

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- GHANA

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CORAM: AKUFFO, (MS) J.S.C (PRESIDING)

DATE-BAH, J.S.C

ADINYIRA, (MRS) J.S.C

OWUSU, (MS) J.S.C

DOTSE, J.S.C

SUIT NO. CM J5/37/2008

10TH DECEMBER, 2008

ANTHONY KWABENA ANYAN

VRS

THE HIGH COURT, ACCRA

R U L I N G

OWUSU, (MS) J.S.C:

This is an application to invoke the supervisory Jurisdiction of the Supreme Court under Article 132 of the constitution, which reads as follows:

“The supreme court shall have supervisory Jurisdiction over all courts and over any adjudicating authority and may in the exercise of that supervisory Jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power.”

The Applicant is seeking an order of certiorari directed to the High Court presided over by J. B. Benson J. to move into this court for the purpose of quashing that part of the ruling of the court dated 10th day of June, 2008, that “the claimant has no interest in the subject matter of this application.”

Before we proceed to deal with the application, we deem it necessary to touch on the title of the application as stated:

“ANTHONY KWABENA ANYAN

TRADING AS ANYAN ENTERPRISE

LIGHT INDUSTRIAL AREA, SOUTH RING ROAD WEST

VRS

HIGH COURT, ACCRA

RESPONDENT

„ PLATINUM HOLDINGS

INTERESTED PARTY

NO. 59 GRAPHIC ROAD, ACCRA

No issue has been raised in this application on the title as stated but all the same we feel the need to have it corrected. The title, as it is, is not fatal to the application, particularly as the court’s aim is to do substantial justice between the parties and either party would suffer no hardship if the heading of the application is amended. Accordingly, we are inclined to amend the title in the exercise of the court’s general Jurisdiction under Art 129 (4) of the constitution to conform to the usual titles adopted in applications of this nature.

Article 129 (4) of the 1992 constitution reads as follows:

“for the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purpose of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and

Jurisdiction vested in any court established by this constitution or any other law.”

“The wrong heading of the application for an order of certiorari could not in any material manner, derogate from the nature of the application itself. Since the supreme court was a court of final resort, in the absence of specific prescriptions in the supreme court rules, 1970 (C113) or any other relevant statute, what was more important was whether the application had any substance regardless of the form in which it has been intituled”.

See the case of OKOFOH ESTATES LTD VRS MODERN SIGNS LTD (1996 -97) SCGLR P. 224 at 225.

We therefore alter the title to read: THE REPUBLIC VRS HIGH COURT; ACCRA EX - PARTE: ANTHONY KWABENA ANYAN.

With the title thus amended, we see our way clear in dealing with the application on its merits.

The events leading to the filing of the instant application before the court are briefly as follows:

The Applicant and the Interested Party are sub-lessees of Edward Nasser and Co. Ltd, a lessee of the Government of Ghana of a piece of land in the light Industrial Area, South of Ring Road West.

Edward Nasser and Co.. Ltd, having taken a lease of the property, sublet portions of it to the Applicant and Interested party.

On or about 24th day of March 2004, the Interested Party brought an action against the Applicant for a declaration of title to plot No. 1A and marked “44” on a map attached to the Applicant’s statement of case in this application and obtained Judgment against him. It was not until 11th November, 2005 that he applied by motion ex-parte, for a writ of possession which was granted on 26th November, 2007.

In executing the Judgment, it is alleged the Interested Party entered another property of the Applicant other than that in respect of which judgment was

obtained and attached same. It was against this execution that the interpleader proceeding was instituted in which the Applicant herein claimed interest in the attached property.

It is the contention of the claimant that the execution Judgment Creditor had levied execution on a property other than plot No. 1A in respect of which Judgment was obtained.

Counsel for the execution Judgment creditor, in response to the claimant's submission, had argued that the execution debtor/claimant has no interest in the property in respect of which execution was levied because his grantor i.e. Edward Nasser and Company's interest had expired in October, 2007.

