IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

OWUSU (MS.) JSC

TORKORNOO (MRS.) JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL MOTION

NO. J5/05/2023

24TH JANUARY, 2023

THE REPUBLIC ……. RESPONDENT

VRS

HIGH COURT KUMASI ……. RESPONDENT

EX PARTE:

1. MINISTRY OF ROADS & TRANSPORTATION

APPLICANTS

2. ATTORNEY GENERAL

AND

CHINA JILIN INTERNATIONAL ECONOMIC &

TECHNICAL CORPORATION (CJIETC) **INTERESTED PARTY**

PER S. A. DANQUAH, DIRECTOR

RULING

TORKORNOO (MRS.) JSC:-

Introduction

Pursuant to article 88 of the 1992 Constitution, the Attorney General (AG) is the constitutionally mandated representative of the State responsible for the institution and conduct of all civil cases on behalf of the State, and defence of all civil proceedings against the State.

Article 88 (5) reads

The attorney-general shall be responsible for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant.

From the exhibits attached to the application under consideration, the plaintiff company is called China Jilin International Economic and Technical Corporation (CJIETC) of 60 Orange Road, Sale, Cheshire, M33 6RY England. It entered into a construction contract with the Government of Ghana on 3rd February 1997 to construct roads. The contract was later terminated.

In a separate act on 29th March 1996, a company called CJIETC GROUP of the same address 60 Orange Road, Sale, Cheshire, M33 6RY England, with head office in Changchun, China had granted a power of attorney to one Dr Monindra Kumar Banerjee and SA Danquah '*and/or their accredited representatives acting alone or otherwise appointed' to*

'absolutely engage legally etc on behalf of this company and its associated companies as listed elsewhere for all projects outside China'. In the power of attorney, the CJIETC GROUP 'also mandated' registered directors of CJIETC Ghana and other senior executives to also engage legally on its behalf.

The Law Suit

The plaintiff, China Jilin International Economic and Technical Corporation (CJIETC) acting by SA Danquah sued the AG with the Ministry of Roads and Transportation, (MRT) as defendants in suit no F3/08/05.

Judgment was eventually entered in favor of the plaintiff/judgment creditor/interested party in 2014. That judgment was part executed, then stayed pending appeal filed on 18th March 2015. From the records, that appeal has still not been transmitted to the court of appeal for determination.

The record shows that in view of the delay in transmission and prosecution of the appeal, the plaintiff/judgment creditor commenced proceedings to set aside the order of stay of execution. At the end of hearing that application and on 22nd September 2020, the high court directed the AG to cause the Record of Appeal to be forwarded to the court of appeal by 30th December 2020 failing which the judgment creditor would have the liberty to go into execution 'upon notice to the Court that the appeal proceedings time lines have not been complied with'.

The plaintiff company thereafter obtained a garnishee order nisi in February 2022 attaching five accounts of various Government bodies with Bank of Ghana and two accounts of the Ministry of Roads with two banks.

Application to set aside garnishee order nisi

The AG applied to set aside the garnishee order nisi on the ground that the Power of Attorney that ostensibly empowered SA Danquah to act on behalf of the plaintiff was not witnessed or notarized and it was issued in England by the company called CJIETC GROUP. The AG urged that the power of attorney was void. Another point raised by the AG for the setting aside of the garnishee order nisi was that four of the blocked accounts were in the name of Ministry of Finance and not the Ministry of Transport.

In an affidavit in opposition deposed to by counsel for the plaintiff/judgment creditor, counsel urged that the alleged incapacity of SA Danquah to represent the plaintiff/judgment creditor was hearsay and must not be relied on by the court. He also urged that the moneys in the blocked accounts belonged to the Government of Ghana and so could be applied to pay the judgment debt.

Thereafter, the AG raised two new reasons for setting aside the garnishee order nisi in a supplementary affidavit. One reason was that a search had been conducted at the Companies House in Cardiff, UK and the AG's office had received a response that there was no company in the name of the plaintiff China Jilin International Economic and Technical Corporation (CJIETC) of 60 Orange Road, Sale, Cheshire, M33 6RY England, registered in the UK. The AG challenged the identity of the plaintiff for being a 'non juristic' person.

Another reason to set aside the garnishee order nisi was that as at February 2022 when the plaintiff applied for the garnishee order nisi, the attorney S A Danquah by whom the plaintiff commenced the action was dead. Apparently, the deponent of the affidavit in support of the application for the garnishee order nisi was one Andrew Danquah.

Counsel for the plaintiff thereafter filed a supplementary affidavit in opposition admitting and confirming the death of SA Danquah in May 2020. He exhibited the incorporation documents of an entity called China Jilin International Economic and Technical Corporation (Ghana) Ltd that was registered in Ghana, and made depositions to the effect that Andrew Danquah and SA Danquah were directors of China Jilin International Economic and Technical Corporation (Ghana) Ltd. This China Jilin International Economic and Technical Corporation (Ghana) Ltd had ostensibly been involved in the execution of the contract in issue between Ghana and China Jilin International Economic and Technical Corporation (CJIETC) of 60 Orange Road, Sale, Cheshire, M33 6RY England.

