THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: BAFFOE-BONNIE, ACTING CJ (PRESIDING)

PWAMANG, JSC

MARFUL-SAU, JSC

DORDZIE, JSC

AMEGATCHER, JSC

CIVIL MOTION

NO. J8/136/2018

6TH NOVEMBER,

2019

TOGBE GOBO DARKE XII ..... APPLICANT
Chief of Tsito Awudome

VRS

TOGBE AYIM MORDEY VI ..... RESPONDENT
Chief of Peki Avetile

RULING

A.M. A DORDZIE: JSC-

The applicant herein Togbe Gobo Darke XII, Chief of Tsito Awudome filed a motion in this court on the 3rd of August 2018 against Togbe Ayim Mordey VI chief of Peki Avetile, praying this court for the following reliefs:

i) An order setting aside the part of the ruling of the Supreme Court dated 30th March 1992 in the suit intituled Republic v High Court,

Accra and Anorther. Exparte Darke & others. That referred the suit therein to the Stool Lands Boundary Commission for settlement.

ii) An order reinstating the judgment of the Court of Appeal in Civil Appeal No. 202/76 of 30th July 1979 intituled Togbe Ayim Darke IV v 1. Togbe Gobo Darke XI 2. Ntow Peniana

iii) Such other orders as the Supreme Court will consider fit to make.

Background

Litigation between the predecessors of the parties herein over parcels of land known as Tiame Awalime lands situate between Peki and Tsito-Awudome in the Volta Region dates back to 1952. The history of the suit is set out by both parties in their respective affidavits. Violence had erupted many a time between these two communities because of the dispute over the years and many lives have been lost. This situation no doubt had been an issue of grave national concern and resolving the dispute totally and timeously would have been a matter of public interest, however, the issue had remained protracted till now over 60 years.

Facts: The substantive suit has a much checked history, as much as possible I will briefly summarize the sequence of events that led to the application before us. An action in respect of the subject matter of litigation between the parties was first instituted by the chief of Peki Avetile, Togbe Ayim Darke IV representing some families of Peki Avetile at the Native Court Peki in 1952 against Togbe Gobo Darke XI of Tsito Awudome and one of his subjects Ntow Peniana. The suit was eventually decided by the High Court, Ho in November 1975 by Francois J in favour of the plaintiff. The defendants appealed, on 30th July 1979, the Court of Appeal overturned the High Court decision.

In 1987 the Paramount Chief of Peki Traditional Area and Togbe Ayim Darke IV instituted a fresh action in the High Court Accra against Togbe Gobo Darke XI seeking a declaration that the judgments of the High Court and Court of

Appeal referred to in the preceding paragraph above are null and void. The reason being that the dispute between the parties involves boundary between stool lands, as such by virtue of the provisions of the Stool Lands Boundaries Settlement Decree 1973, NRCD 172, the Stool Lands Boundaries Settlement Commission was the only body that had jurisdiction to determine the dispute. The High Court, Accra presided over by Omari - Sasu J granted this prayer and declared both the judgment of the High Court Ho dated 11th November 1975 and that of Court of Appeal dated 30th July 1979 null and void.

Togbe Gobo Darke XI appealed against this decision but lost. He then sought refuge in the supervisory jurisdiction of the Supreme Court and applied for an order of certiorari to quash the decision of the High Court, Accra.

In a decision dated 30th March 1992 the Supreme Court granted the application and quashed the decision of the High Court Accra, as well as the decision of the Court of Appeal which affirmed the said judgment. The court further declared null and void the decisions of the High Court, Ho, dated 11th November 1975 and that of the Court of Appeal dated 30th July 1990 and ordered the case to be referred to the Stool Lands Boundary Settlement Commission to be determined. The specific decision of the Supreme Court was as follows:

a) The judgment of the High Court (Omari-Sasu J) dated 22nd February 1989 and that of the Court of Appeal dated 19th July 1990 confirming it, are all null and void.
b) The decision of the High Court (Francois J) dated 11th November 1975 and that of the Court of Appeal dated 30th July 1979 are also null and void for want of jurisdiction on the ground that:
c) The matter before the High Court was a Stool Land boundaries settlement issue, and was cognizable only by the Stool lands

Boundaries Settlement Commission, to which it ought to have been referred.

