**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA - A.D. 2023**

**CORAM: YEBOAH CJ (PRESIDING)**

**DOTSE JSC**

**BAFFOE-BONNIE JSC**

**PWAMANG JSC**

**PROF. KOTEY JSC**

**OWUSU (MS.) JSC**

**AMADU JSC**

**CIVIL MOTION**

**NO. J7/01/2022**

**17TH MAY, 2023**

DANIEL OFORI …….. PLAINTIFF/APPELLANT/APPELLANT/RESPONDENT

HOUSE NO. 16

EAST LEGON, ACCRA

AND

1. ECOBANK GHANA

LIMITED …….. 1ST DEFENDANT/RESPONDENT/RESPONDENT/APPLICANT

2. SECURITIES AND EXCHANGE COMMISSION ……. 4TH DEFENDANT

3. GHANA STOCK EXCHANGE ……. 5TH DEFENDANT

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**RULING**

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**MAJORITY DECISION**

**AMADU JSC:-**

1. My Lords, the trajectory of this case as disclosed by the record before me has once again brought to the fore the policy of the law expressed in the Latin maxim; *interest reipublicae ut sit finis litium* meaning, "*it concerns the State that lawsuits be not protracted*". The dispute between the respondent and the applicant has seen a litany of applications even after substantive judgment by this Court which is the final Court of appeals in this Republic. This fact was acknowledged by my revered brother, Dotse JSC, who authored the opinion of the minority of the ordinary bench in the ruling in Civil Motion No. J5/54/2021 dated 13th July, 2021 that is sought to be reviewed by the present proceedings. In the opinion His Lordship remarked as follows;

   > *"This case has evinced unprecedented post judgment/review applications more than in any other case in my 13 years experience on the Supreme Court Bench."*

2. The present review application is at the instance of **Ecobank Ghana Limited** which was the first defendant in the trial proceedings that resulted in the final appeal to this Court in Civil Appeal No. J4/11/2016 in which judgment was delivered on July 25, 2018. I shall for the sake of convenience adopt the description '"Applicant" for the first defendant in this ruling and "Respondent" for the plaintiff.

3. In the decision of the Court the Applicant wants reviewed, the majority of the ordinary bench of the Court (Yeboah CJ, Baffoe-Bonnie, Pwamang, Appau JJSC-Dotse JSC dissenting) refused an application by the Applicant herein for leave to reopen Civil Appeal No J4/11/2016 for that appeal to be heard *de novo.* The retrial was prayed for to afford the Applicant opportunity to adduce what it referred to as new evidence, the effect of which was intimated to result in the Court varying

or reviewing its judgment in the substantive appeal delivered on 25th July, 2018. It is the refusal of the Applicant's application to reopen the appeal which provoked the instant application.

4. In the application to reopen the appeal, the Applicant purported to invoke the inherent jurisdiction of the Court. The majority decision of the ordinary bench read by my esteemed brother, Pwamang JSC refused the Applicant's invitation on a number of grounds, two of which I will deal with in this ruling.

5. First, the majority of the ordinary bench took the view that the introduction of new evidence on appeal was regulated by clear provisions of the Constitution and rules of the Court. This could be done pursuant to invoking the review jurisdiction of the Court under article 133 of the Constitution and Rule 54(b) of the Supreme Court Rules, 1996 (C.I.16). Where there are rules of court which regulate a particular step in proceedings, the law is that the court will not deploy its inherent jurisdiction ahead of the statutory provisions in order to deal with the matter.

6. Secondly, the ordinary bench of the Court held that, the new evidence sought to be introduced could not be used to justify overturning, varying or reviewing the unanimous decision of the Court delivered on 25th July, 2018 because, the judgment of the Court was delivered in the exercise of the Court's appellate jurisdiction. Meanwhile, the new evidence being referred to related to matters that occurred after judgment had been given and were about how the Respondent conducted himself on the basis of the judgments he had appealed against. When the Court exercises its appellate jurisdiction, it sits in judgment over the decision

of the lower court whose decision has been appealed from and it deals with facts that existed at the time of the trial and cannot take base its decision on facts that came into existence only after the judgment. This is because this case emanated from a full trial in the High Court, after which the Plaintiff appealed to the Court of Appeal and finally to this Court as a court of last resort. My brother, Pwamang JSC summed up this point in the following words;

> *"**So the appeal process is about what took place in the court below**. Of course, the rules give limited room in exceptional cases for new evidence to be led at the hearing of an appeal by leave of the appellate court but the conditions there are rigid…" (my emphasis)*

7. The ordinary bench of this Court noted that the evidence sought to be introduced was about how the Respondent reacted to the judgment of the trial court which went against him. It was alleged that when the trial court and the Court of Appeal held that he was the owner of the shares in issue, he went ahead to receive dividends on those shares despite the fact that he appealed against those judgments to the Supreme Court. The argument of the Applicant was that since the Respondent appealed against the holding that he was the owner of the shares he acted fraudulently when he received the dividends. The majority position was that since there was no order staying execution of the judgments of the High Court and the Court of Appeal, all parties to the suit were bound by those judgments until they were set aside through the appeal that was pending in the Supreme Court. Consequently, the majority held that there was no law that entitled the Supreme Court to take into account the manner the judgment on appeal to them was received by the parties in the determination of the appeal so the evidence the Applicant wanted to be allowed to adduce was totally irrelevant to the resolution of the issues for determination in the appeal.

