**IN THE SUPERIOR COURT OF JUDICATURE**
**THE SUPREME COURT**
**ACCRA, GHANA.**

**CORAM: ATUGUBA, J.S.C. (PRESIDING)**
**ANSAH, J.S.C**
**OWUSU, J.S.C**
**ANIN YEBOAH, J.S.C.**
**BAFFOE-BONNIE, J.S.C**

**CIVIL MOTION**
**NO. J5/43/2008**
**4TH FEBRUARY, 2009**

**THE REPUBLIC**

**VRS**

**THE HIGH COURT, COMMERCIAL DIVISION, ACCRA**

**EX-PARTE:**

| | | |
|---|---|---|
| **MILLICOM GHANA LIMITED** | **...** | **1ST APPLICANT** |
| **REGIS ROMERO** | **...** | **2ND APPLICANT** |
| **TISMARK INJA** | **...** | **3RD APPLICANT** |
| **PERCY GRUNDY** | **...** | **4TH APPLICANT** |
| **SUPERPHONE COMPANY LIMITED** | **...** | **INTERESTED PARTY** |

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**R U L I N G**

**ATUGUBA, JSC.:**

The facts of this case have been related by my learned sister and brother Rose Owusu and Baffoe-Bonnie JJSC respectively. I would not repeat them except where necessary. The legal issues that arose in this case are:

(a) whether the trial High Court was right to issue a bench warrant for the arrest of the applicants, the directors and officers of the first applicant company, who failed to appear in court pursuant to service of committal process on the company;
(b) whether the continuance with the said committal process in the wake of and whilst the application for stay of execution of proceedings was pending, was lawful; and
(c) whether the said committal process was lawful since the third, fourth and fifth applicants had not been served with the application for committal.

**The application for stay of execution pending appeal**

Before dealing with the issue of application for stay of execution pending appeal, I shall first deal with the contention that the committal proceedings contravened rule 27(3)(*b*) of the Court of Appeal Rules, 1997 (CI 19). In my view, the order that fell to be enforced against the applicants was the one made by Marful-Sau JA dated 24 July 2008. The subsequent ruling of Kwofie J dated 20 August 2008 runs thus:

> "**By court**: Counsel for the defendant-applicant says the order of interim injunction made by Marful-Sau JA is not clear, ie that it was unambiguous. It was an order restraining the defendant company from interfering with or disrupting the plaintiff's business or operating in the plaintiff's territory or in any way undermining the plaintiff's business until an arbitrator determines an application for interim injunction to be brought before him. Until the application for injunction is repeated before the arbitrator and the arbitrator rules on the application, the order of injunction shall remain in force. There is nothing ambiguous about the order. *The defendant should comply with that order. The application for review is refused.*" (The emphasis is mine).

It is thus clear that Kwofie J merely declared the meaning of Marful-Sau JA's said order. It is in this light that the statement made by Kwofie J, namely: "*The defendant should comply with that order. The application for review is refused,"* is to be understood. The duty to comply with Marful-Sau JA's order would be the same even without Kwofie J's addendum that "*The defendant should comply with the order.*"

In the context of Kwofie J's ruling, that statement merely echoed his legal view as to the legal effect of Marful-Sau JA's order rather than a new order to that effect. That being so, the application for stay of execution based on Kwofie J's said ruling, was farcical and could not be the basis of an application under rule 27(3)(*a*) and (*b*) of the Court of Appeal Rules, 1997 (CI 19). It is trite law that an application for stay of execution cannot be based on a judgment that is not executable. Nor, as was held in *Sasu* v *Amua-Sekyi* [1987-88] 1 GLR 506, CA can an application for stay of execution be founded upon an appeal to the Supreme Court which was filed without obtaining the requisite statutory leave to appeal. So also was it held in *Khoury* v *Mitchual* [1989-90] 2 GLR 256, SC that where a person's application for leave to appeal to the Supreme Court was first made out of time to the Court of Appeal, it could not be the foundation for a "repeat" application to the Supreme Court for special leave to appeal. Clearly in such circumstances the entertainment and grant of any application for stay of

execution would be a nullity: see *Republic* v *High Court, Kumasi; Ex parte Khoury* [1991] 2 GLR 393, SC. I therefore hold that in this case the incidence of the appeal from Kwofie J's said ruling and pursuant application for stay of execution was as regards the latter, an illusory and irrelevant exercise.

