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

CORAM: DOTSE JSC (PRESIDING)
BAFFOE-BONNIE JSC
GBADGEBE JSC

SINGLE JUDGE REVIEW MOTION
NO. J7/4/2015

21ST JANUARY 2015

GHANA COMMERCIAL BANK LIMITED - PLAINTIFF/APPELLANT APPLICANT/APPLICANT

VRS

1. BULKSHIP & TRADE LTD - DEFENDANTS/RESPONDENTS RESPONDENT/RESPONDENTS

2. CHRIS CHINEBUAH

3. DZIFA FRENCH CUDJOE

RULING

DOTSE JSC:-

This Ruling is at the instance of an application by the Plaintiffs/Appellants/Applicants, hereafter referred to as the Applicants, seeking a variation, discharge or reversal of the ruling of a single Judge of this Court, dated 20th November 2014 pursuant to article 134 (b) of the Constitution 1992 and Rule 73 of the Supreme Court Rules, 1996, C. I. 16.

By the ruling of the single Judge dated 20th November 2014, an application for stay of execution and proceedings or suspension of the entry of judgment in favour of the Defendants/Respondents/Respondents, hereafter referred to as Respondents was refused.

FACTS OF THE CASE

The Applicants, a reputable Commercial Bank in Ghana, filed claims against the Respondents herein in the Commercial Division of the High Court in respect of various sums of money outstanding under overdraft and or credit facilities extended to the 1st Respondents, who are a limited liability company in Ghana, carrying out the business of oil trading, supply of petroleum products, bunkering among others.

The 2nd and 3rd Respondents are directors of the 1st Respondent company. Included in the claims against the Respondents in the High Court was a claim for interest on overdraft/credit facilities extended to them as well as penal interest of 10% on the sums claimed. The Respondents denied the claims against them and instead endorsed a counterclaim against the Applicants by which they claimed several declaratory and other judicial reliefs plus recovery of various sums of money endorsed therein against the Applicants.

The Commercial Division of the High Court, Accra dismissed the entirety of the Applicant's claims against the Respondents, but granted in part the latter's counterclaim in excess of about GH¢80,000,000 plus.

The Applicants appealed the judgment on the counterclaim in favour of the Respondents. Following an application for stay of execution filed in the trial High Court by the Applicants, the High Court on the 5th day of February 2014 granted same in the following terms:-

"The Plaintiff/Applicant shall pay to the 1st Defendant/Respondent the sum equivalent to 25% of the entire judgment debt as set out in the Entry of Judgment after Trial filed by the Defendants/Respondents."

It is instructive to note that, the trial High Court also ordered the 2nd and 3rd Respondents herein to file an undertaking in the same terms as they provided to the Applicants during the transaction which gave rise to the action so that they shall be in a position to refund fully all monies the Applicants shall pay to the 1st Respondent in partial satisfaction of the judgment debt in this suit in case the appeal by the Applicants are successful.

Following the unsuccessful attempts by the Applicants to have the repeat applications for stay of execution of the orders of the High Court granted in the Court of Appeal, the Applicants filed the repeat application to the same effect before the single Judge which as stated earlier was dismissed by order dated 20th November 2014.

Before us on the review panel, learned counsel for the Applicants, Mr. Kwesi Fynn abandoned the other reliefs of varying or discharging the orders of the single Judge and confined himself to the relief of reversal of the orders of the single Judge.

Learned Counsel for the Applicants also abandoned the second relief they sought before this review panel, to wit: an order staying execution, or proceedings or suspending the entry of judgment in this matter, pending the determination of the Appellant's appeal to this Court. By that abandonment, this court accordingly strikes out that relief and it is accordingly struck out as withdrawn.

GROUNDS

The Applicants anchored their application on the following grounds:

The Applicants deposed to a 41 paragraphed affidavit, sworn to by Countess Roselyn Lartey, a Senior Legal Officer of the Applicants, in support of their application on this review application.

