IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA – A.D. 2024

CORAM: AMADU JSC
KULENDI JSC
ACKAH-YENSU (MS.) JSC
GAEWU JSC
DARKO ASARE JSC

CIVIL MOTION
NO. J5/18/2024

5TH MARCH, 2024

THE REPUBLIC

VRS.

HIGH COURT, ACCRA
(CRIMINAL LAW DIVISION 5) ... RESPONDENT

EX PARTE:
BENJAMIN AKUFFO DARKO ... APPLICANT

ATTORNEY GENERAL ... 1ST INTERESTED PARTY

INSPECTOR GENERAL OF POLICE ... 2ND INTERESTED PARTY

RULING

DARKO ASARE JSC:

The Applicant herein describes himself as an Associate Programmes Officer of the Democracy Hub, a Civil Society Organisation, registered under the laws of the Republic of Ghana;

On the 5th of December 2023, the Applicant filed an application invoking the Supervisory Jurisdiction of the Supreme Court pursuant to Article 132 of the Constitution 1992 and Rule 61 of the Supreme Court Rules C. I. 16 of 1996. In these proceedings learned Counsel moves the court on behalf of the Applicant for an order of certiorari to remove into this Court for the purpose of being quashed the decision of the High Court Accra, Criminal Division, dated the 22nd of November 2023 Coram: Her Ladyship Lydia Osei Marfo (Mrs); and for such further order or orders as this Honourable Court may deem fit.

The events leading to the filing of the instant application are far from complex and may briefly be stated as follows:-.

On the 9th day of October 2023, the Democracy Hub, communicated to the 2nd Interested Party, through the Greater Accra Regional Police Commander, an intention to hold a public demonstration in Accra from the 1st of December 2023 to 31st December 2023. Following that, officials of the Democracy Hub held series of meetings with the Regional Police Commander in order to agree on a date for the demonstration that would be convenient to both parties but no consensus was arrived at. The Democracy Hub then decided to act unilaterally and hold their demonstration on their own chosen date ignoring the police. This caused the 2nd Interested Party to file a motion on notice on 15th November 2023 at the High Court praying for an order of injunction to restrain the Applicant and his group from holding any special event between 1st December 2023 and 5th January 2024.

According to the Applicant, though the 2nd Interested Party's application was slated for hearing on 21st of November 2023, he was served with the motion paper and supporting affidavit only on the 17th of November 2023. The applicant contends that this was short service in terms of the provisions of the High Court (Civil Procedure) Rules 2004, C.I. 47 which provide for three clear days between the date of service and the hearing of an application. The Applicant failed to attend court on the date for hearing but according to him he learned from the media later that day that when the case was called in court on the 21st of November 2023, the Court adjourned the hearing of the motion for injunction

to the following day, the 22nd of November 2023. No one from their group attended the court on the 22nd November 2023, but the court proceeded to hear the motion and issued an Order prohibiting the Applicant and all persons affiliated with him from holding any special events between the 1st of December 2023 and the 5th of January 2024.

Claiming that the trial court had no jurisdiction to entertain an application that had been short served on him, and further that the adjournment from the 21st of November 2023 to the 22nd of November 2023 was without notice to him, the Applicant invites us by this instant application, to quash the Order made on 22nd of November 2023 on grounds of breach of the rules of natural justice.

From the record before us, neither the 1st nor 2nd Interested Parties filed any processes in response to this instant application even though there is sufficient evidence that they were both duly served with copies of the application as well as hearing notices for the hearing before this Court. The interested parties have further failed to attend the court for the hearing of the application but because of the importance of the legal issues raised in the arguments of the applicant, we have decided to consider them and to give a reasoned ruling.

Summary of Legal Arguments

In these proceedings, the Applicant contends that the application for injunction filed by the 2nd Interested Party under the provisions of section 1(6), of the Public Order Act, 1994 (Act 491), was designed to restrict his fundamental human rights as entrenched under Article 21(1)(d), of the 1992 Constitution. That being the case, and in pursuance of his rights to natural justice which required that he be given a reasonable opportunity of being heard, he was entitled to the appropriate notice under the Rules of Court. Instead, he and his group were short served and as such the trial court lacked jurisdiction to entertain the application.

