

GHANA / JUDGMENT

OCANSEY & ORS VRS FIANKO-AWUKU & 3 ORS (J4/73/2023) [2024] GHASC 50 (13 November 2024)

COURT
ghascDECIDED
13 November 2024

Source: ghalii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE SUPERIOR COURT OF JUDICATURE IN THE SUPREME COURT ACCRA – A.D. 2024
CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING) OWUSU (MS.) JSC PROF. MENSA-BONSU
(MRS.) JSC GAEWU JSC DARKO ASARE JSC 13TH NOVEMBER, 2024 CIVIL APPEAL NO. J4/73/2023

1. ALBERT JOOJO OCANSEY (SUBSTITUTED BY SIGISMUND OCANSEY) 1ST PLAINTIFF/
RESPONDENT
2. CHARLES FIIFI OCANSEY 2ND PLAINTIFF/RESPONDENT/ (SUBSTITUTED BY GIFTY
NARTEY) APPELLANT
3. SHAKINAH BAAH 3RD PLAINTIFF/RESPONDENT VRS
1. MR. F. F. FIANKO-AWUKU
2. MR. W. M. B. KISSIE
3. MR. KOFI BLANKSON OCANSEY DEFENDANTS/APPELLANTS
4. MR. DAVIS KUDOADZI Page 1 of 25 TERESA OCANSEY APPLICANT/RESPONDENT

JUDGMENT

SACEY TORKORNOO (MRS.) CJ:

Introduction

- [1] The matter at hand for resolution in this appeal is whether the reversal of a decision by a Single Justice of the Court of Appeal by the full bench of the Court of Appeal ought to be upheld by this court or not.
- [2] Article 138 of the 1992 Constitution provides: Powers of a Single Justice of Court of Appeal

138. A single Justice of the Court of Appeal may exercise a power vested in the Court of Appeal not involving the decision of a cause or matter before the Court of Appeal. Article 138 (b) provides that
- (b) In civil matters, any order, direction or decision made or given in exercise of the powers conferred by this article may be varied, discharged or reversed by the Court of Appeal as duly constituted. [3]These provisions are mirrored in section 12 of the Courts Act 1993 Act 459 Section 12—Powers of Single Justice of the Court of Appeal Page 2 of 25 A single Justice of the Court of Appeal may exercise a power vested in the Court of Appeal that does not involve the decision of a cause or matter before the Court of Appeal, except that —
 - (a) in criminal matters where that Justice refuses or grants an application in the exercise of such power, a person affected by it is entitled to have the application determined by the Court of Appeal as duly constituted; and
 - (b) in civil matters any order, direction or decision made or given in exercise of the powers conferred by this section may be varied, discharged or reversed by the Court of Appeal as duly constituted. [4]Court of Appeal (Amendment) Rules, 2016 CI 100 provides: Rule 43 of C. I. 19 substituted The Court of Appeal Rules, 1997 (C. I. 19) are amended by the substitution for rule 43 of ‘Review of decision of single Justice’ 43 (1) A person dissatisfied with the decision of a single Justice of the Court of Appeal in respect of an application determined under article 138 of the Constitution, may apply to the Court of Appeal to have the application determined by three Justices of the Court.
 - (2) The application to have the cause or matter determined by the three Justices shall be by motion on notice and shall be served on any other party who has an interest in the cause or matter’ Background Facts
- [5] The facts behind this appeal are that following the death of a certain man called Charles Ocansey, also known as Nana Kobina Kannie 1, there arose a dispute that a Will dated 14th March 2002, had been substituted for an earlier Will dated 10th November 1998 that was duly executed by the said Charles Ocansey (hereinafter referred to as testator). Page 3 of 25 The later Will dated 14th March 2002 was admitted to probate on 4th September 2002 in favor of the executors named in the said Will, the defendants in this law suit.
- [6] One of the testator’s children named Albert Joojo Ocansey, a beneficiary and named executor in the Will dated 19th November 1998, started an action in the high court against the executors named in the Will of March 2002 in the high court, for the following reliefs:
- a. A declaration that the document dated 14th March, 2002 purporting to be the last will of the deceased Charles Ocansey is invalid and not the testator’s deed, the same having been forged, procured and executed in suspicious circumstances.

