IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD.2025

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

AMADU JSC

KULENDI JSC

ASIEDU JSC

DARKO ASARE JSC

19TH MARCH, 2025

CIVIL APPEAL
J4/54/2023

ALHAJI HALIDU ABOUBAKAR … PLAINTIFF/APPELLANT/ RESPONDENT

VRS

1. **DINAH AFI MARTINS (DECEASED)**
2. **KING GEORGE ENT. LTD … DEFENDANT/RESPONDENT/ APPELLANT**

JUDGMENT

BAFFOE-BONNIE JSC:

This is an interlocutory appeal against the ruling of the Court of Appeal dated 13th day of December, 2022. For purposes of clarity, the Plaintiff/Appellant/Respondent herein shall conveniently be described as the Plaintiff, whereas the Defendants/Respondent/Appellants shall be described as the Defendants. The brief facts of this case are that the Plaintiff commenced an action in the High Court, Accra against the Defendants for declaration of title amongst other reliefs. The High Court delivered judgment in favour of the Defendants. The Plaintiff appealed against the decision to the Court of Appeal and subsequently filed a motion for stay of execution at the **first instance** in the Court of Appeal. The motion for stay of execution was opposed by the Defendants. The Court of Appeal having heard all parties granted the Application for stay of execution. It is worthy of note that this was the time of the introduction of the amendment of Rules 1(a) and 3 of the Court of Appeal (Amendment) Rules, 2020 (C.I 132) which occasioned many uncertainties in the legal fraternity. Subsequently the Defendants filed an application to set aside the decision of the Court of Appeal granting the stay of execution on the basis that the decision was null and void but same was refused. Dissatisfied with the Ruling of the Court of Appeal, the Defendants have filed an appeal against the said Ruling dismissing the application to set aside the Court of Appeal's decision dated 15th November, 2021 on the following grounds;

a. Error of Law: The Court of Appeal lacked jurisdiction to hear the application when they granted the Plaintiff/Appellant/Respondent/Respondent application for stay of execution on the 15th day of November, 2021. The Court of Appeal on the 15th day of November granted the Plaintiff/Appellant/Applicant's application for stay of execution pending appeal of the judgment of the High Court Judgment dated the 19th day of March 2021 when the application was one of first instance and the record of appeal was not before the Court of Appeal.

b. Error of Law: The Court of Appeal decision dated the 15th day of November 2021 was void as the application for stay of execution by the Plaintiff/Appellant/Applicant/Respondent was one of first instance and the Court of Appeal was not seized with the appeal.

c. Error of law: The Court of Appeal decision dated 13th day of December 2022 stating "We are of the view that applicant has not established any good reason for us to set aside the ruling and order of this court dated 15th day of November 2021," was error of law as the Court of Appeal had adequate information that the decision was void for want of jurisdiction.

In dealing with the matter before us, we note that the essential issue here is whether or not the Court of Appeal had jurisdiction to hear the motion on notice for stay of execution pending filed by the Plaintiff and grant same.

The crux of the Defendants/Appellants' argument is that the Court of Appeal was not seised with jurisdiction to hear the Plaintiff's Application for stay of execution at the time of the hearing. Counsel for the Defendants, submitted that an appeal is by creature of statute and no right of appeal exists save that which is conferred by statute. It is the case of counsel for the Defendants that at the time the motion for stay of execution was filed by the Plaintiff in the Court of Appeal at the first instance, the Court of Appeal erroneously believed that per the amendments in C.I 132, they had jurisdiction to entertain the application. Most importantly, counsel states that at the time of the hearing of the said Application the record of proceedings from the High Court had not been transmitted to the Court of Appeal. Counsel buttressed his assertion with the case of The **Republic v. High Court (Criminal Division 9), Accra Exparte Ecobank Ghana Ltd (Applicant), Origin 8 Ltd & Ors** Civil Motion No. J5/10/2022 where this court clarified

the supposed confusion created in the amended C.I 132. Counsel for the Defendant further contended that the Court of Appeal can only entertain an appeal when the record of proceedings have been transmitted therein and since that was not the case in this matter, it follows that the Ruling of the Court of Appeal is void and has to be set aside for want of jurisdiction.

