

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA AD 2015**

**CORAM: ATUGUBA JSC (PRESIDING)
AKUFFO (MS) JSC
BAFFOE-BONNIE JSC
GBADGEBE JSC
AKOTO-BAMFO (MRS) JSC**

**CIVIL MOTION
No.JS/46/2015**

21ST JANUARY 2015

THE REPUBLIC

VRS

HIGH COURT, ACCRA

**EXPARTE: JUSTFAR HOLIDAY RESORT - APPLICANT
COMPANY LTD**

JAMEN COMPANY LTD - INTERESTED PARTY

RULING

ATUGUBA JSC:

The applicant moves this court "for an order for certiorari to quash a ruling of the High Court, 11 Accra delivered by His Lordship, Anthony Kwadwo Yeboah on the 29th day of May 2014 in suit No. C266/2000 between

Janmen Co. Ltd and Justfar Holiday Resort Ltd. and to further restrain his Lordship Anthony Kwadwo Yeboah from further hearing the said suit.”

Sometimes the parties refer to an application by the defendant to set aside the Plaintiff’s motion for release of auction sale funds and at times to an application to set aside the ruling allowing the motion for the release of the said funds.

Whatever the nature of the application in issue it is clear that the present application to this court relating to the Ruling of Anthony K. Yeboah dated 29/5/2014 is overtaken by the earlier Ruling of the said Judge dated 17/3/2014, exhibit JCL3 in which the learned Judge recounts the course of applications on both sides relating to this matter.

Inter alia the learned Judge therein recounts that on the 23/10/2013 he set aside Peter Odei Ofei J’s order dated 25/7/2013 but later reinstated the same upon application by counsel for the Plaintiff/interested party herein.

Consequently, as stated by the learned trial Judge in exhibit JCL3:

“In the course of the execution proceedings some amount of money became lodged with the Court. To have GH¢35,650.00 out of the proceeds of the judicial sale released to the Plaintiffs, the company filed the application for release of funds on 25/6/2013. This Court differently presided over granted the application and made the order dated 25/7/2013 to the effect that the amount of GH¢35,650.00 be released as prayed.

Subsequently, the Plaintiffs filed the application of 30/8/2013 for an order extending the time within which to apply for a review of the release order made on 25/7/2013.

However, before this application for extension of time could be considered, the Defendant filed the application of 10/10/2013 seeking to have set aside ‘motion for order to release money” filed

by the Plaintiff/Judgment – Creditor/Respondent on 9th day of July 2013.”

In fact, the thrust of the application to set aside was that the order made for the release of fund was made without jurisdiction for the reason that the application was not served on the Defendant/Respondent but was rather served on a solicitor who was then not instructed to act for the Defendant/Respondent.

It was evident from the affidavit in support and the tenor of the application for release of fund that it was a post judgment application. Counsel for the Defendant contended that after the judgment he ceased to be the lawyer for the Defendant and, for that reason, all processes meant to be served on the Defendant could not be properly served on him. It was clear that the application for release of funds was served on Sam Wood, Esq. who at the material time had not been appointed as solicitor of the Defendants.

Accordingly, this court by a ruling made on 28/10/2013 granted the application and set aside the order for release of funds earlier made by this Court. The application for release of fund was, accordingly restored to the Cause List and Counsel for the Defendant was ordered to return the process improperly served on him to the Registrar of the Court.

On 15/11/2013, the Plaintiff filed an application seeking to set aside the order of this Court made on 28/10/2013. The thrust of the application was that the Court heard and granted the application at a time when the Plaintiff/Respondent was short-served. The Court heard the application when the requisite clear days had not elapsed.

There was merit in the application and the lawyer for the Defendant had no answer to the application. This court without hesitation granted the application and set aside its own order made on 28/10/2013. *The status quo was accordingly restored.*

However, rather waiting for the application to be heard, the Defendant repeated the application on 10/2/2014 for the purpose of setting "aside motion for "order to release money" filed by the Plaintiff/Judgment-Creditor/Respondent filed on 9th day of July 2013." The thrust of the application is that the motion of 9/7/2013 was wrongly served on him instead of personally on the Defendant.

On the face of the application presently before this court, *the Defendant/Applicant is seeking to have set aside the application filed on 9/7/2013. What the Defendant has failed to appreciate is that in law that application no longer exists to be set aside. It effectively in law ceased to exist the moment this court differently presided over made the order of 30/9/2013. This order resulted from the hearing of that application.* If the defendant had a problem with the service of that application, that was a ground to seek to set aside the order of 30/9/2013. One cannot go beyond the order to set aside the motion as the defendant seeks to do. *Setting aside a non-existent application is an abuse of the court's process.* I recall explaining this point of law to Counsel for the Defendant in open court on 28/2/2013. In this regard, I noted as follows:-"

"Be that as it may, I am inclined to grant the application but not in terms that the application of 9/7/2013 be set aside." It is therefore surprising that counsel for the defendant has chosen to repeat the application in its defective form."

The application is misconceived and the same is dismissed. I award cost of GH ₵500.00 against Counsel for the Defendant personally and for the Plaintiff. Cost is to be paid within 14 days." (e.s)

It is quite clear that this reasoning of the learned Judge is legally valid and therefore with the dismissal of his repeat application dated 10/2/2014 for the purpose of setting aside motion for “order to release money” filed by the plaintiff/judgment-creditor/respondent on 9/7/2013 the applicant has no subsisting application to hinder the listing of the interested party’s motion for hearing per the Ruling dated 29/5/2014 which the applicant impugns by this application.

For the foregoing reasons the application is dismissed.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

SAM WOODE ESQ. FOR THE APPLICANT.

PETER ZWENNES ESQ. (WITH KINGSLEY GURAH-SEY) FOR THE INTERESTED PARTY.