- b. An order of the court revoking the grant of probate of the pretended Will dated 14th March 2002 made by the High Court, Accra to the Defendants on the 4th day of September, 2002, and to have same pronounced against.
 - c. A further order that the Court shall pronounce in solemn form the true last Will of the deceased Charles Ocansey dated the 10th day of November, 1998 which names the 1st Plaintiff as an executor.
 - d. An injunction to restrain the Defendants as executors of the pretended Will dated 14th March 2002 from dealing in any whatsoever with the estate of the deceased pending the final determination of this action and for the appointment of an administrator pending suit.
 - e. An order of the Court to expunge portions of the Will dated 14th March 2002 in which false allegations have been levelled against the plaintiff. Page 4 of 25
- [7] Two of the testator's children named Charles Fiifi Ocansey and Shakinah Baah applied to join the action and were joined as 2nd and 3rd Co-Plaintiffs respectively (In this judgment, they will be referred to as 2nd and 3rd Plaintiffs). The record before us reflects that following their joinder, the 2nd and 3rd Plaintiffs added to the reliefs before the high court the following reliefs:
- a. A declaration that the paper writing dated 14th March, 2002 and purporting to be the last will and testament of Charles Ocansey alias Nana Kobena (deceased) is not the deed and act of Charles Ocansey alias Nana Kobena.
 - b. A declaration that the signature on the said Will is not the signature of the said Charles Ocansey alias Nana Kobena Kannie I.
 - c. An order to revoke probate of the purported Will.
- [8] The named testators in the Will resisted the action, insisting that this Will of 14th March 2002 was the proper act of the testator. The high court tried the suit and in a judgment dated 10th July 2009, declared the Will of 14th March 2002 not to be the last will of the testator and therefore void. The high court went on to recognize the Will of the testator dated 10th November 1998 in the judgment as the last Will and Testament of the testator Charles Ocansey. The defendants appealed the high court judgment to the Court of Appeal. Proceedings before the Court of Appeal
- [9] While the appeal was pending before the Court of Appeal, the 2nd Plaintiff in the high court and Respondent in the Court of Appeal (Charles Fiifi Ocansey) passed on and was substituted by the 1st Plaintiff/Respondent (Albert Joojo Ocansey) in the Court of Appeal. Page 5 of 25 Albert Joojo Ocansey also died and was substituted by his son, Sigismund Ocansey, leaving Charles Fiifi Ocansey without a substituted party.

- [10] Gladys Nartey, the Appellant before us, who is described as the sister of the deceased original 2nd Plaintiff Charles Fiifi Ocansey, applied ex parte in September 2020 to be substituted for the 2nd Plaintiff. A Single Justice of the Court of Appeal, deriving jurisdiction from article 138 of the 1992 Constitution and section 12 of the Courts Act, 1993, Act 459 granted the application for substitution.
- [11] The new 2nd Plaintiff/Respondent then filed her submissions before the Court of Appeal in May 2021. In these submissions, Gladys Nartey urged that while not disputing the finding that the testator left a valid Will dated 1998, to the extent that the Will of 1998 had not been admitted to probate and there was no application pending before the courts to admit the Will of 1998 to probate, the trial judge exceeded his jurisdiction when he ordered for the said Will to be admitted to probate. It was her submission therefore that the testator's properties should be deemed to have fallen into intestacy.
- [12] From the Appellant's statement of case in this court, 'upon becoming aware of her (Gladys Nartey) written submission filed in May 2021' and the substitution done in 2020, Teresa Ocansey, the Respondent before the Supreme Court and the daughter of the deceased original 2nd Plaintiff, (Charles Fiifi Ocansey) filed an application in February 2023 before the Court of Appeal, to reverse the substitution of Gladys Nartey and substitute her, Teresa Ocansey, instead for the deceased 2nd Plaintiff. The gravamen of Teresa Ocansey's complaint to the Court of Appeal was that Gladys Nartey was not the lawful representative of Charles Fiifi Ocansey, not his daughter, or his next of kin, and she is not a beneficiary of the estate of the testator. Page 6 of 25
- [13] Second, Gladys Nartey's submissions to the Court of Appeal were at variance with the case of the Plaintiffs before the high court which had formed the basis of the judgment. And third, the beneficiaries of the estate of the testator in his Will, had not authorized or instructed the said Gifty Nartey to be substituted for Charles Fiifi Ocansey.
- [14] The Court of Appeal fully constituted by three members, agreed to the relevance of the application by Teresa Ocansey, found the written submissions of Gladys Nartey to be adverse to the interests of the beneficiaries of the Will of Charles Ocansey, and on 15th March 2023, set aside the substitution of Gladys Nartey. They went on to substitute Teresa Ocansey for Charles Fiifi Ocansey, the original 2nd plaintiff. Gladys Nartey has now appealed to the Supreme Court on the following ground: Grounds of appeal
- a. That the Court of Appeal erred when it granted the Applicant/Respondent's Motion to set aside the order of this Honorable Court dated 15th December 2020 and for substitution. Submissions of Appellant to the Supreme Court
- [15] The Appellant is urging the following factual positions and legal arguments. First she submits that she is a child of the testator, and a sister of Charles Fiifi Ocansey, and so qualified to be substituted for him. Second, she submits that the head of family and the family of the testator recommended that 'in the interest of the family', she should substitute the 2nd Plaintiff. Third, she urges that her submissions presented to the Court of Appeal

