**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – A.D. 2018**

**CORAM: ANSAH, JSC (PRESIDING)**

**DOTSE, JSC**

**BAFFOE-BONNIE, JSC**

**BENIN, JSC**

**PWAMANG, JSC**

**CIVIL APPEAL**
**NO. J4/35/2017**

**28TH NOVEMBER, 2018**

NII KOJO DANSO II ……. PLAINTIFF/RESPONDENT/APPELLANT

VRS

1. THE EXECUTIVE SECRETARY, LANDS COMMISSION

2. THE EXECUTIVE SECRETARY, LAND VALUATION BOARD

3. THE ATTORNEY-GENERAL ……. DEFENDANTS

AND

JOSHUA ATTOH QUARSHIE …… APPLICANT/APPELLANT/RESPONDENT

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JUDGMENT

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**BENIN, JSC:-**

This is one of those cases wherein the old adage 'there is a pot of gold at the end of the rainbow' is apt. This is because there is money sitting in state coffers to be collected by whoever is declared to be the rightful person to be substituted for the original plaintiff in

this case. After securing judgment, the original plaintiff Nii Kojo Danso I died before the compensation due on the compulsory acquisition of part of land at Dansoman, was paid. These are therefore post-judgment proceedings. Following the demise of Nii Kojo Danso I, one Alhaji Issah Oblitey applied and was substituted for him as the 1st plaintiff. The appellant herein made an application to the High Court to substitute the deceased in place of Alhaji Issah Oblitey, he being the son of the deceased Nii Kojo Ababio I and successor to the Dansoman stool. The respondent who claimed to have been duly appointed by the owners of the land, the Ajumanku Dawurampong royal family, to replace the late Nii Kojo Danso I as plaintiff, brought an application before the High Court to set aside the order that substituted the appellant herein as the 1st plaintiff. The application was refused by the court in a ruling in which the application was described as one for joinder. The respondent invoked the High Court's review jurisdiction under order 42 of C. I. 47 praying the court to revisit its decision. Once again the court refused the request.

Following the denial of the review application, the respondent herein appealed against the said decision to the Court of Appeal. After the issuance and service of Form 6, the appellant therein (now respondent) filed his written submission. It was served on the respondent (now appellant), but he did not file any written submission. On 2nd December 2015, the appeal was placed before the Court of Appeal for hearing. At the hearing, counsel for the then respondent, appellant herein, intimated to the court that there were some errors in the Record of Appeal (ROA), but there is no indication as to the nature of the errors. Nonetheless, the Court of Appeal caved in and stated that the appeal was not ripe for hearing so it made an order remitting the record to the Registrar to take necessary action.

The next proceeding took place some three months later when the Court of Appeal, composed of a single justice thereof, made an order listing the appeal for hearing. This was the result of a request in writing from the respondent herein to the said court. Hearing notices were served on the key parties herein, namely the appellant and the respondent as well as on the Attorney-General. On the return date, namely 25 April 2016,

both counsel for the appellant and the respondent as well as the appellant, now respondent, were in court. The record shows that the court adjourned the appeal to the 21st July 2016 for judgment. The court allowed the appeal and made an order substituting the appellant herein with the respondent herein in place of the late Nii Kojo Ababio I as the first plaintiff.

The appellant has brought this appeal against the Court of Appeal's judgment and orders on these grounds:

1. The judgment is against the weight of evidence.

2. The Court of Appeal lacked jurisdiction to entertain the appeal due to the Applicant/Appellant/Respondent's non-compliance with Rule 20(1) of the Court of Appeal Rules 1997 as amended by C. I. 25.

3. The Court of Appeal lacked jurisdiction to entertain an appeal emanating from a refusal of a High Court judge to review an earlier ruling.

4. The Court of Appeal acted in a breach of the rules of natural justice when it raised a jurisdictional issue going to the root of the appeal and resolved it against the the 1st plaintiff/respondent/appellant without giving the 1st plaintiff/respondent/appellant a hearing on it.

