

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

AMADU JSC

KULENDI JSC

CIVIL APPEAL

NO. J4/55/2021

18TH JANUARY, 2022

KEN KWAME ASAMOAH PLAINTIFF/RESPONDENT/RESPONDENT/RESPONDENT

VRS

STATE INSURANCE COMPANY DEFENDANT/APPELLANT/APPLICANT/APPELLANT

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

On the 18th of January 2022, we allowed the appeal in this matter and reserved our reasons to be filed within 21 days. We proceed now to give the reasons for our decision.

The significance of this appeal lies in the determination of the legal effect of payment of a judgment debt into court. Does the payment of a debt or judgment debt into court

discharge the payer or judgment debtor from all further liabilities under the judgment to the payee or judgment creditor? The appellant says it does while the respondent says it does not. Though, what is before us is an interlocutory appeal arising from the refusal of the Court of Appeal to grant a suspension of the entry of judgment/or stay of proceedings of execution pending appeal, we are of the opinion that to avoid multiplicity of suits and save the parties from further expense and time in unnecessary and unwarranted litigation, this post-judgment interlocutory matter must be determined by us exercising our powers under article 129(4) of the Constitution.

BRIEF FACTS

The appellant is an insurance company while the respondent was the assured of the appellant. The substantive dispute which brought the parties to court had to do with a comprehensive insurance taken by the respondent from the appellant to cover a Chevrolet Sports Car imported into the country. The car was snatched from the wife of the respondent. The respondent, therefore, put in a claim for Ghc116, 200.00 being the insured value of the car. When the appellant repudiated liability, the respondent commenced an action at the High Court for that sum plus interest at the commercial rate till the date of payment.

On 25th June 2014, the High Court delivered judgment in favour of the respondent. Dissatisfied, the appellant appealed to the Court of Appeal and filed an application for a stay of execution. The Court of Appeal on 25th November 2014 granted the stay on terms and ordered the appellant to pay the entire judgment debt made up of Ghc116, 200.00 principal and Ghc138, 278.00 interest into court within 30 days from the date of the order. The Court directed this money to be invested by the Registrar of the Court into an income yielding investment in accordance with the standing directions regarding money's ordered to be paid into court by the Courts. The Court of Appeal further ordered the appellant to pay the respondent the costs of Ghc8, 000.00 awarded by the High Court. This order was complied with by the appellant on 31st December 2014.

Subsequently, when the appeal was heard, the Court of Appeal allowed the appeal of the appellant and reversed the judgment of the High Court. The respondent also was dissatisfied and filed an appeal to the Supreme Court. On 21st November 2018, the Supreme Court allowed the respondent's appeal reversed the judgment of the Court of Appeal and restored the High Court judgment. The respondent then applied to the High Court to withdraw the money paid into court on 31st December 2014 together with the interest accrued from the investment. This application was granted and the said money was paid to the respondent/judgment creditor through his counsel on 25th March 2019.

However, another twist surfaced in this case drama. The respondent filed two notices of 'entry of judgment' in which he sought to calculate interest at the commercial rate on the money paid into court from 25th June 2014 to 31st January 2020 totalling Ghc353,048.08. The respondent justified this additional interest based on the order made by Baffoe-Bonnie JSC when he delivered the majority judgment of this court at the determination of respondent's appeal. At the last paragraph of the judgment, His Lordship ordered as follows:

"The plaintiff is given judgment on the amount of Ghc116, 200.00, being the sum assured, and interest on the said amount at the prevailing market rate till the date of the High Court judgment, and thereafter interest calculated in accordance with post judgment rates till the date of final payment."

The injustices perpetrated by the contents of some notices of entry of judgment after trial filed by counsel for the judgment creditors without any input from the court will engage our comments later in this judgment.

LEGAL EFFECT OF PAYMENT INTO COURT

Our attention, for now, would be focused on the effect of payment of a judgment debt or debt owed into court and the right interpretation to be placed on the Supreme Court order reproduced above.

