IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: DOTSE (PRESIDING)
KOTEY JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC

CIVIL MOTION
NO. J5/01/2022

15TH DECEMBER, 2021

THE REPUBLIC ..... RESPONDENT

VRS

HIGH COURT (COMM COURT 7), ACCRA ..... RESPONDENT

EX PARTE:

MINISTRY OF INTERIOR

ATTORNEY-GENERAL ..... APPLICANTS

NATIONAL TRUST HOLDING COMPANY LTD. ..... INTERESTED PARTY

RULING

TORKORNOO (MRS.) JSC:-

In one of Gilbert & Sullivan's satirical comedy productions in the 1880's called The Mikado, there is a character called Koko who lived in the Japanese town Titipu. He was

condemned to death for flirting at a time that the Mikado of Japan had decreed flirting to be a crime punishable by decapitation. In order to frustrate the implementation of the law, the people of Titipu appointed Koko to the office of the Lord High Executioner and pushed Koko's name to the top of the list of those to be executed for flirting. This resulted in a situation where Koko had to put his head on the chopping board, get up and take up the axe to decapitate his own head, and finding that his head is not there, go through the whole routine again. Suffice it to say that the execution was frustrated time and again. It is this complexity of roles resulting in multiple appearances in different capacities that the Attorney General of Ghana and Minister of Justice has found himself in, in this action.

Background to the Application

Under Article 88 of the 1992 Constitution, the Attorney General is the constitutionally mandated agent of the Government responsible for the institution, conduct of all civil cases on behalf of the state, and also defence of all civil proceedings against the State.

In this multiplicity of roles, the proceedings before us show that he was sued with eight others in a claim commenced by the Interested party herein in March 2017. The title of the suit is **National Trust Holding Company Ltd v Santa Baron Ventures Ltd and 8 Others,** with **suit number CM/BFS/0194/2017**. The Minister of Interior is 8th defendant and the Attorney general is the 9th defendant in the suit. According to the affidavit attached to the application before us, though there was no contract between the State and the Interested Party as Plaintiff, the suit was indorsed with the following claims by the Plaintiff in the High Court

a. Jointly and severally against the Defendants the payment of the liquidated sum of GHS 135,190,410.83 being an amount owed to the Plaintiff in principal and interest as at 31/01/2017 under a loan advanced to the **1st, 2nd, 3rd, 4th, 5th, and 6th defendants** under five facilities between 21/06/2013 and 21/02/14
b. Commercial interest on the said sum of GHS 135,190,410.83 from 31/01/2017 till date of final payment

c. Cost
d. Any further or other relief

According to the applicants, though the Attorney General entered appearance, it was met with stone wall silence from the Ministry of Interior and the Ghana Police Service, the agency that drew the State into the transaction that the six defendants were supposed to have conducted with the Interested Party. Neither the Ministry of Interior nor the Ghana Police Service provided the Attorney General with any information or records to allow it to defend the State against these claims.

Judgment on admissions was entered against the first six defendants on 13th July 2017.

First Garnishee Order

On 10th August 2017, the high court granted a garnishee order nisi directed at the head of treasury of the Ministry of Finance to appear in court on 17th August 2017 to show cause why the Ministry of Finance should not be ordered to settle the judgment debt of the 1st to 6th defendants.

This means that essentially, though no judgment had been entered against the State, after being sued as 8th and 9th defendants, the Interested Party turned to the State, not as defendants, but as a third party ostensibly with funds belonging to the judgment debtors that the Interested party had obtained a judgment against. So, heads, the State was pursued as defendant, and tails, it was pursued as garnishee.