Edward Nasser and company Ltd had by a leasehold agreement been granted a lease of a larger piece of land of which the subject matter of the attachment forms a part, for a term of FIFTY (50) YEARS from the 1st day of October, 1957 by the Ghana Government. In his ruling, the trial Judge found as a fact that the property which was attached in execution is not the one in respect of which the execution/creditor obtained Judgment.

This is what His Lordship said in his ruling:

"That in terms of area and dimensions in the view of this court and from the exhibits annexed to the various affidavits clearly showed that the land is different in dimension and size. The location is also different. We, therefore hold as such that the execution was not in respect of the property for which Judgment was obtained. -----"

The trial Judge did not stop at ruling that the and, the subject matter of the execution, had been wrongly attached but went further to pronounce on the claim by the execution/Judgment/debtor that he has interest in the attached property.

In this regard, he examined the lease document of Edward Nasser and company which was for fifty (50) years effective 1st October, 1957 and that of the claimant which was for 99 years, effective 1st October, 1991 and declared that the grant of 99 years by Edward Nasser and Company Ltd to the claimant was wrong in Law as the company could not alienate any interest in the property more than what it had at the time it sublet part of the land it acquired in the Head lease to the claimant. The company's lease was to expire on the 1st of October 2007 and by that date the claimant's interest under his lease had also automatically expired.

This is what led the court to pronounce on the claimant's interest in the subject matter of the application.

The grounds on which the present application is based are:

“Want of and or excess of Jurisdiction..”

Arguing the application, counsel relies on the opinion of Bamford Addo JSC in the case of *BRITISH AIRWAYS VRS ATTORNEY-GENERAL* (1996-97) SCGLR 547 at 553 where the learned Judge opined as follows:

“The supreme Court's supervisory Jurisdiction under Art. 132 and 161 of the 1992 constitution ought to be exercised in appropriate and deserving cases in the interest of Justice (therefore) whenever in the course of any matter brought before this court, it is found that there exists in one of lower courts any matter which would in the long run result in injustice or illegality it is the duty of the court to at once intervene and issue orders and direction with a view to preventing such illegalities or injustice even before they occur.”

Counsel also referred to the case of the *REPUBLIC VRS THE COURT OF APPEAL; EX-PARTE: TSATSU TSIKATA* reported in (2005-2006) SCGLR in which Her Ladyship Wood JSC (as she then was) reading the lead ruling of the court said -

“The clear thinking of this court is that our supervising Jurisdiction under article 132 of the 1992 constitution should be exercised on in those manifestly plain and obvious cases where there are patent errors of law on the face of the record, which errors either go to Jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reasons that the reason than that the errors of law alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter ---”

It is the contention of counsel that if the learned Judge had not strayed into a discussion of the Applicant's title when that was clearly not an issue before him, particularly after he had held that the execution was wrongful, he would not have dismissed applicant's application.

Regrettably, a copy of the application before the high court was not attached to the instant application and the court is therefore disabled from knowing the nature of interest the Applicant herein claimed. Was he an applicant or a claimant?

“Interpleader is a proceeding by which a person, from whom two or more persons claim the same property or debt, land who does not himself claim the property or dispute the debt, can protect himself from legal proceedings by calling upon the two claimants to interplead – that is to say, claim against one another so that the title to the property of debt may be decided. Interpleaders may be divided into two types; the first is where a sheriff seizes or intends to seize goods by way of execution and a person (other than the Judgment debtor) claims them. Here the sheriff initiates the proceedings to determine whether the property belongs to the Judgment debtor (and therefore can be seized) or to the claimant. ----- ” [Order 17/1/1, the Supreme Court Practice, 1995 (edition Vol. 1) ]

For purposes of this application, we will limit ourselves to this type of Interpleader which is known as a sherrif’s interpleader as the circumstances do not fall under the other type of interpleader known as stakeholder’s interpleader.

