

Prove title strength | Allegations must prove | Balance probabilities standard | Admitted facts accepted |
Pleadings define issues | Parties bound pleadings | Court confines issues | Determined issue binds | Same
question final | Just expeditious resolution | No client sins | Appeal is rehearing | Set aside miscarriage |
Relist dismissed case | Justice merits hearing

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2024

CORAM: SACEY TORKORNOO (MRS), CJ (PRESIDING)
BAFFOE-BONNIE, JSC
KULENDI, JSC
ASIEDU, JSC
GAEWU, JSC

CIVIL APPEAL
NO. J4/63/2022

19TH JUNE, 2024

EMMANUEL JUSTUS BRIANDT PLAINTIFF/APPELLANT/APPELANT

VRS

NANA KWASI ANKRAH III DEFENDANT/RESPONDENT/RESPONDENT

JUDGMENT

GAEWU JSC :

INTRODUCTION

- (a) My Lords, this is an appeal against the judgment of the Court of Appeal dated 22nd day of July 2021 which partially affirmed a judgment of the High Court, Koforidua dated 11th December 2019 granting the defendant/respondent/ respondent (hereinafter referred to as “the Defendant”) perpetual injunction, order directed at the Lands Commission,

Koforidua, to expunge and delete from its records any purported registration made at the instance of the plaintiff herein, recovery of possession, general damages for trespass and legal fees and costs against the plaintiff/appellant/ appellant (hereinafter referred to as "the Plaintiff").

BACKGROUND

The Plaintiff by a writ of summons issued and filed on 13th March 2015 claims against the Defendant:

Declaration of title to all that piece or parcel of land containing an approximate area of 1.64 acres situate in Springfield locality of Peduase in the Akwapim South District bounded on the north-west by the vendor's land measuring a distance of 226.1 feet more or less, on the north-east by vendor's land measuring a distance of 404.1 feet more or less, on the south-east by vendor's land measuring a distance 116.5 feet more or less and on the south-west by vendor's land measuring 341.8 feet more or less.

A declaration that the Defendant's interference with Plaintiff's right to develop, use and enjoy his land is wrongful and an unlawful interference with his right to property.

Damages for wrongful and unlawful interference and trespass.

An order of perpetual injunction against the Defendant, his agents, privies, workmen or assigns from interfering with Plaintiff's ownership of the land.

By his amended statement of claim filed on 20th October 2017, the Plaintiff who claim to be a businessman and owner of the land in dispute by virtue of a grant made to him by the Asona Family of Kitaase in 2009 which grant was later confirmed in a Deed of Grant made on the 13th of May 2010. That he later discovered that the said Asona Family had earlier made a grant of the said land to one Nana Korkor Ntim who is the Queen mother of Kitaase, who had had her ownership confirmed by an arbitration dated 1st February 1995 and a judgment of the Circuit Court in 2011. According to the Plaintiff he took immediate possession of the land upon the grant to him by fencing the entire land and putting up a small dwelling house on a portion thereof and putting it in the care of a caretaker. However, the Defendant had been interfering with his possession of the land

by preventing his workers from coming onto the land and developing same and that the defendant has gone to the extent of causing part of the fence wall he built around the land to be demolished. Hence the action against the defendant praying for the reliefs endorsed on the writ of summons.

The Defendant entered appearance to the writ of summons and in his amended statement of defence, denied the claim of the Plaintiff in its entirety. The Defendant averred that the Plaintiff's claim to land in dispute is a clear case of an abuse of the court's processes and that the entire action and the application was brought in bad faith and the particulars of bad faith were enumerated as follows:

That there is indeed nothing in the Plaintiff's claim nor his exhibited documents which links the defendant herein to the suit apart from the title of the suit.

That the Plaintiff's document, exhibit 1, which purports to convey title in the disputed land to the Plaintiff does not have a name and signature of the Defendant herein as executing same and/or for and behalf of the said Gyaasehene

That the Defendant herein never signed for and on behalf of the Gyaasehene Agyeman Kodua because the said signature on the said Exhibit 1 does not emanate from him and that if indeed it were so, the documents would have bore his name signing for and on behalf of the said Gyaasehene.

