

THE BENCH

Association of Magistrates and Judges of Ghana

2022 EDITION



The Hydra-Headed Burden of Judges

- Allocation of evidential burden in the context of negative averments: a critical look
- Reflections on personal tax reliefs and allowable deductions under Ghana Tax Law

Final informed pleas of guilty and fair trials

Muslim marriages and divorces in Ghana

Revised recent changes in Civil Procedure

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EDITORIAL

“Her complexity is a glorious fire that consumes, while her simplicity goes unapproachable. But if one takes time to understand her, there is something beautiful to find, something simple to be loved. But she goes unloved, for being misunderstood.”

— Anthony Liccione

This year, the BENCH could not help but dwell on the hydra-headed burdens of judgecraft and judgehood. Over our journey from which we have morphed as the JUDICIAL JOURNAL, to the BENCH, we have done much rumination to bring the significant issues of judgehood and judgecraft to the AMJG.

In all the thought travels on the subject, what we have become sure of is that the work and career of a Judge are not simple but sophisticated like the law itself. Then there is the huge ethical load placed on the Judge doing a work that is essentially the mandate of the purest – the one who can cast a stone against his fellow humans. And which human can be that pure? But it is the Judge's burden to ensure that while we tell the citizenry the verdict of the court, the process of arriving at the verdict can pass the test of independent evaluation of the law, transparency, propriety, independence of thought and actions, competence, equality of treatment, integrity to the law and records before the court, and

above all, compliance with the law that the Judiciary is created to uphold. There is no room for the biblical unjust Judge in the land of the living.

Let us begin by considering the sole mandate cast on the Judge to administer justice. Is justice according to law – as asks Roscoe Pound – or dare it go beyond what the law exactly says, in order to fulfil some moral or social inclinations of the actors in court? No doubt for us in Ghana, justice cannot go outside of the law. The difficulty lies in where the law points to in any given case before us.

The law is not logical. The maze that Article 11 of the 1992 Constitution represents should inform every citizen that the law is layered, complicated, and a harrowing mass from which Judges are to extract the exact strands to apply to each fact specific case. Let us remind ourselves of the scope of law in Ghana:

THE LAWS OF GHANA

1. The laws of Ghana shall comprise
a. this Constitution;

b. enactments made by or under the authority of the Parliament established by this Constitution;

c. any Orders, Rules and Regulations made by any person or

d. the existing law; and

e. the common law.

2. The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature.

3. For the purposes of this article, "customary law" means the rules of law which by custom are applicable to particular communities in Ghana.

4. The existing law shall, except as otherwise provided in clause (1) of this article, comprise the written and unwritten laws of Ghana as they existed immediately before the coming into force of this Constitution, and any Act, Decree, Law or statutory instrument issued or made before that date, which is to come into force on or after that date.

5. Subject to the provisions of this Constitution, the existing law shall not be affected by the coming into force of this Constitution.

6. The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution.

The first predator the court has to face is – what is the applicable law in this particular conundrum? The business of justice delivery is unavoidably made burdensome in the Judge's primary function of extracting and establishing what the justice of the specific facts and proceedings demand. Must the decision rest on compliance or breach of rules on procedure and time that give or take jurisdiction from the court? Must the decision rest on compliance or breach of rules on the duties and standards of the law on evidence that make the case unsustainable? Or after complying with every technical requirement that gives the court jurisdiction and discharging the duties and burdens of evidence, parties have failed to prove essential ingredients of the very areas of law they claim rights and entitlements from?

In this edition, you will find various articles that we believe will pique your attention on the burdens of judging. But one case in particular is presented through several articles as well. The case of **The Republic v High Court (Criminal Division 9) Accra (Respondent); Ex Parte Ecobank (Applicant); Origin 8 Limited, Greater Accra Passenger Transport Executive (Interested Parties/Respondents);** Civil Motion No. J5/10/2022 (18th January 2022)

The case is centred on the issue of the jurisdiction of the high court when it comes to the application of CI 132. Why has it generated such heat and discussion? Clearly, the junctions of policy, philosophy and the harmonisation of law and rules

remains a murky ground that continues to test the understanding of even lawyers and judges. How much more the public who can feel done out of the very access to effective and efficient justice that CI 132 was supposed to contribute? We invite you to read all three articles to find the thorny issues and resolutions that invited the storm of writing after delivery of the Origin 8 ruling. And gently meditate on the lessons it brings to the Judiciary on the burden of harmonisation of each strand of law into the mosaic of justice.

But had it been that the herculean task of upholding the scales between fellow journey men is the only weight carried by the Judge, I doubt that the average Judge could feel as bent over in the carriage of it like Atlas. There are constant and various off shoots of this weighty career that make the role a fear-some one – not only to the citizen who has to address the Judge as Worship, Honour or Lord, and pass all the tests of procedure, evidence and substantive law - but also to the Judge who must function in an altogether predatory environment’.

In any given day, whether a court enters decisions in twenty or five cases, the Judge is bound to make twenty or five people unhappy and twenty or five people happy, after cracking their brains and engaging judicial skills to deliver the exact recipe that constitutes justice in the case before them. And no matter how clarifying a judicial decision is, the losing party is bound to find it unclear. The process of interpreting and

applying the law is misunderstood, simply because the law is not logical, or dare I say, not even moral in its intrinsic nature. (if it was, why would it be the duty of a plaintiff to prove their case when they are the ones suffering the effect of the defendant’s behaviour?). This unhappiness generates the second predator we draw attention to – the oprobium of society when it cannot appreciate the basis of the justice delivered in their case. Or when they feel locked out of access to the very justice they came to court.

This is why the Bench invites all Judges to be committed to the skills of judgecraft – clear and transparent case management, court room management, and writing of rulings, judgments and orders.

The last burden (out of a myriad!) we will like to dwell on in this editorial is the predator of perceptions of corruption that the relays in the access to justice and the cultural environment we operate in present. Before the justice delivery process ends in a verdict and execution of a judgment, great are the numbers of people who must handle the baton of justice delivery. From lawyers to registry staff to court room staff, the Judge’s work depends on a many stakeholder. Each of these people can misrepresent their work and the Judge to hapless litigants, who are anxious for a favourable verdict.

How does a judge maintain their personal reputation and the institution’s reputation in the midst

of this sea? The BENCH has endeavoured to bring you enlightening words from our authors. Of particular juice are the features on our icons this year. Please take time to read what they add to the conversations on this tough journey. We are in this together. We must prevail and win over each judicial predator together. We will end with the enigmatic words of the 17th and current Chief Justice of USA John Roberts.

“Judges are like umpires. Umpires don't make the rules. They apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role. Nobody ever went to a ballgame to see the umpire’.
John Roberts

We believe that every stakeholder in the justice delivery process must be aware of the fact that justice delivery starts long before parties ever see a Judge. When the citizenry learns to appreciate what their legal obligations are; and gives entitlements without argument, the rule of law is upheld seamlessly and constantly, and justice becomes the norm. In that environment, the true place of the judiciary as the final bastion of justice is actualized with minimal fuss.

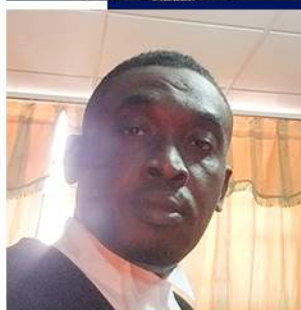
God bless you, and please endeavour to have a beautiful covid 19 free year.



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JA(MEMBER)



JUSTICE
GETRUDE
TORKORNOO
JSC (MEMBER)



JUSTICE
EMMANUEL
ATSU LODOH
(CHAIRMAN)



JUSTICE
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Welcome message from President of AMJG

Justice Henry Kwofie, President, AMJG

On behalf of the Executives of the Association, I take this opportunity to welcome you to the 2022 legal year which commences next week. Data received during the last legal year indicates that judges and magistrates have put their best foot forward in actualizing the judicial mandate.

This year has been eventful. We have had the successful Commonwealth Magistrates and Judges Association (CMJA) Conference which was held in Accra from 5th to 9th September, 2022.

The infrastructure of the Judicial Service has also been boosted by the construction of one hundred (100) court houses and residences in selected regions.

Dear members, notwithstanding these land mark achievements, the Association is still faced with challenges, particularly regarding the welfare of judges and magistrates, such as delays in the payments of allowances. As Executives, we will continue to make representations to management on improving the situation.

On behalf of the Association I wish all of us a happy and fruitful 2022. Do enjoy reading the journal. Thank you all.



Speech by Chief Justice at AMJG CONFERENCE 2022. His Lordship Justice Anin Yeboah.

Hon Attorney General and Minister for Justice, National President and Executives of the Association of Magistrates and Judges of Ghana, National President of the Ghana Bar Association, My Lord Justices of the Superior Courts of Judicature, Your Honours and Your Worships, The Director of the Ghana School of Law The National President of the Judicial Service Staff Association of Ghana Distinguished Guests, Our friends from the Media, Ladies and Gentlemen, Good Morning.

I am happy to be addressing the 41st Annual Conference of the Association of Magistrates and Judges of Ghana. The annual conference is indeed an important event on the calendar of the Judiciary as it offers an opportunity for us all to take stock and reflect on our past performances, and to resolve to

work even harder in fulfilment of our mandate.

An occasion such as this is an opportunity for deep reflection and introspection for the purpose of evaluating past performances to identify where we fall short and strategize to secure the future by performing better.

I wish to use this occasion, which is certainly the last for me as Chief Justice, to thank each and every one of you- distinguished members of the Judiciary, for your contribution to justice delivery. Obviously, you are the chief instrument for justice delivery and the enforcement of the law. I am therefore particularly grateful to those who have worked so tirelessly to keep the peace of our country generally, and specifically in the rather difficult task of maintaining law and order. Some of you worked under very

challenging conditions in the last legal year. You deserve commendation.

I need not remind you about the aims and objectives of the Association which include promoting the welfare of members and keeping abreast of developments in the law. The Association also serves as a link between the Administration and its members to ensure that concerns are addressed to maintain conducive working environment.

The AMJG must help to educate its members to understand and maintain cordial working relations with members of the Bench, the Bar, the entire Judicial Staff and the public as our jurisdiction to adjudicate is invoked by the public.

The theme for this conference: ***“Maintaining the Integrity of the Judiciary Amidst Challenges of Democratic Rights and Freedoms”***, is very apposite. The judiciary exists to serve the justice delivery needs of all Ghanaians without a single exception. The contributions of all and sundry are also invaluable to our very survival as a nation. But clearly, it must be understood that the rights of everybody must be protected within the confines of the law which lies squarely at the doorstep of the Judiciary.

Decisions of the courts have sometimes resulted in an outcry within the society. However, the misinterpretations or misunderstandings of court decisions, regardless of the motives with which they are done,

and the pressures they exert on you, should not cause you to waver in your fidelity to the law. Yours is to dispense justice and to uphold the rule of law irrespective of public clamour. As judges you must always withstand such pressures as anything contrary to that will be a departure from the rule of law.

As the country makes progress towards the enhancement of democratic governance, it is important to ensure that our ‘systems’ work efficiently and effectively to meet the just expectations of the people in whom sovereignty and justice reside. You will agree with me that the Judiciary, like all other institutions of state exists for the sake of the people’s welfare and we cannot afford to disappoint or fail them. This is the real challenge we must endeavour to address, bearing in mind that the ultimate goal of democracy is the enjoyment of all human rights and freedoms by the people within the confines of the law.

The point can hardly be articulated that Ghana’s justice system which is underpinned by the rule of law has been tried and tested over the years. Juxtaposed against the chaotic period preceding the country’s return to democratic governance, our current justice system strikes chords of appreciation, even in established democracies worldwide. As the saying goes, “you don’t value what you have unless you lose it.” Contextually, the consequences of losing what we have, in terms of our justice system, will be

unthinkable. We must, therefore, individually and collectively do what is humanly possible to prevent losing what we have, bearing in mind that “an ounce of prevention is better than a pound of cure.”

Any strong defense of our justice system does not, and cannot, obscure the fact that it has its fair share of imperfections as a human institution. Like all human institutions perfection is an impossible goal. This reality lends credence to constant scrutiny with the view to ensuring that our justice system is firmly on the path of professional rectitude and accountability. In this respect, one effective tool is fair criticism.

It bears emphasizing that the Judiciary is not immune from criticism. Indeed, the Judiciary needs criticism. This will enable this critical institution to be more responsive to the justice delivery requirements of the public and other pillars of Ghana’s democracy.

While underlining the freedom of the public in general and interest groups in particular to criticize the Judiciary, I also wish to reiterate that this should always be done within the boundaries of the law. Freedom anywhere has no absolute value. Simply put, freedom of speech has its limits. This is an incontestable fact. And we should all bear this in mind when dealing with a hyper-sensitive institution like the Judiciary.



As observed by the late Lord Denning, a well-known English judge:

“We do not fear criticism, nor do we resent it. It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. The principle is that so long as the criticism imputes no improper motive on the part of the judge and does not suggest a lack of impartiality there is no contempt.”

I recall with pain and discomfort, a few instances when even high profile lawyers who know the law fell-foul of the law in their gymnastics to play to the gallery, score political points or scandalize the court. No one should lead our judges into temptation to invoke the law on contempt.

We cannot forbid people from expressing their sentiments in the public sphere but unsubstantiated and wild allegations against judges, physical and verbal threats and attacks on judges are abhorrent and tantamount to attempts at perverting the course of justice. These must not be countenanced as they tend to erode the respect and successes we have chalked up as a nation in our democratic journey, to the admiration of the international community. It is well known too, that some of our Judges have served with distinction outside our jurisdiction

The Service, despite the constraints will continue to strive to provide the necessary tools and the correct working environment to enable you to thrive and give off your very best. We know that the working conditions for some of you, especially those in the suburban areas is disappointing. We are working to improve the situation. We are investing more resources into refurbishing old court infrastructure, including accommodation while we construct new ones in other areas.

I am happy to report that as from next month we will witness the inauguration of the Court of Appeal Bungalows Project at Danyame in Kumasi, together with 60 new Courthouses and bungalows throughout the country. These are among the 100 new court infrastructure nationwide promised by the Government to improve access to justice.

This has been made possible with funding support from the District Assemblies Common Fund. I, therefore, want to commend the Administrator of the Common Fund and Government for making this a reality. Preparations are also underway for sod-cutting for the commencement of work on the Cape Coast High Court Complex opposite Adisadel College. Work on the Wa Court Complex is on the front burner and will be tackled in phases.

Efforts to infuse the application of technology in our work in the courtroom is still on-going under the government's e-Transform Programme, even though progress has been slower than we anticipated as a result of the COVID-19 pandemic and post COVID re-adjustments.

We have received increased funding support from the World Bank for the expansion of the e-Justice system from the 51 High Courts in Accra to the High Courts in five regional capitals. The World Bank is further supporting the process at the District Court level while the European Union through the EU Delegation in Ghana is seeking to introduce the intervention at the Circuit Court level, all on pilot basis. All this is with the aim of ensuring a seamless flow in the Court Case Management System through the application of technology. And this should drum home the fact that the e-Justice system has come to stay.

I urge you, colleague Judges and Magistrates, to be particularly abreast of emerging issues surrounding cyber-security and be alert to protect victims of cyber bullying and other cyber-crimes, particularly children and the vulnerable.

There are indeed exciting times ahead and we all must take advantage of the innovations to give our compatriots nothing but the best in justice delivery. We should also be mindful of our judicial oath, to ensure utmost fidelity to the rule of law and to work without fear, favour, affection or ill-will and treat all, who come before us, equally.

On this note, I wish you a productive AGM and pray that the decisions that will be taken will advance the work of the Association and even more importantly result in an improved judicial performance. It is now my singular honour to declare the 41st Annual General Meeting of the Association of Magistrates and Judges of Ghana duly open.

May God bless the work of our hands this New Legal Year and make our nation great and strong. I thank you.



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AN EXAMINATION OF THE CASE OF ORIGIN 8 AND C. 1. 132: A STILL BORN PIECE OF LAW OR AN AUSTERE INTERPRETATION BY THE SUPREME COURT?

By Justice Eric Kyei
Baffour, Court of Appeal
Accra

INTRODUCTION

The coming into force of the Court of Appeal (Amendment) Rules, 2020 C. I. 132 was hailed by the legal fraternity as a smart piece of legislation that had been crafted as a welcome relief to successful parties who were usually taken through the drudgery of frustration from motions for stay of execution from the trial court, and upon refusal, repeated at the Court of

Appeal. The need to first file an application at the trial court for stay of execution and upon refusal, repeat it at the Court of Appeal tended to prolong the time of completion of execution after judgment. This caused the attractiveness of Ghana as a destination for doing business in the World Bank global rankings to dip significantly. In fact, the 2019 rankings noted that it

took seven hundred and ten days (710) to enforce a contract and three hundred and thirty days (330) to enforce a judgment in Ghana. As weightier matters of execution, appeal and applications for interim reliefs pending the determination of an appeal are all matters of procedure, the Rules of Court Committee, in the exercise of its functions as spelt out under article 157(2) of the Constitution through Parliament, sought to close this fertile area of delays in execution processes exploited by losing parties. The coming into force of The Court of Appeal (Amendment) Rules, 2020, C. I. 132, was therefore viewed with optimism by many a litigant and their lawyers. What was however found and discovered to be a new way of doing an old thing and avoid repetitive applications for stay of execution both at the trial court and the Court of Appeal, in the opinion of the Supreme Court, has not achieved that objective.

This article critically examines the case of Civil Motion No. J5/10/2022 **Republic v High Court, (Criminal Division 9), Accra Ex Parte Ecobank Ghana Ltd; Origin 8 & Anor (Respondents & Interested Parties)**. In fact, the case was not against a decision of the Criminal Division 9 but rather the Commercial Division 9, Accra and the “Criminal” found in the title of the case might have been a typographical error. The article analyses the constructive kits in the quiver of a Judge that are supposed to be employed by the court in its appreciation of the scope and application of C. I. 132.

It concludes that the hermeneutical interpretative approach adopted by the apex court of the relevance of C. I. 132 was an austere one, which failed, quite respectfully, to harmonize both the rules of court at the High Court and the Court of Appeal with its various amendments, even though the final appellate court acclaimed itself to have done so.

The Case of Ex Parte Ecobank Ltd:

With the garnishee, Ecobank (Ghana) Ltd having been ordered to pay monies adjudged as deserving of the judgment creditor, it appealed against the order absolute to the Court of Appeal and filed for stay of execution by virtue of C. I. 132. The application was declined and the garnishee returned to the trial High Court to file a motion for the suspension of the execution processes under the inherent jurisdiction of the trial court. What was at stake in the application was whether the High Court, in the face of C. I. 132, had any jurisdiction to stay execution, pending appeal of its decision. The High Court was of the view that it had no jurisdiction to entertain the application and dismissed same. This triggered the garnishee applicant to invoke the supervisory jurisdiction of the Supreme Court. The vexed matters in contention at the Supreme Court, as was rightly stated by Pwamang JSC, were that beyond an assertion of an inherent jurisdiction vested in a trial court to stay execution, what was the correct interpretation to be placed

on C.I. 132 in the context of the Court of Appeal Rules, C. I. 19 as a whole, and the settled practice of the courts.

In other words, the centrality of the issue revolved around the question as to whether C. I. 132 succeeded in taking away the **jurisdiction of the trial court to stay execution of a judgment on appeal but not the general powers of a trial court to stay execution of a judgment that is not on appeal**. I have stated and highlighted the issue this way for a clear distinction right from the onset to be made that the High Court (Civil Procedure) Rules, 2004, C. I. 47 has at least four distinct provisions independent of C. I. 19 that deals with stay of execution. And those four provisions for stay of execution found in C. I. 47 relate to matters not on appeal. There is the danger that stay of execution of an order or decision not on appeal spelt out under C. I. 47 could be lumped together with the provisions of C. I. 19 relating to stay of execution of orders or decisions that are on appeal at the Court of Appeal. In the face of C. I. 132 whose intent was to strip a trial court of jurisdiction to stay execution of its judgment before the transmission of the record of appeal, the meaning of the apex court's construction is that that jurisdiction that was vested in the trial court is still vested even when a matter is on appeal and there is cessation of that jurisdiction only when the record has been transmitted.

For its own analysis the court quoted in extenso the new Rule as

well as the old one. Without intending to adopt the same approach, I think it would achieve the same purpose, if one were to first set out the essence of Rule 27(1) of C. I. 19 before its amendment by C. I. 132. The essence of Rule 27(1) before its revocation was to the effect that an appeal against a decision was not to operate as a stay of execution or a stay of proceedings of the trial court unless the trial court, that is either the Circuit Court or the High Court, as the case may be, described as the court below may stay execution or stay proceedings. Rule 27A as inserted by C. I. 21 was to the effect that it was the Court of Appeal that had jurisdiction to stay proceedings. By virtue also of the revoked Rule 28 of C. I. 19, it stated that when there was the need to make an application either to the trial court from which the appeal was coming, or to the Court of Appeal, it had to be first made to the trial court from where the appeal was emanating. That was the state of the law until the coming into force of C. I. 132. The C. I. 132 is in the nature of amendment by revocation and substitution. Its true effect has been stated in the case of **Attorney-General (WA) v Marquet [2003] HCA 67** when the Australian High Court noted that the meaning of amendment was to alter the legal meaning of an Act whiles that of repeal was to rescind the Act or provision.

In Ghana, by reason of section 32 of the Interpretation Act, 2009, (Act 792) an enactment having been declared to have been repealed, and in the case of a subsidiary

legislation revoked, the enactment has the effect of ceasing to have any effect. Therefore, the whole of Rules 27(1), 27A and 28 of C. I. 19 whose effect was that in respect of stay of execution of a decision or order pending an appeal, the application ought to be made before the trial court first and upon refusal, repeated at the Court of Appeal, as established in cases such as **Republic v Court of Appeal, Accra; Ex Parte Sidi [1987-88] 2 GLR 170 and Ghassoub v Bibiani Wood Complex [1984-86] 1 GLR 271** CA was no longer the law. In its stead came C. I. 132, which can also be summarized as follows: That the filing of an appeal before the Court of Appeal alone cannot operate as a stay of execution unless the Court of Appeal itself has granted a stay of execution upon an application brought before the Court of Appeal. The need for an applicant or party to first move to the trial court for the stay and upon refusal proceed to the Court of Appeal, appears to have been removed.

However, in a much detailed analysis by the apex court, it reasoned that if there was any such intention by the lawmaker to amend the law to take away the jurisdiction of the trial court to grant stay of execution that mission could not be realised for a number of reasons. First, the Supreme Court relied on Orders 43 Rule 11 and 45 Rule 15 of C. I. 47. Rule 11 of Order 43 is to the effect that without prejudicing Order 45 rule 1 of C. I. 47, a party against whom a judgment or order has been given may apply for a stay of

execution on the basis of matters which have occurred since the date of the judgment. Order 45 rule 15, on the other hand deals with a judgment for the payment of money, and the judgment creditor was proceeding by way of Fi Fa and where the trial court was satisfied, based on an application, made at the time of judgment or anytime thereafter of the judgment debtor or a party liable to execution, that there are special circumstances or for any just cause, the trial court may order for stay of execution of the judgment or order. In the view of the Supreme Court, the original rendition of Rules 27(1) and 28 did not purport to confer jurisdiction on the trial courts where an appeal was emanating from hearing applications for stay of execution of matters pending appeal but that:

“a close reading of the language of the original Rules 27 and 28 together, will reveal that the rules do not purport to confer jurisdiction on the lower court to hear applications for stay of execution pending appeal but only made reference to existing jurisdiction of the lower court in that regard”.



The court further reasoned that the existing jurisdiction was located in the practice of the court and has only been stated in Order 43 Rule 11 and Order 45 Rule 15. Perhaps, the court was bold enough to state that the revoked Rules 27(1) and 28

of C. I. 19 did not confer any jurisdiction on trial courts to hear and determine applications for stay of execution but only conferred existing jurisdiction due to the language of Rule 28 that begins with “subject to these Rules and to any other enactment”. It is not the case, in my humble submission, that the jurisdiction of a trial court to stay execution of a decision or judgment for which an appeal has been filed is founded on any of the rules governing the procedure at the High Court or under the inherent jurisdiction of the High Court, as I proceed to demonstrate.

The Scope and Application of Orders 43 and 45 rr 11 and 15.

Contrary to the interpretation placed on the two Rules, being Order 43 Rule 11 and Order 45 Rule 15, the writer thinks, quite respectfully, that the jurisdiction of a trial court to grant a stay of execution founded upon the two provisions under C. I. 47 is completely different from the jurisdiction of a court to grant a stay of execution of a matter for which a notice of appeal has been filed before the Court of Appeal. The *in pari materia* provision of Order 43 Rule 11 of C. I. 47 in the Rules of Court of England and Wales as seen from the 1997 Supreme Court Practice in Order 45 Rule 11 which is to the effect that subject to Order 47 Rule 1, a party against whom a judgment has been given or order made may apply to the court [the High Court] for a stay of execution or other relief on the ground of matters which have occurred since the date of the judgment or order. The

Order 47 Rule 1 of the English Rules is also in *pari materia* with Order 45 Rule 15 of C. I. 47 which the apex court made reference to. That is also to the effect that:

“Where a judgment is given or an order is made for the payment by any person of money, and the court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other part liable to execution –

(a) That there are special circumstances which render it inexpedient to enforce the judgment or order or

(b) That the applicant is unable from any cause to pay the money, then ... the court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the court may think fit”.



With the exception of Order 51 of C. I. 47 that regulates appeals emanating from the District Court to the High Court, all the other provisions in C. I. 47 deals with matters pending or pertaining to post judgment matters not on appeal before the trial court, one submits. It is in that context, that Order 43 rule 11 and Order 45 Rule

15 deal with matters that may occur after judgment. There is even a third provision under C. I. 47, being Order 14 Rule 5(2) that also deals with stay of execution that the Supreme Court did not refer to. Those matters that may have ***“occurred since the date of the judgment”*** do not include when an appeal is filed by a party, it is further submitted. Its scope is restricted to instances such as when a party has filed for instalment payment of a debt in which he has not appealed and follows that with stay of execution. It could also be in respect of an application for stay of execution by virtue of discovery of fresh matters after judgment and a party seeks for a stay before he proceeds to file an appeal but not when an appeal is already filed. This is precisely the commentary on the two provisions from the White Book, 1997 which notes emphatically that ***“the power to stay execution under this rule is separate and distinct from the power to stay execution pending an appeal”***.

The case of **Ellis v Scott** [1964] EWCA Civ J1119-2 illustrates this position on the scope and applicability of those Rules. In the said case the defendant applied for stay of execution to exercise the possibility of appeal against a judgment. This was because the defendant proved subsequent to the entry of judgment that before the plaintiff entered into the agreement in which his claim was founded he had disposed of his rights and that if those facts had been known to the trial court, it would not have entered judgment. Sachs J. was of the view that the

trial court had power to stay execution of its judgment and afford a period for the applicant to file an appeal against the decision due to the matters that have been discovered.

The claim made that the “filing of an appeal is certainly one matter that may occur after a judgment and can ground an application for stay of execution or of proceedings under Or 43 Rule 11” appears, with profound respect, not to be accurate interpretation of the Rule. For, when an appeal is filed, the processes are not regulated by Order 43 or Order 45 of C. I. 47 as those Orders deal with execution and matters in relation to same as may occur after the judgment but not when an appeal is filed. And it may not, quite humbly, be otiose as the learned Justice sought to point out for the original Rules 27(1) and 28 of C. I. 19 to have spelt out the need for an application for stay to be first filed before the trial court and upon refusal repeated at the Court of Appeal. For C. I. 47 did not and could not have purported to confer any jurisdiction on any trial court to stay execution of matters for which a notice of appeal has been filed.

Heading used to Control the Meaning of Rule 27 of C. I. 19

The Supreme Court’s quest to anchor the power to stay execution by a trial court has long been settled and seen in Order 43 Rule 11 and Order 45 Rule 15 of C. I. 47 has been demonstrated, with due respect, to rather be a misconception. That the power of the High Court to stay its its own orders or judgments regarding

matters not on appeal cannot be stretched to cover applications for stay of execution when an appeal has been filed. In the apex court's attempt to define the purpose and role of Rule 27 of C. I. 19, it rather found solace in the heading of Rule 27 which simply states

Appeal". By referring to section 15 of the Interpretation Act, 2009, Act 792 to the effect that titles placed at the head or beginning of an enactment do not form part of the enactment. That it is for the sake of convenience but may be resorted to as an aid to construction. The court also cited the case of **Auntie & Adjuwoh v Ogbo. [2005-2006] SCGLR 494**. There appears to be nothing wrong with the role assigned "Headings" as an aid to construction but it is instead the manner of invocation of the **"Heading"** of Rule 27 to control the meaning of Rule 27(1), which appears to be problematic.

Historically, and from its common law antecedent, headings, titles, long titles, side notes, captions and marginal notes were not part of an enactment. Its presence was only for the sake of convenience as "Headings" in particular is inserted by the draftsman to represent what he thought to be the subject matter or the essence of a section to guide the reader.

Common law did not allow the interpreter to have recourse to the heading as an aid to interpretation. What is stated under section 15 of Act 792, therefore, is a remarkable departure from the common law position to allow recourse to the heading as an aid to interpretation where under the modern purposive approach all parts become essential for the sake of

construing an enactment as a whole. However, being a non-operative part of an enactment, such recourse is resorted to only when there is an ambiguity in the main section of an enactment, wherein the heading may assist the interpreter to throw further light on the section. For the heading, just like marginal notes, may not be able to adequately capture all the contents of a given section. It is not employed in a way to contradict the section when the latter is clear as heading is not used to control the body of a section. Heading cannot also be taken as conclusive as to the meaning, scope and effect of a section. The main Rule 27(1) states what it means, that appeal do not operate as a stay of execution unless the court otherwise orders. The resort, therefore, to the heading as a way of controlling the meaning of Rule 27(1) and take out the clear words "unless the court otherwise orders ...

" may have been unnecessary, it is respectfully submitted. For as noted by Maxwell on Interpretation of Statutes, regarding heading that "prefixed to sections or set of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words".

No reason has been proffered on why the phrase

“unless the court otherwise orders on application made to the court...”

should be muted or controlled by the heading of Rule 27, when its meaning is clear. The deployment of **“heading”** as an interpretative kit in this instance to control the meaning of Rule 27(1) and take out part of the Rule as not dealing with proceedings but only the effect of an appeal may not have been in consonance with the settled rules for the function and role of heading as an aid to interpretation. The decision of the Supreme Court in the case of Civil Motion No. J5/66A/2017 **Republic v High Court, Accra; Ex Parte: Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party)** which formed a strong basis for it to arrive at the conclusion it came to in the Ex Parte Ecobank case, one accepts, is good law. For as the learned Justice stated that notwithstanding the now revoked Rule 27A, and which appeared to have conferred jurisdiction on the Court of Appeal to determine applications for stay of proceedings to the exclusion of the trial court, it thought that by virtue of Rules 21 and 28 of C. I. 19, a trial court still retained the right to have a first shot at all applications, except where the record of appeal has been transmitted to the Court of Appeal. And accordingly the departure from the decision in the case of CM J5/15/2005 **Republic v Fast Track Division, Accra;**

Daniel Abodakpi in the case of Ex parte Magna International was deemed proper. In one's view the context within which the revoked Rule 27A was held in Ex Parte Magna International not to take away the inherent jurisdiction of a trial court to exercise the power of stay of proceedings may not be the same as under C. I. 132. For examining the overall language of C. I. 132 as well as taking into consideration the fact that Rule 28 has also been revoked becomes a game changer. From the language and import of C. I. 132 its intended purpose was to take away any existing jurisdiction in a trial court to stay execution and the fact that Rule 21 was not amended in addition to Rule 28 should not lead to the conclusion that Parliament failed in its effort.

C. I. 132 Promulgated for Nothing?

The state of the law before the coming into force of C. I. 132 was that once the record is transmitted, a party need not bring a stay of execution at the trial court, but rather at the Court of Appeal. When Civil Form 6 has been issued and served on parties to the appeal, it has been the law long before C. I. 132, that all applications regarding appeal were to be filed and heard at the Court of Appeal. When after the issuance of Civil Form 6, an application is filed at the trial court, it would have to be transmitted for hearing before the Court of Appeal. The Supreme Court in its earlier decision in the case of **Republic v High Court (Human Rights Division) Accra; Ex Parte Akita (Mancell-Egala & A-G Interested Parties) [2010]**

SCGLR 374 ruled that once the record is transmitted, all interlocutory applications has to be filed before the Court of Appeal. In this case the plaintiff filed an application in the nature of stay of execution but by the return date for the determination of the application, Civil Form 6 had been issued. The trial court purported to assume jurisdiction to determine the application which provoked the invocation of certiorari and prohibition at the Supreme Court. Brobbey JSC speaking for the majority was emphatic as to the relevance of Rule 21 when Form 6 had been issued that:

“It has been settled that once Form 6 has been served on the trial court, that court no longer has jurisdiction over the case. At that point of the proceedings, the court with the appropriate jurisdiction will be the Court of Appeal...”

That decision relied on cases such as **Ex Parte Evangelical Presbyterian Church of Ghana** [1991] 1 GLR 323 and **Shardey v Adampety; Shardey v Martey (Consolidated)**. [1972] GLR 380. This being the state of the law before the coming into force of C. I. 132, the writer submits that it cannot be that the scope and application of C. I. 132 is to be confined to assumption of jurisdiction by the Court of Appeal in applications for stay only after the transmission of records. There is a presumption of competence and knowledge of Parliament.

In the view of Driedger the legislature is presumed to know all that is necessary to produce a rational and effective piece of legislation. That includes the fact that Parliament knew the existing state of the law before coming up with a new legislation. The presumption credit Parliament with a far reaching knowledge and mastery of the existing state of the rules of court, the substantive law, both common law and statute law. And that must be implicit in the interpretative journey of the court. The offshoot of this presumption is that Parliament does not make mistake in a legislation. Applying this presumption would mean that the existing state of the law before the coming into force of C. I. 132, being that once the record is transmitted from the trial court, all applications ought to be made before the Court of Appeal, was well known to the Rules of Court Committee and invariably Parliament. It cannot be that Parliament only brought into being a legislation to cover a matter for which statute law and precedent was already abundant. If the conclusion of the Supreme Court was anything to go by, then it would mean that Parliament had spoken in vain contrary to the presumption that Parliament does not speak in vain when there was no evidence that the presumption had been displaced.

What then should be a better Approach?

The imaginative discovery of the purpose of a statute is surely the guide to its meaning but not to make fortress out of only one or two provisions. As pointed out

that there already existed an exception to Rule 21 by Rule 27A that allowed applications for stay of proceedings before the Court of Appeal long before the transmission of the record. And C. I. 132 was intended and did achieve the same purpose. From the tenor of the Rule 21 quoted, it appears the attention of the apex court was not even drawn to C. I. 21 which amended Rule 21 of C. I. 19 and further inserted Rule 27A as the Rule 21 quoted in that Ruling was the state of law as it existed before the amendment of Rule 21 by C. I. 21. The dominant approach to construction of statute endorsed by the Interpretation Act, 2009 Act 792 is the modern purposive approach. And that entails an approach that calls for interpretation that fulfils the purpose of the law. For the generally accepted goal of interpretation is to seek for the meaning that effectuates the purpose of the statute or the constitution. The teleological and anthropological background was long laid down by what became known as the mischief rule in the **Heydon's** case. The mischief rule is to the effect that regard should be had to the state of the law as it existed, the defect of the law, the remedy that was designed to cure it and the function of the Judge was to construe the law to avoid the mischief and advance the remedy.

To Aharon Barak, the former President of the Israeli Supreme Court, the purposive approach is a legal construction that combines elements of the subjective and objective purposes of the enactment or the Constitution.

Barak states that the subjective elements include the intention of the author of the text, whereas the objective elements include the intent of the reasonable author and the legal system's fundamental values. Writing on "Purposivism" in his work,

The Role of the Supreme Court in a Democracy, he states that:

"[T]he aim of interpretation is to realize the purpose of the law; the aim in interpreting a legal text such as a constitution or statute is to realize the purpose for which the text was designed. Law is thus a tool designed to realize a social goal... The history of law is a search for the proper balance between these goals and the interpretation of the legal text must express this balance. Indeed if a statute is a tool for realizing a social objective, then interpretation of the statute must be done in a way that realizes the social objective. Moreover, the individual statute does not stand alone. It exist in the context of society, as part of general social activity. The purpose of the individual must therefore also be evaluated against the backdrop of the legal system. This approach underlies the system of interpretation that I think is proper: purposive interpretation".

The guides to exercising such an approach has been spelt out under section 10 of Act 792. Were such an approach to have been adopted, a meaning would not have been assigned to C. I. 132 that already existed before the coming into being of C. I. 132. A construction that calls for the need not to render the meaning and scope of laws void, being *ut res magis valeat quam pereat* was also totally ignored. For this canon of construction has time and again been applied in a number of Ghanaian cases such as **Frank Davies v Attorney-General**, [2012] GHACA 1 **In Re Awere-Kyere v Foster [2003-2004] SCGLR 1050**; Republic v High Court; Ex Parte Adjei. [1984-86] 2 GLR 511

Conclusion

With no such settled practice of the courts save what the Rules have spelt out as to where application for stay of execution should be filed, as argued in this paper, the claim that any such practice has crystallized or coagulated under Order 43 Rule 1 and Order 45 Rule 15 of C. I. 47 may seem, in one's view to be an exaggeration. The writer hopes that the apex court would seize the next available moment to reflect on its decision in **Ex Parte Ecobank; Origin 8 case**. Perhaps, the seeming confusion that has been engendered by the interpretation provided in that case which has in effect rendered C. I. 132 a useless and ineffective piece of legislation may be resolved.

For now the burden of the “austerity of a tabulated legalism” evinced by the highest court of our land in effect rendered C. I. 132 a useless and ineffective piece of legislation may be resolved. For now the burden of the “austerity of a tabulated legalism” evinced by the highest court of our land in its approach to the Ex parte Ecobank case would have to be endured by lawyers and parties.

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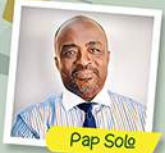
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CAN A COURT LAWFULLY CROSS-EXAMINE A WITNESS?

-JUSTICE ALEXANDER
OSEI TUTU. HIGH COURT,
THE GAMBIA

Introduction

Cross-examination undeniably plays a crucial role in the trial of a case; be it civil or criminal. The origins of cross-examination, according to Claudio Matute, can be traced as far as ancient Rome, but in modern times, it has become a cardinal feature of the common law system. While the significance of cross-examination cannot be underestimated, the vexed question of whether the court can also cross-examine a witness has succinctly been discussed.



What is cross-examination?

According to **Black's Law Dictionary**,² the term cross-examination is used when a witness is examined by the opposing party in the suit before the court. Similarly, the verb, to

“*‘cross-examine’ is defined by the Concise Oxford English Dictionary³ as ‘question (a witness called by the other party) in a court of law to challenge or extend testimony already given’.*

The statutory definition of cross-examination in Ghana is stated in the Evidence Act, 1975 (N.R.C.D. 323) and it is in sync with the meanings contained in both the legal and the English dictionaries *supra*. At section 179 (2) of the NRCD 323, cross-examination is interpreted as “the examination of a witness other than by the party who called the witness”.

Relevance of cross-examination

The purpose of cross-examination is primarily to test the evidence of a witness, to expose weaknesses in the evidence if any, and to undermine the account the witness has given⁴. At page 824 of his Civil Procedure book, the learned Kwami Tetteh writes about the essence of cross-examining a witness thus:

“Cross-examination is a good opportunity to destroy adverse testimony by the witness and, if possible, build the client’s case through the witness. It remains a strong and useful weapon for testing the credibility of a witness”.



¹Claudio Matute, “Cross Examination”. 2 June 2022.

²2nd Edition.

³See 11th edition, Revised at page 342.

⁴Christopher Kessling, “Cross-Examination”.
Defence-Barrister.co.uk

From the above, it can simply be gleaned that cross-examination serves three main purposes:

- a. It affords the opposing party the rare opportunity to present his case across through his adversary.
- b. It offers the opposing party the chance to attack the credibility of the witness.
- c. It also offers the opposing party the opportunity to impeach the credibility of the evidence of the witness (Through cross-examination, the opposing party is able to point out the weaknesses of a witness’s testimony, like holes in their story and the lack of credibility).



Examination of witnesses

Section 68 of N.R.C.D. 323 *supra* provides for the examination of witnesses as follows:

***“Examination of witnesses
(1) The Court may, on its own motion or at the request of a party, call or recall a witness.***

(2) The parties may cross-examine a witness called by the Court.

(3) The Court may ask questions of a witness, whether the witness was called by a party or the Court.



(4) A party may object to questions asked by the Court and to evidence obtained by the Court's questions at any time prior to the submission of the action to the tribunal of fact for determination.

(5) A juror or the jury may, through the Court, ask questions of a witness which the Court itself might ask and which the Court considers proper."

Per the above section, 'the parties may cross-examine a witness ...', while 'the Court may ask questions ...' Is there any difference between 'cross-examining a witness' and 'asking a witness questions'? Or are the words 'cross-examination' and 'questioning' used interchangeably? What is the rationale for allowing the parties to cross-examine a witness while the Court may only ask the witness questions? It may be observed that cross-examination necessarily entails questioning, but questioning on the other hand may not, as a matter of course, constitute cross-examination; unless it is asked to achieve the objectives of cross-examination. For instance, an examination in chief by a party's own lawyer may be in the form of questioning, but it will not be cross-examination, because it does not seek to achieve the same objectives that cross-examination seeks to accomplish.

It can be inferred from section 68 of N.R.C.D. 323 supra that while the court is at liberty to pose questions to a witness, it is doubtful whether it can cross-examine the witness. Since cross-examination literally seeks to achieve the three specific objectives stated supra, it is apparent that the court cannot seek to impeach the evidence of a witness or the credibility of the witness. Doing so could be construed as the court descending into the arena of conflict. It needs stressing the point that the court, unlike the parties, does not have any case for which it may want to advance through the witness. The duty to cross-examine a witness is cast entirely on the parties and not the Court. It is a fundamental principle of law that where a **party** fails to cross-examine on an issue, he or she would be deemed to have admitted it (Emphasis supplied). His Lordship Ansah JSC unambiguously stated the principle in *Faris v. Bakalian*⁵ thus:

It is fair to say that under section 68 (3) supra, the court is legally permitted to ask questions for purposes of clarification and understanding of the evidence adduced by the witness, but not to cross-examine. It should be pointed out clearly that there is a limit to which the court can ask such questions. Under subsection (4) of section 68 of N.R.C.D. 323 above, a party who is not comfortable with the questions asked by the court is allowed to object to the question being asked by the court. Since the law however does not speak in mandatory terms ('a party **may** **object** ...'), it appears that a party

cannot always prevent the court from asking questions it may so wish. However, trial judges are advised to exercise great circumspection in asking witnesses questions especially when a party objects, to avoid a situation where the judge could be perceived as being bias or prosecuting the case for one of the parties.

Conclusion

Cross-examination is typically well-calculated to achieve an advantage in a case or litigation. Since the court is not a party in the case, it has no business obtaining an advantage by indulging in cross-examination. The court's liberty to question witnesses who are called to testify is clearly accentuated by the law and must be distinguished from cross-examination.

Faris v. Bakalian (2008) 18 MRLG 204 at p. 208.





A STILL BORN PIECE OF LAW, AND RIGHTLY SO DECLARED IN THE CASE OF ORIGIN 8.

Thaddeus Sory Esq

INTRODUCTION

My Lord Justice Eric Kyei Baffour [hereinafter called the “author”] in an article intituled; An Examination of the Case of Origin 8 and C.I. 132: A Still Born Piece of Law or an Austere Interpretation by the Supreme Court published on Friday, March 4, 2022, edition of Dennislaw questioned the conclusion reached by the Supreme Court in the case of Republic v High Court, (Criminal Division 9), Accra Ex Parte Ecobank Ghana Ltd; Origin 8 & Anor (Respondents & Interested Parties).

The issue before the apex Court as stated by the author in his critique of the decision in the publication above referred to was this;

“...whether C. I. 132 succeeded in taking away the jurisdiction of the trial court to stay execution of a judgment on appeal but not the general powers of a trial court to stay execution of a judgment that is not on appeal...”

The author took the view that the effect of the Supreme Court decision in the Origin 8 case is that, C.I. 132 did not take away the jurisdiction of the trial court [in this case the High Court] to stay execution of its own judgments pending appeal provided that the record of appeal was not transmitted to the appellate court. The learned Justice of Appeal however did not think the decision of the highest court of the land on this point, to be right.

The author’s position on the effect of C.I. 132 on the trial court’s power to stay execution of its judgment pending appeal as a court of first instance, appears to have been the position taken by the High Court and the Court of Appeal. Their view was that with the amendment of rule 27(1) of the Court of Appeal Rules, 1999 (C.I. 19) by rule 1 of the Court of Appeal (Amendment) Rules, 2020 (C.I. 132), trial courts, particularly the High Court, no longer had jurisdiction, as the court of first instance, to entertain applications for stay of execution pending

appeal, with the right to repeat the same application in the Court of Appeal upon its refusal by the High Court. The Supreme Court observed this fact and noted that given C.I. 132, the High Court and the Court of Appeal had taken the view above stated. The Court acknowledged the point when it stated as follows;

“The idea that C.I.132 took away the lower court’s jurisdiction to stay execution of its decision pending appeal has been pervasive in the courts below with the dominant view being that, pursuant to C.I.132, where a party has lodged an appeal in the Court of Appeal against a decision and is desirous of staying execution pending the determination of the appeal, she must apply to the Court of Appeal straight and not to the High Court in the first instance as was the practice before C.I.132. That notion appears to explain why the applicant herein initially made its application for stay straight to the Court of Appeal and not the High Court first.”

This paper will highlight the learned author’s disagreement with the decision of the Supreme Court in the Origin 8 case, and demonstrate that the Supreme Court’s conclusion on the interpretation and application of C.I. 132, is the correct position of the law.

B. JUSTICE KYEI BAFFOUR’S DISAGREEMENT.

In his article, the author opined that the intention of C.I. 132 “...**was to strip a trial court of jurisdiction** to stay execution of its judgment before the transmission of the record of appeal”.

The learned author clarifies his view that the effect of C.I. 132 was to strip the trial court of jurisdiction to stay execution of its judgment pending appeal before the transmission of the record of appeal to the appellate court by adding thus;

“The C. I. 132 is in the nature of amendment by revocation and substitution. Its true effect has been stated in the case of Attorney-General (WA) v Marquet when the Australian High Court noted that the meaning of amendment was to alter the legal meaning of an Act whiles that of a repeal was to rescind the Act or provision.” ”

The learned author further argued in his article that the purposive approach to the interpretation of statutes at the very least ought to have been deployed to interpret C.I. 132 in order to save it from being a redundant piece of legislation. This, the learned Justice opines, will best have achieved

the intention of the legislature, in making C.I. 132.

His publication, the author said, served to

“...analyse(s) the constructive kits in the quiver of a Judge that are supposed to be employed by the court in its appreciation of the scope and application of C. I. 132.”

He therefore hoped that his article would demonstrate,

“...that the hermeneutical interpretative approach adopted by the apex court of the relevance of C. I. 132 was an austere one, which failed, quite respectfully, to harmonize both the rules of court at the High Court and the Court of Appeal with its various amendments, even though the final appellate court acclaim itself to have done so.”

Unfortunately the author's suggestions, as stated in his article did not in so far as C.I. 132 is concerned, properly address matters regarding the **“constructive kits in the quiver of a Judge that [ought to have been]... employed by the court in its appreciation of the scope and application of C. I. 132.”**

The suggestions made by the author are not, with great dif-

ference, defensible in the law of interpretation and same will be demonstrated in this article when discussing the author's preferred approach to interpretation.

C. AMENDMENT AND REVOCATION ARE THEY THE SAME?

In his paper, the author took the following view;

“The C. I. 132 is in the nature of amendment by revocation and substitution. Its true effect has been stated in the case of Attorney-General (WA) v Marquet when the Australian High Court noted that the meaning of amendment was to alter the legal meaning of an Act while that of a repeal was to rescind the Act or provision.”

This premises which forms one of the foundation stones on which the author constructed his case, is faulty. The obvious error in the premises laid by my lord, is first exposed by the authority itself, cited by his lordship for the argument that the “C. I. 132 is in the nature of amendment by revocation and substitution”

The Australian case cited clearly distinguished between an “amendment” and a “repeal” or “revocation” The case explains that;

“...the meaning of amendment

was to alter the legal meaning of an Act while that of a repeal was to rescind the Act or provision.”

The authority cited by the author therefore clearly questions the author's suggestion that C.I. 132 was an amendment in the nature of a revocation. This is because whereas the effect of the amendment [rule 27(1) as substituted by C.I. 132] was to alter the meaning of rule 27(1) of C.I. 19 as the case cited by the author affirms, the effect of a revocation [which C.I. 132 did not do to C.I. 19] would have been to completely “rescind” the said rule 27(1) of C.I. 19 as amended by C.I. 132. Secondly, a plain reading of C.I. 132 itself will leave no one in doubt that it unmistakably distinguishes between an amendment on the one hand and a revocation on the other. Its rule 1 is headed; **Rule 27 of C.I. 19 amended**, whilst its rule 2 says; **Rule 27A of C.I. 19 revoked**, and it is the same with its rule 3 where it says, **Rule 28 of C.I. 19 revoked**. In terms of the very C.I. 132 itself therefore, the convenient argument of an amendment by revocation is not supported.

Thus, in terms of the distinction between an amendment and a revocation the author submits in his article as follows;

“In Ghana, by reason of Section 32 of the Interpretation Act, 2009, (Act 792) an enactment having been declared to have been

repealed, and in the case of a subsidiary legislation revoked, the enactment has the effect of ceasing to have any effect.

Therefore, the whole of Rules 27(1), 27A and 28 of C. I. 19 whose effect was that in respect of stay of execution of a decision or order pending an appeal, the application ought to be made before the trial court first and upon refusal, repeated at the Court of Appeal, as established in cases such as Republic v Court of Appeal, Accra; Ex Parte Sidi and Ghassoub v Bibiani Wood Complex was no longer the law...””

This submission treats C.I. 132 as a revocation rather than an amendment, the reason for which after he discusses the effect of section 32 of the Interpretation Act, he goes on to say that “an enactment having been declared repealed, and...revoked, the enactment has the effect of ceasing to have any effect.”

As already pointed out, even from the text of C.I. 132 itself, there was never a repeal or revocation of the existing rule 27(1) of C.I. 19. This false block may just be the Achilles heel of the logic upon the author disagrees with the Supreme Court on its view on the effect of the introduction of C.I. 132.

D. WHAT WAS THE AMENDMENT?

As already noted, the amendment [as distinguished from a repeal or revocation] introduced by C.I. 132 to the hitherto rule 27(1) of C.I. 19 is as follows;

“27. Effect of appeal

(1) An appeal shall not operate as a stay of execution [**or of proceedings**] under the judgment or decision appealed against unless [**except**] where the [**court below or the**] Court otherwise orders...” (emphasis supplied)

The words in bold square brackets are those which are taken out rule 27(1) of C.I. 19 by the new rule 27(1) of C.I. 132. These are the words “**or of proceedings**”, “**except**” replaced by “**unless**” and “**court below or the**”. The new rule 27(1) therefore reads as follows;

“Rule 27 of C.I. 19 amended

1. An appeal shall not operate as a stay of execution under the judgment or decision appealed against unless the Court otherwise orders on an application made to the court by motion on notice.”

As already noted, this substitution of the initial rule 27(1) of C.I. 19 with the new rule 27(1) of C.I. 132, made two changes. First it took out the phrase “or of proceedings” completely from the initial rule 27(1) which provided both for “stay

of execution” and also “of [the] proceedings” relating to the execution of the judgment appealed against. Secondly, it took out “the court below” with the effect that it is now “the Court” which may order a stay of the judgment appealed against.

The question here is simple, does the deletion of “court below” leaving “the Court” only, inevitably lead to the conclusion that it is only the court below which may order a stay of execution of the judgment appealed against leaving such applications to be determined only by the Court of Appeal?

E. EX PARTE DAN ABODAKPI.

The answer to the question above posed, would have, unquestionably, been in the affirmative in the regime of Republic v Fast Track Division, Accra; Ex Parte Daniel Abodakpi. This case would easily have vindicated the author’s critique of the Origin 8 case. Unfortunately the Abodakpi era has endured its full life span and has been recently, decently interred.

In the Abodakpi case, the Supreme Court had to determine the effect of a new rule inserted into rule 27 of C.I. 19 as a rule 27A which read thus;

“27A. Interlocutory

“ appeals

The Court may, in an interlocutory appeal, civil or criminal before it, grant a stay of proceedings pending the determination of the interlocutory appeal subject to the conditions the Court considers fit.”

The significant part of the new rule 27A of C.I. 132 is what is highlighted because it is the words “The Court” which decided the matter on a plain, literal, grammatical and ordinary meaning of the statute. The Supreme Court in the Abodakpi case therefore, had to determine the effect of the words “The Court” in the provision above quoted for purposes of deciding whether or not under the said rule, the High Court had jurisdiction was the court to which applications for stay of proceedings pending appeal, was to be first made, before recourse to the Court of Appeal upon failure at the High Court.

The Supreme Court decided that to the extent that the rule [27A] made reference to the “Court” without a mention of “the court below”, the proper forum to initiate and application for stay of proceedings pending appeal was the Court of Appeal but not the High Court as as the court of first instance. “Court”, the Supreme Court held, “means the Court of Appeal” as defined in rule 67 of the Court of Appeal rules [C.I. 19]. This is clear from the application of the

first and only rule of interpretation, which is the literal rule. The other rules of interpretation only come into play where the literal rule fails us. It was thus held in the case of Kuenyehia v Archer, that **“rules of construction do not permit, a passage which has clear meaning, to be complicated or obfuscated by any interpolation, however well intentioned.”**

Be that as it may, the Supreme Court established in the Abodakpi case that “Court” standing alone, “means the Court of Appeal” and no more. On the basis of this authority, it would have been a sound statement of the law to contend [mutates mutandes] that where, as in this case, the amendment deleted the “court below” leaving the “Court” as the only judicial organ to which applications for stay of execution pending appeal ought to be made, then it is only to the “Court” that such applications may be made.

F. EX PARTE ABODAKPI IS NOW DEAD

The Abodakpi decision was however departed from by the Supreme Court in the case of Republic v High Court, Accra; Ex Parte Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party) on the 7th day of November 2018.

The Magna Transport decision laid it down that at common law

every court has inherent jurisdiction to stay its proceedings. This common law, the Supreme Court held, had been elevated to a constitutional pedestal by virtue of article 11(e) of the 1992 Constitution. Benin JSC who delivered the decision of the Court stated in very unequivocal language as follows;

“It is a well settled principle that every court has an inherent jurisdiction to stay proceedings for stated reasons which include, but not limited to, abuse of process. Indeed in matters on appeal, especially interlocutory, the courts have always exercised an inherent jurisdiction to stay proceedings pending appeal, lest all their efforts should become fruitless, a waste of time and resources. The inherent jurisdiction of the Courts is derived from the common law, which is part of the laws of Ghana by virtue of article 11(1)(e) of the Constitution, 1992.”

Stay of execution apart, the established common law position is that every court has inherent jurisdiction to stay execution of its judgment. This being the common law position which has constitutional gravitas by virtue of article 11(e) of the Constitution, the question that arises is simple; **can the new rule 27(1) as substituted by C.I. 132 successfully overthrow the common law position firmly**

anchored in article 11(e) of the Constitution? The answer is clearly in the negative.

It is this point which firmly entrenches Origin 8 as sound law in so far as determining the forum for first making an

application for stay of execution pending appeal is concerned. The first reason for this submission is that the Court followed its own previous decision on the current law on the matter. The Court was required to this in accordance with its constitutional obligation under article 129(3) of the 1992. The Origin 8 decision clearly relied on the earlier decision of the Court in **Magna Transport**. This is evident from the words of Pwamang JSC who delivered himself thus;

“This requires us to construe C.I.132 to determine its effect on the powers of the lower court and the Court of Appeal to hear applications for stay of execution pending appeal, having at the back of our minds what this court said in Ex parte Magna Transport Ltd (supra); where a practice of the courts is well settled, it cannot be upset by statute except by use of express language. See also Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717, at page 721.

The clear reason why the **Origin 8 decision** on the effect of C.I. 132 is flawless is therefore obvious. The Court decided the point on the clear and

established principle of stare decisis which sits on the constitutional pedestal of article 129(3).

Interestingly the author himself accepts the **Magna Transport** decision as good law for he submits thus;

“The decision of the Supreme Court in the case of **Republic v High Court, Accra; Ex Parte: Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party)** which formed a strong basis for it to arrive at the conclusion it came to in the **Ex Parte Ecobank** case, one accept is a good law. For as the learned Justice stated that notwithstanding the now revoked Rule 27A, and which appeared to have conferred jurisdiction on the Court of Appeal to determine applications for stay of proceedings to the exclusive of the trial court, it thought that by virtue of Rules 21 and 28 of C. I. 19, a trial court still retained the right to have a first shot at all applications, except where the record of appeal has been transmitted to the Court of Appeal.”

If then the author accepts the **Magna Transport** decision as good law, how does he reconcile his dissent with the Supreme Court’s stare decisis obligations under article 129(3) of the Constitution and the fact

that the practice affirmed by the **Magna Transport** decision, as the Supreme Court held sits on the constitutional mountain of article 11(e) of the Constitution? Are the rules set in the constitutional provisions of articles 129(3) and 11(e) of the Constitution subservient to C.I. 132?

Furthermore, relying on a previous decision which decided the meaning of a statute almost in pari materia to understand the meaning of C.I. 132 is certainly a clearer way of understanding C.I. 132 than to resort to the legislative intent and purpose which as will be demonstrated, is not easily decipherable. This article has demonstrated the similarity between the substitution introduced by C.I. 132 with the insertion made by C.I. 21 by reference to the **Abodakpi** and **Magna Transport** decisions.

The author submits that the Supreme Court should therefore have rested its decision on the simple point of stare decisis. Unfortunately, the Supreme Court proceeded to examine the other ways of understanding the effect of C.I. 132 against the backdrop of the architecture and structure of the rules regulating the relationship between the trial court and the Court of Appeal when an appeal is pending in so far as stay of execution is concerned. This is what, in the writers opinion, created the confusion and has

understandably attracted the author's criticism of the decision.

This observation, however, does not detract from the present author's view that the decision on the point was right.

G. DID C.I. 132 CLEARLY CHANGE THE PRACTICE ON STAY OF PROCEEDINGS?

As already noted, the decision in **Magna Transport** answers the above interrogatory in the negative. This is the second reason why the author defends the conclusion reached by the Supreme Court in **Origin 8**.

The **Magna Transport** decision affirmed the settled position of the law that a change in a rule of practice declared by the Superior Courts must be expressed with clarity. For this reason, it was expected that the Rules of Court Committee would have expressed without equivocation to the effect that from the coming in to force of C.I. 132 in October, 2020 all applications for stay of execution pending appeal ought to be made to the appellate court and not the court from which the appeal emanates.

It is clear once again that the **Origin 8** conclusion sits on solid rock. There is nothing on the face of C.I. 132 which suggests a change in the

practice regarding applications for stay of execution pending appeal. The **Origin 8** decision relied on the settled principle affirmed in the **Magna Transport** case about the effect of the introduction of a rule of procedure on a rule of practice declared by the Superior Courts. This is evident from the words of Pwamang JSC who delivered himself thus;

The submission above made is most forcefully canvassed especially that the Committee which made C.I. 132 comprised learned persons of intimidating pedigree some of whose bosom resides the law. Indeed Justice V.J.M Dotse was the presiding Justice in **Magna Transport** so he definitely knew the settled position of the law affirmed by the **Magna Transport** decision.

C.I. 132. was given Gazette notification on the 6th day of October, 2020 by which time **Magna Transport** had been decided by over a year earlier. This meant that if Dotse JSC as the presiding Justice in the **Magna Transport** decision intended that C.I. 132 should have the marauding effect that my Lord Kyei Baffour posits then he ought to have advised the members of the Rules of Court Committee where he ranked second in the hierarchy of members who made C.I. 132 that in view of a decision in respect of

which he was presiding Justice, the Rules of Court ought to make it clear that no application for stay of execution pending appeal should now be made to the court from which the appeal emanates.

