IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHNA
ACCRA GHANA

CORAM: DR. DATE-BAH, JSC (PRESIDING)
OWUSU (MS), (JSC)
BAFFOE-BONNIE, JSC
ARYEETEY, JSC
GBADEGBE, JSC

CIVIL APPEAL
SUIT NO. J4/23/08
26TH JANUARY, 2011

AXES COMPANY LTD --- PLAINTIFF/RESPONDENT/ RESPONDENT

VRS

1. KWAME OPOKU --- DEFENDANTS/APPELLANTS
2. SYLOP COMPANY LTD. /APPELLANTS
3. UNIQUE COMPANY LTD.

R U L I N G

THE PRESIDENT OF THE COURT INVITED BAFFOE-BONNIE J. S. C. TO DELIVER HIS JUDGMENT FIRST.

BAFFOE-BONNIE JSC.

For a better appreciation of the issues to be resolved in this case it is important to set out in detail the facts that have given rise to this appeal.

The respondent in this appeal brought an action at the High Court. The writ was indorsed as follows:
The plaintiff's claim is for:

1. An order of interim injunction restraining the 1st Defendant from disposing of the property, that is, a building at Tema end of the Motorway (Tema)

2. An order freezing the accounts of the 1st Defendant , 2nd and 3rd Defendants at Ecobank, Tema
3. An order freezing the accounts of the 1st Defendant at Barclays Bank , Tema

4. An order compelling Barclays Bank to furnish the court with the Statement of accounts of the 1st Defendant from January 2004 to date

5. An order compelling Ecobank to furnish the court with the statement of accounts of the 2nd and 3rd Defendants from January 2004 to date.
   (Attached was an 18-paragraph statement of claims).

This writ was immediately followed with an application for interim injunction on 9/01/07. The application was heard on 12/01/07. Mr. Amua Sekyi who announced himself as appearing for the defendant made the following intervention.

Mr. Amuah Sekyi: "I have no objection to the application except that there must be a time frame within which a statement of accounts within the period so that we can advise ourselves(sic)

It is still not clear how Mr. Amuah Sekyi appeared in court to make this concession seeing that he had not filed any appearance. He only entered appearance on 2/02/07. The application was granted and certain consequential orders made, including:

"5. The managers of the above banks (i.e Barclays Bank, Tema and Ecobank, Tema) are to prepare and submit before this court statement of the respective accounts from January 2003 to date on 30/1/2007."

The two banks complied with the court's directive and duly submitted statements on accounts being kept by the Defendant.

Subsequent to the filing of the accounts by the affected banks, the respondents herein, filed an application for Summary Judgment for the sum of $3,042,000.00 per the grounds averred to in a 27-paragraph supporting affidavit.

In an affidavit in opposition sworn to by one John Cobbina Buabing, managing clerk at the law firm Amua Sekyi & Co., the defendant conceded owing $1,475,330.

On the day of the application Mr. Amuah Sekyi again made the following intervention:

"My Lord, we admit owing the plaintiff the sum of $1,475.330 as contained in our affidavit in opposition"

The court's reaction to this intervention was swift.

By Court: Based on the process before me as well as learned counsel's submissions, summary judgment is entered for the plaintiff for the recovery of the sum of $1,475,330……The outstanding balance of $1,467,000 is set down for hearing. Suit to take its normal course.

This was on 14/03/07.

The respondent herein, thereafter put in motion execution processes to ensure the payment of the judgment debt of ¢1,475,000 and agreed costs of $100,000. A writ of Fi Fa was issued and certain properties were attached and valued for auction. 3 months after these events and while the execution process was still in motion, the appellant changed solicitors.

Per his new solicitors, the appellant filed initially an appeal against the judgment of the court on 18/6/07 and sought to move an application for stay of execution pending appeal. The trial High Court judge ruled that since the appeal was filed out of time and therefore not properly before the court the application for stay of execution could not be entertained.

Taking a cue from this ruling, the appellant applied for an extension of time within which to file appeal. Same was granted on 13/August, 2007.

On 17/08/07, pursuant to leave granted, the appellant first filed a process titled Notice of Appeal. Barely two weeks later, i.e. on 5/9/07, the appellant realizing that there was an error in the process as filed, filed a notice of withdrawal of this flawed process and subsequently corrected himself by filing the correct processes and filed in the appropriate forum.

The grounds of appeal were given as follows:

1. The judgment is not warranted by law;
2. The judgment is against the weight of evidence;
3. That the jurisdiction of the court was not properly invoked;
4. That the judgment was obtained by a violation of public policy;
5. That at all material times the court was functus officio at the date when summary judgment was entered;
6. That the judgment is null and void;
7. Additional grounds will be filed upon receipt of the records of proceedings

The Court of Appeal upheld the submissions of the respondent and dismissed the appeal. It is from this decision that appellant has appealed to this court on the following grounds:

I. the judgment is not warranted by law
Ii. the judgment is against the weight of evidence
Iii. additional grounds will be filed upon receipt of the records of proceedings.

This case raises a number of legal issues which we intend to deal with one after the other.

JURISDICTION OF THE SUPREME COURT

After going through submissions of both counsel and having thoroughly digested the appeal record, this Court came to the conclusion that the first legal hurdle that has to be surmounted before the merits of this appeal could be gone into was whether or not this Court has jurisdiction, and this necessarily has to be addressed first.

Rule 9(1) of the Court of Appeal Rules 1997 C.I. 19 provides as follows

Subject to any other enactment for the time being in force, no appeal shall brought after the expiration of—

(a) Twenty-one days in the case of an appeal against an interlocutory decision; or

(b) three months, in the case of an appeal against a final decision unless the court below or the Court extends the time

(2) The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.

(3) An appeal is brought when the notice of appeal has been filed in the registry of the court below.

The interpretation that has been put on these provisions is that, whilst time can be extended by the court in the case of a final decision, no such extension is permitted under the rules in respect of interlocutory decisions. In effect unless one strictly complies and files his appeal against an interlocutory decision within 21 days, he is out of time and cannot be heard on the matter.

From the recount of the facts so far it is clear that the appeal before this court has its roots in the summary judgment that was granted at the High Court. Since the appeal before the Court of Appeal was premised on the notice of appeal filed pursuant to leave granted extending time, this Court felt that there was the need to deal with whether or not the leave granted was proper or not depending upon whether the summary judgment was interlocutory or final.