That the head and lawful representative of the Asona Royal Family and the occupant of the Kitaase stool cannot execute an indenture for and on behalf of the Gyaasehene of the stool.

That the oath of proof attached to Plaintiff's Deed of Conveyance emanating from his alleged grantors has in its various forms and degrees of alteration of all the dates, which make their claim and documents doubtful.

According to the Defendant further, by virtue of an Executive Instrument, the said parcel of land is vested in the Government of the Republic of Ghana and the stool holds a reversionary interest of same and therefore the Defendant's responsibility is to safeguard and protect same from external aggressors. The Defendant therefore counterclaims against the Plaintiff as follows:

- (b) *A declaration that the defendant is the owner of all that piece or parcel of land situate and lying at Kitaase Peduase in the Akwapim South District area in the Eastern Region of the Republic of Ghana and containing an approximate area of 1.28 acres and bounded on the north-west by Kitaase Aburi road and measuring on that side a distance of 282.45 feet more or less, on the north-east and measuring on that side a distance of 106.01 feet more or less, on the south-east by vendor's land and measuring on that side a distance of 209.55 feet more or less and on the south-west by a proposed lane and measuring on that side a distance of 7.56 feet more or less.*
- (c) *Perpetual injunction restraining the Plaintiff, their agent (sic) servants, workmen, labourers, assigns, privies, personal representatives or howsoever from further interference or dealing with or having anything to do with the land in dispute.*
- (d) *An order directed at the Lands Commissioner, Lands Commission, Koforidua, to expunge and delete from its records any purported registration made at the instance of the plaintiff herein.*
- (e) *Recovery of possession*
- (f) *General damages for trespass*
- (g) *Legal fees and cost.*
- (h) *Any relief(s) that the court may deem fit.*

The parties were ordered at the application for directions stage to file their witness statements which they did, and the case proceeded to the case management conference.

The case management conference was concluded on 9th March 2018 and the case was adjourned to the 12th, 18th and 19th of April 2018 for the trial.

On the 12th of April 2018 when the case was called, Plaintiff was absent, Defendant was however, present. J. O. Amankwa, Esq, was present to hold the brief of Kwaku Osei Asare, Esq, counsel on record for the Plaintiff. There was however a bizarre order of the court awarding cost of GHC800.00 in favour of the Plaintiff and against the defendant

with a further order of hearing notice to be served on the defendant and the case was adjourned to the 9th of March 2018.

On the 17th of April 2018, the case was again called, the Plaintiff was absent, Defendant was present. Kwaku Osei Asare, Esq, Counsel for plaintiff was absent and the learned judge ordered as follows:

"By Court: Case adjourned to 10th July 2018 for hearing. If plaintiff and counsel do not appear, I will strike out the suit and hear the Defendant and his counterclaim. Hearing notice to be served on the Plaintiff. I award cost of GHC300.00 for the purpose".

On 21st of May 2018, the case was called again with the Plaintiff absent, the Defendant was also absent but represented by one Nana Kwame Boadu. Kwaku Osei Asare, Esq, Counsel for the Defendant was also absent. The court made the following order:

"Case adjourned to 10th July 2018 for hearing. If Plaintiff and counsel do not appear, I will strike out the suit and hear the defendant and his counterclaim. Hearing notice to be served on the plaintiff. I award of GHC300.00 for that purpose".

On the 10th of July 2018, the case was called. Plaintiff was absent and Defendant was present. J. O. Amankwa, Esq, was present to hold the brief of Kwaku Osei Asare for the Plaintiff. The court then adjourned the case to 23rd October 2018 for hearing.

On the 23rd of October 2018, both parties were absent. However, Joseph Kwadwo Amankwah was present to hold the brief of Kwaku Osei Asare for the plaintiff. The court then adjourned the case to 18th December 2018 for mention.

On the 18th of December 2018 plaintiff was absent. Joseph Kwadwo Amankwah again was present to hold the brief for Kwaku Osei Asare. The court again adjourned to the 24th of January 2019 for mention.

