IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: YEBOAH, CJ (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL MOTION
NO. J5/54/2021

13TH JULY, 2021

DANIEL OFORI ..... PLAINTIFF/APPELLANT/APPELLANT/RESPONDENT

VRS

1. ECOBANK GHANA LIMITED ..... 1ST DEFENDANT/RESPONDENT/ RESPONDENT/APPLICANT
2. SECURITIES AND EXCHANGE COMMISSION ..... 4TH DEFENDANT
3. GHANA STOCK EXCHANGE ..... 5TH DEFENDANT

RULING

MAJORITY OPINION

PWAMANG JSC:-

My Lords, on 25th July, 2018 the Supreme Court in exercise of its jurisdiction as the final appellate court delivered judgment in Civil Appeal No. J4/11/2016 involving the parties to this application. By the said decision the court reversed the judgment of the Court of Appeal delivered on 6th June, 2013 which had confirmed judgment of the High Court in

the case dated 16th September, 2011. The application before us prays the court to re-open that Civil Appeal No J4/11/2016 and also to grant leave to the 1st defendant/applicant herein, who was a respondent in the said appeal, to adduce further evidence before the court and for the appeal to be re-heard. The applicant contends that the new evidence it seeks leave to adduce if allowed will cause the court to vary its decision of 25th July, 2018. The application is being made on the inherent jurisdiction of the court.

As authority for praying the court to fall back on its inherent jurisdiction to re-open the appeal and receive further evidence the applicant referred to us the decision of the English House of Lords in **R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet Ugarte (No. 2) [1999] 1 All ER 577** and another by the Supreme Court of the United Kingdom in **R (on the application of Bancoult (No 2) v Secretary of State for Foreign and Commonwealth Affairs [2016] UKSC 35.** At paragraph 20 of its statement of case the applicant submits as follows;

"20. The United Kingdom Supreme Court has subsequently followed the House in Pinochet. In R (on the application of Bancoult (No 2) v Secretary of State for Foreign and Commonwealth Affairs (supra), Lord Mance (with the concurrence of Lord Neuberger and Lord Clarke) stated emphatically that the failure by a party to disclose *relevant evidence* subjects the other party to *an unfair procedure*, and that *if significant injustice was caused with no alternative effective remedy,* then the court would exercise its power to re-open an appeal and permit fresh evidence….." (emphasis supplied.)

The true position of the law as is affirmed in the above quoted statement is that a court, including a final court such as this court, may invoke its inherent jurisdiction where no alternative effective remedy has been provided for in the rules of procedure of the court. In **Imbeah v Ababio [2000] SCGLR 259,** the applicant therein, who was out of time as provided under the **Supreme Court Rules, 1996 (C.I.16) r7(1) and (2)** to repeat his application before the Supreme Court for leave to appeal from a decision of the

National House of Chiefs to the Supreme Court, sought to rely on the inherent jurisdiction of the Supreme Court for his application for leave to be considered by the court. The court unanimously dismissed the application for the main reason that the applicant failed to take advantage of the remedy provided in the rules within the time stated therein and could not do so through the back door. At page 268 of the Report Atuguba, JSC, basing on decisions of our courts and of the English courts, re-stated the well established principle on when inherent jurisdiction may be invoked in the following words;

"This is because the inherent jurisdiction should not be invoked in the face of an express rule relating to the same matter. Thus in ***Azorblie v Ankrah IV [1984-1986] 1 GLR 561 at 564, CA,*** *Adade JSC, delivering the judgment of the court, said:* ***"Where specific rules of law exist to cater for a specific situation, we think the courts should be slow to invoke its so-called inherent jurisdiction . . ."*** *(The emphasis is mine.) Supportive of this enunciation is the English case of* ***Perry v St Helens Land & Construction Co Ltd [1939] 3 All ER 113 at 118, CA.*** *In that case, Sir Wilfrid Greene MR, delivering his judgment (Finlay and Luxmoore LJJ concurring), deprecated the appellant's resort to the inherent jurisdiction of the trial court even though the rules of procedure provided, in the circumstances, that he could move in court to discharge an order made in chambers, in which no certificate had been given. The learned Master of the Rolls said at p 118:*

"In my opinion, the point taken by counsel for the respondents is correct. By that I mean this. ***That procedure being open to the defendants, and being the normal procedure of the court in the Chancery Division, the defendants cannot come to this court and ask for the exercise of the inherent jurisdiction of the court when the other remedy is open to them... I think that the court, even assuming that it has that jurisdiction ought not to exercise it where the proper course is pointed out by the rules of court.*** *(The emphasis is mine.)*

The statutory provisions that set out the substantive and procedural jurisdictions of the House of Lords and the United Kingdom Supreme Court are different from those in respect

of our Supreme Court so the decisions referred to by the applicant cannot be transposed into our statutory setting as if our procedure rules do not make provision for the specific matter that is the source of the applicant's present complaint. Our rules certainly make provision regarding the matter raised by the applicant in this application. But before I demonstrate that, I shall first consider the merits of the arguments of the applicant by applying the legal principles of unfair procedure, injustice and absence of alternative effective remedy that it has based the application on to the facts before us.

From the affidavit in support of this application and the exhibits, what are the facts here? The case was about the sale of shares of Cal Bank Ltd by the Plaintiff to one William Oppong-Bio, a customer of the applicant herein, in May, 2008. The sale was conducted on the Ghana Stock Exchange (GSE) in accordance with the Rules of that Exchange and the shares were paid for on 30th May, 2008. Shortly after payment a dispute arose between the Plaintiff and William Oppong-Bio as to whether the trade in the shares settled and the shares transferred to William Oppong-Bio's ownership or it did not settle and they remained the property of the plaintiff as at the time of payment. The plaintiff contended that the trade had settled and the shares transferred to William Oppong-Bio but Willian Oppong-Bio and his banker, the applicant herein, asserted that the trade failed and the shares remained the property of the plaintiff so he was not entitled to the payment. Both the High Court and the Court of Appeal held that the trade did not settle and that the shares remained property of the plaintiff. The plaintiff appealed against the judgment of the Court of Appeal to the Supreme Court and won. On the basis of the earlier judgments, the applicant had withheld from the plaintiff the payment that William Oppong-Bio made to him for the shares so when the Supreme Court gave judgment in plaintiff's favour, the applicant was ordered to pay the monies to him. The applicant has since refunded the purchase price of the shares to the plaintiff on the strength of the Supreme Court judgment but nonetheless, it has been filing motions in the Supreme Court seeking review of the judgment.

In the instant application, the applicant contends that it conducted searches after the judgment in the appeal and discovered that in between the judgments of the Court of

Appeal and the Supreme Court the shares in question were still registered in the name of the plaintiff and he was paid dividend by Cal Bank Ltd in his capacity as the owner of the shares. It is this fact that the applicant claims that if the court had known at the time of its judgment it would not have given the judgment it rendered. The applicant then claims that the plaintiff had a duty to have disclosed to the Supreme Court during the hearing of the appeal that he was in the meantime receiving dividend on the shares on the strength of the judgments of the High Court and the Court of Appeal and that the failure to make that disclosure has caused it to suffer an injustice.

My Lords, the foremost ground that according to the applicant, as quoted above, ought to justify the re-opening of a final appeal that has already been determined is if an unfair procedure was adopted by the opposite party in the hearing of the appeal. The applicant creates the impression that the plaintiff acted wrongfully, even fraudulently, by receiving dividends on the shares on the strength of the judgments of the High Court and the Court of Appeal pending the determination of his appeal by the Supreme Court. It argues that by collecting the dividend while the appeal was pending the plaintiff should be deemed to have repudiated the sale of the shares to William Oppong-Bio and therefore was not entitled to be paid for the shares. This is a strange proposition that reveals a basic misunderstanding of the legal effect of a judgment that has been appealed against. It is trite law that when a court gives a judgment and there is an appeal against it, then unless there is an order for stay of execution, the judgment is effective and binding and execution can be levied on it. A judgment of a court is binding and effective until it is set aside on appeal or by some other procedure. If what the applicant is saying were the correct position of the law then it would mean that if a trial court gives judgment against a defendant to pay a debt which she vehemently disputed and the defendant appeals against the judgment but decides to pay the debt as ordered by the trial court pending the appeal, then if the defendant wins the appeal she cannot recover the amount paid pending the appeal since she would be said to have withdrawn her disputation of the debt by paying it. That has never been the law and the applicant surprises me greatly because in its statement of case, the Counsel for the applicant himself refers to the correct

legal position as stated in the case of **Chahin & Sons v Epope Printing Press [1963] GLR 163.** At holding (3) of the Headnote of the Report the Supreme Court held as follows;

"An erroneous judgment is only voidable and even though an appeal may be pending, execution lies on it as a matter of course unless a stay is granted by the court……Thus a person "acting under the authority of the court," or "in reliance on," or "on the faith of" a judgment which is subsequently reversed is protected. Dimes v. Grand Junction Canal Co.(1852) 3 H.L.C. 759 at p. 786; Phillips v. Eyre (1870) L.R.6 Q.B. 1 at p.22 and Williams v. Smith (1863) 14 C.B.(N.S.) 596 applied. Quartey-Papafio v. Laryea (1936) 3 W.A.C.A."