This Court therefore invited both counsel to submit written arguments on the following points:

1. Is the summary judgment given by Ofori Atta J on 14th March 2007 not an interlocutory judgment?

2. If so, was the application for extension of time to file an appeal on 25th July 2007 competent?

3. If the application was incompetent, was the order by Asiedu J. dated 13th August 2007 granting the defendants leave for extension of time to file an appeal valid?

4. If the application for extension of time was incompetent and the ensuing order by Asiedu J invalid, was there a valid appeal before the Court of Appeal when it purported to deal with it?

This intervention of the court was premised on Rule 6 sub rules (7b) and (8) of the Supreme Court Rules C.I. 16 which provide as follows;

Notwithstanding sub rules (1) to (6) of this rule the Court---

(c) shall not, in deciding the appeal, confine itself to the grounds set forth by the appellant or be precluded from resting its decision on a ground not set forth by the appellant.

(8) Where the Court intends to rest a decision on a ground not set forth by the appellant in his notice of appeal or on any matter not argued before it, the court shall afford the parties reasonable opportunity to be heard on the ground or matter without re-opening the whole appeal

See also the case of **Asare v Brobbey [1971] 2 GLR331**,at pg 338 where ARCHER JA(as then was)quoting **Phillips v.Copping[1935]1KB15** at pg.21 said

"It is the duty of the Court when asked to give judgment contrary to a statute to take the point although the litigants may not take it"

As expected, while counsel for the appellant has submitted that the summary judgment is final, counsel for the respondent has vehemently argued that the summary judgment is interlocutory.

The issue of whether an order is interlocutory or final has engaged the attention of practitioners over all jurisdictions over the years.
Over the years the common law has recognized two alternative tests. The first test is whether or not the order as made disposes of the rights of the parties; if it does it is final, if it does not it is interlocutory.

The second test places emphasis on the nature of the application made to the court. To the proponents of this approach, an order remains interlocutory so long as a different order made in the same proceedings could have kept the litigation in being. It does not matter whether the order made disposes of the litigation. These two tests are called the "order" and "application" approaches, respectively.

Lord Denning's famous words in the case of **Salter Rex &Co.v Ghosh [1971] 2 All ER 865** is often quoted by practitioners and text writers as encapsulating the divergent views and the apparent confusion surrounding interlocutory and final orders. He said at page 866:

"*There is a note in the Supreme Court Practice 1970 under RSC Ord 59, r 4, from which it appears that different tests have been stated from time to time as to what is final and what is interlocutory. In* ***Standard Discount Co v. La Grange*** *and* ***Salaman v. Warner,*** *Lord Esher MR said that the test was the nature of the application to the court and not the nature of the order which the court eventually made. But in* ***Bozson v. Altrincham Urban District Council,*** *the court said that the test was the nature of the order as made. Lord Alverstone CJ said that the test is: 'Does the judgment or order, as made, finally dispose of the rights of the parties?' Lord Alverstone CJ was right in logic but Lord Esher MR was right in experience. Lord Esher MR's test has always been applied in practice. For instance, an appeal from a judgment under RSC Ord 14 (even apart from the new rule) has always been regarded as interlocutory and notice of appeal had to be lodged within 14 days. An appeal from an order striking out an action as being frivolous or vexatious, or as disclosing no reasonable cause of action, or dismissing it for want of prosecution – every such order is regarded as interlocutory: see* ***Hunt v. Allied Bakeries Ltd****. So I would apply Lord Esher MR's test to an order refusing a new trial. I look to the application for a new trial and not to the order made. If the application for a new trial were granted, it would clearly be interlocutory. So equally when it is refused, it is interlocutory. It was so held in an unreported case,* ***Anglo-Auto Finance (commercial) Ltd v. Robert Dick,*** *and we should follow it today.*

This question of 'final' or 'interlocutory' is so uncertain, that the only thing for practitioners to do is to look up the practice books and see what has been decided on the point. Most orders have now been the subject of decision. If a new case should arise, we must do the best we can with it. There is no other way."

In a relatively recent case of **Minister for Agriculture, Food and Forestry v Alte Leipziger [2000]1ESC; [2000]4IR 32** Hardiman J, in his opinion, recapped the confusion surrounding the two approaches adopted by the English courts and offered a relatively practical suggestion. He said at paragraps 66-70

"In his judgment in this case the Chief Justice has thoroughly set out the diverse and sometimes inconsistent English authorities and I agree with him that, generally speaking the difference of judicial approach has been as to whether one looks to the order as made, or to the application for the order, and to ask in either case if the order itself or the application which ever way, it is decided, will finally dispose of the case.
While it is possible to state the core of the divergence in the English authourities with some clarity it seems to me both the approaches which they have adopted are open to criticism. This indeed, was recognized by Denning M.R.in ***Salter REx and Company v Gosh(1971)IQ.B.597."***

Contrasting the order approach as propounded by Lord Alverstone in **Bozso v Altrincham Urban District Council 1903 1 KB547** with the application approach propounded by Lord Esher in **Salomom v Warner q1891!QB 734**, he said

"Lord Alverstone was right in logic but Lord Esher in experience. Lord Esher's test has always been applied in practice ….so I would apply Lord Esher's test to an order refusing a new trial"
……In a later passage in the same judgment, which almost echoes Buckley LJ's perplexity, he said:

'This question of final or interlocutory is so uncertain, that the only thing for practitioners to do is to look up the practice on the point. Most orders have now been the subject of decision. If a new case should arise, we must do the best we can with it. There is no other way.'

This is not an approach either commendable to logic or suggestive of any consistency of experience.

70. I think the fundamental flaw in both these approaches lies in the requirement that the order, or the application (depending on which approach one takes), must finally dispose of the case as a whole if it is to be final and not interlocutory. In my view, it is quite sufficient if the order in question finally disposes of a particular issue between the parties, at least where that issue is discretely raised by some proper procedure."

