# IN THE SUPERIOR COURT OF JUDICATURE
# IN THE SUPREME COURT
# ACCRA, A.D.2013

**CORAM: G. T. WOOD (MRS) C. J (PRESIDING)**
**J. V. M. DOTSE JSC**
**ANIN-YEBOAH JSC**
**A. A BENIN JSC**
**J. B. AKAMBA JSC**

**CIVIL APPEAL.**
**No J4/28/2012**

**15TH AUGUST, 2013**

**THE REPUBLIC**

**VRS.**

**MICHAEL CONDUAH - - RESPONDENT/RESPONDENT/APPELLANT**

**EX-PARTE : SUPI GEORGE ASMAH - -APPLICANT/APPELLANT/RESPONDENT**

---

# JUDGMENT

## AKAMBA, J.S.C.

This appeal is against the judgment of the Court of Appeal, Cape Coast delivered on the 7th day of December 2011, convicting the respondent/appellant (herein after referred to simply as appellant) for contempt.

This case from its inception clearly demonstrates the deplorable handling of an interlocutory application by the High Court, Cape Coast pending before it without recourse to the rules of court. The result is the clear case of a comedy of errors compounded also by poor representation especially from the appellant's camp. The fact situation is reminiscent of what occasioned my respected and able brother Dotse, JSC to lament in the case of **The Republic vs Edward Acquaye, Ex Parte Charles Essel, in Civil Appeal No J4/11/2008 of 10th December 2008** thus: "This case is a classic example of how a small issue can be glossed over by an over zealous litigant and thereby introduce diversionary and irrelevant matters into the main body of the case." In the end the real issues for redress were glossed over in pursuit of non beneficial objectives.

FACTS

A brief statement of the facts which triggered the action would assist in appreciating the present outcome. On 21st June 2001 one Supi Mark Aaba (now deceased) initiated the suit when he applied to the High Court, Cape Coast for an order of Interim Injunction to restrain the appellant from exercising all public functions as chief until his status as Omanhene has been fully determined by the appropriate forum. The appropriate forum for the determination of the status of the appellant as Omanhene can only be a reference to the Judicial Committee of the Central Regional House of Chiefs. The High Court per Iris May Heward-Mills (as she then was), without any hesitation and deliberations, granted the interim relief restraining the appellant from among others, exercising all functions as Chief until the full and final determination of his status as Omanhene. From the records, there does not appear to be any writ pursuant to which the application was predicated.

Prior to the filing of the application for interim injunction, the appellant had been duly nominated, elected, appointed or installed as Omanhene of the Edina Traditional Area in accordance with the customs and traditions of the traditional area under the then Chieftaincy Act, 1971, Act 370. Following this event, the aforementioned late Supi Mark Aaba and others from Elmina, the seat of the newly appointed Omanhene, filed a petition at the Judicial Committee of the Central Regional House of Chiefs challenging the appointment and seeking his removal.

The said Supi Mark Aaba, the applicant /appellant /respondent (herein after simply referred as respondent) filed an application, before the same High Court, Cape Coast which granted the relief of interim injunction, citing the appellant for contempt thereof. The court after hearing the application convicted the appellant on 15th July 2002 of contempt (See page 6 and 27 of ROA) and sentenced him as follows:

"1. The Respondent within 48 hours after the delivery of this ruling is to file and serve an undertaking not to perform any public function as Omanhene until his status as Omanhene has been fully and finally determined.

2. The Respondent is further ordered to pay a fine of GH¢ 500.00

3. Cost of GH¢ 250.00 is awarded in favour of the Applicant."

The convict appealed against the order that same 15th July 2002. (See pages 27–28 and 31 of ROA).

Following this, the appellant (convict) filed an application before the High Court Cape Coast for stay of execution of the orders convicting him. The application was heard and granted by the said court differently constituted on the 31st July 2002 as prayed, pending the final determination of the appeal. (See page 32 of ROA)

On 26th July 2010, the respondent Supi George Asmah who had been substituted for the deceased Supi Mark Aaba applied to the High Court Cape Coast to commit the appellant yet again for his contempt of the original injunction order, citing certain continued activities. The High Court, Cape Coast constituted by Alhaji

M.A. Mustapha, J heard the application on 20th October 2010 and dismissed same on ground that the High Court lacked jurisdiction as the application is a cause or matter affecting chieftaincy.

The respondent who was aggrieved by the dismissal of his contempt application appealed to the Court of Appeal. The Court of Appeal after hearing the application ruled on 7th December 2011 setting aside the ruling of the High Court. It found the appellant guilty of contempt and sentenced him. It is against the aforesaid decision of the Court of Appeal that the present appeal lies to this court.

The appellant by his amended notice of appeal has filed the following ten grounds for determination by this court:

(i) The judgment cannot be supported having regard to the affidavit evidence on record.

(ii) The judgment is against the weight of evidence.

(iii) The Court of Appeal erred in law when it concluded that the contempt application filed at the High Court was not a cause or matter affecting chieftaincy to the extent that the wording of the order of interim injunction made it a cause or matter affecting chieftaincy.