See also the case of **Adumuah Okwei v Ashieteye Laryea [2011] 1 SCGLR 317.**

The applicant in this case itself has acted on the basis of this court's judgment of 25th July, 2018 and refunded the whole purchase price of the shares plus some interest as ordered by the court to the plaintiff. That payment on the strength of the judgment notwithstanding, the applicant has filed this application arguing that the plaintiff was not entitled to be paid anything for the shares as he repudiated the sale. Going by the applicant's reasoning that by acting on the judgments of the High Court and the Court of Appeal the plaintiff repudiated his claim to be paid for the shares, then the applicant too by refunding the purchase price of the shares has withdrawn its challenge to the plaintiff's entitlement to that purchase price and should be thrown out of court peremptorily. In paragraph 7 of the plaintiff's affidavit in opposition reference is made to the admission by the applicant that it is indebted to him in the sum of GHC96,304,972.41 yet it has filed this application. But as explained above, that is not the legal effect of acting on a judgment while challenging it using the due process of law and the applicant's reasoning is alien to the law. Notwithstanding the appeal that the plaintiff filed to the Supreme Court, the erroneous judgments of the High Court and the Court of Appeal that declared him owner of the shares in question was binding on him in the meantime. Therefore, by acting in reliance on those judgments and collecting the dividend he did nothing wrong

but he rather acted in accordance with the law and there was completely no question of unfair procedure in the appeal.

The applicant claims that the fact about who in the meantime was collecting the dividend pending appeal ought to have been disclosed to the Supreme Court to be taken into account in deciding the appeal. This is another dubious proposition from Counsel for the applicant since at paragraph 65 of his statement of case he quotes and relies on the following passage in the case of **Tuakwa v Bosom [2001-2002 SCGLR 61** at page 65;

"An appeal is by way of re-hearing, particularly where the Appellant alleges in his notice of appeal that the decision of the trial court is against the weight of the evidence. In such a case, it is incumbent upon an appellate court, in a civil case, to analyse the entire record of appeal, take into account the testimonies and all documentary ***evidence adduced at the trial*** *before arriving at its decision, so as to satisfy itself that on a balance of probabilities,* ***the conclusions of the trial judge are reasonably or amply supported by the evidence adduced".*** (emphasis supplied.)

The decision talks only about evidence adduced at the trial and as a general principle, in an appeal, the duty of the appellate court is to determine if, when the relevant law is correctly applied to the evidence adduced before the lower court, the conclusion the lower court came to in the case will be considered to be right or wrong. In **A/S Norway Cement Export Ltd v Addision [1974] 2 GLR 117 (CA Full Bench)** at page 182 of the Report, Apaloo, JA (as he then was) stated the nature of the appeal process as follows;

"In an appeal, a higher court is often asked to correct the error real or imagined of a lower court. It can only do this if it has a trustworthy record of what took place in the lower court."

So the appeal process is about what took place in the court below. Of course, the rules give limited room in exceptional cases for new evidence to be led at the hearing of an

appeal by leave of the appellate court but the conditions there are rigid. **Rule 76 of C.I.16** that Counsel for the applicant relies on in the statement of case provides as follows;

76. (I) A party to an appeal before the Court shall not be entitled to adduce new evidence in support of his original action unless the Court, in the interest of justice, allows or requires new evidence *relevant to the issue before the Court* to be adduced.

(2) No such evidence shall be allowed unless the Court is satisfied that with *due diligence or enquiry the evidence could not have been and was not available to the party at time of hearing of the original action to which it relates*. (emphasis supplied).

Thus, an application for leave to lead fresh evidence must be as to evidence relevant to the issue for determination in the appeal. This requirement of relevance is equally insisted upon in the English authorities Counsel refers us to. In this case, from the judgment of the court in the main appeal, which has been exhibited to the application as "Exhibit AAA11", the issue that was before the Supreme Court for determination was whether the lower courts had properly construed and correctly applied the relevant rules of the GSE in coming to their conclusion that the ownership of the shares remained in the plaintiff as at the time payment for them was made. At page 9 of the judgment in the main appeal "EhibitAAA11" the court said as follows;

"We understand the exercise undertaken by the courts in this case from its beginning to be an examination of the position taken by the 4th and 5th defendants, with which the 1st and 2nd defendants agree, to see if they were right in their application of the rules fashioned out by the experts. In fact, there was division among the experts with Mr Patrick Kingsley-Nyinah of Databank and Lawyer Joe Aboagye Debrah, who wrote letters on behalf of plaintiff, maintaining that the trade had settled, whilst the 4th and 5th

defendants said the opposite. The two lower courts agreed with defendants so let us review their reasoning and either agree or disagree with them."

Consequently, the fact of who was collecting dividend after the lower courts judgments had no relevance whatsoever to the issue of the proper interpretation and application of the rules of the Exchange that was to be determined in the appeal. In the same vein, the evidence the applicant is by this application seeking leave to adduce has absolutely no relevance to the issue that was determined by the court in the main appeal so the application clearly does not meet the threshold stated in the English authorities it has been premised on.

From the above explanations, it is plain that the plaintiff did not indulge in any unfair procedure at the hearing of the appeal and no injustice has been occasioned in the case. This applicant who is complaining here has not said that it was the rightful party to have received the dividend that was collected by the plaintiff. If anything, by the judgment of the Supreme Court dated 25th July, 2018, it is William Oppong-Bio who, but for the erroneous judgments of the lower court, ought to have received those dividends, who can complain. But he is not without remedy though the plaintiff received the dividend in good faith on the strength of the judgments of the two courts below. The Law of Trusts certainly would afford William Oppong-Bio effective remedy.

My Lords, the above reasons alone show that this application is grievously misconceived and ought not to be countenanced. Nonetheless, I deem it important to comment on the applicant's resort to the inherent jurisdiction of the court in this matter. The applicant has proceeded to court because it claims that after judgment in the appeal given on 25th July, 2018 it has come across information that it believes is relevant to the issue that was before the court in the appeal, which information it believed if the court had received its judgment would have been otherwise. The question then is, assuming its claims are justifiable (which have been shown above to be spurious), have the procedure rules of the Supreme Court not made provisions in respect of this very matter? Part V of C.I.16 provides in part as follows;

PART V-REVIEW

54. The Court may review any decision made or given by it on any of the following grounds-

...(a) exceptional circumstances which have resulted in miscarriage of justice;

(b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given.

55. An application for review shall be filed at the Registry of the Court not later than one month from the date of the decision sought to be reviewed.....

60. Any of the time limits specified in this Part may, on application, be extended or abridged by the Court.

It is obvious that Rule 54(b) above is intended for a party in the situation of the present applicant who claims to have discovered new evidence after judgment by the Supreme Court. Though time has been provided for the application to be brought and conditions set for applying, just as with every legal remedy, the applicant could still apply for extension of the time under Rule 60 if it had a *bona fide* grievance. There is therefore no justification for the application to have been brought on the inherent jurisdiction so it is not properly before the court. In this case, this applicant has twice had recourse to this provision previously and prayed the Supreme Court to grant it leave to proffer new evidence after judgment in the substantive appeal. The first time the alleged new evidence was the applicant's own record of an investment transaction it entered into with the plaintiff which they failed to disclose during the trial. By a decision dated 22nd June, 2019 that application was refused as not meeting the threshold under Rule 54 of C.I.16. The second time was when the applicant filed another review application for a decision on interest payable on the judgment debt to be set aside on the basis of its said document on the investment transaction between it and the plaintiff. That application too suffered

a dismissal on 24th March, 2021. It was almost immediately after the later decision that the applicant filed the present motion alleging discovery of this other new evidence.

