WRITE-UP

AN EXAMINATION OF THE CASE OF ORIGIN 8 AND C. I. 132:

A Still Born Piece of Law or an Austere Interpretation by the Supreme Court?

By
JUSTICE ERIC KYEI BAFFOUR

FRIDAY, 4TH MARCH 2022

DENNIS LAW
A legal material portal

Introduction

The coming into force of the Court of Appeal (Amendment) Rules, 2020 C. I. 132 was hailed by the legal fraternity as a smart piece of legislation. The rule was a welcome relief to successful parties who were usually taken through the drudgery of frustration by motions for stay of execution from the trial court and upon refusal repeated at the Court of Appeal. The opportunity to first file an application at the trial court for a stay of execution and, upon refusal, file a repeat of same at the Court of Appeal, has ended up prolonging the time of completion of execution after judgment. This practice has the tendency to, in many ways, reduce the attractiveness of Ghana as a destination for business investment .[1] In fact, the 2019 rankings noted that it took seven hundred and ten days (710) to enforce a contract and three hundred and thirty days (330) to enforce a judgment in Ghana.[2] As weightier matters of execution, appeal and applications for interim reliefs pending the determination of an appeal are all matters of procedure. Accordingly,the Rules of Court Committee, in the exercise of its functions as spelt out under article 157(2)[3] of the Constitution through Parliament, sought to close this fertile area of delays in execution processes exploited by losing parties. The coming into force of The Court of Appeal (Amendment) Rules, 2020, C. I. 132, was therefore viewed with delightful smile by many a litigant and their lawyers. What was however found and discovered to be a new way of doing an old thing[4] and avoid repetitive applications for stay of execution both at the trial court and the Court of Appeal, in the opinion of the Supreme Court, has not achieved that objective.

This article takes a critical examination of the case of **Republic v High Court, (Criminal Division 9), Accra Ex Parte Ecobank Ghana Ltd; Origin 8 & Anor (Respondents & Interested Parties).** [5]In fact, the case was not against a decision of the Criminal Division 9 but rather the Commercial

1 See World Bank ranking for doing business that placed Ghana at 118th position out of a total of 189 na tional economies in Doing Business Contract Enforcement Indicators at https//data.www.Worldbank. org/indicator/IC.BUS.EASE.XQ

2 Ibid

3 By virtue of article 157(2) of the Constitution, the Rules of Court Committee is mandated by constitutional instruments to make rules and regulations for regulating the practice and procedures of all courts in Ghana. And that procedure for making such Rules and Regulations has been spelt out under article 11(7) of the Constitution where it has to be laid before Parliament, published in the gazette on the day it is laid and come into force at the expiration of twenty-one days after being laid before Parliament, unless before the expiration of the twenty-one days, it is annulled by the votes not less than two thirds of all members of Parliament.

4 To paraphrase the words of Franz Fanon in his work "The Wretched of the Earth".

5 Unreported decision of the Supreme Court in CM J5/10/2022 dated the 18th of January, 2022.

Division 9, Accra and the *"Criminal"* found in the title of the case might have been a typographical error. The article analyses the constructive kits in the quiver of a Judge that are supposed to be employed by the court in its appreciation of the scope and application of C. I. 132. It concludes that the hermeneutical interpretative approach adopted by the apex court of the relevance of C. I. 132 was an austere one, which failed, quite respectfully, to harmonize both the rules of court at the High Court and the Court of Appeal with its various amendments, even though the final appellate court acclaim itself to have done so.

