

**IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF
JUSTICE HELD AT TEMA ON MONDAY THE 6TH DAY OF
FEBRUARY 2023 BEFORE HER LADYSHIP JUSTICE RITA
AGYEMAN-BUDU (MRS)**

Time: 12:02 pm

SUIT NO: LC/84/2019

NINA NAADEI NEE-KOTEY ... PLAINTIFF

VRS

THE CHURCH OF PENTECOST ... DEFENDANT

PARTIES

Plaintiff's Lawful Attorney Emmanuel Tetteh Wilson – Absent

Defendant – represented by Theophilus Ansah

LEGAL REPRESENTATION

Mr. Michael Amposah Addo holding brief for Mr. Eric Asuman-Adu for the Plaintiff/Applicant- Present

Mr. Ebenezer Ahiator for the Defendant/Respondent- Present.

RULING

This ruling is in respect of Application for Stay of Proceedings pending Appeal. It was filed by Counsel for and on behalf of Plaintiff/Applicant herein on the 28th October, 2022.

The mainstay of this Application is that Plaintiff/Applicant herein on the 14th of July, 2021 filed a Motion on Notice for leave to amend Pleadings and to recall Plaintiff's Attorney to lead fresh evidence.

The said Application was dismissed by this Court per its ruling delivered on 14th April, 2022.

In the instant Application, Plaintiff/Applicant states in Paragraphs 6, 7 and 8 as follows:

Paragraph 6

That aggrieved by the Ruling herein on the 5th May, 2022 filed a Notice of Appeal (see attached: Notice of Appeal marked as Exhibit "B").

Paragraph 7

That the trial of the matter is still ongoing as the only witness for the Defendant is still under cross-examination.

Paragraph 8

That there are exceptional circumstances warranting the grant of this Application and if the matter proceeds to its logical conclusion and the Plaintiff wins on Appeal it will be impracticable for the Plaintiff's Attorney to be recalled to testify and lead fresh evidence and also tender the relevant document, a Search which was later discovered and vial for the determination of the case.

This instant Application was opposed by Defendant/Respondent herein on the grounds that there are no exceptional circumstances.

In his legal submission, Counsel for Defendant/Respondent contends further that their only Witness has already been cross-examined many times by Counsel for Plaintiff/Applicant and is at the tail end of the said process. To grant this Application will draw back the whole trial. It is his contention that Plaintiff is using this Application to delay the trial.

He further submits that since amendment of Writ of Summons and Statement of Claim will mean that Defendant will have to respond to same and then additional time will be given for Case Management Conference in accordance with C.I 87 which was passed to avoid same situations like these.

The issue for this Court to determine is whether or not to grant the instant Motion for Stay of proceedings pending Appeal.

I will refer to **Court of Appeal (Amendment Rules 2020)** which provides as follows:

Rule 27 of C.I 19 amended.

1) The Court of Appeal Rules 1997 (C.I 19) referred to in this enactment as the “principal enactment” is amended in Rule 27 by:

a. the Substitution of Subrule (1) of

1) An appeal shall not operate as a stay of execution under the Judgment or decision appealed against unless the Court otherwise orders on an Application made to the Court by Motion on Notice.

b) the insertion after subrule (1) of “1A”

1A). Unless otherwise provided in this rule, an intermediate act or any other proceedings subsequent to an Application under subrule (1) shall not be invalidated and

c) the substitution for subrule (3) of

3) There shall be a stay of execution of the Judgment or decision appealed against for a period of seven (7) days immediately following the giving of notice of the Judgment or decision

Rule 27 A of C.I 19 revoked

2. The principal enactment is amended by the revocation of rule 27A.

In his book: **A Practical Guide to Civil Procedure in Ghana**, the learned Author **Justice Marful-Sau JSC** stated at page 154 as follows:

“Rule 27A of C.I 19 which empowered the Court of Appeal to grant Stay of Proceedings pending the determination of an Interlocutory Civil or Criminal Appeal has been revoked by Rule 2 of C.I 132. Also, Rule 28 of C.I 19 which empowered a Party to make an Application for Stay of Proceedings at first instance to the Court below and if refused to the Court of Appeal has been revoked by Rule 3 of C.I 132. This therefore means that where this is an Interlocutory Appeal against a Judgment or decision, proceedings shall not be stayed”.

I have however taken into consideration the evidence adduced and fortified by the provisions of the **C.I 132** and also on the authority of page 154 of the book: *“A Practical Guide to Civil Procedure in Ghana*

(supra) and it is my considered opinion that, this Court should not grant the instant Application for Stay of proceedings pending Appeal.

Therefore, Application for Stay of proceedings pending Appeal is hereby dismissed.

Cost of Two Thousand Ghana Cedis (GH¢2,000.00) is awarded in favour of the Defendant/Respondent herein.

**H/L: RITA AGYEMAN-BUDU (MRS)
(JUSTICE OF THE HIGH COURT).**

sb.a