It was further submitted for the Applicant that the trial court persisted in its jurisdictional incompetency when it granted the order for injunction on the 22nd of November 2023 after adjourning the proceedings from the previous day, the 21st November 2023, without any notice served to him of the new date. This default on the part of the trial court, learned Counsel for the applicant argued, constituted a serious violation of his rights to a fair hearing and thereby vitiated the court's of jurisdiction to make the injunctive orders against him and his group.

Finally, learned Counsel for the Applicant urged on the court that the trial court committed a grave error of law when it directed the orders of injunction personally against him rather than the Democracy Hub as an entity.

Consideration

The issues raised in this application concern a recurring but equally engaging aspect of our civil procedure jurisprudence and it relates to the question: whether short service of a process amounts to an irregularity that is fundamental and deprives the court of jurisdiction to entertain the ensuing proceedings. The question has arisen here in the context of a case where two very fundamental constitutional principles appear to collide, to wit, the right to embark on demonstrations under Article 21(1)(d) of the 1992 Constitution and the need to preserve public safety and order under Article 21(4)(c) of the Constitution.

WHEN CAN THE SUPERVISORY JURISDICTION OF THIS COURT BE INVOKED?

The law is settled that the supervisory Jurisdiction of the Court under Art.132 of the 1992 constitution is exercised only in those manifestly plain, obvious and clear cases where there is an allegation of excess or lack of jurisdiction on the part of the lower court or other tribunal; where there is an error of law on the face of the record; and where there has been the breach of the rules of Natural Justice, such as to affect jurisdiction.

The above statement of the law has been re-affirmed in a plethora of judicial decisions like ***Republic v Court of Appeal, Accra, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612*** at 619; ***Republic v High Court, Accra, Ex-parte Ghana Medical Association (Arcman-Akumey — Interested Party) [2012] 2 SCGLR***; ***The Republic v High Court, Accra Ex-parte Attorney-General (Ohene Agyapong Interested Party) [2012] 2 SCGLR 1204***; as well as ***Republic v High Court, Accra; Ex-parte Tetteh Apain [2007-2008] SCGLR 72***

The following passage by this Court in the case of ***Republic v High Court (Commercial Division) Ex Parte The Trust Bank (Ampomah Photo Lab and 3 ors, Interested Parties) [2009] SCGLR 164,*** (at p.169-171), provides perhaps the most pristine roadmap regulating the parameters for the exercise by the Supreme Court of its supervisory jurisdiction over inferior courts:-

> ***"The current law on when the prerogative writs will be available from the Supreme Court to supervise the superior courts in respect of their errors of law was restated and then fine-tuned in the Republic v High Court Accra, Ex Parte CHRAJ [2003-2004] SCGLR 1 and Republic v Court of Appeal, Ex Parte Tsatsu Tsikata [2005-2006] SCGLR 612, respectively. In my view, the combined effect of these two authorities results in a statement of the law which is desirable and should be re-affirmed. This Court should endeavour not to backslide into excessive supervisory intervention over the High Court in relation to its errors of law. Appeals are better suited for resolving errors of law. In the Ex Parte CHRAJ case, this Court, speaking through me, sought to reset the clock on this aspect of the law (as stated at pages 345-346) as follows:***
>
> > ***"The Ruling of this Court in this case, it is hoped, provides a response to the above invitation to restate the law on this matter.***

The restatement of the law may be summarised as follows: where the High Court (or for that matter the Court of Appeal) makes a non-jurisdictional error of law which is not patent on the face of the record (within the meaning already discussed), the avenue for redress open to an aggrieved party is an appeal, not judicial review. In this regard, an error of law made by the High Court or the Court of Appeal is not to be regarded as taking the judge outside the court's jurisdiction, unless the court has acted ultra vires the Constitution or an express statutory restriction validly imposed on it. To the extent that this restatement of the law is inconsistent with any previous decision of this Supreme Court, this Court should be regarded as departing from its previous decision or decisions concerned, pursuant to Article 129(3) of the 1992 Constitution. Any previous decisions of other courts inconsistent with this restatement are overruled."