were not at variance with the case of the plaintiffs that had been affirmed in the high court and appealed against in the Court of Appeal, and which she had been substituted to uphold.
Page 7 of 25

- [16] It was her extensive presentation through her counsel, supported by several citations, that the Respondent to this appeal, Teresa Ocansey, carried a burden of proof to show how the case in the Appellant's submissions varied from the case of Charles Fiifi Ocansey, the 2nd Plaintiff that she had been substituted for. In the absence of the discharge of such burden of proof, the Court of Appeal was wrong to have allowed the said position to weigh on its mind and lead it to uphold the Respondent's application.
- [17] Further, it was her case that since the late Charles Fiifi Ocansey did not endorse any claim and relief about a particular Will, Teresa Ocansey's assertion that there is a Will dated 10th November 1998 to which probate was granted by the High Court is rather contrary to the original claims put forward by the late Albert Joojo Ocansey. She was therefore not estopped from putting forward the impugned submissions that had led to the Respondent's application for reversal of her substitution by the Single Justice of the Court of Appeal. Submissions of Counsel for the Respondent Objection to the ground of appeal
- [18] The Respondent's primary response was that by submitting the ground of appeal that 'the Court of Appeal erred when it granted the Applicant/Respondent's Motion to set aside the order of this Honorable Court dated 15th December 2020 and for substitution', the Appellant had failed to formulate a proper ground of appeal and the said ground should be struck out as incompetent. Counsel for Respondent pointed to Rule 6(2) (f) of the Supreme Court Rules [1996] CI 16 which reads:
- (2) A notice of appeal shall set forth the grounds of appeal and shall state-
- (f) the particulars of any misdirection or error in law, if so alleged' Page 8 of 25
- [19] It was his contention that the sole ground of appeal failed to state any particulars of misdirection or error in law of the Court of Appeal and as such, did not comply with Rule 6 (2) (f). Citing various cases in which this court had reiterated that an appeal is a creature of statute and therefore Appellants are bound to comply with the rules regulating notices of appeal such as *Zabrama v Segbedzi* [1991] 2 GLR 221, *FKA Company Ltd & Nii Teiko Okine* (sub. By Nii Tackie Amoah) *VI v Nii Ayikai Akramah II* (sub. By Nii Tettey Okorah-Aryee) & Others Civil Appeal No. J4/1/2016 Dated 13th April 2016, he urged that the sole ground of appeal lacked sufficient particulars to assist this court to identify and situate the point of law or the facts upon which the Appellant was seeking to impugn the ruling of the Court of Appeal. The ground of appeal ought therefore be struck out in limine.
- [20] Counsel for Respondent then went on to set out the Respondent's substantive response to the appeal. He reiterated the points submitted to the full bench of the Court of Appeal that had led to the reversal of the order substituting Gladys Nartey. This is to the effect that from the submissions of the Appellant, she had revealed an adverse and separate interest that she

sought to protect in the estate of Charles Ocansey. This is an interest for a new pronouncement by the court that the estate of Charles Ocansey should be deemed to have fallen into intestacy following the declaration of the high court that the March 2002 Will was void. This was not the case of the Plaintiffs generally and not the case of the 2nd Plaintiff that she sought to substitute. There was therefore no error in the ruling of the Court of Appeal in reversing the order of substitution. Reply of Appellant

