IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D 2024

CORAM: LOVELACE-JOHNSON (MS.) JSC.
KULENDI JSC.
ACKAH-YENSU (MS.) JSC.
KWOFIE JSC.
DARKO ASARE JSC.

CIVIL APPEAL
NO: J4/03/2024

4TH DECEMBER, 2024

1. **ACHEAMFOUR GROUP LTD**
2. **ACHEAMFOUR & SONS CONST. LTD**
   PLAINTIFFS/
3. **ACHEAMFOUR TOP HOTEL LTD CRESCENT** ....
   RESPONDENTS/
4. **ACHEAMFOUR TRANSPORT & LOGISTICS CO. LTD** **RESPONDENTS**

VRS

1. **COLLINS ANOKYE**
2. **PRINCE MENSAH** .... **DEFENDANTS/**
3. **FRANCIS MENSAH** **APPELLANTS/**
4. **COLLINS MENSAH** **APPELLANTS**
5. **AKWASI AYEH**

All of Kumasi

JUDGMENT

KULENDI JSC.

INTRODUCTION:

1. This is an appeal against the concurring ruling of the Court of Appeal dated 27th July, 2023. By the said ruling, the learned Justices of the Court of Appeal affirmed a High Court ruling granting an interlocutory injunction against the Defendants/Appellants/Appellants (hereinafter called "the Appellants") on 21st July, 2022 pending the final determination of the Suit No.: C12/83/22 filed at the High Court, Kumasi on the 27th of June, 2022.

BACKGROUND:

2. The Plaintiffs/Respondents/Respondents (hereinafter called "the Respondents") instituted the said Suit No.: C12/83/22 against the Appellants for the following reliefs:

   a. *Declaration that the Plaintiffs, which are companies registered and incorporated under the laws of Ghana, are separate and distinct from the persons whose names appear in the records of these companies as shareholders/members.*

   b. *Declaration that the unilateral acts of taking over the affairs of the Plaintiffs/Companies amount to wrongful usurpation of the powers of the Board of Directors.*

   c. *An order of mandatory injunction on the Defendants to forthwith disclose on oath all monies they have taken from or received from the Plaintiff-Companies or any of them since the death of the late Kwabena Baah Acheamfour, a shareholder in the companies listed above.*

   d. *An order calling upon the Defendants to render accounts of all monies they have received and/or taken from the Plaintiff-companies since the death of the late Kwabena Baah Acheamfour.*

   e. *An order of perpetual injunction restraining the Defendants from interfering with the management and superintendence of the affairs of the Plaintiff-companies."*

3. The antecedent contentions upon which the Respondents grounded the above claims can be surmised from the Statement of Claim at pages 1 to 8 of the Record of Appeal. The Appellants caused an appearance to be entered on their behalf on 14th July, 2022 and thereafter proceeded to file a Statement of Defence on 21st July, 2022. The matters of this present appeal however stems from a motion for interlocutory injunction filed by the Respondents on 1st December, 2022 pursuant to Order 25 of CI. 47. In a 39-paragraph affidavit attached to the motion for interlocutory injunction, one Sarah Baah Acheamfour stated that the Respondent companies were set up and managed by herself and her late husband, Kwabena Baah Acheamfour, who died on 3rd September, 2021. Upon the death of her husband, and being the only surviving director, she appointed one Dennis Manu as a co-director of the Respondent companies. Thus, the board of directors which hitherto was constituted by herself and her late husband became constituted by herself and Dennis Manu. It was deposed that during his lifetime, Kwabena Baah Acheamfour, acted as the Chief Executive Officer (CEO) of all the companies. It was further deposed that since the death of her husband, the Appellants have taken over the operations of the hotel at Pataase which is a business operated by the 3rd Respondent company. Further, that the Appellants have taken over the operations of the car washing bay at Pataase which was also a business operated by the 5th Respondent Company.

4. It was also contended that the Appellants had taken over some of the operations of the Respondent companies and chased out some of the cashiers who were working for the companies prior to the demise of the deponent's late husband and that the Appellants had failed to lodge the proceeds of the operations into the designated business accounts. The appellants were alleged to be treating the properties and assets of the Respondent companies as though they were the personal properties of the late Kwabena Baah Acheamfour.