According to the affidavit of the State Attorney before us, the garnishee order nisi was made absolute on 17th August 2017 and the Ministry of Finance was ordered to pay the sum of Ghc9,792,000 to the Interested party herein. The Ministry paid Ghc20,000,000 to the Interested Party – a sum that is arithmetically 10 million Ghana Cedis more than the sum they were ordered to pay as part payment of debt owed by the Ghana Police Service to the 1st and 6th defendants. My lords, the submissions before us indicate that all this while, the Ghana Police Service had maintained its muteness, and the Ministry of Interior, as its supervising Ministry, had maintained that it had nothing to say unless the

Ghana Police Service spoke in response to an explanation for the claims of the Interested party.

According to Applicant, this judgment that was being executed was thereafter set aside on 11th December 2017, on application by the 1st to 7th defendants. A referee was appointed to go into the accounts of the parties and the referee determined that a principal amount of Ghc23,321,005 was owed to the Interested party by the 1st to 7th defendants. On 23rd January 2020, the high court made a determination of interest, and awarded interest at Ghc69,452,001 and penal interest of Ghc71,630,587, on this Ghc23,321,005 with cost of Ghc2 million. It is not clear if a new judgment was entered in these sums and on what day, making that date the date of entry of judgment and against which defendants.

It is not clear how much the Ministry of Finance paid out of these principal, interest, penal interest and cost but according to the Applicants before us in this proceeding, the Ministry of Finance paid '*all the debt owed*', and this full payment included Ghc7.7 millionthat was paid in excess of what was owed.

Second and Relevant Garnishee Proceedings

Thereafter, the court granted to the Interested Party again another Garnishee Order nisi on 8th February 2021 directed at the Head of Treasury of Ministry of Finance to show cause why monies held in an account at the Bank of Ghana and any other Ministry of Finance account at other banks in Ghana should not be attached in satisfaction of the judgment debts of 1st to 7th defendants. The court ordered this Garnishee order Nisi to be served on the Head of Legal, Ministry of Finance, Head of Treasury, Ministry of Finance, the Attorney General and Bank of Ghana, and the return date for hearing was fixed therein for 9th March 2021.

The Ministry of Finance wrote to the Governor of the Bank of Ghana, copied to the Interested Party through the chairman of its Board of Directors, and the Court through the Registrar, that it did not owe the defendants or anyone claiming through it. At the hearing of the second garnishee proceedings on 19th July 2021, it is the case of the

Applicants that as garnishee ordered to appear before the court, its representative was present in court, as well as an employee of Bank of Ghana called Samuel Nkrumah. The applicant goes on to depose through its Attorney that notwithstanding having been served with an order nisi to appear as a garnishee before court to show cause why monies held in Account Number 1018431479036 at the Bank of Ghana should not be attached in further satisfaction of a judgment debt against the 1st to 7th defendants, the representative of the Ministry of Finance was ignored, and only the Bank of Ghana employee was put into the witness box and examined.

According to the Applicant, without taking evidence from the Ministry of Finance, the court went on to make the Garnishee nisi order absolute on 19th July 2021.The State, through the Attorney General, applied to court to set aside its order on account of this failure to hear the Ministry of Finance, and the court refused this application on 23rd August 2021.

Application for Certiorari

It is the case of the Applicant before us that per the Garnishee order nisi that was heard on 19th July 2021, the Ministry of Finance was the garnishee and not the Bank of Ghana. Again, though neither the Attorney General nor the Ministry of Interior are judgment debtors in the suit under execution, the court order described them as judgment debtors.

The applicants are praying for an order of certiorari to quash the proceedings and order of the high court, Commercial Court 7 of 19th July 2021, on account of its failure to take evidence from the Ministry of Finance which is the garnishee it had summoned to court, and entering a garnishee order absolute to the tune of Gh34,794,406.92 from the accounts of the state with the Bank of Ghana, without hearing from the garnishee that is the principal of that account.

OPPOSITION AND CONTENTIONS OF INTERESTED PARTY

The Interested Party has opposed this application on four grounds. The first is that this application is premature. The second is that there is no error of law or fact on the face of the record of proceedings of 19th July 2021. The third is that the applicant was given the opportunity to be heard, but waived its right to be heard by appearing in court and exercising an option to be mute. The Interested Party's last ground of opposition is that there are inappropriate allegations of fraud and or inappropriate behaviour against the Interested Party in the affidavit and submissions of the Applicant that ought to be expunged by this court.

