IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D 2024

CORAM: SACKEY TORKORNOO (MRS.) CJ (PRESIDING)
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC
ASIEDU JSC

CIVIL MOTION
NO. J5/72/2023
28TH FEBRUARY, 2024

THE REPUBLIC

VS.

THE HIGH COURT, ACCRA
(GENERAL JURISDICTION 11) ..... RESPONDENT

EX-PARTE: ANAS AREMEYAW ANAS ..... APPLICANT

KENNEDY OHENE AGYAPONG ..... INTERESTED PARTY

RULING

ASIEDU JSC:

[1]. INTRODUCTION

My lords, the instant application seeks to invoke the supervisory jurisdiction of this court under Article 132 of the Constitution, 1992, section 5 of the Courts Act, 1993 Act 459 and rule 61 of the Supreme Court Rules, 1996, CI.16, for an "order of certiorari directed at the High Court (General Jurisdiction 11), Accra, to bring into this honourable court for the purpose of being quashed, the judgment of the High Court dated the 15th March 2023. The application is premised on basically two main grounds:

(1). Absence of jurisdiction and, (2) Apparent or real likelihood of bias and impartiality on the part of the judge.

The application is supported by a twenty-six-paragraph affidavit. It is also opposed by an eighteen-paragraph affidavit filed by the Interested Party.

[2]. FACTS

The applicant in this matter issued a writ of summons against the Interested Party (hereinafter referred to as the Defendant) in the High Court, Accra on the 20th November 2018 for:

(a). General damages for libel contained in the Defendant's (Interested Party) publications indorsed on the writ of summons.

(b). Aggravated damages arising from libel published by the Defendant of the Plaintiff in the sum of Twenty-Five Million cedis (GH₵25,000,000.00).

(c). Costs

The Defendant entered appearance and filed a statement of defence. The case was heard and the learned trial judge gave judgment on the 15th March 2023 wherein he dismissed the claims of the Applicant against the Defendant. Then, on the 12th day of June 2023, the Applicant filed the instant application against the Defendant herein for the reliefs stated in the application.

[3]. GROUNDS FOR THE APPLICATION:

As stated above, the applicant urges two main grounds for this application. These are: (1). Absence of jurisdiction and (2). Apparent or real likelihood of bias and impartiality on the part of the judge. These grounds will be examined one after the other.

[4]. ABSENCE OF JURISDICTION:

The Applicant, at paragraph 13 of the supporting affidavit referred to exhibit FAA.4 and stated that the said exhibit is the court notes of 1st December 2021 in which Justice Gifty Addo ordered the adoption of the proceedings. I have examined the said exhibit FAA.4 and it does not say what the applicant attributes to it. Exhibit FAA.4 is a court note dated 1st December 2021. It shows that on that date Justice Eric Baah JA. sat on the case. The parties failed to appear in court that day but their lawyers were present in court. The judge then brought to the attention of the lawyers that the Honourable Chief Justice had directed him, per a letter dated the 27th October 2021 to continue the hearing of the case to conclusion since the case was a part heard. The said letter from the Chief Justice is exhibited as exhibit FAA 6. The applicant says at paragraph 18, 19 and 20 of his affidavit in support that:

> "18. The secret exchanges of letters between the interested party and the former Chief Justice raise concerns about fairness and impartiality in the conduct of the case brought by the applicant.
>
> 19. Notwithstanding the exchange of letters between the interested party and the former Chief Justice which appears then to be unknown to Justice Eric Baah, for which we differ, (sic) Justice Baah assumed conduct of the case and gave judgment on the 15th March 2023 against the applicant. Attached hereto as exhibit FAA 8 is a copy of the said judgment.
>
> 20. The delivery of the proceedings of 1st December 2021 by Justice Eric Baah and the selection of Justice Eric Baah by the interested party and approval by Anin Yeboah CJ (as he then was) without recourse to the applicant and the judgment

of 15th March 2023 wherein the judge descended into the boxing arena and attached (sic) the person of the applicant lends credence to deep-seated bias held by the judge against the applicant."

To these depositions, the Defendant says in paragraphs 11 and 12 of his affidavit in opposition that:

> 11. That I am advised by Counsel and I verily believe same to be true that when a Judge is seised with jurisdiction to hear a matter and he is subsequently transferred to another court, any of the parties may by a petition or application to the Chief Justice make a request that, the Judge be allowed to conclude the case if it is part heard which is nearing conclusion as it were in the instant case; in order to have expeditious trial in the interest of justice.
>
> 12. That I am advised by Counsel and I verily believe same to be true that the Chief Justice in exercising the power to allow the Judge to continue and conclude same was within his administrative power and that the exercise of that power cannot amount to the absence of jurisdiction on the part of the judge because another party was not copied of the petition to that effect.

On the basis of the deposition on behalf of the applicant, it was submitted in the statement of case filed on behalf of the applicant herein on the 12th June 2023 that: "In the case of the suit in the High Court, the want of jurisdiction relates to the procedure by which the trial Judge (Justice Eric Baah) came to take charge of the conduct of the case in question and conclude same". What procedure is being complained about in this matter? By exhibit FAA 5, the lawyer for the Defendant on the 19th October 2021 wrote to the Chief Justice as follows:

> **"PETITION FOR AN ORDER FOR JUSTICE ERIC BAAH, JA TO CONTINUE AND COMPLETE PART-HEARD CASE INSTITULED: ANAS AREMEYAW ANAS VSR HON. KENNEDY AGYAPONG (SUIT NO. GJ/892/2018)"**

We write as Solicitors for and on behalf of the Defendant, hereinafter referred to as our client.

My Lord, the above suit which was instituted in 2018 remains unheard until the arrival of the above named Judge. He began taking evidence on the case and has so far heard the evidence of the Plaintiff and the Defendant. He has heard part of the cross examination of the Defendant. He has observed the demeanor of the parties and is abreast with the details of the case, including its nature and scope.

I am aware that a new Judge has been posted to the High Court, General Jurisdiction Division 2. It will take some time for the record of proceedings to be put together for the new Judge. She will need more time to study the record to familiarize herself with it to enable her effectively continue it. She also does not have the benefit of the demeanor of the witnesses so far.

Respectfully, it is my view that it will be quicker and more efficient for Justice Baah to continue the case than the new Judge.

In the circumstances, respectfully and earnestly pray you to order the previous Judge to continue the case."

As a result of the above, the Chief Justice wrote exhibit FAA 6 dated the 27th October 2021 to Justice Eric Baah and directed him to continue the hearing of the case to finality. Subsequently, the case was called on the 1st December 2021 and Justice Eric Baah informed the lawyers, on that date, among others, as follows:

"I justice Eric Baah, JA, sitting with additional responsibility as a High Court Judge, began the case before I was replaced by a substantive Judge at GJ2, I left the case, which was then and still is a part-heard. I however, received a directive from the Honourable Chief Justice dated 27/10/2021, by which I was directed to continue the case to its conclusion".

[5]. There is no evidence before this court that the applicant raised any objection to the hearing of the case by Justice Eric Baah. Consequently, the Judge heard the case and

gave judgment on the15th March 2023. The judgment went against the applicant who is before this court complaining that the Judge had no jurisdiction to hear the case. I am deeply surprised by this complaint. Article 140(1) of the Constitution 1992 confers jurisdiction on the High Court to hear every civil and criminal case except the Constitution says otherwise. Article 140 (1) states as follows:

"140. Jurisdiction of the High Court

(1) The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law".

Is the defamation suit filed by the applicant herein against the Defendant before the High Court not a civil matter? And if it is a civil matter, how can it be reasonably argued that the High Court or a Judge sitting at the High Court has no jurisdiction to entertain and hear the case? Although Justice Baah was and still is a Justice of the Court of Appeal at the time he heard and gave judgment in the matter, that in itself did not infringe any law or take away his jurisdiction to hear the matter. Article 139(1) of the Constitution is very clear on this. It states that:

"139. Composition of the High Court and qualifications of its Justices

(1) The High Court shall consist of

(a) the Chief Justice,

(b) not less than twenty Justices of the High Court, and

(c) such other Justices of the Superior Court of Judicature as the Chief Justice may, by writing signed by him, request to sit as High Court Justices for any period."

Therefore, if the Chief Justice, in writing signed by him, directed Justice Eric Baah to continue and hear the case to the end, what wrong did the Chief Justice or for that matter Justice Eric Baah commit to necessitate the instant application before this court?

[6]. The applicant complains about "the procedure by which the trial Judge came to take charge of the conduct of the case in question and concluded same". The records before this court show that it was Justice Eric Baah who commenced the hearing of the case and heard the evidence of the Applicant and his witness(es) as well as the testimony of the Defendant and even part of the cross examination of the Defendant before another Judge was brought to the very court where the case was pending. The petition, exhibit FAA. 5 exhibited by the applicant herein, makes these facts clear. If a new Judge had been brought to the court and one of the parties had found it fit to petition the Chief Justice for the original Judge, Justice Eric Baah, to continue with the hearing of the case and the Chief Justice had hearkened to the wisdom in the petition, how can it be said that the procedure by which Justice Baah became charge of the case deprived him of jurisdiction? Section 104 of the Courts Act, 1993, Act 459 (as amended) gives power to the Chief Justice to do what he did. It provides that:

> "104. Transfer of cases by the Chief Justice
>
> (1) Subject to the Constitution, the Chief Justice may by order signed by the Chief Justice transfer a case from a Judge, or Magistrate or Tribunal to any other Judge or Magistrate, and from one Court to any other competent court at any time or stage in the course of proceedings and either with or without an application from any of the parties to the proceedings.
>
> (2) The order may be general or special and shall state the nature and extent of the transfer, and in a case of urgency the power of transfer may be exercised by means of a telegraphic, telephonic or electronic communication from the Chief Justice.
>
> (3) A transfer of a case made by telegraph, telephone or electronic communication and not confirmed immediately by order signed and sealed in a manner specified by the Chief Justice or any other person authorised in that behalf by the Chief Justice is not valid".

Section 104 of Act 459 received judicial interpretation in **Republic vs. High Court, Accra; Ex parte Yalley (Gyane & Attor Interested Parties) [2007-2008] SCGLR 512** where this court stated that:

> "Read as a whole, the provision in section 104 (1)-(3) of the Courts Act, 1993, Act 459, as amended by the Courts (Amendment) Act, 2002, Act 620, s.7 and sched applies to all matters pending in the courts, whether motions or applications, whether standing on their own or arising or flowing from a substantive action. The court would interpret the word 'case' appearing in section 104(1)-(3) broadly to include contempt proceedings, which in reality are serious substantive quasi criminal matters carrying custodial punishment. Subsection 2 of section 104 buttresses the point that the provisions are not intended to be limited to substantive actions only. Subsection 2 makes reference to general or special transfers and mandates the transferor to state the nature and extent of the transfer. This supposes that a transfer need not cover an entire substantive case, but parts or segments of it dealing with particular matters. Once any matter has been placed before a Judge, in the absence of an order of transfer from the Chief Justice or the High Court Judge or the Chairman of a Regional Tribunal under section 104 of Act 459 as the case may be, it is only that Judge who has exclusive jurisdiction to deal with the matter or any part thereof. Consequently, no Registrar – and this extends to Magistrates and Circuit Judges – has power to transfer matters pending before a Judge or court to another Judge or Court without the express authorisation of the Chief Justice or the High Court Judge or Chairman of the Regional Tribunal as the case may be, and in the manner specified under the law i.e. section 104 and 106 of Act 459"

[7]. I will add that as far as an order of transfer of a case is made in accordance with the provisions in section 104 of the Courts Act and signed by the Chief Justice or the High Court Judge or Chairman of the Regional Tribunal, the said order of transfer cannot be said to be wrong or unlawful and it can also not be said to deprive the Judge to whom the matter is transferred of jurisdiction to deal with the matter as directed. On the

contrary, a transfer made in accordance with the provisions in section 104 of Act 459, gives jurisdiction to the Judge to whom the matter is transferred to sit on the matter and deal with it in accordance with the laws of the land. After Justice Baah had, on the 1st of December 2021, brought to the notice of the parties and their lawyers that he had been directed by the Chief Justice to hear the case to the finish, why did the Applicant not raise any objection to the hearing before the Judge? Why did he take part in the conduct of the case before Justice Baah to the extent of his lawyers continuing with their cross examination of the Defendant? If the judgment had gone in his favour and damages of GH₵25,000,000.00, which he had asked for in his writ, had been awarded him, would he have filed the instant application and prayed that the judgment be quashed by certiorari because Justice Baah was bereft of jurisdiction? I do not think so. The instant application is a camouflage. It has really been brought because the applicant is aggrieved by the judgment which went against him and not because Justice Baah had no jurisdiction to hear the case. That being the case, certiorari is not the way forward. A party who is genuinely aggrieved by the judgment of a trial court, has his remedy in appeal and not certiorari. **In re Appenteng (Decd); Republic vs High Court, Accra (Commercial Division); Ex parte Appenteng (Appentengs Interested Parties) [2010] SCGLR 327**, this court saw through a similar application when it observed that:

> "The well-established rule was that an applicant for an order of certiorari, being a discretionary remedy, even on the ground of want or excess of jurisdiction, would not obtain the order of certiorari ex debito justitiae, unless he could show that he was unaware of the absence of jurisdiction to determine the matter."
>
> "We have no difficulty in holding that though certiorari is a discretionary remedy, the omission of a party to raise objection to a proceeding in an appropriate forum should disentitle the applicant to that remedy where the omission was wilful and an abuse of the process of the court. Such is the case here. The fact that Tanko Amadu J. (as he then was) was exceeding his authority after the effluxion of the vacation period did not seem to have bothered the applicant until his ruling turned out to be adverse to him. Were it to have been in his favour he would have

> celebrated it …? In the instant case, the applicant did not take objection to the continuance of the matter by Tanko Amadu J unlike the applicant in the case of Republic vs. High Court (Fast Track Division) Accra; Ex parte Quaye (Yovonoo & Others Interested Parties) [2005-2006] SCGLR 660… The applicant by that failure is *particeps delicti* and it would be an abuse of the process to allow his application"

In a country where we continue to lament over the delay in the disposal of cases, the attitude of this court should be to discourage applicants like the one before us from bringing such applications before our courts. We cannot continue to entertain applications such as the one before us and be justified in our lamentations over the slow pace or the incessant delays in the disposal of cases before our law courts. That will surely defeat the provisions in Order 1 rule 2 of the High Court (Civil Procedure) Rules, 2004, CI. 47 (as amended) to the effect that:

> "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 parties may be completely, effectively and finally determined and multiplicity of proceedings concerning any of such matters avoided".

[8]. APPARENT OR REAL LIKELIHOOD OF BIAS:

The next ground upon which the applicant relies for the order of certiorari against the judgment of the High Court is "apparent or real likelihood of bias and impartiality on the part of the judge". Under this head, the applicant has enumerated certain statements in the judgment delivered by the trial judge and then has invited this court to hold that those statements evince bias or real likelihood of bias held by the learned trial Judge against the applicant herein. This calls for a critical examination of the judgment of the learned trial Judge. The applicant first referred to page 64 of the judgment, exhibit FAA 8 herein where the learned Judge stated that:

> "Corruption rating agencies have never been kind to Ghana in their ratings. As to how Plaintiff and his teams select their subject persons is a matter shrouded in

secrecy. But how do they choose their subject persons out of the large number of corrupt Ghanaians? As things stand, persons selected may just be the unlucky ones, since some of those not selected may be worse than those selected"

This court has been told that the above statement shows that: *'the Judge harboured a longtime prejudice against the applicant'.* I do not see what constitutes "bias or real likelihood of bias or a longtime prejudice" against the applicant from this statement. The above statement evokes genuine questions which almost every trial Judge is likely to ask when trying the kind of case which was before the learned trial Judge. Is it not true that corruption rating agencies have never been kind to our country? Is it not true that Ghana has always been placed at uncomfortable positions by corruption rating agencies much to our discomfiture? Has the trial Judge no power to comment, in his judgment, on matters which are obvious given the facts of this case? I do not see anything which can reasonably and correctly be described as constituting 'longtime prejudice' by the trial Judge against the applicant in this matter as far as the above statement is concerned.

[9]. Again, in the unpaginated statement of case of the applicant, reference has been made to a statement at page 64 of the judgment where the learned trial Judge stated that:

> "It should be understood that as officers caught by Plaintiff in his investigations have lost their jobs, an entrapped President may be compelled to resign out of shame or public pressure. That means the Plaintiff through his investigative antics can cause the removal of a President, and thereby [upturn] the mandate given to him at the elections. This is not investigative journalism. It is investigative terrorism. It is exercise of indirect political power under the cloak of journalism"

These may, perhaps, be strong words but they do not, in my humble view, show that the Judge operated under bias or dislike for the applicant. Where else can a judge express his candid opinion on an issue in a case before him than in his judgment? The above statement constitutes an inference which the learned trial Judge drew from his analysis and examination of two exhibits which were tendered at the trial by the Defendant in the

defamation case. These exhibits were labelled exhibit KOA3 and KOA4. In his judgment, the learned trial Judge found that exhibit KOA3 was a video entitled "Fake Sheik" which contained an interview between a Fake Sheik and an interviewer called "Black man". In the said video, the learned trial Judge found an allegation by the Fake Sheik that the Applicant herein and his team members were sending bags loaded with thousands of dollars to somewhere. The trial Judge found also that "the Fake Sheik mentioned the case of Kwasi Nyantakyi, and the attempt to use him to get to the President to facilitate the establishment of a branch of the Baraka Bank in Ghana. The trial Judge also found that the Fake Sheik said that "they planned it very well".

The trial Judge found exhibit KOA4 to be a video covering the applicant herein, one Amakye, a Sheik, an Arabian and a Blackman. The trial Judge found that in the said video, these persons conversed about their efforts to implicate the Ivorian Prime Minister. The trial Judge found that the persons also talked about sharing some percentages with a President and his family. The trial Judge then referred to the evidence of the Defendant to the effect that the meeting in exhibit KOA4 was a plot to entrap the Prime Minister of Ivory Coast and the President of Ghana. The trial Judge then expressed his findings where he stated that "the conversations in exhibits KOA3 and KOA4 appear very much to confirm that claim" That is to say, the conversation in exhibits KOA3 and KOA4 corroborates the Defendant's claim that the Applicant and his team really planned to entrap the Prime Minister of Ivory Coast and the President of Ghana.

