

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: TORKORNOO (MRS.) CJ (PRESIDING)

AMADU JSC

KULENDI JSC

ASIEDU JSC

GAEWU JSC

CIVIL MOTION

NO. J5/62/2023

27<sup>TH</sup> JUNE, 2023

THE REPUBLIC

VRS

THE HIGH COURT (COMMERCIAL DIVISION 9), ACCRA ..... RESPONDENT

EX PARTE: ECOBANK GHANA LIMITED ..... APPLICANT

ORIGIN 8 LIMITED

GREATER ACCRA PASSENGER TRANSPORT ..... INTERESTED PARTIES  
EXECUTIVE

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## RULING

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### KULENDI JSC:-

### INTRODUCTION

The Applicant herein has invoked our supervisory jurisdiction pursuant to article 132 of the Constitution and Rule 61 (1) of the Supreme Court Rules.

The antecedent contentions that sparked the instant application are that the 1<sup>st</sup> Interested Party is the judgment creditor in Suit No.: CM/RPC/0771/17, having obtained judgment against the 2<sup>nd</sup> Interested Party in the High Court Commercial Division 9, Accra, for the recovery of a judgment sum on 4<sup>th</sup> December, 2018 and 14<sup>th</sup> February, 2019. Consequently, an entry of judgment was filed for the sum of One Million and Seventy-Nine Thousand, Two Hundred and One Ghana Cedis and Fifty-Eight Pesewas (GH¢ 1,079,201.58). Subsequently, the 1st Interested Party obtained and served an order for *garnishee nisi* on the Applicant herein to appear before the High Court on 16<sup>th</sup> December, 2019 to show cause why monies standing to the credit of the 2nd Interested Party and held with the Applicant should not be paid to the 1st Interested Party (the judgment creditor therein) in satisfaction of the judgment debt.

Upon the failure of the Applicant to appear before the Court, the orders for Garnishee were made absolute and thus the Applicant became liable to pay the judgment sum to the 1st Interested Party. Claiming that the actual funds held on behalf of the judgment creditor was the sum of One Hundred and Twenty-Two Thousand, One Hundred and Ninety-Five Ghana Cedis, Sixty Pesewas (GH¢122,195.60), the Applicant paid the said sum to the 1st Interested Party (judgment creditor) but failed to pay up the balance of Nine Hundred and Seventy-Five Thousand and Five

Ghana Cedis, Ninety-Seven Pesewas (GH¢ 975,005.97) outstanding on the garnishee order absolute.

To enforce the orders for *garnishee* absolute for the outstanding sums, the 1<sup>st</sup> Interested Party applied and obtained orders dated 28<sup>th</sup> July, 2020, for *garnishee nisi* against the Bank of Ghana to attach funds of the Applicant held with the Bank of Ghana.

The Applicant filed a double-barreled motion to stay proceedings and set aside the order for *garnishee nisi* which sought to attach Applicant's funds with the Bank of Ghana on the ground, among others, that the 1st Interested Party failed to file and serve on the Applicant, an entry of judgment pursuant to Order 47 rule 4(2) of the High Court Civil Procedure Rules, 2004 (C.I. 47).

On 2<sup>nd</sup> May, 2023, the High Court dismissed the application to stay proceedings and to set aside the garnishee *order nisi* served on the Bank of Ghana.

The present application seeks an order of Certiorari directed at the High Court (Commercial Division 9) Accra, to bring up into this Court for the purpose of being quashed, the said ruling of the High Court dated the 2nd day of May 2023. The Applicant further prays for an order of Prohibition directed at the High Court prohibiting it from proceeding with the examination of Bank of Ghana as *garnishee* for the purpose of making an Order Absolute.

## **GROUND OF APPLICATION**

The relevant grounds of the application as set out on the motion paper, which we have had to edit in order to enhance clarity and make sense to save the substance of the application, are as follows:

- a. The High Court (Commercial Division 9) Accra exceeded its jurisdiction in seeking to enforce a judgment debt when the judgment creditor had not filed and served an Entry of Judgment for the sum owed on the judgment debtor prior to the execution process.

- b. The High Court (Commercial Division 9), Accra, committed an error of law by dismissing the Applicant's motion, creating the effect that it could proceed to examine a *garnishee* in respect of a debt for which no Entry of Judgment has been filed, as required by the Rules of Court made thereby making the execution process a nullity.

It is upon the above facts and grounds the Applicant seeks for order for Certiorari and Prohibition.

### **RESOLUTION**

In determining the instant application, we note that the resolution of one central issue effectively disposes of the application. This is the issue of whether or not in executing an order for garnishee absolute, the filing and service of entry of judgment on the Garnishee/Judgment Debtor is a mandatory prerequisite to the enforcement of any payment of money pursuant to the garnishee order absolute.

