IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD 2021

CORAM: YEBOAH, CJ (PRESIDING)

PWAMANG, JSC

AMEGATCHER, JSC

OWUSU (MS.), JSC

AMADU, JSC

CIVIL APPEAL
NO. J4/20/2021

31ST MARCH, 2021

LA DADEKOTOPON YOUTH ASSOCIATION …… PLAINTIFF/RESPONDENT/
RESPONDENT/APPELLANT

VRS

1. NII KPOBI TETTEY TSURU III
(SUBST. BY NII OBODAI ADAI IV
FOR AND ON BEHALF OF LA STOOL) 18 & ORS.] DEFENDANTS/APPELLANTS/
RESPONDENTS/RESPONDENTS

2. EDMUND JOSEPH OBODAI MENSAH …… 10TH DEFENDANT/APPELLANT/
APPLICANT/RESPONDENT

JUDGMENT

PWAMANG JSC:-

It is provided under Rule 20 of the **Court of Appeal Rules, 1997 (C.I.19) (as amended by C.I.21 and C.I.25)** as follows;

20. Written submission

(1) An appellant shall within 21 days of being notified in Form 6 set out in Part I of the Schedule that the record is ready, or within such time as the Court may upon terms direct, file with the Registrar a written submission of his case based on the grounds of appeal set out in the notice of appeal and such other grounds of appeal as he may file.

(2) Where the appellant does not file the statement of his case in accordance with subrule (1), the Registrar shall certify the failure to the Court by a certificate as in Form 11A in Part I of the Schedule and the Court may upon that order the appeal to be struck out.

The defendant/appellant/applicant/respondent (the defendant) filed an appeal in the Court of Appeal against a decision of the High Court dated 21st October, 2014. When the record of the appeal was ready he was served with Civil Form 6 notifying him accordingly. However, he failed to file his written submissions within 21 days of the service on him of the Form 6 as required by the rule so the registrar issued a certificate of Non-Compliance under Rule 20(2) and listed the appeal upon a summons before the Court of Appeal for the court to decide whether to strike it out. About the same time, the defendant filed a motion under Rule 20(1) for extension of the 21 days for him to file his written submissions. The registrar listed the summons for non-compliance and the motion for extension of time before the same panel on the same day. The summons for non-compliance was called first and adjourned *sine die* on ground of non-service of an affidavit in opposition on the plaintiff/respondent/respondent/appellant (the plaintiff). After the summons was adjourned the application for extension of time was called but the plaintiff's counsel objected to the court hearing the application arguing that it has to be adjourned to abide the decision of the court on the summons for non-compliance. The court overruled the objection, heard the application and granted defendant extended time to file his written submissions. Aggrieved by the decision of the Court of Appeal the plaintiff lodged the instant interlocutory appeal.

In its statement of case the plaintiff contends, that once a Certificate of Non-Compliance issued pursuant to Rule 20(2) of C.I.19 (as amended) comes to the attention of the Court of Appeal, the court cannot entertain an application by the appellant who is in default for extension of time to file her written submissions. The plaintiff submits that the summons for Non-Compliance must be heard first and if the court, in exercise of its discretion decides not to strike out the appeal, then and only then can the court hear the application for extension of time. But if the court strikes out the appeal for non-compliance, then the application for extension of time would be rendered moot. The justification posited by the plaintiff for its view that priority ought to be given to hearing of the summons for Non-Compliance is, that hearing the application for extension of time before the summons for non-compliance would "stultify" the summons and render the sanction in Rule 20(2) of C.I.19 for non-compliance ineffective. The plaintiff submits that its preferred order for hearing the two applications will make the rule to bite and compel appellants to comply with the time limitation for filing written submissions.

While we appreciate the plaintiff's submission that courts are required to enforce sanctions provided for in their rules of procedure in order to engender strict compliance with the rules, it is equally the policy of the law that it is in the best interest of justice that disputes that come before the courts, as far as possible, ought not to be decided on the basis of default by one party to comply with rules of procedure but on their merits. In the case of **Quarmyne V Afeyesi [1984-86] 2 GLR 430** at 435 the Court of Appeal approved of the following statement by Lord Atkin in **Evans v. Bartlam [1937] A.C. 473 at 480:**

"The principle obviously is that unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure."

It is for this reason that rules of court normally provide that a party in default may apply for relief from the court unless the matter has been determined on the merits. But where the court grants relief against default of rules of procedure, the party in default is usually still sanctioned by the award of costs and/or other conditions imposed on her as provided for in Rule 20(1). This way the court is enabled to strike a balance between the policy objectives of ensuring the resolution of disputes on their merits and sanctioning litigants for breaches of rules of procedure. It ought to be noted that the original Rule 20 of C.I.19 provided that upon failure by an appellant to file written submissions within the time provided for doing so, the appeal was to be deemed struck out.

