVISION HELD IN ACCRA ON THE 2ND DAY
OF JUNE, 2023 BEFORE HIS LORDSHIP JUSTICE JUSTIN KOFI
DORGU

CM/RPC/0789/2021

DRAM OIL & TRADING LTD } PLAINTIFF

VRS.

ALFAPETRO (GH) LTD & ANOR } DEFENDANTS

PARTIES:	PLAINTIFF ABSENT
	DEFENDANTS REPRESENTED BY AGNES ADU

RULING

On the 8th of February, 2023, this Court made a ruling upon an application and disjoined one Eric Forson who until then was listed as the 2nd Defendant in this action.

The Plaintiff/Applicant herein dissatisfied with the decision filed an interlocutory appeal on or about the 23rd February, 2023. Pursuant to the said notice of appeal, the Plaintiff again filed the instant application on the 9th of March, 2023 praying the Court to stay proceedings in the case pending the hearing and determination of the

interlocutory appeal. In support of the motion, the Plaintiff/Applicant filed a 16 paragraph affidavit in support. Of particular importance and for purposes of putting the case of the Applicant into perspective, I quote hereunder paragraphs 7 through 12 of the Affidavit in Support and as follows;-

- “7. That I am advised by Counsel and verily believe same to be true that being dissatisfied by the Ruling of the Court, the applicant would like to exercise its full legal rights to have that decision reviewed by the Court of Appeal and for that appellate Court to pronounce on same before this suit continues, in order not to prejudice the effective adjudication of the applicant’s full allegations and claims before this court as well.
8. That I am further advised by Counsel and verily believe same to be true that the right of the Applicant to the grant of this order is not subject to the court’s own view of the correctness of its order, which is now sought to be stayed by the Applicant pending appeal.
9. That I am further advised by Counsel and verily believe same to be true that the consideration for the grant of an Order for stay lies in the real likelihood that the Applicant’s appeal, if successful will be rendered nugatory where the Applicant would have been compelled to surrender a legal point, without the grant of the Order for Stay, especially in circumstances which show that the Respondent will not be capable of restoring the Applicant to the status quo ante should the applicant’s appeal be successful.
10. That I am advised by Counsel and verily believe same to be true that given the pleadings filed in this suit, this case presents such a real possibility where the subject matter of the dispute will be irretrievably lost before the determination of the appeal, should this application for stay of proceedings be refused.
11. That I am advised by Counsel and verily believe same to be true that in the circumstances this order for stay of proceedings ought to be granted to enable the

Applicant exercise its right to the appellate processes, in order that any victory obtained will not be rendered nugatory.

12. That I am advised by Counsel and verily believe same to be true that in consequence, the Applicant has a good chance of succeeding in his appeal which is pending before the Court of Appeal”.

The Defendant/Respondent also filed an 11 paragraph Affidavit in Opposition to the application part of which I also reproduce hereunder for their full effects. They are paragraphs 6 through to 10 of the Affidavit filed on the 22nd March 2023

- “6. That I am advised by the Lawyer for the Defendant/Respondent and verily believe same to be true that as prerequisite for the grant of an order for stay of proceedings, the Applicant must demonstrate that the appeal, if granted, would be rendered nugatory in the absence of an Order for stay of proceedings.
7. That I am further advised by the Lawyer for the Defendant/Respondent and verily believe same to be true that the subject matter of the suit may be irretrievable lost if the order for stay of proceedings is not granted.
8. That I have been advised by the Lawyer for the Defendant/Respondent and verily believe same to be true that the subject matter of the suit as disclosed in the Plaintiff/Applicant’s amended Writ of Summons and accompanying statement of claim, filed on 14th February, 2022, are the unpaid under-recoveries sum from the Government of Ghana/National Petroleum Authority, if any, due the Plaintiff/applicant from the Defendant/Respondent as well as interest accruing thereon.
9. That I am advised by the Lawyer for the Defendant/Respondent and verily believe same to be true that the instant application fails to disclose any exceptional circumstance under which this Court is prayed to exercise its discretion in its favour of the Plaintiff/Applicant.

10. That I am advised by the Lawyer for the 1st and 2nd Respondents and verily believe same to be true that the instant interlocutory appeal filed by the Plaintiff/Applicant has no chances of success.”

