IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA-AD 2017

CORAM: AKUFFO (MS), JSC (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC

CIVIL APPEAL
NO. J4/51/2016

14TH JUNE, 2017

NANA AMPOFO KYEI BARFOUR

(SUING PER HIS LAWFUL ATTORNEY NANA ANTWI FOSUHENE 1, ASAWASEHENE ASEM KYIDOMHENE OF ASEM PALACE, KUMASI) ..... PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. **JUSTMOH CONTRUCTION CO. LTD.**
2. **DESPITE COMPANY LIMITED**
3. **YAA SERWAA**
4. **EGGS SELLERS ASSOCIATION LTD.**
5. **GHANA RAILWAY DEVELOPMENT AUTHORITY ..... 5TH DEFENDANT/APPELLANT/RESPONDENT**

JUDGMENT

ADINYIRA (MRS), JSC:-

For purposes of clarity, it is essential to set out in chronological detail, the facts and dates of events, as the bone of contention in this appeal are, the due compliance with time set down by the rules of court and the principle of the audi alteram partem rule.

FACTS AND PROCEDURE:

On 17/3/2013, the occupant of the Asem stool, Nana Ampofo Kyei Baffour, the Plaintiff/Respondent/Appellant (the Plaintiff) instituted an action, per his lawful attorney, at the Fast Track High Court, Kumasi, against the 1st to 4th Defendants for a declaration that the parcel of land being occupied by the Defendants, forms part of Asem Stool lands. In time, the 2nd Defendant herein, Despite Company, applied for its grantor, the Ghana Railway Development Authority to be joined to the action.

The order for joinder made on the 13/5/2013 by the trial judge was as follows:

> "Application for joinder of the Ghana Railway Authority as 5th Defendant is hereby granted. The Ghana Railway Authority is hereby given 14 days to file all processes they need to file. The Plaintiff is to amend the title of the suit accordingly. Case is to take its normal course. Costs of GHS200 is awarded to the Plaintiff to enable him to file the amended process."

The Plaintiff filed the amended writ of summons and statement of claim on 22/5/ 2013 and these were served on the *Ghana Railway Authority*, the 5th Defendant/Appellant/Respondent (5th Defendant) on 25/6/2013.

On 14/6/2013, an appearance was entered on behalf of the 5th Defendant.

On 16/7/2013, the Plaintiff filed a motion for judgment in default of defence against the 5th Defendant with a return date of25/7/2013. The motion was heard and granted on 25th November, 2013 and the matter adjourned to 11/12/2013 for assessment of damages.

On 11/12/2013, the date fixed for assessment of damages, the 5th Defendant, represented by counsel, informed the court that a statement of defence was filed on 2/8/2013 and applied orally that the default judgment be set aside. Counsel for the Plaintiff did not oppose the application and the court granted the application and mulcted the 5th Defendant in costs of GHC 600.

On 13/12/2013, the plaintiff filed a motion to review the order setting aside the default judgment of 25/05/2013 on the grounds that the representation by Counsel for 5th

Defendant that the statement of defence was filed on 2nd August, 2013 was false. On 18/12/2013, the court reviewed the order of 11/12/13 and restored the default judgment.

On 23/ 12/ 2013, the 5th Defendant filed a motion for an order for review of the ruling of 18/12/2013 and to restore the order of 11/12/2013. The application was supported by copies of the court receipts indicating that the statement of defence was indeed filed on 2nd August, 2013.

In the affidavit in opposition filed on 16/01/2014, the Plaintiff stated in paragraph 5 thereof that it was in December 2013 that the statement of defence was served on him through his solicitor. He stated further that the statement of defence was not filed within the 14 days ordered by the court when the order for joinder was granted on 13/05/2013. He therefore submitted that the statement of defence which was filed out of time without leave of the court was a nullity.

On 29/01/2014, the court dismissed the 5th Defendant's application for review on the grounds that since the statement of defence was filed out of time and without leave of the court, the court cannot entertain the statement of defence.

