

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – A.D. 2023**

**CORAM: PWAMANG JSC (PRESIDING)  
LOVELACE-JOHNSON (MS) JSC  
AMADU JSC  
PROF. MENSA-BONSU (MRS.) JSC  
KOOMSON JSC**

**CIVIL MOTION**

**NO. J5/66/2023**

**27<sup>TH</sup> JULY, 2023**

**REPUBLIC**

**VS.**

**HIGH COURT, FINANCIAL AND ECONOMIC ..... RESPONDENT  
CRIME DIVISION (COURT 2), ACCRA**

**EX-PARTE: MALIK IBRAHIM ..... APPLICANT**

**EXECUTIVE DIRECTOR, ECONOMIC AND**

**ORGANISED CRIME OFFICE ..... INTERESTED PARTY**

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**RULING**

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**AMADU JSC:-**

**INTRODUCTION**

- (1) The key question that arises for our determination in this application is, whether the High Court, Financial and Economic Division 2, Accra acted in conformity with the statute that set the limits of authority of the Economic and Organised Crime Office (EOCO), the Interested Party herein, when it confirmed a freezing order over the assets of the Applicant herein. The 1992 Constitution under article 18 guarantees the right to property of every person in Ghana and prohibits interference with that right except in accordance with law. Thus, whereas the Constitution guarantees that individuals are free to enjoy the benefit or use of their properties without unnecessary hindrance, it is equally permits that properties unlawfully acquired may be taken away from their owners. The state has established a number of agencies with the mandate to trace and recover illegally acquired properties and the Interested Party herein is one of those agencies. However, in order that there is order in the fight against crime, the state has carefully delineated the areas of operation of the different institutions and, where there is need for cooperation among those institutions, the legislations expressly provides for that. Article 23 of the Constitution provides as follows; *“Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.”* Therefore, though this case invokes our Supervisory Jurisdiction over the High Court, its importance also draws from the above injunction of our Constitution.

#### **BACKGROUND TO THE APPLICATION**

- (2) On the 30<sup>th</sup> day of May, 2023, the Applicant filed the instant application invoking the supervisory jurisdiction of this court for an order of certiorari and/or prohibition directed at the High Court, Accra, Financial and Economic Division (Court 2) in respect of its orders and/or decisions made on the 18<sup>th</sup> day of April,

2023 and the 2<sup>nd</sup> day of March, 2023. The application arises from the following facts.

- (3) The Applicant, Malik Ibrahim and Alhaji Zakaria Ibrahim are siblings. Alhaji Zakaria Ibrahim is the owner, Chief Executive Officer and Chairman of Pacific Oil Ghana Limited (POGL). Until his resignation from POGL in July 2021, the Applicant was said to be the Vice Chairman of the company and in charge of all operations as well as supervised the various fuel outlets of the Company across the country. The Applicant however denies being in charge of all fuel outlets across the country and states that his role was limited to filling stations at Amasaman and it's environs. The Interested Party, Economic and Organised Crime Office, (EOCO) is a state institution established under the Economic and Organised Crime Office Act, 2010 (Act 804) to *"monitor and investigate economic and organised crime and on the authority of the Attorney-General prosecute the offences to recover the proceeds of crime"* among others.
- (4) Some differences arose between the two brothers, that is the CEO of POGL and the Applicant, when the CEO received information that the Applicant had applied and been issued with a license to operate his own petroleum products distribution company. The CEO appeared to form the opinion that his brother must have got the capital to establish his own petroleum company through dishonest dealings with POGL that he made him a Vic-Chairman in and made him supervisor of operations. From the record, there appears to have been efforts made at the family level to resolve the differences between the brothers but that did not work. There was an incident at the Amasaman Filling Station which the Applicant was made differently in charge and that resulted in a report to the Headquarters of the Criminal Investigations Department (CID) of the Ghana Police Service by the CEO. The nature of the offence reported is stated in Exhibit 'MI 1' as Threat of Death and Stealing. The CID did not complete their investigations when the CEO petitioned EOCO for them to assist him.

