IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: AKUFFO (MS), CJ (PRESIDING)

ANSAH, JSC

ADINYIRA (MRS), JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

CIVIL APPEAL
NO. J4/36/2018

23RD MAY, 2018

BANK OF AFRICA (GHANA) LTD ..... PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. 2K FARMS LTD

2. EMMANUEL CARR

3. LOVE CARR ..... DEFENDANTS/APPELLANTS/APPELLANTS

JUDGMENT

ANSAH, JSC:-

This is an appeal from the judgment of the Court of Appeal, (Civil Division), Accra, coram, their Lordships V.D. Ofoe, JA (presiding), F.G. Korbieh and Her Ladyship, C.H. Sowah JJA, which dismissed the appeal against the judgment of

the High Court brought before the said Court of Appeal (from the judgment of the High Court on the grounds) that:

> '(a) The judgment is against the weight of evidence,
>
> (b) The Court of Appeal erred when it misapplied the law relating to the defense of an 'Act of God', and the misapplication of the law has occasioned the defendants/Appellants/Appellants substantial miscarriage of justice,
>
> (c) The Court of Appeal did not apply the time-honored principle that a court of law should set aside a default judgment in the face of a valid defense to an action to pave the way for the adjudication of the case on its merits. The position taken by the Court of Appeal has occasioned the 1st, 2nd and 3rd defendants/Appellants/Appellants a substantial miscarriage of justice;
>
> (d) In the face of triable issues raised by the 1st, 2nd and 3rd defendants/Appellants/Appellants as borne out by the record of appeal, the Court of Appeal erred when it determined them without remitting the controversies to the High Court for the adduction of evidence;
>
> (e) Additional grounds of appeal may be filed upon receipt of the record of proceedings.

No such additional ground(s) have been filed so far by the appellants.

Reliefs sought from the Supreme Court:

The appellants sought the following reliefs from this court, namely, that:

> "a. The judgment of the Court of Appeal dated 18th June 2015, and by extension the decision of the High Court, Accra, dated 9th April 2014, be set aside and the 1st, 2nd and 3rd defendants/appellants /appellants granted unconditional leave to defend the suit in the High Court.
>
> b. Any other relief that the Supreme Court may deem meet."

It is our humble submission from the foregoing that, the Court of Appeal in affirming the decision, the High Court erred in the judgment handed down against the appellants for the following reasons:

i. The Court of Appeal failed to acknowledge the existence of the 'participation agreement' which is the fundamental and underlying contract between the Respondent and the Appellants.
ii. The Court of Appeal failed to consider the salient portions of the 'participation agreement' and if the court had done so, it would have realized that embedded in the agreement was a reasonable defense to the suit by the respondent.
iii. The Court of Appeal did not consider the defense of 'Act of God', which had reasonably been canvassed as a legal defense premised on sufficient facts, worthy of interrogation.

The background facts of the case:

In a statement of case filed for and on behalf of the 1st, 2nd and 3rd defendants /appellants/appellants, (herein after called the appellants in short), averred that they entered an appearance to the respondents' (simply called the plaintiffs), writ on 12th April 2013, within the time limited by the rules of court and on 26th June 2013, the High Court delivered judgment in default of defense, against the defendants. This was not entered until 29th January 2014.

The appellants explained that the reason why there was such a long delay in levying execution was because the parties were deliberating a write off of the loan facility because of an apparent 'Act of God' that had totally devastated their (appellants') farms.

The explanation was that the farm was devastated by the mealy bug disease which affected the produce, and consequently the sale for the period. The direct result was the defendants' inability to meet their debt obligations to the bank.