5. The Court of Appeal lacked jurisdiction to hear the said appeal, contrary to rule 14(2) of the Court of Appeal rules, 1997 (C. I. 19) as amended by C. I. 21 and/or;

6. The Court of Appeal acted in breach of the rules of lo justice when it failed to direct service of hearing notice or the notice of Appeal on the 2nd plaintiff and the defendant’s, contrary to rule 31(c) of the Court of Appeal Rules, 1997, (C. I. 19).

Before delving into the merits of the appeal, it is necessary to consider the preliminary objection raised by the respondent. The grounds of objection are two-fold, namely:

(1) The instant appeal being an appeal against the ruling of the Court of Appeal in an interlocutory appeal, the Appellant ought to have sought special leave of this Court prior to the filing of this instant appeal before this Court which he failed to do contrary to Article 131(2) of the Constitution of Ghana, 1992 and particularly section 4(2) of the Court's Act, 1993 (Act 459).

(2) The Appeal having been filed without prior special leave of this Court as indicated in ground (1) above, the Supreme Court, respectfully lacks the jurisdiction to entertain same.

Section 4 of Act 459 under which this objection has been brought provides as follows:

4. Appellate Jurisdiction

(1) In accordance with article 131 of the Constitution, an appeal lies from a judgment of the Court of Appeal to the Supreme Court

(a) as of right, in a civil or criminal cause or matter, in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or Regional Tribunal in the exercise of its original jurisdiction;

(b) with the leave of the Court of Appeal, in the cause of matter, where the case was commenced in a court lower than the High Court or Regional Tribunal or where the the Court of Appeal is satisfied that the case involves a substantial question of law or if its in the public interest to grant leave to appeal;

(c) as of right in a cause or matter relating to the issue or refusal of a writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.

(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, including an interlocutory matter, civil or criminal, and may grant leave accordingly.

In arguing this application, Counsel for the respondent relied on this Court's decision in the case of Kwasi Owusu & Nii Achia Family v. Joshua Nmai Addo & 1 other; Civil Appeal no. J4/50/2014, dated 30 July 2015, unreported, where the court held that appeal from an interlocutory decision was not automatic, but one which is carefully circumscribed by article 131 of the Constitution and section 4 of Act 459.

Counsel recounted the facts leading up to the Court of Appeal's decision which has brought about this appeal. He was of the view that the appeal that went before the Court of Appeal was interlocutory which was allowed by the said court on 21 July 2016. Consequently he was of the view that "the appellant not having sought the requisite leave from this Honourable Court prior to the filing of the instant appeal.....renders the instant appeal a nullity, and therefore this Honourable Court will in the circumstances not have jurisdiction to entertain the appeal herein."

Counsel for the appellant herein argued against this submission. Briefly stated, he argued that following the High Court's ruling in the application for review, there was nothing remaining for that court to do, hence the decision was final. Hence, the decision of the Court of Appeal was based on a final decision of the High Court and therefore did not require the leave of the Court to appeal.

The questions raised by the preliminary objection have been exhaustively discussed in this appeal in the opinion of my able brother Pwamang, JSC. Suffice it to say that I share in these views. I would only add that under Order 42 of C. I. 47 a party is only debarred from appealing against a decision when he has applied for a review of the same decision. After the court has ruled on the review application, the aggrieved person may exercise his undoubted right to appeal requiring no leave of court to appeal, not against the original decision which was the subject-matter of the review, but against the ruling in the review application.

There is thus no merit in the preliminary objection and same is hereby dismissed.

On the merits of the appeal, counsel for the appellant argued all the grounds of appeal one after the other, except the first (Ground 1) which he is deemed to have abandoned.

Ground 2.

The Court of Appeal lacked jurisdiction to hear the appeal by reason of the respondent's non-compliance with rule 20(1) of C. I. 19.