- (5) The Interested Party received the complaint dated 11<sup>th</sup> August, 2022 requesting it to conduct a general investigation into the activities/transactions of POGL claiming that the company had detected that generated revenues did not match sales from the various fuel outlets of the company. The Interested Party acted on the complaint and commenced investigations with the assistance of an accounting company. According to the Interested Party, it detected various revenue losses which were attributed to the Applicant but could not satisfactorily explain the losses. The Applicant and three other top management officials of the company were arrested in connection with their roles in the company's losses. Investigation Caution Statements were taken from them by investigators of the Interested Party who stated that they were investigating a case of Stealing and Organised Crime against the company officials and for the Applicant they added the offence of money laundering.
- (6) According to the Interested Party, its investigations revealed certain assets (*including landed properties and bank accounts*) belonging to the Applicant which it suspected were acquired from monies he stole from POGL. It therefore issued an administrative directive freezing the properties. This freezing order was confirmed by the High Court, Financial and Economic Division (2) per an order dated the 2<sup>nd</sup> day of March, 2023. The Order reads in part as follows:

***"IT IS HEREBY ORDERED that, the underlisted immovable properties belonging to the Respondent herein be frozen forthwith pending investigations;"***

It is worth noting that, although the order was in relation to immovable properties of the Applicant, the properties as that were stated on the list referred to included bank accounts which are certainly not immovable properties. When the freezing order of the High Court was served on the Applicant, he applied to the Court to discharge the order. After hearing the application which was opposed by the

Interested Party the High Court did not discharge it but rather varied it. In its ruling dated 18<sup>th</sup> April, 2023 the Court ordered as follows:

*"IT IS HEREBY ORDERED that, the Freezing Order of this Court dated 2<sup>nd</sup> day of March, 2023 is varied in part in view of the businesses being Filling Stations listed in the schedule to the motion paper, are going concerns, that a Receiver/Manager be appointed to manage them pending the conclusion of the investigation.*

*IT IS HEREBY FURTHER ORDERED, that, the parties are to co-operate with the Registrar who shall appoint the Receiver/Manager who in turn shall submit quarterly reports to the Court until the final determination of this matter.*

*AND IT IS HEREBY FURTHER ORDERED. That, the accounts in the name of those Filling Stations shall be defrozen to facilitate the management of the businesses."*

It is the above orders dated the 18<sup>th</sup> April, 2023 and 2<sup>nd</sup> March, 2023 that the Applicant is aggrieved with hence this application.

#### **THE APPLICANT'S CASE**

- (7) The case of the Applicant is that, the High Court was bereft of jurisdiction and/or exceeded its jurisdiction to entertain and proceed to grant the Interested Party's application for confirmation of the freezing of his assets, because the Interested Party does not have authority to investigate an allegation of stealing of money belonging to a wholly private entity such as POGL. In his statement of case, Counsel for the Applicant argues that, per the statutory functions and mandate of the Interested Party as provided for under Act 804, the Interested Party may only investigate the offence of stealing where the offence is alleged to have been committed against the state or an entity in which the state has an interest. Counsel

makes relies on Section 3 of Act 804 which outlines the types of cases the Interested Party has been given authority to investigate and submits that clearly left out is stealing. Counsel notes that there is a general provision which includes "*other serious offences*" into the mandate of the Interested Party but, in Counsel's view "*serious offence*" as defined by Act 804 does not cover stealing. He further submits that the general words "*serious offences*" ought to be construed *ejusdem generis* in relation to the specific offences mentioned under the Act and that if the words are thus construed, stealing must not be included. to wit: economic and/or financial loss to the state:

- a. *"Offences that cause or threaten economic and/or financial loss to the state and/or its agencies.*
- b. *Have international character or recently internationally recognised offences including advance fee fraud, money laundering and terrorist financing.*
- c. *Organised crime related to advance fee fraud, money laundering and terrorist financing that is serious in nature."*

- (8) The Applicant proceeds from the above arguments to submit that since the Interested Party did not have the mandate to investigate stealing *qua* stealing, then the High Court equally is bereft of authority to confirm the freezing by the Interested Party deriving from the unlawful investigations it conducted. As such, when it was pointed out to the Court at the hearing of the application to discharge the confirmation order that the Interested Party clearly exceeded its investigating mandate, the High Court committed a fundamental error by refusing to set aside its order.