The learned trial Judge then analysed the evidence before him and stated, among others, that:

> "The president and the Prime Minister who Plaintiff and his team targeted are the leaders of their nations. They embody the soul and spirit of their nations. They are obliged to lead by example, so if they engage in corrupt acts, journalists like Plaintiff and indeed any citizen is entitled to expose them. However, a pre-emptily, unjustified attacks on their credibility, unprovoked by any credible suspicion of a specific act of corruption engaged in or about to be engaged in by them, such as drawing them into a trap so as to be caught in a contrived corruption set up, as

was alleged by the Defendant and backed by exhibit KOA4 was unwarranted and devious." The learned trial Judge then followed up with the statement which ended with the expression "that is not investigative journalism. It is investigative terrorism…"

Is the applicant saying that a trial Judge has no right to examine and analyse the evidence placed before him and draw inferences and make findings of fact? In my opinion, the statements referred to are the inferences and findings of fact which the learned trial Judge dutifully made and for that matter they cannot reasonably be described as constituting bias and be clothed with the garb of prejudice against the applicant. The statements rather constitute findings of facts by the learned trial Judge. Thus, in **Agyenim-Boateng vrs Ofori & Yeboah [2010] SCGLR 861**, this court reiterated the principle that:

> "It is the trial court that has the exclusive right to make primary findings of fact which would constitute building blocks for the construction of the judgment of the court where such findings of fact are supported by evidence on the record and are based on the credibility of witnesses when the trial tribunal has had the opportunity and advantage of seeing and observing their demeanour and has become satisfied of the truthfulness of their testimonies touching on any particular matter in issue.

It is the duty of trial Judges to make specific findings of fact on each of the issues and facts in contention before the Court. Findings of fact are not made by the bare and naked repetition, either in summary form or by the wholesale repetition, on paper, of the testimonies of the parties and their witnesses. Findings of fact are made by a critical analysis and evaluation of the evidence given by the parties and their witnesses vis-à-vis the claims and defences put forward by them and in each case with the correct application of the rules of procedure and evidence as well as substantive law on each subject and finally showing which of the competing evidence is to be believed or preferred against the other with the reasons assigned for each preference. Findings of fact are normally limited to the contentious issues or matters raised by the parties. A trial Court is normally not expected to make findings of fact on matters which are not in dispute. Hence, if, for

example, a particular allegation of fact has been admitted by the opposite party in his pleadings, no issue is joined on the admitted fact and, generally speaking, no evidence is expected to be received on the admitted fact. It is mostly the contentious allegations of fact which seeks to prove or disprove the claims of the parties that the trial Judge is expected, by law, to make findings on, in order to ascertain which of the competing versions is more probable than the other. Once a trial Judge had made his findings and then drawn conclusions on them, such findings cannot be adorned with garbs described as bias and real likelihood of bias in order to secure the supervisory jurisdiction of this court in the nature of certiorari against them with an invitation to this court to order a fresh trial.

[10]. Further, counsel referred to page 65 of the record where the learned trial Judge stated that:

> "Defendant alleged that plaintiff has amassed wealth through corruption. Even if that allegation is discarded, the question remains as to how plaintiff and his team get those thousands if not millions of dollars. Plaintiff is a lawyer and journalist, but these professions do not breed dollars from nowhere. If plaintiff is being sponsored by internal or external entities, who are they? What are their motives and objectives? Does it include tarnishing the images of Presidents and Prime Ministers in our sub region? If the sponsors are external entities, do they approve of the modus operandi of the plaintiff? Can a journalist from CNN or BBC out of nothing, lay traps just to implicate the American president or the British Prime Minister for the purpose of grabbing the headlines and instilling unwarranted fear in the populace? Have they ever thought of sending plaintiff to their countries to use same methods to catch people in racist acts, which is a social canker plaguing those societies? In all honesty, the plot by plaintiff and his group in exhibit KOA4 has nothing to do with journalism. It was a scheme for grabbing power by the back door and satisfying plaintiff's insatiable taste for power, publicity, fame, awards, and rewards."

The above statement quoted by counsel for the applicant, in his statement of case, was preceded by the following statement made by the learned trial Judge in the judgment sought to be quashed:

> "That brings up the issue of money. In exhibit KOA3, the fake Sheik who was hired to work for plaintiff, talked about the numerous bags of dollars sent to Dubai by plaintiff and his team."

Why counsel decided to leave out that portion of the judgment which immediately precedes what he quoted is not difficult to understand. It shows clearly that the learned trial Judge was not actuated by any bias or prejudice against the applicant. For, the statements represent that trial Judge's evaluation and analysis of KOA3 and KOA4 which have been tendered and received in evidence. In those exhibits, the learned trial Judge found as a fact that the applicant and his team had talked about the applicant carrying monies "numerous bags of dollars sent to Dubai". By this application, what the applicant seeks to do, indirectly, *is to gag trial Judges from making specific findings of fact from the evidence placed before them*, but that is a duty which is imposed upon every trial Judge before he comes to his conclusion and, in my respectful view, the discharge of such duty cannot lawfully be classified as amounting to bias or prejudice. How else are trial Judges expected to perform the duties of their office than to assess, evaluate, critically analyse, draw inferences and make findings of fact from the evidence adduced by the parties to a trial. That is what is known as reasoned judgment in the common law tradition. The fact that a party is not enthused by the assessment and evaluation of evidence by a trial Judge and therefore decides to label such assessment as arising out of bias or prejudice is no ground, in my humble opinion, to issue certiorari against the judgment. If a party is not satisfied with the way and manner that a trial Judge had evaluated the evidence, the remedy is not an application for certiorari. The way forward is to lodge an appeal against the whole judgment so that the appellate court can have the benefit of the whole record of proceedings which is not available in certiorari applications.

[11]. Counsel for the applicant also makes reference to page 56 of the judgment where the learned Judge stated that:

> "The mantra of plaintiff repeated ad nauseum in our ears, and of which I take judicial notice is "Name, shame and prosecute." Pursuant to that, plaintiff has rushed to air audio-visuals on his investigations to the public, often at a fee (judicial notice)."

Counsel says, in his statement of case, that the applicant never charged a fee and that the applicant's documentaries were never an issue before the trial Judge. If counsel desires that the issues placed before the trial court be re-assessed or re-evaluated or examined by an appellate court, then the best way forward is for the applicant to appeal against the judgment in order that the record of proceedings can be placed before an appellate court. In a certiorari application such as the instant, the record of proceedings is not made available to the court and therefore the court becomes handicapped when it has to re-assess the evidence. At any rate, a trial Judge is entitled, in his judgment, to take judicial notice of matters which are of public knowledge as long as they remain relevant to the case before him. And judicial notice may be taken whether or not the parties raise issues about the factual matters of which the judicial notice is relevant. Thus, section 9(1)-(3) of the Evidence Act, 1975, NRCD 323 provides that:

> 9. Judicial notice
>
> (1) This section governs the taking of judicial notice of facts in issue or facts which are relevant to facts in issue.
>
> (2) Judicial notice can be taken only of facts which are
>
> (a) so generally known within the territorial jurisdiction of the Court, or
>
> (b) so capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, that the facts are not subject to reasonable dispute.
>
> (3) Judicial notice may be taken whether requested or not.

Only few Ghanaians might have forgotten what the trial Judge referred to in his judgment as the mantra of the applicant. Consequently, the trial Judge could take judicial notice of matters which are in the domain of the public and by so doing he cannot be lawfully accused of having exercised open bias or prejudice against the applicant. The learned trial Judge had found that the applicant had a video coverage of certain persons who had indulged in criminality but the applicant had refused to premier or show those documentaries to members of the public, as was characteristic of him, because he had taken money from the persons involved in the documentaries which had muted his ability to show those videos. The learned trial Judge therefore observed, among others, that:

> "Had it not been for the efforts of the investigators of that piece and the Defendant, Ghanaians and the world would never have become aware of that tape and the culprits therein". See pages 55 to 56 of exhibit FAA 8

[12]. It is important to stress that the learned trial Judge had made findings of fact in respect of matters bordering on criminality against the applicant herein. A few examples will suffice:

At page 58 of the judgment, exhibit FAA 8, the learned trial Judge stated that:

> "In the court proceedings (exhibits KOA2/F-series), the case began with Mohammed Hafiz Abdallah. Then an unnamed person was added. Later, the three persons appearing as accused persons were: Mohammed Hafix Abdallah, Mubarak Seidu and Prince Kingston Kwame.
>
> Conspicuously missing was Baba Tunde, who plaintiff had captured on tape confessing to the crime. Why was Baba Tunde left out? If he was left out by the prosecution without the knowledge of plaintiff, did the plaintiff petition the Attorney General for his inclusion, since he had his confession on tape?
>
> The evidence before me amply proves that Baba Tunde was excluded from the charges through the machinations of the plaintiff, after receiving a bribe of $100,000.00 from Baba Tunde, and on grounds of their family relationship. For

the sake of emphasis, I will repeat the relevant aspect of the conversation between the plaintiff and the prosecutor on Baba Tunde:

Prosecutor: Hmm they have really been working and are settling

everybody.

Anas: "…his demeanour, 1.9 million dollars from where? Who did they take it from? Then he started telling me how the people came here and were working with them. So, at that time they bought me with hundred thousand dollars because he is somehow related to me. Somehow. I don't know how…?

Prosecutor: Is it the two?

Anas: No, Baba Tunde. He now wanted to fight for himself.

If plaintiff says that Baba Tunde in fighting for himself bribed him with $100,000.00, who else can say he didn't? True to the scheme, Baba Tunde who had confessed to a crime involving $1.9milliom on a tape in the possession of plaintiff, was excluded from the charges. The video of his confession was never shown to the public."

Again, at page 62 of his judgment, the learned trial Judge found and held that:

"The case of Hafiz and Baba Tunde confirms the claim of Defendant that the plaintiff is a blackmailer, an extortionist, corrupt and a criminal. On this point, Hafiz said on television that plaintiff failed to show the video on them because he paid him a bribe of $50,000.00. The evidence from plaintiff's own mouth is that Baba Tunde bought him with $100,000.00. Lo and behold! the tapes on the suspects were never shown to the public by the plaintiff. I considered it established that plaintiff blackmails people he desires to destroy, probably his enemies, or the enemies of his friends or partners, or persons loaded with cash, whether legitimate or illegitimate, as the suspects in the gold scam case, by catching them on tape. The tape is then shown to them. The tape on those who pay up, are shelved, but

those who refuse or are not able to pay are help [sic] to the full glare of the public for reputational damage.

Such conduct is legally and morally wrong. It is evil. Based on the evidence, Defendant was justified in calling plaintiff evil, criminal, corrupt, blackmailer and extortionist. Since the contents of exhibit KAO1 has been established to be true and factual, all comments made by Defendant based in relation to it is both justified and fair."

At page 67 of the judgment, exhibit FAA 8, the learned trial Judge further, stated that:

"As already mentioned above, it is the burden of the judge as a trier of fact to determine whether the words actually defamed the plaintiff, using the hypothetical reader test. I have concluded aforehand; based on exhibits KAO1, KAO3 and KAO4, that the plaintiff engaged in the crime of bribe taking and bribe giving. A person who commits a crime is a criminal, simpliciter. However, since every word uttered on a different occasion ought to be assessed for their defamatory effect, I will assess the alleged words to determine if they succeeded in actually defaming the plaintiff.

The facts and the evidence established the plaintiff as a self-confessed criminal, so Defendant's statement is factual and justified. Bribe taking is a dishonest, fraudulent, cheating, extortionist, thieving, blackmailing, and a corrupt act; besides being illegal. Plaintiff who has been established by the evidence as having taken and given bribes could not have actually been defamed by those words."

The above statements are just a few of the findings of fact made by the learned trial Judge against the applicant herein. Most of the findings show that the applicant indulged in criminality. In the real world, no crusader will be happy to see such findings of fact remain in the law reports. Nonetheless, in the instant application for the remedy of certiorari, by which such findings have been woven, crafted and presented as bias and prejudice, is not the legally accepted mode of getting such findings off the law reports. The way forward is an appeal so that the appellate court would have the benefit of the

entire record and establish for itself whether or not the findings are justified in the face of the evidence adduced before the trial court. In my humble opinion, the fact that a trial Judge had used language, considered to be a bit strong by a party, is not a sufficient ground to quash a judgment which the applicant had dressed up with allegations of bias and prejudice against the trial Judge.

Strong languages have, where appropriate, been used by Judges to describe their revulsion to conducts and behaviours exhibited by parties who had appeared before them as the evidence in the case have revealed and that cannot, reasonably, be seen as a show of bias and prejudice. In **Schandorf vs. Zeini and Another [1976] 2 GLR 418**, Amissah JA. uttered the following words as a result of his observation of the conduct of the appellants therein. He stated that:

> "The appellants are rogues. They were found by the learned trial judge, Koranteng-Addow. J., to have fabricated a case and to have suborned witnesses to put that case to the court. They do not complain about that. Their grievance, in the main, is that the judge failed to apply a rule founded on morality to protect them from their opponent. Considering the source from which it comes, it is a bold complaint to make to a court. Ironically, the cause for the application of the rule they invoke, if indeed that rule is appropriate to their case, arises out of the sheer candour of the respondent. Nothing could be more injurious to the administration of justice than that a person should come before a court to bear false witness deliberately. Our criminal laws through the offences of perjury and deceit of public officer visit such behaviour with severe penalties. The appellants do not ask us to do anything about their offence, though it be serious and was committed in the face of the court in this very case. What they do ask us to do is to interfere with the decision of the trial court, not on the merits, but on the ground that the demands of public policy require that whatever the merits, the respondent, who was plaintiff in the case, should not be helped by the courts."

It is worthy of note that the first sentence uttered by Amissah JA. was that the "appellants are rogues". These words are quite strong and together with the whole paragraph shows

how critical the Judge was; but that, per se, did not mean that Amissah JA. was either bias or operated under prejudice and uttered those words out of any personal dislike or hatred against the appellants in the case. It is not the duty of this court to prescribe the kind of language that Judges should use in their judgments. We can urge moderation in the use of language. However, the fact that a Judge had used language considered to be strong cannot be interpreted to mean that the Judge was bias or prejudicial against a party or had a personal dislike against the party so much so that we should issue certiorari against the judgment. In **Porter and Another v Magill [2002] 1 All ER 465**, the House of Lords laid down a different test for the determination of the existence of bias. The court stated that:

> "In determining whether there had been apparent bias on the part of a tribunal, the court should no longer simply ask itself whether, having regard to all the relevant circumstances, there was a real danger of bias. Rather, the test was whether the relevant circumstances, as ascertained by the court, would lead a fair-minded and informed observer to conclude that there was a real possibility that the tribunal had been biased"

The Porter vs. Magill case, admittedly is of persuasive authority but cannot be lightly discounted. As I have already pointed out, no crusader, in the person of the applicant will be happy to have a Judge make those disparaging findings of fact against him but sitting here on an application for certiorari, this court does not have the benefit of the record of proceedings before us and so the court is handicapped in coming to a determination whether or not the findings of fact made by the Judge are borne out of the evidence adduced before the learned trial Judge. The least which this court can do is to allow the judgment to stand because no bias or prejudice has been established at all by the applicant. The process of appeal is the best way to re-evaluate the evidence.

[13]. It is not within the powers of this court, in the circumstances of the matter before this court, an application for certiorari; for this court to question the basis for the findings of fact made by the learned trial Judge. That power can only be correctly and properly exercised in an appeal where the full record of proceedings and the whole evidence

adduced by the parties are placed before this court. We cannot pretend, in an application for certiorari, to have all the evidence which the trial Judge was possessed of and on the basis of which he made his findings of fact. It is not the place of this court to question the basis for any findings of fact that have been made by a trial Judge when the court does not have the full record of proceedings. That has never been the position of the law. In order to question or assess the correctness or otherwise of any findings of fact, this court, as a matter of law, ought to be seised with the full record of proceedings. That is the policy reason behind the law that where a party seeks to question findings of fact made by a trial Judge, the process of appeal is the hallowed method to do so. In an application for certiorari, findings of fact cannot be legally questioned since the full proceedings is not available to the court.

[14]. Again, the impression must not be created that a trial Judge cannot make findings of fact if evidence is placed before him of the commission of a crime in a civil matter. Again, the impression must not be created as though a Judge is only mandated to make findings of fact in respect of the commission of a crime only when he is sitting on a full-blown criminal trial. The Evidence Act, 1975, NRCD 323 demands that any allegation of the commission of a crime in civil matters must be proved to the same standard required of the Prosecution in a criminal trial. If an allegation of the commission of a crime is made in a civil case before a Judge and evidence of criminality is placed before the Judge and the Judge evaluates the evidence and comes to the conclusion that the allegation of the commission of a crime had been proved beyond reasonable doubt, the Judge is under a legal obligation to make the necessary findings of fact in respect of the commission of the crime. It is not only in criminal cases, that the commission of crimes can be proved and the appropriate findings of fact made thereon. Section 13(1) of NRCD 323 states it clearly:

> "In a civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is directly in issue requires proof beyond a reasonable doubt."

In **Aryeh & Akakpo vs Ayaa Iddrisu [2010] SCGLR 891**, section 13(1) of NRCD 323 was explained by this court that:

> "The rule in section 13(1) of the Evidence Act, 1975, NRCD 323, emphasizes that where in a civil case, crime is pleaded or alleged, the standard of proof change from the civil one of the balance of probabilities to the criminal one of proof beyond reasonable doubt."