The point above made is put in unquestionable doubt when account is taken of the fact that the head of the Rules of Court Committee was His Lordship the Chief Justice of the Republic of Ghana who also presided over the Origin 8 decision. If it was intended that C.I. 132 should have the effect of a revocation as distinguished from an amendment then His Lordship Anin Yeboah CJ who presided over the Origin 8 decision ought to have informed his colleagues that his Committee intended by the introduction of C.I. 132 to take away the trial court's jurisdiction as my lord Kyei Baffour suggests, to determine applications for stay of execution as a court of first instance.

It is clear once again that the Origin 8 decision sits on solid rock. There is nothing in its face which suggests a change the practice. The Origin 8 decision relied on the settled principle repeated in the Magna Transport case about the effect of the introduction of a rule of procedure on a rule of practice declared by the Superior Courts. This is evident from the words of Pwamang JSC who delivered himself thus;

“This requires us to construe C.I.132 to determine its effect on the powers of the lower court and the Court of Appeal to hear applications for stay of execution pending appeal, having at the back of our minds what this court said in Ex parte Magna Transport Ltd (supra); where a practice of the courts is well settled, it cannot be upset by statute except by use of express language. See also Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717, at page 721.

Before discussing the author's preferred approach to the interpretation of C.I. 132, the writer intends to briefly discuss a small point on the jurisdiction of the High Court to stay execution of its own judgments which, the learned author suggested was taken away.

H. DID RULE 27(1) C.I. 19 CREATE JURISDICTION.

It was earlier noted that in his article, his lordship opined that the intention of C.I. 132 “...**was to strip a trial court of jurisdiction**”.

On this point, the decision of the Supreme Court in Civil Motion J5/6/2015; Republic v High Court (Commercial Division) Tamale, Ex parte Kaleem (Substituted by Alhassan) (Dawuni- Interested Party) . In the case just cited, Benin JSC held in very clear language thus;

“There have been numerous authorities, both local and foreign, which have decided that jurisdiction of a court could only be granted by substantive legislation, and not by a body charged with the duty to make rules to regulate the conduct of cases before the courts. See these cases: *Mornah v Attorney-General* [2013] SCGLR (Special Edition) 502; *Safeway Plc v Tate* [2001] TLR 64; *Malgar Limited v R. E. Leach Engineering Ltd* [2000] TLR 109 Ch. D; *Republic v High Court, Kumasi*; *Ex parte Abubakari* (No.1) [1998-99] SCGLR 84 at page 90b, citing *Amponsah v Minister of Defence* [1960] GLR 138, CA.”

The learned Justice goes on to say as follows;

“From even a cursory reading of Article 140(1) and (4) it is clear that the jurisdiction of the High Court is conferred upon it only by the Constitution or any other law, which is meant a law duly enacted by Parliament, as distinct from the rules of practice and procedure enacted by the Rules of Court Committee.”

The Supreme Court endorsed this position in the case of *Nii Kojo Danso II v Lands Commission & 2 Others* (Joshua Quarshie- (Applicant)). In this case *Pwamang JSC* held that In the *Ex parte Kaleem* case, the Court held that rules of procedure do not create jurisdiction.

Contrary to the author’s position therefore, if it was intended that C.I. 132 take away the High Court’s jurisdiction, this could not have been achieved by a procedural rule like C.I. 132. In the light of the authorities just cited, the submission therefore that the intention of C.I. 132 “... was to strip a trial court of jurisdiction” cannot be correct. The rule is strictly procedural and only directs as to the proper manner for dealing with applications for stay of execution pending appeal but not to create jurisdiction for the hearing of such applications.

I. LEGISLATIVE INTENT.

It is regrettable that when a lawyer in a legal argument about the meaning of statutory resorts, as his first port of call, to the legislative intent or purpose? Over a century ago, Lord Wa It has therefore been

“The ‘intention of Parliament’ is, in a sense, a fiction. It is not an intention formulated by the mind of Parliament, for Parliament has no mind; and it is not the collective intention of the members of Parliament for no such collective intention exists. The only real intention is the intention of the sponsors and the draftsman of the bill that give rise to the Act; but that is not the intention of Parliament...”

Driedger has shown that, this

legislative intention business should not be waved around like a magic wand. It has serious drawbacks. That is not to say that the legislative intention as an aid to interpretation is a fiction and should be discounted. Far from that.

In the particular facts of this case, how did the author discern the intention and purpose of E.I. 132? Some members of the Supreme Court also formed part of the very Committee which made C.I. 132 and played key roles as presiding Justices in two different decisions which are directly relevant to C.I. 132. Interestingly their intentions as held in the cases in which they participated is not reflected by the intention attributed to them by the author.

J. LEGISLATIVE PURPOSE

It is suggested by the author that the purpose of C.I. 132 is to spare parties “...the drudgery of frustration by motions for stay of execution from the trial court and upon refusal repeated at the Court of Appeal.”

The learned author submits that; **“The opportunity to first file an application at the trial court for a stay of execution and, upon refusal, file a repeat of same at the Court of Appeal, has ended up prolonging the time of completion of execution after judgment. This practice has the tendency to, in many ways,**

reduce the attractiveness of Ghana as a destination for business investment .”

He says that the introduction of C.I. 132

“... was [therefore] a welcome relief to successful parties who were usually taken through the drudgery of frustration by motions for stay of execution from the trial court and upon refusal repeated at the Court of Appeal.”

The author refers to a World Bank ranking of Ghana in the 118th position out of a total of 189 as a place for for doing business. This report provides no basis at all for attributing Ghana’s poor ranking by the World Bank to the drudgery that judgment creditors go through for purposes of enforcing judgments. As the author himself noted the report

“...noted that it took seven hundred and ten days (710) to enforce a contract and three hundred and thirty days (330) to enforce a judgment in Ghana.”

The delay in the enforcement of contracts and judgments can result from any circumstances ranging from the time it takes to get through the trial itself leading to judgment, the quality of the judgment itself, the reason for which a party appeals and the question as to whether there are even assets

against which execution may even be levied to satisfy the judgment which affirms the contract sought to be enforced, as well as interpleaders among others. It is therefore a nonsequitur to suggest that C.I. 132 may well help to improve Ghana's ranking as an investment destination only because the one unrelated matter of a one time application to the trial court for stay of execution of a judgment appealed against was introduced.

It is contended that no practising lawyer ever though for a second that just by passing C.I. 132 the challenges with enforcement of judgments in Ghana will be solved. If divination is true, then C.I. 132 has no chance of achieving it.

The learned author undermined the supposed purpose of C.I. 132 by making the following observation.

“...the High Court has at least four distinct jurisdictions regarding stay of execution of matters.”

With this admission, how can it be legitimately contended that the Rules of Court Committee had as its purpose that just by taking away one [if it did at all] of the options for stay of execution to solve the problem associated with enforcing judgments?

In any event, the case for the

deployment of a purposive approach to interpreting C.I. 132 raises two important questions relating to the purposive approach to statutory interpretation in terms of my lord's article. The questions are as follows;

- i. what is the purpose of the purposive interpretation itself?
- ii. is the purposive approach of the specifically contested statutory provisions or the purpose of the statute as a whole?

The purposive approach to statutory interpretation leans more in favour of the purpose of the statute as whole rather than the specific provision within the statute. This accords with the rule of construction which requires that statutes must be read as a whole. Although in the context of the Constitution, the principle laid down in the case of *National Media Commission v Attorney-General*, provides guide also to the interpretation of statutes and for that matter C.I. 19 [which C.I. 132 forms part of] as a whole. It was there held per Acquah JSC (as he then was) as follows;

“Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework.

And because the framework has a purpose, the parts are also to work dynamically, each contributing something towards accomplishing the intended goal.”

It is submitted therefore that, C.I.132 must be interpreted within the context of the whole of C.I.19 which it forms a part of, together with the rules of practice [common law] declared by the Superior Courts, which are deemed incorporated in C.I.19 *ex vigore legis* by the provisions of article 11(e) of the 1992 Constitution.

In this context emphasis should not be placed on C.I.132 alone while ignoring the whole structure and purpose of C.I.19 which it forms a part of. To the extent that C.I.132 applies only in the context of appeals, it must be noted that a reading of the rules on appeals will reveal that it sets out elaborate rules that regulate the relationship between the court from which the appeal emanates [in this case the High Court] and the Court of Appeal. These range from settling the record which is the registry of the trial court, through to the transmission of the record to the Court of Appeal, and the effect of the transmission of such record to the appellate court.

The elaborate process detailed in C.I.19 and supplemented by the common law fleshes out the

nature of the relationship between the High Court and the Court of appeal once an appeal is lodged. This fact cannot be ignored when determining a specific provision like C.I. 132 which forms part of the detailed appeal processes which the rules provide for and as supplemented by the common law. They must be interpreted together to give the whole of the rules on appeals set out in C.I. 19 [which C.I. 132 forms part of] meaning.

The writer would have related easily to the author’s suggested approach to recognizing the effect of C.I.132 if the author had simply submitted that C.I.132 should be interpreted *ut res magis valeat quam pereat*; that is to say when alternative readings are possible, one of which (usually the broader reading) would achieve the manifest purpose of the statute and the other of which (usually the narrower reading) would reduce the document’s purpose to futility or absurdity, the interpreter ought to choose the construction that gives greater effect to the statute’s primary purpose in order that, as the author desires, C.I.132 be not rendered still borne.

K. CONCLUSION

Origin 8 decision shorn of its sophistry in main unnecessary areas irrelevant to the conclusion eventually reached by the Supreme Court on the meaning

and effect of C.I.132 was more direct and adopted a more acceptable approach to understanding the meaning [in effect the interpretation] and effect of C.I.132.

Notwithstanding the writer's position on this case, the writer is of the firm conviction that C.I.132 ought not to have been enacted all. Given the so many applications lawyers make to the courts with a view to stultifying judgments and proceedings, it is without doubt that C.I.132 would not have been a drop in the ocean for purposes of dealing with the drudgery associated with enforcing.





MY TAKE ON THE NEED FOR LAW (AND PRACTICE) REFORM IN THE CRIMINAL JUSTICE SYSTEM

- Justice Afia Serwah Asare-Botwe

Going a little farther, he fell with his face to the ground and prayed...

Matthew 26:39a (NIV)

There has been an informal debate for some time now on how to reform our justice system to avoid delays.

It is a veritable truism that cases take forever to complete. It looks like our justice delivery system glories in the adage “the wheels of justice grind slowly”. But should this be the case more than two decades into the 21st Century with gadgets like computers, voice recorders, smart phones and evidence being taken via video link? Why should a trial involving only about five witnesses span over a period of three years or more to be completed? What can be done on the Law Reform front to make our justice delivery better and more efficient? What can we also do as judges to move our cases forward such that the original parties will not die or become infirm before the Judgment is eventually delivered? Of what use is victory in court in the grave?

Considering The Historical Improvements, The Story Is Not All Bad!

Progress has been made from the period when cases could stall for the reason that the Judge had died, been transferred or retired. Those were the dark days of lawyers being the ones to determine whether or not the previous proceedings would be adopted.

Prior to the decision in **Adomako Anane v. Nana Owusu Agyemang & 7 ors [2014] 75 GMJ 1**, the principle in civil matters had been that where there was no agreement between all the parties so to do, adoption of proceeding and evidence could not be done. That legal principle was enunciated in the case of **Awudome (Tsito) Stool v. Peki Stool [2009] SCGLR 681** where the Supreme Court established the rule that when a case has been transferred from one High Court to another, the parties had the option to adopt the proceedings or to have the trial start de novo. That was the common law rule which had been adopted and practiced for many

years in the courts of Ghana.

The Supreme departed from their previous decision in the **Adomako Anane v. Nana Owusu case** because they found that the old principle was rather archaic, retrogressive and producing unjust results.

In **Adomako Anane v. Nana Owusu Agyemang (supra)**, the Court re-stated the law on the proper legal procedure for adopting proceedings as follows:

“The judge’s broad and primary concern must be to ensure that the adoption of the proceedings would not result in any miscarriage of justice. Specific factors that would influence the decision would include the length of time that the case has been on the court’s calendar, the stage at which a trial has reached, the number of witnesses already called, the disputed issues, the nature of the evidence- mostly narrative or documentary, weighty objections by either party, if any, to its reliability, the availability of the witnesses who has already testified, the quality and reliability of the record or transcript”.

The right to fair trial in a timely manner is neither a courtesy nor a favour, but a fundamental right. Protracted delays in the administration of justice impact negatively not only on those who access the courts, such as the victims of crime, accused persons who are acquitted at the end of their trial, parties in civil proceedings and their privies, lawyers who practice before the courts, but indeed the

entire justice system.

This decision in the **Adomako Anane case** helped facilitate speedy trials in no mean measure.

Since then, there has been other decisions of the Supreme Court and Practice Directions that have had significant implications for law enforcement and the justice delivery system such as: •

Martin Kpebu (No.1) v. Attorney-General (No.1) [2015-2016] 1 SCGLR 143

in which it was held that committing a person (surety) to prison for default in paying a civil debt arising from a default to produce a bailed person does not amount to contempt of court. Section 104 (4) of the Criminal and Other offences Procedure Act, 1960 (Act 30) was accordingly struck down as being unconstitutional. Since then, sureties cannot be committed to prison for failing to produce an accused person, and the age-old practice of granting bail to a surety has also become improper.

Martin Kpebu (No.2) v. The Attorney-General (No.2) [2015-2016] 1 SCGLR 171

in which section 96(7) of Act 30 which made some offences such as High Treason, Murder and Rape non-bailable was struck down as unconstitutional as same sinned against the presumption of innocence under Article 19(2) (c) of the 1992 Constitution.

- The decision of the Supreme

Court in **Republic v. Eugene Baf-foe-Bonnie & 4 Ors [2017-2020] 1 SCGLR 327**), concerning Article 19 (2) (e) and (g) of the 1992 Constitution and the principles of fair trial also brought about the current regime of Disclosures in criminal trials.

- Also, one cannot ignore the decision in **Martin Kpebu (No.4) v. The Attorney-General (No.4) [2017-2020] 1 SCGLR 394** which held that under the forty-eight-hour rule in Article 14(3) and (4) of the 1992 Constitution, time runs irrespective of when the Suspect or Accused is arrested, including weekends and public holidays. It is further to this decision that His Lordship the Chief Justice Anin Yeboah (CJ) issued a warrant directing the High Court constituted by three Justices of the High Court to sit on a Saturday in the case of **The Republic v. Dr. Frederick Mac-Palm & 9 Ors.**

Further to these decisions, some Practice Directions have been issued to facilitate speedy and effective justice. These include:

- **Practice Direction (Disclosures and Case Management in Criminal Proceedings) 2018 [2017-2020] SCGLR 362**
- **Practice Direction (Determination of Bail and Consequential Matters) 2019 [2017-2020] SCGLR 373**
- **Practice Direction (Effective Case Completion Strategies) 2019 [2017-2020] SCGLR 422)**

Even with all of the above, there were some hiccups in the mode of applying some of these Practice Directions. For instance, the part of the **Practice Direction (Disclosures and Case Management in Criminal Proceedings)** which directed the determination of the admissibility of evidence at the case management stage was held to be improper as same sinned against Section 6 of the Evidence Act, 1975 (N.R.C.D 373). [See the case of **The Republic v. High Court, Commercial Division, Accra, Ex Parte Kwabena Duffour (Attorney-General and 8 others, Interested Parties) (No. J5/05.2021 dated 10th February, 2021)** (reported on the online portal www.dennislawgh.com as [2021] DLSC10069)]. Clearly, the Supreme Court and the Chief Justice through Practice Directions have in recent times channelled the course of our law practice in Ghana. However, there are matters which are established by statute which cannot be the subject of Practice Directions. This is what brings us to the need for law reform in certain areas of our justice system with special reference to Criminal Law and Practice.

To my mind, some of the matters requiring law reform, are:

- Interlocutory appeals
- Jury trials
- Adoption of proceedings in criminal trials
- Sentencing in criminal matters

Interlocutory Appeals and The Need For Law Reform

Ghanaian law¹ allows for interlocutory appeals in both civil and criminal matters almost as of right up to the Supreme Court. The time limit for lodging an interlocutory appeal is 21 days². In the experience of the writer sitting in the Financial Division of the High Court, this phenomenon of interlocutory appeals with its attendant applications for Stay of Proceedings pending appeal can be a great clog in the grinding of the wheels of justice. Cases which could easily be dealt with within a year or two could drag on for four to five years, and even longer.

For instance, in the case of **The Republic v. Michael Asamoah & Anor. (Suit No.FTRM/272/13) (HC)**, the accused persons were first arraigned before the Court differently constituted on 4th July, 2013 per a charge sheet filed on the same day.

The hearing eventually commenced in October 2013 before the instant judge.

The court ruled on 7th May, 2014, at the close of the prosecution's case, that there was a case to answer on the part of both accused persons.

Dissatisfied with the decision, both accused persons appealed the decision. They also filed an application for stay of the proceedings in this court which was dismissed. The substantive matter of whether there was a

case to answer, and the application for stay went on to the Court of Appeal and finally to the Supreme Court.

Eventually, the matter of the submission of no case culminated in the decision of the **Supreme Court in Asamoah & Anor v. Republic (Criminal Appeal No. J3/4/2017)** dated 26th July, 2017. (The decision is available on www.ghalii.org as [2017] GHASC 13).

In the interim, while the appeals and applications for Stay of Proceedings were pending at the various upper levels of the courts, A2 began to absent himself with many excuses, mainly bordering on ill health. He began to submit a series of medical reports which eventually stopped coming in. It finally became obvious that whilst the appeals and application for stay of proceedings were pending, A2 had taken the opportunity to surreptitiously leave the jurisdiction.

The prosecution then filed a motion to estreat the bond against his sureties when it became obvious that A2 had abused the terms of his bail conditions and absconded, but that also came to naught. The matter of the forfeiture of the recognizance of A2 was never pursued with the excuse that the sureties could not be located. That application was never served either personally or by way of substituted service. There was also no effort to take steps to continue the trial of A2 in

absentia. That is how A2 was effectively never conclusively tried.

The Judgment of the High Court was eventually delivered on 22nd May, 2019, close to six years after it commenced, and two years after the decision of the Supreme Court. Clearly, this is not the best of deliverables.

The case referred to above is one of many such in various courts which have been stalled and stultified by the filing of interlocutory appeals; some of which are hardly done in good faith as the eventual results of the appeals after several years reveal.

In other Commonwealth jurisdictions such as pertains in Canada, interlocutory appeals are not as of right but have to be filed with leave and within a limit of 7 days. Even then, there are strict time lines and rules including those for the service of the Notice of Motion for Leave to Appeal on the respondents within 15 days after the date of the order being appealed. The Notice must then be filed with the Court within 5 days after completing service, along with proof of service. Within thirty days after the filing of the Notice of Motion for Leave to Appeal, the moving party must serve the motion record, factum and transcripts, if any, and file three copies, with proof of service, with the Court.³

Ghana has no such rules which make interlocutory appeals exceptional in the scheme of things.

It is probably time to reconsider the status quo if we are interested in removing one of the commonest causes of delayed trials.

Jury Trials and The Need For Law Reform

Being a former Law Officer variously stationed in the Eastern, Ashanti and the erstwhile Brong Ahafo Regions where she was



head at the Office of the Attorney-General, the writer can relate many tales of jury trials which will be fodder for another day. One can say that the legislation allowing for jury trials contains within it the seeds of the challenges especially in today's world, of trial by judge and jury.

Section 205 of the Criminal and Other Offences (Procedure) Act 1960, Act 30 indicates that in gen-

eral, any person who is resident in Ghana and between the ages of 25 and 60 is qualified to be a juror. However, section 207 sets out classes of professionals who are disqualified; such as doctors, dentists, pharmacists and public officers (other than those engaged on clerical duties i.e. mostly secretarial staff) employed in the Medical, Posts and Telecommunications,



Customs and Excise, or Railway Department or under the Takoradi Harbour Authority. Teachers, workers in public telecommunication and other categories of public workers are also exempt.⁴

One would appreciate that in 1960 when the original Act was passed, there must have been the need to keep such professionals exempt due to the exigencies of their ser-

vices. In the era of technology, the Post is hardly functional and there are many people who are virtually redundant. Further, all the other classes have personnel available in their numbers to enable them be available for jury duty. In the current era, there is hardly any justification for the exemptions.

Another side of the problem of the exemptions is the fact of the jury list being so limited that many people serve as jurors several times to the point of almost being “professional jurors”.

There is also the real problem of the nomination of staff or subordinates to serve as jurors by heads of institutions, unlike what pertains in other advanced jurisdictions which have the jurors selected from voters’ lists. In such circumstances, one would hardly expect such a boss to select the most hardworking staff to perform jury duty. They would naturally allow the ones they find least useful to be the ones to serve as jurors. What happens then is that the jurors who are constantly available to serve may be the ones who trouble the bosses with absenteeism and the like; a behavior such persons would also likely put up when they are required to be present at Court.

Yet another problem is the fact of the make-up of the jurors - their emotion and socialization getting in the way of their judgment in a way that a trained legal practitioner as a judge would

not be troubled with. For instance, in a case in Koforidua where one of two sons killed the other in circumstances where the two possible verdicts could only have been guilty of murder or manslaughter, the jury returned a verdict of not guilty. Later in a post-trial interview, a juror explained that they were sad for the mother of the young men who would have been childless if a guilty verdict had been returned.

The constitutional provision which makes indictable offences triable by judge and jury is entrenched and would require the great expense of a referendum to be done away with. Otherwise, the proposal would have been to follow the path of our neighbouring Nigeria which never carried over the process of jury trials into independence. That remedy being practically unavailable, it is proposed that Act 30 be amended to expand the qualification of jurors to encapsulate many more classes of people to make the system more efficient.

The viable alternative for now, looking at the current challenges in jury trials is to resort to trials on indictment with the aid of Assessors under section 225 of Act 30. Although the exemptions and disqualifications to serve as jurors apply in equal measure to assessors, the difference is that unlike what pertains in jury trials where after summing up, the jury returns their verdict which is binding on the judge; a judge sitting with assessors is not bound

by the opinions of the assessors (see section 287(2) of Act 30) but delivers the judgment.

The Need For Law Reform for Adoption of Proceedings in Criminal Trials

As has been discussed in previous paragraphs, the **Adomako-Anane case** (supra) departed from **Awudome (Tsito) Stool case** (also cited supra) and made the adoption of proceedings in **civil matters** one of discretion for the judge. The case however, does not mention that the same would apply in criminal proceedings. The editorial note to the **Awudome (Tsito) case** sets down the possible explanations for the previous position on trials being conducted de novo. These included the need to observe the demeanour of witnesses, reliability and legibility of the record at a period when proceedings were hand-written.

Having trials de novo has inherent problems, including the fact of unavailable or unwilling witnesses and needless waste of time.

In my respectful view, these issues have become almost moot with modern technology, especially where the courts have instantaneous or even voice recorded transcriptions. Records are type-written, readable and reliable.

In **Chantel v. Koi [2011] 29 GMJ 20**

CA, it was held at page 51 of the Report that one important principle that should guide the tribunal of fact in determining the credibility of witnesses is the need to test the story of the witness as to its consistency with the probabilities that surround the currently existing conditions.

See also **Ntiri & Anor v. Essien & Anor [2001-2002] SCGLR 451**, which held that it is the trial court which determines the credibility of a witness. These include, the demeanour of the witness, the substance of his testimony, the existence or non-existence of any fact testified to by the witness etc. See also:

- **Tamakloe & Partners Unltd. v. GIHOC Distilleries Co. Ltd (SC)** per Amegatcher JSC (Civil Appeal No. **J4/70/2018** dated **3/7/2019** (available on the online portal dennislawgh as [2019] DLSC 6580
- **Ayeh & Akakpo v. Ayaa Iddrisu [2010] SCGLR 891 @ Holding 5**
- **Akufo-Addo v. Catheline [1992] 1 GLR 377**
- **Asamoah v. Setordzi [1987-88] 1 GLR 6**

In other words, do the stories of the witnesses (or the parties, as the case may be) make sense in the circumstances? Would the evidence offered actually prove the case being put forward before the court as a whole?

On the matter of the demeanour of witnesses, I hold the respectful

view that not much weight ought to be put on that per se since much more goes into the determination of an issue before the Court than whether or not a witness is a skilled orator, vociferous or compelling. After all, the appellate courts in criminal cases are able to make decisions affirming or overturning the courts below in appropriate circumstances based on the very record of the same court of first instance without ever observing the demeanour of any witness.

In my view, it is time to have legislation allowing for the adoption of the record of proceedings in all cases, including criminal cases, given the right circumstances.

Further, it is recommended that Judges do their best to have trials from day to day (or continuous trials) as set out in the **Practice Direction (Effective Case Completion Strategies), 2019 [2017-2020] SCGLR 422** in order to avoid long-winded trials in the first place.

The Need for Law Reform in Sentencing

With the passage of the Criminal and Other Offences (Procedure) (Amendment) Act, 2022 (Act 1079) which introduces plea bargaining as well as the current disclosures regime, there is the real likelihood of guilty pleas and convictions increasing in number.

Prison populations keep rising even without plea bargaining.

Under section 294 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the kinds of punishment available under our law are:

- a) Death
- b) Imprisonment
- c) Detention
- d) Fine
- e) Payment of compensation
- f) Liability to police supervision

One would often find that accused persons who are convicted for misdemeanours have fines imposed on them or in default serve a custodial sentence. The circumstances of some of the accused persons is such that no matter how low the sum of the fine is, they may be unable to pay, thereby making the serving of a custodial sentence almost a certainty. There are also instances where the convict and the community would be better served by being made to undertake some publicised Community Service for the sake of deterrence and also for the sake of having work done without having to make expenditures. For instance, the streets are filthy and road islands weedy. Convicts can be used as a constant source of free labour to solve these two problems, to cite just two examples.

This is where Community Service would be a useful tool of punishment in lieu of, or in addition to, a custodial sentence for non-violent, first time offenders to have the opportunity to render useful supervised service (unpaid work) to the

Community.

In jurisdictions where this form of punishment exists, there is a great deal of discretion available to the Judge, to determine how long the service will be and what form it will take. It may relate to the offence committed and can include assisting in road clean-up, or giving speeches at schools or to groups aimed at showing the dangers of the behaviour involved in the crime etc. In the case of a person driving while intoxicated for example, a judge might order a defendant to speak at a school about the perils of drunk driving.⁵ Guidelines may be put in place to assist the judges.

CONCLUSION

It is time to rethink the way we have always conducted the business of the Courts. Law reform is an important way of administering justice. Some of the proposals put forward in this article have been practices in other jurisdictions for decades. It seems that Ghana is a little behind and it is imperative we catch up with the rest of the world sooner than later.

As has always been said of Ghanaian legislative frameworks, we have all the laws we need. However, enforcing them has been a challenge. The Law Reform Commission Act, 2011 (Act 822) empowers the Commission to promote law reform in the country and among other functions, make practical proposals for the development,

simplification and modernisation of the law.

Fortunately, with the recent financial support given to the Commission by the government through the Law Reform Commission Fund⁶, the Commission should take a critical look into the challenges described in this article and make practical proposals aimed at implementing some of the outlined suggestions if not all.

References:

1. Courts Act, 1993, Act 459
2. Rule 9 (1) of Court of Appeal Rules, 1997, CI 19
3. See: Guide to Appeals in Divisional Court (Available online at <https://www.ontariocourts.ca/scj/files/pubs/guide-div-ct-judicial-appeals-EN.pdf>)
4. Section 207 of Act 30
5. More detail available on the blog: <https://www.criminaldefenselawyer.com/resources/community-service-work-in-criminal-sentencing.html>.
6. Reported online at <https://www.graphic.com.gh/news/general-news/ghana-news-2-funds-to-aid-justice-delivery-president-government-contribute-gh-2-2m.html>.



OFFICE OF THE REGISTRAR OF COMPANIES: QUO VADIS?

-Justice Dr. Richmond Osei-Hwere, J.

This paper focuses on a discussion relating to the newly created Office of the Registrar of Companies (ORC). It highlights the functions of the office, the historical antecedent that led to its creation, the policy rationale behind it and the expectations of the ORC.

INTRODUCTION AND THE CURRENT COMPANIES REGULATORY ARCHITECTURE

It is not in doubt that a robust company regulatory regime provides a conducive framework for the conduct of business activities. Law, being an instrument for change, has been an effective tool in the improvement of the business environment in Ghana. The causal link between law and development cannot be underestimated. Law plays a key role in socio-economic reforms and transformation of states. The importance of law in development is reflected in the observation by Garth about the expected role of law and lawyers in society generally as follows:

“... law and lawyers are or ought

to be at the center of struggles for social change, and that researchers in the law and society tradition should look for institutional and rhetorical legal spaces that can provide opportunities for rights-based strategies that can trump politics in favor of social reform on behalf of disadvantaged groups. Legal discourse and legal actors are naturally key to these strategies.”

On 22nd July, 2022 the Office of the Registrar of Companies (ORC) was officially launched by the President of the Republic of Ghana. This event marked a significant progress in Ghana's company law reform agenda. The ORC was borne out of the relatively new Companies Act, 2019 (Act 992) which replaced the Companies Act, 1963 (Act 179).

This new office (ORC) has been created to be solely in charge of the registration and administration of entities. Part C of Act 992, that is Sections 351 to 361, establishes the Office of the Registrar of Companies (ORC); Part D of Act 992, that is sections 362 to 368, is dedicated to the financial provisions of the ORC;

and Part E of Act 992, that is sections 369 to 382, details some general functions of the Registrar of Companies.

Section 351 of Act 992 establishes the ORC as a body corporate with perpetual succession and a seal. By section 353 of Act 992, the functions of the Registrar of Companies is to register and regulate all types of businesses in conformity with the Act and any other relevant enactments. The office is mandated to register:

- Business names in accordance with the Registration of Business Names Act, 1962 (Act 151),
- Companies in accordance Companies Act, 2019 (Act 992),
- Partnerships in accordance with the Incorporated Private Partnerships Act, 1962 (Act 152), and
- Professional bodies pursuant to the Professional Bodies Registration Act, 1973 (N.R.C.D. 147), other than professional bodies established by an Act of Parliament.

Also, the Office has the mandate to appoint inspectors, receivers or managers in accordance with subsection (2) of section 261 of Act 992 to ensure the effective compliance with the Act and to perform functions as the Official

Liquidator under the Bodies Corporate (Official Liquidations) Act, 1963 (Act 180) now the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) (CIRA). It is also the duty of the ORC to undertake public education programmes to educate the general public engaged in business activities on the operation of companies, partnerships and business names.

In addition to the general functions of the Registrar of Companies, the registrar undertakes other functions specifically mentioned in the Act 992. These include collecting penalty fines when certain laws relating to companies are breached , conversion of company limited by shares to company limited to by guarantee , handling application for incorporation process , issuing a certificate of incorporation , correcting errors/omission in documents , allowing alteration of object/business , registration and reservation of names of companies, acquisition and alteration of registered constitution and many others.

The ORC is administered by the Registrar of Companies who is appointed by the President in accordance with article 195 of the 1992 Constitution to perform the functions vested under Act 992. The Registrar of Companies is supported by two Deputy Registrars, Assistant Registrars

and other staff for the proper and effective performance of the functions of the Office.

The ORC is governed by a Board appointed by the President under Article 70 of the 1992 Constitution to ensure the proper and effective performance of the functions of the ORC. The Board shall be governed by the provisions under Sections 354 to 359 of Act 992. The Board shall establish regional offices in each regional capital which shall perform functions of the ORC in the region as the Board on the advice of the Registrar of Companies may direct.

In the performance of its functions, the ORC can acquire and hold property and enter into a contract or any other transaction.

HISTORY OF THE OFFICE OF THE REGISTRAR OF COMPANIES

There is considerable history to the formation of the Office of the Registrar of Companies. The ORC was first proposed by the Gower Report whose recommendations resulted in the Companies Act, 1963 (Act 179). Professor Gower stated in his Report that “in addition, the Interim Report stressed the need to build up the Organisation of the Companies Registry so that it might undertake increased supervision in addition to mere company registration ...” It was

Professor Gower’s anticipation that the Registrar of Companies would take charge of the administration of the Companies Act, 1963, after a brief interim period during which the Registrar-General of Ghana would be in charge. However, this proposed interim arrangement persisted until the passage of the Companies Act, 2019 (Act 992).

In April, 2008 the Business Law Reform Committee of Experts was established by the Attorney-General of Ghana to offer independent advice on the reform of the business law of Ghana. The theme adopted by the Government for this reform programme was:

“Improving the Ease of Doing Business.” The background of the members of the Committee cut across law, economics, accountancy and business. Membership of the Committee were drawn from both the private and public sectors. The Committee was chaired by Justice Dr. S.K. Date-Bah, a Justice of the Supreme Court. Peter McKenzie QC of New Zealand was their external consultant.

The Committee prioritised the reform of company law in Ghana. Consequently, it held extensive stakeholder consultations on the reform of the Companies Act, 1963. This was important because in spite of the forward-looking provisions of the 1963 Act when it was first enacted, some of the

provisions had become obsolete with the effluxion of time.

Policy proposals set out by the Committee of Experts which were endorsed by the Attorney-General translated into a Bill which formed the basis of the Companies Act, 2019 (Act 992). The Committee made 10 proposals for reform:

- Change from Regulations to Constitution and abolition of the need to file a constitution as part of the incorporation process;
- full abolition of the doctrine of ultra vires;
- proposed suffixes to company names;
- the requirement for major transactions to receive the authorization of shareholders;
- “buy-out” remedy for dissenting minority share holders;
- creation of the office of the Registrar of Companies;
- electronic or digital means of registration, communication and service;
- updating the accounting terminology and the requirement to include a statement of cash flows in financial statements;
- retention of the prospectus provisions pending their inclusion in a separate Securities Industries statute; and

- additional to the representative action provided for in Gower’s original proposals, new provisions enabling share holders to enforce the rights of their company through derivative actions.

These proposals – which are in line with modern trends – were incorporated into the Companies Act, 2019. The legislative change is compatible with similar reforms undertaken by other Commonwealth jurisdictions such as Australia, Canada, Mauritius, New Zealand, South Africa and the United Kingdom. The creation of the ORC is to ensure that the 2019 Act is administered by a Registrar dedicated exclusively to business units and their administration. The ORC’s work is boosted by operational impetus in the “electronic or digital means of registration, communication and service” among other provisions. The new legal framework is meant to ensure efficiency and ease of doing business in Ghana.

The ORC was carved out of the Registrar General’s Department (RGD). Under the Companies Act, 1963 the RGD was responsible for the registration of business names, companies, partnership, estate administration, intellectual property and marriage. The creation of the

ORC does not mean the RGD will cease to exist. Under the new arrangement, the RGD shall continue to perform its other functions namely registration of intellectual property, marriages under special license and administration of estates. This is a classic case of division of a government agency/institution performing multiple functions.

Public policy in Ghana has long subscribed to the formation of public bodies that are vested with multiple functions. The phenomenon of government agencies performing multiple functions in Ghana is not restricted to the role of the RGD under the Companies Act, 1963. They are found in most government institutions. The Ghana Civil Aviation Authority (GCAA), for instance, is tasked with the licensing of air transport and ensuring safety of air navigation and aircraft among other functions. The Food and Drugs Authority is charged with functions including ensuring that food, drugs, cosmetics, household chemicals and medical devices placed on the market are safe and effective; advising the Minister on measures for the protection of the health of consumers; and approving the initiation and conduct of clinical trials in the country.

The reason for the consolidation of functions is mainly to make oversight easier. Oversight of

public administration refers “to the ability of an external body to review the conduct and decisions of government agencies and public officials.” These external bodies include the sector Ministry, Parliament and the Auditor-General.

The rationale behind external oversight is to maintain the integrity of government agencies and public officials by holding them accountable for actions and decisions in the performance of their functions. External oversight also “provides a quality control mechanism for any internal review process existing within government agencies.” It also provides the oversight bodies such as Ministries the opportunity to obtain information from agencies within their jurisdiction for the enhancement of government policies among other purposes. It is a respective view that ministerial and parliamentary oversight activities tend to be easier when different governmental functions are placed into one agency. This is because ultimate accountability for the agency’s actions lies with its governing board, which usually produces a single report covering all of the body’s functions. There is, in this way, clarity in relation to the information flowing from the agency to the Minister and clarity in terms of the location of responsibility.

It is, however, observed that multiple functions may lead to neglect of some core duties by agencies. This feature makes these agencies less capable of acting autonomously, and thus more likely to remain under the control of the Minister and Parliament. This is more problematic if the functions are less similar in nature.

The challenges that multi-functional institutions face are enormous. Prominent among them is the challenge of navigating between the different functions to achieve the result expected by principals such as Parliament or the Executive. Faced with different goals, the likelihood of trade-off between two or more goals or prioritisation of goals by a public institution is a normal occurrence. Relating the situation to basic economics, a person may be forced to choose between conflicting wants or commitments. In such circumstances, there is prioritisation which involves the setting out of a scale of preference – the most pressing want comes first on the list. This consequently results in opportunity costs which are the costs of the alternative forgone in order to pursue a certain action. Public institutions performing multiple functions are constantly faced with this conundrum since most of the functions may conflict. To succeed involves a balancing act but in reality, the

dilemma may lead to choices which may sacrifice a goal at the expense of another.

Splitting of the US Minerals Management Service (MMS) provides a case study of the rationale for the division of a public agency. Prior to the division, the MMS was performing multiple functions in environmental enforcement, energy development and revenue collection. The Deepwater Horizon oil spill on the Gulf of Mexico exposed the regulatory failure of the Minerals Management Service due partly to its conflicting functions. Secretary of the Interior Ken Salazar responded by restructuring the Mineral Management Service, dividing its three conflicting functions into separate entities with independent missions. Prior to the signing of the Secretarial Order, Secretary Salazar stated that the MMS must be divided for the benefit of effective enforcement, energy development and revenue collection.

The reform agenda, Secretary Salazar indicated, will ensure that the three separate and equally-important missions will be carried out with greater effectiveness and transparency. The Bureau of Safety and Environmental Enforcement was created to oversee safety and environmental protection in all

offshore energy activities, such as oil drilling. The Bureau of Ocean Energy Management was responsible for the sustainable development of the Outer Continental Shelf's conventional and renewable energy resources, including resource evaluation, planning, and other activities related to leasing. The third new division was the Office of Natural Resources Revenue which was responsible for revenue collection and distribution. All these functions were performed by the Minerals Management Service (MMS).

It is apparent that the business related functions of the Registrar General's Department competed with the other functions. The RGD's multi-faceted role under the old Companies Act overburdened the organisation and affected the delivery of quality services. The registration and regulation of businesses role of the RGD was a huge task that needed enhanced focus and this informed Gower's 1961 Proposal for the creation of the Office of the Registrar of Companies to be responsible for it. With the expansion of business activities in Ghana over the years, it became more important that a government agency was needed solely for registration and administration of companies and other entities. No wonder the creation of the ORC was a key proposal presented by the 2008 Committee of Experts. Following the hive-off, the RGD will now

focus on all other duties and leave anything related to business operations for the Registrar of Companies to handle. The ultimate benefit of the ORC lies in greater efficiency in the regulation of business entities.

CONCLUDING REMARKS

Going forward, the ORC is expected to facilitate business operations and improve quality of service delivery for entities in Ghana. To achieve these, the management of the ORC must endeavor to pursue their organisational goals with alacrity and determination. The position of the office is strengthened by its financial autonomy in the use of internally generated funds to fund their activities. The ORC must adopt innovative means in the generation of revenue and in the execution of its tasks. In the long run, it is efficiency and efficiency alone that can carry the ORC to its destination.

References:

1. B.G. Garth: "Law and Society as Law and Development" (2003) 37 Law and Society Review, pp. 305-314, at p. 309.
2. Act 992, s 8.
3. Act 992, s 9.
4. Act 992, s 13.
5. Act 992, s 15.
6. Act 992, s 17.
7. Act 992, s 20.
8. Act 992, s 21.
9. Act 992, s 22.
10. Act 992, s 23.
11. Act 992, s 30.
12. Act 992, s 351.
13. L C B Gower; Commission of Enquiry into the Working and Administration of the Present Company Law of Ghana. Accra: Government Printer, 1961 p. 3.
14. Date-Bah, Kofi (2011) "Revitalising Gower's Legacy: Re-forming Company Law in Ghana," Penn State International Law Review: Vol. 29: No. 3, Article 5, p. 455.
15. Date-Bah 456.
16. 'Oversight of Public Administration' New South Wales, Ombudsman Sydney March 2012.
17. Ibid.
18. Ibid.
19. See US Department of Interior, The Secretary of the In-

terior, 'Establishment of the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Natural Resource Revenue' Order No. 3299 (19 May 2010) Washington DC hereinafter cited as Secretarial Order.

20. US Department of Interior, 'Salazar Divides MMS's Three Conflicting Mission - Establishes Independent Agency to Police Offshore Energy Operator' Press Release (Washington DC, 19 May 2010) <<http://www.doi.gov/news/pressreleases/Salazar-Divides-MMSs-Three-Conflicting-Mission.cfm>>

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.

25. See <https://www.pulse.com.gh/bi/strategy/duties-of-the-registrar-of-companies-in-ghana-is-now-separated-from-the-registrar/00cpcy5>



THE DAWN OF A NEW ERA IN THE GRANT OF STAY OF EXECUTION IN NON EXECUTORY ORDERS: THE CASE OF OGYEADOM OBRANU KWESI ATTA VI

- Justice Eric Kyei Baffour, Court of Appeal

Introduction

Save for patchy variations set out in a handful of cases in the last decade or so, the courts for more than three score years have been resolute in its refusal to grant stay of execution of orders, decrees, judgments and rulings of lower courts that are deemed not to be executable. Notwithstanding the palpable injustice occasioned to litigants who may have genuine appeals being pursued by such rigid fidelity to the law by Judges in refusing applications for stay of execution on the technical distinction of an appealable order being labelled as executable or non-executable, true substantial justice can be said to have been done in the case of Civil Appeal No. J8/131/2019 Ogyeedom Kwesi Atta VI v Ghana Telecommunications & Co Ltd & Anor when the Supreme

Court granted an application for stay of execution even though the substance of the appeal before the court was against a non-executable order of the Court of Appeal.

In this article, the writer scans the horizon of the legal landscape on the determination of cases regarding executory and non-executory orders culminating in the decision in the case of Ogyeedom Obranu Kwesi Attah VI, which decision has received further clarification and application in the case of Civil Appeal No. J4/01/2021 Tony Lithur v Nana Oye Lithur. The article also explores attempts that were made over the years to avoid the harsh injustice due to the strict adherence to the rule that an order not being executable is not capable of being stayed with the emergent emergence of an order

for suspension of the orders of the court, injunction to stay execution as well as stay of proceedings of execution, all as palliatives in the face of apparent injustice to litigants. Finally, the article examines whether in the face of the new thinking to the effect that an order not being executable but if it has inherent inevitable executable consequences was now a subject of stay order in appropriate circumstances, the alternative reliefs of suspension of the lower courts orders, injunction to stay execution and stay of proceedings of execution that were developed can still be deemed to be apposite.

Executory and Non-Executory Orders Execution simply means the act of carrying out or putting into effect an order of a court. It is the process of judicial enforcement of a judgment to ensure that the victorious party in court fully realizes the gains of the court victory. There are many enforcement procedures provided by the High Court (Civil Procedure) Rules, 2004, C. I 47. The form of execution depends on the nature of the judgment secured in court; they however include writ of fieri facias, garnishee proceedings, a charging order, the appointment of a receiver, an order for committal, writ of sequestration. Besides, one can also speak of writ of possession, writ of delivery up, insolvency petition proceedings against individuals

and petition to wind up of limited liability companies and body corporate entities. As the focus of this article is not about the forms of execution available to a successful party in court, the writer does not intend to discuss each of the forms of execution and when the necessity arises for a resort to any of the modes of execution. An attempt to discuss them has the potential to divert attention from the focus of this write up. What is meant by an executory order, decree or judgment is when the order or decision appealed against is capable of execution by resort to any of the forms of execution of a judgment. And if the order appealed against is not capable of being executed, then a stay of execution would not lie.

Whilst it is a right conferred on a losing party to apply for a stay of execution of the judgment or order or other relief on the ground of matters which have occurred since the date of the judgment or order, and the Court may by order grant the relief, the events that might have occurred since the date of judgment to ground such an application for stay usually may be the filing of an appeal to test the correctness of the judgment. For the mere filing of an appeal alone and without more, cannot operate as a stay of execution. And in this regard the relevant rules of procedure of both the Supreme Court and the Court of Appeal that deal with the



effect of an appeal on execution processes are worth quoting. Rule 20 of the Supreme Court Rules, 1996, C. I. 16 states as follows:

“A civil appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except in so far as the Court or the court below may otherwise order”. ”

A similar provision in the Court of Appeal Rules, being Rule 27 of C. I. 19 was amended to read that a civil appeal shall not operate as a stay of execution under the judgment or decision appealed against unless the court otherwise orders on an application made to the court by motion.

In a comprehensive manner, Order 51 of the High Court (Civil Procedure) Rules, 2004, C. I. 47 has also been amended by substitution for sub rule (1) of rule 9 that

“ “an appeal shall not operate as a stay of execution under the judgment or decision appealed against unless the court otherwise orders on an application made to the court”.

The net effect of the relevant provisions on the amendments to the High Court and Court of Appeal rules of procedures regulating actions in the Superior Courts are to the effect that one, the filing of appeal itself cannot stay execution of a judgment appealed against. Two, that for an appellant to hold in abeyance the execution processes whilst his appeal was pending, he must file an

application for stay of execution of the order or decree or the judgment. Finally, the previous existing regime of first filing the application before the trial court whose order, decree or judgment is the subject of appeal, was no longer the law. And therefore the corpus of law that developed and established in cases like **Ghassoub v Bibiani Wood Complex Ltd [1984-86] 1 GLR 271 CA** may be good law but no longer relevant law. The law flowing from the revoked rule which is to the effect that when an appellant finds the need to apply for stay of execution of a judgment, same must first be made before the court of first instance that gave the order and upon refusal repeated at the appellate court. It had been the principle in the two cases last cited that when the trial court grant the stay but the terms of its compliance are onerous, it effectively amounts to a denial and the applicant is entitled to repeat the application before the appellate court.

Factors giving rise to a decision being declared as Non-Executable Order

What may give rise to a court concluding that the subject matter of appeal is incapable of stay could be any of the following: there may have been a judgment in default of appearance or defence against a defendant or there could have been a summary judgment taken

against a defendant to a cause. Upon being served with entry of judgment or any execution process, such a defendant may wake up from his stupour and quickly apply to the trial court to set aside the order or the ruling. This may be due to the fact that the defendant may contest service of the relevant processes on him or the time to even appeal might have elapsed. When the court refuse to set aside its order, the appeal launched could only be against the refusal of the court to set aside its order but not the original order granting judgment to the victorious party to go into execution. There are also those category of situations where the appeal filed may be against a judgment delivered on merit but the order or decree may have been a declaratory judgment or may not have required the performance of a positive act on the part of any party. And yet on appeal a losing party may seek a stay of that judgment. It is within these contexts that the principles in the decisions discussed below have been framed.

Decided Cases on refusal to Stay Non Executable Orders

The first of the long line of cases was the decision in **Eboe v Eboe [1961] GLR 432**. Ollenu J. (as he then was) was clear in an application seeking to stay declaratory judgment to the effect that a defendant was vested with one half share of certain

business interest and assets held by him when he held that

“the declaration that the defendant is a trustee does not require any person to do anything or abstain from doing anything, and there is no method for executing it”.

This ratio was followed a decade later in the case of **Standard Chartered Bank of West Africa v Boaitay**, [1971] 2 GLR 308, a decision of Taylor J (as then was) even though it must be conceded that the learned Judge did not specifically make reference to the earlier decision in the Eboe case. In a case where judgment had been entered for payment of money due to the Bank and application had been brought for installment payment which had been dismissed. By an appeal against the refusal to grant the motion for installment, the Registrar had relied on the now revoked Court of Appeal (Amendment) Rules, L.I. 618 to claim that because of the pendency of the appeal, execution processes had been suspended. The Bank applied that the appeal against the refusal to stay execution for installment payment should not operate as a stay of execution. Taylor J. agreeing with the submission noted that an appeal as intended by L.I. 618 only operated to stay execution if that which may be taken under the judgment or decision appealed

against was one which has the effect of or involves an order to do or not to do something. He noted emphatically that:

“An appeal which operates as a stay of execution must be one in respect of a matter on which there is a right of appeal, and such right of appeal lies in respect of only a judgment, decree or order. The ruling refusing the application for a stay of execution and payment by instalments was neither a judgment nor a decree and it could not be an order too because an order did not include a refusal to make an order. That ruling was merely a decision which resolved an issue”.

The courts did not slacken or repented in making any exception to this principle as a much more pronounced view of this was to be stated by Acquah JSC (as he then was) speaking for the Supreme Court in the case of **N. B. Landmark v Lakhiani**. [2001-2002] SCGLR 318, a case where default judgment had been obtained for recovery of a shop at the Circuit Court. Application to set aside the default judgment was refused whereupon an appeal was launched against the refusal and was coupled with a motion for stay at the Circuit Court. The trial court refused the application for stay but the Court of Appeal granted it. Piqued by the grant of stay the plaintiff appealed to the Supreme Court which agreed with the plaintiff

in reversing the Court of Appeal. Acquah JSC (as he then was) remarked as follows:

“[i]t is trite learning that an application for stay of execution, presupposes that the order or decision in respect of which the stay is sought is capable of being executed by any of the known processes of execution. If the order or decision is incapable of being executed, an application for stay of execution cannot be applied in respect of it... the judgment in respect of which the application for stay was sought, was one refusing to set aside a default judgment. How does one go into execution in respect of such a refusal order? The appeal was not in respect of the main judgment of 2 November 1998 which ordered the defendant to give up vacant possession of the premises. A stay of execution can of course be applied to stay the substantive judgment if an appeal had been filed against it and the relevant application for stay is filed”.

A similar conclusion was reached in the case of **Appiah v Pastor Laryea-Adjei [2007-2008] SCGLR 863** which involved a sale of a parcel of land at McCarthy Hill in which the plaintiff obtained summary judgment for the refund of monies paid for the intended purchase of the land. Defendant subsequently filed a motion for stay of execution and

payment by installment which was granted. The parties appear to have settled the matter but the defendant failed to abide by the terms which he filed a motion for variation of the terms but same was refused. Defendant then proceeded to file an appeal against the refusal to vary the terms which was granted by the Court of Appeal. Plaintiff then proceeded to the Supreme Court to reverse the order of the Court of Appeal. Akuffo JSC (as she then was) was not enthused by the decision of the Court of Appeal and stated as follows

“[w]here an order of a court is not capable of execution by any known process of the law, it is also not capable of execution by any known process of the law, it is also not capable of being stayed. In this case, however, the High Court did not even make an order. All that the Judge of the High Court did was to decline jurisdiction to deal with the application for variation of the terms of settlement, because he was functus officio. Thus legally, there was and is nothing to execute. Consequently, the Court of Appeal fell into grievous error when it granted the application for stay of execution pending appeal. More importantly the effective outcome of the Court of Appeal’s decision was to grant to the defendant a stay of execution of the judgment debt, by the backdoor as it were, although, as matters stood, there

was no valid application before it for that purpose. It is quite patent from the record that the defendant did not appeal and has never appealed against the summary judgment delivered by the High Court... That being the case there cannot be any valid basis for the Court of Appeal to grant any later application affecting or relating to the execution of the judgment debt”.

Fidelity to this principle was further seen in a case such as **G.F.A. v Apaade Lodge Ltd** [where the Supreme Court reiterated the need in exercising its jurisdiction to grant a stay only in respect of executable judgments or orders of a court from which the appeal emanated. And that in so far as the appeal pending was only in respect of a non-executable order, the Supreme Court had no jurisdiction to stay execution. Not too dissimilar conclusion had also been reached in other cases emanating from the same Supreme Court in following the same line of principle. It must however, be observed that at least two years before the cases of **G. F.A v Apaade Lodge** and **Anang v Sowah** were decided, majority had reached a contrary decision in the case of **N. D. K Financial Services v Yiadom Construction & Electrical Works**. [2007-2008] SCGLR 93. In an appeal against the decision of the Court of

Appeal in refusing to stay execution of a judgment of a High Court, by a majority decision of the apex court, Brobbey JSC invoked, for the first time, the principle of substantial justice in the following terms in granting the application:

“In considering the application for stay, the court should endeavour to do substantial justice. The court should consider the essence of the order more than the form in which it is couched. The most important point is what would happen if the order of the Court of Appeal were not to be obeyed by the party. If the consequences would be the same as refusing to obey the High Court order, and the High Court is executable, then it is my view that the order in the repeat application before the Court of Appeal is equally executable. If it is executable, it is a proper application for consideration on the merits by this court when the application moves to this court from the Court of Appeal”.

With a view to ensuring that substantial justice was achieved, what had been the hackneyed approach to examining executable and non-executable orders was abandoned and the majority determined the case based on the inevitable consequences of the refusal of the application as resulting in injustice. The majority accordingly felt the need to stay execution of the High Court

judgment even though that was not directly the order or decision under appeal. As to whether the majority felt the need to depart from the previous decision was not clearly set out. The guiding principle for the Supreme Court to depart from its own previous decision was clearly set out in the case of **Republic v High Court, General Jurisdiction 5; Ex Parte Minister of Interior**. Benin JSC speaking for the court noted what it means for the Supreme Court to depart from its previous decision under article 129(3) of the Constitution that

“the existing law must be clearly stated and the point/s of departure must equally be clearly stated, without equivocation. Merely casting doubt or even criticizing an existing decision is not tantamount to departing therefrom”. ”

Little wonder therefore, that notwithstanding the brilliant approach by the majority in the N.D. K case to breath fresh air into what had turned to be a stale approach in this beaten path of refusing to grant stay on the technical ground of an order being non-executable, subsequent cases before Ogyeodom decision had to delve into conjuring principles of suspension of orders, injunction and stay of proceedings of execution as a back door approach to stay execution.

Suspension of Judgments, Stay of Proceedings of Execution & Injunctions

With the majority decision in the case of **N. D. K v Yiadom Construction** supra not having gone far enough to clearly depart from the previous decisions, the notional principle of the distinction between executable and non-executable orders and the latter not being capable of stay continued in full force. It is within this milieu that the apex court developed the concept of suspension of orders and decrees and stay of proceedings of execution in particular in an effort to mitigate the palpable helplessness of litigants. Three of these cases where the Supreme Court discussed these principles and either granted or refused are worth discussing here. The first of these is **Merchant Bank Ghana Ltd v Similar Ways**. [2012] 1 SCGLR 440, a case in which the defendant sought to set aside a judgment, entry of judgment at the High Court on the grounds of non-service of hearing. An appeal against the ruling followed by an application for stay of execution at the High Court was dismissed. The third step of another application for stay of execution at the Court of Appeal was withdrawn. It was then followed with an application for interlocutory injunction pending

appeal. Same was dismissed which was then repeated at the Court of Appeal. The Court of Appeal also dismissed the application, compelling the defendant to move to the Supreme Court.

Atuguba JSC conceding that the rules of court cannot adequately conceive every situation that may arise pending the determination of an appeal and drawing on instances of interlocutory reliefs such as suspension of disciplinary sanctions imposed on a lawyer pending the determination of an appeal and suspension of execution pending the determination of a review; the court granted the application not to stay execution but to suspend the order in the following terms:

“All along, it is obvious that its [defendant’s] applications and appeals do not relate to any executable order. That however does not mean that it has no interest in holding off the enforcement of the substantive judgment to which its processes relate.

If a stay of execution cannot lie other remedies may lie. One of such remedies can be the suspension of the entry of judgment. In that event the effect of the judgment itself is temporarily frozen and incidental processes such as execution can’t fly not because execution thereof is stayed but that the life of the judgment itself is in coma. This

measure will prevent the eventual success of the applicant’s appeal being rendered nugatory. This measure will protect the applicant from being injured by the prima facie default of the trial court having delivered its judgment without notice to the applicant, pending the determination of its appeals”. From the tenor of the decision, the necessity to maintain the distinction between a non-executable order and executable order was what conceived the creation of suspension of the orders of the trial court and gave birth to the freezing of execution processes. Refreshing as this approach appeared, it completely accepted as sacrosanct the rule not to grant stay in non-executable orders and hence the ingenuity to introduce the Trojan horse of suspension of the orders of the trial court through which the execution of an order or decree could be held in abeyance.

When one thought the tide had begun to swing, the case of **Standard Chartered Bank (Ghana) Ltd v Western Hardwood** [2009] SCGLR 196 appears to have beaten the path of the hitherto settled principle that a non-executable order was incapable of being stayed. Atuguba JSC who was in the minority in the **N.D.K v Yiadom Construction** (supra) expressed in no uncertain terms that there was no future for the

majority view in the N. D. K case. In fact, if the learned Judge had been a prophet, his prophecy would not have been fulfilled and would be branded as a false prophet today. The Supreme Court in proclaiming that the majority decision in NDK case cannot endure for long unequivocally departed from that decision. The court rather interpreted the word “proceedings” in rule 20(1) of C. I. 16 as referring to any steps that were required or were necessitated, by the judgment appealed from and granted a stay of proceedings of execution. It is very curious to observe that Atuguba JSC who authored this judgment on 20th May, 2009 appeared to have made a volte face in almost two years’ time in the case of **Merchant Bank v Similar Ways** by granting the relief of suspension of the orders of the lower court. The court by invoking functional or purposive interpretation, interpreted the word “proceedings” in rule 20(1) as referring to any steps that were required or were necessitated, and not merely occasioned, by the judgment appealed from.

It was in the face of the murky path chartered that the decision in the case of **Golden Beach Hotels (Ghana) Ltd. v Pack Plus International Ltd** [2012] SCGLR 452 attempted to provide some clarity. The little ray of light provided in the window under the guise of suspension of the orders of a court chartered in the Merchant Bank case seems to have

been slammed when the veritable Date-Bah JSC cautioned in the following terms:

“ “[w]e think that the court needs to spell out the boundaries between orders for stay of execution and orders for suspension of the orders of a court below or for stay of proceedings ... There is a risk of this court descending into a morass of sophistry with applications for stay of execution formulated as applications for suspensions of the orders of the court below or applications for stay for stay of proceedings.

Thus the preconditions for a successful application for an order for suspension of the order of a court below or for the stay of proceedings ... need to be spelt out clearly and authoritatively, otherwise the received learning on executable and non-executable orders would be rendered irrelevant. Logically, the preconditions for triggering orders for suspension of lower courts and stay of stay of proceedings ... have to be stricter and narrower than those for an ordinary application for stay of execution. Otherwise, this court is likely to wallow in a semantic morass”.

The application before the Supreme Court was for an order for the suspension of the order

of the Court of Appeal. It was the view of the court that that application was meant to circumvent the received learning that a court would not grant a stay in a non-executable order of a lower court. The insistence on the narrower factor that the court was at pains to stress was set out to be the necessity to avoid a situation of a successful party whose success on appeal has been rendered nugatory if execution was carried out as set out in the case of **Joseph v Jebeille** [1963] 1 GLR 387 plus what the court described as an additional element of the need to prove exceptional circumstance. As to how the Supreme Court thought it was keeping the door narrow with the criteria of nugatory effect plus exceptional circumstances is not quite clear. For the need to demonstrate exceptional circumstance to merit grant of an application for stay or even suspension of the orders of a trial has long been the law. The narrower approach perhaps was good for emphasis but did not quite respectfully, in the opinion of the writer, set out a new criteria.

Another observation from the Golden Beach case that cannot also be glossed over is that whilst in the **Standard Chartered Bank v Western Hardwood** case, Atuguba JSC had expressly departed from the **N.D. K v Yiadom Construction** case, the Supreme Court affirmed and

upheld the nugatory effect principle espoused in the **N.D. K v Yiadom Construction**, making it appear that the principle established in the latter case was still good law and had not been departed from or overruled in the **Standard Chartered Bank v Western Hardwood** case. In the face of the unclear and meandering paths drawn by the cases, the decision in the case of **Ogyeodom Obranu Kwesi Atta VI v Ghana Telecommunication** becomes one of the ground breaking decisions that marks a watershed in a long wait for an answer to an old problem.