On the 3rd April, 2023, both Learned Counsel were given the opportunity to amplify their respective positions via oral arguments. In his viva voce submissions, the Lawyer for the Plaintiff/Applicant cited Order 43 Rule 11 of the C.I 47 as the procedural provision that empowers the Court to exercise its inherent jurisdiction to stay proceedings in matters before it particularly where interlocutory appeals are concerned. Indeed, Learned Counsel buttressed his assertion with reference to the Supreme Court case of THE REPUBLIC V. HIGH COURT ACCRA; EX-PARTE MAGNA INTERNATIONAL TRANSPORT LTD; GHANA TELECOM AS (INTERESTED PARTY) [2017-2018] SCGLR 1024 and also the case of ANNAN SOWAH V. ADAMS (2009)SCGLR III.

Learned Counsel for the Plaintiff/Applicant further cited the case of JOSEPH V. JABEILE & ANOR [1963] 1 GLR at 387 to hammer home his submissions that the Plaintiff will suffer greater hardships and inconvenience if the 2nd Defendant should remain disjoined whilst the Defendant who has no counterclaim has nothing to suffer. Learned Counsel for the Plaintiff submitted strongly that the serious allegations made in the pleadings against the disjoined party and the need for the Court of Appeal to relook at the Ruling constitute an exceptional case that should warrant the Court in granting the application for stay of proceedings.

In responding to the submissions of the Learned Lawyer for the Plaintiff, the Learned Lawyer for the Defendant/Respondent first and foremost submitted that the Plaintiff failed to state the mode of which he is invoking the Court’s jurisdiction to stay the proceedings. Learned Counsel cited the case of ZIKPITOR AKPATSU FENU V. BENJAMIN ATSU & ORS V, ATTORNEY GENERAL & ORS CIVIL APPEAL NO. J4/40/2018 where the Supreme Court per Adinyira JSC in a judgment dated 17th October, 2018 stated thus;-

“... a stay of proceedings pending in a Court of Law is procedurally derived from three sources;

- (1) The Court’s inherent jurisdiction
- (2) The Rules of Court if any as provided by Statute and
- (3) The Provisions of a particular Statute, example, in arbitration Statute”

Learned Counsel for the Defendant/Respondent argued strongly that it was incumbent on the Learned Counsel for the Plaintiff to state which of the three modes he is using to invoke the jurisdiction of the court and that the reference to Order 43 Rule 11 and the case of JOSEPH V. JEBEILE cited are authorities on Stay of Executions and so inapplicable to the instant case that touch on stay of proceedings.

Now, Order 43 Rule 11 of the C.I 47 stipulates;-

“Without prejudice to Order 45 rule 15, a party against whom a judgment or order has been given or made may apply to the Court for a stay of execution of the Judgment or Order or other reliefs on the ground of matters which have accrued since the date of the Judgment or the Order and the Court may by order grant relief on such terms as it thinks just.”

It is equally instructive to note that the reference of the above rule to Order 45 Rule 15 of the C.I 47 which equally deals with power to stay execution by ‘fieri facias’ convinced me that just as the Learned Lawyer for the Respondent posited, this statute and Judgments are inapplicable to the instant case since they are tailored or designed to deal exclusively with stay of execution. I am minded to say so because the relief of stay of proceedings equally has its own provisions and mode of invocation. The submissions of Learned Counsel for the Plaintiff/Applicant are therefore to me inapplicable to this case. I do not see the argument of the Learned Counsel for the Plaintiff/Applicant that the reference to the phrase ‘other reliefs’ should be stretched

to include “stay of proceedings” especially when viewed from the perspective of the general import of that provision which touched on execution. To me ‘any other relief’ in that context could only mean a suspension of the enforcement of the orders or an injunction against the enforcement of the orders contained in the Judgment or in the worse-case scenario, setting aside the judgment, and this is not one of such cases.

Now, the case of JOSEPH V. JEBEILLE & ANOR cited supra is no different.

See NISSAN DEVELOPMENT COMPANY LTD V. TEMA MUNICIPAL ASSEMBLY & ANOR [2012] 36 MLRG 75 (CA).

Indeed, in the relevant paragraph of the Judgment, the Court held inter alia;-

“While we do not wish to say anything that may be interpreted as a fetter on the exercise of the discretion of a trial judge when he considers an application for stay of execution pending appeal, we think it necessary in the interest of justice to say generally that when such an application is considered the main consideration should not be so much that the victorious party is being deprived of the fruits of his victory as what the position of a defeated party would be who had had to pay up or surrender some legal right only to find himself successful on appeal...”

