IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: ADINYIRA (MRS) JSC PRESIDING
DOTSE JSC
ANIN YEBOAH JSC
GBADEGBE JSC
BENIN JSC

CIVIL MOTION
NO. J5/9/2017

31ST JANUARY, 2017

THE REPUBLIC

VRS

HIGH COURT, (FINANCIAL DIVISION 2) ACCRA

EX-PARTE:

1. KOFI APPIANIN ENNIN - APPLICANTS

2. CRISSPAN COMPANY LIMITED

3. GHANA EMPIRE BAND LIMITED

4. WANAMARU ENTERPRISE

FINANCIAL INTELLIGENCE CENTRE - INTERESTED PARTY

RULING

DOTSE, JSC:

By this application, the Applicants herein seek an order of Certiorari directed at the High Court, Financial Division 2, Accra to bring into the Supreme Court for the purpose of it being quashed, the Ruling of 3rd August 2016 in Suit No. FTRM/87/15 intitutled **Financial Intelligence Centre v Kofi Appianin Ennin and 3 others**.

The grounds upon which the Applicants seek this application have been stated as follows:-

Grounds of the Application

1. The High Court, Financial Division 2 exceeded its jurisdiction when it dismissed the application (filed on 29th June, 2016) to set aside the order for a confirmation of freezing of accounts dated the 16th of June, 2015 and 25th of June, 2015 respectively **when the statutory period of 12 months had long lapsed.**

2. The High Court, Financial Division 2 **exceeded its jurisdiction** when it sought to direct or impose directions on how a case involving the 1st Applicant should be tried before the High Court Criminal Court

3. The freezing of all the accounts of the Applicants was done in breach of the rules of natural justice.

Emphasis supplied

FACTS

The facts of this case admit of no complexities whatsoever. The interested Party herein, (Financial Intelligence Centre) applied to the High Court, Financial Division 2, Accra, by two ex-parte applications for the freezing of the accounts of the Applicants herein. The freezing orders were granted by the High Court referred to supra on the 16th and 25th June 2015 respectively.

Facts deposed to in the affidavit in support of these ex-parte applications are to the following effect:-

- That the 1st Applicant herein was then being investigated for trafficking in narcotic drugs and was subsequently on remand then at the Nsawan Medium Security Prison.

- The 1st Applicant is also a Director of the 2nd and 3rd Applicant companies.

- The 4th Applicant Company belongs to one George Kyei Baffour who was alleged to be a son of the 1st Applicant. This fact has been denied and the Interested Party has not given any further or better particulars of the said depositions.

- It was also alleged that George Kyei Baffour was also implicated for trafficking in narcotics drugs, and was being investigated. No further proof of these allegations apart from the mere depositions had been stated in proof of the averments therein contained.

It has been established that, based on the suspicious activities of the Applicants, the Chief Executive Officer of the Interested Party directed the respective Banks to freeze the accounts of the Applicants at the following banks:-

i. ADB Bank Limited
   Account Number: 1070005049201

ii. Barclays Bank Ghana Limited
   Account numbers: 1248258 and 1056340

iii. Atwima Rural Bank Limited
   Account numbers: 32451, 32587 and 23176

iv. Bank of Africa
   Account numbers: 0000014100228 and 00214100228

v. Stanbic Bank Ghana Limited
   Account number: 0140027065901

vi. ADB Bank Limited

Account Number 1051000112139101

Following the events stated supra, the Applicants herein sought to set aside the orders made by the High Court, Financial Division 2, Accra by motion on notice supported by affidavit but failed in their bid.

In order to appreciate the reasons why the learned High Court Judge dismissed the applications to set aside the ex-parte freezing orders, it is thought expedient to set out some salient parts of the Ruling in extenso, as follows:-

> *"The gravamen of this application per the arguments raised by counsel (sic) Applicants is that* ***per the legislation setting up the Financial Intelligence Centre, and upon an application of the decision of the Supreme Court in The Republic v High Court (Financial Division), Accra Ex-Parte Xenon Investment Co. Limited it would be in excess of the jurisdiction of the Court to keep the accounts of the Applicants beyond the statutory one year period specified in the Anti Money Laundering Amendment Act, 2014, (Act 874).***

Preservation of funds, other assets and instrumentalities of crime.

