

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE  
COMMERCIAL DIVISION, HELD IN ACCRA ON TUESDAY, THE 5<sup>TH</sup> DAY OF  
SEPTEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.**

**SUIT NO.CM/MISC/0534/2022**

**EDWARD AGYEKUM SEREBOE - APPLICANT/APPLICANT**

**VS**

**CLEMENT NANA ADU KORANTENG - RESPONDENT/RESPONDENT**

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**RULING**

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I have listened to the rival submissions by counsel for the Applicant/Appellant/Applicant (hereinafter called the Applicant) and counsel for the Respondent/Respondent/Respondent (hereinafter called the Respondent).

I have also read the documents filed in this application. In cases of stay of execution pending Appeal, the court is faced with two situations:

- I. The decision that the judgment creditor should not be deprived of the fruits of his victory.
- II. The Applicant must also be assured, that if he is successful on appeal, it would not be rendered nugatory.

**See: INTEGRATED INVESTMENT LTD v GIHOC DISTILLERIES CO. LTD [2008] 14 MLRG 91 CA**

Stay of Execution means, imposing fetters on the judgment creditor from obtaining an execution relief from the judgment debtor, or suspending the execution of the judgment which has been given in favour of the judgment creditor.

**See: OSU STOOL v UNILEVER (GHANA) LTD [2003-2005] 1 GLR 274 CA**

**OPPAN v FRANS & CO. LTD [1984-86] 1 GLR 281 CA**

**REPUBLIC v CONDUAH; EX PARTE AABA (SUBSTITUTED BY) ASMAH [2013-2014] 2 SCGLR 1032**

A court will grant stay of execution or suspend an order or judgment where there are exceptional circumstances to warrant it.

**See: ACQUAH v TAGOE [2017 – 2020] 2 SCGLR 73**

However, what will amount to exceptional circumstances will depend on the circumstances of each case and this must be demonstrated by the Applicant.

**See: NII TETTEY OPREMEREH II & ANOR v KOMEXA LTD, LANDS COMMISSION & ORS [2021] 171 GMJ 152 SC**

**SGT ADDO OFOSU v GRAPHIC COMMUNICATIONS GROUPS LTD [2010] 33 MLRG 80 SC**

Counsel for the Applicant submitted, that the court erred when it held that the Applicant ought to have filed entry of judgment before going into execution, since it is not sanctioned under the Borrowers and Lenders Act, 2008 (Act 773). Therefore, the court should grant the application.

Counsel relied on a decision of the Court of Appeal delivered in 2019 under Act 773 and contended, that once Act 773 was a specific law, if it is in conflict with a general law such as C.I 47, the general law must give way to the specific law.

The above principle is the correct position of the law which is supported by litany of authorities such as, **IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY; ZAKARIA v NYIMAKAN [2003-2004] 1 SCGLR 1, REPUBLIC v CIRCUIT COURT, KUMASI, EX PARTE KWABENA MENSAH [2019] 132 GMJ 86, YEBOAH V MENSAH [1998-99] SCGLR 492** among others.

Again, it is settled law that where a general enactment covers a situation for which a specific provision is made by some other enactment, it is presumed that the situation was intended to be dealt with by the specific enactment.

**See: REPUBLIC V (HIGH COURT, FAST TRACK DIVISION) ACCRA, EX-PARTE PPE LTD & PAUL JURIC (UNIQUE TRUST FINANCIAL SERVICES LTD. INTERESTED PARTY) [2007-2008] 1 SCGLR 188**

**KUENYEHIA V ARCHER [1993-94] 2 GLR 525 SC**

**NEW PATRIOTIC PARTY V RAWLINGS & ANOR. [1993-1994] 2 GLR 193**

However, the above principles are not applicable in this situation.

First, Act 773 was repealed by the Borrowers and Lenders Act, 2020 (Act 1052). The Act was assented to on 29<sup>th</sup> December, 2020. Therefore, as at the time the agreement between the parties was made in January 2022, the law which regulated it was Act 1052 and not Act 773.

