

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2019

CORAM: ADINYIRA (MRS), JSC (PRESIDING)

YEBOAH, JSC

BENIN, JSC

MARFUL-SAU, JSC

KOTEY, JSC

CIVIL APPEAL

NO. J4/39/2018

30TH JANUARY, 2019

1. DENNIS TORGBENU

2. TORGBE KUDZE

3. MICHAEL LARWEH MLORFE PLAINTIFFS/RESPONDENTS/
RESPONDENTS/APPELLANTS

VRS

TORGBE NAKAKPO DUGBAZA VIII DEFENDANT/APPELLANT/
APPLICANT/RESPONDENT

J U D G M E N T

MARFUL-SAU, JSC: -

This interlocutory appeal is taken against the ruling of the Court of Appeal, sitting at Ho. The facts of the case relevant to this appeal are that on the 18th of May 2016, the High Court, sitting at Sogakope delivered a ruling in an interlocutory matter which went against the Defendant/Appellant/Applicant/

Respondent herein referred to as Respondent. Dissatisfied with the said ruling the Respondent initiated an Appeal to the Court of Appeal, through a Notice of Appeal filed on the 9th of June 2016. Pursuant to the Notice of Appeal, the Respondent filed a Motion on Notice for Leave to file Additional Grounds of Appeal on the 25th April 2017. The Plaintiff/ Respondent/ Respondent/ Appellant, herein referred to as Appellant, resisted the application and raised a preliminary point of law as to the competence of the appeal filed by the Respondent. The Appellant argued that the Notice of Appeal filed by the Respondent was outside the prescribed 21 days allowed for Interlocutory Appeals. He contended that the ruling, subject of the Appeal was delivered on the 18th May 2016 and the Notice of Appeal was filed on the 9th of June 2016, which was one day outside the 21 days limited for such appeals.

The Court of Appeal dismissed the preliminary objection in a ruling delivered on the 26th of July 2017. It is against the said ruling that Appellant has lodged this Appeal urging this court to set aside the decision of the Court of Appeal, which held that the Notice of Appeal was filed within time and for that matter the appeal was competent. Appellant formulated two (2) grounds of appeal as follows:-

- i. The ruling was against the weight of evidence.
- ii. The learned trial Judges erred when they held that the Notice of Appeal was legitimately filed and therefore not incompetent.

Having read the record of appeal, we are of the opinion that this appeal raises a fundamental issue as to whether the Notice of Appeal filed by the Respondent on the 9th June 2016 was competent? We will therefore address the grounds formulated by the appellant in terms of the fundamental issue.

It is trite that an Appeal is a creature of Statute or the Constitution and for that matter a party who intends to invoke the appellate jurisdiction of a court must strictly comply and or satisfy the law that grants him or her right of appeal.

In the case of **Sandema-Nab v. Asangalisa and Others {1996-97} SCGLR 302**, this court delivered at page 306 of the report as follows:-

“Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for right of appeal, no court has jurisdiction to confer that right in a dispute determined under that statute. Similarly where a right of appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and the relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute.”

See also **Nye v. Nye (1967) GLR 76 CA** (Full Bench) and **Bosompem & Others v. Tetteh Kwame {2011} 1 SCGLR 397.**

Interlocutory appeals in the Court of Appeal are regulated by **Rule 9** of the **Court of Appeal Rules, CI 19**. Rule 9 (1) of CI 19 provides thus:-

- “ 1. Subject to any other enactment governing appeals, an appeal shall not be brought after the expiration of:**
- a. Twenty-one days, in the case of an appeal against an interlocutory decision; or**
 - b. Three months, in the case of an appeal against a final decision unless the court below or the court extends the time.”**

It has been held in a plethora of cases that the time limited for interlocutory appeals in the Court of Appeal per its rule 9 (1) (a) is twenty-one days and no extension is allowed. See the case of **XL Insurance Switzerland Co. & Others v. Gemini Maritime Services & Ghana Ports and Harbours Authority {2012} 1 SCGLR 658.**

We observed however that the issue raised in this appeal is not whether or not the twenty-one days limited for Interlocutory appeals could be extended but rather how the twenty-one days prescribed by law is to be calculated. The Appellant has argued that reckoning the time the ruling was delivered by the High Court, Sogakope on 18th May 2016 and the date the Notice of Appeal was filed on 9th June 2016, it is

clear that the Appeal was filed on the 22nd day after the date of the Ruling. Appellant therefore posited that the Appeal is incompetent. The Respondent on the other hand argued that the Notice of Appeal was filed within time because the twenty-one days limited for the appeal was interrupted by the strike action embarked by the staff of the Judicial Service from 20th May 2016 to 1st June 2016.

Counsel for Respondent, in his statement of case has urged this Court to determine the effect of strike action by Judicial Service Staff on the filing of court processes, regarding times set by the rules of court in civil proceedings. We are, however, unable to address that issue in this judgment simply because the decision of the Court of Appeal was not grounded on the effect of the strike undertaken by the Judicial Service Staff, in May 2016 on the filing of court processes. The Court of Appeal founded its decision on the interpretation of ***section 44(3) of the Interpretation Act, 2009 Act 792.***

Section 44 (3) of the Interpretation Act, 2009 Act 792 which was applied by the Court of Appeal in its ruling provides as follows:

“Where in an enactment a period of time is expressed to be reckoned from or after a particular day that day shall not be included in the period.”

We understand the above provision to mean that when a law expresses time to be reckoned from or after a particular day, then that particular day shall be excluded in reckoning the time. Now, **Rule 9 (1) (a) of CI 19** provides that an interlocutory appeal shall not be brought after the expiration of twenty-one days and **Rule 9 (2) of CI 19 also provides that:**

“The prescribed period within which an appeal may be brought shall be calculated from the date of the decision appealed against.”

Clearly, therefore by section 44(3) of the Interpretation Act, Act 792, the date on which the decision was made ought to be excluded from reckoning the time limited for the appeal, simply because Rule 9 (2) stipulates that the twenty - one days

limited by Rule 9 (1) (a) shall be ***calculated from*** the date of the decision appealed against.

In these proceedings, the ruling of the High Court, Sogakope was delivered on the 18th May 2016 and the Notice of Appeal filed on the 9th June 2016. In calculating the twenty- one days per the formula provided by section 44 (3) of the Interpretation Act, Act 792, the date of the Ruling ought to be excluded and if it is so excluded then the twenty- one days ends on 9th of June 2016, the very day the Notice of Appeal was filed. The appeal was thus properly filed and the Court of Appeal committed no error in so holding.

We are therefore of the opinion that the Court of Appeal was right when it held that by the combined effect of Rule 9 (1), (2) of CI 19 and section 44(3) of the Interpretation Act, Act 792, the appeal was competent.

Accordingly, the appeal is hereby dismissed.

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

ADINYIRA (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Marful-Sau, JSC.

**S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)**

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Marful-Sau, JSC.

**ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)**

BENIN, JSC:-

I agree with the conclusion and reasoning of my brother Marful-Sau, JSC.

**A. A. BENIN
(JUSTICE OF THE SUPREME COURT)**

KOTEY, JSC:-

I agree with the conclusion and reasoning of my brother Marful-Sau, JSC.

**PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

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EDWARD DARLINGTON FOR PLAINTIFFS/RESPONDENTS/RESPONDENTS/
APPELLANTS.