IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – GHANA AD - 2016

CORAM: ANIN YEBOAH JSC
AKOTO – BAMFO (MRS) JSC
BENIN JSC
AKAMBA JSC
APPAU JSC

CIVIL MOTION

NO. J8/121/2016

26TH OCTOBER 2016

INTERNATIONAL ROM LIMITED — **PLAINTIFF/RESPONDENT**
H/NO.TPD TCD6-126 — **/RESPONDENT/APPLICANT**
COMMUNITY 6 NEAR NICK HOTEL
TEMA

VRS.

VODAFONE GHANA LIMITED — **1ST DEFENDANT/APPELLANT**
MANET TOWER 2 — **/APPELLANT/RESPONDENT**
AIRPORT CITY
ACCRA

FIDELITY BANK LIMITED — **2ND DEFENDANT**
RIDGE TOWERS, RIDGE WEST ACCRA

RULING

AKAMBA, JSC:

On the 6th of June 2016, we unanimously dismissed the appeal brought by the 1st defendant/appellant/appellant and respondent in this motion against the decision of the Court of Appeal which had affirmed an earlier decision of the High Court (Commercial Division) Accra in favour of the plaintiff/respondent/respondent and applicant herein.

By our decision, we affirmed the judgment of the Court of Appeal save for a variation. We substituted an award for the payment of the outstanding balance under the undertaking given by the plaintiff/applicant to the 2nd defendant but which monies were paid to other banks. We consequently entered an award for the recovery of the outstanding balance under the undertaking from both (plaintiff) applicant and (1st defendant) respondent jointly.

The Applicant herein filed the present motion on 7th July 2016 barely a month after our decision seeking a clarification 'to parts of the judgment of this Honourable Court dated June 6, 2016' citing reliance on Rule 5 of CI 16.

Rule 5 of CI 16 provides that:

"5. 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."

Reading the ruling of the court in a similar application seeking clarification by this court in the case of **NDK Financial Service Ltd v Ahaman Ltd and 2 ors, CM J8/29/2016 on 10th March 2016**, I stated that:

"This being the last and final court of the land, in a situation in which the rules of court or any other relevant statute, do not prescribe particular practices or procedure as the justice of a cause or matter may require, it is appropriate to grant the application, provided there is substance in it and regardless of the form

in which it has been intituled. This is in consonance with the duty of the courts to do substantial justice on the issue/s before it. A court of justice has a duty to render its decisions with sufficient clarity so as not to leave parties in any doubt/s as to the outcome of its pronouncements. Where doubts are evident or uncertainties obvious from the court's orders, rulings or judgments, it is appropriate to seek the intervention of the court in appropriate circumstances to clarify the doubts. (See Okofoh Estates Ltd vs Modern Signs Ltd &Anor (1996-97) SCGLR 224, holding 1)."

We would consequently deal with the issues raised before us.

The Applicant has listed the following three points as requiring clarification namely:

(a) The rate of interest chargeable on the outstanding indebtedness and whether compound or simple interest;
(b) The substitution of an award of the outstanding balance under the undertaking from both plaintiff and 1st defendant jointly; and
(c) Interest chargeable on half payment of judgment debt by 1st Defendant but not released to Plaintiff as a result of stay of execution.

We would address the three issues in the same order that they were raised.

(a) The rate of interest chargeable on the outstanding indebtedness and whether compound or simple interest.

In our judgment we ordered that the 2nd defendant be entitled to the payment of the balance under the Undertaking by both the (plaintiff) applicant herein and the (1st defendant) respondent herein. Ordinarily such an order was clear enough but for the entrenched positions taken by the parties. It is clear from the record of appeal that three Undertakings were tendered in evidence in proof of those transactions. These are **exhibit 3 dated 6th June 2008 (Page 314 Vol 3 of ROA**); **exhibit 4 dated 12th August 2008 (Page 318 Vol 3 of ROA); and exhibit 10 dated 4th January 2008 (Page 327, Vol 3 of ROA).** These exhibits together provide the answers to the terms of the undertakings entered between the Applicant herein

