DL
WRITE-UP

A STILL BORNE PIECE OF LAW, AND RIGHTLY SO DECLARED IN THE CASE OF ORIGIN 8.

By

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A. INTRODUCTION

My Lord Justice Eric Kyei Baffour [herein after called the "author"] in an article, intituled; 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 published on a Friday, March 4, 2022, edition of Dennislaw questioned the conclusion reached by the Supreme Court in the case of **Republic v High Court, (Criminal Division 9), Accra Ex Parte Ecobank Ghana Ltd; Origin 8 & Anor (Respondents & Interested Parties).** [1] The issue before the Apex Court, as rightly stated by the author in his critique of the decision in the publication above referred to was this;

> *"….whether C. I. 132 succeeded in taking away the jurisdiction of the trial court to stay execution of a judgment on appeal…"*

The learned author took the view that the effect of the Supreme Court decision in the Origin 8 case is that, C.I. 132 did not take away the jurisdiction of the trial court [in this case the High Court] to stay execution of its judgments pending appeal provided that the record of appeal was not transmitted to the appellate court. The learned Justice of Appeal however did not think the decision of the highest court of the land on this point, to be right.

The author's position on the effect of C.I. 132 on the trial court's power to stay execution of its judgment pending appeal as a court of the first instance, appears to have been the position taken by the High Court and the Court of Appeal. Their view was that with the amendment of rule 27(1) of the Court of Appeal Rules, 1999 (C.I. 19) by rule 1 of the Court of Appeal (Amendment) Rules, 2020 (C.I. 132), trial courts, particularly the High Court, no longer had jurisdiction, as the court of the first instance, to entertain applications for stay of execution pending appeal, with the right to repeat the same application in the Court of Appeal, upon its refusal by the High Court.

The Supreme Court observed this fact and noted that given C.I. 132, the High Court and the Court of Appeal had taken the view above stated. The court acknowledged the point when it stated as follows;

> "The idea that C.I.132 took away the lower court's jurisdiction to stay execution of its decision pending appeal has been pervasive in the courts below with the dominant view being that pursuant toC.I.132, where a party has lodged an appeal in the Court of Appeal against a decision and is desirous of staying execution pending the determination of the appeal, **she must apply to the Court of Appeal straight and not to the High Court in the first instance as was the practice before C.I.132.** That notion appears to explain why the applicant herein initially made its application for stay straight to the Court of

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

> Appeal and not the High Court first."

This paper would highlight the learned author's disagreement with the decision of the Supreme Court in the Origin 8 case, and demonstrate that the Supreme Court's conclusion on the interpretation and application of C.I. 132, is the correct position of the law.

B. JUSTICE KYEI BAFFOUR'S DISAGREEMENT.

In his article, the author opined that the intention of C.I. 132 **"…was to strip a trial court of jurisdiction** to stay execution of its judgment before the transmission of the record of an appeal".

The learned author clarifies his view that the effect of C.I. 132 was to strip the trial court of jurisdiction to stay execution of its judgment pending appeal before the transmission of the record of appeal to the appellate court by adding thus;

"The C. I. 132 is like 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 repeal was to rescind the Act or provision."

The learned author further argued in his article that the purposive approach to the interpretation of statutes, at the very least, ought to have been deployed to interpret C.I. 132 to save it from being rendered a redundant piece of legislation. This, the learned Justice opines will best have achieved the intention of the legislature, in making C.I. 132.

His article, the author said, served to "…analyse(s) the constructive kits in the quiver of a Judge that is supposed to be employed by the court in its appreciation of the scope and application of C. I. 132."

He therefore, hoped that his article would demonstrate,

> "…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 the 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."

Unfortunately, the author's suggestions, as stated in his article did not, in so far as C.I. 132 is concerned, properly address matters regarding the "constructive kits in the quiver of a Judge that [ought to have been] … employed by the court in its appreciation of the scope and application of C. I. 132. "

The suggestions made by the author are not, with great deference, defensible in the law of interpretation and same would be demonstrated in this article when discussing the author's

preferred approach to interpretation. Suffice it to say that there is no reason whatsoever for resorting to legislative intent and purpose to decipher the meaning and effect of C.I. 132.

C. AMENDMENT AND REVOCATION-ARE THEY THE SAME?

In his paper, the author took the following view;

> "The C. I. 132 is like 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 repeal was to rescind the Act or provision."