The response of the AG to these disclosures was that counsel for the plaintiff was attempting to pass off a Ghanaian company as the company that had commenced this action which was supposed to be a UK based company. They also responded that counsel for the plaintiff was also attempting to pass off the plaintiff as a company when it was not. And third, counsel was attempting to pass off Andrew Danquah and SA Danquah as directors of the 'non-existent' UK Company.

Preliminary objection to hearing of application to set aside garnishee order nisi

The preliminary objection raised by counsel for the plaintiff/judgment creditor to the application was heard by Ali Baba Abature J, and dismissed on 6th June 2022 in a reasoned ruling attached to the records before us. Abature J also directed counsel to file written submissions for his consideration. These and other processes were filed by July 2022 with the leave of Abature J. Exhibit NOD 2 before us shows that following leave granted by Abature J on 14th July 2022, more supplementary affidavits were filed on 5th August 2022 and 12th August 2022 by counsel for plaintiff. A final process was filed on 26th August 2022.

Ruling

Abature J went on legal vacation on 1st August 2022 and George Appah Kwabeng J came to preside over the court in the vacation period of August and September 2022.

In his capacity as relieving judge, Kwabeng J delivered a ruling dismissing the application to set aside the garnishee order nisi on 30th August 2022.

Existence and Identity of the plaintiff/judgment creditor

On the existence and identity of the plaintiff, the opinion of the Kwabeng J was that he could *not 'overlook the fact that three companies play out in this instant application after sighting Exhibits 'CJ18', 'CJ19', 'CJ20', and 'CJ21' annexed to the Respondent's supplementary affidavit filed on 12th August 2022 (point 1.9 supra) I am of the considered opinion that the 2nd Respondent (MRT) knew full well that it was dealing with the Respondent through its external company in Ghana (CJIETC (Gh) Limited). '*

He noted that there was evidence before him that China Jilin International Economic and Technical Corporation (Ghana) Ltd had responded to a letter that the project engineer had addressed to the plaintiff China Jilin International Economic and Technical Corporation (CJIETC) of UK. This response from China Jilin International Economic and Technical Corporation (Ghana) Ltd had led to another response from the project engineer addressed to the plaintiff China Jilin International Economic and Technical Corporation (CJIETC) of UK (and not the Ghanaian company). And yet, in his evaluation, *'all these are matters bordering on long settled legal principles on the separate and distinct legal personality of a company from its members*'. He cited *Salomon v Salomon and Co Ltd* [1897] AC 22 and *Morkor v Kuma* (No 1) [1999-2000] 1 GLR 721. He went on to say that 'nevertheless, the 2nd Applicant (MRT) pushed through the project with these in mind' and so cannot be

seen to resile from the contractual obligations and the substantive judgment. He said the judgment was valid, and the debt was due to be paid.

Validity of power of Attorney

Regarding the power of attorney used to prosecute the suit, he noted that it came from the letterhead of CJIETC Group in England with a head office address in China. To the judge, 'hence (there were) separate legal entities with varying roles in the contract to be performed as at the time.' He clarified these three companies as CJIETC Group, England UK, CJIETC (China), Changchun and CJIETC (Ghana) Ltd Accra North.

He agreed that the plaintiff judgment creditor required capacity that was valid and present from the commencement of the action until final judgment. He **cited Order 16 Rule 5(4) of CI 47; Hanna Assi (No 2) v GIHOC Refrigeration and Household Products Ltd (No 2) [2007-2008] SCGLR 1 at 16; and Obeng v Assemblies of God Church Ghana [2010] SCGLR 300 at 325**

It was Kwabeng J's opinion that the proper forum for raising the point on the validity of the power of attorney and capacity of SA Danquah to prosecute the case on behalf of the plaintiff before the court was on appeal against the judgment. It was his opinion that without a decision on appeal addressing these circumstances of the underlying suit, the judgment remained good, valid and enforceable.

Effect of death of SA Danquah on the later application for garnishee order nisi While acknowledging the record before him that SA Danquah died in May 2020 and so at the time of the application for the garnishee order nisi in February 2022 he was dead and the power of attorney to him had lapsed, it was the opinion of Kwarbeng J that to urge that this affected the legal capacity of the plaintiff judgment creditor to pursue the

garnishee order nisi would amount to '*stretching this line of argument would amount to opening a whole world of technical absurdity, because the case title, as practice would have it, would normally not change in a post-judgment application such as the Motion ex parte for garnishee order nisi'*

Order 44 rule 3 provides

Necessity for leave to issue writ of execution

3(1) *A writ of execution to enforce a judgment may not issue without leave of court in the following cases*

a. *where six years or more have elapsed since the date of the judgment or order*
b. *where any change has taken place, whether by death or otherwise, in the parties entitled or liable to execution under the judgment or order*

Concerning the requirement of Order 44 rule 3 (b), Kwabeng J cited **Republic v High Court Ex Parte Allgate Co Ltd (Amalgamated Bank Gh Ltd Interested Party) [2007 – 2008] SCGLR 1041** on the principle that non-compliance with the rules of court amount to an irregularity unless the non-compliance is also a breach of the Constitution or a statute other than the rules of court, or a breach of the rules of natural justice which goes to the jurisdiction of the court to deal with the matter. It was his opinion that the failure by plaintiff/judgment creditor to notify the court of the death of SA Danquah was a defect curable under **Order 81 Rule 1(2) (b)** of

CI 47 which reads:

'*The court may, on the ground that there has been a failure as stated in sub rule (1), and on such terms as to costs or otherwise as it considers just*

(b) exercise its powers under these rules to allow such amendments to be made and to make such order dealing with the proceedings generally as it considers just'

It was his evaluation that making any determinations on the garnishee order nisi would amount to a review of the ruling by the judge who granted it and so he proceeded to waive the leave that should have been granted by a court before execution under **Order 44 rule 3** because of the death of SA Danquah.

