IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: DOTSE JSC (PRESIDING)

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

CIVIL MOTION

NO. J5/08/2023

6TH JUNE, 2023

THE REPUBLIC

VRS

HIGH COURT, TEMA

EX-PARTE:

1. YAW GODWIN DORGBADZI

2. MONIQUE TETTEH DORGBADZI } **APPLICANTS**

AND

1. **MICHELLE DAPAAH TETTEH**

2. **GARFIELD LEE JR.** } **INTERESTED PARTIES**

RULING

DOTSE JSC:-

Dedicated to the memory of
His Lordship Justice Samuel Kofi Marful-Sau JSC,
our distinguished brother, friend and confidant
who departed this life on 10th August 2021
Call for observation of a minute's silence

REASONS FOR THE DECISION OF THIS COURT

On the 1st March 2023, this court, by unanimous decision granted the application sought by the Applicants herein for Certiorari and Prohibition to quash the decision of the High Court, Tema and prohibit the said court from hearing the Suit No. E6/199/2022 but reserved the reasons for the said decision.

The following are the reasons why we granted the application:-

PREAMBLE

In view of the antecedents of this case, the impressions it casts on the integrity of the judicial system and our ability to correct the wrongs if any that come to our attention, we have decided for purposes of setting the records straight to be somehow detailed in the narration of the facts and the law applicable, in order to put matters beyond peradventure.

WHAT THE APPLICANTS SEEK FROM THIS COURT

The Applicants have applied to this court for the following reliefs:-

> *"An application for an order of Certiorari to quash the orders/proceedings of the High Court, Tema presided over by His Lordship Mr. Justice Emmanuel Ankamah dated 18th day of August 2022 striking out the Applicant's caveat for want of prosecution and for further orders to quash the Letters of Administration dated 18th March 2022, issued by the said court to the Interested Parties herein and for an order of Prohibition to prohibit the said Judge and or the Registrar of the High Court, Tema from further hearing and/or dealing with the Applications/matters in relation to the estate of the late Reverend Emmanuel Dorgbadzi"*

GROUNDS UPON WHICH APPLICATION HAS BEEN BROUGHT

i. The High Court, Tema presided over by the learned trial Judge failed to observe the rules of natural justice, specifically, the *audi alteram partem* rule in Suit Number E6/199/2022.

ii. The High Court, Tema presided over by the learned trial Judge had no jurisdiction or exceeded his jurisdiction when on 18th August 2022 he purportedly ordered for the striking out of the caveat of the Applicants herein for want of prosecution in Suit Number E6/199/2022.

iii. That the High Court, Tema presided over by the learned trial Judge committed a jurisdictional error in respect of the estate of the deceased, Reverend Emmanuel Dorgbadzi when on the face of the record, the same court had earlier issued Letters of Administration over the same estate.

INITIAL ENQUIRIES BY THIS COURT

On the 31st day of January, 2023, this court considered the rival and competing depositions by the parties herein and considered same to be serious and damning such that it cast a slur on the integrity of the judicial system.

Whilst the Applicants contended that, on the 18th of August 2022, prior to the commencement of that days hearings, an announcement was made to the effect that due to the indisposition of the learned trial Judge, only few of the cases listed that day would be heard as part of the virtual hearing during the vacation, the Interested Parties contended otherwise. The Applicants further contended that their case, Suit No. E6/199/2022 intitutled *"In the matter of the Estate of the Late Rev. Emmanuel Dorgbadzi- (Deceased) and In an Application for the Grant of Letters of Administration by Michelle Dapaah Tettey and Garfield Lee Jr- Applicants and in the Matter of Caveat by Yaw Godwin Dorgbadzi and Monique Tetteh,"* was one of those cases mentioned as those not going to be heard and was infact not heard and or called for hearing that day i.e, the 18th of August 2022.

The Interested Parties, on the other hand, denied those depositions and argued that the case was actually heard by the presiding Judge.

In order to resolve these differences, this court on the 31st day of January, 2023 made the following orders.

> "By Court:-
>
> In view of the maters raised in this court by the Applicants to the effect that there was no virtual hearing in Suit No. E6/199/2022 intitutled in the matter of the ***Estate of the Late Rev. Emmanuel Dorgbadzi (Deceased) and in an application for the Grant of L/A by Michelle Dapaah Tettey and Garfield Lee Jr-*** Applicants and In the matter of Caveat by Yaw Godwin Dorgbadzi and Monique Tetteh, dated 18th day of August 2022, and a contrary opinion by the Interested Parties herein, this Court accordingly gives the following directives:-

1. The Registrar of the High Court, Tema is hereby ordered to produce before this court, the Video and Audio recordings of the proceedings in the case listed supra.
2. One Mr. Sebastian Agbo, who authored a letter in response to a request by the Applicants dated 22nd September 2022 as the Registrar is also to appear before the Court on Wednesday the 8th of February 2023 at 10.00am as well as the new Registrar of the court.

The case is therefore adjourned to 8th February 2023 for continuation."

On the 8th day of February, 2023, when this court reconvened, one Hilda Epton appeared in answer to the order of the Court as the Registrar of the High Court, Tema. Upon further enquiries, she also informed the court that, one Sebastian Agbo, who was the substantive Registrar at all material times had been interdicted by the Judicial Service.

In order to set the records straight we insert the entire record of the evidence of Hilda Epton, before this court on 8th February 2023 as follows:-

"S.O.B in English

C.W.1 Hilda Epton, Registrar of the High Court, General Jurisdiction, Tema.

I assumed duty on the 3rd of October 2022 at the said Court.

Q: Have you received an order dated 31st January 2023 from the Registry of this Court?

A: Yes

Q: Have you got the items we ordered to be produced, namely video and audio recordings of the case Suit No. E6/199/2022 intitutled in the matter of the Estate of Late Rev. Emmanuel Dorgbadzi (Deceased) and in an application for the Grant of L/A by Michelle Dapaah Tetteh and Garfield Lee Jr.

A: Yes my Lord

Q: What do you want to do with them?

