IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD.2025

CORAM: AMADU JSC (PRESIDING)

GAEWU JSC

DZAMEFE JSC

SUURBAAREH JSC

MENSAH JSC

CIVIL MOTION
NO. J5/80/2025

22ND JULY 2025

THE REPUBLIC

VRS.

HIGH COURT (COMMERCIAL DIVISION) ……..…. RESPONDENT

EX PARTE:

KEVIN EKOW TAYLOR …….…. APPLICANT

ATTORNEY-GENERAL ……...…… INTERESTED PARTY

RULING

MAJORITY OPINION

TANKO AMADU JSC:

INTRODUCTION

PROLOGUE

*"**There cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.**" Per Lord Hardwicke in The St. James' Evening Post Case (1742) 2 Atkins 469 at 472.*

(1) On the 22nd day of July, 2025 this court, by majority decision granted the Applicant's prayer for an order of certiorari to lie against the warrant of arrest issued from the High Court (Commercial Division) Accra, on the 16th day of January 2020 and accordingly quashed same. We hereby set out the reasons for the majority decision.

(2) The case of **THE REPUBLIC VS. EUGENE BAFFOE-BONNIE & 4 ORS Ref. No. J1/06/2018, dated 7th June 2018,** did not only produce the ground breaking guidelines on pretrial disclosures in further enhancement of our criminal justice system in strict fidelity with Articles 19(2)(e) and (g) of the 1992 Constitution. In the course of the trial at the High Court, the case provoked an unrelated matter to the substantive trial, in consequence of which the trial judge issued a warrant of arrest on **KELVIN TAYLOR** on the 16th day of January 2020.

(3) The said warrant is reproduced as follows:-

WARRANT FOR THE ARREST OF KELVIN TAYLOR

***WHEREAS** the above-named case is pending before the High Court, Accra.*

***AND WHEREAS,** the Court's attention has been drawn to a scandalous video circulating on social media in relation to this case, which video contains an extremely scandalous and prima facie contemptuous speech that scandalizes the Judge, the Court and the whole administration of justice.*

AND WHEREAS, *the said scandalous video is purported to have been made by a scoundrel who styles himself as* ***Kelvin Taylor,*** *who is not a party to this case.*

AND THE COURT, *finding it necessary to invoke the powers vested in it under Article 126(2) of the Constitution, 1992, to proceed against the said scoundrel,* ***Kelvin Taylor*** *for contempt.*

NOW THEREFORE, *the Court orders the issuance of this Warrant for the* ***apprehension*** *of the body of* ***Kelvin Taylor,*** *and for him to be produced before the court, to answer to the question why he should not be committed to prison for making such contemptuous statements which are totally a fabrication by him, in the said video.*

IT IS HEREBY FURTHER ORDERED, *that this Warrant is directed at the* ***Inspector-General of Police (IGP)*** *and the* ***Ghana Police Service,*** *the* ***Bureau of National Investigations (BNI)*** *and the* ***National Security,*** *to take appropriate steps for the apprehension and production of the said* ***Kelvin Taylor*** *before the court.*

IT IS FURTHER ORDERED, *that this Warrant remains in force until the said* ***Kelvin Taylor*** *is arrested, and shall lapse the day the said* ***Kelvin Taylor*** *expires from the surface of the earth.*

(4) Freedom of expression often described as free speech is not unlimited. However, such limitations to the freedom to express oneself must be grounded in law and due process. As all persons are equal before the law, and have rights protected either by statute or common law, so are judges who are also human and constrained by the frailties of men. But, unlike the laity, judges cannot

descend into the arena to respond to what they find scandalous or insulting in the discharge of their judicial duties. The antidote developed by the common law, is the offence of ***contempt of court.***

(5) In our jurisdiction as in other common law jurisdictions, contempt of court is the only conceivable offence which ordinarily appears contrary to Article 19(11) of the 1992 Constitution which requires every criminal offence to be defined together with prescribed sanctions in a written law. However, the offence of Contempt of Court is justified by the constitution itself under Articles 19(12) and 126(2).

(6) The powers of the court to commit for contempt, is the tool that cushions the very sustenance of the administration of justice and the dignity of the courts. However, if not carefully deployed especially in the procedure to exercise that power to attach or commit for contempt, judges may become arbitrary **"monsters"** against the very people on whose behalf justice is administered and thwart the very justice we have by our judicial oaths sworn to uphold. Henry Cecil, a novelist and a former County Court Judge in England wrote at page 56 of his book **"the English Judge"** thus:-

> ***"Every sane person abuses his power from time to time, but a judge has many more opportunities of doing this than most other people. One unfair remark by one judge can bring the judiciary as a whole into disrepute, just as a few unruly and bad-mannered students can give the young people of today a bad name. In each case the percentage is tiny but the harm is done just the same".*** He further stated that:
>
> ***"The judge is in a unique position. Not merely is everything said by him during a case absolutely privileged, but he cannot be shouted down as in Parliament or even answered back if he refuses to allow it. He can cause great misery and cause frustration to parties, witnesses and***

advocates. The harm that a judge can do is not merely in actual injustice, that is wrong decision, but in sending litigants (and advocates) away with a feeling that their cases had not been properly tried".

(7) As the apex court of the land and final gatekeepers of the rule of law, we have a higher duty to uphold the law to every manner of persons without fear or favour, affection or ill will, and to ensure that individual liberties and freedoms as enshrined and guaranteed in the 1992 Constitution, are not unjustifiably compromised. In undertaking our adjudicative functions, we must at all times, remind ourselves of the source of our power which is from the polity. Our duty is therefore, one of service in the name of the state and on behalf of the people. The service we render, and must be seen to render, is justice. The term *justice* in itself, is not of a monolithic import, but at its foundation, is the requirement of fairness. My Lords, our constitution and judicial oaths expect our adjudicatory processes to be consistent with the principles of fairness, absence of bias and preemptory vilifications of persons who appear before us either by themselves or in response to the courts' processes.

(8) At the same time, in every social setting, perfectionism is almost an illusory construct without life. Therefore, the framers of our constitution recognised situations where persons may deliberately and/or recklessly make it their modus to scandalize the courts in unprintable and insulting language or conduct which will provoke judicial response. Such irritable conduct against the judicial system or particular judges not only endangers the administration of justice, but undermines the authority of the courts with the potential consequence of throwing the entire administration of justice into disrepute or disrespect.

(9) Referencing the quotation in the prologue in this delivery, **Lord Denning MR** *(as he then was)* continued in the *introduction* of his book ***"Due Process of Law" (Oxford University Press, 1980, 3)*** as follows:

> *"**There is not one stream of justice. There are many streams. Whatever obstructs their courses or muddies the waters of any of those streams is punishable under the single cognomen 'Contempt of Court'. It has its peculiar features. It is a criminal offence but it is not tried on indictment with a jury. It is tried summarily by a judge alone, who may be the very judge who has been injured by the contempt. These features have led to some concern. Commentators have criticised it. Committees have considered it. A Discussion Paper has been presented to Parliament. So I have tried to collect our cases upon it. Its importance is undoubted.**"*

(10) My Lords, before us is an application, which triggers a careful consideration of two pertinent aspects of our national lives the adherence to the due process of law, and the respect for the authority of the court. The procedure to enforcing the latter, requires adherence to the principles of the former. Ours is not a dictatorial setting but is procedurally defined, as it is underpinned by respect for the rights of all persons including accused persons or Respondents to any process of the court alleging contempt. This ruling presents an opportunity to re-visit the principles and procedures in citing a person for contempt of court, especially by the court itself, the issuance of a warrant for arrest, recognising that, the alleged contemnor has constitutional rights which command respect.

THE APPLICATION

(11) On 2nd July 2025, the Applicant, ***Kevin Ekow Taylor*** *(described in the warrant of arrest as* ***Kelvin Taylor****)* invoked the jurisdiction of this court and sought relief for certiorari formulated as follows:

"an order of certiorari directed at the High Court, Commercial Division, to bring up into this Court for purposes of being quashed and the quashing of the warrant of arrest issued by His Lordship Eric Kyei Baffour JA (Sitting as an additional Justice of the High Court) dated the 16th day of January, 2020 in the case instituted the REPUBLIC VS. EUGENE BAFFOE-BONNIE & FOUR OTHERS (CASE NO. CR/904/17) for the arrest of the Applicant and for a declaration that the High Court has no jurisdiction to issue a warrant for the arrest of the Applicant without first giving the Applicant an opportunity to answer any charges against him."