Under Order 48 1 (b) of the High Court (civil) procedure Rules C.I. 47, a person may apply to the court for relief by way of interpleader where “the person seeking relief is a Registrar or other officer of the court charged with the execution of process by or under the authority of the court, and a claim is made to any property movable or immovable taken or intended to be taken in execution under any process or to the proceeds or value of any of the property by any Claimant other than the person against whom the process is issued” (emphasis mine)

From the ruling, in the application before the High Court, counsel for the Judgment/executioner had resisted the claim by the Applicant herein on the grounds that being a defendant in the suit he cannot bring an interpleader action. Secondly, that the defendant/claimant has no interest in the property against which execution has been levied because his grantor’s interest had expired in October 2007.

It is in respect of the second leg on which the claim was resisted that the trial Judge ruled that the claimant has no interest in the property, subject matter of the interpleader proceedings.

The law is settled that the supervisory Jurisdiction of the court under Art.132 of the 1992 constitution is exercised only in those manifestly plain,

obvious and clear cases where there are patent and obvious errors of law on the face of the record which error must go to the Jurisdiction of the court so as to make the decision of the court a nullity.

The authorities are now many on this proposition but to mention a few, let us refer to the cases of REPUBLIC VRS HIGH COURT, ACCRA; EX-PARTE APPIAH AND OTHER [2000] SCGLR 389, REPUBLIC VRS HIGH COURT, ACCRA; EX-PARTE: INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES AND ANOTHER [2003-4] SCGLR 348 AND THE TSATSU TSIKATA case already referred to in which the proposition has been clearly set down.

It is therefore the contention of counsel for the Interested Party that in pronouncing on the claim of the Applicant, the court acted within its Jurisdiction and therefore there is no error of law on the face of the record to warrant invocation of this court's supervisory Jurisdiction.

The question then is, was that part of the ruling of the High Court which the Applicant is seeking an order of the court to quash made without Jurisdiction or in excess of Jurisdiction?

In an interpleader proceeding, the claimant puts his interest in issue. In the affidavit of interest, he states the particulars of his claim and the grounds on which he relies. Regrettably, the Applicant's affidavit of interest in support of his claim was not exhibited in this application but attached is Exhibit "1" the leasehold agreement on which he relies. By this agreement, he was granted ninety-nine (99) year leasehold, effective 1st October 1991 by Edward Nasser & Company. Edward Nasser's lease under which the Applicant took his lease was for a term of 50 years with effect from 1st October 1957.

So that at the time when the Applicant sought to support his claim with the lease, same was not valid as his grantor's Head lease had expired.

If the Applicant's application before this court is premised on the ground that the trial Judge lacked Jurisdiction or exceeded his Jurisdiction in pronouncing on the Applicant's title because same was not in issue, we will say that same is a serious misconception. Indeed by the very nature of the relief he sought, he put his title in issue and that is the essence of an interpleader proceeding.

If by the application, the claimant's title was in issue, then the trial Judge was perfectly acting within his Jurisdiction when he pronounced on it. Under

these circumstances if he commits any error which is not patent on the face of the record, certiorari will not issue by way of remedy. Under those circumstances, the aggrieved party's remedy lies in an appeal. See the case of REPUBLIC VRS HIGH COURT, ACCRA. EX-PARTE: COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ) (ADDO Interested Party) [2003-2004] SCGLR.312

Consequently, the application is ill-conceived and same is therefore dismissed.

Having dismissed the application, we are tempted to comment on the relief sought for by the Applicant in the Interpleader proceedings. Looking at the Applicant's case before the High Court, did his relief lie in an interpleader action? His complaint was that, the land the subject matter of the interpleader action was wrongfully attached, thus making the execution wrongful. An execution is wrongful when it is not authorized or justified by the writ of execution or by the Judgment under which it is issued. In this case, the High Court having ruled that the property attached was not justified by the writ of execution, the execution was wrongful.

Unlike property seized in execution of a Judgment debt by writ of fieri facias (fI:fA), the property seized under a writ of possession covers a particular property, subject matter of the Judgment in respect of which the Judgment was obtained. It is when property had been attached normally under a writ of fieri facias that a person other than the defendant who claims an interest in it interpleads.

In cases where the execution is wrongful or irregular, the relief available is to have the writ of execution set aside.

R. C. OWUSU (MS)

(JUSTICE OF THE SUPREME COURT)



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