A: I want to tender them into court. Pendrive recordings of the Audio and Video in the case referred to supra tendered by C.W.1, and marked as Exhibit. C.E.1

Q: Did you listen to and watch the said audio and video recordings on the pendrive tendered and marked as Exhibit C.E.1?

A: Yes I did my Lord

Q: Were the proceedings in Suit No. E6/199/2022 intitutled as above listed part of the virtual proceedings before the High Court dated 18th August 2022?

A: This was part of the virtual recordings of the 18th August 2022.

Q: The proceedings in C. E. I does not cover the announcements that were made before the hearing started on the date.

A: According to the I.T. people, those were the early days of the virtual hearing and so the proceedings were not up to standard.

Video and audio recording in Exhibit C.E.1 starts playing at 11.25 am and ends at 12:23 pm.

Q: Are the recordings on Exhibit C.E.1 the only virtual recordings of the proceedings of the 18th August 2022 that you have on any device in the said High Court, Tema?

A: Yes my Lord

Q: Do you have a Cause List of the 18th August 2022 of cases listed for virtual hearing before the said court?

A: I have to find out because I was not at post at that time.

Cross Examination of C.W.I by learned Counsel for the Applicants

Q: Which officer of the court is responsible for handling the Microsoft team's virtual court sitting?

A: The virtual court sitting I was told was piloted during the vacation and it was handled by Jonathan Tetteh of the I.T. department, Tema.

Q: Is Jonathan Tetteh still at post?

A: Yes

Q: You obtained Exhibit C. E. 1 from Jonathan Tetteh?

A: Yes

Q: For clarity, Exhibit C. E. 1 contained only one file?

A: I don't understand the question

Q: The audio we listened to is the only item on the pendrive Exhibit. C.E.1?

A: Yes

Q: After watching Exhibit C.E.1, did you consult the trial Judge?

A: In respect of the Audio, (Exhibit C. E.1) No.

Q: But have you had any consultation with the trial Judge before coming to this court to testify?

A: I informed him about the order I have received.

Q: Can you give the name of the Clerk whom we saw in Exhibit C. E.1 assisting the court in mentioning the cases?

A: I can't see the face of the person, but I heard the voice

Q: Can you identify the voice of the person?

A: Yes

Q: Can you please give the name of the said Court Clerk?

A: She is called Dansoa Agyemang

Q: Can you confirm that this case involving Mr. Samson Lardi Ayeni was the first case that was called on the 18th of August 2022?

A: I cannot confirm that

Q: You agree with me that, Exhibit C.E.1, started without the announcement of the case at the beginning of the case?

A: Yes, as captured

Q: You also agree that Exhibit C.E.1 failed to capture any announcements prior to the calling of the 1st case mentioned in the Exhibit?

A: Yes

Q: Did you find out from Jonathan the reason for this omission?

A: No

Cross Examination by Counsel for Interested Parties

Q: Can you agree with me that the Audio or Video on its own cannot confirm the date on which it was recorded?

A: The Exhibit came out with some writing indicating Tema High Court but I don't remember if there is a date on it.

By I.T Staff: Upon a request from the court to the I.T staff to verify whether the Exhibit C. E.1 has a date on it, **the staff confirmed that it has a date and time of recording. The date is 18th August 2022 at 9:23 am UTC (same as GMT, Tema High Court B).**

Q: You will agree with me that the beginning of the Exhibit C.E.1 and the end are not usual with court sitting?

A: Yes, not usual of normal court sittings

Q: Counsel prays that Exhibit KA 15 be shown to the witness

Q: Can you identify Exhibit KA 15?

A: Yes my Lord

Q: Can you also confirm that the said Exhibit KA 15 is certified by you?

A: Yes my Lord

That will be all for the witness

By Court

Q: To what did you confirm the certification of Exhibit KA 15?

A: From the case file, I did not use the record book

The witness is discharged

By Court:-

"The Registrar Hilda Epton is directed to produce the case file, the Record Book of the Judge at the Tema High Court B containing entries on the 18th August 2022 and attend the Court on Wednesday, 15th February 2023.

The Things Book must also be produced before the court at the next adjourned date. Also, to be produced are Virtual Court Hearing. Cause List of the Tema High Court during the legal vacation must also be produced by the Registrar." Emphasis

The reference to Exhibit KA 15 in the above proceedings is actually a certified true copy of the record of the impugned proceedings of the 18th August 2022 certified by C.W.1, and which states as follows:-

> "Caveators absent, Maurice Ampaw Esq, for the Applicant – present. Counsel for Caveators – absent.
>
> **By Court: Caveat is struck out for want of prosecution."**

In order to put matters in proper perspective, it is perhaps necessary at this stage to put on record entries in Exhibits C.E.2, which is the record in Suit No. E6/199/2022 on 18th August 2022 and also entries in Exhibit KA 15 attached to an affidavit sworn to by one Kennedy Yao Adzomahe.

> **"Entries on Exhibit C.E.2**
>
> **The Record Book of The High Court, Tema of His Lordship Emmanuel Ankamah dated 18th August 2022 in Suit No. E6/199/2022**
>
> E6/199/2022
>
> The Estate of the late Rev. Emmanuel Dorgbadzi (deceased) and In the Application of the Grant of LA and in In the matter of Caveat Application of LA
>
> **Caveators ab**
>
> **Caveat is struck out for want of prosecution.**
>
> **Maurice Ampaw for the Applicant of LA present.**

Counsel for Caveators ab.

By Court

Caveat is struck out for want of prosecution"

These recordings appear in the record book of the learned trial Judge at page 154 of the record book. This recording has not been signed off as the other cases have been. Secondly, there appears to have been some repetitive entries in this particular recording i.e, *"Caveators ab and Caveat is struck out and for want of prosecution"*. These then appears as attempts to just fill the space that was left on page 154 of the record book to give some semblance of regularity.