Counsel's submissions may be placed under three heads:

i. Once the Record of Appeal (ROA) was remitted to the court below, the only way it could be brought back to the Court of Appeal was by way of the issuance of a fresh Form 6, which was not done in this case.

ii. A fresh written submission has to be filed. Alternatively, he submitted amendments could be made to the one already filed prior to the record being remitted to the court below.

iii. The Court of Appeal cannot proceed to hear the appeal when an appellant has not complied with rule 20(1) on the filing of written submission.

For his part, counsel for the respondent referred to the fact that no action was taken in respect of the Court of Appeal's order remitting the case to the Registrar. The appellant made no follow-up and provided no information as regards what errors were to be rectified. Rather he used the lull in the appeal process to go after the money in the High Court. Consequently the respondent applied to the Court of Appeal to re-list the appeal for hearing. The request was granted by the Court presided over by a single justice thereof. He therefore rejected the submissions as untenable.

It is certain the entire submission by counsel for the appellant is founded on a misapplication of the rules. Under rule 21 of C. I. 19, the Court of Appeal becomes seised of the entire Appeal when the ROA has been transmitted to it. From that moment, the court below has nothing to do with it except when directed by the Court of Appeal. For

that reason correction of errors in the record are done at the direction of the Court of Appeal as it is seised with the appeal. Every directive or order that the Registrar and the lawyers require to help rectify the record are directed to the Court of Appeal and not the court below. The Registrar's duty is purely administrative in respect of the ROA, the court below has no judicial function to perform in this regard. In short, the Court of Appeal does not relinquish its jurisdiction over the appeal because it has remitted it for errors to be corrected. This view is buttressed by the fact that in the interim, every interlocutory application must he heard by the Court of Appeal and not the court below.

Thus after the Registrar of the Court below has corrected the errors, if any, he only notifies the Registrar of the Court of Appeal who then lists it before the Court and issues hearing notice to the parties. There is no provision in the rules for a second Form 6 to be issued, and as such none should be imported into it.

It follows that written submissions which had been filed, prior to the record being remitted to the court below, remain valid. The parties may exercise their right under rule 20(9) to apply for leave to amend the written submissions. On the other hand if a party had not filed a written submission earlier on, being out of time, he may seek the court's leave to do so especially so if the record was indeed rectified.

Rule 20(2) of C. I. 19, spells out what the Court may do where an appellant does not file a written submission. The Court’s jurisdiction is not curtailed, but is limited to striking out and costs. But as earlier stated, the Court has continuing jurisdiction after it has remitted the ROA for rectification, so an appellant’s written submission on the record entitles the Court to hear the appeal.

Thus the Court of Appeal was right when upon receipt of the application to re-list the appeal it granted it, fixed a hearing date and notified parties to attend the hearing. Counsel for the appellant who was present at the hearing did not at any time before judgment indicate he wanted to amend the written submission. And the respondent did

not ask for leave to file a written submission either, thereby foregoing his right to file one.

There is thus no merit in this ground of appeal.

Ground 3

The Court of Appeal lacked jurisdiction to entertain an appeal emanating from the High Court on a refusal to review its own earlier ruling.

The argument by counsel for the appellant is quite interesting and intriguing; we quote same extensively. He wrote: "This ground of appeal is founded on the fundamental observation that unlike the High Court or the Supreme Court, the only jurisdiction reserved to the Court of Appeal is to hear and determine appeals from 'judgment, decree or order' of the High Court and such other appellate jurisdiction as may be conferred on it by the Constitution or any other law. The Court of Appeal can therefore not arrogate to itself an inherent jurisdiction to hear a matter which is not properly laid before it.

Consequently, Justice Ankomah's ruling dated 18th March 2015 refusing to review her own earlier ruling dated 26th February 2015 whereby she refused to set aside the order of substitution dated 12th May 2014 is not properly so-called 'a judgment, decree or order' within the meaning of article 137(1) of the 1992 Constitution so as to be amenable to an appeal hearing at all. It does appear that the Court of Appeal conceded this point but proceeded to brush it aside on the basis that Justice Ankomah had failed to observe the rules of natural justice in making her decision on the review application. This raises the issue as to whether the Court of Appeal can exercise a jurisdiction to intervene in a matter which it otherwise lacks jurisdiction to hear.