On the 24th of January 2019, plaintiff was absent, defendant was also absent but represented by Nana Kwame Boadu. Joseph Kwadwo Amankwa was again present to

hold the brief of Kwaku Osei Asare for the plaintiff. Case again, was adjourned to 28th February 2019 for mention.

And on the said date of 28th February 2019, plaintiff was again absent, Joseph Kwadwo Amankwa again was present to hold the brief of Kwaku Osei Asare for the plaintiff and the court made the following order:

"By Court" Case adjourned to the 29th and 30th of April 2019 for hearing. If the plaintiff does not attend on that day for hearing to begin, his claim will be dismissed, and I will proceed to hear evidence of the defendant in proof of his counterclaim".

It is significant to note that on the 10th of July 2018, 23rd of October 2018, 18th of December 2018, 24th January 2019, 28th of February 2019, when the case was called and the plaintiff was absent, no hearing notices were ordered to be served on the plaintiff.

On the 29th of April 2019, the case was called. Plaintiff was absent, defendant was also absent but represented by Nana Kwame Boadu, Joseph Kwadwo Amankwah, Esq, who had been holding the brief of Kwaku Osei Asare for the plaintiff was absent and so was Kwaku Osei Asare, counsel on record for defendant, also absent. The court, therefore, proceeded as follows:

"By Court: On 28th February 2018 I ruled that if plaintiff did not attend court for hearing to commence, I will dismiss his counterclaim and proceed to hear the evidence of the defendant, that was in the presence of his counsel. Today, both counsel and plaintiff are absent. In accordance with Rule 7(a), 3(a), I, in the circumstance proceed to strike out the action of the plaintiff, i.e., the writ of summons and statement of claim of Order 32. I award cost of GHC5,000.00 in defendant 's favour against the plaintiff".

After striking out the action of the plaintiff, the learned trial judge proceeded immediately to take the evidence of Nana Kwame Boadu in support of the defendant's

case and adopted his witness statement filed on the 9th of November 2015 as his evidence in chief and the case was adjourned to 3rd June 2019 for continuation.

On the 3rd of June 2019, defendant himself testified per his witness statement filed on the 9th of November 2015 and called one Abusuapanyin Yaw Kwafo to testify per his witness statement also filed on 9th November 2015. The witness statements of the defendant and Abusuapanyin Yaw Kwafo were adopted as their entire evidence in chief to the court.

The court then ordered for closing submissions to be filed on/or before 3rd July 2019 by the defendant's counsel and the case was adjourned to 3rd July 2019 for a date to be fixed for judgment.

On the 5th of November 2019, Benjamin K. Sevor, Esq, of Opinsan Chambers, 17 Samora Machel Road, Asylum Down, Accra, filed Notice of Change of Lawyer on behalf of the plaintiff and proceeded on that day and date to file a Motion for and on behalf of the plaintiff for relistment of the action that was struck out, supported by an affidavit. The defendant opposed the application and on the 25th of November 2019, the court heard the application for relistment. After hearing arguments for and against the relistment, the court dismissed the application. And on 11th of December 2019, the trial High Court entered judgment for the defendant on his counterclaim and awarded GHC10,000.00 as damages in favour of the defendant with cost assessed at GHC8,000.00 in favour of the Defendant.

The Plaintiff aggrieved by the judgment of the High Court, appealed to the Court of Appeal on five grounds. The Court of Appeal after analysing the entire case put before it, affirmed in part the judgment of the High Court. The Court of Appeal set aside the declaration of title made by the trial High Court in favour of the defendant but affirmed the other reliefs granted the defendant.

The plaintiff still aggrieved by and dissatisfied with the judgment of the Court of Appeal, has filed a Notice of Appeal on 13th October 2021 to this Court complaining about the entire judgment from the Court of Appeal and on the following grounds set out in the Notice of Appeal:

a)The Court below erred in law when it upheld the judgment of the trial court notwithstanding a clear violation of the rules of natural justice.

