IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – A.D. 2016

CORAM: WOOD (MRS) CJ (PRESIDING)
ANSAH JSC
DOTSE JSC
YEBOAH JSC
BAFFOE-BONNIE JSC
AKOTO-BAMFO (MRS) JSC
AKAMBA JSC

REVIEW MOTION

NO.J7/4/2016

13TH JUNE 2016

NDK FINANCIAL SERVICES - PLAINTIFF/RESPONDENT
NDK BUILDING /APPLICANT
NO.1 REV. HESSE STREET
OSU, ACCRA

VRS

AHAMAN ENTERPRISES LIMITED - 1ST DEFENDANT/RESPONDENT/
NO.73, KOJO THOMPSON RD RESPONDENT
ADABRAKA, ACCRA

ATTORNEY- GENERAL 2ND DEFENDANT/APPLICANT
ATTORNEY- GENERAL'S DEPT. RESPONDENT
MINISTRIES, ACCRA

ALEX A. ADUKO - 3RD DEFENDANT/RESPONDENT/
NO.7 HIGH STREET LANE RESPONDENT
DANSOMAN, ACCRA

RULING

ANIN YEBOAH JSC

The applicant herein has moved this Court under Article 133(1) of the 1992 Constitution and Rule 54(a) of the Supreme Court Rules 1996 (C.I 16) to review part of the clarificatory decision delivered by this court's ordinary bench on the 10th of March 2016.

To appreciate the reasons for this delivery it would be worthwhile to briefly state the facts giving rise to this application for review.

On the 20/4/2009 the applicant herein commenced an action against the three respondents in this application at the Commercial Division of the High Court, Accra. The High Court gave judgment in favour of the plaintiffs against the 1st and 3rd defendants and dismissed the action against the 2nd defendant, the Attorney-General. An appeal was lodged at the Court of Appeal, Accra by the Applicant herein against part of the judgment which dismissed the applicant's claim against the 2nd defendant. The Court of Appeal, on 28/03/2013 allowed the appeal and made the second defendant as a judgment debtor. The second defendant lodged an appeal to this Court against the judgment of the Court of Appeal. This Court on 28/11/2014 dismissed the appeal. Not satisfied by the judgment of this court, the second defendant filed an application for review of the judgment of this Court dated 28/11/2014 but same was dismissed on 28/01/2015. The second defendant on 25/11/2015 by a motion sought clarification on parts of the judgment of the 28/11/2014. In that clarification application, the 2nd Defendant herein prayed this court for the following reliefs as per the motion paper.

a. "the use of the word "jointly" and "jointly and severally" in the judgment and the certificate of the order of this Honourable Court respectively.
b. the appropriate computation of the interest (whether compound or simple interest) as regards the contract signed on 26th August 2005, between the Plaintiffs, NDK Financial Services and the 1st Defendant, Ahaman Enterprise Limited.
c. the period for the computation of the interest exigible."

It was therefore pursuant to the above application and reliefs that this Court delivered itself as per the Ruling of 10th March 2016 which has necessitated this Review application

After hearing arguments this Court on the 10/3/2016 made the following orders:-

1. "The expression" jointly and severally" was not used in this Court's judgment of 28th November, 2014. We accordingly order a rectification of the certificate of payment to reflect that payment under the haulage contract be paid to the plaintiffs jointly by the 1st Defendant/Applicants herein.

2. The second relief as per the motion is refused for the avoidance of doubt; the interest payable under the contract is compound interest.

3. The computation of interest shall run from the date of the contract up to the date of filing the appeal in the Court of Appeal at the rate of 6.5% per month calculated on a 30 day per month basis collectible monthly in arrears."

Learned counsel for the applicant in moving the application limited his complaint on the third paragraph of the orders made by the ordinary bench and submitted that the

ordinary bench misapplied the Court Award of Interest and Post Judgment Interest Rules 2005 CI 52, and submitted the decision was given per in curiam.