CONSIDERATION

We think that this dispute is easily resolved by an understanding of who a garnishee is, and what the law prescribes as necessary in garnishee proceedings and the difference between Bank of Ghana and the Ministry of Finance represented by the Attorney General in the proceedings of 19th July 2021.

Garnishee and Garnishee Proceedings

A garnishee is a third party who must be holding money exclusively for a judgment debtor. Indeed if the money held by the garnishee is in the joint names of the judgment debtor and another, and due to them jointly, the authorities from around the world are divided with the position that a court cannot attach the money in such an accountbecause no one of the account holders has any right to the money without the other (See **Macdonald v Tacquah Gold Mines Co [1884] 13 QBD 535);** or the court may attach such money, and conduct an examination where there is strong prima facie evidence that the funds in the account actually belong solely to the judgment debtor, **(Timing Limited v Tay TohHin& Another – [2020] SGHC 169)**; or an examination of same will prejudice the bank in its duties to the other joint account holder and so such an account may not be attached **(One Investment and Consulting Limited and Another v Cham PohMeng (DBS Bank Ltd) Garnishee [2016] 5 SLR 923**), or such accounts may be attached after due process assurances that ensure that the funds released by the garnishee belong identifiably to the

judgment debtor (**Meyiri Company Ltd v SIC Financial Services and Stanbic Bank Ghana Ltd (as Garnishee) CM/RPC/0307/20**). These various positions show the level of sensitivity around ensuring that moneys taken to answer the debt of another from a third party garnishee justly belong to the judgment debtor, and do not compromise the rights of anyone else.

So essentially, garnishee proceedings are conducted to establish the liability of the garnishee to the judgment debtor regarding funds held by the garnishee, and the availability of such funds to pay the debt to the judgment creditor. In garnishee proceedings, the court establishes that there is a debt in favour of the judgment debtor from the garnishee, and then seizes **that money belonging to the judgment debtor** in the hands of the garnishee, to hand over to the judgment creditor in settlement of the debt of the judgment debtor. **S. KwamiTetteh** in his invaluable book ***Civil Procedure, A Practical Approach*** 2011, sets out a succinct description of this process on page 1025.

In the rules of court, Garnishee Proceedings are regulated by **Order 47 of the High Court (Civil Procedure) Rules, 2004 CI 47**. The legal nature of a garnishee that is ordered to appear in court is very clearly explained in the very opening rule of Order 47

Attachment of debt due to judgment debtor

1(1*)* *Where a person in this Order referred to as 'the judgment creditor' has obtained a judgment or order for the payment of money by some other person referred to as 'the judgment debtor' and the judgment or order is not for the payment of money into court,* ***and another person within the jurisdiction, referred to as 'the garnishee' is indebted to the judgment debtor****, the Court may, subject to the provisions of this Order and of any enactment, order the garnishee to pay the judgment creditor the amount of any debt due or accruing to the judgment debtor from the garnishee, or as much of it as is sufficient to satisfy that judgment or order and the costs of the garnishee proceedings*

Within the Rules of court, it is clear that what is required is that the garnishee is indebted to the judgment debtor. These moneys which rightly belong to the judgment debtor, are redirected to the judgment creditor.

47 (2) deals with how the application for garnishment ought to be made. It commences with an application ex-parte that must be supported by an affidavit that (1) identifies the judgment to be enforced, (2) states the amount remaining unpaid under it at the time of application, (3) states that the garnishee is within the jurisdiction, and (4) states that the garnishee is indebted to the judgment debtor. All of these four factors must be made clear to the judge who grants the order nisi.