(iv) The Court of Appeal failed to consider that the High Court did not have jurisdiction to have granted the order of interim injunction on the 27th day of June, 2001.

(v) The Court of Appeal failed to consider that there was no writ of summons filed at the High Court to warrant the grant of the order of interim injunction.

(vi) The Court of Appeal failed to consider that the irregularity in the High Court assuming jurisdiction and granting the order of interim injunction was so fundamental to warrant a setting aside of the order of interim injunction.

(vii) The Court of Appeal failed to consider that the pendency of a Petition at the Judicial Committee of the Central Regional House of Chiefs cannot be the basis for

the assumption of jurisdiction by the High Court to grant an order of interim injunction.

(viii) The Court of Appeal failed to consider that the respondent's contempt application failed to meet the required standard of proof.

(ix) The Court of Appeal failed to consider that the order of interim injunction of the High Court was ambiguous.

(x) The Court of Appeal failed to consider that the order of interim injunction by the High Court, being void, Respondent could not have applied to the Court of Appeal by way of an appeal to enforce same.

The first ground of appeal filed above is that 'the judgment cannot be supported having regard to the affidavit evidence on record' which is a ground commonly used in criminal appeals. This case being a civil action, the above statement of the omnibus ground is incorrect and in consequence is struck out. The correct statement of the ground is that stated in the ground (ii) the judgment is against the weight of evidence and this would be considered as such.

**Ground (ii) - Judgment is Against the Weight of Evidence.**

This ground alleges that the judgment is against the weight of evidence. Such omnibus ground invites us to take another look at the facts to ascertain whether the conclusions arrived by the Court of Appeal are borne out or not and to arrive at our own conclusion. In **Akufo-Addo vs Catheline (1992) 1 GLR 377 SC** this court observed that whenever an appeal is based on the omnibus ground for consideration the appellate court has jurisdiction to examine the totality of the evidence before it and come to its own decision on the admitted and undisputed facts. Thus when an appellant complains that the judgment is against the weight of evidence, he is implying that there are pieces of evidence on record which if applied properly or correctly could have changed the decision in his favour or certain pieces of evidence have been wrongly applied against him. The onus in such an instance is on the appellant to clearly and properly demonstrate to the appellate court the lapses in the judgment being appealed against. (See **Djin vs Musah Baako (2007-2008) SCGLR 686 at 687, holding 1).**

What factual lapses, if any, emerge for redress from the judgment of the Court of Appeal?

From the perspective of the Court of Appeal, the application that was brought before it was a simple one praying for the committal of the respondent (appellant herein) for his alleged blatant disobedience of court orders contained in exhibits S1 and S2. Exhibit S1 refers to the ruling of the Cape Coast High Court of 15th July 2002 convicting the appellant for his blatant disregard of the orders of the court which restrained him 'from exercising all public functions as a Chief until his status had been fully and finally determined by the appropriate forum'. Exhibit S2 refers to the order of interim injunction drawn on 27th June 2001 pursuant to the grant thereof on 21st June 2001.

The order for Interim injunction dated 27th June 2001 (See exhibit 2) was granted in the following terms:

"*It is hereby ordered that the parties are to meet with representatives from the Elmina Traditional Council to draw up a programme of action to enable the people of Elmina celebrate their festival with all dignity, pomp and style.*

*It is also ordered that pending their meeting and thereafter an Order of Interim Injunction be and is hereby granted restraining the Respondent from exercising all public functions as Chief until his status as Omanhene has been fully and finally determined by the appropriate forum."*

It was in defiance of the of the above injunction order that the High Court convicted the Appellant on 15th July 2002 as per exhibit S1 (See p 6 of ROA).

Following his conviction as per exhibit S1 the appellant applied and was granted a stay of execution by the High Court differently constituted on 31st July 2002 as follows:

*"In conclusion, I consider that this is a proper case where a stay of execution of the orders contained in the ruling of Heward–Mills J ought to be granted, pending the final determination of the appeal. The contemnor's motion is accordingly granted*

*and the execution of the orders contained in the ruling now complained of are hereby ordered to be stayed until final determination of the appeal."*

The application brought before the High Court Cape Coast, presided by Alhaji Mustapha, J. cited the appellant for his 'further and continuous disobedience of the order of interim injunction granted against' him. The High Court was wrong in failing to determine the contempt application before it with the excuse that it was a cause or matter affecting chieftaincy. This is because the issue before the High Court was simply to ascertain whether there was a decision or order restraining the contemnor (appellant herein) from doing something and if so whether he breached the order knowing that he ought not to do so and that he did so willfully. This position of the law is clearly expressed in the elements of a contempt charge outlined in **Rep vs Sito I, Ex parte Fordjour (2001-2002) SCGLR 322** as follows:

i. There must be a judgment or order requiring the contemnor to do or abstain from doing something.

ii. It must be shown that the contemnor knows what precisely he is expected to do or abstain from doing, and

iii. It must be shown that he failed to comply with the terms of the judgment or order and that his disobedience was willful."