(12) The grounds for the application as set out in the paper, are that:

a. *The High Court acted in breach of the rule of natural Justice audi alteram partem when it issued the warrant for the* ***"apprehension of the body of"*** *the Applicant without first hearing the Applicant on the allegations based on which the High Court issued the said warrant of arrest.*

b. *The High Court's warrant for the* ***"apprehension of the body of"*** *the Applicant was not made in accordance with any procedure sanctioned by law.*

c. *The High Court committed an error of law when by its order directed the Applicant's be first apprehended before being heard when there was no previous order for the Applicant to appear before the High Court to show cause which the Applicant did not comply with.*

(13) In a 21 paragraphed affidavit in support, the Applicant stated that he is of the United States of America. He deposed that, he acquired knowledge of the facts he deposed to based on media information and through, a copy of the order, the subject of the application which had been made available to his lawyers.

According to him, for quite some time now, friends and relatives in Ghana informed him that the High Court of the Republic of Ghana has issued a warrant for his arrest, but none of such relatives and friends was able to make a copy available to him. He claimed that, because he is not ordinarily resident in Ghana, he has not paid attention to it, especially as no one ever showed him a copy of the order even though he always requested for copies each time a friend or relative mentioned it to him in a conversation or whenever there had been social media discussion on it.

(14) The Applicant deposed further that, given the frequency of the discussions on the subject, he engaged the services of his present lawyer sometime in April 2025, who, after about a month of search, sent him a copy of the order. According to him, his lawyer explained the difficulty in obtaining a copy of the court order because although he instructed him to procure a copy of the said order, he did not know which court issued it.

(15) The Applicant deposed additionally that, the named **Kelvin** Taylor mentioned in the order is not his name. However, it has a close resemblance to his name and from the information he has received from his friends and relatives in Ghana, it is believed to be directed at him. He contended that, the order refers to a ***"scandalous video circulating on social media…which video contains an extremely scandalous and prima facie contemptuous spe (sic) that scandalizes the Judge, the Court and the whole administration of justice"***, yet, the order did not direct that he be served with a copy of the said video to enable him appear before the Court to explain whether the video was generated by artificial intelligence or doctored or his thinking based on which the video was made before directing that he be arrested.

(16) The Applicant asserted further that, his lawyer confirmed that, the registry of the High Court did not have a copy of the video to enable him offer advice. It is the case of the Applicant that, the order for his arrest was made in breach of his right to be heard before any order is made against him. The Applicant also asserted that, the said order is contrary to law because it was made without first giving him a hearing. According to the Applicant, the impugned order undermined the High Court's own obligation to protect his fundamental human right to liberty because he had not refused nor disobeyed an invitation of the Court to appear to answer any charge of contempt against him. Consequently, there was no legal basis for the ordering of the warrant for his arrest before his appearance in court to answer to the contempt charge.

(17) Additionally, the Applicant stated that, in all instances in which the courts have summoned persons to appear and show cause why they should not be attached for contempt, any appearance before the court is not preceded by an order for the arrest of the alleged contemnor if there is no intention to refuse to appear in court voluntarily to answer any charges.

(18) The Applicant therefore contended that, the warrant for his arrest even before he is given a hearing constitutes a real threat to his fundamental human rights and must not be executed unless he has been given the opportunity to voluntarily appear before the court to answer the contempt charge.

(19) When the application came up for hearing, this court sought an explanation of the lapse of time between the date the warrant for the Applicant's arrest was issued and the date of filing the application as same is in contravention of the time lines prescribed by the rules of this court, the long delay in applying to the court, Counsel for the Applicant responded that, while acknowledging the 90 day time limit within which to bring applications of this nature, the nature of

the impugned order is not constrained by time limitations, since, the order in their view is a nullity and being void there is no time limit in bringing the application for same to be quashed being a nullity *ab initio.*

NO OPPOSITION TO THE APPLICATION

(20) It is trite legal knowledge that, there is no statutory obligation on an opponent to an application to file an affidavit in opposition. Indeed, an application may be opposed without the necessity of filing any formal affidavit in opposition in answer, especially, when the basis of the opposition are legal points, which can be raised by oral submission in court. As held by this court in **REPUBLIC VS. COURT OF APPEAL, ACCRA; EX-PARTE TSATSU TSIKATA [2005-2006] SCGLR 614:**

> ***"An opponent who does not file any affidavit in opposition to the Applicant's affidavit is only deemed to have admitted the facts contained therein. Furthermore, the default does not debar him or her from arguing the matters in connection thereto on points of law, for an Applicant is under such circumstances not entitled to an automatic grant of the prayer on the sole basis that the facts are undisputed."***

(21) In the instant case, there is evidence before the court that, the application was duly served on the office of the Attorney-General. However, no opposition process was filed. We note with regret that, there was no appearance in court by or on behalf of the Honourable Attorney-General even if only out of deference to this court to make an appearance and concede that the procedural shortcomings raised in the Applicant's statement of case are unanswerable or alternatively raise points of law in opposition to the application.

(22) Be that as it may, the absence of any opposition to an application has never resulted in an automatic success of the application. Courts are still under a duty to evaluate the merits of any application in the context of the applicable law and the available evidence in order to make a determination. That was what the majority in the instant application did on the 22nd day of July, 2025 when the application was argued by the Applicant's counsel and same was granted having found that the procedure adopted by the trial high court in issuing the warrant of arrest was without due process of law on the ingredients of want of jurisdiction and breach of natural justice, the combination of which resulted in a nullity of the impugned order.

THE LAW AND PRINCIPLES

(23) Under the 1992 Constitution, the Supreme Court, and the High Court are the only courts vested with jurisdiction to supervise superior courts and lower courts and other adjudicating bodies respectively. (See **Articles 132 and 141 of the 1992 Constitution**). This power of judicial review, is a special power that provides an inherent check in the administration of justice itself. It ensures that, even the courts *(both inferior and superior)* are not by themselves insulated from adhering to due process and the rule of law.

(24) This court has developed a rich line of jurisprudence on the essence and grounds on which the court's supervisory jurisdiction will be properly invoked. The authorities are consistent that, the court's supervisory jurisdiction would be properly invoked upon an allegation of:

a. Breach of the Rules of Natural Justice (both the *audi-alteram partem rule and nemo judex in causa sua*). See **AWUNI VS. WEST AFRICAN EXAMINATIONS COUNCIL [2003-2004] 1 SCGLR 471; ABOAGYE VS. GHANA COMMERCIAL BANK [2001-2002] 2 SCGLR 797**

b. Want and/or Excess of Jurisdiction. See **REPUBLIC VS. HIGH COURT, KOFORIDUA; EX PARTE OTU [1995-96] 1 GLR 177.**

c. Error of law patent on the face of the record, which error goes to the jurisdiction of the court below. See **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE INDUSTRIALISATION FUND FOR DEVELOPING COUNTRIES [2003-2004] 1 SCGLR 348; REPUBLIC VS. COURT OF APPEAL, ACCRA; EX-PARTE TSATSU TSIKATA [2005-2006] SCGLR 612; REPUBLIC VS HIGH COURT, CAPE COAST; EX-PARTE JOHN BONDZIE SEY (UNIVERSITY OF EDUCATION WINNEBA-INTERESTED PARTY) [2020] 164 GMJ.1**

d. Breach of the Wednesbury Principles of illegality, unreasonableness, irrationality or procedural impropriety. **REPUBLIC VS. HIGH COURT, KUMASI; EX PARTE BANK OF GHANA & OTHERS (SEFA & ASIEDU INTEREST3ED PARTIES) (NO.1); REPUBLIC VS. HIGH COURT, KUMASI; EX-PARTE BANK OF GHANA & OTHERS (GYAMFI & OTHERS INTERESTED PARTIES) (NO.1) (CONSOLIDATED) (2013-2014) 1 SCGLR 477 AND TEMA DEVELPMENT CORPORATION & MUSAH V ATTA BAFFOUR [2005-2006] SCGLR 121.**

(25) In the **TEMA DEVELOPMENT CORPORATION & MUSAH VS. ATTA BAFFOUR case supra,** this Court, relying on the English case of **COUNCIL OF CIVIL SERVICE UNIONS AND OTHERS VS. MINISTER FOR THE CIVIL SERVICE [1984] 3 ALL ER 935** set out the grounds on which an application for judicial review may be proper before the court for consideration:

"To qualify as a subject for judicial review the decision must have consequences which affect some person (or body of persons) other than the decision-maker, although it may affect him too. It must affect such other person either (a) by altering rights or obligations of that person which are enforceable by or against him in private law or (b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision- maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rationale ground for withdrawing it on which he has been given an opportunity to comment or (iii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn…

For a decision to be susceptible to judicial review the decision-maker must be empowered by public law to make decisions that, it validity made, will lead to administrative action or abstention from action by an authority endowed by law with executive powers, which have one or other of the consequences mentioned in the preceding paragraph."

