

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF  
JUSTICE (GENERAL JURISDICTION 8), ACCRA HELD ON MONDAY THE 31<sup>ST</sup>  
DAY OF JULY, 2023 BEFORE HER LADYSHIP ELLEN LORDINA SERWAA  
MIREKU, JUSTICE OF THE HIGH COURT

SUIT NO. GJ 0530/2023

ABSA BANK GHANA LIMITED

.... PLAINTIFF

VS.

CHARLES NYARKO

DOING BUSINESS UNDER THE NAME

AND STYLE OF DIPLOMATIC WEAR DESIGNS

.... DEFENDANT

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RULING

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**INTRODUCTION:**

On 10<sup>th</sup> November, 2021 the Supreme Court in exercise of its jurisdiction as the final Appellate Court delivered judgment in Civil Appeal No. J4/38/2020 involving the parties to this application. By the said decision the Supreme Court reversed the judgment of the Court of Appeal dated 25<sup>th</sup> July, 2019 with reasons delivered on 24<sup>th</sup> October, 2019 which had affirmed judgment of the High Court dated 28<sup>th</sup> February, 2017 in favour of the Plaintiff then (now Defendant in this case) but varied the quantum of damages awarded by the Trial High Court.

The Supreme Court in the judgment dated 10<sup>th</sup> November, 2021 ordered as follows:

- a. The award of Special Damages of GH¢73,600 by the High Court which award was varied by the Court of Appeal is set aside.
- b. The award of Special Damages of USD 35,000 is also set aside
- c. The Respondent is however awarded General Damages of the sum of GH¢ 180,000 for Breach of Contract. Interest should be calculated from 1<sup>st</sup> October, 2011 till date of final payment.

The Plaintiff herein (therein the Defendant/Respondent) being dissatisfied and aggrieved by the judgment of the Supreme Court dated 10<sup>th</sup> November, 2021 has issued a fresh Writ and a Motion for Interlocutory Injunction in this Court on 21<sup>st</sup> February, 2023. The Plaintiff per the Writ of Summons is praying the Court as follows:

- A. A declaration that the order numbered (c) of the Supreme Court judgment which awarded Post Judgment Interest to the Defendant to be calculated from 1<sup>st</sup> October, 2011 till date of final payment is contrary to the Court (Award of Interest Post Judgment Interest) Rules, 2005 (C. I. 52) and therefore void or a nullity.
- B. A further declaration that by the provisions of C. I. 52, interest on the said GH¢180,000 awarded to the Defendant for General Damages is a Post Judgment Interest and therefore same could be calculated only from 28<sup>th</sup> February, 2017 when the High Court gave judgment up to the date of final payment.
- C. An order setting aside the said order (c) of the Supreme Court judgment dated 10<sup>th</sup> November, 2021 on grounds that same is void or a nullity.
- D. Perpetual Injunction restraining the Defendant herein from calculating interest on the said GH¢180,000 beginning from 1<sup>st</sup> October, 2011 till date of final payment.

The Defendant/Applicant (hereinafter called the Defendant) contends that this Court lacks jurisdiction to determine this case and has brought this instant application to set aside the Writ of Summons, Statement of Claim and Injunction Application of Plaintiff dated 21<sup>st</sup> February, 2023.

### **GROUND OF APPLICATION**

The Defendant contends that by the Plaintiff issuing a fresh writ, its seeking a redress against a decision of the Supreme Court it is satisfied with and that the remedy that was available to Plaintiff was to seek a review of the Supreme Court's decision and not start a fresh action in the High Court as it is in the instant case since the High Court is bound by the decisions of the Supreme Court and thus, this writ and all other processes ought to be set aside for want of jurisdiction.

In moving his application, Counsel for Defendant argued that the reliefs the Plaintiff is seeking invite this Court to preside over and review the decision of the Supreme Court made previously in a different suit and submitted that by Article 129 of the 1992 Constitution, this Court does not have jurisdiction to preside over a decision the Supreme Court has made. He argued further that per Section 2 (3) of the Court's Act, 1993 (Act 459), once the Supreme Court had given a decision which bothers on an applicable law, all Courts shall be bound to follow the said decision and the trite position is that "shall" in interpretation is mandatory and gives no room for discretion.

Counsel for Defendant contends that Plaintiff based his action on C. I. 52 and says the Supreme Court has wrongly applied the provisions of the said law and seeks this Court to declare that the Supreme Court has misapplied the said law and the action is caught by Article 129 of the 1992 Constitution and that if Plaintiff had any legitimate grievance of the Supreme Court's decision of 10<sup>th</sup> November, 2021, their

right of action would have been to have sought a review and the fact that they are out of time would not justify Plaintiff bringing a fresh writ to get a relief which to all intent and purposes lay in the Supreme Court's jurisdiction of reviewing the substantive decision.

