IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

PROF. KOTEY JSC

LOVELACE-JOHNSON (MS.) JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL
NO. J4/02/2022

15TH NOVEMBER, 2022

EBUSUAPANYIN KOBINA SIRIPI ..... PLAINTIFF/RESPONDENT/ RESPONDENT

VRS

1. ESI IMPRAIM ..... 1ST DEFENDANT

2. ADJOA AMOASIWA

3. AYA KWALAMBA } **DEFENDANTS/APPELLANTS/APPELLANTS**

JUDGMENT

AMADU JSC

INTRODUCTION

(1) The issue for our determination in this appeal is very technical indeed. The Defendants/Appellants/Appellants herein, convinced that the statutory power of the Chief Justice with respect to the reassignment of cases from one High Court

judge to the other. The Appellants have alleged that the statutory procedure not having been complied with when the High Court Winneba, exercised jurisdiction in hearing the suit until final judgment, the entire proceedings before the said High Court is a nullity, there being no order of transfer from the Chief Justice in accordance with Sections 104 (1)-(3) of the Courts Act 1993, (Act 459).

(2) This appeal is from the judgment of the Court of Appeal, Cape Coast which refused to set aside the judgment of the High Court Winneba thereby affirming the judgment of the Trial Court and dismissed the appeal by the 2nd and 3rd Defendants/Appellants/Appellants. By notice filed on 5th May, 2021, the 2nd and 3rd Defendants/ Appellants/Appellants *(hereinafter referred to as Appellants),* dissatisfied with the judgment of the Court of Appeal, set out the following grounds of appeal against the said judgment.

i. "The judgment delivered on 25th February, 2021 is against the weight of evidence.

ii. The Court of Appeal erred by reliance on an undated letter from the Registrar of the High Court indicating a notice of transfer since that letter qua letter; does not satisfy the provision of Section 104 (1) - (3) of the Courts Act, Act 459.

iii. Further grounds of Appeal shall be filed upon receipt of the record of appeal."

(3) **BACKGROUND FACTS**

In order to fully appreciate the trajectory of the issue in contention between the parties, it is important to recount the facts giving rise to this appeal. By writ issued

from the registry of the High Court Swedru, (*the Plaintiff/Respondent herein)* claimed jointly and severally against all the Defendants the following reliefs:-

a. ***"A declaration of title to the disputed house located at Apam and particularly described as NAOMI INN, MAMFAM, APAM and shares boundary on the North by Madam Aba Efi and Kweku Tawiah measuring 150 ft., on the East by Mr. J.A. Nziba measuring 80 ft., on the South by a road measuring 150 ft and on the West by the property of Kwame Ndziba (now Kow Dadzie) measuring 112 ft.***

b. ***An order for perpetual injunction restraining the Defendant, their children and any one claiming through or under them from interfering with Plaintiff's quiet enjoyment and rights to the property.***
c. ***Cost incidental to the suit".***

(4) **PLAINTIFF/RESPONDENT'S CASE**

The Respondent, sued in his capacity as the head of family of the Agona Royal family of Apam. The Appellants are children of the former head of family, Ebusuapanyin Kofi Gyansah Impraim. The Respondent avers that the property, the subject matter of this dispute, particularly described as Naomi Inn, Apam, is the family property of the Agona Royal family of Apam. He claims that it was acquired by four siblings namely: Maame Kromoa, Maame Amoasiwa Panyin, Maame Amoasiwa Kakraba and Opanyin Akondo all of the Agona Royal family about 100 years ago. The siblings thereafter put up a swish building and made same a family house where the family holds meetings and organises funerals for its departed members.

(5) According to the Respondent, the original owners were survived by Maame Amoasiwa Panyin who was in control of the house and after her death, devolved to Ebusuapanyin Mampo. Upon the death of Ebusuapanyin Mampo, he was succeeded by Ebusuapanyin Kofi Gyansah Impraim *(the father of the Appellants)* who moved to the house and constructed four (4) rooms and two (2) halls and undertook other maintenance works on the property. He was said to have lived in the house with his wife and children and used the house for his concert business.