(26) In **REPUBLIC VS. HIGH COURT, SEKONDI, EX-PARTE AMPONG AKA AKROFA KRUKOKO (KYEREFO III AND OTHERS-INTERESTED PARTY) [2011] 2 SCGLR 716 at 722** this Court restated the nature and essence of the remedy of certiorari in the following words:

"an order of certiorari, it is trite learning, is a discretionary remedy granted on grounds of excess or want of jurisdiction and or some breach of a rule of natural justice."

(27) Further, in **REPUBLIC VS. CAPE COAST DISTRICT MAGISTRATE COURT II; EX-PARTE AMOO [1979] GLR 150** Apaloo CJ *(of blessed memory)* observed about the remedy of certiorari as follows:

> ***"As is well known, the remedy of certiorari is a useful tool in aid of justice and ought to be used to correct defects of justice whether they arise from illegality, fraud, breach of the rules of natural justice, error on the face of the record and the like. I am not even prepared to say that the category of cases in which this useful remedy can or should be used is closed. There is no reason why I should stifle the development of the law by any such assertion."***

(28) In the instant application, the Applicant contended that, before the issuance of the impugned warrant of arrest, the court below ought to have afforded him a hearing. According to the Applicant the trial high court, not having given him the opportunity to appear to offer an explanation on the alleged contemptuous video, his right to a fair hearing was violated, and consequently the court was bereft of the jurisdictional competence to proceed against him to issue the impugned warrant of arrest directed at the Inspector General of Police and Director of the Bureau of National Investigations now National Investigations Bureau for execution.

(29) The Applicant further urged on this court that, the trial high court ought not to have in the first instance, issued a warrant for his arrest, without first issuing a summons to show cause commanding his appearance as was the procedure applied by this court in the case of **ABU RAMADAN & EVANS NIMAKO VS. ELECTORAL COMMISSION & ATTORNEY GENERAL IN RE (1) THE OWNER OF THE STATION MONTIE FM (2) SALIFU MAASE @ MUGABE (3) ALISTAIR NELSON (4) GODWIN AKO GUNN Civil Motion No.J8/108/2016 Dated 27th July 2016 (the Montie 3 case).**

JUDICIAL REVIEW NOT CONCERNED WITH THE MERITS OF AN ACTION

(30) It would be observed from the above grounds settled by the authorities that, the conditions for judicial review, are procedurally focused. A writ or order of certiorari is only limited to the procedure by which a decision is made, and not the rightness, or wrongfulness of the substantive decision. It is therefore not available to test the merits of a decision. That avenue is by way of an appeal. What this simply means is that, when a court of law is seised with a matter in the exercise of its supervisory jurisdiction, the court's focus is strictly on the grounds of the review, which does not entail an examination and determination of the merits of the impugned decision but only the procedure by which the decision was arrived at.

(31) In the **EX-PARTE JOHN BONDZIE SEY case (supra),** this Court pronounced on this duty as follows:

> ***"It is trite that judicial review is not concerned with the decision but rather the way the decision was made. The High Court did not commit any breaches of the rules of natural justice. Applicant contends that by failing to recognize the breach of natural justice the High Court had exceeded its jurisdiction. This is respectfully an erroneous assertion by the Applicant.***
>
> ***In the recent case of REPUBLIC VS. HIGH COURT, (PROBATE AND ADMINISTRATIVE DIVISION), ACCRA EX-PARTE: PATRICK AGUDEY TEYE, (INTERESTED PARTIES) NOMO AGBOSU DOGBEDA AND 5 OTHERS CIVIL MOTION NO.J5/62/2018; 29TH MAY, 2019 (UNREPORTED) The Supreme Court stated that:***
>
> ***"In this case, the Applicant is praying for an order of Certiorari not because the trial judge did not have jurisdiction to give a ruling on the***

matter but that he is dissatisfied with the ruling. This may be a ground of appeal but definitely not a ground for certiorari. The judge might have erred in his appreciation of the facts and the conclusion drawn from them. If that is the case, it would not be an egregious error on the face of the record to be cured by certiorari. Where a judge has jurisdiction, he has jurisdiction to be wrong as well as to the right and the corrective machinery to a wrong decision in the opinion of a party is an appeal."

(32) By way of simple illustration, if a student is said to have cheated in an examination and hence his script ought to be cancelled, the examiners must first, grant the student the opportunity to be heard. Videographic evidence of the cheating, or the cheating being committed *in flagrante delicto* of the examiners are not by themselves sufficient to justify a unilateral sanction without a hearing. If the right to be heard is violated, the substantive decision will be quashed even though the court did not consider the merits. It is so because certiorari is strictly concerned with procedure and not substance. Thus, in **AWUNI VS. WAEC (supra)** this court underscored the essence of administrative justice, and pointed out that, the *audi alteram partem* rule of natural justice is an indispensable requirement that ought to be met, before a decision is taken to affect the right of a person or body of persons. Her Ladyship Sophia Akuffo, JSC *(as she then was)* articulated judicial sentiments on the subject *(within the context of administrative review)* as follows:

Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect the qualities of fairness, reasonableness and legal compliance. I will not venture to give a comprehensive definition of what is fair and reasonable, since these qualities are dictated by the circumstances in which the administrative function is performed. At the very least however, it includes probity, transparency, objectivity, opportunity to be

heard, legal competence and absence of bias, caprice or ill-will. In particular, where, as in this case, the likely outcome of an administrative activity is of a penal nature, no matter how strong the suspicion of the commission of the offence, it is imperative that all affected persons be given reasonable notice of the allegations against them and reasonable opportunity to be heard, if the objective of Article 23 is to be achieved.

(33) In other words, whether or not the Applicant before this court is in contempt of court and deserved to be arrested and sanctioned for allegedly making the offensive publication is not an issue before the court in the instant application. Our duty is a simple one, and it is to determine whether due process was adhered to by the trial high court by the procedure it adopted in issuing the warrant of arrest against the Applicant.

(34) Indeed, the alleged contemptuous contents of the video said to have been circulated on social media which the trial high court judge described as ***"extremely scandalous and a fabrication"*** is not part of the evidence before the court.

(35) As this court has previously held, even if a decision is correct on the law, but same was arrived at in breach of the rules of natural justice, that decision is susceptible to be quashed by certiorari where jurisdiction is properly invoked. In **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE EYITI (AKAN PRINTING PRESS & RAJWANI INTERESTED PARTIES) [2015-2016] 1 SCGLR 388,** Gbadegbe JSC *(of blessed memory)* pointed out the policy reasoning on this point which we reproduce *in extenso* as follows:

> ***"This view of the matter accords with settled practice of the court which requires motions that have been struck out to be resorted to the list by formal applications in that behalf.***

In the course of preparing this delivery, we tried in vain if we could come across any previously decided case in regard to the procedure for restored applications that have been struck out but there are reported cases involving appeals that were struck out such as ASCHKAR VS. KARAM [1972] 1 GLR 1 AND FORI VS. AKROBETTOE [1971] 2 GLR 137, which decided that in such cases an application can only be made to restore the appeals to the list for a trial on the merits. Although the said cases were pronounced upon in regard to appeals, we think we should be guided by the principles which were applied in those cases; and develop by analogy similar principles in regard to applications that are struck out. This approach recognises the potential of an existing precedent case to create a new precedent where, as in this case the circumstances to which it is subsequently applied are not the same with that of the previous case in which the principle was pronounced upon. In our opinion, this is one of the strengths of the common law tradition in which one of the features is judge-made law. It seems to us that, as applications are commenced by a solemn process of depositions supporting them, a relaxation in the practice would undermine the purpose for which affidavits are to serve namely swearing to the truth of the facts grounding applications.