It was also his opinion that though the Powers of Attorney Act 1998 (Act 549) is substantive law and came into effect before 2014 when judgment was entered, it was not breached prior to the entry of judgment. He said 'what is more, the suit number and substantive case title would not necessarily change for a post judgment application such as the motion ex parte for the garnishee order nisi, in keeping with the filing practice and convention at the registry of the court. Besides, a different and living director deposed to the affidavit in support of the garnishee order nisi. His identify is evident and verifiable per the exhibits in the court.' (emphasis mine)

The relieving judge was of the opinion that under Ghana law, specifically, **section 190 of Companies Act 2019 Act 992,** a company survives the death of its officers and shareholders. He noted that Andrew Danquah, who deposed to the affidavit in support of the garnishee order nisi, described himself as a director and shareholder of the plaintiff/judgment creditor and his affidavit was sworn in the United Kingdom. In his view, the vexed question of whether the power of attorney granted to SA Danquah to prosecute the suit on behalf of the plaintiff lapsed on the death of SA Danquah in 2020 and so rendered the grant of the garnishee order nisi void in 2022 would therefore not arise.

Identity of Andrew Danquah

On the issue of whether Andrew Danquah was qualified to depose to the affidavit in support of the garnishee order nisi, he noted that from the evidence before him, the

plaintiff was a company with an address in England. However, the performance bond for the project was granted by Vanguard Assurance in Ghana. He therefore came to the conclusion that the MRT dealt with the plaintiff as incorporated in England but through its external company in Ghana. Andrew Danquah's name appears as a director in the Regulations of China Jilin International Economic and Technical Corporation (Ghana) Ltd as Andrew Nii Otu Danquah and his address given in UK and nationality as British. From this he failed to see a lack of capacity in Andrew Danquah to execute the judgment obtained by plaintiff because the power of attorney by CJIETC Group also 'mandated that registered directors of CJIETC –Ghana and senior executives not below the position of Manager/Senior Engineer can also absolutely engage legally etc on our behalf'.

He found this power of attorney to be a 'general power of attorney' which speaks for itself, and by inference reflecting that Andrew Danquah had full capacity to depose to the affidavit in support of the motion ex parte for garnishee order nisi.

Application to set aside the judgment

The AG also sought an order to set aside the judgment on the ground that the plaintiff company did not exist. He cited the principle Mosi v Bagyina [1963] 1 GLR 337, that a judgment or decision obtained without jurisdiction ought to be set aside by the court that granted.

Kwabeng J's opinion on this relief was that the application to set aside the garnishee order nisi was being used as a backdoor appellate opportunity against the judgment.

Application for certiorari

In the application for certiorari under consideration, the AG is invoking the Supreme Court's supervisory jurisdiction over the high court pursuant to article 132 which provides that:

132. Supervisory Jurisdiction of the Supreme Court

The Supreme Court shall have supervisory jurisdiction over all the courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power

The MRT is an interested party in the current application. The AG submits that Kwabeng J committed errors of law apparent on the face of the record and exceeded his jurisdiction in the ruling dated 30th August 2022, and invites us to bring the ruling up to this court under our supervisory jurisdiction to quash it. He submits that

i. the High Court committed an error of law apparent on the face of the record when it entertained proceedings and delivered the ruling in favour of a non-juristic person acting through a deceased lawful attorney;
ii. the High Court judge exceeded his jurisdiction when he substituted the non-existent Interested Party with a non-party;
iii. the High Court committed an error of law apparent on the face of the record when it failed to set aside the Garnishee Order Nisi dated 28th February, 2022 when at the time the application for Garnishee Order Nisi was made and granted the Interested Party's purported lawful attorney was deceased;
iv. That the High Court judge exceeded his jurisdiction when he relied a power of attorney made by a non-existent person, and was neither witnessed nor notarized, although made in the UK to validate the capacity of the deponent of

the affidavit in support of the Garnishee Order Nisi filed on 4th February, 2022;

v. That the High Court committed an error of law patent on the record when it failed to exercise its inherent jurisdiction to set aside the Garnishee Order Nisi, dated 28th February 2022, obtained by a non-juristic person acting through a deceased purported lawful attorney, and to set aside the judgment dated 2nd June, 2014, obtained by a non-juristic person.

The Attorney General is praying this court for:

i. An Order of Certiorari to bring up to this Court for purpos-es of being quashed and quashing the Ruling of the High Court, Kumasi dated 30th August, 2022: Coram George Appah Kwabeng J; in the suit entitled China Ji-lin International Economic and Technical Corporation (CJIETC) per S. A. Danquah, Director vs. The Attorney-General & Anor: Suit No. E3/08/05;
ii. An Order setting aside the Garnishee Order Nisi dated 28th February, 2022;
iii. An Order unfreezing the accounts attached by the Bank of Ghana pursuant to the Garnishee Order Nisi; and
iv. Consequential Order setting aside the judgment of the High Court dated 2nd June, 2014 on grounds of nullity.