Order 47 (3) and 47 (4) are extremely relevant to explaining the requirements of the proceedings that must occur at the hearing of garnishee proceedings.

Service and effect of order to show cause

(3) (1)*An order under rule 1 to show cause shall, at least seven days before the time appointed for the further consideration of the matter, be served on the*

a. garnishee personally; and

b. judgment debtor unless the court otherwise directs

(2)*Service of the order shall bind the garnishee as from the date of service on the garnishee any debt specified in the order or as much of it as may be specified*

No appearance or dispute of liability by garnishee

4(1)*Where on the further consideration of the matter the garnishee does not attend or does not dispute the debt due or claimed to be due from the garnishee to the judgment debtor, the Court may, subject to rule 7 make an order absolute under rule 1 against the garnishee*

The language of these rules are extremely clear. A garnishee must necessarily be indebted to the judgment debtor. A garnishee must be served personally. The court cannot make the order absolute without hearing the garnishee unless the garnishee

does not attend court or does not dispute the debt due or claimed to be due from the garnishee to the judgment debtor. A third party is not made a garnishee just because a judgment creditor's debt is not fully satisfied.

Was the person summoned as garnishee of the 1st to 7th defendant/judgment debtors heard on 19th July 2021?

We have read closely the opposition of the Interested Parties before us and the submissions of their counsel, read the garnishee order nisi, and the relevant proceedings that made the order nisi absolute. And in this situation that the Applicant is urging a breach of the rules of natural justice in their capacity as a garnishee summoned before a court, it is not enough to read only the proceedings of 19th July 2021. The order nisi is critical in ascertaining whether the Applicant is right that it was summoned to show cause why money the State is holding for the judgment debtor ought not to be paid to the judgment creditor. Because as set out earlier, a garnishee cannot be a garnishee unless it holds money that belongs to a judgment debtor. And secondly, the rules of court require that a court may not make the order nisi an order absolute, unless there is a further consideration of the questions raised in the order nisi on the return date indicated thereon. It is only when the garnishee does not attend court after being summoned via an order nisi, or does not dispute the debt due to the judgment debtor, that the court may make the order nisi absolute.

The gravamen of the opposition of the Interested Party does not deny that as plaintiffs with a judgment against the first six or seven of the defendants, they obtained agarnishee order nisi against the Ministry of Finance. This is exhibit AG3. Neither do they deny that the account they sought to attach at Bank of Ghana is the account of the State, and as such under the control of the Ministry of Finance. The proceedings of 19th July 2021 in which the Applicant decries not being heard are attached as exhibit AG8.

We have looked at Exhibit AG3 and the garnishee named therein, and against whom the order to show cause is written in bold letters as '**Head of Treasury, Ministry of**

Finance' and find clearly thatthe Bank of Ghana **<u>was not</u>** a garnishee summoned to court by exhibit AG3. The only garnishee on that order is the Ministry of Finance. Exhibit AG3 however directs that other persons being the Head of the Legal Department of the Ministry of Finance, the Head of Treasury of the Ministry of Finance, the Attorney General's department, and the Bank of Ghana are to appear before the court. The order did not make clear why they were summoned.

And it is easy to understand why the order nisi on which the proceedings of 19th July 2021 were premised **did not invite Bank of Ghana as a garnishee** to court. After all, it is not plausible that the Bank of Ghana was at any time indebted to the judgment debtors, and this is not anyone's case. Bank of Ghana does not hold accounts for companies and individuals as the 1st to 7th defendant who are supposed to be the judgment debtors in the suit CM/BFS/0194/2017 are. Bank of Ghana holds the accounts of the State. Thus it is only in execution of the debts of the State, or whatever special circumstances will make the Bank of Ghana a third party with money for an individual or company, that Bank of Ghana can become a garnishee, because it, by itself as an institution, would be holding money to the credit of the judgment debtor.

