IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD.2025

CORAM: BAFFOE-BONNIE AG. CJ (PRESIDING)

KULENDI JSC

ASIEDU JSC

KWOFIE JSC

DARKO ASARE JSC

CIVIL MOTION
NO. J5/40/2024

25TH JUNE 2025

THE REPUBLIC

VRS.

THE HIGH COURT, ACCRA (COMMERCIAL COURT 9)

EX PARTE:

UNIVERSAL MERCHANT BANK …. APPLICANT

1. MORGAN INTERNATIONAL SCHOOL

2. OBED DANQUAH …. INTERESTED PARTIES

RULING

KULENDI JSC:

INTRODUCTION:

1. This is an application invoking the Supervisory jurisdiction of this Court under Article 132 of the 1992 Constitution and Rule 61 of the Supreme Court Rules, 1996 (C.I. 16). The Applicant is specifically praying for an order of certiorari to remove into this Court for the purpose of quashing an interlocutory judgment entered by the High Court (Commercial Division 9) Accra, dated 14th December 2023 on grounds of the lack of jurisdiction and a fundamental errors of law.

2. The origins of the dispute, as may be inferred from Applicant's affidavit in support and the various exhibits attached thereto, lies in a credit transaction between the Applicant as the Plaintiff in the High Court and the 1st Interested Party as the 1st Defendant at the High Court. The Applicant initiated the action by Writ of Summons against the Interested Parties on 23rd December 2022, seeking a recovery of an outstanding debt of Six Million Four Hundred and Forty-Six Thousand Five Hundred and Seventy-one Ghana Cedis and Sixty-Three pesewas (GHS 6,446,571.63), the judicial sale of a mortgaged property, enforcement of a personal guarantee by the 2nd Interested Party and ancillary reliefs.

3. The Interested Parties entered appearance and filed a defence and counterclaim on 21st June, 2023, asserting, inter alia that the contract was frustrated and that the credit arrangement was null and void under the Borrowers and Lenders Act, 2020 (Act 1052) due to the absence of a pre-lending disclosure agreement. Under their Counterclaim, the Interested Parties sought the following reliefs:

    a) *A declaration that the Plaintiff's acts and conduct in all the circumstances of its referenced Credit transaction with the 1st Defendant amount to breach of Contract.*

b) *A Declaration that the Plaintiff's referenced Credit transaction with the 1st Defendant was frustrated by force majeure and not enforceable in law and equity.*

c) *An order that the Plaintiff failed to execute a pre lending disclosure Agreement before concluding the Credit transaction with the 1st Defendant thereby rendering the said Credit transaction null and void.*

d) *An order cancelling or setting aside the entire transaction under the Borrowers and Lenders Act, 2020 (Act 1052).*

e) *Alternatively, an order that an account be taken between the Plaintiff and the 1st Defendant and further that the Plaintiff do pay to the 1st Defendant what sums, as on the taking of the account may be found to be illegal payments or overpayment made by or demanded from the 1st Defendant.*

f) *Damages for breach of contract.*

g) *Perpetual injunction to restrain the Plaintiff from taking any steps whatsoever intended to enforce the said loan agreements in a manner whatsoever against any property of the 1st Defendant given or vested in the Plaintiff as security for the said money lending transaction.*

h) *Recovery of Seven Million Ghana Cedis (Ghc7, 000,000.00) as damages for the economic losses suffered from the Plaintiff's breach of the Credit transaction.*

i) *Cost including Solicitor's fee*

4. Subsequently, the Applicant brought an application under Order 11 Rule 18(1) (a) of the High Court Civil Procedure Rules, 2004 (C.I. 47), praying the High Court to strike out the Interested Parties' pleadings, which application was dismissed on 5th December 2023.

5. Thereafter, on the 10th of August, 2023, the Defendants filed an application for judgment in default of defence to their counterclaim, which was heard on 14th December, 2023 and granted, despite the spirited opposition by Counsel of the Applicant. This decision resulted in an Interlocutory Judgment being entered in favour of the Interested Parties in respect of all reliefs above enumerated in the following terms:

   "Declaratory reliefs, reliefs for damages etc. are amenable to Order 13 Rule 6 of CI 47. As the rule states, the Court shall give such judgment as the Plaintiff appears entitled to by this Statement of Claim. The Defendant/Applicant by his Statement of Defence and Counterclaim is entitled to Interlocutory Judgment. In the circumstances, Interlocutory Judgment is entered for the Defendant/Applicant for the reliefs as endorsed on his counterclaim. Further directions regarding the filing of Witness Statements would be given at a later date."