- [21] The Reply of counsel for the Appellant to the objection raised by Respondent is that 'it is only when misdirection or errors in law are alleged in grounds of appeal that an Appellant is Page 9 of 25 required to provide particulars of such misdirection or errors of law' pursuant to Rule 6 (2) (f) of CI 16. She urged that the rules of court did not lay any obligation to particularize misdirection or errors if the ground of appeal did not allege any misdirection or error in law, and that not having alleged any misdirection or error in law, the Appellant was not in breach of CI 16 on formulation of grounds of appeal. The Appellant had concisely set out the ground of appeal that she intended to appeal on, which was that the decision was erroneous.
- [22] From this position, counsel for Appellant went on to urge that this court had become tolerant 'to an Appellant's formulation of grounds of appeal such that where sufficient particulars are discernible from the entire reading of the ground of appeal and the written submissions', the ground of appeal would not be struck out. Pointing to cases such as *Dahabieh v S A Turqui & Brothers* [2001-2002] 1 GLR 171, *Empire Builders Ltd v TopKings Enterprises Ltd & 4 Others* Civil Appeal No. J4/10/2019 Dated 16th December 2020, that set the reminder for the need to give notice to parties to an appeal on the grounds upon which a judgment is assailed, and issues to be dealt with in the appeal, she urged that the courts were moving towards the position that where sufficient particulars of the grounds of appeal are discernible from the entire reading of the ground of appeal, or 'where the wording of the grounds of appeal sufficiently convey the alleged error and the matters that the appellant intends to argue thereunder', failure to particularize the alleged error per se would not render the ground inadmissible, and the impugned ground of appeal would not be struck out. She pointed to the decision in *The Republic v Ghana National Gas Company: Ex Parte Kings City Development Company & Lands Commission*, Civil Appeal No. J4/61/2021 Dated 15th December 2021. Page 10 of 25 Direction of this court on provisions on decisions of a Single Justice
- [23] When the parties appeared before this court on 8th May 2024, they were directed to present further submissions on the question of when the full bench of the Court of Appeal can reverse the decision of a single Justice. In supplementary Statements of Case, the parties provided their positions. Counsel for Appellant submitted that the meaning of the provisions in article 138 and section 12 of the Courts Act is that the Court of Appeal, when fully constituted, has inherent powers to set aside its own decision or previous orders made by it. That as much as the decision of a single Justice is that of the Court of Appeal, the framers of the Constitution decided to subject such decisions to that of the duly constituted

court of three judges. Pointing to principles that may be identified from cases such as Mohammed Odartey Lamptey v Lands Commission, Apostolic Faith mission, Wofa Yaw and Asare K Boadi Suit No. AL/145/2007 Dated 27th February, 2020 counsel for Appellant urged that an Applicant seeking discharge, reversal or variation of an order of a Single Justice must show cause why the decision of the Single Justice must be interfered with.

- [24] Such cause would include determination of the factors considered when a second court is called upon to reverse a decision, such as whether the first judge acted on wrong principles or took into account irrelevant matters or did not take into account matters which ought to have been taken into account. Or whether the court had come to a conclusion which no court properly instructing itself on the law would have reached. See the decision of this court in Rev Rocher De-Graft Sefa & Others v Bank of Ghana No. J7/22/2014 Dated 18th December, 2014. Page 11 of 25
- [25] Counsel for Appellant also submitted that in Mass Projects Ltd (No. 2) v Standard Chartered Bank & Yoo Mart Limited (No. 2) [2013-2014] 1 SCGLR 309, the jurisdiction exercised by the three member panel of the Supreme Court that could discharge, or vary the decision of the Single Justice of the Supreme Court pursuant to section 7 of the Courts Act had been described as being akin to the exercise of the court's review jurisdiction.
- [26] In the present case, she reiterated that the Court of Appeal erred when it did not take into account matters which ought to have been taken into account in reversing the order of the Single justice, and came to a conclusion which no court properly instructing itself on the facts of the case and the law would have reached. Had the court of appeal considered the Appellant's written submissions as a whole, it would have come to the conclusion that it was not in any way adverse or prejudicial to the reliefs endorsed on the writ of summons and statement of claim filed by the 2nd and 3rd Plaintiffs.
- [27] It was also her submission that to the extent that Charles Fiifi Ocansey had not sought for any declaration on the 1998 Will, the judgment of the trial judge declaring the 'alleged' Will of 10th November 1998 valid was in relation to a relief asked for by the 1st Plaintiff, and not Charles Fiifi Ocansey. As his substitute therefore, she was not estopped from putting the case forward in the appeal that the estate should rather be declared as having fallen into intestacy. She relied on the principle derived from *Dam v J. K. Addo and Brothers* [1962] 2 GLR 200, that a court must not substitute a case nor accept a case contrary to that which the party himself puts forward, and urged that by finding her submission to the Court of Appeal on the estate having fallen into intestacy 'adverse to the interests' of the plaintiffs, the Court of Appeal had failed to appreciate that the trial judge had earlier committed an error in the judgment in declaring the 'alleged' 10th November 1998 Will valid. Time Lapse Page 12 of 25
- [28] On the issue of time lapse between the order of the Single justice in December 2020, and the reversal of the decision in March 2023, Counsel for Appellant conceded that neither article 134 and article 138 of the 1992 Constitution and sections 7 and 12 of the Courts Act Act 459, which created the jurisdiction of the Single Judge and that of the three member panel of the