He submitted that, no matter how the Plaintiff framed it, the instant action is a review seeking process and same ought to be dismissed to the extent that this Court cannot review the decision of the Supreme Court. He referred the Court to the cases of Ex-parte: Otutu Kone III [2009] SCGLR1 at pg. 11; Republic (No. 1) v High Court, Commercial Division, Kumasi; Ex-parte: First Atlantic Bank Limited (Agyei Baffour & Sons Ltd; Agyei & Opong Interested Parties) No. 1 [2005-2016] 1SCGLR 657 @ 669; Ex parte: Akrofa Krokoko [2010] SCGLR 134 at 156.

He also argued that Plaintiff per its paragraphs 6, 7 and 8 of the Affidavit in Opposition states that the order of the Supreme Court is void but that position is wrong and the Supreme Court made no mistake and relied on the case of Doley v Messrs. FNS Investment Ghana Limited & Anor [2021] GHASC 77 and submitted that this Court is bound assuming that the Supreme Court erred.

He reiterated that the instant action is an abuse of the Court's process and a ground to set aside the writ because after the Supreme Court's decision of 10<sup>th</sup> November, 2021, the High Court barred Plaintiff from bringing any action when it struck out Plaintiff's application before it. He prayed the instant writ is dismissed for want of jurisdiction or in the alternative as an abuse of the Court's process and relied on Naos Holding Incorporated v Ghana Commercial Bank Limited [2011] 1SCGLR 492 at pg. 500 – 503.

Plaintiff is vehemently opposed to the instant application on grounds that same is wholly misconceived. Counsel for Plaintiff argued that the gravamen of Plaintiff's case is that the Supreme Court's judgment of 10<sup>th</sup> November, 2021 clearly breached

C. I. 52 particularly the order numbered C which stated that the interest be calculated from date of the breach to date of final payment.

He submitted that the interest awarded was a post judgment interest and per Rule 2 of C. I. 52, it should have been from the date of the judgment so to have ordered it from October, 2011 to date of final payment breaches statute so the Court is to find out whether or not that order of the Supreme Court is contrary to statute. He urged on the Court strenuously that it contravenes statute and same is therefore void ab initio so should be set aside and referred to the cases of *Mosi v Bagyina* [1976] (GLR 337 @ Holding 4 and *Network Computer System Limited v Intelsat Global Sales and Marketing Limited* [2012] 1SCGLR 218 Holding 3.

Counsel for Plaintiff submitted that the High Court is bound by the decisions of the Supreme Court and ought to follow it but it relates to judgment and orders validly made and not void orders and argued that the Supreme Court did not have jurisdiction to have made the order that contravenes a statute and thus ought to be set aside and referred the Court to the case of *Republic v High Court, Accra; Ex-parte: Kodjo Anku & Others (Daniel Danso - Interested Party)* [2017 - 2018] 2 SCGLR at 313 Holding 3 to show how the Court can deal with a void Order or Judgment and also relied on Order 41 Rule 1 of C. I. 47.

He finally argued that when a case is in breach of a statute, the Court of Appeal in the case of *Awutu Ellis Kaati & others v The Republic* (unreported case dated 15<sup>th</sup> November, 2015, CA) has dealt with that and says that the Court is bound by statute and not judgment and prayed the court that the judgment of the Supreme Court is in breach of a statute so this Court has jurisdiction to set it aside and also for the application to be dismissed and for the Court to determine the matter.

**RULING:**

It is trite and a well-established principle of law that the jurisdiction of the Courts is defined by law. Jurisdiction connotes whether or not a Court has power to make a determination or do what it is doing. It is very fundamental since it goes to the root of the proceedings. A Court can only entertain or determine a matter in which it has jurisdiction so to do. Jurisdiction is determined by or on the basis of the claim that is brought before the court as endorsed on the Writ of Summons by making reference to the 1992 Constitution, the Courts Act, 1993 (Act 459) or any other relevant statute.

The jurisdiction of the High Court is spelt out under Article 140 of the 1992 Constitution.

Article 140 (1) of the 1992 Constitution states: *“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...”*

Section 15 of the Courts Act, 1993 (Act 45) as amended by Section 2 of Act 620 also states that “the High Court shall, subject to the provisions of the Constitution have – (a) original jurisdiction in all matters and in particular, in civil and criminal matters; (b) jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by the Constitution; (c) appellate jurisdiction from a decision of a Community Tribunal in civil matters; (d) any other jurisdiction conferred by the Constitution or by any other enactment.”

It thus means that, the High Court has original jurisdiction in all civil matters that comes before it. The original jurisdiction of the High Court means that it is the Court of first instance in such matters and that being the case, the Plaintiff would have been before me appropriately.