This premises which forms one of the foundation stones on which the author constructed his case is faulty. The obvious error in the premises laid by the author is first exposed by the authority itself, cited by his lordship for the argument that the **"C. I. 132 is like amendment by revocation and substitution"**

The Australian case cited by the author clearly distinguished between an **"amendment"** and a **"repeal"** or **"revocation"**. The case explains 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."

The authority cited by the author therefore clearly questions the author's suggestion that C.I. 132 was an amendment in the nature of a revocation. This is because, whereas the effect of the amendment [rule 27(1) as substituted by C.I. 132] was to alter the meaning of rule 27(1) of C.I. 19 as the case cited by the author affirms, the effect of a revocation [which C.I. 132 did not do to C.I. 19] would have been to completely "rescind" the said rule 27(1) of C.I. 19 as amended by C.I. 132.

Secondly, a plain reading of C.I. 132 itself will leave no one in doubt that it unmistakeably distinguishes between an amendment on the one hand and a revocation on the other. Its rule 1 is headed; **Rule 27 of C.I. 19 amended,** whilst its rule 2 says; **Rule 27A of C.I. 19 revoked,** and it is the same with its rule 3 where it says, **Rule 28 of C.I. 19 revoked**. In terms of the very C.I. 132 itself, therefore, the convenient argument of an amendment by revocation is not supported.

Thus, in terms of the distinction between an amendment and a revocation was the author submits in his article as follows;

> "In Ghana, because 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 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… was no longer the law…"

This submission treats C.I. 132 as a revocation rather than an amendment, the reason for which after he discusses the effect of section 32 of the Interpretation Act, he goes on to say that, "an enactment having been declared repealed, and…revoked, the enactment has the effect of ceasing to have any effect."

As already pointed out, even from the text of C.I. 132 itself, there was never a repeal or revocation of the existing rule 27(1) of C.I. 19. This false block may just be the Achilles heel of the logic upon which the author disagrees with the Supreme Court, on its view on the effect of the introduction of C.I. 132.

D. WHAT WAS THE AMENDMENT?

As already noted, the amendment [as distinguished from a repeal or revocation] introduced by C.I. 132 was an amendment to the hitherto rule 27(1) of C.I. 19 which then stood as follows;

> **"27. Effect of appeal**
>
> (1) An appeal shall not operate as a stay of execution or of proceedings under the judgment or decision appealed against except where the court below or the Court otherwise orders"

The highlighted parts are the essential parts of C.I. 19 which were taken out by C.I. 132 and which are relevant to this discussion. C.I. 132 then introduced a new rule 27(1) which now reads as follows;

> **"Rule 27 of C.I. 19 amended**
>
> "(1) An appeal shall not operate as a stay of execution under the judgment or decision appealed against unless the Court otherwise orders on an application made to the court by motion on notice."

As already noted, this substitution of the initial rule 27(1) of C.I. 19 with the new rule 27(1) of C.I. 132, made two changes relevant for purposes of this discussion. First, it took out the phrase **"or of proceedings"** completely from the initial rule 27(1) which provided for both "stay of execution" and also "of [the] proceedings" relating to the execution of the judgment appealed against. Secondly, it took out **"the court below"** with the effect that it is now only the "Court" which may order a stay of execution [as distinguished from proceedings] of the judgment appealed against.

The question here is simple, does the deletion of "the court below" leaving "the Court" only, inevitably lead to the conclusion that the court below is now barred from hearing applications for stay of execution pending appealing, leaving such applications to be determined only by the Court of Appeal?

E. EX PARTE ABODAKPI.

The answer to the question above posed would have, unquestionably, been in the affirmative in the regime of *Republic v Fast Track Division, Accra; Ex Parte Daniel Abodakpi.* [2] This case would easily have vindicated the author's critique of the Origin 8 case. Unfortunately, however, the Abodakpi era has endured its full life span and has been recently, decently interred.

In the Abodakpi case, the Supreme Court had to determine the effect of a new rule inserted into rule 27 of C.I. 19 as rule 27A [of C.I. 21] which read thus;

> **"27A. Interlocutory appeals**
>
> **The Court** may, in an interlocutory appeal, civil or criminal before it, grant a stay of proceedings pending the determination of the interlocutory appeal subject to the conditions the Court considers fit."

