IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
DORDZIE (MRS.) JSC
AMEGATCHER JSC
PROF. KOTEY JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
HONYENUGA JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

CIVIL MOTION NO. J7/12/2022

5TH APRIL, 2022

MICHAEL ANKOMAH-NIMFAH .... PLAINTIFF/RESPONDENT

VRS

1. JAMES GYAKYE QUAYSON .... 1ST DEFENDANT/APPLICANT
2. THE ELECTORAL COMMISSION .... 2ND DEFENDANT/RESPONDENT
3. THE ATTORNEY-GENERAL .... 3RD DEFENDANT/RESPONDENT

RULING

TORKORNOO (MRS.) JSC:-

The 1st defendant in this action is the applicant herein. He is seeking a review of orders made by this court on 8th March 2022.The present application invokes the jurisdiction of the court created by Article 133 (1) of the **1992 Constitution** and Rule 54 **of the Supreme Court Rules 1996, CI 16.**

Article 133 provides in **Article 133 (1)**

The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court.

To this end, **Rule 54 of the Supreme Court Rules 1996, CI 16** sets the following condition inter alia:

54. The court may review any decision made or given by it on any of the following grounds –

a. exceptional circumstances which have resulted in miscarriage of justice;

Background Facts

The plaintiff and 1st respondent to this application filed a Writ numbered J7/11/2020 invoking the original jurisdiction of this court on 24th January 2022.He sought the following reliefs against the defendants:

1. *A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana at the time of filing his nomination form between 5th -9th October 2020 to contest the 2020 Parliamentary Elections for the Assin North Constituency, the 1st Defendant was not qualified as a member of Parliament.*

2. *A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the decision of the 2nd Defendant to permit the 1st Defendant to contest Parliamentary Elections in the Assin North Constituency when the 1st Defendant owed allegiance to a country other than Ghana is inconsistent with and violates Article 94(2)(a) of the Constitution of the Republic of Ghana 1992.*

3. *A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana, the election of the 1st Defendant as Member of Parliament for the Assin North Constituency was unconstitutional.*

4. *A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the swearing in of 1st Defendant as Member of Parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.*

5. *Any further Orders and/or Directions as the Court may deem fit to give effect or enable effect to be given to the Orders of the Court*.

The plaintiff also filed an application for interlocutory injunction to restrain the applicant from '*holding himself out as Member of Parliament for the Assin North Constituency, presenting himself, and/or attending before Parliament to conduct the business of Member of Parliament pending the determination of the suit*'

The plaintiff was unable to serve the writ and application on the applicant and therefore sought and obtained an order for substituted service on 22nd February 2022.

This order for substituted service was executed in three different ways on 25th March 2022 and an affidavit of posting was filed in this court by the bailiff who conducted the service. In that affidavit, he made oath and stated inter alia:

1. *That on the 24th February 2022, I was entrusted with an order for substituted service of plaintiff's writ invoking the original jurisdiction of the supreme court, statement of case and M/N for the grant of an order of interlocutory injunction and affidavit in support of statement of case and hearing notice*
2. *That on the 25th February 2022 I duly posted up The Said Process as the following*

a. On the fence wall of James Gyakye Quayson of H/N SD/16 SDA in Assin Breku
b. On the notice board of the High Court of Justice, Assin Fosu
c. On the Notice Board of the Supreme Court building, Accra

With the service of the processes on the notice boards and the house, was a hearing notice for parties to appear before the court on 8th March 2022

Proceedings on 8th March 2022

On 8th March 2022, when the case was called, lead counsel for applicant herein complained to this court there had been a publication in the Daily Graphic of 26th February 2022 in which only this court's order for substituted service and a hearing notice to the parties to appear before the court were published. The hearing notice advertised the case as fixed for hearing on Tuesday 5th March 2022, when 5th March 2022 was a Saturday and not a Tuesday.

Counsel for applicant went on to present to this court that Mr Teriwajah, substantive counsel for applicant had written to this court to obtain records on the order for substituted service that led to the publication in the Daily Graphic with the obviously defective date of hearing stated as 5th March 2022, on the accompanying hearing notice.

