IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

DORDZIE (MRS.) JSC

PROF. KOTEY JSC

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL MOTION

NO. J8/61/2022

2TH MARCH, 2022

JELEEL COMPANY GH. LIMITED .... PLAINTIFF/RESPONDENT

RESPONDENT/APPLICANT

VRS

ZION ENERGY LIMITED .... DEFENDANT/DEBTOR

TRASSACCO FURNITURE LIMITED .... APPLICANT/APPELLANT/

RESPONDENT/RESPONDENT

RULING

DOTSE JSC:-

In this Ruling, the Plaintiff/Respondent/Appellant/Applicant, hereafter referred to as the Applicant prays this court for an Order to stay execution of the judgment of the Court of Appeal dated 28th October 2021 which was in favour of the Applicant/Appellant/Respondent hereafter referred to as Respondent.

FACTS OF THIS CASE

The Applicants herein issued out a writ of summons against Zion Energy Ltd., the Defendants therein on the 13th March 2019 before the High Court Accra in ***Suit No. LD/0539/2019 intitutled Jeleel Company GH. Ltd. – Plaintiff v Zion Energy Limited – Defendant.***

The antecedents of the case indicated quite clearly that the Defendants therein did not contest the case as will soon be set out in portions of the judgment of the High Court on the matter.

RELIEFS CLAIMED BY THE APPLICANTS AGAINST DEFENDANTS THEREIN AT THE HIGH COURT

The Applicants claimed the following reliefs against the Defendants:-

a. "Declaration of title and recovery of possession of a parcel of land lying at Adentan with named boundaries and containing approximately 10.98 acres.
b. An order of perpetual injunction restraining the Defendant, its agents, assigns or otherwise howsoever described from entering, assigning, transferring or otherwise disposing of or dealing with or developing the land which is the subject matter of this action.

c. An order directed at the Lands Commission to expunge any recorded transactions affecting the land in dispute.
d. General and special damages for trespass and costs including legal fees."

HIGH COURT DECISION

On the 31st day of July, 2019, the High Court, (Land Division 5) Accra, delivered and entered final judgment in favour of the Applicants herein in respect of their claims but reserved its reasons to the 15th of October 2019.

On the 15th December 2019, the High Court delivered itself thus:-

> ***"It is trite learning that a Court will not declare title of land in favour of a litigant unless he/she described the identity of the land he/she claim, precisely****. See case of* ***Nortey (No 2) v African Institute of Journalism and Communication &Ors [2013-2014] 1 SCGLR 703.*** *The plaintiff in the instant case has clearly described its land as being situate and lying at Adenta and given its dimensions and boundaries. It has also been able to trace is root of title to the Kplen We Family of La as the allodial title owners and called the head of family to corroborate Plaintiff's claim. The Plaintiff in my view has been able to discharge the burden on it as far as title to the disputed land is concerned.*
>
> *It is for this reason, I entered judgment in its favour and declared title over the disputed land in its favour on the 31st day of July 2019.* ***By way of emphasis, final judgment is entered in favour of the Plaintiff as follows:-***
>
> *Title to the disputed land is declared in favour of the Plaintiff in the instant suit, it is to recover possession of the land described at paragraph 13 of its statement of Claim as well as on its endorsement to the Writ of Summons, the Defendant either by itself, its agents, assigns or otherwise howsoever described are restrained forever from entering, assigning, transferring or otherwise disposing of or dealing with or developing which is adjudged to*

belong to the Plaintiff in this judgment. Again, the Lands Commission is ordered to expunge any recorded transaction affecting the land adjudged to belong to the Plaintiff in this Suit which was in favour of any other person or authority other than the Plaintiff in this Suit." Emphasis

EXECUTION OF WRIT OF POSSESSION

After the delivery of the above High Court judgment in favour of the Applicants, they applied to the High Court for a Writ of Possession which appears to have been executed even though the boundaries of the land have not been specified anywhere in the judgment of the High Court referred to supra.