(6) The Respondent further asserted that there has been further developments and renovations on the property by various members of the Agona Royal family as well as the various heads of the family. The Respondent further asserts that upon the death of Ebusuapanyin Kofi Gyansah Impraim, he succeeded him as the head of the family and customary successor in control of the disputed property. The Respondent further asserts the Appellants are the children of Ebusuapanyin Kofi Gyansah Impraim who have started resisting attempts from members of the family to have family meetings and funerals in the disputed property as has been previously done. They have further refused to move out of the disputed house despite several attempts to move them. To make matters worse, the Appellants have given the house out to be used as a church premises. The Respondent therefore took action for declaration of title to the disputed property, an order for perpetual injunction restraining the Appellants, their children and any person claiming through or under them from interfering with the Respondent's quiet enjoyment and rights to the property as well as costs.

(7) **THE CASE OF 2ND AND 3RD DEFENDANTS'/APPELLANTS**

The Appellants denied that the disputed property is a family property of the Agona Royal family of Apam. They contended that the land on which the property lies was acquired by Maame Ama Kwanmoa who gave birth to three (3) children, Nana Aba Simpson, Kofi Gyansah *(Appellants' father)* and Kweku Bondzie in that order. The persons named by the Respondent as co-owners of the property were simply siblings of their grandmother, Maame Kwanmoa, the owner of the property. They further asserted that their father's mother married at Winneba and was a trader in textiles in Apam which made her wealthy. They asserted that those who acquired the land are all siblings of the owner of the land who came from Gomoa Nkran.

(8) The Appellants asserted that the land on which the disputed property is located belonged to the Dentsifo Asafo Company and that in those days, persons who belonged to the Dentsifo Asafo Company were not allowed to go to the area belonging to the Tuafo Asafo Company, let alone build there. Indeed, the Dentsifo Asafo Company had to convince themselves through investigations that Maame Ama Kwanmoa did not belong to the Tuafo Asafo Company before the land was released to her to build the house thereon with the intention that her descendants would all become Dentsifo. By reason of this, all the Appellants are Dentsifo but the Respondent belongs to the Tuafo Asafo Company of Apam whose family house is at the Tuafo section at Egyaa in Apam.

(9) The Appellants asserted further that Maame Ama Kwanmoa started developing the land and had built up to lintel level until her brother started harassing her over the ownership of the property. Consequently, she moved to one side of the land to construct a mud house. Subsequently, a road was constructed which divided her mud house from the concrete built property.

(10) According to the Appellants, the siblings of Ama Kwanmoa *(those that were mentioned by the Respondent as co-owners of the land)* were rather brought to the house by Maame Kwanmoa in order to cater for them since they were poor people. That, Ama Kwanmoa gifted the land on which the first block house was built to her children, Nana Aba Simpson and the other land on which the mud house was built to Kofi Gyansah also called Impraim and Kweku Boadzie. Further that, Kweku Boadzie with the consent of Kofi Gyansah reconstructed the building as well as a platform for concert show. The Respondents concluded that no family member has ever lived in the house and that family meetings were held in the house because their father was old and not because he was the head of family or that the house is a family property. At the end of the trial, the High Court, Winneba entered judgment in favour of the Respondent and held that the disputed property is a family property. The court therefore declared title to the disputed property in favour of the Respondent. It must be noted however, that though, the action commenced at the High Court, Agona Swedru, judgment was given by the High Court, Winneba upon a letter of transfer by the Registrar of the Court. Significantly however, the Appellants herein raised no objection to the assumption of

jurisdiction by the High Court, Winneba from the hearing of the application for directions until judgment was delivered.