The old Rule 20(2) was as follows;

(2) Where the appellant does not file the statement of his case in accordance with subrule (1), the appeal shall be considered to have been struck out and the Registrar shall inform the parties accordingly.

The court had no discretion in the matter and the time could not be extended. That provision debarred the Court of Appeal, even in appropriate cases, from making orders that would facilitate an early determination of an appeal on the merits. This necessitated the amendments effected by C.I.21 and C.I.25 which now allow for extension of the time for filing the written submissions and the court is given discretion as to whether or not to strike out the appeal for non-compliance with the time for filing written submissions.

In any event, it must be noted that under both the original rule 20(2) and the amendments, the legal consequence of failure to file the written submissions within time is for the appeal to be "struck out". That, by the well-settled practice of the courts, means that such appeal can be re-listed on justifiable grounds. See the unreported Supreme Court case of **Mathew Tawiah Aryeetey V Social Security and National Insurance Trust; Suti No. J4/29/2013.** So, to accede to the plaintiff's preferred order of priority for hearing a summons for non-compliance and an application for extension of time under Rule 20 of C.I.19 (as amended) when they are pending

contemporaneously, the result would be that the Court of Appeal may strike out the appeal on hearing the summons for non-compliance, and by reason of that striking out, the motion for extension of time would become moot. Then afterwards, the appellant can file an application to re-list the appeal and apply for leave to file the written submissions. What this means is, that going by the order of priority being urged on the court by the plaintiff, an appellant in default can still arrive at the point where her application for extension of time to file written submissions would be entertained by the court, except that it would be through a lengthy and more expensive procedure. It appears to us that it is this very mischief that C.I.21 and C.I.25 were enacted to cure. Meanwhile, until the court has struck out the appeal, it is still pending and the court has jurisdiction to entertain an application premised on it. See the case of **Republic V Court of Appeal; Ex parte Ghana Chartered Institute of Bankers [2011] 2 SCGLR 940**. If the concern is to sanction an appellant for default in filing her written submissions, as argued by the plaintiff, this can be achieved by the award of appropriate costs against a defaulting appellant.

The modern approach to the interpretation and application of court rules of procedure is to avoid their construction and application in a manner that creates inconvenience or occasions avoidable delay and expense to litigants. But that would be the result if we accept the order of priority being insisted upon by the plaintiff. In our opinion, upon a proper interpretation of Rule 20 of C.I. 19 (as amended) as a whole, where two applications under rule 20 (1) and (2) are pending before the Court of Appeal contemporaneously, one for extension of time to file written submissions and the other a summons for non-compliance with the time provided for filing written submissions, the Court of Appeal shall give priority to the application for extension of time and determine that application first, and the hearing of the summons for non-compliance shall abide the decision on the application for extension of time. To construe the rule otherwise would cause avoidable delay and expense to the parties and return to the practice of the court in the days before C.I.21 and C.I.25 where the appeal was automatically struck out and

then an appellant would apply for re-listment and for leave to file written submissions. But we must not be understood to imply that the application for extension of time shall always be granted because it is to be heard first. It has to be determined on its merits on a case by case basis and where no good grounds have been provided by the applicant for its grant, it may be refused and the summons for non-compliance determined. Our interpretation does not do away with the sanction of striking out for non-compliance provided for in the rule. What it does is to reserve it for only situations where an appellant in default fails to take advantage of Rule 20(1) to apply timeously for extension of time or where the circumstances of her default plainly warrant her appeal being struck out.

Having construed the rule thus, our view is that, in this case, the Court of Appeal did not err but applied Rule 20 correctly to the proceedings before them when they heard the application for extension of time to file written submissions at the time that they had knowledge of the pendency of the summons to strike out the appeal for non-compliance. Consequently we dismiss the appeal on this ground.

The next issue that arises in this interlocutory appeal is whether on the facts of this case, the Court of Appeal exercised its discretion judicially by granting the defendant's application for extension of time. The Court of Appeal in their ruling stated that they gave due consideration to the arguments of the plaintiff in opposition to the application before deciding to grant it and they awarded costs against the defendant in favour of the plaintiff. Nothing has been pointed out to us by the plaintiff to convince us that this was not a proper case in which extension of time ought to have been granted. The extension of time to file the written submissions would enable the court to determine the main appeal on its merits. In the circumstances, we dismiss the appeal on this ground too.

In conclusion, the appeal fails and is dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

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NII KPAKPO SAMOA ADDO FOR THE 10TH DEFENDANT/APPELLANT/APPILCANT/RESPONDENT.