It is the case of the Applicant that, long after the above judgment had been executed and the Applicants placed in possession, the Respondent herein, who was not a party in the trial High Court applied to the High Court, differently constituted on 2nd July 2020 for a stay of execution and to set aside the Writ of Possession that had been granted.

HIGH COURT DECISION ON APPLICATION BY RESPONDENTS HEREIN FOR STAY OF EXECUTION

The said High Court on 22nd day of July 2020 delivered a Ruling on the said application in the following terms:-

"I have read the Application and the Affidavit in support, as well as the supplementary affidavit. I have also looked at the Affidavit in opposition, I am of the opinion that this Application has not been made out since there is no evidence on record to support the assertion of the Applicant's possession of the land which execution has been levied. On the premises Order 43 (3) is inapplicable in the instant case. In the premises the application is refused. The

exhibits "C" series which were attached failed to demonstrate any sign of the Applicant's possession"

APPEAL TO THE COURT OF APPEAL

It must be noted that, it is this Ruling of the High Court, dated 22nd July 2020 which the Respondents herein, therein Applicants/Appellants appealed to the Court of Appeal.

DECISION OF THE COURT OF APPEAL ON 28TH OCTOBER 2021

The Court of Appeal in a unanimous decision with a concurring opinion in support allowed the appeal, and set aside the order for writ of possession to issue and the writ itself on the following grounds:-

> "In the Consolidated Suits of ***Nene Narh Malti & Ors. V Osei Godwin Teye and Samuel Lamin Oyortey & 2 Ors. V Osei Godwin Teye Osei, Civil Appeal No. J4/13/2017 dated 22nd November 2017***
>
> The Supreme Court in that case, similar to the instant appeal where the Circuit Court Akropong-Akuapim failed to be specific about the land to be recovered in the writ of possession declared the writ as null and void and accordingly set aside. **The apex court consequently gave a practice direction requiring trial Judges and Magistrates to ensure that writs of possession granted to judgment creditors contain an indication of the exact piece or parcel of land, the subject matter of the judgment intended to be executed**.
>
> Taking, a cue for this direction by the apex court, it is clear that the trial court in the instant appeal erred in not indicating the exact piece or parcel of land the subject matter of the judgment intended to be executed. **In view of that, we**

declare the order of writ of possession of the trial court dated 21st November 2019 as null and void.

It is trite learning that where a judgment or an order is void either because it was given or made without jurisdiction or because it is not warranted by any law or rule or procedure the party affected is entitled ex debitio justitiae to have it set aside and the court or a Judge is under a legal obligation to set it aside, either suomotu or on an application of the party affected. No judicial discretion arises here. See

1. ***Mosi v Bagyina [1963] 1 GLR 337***
2. ***Ghassoub v Dizengoff [1962] 2 GLR 1331 SC***

That ground of appeal succeeds and that order for Writ of Possession is hereby set aside." Emphasis supplied

In a concurring opinion, Bright-Mensah JA also stated as follows:-

"In summary, therefore, I am of the considered opinion that the learned trial Judge did not take into active consideration, all the necessary facts and circumstances of the case. Consequently, the refusal of the lower court to grant the application to set aside the writ of possession which was a nullity on ground that it clearly violated Order 43 r 3 of C. I. 47 was an exercise not properly and judicially exercised. See ***Mosi v Bagyina (1963) 1 GLR 337.***

In the circumstances the lower court committed an error of law occasioning a grave miscarriage of justice to the appellant herein when it refused to set aside the writ of possession. **In the result, we reserve the power to interfere with the exercise of the discretion of the lower court and hereby set aside the order for writ of possession to issue as well as the writ of possession itself. Consequently, I do agree that the appeal be allowed."** Emphasis

APPEAL BY THE APPLICANTS TO THIS COURT AGAINST THE DECISION OF THE COURT OF APPEAL

Following the above unanimous decision of the Court of Appeal on 28th October 2021, the Applicants herein on the 17th December 2021, filed a Notice of Appeal against the said judgment in the following terms:-

Grounds of Appeal

a. "That the learned Justices of the Court of Appeal erred in law when they set aside a writ of possession which was already executed and a Certificate of Execution issued.
b. That the learned Justices of the Court of Appeal erred in law when they held that Order 43 of C. I. 47 was applicable to an Application claiming ownership of a parcel of land.
c. That the judgment is against the weight of evidence on record.
d. Additional grounds to be filed upon the receipt of the Record of Appeal.