Despite the fact that our judicial system has its antecedents in the common law, it seems the courts in this country have been consistent in rejecting the application approach in favour of the order approach. Apalloo JA(as he then was) in the case of **State Gold Mining Corporation v Sissala 19711 GLR 359,** Anin JA(as he then was)in the case of **Okudzeto v Irani Brothers[1975]1GLR96, Jiagge JA in Tawiah v Badu 1977 1 GLR1,** and Francois JA in the case of **Kerletse-panin v Nuro [1979]GLR194** all adopted the Lord Alverstone test of "order" approach

In the case of ***Pomaa* v *Fosuhene* [1987-88] 1 GLR 244, Taylor JSC** contrasted the views of the English and the accepted view in the Ghanaian courts in the following terms;

> *"The inherent contradiction in the English cases calls for a resolution of the problem in this country; and although the Supreme Court has not had an occasion to make any pronouncement on the matter nevertheless other courts that have exercised appellate jurisdiction in this country have consistently followed the test sponsored by Lord Alverstone; for instance Apaloo JA (as he*

then was) followed the precedent set by the West African Court of Appeal in ***Nkawie Stool v Kwadwo (1956) 1 WALR 241, CA,*** *and applied Lord Alverstone's test in his judgment in the Court of Appeal in* ***State Gold Mining Corporation v Sissala [1971] 1 GLR 359*** *at 362, CA. See also his similar approach in the subsequent Court of Appeal case of* ***Atta Kwadwo v Badu [1977] 1 GLR 1 at 4, C****A. Jiagge JA also reading the judgment of the Court of Appeal in* ***Tawiah v Brako [1973] 1 GLR 483 at 486, CA*** *took the same view when she gave the ambit of an interlocutory decision in this country in the following words*:

> *"An interlocutory decision does not assume finally to dispose of the rights of the parties. It is an order in procedure to preserve matters in status quo until the rights of the parties can be determined."*

I agree entirely with that description which is consistent with Lord Alverstone's test, a test which Anin JA (as he then was) accepted in his judgment in ***Okudjeto v Irani Brothers [1975] 1 GLR 96 at 104, CA*** *in a decision in which Sowah JA (as he then was) concurred; and quite recently in* ***Karletse-Panin v Nuro [1979] GLR 194 at 210, CA****. Francois JA (as he then was) reading his judgment in the Court of Appeal after examining the relevant cases, stated the Ghana position succinctly when he concluded:*

> *"For Ghana then the test is not to look at the nature of the application but at the nature of the order made. This is one area where the courts of Britain and Ghana have already parted ways and the Ghanaian courts have shown remarkable consistency."*

I agree entirely with the views of the Ghanaian judges and I hold that they are right. I will accordingly approve the Alverstone test so consistently followed by the lower courts of this country".

Quotes from some very recent decisions from this court will suffice to buttress the fact that the Ghanaian position is now finally settled in favour of the order approach

In the case of **Attorney-General v Faroe Atlantic Co. ltd [2005-2006]SCGLR271, at 288** DR. Twum JSC, said

"My lords a judgment is final because it puts an end to the action by making an award of redress to a party, or discharge the other, as the case may be. That a summary judgment is a final judgment is too inverterate to be disputed today."

Then in the case of **Republic v High Court(Fast Track Division); Ex parte State Housing Co ltd(No.2)(Koranten-Amoako Interested Party 2[2009]SCGLR 185** at 194, Georgina Wood CJ noted thus,

"in our view, a judgment or order which determines the principal matter in question is termed "final", whilst an interlocutory order has also been defined in Halsbury"s Laws of England(4th ed) vol. 26 para.506 as:

"an order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure; or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed interlocutory."

Finally, I will refer to this court's ruling in a review application in the case of **HALLE AND SONNS S.A v BANK OF GHANA AND ANOTHER Civil Motion No J7/11/2010 Coram Akuffo, Brobbey, Dr Date-Bah, Adinyira, Baffoe-Bonnie Aryeetey and Akoto-Bamfo, JJSC**. (unreported)dated 15th December, 2010. The court ruled as follows:

"There is no doubt in the mind of the Court that the Judgment of Kusi- Apou (as she then was) though summary was final in nature. It is not that a judgment if overturned on appeal would be sent back to the trial court on the merits that determines the question of its finality. Rather, in Ghana, the crystalised position is that the determining

factor is whether or not the court's orders, by nature disposed of the disputed issues between the parties."

So from the state of the law as espoused by the Ghanaian courts over the years, it is obvious that the summary judgment granted by the trial judge, Ofori Atta J, was final. Even though the judge entered summary judgment for only a part of the amount admitted with the unadmitted part to be proved by evidence, as far as the admitted portion was concerned there was finality with the order and nothing else to be done save execution! Here Hardiman J's statement in the Alte Leipzeger case (already cited) becomes very instructive. He said at para. 70,

"I think the fundamental flaw in both these approaches lies in the requirement that the order or application must finally dispose of the case as a whole if it is to be 'final' and not 'interlocutory'. ***In my view, it is quite sufficient if the order in question finally disposes of a particular issue between the parties, at least where that issue is discretely raised by some proper procedure"(emphasis mine)***

As stated earlier even though there were still outstanding issues yet to be determined between the parties, as far as the admitted portion of USD 1,475,330 was concerned we hold that there was nothing else to be done. It was final even though the substantive suit was yet to be finalized.

Our answers to the questions as posed will therefore be:

1. The summary judgment given by Ofori Atta J. on 14th March 2007 is final.

2. The application for extension of time to file an appeal on 25th July 2007 was competent.

3. The order granting leave to file for extension of time to file an appeal is valid.

4. There was a valid appeal before the Court of Appeal.

[SGD] P. BAFFOE – BONNIE J.S.C

JUSTICE OF THE SUPREME COURT

PROF.S. K. DATE-BAH, J. S. C. I agree

[SGD] DR. S.K. DATE-BAHJ.S.C

JUSTICE OF THE SUPREME COURT

B. T. ARYEETEY, J. S. C. **I agree**

[SGD] B. T. ARYEETEY J.S.C

JUSTICE OF THE SUPREME COUT

OWUSU JSC.

I have had the opportunity to read the Judgment of my brother Baffoe-Bonnie J.S.C. but I am inclined to disagree that the Judgment of Ofori-Atta J. delivered on14/03/07 is a final Judgment.

The plaintiffs, after issuance of the writ filed an application for interim injunction which was granted in substance and the court among other orders directed –

"The managers of the above banks (i.e. Barclays, Tema) are to prepare and submit before this court statement of the respective accounts from January 2003 to date on 30/1/2007."

This order of the court was complied with by the banks.

Following the filing of the accounts, the plaintiff/Respondent herein, filed an application for summary Judgment for the sum of $3, 042, 000.00 as deposed to in the supporting affidavit.