The Court of Appeal satisfied itself on the facts led in support of the application for contempt brought against the appellant beyond reasonable doubt before considering the defence put up by the appellant. There is evidence on record that an order was granted which restrained the appellant from doing some act, notably, not to exercise any public function as Chief until his status as an Omanhehe has been fully and finally determined by the appropriate forum. The evidence also established the appellant's breach of the said order this time again hence he was called upon for his defence. The appellant's first defence was that the order of injunction, the basis of the application, was void. It is trite indeed to observe that an order of a court of competent jurisdiction is considered right until it is set aside or vacated. So long therefore that the order of interim injunction

issued out of a court of competent jurisdiction, such as the High Court, has not been vacated, the same is binding until set aside. It is therefore no defence to the present contempt application to state that the order is or was void. The appellant's next defence was that the order of interim injunction was reviewed by the order which convicted him for contempt. We will deal with the peculiar nature of a restraining order such as the interim injunction which makes each infringement amenable for redress later in this report. It is, however, sufficient to state for now, that it is not the case that the order which convicted him had in effect reviewed the original order. That certainly is a strange proposition of the law, to say the least. On the facts, the Court of Appeal was right in allowing the appeal and setting aside the ruling of the High Court of 20th October 2010. We do not find anything on the primary facts as found by the Court of Appeal that warrants a disturbance of their Lordships conclusions. There is no merit on this ground of appeal and it fails.

**Grounds of Error of Law**

**The Court of Appeal failed to consider that the respondent's contempt application failed to meet the required standard of proof. The Court of Appeal failed to consider that the order of interim injunction of the High Court was ambiguous**.

We will determine these two grounds of appeal together as they bear closely on each other. It is a basic requirement under our rules of procedure that a party who relies on allegations of misdirection or errors of law shall provide particulars of the said errors. (See rule 6 (2) (f) of CI 16, 1996 as amended). No such particulars have been provided here and we can only rely upon what Counsel for the appellant herein urged before the Court of Appeal. It was urged that since another High Court had stayed the respondent's conviction and sentence as contained in exhibit S1 the application before it for contempt was incompetent. This contention has been framed differently in this appeal wherein it is urged that an earlier conviction and sentence of the appellant for disobeying the order of

interim injunction has the effect of reviewing the initial order. Strangely however, the extent of the review has not been stated.

Be that as it may, it is important to stress that a judicial decision takes effect upon its delivery. Generally speaking such a decision does not lose its effect because of an appeal filed against it. The only means of suspending its execution is by an application for an order to suspend its execution. An order of stay of execution in the words of Taylor JSC "simply means the suspension of any process or procedure that would post date the judgment. If an applicant asks for such stay pending the hearing and determination of his appeal, then what he is in effect asking is that all processes that can be taken after judgment for the purpose, no doubt of satisfying the judgment should be stayed until the appeal is finally heard and a decision on it given." See per **Taylor, JSC** in **Rep vs Court of Appeal, ex parte Sidi (1987-88) 2 GLR 170 at 176.**

Thus the stay of execution granted on 31st July 2002 only succeeded in suspending any processes that could arise from the orders in exhibit S1 and not beyond.

In the circumstances of this case the respondent's contempt application was proved beyond reasonable doubt to the satisfaction of the Court of Appeal which then proceeded to consider the defence put forward by the appellant before arriving at its conclusion as to the culpability of the appellant. We are satisfied, having perused the record of appeal and the evidence led in support of the contrary contentions that the Court of Appeal was right in arriving at the decision having regard to the requisite standard of proof established by the respective parties. The respondent's application for contempt met the requisite degree of proof required in the circumstance. This ground of appeal fails.

In any case the argument to the effect that the subsequent grant of a stay of appellant's conviction makes the present application incompetent did not find favour with the Court of Appeal, and rightly so. The court held on the authority of **Republic vs Seshie, Ex Parte Dzelu IV, Court of Appeal, Civil Appeal No. 40/2001 of 9th May 2002 unreported** that where a prohibitive order of injunction is made by a court of competent jurisdiction forbidding the doing of an act, a subsequent stay of that order will not constitute sufficient justification for contravening that

order. In that case, the judicial committee of the Anlo Traditional Council (ATC) restrained the other defendants from outdooring the 2nd defendant as Torgbui Nukponku II. The defendants appealed the order, and in purported reliance upon section 27 of the Chieftaincy Act, Act 370 of 1971, which provides an automatic stay of execution upon filing an appeal, outdoored the 2nd defendant as Torgbui Nukponku. The High Court dismissed an application to commit the defendants for contempt of the judicial committee. The applicant appealed against the ruling on ground, among others, that section 27 of Act 370 applied only to interlocutory orders and not final orders and that in their view the order of the ATC was interlocutory. On appeal, the Court of Appeal allowed the appeal and convicted the defendants of contempt of court upon the view that the ruling of the Anlo Traditional Council (ATC) was interlocutory. The Court of Appeal held that where an act was prohibited (by an order of injunction) a subsequent stay of that order permits contravention of the order. The effect of automatic stay under section 27 of Act 370 did not take away the vested interest or rights until the final determination of the matter. (See Civil Procedure - A Practical Approach by S. Kwami Tetteh, p 939). Thus the grant of a stay of execution of a prohibitive order meant that the applicant would not be punished for disobedience of the order, so would a stay of execution of a mandatory injunction mean that the applicant for stay of execution must not be punished for not performing the act ordered.