So was the Ministry of Finance, as garnishee ostensibly holding money to the credit of the judgment debtors, heard in the garnishee proceedings that were heard on 19th July 2021 that were tendered as exhibit AG8?Two institutions are described as 'Garnishee' in the record of those who appeared before court. Bank of Ghana, and Ministry of Finance. One David Agbale of the Ministry of finance (as garnishee) is recorded as present. A representative of Bank of Ghana (as garnishee), Samuel Nkrumah is recorded as present.

The proceedings are clear that no questions were asked of Mr Agbale, as representative of the Ministry of Finance. He was not put in the witness box and no questions were asked of him whether the Ministry of Finance holds money to the credit of the judgment debtor - the only basis of a garnishee proceeding.

Rather, the representative ofBank of Ghana was questioned as to whether the Bank had received a garnishee order to show cause why '*sums should not be paid in satisfaction of the judgment debt in this matter*'. His answer was yes. He was asked what he did when he received the order, and the instructive answer was: '*The particular account in the name of Ministry of Finance (MoF) was blocked*'. Thereafter, he tendered a statement on that account belonging to Ministry of Finance, and he was cross examined as to whether there is any reason why this money should not be paid to the judgment creditor. His answer was no. It is on the strength of these proceedings that the court before us made the garnishee nisi order addressed to the Ministry of Finance absolute.

Respectfully, whose judgment debt was being executed in these proceedings? The judgment debt of 1st to 7th defendants or the judgment debt of 8th to 9th defendant? If it is the judgment debt of 8th to 9th defendant, how were the proceedings of 19th July 2021 related to the garnishee order nisi issued on 8th February 2021, because that order nisi (exhibit AG3) does not speak to a debt of the State. That order nisi was clear that the Ministry of Finance was to come to court to show cause why its account at Bank of Ghana cannot be attached in satisfaction of '*judgment debt against 1st to 7th defendants*'.

So if in these proceedings of 19th July 2021, Bank of Ghana was brought to court as a garnishee as the recording of persons present on exhibit AG8 shows, whose debt had Bank of Ghana been garnisheed to pay, and where is the garnishee nisi issued against Bank of Ghana as a garnishee of the State as a judgment debtor, a liability which is critically different from any liability that may have been incurred by the 1st to 7th defendants as judgment debtors against who judgment was entered ostensibly in 2017 and vacated in December 2017 and later restored ostensibly in January 2020?

We have read the affidavits with attachments presented by the parties as well as their submissions and are satisfied that despite the vigorous opposition of the Interested party, it has itself indicated that the proceedings of 19th July 2021 were supposed to be related to a judgment against the 1st to 7th defendants. This is found in the opening

words of paragraph 6 of the affidavit of Abdul-Bashit Abdulai of National Trust Holding Company ltd in the words:

6. '*That the Interested Party is executing a judgment against the 1st to 7th defendants who were in turn, owed substantial sums of money by the Ministry of Finance*..'

This averment clearly shows that the only garnishee that could have been brought to court, as rightly stated on the order nisi of 8th February 2021, is the Ministry of Finance. A GARNISHEE IS THE PERSON WHO IS SUPPOSED TO HAVE THE MONEY OF **THE JUDGMENT DEBTOR'**, and not just anyone who is known to hold the purse of the garnishee, such as Bank of Ghana.

The purpose of garnishee proceedings is to ascertain if the garnishee has money for the judgment debtor, and not whether the garnishee has money of its own which may be taken to satisfy a judgment debt it has not itself incurred. No court can attach a third party's money to pay for the debt of a judgment debtor unless that third party has money that actually belongs to the judgment debtor and it is only that third party that can answer that extremely critical question on liability to the judgment debtor. Garnishee proceedings are meant to ascertain liability of the garnishee with respect to funds of the judgment debtor, and not availability of money owned by the garnishee.