Counsel for the Plaintiff/Respondent responded to these submissions by stating that the Court of Appeal had jurisdiction the moment the Notice of Appeal was filed. Counsel for the Plaintiff argued that at the material time when the application was mounted, this court could take judicial notice of the apparent confusion that beclouded the interpretation put on the relevant provisions of the amended Court of Appeal Rules by the law fraternity which was due to the erroneous impression that the Court of Appeal could entertain an application for stay of execution at first instance. It was not until this court settled the position of the law in the Ex parte Ecobank Ghana Ltd case supra that the practice at that time was varied. It is the case of counsel for the Plaintiff that the Defendants took active part in that which they seek to set aside. They also submitted to the jurisdiction of the Court of Appeal at the time and argued strenuously against the Application for stay without raising the issue of jurisdiction. Counsel for the Plaintiff is of the opinion that the settled position of the law was made post-delivery of the ruling of the Court of Appeal and to uphold the argument of the Defendants will be to apply the law retrospectively. Counsel concluded by stating that the Record of Appeal has been compiled and same is ready and that to grant this Application will be to open the Pandora's Box for all aggrieved parties to apply for a setting aside of their orders, a situation which will lead to judicial chaos.

ANALYSIS

When C.I 132 was passed the idea prevalent at the time was that the jurisdiction of the High Court to stay execution of its decision pending appeal to the Court of Appeal had been taken away and if a party wishes to stay execution pending appeal that application must be made directly to the Court of Appeal.

The amended rules are reproduced herein for purposes of clarity.

Court of Appeal (Amendment) Rules, 2020 (C.I.132)

Rule 27 of C.I 19 amended

1. The Court of Appeal Rules 1997 (C.I. 19) referred to in this enactment as the "principal enactment" is amended in rule 27 by (a) the substitution for sub rule (1), of

> *"(1) An appeal shall not operate as a stay of execution under the Judgment or decision appealed against unless **the Court** otherwise orders on an application made to the court by motion on notice.";*

3. Rule 28 of C.I. 19 revoked 3

The principal enactment is amended by the revocation of rule 28.

The old provisions state at follows;

27. Effect of appeal

*(1) An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except where **the court below or the Court** otherwise orders*

> *(a) in the case of the court below, upon application made orally or by motion on notice to it; and*

(b) in the case of the Court, upon application made to it by motion on notice,

28. Court to which application should be made

Subject to these Rules and to any other enactment, where under any enactment an application may be made either to the court below or to the Court, it shall be made in the first instance to the court below, but if the court below refuses to grant the application, the applicant shall be entitled to have the application determined by the Court." (Emphasis supplied)

Looking carefully at the new rules in comparison with the old rules, it would be noticed that reference to the ***court below*** has been removed while only maintaining ***the court***. This led to the perception that the law maker intended to take away the jurisdiction of the court below (High Court in this case) to entertain an action for stay of execution or stay of proceedings pending appeal and to confer it solely on the Court of Appeal. It was based on this erroneous perception that the application for stay of execution at was filed at first instance in the Court of Appeal.

The first and basic issue we are faced with herein is whether the Court of Appeal had jurisdiction to hear the Application for stay of execution at first instance when the record had not been transmitted to the Court of Appeal.

Jurisdiction is an integral part of every court. A court's authority to deal with a matter is hinged on its jurisdiction. Jurisdiction indicates whether or not a court has the power to do what it is doing. It is so fundamental that it goes to the root of every matter and can have devastating consequences. See the case of **Kumnipah v. Ayirebi [1987-88] 1 GLR 265** where it was held that;

"Jurisdiction means the power or authority to adjudicate. Where it is lacking, any judgment or order emanating from the court or judge is a nullity…"

It is important to note that a court can only hear a matter in which it has jurisdiction to do so. As was held by this court in **Frimpong v. Nyarko [1999-2000] SCGLR 429** at p. 442;

"Again, where the error is fundamental or goes to the jurisdiction of the court, thereby exposing the court's incompetence or lack of jurisdiction in the matter in which the said error was committed, the court is incompetent to correct or waive such an error, as a court of law has no authority to grant itself jurisdiction in matters where the relevant statute does not confer such power."

See also **Republic v. High Court, Accra, Ex parte Allgate Company Limited [2007-2008] 2 SCGLR 1041** and **Mosi v. Bagyina [1963] 1 GLR 337**.