A stay of execution of a judgment may be by operation of the rules or by order of a court. Section 27 of Act 370, the Chieftaincy Act, (1971) provides an example of stay of execution by operation of the rules as follows:

"*An appeal to the National House of Chiefs or to a Regional House of Chiefs shall operate as a stay of execution of the judgment or order appealed against and any order made consequentially upon it unless the appellate tribunal otherwise directs.*"

The English case of **Clifton Securities Ltd vs Huntley and Others (1948) 2 AER 283** is a classic authority for the principle that where a prohibitive injunction order is made restraining a party from performing an act, the order only prevented the respondent from putting into operation the legal processes of execution and did

not affect the exercise of any rights and remedies he might have independent of the process of the court. In other words the authority highlights the effect of a stay of execution on the parties' rights. In that case the lessee of a workshop which formed part of a factory had a right of way to it through the factory and received their electricity, gas and water supplies through the pipes laid in the factory. On January 13, 1947, the lessors, the owners of the factory, obtained judgment for possession of the premises in the High Court on a notice to quit, the validity of which was disputed. A stay of execution was subsequently granted pending an appeal. The lessees did not give up possession. Early in May 1947, before the Court of Appeal had given judgment affirming the judgment of the court below, and while the stay of execution was still in force, the lessors cut off the supply of electricity, gas and water and shortly after barricaded the right of way. The plaintiffs brought an action for mesne profits and the defendants counterclaimed on the ground that they were entitled to undisturbed possession while the stay was in force, and sought damages for the cutting off of the supplies of electricity, gas and water. Lord Denning, J (as he then was) stated that "*a stay of execution only prevents the plaintiffs from putting into operation the machinery of the law – the legal processes of warrants of execution and so forth – in order to regain possession. It does not take away any other rights which they have. It does not prevent their exercising any right or remedy which they have apart from the process of the court."* The learned judge further pointed out that "*in this case there was no reason why the plaintiffs should not peaceably regain possession if they could. After all, the defendants were trespassers. The plaintiffs must not enter by a strong hand with a multitude of people so as to be guilty of a criminal offence…"*

Applying the above principle to this case only means that the respondent cannot enforce or execute the order which has been stayed using the court process. The principle neither transforms nor reviews the primary or original order of interim injunction.

**Did the conviction of the appellant amount to a review of the original order?**

It is quite obvious that the arguments of counsel for the appellant herein, before the Court of Appeal was founded in the belief that the application to commit the appellant for his continued infringement of the interim injunction order arose from his conviction as per exhibit S 1. That belief is certainly unfounded, for reasons stated in our preceding arguments. It would have been a troubling position of the law to propose that an order which has been regularly stayed would nevertheless continue to operate and in effect be as lethal as what was sought to be stayed. This is however not the end of the matter. Significantly, either by ignorance or carelessness, or both, nothing had been done about the original order of interim injunction which was granted as far back as the 27th June 2001. This means that so long as the original order of interim injunction remains in force, any continued disobedience of that primary order or activity may upon application invoke the sanctions of the court for contempt. This is so because, an interim injunction order remains in force until a named date or further order. The application for contempt argued on 28th September 2010 before Alhaji Mustapha J. was for yet another one of the series of infringements of the parent or primary order and hence actionable in its own right owing to the continued nature of the order of interim injunction. It is therefore incorrect to state that the appellant's conviction for infringing the interim order had the effect of stemming any subsequent infringements. In the circumstances of this case and as stated earlier in this report, the respondent's contempt application was proved beyond reasonable doubt to the satisfaction of the Court of Appeal and after due consideration of the defence concluded that appellant was culpable. There was nothing ambiguous about the interim order of the High Court which restrained the appellant *"from exercising all public functions as Chief until his status as Omanhene has been fully and finally determined by the appropriate forum. "*

We find no merit in the combined ground of appeal and same is dismissed

**<u>Other Errors of Law.</u>**

**The Court of Appeal failed to consider that the order of interim injunction by the High Court, being void, Respondent could not have applied to the Court of Appeal by way of an appeal to enforce same.**