5. Further, it was contended that the 1st to 3rd Appellants, who are nephews of the late Kwabena Baah Acheamfour, together with other family members, have unlawfully hijacked some of the business operations of the Respondents. That due to the hijacking of the businesses of the Respondent companies, the Respondents, the deponent and her eight children whom she had with the late Kwabena Baah Acheamfour are going through extreme financial difficulties because their sources of livelihood which are the income from the operations of the companies are under threat. And it was contended that unless the Court intervenes, the Respondent companies would be put in extreme financial difficulty so that they would not be able to meet their financial obligations to bankers and statutory agencies.

   In addition, it was contended that the Appellants on the other hand who are neither directors nor shareholders have nothing to lose should the businesses of the Respondents be run aground. The deponent attached the various incorporation documents in proof of the limited liability status of the Respondent companies.

6. In an affidavit in opposition filed on 7th December 2022, deposed to by the 1st Appellant on behalf of the other Appellants, it was denied that Sarah Baah Acheamfour has ever been managing director of any of the Respondents.

   It was further alleged *"that the deponent to the affidavit is full of greed and avarice as indicated by the relentless pursuit of money and property when the husband is in the mortuary, yet to be buried and the funeral rites held. She falsely claimed in paragraph 36 that she is in financial hardship when millions of money is at her disposal to the exclusion of the family of the deceased."*

7. For the purposes of this appeal, and to put the case of the Appellants in proper perspective, we shall reproduce verbatim some of the paragraphs deposed to in the affidavit in opposition to the injunction application before the High Court:

“8. That the suit is a preemptive attack by persons who have intermeddled in (Sic) the estate of Kwabena Baah Acheamfour and have refused to account for the enormous sums received on behalf of the estate.

9.That at all times material the 1st to 4th defendants have been in control and direction of the companies fraudulently listed as plaintiffs in the instant suit.

10. That our attempts to call the persons dissipating the monies being part of the estate had been frustrated and the pillage of funds continue by these persons who are now seeking to cover their illegality by the instant action.

11. That to the knowledge of everyone connected with the work of the late Kwabena Baah Acheamfour he treated all his entities as personal properties and the documentation now being used to show an incorporated existence was merely prepared by him for the purpose of bidding and winning contracts.

12. That the deponent had absolutely no hand in the operations of the businesses and assumed control of some of the companies only after the death of Kwabena Baah Acheamfour.

13. That the deponent together with other persons continue the gross usurpation of authority and have changed signatories of bank accounts in a manner particularly adverse to the estate.

14. That the finances of the businesses are being dissipated at an alarming rate much to the inconvenience and hardship of the estate as well as the family of Kwabena Baah Acheamfour. I state that the working capital of Kwabena Baah Acheamfour was money in the form of gold belonging to the family which was given to him and therefore he acknowledged the rights and interest of the family in the business. That explains his

inclusion of us in the business during his lifetime to the complete exclusion of the wife who is now deposing falsely to being the Managing Director.

15. That during the lifetime of the said Kwabena Baah Acheamfour he gave complete control of a significant portion of his business to the Ist - 4th defendants for the benefit of his family and to that extent the false claim that the 1st - 4th defendants had no hand in the businesses of the deceased is completely untrue.

16. That the purported appointment of any person as a director as falsely claimed in paragraphs 12 and 19 of the affidavit in support of the application as well as paragraphs 7 and 9 of the statement of claim are all untrue and fabricated.

17. That the deponent to the affidavit in support of the motion has sought to exercise powers she does not have and has resorted to removing/dismissing all persons who insist on the right procedure being followed so as to avoid stealing of funds forming part of the estate of the deceased.

18. That I will through Counsel refer to the statement of claim and statement of defence filed in the suit to augment our opposition to the application which has absolutely no basis.

19. That I will through Counsel pray the Honourable Court to let the deponent and her collaborators account for the monies received on behalf of the estate of the deceased from the time of his demise till date."

8. From the above, the Appellants contended that the late Kwabena Baah Acheamfour operated all the businesses as personal properties and that the documentations presented to the Courts were only done for the purposes of bidding and winning contracts. It was further contended that the working capital of the late Kwabena Baah

Acheamfour was family gold and that is why he included his family in his business operations. During his lifetime, the late Kwabena Baah Acheamfour, is alleged to have put the Appellants in charge of significant portions of his business for the benefit of his family.

9. A supplementary affidavit was filed by the Respondents on the 13th of December, 2022, in which the material averments contained in the affidavit in opposition were denied.