The Case of Ex Parte Ecobank Ltd:

With the garnishee Ecobank (Ghana) Ltd having been ordered to pay monies adjudged as deserving of the judgment creditor, it appealed against the order absolute to the Court of Appeal and filed for stay of execution by virtue of C. I. 132. The application was declined and the garnishee returned to the trial High Court to file a motion for the suspension of the execution processes under the inherent jurisdiction of the trial court. What was at stake in the application was whether the High Court, in the face of C. I. 132, had any jurisdiction to stay execution, pending appeal of its decision. The High Court was of the view that it had no jurisdiction to entertain the application and dismissed same. This triggered the garnishee applicant to invoke the supervisory jurisdiction of the Supreme Court[6] . The vexed matters in contention at the Supreme Court, as was rightly stated by Pwamang JSC, were that beyond an assertion of an inherent jurisdiction vested in a trial court to stay execution, what was the correct interpretation to be placed on C.I. 132 in the context of the Court of Appeal Rules, C. I. 19 as a whole, and the settled practice of the courts.

In other words, the centrality of the issue revolved around the question whether C. I. 132 succeeded in taking away the jurisdiction of the trial court to stay execution of a **judgment on appeal but not the general powers of a trial court to stay execution of a judgment that is not on appeal**. I have stated and highlighted the issue this way for a clear distinction right from

6 The supervisory jurisdiction is spelt out under article 132 of the Constitution and section 5 of the Courts Act, 1993, Act 459.

the onset to be made that the High Court (Civil Procedure) Rules, 2004, C. I. 47 has at least four distinct provisions independent of C. I. 19 that deal with stay of execution. And those four provisions for stay of execution found in C. I. 47 relates to matters not on appeal. There is the danger that a stay of execution of an order or decision not on appeal spelt out under C. I. 47 could be lumped together with the provisions of C. I. 19 relating to stay of execution of orders or decisions that are on appeal at the Court of Appeal. In the face of C. I. 132 whose intent was to strip a trial court of jurisdiction to stay execution of its judgment before the transmission of the record of appeal, the meaning of the apex Court's construction is that that jurisdiction that was vested in the trial court is still vested even when a matter is on appeal and there is cessation of that jurisdiction only when the record has been transmitted.

For its own analysis the Court quoted in extenso the new Rule as well as the old one. Without intending to adopt the same approach, I think it would achieve the same purpose, if one were to first set out the essence of Rule 27(1) of C. I. 19 before its amendment by C. I. 132. The essence of Rule 27(1) before its revocation was to the effect that an appeal against a decision was not to operate as a stay of execution or a stay of proceedings of the trial court unless the trial court, that is either the Circuit Court or the High Court, (as the case may be), described as the court below may stay execution or stay proceedings.[7] Rule 27A as inserted by C. I. 21 was to the effect that it was the Court of Appeal that had jurisdiction to stay proceedings.[8] By virtue also of the revoked Rule 28 of C. I. 19, it stated that when there was the need to make an application either to the trial court from which the appeal emanating or to the Court of Appeal, it had to be first made to the trial court where the appeal was emanating. That was the state of the law until the coming into force of C. I. 132. The C. I. 132 is in the nature of amendment by revocation and substitution. Its true effect has been stated in the case of Attorney-General (WA) v Marquet when the Australian High Court noted that the meaning of amendment was to alter the legal meaning of an Act whiles that of a repeal was to rescind the Act or provision.[9]

7 By virtue of the combined effect of article 139 and section 11 of the Courts Act, 1993, Act 459, the Court of Appeal is imbued with jurisdiction to hear appeals in all civil matters from the High Court and the Circuit Courts.
8 Rule 27A was embodied in C. I. 21 of 1998 that amended C. I. 19
9 (2003) 217 CLR 545

In Ghana, by reason of Section 32 of the Interpretation Act, 2009, (Act 792)[10] an enactment having been declared to have been repealed, and in the case of a subsidiary legislation revoked, the enactment has the effect of ceasing to have any effect. Therefore, the whole of Rules 27(1), 27A and 28 of C. I. 19 whose effect was that in respect of stay of execution of a decision or order pending an appeal, the application ought to be made before the trial court first and upon refusal, repeated at the Court of Appeal, as established in cases such as **Republic v Court of Appeal, Accra; Ex Parte Sidi**[11] **and Ghassoub v Bibiani Wood Complex**[12] was no longer the law. In its stead came C. I. 132, which can also be summarized as follows: That the filing of an appeal before the Court of Appeal alone cannot operate as a stay of execution unless the Court of Appeal itself has granted a stay of execution upon an application brought before the Court of Appeal. The need for an applicant or party to first move to the trial court for the stay and upon refusal proceed to the Court of Appeal, appears to have been removed.

