IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: YEBOAH CJ (PRESIDING)
PWAMANG, JSC
AMEGATCHER, JSC
TORKORNOO (MRS.), JSC
KULENDI, JSC

CIVIL APPEAL
NO. J4/13/2021

8TH DECEMBER, 2021

STANLEY KOTEI HAMMOND ..... PLAINTIFF/RESPONDENT/RESPONDENT

VRS

1. G. K. AGLEZE
2. J. K. NUGBEMADO ..... DEFENDANT

1. NII KOJO ABABIO V
2. KORLE BEACH RESORT LTD. ..... 2ND APPLICANT/APPELLANT/APPELLANT

JUDGMENT

PWAMANG JSC:-

My Lords, after a reflective consideration of this appeal, we took the view that the Court of Appeal came to the right conclusion in this case when they dismissed the appeal that came before them. Nonetheless, we noted that one of the reasons for their decision is

inconsistent with the law as we know it and it is our duty as the apex court to correct such errors of law in order that courts below the Court of Appeal are not misled. The error is in respect of the statement in their judgment to the effect that a person who was not a party to proceedings in the court below cannot appeal against the judgment in the case even if the person is bound by the judgment or her interest is prejudicially affected by it.

In the Court of Appeal, the appellant lodged a double-barrelled appeal against two decisions given in the same case by the High Court. The case in the High Court is Suit No. BL. 285/2004 intituled Stanley Kotei Hammond v G. K. Agbleze & Anor and concerned title to land. The case went through a full trial and judgment was delivered on 20th November, 2014. The appellant company herein was not a party in the case but is directly affected by the judgment as it contained an order for the cancellation of its registration of the disputed land in the records of the Lands Commission. Being aggrieved by that judgment, the appellant first applied to the High Court by motion to have it set aside but its application was dismissed on 17th June, 2015.The appellant then filed a notice of appeal in the Court of Appeal and sought reliefs against both the substantive judgment of 20th November, 2014 and the ruling dismissing its application to set aside the judgment.

In their judgment dated 28th May, 2020, the Court of Appeal held, correctly in our view, that the part of the appeal against the substantive judgment was woefully out of time and they dismissed it. The court also rightly disapproved of the procedure of filing one notice of appeal against the two decisions in the circumstances of this case. The procedure to adopt where a person is appealing against two decisions by the same court was discussed in the case of **Nana Ampofo Kyei Baffour & Ors v Justmoh Construction Co. Ltd [2017-2018] 2 SCLRG 488 (Adaare).** In that case, the respondent felt aggrieved by two decisions of the High Court, Kumasi, one refusing to review its decision in which it set aside its own ruling allowing the respondent to defend the action and another, a final decision assessing and awarding damages against the respondent. The respondent filed two separate notices of appeal in the Court of Appeal,

one against each decision. On hearing the appeals, the Court of Appeal dismissed the appeal against the ruling on the review as having been filed out of time but allowed the appeal against the assessment of damages. In an appeal to the Supreme Court, the appellant stated as one of the grounds of the appeal that; the procedure adopted by the respondent in filing two notices of appeal was flawed and denied the court jurisdiction to hear both appeals. The view of the appellant was that the appellant should have filed only one notice of appeal and that the filing of two notices of appeal was wrong procedure. In endorsing the procedure adopted in filing two notices of appeal and dismissing the contention of the appellant, Adinyira, JSC who delivered the unanimous opinion of the court said as follows at page 510 of the report;

*"We will dismiss this ground of appeal **in limine** as the 5th Defendant had a right to appeal against both the interlocutory and final decisions of the High Court."*

So, an appellant has a right to appeal simultaneously against two decisions by the same court in a case but the practice of filing one notice of appeal may only be resorted to where a person has filed an appeal against a final judgment and within that appeal also challenges an interlocutory decision that was given in the course of the proceedings leading to the final judgment. For, in **R.T.Brisco v Amponsah (1969) 100,** the Court of Appeal said as follows in (3);