6. It is in challenge of the said ruling that the Applicant has instituted the present application, invoking the supervisory jurisdiction of this Honorable Court pursuant to Article 132 of the 1992 Constitution and Rule 61 of the Supreme Court Rules, 1996 (C.I. 16), seeking an order of certiorari to quash the Interlocutory Judgment in Default of Defence to Counterclaim entered by the High Court, Accra, on 14th December, 2023.

THE APPLICANT'S CASE:

7. Primarily, the Applicant contends that the High Court fundamentally erred by granting interlocutory judgment in respect of reliefs which were inherently not amenable to such summary disposition.

8. It is the case of the Applicant that reliefs such as the declaratory reliefs claimed, require a trial on the merits, supported by evidence and legal argument, and therefore could not be granted by way of interlocutory or default judgment under Order 13 Rule 6 of C.I. 47.

9. The grant of these substantive reliefs by interlocutory judgment, in the Applicant's view, constitutes a jurisdictional overreach and a manifest disregard of established legal principles, particularly the rule that declaratory reliefs and damages cannot be obtained in default of defence without full trial.

10. In light of the foregoing, the Applicant seeks an order of certiorari to quash the entire proceedings and judgment of the High Court dated 14th December, 2023, on the grounds that they were tainted by fundamental errors of law, and made in excess of the Court's jurisdiction.

INTERESTED PARTIES CASE:

11. The Interested Parties vehemently opposed the instant application, contending that the application is wholly unmeritorious, and frivolous.

12. The deponent, Mr. Obed Danquah, Chief Executive Officer of the 1st Interested Party and 2nd Interested Party in the proceedings avers that the application was

not served on the Interested Parties until 19th May 2025, more than a year after its filing on 12th March 2024, and thus ought to be dismissed for inordinate delay and failure to prosecute with due diligence.

13. On the substance, the Interested Parties concede certain background matters in the Applicant's affidavit specifically the procedural history culminating in the grant of an Interlocutory Judgment in Default of Defence to the Counterclaim by the High Court on 14th December 2023. However, they assert, as a matter of law and fact, that the said judgment was not a final determination of the suit, but rather a procedural step necessitated by the Applicant's failure to respond to the counterclaim after several months of service and notice.
14. Critically, the Interested Parties argue that the High Court expressly recognised in its rulings, both in granting the interlocutory judgment and in dismissing the Applicant's subsequent motion to set aside the same, that the issues raised in the counterclaim could only be finally adjudicated after the Interested Parties adduce evidence in support of their claims. Indeed, the matter is presently at the case management stage, with witness statements filed by both parties in anticipation of a full trial. Copies of these statements are annexed to the affidavit in opposition.

15. In this regard, the Interested Party contends that the judgment complained of is not one that conferred final declaratory or executable reliefs, nor has it been enforced or acted upon. As such, there exists no miscarriage of justice, and no breach of jurisdiction by the High Court.

16. The Interested Parties further assert, upon the advice of counsel, that Article 140 of the Constitution vests the High Court with full original jurisdiction in civil matters, including the authority to grant interlocutory judgments where

appropriate under the High Court (Civil Procedure) Rules, 2004 (C.I. 47). The Court properly exercised its discretion under Order 13 Rule 6, having heard legal arguments from counsel for both sides, and the Applicant never contended, before the High Court, that the Court lacked jurisdiction to render the interlocutory judgment.

17. The Interested Parties further contend that the Applicant has neither articulated any specific jurisdictional error, nor demonstrated how the alleged error has occasioned any prejudice. Rather, the Interested Parties argue that the present application is characterized as a tactical ploy, brought in bad faith, to delay proceedings and waste the time of the Supreme Court. The Applicant's failure to appeal the relevant High Court rulings further undermines the bona fides of its position. Accordingly, the Respondents invite this Court to dismiss the application for certiorari as frivolous, vexatious, and an abuse of process, and to award punitive costs against the Applicant.

ANALYSIS:

18. The point is now settled beyond cavil that a declaratory relief must be granted only after a hearing on the merits, and not summarily or in default, unless the party against whom it is sought has been served and heard or expressly waived hearing.

19. We must point out that this Court has already settled the issue with regard to the entry of default judgments in declaration/reliefs in the cases of: *In Re Nungua Chieftaincy Affairs; Odai Ayiku IV v. The Attorney-General (Borketey Larweh XIV – Applicant) [2010] SCGLR 413 @ 416; Republic v. High Court, Accra; Ex Parte Osafo [2011] 2 SCGLR 966; and Rev. De-Graft Sefa & Others v. Bank of*

Ghana (unreported judgment of the Supreme Court in Civil Appeal No. J4/51/2014, dated 19th November 2015).

