

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL DIVISION HELD IN ACCRA ON TUESDAY, THE 22ND DAY OF
AUGUST, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI (J)

SUIT NO. CM/BFS/0520/2020

NATIONAL INVESTMENT BANK - PLAINTIFF/RESPONDENT

VS

NEW CASE CAPITAL LIMITED - DEFENDANT/APPLICANT

RULING

I have listened to the submissions for and against the application for Stay of Execution pending appeal by the Defendant/Applicant (hereinafter called the Applicant). In cases of Stay of Execution pending appeal, the court is faced with two situations.

- a. The decision that the judgment creditor should not be deprived of the fruits of his victory.
- b. 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

However, in cases of Stay of Execution pending appeal, the burden is on the Judgment Debtor/Applicant to prove to the court that his appeal is likely to succeed. This can be

done by pointing out certain defects on the face of the judgment in terms of law or facts or both.

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: OPPAN v FRANS AND CO. LTD [1984-86] 1 GLR 281 CA

OSU STOOL v UNILEVER GHANA LTD [2003-2005] 1 GLR 274 CA

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

A court will grant Stay of Execution if there are exceptional circumstances to warrant same to be granted. This is because; the practice of the courts is not to put fetters on judgment creditors from reaping the fruits of their victories by granting stay of execution.

However, if an Applicant is able to prove special or exceptional circumstances, the court can grant stay of execution pending appeal.

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

What will amount to exceptional circumstances will depend on the circumstances of each case.

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

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

In this case, the Plaintiff/ Judgment Creditor/ Respondent (hereinafter called the Respondent) is a financial institution which operates on commercial basis with branches throughout the country.

It is therefore my view, that even if the Applicant wins on appeal, the Respondent would be able to refund the whole judgment debt amount to the Applicant.

Again, the Applicant has not demonstrated any exceptional circumstances to warrant the grant of the application.

A bare assertion that an appeal is likely to succeed is not sufficient ground to warrant stay of execution pending appeal.

I am therefore not inclined to grant the application and same is dismissed. No order as to cost.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

STEPHEN OBENG DARKO FOR THE PLAINTIFF/RESPONDENT

**ABENA INKOOM HOLDING BRIEF FOR THEOPHILUS TAWIAH FOR THE
DEFENDANT/APPLICANT**

AUTHORITIES

1. INTEGRATED INVESTMENT LTD v GIHOC DISTILLERIES CO. LTD [2008] 14 MLRG 91 CA
2. OPPAN v FRANS AND CO. LTD [1984-86] 1 GLR 281 CA
3. OSU STOOL v UNILEVER GHANA LTD [2003-2005] 1 GLR 274 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. GOLDEN BEACH HOTELS (GHANA) LTD v PACK PLUS INTERNATIONAL LTD [2012] 1 SCGLR 452
7. NII TETTEY OPREMEREH II & ANOR v KOMEXA LTD, LANDS COMMISSION & ORS [2021] 171 GMJ 152 SC