Consideration

We will discuss the submissions made in opposition to each of the grounds for the application as we evaluate the merits of this application.

It is not surprising to us that this ruling has been brought up to this court to be quashed. The fundamental, material, substantial and grievous errors of law made through it shout from the face of the ruling.

It is well understood that a court of competent jurisdiction may decide questions before it rightly or wrongly, and that the procedure for correcting wrong decisions lies in an appeal and not by grant of certiorari to quash the decision. See **Republic v Accra Circuit Court; ex parte Appiah** [1982-83] GLR 129 (at 143)

In this wise, errors of fact and errors of law are corrected through the appeal process and not through the exercise of the supervisory jurisdiction in the form of judicial review as conferred on this court by article 132 of the 1992 Constitution. This court has long drawn the line around its supervisory jurisdiction to exclude ordinary errors of law.

Legal Premise for grant of an order of certiorari

By its very nature therefore certiorari is granted only to excise a judicial decision from the record of decisions because the decision constitutes or perpetrates an illegality or nullity. The essential character of a certiorari application avoids examining the merits of an impugned decision and focuses on whether the decision is void by reason of a fundamental error that is patent on the face of the record, or void because of an absence or excess of jurisdiction in the public body that took the impugned decision. Reference is made to the articulation of these principles in the decisions of this court in **Republic v High Court, Accra: Ex Parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003 – 2004] 1 SC GLR 312; Mansah & Others v Adutwumwaa & Others [2013 – 2014] 1 SCGLR 38; Republic v. High Court, Kumasi, Ex-parte Bank of Ghana and Others, [Sefa and Asiedu-Interested Parties] (No. 1) Republic v High Court, Kumasi, Ex-parte Bank of Ghana and Others (Gyamfi and Others Interested Parties No. 1) Consolidated Suit [2013 – 2014] 1 SCGLR 477**

Many of these cases have been cited to us by counsel from either side before us. A classic statement of this position can be found in the decision of this court per Wood JSC (as she then was) in **Republic v Court of Appeal; ex parte Tsatsu Tsikata** [2005-2006] SCGLR 612 at 619 that *'the supervisory jurisdiction (of the Supreme Court) under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases where there were patent errors of law on the face of the record, which errors either went to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then that the error(s) of law must be fundamental, substantial, material, grave or so serious as to go to the core or root of the matter. The error of law must be one on which the decision depends''*

The nature of the error of law that can invite the supervisory jurisdiction of this court must be 'such an error as to make the decision a nullity'. **Republic v High Court Accra; Ex parte Soku and Another** [1996-97] SCGLR 525

It must be a 'clear error on the face of the ruling of the court; so as to make the decision a nullity, or an error which amounts to lack of jurisdiction in the court so as to make the decision a nullity'. See Republic v High Court Accra; Ex parte Industrialisation Fund for Developing Countries [2003-2004] 1 SCGLR 348

To recap, clear errors that affect the validity of a decision have been identified to include jurisdictional errors arising from want or excess of jurisdiction, or errors of law that are patent on the face of the record or non-jurisdictional errors of law that are latent, or not patent on the face of the record but which affect the validity of the decision. See Republic v Central Regional House of Chiefs & Others; Ex parte Gyan IX (ANDOH X – interested Party) [2013-2014] 2 SCGLR 845, in which case, the high court acceded to an application to quash an administrative entry in the records of the house of chiefs. This court clarified that the act being factual and non-judicial, could not invite the remedy of certiorari.

As can be seen from the cited cases, it is not just the presence of an error or errors in a decision that can invite the invocation of the grant of the remedy of certiorari to quash a judicial. The error must be of such a nature that it affects the very legality, validity and sustainability of the decision as a judicial decision. This court engages its supervisory jurisdiction to prevent a plain illegality, nullity or miscarriage of justice arising out of a judicial decision, and not to correct just any errors found in a judicial decision. See also British Airways v Attorney-General [1996-97] SCGLR 547 at 553.

So our reason for immediately identifying this decision as one that invites an order of certiorari to quash it arise from both jurisdictional errors of law and material and substantial errors of law patent on the face of it.

Before dealing with the specific grounds raised in this application, we think that the more fundamental error apparent on the face of the ruling before us that cannot be ignored by this court even though neither party seemed to have addressed their mind to it is a jurisdictional error. This is the jurisdictional error in a vacation judge purporting to continue the hearing of a matter that was part heard by the substantive judge in the court that he was conducting vacation duties in. Since it is an issue that concerns the very jurisdiction of the court to render the decision before us, this court is well able to raise it suo motu.

Jurisdictional error

Article 157 of the 1992 Constitution provides regarding Rules of Court. It provides in clauses (2) and (3)

2. *The Rules of Court Committee shall, by constitutional instrument, make rules and regulations for regulating the practice and procedure of all courts in Ghana*

3. Without prejudice to clause (2) of this article, no person sitting in a Superior Court for the determination of any cause or matter shall, having heard the arguments of the parties to that cause or matter and before the judgment is delivered, withdraw as a member of that court or tribunal, or as a member of the panel determining that cause or matter, nor shall that person become functus officio in respect of that cause or matter, until judgment is delivered.