23A An accountable institution shall preserve the funds, other assets and instrumentalities of crime for a period of one year to facilitate investigations."

(Emphasis mine)

In considering this application, I have had recourse to closely study the decision of the Supreme Court in the Xenon Investment case. I have also studied the entire record of this case. The Xenon Investment case is quite distinguishable from this one in that in that case, investigations were still ongoing and this Court extended the time for the freezing of the account regardless. Thus the learned Anin-Yeboah JSC stated:

"One is compelled to assume that in this era of information technology and international co-operation among nations, one whole year should be enough for the Financial Intelligence Centre to unearth any wrongdoing in the transaction under consideration…"

In a Ruling by the High Court, Financial & Economic Division 1, Her Ladyship Justice Georgina Mensah-Datsa (Mrs) opined in the case of ***Financial Intelligence Centre v Francis Arthur*** *(Suit No. FTRM 326/13 dated 25th April 2016, which opinion also holds true in the instant case that:*

"The Supreme Court case (in reference to the Xenon Investment case) cited supra did not give a blanket decision that no account can be frozen beyond one year. It decided on the issue of funds frozen pending or to facilitate investigations… to accept the submissions made by learned counsel for the applicant that, irrespective of the stage of a case, that is, investigations, prosecution etc. an account

cannot be frozen for over a year, would be to undermine procedural integrity.

In the circumstances of this case, it is without question that the 1st Applicant is on trial before the High Court presided over by H/L Abdullah-Iddrisu in narcotic related offences under the Narcotic Drug (Control, Enforcement and Sanctions) Law, 1990 (PNDCL 236).

The opening sentence to the memorandum of the law states:-

"The purpose of this law is to bring under one enactment offences relating to illicit dealing in narcotic drugs and to further put in place provisions that will prevent illicit narcotic drug dealers benefiting from their crimes."

A holistic reading of PNDCL 236 would reveal that there are provisions for forfeiture of property without the necessity of a specific money-laundering charge.

In conclusion, I would dismiss this application pending the outcome of the trial before the High Court, presided over by H/L Abdullah Iddrisu. I make no order as to costs." Emphasis supplied

It is the above ruling, dated 3rd day of August 2016 that triggered the Applicants to file the instant certiorari application on 28th October 2016 seeking to have the ruling of 3rd August 2016 quashed on the grounds stated supra.

In his very brief affidavit in support of this certiorari application learned Counsel for the Applicants, Kwame Boafo Akuffo, deposed that, the learned

High Court Judge exceeded her jurisdiction when it dismissed the application to set aside the confirmation of freezing orders dated 16th June 2015 and 25th June 2015 respectively even though the statutory period of 12 months in Anti Money Laundering Amendment Act, 2014 (Act 874), had lapsed.

Learned counsel also deposed to the fact that, the High Court exceeded it's jurisdiction when it sought to direct or impose directions on how a case should be conducted in another High Court. Learned Counsel finally concluded that the freezing of all the accounts of the Applicants was done in breach of the rules of natural justice.

On the part of the Interested Party, the affidavit in opposition to the instant application was sworn to by one Lucy Abebrese, an Analyst of the Interested Party.

The salient points in this affidavit are captured in paragraphs 11, 12, 14, 15, 16, 17, and 18 in which the deponent deposed to as follows:-

11. "That in response to the afore-mentioned paragraphs, the Interested Party will say that the High Court (Financial Division) rightly dismissed the Applicant's motion filed on 29th June 2016, for an order to set aside the order of the court confirming the freezing of the accounts of the Applicant herein **notwithstanding the fact that the statutory period of twelve (12) months, had elapsed**.

12. That the High Court (Financial Division) took into account the fact that the Applicant in the said suit, has been charged and being tried

by the High Court (Criminal Division 3) (Find attached hereto and marked as Exhibit FIC-3, the charge sheet on which the prosecution of the Applicant is based.)

