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Registrar
HIGH COURT
ACCRA

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
CRIMINAL DIVISION
ACCRA – A. D. 2023**

CASE NO. CR/0264/2022

JAMES GYAKYE QUAYSON **** * ACCUSED/APPLICANT/APPELLANT

VRS

THE REPUBLIC *** * PROSECUTION/RESPONDENT/RESPONDENT

**NOTICE OF INTERLOCUTORY CRIMINAL APPEAL
RULE 59A OF C.I. 19 OF 1997 AS AMENDED BY C.I. 25 OF 1999**

PLEASE TAKE NOTICE that the Accused Person/Applicant/Appellant herein who is dissatisfied with the decision of the High Court; Criminal Division 3, Accra presided over by Her Ladyship, Mary M. E. Yanzuh, dated the 23rd of June 2023, hereby appeals to the Court of Appeal on the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

2. PART OF THE DECISION COMPLAINED OF

The refusal by the court below to review and/or vary its decision of the 16th June 2023, at the behest of the Attorney-General, ordering "day to day" hearing of the trial and fixing 20th to 23rd June 2023 for continuation of the trial.

3. GROUND OF APPEAL

- a) The court below erred in law when it failed to appreciate that the exercise of its discretion on 16th June 2023 in respect of the grant of adjournments violated the provisions of article 296(a) and (b) of the 1992 Constitution as did the exercise of prosecutorial discretion by the Attorney-General.

Particulars of error of law

- (i) The court below's invocation of the "trite law" that adjournments are a matter of the discretion of the trial court made it oblivious to the requirements of article 296 of the Constitution which requires that every such discretion be exercised fairly, candidly and devoid of arbitrariness and

capriciousness and not biased either by resentment, prejudice or personal dislike; and

- (ii) The court below failed to give due attention to important considerations such as constitutional rights of the accused in exercising its discretion.
- b) The court below erred in law when it claimed that matters brought to its attention by the accused regarding the abuse of prosecutorial powers with extremely prejudicial implications and an insult of the accused person and professional misconduct by the Attorney-General in respect of this case were not relevant to its consideration of the review application.

Particulars of error of law

- (i) Prejudicial statements made by the prosecutor, the Attorney-General, seriously affect the fairness of the trial;
 - (ii) The court below completely abdicated its constitutional obligation under articles 12 and 23 of the 1992 Constitution to ensure that administrative officials carry out the duties reasonably;
 - (iii) The court below also abdicated its inherent powers to ensure that its officers conduct themselves in accordance with the standards required of them under the rules of professional conduct and etiquette;
 - (iv) The issue of professional misconduct by the Attorney-General which were brought to the attention of the court below by the Accused Person/Applicant/Appellant were additional reasons for the Court to have reviewed the decisions it made at the behest of the Attorney-General for “day to day” hearings; and
 - (v) The court had, on 21st June 2023, at the hearing of the application for review, ruled that the supplementary affidavit which provided further evidence on these allegations was relevant and admitted the said affidavit in evidence on that ground, but now changed its position with no legal basis.
- c) The Court below erred in law when it failed to appreciate the significance of the rights of the accused person contained in articles 19 (13) and 21(3) as well as article 19(1) in respect of the necessity for a court, when exercising its discretion, to consider all relevant factors.

Particulars of error of law

The constitutional provisions referred to establish important constitutional rights which must be enforced rather than being curtailed, as the decision of the court did.

- d) The Court below erred in law when it invoked section 169 of the Criminal Procedure Code as if that section requires or justifies a criminal trial being heard “day to day”.

Particulars of error of law

The terms of the section regarding grant of adjournments make no reference to “day to day” hearings of a trial.

- e) The Court below erred in law when it failed to appreciate that, on 16th June 2023, it did not have jurisdiction to hear and determine the oral application made by the Attorney-General without prior notice to the accused and his lawyers for a significant change in respect of the fixing of dates for hearing of the case

Particulars of error of law

- (i) The Court below did not address the issue raised in the application for review that it did not have before it, on 16th June 2023, any application -on notice by the Attorney-General to the accused and his counsel -concerning the fixing of hearing dates for the trial “day to day”; and
- (ii) The court below acted in violation of due process of law, thereby contravening article 296(b) of the 1992 Constitution.
- f) The decision of the High Court was per incuriam a binding decision of the Supreme Court in **Republic v. High Court, Commercial Division A, Tamale; Ex parte Kaleem** [2015-2016] 2 SCGLR 1332 and, therefore, in violation of article 129(4) of the 1992 Constitution.

Particulars of error of law

The said decision of the Supreme Court makes it clear that it is within the inherent jurisdiction of every court to review, vary or modify orders it has made in circumstances such as those brought to the attention of the trial court in the application for review.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

Reversal of the ruling of the court below dated 23rd June 2023.

5. PERSON MOST DIRECTLY AFFECTED BY THE APPEAL

The Republic/Respondent/Respondent.

6. ADDRESS OF THE APPELLANT

HOUSE NO. SD/16 SDA,
ASSIN-BEREKU,
CENTRAL REGION

DATED AT KAPONDE & ASSOCIATES, SUITE 606/607, GHANA SUPPLY CO. BUILDING, REPUBLIC HOUSE, OPPOSITE COCOBOD, CMB – ACCRA THIS 26TH JUNE, 2023.



**LAWYER FOR THE ACCUSED/
APPLICANT/APPELLANT**
JUSTIN PWAVRA TERIWAJAH, ESQ.
SOLICITOR'S LICENCE NO. eGAR 00004/23
CHAMBER'S REGISTRATION NO. ePP00775/22

THE REGISTRAR
HIGH COURT
CRIMINAL DIVISION (3)
ACCRA

JUSTIN PWAVRA TERIWAJAH
LLB (GHANA), LLM (PEKING)
SOLICITOR AND BARRISTER
TEL: +233 544 181818 / +233 233 181818
+233 277 181818/ +233 208 101010
Email: jpteriwajah@pku.edu.cn

AND TO THE ATTORNEY-GENERAL, ATTORNEY-GENERAL'S DEPARTMENT,
PROSECUTIONS UNIT, MINISTRIES – ACCRA.