

**IN THE SUPERIOR COURT OF JUDICATURE**  
**IN THE SUPREME COURT OF GHANA**  
**ACCRA**

**CORAM:     ATUGUBA, J.S.C (PRESIDING)**  
**ANSAH, J.S.C.**  
**OWUSU (MS), J.S.C.**  
**ANIN YEBOAH, J.S.C.**  
**BAFFOE-BONNIE, J.S.C.**

**CIVIL MOTION**  
**NO. J8/2/2009**  
**14<sup>TH</sup> JANUARY, 2009**

**TONY ADAMS   - - -**

**EXECUTION PURCHASER/  
APPLICANT/RESPONDENT/  
RESPONDENT**

**-VRS-**

**ANANG SOWAH   - - -**

**EXECUTION DEBTOR/RESPONDENT  
APPELLANT/APPELLANT/APPLICANT**

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**R U L I N G**

**ATUGUBA, J.S.C:**

The Defendant-appellant-applicant (hereinafter called the execution debtor) applies to this court "for the stay of execution of the order for delivery of possession of H/No 6C 153/29, East Legon, Mpeasem, Accra and or suspension of the enforcement of the said order for delivery of possession."

It will be seen from the formulation of this application that the alternative form of the order, it is a mere variation of language; it is aimed at the same relief, namely, stay of execution of the order for delivery of possession of the house in question.

The salient parts of the supporting affidavit are as follows:

- "(2) That some time in 1997, one Amarkai Amarteifio, a lawyer by profession of Ayawaso Chambers, Osu, Accra, issued a writ against the applicant claiming an amount of £35,000 as professional fees and financing assistance rendered to the applicant who has been outside the jurisdiction at all material times.
- (3) That pursuant to a judgment in default of appearance, the said Amarkai Amarteifio proceeded to cause a judicial sale of the applicant's house at Mpeasem, East Legon, Accra.
- (4) That the respondent herein purportedly acquired the said property at an auction sale and proceeded to obtain an order directed against the applicant, his personal representatives and assigns, to deliver vacant possession of the said property to him.
- (5) That being aggrieved, the applicant appealed against the said order for delivery of vacant possession to the Court of Appeal. The said appeal was on 17 July 2008, dismissed with costs of GH¢2,000. A copy of the judgment is attached and exhibited as AS.
- (6) That being aggrieved, the applicant has appealed to this honourable court as per the attached notice of appeal exhibited as AS1.
- (12) That an earlier application to the Court of Appeal was dismissed on 20 October 2008. A copy of the order dismissing same would be exhibited on receipt.
- (13) That even though the judgment of the Court of Appeal is not executory in the strict sense, this honourable court has the jurisdiction to ensure that the said order for delivery of vacant possession is heard in the appeal, in the interest of justice."

The relevant rule of this court on stay of execution is rule 20 of the Supreme Court Rules, 1996 (CI 16). It provides as follows:

#### **"20. Effect of appeal**

(1) A civil appeal shall not operate as a *stay of execution or of proceedings under the judgment or decision appealed against* except in so far as the Court or the Court below may otherwise order. (The emphasis is ours).

(2) Subject to these Rules, and to any other enactment governing appeals, an application for stay of execution or of proceedings shall first be made to the Court below and if that court refuses to grant the application, the applicant may repeat the application before the Court for determination."

This rule is not *sui generis*. It is a carry over from earlier rules of the Supreme Court, namely, rule 27 of the Supreme Court Rules, 1962 (LI 218). It has received construction by this court. In *Takyi v Ghassoub (Ghana) Ltd* [1987-88] 2 GLR 52, SC this rule was unanimously interpreted as referring to the execution or steps leading to the execution of a judgment. In recent times there have been dicta in this court that by reason of article 129(4) of the Constitution and also the alternative part of rule 20(1), a stay can be ordered by this court of proceedings that do not relate to execution of the judgment appealed from.

On reflection, we respectfully think that is possible but such proceedings should be in respect of proceedings that stand to be taken by reason of the terms of the judgment appealed from, eg an order that damages be assessed, after the court has reversed a judgment which has dismissed an action for damages: see *Sewing Machines Ltd v Wilson* [1976] 1 WLR 37, CA. Therefore a stay of proceedings having regard to the language used in rule 20(1) of the Supreme Court Rules, 1996 (CI 16), cannot relate to proceedings that only happen to take place after the judgment appealed from, but which do not result from anything required to be done or not to be done or necessitated by the judgment appealed from.

It is otherwise settled that under rule 20 of CI 16, where no executable order is involved, one cannot apply for stay of execution. It is always necessary to bear in mind that rule 20(1) relates to stay of execution in respect of "*the judgment or decision appealed against*." (Our emphasis). Therefore if the "*judgment or decision appealed against*" is not executable then the question of stay of execution does not simply arise. If "*the judgment or decision appealed against*" merely dismissed an appeal from a judgment of a lower court that is executable, such judgment of the lower court is not within the purview of rule 20(1) of CI 16 relating to execution simply because it is "*not the judgment or decision appealed against*." See in that regard: *Republic v Duffour; Ex parte Asare* [2007-2008] 1 SCGLR 394.

Is there a *tabula in naufragio* under rule 5 of the Supreme Court Rules, 1996 (CI 16)? That rule provides as follows:

**"5. Matters not expressly provided for**

Where provision is not expressly made by these Rules regarding the practice and procedure which shall apply to a cause or matter before the Court, the Court shall prescribe the practice and procedure that in the opinion of the Court the justice of the cause or matter requires."

We should think not. It should be emphasised that an appeal to this court is an appeal from the immediate lower court and its powers are designed and directed

at the matters that arise from that court and not otherwise, except as to consequential matters. In any case, there is, indeed, a provision made by the Supreme Court Rules, 1996 concerning an application for stay of execution pending appeal. It is rule 20 aforesaid. There being no omission as to that matter, rule 5 is inapplicable.

In sum, since the judgment appealed from in this case is not executable and has not directed, required or necessitated any proceedings to be taken under it, this application is misconceived and it therefore dismissed.

*Application for stay of execution pending appeal dismissed.*

**W. A. ATUGUBA**  
**(JUSTICE OF THE SUPREME COURT)**

I agree

**J. ANSAH**  
**( JUSTICE OF THE SUPREME COURT)**

I agree

**R. C. OWUSU (MS)**  
**( JUSTICE OF THE SUPREME COURT)**

I agree

**ANIN YEBOAH**  
**( JUSTICE OF THE SUPREME COURT)**

I agree

**P. BAFFOE-BONNIE**  
**( JUSTICE OF THE SUPREME COURT)**

COUNSEL:

OSAFO BUABENG FOR THE APPLICANT.  
WISDOM ANTHONIO FOR THE RESPONDENT.

Judicial Training Institute