In an affidavit opposing the application for the sum claimed, one Cobbina Buabing, Managing Clerk of Amua Sekyi & Co., a law firm, the defendants admitted part only (emphasis supplied) of the claim averring that the amount claimed "has been grossly exaggerated."

In court, Mr. Amua-Sekyi, for the defendants, told the court:

"My Lord, we admit owing the plaintiff the sum of $1,475,330 (one Million Four Hundred and Seventy Five Thousand Three Hundred and Thirty United States dollars as contained in our affidavit in opposition."

The court thereupon entered, summary Judgment for the plaintiff as follows:

"Based on the process before me as well as learned counsel's submissions summary Judgment is entered for the plaintiff for the recovery of the sum of one million four hundred and seventy five thousand three hundred and thirty United States dollars against the defendants. - - -

The outstanding balance of 1, 467.00 (one million four hundred and sixty seven thousand united states dollars) is set down for hearing, suit to take its normal course."

It was not until 18/06/07 that a Notice of Appeal was filed against this Judgment after the plaintiff has actually gone into execution. This Notice of Appeal was however withdrawn by Notice of withdrawal filed on 25/07/07 apparently same has been filed out of time.

On 13th August, 2007 an Application for extension of time to appeal against the Judgment of 14/3/ 07 was taken before Asiedu J. who for stated reasons granted the extension and ordered the appeal to be filed within 30 days from the day of the Order.

The appeal was filed and determined by the Court of Appeal which by a unanimous decision, dismissed same on 31/7/08.

Dissatisfied with the judgment, the defendants further appealed to this court on the grounds that:

1. "The Judgment is not warranted by law."

2. "The Judgment is against the weight of evidence."

In considering the appeal before this court, it became necessary to decide whether the appeal to the Court of Appeal filed pursuant to the leave granted by Asiedu J. was properly before the court in compliance with the Rules of Court.

This became necessary because rule 9(1) of the Court of Appeal Rules C. I. 19 provides that:

Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of –

(a) Twenty one days, in the case of an appeal against an interlocutory decision; or

(b) Three months, in the case of an appeal against a final decision unless the court below or the court extends the time."

When the appellant filed the first Notice of appeal, it was withdrawn because it was filed out of time. Hence the application for extension of time.

To determine the fate of the appeal before the Court of Appeal, the court has to decide whether the summary Judgment of 14/3/07 by Ofori Atta J. is final or interlocutory.

The implication being that if it is final, then in accordance with rule 9(b) of C. I. 19, Asiedu, J. could extend the time for filing an Appeal as he did and the appeal would have been properly filed. On the other hand, if it was interlocutory, then he had no jurisdiction to extend the time for filing the appeal in which case the grant of the extension would have been given without authority and therefore null and void.

The appeal filed pursuant to the grant would also be a nullity as "you cannot put something on nothing and expect it to stay there. It will collapse". These are the words of Lord Denning in the famous case of MACFOY VRS UNITED AFRICA COMPANY LTD [1961] 3 A. E. R 1169.

Whereas my brother Baffoe-Bonnie J.S.C. is of the view that Ofori-Atta's Judgment is final, I am of the view and support the view of my brother Gbadegbe J.S.C. whose Judgment is about to be read that it is interlocutory.

The question of final or interlocutory orders is as Lord Denning said in SALTER REX & Co. V. GHOSH [1971] 2A.E.R 865 "so uncertain, that . . . . . 'If a new case should arise, we must do the best we can with it.'

To Lord Dennings' words, I would say that the question is not only uncertain but also confusing.

I have examined the two tests used in determining whether a decision is final or interlocutory i.e. the Application and Order tests propounded by Lord Esher in the case of SALOMON VRS WARNER [1891]1QB 734 and Lord Alverstone in BOSZSO VRS ALTRINCHAM URBAN DISTRICT COUNCIL [1903]1 KB 547 respectively.

The first test places emphasis on the nature of the application made to the court whereas the second test places emphasis on the order made. If the order made disposes of the rights of the parties, it is final, if it does no, it is interlocutory.

In a recent case of MINISTER FOR AGRICULTURE, FOOD AND FORESTRY VRS ALTE LEIPZIGER [2000] 1 ESC; [2000] 41R 32 Hardiman J. in his opinion examined both tests used in the English courts and said both tests are open to criticism which Denning M. R. recognized in SALTER REX and Company VRS GOSH already referred to. HIS Lordship had this to say

"Lord Alverstone was right in logic but Lord Esher in experience.

> **Lord Esher's test has always been applied in practice . . . so I would apply Lord Esher's test to an order refusing a new trial."**

Hardiman J. continued in his Judgment that –

> "**I think the fundamental flaw in both these approached lies in the requirement that the order, or the application (depending on which approach one takes), *must finally dispose of the case* as a whole if it is to be final and not interlocutory. In my view, it is quite sufficient if the order in question finally disposes of a particular issue between the parties, at least where that issue is discreetly raised by some proper procedure."** (Emphasis supplied)

The question that comes to my mind therefore is – Does the Judgment of Ofori-Atta J. delivered on 14/03/07 finally dispose of the rights of the parties or at least an issue between them?

In the application for summary Judgment, the sum claimed was $3,042,000.00. The issue therefore is whether or not the defendants were liable to pay this sum. Having regard to their admission, they accepted liability for only a part of the claim for which Judgment was entered against them. The judgment did not settle their rights with regard to the claim. Indeed, the trial court went further after entry of the Judgment to set the outstanding balance of $1, 467.00 (one million four hundred and sixty seven thousand united states dollars) down for hearing and adjourned the suit to take its normal course."

Going by the "*order test"* which our courts have consistently adopted in cases like STATE GOLD MINING CORPORATION VRS SISSALA[1971]1 OKUDZETO VRS IRANI BROTHERS [1975]1GLR 96 and the rest, I cannot say that by the judgment, the rights of the parties have been finally disposed of and therefore the Judgment is final. The issue as to whether the defendants are to pay the sum claimed in the application for summary Judgment is partially pending. I would not have any difficulty in coming to the conclusion that the judgment is final at least with regard to the sum claimed if the defendants had admitted the whole amount and the trial court had consequently entered Judgment against them. With regard to that amount, their rights would have been settled.

The Judgment did not assume finally to dispose of the rights of the parties. It was an order in procedure to preserve matters in status quo until the rights of the parties could

be determined. It is for this reason that I am of the view that the Judgment even though summary, is interlocutory.