In the instant matter, the Defendant had alleged that the applicant is a thief, bribe taker/receiver, a corrupt person and all sorts of attribution of criminality. It is because of these allegations made against the applicant that he sued the Defendant for defamation/libel. The Defendant had in his defence pleaded the defence of justification. The learned trial Judge, at page 51 of his judgment rightly placed the burden of proving these allegations of criminality and thus the defence of justification on the Defendant. The Judge after examining the evidence before him, found as a fact that the applicant confessed to receiving bribe. See pages 58 to 67 of the judgment, exhibit FAA 8. At page 59 of exhibit FAA 8, the trial Judge stated as follows:

> "**If plaintiff says that Baba Tunde in fighting for himself bribed him with $100,000.00, who else can say he didn't?"** True to the scheme, Baba Tunde who had confessed to a crime involving $1.9milliom on a tape in the possession of plaintiff, was excluded from the charges. The video of his confession was never shown to the public.
>
> Bribery and corruption by and of public officers are a crime under section 239 (1) and (2) of the Criminal Offences Act, 1960 (Act 29). Section 239 (1) and (2) provides:
>
> "(1) Every public officer or juror who commits corruption, or wilful oppression, or extortion, in respect of the duties of his office, shall be guilty of a misdemeanour.
>
> (2) Whoever corrupts any person in respect of any duties as a public officer or juror shall be guilty of a misdemeanour."

At page 62 of the judgment, the Judge made a finding of fact. He stated that:

> "I considered it established that plaintiff blackmails people he desires to destroy, probably his enemies, or the enemies of his friends or partners, or persons loaded with cash, whether legitimate or illegitimate, as the suspects in the gold scam case, by catching them on tape. The tape is then shown to them. The tape on those who pay up, are shelved, but those who refuse or are not able to pay are help [sic] to the full glare of the public for reputational damage. Such conduct is legally and morally wrong. It is evil. Based on the evidence, Defendant was justified in calling plaintiff evil, criminal, corrupt, blackmailer and extortionist. Since the contents of exhibit KAO1 has been established to be true and factual, all comments made by Defendant based in relation to it is both justified and fair."

The learned trial Judge then concluded at page 67 of exhibit FAA 8 that:

> "I have concluded aforehand; based on exhibits KAO1, KAO3 and KAO4, that the plaintiff engaged in the crime of bribe taking and bribe giving. A person who commits a crime is a criminal, simpliciter. However, since every word uttered on a different occasion ought to be assessed for their defamatory effect, I will assess the alleged words to determine if they succeeded in actually defaming the plaintiff.
>
> The facts and the evidence established the plaintiff as a self-confessed criminal, so Defendant's statement is factual and justified. Bribe taking is a dishonest, fraudulent, cheating, extortionist, thieving, blackmailing, and a corrupt act; besides being illegal. Plaintiff who has been established by the evidence as having taken and given bribes could not have actually been defamed by those words".

It is clear from the above that the learned trial Judge was speaking to the evidence placed before him by the parties. He was making findings of fact and drawing inferences from the evidence produced by the parties. The learned trial Judge was not speaking from some extraneous matter or evidence and neither can it be reasonably supposed that he was speaking from a bias point of view nor from some hatred or prejudice against the applicant. Whether the findings made by the learned Judge have support from the

evidence or not cannot be made by this court in the instant application for certiorari where the record of evidence is not before this court and the fact that the applicant says the Judge was bias is not borne out of the judgment. In the circumstances of this matter and in the face of the absence of the evidence on record, this court cannot sincerely say that the learned trial Judge was bias against the applicant.

[15]. In **Republic v High Court (Financial Division), Accra; Ex parte Odonkor (Executive Director of Economic and Organised Crime Office (EOCO), Bank of Ghana & Ecobank Ghana Ltd Interested Parties) [2015-2016]1 SCGLR 312**, this court pointed out that:

> "The grant of an order of certiorari is at the discretion of the court. Certiorari is a special and residual remedy which is held in reserve and so, where there is an equally effective alternative remedy, certiorari would be refused. See pages 318-319 of the report.

Again, in **Republic v High Court, Accra: Ex parte Rashid (Konadu Interested Party) [2013-2014] 2SCGLR 1385** at 1394, it was pointed out that an applicant's conduct could disentitle the applicant to the discretionary remedy of certiorari and that the existence of an alternative remedy is one of the factors that a court can rely on to exercise its judgment against the grant of certiorari. In the instant matter, as already pointed out, the alternative and the most potent remedy available to the applicant herein is appeal and not certiorari. Let the applicant exploit that remedy.

Further, it was decided by this court in **Republic v High Court, Ex parte Anyan (Platinum Holdings-Interested Party) [2009] SCGLR 255**, that the supervisory jurisdiction of the court under article 132 of the 1992 Constitution is exercised only in the manifestly plain, obvious and clear cases where there are patent and obvious errors of law on the face of the record which error must go to the jurisdiction of the court so as to make the decision of the court a nullity.

When a trial judge acts within his jurisdiction and pronounces on a matter, an error committed by the judge which is not patent on the face of the record will not warrant

certiorari to issue by way of remedy. Under the circumstances, the aggrieved party's remedy lies in an appeal.

In the case of **Republic vs Court of Appeal, Accra; Ex parte Tsatsu Tsikata [2005-2006] SCGLR 612**, this court held that

(a). "the discretionary 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 either went to jurisdiction or were so plain as to make the impugned decision a nullity. The error of law on which the decision was founded, must therefore be fundamental, substantial, material, grave or so serious as to go to the core or root of the matter complained of."

b. "The clear thinking of this Court is that, our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors either go 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 alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. The error of law must be one on which the decision depends. A minor, trifling, inconsequential or unimportant error, or for that matter an error which does not go to the core or root of the decision complained of; or stated differently, on which the decision does not turn, would not attract the court's supervisory intervention."

[16]. CONCLUSION:

In conclusion, I am fully satisfied, after reading the judgment of Eric Baah JA, sitting as an additional Judge at the High Court, from the beginning to the end, that there is nothing in the said judgment, contrary to the assertion by the applicant herein, which shows that the learned trial Judge was bias or exhibited any prejudice against the applicant in the judgment delivered on the 15th March 2023. This court must guard against excessive control of the High Court by the subtle invocation of our jurisdiction to do so through the medium of our supervisory jurisdiction. For, the High Court, as we have it under our

Constitutional arrangement, is neither an inferior or a lower court but is classified in parallel terms as a superior court of judicature by the provisions of article 126(1)(a) of the Constitution. The Supreme Court must therefore see through applications such as the one currently under discussion by which almost every decision of the High Court is sought to be challenged under the guise of lack of jurisdiction, non-observance of the rules of natural justice, error of law on the face of the record and so forth.

It is the duty of this court to guard the jurisdiction of the High Court to hear all kinds of civil and criminal cases unless the Constitution expressly forbids it. And where parties are dissatisfied with decisions of the High Court, the remedy open to them is appeal as in this case and not to pray this court to quash such judgments by resort to our supervisory jurisdiction which appears to them to be a short-cut.

There is nothing on the face of the record to show that the High Court Judge did any of the allegations attributed to him. I cannot conclude without referring to the re-statement of the law by Date-Bah JSC, in the case of the **Republic vs. High Court, Accra; Ex parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003-2004] SCGLR 312** where the learned Justice stated that:

> "Where the High Court (or for that matter the Court of Appeal) has made a non-jurisdictional error of law, which was not patent on the face of the record (and by the "record" was meant the document which initiated the proceedings, the pleadings, if any, and the adjudication but not the evidence nor the reasons unless the tribunal chose to incorporate them), the avenue for redress open to an aggrieved party was an appeal, not judicial review. Therefore, certiorari would not lie to quash errors of law which were not patent on the face of the record and which had been made by a superior court judge who was properly seised of the matter before him or her. In that regard, an error of law made by the High Court or the Court of Appeal, would not be regarded as taking the judge outside the court's jurisdiction, unless the court had acted ultra vires the Constitution or an express statutory restriction validly imposed on it.

> Policy requires that some errors of law by the High Court and the Court of Appeal judges should only be appealable and not subject to judicial review. Otherwise judicial review would supplant the system of appeals, which has been carefully laid down in the 1992 Constitution and the Courts Act, 1993 (Act 459), as amended by the Courts (Amendment) Act, 2002 (Act 620) … We believe there to be a sound policy reason for keeping narrow the category of errors by the superior courts that can be made subject to judicial review. We consider, therefore, that the post – Anisminic cases in England dealing with inferior courts and administrative authorities, should be treated with caution with regard to their relevance to judicial review of decisions of the superior courts in Ghana…. Thus, in our view, errors of law made by a superior court in Ghana should not ordinarily take the court outside its jurisdiction, if it had jurisdiction at the start of the inquiry. This proposition of law may be in conflict with Anisminic. This court is, however, not obliged to follow the persuasive authority of Anisminic on this issue. Although the Supreme Court has approved of Anisminic in broad terms, this approval has been given alongside the more restrictive formulations that we have highlighted above… To the extent that this re-statement of the law is inconsistent with any previous decision of the 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 re-statement are overruled.

And I also adopt the re-statement of the law again by Date Bah JSC in **Republic vs. High Court (Commercial Division) Accra; Ex parte The Trust Bank Ltd. (Ampomah Photo Lab Ltd. & Three Others Interested Parties) [2009] SCGLR 164** where after analysing the authorities, the learned Justice held at page 169 to 170 of the report that:

> "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 re-stated and then fine-tuned in the cases of Republic vs. High Court, Accra; Ex parte

Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003-2004] 1 SCGLR 312 and Republic vs Court of Appeal, Accra Ex parte Tsatsu Tsikata [2005-2006] SCGLR 612, respectively. In my view, the combined effect of these two authorities results in a statement of 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…The combined effect of these two authorities, it seems to me, is that even where a High Court makes a non-jurisdictional error which is patent on the face of the record, it will not be a ground for the exercise of the supervisory jurisdiction of this court unless the error is fundamental. Only fundamental non-jurisdictional error can found the exercise of this court's supervisory jurisdiction."

I will therefore vote to dismiss the application for certiorari to issue against the judgment of Eric Baah JA. delivered on the 15th March 2023.

S. K. A. ASIEDU

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

SACKEY TORKORNOO CJ:

[1] Clearly, this is a case that has excited extraordinary depths of consideration of the ambit of the supervisory jurisdiction of the Supreme Court, as can be seen from the number of opinions expressed in this ruling. This is not surprising, since the application yields up an extraordinary situation for consideration. We are being invited to quash a 69 page judgment on account of it being infected by bias ostensibly found within three pages - pages 56, 64 and 65 of the judgment.

[2] I am particularly piqued and disturbed by this invitation not only because judgments must necessarily be treated as sacrosanct, but also because the supervisory jurisdiction of this court conferred in article 132 of the 1992 Constitution is mirrored by a parallel jurisdiction conferred by article 141 of the 1992 Constitution on the high court, over lower courts and inferior tribunals. It is therefore critical that this decision does not open a Pandora box out of which will jump inordinate applications to the high court to quash judgments that have been meticulously arrived at following trials that by themselves, did not suffer any jurisdictional or non-jurisdictional errors fundamentally bereft of legality, which are the accepted scope for the application of the remedy of certiorari.

[3] I have read the expositions of my brothers Kulendi, Amadu and Asiedu JJSC and defer to their rendition of the background and contexts of the suit. There is no need to spell out the same details in my opinion. I need to set down my own evaluations because they are premised on a position that I do not find articulated in all three opinions. The conclusion of my evaluation is to refuse the application

Since the facts and legal contexts of the case have been sufficiently set out by my brothers, I will delve straight into the evaluative part of this ruling.

Jurisdictional Error

[4]I am satisfied that the jurisdictional issue raised by the Applicant is sufficiently answered by the attention drawn to **section 104 of the Court's Act 1993 Act 459** in the opinions of all three of my brothers. With the letter issued by the Honorable Chief Justice to the trial judge to adjudicate the suit, the submissions on alleged ex parte communication with the Chief Justice totally misconceive the duty placed on the Chief justice to exercise a wide breadth of discretion to ensure that cases are expeditiously disposed off.

Apparent or real likelihood of bias and impartiality on the part of the Judge

[5] This salient ground for consideration calls for a determination of whether the judgment is infected by bias, dislike and prejudice such as to render it a nullity that must be quashed by certiorari. The Applicant urges through the affidavit supporting his application that, '*in large portions of his judgment, the Judge showed unequivocally to any dispassionate observer that prior to sitting on the defamation suit, he harbored firm-held disagreements and disapproval of the work of the applicant and developed deep-seated dislike for the applicant*'. He also urges that the Judge suffered from a real likelihood of bias against the applicant and was therefore not impartial in his consideration of the case.

[6] Significantly, the applicant does not submit that he detected this bias during the hearing of the case or at any time before judgment. Neither does he submit that since the judgment, it has come to his notice that the Judge had a relationship with a party or the subject matter of the suit that would make him suffer from a real likelihood of bias, as happened in the case of **Re Pinochet [1999] All ER 577** cited to us. Thus the entire evaluation before us is a determination of whether the judgment, specifically the impugned portions thereof, reflected dislike of the applicant's person which dislike existed before the judgment, or prior disagreement with the applicant's work, or prior disapproval of the Applicant's work, such that the Judge could not have delivered the judgment with impartiality and freedom from bias. This is a novel call to distil the

likelihood of bias and prejudice out of the language in a judgment, when there is no extraneous evidence of inappropriate connection between the judge and a party, or the subject matter of dispute,

[7] The applicant cited from authorities such as Republic v High Court, Kumasi; **Ex Parte Mobil Oil (Ghana) Ltd, Hagan (Interested Party) 2005-2006] SCGLR 312 in** which this court identified the kernel of the quality of bias that must disqualify a judge from adjudicating a case. This is whenever circumstances pointed to a real likelihood of bias, by which was meant *'an operative prejudice whether conscious or unconscious in relation to a party or an issue before him. This would apply in particular where the circumstances pointed to a situation where a decision might be affected by pre-conceived views*'.

[8] He also urged that the issue of the likelihood of bias becomes operative where it can be established that the '*judicial officer has in fact some interest in the subject-matter, or has such foreknowledge of the facts as to make it impossible for him to adjudicate upon the matter with an independent mind and without any inclination or bias toward one side or other in the dispute*' **Amponsah v Minister of Defence [1960] GLR 140**

These are the established factors for identifying bias and prejudice, a situation distinctly different from the circumstances of the grounds of the application before us. We can however not balk from the novelty of the case at hand, because the categories of factual contexts in disputes can never be closed.

Evaluation

[9] Prior to evaluating this possibility of pre-conceptions, prejudice, dislike and disapproval being expressed in the judgment, it must be appreciated that the Applicant and his work is well known to anyone who cares to listen to news in this country. An expression of such knowledge cannot therefore be used to determine prejudice. And indeed, the doctrine of necessity dictates that despite any work done by the Applicant, whenever he is in litigation with anyone, that litigation will be conducted before the

courts of the country. Such is the constitutional obligation and mandate placed on the judiciary in article 124 of the 1992 Constitution.

[10] This is a case in which the foundation of the suit before the high court necessitated a determination of whether a litany of expressions used by the Interested Party concerning the Applicant were defamatory and meant and could only be understood in their natural and ordinary meanings to mean the following:

i. The plaintiff is a self-confessed criminal
ii. The plaintiff is a murderer and he killed a former Member of Parliament, Joseph Boakye Danquah Adu.
iii. The plaintiff is an abettor of the murder of several Chinese nationals
iv. The plaintiff is an evil and dishonest person
v. The plaintiff is a thief
vi. The plaintiff is suffering from mental derangement
vii. The plaintiff cheated his way through law school.
viii. The plaintiff promotes illegal mining
ix. The plaintiff is a fraudster
x. The plaintiff is an extortionist
xi. The plaintiff is a blackmailer
xii. The plaintiff is corrupt
xiii. The plaintiff corrupts public officials
xiv. The plaintiff engages in tax evasion
xv. The plaintiff engages in custom duty evasion
xvi. The plaintiff takes bribes to influence the outcome of his investigative journalistic work.
xvii. The plaintiff impersonates as a lawyer
xviii. The plaintiff engages in criminal assault
xix. The plaintiff engages in threat of death
xx. The plaintiff engages in threat of harm
xxi. The plaintiff is a land guard.

xxii. The plaintiff engages in illegal land grabbing
xxiii. The plaintiff interferes with the administration of justice
xxiv. The plaintiff is odious and contemptible person
xxv. The plaintiff is a cheat
xxvi. The plaintiff molest children
xxvii. The plaintiff inordinately discredits foreign powers
xxviii. The plaintiff terrorizes people
xxix. The plaintiff engages in fraudulent acts and extortion with his father
xxx. The plaintiff engages in fraudulent acts and extortion with his lawyer
xxxi. The plaintiff is an email and messages hacker

[11] From page 5 of the record of the judgment before us, the defence of the Interested Party was that the words were factual, true or his opinions of the Applicant, and were intended to expose the malicious intentions of the Applicant in doing the work of exposing corruption. Further, the words were not spoken deliberately to injure the image and business reputation of the plaintiff. He claimed that since the words were true, they could not have occasioned distress and embarrassment to the reputation of the plaintiff. Further, the words were fair and justified.

[12] It must be appreciated from the settled law on the tort of defamation that truth and justification are critical defences to a charge of defamation. The court's clear duty was therefore to determine as a matter of fact and law from the evidence brought to court, whether or not the Interested Party established the truth in his impugned words and or justification for using them. It must also be noted that these are accusations that largely exist in the domain of offences in criminal law, and so must be proved beyond reasonable doubt, as per the directions of the **Evidence Act, 1975 NRCD 323 if** a court is to find them to be truthful or justified.

[13]This evaluation is the inherent legal exercise undertaken in the adjudicatory process that ended in the impugned judgment before us. Thus, to the extent that the court remained within the walls of considering the subject of defamation regarding the

thirty one expressions distilled as defamatory, he cannot be said to have gone out of the core work he was called on to do in evaluating the facts, claims and law before him. In **Republic v High Court (Criminal Division1) Ex Parte Stephen Kwabena Opuni, Attorney General (Interested Party) Civil Motion No J7/20/2021**, this necessity for appreciating the legality of the inherent duty discharged by a Judge, despite whatever errors of law may be found in his decision, was emphasized in my opinion delivered in the review application submitted to this court.