We disagree with the Court of Appeal because any casual reading of order 42 of C. I. 47 reveals that a party who elects after a judgment or ruling to appeal the decision cannot at the same time also apply for review of the same decision. Similarly where a party opts

to apply for review it is not open to him at the same time to appeal against the same decision.....

We will submit that.....the respondent had exhausted his chances under the rule of procedure. Further, or in the alternative, both on the merits and on procedural grounds the respondent was at the end of the road as long as his initial choice to apply for review was concerned."

In response, counsel for the respondent agreed with counsel for the appellant in submitting that "as the Court of Appeal rightly commented, an appeal brought against a review should have been discountenanced"

These submissions are not surprising as they both concur in what the Court of Appeal itself said. These are the words the Court used:

"The learned trial judge on the substantive application gave a ruling in error, supposing it to be an application for joinder post-judgment. Without concerning ourselves with whether or not she was right even with regard to what she supposed was the application before her (joinder), we find that when the application was made for review, the learned trial judge failed in her duty to correct what was so obviously a mistake but went ahead, in that ruling for review, to rule on the main application for the first time and she did so in a cavalier manner without having regard to the matter contained in the affidavit in support of the appellant/applicant's application. By that ruling, she dismissed the substituted application holding inter alia that the substitution of Nii Kojo Danso II had exhausted the question of substitution of Nii Kojo Danso I. It is for these reasons that the appeal brought against the ruling on review (which would otherwise have been discountenanced) merit the consideration of this court."

Order 42 of C. I. 47 which is the root of this matter has these relevant and material provisions:

1(1) A person who is aggrieved

(a) by a judgment or order from which an appeal is allowed but from which no appeal has been preferred; or

(b) by a judgment or order from which no appeal is allowed,

may upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within that person's knowledge or could not be produced by that person at the time when the judgment was given or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, apply for a review of the judgment or order.

3(1) Where it appears to a Judge that there is not sufficient ground for a review, the Judge shall dismiss the application

6. No application to review a judgment or order given or made on a review shall be entertained.

It is clear that the court below as well as both counsel herein took a very narrow, restrictive and mistaken view in construing judgment or order to exclude a ruling in the review application. Equally mistaken is appellant's view that a ruling from a review application was not amenable to appeal.

To begin with, article 295 of the Constitution, 1992 defines judgment to include "a decision, an order or decree of the court". It is clear this definition is not exhaustive, it leaves room for other modes of expressing a court's judgment, which include but not limited to a determination or a ruling. Sometimes in an enactment these expressions are used in many ways as to blur a distinction. However, they all point to a decision or determination by the court. In Black's Law Dictionary, 9th Edition, at page 467 it defines 'Decision' to mean "a judicial or agency determination after consideration of the facts and the law, especially a ruling, order or judgment pronounced by a court when considering or disposing of a case."

Even in the 1992 Constitution, diverse expressions have been used in different parts thereof, without necessarily meaning different things. In article 129(2) and (3), the expression used is 'decision', but in clause 4 of the same article 129 the expression used is 'judgment or order'. Article 137(1) uses the expression, 'judgment, decree or order'. But even a cursory reading of these provisions and others in the Constitution will leave no room to doubt the intent and purpose of these expressions: they relate to the court's determination on the issue/s before it. Thus when after hearing an application the court gives a ruling, the matter has been determined and a decision has been pronounced. The fact that the ruling is not usually described as a judgment takes nothing away from its effectiveness as a decision or determination by the court. And as long as it is a court determination made in respect of the issue before it, it comes within the definition of 'judgment' in article 295 of the Constitution as well as the definition of 'decision' quoted from Black's Law Dictionary. The argument that the ruling of the High Court in the review application was not a judgment, order or decree does not hold and same is rejected.