In this case however, the High Court, differently constituted delivered a judgment between the parties in 2017 which went on appeal to the Court of Appeal and further to the Supreme Court and Plaintiff is now before this court praying that one of the final orders made by the Supreme Court is void because it breaches a statute (C.I. 52).

After the Supreme Court has given its final orders in a case on appeal, does the High Court have jurisdiction to set aside that order because it allegedly breaches statute? That is what I seek to answer in this application before me.

The Court in this case has to make a determination to see whether Plaintiff's course of action falls under its jurisdiction before it can determine the instant case. The reliefs being sought are declaratory in nature and also for an injunction. The issue for me to determine to satisfy myself if I have jurisdiction in this instant case is whether or not the order (c) of the Supreme Court's decision dated 10<sup>th</sup> November, 2021 in suit numbered J4/38/2020 is in violation of a statute and therefore void for that matter. If it is determined that it is, then this court can assume jurisdiction and determine the instant case.

Court (Award of Interest and Post Judgment Interest) Rules, 2005 (C.I. 51) was promulgated by the Rules of Court Committee pursuant to Article 157 (2) of the 1992 Constitution and Section 80 (2) (e) of the Courts Act, 1993 (Act 459). This is evident from the preamble of C. I. 52. These rules were promulgated pursuant to a mandate prescribed by the Constitution and that is why C.I 52 is a constitutional instrument. Per article 33 (4) of the 1992 Constitution "*The Rules of Court Committee may make Rules of Court with respect to the practice and procedure of the Superior Courts for the purposes of this article*" and by Article 157(2) the Rules of Court Committee "*shall, by constitutional instrument, make rules and regulations for regulating the practice and procedure of all Courts in Ghana.*"

From these two articles of the 1992 Constitution, the mandate of the Rules of Court Committee is limited to the making of rules and regulations to regulate the practice and procedures of the Court. Such rules made must strictly be confined to the remit of rules of practice and procedure as against substantive legislation that vests jurisdiction in courts.

The power to make rules of practice and procedure conferred on the Rules of Court Committee is not the same as the power to enact substantive legislation as this power is reserved for Parliament. The rules and regulations made by the Rules of Court Committee prescribe what steps to follow in order to have a right or duty judicially enforced and can be contrasted with the law that defines the specific rights or duties themselves.

The Supreme Court in the case of Michael Ankomah-Nimfah v. James Gyakyere Quayson & 2 Others (Suit No. J1/11/2022 dated 13<sup>th</sup> April, 2022) noted as follows: *"We must emphasize that the Rules of Court, be they High Court Rules, Court of Appeal Rules, or the Supreme Court Rules do not confer substantive jurisdiction. They only provide rules and regulations for regulating practice and procedure in Court. They are not to be accorded the status of jurisdiction-conferring enactments..."*

The Supreme Court also held in the case of Ogyeodom Obranu Kwesi Atta VI v Ghana Telecommunications Co. Ltd & Another (Civil Motion No. 18/131/2019 dated 28<sup>th</sup> April, 2020) that: *"It is also settled law that jurisdiction is conferred by the Constitution or substantive enactments and that rules of court contained in subsidiary legislation only regulate the exercise of existing jurisdiction but do not confer jurisdiction and so cannot take it away or diminish or enlarge it."*

From the preceding paragraphs, it can be concluded that C. I. 52 is not a substantive legislation and that it only regulates the award of interest and Post Judgment Interest in the Courts. The Supreme Court therefore had jurisdiction to apply its



provision in the exercise of the appellate jurisdiction confirmed on it by the 1992 Constitution.

Rule 2 of C. I. 52 states that:

*“(1) Subject to subrule (2) each judgement debt shall bear interest at the statutory interest rate from the date of delivery of the judgement up to the date of final payment.*

*(2) Where the transaction which results in the judgement debt is*

*(a) contained in an instrument,*

*(b) evidenced in writing, or*

*(c) admitted by the parties*

*and the parties specify in the instrument, writing or admission the rate of interest which is chargeable on the debt and which is to run to the date of final payment, then that rate of interest shall be payable until the final payment.”*

A careful reading and appreciation of rule 2 of C. I. 52 suggests that it is the rate of the interest awarded that is to be calculated from the date of the judgment. The statutory interest rate has been defined in the C. I. 52 as the bank rate prevailing at the time the judgement or order is made by the Court. However, if the parties had agreed on a rate to be applied which is contained in an instrument, evidenced in writing and admitted by the parties, then it is that rate that will be applied whether it is higher or lower than the Prevailing Bank Rate. C. I. 52 only stipulated or defined the time and what interest rate was to be applied on a Judgment Debt. A Judgment Debt is a debt for the payment of money which a judgment has been given and the judgment arises on account of a decision by a Court of competent jurisdiction. Thus, the debt arose because a judgment was

pronounced by a court and when this happens, and there is a further order for interest to be calculated, the Interest Rate is the Prevailing Bank Rate in force from the date of the judgment and no other rate unless otherwise agreed by the parties.