The court of appeal in **State Construction Corporation v Hasnaw Co Ltd [2001 - 2002] 2GLR 141** clarified the essence of garnishee proceedings and pointed out the critical issues that must be addressed in garnishee proceedings. If the garnishee does not appear, or appears and does not dispute the debt, then an order may be made. If the garnishee appears but does dispute a debt between itself and the judgment debtor, then the settling of that liability, if the judgment creditor insists that the garnishee has the money of the judgment debtor, becomes the duty of the court.

Having laboriously clarified this legal point, we must agree that to the extent that the Ministry of Finance attended court on the date for consideration of the order nisi, then a duty was imposed on the court to ascertain whether the State, represented by the Ministry of Finance, had money belonging to the 1st to 7th defendants. As such, to the

extent that the representative of the Ministry of Finance was not called upon to speak on whether the State owes the 1st to 7th defendants as at 19th July 2021, **the Ministry of Finance was not heard in the garnishee proceedings of 19th July 2021.**

The Interested party strangely urges in paragraph 9 of its affidavit in opposition that this application is misconceived because the trial court was not called upon by the Applicant to determine the issue as to quantum of debt owed by 1st to 7th judgment debtors and between them and the State. I think the misconception lies with the Interested party. Because by Order 47, it is the trial court itself that is supposed to be presiding overgarnishee proceedings to conduct an examination of whether the garnishee has money to the tune of the quantum of the debt of the judgment debtor and why it may not be paid to the judgment creditor. If the court did not ensure that the court was utilized for this process was done, then the proceedings were extremely irregular, and did not constitute a hearing of the garnishee summoned by the court. Courts are not to be passive observers who are directed by the parties before them. Courts are independent administrators of justice, and justice arises from compliance with the rules that the courts administer. An evasion of compliance constitutes an error of law that leads to invalidity.

The Interested party again urges that though the applicants were in court, it is the applicant who did not exercise their right to be heard. This is very strange indeed. Who manages a court? Can a garnishee summoned before court insist on being heard if no one calls on them to be heard? Will they not be in contempt? If the court allows a person that is not a garnishee for the judgment debt that was the subject of attachment to be heard instead of the garnishee for the judgment debt that was the subject of attachment, can insistence on being heard be an option for the garnishee who has attended court?

We are satisfied that in the light of the considerations above, our jurisdiction has been properly invoked and in the proceedings of 19th July 2021, the high court judge acted outside an express statutory duty imposed upon it by all of **Order 47 Rules 1 to 5** when it entered a garnishee order absolute without hearing the person the court had

summoned in a garnishee order nisi. See the decision of this court in **Republic v High Court Accra, Ex Parte Industrialization Fund for Developing Countries 2003 - 2004 1 SCGLR 348**on the nature of error that allows for the invocation of an order of certiorari. The error made by the court in entering a garnishee order absolute when the court had not heard the garnishee that the court's own order summoned before it, on the only matter relevant to garnishee proceedings – that is, if the garnishee had money belonging to the 1st to 7th defendants and if so, why that money could not be paid in satisfaction of their judgment debt, constituted an error of law on the face of the record, and is so fundamental to the jurisdiction of the courts in garnishee proceedings that it made the impugned decision a complete nullity. See also **Republic v Court of Appeal; Ex parte Tsatsu Tsikata 2005 – 2006 SCGLR 612,** cited to us by those counsel.

Not only was there a breach of the natural justice rule of audi alteram partem in the non-hearing of the Ministry of Finance's representative, which put the court's order out of jurisdiction, but the proceedings were on their very face, extremely irregular in hearing an alleged garnishee who had not been summoned to show cause for a debt, and who was not known to hold any money for the judgment debtors.