Particulars of Error of Law

- a. Failure to give counsel for the plaintiff the opportunity to cross-examine the witnesses of defendant/respondent/ respondent (hereinafter called 'defendant') when defendant was called upon to prove his case.
 - b. Failure by the court to restore or relist the case of the plaintiff even though the court recognised that it was all the fault of plaintiff's former counsel that resulted in plaintiff's case being struck out; plaintiff having appointed new counsel, plaintiff ought to have been given the opportunity of presenting his side of the case for the matter to be determined on its merits.
 - c. The failure of the plaintiff to mount an interlocutory appeal against the dismissal of his motion to relist his case did not prevent the court below from considering the facts when rehearing the entire case on appeal, giving the circumstances of the case.
2. The court below based its judgment squarely on the plaintiff's failure to prosecute his case and not because the defendant discharged his own burden of proof.
 3. The finding by the court below that the defendant was first to take possession of the land in dispute as against the plaintiff, is not supported by the pleadings and evidence on record.
 4. The court below correctly quoted the facts and law in Okantey v. Kwaddey (1959) GLR 241 regarding the right of the first party to occupy state land (though without right), to protection against subsequent entrants on the land but failed to correctly apply Okantey v. Kwaddey (1959) GLR 241 to the instant dispute.

5. The court below erred in ignoring the judgment of the Circuit Court, Koforidua, dated 1st June 2011 in Suit numbered 104/2002 which judgment also concerned the same land in dispute.

Further grounds of appeal will be filed upon receipt of the record of appeal.

The plaintiff by way of the reliefs sought is praying that the judgment of the Court of Appeal and by extension, that of the trial High Court be set aside, that the plaintiff's case be restored or relisted and the matter be remitted for trial and for any other order(s) as the circumstances of the case warrant.

RESOLUTION

The first ground of appeal and the particulars offered criticized and attacked the trial court's violation of the rules of natural justice. The term justice according to Black's Law Dictionary, 9th Edition, means "*the fair and proper administration of the law*". "*Natural justice is referred to as a process where justice is served in a natural way devoid of bias and sentiment and under careful analysis, thought and consideration*". Again, natural justice refers to the fundamental principles of fair treatment. These principles include the duty to give someone a fair hearing; the duty to ensure that the matter is decided by someone who is impartial; and a duty to allow an appeal against a decision. Natural justice is based on two principles that "*no man shall be punished without due process of law*" and "*no man shall be a judge in his own cause*".

The principles of natural justice are so dear and at the heart of the practice of the law in the courts such that its violation by any adjudicating authority including the court is not taken lightly by an appellate court or by a court exercising supervisory jurisdiction over any lower court or adjudicating authority or administrative authority established by statute.

In this case, the court struck out the case of the plaintiff for the plaintiff's failure to attend court to prosecute his case when the case was adjourned for hearing. There is no denying the fact that the High Court has the authority under the right circumstances

to strike out a case of a plaintiff. For instance, under Order 32 rule 7A of CI 47 as inserted by High Court (Civil Procedure) (Amendment), Rules 2014 CI 87, specifically Order 32 Rule 7A (3A), where a party has failed to comply with any of the directions given at a case management conference or pretrial review or both, the judge may strike out the **action** if the non-complying party is the plaintiff.

Also, under Order 36 rule 1(2)(b), of CI 47, where an action is called for trial and a party fails to attend, the trial judge may where the defendant attends and the plaintiff fails to attend, dismiss the **action** and allow the defendant to prove the counterclaim, if any.

Action is defined under Order 82 rule 3 of CI 47 on interpretation to mean "*a civil proceeding commenced by writ or in such other manner as may be prescribed by these rules or by any other enactment*".

A writ includes a writ of summons and statement of claim or a petition in a cause or matter.

In our opinion, we find the striking out of the plaintiff's action, that is the writ and statement of claim by the trial judge under Order 32 rule 7(A) Sub-rule 3(a) as amended by CI 87 as wrongful adoption of procedure, as the plaintiff did not fail to comply with any directions given at case management conference or pretrial review of the case or both. The judge ought to have proceeded under Order 36 rule 1.

