IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
PWAMANG JSC
LOVELACE-JOHNSON (MS.) JSC
HONYENUGA JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

CIVIL MOTION
NO. J7/08/2022

9TH FEBRUARY, 2022

SAVIOUR CHURCH OF GHANA	**……**	**PLAINTIFF/RESPONDENT/ RESPONDENT/APPLICANT**
VRS		
1. ABRAHAM KWAKU ADUSEI **2. JACOB ASIRIFI SNR.** **3. ENOCH OFORI** **4. SETH DWUMFOUR** **5. DANIEL MENSAH**	**……**	**DEFENDANTS/APPELLANTS/ APPELLANTS/RESPONDENTS**

RULING

MAJORITY OPINION

DOTSE JSC:-

On the 9th day of February, 2022 this court by a majority decision of 4 to 3, Pwamang, Lovelace-Johnson (Ms) and Prof. Mensa-Bonsu (Mrs) JJSC dissenting, allowed and

granted a review application by the Plaintiffs/Respondents/Respondents/Applicants, hereafter Applicants, against the decision of the ordinary bench of this court dated 24th November, 2021 in favour of the Defendants/Appellants/Appellants/Respondents hereafter Respondents.

APPLICANT'S GROUNDS FOR THIS REVIEW APPLICATION

The Applicant, prayed this court for an order to review the judgment of this court, dated 24th November 2021 upon the following grounds.

1. The majority decision of the Supreme Court **failed to take into consideration the fact that in all the litigations which preceded the instant action, no orders were directed at the Applicant as a distinct corporate entity**.

2. The order by the majority of the Supreme Court for cancellation of the name of the Applicant by the Registrar-General's Department **is founded on a fundamental error which has resulted in a substantial miscarriage of justice to Applicant, there being no finding of fraud in the process of registration of the Applicant's church.**

3. The majority of the ordinary Bench **granted the Defendants/Appellants/Appellants/Respondents, (hereafter Respondents) reliefs which did not belong to the appeal before the court and therefore exercised an irregular jurisdiction in favour of the Respondents when no case of impropriety had been established against the registration of the Applicant's name thereby occasioning a gross miscarriage of justice to the Applicant.**

In support of the Application for Review, one Peter Kwabena Adjei, deposed to a 20 paragraphed affidavit in support of the said review application. It is considered worthwhile to refer in extenso to the following paragraphs 4, 5, 9, 11, 13, 14, 15, 17, and 20 respectively as follows:-

4. That the grounds of the instant application which constitute an exceptional circumstance on the basis of which this Honorable court usually exercises its review jurisdiction, are as set out in the Motion paper, the gravamen of which, as advised by lawyer for applicant is that majority of the Ordinary Bench of the Supreme Court erred, **which error has occasioned applicant substantial miscarriage of justice when , their Lordships gave judgment in favor of Respondent herein and ordered cancelation of the registration of Applicant for fraud when indeed and in fact no finding of fraud in the process of registration has been made. The judgment is marked and attached as EXH. 1.**

5. That I am further advised by my lawyer and verily believe same to be true that respectfully their Lordships of the majority erred when they rested their judgment substantially **on the respondents' misleading claim of res judicata, when in fact there is sufficient evidence on record which points to the established fact that none of the judgments relied on by the majority i.e.** "The Gbadegbe JA judgment", the pursuant Court of Appeal judgment and the "Asiedu J" Contempt Judgment concerned the Applicant herein and therefore these judgments cannot form the basis of res judicata against the applicant, as it was not a party to any of the said suits or proceedings. The said judgments are marked and attached as EXHs. 2 and 3.

9. That I am further advised by my lawyer and verily believe the same to be true that besides, their Lordships of the majority failed to apply the time-tested binding principle of law which is to the effect **that where a party intends to rely on estoppel per rem judicatam as part of his case he is required not only to plead it but also he must tender in evidence the pleadings, proceedings and the judgment concerned.**

11. That I am further advised by my lawyer and verily believe same to be true that the apparent non-compliance with the fundamentally established binding legal

principles, **especially on the constitutionally founded doctrine of departure by the majority of their Lordship, amounts to a violation of the relevant laws which has occasioned applicant substantial miscarriage of justice, which this Honourable court is vested with jurisdiction to reverse**.

13. That I am further advised by my lawyer and verily believe the same to be true that the majority of the Supreme Court indeed erred when their Lordships ordered the Registrar General's Department to expunge the name of Applicant herein from their records when in fact no case of passing off has been made.

14. That indeed at all material times respondents have been overwhelmingly consistent that the church they are associated with and which they have also accepted as being distinct from the Applicant herein is The Saviour Church of Ghana and that is why in their substantive relief indorsed in their counterclaim they inter alia, sought the following:-

    a. A declaration that by virtue of the judgments in the case referred to in paragraph 4 and the subsequent judgment of the Court of Appeal in Civil Appeal No. H1/30/2004 the **Plaintiffs are estopped from relitigating the issue of the ownership and control of the Savior Church of Ghana.**

    b. An order of perpetual injunction restraining the Plaintiff, its followers privies and all who claim through or by them from holding themselves up as members of the Saviour Church of Ghana with Headquarters at Osiem and at anywhere in Ghana.

15. That it is refreshing to note that if indeed the respondent's church which they have overwhelmingly declared even in judicial processes, as already shown, is **The Saviour Church of Ghana had earlier been registered in accordance with the applicable law (Act 179) the Registrar of Companies would not have registered the same entity in the year 2012**

and issued with a certificate of incorporation and for commencement of business in the new name of The Saviour Church of Ghana.

17. That I am further advised by my lawyer and verily believe same to be true that a court has no jurisdiction to substitute or make out for a party a case different from the case he has presented before the court or add to a party's case that which he has not presented to the court, but respectfully this is what the majority of the Supreme Court did in favour of or for the benefit of the respondents herein.

20. Wherefore I pray the Honourable Court to grant the instant application for a review of the decision of the Supreme Court dated 24th November 2021.

RESPONDENTS' AFFIDAVIT IN OPPOSITION

In a 55 paragraphed affidavit in opposition sworn to by Kwaku Ankrah for and on behalf of the Respondents herein, the Respondents opposed the said Review application.

For example, in depositions contained in paragraphs 4 through to 24, the Respondents spent time to deny depositions in paragraph 4 of the Applicants affidavit in support that no **findings of fraud had been made before finding fraud as a basis to cancel their registration.**

In an unprecedented manner, the Respondents laced their depositions by making copious references to decided cases as well as making references to portions of the appeal record as if this was a statement of claim

Concluding their depositions on the claim by the Applicants that no finding of fraud had been made and found against their registration process, the Respondents deposed to in paragraph 24 of their affidavit as follows:-

"That I am further advised and verily believe same to be true that the majority judgment aptly and indisputably provides a valid and sound judgment and thus pitched against the minority opinion there is no basis by way of any exceptional circumstances to disturb the majority decision."

Furthermore, the Respondents in an attempt to answer the depositions in paragraphs 9, 10 and 11 of the Applicants affidavit in support of the review application, deposed to paragraphs 37, 38, 39 and 40 of the said affidavit as follows:-

37. That I am further advised and verily believe same to be true that it is rather the minority opinion of Appau JSC on this score, has erroneously set up a case for and granted a relief not prayed for by the Applicant herein in his review Application and this is not permissible.

38. That I am further advised and verily believe same to be true that this procedural requirement of tendering in evidence the pleadings, proceedings and the judgment in every case of a plea of "*estoppel per rem judicatum*" **is not an inflexible rule and counsel shall seek Leave to refer to the case of *Otu X v Owuodzi (1987-88) 1 GLR 196 at 203 SC* in support.**

39. That I am further advised and verily believe same to be true that what is important is the judgment referred to and which was tendered without any objection at the Trials and **the departure from the erudite judgment of Pwamang JSC is perfectly legitimate.**

40. **That I am further advised and verily believe same to be true that the Supreme Court can depart from its previous decisions on Grounds of Law in consequences on this score.**

The Respondents concluded their opposition to the review application by further depositions in paragraphs 51, 52, 53, and 54 as follows, and prayed this review panel to dismiss the review application.

51. That in response to the depositions contained in paragraph 17 of the Affidavit in support, I am advised and verily **believe same to be true that save that a court has no jurisdiction to substitute or make out for a party a case different from the case he has presented before the court or add to a party's case that which he has not presented to the court, I am to deny**

all the other depositions contained in the said paragraph 17 of the Affidavit in support.

52. That in response to the depositions contained in the said paragraph 18 of the Affidavit in support, I am advised and verily believe same to be true and to say that save that Respondents registered with the Registrar-General's Department **as per request of an officer for a specific purpose the name of "*The Saviour Church of Ghana*" five years after the registration of the Applicant at the Registrar-General's Department in 2007**, all the other depositions contained in the said paragraph 18 are denied and shall contend that the use of the name "*Saviour Church of Ghana*" at the Registrar-General's Department by the Applicant was fraudulent, thus unlawful and that the Respondents never acquiesced to such conduct hence the spate of Litigations.

53. That I am advised and verily believe same to be true to deny all the depositions contained in paragraph 19 of the Affidavit in support.