CONCLUDING OBSERVATIONS

We think that the proceedings brought to us express a very unfortunate set of events that should never have occurred in our courts. It sounds stranger than fiction. Can it be possible that our courts are being handled with such diffidence, that they grant orders against third parties the court had itself summoned, though those third parties are ignored in the proceedings that led to the court's final orders? Is it possible that persons with responsibility for state actions are so unaccountable that when the Attorney General is dragged to court, s/he cannot file pleadings because all institutions become mute, and no one can compel them to speak? Is it possible for the State to be dragged to court as a 'hanging' defendant without any contract between it and the plaintiff and nobody is ready to speak up concerning what the State is supposed to be doing in the case? Is it possible that judgment is entered piecemeal against the first

seven defendants in a suit without a hurried ascertainment of what the actual debts are, and the judgment is set aside five months after it is entered, only to be restored three years later after there is a determination of accounts between the plaintiff and some of the defendants? And between the three years of the first and second judgment, the State claims it has overpaid the judgment creditor for whatever debt stands between the State and the judgment debtor, and there is no interest shown as to why the keepers of the treasury say they have overpaid another State institution, when the State attempts to dispute further execution of debt? Despite being a defendant with no cause of action between the State and Plaintiff (according to the Attorney General's representatives),the State is dragged in again as garnishee with debts owed to the judgment debtors, and on the date that the State is supposed to testify as to whether it actually holds money for the judgment debtors, the hearing is conducted only with the account holder for the State, and not the representatives of the State who have been recorded as being present in court? Respectfully, it has become critical that trial courts pay better attention to the matters that are presented to them, to which they enter orders and append their signatures as administrators of justice, because the final responsibility for what is entered as judgment stops with a judge. It is the judge who has a duty to examine and determine the legality of proceedings and accord the outcomes with validity because only the courts have a constitutional duty to determine what is just.

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

DOTSE JSC:-

I have read the erudite and incisive Ruling delivered by our Sister Torkornoo (Mrs) JSC in the case to which this relates. I agree with the statement of the facts, the reasoning and the conclusions reached therein.

One matter which I think we should address emphatically is the attitude of Senior Government officials in responding to requests from the Office of Attorney-General to enable them respond to the processes that had been filed against the Ministry of Interior and the Attorney-General, described therein as 8th and 9th Defendants in Suit No. CM/BES/0194/17 intitutled ***National Trust Holding Co. Ltd. Plaintiff/Judgment Creditor/Respondent v Santa Baron Ventures Ltd. and 8 Others.*** From records available in this application, reference *Exhibits AG (1b) (1c) (1d) and Exhibits AG (2a) and (2b)* series respectively, the impression is given that, M.D.A's either refuse or are reluctant to give the necessary information and or explanations to the Office of Attorney-General to enable them file the Defences and or processes required on time as expected of them.

For example, on 05/04/2017, a representative of the 9th Defendants, one Jasmin Armah, a Senior State Attorney wrote a letter to the Ministry of Interior informing them of the Writ of Summons and Statement of Claim that has been issued against them. They also requested that the necessary explanations be furnished their office, not later than 12th April 2017 to enable them file their responses accordingly.

Reminders were again sent to the 8th defendants on the 2nd May 2017 and 22nd September 2017. Reference *Exhibits AG (1b) (1c) and (1d)* respectively.

On the 13th of April 2017, the Chief Director of the Ministry of Interior, 8th Defendants responded by acknowledging receipt of the letter of 5th April 2017 and stated that they had also forwarded same to the Ghana Police Service for their comments.

Similar letter from the Ministry of Interior was written on 22nd May 2017 to the Office of Attorney-General in which they again stated that they were awaiting the comments from the Police Headquarters. See Exhibits (2a) and (2b) series in these proceedings.

It is therefore quite apparent that, if the processes to elicit the responses from the necessary (M.D.A.s) had been forthcoming and received on time, perhaps most of the default conditions in which the Office of Attorney-General finds themselves would not result.

