

GHANA / JUDGMENT

ECUMENICAL DEVELOPMENT CO-OP SOCIETY UA VRS. WE CARE ORGANIZATION AND OTHERS (CS 887/1998) [2024] GHABC 163 (21 February 2024)

COURT
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IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT 'B' HELD IN TEMA IN THE GREATER ACCRA REGION OF THE REPUBLIC OF GHANA BEFORE HER LADYSHIP JUSTICE PATRICIA QUANSAH (JUSTICE OF THE HIGH COURT) ON WEDNESDAY THE 21ST OF FEBRUARY 2024. SUIT NO. CS 887/1998 ECUMENICAL DEVELOPMENT CO-OP PLAINTIFF/JUDGMENT CREDITOR SOCIETY UA C/O TETTEH 3RD FLOOR, KINGSWAY BUILDING ACCRA VRS

1. WE CARE ORGANIZATION 2. ROGER SMITH INT. CO. LTD. DEFENDANTS/JUDGMENT DEBTORS 3. JONAH KOBINAH MORRISON AND ABDULAI HARUNA RASHID CLAIMANT

ECUMENICAL vrs WE CARE & 2 ORS 1 PARTIES ABSENT CLAIMANT PRESENT

RULING ON INTERPLEADER APPLICATION MADE BY THE CLAIMANT HEREIN 1.

INTRODUCTION

[a] This matter commenced some time in 1998, and it is obvious from the record of proceedings that the Plaintiff herein obtained judgment against the Defendants some time in 1999; and the Plaintiff/judgment creditor sought to go into execution against the Defendants/judgment debtors herein. [b] The Plaintiff/judgment creditor's attempt to go into execution triggered an initial interpleader action and subsequently this present one, and so this Court is enjoined to deal with this second and present interpleader application brought by the same claimant before this Court. ECUMENICAL vrs WE CARE & 2 ORS 2 2. FACTS PRECEDING THE PRESENT INTERPLEADER APPLICATION [c] From the proceedings on record, it is obvious that after the Plaintiff/judgment creditor had obtained judgment, he attached a cold store situate at Tema said to belong to the Defendants; and that is the genesis of the entire interpleader proceedings before this Court. It was then that the Claimant herein sought to intervene in the matter by filing a notice of claim and commencing an interpleader action. The Claimant subsequently filed an interpleader summons

and an affidavit of interest; but the Claimant's interpleader application was dismissed by this Court, albeit differently constituted, in a ruling dated the 16th of November 2006. [d] Then on the 21st of November 2006, the Claimant herein, said to be dissatisfied with the ruling of the Court dismissing his interpleader action, filed a motion for stay of execution pending appeal, on the following grounds, among others, and I quote paragraphs 4 to 8 of the Claimant's supporting affidavit thus: 4. That my appeal has a reasonable chance of success. 5. That the facts of the matter were hotly in dispute and ought to have been tried and not dealt with summarily. 6. That my appeal will be rendered nugatory in the absence of a stay due to the irrecoverability (sic) of the subject-matter viz Fishing Harbour Cold Store after it had been auctioned. ECUMENICAL vrs WE CARE & 2 ORS 3 7. That a refusal of a stay of execution would impose irreparable harm in the event of my appeal succeeding: I would have lost a valuable investment and the entire business with numerous clients would have been lost: that I cannot recoup my losses. 8. That it would constitute to (sic) a travesty of justice if the judgment creditor were to go into execution and sell the cold store and take the proceeds of sale out of the country with no prospect of recovery if my appeal succeeds. [e] The Claimant further filed a supplementary affidavit in support of his motion for stay of execution pending appeal but the motion for stay of execution pending appeal was dismissed by this Court in a ruling dated the 22nd of October 2009. [f] After this ruling, there were numerous intervening events and it also appears that the Claimant again filed another motion on the 2nd of December 2009 at the Court of Appeal, seeking to stay the execution of the ruling of the Court dated the 16th of November 2006, on the grounds that the ruling in the first stay of execution was delivered by a Judge who did not hear the motion for stay and who did not appear to have the jurisdiction to hear the matter because the case had not been transferred to the said Judge. Further, there were inaccuracies in the entries of the Court; and the Claimant raising other issues, prayed the Appellate Court to grant the motion for stay of execution pending appeal. [g] That stay at the Court above was also dismissed, and the Court of Appeal, on the 20th of April 2010, delivered its ruling dismissing the motion for stay. The ECUMENICAL vrs WE CARE & 2 ORS 4 Plaintiff/judgment Creditor's Counsel annexed a copy of the Appellate Court's ruling to his affidavit in opposition. [h] Then in an interesting turn of events, the Claimant herein also instituted an action against some Defendants including the 2nd Defendant/Judgment debtor herein and prayed for a consolidation of all the suits including this suit, CS 887/1998. Only three of the suits were consolidated, with the exception of this suit before this Court, CS 887/1998. The Court was of the opinion that suit no. CS 887/1998 was completed and the execution process had begun; and so it would not be consolidated with the others. 3. THE PRESENT INTERPLEADER SUMMONS [i] The Plaintiff/judgment creditor's Counsel thereafter filed a motion for leave to go into execution and a subsequent order for reserved price; and that was equally opposed by the same Claimant herein, again by the filing of a notice of claim and an affidavit of interest dated the 27th of July 2022. [j] In the said affidavit of interest, the Claimant now deposed thus:

1. That I am the deponent herein and the Claimant in this suit.

2. That the facts contained herein are personally within my knowledge or matters regarding which I have been informed and/or advised and believe same to be true. ECUMENICAL vrs WE CARE & 2 ORS 5
3. That I am advised and verily believe same to be true that I have beneficial and/or legal ownership in a cold store located at Tema and known as Fishing Harbour (sic) Cold Store (hereinafter called "the Property") that have (sic) been attached in this action to sell as belonging to the Defendants/Judgment Creditors.
4. That I obtained judgment from the High Court Tema that declares that the 2nd Defendant/Judgment Debtor (Roger Smith International Company Limited) is holding the Property in trust for three other individuals and myself with the three others being 50% owners and I alone being the other 50% owner in the Property. I attach herewith the judgment as Exhibit A.
5. That I am also entitled to receive the current value of the Property as refund from these 50% owners which basically means that I am the 100% beneficial owner of the Property.
6. That I state that the 2nd Defendant/Judgment Creditor is not the beneficial owner of the Property for the Property to be attached and sold to pay its judgment debt. [k] The Claimant additionally annexed a copy of a judgment said to have been obtained on the 7th of May 2016 to his affidavit of interest and marked Exhibit A; and on which the Claimant now relies, to state that he has an equitable and ECUMENICAL vrs WE CARE & 2 ORS 6 legal interest in the disputed cold store because a High Court of co-ordinate jurisdiction has entered judgment for and on behalf of the Claimant against some other Defendants including the 2nd Defendant/Respondent herein. [l] Once again, the Plaintiff/Judgment Creditor filed an affidavit in response to the Claimant's affidavit of interest; and that affidavit clearly set out a proper record of the chronology of events as found on the docket and the records of the Court, confirming the events that had previously taken place before this Court. In the response of the Judgment creditor, he reiterated that the claimant had no interest whatsoever in the disputed cold store and assigned reasons thereto. [m] Due to the nature of this case and the period for which the matter had been before this Court, since 1998 thereabout, both Counsel filed written submissions to assist the Court, and I found the written submissions most helpful. I really appreciate the industry and hard work of both Counsel, especially that of the Plaintiff/Judgment Creditor's Counsel as he appeared to have been in this matter from the onset. I will reproduce relevant portions of the written submissions as we go along. 4. ISSUES SET DOWN [n] Counsel for the Claimant set down the following issues for determination in this matter and which simplifies the entirety of the matter before this Court thus: i. Whether or not there was an earlier interpleader claim as this claim brought under order 44 r 12 of CI 47. ECUMENICAL vrs WE CARE & 2 ORS 7 ii. Whether or not the earlier proceedings between the parties were "Interpleader" proceedings under order 44 r 12 of CI 47 or order 48 r 1 and 2 of CI 47. iii. Whether or not there was an "issue ... set down for trial" in the earlier proceedings between the parties. iv. Whether or not there was "a hearing on merits of the Claimant's claim to an interest in the

cold store” in the earlier proceedings between the parties.