However, in a much detailed analysis by the apex Court, it reasoned that if there was any such intention by the lawmaker to amend the law to take away the jurisdiction of the trial court to grant a stay of execution that mission could not be realised for a number of reasons. First, the Supreme Court relied on Order 43 Rule 11 and Order 45 Rule 15 of C. I. 47. Rule 11 of Order 43 is to the effect that without prejudicing Order 45 rule 1 of C. I. 47, a party against whom a judgment or order has been given may apply for a stay of execution on the basis of matters which have occurred since the date of the judgment. Order 45 rule 15, on the other hand deals with a judgment for the payment of money, and the judgment creditor was proceeding by way of Fi Fa and where the trial court was satisfied, based on an application, made at the time of judgment or anytime thereafter of the judgment debtor or a party liable to execution, that there are special circumstances or for any just cause, the trial court may order for a stay of execution of the judgment or order. In the view of the Supreme Court, the original rendition of Rules 27(1) and 28 did not purport to confer jurisdiction on the trial courts where an appeal was emanating from a trial court from hearing applications for a stay of execution of matters pending appeal

10 See section 32 of the Interpretation Act.
11 [1987-88] 2 GLR 170
12 [1984-86] GLR 271

but that:

> *"a close reading of the language of the original Rules 27 and 28 together, will reveal that the rules do not purport to confer jurisdiction on the lower court to hear applications for stay of execution pending appeal but only made reference to existing jurisdiction of the lower court in that regard*[13] *".*

The court further reasoned that the existing jurisdiction was located in the practice of the court and has only been stated in Order 43 Rule 11 and Order 45 Rule 15. Perhaps, the court was bold enough to state that the revoked Rules 27(1) and 28 of C. I. 19 did not confer any jurisdiction on trial courts to hear and determine applications for a stay of execution but only conferred existing jurisdiction due to the language of Rule 28 that begins with "subject to these Rules and to any other enactment". It is not the case, in my humble submission, that the jurisdiction of a trial court to stay execution of a decision or judgment for which an appeal has been filed is founded on any of the rules governing the procedure at the High Court or under the inherent jurisdiction of the High Court, as I proceed to demonstrate.

The Scope and Application of Orders 43 and 45 Rules 11 and 15.

Contrary to the interpretation placed on the two Rules, being Order 43 Rule 11 and Order 45 Rule 15, the writer thinks, quite respectfully, that the jurisdiction of a trial court to grant a stay of execution founded upon the two provisions under C. I. 47 is completely different from the jurisdiction of a court to grant a stay of execution of a matter for which a notice of appeal has been filed before the Court of Appeal. The in pari materia provision of Order 43 Rule 11 of C. I. 47 in the Rules of Court of England and Wales as seen from the 1997 Supreme Court Practice in Order 45 Rule 11 which is to the effect that subject to Order 47 Rule 1, a party against whom a judgment has been given or order made may apply to the court [the High Court] for a stay of execution or other relief on the ground of matters which have occurred since the date of the judgment or order. The Order 47 Rule 1 of the English Rules is also in pari materia with Order 45 Rule 15 of C. I. 47 which the apex court made reference to. That is also to the effect that:

13 Paragraph 1 of page 10 of the unedited judgment.

> *"Where a judgment is given or an order is made for the payment by any person of money, and the court is satisfied, on an application made at the time of the judgment or order, or at any time thereafter, by the judgment debtor or other part liable to execution –*
>
> *(a) That there are special circumstances which render it inexpedient to enforce the judgment or order or*
>
> *(b) That the applicant is unable from any cause to pay the money, then … the court may by order stay the execution of the judgment or order by writ of fieri facias either absolutely or for such period and subject to such conditions as the court may think fit*[14] *".*