This Court has repeatedly stated that our supervisory jurisdiction may be invoked where there is an error of law apparent on the face of the record, want or excess of jurisdiction or a breach of the principles of natural justice. In the case of **The Republic v. High Court, Kumasi: Ex-Parte Bank Of Ghana & Ors (Gyamfi & Others- Interested Parties) [2013-14] 1 SCGLR 477**, at page 502, this Court affirmed its earlier decision in **Republic v. High Court, Secondi:**

**Ex-Parte Among Alias Akrofa Kurokoko I ( Kyerofa III & Ors Interested Party) [2011] 2SCGLR 716** at page 717 held as follows:

“It is well settled that certiorari was not concerned with the merits of the decision; it was rather a discretionary remedy which would be granted on grounds of excess or want of jurisdiction and or some breach of rules of natural justice, or to correct a clear error of law apparent on the face of the record. The error of law must be so grave as to amount to the wrong assumption of jurisdiction; and it must be so obvious as to make the decision a nullity.”

Also, in the case of **Republic v High Court, Koforidua Ex-Parte: Augustus Osae-Akonnor (Agyei-Interested Party)** [2009] SCGLR 573 at page 584, this court held that:

"Where a High Court or a Court of Appeal acts ultra vires the constitution or an express statutory restriction imposed on it, whatever flows from that wrongful act is null and void and therefore amenable to certiorari and the court in the exercise of its supervisory Jurisdiction under Art. 132 of the constitution will remove same into the court for the purpose of being quashed."

Whilst the Applicant contends that the *garnishee* proceedings in respect of the order *nisi* served on Bank of Ghana is a nullity due to the failure of the 1st Interested Party (Judgment Creditor) to file and serve an entry of judgment on the Applicant, the Court in its ruling of 2<sup>nd</sup> May, 2023 held otherwise. Thus, our duty here is to examine the decision of the Court and ascertain whether or not the Court acted ultra vires a non-circumventable prerequisite of the Rules of Court.

The applicable rule for our consideration, Order 47 rule 4 of the High Court Civil Procedure Rules (C.I 47) states as follows:

Rule 4—No Appearance or Dispute of Liability by Garnishee

(1) Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from the garnishee to the judgment debtor, the Court may, subject to rule 7 make an order absolute under rule 1 against the garnishee.

***(2) An order absolute under rule 1 against the garnishee may be enforced in the same manner as any other order for the payment of money.***

We note that rule 7 of Order 47 relates to judgment creditors resident outside Ghana and provisions of the Exchange Control Act, 1962 (Act 71), and is therefore not directly relevant for the purpose of this dispute.

From the reading of Order 47 rule 4(2) of C.I 47, the relevant provision, it is apparent that the Court may make an order absolute against a Garnishee who does not attend Court or disputes the debt claimed from the Garnishee in satisfaction of the judgment debt. Order 47 r 4(2) is clear and unambiguous: such orders made absolute are enforceable as one would enforce an order for the payment of money.

Thus, Order 47r 4(2) being an express, clear, unambiguous provision, needs no interpretation. Any attempt to interpret Order 47 rule 4(2) other than what its express and clear language or terms say is legally implausible. The order simply provides that a garnishee order absolute may be enforced as one would, an order for the payment of money. In such an execution, the Garnishee assumes the position and description of a Judgment Debtor whilst the one in whose favour the order absolute is made is the judgment creditor. Before one can levy execution of a judgment or order of the Court, an entry of judgment ought to be filed and served on the judgment debtor.

In a judgment dated 18<sup>th</sup> January, 2022 in Civil Appeal No: J4/55/2021 entitled: **Ken Asamoah vs. State Insurance Company**, this Court held that:

“Entry of judgment under the High Court Civil Procedure Rules, C.1. 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.”

Similarly, in a judgment dated 13<sup>th</sup> January, 2011 in Civil Appeal No.: J4/36/2011 entitled **Duodu Amoo vs. Nimako Akowuah**, this Court, speaking through Anin Yeboah JSC (as he then was) stated as follows:

“In practice, judgment creditors seeking to levy execution file Entry of Judgment and serve same on the judgment-debtor as a prelude to execution. It is a formal notification to the

judgment-debtor of the reliefs granted by the court which the judgment-creditor may seek to enforce.”

We therefore agree with the Applicant that, regardless of how one becomes a Judgment Debtor, so long as execution is sought against a party, the execution must commence with the entry of the judgment of order sought to be enforced.

In any event, the High Court is duty bound to follow the maxim *stare decisis et non quieta movere* which is a duty to adhere to what has already been decided and not to unsettle established principles. The High Court is bound by the judicial precedent set by the Court of Appeal and the Supreme Court in that hierarchical order. Judicial precedent enables a lower court to make use of instruments of analogy and reasoning of higher courts.