Ground 4

The Court of Appeal acted in breach of the rules of natural justice when it raised a jurisdictional issue going to the root of the appeal and resolved it against the appellant without giving the appellant a hearing on it.

In view of the decision reached in ground 3 above, this ground is dismissed in limine as the Court of Appeal had jurisdiction to entertain the appeal. The said Court just got itself entangled in a web of uncertainty about the effect of the High Court's ruling on the review application.

Grounds 5 and 6 are put together.

5. The Court of Appeal lacked jurisdiction to hear the said appeal, there being no service of Form 6 on any or some of the parties to the appeal contrary to rule 14(2) of C. I. 19 as amended by C. I. 21 and/or;

6. The Court of Appeal acted in breach of the rules of natural justice when it failed to direct service of hearing notice or Notice of Appeal on the 2nd plaintiff and the defendants, contrary to Rule 31(c) of C. I. 19.

Counsel for the appellant argued both grounds together under the common heading "Breaches of natural justice in proceeding to determine appeal without reference to all the affected parties.

The appellant's complaint is that the 2nd plaintiff and the defendants were not served with Form 6, nor were they also not served with hearing notice to attend any hearing that took place at the Court of Appeal. These infractions of the rules 20 and 31(c) could not be glossed over, according to Counsel for the appellant, as it meant the appeal was not properly before the court below. It also amounted to a breach of the rules of natural justice by denying them a hearing.

An examination of the ROA discloses that the arguments in respect of the defendants are factual incorrect. The record shows the Attorney-General was duly served with various processes including the respondent's (then appellant) written submission as well as hearing notice. In respect of the 2nd plaintiff, counsel for the respondent alluded to the fact that since he was joined to the suit the writ was not amended to make him a party. We would not belabour this point for it suffices to say that he was not a party to the appeal and was not a party who would in any way be affected by the outcome of the dispute between the appellant and respondent herein. He was not mentioned in the Notice of Appeal as a party to be affected by the appeal, hence rule 14(2) of C. I. 19 was not applicable to him.Thus lack of service on him caused no miscarriage of justice.

Conclusion

The Court of Appeal was entitled to consider the appeal and give any decision which was just and reasonable in the circumstances. For that reason it could give any decision which the court below failed to give, provided the facts are established on the record, without

recourse to fresh evidence. This is to avoid multiplicity of suits. On the facts before the court, the conclusion reached by the Court of Appeal that the respondent herein is the rightful person to be substituted for Nii Kojo Ababio I cannot be faulted, which decision is hereby endorsed. Consequently, the appeal fails and is accordingly dismissed.

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

**ANSAH, JSC:-**

I agree with the conclusion and reasoning of my brother Benin, JSC.

**J. ANSAH**
**(JUSTICE OF THE SUPREME COURT)**

**DOTSE, JSC:-**

I agree with the conclusion and reasoning of my brother Benin, JSC.

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

**BAFFOE-BONNIE, JSC:-**

I agree with the conclusion and reasoning of my brother Benin, JSC.

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

**PWAMANG, JSC:-**

I read beforehand the lucid opinion of my worthy brother Benin, JSC and I agree with him that this appeal be dismissed on the merits so I shall confine myself to a consideration of the preliminary legal objection filed by the respondent. The respondent raised objection against our hearing this appeal on the ground that it is not properly before the court since the appellant failed to obtain leave before filing the notice of appeal. At paragraph 3 of his Notice of Preliminary Objection the respondent argued as follows;

**"My Lords as emphatically reiterated in Kwasi Owusu & Nii Achia Family vrs Joshua Nmai Addo & Emmanuel K.O. Papafio Civil Appeal No. J4/50/2014 dated 30th July, 2015, the right to appeal to this court against an order of the Court of Appeal, granting an interlocutory application '*...is not an automatic right but one carefully circumscribed by article 131 (2) of the Constitution and 4(2) of the Courts Act, 1993, Act 459. It is a right said to be exercisable by special leave.*'"**