8. In the instant application, the Applicant is impeaching the decision of the ordinary bench on the ground that inherent jurisdiction may be invoked on a matter already provided for by the rules of Court. It cited a number of authorities to support of its contention and argued that the inherent powers of the Court were available to be invoked by a party in any situation where the Court thought it expedient to do so in the interest of justice.

9. The Applicant's review application is grounded on rule 54(a) of the rules of the Court. That Rule provides that the Court may review a decision given if there are exceptional circumstances and what constitute exceptional circumstances are well formulated and settled in several decisions of this Court. The authorities have established that to establish exceptional circumstances, the applicant must demonstrate that the Court had inadvertently committed a fundamental or basic error resulting in a grave miscarriage of justice to that applicant. See the ruling of my sister Tokornoo JSC in concurrence of my ruling in the recent decision of this court in the ***Republic v High Court (Criminal Court 1), Accra Ex parte Kwasi Afrifa Esq (Disciplinary Committee of the General Legal Council-Interested Party).*** **Civil Motion No. J7/10/2022 dated 27th April, 2022** and *Afranie v Quarcoo* **[1992] 2 GLR 561** *Quartey and Others v Central Services Co. Ltd* **[1996-97] SCGLR 398** among others.

10. As pointed out by Dr. Date-Bah JSC in the case of ***Okudzeto Ablakwa (No.3) and Another v Attorney-General and Obetsebi Lamptey*** **(No.3) [2013-2014] 1 SCGLR 12 at page 18**, it is the Applicant's burden to demonstrate that the majority decision of the Ordinary Bench against which it seeks the review is fraught with such

fundamental or basic error inadvertently resulting in a grave miscarriage of justice.

11. The Applicant argues before us that the majority committed a basic error in holding that inherent jurisdiction ought not to be invoked in the face statutory provision and this view is similar to that taken by the minority of the ordinary bench. The minority, had relied heavily on the writing of I.H. Jacobs who, in an article entitled *"The Inherent Jurisdiction of the Court"* published in [1979] Current Legal Problems 23, said that the inherent jurisdiction of the court may be defined as **being the reserve or fund of powers, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so,** and in particular to ensure the observance of the due process of law… to **secure a fair trial between them**. See page 51 of the said article.

12. While the legal literature of the learned author has received approval in the common law jurisdictions as was cited with approval in the decision of this court in the case of ***Footprint Solutions v Leo and Lee*. Civil Appeal No J4/52/2012 dated the 24th May 2013**, with all due deference, the learned author must not be understood to be suggesting that, the inherent jurisdiction of the courts is a jurisdiction which exists as a jurisdiction separate and distinct from the statutory jurisdiction of the courts and to be deployed outside of such statutory jurisdiction.

13. It is worthy of note that the statement by the learned writer that the inherent jurisdiction of the Court is deployed as specified by the author"…**IN PARTICULAR to ensure the observance of the due process of law**… to **secure a fair trial**" establishes without a shred of doubt that a matter must first be within the statutory jurisdiction conferred on the court in order for the court to deploy its

inherent jurisdiction either to *"**ensure the observance of the due process of law**"* or *"**to secure a fair trial**."* There can be nothing otherwise. In this case, the Applicant who is interested in leading new evidence ought to have invoked the review jurisdiction of the Court provided for under article 133 and then come under Rule 54(b). These two enactments would cloth the Court with jurisdiction in the matter before there can be talk of inherent jurisdiction.

14. It is also important to note that the inherent jurisdiction of the court is exercised only in matters of procedure. The fact that the inherent jurisdiction of the court is procedural is unequivocally acknowledged by the Applicant itself. The Applicant itself submits that the inherent jurisdiction of the courts *"…**is a procedural jurisdiction** that hovers over all court proceedings to enable the court fulfil itself…"*. See paragraph 22 of the Applicant's statement of case. This concession should have stopped the Applicant in their tracks. For this reason, a matter must first be before a court in the exercise of a jurisdiction statutorily conferred on the court before the court can contemplate the propriety of considering its inherent jurisdiction in respect of the matter. It is the same with the rules of procedure. No party can create a jurisdiction for the court and invite the court to apply its rules of procedure in respect of the matter which is not cognizable by the court's statutorily conferred jurisdiction.

15. There is no dearth of authority on the circumstances in which the inherent jurisdiction of the Court may be properly invoked. For example, in the case of ***Ashanti Goldfields Co Ltd v Africore Ghana Ltd; Ashanti Goldfields Co Ltd v Westchester Resources Limited (Consolidated)*** **[2013-2014] 1 SCGLR 398**, the appellant invoked the inherent jurisdiction in what the party called, the "*ample powers*" the Court has for directions. Dr. Date-Bah JSC as stated in page 401 of the

report noted that "*that the applicant claims to be invoking "the ample powers" of this Court*." This was met with rebuke from the venerable Justice of the Court in the following words;

> *"This is where the problem is.* ***This Court does not have indeterminate and limitless power to straddle the judicial system dispensing orders right, left and centre from its ample powers****. Its powers are derived from the Constitution, statute and practice (including settled rules as to inherent power). Counsel, therefore, owes an obligation to identify which of this Court's powers he is relying on." (My emphasis)*

16. It is clear from the decision just cited that even where a matter is within the court's statutorily conferred jurisdiction, a court's inherent jurisdiction must be invoked only in settled circumstances. The inherent jurisdiction of the Court is not a default jurisdiction to be invoked by parties when they are stranded or to give a lifeline to cases which must be deemed concluded.