Section 103 of the Courts Act 1993 Act 459 provides as follows:

103. Duty of Judges to give judgment in cases part heard

Where any cause or matter is for determination by a court or tribunal and the Court or Tribunal has heard the arguments of the parties on the cause or matter, no Judge or Chairman, or panel member of the Court or Tribunal shall withdraw from the proceedings unless the judgment or decision has been delivered.

104 (1) *Subject to the provisions of the Constitution, the Chief Justice may by order under his hand transfer a case from any Judge, or tribunal to any other Judge or Tribunal, and from a court referred to in this Act to any other competent court at any time or stage in the course of proceedings and either with or without application from the parties to the proceedings.*

Although it is to be appreciated that the above constitutional provision is specifically couched to provide for proceedings leading to a judgment, article 295 expands the word 'judgment' to include 'a decision, an order or decree of the court'. The necessity of expanding the application of **article 295** to rulings following the hearing of an application is also catered for by **Section 103** of the Courts Act.

Read together, the direction of both the Constitution and the Courts Act are clear. Where a Judge has commenced hearing of an application, and that hearing is part heard, it is the duty of that particular judge to give a ruling on the matter that is part heard.

And when the Judge goes on leave, the warrant to perform relieving duties in that court does not include concluding cases that the substantive judge has commenced hearing of. The simple reason is that the judge who has part heard the matter is not functus officio until they complete the hearing. There can be no justification in law or the practices of the courts for a relieving judge to automatically assume jurisdiction over part heard proceedings, and purport to render a decision on them. Indeed, he is specifically precluded from doing so by both Section 103 of the Courts Act and Article 157 of the Constitution.

The records show that the application to set aside the garnishee order nisi granted on 28th February 2022 was filed on 22nd March 2022. This led to the filing of an affidavit in opposition, and subsequent orders by the substantive judge in the court, granting leave to file supplementary affidavits in April, May, and up to July 2022. A preliminary objection to portions of the supplementary affidavit in support of the application was raised in May 2022 and the substantive judge heard the parties. He wrote a reasoned ruling on 6th June 2022, dismissing the preliminary objection. He then went on to make orders and grant leave to the counsel to file further processes including submissions regarding the matters deposed to in the affidavits. These submissions were filed through June and July 2022, the last of these being filed on 26th August 2022, four days before the ruling given by the relieving judge.

In the very opening lines of his ruling, the vacation judge listed as many as ten processes filed by the parties and with the leave of the substantive judge. Despite the fact that the

substantive judge had part heard this application, dismissed a preliminary objection to the affidavit evidence submitted in support of the application, given leave to the parties to file other processes and directed parties to render their oral submissions into written form, the last of which was filed on 26th August 2022, it is not clear to us how the relieving judge found himself qualified to consider their submissions and several processes filed with the leave of his brother, and within four days after the last process was filed, proceed to write a ruling.

In **Republic v High Court Judge, (Fast Track Division) ex parte Quaye and Another (Yovonoo & Others INTERESTED PARTIES**) (2005-2006) SCGLR 660 the substantive judge in Fast Track Division 2 in Accra, where he had been transferred to, sat and heard an application in a matter that was filed in High Court (18), the court that he had previously presided over. Even though the particular application he ruled on arose out of a ruling he had earlier given, this court did not hesitate to quash the ruling given when he had been transferred, on account of the fact that he was no longer the substantive judge in High Court 18.

As noted in Ex parte Quaye and Another, the administrative powers of the Chief Justice under article 125(4) of the 1992 Constitution include the powers of transfer of judges and magistrates under section 104 of the Courts Act, 1993 (Act 459). This power of transfer, being a prerogative meant for the smooth and efficient administration of justice, could affect the exercise of a court's jurisdiction. Thus a case could be taken from a judge before whom it had been pending at any time for several reasons, including going on transfer. In such a case, though the case was pending in the court from which the court was transferred, the substantive judge loses jurisdiction to have anything further to do with the pending case before him – following his transfer from that first court.

But when a judge goes on leave, he is not on transfer, and he remains the substantive judge in that court with a duty to complete any proceeding that he has been sitting on. And the Courts Act is crisp and precise on the statutory position that anything part heard by that judge remains within his remit until he renders a decision.

This is why even when a judge is transferred to a new court and meets a part heard case, he is constrained from assuming jurisdiction over that part heard case unless the first step of adopting the proceedings is taken by the judge. See the decision in Awudome (Tsito) Stool v Peki Stool [2009] SCGLR 681.

Of course, the event of transfer is distinguishable from when a judge is given relieving duties in a court for a brief period of time. Within the context of relieving duties, this court has made it clear that the jurisdiction of a relieving judge cannot extend beyond the end of that duty period.

In **Republic v High Court, Accra (Commercial Division) ex parte Appenteng** 2010 SCGLR 327 when a relieving judge commenced the hearing of a contempt application filed during the vacation, this court stated unequivocally that his rendering of the decision on that contempt application on 20th October took him out of jurisdiction, and made the decision amenable to being quashed by certiorari.

It is also trite knowledge that parties cannot confer jurisdiction on a court, especially one that is precluded by not only the Courts Act, Act 459, but the Constitution itself. So even if the parties wanted the vacation judge to continue with the hearing of the application that had commenced before the substantive judge, it was the duty of the vacation judge to raise suo motu the fact that jurisdiction to complete the hearing of the application lay with the substantive judge who had commenced the hearing of the application, and not he the relieving Judge.

