IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
ACCRA.

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***Coram: Akamba, J.A. Presiding.***
***Kusi-Appiah, Justice of Appeal***
***Dotse, Justice of Appeal.***

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**CIVIL APPEAL NO. H1/191/2005.**
**13TH JULY 2007**

**EXCEL LOGISTICS GH. LTD** **DEFENDANT/APPELLANTS**

**VS**

**GPRTU OF TUC (GHANA**
**BURKINA FASO HAQRBOUR BRANCH) - PLAINTIFFS/RESPONDENTS.**

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## JUDGMENT

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**AKAMBA, J.A:** This is a motion filed against the hearing of this appeal. Before dealing with the substantive appeal filed on 3rd September 2004 at the High Court Tema against the judgment delivered on 27th August 2004 by the said High Court, it is important to first surmount this procedural obstacle raised by way of preliminary objection which we intend to address.

The plaintiffs/respondents (hereinafter simply referred as the respondents) filed a separate and independent notice of their intention to rely upon a preliminary objection on 13th April 2006, the same date that they (respondents) filed their written submission. It is reasonable to infer that by the sequence of filing the notice, the same being a motion at the same time with the written submission, the motion is presumed to have been filed first and ought to be dealt with before considering the written submission. This position is also supported by the opening arguments in the respondents written arguments which urge that the written submissions were filed out of caution just in case their preliminary objection was not sustained. From the clear statement of the position taken by the respondents it would be grossly unreasonable and indeed unfair to take the position that the respondents had waived their objection by the subsequent or simultaneous filing of their statement of case.

Now to the issues raised in the preliminary objection. The respondents' objection is to the fact that despite the transmission of the records in April 2005 together with the issuance of Civil form 6, the appellants filed their statement of case on 27th March 2006, without obtaining the leave of the court in obvious violation of the mandatory provision of rule 20 (1) of CI 19 (as amended by CI 25) which enacts as follows:

*"20 (1). An appellant shall within 21 days of being notified in Form 6 set out in Part 1 of the Schedule that the record is ready, or within such time as the court may upon terms direct, file with the Registrar a written submission of his case based on the grounds of appeal set out in the notice of appeal and such other grounds of appeal as he may file."*

From the records of this court, the form 6 in respect of this appeal was issued at the lower court on 31st March 2005 and same served on the respondents on 7th April 2005 whilst the record of proceedings was transmitted to this court on 11th April 2005. The appellants then after filed their statement of case on 27th March 2006. By a simple computation of time, the appellants filed their statement of case some eleven months after the twenty-one (21) days within which to file their statement of case. There is no record that leave was sought and granted by this court prior to the filing of the statement in question. The respondents are dissatisfied with the appellants' failure to comply with the requirement to file their written statement within 21 days or failing that to obtain the leave of the court to file out of time. The appellants make no pretensions about filing within the stipulated 21 days required under rule 20 (1) supra. Their only response is that the delay in filing their submissions was not deliberate but due in part to their attempt to amend the original Notice of Appeal which was filed on 11th April 2005 and could not be taken until the 22nd November 2005 owing to the ill health of the Respondents' counsel. The statement of case filed on behalf of the Appellants pursuant to their amended notice of appeal was made on 24th March 2006. At page 62 of the record of appeal, we have the notice of appeal filed on 3rd September 2004. There is no record of any amended notice of appeal on the appeal record except for the reference in the title of the statement of case filed on behalf of the Defendants /Appellants "pursuant to leave" on 27th March 2006 in which reference was made to the "*grounds of appeal filed in the amended notice of appeal*" for which leave was granted on 22nd November 2005. It is apparent that what the appellants

sought from the court was not an amendment of the notice of appeal but an amendment to the grounds of appeal. Whatever the appellants desired to achieve by the steps they took they were obliged to bear in mind that they had twenty-one (21) days within which to file their statement of case upon receipt of the **form 6** and if they took certain steps within the same period such as seeking an amendment either to the Notice of Appeal as a whole or to the grounds of appeal only (as it turned out in this case), they would be mindful to seek the leave of the court to file their response out of time. If they failed to guard against over stepping the time within which to file their statement of case, they cannot be heard to merely sweep their lapse away by claiming that it was not deliberate. It is important to stress that a false step does not freeze the flow of time hence same cannot be reason for excusing the appellants in this case. It is also trite to observe that an appeal is the creation of statute and for one to benefit from the provision/s one must meet the requirements put in place by the statute/s as there is no inherent right to appeal. In this instance, even though it is the Constitution 1992 which confers the appellants the right of appeal, they are obliged to meet not only the requirements set down by the Constitution but the rules of the appellate court as well. Assuming that the time to file their statement of case as set down by the Court of Appeal Rules CI 19 (as amended) did not run when the appellants filed their motion to amend the Notice of Appeal, were they within time when they filed same eventually on 24th March 2006? I do not think so. By the appellants own admission in their statement of case filed on 27/3/2006 the amended notice of appeal was granted on 22nd November 2005. One would reckon that the 21 days would start running from that date unless otherwise directed by the court. There being no record of any abridgment of the time, the appellants were obliged to file their statement of case on or about the 13th December 2005. They rather chose to do so in their own time of 27th March 2006 which is clearly some three and half months after the time permitted by the rules. This also falls outside the three months prescribed for applications for extension of time within which to appeal under rule 9 (4) of CI 19. The appellants therefore failed to file their statement of case in accordance with rule 20 (1) of CI 19 as amended by CI 25 and according to the sub rule (2) thereof the Registrar was obliged to bring the failure to the attention of the court by way of a certificate as in form 11A in Part 1 of the schedule.