"…a person who is dissatisfied with an interlocutory decision does not lose the right to appeal against that decision merely because he failed in bringing the appeal within fourteen days, he still has a right to include appeal against that decision in an appeal against the final decision in the case. Gardiner v Lucas (1878) 3 A.C. 603. H.L…"

However, in the circumstances of this case where the application was made after final judgment had already been delivered, the appellant who was desirous of appealing against both the substantive judgment and the ruling on the post-judgment application is not allowed to file one notice of appeal against the two decisions. In those circumstances, an appellant ought to file two separate notices of appeal but that was

not done in this case. Therefore, the notice of appeal that was filed in the Court of Appeal was highly irregular.

But, our concern in this case is with what the Court of Appeal said at page 8 of their judgment that since the appellant herein was not a party to the case in the High Court it was innately wrong for it to seek to appeal against the final judgment. As authority for that position, the court referred to the decision of the Supreme Court in **Fynhout v Minister Responsible for Lands [1963] 1 GLR 471** where, in construing the words "Any person considering himself aggrieved..." appearing in **Order 39(1) of the High Court (Civil Procedure) Rules, 1954 (LN 54)**the court per AKufo-Addo, JSC (as he then was),held that the right to apply under the rule for the review of a final judgment did not extend to a non-party. The **Fynhout Case** was decided on the combined interpretation of a number of provisions of Or 39 on the review jurisdiction of the High Court but the Court of Appeal nevertheless said they deduced a principle which they considered applicable to appeals. This point about the right of a non-party to appeal against a final judgment that affects her interest is a substantial point of law which, in our estimation, counsel for the appellant herein ought to have taken up in this appeal since the Court of Appeal in coming to their view of the matter did not take into account the statutory provisions on the right of appeal in our jurisdiction and the settled practice of the courts on the subject. Nevertheless, counsel for the respondent on his part has relied on the view of the Court of Appeal in his statement of case as one of the reasons justifying the judgment of the Court of Appeal. But, he too has not made any attempt to refer to the relevant statutes and the settled practice of the court.

Meanwhile, even if the condition for bringing an appeal from a final decision of the High Court to the Court of Appeal was reserved to only persons considering themselves "aggrieved" by the decision, as the Court of Appeal appeared to think, then the court ought to have taken into account the definition of that term by Wood, JSC (as she then was) in the more recent case of **Republic v. High Court, Ho Exparte Awusu(No.1) (Nyonyo Agboada(Sri III) Interested Party)[2003-2004] SCGLR. 864.** The word "aggrieved" in that case came up, not out of the provision of a statute, but in

connection with the locus standing of a non-party to bring an application for certiorari to quash a judicial decision. At page 878 of the Report the legal luminary said as follows;

"By "person aggrieved" is meant the person directly affected by the order complained of. In real terms then, he is the person against whom the order is directed, or whose legal rights have been infringed by the order impugned or who has any other legally recognizable or substantial interest in the impugned order."

This definition of "aggrieved" cast the net wider to include a non-party to the impugned decision. In that case, a non-party was held to be sufficiently aggrieved to apply for certiorari to quash a decision given in proceedings he was not a party to. Because of the substantial nature of the question of the right of appeal by a non-party, we have decided to consider it with some depth despite that it was not fully argued before us, after all the law is said to be in the bosom of the judge.

The right of appeal from any decision, be it by a court, tribunal and even an administrative official, is a substantive right and is conferred by the Constitution or substantive enactment and not the procedure rules. What the rules of procedure do is only to direct how such a right will be actualised in the forum conferred with jurisdiction to hear and determine appeals. See; **Republic v High Court, Koforidua; Ex parte Ansah Otu [2009] SCGLR 141 at page 152.**The appellate jurisdiction of the Court of Appeal over decisions of the High Court is conferred by Article 137(1) & (2) of the Constitution, 1992which are as follows;

(**1) The Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of this Constitution, appeals from a judgement, decree or order of the High Court and Regional Tribunals and such other appellate jurisdiction as may be conferred on it by this Constitution or any other law.**

(2) Except as otherwise provided in this Constitution, an appeal shall lie as of right from a judgement, decree or order of the High Court and a Regional Tribunal to the Court of Appeal.