Entries on Exhibit KA 15 is Attached to An Affidavit Sworn To By Kennedy Yao Adzomahe who described himself in the following terms in the said process sworn to and filed on 27/01/2023 in opposition to the instant application for certiorari and prohibition filed by the Applicants thus:-

"I, Kennedy Yao Adzomahe, a Priest of House No. DB-E86-D15 Nsawam make oath and say as follows:-

1. That I am the lawful attorney of the 2nd Interested Party and the Deponent herein and have the authority of the 1st Interested Party to swear to this affidavit and depose to facts, which are within my personal knowledge or which are based on information provided to me by third parties which I verily believe to be true."

In paragraph 27 of the said affidavit, the said deponent swore to as follows:-

27 "Notwithstanding the service of the processes on Counsel for the Caveators, they neither filed a response nor sort (sic) leave to file any reply to all statements of fact contained therein to those documents as discussed above and were not in court either when the matter was called.

In view of the depositions in the affidavit of interest filed by the Applicants herein, therein Caveators, the learned trial Judge, even if the case had been listed for hearing and the parties had been served as was stated, what the learned trial Judge should have done was to have taken into consideration the material depositions contained in the affidavit of interest.

If that had been done, there is no way the learned trial Judge would have summarily dealt with the Caveat the way he did. The Affidavit contained material facts which formed part of the record of the case.

Attached and marked as Exhibit "KA 15" certified court note of the said 18th August, 2022.

The entry in Exhibit KA15 reads as follows:-

"Parties – Applicants for Letters of Administration – present

Caveators – absent

Legal Representation

Maurice Ampaw Esq for the Applicant – present

Counsel for the Caveatrix – absent

By Court

Caveat is struck out for want of prosecution"

The above proceedings speak volumes of acts of irregularity. However, out of abundance of caution, it is necessary to highlight the following:-

1. That C.W.1 was not the Registrar on 18th August 2022 as she only assumed duty on 3rd day of October 2022
2. That she received the orders made by this Court dated 31st January 2023 and accordingly complied with them.

3. **That exhibit C.E.1, which is a pendrive of the recordings of the virtual court hearing of the 18th day of August 2022 which was played to the hearing of the court did not contain any recording that the Suit No. E6/199/2022 was part of the virtual hearing for that day.** This occurrence alone proves that, Suit No. E6/199/2022 was not heard by the Court on the 18th day of August, 2022 during the virtual hearing as captured by Exhibit C.E.1, the pendrive.
4. Arising from her testimony on the 8th of February 2023, C.W.1 was ordered to further produce the following documents or proceedings:-
    i. The case file in Suit No. E6/199/2022
    ii. The Record Book of the presiding Judge, at Tema High Court B, containing entries of the 18th August 2022
    iii. The Things Book of the court
    iv. Virtual Court Hearing Cause List of the Tema High Court, during the Legal Vacation of 2022.

After the above orders were made, the case was adjourned to 15th February 2023.

PROCEEDINGS OF 15TH FEBRUARY 2023

On the 15th of February, 2023, Hilda Epton, C.W.1, appeared before this court and tendered the following documents as requested by the court.

(a) Record Book of His Lordship Justice Emmanuel Ankamah J (as he then was) including entries made on 18th August 2022 at the High Court B, Tema from pages 150-154 and marked as Exhibit C. E. 2.
(b) Things Book of the said Court dated 18/08/2022, tendered and marked as Exhibit C.E.3 from No. 257
(c) Virtual Court Hearing Cause List for the Tema High Court during the 2022 legal vacation tendered and marked as Exhibit C.E.4.

(d) Case file of the relevant Suit No. E6/199/2022 and tendered as Exhibit C. E. 5.

Thereafter, the case was further adjourned to 22nd February 2023.

PROCEEDINGS OF 22ND FEBRUARY 2023

On the said date, Hilda Epton, CW1 was reminded of her former oath and she continued her evidence as follows:-

C.W.1 reminded of her former oath

Q. Take a look at Exh. (C.E.2) pages 150-154. **All the cases in the record book for the 18th August 2022 bear the signature of the trial Judge at the end of each case with the exception of the last case which is entitled the Estate of the late Emmanuel Dorgbadzi. Put in another way, the trial Judge signed off in all cases he sat on the day with the exception of the case involving the Estate of Late Rev. Emmanuel Dorgbadzi. Is that the case?**

Objection by learned Counsel for the Interested Parties

No foundation has been laid to suggest that the series of marks or signature at the end of each case as found on Exhibit C.E.2 are those of the trial Judge. **Indeed, our Exhibit K. A. 15 shows a mark that suggests the signature or mark of the trial Judge.**

By Counsel for Applicants

Submits that the objection is unfounded because the record book is normally signed by the person sitting over the proceedings in this case the learned trial Judge.

If it is otherwise in this case, the witness is capable of answering.

By Court:-

The objection is overruled. This is because in the circumstances of this application, this is a legitimate question which the witness as the custodian of the Record Book of

the court is capable of answering and references can also be made to the entries in the Record Book, Exhibit C. E. 2 in case of doubt.

A: Yes my Lord I cannot see him signing off in that case. What appears in respect of the other cases are his initials." Emphasis Supplied

It was after these proceedings that this court directed learned counsel to file any legal arguments or submissions if they are so minded.

We have observed that it is only learned counsel for the Applicants therein Joachim Baazeng who has complied with the order. When asked by the court, whether he would file any further legal arguments, learned counsel for the Interested Parties, Kojo Tachie-Menson, indicated that he would not file but will rely on his earlier statement of case filed in the Certiorari and Prohibition application.

Brief comments on Exhibits C.E.2 and KA 15 as produced supra

1. It is clear from Exhibit C.E.2 that the entry of the proceedings of 18/08/2022 on pages 150 -154 of the record book ended with the entries of Suit No. E6/199/2022.
2. It is also a fact that the learned trial Judge signed off at the close of each case entered on the said date.
3. However the entries in respect of this Suit No. E6/199/2022 were not signed off by the Judge and this has been confirmed by CW.1, Hilda Epton

ISSUES

ISSUES IDENTIFIED FOR DETERMINATION

1. Whether the High Court, Tema presided over by His Lordship Justice Ankamah J (as he then was) failed to observe the rules of natural justice by breach of the *"audi alteram partem"* rule in the determination of Suit No. E6/199/2022 on 18/08/2022.