In opposing the application the second defendant , that is the Attorney-General raised procedural issues which goes to our jurisdiction to entertain the application, In their affidavits in opposition which smacks of legal arguments, it was deposed to in paragraphs 19, 20 and 21, that as the order given by this Court when its clarificatory opinion was sought was not a decision of this court contemplated by Rule 54 of C.I 16 of the Supreme Court Rules 1996, the application was not properly before this Court in the sense that the clarificatory opinion delivered was not a decision of this Court contemplated by Rule 54 of CI 16 of the Supreme Rules 1996. The second defendant also contended that the matter is res judicata. This calls for an examination of Rule 54 of C.I. 16 in detail.

Rule 54 of CI 16 states as follows:-

> "The Court may review any decision made or given by it on any of the following ground-
>
> (a) Exceptional circumstances which has resulted in a miscarriage of justice.
>
> **(b)** Discovery of new and important matter or evidence which after the exercise of due diligence, was not within the applicants knowledge or **could not be produced by him at the time when the decision was given."**

We think learned counsel for the respondent has narrowed the scope of the word decision in legal proceedings. Decisions are not limited to what a court of law in the usual course of hearing a matter delivers. Reference may be made to Black's Law Dictionary 9th Edition at page 467 where the word decision is defined thus:-

*"A judicial or agency determination after consideration of the facts and the law; **especially a ruling, order or judgment** pronounced by a court when considering or disposing of a case".*

It thus follows that when a court is seized with jurisdiction in determining any matter and gives a ruling, be it interlocutory or otherwise the court should be deemed as having given a decision.

In this application, what the ordinary bench did was to clarify part of its own judgment when its jurisdiction was properly invoked by the second defendant/respondent herein. In our respectful views the court's order was a decision delivered in the application. It follows that this application falls within the ambit of Rule 54 and therefore it is a decision of this court which could be reviewed.

Another point which was raised but not well argued was the issue of res judicata. We think that as the ruling in the clarificatory opinion of this court was a decision, it was amenable to review if the circumstances for review exist and this court could not declare same as res judicata as under Article 133 (1) of the 1992 Constitution this Court may review any decision made or given by it in the course of exercising its jurisdiction.

Learned counsel for the applicant in moving the application contended that exceptional circumstances which have resulted in miscarriage of justice is apparent on the record to necessitate a review of the clarificatory orders. He relied on the decided cases on rule 54 like:

GIHOC Refrigeration and Household Product Ltd (No1) v Hanna Asi (No1) [2007-2008] SCGLR, Afranie v Quarco [1992] 2 SCGLR 561 And Nasali v Addy [1987-88]. This court has exhibited remarkable consistency by applying strictly the basic principles governing applications for review, nevertheless if an applicant

successfully demonstrates that exceptional circumstances exist which have resulted in miscarriage of justice this court may exercise its review jurisdiction. Reliance was placed in the often - quoted case of **Mechanical Lloyd Assembly Plant v Nartey [1987-88] 2 GLR 598** in which Taylor JSC made an attempt to lay down the criteria that may necessitate a review by this court. Among the listed criteria was that **"decision given per in curiam for failure to consider a statute or case law or fundamental principle or procedure and practice may justify a review."**

In this application learned counsel for the applicant indeed demonstrated that this court did not apply the existing statute governing the award of interest on judgment debt as when the decision was delivered, the Courts (Award of Interest and Post Judgment Interest) Rules 2005 CI 52 was already in force as at 24th January 2006. As this Court's ordinary bench clarificatory ruling of 10/03/2016 did not apply the statutory provision regulating interest on judgment debts but resorted to a repealed statute, that is LI 1295 that is Courts (Award of Interest) Instrument 1984 the decision of the ordinary bench was given per incuriam.