54. That in response to paragraph 19 of the affidavit in support I am advised and verily believe same to be true that no valid Grounds by way of exceptionally (sic) (exceptional) circumstances or other exist for a review of the sound and valid judgment of the majority decision.

ROAD MAP TO GUIDE THIS COURT IN REVIEW APPLICATIONS

The Supreme Court speaking with unanimity in the celebrated case of ***Arthur (No. 2) v Arthur (No.2) [2013-2014] 1 SCGLR 569***, particularly at pages 579-580 after reviewing most of the locus classicus cases on review in our jurisdiction set out what they described therein as a road map. The cases referred to and analysed are the following:-

- ***Mechanical Lloyd Assembly Plant Ltd. vrsNartey [1987-88] 2 GLR 598, SC***

- ***Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398***
- ***Bisi v Kwayie [1987-88] 2 GLR 295, SC***
- ***Nasali v Addy [1987-88] 2 GLR 286 SC***
- ***Ababio v Mensah (No. 2) [1989-90] 1 GLR 573 SC***
- ***Pianim (No. 3) v Ekwam [1996-97} SCGLR 431***
- ***Koglex (GH) Ltd v Attieh [2001-2002] SCGLR 947***
- ***Afranie II v Quarcoo [1992] 2 GLR 561 SC***
- ***Tamakloe v The Republic [2011] 1 SCGLR 29***

ROADMAP IN ARTHUR NO. 2 SUPRA

The Supreme Court speaking through Dotse JSC stated as follows:-

"We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this court under rule 54 (a) of the Supreme Court Rules 1996(C. I. 16) to be mindful of the following which we set out as a road map. It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon the circumstances of each case.

i. In the first place, it must be established that the review application was filed within the time lines specified in rule 55 of C. I. 16, i.e. it shall be filed at the Registry of the Supreme court not later than one month from the date of the decision sought to be reviewed;

ii. that there exists exceptional circumstances to warrant a consideration of the application.

iii. that these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench.

iv. that these have resulted into miscarriage of justice (it could be gross miscarriage or miscarriage of justice simpliciter).

v. the review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench.

vi. the review process should not be used as a forum for unsuccessful litigants to re-argue their case.

It is only when the above conditions have been met to the satisfaction of the Court that the review panel should seriously consider the merits of the application."

ANALYSIS

We will therefore analyse the instant review application broadly in terms of the said road map set out supra.

1. **Timelines for Review Applications**

Rule 55 of the Supreme Court Rules provides as follows:-

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

In the instant application for review, the judgment of the ordinary Bench was rendered on 24th November 2021 and the application was filed on 20thDecember, 2021. This makes it quite clear that the application was filed within the prescribed timelines provided under the relevant rules of procedure.

2. **Are there exceptional circumstances to warrant this review application?**

This will invariably lead to a discussion of whether these exceptional circumstances have led to some basic error in the judgment of the ordinary bench and have resulted into miscarriage of justice (gross or otherwise).

Rule 54 (a) of C. I. 16 provides thus:-

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

(a) **exceptional circumstances which have resulted in miscarriage of justice".** Emphasis

In this application, it should be noted that, the High Court, which is the trial Court, after careful consideration and determination was satisfied that the Applicant herein had led sufficient evidence and therefore delivered judgment in its favour. In that regard, findings of fact were made by the High Court, which dismissed the counterclaim of the Respondents herein.

The Respondents' appeal against the High Court judgment to the Court of Appeal was dismissed and the findings of fact made by the trial High Court were concurred in.

It was a second appeal by the Respondents herein to this Court which by a majority decision of 3 to 2 allowed the appeal and set aside the concurrent findings and decisions of the two lower Courts.

On page 32 of the majority decision, our respected brother Pwamang JSC concluded and rationalised why they in the majority departed from the findings of fact by the learned trial Judge that the Respondents herein had carried out activity under the name *"The Saviour Church of Ghana",* even though there was evidence that the Respondents indeed registered such a name at the Companies Registry.

> ***"It is therefore a perverse finding which is directly contradictory of the evidence and admissions by the Plaintiff for the trial Judge to use the obstinacy of the Plaintiffs in holding onto three insignificant branches of the defendants' church to conclude that the defendants slept on their rights. That finding cannot be justified under any principle of law and is hereby set aside.***" Emphasis

With those statements, the findings of fact labouriously made by the learned trial Judge and concurred in by the Court of Appeal had been wished away by the majority decision without any critical analysis. Such a decision no doubt has caused substantial miscarriage of justice. In order to give some semblance of legitimacy to that decision, the majority decision rationalized further as follows:-

"Even in Amuzu v Oklika [1997-98] GLR89 where a statute stipulated that priority be given to the registered interest over the unregistered one, the court did not permit it on account of the notice the registered interest holder had of the interest of the unregistered person and the apparent fraudulent manner the party went about his registration. Having regard to the totality of the evidence in this case, the Court of Appeal committed a grievous error by confirming the judgment of the High court and I hereby set aside their judgment." Emphasis

With the above concluding remarks the majority decision set aside the two concurrent decisions without any shred of credible evidence.

Our distinguished brother Appau JSC in his minority decision on this point stated thus:-

"The trial High Court found as a fact that the Respondent was a registered religious body and ***that there was nothing fraudulent about its incorporation. The Court added that having gone ahead to register their faction as "The SaviourChurch of Ghana" about five years after the registration of the Respondent church as*** *"Saviour Church of Ghana"* the appellants had acquiesced or accepted the existence of two separate churches operating under the name *"Saviour Church".*

"I cannot conjecture how the trial High Court could be faulted for this finding, which is supported by the facts on record. As the trial Judge rightly said, if indeed Gbadegbe Court and the Court of Appeal did make any order against the Directors of Respondents for the use of the name "Saviour Church" then they should have taken steps to enforce that order but not to go and register another church. But because there was no such order, they did the needful to also register their faction which they called "The Saviour Church of Ghana" in conformity with the name of the very church they succeeded to, which is completely different and distinct from the Respondent "Saviour Church of Ghana".

Having dismissed the allegation of fraud in the registration of the Respondent, the trial Court dismissed in totality the counterclaim of the Appellants and gave Respondent judgment in the following words:-

"This Court decrees that the plaintiff is the only one legal entity by that name which is permitted by law to run churches and do religious and special activities. This Court further grants an order of perpetual injunction restraining the defendants, their agents and assigns from using the name "Saviour Church of Ghana" for any spiritual and religious activities. I further grant plaintiff custody of all their branches in the country." Emphasis

References to Respondents and Plaintiffs therein are to the Applicants herein whilst references to Appellants and Defendants are to the Respondents herein.

Continuing the rendition, Appau JSC also referred to the majority decision of the Court of Appeal which affirmed the findings made by the learned trial Judge eloquently in the passages referred to as follows:-

"The Court of Appeal, in a majority decision, affirmed the judgment of the trial High Court. **The Court of Appeal found that the Respondent was properly and lawfully registered and that there was nothing fraudulent about Respondent's registration. The Court of Appeal, like the trial High Court, did not find as proven, the allegation of fraud in the registration of Respondent.** The Court of Appeal again found that the Directors of the Respondents did not willfully disobey any court order so their conviction for contempt by Asiedu J (as he then was) was wrongful. The Court of Appeal stated; "The trial Judge in convicting them **found that the Respondent acted on the advice of the Registrar General and that they did not willfully disobey the orders of the superior Courts as alleged.** "Emphasis

Appau JSC concluded his rendition on these core issues in the following hallowed words:-

"The Court of Appeal also dismissed the argument by the Appellant that the judgment of Gbadegbe JA and the subsequent decision of the Court of Appeal on same, operated as res judicata with regard to the action initiated by the Respondent in the trial High Court. The Court of Appeal found and rightly so that the Respondent had never been a party to any of the six suits that were consolidated for determination by Gbadegbe JA. It must be emphasized that the Respondent is separate from its Directors. ***If its Directors or some of them were involved in any of the previous suits as consolidated, that had nothing to do with the Respondent as a separate legal personality – (See Salomon v Salomon & Co. Ltd) [1897] AC 22, Nana Yaa Kondadu v Alhaji Abdul Rasheed [2020] 170 GMJ 405 at 418, SC. The Court of Appeal accordingly dismissed the res judicata claim and rightly so."*** Emphasis

Having quoted at length from the majority and minority decisions of the Ordinary Bench, it bears emphasis that the rendition of the raw facts and their application to the law and subsequent conclusions by the majority and minority opinions deserve comments from this review panel. Conscious of the fact that, this review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench, we hasten slowly in concluding that these facts as recounted supra, in the rendition of the majority opinion constitute exceptional circumstances and have resulted into miscarriage of justice.