See the case of TAWIAH VRS. BRAKO [1973] 1 GLR 483 at 484.

Again, in the case of POMAA VRS FOSUHENE [1987-88] the Supreme Court re-echoed the position when it held that:

> **"an inference whether a decision or order was final or interlocutory was dependent essentially on the nature of the decision or order and consequently an answer to the question whether the decision or order finally disposed of the rights of the parties or the matters in controversy" - - -**

A summary Judgment is final if it finally disposed of the rights of the parties or matters in controversy. If it did not, then like in the instant case, I would say it is interlocutory.

Depending on the nature of the order made I would say that it is a bit of generalisation to say that a summary Judgment is a final Judgment. It can be final as well as interlocutory.

In the case of ATTORNEY-GENERAL VRS FAROE ATLANTICE COMPANY LTD [2005-2006] 271, there is no doubt that the summary Judgment entered by the trial court had settled the matters in controversy and it was therefore final.

If Ofori-Atta J.'s Judgment is interlocutory, then the order granting the extension by Asiedu J. was null and void and therefore the appeal filed pursuant to that order is a nullity. The Court of Appeal could not pronounce upon it and should have struck out the appeal for want of jurisdiction.

[SGD] R. C. OWUSU (MS) J.S.C

JUSTICE OF THE SUPREME COURT

GBADEGBE JSC:

On 20th October 2010, when the appeal herein came before us for hearing, in the exercise of the powers conferred on us under rule 6 (7)(b) and 8 of the Supreme Court Rules, C1 16 we directed the parties to respond to four points of law that were carefully formulated by us. The parties having fully complied with our direction, I now proceed to consider the submissions in respect of the said points which were in the nature of questions and are as follows:

1. Is the summary judgment given by Ofori Atta J on 14th March 2007 not an interlocutory judgment?
2. If so, was the application for extension of time to file an appeal on 25th July 2007 competent?
3. If the application was incompetent, was the order by Asiedu J dated 13th August 2007 granting the defendants leave for extension of time to file an appeal valid?
4. If the application for extension of time was incompetent and the ensuing order by Asiedu J invalid, was there a valid appeal before the Court of Appeal when it purported to deal with it?

In my view those points are crucial to the exercise of our jurisdiction to inquire into the appeal and therefore were raised by us in order to satisfy us that we had jurisdiction to inquire into the appeal herein on the merits. In raising these points for the consideration of the parties, we had regard to the different time frames provided by law in respect of appeals from interlocutory and final judgments. It is settled beyond any conflict of opinion that having regard to the very clear words contained in Rule 9(1) of the Court of Appeal Rules, CI 19 of 1996 after the expiry of the period of twenty-one days that is allowed for interlocutory appeals, there is no power in the Court or the Court below to grant to any party extension of time within which to lodge an appeal from an order that is not final but interlocutory. There is in my view, a similar position in Rule 8(1) of the Supreme Court Rules, CI 16. These rules, in my thinking preserve for purposes of appeal the difference between interlocutory and final judgments. This, perhaps explains the different procedure relating to interlocutory appeals from District Courts to the High Court in civil matters as provided for in Order 51 rule1(3) and Order 51 rule 16 of the High Court (Civil Procedure Rules), CI 19.

The question as to the nature of orders and or judgments of Courts has not been an easy one to determine over the years. In order to distinguish between such orders, the common law courts have adopted two approaches that are generally referred to as the application and order approaches. The position regarding these varying approaches may be found in the words of Denning LJ in the case of *Salter Rex & Co* v *Ghosh* [1971] 2 All ER 865. At page 866 in the course of his judgment he pronounced as follows:

> "There is a note in the Supreme Court Practice 1970 under RSC Ord. 59. R4, from which it appears that different tests have been stated from time to time as to what, is final and what is interlocutory. In *Standard Discount Co* v *La Grange* and *Salmon* v *Warner*, Lord Esher MR said that the test was the nature of the application to the court and not the nature of the order which the court eventually made. But in *Bonzon* v *Alttrincham Urban District Council*, the court said that the test was the nature of the order as made. Lord Alverstone CJ said that the test is: Does the judgment or order as made finally dispose of the rights of the parties? Lord Alverstone was right in logic but Lord Esher MR was right in experience. Lord Esher MR's test has always been applied in practice."

In expressing those views, Denning LJ was not alone but echoed the voice of many. Indeed in their very invaluable practice book entitled *Atkin's Court Forms*, Volume 22 (2nd Edition), the learned authors writing on the subject "Interlocutory and final orders at page 297 state as follows:

> *"The decisions of the Court of Appeal as to whether an order is final or interlocutory are difficult to reconcile. There is no precise rule of law or practice which lays down which orders are interlocutory. It*

has been said that " This question of ' final 'or 'interlocutory ' is so uncertain that the only thing for practitioners to do is to look up the practice books and see what has been decided in the past."

In our jurisdiction, there appears to be a leaning towards the nature of the order as made test as opposed to the nature of the application that resulted in the judgment or order of the court. I refer in this regard to the decision of the Supreme Court in the case of Koranteng v Amoako [2009] SCGLR, 185 at 194 where Georgina Wood, CJ observed in the following words:

> " *In our view, a judgment or order which determines the principal matter in question is termed " final" whilst an "interlocutory "order has also been defined in Halsbury's Laws of England(4th ed) Vol. 26 para 506 as:*
>
> > *An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision; or (2) is made after judgment and merely directs how the declarations of right already given in final judgment are to be worked out, is termed "interlocutory".*

The sentiments expressed in the Koranteng case had been earlier on pronounced by Twum JSC (as he then was) in the case of *Attorney General* v *Faroe Atlantic Company Limited* [2005-2006] SCGLR 271 more particularly at 288-289 when the learned judge made the following speech:

> *"My Lords, a judgment is final because it puts an end to the action making an award or redress to a party, or discharge the order as the case may be. That a summary judgment is a final judgment is too inveterate to be disputed today..."*

