

**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA – AD.2025**

**CORAM:**    **PWAMANG JSC (PRESIDING)**  
**LOVELACE-JOHNSON (MS) JSC**  
**AMADU JSC**  
**KULENDI JSC**  
**ASIEDU JSC**

**CIVIL MOTION**  
**NO. J5/48/2025**

**27<sup>TH</sup> MAY 2025**

**THE REPUBLIC**

**VRS.**

**HIGH COURT (CRIMINAL DIVISION 4), ACCRA**

**EX PARTE:**

**KWASI OSEI OFORI** .... **APPLICANT**

**MISYL ENERGY COMPANY LIMITED** .... **INTERESTED PARTIES**

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**RULING**

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**ASIEDU JSC:**

[1]. My lords, on the 15<sup>th</sup> May 2023, David Aseye Tay was convicted and sentenced by the High Court on various charges, including the offence of Money Laundering

contrary to section 1(1) of the Anti-Money Laundering Act, 2014, Act 874. As part of the consequential orders, the High Court made a restitution order in respect of House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra, in favour of the Interested Party herein, Misyl Energy Company Limited, as evidenced by exhibit K2. Meanwhile, the Applicant herein, Kwasi Osei Ofori, had, on the 30<sup>th</sup> day of January 2023, procured a sub-lease in respect of this same house from one Sabina Amoh as shown by exhibit K which has been exhibited to the supporting affidavit to the instant application. Indeed, exhibit K1, which is a Search Report also exhibited to the affidavit in support, also shows that the said Sabina Amoh had, on the 12<sup>th</sup> day of September 2019, taken an assignment of the said property from Babbel Limited.

[2]. The facts of this application also show clearly that the Applicant herein was never made aware that the house in dispute was the subject matter of any criminal investigation until the Restitution Order, exhibit K2 herein, was posted at House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra.

[3]. There is evidence on record to the effect that before the judgment of the High Court was delivered on the 15<sup>th</sup> May 2023, the convict, David Aseye Tay, had on or about the 20<sup>th</sup> day of March 2020 filed an affidavit, exhibit K4 herein, in the High Court in which he had deposed that he had “no proprietary nor legal interest in the property described as ... House No. 64 Patrice Lumumba Road, Airport Residential Area, Accra”. There is also evidence to the effect that following his conviction and sentence, the said David Aseye Tay, filed before the Court of Appeal, on the 13<sup>th</sup> June 2023, a Notice of Appeal, exhibit K5 herein, against his conviction and sentence as well as the consequential orders for restitution. Further to the above, the Applicant in this matter also filed a Notice of Claim, exhibit K6 herein, before the High Court, on the 21<sup>st</sup> December 2023, in which he asserts his ownership over House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra.

[4]. The above notwithstanding, the Interested Party herein, on the 25<sup>th</sup> September 2023, filed a Notice of Motion for an Order for committal for contempt of Court, exhibit

K7 herein, against the Applicant in this matter. Indeed, the High Court presided over by Comfort Kwasiwor Tasiame, J., convicted the Applicant for contempt of court for “*willfully disobeying the lawful restitution and injunction orders of the court*” on the 15<sup>th</sup> April 2024 after hearing the motion on Notice for an Order for committal for contempt. Exhibit K9 is the injunctive order which the Applicant was alleged to have contravened. As expected, the Applicant appealed the decision of the High Court by filing a Notice of Appeal, exhibit K8, to the Court of Appeal on the 27<sup>th</sup> June 2024.

[5]. On the 20<sup>th</sup> day of May 2024, whiles the appeal was pending, the Interested Party filed yet another Motion on Notice, exhibit K10 herein, for an order of committal for contempt and for an order to recover possession of the Property from the Applicant or for the Preservation of the Property known as No. 64, Patrice Lumumba Road, Airport Residential Area, Accra. The Interested Party also sought, as part of his reliefs, an order for the payment of rent on the property into court pending the determination of matters pertaining to the property and also an order for the “custody of the property to be given to the Interested Party”. Counsel for the Applicant raised a preliminary legal objection to the application for committal but was overruled by the Court as indicated in exhibit K11 as a result of which he filed an interlocutory appeal, exhibit K12, and subsequently applied to stay proceedings but, the High Court, in a ruling delivered on the 20<sup>th</sup> February 2024, dismissed the application to stay proceedings.