However, we deem it proper to evaluate the correct rendition and application of the facts and findings of the trial High Court and the intermediate Court of Appeal. We are also conscious of the many decided cases on the caution to this court which restrains us from departing from these concurrent findings. See cases like

i. ***Achoro & Anor. v Akanfela & Anor. [1996-97] SCGLR at 209***
ii. ***Gregory v Tandoh IV & Anor. [2010] SCGLR 971***
iii. ***Obeng v Assemblies of God [2010] SCGLR 300***
iv. ***Akufo-Addo v Cathline [1992] 1 GLR 377***

v. ***Fosua & Adu Poku v Dufie (Deceased) & Adu Poku Mensah [2009] SCGLR 310 at 313***

vi. ***Nene Narh Matti and 2 others ; Oyortey v Teye (Consolidated) [2017-2018] 1 SCGLR 746 (Adaare Report) just to mention a few***

In the latter case, the Supreme Court after review of the settled authorities referred to supra held as follows:-

> ***"The trial Court made definite and positive findings of fact which were affirmed by the first appellate Court. The Court as a second appellate court, would not depart from these settled findings of fact, unless same are unsupportable and very perverse. In the present case, after evaluating all the findings of fact made by the trial court and concurred in by the first appellate court, there are no real, genuine or putative grounds to depart from the said findings of fact."*** Emphasis

We in the majority are of the considered view that the evaluation of the findings of fact and their subsequent analysis and application by the majority in the ordinary bench constitute exceptional circumstances because it is completely without any basis and merit. By parity of reasoning, it also bears emphasis that this has resulted into not only a miscarriage of justice, but gross miscarriage of justice. This is because but for this wrongful evaluation and application of the evidence, the findings so ably made by the two lower courts would have been affirmed. However we have been guided by our resolve to strive to do substantial justice at all times.

As was remarkably noted by that colossus of a Judge, Wuaku JSC in ***Afranie v Quarcoo [1992] 2 GLR 561 at p. 591-592*** where the learned Judge held as follows:-

> "There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court. **However in exceptional circumstances and in relation to an exceptional category of its errors,**

the Supreme Court will give relief through its review jurisdiction." Emphasis

In the celebrated case of **Mechanical Lloyd Assembly Plant v Nartey** supra at page 603, where even though the court dismissed the review application the following words of Adade JSC are worthy of note. He wrote and stated thus:-

> "The review jurisdiction***... is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice."***

At page 609 of the report, Adade JSC qualified the above statement in the following terms:-

> "No Specific definitions exist as to what are exceptional circumstances or sufficient grounds. These will be matters for the court to determine in each case."
>
> We would like to conclude our rendition of the reasons why we allowed the review application by reference to the following decisions. In ***Agyekum v Asakum Engineering and Construction Ltd. [1992] 2 GLR 635,*** Francois JSC expressed his point of view in the following words.
>
> "The acid test remains as always the existence of exceptional circumstances and the likelihood of a miscarriage of justice **that should provoke the conscience to look at the matter again." Emphasis**

In ***Koglex (GH) Ltd v Atieh*** *supra* ***Bamford Addo JSC at page 949*** after review of current cases posited as follows:-

> "Underlying all these later cases on conditions for grant of review, ***is the basic concern that reviews should be motivated by a desire to do justice in circumstances where the failure to intervene would amount to a miscarriage of justice. Upon reviewing all these precedents, I have***

arrived at the conclusion that the case presently before us is reviewable, because the effect of our failure to correct the majority decision handed down at the ordinary panel of this court would be to brush aside a legitimate case of exceptional circumstances that would in turn result in a miscarriage of justice." Emphasis

The call by Bamford Addo JSC in the ***Koglex (GH) Ltd. v Atieh*** case supra that review applications should be motivated by a desire to do justice, lack of which would amount to a miscarriage of justice, was given a boost in the celebrated case of ***Amidu (No.3) v Attorney General., Waterville Holdings (BVI) Ltd & Woyome (No. 2) [2013-2014] 1 SCGLR at 606***, holding 2, where the Supreme Court panel of eleven (11) spoke with unanimity and rendered the following authoritative decision:-

"A review of the decision of the ordinary bench of the Supreme Court might be granted in the following situations: (1) Compelling and exceptional circumstances dictated by the **interests of justice,** and (2) exceptional circumstances where the ***demands of justice had made the exercise extremely necessary to avoid irreparable damage. The interest of ensuring justice was therefore at the core of the considerations that might lead to a grant of a review application***." Emphasis

In the instant case, it appears quite clear that the majority opinion of the ordinary bench failed to consider the parameters and guidelines that had to be satisfied before the concurrent findings of two lower courts can be departed from. There being no genuine, real or putative reasons for such a departure, which we consider as an error which is an exceptional circumstance and has resulted into gross miscarriage of justice, which then requires that such a decision be reviewed.

DEPARTURE FROM PRINCIPLES OF ESTOPPEL PER REM JUDICATAM

But before we rest our case, we deem it useful to refer to arguments by the Applicants contained in paragraphs 9 and 11 of their affidavit in support. **The combined effect of those depositions are to the effect that the departure by the majority from**

established constitutional doctrine of "departure" amounts to a violation of the relevant laws and principles of law which has occasioned substantial miscarriage of justice to the applicant. The basis of this argument finds expression in the failure of the majority opinion to comply with the time tested and binding principle that "where a party intends to rely on "estoppel per rem judicatam" as part of his case, **he is required not only to plead it but also must tender in evidence the pleadings, proceedings and the judgment concerned."**

In their response, the Respondents deposed in paragraph 38 of their affidavit in opposition that the said principle that "judgment in every case of a plea of ***" estoppel per rem judicatam"*** is not an inflexible rule and counsel shall seek leave to refer to the case of ***Otu X v Owudozi [1987-88] 1 GLR 196 at 203 SC*** in support. In articulating their views in respect of the above submissions, learned counsel for the Applicant, Yaw Oppong stated in the Applicant's statement of case as follows:-

> "In the instant case, even though their Lordships of the majority rested their judgment on the respondents' false claim of res judicata ***their Lordships erred when they thus relied on that claim when indeed they had failed to comply with the established pre-conditions which have been overly re-instated in a sea of cases including: In The Matter of Bimbilla Na, Salifu Dawuni (Substituted By Sagnarigu Lana Shani Azumah), Juo Regent, Osman Mahama vrs Andani Dasana (Substituted by Nyelinborgu Naa Yakubu Andani Dasana), Azumah Natogma (Chieftaincy App. No. J2/01/2017; 23rd May 2018*** in which His Lordship Pwamang JSC, has this to say:-
>
> "Besides, where a party intends to rely on estoppel per rem judicatam as part of his case he is required by the rules of procedure and judicial decisions ***to plead it and to tender the pleadings, proceedings and judgment in evidence.*** That way, the opponent will be able to counter any claims that he is prevented from leading evidence contrary to what was held in the judgment."

It must be noted that, the Respondents failed to comply with the above procedural stipulations, and in our opinion the said conduct constituted an error which has resulted into an exceptional circumstance and has led to a gross miscarriage of justice.

It is also interesting to observe that, the Respondents herein also failed to make any submissions in their statement of case on the allegation by the Applicant's that the ordinary bench departed from settled principles of law founded in the Constitution 1992, particularly Articles 129 (2), (3) and (4) which provide as follows:-

129. GENERAL JURISDICTION OF SUPREME COURT

(2)" The Supreme Court shall not be bound to follow the decisions of any other court.

(3) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

(4) For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, **the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law." Emphasis**

Our understanding of the above provisions are that, the Supreme Court as the apex court is not bound to follow the decisions of any other court. However, whilst the decisions of the Supreme Court may be considered as normally binding on it, Article 129 (3) reserves the power to the court to depart from any of its previous decisions whenever it appears right to them to do so.

And in the event of such phenomenon, all other courts shall be bound to follow the decision of the Supreme Court. Finally, even though the Supreme Court is the apex court of the land, it has also been granted the powers of all the courts created by or under the Constitution or any other law. This means therefore that, the Supreme Court can exercise all the powers of the trial courts as well as appellate courts whenever the need arises.

In the light of the above rendition we are compelled to make copious references to the unanimous decision of this court, dated 23rd May 2018 ***In The Matter of Bimbilla Na, Salifu Dawuni (Substituted By Sagnarigu Lana Shani Azumah), Juo Regent, Osman Mahama–Petitioners/Appellants/Appellants vrs Andani Dasana (Substituted by Nyelinborgu Naa Yakubu Andani Dasana), Azumah Natogma – Respondents/Respondents/Respondents*** where the Supreme Court, Coram: Ansah JSC, Yeboah JSC (as he then was) Baffoe-Bonnie JSC, Appau JSC and Pwamang JSC and speaking with one voice through our respected brother Pwamang JSC made the following notable judicial pronouncements as follows:-

> "Petitioners also attempted in this last appeal to rely on estoppel per *rem judicatem* on the basis of a judgment delivered in 1990 by the Judicial Committee of the Northern Regional House of Chiefs in a chieftaincy cause involving a challenge to the enskinment of 1st petitioner as Nakpa Na. As we have already explained, all estoppels are inapplicable with respect to the lineage of 1st petitioner. ***Besides, where a party intends to rely on estoppel per rem judicatem as part of his case he is required by the rules of procedure and judicial decisions to plead it and to tender the pleadings, proceedings and judgment in evidence. That way the opponent will be able to counter any claims that he is prevented from leading evidence contrary to what was held in the judgment. In this case, the judgment was not pleaded and was not tendered in evidence at the trial. No reference was made to it in the judgments of the two lower Judicial Committees and as to how it found itself into the record***

of appeal before us, only the Registrar of the Judicial Committee of the National House of Chiefs can answer." Emphasis

From our reading of the above decision, it is certain that, no reference whatsoever was made to the court in respect of the earlier decisions in ***Otu X v Owuodzi supra and Poku v Frimpong [1972] 1 GLR 230 C.A***. Be that as it may the re-statement of the principle of law therein is correct and applicable.