Relief Sought

a. **"That decision of the Court of Appeal, Accra dated 28th October 2021 be reversed.**

Name and Address of the Persons (s) Affected by the Appeal

Trasacco Furniture Limited

Pantang, Off Accra-Aburi Highway

Accra"

It is in respect of the pendency of the above appeal to this court, that the Applicants have filed the application for Stay of Execution of the said judgment and supported same in an 18 paragraphed affidavit in support.

In an affidavit sworn to by Eunice Agyei, a law clerk of the lawyers for the Applicants, the following depositions in paragraphs 4, 5, 6, 7, 10, 13 14 and 15 are referred to for their emphasis and effect,

4. "That the High Court, Accra in its judgment dated the 15th of October 2019 declared title in respect of a parcel of land situate and being at Pantang, Accra in favour of the Applicant herein against the Defendant herein. Attached hereto and marked Exhibit A is a copy of the judgment."

5. "That the Applicant/Appellant/Respondent/Respondent (hereinafter called the Respondent) was not Party to the said judgment."

6. "That on the 5th day of December 2019 the Bailiffs of the High Court, Accra executed the judgment and placed the Applicant into possession of its land and the Writ returned to the Deputy Sheriff. Attached hereto and marked Exhibit B is a copy of the Certificate of execution."

7. "That on the 12th day of December 2019, long after the Writ of Possession has been executed; the Respondent herein filed a motion seeking to set aside the Writ of Possession."

10. "That on the 28th day of October 2021, the Court of Appeal gave judgment in favour of the Respondent, set aside the ruling of the High Court and set aside the Writ of Possession which had already been executed prior to the application by the Respondent."

11. That being aggrieved by the decision of the Court of Appeal, the Applicant has filed a Notice of Appeal at the Registry of the Court of Appeal. Attached hereto and marked Exhibit E is a copy of the Notice of Appeal.

14. "That although the Court of Appeal did not make any execution orders in favour of the Respondent, **the Respondent is threatening to unlawfully demolish the buildings erected on the Applicant's land under the guise of executing the judgment of the Court of Appeal**."

15. **"That the judgment of the High court declaring title in the land in dispute in favour of the Applicant is still subsisting."**

In response to the said depositions referred to supra, the Respondents also deposed to a 33 paragraphed affidavit in opposition.

RESPONDENTS CASE

In an affidavit sworn to by one Felix Akuffo, Law Clerk of the Lawyers of the Respondents, he deposed to an affidavit in opposition. Reference is accordingly made to the depositions in the following paragraphs 7, 8, 9, 12, 15, 17, 18, 19, 20, 25, 26, 28 and 30 to substantiate the legal arguments made by the Respondents in answer to the Application herein.

7. "That I have been advised by Counsel and verily believe same to be true that the **Notice of Appeal on the basis of which the instant application has been mounted is grossly incompetent."**

8. "That I am advised by Counsel and verily believe same to be true that to the extent that the **Applicant failed and or neglected to seek leave from the Court below or this honourable court before filing the instant appeal, the Notice of**

Appeal is a complete nullity. And the Applicant is precluded as a consequence thereof from mounting the instant application on same."

9. "That at any rate, I am advised by Counsel and verily believe same to be true that the judgment of the learned **Justices of the Court of Appeal did not make any executable order (s) in their judgment delivered on 28th October 2021 to warrant the filing of the instant application**."