On 11/02/14, damages were assessed.

On 18/03/2014, final judgment was given against the 5th Defendant.

On 19/03/2014, the 5th Defendant filed an appeal against the interlocutory ruling of 29/01/2014

On 10/04/2014 the 5th Defendant filed a notice of appeal against the final judgment of 18/03/2014

On 22/12/2015 the Court of Appeal dismissed the notice of appeal against the interlocutory ruling of 29/01/2014 on the grounds that it was filed out of time. However in the same judgment, the Court of Appeal allowed the appeal against the final judgment of 18/03/2014.

In the judgment the court held that even though the 5th Defendant filed the statement of defence out of time and without leave of the court, the subsequent orders by the trial court on 11/12/13 was evidence that the court had admitted the statement as a valid process. The Court further held it was apparent on the face of the record that the assessment of damages was done by the trial judge without notice to the 5th Defendant.

The Plaintiff, aggrieved by the judgment of the Court of Appeal, filed a notice of appeal to the Supreme Court, on 25/12/2015.

GROUNDS OF APPEAL

(a) The Honorable Court erred in holding that the assessment of damages was done by the High Court, Kumasi without notice to 5th Defendant as the 5th Defendant and its counsel were present when the suit was being adjourned for assessment and yet they chose to stay away from the said assessment thus the conclusion of the Court of Appeal that the audi alteram partem rule was breached is erroneous and palpably wrong.

(b) The Honorable Court erred in disregarding the fraud perpetrated on the lower court by the 5th Defendant on the ground that the issue of fraud had indirectly been abandoned by the Plaintiff by failure to restate it in an affidavit in opposition

(c) The Honorable Court erred in holding that the 5th Defendant could disregard the time imposed by the High Court, Kumasi for it to file its appearance and defence and that the order of the High Court, Kumasi in relation to the filing of appearance and defence made it impossible for the 5th Defendant/Appellant/Respondent to file its processes within time.

(d) The Honorable Court erred when although it held that the ground of appeal argued by the 5th Defendant was misconceived it would take and base itself on a different ground of appeal not canvassed by the 5th Defendant/Appellant/Respondent itself.

(e) The Honorable Court erred in not realizing that the filing of 2 separate notices of appeal by the 5th Defendant was an abuse of the process of court and to that extent its jurisdiction had not been properly invoked.

(f) The Honorable Court erred in failing to appreciate that the second notice of appeal it based its decision on was a nullity having regard to the pendency of the earlier one filed based on substantially the same grounds.

(g) The Honorable Court erred in disregarding the binding judicial authorities provided it by the Plaintiff on the need for candor and in coming to the conclusion that the issue of condor was inapplicable to the case before it.

(h) The Honorable Court's decision has led to the situation where the 5th Defendant has benefited from its own wrong contrary to law thus occasioning a substantial miscarriage of justice to the Plaintiff.

(i) Additional grounds to be filed upon receipt of a certified true copy of the judgment

On 31 December 2015 the Plaintiff filed additional grounds of appeal which he listed in his statement of case as (j), (k) and (l) respectively and are as follows:

> (j) The Honorable Court erred in holding that the 5th Defendant/Appellant/Respondent filed a defence on 2nd August 2013 contrary to the evidence on record that no statement of defence was filed by the 5th Defendant on that date.
>
> (k) The Honorable Court erred in interfering with a positive finding of fact made by the trial judge in whose province findings of fact lay.
>
> (l) The Court of Appeal disregarded the question of absence of solicitor's license raised in the written submissions of the Plaintiff as well as the issue of filing of additional ground of appeal without leave thus occasioning a substantial miscarriage of justice to the Plaintiff as both issues were fatal to the appeal of the 5th Defendant before the Court of Appeal.