HOW DOES THE SUPREME COURT DEPART FROM ITS PREVIOUS DECISIONS

The most common method is that, if the Supreme Court had rendered a decision for example dated 8th June 2000 which established a principle of law, that principle of law has, to all intents and purposes become the guiding principle and all courts in Ghana including the Supreme Court itself must follow it until it is departed from by the same Supreme Court. By the doctrine of stare decisis, it is the most current decision of the Supreme Court that is binding on it as well as other courts.

In the instant case, the Applicant has referred us to the decision in the chieftaincy Appeal in the Bimbilla Naa, Salifu Dawuni case supra which stated a principle of law referred to supra. Learned counsel for the Respondents, Addo Atuah in his response in the affidavit in opposition, but not in his statement of case has also referred to the decision of the Supreme Court in the case Otu X and others V Owuodzi and others supra.

At page 202 of the report, Adade JSC who spoke on behalf of the Supreme Court, had this to say

> "In my view, where a party in a suit relies on 'cause of action estoppel,' the burden of establishing the identity of the subject-matter of the previous litigation with that of the second suit lies on the party who alleges the judgment in the previous suit as a bar. He discharges this burden by first producing in evidence **(i) the record of the judgment in the previous suit, and (ii) the pleadings in that former suit**. And if, by comparison between (i) and (ii) on

the one hand and the pleadings in the case before the court he satisfies the court of the possibility of the two causes of action being identical, he will then proceed to give positive evidence of the identity. **"From this it was submitted that "the appellant did not discharge this burden, let alone attempt to follow that procedure."**

I do not believe that ***Poku v. Frimpong [1972] 1 GLR 230 CA*** sought to lay down any such absolute rule that in every case the judgment relied on must first be tendered in evidence, together with the pleadings in the suit to which it relates.

Every court is obliged to take note of a subsisting judgment of a court of competent jurisdiction, if it is brought to its attention. Most of these judgments will be in printed volumes of law reports. If the particular judgment or report is not easily available, then the party relying on it must endeavour to secure a copy for the court (not necessarily tender it in evidence). **And as for putting in the pleadings and the proceedings in the earlier case, this is a matter which the party must decide for himself**. After all, a party pleading estoppel per rem judicatam assumes the burden of establishing that the matter has already been adjudicated upon, and that the parties and the subject matter are the same in the instant case as in the previous suit. If in his opinion the judgment he relies on for the plea contains sufficient material (facts, parties, and identity of subject matter) to enable him discharge the burden, there is no reason why he should, in addition, tender the pleadings and the proceedings in the previous action.

It cannot be stated as an inflexible rule that in every case of a plea of estoppel per rem judicatam the judgment and the pleadings in the earlier action must be put in evidence, or else the plea fails. Each case must be judged and evaluated on its facts.

> I do not therefore find that in this case the failure to put in evidence the judgment in suit 15/1947 was by itself a sufficient reason for reviewing the decision of 23 October 1985. The power was wrongly exercised." Emphasis

What must be noted from the ratio of the above case and principle is that, it is the nature of the case put forward during the plea of estoppel, that will determine the principle of law to be applied. For example, if the judgment that has been produced by the party relying on the estoppel contains all the necessary ingredients, i.e. the parties, pleadings, identity of the subject matter of the dispute and the final decision indicating with clarity the orders of the court, then it might not be necessary to tender separately the pleadings, the judgment and the record of proceedings. However, if the judgment is bare and does not speak for itself then the party relying on it will be failing in his duty if he just tenders or refers to the judgment which may not have been reported in a law report. The application of the principle as stated by the Supreme Court through our respected brother Pwamang JSC is correct and embodies the bald truths of the tenets of the principle.

However, in view of the fact that there has been no prior references and reliance on the said judgments, it behoves on the court to have ensured that the clear requirements as set out in the Chieftaincy Appeal supra are complied with. Not having done that, it meant that the Respondents' reliance on the said estoppel and its acceptance and reception by the majority of the ordinary bench was in error, which has occasioned an exceptional circumstance resulting into a miscarriage of justice. This is therefore a fit and proper case in the light of the decided cases for the review to be granted in order to do justice.

During our tenure in the court in recent memory, when faced with the need to depart from a long line of well established judicial precedent, the panel considering the case had to request the Honourable Chief Justice to enhance the panel to enable the issue of departing from our previous decision as provided for in Article 129 (3) of the Constitution 1992 to be complied with openly in a more transparent manner. The panel

was accordingly enhanced from 5 to 7 with the Chief Justice now presiding. The decision that was rendered in a unanimous decision brought clarity and closure to the nagging issue of this court not granting stay of Execution in non-executable orders of the courts.

We believe that, the process by which this court exercised its powers of departure from its previous binding decisions pursuant to Article 129 (3) supra of the Constitution 1992 should no longer be based on the personal idiosyncrasies of the coram, but based on Rule of procedure or Practice Directions.

We will therefore recommend that, in the interest of ensuring that this constitutional provision in Article 129 (3) is not abused, the Rules of Court Committee or His Lordship the Chief Justice should as a matter of urgency cause Rules of Procedure to be enacted or Practice directions given to regulate the said practice.

This phenomena becomes very critical especially in circumstances where the attention of the court has been drawn to the existing authority and yet no attempt whatsoever is made to seek broader consensus on the need to depart before embarking on a crusade to depart from it. This will ensure some control mechanism of this constitutional provision to enable the practice to be properly regulated.

This will for example prevent the manner in which the majority of the Supreme Court departed from the decision in ***Ekow Russel v The Republic [2017-2020] SCGLR 469***, in the unreported decision of this court in ***Suit No. Civil Motion J7/20/2021 Republic v High Court (Criminal Division 1), Accra – Respondent, Ex-parte Stephen Kwabena Opuni – Applicant/Respondent, Attorney-General – Interested Party/Applicant dated 26th October 2021.***

In the instant case, our attention has been drawn to the decision in the Chieftaincy Appeal case ***In The Matter of Bimbilla Na, Salifu Dawuni (Substituted By Sagnarigu Lana Shani Azumah), Juo Regent, Osman Mahama vrs Andani Dasana(Substituted by Nyelinborgu Naa Yakubu Andani Dasana), Azumah Natogma*** supra and its binding nature on this court.

Similarly, learned counsel for the Respondents, Mr. Addo Atuah has referred us to the decision in the Otu X v Owuadzi case supra which he claims is a decision to the contrary. However, the contents of the said case show clearly that, apart from reiterating the principles of law which our brother Pwamang JSC properly espoused in the Chieftaincy Appeal referred to supra, the exceptions therein contained are logical and consistent with the formulation of the principles in the Chieftaincy Appeal case supra. It should also be noted that, by parity of reasoning, assuming there is even a conflict in the two decisions, the decision in the chieftaincy Appeal being a later decision should be deemed to be the current operating and binding authority of the Supreme Court.

Taking all the above into consideration we in the majority are of the view that, there being a fundamental error in the decision of the majority which is per incuriam, this court should do the needful by reviewing it to ensure that justice is done.

It is for the above reasons that we on the 9th day of February 2022 allowed this review application by a majority of 4 to 3, Pwamang, Lovelace-Johnson (Ms) and Prof. Mensa-Bonsu (Mrs) dissenting.

The decision of the ordinary Bench dated 24th November 2021 is hereby accordingly reviewed.

Orders of the court

The application for review having succeeded the net effect is that the concurrent judgments of the High Court and Court of Appeal which upheld the Applicant's claims in the name of Saviour Church of Ghana and dismissed the Respondents counterclaim are hereby restored.

The judgment of the ordinary bench of this Court dated 24th November 2021 and the consequential orders emanating therefrom are hereby set aside.

The Applicants being a legal entity, duly incorporated under the laws of the Republic of Ghana is entitled to operate in accordance with its regulations or constitution and shall in consequence be entitled to acquire, keep or recover any properties belonging to them in the possession of the Respondents or any other person.

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

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

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

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

PWAMANG JSC:-

My Lords, the parties herein have litigated over Saviour Church of Ghana for more than twenty years now. It is said that though the instant case is still about Saviour Church of Ghana, it is different from the earlier cases. I disagree and I shall demonstrate from the plaintiff's own pleadings, evidence and submissions that this case in substance was targeted by the plaintiff at control of the branches and properties of the original Saviour Church of Ghana founded in 1924. If it were otherwise, there would have been no conceivable reason for the plaintiff/respondent/respondent/applicant (the applicant) to have filed this latest case in the High Court in 2013.