Be that as it may, the striking out of an action or the dismissal of an action of a plaintiff, in our opinion, may not completely foreclose a plaintiff from further participating in an action especially if there is a counterclaim against him for which he has filed a defence. A defence to counterclaim is not defined as including a writ of summons and a statement of claim. In this case, the plaintiff whose action was dismissed has by virtue of his defence to the counterclaim filed, a defendant and in that regard, all notices for the further hearing of the case when his action was struck out or dismissed in his absence, ought to have been served on him in order for him to attend and defend the counterclaim against him.

After striking out the action of the plaintiff, the court ought to have adjourned and order a hearing notice as well as the proceedings of the day to be served on the plaintiff who has become a defendant to the counterclaim to attend court on the next

hearing date to either cross-examine the defendant and his witnesses who testified or otherwise. The failure to notify the plaintiff that his case has been struck out and a hearing notice not ordered to be served on him to come and cross-examine the defendant and his witnesses, was tantamount to serious procedural unfairness of him not being given a hearing on the claims against him. This we think constitute a serious miscarriage of justice.

By reason of the foregoing, we will allow the appeal on this ground alone and order for a re-trial of the case before the High Court.

(SGD) E. Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

(SGD) G. SACKY TORKORNOO (MRS)
(CHIEF JUSTICE)

(SGD) P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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

CONCURRING OPINION

KULENDI JSC:

1. I have had the benefit of reading the erudite and concise lead opinion of my respected brother Ganewu JSC and I fully concur with the reasoning and conclusions on the lapses in natural justices which have irredeemably tainted the judgment of the High Court dated 11th December, 2019 and by extension, the judgment of the Court of Appeal dated 21st July, 2022 which affirmed same.

2. In addition to the erudite reasoning in the lead opinion, a close perusal of this case would reveal that it presents a certain factual nuance which in my opinion, ought to be comprehensively addressed by this Court, being the final appellate Court, and the ultimate gatekeepers of the fountains of justice.

3. The facts of this case, as ably serialized by my brother bears out the point that though this appeal is borne out of a Writ of Summons issued at the instance of the Appellant, the judgment against which the appeal was lodged, relates to a Counterclaim filed by the Respondent. It is also a significant fact that as at the time of the delivery of judgment, the Appellant's case had been struck out by the trial High Court.

4. The consequence of this chronology and factual nuance is that if we were to simply set aside of the judgment of the Court of Appeal and remit the case to the trial Court to be heard *de novo*, without more, the Trial Court will only be empowered to consider the merits of the Respondent's Counterclaim alone, and not more. This is because the ruling of the High Court of 29th April 2019, striking out the Appellants case or originating Writ of Summons and the subsequent ruling of 25th November 2019, dismissing his relistment application, would still subsist as binding judgements and therefore, the Appellant's case cannot be considered on its merits under our order of remittal for a rehearing. Consequently, this would only partially meet the ends of justice because it would still fall short of remedying the full extent of the injustice occasioned the Appellant in the foreclosure of his constitutional right to appeal the interlocutory decision of the High Court dismissing his said application for relistment.

5. In the Appellant's Writ of Summons, he asserted ownership of land situate and lying at Springfield, Peduase by virtue of a grant made in his favor by the Asona Family of Kitase, which grant was later confirmed by a formal deed of conveyance executed by the said family on the 13th May, 2010. After exercising acts of possession over the land, the Appellant alleged that he later discovered that the same Asona Family had also purported to grant of his land to one Nana Korkor Ntim II, the Queen Mother of Kitase.

6. The Appellant averred that in light of this development, and in a bid to forestall needless confrontation and litigation, he took steps to regularize his possession of the land with the said Nana Korkor Ntim II. The Appellant alleged that notwithstanding these steps, the Respondent persisted in interfering with his quiet possession and acts of ownership of the land by preventing his workers from coming onto and developing the land and that in furtherance of such acts of trespass, the Respondent has caused part of a fence wall constructed by the Appellant to be demolished.
7. In the premise of these contentions the Appellant prayed amongst others, for a declaration of title to the land in dispute; a declaration that the Respondent's interference with his land was unlawful; and an order of perpetual injunction against the Respondent.
8. On the other hand, the Respondent per a Statement of Defence and Counterclaim, wholly denied the allegations of the Appellant, contending that he was the Head and Lawful Representative of the Asona Royal Family, and the occupant of the Kitase Stool. He further averred that he had occupied this office as far back as 2009, when the Appellant purports to have been sold the land in dispute. By reason of this office, the Respondent asserts that he is the only rightful person

clothed with the requisite legal authority to deal with, and/or alienate the said parcel of land.