Supreme Court and Court of Appeal over the orders of the single Judge, set a time in which the decisions of the Single Judge could be reversed or varied or set aside. However, she was of the opinion that the Respondent did not bring the Application to set aside the order of the Single Justice within a reasonable time.

- [29] The appellant submits that the duty of the Court of Appeal to act within reasonable time was elucidated by this court speaking through Dotse JSC in *Skylimit Structure Builders Limited (No. 2) v Tullow Ghana Limited (No. 2)* [2017-2018] 1 SCLRG 788 cited supra where this court set out recommendations for detailed Rules of Procedure for the scope of the powers of the single Judge and the nature of applications that can be put before Single Judges, including a time frame within which an application can be made to the full court to vary, discharge or reverse the ruling of a single Judge.
- [30] She cited the opinion in *Aboagye v Quartey and Another* [1991] 1 GLR 491 that reasonable time is the period which the court considers to be fair and just in the peculiar circumstances of each case. This period must accord with common sense, and derive from the discretion of the court. In the same vein, in *Brefoh v The Republic* [1980] GLR 679, the high court had reviewed existing dicta and concluded that 'reasonable time' is the period of time that a reasonable person, having regard to the purpose for which the time is required, the nature of the act or duty to be performed and other attendant circumstances, performs the task at hand. Her conclusion was that the time lapse between Page 13 of 25 the decision of the Single Justice and the full bench of the Court of Appeal in the instant case was unreasonable and so the reversal ought not to be upheld by this court.
- [31] Counsel for Respondent on the other hand is of the view that the courts have clarified that neither the 1992 Constitution, the Courts Act nor Rules of Court CI 16 and CI 19 prescribe a time limit to apply for the reversal, varying or discharge of a decision of the Single Justice, and so the raising of the issue of time lapse between the order of the Single Justice and the Court of Appeal is not valid. He pointed *Amidu (No. II) v Attorney General, Waterville Holdings (BVI) Ltd, Woyome & UT Bank Limited (Under Receivership) (No. 2)* [2017-2020] 2 SCGLR 535 and *Skylimit Structure Builders Limited v Tullow Ghana Limited Civil* supra as cases that had considered this issue of appropriate time between the orders of a Single Justice and the three member panel that may affirm or discharge or vary it.
- [32] In both cases, this court had recognized that there is no time limit set by the 1992 Constitution, Courts Act and the Court of Appeal Rules 1997, CI 19, and Supreme Court Rules, 1996 CI 16, as amended by CI 98, of 2016, for the full panel of the Court of Appeal and three member panel of the Supreme Court to vary, discharge or reverse the decision of a Single Justice. Like Counsel for Appellant, counsel for Respondent, citing from *Most Rev Aboagye Mensah and 3 Others v Yaw Boakye*, Civil Motion No J7/05/2022 Dated 16th March, 2022 agreed that where no time limit is provided for performing an act under the Rules, such act must be performed within a reasonable time, which reasonable time is dependent on special circumstances of each case. Page 14 of 25

