

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON WEDNESDAY THE 16TH DAY OF AUGUST, 2023
BEFORE HIS LORDSHIP FRANCIS OBIRI, J.

SUIT NO. BFS/254/2011

AGRICULTURAL DEVELOPMENT BANK ----- PLAINTIFF/RESPONDENT

Vs

KLEAN WATER SANITATION LTD. &ANOR ----- DEFENDANTS/APPLICANTS

RULING

On 26th June 2023, this Court dismissed two applications which have been filed by the Defendants/Applicants (hereinafter called the Applicants) in this case. The two applications were motion to set aside an auction sale and motion to relist an application for review of reserve price of attached property.

Afterwards, the Applicants filed the present application on 11th July 2023. The present application is praying the Court to stay the execution of the order which was made on 26th June 2023 dismissing the two applications pending the determination of an appeal filed by the Applicants. The motion was fixed for hearing on 24th October, 2023.

However, the case came before this Court on 31st July, 2023 in respect of an application for release of money paid into Court. The said motion was filed by the

Plaintiff/Respondent (hereinafter called the Respondent). The said motion could not be heard because of the Applicants motion which was filed on 11th July, 2023 and fixed for 24th October, 2023.

The Court therefore invoked Order 1 Rule 1 (2), Order 37 Rule 2 and Order 80 Rule 4 (2) of C.I. 47 and abridged the date for the hearing of the Applicants motion to today, 16th August, 2023.

The Court ordered the Respondent counsel to serve the Applicants and or their counsel with the Court notes and hearing notice for today's proceedings.

The Order was complied with by the Respondent on 8th August, 2023 as per the affidavit of service which was commissioned by the Registrar of this Court on 9th August, 2023. Today, the Applicants and their counsel are not in Court to move their motion filed on 11th July, 2023.

The Respondent has filed affidavit in opposition to the motion. I will therefore consider the Applicants application based on the documents filed in support and in opposition to same.

After all, the law allows a Court to consider the merits of an application and decide whether to grant it or refuse it once the documents filed are before the Court. Therefore, a Court can grant or refuse an application without the application being moved formally.

See **REPUBLIC v COURT OF APPEAL, ACCRA EX PARTE: EASTERN ALLOY COMPANY LIMITED [2007-2008] 1 SCGLR 371**

I have considered the documents filed for and against the application for the Stay of Execution filed by the Applicants.

It is trite law, that Stay of Execution would be granted on exceptional circumstances. This is because; it is not the practice of the Courts to deny victorious parties the fruits of

their victories by putting fetters on them. However, stay of execution is granted where there are exceptional circumstances to warrant same.

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

Indeed, what will amount to exceptional circumstances will depend on the circumstances of the case.

See: **GOLDEN BEACH HOTELS (GHANA) LIMITED v PACK PLUS INTERNATIONAL LIMITED [2012] 1 SCGLR 452**

NII TETTEY OPREMEREH II & ANOTHER v KOMEXA LIMITED, LANDS COMMISSION & OTHERS [2021] 171 GMJ 152 SC

I have considered the documents filed in support and in opposition to the application for Stay of Execution and do not find any merit in it. I will therefore proceed to dismiss same and same is accordingly dismissed.

I will award cost **GH¢5,000.00** against the Applicants in favour of the Respondent. I order that the cost should be paid before the Applicants take any fresh step in this case, under the authority of **RISS HENRY OKAIKWEI V NATHANIEL AZUMA NELSON AND ANOTHER [2022] 177 GMJ 251 CA**. I order accordingly

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

TEI MENSAH ADDICO LED BY ALFRED BANNERMAN WILLIAM FOR THE PLAINTIFF/RESPONDENT

COUNSEL FOR DEFENDANTS ABSENT

AUTHORITIES

- 1. REPUBLIC v COURT OF APPEAL, ACCRA EX PARTE: EASTERN ALLOY COMPANY LIMITED [2007-2008] 1 SCGLR 371**
- 2. ACQUAH v TAGOE [2017-2020] 2 SCGLR 73**
- 3. GOLDEN BEACH HOTELS (GHANA) LIMITED v PACK PLUS INTERNATIONAL LIMITED [2012] 1 SCGLR 452**
- 4. NII TETTEY OPREMEREH II & ANOTHER v KOMEXA LIMITED, LANDS COMMISSION & OTHERS [2021] 171 GMJ 152 SC**
- 5. RISS HENRY OKAIKWEI V NATHANIEL AZUMA NELSON AND ANOTHER [2022] 177 GMJ 251 CA**