We have adverted our minds to this dangerous phenomenon, and are of the opinion that, one way of addressing it, is to recommend the enactment of ***"Legislative Guidelines"*** to regulate and serve as a control mechanism, the relationship between the Office of Attorney-General and Ministry of Justice and (M.D.A.s) who access the office of Attorney-General because of the constitutional position of the Attorney-General as contained in Article 88 of the Constitution 1992. As a result of the above, we propose the following as ***"Legislative Guidelines"***, which we direct should be taken on board by the Office of Attorney-General and Ministry of Justice to help address the lapses that have characterized some unfortunate developments in this case and several others, in the past, and could happen in the future. It is to prevent this phenomenon from reaching dangerous and unprecedented levels of indecency that we propose the following:-

Guidelines to regulate conduct of public officials from whom explanation is required by the Attorney-General

1. The Administrative heads of the M.D.A.s must be the persons to whom such letters must be addressed to.
2. In order to ensure that the request letters are received by duly authorized personnel or officers, the said letters must be properly dispatched if the offices are in Accra or the Regional offices of the Attorney-General in the Regions and also duly dispatched and receipted.
3. Timelines in all cases must be given.

4. Punitive measures must be put in place for defaulting M.D.A.s.
5. These punitive measures must as a matter of urgency be quickly put in place by the Attorney-General on behalf of the President of the Republic of Ghana and these must be made to bite. This means that, there must be very stiff punitive measures designed to make unattractive any attempt to be either delinquent in the performance of their duties and or collusion to the detriment of their employers, and the state in general.
6. The lack of prompt response by the M.D.A.s, for whom the office of Attorney-General acts as legal advisors has in most cases, such as the instant one resulted in the award of punitive and aggravated damages/judgment against the Government. We however reckon that, a prompt response with the necessary explanation in most instances would have absolved Government of any liability. Under the circumstances we are constrained to give the following directives to avert these type of phenomena from occurring.
    i. The Receiving Officer at the M.D.A must sign his or her name, give the date received and particulars such as phone number, email and whatsapp number to enable him or her be reached with ease by the Attorney responsible for the case.
    ii. The Administrative Heads of the M.D.A.s must within 24 hours inform the political head or Executive Director or howsoever described of the contents of the request and the steps taken to answer it.
    iii. If as happened in the instant case, the responses are from another independent organisation like the (Police Service) then the Minister of Interior must deal directly with the IGP in a more expeditious manner instead of the informal manner in which this was dealt with at the Ministry of Interior. In view of the fact that time is of the essence in most of the issues which the Attorney-General deals with, strict timelines should be given in the guidelines that the Attorney-General will prepare and which will regulate the future conduct of the working relationship between the office of the Attorney-General and the M.D.A.s involved with the cases.

7. It is therefore our expectation that, the formulation and strict compliance with these legislative guidelines will stem the tide against the easy and rampant manner in which judgments are obtained against M.D.A.s despite the fact that there exist cogent defences in most cases.

ORDERS

The application by the 8th and 9th Defendants/Applicants for an order of Certiorari to quash the proceedings and orders of the High Court, Commercial Court 7, Accra in a Garnishee Proceedings, dated 19th day of July, 2021 in suit No. CM/BFS/0194/

2017 intituled National Trust Holding Company Ltd. Vrs Santa Baron Ventures Ltd. and 8 others, presided over by Her Ladyship Jane Harriet Akweley Quaye (Mrs.), succeeds and are hereby ordered to be brought into this Court for the purposes of being quashed and same are accordingly quashed by an order of Certiorari for the reasons contained in the rulings of this Court.

We also direct the Attorney- General and Minister of Justice to take steps to comply with the directives contained in this Ruling to ensure that the Constitutional role assigned to the Attorney- General under Article 88 of the Constitution is complied with by the Ministries, Departments and Agencies (M.D.A's).

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

COUNSEL

JASMINE ARMAH (PRINCIPAL STATE ATTORNEY) WITH HER AURIEL ASARE BOATENG (ASSISTANT STATE ATTORNEY) FOR THE APPLICANTS PRESENT.

KWAME BOAFO AKUFFO FOR THE INTERESTED PARTY/RESPONDENT.