It was therefore submitted that cases decided on the repealed LI 1295 like **Butt v Chapel Hill Properties Ltd & Anor [2003-2004] SCGLR 638, IBM World Trade Corporation v Hasnem Enterprises Ltd [2001-2002] SCGLR 303 and Standard Chartered Bank (Ghana) Ltd v Nelson [1998-99] SCGLR 810** should be deemed as statutorily overruled by the coming into force on 24th January 2006 of the Court's Award Interest and (Post Judgment Interest Rules) 2005, CI 52. Under this statute, the period of computation of interest after judgment is not regulated by the date of lodging any notice of appeal as the ordinary bench ordered.

The applicant has thus succeeded in establishing that exceptional circumstances exist for this court to correct the patent error which was given in clear violation of existing statutory provisions governing the computation of interest on judgment debts.

We think the above reason should suffice for this ruling but learned counsel for the applicant, placing reliance on the case of **Network Computer System (NCS) Limited v Intelsat Global Sales And Marketing Ltd [2012] 1 SCGLR 218** sought to press the point that as the order was void this court should have exercised its jurisdiction to set it aside when its attention was drawn to it.

We have carefully considered the majority opinion in the above case in which it was held thus:

> **3 "A superior court could set aside a void order made by a court no matter how the void order was brought to its notice. Therefore even though the repeat application before the Supreme Court was only for stay of proceedings under the conditional order of stay of execution pending appeal made to the Court of Appeal from the refusal by the High Court to set aside the registration of the judgment, yet, since the conditional order by the Court of Appeal was a nullity under section 17 of Act 180, it is vacated here and now without waiting for the substantive appeal to be heard on its merit. The appeal was only one mode of impeaching a void order but it was not the only mode; any other mode whatsoever would serve the same purpose"**

The majority opinion relied on the well-known case of **Mosi V Bagyina [1963] 1 GLR 337** SC to support the above proposition of law. We think that care must be taken in application of the above proposition of law in practice. In **The Mosi v Bagyina** supra, the High Court's jurisdiction was invoked to set aside its own void order and the learned judge dismissed the application on the ground that he had no jurisdiction.

It was on appeal to the Supreme Court that the void order was set aside on the grounds that the High Court had jurisdiction to set aside its own order when it is found that it is a void order. Even though we do not doubt the soundness of the proposition of law enunciated in the case we think that the procedure to resort to vacate void orders should not be overlooked.

A party aggrieved by a judgment of the High Court may resort to an appeal, review or judicial review. The choice is his. However as the minority in in the **Network Computer System (NCS) Ltd**, supra, pointed out, the laid down procedure to impeach any void decision must be followed. Appeals in this country are all statutorily conferred on appellate Courts by the Courts Act, Act 459 of 1993 and the 1992 Constitution. The subsidiary rules of court regulate the time frame and procedure for appealing against any judgment whether void or not.

If a party resorts to an appeal to impeach a void order or judgment we think that the procedural rules governing appeals must be strictly followed to vest the appellate court with jurisdiction to exercise, for justice has always been administered in accordance with the rules regulating the procedure of the court or tribunal in any common law jurisdiction.

Specific time frames are set down by the rules for appeals, reviews and judicial review applications and the rules should not be ignored on the basis that the order sought to be impeached is void. See **Tindana (No2) v Chief of Defence Staff & A-G [2011] 2 SCGLR 732**

For any step taken in legal proceedings should be sanctioned by law as **Mosi v Bagyina**, supra, itself has declared.

In conclusion, we think that that the applicant has succeeded in establishing the existence of special circumstances which calls for a review of part of our decision of 10/03/2016 which deals with the computation of post judgment interest.

Therefore under rule 1 (D) and 2(2) (a,b,c) of CI 52 that is the Courts Award of Interest and (Post Judgment Interest) Rules, 2005, C.I. 52, interest on the transaction under consideration should run at the rate specified by statute till date of final judgment from the date of the judgment to the date of final payment.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) G. T. WOOD (MRS)

CHIEF JUSTICE

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE- BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

PEASAH BOADU ESQ. FOR THE PLAINTIFF/APPLICANT

SYLVESTER WILLIAMS (CHIEF STATE ATTORNEY) FOR THE 2ND DEFENDANT /RESPONDENT.