Paying money into court is a way of protecting funds while the litigation is ongoing. Such payment into court is meant to satisfy any potential liability. For instance, if a defendant is found liable, the payment into court goes to the plaintiff. If the defendant is found not liable, then the defendant gets a refund of the payment made into court. In cases of appeal, as the circumstances of this appeal demonstrate, such payments will remain *incustodia legis* to ensure that in the event of the failure of the appeal, the respondent shall without difficulty have his money. In general, the procedure gives other litigants assurance that any judgment awarded by the court will be collectable.

Order 18 of the High Court Civil Procedure Rules is the law regulating payment into court either suo moto by a party or on the orders of a court. The relevant provisions are as follows:

Payment into court

1. (1) A defendant may pay a sum of money into court at any time after the defendant has filed an appearance in an action for debt or damages.

(2) The payment into court shall be in satisfaction of the cause of action claimed or where two or more causes of action are joined, the payment into court shall be a sum or sums of money in satisfaction of any or all of those causes of action.

(3) The defendant or the defendant's lawyer shall give notice as in Form 7 in the Schedule to the plaintiff or the plaintiff's lawyer; and every other defendant when making any payment or increasing any payment into court under this rule shall do the same.

Acceptance of money paid into court

3. (1) Within fourteen days after receipt of the notice of payment or, within fourteen days after receipt of the notice of the last payment or the amended notice, where more than one payment has been made or the notice has been amended, the plaintiff may where the money was paid in respect of

(a) the cause of action or all the causes of action in respect of which the plaintiff claims, accept the money in satisfaction of that cause of action or those causes of action; or

(b) some of the causes of action in respect of which the plaintiff claims, accept in satisfaction of any of the causes of action the sum specified in respect of those causes of action in the notice of payment,

Money paid into court under order of Court

8. (1) Subject to subrule (2), money paid into court under an order of the Court shall not be paid out except in pursuance of an order of the Court.

(2) Unless the Court otherwise orders, a party who has paid money into court in pursuance of an order made under these Rules,

(a) may by notice to the other party appropriate the whole or part of the money and any additional payment to any particular claim made in the writ or counterclaim and specified in the notice; or

(b) if the party pleads a tender, may by the pleading, appropriate the whole or part of the money as payment into court of the money alleged to have been tendered.

(3) Money appropriated in accordance with sub rule (2) shall be taken to be money paid into court in accordance with rule 1 or 2 or money paid into court with a plea of tender and this Order shall apply accordingly.

The clear meaning of Order 18 of C.I. 47 is that payment of money into court to satisfy a claim or counterclaim either by a party on his own accord or acting on the orders of a court shall be in satisfaction of the cause of action claimed. This will be applicable where the payment satisfies fully the obligation of a party under a judgment delivered or by the agreement entered into. If it is a judgment debt, the payment of the whole judgment debt into court by or on the orders of the court will be in satisfaction of the cause of action where it is accepted by the beneficiary. Such payments into court once accepted, will discharge the respondent or judgment debtor from any further obligation or liability to the claimant or judgment creditor. If the payment into court includes the interest and costs payable under the claim, no further interest can be calculated and worked on the principal from the date of the payment into court. However, if exclusive of costs, then naturally such judgment would be entered for such costs exclusive of the payment already made.

Halsbury's Laws of England, 4th Edition, Volume 10 makes this clear at para 336 that:

"...where the whole amount of a claim is paid into court without the costs stated on the summons or after the period of fourteen days has expired, proceedings in the action will be stayed and the defendant will not be liable for any costs incurred after the receipt by the Plaintiff of the notice of payment into court. However, if the costs stated on the summons are not paid into court with the amount of the claim, the plaintiff may have judgment entered for those costs or any balance unpaid and the costs of entering judgment."

In effect payment into court is as good as handing over a debt owed to the beneficiary or discharging an outstanding obligation. Where only part of the claim or obligation had been paid into court, the beneficiary must indicate that his acceptance is without prejudice to the balance or other claims which remained unpaid. The beneficiary is then free to pursue the claim on the balance due and owing. Any interest due can only be calculated on the balance unpaid up to the date of payment.