9. Consequently, in direct response to the Appellant's claims of having validly purchased the land, the Respondent retorts that the purported purchase of the land from persons who had no capacity, ownership or legal right whatsoever to sell the land, could not have vested the Appellant with legal title in the land.

10. On these contrary premises, the Respondent in turn mounted his Counterclaim seeking amongst others; a declaration of title to the same land, an order for perpetual injunction and a further order directed at the Lands Commission, Koforidua, to expunge and delete from its Register, any purported registration made at the instance of the Appellant.

11. After a failed bid by the Appellant to have the Respondent's Statement of Defence struck out for failing to disclose any reasonable defense, the Appellant and his Solicitors failed to attend court on several occasions, causing the learned Trial Judge to issue several stern warnings to the Appellant.

12. On one of such occasions, the 28th of February, 2019 the Trial Court categorically indicated to the Appellant's Counsel that if on the

subsequent dates set for hearing, 29th and 30th of April 2019, the Appellant did not attend for the commencement of hearing of his case, his claim would be dismissed and the Court would proceed with the hearing of the Respondent's Counterclaim.

13. True to the warning, when on the 29th of April, the Appellant failed to attend Court, his case was struck out with cost of Five Thousand Ghana Cedis (GH¢ 5,000.00) awarded against him in favor of the Respondent.

14. The Trial Court then proceeded to hear the Counterclaim of the Respondent and entered the judgment dated 11th December 2019 in his favor without any further notice(s) to the Appellant and/or his lawyer. It is pertinent to underscore that it is this judgment which resulted from the subsequent proceedings which ensued after the striking out of the Appellant's case, that has been set aside by this Court on account of the clear breaches of the rules of natural justice due to the want of notice to the Appellant of the hearings that resulted in the judgement of 11th December 2019.

15. However, it is significant to note that prior to this judgment of 11th December 2019, the Appellant, on the 5th of November 2019, following the striking out of his case on 29th April 2019, had caused a Notice of Change of Solicitor to be filed and later that same day filed a motion

for relistment of his case. In motivation of this application, the Appellant per his affidavit in support, attributed his lethargy in prosecuting his suit to certain undisclosed domestic issues which necessitated his travel out of the jurisdiction for well over a year. The Appellant therefore urged his readiness and willingness to prosecute his case and, in addition, undertook to pay cost to the Respondent to compensate for the damage that would be caused by a relistment of his case.

16. Notwithstanding these undertakings and voluntary offer to pay cost to the Respondent, on oath, the Trial Court dismissed the Appellant's application for relistment on the 25th of November, 2019, citing the implausibility of the reasons canvassed in the Appellant's said affidavit in support. The Court awarded a further cost of Five Thousand Ghana Cedis (GH¢ 5,000.00) against the Appellant.

17. Significantly, the 11th of December 2019, the date on which the trial Court rendered its said final judgment, was exactly **sixteen (16)** days after the dismissal of the relistment application and so the 21 days within which the Appellant may appeal the ruling refusing his application for relistment had not expired. Yet, the effect of this judgment was to effectively bring the entire case being the Appellant's writ and Respondent's counterclaim to a conclusion. This was **five (5)** days shy of the **Twenty-one (21)** day window within which the

Appellant had the right to appeal the interlocutory decision dismissing his application to relist his case.

18. Article 137(2) of the Constitution crystallizes the right of a person to lodge an appeal at the Court of Appeal, against a judgment or decision delivered by the High Court. The said article provides as follows:

“Except as otherwise provided in this Constitution, an appeal shall lie as of right from a judgement, decree or order of the High Court and a Regional Tribunal to the Court of Appeal.”