20. This Court's decision in the case of **Republic v. High Court, Accra; Ex Parte Osafo [2011] 2 SCGLR 966** is instructive. In that case, this court interpreted the very Order 13 Rule 6 of C.I. 47 relied on by the High Court to require the tendering of evidence before a declaratory relief could be granted. The Court emphatically held that:

"Failing to do this before granting such a declaratory relief renders the judgment granting the said relief a nullity."

21. This principle is neither novel nor limited to our jurisdiction. In **Metzger v Department of Health & Social Security [1977] 3 All ER 444 at 451,** Megarry VC declared:

"The court does not make declarations just because the parties to litigation have chosen to admit something. The court declares what it has found to be the law after proper argument, not merely after admission by the parties."

22. Similarly, Halsbury's Laws of England, Vol. 37, para. 252, reinforces the principle that:

"A declaratory judgment or order should be final… but should not be granted in the course of interlocutory proceedings or by way of interim declaration."

23. In the case **of Rev. Rocher De-Graft Sefa and Others v. Bank of Ghana (unreported: Suit No. J4/51/2015 dated 19/11/2015)** this Court, speaking through the illustrious Gbadegbe, JSC said as follows:

"A careful reading of Order 10 of the High Court (Civil Procedure) Rules, C.I. 47 reveals that a declaratory relief does not come within the reliefs mentioned in rules 1 to 4 of the order and this is justifiably so because the settled practice of the courts is that a declaratory relief cannot be obtained by a motion in the cause but after hearing the parties either by way of legal argument or a full scale trial."

24. In the present case, it is undisputed that the High Court granted an interlocutory judgment on the counterclaim in default of defence to same. It is equally undisputed that the reliefs endorsed on the counterclaim included multiple declaratory orders, general and special damages, a perpetual injunction, and an order to set aside a contract.

25. These reliefs, as has been settled above, were clearly not amenable to being granted without the tendering and evaluation of evidence. In the circumstances, it is our considered view that the judgment, purporting to grant these reliefs summarily, by means of an interlocutory judgment in default of Defence to Counterclaim, was undertaken in excess of the jurisdiction conferred on the Court and in violent contravention of settled law and practice.

26. Indeed, declaratory reliefs are not amenable to interlocutory disposal, for they represent the Court's solemn pronouncement on the legal status of parties' rights and obligations and may be binding beyond the immediate litigants. The error committed by the learned trial judge was not merely procedural, it constituted a jurisdictional overreach, for the Court could not lawfully grant interlocutory declaratory judgments, nor perpetual injunctive reliefs without the necessary evidentiary foundation. In the circumstances, the said judgment rendered was a legal nullity.

27. The Interested Parties have sought to downplay the significance of the interlocutory judgment by suggesting that the learned trial judge had not intended it to be final, and that she anticipated receiving evidence at a later date. Respectfully, this submission rather exposes the inherent infirmity in the procedure adopted by the Court and, ironically, reinforces the Applicant's case.

28. The learned trial judge's express indication that she intended to receive evidence at a later stage is, in fact, a tacit acknowledgment of a critical legal truth: that the reliefs sought, being declaratory, injunctive, and for damages, could not lawfully be granted in the absence of adduced and tested evidence. It is precisely because she was cognizant of this legal requirement that she projected the reception of evidence into the future.

29. If the trial judge herself was aware that the reliefs required evidentiary grounding, then the interlocutory judgment she purported to enter was, by her own admission, premature and legally unsustainable. Indeed, such a judgment could not be executed, enforced, or relied upon as a conclusive determination of rights or obligations. It begs the question: what purpose was then served by granting such an interlocutory judgment?

30. This contradiction exposes the interlocutory judgment as an exercise in futility. The Court is not permitted to engage in acts which are *"brutum fulmen."*

31. Further, the trial judge's intention to do the proper thing later cannot sanitize or retroactively validate the improper step taken earlier. The fact remains that

the interlocutory judgment purported to grant substantive declaratory and injunctive reliefs without a hearing on the merits, contrary to the settled legal position established in Ex Parte Osafo *supra* and other binding authorities.

CONCLUSION:

32. In the premises, we are of the considered opinion that the interlocutory judgment in default of Defense to Counterclaim, entered by the High Court (Commercial Division 9) Accra, on the 14th of December, 2023 in the case of Universal Merchant Bank vrs. Morgan International School and Anor with Suit No. CM/BFS/0202/2023, constituted an error of law patent of the face of the record, which error went to jurisdiction. Accordingly, we hereby order that the Interlocutory Judgment in Default of Defence to Counterclaim dated 14th December 2023, entered by the High Court, (Commercial Division 9) Accra, be removed into this Court for the purpose of being quashed and same is hereby quashed.

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

(SGD.) P. BAFFOE-BONNIE
(AG. CHIEF JUSTICE)

(SGD.) S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD.) H. KWOFIE
(JUSTICE OF THE SUPREME COURT)

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