Ogyeodom Obranu Decision: Born Again of an Old Baby?

An enhanced panel of seven had to deal with an application for stay of execution of the judgment of the Court of Appeal which dismissed an appeal of the applicant from a decision of the High Court by which the High Court ordered it to pay to the respondent by way of damages the sum of Sixteen Million and Nine Thousand, Nine Hundred and Twenty United States Dollars (\$16,009,920.00.) The respondent had succeeded in obtaining the said award as damages for unlawful encroachment on its land for erection of a telecommunication tower. An application for stay of execution to the Court of Appeal after the first had been dismissed by the High Court was granted on terms

that required the applicant to pay thirty percent (30%) of the judgment debt to the respondent. This order was complied with. The appeal failed and the applicant further appealed to the Supreme Court. He followed up with a motion for stay which was granted on terms. Feeling aggrieved that the conditional grant amounted to a refusal, repeated the application before the Supreme Court. Opposing the application, the respondent contended as had hitherto been trite law that the grant of the application on terms by the Court of Appeal was not an executable order capable of stay.

Speaking for the court, Gbadegbe JSC was of the view that the previous cases had failed to take advantage of the powers conferred on the Supreme Court under article 129(4) to develop a rule that will avoid the hardships brought upon parties by the strict adherence to the dichotomy of an order or decree being the subject matter of stay only if it is executable. The court in its quest to ensure substantial justice examined the previous cases and drew from its powers to depart from the previous decisions. It was the opinion of the court that

“the ends of justice is better served even in cases where the judgment of the Court of Appeal is said to be merely executable by inquiring to an application for stay of execution

on the merits. This is because in its absence, parties would be left without a remedy”.

I am tempted to think that the word “executable” was meant to be “non-executable” as that provides a better meaning within the context in which the learned Judge drew that conclusion. What has been established by the Ogyeedom decision is the enthronement of the majority decision in the **N. D. K v Yiadom Construction** case which Atuguba JSC had predicted its demise in the Standard Chartered Bank case. The Supreme Court thought it fit that parties seeking justice before court ought not to be turned away on the notional principle of an appeal not being executable when it had ample powers under article 129(4) of the Constitution to do justice. What is now clear is that notwithstanding the departure of the Supreme Court from the previous decisions beginning with **Eboe v Eboe**, the ratio upon which its decision was hinged being article 129(4) which is peculiarly a power conferred on the Supreme Court; the Court of Appeal and the High Court even though bereft of such special power, the latter two courts can still exercise such function and powers in the grant of a stay of execution in non-executable orders.

It is true that the decision was anchored on the special powers

under article 129(4) of the Constitution, but in so far as the Supreme Court departed from its previous decisions under article 129(3) of the Constitution, by which all courts lower than the Supreme Court are bound to follow, the ratio distilled in the Ogyeedom case becomes the decision binding on all courts lower than the Supreme Court, it is submitted.

A casual reading of the concurrent but not dissenting opinion delivered by Pwamang JSC is likely to give the impression that Pwamang JSC was still of the view that a stay could not be granted in non-executable orders of a lower court. But it is doubtful whether that is what the learned Judge meant. First the learned Judge reasoned that exercising a power under article 129(4); such a power cannot be used to stay a non-executable order in the following words:

“I am of the firm view that it would be contrary to established basic and fundamental principles of law for the Supreme Court to purport to stay execution of the judgment of the Court of Appeal that does not contain an executable order. It will be a vacuous order and pointless for the court to make such order”.

One must however be fair to the learned Judge as he agreed that the court has jurisdiction to entertain that application and make an order with a view to

prevent its final judgment in the substantive appeal being rendered nugatory. That by virtue of Articles 131 and 129(4) of the Constitution and Or 43 R11 of C.I.47 the Supreme Court was imbued with the power to stay non-executable orders. If any semblance of doubt existed at all, same has been dispelled in the subsequent case of **Tony Lithur v Nana Oye Lithur(supra)**. First the court stressed that Ogyeedom case departed from the previous decisions. Secondly, it reiterated the point that it may stay execution of decisions which appear not to be executable, but inevitably achieve executable purposes in real terms.

Is Suspension of Orders and Stay of Proceedings of Execution Necessary Any Longer?

With this in mind that in appropriate cases, non-executable orders are capable of stay if the failure would achieve inevitable executable consequences, the received learning distilled in cases like **Merchant Bank v Similar Ways** on suspension of the orders of the court to freeze execution processes and stay of proceedings of execution set out in the case of **Standard Chartered Bank v Western Hardwood Ltd** can be said to be now moot. For the concept of suspension of the execution processes and stay of proceedings of execution

developed within the context of the court's helplessness to intervene in its reluctance to blur the distinction of executable and non-executable orders regardless of the consequences of failure to stay non-executable orders. Having affirmed that by virtue of article 129(4) of the Constitution, the Supreme Court is able to do justice by not being hampered by an order not being executable if its net effect is to result in execution and therefore capable of stay, any application in future for suspension of a non-executable order or for stay of proceedings or even for the court to be guided by a strict and narrower approach in such a grant can be said to be now otiose as an applicant before the Supreme Court need not go through the back door to achieve a stay which is the ultimate desire; when such an applicant is allowed to use the front door by filing for stay of execution when the justice of the case demands so.

Conclusion

The writer therefore finds it apt to cite the following as a befitting epilogue, being the veritable words of our Lord Jesus Christ:

“No one sews a patch of unshrunk cloth on an old garment. Otherwise, the new piece will pull away from the old, making the tear worse. 22 And no one pours new wine into old wineskins. Otherwise, the wine will burst the skins, and both the

wine and the wineskins will be ruined. No, they pour new wine into new wineskins.

One therefore hopes that the pouring of new wine of applications for grant of stay of execution in future would not be diluted with the old wineskin of suspension of orders and stay of proceedings of execution for any ruinous effect as orders coming from the courts. We cannot think anew and still cling to what is now old forms and traditions as well as the things that have fallen apart. Ogyeedom has made things new!!!



ALLOCATING THE EVIDENTIAL BURDEN IN THE CONTEXT OF NEGATIVE AVERMENTS: A CRITICAL LOOK

By Solomon Faakye

Abstract

The apportionment of the burden of proof in a trial remains a tricky endeavor. Many rules of thumb have evolved to resolve this difficulty among which includes the negation based rule. The negation based rule simply posits that the burden of proof is on he who avers the positive and not he who avers the negative. It need not be belabored that the practical application of this rule has further compounded the many complications arising from allocating the burden of proof.

This paper evaluates this rule in the light of Ghanaian Judicial pronouncements and attempts to propose an interpretation and application of the rule that effectively harmonizes the common law position and statute.

Introduction

The rule that the burden of persuasion lies on the person who makes the affirmative claim and not on the one denying a claim is a widely applied rule of evidence across jurisdictions. It is supported by the view that positive claims are easier to prove than negative claims. The correctness or otherwise of the rule however, has been widely contested in the common law world. Saunders, in evaluating the logical basis of the rule calls it a folk lore. McCormick cites the rule with disapproval. Best, describes it as a misapplication of a Roman dictum. In Ghanaian jurisprudence, we see some application of the rule by the Superior Courts in the determination and allocation of the burden of proof. The atmosphere surrounding its application has often been contentious. Judges and Counsels have held on uncompromisingly to conflicting

judicial and academic opinions to justify their position. A clear position on the legal effect of a negative averment on the burden of proof in the Ghanaian jurisdiction has thus been elusive. Put in more specific terms, whether or not a plaintiff who makes a negative averment has any duty to prove the facts he puts in issue remains a riddle. Admittedly, the Ghanaian Courts have good company in this struggle - the evidential position of a party who makes a negative averment has for long, troubled the common law courts . Unlike statutory and common law presumptions which could operate as an exception to the general rules on the allocation of the burden of proof, it is doubtful whether the negation based rule could operate as such. This is because, whilst presumptions have a definitional scope regarding what constitutes its content , the negation based rule has no clear rules or principles on the content of an affirmative statement or negative statement within the context of pleadings.

This paper proposes an approach to the application of the negation based rule that is consistent with statutes and the rule of pleadings as known to Ghanaian law. Such an approach is useful because it provides consistency in the application of the rules of evidence and certainty of the law which is a

key constitutional aspiration.

Manifestations of the Negation Based Rule

For purposes of this paper, two public law cases are primarily of interest. The first is the case of **Kwakyie v. Attorney General**. This case is chosen because not only does it provide a good glimpse on how the debate around the negation based rule has evolved in Ghanaian jurisprudence, but also the factual context within which the rule may arise.

The facts were as follows. The Plaintiff was the Inspector General of Police before the overthrow of the Government on June 4th 1979. He was arrested but managed to escape from detention. In his absence he was tried and sentenced by the special court set up by the new government, Armed Forces Revolutionary Council (AFRC), to twenty five (25) years imprisonment. He subsequently brought an action seeking for a declaration that he was never tried, convicted or sentenced by the Special Court established for that purpose and that the purported sentence of twenty five (25) years imposed on him was void and of no effect. The Defendant, the Attorney General, sought to have the case dismissed on grounds that the court has no jurisdiction to entertain the matter. In support of the Attorney General's claim,

he referred to section 15(2) of the transitional provisions of the 1979 constitution, which provided as follows:

“For the avoidance of doubt it is hereby declared that no executive, legislative or judicial action taken or purported to have been taken by the Armed Forces

Revolutionary Council or by any person in the name of that Council shall be questioned in any proceedings whatsoever, and, accordingly it shall not be lawful for any Court or other tribunal to make any order or grant any remedy or relief in respect of any such act.”

The defendant by an amended writ produced both oral and documentary evidence with a view to show that judicial action or purported legal action within the true meaning of section 15(2) had been taken against the Plaintiff and that the Court was constitutionally enjoined to decline jurisdiction.

The Court’s task was to decide whether a factual basis existed for the application of section 15(2) of the transitional provisions. In resolving this task, the court had to determine whether the defendant had any burden at all to prove that indeed there was no judicial action taken against plaintiff as alleged by defendant. Two judges of the court, Apaloo (JSC) and Sowah (JSC), disagreed on this vital issue. For ease of reference, I reproduce the relevant portions of their opinions

below:

“There seems to be some school of thought that where the subject-matter of a party’s allegation, whether affirmative or negative, is peculiarly within the knowledge of his opponent, it lies upon the latter to rebut the allegation. So it may be argued in this case that whether the plaintiff was tried or not is peculiarly within the knowledge of the defendant and the burden is on him to prove it although it is the plaintiff who makes the averment. But according to Phipson, the cases in which that principle was applied turned largely on construction of legislation. As the learned author put it: “These cases, however, have been considered to rest partly upon the construction of the Acts; and in the absence of statutory provision, the better opinion now seems to be that, in general, some prima facie evidence must be given by the complainant in order to cast the burden on his adversary. The difficulty of proving a fact peculiarly known to an opponent, may . . . affect the quantum of evidence demanded in the first instance, but does not change the rule of law . . . “

Contrary to the opinion of Apaloo JSC. Above, Sowah JSC observed as follows:

“The substance of plaintiff’s claim is that he heard on the radio on 21 September 1979 that he was amongst the persons tried in absentia and sentenced to 25 years’

imprisonment. He denies any such trial and asserts that the purported sentence was an infringement on his human rights. He raises a presumption in his favour which must be rebutted. But I would also add that the matters being agitated are peculiarly within the knowledge of the defence and would adopt the dictum of Bayley J. in R. v. Turner (1816) 5 M. & S. 206 at p. 211. (See also Cross on Evidence (2nd ed.) at p. 81): “If a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies and who asserts the affirmative is to prove it, and not he who asserts the negative.”

What we see from this case is that Justice Apaloo maintains that at least the initial evidential burden remains with the Plaintiff, no matter the form of pleading. Sowah JSC. on the other hand relying on an English case, combines the negation based rule and the peculiar knowledge rule and adopts the view that where a negative averment are made upon facts within the peculiar knowledge of the other party, the burden of proof shifts to that other party. Thus, essentially, the initial evidential burden rest on the person making the positive averment – the defendant. Even though this case was decided more than three decades ago it is instructive to note that the statutory provisions on the burden of producing evidence applied to the case, has

persisted without any legislative reform . Its relevance in contemporary times is therefore beyond doubt.

The rather recent case of **Benjamin Sarfo v. University of Cape Coast**. Which terminated at the Court of Appeal provides further insight into how problematic the application of the rule remains.

The facts in so far as material are that, in 2017, twenty two (22) students of the University of Cape Coast brought a suit against the University seeking a declaration that their rustication from the University offends due process and is thus null and void. The Plaintiff averred that the University (Defendants) did not give them a hearing before its decision to rusticate them. Defendants averred to the contrary that it gave them a hearing. None of the parties provided documentary evidence other than rehashing their pleadings through their witness . On the issue of which of the parties carry the evidential burden and the burden of proof, the Learned Trial Judge reasoned as follows :

“The general proposition of the law is that it is the Plaintiffs who sue the Defendant who is to prove his case against the Defendant. That generally it is the Plaintiff who carries the evidential burden imposed on him against the Defendant.

However as held in the case of: In Re

Ashalley Botwe Lands case , the evidential burden on the other hand is an obligation that shifts between parties over the course of trial.

It is the burden to adduce sufficient evidence to properly raise an issue in Court. Section 14 of the Evidence Act (1976) NRCD 323 also states that the burden of persuasion may shift from the Plaintiff to the Defendant or vice versa .

It is also a common law rule that a person who makes a positive averment carries the burden of proving that positive averment. By necessary implication, a person who makes a negative averment bears no burden to proof the negative averment”

The court then proceeded to demonstrate what in its view constitutes positive averments and what constitutes negative averments.

It observed:

“With reference to the triable issues, it is mainly the defendant who is making a positive averment whereas the plaintiff makes a negative averment. For example, it is a positive averment for the defendants that:

- 1. The Plaintiffs were given a fair hearing before their rustication?*
- 2. The Plaintiffs were charged with offences in the Student’s Hand book during the trial?*
- 3. The Defendant positively maintain that the action it took leading to the rustication of the Plaintiffs were in accordance with the rules of natural justice.*

Whereas the Defendant institution makes these positive averments, the Plaintiffs also averred negatively that;

- 1. They were not given fair trial before their rustication.*
- 2. They were not charged with any offences.*
- 3. That the action which was taken by the Defendant before their rustication is not in accordance with natural justice.*

Thus all the averments crucial to this case made by the Plaintiffs are to the negative whereas the Defendant made positive averments.

As required by law, the Defendant in this case is to prove its positive averments. The burden of proof in this case therefore totally shifts from the Plaintiffs to the Defendant.

It is therefore the Defendant’s institution who is to carry the evidential burden in this case.”

It is clear from the above that the determination of who makes a negative or positive statement was based on the linguistic construction of the pleadings. In other words, the party using the word ‘not’ in his pleadings is considered to be making a negative averment. The learned trial judge imposed both the evidential burden and the persuasive burden on the Defendant on the basis of this construction.

At the Court of Appeal, the case

took an interesting twist. On the question of whether the Trial Court rightly resolved the question of whether the defendant bore the evidential burden relating to the negative averments of the plaintiff, the Court agreed with the Appellant/Defendant and answered in the negative. The Court observed:

“Section 10(2) of Evidence Act, 1975 (NRCD 323) provides that:

“(2) The burden of persuasion may require a party

(a) To raise a reasonable doubt concerning the existence and non- existence of a fact, or

(b) To establish the existence or non – existence of a fact by a preponderance of the probabilities or proof beyond a reasonable doubt.””.

Section 14 of the Act also provides that: “Except as otherwise provided by law, unless it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defense that is asserting”. The above provisions demonstrate that a party in litigation does not only produce sufficient evidence to establish the existence of a fact, but also, he must introduce sufficient evidence to establish the non-existence of a fact in issue. This implies that Section 10(2) AND 11(4) OF THE Evidence Act, 1975 (NRCD 323) have amended the common law position referred by the learned trial judge to the effect that; “A person who makes a negative averment bears no burden to prove the negative.”

Unlike the Court of Appeal Sowah was more measured and restrained in his assessment of the applicability of the negation based rule. Sowah did not dismiss the applicability of the rule in Ghana. He only demonstrated what he thought to be the correct application of the rule in the light of common law precedents. Also, Sowah, introduce one important exception to the strict application of the rule – the peculiar knowledge rule. This has been discussed in other sections of this paper.

The Burden of Proof under Evidence Statute

Ghana’s evidence statute does not use the term burden of proof. It uses the term burden of producing evidence and burden of persuasion to represent the burden of proof as understood in the common law world. The ‘burdens’ as I shall refer to them subsequently, constitutes the onus of proof in a trial . Section 11(1) of the Evidence Act of Ghana defines the evidential burden as follows:

“For the purposes of this decree, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling against him on an issue” .

Generally speaking, it is a party who commences an action

before a competent court who seeks a remedy before that court. It follows that it is such party who stand the danger of not being granted these remedies if no evidence is led. Section 17 (1) of the law provides

“Except as otherwise provided by law, the burden of producing evidence on a particular fact is on the party against whom a finding on that fact would be required in the absence of further evidence”.

Section 17 (2) adds

“Except as otherwise provided by law, the burden of producing evidence of a particular fact is initially on the party with the burden of persuasion as to that fact”.

This provision shows that the initial evidential burden lies with the party with the burden of persuasion. Thus, once we establish where the burden of persuasion falls we can find the bearer of the evidential burden on a fact. This statutory approach appears to be consistent with the view of Emson who notes

“Under normal circumstances the party bearing the legal burden of proof on a fact in issue also bears the evidential burden to make it a live issue.”

Thus essentially the evidential burden is conceptualized as a function of the legal burden of proof. Section 15 of the Evidence Act defines the burden of persuasion as follows:

“For the purposes of this decree the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court”.

Section 17 allocates the burden as follows *“Except as otherwise provided by law, unless and until it is shifted a party has the burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defense he is asserting”.*

This provision is also not without ambiguity regarding which party specifically bears the burden of persuasion. What we can however reasonably deduce is that in the absence of exceptions, the persuasive burden arises where there are facts essential to establishing a claim or a defense. Thus, where no facts are introduced there is nothing to persuade the Court about.

The Burden of Proof and the Nature of Pleadings

A plaintiff sets out a cause of action by means of pleadings contained in a statement of claim. The defendant who intends to fight the case does so by either of three main means or a combination of them: a traverse, confession and avoidance, or legal objection. A traverse simply disputes what the plaintiff says by means of a denial or statement of non-admission. A confession and avoidance admits the fact stated by plaintiff subject to a justification or excuse. Thus it imposes new facts on the

admission which seeks to destroy opponents' facts. A legal objection questions the legal basis of the opponents claim by contesting its validity or regularity as a cause of action. These three typologies of defense are generally accepted in the common law world. The structure of a defense discussed above provides good grounds for analyzing the 'burdens' as used in legislation.

As already mentioned, the persuasive burden in Ghanaian Statutes, relates to an obligation to prove facts essential to a claim or defense up to a certain requisite level of belief . Viewed logically, it is only where a party introduces a fact that he or she bears the persuasive burden. Thus, drawn from the premises already discussed, the persuasive burden will not arise where a party only deny or make a statement of non-admission because no fresh facts will be introduced to warrant proof. And as shown, where there is no persuasive burden, there is no initial burden of proof.

The Ghanaian Courts captures this succinctly as follows:

“In a claim made by the Plaintiff, there is no onus on the defendant to disprove the claim so that however unsatisfactory or conflicting the defendants' evidence may be, it cannot avail the plaintiff. The evidence of the defense only becomes important if it can upset the balance of probabilities which the plaintiff's evidence

might have created in the plaintiffs favor or if tends to corroborate the plaintiffs evidence or tends to show that evidence led on behalf of the plaintiff were true.”

If a burden to disprove does not generally exist, then there is no other burden on Defendants in the absence of any fresh facts raised by means of avoidance and confession or foundational facts that may constitute a legal objection . Even where an evidential burden arises in relation to the Defendant, it appears that the inability of the Defendant to discharge the burden does not relieve the Plaintiff of the legal burden of proof . The case of **Pickford v. Imperial Chemical Industries p/c** affords illustrates . The plaintiffs had been employed by the defendants as a secretary. She developed a disease in both hands which was recognized as a basis for industrial injury benefit. She sued defendants for negligence. Defendants said that it was psychogenic in origin. Plaintiffs said that it was organic in origin. Both sides produced medical experts. The trial judge said that he was not satisfied by either side's assertions and found for the defendants. The House of Lords in reversing the Court of Appeals decision observed that the defendants only had to rebut plaintiffs' assertions but had no duty to prove that the disease was psychogenic in origin. They further observed that failure to prove the explanation that they did put forward still left open the question of whether the disease

was organic in origin.

How do we apply the negation based rule in the light of the structure of pleadings discussed above and our understanding of the statutory position? Does a positive statement in answer to a negative statement make it any less a denial or a rebuttal? My view on this is in the negative. Where a fact is introduced in a negative statement in support of a claim, it is my view that a positive answer that essentially contradicts the statement is a valid denial or non-admission. Odgers demonstrate this as follows: For a statement that *“the premises were handed over in an unfinished condition”, the right denial should be: “the premises were finished when handed over”*.

From this illustration we see that though as a rule, a traverse is stated in the negative and a defendant claim is stated in the negative, the proper means of traversing may be to state it in the opposite way. That does not make it any less a statement of denial or at least a statement of non-admission. Thus the form of a defendant statement may not be in the negative but the effect will be to deny what plaintiff has said. The case of **Soward v. Leggatt** is instructive. In this case, a landlord claimed against the tenants under a repairing contract in a lease. In the pleadings he alleged that the defendants did

not repair and did not paint the premises. The defendant responded that he did well paint and that he did repair the premises. Thus on paper, it looked like defendant was making denials and plaintiff making positive assertions. At trial, the defendant counsel claimed that he had the burden of proof and so he had the right to open the case. Lord Abinger said:

“Looking at these things according to common sense, we should consider what the substantive fact to be made out is, and on whom it lies to make it out. It is not so much the form of the issue which ought to be considered, as the substance and effect of it. In many cases, a party, by a little difference in the drawing of his pleadings, might make [his allegation] either affirmative or negative, as he pleased. The plaintiff here says, ‘You did not repair’; he might have said, ‘You let the house become dilapidated.’ I shall endeavor by my own view to arrive at the substance of the issue, and I think in the present case that the plaintiff’s counsel should begin.”

The Abinger test allocates the burden on the basis of where the cause of action lies. Since the defendants answer, though positively worded essentially denied plaintiff’s claim, Abinger imposed the burden of proof on the plaintiff being the party pursuing a cause of action. Abinger shows that the mere form of pleadings may not be a safe guide in the allocation of the ‘burdens’.

The Trial Courts decision in the

UCC case, allocates the ‘burdens’ according to whether a negative or positive averment has been made . Thus, based on the linguistic structure of the pleadings the defendant is made to bear the ‘burdens’ though he has no cause of action before the Court for which he must persuade or any new facts which he must prove. This view obviously pays no attention to the structure of a defense as known to the rules of pleadings and the statutory position correctly interpreted .

The Court of Appeal as well dismisses the rule out rightly, without any reference to existing judicial authority on the Interpretations of the Rule as for instance found in the Kwakye case already discussed. By doing so the Court of Appeal appears to have overlooked stare decisis relevant to the interpretation of the Evidence Statute. Perhaps averting their minds to this reality may have led to a different conclusion. Sowah on the other hand acknowledges the relevance of the rule but appears to provide further context for its application. It is to this analysis that I now turn.

The Peculiar Knowledge Rule

The peculiar knowledge rule simply says that, the defendant bears the burden of proving a matter that lies peculiarly within his knowledge . In the criminal law, peculiar knowledge is

applied in cases where a charge contains a negative averment . Sowah JSC referring to **R v. Turner** in his judgment combines the peculiar knowledge rule and negation rule to shift the burden of proof. This seems to be consistent with the general view that connect these rules which is that litigants making affirmative claims have greater accessibility to evidence than litigants making a negative claim . In the Nwadoro case we see a more recent endorsement of the rule by the Ghanaian Courts . The facts were that -appellants had been dismissed by the respondents for breach of the school’s regulation. The appellants alleged that their dismissal by respondents was unlawful. The respondents in answer traversed that they have complied with their procedures and thus the dismissal was lawful. The defendants did not tender evidence showing compliance with their own procedures. The court, reversing the decision of the two lower courts observed:

“How the committee, if any, was constituted, how evidence was taken etc. did not matter to the courts below. How in a crucial matter of this nature a security officer can sign a committee’s report without even indicating his status escaped the lower courts. In my opinion, as the setting up of the Committee of Enquiry, its terms of reference and the modalities for its work were known exclusively by the respondent which allegedly set it up, it behooves the respondent to have given particulars

thereof as regards at least the composition and terms of reference, etc. Section 17(1) of the Evidence Act, 1975 NRCD323 states the position clearly as follows: 17(1) except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof. The facts of the commission of Enquiry, if any, was within the particular knowledge of the respondent who allegedly set it up and claimed to have heard the appellants. In such a case, there would be no hardship on them to produce the full record of proceedings, including of course, the evidence, if any, and the membership thereof etc". See the case of: Nimmo v Alexander Cowans & Sons Ltd [1968] AC 107 and the opinion of Lord Pearson who was of the view that a party's respective means of knowledge and spheres of responsibility are vital factors in determining the incidence of burden of proof. I think it would be right to hold against the respondents that given the circumstances of the case, they were enjoined by basic principles of administrative fairness to have provided the names of the members of the Committee of Enquiry, their mandate, and when the appellants were allegedly heard in the matter to warrant the serious sanctions imposed on them."

Similar to the UCC case, plaintiffs had averred the negative, that the respondents did not follow their procedures in dismissing them. The defendants on the other hand had averred the positive by saying that they followed their procedures. The Court, applying the peculiar knowledge rule to relieve the plaintiff of the

• evidential burden, holds that the
• facts were within the exclusive
• knowledge of the respondent and
• thus the plaintiff bears the
• evidential burden. Such
• application of the rule may be
• problematic. How could a Judge
• have concluded that a Plaintiff has
• no knowledge of facts he has
• supplied himself?, Perhaps he
• meant that he has no knowledge
• of the additional facts he needs to
• prove the facts he avers but even
• that view does not completely
• relieve the plaintiff of some
• evidential burden. A preliminary
• enquiry into whether or not
• plaintiff can or can't reasonably
• access relevant facts to prove his
• case in my view must precede any
• decision to shift the
• evidential burden unto the
• defendant if at all necessary .The
• test laid in the **Nimo** case referred
• to supra and relied upon in the
• **Nwadoro** case, refers to the
• parties' respective means of
• knowledge and spheres of
• responsibility as vital factors in
• determining the burden of proof.
• This test requires at least enquiry
• into whether or not Plaintiff
• indeed has no means of proving
• the facts he alleges.

• Thus, for example in this case
• plaintiff should have at least
• produced evidence that: He was
• charged for an offence, he was
• invited for hearing, and that there
• were some procedures of the
• school which were not followed .
• This process requires some
• evidence from the Plaintiff and as
•

such some evidential burden . Even where the peculiar knowledge rule causes a shift of the evidential burden, the statutory position reviewed overwhelmingly suggest that the persuasive burden remains with the plaintiff. Also we know that at common law the peculiar knowledge rule may only be successful at shifting the evidential burden and not the entire 'burdens' of proof.

Some Comments on Exceptions

The defining provisions of the 'burdens' admits of exceptions. Notoriously known exception at common law which is also widely recognized under Ghanaian Statute are presumptions . Presumptions as a matter of law or as a matter of fact presume the existence of certain facts in the context of certain facts that are proved . Thus, for a presumption to become applicable, the party will have the initial evidential burden to prove each of the relevant facts grounding the presumption. Where there is no opportunity for rebuttal, the presumption is conclusive . If the presumption is rebuttable, then the evidential burden will be on the party against whom the presumption is being made to rebut the said presumption . In effect, rebuttable presumptions do not completely shift the evidential burden. The plaintiff bearing in mind the applicable

presumptions will prove his case up to the point of the presumptions being applicable, and then the presumption will come into play to complete the plaintiff's pleaded case. There is thus an initial burden to prove the factual foundation of the presumption.

The negation based rule in my view does not operate as an exception to the general rule on the evidential and persuasive burden afforested. This is because apart from its poverty of content, the negation based rule construed in line with correct meaning and structure of pleadings invariably lead to the same result as the statutory rule -namely he who makes a claim has the persuasive burden to prove the facts constituting the claim and as such has the initial evidential burden. Thus, it does not depart from the effect and incidence of the statutory rule as applied except some exception known to the law is invoked. Also, as already discussed, the peculiar knowledge rule even if used in conjunction with the negation based rule will require the plaintiff making the negative averment to prove the basic facts that support the claim that defendants possess exclusive knowledge. It is safe therefore to say that the negation based rule and peculiar knowledge rule, whether used conjunctively or separately can't displace the legal burden of proof.

Conclusion

The negation based rule is a difficult rule to interpret and apply. In the two cases reviewed, we see that the Court applied the rule with less regard to the rules of pleadings and the relevant statutory framework. This work has shown that a correct application of statutory position and the common law rule essentially lead to the same result. It has further shown that the negation based rule whether or not with its counterpart, the peculiar knowledge rule can't shift the persuasive burden and thus the initial evidential burden.

The work has further illustrated the permissible spaces within which the burdens may shift within the context of the rules of pleadings.

Having established all these, a worthwhile question to ask is: How do we avoid conflict between the negation based rule and the statutory rules as well as the known rules of pleadings in applying the negation based rule?, How do we achieve an outcome in applying the rule that leads to consistency with statutes and internal coherence in the legal system? The answer as shown in this paper lies in conceptualizing an affirmative statement as one that introduces a fact and a negative statement as one that denies a fact or does not admit same. This will put the rule in line with the rules of pleading and the statutory position.





THE SUPREME COURT IN ORIGIN 8: Creating a void or avoiding the creation of a void?

-Justice Gertrude Torkornoo JSC

An interesting furore of commentaries was stirred up after the delivery of the Supreme Court's ruling in **The Republic v High Court (Criminal Division 9) Accra (Respondent); Ex Parte Ecobank (Applicant); Origin 8 Limited, Greater Accra Passenger Transport Executive (Interested Parties/Respondents); Civil Motion No. J5/10/2022 (18th January 2022).**

No less a stature than that of HL Justice Eric Kyei Baafuor of the Court of Appeal shot out the first comment titled **'An examination of the case of Origin 8 and CI 132: A still born piece of law or an austere interpretation by the Supreme Court'**. He was answered by senior counsel Thaddeus Sory in the riposte **'A still born piece of law, and rightly so declared in the case of Origin 8'**. The legal community also heard from other strong voices such as that of Francesca Serwaa Boateng of FSB Law Consult in her article titled **'The Great Somersault in Ex Parte Ecobank Ghana Ltd'**.

I have decided to add my voice to the mist on the ground because I think that the case of Origin 8 is one of those decisions that brings the legal community the much needed jolt on considerations that the purveyors of the concept of justice must always bear in mind – the basic, fundamental log of unimpeded access to justice for every citizen, and the need to ensure that no aspect of law, as varied and myriad as law is, contradicts another. The law would never intend that there is no forum for ventilation of a wrong, no law should be interpreted as breaking another law, and where the law wants to change (by repealing, revoking or amending) an existing legal position, the new law must state so expressly, because of the presumption against implied repeal. In summary, law is sacrosanct and may not be treated facetiously.

Court of Appeal (Amendment) Rules 2020 CI 132 – Curing or Missing the cure of mischief?

Many have been the lawyers and litigants who felt the frustrations of a judgment debtor seeking stay of execution of a hard won judgment in appeals and multiple and endless applications after the filing of a notice of appeal. Was Rule 27 (1) of Court of Appeal Rules 1998 CI 19 as amended by CI 132 created to cure this mischief? This is the testy question behind the agitations raised by the Supreme Court's decision in Origin 8.

Under the original Rule 27(1) (a) and (b) and Rule 28 of CI 19, a judgment debtor who had appealed a decision to the Court of Appeal was directed to first apply to 'the court below' for stay of execution before repeating such an application before the Court of Appeal in the event of refusal. Rule 27 subrule 1 and Rule 28 read as follows:

27. Effect of appeal

(1) An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except where *the court below* or the Court otherwise orders -

- (a) *in the case of the court below*, upon application made orally or by motion on notice to it; and
- (b) *in the case of the Court*, upon application made to it by motion

on notice,

28. Court to which application should be made

Subject to these Rules and to any other enactment, where under any enactment an application may be made either to the court below or to the Court, it shall be made in the first instance to the court below, but if the court below refuses to grant the application, the applicant shall be entitled to have the application determined by the Court. (Emphasis supplied)

Enter the **Court of Appeal (Amendment) CI 132**. It amended Rule 27 (1) by substituting it with a new provision.

Rule 27 of C.I. 19 amended

1. The Court of Appeal Rules 1997 (C.I. 19) referred to in this enactment as the "principal enactment" is amended in rule 27 by

(a) the substitution for sub rule (1), of

"(1) An appeal shall not operate as a stay of execution under the judgment or decision appealed against unless the Court otherwise orders on an application made to the court by motion on notice.;

The legal community hailed the new Rule 27 (1) as having come to the high court as a police man with a halting hand to stop the careening habits of judgment debtors gone amok with appeals and multiple

applications for stay of proceedings and stay of execution after the blows of a judgment. 'The repeal of Rule 28 and the text of the new Rule 27 (1) (a) in CI 132 were interpreted to mean that the high court had lost jurisdiction to stay execution as a court of first instance once an appeal had been filed'. This is the decision rendered by the High Court which was taken up to the Supreme Court on an application for judicial review in the Origin 8 case. And it is this question that was framed by the Supreme Court as the central issue to resolve in these words:

'The question that we are to answer is, in view of the coming into force of C.I.132, at what stage of the appeal process does the jurisdiction of the lower court wholly terminate in respect of applications for stay of execution such that it can no longer entertain such applications pending the determination of the appeal? In other words, when an appeal has been lodged in the Court of Appeal against the decision of a trial court, at what stage of the appeal process does the jurisdiction of the trial court to hear applications for stay lapse for that of the Court of Appeal to kick in?'

This requires us to construe C.I.132 to determine its effect on the powers of the lower court and the Court of Appeal to hear applications for stay of execution pending appeal, having at the back of our minds what this court said in Ex parte Magna Transport Ltd (supra); where a practice of the courts is well settled, it cannot be upset by statute except by use of express language. '

In their ruling, the Supreme Court pointed out in Origin 8 that under **Rule 21** of **CI 19**, which had not been amended or revoked, the jurisdiction of the Court of Appeal to entertain interlocutory applications was invoked only after the transmission of the record of appeal to the Court of Appeal. Without that transmission, the jurisdiction of the Court of Appeal over the incidents of a notice of appeal filed was not invoked.

Rule 21 reads:

After an appeal has been entered and until it has finally been disposed of, the Court shall be seised of the whole of the proceedings as between the parties and every application shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court.

As can be seen, **Rule 28**, prior to its revocation, expressly provided for a litigant who had filed a notice of appeal, but whose appeal records had not yet been transmitted to the Court of Appeal in order to invoke its jurisdiction under **Rule 21**, to repeat an application for stay of execution in the Court of Appeal, if the High Court refused it. Now with the repeal of **Rule 28** in **CI 132** what was left was **Rule 21** with **Rule 27(1)**.

Now if the Court of Appeal could

not be seised with jurisdiction until after transmission of records as directed by **Rule 21**, and there was no mention of the High Court's jurisdiction to consider an application for stay of execution after an appeal had been filed under **Rule 27(1)**, what court then did a judgment debtor who wanted a stay of execution after filing a notice of appeal against the judgement, but whose record of appeal had not been transmitted to the Court of Appeal go to?

Especially, if their application for stay of execution was premised on the grounds of appeal, and not on other grounds for applying for stay of execution as allowed by **Order 43 Rule 11** and **Order 45 Rule 15** of the **High Court Civil Procedure Rules 2004 CI 47**? 'Could they come to the Court of Appeal first as provided for under the new Rule 27 (1) (a) in CI 132, without going through the High Court, as had been earlier provided for under the revoked Rule 28'.

This was the '*access to justice*' question created by the interpretation of **CI 132** as ousting the jurisdiction of the high court over applications for stay of execution once a notice of appeal had been filed. 'The brambles created by the interpretation of the new Rule 27 (1) in CI 132 meant that once an appeal was filed, the High Court deemed its jurisdiction to hear applications for stay of execution pending appeal as previously provided for under Rule 27(1) and Rule 28 ousted'.

This position led to the

overview given by the Supreme Court in its reasons for deciding Origin 8 as it did. 'Did Rule 27(1) (a) in CI 132 intend to create a special situation regarding applications for stay of execution when an appeal has been filed' – a situation in which the applicant went straight to the Court of Appeal without first applying to the court that entered judgment against it?

If this was the intention of **Rule 27(1) (a)** as amended by **CI 132**, then it was necessary to consider such a position with an eye on the pillars that held any system of justice together. Could **CI 19** contradict itself without express provision? 'How could Rule 21 of CI 19 elide the jurisdiction of the Court of Appeal prior to transmission of the record of appeal while the same CI 19 directs silently in Rule 27(1) (a) in CI 132, that applications for stay of execution should first be made to the Court of Appeal immediately a notice of appeal is filed?' The Supreme Court had this to say:

“If the intention of the rule maker was to exclude applications for stay of execution from the settled practice covered by Rule 21, then it is Rule 21 that ought to have been amended to expressly exclude applications for stay of execution. The amendment to Rules 27 and 28 does not expressly exclude applications

for stay of execution from the operation of Rule 21 and the settled practice’.

In essence, the Supreme Court’s view was that it would be a structural rearrangement of the law on the jurisdiction of the Court of Appeal as set out in **Rule 21** of **CI 19**. With the inclusion of the original text of **Rule 27** and **Rule 28** that had been revoked by **CI 132**, that structural rearrangement on the jurisdiction of the Court of Appeal had been expressly provided for, and that formed the basis for repeating an application for stay of execution in the Court of Appeal, even when the record of appeal had not been transmitted to properly invoke the Court of Appeal’s jurisdiction under **Rule 21**.

Further, the direction of **Rule 21** could not be changed by silent prescription within the new **Rule 27(1)** and without express provision regarding the assumption of jurisdiction by the Court of Appeal as a court of first resort for applications related to a decision by the High Court, when the record of appeal had not been transmitted to the Court of Appeal.

To the extent that **Rule 21** was not revoked, **Rule 21** and **Rule 27(1)** have to be read together in harmony and cannot contradict each other within **CI 19**. ‘When that is done, the import of **Rule 27(1) (a)** in **CI 132** can only be that

until records are transmitted, applications for stay of execution must be made to the High Court under its inherent jurisdiction as the court with jurisdiction over the case.’ As the Court pointed out, it must be appreciated that law is not made silently. If by removing the words ‘*the court below*’, **Rule 27(1)** as amended by **CI 132** intended to remove the inherent jurisdiction of the high court to hear applications for stay of execution, the law should have stated so expressly. Inferentially, the Supreme Court was drawing attention to the fact that one could not remain within the confines of comparing the provisions of the old rule with its amendment to determine the purpose of the amended rule, without remembering that interpretation of law is done from a larger basket of rules that must all be harmonized, and not just by a comparison of the old and new.

What was the outcome of this pickling exercise? The percolation of old and settled positions, methink. The jurisdiction of the Court of Appeal is only invoked by the transmission of the record of appeal. The jurisdiction of the High Court to hear applications in cases that pend before it cannot be removed without express articulation in substantive law, because it is an inherent jurisdiction supported by the constitutional mandate of the high court.

The SC in Origin 8 - Avoiding a void?

I must however say that what continues to make me scratch my mind is: what then is the import of the express words of **Rule 27(1) (a)** if it did not intend to place the first jurisdiction for hearing of an application for Stay of execution in the Court of Appeal? Can **Rule 21** and **Rule 27(1)** not be read conjunctively instead of disjunctively for the harmony of **CI 19** as was done before the passage of **CI 132**? Was **Rule 28** necessary for **Rule 21** and **Rule 27(1)** to be read in harmony? Why go 'disjunctive' on **Rules 21** and **27(1)** when the direction on 'transmission of records' in **Rule 21** had not coloured the operation of the original provisions in **Rules 27** and **28**? And most importantly, with the revocation of **Rule 28**, what would be the basis for an applicant moving to the Court of Appeal after a refusal of an application for stay of execution conducted under the inherent jurisdiction of the High Court - if **Rule 21** has still not been complied with? 'I think this is the sticky bone that remains from the presence of **Rule 27 (1) (a)** in **CI 132** despite the clarification given in Origin 8'.

A pickle indeed for all who looked forward to the day when the journey of justice cannot be frustrated by deliberate layers of applications after the filing of an appeal. Or maybe an impetus to such watchers of justice to

ensure that when a notice of appeal is filed, the record of appeal is transmitted in all speed, as could only have been intended by all the facilities given us by technology - since the date of the typewriter. The citizenry of Ghana continue to long for effective and efficient justice delivery.

References:

i. Hereafter referred to as Origin 8

ii. The doctrine of innate and inherent jurisdiction and its place vis-à-vis express conferment or removal of jurisdiction by statute as discussed in Origin 8 referred to **Ahyia v Amoah [1987-88] 2 GLR 289**, **Footprints Solutions Ltd v Leo & Lee Company Ltd, CA. No J4/52/2011 (24th May, 2013)**, **Acheampong v Asare-Manu [1976] 1 GLR 28 at 29**, **Attoh-Quarshie v Okpote [1973] 1 GLR**

iii. Read opinion of Benin, JSC in **Republic Vrs High Court, Accra; Ex Parte: Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party) [2017-2018] 2 SCLRG (Adaare) 1024 at 1036**. On the principle of implied change in settled practice of the courts by later legislation, see the reference in Origin 8 to **Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717**, at page 721 Atuguba, JSC.

WITNESS STATEMENTS AS EVIDENCE-IN- CHIEF AND CASE MANAGEMENT BY JUDGES UNDER C.I. 47 AS AMENDED BY C.I. 87 – CHALLENGES AND SOLUTIONS.

- JUSTICE SIR DENNIS ADJEI



The paper was presented by Justice Sir Dennis Adjei, FGA at the 2021/2022 Annual General Conference of the Ghana Bar Association on Tuesday 14th September, 2021 at the Fountain Gate Chapel, Bolgatanga.

The High Court (Civil Procedure) Rules, C.I. 47 (2004) was enacted to promote speedy and effective justice by disposing of matters effectively, completely and finally as between the parties and at the same time avoid delays, unnecessary expenses and multiplicity of suitsⁱ. To ensure that speedy justice is achieved, the Rules provide solutions for technicalities emanating from non-compliance with the Rules, which were the bane for delays.

The Rules provide that non-compliance with rules which do not go to the root of the proceedings shall not render the proceedings void ⁱⁱ. However, the Rules were not meant to cure matters on jurisdiction, capacity and violations of any other rules or enactments ⁱⁱⁱ.

AVOIDING DELAYS AND UNREASONABLE EXPENSES

Another area which occasioned delay during hearing was viva voce evidence- in-chief, so there was the need to cure this mischief. In most cases, proceedings had to be adjourned during evidence-in-chief for a party to amend its pleadings. The practice was that whenever a party sought leave to amend its pleadings during cross-examination, the other party shall as a matter of course amend its pleadings to respond to the amendment made by the first party. In most cases, whenever a party wanted to introduce unpleaded facts as part of its evidence-in- chief and an objection was timeously raised, that party would pray

for time to file for an amendment as a result of which unreasonable delays of the proceedings were occasioned, and the parties at the same time incurred unnecessary expenses.

INTRODUCTION OF WITNESS STATEMENTS



Ghana, following countries such as the United Kingdom, Canada and India which had introduced witness statements to curtail the delays occasioned when a party was under examination-in-chief, in 2014 introduced the use of witness statements through an amendment to C.I. 47 to help achieve the aims for which C.I. 47 was enacted, that is to ensure that cases are heard expeditiously to promote effective justice without compromising integrity. The High Court (Civil Procedure) (Amendment) Rules, C.I. 87 amended part of Order 32 to introduce Rule 7A by adding, inter alia, case management conference to the existing application for directions stage. The Courts are to fix a date for case management after all matters to be resolved at the

application for directions stage have been dealt with^{iv}.

IMPORTANCE OF APPLICATION FOR DIRECTIONS

The courts are required to do two things at the application for directions stage to achieve the objectives of the Rules as provided under Order 1 rule 2 of C.I.47. They are firstly to resolve all matters, including interlocutory matters, which were supposed to have been dealt with before the application for directions stage but were not; and secondly to give directions as to the future conduct of the case as the courts may deem it fit to secure the just, inexpensive and expeditious disposal of cases^v.

The only areas exempted from the rules on application for directions are where the courts have the power to give directions at a particular stage preceding the application for directions stage, or where the procedure does not require application for directions to be taken.

AREAS EXEMPTED FROM APPLICATION FOR DIRECTIONS

The areas exempted from application for directions are: (a) where directions are given under Order 11 Rule 18 and pleadings are struck out or stayed or judgment is given; (b) where the Court gives a direction in summary judgment under Order 14 Rule 6 and grants leave to defend the action or stays execution after hear-

ing an application for summary judgment under Order 14 Rule 5; (c) where an application for interlocutory injunction or interim preservation of property is made and the Court in the exercise of its powers under Order 25 Rule 7 gives directions as to the further conduct of the matter; (d) where an application for summary order for account is made and appropriate orders are made by the court under Order 29 Rule 1 which is premised by the determination by the court that there is a preliminary question to be tried; (e) where the matter involves infringement of a patent; and finally (f) any matrimonial causes or matters under Order 65 where the rules do not provide for application for directions to be filed.

There is a mistake committed by the typist, ignored by the drafters and unwittingly ignored by the Rules of Court Committee and Parliament, as seen in Order 32 rule 2 (a) which provides for Order 11 Rule 19 instead of Order 11 Rule 18 where orders are made by the court without going through application for directions. Order 11 Rule 19 is on close of pleadings and does not require any order to be made under it. There is therefore a manifest error which could be cured through a proper application of Order 1 of C.I. 47.

CASE MANAGEMENT

There are two alternative major functions under case

management, which is an effective tool to regulate hearing of a matter after the application for directions has been filed. The first function helps the court to give directions for the management of the case and further provides for a timetable to regulate the processes to be filed and directions for the trial. The alternative function empowers the court to fix a case management conference and give directions regarding the management of the case as it considers fit ^{vi}.

Where the court chooses the first option, it may set down a matter for a preliminary legal matter to be determined. Where a determination of a matter of fact or a question of law or partly of fact and partly of law is to be resolved as a preliminary legal matter and is raised by the pleadings to be resolved before, at or after the trial, the court may proceed to accordingly determine it. The court may take evidence in respect of the preliminary issue and resolve it, and when the preliminary objection is refused, it may order for case management conference or pre-trial review.

Where the court chooses the second option, it shall order witness statements to be filed by the parties in any manner it deems fit. The witness statements may be filed by the parties simultaneously or at

different times as the court may determine in the interest of justice, depending on the nature of the case. The parties shall file their respective pre-trial check lists after filing their respective witness statements in accordance with the directions given by the court at the application for directions stage. The court may either set a date for a case management conference or may have a pre-trial review.

There is a difference between a case management conference and a pre-trial review. In practice, a pre-trial review is held in complex cases to ensure that trial proceeds efficiently and the court is required to identify the dispute in the matter and narrow it as far as possible for easy resolution.

CASE MANAGEMENT AS SUI GENERIS PRACTICE

Case management conference requires the court to prepare the case for trial. The role the court performs at the case management conference is to ensure compliance of its orders made at the application for directions stage, such as filing of witness statements, experts' reports, disclosures, helping the parties to resolve the dispute by any of the ADR mechanisms and fixing of timetables.

In the United Kingdom, the court seised with jurisdiction to

undertake case management conference sets a timetable to take care of all the steps in the trial. The court may have a number of case management conferences in one case depending on the nature of the case. In the United Kingdom, the purpose of case management conference is to ensure that the court identifies the issues in the matter, takes a decision as to whether those issues could be narrowed before trial, and finally to make appropriate directives to the parties to enable the court to effectively manage the case ^{viii}.

In Ghana, however, a case is fixed for case management conference for the court to give directions regarding the management of the case as the court deems fit. The case management conference helps the court to ensure that all the orders made at the application for directions stage, including filing of witness statements and disclosures, have been complied with and pre-trial checklists have been duly filed in accordance with lawix . The English position on case management conference is not the same as Ghana's, as most of the directives given by the courts in England are normally made at the application for directions stage in Ghana.

In Lagos, Nigeria, within fourteen days after close of pleadings, the plaintiff is required to apply for Case Management Conference

to be issued^x. The Lagos Rules provide for sanctions to be imposed on parties who fail to attend Case Management Conference in good faith. Where the plaintiff fails to participate in the Case Management Conference in good faith, that plaintiff's case shall be dismissed by the court. In the case of a defendant, the court shall in appropriate cases enter judgment against that defendant^{xi}. The Judge is required to make a report of the conduct of the case management conference to provide for the roadmap to regulate the trial of the case^{xii}.

Under C.I. 47 as amended by C.I. 87, no power has been given to the judge to strike out a case for the plaintiff where that plaintiff fails to appear in good faith. There is no such power vested in the court to enter judgment in favour of the plaintiff where the defendant fails to attend case management conference in good faith. The court is only clothed with jurisdiction to make any of the following orders where an order made at the case management conference is not complied with; (a) strike out the plaintiff's case for non-compliance, (b) strike out the defendant's defence and counterclaim of the defendant is the non-complying party, (c) order a party to pay cost, and (d) make any other appropriate order^{xiii}. This jurisdiction can only

be exercised after the Case Management Conference, when the case has been fixed for trial and the non-complying party has still failed to comply with the orders that were given during the Case Management Conference.

In Ghana, unlike Lagos, the court cannot sanction a party by striking out that party's case for not attending case management conference in good faith. The rules on Case Management Conference and the powers to be exercised vary from one country to the other and a court cannot exercise such powers not conferred on it.

Order 82 Rule 1 of C.I. 47 empowers the court to resort to the rules prevailing in another Common Law country where no provision is made in respect of any matter of procedure. Therefore, where C.I. 47 has provided for a procedure, it is that procedure alone which shall be followed. The pitfall in the application of C.I. 87 which has become an albatross on the neck of the courts and practitioners emanates from where the courts and the practitioners did not follow their procedure on case management but followed that of other Common Law jurisdictions which they considered to be expedient and more effective.

THE RULES OF EVIDENCE ON ADMISSIBILITY AND OBJECTIONS

The Constitution is the supreme law of the land by virtue of Article 1 (2) of the Constitution. Article 11 of the Constitution does not arrange the laws in hierarchical order. A subsidiary legislation cannot take precedence over an Act of Parliament being an existing law. Furthermore, an Act of Parliament made under the Constitution does not automatically take precedence over an existing statute.

The law on implied repealed rules provides that where two Acts of Parliament or two subsidiary legislations are in conflict and the conflict is irreconcilable, there are two maxims which are used to resolve the conflict. The maxims are *generalia specialibus non derogant* and *leges posteriores prones contrarias abrogant*. The first maxim simply means that where two Acts of Parliament or subsidiary legislations are in conflict and one of them is a special or specific law and the other is a general law, the conflict is resolved in favour of the specific law irrespective of the time the specific law was made^{xiv}.

The Latin maxim *posteriores prones contrarias abrogant* provides that where there are two Acts of Parliament or two subsidiary legislations of the same kind,

both are general laws or special/specific laws in conflict and the conflict is irreconcilable, the conflict is resolved in favour of the latter law. Section 6 of the Evidence Act, 1975 (N.R.C.D. 323) which is the substantive enactment on objections to evidence provides thus:

“(1) In an action, and at every stage of the action, an objection to the admissibility of evidence by a party affected by that evidence shall be made at the time the evidence is being offered.

(2) An objection to the admissibility of evidence shall be recorded and ruled upon by the Court as a matter of course.

(3) Where a document is produced and tendered in evidence and rejected by the Court, it shall be marked by the Court as having been tendered and rejected.”

From the above discussion, the Evidence Act as a substantive enactment takes precedence over the High Court (Civil Procedure) Rules, C.I.47 and the latter shall conform with the former. The Evidence Act provides that an objection to the admissibility of evidence shall be raised at the time the evidence is being offered. Therefore, admissibility of evidence shall not be considered at the Case Management Conference where trial has not commenced for an

objection to be taken. Furthermore, none of the parties is on oath at the Case Management Conference for an objection as to the admissibility of a witness statement or part of its content to be raised, or for an exhibit to be objected to. The matter on admissibility of evidence at the Case Management Conference has been conclusively resolved by the Supreme Court^{xv}.

The orders to be made by the Court at the Case Management Conference are limited to ensuring that orders made in respect of filing of witness statements and disclosures have been complied with and to give further directives on the future conduct of the case.

COURT EXPERT

Order 26 of C.I.47 provides that until a party applies to the Court within two weeks upon service of the court expert's report, for the court expert to be cross examined, the report of the expert shall constitute the evidence of that expert.

A court expert is an expert appointed by the Court as its witness. Where a party calls an expert as a witness, that expert becomes an expert witness for that party and is labelled as one of the witnesses called by that party. Order 26 rule 4 of C.I. 47 is in conflict with section 6 of the Evidence Act, N.R.C.D. 323, therefore where the Court calls

a court expert, that court expert shall be sworn to tender that expert's report otherwise it will not constitute evidence under section 6 of the Evidence Act.

AMENDMENT OF SECTION 6 OF THE EVIDENCE ACT, N.R.C.D 323

Until section 6 of the Evidence Act is amended, an objection to the admissibility of any evidence including exhibits should be raised when a party is in the witness box and that evidence is being offered, and not at any other stage of the proceedings.

Order 38 Rule 1 of C.I. 47 as amended by C.I. 87 settles any dispute where there is a conflict between the Evidence Act and C.I. 47. It provides as follows:

“Subject to the Constitution, the Evidence Act, 1975 (N.R.C.D 323), these Rules and any other enactment to the contrary, a fact to be proved at the trial of an action by the evidence of the witnesses shall be proved by a trial of their oral evidence given in court.”

Section 6 of the Evidence Act prevails over any provision in C.I. 47 and any dispute between the two enactment shall be resolved in favour of the Evidence Act, N.R.C.D 323. Case Management Conference does not constitute part of the trial of a case and an objection to the admissibility of evidence cannot be determined at that stage.

THE LEGAL EFFECT OF WITNESS STATEMENTS

A witness statement is the statement in writing by a person and signed by that person containing the evidence the person would be permitted to give orally at the trial. A witness statement shall be verified by a statement of truth by the person who made it to prove that it contains the evidence that person would be permitted to give orally at the trial^{xviii}.

A witness statement shall not contain anything which the person who signed it would not be permitted to give orally as evidence at the trial. Therefore, a witness statement shall remain a statement until it is adopted by the Court at the trial after it has passed the admissibility test. The Court has the power to reject a witness statement or part of it as inadmissible when the person who made it and wishes to rely on it as that person's evidence-in-chief has been sworn by the Court to impliedly pray for its conversion of the witness statement from a statement to evidence in-chief, by operation of law.

Similarly, where the person who made the witness statement is unavailable and that person's witness statement is to be put in as hearsay evidence, the Court may allow it subject to expunging any part of it which is inadmissible and, that person

would not have been allowed to give orally as that person's evidence-in-chief at the trial, if the person were available^{xix}.

The Court may also allow a person who has filed a witness statement to give additional oral evidence in respect of a new matter which has arisen since the witness statement was filed and served on the other person. The Court may grant such leave to the party to give further evidence-in-chief orally where the Court is satisfied that there is good reason not to restrict the person's evidence-in-chief to the witness statement of that person^{xx}.

By parity of reason, the Court may grant leave to a person who has already filed a witness statement to file and serve a supplementary witness statement where the Court is satisfied that that it should be granted in the interest of justice. After objections to the admissibility of a person's witness statement have been determined by the Court, the admissible part shall stand as the evidence-in-chief of that person^{xxi}.

CONCLUSION

A witness statement shall become the evidence-in-chief of the person who signed and verified it by a statement of truth at the trial and not at any other stage by virtue of section 6 of the Evidence Act which provides that an objection to the admissibility of evidence shall be determined

at the time the evidence is being offered. The Case Management Conference is part of the preparatory stages to a trial and does not form part of a trial and any trial or purported trial made at that stage shall be void.

References

- ⁱ Order 1 rule 2 of the High Court (Civil Procedure) Rules, C.I.47
- ⁱⁱ Order 81 of the High Court (Civil Procedure) Rules, C.I. 47
- ⁱⁱⁱ Republic v High Court, Accra: ex parte Allgate [2007-2008] 2 SCGLR 1041
- ^{iv} Order 32 Rule 7A of C.I. 47
- ^v Order 32 rule 1 (a) & (b) of C.I. 47
- ^{vi} Order 32 rule 7A of C.I.47 as amended by C.I.87
- ^{vii} Order 33 rules 3,4 and 5 of C.I 47
- ^{viii} Practice Direction 23A Civil Procedure Rules
- ^{ix} Order 32 rule 7A (1)(b) of C.I.47
- ^x Order 25 rule 3 High Court of Lagos State Civil Procedure Rules 2012
- ^{xi} Order 25 rule 5 of the High Court of Lagos State Civil Procedure Rules 2012
- ^{xii} Order 25 rule 4 of the High Court of Lagos State Civil Procedure Rules, 2012
- ^{xiii} Order 32 Rule 7A (3) (a),(b),(c), and (d) of C.I. 47
- ^{xiv} Kowus Motors v Check Point Ghana Limited and Others [2009] SCGLR 230
- ^{xv} Republic v The High Court, Commercial Division, Accra, ex parte: Kwabena Duffour , Attorney-General and Others (Interested Parties) Civil Motion No J5/05/2021, delivered on 10th February, 2021 (Unreported) SC
- ^{xvi} Order 38 rule 3B (1) of C.I. 47 as amended by C.I.87
- ^{xvii} Order 38 rule 3C of C.I. 47 as amended by C.I. 87
- ^{xviii} Order 38 rule 3E (1) of C.I. 47 as amended by C.I. 87
- ^{xiv} Order 38 rule 3E (3) & (4) of C.I 47 as amended by C.I.47
- ^{xv} Order 38 rule 3E (2) & (3) of C.I.47 as amended by C.I.87



INFORMED PLEA OF GUILT AND THE JUDICIAL BURDEN OF ENSURING A FAIR TRIAL.

**-HER HONOUR
BERTHA ANIAGYEI**

INTRODUCTION

The right to fair trial is guaranteed by Article 19 of the Constitution, 1992. Article 12 of the Constitution enjoins the judiciary to respect and uphold the human rights provisions of Chapter 5 of the Constitution inclusive of the right to fair trial. The centrality of the right to fair trial, and in particular, the presumption of innocence of an accused person in a criminal trial casts a duty on a court to ensure and satisfy itself that a plea of guilt entered by an accused person is voluntary, well-informed and not actuated by fraud, inducement or some other vitiating circumstance. It is in this regard that this article proposes to set out a series of steps for a judge or magistrate to follow in the event an accused person pleads guilty.

FAIR TRIAL AND THE PRESUMPTION OF INNOCENCE

A little over a decade after the House of Lords in the celebrated case of **Woolmington vrs. DPP**¹ had laid out the presumption of innocence as the “*golden thread*” that ran through English criminal jurisprudence, the UN General Assembly in 1948 adopted the Universal Declaration of Human Rights that recognized and affirmed the presumption of innocence as an essential aspect to a fair trial. Since then, the right to fair trial, including the presumption of innocence, has been guaranteed in numerous international instruments such as the International Covenant on Civil and Political Rights², the African Charter on Human and Peoples’ Rights³, the European Convention on Human Rights⁴ and the Inter-American

Convention of Human Rights⁵ . Closer home, the Ghanaian Constitution, 1992 also guarantees the right to a fair trial, especially, the presumption of innocence of an accused person⁶.