**The issuance of the bench warrant**

It is said that the company itself was served in this case with notice of the application for committal for contempt of court; and that even if the directors were not served, such service, was unnecessary either because such service was dispensed with by the court or that they were bound to appear pursuant to the service on the company itself. Arguments as to those matters were founded on differences between the provisions of Orders 50 and 43 of the High Court (Civil Procedure) Rules, 2004 (CI 47). If a court has jurisdiction over a matter, I do not think the erroneous citation of the relevant rule matters: see *Shardey* v *Adamtey; Shardey* v *Martey (Consolidated)* [1972] 2 GLR 380, CA.

In this case the application was for committal for contempt in execution of a judgment or order against a corporate body. In those circumstances, Order 50 is a general provision as opposed to Order 43. It is the latter that specifically relates to the enforcement of judgment or order to do or abstain from doing an act and therefore governs the application in this case upon the principle of the construction that verba *generalia specialibus non derogant*. As the applicant chose enforcement by means of committal, the relevant provision is, particularly, on the facts of this case, Order 43, rr 5(1)(*b*)(*cc*) and 7(1) and (2). It is plain that under these rules, without service on the relevant directors or officers, as in this case, committal, cannot lie. That being so, service of the committal application on the company as opposed to the directors or officers was a misdirected step. The company, indeed, ought to be struck out from this application. I say this not oblivious of the fact that the word "may" is used in rule 5(1)(*b*)(*cc*) of Order 43 relating to committal in execution of a judgment or order against a body corporate.

It was for these reasons that I agreed with the decision of this court on 14 January 2009 that the application for certiorari be granted.

I would hereby direct the court below to strike out the first applicant company from the committal application. I would further prohibit that court from continuing with the application for committal unless the directors of the company, ie the third, fourth and fifth applicants, have been served with the committal application and any other necessary process.

**W. A. ATUGUBA**
**(JUSTICE OF THE SUPREME COURT)**

**OWUSU (MS), J.S.C.:**

*Was invited by the President of the court to first deliver her opinion*. On 14 January 2009, this court unanimously granted the instant application for an order of

*certiorari* and indicated that we shall give our reasons later. I therefore proceed to give my reasons.

This is an application to invoke the supervisory jurisdiction of this court under article 132 of the 1992 Constitution for an order for directions, prohibition and *certiorari* directed at the High Court, (Commercial Division) Accra, presided over by Kwofie J for the purpose of moving into this court the order of that court dated 18 September 2008 for same to be quashed on the grounds of:

(i) want of jurisdiction to order bench warrant to issue for the attachment of the applicants in the purported execution of an order of injunction contrary to rule 27(3) of the Court of Appeal Rules, 1997 (CI 19);
(ii) violation of rules of natural justice in purporting to hear an application for contempt against the applicants which was not served on the applicants; and
(iii) disregard of the rules of court that rendered null and void the order for bench warrant to issue.

The events leading to the filing of the instant application are as follows: The first applicant is a limited liability company, a provider of mobile cellular telephone services in Ghana. By a dealership agreement entered into by the company and Superphone Co Ltd, the interested party herein, the interested party was appointed by the first applicant, Millicom Ghana Ltd, a distributor of the first applicant's phone cards in a defined territory. Copy of the said agreement was attached to the affidavit in support of the applications as HCN 1. By a letter dated 15 January 2008, a copy of which was attached to the affidavit in support and marked HCN 2, the said agreement was terminated by the first applicant.

