

**IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL DIVISION, HELD IN ACCRA ON THURSDAY, THE 17TH DAY OF
AUGUST, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI 'J'.**

SUIT NO. GJ/625/2019

1. SAMUEL AYIM -----
2. FOCUS LIFE PROPERTIES

PLAINTIFFS/RESPONDENTS

VS

1. MENZGOLD GHANA LIMITED
2. NANA APPIAH MENSAH
3. BREW MARKETING CONSULT LIMITED
4. BENEDICTA APPIAH

DEFENDANTS

**ECONOMIC AND ORGANIZED CRIME
OFFICE (EOCO)**

**- INTERESTED PARTY/
APPLICANT**

RULING

I have listened to the submissions for and against the grant of the application for Stay of Execution of the Order of this court dated 27th April, 2023. I have read the documents filed in support and in opposition to the application.

It is trite law, that the practice of the courts is not to put fetters on victorious parties from reaping the fruits of their victories in legal proceedings by granting Stay of Execution. However, Stay of Execution is granted in exceptional cases or circumstances.

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

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

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

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

Stay of Execution means, suspending the enforcement of a judgment under the procedure prescribed by law for enforcing judgments. It can also mean stopping, delaying or imposing any fetters on a judgment creditor to obtain an appropriate writ of execution.

See: **OPPAN V FRANS CO. LTD. [1984-86] 1 GLR 281 CA**

Let me say that in this case, the Interested Party/Applicant (hereinafter called the Applicant) has not filed any appeal against the ruling of this Court differently constituted, dated 27th April, 2023. However, under Order 43 rule 11 of C. I. 47, stay of execution can be applied for whether or not an appeal is pending against the judgment or the decision which had been given by a court.

And the meaning of a party within the context of Order 43 rule 11 includes the parties in the case as well as their agents, servants etc. and anybody who is directly affected by the decision or the judgment of the court.

See: **NISSA DEVELOPMENT COMPANY LIMITED AND ANOTHER v TEMA MUNICIPAL ASSEMBLY AND 8 OTHERS [2012] 36 MLRG 75 CA**

In this case, the Applicant, Economic and Organized Crime Office (EOCO), is not a party in respect of which the Order dated 27th April, 2023 was made. However, in its affidavit in support, it averred that it is prosecuting a case in respect of the properties which the Order dated 27th April, 2023 revolves. The Applicant added, that the properties referred

to in the 27th April, 2023 Order of this Court have been frozen as far back as 2019 by another High Court, hence their application for the Order dated 27th April, 2023 to be stayed.

The Plaintiffs/Respondents (hereinafter called the Respondents) counsel contended, that the properties in the 27th April, 2023 Order are not among the frozen properties. Again, there is no indication that the criminal case is still pending.

First, I wish to say that this court presently constituted cannot determine through affidavit evidence as to whether the properties which were frozen in the 2019 Order of the High Court include the properties stated in the 27th April, 2023 Order of this Court.

Secondly, the court has taken judicial notice under section 9 of NRCD 323, that the criminal case involving some officers of Menzgold Ghana Limited is still pending in court.

Under section 9 (3) of NRCD 323, judicial notice can be taken by the Court whether requested for or not.

And under section 9 (6) of NRCD 323, such judicial notice can be taken at any stage of the case.

The Order dated 21st January, 2019 which was made by the High Court in respect of the confirmation of freezing of tainted property or proceeds of crime has been attached to the application as exhibit EOCO4. It has not been varied or vacated. It confirmed the freezing of the properties pending the final determination of the criminal case.

And as I have stated already, the court has taken judicial notice of the fact that the criminal case which revolves around those properties is still pending in court.

The Order dated 27th April, 2023 ordered the sale of some properties which belong to Menzgold Ghana Limited at Ofankor and Kasoa. The 2019 Order mentioned properties of Menzgold at Kasoa and Ofankor. Therefore, as I have indicated earlier, I am not able to conclude whether the properties are the same or not.

In my view, the 27th April 2023 Order by the High Court for the sale of some properties of Menzgold appears to subvert the 2019 Order for the confirmation of the freezing Order in respect of properties of Menzgold Ghana Limited.

The law is settled, that a court of coordinate jurisdiction cannot make an order to subvert a valid subsisting order by another coordinate Court.

See: **WILSON KOFI KUTSOKEY v E. SOWA NARTEY AND 2 OTHERS [2006] 9 MLRG 90 CA**

I am of the view, that the above discussions raise exceptional circumstances to warrant the grant of the Stay of Execution of the order of this Court differently constituted dated 27th April, 2023.

It is therefore my view, that the application should be granted and I proceed to grant same. The effect is that the Order dated 27th April, 2023 in respect of the sale of some properties of Menzgold Ghana Limited is hereby stayed. The application is granted in its entirety. I order accordingly. No order as to cost.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

JAMES MENSAH KULLEY HOLDING BRIEF FOR MICHAEL AKANBEK FOR PLAINTIFFS/ RESPONDENTS

VICTORIA ASAMOAH WITH SEDINA GBEVE HOLDING BRIEF FOR ABU ISSAH FOR THE INTERESTED PARTY/APPLICANT

AUTHORITIES

1. ACQUAH v TAGOE [2017-2020] 2 SCGLR 73
2. NII TETTEY OPREMEREH II AND ANOTHER v KOMEXA LIMITED, LANDS COMMISSION AND OTHERS [2021] 171 GMJ 152 SC
3. GOLDEN BEACH HOTELS (GHANA) LIMITED v PACK PLUS INTERNATIONAL LIMITED [2012] 1 SCGLR 452
4. OPPAN V FRANS CO. LTD. [1984-86] 1 GLR 281 CA
5. NISSA DEVELOPMENT COMPANY LIMITED AND ANOTHER v TEMA MUNICIPAL ASSEMBLY AND 8 OTHERS [2012] 36 MLRG 75 CA
6. WILSON KOFI KUTSOKEY v E. SOWA NARTEY AND 2 OTHERS [2006] 9 MLRG 90 CA