14. That I have been advised by the Lawyer for the Interested Party, and I verily believe same to be true that **on a proper construction of Section 23A of Act 874, the preservation of the funds in a frozen account to facilitate investigations, includes prosecution, when a prima facia case has been established against the holder of the account**.

15. That the fact that the Applicant herein is standing trial for charges of possessing narcotics drugs without lawful authority, made it prudent for the High Court (Financial Division) to refuse the application filed before it for an order to defreeze the account because the Statutory Period of twelve (12) month, had elapsed.

16. That I have further been advised by Lawyer for the Interested Party herein, and I verily believe same to be true that since the offence of possessing narcotics drugs without lawful authority is a predicate offence, as per the provisions of the Anti-Money Laundering Act 2008, Act 749, as amended by Act 874, it was prudent for the High Court (Financial Division) to refuse the application to defreeze accounts of the Applicant herein so as to preserve the funds, which are the subject matter of the trial.

17. That in response to the deposition in paragraph 7 of the affidavit in support of the instant motion, the interested party will say that there was no breach of the rules of natural justice as the Applicant herein was informed through the banks within forty-eight (48) hours of the freezing directive as required by the provisions of the Anti-Money Laundering Act, 2008, Act 749 as amended by Act 874.

18. That the instant application is misconceived and frivolous, and same ought to be dismissed, since the High Court (Financial Division) acted within its jurisdiction, and that its order refusing the motion to set aside the freezing orders, did not occasion any miscarriage of justice." Emphasis supplied

STATEMENTS OF CASE

We have also perused the statements of case filed by the respective learned counsel in support of their various positions.

BY COUNSEL FOR APPLICANTS

Learned Counsel for the Parties reiterated arguments in support of the grounds urged upon us in this application. Salient among them are the following for the applicants herein.

1. In this respect, learned counsel for the Applicant, Kwame Akuffo argued that at the time the learned High Court Judge refused the application to set aside the freezing orders, more than one year (12 months) had lapsed, and was therefore contrary to section 23 of the

Anti Money Laundering Amendment Act, (Act 874) which provides as follows:-

"An accountable institution shall preserve the funds, other assets and instrumentalities of crime for a period of one year to facilitate investigations."

Based on the above, learned counsel for Applicants argued that the jurisdiction of the High Court is only to freeze the account for periods not more than one year. Thus, having kept the said accounts of the Applicants frozen for more than one year in the opinion of learned counsel amounted to an exercise of jurisdiction which was clearly in excess of the court's jurisdiction.

In support of this contention, learned counsel referred to the following cases:

i. **Republic v Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612 per Georgina Wood JSC as she then was.**
ii. **Republic v Circuit Court, Ex-parte Komely Adam [2012] 1 SCGLR 111 at 121 per Date-Bah JSC.**

See also the unreported ruling of this Court in the case of ***Republic v High Court, (Financial Division) Accra, Ex-parte Xenon Investment Co. Ltd., Financial Intelligence Centre***, Suit No. CM/J5/46/2015 dated 22/3/2016.

2. Learned Counsel further argued in support of ground 2 of this application that, in so far as the 1st Applicant herein was not being prosecuted for an offence under Act 874, already referred to supra, the learned trial Judge exceeded her jurisdiction when she made references to Narcotic Drug (Control, Enforcement and Sanctions) Law 1990 PNDCL 236 and the subsequent prosecution of the 1st Applicant for narcotic related offences by another court of competent jurisdiction.

3. Finally learned counsel for the Applicant argued in respect of ground 3 that, the freezing of all accounts in respect of the Applicants, without affording them an opportunity to specify the accounts which involved the suspicious transactions. Learned Counsel therefore concluded that, without giving them an opportunity to be heard, the Court breached the principles of natural justice, and also a breach of article 296 of the Constitution 1992.

