IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, 2012

CORAM: AKUFFO, (MS) JSC (PRESIDING)
DATE-BAH, JSC
ANSAH, JSC
BONNIE, JSC
BAMFO,(MRS) JSC

CIVIL APPEAL.
No. J4/7/2012

25TH APRIL,2012

1. **XL INSURANCE SWITZERLAND CO.**
2. **AXA CORPORATE SOLUTION**
3. **KILN SYNDICATE COMBINED SYNDICATE 51**
4. **GENERALIARD**
5. **SIAT SOCIETA ITALAINA ASSICURAZIONI ET RIASSKURAZIONI**
6. **ASCOTT COMMODITIES SA GEVENA** **APPELLANTS**

VRS.

1. **GEMINI MARITIME SERVICES**
2. **GHANA PORTS &HARBOURS AUTHORITY** **RESPONDENTS**

J U D G M E N T

BAFFOE-BONNIE, J.S.C.

The appellants sued the two defendants at the High Court claiming:

a. An amount of Two Hundred and Sixty Two Thousand Nine Hundred and Seventy Seven US dollars or its equivalent in cedis being actual cost of damage and surveyor's fees as a result of the defendant's negligence and breach of contract;
b. Interest on the sum of Two Hundred and Sixty Two Thousand Nine Hundred and Seventy Seven US dollars or its equivalent in cedis at the prevailing commercial rate from August 2008 till date of final payment;
c. Damages for negligence and breach of contract by the defendants;
d. Costs including legal fees; and

e. Any other reliefs arising from the pleadings.

The 2nd defendant respondent entered a conditional appearance and applied to have the writ of summons set aside on the grounds that failure to comply with section 92(2) of Ghana Ports and Harbours Authority Act, 1986 (PNDC Law 160) rendered the writ premature and therefore null and void. This submission was upheld by the trial High Court Judge and the writ was dismissed on 14th October 2009. On the 9th of November 2009 the appellant applied ex parte to the High Court, differently constituted, for an extension of time within which to file an appeal against the decision of the High Court dismissing his writ of summons. This application was granted on 12th Nov. 2009 for a period of 3 working days. With time extended the appellants appealed to the Court Of Appeal on the grounds that:

a. the learned trial judge erred in law by striking out the writ of summons and statement of claim and

b. the learned trial judge erred in awarding costs

Before the Court of Appeal the appellant argued that the section 92(2) of PNDC Law 160 which was the basis of the High Court's decision was unconstitutional as same was inconsistent with the provisions of the 1992 constitution

The Court of Appeal dismissed the appeal on the grounds that;

a. the appeal was filed out of time , it being an interlocutory appeal, and that the purported extension of time granted to file same was done without jurisdiction and therefore null and void; and
b. the section 92(2) of PNDC Law 160 is constitutional.

It is against this decision that the appellant has appealed to this court on the following grounds.

1 the learned Court of Appeal Judges erred in holding that the High Court Judge had no jurisdiction to grant the appellants extension of time within which to file notice of appeal. The particulars of error being that under rule 9(1)of C.I.19 there is no provision for extension of time to appeal in an interlocutory decision.

Alternatively the ruling of the trial court was a final decision,

2. That the learned justices of the court of appeal erred in holding that section 92(2) of the PNDC Law 160 is constitutional.

For a proper discussion of the grounds of appeal I intend to take the alternative ground first before l take ground 1

ALTERNATIVE GROUND.

On the alternative ground the appellant submitted that the order made by the trial High Court Judge was a final one. He said:

"**It is also respectively submitted with hindsight as a distinct leg of submission based on the decision of this court in Axes Co Ltd v. Opoku, it appears that, the Court of Appeal erred in holding the appeal as an interlocutory appeal because it is our humble submission that the decision of the trial judge to the effect that the writ of summons is set aside against the 2nd respondent constitutes a final decision. That is so because there was**

nothing more for the court to decide between the appellant and 2nd respondent. As such the appellant did not need leave to appeal"

After quoting portions of the Axes case counsel continued and concluded thus,

"Flowing from the above it is our submission that it appears the ruling by the high court, the subject of this appeal, finally determined the matter between the appellant and the 2nd respondent. After the said ruling there was no other pending case at the trial court between the said parties. Their dispute had finally been determined. To the extent that the above ruling foreclosed the right of action against the 2nd respondent it was a final decision. Therefore the appellant's right to appeal is not limited to twenty one days but three months and includes the grant of extension of time to appeal therefrom."