But whether this application is looked at from the point of view of Rule 76 of C.I.16 that the applicant partly relies on or Rule 54 that it could have come under, the question that the applicant has no answer to is, is it truly the case that during the hearing of the case and the appeals it made diligent effort to get this new evidence and could not get it or that the evidence is of such nature that it could not have been obtained at the time the appeal was being heard? The facts of this case as contained in the judgment of 25th July, 2018, "Exhibit AAA11" is that the shares in question were reversed into the name of the plaintiff by order of the Securities and Exchange Commission (SEC) even before the case was filed in the High Court. At page 4 of "Exhibit AAA11" the Supreme Court recounted the evidence adduced before the trial court as follows;

"The Director-General of the 4th defendant went into the matter and carried out investigations and at the end of it issued directives for the compliance of all interested parties. On the central issue of whether the trade settled or failed, the Director-General of 4th defendant held that the trade had not been consummated in accordance with the rules of the Exchange which, in the parlance of the Exchange, meant the trade had failed. As a consequence of that holding he directed that the shares in question be reverted to plaintiff and the other sellers in the register of members of Cal Bank Ltd."

So, it has all along been known that the shares, after they were initially entered in the name of Willian Oppong-Bio were reverted into the name of the plaintiff by order of the SEC. It is that order that sparked the whole litigation so it amazes me that the applicant needed to conduct searches and hire lawyers to find out the name the shares were registered in as at 26th July, 2018, a day after the Supreme Court decision, as deposed to in paragraphs 27 to 35 of the affidavit in support. The SEC and the GSE were parties to the appeal in the Supreme Court and are aware of the judgment of this court that set aside the order for the shares to be reverted into the name of the plaintiff and until they

comply with the judgment or execution is levied to compel their compliance by ensuring reversal of the shares to William Oppong-Bio, the shares may remain in the name of the plaintiff. As for to whom dividend was payable during the period the shares were in the name of the plaintiff, it is a matter of course in company matters that requires no expertise to know that it was the plaintiff. These are elementary legal consequences that flow from the judgment on the facts in this case and there is nothing new and nothing that was unknowable about them to warrant this type of application.

What all of the above mean is that, on whichever grounds this application is considered, it has no leg to stand on. I will end this ruling with the words of our worthy brother Amegatcher, JSC in the case of **Togbe Gobo Darke XII v Togbe Ayim Mordey VI, Civil Motion No.J8/136/2018, unreported ruling of the Supreme Court dated 6th November, 2019**. He said as follows;

"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."

This application is a typical example of the repetitive actions Amegatcher, JSC deprecated in the above quoted opinion and is indeed an abuse of the process of the court and is accordingly dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

DOTSE JSC:-

Due to the unprecedented nature of the application which has led to this Ruling, I have decided to re-state the salient facts of this case to put them in proper context. I also wish to state that, at our brief judgment conference on Tuesday, the 29th day of June 2021, in the above intitutled application/suit, it was apparent that I was alone in my understanding and resolve to depart from the majority of my brethren, I am therefore aware that I am not in a comfortable majority, but nonetheless I have decided to walk alone.

THE APPLICATION

The 1st Defendant/Applicants, hereafter referred to as the Applicants, on the 3rd day of June 2021, filed an application on notice against the Plaintiff/Respondent, also referred to as the Respondent. The motion paper also listed the 4th and 5th Defendants therein as parties and accordingly addressed for service of the processes on their counsel, Sterling Partnership, 3 Otsokrikri Road, of Farrar Avenue, Adabraka. There is no indication whether they have been served.

There was no representation for and on their behalf, and no processes have also been filed on their behalf.

The application by the applicant is headed thus:- ***"Motion on Notice Invoking this Honourable Court's Inherent Jurisdiction for an order to re-open the Appeal filed on 7th June 2013 and for leave to Adduce New Evidence"***

This application was supported by a 59 paragraphed affidavit sworn to by Awuraa Abena Asafo-Boakye, Company Secretary and Head of Legal of the Applicants.

In view of the special antecedents of this application, I have decided to set out in a chronological context, the salient facts of this case since its inception. This is to afford an understanding of the issues that have emerged for determination in this application.

FACTS OF THE CASE

It should be noted that, the Respondent herein initially issued the writ of summons against the Applicants herein. Later, by an amended writ, the Respondent added the following parties to the Applicants. The standing of the Defendants on the amended writ is therefore as follows:-

1. Ecobank Ghana Limited - 1st Defendants
2. William Oppong-Bio - 2nd Defendants
3. Data Bank Brokerage - 3rd Defendants
4. Securities and Exchange Commission - 4th Defendants
5. Ghana Stock Exchange - 5th Defendants

The facts in relation to the original and amended writs issued by the Respondent herein will be briefly stated thus:-

On the 27th of May 2008, Daniel Ofori (Respondent herein) sought to sell to the 2nd defendant, William Oppong-Bio, and he sought to purchase listed shares held by the Respondent in CAL Bank Limited **pursuant to the rules of the Ghana Stock Exchange, (5th Defendant).** The sale and purchase, i.e. the trade, was to settle on 30 May 2008 at 11.00 am. On 30th May 2008, the Bank of Ghana (BOG) intervened in the trade and asked that it be suspended pending investigations into suspicion of money laundering. **2nd Defendant who had instructed his bank, Ecobank Ghana Limited (Applicants herein) to pay the Respondent in respect of the purchase of the shares stopped the payment. 5th Defendant also acting on the instructions of the Bank of Ghana suspended the trade in the said CAL Bank shares on its market.**

Following the suspension, Respondent complained to the Securities and Exchange Commission (4th Defendant) about the suspension of the trade. **4th Defendant investigated the complaint and concluded that the trade had failed. Meanwhile before the 2nd Defendant's countermand,** Applicant had already issued three (3) banker's draft to SG-SSB Bank Ltd., Zenith Bank Ltd. and Databank Brokerage Limited (3rd Defendant) SG.SSB bank gave value for the banker's draft but the other two, Zenith Bank and Databank Brokerage Limited returned the banker's drafts to the Applicant. **2nd Defendant contended that the trade had failed because of the Bank of Ghana's directive which was acted upon by 4th and 5th Defendants. Dissatisfied with the decision of the 4th Defendant, Respondent initially sued the 1st Defendant claiming the following reliefs**:-

ORIGINAL WRIT AND RELIEFS:

a. "An order that the Defendant credits the accounts of the Plaintiff with the full value of the Defendant's banker's draft lodged by the Plaintiff.

b. An order of injunction against the Defendant from interfering with the plaintiff's funds representing the full value of the banker's drafts issued by the defendant.
c. An order that the defendant gives value for the payment order dated the 30th day of May, 2008 and deposited into the Plaintiffs account with SG-SSB Limited
d. Damages
e. Costs"

All references to the plaintiff are references to the Respondent herein, and Defendant to the Applicant herein.

The Writ of Summons and the Statement of Claim were, however, amended on April 4, 2009 to add the parties already referred to supra.

AMENDED WRIT AND RELIEFS

In amending the parties to the action, the Plaintiff also amended the reliefs to read as follows:-

a. "A declaration that the shares are the property of the 2nd Defendant.

b. An order that the name of the 2nd Defendant be entered unto the Register of Shareholder of CAL Bank Ltd, as the holder of the shares which is the subject matter of the suit.

c. An order that the 1st Defendant gives full value for the bankers drafts issued for the full payment of the shares bought by the 2nd Defendant or in the alternative.

d. An order for specific performance of the sale contract note against the 2nd defendant.

e. An order of injunction against the 1st Defendant from interfering with plaintiff's funds representing the full value of bankers drafts issued by the 1st Defendant in payment for the shares upon the instructions of the 2nd Defendants.

f. An order that the 1st Defendant gives value for the payment order dated May 30, 2008 and deposited into the plaintiff's account with SG-SSB Ltd.

g. A declaration that the 4th Defendant's ruling that the trade was not consummated and the shares remain the property of the plaintiff is null and void as not supported by law or fact.

h. An order that the 4th Defendant directs the 5th defendant to enforce its rules against the 3rd Defendant to assure payment by the 2nd Defendant through the 1st Defendant.

i. Damages

j. Costs

k. Any other relief (s) may seem fit to the Honourable Court." Emphasis supplied

All references above to the Plaintiff refer to the Respondent and those to the 1st Defendant refer to the Applicants herein.