BY COUNSEL FOR INTERESTED PARTY

Learned Counsel for the Interested Party, Arthur Chambers, argued in response to the Applicants submissions as follows:-

1. In substance, Learned Counsel argued that, even though the 1st Applicant is not facing an offence under the Money Laundering Amendment Act, Act 874, the offence which he is facing under the Narcotics Law, PNDCL 236 is a predicate offence of money laundering. Learned Counsel sought to downplay the effect of the

decision of this court in the Ex-parte Xenon Investment Co. Limited case and distinguished it as such. Learned counsel strenuously argued that the High Court did not exceed it's jurisdiction merely by refusing to defreeze the accounts of the Applicants as prayed for. He also argued that there was no error of law apparent on the face of the record. In support of this argument, learned counsel for the Interested Party referred to the following cases:-

i. **Republic v Fast Track High Court, Accra Ex-parte Electoral Commission [2005-2006] SCGLR per Prof. Ocran JSC**

ii. **Republic v District Magistrate Accra, Ex-parte Adio [1972] 2 GLR 125**

2. In respect of ground 2, learned Counsel argued that, since Section 23A of Act 874 provides inter alia that the funds, assets and instrumentalities of crime are to be preserved for 12 months to facilitate investigations, the funds in the accounts of the Applicants were the subject of investigation which has established a prima facie case in narcotics, leading to prosecution therein of the 1st Applicant. In the opinion of Counsel, the prosecution of the 1st Applicant for narcotic related offences entitled the High Court to extend the freezing orders beyond the statutory 12 months period in section 23 of Act 874.

3. By relying on the Supreme Court case of ***Republic v High Court (Financial Division) Accra, Ex-parte James Awuni, The Chief Executive Officer, Financial Intelligence Centre [2015] 84 G.M.J at 72***, Counsel argued that it is the law which stipulates that an account could be frozen before the holder of the account is informed. Learned counsel for the Interested Party then argued that since the Supreme Court in the case referred to supra had stated that the process of notification to the Applicants i.e. a person whose accounts have been frozen is a purely administrative duty, there was thus no breach of the rules of natural justice. In conclusion, learned counsel for the Interested Party urged the court to dismiss the application as it is misconceived.

ISSUES

From the submissions of both Counsel in this application, the issue which calls for determination can be subsumed under only one issue as follows:-

1. Whether the Application as it stands entitles the Applicants to have the Ruling of 3rd August 2016 quashed by certiorari upon the grounds urged on this Court by the Applicants.

Article 132 of the Constitution 1992, which the Applicants have invoked states as follows:-

> *"The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that*

supervisory jurisdiction, ***issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power****".*

The sum total of all the arguments of both learned counsel is to the effect that, section 23A of Act 849 only allows and or permits the freezing of accounts for one year. However, whilst the Applicants reiterate this fact and urge upon us, that the non observance and compliance with the said statutory provisions by the learned trial Judge exceeded her jurisdiction, learned counsel for the Interested Party is of the view that section 23A of Act 849 permits extension of freezing orders beyond the statutory one year period provided prosecution has commenced. Infact, learned counsel equated prosecution as an aspect of investigations.

Black's Law Dictionary, 9th Ed, by Bryan A. Garner, at page 902 thereof defines *"investigate"* in the following terms:-

"To inquire into (a matter) systematically; to make (a suspect) the subject of a criminal inquiry, the Police investigated the suspects involvement in the murder. "

On the other hand, prosecute is also defined on page 1341 by the same learned authors of Black's Law Dictionary as follows:-

1. **"To commence and carry out a legal action, because the Plaintiff failed to prosecute it's contractual clause, the court dismissed the suit."**

2. "To institute and pursue a criminal action against (a person), the notorious felon has been prosecuted."

Prosecution is also defined on the same page ***as "a criminal proceeding in which an accused person is tried."***

From the above definitions, it is quite apparent that investigate and prosecute are entirely different things or scenarios and one cannot be substituted for the other. Whilst it must be noted that, an enquiry into any criminal conduct, which is what investigation basically entails must necessarily precede prosecution which is the institution of criminal action against a suspect, the fact remains that not all investigations result or lead into prosecutions.