[14] As much as bias, likelihood of bias, and possibility of bias have no place in the process of adjudication, and it is the duty of this court under **article 132** if the 1992 Constitution to protect any one before the superior courts from the discolorative effect of bias and partiality, the call to set aside a judgment given after a trial is no mean one. To my mind, it stands at the very top of the extreme measures that a court may take to keep the streams of justice pure. The court must hesitate to embark on this exercise unless the said exercise is the only measure available for the discharge of the duty conferred on this court in **article 132**, and this position must go for the high court in the discharge of their duty under **article 141**.

And it is imperative to remember that in the discharge of the duty under **article 132**, this court is not being called on to evaluate the correctness or otherwise of the determinations of the court below. Our duty is to determine whether the judgment is so infected with, and indicative of qualities of jurisdictional errors, or non-jurisdictional errors that are fundamental enough to deprive the judgment of legality. See **Republic v Court of Appeal, Accra; Ex Parte Ghana Cable Ltd (Barclays Bank of Ghana Interested Party**) **[2005-2006] SCGLR 107** cited by counsel for Respondent.

[15] It must also be pointed out that in the matter before us, the bias is supposed to be gleaned from the language of the judgment. So the significant conundrum we have to resolve is whether the words complained of could only have risen out of bias rather than the inherent duty of the Judge to evaluate the issues before him within the context of law and facts he was called on to consider. In order to do this, we must keep a close view of the list of thirty one expressions that he had a duty to determine truth or

justification for, from the evidence placed before him. The crudeness or elegance of the language the judge could employ in the judgment from which the complaint is arising must be considered in the light of the burden of evaluation he bore. That burden, especially in a case of defamation, is discharged with evaluation of the words identified as defamatory.

[16] The well settled position on the law of supervisory jurisdiction in the form of certiorari, is that by its very nature, certiorari is granted only to quash 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 the fundamental error appearing patently on the face of the record, or the decision is 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**

[17]A classic statement of this position was rendered in the decision in **Republic v Court of Appeal; ex parte Tsatsu Tsikata [2005-2006] SCGLR 612** at 619 in these words - '*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***'**

See also **Republic v High Court Accra; Ex Parte Soku and Another [1996-97] SCGLR 525** in which this court clarified that 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*'.

[18] The remedy of certiorari is also discretionary. See **Appenteng (Decd) In re Republic v High Court, Accra; Ex parte Appenteng [2010] SCGLR 327.** 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**)

This is therefore the odyssey that this court must embark on in order to make the difficult determination of whether to quash the judgment brought to us or to uphold its validity.

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[19] The Applicant is specifically complaining about the words and context of the judgment found on pages 56, 64 and 65 of the 69 page judgment.

Counsel for Applicant urges inter alia in his Statement of Case that '*statements made by the trial judge which any reasonable observer would understand that the judge harbored a long time prejudice against the applicant*.' This was supported by words found on page 64 to the effect that inasmuch as corruption rating agencies have never been kind to Ghana in their ratings, it is a matter 'shrouded in secrecy' how the Applicant chooses persons he investigates for corrupt acts. The Judge went on to say that '*As things stand, persons selected may just be the unlucky ones since some of those not selected may be worse than those selected*.'

[20] I must respectfully decline to agree that this statement reveals '*a long time prejudice against the applicant*'. As a reasonable reader of the judgment, these words only reflect rumination on a point being considered by the court on that page, being the exposition of corruption by diverse institutions in the global space, and nothing more besides. And the said rumination is not out of place in the judgment at hand, because the central issues considered included whether the defendant was being truthful and was justified in calling the applicant corrupt for being selective in the choice of how he made public the results of his investigation. The court had been called on to evaluate specific acts that had been placed before the court. This comment was raised in the middle of that evaluation.

[21] The second passage on page 64 attacked as reflecting bias describes the work of applicant as '*investigative antics*', and presents that these '*antics*' can cause the removal of a president. The judge goes on to describe this quality and context of the Applicant's work as '*investigative terrorism'*.

It must be noted that the twenty eighth alleged meaning of the Interested Party's words set out in the judgment reads:

xxviii. The plaintiff terrorizes people

Thus an evaluation of whether or not the Applicant's work '*terrorizes people*' and constitutes '*terrorism*', is not out of place within the judgment. As much as a finding on terrorism required the evaluation that an act which is a criminal offence has been proved, the Judge cannot be said to have imported a prejudicial evaluation of what the applicant's work stands for outside of the case at hand, or beyond the tall list of thirty one summaries of meanings, which stood in issue before the Judge, when he evaluated that there was justification for alleging terrorism in the Applicant's work. As to whether his evaluation was erroneous in law or against the weight of evidence, is itself a matter of law. However, it must be appreciated that in an application for certiorari, this court does not concern itself with the legal merits of the matter reviewed, and as the final court, this court must be careful to keep away from a consideration of the quality of

legal evaluation done in the judgment. Our current work must only concern itself with the legality and validity of the proceedings themselves, and decision complained off.

[22] What must weigh heavily is the consideration whether the use of the words *'antics'* and *'investigative terrorism'* took the Judge out of the role of independent arbiter of the cause of action in defamation, and the issue whether the words and expressions used by the Interested Party were defamatory, especially in view of defendant's position that there was truth and justification in the words used. The defence of '*truth and justification*' compelled the trial court to evaluate whether the plaintiff does indeed conduct his work in a manner that fits into that description of 'terrorizing'. It therefore behoves recognition that when the Judge arrived at the conclusion that the work constituted '*investigative terrorism*', he was well within his evaluative duty. The strong words used in the judgment were premised on the strong words presented as defamatory. See majority decision in **Republic v High Court (Criminal Division1) Ex Parte Stephen Kwabena Opuni, Attorney General (Interested Party) Civil Motion No J7/20/2021**

[23] The applicant further complains about an evaluation found on page 65 of the judgment. The trial judge concluded the impugned paragraph with the words '*in all honesty, the plot by plaintiff and his group in exhibit KOA 4 has nothing to do with journalism. It was a scheme for grabbing power by the back door and* ***satisfying plaintiff's insatiable taste for power, publicity, fame, awards, and rewards***'.

The evaluation that a party before a court is involved in a plot, that the plot was a back door scheme for grabbing power, and that the person has **an insatiable taste** for anything, including power, publicity, fame, awards, and rewards would at face value, seem not to be an evaluation that a court can make. On face value, it sounds like a personal opinion. However, it must be remembered that the duty thrust on the court was to determine whether the evidence presented to him was reflective of the thirty one expressions distilled out of the extensive oral publications of the Interested Party. This was the dispute in issue that the court had to resolve. The court's evaluation therefore had to remain in the context of whether any of the list of thirty one

expressions that the Interested Party had admitted to, were true or justified by the opinions and expressions set out in the evidence and processes before the court. An example is the 27th meaning listed which the Judge was called on to evaluate. It reads:

xxvii. The plaintiff inordinately discredits foreign powers

[24] How (un)related to a conclusion that there is an 'insatiable' desire for power is the prior evaluation that the evidence reflects truth or justification for a position that the Applicant does indeed take steps to discredit actors in governance of nations in a manner that is capable of removing them from their positions? And as alleged, he has done so on more than one occasion? This is an extremely uncomfortable context of presentations, and yet, this is what this case is about. To my mind, this 27th expression in the list, for example, placed a duty on the judge to determine whether the Applicant had an '*out of the ordinary*' disposition towards destabilizing governing institutions of states.

[25] The context of evaluation by the Judge was grounded on investigations of persons with positions of power in States, and the ability to influence positions of power from the evidence that had been brought to court. My humble view is that as long as the Judge's evaluation can find context within the record of facts before him and the law of defamation, he could not be said to have shown obvious dislike for, and prejudice against the Applicant when he used the expression 'insatiable taste'. Prejudice must arise before and actuate the act complained of, and not just be inferred from the quality of work done in the adjudicatory process. Whether there was proof or not of the expressed 'insatiable taste' would require recourse to evaluation of the weight of evidence, and that is the role of appellate judges.

[26] Last but not the least, the Applicant urges that the Judge's alleged 'judicial notice' of fees charged for the Applicant's showings was not backed by the records of the case. That to my mind, can only be settled by a review of the records of the whole case. And the records of the case are not before us.

[27] In the four complaints dispersed over 69 pages therefore, I do not see any of the impugned contexts to be out of place within the list of thirty one expressions plus claims, defences, issues and evidence of defamation that the court had a duty to consider. I think that the foundational test that must be employed in this novel call to distil the likelihood of bias and prejudice out of the language in a judgment, when there is no extraneous evidence of inappropriate connection between the Judge and a party, or the subject matter of dispute, is whether the impugned inelegant or opinionated evidence is out of place within the core duty that the court was called on to discharge.

[28] I would therefore say clearly that whether or not the Judge was in error by evaluating that the Interested Person's calling of the Applicant as a blackmailer, criminal, etc, (as unsavory as they sound), is true and justified, will depend on the quality of evidence that the Judge had before him to support those opinions, because the very case being tried was essentially about these very unsavory descriptions, and whether or not they were true or justified. Indeed, the very nature of cases of defamation center on unsavory words.

Whether or not his evaluations constituted errors of law or were against the weight of evidence before the court is a consideration not allowed to a court undertaking the supervisory jurisdiction, and this is especially so, because this court in its supervisory jurisdiction does not have the benefit of the evidence and record of proceedings that the lower court was called on to consider.

Conclusion

[29]My conclusion is that the issue of the sustainability of the Judge's words used to describe the Applicant can only be a matter determinable by the appellate court. It is not the place of this court to question the basis for any findings and conclusions that have been reached by a trial Judge when the court does not have the full record of proceedings. That has never been the position of the law. In order to question or assess the correctness or otherwise of any findings of fact, statement of opinions, and conclusions, this court, as a matter of law, ought to be seised with the full record of

proceedings. That is the policy reason behind the law that where a party seeks to question conclusions reached by a trial Judge, the process of appeal is the hallowed method to do so. I would dismiss the application for certiorari as unsupported by the material before us.

G. SACKEY TORKORNOO (MRS.)

(CHIEF JUSTICE)

DISSENTING OPINION

KULENDI JSC:

INTRODUCTION:

1. My Lords I may, perhaps reference Shakespeare, in the opening scene of Richard II where he wrote as follows:

> "The purest treasure mortal times afford is spotless reputation; that away, men are but gilded loam, or painted clay ... Mine honour is my life. Both grow in one. Take honour from me, and my life is done." (I.i.177–9, 182–3)

2. With these famous lines of Shakespeare echoing in my mind, coupled with my reflections on the ends of justice, the imperatives of due process, the responsible use of judicial power and the scope of this Court's supervisory jurisdiction under Article 132 of the 1992 Constitution, I have read and tried to come to terms with the reasoning and conclusions of my venerable and respected brother and sisters in the majority but have found myself unable to agree with them and hence, this dissent. In my respectful opinion, the plaint of the Applicant ought to have found favor in the exercise of our supervisory jurisdiction.

BACKGROUND:

3. This present legal banter is an escalation of the Applicant's quest to salvage his reputation, which he alleges, has been filched by the Interested Party. In these proceedings, the Applicant invokes our supervisory jurisdiction pursuant to Article 132 of the Constitution and prays for an order of certiorari to quash the judgment of the High Court, coram: His Lordship Eric Baah J.A dated 15th March, 2023 in Suit No.: GJ/892/2018 entitled: Anas Aremeyaw Anas vrs. Kennedy Ohene Agyapong.

4. The contentions that led up to the instant application are that the Applicant, who is described in the processes before us as "a lawyer and an internationally acclaimed investigative journalist" of several years standing issued, a writ of summons and accompanying statement of claim against the Interested Party for alleged libelous publications which Applicant contends was defamatory of him.

5. The writ which was issued on or about the 18th day of June 2018 was originally placed before the High Court (General Jurisdiction Court 2) Accra, Coram: His Lordship Justice Daniel Mensah J, who was later transferred from the Court. His Lordship Justice Eric Baah J.A. assumed trial of the case on relieving duties in the said Court, adopted proceedings in the suit and continued the hearing of the case. Even though a substantive judge was later assigned to High Court (General Jurisdiction 2), a directive from the then Chief Justice Anin Yeboah CJ, authorized His Lordship Justice Eric Baah J.A. to continue to hear the case to its conclusion.

6. The court notes of 1st December, 2021 references the directive in the following words:

   "*I justice Eric Baah, J.A, siting with additional responsibility as a High Court Judge, began the case before I was replaced by a substantive judge at GJ2, I left this case, which was then and still is a part-heard. I however received a*

directive from the Honourable Chief Justice dated 27/10/2021, by which I was directed to continue the case to its conclusion. The directive appears to be based on a petition to that effect by Counsel for defendant, on behalf of the defendant. A copy of the petition is attached to the directive. It was expected that the plaintiff or his counsel would be served a copy of the petition and the directive. That appears not to have been the case. A photocopy of the directive is on the docket of the court. Plaintiff's counsel may apply io the Registrar for a copy of same. At the prayer of counsel for defendant, the suit is adjourned to 2nd December, 2021, at 9:00 am prompt for continuation of cross examination of defendant."

7. The petition that occasioned the directive from the Chief Justice stated in part as follows:

" My Lord Chief Justice,

PETITION FOR AN ORDER FOR JUSTICE ERIC BAAH, JA TO CONTINUE AND COMPLETE PART-HEARD CASE INTITLED: ANAS AREMEYAW ANAS VRS HON. KENNEDY AGYAPONG (SUIT NO: GJ/892/2018)

We write as Solicitors for and on behalf of Defendant, hereinafter referred to as our Client.

My Lord, the above suit which was instituted in 2018 remained unheard until the arrival of the above-named Judge. He began taking evidence on the case and has so far heard the evidence of the Plaintiff and the Defendant. He-has heard part of the cross-examination of the defendant. He has observed the demeanor of the parties and is abreast with the details of the case, including its nature and scope. I am aware that a new Judge has been posted to the High Court, General Jurisdiction Division 2. It will take some time for the record of proceedings to be put together for the new Judge. She will need further time to study the record to familiarize

herself with it to enable her to effectively continue it. She also does not have the benefit of the demeanour of the witnesses so far.

Respectfully, it is my view that it will be quicker and more efficient for Justice Baah to continue the case than the new Judge.

In the circumstance, I respectfully and earnestly pray you to order the previous Judge to continue the case.

Thank you.

Yours sincerely"

8. Flowing from the above, it can be reasonably inferred that the directive to His Lordship Eric Baah J.A. was to achieve speedy and effective justice, avoid delays and unnecessary expense. Cross-examination had already begun before Eric Baah J.A and it was prudent that he continued to hear the case to its finality. The trial therefore resumed until the court delivered its judgment on 15th March, 2022.

9. The Applicant takes exception to the language adopted by the trial judge in the judgment and has deposed in paragraphs 23, 24 and 25 of the affidavit in support of the instant application as follows:

"23. Justice Eric Baah, in large portions of his judgment, showed unequivocally to any dispassionate observer that prior to sitting on the applicant's defamation suit he harboured firm-held disagreements and disapproval of the work of the applicant and developed deep-seated dislike for the applicant.

24. It is apparent on a casual reading of the judgment of Justice Eric Baah that he suffered from a real likelihood of bias against the applicant and therefore he was not impartial in his consideration of the case.

25. The judgment of a judge who suffered a real likelihood of bias in a case ought to be quashed and the affected party given the opportunity for his case to be impartially heard and determined."

10. Aside from the above misgivings about the judgment of 15th March, 2023, it is also contended by the Applicant that the trial judge lacked jurisdiction to hear the case in the first place.

Applicant's Case:

11. The Applicant has argued that it was wrong for the Interested Party to petition His Lordship the Chief Justice for a directive to allow His Lordship Justice Eric Baah J.A. to continue to hear the case without notice to him. The Applicant further raised an issue about not being copied in the directive by His Lordship the Chief Justice directing or authorizing His Lordship Justice Eric Baah J.A. to continue to hear the case. It is also argued that by settled practice, His Lordship Eric Baah J.A., being a relieving judge, was bereft of jurisdiction to hear a case that has been assigned to a court in which he was not a substantive judge. What the Applicant appears to be saying is that, once a substantive judge was appointed to the court, His Lordship Eric Baah J.A. ceased to have jurisdiction to hear the case.

12. In addition to the above, the Applicant says that the trial judge embarked on a tirade against the investigative methods of the Applicant, when the case was not about the Applicant's professional conduct and, that, it is apparent that at all material

times, His Lordship Justice Eric Baah J.A. harbored personal dislike, prejudice and bias against Applicant.

Respondent's Case:

13. The Respondent is opposed to the motion and has argued that any party to a suit may petition the Chief Justice to make a request that the judge be allowed to conclude hearing of a case for expeditious trial and in the interest of justice. He argues further that the Chief Justice was within his administrative rights to give a directive to a judge to continue hearing a case. The Respondent therefore submits that the jurisdiction of the court is not invalidated merely because a party was not put in copy of a petition and in any event, that section 104(1) of the Courts Act, 1993 (Act 459) permits the Chief Justice to *suo moto* or on application by a party allow a judge to continue with a matter even after transfer to a different court in the interest of justice.

14. The interested party has further argued that the plaints of the Applicant about the pronouncements made in the judgment are better addressed through appeal and not by the invocation of the supervisory jurisdiction of this Court. Since the Applicant has filed two notices of appeal against the judgment, the recourse to this Court is a mere forum shopping.

GROUNDS FOR APPLICATION

15. On the face of the motion paper, the instant application is premised on the grounds of absence of jurisdiction and a breach of the rule of natural justice stemming from the alleged existence of an apparent or real likelihood of bias.