Commentary on the Amended Writ of Summons

The Respondent herein makes a categorical statement that the shares are those of the 2nd Defendant and specifically states that it be granted as a relief. This to my understanding means that the Respondent has unequivocally admitted before the court that the shares no longer belong to him.

In relief (b) of the amended writ, the Respondent again makes it clear that it is the 2nd Defendant who should be recognized and regarded as the owner of the Cal Bank Ltd Shares, the subject matter of the reliefs.

In reliefs (d) and (e) the Respondent equally makes assertions and claims to the same effect.

AVERMENTS BY RESPONDENT IN THE AMENDED STATEMENT OF CLAIM TO SUPPORT THE RELIEFS HIGHLIGHTED SUPRA

In paragraphs 24, 25, 26, 27, 35 and 36, the Respondent averred quite clearly his stated position that he had divested himself of the shares in Cal Bank Ltd. to the 2nd Defendant in the following terms:-

24. "The Plaintiff says that he later got to know that the 2nd Defendant had purchased his shares through the 3rd Defendant who also acted as the selling broker.

25. The Plaintiff says that in accordance with prevailing securities law, his shares in Cal Bank Ltd were duly transferred to the 2nd defendant and the 2nd Defendant's name was duly recorded as such in the Register of shareholders of Cal Bank Ltd by NTHC Registrars, the Registrars of CAL Bank Ltd.

26. The Plaintiff says that according to the rules and regulations of the 4th and 5th defendants, only the holders of shares can have their names on the Register of shareholders of listed companies.

27. The Plaintiff further says that the removal of his name and the replacement therewith by the name of the 2nd Defendant is incontrovertible evidence that the 2nd Defendant had acquired the shares sold on the 5th Defendants trading floor on May 27, 2008

35. The Plaintiff says that the transaction in his shares of CAL Bank was fully completed as he transferred his shares and received payment through bankers draft for the equivalent value which he paid into his accounts and was duly credited by his own bankers, SG. SSB Ltd. for full value as a result of the lodgment of one of the said banker's drafts.

36. The Plaintiff says that the 3rd defendant later informed him that the 4th Defendant had concluded investigations into the matter and ruled that the trade was not

consummated as a result of certain intervening events and that the shares remained the property of the plaintiff."

APPLICANTS DEFENCE IN REACTION TO RESPONDENTS STATEMENT OF CLAIM

4. "In answer to paragraph 7 up to and including paragraph 11 of the Amended Statement of Claim, 1st Defendant avers that on the 22nd day of May 2008 1st Defendant's customer Mr. William Oppong-Bio the 2nd defendant herein applied to 1st Defendant for a Loan Facility to enable 2nd Defendant pay for and acquire Plaintiff's shares held by Plaintiff in Cal Bank Limited

5. 1st Defendant further avers that 1st Defendant issued t 2nd Defendant a Loan Agreement which was duly signed and accepted by 2nd defendant and the loan facility was approved and the funds placed into 2nd defendant's account with 1st Defendant.

6. On the 30th day of May 2008 1st Defendant on the instructions of 2nd defendant issued in favour of SG-SSB Bank Limited 1st Defendant's Manager's cheque No.005314 in the sum of Four Hundred Thousand Ghana Cedis (GH¢400,000.00) in settlement of and payment for the shares held by plaintiff in Cal Bank Limited which Plaintiff then intended to sell to 2nd Defendant.

7. 1st Defendant further avers that the following working day, 1st defendant had notice of a directive from the Bank of Ghana and the Ghana Stock Exchange dated the 30th of May 2008 requesting that the sale of the shares be put on hold.

8. 1st defendant further avers that immediately thereafter, 2nd Defendant instructed 1st Defendant to cancel all payments to Plaintiff, whereupon 1st Defendant issued and dispatched a Stop Payment Order to SG.SSB Bank Limited and informed SG-

SSB Bank Limited that 1st Defendant will not be honoring payment of 1st Defendant Manager's Cheuqe No. 005314."

DECISION OF THE TRIAL COURT

On the 16th day of September 2011, the learned trial High Court Judge concluded that the trade on the Ghana Stock Exchange by the Respondent herein to the 2nd Defendant therein did not conform to the rules of the Exchange. This was because there was no Delivery versus payment as the payment and delivery of the share certificates were not effected as at 11.00am on the third day. The court held among other orders that, since the share certificates were not delivered before the suspension of the trade, there was total failure of consideration so Respondent was not entitled to be paid. Respondent unsuccessfully appealed the High Court decision to the Court of Appeal since the Court of Appeal dismissed the appeal, the Respondent successfully this time appealed to the Supreme Court.

DECISION OF THE SUPREME COURT

On the 25th day of July 2018, this court delivered judgment in favour of the Respondent, and reversed both the trial court and the intermediate appellate court decisions.

REVIEW APPLICATION AND DECISION

On the 27th of February 2019, the Supreme Court reviewed the judgment of the ordinary bench of the Supreme Court dated 25th July 2018 in terms of the review Ruling.

POST REVIEW APPLICATIONS AND RULINGS

This case has evinced unprecedented post judgment/review applications more than in any other case in my 13 years experience on the Supreme Court Bench.

APPLICANTS ARGUMENTS IN SUPPORT OF THE INSTANT APPLICATION

1. It is an application invoking this court's Inherent Jurisdiction to re-open an appeal that had been determined by this court on 25th July 2018. In that judgment, it is clear that the court based its judgment on the understanding that the Respondent never received dividend payments in respect of the disputed Cal Bank Ltd shares.
2. This application has been brought up because the Applicants claim there are new pieces of evidence which they have only recently discovered and to which the Respondent has admitted. In brief, the Applicants contend that, the said evidence if admitted will have an impact on the decision this court will take, or would have taken if available at all material times.
3. That the justice of the case required that the present application should be granted in order to ensure that the Applicants case is considered in totality.

At this stage, I deem it expedient, again to refer this time copiously to the affidavit sworn to by Awuraa Abena Asafo-Boakye, Company Secretary and Head of Legal of the Applicants in support of the instant application invoking this courts inherent jurisdiction.

In order to put matters in proper perspectives, I have decided to quote in full the following depositions in paragraphs 12,14,18, 24, 25, 27, 29, 30, 35, 36, 37, 40, 49, 50, 51, 52, 53, 54, 55, 56 and 59 as follows:-

12. "That pursuant to the joinder, Daniel Ofori filed an Amended Writ of Summons on 1st April 2009 and subsequently filed a separate amended Statement of Claim and stated that he had fully divested himself of the Shares (a copy of Daniel Ofori's Amended Writ of Summons and Statement of Claim filed respectively on 1st April 2009 and 7th May 2009 are hereby attached and marked as Exhibit AAA5 and Exhibit AAA6.)

14. That on 7th October 2009, Daniel Ofori applied for Interim Preservation of the shares but the application was dismissed on the basis that the shares belonged to

him (a copy of the Motion for Interim Preservation of Shares dated 7th October 2009) is hereby attached and marked as Exhibit AAA7A).

18. That on 25th July 2018, the Supreme Court gave its judgment and overturned the previous decisions of both the High Court and Court of Appeal, and found that the share trade had been consummated and settled before GSE suspended the trade, and that Daniel Ofori had transferred the shares to William Oppong-Bio by the entry of the latter's name in Cal Bank's register of members (a copy of the judgment dated 25th July 2018 is hereby attached and marked as Exhibit AAA11).

24. That this Honourable Court, in arriving at its decision (Exhibit AAA 15) having considered the investment agreement, variously marked as 'Exhibit AAB6' and 'Exhibit C 'and implied terms into the parties' agreement and held at pages 5 and 6 of the decision that the manner for calculating interest on the invested amount of GH¢6,162,240 ought to be 30% compound interest from 2nd June 2008 to 25th July 2018.

25. That the purported investment agreement, "Exhibit C' which this Honourable Court relied on by virtue of its consideration of the parties' agreement, in arriving at Exhibit AAA 15, was tampered with as confirmed by a forensic report by the Criminal Investigations Department of the Ghana Police Service (a copy of the Forensic Report dated 25th November 2020 is hereby attached and marked as Exhibit AAA 16.