With the exception of Order 51 of C. I. 47 that regulates appeals emanating from the District Court to the High Court, all the other provisions in C. I 47 deals with matters pending or pertaining to post judgment matters not on appeal before the trial court, one submits. It is in that context, that Order 43 Rule 11 and Order 45 Rule 15 deal with matters that may occur after judgment. There is even a third provision under C. I. 47, being Order 14 Rule 5(2) which also deals with stay of execution that the Supreme Court did not refer to.[15] It is further submitted those matters that may have *"occurred since the date of the judgment"*[16] do not include when an appeal is filed by a party.. Its scope is restricted to instances such as when a party has filed for instalment payment of a debt in which he has not appealed and follows that with a stay of execution. It could also be in respect of an application for stay of execution by virtue of discovery of fresh matters after judgment and a party seeks for a stay before he proceeds to file an appeal but not when an appeal is already filed. This is precisely the commentary on the two provisions from the White Book, 1997 which notes emphatically that *"the power to stay execution under this rule is separate and distinct from the power to stay execution pending an appeal"*.[17]

The case of **Ellis v Scott**[18] illustrates this position on the scope and applicability of those Rules.

14 See The Supreme Court Practice, 1997, Volume 1, @page 773
15 The Rule states that "The court may, subject to any conditions that the justice of the case require, stay execution of a judgment given against a defendant under this rule until the trial of any counter claim raised by a defendant
16 Order 43 Rule 11
17 The Supreme Court Practice, 1997 Volume 1 @ page 774.
18 [1964] 2 ALL ER 987

In the said case the defendant applied for stay of execution to exercise the possibility of appeal against a judgment. This was because the defendant proved subsequent to the entry of judgment that before the plaintiff entered into the agreement in which his claim was founded he had disposed of his rights and that if those facts had been known to the trial court, it would not have entered judgment. Sachs J. was of the view that the trial court had power to stay execution of its judgment and afford a period for the applicant to file an appeal against the decision due to the matters that have been discovered.[19]

The claim made that the *"filing of an appeal is certainly one matter that may occur after a judgment and can ground an application for stay of execution or of proceedings under Or 43 Rule 11"*[20] appears, with profound respect, not to be accurate interpretation of the Rule. For, when an appeal is filed, the processes are not regulated by Order 43 or Order 45 of C. I. 47 as those Orders deal with execution and matters in relation to same as may occur after the judgment but not when an appeal is filed. And it may not, quite humbly, be otiose as the learned Justice sought to point out for the original Rules 27(1) and 28 of C. I. 19 to have spelt out the need for an application for stay to be first filed before the trial court and upon refusal repeated at the Court of Appeal. For C. I. 47 did not and could not have purported to confer any jurisdiction on any trial court to stay execution of matters for which a notice of appeal has been filed.

The Use of a Heading to Control the Meaning of Rule 27 of C. I. 19

The Supreme Court's quest to anchor the power to stay execution by a trial court as long settled and seen in Order 43 Rule 11 and Order 45 Rule 15 of C. I. 47 has been demonstrated, with due respect, to be rather a misconception. That the power of the High Court to stay its own orders or judgments regarding matters not on appeal cannot be stretched to cover applications for stay of execution when an appeal has been filed. In the apex court's attempt to define the purpose and role of Rule 27 of C. I. 19, it rather found solace in the heading of Rule 27 which simply states, **"Effect of Appeal".**[21] By referring to Section 15 of the Interpretation Act, 2009, Act 792 to the effect

19 Ibid page 988
20 See page 11 of the unedited Ruling
21 See the heading of Rule 27 of C. I 19

that titles placed at the head or beginning of an enactment do not form part of the enactment. That it is for the sake of convenience but may be resorted to as an aid to construction. [22]The court also cited the case of **Auntie & Adjuwoh v Ogbo.**[23] There appears to be nothing wrong with the role assigned to *"Headings"* as an aid to construction. Rather, it is the manner in which of the "Heading" of Rule 27 to was applied to control the meaning of Rule 27(1), which appears to be problematic. Historically, and from its common law antecedent, headings, titles, long titles, side notes, captions and marginal notes were not part of an enactment. Its presence was only for the sake of convenience as "Headings" in particular is inserted by the draftsman to represent what he thought to be the subject matter or the essence of a section to guide the reader.[24]