[6]. Consequently, the Applicant filed the instant application on the 24<sup>th</sup> March 2025, invoking the supervisory jurisdiction of this court pursuant to article 132 of the Constitution, 1992 and rule 61(1) of the Supreme Court Rules, 1996, CI.16 for the following orders:

“1. An order of prohibition directed at High Court 4, Criminal Division, Accra, presided over by Her Ladyship, Mrs. Comfort Kwasiwor Tasiame, J., to restrain her from proceeding to hear and determine an application for contempt filed by the Interested Party on 20/05/2024 seeking to commit the Applicant for contempt of court and to further restrain her from proceeding to hear and

determine an application seeking recovery of possession of Applicant's property known as Plot 64 Patrice Lumumba Road, Airport Residential Area, Accra, or in the alternative preservation of the property, inspection the property and payment of rent on account of open prejudice and likely bias against the Applicant.

2. An order of prohibition directed at High Court 4, Criminal Division, Accra, presided over by Her Ladyship Mrs. Comfort Kwasiwor Tasiame J., to restrain her from proceeding to hear and determine an application for contempt filed by the Interested Party on 20/05/2024 seeking to commit the Applicant for contempt of court and to further restrain her from proceeding to hear and determine an application seeking recovery of possession of Applicant's property aforesaid or in the alternative preservation of same, inspection of same and payment of rent; as the hearing and determination of the said application is in violation of the audi alteram partem rule of natural justice.

3. An order of prohibition directed at High Court 4, Criminal Division, Accra, presided over by Her Ladyship Mrs. Comfort Kwasiwor Tasiame J., to restrain her from hearing and determining Suit Number CR/0140/2020 and any matter concerning the revesting of Applicant's property aforesaid and being the subject matter of restitution ordered by the trial court on 15th May, 2023; pending the determination of the substantive appeal mounted by the convict in the substantive trial on 13th June, 2023".

The grounds upon which the Applicant makes this application are that:

"a. Upon the dismissal of an application for stay of execution pending appeal, Her Ladyship the trial judge inter alia held the conclusive view that the Interested Party will suffer extreme hardship if proceedings are stayed as the Interested Party has already lost part of the length of time in the interest in the subject property granted it by the Restitution order made in May 2023 and

added in addition that as victor, the Interested Party must be allowed to enjoy the fruits of its labour. These views of the trial Judge are highly prejudicial to the case of the Applicant and portend bias and likelihood of bias in her determination of the case between the parties and against the Applicant who is unlikely to get a fair trial.

b. Upon convicting the prisoner in the trial of the substantive case in which the Applicant was neither a party nor the Applicant's house, Plot Number 64 Patrice Lumumba Road ever being a subject of the trial and neither the Applicant who is the bona fide owner was ever heard, the Court made a restitution order purporting to confiscate the property from the Applicant and be given to the Interested Party. The house has never been the property of the prisoner. There has never been any evidence that the prisoner ever used the Interested Party's money to acquire the property. The Applicant has never been personally served with any restitution order by the Interested Party. Applicant has filed his Notice of Claim to the property in the court. Proceeding to hear the application for contempt in which the Interested Party seeks to commit the Applicant for contempt of court in addition to seeking the grant of proprietary interest in the property (without leading evidence to prove valid ownership) violates the Applicant's rights to fair hearing and in breach of the rules of natural justice as the trial court seeks to confiscate Applicant's [sic] for the Interested Party without regard to due process.

c. The prisoner in the substantive trial was convicted on 15th May 2023 when the restitution order was issued. The prisoner appealed against his conviction and sentence on 15th June, 2023. By law the operations of all orders concerning the restitution which in effect seeks to revesting Applicant's property in the Interested Party are suspended effective 15th June, 2023 when the appeal was mounted. The trial court does not have jurisdiction to hear and determine any such reliefs until the hearing of the said appeal.

d. The attempts using contempt proceedings to enforce an order for restitution which is being contested by the owner-in-possession of the property constitutes a denial of the Applicant's right to be heard with respect to his substantive rights over the subject property".

