

## **GENERAL OVERVIEW OF THE FUNCTIONS OF THE SUPREME COURT, COURT OF APPEAL, FAST TRACK COURT AND THE COMMERCIAL COURT.**

This paper has been designed to give the newly appointed Court Process Servers an idea as to the functions of the Superior Courts of Judicature.

The Judiciary is the third arm of government after the Executive and the Legislature. By article 125(4) of the 1992 Constitution, the Judiciary is headed by the Chief Justice. The same 1992 Constitution creates a Judiciary Composed of the Supreme Court, Court of Appeal, the High Court and such other Courts as may be created by an Act of Parliament.

The Supreme Court, the Court of Appeal and the High Court are normally described as the Superior Courts. Below the superior courts are the Circuit Court and the District Courts. For the purposes of this training programme, this paper will be restricted to the Superior Courts.

### **THE SUPREME COURT**

By Article 128(1) of the 1992 Constitution the Supreme Court shall be composed of the Chief Justice and not less than nine other Justices of the Supreme Court. This provision sets a minimum number of Justices to the Supreme Court and not the maximum.

The Supreme Court is the final Appellate Court of the Republic and also exercise such jurisdiction as is conferred by the constitution or any other law. For example, it is only the Supreme Court that has jurisdiction in chieftaincy cases after the matter has gone to the appropriate House of Chiefs. The Supreme Court also has exclusive jurisdiction in all matters relating to the enforcement or interpretation of the 1992 Constitution. It also has the sole jurisdiction to determine whether an enactment was made in excess of the power conferred on Parliament or other person or authority by law or under the Constitution.

## **THE COURT OF APPEAL**

This Court is composed of the Chief Justice and not less than ten Justices of the Court of Appeal and such other Justices of the Superior Court that the Chief Justice may by writing signed by him request to sit in the Court of Appeal, for any specified period. By article 137 of the 1992 Constitution, the Court of Appeal has the jurisdiction to hear and determine appeals from a judgment decree or order of the High Court. This court can sit in any part of the Country to function. Its primary function is to hear and determine appeals in all Civil and Criminal Cases from the High Court and in some cases appeals from the Circuit Court.

## **THE HIGH COURT**

The High Court of Ghana as created by article 139 of the 1992 Constitution is composed of the Chief Justice and not less than Twenty Justices of the High Court and such other Justices of the Superior Court of Judicature as the Chief Justice may by writing and signed by him request to sit as and High Court Justices for any period. The Court is constituted by a single Justice of the Court or by a single Justice of the Court and a Jury or assessors or by three Justices of the Court in a trial of treason.

The High Court has original jurisdiction in all matters and in particular, in civil and criminal matters and such, appellate jurisdiction from the Circuit and District Courts. It is also the court that has jurisdiction to enforce the fundamental Human Rights and Freedoms guaranteed by the 1992 Constitution.

By article 139(3) of the 1992 Constitution the Chief Justice is empowered to create divisions in the High Court. The Fast Track Court (FTC) and the Commercial Court (COMCOURT) are but two of the divisions in the High Court. The Fast Track Court and the Commercial Court are therefore High Courts that have been established to provide specific services to particular users of the courts in Ghana.

## **THE FAST TRACK COURT**

By year 2000 it had become clear that the old judicial system could not fulfil the aspiration of investors and court users in dealing with increasing disputes in investment, trade and commerce. There was public dissatisfaction with the performance of the judicial system particularly with the delays in adjudication of disputes. It was against this background that the Government of Ghana set up the Legal/Judicial Sector Reform Project, to promote reforms in that sector. Out of these reforms emerged the Automated Fast Track Court which was established in March 2001.

As part of the High Court, the Fast Track Court has original jurisdiction in all matters both civil and criminal. Proceedings at the court are mechanised and electronically recorded by the use of tape recorders or stenograph machines.