By no stretch of one's imagination can one conclude that Rule 2 means that the date of when the interest is to be calculated for a Breach of Contract that has occasioned an award of damages to be calculated from the date of the judgment and not from the day of the breach to the date of final payment. Counsel for Plaintiff's argument is therefore unfounded and misconceived. The Interest Rate applicable on the Judgment Debt awarded against the Plaintiff by the Supreme Court in its judgment dated 10<sup>th</sup> November, 2021 is the Interest Rate prevailing on the date of the judgment and the date of the breach of the contract was clearly stated by the Court to guide the parties in determining when the calculation was to commence.

Under Article 129 (3) of the 1992 Constitution, all other Courts are bound to follow the decisions of the Supreme Court on questions of law and it is the same Supreme Court that can depart from its previous decision when it appears to it right to do so. This Court being lower to the Supreme Court is therefore bound to follow its decision on questions of law and cannot purport to superintend over its affairs after it has delivered a judgment that was within their jurisdiction and which I am bound by law, to declare same void and set it aside when no statute has been breached or no violation has arisen.

Assuming the Supreme Court had erred in its decision in the application of the rules of C. I. 52, the remedy that was available to Plaintiff herein was to have applied for a review. The Supreme Court in the case of Irene Tetteh Enyo v Electricity Company of Ghana Ltd (Civil Motion No. 37/02/2023 dated 26<sup>th</sup> April, 2023 listed the instances where one can apply for a review. The Court held as follows: *"The grounds on which the Supreme Court may grant an application for review of a decision of the court's ordinary*

bench are only two; that is, where after the decision there has been discovery of new and important matter or evidence; and where there are exceptional circumstances that have resulted in a miscarriage of justice... Exactly what constitutes exceptional circumstances are not spelt out, but various decisions of this court contain diverse opinions on what may be regarded as constituting exceptional circumstances. For example:

- a. *The circumstances should be of such a nature as to convince this Court that the judgment should be reversed in the interest of justice, and should indicate clearly that there had been a miscarriage of justice: see Bisi v. Kwayie [1987-88] 2 G.L.R. 295, S.C.*
- b. *The jurisdiction is exercisable in exceptional circumstances where demands of justice make the exercise extremely necessary to avoid irremediable harm to an applicant: see Nasali v. Addy [1987-88] 2 G.L.R. 286, S.C.*
- c. *Where a fundamental and basic error might have inadvertently been committed by the court resulting in a grave miscarriage of justice: see Mechanical Lloyd Assembly Plant Ltd. v. Nartey [1987-88] 2 G.L.R. 598, S.C.*
- d. *Decision was given per incuriam for failure to consider a statute or case law or a fundamental principle of practice and procedure relevant to the decision and which would have resulted in a different decision: see Mechanical Lloyd Assembly Plant Ltd. v. Nartey (supra) and Ababio v. Mensah (No. 2) [1989-90] 1 G.L.R. 573, S.C*
- e. *When the appellant had sought for a specific relief which materially affected the appeal and had argued grounds in support, but the appellate court failed or neglected to make a decision on it: see Mechanical Lloyd Assembly Plant Ltd. v. Nartey (supra)."*

The Plaintiff could have gone under d of the just quoted Supreme Court case and applied to the Supreme Court in 2021 but not sleep on it oars until 2023 to file a fresh writ when he clearly has no cause of action against the Defendant herein. Realizing

it's out of time if any and wanting to frustrate the Defendant in executing the judgment, it brought this application. Such conduct would not be countenanced by this Court.

After a careful reading of the Defendants' motion paper and supporting affidavit and a consideration of both Counsel's oral submission before me and being guided that no court has the power to assume jurisdiction that is not properly conferred or extend its jurisdiction beyond the scope granted it by law, I hereby set aside the writ and dismiss the instant suit for want of jurisdiction for reasons canvassed in this ruling. Cost of GH¢10,000 is awarded against Plaintiff in Defendant's favour.

**(SGD)**

**H/L ELLEN L. S. MIREKU  
JUSTICE OF THE HIGH COURT**

**EVANS DJIKUNU ESQ. WITH EVELYN ARHINSAH AND HENRY ARYEE ESQ.  
FOR THE PLAINTIFF/RESPONDENT**

**FRANK NARTEY ESQ. FOR THE DEFENDANT/APPLICANT**