[7]. Section 29 of the Courts Act, 1993, Act 459 (as amended) provides that:

"29. Suspension of court order pending appeal

(1) Where a Court, on conviction of a person, orders payment of compensation, payment of the expenses of the prosecution or the restoration or revesting of property in a person, the operation of the order shall be suspended,

(a) until the expiration of the period within which an appeal may be brought;

and

(b) where notice of appeal or notice of application for leave to appeal is given in accordance with law, until the determination of the appeal or until the refusal of leave to appeal or withdrawal of the application for leave to appeal.

(2) Where the operation of an order is suspended pending the determination of the appeal, the order shall not take effect if the conviction is quashed on appeal, unless the appellate court otherwise directs.

(3) Notwithstanding a provision of this section, the trial court may, in the case of stolen property where the title to the property is not in dispute, order the immediate enforcement of the order".

We think the language of section 29 of the Courts Act is clear and devoid of any misunderstanding that, where a notice of appeal has been filed by a person who has been convicted of a crime as a result of which orders for the payment of compensation have been made in favour of the complainant or any such person against the convict or orders have been made by the court for the payment of the expenses of the prosecution by the convict or orders for the restoration or revesting of property in a

person have been made by the court against the convict, all such orders are automatically suspended by virtue of the filing of the Notice of Appeal until the appeal which has been filed is determined by the Appellate Court. Again, the filing of an application for leave to appeal against a conviction, following which orders for payment of compensation or the payment of the expenses of the prosecution or the restoration or the revesting of property have been made, has the effect of suspending the operation of such orders until the application for leave to appeal is refused by the court or withdrawn by the applicant.

[8]. In the instant matter, the fact that the said David Aseye Tay filed a Notice of Appeal immediately after his conviction and sentence by the High Court is clearly captured by exhibit K5, the Notice of Appeal herein, which was, indeed, filed on the 13<sup>th</sup> June 2023. The Interested Party has admitted the filing of the Notice of Appeal in its Affidavit in Opposition, but pleads at paragraph 49 thereof that:

“49. That I am further advised by Counsel and verily believe same to be true that even though the Courts Act 1993 (Act 459), the Court of Appeal Rules, 1997 (CI 19) (As Amended) and provisions of the Rules of Procedure of this Honourable Court provide that when a trial court at the time of conviction makes an order affecting the rights or property of a convicted person, the operation of the said order shall be suspended when notice of appeal is given until the determination of the appeal against the conviction in relation to which the order was made or until abandonment of the appeal, the essence of the provisions is in relation to the enforcement or execution of the said orders and not post-judgment and contempt proceedings”.

We wish to state emphatically that by the provisions in section 29 of the Courts Act, once a convicted person files a notice of appeal against his conviction, all orders made by the trial Court with respect to the payment of compensation or the expenses of the Prosecution or orders in the nature of restitution cannot be enforced by any of the processes of execution until the appeal filed has been heard and disposed of. The

contempt processes filed by the Interested Party herein were principally aimed at securing the enforcement of the restitution order made by the trial Court. The body of the Notice of Motion for an Order for Committal for Contempt filed on behalf of the Interested Party herein and exhibited by the Interested Party as exhibit FLA9, is clear evidence of the intention of the Interested Party to enforce the restitution order by contempt proceedings. The body of the motion, exhibit FLA9, states as follows:

“TAKE NOTICE that this Honourable court will be moved by TASSAH TAPHA TASSAH counsel for and on behalf of the Applicant herein praying this Honourable Court for a Committal Order directed at the Respondent for his contumacious conduct by reason of his blatant disrespect of the Restitution Orders of the Honourable court made on the 15th May 2023 in this suit, an act to bring the administration of justice into grave disrepute and for such further or other orders as this Honourable court may deem just upon the grounds contained in the accompanying Affidavit in support”.

As stated on the motion paper, the application sought “*a committal order directed at the Respondent [Applicant herein] for his contumacious conduct by reason of his blatant disrespect of the Restitution Orders of the Honourable Court made on the 15<sup>th</sup> May 2023 in this suit ...*” The steps taken by the Interested Party to enforce the restitution order made by the trial High Court after the filing of a Notice of Appeal against the conviction of David Aseye Tay, runs contrary to the clear and unambiguous provision of section 29 of the Courts Act. The orders made by the High Court in convicting the said David Aseye Tay for contempt of court on the 15<sup>th</sup> April 2024, as shown by exhibit K7A, which is the ruling of the High Court, in its bid to enforce the restitution order of the Court, was clearly unlawful since it violates the provisions of section 29 of the Courts Act, Act 459. The High Court has no jurisdiction to enforce a restitution order where the convict has filed a Notice of Appeal, as in the instant matter, against his conviction and sentence. Further, the desire and the willingness of the High Court to hear the second application for contempt against the Applicant herein filed on the 20<sup>th</sup> May