17. It is in this context that my revered brother Pwamang JSC also stated in the case of ***Republic v High Court (Criminal Division 9), Ex parte Ecobank Ghana Limited (Origin 8 Limited & Greater Accra Passenger Transport Executive-Interested Parties)*****. Civil Motion No J5/10/2022 dated 18th of January, 2022**. He noted that the inherent jurisdiction of a court

> *"does not mean limitless power of a court enabling it to do even what it clearly has been specifically restrained from doing either by legislation* ***or a practice well-settled by binding precedents****…Inherent jurisdiction is not so elastic as to extend beyond the limits of the substantive jurisdiction of the court as delimited by statute or the settled practice of the courts." (Emphasis mine)*

18. In this case the Applicant made the application citing the inherent jurisdiction of the Court after the Applicant had invoked the review jurisdiction of the Court in relation to the same judgment of 25th July, 2018 but was thrown out by unanimous decision of a seven-member panel on 17th June, 2020. It is plain that when the Applicant stated that it was praying to the inherent jurisdiction of the Court, what in substance it was seeking was a second attempt to have the main appeal decision reviewed. It would have been a dangerous precedent for the Court to allow a review after a first review application had been refused.

19. I must say that there was sound policy reason for dismissing the application to reopen the appeal in the sense that since the law has provided adequate avenues for questioning a final judgment of the Supreme Court in an appeal in the form of application for review under article 133 of the Constitution, the Supreme Court ought not to elongate its jurisdiction beyond what the framers of the Constitution deemed fit. If the Court had indulged the Applicant, it would have laid down a principle to the effect that after an appeal has been finally and conclusively determined by the Court, one of the parties can have it reopened after exhausting the statutory options made available by the Constitution.

20. Besides the unconstitutionality of the procedure of invoking the inherent jurisdiction of the Supreme Court to effectively have a second attempt to review a final decision after a first review application was dismissed, the majority of the ordinary bench was on firm legal grounds in holding that the evidence the Applicant was praying the leave to adduce is irrelevant to the issues that arose for determination in the appeal and which were settled in the judgment of 25th July, 2018. The issues that were subject matter of the appeal concerned whether the trade in the shares of Cal Bank settled or not and whether the respondent herein

was entitled to be paid for his shares that were traded? When the Supreme Court decided these issues in the substantive judgment of 25th July, 2018, the Applicant accepted that decision and paid the Respondent for his shares that were traded.

21. The only matter the Applicant took up after judgment on the main issues was the question of interest payments and when the Court ruled on that matter the Applicant accepted it in open Court and agreed to pay the amount of interest due and submitted to judgment openly in the Supreme Court. Only for the Applicant to have a change of mind and to file the application to reopen the appeal the judgment in which it had accepted and paid up on. Clearly, the Applicant is not taking the Supreme Court serious by its latest stance. How does the receipt of dividend after the judgments of the High Court and the Court of Appeal affect the issues in the appeal as stated above and which were resolved by the Supreme Court in the substantive judgment? Therefore, the majority did not err on the second ground they stated for dismissing the application for leave to reopen the appeal.

22. In order to justify its decision to change its mind after honourably accepting liability and making payment in accordance with the judgment and ruling of the court, the Applicant chose to throw in the word "fraud" hoping to excite the attention of the Court. Meanwhile, the only fact talked about is that since the Respondent had appealed against the holding of the Court of Appeal regarding who had ownership of the shares, he ought not to have received dividends on them in the interim. That conduct can never under any circumstances resemble fraud and the Court cannot be moved by such flimsy excuses to justify reneging from undertakings given in open Court. As Francios JSC observed in the case of *Dzotepe v Hahormene II* [1987-88] 2 GLR 681 at 701;

*"that courts abhor fraud* ***should not make them insensitive to the just claims of victorious parties. The judicial edifice was not constructed to lend a ready ear to every cry of fraud from suitors who had lost on the merits****…."* *(My emphasis).*

23. It is noted that, this dispute before the Court which should have been decently buried by now has been kept on life support for almost half a decade since the final judgment of the Court in July, 2018. The underlying public interest is that, there should be finality in litigation which should not drag on forever. The Court only recently restated this principle in the case of ***Attorney-General v Sweater & Socks Factory Ltd*** **[2013-2014] 2 SCGLR 946**. The Court held that it was in the interest of justice and the public at large that finality should attach to binding judgments and decisions of courts and tribunals of competent jurisdiction. See pages 951-952 of the report.

24. Finally, let me place on record that although divided on the fate of the instant application, this Court, as can be seen from the words of Dotse, JSC uttered in respect of this very case and quoted at the outset in this delivery, to be seriously concerned about the manner in which this matter has been protracted in this Court. In this regard, although we entered the labyrinth of this case together as a court, we unfortunately found our exits through different paths. The silver lining in this ruling therefore, lies in the clear observation that this Court is united in the position that this suit must now see its terminus by this ruling which is to the effect that this application for review is groundless and totally without merit. It is accordingly dismissed.

