

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – A.D. 2023**

**CORAM: PWAMANG JSC (PRESIDING)**

**OWUSU (MS.) JSC**

**PROF. MENSA-BONSU (MRS.) JSC**

**ASIEDU JSC**

**GAEWU JSC**

**CIVIL MOTION**

**NO. J5/56/2023**

**28<sup>TH</sup> JUNE, 2023**

**THE REPUBLIC**

**VS**

**HIGH COURT (LAND DIVISION), ACCRA ..... RESPONDENT**

**EX PARTE:**

**THE REGISTERED TRUSTEES OF THE ..... APPLICANT**

**PRESBYTERIAN CHURCH OF GHANA**

**CHURCH HOUSE, KUKU HILL, OSU, ACCRA**

**NANA OTENG KORANKYE ..... INTERESTED PARTY**

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## RULING

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### ASIEDU JSC

#### INTRODUCTION:

On the 13<sup>th</sup> June 2023, this application which invoked the Supervisory jurisdiction of this Court for an order of certiorari, came up for hearing. After listening to arguments from the lawyers, this Court granted the application but reserved full reasons to be filed later. The application invoked the Supervisory jurisdiction for the grant of an order of certiorari directed to the High Court of Justice, Land Division, Accra to bring up into this Court for the purpose of being quashed, the decision of the High Court, contained in the ruling dated the 4<sup>th</sup> day of April 2023 in Suit No. FAL 592/15 titled: The Registered Trustees of the Presbyterian Church of Ghana vs. Nana Oteng Korankye & Another.

#### **Facts:**

The background of the instant application as stated in the accompanying affidavit is that judgment was entered in favour of the Interested Party against the applicant by the High Court on the 8<sup>th</sup> April 2019. Thereafter, the applicant filed a notice of appeal to the Court of Appeal against the judgment. After the Record of Appeal had been compiled, same was forwarded to the Court of Appeal as evidenced by the service of Civil Form 6 on the parties.

Subsequent to the above, the applicant successfully applied to the Court of Appeal that the Record of Appeal be remitted to the Registry of the Trial Court to enable some

corrections to be done in the record as noted in exhibit 'DMA4'. The applicant filed its Written Submission after the rectification had been completed and the record of appeal returned to the Registrar of the Court of Appeal. Thereafter, the appeal was fixed for hearing on the 24<sup>th</sup> May 2022. On that date, the Interested Party informed the Court of Appeal that he had filed another application to be heard on the 13<sup>th</sup> of June 2022 for an order for the further rectification of the Record of Appeal. This application was heard and granted by the Court of Appeal which then adjourned the case sine die. It is on record that the application for the further rectification of the record was granted on the 13<sup>th</sup> June 2023 as shown by exhibit 'DMA 5'. Whilst waiting for the second rectification to be carried out, the Interested Party filed an application before the High Court, for an *“order to set aside or vary orders staying the execution of the judgment of the High Court dated 8<sup>th</sup> April 2019.”* This application was opposed by the Applicant herein on grounds of lack of jurisdiction in the High Court to entertain the said application. That notwithstanding, the High Court went ahead to hear and granted the application as prayed.

The applicant insists before us that the High Court did not have jurisdiction to entertain the application for an order to vary the order for stay of execution and therefore the order of variation made by the High Court pursuant to the application should be brought up and quashed by this Honourable Court.