- (9) The Applicant also argues that, the High Court Judge erred in signing the order of confirmation that was drawn up to include his bank accounts whereas the order it granted stated immovable properties only. The Applicant further argues that the ex parte order confirming the freezing of his assets was served on him later than seven (7) days as required by the Act so on that score, the High Court ought to have set it aside when he applied to it.
- (10) Additionally, he faults the High Court for making an order of appointment of a Receiver/Manager over his assets arguing that Act 804 does not confer authority on the Court to make such an order. Finally, the Applicant contends that, since a freezing order is punitive and imposes liability on an affected person, then before confirming it, the Court ought to accord a hearing to persons to be affected thereby notwithstanding that Section 34 (1) of the Act states that the application for confirmation may be made without notice to the respondent. In the view of the Applicant, that ought to be the practice if the Court acts reasonably as required by Article 23 of the Constitution. In this respect, the Applicant's counsel relied on the cases of **AWUNI VS. WAEC [2003-2004] 1 SCGLR 47.**

#### **THE CASE OF THE INTERESTED PARTY**

- (11) In opposition, the Interested Party contends that, it acted at all times in accordance with law and its establishing legislation, Act 804 which vests it with the power to investigate serious offences and stealing is one of such serious offences. In the statement of case of the Interested Party, it argues that the grounds urged on the Court by the Applicant in his application do not justify the exercise of this Court's supervisory jurisdiction and that, a grant of the relief of certiorari and an order of prohibition will amount to an abuse of the jurisdiction of the court under Article 132 of the 1992 Constitution. Counsel submits as follows;

*"The decisions of the trial court in the instant case, to in essence grant the application for the confirmation of a Freezing Order and vary same cannot*

*constitute a proper ground for this Court's supervisory jurisdiction. Even if the decision is erroneous, it is not an error which is so fundamental or one on which the decision of the court to make the orders of the appointment of the Receiver/Manager to the businesses pending conclusion of investigation depends. Indeed it does not in any way go to the core or root of the decision that the confirmation of a Freezing Order was granted and same varied by the trial court is a nullity and one which should warrant the invocation of this Court's jurisdiction under Article 132 of the Constitution."*

- (12) In response to the complaint about the failure to have the confirmation order served on the Applicant within the seven (7) days of its grant, the Interested Party's explains that, though the order was granted on the 2<sup>nd</sup> day of March 2023, same was not made available on the same day hence the inability to serve within the seven days. The Interested Party answers the discrepancy in the order referring to only immovable properties by stating that the list of properties referred to by the ruling of the Judge included moveable properties of the Applicant so the failure to add moveable properties was a typographic error. The position of the Interested Party is that the High Court committed no error by appointing a receiver/manager over the assets that were frozen in view of the fact that some of the assets were on-going business concerns that needed to be managed pending the conclusion of the case. Finally, the Interested Party disagrees with the Applicant that he was entitled to have been given a hearing before the confirmation of the freezing since Section 34 (1) of Act 804 is very clear that the application may be ex parte.