**I. O. TANKO AMADU**

**(JUSTICE OF THE SUPREME COURT)**

**ANIN YEBOAH**

**(CHIEF JUSTICE)**

**P. BAFFOE-BONNIE**

**(JUSTICE OF THE SUPREME COURT)**

**G. PWAMANG**

**(JUSTICE OF THE SUPREME COURT)**

**MINORITY DECISION**

**DOTSE JSC:-**

On the 17th of May 2023, this Court by a majority decision of 4-3, Dotse, Kotey and Owusu JJSC's dissenting, dismissed the 1st Defendant/Respondent/Respondent/Applicant's hereinafter referred to as 1st Defendant application for review of this court's decision of 13th July 2021.

The Plaintiff/Appellant/Appellant/Respondent, will also for purposes of consistency be referred to in this Ruling as Plaintiff.

**PREAMBLE**

It should be noted that, this court had earlier by a 4-3 majority decision, Anin-Yeboah C.J, Baffoe-Bonnie and Pwamang JJSCS dissenting dimissed an objection raised by the Plaintiff to the proprietary of the 1st Defendants filing the review application out of time. A subsequent review application by the Plaintiff to review this application was also similary dismissed by a majority decision of 7-2, Anin-Yeobah C.J and Pwamang JSC dissenting.

**WHAT NECESSITATED 1ST DEFENDANTS REVIEW APPLICATION OF 13TH JULY 2021**

In the Ruing of 13th July 2021, this Court coram: *Yeboah CJ, presiding, Dotse, Baffoe-Bonnie, Appau and Pwamang JJSC's*, by a majority of 4 -1, Dotse JSC dissenting, this court dismissed the 1st Defendants application which was headed thus:-

> *"Motion on Notice Invoking this Honourable Court's Inherent Jurisdiction for an Order to re-open the Appeal filed on 7th June 2013, and for Leave to adduce New Evidence"*

This was the application that was dismissed by the majority of 4-1 referred to supra and which is being sought to be reviewed by the instant application.

This application for review has been amplified by a 39 paragraphed affidavit sworn to by Awuraa Abena Asafo-Boakye, Company Secretary and Head of Legal of the 1st Defendant's Bank.

In order to put matters and all the facts in proper perspective, we will set these out in detail and these had in fact been stated in an earlier Ruling delivered by Dotse JSC on behalf of the majority dated 29th day of November,2022 in Suit No.J7/01/2022 as follows:-

1. One William Oppong-Bio, in May 2008, instructed Databank Brokerage Ltd, referred to as *"Databank"* and the 1st Defendant's herein to purchase 14,130,000 shares in Cal Bank Ltd, also referred to as "Calbank" which shares were owned by the Plaintiff and listed and traded on the floor of the Ghana Stock Exchange (GSE).
2. 1st Defendant Bank on 27th May 2008, initiated a trade in the 14, 130,000 of the Calbank shares belonging to the Plaintiff and 2 other persons on whose behalf the Plaintiff held part of the shares on the floor of the G.S.E.
3. For these shares transaction, Oppong-Bio had obtained a loan facility in the sum of GH¢13,300,000 from the 1st Defendant's herein and instructed that these be applied to pay for the 14,130,000 shares to be purchased from the Plaintiff.
4. The Plaintiff then issued the following instructions to the 1st Defendants herein
   (i) To place the sum of GH¢13,762,420 in a call deposit account and
   (ii) Issue two separate banker's drafts in the sum of GH¢7,600,000 payable to the Plaintiff's account with Zenith and SG-SSB Banks respectively, and
   (iii) The balance of GH¢6,162,420 to be invested in a call deposit account.
5. On **30th May 2008**, the Bank of Ghana (BoG) directed the GSE **to suspend the sale transaction to enable it investigate allegations of anti-money laundering surrounding the transactions.**
6. Based on the above directives, Oppong-Bio wrote to the 1st Defendants herein and issued the following instructions:-
   (i) To stop the payment for the 14,130,000 shares to the Plaintiff herein,
   **(ii) Recover and cancel the loan facility he had obtained**

Flowing from the above, the 1st Defendants carried out Oppong-Bio's request, stopped the payments and cancelled the loan facility.

7. By a letter dated **10th September 2008** the Securities and Exchange Commission, hereafter SEC, informed all the parties herein that at the time BoG instructed the

suspension of the transactions, the sale of the 14,130,000 shares had not been consummated and therefore the shares remained the property of the plaintiff. The SEC further directed that, the shares which had been registered in the name of Oppong-Bio be reverted to the Plaintiff.

8. The plaintiff rejected this directive and on **3rd December, 2008** issued a writ in the High Court against the 1st Defendants herein alone. **In that suit, the Plaintiff maintained that the shares belonged to Oppong-Bio and the Plaintiff was thus entitled to the purchase price of the shares.** This Writ was subsequently amended by order of the Court at the instance of the Plaintiff herein by which Oppong-Bio, 1st Defendants herein, SEC, GSE were joined as 2nd, 3rd, 4th and 5th Defendants respectively.
9. By this amended writ of summons, the Plaintiff maintained that the shares were the properties of Oppong-Bio and he was therefore entitled to the purchase price. **He therefore among other reliefs claimed that the 14, 130,000 shares are the property of Oppong-Bio**.
10. The Plaintiffs action in the High Court was dismissed and a subsequent appeal to the Court of Appeal was also dismissed whereupon the Plaintiff appealed to this court which **upheld his appeal, on 25th July 2018.**
11. Following a review application by the Plaintiff herein against this court's decision of 25th July 2018 in which he applied for a review of this court's decision in relation to the interest rate and the period from which it should apply, **this court on the 27th February, 2019 granted the said application in the following terms:-**

i. That interest be calculated on the sum of GH¢6,162,240 at 30% from 2nd June 2008 to 25th July 2018, and

ii. Thereafter, at the prevailing rate of interest as at date of judgment on 25th July 2018 up to date of final payment, and

iii. And on GH¢7,600,000 at the prevailing rate as at 25th July 2018 from 2nd June, 2008 up to the date of final payment.