Speaking for myself, the application test commends itself better to me because it looks not only at the order as made but the order which might have been made and in this connection looks at what the result would be if an appeal from the order should succeed. I think that the attitude of merely looking at the order as made may in certain situations elevate even judgments obtained in default of appearance on which for example assessment of damages have been made to acquire the attribute of finality. But we know that such judgments may be set aside upon an appeal and when this happens, the judgment together with all processes of execution founded thereon are set aside. Let us consider for example, the situation in an action where there is a claim for general and special damages for negligence in which summary judgment has been obtained on the issue of negligence leaving the assessment of damages. If the defendant in that case feels aggrieved by the determination of the question of negligence and desires to appeal, what time frame would apply to him? Is the summary judgment entered on the question of negligence final or interlocutory? I do not think that it is correct to say that once a judgment has been delivered and not appealed against even though there has not been a trial on the merits or what is sometimes described a full scale trial in which witnesses are called by the parties before the court's decision on the controversy is rendered the judgment is final. To come to this view of the matter in my opinion would be unfortunate for it looks not at the nature of the order but the consequences of it; for a judgment obtained by default on which execution is founded that yields to the execution creditor all the reliefs that he sought by the action thereby becomes final and yet when on appeal therefrom the decision is set aside it immediately loses its finality. I observe in respect of summary judgments that may be appealed that while in the intervening period between the judgment that is appealed and the decision of the appellate court it has the character of finality, immediately the

appeal succeeds it is transformed into an interlocutory judgment. But, we know that final judgments retain their nature notwithstanding the decision that is delivered on appeal. The absence of consistency in the order approach does not commend itself to me as in my opinion a final judgment when properly so described remains so even if an appeal from it succeeds. The attitude of our courts has been expressed in several judgments that have acquired over the years the force of precedent that requires to be re-examined in the future by us in the light of the inconsistency in the consequences that flow from the acceptance of the order approach. Notwithstanding my reservations, I echo that which was said by Lord Halsbury LC several years ago in the case of Pledge v White [1896] Ac 187 at page 190 as follows:

> "My Lords, I have had an opportunity of considering the judgment prepared by my noble and learned friend (Lord Davey) and I am not prepared to dissent from it. I use the form of expression because I confess I lament the conclusion to which it has been found necessary to come, although I believe the strict principle upon which it rests is founded in our law at present, and in dealing with a technical system it is better to adhere to principle when once established, than to create greater confusion by dissenting from it. I think the principle laid down in *Vint* v *Padget* (1) has been so firmly established now by authority in our technical system that I feel more mischief would be done by dissenting from it, than by acquiescing in it."

Now, going by the approach that has run through cases on the matter in our jurisdiction, I can discern one firm principle which is as follows. If the order as made finally disposes of the matter then it matters not that even on appeal the

order appealed is set aside resulting in the loss of finality. Thus, when a plaintiff obtains judgment under Order 14 of the High Court Rules, CI 19 it is for all purposes final and the right to appeal is not limited to twenty one days but three months and includes the grant of extension of time to appeal there from. But for the summary judgment to have the character of finality, in my view it should have conclusively determined the claim before the court and not have pending for determination certain reliefs indorsed on the writ of summons. I think this is the context in which the two Ghanaian cases that I have earlier on referred to in the course of this delivery may be understood. I do not think that a fair reading of the two cases is supportive of the position that even in cases where the order of summary judgment does not put an end to the action it can be described as final. To place a contrary meaning on the words of either Georgina Wood CJ in the case of *Koranteng v Amoako (supra)* or that of Twum JSC in the *Attorney General v Faroe Atlantic Company Limited* (supra) is to strain the language employed by the two learned judges in their pronouncements.

This being the position, I next proceed to examine the record of proceedings on which the instant appeal is based to determine if the order of summary judgment in question had in the words of Twum JSC (as he then was) "*put an end to the action …..*" It is to be noted that in determining finality, one has to examine the writ on which the action turns to find out whether at the date of the making of the summary judgment, there were other reliefs or redresses sought in the action that were pending before the court? In the case before us, apart from the fact that the monetary demand on which the summary judgment was entered did not put an end as it were to the entire amount claimed in the application and that the order of the court was based only on part of the claim it is useful to refer to the court notes for the proceedings for the day on which the

judgment was entered that appears at pages 140- 141 of the record of proceedings as follows:

> *"By Court: Based on the processes before me as well as learned counsel's submissions, summary judgment is entered for the plaintiff for the recovery of the sum of $1, 475, 330…….. The outstanding balance of $1,467, 000 is set down for hearing suit to take its normal course."*

My Lords, it does not appear to me that the order as made by the learned trial judge finally disposed of even the claim contained in the application for summary judgment. The order itself reserved to the parties the right to have the outstanding balance determined subsequently. There cannot in my thinking be any question that the order did not finally and effectually dispose of the rights of the parties and that it was in its nature provisional in respect of the claim to which it related and therefore interlocutory. I pause here to examine the powers that are available to a court at the hearing of an application under Order 14 rule 5(1) of the High Court (Civil Procedure) Rules, 2004 (CI 46).

> *"On the hearing of the application the Court may*
>
> *(a) give such judgment for the plaintiff against the defendant on the relevant claim or part of a claim as may be just having regard to the nature of the remedy or relief sought, unless the defendant satisfies the Court with respect to that claim or part of it, that there is an issue or question in dispute which ought to be tried or*

that there ought for some other reason to be a trial of that claim or part of it.

(b) give the defendant leave to defend the action with respect to the relevant claim or part of it either unconditionally or on terms such as giving security or otherwise; or

(c) dismiss the application with costs to be paid forthwith by the plaintiff as it appears that the case is not within this Order or that the plaintiff knew that the defendant relied on a contention which would entitle the defendant to unconditional leave to defend the action."

In my view, the order that is on appeal to us was made by the court in the exercise of its powers under *Rule 5(1) (a)* and was in its nature one that gave the defendant leave to defend that part of the claim in respect of which the judgment was denied to the plaintiff as expressed in the court notes referred to above. That the rule recognizes that in cases where the plaintiff does not obtain judgment in respect of the entire claim in respect of which the application was made the matter may still be pending before the court for a trial is amply testified to by the provision in *rule 5(2)* that authorizes the Court in appropriate cases to make an order of stay of execution of the judgment so entered pending the determination of a counterclaim by the defendant. I must without any hesitation say that in the case before us there was no counterclaim but the point being made here is that in some instances such a judgment under Order 14 does not bring the action to an end. If this contention is right then it is not correct to generally categorize all instances of judgment under Order 14 of CI 46 as final. I think every case need to be considered having regard to the order as made in relation to the reliefs sought in the action as well as in the application to sign

summary judgment under Order 14. The court before which the issue as to the finality or otherwise of an order made under Order 14 is raised must patiently consider the relief granted at the hearing before proceeding to classify it as final or interlocutory; for there cannot be finality when part of the relief on which a claim is pending has been left to be determined by means of a hearing subsequent to an order for directions and for that matter enables the defendant to file a defence relating to that part of the claim in respect of which summary judgment was withheld by the court. In such cases, the court is authorized under rule 5.6 to