(11) Dissatisfied with the judgment of the trial court, the Appellants appealed to the Court of Appeal on grounds which include the omnibus ground of appeal and the non-compliance with the statutory provisions contained in Section 104 (1)-(3) of the Courts Act, 1993 (Act 459) with respect to the exclusive power of the Chief Justice to transfer suits from one court to the other. The Court of Appeal dismissed the appeal and affirmed the judgment of the Trial High Court.

(12) **APPEAL TO THE SUPREME COURT**

As aforesaid, by a notice of appeal to this court, the Appellants have appealed from the judgment of the Court of Appeal on the same grounds on which their appeal to the Court below was anchored and determined. It must however be placed on record that no further ground of appeal was filed by the Appellants as they addressed only the two (2) grounds of the appeal set out above.

(13) We shall proceed first to address the second ground of appeal since the said ground raises a fundamental issue of law founded on an alleged procedural impropriety which goes to the jurisdiction of the Trial Court. This is because, if the jurisdictional issue is upheld in favour of the Appellants, the determination of the other issue with respect to the weight of the evidence adduced at the trial on substantive issues become moot and irrelevant. The decision of the Court of Appeal Civil Appeal Number H1/252/04, dated 5th February, 2009, per Anin Yeboah JSC *(as he then was) as additional Justice of the Court of Appeal)* Baffoe-Bonnie

JSC and Asare Korang J.A (concurring) in the case of **EBUSUAPAYIN YAW STEPHENS VS. KWESI APOH** vindicates this position. There, His Lordship said *inter alia* that; ***"A defence of estoppel, statute of limitation; lack of locus standi, etc. are all pleaded to show that a cause of action is wanting in a legal manner. This is the rationale for determining such preliminary matters first in the course of proceedings: "It is therefore the law that if an action succeeds on a plea of limitation, lack of jurisdiction, or lack of locus standi, the trial court or for that matter an Appellate Court should not proceed to determine the merits of the case irrespective of the evidence See GRAVES VS. OYEWOO [1967] GLR 803 SC & SARKODIE, 1 AKRONG V. BULLEY [1965] GLR 469 SC. V. BOATENG II [1982-83] GLR 715 SC".*** This position of the law was restated by this court in the case of **TIDANA (NO.1) V. CHIEF OF DEFENCE STAFF & ANOTHER (NO.1)[2011]1 SCGLR 724**

(14) In ground two (2) of the Notice of Appeal, the Appellants formulated their complaint against the judgment of the Court of Appeal as follows:-

> "***The Court of Appeal erred by reliance on an undated letter from the Registrar of the High Court indicating a notice of transfer since that letter qua letter, does not satisfy the provisions of Section 104 (1)-(3) of the Court Act, Act 459".***

The Appellants allege that the High Court, Winneba, lacked jurisdiction to hear the case which was purportedly transferred from the High Court Agona Swedru, since

the said transfer did not comply with the provisions of Section 104 (1)-(3) of the Court Act 1993 (Act 459), thereby rendering the entire proceedings at the High Court Winneba a nullity on grounds of want of jurisdiction. As the record of appeal reveals, the writ was filed at the High Court, Agona Swedru on 4th March, 2013. However, by an undated letter of transfer from the Registrar of the High Court, Winneba. *(See page 159 of the record)* the case was transferred to the High Court, Winneba, and the parties informed to appear before the Winneba High Court on 4th November, 2013 for mention. The Appellants contend that since the letter of transfer was not under the hand and signature of the Chief Justice as required under Section 104 (1)-(3), 1993 (Act 459), the High Court, Winneba could not have properly assumed jurisdiction to determine the matter.

(15) To put the argument of the Appellants in the proper context, Section 104 (1)-(3) of the Courts Act, 1993 (Act 459) provide as follows:

"(1) Subject to the provisions of the Constitution, the Chief Justice may by order under his hand transfer a case at any stage of the proceedings from any Judge or Magistrate to any other Judge or Magistrate and from one court to another court of competent jurisdiction at any time or stage of the proceedings and either with or without an application from any of the parties to the proceedings. (As amended by the Courts (Amendment) Act, 2002 (Act 620), sch. to s.7).