The crux of the matter therefore is what did the legislature mean by the use of the word investigations in section 23A of Act 874?

The learning we have acquired from the learned authors of Black's Law Dictionary and the meaning of section 23A of Act 874 is that, *"An accountable institution is mandatorily required to preserve funds and other assets and instrumentalities of crime not exceeding a period of one year to aid in the inquiry into the matters which necessitated the Accountable institution to preserve the funds, assets or other instrumentalities of crime."*

We cannot help but adopt the words of our respected brother Anin-Yeboah JSC in the *Ex-parte Xenon Investments Co. Limited* case, referred to supra, when he stated thus:-

"One is compelled to assume that in this era of information technology and international co-operation among nations, one whole year should be enough for the Financial Intelligence Centre to unearth any wrongdoing in the transaction under consideration."

The Legislature no doubt must be assumed to be aware of the constitutional provisions protecting property rights in their imposition of the one year period in the Law requiring them to investigate the allegations. It is for the above reasons that we are of the considered view that, for a whole state apparatus, like the Interested Party herein, with all the resources, facilities, and other institutions of state responsible for intelligence available to them, and taking into account the international cooperation that they receive, one year is more than enough to enable them complete investigations into any offence under Act 874.

WHETHER THIS COURT HAS JURISDICTION TO GRANT THE RELIEFS CLAIMED

This court decided unanimously on the scope of the jurisdiction of the Supreme Court in the exercise of its supervisory jurisdiction in the case of **Republic v High Court, Accra, Ex parte CHRAJ (Addo - Interested Party)** [2003-2004] SCGLR 312 per Dr. Date-Bah JSC as follows:-

"The restatement of the law may be summarised as follows:

Where the High Court (or that matter the Court of Appeal) makes a non-jurisdictional error of law which is not patent on the face of the

record (within the meaning already discussed, the avenue for redress open to an aggrieved party is an appeal, not judicial review. In this regard, an error of law made by the High Court or the Court of Appeal is not to be regarded as taking the Judge outside the court's jurisdiction, ***unless the court has acted ultra vires the Constitution or an express statutory restriction validly imposed on it."*** Emphasis

As was stated by the Supreme Court in the Ex- Parte CHRAJ case supra, the said decision was meant to be a re-statement of the scope of the Supreme Courts supervisory jurisdiction as is contained in article 132 of the Constitution 1992.

It is therefore clear that, once the learned trial Judge acted contrary to the terms of the words of Section 23A of Act 874 by refusing to defreeze the accounts of the Applicants after the lapse of one year, it means that the trial court has committed an error of law which is patent on the record and for which Judicial review in the nature of certiorari can lie to quash the said decision in terms of the Supreme Court decision in Ex-parte CHRAJ supra.

The definition of what an Accountable Institution is, can be found in the First Schedule of Act 874 and this includes all Banks such as those institutions that were ordered to freeze the accounts of the Applicants already referred to supra.

The memorandum to Act 874 states as follows:-

"An Act to amend the Anti-Money Laundering Act, 2008 (Act 749) to extend the application of the Anti-Money Laundering Act, 2008 (Act 749), ***to expand the scope of actions*** *that can be taken under the Act and to provide for related matters."* Emphasis

We have perused in it's entirety the provisions of Act 874 and we are convinced that it is a very comprehensive law with very wide and enormous powers at the disposal of the Chief Executive of the Interested Party and his office.

For example, if one considers in detail the provisions of sections 5 and 6 thereof, which deals with the objects of the centre as well as functions thereof, the fact is clear that these wide and enormous powers have to be exercised strictly within the restrictions imposed by the law.

What needs to be done is to ensure that, affairs at the Interested Party's office are handled in such a way that, they do not become veritable instruments of harassment and oppression of citizens.

It is in this respect that we feel that the supervisory jurisdiction of this court should not be withheld from the Applicants herein.