The words of the Constitution are clear and do not require any interpretation. The provisions do not make any reference to a party to the proceedings in the High Court and there is nothing from the words that ought to lead to an interpretation that limits the right of appeal to parties only.

In **Akinola Maja & Ors v Harriet Johnson [1950-51] 13 WACA, 194,** in the unanimous ruling of the Court of Appeal, Verity, CJ held as follows;

"This is an application for leave to appeal by persons who were not parties to the suit in the Court below. The action was one brought by executors named in the alleged will of a deceased person to establish the will in solemn from. The learned Judge before whom the action came, found that the document propounded as a will was not executed according-to law and declared it to be null and void.

Affidavits exhibited in the present application, which is made ex parte, aver that although advised by Counsel that there are good grounds for appealing against the judgment the executors have given no instructions to lodge an appeal and indeed that they have stated that it is not their intention to do so.

The applicants are beneficiaries under the alleged will who would substantially benefit thereunder. Both were absent from Nigeria at the time of the proceedings in the Court below and one is an infant.

There is nothing in the West African Court of Appeal Ordinance (Cap. 229) to preclude the applicants from bringing an appeal, but there is nothing in the Rules of this Court prescribing the means by which they may do so. Rule 42 of the West African Court of Appeal Rules, 1950, provides, however, that when there is no provision in the Rules, recourse may be had to the practice for the time being in force in England.

Authorities referred to in the Annual Practice, 1949, at page 1325, establish that it is in England the practice that where a person might have been a party to the suit he may be granted leave to appeal against a judgment therein affecting his interest. In my opinion, the present applicants are in that position and I think this Court should exercise its discretion in their favour by granting the leave prayed."

Then, in the quite recent English case of **M.A. Holdings Ltd v George Wimpey UK Ltd, R (Of the Application of) & Anor [2008] EWCA Civ 12,** a non-party who considered itself directly affected by a decision of the High Court sought leave of the Court of Appeal to appeal against the decision but was opposed and one of the grounds of opposition was that the court had no jurisdiction to entertain the application because the applicant was not a party to the proceedings in the High Court. The court considered the interpretation that ought to be given to "Appellant" as defined in **Order 52 Rule 1(3)** of the English **Civil Procedure Rules, 1998,(CPR)**which govern appeals to the Court of Appeal, to determine whether the definition includes a person who was not a party in the court below. In dismissing the objection to the jurisdiction of the court, it was stated at paragraph 17 of the judgment by Lord Justice Dyson as follows;

"17. I do not accept Mr Village's submissions as to the meaning of "appellant". I see no reason not to give the definition its plain and ordinary meaning. The word "person" in rule 52.1(3)(d) is not qualified by the words "who was a party to the proceedings in the lower court". If it had been intended to restrict an "appellant" to a person who was a party in the lower court, one would have expected the draftsman so to provide expressly, especially as he has done so in relation to a "respondent" in the definition in rule 52.1(3)(e)(i)."

In that case, the English Court of Appeal observed that at common law, which is part of the laws of Ghana by virtue of Article 11(2) of the Constitution, 1992, the court had always upheld the right of a non-party to appeal against a decision that is binding on her or affects here interest, subject to leave of the court. In fact, the practice at common law was stated in the case of **In re Securities Insurance Company**

[1894] 2 Ch D 410. There, Lindley, L.J with whom the other members of the Court of Appeal agreed, said as follows at page 413 of the Report;

"Now what was the practice of the Court of Chancery before 1862, and what has it been since? I understand the practice to be perfectly well settled that a person who is a party can appeal (of course within the proper time) without any leave, and that a person who without being a party is either bound by the order or is aggrieved by it, or is prejudicially affected by it, cannot appeal without leave. It does not require much to obtain leave. If a person alleging himself to be aggrieved by an order can make out even a prima facie case why he should have leave he will get it; but without leave he is not entitled to appeal."