The right of an accused to a fair trial includes the right to be given a fair hearing within a reasonable time, be tried by a court of competent jurisdiction, be presumed innocent until proved guilty or has pleaded guilty, be informed in a language she understands and in detail of the nature of the offence she has been charged with, and be given adequate time and facilities for the preparation of her defence⁷.

In furtherance of the principles of fair trial, an accused also has the right to defend herself in person or by a lawyer of her own choosing, to be afforded the facilities to cross examine prosecution witnesses and be permitted at no cost to herself to have an interpreter who understands her language of preference⁸. One of the most jealously guarded fair trial principles is the presumption of innocence of an accused person. In this regard, clause (2) (c) of Article 19 Constitution, 1992 provides that **“A person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty”**. This principle is enshrined in Article 11(1) of the Universal

Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, and Article 7(b) of the African Charter on Human and Peoples’ Rights.

As noted earlier, the presumption of innocence is so fundamental that it is regarded as the golden thread that runs through the criminal justice system and the cornerstone that underpins the same criminal justice system⁹. The presumption of innocence is inextricably linked to the legal maxim *“it is better that ten guilty persons escape than that one innocent suffer*. To this, Voltaire adds that *“the great principle is that it is better to run the risk of sparing the guilty than to condemn the innocent”*.

A PLEA OF GUILT

The Criminal and Other Offences (Procedure) Act, 1960, Act 30, provides that an accused person may plead guilty or not guilty upon being called to plead to the charges by a court¹⁰. Professor Amissah defines a guilty plea to be *“a judicial confession which disposes of the obligation on the prosecution to prove the case”*¹¹.

Where the accused person refuses to plead, she is deemed to have exercised her constitutional right to remain silent¹² , the court shall enter a plea of not guilty for her and then

proceed to trial. An accused may also plead guilty with explanation to a charge. The importance of the presumption of innocence in a fair trial demands that, in the event an accused person pleads guilty, a great deal of judicial circumspection is exercised to ensure that the plea was made voluntarily by the accused, that the accused was fully aware of the consequences of the plea, and that the plea was not obtained through fraud, inducements or some other vitiating factor.

Accordingly, whether an accused person pleads guilty or not, there is a burden on the judge/magistrate to ensure that the principles of fair trial are strictly complied with. In instances where an accused person pleads guilty, it is of the utmost essence that the court takes particular steps to ensure that the accused person is of sound mind, understands the charge(s), understands his rights, understands the plea of guilt and its attendant consequences, and most importantly, that his plea of guilt is voluntarily made.

One of the grounds upon which a guilty plea may be set aside by a higher court upon appeal is where the appellant did not appreciate or understand the charge or procedure and thus

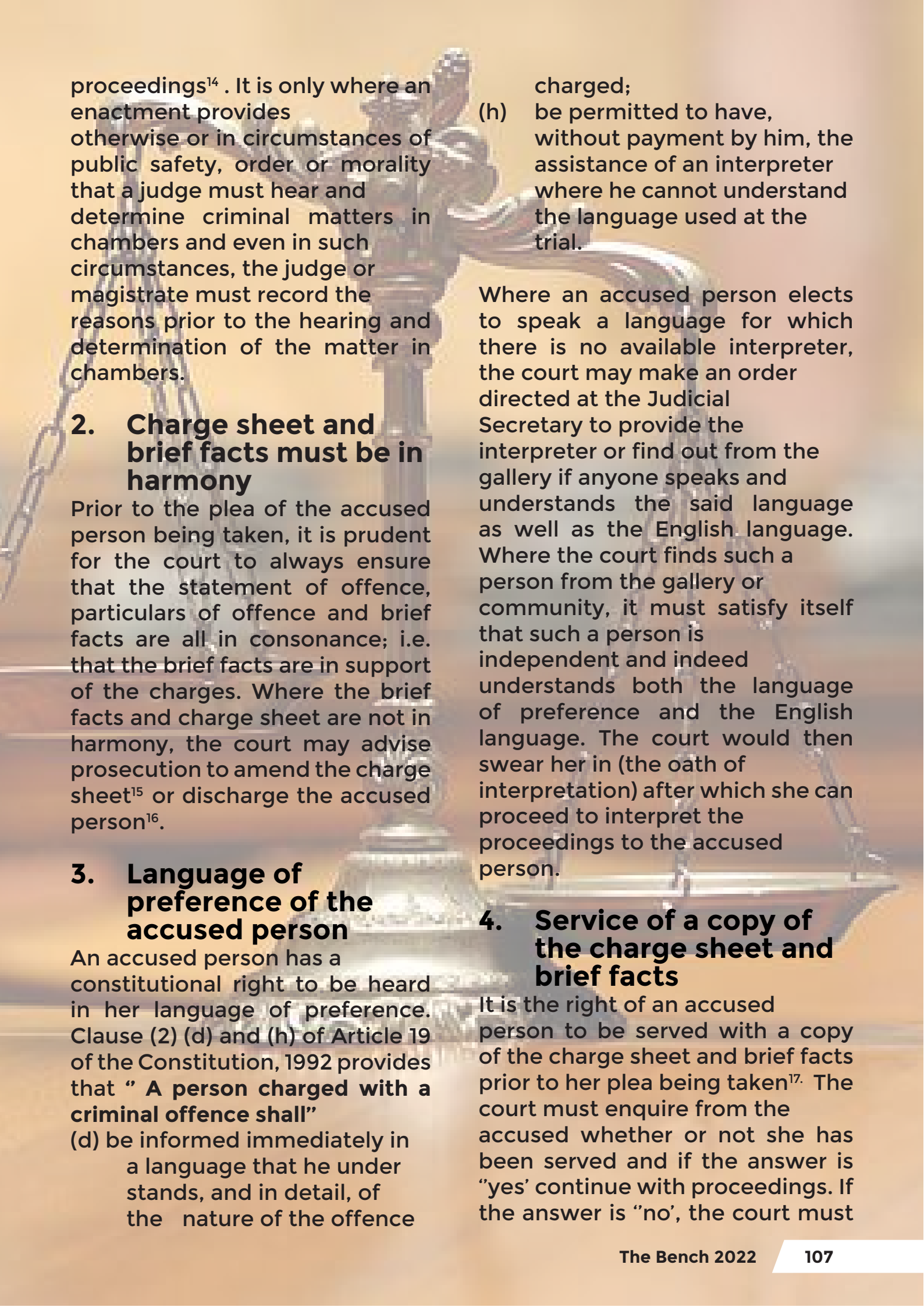
pleaded guilty by mistake¹³. Therefore, where a judge takes adequate steps to ensure that a guilty plea is properly obtained before convicting the accused person, not only would the convict, prosecution and the public be clear in their minds as to the guilt of the convict, but also, it is unlikely that such a conviction would be set aside upon appeal.

Complying with the legal burden of a fair trial upon a plea of guilt would also prevent or minimize situations of wrongful convictions based on defective or wrongful pleas of guilt and avert the attendant wastage of resources to correct this harm, which could have been averted if the convicting judge had meticulously ensured that the plea of guilt was voluntarily made.

Furthermore, it would also boost trust in the judiciary. Justice emanates from the people and is administered by judges and magistrates. Thus carrying the people along the judicial journey of fair trial would ensure that they understand the process and procedures by which judges and magistrates arrive at their decisions. Such accountability and transparency would go a long way in engendering trust for the judiciary among the citizenry.

1. Publicity of Proceedings

Criminal matters should be heard and determined in an open and public place to which the public may have access to the



proceedings¹⁴. It is only where an enactment provides otherwise or in circumstances of public safety, order or morality that a judge must hear and determine criminal matters in chambers and even in such circumstances, the judge or magistrate must record the reasons prior to the hearing and determination of the matter in chambers.

2. Charge sheet and brief facts must be in harmony

Prior to the plea of the accused person being taken, it is prudent for the court to always ensure that the statement of offence, particulars of offence and brief facts are all in consonance; i.e. that the brief facts are in support of the charges. Where the brief facts and charge sheet are not in harmony, the court may advise prosecution to amend the charge sheet¹⁵ or discharge the accused person¹⁶.

3. Language of preference of the accused person

An accused person has a constitutional right to be heard in her language of preference. Clause (2) (d) and (h) of Article 19 of the Constitution, 1992 provides that “ **A person charged with a criminal offence shall**”

(d) be informed immediately in a language that he understands, and in detail, of the nature of the offence

charged;
(h) be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial.

Where an accused person elects to speak a language for which there is no available interpreter, the court may make an order directed at the Judicial Secretary to provide the interpreter or find out from the gallery if anyone speaks and understands the said language as well as the English language. Where the court finds such a person from the gallery or community, it must satisfy itself that such a person is independent and indeed understands both the language of preference and the English language. The court would then swear her in (the oath of interpretation) after which she can proceed to interpret the proceedings to the accused person.

4. Service of a copy of the charge sheet and brief facts

It is the right of an accused person to be served with a copy of the charge sheet and brief facts prior to her plea being taken¹⁷. The court must enquire from the accused whether or not she has been served and if the answer is “yes” continue with proceedings. If the answer is “no”, the court must

stand the case down for prosecution to serve the accused and recall the case thereafter.

5. Right to self-representation, by a lawyer of her choice or Legal Aid Commission.

An accused person has a constitutional right to either represent herself at a trial, be represented by a lawyer of her own choosing whose service and fees she would have to foot or be represented by Legal Aid Commission. Prior to taking the plea, the court must enquire from the accused if she has a lawyer. Where the answer is yes, the court must then enquire as to the whereabouts of the lawyer if he is not in court and either stand the case down, proceed or adjourn depending on the answer. Where the court must adjourn, the charges must be read and explained to the accused person and her plea deferred to the next sitting date for the appearance of her counsel. The court must then consider bail.

Where the answer is no, the court must explain (a) the right of the accused to a lawyer of her choice, (b) her right to seek the assistance of Legal Aid Commission (the court must explain Legal Aid and where they are located, etc.), and (c) her right to conduct the case pro se (i.e. self

representation). The court must then put the accused person to an election. Where the accused person elects option (a) or (b), the charges must be read and explained to her and then her plea deferred to enable her exercise that option. It lies within the discretion of the court to determine what would be a reasonable time for the accused to engage the services of a lawyer or seek the assistance of Legal Aid commission. The court then considers bail (after prosecution has read out the brief facts) and thereafter adjourns the case.

6. Taking of the plea

Where the accused person elects to represent herself, is represented by a lawyer of her choice or one from Legal Aid Commission, the court may proceed to take the plea. Where the court adjourns or stands the matter down for a lawyer to be present and he/she is absent upon the case being recalled or the next sitting date, the court may proceed to take the plea¹⁸. Taking of the plea in the absence of a lawyer who is made aware of proceedings and yet does not appear in court does not constitute an infringement of fair trial principles.

7. Charges must be read out and explained to the accused person in

his language of preference

In line with the principles of fair trial, the charge has to be read and explained to the accused person in her language of choice. The court should have the interpreter explain briefly what it means to plead guilty and not guilty (particularly so where the accused is conducting the matter pro se) Where the accused person pleads guilty, the court must record her guilty plea as nearly as possible in the words used by her¹⁹. However, for capital offences, the court shall not accept a plea of guilt²⁰.

An accused may also plead guilty with explanation. The court must listen to her explanation and decide whether or not the explanation raises any defence in her favour and/or negatives any of the relevant elements of the offence. The court at this stage does not determine credibility of the explanation given by the accused²¹.

Where the explanation accords with a defence, or negatives any relevant element of the offence, the court must proceed to enter a plea of not guilty for the accused person. Where the explanation is neither of the two circumstances earlier stated and, for instance, is an apology by the accused for the offence she has been charged with, the court must enter a plea of guilty and

then proceed to convict.

As an illustration, on a charge of stealing contrary to section 124(1) of the Criminal Offences Act, 1960, Act 29, AA, upon being called upon to plead says "Guilty with explanation" and explains as follows:

a. "It is true that I stole her bag. However, I thought she had misplaced it and wanted to find her and hand it over to her. (If this explanation is proved, it negatives the element of intention to deprive the owner of the value, benefit or proceeds of the item be it temporarily or permanently i.e. the element of dishonest appropriation which is one of the relevant elements of the offence of stealing)

b. It is true that I took the money, however, the money belongs to me. (Here, AA is setting up a defence of a claim of right to the money) In both instances, the court must enter a plea of 'not guilty' for AA and proceed to trial.

On a charge of assault contrary to section 84 of Act 29, AA pleads guilty with explanation and says as follows:

a. "I am sorry for kicking her with my legs. I was angry because she refused to hand me the phone. Please forgive me".

Here, anger is not a defence in law. Even if it is provocation, it is

only a defence one can rely on in a charge of murder and not assault²².

8. Ascertain whether the plea of guilt is a “proper one”

After the accused person pleads guilty or the court enters a plea of guilty for her after carefully considering her plea of guilty with explanation, section 171 (3) of Act 30 provides that the court shall convict and pass sentence or make an order against the accused unless there appears sufficient cause to the contrary (emphasis mine). Without any ambiguity, the law is clear that even where an accused person has pleaded guilty, the court may have sufficient cause not to accept the plea, convict and sentence. Thus in order for the court to have sufficient cause to convict, it is imperative that the court take steps to ensure that the accused person is of sound mind, understands the plea of guilt and its consequences and her plea is voluntary.

In the words of Benin J. (as he then was) in the case of **Darkurugu vrs. The Republic**²³

“a trial magistrate or judge must observe the following rules before accepting, recording and convicting an accused on the basis of his guilty plea under the Criminal Procedure Code, 1960 (Act 30), ss. 171 (2) and 199. He must ensure that: (i) the guilty

plea was voluntary; (ii) the plea was intelligent; in other words that the accused knew his rights, the nature of the charge to which he was pleading and the consequences of his plea; (iii) there was a factual basis for the plea, i.e. that the facts presented by the prosecution supported the charge and that the accused’s explanation did not negate the vital ingredients of the charge; and (iv) he must also personally address the accused in the language he understood and must record down all the processes”.

The steps below may well prove useful in accomplishing these objectives.

Q: BY COURT: Mr....(accused), how are you doing this morning?

A: Accused: I am not well ²⁴

A: Accused: Please, I am doing well by God’s Grace.

Q: BY COURT: Have you received any formal education, and if so, to what level?

A: Accused: Yes S.H.S 3.

Q: BY COURT: How old are you?²⁵

A: Accused: 26 years

Q: BY COURT: Do you understand the proceedings so far?

A: Accused: Yes.

Q: BY COURT: Without prejudice, have you ever administered any narcotic substance to yourself and if so when was the last time you did so²⁶.

A: Accused: No, My Lord²⁷.

Q: BY COURT: Again without prejudice, have you ever

suffered from any mental derangement. If so, how long ago was your last episode, are you on any medication, which hospital or herbal home is treating you etc. (sound mind principle,

Depending on the answers, resort to section 133 (1-4) of Act 30))

A: Accused: No please.

Q: BY COURT: You have pleaded guilty to the charge of unlawful entry and stealing. Do you understand what it means to plead guilty?

A: Accused: Yes, please.

Q: BY COURT: In your own words, please explain it to the court.

A: Accused: It means I entered his house without his knowledge and with the intention to steal and I have stolen his money, laptop and phones (record as much as possible in his own words)²⁸

Q: BY COURT: Sir/madam, is your plea of guilty voluntary?

A: Accused: Yes, My Lord.

Q: BY COURT: In the abundance of caution, has anyone including the arresting officer, the complainant, the investigator, any police man at the police station, the prosecution or your family induced you to plead guilty under duress or threat of duress, any undue influence or the promise of a reward?

A: Accused: Please no one induced me²⁹.

Q: BY COURT: Has anyone including myself, the court staff, the prosecutors, your lawyer, any lawyer, or anyone for that matter demanded or obtained from you

any property including money to be handed to me in exchange for a lighter sentence for your plea of guilty?

A: Accused: No Please³⁰.

Where the answer is no, the court should proceed:

Q: BY COURT: Do you agree with the brief facts by the State as read and explained to you earlier?

A: Accused: Yes.

BY COURT: Being satisfied that the accused person is of sound mind, that he understands the nature of the charge, that his plea of guilty on the charge was made voluntarily and further that he understood the plea and its effects, I hereby convict him on his own plea of guilt to the charges of stealing and unlawful entry.

Where the accused person has a lawyer and he pleads guilty in the presence of the lawyer, for the avoidance of doubt, the court may ask these questions:

Q:BY COURT: Has your lawyer explained the charges to you and the meaning of your plea of guilt?

A: Accused: If yes, the court must proceed to convict and if no, the court must stand the case down for the lawyer to do the needful.

9. After conviction

After conviction, proceed to conduct pre-sentencing hearing³¹ and sentencing³² . Apply the

sentencing guidelines³³.

CONCLUSION

In our country where literacy levels are generally low, it is necessary for the courts to assume the burden of ensuring that persons who are unrepresented by lawyers do not become marginalized and have their rights abused in the criminal justice system. The tripartite interests that the criminal justice system serves - the interest of the public, the interest of the accused as well as the victim of crime - must always be upheld in order to deliver justice for all and not only the victim or the State. Criminal law holds the innocence of an accused to be sacrosanct and in rebutting it, steps must be taken to ensure that it is indeed the guilty who will be convicted and punished. Adherence to the steps laid out above in situations where the accused person has pleaded guilty will go a long way to reducing wrongful convictions based on pleas of guilt that were not voluntary, actuated by fraud, inducement or some other vitiating factor. Justice emanates from the people and must be exercised in accordance with law and fairness to all.

References

- ¹[1935] UKHL 1
- ² International Covenant on Civil and Political Rights, 1966, Treaty Series, 999, 171.
- ³ African Charter on Human and Peoples' Rights, 1981

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms. Council of Europe Treaty Series 005, Council of Europe, 1950.

⁶ Organization of American States. "American Convention on Human Rights. Treaty Series, No. 36, Organization of American States, 1969 Article 19(2)(c) of the Constitution, 1992

⁷ Ibid.

⁸ Article 19(2) of the Constitution, 1992

⁹ Supra note 1

¹⁰ Act 30, section 171

¹¹ A.N.E Amissah, Criminal Procedure in Ghana, Sedco, 1982, p.109

¹² Article 19(10) of the Constitution, 1992.

¹³ 12. See the decision of Taylor J. (as he then was) in the case of Alpha Zabrama v. The Republic [1976] 1 GLR 291 at 302-303

¹⁴ Act 30, section 165

¹⁵ Ibid, section 176

¹⁶ Dennis Dominic Adjei, Criminal Practice and Procedure in Ghana, 3rd edition, p. 267

¹⁷ Practice Directions by Sophia A. Akuffo, C.J. issued on 1st November, 2018, page 8)

¹⁸ Act 30, section 171 (1)

¹⁹ Ibid, section 171

²⁰ Act 30, Section 199(5)

²¹ supra note 13

²² Criminal Offences Act, 1960, Act 29, Sections 47, 52 and 53

²³ [1989-90] 1 GLR 308, holding 1

²⁴ Enquire as to what the health issue is and if you consider it to be significant, order for him to be taken to a Government hospital for free medical attention under the Hospital Fees Act, 1971 Act 387, section 2(f). Remand him into custody to enable the police take him to the said hospital and adjourn proceedings.

²⁵ The court should ensure that the accused person is not a juvenile... although age is contained in the particulars of offence, this is information from the Republic and the court is at liberty to find out from the accused person himself. Where accused is a juvenile, the court would have no jurisdiction to determine the case and the case should be transferred through the Supervising High Court judge or the Honourable Chief Justice to a juvenile Court where a juvenile Court has been constituted for the place or district in question. Section 17 (1) (a) & (b) of the Juvenile Justice Act, 2003, Act 653. Where there is no juvenile court constituted for the area, the court's jurisdiction is limited only to the consideration of bail where it is in the best interest of the juvenile to do so. Where accused is a juvenile but is being tried with an adult/adults, the court would be seized with jurisdiction to try him. If the court find him guilty at the end of the trial, the court should

convict him but remit him to a juvenile court for sentencing. Section 17(2) (3) and (18) (1) of Act 653.

²⁶ This question is without prejudice and meant to ascertain your state of mind.

²⁷ If yes, keeping in mind that narcotic substance ingestion has a probability of impairing the brain temporarily or permanently, proceed to find out the last time the accused has ingested such a substance, the length of time spent in police custody prior to his arraignment and his behaviour in custody. Where there is a likelihood that the narcotics may have impaired his brain, refer him to a psychiatrist for a medical assessment as to whether he is *compos mentis*. Act 30, section 133 (1)

²⁸ Where accused person says he does not understand, the court must carefully explain the offence in relation to the particulars, have it interpreted to him in his language of preference and then repeat the question. Where the accused in his own words, satisfactorily explains the meaning of guilt, the court may proceed. Where his explanation does not accord with guilt, the court must indicate that the accused person per his explanation did not understand what it meant to plead guilty and then proceed to change his plea of 'guilty' to 'not guilty' and proceed to trial.

²⁹ Where the answer is yes, the court must ask for further particulars and if satisfied that his plea of guilt was not voluntarily made, change his plea to not guilty. Keeping in mind that, even a confession statement is inadmissible if proven to have been obtained involuntarily (Evidence Act, 1975, Act 323, section 120 (1) and the erudite decision of Akamba JSC

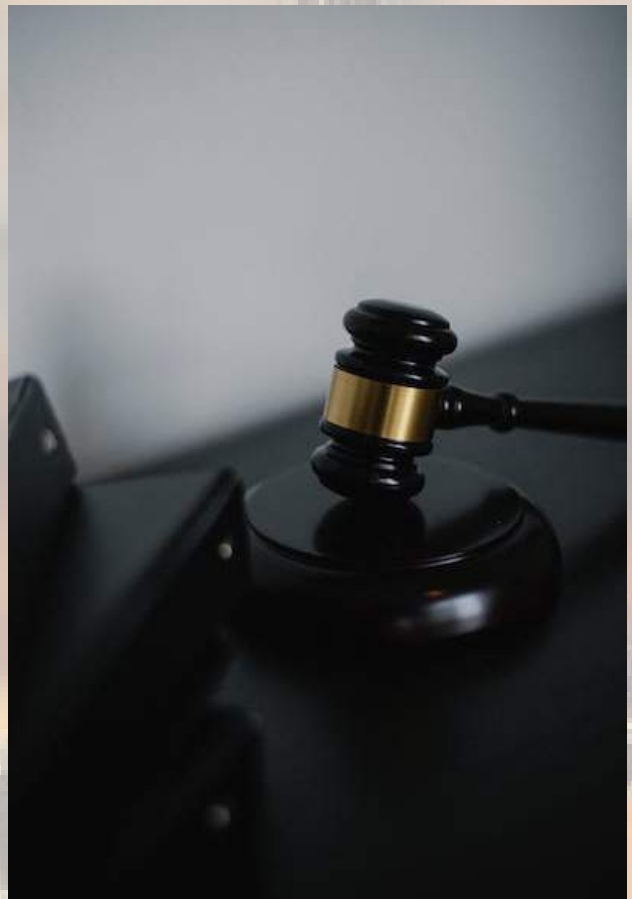
speaking for the Apex Court in the case of G/L/Cpl Ekow Russell vrs. The Republic [2016] 102 GMJ 124), On that same reasoning, a court shall not allow a guilty plea obtained by inducement to stand.

³⁰ A: Where the answer is yes, ask further questions and if satisfied of the possibility of any such act of corruption, change the plea to "not guilty". Consider the question of bail or otherwise. Refer the matter to the Judicial Secretary if it involves you the judge or court staff and to the Attorney General or General Legal Council through the Judicial Secretary if it involves the police, a prosecutor or a lawyer. In order to maintain public trust, you may consider recusing yourself so the case can be transferred to another judge.

³¹ Act 30, Section 177(2)

³² Ibid Section 177 (1) (a)

³³ Supra, note 16, p.269





Profile of **HL JUSTICE AGNES DORDZIE JSC**

HL Agnes Dordzie retired in October this year after thirty five years of service to the Judiciary, the Judicial Service and Ghana. She is one of a few Judges who have experienced working in all levels of courts. Known for her discipline, focus and comportment as a Judge, she leaves us with memories of the high standards of work ethics that marked her career as a jurist. The BENCH decided to profile her as this year's icon of the Supreme Court

Born as the last of six siblings, HL Justice Agnes Dordzie started her basic education in her village Taviefe and continued in other parts of the country, particularly the Eastern Region. She had her secondary education in OLA Secondary school in Ho. Choosing law as a career was not a difficult decision. She admired legal professionals from childhood

and her parents encouraged to study law. And right from the law faculty, she loved reading the law.

After law school, she took up a job with the Attorney General's Department Ghana, as an Assistant State Attorney and later as State Counsel with Ministry of Justice, Cross River State Nigeria. She practiced briefly as a private legal practitioner with the Law firm of Adzoe Gbadege & Co in Ho. Surmising that becoming a judge would open up every area of the law to her, she joined the bench as a Magistrate in 1987. She was then known as Miss Bodjawah.

This is where a regularly experienced challenge almost derailed her journey in the law as a jurist. The conditions of service and the work place environment were so frustrating that she nearly gave up her dream career. Her father however encouraged her to stay on. (Thank God for loving fathers with vision!) THE BENCH asked her what the biggest obstacle she experienced in her work on the bench was.

The biggest challenge to her, particularly in the magistrate court, was the backlog of cases and workload. She informs us that in the early days, the magistrate court had an extensive jurisdiction spanning

motor offences, criminal cases, civil cases, juvenile and family tribunal cases. In a day, the cause list came very tall.

So how did she master these giant challenges to physical and mental health enough to have continued work up to the apex court?

She applied professional, creative and value based initiatives by developing her own case management strategies and adopting certain positions in managing her courtroom. They included apportioning days and time for hearing the various categories of cases, and 'no adjournment' policies.

In her view, the measures she put in place to overcome this challenge made her very unpopular, particularly with the bar. It however worked, because cases moved fast in her court. Thereafter, there were occasions when she was invited to share her case management strategies with colleagues at seminars.

The next issue the BENCH wanted her to address was: ***what philosophies and values have undergirded the discipline and focus she has been known for throughout her career?***

Her answer is simple: She believes that the training from home that she received from childhood and her Christian background had a lot of impact on her work ethics. Apart from that, the nature of the work as a judge

demand discipline and commitment. To her, it is self-discipline that helps a judge to maintain integrity as a judge. Commitment and focus also result in working hard work. And so throughout her career she tried to maintain these three characteristics of self-discipline, commitment and focus.

Along her journey, HL Dordzie obtained a Master of Arts (MA) in International Relations from the Commonwealth Open University British Virgin Islands (UK). She participated in several trainings in Ghana and other jurisdictions designed to assist Judges in their work as jurists, and to deal with financial crimes, alternate dispute resolution of conflicts, leadership and general administration. Her Ladyship also has a Diploma in Christian Counselling from the Institute of Theological Studies, Ghana

Her Ladyship Dordzie served the AMJG as treasurer and representative of the lower bench on the Judicial Council. Her work in bringing to birth the design and use of the AMJG and IAWJ cloths are salutary and will be fondly remembered.

The BENCH asked her the burning question on our table that has informed the theme for this year. ***In the face of the multi-pronged skills and hurdles a Judge or Magistrate has to surmount in order to***

meet the justice needs of the litigating public, could Her Ladyship share with young Judges and Magistrates some of the tools or skill sets they need to acquire or hone in order to effectively carry out their respective duties?

Her response is that every judge needs a good library for an effective work however the judiciary of Ghana lacks this essential tool. Lamenting about this situation to a very senior member of the bench in her early days on the bench, the colleague remarked sarcastically *“here we are magicians we are supposed to produce good judgments without libraries”*

Thank God for electronic libraries now but it takes money to access them. Since many judges cannot afford access to all of them and internet connectivity is a challenge particularly outside the big cities, Judges must appreciate the fact that the work on the bench in our jurisdiction is a work of sacrifice in service of nation and humanity. Therefore, presently Judge should be ready to spend out of their own pockets to buy books or access online libraries in order to produce well reasoned judgments. There are free electronic libraries, and she encourages the younger members of the bench to explore and break fallow grounds for the development of the law. She also reiterates the earlier

points made and adds that Judges must activate case management strategies that are supported by the Rules of Court. This is what will bring the efficiency and effectiveness that is the goal of Rules of Court. Third, focus and commitment in managing courts are very necessary for an effective output. She also advises that it is necessary to remember that serving in humility brings honor to the positions that Judges occupy. Judges should therefore make it a point to maintain Personal integrity in relations with court staff, registry staff and litigants. It is personal integrity that will save a Judge and their reputation among the larger society when there is an attack against their work. She tells this interesting anecdote on the effect of personal integrity on the work of a Judge:

‘As a judge of the circuit court in the Cocoa Affairs enclave of courts, one day I was trying to implement my strict ‘no adjournment’ rule, when the following transpired during the trial of a civil case scheduled for definite hearing. Counsel for the plaintiff was not in court when the case was called.

Judge (Judge Dordzie): where is your lawyer?

Plaintiff: He is not here yet

Judge: You will have to conduct your own case. The court cannot wait for him.

Plaintiff: *I cannot conduct my own case*

Judge: *Then your case would be struck out*

Plaintiff: *You cannot strike out my case when I have paid you so much money. My lawyer took money from me to give to you. How can you strike out my case?*

Judge: *Court Warrant Officer - please lock this man up in the cells until his lawyer comes. (His lawyer was at the door and overheard what was going on and quickly ran away.*

Plaintiff was taken to the cells).

Interestingly I did not have to defend myself. Members of the bar who were present in the court that day, including Honorable Alban Bagbin, called for the man to be brought back to the courtroom. They told him 'this Judge would not take money from anybody, your lawyer deceived you. You have to apologize to the judge'. The litigant did, and I released him. But I declined

jurisdiction in the case and wrote to the Honorable Chief Justice for the matter to be investigated. What I noticed was that CJ Archer never forgave the lawyer and he referred to the incident often at gatherings and mentioned the lawyer's name. It pays to have a good reputation of integrity as a judge, because others will stand up for you when you are falsely accused'.

The BENCH decided to address a controversial issue that affects many Judges and which Her Ladyship can give advice on. So we asked her the following question and got an extremely wise direction.

'It is an open secret that you are a committed Minister of the Gospel of Jesus Christ. What have you found challenging about navigating the world of ministry - which should make you open to the public; and the work of a judge - which should make you withdraw from the public?'

HL Dordzie: *'I am a minister's wife and whatever role I play in that capacity is limited to my local church so I have not faced any challenges. We do go on missions in the rural areas but as much as possible we do not disclose my identity as a Judge in the field. Maintaining discretion and prudence is critical when working directly with the public, because of the need to maintain the independence of the Judge'.*

In summary, a Judge should try to keep their social influence restricted because of the need for independence.

So how would Her Ladyship like to see the Ghana Judiciary function in the next ten years? Her answer rushed out with no hesitation.

'It will be my greatest joy to see all courts in the country fully automated. I wish to see the

electronic case filing system work effectively in all courts, ADR and other case management methods fully implemented, and justice delivery made smooth and fast. Above all, it would be a great joy to see the Judiciary regain the confidence reposed in it by the Ghanaian public'. A heartwarming vision indeed.

In closing, the BENCH asked Her Ladyship how she spends her free time beyond the bench, the pulpit, and missions. How does she relax?

Her answer revealed what has kept her fresh and invigorated these thirty five years. She reads, loves gardening and spends time with her flowers.

On behalf of the AMJG, the BENCH thanks Her Ladyship Justice Agnes Ablu Dordzie for responding to the invitation to share parting words with the Judiciary. We wish her all the best of health and God's blessings in her well-deserved retirement.

Profile of **JUSTICE SENYO DZAMEFE**

Justice of the Court of Appeal



Justice Senyo Dzamefe is a Justice of the Court of Appeal and the immediate past president of the Association of Judges and Magistrates (AMJG).

He is therefore well known to the entire judiciary. We are therefore pleased to profile him in this year's publication.'

Q: Tell us a little about yourself

A: I was born in the Volta Region to the late REV. HENRY ESAU DZAMEFE and MRS. EDITH PATRICIA DZAMEFE of AGOGOE LUME near Ho. I had my elementary education at the famous Ho-Kpodzi Evangelical Presbyterian School.

I attended Hohoe Evangelical Presbyterian Secondary School. This preference was because my father was a Reverend Pastor in the Evangelical Presbyterian Church. I later attended the Jasikan Training College. Subsequently, I entered the University of Ghana, Legon, to read the Bachelor of Laws (LLB) degree and later to the Ghana School of Law and was called to the Bar in 1984.

I did my National Service at the Attorney General's Department, Ho in the

Volta Region under Mrs. Sophia Adinyira, JSC, (Rtd. Supreme Court Judge). After National Service, I sojourned to the United Kingdom. I returned and joined the erstwhile National Public Tribunal as a Tribunal Chairman in 1988. I chaired the Tema Public Tribunal and was a visiting Chairman of the Wa Public Tribunal (UWR). I went for further studies in Norway where I obtained a Master's in Business Administration (MBA) in Management and Leadership.

In 1994, I joined the Judicial Service after the merger of both systems and was posted to the Koforidua Circuit Tribunal as the Chairman in 1994. After six years of hard work I was appointed a High Court Judge. In fact I was one of the first two Tribunal Chairmen to cross over to the Mainstream High Court in 2000.

I was posted to the High Court, Sekondi in the year 2000 and remained there until 2002. I was later transferred to the High Court, Swedru (2002 to 2008) and later in 2008 to the High Court, Accra where I presided over the popular “Court 4” noted for serious Criminal cases in those days. I was subsequently elevated to the Court of Appeal bench in 2010.

POSITIONS HELD IN THE JUDICIARY.

I represented the Lower Courts on the Judicial Council from 1996 to 2000. I also represented the High Court Bench on the Council from 2006 to 2010 until I was elevated to the Court of Appeal bench. I was also served as a member of the Rules Committee. I am currently the representative of the Court of Appeal Bench on the Council (A hat trick).

ASSOCIATION OF MAGISTRATES AND JUDGES OF GHANA (AMJG)

I was the Vice president of the Association from 1996 to 2000. I represented the Association at the Triennial Commonwealth Magistrates and Judges Association (CMJA) conferences in Scotland and Canada.

I was elected president of the AMJG in 2018 and was

president for three years. (2018 - 2021). I was the President that introduced the Judiciary Cloth for Friday wear. The first in the history of the Association. I was also the first President to acquire a brand new 33 Seater Bus for the Association. Another notable achievement was the introduction of the Bench/Faculty interactive sessions with the Law Faculties. The Association has so far had interactions with Law students at the University of Ghana and GIMPA. The sessions were very successful and the students are always requesting for more sessions. I was the President during the COVID 19 Pandemic and was able to distribute COVID 19 items like sanitizers etc to all Judges in every Region in the Country on three occasions.

I was also a member of the Local Organizing Committee (LOC) of the CMJA’s successful 19th Triennial conference held in Accra, Ghana in September, 2022.

Q : Tell us why you decided to choose the Judiciary as career. What are some of the considerations that motivated your decision?

A : It is very interesting, the Presbyterian church during confirmation, candidates pick random Bible text messages and it is believed what you choose is your calling on earth. Late father chose *Mathew 5:9* “*Blessed*

are the peace makers for they shall be called the children of God” and he became a Pastor. Strangely I chose the same text during my confirmation and I decided to be a judge, to make peace. I hate cheating and always want what is rightly due me to be given me.

Q: Did you face any challenges joining the Bench. If so, how did you deal with it?

A: The challenge was the cross over from the Tribunal system to the mainstream judiciary. The bureaucracy and the seeming differences in both systems and as the first person in such a situation but as time went on, I adjusted to the mainstream. The Tribunal was worked mainly on criminal cases but with the cross over we added civil cases, which turned out to be more interesting.

Q: You have contributed immensely to the growth of the AMJG. Indeed the exciting innovations you brought to our annual conference was lauded by almost all judges and magistrates. Please share with us what led you to decide to participate in the leadership of our Association?

A: Am a born leader. A lot of people come to me for inspiration, advice and guidance. In fact, I majored in leadership in my masters degree, MBA in

Norway (Norwegian School of Management, Oslo). To me for every institution or project or venture to be successful depends on the leadership. A leader with creativity and innovation. Leadership with vision, focus and change for the best. A leader must challenge himself to depart from the norm, be innovative, and creative to think outside the box. A leader who is ready to change things for the betterment of the people he is leading. Not the “business as usual” leader. After all, when you do things the same way you get the same results.

Our AGMs were boring. A lot of members stopped attending. I therefore decided with my executives to change things and raise the bar. Hence the changes we introduced at the AGM, from the sitting arrangement, the interior décor, live band music, games, medical booths etc.

As the lower court representative On the Judicial Council I was voted as the Vice – president of the Association in 1996. In fact, I was nominated by others due to the qualities they saw in me. From the four years’ experience, I became the President, uncontested in 2018.

We introduced the Judiciary cloth and acquired a bus which the only asset the Associates has since its inception.

Q :Tell us about how you spend your free time. How do you occupy yourself outside work?

A :Am a sports enthusiast. I am a strong member of a keep fit club. I exercise a lot, go to the gym or watching soccer. You Never Walk Alone! Am a family man and a lot of times if not out for exercise am home.

Q :The theme for this year is centered on the multi-pronged skills and hurdles a judge or magistrate will have to surmount in order meet the justice needs of the litigating public. Can you share with the young judges and magistrates some of tools or skill sets they need to acquire or hone in order to effectively carry out their respective duties?

A :To the younger ones, please always read and be abreast with the law. Law is dynamic and never static so keep reading. Not just cases from our jurisdiction from other common law jurisdictions. Be interested in reading judgments from the superior courts and be abreast with the application of the law.

Secondly, do not rush into conclusions when cases come before you. Play the angel and the devil. Make sure if you grasp

the law and match it with the facts and evidence led and adduced before you. The rule of the game is evidence.

In civil trials look carefully at the issues set down for trial and deal with those. In criminal trials look at the ingredients of every charge vis-a-vis the fact and evidence led and adduced before you. Listen to the case of the defence carefully and ask yourself the following questions. Is the defence explanation true. Even if not is it reasonably probable? The explanation may not be true but if its reasonably probable set him free. If one little ingredient of a charge is not proven, free him. After all it is better to set 99 prisoners free than to imprison one innocent person.

Comportment, both in and out of it is very crucial to our job. We here become Ceaser's wife must be beyond reproach. Our appearance both in and out of court. Look neat and well-dressed always. Encourage a relaxed atmosphere in your court. Do not Lord your "Lordship" over those who attend your court but not compromising discipline. Mind your time lines, if you start work at 9am keep to it. Deliver judgments on the dates fixed. If you can't, let the court know. Last but definitely not least "when in doubt consult"

Q Do you have any interesting anecdote of a learning experience

you would like to share?

A : A chieftaincy case came before me as a High Court Judge. Both parties were in their colorful regalia before me.

After listening to the case, I asked where their town was located. I told them I do not know the place neither have I heard of the name before. I do not understand the language they speak nor their culture and traditions but if they want a person like that to decide for them whether they had followed the proper procedure in installing their chief and whether he was the rightful person, which I had no jurisdiction to decide anyway, I am ready to do so for them. There was silence in the court room. An

elderly man raised his hands and said the wisdom in what I said was amazing and that he was pleading for an adjournment to attempt amicable settlement.

I granted same to encourage ADR and on the next adjourned date, both parties were happy that they had settled the issue which protracted for years. As Judges, we must encourage ADR to resolve some cases before us. Be ready to help as a judge and not necessarily through trial.

Q :What was your biggest obstacle on the bench and how did you master it.

A :The biggest obstacle was

where to draw the line between my private life and that of a judge but as time went on it became easy. I know what to do as a judge and what not to do. It is a very thin line through but am very careful because of the perceptions.

Q :Finally, My Lord, how would you like to see the AMJG in the next ten years?

A :Obviously, I will want the AMJG in the next 10 years to be more potent and independent than it is now. Though we are a registered body there are a lot of constraints on the association.

Firstly, financial constraints that discourages us to implement new ideas.

Secondly, though we are perceived to be independent, it is not exactly so because the leadership are still judicial officers who may not want to disagree with some management issues for obvious reason. We must also encourage the justice of the Supreme Court to take more active interest in the association than they are now. The association is so dear to my heart, hence the immense help I offered the incumbent executives in planning the current AGM. Long live the AGM.

On behalf of the Association, we want to thank you for availing yourself. We wish you all the best.

Profile of **HER LADYSHIP JUSTICE (MRS) OLIVIA OBENG OWUSU**

Our laser beam this year for the High Court fell on **HER LADYSHIP JUSTICE (MRS) OLIVIA OBENG OWUSU**. Read her exciting profile below.

Birth

I was born in Monrovia at the Catholic Hospital Liberia on the 3rd of May 1968 to Mr. Isaac Kwasi Obeng a career diplomat, and Mrs. Mary Obeng of blessed memory, a teacher. At the time of my birth, my father was the first secretary of Ghana's diplomatic mission in Liberia.

Education

I had my primary school education at Achimota Primary School. I had my secondary school education up to A-Levels at Holy Child School Cape Coast from 1980-1987. I studied law at the University of Ghana and thereafter proceeded to the Ghana School of Law 1992 and completed in 1994.

One of the exciting episodes in my life is that my father decided to read law after his retirement from the diplomatic service and entered the law school with me in the year 1992. We were both called to the bar in 1994, setting a record at the time as the first father and daughter to be called at the same time to the Ghana Bar.

I joined the bench on the advice of my mentor Her Ladyship Justice Vida Akoto Bamfo a retired Justice of The Supreme Court.



Family

I have been married to Dr. Raphael Obeng Owusu, a medical practitioner for 33 years. We have two children Dr. Ralph Obeng Owusu and Dr. Oliver Obeng Owusu.

I am the first of 4 children. My brother who comes directly after me is a medical doctor at the University of Kentucky

FATHER, DAUGHTER IN CLASS

THE idea of sitting in the same class with his daughter did not occur to 56-year-old barrister-at-law, Mr Isaac Otieng.

In 1982 when Mr Otieng decided to read the professional bar in law degree course at the Ghana Law School, he had no idea that he was going to share the same class with his daughter, Otieng Otieng Otieng.

At the time, Otieng Otieng Otieng was still a student.

As for two years, father and daughter sat in the same class, studied the same subjects, did the same home work and wrote the same tests. It finally both passed off successfully and were on Friday, September 26, 1983, awarded certificates.

Cheque book could not help him

By Aducci Serwan Bawa and Tanya Bawa

WHEN Felix Kofi Addo, 29, unemployed, found a cheque book in some bushes near a car washing bay in Accra, he felt God had answered his prayers for his poverty to be alleviated.

Then he used the cheque in purchasing a few items, but all of them were disallowed by the bank.

Addo now instead of laughing, Addo is in a pitiful grip after he was arrested last Tuesday in the process of handing another cheque to the payment of fitting back.

When Addo was arrested, a search on him revealed a National Savings and Credit Bank, Ring Road Central branch cheque book with account number 028701 with 21 cheques left out of them in writing believed to be his.

According to a police source, on September 29, this year, one Kwaku Addo, a senior sales officer at Nsamen made a complaint that he had been duped by a man who bought one of his wrist watches and paid with a cheque, which was dishonoured when he went to the bank to cash it.

Addo said the man who happened to be Addo,

By Michael Crabbe

to the bar with 81 other fresh lawyers.

Talking to *The Mirror*, Mr Otieng said that it was an intriguing and challenging experience. He disclosed that he entered the University of Ghana, Legon, in 1960, eight years before Otieng was born and passed out in 1963 with a degree in Economics.

According to Mr Otieng, soon after completing the university, he started working in the Diplomatic Service and served in countries like Liberia, Algeria, France and finally the United States. This was up to 1984.

In 1984, Mr Otieng said he was transferred to Home Service, Otieng, then a 16-year-old girl was a student at the Holy Child School at Cape Coast.

He worked with the Home Service for six years and moved to the Ministry of Science and Technology as the Director of Administration and he is currently at the Ministry of Agriculture.

"At this time in life, the idea of taking a married degree was entirely out of the question for me as I thought the brain was not fertile enough to cope with academic stress," Mr Otieng said.

"As a young husband, I was not interested in the same class with my daughter. I never even thought of it. It did, however, inspire me to work hard. I am now a barrister and that, it is fulfilling," he revealed.

According to Mr Otieng, the urge to go back to school started in 1979 when he got into Mrs Margaret Akpanang, a lawyer, a wife and she told him she was a student at the Ghana Law School.

Mr Otieng told *The Mirror* that he found it surprising that someone of her age would still be studying and "as who else should be to see that short reading law, it was with very little hesitation that I decided to be a student."

According to Mr Otieng, in 1980 he wrote the entrance examination, passed and read the professional degree from 1980 to 1982. "I was in that same year when Otieng was the first woman barrister-at-law course at the Law School that I did not see any that I was going to sit to be some class with Otieng, my daughter," she having also finished her Bachelor of Arts Law course at Legon.

Talking about how he felt about the experience with his daughter, Mr Otieng said it was thrilling and challenging at the same time especially when she kept referring to him as "dad" all the time.

"Dad, could you please, turn my year book on



•The smiling duo — Mr Otieng poses with Otieng soon after their coming to the bar.

Contd. on P. 5

Kantamanto music pirates busted

By Vincent Asamoah

A JOINT raid by the police and the anti-Piracy Monitoring Unit of the Music Industry of Ghana on music pirates at the Kantamanto market in Accra last Wednesday resulted in the arrest of three suspected pirates and seizure of 8,000 pirated works of both local and foreign artists.

The music pirates have devised very cunning ways of outwitting the Copyright Society of Ghana (COSAGE), by obtaining trademarks which they stick on pirated works to give them a look of authenticity.

According to Mr Stephen Boshun, mem-

ber of the monitoring team and managing director of Studio Records, a joint committee of the Music Union of Ghana (MUSUGA) and the Association of Recording Industry in Ghana (ARIGI), would soon take over the sale of handbills.

He said handbills are now being sold even at the Kantamanto market because the administering body, COSAGE, has not been able to properly police sales.

Mr Boshun told *The Mirror* that MUSUGA and ARIGI have members who suffer directly from inappropriate use of handbills. "The two organisations taking over would therefore ensure at least a more fair price sales."

High Court, a position I hold to the present day.

I have held the position of Treasurer of the Association of Magistrates and Judges of Ghana (AMJG) from 2005-2016. I also have the honour of being a Founding member of the Ghana Chapter of the International Association of Women Judges (IAWJ). I have also acted as the Greater Accra Regional representative of the High Court from 2019-2021.

Presently I am the Vice President of the Association of Magistrates and Judges of Ghana (AMJG) and a proud member of The Commonwealth Magistrates and Judges Association (CMJA). I have also delivered papers at various international conferences. Interests

I love fashion, dancing, travelling, reading and planning events. I however dislike injustice, people who are arrogant and hypocrites.

Personality

After giving a comprehensive profile of herself, we only had a few more questions for the versatile Olivia J.

Q What inspired you to pursue a career in law and subsequently in the judiciary?

A The late Justice Cecilia Koranteng Addow inspired me to pursue a career in law. She



Hospital in the United States of America. My younger sister is also a High Court Judge in Accra and the last-born is a graduate Nurse at Hopeway Foundation in the US.

Life on the Bench

I Joined the bench in 1997 as a Magistrate and have been active on the bench and in its affairs to date. I sat as a Magistrate from 1997 to 2008 when I was promoted to the Circuit Court. In 2011, I was elevated as a Justice of the

was the mother of my friend Mary. I idolized her and wanted to be like her. I also chose to be a judge, because of the intricacies of the law. Whether the case involves company law, music or football you must be able to understand the case and give judgment. I have acquired a lot of experience on the bench, which I think no other profession can give me.

Q :You have mentioned Her Ladyship (now retired) Vida Akoto-Bamfo as your mentor. Do you have any other role models, either on the bench or outside it who have supported or led you in your career?

A :Yes I have. She is Justice Avril Love-Lace Johnson, a Justice of the Supreme Court. She has supported me in my career.

Q As a woman, have you had men support you in your chosen career?

A I have had lots of men support me in my career. To name a few, my husband, my dad and my former boss Mr. Alexander Somuah-Asamoah.

Q Have you encountered any challenges in your career because of your gender?

A No. I haven't encountered any challenges in my ca-

reer because of my gender. Unlike other jurisdictions traces of sexism in the Ghanaian judiciary are absent.

Q Have you had any fears in taking on your role as a judge? I pose this question because generally, judges are perceived or expected to be frumpy, unexciting safe and impartial arbiters. You have alluded to an interest in fashion, dancing, travel etc. It all sounds rather glamorous and exciting. Have these interests in anyway negatively impacted your career?

A No. I haven't had any fears taking on my role as a judge. My interests have not in anyway negatively impacted on my career. Judges are supposed to be above reproach so I try not to do anything which may undermine the authority and dignity of the office.

Q You have been very active in the affairs of the Bench, especially the Association of Magistrates and Judges, Ghana. This is very commendable. Do you have any advice for the younger ones looking to make a career on the bench?

A Yes I do. I entreat them to study hard to be able to make it to the bench. There is dignity in being on the bench. You are highly respected in society provided you conduct yourself well.

Profile of **HER HONOUR ANGELA ATTACHIE**

As a young girl growing up, Her Honour Angela A. Attachie, watched Georgina Wood JSC (as she then was) during a documentary on GTV and knew that was her destiny. She simply knew she would be a judge. Now as a Judge, She has realized her dream and even becomes the first female judge to be coronated as a Queen Mother.

The process started from her senior high school, Our Lady of Apostles, OLA Girls, at Ho. She got enrolled into Political science and Linguistics programme at the University of Ghana, Legon for her first degree. She later got admission into the LLB programme at the same University of Ghana and, subsequently, she was admitted into Ghana School of Law, Makola. She was called to the Bar in 2013, where she practiced for three years; and, successively, joined the bench in 2016. She was posted as a Magistrate to the District Court,

Harbour Area- Takoradi; and, in 2021, she was transferred to the Madina court “1”, where she subsequently got promoted to the Circuit Court, as a Judge.

For over six years, she has been a noteworthy persona in the Magistrates and Judges space. You may know her from her service and role as the treasurer of the AMJG but she can also be credited with contributions to the western bench as their treasurer, secretary to the lower bench and committees of the Judicial service. She is married with two children.

As said, she has been honoured as a Queen Mother of her community. Inspired by her philosophy that the quality of justice is as important as the quality of the source, she feels





effective traditional leadership remains unmet and this creates an atmosphere of uncertainty over the future justice in the larger community.

Beyond that, she takes up her professional and traditional roles in the light of the fact that the urgency to find a right calibre of leaders in our society is no more an enterprise for a few. This urgency, she imagines, evokes a need for a hybrid of virtuous habits of leadership. That being so, she intends not to lose sight of the fact that her mandate to lead comes from her people to whom she must forever remain responsible. For her, this mandate is not a programme or

an event; it is a way of life. It is not for a limited time, but for her whole life.

More so, with her brief experience in the Judicial service, she has come to regard as true that identifying with the pains and joys of people is a learned skill. This is because she sees empathy as a discipline that has inched up her professional and traditional duties. Over time, this has helped her discern people's needs as well as opening her up to be a better person as a Judge and a Queen Mother.

Therefore, for her, to build a character that blends many virtuous qualities is merely not a core feature of becoming a leader, it is one way to engage with the emerging existential needs of today's society. This, she also thinks, will be an act that can mitigate, if not end, the evolving multi-challenges facing our service delivery. She may not know how. She may not have the expertise. She may not have the time. She may not have the basis and resources to make it happen. But she believes she can do something; and she is willing to do that inch by inch.

Aside, as hobbies, she loves to read and stay home to cater for her family.



ON A LIGHTER NOTE

The doctor told me I had only six months to live, so I shot him dead. The judge gave me fifteen years.

Judge: For your crimes against our citizenry, I hereby sentence you to a decade in prison.

Man: That's a long sentence. Can you reduce it?

Judge: Ok. You go to jail 10 years.

A guy wants a divorce. He tells the judge "I can't take it anymore she's out going from bar to bar every night way past midnight"

The judge responds "what's she doing"

The guy says "looking for me"

A District Court judge, a Circuit Court judge, and a Supreme Court justice are sitting at a bar.

The District Court judge says, "I interpret the Constitution the way I read it."

The Circuit Court judge says, "I interpret the Constitution the way it's written."

The Supreme Court justice says,

"The Constitution isn't anything, until I interpret it."

A man in Kumasi is brought before a judge.

"What is the charge, counsel?" The judge asks.

"Bigotry, your honor," the prosecutor replies. "This man has three wives."

"You idiot," the judge says. "That ain't bigotry, it's trigonometry."

Judge: Silence in court! The next person who laughs again will be thrown out of court.

Accused: Hahahaha

Judge: I wasn't talking to you!

A drunk was in front of a judge. The judge says, "You've been brought here for drinking and molesting women."

The drunk says "Great! Let's get started."

Objection

"You seem to be in some distress," said the kindly judge to the witness. "Is anything the matter?" Well, your honor," said the witness, "I swore to tell the truth, the whole truth and nothing but the truth, but every time I try, some lawyer objects."

Source. upjoke.com

STORIES

HEARTS COME HOME

“A short story”

She was running the trinkets through her fingers again. Ur had been known for its gold in ancient times. The people just used it up. Decorating the different moulds sitting on every hill and mound as gods. Then the thieves stole them. They stole the gold off the gods and the priests just shared the gold with them. Soon, gold was a forgotten luxury.

Then this man came and said that her old great uncle who left forty years ago had become so wealthy that he had a chest of trinkets just to dress his son's bride up. And she was to be that bride!!!! Laughter welled up in her. She giggled with pride and wondered what it would be like to be the decorated wife of a wealthy man. Her nurse Deborah was casting glances at her again. She wondered what was going on in her mind. More giggles.

Rebecca imagined the handsome man touching her hair and she leaned sideways and closed her eyes. Her camel seemed to bump a hoof. It was limping now. She reluctantly opened her eyes. And floated as if into a gilded dream. He was standing on a hill. Rich robes slung carelessly around him. She could feel her eyes dilating. His hair strong and brown. Feet as bronze. Eyes wide and dark. Oh my. Oh my. These cannot be the butterflies in the tummy the girls always talked about. Mmmmmmm. This felt like milk dripping into a cup with the cupbearer not watching until it overflowed the rim of the cup and...

He smiled at her. He laughed. And she remembered. His name is Isaac. It means laughter. They started to move towards the big thing that drew them together. Her nurse was smiling. Her heart had found its home. The gold was just to decorate it.

By HL Gertrude Torkornoo JSC

RABBI

There were many times that she thought she had also found love, though her burden was to sell it every day. Most of the procession of men were slave hunters, users and simply reminded her of the dogs that would not leave the neighbourhood of the prostitutes. These slavers tried to control her and insist that she makes herself available to them when they wanted. She showed them that they were the enslaved when they kept coming and she simply refused to be available to them beyond her body. She would not even have any proper conversation with them.

But this savior had taken her out of the stench. She did not need to steal anymore. Or be held by a male that made her want to puke. She did not need anything or anyone any more. No herbs for headaches. No mixtures of perfumes to appeal to different kinds of strangers who remained strangers no matter how deep they went. Now she slept deeply every night, and had been reconciled to her family. All was well. Shalom like she had never known.

She was in such wonder about the strength and power of the man. He came to mind with every other thought. And no matter how hard she tried to understand Him, her mind always went to how clean he was. That is where she landed whenever her thoughts went round and round. Clean. He always smelt clean, looked clean and was simply clean. His kindness, power and grace were emphasised by the purity of his simplicity, kindness, sheer joy and humility. Everyone left his presence feeling well. Hunchbacks were removed and epilepsy never showed up again. The wonder of it all was that, there was no weight in the glory of his presence and power. So she decided to go pour her favourite perfume that she had kept for years on him. That is what fit his royalty. That was the best her heart could do.

And for all the love she looked at him with, he always spoke quietly to her when her longing demanded words from him. *'Mary, someone will marry you soon. And perfect your royalty'. 'You are the one I want please',* her heart whispered. And he heard it. *'The son of man came to die, Mary. And on the third day, be raised, for the souls of all men. When that shall happen, I want you to preach the good news of the savior who cast demons out of you and gave you a new life, Mary. Bless others with your story, Mary'.*

She sighed. He refused to speak what she wanted to hear. And yet she knew he was speaking to what the truth was. That is all he ever did. Speak the truth. And this was the only loving she could get back. She will take it. And drench him in perfume. Then surely, he will respond? *'Mary. I*

pray for you every day, that your faith will bring you to your purpose'. 'Yes Lord'. She turned away so he wouldn't see the tears that were never far from her face. Tears from the lightness and cleanness of life now, and the burden of wondering how she was to live where his presence was not close.

So she entered the house of that Pharisee leper called Simon clutching the alabaster box. She knew all of those arrayed at the table. His son Judas claimed he was one of the twelve. But he had spent time stealing from their traveling purse to come pay for her services. This is how she heard of the miracles of this burden lifting savior. He would talk of the miracles while lying on her bed. And that is how she had come to the savior. And through that, managed to get rid of Judas and his father Simon the leper. She looked at them around the table. Their filth had touched her garbage over the years. In the last seven months, since she met Jesus, she had been free of them.

One by one she saw that the men were recognizing her. Eyes flew open as they saw her without make up. A face scrubbed clean and washed in tears. Jesus looked happy to see her. Never mind. She did not care who was happy or afraid. She bent down and poured all the types of love she felt for him through that perfume. Washed his feet. Cried out the pain of never having him the way she wished she could. And the joy of having him the way she needed. Cried and cried until tears were a river mixing with the perfume and the house was a cloud engulfing the clean and unclean. 'This is my beloved son. Listen to him' echoed in every heart round the table.

'Simon. I have something to say to you. Will you listen? Will you hear?' Simon looked away. He had been asked to host a man who multiplied influence and power for those who came near to him, and yet behaved as if he was not aware of this huge commodity. Whether he was aware or not, Simon was clear that that was his interest. Not the confusion he was watching around his dinner table. He was furious. Arranging his shortened and dead hands under his robes, he faced Jesus with a studied smile. *'Speak Rabbi. I am listening'*. Everyone knew he was not. Still, words flowed from Jesus as Mary's perfume and tears kept flowing over him.

'Have you seen this lady? You are thinking about the cost of this perfume oil. But know this. She has come to anoint me for my burial. And whenever the glories of my work are preached, her work will be praised. Love the eternal, Simon. That is all that matters. But will you hear?' Simon looked away. Judas rushed out in anger to look for those who will

get rid of this man who gave power with one hand and took it away with another. Everyone was frustrated. Except that reformed prostitute who had offered her best perfume because she had been brought into light. *'Darkness is better. Transactions are best done in the dark'*; Judas fumed. *'Thank you for the light'* Mary cried.



By HL Gertrude Torkornoo JSC

LOVE HAPPENS HERE: TOO

Obed Edom wondered if his children understood the love story that engulfed them day after day. God knows that he tried to tell them enough times. What he was afraid of was that they would be so used to the wealth and fortune they now lived in that the love story that under girded it could be forgotten.

Obed Edom had met David sitting under a tree singing in his home town of Lachish in Gath. Singing love ballads to his God, while fleeing from a situation that David would not explain. He called his God a Shepherd who fed him every day. Obed Edom's god at home needed to be fed sacred food before it could be activated to look at them. So who was this God who fed and led? David told him the stories of this God. A God who made an old man and woman pregnant and started a nation out of their

clan, after he had made them wealthy beyond their imagination. A God who watched over a 'birth right' and made sure it went to the younger twin when the older twin had chosen to marry Canaanite women. A living and breathing God who never died. Immortal. Omniscient. Omnipotent. So strong that this God had planted a boy with a death sentence in the palace of Egypt from which the sentence was issued. The Egyptian royalty and nobility taught him about their kingdom and he used that information to come back to the palace and work with God to destroy the mightiest empire on earth. Even lure them into a sea and drown their kings and nobles. Obed Edom listened and listened as David sang and sang. And with time, Obed Edom believed in this God.

So much so that he moved from Gath to live in Judah when David became king. God had proved His power by making the refugee David king, and Obed Edom was determined to live in the shadow of David's God. He became a trusted friend of David even though many in David's circle advised David not to trust him. David and Obed Edom ignored them. Obed Edom's only interest was to be close to David's God

On the day that changed it all, Obed Edom had followed David to bring the ark of God to Jerusalem. He saw the killing of Uzzah, just as God had killed the people of Beth Shemesh who dared to look into the ark. After Uzzah died, David asked Obed-Edom to keep the great Ark. Of all the people around him, David had whispered to Obed Edom that it was only Obed Edom's love and faithfulness to God and the things of God that David could trust. What an honour!