Preliminary Legal Objection by the Defendant

On 25 October the Plaintiff filed a notice of intention to rely on a preliminary objection "that the writ of summons filed on 17/1/2013 and the amended writ of summons filed on 22/05/2013 by Hanson Kodua Esq. for the appellant herein initiating the suit in the High Court Kumasi are incompetent, total nullities and invalid for all purposes and accordingly all processes filed pursuant to the filing of the said Writ of Summons, the Amended Writ of Summons, and the judgments based on the invalid and incompetent Writs of Summonses as well as any execution based thereon are also invalid and of no effect."

The grounds of his objection are as follows:

1. Hansen Kwadwo Kodua Esq. did not have a current valid annual Solicitor's License for the 2013 legal year when he purported to file the Writ of Summons and the Amended Writ of Summons, contrary to section 8(1) of the Legal Profession Act, 1960 (Act 32).
2. Hansen Kwadwo Kodua Esq. was not member of any professional Chambers duly registered with the General Legal Council for the 2013 legal year when he purported to file the Writ of Summons and the Amended Writ of Summons contrary to Rules 4(1) and 4(4) of Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (LI 613).

We are surprised that this preliminary objection is being raised at this late stage as Counsel for the Plaintiff, had raised a similar point at the Court of Appeal and repeated it before us as an additional ground of appeal. This objection appears to be tit for tat and shows lack of candour on the part of both lawyers.

Though an objection such as this goes to the validity of the processes filed by a solicitor and could therefore be raised at any stage of the proceedings, the best practice in our opinion, is for the point to be raised at the earliest opportunity and at the early stage of the proceedings at the trial court.

In any event Mr. Hansen Kwadwo Kodua has attached in response to the objection attached a copy of correspondence from the General Legal Council which speaks for itself and is reproduced hereunder:

"Hansen Kwadwo Kodua Esq
In God We Trust Legal Consult Ltd
Millennium Plaza
Kumasi

RE: NON-ISSUE OF MY PRACTICING CERTIFICATE FOR 2013 – HANSEN KWADWO KODUAH, ESQ.

We respond to your letter 22nd November 2016 in respect of above.

We acknowledge that although you duly paid and applied for the issuance of a practicing licence for the year 2013, your forms unfortunately were part of application forms which the Sub-Committee for reasons of expediency deferred for lump issue in the ensuing year 2014.

Indeed, you were entitled to a licence and the inadvertence to issue same was no fault of yours but that of the Sub-Committee.

We noted that you had since applied for a licence for 2014, and the GLC/GBA Secretariat took steps to issue your 2014 licence which covered the prior period of 2013 as well. We hope the above would straighten out the record.
Yours faithfully,
Signed by
J.L. LAWSON
EXECUTIVE SECRETARY, GBA
For: CHAIR, GLC COMMITTEE ON SOLICITORS
LICENCE & REGISTRATION OF CHAMBERS"

We note that the counsel for the Plaintiff added his 2012 solicitor licence number to the statement of claim filed on 17/1/2013. The letter **supra** shows counsel for the Plaintiff applied and paid for his licence in 2013 but due to bureaucratic delay by the issuing authority the licence was issued in 2014. We take judicial notice of the fact that in 2013, there was a backlog in the issuance of solicitor licences and solicitors who had proof of having paid for renewal or issue of licence to practice were not penalized by the courts.

Consequently we dismiss the preliminary legal objection.

Consideration of the Appeal on its Merits

Having disposed of this preliminary legal objection we will now proceed to consider the grounds of appeal.

Ground (a)

> **The Honorable Court erred in holding that the assessment of damages was done by the High Court, Kumasi without notice to 5th Defendant as the 5th Defendant and its counsel were present when the suit was being adjourned for assessment and yet they choose to stay away from the said assessment thus the conclusion of the Court of Appeal that the audi alteram partem rule was breached is erroneous and palpably wrong.**

Counsel for the Plaintiff refers to pages 161 162 of the Record of Proceedings and submits the record "amply demonstrated that at the time the suit was being adjourned for assessment of damages Counsel for the 5th Defendant was present and therefore required no notice to be served on him" Counsel went on to cite a plethora of authorities to demonstrate that when a party has been given due notice of a hearing and fails to turn up on the due date; that party cannot turn round to complain he was not given a hearing.