ISSUE OF ABSENCE OF JURISDICTION

16. We have carefully considered the plaint of the Applicant on the above issue and see no merit in same. Applicant has argued that as a relieving judge, the trial judge lacked jurisdiction to continue to hear the case once a substantive judge was appointed to the Court which the case was originally assigned to.

17. The Chief Justice, as head of the judiciary, is clothed with the administrative authority to direct that a specific case be handled by another judge or another court of competent jurisdiction. This is evident in Section 104 of the Court's Act, which states as follows:

> ***"Section 104- Power to Transfer by the Chief Justice.***
>
> *(1)Subject to the provisions of the Constitution,* ***the Chief Justice may by order under his hand transfer a case at any stage of the proceedings from any Judge or Magistrate to any other Judge or Magistrate and from one court to another court of competent jurisdiction at any time or stage of the proceedings and either with or without an application from any of the parties to the proceedings****.[As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7]"*

18. The above aside, the constitutional and statutory provisions regulating the various courts not only make the Chief Justice a member of all courts in Ghana, but further prescribe that all courts shall be additionally composed of such other justices of the Superior Courts as the Chief Justice may appoint. Consequently, the appointment of Eric Baah J.A as additional High Court judge on relieving duties was lawful and so was the directive to hear the case to its finality.

19. The Applicant also takes issue with the refusal or neglect on the part of the lawyer for the Interested party to notify him of the petition made to the Chief Justice to maintain His Lordship Justice Eric Baah, as judge for the purposes of concluding the hearing of the case and delivering judgment over same. The pith of this issue, ostensibly, is that in failing to notify the Applicant of the said petition, he was deprived of the opportunity to offer a contrasting view to the request made.

20. In my respectful view, the failure, neglect and/or refusal to notify the Applicant of the petition is not best practice because to the extent that the Applicant was party to the proceedings and will be affected by a decision on the trial, it is proper administrative practice that the Applicant be notified as a matter of transparency and due process, of any request and/or contingencies that would occasion the exercise of an administrative discretion by the Chief Justice in respect of the trial. This notwithstanding, we find untenable, the Applicant's belated protest to the manner in which the Interested Party's petition for the retention of the trial judge was handled.

21. Significantly, the Applicant, did not protest the failure to notify him timeously. Besides, when the petition and the directive of the Chief Justice came to the Applicant's attention, he did not object to the directive by the Chief Justice. On the contrary, the Applicant cooperated in the continuation of the hearing of the case. Infact, the trial judge directed Applicant to apply for a copy of the directive and the petition that occasioned the directive. If Applicant genuinely had opposition to the trial judge's continuation of the suit, he should have raised the objection timeously.

22. In a judgment of this court dated 4th May, 2022 in Civil Appeal No.: J4/73/2021 entitled: Kofi Amofa Kusi vrs. Afia Amankwah Adarkwah, we had cause to caution litigants who default in taking objections only to spring last-minute surprises to impugn decisions of a court, when we stated as follows:

"objections must be raised timeously and a litigant who neglects, fails and/or refuses to raise objections timeously risks being held to have forfeited the opportunity or the right to object"

23. From the processes before us, the trial judge had already taken evidence of the Plaintiff's case and had heard a substantial portion of the evidence of both parties. He had observed the demeanor of the parties and was abreast with the details of the case. It was thus prudent and a reasonable exercise of administrative discretion to permit him to continue to hear the case to its conclusion. The Chief Justice, having acted within his administrative powers in issuing the directive for the trial judge to continue to hear the case to its finality, this cannot constitute a basis for the lack of jurisdiction in the Court. I therefore find that this ground is bereft of any merit, and same is accordingly dismissed.

ISSUE OF BIAS

24. The grounds upon which one may invoke our supervisory jurisdiction are settled and they are as follows:
    a. a breach of the principles of natural justice;
    b. error of law apparent on the face of the record;
    c. excess or want of jurisdiction; or
    d. the Wenesbury principle of unreasonableness.

25. The application is premised primarily on an allegation of the breach of the rules of natural justice. The principles of natural justice are two-fold. These are:
    a. the right to be given a fair hearing, otherwise known as the *audi alteram partem rule*; and

b. the rule against bias, otherwise known as *nemo judex in causa sua*.

26. In my view, the circumstances of this case implicate the second head of the rule of natural justice. Accordingly, I shall proceed to delve into the intricacies of this ground to ascertain whether the trial judge was actuated by bias in adjudicating the case and for which reason we ought to quash the said judgment.

27. Bias, whenever operative, detracts from a judge's judicial oath to be objective and impartial in the discharge of his or her duties. It is often actuated by self-interest and fueled by an operative prejudice, preconceived opinion, a predisposition or a predetermination to decide the case in a particular manner without being open minded.

28. Although originally a common law rule, the importance of the rule against bias finds itself in our judicial oath by which judges are to "truly and faithfully perform the functions of [their] office without fear or favour, affection or ill-will". This rule is to ensure public confidence in the impartiality of judges and the adjudicatory process. This is because not only must justice be done, but it must manifestly and undoubtedly, be seen to be done.

29. Accordingly, in **Republic vrs. High Court, Kumasi; Ex Parte Mobil Oil (Ghana) Ltd Hagan (Interested Party*)* [2005-2006] SCGLR 312**, this Court stated that:

> "*At common law, a judge, magistrate or an independent arbitrator would be disqualified from adjudicating whenever circumstances pointed to a real likelihood of bias, by which was meant "an operative prejudice whether conscious or unconscious in relation to a party or an issue before him. That would apply in particular where the*

circumstances pointed to a situation where a decision might be affected by ***pre-conceived*** *views*." (emphasis mine)

See also: **Amadu V Mohammed [2007-2008] SCGLR 58 At 59; Nana Yeboa-Kodie Asare II & 1 Or. V Nana Kwaku Addai & 7 Ors Unreported, [Motion No.: J7/20/2014], Supreme Court, Dated 12/02/2015.**

30. The law is that a judge is disqualified from adjudicating a case in which he has a personal, proprietary or financial interest or in which he is **predisposed** or **predetermined** or **prejudiced** to adjudicate the case in a manner that does not accord with the sanctity of justice or where there exists a real likelihood of bias. In such a case, this court will be within its powers to grant an order of prohibition or injunction to prevent such a judge from adjudicating such matters or an order of certiorari to quash a resultant decision or order arising therefrom.

31. I must hasten to emphasize that the hallowed office of the judge requires that the judge's individual conduct does not injure public confidence or trust in the integrity of the judicial process. Consequently, where the judge, whether through his actions or inactions, engenders a situation where reasonable members of the society would have cause to doubt his objectivity, neutrality or evenhandedness in adjudicating a case before him, the judge would cease to have jurisdiction to hear the said case. See the case of **Porter v. Magill [2002] AC 357**

32. I should state here that this application presents us with a novel focus and direction than that which is usually interrogated in the orthodox cases of bias. Unlike in those cases, this is not the assertion that judicial bias was established during the hearing or before the hearing. This is the case that judicial bias is alleged to have been

exposed in the language of the judgment and the employment of certain expressions. Consequently, this case requires a more nuanced inquiry than the mere deployment of cases relating to traditional judicial bias principles.

33. The rule against bias, be it actual or apparent, invokes a justiciable notion of fairness and commands a certain judicial behavior, especially for judges if the elements of integrity and objectivity are to be associated with the duty of judging. Parties submit to court believing, as it has been the core objective of the court system, that the whole process of the trial and final judgment would be enmeshed in conditions of fairness, open-mindedness, objectivity and judicious application of the rules and language. This judicial disposition is required at all levels and at all stages of the proceedings.

34. Needless to say, judicial bias has long been held as a basic evil that impugns judicial fairness. No one wants it, no country has ever registered any loud applause for its effects and practitioners and the courts of Ghana would not chart a new path in upholding and praising judicial bias. I take this view even if the acts that are evidencing bias are done unconsciously. The character of the act at this stage is not relevant. What is relevant is whether there is some evidence of bias on the part of the trial judge as to engender the feeling in a litigant that the judicial proceedings conducted before the said judge were not discharged with an open mind. It is this reasonable feeling or the appearance of it that we should avoid and work to prevent.

35. I note from the outset that bias, whichever form it takes, may lead to results which may reasonably be remediable by the invocation of the supervisory jurisdiction of this Court. Therefore, where the bias affects the evaluation of evidence, the conclusions drawn on the basis of such demonstrated bias, should not stand. Such an exercise would be taken as having proceeded from either a pre-determined position or being an inquiry which proceeded from a closed mind. A pre-determined

position ordained by a closed minded judge must not have the judicial blessing of this Court. The simple justification, apart from the overall effect of judicial bias, is that the conclusions reached in the judgment constitute a fundamental affront to justice and as such, upsets the legal propriety of the judgment and for that reason does not represent the accurate and legally faithful determination of the rights of the parties therein.

36. It is thus expected, and reasonably so, that where a judge sits or presides over a matter, a duty of judicial circumspection exists not to show any conduct or expression of a view, especially in the language of the judge, that smacks of any bias. In **R v Inner West London Coroner, ex parte Dallaglio, [1994] 4 All ER 138,** a coroner used expressions such as "mentally unwell" or "unhinged" to describe relatives of a deceased. The coroner had sought the views of the deceased's family as to whether the inquests should be resumed. The coroner then refused to resume the inquests or to remove himself and the family argued that his decision was reached on the ground of apparent bias against them. The Court held that the use of the expressions 'unhinged' and 'mentally unwell' indicated a real possibility that he had unconsciously allowed himself to be influenced against the applicants and other members of the action group by a feeling of hostility towards them and that he had undervalued their case that the inquests should be resumed.

37. The language of the coroner in **ex parte Dallaglio** supra, was deemed fertile ground to disturb his conclusions. The Court held:

> "For a judicial officer to say publicly of someone that they are unreliable because they are "'unhinged" shows, I have no doubt, an appearance of bias: such a description is not merely injudicious and insensitive but bound to be interpreted as a gratuitous insult... As to the crucial second limb, I find myself in the last analysis

unable to discount the real possibility that the coroner unconsciously allowed himself to be influenced against the applicants and the other members of the action group by a feeling of hostility towards them. There remains to my mind not a probability but a not insubstantial possibility that he thought them troublemakers and in the result unfairly undervalued their case for a resumption" (pp.153))

38. Again, in a discharge of his or her judicial mandate, the exhibition of antagonism, whether overt or subtle, on the part of a judge against a party, may rightly give rise to justiciable allegations of bias. In the case of **Locabail (UK) Ltd v. Bayfield Properties [2000] Q.B. 451,** the UK Court of Appeal held that personal acquaintance with, or antagonism against, any individual involved in a case, would give rise to a real danger of bias. The Court said:

> "…a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case, particularly if the credibility of that individual could be significant in the decision of the case; or if, in a case where the credibility of any individual were an issue to be decided by the judge, he had in a previous case rejected the evidence of that person in such outspoken terms as to throw doubt on his ability to approach such person's evidence with an open mind on any later occasion; ***or if on any question at issue in the proceedings before him the judge had expressed views, particularly in the course of the hearing, in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with***

an objective judicial mind (see Vakauta v Kelly (1989) 167 CLR 568); ***or if, for any other reason, there were real ground for doubting the ability of the judge to ignore extraneous considerations, prejudices and predilections and bring an objective judgment to bear on the issues before him***." (emphasis added)

39. Similarly, the use of certain language or personal conduct of a judge might provide a basis for the allegation of bias and might affect the legal integrity of the conclusions drawn that ultimately form the basis of the judgment rendered. In the **Serafin v Malkiewicz & Ors, [2020] UKSC 23:** the Supreme Court of UK was confronted with the question whether rudeness, and/or "descending into the arena" on the part of the judge can be sufficient to render a trial unfair. The material allegation was to the effect that the trial judge had prejudged matters against the claimant when he referred to him as a "liar" who had behaved "deplorably" and threatened that he would say so in his judgment. Lord Wilson writing for the unanimous Court stated as follows:

> "Some of the excerpts, if taken alone, would not merit significant criticism. Nor should we forget that the transcripts enable us to read but neither to hear nor to see. But, **when one considers the barrage of hostility towards the claimant's case, and towards the claimant himself acting in person, fired by the judge in immoderate, ill-tempered and at times offensive language at many different points during the long hearing, one is driven, with profound regret**, to uphold the Court of Appeal's conclusion that he did not allow the claim to be properly presented; that therefore he could not fairly appraise it; and, that, in short, the trial was unfair"

40. On this score, not only will it be inappropriate for offensive language to be employed by a judge but also fair trial requires that a judge must attend to the issues before him without attacks, whether direct or indirect, on a party, especially where the basis of such scathing remarks are not sufficiently proven nor required as any material part to validate his or her judgment.

41. I am of the firm opinion that, as a matter of principle, negative comments or insulting words directed at parties or witnesses might be perceived, in appropriate cases, as grounds of bias. In **Vakauta v Kelly (1989) 167 CLR 568:** during the course of a dispute regarding a personal injury claim by a worker, the presiding judge made a number of negative comments about the doctors who had written reports in favour of the insurer. Amongst them, he referred to them as **"the unholy trinity"** and that it was the usual doctors who **"think you can do a full weeks work without any arms or legs"**. The insurer's counsel requested that it be put on the record that these comments were made but did not outright accuse the Judge of bias. In the judgment, the judge again referred to one of the doctors negatively, writing the report was **"as negative as it always seems to be - and based as usual upon his non-acceptance of the genuineness of any plaintiff's complaints of pain"**

42. As pertained to the second comment, made within the judgment, the Australian High Court concluded that a reasonable lay person could think that this made the Judge biased against certain witnesses, and thus there was an appearance of bias. The court said as follows:

> "The question is, therefore, not whether the learned trial judge had preconceived views arising from his previous experience, but

whether his preconceptions were of such a kind or were so expressed as to lead a reasonable person to apprehend that he was unable to approach the resolution of the case in a fair and even-handed manner without any inclination towards one side or the other."

43. In my considered view, judges must be held to the highest standards of impartiality. Fairness and impartiality must be both subjectively present and objectively demonstrated to the informed and reasonable observer. Therefore, the trial will be rendered unfair and amenable to being quashed, if, to the informed and reasonable observer, the *words or actions of the presiding judge give rise to a reasonable apprehension of bias.*

44. I am of the further opinion that judges must be particularly sensitive to the need not only to be fair but also to appear to all reasonable ***observers to be fair. If actual or apprehended bias arises from a judge's words or conduct, then the judge has forfeited his or her jurisdiction.*** *The mere fact that the judge appears to make proper findings of credibility on certain issues or comes to the correct result cannot alleviate the effects of a reasonable apprehension of bias arising from the judge's other words or conduct.* The harm occasioned by bias may be remedied by an application, in the case of a lower court, to the High Court; and in the case of a Superior Court, to this Court, for an order of prohibition if the proceedings are still underway, or for a certiorari to quash a decision already made. [see the case of *R. v. S. (R.D.)* [1997] 3 SCR 484]

45. To my mind, judicial bias can be metaphorically likened to the fruit from the infamous poisonous tree, as it has the insidious tendency to contaminate an otherwise sound judgment. Just as the fruit of a poisonous tree carries the inherent

toxicity of its roots, judicial bias, whether conscious or unconscious, stems from underlying prejudices or predispositions. When bias infiltrates the judicial process, it undermines the very foundation of justice by casting doubt on the integrity and fairness of the proceedings. Like a poison spreading through a tree, bias can infect every aspect of proceedings in a case, influencing decisions and outcomes in a manner that deviates from the principles of objectivity and impartiality. Thus, even a judgment that appears valid on the surface may be tainted by the presence of bias, eroding trust in the legal system and compromising the pursuit of justice.

46. It is however to be noted that the apprehension of bias must be a reasonable one held by reasonable and right-minded persons. The test is what would an informed person, viewing the matter realistically and practically and having thought the matter through, conclude? This test, as suggested in the Canadian case of *R. v. S. (R.D.)* [1997] 3 SCR 484. contains a two-fold objective element: the person considering the alleged *bias must be reasonable and the apprehension of bias itself must also be reasonable in the circumstances of the case*.

47. In the instant case, we are not here confronted with any complaint that during trial the judge made certain prejudicial comments as most of the persuasive authorities alluded to. The harsh words or insulting comments impugned are found within the very text of the judgment of the trial court. The Applicant herein alleges that the judge's bias is exposed in the language he adopted in the judgment itself. I have therefore, had to read the said judgment thoroughly to inform ourselves of whether the statements, pronouncements, language or tone adopted by the trial judge is one from which an inference of prejudice, bias or dislike could be made.

48. Among the litany of judicially defamatory statements in the impugned judgment, the judge, for example, stated as follows:

"*That is not investigative journalism. It is investigative terrorism. It is the exercise of indirect political power under the cloak of journalism. The serious aspect is that political enemies of a president who could not stand him at an election, may hire the plaintiff to entrap him to undermine his presidency. Enemies of a state can also hire him just to destroy the political hierarchy…*

In all honesty, the plot by plaintiff and his group in exhibit KOA4 has nothing to do with journalism. It was a scheme for grabbing power by the back door and satisfying plaintiff's insatiable taste for power, publicity, fame, awards, and rewards….I considered it established that the plaintiff blackmails people he desires to destroy, probably his enemies, or the enemies of his friends or partners, or persons loaded with cash, whether legitimate or illegitimate, as the suspects in the gold scam case, by catching them on tape. The tape is then shown to them. The tape on those who pay up, are shelved, but those who refuse or are not able to pay are held to the full glare of the public for reputational damage. Such conduct is legally and morally wrong. It is evil. Based on the evidence, defendant was justified in calling plaintiff evil, criminal, corrupt, blackmailer and extortionist…."

49. Here, the trial judge asserts in express terms that the Plaintiff exercises indirect political power under the cloak of journalism, engages in the execution of a scheme for grabbing power by the back door in order to satisfy himself of his insatiable taste for power, publicity, fame, awards, and rewards, and also engages in the blackmail of his enemies. These are comments contained in the judgment of the court. Note that these comments could not have been objected to by the plaintiff or his lawyer because they were not made in open court whilst hearing was ongoing.