2. Whether the said court and Judge as listed in Issue 1 supra, had no jurisdiction or exceeded same when he purportedly struck out the caveat of the Applicants herein for want of prosecution in Suit No. E6/199/2022.
3. Flowing from the above two issues supra, whether the said High Court and learned presiding Judge named supra committed a jurisdictional error patent on the face of the record, to wit, the Letters of Administration in respect of the Estate of the Deceased, Rev. Emmanuel Dorgbadzi, when on the face of the record, same court had earlier granted Letters of Administration over the same Estate.
4. Whether or not Prohibition can lie against the learned presiding Judge to prevent him from continuing to determine the case.

FINDINGS OF FACT

1. From the testimony of Hilda Epton, C.W.1, and the several documents tendered by her, to wit Exhibits *C.E.1, C.E.2, C.E.3, C.E.4 and C.E.5*, all referred to supra, we are convinced that Suit No. E6/199/2022 was not one of the cases listed for hearing on the 18th of August 2022, before the High Court, Tema.
2. Indeed, Exhibit C. E.1, the video and audio recording of the Virtual Hearing bears adequate testimony to the above conclusion.
3. Furthermore, the recording of Suit No. E6/199/2022 on pages 150-154 thereof raise serious credibility issues about the sanctity of the said record. Indeed, having observed the nature of the said recording, albeit with the deliberate cancellations and interpolations, we are minded to conclude without any further hesitation that the said record had been tampered with and in that regard should be entirely disregarded. Refer to exhibit KA15 in the main Certiorari Application.
4. The conduct of the learned trial Judge and or the Registrar at the time, has brought into question the sanctity of the said record and we completely disregard it as

incorrect and not borne out as a court recording. The said recordings must have been manipulated after the event.

5. We are also convinced that, the said Suit No. E6/199/2022 was not listed for hearing but for mention. The evidence of the Applicants that it was announced by the Court clerk as one of the cases that were not to be heard that day is consistent with all other material facts relevant to the case. This is because, Exhibit CE4, which is the Cause List of the High Court, Tema for the week commencing Monday, 15th August to Friday 19th August 2022 shows clearly that the case was listed for mention. On the Cause List for Thursday, 18th August 2022 the case No.3 reads *"E6/119/2022 Estate of Rev. Emmanuel Dorgbadzi….FM"* is the abbreviation *"for mention"*. The practice is that, a date is given for hearing after an FM date.
6. Besides all the above procedural lapses, substantively, assuming that the learned trial Judge was even minded to proceed with the hearing of the Caveat and consider the merits of the case, the issues of fact and law raised in the Caveat were so weighty that he could not have just wished it away in the casual manner in which he dealt with it. Refer to the affidavit of interest filed by the Applicants and the priority of grants provided in Order 66 rule 13 of the High Court (Civil Procedure) Rules C. I. 47 of 2004.

Before we deal with the determination of the issues listed supra, we consider it appropriate to state the possible reasons why the Application for grant of Letters of Administration to administer the Estate of Rev. Emmanuel Dorgbadzi (Deceased) has attracted so much controversy. It appears to us that, from the Inventory filed by the Interested parties, the Estate of Rev. Emmanuel Dorgbadzi is very substantial.

Our curiosity was aroused very much early in this case to enquire why a mere application for grant of Letters of Administration to administer the Estate of Rev. Emmanuel

Dorgbodzi – Deceased of H/No.13, Bamboo Street, Community 20 Tema should generate so much controversy.

This curiosity was soon answered when we looked at the Declaration of the Movable and Immovable Property of Rev. Emmanuel Dorgbadzi – Deceased.

The following are the Inventory that the Interested Parties declared when they applied for the grant of the Letters of Administration.

		GH¢
▪ Brayant Misssion Hospital (Obuasi)	-	60,000.00
▪ Great Commission School Limited	-	35,000.00
▪ Brayant Mission Grammer School (Obuasi)	-	25,000.00
▪ H/No 13, Bamboo Street Comm. 20, Tema	-	30,000.00
▪ 5400 Las Moya Ave, Jacksonville FL	-	40,000.00
▪ Nissan Extra 4x4, GW 1324W	-	20,000.00
▪ 3 bedroom House & Voc. School Mafi Devimev/R	-	45,000.00
▪ Teak Farm at Offinso	-	15,000.00
▪ Cocoa farm at Sikaman	-	10,000.00
▪ Oil Palm Plantation at Amankyem	-	10,000.00
▪ Standard Chartered Account Nos. 870022777000, 8750102277700, 0150465172700 8700202749900	- 5,000.00	
▪ H/No. NT76 Obuasi, Aboagye Krom	-	35,000.00
▪ Money at the Bank (USD)	-	unknown
Total		**GH¢340,000.00**

It does appear that, the Interested Parties herein, therein Applicants for the Letters of Administration substantially under valued the properties mentioned in the inventory for obvious fraudulent reasons.

For example, where in this country, can a mission Hospital in Obuasi cost GH¢60,000.00? Similarly, how can going concerns in the nature of educational institutions (schools) in Obuasi and elsewhere cost GH¢35,000.00 and GH¢25,000.00 respectively? What about the Deceased's place of abode at H/No. 13, Bamboo Street, Community 20, Tema valued at GH¢30,000.00?

Is it not also very deceptive, that the money in the Account of the deceased at the Banks in the United States of America have not been stated?

In an affidavit of Interest sworn to by the Applicants herein and therein Caveators, they jointly deposed in paragraphs 4, 5, 8, 10, 13, 15, 18, 19, 20 and 21 as follows as per the affidavit filed on 31st day of March 2020.

4. "That until his death, Rev. Emmanuel Dorgbadzi had his last place of abode at House Number 76, Aboagyekrom Obuasi, where most of his properties are also situated.