The appellant has also raised other grounds for our determination. They include an attack on the Court of Appeal that it failed to consider that the order of interim injunction by the High Court, being void, the respondent could not have applied to the Court of Appeal by way of an appeal to enforce same. We reiterate the point we made earlier that a decision of a court of competent jurisdiction is valid until it is set aside. Following the ruling of the High Court Cape Coast per Mrs. Iris Heward-Mills which was read by K.K Acquaye, J on 15th July 2002 the respondent filed an appeal against same on the same 15th July 2002. (See page 27 of ROA). If I understand this ground of appeal well enough then it is a non starter. The right to appeal is conferred by statute. The Court of Appeal does not decide for parties as to who should or should not file an appeal. However it is for the would be appellant to meet the requirements for the appeal process which when complied with and set before the appellate court would in turn trigger the determination of the issues placed before the court. In any case there was a more appropriate remedy for redressing a void order complained of than the appeal process which is blown away because of time limitation. The option or choice between the path of an appeal or resort to the supervisory jurisdiction of the superior courts must be a very well considered one. My distinguished and respected brother Dr Date-Bah, JSC in the case of the **Republic v High Court (Commercial Division) Accra, Ex Parte The Trust Bank Ltd (Ampoma Photo Lab Ltd & 3 ors – Interested Parties) (2009) SCGLR 164** *at 166* gave the following caution:

"In my view, the combined effect of two authorities, namely ***Ex–Parte CHRAJ, (2003-2004) SCGLR 312 and Ex-parte Tsatsu Tsikata (2005-2006) SCGLR 612*** results in a statement of law which is desirable and should be re-affirmed. This court should endeavour not to backslide into excessive supervisory intervention over the High Court in relation to its errors of law. Appeals are better suited for resolving errors of law. Even where a High Court makes a non-jurisdictional error which is patent on the face of the record, it will not be a ground for the exercise of the supervisory jurisdiction of this court unless the error is fundamental. Only fundamental non-jurisdictional error can find the exercise of this court's supervisory jurisdiction."

Dr Date-Bah, JSC again in ***Rep vs High Court, Cape Coast, Ex Parte Ghana Cocoa Board, - (Apotoi III – Interested Party), (2009) SCGLR 603*****, at 613,** graphically pointed out that "so long as the separate requirements of an appeal and of an application for the exercise of the supervisory jurisdiction have been complied with, a party should be able to avail himself or herself with either avenue of redress at the same time. The Supreme Court would therefore depart from any previous cases which had decided otherwise, pursuant to article 129 (3) of the 1992 Constitution."

The failure of the counsel for the appellant to apply the appropriate options in reasonable time is an indication that caution had been thrown to the wind. The result is the present lengthy and drawn path in seeking redress. Strangely enough the appellant did not cross appeal to the Court of Appeal and assumed a laid back position only to criticize the respondent's resort to the Court of Appeal to overturn the High Court ruling which did not favour him. In any case being a point of law the issue of jurisdiction should have been considered by the lower court and put before the parties to argue for the consideration of the court.

**Further Errors of Law**

The following remaining grounds of appeal would be taken together as they bear a common theme:

(iii) The Court of Appeal erred in law when it concluded that the contempt application filed at the High Court was not a cause or matter affecting chieftaincy to the extent that the wording of the order of interim injunction made it a cause or matter affecting chieftaincy.

(iv) The Court of Appeal failed to consider that the High Court did not have jurisdiction to have granted the order of interim injunction on the 27th day of June, 2001.

(v) The Court of Appeal failed to consider that there was no writ of summons filed at the High Court to warrant the grant of the order of interim injunction.

(vi) The Court of Appeal failed to consider that the irregularity in the High Court assuming jurisdiction and granting the order of interim injunction was so fundamental to warrant a setting aside of the order of interim injunction.

(vii) The Court of Appeal failed to consider that the pendency of a Petition at the Judicial Committee of the Central Regional House of Chiefs cannot be the basis for the assumption of jurisdiction by the High Court to grant an order of interim injunction.

These grounds should be considered in the perspective of what the Court of Appeal was required to determine. In other words what were the grounds of appeal the Court of Appeal was called upon to determine? In the notice of appeal filed against the ruling of Alhaji Mustapha J at page 64 of the record of appeal only one ground of appeal was stated. The learned Court of Appeal judge confirmed in his judgment that "the notice of appeal filed on 2/11/10 had one ground of appeal which was: "that the learned trial judge erred in law when he arrived at the conclusion that the application for contempt of court of the respondent is a matter affecting chieftaincy for which he had no jurisdiction." (See page 86 of ROA).

On 29th July 2013 this court ordered the parties in this appeal to file within fourteen days of that date, supplementary arguments on the legal propriety or otherwise of the grant of an order of interim injunction without a writ of summons filed in a suit. This order followed the court's study or scrutiny of the record of appeal which failed to show that the original motion for the interim order was predicated upon the issuance of a writ of summons. The two opposing counsel in this matter, have raised very interesting arguments for our consideration. Even though we find the stances of either counsel rather self serving, one of them accords more with the reality within which the issue arises than the other.

Rule 6 (8) of CI 16 (1996) upon which we directed the parties to furnish the supplementary arguments provides that "Where the Court intends to rest a decision on a ground not set forth by the appellant in his notice of appeal or on any matter not argued before it, the Court shall afford the parties reasonable

opportunity to be heard on the ground or matter without reopening the whole appeal."