Following the termination, the interested party instituted an action in the High Court (Commercial Division) Accra, claiming the following reliefs against the first applicant:

"(a) a declaration that the notice of intention to terminate the dealership agreement between it and the defendant company does not amount to a termination of the said agreement and as such the dealership agreement dated 16 November 2007 between the parties is valid and binding on them;
(b) further declaration that clause 8.3(b) of the agreement aforesaid which gives the defendant the right to terminate the said agreement forthwith on grounds of 'territory invasion' is vague, unreasonable and unconscionable and as such inapplicable by virtue of the provisions of clause 10.4 of the said agreement;
© a further declaration that the conduct of the defendant in allowing a rival dealer to operate within the plaintiff's territory is tantamount to an undue interference in and a disruption of the plaintiff's business;
(d) a further declaration that the conduct of the defendant in discriminating against it in favour of Lebanese owned companies smacks of racial discrimination and such is entitled to protection under the Protection Against Unfair Competition Act, 2000 (Act 589);
(e) an order of this honourable court directing and mandating the defendant to specifically comply with the terms of the agreement dated 16 November 2007; and

(f) an order of injunction restraining the defendant, its servants, agents, other dealers and assigns from interfering with, disrupting, allowing other dealers or agents to operate in or in any way undermining the plaintiff's business."

Accompanying the writ of summons and the statement of claim was a motion on notice for an order of interlocutory injunction under Order 25, r (1) of the High Court (Civil Procedure Rules), 2004 (CI 47).

The writ of summons, statement of claim and the motion having been served on the defendant, the defendant applied for stay of proceedings pending arbitration in terms of the dealership agreement.

On 24 July 2008, the motion for injunction and the one for stay of proceedings came before the High Court (Commercial Division) Accra presided over by Marful-Sau JA. The application for stay was granted and the parties ordered to refer the dispute for arbitration pursuant to clause 3:1:2 of the dealership agreement. However, the motion for interlocutory injunction was granted on terms. The defendant was restrained from interfering with or disrupting or operating in the plaintiff's territory or in any way undermine the plaintiff's business. The injunction was to be repeated before the arbitrator for a determination and the said determination shall vacate the order for injunction granted by the High Court without prejudice to the rights of any of the parties.

By a letter dated 1 August 2008, counsel for the plaintiff drew the defendant's attention to the order of the court and attached a copy of it to the letter. On 24 July 2008, when the applications were heard, both parties, ie the plaintiff and the defendant were absent in court.

On 20 August 2008, an application for review of the order of Marful-Sau JA dated 24 July 2008 was refused by Kwofie J who ordered the defendant company to comply with it. On 25 September 2008, the defendant filed an application for stay of execution pending appeal against the ruling and order of Kwofie J given on 20 August 2008, having on the same day appealed against the ruling. The notice of appeal was filed on 28 August 2008.

Meanwhile, the plaintiff had, on 8 August 2008, filed a motion on notice for an order of committal for contempt against each of the five respondents in that application, namely Millicom Ghana Ltd, Percy Grundy, G Townley, T Insa and R Rodero all of Millicom Ghana Ltd. The third, fourth and fifth respondents are directors of the first respondent's company and the second is the chief operating officer of the company.

On 18 September 2008, the application for stay of execution was moved by counsel for the defendant but same was dismissed. When the application for stay was dismissed, that same day, counsel for the plaintiff, the interested party in the instant application, sought to move the motion for committal. At that time, counsel for the respondents in that application, pointed out to the court that the respondents have not been served. However, counsel for the applicant, seeking the committal order, then said one of the respondents, ie the first respondent company, Millicom Ghana Ltd, had then been served, so he would proceed against the company.

In spite of counsel's insistence on personal service on the alleged contemnors, counsel for the applicant persisted in his moves to go on with the application for the committal order against the first respondent company because, at least, the company had been served. He did, however, not indicate how and on whom service was effected on behalf of the company. When the court drew counsel's

attention to the fact that the first respondent was not in court, because there was nobody representing the company in court, counsel for the plaintiff informed the court that, the company was represented in the person of Helen De Cardi Nelson. Who is this Helen De Cardi Nelson? In an affidavit in support of the present application for an order of *certiorari*, she describes herself as "an in-house lawyer" for the first respondent company.

