

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE,
COMMERCIAL DIVISION HELD IN ACCRA ON FRIDAY, THE 22ND DAY OF
SEPTEMBER, 2023 BEFORE HIS LORDSHIP FRANCIS OBIRI J.

SUIT NO. CR/0393/2022

THE REPUBLIC

VS

1. PAUL LIST - RESPONDENTS/APPELLANTS/
2. JEREMY LIST APPLICANTS
3. ROBERT NARTEY
4. KOFI AMOAKOHENE

EX PARTE ANGELA DIALA LIST - APPLICANT/RESPONDENT/
RESPONDENT

RULING

I have listened to the submission by counsel for the 1st, 2nd and 3rd Respondents/Appellants/Applicants (hereinafter called the Applicants) praying the court to suspend the sentence of each of the Applicants dated 20th July, 2023 pending the determination of their appeal before the Court of Appeal.

I have gone through the documents in this application which was filed on 6th September 2023. The motion was served on the Applicant/Respondent/Respondent (hereinafter called the Respondent) counsel on 8th September, 2023 as per the affidavit of service commissioned on 11th September, 2023. There is no affidavit in opposition.

The Applicants contention is that the sentence imposed on each of them on 20th July, 2023 by this court differently constituted should be suspended pending the determination of their appeal before the Court of Appeal.

The judgment of this court dated 20th July, 2023 has been attached as exhibit 'A'. The judgment is in respect of an application for committal for contempt which was filed by the Respondent against the Applicants and another person on 21st March, 2022.

The application for committal for contempt was also predicate on a motion on notice for an order for interlocutory injunction filed by the Respondent against some of the Applicants on 22nd October, 2021.

The Applicants have contended in their affidavit in support that they were not served with the injunction application. Therefore, their conviction was wrong in law. Consequently, their appeal is likely to succeed.

The Court has power under Order 50 Rule 4 of C.I. 47 to suspend the execution of a sentence of a person who has been committed for contempt.

However, the Court will do that if there are exceptional circumstances to warrant it to be suspended.

In this case, the court concluded that the Applicants herein were duly served, or properly became aware of the pendency of the injunction application but engaged in acts to overreach the application while it was pending. Therefore, they were in contempt of court. Indeed, that is the correct position of the law.

In the case of **ARYEETAY v AGBOFU II AND ANOTHER [1994-1995] GBR 250**, the Supreme Court held at page 252 as follows: **"...The Applicants having been served with the motion for the interim injunction to restrain them from carrying out any kind of installation until the outcome of the suit was known, deliberately stole the march over the Respondent by doing the very thing for which the motion had been brought. While the motion for the interim injunction was pending. ... Once the Applicants had**

become aware of the pendency of the motion, any conduct that was likely to prejudice a fair hearing of that motion was tantamount to contempt”.

Therefore, the issue is whether the Applicants herein were properly served with the injunction application.

The Respondent herein contended in the substantive application for the contempt in which she was the Applicant that the Respondents therein who are the Applicants herein were properly served with the injunction application.

It is the law that where there is a dispute as to service of a process on a party, the person relying on the alleged service must be put to strict proof of it.

See: IN RE YENDI SKIN AFFAIRS; ANDANI v ABUDULAI [1982-1983] GLR 1080 SC

Therefore, it is the Respondent herein who was the Applicant in the contempt application who had the burden to prove strictly, that the Applicants herein were served with the injunction application.

In this case, the Respondent attached to the substantive contempt application copies of letters from her counsel to the Applicants herein to notify them of the pendency of the injunction application through email.

However, was the email from counsel for the Respondent herein to the Applicants as to the pendency of the injunction application a proper service?

Under Order 7 Rule 1 of C.I. 47, a document which is required to be served on a person should be served by a bailiff of the Court or process server registered with the Court; but a party may direct service.

Therefore, under Order 7 Rule 1 of C.I. 47, there are only two people who can effect personal service on another person namely;

- I. a Court bailiff,
- II. process server registered with the Court.

Order 7 Rule 1 of C.I. 47 does not give the lawyer of a party the right to serve a process on the opponent.

After a bailiff or a process server has served a document personally under Order 7 Rule 1 of C.I. 47, the said process server or the bailiff will prepare affidavit of service under Order 7 Rule 9 of C.I. 47 and also enter the particulars of service in a process book under Order 7 Rule 11 of C.I. 47.

A party can be served through an email but it should be by a court's order directing or granting substituted service under Order 7 Rule 6 of C.I. 47. And after the substituted service has been carried out, Order 7 Rule 9 of C.I. 47 (as to affidavit of service) and Order 7 Rule 11 (as to the entries in the process book) must be complied with by the bailiff or the process server who effected the substituted service.

It is only when personal service is not successful that the court will grant an order for substituted service.