27. That immediately after Exhibit AAA 11 was delivered, Ecobank by a letter dated 26th July 2018 conducted a search at the Central Securities Depository (Ghana) Limited (CSDGL).

29. That Ecobank then engaged consultants named Firstcode Management Services (FMS) who conducted investigations and reported by a letter dated 13th August 2018 that Daniel Ofori as at 31st July 2018 held 15,377,194 shares in Cal Bank

representing 2.45% of the issued shares (a copy of the 13th August 2018 letter from FMS is hereby attached and marked as 'Exhibit AAA18.

30. That by a letter dated 8th August 2018 Ecobank conducted a further search at CSDGL on Daniel Ofori's shareholding in Cal Bank and on 17th August 2018 CSDGL informed Ecobank that Daniel Ofori even after the 25th July 2018 decision (Exhibit AAA 11) held the shares in his name (a copy of the 17th August 2018 letter is hereby attached and marked as Exhibit AAA19.

35. That Ecobank through its lawyers wrote to Cal Bank on 16th December 2020 and 13th January 2021 respectively to inquire about the status of the Shares *(copies of Ecobank's lawyers' letters to Cal Bank dated 16th December 2020 and 11th January 2021 are hereby attached and marked respectively as "Exhibit AAA23 and Exhibit AAA24)*

36. That by a letter dated 4th January 2021, Cal Bank informed Ecobank's lawyers that the Shares remained in Daniel Ofori's name in the register of members and **revealed for the first time that indeed Daniel Ofori had received dividend warrants/payments from 2010 to 2019** ***(a copy of the 4th January 2021 letter from Cal Bank is hereby attached and marked as 'Exhibit AAA25).***

37. That by another letter dated 25th January 2021, Cal Bank **confirmed that Daniel Ofori has collected the dividends on the Shares as shown by the dividend warrant collection forms attached to the letter** ***(a copy of the 25th January 2021 letter from Cal Bank is hereby attached and marked as Exhibit AAA 26).***

40. That it is evident from Exhibit AAA 26 that Daniel Ofori, **while claiming and arguing before this Honourable Court that he had completely divested himself of the shares and was therefore entitled to payment for those shares and interest on that sum, had gone back, not only to claim the**

shares but to exercise complete shareholder rights in respect of the shares by claiming dividends dating back to 2010 and also receiving bonus shares in his name, which were issued to existing shareholders only in proportion to their existing sharers.

49. That further, Daniel Ofori **was bound by law to make a full disclosure of these exceptional and material acts of his to this Honourable Court, to afford the court the opportunity to declare on the effect of those material changes and actions on the matter.**

50. That Daniel Ofori's deliberate and intentional concealment, and or neglect, failure or refusal to disclose to this Honourable Court that he had been collecting dividends and bonus shares on the shares, at the time he was claiming that on account of having divested himself of the shares, he was entitled to payment from Ecobank, were done with the intention to take fraudulent advantage of the processes of this Honourable Court.

51. That Exhibit AAA 25 exposes the fraudulent intent with which Daniel Ofori concealed the fact that the shares were in his name and received dividend and bonus shares on them, while contending in this Honourable Court that he had divested his interest in the shares and thus was entitled to be paid the value of the shares.

52. That if the averments or facts finally admitted by Daniel Ofori in paragraph 6, 10 and 11 of Exhibit AAA 27 were disclosed to this court, it would not have delivered the 25th July 2018 judgment (Exhibit AAA 11) in Daniel Ofori's favour.

53. That grave, extraordinary and special circumstances surround this case, which warrant the exercise of this Honourable Court's inherent jurisdiction to re-open the

appeal and allow new evidence which if made available to this Honourable court would have substantially impacted Exhibit AAA 11 differently.

54. That the evidence sought to be adduced are the Forensic Report (Exhibit AAA16), the 1st August CSDGL, letter (Exhibit AAA 17), the 17th August 2018 letter (Exhibit AAA 19), the 19th October 2018 Ecobank letter (Exhibit AAA 20), the 31st October 2018 CSDGL letter (Exhibit AAA 21), the 1st November 2018 letter to NTHC Registrars Limited (Exhibit AAA 22), the 4th January 2021 Cal Bank Letter (Exhibit AAA 25), the 25th January 2021 Cal Bank Letter (Exhibit AAA 26), which were not available to both this Honourable Court and Ecobank during the pendency of the action in this court.

55. That the new pieces of evidence sought to be adduced are relevant and could not have been diligently obtained given the exceptional and peculiar circumstances of the present case particularly when information regarding the payment of dividends on the Shares were not readily available to Ecobank but rather were available to Daniel Ofori.

56. That all the evidence sought to be adduced became available to Ecobank only after this Honourable Court delivered the 25th July 2018 decision and made consequential orders.

59. That in the interest of justice Ecobank respectfully prays this Honourable Court to grant this instant application to re-open the appeal and to adduce new evidence and for matters which were deliberately concealed from this Honourable Court to be made available to it to aid in its determination of the dispute." Emphasis supplied

RESPONDENTS RESPONSE

The Respondent in a 32 paragraphed affidavit in opposition to the Applicants application invoking this courts inherent jurisdiction vehemently opposed the said application on the following grounds:-

1. That this court, being the highest court of the land should not revisit decisions once given except as permitted by law.
2. The Respondent contends that under the applicable Rules of this court, reference Rule 55 of the Supreme Court Rules, 1996, C. I. 16, the time limit of one month has lapsed and therefore the Applicants are out of time.
3. The Respondent makes an argument that because there was no stay of execution after the trial High Court decision and that of the Court of Appeal, it was perfectly legitimate for the Respondent to proceed to receive the dividend payment and conceal this fact from the Applicant.

These are deductions which I have made of the applicable facts.

4. That the receipt of dividends by the Respondent during and especially after the judgment of this court dated 25th July 2018 did not cause any injustice as the applicants contend.

In support of the above contentions Daniel Ofori, swore to a 32 paragraphed affidavit in which he catalogued his objections to the application.

Out of abundance of caution, I rely and quote in extenso the following paragraphs of the said affidavit, 7, 10, 11, 20, 21, 23, 24, 25, 26, 29, 30 and 32.

7. "That I depose upon my lawyers' advice to me, which I verily believe to be true, that the court has no jurisdiction to entertain first Defendant's application and also that the application is incompetent not only because it is supported by a defective affidavit, but also because the notice of appeal which is sought to be reopened cannot be legally opened as it is non-existent.

10. That it is on the basis of the principle deposed to in paragraph 9 above that once a judgment is delivered the only recourse of a party is to set aside the judgment of the court under any of the principles of law such as appeal or review where applicable, failing which the processes of the court are no longer available to be attacked or interrogate, the judgment of the court being final and closes the matter.

11. That the fact that the application before the court is incompetent for which reason it should be dismissed in limine apart, the application before the court not only abuses the inherent jurisdiction of the court but completely misconceives the court's jurisdiction as statutorily created on the one hand and the powers inherent in the court on the other hand, in the exercise of its statutory jurisdiction to give effect to such jurisdiction as created by statue.

20. That in my affidavit exhibited to the affidavit in support of the application and marked AAA27, I made specific depositions in response to first Defendant's arguments about payment to me of dividend, contending that first Defendant fails to appreciate the nature of the cause of action determined by the court in the exercise of its appellate jurisdiction in the judgment of the court dated the 25th day of July 2018 and also the applications for review which followed the said judgment of the court.

21. That in the judgment of the court from which several applications for review resulted, the court determined that first defendant wrongly deprived me of my funds to which I am entitled and having so decided, the court was statutorily obliged and also by the common law to apply the proper rate of interest to the amount wrongly withheld by first defendant, this being a matter of law and falls within the cause of action determined by the court.

23. That in any case, having previously raised the same matter before the court, first defendant is not entitled to bring the same matter before the court by rechristening its earlier application for review by purportedly invoking the inherent jurisdiction

of the court, first defendant having become notorious for its penchant for vexing the Court and me with the same matters previously raised before the court ad nauseam.

24. That the instant application apart, several examples abound with regard to first Defendant's legal strategy of returning to the court with the same matter as if the court were a musical forum where it is preferred to sing only the chorus of a song rather the song itself to avoid concluding the song to bring the musical proceedings to finality.