Common law did not allow the interpreter to have recourse to the heading as an aid to interpretation. What is stated under Section 15 of Act 792, therefore, is a remarkable departure from the common law position to allow recourse to the heading as an aid to interpretation where under the modern purposive approach all parts become essential for the sake of construing an enactment as a whole.[25] However, being a non-operative part of an enactment,[26] such recourse is resorted to only when there is an ambiguity in the main section of an enactment, wherein the heading may assist the interpreter to throw further light on the section. For the heading, just like marginal notes, may not be able to adequately capture all the contents of a given section.[27] It is not employed in a way to contradict the section when the latter is clear as heading is not used to control the body of a section. Heading cannot also be taken as conclusive as to the meaning, scope and effect of a section.[28] The main Rule 27(1) states what it means, that appeal do not operate as a stay of execution unless the court otherwise orders. The resort, therefore, to the heading as a way of controlling the meaning of Rule 27(1) and take out the clear words "*unless the court otherwise orders …*"[29] may have been unnecessary, it is respectfully submitted. For as

22 Section 15 of the Interpretation Act, 2009, Act 792
23 [2005-2006] SCGLR 494
24 "Modern Purposive Approach to Interpretation in Ghana" by John Essel Edzie, at pager 542
25 See VALCO v Tetteh Akuffo & Others [2003-2004] SCGLR 1158
26 Acts for the sake of construction are divided into operative and non-operative parts. Where there is conflict, the non-operative part cannot be invoked to trump over the operative parts as the latter control the meaning
27 See Sir Dennis Adjei's "Modern Approach to the Law of Interpretation in Ghana and Edzie, John infra
28 Edzie, John, "Modern Purposive Approach to Interpretation in Ghana", page 543.
29 See the full Rule 27 of C. I 132

noted by Maxwell on Interpretation of Statutes, regarding heading that *"prefixed to sections or set of sections in some modern statutes are regarded as preambles to those sections. They cannot control the plain words of the statute but they may explain ambiguous words".*[30]

One has not also been pointed to the reason why the phrase *"unless the court otherwise orders on application made to the court…"* [31] should be muted or controlled by the heading of Rule 27, when its meaning is clear. The deployment of "heading" as an interpretative kit in this instance to control the meaning of Rule 27(1) and take out part of the Rule as not dealing with proceedings but only the effect of an appeal may not have been in consonance with the settled rules for the function and role of heading as an aid to interpretation.

The decision of the Supreme Court in the case of **Republic v High Court, Accra; Ex Parte: Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party)**[32] which formed a strong basis for it to arrive at the conclusion it came to in the Ex Parte Ecobank case, one accept is a good law. For as the learned Justice stated that notwithstanding the now revoked Rule 27A, and which appeared to have conferred jurisdiction on the Court of Appeal to determine applications for stay of proceedings to the exclusive of the trial court, it thought that by virtue of Rules 21 and 28 of C. I. 19, a trial court still retained the right to have a first shot at all applications, except where the record of appeal has been transmitted to the Court of Appeal. And accordingly the departure from the decision in the case of **Republic v Fast Track Division, Accra; Ex Parte Daniel Abodakpi**[33] in the case of Ex parte Magna International case was deemed proper. In one's view the context within which the revoked Rule 27A was held in Ex Parte Magna International[34] not to take away the inherent jurisdiction of a trial court to exercise the power of stay of proceedings may not be the same as under C. I. 132. For examining the overall language of C. I. 132 as well as taking into consideration the fact that Rule 28 has also been revoked becomes a game changer. From the language and import of C. I. 132 its intended purpose was to take away any existing jurisdiction in a trial court to stay execution and the

30 Maxwell on Interpretation of Statutes, 12th Ed
31 Rule 27 of C. I 132
32 [2017-2018] 2 SCGLR 1024
33 CM J5/15/2005
34 Supra

fact that Rule 21 was not amended in addition to Rule 28 should not lead to the conclusion that Parliament failed in its effort.