The emphasis at the Fast Track Court is on time and case management so much so that the court actually waits for no one. Once the case is ripe for hearing and the trial date has been set, the trial Judge is under strict obligation to proceed. The objective of the Fast Track Court is to provide a forum where a case will be processed, tried, concluded and judgment delivered within six months from the day it was filed. The Judges, Court Clerks and administrative staff, disputants and their Lawyers are all obliged to work within a set time frame to ensure that the targets of the court are achieved efficiently. So far the Fast Track Court has performed creditably.

## **THE COMMERCIAL COURT**

Following the performance of the Fast Track Court, it has become necessary for the Judicial Service of Ghana to establish a special court to handle commercial disputes only. Consequently with the direct involvement of the Chief Justice, His Lordship Justice Kingsley Acquah, and with financial support from the Danish Government, a Commercial Court has been established.

The Commercial Court is a division of the High Court and as such is a High Court. As a High Court, it has original jurisdiction in all matters. However because the court has been designed to serve specific needs, as it's name implies, the Court will handle the following cases:-

1. The formation or governance of a business or commercial organisation.
2. The winding up or bankruptcy of commercial or business organisation or persons.
3. The restructuring or payment of commercial debts by or to business or commercial organisation or person.
4. Interpretation of a business document or contract.
5. The export or import of goods
6. The carriage of goods by sea, air, land and or pipeline.
7. The exploration of oil and gas reserves
8. Insurance and re insurance
9. Banking and Financial service
10. Business Agency
11. Dispute involving Commercial Arbitration and other settlement awards
12. Intellectual property rights, including patents, copy right and trade marks.
13. Tax matters
14. Commercial fraud
15. Applications under the Companies Code 1963 (ACT 179).
16. Such other claims of Commercial nature

To facilitate the efficiency of the court in the adjudication of cases, the Commercial Court apart from the general High Court Rules has special rules of procedure designed to ensure the speedy disposal of cases filed in the court. Order 58 of C.I.47, the new High Court Rules enjoins the Commercial Court to adopt Alternative Dispute Resolution mechanism as part of its adjudicating process. After pleadings are closed, a Judge would be assigned to do a pre trial conference at which the Judge has the authority to mediate by

assisting the parties to settle their dispute. This pre trial conference offered by the Commercial Court is an incentive to the users of the court. If the mediation fails, the case will then be put before another Judge of the Court for trial to commence within 21 days, after the unsuccessful mediation.

In the Commercial Court the parties to a dispute have the right to request that the dispute be referred to an external person or institution to settle the dispute and a report submitted to the Court upon settlement.

Apart from this unique role of the Commercial Court, the court is fully automated and all proceedings will be recorded electronically thus eliminating the problems of long hand recording by Judges.

The objective of the Commercial Court is to eliminate delays in the adjudication of commercial disputes to create the necessary judicial environment for investment and economic growth. It is for this very reason that the system of serving process filed at the court has been privatised.

In conclusion it is important to state that the success of the Commercial Court will depend on the industry of Judges, administrative staff, users of the court, their lawyers and most importantly the work rate of the process servers. It is hoped that all the stakeholders will work hard to ensure a speedy but efficient administration of commercial justice in Ghana.

## **DIFFERENT STAGES IN CIVIL TRIAL**

In order that a process server would grasp the intricacies of Civil Procedures, he or she must have at the beginning a very clear idea of the various stages in civil litigation and the steps that are to be taken with each stage by a bailiff or process server. Civil actions begin by Writ of Summons.

For the purposes of your work as a process server, we shall divide an action commenced by a writ of summon into five main stages: -

1. From issue of writ of summons to application for Directions.
2. Trial and Judgment.
3. Execution.
4. Appeals from Circuit Court/High Court to the Court of Appeal
5. Appeals from Court of Appeal to the Supreme Court.

Within these stages there are steps to be taken by the parties to the action, sometimes in turn and at times simultaneously. These will now be considered.