50. But conjectures as they will truly remain, the comments constituted an expression of preconceptions, which smacks of feelings of bias, prejudice and dislike towards the plaintiff. There is no basis for the conclusion that plaintiff's work amounted to the exercise of indirect political power. There is also no basis for the court to come to the conclusion that the specific objective of the plaintiff's work was to grab political power and satisfy himself of his insatiable taste for power, publicity, fame and awards.

51. The court must have been jogging with the athletes of preconception when it diagnosed without evidence that the plaintiff wants political power, fame, publicity and awards. Where was the information on the account of which that conclusion was drawn? What was the basis for that conclusion?

52. It is my opinion that any reasonable person seized with the facts of this case and the language of the judge used against the plaintiff, could only come to the conclusion that the judge was influenced by prejudice. The prejudice was operative enough to the extent that the plaintiff's averment that he is a journalist and a lawyer did not sit well with the judge. In the claims of journalism and lawyering, the judge has seen a politician, power grabber, and publicity, fame and award seeker. Without a prejudice and preconceived world view, it is difficult to come to a determinate conclusion that journalism and legal practice are indivisible from and interrelated with politics, power grabbing, fame, publicity and award seeking.

53. In the case of **Haines v. Liggett Group, Inc**., **975 F.2d 81 (3d Cir. 1992)**, a 1992 decision that concerned a tort action claiming that the deceased's death had been caused by smoking cigarettes produced by the defendant company, the United States Court of Appeals for the Third Circuit removed the trial judge, Judge Sarokin, from further presiding over the case, because he made the following statement in an interim opinion:

> "In the light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, sales over safety, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their own prosperity! As the following facts disclose, despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation".

54. Based on these comments, the court took the view that the trial judge was attending to the facts with a closed mind or preconceived notions. In that event, it would not be fair to allow him to proceed with the trial. Though this was contained in an interim opinion, I am convinced that there is nothing wrong with disturbing a judgment where such prejudiced views are canvassed. Especially in a case such as this, where there was no opportunity for the Applicant to contest the preconceived opinions expressed by the learned trial judge in the judgment, the subject matter of this application.

55. I find it even more perplexing that a court exercising civil jurisdiction would find that the Applicant is guilty of having taken bribes and being dishonest, fraudulent, a cheat, an extortionist, a thief, a blackmailer and corrupt. Equally baffling is the trial Court's finding that a description of the Applicant as "a criminal, murderer, extortionist, blackmailer, corrupt, landgrabber, tax evader, bribe taker, cheat, interferer in the administration of justice, email hacker" among others are truthful

and factual. There can be no greater affront to the rights and honor of a litigant who resorts to the sanctuary of justice to vindicate his rights than this pre-conceived, biased, prejudiced and ill-motivated views which the trial judge held of the Applicant even before he embarked on a trial of the case before him. Needless to say that the trial judge was merely pretending to adjudicate even though he was already harboring these opinions of the Applicant and animosities against him for his work, methodologies and prominence.

56. I must hasten to emphasize that it matters not whether or not these statements were made within jurisdiction, as even statements made within jurisdiction may evince a latently held bias or prejudice harboured by a judge for or against a party. Furthermore, as I have previously articulated, an allegation of bias, when proven, contaminates even the most legally sound decisions and a judgment that would otherwise have been valid, may very well be irreparably tainted by the nullifying effect of proven judicial bias as in this case.

57. It is my considered view that the trial judge obviously threw every caution and circumspection in judicial language and expression to the wind and even went further to describe the Applicant's work as "investigative terrorism" and not investigative journalism. He also found that the Applicant's work is "an exercise of indirect political power under the cloak of journalism" and accused him of being capable of being "hired by political enemies of a President who could not stand him at an election to entrap him to undermine his Presidency" or "enemies of the state to destroy a political hierarchy". Upon a review of all processes before us in this application, I am simply at a loss as to how the learned trial judge reached these findings and conclusions as well as what standards to proof he applied and the legal and procedural basis of the trial judge's conclusions. The Applicant is, to say the least, a victim of judicial defamation, a violation which in my view, is more grievous

that his complaint against the Interest Party which landed him before the trial judge in the first place.

58. Specifically, I hasten to inquire, by what means and by which proceedings did the trial court conduct an inquiry into allegations of crime and find the Applicant guilty of same. By what standard of proof was the trial judge assessing these allegations of crime in a civil trial. Was the Applicant charged before the Court, was his plea taken for any criminal charges, were any of these crimes proven beyond reasonable doubt? Was there any evidence of the Applicant having been convicted of murder, stealing, terrorism, extortion, blackmail, tax evasion or corruption placed before the trial judge to warrant and/or justify his arrival at these criminal findings in course of a civil trial? If these criminal imputations to the Applicant by the trial judge do not sufficiently evince a clear case of ill-will, hatred, disdain, disapproval and pre-conceived malicious opinions, what manner of judicial expression would meet a threshold of apparent or apprehended bias.

59. I note that the trial Court, in the course of its judgment, took judicial notice of the works of the Applicant as follows:

> "*The mantra of plaintiff repeated ad nauseum in our ears, and of which I take judicial notice is "Name, shame and prosecute … Pursuant to that, plaintiff has rushed to air audio-visuals on his investigations to the public, often at a fee (judicial notice). Judicial notice is further taken of the fact that in some of the investigations aired to the public, the bribes collected involves thousands of cedis and or goats, yam etc.-refer to the investigation on judges dubbed "Ghana in the eyes of God, epic of injustice", cited by plaintiff's counsel.*"

60. The judge's statement then noted that persons exposed by the Applicant's investigations have lost their jobs. The judge further alluded to the fact that the

Applicant makes his money from corruption when he asked the following rhetorical questions:

> *"Defendant alleged that plaintiff has amassed wealth through corruption. Even if that allegation is discarded, the question remains as to how plaintiff and his team get those thousands if not millions of dollars. Plaintiff is a lawyer and journalist, but these professions do not breed dollars from nowhere. If plaintiff is being sponsored by internal or external entities, who are they? What are their motives and objectives?"*

61. The trial court's disdain for the investigative methods of the Applicant is further exposed when he asked the following in his judgment:

> "*Can a journalist from CNN or BBC out of nothing, lay traps just to implicate the American president or the British Prime Minister for the purpose of grabbing the headlines and instilling unwarranted fear in the populace? Have they ever thought of sending plaintiff to their countries to use same methods to catch people in racist acts, which is a social canker plaguing those societies?*"

62. In my humble view, these queries of the Applicant's work and modus operandi by the trial judge are clearly exhibitory of the fact that his personal reservations, disapproval and dislike for the Applicant and his modus operandi, had poisoned his mind, blinded and disabled him from being an open minded and impartial adjudicator of the matters before him.

63. In a judgment of this Court dated 9th of March, 2022 in Suit No.: J5/17/2022 entitled **Republic v. Court Of Appeal Ex Parte: James Gyakye Quayson with ,** this court sounded the following caution to all Courts

"a court of law cannot act in aid of a party in our adversarial system of justice, by fishing for [matters] or introducing documents to support a party's case against his adversary. That would be tantamount to an 'unbiased umpire' descending into the arena of conflict."

64. The above referenced statements of the trial Court are indicative of a deep-seated personal dislike of the person and investigative methods of the Applicant. One would ask, was the Applicant on trial for murder, terrorism or the host of other crimes that were imputed to him by the Judge? Was the Court exercising a criminal jurisdiction in the defamation suit?

65. What then would animate the Court to go on a tangent of taking such judicial notice and making a finding of criminality against the Applicant. As indicated above, these comments, statements, and language adopted by the judge betrays his bias against the Applicant and therefore disabled the trial court from impartially adjudicating the case with the open mindedness expected.

66. This is particularly so because, in my view, the facts of which the judge took judicial notice, were clearly not relevant to the issues that arose for determination. Accordingly, it was needless for the trial judge to embark on such a venture. The only inescapable conclusion that can be reached from the conduct of the judge is that the judge took judicial notice of those facts purely to deprecate the Applicant in the manner he did, and not to assist the court to determine issues in dispute.

67. It must be emphasized that in a civil suit which was conducted outside the procedural and evidentiary rigidities of a criminal trial and criminal proceedings, properly so called, a Court cannot arrive at definite findings of criminal culpability against a person.

68. Short of sentencing the Applicant, the trial judge, who appears to have been actuated by ill will, malice, dislike and complete disapproval of the Applicant's methods and investigative journalism, could not restrain himself from pronouncing a conviction and condemning the Applicant as an outright criminal, extortionist and blackmailer masquerading as a journalist.

69. This type of unrestrained intemperate judicial arbitrariness, motivated by obvious personal dislike of a citizen, in the sanctuary of justice of all places, ought to be deprecated, disapproved and rejected in the strongest of terms. The toxic, caustic and unsavory descriptions of the Applicant by the trial judge is a classic example of a violent abuse of judicial power, privilege and prerogative in the deployment of language under the guise of a judgment.

70. It is therefore my considered opinion that the learned trial judge irreparably contaminated an otherwise commendable enunciation of the law and principles of defamation, and relevant case law/authorities, with the manifest contempt, hatred and disdain in which he held the Applicant. This court cannot allow such an unacceptable abuse of judicial power and recourse to violent and unjustified language against a citizen who invokes the jurisdiction of the Court, to stand.

71. It is for these reasons that I would order the removal into this Court, for the purpose of being quashed, the judgment of the High Court coram: His Lordship Justice Eric Baah JA dated 15th March 2023 and would have quashed same and prohibited the

implicated trial Court judge and ordered a trial de novo before the High Court differently constituted.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

AMADU JSC:

INTRODUCTION

(1) My Lords, in view of the peculiar factual circumstances of this application, and for a better appreciation of the context of this delivery, I find it relevant to quote the famous English philosopher Thomas Hobbes in his book, '*The Leviathan',* where he sustained the caution against biased adjudication in the following words:

> ***"Seeing every man is presumed to do all things in order to his own benefit, no man is a fit arbitrator in his own cause; and if he were never so fit; yet equity allowing to each party equal benefit, if one be admitted to be judge, the other is to be admitted also. For the same reason no man in any cause ought to be received as arbitrator, to whom greater profit, or honour, or pleasure apparently arise out of the victory of one party, than of the other: for he hath taken, though an unavoidable bribe, yet a bribe; and no man can be obliged to trust him."*** **[See Thomas Hobbes, '*The***

Leviathan', **(London 1651) (Oakesott M. ed, Macmillan Publishers, 1946, at 102)]."**

(2) The issues provoked for determination by this application are not novel to our jurisprudence yet, the grounds for the application reveal a special situation, where the Applicant, who was Plaintiff in Suit No. GJ/892/2018 in the High Court Accra, invoked the supervisory jurisdiction of this court in respect of the outcome of a defamation action commenced by writ of summons against the Interested Party herein *(the Defendant therein*). There was no point in time during the trial proceedings that, the Applicant had questioned or objected to the conduct of Learned Trial Judge on grounds of bias neither did the Applicant complain at any time that, he was not heard on any matter or issue which by our jurisprudence the Applicant was entitled to be heard.

(3) Ordinarily therefore, in the absence of any of these two situations which primarily define the known rules of natural justice, to wit: ***audi alteram partem and nemo judex in causa sua;*** the Applicant before us, cannot be heard to complain against the adjudicator the Learned Trial Judge, on grounds of bias and seek redress by recourse to the supervisory jurisdiction of this court.

(4) However, the novelty of the more fundamental issue at least
in our jurisdiction, is seen from the resolution of the issue of bias based on the trial court's judgment. This is because the instant Applicant provokes our determination of a core issue, of, whether per the judgment of the trial court, the trial judge was biased against the Applicant, and thereby warranting that, we nullify the judgment so given by quashing same. The determination of this issue, in my view, is confined solely to the judgment that was delivered and nothing more. It is thus a herculean burden, which the Applicant must surmount in order to succeed in the instant application.

(5) Having said that, the filing of the application is conceivably appropriate given that, the allegations of bias against the Learned Trial Judge, and the deprivation of the opportunity to be heard on key issues in which the Learned Trial Judge had made definitive pronouncements against the Applicant on matters of criminality are embodied in the final judgment and not at any time during the trial proceedings.

BACKGROUND TO THE APPLICATION

(6) From the affidavit evidence, the Applicant claims to be an internationally renowned investigative journalist. According to him, his work has been at great risk, but the outcome has seen some culprits suffer punishment for their corrupt activities. The Applicant deposes that there are persons, including the Interested Party who detest his works and have vowed to bring him down. In pursuance of this negative agenda, the Applicant alleges that, the Interested Party embarked on a series of sustained public castigations against him, accusing Applicant of all manner of crimes including murder, stealing, tax evasion and corruption, all of which received wide publications.

(7) Aggrieved by the alleged defamatory publications, the Applicant, on the 20th day of November 2018, commenced a defamation suit against the Interested Party for various reliefs as endorsed on the originating writ. The suit was originally assigned to Justice Daniel Mensah then at the General Jurisdiction 2 Division of the High Court. The said judge, was subsequently transferred to the High Court, Tema. His Lordship Justice Eric Baah JA, pursuant to a directive from the Chief Justice took over the handling of the case from 11th of February, 2021 but only as a relieving judge. A substantive judge for General Jurisdiction 2 was subsequently appointed in the person of Justice Gifty Agyei Addo J. *(as she then was).* However, following a petition by the Interested Party through his lawyers to the then Honourable Chief Justice, Justice Eric Baah was assigned with the handling of the substantive matter, this time, while sitting at the General Jurisdiction 11 Division of the High Court.

(8) After a full trial with the participation of all the parties, without any objection to the court's jurisdiction, the trial judge on the 15th day of March 2023, delivered judgment against the Applicant and thus, dismissed the Applicant's claims against the Interested Party. Following the judgment, the Applicant launched two appeals against same per notices of appeal dated 8th June 2023 and 12th June 2023. The later notice of appeal filed, is actually anchored on as many as seventeen (17) grounds of appeal.

(9) On the 12th day of June 2023, the Applicant invoked the supervisory jurisdiction of this court for an order of certiorari directed at the High Court *(General Jurisdiction 11),* Accra presided over by Justice Eric Baah, JA *(sitting as Additional High Court Judge),* to bring into this Court for the purposes of being quashed the judgment of the High Court dated 15th March 2023. The Applicant anchors the application on the absence of jurisdiction and an apparent or a real likelihood of bias and partiality on the part of the trial judge.

(10) On the first ground of absence of jurisdiction, the Applicant contends that, the transfer of the suit by the then Chief Justice, following series of correspondence between the Interested Party and the office of the Chief Justice without notice to him was unfair and aroused lack of impartiality in the approach. The Applicant argues that, by settled practice, a relieving judge would be bereft of jurisdiction to hear a case that has been assigned to a court in which he is not the assigned substantive judge. Under the second ground, the Applicant attacks the entirety of the judgment as according to him, the trial judge left the legal principles in contention and embarked on a tirade against the investigative method of the Applicant when the case was not about the Applicant's professional conduct as a journalist. For Applicant, it is apparent upon a casual reading of the said judgment, that he suffered from a real likelihood or actual bias against him and therefore the Trial Judge was not impartial in his consideration of the case.

(11) **THE AFFIDAVIT IN OPPOSITION**

Expectedly, the Interested Party opposed the grant of the application. Significantly however, as if the other issues raised by the Applicant are unanswerable, the Interested Party's opposition was grounded only on the claim of absence of jurisdiction by the trial judge and not at all on the issue of the judgment being tainted by a real likelihood of bias and want of the opportunity for the Applicant to respond to the crucial statements of criminal conduct made by the Trial Judge which the Applicant contends influenced the outcome of the suit.

(12) According to the Interested Party, the application is unmeritorious as it fails to meet the threshold for invoking the supervisory jurisdiction of this Court. He contends that, subsequent to the delivery of the judgment, the Applicant filed two separate appeals of which Civil Form 2 had been issued in respect of both. The Interested Party contends further that, there was no impropriety regarding the petition to the Chief Justice for the trial judge to hear the substantive case and that same was a normal practice in the advancement of expeditious trials. The Interested Party thus asserts that, the power of the Chief Justice to transfer the suit was an administrative function as the power is vested solely in the Chief Justice who duly exercised same.

The Interested Party further asserts that in any case, if the Applicant was minded to challenge the transfer order of the Chief Justice, same should have been raised earlier in time. The Interested Party further contends that, even per the notices of appeal, the issue of absence of jurisdiction is absent, and that the Applicant is basically, forum shopping for relief.

(13) **THE LAW ON JUDICIAL REVIEW**

Article 132 of the 1992 Constitution vests the Supreme Court with supervisory jurisdiction ***"over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and direction for the purpose of enforcing or securing the enforcement".*** See also, **Section 5 of the Courts Act, 1993 (Act 459).**

(14) This court has settled in a plethora of cases that, our jurisdiction to review decisions of courts lower than the Supreme Court must be specially informed by want or excess of jurisdiction; error of law patent on the face of the record, which error is not trivial, but fundamental and goes to the jurisdiction of the court; breach of the rules of natural justice, as well as breach of the Wednesbury principles of illegality; irrationality, unreasonableness and or procedural impropriety.

(15) In **REPUBLIC VS. HIGH COURT, KUMASI: EX-PARTE BANK OF GHANA & ORS. (GYAMFI & OTHERS-INTERESTED PARTIES) [2013-2014] 1 SCGLR 477,** Dotse JSC speaking on behalf of this Court pronounced as follows:

"It is well settled that certiorari was not concerned with the merits of the decision; it was rather discretionary remedy which would be granted on grounds of excess or want of jurisdiction and or some breach of rule of natural justice; or to correct a clear error of law apparent on the face of the record. The error of law must be so grave as to amount to the wrong assumption of jurisdiction; and it must be so obvious as to make the decision a nullity. Where the error of law or fact was not apparent on the face of the record, the Applicant's remedy would lie in an appeal."