He went on to say that subsequent to the first publication on 26th February 2022, the Daily Graphic again published on 1st March 2022 another Hearing Notice and the order for substituted service in which the date the parties were to appear before the court was stated as Tuesday 8th March 2022.

According to counsel for applicant, these publications on 26th February 2022 and 1st March 2022, when compared with the court's order for substituted service showed that the applicant had not been properly served with the processes in the suit.

Although the records of this court indicate that in his submissions, counsel for applicant intimated that the first Daily Graphic publication was on 26th February 2022, the supporting affidavit to the application presents the date of first publication as 25th February 2022. In a supplementary statement of case adopted by this court on 29th March 2022, counsel for applicant now presented that the Daily Graphic publication was done on 28th February2022. Our checks indicate the publication to have been on 26thFebruary 2022.

In responding to this submission that the applicant had not been properly served with the processes in this suit, counsel for plaintiff submitted that the order for substituted service given by this court on 22nd February 2022 had directed that copies of the processes were to be served in four places. Thus if all the processes had been published in three out of the four places designated by the court, and there was a mistake in the publication of the date on the hearing notice in the Daily Graphic, the other three modes of service should be deemed as service of the processes filed on the applicant.

Following these submissions, the Registrar of the court confirmed that after the posting of notices on the house of the applicant, and the notice boards of the High court in Assin Fosu and the Supreme Court, he received a letter from counsel for applicant on 28th February 2022.

Counsel for applicant stated in his letter of 28th February 2022 that:

'*Following the execution of an order for substituted service against the 1st defendant in the instant case, I have been appointed to act for him in this regard.*

Kindly furnish me with certified true copies of the motion for substituted service, the affidavit in support of same and the order for substituted service thereof.

Additionally, I hereby request for the court notes pertaining to the sitting of this court dated 22nd February 2022 when the said order for substituted service was made in respect of this case..'

It is the confirmation of appointment in this letter of 28th February 2022 that led the Registrar to additionally serve a hearing notice on counsel for applicant for the hearing of 8th March 2022. The Registrar also confirmed that on 1st March 2022, the Daily Graphic had corrected the originally defective date for hearing that was published as 5th March 2022.

When called on to address the court, the Attorney General urged that Mr Teriwajah's letter simply confirmed the fact that the applicant had been served as ordered by the court, and therefore, there was no controversy with the substituted service ordered by this court.

Ruling and orders

This court then ruled that '*the essence of substituted service is to bring to the attention of the party to be served, the pendency of the suit against him*.' It was the considered view of the court that Mr Teriwajah's letter of 28th February 2022 speaks for itself on the point that the applicant has been served with all processes in the suit. The court therefore dismissed the objections of counsel for applicant against the substituted service undertaken, and ordered the applicant to file all responses to the documents served in this case on or by the 16th March 2022, '*for the hearing of the interlocutory injunction*'.

It is this ruling that applicant is asking this court to review on the following grounds:

1. That the court fundamentally erred in law when it disregarded the terms of its own orders for substituted service, thereby occasioning a grave injustice to the applicant
2. The Court acted outside its jurisdiction and occasioned a miscarriage of justice to the applicant when it adjourned the case for hearing to 16th March 2022 in breach of the Supreme Court Rules, 1996, CI 16
3. The court fundamentally erred in law and occasioned miscarriage of justice to applicant by denying him the opportunity to file a statement of case within the time limits provided for under the rules of court
4. The order for a hearing on 16th March 2022 was arbitrary, unreasonable and not compliant with due process of law under Article 296 and the court lacked the jurisdiction to make such an order.