The assumption of jurisdiction by the Court of Appeal in matters relating to Applications for stay of execution relates to the control of proceedings during the pendency of appeal and this is carefully provided for in Rule 21 of Court of Appeal Rules, 1997 (C.I 19).

"21. Control of proceedings during pendency of appeal

After an appeal has been entered and until it has finally been disposed of*, the Court shall be seised of the whole of the proceedings as between the parties and every application shall be made to the Court and not to the court below, but any application may be filed in the court below for transmission to the Court."*

This provision suggests that the Court of Appeal only assumes jurisdiction when an appeal has been entered and until it has finally been disposed of. What then is entry of an appeal? Rule 14 of C.I 19 provides some guidance here.

14. Transmission of record

"(I) The Registrar of the court below shall transmit the record when ready together with-

(a) a certificate of service of the notice of appeal;

(b) a certificate as in Form 5 in Part I of the Schedule that the conditions imposed under rules 11(4) and 12 have been fulfilled;

(c) five copies of the record for the use of the Judges;

(d) the docket or file of the case in the court below containing all papers or documents filed by the parties concerned; and

(e) the exhibits, documents or other things received by the court below in respect of the appeal.

(2) The Registrar of the court below shall also cause to be served on all parties mentioned in the notice of appeal, a notice as in Form 4 in Part I of the Schedule that the record has been forwarded to the Registrar, and the Registrar shall in due course ***enter the appeal*** *in the cause list mentioned in rule 2(1)."*

The combined effect of the provisions stated above demonstrate that the jurisdiction of the Court of Appeal only kicks in after the transmission of the Record to the Court of Appeal. The reason being that it is only after the transmission of the Record that the

Registrar of the Court of Appeal shall enter the appeal in the cause list. In the light of these provisions, before the transmission of the Record, the Court of Appeal does not have jurisdiction to deal with interlocutory matters relating to a particular appeal. This clearly means that the Court of Appeal cannot entertain "any application" including an application for stay of execution at first instance before the entry of an appeal which is preceded by the transmission of the Record. Most importantly, the Notice of Appeal is filed in the Registry of the High Court and the Court of Appeal would have no notice or idea of any appeal until the Record of Appeal is transmitted to the Registry of the Court of Appeal.

Indeed, it clear that two different Courts (in this case the Court of Appeal and the High Court) cannot have jurisdiction over the same matter at the same time. The service of Form 6 effectively ends the jurisdiction of the High Court and allows the Court of Appeal to assume jurisdiction. This position of law was held in the case of **Republic v. High Court (Human Rights Division) Accra; Ex parte Akita (Mancell-Egala & Attorney General Interested Parties) [2010] SCGLR 374** where the Court stated;

> *"It was well settled that once the Civil Form 6 had been served on the trial High Court, that Court no longer had jurisdiction over the case. At that point of the proceedings, the Court with the appropriate jurisdiction would be the Court of Appeal. Since there was no doubt that Form 6 had been served on the trial High Court that should have effectively ended its jurisdiction."*

This explains that if the Record is still at the High Court, then the High Court still has jurisdiction because per the Rules, the jurisdiction of the High Court has not ended. Since two courts cannot have the same jurisdiction over one case, it is the position of this court that at the time of filing the Application for stay of execution, the High Court was the

appropriate court clothed with jurisdiction to hear the matter and that is because the Record was still at the High Court. In **Nii Kojo Danso II v. Lands Commission & 2 Others (Joshua Quarshie - Applicant) [2017-2018] 2 SCLRG 880** this court emphasized at page 891 of the report that:

> *"Under rule 21 of CI.19, the Court of Appeal becomes seised of the entire appeal when the Record of Appeal has been transmitted to it".*

Then again in **Republic v. High Court (Human Rights Division), Accra, Ex parte Akita [2010] SCGLR 374** this court opined that Civil Form 6 *"connotes the juncture of severance of jurisdiction on the appealed decision from the High Court".*

In explaining further, the effect of Rule 21 of C.I 19 this court expressed the following;

> *"By this rule, i.e., rule 21, the High Court retains jurisdiction when the record is not ready for transmission or has for any reason not been transmitted to the Court of Appeal, with the corollary that as soon as it has been transmitted to the Court of Appeal, then its jurisdiction to entertain any application is curtailed except that whatever is meant for the Court of Appeal but was filed in the High Court must be forwarded to the latter court."*