(2) The order may be general or special and shall state the nature and extent of the transfer and in any case of urgency the power of transfer may be exercised by means of a telegraphic, telephonic or electronic communication from the Chief Justice.

(3) A transfer of a case made by telegraph telephone or electronic communication and not confirmed immediately by order signed and sealed in a manner specified by the Chief Justice or any other person authorised in that behalf by him shall be of no effect.

(16) From the provisions reproduced above, the power to transfer a case from one High Court or from one judge to another is exclusively vested in the Chief Justice. It is an exclusive statutory preserve of the Chief Justice. Without an order from the Chief Justice therefore, no other person has the power to transfer a case from one court to the other. Indeed, the only instance where that power of transfer is delegated is provided in Subsection 3 of Section 104 where the transfer is made by either telegraph or electronic communication. In that instance, the telegraph telephone or electronic transfer ought to be followed immediately by an order referred to as warrant signed and sealed by the Chief Justice or any other person duly authorised by him. Anything otherwise, renders the transfer null and void. The essence of this requirement though administrative has legal consequences. The power resides solely in the Chief Justice as the head of the judiciary pursuant to Article 125 (4) of the Constitution. Anything less will not only be unlawful but may result in abuse and malpractice. And for any court to proceed to assume jurisdiction over a transferred suit not by the Chief Justice any proceedings arising therefrom will be a nullity. There is clear legislative intent that Section 104 of Act 459 prescribes the formal mode of effecting any transfer of a case to another judge. Its formalities or characteristics include the signature and seal of the Chief Justice or a person authorized to sign and seal such order of transfer.

(17) Indeed this Court has in several previous decisions reiterated and reaffirmed this statutory provision in order to preserve the sanctity of the judicial system. If the administrative checks put in place by legislation such as the Chief Justice's power of transfer of cases between courts and judges are not enforced, chaos, forum shopping and combustible disharmony among judges would ruin or mar the proper administration of justice in this country. In **THE REPUBLIC VS. HIGH COURT, FAST TRACK DIVISION) ACCRA; EX-PARTE: NATIONAL LOTTERY AUTHORITY (GHANA LOTTO OPERATORS ASSOCIATION & OTHERS INTERESTED PARTIES) [2009] SCGLR 390** this court per Atuguba JSC. His Lordship stated *inter alia* at page 397 of the report that:

> ***"It is** communis opinio **among lawyers and judges that the courts are servants of the legislative. Consequently any act of a court that is contrary to a statute . . . is, unless otherwise expressly or impliedly provided, a nullity . . ."***

From the concurrent judgments of the two lower courts it is difficult to appreciate the legal reasoning for their refusal to uphold the clear provisions of Section (104 1-3) of the Courts Act 1993 (Act 459) and declare without equivocation that since the purported transfer of the case from the High Court Swedru to the High Court Winneba was not carried out in accordance with the clear provisions of the enabling law, the proceedings and judgment emanating from the High Court Winneba are both a resultant nullity.

(18) Then in the earlier decision of this court in the case of **REPUBLIC VS. HIGH COURT (FAST TRACK DIVISION) ACCRA EX-PARTE: GHANA LOTTO OPERATORS ASSOCIATION (NATIONAL LOTTERY AUTHORITY INTERESTED PARTY [2009] SCGLR 372,** this court per Dr. Date Bah JSC answered the question for determination which is apposite the issue before us succinctly. His Lordship restated the position of the law *inter alia* as follows:- *"From the facts narrated above, it would appear that certiorari should lie, unless a matter restraining the exercise of this court's jurisdiction can be established. This is because the clear meaning of Section 104 (1) to (3) of the Courts Act, 1993 (Act 459), as amended by the Courts (Amendment) Act, 2002 (Act 620) S, 7 and its schedule is that the Chief Justice may, by an order under his or her hand transfer a case at any stage of proceedings before any Judge or Magistrate. The clear implication of this is that nobody else, including registrars, is authorised to transfer a case between judges once proceedings have commenced before them. The applicant has relied on case law that reinforces this necessary and obvious implication. The cases he cites are:* ***SORO V. FRANS [2005-2006] SCGLR 1003; REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE MOBIL OIL (GHANA) LTD. (HAGAN INTERESTED PARTY) [2005-2006] SCGLR 312 AND REPUBLIC VS. HIGH COURT JUDGE (FAST TRACK DIVISION), ACCRA; EX-PARTE QUAYE AND ANOTHER (YOVONOO AND OTHERS– INTERESTED PARTIES) [2005-2006] SCGLR 660.*** *I am persuaded by the provisions of Section 104 of the Courts Act and the cases cited above that a*