12. **By further decisions of this court dated 17th June 2020 this court ordered that** interest be calculated on the judgment in favour of the Plaintiff as follows:-

(i) Interest on the sum of GH¢6,160,240 at 30% compound from 2nd June 2008 to 25th July 2018

(ii) Thereafter, at the statutory rate of interest prevailing at the time of the main judgment which is 25th July 2018 that is at 13.34% at simple interest till date of final payment.

(iii) And interest on the sum of GH¢7,600,000 at the rate of 13.34% from 2nd June 2008 to date of final payment.

(iv) By Computation, the rate of interest ordered to be paid by this court to the Plaintiff on the amounts are as follows:-

(a) GH¢6,160,240 - Total Interest GH¢84,979,152.42

(b) GH¢7,600,000 - Total Interest GH¢10,616,154.74

(c) Total Interest Payments - GH¢95,595,307.16

13. It is the case of the 1st Defendants that, since by the orders of the High Court and the Court of Appeal, the Plaintiff had been declared as the owner of the shares, it was not necessary for the 1st Defendants to make any enquiries whether he had been exercising any rights of ownership as he had been declared as such by courts of competent jurisdiction.

14. **The 1st Defendants alleged that, following the decision of this court on 25th July 2018, they made inquiries from relevant statutory bodies and these disclosed and or confirmed that as at 31st July 2018 Oppong-Bio was not on the Calbank register as a shareholder.**

15. The 1st Defendants then engaged the services of First Code Management Services to conduct investigations as to the shareholdings of the plaintiff herein and

Oppong-Bio. Per its letter of 13th August, 2018, First Code Management Service informed the 1st Defendants that whilst the Plaintiff held **15, 377,194 shares** in Calbank as of 31st August 2018, Oppong-Bio was not recorded as a shareholder in Calbank.

16. By a further search conducted by the 1st Defendants from the Central Securities Depository Ghana Ltd. "CSDGL" it was confirmed that the Plaintiff indeed as at 13th August 2018 held **15,377,194 shares** in Calbank in his name. The increased number of shares included bonus shares issued in the name of the Plaintiff over the period.
17. After attempts by the 1st Defendants to inquire from NTHC the Registrars of Calbank to confirm the exact amount of Calbank's shares that the Plaintiff owned failed, the 1st Defendants applied directly to Calbank through their lawyers.
18. It was at this stage, as per Calbank's letter dated 4th Janaury 2021 which officially confirmed the following facts for the first time as follows:-
    (i) That at all material times, the shares had remained in the name of the Plaintiff.
    **(ii)** The letter also revealed for the first time that the **Plaintiff also received both dividend and Bonus shares between 2008 and 2019.**
    **(iii)** This therefore meant that **even before the commencement of the suit by the plaintiff in the High Court against the 1st Defendant and the others, he had been receiving dividends and bonus shares as the owner of the said shares contrary to his assertions all along during the High Court and the Court of Appeal trials.**
    (iv) The only time the Plaintiff did not receive the dividend warrants in respect of his own shares was after the judgment of this court dated 25th July 2018, but continued to receive the shares held in trust for Esther Frimpong and Stephen Danso all of which formed part of the shares for which he had sued

the 1st Defendants. These the Plaintiff received on 6th June 2019 and 8th July 2020, well after the judgment of 25th July 2018.

19. The above facts were thus brought to the attention of the **1st Defendants only in January 2021 because** the Respondent had all the time pretended and made 1st Defendants to believe that the shares had belonged solely to Oppong Bio prior to the commencement of the Suit in the High Court to the delivery of the judgment in the Supreme Court on 25th July 2018.
20. It is trite knowledge that, the 1st Defendants proceeded to this court with an Application for leave to re-open their appeal and admit new evidence. However, this court by a majority decision rendered on the 13th July 2021 dismissed the 1st Defendant's application, hence this Review application of that Ruling.

**GROUNDS FOR THIS REVIEW APPLICATION**

1. Exceptional circumstances which have occasioned a miscarriage of justice.
2. That this court committed a fundamental jurisdictional error when it held that the inherent jurisdiction of this court was exercisable only where no clear provisions exists in the Rules.
3. The 1st Defendants further deposed that, a decision touching on jurisdiction if wrong amounts to a fundamental error which can amount to injustice and is clearly a ground for review.
4. The crux of the 1st Defendants ground for mounting this review application had been further explained in paragraphs 34-38 of their affidavit in support of the application.

Based and flowing from the averments deposed to by the 1st Defendants in the said paragraphs referred to supra, the 1st Defendant invited this court to consider the undisputed facts that the 1st Defendants acted on the judgments of the trial High Court and the Court of Appeal which was in their favour. The 1st Defendants argued further

that, if those facts are taken into consideration, then the invitation being made to this court by the 1st Defendants will be understood in the terms of preventing a failure of justice under the circumstances.

**PLAINTIFF'S RESPONSE**

The Plaintiff's answer to the points of substance argued in respect of this review application can be summarized under the following headings:-

1. The process before the court is not competent to invoke the review jurisdiction
2. The court lacks jurisdiction for review, based on the same facts.
3. Is woefully wanting in merit
4. Is contemptuous abuse of the processes of the court.