12. "That the Respondent has been in actual possession of the land in dispute and has constructed various buildings on a portion of the land which serves as offices for some of its sister companies including, Michelleti Company Limited, Royal Aluminum Company, West Africa Industrial Developers Company Limited amongst others."

15. "That sometime in 2019, the Applicant's attention was drawn to a judgment dated 15th October 2019 granted in favour of the Plaintiff/Respondent/Appellant (Applicant) in ***Suit No. LD/0536/20219, entitled Jeleel Company Ghana Limited v Zion Energy Limited*** against the Defendant therein, following which a writ of possession was granted to the Applicant on the 21st Noveber 2019 pursuant to a motion exparte filed by the Respondent. ".

17. That upon further interrogation and review of the processes culminating in the issuance of the writ of possession, it **became clear that the writ of possession consequent upon which the Applicant took possession of the Respondent's land was void to the extent that it did not disclose the extent of the land, the subject matter of the judgment in respect of which the writ of possession was issued.**

18. That additionally, I am advised by Counsel and verily believe same to be true that the Applicant's execution of the writ of possession was irregular and sinned

against Order 43 (3) of the C. I. 47 given that the writ was executed without notice to the Respondent in order to have enabled the Respondent to have applied for relief as provided for under the rules of court, thereby breaching the Respondent's audi alteram partem rights.

19. That the Respondent has embarked on a massive publicity of the land for sale in various for a including facebook, whatsapp and other social media platforms which marketing platforms are receiving patronage. Copies of photographs of publicity are attached as Exhibits "D" series.

20. That worse of all, although the **default judgment obtained by the Applicant relates to only 10 acres of land, the Applicant has so far cleared almost 50 acres, destroyed property and has deployed land guards and thugs on the land and has further sacked the security personnel of the Respondents company from the land, the subject matter of this action. Attached hereto as Exhibit "E" series pictures of the vast land cleared by the Respondent."**

25. "That I am advised by Counsel and verily believe same to be true that one of the cardinal considerations for considering applications of this kind is that the Notice of Appeal on the back of which the application is mounted must disclose real and substantial grounds to justify the grant of the application."

26. "That I am advised by Counsel and verily believe same to be true that in the circumstances of this case, the Notice of Appeal attached by the Applicant and marked Exhibit E is **a complete nullity to the extent that the Applicant failed to seek leave of the court below or this honourable court before lodging the appeal."**

28. "That I am advised by Counsel and verily believe same to be true that in any event a perusal of the Notice of Appeal (exhibit E) filed by the Applicant shows

that the appeal is frivolous and fails to lay out any arguable points of law capable of upsetting the judgment entered by the Court of Appeal on 28th October 2021."

30. "That the Respondent denies paragraph 14 of the affidavit in support and says in response thereto **that if on the Applicant's own showing, the Court of Appeal did not make any "executable orders" there is no basis in law for the Applicant to lodge an application for stay of execution pending appeal**. Emphasis supplied

PRELIMINARY LEGAL OBJECTION

This court will have to determine the preliminary legal issues before the substance of the case is enquired into.

From the affidavit in opposition, the Respondent's should be deemed to have **raised the preliminary legal objection that the instant appeal by the Applicants and their subsequent stay of Execution has not been well laid out because they failed to obtain leave from the Court below or this Supreme Court before filing the instant appeal and application.**

PROCEDURAL STEPS

What must be noted is that, the High Court judgment even though a default judgment is a final judgment. This is because, it settled to finality the issues between the Applicants herein and the Defendant therein.

The subsequent application by the Respondents to the High Court which was dismissed on 22/07/2020 and hence their appeal against it to the Court of Appeal is also a final decision.