We think that the Learned Trial Judge having done that which falls outside the settled practice of the court can be said to have acted without jurisdiction and rumblings whether in the circumstances there was any miscarriage of justice are of no moment as an application for judicial review in the nature of certiorari concerns itself with due process requirements and not the merits. See REPUBLIC VS. COMMITTEE OF INQUIRY INTO NUNGUA TRADITIONAL

AFFAIRS EX-PARTE ODAI IV AND OTHERS [1996-97] SCGLR 401. In her judgment at page 14, Bamford -Addo JSC *(as she then was)* observed as follow:

"A decision made in breach of the rules of natural justice would be quashed even if made correctly…". *[Our Emphasis].*

(36) We are however not unmindful that, the scope of the jurisdiction invoked is discretionary. Therefore, the court can refuse a prayer for certiorari on the ground of the inappropriate conduct of the Applicant. That is, if there is evidence before the court, which demonstrates that, the Applicant is not deserving of the grant, especially when he himself has sanctioned the impugned order, in the sense of having participated in or encouraged the making of the order, the court will not lend itself to any such conduct which mitigates against the exercise of the judicial discretion. In **THE REPUBLIC VS. THE NATIONAL HOUSE OF CHIEFS AND THE CENTRAL REGIONAL HOUSE OF CHIEFS, EX-PARTE: NANA AKWESI PEPRAH II, CIVIL MOTION No. J4/46/2013 DATED 7TH MAY, 2014,** this court held that:

In considering an application for an order of certiorari, one will necessarily need to consider the conduct of the parties especially the Applicant, so that where he is guilty…, he may be denied it. It ought to be borne in mind that certiorari is a discretionary remedy and the conduct of an Applicant is worthy of consideration. The circumstances of the case and the conduct of the Applicant can disentitle him to the remedy".

(37) See also **REPUBLIC VS. HIGH COURT, CAPE CAOST; EX PARTE JOHN BONDZIE SEY (UNIVERSITY OF EDUCATION WINNEBA-INTRESTED PARTY) [2020] 164 GMJ 1.** But this, as indicated, is based on positive evidence put before the court.

TIME FOR FILING THE APPLICATION

(38) Before delving into the merits of the application, it was important to dispose of an issue that came up during the hearing. That is, whether the application was filed within the permissible time prescribed by the rules of this court. This enquiry is of much significance, not just to satisfy the procedural dictates of our rules of court, but also, to engage the conduct of the Applicant whether he is deserving of a hearing at all. As was held in the case of **THE REPUBLIC VS. THE NATIONAL HOUSE OF CHIEFS, THE CENTRAL REGIONAL HOUSE OF CHIEFS; EX-PARTE: NANA AKWESI PEPRAH II (supra),** per Ansah JSC (*as he then was*):

> ***"In our opinion, where there was an undue delay of a period of about twenty-one long years in making the application, such as in this case, it will militate against the success of the application for the reliefs sought. Tardy and delayed applications scarcely succeed in securing favourable results in applications of this nature."***

(39) In the instant case, the Applicant concedes that, the impugned order was made on the 16th day of January 2020, over five years ago. However, the Applicant contended that, although same was brought to his attention, none of his friends or relatives were able to furnish him with a copy of the order. According to him, it was not until April 2025 that his lawyer was able to procure a copy of the order. It is therefore quite disingenuous, when the Applicant's counsel sought to suggest in his statement of case that, the time began to reckon only when they formally procured the order. Counsel submitted at page 3 of the Applicant's statement of case as follows:

> ***"In this case, the Applicant has deposed that he was not aware of the order until his lawyer procured it sometime in May of this year. The***

month of May this year is therefore the valid period from which to reckon the timing of the present application."

(40) As noted, the Applicant himself had deposed to the factual circumstance regarding when the order was brought to his attention, albeit informally. That being the case, we are not persuaded by his lame excuse that, none of his informants was able to procure a copy of the order for him same being a public document and readily available upon request. If indeed, the Applicant was really concerned and minded, he would have, as he has now sought to do, engaged a lawyer to do the needful, just when his friends and relatives drew his attention to the order. It should be noted that, an application invoking our supervisory jurisdiction is constrained by time. This is regulated by Rules 62 and 66 of the Supreme Court Rules, 1996 (C.I.16) *(as amended)* which demands that, an application to invoke the supervisory jurisdiction of the Court shall be filed within 90 days of the date when the grounds for the application first arose unless the time is extended by the court.

(41) From the affidavit in support of the application, the Applicant does not disclose the first time his attention was drawn to the subsistence of the order. But clearly, from his own depositions, and concessions by his counsel during the hearing, the Applicant knew of the order being sought to be quashed long before the expiration of the 90 days within which the supervisory jurisdiction of this court ought to have been invoked unless time is extended. It is therefore our considered view that, the Applicant has been tardy in bringing the application. This conclusion notwithstanding, as submitted by Counsel for the Applicant, the crucial issue provoked by the application is one, which should not be constrained by time limitations.

(42) There is consensus of judicial authority from this court and the jurisprudence is well settled that, where an order, judgment, ruling or proceeding being sought to quashed is one, which is a nullity and therefore void, public policy frowns upon its subsistence and hence limitations of time shall not be a bar to enabling the court interrogate same. What this simply means is that, in appropriate circumstances, this court can dispense with the timelines for applications of this nature especially where, the subject of the application is void or a nullity *ab initio*. It must be stressed however that, each case is determined on its peculiar facts.

(43) In our considered view, the issue the instant application has provoked is a pivotal public law question, especially within our criminal justice system which balances the requirement of due process and the exercise of the court's powers generally and particularly in contempt proceedings where the liberty of a person or group of persons is at stake. It is this essential public utility, undergirding the instant application, and the fact of likely void character of the impugned order, that sustains our jurisdiction to admit the application for consideration. After all, we have consistently held that, this court will not allow time limitations to inhibit the setting aside of a void order which is a nullity *ab initio.* The authorities are legion and settled on this position of the law.

(44) In the case of **THE REPUBLIC VS. HIGH COURT (HUMAN RIGHTS DIVISION), ACCRA, EX PARTE: ATTORNEY-GENERAL (CIVIL APPEAL NO. J5/39/2016) DATED 9TH FEBRUARY 2017** the respected Appau JSC speaking on behalf of this court restated the position of the law as follows:

> ***"It must be emphasized that when we talk of void judgments/decisions', they are in two categories. There are those that are void ab-initio just because the court that determined or took those decisions in question had no jurisdiction in the first place, to entertain the matter or matters***

before it. Such decisions or orders are complete nullities because they go to jurisdiction and can be set aside at any time, even by the very court that made the void orders. This is because they go to jurisdiction and should not have been entertained at all by the court. Time does not therefore run when it comes to the setting aside of such void judgments or orders. Then there are those that are patent errors made within jurisdiction. The procedure to impeach this second category of void orders or judgments is forum and/or time regulated. Such errors of law that are patent or apparent on the face of the record but made within jurisdiction could be set aside as void upon an appropriate application made by an affected or interested party as specified under the rules or through the appeal procedure. In this second category of judgments or orders, time is of the essence, depending on the procedure adopted".

(45) In a similar exposition of the same position of the law, our esteemed brother Pwamang JSC in the case of **NAI OTUO TETTEH V. OPANYIN KWADWO ABABIO (DECEASED) AND NAI KOJO ADU II [2018] DLSC 221** articulated as follows:

"[T]he power of the court or a judge to set aside any such judgment or order is derived from the inherent jurisdiction of the court to set aside its own void orders and it is irrespective of any expressed power of review vested in the court or a judge; and the constitution of the court is for this purpose immaterial. Further, there is no time limit in which the party affected by a void order or judgment may apply to have it set aside. CRAIG V. KANSEEN [1943] 1 K.B. 256, C.A.; FORFIE V. SEIFAH [1958) A.C. 59, P.C.: AMOABIMAA V. BADU (1957) 2 W.A.LR. 214, W.A.C.A.; CONCESSION ENQUIRY NO. 471 (ASHANTI) [1962] 2

G.L.R. 24, S.C., and GHASSOUB V. DIZENGOFF [1962] 2 G.L.R. 133, S.C. applied".

(46) See also **IN RE: NUNGUA CHIEFTAINCY AFFAIRS, NII ODAI AYIKU IV VS. ATTORNEY GENERAL & WOR NII BORTELABI ABI BORKETEY LAWEH XIV [2010] SCGLR 413.** See also **REPUBLIC VS. HIGH COURT (FAST TRACK DIVISION) ACCRA EX-PARTE SPEEDLINE STEVEDORING CO. LTD. (DOLPHYNE INTERESTED PARTY) [2007-2008] 1 SCGLR 108,** cited by Counsel for Applicant.