There is no doubt therefore that conceptually, the remedies of stay of execution and stay of proceedings are different (see REPUBLIC V. FAST TRACK HIGH COURT; EX-PARTE SIAN GOLDFIELDS LTD (AUREX MANAGEMENT) AND INVESTMENT (INTERESTED PARTY) [2009] 25 MLRG 120 SC @ 134 per Anin Yeboah JSC (as he then was).

Having said the above, there is no doubt however that there exist a discretionary remedy in the Court generally to stay its own proceedings. And since it is equally true that the wrong citation of a rule of procedure is not necessarily fatal to an application provided that relief is known to the law, I will go ahead and deal with the application as if it were properly invoked.

Now, there is no doubt that Courts by the very nature of their constitution have the inherent power to stay proceedings in cases that are before them. In the REPUBLIC V. HIGH COURT ACCRA; EX-PARTE MAGNA INTERNATIONAL TRANSPORT LTD (GHANA TELECOMINICATIONS CO LTD (INTERESTED PARTY) [2017-18] SCGLR 1024, the Supreme Court speaking through Benin JSC said as follows;-

“It is a well settled principle that every Court has an inherent jurisdiction to stay proceedings for stated reasons which include but not limited to abuse of process. Indeed, in matters of appeal especially interlocutory, the Courts have always exercised inherent jurisdiction to stay proceedings pending appeal, lest all their efforts should become fruitless, a waste of time and resources. The inherent jurisdiction of the Court derived from the common law which is part of the laws of Ghana by virtue of Article 11 (1) (e) of the Constitution, 1992.”

In a similar case, cited by the Learned Counsel for the Plaintiff/applicant, and that is OGYEEDOM OBRAN KWESI ATTA IV V. GHANA TELECOM COMPAY LTD & ANOR, SUIT NO. J8/131/2019 dated the 28th April, 2020, the Supreme Court stated thus;-

“[There] is an acknowledgement of the inherent power of the Court in appropriate instances to grant stay of execution or proceedings...”

What is clear from the above principle is that the stay of proceedings is an equitable remedy and discretionary in nature. It is to be exercised in appropriate instances. Now, amongst the appropriate instances is the need to prove ‘very exceptional circumstances’. In the case of TSATSU TSIKATA V. JUBILEE GHANA MV21 INC & 1 ANOR CIVIL APPEAL NO. A3/392/16, Barbara Ackah-Yensu J.A sitting as a single Judge of Appeal stated at page 3 of the Judgment as follows;-

“Also it is trite that an order for stay of proceedings should be made in exceptional circumstances such as where there was a likelihood that the subject matter of the dispute might be irretrievably lost before the determination of the appeal”

In this particular case, there is nothing perishable at stake for which the Court will grant a stay of proceedings. The mere fact that Plaintiff/Applicant thinks that the disjoined party is necessary to the successful prosecution of his case, which unfortunately is not the position of the Court is not an exceptional case of circumstances.

Another element that a Court faced with such an application will consider is the effect of the stay on the proceedings generally. Will the stay of proceedings enhance the early resolution of the issues or will rather cause undue delay should the appeal fail. In this particular case, it is my considered opinion that a stay of proceedings will rather delay the resolution of the Plaintiff's claim. This is so because, to me, the primary focus of the Plaintiff should be against the Defendant and not the disjoined party.

Equally so, I tend to go along with the Learned Counsel for the Defendant that the chances of an appeal cannot be special circumstances to warrant a stay. Especially so if the subject matter is not perishable. There is no doubt every appeal is a gamble with a 50-50% chance, just as the Plaintiff/Applicant feels strongly that his appeal has a high chance of succeeding, one cannot discount also that it equally has the possibility of it failing. This also cannot be an exceptional circumstances.

Having gone through the totality of the submissions before me, I must say that I am not persuaded by the arguments of the Learned Counsel for the Plaintiff/Applicant to warrant the grant of stay of proceedings of his own case pending the determination of the interlocutory appeal. This case is still at its infant stage and proceedings could continue whilst the Plaintiff pursues his appeal.

The application is thus dismissed as unmeritorious.

(SGD)

JUSTICE JUSTIN KOFI DORGU

(JUSTICE OF THE HIGH COURT)

LEGAL REPRESENTATION

GASPAR LYLE NII-APONSAH FOR THE APPLICANT

SHADRACK ARHIN FOR THE RESPONDENT