On 29th March 2022, this court admitted a supplement to applicant's statement of case in this application. The submissions therein accorded largely with those that had already been made to this court. Counsel for applicant added a new point in this supplement to his case. He urged that, included in the order that this court made on 22nd February 2022, was the order for all the processes filed by the plaintiff to be published. As such, the ruling of this court on 8th March 2022 accepting as sufficient service, the manner in which the plaintiff's processes had been served constituted a veiled attempt to vary its earlier order. According to counsel for applicant, '*it would be a recipe for chaos in the judicial system if when the attention of a court is drawn to non-compliance with its previous order, the court can now say that it did not expect the terms of the order it had made to be complied with*'.

Ground 1 and Ground 4 will be considered together.

Counsel for applicant has urged in his statement of case that despite the failure of the plaintiff to publish all the various processes in the Daily Graphic as ordered by the court, the court made a fundamental error which undermines the integrity of administration of justice when it ruled that service through the other means ordered by the court constituted sufficient service.

According to counsel for applicant, since plaintiff had not fully obeyed the court's orders and not sought variation of the court's orders on how substituted service was to be effected, the court did not have jurisdiction to vary how service was to be considered as effected.

Citing **In re Ntrakwa (Decd) Bogoso Gold v Ntrakwa & Another [2007-2008] SCGLR 389,** he quoted Asiamah JSC at **page 392**, that the obligatory nature of court orders required an unquestioning obedience thereto. He urged that the court erred in varying its order of substituted service by accepting the publication of the processes in the Daily Graphic as compliant of its orders of 22nd February 2022.

Under ground 4, counsel for applicant also urged that Article 296 of the Constitution requires that the exercise of discretionary power shall not be arbitrary, capricious or biased and shall be in accordance with due process of law. He cited **Kyenkyenhene v Adu 2003 – 2004 SCGLR 142** in which this court set aside a decision of the High Court because the court had misapprehended the evidence before it and failed to give critical consideration to relevant issues. This court found the high court's decision in the **Kyenkyenhene** case (cited supra) as lacking basis in clear principles.

Do these submissions merit the grant of an order reviewing this court's decision that the applicant has been served with the processes filed in this suit by the plaintiff?

Consideration

We find the submissions on these two grounds of this application unconvincing in any material particular on the necessary conditions that must underpin a review of this court's decisions. We do not see that the submissions urge any exceptional circumstances arising from the court's finding that service of the plaintiff's processes had been sufficiently carried out pursuant to the order for substituted service made on 22nd February 2022. Neither do the submissions urge any convincing exceptional circumstances arising from the court's hearing notice to parties to appear before it on 8th March 2022 that was served with the plaintiff's processes in the substituted service effected on 25th February 2022 by the bailiff. This application does not also any set out any miscarriage of justice that applicant is alleged to have suffered from the court's holding that he was sufficiently served with copies of the plaintiff's processes posted on his house, the high court and supreme court, and with notice of the court's order of substituted service. And the application does not convince of any miscarriage of justice from applicant being given notice to appear before this court on 8th February 2022, as correctly published in the Daily Graphic, after the first misstatement of the hearing date.

As has been established from the decisions of this court on the invocation of its' review jurisdiction in cases such **as Afranie 11 v Quarcoo 1992 2 GLR 561, the** exceptional circumstances that can invite a review of this court's decisions must reveal a fundamental or basic error that has been committed by the court in arriving at its decision and resulting in miscarriage of justice. The fundamental or basic error includes situations where the court gave the decision per curiam for failure to consider a statute or binding case law or a fundamental principle of practice and procedure relevant to the decision.

In **Arthur (No 2) v Arthur (No 2) 2013 – 2014 1 SCGLR 569**, this court reiterated that in an application for review of the court's decision on the basis of Rule 54(a), it is imperative that there exist exceptional circumstances, and the exceptional circumstances include fundamental or basic error and not just error of law, but error that is evident or patent on the face of the record of the decision

Apart from the necessity of such exceptional circumstances, a supplicant for this court to review its decision must also show that there has been miscarriage of justice occasioned by the decision arrived at erroneously, or that the demands of justice make the review necessary to avoid irremediable harm.