Both the High Court and the Court of Appeal held in favour of the applicant but on 24th November, 2021 the ordinary bench of this court by majority decision of 3-2 reversed both lower courts and entered judgment for the defendants/appellants/appellants/respondents (the respondents). The Court of Appeal decision too was a split one. However, on 9th February, 2022,this review bench of the Supreme Court decided by 4-3 majority to grant the applicant's application for review but the reasons, both for the majority and the minority decisions, were reserved to 16th March, 2022. Also reserved was the actual reliefs that the majority would grant in favour of the applicant. This course of proceeding whereby the actual reliefs granted by the majority were not stated in a warrant of judgment of the court at the time the decision was pronounced, as is the normal practice, was as a result of the fact that, even the minority of the ordinary bench did not affirm the reliefs granted to the plaintiff by both the High Court and the Court of Appeal but appeared to have varied them. In this delivery, I am explaining the reasons why the minority of the review bench dismissed the whole application as being without merit. Since at this point in time I do not have the benefit of the precise reliefs to be granted to the plaintiff by the majority of the review bench, my analysis will base solely on the processes filed in the application and the arguments of the parties.

The review jurisdiction of the Supreme Court is said to be special and very narrow and may be exercised on only on two grounds. Rule 54 of the **Supreme Court Rules, 1996 (C.I.16)** states the grounds for review as follows;

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

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

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

The applicant made the instant application contending that exceptional circumstances exist in the case arising from the decision of the ordinary bench and the exceptional circumstances have resulted in a miscarriage of justice to it. "Exceptional circumstances" in the context of Rule 54 of C.I.16 (the same expression was stated in the similar legislations that preceded it) has received judicial interpretation by the Supreme Court in several cases too many to list down.

In **Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398,** the Court stated the scope of the review jurisdiction of the Supreme Court on ground of exceptional circumstances as follows:

"A review jurisdiction is a special jurisdiction and not an Appellate jurisdiction, conferred on the court, and the court would exercise that special jurisdiction in favour of an Applicant only in exceptional circumstances. ***This implies that such an applicant should satisfy the court that there has been some fundamental or basic error which the court inadvertently committed in the course of considering its judgment and which fundamental error has resulted in gross miscarriage of justice.*** (Emphasis supplied).

The court has consistently refused to readily exercise this special jurisdiction because a losing party is dissatisfied with the reasoning and decision of the ordinary bench. Thus,

in **Tamakloe v Republic [2011] 1 SCGLR 29**, at holding (1) of the Head note, the court by a majority decision of 6-1, held as follows:-

" The review jurisdiction of the Supreme Court was not an appellate jurisdiction, but a special one. Accordingly, an issue of law that had been argued before the ordinary bench of the Supreme Court and determined by that court, could not be revisited in a review application, such as in the instant case, simply because the losing party had not agreed with the determination. ***Even if the decision of the ordinary bench on appeal from the judgment of the Court of Appeal, were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. That was an inherent incident of the finality of the judgment of the Supreme Court as the final appellate court."*** (Emphasis supplied).

See also **Arthur (No.2) v Arthur (No.2) [2013-2014] 1 SCGLR 569; Agyekum v Asakum Engineering and Construction Ltd [1992] 2 GLR 635** and **Afranie II v Quarcooo [1992] 2 GLR 561.**

The background of this case is essential for deciding whether the arguments by the applicant raise any exceptional circumstances or this is the case of a losing party seeking to re-argue its appeal as the respondents have submitted. Secondly, a full knowledge of the background is required to be able to decide in fairness to both parties, if the decision of the ordinary bench occasioned any miscarriage of justice to the plaintiff. I will summarise the facts as contained in the affidavits and exhibits filed in this application.

It all started in 1924 or thereabout in colonial Gold Coast and Asante when one Opanyin Samuel Brako founded a Christian church that subsequently became known as Saviour Church of Ghana. He attracted a considerable following and the church had branches established in some towns in Southern Ghana. When he died, the headship of the church passed to Opanyin Isaac Asirifi. Under his leadership, the church continued to grow and became well established. It set up administrative structures, built additional branches and acquired more properties. The church had a tract of land at Osiem in the

Eastern Region on which it built its administrative offices for purposes of the expanded church and also allowed some of its leading members to build houses where they lived. The church adopted a Constitution for itself and its trustees are registered under the **Trustees (Incorporation) Act, 1962 (Act 106).** With time, the church set up schools in the communities where it operates and has even established a specialist eye hospital among other social developmental undertakings.

The church was being run without any problems until after Opanyin Isaac Asirifi died in 1997. On his passing the registered trustees and elders of the church, acting by the provisions of the Constitution of the church, elected Abraham Kweku Adusei to succeed Opanyin Isaac Asirifi as new General Superintendent, the post that Opanyin Isaac Asirifi had occupied under the church's Constitution. Initially there was general approval of his election and he was formally installed and inducted as the General Superintendent after which, together with the registered trustees, he led the church in its spiritual and social endeavours. However, after a period of time, some members of the church started to dispute the validity of the process of electing a leader for the church claiming that the church is a spiritual church so it is the spirit that selects the leader and not human beings. These members said before the death of Opanyin Isaac Asirifi there was a spiritual revelation that his son, Elias Kofi Asirifi Asante shall take over the headship of the church when he died. These members therefore urged Elias Asirifi Asante to take over the leadership of the church from Abraham Kweku Adusei. When Elias Asirifi Asante was slow in acting on the alleged spiritual choice, there was another alleged revelation through another member that he is the chosen one and not Abraham Kweku Adusei.

Somehow, Elias Asirifi Asante later bought into this choice by the spirit and he and his supporters tried to take over the church from Abraham Kweku Adusei and the registered Trustees. Elias Asirifi Asante and his supporters engaged in activities that the leaders of the church considered incompatible with the church's doctrine and practices as they refused to accept Abraham Adusei as their General Superintendent but rather considered Elias Asirifi Asante as their General Superintendent. It became impossible for

the two groups to co-exist and Elias Asirifi Asante and his group left Osiem, the headquarters of the church and set up a rival administration, initially at the Mankrong Junction branch of Saviour Church of Ghana in the Central Region. With time they moved their operational base to Gomoa Nyanyano branch, also in the Central Region.

Though Elias Asirifi Asante and his group refused to have anything to do with the church leadership at Osiem, they took over some branch church buildings, worship articles and paraphernalia and properties of the Saviour Church of Ghana. Consequently, the trustees of the church sued them in the High Court to recover those properties of the church from them. The church filed a number of cases against Elias Asirifi Asante and his supporters in respect of various branch buildings they took over. In all there were about seven cases in the High Court and they were consolidated and tried by Gbadegbe, J (as he then was). In his judgment dated 10th June, 2003 the judge identified the central issue in the consolidated cases to be; between the registered trustees of Saviour Church of Ghana and Elias Asirifi Asante and his group, who was the legitimate successor to the original Saviour Church of Ghana, founded in 1924 and over which Opanyin Isaac Asirifi was General Superintendent? Gbadegbe J resolved this issue in favour of the registered trustees holding, that after the election and swearing in of Abraham Kweku Adusei as General Superintendent, the registered trustees, the general membership of the church including Elias Asirifi Asante and those who later joined him, recognised his leadership. It was later that the Elias Asirifi Faction broke away from the main church because they decided to recognise Elias Asirifi Asante as their General Superintendent and not Abraham Adusei. He found from the evidence that they had been conducting themselves as a separate entity having nothing to do with the main church. Therefore, having left the main church and formed their own church, they were no longer members of Saviour Church of Ghana and had no rights to use the places and articles of worship as well as properties of the church. Gbadegbe J said at page 6 of his judgment that:

"In my thinking, the defendants by their decision to appoint a new leader and operate separately from the existing church had broken away and

cannot continue thereafter to be regarded as members of the Saviour Church of Ghana."

Consequently, he granted perpetual injunction against Elias Asirifi Asante and his supporters and ordered for any branch buildings and other properties of the church that were under the control to be recovered from them. That included the lands at Osiem on which some of them, prior to the dispute, built houses in which they lived. For those houses, the court said their possessory rights to live there should be respected subject to good behavior. The Asirifi Asante Faction appealed against the Gbadegbe J judgment to the Court of Appeal and in a judgment dated 26th February, 2004, the appeal was dismissed, save for a variation of the order for possession of the houses of members of the Asante Ashrifi Faction. The Court of Appeal per Ansah JA (as he then was) in part said as follows;

"By way of a brief comment, the evidence was overwhelming that the registered trustees on record are of only the Saviour Church of Ghana, the respondents in this appeal, thus fortifying the finding of the trial court that *there is only one true Saviour Church of Ghana and Adusei is the leader.* We affirm the finding that the registered trustees of the Saviour Church of Ghana under the Trustees Incorporation Act of Ghana, 1962, Act 106, were the respondent church. There was no error by the trial judge in his interpretation and inferences from the law."(Emphasis supplied).