2024 as expressed in the ruling of the High Court in exhibit K11, is a clear indication of the Court's willingness to continue to act in breach of the provisions of the Courts Act. The duty of every court is to uphold the law and not to breach same. The High Court, by this act, placed itself on a path of a clear conflict with the law; and, this Court, being the final court of the land, has power to stop it from continuing to act in breach of the statutes and the laws of the land as expressly given by article 132 of the Constitution which states that:

**"132. Supervisory jurisdiction of the Supreme Court**

The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power".

It is my humble view that the prerogative writ of prohibition will lie in public law to stop a public adjudicator, such as a High Court Judge, from embarking upon or undertaking any public act in an unlawful manner and consequently without jurisdiction.

Lord Justice Atkin has held in the old English case of R vs. North, Ex parte Oakey [1927] 1 KB 491 that:

"I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matters which would result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction"

See Republic vs. High Court (Fast Track Division) Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) [2009] SCGLR 390.

[9]. The method of execution employed by the Interested Party herein and the High Court to enforce the restitution order, is not sanctioned by any rule of law or procedure. The trial High Court came to the conclusion, after the criminal trial, that David Aseye Tay had acquired various properties, including the Property known as No. 64, Patrice Lumumba Road, Airport Residential Area, Accra. Consequently, relying on sections 146, 147, 147A (1) and 147B (1) of the Criminal and Other Offences (Procedure) Act, 1960, Act 30, the High Court made an order of restitution of No. 64, Patrice Lumumba Road, Airport Residential Area, Accra in favour of the Interested Party. The judgment in case number CR/0140/2020 is not on appeal before this court and it is also not the subject matter of the instant application for prohibition before this court. For that reason, we restrain ourselves from any comment which may have the effect of determining the propriety of the orders made in that judgment including the order for restitution. Assuming, therefore, that the order for restitution was correctly made by the trial court, section 147A (2) and 147B (2) of Act 30 are very relevant to the determination of the issues presented in this application.

Section 147A of Act 30 states that:

“147A. Payments of money made by accused persons

(1) Where a person convicted of an offence involving dishonesty has, since the commission of the offence, made payments of money or transferred property to any other person, the payments or transfers shall be considered to have been made out of the proceeds of the offence, and accordingly the Court may, on the application of the prosecutor or the victim of the offence, order the person to whom the payments or transfers have been made to return the money or property to the person specified by the Court unless it is shown to the satisfaction of the Court by the person in respect of whom the order has been made

- (a) that valuable consideration was given commensurate with payments of money or transfers of property made to that person, or
  - (b) that that person is a dependant of the person convicted and that the payments of money were that person's reasonable living expenses made as dependant.
- (2) An order under subsection (1) is, for the purposes of this Act, an exercise of the civil jurisdiction of the Court in an action between the person in whose favour the order has been made as plaintiff and the person against whom the order has been made as defendant, and is enforceable in the manner and is subject to an appeal as are orders for the return of money.
- (3) Although the value of the money or property exceeds the limits of the civil jurisdiction of the Court, the Court shall have jurisdiction under this section".

Section 147B of the Criminal and Other Offences (Procedure) Act, 1960, Act 30, also provides that:

**"147B. Order for recovery of property or its value**

(1) Where sentence is imposed for an offence involving dishonesty and property including money is not recovered, the Court, on sentencing the offender, on its own motion or on the application of the prosecutor or the victim of the offence, may make an order for the return by the offender to the victim of the property not recovered and for payment, in default, of the value of the property not returned.

(1a) Where sentence is imposed for an offence involving an act of terrorism, the court on sentencing the offender, on its own motion or on the application of the prosecutor or the victim of the offence may make an order for the offender to pay for the value of any property damaged as a result of the terrorist act without limiting any civil action the victim may take.