(16) Earlier in time, this court held in **REPUBLIC VS. COMMITTEE OF INQUIRY INTO NUNGUA TRADITIONAL AFFAIRS [1996-97] SCGLR 401** that,

". . . certiorari was a discretionary remedy which would lie to quash not only the finding or decision of a lower court or inferior tribunal which has acted ultra vires its powers or whose decision has been vitiated by error on the face of the record or which has failed to observe the rules of natural justice but also any other inferior tribunal including administrative tribunals which had a duty to act judicially, and by "judicial action" was meant an act done by a competent authority upon

consideration of facts and circumstances imposing liability and affecting the rights of others." See also **REPUBLIC VS. HIGH COURT SEKONDI; EX-PARTE AMPONG ALIAS ODENEHO AKRUFA KRUKOKO I (KYEREFO III & OTHERS INTERESTED PARTIES), [2011] 2 SCGLR AT 722; REPUBLIC VS. HIGH COURT (LAND DIVISION) ACCRA EX-PARTE-KENNEDY OHENE AGYAPONG; (SUSAN BANDOH-INTERESTED PARTY) [2020] DLSC 985 AT PAGE 27-28, PER KULENDI JSC.**

(17) It is settled that, judicial review is procedurally focused; and not concerned with the merits of the decision or order made. Thus, in this delivery, I will not be concerned with whether, on the substance of the impugned judgment, the trial court was right in its conclusion or otherwise. This point is very crucial, and requires a careful circumvention having regard to the fact that, the indicia to deciding whether the judgment ought to be set aside is the very judgment. That determination cannot therefore be done, without a consideration of and re-examination of appropriate aspects of the judgment.

(18) The point of departure however, is that, the re-evaluation will be pursued with the sole aim of ascertaining whether there was a real likelihood of bias or of actual bias on the part of the trial judge. Further, did the trial court deny the Applicant the opportunity to be heard on crucial definitive pronouncements of a criminal nature in the judgment proceedings? Furthermore, has a substantial miscarriage of justice been occasioned against the Applicant by reason of the approach of the Learned Trial Judge in the judgment before us?

(19) **EVALUATION**

In my view, two principal issues arise for determination in this application as follows:

a. ***"Whether the trial judge was bereft of authority to adjudicate over the substantive matter?***
b. ***Whether the judgment of the trial court suffers from a real-likelihood of bias or actual bias on the part of the trial judge and a resultant infringement of the Applicant's right to natural justice".***

From the affidavit evidence before me, I have no difficulty at all, in dismissing the jurisdictional ground on which this application is anchored. The essence of the Applicant's complaint on that ground, simply lies in the deposition that the Applicant was not put on notice regarding the Interested Party's petition to the Chief Justice for the suit to be transferred to Justice Eric Baah for determination. Counsel for the Applicant himself concedes that, the power to transfer suits is solely at the discretion of the Chief Justice and not party driven nor of lawyers (See; **Section 104 of Act 459)**. Thus, even in the absence of any petition, the Chief Justice was vested with statutory authority to effect a transfer. The important ingredient to be satisfied is, whether, same was pursuant to the fiat of the Chief Justice in accordance with statute. This, has not been argued by the Applicant to be absent.

(20) Therefore, in dismissing the jurisdictional ground, I find and hold that, the transfer of the suit by the Hon. Chief Justice to the trial court for determination by Eric Baah JA. was pursuant to the authority vested in the Hon. Chief Justice under the Court's Act, 1993 (Act 459) and the 1992 Constitution and not merely on the Interested Party's petition qua petitioner. The claim of absence of notice of the correspondence to the Applicant, is in my view of *de minimis* effect and could not deprive the court of its jurisdiction to adjudicate over the matter. Be that as it may, the Applicant, as aforesaid did not raise any objection against the trial judge in the hearing and determination of the suit. The Applicant actually participated in the whole trial and has raised the issue belatedly.

(21) It is conceded that while jurisdictional issues can be raised at any stage of any judgment proceedings a party who participates in a trial till judgment in any cause or matter and had been or ought to be aware of an irregularity which violates his right to fair hearing must act expeditiously, lest, he be deemed to have waived the right to complain. See the case of **THE REPUBLIC VS. HIGH COURT (COMMERCIAL DIVISION) EX-PARTE DR. KWABENA APPENTENG STEPHEN KWAKU ASIEDU APPENTENG & OTHERS (INTERESTED PARTIES)** in CM/J5/6/2010 dated 3rd February 2010 where this court in determining an application for certiorari to quash the proceedings of a vacation trial judge who proceeded to deliver a ruling after the period of the legal vacation without the warrant of the Hon. Chief Justice held while relying on the statement of Wood C.J in **REPUBLIC VS. HIGH COURT, EX-PARTE YALLEY (GYANE & OTTOR INTERESTED PARTIES) [2007-2008] SC GLR 512,** as follows:-

"Indeed, if we must eliminate the specter of perceived judicial manipulation and other negative acts or conduct that are alleged to be stalking, as it were, our judicial corridors, then it is absolutely critical that all the principal powers who drive the system, particularly, judges, ought strictly to ensure compliance with the provisions in Section 104 which are clearly intended to inject order, transparency, accountability and sanity into the entire justice system. We find that the provisions in Section 104 are intended to promote credibility, general efficiency and should be allowed to function as such."

"Against a background such as this, we have no difficulty in holding that though certiorari is a discretionary remedy, the omission of a party to raise objection to a proceeding in an appropriate forum should disentitle the Applicant to that remedy where the omission was wilful and an abuse of the process of the court. Such is the case here. The

fact that Tanko Amadu, J. was exceeding his authority after the effluxion of the vacation period did not seem to have bothered the Applicant until his ruling turned out to be adverse to him. Were it to have been in his favour he would have celebrated it".

Accordingly, this ground of the application is in my view spineless and I dismiss same.

(22) **WHETHER THE JUDGMENT OF THE TRIAL COURT SUFFERS FROM A REAL LIKELIHOOD OF BIAS ON THE PART OF THE TRIAL JUDGE RESULTING IN THE INFRINGEMENT OF THE APPLICANT'S RIGHT TO NATURAL JUSTICE.**

In determining this issue, I have cautioned myself on the ingredients necessary for the exercise of the supervisory jurisdiction of this court. This is because, the jurisdiction is not concerned with the merits of the matter. This involves a determination of whether, there have been some procedural lapses, which ought to have been complied with, but same were ignored, with the consequence that the default erodes an order or judgment of efficacy into a resultant nullity.

(23) The crucial ground which invigorates this issue, is a breach of the ***nemo judex in causa sua*** rule of natural justice. The traditional consideration of this principle has been anchored on a demonstration that, the adjudicator had a pecuniary/financial interest in the ***res litiga***; or proprietary a relational interest in the matter; or a pre-determined mind on an issue before the court. Often times most of these factors come to play before the final judgment is delivered. In such situations, the adjudicator is expected to recuse himself, for justice to be seen to be done. In exceptional situations however, the determining factor(s) may be unraveled after the delivery of the judgment.

(24) In the instant application, the nature of the bias this court is confronted with, is one, which arose from the content of the judgment which the Applicant alleges included exhaustive statements of criminality against him extraneous to the proceedings which cumulatively have deprived the judgment the sanctity of impartiality required of a trial judge. It is significant however to place on record that, the Applicant has not contended that, the trial judge had a pecuniary or relational interest in the subject of the suit or with the Interested Party. The Applicant has also not alleged that, the trial judge pre-determined the matter. All that the Applicant alleges is that, a casual reading of the judgment reveals that, the trial judge had personal deep seated issues with the Applicant's investigative methods, and as a result, veered off the settled principle of impartial adjudication and marred the judgment in a manner inconsistent with due process. On this ground, the Applicant has urged this court to exercise its supervisory power to quash the judgment.

(25) While I find this complaint to be so fundamental to have warranted much articulation by the Applicant, in his affidavit in support, the Applicant rather devoted much of his attention on the fanciful jurisdictional issue. The relevant depositions on the issue of bias from the affidavit in support can be found at paragraphs 22-25 which I hereby reproduce as follows:

"22. True to the fears of the Applicant, when Justice Eric Baah delivered his judgment, he left the legal principles in contention and embarked on a tirade against the investigation method of the Applicant when the case was not about the Applicant's professional conduct.

23. Justice Eric Baah, in large portions of his judgment, showed unequivocally to any dispassionate observer that prior to sitting on the applicant's defamation suit he harboured firm -held disagreements and disapproval of the work of the Applicant and developed deep -seated dislike for the Applicant.

24. It is apparent on a casual reading of the judgment

of Justice Eric Baah that he suffered from a real likelihood of bias against the applicant and therefore he was not impartial in his consideration of the case.

25. The judgment of a judge who suffered a real likelihood of bias in a case ought to be quashed and the affected party given the opportunity for his case to be impartially heard and determined.″

(26) In the statement of case in support of the application, the portions of the judgment of the Learned Trial Judge which, the Applicant alleges occasioned a real likelihood of bias are as follows:

Page 64, the Learned Trial Judge delivered as follows:-

"Corruption rating agencies have never been kind to Ghana in their ratings. As to how Plaintiff and his team select their subject persons is a matter shrouded in secrecy. But how do they choose their subjects persons out of the large number of corrupt Ghanaians? As things stand, persons selected may just be the unlucky ones, since some of those not selected may be worse than those selected".

(27) On the same page, the Learned Trial Judge stated thus:

"It should be understood that as officers caught by Plaintiff in his investigations have lost their jobs, an entrapped president may be compelled to resign out of shame or public pressure. That means, the Plaintiff through his investigative antics can cause the removal of a president, and thereby [upurn] the mandate given to him at the elections. This is not investigative journalism. It is investigative terrorism. It is exercise of indirect political power under the clock of journalism."

(28) Then at page 65 of the judgment, the Learned Trial Judge stated as follows:-

"Defendant alleged that Plaintiff has amassed wealth through corruption. Even if that allegation is discarded, the question remains as to how Plaintiff and his team get those thousands if not millions of dollars. Plaintiff is a lawyer and journalist, but these professions do not breed dollars from nowhere. If Plaintiff is being sponsored by internal or external entities, who are they? What are their motives and objectives? Does it include tarnishing the images of Presidents and Prime Ministers in our sub region? If the sponsors are external entities, do they approve of the modus operandi of the Plaintiff? Can a journalist from CNN or BBC out of nothings, lay traps just to implicate the American President or the British Prime Minister for the purpose of grabbing the headlines and instilling unwarranted fear in the populace? Have they ever thought of sending Plaintiff to their countries to use same methods to catch people in racist acts, which is a social canker plaguing those societie*s?*** ***In all honesty, the plot by Plaintiff and his group in Exhibit KOA.4 has nothing to do with journalism. It was a scheme for grabbing power by the back door and satisfying Plaintiff's insatiable taste of power, publicity, fame, awards and rewards.***

(29) Finally, the Applicant refers to page 56 of the judgment where the Learned Trial Judge said:

"The mantra of Plaintiff repeated ad nauseum in our ears, and of which I take judicial notice is "name, shame and prosecute". Pursuant to that, plaintiff has rushed to air audio-visuals on his investigation to the public, often at a fee."

The Applicant denies this last reference at page 56 and asserts that, while it was never an issue for determination, he has never charged any fee for public viewing of his work.

(30) Are the above statements, merely *obiter*, which if discarded will not impact the reasoning informing the dismissal of the suit? In answering this crucial question, I am persuaded by the observation made by Lord Thankerton in the English case of **FRANKLIN VS. MINISTER OF TOWN AND COUNTRY PLANNING (1948) A.C** where it was held at page 87 that:

> ***"I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute."***

(31) With all due respect to the Learned Trial Judge, it is in my view obvious that, he was actually actuated by his self-conceived notion of the Applicant's supposed improper investigative methods and thus, discarded the core issues before him. In fact, the judgment as rendered, was indubitably informed by these personal dislikes against the Applicant and not based on the law and evidence placed before the Learned Trial Judge. From a reading of the judgment, it is obvious that, the Learned Trial Judge, deliberately set up the delivery to assist the course of the Interested Party.

(32) Having said that however, I must express my admiration for the Learned Trial Judge's elaborate and erudite evaluation of the law on defamation. While I

expected that, based on the law so propounded, the Learned Trial Judge would apply same to the facts and evidence, the Learned Trial Judge unfortunately did not just descend into the arena of conflict, but, pursued a line of what in my view is an improper reliance on extraneous matters against the Applicant which were not relevant in the determination of the suit but which associate the Applicant with criminality. This was at a stage of the proceedings where the Applicant was not and could not have been heard on those matters.

(33) In the impugned delivery before us, the Learned Trial Judge stated that, the Applicant was involved in his work just to enrich himself. The trial judge further stated that, several Ghanaians were corrupt yet the Applicant targets only a few. Furthermore, he described the Applicant as a person engaged in investigative terrorism and not journalism and that, the Applicant possessed huge sums in dollars for being just a journalist and lawyer when those professions do not produce such resources. It is difficult to appreciate how the trial judge arrived at such definitive uncomplimentary statements about the Applicant without a prejudicial disposition since there was no evidence to support same, especially at that stage of the proceedings when the Applicant had no opportunity to respond to those statements even if he had been tried for a criminal offence.

(34) To any fair-minded person concerned with the reading of the judgment of the Trial Court, these conclusive statements which associate the Applicant with a criminal enterprise are not only injudicious but capricious as they are not the result of due process. The use of such language without hearing the subject for his response should not be available to any adjudicator. Otherwise, they will certainly be demonstrative of animosity, dislike, hatred and/or ill will, none of which is judicious. Not having given the Applicant the opportunity to be heard on them, and there being no evidence in support of those prejudicial conclusive statements of criminality against the Applicant, the situation reveals a pattern of premeditation to unjustifiably attack the Applicant. This prejudicial state of mind regrettably found expression in the forum

of adjudication in arriving at a decision on the Applicant's case. Such injudicious disposition by the Learned Trial Judge is not only inconsistent with the judicial oath, but is frowned upon by the 1992 Constitution on the requirement of fair hearing. The manner in which it is prevalent in the judgment misdirected the focus of the Learned Trial Judge on the cardinal principle of impartiality in his delivery, however well intended he might have been.

(35) In all jurisdictions and Ghana is no exception, judges occupy a sensitive and peculiar role in society. As persons who are part of the larger society, judges are also consumers of information about persons and institutions which constitute the society and which by the judges' special calling they are to regulate. In the process of adjudication therefore, judges must not adjudicate on the basis of their own personal views or perceptions, nor of public opinion about the parties, lawyers and witnesses before them, except as provided by the law of evidence. Such extra-judicial information whether positive or negative may always be available but must not be expressed on the face of a judgment though it may constitute the inarticulate premise on which a decision may turn provided the evidence and the law adduced supports such premise.

(36) Except as aforesaid therefore, once such prejudicial matters are expressed in a judgment not having been received through the due process of reception of evidence, the entire delivery becomes susceptible to quashing orders or other impeaching orders when jurisdiction is properly invoked. Therefore, the constitutional immunity enshrined in Article 127 of the 1992 Constitution to protect judges in the exercise of judicial power should not be taken for granted and construed as a shield to attack parties, lawyers and or witnesses before them without due process or any other sufficient justification.

(37) My Lords, as judges, our duty in adjudicating is simply guided by the issues set for trial or those consequential issues necessary for the final and effectual determination of any dispute. While obiter statements are permissible, our core duty is to apply the law and evidence to the facts of a particular case before us. Where personal biases becloud a judicious approach to adjudication, the outcome cannot be accepted as the reasoning informing the conclusion arrived at, since it will not be based on the evidence placed before the court. It is such judicial conduct that, this court must fearlessly and unhesitatingly, but authoritatively deprecate irrespective of the composition of any coram. This is because, as Judges, we remain servants of the polity; and the power to adjudicate actually emanates from the people. Therefore, any arrogated judicial power, guided in its approach by prejudice and absence of due process must not be countenanced.

(38) In **JONES VS. NATIONAL COAL BOARD [1957]2 Q.B.55** a statement by **Lord Denning**, one of the most celebrated jurists of the common law jurisdiction is worth reproducing *in extenso* for its relevance about the conduct of judges and the application under consideration. **Lord Denning** said *inter alia* as follows:-

"No one can doubt that the judge, in intervening as he did, was actuated by the best motives. He was anxious to understand the details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witnesses should not be harassed unduly in cross-examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticisms that had been made against the Board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily

intervene in the conduct of cases, and have done for centuries. . . Nevertheless, we are quite clear that the interventions, taken together, were far more than they should have been. In the system of trial, which have been evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe, in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question, 'How's that? His object above all, is to find out the truth, and to do justice according to law and the daily pursuit of it the advocate plays an honourable and necessary role. Was it not Lord Eldon LC who said in a notable passage that "truth is best discovered by powerful statements on both sides of the question": See Ex-Parte Lloyd. And Lord Greene MR who explained that, justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, "he, so to speak descends into the arena and is liable to have his vision clouded by the dust of conflict".