- [33] He submitted that the Respondent had taken steps immediately after receiving the submissions of Appellant, and had not been indolent in taking steps to have the order appointing Gifty Nartey reversed when 'the injurious' nature of her written submissions were brought to her notice. Thus the Justices of the Court of Appeal had, after considering the special circumstances of the instant matter, exercised their discretion appropriately in reversing the decision of the Single Justice. Our evaluation and determination Preliminary objection to the ground of appeal
- [34] We must state that we are not impressed with the simplistic expression of the Appellant's ground of appeal, which urges error without setting out the particulars of error. The direction of Rule 6 (2)(f) of CI 16 is clear that where error in law by the court below is alleged, the alleged particulars of error must be given. This is what enables the real issue in an appeal to be identified, argued and ruled on. From the case presented to this court and ostensibly founded on the above ground of appeal, it is understood that the Appellant's primary complaint is that the Court of Appeal failed to properly weigh and evaluate evidence in the Appellant's written submissions which was attached to the application to set aside the order of substitution. And the court failed to properly weigh and evaluate this evidence in the light of the different Statements of Claim of the three plaintiffs, and the judgment rendered by the high court. As a result of this misapprehension of the import of the position in the written submissions vis a vis evidence found in the pleadings and judgment of the trial court, the Court of Appeal erred in reversing the order of substitution. Page 15 of 25
- [35] If this is the case on which the ground of appeal is founded, then clearly, the appropriate ground of appeal, pursuant to Rule 6 (5) of CI 16 is that the ruling of the Court of Appeal was against the weight of evidence placed before it. It is this ground that would legitimize the aspersions cast on the Court of Appeal's alleged misapprehension of the evidence placed before it. However, as inadequate as the sole ground of appeal is, to the extent that it does not identify the error the Court of Appeal is alleged to have fallen into, the ground of appeal and submissions of counsel for Appellant compel the questioning whether on the law, it would be an error for the Court of Appeal fully constituted, to reverse an order of substitution made by a Single Justice. Second, whether it would be an error to reverse the order of substitution on the ground that the new 2nd Plaintiff, had introduced into the records of appeal, a case adverse to the interests of the party she substituted? And whether it would be an error if the Court of Appeal, fully constituted, reversed an order of substitution made by a Single Justice, if the said reversal occurred more than two years after the said order of substitution? And especially if there had been an intervening event such as the substituted party filing submissions to the court for consideration in the appeal?

- [36] In essence, we are questioning whether by reversing the order of the Single Justice, the Court of Appeal fell into any form of error –being an error of exercising the jurisdiction of reversing the decision of the Single Justice, or an error occasioned by the lapse of time between the date of the order of substitution of the Single Justice, and the date of the order reversing the order of substitution. To each question, our evaluation compels the answer ‘no’. Page 16 of 25
- [37] In the bid to justify the ground of appeal complaining of an error simpliciter, counsel for Appellant is urging that the decision of the Court of Appeal that her submissions were adverse to the interest of the Plaintiffs in the suit was as a result of erroneous apprehension of the submissions presented by Appellant when in fact, the Appellant was advancing the interest of all the Co-Plaintiffs, including Charles Fiifi Ocansey, the original 1st Co-Plaintiff.
- [38] First, we find from the Record of Appeal submitted to us, that neither the Statement of Claim of the 1st Plaintiff nor the judgment of the high court formed part of the evidence attached to the application leading to the appealed ruling. Since this is the record comprising the applications and rulings below that are on appeal, the arguments of counsel for the Appellant have unnecessarily burdened this court with conflating submissions regarding what the pleadings of the different plaintiffs meant, what the judgment of the high court meant, and the import of these two as presented to the Court of Appeal by the parties after the Appellant had been substituted for the 2nd Plaintiff by the Single Justice, when in fact, these significant material did not form part of the Record dealt with in the relevant application and decision brought up here appeal.
- [39] Clearly also, an appeal is against a decision already taken, and so no appeal is germinated on new grounds that did not constitute part of the facts or issues that the court below had to address, unless new evidence is especially allowed in an appeal pursuant to a court order. A lower court cannot therefore be in error if they did not have to consider an issue presented to the appellate court to base a decision on. Thus where a substituted party purports to advance a case ‘supportive of the interests of the party she substituted’, which case did not form part of the issues raised or remedies sought below, that introduction is untenable, no matter how ‘supportive’ it may be. For that reason, the Court of Appeal was right in determining that the Appellant’s introduction of the new Page 17 of 25 issue of whether the estate of Charles Ocansey had fallen into intestacy, by reason of the 1998 Will not having been admitted to probate, was deleterious. Role of the Single Justice
- [40] From our review of the relevant constitutional, and statutory provisions, and the jurisprudence on the subject matter, such as *Amidu (No II) v Attorney General Waterville Holdings (BVI) Ltd*, *Woyome UT Bank Limited (Under Receivership) (No. II) supra* and *Skylimit Structure Builders Limited v Tullow Ghana Limited supra*, *Mass Projects Ltd v Standard Chartered Bank & Yoo Mart Ltd (No. 2) supra*, we are satisfied that when the framers of the Constitution and the legislators framed the provisions of article 134, and 138 and sections 7 and 12 of the Courts Act, including Rule 73 of CI 16 and Rule 43 of CI 19 as amended, they were quite clear that the orders of the Single Judge were never to be binding

on the Supreme Court and Court of Appeal in the exercise of their jurisdictions over cases submitted to these final appellate courts.