There was no further appeal to the Supreme Court. After the Court of Appeal judgment, the registered trustees succeeded in recovering some branches of the church that were under the control of Elias Asirifi Asante and his group but the faction resisted handover of about three branches including the Gomoa Nyanyono branch that served as their headquarters. It appeared that the trustees decided to move on with their religious activities and allow peace to prevail but they would be poked by Elias Asirifi Asante and his group. In 2008, the Asirifi Asante Faction filed a case in the High Court, Accra praying the court to set aside the Gbadegbe J judgment alleging it was obtained by fraud. Meanwhile in 2007 they had gone behind the back of the trustees to register the

name "Saviour Church of Ghana Ltd" at the Companies registry as a company limited by guarantee under the Companies Act, 1963 (Act 179) with them as directors. It was in 2009 that the trustees got to know about the company registration which they considered amounted to contempt of the judgments of Gbadegbe J and Court of Appeal which held that there was "only one true Saviour Church of Ghana" represented by the registered trustees. They therefore brought committal proceedings against the leaders of the Asirifi Asante Faction for contempt of court. The High Court convicted them for contempt of court and fined them. They paid the fine but did not appeal against their conviction.

Notwithstanding their conviction and sentence for contempt of court for registering the name "Saviour Church of Ghana Ltd", the Asirifi Asante Faction, claiming as a corporate entity, used the name "Saviour Church of Ghana", without the Limited, to sue the registered trustees of "Saviour Church of Ghana" in the High Court, Accra in 2013. It is that suit that has culminated in this review application. This time round, the case they took to the High Court as stated in their statement of claim was as follows;

"**1.The plaintiff is a religious body, which is a company limited by guarantee incorporated under the laws of Ghana on 6th February 2007, whose nature of business are spiritual church planting, worship of the Lord in spirit and in truth, among others.**

2**.The plaintiff has branches across the length and breadth of Ghana.**

3.The board of directors of the plaintiff are: a. Elias Asirifi Asante, b. Moses Adjei Kum, c. Peter Kwabena Adjei, d. Matthew Adjei Mensah, e. Emmanuel Dadzie

4.The Defendants are the registered trustees of Saviour Church of Ghana with the sole purpose of holding property in that name. Most of the Defendants reside in Osiem.

5.Indeed the Defendants are not a religious body and cannot function in that capacity.

6.The Plaintiff is the only legal entity recognized by the laws of Ghana to run churches.

7.The Defendants have exceeded their legal mandate and have been using the name of the Plaintiff to do church activities contrary to law.

8.By this illegally, the Defendants are running churches and even plan a convention in the name of the Plaintiff.

9.Unless restrained by the court, the Defendants will use the name of the Plaintiff to deceive the whole world and to achieve their own illegal ends.

10. By reason of the matters aforesaid, the Plaintiffs claim against the Defendants jointly and severally for:

i. A declaration that the Plaintiff is the only one legal entity by that name, who is permitted by law to run churches and to do religious and spiritual activities.

ii. An order for perpetual injunction restraining the Defendants, their agents and assigns from using the name Saviour Church of Ghana for any spiritual and religious activities.

iii. Any further order(s) as the justice of this case demands.

iv. Costs, including lawyer's professional fees.

The pith of the pleaded case of the leaders of the Asirifi Asante Faction, who were expressly listed in paragraph 3 of the statement of claim to signify that they were privies of the plaintiff, is that, yes the Abraham Adusei Faction are the registered trustees of Saviour Church of Ghana under the Trustees (Incorporation) Act, 1962 (Act 106) but they are not permitted by law to operate as a church but they have been doing so and they should be restrained. The defence of the defendants was basically,

that there is no law that prevents them as registered trustees under Act 106 from operating as a church and that in fact, their right to operate as such has been upheld in three judgments by the Superior Courts of Ghana. They stated that those judgments held that the Asirifi Asante Faction whose leaders were listed in the statement of claim as directors of the plaintiff company, are not members of "Saviour Church of Ghana" and for that reason they were even convicted for contempt of court on account of the registration. They pleaded that this new suit was a disguise to re-litigate the question; which of the two factions is the successor to the original and only one Saviour Church of Ghana founded by Opanin Samuel Braku who was succeeded as by Opanin Ashrifi, a question that had been long settled in their favour in the Gbadegbe J and Court of Appeal judgments of 2003 and 2004 respectively.

In a reply, the applicant did not deny that the issues about Saviour Church of Ghana had been determined in the earlier litigations but averred that this case raised a new issue. They stated as follows;

"In answer to paragraphs 16, 17, 18 and 19 of the statement of defence and counterclaim, the plaintiff avers that all the decisions emanating from the Superior Courts of Judicature never determined the fundamental issue of this plaint as to whether Saviour Church of Ghana has been duly incorporated under the laws of Ghana to conduct religious, spiritual and/or church business."

The plaintiff pleaded this way despite what the Court of Appeal held, which was that;

"...We affirm the finding that the registered trustees of the Saviour Church of Ghana under the Trustees Incorporation Act of Ghana, 1962, Act 106, were the respondent church. There was no error by the trial judge in his interpretation and inferences from the law."

If the Court of Appeal affirmed the finding that the registered trustees of Saviour Church of Ghana were a church under law, then how could it be asserted that a church so recognised is not incorporated to conduct church business? Worse of all, the plaintiff

company did not plead any enactment that prevents a church incorporated under Act 106 from conducting church business. Nonetheless, the case was tried by adduction of evidence when it ought, from the pleadings, to have been by legal arguments. At the close of the trial, the High Court gave judgment rather dismissing the counterclaim of the trustees and in favour of the plaintiff in the following terms;

"1.This court decrees that the plaintiff is the only legal entity by that name which is permitted by law to run churches and do religious and spiritual activities.

2.This court further grants an order of perpetual injunction restraining the defendants, their agents and assigns from using the name Saviour Church of Ghana for any spiritual and religious activities.

3.I further grant plaintiff custody of all their branches in the country."

It was these orders that were affirmed by the majority of Court of Appeal, leading to the appeal to the Supreme Court.

The majority of the Supreme Court ordinary bench overturned this decision on a number of grounds;

(a) The registered trustees had been recognised as the rightful entity for religious activities called "Saviour Church of Ghana" and that finding was affirmed by the Court of Appeal so this High Court had no jurisdiction to overturn that holding by a contrary declaration to the effect that they have no legal right to run churches. Furthermore, the High Court had no jurisdiction to restrain the registered trustees from using the name under which they are registered under Act 106 to do any spiritual and religious activities. The ordinary bench quoted from the Gbadegbe J judgment as follows;

'At page 7 of his judgment Gbadegbe JA held as follows;

"These attributes in my view are possessed by the entity represented by the plaintiffs [Abraham Adusei&Ors] herein and I hold that *the*

description Saviour Church of Ghana relates to them and not the defendants." **(Emphasis supplied).**

The majority of ordinary bench considered it unlawful for the registered trustees to be injuncted from use of the name they had always used and which received judicial endorsement by a court higher than the trial judge in this case.

(b) Despite being aware that the earlier judgments upheld the right of the registered trustees to the name "Saviour Church of Ghana", the High Court and Court of Appeal in this case made the above orders because, in the course of leading evidence, part of the testimony of the applicant was to the effect that the registered trustees were operating as a church under the name "**The** Saviour Church of Ghana" and not "Saviour Church of Ghana". The only reason given was that in the year 2012 the respondents registered a company by guarantee under Act 179 with the name "The Saviour Church of Ghana Ltd". First, the testimony of the plaintiff that the respondents church was "The Saviour Church of Ghana" contradicted their own pleadings quoted above, where the applicant pleaded that the respondents were registered Trustees of "Saviour Church of Ghana" and have been undertaking religious activities in that name. The pleadings did not add "The" to the name of the church the trustees registered neither did it add "The" to name of the church under which they carried out their religious activities. If indeed the trustees were operating as a separate church in a name different from "Saviour Church of Ghana", why on earth would the plaintiff have sued them for an injunction to restrain them?

Secondly, the ordinary bench observed that when the plaintiff testified contrary to their own pleadings, the respondents led evidence to contradict them and proved that their name is "Saviour Church of Ghana" and that they have been operating as a church under that name and not under the name "**The** Saviour Church of Ghana". The respondents explained that the registration of the company by guarantee was for purposes of obtaining a Tax Identification Number in order to register their vehicle and that after that they have never carried out any church business in that name. They testified that they have

always been known and have always operated as "Saviour Church of Ghana". In the majority opinion of ordinary bench they referred to the evidence in the following passage;

"The undisputed evidence on the record is, that during the pendency of this suit, the defendants, operating their church as "Saviour Church of Ghana", were going to celebrate their 90th Anniversary in that name and the plaintiff applied ex parte for an order of interim injunction to restrain them.

The terms of the order of the court at page 144 volume 1 of the ROA stated as follows;

"IT IS HEREBY ORDERED that the Defendants, their agents and assigns are hereby restrained from using the name Saviour Church of Ghana to celebrate the 90th Anniversary of the Saviour Church of Ghana at Osiem…"

The celebration went off anyway because the Abraham Adusei Faction were not served. The defendants continued to use the name "Saviour Church of Ghana" for their religious activities while the case was pending. On 16th July, 2018 the following cross examination of the defendant took place at page 379 of the ROA vol 2;

Q. You together with the defendants organized a convention for Saviour Church of Ghana in February this year; not so?.....