Also, in**Re B (an infant) [1958] 1 QB 12.** Lord Evershed MR said at p 17:

"But, in any event, in my judgment, the general jurisdiction conferred upon this court by R.S.C., Ord. 58, would suffice if it could not properly be said that the mother was here a "party" to the proceedings within the meaning of section 105 of the County Courts Act, 1934. According to the note on p.1244 of the Annual Practice, 1957 ed., it is said: "But in addition, in accordance with old Chancery practice, any person may appeal by leave (obtained on ex parte motion to the Court of Appeal) if he could by possibility have been made a party to the action by service"; and a number of cases are cited. There cannot be any doubt that by possibility the mother could have been made a party, in the strict sense, by being a respondent to the application and, in fact, in the present case leave was given by this court for the mother to bring the matter here. I, therefore, am satisfied in this case that there is jurisdiction in this court to hear and determine the question of the validity and propriety of the order of February 25 as upon an appeal."

So, by the settled practice of the Court of Appeal, a non-party always had the right to appeal against a judgment that binds her or prejudicially affects her interest except that it must be with the leave of the Court of Appeal.

In the case of **Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717,** at page 721 Atuguba, JSC, delivering the unanimous judgment of the court said as follows;

"Nonetheless, it is always necessary to bear in mind that the law making body legislates with the existing law in view and is not deemed to alter the same except in the extent provided expressly or by very necessary implication. In this regard, the established practices of the courts cannot be discounted in applying the law…Thus in R v Chancellor of St Edmundsbury & Ipswich Diocese; Ex parte White [1948]1 KB 195 at 216, CA, Wrottesley LJ, forcefully stated thus;

'In the interest of all concerned, and particularly of litigants, a long settled practice of a court of record…is not to be disturbed except by establishing that a departure from it is necessary in order to do justice to an applicant who can get justice in no other way, and to whom the court has always had jurisdiction to grant the relief prayed for. A heavy burden lies, therefore, on those who challenge a practice so long settled.'"

On a whole reading of the **Court of Appeal Rules, 1997 (C.I.19)**as amended, being a party in the court below has not been made a precondition to filing an appeal in the court. The provisions of C.I.19 that appear to be relevant to the question who may appeal against the decision of the court below are Rules 9(8), 10 and the definition of "Appellant" in Rule 67. They are as follows;

9 (8) For the purposes of sub rule (4) of this rule and rule 28, *where a person has applied to the court below* for extension of time within which to appeal and after a period of not less than one month the court below fails or refuses to grant the application, the applicant may subject to sub-rule (5) of this rule move the Court to determine the application. "

10. Service of notice of appeal

(1) The Registrar of the court below shall, after the notice of appeal has been filed, cause to be served a true copy of it on each of the parties mentioned in the notice of appeal.

(2) The Court may also direct the notice to be served on all or any of the parties to the action or other proceedings *or on any person not a party*, and may adjourn the hearing of the appeal upon such terms as may be just, and also make any order as if the person served withtl1e notice had originally been a party to the appeal.

67. "appellant" means the party appealing from a judgment, order or decree of a court below and his counsel.(Emphasis supplied).

It is instructive to recognise that Rule 9(8) is about a would-be appellant and in talking about the would-be appellant in relation to the proceedings in the court below the rule maker uses the general word "person" and not "party". Then Rule 10 (2) is explicit in stating that the jurisdiction of the Court of Appeal extends beyond the parties in the proceedings in the court below to include non-parties. Therefore, if the term "appellant" in Rule 67 is construed against the background of these other provisions, as it ought to be, it becomes plain that "party" in the definition of "appellant" refers to a party to the cause or matter before the Court of Appeal and not "party" to the proceedings in the court below. If it was the intention of the rule maker to depart from the settled practice of the Court of Appeal, it would have provided so expressly or by necessary implication.