10. After the hearing of the interlocutory injunction, the learned Justice of the High Court delivered a ruling on 21st November, 2022, and granted the application whilst holding in part as follows:

> *"It has come to the notice of the Court through the pleadings and various submissions filed that the Defendants have arrogated to themselves, the role of Directors of the Plaintiff's Companies and the status quo ante that must be maintained is that once Sarah Baah Acheamfour and Dennis Manu at the moment per the records available to the Court are the Directors of the Plaintiff's Company (sic) by exhibiting documents to that effect, it is their job to manage all the Companies for now until the evidence in the case proves otherwise.*
>
> *…*
>
> *The Defendants, their Agents, Workmen, Assigns, Servants and all those claiming authority through them are hereby restrained from interfering with the Applicants management and superintendence of the affairs of the Plaintiffs Companies. As a further order, the Defendants their Agents, Assigns, Workmen, Executors and any person (s) claiming through them are to deliver or surrender all keys to any Office or facility of the Plaintiff's Company in their possession to the Registrar of the Court by 4.00 p.m. of 22/12/2022 for the collection by the Applicants."*

11. Aggrieved by this ruling, the Appellants mounted an appeal to the Court of Appeal but same was dismissed on 27th July, 2023.

12. In dismissing the appeal, the Court of Appeal also held in part as follows;

> "*We cannot conclude this judgment without restating that the Defendants/Appellants have appealed against the decision of the court below to a court of equity. This Court cannot therefore exercise its equitable jurisdiction in favour of a party whose hands are tainted. Indeed, the Defendants/ Appellants together with their agents, workmen, assigns, servants and all claiming authority through them had no business arrogating to themselves powers and without lawful authority and with brazen impunity, forcibly take over the operations and management of companies duly incorporated under the laws of Ghana. This Court will not allow the laws of the land to be mere paper tigers.*"

13. Again, dissatisfied with the ruling of the Court of Appeal, the Appellants have mounted a further appeal to this court by the filing of a notice of appeal dated 28th July, 2023.

14. We note that after the grant of the orders for injunction and the filing of the appeal to the court below, an application was brought by the Appellants to stay execution of the ruling of the High Court but same was dismissed by the Court of Appeal on 2nd May, 2023. An application was thereafter made for leave to appeal the 2nd May, 2023 ruling but this was also dismissed by the Court below on 1st June, 2023.

GROUNDS:

15. The grounds of appeal, as contained in the notice of appeal filed by the Appellants on 28th July, 2023 are as follows:

a. The judgment of the Honourable Court cannot be supported in law.

b. The judgment of the Honourable Court disregards mandatory procedural prerequisites for the invocation of the jurisdiction of the Court by the Plaintiffs/Respondents/Respondents which has resulted in a substantial miscarriage of justice to the 1st - 4th Defendants/ Appellants/Appellants.

c. The Honourable Court side-stepped the meaning, import and effect of Section 200 (2) of Act 992 thereby granting immunity to the Plaintiffs/Respondents/Respondents for non-compliance with mandatory statutory provision.

d. Appellants/Appellants hand over the operation of the businesses by the 3rd of August, 2023 is contrary to law and infringes the constitutional rights of the 1st - 4th Defendants/Appellants/ Appellants thereby occasioning a substantial miscarriage of justice to them.

e. The order of the Court directed at the Regional Police Command to forcibly remove the 1st - 4th Defendants/Appellants/Appellants from the business is wrongful extra-legal and contrary to law thereby occasioning a substantial miscarriage of justice to the 1st-4th Defendants/Appellants/Appellants.

f. The Court's reliance on the principle in Henderson vs Henderson is wholly misconceived having regard to the fact that the issue of jurisdiction/propriety of the writ was raised timeously by the 1st-4th Defendants/Appellants/Appellants and in any event could be raised at any time.

g. The judgment is against the weight of evidence.

h. The award of GH¢10,000.00 is harsh, excessive and unjustified particularly when the matter is an estate matter dressed in the garb of a corporate issue.