As noted by Ampiah JSC in **Republic v High Court, Cape Coast; ex parte Marwan Kort** [1998-99] SCGLR 833 '*As the exercise of a jurisdiction which a particular court does not have would render null and void proceedings in that matter it is incumbent on the judge who has been called upon to exercise a jurisdiction to make sure, save in debatable situations, that he has jurisdiction before he embarks on exercising that jurisdiction.*'

Acquah JSC (as he then was) also quoted **Attorney-General v Birmingham TRDD Board** [1912] AC 788 at 795 in exparte Marwan Kort in this wise '*A court of law has no power to grant dispensation from obedience to an Act of Parliament*'

With the application to set aside the garnishee order nisi part-heard by the substantive judge through the hearing of oral submissions, the dismissal of the preliminary objection, and direction to file written submissions, the relieving judge could not purport to assume jurisdiction over the same application and render a ruling over the application. This was a jurisdictional error that rendered his decision void.

For the avoidance of doubt and as part of our supervisory duty, we state that the jurisdiction of a relieving judge, unless otherwise specifically stated by the Chief Justice under the warrant issued to the judge, is strictly confined to matters that have not in any manner been part heard by the substantive judge.

If a matter has been called and opened by the substantive judge to the extent that he has given any form of directions for the continued hearing of the application or process, including hearing preliminary objections, the substantive judge is constitutionally bound to complete that hearing, unless the hearing of that specific matter is specifically transferred to another judge by the Chief Justice.

On this score and even without more, we order for the impugned ruling of 30th August 2022 to be brought up to this court to be quashed and it is hereby quashed.
Consideration of the grounds of this application

But we deem it necessary to consider the grounds submitted to us in support of the application before us in view of the nature of the material submitted in the application. We do this for the purpose of issuing orders and directions for the purpose of enforcing or securing the enforcement of our supervisory power as provided for under articles 129 (4) and 132 of the 1992 Constitution.

The process that was under attack and which led to the impugned order was a garnishee order nisi. The motion paper to set it aside read:

'MOTION ON NOTICE FOR AN ORDER TO SET ASIDE THE GARNISHEE ORDER NISI DATED 28TH FEBRUARY 2022 ON GROUNDS OF CAPACITY

PLEASE TAKE NOTICE that Counsel for and on behalf of the Defendants/Applicants herein shall move this Honorable Court to set aside the Garnishee Order Nisi granted on 28th February 2022 on the ground that SA Danquah has no capacity to act on behalf of the Plaintiff/Respondent to apply for an Order to Garnishee the accounts of the 2nd defendant/applicant upon the grounds contained in the accompanying affidavit

AND FOR any further order(s) as this Honorable Court may deem fit'

In the impugned decision, the relieving judge rightly identified that the application presented a '*challenge (to) the capacity of the (Plaintiff) Respondent, (and) more particularly one SA Danquah (presently deceased), who was a director of the Respondent's external Company here in Ghana CJIETC (GH) LIMITED) and through whom the substantive action was prosecuted to finality, culminating in the judgment of 2nd June 2014..'*

He also identified other issues he was being called on to resolve as:

a. That the plaintiff company does not exist
b. That the contract between the Respondent Company and the Applicants did not receive parliamentary approval and therefore same is void
c. That SA Danquah has no capacity due to a defective Power of Attorney granted to him
d. That Andrew Danquah is not the same person as Andrew Kwame Nii-Out Danquah
e. That China Jilin International Economic and Technical Corporation (GH) Ltd is not known to the applicants.

Clearly the matters raised before the court did not relate to just the sustainability of the garnishee order nisi, but the sustainability of the law suit, the legality of the plaintiff executing the judgment obtained, as well as the capacity of the person who applied to the court to execute the judgment as a representative of the plaintiff.

(Non) Existence of China Jilin International Economic and Technical Corporation (CJIETC) of UK

A garnishee order nisi is a process to execute a judgment that must have been validly obtained. From the tenets of the ruling, after rightly identifying the relevant issues for resolution, the relieving judge seemed to lose sight of the fundamental position of the law that it is only a party that has obtained a judgment who is entitled to execute the judgment. As rightly pointed out in **Kimon Compania Naviera v Volta Lines Ltd** [1973] 1 GLR 140 at 143 and cited to him *'A person suing by a lawful attorney can only sue in the name of the principal and not in his own name. If the principal has no legal personality he cannot acquire one by using an attorney. The law does not authorise a body which is not properly*

incorporated to evade the requirements of incorporation or registration by suing by an attorney. Finally, when a writ is taken out by a non-existent plaintiff it is a nullity and will be set aside'.

This principle has been agonisingly reiterated in recent times **in National Investment Bank Ltd and Others (No 1) v Standard Bank Offshore Trust Company Ltd (No 1)** [2017-2020] 2 SCGLR where this court asserted that a writ that did not meet the requirement of capacity was null and void and that issue of nullity might be raised at any time in the course of proceedings. It could not be corrected as an irregularity under Order 81 of CI 47.