Registrar, without an order from the Chief Justice, has no authority to move a case, including interlocutory applications, from one High Court judge to another. If the Registrar does that, the receiving High Court judge acquires no jurisdiction and therefore proceedings before him or her would be null and void. In support of this proposition, I would like to cite the following passage from Wood JSC (as she then was) in ***SORO VS. FRANS*** *(supra) at p. 1008, where Her Ladyship said:*

> ***"The power to transfer and thereby take away the jurisdiction of any judge to hear and determine any cause or matter pending before him or her, be it part-heard or a fresh matter, is in stricto sensu reserved exclusively in the Chief Justice under Section 104 of the Courts Act, 1993 (Act 459). A supervising High Court Judge and the Chairman of the Regional Tribunal are also empowered to order the transfer of cases, but their powers are understandably subordinate to that of the Chief Justice."***

(19) The position of this court on the law will not change in the instant appeal. This court has been consistent on its abhorrence and disapproval of transfer of cases from one court to another except by the Chief Justice or if by another person without the express authorisation of the Chief Justice. It is not for nothing that this power exclusively resides in the Chief Justice. At the very least it will ensure that sanity prevails in the judicial system. Being a provision of statute and in giving fidelity to the statute and the constitution, it has to be complied with to the letter.

(20) In its judgment the Court of Appeal, while addressing this issue relied on **THE REPUBLIC VS. HIGH COURT, ACCRA (COMMERCIAL DIVISION) EX-PARTE DR. KWABENA APPENTENG & 3 ORS., SUIT NO.J5/6/09,**

DELIVERED ON 3RD FEBRUARY, 2010 and accordingly applied the decision of the said case *mutatis mutandis* to the instant case. In the **Ex-parte Appenteng**, case the Trial High Court Judge had a warrant of the Chief Justice to sit during the period of the legal vacation and to deal with particular cases assigned for the period but failed to obtain the consent of the Chief Justice and proceeded to deliver a decision after the vacation jurisdiction had elapsed. Upon application for certiorari to quash the conviction of the Applicants, on grounds of want of jurisdiction by the Trial Court to deliver the ruling after the vacation period without the warrant of the Chief Justice in writing, this court refused the application and saved the ruling of the Trial Court.

(21) The decision of this court in that case ought to be applied with great circumspection and within the context of the peculiar facts and procedure by which the jurisdiction of this court was so invoked. Being an application which had invoked the supervisory jurisdiction of this court, this court declined to order certiorari to lie on the grounds that the conduct of the Applicant not only amounted to condonation of the proceedings, but essentially because an order for certiorari was within the discretionary jurisdiction of this court which not the peculiar facts, this court was not inclined to grant.