If I understand the above submission well, the respondent claims that in the **Kwasi Owusu case** supra this court decided that appeals to the Supreme Court against any interlocutory decision of the Court of Appeal cannot be brought as of right but must be by the special leave of the Supreme Court. The appellant in his answer to the preliminary objection has contended that the decision of the Court of Appeal on appeal before us is not interlocutory but a final decision and he appears to agree with the respondent that any interlocutory appeal from the Court of Appeal to the Supreme Court requires special leave of the Supreme Court under Article 131(2) of the Constitution. That is regrettable because that notion has no basis either from even a cursory reading of the provisions of the Constitution, 1992 or the decision of this court in the **Kwasi Owusu case** referred to above.

The time was in Ghana when any interlocutory appeal from the High Court to the Court of Appeal was subjected to leave of the High Court or the Court of Appeal. That was the position in the **Court Decree, 1966 (N.L.C.D. 84), para. 7, as amended by the**

**Courts (Amendment) Decree, 1968 (N.L.C.D. 277), para. 1 (a).** Currently, **Section 11(5) of Act 459** contains a similar provision in respect of appeals against any interlocutory decision of the Circuit Court to the Court of Appeal which can only be made upon leave granted by the Circuit Court or the Court of Appeal. The policy of subjecting interlocutory appeals to a filtration process of prior leave certainly has benefits in that it serves to weed out frivolous interlocutory appeals and expedite the determination of cases on their merits. That notwithstanding, a general requirement of leave for any interlocutory appeal from the High Court to the Court of Appeal and from Court of Appeal to the Supreme Court has not been provided for in the Constitution and we are bound by it. Article 131 of the Constitution, 1992 (as well as Section 4(2) of Act 459) provides as follows;.

**131 (1) An appeal shall lie from a judgement of the Court of Appeal to the Supreme Court-**
**(a) as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or**
**(b) with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.**
**(2) Notwithstanding clause (1) of this article, the Supreme Court may entertain application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly.**

Article 131(1)(a) does not distinguish between final and interlocutory decisions and does not limit appeals as of right to only final decisions. It would therefore be wrong for anyone to seek to introduce such distinction and, certainly, the Supreme Court did not lay down

any such distinction in the **Kwasi Owusu case**. However, appeals as of right by Article 131(1)(a) cover only decisions of the Court of Appeal that are in respect of appeals from judgments of the High Court given in the exercise of its original jurisdiction. That means that two categories of decisions of the Court of Appeal are excluded from this automatic right of appeal; (i) decisions that are given in respect of appeals from decisions of the High Court, but they were given by the High Court in respect of a case that commenced in a court lower than the High Court., and (ii) decisions that are given but not in respect of appeals against decisions of the High Court. For cases in both categories (i) and (ii), there is no automatic right of appeal but leave is required.

Category (i) cases include decisions given by the High Court in the exercise of its appellate or supervisory jurisdictions provided for in the Constitution and Act 459 and by Article 131(1)(b), leave is required before appealing to the Supreme Court. Category (ii) cases would include the determination of an appeal by the Court of Appeal against a decision of the Labour Commission under **Section 167(2) of the Labour Act, 2003 (Act 651)**. Here the appeal to the Court of Appeal is not in respect of a judgment delivered by the High Court so though it may be a final decision, leave would be required. Category (ii) also includes the situation where the Court of Appeal hears and determines a repeat interlocutory application pursuant to Rules 27 and 28 of the **Court of Appeal Rules, 1997 (C.I.19)**. There too the repeat application is not an appeal against a decision of the High Court. It is important to underscore the substantial difference between a repeat interlocutory application and an appeal against an interlocutory decision of the High Court. With the repeat application the Court of Appeal exercises its own discretion in the matter as it sees fit but with the appeal against an interlocutory decision of the High Court, the Court of Appeal determines if the High Court exercised its discretion in the case in accordance with correct principles of law. In such appeals the Court of Appeal has no discretion of its own in the matter. See the case of **Ballmoos v Mensah [1984-86] 1 GLR 724.** Article 131(2) applies to cases in category (ii) and appeals in that category can only be brought upon special leave.