Without such showing, an application for review of a decision of this court does not meet with the conditions set by Rule 54(a) of CI 16, and accords with the view of this court in **Mechanical Lloyd Assembly Plant Ltd v. Nartey 1987-88 2 GLR 598**that the review jurisdiction is not intended as a try-on by a party after losing on an earlier proceeding before this court.

It is instructive that counsel for applicant is not urging that in exercising discretion to accept the substituted service implemented by the registry of the court as sufficiently compliant of the order for substituted service, and to assume jurisdiction over this case on 8th March 2022 and 16th March 2022, this court's decisions violated the Constitution, statute, or the rules of natural justice. Or that the applicant has suffered any deficiency in how he received notice of the processes filed in this court by the plaintiff by 25th February 2022, which deficiency had affected his entitlement to or actual notice of the processes, or affected his ability to defend himself from the time the processes came to his notice through the postings ordered by the court.

His disputations are premised on allegations of discrepancies between the order of substituted service and the manner in which it was carried out, and the need for this court to insist that its orders are obeyed strictly. He is also urging that the hearing notice wrongfully set down the hearing of this suit, which hearing date was subsequently corrected. The hearing notice was also wrongful because the rules of court required that a defendant to a writ invoking the original jurisdiction of the court be given time to file their statement of case before the case is set down for hearing.

Alleged discrepancy between Order of substituted service and the manner of carrying out the Order

Article 129 (4) of the 1992 Constitution gives this court jurisdiction to adopt any of the procedures of the courts in the execution of its various jurisdictions. In the same vein, **Rule 5 of CI 16** allows the adoption of the practice and procedures that the justice of the causes before the court allow. The two provisions read:

Article 129 (4)

For the purposes of hearing and determining a matter within its jurisdiction and the *amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law*.

Rule 5 of CI 16 (Matters not expressly provided for)

Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any cause or matter before the court, the court shall prescribe such practice and procedure as in the opinion of the court the justice of the cause or matter may require.

As a mode of service, substituted service is regulated under **Order 7 of The High Court (Civil Procedure) Rules 2004 CI 47**. Substituted service is allowed if a document that is required to be served personally on any person cannot be effected because of failure in attempts to serve them; or because it is impracticable to serve the court process personally.

I think what is extremely incisive in resolution of the matter before us can be found under Order 7 rule 6 (3) because it is the rule that addresses how to determine if substituted service has been effected. It reads:

(3) *Substituted service of a document in relation to which an order is made under this rule,* ***is effected by taking such steps as the Court <u>may direct to bring the document to the notice of the person </u>to be served*** (emphasis mine)

My lords, the import of this rule is clear on the face of it. The primary objective of the steps to be taken to effect substituted service is what will bring the documents in issue to the notice of the person to be served.

And clearly this is the reason why the court is given a broad and unclosed scope for directing substituted service in Order 7 rule 6 (4). Any of the modes of service outlined in Order 7 rule 6 (4), '*without prejudice to the generality of sub rule (3)*', may be utilized by the court to bring the processes to the notice of the person to be served. This includes in **sub rule 6 (4) (d) of Order 7**, '*by notice put up at the* *court or some other public space in the Region in which the cause or matter is commenced or at the usual or last known place of residence or business of the person to be served*;' or in **sub rule 6 (4) (d)** '*by advertisement in the media within the jurisdiction of the Court'*

In the case before us, the records will show that this court chose a combination of the menu in sub rule 6 to ensure that sets of filed processes were duly served on the applicant. The sets of processes were the writ and its accompanying statement of case, the application for interlocutory injunction and its accompanying affidavit and statement of case. The order of substituted service directed that service was to be effected in the following manner:

- *i. By posting copies of Plaintiff's writ to invoke the original jurisdiction of the Supreme Court, Statement of Case and Motion on Notice for the Grant of an Order of Interlocutory Injunction, Affidavits in Support and Statements of Case on the fence wall and/or gate of H/No SD/16 SDA, in Assin Bereku*
- *ii. By posting copies thereof on the Notice Board of the High Court of Justice, Assin Fosu*
- *iii. By posting copies thereof on the Notice board of the Supreme Court Building, Accra*
- *iv. By one (time) publication in the Daily Graphic after which the service becomes valid after seven (7) days*

The court also ordered that the applicant would be deemed to have been served with the processes after seven days of the postings and publications. A simple glance at this order reveals that there were to be three postings and one publication. The three postings were to be done with 'copies of the writ etc.', and the words 'copies thereof' referred to copies of the processes filed by the plaintiff described in number 1 of the order. What is noteworthy is that the last line item, being the direction for publication, contained no reference to 'copies'.