#### **THE SUPERVISORY JURISDICTION OF THE SUPREME COURT**

- (13) Article 132 of the 1992 Constitution provides for the Supreme Court's supervisory jurisdiction in these terms:



*“The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power.”*

The scope of the Supervisory Jurisdiction and the grounds on which it would be exercised by the Supreme Court has been expatiated in numerous cases including; **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE CHRAJ (ADDO, INTERESTED PARTY) [2003-2004] SCGLR 312; REPUBLIC VS. HIGH COURT; EX-PARTE INDUSTRIAL FUND FOR DEVELOPING COUNTRIES AND ANOTHER [2003-2004] 1 SCGLR 348, AND ASSOCIATED PROVINCIAL PICTURE HOUSE VS. WENESBURY CORPORATION [1948] IKB, 223.** In **REPUBLIC VS. HIGH COURT (LAND DIVISION), ACCRA EX-PARTE: KENNEDY OHENE AGYAPONG (SUSAN BANDOY INTERESTED PARTY) [2020] DLSC 9895** our brother, Kulendi JSC aptly captured the nature and scope of the supervisory jurisdiction on this court in the following words:

*“The supervisory jurisdiction of this court is a great residual jurisdiction that allows this court to streamline the activities of the lower courts. Our control is limited to three main areas: against want or excess of jurisdiction; against patent errors of law on the face of the record; and against breaches or denial of natural justice.”*

- (14) Similarly, in **REPUBLIC VS. HIGH COURT, KUMASI: EX-PARTE BANK OF GHANA & ORS. (GYAMFI & ORS. INTERESTED PARTIES) [2013-14] 1 SCGLR 477**, this Court, per the Dotse JSC pronounced on the exercise of the supervisory jurisdiction in the nature of certiorari as follows: *“It is well settled that certiorari was not concerned with the merits of the decision; it was rather discretionary remedy which would be granted on grounds of excess or want of jurisdiction and or some breach of rules of natural justice; or to correct a clear*

*error of law apparent on the face of the record. The error of law must be so grave as to amount to the wrong assumption of jurisdiction; and it must be so obvious as to make the decision. A nullity. Where the error of law or facts was not apparent on the face of the record, the Applicant's remedy would lie in an appeal."*

### EVALUATION

- (15) In our view, the crucial issue for determination in this application is whether the facts of this case bring it within the scope of the statutory power conferred on the Interested Party herein by its establishment legislation. It is useful to trace the legislative history of Act 804 in order for us properly situate its mandate in the fight against crime in Ghana. The Economic and Organised Crime Office (EOCO) is successor to the Serious Fraud Office (SFO) established under the Serious Fraud Office Act, 1993 (Act 466). The Long title to Act 466 provided as follows; *"An ACT to establish a Serious Fraud Office as a specialised agency of Government to monitor, investigate and, on the authority of the Attorney-General, prosecute any offence involving serious financial or economic loss to the state and to make provisions for connected and incidental purposes."* The functions of the office, as per the long title was further detailed under Section 3 of Act 466 as follows:

- (a) *"to investigate any suspected offence provided for by law which appears to the Director on reasonable grounds to involve serious financial or economic loss to the State or to any state organisation or other institution in which the State has financial interest;*
- (b) *to monitor such economic activities as the Director considers necessary with a view to detected crimes likely to cause financial or economic loss to the State;*

- (c) *to take such other reasonable measures and the Director considers necessary to prevent the commission of crimes which may cause financial or economic loss to the State; and*
- (d) *to co-operate with such international agencies as the Director considers appropriate for any of the purpose under the section."*
- (16) However, whereas the name of the organization conveyed the impression that it's mandate was about fraud simpliciter, the landscape of criminal activity had fast evolved and new challenges in the fight against new trends in criminal activities had emerged. There was therefore the need to expand the scope of the mandate of the SFO and a new name altogether adopted under a new statutory regime while maintaining the concept of a "*Specialised Agency*" of the state with a limited mandate focused on some particular areas. This statutory institutional mandate is not like the Police Service whose mandate to fight crime is unrestricted. In the memorandum accompanying the Bill for the passage of the Economic and Organised Crime Office Act, 2010 (Act 804), it was explained in part that; "*The Serious Fraud Office established in 1993 by the Serious Fraud Office Act, 1993 (Act 466) was mandated to investigate suspected offences provided by law which involve serious financial or economic loss to the State or other institutions in which the State has a financial interest. The Office was also to monitor economic activity in order to detect crimes likely to cause financial or economic loss to the State, take the necessary measures to prevent the commission of crimes which may cause financial or economic loss to the State and co-operate with international agencies where necessary in the performance of its functions. The mandate of the Serious Fraud Office does not extend to the investigation and prosecution of offences related to advance fee fraud, drug trafficking, money laundering and other organised crimes.*"