Accordingly the Supreme Court made the order that the matter be referred to the Secretary responsible for Justice under section 5 (2) of N.R.C.D. 172 as amended by the Stool Lands Boundaries Settlement (Amendment) Law, 1986 (P.N.D.C.L. 147) for onward transmission to the Stool Lands Boundary Settlement Commission.

The applicant herein Togbe Gobo Darke XI applied for a review of the above decision of the Supreme Court and by a majority decision of 8 to 1 dated 17th November1992 the review application was dismissed.

By the affidavit of the applicant herein the matter went before the Stool Lands Boundaries Settlement Commission presumably in 1992 when the decision referring the matter to the said Commission was made. By paragraph 18 of the applicant's supporting affidavit the Awudome Stool which is the overlord of the Tsito Stool joined the suit as a 2nd claimant. In the year 2000 when the Stool Lands Boundary Settlement Decree was repealed the matter was transferred to the High Court by virtue of Act 587 which repealed the Decree. For the past 19 years therefore the matter has been pending before the High Court. The applicant's affidavit further discloses various interlocutory applications that had travelled all the way to the Supreme Court. By paragraph 43 of the applicant's affidavit the matter has now finally been assigned to High Court 4 Accra (Land Division) for hearing. For all intents and purposes one would have thought that the substantive issues in the suit before the High Court would be heard and determined once and for all, however the applicant has decided to set the clock of progress so far back to 1975. In fact it is part of submissions made by counsel for the applicant that it is the position of the applicant that the trial in the High Court should not take place at all.

The applicant maintains he brings this application in his capacity as the applicant in the certiorari application that was determined by the Supreme Court on 30th March 1992 and that he is invoking the inherent jurisdiction of this court in bringing this application.

The grounds of the application are stated in paragraphs 44 to 49 of his affidavit supporting the application and they are:

i) Upon a proper consideration of the claims, evidence and judgment of the High Court Ho by Francois J dated 11th November 1975 and the subsequent decision of the Court of Appeal dated 30th July 1979, the subject matter in the suit before the High Court, and the Court of Appeal was not a stool land boundary dispute.

ii) The subject matter of the said suit in the High Court Ho and the appeal before the Court of Appeal was a dispute relating to lands belonging to individual families. The reference of the dispute to the Stool Lands Boundary Settlement Commission by the Supreme Court in its ruling dated 30th March 1992 was therefore null and void.

iii) The matter before the Supreme Court in 1992 was not an appeal but an application for certiorari; as such the pleadings, proceeding and exhibits before the High Court Ho and the Court of Appeal were not before the Supreme Court. The Supreme Court therefore did not have the record to determine whether the subject matter in the suit that went before the High Court, Ho and the Court of Appeal was stool land or not

iv) The Supreme Court did not have jurisdiction to pronounce on the validity or otherwise of the decision by the Court of Appeal that the subject matter of dispute was not stool land.

In his statement of case, counsel for the appellant, relying on the cases of Attoh-Quarshie v Okpote [1973] 1 GLR 59 and Mosi v Bagyina [1963]1GLR

337 The Rep v Tommy Thompson Books Ltd [1996-97] 1996-97 SCGLR 804 made submissions to justify invoking of the inherent jurisdiction of this court. It is his submission that the inherent jurisdiction of this court is being invoked to do justice between the parties, 'the court is being invited to exercise its power to prevent a wrong or injury being inflicted by its own orders, particularly the power of vacating orders made by mistake and the power to undo what it had no authority to do originally'.

Counsel in his further submissions defined what constituted stool lands at the time the High Court made its decision in 1975 and emphasized the position that the subject matter of the dispute between the parties is not a stool land but family land the trial by the High Court, Ho and the subsequent appeal were done within jurisdiction.

The respondent in their affidavit opposing the application drew the court's attention to the fact that the applicant applied for a review of the Supreme Court decision of 30th March 1992, the grounds for the review application are the same grounds the applicant is canvassing in the present application. The review decision of the Supreme Court dated 17th November 1992 is reported in the 1992 edition of the Ghana Law Reports and a copy is exhibited with the respondent's affidavit as exhibit TAM2. It is the submission of counsel for the respondent therefore that the applicant is estopped per rem judicatam from re-litigating the same issues in the present application before the court. Counsel urged the court to dismiss the application for being baseless and an abuse of the court process.