5. That the late Rev. Emmanuel Dorgbadzi was a member of the Tei-Tetteh Dorgbadzi gate of the Dorgbadzi family of Mafi Devime (Dorgbadzikofe)/

8. That the 2nd Caveator herein is a child of the deceased, the late Rev. Emmanuel Dorgbadzi.

10. That however the said widow, Patricia Ann Dorgbadzi, and the eldest child of the Deceased, Michael Dapaa alias Kofi Oral Dorgbadzi are both also now deceased, with the result being that the 2nd Caveator herein (Monique Tetteh Dorgbadzi) and

Justice Tetteh Dorgbadzi are the only surviving children of the late Rev. Emmanuel Dorgbadzi.

13. That when Michael Dapaa alias Kofi Oral Dorgbadzi also died, the 1st Caveator was appointed by the family as both his customary successor and the customary successor of the late Rev. Emmanuel Dorgbadzi. (We attach herewith copies of letters from the family appointing the 1st Caveator as the customary successor of the late Michael Dapaa alias Kofi Oral Dorgbadzi and the late Rev. Emmanuel Dorgbadzi and mark same as Exhibit YM 1 and YM 2.

15. That the 1st Applicant to the Application for the grant of Letters of Administration (that is, Michelle Dapaah Tetteh) is a child of the late Michael Dapaa alias Kofi Oral Dorgbadzi and the grandchild of the late Rev. Emmanuel Dorgbadzi.

18. That further, one Evans-Kofi Dorgbadzi who swore an affidavit in support of the Application and purporting to be the head of family is not the head of the family to which the late Rev. Emmanuel Dorgbadzi belonged.

19. That similarly, the 2nd Applicant to the Application for the grant of Letters of Administration (that is, Garfield Lee Jnr.) is not a child of the late Rev. Emmanuel Dorgbadzi.

20. That moreso, the said Garfield Lee Jnr. is not even a member of the family to which the late Rev. Emmanuel Dorgbadzi belonged.

21. That Garfield Lee Jnr. is only the nephew of the widow of the late Rev. Emmanuel Dorgbadzi (that is, Patricia Ann Dorgbadzi)."

It is therefore clear from the above affidavit of Interest filed by the Applicants herein that they had raised serious issues of fact and law as regards priorities of grant of Letters of

Administration. That being the case, the learned trial Judge should have been circumspect in casually dismissing this caveat.

Based on the above findings of fact, we unreservedly conclude that Suit No. E6/199/2022 pending at the High Court, Tema was not called for determination on the 18th of August 2022. As a result, the Orders made by His Lordship Justice Ankamah J, (as he then was) on the said date were made in clear breach of the rules of natural justice as the applicants herein were infact not given a hearing.

The determination of the issues herein will lay bare the reasons why we concluded thus.

DETERMINATION OF THE ISSUES

ISSUE ONE

There is now no doubt, that the Applicants herein were not given any opportunity to be heard in the determination of the Suit No. E6/199/2022 which was pending before the High Court, Tema.

There are quite a number of decent judicial decisions which establish the fact that failure to afford an opportunity to a party to be heard before a determination is made against him in a judicial contest and others where a decision is made affecting the rights or properties of a party, would entitle the said proceedings to be quashed for breach of the principles of natural justice.

Learned Counsel for the parties herein have all referred to a number of cases in support of their rival contentions.

We have as a matter of course read and considered all the said cases. However, as a result of deeper analysis and conclusions, we have decided to narrow down on the following cases and others mentioned in our excursion into the historical antecedents of the

principles of natural justice, mainly breach of the rules *of "audi alteram partem"* to deal authoritatively with the issues.

See the following cases for example and the principles of law which they illustrate.

1. ***Vasquez v Quarshie & Others [1968] GLR 62-66***
2. ***Barclays Bank of Ghana Ltd v Ghana Cables Co. Ltd & Ors [1998-1999]***
3. ***In re Ashalley Botwe Lands, Adjetey Agbosu & Others v Kotey & Others [2003-2004] SCGLR 420 per Wood JSC (as she then was)***
4. ***Republic v High Court, Accra Ex-parte Agbesi Awusu II (No.2) Nyonyo Agboada Sri III) Interested Party, [2003-2004] SCGLR 907 at 924-925***
5. ***Republic v High Court, Accra Ex-parte Salloum (Senyo Coker, Interested Party) [2011] 1 SCGLR 574***
6. ***Republic v High Court, (Land Division Court 2) Accra, Ex-parte Al-Hassan Ltd. – (Thaddeus Sory) Interested Party 2011] 1 SCGLR 478***
7. ***Alabi v B5 Plus Company Ltd [2018-2019] 1 GLR 197 holding 2(b) per Dotse JSC***
8. ***Awuku-Sao v Ghana Supply Co. Ltd [2009] SCGLR 710***
9. ***Republic v District Magistrate, Accra Ex-parte Adio [1972] 2 GLR 125-134 C.A per Archer J.A (as he then was)***

HISTORICAL ANTECEDENTS OF THE PRINCIPLE OF AUDI ALTERAM PARTEM OF NATURAL JUSTICE

The learned authors of Judicial Review of Administrative Action, De Smith, Woolf, and Jowell, Fifth edition, writing on this subject of Natural Justice and its related principles at page 376 state as follows:-

> *"Historically, the principle of natural justice appropriated most of procedural fairness, and, as we shall see, eventually unnecessarily confined itself to situations where a body was acting "judicially" and where "rights" rather than "privileges" were in issue.*

Although often retained as a general concept, the term natural justice had since been largely replaced and extended by the more general duty to act "fairly". More recently, Lord Diplock adopted the term "procedural propriety" to describe one of the three "grounds of judicial review. See ***Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374, 410.***

"Such a term extends the exclusively common law ambit of natural justice and fair hearings to situations where procedures are also provided by statute."

At pages 377-379, the learned authors De Smith, Woolf and Jowell stated the following as the historical development of the concept of natural justice.