25. That I repeat paragraph 24 above of the affidavit and depose further that the argument in the application before the court also that the 30% interest rate adjudged by the court as chargeable on my investment sum was based on an agreement which was subsequently found to have been forged has been previously canvassed before the court and explained with clarity to first Defendant that the judgment of the court affirming the 30% interest was not based on any document but on first defendant's own admissions thereby rendering completely redundant exhibit AAA 16 [the forensic report] attached to the affidavit in support of the application before the court, which exhibit AAA 16 was first introduced by first Defendant to this court by way of supplementary affidavit filed on the 1st day of December 2020 and exhibited hereto as 2.

26. That in any case with regard to exhibits AAA17, AAA18, AAA19, AAA20, AAA21, AAA22, AAA25 and AAA26, the least said about them the better as first Defendant impliedly admits the weakness of seeking the introduce them as new evidence by failing to depose to any information to demonstrate that the documents were not within its reasonable contemplation before the court gave its judgment or even after the flurry of pointless applications made to the court thereafter.

29. That accordingly at all times material to the Application before the Court, the documents the subject matter of the application before the court,

have been previously introduced to the court, at least three times for which reason the documents the subject matter of the application to the court, cannot be deemed "fresh evidence" even by a desperate strain on language.

30. That I have always maintained that first Defendant is acting mala fide the reason being that in first Defendant's own affidavit in support of its application to set aside my entry of judgment filed on the 13th day of May 2021, first defendant did not contest the judgment of the court but unequivocally admitted that in terms of the judgment of the court, it is indebted to me in the sum of GH¢96,304,972.41.

32. That the sheer bulk of the application and the extensive and elaborate re-enactment of the facts that provided the cause for my suit against first defendant eventually determined by the court in its judgment exhibited to the affidavit in support of the application and marked AAA11 will leave the court in no doubt whatsoever that the instant application is a mischievous attempt to re-open a matter past and closed." Emphasis supplied

PRELIMINARY LEGAL OBJECTIONS

Arising from the above depositions, it bears emphasis that the respondent has raised the following legal objections:-

1. That the Applicants application is incompetent because it is based on a defective affidavit.
2. Secondly, that because the appeal has already been determined, leave cannot be legally granted to re-open an appeal that does not exist.
3. **Substantive Grounds on the Merits**

(i.) That the application invoking the inherent jurisdiction of the court is an abuse of process

(ii) That the so-called "*Fresh Evidence*" is after all not fresh, as it had been raised on previous occasions and dismissed.

DEFECTIVE AFFIDAVIT

1. I find no substance in this objection. We have held times without number, that due to the sheer volumes of documents that are presented to this Court's registry for filing and sometimes also due to incompetence on part of our staff, some of the documents that go out for Service may not have been duly processed and admitted for filing let alone for service. Indeed, the affidavit on my file, has been duly sworn to by the Applicant's representative and I take judicial notice of same. I accordingly dismiss the said objection.

I will however urge the Registrar of this court to ensure that his filing clerks are well trained to ensure that they perform their duties and roles without any blemish.

2. It is an undeniable fact that the Notice of Appeal upon which the judgment of 25th July 2018 was determined has been concluded. But there are currently applications pending before this court. The Respondent who has raised this point is himself still in this court seeking a variation, clarification etc. of this or that judgment on post judgment Ruling or decision. Fact of the matter is that, even though a decision has been given by this court, it bears emphasis that, once the judgment has not been completely executed, and the parties continue to invoke the jurisdiction of this court, there is no bar to the Applicant invoking the inherent jurisdiction of this court. Since a decision on the above matter will encompass some of the substantive issues, I will dismiss the preliminary objections and proceed to deal with the issues of substance.

INHERENT JURISDICTION OF THIS COURT

I have reviewed the statements of case filed for and on behalf of the parties herein by learned Counsel respectively.

Learned counsel for the Applicants, Ace-Anan Ankomah in his well written statement of case has referred to *Rule 76 of the Supreme Court Rules, C. I. 16.* I have no doubt whatsoever that the said Rule does not apply automatically. This is because, as had been

stated by learned counsel for the Respondent, Thaddeus Sory, judgment in the Appeal has been delivered and there is nothing left to consider.

However, as I have indicated elsewhere in this rendition, there are still pending before this court some Applications.

It is quite evident on the state of our decisions that the first criteria to be met is whether the evidence sought to be led was ***neither in the possession of the applicant nor obtainable by the exercise of reasonable human ingenuity before the impugned decision was delivered or given***. It was only after this first hurdle had been met that the court will proceed to consider other considerations or criteria. See cases of ***Poku v Poku [2007 -2008] 2 SCGLR 996, and The Republic v Adamah-Thompson and Others, ex-parte Ahinakwah II (substituted by Ayikai) [2012] 1 SCGLR 378.***

It appears to me that, this is the first time that the Applicants have made a really strong strenuous effort to allege the fact that, the **Respondent despite his strong claims that he has divested himself of the shares in CAL Bank Ltd. to the 2nd Defendant therein, and therefore does not own the shares, should surreptitiously** go behind the Applicants with whom he was contesting the issue on appeal in this court and collect dividend payments. That conduct in itself was only really admitted by the Respondent when the matter was formally raised by the Applicant. The conduct of the Respondent in concealing this to the Applicants, and considering the colossal sums of money involved make it imperative that the Applicants be allowed to re-open the appeal by new evidence.

Master I .H. Jacobs, who I consider as having made significant contributions on what constitutes a court's inherent jurisdiction has been duly acknowledged and referred to by learned Counsel for the Applicant.

In his scholarly and ground breaking work, the learned author I.H. Jacobs writes in his seminal work *"The Inherent Jurisdiction of the Court" [1979] Current Legal Problems 23, at page 51,* the following statement is attributed to him:-

> *"…the inherent jurisdiction of the court may be defined as* ***being the reserve or fund of powers, a residual source of power, which the court may draw upon as necessary whenever it is just or equitable to do so,*** *and in particular to ensure the observance of the due process of law… to* ***secure a fair trial between them." Emphasis***

As stated above, Master I. H. Jacobs' work on Inherent jurisdiction has been ground breaking and very illustrative. At pages 25 and 33 of the works referred to supra, he explains the scope and the powers of the court in these instances as follows:-

At page 25

> *"…the inherent jurisdiction of the court may be exercised in any given case,* ***notwithstanding that there are Rules of Court governing the circumstances of such case****. The powers conferred by the Rules of court are, generally speaking additional to and not in substitution of powers arising out of the inherent jurisdiction of the court.* ***The two heads of powers are generally cumulative and not mutually exclusive so that in any given case,*** *the court is able to proceed under either or both heads of jurisdiction. Emphasis supplied*

At page 33

> *"Indeed,* ***it is difficult to set the limits upon the powers of the court in the exercise of its inherent jurisdiction to control and regulate its process, for these limits are coincident with the needs of the court to fulfill its judicial functions in the administration of justice."*** *Emphasis supplied*

From the above quotations, it is apparent that, the inherent jurisdiction of the courts are based on the following principles:-

1. They are not based on statutory or procedural laws or rules of procedure.
2. The exercise of these jurisdictions exist because it is difficult to circumscribe the limits of the powers of the court to take care of all or conceivable breach or breaches or disrespect to the courts.
3. That the exercise of this class of jurisdiction is additional to the existing jurisdictions of the courts.
4. They are meant to ensure that justice is done in cases in which they are deemed appropriate.

Hayfron-Benjamin J, (as he then was) could not have explained the principle much better than what he stated in the case of ***Attoh-Quarshie v Okpote [1973] 1 GLR 59*** at page 65 as follows:-

> *"Inherent power is an authority not derived from any external source, possessed by a court. Whereas jurisdiction is conferred on courts by Constitutions and statutes, inherent powers are those which are necessary for the ordinary and efficient exercise of the jurisdiction already conferred. They are essentially protective powers necessary for the existence of the court and its due functioning. They spring not from legislation but from the nature and constitution of the court itself. They are inherent in the court by virtue of its duty to do justice between the parties before it. The scope of inherent powers however cannot be extended beyond its legitimate and circumscribed sphere. The safest guidelines are precedents." Emphasis supplied*

From the above, it is clear that, inherent jurisdiction can safely be described as the powers of a court which it holds in reserve and exercises it sparingly to ensure that the administration of justice is not brought into disrepute and above all ensure that justice is done to all parties when constitutional, statutory or procedural rules are deficient and or lacking.