The plain learning to be derived from the above instructive statement of the law is that the Supreme Court's power of supervisory jurisdiction, though far reaching in its embrace, is certainly not available for questioning the legitimacy of non-jurisdictional errors that are better resolved by resort to the appeal process.

It cannot therefore be over emphasized that the supervisory jurisdiction of this Court should be invoked only in the most crystal clear and manifest of cases. The exercise of the Supreme Court's supervisory jurisdiction should in no wise become a happy hunting-ground for Applicants seeking to question the legitimacy of any decision by lower courts or tribunals, without critically examining the grounds upon which such decisions are sought to be impugned. If this Court fails to ensure that its supervisory powers are properly invoked, it would soon become engulfed in streams of undeserving cases that are better suited to be resolved by the appeal process.

The facts of this instant application fall within the category of cases wherein it is alleged that while engaged on an enquiry ordinarily within its competence, the trial court departed from the rules of natural justice and failed to give the Applicant an opportunity to be heard, thereby vitiating its jurisdiction. The crux of the Applicant's application was quintessentially expressed in his depositions at paragraph 32 of his supporting affidavit where he averred as follows:-

> *32. That I am further advised by my Counsel and I verily believe the same to be true, that a Court does not have the jurisdiction to make a final order that adversely affects the right of a Party or a person who is either not before it at all or who is not properly before it; and that by making a final order against me when I was not given an opportunity to appear before it, the Honourable Court erred in law.*

But the question is: Can it be said on a consideration of the totality of the materials filed in this application that a proper case has been made for invoking this Court's supervisory jurisdiction?

To start with, there is no doubt that generally speaking, certiorari, if the circumstances are appropriate, can be directed to a decision of an inferior court or tribunal where a Party has been deprived of his right to be heard.

Indeed, nothing is clearer today than that a breach of the rules of natural justice is said to occur if a Party to proceedings, is not given an opportunity to be heard and to present his case. It is so elementary and so basic a proposition of the law, it hardly needs to be said. Not only is it a legal truism, but it is a proposition on which judicial opinion is consistent.

Thus for instance, in the case of ***Barclays Bank of Ghana Ltd v. Ghana Cable Co. Ltd. And Others (1998 – 1999) SCGLR 1,*** this Court held as follows:-

"A court has generally no jurisdiction to proceed against a party who has not been served. Accordingly, when a defendant complains that he has not been served with a writ of summons or any process which requires his personal service, the court is duty bound to examine that complaint thoroughly and make a definitive finding irrespective of whether there is proof of service or entry of appearance on behalf of that defendant."

In ***Serbeh-Yiadom v Stanbic Bank (Gh) Ltd [2003-2005] 1 GLR 86*** the Supreme Court stated that:-

"It is a salutary and well-known principle of law that a person should be given the opportunity of being heard when he is accused of any wrong doing before any action is taken against him".

The effect of failure to comply with the rules of natural justice is to render the ensuing proceedings a nullity. See ***In re Kumi (Decd); Kumi v Nartey [2007-2008] SCGLR 623***. In the case of ***The Republic v. High Court, Accra Ex-Parte Salloum (Senyo Coker (interested party) [2011] 1 SCGLR 574*** the Supreme Court re-echoed the same principle when it held thus:—

"Equally so, if a party is denied the right to be heard as in this case, it should constitute a fundamental error for the proceedings to be declared a nullity. The courts in Ghana and elsewhere seriously frown upon breaches of the audi alteram partem rule to the extent that no matter the merits of the case, its denial is seen as a basic fundamental error which should nullify proceedings made pursuant to the denial."

From the antecedents as set out above, the issues raised under this application appear to be three fold:- (i) whether the alleged short service of the 2nd Interested Party's

application deprived the trial court of jurisdiction; (ii) whether the adjournment of the proceedings from the 21st of November 2023 to the following day the 22nd of November 2023 without serving the Applicant with any hearing notice occasioned a grave violation of the Applicant's right to natural justice; and (iii) whether the trial court committed a grave error of law when it directed the injunctive order against the Applicant rather than the Democracy Hub.