- v. Whether or not the present claim is an abuse of court process. vi. Whether or not the Claim of the Claimant is res judicata. vii. Whether or not in the face of the judgment the Registrar can still have the property attached. 5. EVALUATION OF THE EVIDENCE AND THE LAW [o] The first four issues as follows:
 - Whether or not there was an earlier interpleader claim as this claim brought under order 44 r 12 of CI 47.
 - Whether or not the earlier proceedings between the parties were “Interpleader” proceedings under order 44 r 12 of CI 47 or order 48 r 1 and 2 of CI 47. ECUMENICAL vrs WE CARE & 2 ORS 8
 - Whether or not there was an “issue ... set down for trial” in the earlier proceedings between the parties.
 - Whether or not there was “a hearing on merits of the Claimant’s claim to an interest in the cold store” in the earlier proceedings between the parties. are going to be discussed together as I find that they relate to the procedure adopted for the determination of the previous interpleader application filed by the Claimant herein. [p] In respect of the above, Counsel for the Claimant submitted thus and I quote: “My lord, the procedure the learned judge adopted, with utmost respect, in that claim of the Claimant was neither the procedure provided for in Order 48 r 1 and 2 nor Order 44 r 12. Order 48 r 2 requires the “person seeking relief” which could be the “applicant” in Order 48 r 1 (a) (a private person) or “the registrar or other court official” in Order 48 r 1(b) to apply by motion on notice to the claimants (Order 48 r 2) and the Claimants as provided by Order 48 r 2 include the claimant and the Plaintiff. So, the registrar or any other court official should have been the person applying by motion on notice to the claimant and the plaintiff if Order 48 was what was invoked by the claimant. In this case, the Court rather made the claimant to issue motion on notice to the Plaintiff contrary to the rules. The Court then proceeded to hear the motion and gave the ruling of 16th November, 2006. The claim we humbly submit was not determined in accordance with the rules, as the processes and procedures ECUMENICAL vrs WE CARE & 2 ORS 9 adopted were not warranted by the rules. In S. Kwami Tetteh’s book: Civil Procedure Practical Approach at pages 644 to 645 he writes: “Where the claimants appear in pursuance of an order, the court may order any claimant to be defendant in the pending action in lieu of or in addition to the defendant or that an issue between the claimants be stated and tried and in the latter case may direct which of the claimants is to be plaintiff and which defendant. Where the claimants consent or any of them so requests, or where the question in issue is a question of law and the facts are not in dispute, the court may summarily determine the questions in issue and make an order on such terms as may be just.” The learned trial judge did not follow the laid down procedure in both Order 44 R 12 & 13 or Order 48 as explained by the learned author. Indeed, the Court was required to adopt the procedure provided for in Order 44 r 12 as that was the applicable rule the claimant

obviously chose to come by and not Order 48 procedure the learned judge purportedly used. The alien procedure adopted purportedly under Order 48 makes the decision void. The failure to adopt Order 44 R 12 & 13 further renders the procedure and ruling of 16th day of November, 2006 void. My lord, by the authority of *Mosi v Bagyina* [1963] GLR 337 at 338 the decision of 16th November, 2006 as void as not warranted by the rules. (Emphasis is mine) Counsel for the Plaintiff/judgment creditor naturally opposed the above. *ECUMENICAL vrs WE CARE & 2* ORS 10 [q] From the proceedings before this Court, there is no doubt that the Claimant commenced interpleader proceedings in accordance with order 44 rules 12 and 13 of the High Court (Civil Procedure) Rules, 2004, C1 47, as follows: Rule 12—Claims by other Persons