It is true that C.I.19 does not contain Rules for the granting of leave to a non-party to appeal but as we have explained above, the settled practices of the courts, to the extent that they regulate a practice not provided for by the procedure Rules statutorily made, are binding on courts. We also are not unaware that in the precedent form of Notice of Appeal in C.I.19, it is mentioned that "plaintiff/defendant who is dissatisfied with the decision" of the court below. It is well known that precedent forms are to be used mutatis mutandis and in the circumstances here the form cannot preclude a non-party from appealing when the rules themselves have not so excluded such person.

A non-party may be bound by a decision in circumstances where estoppel per *res judicatem* would operate against her as a privy of a party in the case. An example is where judgment is recovered against a grantor of a large parcel of land, a grantee of part of that land who was not a party is nevertheless bound by that judgment as a privy of the grantor, unless she has a defence based on estoppels or the Limitations Act. See **Robertson v Nii Akramah II & Ors [1973] 1 GLR 445, C.A**, Holding (3). A non-party may also be bound by a judgment on account of the fact that, though she was aware of proceedings, she stood by and allowed her interest to be defended by a party. See **Egyin v Aye [1962] 2 GLR 187, SC.** In these stated circumstances, if the party decides not to exercise her right to appeal against an adverse decision, justice and fairness would demand that the non-party who is bound by the judgment be able to appeal against it, provided she does so within the time allowed for appealing and obtains the leave of the court.

There are also situations where a non-party may not be bound by a decision as such but the decision injuriously affects her interest substantially. Such was the case in **M.A. Holdings Ltd v George Wimpey UK Ltd, R (Of the Application of) & Anor (supra).** George Wimpey UK Ltd brought proceedings against the Borough Council of its locality for adopting a Local Plan which zoned its farmland within the area for residential development. It contended that the Council in adopting the plan did not comply with guidelines provided in the legislation. The Council contested the case. M.A. Holdings Ltd, an estate developer, owned freehold interest in the area and it was in its business interest for the residential zoning to be maintained. For that reason, it followed the case and even attended court regularly but it did not apply to join the case which would have been problematic since the basis of the action was in the nature of review of administrative action. At the end of the trial judgment was given against the Council. M. A. Holdings enquired from them if they would appeal against the decision and they indicated that they were not interested in appealing. M.A. Holdings therefore filed an appeal and applied for permission, as is required under the **CPR**, but George Wimpey

opposed it. In granting the permission to appeal the Court of Appeal at paragraph 25 of its ruling said as follows;

"The judge's decision to quash the relevant parts of the Local Plan affected MA's property interests. If an appeal would have real prospects of success, it would be a real injustice to MA to deny it the right of appeal. MA was no mere intermeddling busybody…"

Counsel opposing the application also argued that M.A Holdings opted not to join the proceedings in the High Court so its application ought to be refused but the court answered as follows;

"MA had no reason to seek to be added as a party to the proceedings. In the circumstances of this case, the fact that it (and others affected by the Local Plan) had an interest in the defence of the Local Plan was not sufficient to justify adding it as a party to the proceedings. [29]…The true analogue would be an application by MA to be added as a party to the appeal if the Council had been appealing. The fact that the Council had decided not to appeal completely changed the landscape."