As counsel rightly pointed out the issue of when an order is final or interlocutory was discussed at length in the Axes Case but it is obvious from counsel's submission that he failed to appreciate the ratio in that case.

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.

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.

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, CA. 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".

In the AXES CASE the Court also referred to some very recent decisions from this Supreme Court to buttress the fact that the Ghanaian position is now finally settled in favour of the order approach. It was noted thus;

"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 courts 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 crystalized position is that the determining factor is whether or not the

court's orders, by nature disposed of the disputed issues between the parties."

From the facts of the case before us and the order made the only logical inference is that the order was interlocutory. The order was made purely on matter of procedure and also that the courts orders did not dispose of the disputed issue between the parties. That the matter may not resurrect in court again because of procedural lapses does not mean that the real issue in controversy between the parties has been dealt with to achieve the status of finality.

It is this Court's holding therefore that the order made by the trial High Court setting aside the writ of summons was interlocutory and that any appeal therefrom was subject to rule 9(1) of C.I. 19.

GROUND ONE

Rule 9(1) of the Court of Appeal Rules 1997 C.I.19 reads,

9. Time limits for appealing

(1) 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.

In their ruling which is the subject matter of the appeal before us, the Court of Appeal said that since the order setting aside the writ of summons was interlocutory, an appeal from it ought to have been filed within 21 days. Further the trial judge did not have jurisdiction to extend time within which to appeal. The order extending time therefore was made without jurisdiction and therefore null and void.

In his submissions before us counsel has tried in a masterly and scholarly way to convince the Court that time to appeal can be extended not only in final appeals but also in interlocutory appeals. He has taken the court through the labyrinths of English grammar with particular reference to the use of punctuation marks.

Counsel for the appellant submitted as follows;

"The issue is whether or not the exception <u>"unless the court below or the court extends the time" in rule 9(1) (b) applies to both "(a)" and "(b)", or to "(b)" exclusively.</u>

The word "or" in 9(1)(a) above does not stand in isolation. It is preceded by a semi colon (:) and the semi colon needs to be interpreted too. Section 14 of the Interpretation Act, 2009 (Act 792) provides as follows:

"Punctuation forms part of an enactment and may be used as an aid to its construction".

In view of the above provision it is the submission of the appellants that the semi colon which precedes the "or" is an aid to the construction of the whole of rule 9(1). A semi colon has several uses and it is for this Court to determine the particular meaning that the semi colon is intended to convey in the context of rule 9(1) of CI 19. Our humble submission is that in this context the semi colon signifies a pause in communication but does not truncate the message or meaning being communicated. The words or sentence which follows a semi colon add more meaning to what had already been said before the punctuation; it provides further information to the previous message before the semi colon. As such it follows that the semi colon is not a signification of a total break in communication or change in meaning, or of subject in rule 9(1). Consequently, the legislature should be deemed to have intended a constructive link in meaning between Rule 1 (a) and (b); that was the reason for the semi colon before the conjunction "or". Contextually, the said conjunction must not be construed literally as providing completely two mutually exclusive items. Indeed rule 9(4) reinforces our submission above and we will demonstrate it shortly below."

"The disjunction between "(a) and "(b)" relate only to the twenty-one days in the case of an appeal against an interlocutory decision in "(a)", and the 'three months in the case of an appeal against a final decision.' So construed, the interpreter ought to apply the exception, unless the court below or the court extends the time, to both "(a)" and "(b)". It is submitted that it was that link that the legislature intended to create between "(a)" and "(b)" by using a semi colon rather than a full stop. The use of a semi colon effectively shuts the door to all meanings associated with a full stop. Accordingly, it will be erroneous to consider only the "or" and disregard the punctuation (the semi colon before the 'or')."