BENCH WARRANT VERSUS SUMMONS TO APPEAR

(47) My Lords, as an overture to considering the procedure adopted by the courts in dealing with situations of contempt, we deem it pertinent to consider an analysis and distinction between two processes of the court, a bench warrant and a summons to appear.

(48) Generally, courts use bench warrants and summons *(notices to appear)* as legal instruments to compel individuals to attend court proceedings. A summons is an official court document or notice ordering a person to appear at a specified time and place, without immediate arrest. In contrast, a bench warrant is an arrest warrant issued directly by a judge **("from the bench")** commanding law enforcement to detain and bring a person before the court. These tools serve similar purposes of securing attendance but operate under different legal circumstances.

(49) A bench warrant is essentially a court order for arrest issued by a judge to compel appearance. In **Blacks Law Dictionary (11th Edition by Bryan A Garner, 2019)** a bench warrant is defined as: ***"A warrant issued directly by a judge to a law-enforcement officer, especially for the arrest of a person who***

***has been held in contempt, has been indicted, has disobeyed a subpoena, or has failed to appear for a hearing or trial.*"** So, a person must in the normal course of events have refused or failed to attend court on request before a bench warrant is issued to compel him to do so. See **REPUBLIC VS. HIGH COURT, COMMERCIAL DIVISION, EX PARTE MILLICOM GHANA LIMITED [2009] SCGLR 41**

(50) Unlike an original arrest warrant (which initiates a criminal case), a bench warrant usually arises after a case is underway, for example, when a defendant or witness has failed to appear as required or has defied a court order. **(See section 71 of Act 30).** In practical terms, a bench warrant directs a law enforcement agent or agency to take the person into custody and bring them before the specific court that issued the warrant.

(51) In Ghana, the power to issue bench warrants is well-established in the criminal procedure legislation. Under **Ghana's Criminal Procedure Act, 1960 (Act 30),** if an accused person is not already in custody or present when a criminal case commences, the court may either issue a summons or a warrant for the person's arrest to secure their attendance. The choice between summons and warrant depends on the circumstances. Act 30 permits a warrant to be issued at any time ***"before or after the time appointed in the summons for the appearance of the accused although a summons may have been issued."*** **(Section 71 of Act 30).** In other words, even if a summons was initially used, the court can resort to an arrest warrant if needed.

(52) From our practice and procedure, a bench warrant is justified to be issued in situations such as:

(a) when a person who has been duly served with a criminal summons willfully fails to appear in court, or

(b) when the underlying offence is particularly serious, justifying immediate custody rather than reliance on a summons.

(c) if the complaint is made on oath by affidavit.

(53) This is reflected in **Section 71 of Act 30,** which allows the court to issue an arrest warrant at any stage if it is deemed necessary to ensure the accused's presence.

(54) Furthermore, **Section 72 of Act 30** provides that if an accused disobeys a summons, the court may issue a warrant for the person's arrest *(usually upon proof on oath of the failure to appear).* Before issuing a bench warrant, the court should be satisfied that the summons was properly served. Ghanaian law requires personal service of a criminal summons where practicable. **(Section 63(1) of Act 30).**

(55) It is also instructive to note that when it comes to the issuance of bench warrants, if service of the summons cannot be proven, issuing a warrant would be premature. Therefore, in discussing whether a bench warrant can be issued to compel persons who had not willfully failed to come to court, the Supreme court in the ***Millicom Ghana Limited case***, *supra* held that: ***"After hearing the motion for stay of execution, if the court felt that it still wanted to proceed with the application for contempt against the first Applicant company and therefore required the presence of the directors instead of the in-house lawyer, there were two options open to it:***

(a) if the trial judge was minded to proceed against the directors, then it had to adjourn the case to ensure that the directors of the

company were served to come to court to represent the company: See Order 43, rr 5(1)(b)(cc) and 7(3)(a); or,

(b) to treat the company as represented by its in-house lawyer and go ahead to deal with it (after all in contempt against companies, not being a human person, there can only be a fine and not incarceration). To have issued a bench warrant at this early stage to compel persons who had not willfully failed to come to court, was premature and wrongful."

THE PROCEDURE IN CITING A PERSON FOR CONTEMPT BY THE COURT ITSELF

(56) Contempt of court is an offence against the dignity of the court and no other person. And, as already referred to, the 1992 Constitution, has invested the superior courts with the authority to commit persons for contempt of court. Generally, the fact of the contemptuous conduct, may be brought to the attention of the court, by an application or some other means. In the instant case, the order of the court itself shows that, the court's attention was drawn to the alleged contemptuous conduct contained in a certain video but the source by which the court's attention was drawn to same and whether or not the instant Applicant was the person indisputably responsible for its production and publication is not apparent on the face of the order. Indeed, as aforesaid, in the instant application, the authenticity of the video and the merit or otherwise of the allegation and any defence is not a matter before us for our consideration.

(57) Having so observed, whether the contemptuous conduct is brought to the attention of the court through a formal application or otherwise, there is one indispensable requirement which if violated would render the entire

proceedings a nullity. That is, the evidence that, the alleged contemnor had first been ordered to appear and show cause if he is responsible for the alleged contemptuous conduct to enable him to defend himself. It should be noted that, in quasi criminal proceedings, an alleged contemnor is entitled to all the requirements of fair hearing as established by the common law courts, and entrenched in the 1992 Constitution. In particular, and within our constitutional tenets under **Article 19 of the 1992 Constitution,** there is the constitutional requirement that the process must be fair.

(58) Undoubtedly, the alleged contemptuous conduct, which we are confronted with, is not one of willful disobedience of an order of the court. It is that, the Applicant being aware that a criminal case is *sub judice,* engaged in a conduct that unfairly prejudiced the hearing of the matter, and/or, deliberately conducted himself in a manner, to bring the administration of justice into disrepute.

(59) In our view, just as in a formal application for contempt where the alleged contemnor is served with an application to enable him defend himself, where the court cites another for being in contempt, the court is under a mandatory duty to bring the fact of the allegation to the attention of the alleged contemnor. Procedurally, the court is expected to issue a summons or order requiring the attendance of the alleged contemnor as was the procedure applied in the **Montie 3 case (supra).** We do not think that, the court has the option to side-step the issuance of a summons or an order to appear and rather sanction a warrant for the arrest of a person, who, has not in the first instance, demonstrated any intention to appear before the court.

(60) In the Applicant's statement of case, counsel for the Applicant contended that, the trial high court deprived the Applicant the opportunity to be heard before

issuing the warrant for his arrest. And hence, the court was bereft of jurisdiction. It appears to us that, properly construed, the contention should rather be that, in the absence of any demonstration of unwillingness to appear before the trial high court, the trial judge acted without jurisdiction to have issued the warrant for arrest which had the effect of curtailing the Applicant's fundamental right to free movement. As is glaring in the warrant, the Trial High Court was emphatic that, the Applicant should be arrested and brought before him, "*to answer to the question why he should not be committed to prison for making such contemptuous statements which are totally a fabrication by him, in the said video*".

(61) What we however find irregular with the approach by the trial high court is the issuance of a warrant for the arrest of the Applicant without first issuing a civil summons or an order directed at the Applicant to appear and show cause. As has been demonstrated, Ghana, just like other common law jurisdictions have legislated the appropriate procedure to compelling attendance in a civil, criminal or quasi-criminal proceeding to be, in the first instance, the issuance of a summons to appear, and upon breach, a consideration for a warrant for the arrest of the subject of the order. Ignoring the liberty of the individual, and commanding his arrest, in our view offends the constitutional requirements for fair hearing and due process of law. In the instant case, the summary jurisdiction exercised by the trial judge *suo motu* in ordering a warrant of arrest to issue on the Applicant without first ordering his appearance to show cause is procedurally flawed. That jurisdiction is irregular for which reason same was quashed by certiorari.