We find judicial support for our interpretation of the rules and the legal effect of payment of debt into court. In the Supreme Court case of **Ghana Consolidated Diamonds Ltd v Tantuo [2003-2004] SCGLR 1136 at 1144-1145**, the plaintiffs sued their employers for the payment of their end of service benefits. The employers then paid into court the sum in satisfaction of the plaintiffs' claim. The plaintiffs accepted and received the payment made into court but later filed a notice of acceptance of the amount paid as part satisfaction of their claims. **Atuguba JSC** explained emphatically that payment into court and acceptance in such circumstances ended the matter in the following dictum:

"The plaintiffs seemed to have misunderstood the nature of a payment into court. As Devlin LJ, delivering the judgment of the Court of Appeal in *Martin French (a Firm) v Kingswood Hill Ltd [1960] 2 All ER 251* explained at 252: "A payment into court is simply an offer to dispose of the claim on terms." (My emphasis). As I understand the position, therefore, the amount paid in need not be the exact sum claimed by the plaintiff or expected by him. If he feels the sum paid in is not acceptable to him he is free to reject it, but if he accepts it, that is the end of the matter. In the instant case, the plaintiffs' view that they were accepting the payment as part payment of their claim was misconceived."

Again, in the subsequent case of **Smith & Ors v Blankson (substituted by) Baffour & Anor [2007-2008] SCGLR 374**, a land purchase transaction between the parties failed. The plaintiff requested a refund of his purchase money after which he sued for specific performance. The plaintiff lost at the High Court where an order was made for the landowner to refund the purchase price paid by the plaintiff to him. This was complied with by the landowner by paying the entire sum into court. An appeal to the Court of Appeal was unsuccessful and a similar order was made for a refund of the purchase price. At the Supreme Court, though the plaintiff never claimed interest when he requested for a refund of the purchase price paid, his counsel for the first time submitted that by the landowner keeping the plaintiff's money for ten years, it was only

fair that the refund should attract interest. The Supreme Court per Sophia Akuffo JSC (as she then was) made it clear that interest was calculable up to the date of payment into court after which no further interest was payable in the following words at pages **384-385**:

“Be that as it may, we are, on the other hand of the view that it is in the interest of justice to order that, since the Defendant did not immediately refund the money after the receipt of the message, interest must be paid on the amount due at the prevailing commercial bank rate of interest, from the date of the judgment of the High Court, until the date of payment. From the date the 1st Plaintiff demanded the refund, without the Defendant challenging the validity of the same, the Defendant had had use of money which, by rights, belonged to the 1st Plaintiff. We, however, notice from the Respondents’ Statement of Case herein, that the amount due has, since the judgment of the High Court been paid into court but the Plaintiffs have failed to collect the same. If that is so, then the interest should run until the date of such payment into court. The failure of the Plaintiffs to collect the amount thus paid cannot affect the calculation of the interest.”

The principles, then, deduced from these cases are first, once payment has been made into court which satisfies the claim and accepted by the beneficiary, the payment discharges the debtor from any further obligation be it the principal or interest. Secondly, any interest calculable on the debt due will cease to run from the date the full principal is paid into court.

Applying the rules and authorities cited above to the current case before us, it is an undisputed fact that in between the pronouncement of the High Court judgment and the determination of the appeal by the Court of Appeal and the Supreme Court, certain interlocutory proceedings were held. One was the stay of execution which was heard and determined by the Court of Appeal. The Court ordered the entire judgment debt and interest to be paid into court and the costs paid to the plaintiff.