Allegation that short service deprived the trial court of jurisdiction

In dealing with the issues raised in this instant application, this Court's primary concern is to answer the quite straightforward question whether or not short service vitiates the jurisdiction of the Court to entertain the proceedings before it?. Put differently does short service give rise to a mere procedural irregularity or does it acquire a jurisdictional character that renders all proceedings founded upon it a nullity?

Happily, the answer to the above question has been neatly raised and answered by impeccable authority. In the now seminal case of ***Republic v High Court, Accra; Ex Parte Allgate Co Ltd (Amalgamated Bank Ltd Interested Party) (2007-2008) 2 SCGLR 1041***, which appears to be one of the first cases on non-compliance upon the coming into force of the current High Court [Civil Procedure] Rules CI 47 of 2004, the Supreme Court laid down the guidelines for determining the circumstances under which non-compliance with a procedural rule, could lead to proceedings being vitiated. In that case, this Court came to the conclusion that, non-compliance will nullify proceedings if the irregularity complained of amounts to a breach of the Constitution or a statutory provision, or breach of the rules of natural justice, such as to affect jurisdiction.

The facts of the ***Ex Parte Allgate*** case (supra) which actually appear almost identical to the facts in this instant application, were that the Defendant/Applicant was short-served by one day with the hearing of an application for summary judgment but failed to appear. The High Court proceeded with the hearing of the application for summary judgment and

granted same. In a subsequent application by the Defendant/Applicant for an order of certiorari to quash the Ruling on grounds of non-compliance with the mandatory provisions of Order 14 Rule 2(3) of the High Court (Civil Procedure) Rules 1994, C.I. 47, which requires the Defendant to be given four clear days' notice of the application for summary judgment, this Court in dismissing the application held at (2) as follows:-

> ***(2) Non service of a process where service of same is required, goes to jurisdiction. Non-service implies that audi alteram partem, the rule of natural justice is breached. This is fundamental and goes to jurisdiction. Thus, the reason why, even after the coming into effect of Order 81 of C.I. 47, non-service of a process result in nullity is not because of non-compliance with a rule of procedure, but rather because it is an infringement of a fundamental principle of natural justice, as recognized by the common law. Similarly, breach of the principle of nemo index causae suae could result in nullity. In contrast, short-service need not be treated as fundamental enough to go to jurisdiction. It should thus be regarded as an irregularity that may serve as a ground for setting aside the proceedings following it under Order 81 rule 1 but it does not make proceedings null and void. The short-service is to be regarded as an irregularity which does not cause an automatic nullity (emphasis mine). This conclusion is fatal to the applicant's case. Azinogo v W.E. August & Co. Ltd. [1989-90] 2 GLR 278 overruled. Dictum of Lord Denning MR in In re Pritchard (Decd): Pritchard v Deacon [1963] 1 Ch. 502 at 517-518 cited".***

An identity of reasoning appears to have informed the remarks by Twum JSC in the case of ***Boakye vs. Tutuyehene [2007-2008] 2 SCGLR 970*** at 980, as follows:-

> ***"The new Order 81 has made it clear that perhaps apart from lack of jurisdiction in its true and strict sense any other wrong step taken in any***

legal suit should not have the effect of nullifying the judgment or the proceedings"

To the extent then that learned Counsel for the Applicant sought to say that the short service of the 2nd Interested Party's notice of motion on him, deprived the trial court of jurisdiction to entertain the proceedings slated for the 21st of November 2023, it seems to us that the combined effect of the decisions in the case of ***Ex Parte Allgate*** (supra) and the case of ***Boakye vs. Tutuyehene***, (supra), furnish a complete answer.

This means that even if true that there was a breach of the provisions of Order 19 Rule 2(1) of C.I 47, when the 2nd Interested Party's application for an injunction was short served on the Applicant by one day, this was not a defect that went to jurisdiction, so as to render the proceedings a nullity; it only constituted a mere irregularity that may serve as a ground for setting aside the affected proceedings. See the provisions of Order 81 of C.I. 47

It follows therefore that the failure by the Applicant and his lawyers to attend court on the 21st of November 2023 under the obviously ill-advised misapprehension that the trial court was not vested with jurisdiction to entertain the proceedings slated for that day, was a truly misguided step to have taken. Rather than attend the proceedings slated for the 21st of November 2023, the Applicant decided as per paragraph 24 of his affidavit, to meet with his lawyers elsewhere. That was clearly unfortunate. By failing to attend the proceedings slated for the 21st of November 2023, the Applicant clearly deprived himself of the opportunity to be heard on the said proceedings. He can hardly turn around and accuse the trial court of breaching his rights to natural justice.