THE REQUIREMENTS OF FAIRNESS AND DUE PROCESS

(62) My Lords, central to our analysis so far, is a direction to all courts that, in contempt proceedings, and in fact, in all proceedings before any court of law, same must be pursued within the confines of fair hearing and due process. While judges wield power, including, in our present context, the power to commit for contempt, that power must be carefully guarded and exercised. At all times, the court must act strictly, and be guided by the proper exercise of discretionary powers as defined under Article 296 of the 1992 Constitution, that the exercise demands a duty to be fair and candid and should not be ***"arbitrary, capricious or biased whether by resentment, prejudice or personal dislike and shall be in accordance with due process of law."***

(63) Having said that, we reiterate the appropriate judicial attitude that, while there is necessity for, and the duty of a court subjected to contempt *ex facie curiae* or *in facie curiae,* to quickly, and if possible in the immediate presence of those who witnessed the insult or other disrespectful conduct to restore the dignity and authority of the court by sharp, instantaneous and incisive response, the above duty of a judge must be correspondingly balanced by the other requirement that a judge must not give in to intemperate and excessive reaction, or be easily irritable to a person's conduct of his case or the provocative conduct of counsel.

(64) The judge or court must always be guided by their mature experience on the bench. As an unfettered impartial arbiter, a judge is required to exercise judicial probity, mindful that, in some cases, excessive reaction from the judge may do as much harm to the image of the court as insufficient reaction to a blatant insult or any other conduct that brings the administration of justice into disrepute. The mean between the two is the quality by which the outcome is assessed and the judicial temperament by which it was expressed as well as the quality of justice embedded in the decision.

(65) What this also means is that, **judges must note that, while the court should not allow itself to be scandalised, exposed to ridicule and belittled unjustifiably, the jurisdiction of the court to punish for contempt has been created and maintained for the preservation, enhancement of the honour and dignity of the court and not for personal aggrandisement of the judge. This jurisdiction or power should be used sparingly and within the ambit of the rule of law and undergirded by due process**. Without these, every order made by a court may be a resultant nullity and void. No court must hesitate in pronouncing any order, ruling, judgment or proceeding conducted without due process as a consequential nullity.

(66) The lesson is that, summary proceedings for alleged contempt in the face of the court should not be invoked unless the ends of justice demand such a drastic measure. It is ***"off the cuff"*** justice which sometimes hurts both the contemnor and the Court. The scope of the offence of contempt of court by conduct, comment, or publication and not necessarily disobedience of the court order is not precise. But generally, it may be described as any conduct which tends to bring into disrespect, scorn or disrepute, the authority and administration of the law or which tends to interfere with and/or prejudice litigants and/or their witnesses in the course of litigation. See the case of **THE REPUBLIC VS. KORLE GONNO DISTRICT MAGISTRATE COURT, EX-PARTE MOFFAT [1971]2 GLR 391-403**

(67) In the English case of **BALOGH VS. ST ALBANS CROWN COURT [1975]1 QB 73 Stephenson L.J** made an observation about the peculiar nature of the court itself citing a person for contempt in the following words:

"The power of a Superior Court to commit (or attach) a contemnor to prison without charge or trial is ancient, very necessary, but very unusual, if not

indeed unique. It is as old as the courts themselves and it is necessary for the performance of their function of administering justice whether they exercise criminal or civil jurisdiction. If they are to do justice, they need power to administer it without interference or affront, as well as enforce their own orders and to punish those who insult or obstruct them directly or indirectly in the performance of their duty or misbehave in such a manner as to weaken or lower the dignity and authority of a court of law.

In a latter portion of the judgment ***Stephenson L.J made certain observations which we particularly consider germane to proceedings for instant punishment for contempt in curiae facie.*** Said the Learned Lord: ***"…..but when a judge of the High Court or Crown Court proceeds of his own motion, the procedure is more summary still. It must never be invoked unless the ends of justice richly require such drastic means; it appears to be rough justice; it is contrary to natural justice; and it can only be justified if nothing else will do. But if a witness or juror is bribed or threatened in the course of a case, whether in the court or in its precincts or at any distance from it, the judge must act at once against the offender and if satisfied of his offence, punish him, if necessary by committing him to prison".***

(68) We must state without any equivocation however that, the balance between the exercise of the court's coercive power to *suo motu* conduct proceedings to commit or attach for contempt demands due process. This requires judicial sobriety by not suggesting in any judicial expression or conduct prejudicial and predetermined presumption of guilt resulting in a situation of real likelihood or actual bias which beclouds the sense of the justice intended to be dispensed. Anything to the contrary would be potentially unconstitutional as it would contravene the provision of Article 19(2) (c) of the 1992 Constitution on the presumption of innocence.

(69) In the **REPUBLIC VRS HIGH COURT, (LAND DIVISION), ACCRA EX PARTE KENNEDY OHENE AGYAPONG (SUSAN BANDOH INTERESTED-PARTY) CIVIL MOTION NO J5/62/2020 DATED 20TH OCTOBER 2020,** this court had the opportunity of pronouncing on the language by a trial court while dealing with an allegation of conduct arising from statements against the trial judge which were scandalous and disrespectful thereby allegedly bringing the administration of justice into disrepute. In that case this court took the view that by demanding of the Applicant to appear and show cause why he should not be ***'severely'*** punished before hearing the Applicant, the trial judge had acted prejudicially and had ***'convicted'*** the Applicant even before he appeared before the court to be heard. The result was that the Applicant's right to fair hearing had been implicitly violated. An application for certiorari to quash the summons and the relief of prohibition were both granted by this court. Our respected brother Kulendi JSC in articulating the position of the court said *inter alia* and reproduced *in extenso* as follows: ***"In our opinion, the nature of the contempt summons, to the extent that it was suggestive of the magnitude or gravity of the sentence that would be meted out to the Applicant, was prejudicial. Where a judge, even before taking the plea of an accused, expressly states that if the charge preferred against the Accused (the Applicant herein) is proven against him, he shall be "punished severely', the inference that the judge is clearly biased is irresistible. …These considerations, coupled with the trial judge's express language regarding the gravity of punishment he contemplates against the Applicant, smacks of prejudice and bias. In context, the word severely is a single but defining word that betrays the judge's intention if it comes to punishment of the Applicant. That kind of subjective language and moreover coupled with the conduct reflected in the proceedings as enumerated above, puts a judge in a position where he or she cannot be presumed to be objective, and/or impartial.***

In any event, we observe that, when the circumstances that give rise to contempt proceedings are such that, a judge becomes personally interested in the matter, or that a judge's personality is attacked or that scandalous or insulting language has been used against a particular judge, and, where the contempt is committed ex facie curiae, that particular judge, where the circumstances permit, should not adjudicate on the matter.

This is especially so because, the purpose of the contempt proceedings is to maintain the dignity of the court and ensure public confidence in the administration of justice. If judges who are personally interested in a matter or whose personality have been subjected to scandalous and contemptuous attack have to sit and adjudicate on such matters and pass judgment, justice will not appear to be done, even though such judges will have the jurisdiction so to act.

Even in cases of contempt committed in facie curiae, there is the need to do a balancing between the need to stamp out interferences with ongoing legal proceedings and the need to ensure that justice appears to be done. Where a judge, in fairness to his conscience is of the opinion that the nature of contempt committed in facie curiae is such that he cannot impartially discharge his judicial oath, such a judge should recuse himself from sitting on the proceedings and cede the trial to the Court, differently constituted."

(70) We wish to emphasize that, the right to fair hearing, and the requirements of due process, has crystalised into a *jus cogen* among all civilized democratic states. A breach of the fair hearing principles should not be the doing of a judge. It is dangerous, if, a judge-complainant in a contempt hearing, forgets these tenets. The result could be draconian.

(71) Indeed, apart from our position, that the issuance of the arrest warrant was unwarranted at the time same was issued, we find the order made by the court,

especially the language employed quite disturbing. Even before the Applicant is heard, the court appears, obviously biased on certain prejudicial trajectory in describing the Applicant as a **"scoundrel."** And the warrant itself conclude the prejudice "*that this Warrant remains in force until the said **Kelvin Taylor** is arrested, and shall lapse the day the said **Kelvin Taylor** expires from the surface of the earth."*

(72) With utmost deference to the Trial Judge whose distinguished judicial career we do not hesitate to place on record that, characterisation of the Applicant as a scoundrel before he is heard, is unjudicial and same exposes a grave concern of potential bias. The tenor of the order in itself, contravened the Applicant's constitutional right to be presumed innocent until his guilt is proven as provided Article 19(2)(c) of the 1992 Constitution. In **THE REPUBLIC VRS HIGH COURT (GENERAL JURISDICTION 11) EX-PARTE ANAS KENNEDY OHENE AGYAPONG INTERESTED PARTY) CIVIL MOTION NO. J5/72/2023 DATED 28TH FEBRUARY, 2023** our esteemed brother Kulendi JSC said *inter alia* in his dissenting opinion which of relevance to the factual circumstances of this application as follows:

> ***"…On this score, not only will it be inappropriate for offensive language to be employed by a judge but also fair trial requires that a judge must attend to the issues before him without attacks, whether direct or indirect, on a party, especially where the basis of such scathing remarks are not sufficiently proven nor required as any material part to validate his or her judgment.***
>
> ***I am of the firm opinion that, as a matter of principle, negative comments or insulting words directed at parties or witnesses might be perceived, in appropriate case, as grounds of bias.***

[Emphasis Added]

(73) This caution remains more instrumental, especially in a situation, where the judge is the complainant and abiter at the same time and in no other proceedings than in contempt situations. We therefore, share the position of one of the illustrious legal luminaries of this country Dr. W.C Ekow Daniels in his article '***WHEN A JUDGE IS NOT A JUDGE: PRESENT TRENDS'*** **Review of Ghana Law 1970, Vol. II. No. 3, 192-206,** where he stated that; where there are subtle, concealed or inchoate instances of bias which when allowed to permeate judicial proceedings could mar judicial decisions, they should operate to disqualify a judge from sitting on a matter.