It should also be understood that the Plaintiff also emphasized the fact that, the evidence which the Applicants seek to use and or rely upon in this review application had always been available and indeed had been used in previous application, reference the 7th June 2013 and marked in their exhibits attached as *AAA 25 – AAA26 (see paragraph 13 of the said affidavit).*

Plaintiff also argued the jurisdictional position that this court has no jurisdiction to review the said decision of 13th July 2021.

**ARGUMENTS OF LEARNED COUNSEL IN RESPECT OF THIS REVIEW**

It should be understood in this Ruling, that this court on the 19th October 2021 granted leave for the 1st Defendants to file this review application. Learned Counsel for the 1st Defendants Kizito Beyuo in a well written and incisive statement of case justified the reasons why this court should grant this review application by referring to Rules 54 (a) of the Supreme Court Procedure Rules, C. I. 16 which states as follows:-

**"Rule 54 - Grounds for Review.**

The Court may review any decision made or given by it on the following grounds

**(a) exceptional circumstances which have resulted in miscarriage of justice;" Emphasis**

This rule bears emphasis that, this court is empowered to entertain and grant applications for review of the decisions of the ordinary bench in exceptional circumstances resulting or likely to result in miscarriage of justice.

There are a number of respected and decent judicial pronouncements from this court aimed at defining and explaining the scope and purpose of the rules which entitle this court to review its own decisions which it considers as flawed and may result in miscarriage of justice if not reviewed.

See cases like

- ***Afranie II v Quarcoo and Another [1992] 2 GLR 561 S.C***
- ***Hanna Assi (No.2) v GIHOC Refrigeration and Household Products Ltd. (No.2) 2007-2008] SCGLR 16***
- ***Nasali v Addy [1987-88] 2 GLR 286*** *where this court set out the parameters for grant of review*
- ***Koglex (GH) Ltd v Attieh [2001-2002] SCGLR 947***
- ***Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398 and***
- ***Amidu (No.3) v Attorney-General, Waterville Holdings (BVI) and Woyome (No.2) supra***

**SCOPE OF INHERENT JURISDICTION OF THIS COURT**

After recounting the facts of this review application as has already been elaborately set out earlier in this rendition, learned Counsel for the 1st Defendant, Kizito Beyuo quoted at length from *Halsbury's Laws of England, 4th ed, Vol. 37 paragraph 14* where the learned authors explained the term inherent jurisdiction in the following words:-

"The jurisdiction of the Court which is comprised within the term "inherent" is that which enables it to **fulfil itself properly and effectively, as a court of law.** The overriding feature of the inherent jurisdiction of the court is that it is a part of procedural law – **and it may be exercised even in circumstances governed by rules of court.** The inherent jurisdiction of the court enables it to exercise

**(i)** Control over process of regulating its proceedings, **by preventing the abuse of process and by compelling the observance of process**…In sum, it may be said that the inherent jurisdiction of the court is a **virile and viable doctrine, and has been defined as being the reserve or fund of powers, residual source of powers which the court may draw upon as necessary** whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, **to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."** Emphasis

Learned counsel for the 1st Defendant then referred to a number of distinguished and respected judicial decisions as follows:-

**Reichel v Magrath (1889) 14 App. Cas 665 at 668, where Lord Halsbury LC said**

*"I believe there must be an inherent jurisdiction in every Court of Justice to prevent such an abuse of its procedure…"*

See also the following cases:-

- ***R v Loosely, Attorney General's Reference (No. 3 of 2000) [2001] UK HL53 Lord Nicholls of Birkenhead:***
- ***Republic v High Court, General Jurisdiction, Accra, Ex-parte Magna International Transport Ltd. (Telecommunications Co. Ltd, Interested Party) [2017-2018] 2 SCGLR per Benin JSC***

- ***The East African Court of Appeal decision in Rawal v Mombasa Hardware Ltd. [1968] EA 392 at 394, per Sir Charles Newbold P.***
- ***In Republic v High Court, (Commercial Division) Tamale: exparte Kaleem (substituted by Alhassan) (Dawuni, Interested party)[2015-2016] 2 SCGLR 1332*** *where* ***this Supreme Court per Benin JSC,*** earlier on held on the concurrent operation of the substantive law and the inherent jurisdiction on page 1347 as follows:-

  ***"even where specific provision is made in the rules, it will still not deny the court of its inherent jurisdiction to stay proceedings on various circumstances, for as stated by the authors of Halbury's Laws of England, (5 ed) at page 503, paragraph 1043 the two sources of the court's power continue to exist side by side and may be invoked cumulatively or alternatively****." Emphasis supplied*

Learned counsel for the 1st Defendant was at pains to explain that even before the enactment of Rule 54 of C. I. 16 which regulated this Review jurisdiction, this court, has by its decision in ***Mosi v Bagyina [1963] 1 GLR 337***, decided that **the court retains power to review its void and erroneous decisions under the inherent jurisdiction.** In the above quoted case, this is what the court per Akufo-Addo JSC (as he then was) said:-

> *"where a judgment or an order is void either because it is given or made without jurisdiction or because it is not warranted by any law or rule or procedure, the party affected is entitled ex debito justitiae to have it set aside, and the court or a Judge is under a legal obligation to set it aside, either suo motu or on the application of the party affected. No judicial discretion arises here*. The power of the court or a Judge to set aside any such judgment or order ***is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a Judge." Emphasis***