16. In addressing the above grounds of appeal, it is worthy to mention that the factual findings that are the subject matter of the present appeal are concurrent findings. Thus, this Court, being the second appellate court, would be hesitant to interfere with and/or disturb them save where the Appellants are able to clearly demonstrate that the concurrent findings are not supported by the evidence on record; or that the findings were made upon the application of wrong principles of law. [See: **OBENG & OTHERS V ASSEMBLIES OF GOD CHURCH, GHANA [2010] SCGLR 300 AT 409; NTIRI V ESSIEN [2001-2002] SCGLR 459; SARKODIE V F K A CO LTD [2009] SCGLR 79; JASS CO LTD V APPAU [20009] SCGLR 266 AND AWUKU-SAO V GHANA SUPPLY CO LTD [2009] SCGLR 713; GREGORY V TANDOH IV [2010] SCGLR 971; ACHORO V AKANFELLA. [1996-97] SCGLR 209].**

17. The grounds for overturning concurrent decisions were ably enunciated in the case of **Koglex Ltd v. Field (no 2) [2000] SCGLR 175**, where this Court provides the following metrics which must be met before a concurrent decision may be overturned:

i. Where the findings of the trial court are clearly unsupported by evidence on record or the reasons in support of the findings are unsatisfactory.

ii. Where there has been improper application of a principle of evidence or where the trial court has failed to draw an irrestible conclusion from the evidence.

iii. Where the findings are based on wrong propositions of law and, if that proposition is corrected, the finding disappears and

iv. Where the finding is inconsistent with crucial documentary evidence on record.

18. The Appellants therefore bear the onus to demonstrate that the findings of the High Court and the Court of Appeal, were decided on wrong principles of law and that there are pieces of evidence which were wrongly applied against the Appellants.

19. Similarly, it is worthy of note that the grant or refusal of injunction is a matter of discretion. Thus, for an Appellant to succeed in upstaging a decision taken by a Court in the exercise of its judicial discretion, such an appellant must be able to strongly demonstrate that the discretion was exercised on a misapprehension of facts or upon wrongful considerations.

In the case of **Traboulsi v. Patterson Zochonis [1973] 1 GLR 133,** it was held as follows;

> *"The appellate tribunal is not at liberty merely to substitute its own discretion for the discretion exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion, in that no weight, or no sufficient weight has been given to the relevant considerations, such as those urged before us, by the appellant, then the reversal of the order on appeal may be justified."*

See also Crentsil v. Crentsil [1962] 2 GLR 171

20. The Appellants contend, as their first ground of appeal, that the judgment of the Court cannot be supported in law. Under this ground of appeal, the Appellants say that the writ of summons is a nullity for failure of Respondents to disclose Appellants' addresses. The Appellants argue at page 40 of their submissions as follows:

"A cursory glance at the writ of summons which supposedly commenced the suit indicates that the address of all the 1st to 4th Defendants/Appellants/Appellants are not indicated contrary to the mandatory prescription of the law. This failure has definite legal consequences as enunciated in the authorities listed hereunder".

21. We are of the opinion that this legal contention by the Appellants is unfounded. First and foremost, an examination of the Writ of Summons would indicate an address provided for the Appellants as being "*All of KUMASI*". It is one thing to argue that the said address is insufficient in which case orders could be made for rectification, amendment or provision of sufficient address. It is also another thing to argue that there is no address at all.

22. In any case, there is no strict requirement for the provision of Defendant's address in the Writ of Summons. A person who reads order 2 rule 3(2) of CI 47 must do so in conjunction with Order 2 rule 5(5) as well as the established customs and practices of the Court. Indeed, it has long been the practice of our Courts that the failure to disclose the address of Defendant would not nullify a writ of summons. This settled practice at the bar finds footing in the combined reading or Order 2 rule 3(2) and Order 2 rule 5(5) which states as follows;

Order 2 rule 3(2)

"The occupational and residential address of the parties shall be stated on the writ and the address of the plaintiff rather than the address of the lawyer of the plaintiff shall be used in the writ."

Order 2 rule 5(5)

"Where the address of the defendant after diligent search is not known, the Plaintiff shall indicate on the writ that the Plaintiff shall direct service."

23. The authority urged on us to the contrary which is the case of **Mahama vrs. Borlabi 2008-2009 2 GLR 393** at 394 does not support the position urged on this Court by the Appellant. The said authority frowns upon service of writ on nameless and faceless persons and says that such service was improper, incurably bad and invalid.

24. Indeed, in the instant case, not only is an address provided, but the Writ was served on the defendants who entered appearance through Counsel and subsequently filed a Statement of Defence to the action. Thus, even if the Appellants had any legitimate objection to the issuance of the Writ itself or the service of same, the proper step to have been taken was to go by the approach prescribed by the same rules of Court, the violation of which appears to be the trump card of the Appellant in this Court.

