IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: DOTSE, JSC (PRESIDING)

YEBOAH, JSC

BAFFOE-BONNIE, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL MOTION
NO. J5/43/2018

4TH JULY, 2018

THE REPUBLIC

VRS

COURT OF APPEAL
EX-PARTE; ECONOMIC AND ORGANISED CRIME OFFICE,
OLD PARLIAMENT HOUSE, ACCRA ……
APPELLANT/APPLICANT

NICHOLAS ANAMO ……. INTERESTED PARTY/RESPONDENT

RULING

YEBOAH, JSC:–

My Lords, the supervisory jurisdiction of this court has been invoked by the applicant herein to quash the order of the Court of Appeal dated the 9th of May, 2018 which order sought to set aside the order of Stay of Execution pending an appeal to the Court of Appeal. This application

before us raises procedural matters which we have been called upon to resolve.

To appreciate our reasons for this ruling a brief summary of the facts would suffice. The applicant herein, a statutory body established under an act of parliament conducted an investigation of the interested party herein involving fraud, money laundering in the sum of US$200,000 and other related offences. The interested party was subsequently charged before the High Court, Accra in a criminal matter titled: REPUBLIC v NICHOLAS ANAMO suit №. FT/0063/2016. After going through plenary trial the interested party made a submission of no case to answer at the close of the case for the prosecution. The trial High Court upheld the submission and acquitted the interested party. The applicant lodged an interlocutory appeal against the ruling acquitting the interested party. The interested party, after his acquittal brought an application titled: NICHOLAS ANAMO vrs. EOCO as suit №. FT.050.2016 at the High Court, Accra for defreezing of his accounts which the court had by an earlier order frozen. The learned judge after hearing arguments granted the application and ordered the defreezing of the accounts.

The applicants feeling aggrieved by the order lodged an appeal at the Court of Appeal to set aside the order. Subsequent to the lodging of the appeal, the applicant filed a motion for stay of execution which was to prevent the interested party to have access to the accounts. This application was granted by the High Court after hearing both parties. The interested party feeling aggrieved by the order staying execution pending

the appeal at the Court of Appeal, filed a motion at the Court of Appeal to vacate the order of the High Court staying execution. The motion at the Court of Appeal was headed thus:

> "MOTION ON NOTICE TO SET ASIDE AN ORDER FOR STAY OF EXECUTION PENDING APPEAL"

The body of the motion or the relief sought was: "for the Applicant/ Respondent/Applicant herein humbly praying this Honourable Court to set aside an order for stay of Execution granted by the High Court on the 9th day of April, 2018"

The Court of Appeal granted the application which resulted in defreezing of the accounts in favour of the interested party. The applicant obviously aggrieved by the Court of Appeal's order has filed this instant application invoking our supervisory jurisdiction to quash the order of the Court of Appeal setting aside the stay of execution ordered by the High Court.

The applicant has grounded this application for certiorari as follows: Wrongful assumption of jurisdiction, breach of the natural justice rules and want of jurisdiction. The applicant complains that there was no appeal pending at the instance of the interested party at the Court of Appeal and therefore he had no right to resort to invoking the jurisdiction of the Court of Appeal to set aside the order staying execution duly made at the High Court.

Generally, it is the judgment-debtor who would apply for stay of execution to hold in abeyance the execution of the judgment to be enforced when

his appeal is pending. In the case of REPUBLIC v COURT OF APPEAL, EX PARTE SIDI [1987 – 88] 2 GLR 170, Justice Taylor said of the nature of stay of execution at page 176 as follows:

> "a stay of execution… means simply the suspension of any process or procedure that would post date the judgment. If an applicant asks for such stay pending the hearing and determination of his appeal, that what he is in effect asking is that all processes that can be taken after judgment for the purpose , no doubt of satisfying the judgment, should be stayed until the appeal is finally heard and a decision on it given"

A stay of execution may be in operation by virtue of the rules of court in force even when there would be no appeal. For example Order 51 rule 9(2) of CI 47 of 2004, permits a statutory stay before the High Court. Interpleader proceedings pending for determination before a court which delivered a judgment and executing it normally stays execution till the interpleader proceedings is determined. Another statutory stay under our rules is under Rule 27 (3) (a) and (b) of the Court of Appeal Rules, CI 19 of 1997. All other applications for stay of execution must be made to the court for the order to be made after hearing the parties to the case.

In this application, it appeared that the applicant was the party who had lodged an appeal to test the judgment/order of the High Court. He was properly before the High Court when he filed his application which was subsequently granted. The applicant could not have gone to the Court of

Appeal as the record of proceedings had not even been prepared at the time he filed the motion for stay, barely a few days after lodging the appeal. As regards the interested party herein, he had no appeal pending to test the judgment or order of the trial High Court which had given judgment in his favour. From the SIDI's case, supra it sounds reasonable to hold that the applicant who has lodged an appeal would be the proper party to file a stay at the trial court and upon refusal repeat the application under Rule 28 of the Court of Appeal rules. In this case, the interested party had not filed any appeal and indeed had not also filed a motion for stay of execution at the trial court which would have given the right to invoke Rule 28 by way of repeat application.

It follows therefore, that when the High Court granted stay in favour of the applicant the interested party who had no appeal pending at the Court of Appeal should have appealed against the order of the High Court granting the stay of execution. He could go to the Court of Appeal by way of repeat application only if an enactment allowed him to do so. We have found no enactment which granted him that dispensation.

Another point which was also glossed over was the fact that, generally, the Court of Appeal will entertain stay of execution by way of repeat applications when the conditions imposed by the High Court/Circuit Court appeared to be onerous or refused by the trial court. It is clear in this case that the Court of Appeal, even though could determine the application on the merits as if it was a fresh application, it ought to have

satisfied itself that the application was not a repeat application at the instance of the interested party herein. As the High Court had stayed execution unconditionally without imposing anything on the applicant, the applicant could not have filed any repeat application at the Court of Appeal based on the SIDI's case.

We therefore think that by the settled practice and under Rule 28 of CI 19 of 1997 the interested party to this application ought not to have invoked the Court of Appeal's jurisdiction at that stage. The Court of Appeal Rules, Rule 28 states thus:

> "Subject to these Rules and to any other enactment, where under any enactment an application may be made either to the court below or to the court, it shall be made in the first instance to the court below, but if the court below refuses to grant the application, the applicant shall be entitled to have the application determined by the court"

If the Court of Appeal had examined its jurisdiction carefully it would have been clear to the court that the application was not a repeat application. It is only when the record of proceedings has been transmitted to the Court of Appeal that it would entertain in the first instance, a motion for stay of execution.

The High Court as the court below in these proceedings did not refuse the application as has been pointed out already. The Court of Appeal in our

respectful opinion was not seized with jurisdiction under Rule 28 of its' rules to entertain the application under the circumstances. We therefore think that as the applicant has made a case of want of jurisdiction against the Court of Appeal, the application commands merit and same ought to be granted in the terms prayed. This court has consistently exercised its' supervisory jurisdiction when it becomes clear that the Lower Superior Courts exceeded their jurisdictions. This case is a clear case of want of jurisdiction by the Court of Appeal.

As the applicant has made a very strong case on jurisdictional grounds, it would suffice to grant the application without resort to the other grounds.

The application is therefore granted as prayed.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

CHARLES WILCOX OFORI WITH HIM NANA AKUA ADUBEA SAKYI FOR THE APPELLANT/APPLICANT.

KWAMENA AFENYO MARKIN FOR THE INTERESTED PARTY/RESPONDENT.