In the case ***of Republic v High Court, (Fast Track Division) Accra, Ex-parte State Housing Co. Ltd. (No.2) (Koranten-Amoako) – Interested Party 2009 SCGLR 185 at 194,*** the Supreme Court, speaking with unanimity through distinguished Chief Justice Georgina Wood explained this dichotomy between final/interlocutory judgment or orders as follows:-

> "In our view, a judgment or order which determines the principal matter in question is termed "final", whilst an "interlocutory" order has also been defined in Halsbury's Laws of England (4th edition), Vol. 26 para 506 as
>
> **An order which does not deal with the final rights of the parties, but either**
>
> 1. **is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or**
> 2. **is made after judgment, and merely directs how the declarations of rights already given in the final judgment are to be worked out, is termed "interlocutory".**

The Court then referred to the case of **Pomaa v Fosuhene [1987-88] 1 GLR 244** where the Supreme Court by a four to one majority decision held (as stated in holding (1) of the headnote) as follows that:-

> "an inference whether a decision or order was ***final or interlocutory was dependent essentially on the nature of the decision or order and consequently on the answer to the question whether the decision or order finally disposed of the rights of the parties or the matter in controversy***." Emphasis

The Supreme Court followed the above line of reasoning in the case of ***Opoku v Axes [2011] 1 SCGLR 50***, and this position was affirmed in a subsequent review decision where the court spoke with unanimity per our illustrious brother, AtugubaJSC at page 54 of the report as follows:-

> The best known test for a final judgment is **that it disposes of the rights of the parties in relation to the res litiga. In the course of the trial the res litiga may assume a new dimension wholly or in partly depending on the permissible ramifications of litigation. We are wholly unmoved by a contention that, when a part of a claim has been distinctly ascertained and judgment given as to the rights of the parties in relation to it, without the need for further litigation or adjudicatory process regarding the same, such a pronouncement by the court is anything but final." Emphasis**

The Supreme Court, in a majority decision of 3-2 in the case of ***Network Computer System Ltd. v Intelsat Global Sales & Marketing Ltd. [2012] 1 SCGLR 218***, holden (1), the court held as follows:-

> "In Ghana, the judicial test for determining whether a judgment or order was final or interlocutory had been **harmonized in favour of whether the nature or the effect of the judgment or order was to finally dispose of the rights of the parties."** Emphasis

The Supreme Court this time speaking with unanimity through our respected brother Baffoe-Bonnie JSC rationalized as between nature of application approach and the order approach and stated thus:-

> "Despite the fact that our judicial system has its antecedents in the common law, **it seems the courts in this country have been consistent in rejecting the "application" approach in favour of the "order" approach**. Emphasis

Applying all the above principles decided in the cases referred to supra leaves no one in doubt that, the grant of the default judgment by the High Court, and the subsequent ruling of the High Court refusing to set aside the execution of the writ of possession were all final in nature, applying the finality of the nature of the order test.

In this respect therefore, we are of the considered view that, the nature of the order approach when applied will give a very clear picture of finality having been brought to the matters in controversy as between the parties at each level of the disputation, be it at the High Court, or the Court of Appeal.

In that respect, we are unable to accede to the request of the Respondents that the Applicant herein ought to have obtained leave of the lower court or this court before filing the instant Appeal

What must be noted is that, the facts of this case are completely different from the type of cases that led this court to render it's decision **in Owusu and Others v Addo & Another [2015-2016] 2 SCGLR 1479, at1490**. Inthe above case supra, the Supreme Court speaking with one voice through the respected Chief Justice Wood held as follows:-

> *"The right of appeal to the Supreme Court in respect of an order of the Court of Appeal dismissing a repeat application for stay of execution, was not an automatic right but one exercisable by special leave as carefully circumscribed by article 131 (2) of the 1992 Constitution and Section 4 (2) of the Courts Act, 1993 (Act 459).* ***Thus an appellant would have no direct access to the Supreme Court without first satisfying the leave requirement.*****"** Emphasis

With the above statement, it follows quite clearly that the facts and the nature of the orders made at each tier of the Court structures at the High Courts and the Court of Appeal brought finality to the orders therein contained.

The leave element introduced by the ***Owusu v Addo*** case supra, clearly therefore does not apply.