- [41] Article 136 (1) of the 1992 Constitution provides the composition of the Court of Appeal, and article 136 (2) directs that: 'The Court of Appeal shall be duly constituted by any three of the Justices referred to in clause (1) of this article and when so constituted, the most senior of the Justices shall preside'. Rule 21 of the Court of Appeal Rules 1997 CI 19 places full control over any proceedings between the parties on any matters arising during pendency of an appeal in the Court of Appeal. What then would be the value of the provisions made for the work of the Single Judge? The language of the provisions – set out supra - clearly establishes the meaning, Page 18 of 25 direction and purpose of the provisions. For ease of extrapolation, article 138 and 138 (b) are repeated.
- [42] Powers of a Single Justice of Court of Appeal
138. A single Justice of the Court of Appeal may exercise a power vested in the Court of Appeal not involving the decision of a cause or matter before the Court of Appeal. (emphasis provided) 138 (b) In civil matters, any order, direction or decision made or given in exercise of the powers conferred by this article, may be varied, discharged or reversed by the court of appeal as duly constituted. It is trite knowledge that many matters submitted to the Court during the pendency of proceedings may seek orders that allow for streamlining the proceedings before the main hearing of the appeal that the court has jurisdiction over. What kind of decisions can fall into this category? Such orders can include orders given for substituted service when a party cannot be served directly, the uncontested relisting of a case that has been struck out, applications granting leave to file a process out of time that is not contested as affecting the validity of the case before the court, or the settling of the date when a case may be heard through an application to the court, instead of being made to the Registrar. Such applications, while not exhaustive in the category, would be included in the processes necessary for getting the record ready to be heard by the court, though they will not involve the decision of a cause or matter before the Court of Appeal. The emphasis on the article 'the' is to be noted. Page 19 of 25
- [43] The decision of a cause or matter before the Court of Appeal would be the final decision in the appeal, or the decision on a contested application that parties to an appeal would want resolved as a necessary part of the cause or matter on appeal. In essence, this jurisdiction created as exercisable by a Single Justice allows a Single Justice of the Court of Appeal to give orders or directions on uncontested matters that would assist in readying the cause or matter before these highest appellate courts for determination. It provides for decisions deriving from the functions of the court, but which decisions do not determine any of the issues in the substantive action before the court, without the burden of a recourse to the full bench. In every situation therefore, the core question to ask in considering whether an application before a Single Judge or direction given by a Single Judge is a proper one is whether it will affect any issue to be determined in the substantive appeal before the Court of Appeal, or cause or matter before the Supreme Court. To use the edict of the Constitution,

whether or not it involves the decision (to be given) in a cause or matter before the Court of Appeal

- [44] Nature of the orders of a Single Judge It is also clear that as much as the orders of the Single Justice would be binding on the parties to which they are directed, the directions of the Single Judge are not allowed to bind the Court of Appeal or Supreme Court and no time is set for when the court, more fully constituted, may vary or discharge an order given by a Single Justice of the appellate court. Page 20 of 25 In amending Rule 43 of CI 19 that dealt with the exercise of the jurisdiction of the Single Justice, CI 100 of 2016 - set out at the outset of this judgment – simply provided for a person dissatisfied with the decision of a Single Justice to have the same application determined by three Justices of the Court.
- [45] Neither the framers of the Constitution or the Courts Act or the Rules of Court created room for binding the appellate courts with the decisions of a Single Justice, within or outside of a time frame without giving the full panel of the Court of Appeal that is seised with jurisdiction over the cause or matter before the Court of Appeal, and a three member panel of the Supreme Court that reviews decisions of a Single Justice, the opportunity to determine whether it is appropriate to discharge, reverse or vary the order made by the Single Justice.
- [46] It is noteworthy that in the case of the Supreme Court, the function of reviewing the decision of the Single Justice is given to a three member panel under article 134 (b), and not even the five member bench that duly constitutes the Supreme Court for its determinative work as provided for in article 128 (2). This direction reinforces the effort made by the Constitution to limit the role of the Single Justice to a pre-trial direction context, rather than a framework that can bind the Court as duly constituted to give decisions on the cause or matter before the Supreme Court. When it comes to time, no restriction is placed against the scope of time given to the three member bench to reconsider the orders of the Single Justice in any further determination of the cause or matter pending before the Court of Appeal or Supreme Court. Application to the instant appeal before us Page 21 of 25
- [47] In view of the analysis above, we see no reason to, and we have been given no reason to find erroneous the determination by the Court of Appeal that the proper person to be substituted for the 2nd plaintiff is Teresa Ocansey. From the specific records of this appeal, there is no evidence as to whether Teresa Ocansey found out about the substitution of Gladys Nartey that was obtained ex parte, prior to Gladys Nartey filing submissions in May 2021 and when Gladys Nartey's submissions came to the notice of Teresa Ocansey or the other parties in the suit. The duty of hearing the appeal in the Court of Appeal lies with the Court of Appeal, and where there is a contest as to whether the proper person to substitute the 2nd defendant is Teresah Ocansey and not Gladys Nartey, we find that the Court of Appeal rightly exercised discretion when they determined that Gladys Nartey had prima facie, presented submissions to the court that introduced a legal position at variance with the judgment obtained by the person she was seeking to substitute. The court's decision to exercise discretion and reverse the order of the Single Justice to substitute Gladys Nartey for the