25. Having come to the conclusion that the insufficiency of an endorsement of a Defendant's address would not invalidate the Writ, as the same is a mere irregularity curable under Order 81 of C.I. 47, the said ground 1 is without merit and same is accordingly dismissed.

26. Another ground of appeal urged on us is the contention that the Writ was issued in the name of the Respondents contrary to Section 200(2) of the Companies Act, 2019. To this end, the Appellants argue that no resolution was passed by the board of directors of the Company to authorize the present litigation.

27. The said section 200(2) reads as follows;

    "*Proceedings may be instituted by the company on the authority of the board of directors or of a receiver and manager or liquidator of the company, or of an ordinary resolution of the company which has been agreed to by the members of the company entitled to attend and vote at a general meeting or has been passed at a general meeting*."

28. Under this contention, it is urged that no court has jurisdiction to grant immunity to a breach of statute. Thus, once there was no resolution passed for the institution of the

action, the writ itself was null and void as having been issued without due process of law.

29. We note that section 200(2) of Act 992 allows for the institution of action on the authority of the Board of Directors. In the affidavit in support of the injunction application which is deposed by Mrs. Sarah Baah Acheamfour, she indicated that she and her late husband were the only directors and shareholders of the Respondents. She further deposed that upon the demise of her husband, Denis Manu became her co-director. Indeed, she deposed to the said affidavit as the Managing Director and shareholder of the Respondents. We think that in the absence of any evidence to the contrary, the due institution of the action in the name of the Respondents can be presumed from the fact of the knowledge, endorsement and active participation in the proceedings by Mrs. Sarah Baah Acheamfour, the director/shareholder of the companies whose status is affirmed by the many Registrar of Companies forms annexed to the affidavit in support to the injunction application.

30. We also note that the authenticity of the documents which shows the stakes of Mrs. Sarah Baah Acheamfour were not disputed. The facts recited therein could therefore be presumed accurate.

31. Also, in the supplementary affidavit filed on 13th December, 2022, Mrs. Sarah Baah Acheamfour further deposed to the due appointment of Dennis Manu as director to fill the vacancy left by her late husband and attached evidence of the due amendments made to the company profile at the Registrar of Companies' department.

32. The fact of the due authorization of the institution of an action by the Plaintiff companies therefore is safely presumed by the involvement of the shareholder/director in the special circumstances of this case. Again, we note that save a broad objection to the invocation of the Court's jurisdiction without specificity of section 200(2) of the Companies Act, the trial High Court cannot be faulted in its failure to give adequate

consideration to this matter which is now being raised on appeal. Whereas objection to jurisdiction and capacity can be raised at any time, where the resolution of such an objection would inextricably involve a consideration of factual matters which are not part of the record of appeal because a party was not afforded an opportunity to adduce any such factual evidence by the belated nature of an objection, this Court, or any other appellate Court for that matter before whom such an objection is raised for the first time must be cautious in their resolution of such objections so as not to occasion a Respondent to such an objection miscarriage of justice. We have had cause to caution on the timeliness of objections when we reasoned in a judgment of this court dated 4th May, 2022 in Civil Appeal No.: J4/73/2021 entitled: Kofi Amofa Kusi vrs. Afia Amankwah Adarkwah, as follows;

> "*objections must be raised timeously and a litigant who neglects, fails and/or refuses to raise objections timeously risks being held to have forfeited the opportunity or the right to object*"

33. In this particular case, we are of the opinion that the contention of the Appellant founded on section 200(2) is unfounded and ought not be countenanced.

34. The Appellants again argued that the decision to compel them to hand over the operations of the businesses by 3rd of August, 2023 is contrary to law and infringes on their constitutional rights. The Appellants contend that such orders give an unfortunate impression that the Court is interested in the outcome of the suit and thus contravenes the time honoured principle that "a court must not substitute a case *proprio motu,* nor accept a case contrary to what a party has put forward".

35. In respect of the above contention, we note that the case of the Respondents are set out on the face of their motion paper was for

"An ORDER OF INTERLOCUTORY INJUNCTION restraining the Defendants, their agents, workmen, assigns, servants and all those who claim authority through them from in any manner interfering with the management and superintendence of the affairs of the Plaintiffs-Companies and A FURTHER ORDER of MANDATORY INJUNCTION compelling the Defendants, their agents, workmen, assigns, servants and all those who claim authority through them to deliver all keys to the offices and facilities of the Plaintiffs-Companies as per the accompanying affidavit and annexures AND SUCH FURTHER ORDER or ORDERS as to this Honourable Court may deem meet".