"The concept of natural justice

The expression "natural justice" which is the source from which procedural fairness now flows, has been described as one ***"sadly lacking in precision".*** It has been consigned more than once to the lumber room. Thus, it has been said that in so far as it **"means that a result or process should be just**, it is harmless though it may be a high-sounding expression; in so far as it attempts to reflect the old *jus natural,* it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is restored to for other purposes, it is vacuous." No one who has the slightest acquaintance with the medieval English legal system or with legal systems in other parts of the world will suggest that those elements of judicial procedure which are now regarded as the hallmark of a civilized society have been generally enforced or even generally regarded as proper. But courts and commentators who decline to accept any form of justice as natural may take their choice from among "***substantial justice, "the essence of justice, "fundamental justice", "universal justice", "rational justice", the "principles of British justice, " or simply "justice without any epithet", "fair play***

in action" or fairness writ large and juridically" as phrases which express the same idea. And in any event "natural justice" was written into the statute book in 1969. Moreover, "natural justice" is said to express the close relationship between the common law and moral principles and in addition it has an impressive ancestry. **That no man is to be judged unheard was a precept known to the Greeks, inscribed in ancient times upon images in places where justice was administered, proclaimed in Seneca's Medea, enshrined in the scriptures, mentioned by St. Augustine, embodied in Germanic as well as African proverbs, ascribed in the Year Books to the law of nature, asserted by Coke to be a principle of divine justice, and traced by an eighteenth-century judge to the events in the Garden of Eden.** The historical and philosophical foundations of the English concept of "natural" justice may be insecure; but it is not therefore the less worthy of preservation. If it is vulnerable to rationale criticism, so too are the "unalienable rights" of the Founding Fathers of the American Constitution or the notion of "due process". And the view that *"natural justice is so vague as to be practically meaningless"* is tainted by "**the perennial fallacy that because something cannot be cut and dried or nicely weighted or measured therefore it does not exist."**

Continuing further, the learned authors concluded thus:-

"Certainly it did exist in English law. It became identified with the two constituents of a fair hearing; ***(a) that the parties should be given a proper opportunity to be heard and to this end should be given due notice of the hearing and (b) that a person adjudicating should be disinterested and unbiased."***

It certainly sounds quite academic to trace this historical development of this hallowed principle of natural justice. For example, the reference to the principle being known to the Greeks has been explained in the footnote by the learned authors as "J.M. Kelly in

(1964) 9 Natural Law Forum 103, **where he points out however, that the Greeks tended to regard the principle as a practical aid to making good decisions rather than an abstract principle of justice.** But since equal application of the law to similar situations is an important aspect of justice, there is a significant overlap between good decision making and justice. See also *A.R.W Harrison, The Law of Athens [1971] Vol 1.*

The Scripture referred to by the learned authors is John 7:51 which states as follows:-

> **"Does our law condemn a person before it first hears him and finds out what he is doing?"**

The learned authors also referred to the case of R v Chancellor of the University of Cambridge [1723] 1 Str. 557, 567, per Fortescue J … where he stated thus:-

> **"…even God himself did not pass sentence upon Adam, before he was called upon to make his defence "Adam" (says God) "where art thou?, Hast thou eaten of the tree, whereof I command thee that thou shouldst not eat." Emphasis**
>
> But the Biblical precedents are conflicting, see R.F.V Heuston, *Essays in Constitutional Law (2nd edition 1964), 185 and J. M. Kelly in (1964). Natural Law forum at 110, n 38."*

From the above excursion into the first principles, it bears emphasis that the courts from very early times placed a lot of emphasis on the principles of natural justice. This *"audi alteram partem"* aspect of the principle of natural justice, ie to give the party an opportunity to be heard before he or she is condemned, has become a hallowed principle of the courts in Ghana.

HOW HAVE WE FARED IN GHANA AND JOURNEY THROUGH SOME DECIDED CASES

In the celebrated case of ***Vasquez v Quashie*** supra Amissah J.A, sitting as an additional Judge of the High Court, *(i.e. thus even in 1968, this concept of additional judgeship was an integral part of the judicial system)* stated emphatically at page 65 of the report as follows:-

> *"A court making a decision in a case where a party does not* ***appear because he has not been notified is doing an act which is a nullity on the ground of absence of jurisdiction.***"

The Supreme Court, in the case of ***Barclays Bank Ghana v Ghana Cable [1998-99] SCGLR 1*** at page 7, after referring to the case of ***Vasquez v Quashie*** supra, explained the position of the law, per Acquah JSC (as he then was) in situations such as the instant.

> "The rationale for this as stated in *Broom Legal Maxims (9th ed) at page 78,* is that:
>
> "It has long been a received rule that no one is to be condemned, punished, or deprived of his property in any judicial **proceedings unless he has had an opportunity of being heard**. Denning LJ (as he then was) in ***R v Appeal Committee of London Quarter Sessions, Ex-parte Rossi [1956] 1 ALL ER 670 at 674,*** made the same point, when he said
>
> > **"It is to be remembered that it is a fundamental principle of our law that no one is to be found** guilty or made liable by an order of any tribunal unless he has been given fair notice of the proceedings so as to enable him to appear and defend them. **The common law has always been very careful to see that the defendant is fully apprised of the proceedings before it makes any orders against him". Emphasis supplied.**
> >
> > ***In Re Ashalley Botwe Lands, Adjetey Agbosu and Others v Kotey and Others [2003-2004] Vol.1.420*** the Supreme Court speaking with unanimity

per Wood JSC, (as she then was) in her characteristic fashion, elevated this principle of "audi alteram partem" to a higher level when she stated at page 454 as follows:-

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

Dr. Date-Bah JSC rendering his opinion in the unanimous decision of the Supreme Court in the case of ***Republic v High Court, Denu (Exparte Agbesi Awusi III) (No.2) Nyonyo Agboada (Sri III) Interested Party [2003-2004] SCGLR 907 at 924-925*** explained the scope of the principles of natural justice and this court's supervisory jurisdiction as has been invoked in the instant case as follows:-

> "In the statement of case filed on behalf of the interested party, it is argued that the prerogative order of certiorari will only lie to quash a decision of an inferior court or tribunal if there is an error of law on the face of the record and/ or if the inferior court or tribunal acted in excess of jurisdiction or in breach of the rules of natural justice. The argument is that the present application does not come within the ambit of that formulation. **However, an allegation of bias, if sustained, comes within the ambit of the breach of the rules of natural justice.**