In this application, even though it is indicated that the motion for committal was brought under Order 50 of the High Court (Civil Procedure) Rules, 2004 (CI 47), counsel for the applicants has argued it as if same has been brought under Order 43. Under the said Order 50, r 1(4), subject to sub-rule (5), "the notice of motion together with a copy of the affidavit in support of the application *shall be served personally on the person sought to be served.*" *(The* emphasis is mine). This in effect means that proceedings in an application for contempt cannot commence until the court satisfies itself that the respondent to the application has so been personally served. Order 50 is silent on whom service of the motion together with the affidavit should be served where the person sought to be committed is a corporate body.

However, section 263(1) and (3) of the Companies Act, 1963 (Act 179), provides that:

> "(1) A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company.
>
> (3) Where a company does not have a registered office, service on a director of the company or, if the company does not have a director or if a director cannot be traced in the Republic, on a member of the company, shall be deemed good and effectual service on the company."

In the case of *Barclays Bank of Ghana Ltd* v *Ghana Cable Co Ltd* [1998-99] SCGLR 1 the court (per Acquah JSC) (as he then was), and Charles Hayfron-Benjamin JSC concurring (both of blessed memory) held (as stated in holding (1) of the headnote) that:

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

Consequently, notwithstanding the presence of Helen De Cardi Nelson in court, when counsel for the first respondent in that application insisted that the respondents had not been served, the trial judge should have satisfied himself that the company has been properly served, as required by section 26(1) and (3) of the Companies Act, 1963 (Act 179), especially where there was no proof of such service of the motion for the order of committal. In the absence of such proof, the court was not seised with jurisdiction and therefore incompetent to sit on the application and for this reason, *certiorari* will issue to quash the order for bench warrant to issue against the directors of the company. Assuming (which is denied) that the first respondent company was served, it is against the same

directors or any of them that the applicant for committal order can proceed. Where therefore, these directors or any member of the company have not been served, there cannot be proper service on the company.

Article 132 of the 1992 Constitution provides that:

> "the Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power."

The law is settled that the supervisory jurisdiction of the court under article 132 of the Constitution is exercised only in those 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. This proposition of law has been stated clearly in the decided cases like *Republic* v *High Court, Accra; Ex parte Industrialization Fund for Developing Countries* [2003-2004] 1 SCGLR 348; *Republic* v *High Court, Accra; Ex parte Commission on Human Rights and Administrative Justice (Addo Interested Party)* [2003-2004] 1 SCGLR 312 and *Republic* v *Court of Appeal, Ex parte; Tsatsu Tsikata* [2005-2006] SCGLR 612. In the *Tsatsu Tsikata* case, her Ladyship Georgina Wood JSC (as she then was) reading the lead ruling of the court (as stated at page 619 of the Report) said:

> "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 than, that the errors(s) of law alleged must be fundamental, substantial, material, grave or *so serious as to go to the root of the matter*. (The emphasis is mine).

The first ground on which the application for *certiorari* is based, is that the bench warrant issued for the arrest of the directors of the company was void because when the order was made, the trial court did not have the power, competence or jurisdiction to make it. I would uphold the first ground and grant the application.

Counsel for the applicants also referred to rule 27(3)(*b*) of the Court of Appeal Rules, 1997 (CI 19), which stipulates that:

> "There shall be a stay of execution of the judgment or decision, or of proceedings under the judgment or decision appealed
> (*b*) for a period of seven days immediately following the determination by the Court below of an application under sub-rule (1)(*a*) where the application is refused by the Court below."

When the application for stay was refused, counsel submitted further that the trial High Court should have stayed its hands for the period of seven days in compliance of rule 27(3)(*b*) of CI 19 before proceeding to hear the committal proceedings. It therefore lacked jurisdiction when it purported to hear the application for committal and consequently issued the order for bench warrant.