The significant part of the new rule 27A of C.I. 21 is what is highlighted because it is the words "The Court" which decided the matter on a plain, literal, grammatical and ordinary meaning of the statute. The Supreme Court in the Abodakpi case therefore, had to determine the effect of the words "The Court" in the provision above quoted for purposes of deciding whether or not under the said rule, the High Court was the court to which applications for stay of proceedings pending appeal, was to be first made, before recourse to the Court of Appeal upon failure at the High Court.

The Supreme Court decided that to the extent that the rule [27A] made reference to the "Court" without a mention of "the court below", the proper forum to initiate an application for stay of proceedings pending appeal was the Court of Appeal but not the High Court, as the court of first instance. **"Court"** "means the Court of Appeal" as defined in rule 67 of the Court of Appeal rules [C.I. 47]. This is clear from the application of the first and only rule of interpretation, which is the literal rule. The other rules of interpretation only come into play where the literal rule fails us. It was thus held in the case of *Kuenyehia v Archer* [3] that, "rules of construction do not permit, a passage which has clear meaning, to be complicated or obfuscated by any interpolation, however well intentioned." [4]

Be that as it may, the Supreme Court established in the Abodakpi case that "Court" standing alone, "means the Court of Appeal" and no more. On the basis of this authority, it would have been a sound statement of the law to contend [mutates mutandes] that where, as in this case,

2 CM J5/15/2005
3 [1993-94] 2 GLR 525 SC
4 Per Francois JSC at 562. Quoted with approval by Akamba JSC in the case of Martin Kpebu v Attorney-General, writ No J1/8/2015, dated the 5th day of December, 2016.

the amendment deleted the "court below" leaving the "Court" as the only judicial organ to which applications for stay of proceedings pending appeal may be made, then it is only to the "Court" that such applications may be made.

F. EX PARTE ABODAKPI IS NOW DEAD.

The Abodakpi decision was however departed from by the Supreme Court in the case of *Republic v High Court, Accra; Ex Parte: Magna International Transport Ltd (Ghana Telecommunications Co Ltd-Interested Party)* [5] on the 7th day of November 2018.

The Magna Transport decision laid it down that at common law every court has inherent jurisdiction to stay its proceedings. This common law, the Supreme Court held, had been elevated to a constitutional pedestal by virtue of article 11(e) of the 1992 Constitution. Benin JSC who delivered the decision of the Court stated in very unequivocal language as follows;

> "It is a well settled principle that every court has an inherent jurisdiction to stay proceedings for stated reasons which include, but not limited to, abuse of process. Indeed, in matters on appeal, especially interlocutory, the courts have always exercised an inherent jurisdiction to stay proceedings pending appeal, lest all their efforts should become fruitless, a waste of time and resources. The inherent jurisdiction of the Courts is derived from the common law, which is part of the laws of Ghana by virtue of article 11(1)(e) of the Constitution, 1992."

Stay of execution apart, the established common law position is that every court has inherent jurisdiction to stay execution of its judgment. [6] This being the undoubted common law position which has constitutional gravitas by virtue of article 11(e) of the Constitution, the question that arises is simple; **Can the new rule 27(1) as substituted by C.I. 132 successfully overthrow the common law position firmly anchored in article 11(e) of the Constitution?** The answer is clearly in the negative.

It is this point which firmly entrenches Origin 8 as sound law in so far as determining the forum for first making an application for stay of execution pending appeal is concerned. The first reason for this submission is that the Court followed its own previous decision on the current law on the matter. The Court was required to do this in accordance with its constitutional obligation under article 129(3) of the 1992 Constitution. The Origin 8 decision clearly relied on the earlier decision of the Court in **Magna Transport.** This is evident from the words of Pwamang JSC who delivered himself thus;

> "This requires us to construe C.I.132 to determine its effect on the powers of the lower court and the Court of Appeal to hear applications for stay of execution pending appeal, having at the back of our minds what this court said in Ex parte Magna Transport Ltd (supra); where a practice of the courts is well settled, it cannot be upset by statute except by use of express

5 [2017-2018] 2 SCGLR 1024.
6 [2017-2018] 2 SCGLR 1024.

> language. See also Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717, at page 721."

The clear reason why the Origin 8 decision on the effect of C.I. 132 is flawless is therefore clear. The Court decided the point on the clear and established principle of stare decisis which sits on a constitutional pedestal of article 129(3). *The Magna Transport* decision itself on which Origin 8 relied was based on the sound common law position established beyond doubt by the provisions of article 11(e) of the Constitution which the said decision applied.