> **Natural justice or procedural fairness demands not only that those affected by a decision should be given prior notice and an opportunity to be heard (audi alteram partem) rule, but also that there should be an entitlement to an unbiased decision maker (nemo judex in causa sua and allied ideas) Emphasis**

Sophia Adinyira JSC in the case of ***In re Kumi (Decd), Kumi v Nartey [2007-2008] 1 SCGLR 623*** stated at pages 632-633 as follows:-

> "As said earlier, it is trite law that a person **cannot be found or liable by an order or judgment unless he had been given fair notice of the trial proceeding to enable him to appear and defend himself. This is the essence of justice. Failure by a court or tribunal to do so would be a breach of the rules of civil procedure and natural justice.** A judgment or order procured under such circumstances is, in our view, a nullity" emphasis

See also ***Republic v High Court, Accra, Ex-parte Salloum & Others, (Senyo Coker Interested Party) [2011] 1 SCGLR 574***.

See also the case of ***Awuku-Sao v Ghana Supply Co. Ltd [2009] SCGLR 710, at 722*** where the court again speaking with unanimity per Adinyira JSC held as follows:-

> "It is trite law and a cardinal principle of natural justice that no man shall be condemned unless he has been given prior notice of the allegation against him and a fair opportunity to be heard. See Halsbury's Laws of England (4th ed Vol. 1 at page 76).

In the instant case, having established that the Applicants were made aware that their case which was listed for mention, and thus was ineligible to be heard, had every right to believe the court staff who made that announcement. Applying the principles of law

involved herein would automatically lead to quash such a decision that was arrived at without hearing the Applicants. We have referred to Exhibit KA15, the impugned record of the 18th of August 2022 and the record of proceedings of the learned trial Judge, tendered by C. W. 1, Hilda Epton as Exhibit C. E.2. The said Exhibits speak for themselves. The least said about them now, the better.

The facts in this case actually admit of no controversy whatsoever, and that is, that even though the Applicants were aware that their case Suit No. E66/199/2022 was listed on the Cause List for the said 18th August 2023, the said case was never heard. This was due to a variety of factors, such as the blatant deceit and fraud perpetuated on the Applicants that their case would not be heard that day, and secondly from the records, the conclusion by this court that the case was indeed never heard even though the record book indicated the contrary. And thirdly, that from the court records the case was actually listed for mention. In that respect, it is therefore clear that the orders made by the court on the said 18th August, 2022 have resulted in a denial of the Applicants right to a hearing.

From all the above respected authorities referred to supra it can safely be concluded that, where a party, such as the Applicants in the instant case, were denied and or prevented by carefully designed and well orchestrated machinations to be heard in the prosecution of their case which they had put forward in a court, there is nothing so serious as their denial to the age old principle of the *"audi alteram partem"* rule of natural justice, to wit the right to a hearing. This is a classic case where the justice of the case requires that the court should not shy away from granting the first relief of the Applicants.

Under the circumstances, we hold that the learned trial Judge at High Court, Tema failed to observe the rules of natural justice by the breach of the *"audi alteram partem"* rule in the orders he made in Suit No. E6/199/2022 in respect of the Estate of Rev. Emmanuel Dorgbadzi – Deceased on the 18th August 2022.

ISSUE TWO

Furthermore, having considered all the facts and the cases referred to supra, it is apparent that the learned trial Judge His Lordship Emmanuel Ankamah J (as he then was) had no jurisdiction whatsoever to have presided over Suit No. E6/199/2022 on the 18th August 2022. This is because the case was not listed to be heard that day, and from the antecedents of the case, the learned trial Judge lacked jurisdiction to have made the orders he purportedly made.

Flowing from the facts of the case, and having regard to the issues raised by the Applicants herein in their affidavit of Interest, the subject matter of the Caveat, and the fact that an application for Letters of Administration had already been granted, the court had very limited space to operate.

ISSUE THREE

Reference is made to the provisions in Order 66 r. 13 of the High Court (Civil Procedure) Rules, 2004 on the order of Priority of Grants where a person dies intestate after the enactment of the Intestate Succession Act, PNDC Law 111.

It is to be noted that, where a person dies intestate, after 14th June 1985, the persons who have beneficial interest in the Intestate's Estate, shall be entitled to grant of Letters of Administration in the following order:-

1. any surviving spouse
2. any surviving children
3. any surviving parents
4. customary successors of the deceased.

From the state of the affidavit evidence, the Interested Parties herein, to whom the learned trial Judge made the grant of Letters of Administration to, do not come under the said priority.

Taking a cue from the said Rules of Court which stipulate the priorities of the grant, it is apparent that the Learned trial Judge again erred in the orders he made on the 18th August 2022. Thus, on the strength of the issues raised by the Applicants in their affidavit of Interest in the caveat, the learned trial Judge, should not have been in a hurry to dismiss same because of the substance contained therein.

ISSUE FOUR

Finally, from the conduct of the learned trial Judge, it appears that he was biased against the Applicants. This is exemplified in the conduct of the Judge in putting aside rules of proper conduct in determining cases thereby descending into the arena of the conflict as an interested party.

In the ***Ex-parte Agbesi Awusi II (No2) (Nyonyo Agboada Sri III) Interested Party*** supra at holding 1, at 908, the court unanimously explained the rules thus:-

> *"Where bias or real likelihood of bias has been satisfactorily established against a trial Judge, both certiorari and prohibition would automatically lie to quash his judgment or prevent the biased Judge from hearing a case in the Supreme interest of justice so as not to bring the administration of justice into disrepute."* Emphasis

See other cases such as ***Adzaku v Galenku [1974] 1 GLR 198, Bilson v Apaloo [1981] GLR 15, SC and in Re Effiduase Stool Affairs (No.1) Republic v Numapau, President of National House of Chief Ex-parte Ameyaw II [1998-99] SCGLR 427 at 443 - 444, 448 and 449-450***

From the foregoing, it is apparent that, the conduct exhibited by the learned trial Judge would warrant this court to prohibit him from further hearing or determining this Suit No E66/199/2022 before the High Court, Tema or at any other forum.