Hayfron-Benjamin attempted to circumscribe the instances when this residual powers of the courts maybe exercised at page 67 of the law report as follows:-

"… the scope of the inherent powers of the High Court, and the conditions and circumstances under which these powers would be exercised. Tradition has sanctioned three areas where the court generally invokes its inherent powers. First, where the exercise of the powers is necessary for the maintenance of the courts dignity and independence; such powers include the power to punish for contempt and enforce obedience to its mandates and judgments and orders. Secondly, where the powers are necessary to ensure the control of its officers (including lawyers) the power to hold its officers to a proper accountability for any default or misfeasance in the execution of its process. ***Thirdly, powers to prevent wrong or injury being inflicted by its own acts or orders or judgments including the power of vacating judgment entered by mistake and of relieving judgments procured by fraud, and a power to undo what it had no authority to do originally****." Emphasis supplied*

I have carefully perused all the processes filed by learned counsel for the parties including their statements of case and affidavits and their many exhibits.

The crux of the matters contained therein in the pleadings and processes are that, whilst the Applicants rightly in my view urge the court to invoke this special jurisdiction to deal with the fraudulent conduct of the Respondent which led this court to commit a mistake in its judgment of 25th July 2018, the Respondent on the other hand contends that, this court lacks jurisdiction to do what the Applicant seeks from this court and concludes that it is an abuse of process.

I have looked and combed the law reports to find out if an appeal that has been determined can be re-opened, but I have found none. However, this should not be an inhibiting factor to this court.

The principle of our inherent jurisdiction exists to cater for situations like this. Furthermore, even if existing precedent is against the exercise of the jurisdiction, Article 129 (3) of the Constitution 1992, would have permitted this court to depart from its previous decision in order to achieve justice.

For example, in the pleadings of the Respondent referred to supra, he was clear in his mind when he stated in paragraph 24 of the amended statement of claim as follows:-

> ***"The Plaintiff says that in accordance with prevailing securities law, his shares in Cal Bank Ltd. were duly transferred to the 2nd Defendant and the 2nd Defendant's name was duly recorded as such in the Register of shareholders of Cal Bank Ltd. by NTHC Registrars, the Registrars of Cal Bank Ltd."***

How can the Respondent, who had appealed against the Court of Appeal decision to this court, to affirm his position and claim that he had transferred all his shares in CAL Bank Ltd. to the 2nd Defendant, William Oppong-Bio, turn around whilst the appeal was pending and continue to receive dividend payments on the very shares he claims were no longer his?

The judgment that this court delivered in his favour, setting aside the lower court's decision was based on the fact that the averments in his pleadings were upheld and affirmed. Any contention therefore to the contrary, which has been brought to our attention must receive a quick attention and if sustained must equally be reversed to prevent a failure of justice.

Is this conduct of the Respondent consistent with the tenets of good faith which he was entitled to exhibit? I do not think so. Such specie of conduct smacks of fraud. And it is generally agreed that a judgment obtained by fraud or through fraudulent related activities is a void judgment if the allegations of fraud have been proven and sustained. In the instant case, it is the Supreme Court judgment that was obtained by the fraud that I am seeing.

It should be noted that, the High Court did not even consider the question of ownership of these shares, because it was not a matter that was considered following the preliminary finding of *"no transaction of sale".*

It is therefore not surprising that the courts have always frowned upon fraudulent specie of conduct that has been proven to aid a party to obtain an unfair position in a judgment in his favour. See the case of ***Dzotepe v Hahormene III (No.2) [1984-86] 294*** *where the Court of Appeal unanimously stated this principle as follows:-*

> *"Fraud in all cases implied a wilful act on the part of anyone, whereby another was sought to be deprived by illegal or inequitable means of what he was entitled to.* ***Fraud vitiated every transaction known to the law including judgments of the courts."*** *Emphasis supplied*

If proven before this court that the reasons for which this court set aside the lower court judgments was obtained on a false premise, this court must invoke its inherent ***jurisdiction to correct the apparent wrong. In coming to the above decision in the Dzotepe v Hahormene III*** case supra, the court referred to and relied on cases like ***Jonesco v Beard [1930] AC 298 at 301-302*** which also relied on the learned authors of *"Kerr on Fraud and mistake"* (7th ed) at page 3 where the learned authors stated thus:-

> *"Fraud vitiates everything, even judgments and orders of the court." Emphasis supplied.*

See also the case of ***In Re West Coast Dyeing Industry Ltd, Adams vrs Tandoh [1984-86] 2 GLR 561 at 605.***

In the instant case, the Applicants have not pleaded fraud, but the evidence they use in their application to invoke our inherent jurisdiction smacks of fraud in their quest to adduce fresh evidence on appeal and re-open same.

Courts of law, like the Supreme Court, which is the highest court of the land, must in all sincerity be taken seriously by all who appear before it. Any attempt, which portrays that the court is being taken for granted and also abused by a party must not only be frowned upon, but also dealt with swiftly by the invocation of this inherent jurisdiction when all other avenues appears to have been closed. My illustrious and distinguished brother,

Gbadegbe JSC, speaking for the court with one voice in the unreported case of ***Ogyeadom Obranu Kwesi Atta VI v Ghana Telecommunications Co. Ltd, and Anr. Suit No. CM/J8/131/2019, dated 28th April 2020***, authoritatively stated the following:-

> *The Supreme Court may* **while treating its previous decisions as normally binding, depart from a previous decision when it appears to it right to do so…" (***Emphasis mine)*
>
> *This provision was similarly contained in both the 1969 and 1979 Constitutions of Ghana. Therefore, cases decided previously provide us with guidance as we seek to depart from the previous decisions. In the case of* ***Loga v Davordzi [1966] GLR*** *530, the Supreme Court had before the incorporation of the principle of departure into our Rules, specified some of the circumstances justifying the exercise of the power to depart from a previous decision to include a decision that was per incuriam or for any exceptional reason not be followed. Also, in the course of his judgment in* ***Essilfie v Anafo [1992] 2 GLR 654****. Archer CJ (as he then was), observed at page 666 of the report as follows: 2005]*
>
> > *"There is no doubt that this conflict in the two decisions has caused anxiety and confusion to parties and their counsel and must now be resolved if the principle of the binding effect of judicial precedent is to have any relevance at all in Ghana. The doctrine at times can bring about unforeseen consequences and that is why the Constitution, 1969 for the first time empowered the Supreme Court to depart from its previous decisions 'when it appears right so to do'. This Constitutional power was repeated in the Constitution, 1979. In Ghana, the practice appears to have the backing of statutory law, whereas in England where this practice was first introduced and copied by Ghana, the practice is based on the practice statement by the House of Lords and not by an Act of Parliament."*

That pronouncements by the Court of the right of a party to an order of stay of execution pending appeal has been concerning to some of its members is evidenced by Dotse JSC in a paper presented to the Ghana Bar Association at its annual conference in Ho on September 13, 2013 entitled " Executable-Non-Executable Orders-The Predicament of the Judgment Debtor in Staying Execution Pending Appeal" and Pwamang JSC's dissenting opinion in ***Sethi Brothers Ghana Ltd v Regency International Insurance Ltd, an unreported judgment of the Supreme Court in Civil Appeal No J8/68/2019 dated May 20, 2019.*** *It is noteworthy to observe that Dotse JSC's presentation came to the notice of the learned justices of the Court in the course of their deliberation in the unreported decision in* ***ADM Cocoa Ghana Limited v International Loan Development Ltd.*** *Both respected Justices of the Court deprecated the uncertainty in the decisions regarding applications for stay of execution pending appeals. These voices, which may be likened to cries in the wilderness point in the same direction urging us to bring about an end to the apparent lack of certainty in our decisions in applications for stay from the so-called non-executable judgments of the Court of Appeal.* ***It is a cry to us to assume the powers, authority and jurisdiction conferred on us by article 129(3) of the Constitution to depart from previous decisions when we are satisfied that it is right to do so. Although the power to depart is vested in us, this should be done rarely and sparingly when a decision is shown to be manifestly wrong or we are faced with different approaches of the Court to the resolution of a particular problem****. It must be exercised with self-restraint and resorted to only when the Court is convinced that the earlier decision was incorrect or such a departure is necessary to bring certainty to its decision in order to give teeth to the doctrine of judicial precedent. Departure from a precedent should be seen as an avenue to shaping the course of the law to avoid perpetuating what is considered an error. Such is the nature of restraint that it took the House of Lords, forty years from the Practice Statement in 1966 to sometime in 2006, when, in Horton* ***v Sadler [2006] UKHL 27****, it departed from*