deceased 2nd Plaintiff, and substitute Teresah Ocansey for the deceased 2nd Plaintiff cannot therefore, be faulted.

- [48] Just as a matter of comment that should assist in elucidating the proper role of a Single Justice sitting in the Court of Appeal or Supreme Court, we think that an issue such as the proper person to be substituted for a deceased appellant ought not to have been heard ex parte and without reference to the existing parties, who could have spoken to whether indeed, the person seeking substitution was qualified in law and fact to be substituted for the deceased 2nd Plaintiff. Indeed, in a case such as this one that was hotly contested at the trial level, it was not at all appropriate for the Single Justice to have considered the application for substitution on the basis of an ex parte motion. Page 22 of 25
- [49] We draw attention to the directions of the original provision in rule 73 of CI 16 which was amended by Supreme Court (Amendment) Rules 2016, CI 98. It provides: 73 Exercise of powers of a single justice An application made pursuant to article 134 of the Constitution in respect of any cause or matter, civil or criminal shall be by motion on notice and shall be served on any party who has an interest in the cause or matter.
- [50] The Supreme Court (Amendment) Rules 2016, CI 98 substitute these provisions by providing for applications for review of the orders of a Single Justice to be conducted on notice to the parties that they affect. It provides: Rule 73 of C.I. 16 substituted
1. The Supreme Court Rules, 1996 (C.I. 16) are amended by the substitution for rule 73 of "Review of decision of single Justice'
 73. (1) A person dissatisfied with the decision of a single Justice of the Supreme Court in respect of an application determined under-article 134 of the Constitution, may apply to the Supreme Court to have the application determined by three Justices of the Court.
 - (2) The application to have the cause or matter determined by the three Justices shall be by motion on notice and shall be served on any other party who has an interest in the cause or matter."
- [51] This direction of CI 98 also reflects the need for decisions of a Single Justice to be made and reviewed on notice to affected parties. We are therefore of the firm opinion Page 23 of 25 that it does not matter that the said substituted party and Appellant before us had filed a written submission before the Court of Appeal reversed the order of substitution. The order of the Court of Appeal duly constituted for its work, was clearly aimed at streamlining processes before the court for the purpose of hearing of the appeal.
- [52] The Registrars of the Supreme Court and Court of Appeal are directed to carefully review the scope of cases placed before Single Justices to ensure that the applications are made on notice whenever possible, and that orders required do not involve decisions in the cause or matter before the Court of Appeal or the Supreme Court. The appeal is dismissed as being without merit. (SGD.) G. SACKY TORKORNOO (MRS.) (CHIEF JUSTICE) (SGD.) M. OWUSU (MS.) (JUSTICE OF THE SUPREME COURT) (SGD.) (JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.) (SGD.) E. Y. GAEWU (JUSTICE OF THE SUPREME COURT) Page 24 of 25 (SGD.) (JUSTICE OF THE SUPREME COURT) Y. DARKO ASARE COUNSEL NII KPAKPO SAMOA ADDO ESQ. FOR THE 2ND PLAINTIFF/RESPONDENT / APPELLANT WITH BENEDICTA QUAYE A . K. BANNERMAN-WILLIAMS JNR ESQ. FOR THE 1ST PLAINTIFF/ RESPONDENT AND APPLICANT/RESPONDENT WITH ROBERT PAPPOE
Page 25 of 25

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ghalii.org/akn/gh/judgment/ghasc/2024/50/eng@2024-11-13/source.pdf>

CASE PAGE <https://chat.esheria.ai/case-law/ghana/Substitutionofparties-ghasc-2024--6a3ea5233b1caa912981940b>

Prepared on 27 October 2026 · Esheria