The above decision was endorsed by the decision of the Supreme Court in the later case of ***Mechanical Lloyd Assembly Plant v Nartey [1987-88] 2 GLR 598, SC*** where the court per Taylor JSC added another dimension to this principle of inherent jurisdiction as follows:-

> *"I will hasten with diffidence to suggest some criteria which could in appropriate cases be indicative of exceptional circumstances calling for review…Another circumstance is the one following within the principle ( i.e. where a judgment or an order is void) as enunciated by that pillar of legality Akufo-Addo (JSC) in* ***Mosi v Bagyina*** *supra. "*

See also the following later case of this court,

- ***Fosuhene v Pomaa [1987-88] 2 GLR 105 at 124, SC per Adade JSC***

**ARGUMENTS OF LEARNED COUNSEL FOR THE PLAINTIFF**

Learned counsel for the Plaintiff, Thaddeus Sory in his elaborate 33 paged statement of case argued that, **"where a matter does not fall within any of the constitutionally or statutorily established jurisdictions, no rule of court or "inherent jurisdiction of the court" will create another category of jurisdiction to enable the court to re-open a matter.**

In this respect, learned counsel referred to the decision of Dotse JSC in the minority, and concluded that, that position and or principle does not sit well with his avowed commitment to the principle of stare decisis as espoused by him in subsequent decisions. Learned Counsel then referred copiously to portions of Dotse JSC's decision in ***Attorney-General*** v ***Sweater and Socks Factory Ltd. [2013-2014] 2 SCGLR 946***, and concluded that neither the facts nor precedent in the above quoted case support the view taken by the learned Judge in his dissenting opinion.

What learned Counsel has forgotten is that, the 1st Defendants herein came before a panel of this court for leave to bring an application for review of this court's decision dated 13th

July 2021. We think our memory is right that the court by a majority decision granted leave to the 1st Defendants herein to bring an application for a review of this court's decision dated 13th July 2021.

From the facts and principles of law stated by learned counsel in the decision in ***Sweater and Socks Factory*** case supra,wethink with the greatest respect to learned counsel that he has got it all wrong. **The court herein has been called upon after leave has been granted to exercise its review jurisdiction upon the set of facts which have been set out supra.** It is in the determination of this review application that learned counsel for the 1st Defendant has called in aid the application of the principle of *"inherent jurisdiction"* to assist the court in coming to a just and fair conclusion.

In this respect, we have apprized ourselves to the judicial decisions referred to by learned counsel for the Plaintiff on this submissions, such as ***Essilfie and Others v Anafo and Others [1992] GLR 654-687 SC.***

***In Re The Preventive Detention Act, 1958 and In Re Okine and Others And In Re Application for Writs of Habeas Corpus subjiciendum [1960] GLR 84 CA.***

In the ***Essilfie v Anafo*** case supra, for example, the quote that *"ends of justice"* do not confer jurisdiction might well be the case. But this has been taken out of contest and applied blindly. The ends of justice is the goal which judicial decisions must strive to achieve, else they become vague and unfulfilled decisions which amount to injustice. Even though some decisions end that way, this should not be the primary focus of justice delivery.

Secondly, no attempt has been made by either the 1st Defendants or by this court to use the "inherent jurisdiction" as a sword to grant them their releifs.

However, it must be appreciated by all who pay fidelity to the law and the course of justice that hallowed and time tested principles like "inherent jurisdiction" "doing

substantial justice", "preventing a failure of law and equity" and the like will remain principles to guide courts of law to determine cases failing which justice delivery will become vague, meaningless and unfulfilled aspirations of the citizenry to access justice.

Finally, it is regrettable that learned counsel has referred to the 1960 decision in the case of In Re Okine to support their contention in this case.

The lamentations of Van Lare JA (as he then was) about his inability to do justice because of limitations imposed on the court at the time are not desirable and should not be wished for. We certainly will not allow ourselves to be put in a pigeon hole when the circumstances do not justify it.

In any case, we are convinced that the said decision cannot and does not impose any strictures and limitations on this court, and to that extent is disregarded.

Indeed, as recent as 24th May 2013, this court in a unanimous decision in the unreported case of ***Suit No. CA J4/53/2011 Footprints Solutions Ltd v Leo and Lee (Coram Dr. Date-Bah, Anin-Yeboah, Baffoe-Bonnie, Benin, Akamba JJSC) Anin-Yeboah JSC*** (as he then was) in his concurring opinion put the matter beyond per adventure when he stated as follows:-

> ***"In his article on "The Inherent Jurisdiction of the Court, 1970 Current Legal Problems, Sir I . H. Jacob a renowned contributor to Civil Procedure in the common law said at page 25 as follows:-***
>
> *"The inherent jurisdiction of the court may be exercised in any given case, notwithstanding that there are Rules of Court governing the circumstances of such case. The powers conferred by the Rules of Court are generally speaking, additional to, and not in substitution of powers arising out of the inherent jurisdiction of the court. The two heads of powers are generally cumulative and not exclusive, so that in any given case, the court is able to proceed under either or both heads of jurisdiction." Emphasis*

This court should be deemed as having unanimously endorsed the views of the distinguished author and by necessary inference that of our distinguished jurist, Anin-Yeboah JSC (as he then was).