(74) As a matter of procedure incidental to contempt proceedings, we say without any equivocation therefore that, the practice where court's especially trial courts before whom applications for attachment for contempt is pending issue bench warrant for arrest of a Respondent(s) to the application who fails, refuses or neglects to appear, after service of the application, is unlawful as it is unconstitutional in the absence of the specific order by the court directed at the Respondent(s) to physically appear in court in person. Contempt is a substantially civil process and the failure or refusal to attend court on any return date cannot provoke any sanctions. We dare say that, if the Respondent fails, refuses or neglects to appear, the failure refusal or neglect shall not diminish the statutory burden of the Applicant to prove the allegation of contempt beyond reasonable doubt failing which no liability for contempt can be lawfully made by the court. For future guidance, we propose this practice direction, that:

> **Where the court itself, cites a person for contempt, or where the jurisdiction is invoked in the course of pending proceedings and that person is not present in court at the material time and the court, given**

the circumstances of the allegation intends to ensure the attendance of the alleged contemnor, the court must:

a. *First, cause to be issued, a summons or order demanding the presence of the alleged contemnor to show cause why he should not be committed for contempt.*

b. *The summons should simply contain a statement demanding appearance before the court to show cause without more.*

c. *Prejudicial statements or words likely to be construed as prejudicial should not accompany the summons to show cause.*

d. *The Registrar of the court, must ensure that, the alleged contemnor is duly served with the summons.*

e. *In the event that, the alleged contemnor is duly served, yet refuses to appear before the court, then, the court may decide to issue an arrest warrant. Even at this stage, the court must assess all the circumstances of the case impartially and first determine whether, the default in appearing was not occasioned by any special circumstance, which made it impossible for the alleged contemnor to appear, and the exercise must be guided by the principles of fairness especially as defined under* ***Article 296 of the 1992 Constitution.***

(75) In situations of contempt *ex faciae curiae*, the proactiveness of the Attorney-General in invoking jurisdiction against any person whose conduct is likely to bring the administration of justice into disrepute is a preferable procedural step in ensuring that cases where the Trial Judge or the Court allegedly scandalised shall not necessarily be the forum for the trial of the alleged contemptuous conduct.

(76) We further take the opportunity of this delivery to comment on a disturbing emerging judicial approach especially in the High Court in determining applications for attachment for contempt. This involves situations where the Respondent to an application has vehemently denied the alleged contemptuous conduct by affidavit in opposition thereby joining issues on the facts before the court. In spite of this situation, instead of directing the cross-examination of the deponents to affidavits in order to resolve the conflict in the respective affidavits, the High Courts have developed this practice of directing written submissions to be filed when factual conflicts in affidavits have not been resolved and no admissions for the allegations are apparent on the face of the affidavit in opposition. How the Trial Court is able to determine whether or not the statutory burden of proof has been discharged by the affidavit evidence exclusively in the absence of oral examination is mysterious to say the least. And inspite of the conflicts in affidavits, some trial High Courts are able to make a finding of liability for contempt which requires proof beyond a reasonable doubt.

(77) This in our view, is not only erroneous but results in a potential mistrial as any ruling arising therefrom is liable to reversal on appeal especially where the Respondent is found liable. It is also tantamount to an abandonment of judicial responsibility to effectively adjudicate the allegation and must not be countenanced in our judicial system.

(78) Having made these observations on the appropriate procedure in dealing with cases of contempt before the court, it is for the earlier reasons fully set out in this delivery which informed the decision of the majority to grant the instant application when it came up for hearing on the 22nd July, 2025.

(79) Quite clearly, the order issued by the trial high court for the arrest of the Applicant was not compliant with due process as the trial high court lacked the jurisdiction to proceed in that manner and had violated the Applicant's constitutional rights resulting in a nullity *ab initio*.

(80) Finally given the factual circumstances which gave rise to this application, we state without any equivocation that, as judges we should not lose our temper with counsel or litigants no matter how irritable they may be, so that the composure required to administer justice may not depart from the temple of justice, while we have the rare privilege to adjudicate.

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

(SGD) **S. DZAMEFE**
(JUSTICE OF THE SUPREME COURT)

(SGD) **G. S. SUURBAAREH**
(JUSTICE OF THE SUPREME COURT)

(SGD) **P. B. MENSAH**
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

GAEWU JSC:

On 22nd July 2025, this Court by majority of 4:1, Gaewu, JSC, dissenting, granted certiorari to quash the order of Warrant of Arrest issued for the arrest of one **Kelvin** Taylor on the 16th day of January 2020 by the High Court (Commercial Division), Accra, in the matter; Case No. CR904/17, the Republic v. Eugene Baffoe Bonnie and 4 ors. The honourable High Court was presided over by H/L Eric Kyei Baffour, JA, (sitting as additional High Court Judge). I reserved my reasons for my Ruling and dissent which I hereby proceed to render in this dissenting opinion as follows:

On 2nd July 2025, the applicant, now **Kevin Ekow Taylor**, filed this application invoking the supervisory jurisdiction of the Supreme Court pursuant to Article 132 of the Constitution of Ghana and Rule 61(1) of the Supreme Court Rules, 1996 (CI 16), seeking to quash the warrant of arrest issued by H/L Eric Kyei Baffour, JA, (sitting as an additional Justice of the High Court), dated 16th day of January 2020 in the case intituled the Republic v. Eugene Baffoe Bonnie & 4 ors. (Case No. CR904/17), for the arrest of the applicant and for a declaration that the High Court has no jurisdiction to issue a warrant for the arrest of the applicant without first giving the applicant an opportunity to answer any charges against him.

The applicant has raised three grounds in the application. These are:

a) The High Court acted in breach of the rule of natural justice *audi alteream partem* when it issued the warrant for the "The apprehension of the body of the applicant without first hearing the applicant on the allegations based on which the High Court issued the said warrant of arrest.

b) The High Court's warrant for the "apprehension of the body of the applicant was not made in accordance with any procedure sanctioned by law.

c) The High Court committed an error of law when by its order directed the applicant be first apprehended before being heard when there was no previous order for the applicant to appear before the High Court to show cause which the applicant did not comply with.

It is noted that the Attorney General who was made the interested party to the application was from the proof of service shown the court, served with the application on 3rd July 2025. However, no processes, affidavit in opposition or otherwise and statement of case were filed to either defend the court and/or support the application. And quite surprisingly, on the day the application was called to be heard, neither the Honourable Attorney General nor his Deputy and/or any lawyer from the large retinue of lawyers employed at the office of the Attorney General and Ministry of Justice was present in court, if for nothing at all, to show courtesy and respect to the court. This conduct of the Attorney General and the lawyers does not auger well for the kind of strong and healthy democracy the country is building.

Justice, it is said, emanates from the people and same is administered in the name of the Republic by the Judiciary. If therefore, a justice of the superior court sitting to administer justice and makes order(s) and these order(s) is/are attacked in the manner herein, it is only fair that the Attorney General who is responsible for the institution and conduct of all civil cases on behalf of the state and all civil proceedings against the state shall be instituted against the Attorney General as defendant shall be alive to such responsibility in order to defend Justices of the Judiciary whose decisions/orders are brought under attack in the manner herein.