The Interested Party concedes that the applicant raised the issue of lack of jurisdiction in the High Court to hear the application for variation of the order for stay of execution but says that the Court of Appeal had made an order remitting the records to the trial High Court for rectification and as deposed in paragraphs 16, 17, 18, 19 and 22 of the affidavit in opposition as follows:

*“16. That I am further advised by counsel and verily believe same to be true that pursuant to the order for rectification granted by the Court of Appeal, the Record of*

*Appeal was remitted to the High Court for which reason there was no record before the Court of Appeal on the back of which the Court of Appeal could hear my motion to set aside the order for stay of execution or vary the said order which was made by the High Court.*

*17. That I am again advised by Counsel and verily believe same to be true that the Civil Form 6 for all intents and purposes is a Notice of Dispatch of the Records and therefore, it is the dispatch of the records to their Lordships at the Court of Appeal which vests the Court of Appeal with exclusive jurisdiction over the appeal, including interlocutory applications.*

*18. That I am again advised by Counsel and verily believe same to be true that once the record is therefore before the High Court, the High Court thereafter is vested with jurisdiction to make certain orders, including the order for variation made by the High Court on the 4<sup>th</sup> of April 2023.*

*22. That I assert that once the order for rectification was made by the Court of Appeal, the entire record was removed from the Registry of the Court of Appeal and remitted to the High Court and this is buttressed by the fact that I have been served with a new Form 6 dated the 1<sup>st</sup> of June 2023 and this Form 6 states that pursuant to the order of the Court of Appeal dated the 13<sup>th</sup> June 2022, the rectification had been duly effected and the records of appeal have been forwarded to the Registrar of the Court of Appeal.”*

**Determination:**

Thus, as asserted by the Interested Party herein, the crucial question for determination is whether upon the remission of the Record of Appeal to the lower Court, as a consequence of an order by an Appellate Court, the Appellate Court thereby cedes its jurisdiction over the matter to the lower Court whose registry the record had been remitted.

The Record of Appeal is compiled by the Registrar of the trial High Court, where the Notice of Appeal had been filed against a judgment or an order of the High Court. In so doing the Registrar of the High Court acts under the powers conferred on him by Rule 11(1) of the Court of Appeal Rules, 1997, CI.19 which states that:

*11. Settling Record of Appeal*

*(1) When an appeal is brought in the Court below, the Registrar of the Court below,*

*(a) shall issue summons in the Form 2 set out in Part 1 of the Schedule directing the parties to appear before that Registrar to settle the Record of Appeal; and*

*(b) shall, whether or not any of the parties attend the appointment, settle and sign the record and in due course file it.*

It ought to be noted that the power to compile the records is statutorily given to the Registrar as shown above, but the actual work of the compilation is an administrative exercise performed by the Registrar of the trial Court or the Court whose judgment is the subject matter of the Appeal.

The rules are clear that once the Registrar of the trial Court had finished with the compilation of the record, he is enjoined to transmit the compiled record together with other documents to the Registrar of the Court of Appeal. Thus, rule 14 of CI.19 states that:

*14. Transmission of record*

*(1) The Registrar of the Court below shall transmit to the Registrar the record when ready together with*

*(a) a certificate of service of the notice of appeal;*

*(b) a certificate in the Form 5 set out in Part One of the Schedule that the conditions imposed under rules 11 (4) and 12 have been fulfilled;*

*(c) four copies of the record for the use of the Justices;*

*(d) the docket or file of the case in the Court below containing the papers or documents filed by the parties concerned; and*

*(e) the exhibits, documents or any other things received by the Court below in respect of the appeal.*

*(2) The Registrar of the Court below shall also serve on the parties mentioned in the notice of appeal, a notice in the Form 6 set out in Part One of the Schedule that the record has been forwarded to the Registrar.*

*(3) The Registrar shall in due course enter the appeal in the cause list mentioned in rule 21 (1)."*

The word "record" as used in rule 14(1) of CI.19 is the record of appeal. It includes the writ of summons or the originating process by which the action was commenced, the pleadings, the evidence given by the parties before the trial Judge, (the evidence, surely, includes the exhibits tendered by the parties at the trial), the speeches or addresses given by the lawyers of the parties, the judgment delivered by the Court, any relevant proceedings subsequent to the delivery of the judgment of the Court and the Notice of Appeal filed by the Appellant. The learned editors of Atkins Court Forms (2<sup>nd</sup> ed.) volume 5(1) 2004 Issue, define the record, in relation to an appeal to the Privy Council, at page 22 paragraph 16 as:

*The aggregate of papers relating to an appeal (including the pleadings, proceedings, evidence, exhibits, orders and judgments of the lower Courts and the order granting final leave to appeal) proper to be laid before Her Majesty in Council on the hearing of the*

*appeal...The record must include all the judgments with reasons in the proceedings in the Court below. Where leave to appeal was given by the Court of Appeal, it must also include the Court of Appeal's order granting leave to appeal..."*

In transmitting the record from the trial Court to the Court of Appeal, the Registrar of the trial Court is enjoined to add thereto, all the documents mentioned in rule 14 (1) (a) to (e) of CI.19. That is to say the compiled record comes with additional documents listed in sub-rule 1 (a) to (e) of rule 14. As soon as the compiled Record of Appeal together with the other documents stated in rule 14 1(a) to (e) of CI. 19 are forwarded to the Registrar of the Court of Appeal, the Registrar of the trial Court is legally obliged to inform the parties to the appeal of the said transmission of the record by serving on them Civil Form 6 as stated in rule 14(2) of the Court of Appeal Rules. After the reception of the record together with the other documents as stated above, the Registrar of the Court of Appeal becomes duty bound to enter the appeal in the cause list as provided in rule 14(3). Again, this is an administrative act which ensures that the case in question is recorded in a book kept for that purpose by the Registrar of the Court of Appeal, such that the said case then becomes one of the cases on appeal, pending before the Court of Appeal to be heard in due course.

Indeed, the transmission of the record together with the other documents aforesaid in accordance with rule 14 of the Court of Appeal Rules by the Registrar of the trial Court or the Court below to the Registrar of the Court of Appeal has the effect of placing the judicial management of the case in question in the charge of the Court of Appeal which then becomes seized with everything about the case till the case is heard and disposed of by the Court of Appeal. For this reason, rule 21 of the Court of Appeal Rules provides that:

*"21. Control of proceedings during pendency of appeal*

*After the Record of Appeal has been transmitted from the Court below to the Court, the Court shall be seized of the whole of the proceedings as between the parties and every application shall be made to the Court and not to the Court below, but an application may be filed in the Court below for transmission to the Court."*

Thus, as stated in rule 21 which is quoted above, once the Record of Appeal has been forwarded to the Registry of the Court of Appeal, the hearing of the appeal becomes the duty of the Court of Appeal; the hearing of "every application" in connection with the case is the duty of the Court of Appeal and every judicial act in relation to the case becomes the burden of the Court of Appeal to discharge. This position of the law was firmly espoused by this Court in **Republic vs. High Court (Human Rights Division) Accra; Ex parte Akita (Mancell-Egala & Attorney General Interested Parties) [2010] SCGLR 374** where the Court held, among others, that:

*"It was well settled that once the Civil Form 6 had been served on the trial High Court, that Court no longer had jurisdiction over the case. At that point of the proceedings, the Court with the appropriate jurisdiction would be the Court of Appeal. Since there was no doubt that Form 6 had been served on the trial High Court, that should have effectively ended its jurisdiction. However, the trial High Court proceeded to hear the case for the reason that the motion had been pending in that Court before service of Civil Form 6. That reason was untenable. Rule 21 of the Court of Appeal Rules, 1997, (CI.19), anticipated the situation by which aspects of the case would be pending before the trial Judge. In that event, the trial Court was duty bound to transfer the case to the Court of Appeal. Rule 21 of CI.19 was intended to obviate that kind of situation so as to avoid protracting the proceedings unnecessarily. The rule was not intended to prolong the jurisdiction of the trial Court which had been curtailed by the service of Form 6."*

In the instant matter, the Interested Party's argument for asserting the jurisdiction of the trial High Court over the application to vary the order of stay of execution is that when

the Court of Appeal had made an order for the remission of the record to the trial Court for rectification, the entire record was moved from the Registry of the Court of Appeal to the Registry of the High Court with the consequence that *“there was no record before the Court of Appeal on the back of which the Court of Appeal could hear the motion to set aside the order for stay of execution or vary the said order which was made by the High Court.”* In effect, the argument by Counsel for the Interested Party is that the order for the rectification of the record made by the Court of Appeal and the subsequent remission of the record to the Registry of the trial Court for rectification occasioned an implied restoration of jurisdiction in the High Court which gave the trial Court a renewed authority to take back the case and hear applications thereunder. This argument is very fantastic!