As a matter of fact, when one further considers article 11 of the Constitution 1992, then it is fair to conclude that this Anti Money Laundering Amendment Law, Act 874 is subject and subordinate to the Constitution. As a result, this Law cannot permit the deprivation of properties such as monies and other assets for indefinite periods of time without recourse to the constitutional guarantee's of preservation of

property rights in chapter five of the Constitution 1992 especially articles 18 (1) and (2) of the Constitution 1992. It is therefore clear that, funds, assets etc. cannot continue to be frozen under section 23A of Act 874 under any circumstances whatsoever beyond the one year period. This is even so if investigations have not been completed. Similarly, it should be noted that, prosecution is different from investigations and the two cannot be used inter changeably.

We are of the considered opinion that, in order to ensure that institutions like the Interested Party operate strictly within the confines of the law under which they were created, the Courts should not permit such institutions to violently breach the provisions of the law by unlawfully extending the period allowed to freeze assets under Section 23A of Act 874.

NEED FOR LAW REFORM

We however feel that, there might be genuine instances where the Interested Party and other investigative bodies may not have completed their work during the one year period that the law permits in section 23A of Act 874. It is our considered view that in circumstances like this, there is the need for urgent reforms in the law. This will allow for the Investigative bodies to apply to the Court giving very good and solid reasons why the time should be extended for the freezing of accounts. In instances of this nature, clear example must be given of the efforts made during the one year period and the need for extension of time. The Attorney-General is

hereby urged as a matter of urgency to make proposals for legislative reforms in this regard

APPLICATION OF EX-PARTE XENON INVESTMENT CASE

We are also of the strong view that there was no basis whatsoever for the learned trial Judge to have distinguished the case of Ex-parte Xenon Investment Co. Limited, supra from the case that was before her.

In the Ex-parte Xenon Investment Limited case, supra, Anin-Yeboah JSC, speaking on behalf of the Court put the matters in issue beyond per adventure, and we are therefore baffled that despite the clear and unambiguous decision of the court, the trial Judge decided not to follow it.

In order to show the fallacy and the errors of law apparent in the decision of the trial High Court Judge dated 3rd August 2016, we deem it expedient to quote in extenso, portions of the explanatory judgment of our respected brother Anin-Yeboah JSC, which gave sufficient clarity and guidance to the trial court. He stated thus:-

> *"The applicant company does not complain in this application before us, that the initial procedure leading to the freezing of the accounts were not in order. However, it has raised a legal issue that under the Anti-money Laundering Amendment Act, 2014 (Act 874) the interested party cannot freeze the accounts of the company for more than one year and that the statute under reference does not even*

provide for extension of the one year and therefore the court had no jurisdiction to keep the freezing order beyond the one year."

After succinctly putting the issues raised in the case before the court, the Supreme Court decisively dealt with and resolved the matter convincingly as follows:

"The question is this: is the High Court vested with jurisdiction to freeze the account for over one year? We think that the statute does not vest that jurisdiction in the High Court to do so. It has jurisdiction to freeze and defreeze an account but the statute does not vest it with authority to keep the accounts frozen for more than one year.

Learned counsel for the applicant has referred us to the case of the ***Republic v District Magistrate, Accra, Ex Parte Adio [1972] 2 GLR 125*** *to argue that even though the High Court had jurisdiction to entertain the matter the order made to keep the accounts frozen beyond one year destroyed its jurisdiction. In the said case Archer JA (as he then was) at page 132 said:-*

"It is of vital importance to appreciate that when the term "excess of jurisdiction" is used, it may mean that from the inception of the case, the court has no jurisdiction whatsoever because the nature of the case or the value involved is beyond its jurisdiction. But it may also mean that although the Court has jurisdiction to hear the case, the orders which the court can pronounce are restricted by statute. If an

order is therefore beyond the powers of the court, it is perfectly correct to say that it has exceeded its jurisdiction." Emphasis ours

After referring to the dictum of Archer JA, as he then was in the Ex-parte Adio case, Anin-Yeboah JSC continued in the Ex-parte Xenon Investment Case as follows:-

"We think this proposition of law clearly settles the matter. The High Court undoubtedly has jurisdiction to hear the matter but it is clear beyond doubt that it had no jurisdiction to order the continuous freezing of the accounts beyond one year."