I am really surprised that counsel who seems so enamored with the meaning and usage of punctuation marks misses the obvious in the rule under construction. The semi colon at the end of sub rule 1(a) followed by the word 'or" clearly brings out the disjunction between the sub rules (a) and (b). And this is made even more pertinent by the fact that sub rule 1(b) is one sentence not broken by punctuation mark except at the end by a full stop. If the draftsman wanted the expression "unless the court below or the court extends the time" to also affect sub rule 1(a) he would have broken the sentence by a punctuation mark after the word 'decision' in sub rule(b) and/or possibly brought the remainder of that sentence onto a different line to read as follows;

"9. Time limits for appealing

(1) 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. (emphasis added)

For example let us look at Article 2 of the constitution 1992. It reads,

2 (1) A person who alleges that__

(a) An enactment or anything contained in or done under the authority of that or any other enactment; or

(b) Any act or omission of any person,

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

It can clearly be seen that the part of the provision staring from 'is' and ending 'effect' is supposed to refer to both sub clauses (1a) and (1b). So they can actually be read separately as follows,

a Any person who alleges that an enactment or anything contained in or done under the authority of that or any other enactment; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect

b Any person who alleges that any act or omission of any person is inconsistent……..(emphasis mine).

From the arrangement of the wording in the rule and the use of punctuation marks, it becomes rather obvious that the Court of Appeal was right and the Appellant was wrong in the interpretation of the Rule**.**

That an interlocutory appeal should stricto sensu be filed within the twenty-one days prescribed by the rules has been acknowledged and given judicial fiat in many cases. I will refer to a few.

In the case of **DAVID ANDREAS HESSE VRS. INVESTCOM CONCORTIUM SUIT NO H3/350/2007 (unreported),** dated the 4th of July 2007 the Court of Appeal was presented with a similar situation where the Respondents in that case applied for extension of time within which to appeal. Her Ladyship Mariama Owusu, JA noted as follows:

"**I am strengthened by this court's decision in the case of PATRICIA LITHUR VRS. SAMUEL KUDISAH & 2 OTHERS cited supra, where Her Lordship OWUSU J.A had occasion to comment on Rule 9(a) (a) of CI 19. She said "I now attempt to answer 2 questions posed earlier on. I do not think that the makers of the rules failed to insert a provision for the 21 days to be calculated from the date of the grant of leave for no apparent reason. Rule 9(2) fixes a definite time within which the appeal must be filed and it was their intention not to exceed the 21 days under any circumstances. For this reason, the Court was not given the power to extend the time so fixed unlike an appeal against a final decision where under Rule 9(1) (b), the court below or the court extend the time".**

The Supreme Court was presented with a situation similar to that in the Andreas Hesse case in the case of **BOSOMPEM & OTHERS V. TETTEH KWAME SC C/A J4/5/10 (unreported) dated 7th July 2010**, and this was the response;

"**In his one page statement in response, Counsel for the respondent submitted that, the decision to refuse the application to go into execution was interlocutory and since same was given on 7th April 2009, the rules allows only 21 days to file an appeal against same. By waiting till 7th July 2009 (3 months after the decision) to file an appeal, the application was incompetent.**

Rule 8(1) a of the Supreme Court rules C.I 16 as amended reads

1) Subject to any other enactment governing appeals, a civil appeal shall be lodged within

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

(b) three months, in the case of an appeal against a final decision unless the Court below or the court extends the period within which an appeal may be lodged.

The appellant herein has submitted that by the nature of the application and the outcome of same the appeal is sustainable because the decision is not interlocutory but rather final.

A determination as to whether or not the decision appealed from is interlocutory or final is at the heart of this appeal because as has often been said no right of appeal exists save such as is conferred by statute.

In the case of In re Amponsah [1960] GLR140 the Court of Appeal held,

"We are clearly of the opinion that an appellate court has no inherent jurisdiction to entertain an appeal from an order or decision given by a court below it. In all causes or matters an appeal lies only if given by statute."

AkuffoAddo JSC (as he then was) in case of Frimpong v Poku 1963 GLR 1 said,

"a right of appeal is always conferred by statute, and when the statute conferring the right lays down conditions precedent to the vesting of that right in a litigant it is essential that those conditions must be strictly performed otherwise the right does not become vested.

In the present appeal the rule that regulates the appellate jurisdiction of this court is Rule 8(1) sub rules (a) and (b). It is 21 days if interlocutory and three months, if final. Interestingly whilst the three months in respect of final judgment can be extended when leave is sought and granted, no such extension is countenanced by the rule regulating interlocutory appeals."

It is the Court's holding that a party's right to appeal against interlocutory orders is extinguished after twenty one days and no court has jurisdiction to extend this time!