Unfortunately, the learned High Court Judge bought into this argument when he stated in his ruling dated 4<sup>th</sup> April 2023, among others, that:

*“I have critically examined the application and the submission put up by Counsel for the parties. Whilst Counsel for the Plaintiff/Respondent contends this Court has no jurisdiction to deal with the application since the Record of Appeal has been transmitted to the Court of Appeal, after the service of Form 6.*

*There is unchallenged evidence before the Court depicting that after the transmission of the record to the Court of Appeal same was subsequently remitted to the High Court for **rectification** of same.*

*This therefore means that the Court of Appeal will once again assume jurisdiction over the case after the Record of Appeal has been rectified and a new Form 6 issued.*

*It is my candid view that until this is done, this Court has the jurisdiction to deal with the application brought by any of the parties for which reason this Court can deal with the instant application.”*

From the arguments canvassed by the Interested Party herein and the ruling given by the learned High Court Judge, the crucial question which this Court is called upon to answer is whether or not jurisdiction was restored to the trial High Court upon the remission of the Record of Appeal to that Court by an Appellate Court for corrections to be made in the record by the Registrar of the Court below. In particular, the issue for determination is whether the High Court's jurisdiction was resurrected by the remission of the Record of Appeal from the Court of Appeal to the registry of the High Court.

The language of rule 21 of the Court of Appeal Rules, 1997, CI.19 is very firm and clear that once the Record of Appeal is transmitted by the Registrar of the High Court (or the Court below) to the Court of Appeal, the whole case constituted in the record shall thenceforth rests with the Court of Appeal which shall immediately take charge of all proceedings between the parties in the case and every application in relation to the case shall be made to the Court of Appeal instead of the trial Court whose judgment is on appeal. In other words, the High Court or the Court whose judgment is on appeal shall cease to have anything to do with the case upon the transmission of the record from the Registry of that Court to the Court of Appeal. See, **Republic vs. High Court, Accra; Ex parte Magna International Transport Ltd. (Ghana Telecommunications Co. Ltd – Interested Party)** [2017-2018] 2 SCGLR 1024 at 1035.

As already pointed out, as soon as the record is transmitted from the Registry of the trial Court (or the Court below), after the completion of the compilation, to the Registry of the Court of Appeal (or the Appellate Court), the Registrar of the trial High Court is under a legal obligation to issue Civil Form 6 to the parties. It must be stated in plain language that the issuance of Civil Form 6 is not predicated upon the orders of any Court but has its basis in statute as provided under rule 14(2) of the Court of Appeal Rules. The issuance of Civil Form 6 is therefore a statutory duty or obligation placed on the Registrar of the trial Court or the Court whose decision is being appealed. The

issuance of Form 6 is an administrative act to be performed by the Registrar of the Court below and it is performed only after the Record of Appeal had been compiled and forwarded to the Registrar of the Appellate Court. The issuance of Form 6 serves various purposes: First, it serves to inform the parties to the appeal of the dispatch of the Record of Appeal to the Appellate Court and secondly, it serves to alert the Appellant in particular that the time for him to file his Written Submission in the Court of Appeal (or his Statement of Case in the Supreme Court) has started running. Most important of all, the service of Form 6 marks the end of the jurisdiction of the trial Court over the case and the commencement of the jurisdiction of the Court of Appeal.