Counsel for the 5th Defendant on the other hand submits that the record does not support the Plaintiff's contention. Counsel contends: "on 23/12/13 5th Defendant filed a motion for a review of the court's decision dated 18/12/13 with a return date of 20/1/14. The assessment of damages could therefore not have been heard on 13/01/14 as earlier scheduled as the order/judgment/ruling on which the assessment was going to be based was the subject of the pending review motion." He cites **Barclays Bank Ghana Ltd. V Ghana Cable [1998-1999] SCGLR 1** to the effect that a court generally has no jurisdiction to proceed against a party who has not been served.

We noticed from the record that the trial judge heard the 5th Defendant's application for review on 20/1/14 where both parties and their lawyers were present. The court adjourned the ruling to 29/1/14.

The ruling was read by the judge on 29/1/14, but there was no indication on the face of the record of the presence of any of the parties or their counsel. At the end of the ruling too no date was fixed for assessment of damages.

The Court of appeal, in their judgment at pages 364 to 365 per Ayebi J.A. held:

> "On 11/2/14, the plaintiff led evidence in proof of his stool's claim. It is also called assessment of damages. The 5th Defendant was absent from court. But before the court heard the plaintiff that day, it observed that the 5th Defendant was present on the 29/10/14 when the ruling was read and the court adjourned the matter for the day. The ruling runs from pages 184 to 192. There is no indication at the beginning or at the end of the ruling that any of the parties, let alone the 5th Defendant was present. At the end of the ruling too, no date was set down for assessment of damages. So as appeared from the record before us, the 5th Defendant was not notified of the dates of the assessment of damages and the judgment itself which went against it. The court in that regard again erred."

We affirm this finding; as a court generally has no jurisdiction to proceed against a party who has not been served or notified of a hearing date; to hold otherwise, would be a clear violation of the audi alteram partem rule. See **Republic v Court of Appeal &Thomford; Ex parte Ghana Chartered Institute of Bankers[2011] 2 SCGLR 941;** where the Supreme Court at **pages 945 to 947** referred to its recent decisions that non-compliance with the *audi alteram partem* rule would result in nullity.

In the plethora of cases cited by Counsel for the Plaintiff; for example, **Republic v High Court (Fast Track Division) Accra; Ex parte State Housing Co Ltd (No 2) (Koranten-Amoako Interested Party) [2009] SCGLR 185; Republic High Court (Human Rights Division) Accra; Ex parte Akita (Mancell-Egala & Attorney-General Interested Parties)[2010] SCGLR 374 at 379;** where the Supreme Court held the principle of the *audi alteram partem* rule was inapplicable; it was clearly evident, on the face of the record that the party, complaining of a breach of his/her right to be heard, was present in court on the day the case was adjourned for hearing or was served with hearing notice but chose not to be present either by himself or counsel to be heard on the due date. This was however not the situation in the appeal before us.

From the foregoing the appeal on this ground fails and is dismissed.

It is convenient to deal with grounds (b) (c) and (j) together as these grounds relate to the filing of the statement of defence on 2/8/13.

Ground (b) (c) and (j)

> **(b)The Honorable Court erred in disregarding the fraud perpetrated on the lower court by the 5th Defendant on the ground that the issue of fraud had indirectly been abandoned by the Plaintiff by failure to restate it in an affidavit in opposition.**
>
> **(c) The Honorable Court erred in holding that the 5th Defendant could disregard the time imposed by the High Court, Kumasi for it to file its appearance and defence and that the order of the High Court, Kumasi in relation to the filing of appearance and defence made it impossible for the 5th Defendant to file its processes within time.**
>
> **(j)The Honorable Court erred in holding that the 5th Defendant filed a**

defence on 2nd August 2013 contrary to the evidence on record that no statement of defence was filed by the 5th Defendant on that date.