Rule 23(3)(*b*) of CI 19 is clear in its terms: Where the statutory seven days' period had not elapsed, again, the court was not seised with jurisdiction to entertain the committal proceedings and, for that reason, the order issued for bench warrant is void and the court in exercise of its supervisory jurisdiction ought to bring same into this court for the purpose of quashing it.

The errors of law complained of (as indicated above) are so manifestly plain, fundamental, material, grave and so serious that they go to the root of the matter. The application for *certiorari* is hereby granted. The orders for the bench warrant to issue is to be brought into this court for the purpose of quashing same and same is hereby quashed.

In the absence of proof of service of the order of committal on the applicants in the instant application, the trial court is also prohibited from going on with hearing of the committal proceedings.

**R. C. OWUSU (MS)**
**(JUSTICE OF THE SUPREME COURT)**

**BAFFOE-BONNIE, J.S.C.:**

I shall also proceed to give my reasons in support of the unanimous decision of this court given on 14 January 2009, granting the application for an order of *certiorari*.

**The facts**

The facts in this case are fairly simple and straightforward. The grounds for the application were:

(i) want of jurisdiction to order bench warrant to issue for the attachment of the applicants in the purported execution of an order of injunction contrary to rule 27(3)(*b*) of the Court of Appeal Rules, 1997 (CI 19);
(ii) violation of natural justice in purporting to hear an application for contempt against the applicants which was not served on the applicants; and
(iii) disregard of the rules of court that rendered null and void the order for bench warrant to issue.

The interested party in this application for *certiorari*, Superphone Co Ltd, issued a writ against the first applicant herein, Millicom Ghana Ltd, claiming, inter alia:

> "(1) a declaration that the notice of intention to terminate the dealership agreement between it and the defendant does not amount to a termination of the said agreement and as such the dealership agreement dated 16 November 2007 between the parties is valid and binding on them."

Following an application filed by the interested party for an interlocutory injunction, the trial High Court (per Marful-Sau JA sitting as Additional Judge of the High Court) ruled as follows:

> "… There is also an application for interlocutory injunction to restrain the defendant from interfering with or disrupting or allowing other dealers or agents to operate in the plaintiff's territory or in anyway undermining the plaintiff's business. I think the ends of justice would be served if the application is granted on terms. The defendant is accordingly restrained from interfering with or disrupting or operating in the plaintiffs territory or in any way undermining the plaintiff's business."

Construing this order as a directive to the first applicant herein to resume the trading activities with it, the plaintiff company requested for the supply of trading materials but the first applicant refused saying the order did not compel it to resume trading with the interested party. Feeling that the refusal to resume trading activities with it constituted a breach of and an affront to the orders of the court, the interested party applied to enforce the injunction order by committal for contempt of court of all the applicants herein.

The first applicant therefore applied to the High Court for a review and clarification of the order of injunction. This application was dismissed on 20 August 2008. The High Court differently constituted (per Kwofie J) ruled as follows: "… There is nothing ambiguous about the order. The defendant should comply with that order. The application for review is refused." However, on 28 August 2008, the first applicant appealed to the Court of Appeal against the grant of the injunction order and applied for stay of execution at the High Court. The application for stay of execution was moved and dismissed on 18 September 2008.

Immediately after the dismissal of the application for stay of execution pending appeal, the interested party sought to move its application for contempt which had been pending for some time but which had been held in abeyance because of the motion for stay of execution. Counsel for the applicants herein, intimated to the court that apart from the first applicant on whom some form of service had been affected, none of the applicants had been served and so the contempt proceedings could not go on. Even though the court conceded that the third, fourth and fifth applicants herein had not been served and therefore the contempt proceedings against them could not go on, counsel for the interested party was permitted to proceed against the first applicant company. On 18 September 2008, the court after hearing counsel directed that since the directors of the company were not in court, bench warrant was to issue against them.

**Determination of the application for committal for contempt of court**

In this application, the applicants are praying this court for an order of directions, prohibition and an order of *certiorari* directed at the High Court (Commercial Division) Accra presided over Kwofie J, to move into this court for the purpose of being quashed the order of the court dated 18 September 2008.