The **Kwasi Owusu case** was an appeal to the Supreme Court in respect of a decision of the Court of Appeal given on a repeat application for stay of execution and the Supreme Court held that such appeals fall within those decisions of the Court of Appeal excluded from the appeals as of right so leave was required. Wood, C.J. who rendered the decision of the court was at pains to explain the distinction and stated as follows;

*"The right to appeal to this court in respect of an order of the Court of Appeal, dismissing a **repeat application** for stay of execution, is not an automatic right but one carefully circumscribed by article 131 (2) of the 1992 Constitution and s.4 (2) of the Courts Act, 1993, Act 459. It is a right exercisable by special leave, as the appellants counsel honourably conceded when at a further hearing, we invited him to address us on whether the right to appeal is of right or subject to the grant of this court's special leave as pertinently provided under s. 4 (2) of Act 459. It would be prudent to produce in extenso the relevant, s. 4 of Act 459. It provides.....*

*An even cursory examination of this instant appeal and indeed others that have arisen from orders flowing **from repeat applications to the Court of Appeal**, particularly dismissal orders, demonstrates clearly that these decisions, or orders, are neither judgments of the High Court nor Regional Tribunal in the exercise of their original jurisdiction. And so the appellants before us did not proceed under s. 4 (1) ss. (a). Similarly, this appeal did not fall under s. 4 (b) of Act 459, since this matter is not an appeal in a cause or matter which was commenced in a court lower than the High Court or Regional Tribunal. But, even if it were, on the clear provisions of s. 4 ss. b of Act 459, the appellants would have no direct access to this court without first satisfying the leave requirement."(emphasis supplied).*

From the above exposition of the law, special leave was required of the appellant in the Kwasi Owusu case not because the decision of the Court of Appeal on appeal was an interlocutory decision but on the ground that it was not in respect of an appeal against a decision of the High Court.

What are the essential facts in this case? In the background to this appeal are some procedural flaws apparent in the judgment of the Court of Appeal which

have been discussed comprehensively in the lead judgment of my worthy brother Benin, JSC so I shall refer to only those processes relevant for my opinion on the preliminary objection. The instant appeal is in respect of a matter that commenced in the High Court wherein Elizabeth Ankumah J, in the exercise of her original jurisdiction, heard and dismissed a motion that sought to set aside an earlier order of substitution and to substitute the applicant for the 1st plaintiff in the case. The application was brought after judgment had already been entered in the case. The respondent herein, who was the applicant, felt aggrieved by the dismissal and filed a motion before the same Elizabeth Ankumah J praying her to review her decision on grounds set out in an affidavit in support but that application was also dismissed. Respondent thereafter filed two notices of appeal, one against the refusal to review and another against the dismissal of his original application to substitute him for the 1st plaintiff. As has been well explained in the lead judgment, after the respondent had applied for the review of the decision of the High Court dismissing his application for substitution, he could not turn round and appeal against it. For that reason, notwithstanding the confusion in the mind of the Court of Appeal on the question of which notice of appeal was dealt with, we decided to consider their decision to allow the appeal on the basis of the appeal against the dismissal of the review application.

In the judgment of this court in **Civil Motion J5/6/2015; Republic v High Court (Commercial Div) Tamale, Ex parte Dakpem Zoboguna Henry Kaleem; Dakpem Naa Alhassan Mohammed Dawuni, Interested Party dated 4th June, 2015,** the jurisdiction of the High Court as stated at Order 42 of the **High Court(Civil Procedure) Rules2004 (C.I.47)** to review its final decisions was questioned in an obiter. However, the court restated the settled position of the law that the High Court, and indeed every court, has authority to control its interlocutory orders and may in the exercise of that power review its interlocutory orders. See **Vanderpuye v Nartey [1977] 1 GLR 428.** The question here then is was the dismissal by the High Court of respondent's

application to be substituted for the 1st plaintiff an interlocutory or a final decision, which takes us to the issue raised by the respondent in the preliminary objection. In the judgment of this court in the case of **Amarkai Amarteifio v Anang Sowah, Civil Appeal J4/57/2014 dated** 25/10/2017 I quoted the following statement by Lord Denning MR in the case of **Salter Rex & Co v Ghosh [1971] 2 All E.R 865 C.A.;**