As members of the community, we sometimes feel the energy and the kind of public interest engendered in some of these cases before the courts. Members of the public are entitled to know why orders of this nature by the court are brought to be quashed. The failure, refusal and/or unwillingness by the Attorney General to defend the case has in itself deprived the public from knowing what went into the order being made by the High Court. The Attorney General could have brought before us the full facts of the case before the lower court and the failure and/or refusal to do so and to the defend the case amounted to a breach of the *audi alteream partem* rules or principles as the lower court's side of the case was not properly brought before us to be heard.
Be that as it may, I shall proceed to deal with the application on its own merits. And as noted earlier, the applicant raised three grounds in this application before us. However, before proceeding to deal and consider the grounds of the application, there is the need to ascertain whether the application rightly invokes the jurisdiction of the court to hear and deal with the application.

The supervisory jurisdiction of the Supreme Court is provided for under Article 132 of the Constitution as follows:

> *"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".*

Supervisory jurisdiction is defined under Article 161 of the Constitution to include jurisdiction to issue writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto.

An application seeking to invoke the supervisory jurisdiction of the court under Article 132 of the Constitution shall be as provided for under Rule 61 of the Supreme

Court Rules, 1996, (CI 16). Rule 62 of CI 16 on time limits as substituted by CI 24, as follows"

> *"An application to invoke the supervisory jurisdiction of the court shall be filed within ninety days of the date when the grounds for the application first arose unless the time is extended by the court".*

It is quite clear that the instant application has been brought well after five years after the occurrence of the relevant event that is being called into question by the applicant. The order of the trial High Court was made on 16th January 2020 and it was not until 2nd July 2025 that the instant application was filed seeking to quash the order.

In the applicant's affidavit filed in support of the application, he deposed to at paragraphs 7, 8,9, 10 and 12 as follows:

> *"7. For quite some time, friends and relatives in Ghana have informed me that the High Court of the Republic of Ghana has issued a warrant for my arrest but none of such relatives and friends have ever made available to me a copy of the High Court's order despite several requests.*
>
> *8. Indeed, friends and relatives in Ghana have drawn my attention to several social media discussions of the said warrant for my arrest but none was able to provide a copy to me for my attention.*
>
> *9. Because I do not ordinarily reside in Ghana, I have not paid attention to it especially that no one ever showed me a copy of the order even though I always asked for copies each time a friend or relative mentions it to me in a conversation or when I hear social media discussions on it.*
>
> *10. Giving the frequency of the reference to the order and the discussions I have heard about it on social media, I engaged the services of my present solicitor sometime in April this year 2025, who after about a month (that is sometime at*

the end of May) of search sent me a copy of the order which is exhibited hereto and marked A.

12. *The order says that it is issued for the arrest of a certain **Kelvin** Taylor which is not my name but because its close resemblance with my name and the information I have received from my friends and relatives in Ghana, the order is believed to refer to me because all media discussions I have heard on the subject all point to me as the subject of the order".*

From the applicant's own depositions as captured above, he has all along been aware of the order of the court of the arrest of a certain ***Kelvin Taylor*** but he chose to ignore same and stayed away from challenging the order at the High Court until now, that is, after over five years contrary to Rule 62 of CI 16 claiming that the said certain ***Kelvin Taylor*** is not his name.

The principle is well established that certiorari is a discretionary remedy, that the omission of a party to raise objection to a proceeding and/or challenge an order in an appropriate forum should disentitle the applicant to that remedy where the omission was wilful and an abuse of the process of the court. - **In Re Appenteng (deceased); Republic v. High Court (Commercial Division, Accra), Ex-parte Appenteng [2010] SCGLR 327**

The law is also well established that the existence of an alternative remedy is one of the factors that a court can rely on to exercise its discretion against the grant of certiorari - See **Republic v. High Court, Ex-parte Attorney General (Ohene Agyapong - Interested Party) [2012] 2 SCGLR 1204; Republic v. High Court, Accra, Ex-parte Tetteh Apain [2007-2008] SCGLR 72.**

In certiorari applications also, the conduct of an applicant is significant and important as to whether the application may be granted to him or be refused. In the case of

Republic v. The President, National House of Chiefs & Anor; Ex-parte Nana Akwesi Peprah II [2013-2014] 2 SCGLR 1307 @ 1312, Ansah, JSC, (as he then was) stated and held thus,

> *"We wish to consider one other point germane to applications on orders of the nature under consideration and state that, in considering an application for an order of certiorari, one will necessarily need to consider the conduct of the parties especially the applicant, so that where he is guilty of a* ***long delay*** *in applying for the remedy, he may be denied it. It ought to be borne in mind that certiorari is a discretionary remedy, and the conduct of an applicant is worthy of consideration. The circumstance of the case and the conduct of the applicant can disentitle him to the remedy".*

The length of time is also material in the grant or otherwise of certiorari applications. In Ex- parte Nana Akwesi Peprah II (supra), Ansah, JSC, further said:

> *"In our opinion, where there was an undue delay of a period of about twenty-one long years in making the application, such as in this case, it will militate against the success of the application for the relief sought. Tardy and delayed applications scarcely succeed in securing favourable results in applications of this nature".*

In **Republic v. High Court, Cape Coast, Ex-parte John Bondzie Sey (University of Education, Winneba - Interested Party) [2020] 164 GMJ 1** at 57, this court stated as follows:

> *"The Supreme Court has also set out the parameters and the essence of the grant of certiorari in the case of Republic v. High Court, Kumasi, Ex-parte Bank of Ghana & ors. (Sefa and Asiedu - Interested parties) (No. 1) Republic v. High Court, Kumasi, Ex-parte Bank of Ghana & ors. (Gyamfi and ors - interested parties) (No. 1) consolidated [2013-2014] 1 SCGLR 477, that over the years the courts have established guidelines for the grant of these judicial review applications of certiorari, prohibition, and*

mandamus. These are: A. Availability of alternative effective remedies such as (i) Appeal, (ii) application to set aside the proceedings sought to be impugned, B. The conduct of the applicant and in some cases conduct of counsel for the applicant which may be found to be reprehensible and therefore undeserving of the grant of the court's discretion in their favour".

In this case, the conduct of the applicant when in his own deposition, he was informed by friends and relatives that a warrant of arrest has been issued for the arrest of a certain **Kelvin Taylor** which even if not his name but bears close resemblance to his name, ought to have been proactive enough to apply to the trial High Court to clarify the person the order was directed at and to have the order set aside rather than waiting for a whole five years after to come and apply to the Supreme Court to have the order quashed by certiorari.

Indeed, in the case of **Republic v. High Court, Accra, Ex-parte Nii Nueh Odonkor, the Executive Director, Economic and Organized Crime Office, Bank of Ghana, Ecobank Ghana Ltd; Civil Motion No. J5/26/2014** dated 22nd July 2014 (unreported), Atuguba, JSC, (as he then was), (for the majority) stated as follows:

"This court has stated time without number that the discretionary nature of the remedy of certiorari is not prejudiced by the incidence of nullity of proceedings sought to be quashed … Perhaps it is necessary to explain that the mere fact that rules of court on time limits cannot shut out an application in respect of proceedings that are nullity, does not mean the reliefs sought will be granted pro tanto. The discretionary nature of certiorari still applies in relation to it. Since even when an application for certiorari is brought within time limits can still be refused for tardiness, it would be pessimi exempli to hold that tardiness cannot, as a matter of discretion, defeat certiorari application brought outside statutory time limits".

In emphasizing the discretionary nature of certiorari, Atuguba, JSC, again stressed that certiorari is a special and residual remedy which is held in reserve, hence the rule that where there is an equally effective alternative remedy, resort to certiorari will be refused.

Again, relying on the case of **Republic v. Anlo Traditional Council, Ex-parte Hor II [1979] GLR 234, CA, @ 243**, where Jiagge, JA (as she then was) emphasised the point as follows:

> *"As a matter of practice, great caution accompanies the exercise of discretionary powers under prerogative orders. The prerogative has been defined as 'the residue of discretionary or arbitrary authority which at any given time is largely left in the hands of crown; (that is State)'".*

In view of the reasons stated supra, the application for an order of certiorari to quash the order of the High Court (Commercial Division), Accra for warrant for the arrest of **Kelvin Taylor** presided over by Eric Keyi Baffour, JA, sitting as additional High Court judge dated 16th January 2020 fails and same is accordingly dismissed in its entirety.

(SGD) E. Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

PETER OKUDZETO ESQ. FOR THE APPLICANT. WITH HIM ELI AHU ESQ.

ATTORNEY-GENERAL ABSENT.