IS THE COURT OF APPEAL DECISION NON EXECUTABLE AND THUS MISGUIDED AND UNWARRANTED IN LAW?

In order to examine the parameters of this argument, the merits of the instant case would have to be enquired into. We prefer a merit based analysis which will discuss the core issues of procedure in the execution of the Writ of Possession than to focus on executable or non executable orders.

The substance of the objection of the Respondents to the original judgment of the High Court had been founded on the non-compliance of the Applicants herein in their execution of the Writ of Possession granted them. The non compliance with the rules of procedure had been anchored on Order 43 rules (2) & (3) of the High Court, (Civil Procedure) Rules, 2004 (C. I. 47) which states as follows:-

> **"ENFORCEMENT OF JUDGMENT FOR POSSESSION OF IMMOVABLE PROPERTY**
>
> (2) A writ of possession to enforce a judgment or order for the recovery of possession of immovable property shall not **be issued without leave of the court except where the judgment or Order was given or made in a mortgage action to which Order 56 applies.**
>
> (3) **The leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings as appears to the court sufficient**to enable the person to apply to the court for any relief to which the person may be entitled." Emphasis

Before us in this court, the Respondents have made it quite clear in their affidavit in opposition and in their submissions that they were neither notified by the Applicants nor given any subsequent notice when execution processes therein were embarked upon pursuant to the grant of the Writ of possession.

In a unanimous decision of the Supreme Court in the (consolidated) case of ***Nene Narh Mati & Ors v Osei Godwin Teye; and Samuel Yamm Oyortey and Others v Osei Godwin Teye [2017-2018] 1 SCLRG 746 (Adaare Law Report),*** the Supreme Court, relied on the provisions of Order 43 r (3) of the High Court (Civil Procedure) Rules C. I. 47 referred to supra made it quite clear that non compliance with the above procedural rules would render the issuing or grant of the Writ of Possession and its execution thereof null and void and of no effect.

Per Holding 4 of the report at page 749, the Court held in the Nene Narh Matti case as follows:-

> "The action which resulted in the judgment which was executed by leave of the Circuit Court, Akropong-Akwapim, was commenced in the High Court and terminated with the execution of the judgment of the Court of Appeal. Consequently, Order 43 rules 3 (1) and (2) and 13 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) were applicable to the execution of the judgment. Forms 18 C and 18 D provided for under Order 43 rule 13, were relevant for the issuance of the Writ of possession.
>
> However, these provisions were not complied with. The execution of the Writ of Possession as ordered by the Circuit Court, Akropong-Akwapim is therefore, null and void and same is accordingly set aside."

See also the comments of the learned author, Yaw Oppong in his valuable book*"Contemporary Trends in the Law of Immovable Property in Ghana"* pages 973-985 particularly at pages 982-983 where the learned author wrote thus:-

Commenting and stating the rationale for the Supreme Court decision in the Nene Narh Matti consolidated case supra, the learned Author Yaw Oppong quoting portions of the said judgment wrote on pages 982 to 983 of his invaluable book thus:-

"13. Forms applicable to this Order

Forms 18 to 18K provided in the schedule to these Rules shall be used for the respective purposes provided for in this order."

We observe from an examination of the forms pursuant to Order 43 r. 13 that Forms 18Cand18D are relevant for our purposes whilst form 18C is titled ***"Request for Writ of Possession"*** and contains **an indication for detailed description of the property or premises.**

"In respect of which the writ has been applied for. It is not surprising that, this request is therefore to be **signed by the Lawyer for the party applying.**

On the contrary, Form 18D is titled, **writ of possession and is to be signed by the Registrar of the issuing court.** This Form has the following particulars to be indicated as follows:-

(a) Insert name of party applying
(b) Insert name of party against whom writ is issued
(c) Describe the land delivery of which has been adjudged or ordered.

We observe that the examination of the writ of possession in the instant case is contrary to the said provisions and format. Indeed, as provided under the Rules and relevant forms, if these are complied with, the laxities complained of in most executions of writs of possession will be absent. For the above reasons, the execution of the Writ of Possession as ordered by the Circuit Court, Akropong-Akwapim, is null and void and accordingly set aside.