Without the reference to 'copies' of the Plaintiff's processes, as is found with regard to the postings from number 1 to 3, we think that it would be an inappropriate evaluation indeed, for this court to have held that the plaintiff or the Registrar were disobedient of the court order if they failed to advertise the writ, its statement of case, application for injunction and all its supporting documents in the Daily Graphic publication.

This is why the exercise of discretion in finding the posting of copies in the three other modes of service as sufficient service of those processes was an appropriate use of discretion, premised on the evidence before the court, and proper principles of evaluation. The decision of 8th March 2022 to accept that the applicant had been duly served though all the different processes were not advertised in extensor in the Daily Graphic cannot be described as arbitrary, capricious, unreasonable and violating of Article 296 as applicant claims.

And this is especially so when the affidavit of service on record shows that by 25th February 2022, the order of the court had been complied with by the posting of copies of all of filed processes on the three designated locations under numbers one to three of the order for substituted service.

Added to this, on 28th February 2022, counsel for applicant had written to inform the court through the Registrar that not only had the applicant been duly served by substitution, but he had instructed counsel to represent him. With the service of all copies posted three times, and with the admission by counsel for applicant that he had been instructed on account of the execution of the court's order of substituted service, we think that it could only have been a perverse use of discretion to find that the court's orders had not been complied because the Daily Graphic publication had not carried the full text of the Writ of Summons, Statement of Case, Application for Interlocutory Injunction with supporting exhibits

We note that counsel for applicant has supplied court notes from the sitting of this court on 22nd February 2022 in which the court used the words '*In addition, the Plaintiff is directed by the Court to publish the said processes mentioned in the motion paper by publication in the Daily Graphic after which they become valid after for seven days*'

He is urging that with this direction, the ruling of 8th March 2022 was a veiled attempt by the ordinary bench to vary its own orders in accepting the publication without the full processes mentioned in the motion paper as sufficient service. We must note that the court order published by the Registrar of this court did not contain these words from the court notes. For that reason, we are satisfied that the Plaintiff's duty was to comply with the orders of this court as drawn up by the Registrar. And to the extent that the drawn up order exhibited in this application as Exhibit JPT1 did not mandate the publication of the 'processes mentioned in the motion paper', we find the acceptance of the sufficiency of service with the full delivery of every process filed in the postings as an appropriate exercise of discretion. We also find the publication of the notice of the order of substituted service in the Daily Graphic of 26th February 2022 as sufficient to trigger the counting of the seven day validation period for substituted service that was set by this court.

It is imperative to reiterate that the finding that the applicant was duly served is not a variation of the order of substituted service issued by this court, but a recognition of sufficiency of notice to the applicant, and compliance with the order issued under the hand of the Registrar.

We must refer to decisions such as in **Coleman v Shang [1959] GLR 390**where the principle was affirmed that if a person required to be served with any process appeared before a court in answer to that process or filed documents in answer thereto, the presumption is that service of the process has been duly effected upon him.

Submissions on disobedience to the orders of the court

Counsel for applicant's reference to decisions in cases such as **Republic v High Court Accra, Ex parte Afoda {2001 -2002} SCGLR 768,** which direct that obedience of a court order is not to be compromised at any time, cannot be relevant to the duty borne by a party who has to show that the exceptional circumstance of fundamental error of such depth as to make a court order void had occurred in this court's acceptance of the sufficiency of service. This is because **Ex parte Afoda** (cited supra) did not determine that the relevant orders of the courts were rendered invalid by reason of disobedience. The submissions on the need to avoid disobedience of a court's orders bring no help to the resolution of an application for review of a court's orders.