(2) An order under subsection (1) is, for the purpose of this Act, an exercise of the civil jurisdiction of the Court in an action between the victim of the offence as plaintiff and the offender as defendant, and is enforceable in the manner and is subject to an appeal as are orders for the return of chattels or of money.

(3) Where there is a dispute as to the value of the property the issue shall be tried by the Court as if it were a civil action.

(4) Although the value of the property involved exceeds the limits of the civil jurisdiction of the Court, the Court shall have jurisdiction under this section.

(5) An order under this section may be enforced during the term of the sentence imposed, or at any time within ten years after the expiry of the sentence".

For the purposes of the instant matter, sub-section 2 of section 147A and sub-section 2 of section 147B of Act 30 are of relevance. These sub-sections give direction as to the manner of enforcement of restitution orders made by a court after the trial and conviction of persons for stated criminal offences. The sub-sections mainly point to the application of the various modes of enforcement of respective orders in civil suits. The implication is that, depending on the order for restitution made, a person desirous of enforcing such orders shall have resort to the appropriate process for the enforcement of a civil judgment. This is so because, as stated in both section 147A (2) and 147B (2), "an order under subsection (1) is, for the purpose of this Act, an exercise of the civil jurisdiction of the Court in an action between the victim of the offence as plaintiff and the offender as defendant ..."."

[10]. In this matter, since the restitution order made in favour of the Interested Party was, in fact, for the recovery of possession of an immovable property, the most appropriate rule for the enforcement of such a judgment is Order 43 rule 3 of the High Court (Civil Procedure) Rules, 2004, CI.47 (as amended). Order 43 rules 3(1) to (3) provides as follows:

"3. Enforcement of judgment for possession of immovable property

- (1) Subject to these Rules, a judgment or order for the recovery of possession of immovable property may be enforced by one or more of the following means,
- (a) a writ of possession;
- (b) in a case in which rule 5 applies, an order of committal or a writ of sequestration.
- (2) A writ of possession to enforce a judgment or order for the recovery of possession of immovable property shall not be issued without leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 56 applies.
- (3) The leave shall not be granted unless it is shown that every person in actual possession of the whole or any part of the immovable property has received such notice of the proceedings as appears to the Court sufficient to enable the person to apply to the Court for any relief to which the person may be entitled".

Thus, as stated in rule 3(1)(a) of Order 43 of CI.47, the main method or mode for the enforcement of a judgment or order for the recovery of possession of an immovable property is the issuance of a writ of possession. Although rule 3(1)(b) of Order 43 mentions an order of committal or the issuance of a writ of sequestration as an alternative mode for the enforcement of a judgment for the recovery of immovable property, that rule, that is, rule 3(1)(b) of Order 43 applies only where the order requiring the surrender of possession of the immovable property stated the time within which the possession is to be surrendered. Otherwise, the use of committal proceedings or the issuance of a writ of sequestration have no place as a mode of enforcing a judgment for the recovery of possession of an immovable property, and this is so because Order 43 rule 12(2) specifically excludes the use of committal proceedings and writ of sequestration as a mode by which possession of an

immovable property may be enforced. The said Order 43 rule 12(2) provides in no uncertain terms that:

“12. Enforcement of judgment and order for recovery of money

(2) Rule 3 of this Order with the omission of sub rule (1) (b) and Order 45 rule 3 shall apply to a judgment or order for the recovery of possession of immovable property as they apply to a judgment or order for the giving or delivery of possession of immovable property”.

In the matter under consideration, in making the order for restitution in her judgment, exhibit K3 herein, delivered on the 15<sup>th</sup> May 2023, the High Court judge did not state any time within which possession of the Property known as No. 64, Patrice Lumumba Road, Airport Residential Area, Accra, was to be delivered. It follows, therefore, that the use of committal proceedings, quite apart from section 29 of the Courts Act, was not available to the Interested Party and the High Court as a means of enforcing the restitution order. The resort to committal proceedings as a way of enforcing the restitution order was therefore unlawful. It is within the powers of this court not only to order and direct the enforcement of the laws of the land but also to nullify unlawful acts undertaken by lower courts such as the High Court. As pointed out in Network Computer System Ltd vs. Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218 at 230, “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”

[11]. One other issue that cannot be glossed over is the effect of the filing of a Notice of Claim, exhibit K6 herein, by the Applicant, before the High Court, on the 21st December 2023, in which he asserts his ownership over House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra, following the posting on the property in question of the order for restitution. This Notice of Claim must be

considered against the backdrop of the filing by David Aseye Tay of an affidavit, exhibit K4 herein, on the 20<sup>th</sup> day of March 2020, in the High Court in which he had deposed that he had “no proprietary nor legal interest in the property described as ... House No. 64 Patrice Lumumba Road, Airport Residential Area, Accra”.