The applicants' case in simple terms is that when the trial High Court Judge dismissed the application for stay of execution, they had the right to either appeal against the dismissal or repeat the application before the Court of Appeal before which the appeal against the original order was pending in terms of rule 27 of the

Court of Appeal Rules, 1997 (CI 19). Pursuant to this, therefore, the court was obliged by law to hold its hands for a statutory period of seven days. During this period, the court could not hear the application for contempt and therefore could not have legally arrested somebody for failing to appear in court for contempt proceedings which could not have been heard anyway. The issuing of bench warrant within that seven-day statutory stay period was done without jurisdiction. Further, it is on record that immediately after the dismissal of the application for stay of execution, the applicants filed a repeat application before the Court of Appeal praying for stay of execution of the orders of the trial High Court Judge. That being so, pursuant to rule 27(3)(*b*) of CI 19, the attempt to hear the contempt proceedings which necessitated the issuance of the bench warrant was wrongful.

Touching on the issuance of the bench warrant itself, the applicants submitted that none of the applicants had been served at the time the interested party herein sought to move his application for contempt and so attempting to go on was a violation of the *audi alteram partem* rule of natural justice and therefore the order was amenable to be quashed by *certiorari*.

Counsel for the interested party, on the other hand, has submitted that the application before the court is unmeritorious and incompetent and so same should be dismissed. Counsel argued that the bench warrant issued by the trial High Court was regular and that the said court was acting within its powers when it ordered that a bench warrant be issued for the arrest of the directors of the company who had absented themselves from court notwithstanding the service of the application for contempt on the first applicant company.

Was the issuance of the bench warrant warranted in the circumstances of this case? Without seeking to embellish my answer in any legal niceties, and for reasons which I shall give presently, I am of the view that the answer should be in the negative.

It is a natural sequence in civil trials that once a person feels aggrieved by any decision of a trial court, be it interlocutory or final, he has the right to appeal to a higher body by filing a notice of appeal. It is provided by the all the Rules of Court, namely, the High Court (Civil Procedure) Rules, 2004 (CI 47), the Court of Appeal Rules, 1997 (CI 19), and the Supreme Court Rules, 1996 (CI 16), that an appeal in itself does not operate as a stay of execution. However, the same rules provide that when an application for stay of execution is pending for hearing, it stops execution until the same is heard and dismissed. The relevant provision in CI 19, r 27(2) states that:

> "(2) Where an application [for stay of execution] is pending for determination under sub-rule (1), the proceedings for execution of the judgment or decision to which the application relates shall be stayed."

In fact the trial High Court Judge recognized the power behind this rule that is why even though the contempt application had, indeed, been filed earlier, ie on 8 August 2008, he decided to wait and dispose of the motion for stay of execution which had been filed on 28 August 2008 before tackling the contempt application. The sequence of events on 18 September 2008 in the court room attests to this: The first applicant company herein moved its application for stay execution; same was opposed and the court dismissed it. Then counsel for the interested party herein said: "My Lord I wish to move the application for contempt which has been pending for some time. My Lord the application was filed as far back as 8 August

2008…" This was another way of saying: "My Lord now that we have disposed of the motion for stay of execution, I wish to move my contempt application which has been pending for so long."

Counsel for the interested party, who felt he had disentangled himself from the restraining hands of rule 27(2) of CI 19, then forcefully pressed forward his desire to move his application for contempt. What counsel did not advert his mind to was rule 27(3)(*a*) and (*b*) of CI 19 which grants seven days' automatic stay between the giving of a judgment of the court and its enforcement unless the court otherwise directs. Rule 27(3)(*a*) and (*b*) reads:

> "27(3) There shall be a stay of execution of the judgment or decision, or of proceedings under the judgment or decision appealed
>
> (*a*) for a period of seven days immediately following the giving of the judgment or decision; and
> (*b*) for a period of seven days immediately following the determination by the Court below of an application under sub-rule (1)(*a*) where the application is refused by the Court below."