A. It was in the month of March and June.

Q. The convention was for Saviour Church of Ghana?

A. Yes my Lord. We were the ones who organized it."

The High Court and the Court of Appeal nevertheless had held that the church that was operated by the respondents was "**The** Saviour Church of Ghana" and the Asirifi Asante Faction is the only "Saviour Church of Ghana". Here is a matter of fact that is as clear as daylight, Gbadegbe J and the Court of Appeal held that respondents are Saviour

Church of Ghana, the applicant itself sought an injunction against the respondents because they are registered trustees of "Saviour Church of Ghana" and are actively running a church in the name "Saviour Church of Ghana", and the evidence proved that that was indeed the situation on the ground, but the lower courts subverted these facts and said the respondents church is "**The** Saviour Church of Ghana" from henceforth. The ordinary bench has corrected this crass perverse finding and the applicant is arguing that the ordinary bench committed a fundamental error and ought not to have corrected this ridiculous finding that worked injustice to the respondents. Then what is the purpose of an appeal? In **A/S Norway Cement Export v Addisson [1974] 2 GLR 177 C.A; (F.C)**; at page 182, Apaloo, JA (as he then was) stated the purpose of an appeal as follows;

"In an appeal, a higher court is often asked to correct the error real or imagined of a lower court."

When the matter came on appeal, the ordinary bench of the court had a duty to correct the glaring factual error committed by the lower courts. In the records of the Registrar-General who administers the Trustees (Incorporation) Act, the respondents are registered as trustees of "Saviour Church of Ghana" but now the courts held to the contrary. The majority of the ordinary bench certainly did not commit any error when they corrected the lower courts by setting aside the declaration and injunction against the respondents and Act 106.

But all of the above is premised on the understanding that the plaintiff from 2007 formed a new church distinct from the respondents' church. In fact, at paragraph 26 of its statement of case in this application the applicant has submitted as follows;

"26. What is also crystal clear is that in all the proceedings prior to the instant one resulting in the appeal, "Saviour Church of Ghana" applicant herein, as an entity distinct from its directors was never a party. So all orders said to have been made earlier against the directors including the impugned committal for contempt were not matters which affected the

applicant herein as distinct juristic entity. Therefore any meaning ascribed to those decisions and construed to be effectual and binding on "Saviour Church of Ghana" applicant herein particularly with respect to the propriety of it name is incorrect and an extraneous issue which properly belongs to a cause of action in the common law of passing off, which was not part of the case of the respondent."

Also at paragraph 40 it has argued as follows;

"40. Indeed, the issues that were actually set down for final determination in the "Gbadegbe proceedings" as set out by the Court of Appeal (the Ansah Judgment) at page 35 of the Record of Appeal (ROA) EXH.....made reference to the Saviour Church of Ghana" confirming that the "Gbadebge judgment" could only have affected the entity (if at all) referred to as "the Saviour Church of Ghana" and not *the distinct entity legally known as Saviour Church of Ghana, Applicant herein."*

I will first comment on the applicant's paragraph 40. From the copies of the judgments exhibited in this application, the Consolidated judgment of Gbadegbe J, was as follows; Suit No. FTHR 13/2001; intituled;

"The Registered Trustees of Saviour Church of Ghana

V

Kofi Elias Asante"

and the appeal was Civil Appeal No H1.30.2004intituled;

"The Registered Trustees of Saviour Church of Ghana

V

Kofi Elias Asante & Others"

Therefore, there can be no disputing the fact that the name of the church that was determined to belong to the respondents in those cases in 2003/2004 was "Saviour

Church of Ghana" and not "**the** Saviour Church of Ghana". The submission that the name of church had "the" to it is conjured up and must be disregarded. What is more, it needs to be underscored that if the directors of plaintiff who brought this action had conscientiously internalized and accepted what Gbadegbe J said then, that they were separate from and no longer part of Saviour Church of Ghana, they would have spent their time and resources over these more than twenty years planting their own church and not be constantly ruminating on the original church and bringing suits upon suits against it. If infact and indeed the respondents operated as "the Saviour Church of Ghana" in 2003/2004 and it is separate and distinct from the plaintiff's church "Saviour Church of Ghana" born in 2007, to what ends did the plaintiff sue them in the first place?

Even now that they argue in their paragraph 26 that the plaintiff having come into existence as a separate and distinct legal entity in 2007 is not affected by what happened involving its directors from 1997 to 2009, then that is the more reason why the applicant herein should not have had any grievance against the respondents who existed long before 2007. Even if it were to protect its name "Saviour Church of Ghana" that the defendants are the registered trustees of, (but here too the applicant contradicts itself by contending that the respondents do not use "Saviour Church of Ghana" but "The Saviour Church of Ghana") when after the contempt case the applicant continued to operate its church in that name as stated in its statement of claim, the respondents did not take any step to prevent them operating. So why stoke a hornets' nest by suing people who were quietly minding their own church business? With what the applicant is now saying, it would mean that there were two separate distinct churches going by the name "Saviour Church of Ghana". That may have been so but no one complained of passing off as stated by the applicant in its statement of case.

The respondents say 'As a church we are not "The Saviour Church of Ghana"' but it is told 'You are "The Saviour Church of Ghana" since you registered a company limited by guarantee as such'. But how can it be that the applicant is entertained by the court on

the legal basis of corporate separateness on account of Act 179 but the court is not ready to accept that "The Saviour Church of Ghana" registered under Act 179 is distinct and separate from the respondents who have been sued? The plaintiff and its directors are separate but the respondents and "The Saviour Church of Ghana Ltd" are not separate. Can an injunction be issued against "The Saviour Church of Ghana Ltd" when it was not a party to the proceedings? The applicant before us is urging on us new law but I am unable to accept its submissions. The position taken by the applicant in this review, that its church is separate and distinct from the defendants' church, then they agree with what my noble brother Appau, JSC said in his dissenting opinion at page 73 of the judgment of the ordinary bench, which was endorsed by Amadu, JSC who also dissented, that;

"With regard to relief (a) (sic) the instant action by the Respondent [applicant] was not in respect of the ownership and control of 'The Saviour Church of Ghana' with headquarters at Osiem. It was in respect of the right of 'Saviour Church of Ghana' with headquarters at Gomoa Nyanyano, as distinct from The Saviour Church of Ghana with headquarters at Osiem, to operate and run a church and religious activities in that name."

My Lords, from the discussion above, I can hardly see any legal basis for any order made in favour of this applicant that would touch and concern the branches and properties of the respondents' church with its headquarters at Osiem. What this means is that the relief (3) that was granted by the High Court and affirmed by the Court of Appeal in this case namely; "I further grant plaintiff custody of all **their branches** in the country" cannot be in respect of any branches of the respondents' church with headquarters at Osiem but is limited to any branches the plaintiff established since coming into existence as a separate and distinct legal entity in 2007. Infact, the order expressly referred to '**their [applicant] branche**s' and these must of necessity be branches acquired since 2007 when the plaintiff came into existence as a separate and distinct legal entity.

But, lets return to the fundamental question that is begging for answer; the applicant maintains that it has nothing to do with the past issues about the original Saviour Church of Ghana and that it is a new creation born in 2007 separate and distinct from any faction that existed before, then did it really have a cause of action against the respondents who existed before its birth? The majority of the ordinary bench were forthright in saying that the plaintiff is not entitled to any relief against the respondents so they dismissed their claim outright. The minority position as captured by Appau, JSC's judgment, is in effect this; 'yes applicant has no relief against the respondents as far as the branches of the respondents are concerned but it is entitled to run and operate churches as a separate and distinct entity'. But, with the greatest deference, that has never been in doubt. It was registered under law and until its registration is cancelled it was free to operate as a church. In fact, from its statement of claim it was operating freely since 2007 and formed branches through- out Ghana and no one stopped it. Even its directors' right to operate as a separate church was recognised by Gbadegbe J in his 2003 judgment. The truth is that the applicant in 2013 sued in court not to protect its right to operate as a distinct church or to protect its name but to sequestrate the original Saviour Church of Ghana of the respondents that existed before the applicant was born in 2007. Here is the proof:

When giving evidence at the trial in the High Court, at page 354 of vol 2 of the Record of Appeal (ROA) the following occurred when Mr Peter Kwabena Adjei, Director of applicant and leading member of the Asirifi Asante faction, who was the only person to testify on behalf of the plaintiff was cross-examined by the respondents' lawyer;

Q. It means that your church you registered was established in 2007?

A. That is not true. The church was not established in 2007 but rather registered in 2007 because that was the church Opanyin Isaac Asirifi was General Superintendent before he handed over to Eliah Asirifi Asante.

By this, the plaintiff was categorical that it came into legal existence to supplant the original Saviour Church of Ghana that was declared by Gbadegbe J and affirmed by the

Court of Appeal in 2003/2004 to belong to the respondents herein. The plaintiff is unequivocal that its incorporation was not to bring into existence a legal entity separate and distinct from Saviour Church of Ghana in operation before from 1924 to 2007 but the registration was meant as a registration of that church. The church whose branch buildings and other properties were recovered from the promoters and directors upon judgment by the Court of Appeal was being registered by those very persons in blatant intentional disrespect of the courts' decisions.