Counsel for the respondent in the supplementary arguments filed on 9th August 2013 strongly disagrees that the application for the interim injunction was not accompanied by a writ. Respondent's counsel made the unusual assertion that without an "order of this court to the trial High Court to furnish, produce and ascertain from the authentic record of proceedings in the matter from 2001, it is unfair or impossible to rest a case on the issue raised." It is a wonder what the basis of the above submission is.

The respondent it was who initiated the whole process at the High Court where he obtained the order of interim injunction. As the applicant then, he had the burden of producing sufficient evidence to avoid a ruling against him in line with section 11 of Act 323, the Evidence Act (1975). Having obtained his interlocutory relief in the nature of the order of interim injunction, the said order is presumed right/valid until it is set aside. In the present presentation, the resultant interim injunction order obtained pursuant to the respondent's (applicant's) prayer is covered by the legal presumption of regularity provided in section 37 (1) of Act 323. More specifically the present challenge to the court's power to grant the interim order without the issuance of a writ of summons obviously raises the issue of jurisdiction which is specifically provided under section 39 (1) and (2) of the Evidence Act, Act 323. The section states:

" 39 (1) Any court of Ghana, or any court of general jurisdiction in any other state or sub-division of a state, or any judge of such a court, acting as such, is presumed to have acted in the lawful exercise of its jurisdiction.

(2) This section applies only when the act of the court or judge is under collateral attack, namely where the jurisdiction of the court is not directly in issue."

The "Commentary on the Evidence Decree, 1975 NRCD 323" provides very useful guide as to the meaning and coverage of the section as follows:

"Section 39 – This section states the common law corollary to the presumption of regularity. It presumes the regularity of the exercise of judicial jurisdiction when a

court action is under collateral attack. In other words, the presumption does not apply if the challenge is raised as an issue when the judgment is on appeal or under review or the subject of supervisory proceedings."

It is equally pertinent to point out that the presumptions provided in sections 37 and 39 of Act 323 are both rebuttable presumptions as covered by section 30 of the Act. Being rebuttable presumptions it is sufficient that the appellant has filed the search and its results. The search affirms that prior to applying for the order of Interim injunction against the respondent (appellant herein) no writ of summons and statement of claim was filed by the applicant (respondent herein). The search request was made to the registrar of the trial High Court on 6th January 2012 and the results filed in this court on 2nd August 2013 as an exhibit. It is trite to observe that the Registrar of the High Court is the official custodian of the records of the court and the outcome of the search from his outfit accords with practice and also section 126 (1) and (2) of Act 323. It is also clear from the explanation quoted from the 'Commentary on the Evidence Act' on the section under consideration that the presumption does not apply upon a challenge on appeal as to jurisdiction which is the case before us. Furthermore, it is not the practice that when a judgment upon which a party relies is challenged, it is the duty of the court to order the trial court 'to furnish, produce and ascertain from the authentic record of proceedings in the matter' as canvassed by the respondent. The Evidence Act 323 in sections 10, 11 and 12 places upon parties in litigation the duty to produce sufficient evidence to avoid a ruling against them. The present application is no exception. It is always important for counsel to be guided by the Evidence Act and the respective rules of procedure - be they civil or criminal as the case may be - and not resort to sentimental arguments which are far from the law. There is also no truth in the respondent counsel's claim that it took over twelve months for the appellant to file a notice of appeal to the order of interim injunction granted on 27th June 2001. There has not been any appeal filed against the orders of 27/6/2001. There was an appeal against the conviction of the appellant filed on 15/07/2002. (See pages 27 -28 of the ROA)

In the instant appeal the High Court, Cape Coast, coram Iris Heward Mills (Mrs) J had a duty to take the point as to jurisdiction when presented with the motion for

injunction in a matter which from the affidavit in support was clearly a cause or matter affecting chieftaincy, but failed to do so The motion which was filed on 21st June 2001 was not sequel to a writ of summons as envisaged by Order 50 Rules 7 and 8 of LN 140A, the relevant (High Court) Civil Procedure Rules at the time material to the application. This position is confirmed by the search report filed on 2nd August 2013 following our directives for supplementary arguments. Order 50 Rules 7 and 8 of LN 140A provide that:

"7. (1) The Court may grant mandamus or an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.

(2) Any such order may be made either conditionally or on such terms or conditions as the Court thinks just.

8. An application for an order under Rules 4, 5, or 7 of this Order may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order of mandamus or for an injunction or the appointment of a receiver, it may be made either ex parte or with notice, and if for an order under Rules 4, 5 or 7 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party then on notice to the plaintiff and at any time after appearance by the party making the application."

[Underlined for emphasis]

The respondent failed to comply with the basic requirement of Order 50 r. 7 and 8 of the LN 140A which required that an application by a plaintiff for an order of injunction made on notice under rule 7 may be made after notice to the defendant at any time after the issue of the writ of summons. This obviously meant that an applicant for an order of injunction should precede his application with a writ of summons. This was not the case in the instant application. This failure deprived the High Court of the jurisdiction to deal in the application as it did. The resultant grant of the relief sought was therefore void.