Walkley v Precision Forgings Ltd [1979] 1 WLR 606. *The Canadian case of* ***R v Neves [2005] M.J No 381*** *in which it was observed as follows, though of persuasive authority, commends itself to me.*

"The principle of stare decisis is a bedrock of our judicial system. ***There is great value in certainty in the law, but there is also, of course, an expectation that the law as expounded by judges will be correct, and certainly not knowingly incorrect, which would result when a decision felt to be wrong is thus not overruled****. The tension when these basic principles are in conflict can be profound."*

The confusion and anxiety which confronted the Supreme Court in ***Essilfie v Anafo*** *(supra) and indeed, in the Canadian court in* ***R v Neves (supra)*** *is no different from that which now confronts us****. From the authorities, such an occasion presents an opportunity to depart from previous decisions that are considered to be wrong. The benefit to be gained by the entire legal system by the correction of the error outweighs that to be gained by a strict adherence to precedent****. Therefore, having demonstrated that the collection of cases to which clear reference has been made previously in this delivery were wrong in their application of the clear provisions of article 129 (4) of the Constitution,* ***it is right to say that the time has come for us to chart a new journey by taking advantage of the enormous powers conferred on us by article 129(3) of the Constitution." Emphasis supplied***

Based on the above rendition, I am of the humble view that, the fact that this court can depart from binding precedents if necessary make a lot of sense. Additionally, this court should also not shy away from doing something it has not done before.

The rationale of our decision in the ***Ogyeadom Obranu Kwesi Atta Vi v Ghana Telecommunications Co. Ltd, and Anr case*** supra is that, where following and applying a binding precedent of the court will result into gross injustice, a court such as

this court with powers in Article 129 (3) of the Constitution 1992 to depart therefrom should not shy away from doing so.

Similarly, where there is also no precedent, to guide the court on an issue, in order to ensure that justice is done and prevent a total failure of what the courts stand for, the inherent jurisdiction of the court should be invoked to prevent irreparable damage and harm on the basis of lack of guiding precedent.

Having considered the ground breaking work of I.H. Jacobs referred to supra, and the guidelines stated by Hayfron Benjamin in ***Attoh-Quarshie v Okpote*** supra and other cases, it should be noted that the criteria that the courts should apply when their inherent jurisdictions are invoked as has happened in this case are limitless depending on the particular facts and genesis of each case. I am of the view that, it will be dangerous to put the courts exercise of this inherent jurisdiction in a pigeon hole like situation. Cases differ on case by case basis, and a situation might arise in future which if not dealt with by the courts under the inherent jurisdiction might completely erode the dignity and respect of the courts because they would then be powerless in handling any such dangerous affront to their very existence.

The learned authors of the *Ninth Edition of Blacks Law Dictionary page 853* define *"Inherent Powers doctrine"* as

> ***"The principle that allows courts to deal with diverse matters over which they are thought to have intrinsic authority, such as***
>
> *i. Procedural rule making*
> *ii. Internal budgeting of the court*
> ***iii. Regulating the practice of the law and***
> ***iv. General judge housekeeping" Emphasis supplied***

Having considered the Applicants instant application in context and the antecedents that I have eloquently referred to in the pleadings and the somersault made by the Respondent in his original position vis-à-vis the basis of his appeal to this court which

was sustained albeit it on grounds which have now proven to be invalid, deceitful and I daresay without any sustained basis or merits whatsoever, this court, must be emboldened to apply the inherent powers doctrine to allow the application of the inherent jurisdiction doctrines to enable this court do substantial justice and avoid failure of justice.

WHY THIS COURT MUST ACCEDE TO THE GRANT OF THIS APPLICATION

I have already referred to paragraphs 24 and 25 of the Applicants affidavit in support of the instant application invoking this courts inherent jurisdiction. The combined effect of the depositions in the two paragraphs referred to supra creates a serious phenomenon of suspicious, and dishonest activities aimed at creating a favourable condition for the said actors. These are presumptions which can be put to proof.

Without ascribing any blame on the Respondent or anybody acting through him, I am of the view that, the report contained in Exhibit AAA16, which is the Forensic Report, dated 25th November 2020, emanating from the Ghana Police Service Criminal Investigation Department, Forensic Science Laboratory are weighty and serious enough to agitate our minds in this Supreme Court.

The said report in the Exhibit concludes and states as follows:-

> "The handwriting on document marked "A" and "C" are the same. Meaning that, document marked "C" is a photocopy or scanned copy of document marked "A".

The effect and impression of the above report for now is that, the investment agreement upon which this court based its judgment and the basis of the interest of 30% on the investment amount is what has been labelled as dubious and tampered with.

In the premises, where this report emanates from being none other than the Forensic Science Laboratory of the C.I.D of the Ghana Police Service, dated 25th November 2020, makes it very credible and authentic and I am prepared to err on the side of caution and direct that the judgment be set aside and appeal be re-opened for these serious matters to be enquired into before further execution of the judgments in this case which are on

the very high side are continued and completed. Anything devoid of the above will result into this court being made a conduit for the unjustifiable enjoyment of the proceeds of the incomplete judgment and this will be tantamount to acts of injustice.

Finally, the Applicants have deposed to paragraphs 37 and 40 supra of their affidavit in support of the instant application.

In these depositions, the Applicants apart from the bare assertions that the Respondent contrary to his stated and previously sworn and held position that the Cal Bank Ltd. shares did not belong to him, has since 2010 to date, collected dividends on the said shares.

For example, in Exhibit AAA 26, Cal Bank in a letter dated 25th January 2021 wrote to the Solicitors of the Applicants and state as follows:-

"Dear Sir,

SHAREHOLDING AND DIVIDEND PAYMENT TO DANIEL OFORI

We refer to your letter dated 13th January 2021 and provide the following information:-

1. The bonus issue was made to Daniel Ofori and his ITF's. There is no document evidencing Mr. Ofori's acceptance of the bonus shares. This is because a bonus issue is a mandatory corporate action event and the terms do not give shareholders the option to consent or decline acceptance.
2. **The schedules of dividend payments made to Mr. Daniel Ofori, Daniel Ofori ITF Stephen Danso and Daniel Ofori ITF Esther Frimpong from 2010 to 2019 financial years are attached.** The payments were in the form of dividend warrants/cheques, issued to Mr. Daniel Ofori, Daniel Ofori ITF Stephen Danso and Daniel Ofori ITF Esther Frimpong. The warrants were collected from the Registrar on his behalf by a messenger. Copies of the dividend warrant collection forms are attached.

   Do let us know if you require any additional information.

   Yours faithfully

Dzifa Amegashie
Head, Corporate and Investor Relations".

I have verified the attachments and can conclude that, the Respondent has indeed collected/ received from Cal Bank total dividends of GH¢5,713,627.19 from 2010 to 2019 on his shares, whilst Daniel Ofori ITF Stephen Danso received/collected total dividends of GH¢5,945.04 covering the same period and Daniel Ofori ITF Esther Frimpong received/collected total dividends of GH¢330,550.15 also covering the same period.

In all instances these dividends were collected on the Respondent's behalf by Victor Dzrahdoh, and this has been verified. It is therefore not surprising that the Respondent has conceded the fact of receipt of these dividends. The reasons given by him to me are not reasonable and lack any candour.

CLOSING ORDERS

It is therefore my view that, having taken all the above factors into consideration, I am inclined to grant the Applicants application. I will therefore invoke this courts inherent jurisdiction to grant leave to the Applicants to re-open the appeal filed by the Respondent on 7th June 2013, set aside the said judgment delivered by the court on 25th July 2018 for the Applicants to adduce new evidence in terms of the matters which were deliberately concealed from this court to be made available to the court to assist it in its determination of the dispute.

The application therefore succeeds.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

COUNSEL

THADDEUS SORY FOR THE PLAINTIFF/APPELLANT/APPELLANT/ RESPONDENT.

ACE ANKOMAH FOR THE 1ST DEFENDANT/RESPONDENT/RESPONDENT/ APPLICANT.