Indeed, where a Notice of Claim is filed by a person, claiming to be the owner of property taken in execution or intended to be taken in execution, the Registrar or the Deputy Sheriff of the Court is required by the rules of Court to serve a copy of the Notice of Claim on the execution judgment creditor, in this case the Interested Party, who shall also file a Notice informing the Registrar whether the execution judgment creditor admits or disputes the claim. The notice is to be filed by the execution judgment creditor within four days after he has been served with the notice of claim by the Registrar. Thereafter, since in the instant matter the Interested Party insists on possessing House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra, as a result of the restitution order, the Registrar is enjoined to file an application ex parte for an order that the Applicant herein and the Interested Party appear before the High Court on a date to be given by the Court so that the issue of ownership of the property in question shall be determined by the court. This procedure is succinctly captured in Order 44 rule 12 of the Rules of the High Court which states that:

“12. Claims by other persons

(1) A person who makes a claim to or in respect of a property taken or intended to be taken in execution under process of the Court, or to the proceeds or value of any such property, shall give notice of the claim to the Registrar and shall include in the notice a statement of the person’s address for service.

(2) On receipt of a claim made under sub rule (1), the Registrar shall forthwith give notice of it to the execution creditor who shall within four days after receiving the notice, give notice to the Registrar informing the Registrar whether the execution creditor admits or disputes the claim.

(3) Where

(a) the Registrar receives a notice from an execution creditor under sub rule (2) disputing a claim, or the execution creditor fails to give the required notice within the period mentioned in that sub rule; and

(b) the claim made under sub rule (1) is not withdrawn,

the Registrar may apply to the Court for relief.

(4) An application for relief by the Registrar under this rule shall be made ex parte to the Court seeking an order that the claimant and the execution creditor shall appear before the Court on a date specified in the order for the issue between them to be determined.

(5) Where the Registrar receives a notice from an execution creditor under sub rule (2) admitting a claim, the Registrar shall forthwith withdraw from possession of the property claimed and having withdrawn the Registrar may apply to the Court for an order restraining the bringing of an action against the Registrar in respect of the Registrar having taken possession of that property.

(6) Notice of an application under sub rule (5) shall be served on any person who makes a claim under sub rule (1) to or in respect of the property concerned, and that person may attend the hearing of the application.

(7) An execution creditor who gives notice in accordance with sub rule (2) admitting a claim shall only be liable to the Registrar for the fees and expenses incurred by the Registrar before receipt of that notice".

The need for the hearing of the dispute between the Applicant as claimant and the Interested Party as an execution judgment creditor becomes more paramount in view of the affidavit, exhibit K4 herein, filed by David Aseye Tay on the 20th day of March 2020, in which he had deposed that he is neither the owner nor has he any interest in House No. 64 Patrice Lumumba Road, Airport Residential Area, Accra. The Applicant

has an inalienable right to be heard by the Court before orders could be made to deprive him of his property if the Interested Party succeeds in proving his claim. Speaking through Acquah JSC, (as he then was) in Barclays Bank of Ghana Ltd vs. Ghana Cable Co. Ltd and Others [1998-1999] SCGLR 1, this Court emphasised the need to observe the principles of natural justice when it quoted with approval the position of the law in Broom Legal Maxims (9<sup>th</sup> ed) at page 78 that:

“It has long been a received rule that no one is to be condemned, punished, or deprived of his property in any judicial proceedings unless he has had an opportunity of being heard”.

In Republic vs High Court, Accra; Ex parte Salloum & Others (Senyo Coker interested party) [2011]1 SCGLR 574, this Court pointed out that:

“The right to be heard in proceedings before a court of law-the audi alteram partem rule – was well-established in every common law jurisdiction. Thus, no matter the merits of the case, the denial of the audi alteram partem rule would be seen as a basic fundamental error which should nullify proceedings made pursuant to the denial. It should be taken away only when the rules of court or practice so permitted.”