The next jurisdictional issue for determination is that which contends that the respondent's conviction by the court was based on an order which was void ab

initio and therefore of no effect. A notice of additional grounds of appeal was also filed on 16/07/2002 in the Court of Appeal raising the further ground that "the order that the appellant gives an undertaking not to act as a Chief pending the determination of his status is a nullity for want of jurisdiction since the matter is a cause or matter affecting chieftaincy and an application for that order is pending before the Central Region House of Chiefs." From the records that application is still pending before that House.

The combined effect of the present grounds of appeal is that the orders of the High Court Cape Coast restraining the appellant from acting as the Paramount Chief up to his conviction for contempt for breaching those restraining orders were all void because they were based upon an application to destool the appellant pending before the Central Regional House of Chiefs, hence this court should set them aside.

*In* ***Republic vs High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association & Ors Interested Parties) (2009) SCGLR 390 at 390*** my able and respected brother Atuguba JSC, in characteristic fashion echoed as follows: " It is communis opinio among lawyers that the courts are servants of the legislature. Consequently any act of a court that is contrary to a statute such as Act 722, s 58 (1) – (3) is, unless otherwise expressly or impliedly provided, a nullity."

It is not for nothing that the Constitution of Ghana 1992 in chapter 22 has conferred original jurisdiction in 'any cause or matter affecting chieftaincy' in the various judicial committees of the Houses of Chiefs. The Constitution however reserves final appeal from decisions of the Judicial Committee of the National House of Chiefs to the Supreme Court. Owing to their significance in this report, the relevant articles of the Constitution 1992 are quoted here below as follows:

"Article 273

(5) A Judicial Committee of the National House of Chiefs shall have original jurisdiction in any cause or matter affecting chieftaincy-

(a) which lies within the competence of two or more Regional houses of Chiefs; or

(b) which is not properly within the jurisdiction of a Regional House of Chiefs; or

(c ) which cannot otherwise be dealt with by a Regional House of Chiefs.

(6) An appeal shall lie as of right in respect of any cause or matter dealt with by a Judicial Committee of the National House of Chiefs under clause (5) of this article to the Supreme Court.

Article 274

(1) There shall be established in and for each region of Ghana a Regional House of Chiefs.

…

(3) A Regional House of Chiefs shall –

(c ) hear and determine appeals from the traditional councils within the region in respect of the nomination, election, selection installation or deposition of a person as a chief;

(d) **have original jurisdiction in all matters relating to a paramount stool or skin or the occupant of a paramount stool or skin, including a queenmother to a paramount stool or skin….**

(4) The original and appellate jurisdictions of a Regional House of chiefs shall be exercised by a Judicial Committee of the Regional House of Chiefs consisting of three chiefs appointed by the regional House of chiefs from among its members…" [Highlighted for emphasis]

The record of appeal (ROA) is replete with admissions that the interlocutory application from its inception to the conviction of the appellant for contempt was and still is a cause or matter affecting chieftaincy. We will illustrate the point with a few examples from the record. For instance at Page 2 of the appeal record, there is an affidavit filed by George Asmah in support of the motion for committal of the appellant herein for contempt which states in paragraphs 4 and 5 as follows:

"4. That the Respondent is ordinarily resident at Elmina and has cast himself in the mound (sic) of Omanhene of the Edina Traditional Area.

5.That there is presently a pending action instituted before the Central Region House of Chiefs, Cape Coast, seeking an order to destool the Respondent."

The application for injunction which set in motion this whole saga is exhibited at pages 25 to 26 of the ROA. The motion paper prayed for an order to restrain the defendant from acting as a Chief. Paragraphs 4 and 5 of the supporting affidavit sum up the facts at issue as follows:

"4. That the defendant has installed himself as Omanhene of the Edina Traditional Area and has as such been parading around as a Chief.

5. That the defendant is not a properly installed Chief and he thus cannot call himself as a Chief and as such he ought to be restrained from so acting."

It is apparent that, based upon this bare motion and the supporting affidavit and without any writ of summons, the High Court, Cape Coast was willing to and did indeed issue the restraining injunction in complete defiance of the exclusion of the regular courts from determining causes and matters affecting chieftaincy. The consequences of such defiance was forcefully stated by my respected brother Dr Date-Bah, JSC in **Ex Parte National Lottery Authority (2009) SCGLR 390 at 402** that; "*No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders…..This oath is surely inconsistent with any judicial order that permits the infringement of an Act of Parliament. "*

The result of the ruling of the High Court Cape Coast granting the injunction was to breach the Constitutional provisions in articles 273 (1) and 274 quoted above, granting original jurisdiction in causes and matters affecting chieftaincy to the Judicial Committees of the Houses of Chiefs. The jurisdiction conferred on the judicial committees of the National and Regional Houses of Chiefs by the Constitution are re-echoed in Act 370, the Chieftaincy Act 1971 with extension to

cover Traditional Councils and Divisional Councils. This is clearly provided in sections 15, 21, 22, 23 of Act 370. Section 15 the Act 370 states:

"(1) Subject to the provisions of this Act and to any appeal there from, a traditional Council shall have exclusive jurisdiction to hear and determine any cause or matter affecting chieftaincy which arises within its area , not being one to which the Asantehene or a Paramount Chief is a party."