There is also the instance of representative action, where a party represents a class to sue and after losing decides not to exercise the right of an appeal. A member of the class should be able to appeal since he stands bound by the judgment. This happens a lot in estate matters. See **Akinola Maja & Ors v Harriet Johnson (supra).** Also, in personal injury or death claims under **section 10 (1)** of the **Motor Vehicle (Third Party Insurance) Act, 1958 (No. 42 of 1958),** a claimant is required to first obtain judgment against the tortfeasor before proceeding against the insurer of the tortfeasor for enforcement of the judgment, provided at the commencement of the proceedings against the tortfeasor she served notice on the insurer. The decisions of our courts seem to suggest that the insurer cannot be joined to the initial proceedings. See **Amon v Katz [1976] 2 GLR 115, CA** and **Amponsah v Appeagyei [1982-83] 1 GLR 96.**The insurer is nevertheless bound by such a judgment and if there are

prospects of success in an appeal but the tort feasor decides not to appeal, justice would require that the insurer be permitted to appeal in her own name.

It is the policy of the law that, unless some prejudice or inconvenience would be occasioned to parties in a case, when a disputes comes before the court all persons with interest in the matter ought to be involved so that there is simultaneous resolution of the matter to avoid multiplicity of suits. That is the justification for enabling a non-party to appeal in the same case instead of embarking on multiple proceedings. Consequently, a non-party who is either bound by a judgment to which she was not a party or is aggrieved by it in that it prejudicially affects her rights in the subject matter of the judgment, may apply for leave to appeal in her own name against the decision.

In this case, if the appellant here could satisfy the conditions for grant of leave, it obviously comes within the class of persons who would be entitled to appeal against the judgment without being a party. It was aware of the proceedings but stood by without joining so estoppel of standing by would bind it to the judgment. Secondly, the judgment adversely affected its interest in the land subject matter of the case. However, the conditions for granting leave, which we shall discuss in detail *in fra*, will seem to suggest that, on the facts in this case where the defendants in the court below, whose interests are similar to that of the appellant herein has already appealed against the final judgment of the High Court, the appellant herein is not likely to be granted leave to appeal. If it was content to allow the defendants to defend its interest in the High Court, a judge may hold that it may as well allow the defendant to fight the appeal on its behalf.

The practice at common law, as stated above, was for the non-party who qualifies to appeal to apply by ex parte motion to the Court of Appeal for leave to appeal. In those days the applicable English enactments conferred the right of appeal from a decision of the High Court to the Court of Appeal as of right as we currently have in Ghana. The law in England has since been changed and appeals from decisions of the High Court to the Court of Appeal are no longer as of right but are subject to permission of the High Court or the Court of Appeal. The application for permission is made on notice to the

would-be respondents to the appeal. In our case, it is only in respect of appeals from interlocutory decisions from the Circuit Court to the Court of Appeal that the requirement of leave has been imposed. **Section 11(5) of the Courts Act, 1993 (Act 459)** states;

"(5) A person aggrieved by any interlocutory order or decision made or given by a Circuit Court may appeal to the Court of appeal against the order or decision with the leave of the Circuit Court and upon a refusal with the leave of the Court of Appeal and the Court of Appeal shall have jurisdiction to hear and determine any such appeal."

C.I.19, contains no Rules in respect this jurisdiction relating to the manner of applying and the grounds on which the leave referred to in section 11(5) of Act 459 may be granted. If this had been done, those Rules could easily be applied, with the necessary modifications, to applications by non-parties for leave to appeal. It is however provided under Rule 7 of CI 19 as follows;

"7. Matters not expressly provided for

Where no provision is expressly made by these Rules regarding the practice and procedure which shall apply to any cause or matter before the Court, the Court shall prescribe such practice and procedure as in the opinion of the Court the justice of the cause or matter requires."

The purpose of the law imposing the requirement of permission before certain proceedings may be embarked upon is in order to prevent abuse of the process of the court and weed out frivolous or vexatious proceedings. Consequently, there is the need for clear guidelines on applications for leave by a non-party to appeal in order that the procedure is not abused by meddlesome bystanders or those with frivolous or vexatious appeals. Guidelines will further ensure uniformity in the manner courts handle such applications until the Rules of Court Committee deem it necessary to enact Rules in that regard.