The argument by counsel for the Applicant that the Court of Appeal had jurisdiction to entertain an application for stay pending appeal, the moment a Notice of Appeal was filed, is unfortunately inconsistent with the law. Jurisdiction is a creature of statute. The Court of Appeal's jurisdiction to deal with applications operates within the parameters of C.I 19. A Notice of Appeal does not grant jurisdiction to the Appellate Court. When this court was confronted with a similar issue in relation to the Supreme Court Rules, 1996 (C.I 16), this is what the court said in the case of **Ashanti Goldfields Company Ltd**

v. Africore Ghana Ltd and Westchester Resources Ltd Civil Motion No. J8/29/2013 dated 27th March, 2013;

> *"In our opinion the appeal is entered, or is deemed to have been entered, the moment the registrar of the Supreme Court receives the record and all the accompanying documents listed in rule 15 (1) of the aforesaid Rules. It will be observed that the docket or the file which contains all relevant materials for the due prosecution of the appeal would have, at that stage, been transmitted from the court below to this court. On the receipt of these documents the court below becomes functus officio; the Supreme Court then becomes seised of the whole of the proceedings as between the parties thereto and, until the appeal is finally determined "every application therein shall be made to the court and not to the court below, but any application may be filed in the court below for transmission to the court."*

Counsel for the Plaintiff/Respondent also contended that the Defendant/Appellant took active part in the proceedings in the Court of Appeal and now seeks to set it aside simply because the outcome was unfavourable in his perspective. Counsel stated that the Appellant submitted to the jurisdiction of the Court of Appeal at the time and argued strenuously against the Application without raising the issue of jurisdiction. More so, it is the case of counsel for the Respondent that the settled position of law was made post-delivery of the Ruling of the Court of Appeal and to uphold the argument of the Appellant would be to apply the law retrospectively.

It is our opinion that this argument is clearly misplaced. The position of the law never changed and the amendment to C.I 19 did not change the rules with respect to the jurisdiction of the Court of Appeal. The Supreme Court only made the existing position of the law clear in the Ex parte Ecobank case supra, and so the principle of non-retrospective application of law does not come in. Most importantly the law is settled

that the issue of jurisdiction can be raised at any time during the trial and on appeal even for the first time. In **Republic v. Adansi Traditional Council Ex-parte Nana Akyie II and Anor [1974] 2 GLR 126** the court held as follows:

> *"A plea as to the jurisdiction of an inferior court or tribunal could be taken and heard at any time even if the point was not raised in the court below if it appeared to an appellate court that an order against which an appeal had been brought had been made without jurisdiction and it would never be too late to admit and give effect to the plea that the order was a nullity."*

The authorities on the subject are too many to recount but suffice the reference to the decisions in **Republic v. Nii Adamah Thompson & Ors, Ex-Parte Nii Tetteh Ahinakwah II** Civil Appeal No. J8/92/2011 dated 15th February, 2012 and **Attorney-General v. Faroe Atlantic Co. Ltd. [2005-2006] SCGLR 271.**

It does not matter whether the parties were actively involved in the matter or not, this is because jurisdiction is at the heart of each case and so vital that even if it is not questioned by any of the parties it is important for a court to advert its mind to it so as not to give a void order. See: **Bimpong-Buta v. General Legal Council (2003-04) SCGLR 1200, Ghana Bar Association v. Attorney-General (1996-97)1 GLR 598.**

The authorities are legion on the principle that generally any act done contrary to law or procedure which goes to the jurisdiction of the matter is void and if an act is void then it is in law a nullity. See **Macfoy v. United Africa Co. Ltd. [1961] All ER 1169 at 1172.** This court also made it clear in **Koglex (No.2) v. Attieh (No.2) [2003-04] SCGLR 75** that it is not the duty of a court to confer on itself jurisdiction if the statute creating the court or the rules do not confer jurisdiction.

