

IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4) HELD IN ACCRA ON THE MONDAY THE 20<sup>TH</sup> DAY OF FEBRUARY, 2023 BEFORE HER LADYSHIP OLIVIA OBENG OWUSU, (MRS) J.

SUIT NO: GJ/0484/2020

ANDREA MARIA ORLANDI                    ::        PLAINTIFF/RESPONDENT  
*64, ERIC MOORE ROAD, SURULERE, LAGOS, NIGERIA*

**VRS**

MRS.CONSTANCE PEASAH BOADU   ::        DEFENDANT/APPLICANT  
*NO. 320 PHASE 3, TRASSACO VALLEY, ADJIRINGANO – ACCRA*

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**R U L I N G**

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This is an Application on notice by the Defendant/Applicant (hereafter referred to as the Defendant) for stay of execution and to set aside the amended Entry of Judgment filed on the 4<sup>th</sup> of October, 2022. The main grounds for the Application can be found in paragraphs 9, 10 and 11 of the affidavit in support of the Application and I do reproduce same for easy reference:

*“9. That I am informed by Counsel for the Respondent and I verily believe same to be true that the said amended Entry of Judgment (Exhibit C) was made in error and in contravention of the rules of this Honourable Court.*

10. *That the deposition of the Applicant in the immediately preceding paragraph is not far-fetched and the particulars of error canvassed hereunder as follows:*
- i. That the Applicant has not received any Entry of judgment in this matter for the same to be amended.*
  - ii. That the respondent's amended Entry of Judgment without leave of this honourable Court if indeed she had previously filed an Entry of Judgment.*
  - iii. That the imposition of 14% per annum as indicated on the amended Entry of Judgment filed on 14<sup>th</sup> October, 2022 is arbitrary, self serving and not guaranteed by C.I. 52 the applicable rules governing interest impositions on judgment debts.*
  - iv. That the interest exigible under the Judgment can never be the prevailing bank lending rate but the Bank of Ghana's interest rate on the dollar.*
  - v. That there is no way the bank of Ghana's interest rate on the dollar can be 14% per annum.*
  - vi. That assuming without admitting that the interest rate on the dollar is 14% the Respondent has represented different amounts as the interest amount following the application of the 14% interest rate on the judgment debt of USD 130,000.00 as follows: i.e. USD11,542.562 and USD111,543.56.*

- vii. *That the respondent has not provided any plausible explanation for this vast difference in consequence of which the applicant submits that the entire amended Entry of Judgment (Exhibit C) was made in error.*
11. *That consequently the Applicant prays that the amended Entry of Judgment filed on 4<sup>th</sup> day of October, Exhibit C was made in error."*

The Plaintiff/Respondent (hereafter referred to as the Plaintiff) filed an affidavit in opposition to the Application. The material portions of the affidavit in opposition are the depositions contained in paragraphs 3, 4, 5, 6 and 7 which read as follows:

- "3. *In answer to paragraph 10(i) and 10(ii) of the said affidavit I wish to say that ever since the plaintiff obtained judgment on the 21<sup>st</sup> of December, 2021 every effort to have the Entry of Judgment served on the Defendant personally was thwarted by the security guards at the entrance of Trasaco Valley.*
4. *Consequently I am advised by my counsel and verily believe same to be true that the plaintiff did not require leave of this Honourable Court before filing the said amended entry of judgment especially so when the previous one was not served on the defendant.*
5. *In answer to paragraph 10(iii to v) of the said affidavit, I am advised by my counsel and verily believe same to be true that C.I 52 does not apply in (i) calculating the interest payable by the defendant in this instance because the plaintiff sought a commercial rate of interest payment as one of his reliefs in this action as opposed to a situation where the court is left to decide on the rate of interest to be paid on the debt.*
6. *In answer to paragraph 10 (vi to vii) of the said affidavit I wish to say that the figures complained of are just typos that did not in any way affect the outcome*

*of the calculations and therefore the quantum of the defendant's indebtedness to the plaintiff.*

7. *The defendant's application therefore for stay of execution and setting aside the amended entry of judgment is devoid of merit and the same ought to be dismissed.."*

Counsel on both sides advanced arguments in support of the respective positions as disclosed in the affidavits.

Learned Counsel for the Defendant emphasized the point that a Judgment Creditor who is desirous of amending his/her Entry of Judgment must do so with the leave of the Court. He submitted that there was an initial Entry of Judgment, which forms part of the Court record. This Entry of Judgment according to him was amended by the plaintiff without leave of the Court. He argued that the amended Entry of Judgment was thus filed in error and prayed the Court to set it aside. Counsel based his argument on the case of *AKOWUAH AND ANOTHER VRS AMOO AND ANOTHER [2012] 1 SCGLR PAGE 261*

Learned Counsel for the Plaintiff, on the other hand disagreed with the submissions made by the Defendant's counsel. He pointed out that the Defendant could not be served with the initial Entry of Judgment because the Plaintiff could not get access to the gated community where she lives. With the passage of time the quantum of the Judgment debt rose. The Plaintiff therefore realizing that there was the need to capture the increase amended the Entry of Judgment. Following that she procured from the Court an Order for substituted Service of the amended Entry of Judgment and served the Defendant in terms of the Order she got from the Substituted Service. In Counsel's view as no Entry of Judgment had been served on the Defendant the

plaintiff was entitled to file the amended Entry of Judgment without leave of the Court.