The argument of the 1st Defendant is that, the Application for leave to pursue the instant application which had been granted by this court therefore permits this court to consider this new matter, which if they had been taken into consideration would not have led to a miscarriage of justice.

In our respectful opinion, we will under the circumstances use this principle of "inherent jurisdiction" to address the merits of the 1st Defendants application.

We will therefore proceed to address the application as follows:-

**EVALUATION OF THE CASE PUT UP BY THE PARTIES**

**1ST DEFENDANTS**

Basing ourselves on the principles of law and roadmap set out in the case of ***Arthur (No.2) v Arthur (No.2) [2013-2014] 1 SCGLR 569*** and other cases on review such as ***Quartey v Central Services Co. Ltd [1996-97] SCGLR 398 and Ekow Russel v Republic [2017-2010] SCGLR at 469***, etc we make these observations as follows:-

i. Once the 1st Defendants application has been filed pursuant to leave granted by this court, all defects with the timelines prior to the filing have been cured.
ii. That, there indeed exists exceptional circumstances to warrant the due consideration of the application. This finds expression in the deliberate withholding of facts by Plaintiff which were pivotal to the determination of the case. But for the vigilance of the 1st Defendants, Plaintiff would not have voluntarily divulged to the court, these facts that he has been enjoying dividends of the shares, the subject-matter of these proceedings.

**iii.** That, there indeed exists exceptional circumstances like those we have alluded to in the narration of the facts, which have led to fundamental error in the judgment of the ordinary bench. In any case, the ends of justice require that, courts of law must ensure that substantial justice is done. **The failure of the plaintiff to disclose this to the court , which gave the final judgment on appeal and which reviewed the same judgment on interest at the instance of the plaintiff are specie of conduct which constitute exceptional circumstances which this review court must take into consideration. This court cannot therefore sit by and allow the 1st Defendants to suffer this gross injustice which they will endure if this application is refused.**

iv. From our analysis and understanding of the principles of law, these specie of conduct have resulted into gross miscarriage of justice.

v. We are also satisfied that, on the state of the principles of law, the facts of the case and the circumstances of this case, this review process has not been turned into another avenue of appeal, against the decision of the ordinary bench. As we have indicated in one of our previous decisions in this case, despite the many applications filed by the parties in this case, (a phenomenon which both parties cannot escape blame), we are of the considered view that there is the utmost need for this review application to be granted.

vi. The special circumstances and the case history of this case require that this court should take this case as an exceptional case in the first place and consider this review application on the principles dealt with in ***Martin Amidu (No.3) v Attorney-General, Waterville and Woyome (No.2)*** supra.

vii. Taking the totality of the facts into consideration, we also think that the conduct of the Plaintiff in his dealings with the 1st Defendants, constitutes specie of conduct which amount to fraud. And since fraud vitiates everything in its track, this court has the jurisdiction to grant this application. In ***Mass Projects Limited (No. 2) v***

***Standard Chartered Bank & Yoo Mart Limited (No.2) [2013-2014] 1 SCGLR 309*** it was started that fraud vitiates every conduct, an allegation of fraud if proven and sustained will wipe and sweep away everything in its trail as if the thing had never existed. Also in ***Dzotepe v Hahormene III [1987-88] 2 GLR 681*** it was held that, a judgment obtained by fraud should never be permitted to operate in Ghana as an estoppel once the fraud was exposed in a court of competent jurisdiction because a fraudulent judgment was a nullity.

The net effect of the conduct of the Plaintiff in our assessment amounts to fraud and the judgment obtained therein should not be allowed to stand, let alone operate.

Taking all these into consideration, it is my understanding that the 1st Defendants should not be seen as using this review process to re-argue their case as unsuccessful litigants.

In the same instances for example, the court on the basis of the decision in ***Mosi v Bagyina*** supra can suo motu review the said decision because at the time, the material facts had been withheld by the plaintiff from the court.

**POINTS RAISED BY PLAINTIFF**

We have considered the following issues raised by learned Counsel for the Plaintiff.

1. That this court is bound by its own previous decisions:-

   This point is clear and admits of no controversy. There is no substance in the allegation that the court departed from its previous decisions.
2. On the 1st Defendants conduct in not complying with the terms of the grant of leave to file the review application since this matter has been resolved by the 7-2 majority decision of this court in dismissing the review application of the plaintiff of the Ruling of this court dated 17th May 2023 the said point is moot.
3. That this court's review jurisdiction is exhausted.

4. That this court has no inherent jurisdiction to open the appeal and other similar non consequential grounds of objection that have been raised and argued by learned counsel for the Plaintiff are dismissed as being repetitive in nature and not really raising any points of substance.

**CONCLUSION**

In our considered view, there is a real need for this court to intervene on the side of the 1st Defendants to adduce fresh evidence to prevent a failure of justice. In our mind, the conduct of the plaintiff in concealing the fact that despite the fact that he had appealed against the decisions of the High Court and Court of Appeal, he was also on the blind side of the 1st Defendants enjoying the shares he claims were not transferred into his name.

This conduct is fraudulent and since fraud vitiates everything, leave to adduce that fresh evidence is required and necessary.

Cite cases

It is for the above reasons that we opted to grant the 1st Defendant's Application for review.

**V. J. M. DOTSE**

**(JUSTICE OF THE SUPREME COURT)**

**PROF. N. A. KOTEY**

**(JUSTICE OF THE SUPREME COURT)**

**M. OWUSU (MS.)**

**(JUSTICE OF THE SUPREME COURT)**

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