The issue of res judicata raises a legal point which in my view ought to be dealt with first and foremost. It is worth noting that though the applicant carefully narrated the history of this case from 1952 to the present in his affidavit, he carefully omitted the fact that he applied to this court for review of its 30th March 1992 decision; even though the respondent exhibited a copy of the review decision and the applicant had filed a supplementary affidavit,

he failed to address the issue that his reliefs in this application is not any different from the reliefs he sought in the review application.

From the review judgment as reported at page 443 of the [1992]2 GLR which is exhibited as TAM2 there is no doubt that the matters that formed grounds for the applicant's review application are the same reliefs he is praying for in this application. This is demonstrated in the opening words of Adade JSC delivering the majority decision in the review application on 17th of November 1992. I will quote him: "The decision we gave on 30th March 1992 was to the effect that:

a) The judgment of the High Court (Omari-Sasu J) dated 22nd February 1989 and that of the Court of Appeal dated 19th July 1990 confirming it, are all null and void.
b) The decision of the High Court (Francois J) dated 11th November 1975 and that of the Court of Appeal dated 30th July 1979 are also null and void for want of jurisdiction on the ground that:
c) The matter before the High Court was a Stool Land boundaries settlement issue, and was cognizable only by the Stool lands Boundaries Settlement Commission, to which it ought to have been referred. We accordingly refer it to the Commission via the Attorney General. ***… It must be pointed out that the matter had come before this court in the first place as a result of an application for certiorari to quash (a) above only. It is said in the instant application for review that we should have stopped with the decision on (a) supra, and not proceed to decide (b) and (c)"*** (Emphasis mine).

It is the orders in (b) and (c) supra that the applicant in his motion before us is praying this court to set aside. It is absolutely clear from the review decision of this court that issues related to the conclusions this court came to in its decision in (b) and (c) had been effectively dealt with by

this court. It is worthwhile quoting part of the reasoning of the learned jurists which informed the conclusions they came to in decisions (b) and (c), the subject matter of this application. Per Adade JSC (continuing his reasoning from where I left off in the previous paragraph) "But if indeed the matter before Francois J (as he then was) was basically a stool lands boundary issue, then Francois J (as he then was) would not have had jurisdiction, and his decision, as that of the Court of Appeal arising from it would be void. This court in becoming aware of it could, on its own motion set it aside. The foundation for the decision of the Court of Appeal dated 30th July 1979 would have collapsed, and setting aside that decision would be a mere formality."

The court per Amua- Sekyi JSC at page 445 of the report said "The decision of this court that the dispute between the Peki and Tsito stools be referred to the Stool Lands Boundary Settlement Commission for adjudication was fair. After all, it was the Tsito stool which in the earlier proceedings had argued that Francois J (as he then was) had no jurisdiction to entertain the suit. That the objection was overruled does not, in any way, in my view, give them an excuse to benefit from the wrongful assumption of jurisdiction by the High Court and Court of Appeal."

The court re-emphasized the same point per Kpegah JA (as he then was) when it said at 466 and 468 of the report that "***The fact of the matter, therefore, is that the two separate judgments (i.e that of Francois J (as he then was) and that of the 1979 Court of Appeal on one side, and the judgments of Omari –Sasu J and that of the 1990 Court of Appeal on the other) between the parties have been set aside by this court in the judgment sought to be reversed through the review process. Our judgment further held***

that the dispute related to stool lands as defined in the Stool Lands Boundaries Settlement Decree, 1973 (NRCD172) and that the proper forum for ventilating such claim is before the Stool Lands Boundaries Settlement Commissioner. This was what the justice of the case between the parties demanded and nothing else. I say so because the issue whether the dispute related to stool lands or individual lands, with the determination of the proper forum as an ancillary issue, had become crucial to the rights of the parties." (Emphasis mine)