It is for the above reasons that we unanimously granted the Applicants the orders for Certiorari and Prohibition on the 1st March 2023 as follows:-

> "By Court:
>
> This is an application at the instance of the Applicants herein seeking to quash the orders/proceedings of the High Court, Tema, presided over by His Lordship Emmanuel Ankamah dated 18th August 2022 and also to prohibit the said Judge from hearing and or dealing with any matter in respect of the Estate of Rev. Emmanuel Dorgbadzi (Deceased) Suit No. E6/199/2022 or any such related case. Having considered all the processes filed by the respective Counsel and also taken into consideration their arguments as well as the exhibits tendered during the testimony of C.W.1, Hilda Epton, Registrar of the High Court, Tema, this Court is of the considered opinion that, the proceedings and orders made by the High Court, Tema presided over by His Lordship, Emmanuel Ankamah J, (as he then was) on the 18th day of August 2022 in Suit No. E6/199/2022 intitutled "In the matter of the Estate of the late Rev. Emmanuel Dorgbadzi – Deceased and In an application for the Grant of Letters of Administration by Mitchelle Dapaah Tetteh and Garfield Lee Jr. Applicants And In the matter of Caveat by Yaw Godwin Dorgbadzi and Monique Tetteh are hereby brought up into this court for the purposes of being quashed and same are accordingly quashed by order of Certiorari. For the avoidance of doubts, the said Judge Ankamah J (as he then was), is also hereby prohibited from hearing or having anything to do with this suit or any related aspect of it whatsoever."

REFERRALS

1. In our collective wisdom, we deem it appropriate to refer this case to the Chief Justice to cause further investigations into the conduct of the learned trial Judge and Sebastian Agbo, then Registrar of the High Court, Tema under whose tenure the sordid affairs happened. This should cover all officers who played any role in this shameful specie of conduct.
2. We further advice and urge the Hon. Chief Justice to cause investigations into the apparent devise by the Interested Parties herein to undervalue the Estate of the Deceased. Learned Counsel who filed the application for and on behalf of the Interested Parties should be made to give explanation as to the basis of the valuations made in respect of the properties stated therein
3. It is the considered view of this panel that, such an investigation will unravel the phenomenon that parties have been adopting to undervalue Estate of deceased persons in respect of whose Estate's they apply for Letters of Administration.
4. We urge the Judicial Service to enquire into the circumstances that led to Sebastian Agbo, then Registrar of the High Court, Tema being interdicted.

EPILOGUE

PROPOSALS FOR REFORMS

We wish to reiterate the urgent need for the Rules of Court Committee to come out with robust Rules of Procedure to prevent lawyers and parties from stampeding the swift progress of cases with reckless and delay tactics. What must be noted here is that, all of our Rules of Procedure in Civil as well as Criminal Justice have all been fashioned to ensure that the basic tenets of natural justice and fair trials are guaranteed to all parties.

It however appears to us that, flowing from our years of experience at the Bar and the Bench and this has brought to the fore the need for urgent reforms in all aspects of our Rules of Procedure.

We must however admit that the Rules of Court Committee has since July, 2017 made several attempts to amend these Rules of Procedure. What is lacking is that, the pace is too slow with the result that, by the time the amendments and or reforms are introduced, they may be described as *"dead at birth"*.

The result has been that many people see the Legal and Justice Systems as a recipe for the country's slow pace for fighting increase in crimes and most importantly, corruption and also the phenomenon of the slow pace of trials in all cases, civil and criminal.

It is our considered view that since this case has emanated from the maiden virtual court hearings during the vacation, there is the urgent need to enact and or reform e justice rules of procedure

From the evidence that unfolded during the adduction of evidence before the Supreme Court, it bears emphasis that there is the need for rules of procedure to be enacted to regulate the virtual court hearings such that the lapses that were evident and exploited are addressed. A stitch in time in this instance will be very much appreciated.

The incessant delays in our justice system must be addressed head on by all the principal actors coming together with a common purpose for genuine reforms.

The office of the Chief Justice, the Hon. Attorney-General, the I.G.P, the President of the Ghana Bar Association and others must show and exhibit a real and dogged commitment for meaningful reforms.

In this respect, we recommend the holding of an urgent High Level Criminal Justice Review conference to tackle serious and endemic delays associated with the trial of criminal cases of all types and at all levels, especially at the trial courts.

For example, is it ripe to put an end to jury trials and abolish the distinction between trials on Indictment and Summary trials? Food for thought. What about the procedure for interlocutory appeals in all aspects of both civil and criminal procedures?

In civil cases, we must exhibit real interest and desire to do substantial but swift justice. In this respect, the Case Management Conference system must be refined to ensure that, Judges, Lawyers and or parties who fail to comply with timelines in the prosecution of their cases in court as directed at the Case Management Conference levels are professionally penalized. This is the only way we can redeem our image which is fast fading.

The job as Judges at the Apex Court is daunting and is a huge challenge. The stress it carries is such that there is the urgent need to manage the psychological state of our Judges.

As a country, we urge that we honour and respect our Judges because they work under difficult conditions. At the same time we call on all of our brethren to endeavor to put up their best, to expeditiously deal with the cases that come before them, eschew all forms of bias, and disrespect to the parties and lawyers who appear before them and avoid the incessant adjournments without the decency to inform the lawyers and parties.

One thing we will urge Her Ladyship the Chief Justice to pursue promptly is to ensure that the short notices Judges are given to go for this or that programme or seminar without the corresponding need to alert the lawyers and parties ahead of time by the J.T.I must be avoided or reduced to the barest minimum.

The last issue we want to deal with is this. In a country where we claim that the private sector is the *"Engine of Growth"* it is sad to observe that, some of our policies, laws and practices are geared towards stultifying the private sector. We therefore appeal to our Governments to initiate bold and deliberate initiatives to help promote private businesses. This is the only way by which the excessive stress on public funds will be reduced. If the private sector is financially strong, funds meant for the public sector will be free for the use of the benefit of the public.

Thank you for your attention.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

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