Obed Edom shook like a leaf. And emptied his guest room for the great ark. He scrubbed the room every day. He bowed before the ark. He prayed to God and pleaded for God to heal his wife and grandmother. Every disease in the house was healed within days of the ark being in the house. His wife got pregnant. And business idea after idea kept coming into his head as he bowed before the ark every day. He started to import olives and grapes and flour. Everyone wanted to buy his olives. He didn't know where the energy came from. His sons became the best at everything they did. Within two months, Obed Edom was wealthy. And the wealth had stayed. Now his family held positions that were reserved to Levites. And no one cared that he was not a Levite. The quality of favour he enjoyed after he hosted the presence of God was beyond incredible. Who could doubt the majesty of this God? Able to single handedly break the pride of the five lords of Phillistia without weapon or word. Just His presence caused their Dagon's body to break up. And rats to invade their land. Strangely, many in Israel doubted this God who embraced them with His shield and power.

Obed Edom run into the tabernacle and bowed. Prostrated. Sang at the top of his voice. *'The Lord is my light and salvation. The Lord is my shepherd. I love you Lord, for your mercy never failed me'*. Another voice had joined him. He knew who it was. He turned to smile at his friend. The precious king of Israel. The singer of songs. He was kneeling and singing. Their love for the Fear of Israel welled up around them until their hearts could only burst through with tears.



By HL Gertrude Torkornoo JSC

POEMS

MOVE ON, THE COMMONWEALTH

Move on, Commonwealth, move on
Move on the Olympian heights-
And beyond the reaches of
The fine-thinned clouds
Up, up, move on
Up, up, move on

Move on to the chartered waters
Irrigating the rich fields of democracy
Where human rights bloom, no au-
tocracy
Nor the befuddled drudgers of bu-
reaucracy
But we create the wealth
Of tolerance, dignity and integrity
Common to all our precious health.

Create a common wealth for all to
share
Like Brothers in warm embrace
Each one his brother's keeper
Premised on principles of good gov-
ernance
Rooted in the gilded mines of the law

Salute the Founders, Cherish Her
Secretaries-
Arnold planted the seed
Shridath gave it the feed
Emeka's irrigating waters
Don's inspiring living matters.

Make the Commonwealth tree to
grow

To Olympian heights under
which nourished
The great, the tiny, the haves
and the have nots

Survive the spirit, strengthen
the resolve
Keeps the touch aburning
bright
The Queen the pillar, mem-
bers
The little stones fashioned to
structure
The towering edifice of the
holy alliance

Alliance of peace's trust of
truth
Survive the peace, no vita-
mins for the guns
Nor bread and butter for the
hand grenades
Silence the shells chasing
without choice
Starve the machine guns

Come on, Commonwealth,
move in common
For the common good, as
parched lands
Are turned into evergreen
strands
Where fevered children be
turned
Into happy lads and lasses

By Justice (Rtd) L.L. Mensah



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RECENT CHANGES IN CIVIL PROCEDURE AND JURISDICTIONS OF THE COURTS TO ACHIEVE EFFECTIVE JUSTICE DEVOID OF DELAY, UNNECESSARY EXPENSES AND MULTIPLICITY OF SUITS

BY JUSTICE DENNIS ADJEI, FGA TO LAWYERS AT THE LANDS COMMISSION ON 30TH SEPTEMBER, 2021 AT KOFORIDUA

There have been amendments to the Supreme Court Rules, 1999 (C.I.16) as amended; the Court of Appeal Rules, 1999 (C.I.19) as amended; the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended; and the District Court (Rules) 2009) as amended to change the procedures on stay of execution and stay of proceedings and both of them have ceased to be repeat applications. Furthermore, it is the appellate court which is seised with jurisdiction to entertain an application for stay of execution of the judgment of the court which delivered the judgment. The aim of the amendments is to avoid delay and unnecessary expense arising out of the use of applications.

The Courts Regulations, 2020 (L.I. 2429) was also enacted to increase the value jurisdiction of the Circuit Courts and District Courts from fifty thousand Ghana Cedis (GHC 50,000.00) and twenty thousand Ghana Cedis (GHC 20,000.00 respectively) to two million Ghana Cedis (GHC 2,000,000.00) and five hundred thousand Ghana Cedis (GH 500,000.00) respectively. The increase in the monetary value of the jurisdiction of the Circuit Courts and the District Courts was a timely intervention to save the High Court from entertaining some matters which could be effectively determined by the Circuit Courts and the District Courts. Furthermore, the then monetary jurisdiction exercised by the lower courts had outlived its usefulness as the District Courts could not entertain a case involving the ownership of a plot of land whose value exceeded twenty thousand Ghana Cedis unless the parties by consent conferred value jurisdiction on the District Courts. The mode of service of civil processes was also amended to introduce electronic

service to reduce the delays arising from personal and substituted services.

REPEAT APPLICATIONS

The laws on repeat applications with regards to stay of execution of judgments in civil cases have been radically revised. Henceforth, stay of execution in civil cases has ceased to be a repeat application. Therefore, where there is no enactment making an application a repeat one, a person dissatisfied with the ruling of the court in respect of that application may file an appeal against it. Differently stated, no application is a repeat one unless an enactment specifically makes it so. An application which is not a repeat one may be impeached by an appeal or certiorari depending on the grounds available to the applicant. Repeat application is a creature of statute and not an inherent jurisdiction and a person who claims that an application is a repeat one must derive his source from an enactment.

DISTRICT COURT (AMENDMENT) RULES, 2020 (C.I. 134)

The District Court (Amendment) Rules, 2020 (C.I.134) came into force on 5th November, 2020. It made one important change in the District Court Rules, C.I. 59

by revoking its powers to review its own decisions under certain circumstances. Rule 29 of C.I. 59 has been revoked and the District Courts cannot review its own civil decisions.

HIGH COURT (CIVIL PROCEDURE) (AMENDMENT) RULES, 2020 (C.I. 133)

The High Court (Civil Procedure) (Amendment) Rules, 2020 (C.I. 133) which came into force on 5th November, 2020 was enacted to make changes to the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended. The High Court (Civil Procedure) (Amendment) Rule C.I. 133 amended Order 32 (Application for Directions), Order 51 (Appeals from the District Court) and Order 58 (Commercial Court Rules) and repealed Order 42 on review jurisdiction. The jurisdiction conferred on the High Court and the Circuit Court to review their own decisions upon stated grounds has been revoked.

Application for directions under Order 32 of C.I.47 has been amended to take care of settlement. A person who files an application for directions and seeks for the parties to settle the matter by Alternative Dispute Resolution (ADR) mechanism or other means shall file a written request to pray the Court for the proceedings to be stayed within the time granted for the matter

to be resolved.

A judge who presides over an application for directions at the first instance shall inquire from the parties whether they were amenable to settlement unless the case is one of the matters that cannot be settled under the Alternative Dispute

Resolution Act, 2010 (Act 798). The four matters that cannot be settled by the parties under section 1 of Act, 798 are; matters on environment, matters of national and public interest, matters on enforcement or interpretation of the Constitution, and where an enactment provides that a matter cannot be resolved.

Where the parties agree to settle the matter, the Court shall stay the proceedings for one month. Where the parties could not settle the matter within the period of one month and there is the possibility of settlement, the Court may extend the time and stay proceedings . Where the parties are able to settle, the agreed terms shall be reduced into writing and the terms of settlement shall be filed and entered by the Court as its judgment. Where the parties fail to settle and there is no possibility for settlement, the Court shall proceed with the application for directions.

Order 51 rule (1) of C.I. 47 which is on stay of execution of the

judgment of the District Court has been amended and has ceased to be a repeat application. The High Court is seised with jurisdiction to stay the execution of a decision of the District Court and such an application is to be brought on notice at the High Court.

Order 58 which is on commercial claims before the Commercial Division of the High Court also known as the Commercial Court has been amended to include commercial claims filed in the Circuit Court. The rules on filing proceedings in the High Court has to apply *pari pasu* to commercial claims in the Commercial Court and the Circuit Court. The practice at the Commercial Court and the Circuit Court in determining a commercial claim has been enhanced by the introduction of settlement including voluntary ones in accordance with the rules.

A settlement made by an external person, read over to the parties and duly executed by the parties shall be binding on them and be filed at the registry of the Court.

COURT OF APPEAL (AMENDMENT) RULES, 2020 (C.I. 132)

The Court of Appeal (Amendment) Rules C.I.132 has also amended Rule 27A, and 28 of the Court of Appeal Rules. Stay

of execution of a civil judgment of a court below is determined by the Court of Appeal and not the court below. An application for stay of execution against the judgment of the High Court or Circuit Court has ceased to be a repeat application, and furthermore, it is to be filed before the Court of Appeal for determination.

The Court of Appeal was conferred with review jurisdiction by Rule 34 of the Court of Appeal Rules, C.I.19 as amended to review its decisions in exceptional cases. The Rules of Court Committee which did not have jurisdiction to confer the review jurisdiction on the Court of Appeal, repealed same by C.I. 132 on 5th November, 2020.

The power of the Court of Appeal to stay proceedings in interlocutory appeals filed against the ruling of a court below has also been repealed by C.I 132. A trial court has inherent jurisdiction to stay its own proceedings or may stay it under an enactment including where it makes reference to the Supreme Court under articles 2 and 130 of the Constitution.

SUPREME COURT (AMENDMENT) RULES, 2020 (C.I. 131)

Until 5th November, 2020, the Court of Appeal had jurisdiction to stay execution of

its own civil decisions and upon failure to grant or where it was granted in part but the conditions were onerous or burdensome, the person who was dissatisfied with it had a right to repeat it before the Supreme Court. The power of the Court of Appeal to stay the execution of its own decisions has been revoked by the Supreme Court (Amendment) Rules, (C.I. 131) and it is the Supreme Court which has exclusive jurisdiction to determine a stay of execution against a decision of the Court of Appeal.

The Supreme Court (Amendment) Rules, (C.I. 131) amended rule 20 of the Supreme Court Rules, 2020, (C.I. 131) to take away the jurisdiction of the Court of Appeal to stay its own decision which is a subject matter of appeal before the Supreme Court.

In a nutshell, review jurisdiction and stay of execution and proceedings are created by statute and a person cannot exercise it where a statute has not created it. The only exception is that any court has an inherent right to stay its own proceedings, particularly, where an interlocutory appeal is filed against its ruling. Other instance where stay of proceedings is regulated by an enactment are; where reference is made to the

Supreme Court under Rule 67 of C.I.16, and a reservation of a question of law is made under section 100 of the Courts Act, 1993 (Act 459) .

COURT REGULATIONS, 2020 (L.I. 2429)

The monetary jurisdiction of the Circuit Courts and the District Courts was expanded by the Court Regulation, 2020 (L.I. 2429) which came into force on 16th December, 2020. The Court Regulation, L.I. 2020 revoked the Courts (Amendment) Regulations, 2014 (L.I. 2211) which was previously made to expand the jurisdiction conferred on the Circuit Courts and the District Courts by sections 42 and 47 of the Courts Act, 1993 (Act 459) respectively.

The Circuit Court's monetary jurisdiction in respect of personal actions arising under a contract or tort, recovery of liquidated sum, probate and letters of administration in respect of succession of property of a deceased person has been expanded to two million Ghana Cedis (GHC2,000,000.00).

The monetary jurisdiction of the District Court in respect of personal actions under tort or contract or for the recovery of liquidated sum; the value of the estate of a deceased person in causes or matters to succession of a person who at the time of his death had his fixed

place of abode in the jurisdiction of the District Court; and an action relating to ownership, possession or occupation of land has also been expanded to five hundred thousand Ghana Cedis (GHC500,000.00).

A transitional provision was provided to take care of the matters which were pending before the Circuit Courts and the District Courts before the expanded jurisdiction was conferred on them. It provides thus:

“5. A court shall, within two years of the coming into force of these Regulations, conclude a case pending before the court under L.I. 2211.”

The transitional provision is unnecessary as it is likely to occasion injustice unless it is interpreted purposively.

The Courts Regulations, L.I. 2429 only expanded the value jurisdiction of the Circuit Courts and the District Courts without taking away their previous jurisdiction and it is wrong for the transitional provision to state that matters pending before them under their previous jurisdiction shall be concluded within two years from the coming into force of L.I. 2429. The Circuit Courts and the District Courts continue to have concurrent jurisdiction in any matter involving

the smallest coin and therefore they did not lose their previous monetary jurisdiction on the coming into force of L.I. 2429.

SERVICE BY ELECTRONIC MEANS

The High Court (Civil Procedure) (Amendment) Rules, 2019 (C.I. 122) came into force on 3rd December, 2019 to introduce electronic service of processes. The High Court (Civil Procedure) (C.I. 122) amended Order 7 of C.I. 47 by the insertion of Rule 3A. A party who issues a writ and would like to be served by electronic means or enters an appearance and would like to be served by electronic means shall clearly state whether the service of any process or document in the matter should be by electronic means. A party who requests for service of electronic means shall be deemed to have been served where that process is served on that party by that means. A person who requests for service by electronic means shall endorse on any process filed by them, their telephone number and their electronic mail address. Where a party is represented by a lawyer, the lawyer may request to be served by electronic means and the service on the lawyer is a valid service. A party who serves another party a process or document by electronic means shall deliver a hard copy of the

of the Court for verification.

A party may elect to be served with hard copies of processes and documents and the processes shall be served on that party by a registered process server or a bailiff. On the other hand, where a party who elects for service of hard copies of a process or document by a registered process server or a bailiff decides to change for electronic means, they may do so by notice to the Registrar of the Court. Service by electronic means should be encouraged in this era of COVID-19 Pandemic where documents and processes served by a registered process server or a bailiff may be contaminated.

CONCLUSION

The recent amendments discussed in this paper are meant to help achieve the purpose envisaged by Order 1 of C.I.47, that is to promote effective justice through expeditious hearing devoid of unnecessary expenses and delay.



MUSLIM MARRIAGES AND DIVORCES IN GHANA: PROCEDURES AND CHALLENGES WITH COMPLIANCE WITH THE LAW, PROPERTY SETTLEMENT, SUCCESSION AND RECENT DEVELOPMENTS

H/H EFUA GYETOWAH EDISSIN

Marriage is universally accepted across differing societies and cultures. It is a legally or socially sanctioned union of two individuals as partners in a private relationship. Most jurisdictions worldwide specifically consider marriage as a union between a man and a woman with thirty-two countries, South Africa being the only African country included, currently recognizing same sex marriage¹. It is universally acknowledged that *“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and*

to found a family” and this right is enshrined in Article 16 (1) of the Universal Declaration of Human Rights, 1948 (UDHR). The fundamentals of a valid marriage are that the parties ought to be legally capable of entering into a contract to marry, the intending spouses must mutually and freely consent or agree to get married² and finally the intending spouses ought to enter into the marriage contract in a form that is prescribed by law or is socially accepted pertaining to the particular society or jurisdiction where the intending spouses either are located or desire to get married.

There are laws, rules, beliefs and customs in existence to regulate marriage and establish the framework for the rights (for instance property rights and inheritance/succession) and

obligations (for instance division of labour between spouses and procreation with its associated incidences such as the obligations to children including their care, maintenance and upbringing)³ of the spouses in a marriage. The regulatory framework would also cover the status and rights accorded to offspring (if any) of the marriage.

Ghana is one of the jurisdictions where marriage is recognized as a legally or socially sanctioned union between a man and a woman. The forms of marriages recognized are customary marriage, common law marriage, marriage under the Marriage Ordinance (CAP 127) and Muslim marriage.

Muslim marriage in Ghana is the marriage celebrated by Muslims or persons that practice the Islamic faith, in accordance with Sharia [Islamic law]. In this article, I will focus on Muslim marriage and divorce and explore the legal requirements for validating a Muslim marriage and divorce and the challenges with complying with the requirements of the law. I will also explore property settlement during dissolution of a Muslim marriage and succession by a spouse in a Muslim marriage. Finally, I will look at recent developments related to Muslim marriages and divorces.

i. The essential requirements for contracting a Muslim marriage

In Mulla Principles of Mahomedan Law (16th Edition, S252) the essentials of a Muslim marriage are set out as:



“It is essential to the validity of a marriage that there should be a proposal made by or on behalf of one of the parties to the marriage, and an acceptance of the proposal by or on behalf of the other, in the presence and hearing of two male or female witnesses who must be sane and adult Mahomedans. The proposal and acceptance must both be expressed at one meeting; a proposal made at one meeting and an acceptance made at another meeting do not constitute a valid marriage. Neither writing nor any

religious ceremony is essential.👉👉

To successfully contract a Muslim marriage, a man and woman who are capable of legally contracting a marriage must of their own free will agree to the marriage. On the capacity to legally enter into a marriage, the Children's Act, 1998 (Act 560) provides that "*the minimum age of marriage of whatever kind is eighteen years*" and any person that forces a child to be betrothed, be the subject of a dowry transaction or to be married⁴ commits a criminal offence and on summary conviction is liable to a specified fine or term of imprisonment or to both⁵. A child in Ghana consequently does not have the capacity to marry and cannot validly enter into a marriage contract. Any purported betrothal or marriage of a child is of no legal consequence or effect⁶. "*A child is person below the age of eighteen years.*" ⁷

Under Article 23 (1) of the International Covenant on Civil and Political Rights, 1966 (ICCPR) and Article 10 (1) of the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), both ratified by Ghana, the right of all persons to enter into marriage with the free and full consent of both intending spouses to the marriage is assured and unassailable. Article 16 (1) (b) of the Convention on the Elimination of All Forms of Discrimination against Women,

1979 (CEDAW), also ratified by Ghana, requires States to ensure, that both men and women have the same right to freely choose a spouse and to enter into marriage only upon their free and full consent. This is based on the principle of equality of men and women.

Thus in Ghana, a person aged eighteen years and above, upon his or her free and full consent can enter into a Muslim marriage with another person of the opposite sex aged eighteen years or above, who also freely and fully consents to the marriage in accordance with the specific requirements of Sharia [Islamic law] for contracting an Islamic marriage. A Muslim woman can consent to a marriage with the permission of her wali. No Islamic marriage is valid without a wali⁸. Under Islam, "[I]n case of marriage, *wali* is [a man] who has been granted an authority to consent to marriage on behalf of someone" (Rafiq, 2015, p.1255). Thus guardians are the men (excluding women) who have been granted a position of authority by the Sharia [Islamic law] over others to safeguard their interests and look after their rights." ⁹

A Muslim marriage is potentially polygamous and a man who contracts a Muslim marriage may marry up to four wives as agreeable to him under certain circumstances Islam allows.¹⁰

ii. Muslim marriage and divorce and the Law

The main law that regulates Muslim marriages and divorces in Ghana is the Marriage of Mohammedans Ordinance, 1907 (Cap 129), currently Part Two of the Marriages Act, 1884-1985 (CAP 129).

- Requirement for registration of a Muslim marriage

A Muslim marriage must be registered, as soon as practicable after it is celebrated and no later than one week after its celebration, by the bridegroom, the bride's wali or guardian, two witnesses to the marriage and a licensed Muslim priest at the office of the District Chief Executive¹¹. The District Chief Executive of each district serves as the Registrar of Muslim marriages and divorces of that district.¹²

The details of the marriage must be entered in the Mohammedan Marriage and Divorce Register,

nesses who were present at the marriage ceremony. The licensed Muslim priest shall then sign in the register and on the marriage certificates, a certificate that the marriage is valid according to Islamic law. The registration process is completed by the District Chief Executive signing the register and both certificates and he shall insert the date and place of registration. The marriage is entered in the register and in the duplicate certificates and the certificates are detached from the register, with a copy given to the bridegroom and the other to the bride's wali.¹³

On the expiration of the statutory period for registration of a Muslim marriage, the bridegroom or the bride's wali may by an ex-parte application apply to the High Court and a Justice of the High Court may issue a certificate personally signed by the Justice to dispense with the signature of any person, other than a licensed priest upon grounds stipulated in the law.¹⁴

The effect of failure to register a Muslim marriage is that such a marriage is not valid and thus not legally recognized.¹⁵

- Requirement for registration of dissolution of a Muslim marriage

Similar to the requirement for registration of a Muslim marriage, there are requirements for the registration of a Muslim divorce. The procedure for the



signed by the bridegroom, the bride's wali, and the two wit-

registration of a Muslim divorce is the same as the procedure for the registration of a Muslim marriage, save that the Muslim divorce shall be registered within one month of the divorce.¹⁶

In the event of the dissolution of a Muslim marriage, and where the statutory period for the registration of the divorce has expired, a Justice of the High Court may on an ex parte application by the man or woman's wali, issue a certificate signed personally by the Justice authorizing the District Chief Executive to register the divorce at any time one month from the date of the certificate, and on the registration to dispense with the signature of a person, other than a licensed priest on grounds set out in the law.¹⁷

A Muslim divorce that is not registered is null and void and of no effect.¹⁸

iii. Challenges with compliance with the Law

“There has been very little research conducted into compliance of Islamic marriages with CAP 129. What is however evident from the available outcome of research conducted in that regard is that the overwhelming majority of Muslims have not registered their marriages and are even unaware of the requirement of registration of their Islamic marriages, let alone the legal

effect of non-registration on their marriages (SEE: Kludze, A.K.P (2015) *Modern Law of Succession in Ghana*; p.234; Ollennu, N.A. (1966) *The Law of Testate and Intestate Succession in Ghana*, p.262.). This staggering rate of noncompliance with CAP 129 has given credence to the apt description given to CAP 129 by one writer that, “the Marriage of Mohammedans Ordinance has been honoured by its breach rather than its observance (Daniels, W.C. Ekow, “Towards Integration Of Laws Relating To Husband And Wife In Ghana;” *University of Ghana Law Journal* (Vol. 11, 1965) P.37)”.¹⁹

A challenge with the registration of Muslim marriages and divorces under Cap 129 is that it has become unattractive to Muslims since the section of the law under Cap 129²⁰ that allowed a Muslim to apply Sharia [Islamic law] as the personal law in matters such as succession to the property of a Muslim upon death intestate has been done away with by the Intestate Succession Act, 1985 (PNDCL 111).

Also, some challenges with compliance flow out of the law itself making it difficult and at times impracticable to secure adherence to its strict requirements. An example of this is the time limited for registration. The period of one week limited for registration of a Muslim marriage under Cap 129 in the first instance is not adequate. The inadequacy of the time may

deter compliance with the law.

Moreover, the current registration process for Muslim marriages and divorces, specifically, the requirement that the bridegroom, the bride and her wali, witnesses and the licensed priest have to visit the office of the District Chief Executive, who should be the Registrar of Muslim Marriages and Divorces, to register either a marriage or divorce is burdensome and discourages compliance with the law. Furthermore, obtaining an extension of time after the expiration of the statutory time limited for registration of Muslim marriages and divorces through the High Court, which are mostly not readily available at the District level together with the costs associated with the filing of applications at the High Courts, could potentially discourage couples from seeking to comply with the provisions of the law by way of late registration even after expiration of the statutory period for registration in the first instance.

The stark reality in Ghana is that there is the absence of a regulatory framework for registration of Muslim marriages and divorces. The District Assemblies have no framework in place for the registration of Muslim marriages and divorces, even though the District Chief Executive of each

district is required under Cap 129 to oversee the registration of Muslim marriages and divorces as its Registrar. The sad truth is that there are no registries in place to register a Muslim marriage or divorce and also no regime in place for the licensing of Muslim priests who are to officiate Muslim marriages and whose subsequent presence and involvement in the registration of a Muslim marriage or divorce is a sine qua non for the validity of the registration of the Muslim marriage or divorce.

To buttress this point, it is noteworthy that although all District Assemblies throughout Ghana make their own bye-laws prescribing fees to be charged for services provided, the various District Assemblies have prescribed fees related to customary and ordinance marriages but no prescribed fees related to Muslim marriages or divorces. Besides, the District Assemblies do not have the required Forms for the registration of Muslim marriages or divorces. Given the lack of an effective registration process, invariably Muslims that go to register their Muslim marriages end up having those marriages registered under the Marriages Act (Cap 127), the Customary Marriage and Divorce Registration Act, 1985 (PNDCL 112) or not having those marriages registered at all.

iv. Property Settlement upon dissolution of a Muslim marriage

It is the universal right of every person to own property either alone or in association with others and to not be arbitrarily deprived of one's property.²¹ This is a constitutionally guaranteed right of every Ghanaian²². One of the normal incidences of marriage is the acquisition of property by spouses either individually or jointly in the course of their marriage. It is in light of this that the 1992

Constitution of Ghana recognizes the property rights of spouses. To safeguard the property rights of spouses in a marriage, the Constitution guarantees *“spouses shall have equal access to property jointly acquired during marriage.”*²³

During or at the dissolution of a Muslim marriage, there may be the incidental matter of distribution of property acquired in the course of a marriage



between the parties. The Marriages Act, 1884-1985 (Cap 129) does not have any specific provisions relating to the

settlement of property acquired during a Muslim marriage between the spouses at the dissolution of the marriage.

However, our 1992 Constitution once again guarantees *“assets which are jointly acquired during marriage shall be distributed equitably between the spouses upon dissolution of the marriage.”*²⁴

The Universal Declaration of Human Rights also guarantees that men and women are *“entitled to equal rights as to marriage, during marriage and at its dissolution (emphasis mine)”*.²⁵

Although, there are no specific provisions in the laws that regulate property settlement upon the dissolution of a Muslim marriage, the Matrimonial Causes Act, 1971 (Act 367), an act providing for matrimonial causes and for other matters connected to it, provides a way out. Ordinarily, the Act applies to all monogamous marriages.²⁶ Nonetheless,

“on application by a party to a marriage other than a monogamous marriage, the court shall apply the provisions of this Act to that marriage, and in so doing subject to the requirements of justice, equity and good conscience may have regard to the peculiar incidents of that marriage in determining appropriate relief, financial provision and child custody arrangements or may grant any form of relief recognised by the personal law of the

parties to the proceedings, either in addition to or in substitution for the matrimonial reliefs afforded by this Act.”²⁷

The effect of the above is that where one spouse or both spouses in a Muslim marriage are no longer desirous of continuing with the marriage contract between them, they may apply to the courts under Act 367 for the Act to be applied to their marriage for its dissolution only, or for its dissolution and the settlement of property between the spouses under section 20, where the couple jointly acquired property in the course of their marriage.

In settling property between spouses, courts take into consideration the property rights of spouses enshrined in the Constitution, international conventions Ghana has ratified, as well as principles for settling property between spouses upon dissolution of a marriage espoused in court decisions. The most recent decision being the one given by the apex court of Ghana in **PETER ADJEI v. MARGARET ADJEI, CIVIL APPEAL NO. J4/06/2021** delivered on 21st April 2021 where the court held “...any **property that is acquired during the subsistence of a marriage, be it customary or under the English or Moham-medan Ordinance, is presumed to have been jointly acquired**

by the couple and upon divorce, should be shared between them on the equality is equity principle. This presumption of joint acquisition is, however, rebuttable upon evidence to the contrary.”

All the principles relating to property settlement of spouses regarding jointly acquired property apply equally to a Muslim marriage upon its dissolution.

v. Muslim Marriage and Succession

Where spouses in a marriage acquire property, either alone or jointly, one spouse or both spouses may decide to leave a will with instructions as to who should be given their property upon their demise. However, situations also arise whereby a spouse who has acquired property upon their death would not have left instructions as to how their property should be distributed. This is the most common occurrence in our country.

Ordinarily under Islam, the personal law of a Muslim being Sharia [Islamic law] would govern property rights and succession to his or her property. Sharia defines the portions that each member of the family would receive with the woman's share being half that of a man when there are both male and female heirs or successors. However in Ghana under PNDCL

111, the devolution of the estate of any person who dies intestate on or after the commencement of the law SHALL be determined in accordance with its provisions.

With respect to the distribution of properties under Sharia [Islamic Law] the Supreme Court of Ghana in **GIWAH & OTHERS v LADI [2013-2014] 2 SCGLR 1139**, affirming the decision of the trial High Court which was affirmed by the Court of Appeal, held setting aside the decision of the Islamic Judicial Committee, that under Islamic law or Sharia, inheritance to a deceased intestate estate was through the male line and females did not inherit property. The court's decision was on the ground that this position violated article 17(1) and (2) of the 1992 Constitution. The court further held that with the coming into force of the Intestate Succession Act, 1985 (PNDCL 111), the distribution of every intestate estate shall be governed by that law, irrespective of one's religion, ethnic or cultural practices.

Therefore where a spouse in a Muslim marriage dies intestate, the estate of the deceased is to be distributed in accordance with State laws, explicitly set out in PNDCL 111 and not according to their personal law being Sharia [Islamic Law]. This is the current position of the law in Ghana.

vi. Recent Developments

The Office of the Attorney General and Ministry of Justice in conjunction with the Registrar General's Department is leading efforts at the introduction of a new law to regulate Muslim marriages and divorces and other incidental matters. The result of this effort is the Muslim Marriage and Divorce Bill, 2019. The Muslim Lawyers Forum (MLF) in a Memorandum to the Registrar General's Department on the above Bill dated 29th July 2020 described the current law as "a colonial era legislation that has seen hardly any amendments over the years" and further pointed out that "the onerous and burdensome procedure for registration of Muslim marriages and divorces under Cap 129 and the consequences of non-compliance with the law have created serious legal and social problems about the status and validity of Muslim marriages and divorces under that law."

As a result of the legal and social problems associated with the current law, the Bill is proposing changes to the current law. It is provided in the Memorandum to the Bill thus: **"In light of these problems, this Bill seeks to provide a user-friendly institutional and regulatory framework for the registration of Muslim marriage and divorce. It seeks to establish a Muslim marriage and Divorce Registry in each district**

in the country and entrust it with the responsibility to register Muslim marriage and divorce. The Bill also seeks to make the production of an entry in the Register or a certificate to that effect conclusive proof of the fact of marriage or divorce.”

The Bill provides for the appointment of a Registrar of Muslim Marriages and Divorces for each district, licensing of places of marriage, licensing of Imams by the Registrars appointed and conditions related thereto, the requirements of a valid Muslim marriage including requirements for proof of age of parties to a proposed marriage and the requirements for the celebration of Muslim marriage including Muslim Marriage Contract. The Bill proposes in-depth provisions for the registration of Muslim marriages and divorces and the methods for registration, with the introduction of one month for registration of Muslim marriages, a laudable change compared to the inadequate one week period prescribed under the current law. The one-month period for registration of a Muslim divorce is maintained. It is also laudable that the Bill makes provision for marriages celebrated prior to the passing of the bill into law to be registered under the new law after its commencement. The Bill again makes provisions for divorce and matters incidental thereto, and succession. In my opinion, the Bill

seeks to recognize and apply Sharia [Islamic law] as the personal law of Muslims in areas such as divorce and related matters and succession, while at the same time attempting to strike a balance between the dictates of the Ghanaian Constitution and laws.

The Bill has gone before a number of Muslim stakeholders soliciting further inputs into the Draft Bill with some concerns having been raised for further addressing. The Muslim Lawyers Forum (MLF) being one of the stakeholders, in its Memorandum to the Registrar General's Department raised some concerns. These concerns touch on the registry and appointment of the Registrar, the licensing, suspension and revocation of license of an Imam or a place of worship, the Muslim Family Law Arbitration and Counselling Unit which the Bill proposes to be formed and the review or appeal of the decisions of the Muslim Family Law Arbitration and Counselling Unit, the proposed Muslim Marriage Contract, mode of registration of marriages and provision for celebration of marriage by special license and finally recourse to the High Court in respect of matters relating to the registration of marriage and divorce. Recommendations have been made with respect to all the areas of concern raised to

the Registrar General's Department for consideration.

In conclusion, I would say that bold changes have been proposed in the Bill with stakeholder engagements and consultations ongoing. Although the Bill is currently not on the list of Bills on the Parliament of Ghana's website being considered by the current session of Parliament, I must say that the Muslim Marriage and Divorce Bill, 2019 is a work in progress.

It is my fervent hope, as I believe is the hope of all stakeholders, that are tirelessly working to see positive changes made to the present law, that in the foreseeable future a user-friendly Muslim Marriage and Divorce Bill that addresses the current pertinent issues and satisfies all relevant stakeholders will be passed into law ushering in a new regime for the regulation of Muslim marriages and divorces and its incidental matters in Ghana.





IS THE DISPUTE SETTLEMENT MECHANISM OF THE AfCFTA FIT FOR PURPOSE?

-Justice Kweku Ackaah-Boafo,
High Court, Accra

Early in August 2022, Ghanaian news portals reported that H.E. Wamkele Mene, the Secretary General of the African Continental Free Trade Area (AfCFTA) had announced that Ghana, Egypt, Cameroon and Rwanda had agreed to start products-trading under the flagship of AfCFTA on September 26, 2022. Many may have read that the AfCFTA is headquartered in Accra, but may have no idea what it is about. In this article, I look at the background to the AfCFTA and specifically, at the dispute settlement mechanism set out in the AfCFTA agreement to find out whether or not it is a hope for African integration.

Regional integration remains an economic and political priority for African leaders and policy makers because there is the general perception that African regional integration has existential ramifications for trade, which holds the key to the development of Africa and the enhancement of intra-trade in Africa. The rationale

behind the perception is that a comprehensively integrated Africa shall have a better bargaining ability and capacity in this era of globalization. There is also the potential for the development of the individual economies, enhanced competition and increased production. As well, integration acts as a shield against the vagaries of globalization because an expanded regional market creates condition for an improved economic growth.

On the occasion of the 50th Anniversary of the Organization of African Unity (OAU) in 2013, African leaders re-dedicated themselves to the attainment of the Pan Africanist vision of an integrated and prosperous Africa. African leaders realized that there was a need to re-focus and reprioritize Africa's developmental agenda. The re-focus and re-strategizing resulted in the adoption of the Agenda 2063 which is a set of initiatives proposed to be

implemented by the African Union. The Agenda is seen as the strategic development program by which the continents' social, economic development, political stability, public security and regional integration hinged. According to Ndizera & Muzee (2018 p. 143) *“Agenda 2063 is rooted in Pan Africanism and African Renaissance. It attempts to provide a robust framework for addressing past injustices and realization of the 21st century as the African century”*.

Following the adoption of the AU Agenda 2063, the AU adopted seven key aspirations which are meant to move the continent to the next level of integration and development. Aspiration two speaks of **“An Integrated Continent Politically united and based on the ideals of Pan Africanism and the vision of African Renaissance”**.

The AfCFTA is a flagship program which forms part of the aspirations. With the idea of having a united market rather than the fragmented markets which presently exist, the AfCFTA was birthed at the AU's 18th Ordinary Session in Ethiopia in January 2012 and the agreement was signed in Kigali, Rwanda in March 2018 by 44 member states, but as of August 2021, 54 member states had signed. The agreement entered into force on May 30, 2019. Its operational phase began in July 2019. By becoming

operational, it is accepted that the AfCFTA is the largest free-trade agreement in terms of the number of countries participating in it since the establishment of the World Trade Organisation (WTO).

The preamble to the AfCFTA provides that the AfCFTA aims at integrating Africa's markets, to strengthen economic relations and to create a continental market with free movement of persons, capital, goods and services. Further, by becoming operational, the AfCFTA affirms the attainment of part of the AU Agenda 2063 which is *“an integrated, prosperous and peaceful Africa, driven by its own citizens and representing a dynamic force in international arena”*.

With AfCFTA, the focus of integration is no longer on sentiments but on tangibles like trade improvements. By Article 3 of the AfCFTA agreement titled general objectives, it is aimed at creating collective wealth through trade and thus lift the continent out from its poverty quagmire. The AfCFTA is also to help accelerate the growth of Intra-Africa trade which available data shows is at a very low level.

The AfCFTA agreement sets out a mechanism for the settlement of disputes, but the settlement of disputes is between the member states and not by pri-

vate commercial entities even though the private entities are the ones who will engage in the business of trading in goods, services and investment in the continent.

Article 4 of the AfCFTA Agreement provides that it is to, *“establish a mechanism for the settlement of disputes concerning rights and obligations”*. Article 20 of the Agreement sets out a

Dispute Settlement Mechanism for the AfCFTA. It reveals dispute settlement to be *“a central element in providing security and predictability to the regional trading system”*. The Protocol on Dispute Settlement was adopted and signed in Kigali, Rwanda on March 21, 2018 when the Agreement was signed.

Article 1, the Definitions Article of the Protocol on Rules and Procedures on the Settlement of Disputes defines a *“dispute”* as *“a disagreement between State Parties regarding the interpretation and/or application of the Agreement in relation to their rights and obligations”*. The same Article further defines the *“Agreement”* to include the *“Agreement Establishing the African Continental Free Trade Area and Its Protocols, Annexes and Appendices which shall form integral part thereof”*.

The Dispute Settlement Mechanism is modelled after the World Trade Organization (WTO) set-up and consists of a Dispute Settlement Body (DSB) and an Appellate Body (AB). The dispute settlement bodies have jurisdiction to settle disputes that arise between **State Parties**. Indeed Article 3(1) of the Dispute Settlement Protocol provides that *“This Protocol shall apply to disputes arising between State Parties concerning their rights and obligations under the provisions of the Agreement”*.

It is envisaged that applications will first be determined by Panels appointed for each case filed. The DSB is composed of representatives of the State Parties and they are to administer the provisions of the Dispute Settlement Protocol pursuant to Article 5 of the Protocol. The Appellate Body is a permanent institution composed of seven (7) members, three (3) of whom shall sit on any one matter pursuant to Article 20 (1) and (2) of the Protocol on Dispute Settlement. The Appellate Body shall hear appeals against Panel reports. The AfCFTA state parties may also, if they so wish and agree, settle their disputes through arbitration .

Further to Article 30 of the DS Protocol, the legal instruments of the AfCFTA shall be

interpreted in accordance with the customary rules of interpretation of public international law, including the 1969 Vienna Convention on the Law of Treaties.

According to Onyema (2020), it is generally recognized that the increase in trade under the AfCFTA agreement will be driven by small and medium sized firms and new start-ups. Onyema further posits that “the legal status of corporations or business entities trading or carrying on business across one or more African countries vary from informal to formal”. By engaging in trade and other businesses in the continent, the private entities including SMEs, firms and other start-ups in technology, will most likely be involved in trade, and the likely disputants in the framework for dispute resolution. In view of that, it is necessary to examine whether or not the framework for the settlement or resolution of disputes as envisaged under the AfCFTA gives hope for continental economic integration by helping to deliver the goals of the AfCFTA.

From the referenced dispute settlement provisions above, it is clear that the reference to state parties as stated in Article 3 as the only possible disputant under the Dispute Settlement Mechanism essentially affirms that state parties are the only ones with standing under the dispute settlement arrangement to deal



with any dispute. The Secretariat and other AfCFTA institutions will not be able to bring applications for the enforcement of the rules of the AfCFTA before the DSB and the AP. Also, commercial disputes arising from trade in goods and services between private parties such as the economic actors who operate in the African markets cannot be adjudicated before the DSB with the private actors as parties because they do not have standing. Also, individual citizens who suffer a loss in any trade related matter will not have standing to pursue a claim.

The AfCFTA dispute settlement set up pursuant to the DS Protocol has been criticized for giving locus standi to only state parties. One of the critics is



Gerhard Erasmus. In a commentary published on July 28, 2020 he submits that the legal standing arrangement of the AfCFTA regime is not the best in so far as legal standing is not given to private parties and individuals. He referenced Article 1 of the AfCFTA Dispute Settlement Protocol and wrote that “In international adjudication there must be a dispute as defined in the applicable agreement before dispute settlement application can be brought to the forum with jurisdiction over the matter”. In this case he wrote and affirmed that the **“relevant Agreement means the Agreement Establishing the AfCFTA and its Protocols, Annexes and Appendices which shall form an integral part thereof”** as per Article 1. He surmises that it is

important to note that once the AfCFTA becomes operational further to outstanding matters including rules of origin and other matters finalized, **“only state parties will be bound, but they will not trade with each other, as far as trade in goods is concerned, in terms of one single legal regime”**.

According to Erasmus (2020), the Free Trade Area (FTA) **“brought about by the AfCFTA will not constitute a continent-wide arrangement. Only those African States presently trading with each other under the MFN rates will, once the AfCFTA has become operational and the relevant States are AfCFTA State Parties, use the preferences of the new FTA established by the AfCFTA. The other AfCFTA State Parties will continue to trade with each other under the higher levels of liberalization provided for by the Regional Economic Communities (REC) FTAs, and other regional trading arrangements of which States are members”**. He refers to Article 19(2) of the AfCFTA agreement which provides that: **“State Parties that are members of their regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves”**.

Erasmus (2020) further refers to

Article 8 of the AfCFTA Protocol on Trade in Goods and submits that under the scheme, there will be several African FTAs and other trade arrangements co-existing with each other. To that extent, Erasmus submits that **“Disputes about compliance with the relevant rules will be linked to the applicable legal instruments and their own dispute settlement mechanisms”**. According to him the AfCFTA Dispute Settlement Mechanism will have jurisdiction over trade-related disputes between state parties that fall under the instruments of AfCFTA, and where two countries trade with each other under MFN rules, the applicable forum would be the dispute settlement system of the WTO. He argues that giving only state parties standing under the dispute settlement mechanism is not the best idea because according to him **“African States never litigate against each other over trade related matters. They are unlikely to do so in the case of the AfCFTA”**.

There is no denying the fact that the AfCFTA Agreement marks an important milestone for Africa as it seeks to remove both legal and non-legal barriers to trade in Africa. To that extent, I am of the view that its dispute settlement mechanism could have been bold and revolutionary and not follow what has become the traditional way of dealing with matters relating to the

implementation of treaty obligations – that is, by giving only state parties standing in dispute settlement. I am of the opinion that the framers and the drafters of the dispute settlement mechanism ought to have adopted the position of the erstwhile COMESA Court of Justice decision in the *Polytol Paints and Adhesives case* .

In that case, Polytol Paints and Adhesives Manufacturers Co. Ltd, a company incorporated in Mauritius filed a case against the Republic of Mauritius to seek certain remedies at the COMESA Court of first Instance in its name as a party. The Polytol’s main arguments revolved around the fact that under Article 46 of the COMESA Treaty, Member states of the organization were required, by the year 2000, to eliminate customs duties and other charges of equivalent effect imposed on goods eligible for Common Market treatment. The Applicant argued that though the Respondent, Mauritius, initially complied with the obligation, it reneged and reintroduced in the year 2001 a 40% customs duty on specific products (Kapci products) from Egypt, another COMESA member, which included the products imported by the Applicant. It argued that only products from Egypt were targeted.

The Respondent filed a preliminary application to set aside the reference on the first ground that the Applicant had no *locus standi* to file the reference in matters relating to implementation of Treaty obligations. The Court ruled on the preliminary application and found that the Applicant had locus standi and that the Court had jurisdiction to hear the reference pursuant to Articles 23 and 26 of the treaty.

The ruling confirmed that the traditional view that only states are parties to international agreements and they are the only ones to derive rights from such agreements and have standing before international courts and tribunals when violations occur cannot be a general statement and ought to be qualified in the case of rules-based regional integration, because community/regional law is *sui generis*.

Even though the Polytol case could be unique in the sense that it is widely known to be the only reported case where a private company was granted standing, I am of the view that it was a progressive and ground breaking decision for which the AfCFTA protocol on dispute settlement could have built upon since as stated supra, private entities are those who will drive the agenda for the success of the AfCFTA economic integration agenda.

I am also of the further view that the protocol ought to have given standing to citizens who may suffer loss as a result of trade-related matters under the Dispute Settlement Protocol. Indeed, granting citizens standing would not have been novel because citizens have standing in the Courts of Justice of the ECOWAS and the East African Community (EAC). Without standing, the question is who will espouse the claim of a citizen who suffers loss in a trade-related matter under the AfCFTA protocol? Such a question and others are what would confront member states now that the AfCFTA Agreement is fully operational and therefore ought to be addressed. I am also of the view that the DSB should be allowed to grant retaliatory measures by injured parties. But, it must be linked to the proportionality concept, that is, it must be moderated to avoid escalation of any dispute that may arise between the disputed parties.

The foregoing establishes that the dispute settlement mechanism under the AfCFTA protocol on dispute settlement is modeled on the traditional public international law position by giving standing to only member states. That, notwithstanding and despite the criticism of others and my opinion expressed, it can be stated that it is not all doom and gloom for private companies

and individuals under the dispute settlement mechanism of the AfCFTA. Indeed, when necessary, because the Dispute Settlement Mechanism is modelled after the WTO rules, it means that private companies and individuals, where need be, can be protected if a State Party is able to show that the person's rights have been violated and can therefore bring a claim.

Governments of WTO members frequently do so. An example is the Bananas disputes case where Ecuador, Guatemala, Honduras, Mexico and the United States lodged a complaint against the European Communities at the WTO Dispute Settlement Panel. It was acknowledged that individual exporters were pursuing the claim even though the State Parties lodged the claim.

Also, citizens, corporate bodies and CSOs etc. as consumers who will buy and patronize the activities of the private entities within the African continent can claim to have standing before the dispute settlement body under the AfCFTA if they recognize that they make up the state and therefore through advocacy urge the States to represent their interest.

Furthermore, it should be noted that the AfCFTA dispute settlement mechanism has not come to do away with African domestic courts' including the

Ghanaian courts whose work include the hearing of cases involving national regulators in such areas as telecommunications, energy, taxes and the financial sectors and general commercial transaction disputes which may arise.

Finally, it is noted that states are only granted standing under the agreement because state parties as signatories recognize that national courts would continue to operate in so far as resolution of disputes are concerned. Also, it is clear that the AfCFTA is a 'process' and not an 'event' and all the issues could not be dealt with at the same time before making the AfCFTA agreement operational. To that extent it is conceded that many changes and modification would be made in an ambulatory fashion.

The above criticism notwithstanding, it cannot be denied that the AfCFTA agreement is indeed an important milestone for Africa as it seeks to remove legal and non-legal barriers to trade and boost intra-Africa trade.

Undoubtedly, since it cannot be denied that Africa's integration is intrinsically linked to its economic development, the AfCFTA set up is the best mechanism in place now, and therefore one can only hope that it will work because as earlier stated, the rules are fashioned after the WTO rules which have been tested and

applied over the years with positive results. If the AfCFTA through training and development of technical skills by the Secretariat and other institutions succeeds in changing State Parties' (governments) attitude towards trade dispute settlement and proceedings, then as Erasmus put it "it will make a very real contribution to better trade governance and dispute settlement in Africa".



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ASAMOAH V. SIC: A WELCOME RELIEF TO JUDGMENT DEBTORS

BY JUSTICE OSEI TUTU, J.

INTRODUCTION

Early 2022, the Supreme Court in the case of **Ken Kwame Asamoah v. State Insurance Company (S.I.C)**¹, delivered a judgment that is expected to provide immense relief to judgment debtors. Invariably, after the delivery of a judgment, the judgment creditor is required to draw up the orders of the court, which said process is commonly referred to as the ‘entry of judgment’. The process of drawing up the entry of judgment is a unilateral act and has arguably suffered some abuses over the years. To address the unfortunate development, the Supreme Court in the *Asamoah v. S.I.C.* case supra issued some directives to the relevant actors of the judicial process. The Court further tasked the Judicial Secretary and the Judicial Training Institute (J.T.I.) to disseminate the new guidelines to all trial judges and registrars. The author is unable to establish whether the directives have been complied with or not. He is mindful that there are other players affected by the guidelines, such as lawyers and litigants who are not members of the Judicial Service, but who equally need to be informed of the directives. This piece is a humble effort by the writer to briefly discuss the subject of notice of entry of judgment. The author concludes with the directives given by the Supreme Court to illuminate the path of not only litigants and their lawyers but also judges, registrars and the relevant actors of the justice delivery system.

The rule on entry of judgment

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

“(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.”

The underlying objective of the rule

The purpose of filing and serving the entry of Judgment on the judgment debtor was recapitulated by Anin Yeboah JSC (as he then was)

in the case of **Amoo v. Akowuah**ⁱⁱ thus: *“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. Under the rules of court as it then stood after the judgment was delivered, the judgment creditor was enjoined by Order 41 r 1,3 and 5 to officially notify the judgment-debtor the terms of the judgment and what was due to be paid.”* The rule found crystal expression in the old High Court Rules, 1954 (LN 140A), which was applied in the cases of **Nora Stores v. Union Industries (Ghana) Limited**ⁱⁱⁱ and **Otu & Ors. v. Sodoke**.^{iv}

In **Republic v. Court of Appeal; Ex-parte Ghana Commercial Bank Pensioners Association**^v, 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.”

The case of Ken Kwame Asamoah v. State Insurance Company (S.I.C)^{vi},

In the recent case of **Ken Kwame Asamoah v. State Insurance Company (S.I.C)**^{vii}, the respondent upon obtaining judgment filed two conflicting notices of entry of judgment wherein the interest calculated in the two notices were different - one was from April 2010 to November 2018 and the other was up to January 2020. The Apex Court speaking per Amegatcher JSC noted that under C.I. 47, entry of Judgment is the first step to be taken by a judgment creditor in the enforcement of the judgment of the Court. He explained that because the entry of judgment is usually drawn by the lawyer for the judgment creditor, some lawyers sometimes prevaricate the orders of the Court to suit their whims. The learned Law Lord bemoaned: *“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”.

Justice Amegatcher thus expressed disappointment in the court registrars who mechanically accept the orders drawn by the judgment creditors without taking the pains to scrutinize them to be sure that they reflect the orders made by the court before proceeding to levy execution based on the orders not made by the court. *“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”*, the Court lamented.

In His Lordship’s view, if, as explained by Afreh JSC (supra), that 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, then it is not right to leave the drawing up of the order in the hands of only one party to the litigation without any

input from the judge who delivered the judgment.

Directives issued to the various actors by the Supreme Court

The Apex Court after painstakingly reflecting on the issue in the Ken Asamoah case supra issued the beneath guidelines for the purpose of bringing to an end the injustice meted to judgment debtors:

1 Directives to Trial Judges

Trial judges have been tasked to ensure that they summarise and specifically state all enforceable orders they make in their judgments at the end of the case or at the conclusion of the judgments. Aside the Judgments, trial Judges are to record the summary of their orders in the Court’s Record Books, so as to guide not only the parties and their counsel but also the registrar of the court with regard to the drawing up and the filing of notices of judgment after trial as well as the specific orders to be enforced by way of execution (My emphasis).

2 Directives to Court Registrars

All Courts Registrars are directed to carefully review any notice of entry of judgment that will be filed in the Court by satisfying themselves that the contents therein are a true representation of the orders of the court in the suit. Registrars

are further being implored to seek clarification from the judge who made the orders whenever they are in doubt before proceeding to execute any document for the enforcement of the judgment (Emphasis is mine).

3 Directives to Counsel for Judgment Creditors

The Apex Court reminded counsel who prepare and sign notices of judgment after trial of the rules of professional conduct which regulate their actions in court. Reference was made to Rule 63 (2) (e) & (f) of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020, L.I. 2423 thus:

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”*

After copiously citing the above Professional rules to buttress their point, their Lordships then cautioned lawyers of judgment

creditors who, henceforth, disregard the directive to gear up to face the Disciplinary Committee of the General Legal Council for appropriate sanctions to be inflicted on them.

4 Directives to Counsel for Judgment Debtors

Counsel representing judgment debtors are encouraged to carefully scrutinise the notices of the entry of the judgment filed by the judgment creditors to ensure that the contents contained in the notice of the entry of judgment are in sync with the agreement of the parties (in the case of consent judgment) and/or the final orders made by the court. The Apex Court admonished Counsel for judgment debtors that if they discover that the notice differs from the judgment or orders made by the court, they owe a duty not only to their clients but also to the court to object timeously to the terms filed and apply to the court immediately to set aside or rectify the notices.

5 The Challenge thrown to the Rules of Courts Committee

After giving ample guidelines to the various stakeholders in the Judicial System regarding the notice of the entry of judgment, the Supreme Court requested the Rules of Court Committee to take a second look at the provisions in the rules which vest

the power to interpret and draw up the notice of judgment after trial exclusively 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”*, their Lordships emphasized.

Conclusion

The Supreme Court deserves immense commendations for its bold effort in stepping in to thwart the telling injustices that are usually visited on judgment debtors by unguarded notices of entry of judgments. The Rules Committee are therefore expected to accede to the request of their Lordships and act immediately. But until the Committee provides for the appropriate rules to guide judgment creditors in the drawing up of court orders; trial judges, registrars, lawyers and their clients are entreated to familiarise themselves with the Supreme Court’s directives and comply with them accordingly.

References

- ⁱ Ken Kwame Asamoah v. State Insurance Company; Civil App. No. J5/55/2021 (Unreported) (18th January 2022).
- ⁱⁱ Amoo v. Akowuah (2012) 52 G.M.J. 27 at pp. 44-45; (2012) 1 SCGLR 261.
- ⁱⁱⁱ Nora Stores v. Union Industries (Ghana) Limited (1969) CC 123.

^{iv} Otu and Ors. V. Sodoke (1969) CC 66, C.A.

^v Republic v. Court of Appeal; Ex parte Ghana Commercial Bank Pensioners Association (2001-2002) SCGLR 883.

^{vi} Ken Kwame Asamoah v. State Insurance Company; Civil App. No. J5/55/2021 (Unreported) (18th January 2022).

^{vii} Ken Kwame Asamoah v. State Insurance Company; Civil App. No. J5/55/2021 (Unreported) (18th January 2022).



REFLECTIONS ON PERSONAL TAX RELIEFS AND OTHER ALLOWABLE DEDUCTIONS UNDER GHANAIAN TAX LAW

His Worship Mawukoenya Nutekpor
(MBA, MCITG, QCL/BL, LL.B)ⁱ

Introduction

In Ghana, the Income Tax Act, 2015, (Act 896), as amended, imposes tax on every person who earns income during the year of assessment unless that person falls under the exempt amounts under section 7 of Act 896. In the case of individuals and partners in the partnership, their year of assessment is from the 1st January to the 31st December each year in line with the government calendar yearⁱⁱ. Income tax is payable for each year of assessment by an individual who has chargeable income for the year. Thus, in Ghana, all income earners of a certain category have an obligation to register with the Ghana Revenue Authority, file their tax returns and pay taxes on their earnings.

Resident individuals who pay taxes are entitled to personal tax reliefs. The personal tax reliefs serve as an incentive and reduce the tax liability of such persons. There are many individuals who are unaware of the personal tax reliefs under the income tax law. The law requires that tax returns be filed. In

filing the tax returns, individuals are entitled to claim for these reliefs. Some of the reliefs can also be claimed upfront on monthly basis, provided the income is exclusively from employment.

The purpose of this paper is to examine the personal tax reliefs for resident individuals and other allowable deductions under the Income Tax Act, 2015, (Act 896), as amended. The paper starts by explaining what constitutes employment income for tax purposes, resident individual, analysis of six (6) personal tax relief situations as well as other allowable deductions, how to apply for the tax reliefs and conclusion.

Income from Employmentⁱⁱⁱ

The income of an individual from an employment for a year of assessment is the gains and profits of that individual from the employment for the year or a part of the year. An amount, allowance or benefit is a gain or profit from employment, if the amount, allowance or benefit is provided (a) by the employer, an associate

of the employer or a third party under an arrangement with the employer or the associate of the employer; (b) to an employee or an associate of the employee; and (c) in respect of past, present or prospective employment.

An amount specified in respect of the following are regarded as profits and gains of an individual in calculating income from an employment:

- (i) salary, wages, leave pay, fees, commissions, and gratuities;
- (ii) overtime pay and bonuses as provided by Regulations;
- (iii) personal allowances, including cost of living allowance, subsistence, rent, entertainment or travel allowance;
- (iv) a discharge or reimbursement of an expense incurred by an individual or an associate of the individual;
- (v) a payment made for the individual's agreement to conditions of the employment;
- (vi) a retirement contribution made to a retirement fund on behalf of an employee and a retirement payment received in respect of an employment (subject to section 94 of Act 896)
- (vii) other payments, including gifts, received in respect of the employment;
- (viii) other amounts required to be included under Part III;

- and
- (ix) any other allowance or benefit paid in cash or given in kind if they are derived by the individual during the year from the employment.

The above explains the reason why allowances such as fuel allowance and rent allowance pay to Judges and Magistrates are subject to tax. This is because those allowances are regarded as gains or profits from employment. On the other hand, an amount specified in respect of the following are excluded from calculating income from an employment:

- (i) an exemption under section 7 of Act 896
- (ii) a final withholding payment;
- (iii) a discharge or reimbursement of an expense incurred by an individual on behalf of the employer of that individual that serves the proper business purposes of the employer;
- (iv) a discharge or reimbursement of the dental, medical or health insurance expenses of an individual where the benefit is available to each full-time employee on equal terms;
- (v) a payment providing passage of the individual to or from the country in respect of the first employment of that

- individual by the employer or termination of the employment where the individual (a) is recruited or engaged outside the country; (b) is in the country solely for the purpose of serving the employer; and (c) is not a resident of the country;
- (vi) a provision of accommodation by an employer carrying on a timber, mining, building, construction, farming business or petroleum operations to that person at a place or site where the field operation of the business is carried on or as prescribed by Regulations;
 - (vii) a payment made to employees on a non-discriminatory basis and which by reason of the size, type and frequency of the payments, are unreasonable or administratively impracticable for the employer to account for or to allocate to an individual; and
 - (viii) redundancy pay.

Who Is a Resident Individual?

A resident individual for tax purposes, in a year of assessment, means an individual who is ^{iv}:

- i. a citizen of Ghana, other than a citizen who has a permanent home outside Ghana and lives in that home for the whole of that year;
- ii. present in Ghana during that

- year for an aggregate period of one hundred and eighty-three (183) days or more in any twelve-month period that commences or ends during that year;
- iii. an employee or an official of the Government of Ghana posted abroad during that year; or
- iv. a citizen of Ghana who is temporarily absent from Ghana for a period of not more than three hundred and sixty-five continuous days, where that citizen has a permanent home in Ghana.

Personal Tax Reliefs and their Analysis

Personal tax reliefs are legally approved deductible allowances intended to reduce individual's chargeable income and thereby lessen the tax burden. It is intended to cushion the effect of tax on the individual and to make it bearable for them to pay the tax^v. The personal circumstances of taxpayers are taken into consideration in granting these reliefs. For instance, a married individual with children attending school will normally have more responsibilities than an individual who is single. Therefore, in arriving at the chargeable income of a resident individual for the year of assessment, that resident individual is permitted to deduct personal tax reliefs from the assessable income for that year^{vi}. These personal tax reliefs are:

- i. Marriage/Responsibility Relief

- ii. Disability Relief
- iii. Aged Relief
- iv. Child Education Relief
- v. Aged Dependant Relief
- vi. Professional, Technical or Vocational Training Relief

It must be noted that a non-resident individual is not entitled to the grant of personal tax reliefs unless there is a provision in a double taxation arrangement to the contrary^{vii}.

It is noteworthy that Reliefs (i)-(v) mentioned above can be claimed upfront on monthly basis provided the income is from employment only. Relief (vi) is however claimable upon filing of tax returns.

The analysis of the above-mentioned reliefs are as follows:

i. Marriage/Responsibility Relief

An individual who has a dependant spouse or at least two dependant children, is entitled to a personal relief of one thousand two hundred currency points (**GHC1,200.00**) per year^{viii}. A dependant child or spouse means a child or spouse of the individual for whom that individual provides the necessities of life^{ix}. This relief is granted to only one spouse in a marriage after production of a marriage certificate or certified true copy of the registration of the marriage.

ii. Disability Relief

An individual who has a disability

is entitled to a personal relief of twenty-five percent (**25%**) of the assessable income from a business or an employment^x. The income of an individual with disability, from an investment is however excluded. A person with disability means an individual with a physical, mental or sensory impairment including a visual, hearing or speech functional disability which gives rise to physical, cultural or social barriers that substantially limits one or more of their major life activities^{xi}. This relief is granted to individuals who prove to the satisfaction of the Commissioner-General that they are disabled. The person must provide a certificate from the Department of Social Welfare confirming his or her disability.

iii. Aged/Old Age Relief

An individual who is sixty (60) years of age and above is entitled to a personal relief of one thousand five hundred currency points (**GHC1,500.00**) per year. The individual in question must derive an assessable income during the year from an employment or business. Thus, that individual's income from an investment is not included. The evidence of the date of birth of the individual in question must be provided.

iv. Child Education Relief

An individual who is sponsoring the education of a child or ward in a recognized registered

educational institution in Ghana is entitled to a personal relief of six hundred currency points (**GHC 600.00**) per child or ward up to a maximum of three children or dependents per year^{xiii}. This relief may be claimed in respect of three (3) children or wards amounting to a total of one thousand eight hundred currency points (**GHC 1,800.00**) per year. The Commissioner-General shall grant only one relief where two or more persons qualify in respect of the same child or ward^{xiv}.