This provision is in keeping with the current policy decision in various jurisdictions to reduce the time limits within which substantive issues brought before courts are determined and also reduce the cost of litigation to appreciable levels. Indeed in some jurisdictions like the UK and the USA

interlocutory appeals are limited to very important questions of law and are almost extinct now.

GROUND 2

Section 92(2) and (3) of Act 160 reads as follows;

"A civil suit shall not be commenced against the authority until one month at least after written notice to commence the action has been served on the authority by the intending plaintiff or the agent of the plaintiff

(3)The notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief he claims."

Following the preliminary objection raised by the 1st respondent for their non compliance with this provision the trial judge held as follows.

"I have carefully read all the authorities cited and the only logical conclusion I make is that the enabling law Act 160 governs the operations of the 2nd defendant and the provisions are quite clear and unambiguous. The plaintiff ought to have been more pro active concerning its rights and obligations. The plaintiff is caught squarely by the provisions of section 92 (2) of Act 160..

Before the Court of Appeal the appellant, referred to the comments of ASARE Korang J (as he then was) in the case of **EVANGELICAL PRESBYTERIAN CHURCH V. ATTORNEY GENERAL [1993-94]GLR 429**, and submitted as follows'

"The Supreme Court reached a similar decision to the effect that the precondition of serving a thirty day notice on the Attorney General before suing the state, does not apply, with respect to the fundamental human rights. As such , we pray your lordships to hold in respect of the case at bar , that the thirty days notice is unconstitutional. In deed such a conclusion will not amount to interpreting the constitution, since the constitutional provisions are clear and your brother's decision has not been overruled as amounting to constitutional interpretation. Other cases in which the Supreme Court has upheld cases in which courts other than the Supreme Court have pronounced on the constitutionality of laws are:

The **Re public V. Maikankan [1973]2 GLR; Auamoah ll v.Twum [2000]SCGLR165;Republic v. SPECIAL TRIBUNAL; EX PARTE AKOSAH1980GLR 582'\;NANA YIADOM V NANA AMANIAMPONG[1981] GLR and AGYEKUM V. BOADI SCGLR 282."**

The Court of Appeal accepted the invitation that ruling **on th**e subject will not amount to usurping the jurisdiction exclusively reserved to the Supreme Court in matters of interpretation, and promptly ruled as follows,

"I note that after the decision in the E.P. Church case, the legislature quickly enacted a new State Proceedings Act in 1998 (ACT 555) which still retains in Section 10 the requirement of serving thirty days notice on the Attorney General in Civil Actions against the Republic of Ghana. The requirement of service on the Attorney General is therefore still on our statute books' In the instant appeal I have not been informed about, nor have l seen any legislation striking down Section 92 of Act 160. In the circumstances, there is no law to the effect that Section 92 is unconstitutional and l hold that the failure or neglect of the plaintiffs to serve notice on the 2nd defendant renders their writ of summons and statement of claim incompetent and is hereby set aside."

Interestingly after extending the invitation in very unequivocal terms and same accepted by the Court of Appeal, because the Court's rendition was not favorable, the appellant changed gear and submitted as follows,

"We drew the Court of Appeal's attention to the need to refer this matter to this court for constitutional interpretation at page 44 of the record (par 7). The 1st respondent also raised the constitutionality of section 92(2) in their written submissions at pages 61-65 of the record and appellants raised it again on page 66 of the record of appeal yet the Court chose to pronounce on the constitutionality of the said provision without referring same to this Honourable Court. This Honorable Court stated and admonished judges of courts lower than the Supreme court, to refer cases that require constitutional interpretation to this court and has given guidance on how to proceed to do same: TSURU V. ATTORNEY GENERAL 2010 SCGLR904."!

Clearly the appellant is blowing hot and cold or approbating and reprobating. In one breath the Court of Appeal is competent to pronounce on the matter because the words are clear and unambiguous and require no interpretation, and when the pronouncement goes against them then it is purely constitutional and same ought to have been referred.

It is true that this Court has admonished all courts on the need for courts lower than the Supreme Court to refer matters that border on interpretation to the Supreme Court. The following quote by Ocran JSC in the case of **REPUBLIC V. HIGH COURT(FAST TRACK DIVISION)ACCRA; EX PARTE ELECTORAL COMMISSION.(METTLE-NUNOO &OTHERS INTERESTED PARTIES)[2005-2006] SCGLR514 AT PG 559** ,encapsulates the Court's views on this matter. He said

"…..in dealing with constitutional provisions which have received little or no prior judicial interpretation, the trial court should not presume that there is no issue of interpretation; it will be a safer course of action for the trial court to refer the matter to the Supreme Court rather than to assume that there is no real issue of interpretation, or that his or her view of the constitutional provision is more likely to be more correct than that of five or seven Supreme Court Justices put together."