C. I. 132 Promulgated for Nothing?

The state of the law before the coming into force of C. I. 132 was that once the record is transmitted, a party need not bring a stay of execution at the trial court, but rather at the Court of Appeal. When Civil Form 6 has been issued and served on parties to the appeal, it has been the law long before C. I. 132, that all applications regarding appeal were to be filed and heard at the Court of Appeal. When after the issuance of Civil Form 6, an application is filed at the trial court, it would have to be transmitted for hearing before the Court of Appeal.[35] The Supreme Court in its earlier decision in the case **of Republic v High Court (Human Rights Division) Accra; Ex Parte Akita (Mancell-Egala & A-G Interested Parties)**[36] ruled that once the record is transmitted, all interlocutory applications has to be filed before the Court of Appeal. In this case the plaintiff filed an application in the nature of stay of execution but by the return date for the determination of the application, Civil Form 6 had been issued. The trial court purported to assume jurisdiction to determine the application which provoked the invocation of certiorari and prohibition at the Supreme Court. Brobbey JSC speaking for the majority was emphatic as to the relevance of Rule 21 when Form 6 had been issued that:

> *"It has been settled that once Form 6 has been served on the trial court, that court no longer has jurisdiction over the case. At that point of the proceedings, the court with the appropriate Wjurisdiction will be the Court of Appeal…".*[37]

That decision relied on cases such as **Ex Parte Evangelical Presbyterian Church of Ghana**[38] and **Shardey v Adamptey; Shardey v Martey (Consolidated).**[39] This being the state of the law before the coming into force of C. I. 132, the writer submits that it cannot be that the scope and

35 See Matthew Appiah: "Civil Procedure at the Court of Appeal in Ghana
36 [2010] SCGLR 374
37 At page 383, paragraph 3 of the Report
38 Supra
39 [1972] 2 GLR 380 CA

application of C. I. 132 is to be confined to assumption of jurisdiction by the Court of Appeal in applications for stay only after the transmission of records.

There is a presumption of competence and knowledge of Parliament. In the view of Driedger [40]the legislature is presumed to know all that is necessary to produce a rational and effective piece of legislation. That includes the fact that Parliament knew the existing state of the law before coming up with a new legislation. The presumption credit Parliament with a far reaching knowledge and mastery of the existing state of the rules of court, the substantive law, both common law and statute law.[41] And that must be implicit in the interpretative journey of the court.[42] The offshoot of this presumption is that Parliament does not make mistake in a legislation. [43]Applying this presumption would mean that the existing state of the law before the coming into force of C. I. 132, being that once the record is transmitted from the trial court, all applications ought to be made before the Court of Appeal, was well known to the Rules of Court Committee and invariably Parliament. It cannot be that Parliament only brought into being a legislation to cover a matter for which statute law and precedent was already abundant. If the conclusion of the Supreme Court was anything to go by, then it would mean that Parliament had spoken in vain contrary to the presumption that Parliament does not speak in vain[44] when there was no evidence that the presumption had been displaced.

What then should be a better Approach?