Interestingly the author accepts the **Magna Transport** decision as good law for he submits thus;

> "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) 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."

If then the author accepts the *Magna Transport* decision as good law, how does he reconcile his dissent with the Supreme Court's stare decisis obligations under article 129(3) of the Constitution and the fact that the practice affirmed by the Magna Terris decision, which the Origin 8 decision followed, sits on the constitutional mountain of article 11(e) of the Constitution? Are the rules set in the constitutional provisions of articles 129(3) and 11(e) of the Constitution subservient to C.I. 132?

Furthermore, relying on a previous decision which decided the meaning of a statute almost in pari materia to understand the meaning of C.I. 132 is certainly a clearer way of understanding C.I. 132 than resort to the legislative intent and purpose which as will be demonstrated, is not easily decipherable. This paper has demonstrated the similarity between **the amendment introduced by C.I. 132** and the **insertion made by C.I. 21** in **C.I. 19** by reference to the **Abodakpi** and **Magna Transport** decisions.

The author submits that the Supreme Court should therefore have rested its decision on the simple point of stare decisis. Unfortunately, the Supreme Court proceeded to examine the other ways of understanding the effect of C.I. 132 against the backdrop of the architecture and structure of the rules regulating the relationship between the trial court and the Court of Appeal when an appeal is pending in so far as stay of execution pending appeal is concerned. This is what, in the writer's opinion, created the confusion and has understandably attracted the author's criticism of the decision.

This observation, however, does not detract from the author's view that the decision on the point was right.

G. DID C.I. 132 CLEARLY CHANGE THE PRACTICE ON STAY OF EXECUTION?

As already noted, the decision in Magna Transport answers the above interrogatory in the negative. This is the second reason why the author defends the conclusion reached by the Supreme Court in Origin 8.

The **Magna Transport** decision affirmed the settled position of the law that a change in a rule of practice declared by the Superior Courts must be expressed with clarity. For this reason, it was expected that the Rules of Court Committee would have expressed itself without equivocation to the effect that from the coming into force of C.I. 132 in October, 2020, all applications for stay of execution pending appeal ought to be made to the appellate court as the court of first instance but not the court from which the appeal emanates.

C.I. 132 was given Gazette notification on the 6th day of October, 2020 by which time Magna Transport had been decided by over a year earlier. This meant the Rules of Court made of very learned men, knew or ought to have known about it for that matter ought to have made it clear that no application for stay of execution pending appeal should now be made to the court from which the appeal emanates.

It is clear once again that the Origin 8 conclusion sits on solid rock. There is nothing on the face of C.I. 132 which suggests a change in the practice regarding applications for stay of execution pending appeal. The Origin 8 decision relied on the settled principle affirmed in the Magna Transport case about the effect of the introduction of a rule of procedure on a rule of practice declared by the Superior Courts. This is evident from the words of Pwamang JSC who delivered himself thus;

> "This requires us to construe C.I.132 to determine its effect on the powers of the lower court and the Court of Appeal to hear applications for stay of execution pending appeal, having at the back of our minds what this court said in Ex parte Magna Transport Ltd (supra); where a practice of the courts is well settled, it cannot be upset by statute except by use of express language. See also Trustees, Synagogue Church of All Nations v Agyeman [2010] SCGLR 717, at page 721."

H. APPROACH TO INTERPRETING C.I. 132

Before discussing the author's preferred approach to the interpretation of C.I. 132, the writer intends to briefly discuss a small point on the jurisdiction of the High Court to stay execution of its own judgments which the learned author suggested was taken away.

I. DID RULE 27(1) C.I. 19 CREATE JURISDICTION?

It was earlier noted that in his article, his lordship opined that the intention of C.I. 132 **"…was to strip a trial court of jurisdiction".**

On this point the decision of the Supreme Court in Civil Motion J5/6/2015; *Republic v High Court (Commercial Div) Tamale, Ex parte Dakpem Zoboguna Henry Kaleem; Dakpem Naa Alhassan Mohammed Dawuni, Interested Party*. [7] In the case case just cited, Benin JSC held in very clear language thus;