This was cited with approval by WOOD CJ in the case **of REPUBLIC V. HIGH COURT (FAST TRACK DIVISION)ACCRA;EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTATIVE JUSTICE. (RICHARD ANANE, INTERESTED PARTY)[2007-2008] SCGLR 213 at pg 235.**

However it has also been held by this Court in countless number of cases that it is not every matter that has to be referred to the Supreme Court for interpretation and that when the words of a statute are plain and unambiguous the courts are only required to give vent to the meaning as expressed without having to interpret them. Thus in the case of **REPUBLIC V. ASIAMAH [1971] 2 GLR478** the Supreme Court said as follows

"We wish to stress that it is not every submission in a trial that an issue is a question or matter relating to the interpretation of any provision of the Constitution that has to be referred to this court for determination under article 106 of the constitution. Where the language of the article is clear and

unambiguous no question of interpretation arises to warrant a reference. The submission may well relate to no more than a proper application of the facts or issues, and this is a matter which the trial court has jurisdiction to determine."

See also the cases of **REPUBLIC V SPECIAL TRIBUNAL EX PARTE AKOSAH (1980) GLR 592 C.A; REPUBLIC V JUDICIAL SECRETARY EX PARTE TORTO [1979] GLR 444 CA AND REPUBLIC V SPECIAL TRIBUNAL EX PARTE FORSON (1980) GLR 529.**

What article of the constitution was required to be interpreted in the High Court that ought to have been referred to the Supreme Court? None. Before the High Court the issue to be decided was whether a person who initiated an action against the Ghana ports authority was properly before the court if he failed to comply with section 92(2) of the law.

The trial Judge's answer was that failure to comply with the clear provisions of the statute rendered the writ null and void.

The appellant appealed to the Court of Appeal on the ground that the learned trial judge erred in holding that the failure of the plaintiffs to serve the 2nd defendant with prior notice in accordance with section 92 0f PNDC Law 160 rendered the plaintiff's action null and void. The Court of Appeal's answer was as follows;

"In the instant appeal, l have not been informed about nor have l seen any legislation striking down Section 92 of Act 160. In the circumstances, there is no law to the effect that Section 92 is unconstitutional and I hold that the failure or neglect of the plaintiffs to serve notice on the second defendant renders their writ of summons and statement of claim incompetent…"

The contentious section of the Act reads;

"92(2) A civil suit shall not be commenced against the Authority until one month at least after written notice of the intention to commence the action has been served on the Authority by the intending plaintiff or the agent of the plaintiff."

Clearly there is nothing ambiguous or unclear about this provision and the trial judge rightly, in our view, held that the use of the word 'shall' in the subsection made it mandatory, and that failure to comply with same made the plaintiff improperly before the court. Before us the appellant has argued that Court of Appeal was wrong in ruling on the constitutionality or otherwise of section 92(2) and that same should have been referred to the Supreme Court to pronounce on. We think the appellant is getting it all wrong. Yes it is true that the constitution is the supreme law of the land and any other law found to be inconsistent with any provisions of it shall to the extent of the inconsistency, be void. (Art.1(2) of the Constitution 1992. But Article 2(1) reads;

A person who alleges that__

> **"An enactment or anything contained in or done under the authority of that or any other enactment; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect".**

As far as the trial judge and justices of the Court of Appeal were concerned they were confronted with a straight case of enforcing an Act whose meaning was clear and unambiguous. It did not call for any interpretation and therefore did not warrant a reference to the Supreme Court. And as the Court of Appeal rightly noted, in the absence of any pronouncement by the Supreme Court striking down the said provision as unconstitutional, failure to comply with its mandatory requirements rendered the writ void.

The appeal therefore fails on all grounds and same is dismissed.

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREMECOURT

(SGD) DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

MARTIN KPEBU FOR THE APPELLANTS.
OSAFO BUABENG WITH HIM VIVIAN TETTEH FOR THE 1ST RESPONDENT.

MARIETTA APPIAH- OPPONG FOR THE 2ND RESPONDENT.