The Court further justified its decision to refer the matter to the Stool Lands Boundaries Settlement Commissioner at page 468 of the report and said per Kpegah JA (as he then was) "***There is no threat to the justice of the matter in our decision that the case be referred to the Stool Lands Boundaries Settlement Commissioner for adjudication, having decided the dispute related to stool lands as defined in NRCD 172. I say so not unaware that the applicants had at a certain stage of this protracted litigation contended that the dispute related to stool lands and that the courts have no jurisdiction. The rights and fortunes of the parties have become bound up with this issue."***

It has been amply demonstrated above that the issues in the application before us had been effectively determined by this court in its review decision dated 17th November 1992. It is also absolutely clear that it is on record in the previous proceedings that the applicant took the position that the subject matter is a stool boundary dispute and took objection to the court's jurisdiction to hear same. It is inappropriate, in fact, dishonest on the part of the applicant to come back to this court on his stand now that the dispute is not a stool land boundary dispute and to re-litigate issues that were determined 27years ago. The application is more or less a repeat of the review application. The applicant is estopped from re-litigating the same issues that had already been decided by a court of competent jurisdiction.

The circumstances in which the principle of estoppel per rem judicatam is applicable had been considered in many decisions of this court. The circumstances of this application are not any different and there is no reason why we should depart from them.

In the case of ***Dahabieh v S A Turqui & Brothers [2001-2002] SCGLR 498*** the court per Adzoe JSC has this to say at page 507 on the principle of estoppel per res judicata ***"It is well settled under the rule of estoppel that if a court of competent jurisdiction has tried and disposed of a case, the parties themselves and their privies cannot, thereafter, bring an action on the same claim or issue. The rule covers matters actually dealt with in the previous litigation as well as those matters which properly belonged to that litigation and could have been brought up for determination but were not raised."***

This particular litigation has protracted for 67 seven years, the decision of this court which the applicant is re-litigating was made 27 years ago the applicant had since then complied with the decision, participated in the proceedings before the Stool Lands Boundary Settlement Commission until the said commission was abolished in the year2000. He had continued with the proceedings in the High Court ever since. It is scandalous for the applicant to take the step he has taken now to further delay the hearing of the substantive case.

The doctrine of estoppel is founded on the principle that litigation should not be protracted, early disposal of cases is a matter of concern to the state hence the maxim "interest reipublicae ut sit finis litum" which means - it concerns the state that law suits are not protracted.

In fact this court in its 30th March 1992 judgment lamented about the length of time this case has remained in the courts. The comments by this court per Hayfron-Benjamin JSC are as follows: "***as I have said, the matter has been pending in the courts for 40 years and there must be an end to***

the litigation. This court as the final court to which parties may prefer their suit has the jurisdiction to do ample justice and finally lay to rest the ghost of this litigation" This court in the 30th March 1992 judgment and the 17th November 1992 review judgment exercised its jurisdiction as the final court do justice as the circumstances of the case demanded.

The protraction of this particular litigation for over 67 years, as I have earlier said is of grave public concern because of the violence it has generated in both communities and the lives that had been lost. The parties and their lawyers owe it a duty to the people of this nation to stop the frivolous interlocutory applications and corporate with the trial High Court to hear the substantive matter to conclusion

The review judgment of this court made on the 17th of November 1992 is valid and subsisting, it has decided the same issues the applicant has brought before us in this application. The said judgment operates as res judicata; the applicant is therefore estopped from instituting this proceeding. That brings me to the procedure by which this application found its way to this court.

The applicant claims he has invoked the inherent jurisdiction of this court. I have earlier on recounted the arguments advanced to support this. Counsel for the appellant maintained the court is being called upon to 'exercise its power to prevent a wrong or injury being inflicted by its own orders, particularly the power of vacating orders made by mistake and the power to undo what it had no authority to do originally'. In taking this stand counsel never mentioned the applicant's application for review and the subsequent review decision of this court.

I have extensively quoted portions of the review decision of this court to demonstrate that the court had been mindful of the rights of both parties and had taken steps to protect those rights. In the circumstances it cannot

be said the applicant suffered any injustice or injuries because of the orders therefore could invoke the inherent jurisdiction of this court. In fact it lies very foul in the mouth of the applicant to raise issues on whether the subject land is stool land or not since the review judgment demonstrates that they had taken the position at a stage in the course of this litigation that the dispute relates to Stool Lands and the courts have no jurisdiction.