These interlocutory proceedings took place after the High Court trial and judgment. They were, thus, not part of the trial court proceedings compiled in the record of appeal and transmitted to the Court of Appeal and then to the Supreme Court. It is not surprising that at the time the Supreme Court heard the appeal and decided on it, it had no knowledge of the Court of Appeal order for the payment of the judgment debt and interest into court. Therefore, the order of the Supreme Court for calculation of interest up to the date of final payment ought to be interpreted by the parties in the light of the reality on the ground as at the date of its delivery. This is to say that if at the date of the appellate court judgment and order, the debt had been fully paid in compliance with the trial court judgment and no longer existed, any order for interest to be calculated up to the date of payment should be interpreted to imply the date of payment to the beneficiary or into court and not the date the beneficiary chose to withdraw the payment from court. The date of final payment as ordered by the Supreme Court in this case is the date the judgment debt was paid into court, i.e. 31st December 2014.

On the basis of our appreciation of the legal issues in this appeal, we conclude that the respondent had not been kept out of his money. He applied to the High Court and had the money which was paid into court on 31st December 2014 together with the interest accrued from the investment released to him. In our view the respondent had, rather, been indemnified from any loss by the investment made and interest accrued. Having gained access to the full value of the money, it would have constituted unjust enrichment if he were to be granted further interest as was calculated in the subsequent notices of entry of judgment filed by his counsel.

NOTICE OF ENTRY OF JUDGMENT AFTER TRIAL

We now turn to the issue of notice of entry of judgment after trial. The current dispute arose when the respondent filed two notices of entry of judgment, the first on 4th December 2018 in which he calculated interest from April 2010 to 30th November 2018

and the second dated 5th February 2020 in which he, again, sought to calculate interest on the principal amount up to 31st January 2020.

Entry of judgment under the High Court Civil Procedure Rules, C.I. 47 is the first step in the processes towards the enforcement of the judgment of the court. It is usually prepared and filed by the judgment creditor or his counsel and served personally on the losing party or judgment debtor. The contents include the date of the judgment, the orders made by the court in favour of the judgment creditor and costs awarded as more particularly provided for in Form 17 of the Forms in C.I. 47.

Order 41 of C.I. 47 deals with drawing up and entry of judgment or order. Rule 7 provides as follows:

7. (1) The party seeking to have a judgment entered shall draw up the judgment and present it to the Registrar for entry.

(2) Where judgment is presented for entry in accordance with this rule, the Registrar shall enter it in the book kept for that purpose, file the judgment and return a duplicate of it to the party who presents it for entry.

In **Republic v Court of Appeal; Ex-parte Ghana Commercial Bank Pensioners Association [2001-2002] SCGLR 883** Afreh JSC explained the object and rationale of the judgment after trial in the following words:

“The Judgment After Trial is the formal record of the judgment pronounced by the judge at or after the trial. It is the document which contains the full details of the judgment and must be filed under Order 41 r.1 to give effect to the judgment pronounced by the judge under order 36 r.24. Without it the judgment pronounced by the judge cannot be enforced. Since it is the formal record of the judgment of the court its existence is a most cogent evidence that the judge pronounced judgment at or after the trial. In our opinion where Judgment After Trial has duly been entered it must be presumed that the judge regularly performed his duty of pronouncing judgment at or after

the trial..... In the case before us the Defendant did not object to the terms of the Judgment After Trial filed by the Plaintiffs on 3rd April 1999. All the parties and the trial judge acted upon it, none of them had any doubt that a judgment had been directed or pronounced. The correctness and validity of the Judgment After Trial were not in issue in the proceedings to interpret certain terms arising from it.”

Under order 41, it is the judgment creditors or their lawyers who interpret the judgment and draw it up in a notice of an entry of judgment. The problem this has posed to the administration of justice in this jurisdiction is that some parties deliberately misstate the actual orders made by the court or the legal basis of their claim before the court in the notices of entry of judgment. An example is a claim for compounded interest when no such rate was part of the agreement between the parties or was not ordered by the court. Another is entry for recovery of possession when no such relief was claimed and even if claimed was not granted by the court. Yet, another is the actual effect of a declaratory relief made by the court and the legality of enforcement of those reliefs.