Upon a careful consideration of the Record of Appeal, the Motion for stay of execution was filed at the first instance in the Court of Appeal. Both counsel agree to the fact that the Record had not been transmitted to the Court of Appeal then. It follows that the Court of Appeal was not seised with jurisdiction to entertain the Application for stay of execution at the first instance. We conclude on this point by making reference to the decision of this Court in the **Ashanti Goldfields Company Ltd case supra** where this court in dismissing the application concluded as follows;

> *"The jurisdiction conferred by the Constitution on the Supreme Court to hear appeals from the Court of Appeal is exercised in accordance with rules of court formulated pursuant to the Constitution itself. Those rules of court have fashioned rules on when interlocutory applications may validly be made to this court and when they are to be made to the court below. Those rules are not a clog on the right of appeal and thus in no way unconstitutional. Accordingly, the preliminary objection is upheld and the application struck out".*

Based on the above analysis rendition of the law, this appeal should have been allowed. However, whilst dealing with the issue of whether the Court of Appeal had jurisdiction to deal with an application for stay of execution pending appeal in the first instance, we also grappled with the issue as to whether our jurisdiction has been properly invoked by the Defendants/Appellants as per their notice of appeal. As stated above, jurisdiction is so fundamental that it can be raised at any time either by the parties or the court itself (as is the case herein).

Though not raised by any of the parties to this suit, because jurisdiction is so fundamental, the question that we ask ourselves in determining whether the jurisdiction of this court has been properly invoked is: Whether or not the Defendants/Appellants ought to have obtained special leave before filing this appeal.

Article 131 of the 1992 Constitution provides for special leave. This is also reiterated in Section 4 of the Courts Act, 1993 (Act 459) which provides as follows;

"4. Appellate jurisdiction

(1) In accordance with article 131 of the Constitution, an appeal lies from a judgment of the Court of Appeal to the Supreme Court

(a) as of right, in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction;

(b) with the leave of the Court of Appeal, in a cause or matter, where the case was commenced in a Court lower than the High Court or Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or it is in the public interest to grant leave of appeal;

(c) as of right, in a cause or matter relating to the issue or refusal of a writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.

(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in a cause or matter, including an interlocutory matter, civil or criminal, and may grant leave accordingly.

(3) The Supreme Court has appellate jurisdiction, to the exclusion of the Court of Appeal to determine matters relating to the conviction or otherwise of a person for high treason or treason by the High Court.

(4) An appeal from a decision of the Judicial Committee of the National House of Chiefs lies to the Supreme Court with the leave of Judicial Committee or the Supreme Court.

(5) Subject to subsection (2), the Supreme Court shall not entertain an appeal unless the appellant has fulfilled the conditions of appeal prescribed under the Rules of Court."

The general rule is that all appeals emanating from the judgment of the High Court in the exercise of its original jurisdiction lie as of right to the Supreme Court. It is worthy of note that the law does not create a distinction between interlocutory and final appeals. A simple understanding of the provisions reproduced above would mean that if an appeal does not emanate from the judgment of the High Court in the exercise of its original jurisdiction, then one cannot come as of right. This explains why it is provided that where a matter emanates from a court lower than the High Court, then leave must be obtained. This position of the law was extensively explained by our brother Pwamang JSC in his concurring opinion in the case of **Nii Kojo Danso II Vrs the Executive Secretary, Lands Commissions** supra;

"…However, appeals as of right by Article 131(1)(a) cover only decisions of the Court of Appeal that are in respect of appeals from judgments of the High Court given in the exercise of its original jurisdiction. That means that two categories of decisions of the Court of Appeal are excluded from this automatic right of appeal; (i) decisions that are given in respect of appeals from decisions of the High Court, but they were given by the High Court in respect of a case that commenced in a court lower than the High Court., and ***(ii) decisions that are given but not in respect of appeals against decisions of the High Court.*** *For cases in both categories (i) and (ii), there is no automatic right of appeal but leave is required".*

Much emphasis is placed on the fact that decisions that are given but not in respect of appeals against decisions of the High Court do not have automatic right of appeal as leave is required. His Lordship went on further to clarify that;

> *"Category (ii) also includes the situation where the Court of Appeal hears and determines a repeat interlocutory application pursuant to Rules 27 and 28 of the Court of Appeal Rules, 1997 (C.I.19).* ***There too the repeat application is not an appeal against a decision of the High Court****. It is important to underscore the substantial difference between a repeat interlocutory application and an appeal against an interlocutory decision of the High Court.* ***With the repeat application the Court of Appeal exercises its own discretion in the matter as it sees fit*** *but with the appeal against an interlocutory decision of the High Court, the Court of Appeal determines if the High Court exercised its discretion in the case in accordance with correct principles of law. In such appeals the Court of Appeal has no discretion of its own in the matter… Article 131(2) applies to cases in category (ii) and appeals in that category can only be brought upon special leave."*