The rationale behind rule 27(3)(*a)* and *(b)* of CI 19 is to ensure that an aggrieved party is given some time to file any processes to stop execution. And, indeed, in this case immediately after the decision, the first applicant company herein did file a repeat application before the Court of Appeal. But unfortunately the interested party could not or did not wait for the seven days' statutory stay and put rather into motion a process to enforce the decision of the trial court. This process was the contempt proceedings! Clearly the process to attach the applicants was premature. This is because the decision was being appealed against and they had at least seven days within which to file application for stay (which they indeed did file later). Why the interested party, who had all this while held his hands to await the outcome of the stay of execution, could not wait for the statutory seven-day stay of execution period may never be known. Suffice it to say, in his haste to move his application, he sought to confer jurisdiction on the High Court which said jurisdiction the High Court wrongly assumed. And therefore in the absence of jurisdiction, the orders of the High Court could be impugned and are amenable to be quashed by an order of *certiorari*.

Another beef of the applicants herein is the actual issuance of the bench warrant for the arrest of the directors of the company when none of them had been served with the application for contempt. This was brought to the attention of the court.

Here there is the need for a little explanation. The first applicant herein is a limited liability company while the third, fourth and fifth applicants are directors of the applicant company. The first applicant company, according to the interested party, had been served with the motion for an order of committal for contempt. How and on whom service was effected on behalf of the company is not borne out by any of the processes filed in this court. The other respondents in that application, who happen to be the directors of the company had not been served. On the day of these proceedings, the first applicant company, was represented in court by Helen De Cardi Nelson, the in-house lawyer. When counsel for the interested party sought to move the application for contempt, his attention was drawn to the fact that the other respondents had not been served. He submitted that since the first applicant herein had been served, he could proceed against it.

It was then that he submitted that since the first company had been served, its directors should be arrested on bench warrant. The court obliged. So in effect, even though counsel for the interested party conceded that in the absence of formal service of the application on the directors, who were themselves respondents in the application for contempt, the court could not proceed against them, he still got the court to issue the bench warrant to arrest the self-same directors because they were not in court to represent the first applicant company which counsel claimed had been served.

It seems to me that the issue here is not merely a breach of rules of natural justice as counsel for the applicants herein seem to think. Citing the case of *Barclays Bank of Ghana Ltd* v *Ghana Cable Co Ltd* [1998-99] SC GLR 1, counsel submitted that proceeding against a party to judicial proceedings who had not been served must be deplored. He said a court has generally no jurisdiction to proceed against a party who has not been served. This court therefore has power to quash any proceeding by an order of *certiorari* if satisfied that the proceeding was conducted without notice to the aggrieved party.

This is well said and represents this court's view on proceedings taken without proper notice. But in the peculiar circumstances of this case, I think counsel is mixing issues or being generous. The bench warrant issued against the directors was not against them as respondents (in their personal capacities) to elicit just the comment that they had not been served. The court issued the bench warrant for the arrest of the directors for failing to come to court to represent the first applicant company which the interested party claimed had been served. That is why to me it is not just a matter of proceeding against somebody who has not been served.

The questions to ask are: what is a bench warrant? When is a bench warrant issued and was the issuance of bench warrant in this case proper? In *Blacks Law Dictionary* (7th edition by Bryan A Garner) a bench warrant is defined as:

> "A warrant issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial."

So a person must in the normal course of events have refused or failed to attend court on request before a bench warrant is issued to compel him to do so. In this case, the first applicant company was represented in court by its in-house lawyer Helen De Cardi Nelson. It must be remembered that on that day, there were other businesses to do with respect to the case apart from the application for contempt. Indeed, there was no indication that the application for contempt was going to be moved. So the company was actually represented in court. The court therefore could not say that first applicant was not in court so it was issuing bench warrant. And I know of no rule of law that says that when a company is a party in a case no other officer of the company, not even one as high as in-house lawyer, can represent the company in court except the directors of the company.