Grounds Two and Three

Non-compliance with Rules 48, 50 and 53 of CI 16

The submissions of counsel for applicant under these grounds essentially complain that this court had no jurisdiction to issue a hearing notice fixing this case for hearing on 8th March 2022, along with the order for substituted service, because service of the processes filed in court by plaintiff could only be deemed to be complete seven days after the publication in the Daily Graphic.

This publication, according to counsel for applicant, was effected on 1st March 2022, because this was the date when the correct hearing date was published in the Daily Graphic. Thereafter, Rules 48, 50 and of CI 16 would allow a defendant 14 days to file his defence, and the parties time to file a Memorandum of issues. Thus, without the full passage of the time allowed for a defence and memorandum of issues, this court did not have jurisdiction to fix a hearing on 8th March 2022, and did not have jurisdiction or to adjourn the hearing to 16th March 2022 when the parties appeared before the court on 8th March 2022.

We find these submissions unfortunate, especially since counsel waxed long on cases that settled that the rules of court were to be complied with, thereby creating the impression that this court had attempted to circumvent the times set for filing processes relating to the Writ invoking the original jurisdiction of the court.

The issuing of hearing notice to parties fixing a date for parties to appear before a court does not constitute a direction to hear the suit without allowing parties their allotted time to file processes served on them, such as should merit the controversy raised in these submissions. Every court has a duty to conduct case management, and it is not for a party to pre-empt the reason why a court would summon parties to appear before it after service of any set of processes. The determination of the business of the day in any pending proceedings is part of the duty and practice of courts, and the jurisdiction to invite parties to appear before a court cannot be contested, even if the suit was not ripe for hearing when the court ordered the parties to appear before it. In any event, to the extent that the processes that were served included an application, the proper inference from the service of hearing notice was that the business of the day would be a hearing of the application, before a hearing of the substantive action.

Indeed, the proceedings of 8^{th} March 2022 which counsel for applicant applied for and obtained before filing this application for review, state clearly that the business fixed for the 16^{th} March 2022 was the hearing of the application for interlocutory injunction that applicant was served with, along with the Writ. This gives the simple explanation for the hearing notice that was served with the application and the Writ, and should have prevented the presentation of these grounds of the application under consideration.

It must also be pointed out that with service of the processes before the court and the court's direction that applicant should be deemed as served after 7 days of the publication, time began to ran for applicant to file his responses to the processes he had been served with. Nothing prevented applicant from complying with the requirements of Rule 48 by filing his statement of case on time. If, as counsel for applicant submits, service of the processes on applicant became valid on 9^{th} March (and not 8^{th} March), it only became his duty to file his statement of case 14 days after this date. That would have been on 25^{th} March 2022, a date now long past.

We note that counsel for applicant is urging in his submissions that the date for service should be computed as 9^{th}March 2022, since the corrected hearing notice was published on 1^{st} March 2022. We cannot agree with him. The order of substituted service clarified that service of the writ and processes filed by plaintiff was to be deemed to have been validated seven days after the one time publication. In his supplementary statement of case, counsel for the applicant urged that the 1^{st} publication was on 28^{th}February 2022, though in his earlier processes filed, he had stated that the publication was on 26^{th} February 2022.

As stated earlier, our own checks from the Registrar inform us that the first publication was on 26^{th} February 2022. The subsequent publication on 1^{st} March 2022 only corrected the obviously defective date published by the Daily Graphic on

26th February 2022. It did not affect the fact of service of the court processes on 25th February 2022, nor the notice of the order published on that date. Service on applicant of the writ and accompanying processes was therefore fully validated seven days after 26th February 2022, and this was on 4th March 2022, and not 8thor 9thMarch 2022. From 4thMarch 2022, time begun to ran for the filing of responses to either party's processes