- (17) As can be deduced from the above, the law maker by Act 804 sought a continuum of the functions of the SFO in EOCO, but, with an expanded mandate, to include issues of; *advance fee fraud; drug trafficking, money laundering and other organized crimes* which hitherto the SFO did not have authority to investigate. What this underscores is that the legislature recognized that if there was need to expand the mandate that was given to the SFO, then it must be done through legislative reform. Therefore, if the Court accepts an expanded mandate for EOCO on the basis of arguments by the Interested Party in this case that EOCO requires such powers in order to fight crime, then the Court will simply be usurping the powers of the legislature under the guise of judicial activism. The constitutional role of the Court in the case being made by the Applicant before us is to determine the limits of the mandate of the Interested Party as intended by Parliament and this ought to be done by interpreting Act 804 as a whole using settled canons of interpretation of statutes.
- (18) From the long title of Act 804, it is an ACT to *“establish an Economic and Organised Crime Office as specialised agency to monitor and investigate economic and organized crime and on the authority of the Attorney-General prosecute the offences to recover the proceeds of crime and provide for related matters.”* These Objects of the office are further explained under Section 3 as;
- a) *“investigate on the authority of the Attorney-General prosecute serious offences that involve;*
- (i) *financial or economic loss to the Republic or any State entity or institution in which the State has financial interest,*
  - (ii) *money laundering,*
  - (iii) *human trafficking*
  - (iv) *prohibited cyber activity,*
  - (v) *tax fraud, and*
  - (vi) *other serious offences;*

*b) recover the proceeds of crime;*

*c) monitor activities connected with the offences specified in paragraph (a) to detect correlative crimes;*

*d) take reasonable measures necessary to prevent the commission of crimes specified in paragraph (a) and their correlative offences;*

*e) disseminate information gathered in the course of investigation to law enforcement agencies, other appropriate public agencies and other persons the Office considers appropriate in connection with the offences specified in paragraph (a);*

*f) co-operate with relevant foreign or international agencies in furtherance of this Act; and*

*g) perform any other functions connected with the objects of the Office."*

(19) By the preamble, EOCO is a "*specialized agency*" just as SFO was a specialized agency and this sets the background from which the Act proceeds to specify the areas of authority of the agency and to limit its mandate. Under Section 3(a) of the Act, the investigative function of EOCO, when a matter concerns financial or economic loss, is limited to complaints alleging financial or economic loss to the state or a state institution or an entity in which the State has an interest. This is the same as what was stated for the SFO. This subsection does not apply in this case and the Interested Party has not claimed authority to investigate the Applicant herein under this provision. In the statement of case filed by the Interested Party, Counsel avoided relying on any specific provision of Section 3 of the Act but it was at the viva voce hearing of the Application that he said that if "*serious offence*" is properly construed, it covers the case of stealing and participating in an organized crime. Those are the offences captured in the investigation statements and the

internal memorandum of the Interested Party exhibited with the affidavit it filed in opposition to this application.