Secondly, under section 84 of Act 1052, the law provides that a person who seek recourse to the Court for any remedy under Act 1052 must do so in accordance with C.I. 47 or C.I. 59 (District Court Rules 2009).

This means, the provisions under Act 1052 must be used together with the provisions in C.I. 47 or C.I. 59.

Again, there is no corresponding provision of section 84 under Act 1052 in Act 773. Therefore, section 84 of Act 1052 is a new provision.

This means, the said decided case counsel for the Applicant cited is against section 84 of Act 1052. In that case, the decision can be considered as no more a good law or per incuriam and not binding.

The law is settled, that where there are calls on the court as to which authority to comply with, obeisance is due to statute rather than a decision of a higher court however exalted. In other words, where a statute conflicts with a case law, the provision in the statute prevails.

**See: BAAH V ATTORNEY-GENERAL [2012] 49 GMJ 57 CA**

**EDUSEI V DINERS CLUB SUISSE SA [1982-1983] GLR 809 CA**

I will therefore reject the Applicant counsel's argument to rely on the said Court of Appeal decision which is against Act 1052. And if this was in religious realm, I would have described such submission from the Applicant counsel as the height of apostasy.

I have given considerable thought to the application and do not find any merit in it. I will proceed to dismiss same and same is accordingly dismissed.

I will award cost of **GH¢3,000.00** against the Applicant and order, that the cost should be paid before the Applicant takes any fresh step in this case. I am fortified in this direction by the case of **RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA**. I order accordingly.

**SGD.**

**FRANCIS OBIRI**  
**(JUSTICE OF THE HIGH COURT)**

**COUNSEL**

**KWAME ASARE BEDIAKO FOR THE APPLICANT**

**GAFARU ALI HOLDING BRIEF FOR RICHARD NUNEKPEKU FOR THE  
RESPONDENT**

**AUTHORITIES**

- 1. INTEGRATED INVESTMENT LTD v GIHOC DISTILLERIES CO. LTD [2008] 14  
MLRG 91 CA**
- 2. OSU STOOL v UNILEVER (GHANA) LTD [2003-2005] 1 GLR 274 CA**
- 3. OPPAN v FRANS & CO. LTD [1984-86] 1 GLR 281 CA**
- 4. REPUBLIC v CONDUAH; EX PARTE AABA (SUBSTITUTED BY) ASMAH [2013-  
2014] 2 SCGLR 1032**
- 5. ACQUAH v TAGOE [2017 – 2020] 2 SCGLR 73**
- 6. NII TETTEY OPREMEREH II & ANOR v KOMEXA LTD, LANDS COMMISSION  
& ORS [2021] 171 GMJ 152 SC**
- 7. SGT ADDO OFOSU v GRAPHIC COMMUNICATIONS GROUPS LTD [2010] 33  
MLRG 80 SC**
- 8. IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY;  
ZAKARIA v NYIMAKAN [2003-2004] 1 SCGLR 1**

9. **REPUBLIC v CIRCUIT COURT, KUMASI, EX PARTE: KWABENA MENSAH [2019]**  
132 GMJ 86
10. **YEBOAH V MENSAH [1998-99] SCGLR 492**
11. **REPUBLIC V (HIGH COURT, FAST TRACK DIVISION) ACCRA, EX-PARTE PPE LTD & PAUL JURIC (UNIQUE TRUST FINANCIAL SERVICES LTD.--INTERESTED PARTY) [2007-2008] 1 SCGLR 188**
12. **KUENYEHIA V ARCHER [1993-94] 2 GLR 525 SC**
13. **NEW PATRIOTIC PARTY V RAWLINGS & ANOR. [1993-1994] 2 GLR 193**
14. **BAAH V ATTORNEY-GENERAL [2012] 49 GMJ 57 CA**
15. **EDUSEI V DINERS CLUB SUISSE SA [1982-1983] GLR 809 CA**
16. **RISS HENRY OKAIKWEI v NATHANIEL AZUMA NELSON [2022] 177 GMJ 251 CA**