On the matter before us that has not been provided for, Rule 7 of C.I.19 gives the power to prescribe the practice to the Court of Appeal but since when the matter arose in that court it was not given the deserved consideration, we shall fall on our powers under Article 129(4) of the Constitution and provide some minimum direction hoping that the Court of Appeal will develop them further from case to case. For guidance we have taken note of the procedure provided in Rule 9 of C.I.19 for applications for extension of time to appeal and the decisions of our superior courts concerning leave to appeal in other situations. Though the practice in the Chancery courts of old was by ex parte motion to the Court of Appeal and the grounds for applying appeared relaxed, we think times have changed and the rules should be tighter. Therefore, the following guidelines shall apply where a non-party is desirous of appealing from a final decision of the Circuit Court or High Court to the Court of Appeal;

(i) No application for leave to appeal shall be made later than the time provided for under Rule 9 of C.I.19 for appealing or applying for extension of time to appeal;

(ii) An application for leave to appeal shall be by motion on notice to persons who would be directly affected by the appeal and shall be supported by an affidavit setting out good and substantial reasons for the application;

(iii) Leave to appeal shall not be granted unless the court is satisfied that;
   (a) the applicant is bound by or is prejudicially affected by or is otherwise aggrieved by the decision he seeks to appeal against; and
   (b) the intended appeal has reasonable prospects of success; or
   (c) for some other compelling reason leave ought to be granted.

(iv) At the hearing of the application for leave, if it shall be the case that a party in the court below with interests and motives similar to those of the applicant has appealed or indicated an intention to appeal against the decision, then the court shall take that fact into account in deciding whether or not to grant the application.

(v) An application for leave to appeal shall be made to the court below and upon refusal it may be made to the court.

(vi) Where a person has applied to the court below for leave but after a period of not less than one month the court below fails to determine the application, the application may made to the court.

(vii) Where leave is granted the pursuant notice of appeal endorsed with the date of the order granting leave shall be filed together with a certified copy of the order.

These guidelines are not to be considered exhaustive and may be added to by the Court in appropriate cases. In this case, the appellant did not obtain the leave of the court before purporting to appeal against the final judgment of the High Court so that appeal was a nullity on that ground.

Besides the circumstances discussed above where a non-party may obtain leave to appeal from a final judgment to the Court of Appeal, we wish for future guidance, to draw attention to the practice in respect of appeals by a non-party that may arise under**Order 43 Rule 9** of the **High Court (Civil Procedure) Rules, 2004 (CI 47).** The provision is as follows;

"Execution by or against person not being a party

9. (1) Any person, not being a party to the cause or matter, who obtains any order or in whose favour any order is made, is entitled to enforce obedience to the order by the same process as if the person were a party.

(2) Any person, not being a party to the cause or matter against whom obedience to any judgment or order may be enforced, is liable to the same process for enforcing obedience to the judgment or order as if the person were a party."

This rule,which was also enacted in **Or 42 R 24** of the **High Court (Civil Procedure) Rules, 1954 (LN 140A)**makes a non-party liable to the processes of execution in

respect of a judgment she was not a party to. It is conceivable that a non-party served with a judgment under Sub-Rule 2 above who is dissatisfied may wish to seek redress by means of an appeal. The "Supreme Court Annual Practice" 1970,volume 1 at page 592, in discussing the English practice in relation to Or 44 R 3 of the English Rules of the Supreme Court, 1965, which is somehow similar to our provision, states as follows;

"Appeal. A person served with notice and appearing and attending the proceedings may appeal to C.A against any order in action".

The practice under that provision is different from where a non-party is aggrieved without being served with the judgment with a view to enforcing it against such non-party. The practice does not mention the requirement of leave. However, our decision on what the practice in our jurisdiction ought to be with regard to appeals under Or 43 R9 of C.I. 47 is not required in this case so we shall leave it at that.