From the facts of this case, the Plaintiff filed an application for stay of execution in the **first instance**, at the Court of Appeal. The Court of Appeal heard the Application and granted same on 15th November, 2021. Subsequently, the Defendant then brought an application to set aside the grant of stay of execution at the Court of Appeal and same was dismissed on the 13th of December, 2022. It is based on this Ruling by the Court of Appeal dated 13th December, 2022, that the Defendant has brought this appeal. This is evident in the Notice of Appeal which is produced herein;

> *"TAKE NOTICE that the Appellant being dissatisfied with the* ***decision of the Court of Appeal*** *more particularly stated hereunder and contained in the Ruling of the Court of Appeal dated the 13th day of December 2022 dismissing the Defendant/Respondent/*

Applicant/Appellants application to set aside the Court of Appeal's decision dated the 15th day of November 2021 as void, do appeal to the Supreme Court on the grounds…"

Clearly, the Defendant is appealing against a decision of the Court of Appeal which emanates from the same Court of Appeal. This is not an appeal against a decision of the High Court exercising its original jurisdiction. Article 131 of the Constitution and Section 4 of Act 459 are clear that any decision which does not emanate from the judgment of the High Court in the exercise of its original jurisdiction requires leave of court. More so, even though this is not a repeat application, it has the nature of a repeat application. This is because when the Application for stay of execution was brought before the Court of Appeal at first instance, the Court of Appeal exercised its own discretion in the matter as it sees fit and it is obvious that this is definitely not an appeal. This brings the understanding that the decision the Defendants/Appellants is appealing against is purely hinged on the Court of Appeal decision dated 15th November, 2021 and that is not a judgment or decision of the High Court which therefore activates the requirement of special leave from this court in accordance with Article 131(2) and Section 4 of Act 459. It must be noted that special leave is required in this case because the appeal before us is not in respect of a judgment of the High Court exercising its original jurisdiction and not because it is an interlocutory decision. Appeals of this nature, as in the case before us, fall outside the scope of appeals brought as of right per Article 131(1) of the Constitution and due to this leave must first be obtained. Reference is made to the case of **Kwasi Owusu & Anor Vrs Joshua Nmai Addo & Anor** Civil Appeal No. J4/50/2014 dated 30th July, 2015 where this court speaking through Wood, C.J expressed the following words;

"The right to appeal to this court in respect of an order of the Court of Appeal, dismissing a repeat application for stay of execution, is not an automatic right but one carefully

circumscribed by Article 131 (2) of the 1992 Constitution and s.4 (2) of the Courts Act, 1993, Act 459. It is a right exercisable by special leave…

An even cursory examination of this instant appeal and indeed others that have arisen from orders flowing from repeat applications to the Court of Appeal, particularly dismissal orders, demonstrates ***clearly that these decisions, or orders, are neither judgments of the High Court nor Regional Tribunal in the exercise of their original jurisdiction.*** *And so, the appellants before us did not proceed under s. 4 (1) ss. (a). Similarly, this appeal did not fall under s. 4 (b) of Act 459, since this matter is not an appeal in a cause or matter which was commenced in a court lower than the High Court or Regional Tribunal. But, even if it were, on the clear provisions of s. 4 ss. b of Act 459, the appellants would have no direct access to this court without first satisfying the leave requirement."*

The upshot of this rendition is that the Defendants/Appellants ought to have first obtained special leave before filing their appeal in this court. As a consequence, having failed to procure the leave that was required, the appellant has failed to properly invoke our jurisdiction.

Much as we sympathize with the Defendants/Appellants, because this is an appeal which should ordinarily have succeeded on the merits, we unfortunately are constrained by the dictates of the law and procedure from pronouncing on the merits of the appeal since our jurisdiction has not been properly invoked. Appeal is struck out for lack of jurisdiction.

(SGD.) P. BAFFOE – BONNIE
(JUSTICE OF THE SUPREME COURT)

(SGD.) **I. O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

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

(SGD.) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

COUNSEL

FELIX QUARTEY ESQ. FOR PLAINTIFF/APPELLANT/RESPONDENT

JOHN F. APPIAH ESQ. FOR DEFENDANT/RESPONDENT/APPELLANT