After hearing the motion for stay of execution, if the court felt that it still wanted to proceed with the application for contempt against the first applicant company and therefore required the presence of the directors instead of the in-house lawyer, there were two options open to it: (a) if the trial judge was minded to proceed against the directors, then it had to adjourn the case to ensure that the

directors of the company were served to come to court to represent the company: see Order 43, rr 5(1)(*b*)(*cc*) and 7(3)(a); or, (b) to treat the company as represented by its in-house lawyer and go ahead to deal with it (after all in contempt against companies, not being a human person, there can only be a fine and not incarceration). To have issued a bench warrant at this early stage to compel persons who had not wilfully failed to come to court, was premature and wrongful.

Has the supervisory jurisdiction of this court been properly invoked and will *certiorari lie* to quash the bench warrant? Counsel for the interested party herein has urged forcefully on this court that granting that the issuance of the bench warrant was wrong, the High Court was acting within the full ambit of the law and therefore was not amenable to the supervisory jurisdiction of this court. Citing a legion of cases including *Republic* v *Accra Circuit Court; Ex parte Appiah* [1982-83] GLR 129; *Republic* v *High Court Accra; Ex parte Soku* [1996-97] SCGLR 525 and *Republic* v *High Court Accra; Ex parte Industrialization Fund for Developing Countries* [2003-2004] 1 SCGLR 348, counsel concluded thus;

> *"Granting that the trial High Court erred at all (which we vehemently deny) it is not such an error as would take the said court outside its jurisdiction and hence make it amenable to the supervisory jurisdiction of your Lordships. After all the affected parties could have applied to the said court to rescind the bench warrant in order to seek certain reliefs therefrom or in the alternative it could have appealed to the Court of Appeal*. (The emphasis is mine).

I think ingenious as this line of reasoning may be, it is all wrong in relation to the present case. The fact is that this court has laid it down in a number of cases including those cited by counsel that one of the basis of invoking the supervisory jurisdiction of this court is the wrongful assumption of jurisdiction or excess of jurisdiction.

It is true that the trial High Court had jurisdiction to deal with the application for stay of execution and, for that matter, the application for committal order for contempt of court. But the Rules of Court specifically indicate when the jurisdiction can be assumed. Rule 27(*3a)* and (*b*) of the Court of Appeal Rules, 1997 (CI 19), specifically states that following a decision, there is an automatic statutory stay of execution. If therefore a court purports to act within the said seven-day period, it will be deemed to have acted without jurisdiction, as in this case. In the light of the foregoing, it is my view that at the time of issuance of the bench warrant the trial court was not vested with jurisdiction to go on with the application for contempt and therefore the issuance of the bench warrant was done without jurisdiction.

It is for these reasons that this court at the hearing of the instant application on 14 January 2009 was of the view that the supervisory jurisdiction of this court has been properly invoked. The application succeeds and is granted as prayed.

The proceedings of the trial High Court given on 18 September 2008, ordering the issuance of bench warrant against the directors of the first applicant company should be brought up before this court for the purpose of being quashed and same is quashed accordingly. The learned High Court Judge is also hereby prohibited from going ahead with the committal proceedings without proof of proper service on the respondents to the application.

**P. BAFFOE-BONNIE**
**(JUSTICE OF THE SUPREME COURT)**

**ANSAH, J.S.C.:**

I agree with the reasons given in the opinions delivered by my learned brothers Atuguba and Baffoe-Bonnie JJSC and my learned sister Rose Owusu JSC. I have nothing useful to add.

**J. ANSAH**
**(JUSTICE OF THE SUPREME COURT)**

**ANIN YEBOAH, J.S.C.:**

I also agree with the reasons given in the opinions delivered by my learned brothers Atuguba and Baffoe-Bonnie JJSC and my learned sister, Rose Owusu JSC.

**ANIN YEBOAH**
**(JUSTICE OF THE SUPREME COURT)**

**COUNSEL:**

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ENOH-AMAH ANDOH FOR THE INTERESTED PARTY.