Finally, we wish to clarify an important point of law that arises in respect of the appeal against the ruling dismissing the appellant's motion to set aside the final judgment of the High Court. The appellant brought its application under **Order 4 Rule 5(7) of C.I.47**. The reason for the appellant's dissatisfaction with the decision of the Court of Appeal on this part of its appeal is that the order which directed the cancellation of its registration is void since it adversely affected its interest without it being served with the processes in the case. Appellant has referred to us the case of **Kumi v Nartey [2007-2008] SCGLR 623** but the reliance on that case is misplaced. That case involved non-service on a **defendant** who was **a party** in the case. The substance of the appellant's complaint in this case is that **it ought to have been joined** as a party in the case since its interest in the case was apparent from the relief prayed for by the plaintiff. But that is a case of **non-joinder** and the appellant correctly identified it as such hence it brought its application to set aside under Or 4 Rule 5 which has the sub-title; **"Misjoinder and non-joinder of parties"**. Rule 5(1) is as follows;

5. (1) ***No proceedings shall be defeated by reason of misjoinder or non-joinder of any party*****; and the Court may in any proceeding determine the**

issues or questions in dispute so far as they affect the rights and interests of the persons who are parties to the proceedings.(Emphasis supplied).

Consequently, it is inconsistent with the very Order the appellant relied on for it to contend that the judgment of the High Court is void because of the non-joinder it has referred to. Lawyers often confuse non-service of notice of hearing on a party to proceedings, which has the effect of rendering the proceedings void, with failure to join a person who ought to have been joined to proceedings, which does not nullify the proceedings but may only limits the binding effect of those proceedings on such person who ought to have been joined but was joined as a party. In **Republic v High Court, Accra; Ex parte Okudzeto & Ors CM J5/68/2017 unreported ruling of the Supreme Court dated 24/10/2018,** Anin Yeboah, JSC (as he then was) explained the position in the following words;

"The Order regulating the procedure is Order 5 rule 1 of the High Court (Civil Procedure) Rules which states thus:

'5(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of any party; and the court may in any proceedings determine the issues or questions in dispute so far and they affect the rights and interests of the persons who are parties to the proceedings.

(2) At any stage of proceedings the court may on such terms as it thinks just either of its own motion or on application

(a) Order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party.

(b) Order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party.'

It is usually the practice that parties may on application join new parties to the suit or persons not parties may apply to join the suit for the sole purpose of fulfilling the objects of the above-quoted rule so that there would not be any multiplicity of suits and thereby allowing the court to completely and effectively determine all the issues in controversy. This is the ideal situation as illustrated by cases like APPLICATION FOR JOINDER, IN RE: DIVESTITURE IMPLEMENTATION COMMITTEE, APPLICANTS; SAME No. 1 v ATTORNEY-GENERAL [2010] SCGLR 102, AGO SAI v KPOBI TETTEH TSURU [2010] SCGLR 762 and USSHER v DARKY [1977] IGLR 476 CA. However, in the absence of the joinder of all the proper parties the trial court's jurisdiction could not be said to be lacking."

Therefore, the substantive judgment of the High Court in this case was not void and the attempt by the appellant to apply by motion to set it aside relying on our decision in **Nai Otuo Tetteh v Opanyin Kwadwo Ababio [2017-2018] 2 SCLRG 641** was misconceived and rightly dismissed. As explained above in relation to Or 43 Rule 9, it is within the contemplation of the procedure rules that a court may, in appropriate circumstances, give a judgment for the benefit of a non-party or against a non-party and execution may be levied against such non-party. Such a party may seek redress through the appropriate procedure and show that such order ought not to have been made against her, but certainly not by motion on the ground that the decision is void on account of non-joinder.

In sum, there is no merit whatsoever in the appeal and it is accordingly dismissed. Subject to the correction of the Court of Appeal explained above, their judgment of 28th May, 2020 is affirmed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
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