- (20) The Interested Party therefore admits that stealing is not specified in any of the provisions but it relies on an interpretative exercise to contend that stealing qualifies as a serious offence. Though the Act defines "*serious offence*", it only states the offences that are included as serious offences which does not mention stealing. However, the definition does not exhaust the offences that the law maker considered as "*serious offences*". The Interested Party reproduces the following definition under Section 74 of the Act;

*"Serious offence" include;*

- (a) *"participation in an organised criminal group, terrorism and terrorist financing, money laundering, human trafficking, people smuggling, sexual exploitation, illicit trafficking in narcotic drugs, illicit arms trafficking, trafficking in stolen and other goods, corruption and bribery, serious fraud, counterfeiting and piracy of products, smuggling, extortion, forgery, inside trading and market manipulation.*
- (b) *murder, grievous bodily harm, armed robbery or theft where there are predicate offences for a serious offence, and*
- (c) *any other similar offence or related prohibited activity punishable with imprisonment of not less than twelve months."*

By the content of its Exhibits, the Interested Party has sought to come within "*participation in organized criminal group*" under (a) above to found authority to investigate this case. In the investigation statements that the interested party took from the Applicant and the other suspects, which have been exhibited by the interested party, it stated as follows;

*"I am investigating cases of conspiracy to commit crime to wit stealing and stealing and participating in organized crime in which you are involved."*

It is only in respect of the Applicant herein that a second statement was taken in respect of *“stealing and stealing and money laundering in which you are involved.”*

- (21) The charge of money laundering in this case is premised on the alleged stealing in that it is alleged by the Interested Party that the Applicant stole money belonging to POGL and then laundered it by acquiring properties with the stolen money to conceal its source, which is the definition of money laundering. Since the money laundering in this case cannot be divorced from the stealing, then our view is that unless the Interested Party’s mandate covers the case of stealing on the facts, the fact that there is an ancillary offence that it has mandate to investigate would not confer authority on the Interested Party. This point is important because the impression must not be given that the Ghana Police Service has no mandate to investigate money laundering if in the course of their duties of investigating crimes in general evidence leading to the possible commission of money laundering emerges. We shall explain this point in detail *in fra*.
- (22) In the meantime, let us answer the question whether on the facts that were relied on in this case, the stealing alleged against the suspects qualify as an organized crime under Act 804? There is no allegation by the Interested Party that, the suspects in this case, apart from conspiring to steal from the complainant in this case, have constituted themselves into a coherent criminal organization for a series of criminal activities against society in general. Section 74 of Act 804 defines *“organized crime”* as follows; *“means a recurring serious offence committed by two or more persons working in concert”*. Clearly absent in the facts here is the element of recurring. The facts here therefore, at best, allege a conspiracy and not organized crime. One may also consider whether *“...theft where there are predicate offences for a serious offence”* stated under (b) above can be said to apply on the facts here. This refers to a situation where in the course of investigating a main serious offence that falls within the mandate of EOCO, evidence of a theft

connected with the foundation offence, then EOCO may investigate that theft. It is obvious that in this case the main or substantive crime being investigated is the alleged stealing of money of Pacific Oil Company Ghana Ltd. so that is the predicate offence here and the mandate of EOCO does not cover it.

- (23) We have further examined the words of the Act, *“any other similar offence or related prohibited activity punishable with imprisonment for not less than twelve months”* to see if the stealing in this case may come under it. This phrase, in a sense, alludes to interpretation of general words following or preceding specific words by considering the class or colour that the specific words portray. There are two maxims of interpretation that refer to this approach of interpreting general words in statutes and deeds and these are; *ejusdem generis* and *noscitur a sociis*. Of all the specific offences stated under Act 804, stealing of money is similar to causing financial or economic loss. However, the condition on which the Interested Party may investigate financial or economic loss is that the victim must be the state, a state institution or an entity in which the state has an interest. In the circumstances, we are of the firm opinion that the law maker did not intend to give authority to the Interested Party to investigate stealing of a private person’s property. It must always be remembered that the investigating mandate of the Interested Party was carved out of the general mandate of the Police Service to investigate all crimes so it is not as if the lack of mandate by the Interested Party would result in a functional vacuum.