Counsel for the Plaintiff submits that counsel for the 5th Defendant perpetrated fraud on the trial court when he told the court that the 5th Defendant had filed its statement of defence on 2/8/14.He cited a lot of cases to demonstrate that a court cannot disregard fraud as it vitiates all proceedings. Counsel submits further that the filing of the statement of defence was out of time and therefore void, and consequently the entry of a default judgment against the 5th Defendant was lawful. He submits further that it was wrong for the Court of Appeal to hold that the Plaintiff had abandoned the allegation of fraud perpetrated when it was not mentioned in his affidavit in opposition to the application for review by the 5th Defendant.

While Counsel for the 5th Defendant agrees with the principle of law enunciated in the many cases cited by the Counsel for the Plaintiff on the effect of fraud, he nevertheless rejects their relevance to this case as he contends there was no fraud perpetrated on the court as there is incontrovertible evidence on record to show that the 5th Defendant filed its statement of defence on 2/8/13. Counsel submits further that in the absence of any specific direction that a statement of defence be filed within 14 days, it would appear rather a strident criticism of the 5th Defendant's alleged default in filing the process within 14 days.
The issue of fraud was jettisoned by the trial judge when he exonerated the 5th defendant and laid the blame and confusion on the High Court Registry and the process servers. At page 152 the trial judge said:

> "The courts exist to do justice. Since there is evidence to show that the 5th Defendant filed its defence on 2nd August, 2013, it cannot be faulted in the matter. The fault can be laid squarely at the feet of either the bailiffs or the private process servers. They have misled the Plaintiff into thinking that the 5th Defendant had not entered appearance and neither had it filed defence. In the result, this court will set aside the interlocutory judgment entered in favour of the Plaintiff on 25/11/13. Suit will take its normal course.″

On 18/12/2013, the trial court reversed its ruling when it was brought to its notice that the statement of defence was filed out of time. On 23/12/2013, the 5th Defendant applied to have the order setting aside the default judgment reinstated. The trial court's reason for refusal given on 29/01/2014 was not on based on the grounds of fraud but on non-compliance with time. The Court of Appeal chastised the trial court for backtracking on its own orders for reasons to be discussed below.

It is pertinent at this stage to set out the rules relating to the filing of processes by a defendant upon joinder under **Order 5 rules (6) and (7) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47),** which provides:

> *(6) Where under this rule a person is ordered to be made a defendant, the person on whose application the order is made shall procure it to be noted in the Cause Book by the Registrar and after it is so noted*
>
> *(a) the amended writ shall be served on the person ordered to be made a defendant; and*
>
> *(b) the defendant so served shall thereafter file an appearance*

When the 5th Defendant was joined to this action on 13/5/13, the trial judge made the following order:

> "Application for joinder of the Ghana Railway Authority as 5th Defendant is hereby granted. The Ghana Railway Authority is hereby given 14 days to file all processes they need to file. The Plaintiff is to amend the title of the suit accordingly. Case is to take its normal course. Costs of GHS200 is awarded to the Plaintiff to enable him to file the amended process"

The rules ***supra*** clearly show that there is no process the 5th Defendant was obliged to file before the amended writ is served on him. Compliance with the time frame set under the various rules can only be computed after service of the writ on the 5th Defendant. Therefore the part of the trial judge's order that the Defendant to file all the processes within 14 days, was in our view in conflict with the rules of procedure.

For purposes of case management and the expeditious trial of the substantive land matter before it, the trial judge had discretion, to abridge the time for filing processes. However

the exercise of such discretion must be within reason and in accordance with the rules of procedure.