> *"give such directions as to the further conduct of the action as may be given on an application for directions, and may order that the action be set down for trial forthwith or at such date as the Court considers proper."*

I think that it is not open to anyone considering the order made by the court to contend that it was in its nature final and not provisional. In my opinion, the order may in its consequence or operation be final but in its nature remained interlocutory as was decided in the case of *In re Compton, Norton* v *Compton* [1884] 27 Ch. 392 at 394 per Cotton LJ. Examining the order on appeal within the intendment of the rules, it is plain that the order even as made was not complete as the court did not advert its mind to the *"directions as to the further conduct of the case"* thus leaving it open to the parties to apply to it for a supplementary order to enable the requirements of rule *5(6)* to be satisfied. This, in my opinion is yet another reason for saying that the order was not final but interlocutory. There cannot be finality in respect of a claim or part of it when to the knowledge of the parties the court has pending before it an aspect of the claim for determination subsequent to an order of directions in the matter.

But that in my view is not the end of the matter. The plaintiff in its writ sought certain reliefs, none of which had been finally disposed of at the time of the making of the summary judgment on which these proceedings are based. There were the reliefs for freezing the accounts of the defendants held by them with named banks. Although the reliefs that sought orders freezing the accounts may look unfamiliar to us, I think it may substantively refer to the court placing an injunction on the specified bank accounts in respect of which the claims were made and a careful study of the record of proceedings reveals that as at the date of the summary judgment pleadings had not closed in the matter and no application had been made to the court below for those reliefs to be struck out as disclosing no reasonable cause of action and therefore for all intents and purposes they were pending for determination. In the said circumstances to describe the summary judgment as a final decision is not appropriate and in my view runs contrary to the settled practice of the courts. Again, in determining whether an order is final or interlocutory, one should have regard to the claims contained in the plaintiff's writ. In the case before us, clearly what the plaintiff sought by the writ was to prevent the defendants from operating the designated bank accounts as from the pleadings it was averred against the defendant that the amounts lodged therein were from funds that properly belonged not to him but to the plaintiff company.

In the course of preparing this delivery, my attention has been drawn to a pronouncement by Hardiman J in the Irish case entitled *Minister of Agriculture, Food and Forestry v Alte Leipzeger* [2000] IESC 13, [2000] 4 IR 32 to the effect that where an order sufficiently disposes of particular issue then it is final and not interlocutory. The following words appear at page 17 of his judgment:

"I think the fundamental flaw in both these approaches lies in the requirement that the order, or the application (depending on which approach one takes) must finally dispose of the case as a whole if it is to be final and not interlocutory. In my view, it is quite sufficient if the order in question finally disposes of a particular issue between the parties, at least where that issue is discretely raised by some proper procedure."

In my opinion, the above pronouncements are contrary to the settled judicial opinion in our jurisdiction and I must say at once that it is not binding on me. On the contrary as a persuasive authority, it runs contrary to the generally accepted approach to final and interlocutory orders as it seeks to chart a new and previously unthreaded path namely the issue approach. I think that to adopt a test that looks at whether the order as made sufficiently disposes of a single issue in a case for example that turns on multiple issues as is often the case is to create an unhealthy situation in which in a single case there might be more than one final judgment. This in my thinking would undermine the existing case law on the subject and additionally create for purposes of appeal more than one instance of a final judgment thereby rendering useless the different time rules contained in Rule 9(1) of CI 19 and indeed Rule 8(1) of the Supreme Court Rules, CI 16. I think that our jurisdiction like many others in the common law have preserved the distinction between final and interlocutory orders and judgments for the purposes of appeals and for that matter any decision from any other jurisdiction that is not only in conflict with the pronouncements of our courts but have the effect of blurring the different categorization of orders and judgments must be rejected.

Again, a careful reading of Hardiman's judgment appears that it was based essentially on *Order 58 rule 8 of the Superior Courts Rules, 1986*. Indeed, at page 10 of his judgment at paragraph 33 he observed as follows:

> "……*The sole issue in this appeal is whether or not that order was a final order or an interlocutory order for the purposes of O. 58, r. 8 of the Rules of the Superior Courts, 1986."*

In order to better appreciate the limited scope of the above judgment, I wish to refer to the relevant rule on which the case was decided:

> *"Such further evidence may be given without special leave upon any appeal from an interlocutory judgment or order or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon any appeal from a final judgment or order such further evidence (save as to matters subsequent as [*3] aforesaid) shall be admitted on special grounds only, and not without special leave of the Supreme Court (obtained upon application therefor by motion on notice setting forth such special grounds)."*

In fact, the said point arose because subsequent to the judgment of the High Court that was appealed to the Supreme Court in the above case; the parties had filed further affidavits without leave from the court. This is patently clear from the delivery of the three judges who read their opinions as appears from *Baron J's* delivery thus:

> *"Since the order of the High Court the parties in the present proceedings have filed additional affidavits. No leave has been sought for such filing. Accordingly, an application for special leave to*

file such affidavits should have been brought unless the order appealed from was an interlocutory order".

That the scope of the decision in the above case goes not beyond Order 58 rule 5 of the relevant Irish Rule appears in the concluding statement of *Barron J* in his judgment that was concurred in by two other colleagues-*Murray and McGuiness JJ* as follows:

"In all the circumstances of this case I consider that the order appealed from is for the purposes of Order 58, r (8) a final order. I would disallow the appeal."