> "There have been numerous authorities, both local and foreign, which have decided that jurisdiction of a court could only be granted by substantive legislation, and not by a body charged with the duty to make rules to regulate the conduct of cases before the courts. See these cases: **Mornah v. Attorney-General [2013] SCGLR (Special Edition) 502; Safeway PLC v. Tate [2001] TLR 64; Malgar Ltd. v. R. E. Leach Engineering Ltd. (2000) TLR 109 Ch. D; Republic v. High Court, Kumasi; Ex parte Abubakari (No. 1) [1998-99] SCGLR 84 at page 90b, citing Amponsah v. Minister of Defence [1960] GLR 138, CA."**

The learned Justice goes on to note as follows;

> "From even a cursory reading of Article 140(1) and (4) it is clear **that the jurisdiction of the High Court is conferred upon it only by the Constitution or any other law,** which is meant a law duly enacted by Parliament, **as distinct from the rules of practice and procedure enacted by the Rules of Court Committee."**

The Supreme Court endorsed this position in the case of **Nii Kojo Danso II v The Executive Secretary, Lands Commission & Others (Joshua Attoh Quarshie (Applicant/Appellant/Respondent).** [8] In this case Pwamang JSC held that In the Ex parte Dakpem Zoboguna Henry Kaleem case, the Court held that rules of procedure do not create jurisdiction.

Contrary to the author's position therefore, if it was intended that C.I. 132 take away the High Court's jurisdiction, this could not have been achieved by a procedural rule like C.I. 132. In the light of the authorities just cited, the submission therefore that the intention of C.I. 132 **"…was to strip a trial court of jurisdiction"** cannot be correct. The rule is strictly procedural and only directs as to the proper manner for dealing with applications for stay pending appeal but not to create jurisdiction for the hearing of such applications.

J. LEGISLATIVE INTENT.

It is regrettable that when in a legal argument about the meaning of statutory provisions a lawyer's first point of call is the legislative intent or purpose? Over a century ago, Lord Watson is reported

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7 dated 4th June, 2015.
8 Civil Appeal No. J4/35/2017 dated the 28th day of November 2018

to have warned that, legislative intention is a *"very slippery"* phrase." [9] It has therefore been written that

> "The 'intention of Parliament' is, in a sense, a fiction. It is not an intention formulated by the mind of Parliament, for Parliament has no mind; and it is not the collective intention of the members of Parliament for no such collective intention exists. The only real intention is the intention of the sponsors and the draftsman of the bill that give rise to the Act; but that is not the intention of Parliament…" [10]

Driedger has shown that, this legislative intention business should not be waved around like a magic wand. It has serious drawbacks. This is not to say that the legislative intention as an aid to interpretation is a fiction and should be discounted. Far from that.

In the particular facts of this case, how did the author discern the intention and purpose of C.I. 132? Some members of the Supreme Court also formed part of the very Committee which made C.I. 132 and played key roles as presiding Justices in two different decisions which are directly relevant to C.I. 132. Interestingly their intentions as held in the cases in which they participated is not reflected by the intention attributed to them by the author.

K. LEGISLATIVE PURPOSE.

It is suggested by the author that the purpose of C.I. 132 is to spare parties "…the drudgery of frustration by motions for stay of execution from the trial court and upon refusal repeated at the Court of Appeal."

The learned author submits that;

> "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."

He says that the introduction of C.I. 132

> "… was [therefore] 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 author refers to a World Bank ranking of Ghana in the 118th position out of a total of 189 as a place for doing business to support his premises. This report provides no basis at all for attributing Ghana's poor ranking by the World Bank to the drudgery that judgment creditors go through for purposes of enforcing judgments. The author stated that the report,

9 See Salomon v Salomon & Co Ltd [1897] AC 22 at 38.
10 E. Driedger, The Construction of Statutes (1976) Butterworths Canada, p 82.

> "…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."

The delay in the enforcement of contracts and judgments can result from any circumstances ranging from the time it takes to get through the trial itself leading to judgment, the quality of the judgment itself, the reason for which a party's appeal against it stalls its execution to abide the appeal and the question as to whether there are even assets easily located against which execution may even be levied to satisfy the judgment.

It would be contended that no practising lawyer ever thought for a second that just by-passing C.I. 132 the challenges with enforcement of judgments in Ghana would have been solved. If divination is true then C.I. 132 had no chance of achieving it.