In our opinion, the Court of Appeal adequately dealt with this issue of non-compliance when it said at pages 362 to 363:

> "Just as courts are enjoined to ensure compliance with statutes, the courts must also make orders which are enforceable. Orders of a court are in the nature of a command or direction to do an act or to refrain from doing an act. Compliance or non-compliance with an order of a court has its consequences. An order of a court should therefore be clear, straightforward and devoid of any ambiguity. On 13/5/13 the court ordered the 5th Defendant to file processes which needed to be filed within 14 days.
>
> "I cannot fathom how the said order made by Justice Koomson should be interpreted to mean that the 5th defendant should file a statement of defence within 14 days. This is because the order is not only nebulous but also very ambiguous. The truth of the matter is that the court never repeat never ordered the 5th defendant to file its statement of defence within 14 days. As has been demonstrated, the 5th defendant upon the joinder could not have filed any process in the matter unless an amended writ of summons was served on it."

The order of the High Court dated 11/12/2013 setting aside the default judgment and awarding costs to the Plaintiff clearly demonstrates that the court waived the non-compliance with the time lines and adopted the statement of defence filed out of time by the Defendant. In effect, **Hayfron-Benjamin JSC** in **Republic v High Court, Koforidua, Ex parte Ohene [1995-96] GLR 1 SC,** said at pages 6-7 of the Report: **"***In the light of authorities it must be concluded that a court cannot regard a statement filed out of time a nullity"* In the same vein, **Anin Yeboah JSC,** in **Republic v High Court (Commercial Division) Accra; Ex parte Ports Handling Co Ltd (Crosswinds Consulting & Financial Services Interested Party) 2 SCGLR 1219** at page1225 said: **"** *To put it simply, a trial judge has no jurisdiction to disregard a statement of defence on record when entertaining an application for judgment in default of defence."*

In our opinion, the Court of Appeal did not commit any error of law when it stated at page 364:

> "The Setting aside of the default judgment, ordering the suit to take its normal course and penalizing the 5th defendant for the late filing of the statement of defence is ample evidence that the court had admitted the statement as a valid process henceforth. There was no application by the 5th defendant for leave to file the statement of defence out of time. But by these orders the court made, the said statement of defence filed on 2/08/13 was deemed to have been regularized and ratified by the court."

The Court of Appeal rightly chastised the trial court when it held:

> "Therefore the trial judge backtracked in his ruling of 29/01/ 14 when it declared the statement of defence filed on 2/08/13 null and void because it was in disobedience of the order of the court. Indeed in view of the orders of the trial judge made on 11/12/13, the ratio of the 29/01/14 ruling has undermined its own orders. It is grievous error on the part of the trial judge for which reason the 29/01/14 ruling should not be allowed any validity and existence on the record."

We affirm the reasoning and conclusion the Court of Appeal. The appeal on grounds (b), (c) and (j) are therefore dismissed.

For the foregoing reasons we will dismiss **Grounds (g) and (h)** which are almost similar in content and scope.

Ground (d)

> **The Honourable Court erred when although it held that the ground of appeal argued by the 5th Defendant was misconceived it would take and base itself on a different ground of appeal not canvassed by the 5th Defendant itself**.

Counsel for the Plaintiff submits that "a ground of appeal not argued is deemed abandoned" and that what the Court of Appeal did in this case is substituting a ground not argued and concludes that "this is similar to substituting a case for a party contrary to the principle enunciated in ***Dam v Addo [1962]2GLR 200***."

We note that Counsel for the plaintiff did not adequately address this ground of appeal and also failed to point out the exact substitution that he complained of. In any event, it is clear from the judgment that the Court of Appeal considered ground (viii) of the grounds of appeal to have sufficiently covered all the issues in controversy; when it said at page 356 of the record of proceedings:

> " I am of the view that all issues relating to the filing or non-filing of a statement of defence by the appellant, applications and rulings of the trial judge thereon, all of which culminated in the final judgment against the appellant can be covered under this ground of appeal."

In our opinion what the court did was quite legitimate; as in determining the real issues in controversy between the parties, the appellate court has a discretion based on the record before it to prefer one ground of appeal as against another. On the record, the real issue related to the statement of defence filed out of time set down by the rules of court and the hearing of assessment of damages based on the default judgment that took place without notice to and in the absence of the 5th Defendant.