(22) In that case under reference the Applicant who was one of the executors of the will of the late Samuel Christian Appenteng, on 18/4/2008 obtained, in a chain of steps, leave for the issue of a writ of possession, in respect of one of the properties

of the estate of the said testator. However, the purported execution of this writ was obstructed by the interested parties. The Applicant thereupon obtained an order for forcible entry and arrest of any person who would seek to obstruct the same. Meanwhile, the interested parties had commenced an action on the 16/12/2007 against the interested parties impeaching the purported disposal of the disputed property. After an initial ex-parte interim injunction, the interested parties brought an application on notice for the same which was adjourned ruling. Before the ruling could be delivered, the interested parties claimed that: ***"the Applicant herein and 4th Defendant without waiting for the ruling of the Court on 8th day of July 2008 entered the premises threw out the beneficiaries and forcibly removed the machines being used by the said beneficiaries and thereby destroying the said machines and used forklift to remove the machines from the premises into the pavement and left the machines to the mercy of the sum".***

(23) The interested parties were subsequently cited for contempt which application was heard and the Applicants found liable for contempt. As the original proceedings of this case had been pending in the ordinary High Court, the Applicants contended *inter alia* that, the Trial Judge as a judge of the Commercial Division had no jurisdiction to hear and determine the contempt application. In delivering itself, this court per **Atuguba JSC** held as follows:

> ***"Against a background such as this, we have no difficulty in holding that though certiorari is a discretionary remedy, the***

omission of a party to raise objection to a proceeding in an inappropriate forum should disentitle the Applicant to that remedy where the omission was wilful and an abuse of the process of the court. Such is the case here. The fact that Tanko Amadu J. was exceeding his authority after the effluxion of the vacation period did not seem to have bothered the Applicant until his ruling turned out to be adverse to him. Were it to have been in his favour he would have celebrated it…. In this case the applicant did not take objection to the continuance of the matter by Tanko Amadu J. unlike the Applicant in the Ex-parte Quaye case, supra. The Applicant by that failure is particepis delicti and it would be an abuse of the process to allow his application".

(24) Therefore the **Ex-Parte Appenteng** case is clearly distinguishable from the instant case. As aforesaid, in the **Ex-Parte Appenteng** case, the Applicants invited this court to exercise its discretionary jurisdiction, an invitation which this court opined that it could not avail the Applicant for the reasons stated in the ruling. In the instant case, the Appellant's ground of appeal is an allegation of a breach of a statute for which they have exercised their constitutional rights to appeal to this court to have the proceedings declared null and void as a result of the alleged breach of statute and consequential warrant of jurisdiction of the High Court Winneba. The provisions of Section 104 (1) - (3) are neither in dispute nor ambiguous. They expressly provides that the power of transfer of a suit from one court to the other is exclusively vested in the Chief Justice. No other person can purport to exercise this power on behalf of the Chief Justice. Even in cases of urgency, Section 104 (2) of Act 459 provides that where the Chief Justice is not

available to sign a letter of transfer, he may order the transfer either by means of telegraphic, telephonic or any other electronic communication.

(25) This provision in Sub-Section 2 demonstrates that this exclusive statutory power vested in the Chief Justice ought to be strictly applied in order to prevent abuse of the power and process. Indeed, the only instance where a person may purport to act on behalf of the Chief Justice in the exercise of this power is provided for in Section 104 (3) of Act 459. In the said provision, the power is only exercisable after the Chief Justice has made an order of transfer by electronic means and it requires confirmation by a letter signed and sealed by him. It is only in that instant that a person duly authorised by the Chief Justice may issue the letter of transfer. It must be noted that, the transfer ought to have been first ordered by the Chief Justice by electronic means before any person authorised by him may confirm the transfer by electronic means issued by the Chief Justice. The provisions on the exercise of the power of transfer are therefore statutorily restrictive.