In **Morkor v Kuma (No 1)** cited to the Judge and acknowledged by him in his ruling, this court was very clear that the proper parties in an action on a contract that had created the cause of action, if it involved a corporate entity, was that corporate entity. It is this corporate entity with a capacity separate, independent and distinct from those constituting it or employed by it that was the proper party in law. Again, where in fact or law, a person was not a proper party to a suit, then no matter how actively that party had participated in a suit, that person had never been a proper party. It is open, however belatedly, for any party who was never a proper party to be disjoined from the action and the earlier participation in the suit could not act to estop them from raising this objection. Quite apart from firmly established principles in company law and the standing jurisprudence on the distinct legal personality of corporate bodies, our humble view is that there can be no justification for a court, when the question that the party before the court is allegedly non-existent as a corporate body is raised, to jump that primary enquiry and direct that the party's judgment can be pursued by other separate legal entities, because those other corporate bodies had been involved in the administration of the contract that led to the suit. How could the second party lawfully step into the shoes of the judgment creditor whose very existence is being attacked, and inherit a judgment that

the original 'plaintiff' could not itself have validly obtained? In such a circumstance, it becomes the utmost duty of a judge confronted with such evidence to discharge the garnishee order nisi and allow a full enquiry into this prima facie evidence through the right processes.

Yet after acknowledging that there was a multiplicity of companies being presented to the court through the proceedings, the judge had this to say: 'I cannot overlook the fact that three companies play out in this instant application. Having sighted Exhibits 'CJ18', 'CJ19', 'CJ20', and 'CJ21' annexed to the Respondent's supplementary affidavit filed on 12th August 2022 (point 1.9 supra) I am of the considered opinion that the 2nd Respondent (MRT) knew full well that it was dealing with the Respondent through its external company in Ghana (CJIETC (Gh) Limited). ' In essence the judge appreciated that there was a particular company before the court as plaintiff and judgment creditor. However, he evaluated that since, as part of the management of the contract, the defendant had dealt with both the plaintiff before the court and its external company in the administration of the contract, '*the defendant cannot be seen to resile from the contractual obligations it had assumed and so was currently liable under the substantive judgment'.*

This conclusion is a complete failure to appreciate that first, responding to communication as part of the administration of a contract cannot create capacity to sue on a contract. Second, allowing a second company – whether related to the plaintiff or not – to execute a judgment obtained by a plaintiff, amounts to the perpetration of an illegality on the court and therefore a nullity. The identity of a party before a court is a material, grave and foundational issue that speaks to the very legality and sustainability of the law suit that the court is administering. The earlier evaluations regarding National Investment Bank Ltd and Others (No 1) v Standard Bank Offshore Trust Company Ltd (No 1) cited supra again referred to.

On the face of the law suit, the action was commenced by China Jilin International Economic and Technical Corporation (CJIETC). So from the defendant's evidence, does China Jilin International Economic and Technical Corporation (CJIETC) exist? We will not attempt to answer that question, because it is not our remit. But this was the remit of the judge who delivered the impugned decision. His decision from the evidence was supposed to turn on this enquiry. That issue requires an answer in binary form from his evaluation of the evidence.

At the time of commencement of the action, and from the records submitted, was the plaintiff in existence or it was not? This is the demand of Order 16 Rule 5(4) of CI 47 which reads:

Amendment of writ or pleading with leave

(4)'An amendment to alter the capacity in which a party sues may be allowed under subrule (2) if the new capacity is one which that party had at the date of the commencement of the proceedings or has since acquired'

A simple requirement is given by this rule. Even if you wish to amend the capacity in which you are suing, you should have had this capacity at the commencement of the action, or you should have acquired it before the relevant application seeking amendment of capacity in which the action is undertaken.

On the very face of the ruling, the relieving judge failed to answer this fundamental point that speaks to the very legality of the law suit. This failure to answer the foundational issue of the legality and validity or not of the judgment under execution, and the validity of the execution of the judgment, in the light of the documents before the court, is the

error of law patent on the face of the ruling for which the decision ought to be quashed instead of being reversed on appeal

Death of SA Danquah

The application that led to the impugned ruling was an application by a defendant judgment debtor who was seeking set aside the order nisi because it had come to his notice that the attorney prosecuting the suit for the judgment creditor was dead at the time the application for the garnishee order was granted.

If the attorney who commenced the action for China Jilin International Economic and Technical Corporation (CJIETC) UK was dead, then had the plaintiff China Jilin International Economic and Technical Corporation (CJIETC) UK authorised another person to execute its judgment?

Is it the UK based China Jilin International Economic and Technical Corporation (CJIETC) that obtained the garnishee order nisi, or is it the external company registered in Ghana that obtained the garnishee order nisi to execute the judgment of the UK based China Jilin International Economic and Technical Corporation (CJIETC)? Or was it CJIETC Group that issued the power of attorney?

On a simple reading of the power of attorney which is itself under attack as defective because of a lack of independent witnessing of it, we see that it was granted by CJIETC Group to SA Danquah and another person. They were to 'absolutely engage legally etc on behalf of his company and its associated companies as listed elsewhere for all projects outside China'. In that same document, CJIETC Group separately authorised 'registered directors of CJIETC Ghana and senior executives' to absolutely engage legally 'on our

behalf', without any indication of what the directors etc of the Ghana company were to engage legally on behalf of CJIETC GROUP for.