19. In furtherance of, and for the purpose of the realization of this constitutional right of appeal when it turns on interlocutory judgments, orders or decrees of the High Court, Rule 9(1)(a) of the Court of Appeal Rules, 1997 (C.I 19), prescribes the timelines within which a person may exercise this right of Appeal as follows:

***“Subject to any other enactment for the time being in force, no appeal shall be brought after the expiration of-
(a) twenty-one days in the case of an appeal against an interlocutory decision;”***

This procedural limitation ensures the protection of the constitutional right to challenge interlocutory decisions of the High Court, while also ensuring that such a right does not take proceedings hostage and thereby unduly delay, permanently suspend and/or entirely disrupt the proceedings and the necessary conclusion, and full and final adjudication of disputes by the High Court. The effect of the procedural guidance and timeline in rule 9(1)(a) of CI 19 is that the

right of appeal against an interlocutory judgement order or decree of a High Court, even though automatic and as of right, it does not exist in perpetuity and must be exercised within 21 days if a litigant is minded to ventilate a grievance resulting from an interlocutory judgement, order or decree of the High Court by way of an appeal.

20. On the basis of the foregoing, it therefore stands to reason that by virtue of the delivery of the final judgment **five (5)** days prior to the elapsing of the **Twenty-one (21)** day period stipulated by Rule 9(1) (a) of the Court of Appeal Rules, 1997 (C.I 19), the Appellant was overreached in his right to appeal the ruling dismissing his application for relistment of his case given that the ensuing proceedings which concluded in a final judgment disposed of the entire subject matter of the case that formed the basis of his Writ of Summons.

21. The net effect of this state of affairs is that, unless this Court intervenes to remedy this procedural mishap, and thereby restore the Appellant's opportunity to have his case, constituted in his writ and statement of case, heard on its merits, merely setting aside the judgment of the Court of Appeal dated 22nd July 2022 and remitting "the case" to the High Court, differently constituted, will only affect the hearing of the Respondent's counterclaim. The only "case" that can rightly be reheard by the High Court will be the case constituted in the

Respondent's Counterclaim as distinct from the case constituted in the Appellant's Writ of Summons. This is because, the Appellant's case will remain struck out due to the subsistence of the ruling/order that struck out his application for relistment and which ruling, Appellant could not have appealed after the trial Court's conclusion and delivery of a final judgment on the Respondent's counterclaim. Furthermore, given that the Twenty-one (21) day timeline for filing an interlocutory appeal subsequently expired some five days after the delivery of a final judgment on the Respondent's Counterclaim and has since long elapsed, the Appellant will not be automatically entitled to file an appeal against the interlocutory judgment dismissing his application for relistment as of right. This outcome, without more, will not comprehensively achieve the full ends of justice.

22. It must be pointed out that it is the need to afford this Court the opportunity to address and in appropriate cases remedy failures of justice that may occur due to unappealed interlocutory judgements, orders or decrees of trial and appellate Courts that Rule 22 of the **Supreme Court Rules 1996, (C.I. 16)** prescribes as follows:

*'An interlocutory judgment, decree or order from which there has been no appeal **shall not** operate to bar or prejudice the Court from giving its own decision upon the appeal as may seem just.'*

23. The import of this Rule is that this Court, in considering a final appeal, as in this case, is not barred or prejudiced from interrogating interlocutory judgments and orders only by reason of the fact that the affected party failed and/or refused to file an interlocutory appeal challenging any such interlocutory judgment, decree or order or may have been disabled from doing so. Therefore, in the exercise of our final appellate jurisdiction, this Court reserves the jurisdiction to assess the propriety of any and all interlocutory judgments, rulings, decrees or orders, that may have been occasioned in the life of the case under appeal, to the extent that it seems just to this Court as it would serve the ends of substantial justice to the parties, rights and interests entailed in any particular appeal. Consequently, where an interlocutory judgment, decree or order from which there has been no appeal will have the effect of occasioning a substantial miscarriage of justice, this Court ought to, in the determination of a final appeal, interrogate such a judgement, order or decree, and intervene to secure the ends of justice by overturning such an impugned interlocutory judgment.