- (24) It is provided under Section 1 of the **Police Service Act, 1970 (Act 350)** provides as follows;

#### **1. Functions of the Service**

- (1) *The Police Service as provided for by Article 190 of the*

*Constitution, shall prevent and detect crime, apprehend offenders, and maintain public order and the safety of persons and property.*



Accordingly, the mandate of the Police Service established by the Constitution is not limited except as may be stated in enactments made subsequent to Act 350. However, the offence of money laundering is created and defined by Section 1 (1) & (2) of the **Anti - Money Laundering Act, 2020 (Act 1044)** as follows;

**Section 1 - Money laundering**

- (1) A person shall not engage in money laundering.**
  - (2) A person commits an offence of money laundering if the**
    - person knows or ought to have known that a property is, or forms part of,**
    - the proceeds of unlawful activity and the person**
      - (a) converts, conceals, disguises or transfers the property for the purpose of**
        - (i) concealing or disguising the illicit origin of the property; or**
        - (ii) assisting any person who is involved in the commission of the**
          - unlawful activity to evade the legal consequences of the unlawful activity;**
      - (b) conceals or disguises the true nature, source, location, disposition, movement or ownership of, or rights to, the property; or**
      - (c) acquires, uses or takes possession of the property knowing or suspecting at the time of receipt of the property that the property is, or forms part of the proceeds of unlawful activity.**
- (25)** The Act does not designate one particular agency of state as the only agency to investigate offences under the Act. What the Act does is that, under Section 37 it refers to *“Competent Authorities”* who, if in the course of performing their duties they apprehend information alluding to money laundering, those authorities are required to make a report to the Financial Intelligence Centre (FIC) established by Act 1044. The FIC may also refer a matter of offence under Act 1044 to an investigating authority for it to take action. The phrase *“Competent authorities”* is defined under the Act to include the Police Service, EOCO, National Security Secretariat and other agencies of state. *“Investigating Authority”* is defined to

mean; *“a body that is designated by legislation to investigate an unlawful activity under this Act”*. The FIC established under the Act does not have an investigating mandate as one of its functions set out under the Act. Section 8(g) of Act 1044 states that the FIC shall collaborate with investigating authorities without limiting it to any particular agency.

(26) Though Act 804 states money laundering as one of the offences that may be investigated by EOCO, Act 1044 itself appears to envisage more than one agency of state as the competent investigation authority. Act 1044 was enacted in 2020 when the EOCO Act had been in force for ten years and if it was the intention of the legislature to make EOCO the only investigating authority for money laundering, it could easily have said so expressly in the definition of *“investigating authority”*. As such, where the Police is investigating an ordinary case of stealing that does not involve state interest, and the facts show that the suspect laundered the proceeds of the crime to acquire properties or transferred the proceeds to a third party, the police must not cease their investigations.

(27) We are not unmindful of the fact that Act 804 gives power to EOCO, on the authority of the Attorney-General, to prosecute persons charged with the offence of money laundering and that police investigations usually result in prosecution by the Police Prosecution Division or by the Prosecutions Division of the Office of the Attorney-General. Act 1044 designates the High Court as the Court with jurisdiction to try offences under the Act so money laundry may be prosecuted only in the High Court. Act 1044 confers power on the High Court to order confiscation to the state of property proved to have been acquired in contravention of the Act. We wish to take opportunity to draw the attention of the Interested Party to fact that under section 5 of Act 1044 and Section 52(3) of Act 804, any confiscations by the High Court of properties from money laundering would vest such properties in the Republic. Therefore, where there is an identifiable victim as

is alleged in this case, proceeding under these statutes alone may not ultimately be what the complainant is looking for.