Interestingly enough the appellants cite the failure of the Registrar to do as required under rule 20 (2) of CI 19 to mean that their lapse was not deliberate. Far from being as contended by the appellants, they had not given any reasonable explanation to warrant such a conclusion. The failure of the

Registrar to do his/her duty does not make the appellants lapse right, for two wrongs do not constitute one right. We view that the appellants did not demonstrate sufficient interest in complying with rule 20 (1) of CI 19 as amended by CI 25 and in particular that portion of the rule which required that the appellants ought to file their written submissions within 21 days of being notified in form 6 that the record is ready or within such time as the court may upon terms direct. In the absence of any extension of time granted by the court to enable the appellants file the statement of case outside the 21 days, the unilateral action resorted by the appellants is a slap in the face of the rules. We have also considered the import of rule 63 of CI 19 on the present lapse. Our view is that from whatever position one looks at the lapse and the reasons assigned before this court for the delay whether calculated as eleven months from the date the original 21 days ended from the date of issuance of the form 6 on 31st March 2005 or a lapse of one hundred and twenty one (121) days calculated from the end of the 21 days after the grant of the amendment motion on 22/11/2005, the appellants' action is inexcusable and thus cannot be salvaged by this rule. It is inevitable that the delay, whether looked at as eleven months or one hundred and twenty one days both exceed the period permitted by our rules for extension of time to appeal except where good and tangible reasons have been advanced which the appellant has not. By far the most authoritative pronouncement which fortifies our position is in the case of Doku vs Presbyterian Church of Ghana [2005-2006] SCGLR 700, in which the Supreme Court stated at page 704 the following:

"*It is not for nothing that rules of court procedure stipulate time limits. As has already been pointed out above, the 1992 Constitution gives dissatisfied litigants the right of appeal to this court. However, because it is also in the public interest that there should be an end to litigation, the rules of the Supreme Court (as well as the Rules of the Court of Appeal) have set these time limits to guide litigants with a view to achieving certainty and procedural integrity. Otherwise, in the case of appeals, any litigant may conveniently take his or her time to decide when to resurrect the litigation of suits in which decisions have been given.*

*For the greater part of this case's journey through the courts, the appellant has represented himself. Admittedly, a self-represented litigant cannot be expected to be well-versed in all the intricacies of court procedures. However, time limits are too important for this court to ignore, even if it had any discretion in the matter (which we doubt in the present circumstances), and although one might empathize with the appellant's prayer for this court to take into account the rules of equity to 'prevent the respondent from*

*taking undue advantage of the weakness or necessity' of the appellant, we cannot craft new rules to suit the appellant's situation nor will the ends of justice and equity be served in any attempt on our part to do so".*

In the event, the appellants have not given us any reason to overrule the preliminary point taken by the respondents. We would therefore uphold the respondents' preliminary objection

The appellants have rather taken issue with the procedure adopted by the respondents in this appeal wherein they raised the preliminary objection and followed same with the written response. To say the least the procedure adopted by the respondents not only accords with the practice in the Supreme Court and is no indication of a waiver as insinuated by the appellants in their reply filed on 27th June 2006 it also conforms with this court's ruling in the case of Dasebre Nana Osei Bonsu II vs Akwasi Mensah & 3 ors C/A No H1/131/2005 of 26th May 2005 (Unreported). Being an objection to the hearing of the appeal, it was within the rights of the respondents to file the preliminary objection together with the written submission on the case as they did. As we noted in our decision quoted supra, the purpose of the preliminary objection is to prevent the hearing of the appeal on its merit either on grounds of irregularity, or non-compliance with some legal provision or for some other good and sufficient reason in which case the alleged irregularity, defect or default must be apparent on the face of the motion. The objection being simply a question whether the proceeding or as in this instance the appeal is properly authorized, then it is a matter of procedure and a challenge thereto should be taken before the appeal is heard. The case of Republic vs Ada Traditional Council, Ex Parte Nene Okunno II, (1971) 1 GLR 412 although a decision of the High Court, correctly states this position which we affirm. Thus the notice by the respondents to rely on the preliminary objection filed on 13th April 2006 was well taken and in compliance with the rules of this court. In conclusion, the procedure is not only one of caution and common sense it accords with the decisions of this court and does not evince an intention to waive a right.

Accordingly we uphold the preliminary objection and strike out the appeal as incompetent and without liberty. For the avoidance of doubt the appellants have no liberty to come afresh.

We allow costs of five million cedis (¢5m) for the Respondents as against the Appellants.

**J.B.AKAMBA**
**JUSTICE OF APPEAL**

Francis Kusi-Appiah, J.A. I agree.

**FRANCIS KUSI-APPIAH**
**JUSTICE OF APPEAL**

Jones Victor Dotse, J.A. I also agree.

**JONES VICTOR DOTSE**
**JUSTICE OF APPEAL**

**COUNSEL.**

Joe Addae Aboagye, Esq. for Defendants/Appellants.
Oseawuo Chambers for Plaintiff/Respondent.

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