Also, at page 360 vol 2 of the Record the applicant's same witness openly denied that they have formed a separate church. He was asked;

Q. It is you and your group who have rather formed a church, the defendants have not formed any church they are only continuing the church left behind by Isaac Asirifi and that is why you had to do a new registration in 2007.

And he answered thus;

A. That is not correct because "Saviour Church of Ghana" is a spiritual church.

The above quoted testimonies under oath when compared with what the applicant now says in its paragraphs 26 and 40 reproduced above should only mean that the applicant has now changed its position, probably after reading both the majority and minority opinions of the ordinary bench. Unfortunately, when one reads what the applicant has stated at paragraphs 8 and 9 of its statement of case in this present application for review, the irresistible conclusion is that the applicant is unrepentant and is still aimed at the original church of the respondents that existed before its birth in 2007. It has stateda different reason why it sued the respondents in the High Court in 2013. It is as follows;

"8 Respectfully my Lords, on 14th August, 2012, the Respondents herein also registered their own church with the name "The Saviour Church of Ghana" and was issued with a certificate to commence business with effect from 6th

November, 2012. The Respondents as directors [trustees] of the Saviour Church of Ghana sought to take over all the assets of the Applicant [Saviour Church of Ghana Ltd of 2007] herein for their said church the Saviour Church of Ghana.

9. It is these illegal acts of the Respondents that compelled Applicant herein to cause a Writ of Summons and a Statement of Claim to be issued on 18th January, 2013 for the following reliefs against respondents herein…".

If the applicant is to be believed, then why was it that when it sued in 2013 it didn't sue the corporate entity "The Saviour Church of Ghana Ltd" but rather sued the respondents in their capacity as registered trustees of "Saviour Church of Ghana" operating as "Saviour Church of Ghana"? It would even have been different if it sued the respondents in their capacity as directors of a corporate entity registered as "The Saviour Church of Ghana". That would at least look consistent with what the applicant now says that its target was a church formed in 2012. The above paragraphs simply expose the complete absence of good faith on the part of the applicant when it filed this case in 2013. It knew that the corporate entity "The Saviour Church of Ghana Ltd" since it came into existence in 2012 did not possess any churches and did not interfere in any way with it. Itself did not have any branches or assets that anyone interfered with. It came to court to recover the church of the respondents, hence the suit against them. This is the same applicant who says it was born in 2007 and has nothing to do with what happened before its birth.

It is agreed by all that the applicant cannot in law claim properties that the respondents had long before it came into existence and in some of its submissions it agrees with this incontrovertible position of the law. So, why shouldn't the court dismiss its claims in clear terms instead of making ambiguous orders that appear to be pleading with the applicant to accept a compromise that it knows does not meet its purpose for suing?

In **Acquaah v Apaa [1999-2000] 2 GLR 896,** Acquah, JSC remarked as follows at pages 911-912;

'In the instant appeal, each party asserted vehemently its exclusive claim to the omanhene's stool of Gomoa Ajumako, and insisted that the other party has no claim to the stool. In the face of such a stand and claim by each party, the duty of the judicial committee of the National House was to decide .the appeal in accordance with the materials and respective claims of the parties. The National House of Chiefs is not to abandon its judicial duty and turn itself into a settlement committee by granting a compromise judgment not sought for by either party. A court which does that, acts without jurisdiction and its judgment cannot be justified Thus, Gyewu v Asare II [1991] 1 WASC169 at 186, Osei- Hwere JSC did not mince his words in castigating the National House of Chiefs when it made a similar decision. His lordship said:

"In my view the appeal on the ground of excess of jurisdiction has been well made out. ***A court of justice called upon to resolve a dispute, I repeat, must neither play the role of the 'artful dodger' (of Dicknesian creation) nor indulge in 'diplomatic double talk' (intending to hurt no one) but must seize the bull by the horns and hand down the decision the dispute demands****. I would accordingly nullify the decision of the National House of Chiefs for excess of jurisdiction."*

I agree entirely with the above view of his lordship, and accordingly refuse to endorse the judgement of the National House of Chiefs (Emphasis supplied).

It appears there is an effort not to hurt the applicant in this case so while admitting that it cannot be given what it wants it is not being told so. The applicant can only be told so by an unequivocal dismissal of its case. The applicant, right from the High Court to this review court, has been contradicting itself by pleading one thing only to say the direct opposite of it in the next line. It was this duplicitous conduct on the part of the applicant that caused the majority of the ordinary bench to hold as follows;

"In Dzotope v Hahormene III (No 2) [1984-86] 1 GLR 294 Edusei JA said the following about what constitutes fraud at page 300 of the Report;

"In Kerr on Fraud and Mistake (7th ed.) at p. 1 appears this statement: "Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to."

The facts of this case answer exactly to this definition of fraud. After the registration of the name "Saviour Church of Ghana" the Elias Asirifi Faction brought this suit stating a different set of facts in their statement of claim in order to conceal their real motive and then when they entered the witness box, they revealed their actual objective in registering the name; to wrestle from the defendants ownership of their church. When the plaintiff sued in court it pleaded its case in a sly manner hoping to mislead the court for it to view this case as unrelated to the previous cases that decided that Saviour Church of Ghana belongs to the defendants. That is surely inequitable means to deprive the defendants of their rights that have been upheld in three superior courts' judgments. It is clear to me from the evidence of the plaintiff that the intention for the incorporation of plaintiff was not to bring into being a new entity that would engage in religious and spiritual activities of its own but it was part of the inequitable strategies for taking over defendants church from them. At page 301 of the Report Adusei JA added as follows;

"Undoubtedly fraud is a conduct which vitiates every transaction known to the law."

Consequently, since the registration of the plaintiff under Act 179 was for a fraudulent purpose, the registration is vitiated by the fraud and must be unraveled by the court by an order setting same aside. The incorporation of the plaintiff is hereby set aside on grounds of fraud and the Registrar of Companies is hereby directed to cancel the registration."

Evidence from the plaintiff itself was that its registration was not meant for the purpose intended by Act 179, namely incorporation of a separate and distinct entity, but that it was meant to take the place of the existing church which three superior courts had held to belong to people other than applicant's promoters. The distinction ought to be made between fraudulent steps taken in the cause of a registration and registration for a

fraudulent purpose. It may be true that the evidence in this case did not point to fraudulent steps in the course of registering the plaintiff but from plaintiff's own mouth, the purpose for which plaintiff was incorporated was to deprive the respondents of their property, namely their church. That fits the definition of fraud quoted above.

The respondents registered that name under Act 106 and operated under it for about fifty years before the applicant was registered. Sections 1(4) and 1A of Act 106 as amended provide as follows;

1(4) Upon the grant of the certificate, *the trustees shall become a body corporate by the name described in the certificate*, and shall have perpetual succession and an official seal, and power to sue and be sued in such corporate name, and subject to the conditions and directions contained in the said certificate, to hold and acquire, and by instruments under the official seal to convey, assign, and demise any land now or hereafter belonging to, or held for the benefit of, that body or association, in like manner, and subject to such restrictions and provisions as the trustees might, without such incorporation, hold or acquire, convey or assign, or demise the land for the purposes of that body or association.

Section 1A—Application of Act 106 to Religious Bodies.

***The provisions of the Trustees (Incorporation) Act, 1962 (Act 106) shall apply to the trustees of an unincorporated voluntary association of persons or body established for a religious purpose*. [Inserted and to be cited as Trustees (Incorporation) (Amendment) Law, 1993 (PNDC L 311) s.1]**

The statute states the effect of registration under the Act to be that the body corporate shall be known by the name registered. The respondents registered in the name "Saviour Church of Ghana" so it is unlawful for a court to restrain the respondents from use of that name. Such order of a court seeks to countermand a statute but no court has such power. In **Republic v High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association &Ors**

Interested Parties) [2009] SCGLR 390 at page 405, Date-Bah, JSC emphasised the limits of the court's jurisdiction regarding Act of Parliament in the following words;

"The Judicial Oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders. The end of the judicial oath set out in the Second Schedule of the 1992 Constitution is as follows; 'I will at all times uphold, preserve, protect and defend the Constitution and laws of the Republic of Ghana.' This oath is surely inconsistent with any judicial order that permits the infringement of an Act of Parliament."

In conclusion, the applicant has no right to any branches or properties of the respondents' church so there is no need for a court order to be made for the applicant to take custody of its own branches. No one, and certainly not the respondents, have interfered or threatened to interfere with any branches or properties acquired by the applicant since its incorporation in 2007. Such an order would only cause confusion and bring the administration of justice into jeopardy. Additionally, it is unlawful for the court to nullify Act 106, a statute binding on the court, by restraining the respondents from using their name validly registered under that Act and upheld for them to use as a church by Gbadegbe J and affirmed by the Court of appeal in subsisting judgments dated 10th June, 2003 and 26th February, 2004 respectively. The record proved that the applicant is a fictitious entity incorporated for dubious purposes and its registration ought to be cancelled for fraud. The applicant in this review application has only succeeded in confirming the correctness of the decision of the ordinary bench. The application does not meet the threshold to warrant a review of the judgment of the ordinary bench. The application has no merits whatsoever and it is accordingly dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

PROF. H. J. A. N. MENSA-BONSU (MRS.)
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