36. We are of the opinion that the said order for the handing over of the business operations being an interlocutory order that is operational pending the final resolution of the case is one within the discretionary purview of the Court in the circumstances of this case. This is especially the case when the Appellants do not dispute that they are in operation of some of the businesses of the Plaintiffs but contends specifically in their paragraphs 12, 13, 14, and 15 of their affidavit in opposition that their inclusion in the business and control of some of the operations were done by the deceased Kwabena Baah Acheamfour during his lifetime.

37. Clearly, where as a matter of fact, where a Court comes to the opinion that the business operations which are the subject matter of dispute are better managed by the companies who own them, as against the Appellants who also allege that their control and involvement in the said operations have been at the absolute behest of a deceased director/shareholder, the Court may properly direct a person to take over the management of those operations pending the determination of the substantive suit.

38. It has been further contended that the order of the Court which directed the Regional Police Command to forcefully remove the Appellants from the business was wrongful, extra-legal and contrary to law and has occasioned a substantial miscarriage of justice to the Appellant. Under this ground of appeal too, we do not see any impropriety. In

any case, a Court of law is within its rights to give directions that will ensure compliance with its orders and rulings. Of course, nowhere in the writ is such a relief sought. Nonetheless, we note that in the motion paper, the Respondents prayed that the Court grants any relief that the Court deems meet. Indeed, the Court of Appeal is permitted by Rule 31 of the Court of Appeal rules to make any interim order that the Court below is authorized to make or grant and shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Court of Appeal as though it were the Court of first instance. Thus, issuing out directives to the Regional Police Command to ensure compliance with its orders cannot be said to be extra-legal especially in this case where orders of the Court have been made as far back as in June 2022 but have been disregarded by the Appellants who continue to operate the businesses of the Plaintiffs without lawful authority.

39. It is again argued before this Court that the Court's reliance on the principle in Henderson v Henderson is misconceived. For this ground, the Appellant argues that it is settled law that a point of law arising from the record can be canvassed in the appellate court for the first time. It is further argued that a contention that no resolution is required by an incorporated entity to initiate a valid action in court is clearly borne out of confusion. Having addressed this issue as canvassed by the Appellant in support of his arguments on section 200(2) of the Companies Act, 2019 and coupled with the fact that we see no mention in the judgment of the Court of Appeal of the case of Henderson v Henderson, we find that this ground of appeal is misconceived and not borne out of the judgment of the Court of Appeal.

40. Having dealt with the above issues, we now turn to the omnibus ground of appeal which is that the judgment is against the weight of evidence. Under this omnibus ground, it was urged on this Court that having regard to the rival contentions set out in the respective affidavits, it was incumbent on the Court to hear further evidence before making a definitive pronouncement or conclusions. It was contended that contrary to assertions by the Respondents, that it did run those business operations, the deceased,

the late Kwabena Baah Acheamfour did run those businesses as his personal businesses. Specifically, it was contended at page 71 of the submissions filed by the Appellants as follows;

> *"My Lords, the businesses of the deceased were never ran and have not been run as incorporated entities. If they had been run as incorporated entities, there would have been evidence of compliance with the following mandatory requirements of the Companies Act (Act 992). This is the more reason for the need to lift the ill-fitting veil of incorporation in the circumstances of this case. In particular, the underlisted statutory requirements mandated by the Companies Act, (Act 992) are all not observed or met by the Plaintiffs/Respondents/Respondents thereby fortifying the version of events of the 1»-4 Defendants/Appellants/Appellants that the businesses incorporated have always been ran by the deceased in a manner completely devoid of any Declaration of dividends"*

41. Indeed, even if the above arguments are in truth what transpired, the question is would the Appellants as nephews of the deceased be permitted in law to continue to run the personal businesses of the deceased to the exclusion of the wife and children? We think not. Can a court of law gloss over the beneficial interest that the wife and children of the deceased may have in the estate of a deceased as against the beneficial interest of nephews of a deceased? Would it be a proper exercise of discretion for a court to grant interim orders mandating businesses of a deceased person to be run and managed by a company pending the determination of a dispute? We think that quite apart from the above nagging questions, the affidavits filed by the appellants betray the assertion that the Respondents do not own and operate the businesses in contention. Specifically, in paragraph 12 of the affidavit in opposition the appellant argued that the wife of their deceased uncle "had absolutely no hand in the operation of the businesses and assumed control of some of the companies only after the death of Kwabena Baah Acheamfour". In paragraph 15, it was contended that in the lifetime of Kwabena Baah Acheamfour, he gave significant control of portions of his businesses to the Appellants. In paragraph 11,