The order for the remission of the record by the Court of Appeal to the Registrar of the Court below for rectification, is a direction by the Court of Appeal to the Registrar of the High Court (or the Court below), to effect a correction, administratively, in the record. The remission of the record is not a direction to the High Court or the Court below to carry out a judicial act in the record. There is no judicial action involved in the rectification of the record and therefore one cannot talk about a resurrection or restoration of the jurisdiction of the High Court by virtue of the remission of the record so as to empower the High Court (or the Court below) to entertain and hear any application in the case as the Interested Party argued before this Court. In short, the order for rectification of the record does not have the effect of restoring any lost jurisdiction to the High Court. In **Theophilus Teiko Tagoe & Another vs. Dr. Prempeh and Another Civil Appeal No. J4/29/2022** dated 26<sup>th</sup> April 2023, this Court quoted with approval a statement of the law in **Nii Kojo Danso II vs. Lands Commission & 2 Others (Joshua Quarshie - Applicant) [2017-2018] 2 SCLRG 880** where the Court held at page 891 of the report that:

*“Under rule 21 of CI.19, the Court of Appeal becomes seised of the entire appeal when the Record of Appeal has been transmitted to it. From that moment, the Court below has*

nothing to do with it except when directed by the Court of Appeal. For that reason, the correction of errors in the record are done at the direction of the Court of Appeal as it is seised with the appeal. Every directive or order which the Registrar and the lawyers require to help rectify the record are directed to the Court of Appeal and not the Court below. The Registrar's duty is purely administrative in respect of the Record of Appeal, the Court below has no judicial function to perform in this regard. **In short, the Court of Appeal does not relinquish its jurisdiction over the appeal because it has remitted it for errors to be corrected.** This view is buttressed by the fact that in the interim, every interlocutory application must be heard by the Court of Appeal and not the Court below. Thus, after the Registrar of the Court below has corrected the errors, if any, he only notifies the Registrar of the Court of Appeal who then lists the appeal before the Court of Appeal and issues hearing notices to the parties. There is no provision in the rules of the Court for a second Civil Form 6 to be issued, and as such none should be imported into the rules. It follows that the written submission which had been filed prior to the record being remitted to the Court below, remain valid. The parties may exercise their right under rule 20(9) of CI.19 to apply for leave to amend the written submissions. On the other hand, if a party had not filed a written submission earlier on, being out of time, he may seek the Court's leave to do so, especially if the record was indeed rectified."

At paragraph 22 of the Interested Party's affidavit in opposition he deposed that: "that I assert that once the order for rectification was made by the Court of Appeal, the entire record was removed from the Registry of the Court of Appeal and remitted to the High Court and this is buttressed by the fact that I have been served with a new Form 6 dated the 1st of June 2023 and this Form 6 states that pursuant to the order of the Court of Appeal dated the 13th June 2022, the rectification had been duly effected and the records of appeal have been forwarded to the Registrar of the of the Court of Appeal".

However, the practice whereby the Registrar of the trial Court issues another Form 6 following the completion of the rectification is not backed by law and in the case of **Nii Kojo Danso II vs. Lands Commission & 2 Others (Joshua Quarshie - Applicant) [2017-2018]2 SCLRG 880**, this Court disapproved of that practice of issuing a second Form 6 and directed that only a notice is to be given to inform the parties that the rectification has been completed. Admittedly, the practice of issuing a second Form 6 has been a source of confusion whereby parties tend to refile their Written Submissions. It was expected that following the decision of this Court in **Theophilus Teiko Tagoe & Another vs. Dr. Prempeh and Another Civil Appeal No. J4/29/2022 dated 26th April 2023** and **Nii Kojo Danso II vs. Lands Commission & 2 Others (Joshua Quarshie - Applicant) (supra)** lawyers would draw guidance from them but it appears the confusion still persists.