It must not be forgotten that a Party's right to a fair hearing is not absolute and a Party can waive his right to be heard. Thus, in ***Republic v Court of Appeal Ex Parte Eastern Alloy [2007-2008] 1 SCGLR 371*** at 372, this Court stated as follows:-

"It is trite law that the rules of natural justice can be waived, see Bilson v Apaloo (1981) GLR 24 SC. There is no suggestion that the applicant was unaware of the hearing date of the motion, yet it absented itself without even representation by counsel. A clearer case of waiver of the right to a hearing could not be imagined."

Decisions like ***Republic vrs High Court (Human Rights Division), Accra; Ex parte Josephine Akita (Mancell — Egala and A-G, Interested Parties) [2010] SCGLR 374*** at 383-384, further underscore the fact that deliberately absenting oneself would constitute a waiver of the right to be heard. This is what the Court said:—

"The argument that the Applicant was not heard on the motion, should be summarily dismissed because she was aware that the proceedings were to take place before the trial court but the Applicant (per her Counsel) walked out of the proceedings because Counsel was convinced the court had no jurisdiction to proceed with the case. If the Applicant were minded to be heard, she would have been heard, even if it meant going to the court to protest against the court continuing with the hearing"

The Court then proceeded to lay down the following proposition:-

"a person who has been given the opportunity to be heard but deliberately spurned that opportunity to satisfy his own decision to boycott proceedings cannot later complain that the proceedings have been proceeded without hearing him and then plead in aid the audi alteram partem rule".

Wood, C.J. (as she then was) on her part, in the case of ***Republic v. High Court (Fast Track Division) Ex Parte State Housing Co. Ltd. (No. 2) [2009] S.C.G.L.R. 189*** at 190, stated thus:

> ***"A party who disables himself or herself from being heard in any proceedings, cannot later turn around and accuse an adjudicator of having breached the rules of natural justice."***

We have examined the principles of the law deducible from the authorities above cited, and we are unable to conceive on the facts of this case, of a more classic example of a Party waiving his rights to be heard. Having determined then that the blame falls squarely on the Applicant when he spurned the opportunity to attend the proceedings slated for the 21st of November 2023, we think it is a matter which should result in the failure of the first leg upon which the instant application to invoke this Court's supervisory jurisdiction has been anchored. In our judgment, that is the outcome to which this Court should adhere.

Allegation that the adjournment of proceedings from the 21st of November 2023 to the 22nd of November 2023 without notice to the Applicant violated his right to natural justice.

Under this next leg, the Applicant viscerally assails the Ruling of the trial court dated the 22nd of November 2023 on the ground that the trial court committed a grave jurisdictional error when it failed to ensure that he was served with any hearing notice after adjourning the proceedings from the 21st of November 2023 to the following day, the 22nd of November 2023. As we understand him to be saying, this failure by the trial court to put him on notice, deprived him of an opportunity of being heard, and thereby constituted another serious violation of the *audi alteram partem* rule of natural justice.

To begin with, we are unable to disagree with the Applicant's contention that adjourning a suit without notice to a Party, constitutes a violation of the *audi alteram partem* rule of natural justice. In the case of ***Vasquez v Quashie [1968] GLR 62*** at page 65, Amissah J.A. (as he then was) in giving judgment to the same effect as the principle stated above, laid down what seems to be the sound general rule on this subject, and that which this Court should desire to sanction. He said:-

> ***"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. A person who is condemned in his absence in proceedings of which he has no knowledge cannot be limited as to the time within which he may repudiate the decision,"***

Having so conceded however, the critical question is whether on the peculiar facts of this case, the Applicant was entitled to successfully plead in his aid the *audi alteram partem* rule of natural justice? We think not, and our reasons are nor far to seek.