The imaginative discovery of the purpose of a statute is surely the guide to its meaning but not to make fortress out of only one or two provisions[45] . As pointed out there already existed an exception to Rule 21 by Rule 27A that allowed applications for stay of proceedings before the Court of Appeal long before the transmission of the record. And C. I. 132 was intended and did achieve the same purpose. From the tenor of the Rule 21 quoted, it appears the attention

40 Driedger on the Construction of Statutes (3rd Ed.) at pages 156-157
41 See also Sir Dennis Adjei's "Modern Approach to the Law of Interpretation in Ghana", 3rd Ed. at page 382
42 Ibid page 382
43 See Edzie, John "Modern Purposive Approach to Interpretation".
44 Supra
45 Aharon Barak: "Purposive Interpretation in Law", Princeton University Press, 2005.

of the apex court was not even drawn to C. I. 21 which amended Rule 21 of C. I. 19 and further inserted Rule 27A as the Rule 21 quoted in that Ruling was the state of law as it existed before the amendment of Rule 21 by C. I. 21. The dominant approach to construction of statute endorsed by the Interpretation Act, 2009 (Act 792) is the modern purposive approach.[46] And that entails an approach that calls for interpretation that fulfils the purpose of the law. For the generally accepted goal of interpretation is to seek for the meaning that effectuates the purpose of the statute or the constitution. The teleological and anthropological background was long laid down by what became known as the mischief rule in the **Heydon's** case[47] . The mischief rule is to the effect that regard should be had to the state of the law as it existed, the defect of the law, the remedy that was designed to cure it and the function of the Judge was to construe the law to avoid the mischief and advance the remedy.[48]

To Aharon Barak, the former President of the Israeli Supreme Court, the purposive approach is a legal construction that combines elements of the subjective and objective purposes of the enactment or the Constitution. Barak states that the subjective elements include the intention of the author of the text, whereas the objective elements include the intent of the reasonable author and the legal system's fundamental values.[49] Writing on "Purposivism" in his work, **The Judge on Judging: The Role of the Supreme Court in a Democracy**[50] , he states that:

> *"[T]he aim of interpretation is to realize the purpose of the law; the aim in interpreting a legal text such as a constitution or statute is to realize the purpose for which the text was designed. Law is thus a tool designed to realize a social goal… The history of law is a search for the proper balance between these goals and the interpretation of the legal text must express this balance. Indeed if a statute is a tool for realizing a social objective, then interpretation of the statute must be done in a way that realizes the social objective. Moreover, the individual statute does not stand alone. It exist in the context of society, as part of general social activity. The purpose of the individual must therefore also be evaluated against the*

46 See the Memorandum to the Law as well as section 10 of Act 792
47 (1584) 3 CO REP 7A @ 7B; 76 ER 637 @ 638
48 Ibid at 7B
49 Purposive Interpretation in Law, @ page 87
50 2002, Harvard Law Review, 19 @ page 26

backdrop of the legal system. This approach underlies the system of interpretation that I think is proper: purposive interpretation".

The guides to exercising such an approach has been spelt out under Section 10 of Act 792. Were such an approach to have been adopted, a meaning would not have been assigned to C. I. 132 that already existed before the coming into being of C. I. 132. A construction that calls for the need not to render the meaning and scope of laws void, being *ut res magis valeat quam pereat* [51] was also totally ignored. For this canon of construction has time and again been applied in a number of Ghanaian cases such as **Frank Davies v Attorney-General,**[52] **In Re Awere-Kyere v Foster;**[53] **Republic v High Court; Ex Parte Adjei.**[54]

Conclusion

With no such settled practice of the courts save what the Rules have spelt out as to where application for stay of execution should be filed, as argued in this paper, the claim of any such practice that has crystallized or coagulated under Order 43 Rule 11 and Order 45 Rule 15 of C. I. 47 may seem in one's view to be an exaggeration. The writer hopes that the apex court would seize the next available moment to reflect on its decision in **Ex Parte Ecobank; Origin 8 case.** Perhaps, the seeming confusion that has been engendered by the interpretation provided in that case which has in effect rendered C. I. 132 a useless and ineffective piece of legislation may be resolved. For now the burden of the *"austerity of a tabulated legalism"* evinced by the highest Court of our land in its approach to the Ex parte Ecobank case would have to be endured by lawyers and parties.

51 That it is better that a law should have meaning rather than be declared void.
52 [2012] 2 SCGLR 1155
53 [2003-2004] 2 SCGLR 1050
54 (1984-86) GLR