- (28) The law has not barred the Prosecution Division of the Office of the Attorney-General from prosecuting money laundering offences. Therefore where that offence is ancillary and arises from a case of ordinary stealing investigated by the Police and forwarded for prosecution by the Prosecution Division of the Attorney-General, no law would have been broken. However, the opposite of that, which would mean the EOCO investigating and prosecuting an ordinary stealing case because an offence of money laundering is connected with the ordinary stealing, that would violate a law, namely Act 804. We are bound by the statutes as made by Parliament and in this case, our understanding of the statutory regime set out in the statutes applicable in this case lead us to the conclusion that the Interested Party exceeded its mandate and the High Court ought not to have confirmed the freezing order.
- (29) We shall now briefly dispose of the argument by the Applicant that notwithstanding Section 34(1) of Act 804, which expressly states that the judicial confirmation of a freezing order may be without notice to the respondent, he ought to have been given a hearing before the confirmation by the High Court. Note must be taken of the fact that the *audi alterem partem* principle may be regulated by statute and it is normal for statute to provide for certain proceedings to embarked on Ex-Parte because of special circumstances. Therefore, in case of urgency, the civil procedure rules permit the making of ex-parte motions for an order of interim injunction. Where proceedings are permitted by statute to be by ex- parte application because of special circumstances, there is always an opportunity for persons affected thereby to apply to set aside orders obtained ex parte. The application to set aside affords the affected person the right to be heard. This is what has been done by Parliament in the case of Act 804 and there is nothing

unconstitutional about it. In the English case of **PEARLBERG VS. VARTY** [1972] **2 ALL ER 6 LORD HAILSHAM OF ST. MARYLEBONE, L.C**, said as follows; *"The point, and the only point, at issue in the appeal is whether the taxpayer has a right of audience before, or a right to make written representations to, the single Commissioner before he gives leave under s. 6(1) of the Income Tax Management Act 1964 to raise back assessments on an application of the Inspector of Taxes or other officer of the Board made under that section. The Appellant argues in favour of such a right on the basis of natural justice, or, as it was called by BYLES J. IN COOPER VS. WANDSWORTH BOARD OF WORKS (1863) 14 C.B.N.S. 180, at page 194, 'the justice of the common law'. I am decisively of the opinion that the section affords no such right..., (emphasis supplied)."*

*He further said that; "Despite the majestic conception of natural justice on which it was argued, I do not believe that this case involves any important legal principle at all. On the contrary, it is only another example of the general proposition that decisions of the Courts on particular Statutes should be based in the first instance on a careful, even meticulous, construction of what that Statute actually means in the context in which it was passed. It is true, of course that, the Courts will lean heavily against any construction of a Statute which would be manifestly unfair. But they have no power to amend or supplement the language of a Statute merely because on one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than the Statute accords him. Still less is it the function of the Courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment. The doctrine of natural justice has come in for increasing consideration in recent years, and the Courts generally, and your Lordships' House in particular, have, I think rightly, advanced its frontiers considerably. But at the same time they have taken an increasingly sophisticated view of what it requires in individual cases."* We accordingly reject the Applicant's argument that the

failure to serve him notice to be heard on the application to confirm the freezing order contravened the Constitution.

### **CONCLUSION**

- (30) In conclusion, we find merit in the case made by the Applicant that the Interested Party plainly acted ultra vires its statutory mandate and the High Court ought to have set aside its order confirming the freezing of the assets of the Applicant. That is a clear basic error of law committed by the High Court for which certiorari will lie to quash the confirmation of the freezing order. Accordingly, the orders of the High Court dated 2<sup>nd</sup> March, 2023 and 18<sup>th</sup> April, 2023 are to be brought to this court for purposes of being quashed, and same are hereby accordingly quashed. We are of the firm view that this case does not come within the statutory remit of EOCO but one that ought to be investigated by the Criminal Investigations Department of the Ghana Police Service. We are however, not satisfied that a case has been made to warrant an order of prohibition against the High Court Judge. Consequently, the prayer for an order of prohibition is refused.

**I. O. TANKO AMADU**

**(JUSTICE OF THE SUPREME COURT)**

**G. PWAMANG**

**(JUSTICE OF THE SUPREME COURT)**

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

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