*"The question of final or interlocutory is so uncertain that the only thing for practitioners to do is to look up the practice books to see what has been decided on the point. Most orders have now been the subject of decision. If a new case should arise, we must do the best we can with it. There is no other way."*

So as the question of whether the substitution orders and their review made post-judgment has arisen in this case, the first task of counsel in the case, and the court as well, ought to be to look up what our courts have decided in relation to the interlocutory or final nature of post-judgment orders. It is where we do not find a relevant decision in that regard that we may embark on an analysis of the decision in question using as our tool "the nature of the order approach" which is the applicable approach under Ghana jurisprudence on interlocutory and final orders. This way we ensure consistency and some amount of certainty on this vexed question of interlocutory and final orders. For instance, our Supreme Court has already pronounced on the final or interlocutory nature of certain decisions or orders; **Pomaa& Ors v Fosuhene [1987-88] 1 GLR 244** decided that a judgment on admissions is a final judgment. **Attorney-General v Faroe Atlantic Co. Ltd [2005-2006] SCGLR 271, S.C** held that summary judgment is a final judgment and in **Amarkai Amarteifio V Anang Sowah** we concluded that a dismissal of an application to set aside a judgment in default of appearance is a final decision.

Post-judgment orders were considered in the cases of **Okudjeto & Ors v Irani Brothers & Ors [1975] 1 GLR 96;** CA and **Republic v High Court (Fast Track Division) Accra; Ex parte State Housing Co Ltd (No2) [2009] SCGLR 185; SC,** yet both counsel in their statements of case did not advert their minds to them. But it is the later case that adopted a principle on post-judgment orders relevant for a

determination of the specific question of interlocutory or final that confronts us in this case. In that case Wood, JSC (as she then was) at page 194 of the Report adopted with approval the following passage from **Halsbury's Laws of England (4th ed) vol 26, para 506;**

*"An order which does not deal with the final rights of the parties, but either (1) is made before judgment and gives no final decision on the matters in dispute, but is merely on a matter of procedure; or (2**) is made after judgment, and merely directs how the declaration of rights already given in the final judgment are to be worked out, is termed interlocutory."(emphasis supplied).***

It is common cause between the parties that judgment was given in this case as far back as 13th April, 2005 for the plaintiffs to be paid compensation for their land compulsorily acquired by the government for the establishment of the Dansoman Estate. The application by the respondent to be substituted for the 1st plaintiff was to enable him to execute the rights already declared in the judgment so the decision on the application was interlocutory as stated in **ex parte State Housing Co Ltd (No.2)** (supra). The decision did not seek to affect the rights to compensation already declared in the judgment. In this wise, the application for review which was considered by Elizabeth Ankumah J was also an interlocutory application and so was the dismissal an interlocutory decision. Consequently, the appellant is wrong in contending that the High Court's dismissal of the application for review of the refusal to grant the substitution was a final decision. A refusal to review an interlocutory decision cannot change the nature of the decision to be a final one. Since the decision of the High Court on the application for review was interlocutory, the appeal to the Court of Appeal was also an interlocutory appeal. Nevertheless, the interlocutory decision of the Court of Appeal in this case emanated from an appeal against the exercise of the original jurisdiction of the High Court so there is an automatic right of appeal. The case did not go before the Court of Appeal as a repeat application so the decision in the **Kwasi Owusu**

**case** does not apply here. In the circumstances the preliminary objection is misconceived and is hereby dismissed.

**G. PWAMANG**
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