It must be noted that the children or wards of the individual in question could be biological or otherwise. There must be evidence that the individual claiming the relief is funding the education of those children or wards. There must also be evidence that the children or wards are studying in that educational institution. A certificate issued by the Head of the educational institution concerned stating that the child or ward is studying at that institution and that the individual is responsible for sponsoring the child or ward's education will suffice.

v. Aged Dependant/Old Age Dependency Relief

An individual who has a dependant relative, other than a child or spouse, who is sixty (60) years of age or more is entitled to a personal relief of one thousand currency points (**GHC1,000.00**)

per year but that individual may only claim relief in respect of two dependant relatives^{xv}. A dependant relative means a relative of the individual for whom that individual provides the necessities of life^{xvi}. The Commissioner-General shall grant only one relief where two or more persons qualify in respect of the same relative^{xvii}. This relief may be claimed in respect of two dependant relatives. Thus, the total amount that may be claimed is two thousand currency points (**GHC2,000.00**) per year^{xviii}. Resident individuals will enjoy this relief if they prove to the satisfaction of the Commissioner-General that they have an aged relative who is dependent on them.

vi. Professional, Technical or Vocational Training Relief

An individual who has undergone training to update his professional, technical or vocational skills or knowledge is entitled to a personal relief which is equivalent to the cost of the training of not more than two thousand currency points (**GHC2,000.00**) per year. Anyone who wishes to claim this relief must provide evidence to the satisfaction of the Commissioner-General that the individual has undergone training to update his professional, technical or vocational skills or knowledge. Please note that “**knowledge**” does not include academic knowledge.

The tabular representation of the Personal Tax Reliefs are as follows:

Type of Relief	Minimum Amount Per Year	Maximum Amount Per Year
Marriage/ Responsibility Relief	GHC1,200.00	GHC1,200.00
Disability Relief	25% of assessable income from employment or business	Quarter or 1/4 of assessable income from employment or business
Aged Relief	GHC1,500.00	GHC1,500.00
Child Education Relief	GHC 600.00	Up to three (3) children or wards (GHC 1,800.00)
Aged Dependant Relief	GHC1,000.00	Up to two (2) dependant relatives (GHC 2,000.00)
Professional, Technical or Vocational Training Relief	GHC2,000.00	GHC 2,000.00

Other Allowable Deductions

i. Mortgage Interest^{xix}

Mortgage Interest means interest incurred by an individual in respect of a borrowing employed in constructing or acquiring the individual's only place of residence. In other words, mortgage interest relief is a tax relief based on the amount of qualifying mortgage interest that an individual pays in a given tax year for the individual's principal private residence. An individual may deduct mortgage interest in respect of only one residential premises during the lifetime of that individual. So, in calculating the income of the individual from conducting an employment, business or investment for a year of assessment, the individual is allowed to deduct mortgage interest incurred during the year. The issue of whether an individual could take this deduction on a monthly basis or on an annual basis was considered in the case of **Kwasi Nyantekyi Owiredue vrs the Ghana Revenue Authority (2019)^{xx}**, where the court held that the Plaintiff could deduct mortgage interest incurred on his residential premises on a monthly basis in arriving at his chargeable income. The court stated that *"mortgage interest is not a tax relief; it is rather a tax concession granted on a temporary basis to enable an employee acquire for himself one house during his lifetime."* In order to enjoy the monthly deduction, the person must provide proof of payment of the monthly mortgage interest to his/her employer every month. In other words a person is entitled to an upfront deduction of

his mortgage interest at any time that his employer makes a qualifying cash payment to him, be it weekly, monthly or yearly.

ii. Contributions and donations to a worthwhile cause^{xxi}

A person who has made a donation or contributed to a worthwhile cause may claim a deduction that is equal to the contribution and donation made by that person during that year for a worthwhile cause approved by Government. The following causes are worthwhile causes approved by Government: (a) a charitable organisation which meet the requirements of section 97; (b) a scheme of scholarship for an academic, technical, professional or other course of study; (c) development of any rural area or urban area; (d) sports development or sports promotion; and (e) any other worthwhile cause approved by the Commissioner-General.

How to apply for the reliefs.

An application can be made to the Commissioner-General for the reliefs using the prescribed form. The relief form can be obtained from any of the Domestic Tax Revenue Division offices of the Ghana Revenue Authority across the country.

Conclusion

Personal tax reliefs are legally approved deductible allowances

intended to reduce individual's chargeable income and thereby lessen the tax burden. It is intended to mitigate the effect of tax on the individual and to make it bearable for them to pay the tax. Marriage/Responsibility Relief, Aged/Old Age Relief, Child Education Relief, Aged Dependant/Old Age Dependency Relief, Mortgage Interest and Disability Relief can be claimed upfront provided the income is exclusively from employment. Professional, Technical or Vocational Training Relief are however claimable upon filing of tax returns.

References

i His Worship Mawukoenya Nutekpor was called to the Ghana Bar on 2nd October, 2015. He joined the Bench in November 2021 after six years of experience in litigation, settlement of disputes out of court and corporate practice. He holds Qualifying Examination Certificate in Taxation from Chartered Institute of Taxation, Ghana. In June, 2022 he was admitted into Membership of the Chartered Institute of Taxation, Ghana as a Chartered Tax Practitioner. He also holds Master of Business Administration (MBA) in Accounting and Finance from the University of Professional Studies, Accra (UPSA).

ii See section 1(1)(a) of Act 896

iii Section 4 of the Income Tax Act, 2015 (Act 896) as amended

iv See section 101(1) of Act 896

v Abdallah Ali-Nakyea, Taxation in Ghana; Principles, Practice and Plaining, 3rd edition, page 107.

vi See section 51 of Act 896

vii See Regulations 2(a) of L.I. 2244 of 2016

viii See paragraph 1 (a) of the Fifth Schedule to Act 896 as amended by Act 1007

ix See paragraph 3 of the Fifth Schedule to Act 896

x See paragraph 1 (b) of the Fifth Schedule to Act 896

xi See section 59 of Persons with Disability Act, 2006 (Act 715)

xii See paragraph 1 (c) of the Fifth Schedule to

Act 896 by amended by Act 1007

^{xiii} See paragraph 1 (d) of the Fifth Schedule to Act 896 by amended by Act 1007

^{xiv} See paragraph 2 of the Fifth Schedule to Act 896

^{xv} See paragraph 1 (e) of the Fifth Schedule to Act 896 as amended by Act 1007

^{xvi} See paragraph 3 of the Fifth Schedule to Act 896

^{xvii} See paragraph 2 of the Fifth Schedule to Act 896

^{xviii} See paragraph 1 (f) of the Fifth Schedule to Act 896 as amended by Act 1007

^{xix} See paragraph 4(3)(4) of the sixth schedule to Act 896

^{xx} Suit No. CM/Tax/0142/2019 (Unreported case) delivered on 20th December, 2019

^{xxi} See section 100 of Act 896



HUMAN TRAFFICKING - THE UNSPOKEN MODERN-DAY SLAVERY

- Justice Afia Serwah Asare-Botwe,
High Court, Accra

Last year, I had the opportunity to participate in a Webinar on Human Trafficking. I recall thinking at the time that the concept of modern-day slavery and the matter of human trafficking might be exaggerated.

I remembered once watching a programme relating to CNN International's Freedom Project which had to do with a media campaign "to end modern-day slavery" and illegal practices including human trafficking.

By the time the research was completed, I had had a change of heart thanks to the decisions of esteemed judges whose decisions will be digested in this article.

Human Trafficking (also referred to as trafficking in persons) is a crime with both domestic and international implications which needs to be combatted in a coordinated manner on all fronts. It is a serious problem which seems to be on the rise in various forms and same must be curtailed before it gets out of hand.

HUMAN TRAFFICKING:

Human trafficking has been defined by section 1(1) of Act 694, as amended by the Human Trafficking (Amendment) Act, 2009 Act 784, as follows:

"1 (1) Human trafficking means the recruitment, transportation, transfer harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by:

- a. the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or*
- b. giving or receiving payments and benefits to achieve consent".*

2. Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar

3. Placement for sale, bonded placement, temporary placement, placement as service

where exploitation by someone else is the motivating factor shall also constitute trafficking.

From the language of the law, the following elements or ingredients should be established by the prosecution in order to succeed at a trial:

- **The ACTIVITY** undertaken would be: recruitment, transportation, transfer, harbouring, trading or receipt of persons.
- **By MEANS of:** The use of threats, force, other forms of coercion, abduction, fraud, deception, the abuse of power, exploitation of vulnerability or giving or receiving payments and benefits to achieve consent.
- **PURPOSE:** Induced prostitution and other forms of sexual exploitation, forced labour or services, Slavery or similar practices, placement for

sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor.

Human trafficking is recognised as a modern form of slavery. There are 3 common modes in Ghana that could be seen from the Judgments read

a) Within the jurisdiction of Ghana

In most of the recorded cases,

this usually involves children being used in the fishing industry. The children are usually prevented from and/or unable to attend school. There is also a lot of danger in what

they are required to do, including going into the river to detangle fishing nets from trees underneath, etc. The cases showed that they were not allowed any time for rest and were also not allowed to go back to their parents.

In a Judgment by the High Court, Ho, presided by his Lordship Eric Baah J.(as he then was), entitled **The Republic v. Aku Kedevi @ Mansanor & Michael Boti (SUIT NO. MIC/02/2018**

dated 13/7/2017, the facts showed that the two accused persons who were described as fishers; fishmonger and fisherman respectively, were charged with conspiracy to engage in human trafficking and the substantive offence of human trafficking, as well as a third charge of 'use of trafficked persons'. The victims, were all children; minors of between 9 and 16 years.

The particulars accompanying the charges in counts 1 and 2 were that, the accused persons between the years 2012 and 2018, at Ehi in the Volta Region, did agree together with a common purpose to traffic, by the use of deceptive means and

for the purpose of exploitation, the following juveniles:

Albert Atsu - 13 years

Abalo Bright - 16 years

Edinam Sini - 14 years,
and

Atsu Bodzi Daddy -12 years

Further to their design (conspiracy), the two were alleged to have trafficked the juveniles by the use of deception and fraud and for the purpose of exploitation.

In respect of count 3, the 1st accused was alleged to have trafficked the following children by the use of deceptive and fraudulent means and for the purpose of exploitation between 2015 to 2018,:

Daniel Tuglo - 10 years

Janet Sini - 13 years

Yao Abuakwa Boti- 9 years

The nature of the deception in the various cases were that the children were being sent away for their education, and they were going to assist the 1st accused person in his shop. In another instance, the vulnerability of a poor mother was exploited. She was given a paltry one hundred Ghana cedis (GH¢100.00).

On count 4, it was established that the 2nd accused person used Albert Atsu, Abalo Bright, Edinam Sini and Atsu Bodzi



Daddy in circumstances of servitude between 2012 and 2018 when he knew that they were victims of human trafficking.

This mode of trafficking and abusing children in-country is quite regrettably rather common. However, unfortunately, most of the judgments are not reported because the trials are undertaken by the Circuit Bench. That said, however, there are very useful learnings in these Judgments for the benefit of judges and the general public.

b) From Ghana to countries outside the jurisdiction

being put in servitude as domestic workers in the Gulf States including Kuwait. This form of trafficking in persons involves arranging for

young Ghanaians, mostly women, to travel often to the Gulf States to be engaged as domestic workers. They are often deceived into thinking that they are going to work with high incomes, but find to their utter shock that they are subjected to racial, sexual and physical abuse and all manner of harassments.

They find that the wonderful conditions of service that they were promised do not exist and even worse, they are unable to return home because they neither have the money nor the travel documents to do so. Most of these victims would also be in *communicado* as their telephones would have been seized by their masters.

Rauf Ibrahim Gomah & Anor. (Suit No. D2/447/15) Her Honour Abena Oppong Adjin-Doku (as she then was) in a Judgment dated the 9th of March, dealt with a case involving the following facts; Sometime in November 2014 the victim Ernestina Annan who is a pupil teacher met the 1st accused at Ablekuma Agape and they became friends. The 1st accused introduced a job opportunity in Kuwait to Ernestina, following which a meeting was held to discuss it. The 1st accused demanded and received three thousand cedis to process her documents and to facilitate her travel to Kuwait. The two accused persons brought a passport bearing Ernestina's picture but

in a different name and date of birth and when Ernestina enquired why her name was not on the passport the response she was given was that she could travel with it without any problem. Ernestina left for Kuwait and after working for four months she became dissatisfied with the conditions of work and decided to return home. At the Agency she called her parents and a petition was lodged with the Director General of the CID, which led to the arrest of the accused persons. The evidence established human trafficking in addition to a finding that the victim had travelled with a passport not belonging to her, but in another her photograph was substituted.

The accused persons were duly convicted. This case is but one example of such common complaints of acts amounting to human trafficking and modern-day slavery with young ladies especially, being ferried to the Gulf states, to work in-sane hours for almost nothing.

c) From outside the jurisdiction into Ghana

The recorded judgments involve women brought in from Nigeria and forced into prostitution.

Unfortunately, no case from the superior court bench has been determined under this type of

Trafficking. However, what decisions are available are also very profitable for learning.

In the case of **The Republic v. Bina Obiagwu & Jennifer Obi (Suit NO. D2/41/13** dated 14th November, 2013), the victim travelled from her home state of Delta Benin City to Ghana, purportedly *en route* to Dubai, under the illusion that she had secured a lucrative contract of employment in Dubai. She got the shock of her life when she arrived in Ghana and was informed that this was her last stop. Her woes did not end there. Her job as a sales girl in Dubai dissolved into that of a prostitute in Ghana where she was to make daily proceeds of two hundred and eighty Ghana Cedis.

The first accused had arranged for her transportation to Accra and when she arrived exploited her by sending her to Circle for purposes of prostitution. She was threatened by the accused persons and her phone was impounded to defray the cost of transporting her to Ghana. The victim was in a very vulnerable position, coerced into a trade which could only be described as being incompatible with human dignity.

Complainant somehow managed to escape this nightmarish experience and lodged a complaint through a Good Samaritan. She was able to identify accused persons and they were

arrested and charged.

Both accused persons were convicted and sentenced to seven and five years IHL respectively (albeit in absentia) by the presiding judge, Her Honour Sedina Agbemava (as she then was). This kind of trafficking in persons is also, regrettably, rather common in our jurisdiction.

THE PHENOMENA OF MODERN SLAVERY/HUMAN TRAFFICKING AND A CO-ORDINATED JUDICIAL APPROACH TO SOLVING THE PROBLEM:

In his Judgment in the **The Republic V. Aku Kedevi @ Mansanor & Michael Boti case (cited supra)**, His Lordship Eric Baah refers to an article titled: Combating Human Trafficking in Ghana: A Proactive Approach, by Alexander Osei Tutu, a justice of the High Court of Ghana, which captures the phenomena of human trafficking in the following succinct words (references omitted):

“One would have thought that the outlawing of the slave trade over a century ago would have perpetually consigned the obnoxious human trading into its unenviable grave, but it turned out not to be so. Its ghost has resurrected in a metamorphosed form of human trafficking lingering in recent times to haunt even the most dreaded and powerful governments under the sun. Its

popularity nonetheless became more evident not too long ago. Over the past decade, trafficking in persons has reached epidemic proportions. No country is immune, warned the United Nations Office on Drugs and Crime (UNODC). It is not for nothing that the UNODC and even some writers have described it as the 21st century slavery. It is estimated by the International Labour Organisation (ILO) that there are 20.9 million victims of forced labour. Out of this number, women and children generally considered vulnerable in every society undoubtedly constitute the chunk of the figure. Quite strangely however, some women tend to be among the culprits, especially in Africa. This fact was barely laid by the UNODC Executive Director, Antonio Maria Costa on the 16th of June 2009 as follows, “The evidence available tells a woeful tale of how many regions of Africa are highly vulnerable to trafficking. Shockingly, in West and Central Africa, most of the perpetrators are women. Across the continent, many of the victims are children. In the 2012 Annual Report of the UNODC, it was found out that 30% out of a data gathered from 155 countries which provided information on the gender of traffickers, “women make up the largest proportion of traffickers. In some parts of the world, women trafficking women is the norm”.

The human trafficking activity has rapidly grown in proportional di-

mension in recent times, to the extent that, it has become the third most lucrative criminal activity coming next after drug and arms dealing. The gains that are made by the traffickers in this unlawful business are not only shocking but revealing. As much as \$32 billion is reported to be generated from the trade annually. When one compares the activity with its parent slave trading, it would be realised that the modern human trafficking has convincingly outclassed and surpassed the entire generations of the ancient Trans-Atlantic slave trading activity in terms of numbers. This new form of slavery has become a source of worry to virtually all governments across the globe hanging on their pitiable heads like the Sword of Damocles. Globalization and technology have advanced the quick popularity and complexity of the new slavery. This fact was perfectly summed up by Hillary Clinton: “The problem of modern trafficking may be entrenched, and it may seem like there is no end in sight.” The UN has responded with the introduction of the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children (the UN Protocol), supplementing the United Nations Convention against Transnational Organised Crime. Most member have taken various steps to pass legislations domestically to deal with the issues. Among these countries is Ghana...”

What can be done?

What can members of the judiciary (at home and abroad) do to combat this heinous crime? Is there the possibility of a coordinated judicial approach to deal with this unwanted phenomenon which steals the lives and futures of victims? I would submit so.

1. **Expeditious trials:**

It is important that judges pay special attention to the cases involving human trafficking and deal with them with speed. Some of the victims and the accused persons would be found to be foreigners or even in the case of Ghanaians, people whose families would likely be far away from the place of arrest or trial with little local support. In such circumstances, the trial ought to be dealt with promptly for there to be closure. Trials spanning several years would not serve any useful purpose and might never be concluded as the witnesses (or victims) may leave the jurisdiction of the court out of frustration. Judges are encouraged to adhere to the **Practice Direction on Effective Case Completion Strategies [2017-2020] SCGLR 422**.

2. **International Cooperation and the Judiciary:**

In many cases, more than one country is involved one way or

other. Orders of the Court may be needed to assist in the recovery of assets from abroad, to get evidence, documents, and statements from financial institutions and other witnesses, to arrest or extradite offenders, and taking evidence via video link or on commission etc. Being a financial crime as it yields proceeds, Human Trafficking is a predicate offence of Money Laundering. Judges ought to be aware of pre-trial and post-trial applications that may be brought pursuant to relatively new legislations which are relevant to Human Trafficking and Money Laundering.

These applications/requests would sometimes require extensive research into new areas of the law and a timeous delivery of decisions. The decisions may border on pre-trial applications to facilitate investigations as well as substantive matters. These are usually pursuant to Mutual Legal Assistance Laws and Treaties. Due to the intrusive nature of some of these requests, judicial supervision may be required. The requests/applications could be for;

- Taking testimony, evidence or statements from persons;
- The execution of foreign confiscation and forfeiture orders in respect of the

- proceeds or instrumentalities of crime;
- The taking of evidence for use outside the State;
- Search for and seizure of evidence;
- The taking of evidence in court; and
- Police cooperation.

CONCLUSION:

As Judges we have to rethink our borders and the effect of decisions we make. We have to realise that technology and ease of movement make it imperative that we deal with matters cohesively.

On the matter of trafficking in persons, it is important that we recognise what constitutes the crime since modern day slavery may not be recognisable to us because of our socialisation.



INTERNATIONAL PEACE AND THE POLITICS OF AGGRESSION

**-Justice Charles. A.
Wilson**

High Court, Bolgatanga

INTRODUCTION

This article focuses on aggression and military intervention in sovereign states. Apart from questioning to what extent such military operations are in line with International law, it examines their detrimental impact on the stability of weaker states.

The UN General Assembly Resolution 3314 of December 14 1994 adopts the following definition of Aggression

Article 1

Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition`

Article 3

Any of the following acts, regardless of a declaration of accordance with the provi-

sions of article 2, qualify as an act of aggression.

(a) **The invasion or attack by the armed forces of a State** of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof

(b) **Bombardment** by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) **The Blockade** of the ports or coasts of a State by the armed forces of another State;

(d) **An attack** by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another States;

(e) **The use of armed forces** of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any ex-

tension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, *which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State*

(g) The sending by or on behalf of a State of armed bands, *groups irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.*

Article 4

The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter.

Article 5

1. *No consideration of whatever nature, whether political, economic, military or otherwise , may serve as a justification for aggression.*

2. *A war of aggression is a crime against international peace. Aggression gives rise to international responsibility.*

It might be relevant at the stage to refer to provisions of the UN Charter that authorizes and mandates military intervention

Article 39 of the U.N Charter provides

“The Security Council shall determine the existence of any threat to the peace, breach of the peace or

act of aggression and shall decide recommendation or decide what measures shall be taken to maintain or restore international peace and security”

By the provisions laid above, a military intervention must be approved by the U.N Security Council. The assumption is that when the Security Council authorizes an intervention, then some sort of consensus is achieved. Notwithstanding the above, the provisions of **Article 2 (7) of the U.N Charter states**

“Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter but this principle shall not prejudice the application of enforcement measures under chapter vii”

The U.S Intervention in Afghanistan

The event of September 11 was undoubtedly one the worst acts of terrorism on U.S soil. In the wake of September 11, there were attempts to compel members of the Taliban (the Afghanistan government) to hand over terror suspects but there was unwillingness and non-cooperation.

The U.S declared war on terrorism as an act of self defence. This resulted in the U.N

Security Council authorizing a war on terrorism in resolution 1368. Nowhere in the resolution is an invasion legitimized. The U.S. by-passed the Security Council and unilaterally initiated military strikes and intervention to protect the international community.

In 2001, the USA invaded Afghanistan with the support of NATO and over 40 countries. This was meant to counter Al-Qaeda and the Taliban regime of Afghanistan which hosted terrorist organizations such as al-Qaeda. In the considered opinion of the US, its intervention in Afghanistan was an ideal way to punish Osama Bin Laden and the Taliban for their actions. For almost two decades the U.S. has legitimized its military operations. During these military endeavours, about 100,000 civilians (U.N News 2020) and over 60,000 security forces have been killed (Aljazeera 2019)

Military Intervention in Syria

On 15th March 2011 violence erupted in Syria following a popular demonstration demanding the resignation of President Bashar al Assad and the ruling party. The uprising escalated into a civil war, with efforts by the UN to broker a peace accord unsuccessful. The US, Britain and France threatened to respond to the use of chemical weapons by the Syria

military forces by launching an attack, describing the Syria action as morally indefensible.

Whilst the conflict started with sporadic flare-up of protest and resistance, it gradually developed into a permanent control of Syria's territory. Nearly 400,000 Syrians fled to neighbouring countries and another 12 million were displaced internally.

The US affirmed that the protestors were affiliated to Al-Qaeda and so the U.S. launched air strikes in Syria with the assurance that they would avoid civilian targets and infrastructure. Syria insisted that the U.S. needed permission from the Syrian government, but the U.S. said it was acting under the mandate of the Security Council and needed no permission. In my view, a country is supposed to have sovereignty over its territory and must give permission to another to intervene otherwise it is a unilateral intervention.

UN Intervention in Kuwait

In 1990, the Security Council passed Resolution 678, authorizing the collective use of force against Iraq for its invasion of Kuwait. The Security Council determined that the Iraq invasion of Kuwait violated Article 2 (4) of the UN Charter which prohibits the "threat or use of force against the territorial integrity or independence" of any state.

A coalition of nations led by the US forced the Iraq army out of Kuwait. Thus a new precedent has been established in international law that forcible intervention would be justified if human rights violations occurring within a state amounted to a threat to peace and security in the region.

Humanitarian Intervention- The Responsibility to Protect

It is the responsibility of every government to protect its citizens from human rights violations, genocide, and crimes against humanity. If a government is unable to discharge that responsibility, then the international community can intervene. This means that the international community can protect a civilian population from their own government.

The UN Security Council authorized military intervention in Libya on grounds of widespread human rights violations particularly in Benghazi. The intervention was essentially by the West. NATO however exceeded its authorization by attacking Gaddafi's defenses, his aircraft was bombed, and finally resulted in the overthrow of Gaddafi's government. The events in Libya was actually a military intervention in another country under a UN mandate.

What should be the response when there is civil war, internal violence and human rights abuses perpetrated on a massive scale? The Rwanda genocide is a typical example which ought to have compelled the U.N Security Council to intervene, but it did not.

Investigating and Prosecuting International Crime

Article 8 of the Amendment of the Rome Statute of the International Criminal Court provides:

"For the purposes of this statute, "Crime of "aggression" means the planning preparation, initiation of execution by a person in a position effectively to exercise control over or to direct the political or military action of a state, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations"

Article 15 of the statute states that the court may exercise jurisdiction over the crime of aggression in accordance with Article 13. Dafur is part of Western Sudan. Ethnic groups affiliated to the government allegedly were killing and imprisoning other ethnic groups. There was a claim that the Sudanese government was tacitly supporting them but the government denied complicity.

The Security Council did not intervene militarily, but referred

the matter to the International Criminal Court, the ICC prosecutors issued a warrant for the arrest of President Omar Bashir. Either President Bashir came to The Hague or he was to be arrested and brought to the court. Unfortunately President Bashir chooses the countries to visit so it is unlikely that an Arab country or any African leader will arrest him.

It is believed that he even visited South Africa and China but was not arrested. The Dafur conflict continues and yet the Security Council has not intervened.

The War in Ukraine

In December 2021, Russia made it clear that it was preventing a further expansion of NATO to the East. Russia entertained fears that Ukraine accession to NATO would endanger Russian security and strategic balance with the US. Russia therefore wanted to prevent NATO from stationing troops on Russian borders or deploying long range missiles in European states that could threaten Russia.

To this end, Russia demanded that NATO withdraw its summit declaration in which it held out the prospect of Ukraine joining the alliance.

After military maneuvers near the border, Russia started a full scale invasion of Ukraine. In an act of aggression, President

Vladimir Putin launched a military assault on Ukraine in the early hours of 24th February 2022 and made a threat of nuclear strikes upon any outside power that might come to Ukraine's aid. Residents of Kyiv, the Ukraine capital, and cities in the country woke to explosions as Russian bombs and missiles fell on military installations and infrastructure, an indication that Russia had embarked not only on a campaign aimed at toppling the Ukraine government, but a full scale invasion.

The urban war is causing damage to critical civilian infrastructure. As a result of the war and sanctions, there has been a surge in inflation in the rest of Europe. In Germany for example, gas price has doubled as many European countries rely heavily on Russia for oil and gas.

Powerless U.N

A close assessment of the invasions in Afghanistan, Syria, Libya and Ukraine shows that although there could be a U.N Security Council mandate, military interventions appears to be driven by political and economic interest. In my opinion, these unilateral interventions compromise the authority of the UN. It seems to me that the United Nations has become a lame duck, being hijacked by some super powers for ulterior purposes and self interest.

The decision making processes of the U.N now centered in the Security Council must involve the less developed nations so that military intervention is not seen as a whim of the permanent members.

It is not the purpose of this article to compare the U.S intervention in other sovereign states with Russian intervention in Ukraine, both are instances of aggression - unnecessary and unjust wars.

Concluding Remarks

The principal purpose of the United Nations is:

“To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means... adjustments or settlements of international disputes or situations that might lead to a breach of the peace”

If a peaceful solution can be achieved by non-violent means, there should be a moral obligation to pursue that means.

References

1. Asrov, V., Ghodsi M., Grieveson, R., Hozner, M., Landesmann, M., & Kochnev, A. (2022). Russian invasion of Ukraine- Assessment of human and economic and financial short and medium term. The Vienna Institute for International and Human Rights. Emory University. Economic Studies Policy Notes and Reports.
2. Centre for Security Studies C.S.S. (2012). The Syrian civil war: Between

3. Connah L. (2021). U.S. Intervention in Afghanistan-Justifying the Unjustifiable? University of Lancaster-U.K. South Asian Research, 41 (1), 70-86.
4. General Assembly Resolution (December 14,1974). 331. Retrieved 29th august 2022 from www.en.wikipedia.org
5. Draft Amendments to the Rome Statute of International Criminal Court on the Crime Aggression. Article 7 (1) 15.
6. Henkin, L., Cleveland, S.H., Rittfefer, L., Neuman, G. L., Orentlicher D.F (2009). Human rights (2nd ed.) Chapter 7- Implementation of Human Rights (p. 533). New York N.Y., Foundation Press
7. International Crisis Group (2022). War in Europe-Responding to Russian invasion of Ukraine Retrieved 29th August 2022 from www.crisisgroup.org/europe-central-asia
8. Richter, W. (2022). NATO-Russian tensions-Putin orders invasion of Ukraine. German Institute for International and Security Affairs. SWP Comment (16)



THE LAND ACT - IMPLICATIONS FOR LAND OWNERS

**JUSTICE SIR DENNIS
DOMINIC ADJEI**
FGA

The paper was presented by Justice Sir Dennis Adjei, FGA on 11th November, 2021 to senior members of the University of Ghana, Legon.

The Land Act, 2020 (Act 1036) came into force on 23rd December, 2020 to repeal most of the enactments on land law and, furthermore, to revise, harmonize and consolidate laws on land. The Land Act, Act 1036 was further enacted to promote a sustainable land tenure system, effective and efficient land administration and management in Ghana which were in disarrayⁱ.

REPEALS

The following Acts were repealed without being re-enacted; the Land Development (Protection of Purchasers) Act, 1960 (Act 2); Farm Lands (Protection) Act, 1962 (Act 122); Rent Stabilization Act, (Repeal) Decree 1966 (N.L.C.D. 49); and Rent Stabilization Act, (Amendment) Act, 1966 (N.L.C.D.103)ⁱⁱ. The Land

Development (Protection of Purchasers) Act, 1960 (Act 2) was made to protect persons who acquired interest in land in good faith in the prescribed area of Accra and had built to an advance level before the actual owner came to assert their title. The purchaser upon proof to the High Court that he/she would suffer hardship if the true owner was permitted to recover possession might have his/her interest protected subject to payment of compensation to be determined by the Court. The Act outlived its usefulness and those who benefited under it had their rights accrued and the repeal would not have any effect on the persons with accrued rights.

The Farm Lands (Protection) Act, 1962 (Act 107) was a double barrel gun in that it was to deprive farmers who had acquired lands for farming purposes in a prescribed area and had not cultivated the whole or part of it for eight years, and at the same time protected farmers who acquired lands between 31st December, 1940 and 24th

February, 1962 in good faith and had cultivated within eight years from the date of its acquisition and their title was found to be defective. The Act affected the entire land which was not cultivated and where a part had been cultivated, that part that was not cultivated was affected.

The Rents (Stabilization) Act, 1962 (Act 109) was enacted to address the rights of farmers; subjects of stool and strangers who acquired lands from stools or lands acquired by the stool under customary tenancies, either abunu (partition into two) or abusa (partition into three) and were in addition to those tenancies were forced to pay economic rents in respect of their portions of land, to the stool. The farmers were to stop sharing the proceeds from the farm as agreed between them and the stools and were to pay five shillings for every acre of land cultivated for every year. The Act was found to be unfair to the stools by depriving them of their produce from the particular type of customary tenancies they had entered into with the farmers. The Rents Stabilization Act (Repeal) Decree (N.L.C.D. 49) was enacted to repeal Act 109 by maintaining the status quo regarding the particular type of customary tenancies the respective stools had entered into with the farmers.

The Administration of Lands Act, 1962 (Act 123) and State Lands Act, 1962 (Act 125) which were the laws

on compulsory acquisition but of different nature were repealed, revised, harmonized and consolidated to keep pace with the advancement in the economic and the social needs of Ghanaians. The Administration of Lands Act, Act 123 was enacted to help the State to exercise its eminent domain to acquire stool lands of whatever kind without paying for the land itself but paid for the development on it and annual rent to be determined by the State. Thus, the State acquired lands under Act 123 to administer that land on behalf of the stool concerned and the stool benefited from annual rent.

The State Land Act clothed the State with authority to acquire any land by paying for the land itself and the development on it. The State acquired allodial interest in land, the ultimate in land through compulsory acquisition. A person who had interest in a land acquired under Act 125 was to forfeit that person's interest in the land to the State. The Public Lands (Protection) Act, 1974 (N.R.C.D 240) was enacted to protect public lands from encroachers. It criminalized persons who trespassed onto public lands and further authorized the State or the state agency for whom the land was acquired to abate the trespass by serving twenty-one days' notice on the trespasser without resorting to court. The Land Act,

Act 1036 has maintained compulsory acquisition which extinguishes any interest in the land and vests in the State the ultimate interest in it. On the coming into force of the Land Act, Act 1036, any compulsory acquisition confers absolute interest in the land in the State and government is required to pay for fair and prompt compensation on the land and any development on it to the person whose land has been compulsorily acquired. The Act has further maintained all the offences created under N.R.C.D 240 as well as the civil remedies available to the State or the agency for whom the land was acquired.

The Conveyancing Act, 1973 (N.R.C.D. 175) which provided for transfer of land or contract for transfer of an interest including conveyances, leases, assignments, subleases and other rights such as mortgages, easements, profit a prendre, licences and user rights under a certificate of allocation was repealed by the Land Act but has been revised and consolidated with modifications to meet the needs of the time. The Land Act has introduced some implied covenants which neither formed part of the statutes nor customary land lawⁱⁱⁱ.

The Land Registry Act, 1960 (Act 122) which dealt with registration of deeds or instruments affecting

land has been repealed and re-enacted with some modifications to make deed registration more relevant. Under title registration, it is the instrument or the documents prepared by the parties which is registered and not title of the parties^{iv}.

The Land Title Registration Act, 1986 (P.N.D.C.L. 152) which was to deal with title registration did not achieve the purpose for which it was created as it took the Lands Commission thirty- six years to register lands in Accra, Kumasi Township and Winneba. The Act has been repealed, revised, consolidated and modified to facilitate registration of title to land^v.

SOURCES OF LAND LAW

The Land Act, Act 1036 repealed twelve enactments and section 11 of the Survey Act, 1962 (Act 127) but there are other laws on land law which were not affected and continue to form part of sources of land law. The existing laws include the Constitution of Ghana, 1992; the supreme law of the land, English Statutes of General Application, common law and other enactments such as the Towns Act, 1892 (Cap 86), Land (Statutory Wayleaves) Act, 1963 (Act 186), Limitations Act, 1972 (N.R.C.D. 54) the Mortgages Act, 1973 (N.R.C.D. 96) and customary land law.

The Constitution addresses

matters on compulsory acquisition under article 20, non-citizens of Ghana proscribed from acquiring interest in land exceeding fifty years at any one time under article 266 and the creation of the Office of the Administrator of Stool Land to collect revenue accruing from stool lands under article 267.

The remaining English Statutes of General Application are found in section 119 of the Courts Act, 1993 (Act 459). They are: sections 1 and 2 of the Partitions Act of 1539; sections 1 and 2 of the Partitions Act of 1540; section 4 of the Cestuique Vic Act of 1540; sections 1 to 8 of the Prescription Act of 1832; sections 6 to 8 of the Real Property Act of 1845; sections 1 to 5 and 7 to 34 of the Trustee Act of 1860; sections 2 to 9 of the Partitions Act of 1868 ; section 12 of the Charitable Trusts Act of 1969; and sections 49, 50, 51, 59, 71 (1) and (2), 131,139,145,150,151,154,158,161,164,and 184 of the Law of Property Act of 1925vi . The customary land law in Ghana deals with customary tenancies such as allodial interest, customary freehold, usufructuary interest, abunu and abusa and pledges. Common law addresses matters including common law freehold, easements, mortgages, profits, restrictive covenants and licences. Common law freehold which is a derivative of allodial interest exists in three forms namely; fee simple, fee tail and

life interest.

INTERESTS AND RIGHTS IN LAND AND CAPACITY TO DEAL WITH LAND

The types of interest in land recognized by law are allodial title, common law freehold, customary law freehold, usufructuary interest, leasehold interest and customary tenancy-vii .

Allodial interest is the highest or ultimate interest in land that a stool or skin, clan, family or individual may have in land.

Traditionally, allodial interest was acquired by a stool or skin, clan, family or an individual through conquest, pioneer discovery and settlement, gift or purchaseviii . The three other freehold interests in land, namely; common law freehold, customary law freehold and usufructuary interest are created directly from allodial title and it is the modes of creation of the various interests which are different. The State acquires freehold interests in land through expropriation or compulsory acquisition and it is now recognized as one of the entities with allodial interest.

Section 2 of the Land Act, Act 1036 provides that the State acquires allodial interest through compulsory acquisition. The Act failed to recognize that the acquisition of allodial interest by the State under the 1969 Constitution through the use of its eminent domain, was

expropriation.

Common law freehold is acquired from an allodial title by a transaction regulated by common law^{ix}. Customary freehold is derived from allodial title through a transaction under customary law^x. The acquisition of both common law and customary law freehold by non-citizens of Ghana was proscribed by the 1969 Constitution which came into force on 22nd August, 1969^{xi}. Any non-citizen of Ghana who had a freehold interest in land on or before 22nd August, 1969 had his interest commuted to a lease of fifty years which expired on 21st August, 2019. The Government became the lessor of those lands and the non-citizens who acquired those freehold interests became lessees and paid a pepper corn rent to the Government to recognize the Government as their lessor.

A non-citizen who had a leasehold interest in land exceeding fifty years was also commuted to a lease of fifty years and the remaining interest was vested in the lessor. The lessors of those commuted interests had their reversionary interest vested in them on 21st August, 2019. The 1969 Constitution which deprived the non-citizens of their freehold interests and leases exceeding fifty years was expropriation as they were denied of their original interests in their respective lands without compensation.

Usufructuary interest is acquired by a subject of a stool or skin or a member of a clan or family which holds allodial interest by exercising an inherent right by cultivating a portion of an unappropriated part of the land or by virtue of an express grant. Usufructuary interest may also be acquired by a non-indigene or group of non-indigenes who acquire(s) lands for settlements for not less than fifty years from a person with allodial title with the permission of that allodial title holder except where the settlement is on agreed terms^{xii}.

The freehold interests which exist in Ghana are allodial title, common law freehold, customary freehold and usufructuary interest. They are called freehold by the fact that they are not constrained by time even though some of them shall be automatically determined upon the occurrence of other factors such as where a person with fee tail interest dies without an heir where his interest was to be determined. Furthermore, a person who has a life interest in a land shall be entitled to use the land during his lifetime. A person with common law freehold, customary freehold and usufructuary interest has an interest not constrained by time, but such a person may lose his interest in the land where he commits serious unrectified breaches of customary tenure or abandons the land for a

reasonable time or denies the title of his allodial interest holder^{xiii}.

The common law position was that infants could not acquire land or an interest in land in their names except through a trustee. An infant at common law was a person under twenty-one years. Presently, an infant in land law is a person under eighteen years^{xiv}.

PUBLIC LANDS

Public lands are lands acquired by the State through expropriation, compulsory acquisition, purchase, gift or where such a land is vested in the State on behalf of the allodial owners. A person with any interests in land loses that person's interest whenever the State compulsorily acquires the land. Whenever the State acquires land by the exercise of its eminent domain through either expropriation or compulsory acquisition, it acquires the allodial title and all other lesser interests in the land. The only duty imposed on the State when it compulsorily acquires land is to pay prompt and fair compensation to the persons affected by the acquisition and a person dissatisfied with the compensation assessed by the Land Valuation Division of the Lands Commission premised on the market value of the land may seek redress in the High Court^{xv}.

LAND COMPULSORILY ACQUIRED BY THE STATE

The State may acquire land for a public body either by compulsory acquisition in the name of that public body or may acquire and vest it in the public body. Where the State compulsorily acquires land for a particular purpose, it shall allocate it for the purpose for which the land was acquired or in the public interest^{xvi}. The State becomes the allodial owner of a land compulsorily acquired and the stool or skin, clan, family or individual with an allodial interest and any other interest shall have their interest extinguished. A person who had an interest in a land before compulsory acquisition and does not vacate the land after the compulsory acquisition becomes a trespasser.

The State is prohibited from granting a freehold interest or a perpetually renewable lease in a public land to a person^{xvii}. Where the State intends to grant a user right of public land in a public body capable of holding interest in land, the Lands Commission shall issue to that public body a Certificate of Allocation. A public body which is issued with Certificate of Allocation has only a user right in it and cannot transfer an interest in the land^{xviii}.

The State may compulsorily acquire any land where the land is required for a public purpose, interest of defence, public health,

town and country planning, public order, a road, a highway, a railway, any public service, the development or utilisation of property that will promote public benefit^{xix}. The State is required to provide reasonable justification for the acquisition with respect to the hardship likely to be occasioned to a person who has a right or interest over the land to be acquired. Where the State makes a reasonable justification for the need of the land, a person with interest or right over the land shall only be entitled to compensation to be determined in accordance with the market value of the land^{xx}.

A caveat against the acquisition of public land compulsorily acquired for public purpose or interest which is not used for that purpose or interest, is that the owner of the land from whom the acquisition was made shall be given the first option to acquire it subject to the refund of the whole or part of the compensation paid to him at the time of the acquisition as provided by law or such amount as is commensurate with the value of the land at the time of the re-acquisition^{xxi}.

UNLAWFUL OCCUPATION OR SALE OF PUBLIC LAND

Persons including those who had interest in or right over land before compulsory acquisition who fail to vacate the land or

encroach or unlawfully occupy same commit an offence and upon conviction shall be liable on summary conviction to a fine of not less than one thousand penalty units (GHC12,000.00) and not more than two thousand penalty units (GHC 24,000.00) or to a term of imprisonment of not less than one year and not more than three years or to both^{xxii}.

A person who sells, conveys or unlawfully appropriates public land commits an offence and upon conviction shall be liable to a fine of not less than five thousand penalty units (GHC 60000.00) and not more than ten thousand penalty units (GHC120,000.00) or to a term of imprisonment of not less than seven years and not more than fifteen years or, to both^{xxiii}.

A public body on public land which has been encroached may serve a notice in writing on the encroacher personally or by fixing it on the part of the land and require that encroacher to vacate within twenty-one days from the date of the notice. Where the encroacher fails to vacate the land after the notice has been duly served, the public body or the appropriate agency may use reasonable force to eject the encroacher from the land, confiscate or remove all his goods or may demolish or remove any structure or obstacle from the land and the encroacher shall not maintain a

civil action against the appropriate agency or public body in an action done in good faith in the execution of abating nuisance under section 236 of the Land Act^{xxiv}.

A person who obstructs an appropriate agency in possession of public land from abating his trespassory act commits an offence and upon conviction shall be liable to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a fine of not less than six months and not more than twelve months or to both^{xxv}.

LIMITATION AND ACQUIESCENCE

Under the repealed enactments, the Limitation Act, 1972 (N.R.C.D. 54), waiver, acquiescence, prescription or adverse possession operated against public lands. In terms of the Limitation Act, N.R.C.D 54, where a trespasser occupied a public land for a continuous period of twelve years in adverse possession, the trespasser became the owner of the land^{xxvi}.

Presently, the Limitation Act, 1972 (N.R.C.D. 54), prescription or adverse possession does not operate against public lands in favour of trespassers^{xxvii}.

Persons who acquired interest in public lands through adverse possession, prescription or limitation before the coming into

force of the Land Act on 23rd December, 2020 acquired vested rights in the lands and cannot be dispossessed of their interest or rights over them by the appropriate agency. On the other hand, where a trespasser has been in unlawful possession for a period of less than twelve years before the Land Act came into force, he cannot take benefit under the Limitation Act, N.R.C.D. 54 by the fact that limitation ceased to operate against public lands effective from 23rd December, 2020.

University of Ghana as an appropriate agency which occupies public land cannot eject all trespassers on its land who have been in adverse possession of a portion of its land for twelve years or more and are protected by the Limitation Act, N.R.C.D. 54.

LESSEES

A lease is created out from freehold interests, namely; allodial, common law freehold, customary freehold or usufructuary interest. A lessor creates an interest in land for a specified number of years from that lessor's freehold land with terms and conditions without exhausting the lessor's interest in the land. Apart from a usufructuary interest holder, a person with freehold interest may create a lease without any restrictions provided it is created in accordance with law.

An usufructuary interest holder who acquires his interest through the exercise of an inherent right shall not create a lease for a non-subject of the stool or skin or non-member of the clan or family which holds the allodial title or a non-indigene with usufructuary interest shall not create a leasehold interest without the written consent of the allodial title holder and the performance of an institutionalized customary duty ^{xxviii}.

LAND GUARDS

The use of land guards has been criminalized. A person who seeks to protect a land he has no interest in or purports to supervise or control land development in an area or extorts money from a person with an interest in land, or prevents a developer from developing his land, or either in person or engages another person to unlawfully use force to prevent a person with an interest in land from accessing their land or drives them away from their land shall upon conviction be liable to a term of imprisonment of not less than five years and not more than fifteen years ^{xxix}.

A person who engages the services of a land guard or through another person engages in the use of a land guard to use force, intimidation or prevent an owner of a land from developing same commits an offence and

upon conviction shall be liable to a term of imprisonment of not less than ten years and not more than fifteen years ^{xxx}.

ADVANCEMENT AND TRUST

A person has the right to acquire land in the name of any other person and to hold it in trust for him. A person who uses his money to buy a land in the name of another person is deemed to be the beneficial owner while the person in whose name the land was bought becomes a legal owner. Where there is a dispute as to the ownership of the land and the one who provided the purchase money is able to prove that he provided the purchase money, he shall be deemed to be the owner and not the one in whose name the land was bought. On the other hand, where the person who provided the purchase money fails to prove, the legal owner shall be deemed to be both the legal and beneficial owner^{xxxi}.

However, a person who unlawfully uses someone's money to acquire land in his own name shall be deemed to hold it in trust for the person whose money was used to acquire the property. The person who buys a land in their name with the money belonging to another person shall hold the land in trust as a constrictive trust for the person whose money was used to buy the land without their authority. A chief or head of

family who uses the income from their stool land or family land to acquire a land in their personal name shall hold that land in constructive trust for the said stool or family. A constructive trust is created where a trustee takes advantage of the trustee's position to acquire property with the trust's money without authorization of the beneficiary.

The exception to trust as discussed above is where a man buys a land in the name of his wife, child or a person he stands in loco parentis, that wife, child or the other person takes that land as a gift under common law. The gift may be rebutted but it is difficult to do so unless the man knew the laws on advancement at the time of the acquisition of the land. The rebuttal is made from two angles but very difficult to succeed. The first one is that the man before the purchase of the property in the name of his wife or child made a declaration that he was buying the property in the name of that wife or child but did not intend to create a gift.

The second rebuttal is acceptable where a declaration was contemporaneously made by the man at the time of the purchase that he was buying the property in the name of his wife or child but did not intend to create a common law gift. A man in whose name a land is bought by a wife or a child holds the land in trust for that wife or child and

it does not constitute common law gift. Is it not discriminatory? That is the position under common law which forms part of our laws. A land bought by a man in the name of his girlfriend is a trust and not an advancement and the girlfriend shall hold it in trust for the man^{xxxii}.

GIFT

A gift of land made in accordance with customary law shall be accepted in the presence of witnesses by the donee (beneficiary) otherwise, it shall lapse. A gift validly made is irrevocable unless it was a gift from a parent to a child which is perpetually revocable.

However, where the child has spent reasonable amount of money to develop the land, it shall be unconscionable to permit the parent to revoke the customary law gift at any time without notice to the child.

IMPLIED COVENANTS FOR A LAND ACQUIRED BY A COUPLE DURING MARRIAGE

Where a couple jointly acquire a land during marriage for a valuable consideration and the conveyance is made in the name of one of the spouses, it shall be presumed that that spouse holds the property in trust for the spouses unless there a contrary position is stated in the conveyance^{xxxiii}. Where a spouse acquires a land in which no valuable consideration was

provided such as inheritance or gift, the other spouse shall not become a joint owner by the fact that it was not acquired for a valuable consideration.

A land acquired during marriage shall become the joint property of the spouses where it was jointly acquired during marriage and a valuable consideration was given. A joint property shall remain as such despite the fact that the land jointly acquired during marriage was prepared in the name of one of the spouses.

A land jointly acquired by spouses during marriage for a valuable consideration shall not be transferred, sold, mortgaged, leased or be a subject matter of a contract for the sale, exchange, transfer, lease or be gifted or be a subject matter of any transaction without the written consent of the other spouse but such consent shall not be unreasonable withheld unless it is likely to occasion the loss of the land^{xxxiv}.

RENEWAL OF LEASE

The old position was that a lease without a renewal clause was not subject to renewal unless agreed by the parties. A renewal clause in a lease was not part of implied covenants under the repealed Conveyancing Act, N.R.C.D. 175^{xxxv}. At present, there is an automatic renewal of a lease developed for residential, perennial crops or commercial

or industrial purposes for the same duration of the original lease but different terms are to be agreed between the parties whether the lessee is an indigene of the stool or skin, clan or family which holds freehold interest in the land. Where the parties are unable to agree on the terms of the renewal, they shall first resort to settlement under the Alternative Dispute Resolution Act, 2010 (Act 798) and where settlement cannot be reached under the Act, they may resort to the courts for settlement^{xxxvi}. There shall not be an automatic renewal of a lease for a non-citizen of Ghana unless the conveyance expressly provides for it^{xxxvii}.

A lease of bare land granted by the Republic to a citizen of Ghana who is a subject of Ghana is subject to automatic renewal on the terms agreed between the parties unless the subject matter of the lease is a commercial property, or the land is required by the State for re-development^{xxxviii}. The parties shall resort to settlement under the Alternative Dispute Resolution Act, Act 798 and may go to court where the settlement fails.

ACCOUNTABILITY OF LAND OWNERS AS FIDUCIARY

A chief, tendana, clan head, family head or any person with authority to manage stool or skin, clan or family land is accountable to the subject of the stool or clan

or members of the clan and family and anyone of them who fails to account commits a criminal offence and upon conviction shall be liable to a summary conviction of not less than five thousand penalty units (GHC60,000.00) and not more than ten thousand penalty units (GHC120,000.00) or to a term of imprisonment of not less than five years and not more than ten years or to both^{xxxix}.

A person who stands in fiduciary may also be compelled by a civil action to render accounts to the beneficiaries. The fiduciary shall be called upon to account and upon failure or where the accounting is not satisfactory, an application may be brought under the Head of Family (Accountability) Act, 1985 (P.N.D.C.L 114) with the necessary modifications to it to make it applicable to occupants of stools or skins^{xl}.

An allodial title holder shall not alienate any part of his land unless it has been registered and the plan evidencing same is approved by the Director of Survey and Mapping Division of the Land Commission. An allodial owner who leases a land to a lessee where the entire land has not been zoned and approved commits an offence and upon conviction shall be liable to a fine of not less than five thousand penalty units (GHC60,000.00) and not more than ten thousand

penalty units (GHC120,000.00) or to a term of imprisonment of not less than five years and not more than ten years or to both^{xli}.

A stool or skin, or a person who is in possession of a stool or skin land by reason of being entitled to the free use of the land shall be subjected to article 267 of the Constitution which requires the Administrator of Stool Lands to collect and disburse same in accordance with law^{xlii}.

A company or body corporate body formed shall not become a citizen of Ghana unless sixty percent or more of the equity shareholding is held by citizens of Ghana. A non- Ghanaian company shall not be entitled to a lease of more than fifty years at any one time^{xliii}.

Land acquisition is different from a chattel and the laws on land acquisition and alienation shall be religiously observed to avoid unnecessary litigation which has negative impact on development.

Thank you for your attention.

References

ⁱ Long title to the Land Act, 2020 (Act 1036).

ⁱⁱ section 282 (1) (a), (b), (f), (i) and (j) of the Land Act, 2020 (Act 1036).

ⁱⁱⁱ sections 282(1) (k) and 50 of the Land Act, Act 1036.

^{iv} section 282 (1) (c) of the Land Act, Act 1036.

^v section 282 (1) (m) of the Land Act,

Act 1036.

- vi section 119 of the Courts Act, Act 459 (1993).
- vii section 1 of the Land Act, Act 1036.
- viii *Ohimen v Adjei and Another* [1957] 2 WALR 275 and section 2 of the Land Act, Act 1036.
- ix section 4 of the Land Act, Act 1036.
- x section 3 of the Land Act, Act 1036.
- xi article 266 of the Constitution, 1992 and the 1969 Constitution.
- xii section 5 of the Land Act, Act 10.
- xiii *Ohimen v Adjei* [1957] 2WALR 275, *Atta v Lagos* [1960] GLR 42, *Adjei v Grumah* [1982-83] 985 and *Assed v Anto* [1961] GLR 103.
- xiv section 281 of the Land Act, Act 1036.
- xv article 20 of the Constitution, 1992 and sections 233 to 277 of the Land Act, Act 1036.
- xvi section 235(1) of the Land Act, Act 1036.
- xvii section 235 (2) of the Land Act, Act 1036.
- xviii section 235 (3) and (4) of the Land Act, Act 1036.
- xix article 20(1)(a) of the Constitution, 1992 and section 233 (1) of the Land Act, Act 1036.
- xx article 20 (1) (b) of the Constitution and section 233 (2) of the Land Act, Act 1036.
- xxi article 20 (6) of the Constitution and section 235 (5) of the Land Act, Act 1036.
- xxii section 236 (4) of the Land Act, Act 1036.
- xxiii section 236 (3) of the Land Act, Act 1036.
- xxiv section 236 (5), (6), (7) and (8) of the Land Act, Act 1036.
- xxv section 236 (10) of the Land Act, Act 1036.
- xxvi *Dolphyne (No.3) v Speedline Stevedoring Co Ltd and Another* [1996-97] SCGLR 514.
- xxvii section 236 (1) and (2) of the Land Act, Act 1036.
- xxviii section 5 of the Land Act, Act 1036.
- xxix section 12 (1) of the Land Act, Act 1036.
- xxx section 12(2) of the Land Act, Act 1036.

- xxxi *In re Koranteng (decd); Addo v Koranteng and Others* [2005-2006] SCGLR 1039 and *Saaka v Denali* [1984-86] 2 GLR 774.
- xxxii *Richards (Juliana) v Nkrumah* [2013-2014] 2 SCGLR 1577 and *In re Sasu-Twum (decd); Twum v Sasu Twum* [1976] 1 GLR 23.
- xxxiii section 38 (3) & (4) of the Land Act, Act 1036.
- xxxiv section 47 of the Land Act, Act 1036.
- xxxv *In re Mireku & Tettey (decd); Mireku and Others v Tettey & Others* [2011] 1 SCGLR 520.
- xxxvi section 50 (9) - (16) of the Land Act, Act 1036.
- xxxvii section 50 (7) of the Land Act, Act 1036.
- xxxviii section 51 (13-14) of the Land Act, Act 1036.
- xxxix section 13 of the Land Act, Act 1036.
- xl section 13 (5) of the Land Act, Act 1036.
- xli section 182 of the Land Act, Act 1036.
- xlii section 20 of the Land Act, Act 1036.
- xliii section 10 (10) of the Land Act, Act 1036.



DO WE LEARN THE ART OF JUDGING THROUGH OSMOSIS OR JUDICIAL EDUCATION?

By Justice J. B. Akamba, JSC (Retired)

Overview of learning

The art of judging encompasses the ability to make good decisions or form sensible or reasonable opinions on matters. It is about knowing and applying the substantive and procedural laws to render a seasoned judgment. This skill, like many others, can be acquired either formally or informally. The formal medium for acquiring this skill is through structured judicial education in contradistinction to the informal which is by contact learning from peers.

Osmosis is defined in the Oxford Advanced Learners' Dictionary (January 2000 Edition) as follows:

1. The gradual passing of a liquid through a Membrane. (Biology or Chemistry)
2. The gradual process of learning or being influenced by something as a result of being in close contact with it.

Judicial education on the other

hand refers to the planned and structured learning activities that contribute to the job competencies of judicial employees or staff.

In the light of the definitions above given, I see the art of learning judging through osmosis as a reference to the informal and gradual learning of judging as a result of being in close contact to the bench as opposed to the formal and comprehensive strategy of judicial education training of judges and other judicial officials to dispense justice.

Brief History of appointments to the Bench

In this presentation, permit me to make a few references to personal experiences I had during my forty years I served on the Ghanaian bench. I joined the bench in 1977 as a District Magistrate. At that time, newly appointed Magistrates did not have the privilege (or should I on hind sight call it the luxury) to undergo any formal training, simply because such facilities were non-existent. When a new officer was

appointed, the practice then was to attach the said appointee to a senior magistrate or a Circuit Court Judge for one week to under-study the latter and then-after left on his/her own.

At the time of my appointment however, not only did I enter with prosecution and advocacy skills, I also had in me values of honesty, integrity and a desire to uphold what is good, knowing that a good name is better than riches.

These values ultimately carried me from the bottom of the judicial ladder to the very top of the hierarchy. I need add that these values were inculcated in me from my early upbringing at home and harped upon in the schools and University (the University of Ghana) and church I attended. Indeed, one of the reasons for my decision to accept appointment on the magisterial bench was to help bring change to what I saw then as basic weaknesses and poor practices in the lower courts, particularly in the Region where I worked as an Attorney. Indeed nobody feels proud to work in an organisation with a very low image as it does not stimulate confidence and satisfaction.

Most of the magistrate courts in those days were presided over by Lay Magistrates who were not lawyers, and who had no legal training whatsoever. Their backgrounds showed that they were retired teachers, retired

social welfare officers, retired police officers, former politicians, retired registrars, etc. who were engaged as a stop gap measure to tap their experiences gained from years of public service to deal with matters at the magistrate court level. Apart from these Lay Magistrates, there were very few Professional Magistrates who, as the title indicates, were qualified lawyers, engaged or appointed to man the district courts. This latter category had the prospect of ascending the judicial ladder as far as their competencies and experiences would permit. It is interesting to observe that in spite of the many reforms in the Judiciary, aimed at professionalising every sector of the Institution, the Lay magistrate program still remains an integral part of Lower bench in Ghana to date, with some modifications. The present crop of Lay Magistrates were given special training to fit the purpose of their office and encouraged to upgrade themselves, (if possible) to obtain the appropriate legal qualification to warrant conversion to the legal class. I am aware of a few who have taken advantage of this window of opportunity and have become professional magistrates.

The original resort or reliance on the non-professional Lay Magistrates arose because of a lack of response from lawyers to accept appointment to the

lower bench and further because the population of lawyers in the country shortly after independence was rather low. Indeed the turnout of lawyers from the Ghana School of Law only begun in 1959 and was yet to make any impact in the number of lawyers needed for this newly independent country with its growing economy. Most newly qualified lawyers, many of whom had trained overseas at their own expense and the few locally trained, preferred the glamour of private practice and the apparent prospect of making money from their training. Another deterring factor contributing to the low patronage of the lower bench in particular, and the public service at large, was the low and unattractive remuneration of public officers.

In spite of the limited capacities of most Lay magistrates, some succeeded in acquitting themselves creditably, but it cannot be denied that considering other vicissitudes and temptations, a few fell through the cracks of a sustained career.

The bad nuts among these officers ultimately gave the institution a rather poor rating amongst the populace, and lawyers in particular.

It is worthy of note that in 2003, the Judiciary in collaboration

with the Ghana Law School initiated a two-year program that trained a new crop of non-professional or Lay Magistrates for a career on the lower bench. These Magistrates (about ninety as the records show) otherwise called the career Magistrates upon appointment, remain as such, until they retire at the compulsory retirement age for all public office holders. They however have the option to change the career path upon upgrading themselves with the acquisition of the requisite law degree and being admitted to the Bar. A few have succeeded in this feat and since changed their career paths to the Professional path. The special program ceased after the two years experimentation. Currently, only lawyers with the requisite qualifications are admitted to the bench.