We will end our epilogue with a caution to all practitioners, Magistrates and Judges in particular to ensure that, in granting writs of possession in respect of disputed title to land where one party claims to have been granted possession,

the judgments decreeing title and possession are perused and the exact areas granted are specified in the order as directed by Order 43 r. 13 supra by the use of the relevant Froms18C and 18D". Emphasis

The learned author then commented as follows on page 983 paragraph 18 thereof:-

> "It is reasonably expected that these well thought-out guidelines will, inter alia bring to an end or at least substantially minimize the regular occurrence in judicial proceedings where even after judgment has been given in a land case in particular, the losing party or their privies would commence fresh actions solely on the basis of disagreements relating to the size and boundaries of the land in respect of which judgment was given." Emphasis

The application of the above to the circumstances of this application reveals substantial procedural flaws in the conduct of the case from the trial court, to the grant of the default judgment and proceedings after judgment in the trial court as well as the intermediate Court of Appeal. These procedural irregularities are of such a nature and it is difficult to ignore and proceed any further with the determination of this application for Stay of Execution.

We have observed that, the Court of Appeal judgment that is on appeal to this Court, and upon which the instant Application for Stay has been founded referred to the above Nene Narh Matti consolidated cases.

Our own observations of the original High Court judgment is that, the said decision did not contain any reference to the land size, description of boundary owners or size of land or even by reference to a site plan or a Map or Indenture.

The only reference is that it is a 10 acre land. This is completely nebulous and does not make any reference to any particular land. Having failed to prove and establish the

exact identities and or boundaries of the disputed land, the Applicant herein must be made to understand the hollow nature of their claims then and now.

In arriving at the decision of the Supreme Court in the Nene Narh Matti Consolidated cases supra, the Court relied on the case of ***In Re Ashalley Botwe Lands, Adjetey Agbosu and Others v Kotey and Others [2003-2004] 1 SCGLR 420*** at holding 9, where Wood JSC (as she then was) rationalised their decision as follows:-

> "I see an order directed at the beneficiaries who were never parties to this action, persons who have acquired lands from the defendant, but who were however not heard in these proceedings, contrary to the fundamental and plain rule of natural justice, the audi alteram partem rule. To order an annulment or cancellation of their documents without any notice to them and without having given them a hearing, is in my view, erroneous as the intention clearly is to dispossess them of their properties."

From the above rendition by Wood JSC (as she then was) the wisdom in ensuring that parties who are on parcels of land and have not been joined to an action in court cannot be thrown out by operation of the judgment against them without giving them a hearing and notice of the execution processes embarked upon.

We have also adverted ourselves to the decisions in ***Ahinakwa II (substituted by Ayikai v Okandja II and Others [2011] 1 SCGLR 205*** and the Unreported Supreme Court case intitutled ***Board of Governors, Achimota School v NiiAkoNortei II and 2 Others, C/A No.J4/09/2019*** dated 20th May 2020and we agree with the conclusions therein.

To that extent, the non-compliance with order 43 r. 3 (3) by the Applicants herein in not giving the Respondents herein notice of their intended execution of a judgment to which they were not parties but would be affected and were indeed affected, constituted an irregularity which under the circumstances cannot be cured. It is difficult

and practically impossible to grant an application for Stay of Execution in view of the lack of certainty in the area of land claimed by the Applicants.

CONCLUSION

Under the circumstances of this case, whilst the preliminary legal objection that the failure by the Applicant to obtain leave before filing the appeal fails, the Application for Stay of Execution is however dismissed on a more substantive ground of failure to comply with mandatory requirements provided in order 43 r (3) which is fundamental to the sustenance of the application.

The application for Stay of Execution by Applicant thus fails.

(SGD) V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

(SGD) A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

(SGD) PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

(SGD) A. LOVEACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

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