So who authorised the law suit and who authorised the garnishee order nisi? Was it CJIETC Group that authorised both the law suit and the execution through garnishee orders? And if it was the CJIETC Group that authorized SA Danquah to prosecute the law suit for China Jilin International Economic and Technical Corporation (CJIETC) in UK; could a court, after giving judgment to China Jilin International Economic and Technical Corporation (CJIETC) of UK, allow anyone without authority from China Jilin International Economic and Technical Corporation (CJIETC) of UK, to execute its judgment – after the original attorney's death? Could CJIETC Group issue authorisations over a litigation in Ghana without being a party to the suit?

Once again, these questions speak to the very legality and validity of the grant of garnishee order nisi. It is a fundamental matter that goes to the identity and authority of the person seeking to execute a judgment granted by the courts in this country to the UK based China Jilin International Economic and Technical Corporation (CJIETC). And yet the relieving judge treated the matter as if the persona of the judgment creditor could be taken over by a company other than the judgment creditor on a showing that this next company was a related company, and the person authorising the execution of the judgment was an officer of the related company.

It was his opinion regarding the need to abide with order 44(3) that 'stretching this line of argument would amount to opening a whole world of technical absurdity, because the case title, as practice would have it, would normally not change in a post-judgment application such as the Motion ex parte for garnishee order nisi' (page 11 of his ruling).

With very great respect to the relieving judge, the issue of the person executing a judgment does not rest on the construct of the case title. Neither is a case title a mere cluster of words with no value for a judge and parties before a court. A case title determines the very premise of identity, capacity, entitlement and legality of a party in court.

It was therefore the duty of the judge to examine the fundamental issue of whether it was the judgment creditor who was executing the judgment, or another corporate entity, and if so, under what circumstance that third party could execute the judgment. The glossing over of this fundamental matter on the premise that it would amount to 'stretching' issues around the case title to 'absurdity' constitutes a patent error of law that the court's decision turned on.

Validity of Power of Attorney.

On the issue of whether the power of attorney that had been shown to have authorised the very law suit and all orders pursuant to it was defective, the judge recognized that the power of attorney used to obtain a judgment 'concerns the Respondent's capacity, which must be valid and present from the commencement of the action until final action'. He then went on to cite decisions of this court on the need for capacity to prosecute an action being present from the commencement of the action. He however concluded with the opinion that the proper forum for raising the point on the validity of the power of attorney and capacity of SA Danquah to prosecute the case on behalf of the plaintiff before the court was on appeal against the judgment. It was his opinion that without a decision on appeal addressing these circumstances of the underlying suit, the judgment remained good, valid and enforceable.

We must strongly contradict Kwarbeng J. The application he had given himself jurisdiction over required him to determine whether or not enough evidence had been placed before the court to challenge the validity of the law suit itself and the application for garnishee orders to merit the setting aside of the attachment of the accounts in issue.

If a strong case regarding the very validity of the action and judgment and orders had been placed before him, the high court was bound in law to ensure that the issue of legality of its judgment is resolved as a primary fact. This is why it was not the place of the vacation judge to rule on the fundamental contest that the substantive judge seised with the entire record had asked to be addressed on. It is a court faced with invalidity of a judgment or order granted by it that is bound to set it aside, not an appellate court. A judgment obtained illegally should be declared non est, not erroneous. See **Mosi v Bagyina** [1963] 1 GLR 337 and **Morkor v Kuma (No 1)** already referred to.

So what is the effect of this power of attorney on the authorisation of SA Danquah to commence the action and obtain the judgment as a representation of the UK company, and what is the effect of this power of attorney on the capacity of Andrew Danquah or the Ghana company to execute the judgment of the UK company – after the death of SA Danquah? These questions are still pending and must be resolved before the garnishee nisi can be made absolute, or any execution of this judgment carried out.

It is for the above reasons that we quash the ruling of 30th August 2022. We also assume the jurisdiction of the substantive judge in the court, and set aside the order of garnishee nisi granted on 28th February 2022 on the strength of the fundamental questions raised by the AG regarding the very legality of the suit

In **Mosi v Bagyina** [1963] 1 GLR 337, where the high court had granted an application for the issue of a writ of possession when the judgment being executed was entered by a

lower court, the Supreme Court distilled the following legal position on jurisdiction as follows: *'where a court or a judge gives a judgment or makes an order which it has no jurisdiction to give or make or which is irregular because it is not warranted by any enactment or rule of procedure, such a judgment or order is void and the court has an inherent jurisdiction, either suo motu or on the application of the party affected, to set aside the judgment or the order'.*

Being mindful of this fundamental position, it is our view that it is the high court that has the jurisdiction, ex debito justitiae, to set aside its own judgment, if the judgment it granted in 2014 was unsupported in law, and for reasons it satisfies itself over, in the light of the record.

The application before the court that we have quashed the ruling given in, was expressly to set aside the garnishee order and we confine ourselves to quashing the ruling given without jurisdiction, and making the consequential order setting aside the garnishee order nisi.

We have carefully reviewed the application and carefully considered the written and oral submission of both Counsel. This court has come to the conclusion that the application for Judicial Review in the nature of certiorari be granted as prayed. Let the ruling of the High Court, Kumasi dated 30th August, 2022 be brought before the Supreme Court for the purposes of being quashed and same is quashed accordingly.

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)

(JUSTICE OF THE SUPREME COURT)

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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J. B. DANQUAH ESQ. FOR THE INTERESTED PARTY.