It is my view that the inherent jurisdiction of this court has not been properly invoked, the application is therefore incompetent. The applicant above all is estopped from re-litigating matters that had already been decided in this court's review decision dated 17th November 1992. The application lacks merit and it is hereby dismissed.

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

PWAMANG, JSC:-

I have read beforehand the well-researched judgments of my respected colleagues; Dordzie and Amegatcher, JJSC and agree that this application ought to fail. A fundamental argument pressed on us by the applicant is that, in the judgment of the Court of Appeal dated 30th July 1979, that court heard arguments on the issue whether or not this suit is, properly speaking, a stool lands boundary dispute cognizable under the Stool Lands Boundary Settlement Commission Decree, 1973 (SMCD 172). The Court of Appeal arrived at the conclusion that it is not. According to applicant, that judgment was the final decision of the highest court of the land at the time it was delivered and whether the Supreme Court in 1992 agreed with the view of the Court of Appeal or not, it had no authority to set it aside and substitute its view as the correct position of the law on the issue. When one considers the doctrine of immutability of final judgments, there is sympathy for that argument of the applicant.

However, when that argument is taken one step further, then we find ourselves facing the same argument in this application in that, as has been abundantly pointed out in the judgments of my worthy colleagues, the review panel of the Supreme Court in November 1992, considered the same arguments applicant has made in the present application and came to a conclusion that the judgment of the Court of Appeal dated 30th July, 1979 was rightly set aside by the regular panel in their judgment dated 30th March, 1992. If the Supreme Court erred in setting aside the final judgment of the Court of Appeal, as the applicant is contending, is he urging us to go down the same fallacious path and set aside the final review decision of this court assuming we were of a different view of the matter?

I do not think it is in the interest of the administration of justice to do so. Decisions of the Supreme Court are final not because the Supreme Court may not on rare occasions err, but we say the Supreme Court does not err for the only reason that its review decisions are final. See the case of **Brown v. Allen 344 US 443, 540 (1953).**

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

AMEGATCHER, JSC:-

I have had the benefit of reading the opinion just delivered by my learned and respected sister Dordzie JSC. I entirely agree with her narration of the facts and the conclusion reached that the application before us lacks merit and should be dismissed. This is a 67-year-old land litigation with a chequered history. Because of the legal and procedural manouvering and professional ingenuity adopted by the parties resulting in series of applications, I find it appropriate to comment on two legal propositions which have a bearing on this matter for the benefit of the parties and the jurisprudence of the court.

The applicant says he is invoking the inherent jurisdiction of this court to re-open and set aside part of the ruling of this court dated 30th March 1992. That ruling referred the dispute between the parties to the Stool Lands Boundary Settlement Commissioner for settlement. The effect of heeding the request of the applicant would mean reinstating the judgment of the Court of Appeal in **Civil Appeal No. 202/76 of 30th July 1979** intituled **Togbe Ayim Darke IV & Others v Togbe Gbobo Darke XI** which the Supreme Court set aside in the ruling of 30th March 1992. Incidentally the application which resulted in the Supreme Court's ruling was initiated by the applicant herein. The Supreme Court granted the prayer of the applicant and went ahead under its power to make consequential orders to set aside the judgments of the High Court delivered by Francois J (as he then was) and the Court of Appeal delivered by Lassey JA. The outcome from that ruling was that part was in favour of the applicant while the other part did not go down well with the applicant. Adade JSC, in his opinion in the 30th March 1992 ruling reported as **Republic v High Court, Accra; Ex Parte Darke XII [1992] 2 GLR 688 at 714,** gave an indication why the two judgments were set aside in the following words:

"**But in the course of this application, the court's attention has been drawn to the proceedings and judgments in phase I, i.e. to the judgments of Francois J. (as he then was) at the High Court, Ho and of the Lassey Court of Appeal. These judgments are not directly before us; there is no formal application to us to do anything with them. But if we have reason to think that they are void, we can, indeed we should, of our own motion say so and set them aside."**