I responded to the advertisement for appointment to the bench because I wanted to contribute to the needed change in the quality and integrity of the lower bench. My belief was that an injection of professionalism with integrity into the lower bench would help turn the tide for a more honourable and respectable judicial system. I also convinced other lawyers to accept appointment to the lower bench to drive the needed reform.

At the time of my appointment as a Magistrate, my only practical experience of the adjudication process was from

my three years stint as an Assistant State Attorney in Tamale in the Northern Region, where I had the opportunity to practice under the able guidance of Senior Attorneys in handling both civil and criminal matters.

These experiences, I dare say, were in drafting criminal charges, conducting prosecution of criminal offenders and in initiating and defending civil actions on behalf of the State or Government Agencies in the Regions. The skills required for these undertakings included the proper identification of infringements of the law and advocacy.

The demands of the bench, on the other hand, are different. Judging requires an entirely different approach and qualities. To quote the late Lord Thomas Skyrme, founder of the CMJA:

“It is axiomatic that any system depends more on the people who operate it than upon the quality of the system itself.”

The bench requires quite an elaborate set of skills of its own. Whilst it is possible to acquire some of the skills demanded by the bench by being in contact with the office as a magistrate or any other judicial officer, such an approach or medium is bound to take a long time. This last point finds ample support from Justice G. Samuels (New South Wales, Australia), who argues that, *‘most judicial characteristics are*

qualities which cannot be instilled in the classroom. If they are to be acquired at all, it is through a good many years of experience. I wonder therefore whether it may not too readily be assumed that basic judicial training can supply not only deficiencies in the legal knowledge and experience but defects of judicial character as well.”

(Quoted by Judge Shamim Ahmed Qureshi, Director of Programs, Commonwealth Magistrates and Judges Association (CMJA) in his article on The Importance of Judicial Education, and published at page 14 of the Association of Magistrates and Judges of Ghana (AMJG) News Journal, October 2010 edition).

The distinguished author (Director of Programs) then observed as follows: *“It was once stated, ‘Good judgments come from experience, and experience comes from bad judgment.’ “With this approach you have to take pity on all those parties and advocates who appear before the judicial officer whilst he or she is still in the bad judgment stage.”*

From my own experience and interactions with new entrants into the Judiciary it cannot necessarily be true, if indeed it was, that new appointees to the bench come readily equipped with general skills needed to perform their roles without making numerous mistakes.

It is also important to observe that ‘such mistakes and

injustices can be too costly for the judiciary, especially if it results in the judiciary being perceived as inferior, unreliable or even irrelevant because of a 'reputation of incompetence, corruption, inefficiency or inability to bridge the gap between law and justice; because the transaction costs are too great; because of other access issues such as language or distance. These factors sometimes push the citizens to settle for extra judicial solutions which will pose a threat to the status of the formal judiciary and lessen its ability to perform its important functions.' {See presentation by Judge Sandra E. Oxner, at a conference in St. Petersburg, Russia on Empowerment, Security and Opportunity through Law and Justice, (July 2001).

Whilst it is true to state that many judicial qualities cannot be instilled in the classroom, it is worse off to leave it completely un-addressed. Constant exposure to the requirement through training will instil in the office holder, the desire to be compliant or face the consequences.

The case for judicial education training

Thankfully, many countries of the Commonwealth of Magistrates and Judges Association, (CMJA) have now recognized the great advantages

to be gained in adopting the formal learning process through the setting up of Judicial Training facilities to reform their judiciaries to cope with the new and changing trends in society, the law and other needs rather than leaving it to chance.

With an ever increasing caseload, in virtually all countries within the Commonwealth, no judiciary can afford to go by the old constraint of appointing their Magistrates and Judges to learn the art of judging by being in contact with the office, i.e. scrolling through what pieces of guidance one can find on one's own or picking up the pieces from those before him/her. Also, under the emerging democratic dispensation in most of today's Commonwealth nations, it is true to observe that the Judiciary is given the power to protect the rights of the citizenry.

In the 1992 Constitution of Ghana for instance, by its Article 33, the courts have the ultimate power to protect the rights of the citizenry. Aside this, judicial power, under Article 125 of the Ghana Constitution, resides in the Judiciary. The said Article 125 of the Ghana constitution states as follows:

'125. The judicial power of Ghana.
1. Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.

2. Citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems.

3. The judicial power of Ghana shall be vested in the Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power.

4. The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.

5. The Judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to this Constitution, and such other jurisdiction as Parliament may, by law, confer on it.”

Article 127 of the Ghanaian Constitution, 1992, again provides for the independence of the judiciary. The article provides:

1. “In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority.

2. Neither the President nor Parliament nor any person acting under the authority of the President or Parliament nor any other person whatsoever shall interfere with Judges or judicial officers or other persons exercising judicial power, in the exercise of their judicial functions; and all organs and agencies of the State shall accord to the courts such assistance as the courts may reasonably require to protect the independence, dignity and effectiveness of the courts, subject to this Constitution”.

It is said that ‘unto him that much is given, much is expected.’ Since justice emanates from the people, who have in turn, handed same to the Judiciary to exercise on their behalf, it is inevitable that the institution is accountable to the people who look forward to a fair, honest, competent, impartial and independent judiciary, etc. Of what significance is such power and authority if those entrusted with the responsibility are not themselves conscious of this and competent as to make it manifest?

Reiterating this point, the distinguished retired Justice of the Supreme Court of Ghana, Justice S. K. Date-Bah, delivering the Keynote Address at the 33rd Annual General Meeting of Association of Magistrates and Judges of Ghana (AMJG) stated as follows;

“It is thus a banal truth that judges and magistrates play a pivotal role in the maintenance of the rule of law, which our politicians and people

generally have expressed themselves to be proud of. The rule of law is indeed a vital element in the maintenance of the current constitutional democracy that Ghana is enjoying and thus judges and magistrates are central to the maintenance of our governance system. We should jealously guard our critical role in maintaining the rule of law. This entails defending the independence of the judiciary and making manifest our integrity and dedication to impartial decision-making”.

Such is the enormity of the task placed upon the Judiciary that makes reform inevitable. This situation is set in a world that is fast changing. There are now changed values, changed technologies, changes in the laws, changes in the rules of engagement, global interconnectivity of rules of engagement, etc. These changes are so overwhelming, and far reaching that, no judicial officer can on his/her own, sitting in a court at Asankragwa, in one of the newly created Regions of Ghana or elsewhere, be able to be current by merely being in the system. The reality of the modern world makes judicial reforms inevitable to churn out judicial officers who are in tune with the tasks before them. It is suicidal for any Judiciary not to embark on improving upon its delivery from both human and structural perspectives. Judiciaries in developing economies, have to

cope with ever increasing litigations arising from high population densities. They have to learn new ways of upgrading their rules of engagement or else be found wanting. With the right structures in place together with little motivation to bring improvement in the conditions of service of judicial officers there will be change for the better.

These words recognise the very essential role a trained, current, knowledgeable and well-motivated magistrate/judge plays for the success of his/her work on the bench. The assumption of the judicial role calls for a new experience and a new paradigm. As indicated earlier in my case, I was transitioning from being a Prosecutor/Advocate to a Magistrate in 1977. However great those experiences were, I had to adapt to the new challenges. My new role was that of a neutral person or a referee which required that I build upon my ability to make up my mind on facts or issues placed before me for a decision; to train my mind/self to be independent minded and arrive at conclusions based upon evaluation of all facts and laws presented before me; to guard against any prejudices, be it religious, ethnic, race, or whatever in my determination of any matters before me and lastly to conduct myself in such a way as to preserve the dignity of my office, the impartiality and

independence of the judiciary. These are quite detailed requirements and whilst it is possible to acquire them by “being in contact with the office as a Magistrate or any other judicial officer”, this is bound to take a long time. Built into this modern training options, are facilities and opportunities for evaluation of levels of absorption of topics or issues dealt with. The resultant outcomes would inform the next line of emphasis. In this fast moving world of today, society can no longer wait endlessly for outcomes that can be done in no time but for the inefficiencies and the incompetence of the system. Formal training as opposed to the informal, snail paced interactive or osmotic approach should grant society the answer. This of course is not to entirely discount the deployment of the informal process as and when opportune. I personally do recall, the former Chief Justice of Ghana, Her Ladyship, Georgina Theodora Wood, assigning High Court Judges to various Supreme Court Judges for mentoring. This was not to supersede the formal training but to complement it.

Further Advantages of Judicial Education

It is always important to remember what the purpose of judicial education is. It is for gaining information and insights of changing social and economic perspectives and values, and gen-

erally to help judges to keep abreast of the law to prevent avoidable judicial error at the first instance in the conduct of trials, such error leading to emotional harm to the parties, accused persons and witnesses. This remedy appears to answer one of the queries raised in Judge Qureshi’s lament.

In his remarks on the theme “*Judicial Reform: Impact, Driving Force, Future*” at the CMJA conference hosted in Accra in 2005, Justice Steven Allan Brobbey, retired Justice of the Supreme Court of Ghana, (then Chief Justice of The Gambia) succinctly put the importance of judicial education as follows:

“A judge who feels deficient in knowledge or skill is definitely susceptible to all kinds of pressures and influences. His shortcomings are reflected in faulty judgment easily reversible on appeals, socially unacceptable conclusions, outrageously disproportionate sentencing, etc. Judicial education that imparts the right knowledge opens up the mind of the judge to all ramifications of the subject matter of the case before him and equips him with the necessary skills to consider all relevant facets and issues arising therefrom-social, political, economic, legal, moral and judicial”. (See page 19 of AMJG News Journal, October 2009 Edition)

In further support of judicial education, Dennis Catlin

(Michigan Judicial Institute, USA) stated;

“Lawyers don’t become good judges by the wave of a magic wand. Not even the best lawyers. To reappear behind the bench as a skilled jurist is a tricky manoeuvre. Going from adversary to adjudicator means changing one’s attitude, learning and using new skills, and in some cases severing old ties. In many jurisdictions judges must learn their new roles by the seat of their pants. In Michigan though, both new and veteran judges are trained extensively.”

(See page 14 of AMJG News Journal, October 2010 Edition).

I would like at this stage to illustrate this point of the need for the modern judge to learn his/her new role by the seat of the pants, using the Ghanaian trajectory, since I am quite familiar with this as the 2nd Director of the Judicial Training Institute (JTI) of Ghana.

Establishment of Judicial Training Institute of Ghana

The Judicial Service of Ghana established a Judicial Service Training School in 1965. As the name imports, this facility was to provide training support to staff of the Judicial Service. Thus the training was targeted at the Registry staff and such other administrators of the Judicial Service as was necessary for the effective functioning of justice administration. As such, officials such as Registrars, Bailiffs were the target beneficiaries of such

trainings. Magistrates and judges were not covered under this programme. In 1995, the Institute of Continuing Judicial Education of Ghana (ICJEG) was established to provide judicial education on a continuous basis to the Ghanaian bench. My personal experience of the latter, involved the organisation of some lectures just before the opening of the Legal year at which fora, topical issues, or recent decision/s of the apex court was/were highlighted, apparently to guide the audience who were Magistrates and Judges, of our practices at our various stations. Of course, it was fashionable to have some Academics give their “academic perspectives or viewpoints” on the topic/s. This approach was good as it lasted. This situation must be set against the background that, apart from Accra and Kumasi and to some extent, Sekondi/Takoradi and Tamale, most of the then remaining stations were inadequately stocked with law books/legal material or decisions of the apex court to aid any research by any magistrate or Judge. Thus it is in such context that one must consider the effectiveness of such occasional bench/bar lectures or conferences to the distant practising magistrate or judge. More so, knowing from our judicial training, the retention rate one derives from lectures is rather very low. It was such a great relief and breakthrough in the annals of

Judicial Education, that the Judiciary and the Judicial Service of Ghana took the bold and formidable decision under the leadership of Chief Justice George Kingsley Acquah of blessed memory, to establish the Judicial Training Institute of Ghana (JTI). The mandate of this Institute (JTI) was broad. It was to develop and deliver training programmes for new and veteran members of the Judiciary and the Judicial Service with the broader objective of using education and training for development and engineering of the human resource needs of the Judicial Service of Ghana and for judicial reform through ensuring judicial efficiency and effectiveness in Ghana.

The training programmes are generally based on a proper needs assessment which are designed to meet the specific needs of the judges, magistrates and staff that contribute to the job competency of the judge or magistrate or staff.

It is worth noting that over all these years, the JTI had received and continues to receive tremendous support from Chief Justices of Ghana because of their pro-judicial training stances.

In her vision statement, upon her assumption to office as Chief Justice of Ghana, the Honourable Lady Chief Justice Georgina Wood stated;
“I envisage a credible, trustworthy, efficient and effective judiciary... it is not enough

to have good mechanisms and systems, we also need good people, people with integrity... I see the Judicial Training Institute as one of the key institutions within the judiciary. I am hoping that the JTI will play a formidable role in reshaping our judges and administrative staff”.

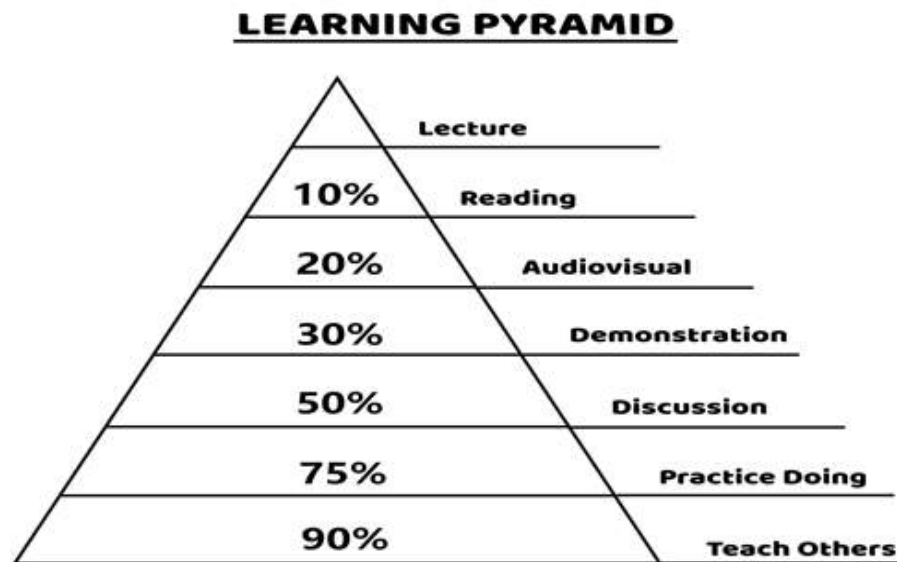
The JTI's work has slowly extended to all parts of the judiciary covering newly appointed and veteran judges and magistrates. Newly appointed judges and magistrates undergo induction training upon first appointment and further attachment to experienced judges on the bench before they begin their careers on the bench. Whiles on the bench, the JTI organises regular training programmes for the judges and magistrates to keep them abreast of new legislations, procedures and best practices.

Methodology /Pedagogy of Training Judges/Magistrates

The JTI has always deployed different forms of training and learning, including lectures, seminars and small group discussions. Refresher programmes are regularly organised to provide updates and generate interest among the judges on important issues and developments within the law, especially new legislation and amendments.

Judicial training by its very nature deploys the use of the latest

methodologies, such as planned and structured learning activities that contribute to the job competency of the judge or magistrate. These methodologies ensure that the beneficiary (Judge or Magistrate) obtains the highest retention of the subject under discussion. The diagram below illustrates the average retention rates of students upon the use of various methods displayed as follows:



Source: National Training Laboratories, Bethel, Maine

Learning by doing has generally become the preferred choice of adult education. This gives a retention rate of 75%. Other methods used are group discussions with a retention rate of 50%, and demonstration which gives 30% rate of retention.

At any given time, the focus is more centered on knowledge and experience sharing. Experiential learning is always the best method for judicial education in these modern times. I believe that a Judge or Magistrate cannot depend on legal text alone and expect to understand all the issues before him/ her. Social context learning prepares the mind of the judge to fully apply his or her interpretation of the law to what pertains in a particular environment or community.

In conclusion, I submit that whilst it is useful to deploy the osmotic, slow or snail paced technique of sharing knowledge, the sheer weight and demands of a modern Judiciary cannot place full reliance on such a process as opposed to formal judicial training as the latter deploys full use of modern learning techniques which is more embracing and easily assimilated. Judicial training will expose a judge/magistrate or judicial officer to all possible pitfalls to guard against and it is for every such

officer to abide or forever bear the consequences.

The JTI of Ghana benefited tremendously from the active and strong support of the National Judicial Institute (NJI) of Canada in designing and building the necessary structures for our Institute in 2004. Special mention must be made of Professor Brettel (now NJI Academic Fellow), Judge Adele Kent, Judge Thompson (now Supreme Court) and others. Unto them, Ghana's JTI will always be grateful.

Mention must also be made of the ample support of the Commonwealth Judicial Education Institute (CJEI) also of Canada, under the able leadership of Judge Sandra E. Oxner (Chairperson) for their support in building the capacities of our faculty members. We have also enjoyed the co-operation and support over the years of the Judicial Studies Board now Judicial College of England and Wales of the UK. We cannot leave out our great partners on this journey, the Commonwealth Magistrates and Judges Association (CMJA) for their training support for judges in Ghana. To all, our partners on this journey, we express our appreciation and gratefulness. We look forward to a continuation of the friendship built over these years and a continuation of the support to build stronger and better judiciaries within the membership of the CMJA in the years to come.

Training Programmes Organised for the Judiciary by the Judicial Training Institute for the year 2021/2022

Pursuant to Article 125 (1) of the 1992 Constitution of Ghana, the judiciary continues to deliver on its mandate. In order to render decisions posited within statutes, jurisprudence, the dynamics of social changes and national policy, it is imperative that the knowledge and judge-craft of Judges and Magistrates are deepened through judicial education.

It is thus the mandate of the Judicial Training Institute (JTI) to develop and organise quality training programmes to build the knowledge resources of Judges and Magistrates to enable them discharge their constitutional mandate effectively and efficiently.

In line with this mandate, the following training programmes were developed and organised by the JTI for some Judges and Magistrates in the year under review.

1.	<i>Virtual sensitization on the new Borrowers and Lenders Act, 2020 (Act 1050) for selected Justices of the Court of Appeal.</i>
2.	<i>Sensitization on the Borrowers and Lenders Act, 2020 (Act 1050) for all Circuit Court Judges in the southern sector of Ghana.</i>
3.	<i>Training on Tax Laws and Transfer Pricing Regulations, 2020 (L.I. 2412) for selected Justices of the Court of Appeal and High Court.</i>
4.	<i>Training on International Commercial Arbitration for Justices of the Court of Appeal and High Court (Commercial Division).</i>
5.	<i>Training on the Work of the Securities and Exchange Commission for selected Court of Appeal and High Court Justices.</i>
6.	<i>Seminar on Maritime Law for selected Justices of Supreme Court, Court of Appeal and High Court.</i>
7.	<i>Workshop on Bail Application, Electronic Evidence, Forensic Audit and Analysis for High and Circuit Court Judges in the Greater Accra and Ashanti Regions.</i>
8.	<i>Workshop on Gender Mainstreaming and Equity for all Circuit Court Judges and Magistrates across the country.</i>
9.	<i>Webinar on African Judicial Network for selected Circuit Court Judges and one Magistrate.</i>

10. *Workshop on the National Pension Act, 2008 (Act 766) as amended for selected Justices of the High Court in both Southern and Northern sectors.*
11. *Virtual training on International Best Practices in the area of Insolvency Law with focus on Avoidance Proceedings for all High Court Justices.*
12. *Induction for newly appointed High Court Judges and Magistrates*
13. *Sensitization workshop on Narcotics Control Commission Act, 2020 (Act 1019) for selected Judges and Magistrates across the country.*

Over all, the Institute undertook 32 events or training sessions in 12 subject areas. No doubt the year was a robust one.

Regrettably, due to insufficient funds, not all judges and magistrates benefited from the learning programmes. To ensure that all benefit from the discourse on the afore mentioned subjects, the JTI has published on its website, www.jtighana.org, some of the training materials to allow easy access by a Judge or Magistrates who was unable to benefit from the participation of the training programmes above listed. Again, the Institute has audio-record of all the training programmes readily available to be shared with a Judge or Magistrates via email upon request to the JTI.

This report is a testament to the Institute's commitment to assist the judiciary through a well structure judicial education to carry out its constitutional mandate.





OVERCOMING THE COURT INFRASTRUCTURE CHALLENGE

BY CYRIL N. ABLADE,
DIRECTOR OF ESTATE

1 Introduction

Under Section 12 (3) (h) of the Local Governance Act 2016 (Act 936), Metropolitan/ Municipal/ District Assemblies (MMDAs) are obliged to ensure ready access to Courts in the District for the promotion of justice. Accordingly, the provision of Courthouses and accommodation for Judges and Magistrates are the responsibilities of the MMDAs.

Generally, the MMDAs have provided some Court infrastructure in the Metropolis, Municipalities, and Districts. Most of these Courthouses and bungalows are colonial relics, some of which are not fit for purpose. A large number of these Court buildings are in a deplorable state, and as such do not provide the congenial working environment for Judges and Magistrates to discharge their functions efficiently.

Presently, the state of residential accommodation for Judges and Magistrates leave much to be desired. Some Magistrates in the Districts have no official accommodation, forcing them into private rentals. Most of these properties are not fenced, thereby exposing them to security risks.

Most Executives of the MMDAs claim that they are not aware of their responsibility to provide Court infrastructure and access to the Courts. As a result, there are many Districts (especially the newly created ones) without Courts. Clearly, the MMDAs have not lived up to their responsibilities under the provisions of the Local Governance 2016 (ACT 936).

2 The Infrastructure Challenge

Based on a needs assessment conducted after the nationwide Court inspection of the Chief Justice in 2018/2019, it was estimated that a total of 207 new purpose-built Courthouses and 381 residential accommodation for Judges and Magistrates needed to be constructed throughout the country to improve access to the Courts and to provide

a conducive environment for the Judges and Magistrates to live in. The figures include the provision of Court infrastructure for the six (6) new Regional Capitals at Sefwi Wiawso, Dambai, Goaso, Techiman, Damongo, and Nalerigu.

The numbers above necessitated that we pursue an aggressive strategy to tackle the infrastructural needs of the Judiciary and the Judicial Service.

3 Intervention by His Lordship The Chief Justice

In 2019, a comprehensive report with videos, photographs, and estimated costs of new Court projects on the nationwide Court Inspection was submitted to His Excellency The President to apprise him of the state of Court infrastructure in the country. This followed several petitions by the MMDAs to the District Assemblies Common Fund (DACF) to provide funding for the construction of new Courthouses to avert the threat of their Courts being closed down by the Chief Justice for non-compliance of ACT 936. The DACF approached the Judicial Service for the list of locations where new Courts and bungalows are to be constructed, and obtained approval from Cabinet to construct Court buildings and bungalows for the Judiciary.

Upon assumption of Office in 2020, His Lordship the Chief Justice, Justice Anin Yeboah made it his focal point to aggressively pursue strategies to improve the physical infrastructure of the Courts. He therefore held series of meetings with the Administrator of the District Assemblies Common Fund (DACF) to discuss strategies on how the Fund can partner the Judiciary to improve access to the Courts. The consultations and discussions culminated in the State taking on the responsibility of constructing one hundred (100) Courthouses with bungalows for Judges and Magistrates across the country. The project comprises the construction of 20 Townhouses for Court of Appeal Judges with a Guesthouse, Clubhouse, Swimming Pool, and a Tennis Court at Danyame, Kumasi. The Court of Appeal project was designed to address the perennial problem of lack of accommodation for Court of Appeal Judges in the Northern Sector resulting in long distance travels with attendant high cost of hotel accommodation.

The project is being implemented by the Ministry of Local Government, Decentralization, and Rural Development with funding support from the DACF. Construction is ongoing simultaneously at selected project locations nationwide. Provision has been made for Solar Power, Generators, and Borehole at all project sites. All projects will be fully furnished.

4 Progress of Work

a. Court of Appeal Project

The project commenced in April 2021. The site is located on the right side to the Regional Coordinating Council at Danyame, Kumasi.

At the time of reporting, construction of the twenty (20) Townhouses have been completed and fully furnished according to contractual specifications.

- Construction of the Swimming Pool is completed, filled with water, and being test run.
- Construction of the Guesthouse has been completed. Final painting is being done. Furnishing has commenced and presently on-going.
- Construction of the Clubhouse has been completed. Final painting is ongoing. Furnishing has commenced and ongoing at the time of filing this report.
- Construction of the Tennis Court is 96% completed. Final touches are being done.
- External works including pavement works, Carports, and landscaping are ongoing and about 92% complete
- Road Works: Primer seal done, awaiting final asphalt overlay. This project will be handed over by 30th September 2022 for commissioning in October 2022. (See attached photographs)

b. Nationwide Construction of Courthouses with Bungalows

This project comprise the construction of one hundred purpose-built Courthouses including High Courts at selected project locations. The project comes with drilled Borehole, Solar Power, Generator Sets, and Furniture.

Currently, construction of Courthouses and bungalows are completed in fifty (50) project locations. Out of the 50 locations, thirty-five (35) projects have been furnished and awaiting commissioning from October 2022. See selected photographs.

Conclusion

The Court of Appeal project at Danyame, and sixty (60) new Courthouses and bungalows are expected to be commissioned and added to existing judicial infrastructure by the end of 2022.

This success story of massive improvement in judicial infrastructure was attained through the visionary leadership of His Lordship the Chief Justice within a space of two years in Office. This achievement cannot

be celebrated without commending the Government of Ghana for providing funding support through the District Assemblies Common Fund (DACF) to ensure the realization of our dreams. It is an exciting time to serve the Judiciary.

TOWNHOUSES FOR COURT OF APPEAL JUDGES AT DANYAME, KUMASI



FRONT VIEW



LIVING ROOM



DINING AREA



KITCHEN



MASTER BEDROOM



BATHROOM



BEDROOM



STUDY



GUESTHOUSE & CLUBHOUSE



SWIMMING POOL

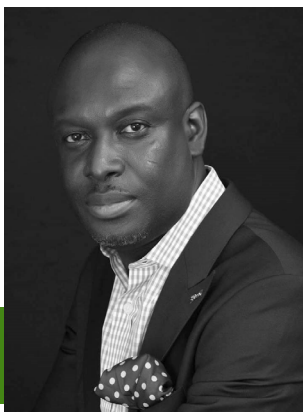


REGIONAL REPORTS



The Bench 2022





BONO, BONO EAST AND AHAFO REGIONS' REPORT

DOUGLAS SEIDU
(JUSTICE OF THE HIGH COURT)

Greetings from the Bono, Bono East and Ahafo Regions to all members of the Association of Magistrates and Judges of Ghana.

OVERVIEW OF COURTS

The Bono, Bono East and Ahafo Regions have a total number of (31) courts comprising Five (5) High Courts, Seven (7) Circuit Courts and Nineteen (19) District Courts.

MEETINGS

Members of the association for the Bono, Bono East and Ahafo Regions held just one meeting in July, 2022. This is a far cry from our desire to meet regularly on the whole. Tight work schedules and the long distance travels from the various District Capitals to Sunyani partly affected our planned schedules.

NO	NAME	FROM	TO
1.	H/W JOSEPH HAMIDU NASIGRE	DISTRICT COURT, NSOATRE	DISTRICT COURT, DONKOKROM
2.	H/W LILY AMOAH KANKAM	DISTRICT COURT, TEPA	CIRCUIT COURT, KINTAMPO
3.	H/W AUGUSTINE AKUSA-AM	DISTRICT COURT DONKOKROM	DISTRICT COURT, NSOATRE
4.	H/W KORKOR ACHAW OWUSU ESQ	DISTRICT COURT, NAVRONGO	DISTRICT COURT, BECHEM
5.	H/W HAJIA MAMUNATU JE-BUNI YAKUBU	DISTRICT COURT, BECHEM	DISTRICT COURT, NKORANZA -ON CONTRACT

FUN TRIP/ EXCURSION

In December 2021, the Bono, Bono East and Ahafo members of the association embarked on an excursion to the Bui Power Plant in Bui. Members were taken round the Bui Generation Station to see the Bui Hydro Dam and Solar Farm by engineers of the Bui Power Authority on site. Members ended the trip at the Club House at the Bui Hydro dam. We were treated to some good wine and good food by our local treasurer. The Bui Hydro Plant and the Solar Farm has a combined generating capacity of 450 megawatts of power.

VISIT BY HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE

His Lordship, the Honorable Chief Justice paid a working visit to the Bono, Bono East and Ahafo regions to inaugurate Gender-Based Violence courts at Dormaa, Techiman and Goaso respectively. These Circuit Courts have been renovated and fitted with ultra-modern equipment or gadgets.

CHALLENGES

There are a number of challenges with the smooth running of the courts or administration of justice generally. These challenges or problems cut across the various courts and are largely due to loose administrative controls.

High Court-Sunyani

Court precincts have been reduced to a place for petty-trading. Court staff actively patronize goods hawked on the court compound. There are instances of hawkers actually entering various offices to sell their wares. Cleaners for the various courts and offices are inadequate. Most times, court rooms, offices and washrooms are in a mess. The Court compound is littered with plastic bags.

District Court -Goaso

1. No swivel chairs in the Magistrate's chambers and in the open court.

2. There is a dumping of mud all around the Magistrate's residence when it rains.
3. The borehole in the Magistrate's residence is manual. The Magistrate pumps out water for use from the borehole herself. Same needs to be mechanized.

District Court - Nsoatre

1. There are no chairs in the Magistrate's chambers. Benches are used for family tribunal and juvenile cases.

District Court - Wenchi

1. There is no running water at the court premises.

District Court - Kenyase

1. The Air Conditioner in the Magistrate's chambers is faulty.
2. No chairs for family tribunal and juvenile cases in Magistrate's chambers.

District Court - Sampa

1. A new court house has been built but yet to be furnished.
2. The old court house leaks badly when it rains.

District Court - Kintampo and Jema

1. No Air Conditioner in the Magistrate's chambers at the Kintampo District Court.
2. There is no substantive

Magistrate at the Jema District Court.

Circuit Court – Fiapre

1. A new court house has been built but yet to be furnished.
2. No toners for the printers and no stationery for most times.

District Court – Kukuom

1. Family tribunal panel not constituted.
2. No night watchman for the court.

District Court – Berekum

1. No day watchman for the court.

District Court ‘A’ – Sunyani

An office was converted into a court room and designated as District Court ‘A’. The court room is very small and congested. There is an urgent need for a new court house to be built.

CONCLUSION.

It is our prayer that the challenges would be given urgent attention. We wish all members good health and a productive year. God bless our homeland Ghana and make her great and strong.



REPORT FROM THE UPPER WEST REGION [WA] FOR THE 2021-2022 LEGAL YEAR

H/L JUSTICE A. YUSIF ASIBEY
SUPERVISING HIGH COURT JUDGE
AMJC REGIONAL REPRESENTATIVE
UPPER WEST REGION

INTRODUCTION

All praise to the Almighty God for yet another peaceful year. Fraternal greetings from the Supervising High Court Judge and members of the Upper West Regional Branch of AMJC.

This Report highlights the activities, achievements, challenges of the Region during the period under review.

TRANSFERS IN AND OUT OF THE REGION

The year began with the transfers out of the Region of three District Court Magistrates i.e. H/W Sidney Braimah, H/W Joseph Evans Okropa and H/W Augustine Fiifi Domful. In their place, H/W Maxwell M. Titriku, H/W Joseph Mensah and H/W Baba Issahaku Iddi were transferred into the Region for Wa, Nandom and Jirapa District Courts respectively.

A good number of personnel, at other levels of the service, were either appointed or transferred into the Region. The staffing situation of the courts and departments have greatly improved. We commend management of the Judicial Service for this positive trend.

COMMISSIONING OF NEW COURT

The period under review witnessed the commissioning of a magnificent District Court at Nadowli. Thumbs up to the Honourable Chief Justice, the Upper West Regional Minister, District Chief Executive for Nadowli-Kaleo Assembly and all who in diverse ways played a role in bringing into fruition the long held dream of having a court at Nadowli.



NEW COURTS AT WECHIAU AND GWOLLU

The District Courts at Wechiau and Gwollu are yet to be commissioned due to various degrees of problems.

COURT COMPLEX IN WA

There is a Court Complex under construction in Wa. The edifice has been roofed. Work however is now stalled. There is an emotional attachment of all in the Region to this court complex. No one can begrudge us. It is the belief and hope of everyone here that once the court complex is completed, the problems the region faces regarding office accommodation would be things of the past



COURT COMPLEX UNDER CONSTRUCTION.

WORKING VISITS TO DISTRICTS

During the period under review, the Supervising High Court Judge paid working visits to the Jirapa, Lawra, Nandom and Tumu Courts. The problems faced by these courts are poor court infrastructure, deplorable residential accommodation for Magistrates among others. It is hoped that the Nandom District Assembly will put into habitable shape the bungalow of the District Magistrate to enable him

have his peace of mind.

STATE OF BUNGALOWS

The Supervising High Court Judge's bungalow and all other bungalows are in deplorable state and need urgent renovation.

REGIONAL STORES

The Region does not have a Regional Stores set-up.

This unfortunate situation poses lots of problems. The earlier one is created, the better for the Region.

SWEARING-IN

During the period under review, the Municipal/District Chief Executives in the Upper West Region were sworn into office by the Supervising High Court Judge. He also swore into office the Paramount Chief of Nandom Traditional Area, Naa Professor Edmund Nminyem Delle Chiir VIII and members of the reconstituted Upper West Regional Lands Commission.

CONCLUSION

It is the fervent hope of all that the Regional Court Complex, the bungalows of Judges and Magistrates, the new Courts at Wechiau and Gwollu would be completed and commissioned. Members pledge to be law abiding and work harder.



AMJG EASTERN REGIONAL REPORT (2021-2022 LEGAL YEAR).

**HIS HONOUR ABASS ABUBAKARI
ADAMS**
(CIRCUIT COURT – ASAMANKESE).

1. INTRODUCTION:

We, the members of the Eastern regional branch of the Association of Magistrates and Judges of Ghana (AMJG), extend our heartfelt and warmest greetings to all members of the AMJG. This regional report shall highlight notable developments, happenings, and matters of interest to our members in the Eastern region for the period of the 2021-2022 legal year. This report shall specifically highlight the distribution of courts; transfers, postings, and retirements of members; new developments; activities and meetings; and some challenges facing the courts within the Eastern region of Ghana.

2. DISTRIBUTION OF COURTS:

There is a total of 43 courts in the Eastern region. The courts are made up of the Court of Appeal-1, High courts-11, Circuit courts-11, and District courts-20. As was highlighted last year, all the courts within the region had substantive Magistrates and

Judges manning them except Asesewa, Somanya, and Tafo District courts, where the substantive Magistrates were on study leave. This year, Asesewa, Somanya, and Tafo District courts have substantive Magistrates assigned to them.

3. TRANSFERS, POSTINGS & RETIREMENTS:

The table below shows transfers and postings of members stationed in the region in the year under review. Most of these transfers were part of the general transfer of Judges and Magistrates who had stayed at the station for four years or more, which took place in October 2021.

NAME OF JUDGE OR MAGISTRATE	FROM COURT	TO COURT
H/L Dabanka-Bekoe Doris	High Court, Koforidua	High Court, Sowutuom
H/L Emmanuel S. Amedahe	High Court "1", Kumasi	High Court, Koforidua
H/L (Now) Mercy Adei Kotei	Circuit Court "B", Koforidua	Circuit Court, Keta
H/H Kwame Polley	Circuit Court, Keta	Circuit Court "B", Koforidua
H/H William Appiah Twumasi	Circuit Court, Tamale	Circuit Court, Akim Swedru
H/H Alexander Oworae	Circuit Court, Akim Swedru	Circuit Court, Tamale
H/W Isaac Adjei	District Court, Ada	District Court, Nkawkaw
H/H(Now) Appiatse Kwasi Abaidoo	District Court, Akim Oda	District Court "1", Ho
H/H (Now) Robert Addo	District Court "1", Ho	District Court, Akim Oda
H/W Eric Danning	District Court "B", Koforidua	District Court, Sunyani
H/W Maame Efua Tordimah	District Court, Madina	District Court "B", Koforidua
H/W Kojo Frimpong Manso	District Court, Begoro	District Court, Tuobodom
H/W Florence A. Baah	District Court, Akomadan	District Court, Begoro
H/W Nana Asibey Osei	District Court "A", Koforidua	District Court, Agona
H/W Nana Ama Dabbah Fynn	District Court Adum, Kumasi	District Court "A", Koforidua
H/W Gifty Cudjoe	District Court, Kwabeng	District Court, Kpando
H/W Love Sitsofe B. Mawuli	District Court, Kpando	District Court, Kwabeng
H/W Alice Afua Yirenkyi	District Court, Kibi	District Court, Ajumako
H/W Juliet Osei Duedu	District Court, La	District Court, Kibi

One member of our Association, in the person of Justice Nathaniel Kojo Ekwam Osam of the Nkawkaw High Court, retired from the service in the year under review. We wish him the best in his future endeavours.

4. NEW DEVELOPMENTS:

The region has been spawned by the construction and development of new courts and bungalows for Judges and Magistrates within the region. The construction and developments are at various stages of completion, with the majority of the structures almost completed. All things being equal, most of the new court buildings and bungalows will be ready for

commissioning, which would pave the way for the use of the facilities by the end of this year. The table below lists the new courts and bungalows:

NEW COURT	NEW BUNGALOW
District Court, Aburi	With Bungalow
District Court, Adukrom	With Bungalow
District Court, Coltar	With Bungalow
District Court, Akwatia	With Bungalow
Circuit Court, Akwatia	With Bungalow
District Court, Osino	With Bungalow
District Court, Kwabeng	No bungalow

A new bungalow was constructed and completed in Koforidua. The bungalow is now being used by one of the Justices of the High Court, Koforidua.

5. ACTIVITIES AND MEETINGS:

There were no major activities or meetings in the year under review for members of the region. Her Ladyship, Justice Gifty Dekyem, the Supervising High Court Judge for the region, has plans to organise a meeting for the members of the region at the commencement of the new legal year to enable members to discuss welfare, work-related, and other issues or matters affecting members. The said meeting will also enable members to fraternise with each other.

6. CHALLENGES:

Our region faces myriads of challenges. Thankfully, most of the challenges reported in the previous year's report are currently being resolved. The construction of the new courts and bungalows stated earlier in this report is at various stages of completion and construction is progressing speedily. There are, however, a few persisting challenges, including a lack of staff and lack of adequate logistics like computers, printers, stationeries, suitable swivel chairs, office tables etc. Though the region has benefited from the construction of some new bungalows, some courts that have not benefited from the construction of the new bungalows have dilapidated bungalows that need renovation.

7. CONCLUSION:

The year under review has been generally good for members in the region. Members have worked hard to make the year under review a

successful one. The members of the region are geared up to work harder and commit to upholding our judicial oath and performing our duties for the betterment of mother Ghana. We, however, hope that the various developments and constructions of new courts and bungalows will be continued, completed, commissioned and utilised by members and court users by the end of this calendar year. We wish all members good health and professional fulfilment in the upcoming legal year.





REGIONAL REPORT OCTOBER 2021- JULY 2022 ASHANTI REGION

His Lordship, Justice Kofi Akrowiah
(Supervising High Court Judge, Ashanti Region)
AMJC Regional Representative.

This report spans from October 2021 to July 2022 in respect of activities bordering on the Courts, infrastructures, Judges and Magistrates in the Ashanti Region.

THE STATUS OF COURTS IN THE REGION:

The region continues to have the second highest number of Courts in the country, next to Greater Accra Region. The region now has 63 functional Courts.

The distribution is as follows:

Court of Appeal	-	1
High Courts	-	16
Circuit Courts	-	14
District Courts	-	32

Under the tutelage of our current leader, His Lordship Justice Kwasi Anin Yeboah, the Chief Justice of the Republic of Ghana, the service in the region has seen an unprecedented increase in infrastructure development, in respect of court houses and residential accommodation for Judges.

As at date, additional 14 court houses and bungalows have been completed and awaiting takeover and commissioning.

Their locations are as follows: **Old Tafo, Adansi Asokwa, Boamang, Atasemanso (Santasi), Pakyi No. 2, Juaso, Juaben Abuakwa, Toase, Wiemoase, Akumadan, Twedie, Bompata and Tapa.**

There are also 13 others that are still under construction, with some of them at very advanced stages.

The distribution is as follows: Bonwire, Donyina, Ntonso, Anwiankwanta, Pokukrom, Drobonso, Ejura, Jacobu, Nyinahin, Asante Mampong (which consists of a High Court and a Magistrate's Court), Kodie, Kwadaso (Ewhimase) and Mamponteng. The total number of court houses stands at 26 and residential accommodation at 27.

These are all Common Fund funded projects.

There are few others which are not necessarily under the Common Fund funded projects but are the respective Districts/Municipal Assemblies funded. One such project is on-going at Breman and this is also at an advanced stage.

VACANT COURTS

The following courts are without substantive Judges or Magistrates;

1. HIGH COURT, OBUASI
2. HIGH COURT PRISON'S, KUMASI
3. CIRCUIT COURT, AKROPONG
4. CIRCUIT COURT, KUMAWU
5. DISTRICT COURT, JACOBUS
6. DISTRICT COURT, ASIWA

JUDGES/MAGISTRATES TRANSFERRED INTO THE REGION

The following Judges and Magistrates were transferred into the Region within the period under review.

NO	JUDGE/MAGIS- TRATE	COURT/STATION	EFFECTIVE DATE
1	HER LADYSHIP HANNAH TAYLOR	HIGH COURT "1", LAND DIVISION	04/10/2021
2	HIS LORDSHIP DANIEL K. OBENG	HIGH COURT "3", LAND DIVISION KUMASI	04/10/2021
3	HER HONOUR PRISICILLA MIREKU DAPAAH	CIRCUIT COURT "2", ADUM	04/10/2021
4	HIS HONOUR NANA BREW	CIRCUIT COURT, NKAWIE	04/10/2021
5	HIS WORSHIP NANA ASIBEY OSEI	DISTRICT COURT, AGONA	04/10/2021
6	HER WORSHIP VICTORIA VERA AKONU	DISTRICT COURT, NYINAHIN	04/06/2021
7	HIS WORSHIP FUMEY DENNIS EYRAM	DISTRICT COURT, MAMPONG	07/06/2021
8	HER WOR- SHIP CHRISTINA BRUCE-ASHIRIFI	DISTRICT COURT, KODIE	07/06/2021
9	HIS WORSHIP KOFI OWUSU SEKYERE	DISTRICT COURT, OBUASI	04/10/2021

10	HER WORSHIP DEBORA GYAAWA DONKOR	DISTRICT COURT, KWASO	13/12/2021
11	HER WORSHIP GRACE LINDA NYARKO	DISTRICT COURT, AKOMADAN	13/12/2021
12	HER WORSHIP VIVIAN YAMUSAH LARIBA	DISTRICT COURT, EJURA	01/11/2021
13	HIS WORSHIP AN- THONY ASSAH	DISTRICT COURT, TWEDIE	04/10/2021
14	HIS WORSHIP AU- GUSTINE ESSAH	DISTRICT COURT, NEW EDUBIASE	04/10/2021
15	HIS WORSHIP SAMUEL BUABIN QUANSAH	DISTRICT COURT, MAM- PONG	04/10/2021
16	HIS WORSHIP FRANK ASHITEY ADDO	DISTRICT COURT, EFFIDUASE	04/10/2021
17	HER WORSHIP AN- NIE ADOBOR	DISTRICT COURT JACOB, U, (ON STUDY LEAVE)	04/10/2021
18	HER HONOUR KIZITA NAA AKOOWAA QUARSHIE	DISTRICT COURT, ASOKWA	07/04/2022
19	HER WORSHIP JU- LIANA OCRAN	DISTRICT COURT, MANK- RANSO	01/03/2021

JUDGES/MAGISTRATES TRANSFERED FROM THE REGION (2021/2022)

The following Judges and Magistrates were also transferred from the Region.

NO	JUDGES/MAGISTRATES	EFFECTIVE DATE
1	HIS LORDSHIP SENYO AMEDAHE	04/10/2021
2	HIS LORDSHIP FRANCIS OBIRI	01/11/2021
3	HIS HONOUR MICHAEL JOHNSON ABBEY	04/10/2021
4	HER HONOUR PATRICIA AMPONSAH	04/10/2021
5	HIS WORSHIP DIVINE KWAKU AHIADU	04/10/2021
6	HER WORSHIP MOLLY PORTIA ANAFO-SALIA	04/10/2021
7	HIS WORSHIP MICHAEL DEREK-OCLOO	04/10/2021
8	HIS WORSHIP FLORENCE BAAH	04/10/2021
9	HER WORSHIP CYNTHIA ANDY	03/10/2021
10	HIS WORSHIP GEORGE DAVIS OFORI	03/10/2021

RETIREMENT

His Worship John Josiah- Kwofie retired from the Twedie District Magistrate Court but has since been engaged on contract and posted to Apam in the Central Region.

NEW COURTS WITH JUDGES/MAGISTRATES BUT YET TO BE COMMISSIONED

The following are the new Courts with Judges and Magistrates appointed and or assigned to them but yet to be commissioned in the Region.

- a. CIRCUIT COURT, ADANSI ASOKWA
- b. CIRCUIT COURT, OLD TAFO
- c. CIRCUIT COURT, ABUAKWA
- d. DISTRICT COURT, TOASE
- e. DISTRICT COURT, ADANSI -ASOKWA
- f. DISTRICT COURT, JUABEN
- g. DISTRICT COURT, PAKYI NO. 2
- h. DISTRICT COURT, POKUKROM

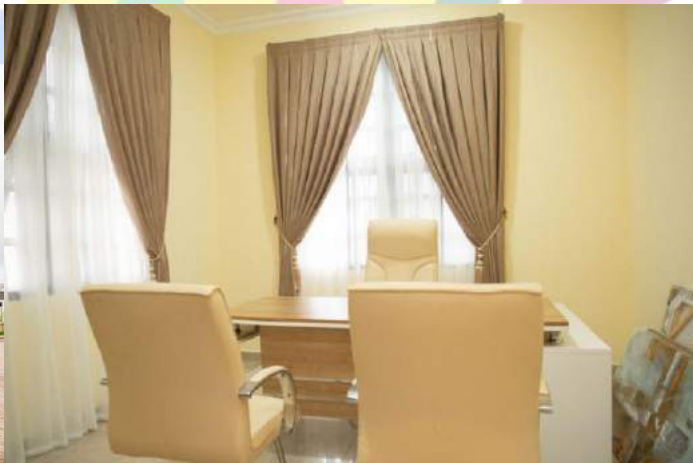
RESIDENTIAL ACCOMODATION FOR JUDGES

The Residential accommodation for the Court of Appeal Judges and High Court Judges which sword cutting was done on the 20th April, 2021, jointly, by his Excellency Nana Addo Dankwah Akuffo Addo, the President of the Republic of Ghana, and Otumfuo Osei Tutu II, the Asantehene as well as His Lordship, Justice Kwasi Anin Yeboah, the Chief Justice in April 2021, is ready for commissioning. It is important to note that, this will solve the long-standing problem of Court of Appeal Judges staying in hotels, with the resultant inconveniences as well as the resultant cost to the service, effectively.

We are indeed, grateful to, His Lordship Kwasi Anin Yeboah, the Chief Justice of the Republic, for his keen interest in seeing to this project's completion in record time.

The facility consists of 20 unit- residential bungalows, a Guest House, a Swimming Pool and a Long Tennis Court.

There is also a 6 (six) unit-bungalow for which His Lordship , the Chief Justice is to determine which officers shall benefit from its use. Prospective beneficial officers are likely to include; the Deputy Judicial Secretary for the Northern Sector and the Resident Medical Officer for the Judicial Service Clinic.



(scenes from the newly constructed bungalows for Court of Appeal Judges and High Court Judges)

LUNCHEON

The Ashanti Bar hosted members of the Ashanti Bench to a luncheon on the 4th of November 2021 to commemorate the induction into office of Yaw Acheampong Boafo, ESQ, as the National President of the Ghana Bar Association.

COCKTAIL

The Ashanti Bar as part of their collaboration with the Bench in the region, invited the Judges and Magistrates to their end of year cocktail party organized at the Officers Mess in Kumasi, on the 22nd December, 2021.

END OF YEAR MEETING

The Ashanti Bench also had its End of Year meeting and get together at the Miklin Hotel, Kumasi, on the 23rd December, 2021 to mark the end of the year 2021.

BEREAVEMENTS/WELFARE

- His Lordship, the Chief Justice lost his brother at Toase. As the host region, and under the leadership of His Lordship,

Justice Kofi Akrowiah, the Supervising Judge for the region, we extended our energies and support to His Lordship both at the one-week observation and the final funeral rites at Toase. At the final funeral rites which was held on 12th March, 2022, we mobilized our members and the staff within the region, to join hands with other Judges and staff from across the country, to support and mourn with His Lordship, the Chief Justice.

Indeed, the region made the highest donation among the various regional groupings and departments in the Judicial Service.

- The Regional Association also supported our brother H/W Thomas Boadi Soyori, the District Magistrate at Mamponteng upon the loss of his daughter.

- Similarly, the Regional Association contributed to support our Sister H/W Naomi Kuntour of Awuto District Court, in support of her father's final funeral rites at Yonsu near Jamase in the Ashanti Region on Thursday 11th August 2022. Some of our members were also in attendance.

COVID-19 BOOSTER SHOTS

In pursuance of the services quest to fight against the prevalence of Covid -19 pandemic, Covid -19 booster shots were administered to the members of the Ashanti Bench on 3rd and 4th of February 2022.



(scenes from Martyr's Day Service)

Some members of staff equally benefitted from the exercise.

STAKEHOLDERS ENGAGEMENT WITH JUDGES OF THE NORTHERN SECTOR

At the direction of His Lordship, Justice Kwasi Anin Yeboah, the Chief Justice, Judges of the Northern Sector participated in a stakeholders' engagement on the "National Energy Transition Plan" on Thursday 21st of July, 2022, at the Court of Appeal Conference room in Kumasi. He personally opened the program. The Honorable Minister for Energy, Dr.



(scenes from Martyr's Day Service)

Mathew Opoku Prempeh, MP, was ably represented by his two deputies, Hon. William Owurako Aidoo, MP, and Hon. Agyapa Mercer, MP. The Honourable Minister for Transport was also represented by his deputy, Hon. Hassan Tampuli, MP. The program was initiated by the Ministry of Energy in collaboration with the Ministry of Transport.

MARTYR'S DAY CELEBRATION

This year's Commemoration of the Martyr's Day's church service in the Ashanti Region was held once again at the St. George's Interdenominational Church

at Adum. This year's programme, which was, as usual, organized by the Ashanti Regional Bar, was particularly patronized by the Bench in the region, in record numbers.

We were fortunate to have His Lordship Justice Paul Baffoe-Bonnie, of the Supreme Court in our midst. The sermon was preached by Rev. Dr Steve Asante, a guest preacher with the host minister being Very Rev. Dr Isaac Osei Karikari.

We commend the Ashanti Regional Bar for their consistency in commemorating this historic occasion in a special way. They also kindly hosted the Judges and Magistrates, as usual in a handsome way.

THE NATIONAL ADR WEEK

The Region was privileged to have been selected to host this year's national celebration of the ADR week. The programme was launched by His Lordship Justice Kwasi Anin Yeboah, the Chief Justice of the Republic, present was Her Ladyship Irene Larbi, the Judge in-charge. Also present were almost all Superior Court Judges in the region and other Lower Bench Judges and Magistrates.

JUDICIAL TRAINING INSTITUTE PROGRAMMES

The region was privileged to host a number of JTI Training programmes involving Judges and Magistrates of the entire Northern Sector. The programmes include the fol-

lowing;

END OF YEAR CEREMONIAL PHOTO SESSION

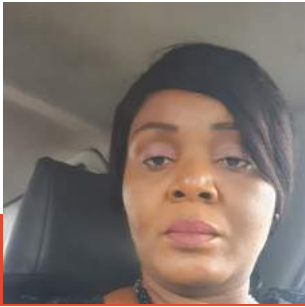
In pursuance of the Ashanti Regional Bar's practice, it invited all Judges and Magistrates within the region to participate in this year's Annual End of Year Ceremonial Photo Session.



(scenes from the End of Year Photo Session with the Ashanti Bar)

NO	PROGRAMMES	DATE	VENUE	SPONSOR	CATEGORY OF STAFF
1	A One-day training on Lenders and Borrowers Act	29th October, 2021	Golden Bean Hotel, Kumasi	Bank of Ghana	Circuit Court Judges in Northern Sector
2	A One-Day training on SSNIT Pensions	19th March, 2022	Golden Bean Hotel, Kumasi	SSNIT	High Court Judges, In Northern Sector
3	A One -Day training on Gender Mainstream and Equity	1st April, 2022	True Vine Hotel, Kumasi	Judicial Service	Circuit Court Judges and Magistrates in Ashanti, part of Central and Western Regions

4	A one-day training on narcotics offenses	20th May, 2022	Golden Bean Hotel, Kumasi	POS	Selected High Court, Circuit Judges and Magistrates in the Northern Sector
5	A one-day training on borrowers and lenders Act. 1052	22nd July, 2022	(Golden Tulip) Lancaster Hotel, Kumasi	Bank of Ghana	High Court Judges in Northern Sector
6	A one-day training on Bail application, electronic evidence, forensic audit and analysis	27th July, 2022	(Golden Tulip) Lancaster Hotel, Kumasi	US Embassy	High and Circuit Court Judges in Northern Sector
7	A one- day training on bail application, electronic evidence, forensic audit and analysis	28th July, 2022	(Golden Tulip) Lancaster Hotel, Kumasi	US Embassy	All Magistrates in the Northern Sector
8	One -day training on enforcement of judgements	12th August, 2022	True Vine Hotel, Kumasi	Judicial Service	Circuit Judges and Magistrates in Ashanti, part of Central and Western North Regions



CENTRAL REGIONAL REPORT

HL MALIKE AWO WOANYAH DEY J

Respectfully, I present this report on behalf of our indefatigable Supervising High Court Judge, Justice Patience Mills-Tetteh, all Superior Court Judges and Lower Court members of the Association of Judges and Magistrates in the Central Region. The report is focused on the following;

- 65th Independence Day celebrations
- Visit by his Lordship the Chief Justice
- Some other significant events that took place in the Region within the 2021/ 2022 legal year
- The number of courts in the Region
- Postings, Transfers, Promotions and retirements
- Bereavement

65TH INDEPENDENCE DAY CELEBRATIONS FOR 2022

Ghana's 65th Independence Day was celebrated on 6th March 2022 at the Cape Coast Stadium under the theme 'Working Together, Bouncing Back Together'. In attendance were President Nana Akufo Addo and other dignitaries, including the

Honourable Chief Justice of the Republic, His Lordship Justice Anin Yeboah accompanied by other Superior Court Judges. After the program, the Chief Justice met with members of the Association in the Region over lunch at the Coconut Grove Hotel. He encouraged members to be committed to the work and also spoke about plans to build a new Courts Complex for Cape Coast.

VISIT BY HIS LORDSHIP THE CHIEF JUSTICE

On 21st June 2022, his Lordship the Chief Justice paid a surprise visit to the Law Courts Complex in Cape Coast. He told a group of High and Circuit Court Judges and magistrates that the primary purpose of his visit was to assess the level of deterioration of the Law Court Complex since he had heard that the entire building was unfit for any meaningful work by judges, magistrates and staff. He expressed his sympathy and solidarity toward judges and magistrates working in the building. Led by the Supervising High Court Judge, Justice Patience Mills Tetteh, the Regional Administrator and some Judges, he took a tour of the entire Courts complex. He expressed utter shock at the state of the building and ordered the release of funds for the

roof to be fixed in the meantime to forestall the incessant leakages in the courtrooms and chambers of members whenever it rained. He also spoke about the plans the Government had to build a new court complex in Cape Coast. The land, he said, had been acquired, and plans were in place to bring that project to fruition. He invited all High Court Judges present for lunch at the Ridge Royal Hotel. A group photograph was taken, after which he left. We are grateful to his Lordship for the concern he has shown on the issue. We are hopeful that the project will commence soon.



Group photograph with his Lordship after his visit to the Law Court Complex, Cape Coast.

SOME OTHER IMPORTANT EVENTS THAT TOOK PLACE IN THE REGION WITHIN THE 2021/ 2022 LEGAL YEAR END OF YEAR 2021, GET-TOGETHER

Our yearly get-together 2021 edition took place at the Coconut Grove Hotel, Elmina, on 22nd December, 2021. Sixteen (16) members attended the event. Members had a great time together over a variety of local and continental dishes amidst chats

about work and welfare. The Supervising High Court Judge announced that a new regional representative, HL Malike Awo Woanyah Dey and Treasurer HH Veronique Praba Tetteh had been nominated due to the transfer of HH Francis Obuajo and HH Abena Buansi from the Region. The Supervising High Court Judge told the gathering that parting gifts had been presented to them on behalf of members of the Association in the Region. She encouraged all to be hardworking despite the challenges that confronted members.



Group Photograph after the get-together

MARTYRS' DAY CELEBRATION

This year's Martyrs' Day celebration in honour of the three murdered Justices of the High Court was organised by the Central Regional Bar at Christ Church, Anglican Cathedral, Cape Coast, close to the Law Courts Complex on Thursday 30th June, 2022. It was well patronised by lawyers and Judges in the Region, especially those in the Cape Coast Metropolis. The Diocesan Bishop of the church in Cape Coast the

RT. Rev. Victor Reginald Atta Baffoe was the principal officiant and was assisted by Very Rev. Ebenezer Love Annan, the Dean of the Cathedral. He implored all gathered to be as selfless and loving as the three murdered Judges. He said they loved their country and played their various roles with integrity, candour and honesty. Their lives, he said, were worthy of emulation. At the close of the service, the Regional Bar provided both judges and lawyers with refreshments. The Supervising High Court Judge and the Bench are deeply grateful to the church and the Bar for organising the programme to eulogise the three Judges who died whilst serving the nation. We pray that such mishaps will not befall any member of the judiciary. We say, 'never again'.



Photograph of Judges with the Bar and the Diocesan Bishop of the Anglican Church after the Remembrance Service

MEETING WITH THE NATIONAL BAR EXECUTIVES

Led by the National Bar President, the executives of the National Bar paid a visit to the Law Courts

complex and met with all High court Judges. The executives of the Regional Bar accompanied them. The Supervising High Court Judge welcomed them on behalf of all Judges and Magistrates in the Region. The President told the Judges that they were in the Region to survey the amenities available as there was the possibility of holding the Bar Conference for 2023 in the Region, specifically Cape Coast. The President enquired from judges whether there were any issues that could be brought to their attention. The issue of the state of the Law Courts Complex in Cape Coast featured in the discussion. Other issues include; ethics at the bar, punctuality to court and time consciousness of lawyers to ensure that cases are disposed of expeditiously for justice to be effectively served. The President assured the judges that they would bring the concerns raised to the notice of lawyers in the Region.

NATIONAL TREE PLANTING DAY

As part of the 'Green Ghana Day' launched on 1st March 2020 by the President of the Republic His Excellency Nana Addo Dankwa Akufo Addo, on 10th June 2022, the Supervising High Court Judge assisted by a group of magistrates and judges planted trees in front of the

Law Courts Complex, Cape Coast to commemorate the day. The tree seedlings were provided by the Forestry Commission in the region. She called on all to embrace the project and take the frantic measures needed to protect the environment.

Additionally, led by the Central Regional Administrative Officer of the Judicial Service, some personnel of the service also planted tree seedlings in various parts of the region to mark the day. He also noted that each person had a role to play in



Group photograph of Her Ladyship Justice Patience Mills Tetteh with other Judges and magistrates at the Law Courts Complex, Cape Coast after the tree planting project

NUMBER OF COURTS IN THE REGION

The Central Region has one Court of Appeal, which sits in Cape Coast every 3rd week of every month. The President of the Court is Her Ladyship Justice Irene Charity Larbi (JA) who is soon to retire from the Service. The others are; Justice Georgina Mensah- Datsa (JA) and His Lordship Justice Alex Darko Asare (JA). There are ten High Courts in the Region, five of which are in Cape Coast. The rest are in Agona Swedru, Mankessim,

Winneba, Assin Fosu and Dunkwa-On-Offin. The Circuit Courts are six, two of which are in Cape Coast. The rest are in Agona Swedru, Mankessim, Kasoa Ofaakor and Dunkwa-on-Offin. There are 21 District courts in the Region. Two are in Cape Coast and the rest are in Awutu, Kasoa, Brehman Asikuma, Ajumako, Elmina, Dunkwa on-Offin, Essakyir, Saltpond, Twifo Praso, Winneba, Abura Dunkwa, Agona Swedru, Apam, Assin Fosu, Dawurampong, Nyamkumasi Ahenkro, Ofaakor, Diaso and Mankessim.