[12]. The prerogative writ of Prohibition is more particularly used in our jurisdiction to restrain adjudicators, exercising a function under public law, who exhibit bias or real likelihood of bias in the process of adjudication. The aim is to engender public confidence in the judicial process and, in particular, ensure trust in the parties who appear before the courts and adjudicators alike that their cases and disputes will be heard by persons who are neutral and uninterested in particular outcomes except to ensure that justice was done to the parties before them. For these reasons, this court held in Republic vs High Court, Denu Ex parte Agbesi Awusu III (No.2) Nyonyo Agboada Sri III (Interested Party) [2003-2004] SCGLR 907 that:

"[W]here bias or real likelihood of bias has been satisfactorily established against a trial judge, both certiorari and prohibition would automatically lie to quash his judgment or prevent the biased judge from hearing a case in the supreme interest of justice so as not to bring the administration of justice into disrepute...."

At page 913 of the report, the Court stated, among others, that:

"The strict application of the rules of natural justice prevents and discourages judges who have proprietary, financial, hostile or any other interest from sitting in judgment over such cases."

Thus, the public law remedy of Prohibition is future looking in outlook and prospective in nature and it is akin to the equitable and private law remedy of injunction. Both serve as restraint remedies: one public the other private. In contrasting the public law remedy of certiorari with prohibition, the author of Craig Administrative Law, (8<sup>th</sup> ed.), Sweet & Maxwell, writes at page 794 that:

"Whereas certiorari operated retrospectively to quash a decision already made, prohibition was prospective in its impact, preventing the person addressed from continuing with something that would be an excess of jurisdiction".

Prohibition, as a prerogative writ and a public law remedy thus, serves to restrain any body or persons or any adjudicator with legal authority to determine matters or disputes or questions which affect the rights of others, with a duty to act judicially, from exercising that function where the adjudicator either proceeds with bias or exhibits real likelihood of bias and lack of impartiality or has an interest in the matter or where the adjudicator proceeds to act outside the jurisdiction circumscribed by the law. In R vs. Electricity Commissioners, Ex parte London Electricity Joint Committee (1920) Ltd. [1924] 1 KB 171 Atkin LJ stated at page 206 of the report that:

"I can see no difference in principle between certiorari and prohibition, except that the latter may be invoked at an earlier stage. If the proceedings established

that the body complained of is exceeding its jurisdiction by entertaining matters which will result in its final decision being subject to being brought up and quashed on certiorari, I think that prohibition will lie to restrain it from so exceeding its jurisdiction".

It can not be disputed, in the instant matter, that section 29 of the Courts Act, 1993, Act 459 puts a break on the enforcement of a restitution order made upon the conviction of an accused person where the accused files a Notice of Appeal against the judgment of the Court. As already pointed out, the filing of the Notice of Appeal serves to stay the execution of the restitution order until the appeal is finally determined by the Appellate Court or until the Appeal is withdrawn. Thus, the jurisdiction of the High Court to enforce the restitution order is suspended or held in abeyance till the determination of the appeal or till the withdrawal of the appeal. Therefore, where the High Court proceeds to enforce the restitution order, as in this case, whiles the appeal filed by David Aseye Tay remains undetermined, the High Court will be acting without jurisdiction and consequently, Prohibition will lie to restrain it from so doing. The aberration becomes more complicated and worse for the High Court to attempt to enforce the restitution order by contempt proceedings as shown above.

[13]. Apart from the brazen breach of statute law, the High Court is also accused of bias which is one of the reasons why the Applicant seeks Prohibition to restrain the High Court from hearing the second application for contempt filed on the 17<sup>th</sup> May 2024, exhibit K herein. At paragraphs 36 to 39 of the supporting affidavit, the Applicant deposed that:

"36. That on 20th February, 2025, the trial court dismissed my application for stay of proceedings pending appeal. Attached hereto and marked Exhibit K13 is a copy of the ruling and court notes of the trial court.

37. That in its ruling aforesaid the trial court held that it agrees with the Interested Party that the second contempt application must be tried expeditiously since the residue of interest conferred on the Interested Party by the restitution order was being wasted.

38. That I believe counsel's advice that the holding of the court on 20th February, 2025 is prejudicial and openly biased to my cause as the trial court has predetermined the contempt application in favour of the Interested Party even before I am heard.