- (1) A person who makes a claim to or in respect of a property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such property, shall give notice of the claim to the Registrar and shall include in the notice a statement of the person's address for service.
 - (2) On receipt of a claim made under subrule (1), the Registrar shall forthwith give notice of it to the execution creditor who shall within four days after receiving the notice, give notice to the Registrar informing the Registrar whether the execution creditor admits or disputes the claim.
 - (3) Where (a) the Registrar receives a notice from an execution creditor under subrule (2) disputing a claim, or the execution creditor fails to give the required notice within the period mentioned in that subrule; and *ECUMENICAL vrs WE CARE & 2* ORS 11 (b) the claim made under subrule (1) is not withdrawn, the Registrar may apply to the Court for relief.
 - (4) An application for relief by the Registrar under this rule shall be made ex-parte to the Court seeking an order that the claimant and the execution creditor shall appear before the Court on a date specified in the order for the issue between them to be determined. (Emphasis is mine) Rule 13—Powers of Court Hearing Application for Relief
- (1) Where on the hearing of proceedings pursuant to an order made under rule 12(4) all the persons by whom adverse claims to the property in dispute, in this rule referred to as "the claimants" appear, the Court may (a) summarily determine the question in issue between the claimants and execution creditor and make an order accordingly on such terms as may be just; or (b) order that any issue between the claimants and the execution creditor be stated and tried and may direct which of them is to be plaintiff and which defendant. *ECUMENICAL vrs WE CARE & 2* ORS 12 [r] Order 48 of CI 47 deals with another kind of interpleader and Counsel for the Plaintiff/judgment creditor adequately explained that in his written submission. From the above therefore, it is trite that the discretion of a Court is invoked under order 44 rule 13 to determine an interpleader application either summarily or by a trial; and the original interpleader application was dealt with summarily and properly in accordance with law. Likewise, this Court, considering the period for which the parties have been before the Court and the issue of whether or not the Claimant herein has any

interest whatsoever in the disputed cold store, this Court exercised her discretion to summarily determine this matter in accordance with the rules. [s] Counsel for the Judgment Creditor rightly cited the unreported Supreme Court case of Anthony Kwabena Anyan v The High Court, Accra (suit no. CM J5/37/2008 of 10th December 2008, to explain the types of interpleader which order 44 describes. From the entirety of the matter before me, it is not in doubt that the Plaintiff/judgment/creditor did indeed obtain judgment against the Defendants herein; and as rightly submitted by Counsel for the Judgment Creditor, that judgment for the recovery of ₵150,000,000 has not been set aside. The Claimant herein was not a party to the suit and so the judgment creditor has a right to go into execution against the Defendants herein, and this the Judgment Creditor sought to do by attaching the disputed cold store. [t] That was when the Claimant filed the notice of claim and the Court granted him the opportunity to file his affidavit of interest and the Claimant did. The ECUMENICAL vrs WE CARE & 2 ORS 13 Court found as a matter of fact that the Claimant herein had no interest in the disputed property and the Appellate Court had a similar view when the Claimant's application for stay of execution was dismissed at the Court of Appeal. [u] With all due respect to the Claimant and his Counsel, I do not find the decision of the Court, dismissing the claims of the Claimant a nullity; and neither do I find the procedure used in determining the original application irregular. It must also be noted that the Court delivered a ruling dismissing the original claims; and a second ruling refusing to stay execution of the Court's ruling, that the Claimant had no interest in the disputed cold store. Therefore, if the Claimant is dissatisfied with the decision, his remedy does not lie in a repeat application. Furthermore, once the claims of the Claimant have been dismissed, again, the remedy is not to file a repeat application before the same Court; when the original order dismissing the first interpleader application has not been set aside. [v] The fact that the interpleader application was dealt with summarily does not mean the merits of the case was not gone into by the Court. The entire essence of the application before the Court was to determine whether or not the Claimant had an interest in the disputed property; whether by way of ownership or any other interest. Consequently, the Court found as a matter of fact that the Claimant had no such interest in the disputed property, such that this Court dismissed the Claimant's action. I therefore do not find the procedure in the determination of the initial interpleader proceedings wrongful and/or unlawful as the interpleader ECUMENICAL vrs WE CARE & 2 ORS 14 application was summarily determined in accordance with the provisions of CI 47. [w] Without belabouring the point, I proceed to deal with the final set of issues as follows:

- Whether or not the present claim is an abuse of court process.
- Whether or not the Claim of the Claimant is res judicata.
- Whether or not in the face of the judgment the Registrar can still have the property attached. [x] Regarding the above issues, I find the submissions of the judgment creditor's Counsel relevant here when it was submitted at paragraphs 93, 94 and 95 as follows:

93. “It is not in dispute that the Second Interpleader Proceedings is in respect of the same subject matter between the same parties and in respect of the same issue. It is also not in dispute that as between the same parties, Korbieh J had determined that the claim by the Claimant that by virtue of the matters alleged by him in the First Interpleader Proceedings did not vest him with any interest in the property subject matter of the Interpleader Proceedings. It is also not in dispute that the facts which the Claimant had alleged vested him with an interest in the property are the same facts on which he relies upon in the Second Interpleader Suit. ECUMENICAL vrs WE CARE & 2 ORS 15
94. By the doctrine of estoppel per rem judicatam, a judgment rendered by a judicial tribunal of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies as, and as to them, and constitute an absolute bar to a subsequent action involving the same claim. 95. It is submitted that since Korbieh J has decided the issue of the claim by the Claimants to have an interest in the property and the Claimant is estopped per rem judicatam and cannot in the Second Interpleader Proceedings re-litigate the issue.” I agree with the Judgment Creditor’s Counsel, that the second application filed constitutes “is an abuse of process because the Claimant is estopped per rem judicatam by the earlier decision on the same subject matter between same parties.” [y] It is trite that a judgment includes an order or ruling, see order 82 rule 3 on interpretation in CI 47, and the ruling or the orders of the Court finally determined the issue of the Claimant’s interest in the disputed cold store. In the case of Peter Osei Assibey vrs Lands Commission [2019] 136 GMJ 123, it was held: It needs be said that for a judgment to operate as res judicata, it must be valid and subsisting; that is, it must be a final judgment delivered by a court of competent jurisdiction, otherwise, the judgment could not operate as res judicata to bind the parties. ECUMENICAL vrs WE CARE & 2 ORS 16 Plea of res judicatam is in the interest of the public that there should be an end to litigation. See Assafuah v Arhin Davis (2014) 78 GMJ 58. [z] I am unsure as to why the Claimant did not pursue the appeal but sought to bring this second interpleader application on the same subject matter, since it is trite that an appeal is by way of rehearing. Perhaps, it is because the Claimant seeks to rely on a judgment he has purportedly obtained against the 2nd Defendant herein and others, holding the Claimant out as having some interest in the form of some form of trust for and on behalf of the Claimant herein in the disputed cold store. [aa] I find that apart from the fact that the judgment obtained by the Claimant herein is not binding on the Plaintiff as he was not a party to the suit, the Claimant has also not been able to establish before this Court that the 2nd Defendant/judgment debtor herein has no interest at all in the disputed cold store. The judgment creditor is at liberty to go into execution against the Defendants/judgment debtors, and any property they have an interest in can rightly be attached in execution of the judgment debt against the Defendants herein.
- 6.

CONCLUSION

[bb] As rightly shown by the Judgment creditor, the 2nd Defendant surely has an interest in the disputed property and I am unable to grant the Claimant's present application that he has an interest in the disputed property. ECUMENICAL vrs WE CARE & 2 ORS 17 The Claimant's application be and is hereby dismissed for the foregoing reasons and the Judgment creditor is at liberty to go into execution against the Defendants herein. Considering the entire circumstances of this case and the duration, costs of GH¢5,000.00 awarded in the Plaintiff/judgment creditor's favour. SGD. JUSTICE PATRICIA QUANSAH HIGH COURT 'B' TEMA GREATER ACCRA REGION. 21ST FEBRUARY 2024. COUNSEL: ALI GOMDA ABDUL – SAMAD ESQ, COUNSEL FOR THE CLAIMANT KIZITO BEYUO ESQ. COUNSEL FOR THE PLAINTIFF/JUDGMENT CREDITOR ECUMENICAL vrs WE CARE & 2 ORS 18

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