24. I am of the considered opinion that this procedural jurisdiction is anchored in **Article 129(4)** of the Constitution which provides that,

'For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any

other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law.'

25. That said, I must hasten to add that admittedly, the Appellant, in his persistent absence from Court was excessively indolent in the prosecution of his own suit. The Trial Court was, in the circumstances, well within its discretion to strike out the Appellant's case and mulct him in cost, as it rightly did.

26. The propriety and justification of the Trial judge's exercise of this initial discretion notwithstanding, the sacrosanct and paramount principle of justice delivery which has from time immemorial colored and guided the exercise of any and all forms of judicial discretion is that '***a party must not be driven from the seat of justice lightly and each person, as far as is practically possible, ought to be given the opportunity to be heard.***'

27. Clearly, by changing solicitors and filing the relistment application, the Appellant had at the very least, evinced his renewed intention to prosecute his case. At that point and with much deference to the learned Trial Court, this renewed disposition coupled with the representations urged by the Appellant on oath, ought to have counted to the Appellant's favor. Additionally, the Appellant had unequivocally declared his willingness to pay cost for the

inconvenience occasioned the Respondent, by reason of his indolence and inactivity. Consequently, if the judge was minded, the Court was at liberty to award such punitive cost as it deemed adequate, and make the payment of same a pre-condition to the relistment of the Appellant's case and impose conditions on the future conduct of the case so as to hold the feet of the Appellant to the steady tracks of due process and justice.

28. The need for trial Courts to be mindful of the jurisprudential basis of their procedural jurisdiction and rules cannot be overemphasized.

Order 1 Rule 1(2) of the High Court, Civil Procedure Rules 2004 (C.I 47), which in my considered view sets the tone and reflects the philosophy and essence of the procedural jurisdiction, powers, and discretion of trial courts provides that:

.. the rules of Court shall *be interpreted and applied so as to achieve speedy and effective justice, avoid delays and unnecessary expense, **and ensure that as far as possible, all matters in dispute between parties may be completely, effectively and finally determined** and multiplicity of proceedings concerning any of such matters avoided.*

In the symphony of C.I. 47 (as amended), Order 1 rule 1(2) is the chorus and compass that points trial judges, lawyers and other stakeholders in the law and due process to the over-arching philosophy and objective of the rules of procedure and the powers and discretions that derive from them.

29. This Court has repeatedly admonished that the requirement of the Court to fully and finally determine the issues in dispute between the parties, cannot be sacrificed at the altar of convenience and speed at trials; and whilst it is a duty incumbent on the Court that it ensures that a party does not conduct his case in such a manner as to unduly retard the progress of a case, this duty is in every sense subservient and subordinate to the pre-eminent requirement that the party ought to be afforded all avenues that are reasonably and practically possible to ensure that disputes are fully and finally determined and disposed of.

30. In this regard, in a judgment dated the 1st of December, 2021, in Suit No. J4/17/2021 entitled **Nii Lante Lamptey v. R. O. Lamptey Ors**, this Court, speaking through Torkonoo JSC (as she then was), affirmed this overriding necessity, to afford the party the opportunity to fully ventilate his case, in the following terms:

*" We are allowing the appeal on the ground that we choose to exercise our discretion by not visiting the sins of Counsel on the client. **Again, on account of the fact that the appeal has not been heard on its merits, we choose to exercise our discretion to enable that necessity of justice.**"*

31. In consequence of the foregoing, and in exercise of our powers under Rule 22 of CI 16, on the 19th of June, 2023, in addition to the judgement of the Court of Appeal dated 21st July, 2022 which affirmed the judgement of the High Court dated 11th of December 2019, we further set aside the ruling of the Trial High Court dated 25th of November, 2019, dismissing the application for the relistment of the Appellant's case and further order that same be relisted for hearing in addition to the Respondents Counterclaim.

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

COUNSEL:

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RESPONDENT.**