We have already concluded above that the Applicant's failure to attend the proceedings on the 21st of November 2023 on grounds that he was short served with the application slated for the day was seriously ill-advised. Having taken that completely precipitous step, we think it was incumbent upon the Applicant as any prudent litigant would do, to have enquired about the outcome of the proceedings of the 21st of November 2023 and advised himself appropriately.

As already pointed out above, this was a case in which two very important constitutional rights and freedoms had become seriously engaged. The Applicant well knew that the public interest ramifications surrounding this case were quite far reaching. He knew or ought to have known, with the benefit of professional legal services, that even if he had been short served with the application slated for the 21st of November 2023, he still owed a duty to the court to appear and allow himself to be heard on the issue of short service.

He wilfully failed to do that. Not only did he refuse to attend the proceedings slated for the 21st of November 2023, but more significantly, he also failed to find out what the outcome of those proceedings were. That we find to be rather striking.

The case of ***Aponsah v Okailey [1992-93] GBR 86***, presented facts which bear a striking resemblance to those existing in the instant application. In that case, the Plaintiff failed to appear on the 2nd of May 1989, the date fixed for the hearing and had written a letter for a long adjournment, which was rejected by the trial court and the matter adjourned to the very next day, the 3rd of May 1989, on which date the suit was struck out for want of prosecution when Plaintiff again failed to appear. A subsequent application to vacate the order striking out the suit was refused by the trial court and on appeal, the Court of Appeal, dismissing the appeal, held that the trial court had exercised its discretion judicially when it refused to vacate the order striking out the Plaintiff's suit for want of prosecution. In arriving at the above conclusion, the Court of Appeal had reasoned *inter alia*, that the Plaintiff had failed to act with ordinary prudence when he neglected to check on the fate of his application for adjournment on the 2nd of May 1989, and advised himself appropriately.

We think that so far is relevant to the facts of this instant application, the sound policy objectives underlying the above decision is exemplary and must be re-affirmed, given especially the current regime regulating our rules of procedure, where considerations for achieving speedy and effective justice, avoid delays and unnecessary expense, have all been clearly articulated under the provisions of Order 1 Rule 2 of the High Court (Civil Procedure) Rules 2004, C.I 47 as follows:-

> *"These Rules shall be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, and ensure that as far as possible, all matters in dispute between the parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any such matters avoided."*

In the end therefore, and having closely examined all the processes filed in support of this instant application, we are not satisfied that this Court should lend its aid to a litigant such as the Applicant herein. Not only had the Applicant waived his rights to be heard on the proceedings slated for the 21st of November 2023, but more importantly, he also neglected to make the necessary enquiries, as any prudent litigant would do, about the outcome of the proceedings for that day, and appropriately advised himself. We are satisfied that on the peculiar facts of this case, the Applicant herein should not be allowed to use his own default as a shield and in the process, benefit from his own transgressions.

Fletcher – Moulton L. J could not have been more right when he remarked in the case of ***Kish v. Taylor [1911] I KB 624*** as follows;

> ***"A man may not take advantage of his own wrong. He may not plead in his own interest a self –created necessity"***

Strengthened by the above remarks and informed by similar sentiments expressed by this Court in such cases as ***Republic v High Court (Human Rights Division), Accra; Ex parte Josephine Akita (Mancell — Egala and A-G, Interested Parties)*** (supra), we think that it would be wrong, by a gradual erosion of the very basic principles upon which our supervisory jurisdiction have been founded, to lay down any firm rule of law, by which Parties like the Applicant herein can happily impeach decisions of lower courts on grounds as facile and as tenuous as have been urged on this Court in this instant application.

In arriving at the above conclusion, it is important to make it clear that the views we have held above relate solely to the facts of this instant case, and that our acceptance that the present circumstances do not properly invoke our supervisory jurisdiction, is not to be understood as laying down a general rule by which a failure to make appropriate enquiries concerning the outcome of previous proceedings would invariably be a bar to a successful

plea of the *audi alteram partem* rule of natural justice, even when a Party's right to be heard has been breached.

Certiorari, it must not be forgotten, is a discretionary remedy and so it is. No one can come to this Court and demand an order of certiorari as of right. No such order goes unless the Court in its discretion thinks that the situation befits its grant. Accordingly, when an Applicant has so conducted himself as to disentitle him to the grant of the remedy, the Court will refuse to come to his aid.