The High Court, Cape Coast could not pretend to be ignorant of these very fundamental limitations to its jurisdiction. It could equally not feign ignorance of the fact that the application before it related to a cause or matter affecting chieftaincy in view of the depositions in the supporting affidavits quoted above admitting this before the court. As to what constitutes a cause or matter affecting chieftaincy several decisions of this court have dealt with it. In **Republic vs High Court, Koforidua; Ex Parte Bediako II (1998-99) SCGLR 91** this court per Sophia Akuffo, JSC stated that: "In order to constitute a matter as one affecting chieftaincy, it must, in my view, be the determination of which, unless overturned on appeal, would settle once and for all, a chieftaincy matter or dispute."

In the recent three to two majority decision in **Network Computer System (NCS) Ltd vs Intelsat Global Sales and Marketing Ltd (2012) 1 SCGLR 218,** this court reiterated the courts duty to stem illegalities arising from statutory infractions, which in the words of my respected brother Atuguba, JSC as stated at page 230 of the report are as follows: "A court cannot shut its eyes to the violation of a statute as that would be very contrary to its raison d'etre. If a court can suo motu take up the question of illegality even on mere public policy grounds, I do not see how it can fail to take up illegality arising from statutory infraction which has duly come to its notice."

The fact that the norm or rule breached is a constitutional provision in contra distinction to an ordinary statute makes it even more compelling. The supremacy of the Constitution in the hierarchy of legal norms in the legal system has to be preserved and jealously guarded. (See **Martin Alamisi Amidu vs The Attorney General & 2 ors, SC, No. J1/15/2012 dated 14th June 2013, unreported**.)

From the foregoing even though the issues concerning jurisdiction were obvious from the face of the record the High Court failed to take any steps. It goes without saying that the court was obliged to take the point as to its jurisdiction in the matter even if the litigants failed to take it up. In **Phillips vs Copping (1935) 1 KB 15 at 21 C.A, Scrutton LJ** stated that: "It is the duty of the Court when asked to give a judgment which is contrary to a statute to take the point although the litigants may not take it." Were the trial judge to focus on the affidavit evidence laid before her, particularly the paragraphs highlighted above, together with the absence of a preceding writ of summons, it is obvious that she would not have fallen into the grievous error of granting the application. The trial High Court, Cape Coast had no jurisdiction to grant the application for injunction which it granted on 21st June 2001. The same is hereby set aside as void.

In summary, as far as the application for contempt against the appellant for the alleged breach of the order of injunction is concerned, the appellant had no legitimate defence thereto. It was no defence to say that the order was void when the same had not been vacated. It is worth reiterating that It is not the business of litigants or their counsel to determine which orders or processes of the court are lawful and deserving of obedience, and if not, must be disobeyed. The rule is that a party is obliged to take a proper course to question the validity of an act of a court, but while it exists it must be obeyed. We wish to reiterate our position as well echoed in this court's decision in **Republlic vs High Court, Accra, Ex parte Afoda (2001-2002) SCGLR 768** especially 773 that "the fact that an order of or process from a court of competent jurisdiction is perceived and considered void or erroneous should not give a party who is affected by the order or to whom the process is directed the slightest encouragement to disobey it; and when cited for contempt, only to turn round to justify the said disobedience by the fact that the order ought not to have been made or the process issued in the first place." In the circumstance we affirm the decision of the Court of Appeal convicting the appellant for contempt of the court.

As the final appellate court of the land we cannot shut our eyes to obvious infringements of statutes and in particular the Constitution by the respondents in initiating their application for injunction without a writ of summons and in a cause

or matter affecting chieftaincy which is outside the jurisdiction of the regular courts. Consequently the order of injunction granted on 27th June 2001 is hereby set aside. For the reasons given above and in order also to send the requisite signals to persons desirous of undermining the authority of the courts the sentence of eight thousand Ghana cedis ( GH¢ 8,000) or in default thirty (30) days imprisonment against the appellant is hereby affirmed. Also in view particularly of the breach of the Constitutional provisions and statutes highlighted above the cost of two thousand Ghana cedis (GH¢ 2,000) in favour of the respondent is set aside. Also set aside is the order to execute the bond or undertaking to respect the orders of the High Court particularly exhibit S2 within seven (7) days.

**(SGD) J. B. AKAMBA**
**JUSTICE OF THE SUPREME COURT**

**(SGD) G. T. WOOD (MRS)**
**CHIEF JUSTICE**

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

**(SGD) ANIN YEBOAH**
**JUSTICE OF THE SUPREME COURT**

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

**COUNSEL**

EGBERT FAIBILLE JNR. WITH AKOSUA ASAH-ASANTE FOR THE RESPONDENT /RESPONDENT/APPELLANT.

K. O. AMPONSA DADZIE AND ROLAND A. K. HAMILTON LED BY SAM AWOTWI FOR THE APPLICANT/APPELLANT/RESPONDENT.