We believe that with the distribution of these courts in the Region, to a large extent, justice will be served at the doorsteps of the people of the Central Region.

POSTINGS, TRANSFERS AND PROMOTIONS

Several judges and magistrates were posted to and transferred from the Region, whilst others were promoted from the Circuit to the High Court and from District to the Circuit Court.

Judges/Magistrates transferred to the Region.

1. H/H Veronique Praba Tetteh, Circuit Court, Cape Coast
2. H/H Yaw Poku Achampong, Circuit Court, Dunkwa on-Offin
3. H/H Rosemond Dodua Agyiri, Winneba District Court
4. H/W Bernice Mawusi Kpodo, District Court, Mankessim
5. HW Bernard Biney, District court, Diaso

6. H/W Alice Afua Yirenkyi, DC Ajumako
7. H/W Erasmus Narh Addo, DC, Saltpond
8. HW John K Josiah Kwofie, DC, Apam
9. H/W Juliana S.P. Mensah, DC, Abura Dunkwa
10. H/W Maxwell Ofori Kpodo, DC, Twifo Praso
11. HW Osman Abdul-Kareem, DC, Dunkwa on-Offin

Judges/Magistrates transferred from the Region

1. H/H Abena Buansi from Cape Coast to Accra, Family Court
2. H/H Francis Asong Obuajo from Dunkwa On-Offin to Volta
3. H/W Patience Ashami Ablor from Saltpond to Western Region
4. HW Festus Fovi Nukunu from DC Dunkwa on Offin to Tema
5. H/W Annie Adorbor from DC Saltpond to Volta
6. H/W Isaac Oheneba-Kuffour from DC Winneba to Accra

Voluntary Retirement

1. H/W Anthony Abebrese

Judge elevated to the High Court

1. H/L Ebenezer Osei Darko

Magistrates Elevated to the Circuit Court

1. H/H James Botah
2. H/H Rosemary Dodua Agyiri

3. H/H Isaac Apeatu

BEREAVEMENT

Three of our members were bereaved within the year. They are; Her Honour Mawusi Afudego sitting as Additional magistrate at the Elmina District Court who lost her mother, HW Erasmus Narh Addo of Saltpond District Court also lost his mother and Naomi Kuntour of Awutu District Court lost her father. We are grateful to all members who took time out of their busy schedules to support our brother and sister in diverse ways.

With a grateful heart, we say, there was no death of any member recorded for the legal year.

CONCLUSION

On behalf of the Supervising High Court Judge, Judges and magistrates in the Region, we thank God Almighty for His sustenance and protection throughout the year. We pray that He will perfect that which concerns all of us in the coming legal year.



GREATER ACCRA REGIONAL REPORT

HH Abena Amponsah Buansi

Circuit Court, DOVVSU Accra

Your Lordship the Chief Justice of the Republic of Ghana, Justices of the Superior Courts and members of the Lower Bench. Respectfully, I bring you the warmest of wishes from the Greater Accra Regional Branch of the Association of Magistrates and Judges of Ghana (AMJG). Thanks to the Almighty God, the 2021/2022 legal year has come to a successful end. This report highlights some major events and activities in the Region for the 2021/2022 legal year.

ACTIVITIES

The Judiciary of Ghana hosted the ECOWAS Community Court of Justice's 2022 External Court Session at the Law Court Complex in Accra from 21st March 2022 to 1st April 2022.

The Commonwealth Magistrates and Judges (CMJA) Conference has been scheduled to be held at the Labadi Beach Hotel in Accra from 4th September 2022 to 9th September 2022.

There were no social events in the Region in the year under review. Hopefully there will be a

few organized in the coming legal year. The year under review saw a remarkable increase in the number of judges attending funerals to support members in the Region that were bereaved.

DISTRIBUTION OF COURTS

The Greater Accra Region has one hundred and seven (107) courts made up of one Supreme Court, one Court of Appeal, fifty-nine High Courts, twenty Circuit Courts and twenty-six District Courts.

NEWLY ESTABLISHED COURTS

The Sowutuom High Court became fully operational on the 4th of July 2022. The Circuit Court DOVVSU and District Court DOVVSU which were commissioned on 22nd January 2022 became fully operational on the 4th of April 2022.

The Abeka District Court was relocated and named the Achimota District Court, following its relocation to Achimota where a fit for purpose court has been constructed by the Assembly.

There are four (4) newly

constructed courts across the Region which are expected to be commissioned and to become fully operational in the next legal year. These are the Gbetsile High and District Courts, Kpone District Court and Ofankor District Court.

VIRTUAL COURTS

Vacation courts in the Greater Accra Region were held virtually. We laud this innovation and hope for a successful implementation in the whole country.

TRANSFERS, POSTING AND RETIREMENT.

There were transfers in the year under review with some members being transferred outside, and others into the Region. There were also some appointments and elevations to the various courts in the Region. We also had some members going on retirement. We wish them all the best in their future endeavors. We wish everyone a fruitful Legal Year.





A REPORT ON THE ACTIVITIES OF AMJG IN THE NORTHERN REGION FOR 2021/22 REPORTING YEAR

**H/H ANTHONY ADUKU-AIDOO ESQ
REPORTED BY THE SECRETARY
(AMJG NORTHERN REGION)**

INTRODUCTION

This report is on the developments in the Northern Region in respect of our courts, conditions of Magistrates and Judges' bungalows and transfers during the above stated time period. The Northern Region as reported on now, still comprises the current North East Region, Northern Region and the Savanna Region.

THE COURTS

There has been a lot of development in the region in respect of the provision of court buildings. During the period under review only the Bimbila District court that has been under renovation. However, there is a number of new court buildings being built in many of the districts in the Northern Region. There are completely new court buildings in such areas as Nalerigu, Gambaga, Walewale, Yagabaga-Kubare, Cheriponi, Nakpanduri, Buipe, Nanton and Damongo, all under the auspices of the Common Fund

Administrator, while the one built at Kpandai is by the Kpandai District Assembly. All these courts are either completed or virtually completed. However, none has been commissioned and handed over to the Judicial Service for operations yet. Interestingly, the Damongo District Court which was closed down some time ago has been renovated in the past but has never been re-opened for use. So, in terms of court buildings there are a number of them ready to be activated and the region will have a good number of courts to serve the people in the Northern Region.

In spite of these developments at the districts, which are largely welcome, the deplorable condition of the buildings that house the High Courts and the Circuit Court in Tamale cannot be overlooked. Some of the walls need repair works and the floors need some re-construction to enhance delivery of justice in the region.

HUMAN RESOURCE & TRANSFERS

Staffing in the courts in the region has been improved tremendously. New officers like processing clerks,

preters have been posted to the region to boost the court staff. However, the region still has a problem in respect of interpreters for Fulani language. In the whole of the Northern Region courts there is only one lady at the High Court, Tamale, who is available for Fulani interpretation at the courts. This poses a grave problem because she cannot be available in such distant places like Yendi, Bimbila and Nalerigu courts, or even outside Tamale area. This gravely slows down trial processes in the various courts because of language barrier. For areas like Yendi and Bimbilla the problem is even more compounded with two other languages: Komkomba and Chokosi or Anufo languages which together with Fulani language make up the bulk of the languages spoken in the criminal cases.

It is proposed that suitable persons here in the localities and recommended to the Head office for employment. With respect to Magistrates and Judges in the region, the situation is not that good. Within the reporting year, two Judges from the High Court, Tamale: Justice Obeng and Justice Osei Kwame have been transferred out of the region without being replaced. This has led to the situation whereby all the High Courts of the Region are manned by only one judge, the Supervising High Court Judge,

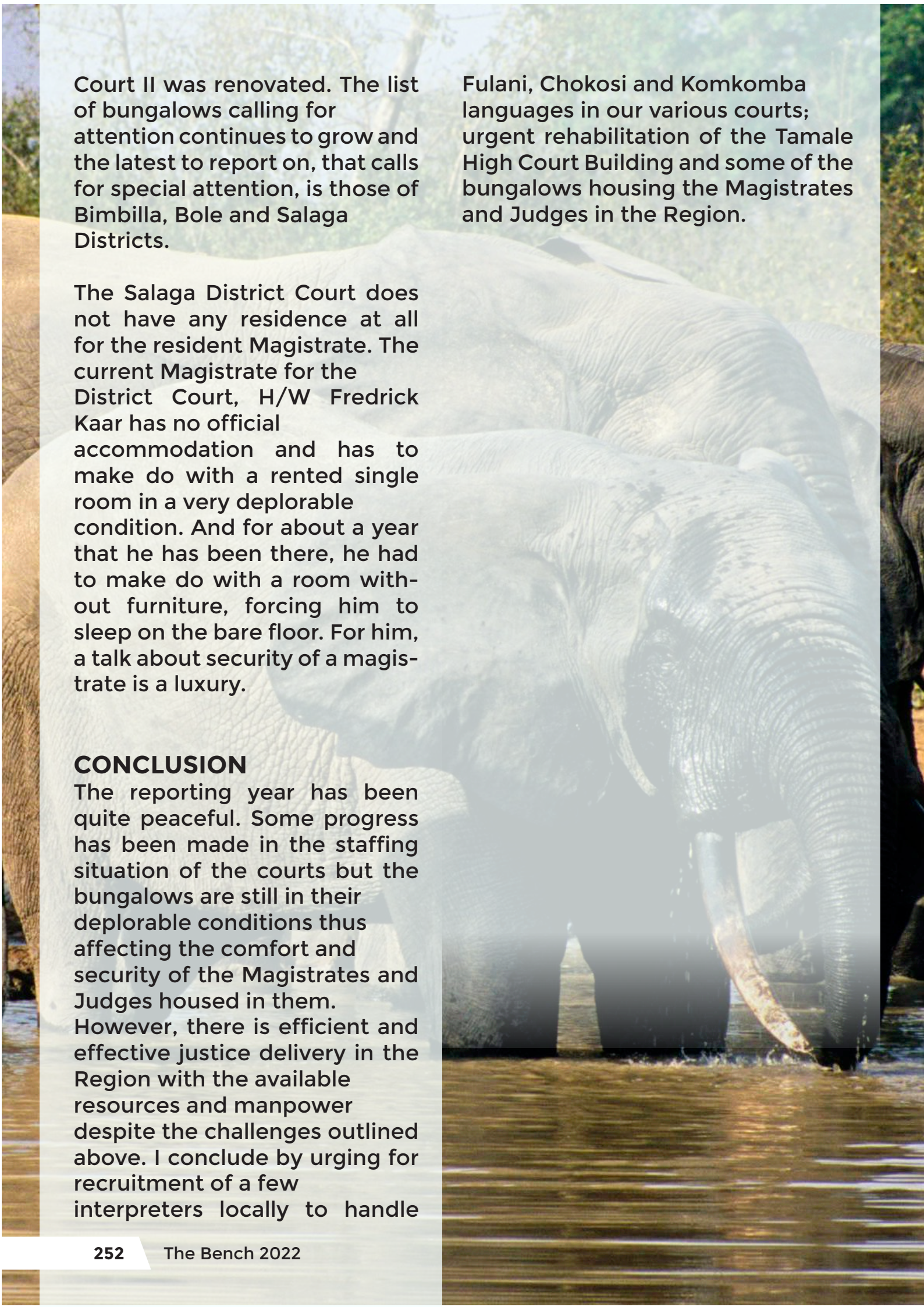
Justice Richard Kogyakwah. So on the Superior Bench in the region the situation is bad.

However, on the Lower Bench, Magistrates who were moved out of the region on transfer have been replaced. Except for the Walewale Court, there have been replacements for Magistrates at Salaga Court, Tamale Court II, and Bole Court. H/W Derrick Annan is in for Tamale Court II; H/W Samuel Kofi Bediako is at post at Nalerigu District Court; H/W Fredrick Kaar has replaced H/W David Sebiyam at Salaga District Court; while H/W Edward Essel is in for H/W Prince Cudjoe at the Bole District Court.

BUNGALOWS

We continue to report on the deplorable conditions of bungalows in this region. Maintenance of the bungalows has been an over flogged issue. As a result, a few of the bungalows are in quite a dire situation, with leaking roofs and cracked walls. Many of the bungalows do not have walls around them to boost up security. We share the residencies with intruders including animals who could breach our privacy with impunity. This situation also poses a security threat to us.

During the reporting period only one bungalow housing the Magistrate for Tamale District



Court II was renovated. The list of bungalows calling for attention continues to grow and the latest to report on, that calls for special attention, is those of Bimbilla, Bole and Salaga Districts.

Fulani, Chokosi and Komkomba languages in our various courts; urgent rehabilitation of the Tamale High Court Building and some of the bungalows housing the Magistrates and Judges in the Region.

The Salaga District Court does not have any residence at all for the resident Magistrate. The current Magistrate for the District Court, H/W Fredrick Kaar has no official accommodation and has to make do with a rented single room in a very deplorable condition. And for about a year that he has been there, he had to make do with a room without furniture, forcing him to sleep on the bare floor. For him, a talk about security of a magistrate is a luxury.

CONCLUSION

The reporting year has been quite peaceful. Some progress has been made in the staffing situation of the courts but the bungalows are still in their deplorable conditions thus affecting the comfort and security of the Magistrates and Judges housed in them. However, there is efficient and effective justice delivery in the Region with the available resources and manpower despite the challenges outlined above. I conclude by urging for recruitment of a few interpreters locally to handle



UPPER EAST REGIONAL REPORT

His Worship Mawukoenya Nutekpor
District Court-Bolgatanga
(AMJG Regional Representative)

The Upper East Regional Branch of the Association of Magistrates and Judges of Ghana (AMJG) extends its warmest greetings to the Honourable Chief Justice and members of the Association. This annual report seeks to focus on the following:

- ▶ Number of Courts
- ▶ New Courts under Construction or yet to be commissioned in the Region
- ▶ List of Judges and Magistrates
- ▶ Vacant Courts
- ▶ Challenges/Problems
- ▶ Bawku Conflicts
- ▶ Trainings/Workshops
- ▶ Promotion
- ▶ Transfers/Postings
- ▶ Conclusion

Number of Courts

There are eleven (11) Courts in the Region. They are two High Courts, two Circuit Courts and seven District Courts. The two High Courts are located in Bolgatanga. There is one Circuit Court in Bolgatanga and another in Bawku. The District Courts are located in Bolgatanga, Navrongo, Bongo, Garu, Bawku, Sandema and Zebilla.

New Courts under Construction or yet to be Commissioned in the Region

1. Zuarungu District Court
2. Pusiga District Court

List of Judges and Magistrates

1. His Lordship Justice Charles Adjei Wilson, High Court 1, Bolgatanga (Supervising High Court Judge).
2. His Lordship Justice Alexander Graham, Circuit Court, Bolgatanga (He was promoted to the High Court in July 2022.)
3. His Worship Mawukoenya Nutekpor, sitting Magistrate at Bolgatanga District Court but undertakes additional responsibility at Zebilla District Court.
4. His Worship Samuel Boafo Amewuho, Garu District Court.
5. His Worship Selorm Kuma Dzata, sitting Magistrate at Sandema District Court but also undertakes additional responsibility at Navrongo District Court.

6. His Worship David Dokurigu Sebiyam, Bongo District Court.

Vacant Courts

1. High Court 2, Bolgatanga
2. Zebilla District Court
3. Navrongo District Court
4. Bawku Circuit Court
5. Bawku District Court

6. The Circuit Court at Bolgatanga is likely to be vacant after His Lordship Justice Alexander Graham is posted to a High Court unless a Circuit Judge is posted to the Court.

We are urging management to post Judges and Magistrates to fill the above vacancies in the Region.

Challenges/Problems

Most of the court houses and Bungalows in the region are not in good condition or are in deplorable states. For instance, the Circuit Judge's bungalow at Bolgatanga is in a very bad state. It is not suitable for habitation.

Our complaints and petitions for them to be renovated have been intensified over the past year. The furniture in most of the court rooms in the Region is also not in good condition or not enough. The Bungalows in the Region are also not fenced. It will be preferable if the Bungalows are fenced in order to enhance security of members in the Region. The Administration, High and

Circuit Courts Complex at Bolgatanga need painting.

The Jurors at the High Court have threatened several times to boycott sittings. This is because their allowances are not being paid on time. We recommend to management to see to it that the Jurors are paid for their services on time. The services of Jurors are indispensable considering the number of indictable offences on trial in the Region.

Navrongo District Court needs to be furnished with new furniture. The District Court, Bolgatanga is housed in premises rented by University of Ghana for their distance learning education. We have received several letters to move from the premises but there is no suitable place. The Municipal Assembly promised to construct a new premise for the District Court, Bolgatanga but they are yet to commence the project.

The Family Tribunals and Juvenile Courts at the Bolgatanga and Garu District Courts have not been functioning for the past two years. All efforts for the panel members to be constituted have proved futile.

Bawku Conflicts

The Circuit and District Courts at Bawku have been closed down or suspended due to the ongoing conflicts at Bawku. As a result of the suspension of those Courts, cases from Bawku are

being brought to the Courts in Bolgatanga and Garu. We hope the conflicts will end as soon as possible for those Courts to resume sitting.

Trainings/Workshops

Members in the Region attended workshops organised by the Judicial Training Institute on Bail Applications, Plea Bargaining, Electronic Evidence, Forensic Audit and Analysis. Some members attended workshop on Gender Mainstreaming and Equity, and Sensitisation Workshop on Care Reforms and Care Orders. Some members also attended Workshop on Stakeholders Engagement with Judiciary on National Energy Transition organised by the Energy Commission.

There was also a sensitisation Workshop on the New Borrowers and Lenders Act, 2020 for High Court Judges for which the Supervising High Court Judge attended.

Promotion

The Bolgatanga Circuit Court Judge, His Honour Alexander Graham has been promoted to the High Court.

Transfers/Postings

The following judges or magistrates were transferred from the region during the 2021/2022 legal year:

1. His Honour Malcolm Ewoenam Bedzrah (from

Bolgatanga Circuit Court to Techiman Circuit Court).

2. His Worship Frederick Tieme Kaar (from Bongo District Court to Salaga District Court).

3. His Worship Osman Abdul-Hakeem (from Bolgatanga District Court to Dunkwa-On -Offin District Court).

The following judges or magistrates were posted to the region during the 2021/2022 legal year:

4. His Honour Alexander Graham (now a Justice of the High Court).

5. His Worship Mawukoenya Nutekpor

6. His Worship Selorm Kuma Dzata

7. His Worship David Dokurigu Sebiyam

Conclusion

We hope that the challenges or problems facing members in the Region will be addressed as soon as possible. It is also hoped that the new legal year will bring us joy and good health. We wish all members a fruitful new year.



VOLTA AND OTI REGIONAL REPORT

KWESI APPIATSE ABAIDOO
(VOLTA AND OTI REGIONAL REP.)

INTRODUCTORY REMARKS

Once again, the Almighty God has given us an opportunity to see each other and to celebrate a successful year. We are most grateful to Him. A year full of legal and non-legal activities ranging from transfers, promotions, participating in workshops and funerals, among others, in the midst of our limited resources.

Transfers and Promotions

The 2021/2022 legal year began with the usual transfer of some magistrates in the Volta and Oti regions. These transfers saw our able and dear regional representative to AMJG, His Worship Robert Addo (as he then was), transferred to Akim Oda District Court, and replaced by His Worship Kwesi Appiatse Abaidoo (as he then was), at District Court 1, Ho. In the month of December 2021, two other magistrates joined the Volta and Oti regional bench, namely; Her Worship Angela Kesse Mireku, of Abor District Court and His Worship Alhassan Dramani, of Dambai District Court.

We are happy to report that our

regional representative and his predecessor were elevated to the Circuit Court Bench on the 28th February 2022. We congratulate them, and pray that many of such promotions or elevations occur on the regional bench again in the next legal year (2022/2023).

Workshops and Other Legal Related Activities

In the course of the year under review, members of the Volta and Oti bench enjoyed workshops organized for us at Ho. The workshops included training on gender-based violence organized by JTI, and training on the right to information organized by the Right To Information Commission, at Ho Technical University. The Supervising High Court Judge together with some magistrates and judges participated in the quadrennial conference of JUSAG which took place at the main campus of University Of Health And Allied Sciences, at Ho. As part of carrier mentorship program for school children, the Supervising High Court Judge, Justice George Buadi hosted students of Ola SHS and some other schools in the Volta Region, and interacted with them to boost their confidence and whip up their appetite towards the study law.

Participation in Tree Planting Program

As part of government's effort in greening Ghana by planting trees across the nation, the Volta and Oti bench took part in the tree planting exercises as a civic responsibility. Some magistrates and judges planted trees in their respective jurisdictions to commemorate the event. At Dambai, the Oti regional capital, His Worship Alhassan Dramani and his staff took part in the exercise.

Welfare Issues

Welfare issues dominated the program and agenda of the Volta and Oti bench. We are grateful to the almighty God for the good health members of the Volta and Oti bench enjoyed over the year under review.

Unfortunately, during the course of the year, some members of the Volta and Oti bench together with some members of AMJG from other regions (but who hail from Volta and Oti regions) lost their dear ones. We are happy to report that, during the funerals of our departed loved ones, the Volta and Oti bench were at the various funerals within the two regions to mourn with our dear brothers and sisters. This also, afforded us an opportunity to commune with each other and from the feedback we received from those who lost their dear ones, it appears we were a source of comfort to them. In this regard, we want to encourage all

members of AMJG to take part in attending programs affecting members of the bench.

Courtroom Infrastructures and Accommodation

Management of the Judicial Service during the course of the legal year supplied swivel chairs and some office equipment to the various courts in the Volta and Oti regions. These items supplied, helped us to discharge our duties in congenial and safer environment. This reduced the plight of magistrates and judges going for spinal and muscular related treatments at the hospitals due to bad sitting postures. We are most grateful to management of Judicial Service for coming to our aid. But, we continue to urge management of Judicial Service to ensure that courtroom infrastructure is improved to enhance efficiency and also provide safer working environment for magistrates, judges and court staff.

Accommodation issues came up as usual, and members expressed their desire to have their residences renovated, as so many of the magistrates' and judges' residences are in a deplorable state. The Adidome and Ho magistrates' residences require urgent renovation works. While reporting on the issue of deplorable residential accommodation, it is important to practice responsible use of courtroom properties and

residential accommodation provided us by the Judicial Service. After all, the facilities are meant for our comfort and safety. We therefore call on all members of the bench to make responsible use of office and residential facilities given to us.

Conclusion

The legal year 2021/2022 has been an eventful one, full of activities for both Volta and Oti regions, and we are grateful to God for how far he has brought us. We explode with joy and pat each other on the shoulder for a good work done. While congratulating ourselves, we pray that good omen be our property in the ensuing year. We say “akpe na mi kata. Mawu ne yra mi. Translated to mean; “thank you all. God bless us all)”.



WESTERN/WESTERN NORTH REGIONAL REPORT

HL AFIA N. ADU-AMANKWA

The Western/Western North branches of the Association of Magistrates and Judges of Ghana (AMJG) extend their warmest greetings to the membership of the Association. This annual report provides information on the activities, progress and challenges of the courts in the regions for the period under review.

OVERVIEW OF COURTS

The regions have a total of thirty-two (32) courts comprising seven (7) High Courts, five (5) Circuit Courts and twenty (20) District Courts. Currently, the regions have twenty-nine (29) judges made up of five (5) High Court judges, five (5) Circuit Court judges and nineteen (19) magistrates. Presently, the Sekondi High Court “2”, Commercial Court “B” and the District Court, Sefwi Debiso have no substantive judges. The overall staff strength is three hundred and sixty-two (362), excluding the members of the Bench.

PROMOTIONS AND TRANSFERS

His Honor Joseph McAli was promoted to the Circuit Court

during the year under review. Her Honor Henrietta Charway was appointed and posted to sit as an additional Magistrate at the Daboase District Court. The Regional Accountant and Deputy Regional Administrative Officer, Mr. Joseph Donkor and Rev. G. Amoah respectively retired from the Service in April and June of 2022.

MEETINGS

This year’s annual get-together occurred on 26th February, 2022, at the Raybow Hotel, Takoradi. The essence of the together was for members to fraternize and meet the new members who had been posted to the region. Sadly, it was poorly attended, with only four members in attendance.

BENCH/BAR DIALOGUE

This year’s dialogue with members of the Western Bar took place on 1st April, 2022. The meeting was to afford a dialogue between the Bar and the Bench regarding the improvement of the administration of justice in the region. Among the issues that cropped up for discussion was the registrars’ insistence on valuation reports in applications

for probate and letters of administration, appropriate attire for lawyers and the roles of the Bar and Bench in improving the administration of justice in the region.

MARTYRS DAY MEMORIAL SERVICE

The 2022 Martyrs day church service was organized by the Western Region Bar at the Anglican Pro-Cathedral Church, Takoradi on 3rd July, 2022. The service was well attended by judges and members of the Bar. At the service, the biographies of the murdered judges and their contributions to the development of the law were read. The presiding bishop of the church also offered prayers for all judges and lawyers in the region for God's wisdom and protection.

ADR Week (Western Region)

This year's ADR week was launched at Daboase District Court on 25th July, 2022, under the theme

"Access to Justice, ADR a Tool for Peace and Stability". The essence of the celebration was to create public awareness about how ADR (mediation) could be used to resolve cases expeditiously and effectively.

INFRASTRUCTURE AND PERSONNEL

The regions have seen an improvement in their infrastructure and personnel. A

mechanized borehole has been constructed at the premises of the High Court, Sekondi to provide water for the Commercial Court, High Court and Gender Based Violence Court. Aquila International Limited has also been awarded a contract to rehabilitate sections of the Commercial Court Building. Most of the courts in the regions are well furnished with swivel chairs, pews and tables. In terms of personnel, the courts are adequately staffed with courtroom staff, cleaners and watchmen.

CONCLUSION

The reporting year has generally been a peaceful one. We wish all members of the Association a happy new year. It is prayed that the new legal year comes with peace, prosperity, security, wisdom and good health.





INTERNATIONAL ASSOCIATION OF WOMEN JUDGES GHANA CHAPTER (IAWJ)

2020 - 2022 REPORT

INTRODUCTION

This report showcases the activities of the IAWJ Ghana Chapter from 2020 to 2022. Within this period, the leadership and members of the Association have organised and participated in various activities that affect our society with specific emphasis on women and children.

IAWJ REPORT 2020

The activities of the Ghana Chapter were minimised due to the COVID-19 Pandemic.

1. Justice Mabel Agyemang was appointed as the Chief Justice of the Turks and Caicos Islands.
2. On 27 January 2020 the Chapter donated GH¢2,000.00 to the Autism Awareness Centre.

Donation To Nsawam Medium Security Female Prison

The IAWJ Ghana Chapter made a donation to the Female Wing of Nsawam Medium Security Prisons instead of visiting because of the pandemic.



IAWJ Executives presenting their yearly donation to the Female Nasawam Medium Security Prison for their Skills-Training Program

Osu Cluster of Schools

In order to mark World Trafficking Day in June 2019, the Association, represented by its Executives and some members visited the Osu Cluster of schools in Accra. HL Justice Jane H A Quaye (then a Circuit Judge) and HH Judge Dora G A Inkumsah Eshun (then a Magistrate), educated the children on child trafficking, the signs and indicators of trafficking, steps to take to protect themselves from trafficking and immediate responses when they become aware of the presence of a human trafficking agent. The management and students expressed their gratitude for the presentations and asked for future engagements with the students on issues such as domestic violence in the home. The Association's visit was timely, as the entire country was yet to recover from the infamous kidnapping of the "Three Takoradi Girls".



Students of the Osu Cluster of Schools



Vice-President HL Justice Rita Agyeman-Budu, Vice-Treasurer HH Judge Dora G A Inkumsah Eshun (then a magistrate) and other members of IAWJ Ghana Chapter at the OSU Cluster of Schools



HL Justice Henrietta Abban (retired) at the 2021 IAWJ AGM

IAWJ REPORT 2021 Skills Training Support At The Nsawam Female Medium Security Prison

The Ghana Chapter made another donation towards the soap-making skills training programme for the Nsawam Female Medium Security Prison.



HL Justice Helena Inkumsah Abban (retired) at the 2021 AGM

2021 Annual General Meeting

At the 2021 AGM, IAWJ members had the opportunity to re-connect in person.



IAWJ Ghana President and Vice-President HL Justice Merley A Wood and HL Justice Rita Agyeman-Budu, Former IAWJ Ghana President HL Justice Mariama Owusu, HL Justice Gifty Dekyem with HL Justice Barbara Ward-Acquah (retired)



Former IAWJ Ghana Chapter President HL Justice Mariama Owusu, current Vice-President HL Justice Rita Agyeman-Budu and HL Justice Gifty Dekyem with HL Justice Jennifer Tagoe at the 2021 AGM



IAWJ Ghana Secretary HL Justice Maliike Awo Woanyah Dey with other lady justices at the 2021 IAWJ Ghana AGM

IAWJ REPORT 2022

Global Mentoring Walk 2022

On Thursday 3rd March 2022, we had a Mentoring Programme with young ladies supported by Madam Brigitte Dzogbenuku, the founder of the Global Mentoring Walk 2022.

Ark Foundation

Through voluntary contributions, the Chapter supported the Ark Foundation's *Mother's Day Shelter* with a donation of GHc3,500.00 in June 2022. The services and support available to survivors at the Shelter are counselling, case management and social enquiry, educational/skills training support, medical, legal, psychological and pastoral aid, feeding, clothing and other basic needs, childcare, referrals, reintegration and resettlement.



IAWJ President HL Justice Merley A Wood presenting the cheque to Madam Angela Dwamena Aboagye with HL Justice Juliana E. Amonoo-Neizer

Visit to Skills Training Program at the Nsawam Female Prison

The IAWJ Ghana visited the Nsawam Female Prison on Wednesday 10th August 2022, interacted with the fe-

male inmates, made a donation to the Skills-Training Program and purchased products made by the inmates in the Program.



The IAWJ President, Treasurer and Vice Secretary with members at the Nsawam Female Medium Security Prison in August 2022



IAWJ President HL Justice Merley Wood and Vice-President HL Justice Rita Agyeman-Budu inspecting products made by female inmates at the Nsawam Medium Security Prison in August 2022

lawj Member Bereavements

Many IAWJ Ghana members were bereaved between 2019 to 2022. We visited and mourned with them. It is our prayer that the Good Lord will strengthen and comfort all our sisters.



The IAWJ President, Vice-President, Vice-Treasurer and members showing support to HL Justice Cynthia P. Addo, the Judicial Secretary, on the loss of her mother



IAWJ members showing support to HW Naomi Kuntour in the Ashanti Region on the loss of her father



IAWJ Executives and members showing support to HL Justice Gertrude A Torkornoo in Accra on the loss of her father



IAWJ Vice-Treasurer and members showing support to HW Beatrice Love Woname Elimons at Amasaman on the loss of her father

2022 CMJA Conference

Many IAWJ members were nominated to attend the CMJA conference held in Ghana between September 4 – 9, 2022.



IAWJ Executives and members after the Gender Meeting at the 2022 CMJA Conference

2022 Annual General Meeting

The 2022 Annual General Meeting of the Ghana Chapter was held on 26th September 2022 in the Labadi Suite at the Labadi Beach Hotel in Accra. Elections were held and new Executives were elected.



The Hon. Chief Justice Kwasi Anin Yeboah, the Judicial Secretary HL Justice Cynthia P Addo, the President of the IAWJ HL Justice Merley A Wood and former IAWJ President HL Justice Mariama Owusu at the 2022 AGM



The Hon CJ Justice Kwasi Anin Yeboah, AMJG President HL Justice Henry A Kwofie, former IAWJ President HL Justice Mariama Owusu and HL Justice Agnes Dordzie (retd) with outgoing IAWJ Executives at the 2022 AGM



Hon CJ Justice Kwasi Anin Yeboah with IAWJ Executives and members at the 2022 AGM



Incoming IAWJ Executives - HL Justice Rita Agyeman-Budu (President), HL Justice Maliye Awo Woanyah Dey (Vice-President) HH Abena Amponsah Buansi (Treasurer), HW Susanna Nyakotey (Secretary), HW Rosemary Edith Hayford (Vice-Treasurer) and HW Cynthia Ohene (Vice-Secretary) at the 2022 AGM

Donation to SOS-Children's Villages Ghana

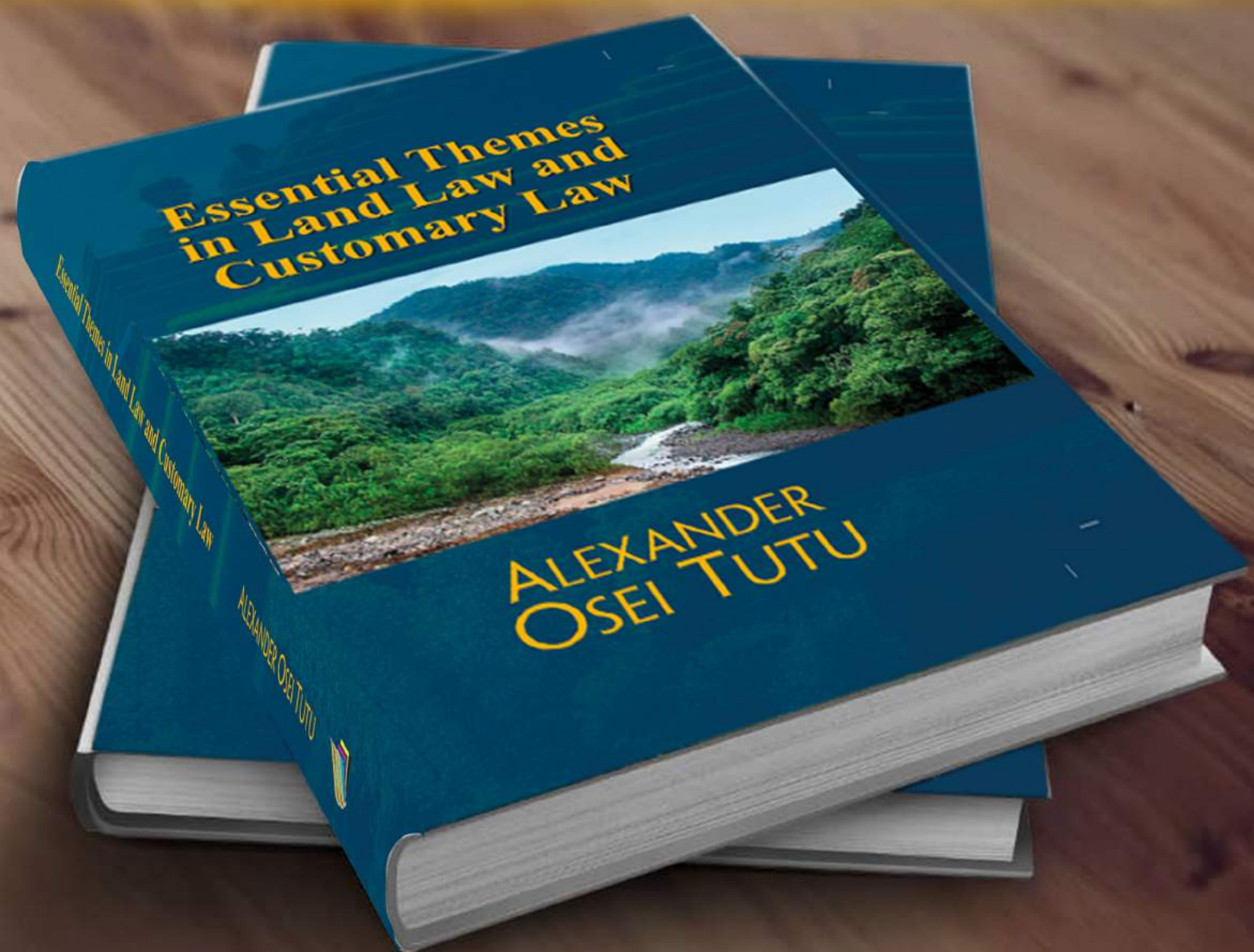
During the 2022 Annual General Meeting of the Ghana Chapter, the Executives donated a cheque of GH¢2,000 to SOS-Children's Villages Ghana on behalf of the Association.



Outgoing IAWJ President HL Justice Merley A Wood, Outgoing Vice-Treasurer HH Judge Dora G A Inkumsah Eshun, HL Justice Jane H A Quaye and HL Justice Abena A Oppong presenting a cheque to Mr. Josiah B. Nartey, National Safeguarding Advisor and staff of SOS Children's Villages Ghana at Labadi Beach Hotel after the 2022 AGM.

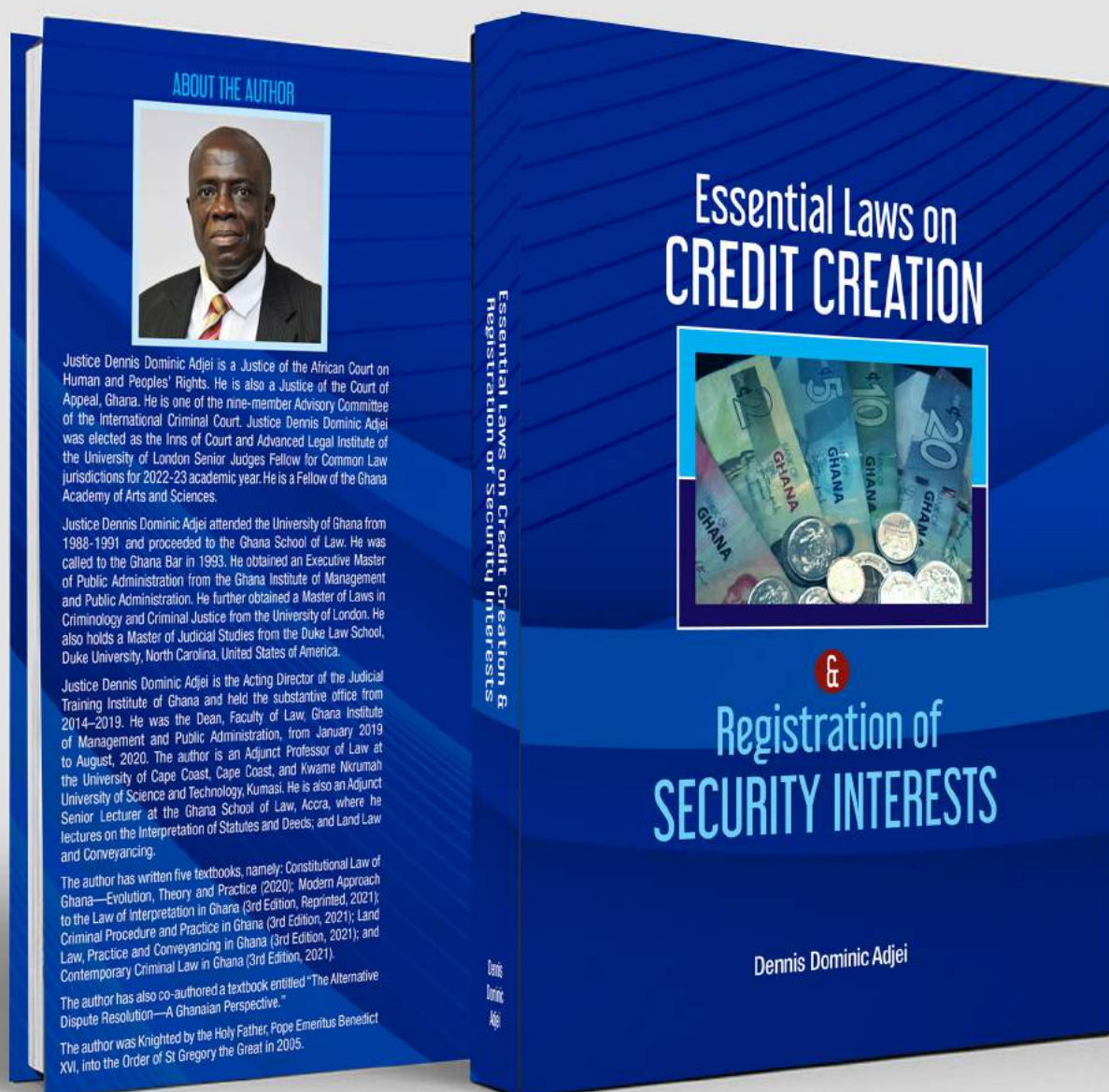
ESSENTIAL THEMES IN LAND LAW AND CUSTOMARY LAW

By ALEXANDER OSEI TUTU



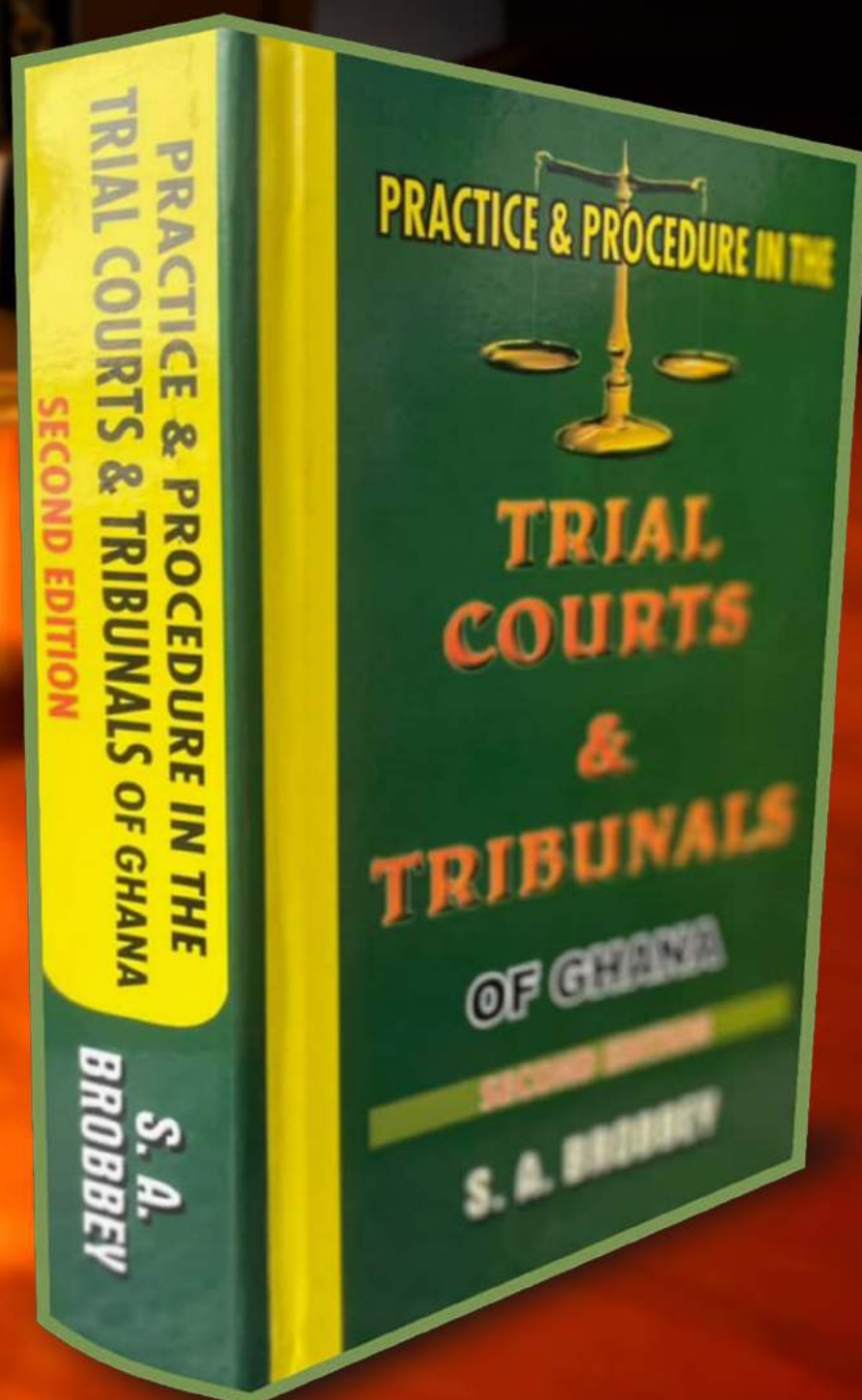
ESSENTIAL LAWS ON CREDIT CREATION & REGISTRATION OF SECURITY INTERESTS

By Justice Dennis Dominic Adjei



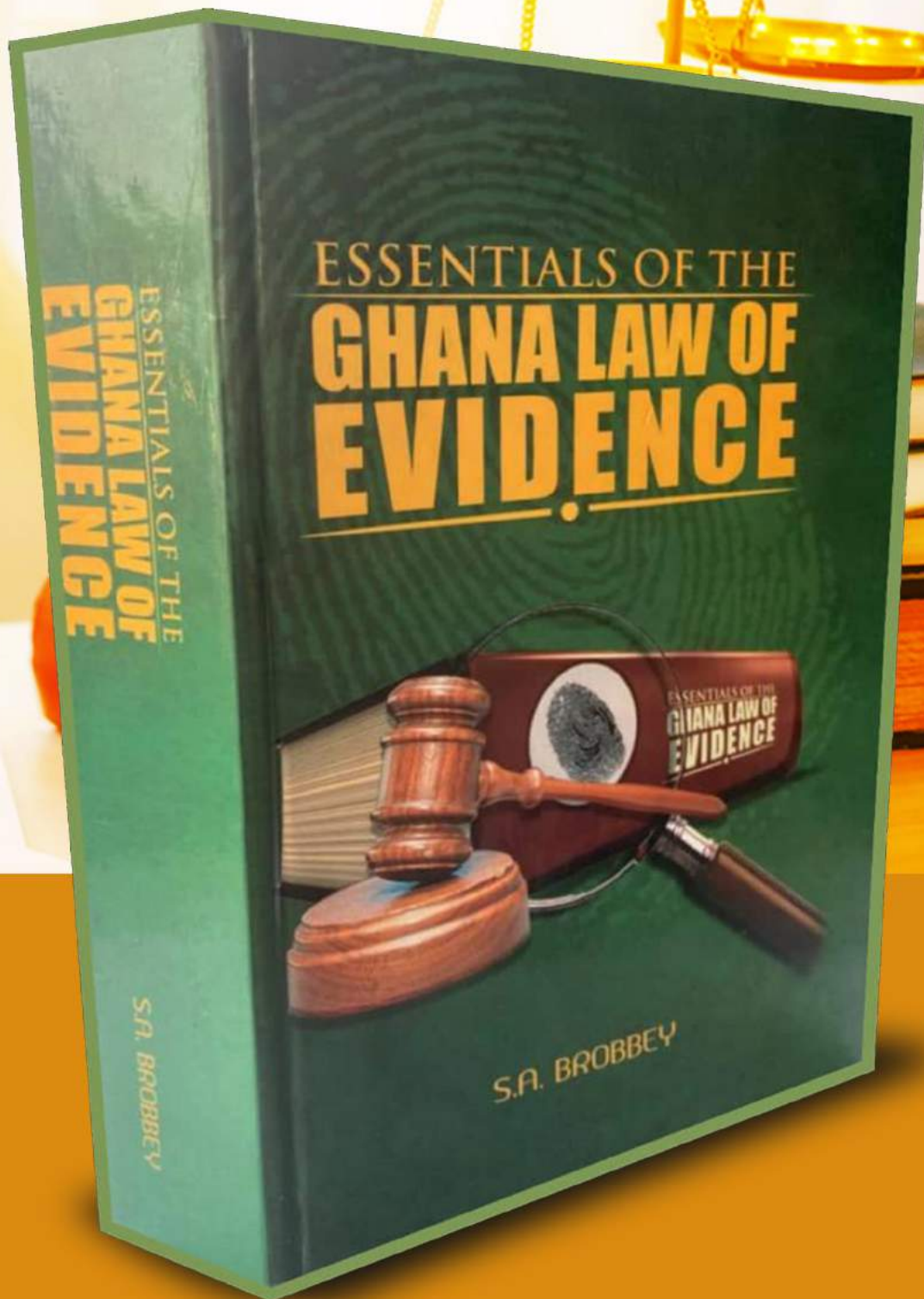
PRACTICE & PROCEDURE IN THE TRIAL COURT & TRIBUNALS OF GHANA

By S.A. Brobbey



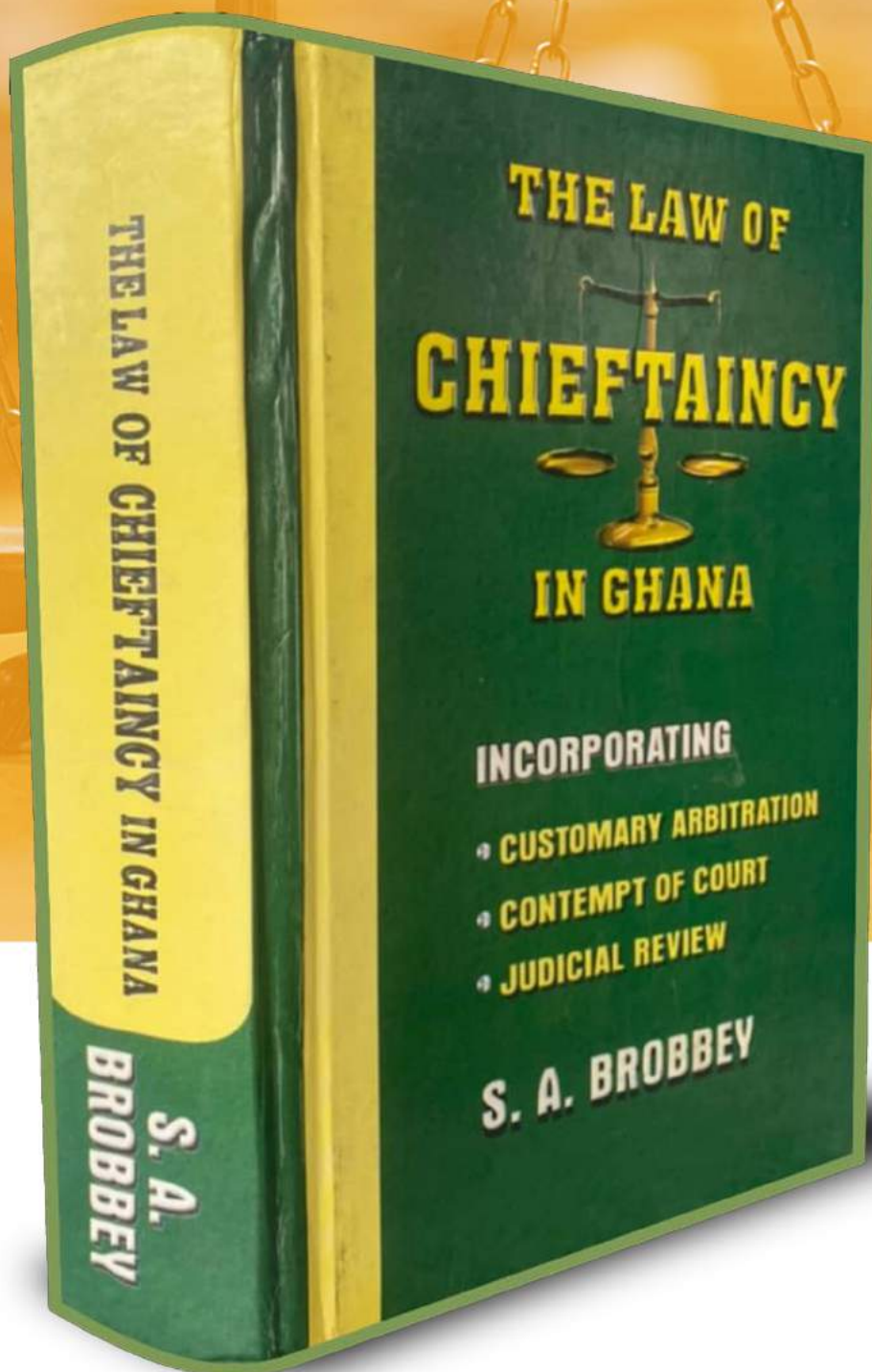
ESSENTIALS OF THE GHANA LAW OF EVIDENCE

By S.A. Brobbey

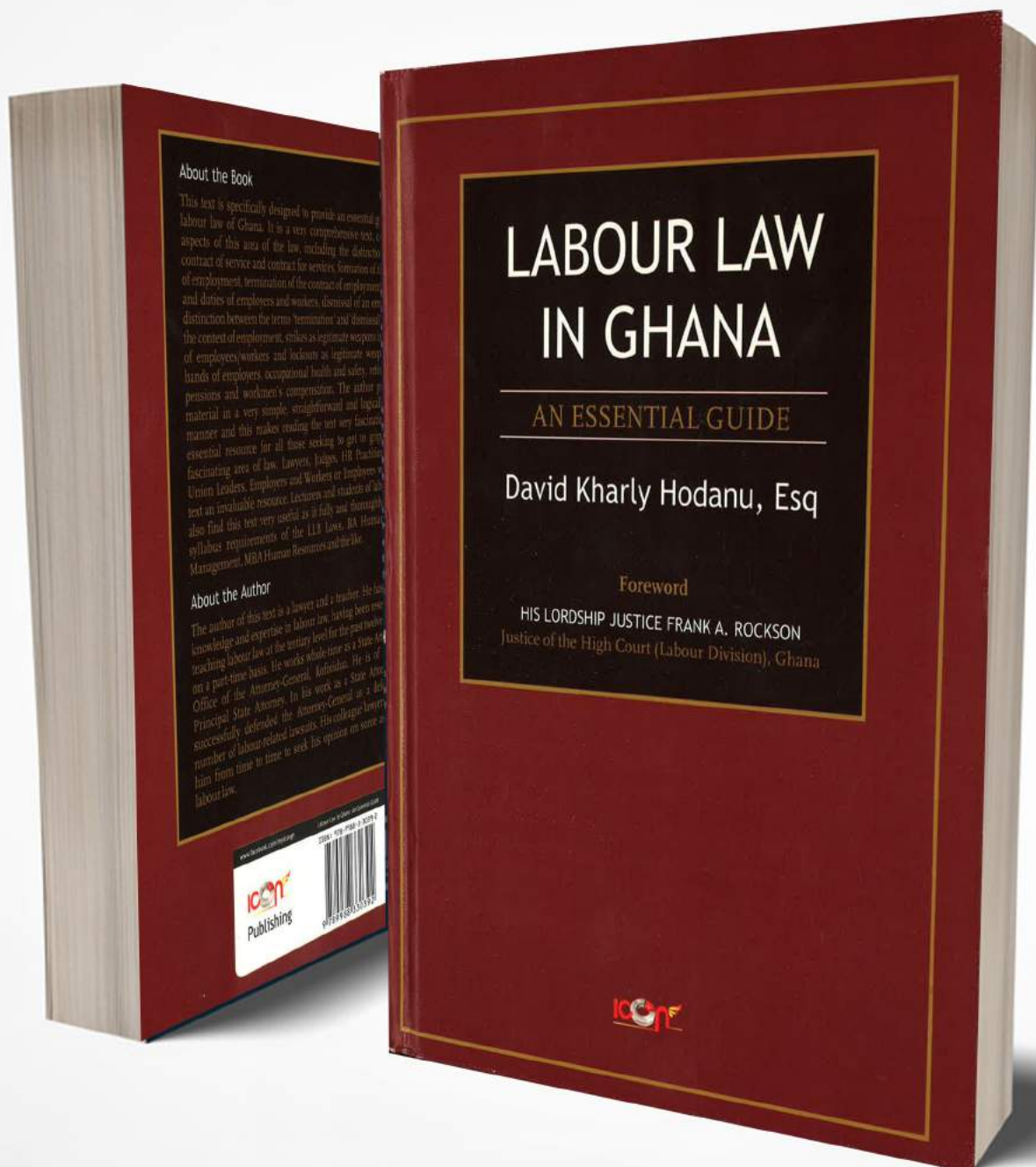


THE LAW OF CHIEFTANCY IN GHANA

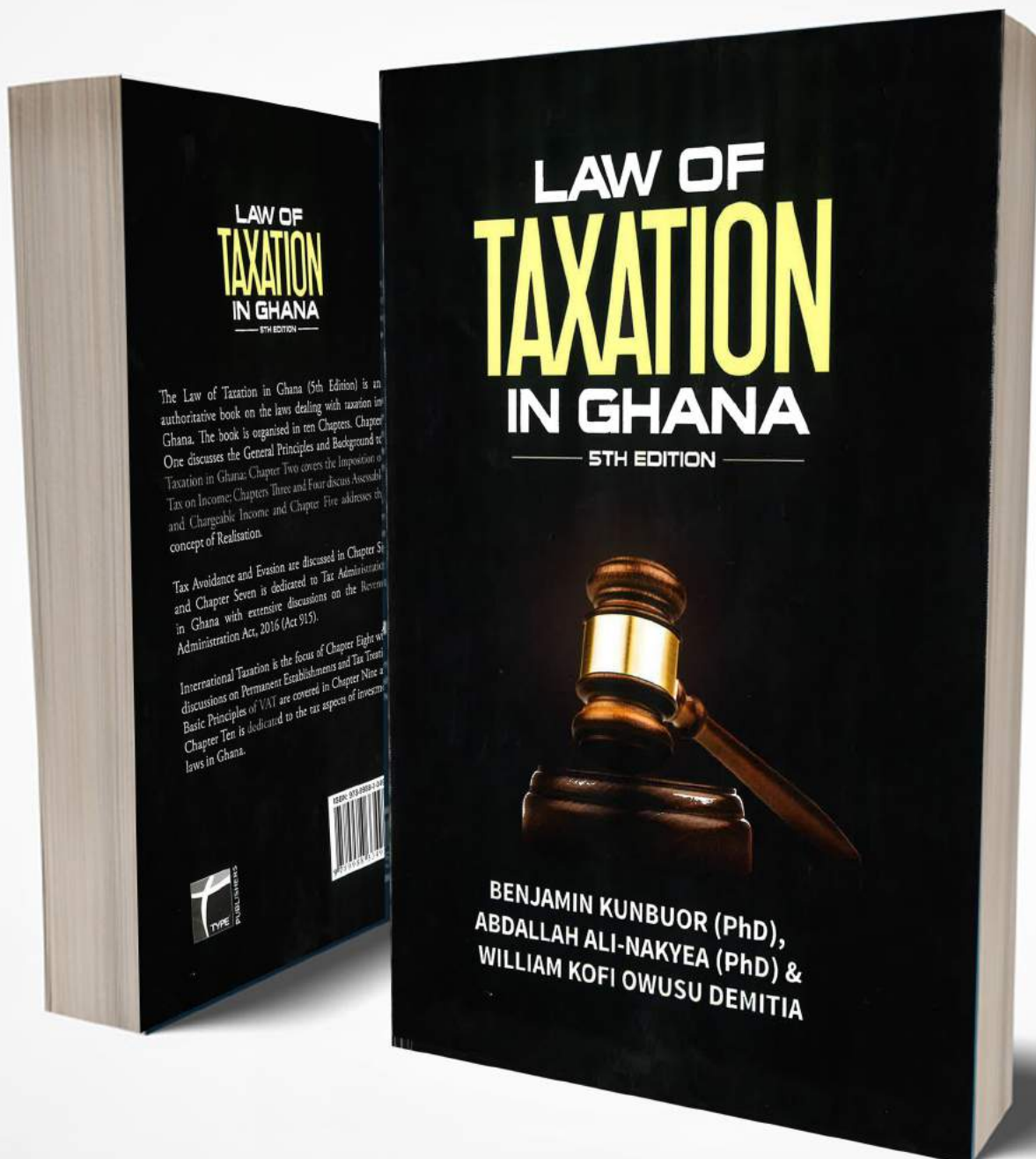
By S.A. Brobbey



LABOUR LAW IN GHANA



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