The Defendant anchors her Application on three main grounds. The first is that the amended Entry of Judgment was filed without leave of the court. It was made in error and ought to be set aside. The second is that the Plaintiff was not entitled to charge 14% per annum as interest on the judgment debt. The third is that the plaintiff represented different amounts as the interest amount on the Judgment debt and has not provided any plausible explanation for the vast difference.

The law is well-settled, and the reported cases themselves numerous, in which it has been held that a party cannot go into execution on the Judgment if he/she has not first entered same.

By the provisions of Order 41, rule 7(1) of the High Court (Civil Procedure) Rules, 2004 C.I. 47 the party seeking to have a Judgment entered shall draw up the Judgment and present it to the Registrar for entry. In the case of *ABIREH VRS ATTORNEY GENERAL [1992] 1 GLR 467* the Court held that a successful party cannot go into execution on the Judgment if he has not first entered same.

Similarly in the case of *REPUBLIC VRS COURT OF APPEAL EX-PARTE GHANA COMMERCIAL BANK PENSIONER'S ASSOCIATION 2001–2002 SCGLR 883 @ 891* the Supreme Court per Afreh JSC stated thus:

*“The Judgment after trial is the formal record of the Judgment pronounced by the Judge at or after the trial. It is the document which contains the full details of the judgment and must be filed under Order 41 r 1 of L N 140A to give effect to the Judgment pronounced by the Judge under Order 36, rule 24. Without it the Judgment pronounced by the Judge cannot be enforced.”*

In the instant case, there was, admittedly, no service of the initial Entry of Judgment. The fact that the initial Entry of Judgment was amended without recourse to the Court has not been denied by the Plaintiff.

The question that arises then is this: was the non-service of the initial Entry of Judgment on the Defendant fatal to subsequent proceedings? I think not. It is my considered opinion that the facts of this case are different from those in the Amoo case cited by Learned Counsel for the Defendant. In that case the Judgment Debtor had paid what he was requested to pay per the Entry of Judgment served on him and had filed a Statement of Account pursuant to the Order of the Court. Subsequently, the Judgment Creditor filed an amended Entry of Judgment which computed interest on the judgment debt which was almost double the original amount on the first Entry of Judgment. This amended Entry of Judgment was not served on the Judgment Debtor to make him officially aware of the new amount he was supposed to pay. The Court held that that unilateral step which had been taken to amend the Entry of Judgment should be frowned upon. Besides as the Court held, there was no evidence of service of the amended Entry of Judgment on the Judgment Debtor. The situation in the present case is quite different. Here, although the Plaintiff initially filed an Entry of Judgment the existence of this Entry of Judgment was never brought to the knowledge of the Defendant because it was not served on her. In my view the initial Entry of Judgment was superseded by the amended Entry of Judgment.

Unlike the situation in the Amoo case following service of the amended Entry of Judgment on the Defendant the amount which had been indicated on it was not revised or amended by the Plaintiff. The essence of service of any process on a party in a case is so that the party may have the opportunity to appear or be represented in order to assert or defend his rights. The Defendant was made aware of the amount she was to pay when she was served with the amended Entry of Judgment. I also find that the different amounts, which the Plaintiff represented as the interest amount, did not affect the result of her computations. The Defendant has been unable to

demonstrate how her interest has been prejudiced by reason of the Plaintiff's non-compliance. The Application to set aside the amended Entry of Judgment should therefore fail. Accordingly, I dismiss the application to set aside the amended Entry of Judgment filed on the 4<sup>th</sup> of October, 2022.

This leaves me with the other limb of the Application i.e. whether execution ought to be stayed. In the main an issue has been raised by the Defendant as to the applicable interest rate. I think it will be expedient to suspend the execution of the Judgment until this has been determined. The Court has an inherent power to control the execution of a judgment. See the case of *MENSAH VRS CONSTRUCTION AND BUILDING MATERIALS WORKERS UNION [2008–2009] 2 GLR 177*.

I direct the Registrar of this Court to write to the Bank of Ghana to ascertain the interest rate in order for the Defendant to pay the Plaintiff. I order that the execution be suspended until the applicable interest rate has been determined. Parties are to appear before the Registrar.

(SGD.)

H/L OLIVIA OBENG OWUSU (MRS.)

JUSTICE OF THE HIGH COURT

**PARTIES:**

*PLAINTIFF/RESPONDENT ABSENT*

*DEFENDANT/APPLICANT ABSENT*

**COUNSEL:**

*SELLY SERWAA KWAKYE ESQ., H/B FOR WILLIAM ADDO ESQ., FOR  
PLAINTIFF/JUDGMENT CREDITOR/RESPONDENT PRESENT*

*IRENE DAVIES ESQ., WITH CAROLINE ADDO ESQ., H/B FOR KWAME  
AMENANOR TANNOR ESQ., FOR DEFENDANT/JUDGMENT DEBTOR/APPLICANT  
PRESENT*

**CASES REFERRED TO:**

1. ABIREH VRS ATTORNEY GENERAL [1992] 1 GLR 467
2. REPUBLIC VRS COURT OF APPEAL EX PARTE GHANA  
COMMERCIAL BANK PENSIONER'S ASSOCIATION [2001-2002] SCGLR 883
3. MENSAH VRS CONSTRUCTION AND BUILDING MATERIALS WORKERS  
UNION [2008–2009] 2 GLR 177