Dissatisfied at the setting aside, the applicant applied to the Supreme Court for a review. The grounds for the review application and the arguments canvassed by the applicant in 1992 are the same as the arguments canvassed before us in this application. The arguments did not find favour with the 1992 Supreme Court which refused the application for a review by a majority of 8-1, thus closing the chapter on that phase of the litigation

between the parties. This is how Hayfron-Benjamin JSC explained the exercise of the power by the court. At page 790 the learned judge opined:

“The applicants have prayed for some declarations. I have examined the nature of those declarations and I am of the view that they are in fact a plea for consequential orders to be made. In an application for certiorari the court has power to make consequential orders. In the present application, as I have said, the matter has been pending in the courts for 40 years and there must be an end to the litigation. This court as the final court to which parties may prefer their suit has the jurisdiction to do ample justice and finally lay to rest the ghost of this litigation. I will therefore grant the consequential reliefs subject to only one small variation-that is to say the whole of the decision of the Court of Appeal dated 30 July 1979.”

Can the inherent jurisdiction of this court be invoked to set aside a previous decision of the court which after review had brought finality to that phase of the litigation? What is the remedy of an applicant even if the Supreme Court decision on review is later found to be wrong in law?

Counsel for the applicant relied on this court’s decision in the case of **Republic v Tommy Thompson Books Limited [1996-97] SCGLR 804 at 838** where Kpegah JSC, cited with approval the opinion of Hayfron-Benjamin J (as he then was) in the case of **Attoh-Quarshie v Okpoti [1973] 1 GLR 59** and held that under the inherent jurisdiction of the court, the court has power to prevent wrong or injury being inflicted by its own acts or orders or judgments, including the power of vacating judgments entered by mistake and of relieving judgments procured by fraud, and a power to undo what it had no authority to do originally. An excursion into how the inherent power has been exercised in some few Commonwealth jurisdiction will guide this court in charting its own path in the use of that power.

According to **Justice Anderson** in the 1841 case of **Cocker v Tempess 151 ER 864 (1841)**, inherent jurisdiction is:

“the power of each court over its own process…; it is a power incident of all courts, inferior as well as superior; were it not so, the

court would be obliged to sit still and (to) see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter of the most careful discretion."

In a book on the topic, South African jurist, **Jerold Taitz** used these words:

"The inherent jurisdiction of the Supreme Court may be described as the unwritten power without which the Court is unable to function with justice and good reason. As will be observed below, such powers are enjoyed by the Court by virtue of its very nature as a superior court modelled on the lines of an English superior court. All English superior courts, English colonial superior courts and the superior courts which succeeded them are deemed to possess such inherent jurisdiction save where it has been repealed or otherwise amended by legislation."

In **Connelly v. Director of Public Prosecutions, [1964] A.C. 1254**, Justice Morris of the House of Lords (England) wrote:

"There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process."

I cannot ignore **Halsbury's Laws of England whose (4th Edition), 1982, Vol. 37, at p. 23**, describes the inherent jurisdiction of the court as follows:

"In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine, and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable

to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

One can, therefore, identify four general overriding circumstances in which the inherent jurisdiction of the superior courts is exercised:

1. To ensure equity, fairness and convenience in legal proceedings,
2. To prevent steps by litigants which would render judicial proceedings vexatious, oppressive and ineffective,
3. To prevent abuse of its process, and
4. To aid superior courts exercise proper supervision over lower courts and tribunals.

The scope of a superior court's power in the exercise of its inherent jurisdiction though not fully defined, nevertheless cannot be said to be unlimited. There should be and in fact there are limits that have been established in certain areas of the court’s powers.

In the Singaporean case of **Management Corporation Strata Title Plan No 301 v Lee Tat Development Pte Ltd [2010] SGCA 39,** the issue which arose in this case **was** whether Singapore’s highest court, the Court of Appeal has the inherent jurisdiction to reopen and set aside an earlier decision which it made and reconstitute itself to rehear the matters dealt with in that decision. The applicants alleged that a decision of the Court of Appeal had breached natural justice and in such a situation, the Court had an inherent jurisdiction to reopen that decision in order to correct the injustice. The argument was reliant upon (inter alia) the House of Lords’ decision in **R v Bow Street Metropolitan Stipendiary Magistrate and Others, Ex parte Pinochet Ugarte (No 2) [2000] 1 AC 119**. In that case, the Court had used its inherent jurisdiction to vacate and rehear an earlier decision tainted by apparent bias. The court below had held that cases like Pinochet were distinguishable on the basis that the House of Lords was operating in a

statutory vacuum, whereas the Court of Appeal in Singapore was a statutory creature. Rejecting the argument that an inherent jurisdiction to reopen existed, that court stated the following:

“Inherent power” should not be used as though it were the joker in a pack of cards, possessed of no specific designation and used only when one [does] not have the specific card required. The same might be said of “doing justice” because one man’s justice can be another man’s injustice. “Inherent power” does not mean unlimited power, and if a substantive power to reopen a case on [the] merits is to be given, it must come expressly from the legislature.”

The Tommy Thompson Books Limited case (supra) did not lay down unlimited scope within which the superior courts could exercise their inherent power. In fact, the situations identified by Kpegah JSC in that case have always existed in our legal jurisprudence as grounds for the court *suo motu* or on application to vacate its own orders. Among these are vacating judgments on grounds of mistake, fraud and lack of jurisdiction. These grounds do not suffice and cannot be used to form the basis of inviting us to set aside the 30th March 1992 judgment of this court.

If we were to go that route, we would be going contrary to the time-tested and well-established principle of “***interest republicae ut sit finis litium***”. This principle is founded on the doctrine of Res Judicata which is common to all civilised systems of jurisprudence to the extent that a judgment after a proper trial by a court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should forever put the controversy to rest. The plea of Res Judicata, it is said is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice to prevent abuse in accessing courts and re-opening issues which have been finally determined between the parties.

We are being invited to set a precedent whereby virtually every litigant who has gone through the hierarchy of the courts right to the apex court and has exhausted the review jurisdiction, could on application invite us to re-open the matter decades later on the pretext that the apex court erred and should not have delivered judgment the way it did. It is to the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. This maxim belongs to the law of all civilised countries and ensures that litigations are brought to an early end. That is why provisions are made in our laws for unsuccessful litigants to exercise the right to appeal within specified periods through the hierarchy of the courts until the final and highest court of the land puts the final seal to the litigation.

The principle of finality of litigation is based on the high principle of public policy. In the absence of such a principle, litigants would be unnecessarily oppressed or vexed by their rich opponents with repetitive suits and actions under the colour and pretence of law. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata evolved to prevent such anarchy.

To the same effect is the view expressed by the Federal Court of India in **Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai (AIR 1941 SC 1)** placing reliance on dicta of the Privy Council in **Venkata Narasimha Appa Row v. Court of Wards 1886 (II) AC 660**. **Gwyer, C.J.** speaking for the Federal Court observed:

'This Court will not sit as a court of appeal from its own decisions, nor will it entertain applications to review on the ground only that one of the parties in the case conceives himself to be aggrieved by the decision. It would in our opinion be intolerable and most prejudicial to the public interest if cases once decided by the court could be re-opened and re-heard: 'There is a salutary maxim which

ought to be observed by all courts of last resort -- *Interest reipublicae ut sit finis litium* (It concerns the state that there be an end of law-suits. It is in the interest of the State that there should be an end of law-suits.) Its strict observance may occasionally entail hardship upon individual litigants, but the mischief arising from that source must be small in comparison with the great mischief which would necessarily result from doubt being thrown upon the finality of the decisions of such a tribunal as this.'

In my opinion, the inherent jurisdiction of judges of the superior courts does not extend to re-opening and varying or setting aside final orders of the court disposing of a matter unless there is clear breach of the rules of natural justice or the order does not express the true intent of the court's decision. If this is not guarded jealously, there will not be certainty or finality to court orders that the judicial process requires. While its presence and use by the appropriate courts allows flexibility for substantial justice to be done between the parties and avoid abuses of the courts processes in appropriate cases, my opinion is as an element related to the common law, it should be used cautiously or sparingly but as often as truly required. In conclusion, in as much as the grounds of this application are the same as the arguments that were made before the review panel in 1992 but did not find favour with this court, that phase of the litigation is final and cannot be reopen.

SGD N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

SGD P. BAFFOE-BONNIE

(ACTING CHIEF JUSTICE)

SGD S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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