What this means is that the second Civil Form 6, exhibit 'H' in this case, is therefore a nullity. Under rule 14(2) of CI.19, Civil Form 6 is required to be issued and served on the parties to the appeal only after the compilation of the record after the filing of a Notice of Appeal and the dispatch of the said record to the Court of Appeal. There is no provision under the Rules for the issuance of another Civil Form 6 after the rectification of the record.

In the instant matter, we hold that the High Court had no jurisdiction to entertain the application for an order to set aside or vary orders staying the execution of the Judgment of the High Court, exhibit 'E' filed by the Interested Party herein on the 9<sup>th</sup> February 2023 because the parties to the case had long been served with Civil Form 6 which under Rule 21 of CI.19 effectively deprives the High Court of jurisdiction in the matter and at the same time vests jurisdiction in the Court of Appeal.

Article 132 of the Constitution, 1992 gives the Supreme Court power to exercise supervisory jurisdiction over all lower Courts and adjudicating authority. It provides that:

*“132. Supervisory jurisdiction of the Supreme Court*

*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.”*

Section 5 of the Courts Act 1993, Act 459 re-iterates the provision in Article 132. It states that:

*“5. Supervisory jurisdiction*

*In accordance with article 132 of the Constitution, the Supreme Court has supervisory jurisdiction over any other Court and over an adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory power.”*

There is a plethora of authorities which have explained the circumstances under which the Supreme Court will exercise its supervisory jurisdiction as provided under the Constitution and the Courts Act. In **Republic vs. High Court, Accra Ex parte Industrialization Fund for Developing Countries and Another [2003-2004] 1 SCGLR 384**, this Court held that:

*“Certiorari is a discretionary remedy which will issue to correct a clear error of law on the face of the ruling of the Court; or an error which amounts to lack of jurisdiction in the Court so as to make the decision a nullity.”*

**In Republic vs. Central Regional House of Chiefs & Others; Ex parte Gyan IX (Andoh X Interested Party) [2013-2014] 2 SCGLR 845**, this Court again held that:

*“Judicial review lies to correct errors of law and not fact. The remedy of certiorari is available to correct or quash:(i) jurisdictional error arising from want of jurisdiction; (ii) jurisdictional error arising from excess of jurisdiction; (iii) jurisdictional error patent on the face of the record; (iv) non-jurisdictional error latent, hidden or not patent on the face of the record; and (v) breach of the rules of natural justice.”*

We are satisfied that in the instant matter the High Court acted without jurisdiction when it entertained and heard the application for an order to set aside or vary the order for stay of execution which it had earlier made. As explained, the want of jurisdiction arose out of the fact that at the time the High Court entertained and heard the said application, the appeal in respect of the judgment it had delivered in the case was effectively pending before the Court of Appeal by virtue of the issuance and service on the parties of Civil Form 6 with the consequence that it was only the Court of Appeal that had jurisdiction under Rule 21 of the Court of Appeal Rules, 1997, CI.19 to deal with the case judicially including the hearing of applications in the matter. It is on the strength of these reasons that we granted the instant application and issued certiorari to quash the ruling of the High Court dated the 4<sup>th</sup> April 2023.

We wish to use the occasion of this case to provide a practice direction in relation to the duties of the Registrars of the trial Court and the Court of appeal regarding remission of records of appeal and transmission of rectified records of appeal back to the Court of Appeal.

Where a record of appeal is remitted to the trial Court for rectification, but the Court of Appeal does not state any directives to the registrars, the following practice shall prevail.

(i) The Registrar of the trial Court after rectification of the record shall return it to the Registrar of the Court of Appeal under cover of a letter stating that the record has been rectified and is being returned to the Court.

(ii) The letter returning the record of appeal shall be copied to the parties to the appeal and served on them.

If this practice is complied with, the parties to the appeal will be notified to apply for resumption of proceedings in the Court of Appeal.

**S. K. A. ASIEDU**  
**(JUSTICE OF THE SUPREME COURT)**

**G. PWAMANG**  
**(JUSTICE OF THE SUPREME COURT)**

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