(26) Accordingly, this court will not be inclined to give any other meaning outside the express provisions in Section 104 (1) - (2) of Act 459, as any attempt to do so would be tantamount to rewriting the provisions of Section 104 (1) - (3) of Act 459. The provisions admit of no ambiguity which would have required an interpretation different from what it literally provides. In the case of **BOYEFIO VS. NTHC PROPERTIES LTD. [1996-97] SGLR 531,** this court held *per* holding 5 as follows:-

"The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed . . ." See also the decision of this court in the case of **REPUBLIC VS. HIGH COURT, KOFORIDUA; EX-PARTE ASARE (BABA JAMAL & OTHERS-INTERESTED PARTIES) (2009) SCGLR 460 at 509** where **Dotse JSC** in delivering the opinion of the Court held thus:-

> ***"Where a statute has made provision provisions for certain steps to be taken in order to comply with the requirements of the law, then no other steps other than those prescribed must be taken or followed. In this case, once the first interested parties have failed to strictly adhere to the provisions of PNDCL 284 as will be shortly established, it follows that their actions fall flat in the face of the law." This must not be countenanced by a court of law, especially the Supreme Court for that matter. This is because it is from the Supreme Court that all other courts take direction and guidance, because of the principle of*** *stare decisis****".***

These principled statements on the position of the law clearly show that no other construction shall be given to the meaning and application of statute other than what the clear words of the statute provide.

(27) Further, on the effect of clear provisions of statute this court in the case of **KWABENA OBENG & ORS. VS., KUMASI METROPOLITAN ASSEMBLY (KMA)**, Suit No. J4/53/2016 dated 14th June, 2017 held *inter alia* as follows:

"*In this context, we agree with learned counsel and his reliance on the following cases to support that contention. 1. See the case of* ***REPUBLIC VS. HIGH COURT (LANDS DIVISION) ACCRA, EX-PARTE LANDS COMMISSION (NUNGUA STOOL AND OTHERS – INTERESTED PARTIES, Civil Motion No.J5/4/14*** *dated* ***5th December 2013*** *where Wood CJ, quoted with approval*

the dictum of Atuguba JSC in the case of ***NETWORK COMPUTERS LIMITED VS. INTELSAT GLOBAL SALES AND MARKETING [2012] 1 SCGLR 218 at page 231*** *where the celebrated jurist observed thus:-*

> ***"Unless a substantive Act can be regarded as directory and not mandatory or its infraction is so minimal that it can be observed that it can be covered by the maxim*** *de minimis non curat lex* ***or is such that the complaint about it is mere fastidious stiffness in its construction or the breach relates to part of it which, in relation to others, can be regarded as subsidiary, and therefore should not be allowed to prejudice the operation of the dominant part or purpose thereof, or the strict enforcement of the statute would amount to a fraudulent or inequitable use of the statute or some other compelling reason, I do not see how a court can gloss over the breach of a statute."***

(28) We shall therefore in being consistent with the position of this court on compliance with statute, hold that once Section 104 (1) - (3) of Act 459 have prescribed a procedure by which an act ought to be done, it is that mode only that must be applied. Any attempt to circumvent the provision or procedure would be unlawful and will result in a nullity. It was thus, erroneous for the Court of Appeal to have endorsed a clear breach of the statutory provision by the Trial High Court on the issue of non-compliance with the express provisions of statute. Since no party before a court can give the court a statutory jurisdiction it otherwise lacks, the failure by the Appellants to object to the proceedings at the Trial Court until judgment was delivered is inconsequential as the conduct of a party cannot confer a court with a statutory jurisdiction it does not have.

(29) In the instant case, the crucial issue is whether or not the Registrar of the High Court Winneba, could assume to exercise a power statutorily vested in the Chief Justice who by virtue of Article 125 of the 1992 Constitution, is the head of the judiciary in whom that power is exclusively vested by virtue of Section 104 (1)-(3) of Act 459. Even worse, is where the correspondence by the Registrar purporting to exercise powers not vested in his office was neither signed nor dated nor was it purported to have been made on the instruction or consent of the Chief Justice. In our view, any other position different from one setting aside the entire proceedings emanating from this procedural glitch with a resultant nullity would be tantamount to permitting any other officer of the judicial service to purport to issue orders and warrants on behalf of the Chief Justice contrary to statute. The consequences of such illegality are unimaginable but undoubtedly monstrous and it is of no consequence that in the context of this particular case, the entire trial proceedings including the judgment emanating therefrom if declared a nullity has to be remitted to the High Court for trial *de novo.*