The appeal on this ground (d) is rather frivolous and is accordingly dismissed.

Grounds (e) and (f) can be determined together

> **(e) The Honorable Court erred in not realizing that the filing of 2 separate notices of appeal by the 5th Defendant was an abuse of the process of court and to that extent its jurisdiction had not been properly invoked.**
>
> **(f) The Honorable Court erred in failing to appreciate that the second notice of appeal it based its decision on was a nullity having regard to the pendency of the earlier one filed based on substantially the same grounds.**

Counsel for the Plaintiff did not put forth any submissions in respect of the above grounds of appeal except to cite a plethora of cases to the effect that the filing of two appeals in respect of the same case was an abuse of the court process.

We will dismiss this ground of appeal in limine as the 5th Defendant had a right to appeal against both the interlocutory and final decisions of the High Court. The best practice in our view is to include the appeal against the interlocutory decision in the appeal against the final decision. **RT *Briscoe (Ghana) Ltd v Amponsah* [1969] CC 99; *Republic vs. High Court, Accra; Ex Parte Puplampu I* [1991] 2 GLR at page 478.**

The Court of Appeal went on to address a common concern of ours, on the filing of appeals against interlocutory rulings; as per Ayibi J.A. at page 352 of the judgment:

> "It is common practice in the courts that before a final judgment is delivered at the close of all proceedings, the court would have delivered other ruling on interlocutory matters mainly. A party against whom those ruling s were given may be aggrieved by them and could have appealed. It is however not the practice to appeal against every such interlocutory ruling as seems to be the practice by some practitioners. If those interlocutory rulings culminated in the final judgment against an aggrieved party, an appeal against the final judgment incorporating or alluding to those interlocutory matters in the grounds of appeal is the way to go.″

Grounds (e) and (f) are accordingly dismissed.

Ground (k)

> **The Honorable Court erred in interfering with a positive finding of fact made by the trial judge in whose province findings of fact lay**.

The Plaintiff in his statement of case just cited case authorities without addressing the ground of appeal or point the finding of fact which he claimed was wrongly interfered with by the Court of Appeal.

Ground (k) is therefore dismissed.

Ground (l)

> **The Court of Appeal disregarded the question of absence of solicitor's license raised in the written submissions of the Plaintiff as well as the issue of filing of additional ground of appeal without leave thus occasioning a substantial miscarriage of justice to the Plaintiff as both issues were fatal to the appeal of the 5th Defendant before the Court of Appeal.**

This ground of appeal is twofold: the first part of this ground of appeal deal with lack of solicitor's licence by counsel for the 5th Defendant.

Apparently this issue was dealt with as a preliminary point on 17/2/15 by the Court of Appeal as indicated at page 246 of the record of proceedings when Counsel for the 5th

Defendant promised to produce and file it at the Court Registry. However there is no such filing on the record.

In any event, the written submissions filed by Counsel subsequently, on 26/6/15 had Counsel's solicitor licence number written on it. We think this is sufficient for us to hold that Counsel for the 5th Defendant has a valid solicitor licence. We therefore dismiss this ground of appeal.

LAW REFORM

. We recall our jurisprudence in cases such as ***Henry Nuertey Korboe v Francis Amosa, Civil Appeal No. J4/56/2014 SC delivered on 21 April, 2016 (Unreported)*** where we held, in effect, that a lawyer without a valid solicitor's licence for any particular year, as required by section 8(1) of Act 32, cannot practice as a lawyer in any court or prepare any process as a solicitor within the particular period of non compliance, and that any process originated by such a solicitor is a nullity.

This clearly may seem to be an injustice to the litigant and the solution does not lie in expecting a litigant to verify beforehand, the credentials and legal capacity of his lawyer and of his chambers, to perform the services he is engaged to undertake.

Objections taken to non compliance with section 8(1) of Act 32 keep cropping up which cause delay in the delivery of justice. Perhaps it is about time for the Rules Committee to make amendments to ***Order 2 rules 5 (1) (b) and 7 of the High Court (Civil Procedure) Rules, 2004, (C.I. 47)*** on indorsement and issue of writ, respectively.