The exposition of the law by the Supreme Court in the ex-parte Xenon Investment case clearly settles the issue beyond doubt. Whilst the learned High Court Judge had jurisdiction initially to determine the application that was brought before it, it subsequently fell into error by the orders it made. For example, it ought to have dawned on the learned trial Judge that prosecutions under the Narcotic Drug (Control, Enforcement and Sanctions) Law, 1990 PNDCL 236 are separate and distinct from those under Act 874. Similarly, PNDCL 236 has it's own mechanisms to deal with and prevent drug dealers benefiting from the proceeds of crime. The intermeddling of the two statutes by the trial court was wrong.

In exercise of our jurisdiction in article 132 already referred to supra, we wish to reiterate the fact that it is clearly wrong for courts lower to the Supreme Court to refuse to follow the decisions of this court in flagrant

violation and or breach of article 129 (3) of the Constitution which states that:-

> *"The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so,* ***and all other courts shall be bound to follow the decisions of the Supreme Court on question of law."*** *Emphasis*

We therefore direct that all courts shall henceforth endeavour to follow and abide with the above constitutional injunction and follow the decisions of the apex court on points of law as directed.

LAPSED ORDERS UNDER SECTION 23A OF ACT 874

The learned trial Judge should have directed herself to the fact that, after the expiry of one year, although the order freezing the accounts had lapsed without an express order from the court, the Accountable Institutions i.e. the Banks will not have had any authority to release the funds to the Applicants without an express order from the courts. Therefore, the illegality and the injustice in holding onto the accounts would continue to be perpetuated this time without any court order. Trial courts should advert their minds to the illegality involved in the said occurrence whenever issues on the application of Section 23A of Act 874 comes up for interpretation, especially after the expiry of the one year period mandated by and under Act 874.

CAUTION TO INSTITUTIONS OF STATE LIKE THE INTERESTED PARTIES

There is a small matter we could have avoided comment on but for the fact that it may be perpetuated by trial courts which deal with issues involving cases under Act 874 and Economic and Organised Crime Act, 2010 (Act 804).

We appreciate the enormous responsibilities that such investigative agencies face in their bid to curb money laundering and other economic crimes. However, we are of the considered view that, when an application is made to a court for the freezing of accounts, the monies in the accounts not tainted with crime or with the suspicious transactions should be separated such that the affected person can at least withdraw such funds that are not the proceeds of crime or suspicious transactions. See the case of ***Republic v High Court (Financial Division) Accra, Ex-parte James Awuni, The Chief Executive Officer, Financial Intelligence Centre***, supra where the above issue was discussed by our respected brother Benin JSC which we endorse.

In this regard, we refer once again to the dictum of Anin-Yeboah JSC in the ex-parte Xenon Investment case referred to supra when again speaking on behalf of the court he said thus:

> *"As applicant was denied the opportunity to be heard as regards the money not forming part of the alleged money laundering, but nevertheless has the entire accounts frozen, we hold that the court*

denied the applicant a fundamental requirement of the common law, that is the audi alteram rule."

We also wish to finally caution the Interested Party herein to be mindful of the constitutional provisions in Chapter 5 of the Constitution especially Articles 18 and 23 in the discharge of their mandate. This is to ensure that we do not create a monster out of institutions of state created to help curb crime and thereby lose our constitutional fundamental human rights to freedom enshrined in the Constitution. The courts must be wide awake to protect the rights of the citizens.

CONCLUSION

In sum, the Applicants succeed in terms of the application and we accordingly invoke our supervisory jurisdiction pursuant to article 132 of the Constitution. Consequently, the decision and orders of the High Court, Financial Division 2, Accra presided over by Afia Serwaa Asare-Botwe J (Mrs) dated 3rd August, 2016 in suit No. FTRM/87/15 is accordingly ordered to be brought up and same is accordingly brought up and quashed by certiorari in terms of the decisions of this Court.

(SGD) V. J. M. DOTSE
JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE
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