Regrettably, registrars of the courts accept these entries of judgment without any questioning and proceed to levy execution based on orders the court had not made. The consequences are numerous and sometimes irreparable. Many parties to litigation before our courts suffer injustices when compelled to satisfy judgment debts they have not incurred. They are, then thrown out of their businesses. Others suffer the brunt of wrongful demolishing of their properties arising from such false representations drawn up in the entry of judgment. If, as explained by Afreh JSC (supra), the judgment after trial is the formal record of the judgment and the most cogent evidence that the judge pronounced that judgment at or after the trial, we do not think it is appropriate for its drawing up to be left in the hands of one party to the litigation without any input from the judge who delivered the judgment. A similar provision in Rule 28 of the Supreme Court Rules, C.I. 16 for the enforcement of Supreme Court judgments or orders in the trial courts requires a certificate specifying the orders made by the Court under the seal of the Court and the hand of the presiding judge before enforcement could take place-

see this court's decision in **Republic v High Court, Accra; Ex parte Kumoji [2000] SCGLR 211**. We believe the time has come to take a second look at this provision in the High Court Rules.

Thus, to avert similar injustices in the future which invariably taint the reputation of the judiciary we give the following directions.

1. Trial judges are to summarise and specifically state all enforceable orders made in their judgments at the end or at the conclusion of the judgments. This summary is to be recorded in the Record Book as well. This will provide guidelines to the parties, counsel and the registrars regarding the drawing up and the filing of notices of judgment after trial and the specific orders to be enforced by way of execution. The Judicial Secretary is ordered to bring this directive to the attention of all trial courts in the country and the Judicial Training Institute.
2. Registrars of all courts are to carefully review such notices of entry of judgment filed and satisfy themselves that the contents represent the orders made by the court in the suit. When in doubt, registrars should seek clarification from the judge who pronounced the judgment before executing any documents for the enforcement of the judgment. The Judicial Secretary is ordered to bring this directive to the attention of all registrars of the courts in the country and the Judicial Training Institute.
3. Counsel representing judgment debtors must carefully scrutinise notices of entry of judgment filed by their colleagues and confirm that the contents are in line with the agreement of the parties and/or the final orders made by the court. If the notice has been misrepresented, it is the professional responsibility of the counsel to object timeously to the terms filed and to apply to the court immediately to set aside or rectify the notices. This is a duty owed their clients,

the court and the profession to expose wrongdoing and protect the sanctity of the justice delivery system.

4. Counsel preparing and signing notices of judgment after trial should be weary of the rules of professional conduct which regulate their actions in court. We refer especially to Rule 63 (2) (e)& (f) of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020, L.I. 2423 which provides as follows:

- a. Rule 63 (2) (e) **Where a lawyer acts as an advocate, that lawyer shall not knowingly attempt to deceive a court or influence the course of justice by offering false evidence, misstating a fact or law, presenting or relying on a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in a criminal or an illegal conduct."**

- b. Rule 63 (2)(f) **Where a lawyer acts as an advocate, that lawyer shall not knowingly misstate the content of a document, the testimony of a witness, the substance of an argument, or the provision of an enactment or like authority."**

Any breach of these rules by misstating the orders made by a court in the notices of entry of judgment should henceforth be referred to the Disciplinary Committee of the General Legal Council for the appropriate sanctions.

5. The Rules of Court Committee is called upon to have a second look at the provisions in the rules which vest the power to interpret and draw up the notice of judgment after trial solely in the hands of the judgment creditor and their counsel. Any review or amendments of the rules should be geared towards averting injustices occasioned by misrepresentation of court orders for the purposes of execution.

Based on the opinion expressed in this judgment, we do not think it is necessary to put the parties to any further expense by remitting this matter to the High Court for further orders to be made regarding the two notices of entry of judgment filed by counsel for the respondent. We, therefore, exercise the powers vested in us under article 129(4) of the Constitution, 1992 and allow the appeal, set aside the notices of entry of judgment filed by the respondent on 4th December 2018 and 5th February 2020.

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

**ANIN YEBOAH
(CHIEF JUSTICE)**

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