Even though many grounds had been urged in the said affidavit, Mr. Kwesi Fynn, learned Counsel for the applicants, on the reception of arguments in this case before the court, narrowed the arguments to the following:

1. That, what called for determination before the single Judge was whether the Court of Appeal exercised independent views on the application made before it culminating in the 14th May 2014 ruling or just acted as an appellate court on the trial court's ruling, which it was not permitted to do.

This is because in the exercise of that jurisdiction, the Court of Appeal, just like the single Judge in a repeat application, had to consider the applications on their own independent assessments and merits.

In this respect, learned counsel referred to the cases of ***Ofosu Addo v Graphic Communications [2011] 1 SCGLR 355 at 361-362*** and that of ***Republic v Court of Appeal, Ex-parte Sidi [1987-88] 2 GLR 170 at 174***.

We have looked at the said cases, and are of the opinion that, on both the facts and the law, the said cases are inapplicable and are therefore irrelevant.

2. Secondly, that the single Judge wrongly considered and applied the requirements of the *"nugatory effect plus more"* criteria enunciated in the **Golden Beach Hotels (GH) Ltd v Pack Plus Int. Ltd. [2012] 1 SCGLR 452 at 459** which would have warranted a suspension of the entry of the judgment in this case."

3. At the tail end of the submissions, learned counsel for the Applicants, Mr. Kwesi Fynn, stated that in the event the court was minded to dismiss

the application, then the Respondents should be made to give secured undertaking for the payment of the 25% of the judgment debt which was ordered by the High Court to be paid to them.

We do not consider it worthwhile to recount all the arguments made by learned counsel in relation to this review motion as we consider same as a repetition of the arguments made to the single Judge. The single Judge in our opinion considered in detail all the issues that were germane before delivering the said ruling of 20th November 2014.

On the other hand, learned counsel for the Respondents, Mr. Clarence Tagoe on opposed the application for reversal of the orders of the single Judge and prayed that the application be refused.

On our part, we have thoroughly considered all the processes filed by both parties as well as the submissions of learned counsel before the review panel.

We have also considered our mandate under article 134 (b) of the Constitution 1992 as well as the relevant rules of procedure including all the cases referred to us by both counsel.

In arriving at our decision, we have considered the import of the trial court's order that only 25% of the judgment debt owed to the Respondents be paid by the Applicants.

We have looked at the judgment of the trial Court, and whilst we have no pretensions to prejudice the outcome of the appeal process, we feel that the said judgment is valid and subsisting until it is set aside on appeal. An order that only 25% of that judgment be paid, with the remaining 75% being stayed should be looked at in terms of the percentage grant and not in terms of the monetary output at the end of the day.

Fact of the matter is that, once the judgment figure is on the high side, any percentage payment will equally be on the high side.

Considering the fact that a victorious party is entitled to the fruits of his judgment unless a strong contrary intention is shown such as the likelihood of success, irreparable damage or harm being caused to the other party, then the time honoured tradition of allowing a victorious party enjoy the fruits of his judgment must be applied.

In view of all the above factors enumerated supra, we are convinced that the Applicants have not shown any good and sound basis in law to warrant a reversal of the decision of the single Judge on 20th November 2014.

We accordingly refuse and dismiss the instant application.

During the submission of learned counsel for the Applicants Mr. Kwesi Fynn, as already stated supra, an application was made to the effect that the Respondents be made to give secured undertaking for the payment of this 25% judgment debt to them by Applicants. We have considered this request, and refuse it. This is because we observe that during the pendency of the suit, the 2nd and 3rd Respondents were made to give an undertaking which has been recounted elsewhere in this ruling.

It is our decision that the said undertaking by the 2nd and 3rd Respondents still holds good and it is hereby made to subsist in relation to the payment of the 25% judgment debt pending the outcome of the appeal process embarked upon by the Applicants.

Save that the undertaking already given by the 2nd and 3rd Respondents during the trial of the case in the High Court is to subsist, the Application herein seeking a reversal of the decision of the single Judge dated 20th November 2014 is hereby refused and is accordingly dismissed.

J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

COUNSEL

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