We think that Wuaku JSC succinctly stated the correct position of the law when he reiterated this same principle in the following words in the case of ***Republic v High Court, Accra; Ex parte Pupulampu [1991] 2 GLR 472*** at p. 477:-

> ***"Certiorari is never granted if the grant will serve no useful purpose or where no benefit can be derived from it. It is in the discretion of the court to grant or to refuse an order of certiorari, and it is not a matter of right: see R v. Newborough (1869) LR 4 QB 585 at 589."***

See also the case of ***Republic v High Court, Accra Ex-parte Attorney-General (Delta Foods case) [1998-99] SCGLR 595***, where the Supreme Court stated thus:-

> ***"And an order of certiorari is a discretionary remedy and hence it would not be automatically issued by the Supreme Court except in cases of want of jurisdiction."***

Allegation of error of law

The Applicant next contests the Ruling of the trial court, on the grounds that the decision was directed personally at him, when it ought to have been directed at Democracy Hub. Consequently, so argued learned Counsel, the trial court had committed a grave error of law apparent on the face of the record.

We must say without hesitation that we find little in this complaint to commend itself to this Court. Even if true, as alleged that the trial court erred by directing the orders of injunction against Democracy Hub rather than the Applicant, we are firm in our view that this should not be an error that goes to jurisdiction, capable of rendering the decision amenable to judicial review by way of certiorari. The remedies, if any available to the Applicant for redressing such alleged errors of law, should be by way of an appeal or by an appropriate application filed before the trial court.

It cannot be reiterated too often that the supervisory jurisdiction of the Supreme Court is only to be invoked where there has been a fundamental, substantial, material, grave and serious error such as would render the decision a nullity.

As was instructively stated by Wood JSC (as she then was) in the case of ***Republic v Court of Appeal, Accra; Ex Parte Tsatsu Tsikata [2005-2006] SCGLR 612*** at page 627:-

> ***'the learned justice may well have been wrong, indeed badly wrong, but the avenue open to the applicant under such circumstances is by way of an appeal and not certiorari.'***

Again, as held by the Supreme Court speaking through Bamford Addo JSC in ***Republic v High Court, Accra; Ex Parte Industrialization Fund for Developing Countries and Another [2003-2004] 1SCGLR 348*** at 354,

> ***"When the high court, a Superior Court, is acting within its jurisdiction, its erroneous decision is normally corrected on appeal whether the error is one of fact or law. Certiorari, however, is a discretionary remedy, which would issue to correct a clear error of law on the face of the ruling of the court; or an error which***

amounts to lack of jurisdiction in the court so as to make the decision a nullity"

In the final analysis, and having carefully examined the plethora of rich judicial authorities on this point, we are certain that the Applicant proceeds in manifest error when he sought to impeach by judicial review, the decision of the trial court dated the 22nd of November 2023, on grounds no weightier than that the trial court committed an error of law when it directed its injunctive orders against the Applicant personally, rather than the Democratic Hub as an entity.

CONCLUSION

We have determined from our analysis in this delivery that short service of the 2nd Interested Party's application for an injunction was not an irregularity that went to jurisdiction so as to vitiate the proceedings before the trial court dated the 21st of November 2023. We have equally determined that the adjournment of the proceedings to the 22nd of November 2023 did not occasion any breach of the *audi alteram partem* rule of natural justice, such as to affect jurisdiction. Finally we have concluded that the order directed against the Applicant rather than the Democratic Hub was not an error of law that was so fundamental as to vitiate the trial court's jurisdiction.

Our conclusions afore-said are fatal to the instant application. To the extent then that the complaints alleged against the proceedings of the trial court were incapable of nullifying its jurisdiction, it is the judgment of this Court that certiorari cannot lie to quash it.

Accordingly, the Applicant's application for an order of certiorari to quash the decision of Her Ladyship Lydia Osei Marfo (Mrs) dated the 22nd of November 2023 fails and is hereby dismissed.

Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

I.O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

E.YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

B. F. ACKAH-YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)

E.Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

OLIVER BARKER-VORMAWOR ESQ. FOR THE APPLICANT.