We propose:

1. Order 2 rule 5 (1) (b) to be amended as follows:
   Where the plaintiff sues by a lawyer who issues a writ the plaintiff shall, in addition to the residential and occupational address of the parties, provide at the back of the writ, the lawyer's firm's name and business address, ***and solicitor's licence and chambers registration numbers in*** Ghana and also, if the solicitor is the agent of another the firm's name and business address, and ***solicitor's licence and***

chambers registration numbers of his principal.

(Proposed amendment highlighted)

2. Order 2 rule 7 to be amended by the addition of a new sub rule as follows:

   No writ *shall* be sealed or issued by a Registrar if it the writ *does not comply with Order 2 rules 5 (1) (b)*

   (Proposed amendment highlighted)

3. Further rules to be formulated for the above requirement to apply to any filing by the plaintiff and defendant as well.

PRACTICE DIRECTION

In the interim, a practice direction may be issued for the Bar and the Registrars to follow until such time that the Rules Committee amends the rules.

The second leg of ground (l):

> **... on the filing of additional ground of appeal without leave thus occasioning a substantial miscarriage of justice to the Plaintiff as both issues were fatal to the appeal of the 5th Defendant before the Court of Appeal.**

Counsel for the 5th Defendant concedes that it erred in not seeking leave of the court to file additional grounds of appeal at the Court of Appeal. He however submits that the courts over the years have always in the interest of justice admitted such grounds of appeal even when argued without leave. He stated further that non-compliance with the rules of court do not render proceedings void, citing ***Halle & Sonns v Bank of Ghana & Weather Enterprise Limited[2011]1 SCGLR 368.***

We disapprove of this blanket statement, as it has been an unwavering practice for this Court, during the oral hearing of appeals, to draw the attention of lawyers to their failure to ask for leave to file and argue additional grounds of appeal contained in their statement of

case. The fact that leave is usually granted when leave is properly sought by this Court should not be taken as a licence for the bar to ignore rules of procedure.

We wish to reiterate our recent views expressed by the Supreme Court on the need by the Bar to ensure proper legal standards and to uphold procedural rules. In **Martin Alamisi Amidu V Attorney General & Anor, Review Motion No.37/10/2013** dated **29TH July, 2014** we held per **Wood CJ:**

> "I do appreciate Counsel's concern about the falling standards of the legal practice in our jurisdiction; relative in particular, to the growing number of Court processes that are filed in total disregard to the procedural rules of Court. I also do understand his anxiety about the seeming complicity of the Courts in not exacting strict legal accountability but rather choosing to encourage mediocrity, by aiding the complacent and slothful to find refuge under the waiver of non-compliance rule and also the substantial justice principle"

Similarly, in **Republic V High Court (Financial Division) Accra, Ex-Parte Tweneboah Kodua**, Civil Motion **No. J5/22/2014 dated 29th July, 2014,** the Supreme Court held per Akamba JSC:

> "There is an emerging tendency in practice today to consider that the rules of procedure indeed do not matter so long as an application is placed before the Court. Yet the rules of procedure are as integral as the substantive law to the success of the trial process. It is therefore essential that time lines set down under the rules of Court are adhered to, to facilitate timely trials.
>
> Infringements of these rules without reasonable justification should be met with corresponding sanctions or denials"

However, we notice that the judgment of the Court of Appeal did not turn on the additional grounds of appeal that were filed and argued without leave of the court. Accordingly we hold there was no miscarriage of justice and the appeal on this ground is also dismissed.

From the foregoing, we find no merit in the entire appeal. The appeal is accordingly dismissed.

The judgment of the Court of Appeal is affirmed.

It is hereby ordered that the case be remitted to the High Court to be heard on its merit.

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

S. A. B. AKUFFO (MS)
(JUSTICE OF THE SUPREME COURT)

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

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

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