### **STAGE ONE: ISSUE OF WRIT SUMMONS TO APPLICATION FOR DIRECTIONS**

1. Plaintiff issues the writ with statement of claim and that is served on the defendant personally or by substituted service or service out of jurisdiction.
2. Defendant must enter appearance by filing a notice of appearance stating his address for service within eight (8) days.
3. The defendant must within 14 days after the time limited for appearance file his statement of defence and counter-claim if any.
4. The Plaintiff may file a reply and defence to the defendant's counterclaim before the expiration of seven (7) days after the services on the plaintiff of that defence
5. The plaintiff applies for Directions (summons for directions). If the Plaintiff fails to do this, the defendant may do so. The plaintiff shall

within one month after the pleadings are closed (i.e. after filing a reply), file notice of an application for directions for service on all the other parties to the action. There shall be at least (8) days between the date of service of the notice and the day named in the notice for the hearing of the application. Before the hearing of the application for Direction the defendant may file additional issues for consideration by the court.

6. Hearing of application for direction.

## **STAGE TWO: TRIAL & JUDGMENT**

1. The plaintiff or the person on whom the burden of proof lies by the pleadings starts to give evidence.
  - a. The plaintiff gives evidence in chief
  - b. The plaintiff is cross-examined by the defendant or his lawyer.
  - c. The plaintiff is re-examined by his lawyer.
2. Plaintiff calls his witnesses who is examined, cross examined and re-examined as in the case of the plaintiff himself.
3. Plaintiff closes his case.
4. The defendant opens and gives evidence, he is cross-examined and re-examined.
5. The defendant calls his witnesses who are examined, cross-examined and re-examined.
6. The defendant closes his case.
7. The defendant files his written address to the court (unless he decides to give an oral submission)
8. The plaintiff files his address to the court
9. Judgment by the court.

## **STAGE THREE: EXECUTION**

1. The successful party must file entry of judgment.
2. The nature of execution of the judgment will depend upon the nature of the relief sought and granted in the judgment.

- a. If the judgment decrees payment of money either by way of damages, debt or cost then the execution will be by any of the following:
- Writ of fierri facias
  - Garnishee order
  - Charging Order/Stop Order
  - Committal
  - Sequestration
- b. If the judgment decrees delivery of property other than land then one of the following methods of execution will be used.
- Writ of Sequestration
  - Committal or
  - Writ of delivery
- c. If the judgment decrees recovery of possession of land then the Execution will be by writ of Possession, Sequestration or Committal.

#### **STAGE FOUR: APPEAL TO COURT OF APPEAL**

1. Notice of appeal to be filed by the unsuccessful party within three months from the date of judgment.
2. Motion on Notice by the appellant for stay of execution if necessary.
3. Notice of settlement of record before the Registrar of the trial court.
4. Settlement of record before the Registrar of the trial Court.
5. The appellant fulfils conditions of appeal by entry into bond with sureties and paying an amount towards the cost of the record of appeal.
6. Preparation of the record of appeal by the Registry staff.
7. Record of appeal transmitted to the appellate court and parties being formally notified.
8. Hearing of the appeal
  - a. The appellant argues the appeal.
  - b. The Respondent replies to the appellant's argument and
  - c. The appellant replies to the arguments of the Respondent.



9. Judgment of the Court.

**STAGE FIVE: FURTHER APPEAL TO THE SUPREME COURT**

In case of a further appeal from the Court of Appeal to the Supreme Court, steps 1-7 as stated above of the Court of Appeal is the same for the Supreme Court.

- a. In the Supreme Court, however, the appellant has to file a written Argument (i.e. statement of case within 14 days of being served with Notice of transmission of the record of appeal to the Supreme Court (As in 7 above).
- b. The Respondent, on receipt of the written arguments (Statement of case) of the appellant has to file his written reply within 14 days.

Judgment of the Court. The court may or may not hear oral argument at the Hearing of the appeal before delivering its judgment.

It must finally be noted that not every action commenced by a writ may travel through the five stages of litigations. An action may terminate prematurely by notice of Discontinuance filed by the plaintiff etc. etc. Lastly a court has power to review its own judgment on application made to it by the losing or unsuccessful party within 14 days from the date on which the judgment or order in respect of which review is sought is entered or made. This period can be extended with leave of the Court within three months after the judgment. A losing party may therefore decide to avail himself of the review procedure instead of appealing. An appeal or review procedure cannot take place at the same time.

Thank you.