See: KOMBAT AND OTHERS v BEDIAKO AND OTHERS EX PARTE KOMBAT [1971] 1 GLR 196

DAKAR LIMITED v INDUSTRIAL CHEMICAL AND PHARMACEUTICAL COMPANY LIMITED AND ANOTHER [1981] GLR 453

In this case, there is no evidence that the Applicants were served with the injunction application by any Court bailiff or a process server. There is no indication that the court granted any order for them to be served with the injunction application by substitution.

The law is settled, that substituted service must be with the leave of the court otherwise it is void. In that case, any decision which will flow from substituted service without the leave of the court is also a nullity.

See: POKU v KWABENA [1972] 2 GLR 75

BRAKOWAAH V. AWUAKYEWAH [1961] GLR 164 SC

It is trite learning, that proper service is very fundamental in every proceeding. It is proper service which will invoke the jurisdiction of the court to determine a matter against a party.

Therefore, where service of a process is not within the ambit of the law, there is no proper service. Consequently, any process which will flow from such improper service may be declared a nullity. This is because; the jurisdiction of the court would not have been properly invoked to make any proper determination of the matter.

See: FRIESLAND FRICO DOMO ALIAS FRIESLAND FOODS BV v DACHEL COMPANY LIMITED [2012] 1 SCGLR 41

REPUBLIC v HIGH COURT, ACCRA; EX PARTE SALLOUM AND OTHERS (SENYO COKER –INTERESTED PARTY) [2011] 1 SCGLR 574

AMOAKOH v HANSEN [1987-1988] 2 GLR 26

It therefore appears to me, that the Applicants herein were not properly served with the Respondent injunction application in compliance with either Order 7 Rule 1, or Order 7 Rule 6 of C.I. 47. This in my opinion has effect on their conviction.

The Appellate Court therefore has to decide whether the Applicants herein were properly served with the injunction application which gave rise to the contempt application upon they were found liable.

The law is settled, that a court is not bound by legal misconceptions by lawyers. It means that the court has power to address a legal issue which might have escaped the lawyers in the case.

See: GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LIMITED v HANNA ASSI [2007-2008] 1 SCGLR 1

It is settled law that an irregular service of a process may not give rise to contempt of court.

**See: REPUBLIC v BAFFOUR ALIMOH AND OTHERS; EX PARTE ASIEDU AKORA
[2010-2012] 1 GLR 27**

From the above rendition, I am of the view that the Applicants application raises exceptional circumstances upon which the application can be granted and same is accordingly granted.

The effect is that the sentence imposed on each of the Applicants herein, that is, the 1st, 2nd and 3rd Respondents in the substantive contempt application is hereby suspended pending the determination of their appeal. I order accordingly. No order as to cost.

SGD.

FRANCIS OBIRI

(JUSTICE OF THE HIGH COURT)

COUNSEL

**RICHMOND ADODOADJI HOLDING BRIEF FOR ISRAEL ACKAH FOR THE 1ST,
2ND AND 3RD RESPONDENTS/APPELLANTS/ APPLICANTS**

KWAME BOAFO AKUFFO FOR THE 4TH RESPONDENT

COUNSEL FOR THE APPLICANT/RESPONDENT/RESPONDENT ABSENT

AUTHORITIES

- 1. ARYEETAY v AGBOFU II AND ANOTHER [1994-1995] GBR 250 SC**
- 2. IN RE YENDI SKIN AFFAIRS; ANDANI v ABUDULAI [1982-1983] GLR 1080
SC**
- 3. KOMBAT AND OTHERS v BEDIAKO AND OTHERS EX PARTE KOMBAT
[1971] 1 GLR 196**

- 4. DAKAR LIMITED v INDUSTRIAL CHEMICAL AND PHARMACEUTICAL COMPANY LIMITED AND ANOTHER [1981] GLR 453**
- 5. POKU v KWABENA [1972] 2 GLR 75**
- 6. BRAKOWAAH V. AWUAKYEWAH [1961] GLR 164 SC**
- 7. FRIESLAND FRICO DOMO ALIAS FRIESLAND FOODS BV v DACHEL COMPANY LIMITED [2012] 1 SCGLR 41**
- 8. REPUBLIC v HIGH COURT, ACCRA; EX PARTE SALLOUM AND OTHERS (SENYO COKER –INTERESTED PARTY) [2011] 1 SCGLR 574**
- 9. AMOAKOH v HANSEN [1987-1988] 2 GLR 26**
- 10. GIHOC REFRIGERATION AND HOUSEHOLD PRODUCTS LIMITED v HANNA ASSI [2007-2008] 1 SCGLR 1**
- 11. REPUBLIC v BAFFOUR ALIMOH AND OTHERS; EX PARTE ASIEDU AKORA [2010-2012] 1 GLR 27**