Effect of non-compliance with Rules of Court

It is also important to point out in an evaluation of submissions on non- compliance with orders of a court and Rules of Court, non-compliance does not automatically lead to invalidity of a process in issue. In **Republic v. High Court, Accra, Ex Parte Allgate Co. Ltd (Amalgamated Bank Ltd- Interested Party) [2007-2008] SCGLR 1041** cited by counsel for applicant, this court, in evaluating the import of Order 81 rule 1 of CI 47 pointed out that the primary purpose and objective of CI 47 as captured in Order 1 rule 1 (2) is to ensure completeness, effectiveness and finality in dispute resolutions. To this end, the language of Order 81 rule 1 of CI 47 is intended to prevent non-compliance with the rules of procedure <u>resulting automatically in the invalidity of proceedings</u> (emphasis mine)

Order 81 of C.I. 47 reads:

Non-Compliance with Rules not to render proceedings void

1(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall (not) be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order in it

Similarly, Rule 63 of CI 19 and Rule 79 of CI 16 read:

Rule 63 of CI 19 – Waiver of non-compliance Rules

When a party to any proceedings before the Court fails to comply with these rules or with the terms of any order or directions given or with any rule of practice or procedure directed or determined by the Court, the failure to comply shall be a bar to the further prosecution or proceedings unless the court considers that the non-compliance should be waived

Rule 79 of CI 16 – Waiver of non-compliance Rules

Where a party to any proceedings before the Court fails to comply with any provision of these Rules or with the terms of any order or directions given or with any rule of practice or procedure directed or determined by the Court, the failure to comply shall be a bar to the further prosecution of proceedings unless the court considers that the non-compliance should be waived

By necessary inference, non-compliance with the Rules of court, whether CI 47, CI 19, or CI 16, may, even if resulting in an irregularity, not lead to invalidity of proceedings unless the court refuses to waive that non-compliance or the court exercises discretion to set aside the process.

The exception to the validity of even non-compliant processes, unless invalidated by a specific court order, is where the point of non-compliance is considered to be so fundamental as to go to want of jurisdiction in the court, or is in breach of the Constitution, or a statute other than the civil procedure rules, or rules of natural justice. Because of this, when non-compliance with a rule of court is alleged, it becomes the duty of the party who has made it an issue, to assure themselves of the nature of non-compliance and the legal effect of that non-compliance as the determinative factors for any case made. If the non- compliance did not stretch to failure to comply with a statutory or constitutional obligations, the non-compliance would at worse lead to an irregularity which is curable. And for the avoidance of doubt in the matters presently before us, the ordinary bench ruled, and we find no reason to review that ruling, that there was sufficient compliance with the court's order of substituted service issued on 22nd February 2022.

In **In re Ntrakwa (Decd); Bogoso Gold v Ntrakwa & Another [2007-2008] SCGLR 389**cited by counsel for applicant as a supporting authority for his submissions, this court determined the effect of failure to ensure the service of a hearing notice prior to a court assuming jurisdiction to consider an issue after it had delivered judgment.

This is a fundamental breach that is distinguishable from the current situation where there has been a glut of service in three different forms, and there exists proof of service through those three forms, as well as a notice in media to ensure that the order of substituted service has been brought to the notice of the relevant party.

Grounds two and three of this application are also dismissed as misconceived. The application is dismissed.

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

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

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

<u>COUNSEL</u>

TSATSU TSIKATA ESQ. WITH HIM JUSTIN PWAVRA TERIWAJAH ESQ. FOR THE 1ST DEFENDANT/APPLICANT.

FRANK DAVIES ESQ. FOR THE PLAINTIFF/RESPONDENT.

EMMANUEL ADDAI ESQ. FOR THE 2ND DEFENDANT/RESPONDENT.

GODFRED YEBOAH DAME (ATTORNEY-GENERAL) FOR THE 3RD DEFENDANT/RESPONDENT, WITH HIM ALFRED TUAH YEBOAH, (DEPUTY ATTORNEY-GENERAL), MISS. DIANA ASONABA DAPAAH, (DEPUTY ATTORNEY-GENERAL) AND DR. SILVIA ADUSU, (CHIEF STATE ATTORNEY).