The law laid down as *ratio decidendi* by this Court is binding on all courts and tribunals. No lower court is given a judicial or legislative fiat to disregard decisions of higher Courts in the judicial hierarchy, and more so, this apex Court. As a matter of fact, the duty to all Courts in Ghana to follow and apply decisions of this Court is not only a rule of common law by way of judicial precedent but also, a Constitutional obligation entrenched in Article 129 (3) of the Constitution. The said article 129 (3) states that:

“...all other courts shall be bound to follow the decisions of the Supreme Court on questions of Law”

The High Court in ruling that execution can be levied against a garnishee without the filing of an entry of judgment failed to follow the binding decisions of this Court, particularly the **Duodo Amoo** case supra wherein this Court held that the filing of entry of judgment is a *sine qua non* to the execution of any judgment. The resultant decision is therefore unconstitutional, null, void and of no legal effect.

For emphasis, we state that it is the entry of the judgment or order that commences the execution processes. Therefore, one cannot sidestep the filing of an entry of judgment or order in the execution process. The entry of judgment sets out in specific terms the orders of the Court to be performed by the judgment debtor. Unlike the actual judgment of a court, entry of judgment does not contain the facts, reasoning and the analysis of a court. It sets out the specific orders to be performed pursuant to the judgment and serves as the barometer by which the execution ought to be measured. It is for this reason that an entry of judgment which does not reflect the terms or orders contained in the judgment to be performed, may be set aside by the Court. Order 41 of CI 47 provides for how the entry ought to be drawn and the specific form that is used in filing the entry of judgment or order.

There are good policy reasons for the mandatory filing and service of an entry of judgment on a judgment debtor. It serves as a notice of impending execution which may often be unpleasant and thus motivate voluntary performance. Further, it also enables the judgment debtor to raise any objections it may have to the entry of judgment and/or the specific terms of the judgment or order sought to be enforced.

In the instant case, the Applicant was entitled to have the orders for garnishee absolute entered and served on it. This would have provided them the appropriate notice under the rules to pay up the debt or any money that may be due it to the original judgment debtor, or show up to explain that it neither knows the judgment debtor nor has any money due the judgment debtor from it. Similarly, the garnishee, upon service of the entry of judgment may take such other action as the law permits.

In the premises, we are of the considered opinion that the 1st Interested Party having failed to file and serve an entry of judgment on the Applicant herein, all subsequent execution processes filed in disregard of the clear terms of Order 47 rule 4(2) are thus null and void.

Proceedings taken in disregard of the rules are null and void, save those that are curable under Order 81 of the C.I 47. This however is not one of such processes that are curable under the rules



of Court. This procedural mistep is akin to filing of an application for injunction when there is no substantive writ filed before the Court. In a judgment of this Court dated 13th April 2022, in Writ No.: J1/11/2022 entitled **Micheal Ankomah Nimfah vrs. James Gyakye Quayson** which I had the privilege of authoring, this Court reasoned as follows:

“The rules of court serve as a lubricant. They lubricate the wheels on which the substantive jurisdiction of the Courts ride. They are to grease the machinery of the law for effective justice.”

Outright avoidance or non-compliance of the rules of court and an endorsement of such blatant disregard of these rules undermines the ends of justice. This is more so when such non-compliance with rules of procedure goes to jurisdiction, occasions injury, injustice or the overreaching of one party by another.

It is for these reasons that we are of the opinion that the Trial Court exceeded its jurisdiction in seeking to give judicial blessing to the enforcement of a payment of money pursuant to a garnishee order absolute even though the judgment creditor had not filed and served an entry of judgment for the sum due.

### **Conclusion:**

Having had the benefit of carefully considering the instant application as well as the arguments of both Counsel, we are of the opinion that a proper case has been made to warrant our supervisory intervention. The filing and service of entry of judgment is a pre-condition for the execution of an order or a judgment of a Court. Having failed to file an entry of judgment, all steps taken in execution of the garnishee order absolute are null, void and of no legal effect. The trial judge ought to have set the garnishee proceedings aside when its attention was drawn to the breach of Order 47 rule 4(2) of the C.I 47. The ruling of the Court dated 2nd May, 2023 by which

the Trial High Court held, in effect, that a garnishee order absolute can be enforced or executed without the prior filing and service of an entry of judgment is a patent error of law that goes to jurisdiction. It is for these reasons that we unanimously concluded, on the 27th day of June 2023, that the ruling of the High Court dated 2nd May, 2023, reflected a patent error of law and ordered for it to be brought up to this Court for the purpose of being quashed and same was duly quashed. However, we denied the prayer for prohibition as the grounds for same were not made out by the Applicant.

**(SGD) E. YONNY KULENDI**  
**(JUSTICE OF THE SUPREME COURT)**

**(SGD) G. SACKY TORKORNOO (MRS.)**  
**(CHIEF JUSTICE)**

**(SGD) I. O. TANKO AMADU**  
**(JUSTICE OF THE SUPREME COURT)**

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