39. That in the circumstances of the matter, I do not believe that I will have fair hearing before the trial court both in the contempt application and any subsequent determination of any matter relating to my ownership of the property".

Indeed, the Interested Party herein exhibited the ruling of the High Court, exhibit FLA19, on an application for stay of proceedings against the hearing of the second application for contempt filed by the Interested Party. The said ruling was delivered on the 20<sup>th</sup> February 2025. In the ruling, the Judge stated at page 6 to 7 thereof that:

"The ruling on the preliminary legal objection to the hearing of the motion for contempt and preservation was delivered on 15/8/2024. It has been six months now. Learned counsel for the respondent submitted that, grant of stay would mean a reduction in the amount of time that they would be benefiting from the property subject matter of the motion whose reversionary interest is held by their landlord. The judgment in the main case, Republic v David Aseye Tay, that granted the restitution order was delivered in May 2023. I am of the view that, Respondents will suffer extreme hardship when this application is granted. In addition, victors in cases must be allowed to enjoy the fruits of their labour ..." "

The above statement is a clear indication that the trial Judge has made up her mind that is why she thinks that once the High Court, differently constituted, has made an order for restitution in favour of the Interested Party upon the conviction of David Aseye Tay, then, notwithstanding the claim of ownership made against the property, subject matter of the order of restitution, the Interested Party, must at all cost, be delivered with the property because, in the view of the trial Judge, the Interested Party had emerged victorious and for that matter she must proceed to hear the second application for contempt by which the Interested Party seeks to enforce the order for restitution of the property in issue. In the words of the learned authors of Halsbury's Laws of England (5<sup>th</sup> ed.), Volume 61 at paragraph 633:

"It is generally unnecessary to establish the presence of actual bias, although the courts are not precluded from entertaining such an allegation. It is enough to establish the appearance of bias. It is now established that a uniform test applies which requires the court to inform itself about all the circumstances which relate to the suggestion that the decision-maker is biased. It must then ask whether those circumstances would lead a fair-minded and informed observer to conclude that there was a real possibility that the decision-maker was biased. In previous cases a variety of linguistic formulations were used, including a real danger, or a real likelihood, that in circumstances of the case an adjudicator will be biased, or that a reasonable person acquainted with the outward appearance of the situation would have reasonable grounds for suspecting bias, or a more exacting test based on whether or not justice had been manifestly seen to be done. Although these different formulations are no longer apposite, the decisions themselves still provide examples of the general principles in action".

At paragraph 634, the learned authors write that:

"In a wide range of other situations, the test for apparent bias may be satisfied. A person ought not to participate or appear to participate in an appeal against

his own decision, or act or appear to act as both prosecutor and judge; the general rule is that in such circumstances, the decision will be set aside. Normally it will also be inappropriate for a member of the tribunal to act as witness. Apparent bias may also arise because an adjudicator has already indicated partisanship by expressing opinions antagonistic or favourable to the parties before him, or has made known his views about the merits of the very issue or issues of a similar nature in such a way as to suggest prejudgment ...”

As already pointed out, by expressing her view that the Interested Party must be allowed to enjoy the fruits of their labour; in other words, because an order for restitution had been made in their favour, the Interested Party is entitled to the delivery of possession of House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra, irrespective of the Notice of Claim filed by the Applicant herein in addition to the Notice of Appeal filed by David Aseye Tay, the trial Judge has pre-determined the issues surrounding the order for restitution, and consequently is guilty of apparent bias. Hence, she cannot be allowed to continue to hear the second application for contempt of court against the Applicant herein.

**[14].** For all the reasons given in this judgment, we will grant the application for Prohibition which we hereby do and consequently Prohibit the High Court Judge, Her Ladyship Comfort Kwasiwor Tasiame J, from proceeding to hear and determine the application for contempt filed by the Interested Party herein on the 20<sup>th</sup> May 2024 or any such application in connection with House No. 64, Patrice Lumumba Road, Airport Residential Area, Accra.

(SGD)

**S. K. A. ASIEDU  
(JUSTICE OF THE SUPREME COURT)**

(SGD)

**G. PWAMANG**  
**(JUSTICE OF THE SUPREME COURT)**

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

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HER PRISCILLA AGGUDAY ESQ.**