IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, JSC. (PRESIDING)
DR. DATE-BAH, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
GBADEGBE,JSC

CIVIL APPEAL
No. J4 /12 / 2012

27TH FEBRUARY,2013

DANIEL ELIAS WILLIAM JOSEPH : PLAINTIFF
PER HIS LAWFUL ATTORNEY **/APPELLANT**
JOHN ADDAI **/APPELLANT**

VRS

1. OKOMFO ANKYE :DEFENDANTS
AMOAPONG STOOL **/RESPONDENTS**
/RESPONDENTS

2. THE LANDS COMMISSION
PER THE REGIONAL LANDS OFFICER, KUMASI

J U D G M E N T

GBADEGBE JSC:

On 7 November 2011 when the matter herein came before us in open court, we raised for the consideration of the parties by virtue of the authority conferred on us under rule 6(8) of the Supreme Court Rules, CI 16 a point of law that was carefully crafted by us as follows:

"Whether having regard to the time frames provided for in Rule 8(1) (a) of the Supreme Court Rules, CI 16 the appeal herein is properly constituted?"

Before proceeding further, we wish to say that the instant appeal arises from the refusal by the Court of Appeal to set aside a previous decision of the High Court by which an application for interlocutory injunction that was sought by the Appellant herein was refused. By its decision, the Court of Appeal affirmed the order of the trial court refusing the application for interlocutory injunction. The appeal to this court therefore from the decision of the Court of Appeal is in respect of the interlocutory injunction. The decision on appeal to us was delivered by the Court of Appeal on29 July 2011 while the notice of appeal to us was filed on 19 August 2011.

The parties having complied with the order of the court by submitting their respective responses to the said question, we now proceed to determine the question concerning the timeliness of the appeal herein. As the said point touches and concerns jurisdiction, we think it must be determined before the consideration of the appeal on the merits. In response to the question raised by us, learned counsel for the Appellant was of the view that the decision, the subject-matter of the appeal was final in nature and that the appeal which was filed therefrom on 19 August 2011 was filed within time. Learned counsel for the respondent, however, was of the opinion that the ruling the subject matter of the instant appeal was interlocutory and that in filing an appeal therefrom after the expiry of twenty-one days the appeal was improperly constituted and should be dismissed without a consideration of the merits. We observe that implicit in the response of the appellant to the question raised by the court is an admission that if indeed, the nature of the order appealed is interlocutory then the appeal is

improperly constituted as having been filed out of the statutory twenty-one days provided for by the applicable rule. Accordingly, our decision is limited to the question whether an interlocutory injunction is final or interlocutory.

We have carefully considered the submissions of learned counsel in the matter and have without any hesitation come to the conclusion that learned counsel for the respondent is right. In our view, the nature of an interlocutory injunction which is ordinarily made in between the issue of the writ and before judgment in an action is not final but interlocutory and it is surprising that notwithstanding the clear nature of such an order, we have been invited to accept a contrary view by the appellant. The urgings of learned counsel for the appellant is the more surprising when one considers the fact that at page 8 of the record of appeal in the body of the motion on notice for the order on which this case turns, he described the order sought in the following words:

"…..praying this Honourable Court for an order of Interlocutory Injunction to restrain the 1st Defendant/Respondent……"

In our view, an interlocutory injunction is one of the remedies available to disputants as an interim measure. Its purpose is to provide protective or provisional remedies to the parties between the commencement of the action and its final trial or determination. As an interim relief, it cannot in our thinking be transformed into a final order of the court by virtue only of an appeal therefrom to a higher court. Our courts have always construed such interim or interlocutory orders as not being final in their nature. See: REPUBLIC V HIGH COURT (FAST TRACK DIVISION) ACCRA; Ex-parte STATE HOUSING COMPANY LIMITED AND ANOTHER [2009] SCGLR 185.Since appeals are creations of statute, a party who desires to appeal must in order to confer jurisdiction on the appellate court first satisfy the requirement of the time frame provided in the enabling legislation-rule 8(1) (a) of CI 16. See: TINDANA (No 1) v CHIEF OF DEFENCE STAFF [2011] SCGLR 724.At page 731 in the TIndana case (supra), the Court expressed itself in a situation similar to that which confronts us in this appeal as follows:

"The result is that we do not have before us any appeal to be considered on the merits. It is to be observed that in such cases the court's decision is based essentially on the requirements of due process that all parties who desire to appeal in cases that have been tried must comply with the conditions under which the right of appeal has been conferred on them."

In our view, there is no answer in point of substance to the question posed by us as a simple arithmetical computation of time discloses that the appeal herein was lodged outside the mandatory twenty-one days provided for in rule 8(1) (a) of the Supreme Court Rules, CI 16. Accordingly, we have no discretion other than to strike it out.

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) DR. S. K. DATE BAH
JUSTICE OF THE SUPREME COURT

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

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

COUNSEL

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K. A. ASANTE-KROBEA FOR THE 1ST DEFENDANT/RESPONDENT/RESPONDENT .
NO APPEARANCE FOR THE 2ND DEFENDANT/RESPONDENT/RESPONDENT.