(39) Some English case law will provide a useful persuasive effect in determining the instant application. In the case of **IN R. VS. GRIMSBY BOROUGH QUARTER SESSIONS. EX-PARTE FULLER [1956] 1 Q.B. 36**, the Applicant had been convicted by a Court of summary jurisdiction on a charge of being found in enclosed premises for an unlawful purpose, and he appealed to quarter sessions against his conviction. During the cross examination of the applicant at the hearing of the appeal, the clerk of the peace, acting in the interests of the accused, handed to the recorder a police report and drew the recorder's attention to a passage which, might provide the answer to a matter being put to the applicant in cross-examination. On the same page of the police report, immediately below the passage in question, was set out a

list of the Applicant's previous convictions. The Applicant's character had not been put in issue. The recorder read the passage to which his attention had been drawn, marked it and kept the document.

he appeal having been dismissed; the Applicant applied for an order of certiorari to quash the order dismissing the appeal. At page 41 Lord Goddard L.C.J., delivering the judgment of the Court, said:

> ***"It is not for every irregularity in the course of a hearing either in petty or quarter sessions that a certiorari would be granted. In our opinion we ought to apply the same rule as in a case where bias on the part of a justice adjudicating is alleged, which was fully considered by this court in the recent case of REG, VS. CAMBORNE JUSTICES EX-PARTE PEARCE. (1955 1 Q.B. 41; I.1954.J 2 ALL I.R. 850.) where in the result a certiorari was refused. It was there held that there must be a real likelihood of bias and so here we would say a real likelihood of prejudice. We emphasize it is likelihood, not certainty. We applied the judgment of Blackburn J. in REG, VS. RAND, ((1866) L.R.L Q.B. 230, 23L) and also adopted the words of Lord O'Brien L.C.J. IN REX VS. QUEEN'S COUNTY JUSTICES ([1908] 2 I.R. 285, 294•'): "By 'bias' I understand a real likelihood of an operative prejudice, whether conscious or unconscious," and this, in our opinion, amply justifies us in applying the same test in the present case as would be applied where a motion is brought on the ground of bias".***

fter considering the comments of the Magistrate very carefully, Hutchison J. came to the conclusion that, the circumstances were not such as to establish judicial bias but, proceeded to consider whether there was nevertheless a failure of natural justice and accordingly a ground for the order of certiorari had arisen. This is because of a view prematurely formed by the Magistrate adverse to the third party. At p.953 he said- ***"The question, as I see it, is whether the matters to which I have last***

referred … taking them cumulatively, show a real likelihood that the Learned Magistrate prejudged the case so that the opportunity of the third party to present its case was no fair opportunity at all. The "burden of proof resting on the third party I have earlier stated as being one of establishing a "real likelihood that the Learned Magistrate prejudged the case." He then came to the conclusion that, the cumulative effect of the comments was sufficient to show that the Magistrate prejudged the case, and the third party did not have a fair opportunity to present its case. Accordingly, certiorari was issued on that ground.

(42) The procedure of judicial review by which legal proceedings which are otherwise considered regular but still suffer perdition on grounds of the real likelihood of, or actual bias is not novel in common law jurisdictions. In our jurisdiction, the procedure which, is mutually exclusive to the appellate process is provided in Article 132 of the 1992 Constitution and Section 5 of the Courts Act, 1993 (Act 459) (as amended) under which the instant Applicant invoked the supervisory jurisdiction of this court.

(43) Thus, in the English case of **R. VS. BOW STREET METROPOLITAN STIPENDIARY MAGISTRATE & ORS., EX-PARTE PINOCHET UGARTE (NO.2) [2000] 1 AC 119,** the accused, former Head of State of Chile faced extradition for alleged crimes against humanity. In the first judgment, a panel of five judges of the House of Lords held that Pinochet was not entitled to immunity from prosecution. Subsequently, however, there were revelations that a member of the panel of justices had links with Amnesty International an organization targeting individuals involved in crimes against humanity. This development resulted in an appearance of bias on the part of the said law lord. The decision, was therefore overturned due to the apparent perceived bias on the part of Lord Hoffman, a member of the first panel.

(44) Therefore, the cardinal principle that a judge must be impartial is accepted in the jurisprudence of any civilised country and the common law jurisdictions are no exception. There is therefore no ground for holding that in this respect, Ghanaian law differs from the law of England or for hesitating to follow the English decisions though of persuasive effect. One relevant decision was in the case of **REGINA VS. CAMBORNE JUSTICES [1955]1QB.41.** I would adopt the following passage from page 51 of the judgment as setting out the law as equally applicable in our jurisdiction;

> ***"In the judgment of this court the right test is that presented by Blackburn J. namely that to disqualify a person from acting in a judicial or quasi-judicial capacity upon the ground of interest (other than pecuniary or proprietary) in the subject matter of the proceeding a real likelihood of bias must be shown. This court in further of opinion that a real likelihood of bias must be made to appear not only from the materials in fact ascertained by the party complaining, but from such further facts as he might readily have ascertained and easily verified in the course of his inquires".***

(45) In respect of the above requirement, a number of the English authorities provide the relevant and appropriate persuasive guidance. In the case of **METROPOLITAN PROPERTIES CO. (F.G.C) LTD. VS. LENNON [1969] 1 Q.B.577** at **598 Lord Denning MR**. *(as he then was)* referred to the case of **REG. VS. BARNSLEY LICENSING JUSTICES, EX-PARTE BARNSLEY AND DISTRICT LICENSED VICTUALLERS' ASSOCIATION [1960, 2 Q.B.167 at 187]** as follows:- ***". . . DELVIN J. appears to have limited that principle considerably, but I would stand by it. It brings home this point: In considering whether there was a real likelihood or bias the court does not look at the mind of the judge or chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there***

was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand": See **REG. VS. HUGGINS [1895, 1 Q.B.563] AND REX. VS. SUNDERLAND JUSTICES [1901, 2 K.B. 357 AT 373 C.A] PER VANGHAM WILLIAMS L.J.** Nevertheless there must appear to be a real likelihood of bias. Neither surmise nor conjecture is enough: See **REG. VS. CUMBORNE JUSTICES, EX-PARTE PEARCE [1955], 1 Q.B.41 AND REG. VS. NAILSWORTH LICENSING JUSTICES EX-PARTE BIND [1953, 2 A11, E.R. 652 D.C.]; *"There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would or did, favour one side unfairly at the expense of the other. The court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: The judge was biased".***

(46) In the instant case, with all due deference to the Learned Trial Judge, his conclusive definitive pronouncements on matters extraneous to the proceedings and the portrayal of the Applicant as a person with a pretence of journalism which can be likened to such high crime as terrorism is language which in my view, gives reasonable cause for the suspicion of animosity and a real likelihood of bias against the Applicant by any right-minded person.

(47) It is against the likelihood of such lapses or fundamental breaches of procedure resulting in a miscarriage of justice that, the power of judicial review has been vested in this court. I am thus in agreement with the Applicant that, any

reasonable person concerned with a reading of the judgment of the trial court, will notice that, the delivery is regrettably replete with unwarranted attacks on the Applicant by the Learned Trial Judge over extraneous matters of criminality and/or reprehensible conduct while exercising adjudicatory authority. In that disposition of apparent bias, it was lost on the Learned Trial Judge that, the Applicant was not on trial for a criminal offence nor was the Applicant given the opportunity to be heard on those matters of criminality.

(48) With all due respect to the Learned Trial Judge, his approach is in my view an improper exercise of judicial power and same ought not to be allowed to stand. The apparent real likelihood of bias is so manifest that, it infested a rather sound and profound exposition of the law on defamation. Consequently, rather than prescribe a recourse to the appellate process which is mutually exclusive to the instant procedure elected by the Applicant, I am inclined to granting the application, as it will be too simplistic to suggest that, even though the supervisory jurisdiction of this court has been properly invoked, the Applicant be denied relief in order that his remedy is pursued by way of an appeal.

(49) In the case of **REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE BANK OF GHANA AND OTHERS (SEFA AND ASIEDU–INTERESTED PARTIES) (NO.1), REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE BANK OF GHANA AND OTHERS (GYAMFI AND OTHERS –INTERESTED PARTIES) (NO.1) (CONSOLIDATED)** this court in a benign advance while articulating on the scope of the supervisory jurisdiction unanimously and succinctly held as follows:-

"The supervisory jurisdiction of the Supreme Court under Article 132 of the 1992 Constitution was not limited to the issuing of the traditional conventional writs of certiorari, mandamus, prohibitions etc. under

Articles 132 and 161. The Supreme Court would, in appropriate circumstances, give directions in cases such as the instant one, to ensure the prevalence of justice, equity and fairness. The Supreme Court, indeed, had wide powers in exercising its supervisory jurisdiction, that was particularly so in view of its previous decision that so long as the separate requirements of an appeal and of an application for the exercise of the supervisory jurisdiction had been complied with, a party should be able to avail himself or herself with either avenue for redress at the same time. Consequently, despite the fact that the instant application for certiorari would be dismissed as being untenable, the court on the principle of ensuring fairness and justice, would grant a stay of execution of all processes aimed at executing the default judgments of the High Court, Kumasi until the final determination of the appeal currently pending before the Court of Appeal. See cases like **BRITISH AIRWAYS VS. ATTORNEY-GENERAL [1996-97] SCGLR 547, REPUBLIC VS. HIGH COURT, (FAST TRACK DIVISION) ACCRA, EX-PARTE ELECTORAL COMMISSION, [2005-2008] SCGLR 514, AND REPUBLIC VS. HIGH COURT, CAPECOAST, EX-PARTE GHANA COCOA BOARD (APOTOI III- INTERESTED PARTY) [2009] SCGLR 603** *cited."*

N BLACK VS, BLACK [1951J N.Z.L.R. 723, COOKE J. held at pages **726-727**, as follows:- ***"The injunction that is contained in the maxim audi alteram partem is an ancient principle of the common law ... and anything done contrary to that principle is contrary to natural justice. It is plain that for a tribunal to give a party to a proceeding the opportunity to be heard only after that tribunal had already expressed the view that his evidence would not be believed would be to treat that principle as a dead letter. It is equally plain that for a tribunal to give such a party the opportunity to be heard only after the tribunal had already expressed the view that the decision in the proceeding should be adverse to him would also be***

to treat that principle as a dead letter. In either of those cases, there would be a departure from natural justice."

"... It is now well established that certiorari is available to quash a conviction regardless of the fact that an appeal is available to the person seeking the issue of the writ and furthermore if there has been a miscarriage of justice it is the appropriate remedy.

urther, in the case of ***IN VS. NORTH EX-PARTE OSKEY 43 T.L.R. 60 ATKIN L.J., at P.66***, affirmed in a statement approved by MacGregor J. in ***WOODLEY VS. TOODLEV AND MELDRUM [1928] N.Z.I.H. 4O5, 472,*** that where there has been a breach of a fundamental principle of justice the fact that there is a remedy of appeal is no answer to a writ of prohibition or certiorari. It was elucidated therein as follows:-

> ***"... A recent affirmation of the above principle can be found in MC CARTHY VS. GRANT [1959] N.Z.L.R. 1014. It is clear then that if there had been a breach of the rules of natural justice in this case then the exercise by the Applicant of his right of appeal would not have debarred him from obtaining a writ of certiorari which, in the light of the earlier discussion it is submitted with very great respect was refused by Sherlund J. without consideration of all the principles of law involved."***

(52) Against the background of the common law position as demonstrated above, it is my view that any proposition that the instant Applicant's remedy lies in an appeal would be tantamount to inviting this court to abandon its hallowed supervisory authority which is a constitutional prescription in preference for the appellate process of the Court of Appeal. While it is conceded that, the favourable exercise of this court's supervisory jurisdiction is discretionary and may conceivably be refused even when an application is not necessarily unmeritorious, on the facts

and issues provoked by the instant case, this court ought to be inclined to granting the application. In my considered view, doing so will not only expeditiously remedy the manifest injustice visited on the Applicant by the Trial Court, but will guide judges in demonstrating conduct which is consistent with the judicial oaths we have all solemnly sworn to uphold.

(53) In this jurisdiction, this court has settled in a number of cases that, in order to succeed on an allegation of bias against a judge, the Applicant must demonstrate, not just a mere or suspicion of bias or actual bias, but a real likelihood of bias. What amounts to a real likelihood of bias, is not monolithic in response. Each case must be decided per its peculiar facts. Thus in **REPUBLIC VS. HIGH COURT (CRIMINAL DIVISOIN 1), ACCRA EX-PARTE STEPHEN KWABENA OPUNI, CIVIL/MOTION NO.J5/58/2021 DATED 28TH JULY 2021,** my revered brother, Pwamang JSC observed as follows:

> ***"Bias takes different forms as there are many factors that may cause a decision-maker not to be impartial. She may have a pecuniary interest in the subject matter of the enquiry, or she may be related to one party or a witness by a family or friendship, or may have dislike for one party or her witness, or may simply have a prejudiced opinion of the issue to be decided. ....*** "See also **BILSON VS. APALOO [1980] GLR 15,** per Anin JSC. In **REPUBLIC VS. HIGH COURT, DENU; EX-PARTE AGBESI AWUSU II (NO.1) (NYONYO AGBOADA SRI INTERESTED PARTY) [2003-2004] 2 SCGLR 864** the Supreme Court held that: ***"a charge of bias or real likelihood of bias must be satisfactorily proved on the balance of probabilities by the person alleging same. Where there existed a real likelihood of bias or apparent bias was an issue of fact determinable on a case to case basis.***

(54) In **EX-PARTE BRAIMAH [1969] CC 33** Annan J. *(as he then was)* outlined the principles for determining bias of a judge as follows:

(1) In order to succeed, the Applicant must show the existence of a real likelihood of bias or interest on the part of the Respondent.

(2) Mere suspicion of bias is not sufficient.

(3) In the absence of proof of pecuniary or proprietary interest, the Applicant has to show that the Respondent's interest in the proceedings (sought to be quashed) is so real and substantial and of such a nature as to give rise to a real likelihood of bias.

(4) The test of bias is objective, and it is the view that a right-minded person would take if he accepted the matters of fact put forward by the Applicant.

(5) The burden of proof lies on the Applicant and such burden must be discharged by cogent and credible evidence, preferably that of independent witnesses.

(6) Wrong adjudication on issues of law by a committee such as the Constitutional Committee is not evidence of such bias or interest as would make its decision voidable.

In the instant application, I am satisfied that, the judgment before us, being sought to be quashed, fails to be accorded the quality of a judgment devoid of a real likelihood of bias. The delivery in my view, was not informed by an independent and unbiased mind required of an adjudicator.

(55) In our jurisprudence, the requirement of fair hearing must involve a fair trial, and a fair trial of a case consists of the whole hearing including the judgment proceedings. For, it is a cardinal principle of natural justice that, a tribunal, unless otherwise empowered so to do must base its findings and conclusion on the evidence of some probative value adduced, and never on the personal perceptions of the tribunal especially where a party to the proceedings is not confronted with such significant matters which form the basis of those findings. Where such a situation is prevalent as in the instant case, the justice of the matter which the tribunal is by law enjoined to dispense is naturally compromised.

(56) What is the response of the Interested Party to the ground of the application that the Learned Trial Judge was actuated by a real likelihood of bias and in so doing deprived the Applicant the opportunity to be heard before subjecting him to the determination of matters of a criminal nature?

It must be emphasized that, the failure of the Interested Party to contest the application on this ground will not result in a default situation with the potential result that, the application ought to automatically succeed on that ground. The situation places a responsibility on this court to examine the said ground with the view to arriving at a conclusion on whether or not it is meritorious. This determination will have to be done on the basis of the settled principles of law pronounced by this court and of other common law jurisdictions which are of persuasive effect.

(57) In this context therefore, on the strength of the judicial authorities already referred to, any conclusion that the instant application ought to fail either because, granting same will result in expanding the scope of the supervisory jurisdiction or that, a resort to the appellate process suffices to avail the Applicant a remedy is with all due respect, not only inaccurate, but inconsistent with settled judicial authorities. It must be emphasised that, in the exercise of this special supervisory

jurisdiction vested in this court by the constitution though discretionary, there should be no reason for apprehension, judicial indulgence, nor conservatism. Neither should a refusal to exercise supervisory power be influenced by any considerations of permissiveness, nor preservation of a *status quo* which is inconsistent with the peculiar facts of the instant application and the applicable relevant law.

(58) Thus, granted for the sake of argument that, there is no available judicial precedent to assist in determining the issues arising from these peculiar undisputed facts, or that the matter falls within the class of cases which on the facts are penumbra, a refusal to grant the application on ground of the need to narrow access to, or check an abuse of the supervisory jurisdiction or for want of available judicial precedent on the facts of this application are untenable. As succinctly cautioned by an eminent jurist of this court, Adade JSC in the case of **MERCHANT BANK (GHANA) LTD. VS. GHANA PRIMEWOOD PRODUCT LTD. [1989-90] 2GLR** page 568 ***"Precedents are merely to help us think about cases before us, they cannot do the thinking for us. We are in danger of submitting our thinking to be done for us, and this is because the impression is being created that, every case must have a precedent by which it should be decided, so that rather than do some original thinking about the case, we first try to look at the deciding precedent, and then proceed to push our case into the straight jacket of that precedent."*** See also the statement of Lord Denning in the case of **PARKER VS. PARKER [1954]1 AII E.R 22,** cautioning on the reliance on precedent in the adjudication process.

(59) In my statement in concurring with the majority opinion in the case of **OGYEEDOM OBRANU KWESI ATTA VI VS. GHANA TELECOMMUNICATIONS CO. LTD. & LANDS COMMISSION, Civil Motion**

No. J8/37/2021 dated 31st March 2021, I instructively observed as follows:-

"The absence of any precedent is no reason why the (an) application ought to be refused. As the highest and final court of the land, it is not every legal issue that we can resolve on the basis of judicial precedent. Judicial decisions are made to resolve particular disputes. A decision derives its quality of justice, soundness and profoundness from the peculiar surrounding circumstance(s) of the dispute it is presumed to adjudicate, within the context of the relevant applicable law. In my considered view, the rules and accepted principles of law established by this court cannot be considered in the abstract without proper attention to, and consideration given to the facts of each case. The facts as in the instant application are peculiarly material and fundamental and must assume a crucial role in the process of our decision."

(60) In resting this delivery, I arrive at one conclusion. It is that, the Applicant, had in the impugned judgment been subjected to a pre-judicial determination of unsubstantiated criminal conduct. Those conclusions of criminality against the Applicant, were arrived at without giving the Applicant the opportunity to be heard on them, as required by the due process of law in our criminal jurisprudence. Consequently, a cardinal principle of natural justice has been infringed in the process of that adjudication. This situation, clearly motivated by the apparent bias, which emerged on the part of the Learned Trial Judge in his adjudication of the case, cumulatively justify and authorise the exercise of this court's supervisory power. In the result, this application must succeed.

(61) Let the judgment of the High court, subject matter of the application, be brought up to this court for the purposes of being quashed and the same is hereby accordingly quashed. I will abide all the consequential orders contained in the opinion of my esteemed brother, Kulendi JSC.

I. O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

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