In this appeal, the facts reveal that though the defendants did enter appearance to the writ, they failed to enter any defense and default

judgment was consequently entered against them. In the circumstances they suffered a default judgment; under the rules of Court, they were to appeal against the judgment within (a specified number of) days.
The question therefore resolves itself into this: what was the nature of the order or judgment made against them: was it *interlocutory*, or *final?*

> "The inference whether a decision or order was *final* or *interlocutory* depends essentially on the nature of the decision or order and consequently on the answer to the question whether the decision or order finally disposed of the rights of the parties or the matter in controversy. An interlocutory decision did not assume finally to dispose of the rights of the parties. It was an order in procedure to preserve matters *in status quo* until the rights of the parties could be determined. The test was not to look at the nature of the application but at the nature of the order made." That was the Supreme Court's distinction between an interlocutory and final judgment per the holding in ***Pomaa v Fosuhene [1987] 1 SCGLR244-265.***

The above principle was applied in ***Republic v High Court (Fast Track Division) ex-parte State Housing Co. Ltd No2 (Koranteng-Amoako interested Party) [2009] SCGLR 185***, in which the Court stated that:
"A judgment or order which determines the principal matter in question is termed *final* whilst an order which does not deal with the final rights of the parties but either

(i) is made before the judgment and gives no final decision on the matter in dispute but merely on a matter of procedure or
(ii) is made after judgment and merely directs how the declarations of rights already given in the final judgment are to be worked out is termed *interlocutory.*

In ***Pomaa v Fosuhene*** case (supra), it was concluded that:

> "Some criteria have been propounded to help tell whether a decision is *interlocutory* or *final.*

These criteria are:

That orders which decide the rights of the parties are final, those which do not are interlocutory; and

(a) If the application which resulted in this order is interlocutory, then the resultant decision must be interlocutory, similar to the Ashanti proverb that a crab cannot give birth to a bird."

Lord Denning pointed out that it is impossible to lay down any principles about what is final or interlocutory, in this country, 'Notwithstanding the fact that any decision to the Supreme Court in any matter is final, our rules have taken the extra precaution of repeating the English law on this, by enacting in rule 21 of CI 13 as follows : "whenever any doubt arises as to whether any judgment, order, decree, or decision is final or interlocutory, the question shall be determined by the Court."

Other cases worth mentioning because they throw much light on the topic are: ***Akonor v Mama [1960] GLR.176; Tawiah v Brako [1973]1 GLR; Vanderpuye Akwei [1971]1 GLR 242*** *at* ***248; Koranten v Amoako [2009] 185*** at ***194; State Gold Mining Corporation v Sisala [1971[1 GLR 359, Okudzeto v Irani Brothers 1975 1GLR*** **96***; Atta Kwadwo v Badu [1977] 1 GLR 1, CA; Axes Co. Ltd v Opoku [2011] 31 GMJ.*** An interlocutory order was defined by this court as one which does not deal with the final rights of the parties but either is made before judgment and gives no final decision on matters in dispute but is merely a matter of procedure or is made after judgment and merely directs how declarations which might already have been given in their final judgment are to be worked out.

The appellants submitted in their statement of case that going by these authorities cited above, the decision appealed against was a *final* judgment in so far as the decision to refuse to set aside the default judgment extinguished the appellants' rights and prevented any further rights or action by him in respect of that decision at the court below.

An appeal in respect of a decision, rule or an order was regulated by law and going by

Rule 8 of the Supreme Court Rules, 1996, (C16),

"(i) Subject to the provisions of any other enactment governing appeals, a civil appeal shall be lodged within:

(a) Twenty-one days in the case of an appeal against an *interlocutory* decision; or
(b) Three months in the case of an appeal against a *final* decision unless the court below extends the period within which an appeal may be lodged"

I have determined that the appeal should have been filed within three months after when it was given on 9th April 2014, then the appeal which was filed on 23rd May 2014, was well within the time limited by the rules of court. We uphold the submission that the ruling of the High Court dated 9th April 2014 was a final judgment.

In the circumstances the appeal was filed within the time regulated by the rules of court. The appeal is dismissed. We affirm the decision of the Court of Appeal to dismiss the appeal before it for the trial judge exercised his discretion judiciously when he refused to set aside the default judgment as it would have served no useful purpose to do so. We refuse to make the reliefs sought from this Court or any other.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

AKUFFO (MS), CJ:-

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

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

ADINYIRA (MRS), JSC:-

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

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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