It is submitted that a construction that leads to conflicts relating to the true and proper place of C.I. 132 within the whole of the statutory framework and architecture of appeals provided for in C.I. 19 and the role it plays in that process, as well as its effect in so far as the common law on the same subject is concerned, creates an undesirable uncertainty in the law. Certainty in the law is without doubt a key requirement for rule of law and due process. This is a non-negotiable principle in so far as the World Bank is concerned. If my author is concerned about the World Bank therefore, he must endorse Origin 8 which has settled the apparent confusion needlessly introduced by C.I. 132.

It is therefore a nonsequitur to suggest that C.I. 132 may well help to improve Ghana's ranking as an investment destination only because the one unrelated matter of a one-time application to the trial court for stay of execution of a judgment appealed against was introduced.

The learned author undermined the supposed purpose of C.I. 132 by making the following observation. "…the High Court has at least four distinct jurisdictions regarding stay of execution of matters."

With this admission how can it be legitimately contended that the Rules of Court Committee had as its purpose the taking away of just one [if it did at all] of the options for stay of execution to solve the problems associated with enforcing judgments?

In any event, the case for the deployment of a purposive approach to interpreting C.I. 132 raises two important questions relating to the purposive approach to statutory interpretation in terms of my lord's article. The questions are as follows;

i. *what is the purpose of the purposive interpretation itself?*
ii. *is the purposive approach committed to finding, is it the purpose of the specifically contested statutory provisions or the purpose of the statute as a whole?*

The purposive approach to statutory interpretation leans more in favour of the purpose of the statute as whole rather than the specific provision within the statute. This accords with the rule of construction which requires that statutes must be read as a whole. Although in the context of

the Constitution, the principle laid down in the case of **National Media Commission v Attorney-General [2000] SCGLR 1,** provides guide also to the interpretation of statutes and for that matter C.I. 19 [which C.I. 132 forms part of] as a whole. It was there held per Acquah JSC (as he then was) as follows;

> "Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the parts are also to work dynamically, each contributing something towards accomplishing the intended goal." See page 11 of the report.

It is submitted therefore that, C.I. 132 must be interpreted within the context of the whole of C.I. 19 which it forms a part of, together with the rules of practice [common law] declared by the Superior Courts, which are deemed incorporated in C.I. 19 ex vigore legis by the provisions article 11(e) of the 1992 Constitution.

In this context emphasis should not be placed on C.I. 132 alone while ignoring the whole structure and purpose of C.I. 19 which it forms a part of. To the extent that C.I. 132 applies only in the context of appeals, it must be noted that a reading of the rules on appeals will reveal that it sets out elaborate rules that regulate the relationship between the court from which the appeal emanates [in this case the High Court] and the Court of Appeal. These range from settling the record which is the registry of the trial court, through to the transmission of the record to the Court of Appeal, and the effect of the transmission of such record to the appellate court.

The elaborate process detailed in C.I. 19 and supplemented by the common law fleshes out the nature of the relationship between the High Court and the Court of appeal once an appeal is lodged. This fact cannot be ignored when determining a specific provision like C.I. 132 which forms part of the detailed appeal processes which the rules provide for and as supplemented by the common law. They must be interpreted together to give the whole of the rules on appeals set out in C.I. 19 [which C.I. 132 forms part of] meaning.

The writer would have related easily to the author's suggested approach to recognizing the effect of C.I. 132 if the author had simply submitted that C.I. 132 should be interpreted ut res magis valeat quam pereat; that is to say when alternative readings are possible, one of which (usually the broader reading) would achieve the manifest purpose of the statute and the other of which (usually the narrower reading) would reduce the document's purpose to futility or absurdity, the interpreter ought to choose the construction that gives greater effect to the statute's primary purpose in order that, as the author desires, C.I. 132 be not rendered still borne.

L. CONCLUSION.

Origin 8 decision shorn of its sophistry in main unnecessary areas irrelevant to the conclusion **eventually reached by the Supreme Court on the meaning and effect of C.I. 132 was more direct and adopted a more acceptable approach to understanding the meaning [in effect the interpretation] and effect of C.I. 132.**

Notwithstanding the writer's position on this case, the writer is of the firm conviction that C.I. 132 ought not to have been enacted all. Given the so many applications lawyers make to the courts with a view to stultifying judgments and proceedings, it is without doubt that C.I. 132 would not have been a drop in the ocean for purposes of dealing with the drudgery associated with enforcing judgments.