it was contended that the incorporated existence of the Respondents were used by the deceased for the purpose of bidding and winning contracts. These depositions, coupled with the statement of defence that was filed by the appellants in which allegations of the deceased having operated bank accounts in the name of Acheamfour Logistics and Transport Limited lends credence to the fact that the deceased in his lifetime did operate with some, if not all, of these limited liability companies who are the Respondents herein. Indeed, the time honoured principle of separate legal entity sways heavily against the Appellants who on the face of the processes filed are unable to lead any compelling affidavit evidence in contradiction of the documentary evidence of the existence, structure and operation of the Respondent companies.

42. We note that in considering whether to grant or refuse an injunction application, a Court of law is bound to consider a number of grounds. His Lordship Justice Anin Yeboah JSC in the case of 18TH JULY LIMITED v YEHANS INTERNATIONAL LIMITED [2012] 1 SCGLR 167 established the conditions that an Applicant must satisfy in order to warrant an order of interlocutory injunction from a trial court. He states as follows:

"Even though it is discretionary, we are of the view that a Trial Court in determining interlocutory application must consider …Firstly, whether the case of an applicant is not frivolous and has demonstrated that he had legal or equitable right, which a court should protect. Secondly, the court is also enjoined to ensure that the status quo is maintained so as to avoid any irreparable damage to the applicant pending the hearing of the matter. And thirdly, the trial court ought to consider the balance of convenience and should refuse the application if its grant would cause serious hardships to the other party.

43. From the affidavit evidence before us, it is obvious that the case of the Respondents for injunction was not frivolous, and that they had actually demonstrated that the Appellants had arrogated unto themselves the authority to manage, operate and control

business operations which prior to the death of the Kwabena Baah Acheamfour were managed by the deceased in the name of the Respondents. Even if the Appellants' case can be taken to be true, the Court cannot endorse an illegal usurpation of the businesses and accounts which on the Appellants' own showing were more probable than not, managed under limited liability companies.

44. Also, the Respondents had been able to demonstrate on the balance of probability that they have both legal and equitable rights which ought to be protected by the Trial Court pending the final determination of the suit. Indeed, the Respondents on the face of it stand to suffer irreparable damage and irremediable hardship if the application for injunction was refused. This is because the decision of the Appellants to manage and control the business operations of the Respondent without accountability and their apparent display of adverse possession, usage and interest, made it expedient for a Court of law to step in to avert irremediable injury to the Respondents. This is moreso when the Appellants trace their interest to a certain entitlement to a deceased uncle's business entities, without any authority either by way of letters of administration, probate or a will, lending credence to such an interest.

45. The balance of hardship tilts more heavily in favour of the Respondents as the persons that would be occasioned most hardship should the application be refused.

46. On the totality of all of these, we cannot fault the High Court in exercising its discretion in favour of a grant of the interlocutory injunction. Also, we can neither fault the Court of Appeal in its decision not to disturb the discretionary orders given by the High Court but rather affirmed same.

47. We have carefully considered the entire record of appeal. We have particularly noted the industry put in by both parties in respect of the interlocutory injunction the result of which is two volumes of record of appeal on this interlocutory matter. We have read

in detail the ruling of the High Court on the injunction application as well as the concurring judgment of the court of appeal and have come to the conclusion that the orders for injunction were proper and its subsequent affirmation and endorsement by the Court of Appeal also sound law. Consequently, we would dismiss this appeal and wholly affirm the judgment of the Court of Appeal.

The appeal is accordingly dismissed.
Cost is assessed at GHC 20,000 against the Appellants and in favour of the Respondents

(SGD.) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **A LOVELACE-JOHNSON (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **B. F. ACKAH-YENSU (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **H. KWOFIE**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

COUNSEL

K. A. ASANTE – KROBEA ESQ. WITH MITCHELL OSEI DONKOR FOR PLAINTIFFS/RESPONDENTS/RESPONDENTS

KWASI AFRIFA WITH JAH JOSIAH, EBENZER NUBUOR AND OMAI ADDO YOBO FOR DEFENDANTS/APPELLANTS/APPELLANTS