(30) We are aware that in their judgment, the Learned Justices of the Court of Appeal relied on **Section 37 of the Evidence Act 1975 (NRCD 323)** on the presumption of regularity, to conclude that the Registrar is presumed to have regularly performed the duty of transfer when that duty was never vested in him by law. For the avoidance of doubt, Section 37(1) of NRCD 323 provides that: "*it is presumed that official duty has been regularly performed*". This is a rebuttable

presumption which on the peculiar facts of this case is demonstrably irrelevant and inapplicable.

(31) Whereas pursuant to Art 129 (3) the Supreme Court may depart from its own previous decisions, in the instant case, we consider ourselves constrained to follow the benign advance made by this court in all its previous decisions with respect to compliance with statute as a precondition to the regularity of court processes and proceedings. That is why the decision of this court in **Ex-Parte Appenteng** supra cannot be construed to have departed from the principled position of this court on this issue. Consequently, the legal issue which arose for determination in the Court of Appeal and in this court with respect to the statutory non-compliance with Section 104 (1-3) of the Courts Act, 1993 (Act 459) is demonstrably unanswerable. In our view, the Court of Appeal erred when it misconstrued the legal effect of the non-compliance which is jurisdictional in nature.

(32) With all due respect to the Learned Justices of the Court of Appeal, they wrongly apprehended the non-compliance with a statutory provision contained in Section 104 (1-3) of Act 459. In our respectful view, their attitude to the non-compliance with statute is superficial and it is inconsequential that the issue which is jurisdictional in nature was not raised at the court of first instance. In **TINDANA VS. CHIEF OF DEFENCE STAFF, (NO.2) [2011]2 SCGLR 732 at 743** this Court held on the issue of jurisdiction and the conduct of the parties in a suit as follows:-

". . .Since it was a jurisdictional issue it could be taken even in the last appellate court and this was rightly done by this court. See - ***REPUBLIC VS. ADANSI TRADITIONAL COUNCIL; EX-PARTE NANA AKYIE II [1974] 2 GLR 126 CA.*** *As the Court of Appeal lacked jurisdiction to hear the appeal, the parties and the court's failure to raise the point is inconsequential.* ***LORD ESHER MR IN R V. JUSTICES OF ESSEX [1895] 1 QB 38****, at page 41:* ***"No consent of the parties can give jurisdiction when the conditions are not complied with".***

(33) Therefore, once the issue for determination is jurisdictional, the conduct of the other side is non-consequential. It is also inconsequential at what stage of the proceedings the objection was taken. Having come to the attention of the court, however belatedly, this Court has the jurisdiction to correct the fundamental irregularity which goes to the jurisdiction of the Trial High Court to assume jurisdiction based on the purported transfer of the suit from Swedru to Winneba to High Court contrary to statute.

(34) In the oft cited case of **MOSI VS. BAGYINA [1963] 1 GLR 337 - 348**, this Court, speaking through Akufo-Addo JSC stated as follows;

"Where a judgment or an order is void either because it is given or made without jurisdiction or because it is not warranted by any law or rule or procedure, the party affected is entitled *ex debito justitiae* ***to have it set aside, and the court or a judge is under a legal obligation to set it aside, either*** *suo motu* ***or on the application of the party affected. No judicial discretion arises here. The power of the court or a judge to set aside any***

such judgment or order is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a judge; and the constitution of the court is for this purpose immaterial."

(35) On the strength of the foregoing, Ground "b" of the grounds set out in the Notice of Appeal is hereby upheld. The omnibus ground of appeal as set out in Ground "a" is hereby struck out as abandoned.

(36) In the result, this appeal must succeed and it is hereby allowed. The concurring judgments of the High Court and the Court of Appeal are hereby set aside.

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE BONNIE
(JUSTICE OF THE SUPREME COURT)

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

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

PROF. H.J.A.N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

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