as borrower and 2nd Defendant as Lender for which the Respondent provided the undertaking. The three exhibits bear different interest rates. For instance, under **exhibit 3 (See Page 315 of Vol 3 ROA**) the interest chargeable on the facility is stated as "13% per annum based on the actual number of days elapsed in 365 days and payable as a single bullet payment of principal and interest three months after disbursement. This clause together with clause 7 below shall continue to be applicable after judgment in any court proceedings by Fidelity bank to recover the Borrowing, until the date of final repayment of the Facility." The undertaking provides a default clause to the effect that "All payments in default will attract interest at the rate of 3% Compound Interest per annum above the stated Interest Rate on the overdue balance of Principal plus Interest from the date on which the payment falls due until the date on which it is received by Fidelity."

The interest calculable under **exhibit 4 (See page 319 of Vol 3, ROA)** is the "Fidelity Bank base rate of 25.7% plus a margin of 1.3 % (i.e. 27%) per annum. Interest will accrue in arrears based on the actual number of days elapsed in 365 days and payable together with the principal installment due on January 31st, April 30th and July 31st 2009. There is also a default clause under which all payments in default will attract interest at 3% Compound Interest per annum above the stated Interest rate on the overdue balance of Principal plus Interest from the date on which the payment falls due until the date on which it is received by Fidelity.

The agreed interest attractable under **exhibit 10 (See Page 327 of Vol 3 ROA)** is 19% calculated on the actual number of days elapsed on a 365 day/year basis.

The import of our order was to direct the parties to work out the details of payments against outstanding balances based upon the three undertakings entered between them. Since the three exhibits bear different interest rates, the same shall guide the calculations to be offset against any payments. This order accords with Rule 1 of CI 52, the Court (Award of Interest and Post Judgment Interest) Rules, 2005. The rule provides:

"Rule I-Order for payment of interest

1. If the court in a civil cause or matter decides to make an order for the payment of interest on a sum of money due to a party in the action, that interest shall be calculated

(a) at the bank rate prevailing at the time the order is made, and

(b) at simple interest

but where an enactment, instrument or agreement between the parties specifies a rate of interest which is to be calculated in a particular manner the court shall award that rate of interest calculated in that manner "

The parties in this transaction are governed by their 'Undertakings' hence interest is calculable on the terms agreed to in exhibits 3, 4 and 10.

(b) The substitution of an award of the outstanding balance under the undertaking from both plaintiff and 1st defendant jointly;

Ordinarily the contract in respect of the transaction was entered between International Rom Ltd, the applicant herein and Ghana Telecom, now Vodafone and respondent herein for civil works on the latter's properties. However, in order to execute the contracts it was necessary for the applicant company to obtain loans from the 2nd defendant bank which bank demanded an undertaking from both the applicant and respondent to the effect that payments arising from the contract would be made by the respondent in the joint names of the applicant and the 2nd defendant. The respondent having failed to honour the undertaking in that it failed to or reneged from effecting all payments under the contract in the joint names, as undertaken under the exhibits 3, 4 and 10, it thereby contributed immensely to the non-payment of the loan hence its liability. It was the applicant who for its part sought the loan from the 2nd defendant bank and has the obligation to pay off the loan extended to it under the three exhibits referred to supra. Consequently by their joint failure to honour their obligation to pay off the loan, they are jointly accountable. There is indeed no ambiguity or uncertainty about this order. It is as clear as it stands.

(c) Interest chargeable on half payment of judgment debt by 1st Defendant but not released to Plaintiff as a result of stay of execution.

We are under no obligation to answer this last issue simply because it is not a matter that arises from our judgment under consideration. We accordingly decline to answer it.

In conclusion, save for issue (a) which has been clarified, issues (b) and (c) require no other clarifications beyond what is stated herein.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO – BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

COUNSEL

EMMANUEL AMOFAH ESQ. FOR THE PLAINTIFF/RESPONDENT/ RESPONDENT /APPLICANT.
TONY LITHUR ESQ. FOR THE 1ST DEFENDANT/APPELLANT/APPELLANT /RESPONDENT.