A similar point had previously arisen in the Compton case (supra) and at page 394, Cotton LJ said:

"The question turns on Order LVIII, rule 4. In reading the clause permitting further evidence on appeals from interlocutory orders we must read it in connection with the alternative clause following it, which says that "upon *appeals from a judgment after trial or hearing of any cause or matter upon the merits such further evidence shall be admitted on special grounds only." That clause is wide enough to include a claim by a creditor in an administrative action. Though it is in form interlocutory, it is a final decision of the claim on the merits."*

The head note of the said case in the following words:

"Although *an order made on a summons by a creditor in an administrative action is considered as if interlocutory for the purpose of determining the time within which an appeal may be brought, for*

other purposes it is a final order, and therefore fresh *evidence cannot be given on the appeal without special leave of the court."*

Then there is the issue of what is generally described as a "split trial", in which questions of liability may be tried before and separately from other issues as to damages. Indeed, in the case of *Ministry of Agriculture Food and Forestry v Alte Leipzeger* (supra) the point for determination was in a split trial where the court had to deal with the preliminary issue of jurisdiction arising under an insurance policy that conferred jurisdiction solely on the Tribunal de Commerce, Paris. So raised, the point was one analogous to a split trial. In the course of his judgment in that case, Hardiman J at paragraphs 77-78 in considering the issue of jurisdiction made the following speech:

"It *seems to me that a jurisdiction issue, too, is quite independent of the merits of the action and should be got out of the way conclusively and finally as early as possible. I believe that the Court should focus on whether the jurisdiction issue and not the general issues in the litigation have been finally determined for the purpose of this action by the judgment of Laffoy J. The virtues of this approach seem to apply a fortiorori to, and indeed to be specifically mandated by, the procedural context of this appeal. The issue of jurisdiction arises for immediate determination by virtue of a special procedure whereby no……. other issue is clearer, the issue more precisely knit, and more expressly isolated from any other issue which might arise, than in any of the authorities to which we have been referred. Those cases feature split trials of liability and damages, a motion to dismiss an action as vexatious, a motion to dismiss on a point of law, and other special circumstances. None are*

to my mind at all usefully analogous to that arising here. Article 18 allows for the joining of issue on the limited question of jurisdiction and the order made after this has been done seems to me to be an order which is (subject only to appeal) final on that issue, and that was the only issue before the High Court."

The learned judge concluded his consideration of the point of jurisdiction in a manner that explained why he was unable to follow the English authorities on the question of final and interlocutory judgments. He said and I quote*:*

" *I believe that the approach I have proposed arises naturally from the article 18 procedure and the amended rules which followed from the underlying logic of separating the fundamental question of jurisdiction from many other matters which will arise only if jurisdiction is accepted. I am of the view that it is unnecessary to apply either of the tests emerging from the English authorities because the procedure involving the invocation of Article 18 and* the service of a motion under Article 12 rule 26 is sui *generis."*

My Lords, it does not appear to me within the context of the above that we have before us any of the special circumstances that Hardiman J described as "sui generis". This being the position, I think that the ordinary tests applicable in distinguishing final and interlocutory judgments applies. There was no hearing in the trial High Court pursuant to an order for the separate trial of issues under Order 33.3 of CI 47. The application for summary judgment was filed pursuant to Order 14 as a matter of procedure and as such cannot be said to have been made within the scope of Order 33 rule 3 which provides as follows:

> "*The Court may order any question or issue arising in any cause or matter whether of fact or law, or partly of fact and partly of law, and raised by the pleadings to be tried before, at or after the trial of the cause or matter and may give directions as to the manner in which the question shall be raised."*

In view of the above, it would be clearly wrong to extend the words of

Hardiman J beyond the scope of that which it was clearly intended. In answering the question whether the order was final or interlocutory, our attention must be directed at its form or nature as distinguished from its consequence or operation. Equally wrong in my opinion would be a decision that overrules the long line of decisions of our courts on the point in contention in favor of a single case from Ireland that was decided on a point of law that is not before us in the instant appeal. Thus, even if the said decision were to be binding on us, there is good ground for us not to follow it because the facts in the two cases are dissimilar. In my opinion in applying the principle in the said Irish case in favor of our own previously decided cases, it would have the effect of undermining one of the pillars of the common law namely the doctrine of judicial precedent that in its essence requires us not to do that which would have the effect of "*unsettling the established order of things."* The doctrine of judicial precedent does not permit us based only on a single decision such as is revealed by the decision in the case of *Minister for Agriculture, Food* and *Forestry* v *Alte Leipzeger* (supra) to depart from the long line of previously decided cases in our jurisdiction that are to the contrary but binding on us. Our jurisdiction abounds with adequate remedies on the matter that are reasonable and as such we require not to journey elsewhere in order to reach a decision in the matter. Accordingly, I am unable to agree with my brethren on the other side that the decision on appeal

to us is covered by the principle in the case of the *Minister of Agriculture, Food and Forestry* v *Alte Leipzeg*er (supra).

My Lords, on the state of the authorities that are binding on us I do not think that it is right for us within the contemplation of Article 129(3) of the 1992 Constitution to depart from the principles inherent in the Ghanaian cases referred to in the course of this delivery. In my thinking based on the said cases the summary judgment, the subject matter of these proceedings was clearly interlocutory. This view of the matter appears to be in accord with the definition provided in Rule 82 of the Supreme Court Rules, CI 16 in relation to the word "interlocutory" as follows:

> *"Interlocutory decision means a decision which is not a final decision in a cause."*

This definition is substantially the same as that contained in Order 82 rule 3 of CI 46 to the following effect:

> *"interlocutory decision" means a decision which is not a final decision in any cause or matter"*

It is clear from the interpretation of the word interlocutory that finality relates to the effective disposal of a "cause" that brings an end to litigation and leaves nothing but the execution of the judgment. I do not think it is right to restrictively employ "final" to denote the determination of a single issue that arises in an action and in particular as unfolded from the circumstances of this case, a decision that settled only part of a subsidiary question. The effect of this is to say that the extension of time that was purportedly granted to the appellants herein to appeal out of time was incompetent and as a result the Court of Appeal had no valid appeal before it on which it pronounced. The issue

on which this delivery turns, in my opinion is one of due process that enjoins parties who desire to appeal from decisions rendered against them within the time frame provided and where as in this case there has been a default in so doing we are constrained from inquiring into the merits of the appeal on the grounds of absence of jurisdiction. See: (1) *Frimpong* v *Nyarko* [1998-99] SCGLR 734*;* (2) *Darke* v *Darke IV* [1984-86]1 GLR. 481.

For these reasons, the instant appeal should be struck out as incompetent; there being no jurisdiction in the High Court under rule 9(1)(a) of the Court of Appeal Rules CI 19 to extend time in respect of interlocutory decision, and consequently the order granting extension of time to the appellant herein should be set aside.

[SGD] S. GBADEGBE J.S.C

JUSTICE OF THE SUPREME COURT

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