

SERVICE OF COURT PROCESSES ON COMPANIES IN GHANA – THE INTERCOURSE BETWEEN SUBSTANTIVE AND PROCEDURAL LEGISLATION- *DISTILING THE LEGAL QUARGMIRE*



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“Service is therefore a fundamental requirement that places a duty on the party whose process is required to be to ensure that the adversary has been duly served. This often entails calling in the registry advisedly to ascertain proof of service of the process. Before embarking upon the determination of a matter, the judge would examine the record to ensure compliance with all requirements for service” S. Kwami Tetteh, Civil Procedure, A Practical Approach p.213

INTRODUCTION

In all proceedings before the Courts and all other adjudicating bodies, notice to a person is not only important, but required and an imperative. ‘Service’ is essential whether in criminal, civil or even constitutional litigation. It is at the heart of the rules of Natural Justice, that a person must be heard before judgment is made against that person. In the Holy Bible, even God, the Creator and master Architect of the Universe, when He entered the Garden of Eden and saw that Adam and Eve had erred, gave them a hearing before passing judgment on them.¹ In the Holy Quran there are several indications to fairness and justice including, “Allah commands you to give the trust to their rightful owners and to judge with justice, when you judge between the people. Excellent is the counsel that Allah gives you, for Allah is He who hears and sees all things.”² It again says that, “O believers! If a wicked person brings you some news inquire into its truth, lest you harm people unwittingly and afterward repent of what you did.”³ If a person is not heard and judgement is entered against him or her, that decision, no matter how sound, meritorious it may be, is liable to a quashing order by a Court as being void and made without proper jurisdiction. In civil proceedings

¹ Genesis 3:1 – 24 of the Holy Bible

² Surah An-Nisa 4.58 of the Holy Qur'an

³ Surah Al Hujurat 49.6 of the Holy Qur'an

against corporate bodies like Companies, the subject of 'service' and how same is effected can become a bone of contention between parties before the court. Service, is therefore fundamental and goes to the core of the matter before the court. Lord Denning reminds us in ***R v. Appeal Committee of London Quarter Sessions, ex parte Rossi***⁴ thus, ***"It is to be remembered that it is a fundamental principle of our law that no one is to be found guilty or made liable by an order of any tribunal unless he has been given a fair notice of the proceedings so as to enable him to appear and defend them. The common law has always been careful to see that the defendant is fully apprised of the proceedings before making any order against him."***

It is not uncommon to come across situations where 'service' of court processes on a company in civil proceedings is being challenged in one way or the other. The Author in this piece seeks to consider the legal regime for 'service' of court processes on corporate bodies under the laws of Ghana. The Author shall discuss the position of the law by reviewing the legislative framework (Substantive legislation and Procedural Rules) and case law. The aim of the Author, will be to dispel with the erroneous notion that 'service' of processes of the courts on companies must be on certain people in a particular designation in the company, failing which the 'service' becomes a subject of quashing or setting aside. The Author argues in this paper, that this is not and cannot be the position of the law.

Service in Civil Proceedings.

The judicial system operates on the doctrine of Natural Justice, which manifests itself in two main respects; one, a person must not be a judge in his own cause (*Nemo iudex in causa sua*) and the other, hear the other side before passing a judgment affecting him or her (*audi alteram partem* rule). Service is the process of making a party to a case aware of a proceeding against him or her. It is the bringing to the attention or knowledge of a person that someone has commenced proceedings against them. The respected S. Kwami Tetteh in his invaluable book⁵ said that, "Natural justice requires that the litigant be informed of any proceeding against him or her."⁶ In Civil Proceedings under Ghana law, 'service' is supposed to be personal unless otherwise provided by the law.⁷ Personal service under the rules entails leaving a duplicate or attested copy of the document with the person sought to be served.⁸ The subject of service is essential in every proceedings and as such the law ensures that at all costs, a

⁴ [1956] 1 All ER 670 @ 674

⁵ Civil Procedure, A Practical Approach p 213

⁶ *supra*

⁷ Order 7 rule 2 of the High Court (Civil Procedure) Rules 2004 (C.I 47)

⁸ Order 7 rule 3 of the High Court (Civil Procedure) Rules 2004 (C.I 47)

person against whom proceedings are commenced is notified of same through several means including by substituted service.⁹

So important is the issue of service that in recent times, the Courts have ordered processes to be served through WhatsApp contacts, electronic mails and on Facebook accounts. As recent as 28th May 2024, the High Court Accra General Jurisdiction 13, coram His Lordship Justice Joseph Adu Owusu-Agyeman (Rev. Fr.) in the case of *John Paintsil v Multimedia Group Limited and 6 Others*¹⁰ made an order for processes to be served on the 7th Defendant by posting on her Social media pages on X (former twitter), her Facebook page and on her WhatsApp contact. It is only when the Court or tribunal is satisfied that 'service' has been effected that the court or tribunal would be seised with the proper jurisdiction to proceed. The Author suggests that, even if service or lack of it is not raised by a party, the court or tribunal may raise same *suo motu*, unless the party to be served expressly waives service, since there is authority from the case of *Dhanlomal v Puplampu*¹¹ where the court of appeal¹² held that a person for whose benefit a provision is solely made can waive same. This implies that without the processes being served, the court's jurisdiction is challenged, and any proceedings may be challenged subsequently.

The Substantive versus Procedural controversy

The subject of controversy is whether the law on service of companies is in the High Court (Civil Procedure) Rules 2004 (C.I 47) as some argue or the substantive legislation in this case Companies Act 2019 (Act 992) as the Author shall suggest.

Provisions under Substantive Law and Procedural

The Companies Act 2019 (Act 992) provides for the mode of service of court documents on companies. Section 291 (1)(a) provides that, **"A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company."** The First Schedule to the Companies Act defines a document to include inter alia (a) writing on any material, (b) written expression in any form.... The import of this provision in the First Schedule is that a court process is a document within the meaning of the Companies Act and therefore can be validly served on a company or corporate body in the manner provided in section 291(1)(a). In the Author's view therefore, a company can be served with a court processes by the bailiff or process server leaving the

⁹ Order 7 rule 6 of the High Court (Civil Procedure) Rules 2004 (C.I 47)

¹⁰ Suit Number GJ/0591/2024

¹¹ [1984-86] 1 GLR 341"

¹² per Osei-Hwere JA "Statutory provisions can be waived if (a) they have been enacted solely for the benefit of the person or class of persons waiving them"

document at, or by sending the said document through post to the registered place of business of the company or at the latest place of business of the company and that mode of service is valid and without any defect known to the law. This statutory provision has received judicial blessing *albeit* under previous legislation, some of which shall be discussed. In the case of **Zain Communication v Ampratwum**¹³ their Lordships at the Court of Appeal in dealing with section 263 of the repealed Companies Act 1963 (Act 179) which provision is a verbatim repetition of the section 291(1)(a) had this to say,

... "There is no dispute that the defendant is a body corporate. The law on the service of documents on bodies corporate or companies can be found in section 263 of the Companies Act, 1963 (Act 179). It is provided in sub-section (1) thereof as follows; '**A document may be served on a company by leaving it at, or sending it by post to the registered offices of the company or the latest office registered by the Registrar as the registered address of the company**'".

It is therefore clear and beyond legal controversy, that a statute has provided for how companies may be served with court documents under Ghana law. The law is that, where a law provides for a means of doing an act, it is that means, and procedure provided for so doing that must be used without more. That is the settled position by a long line of cases including the celebrated case of *Boyefio v NTHC*¹⁴ where the Supreme Court held that, "**The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed.**"

The controversy, which in the Author's respectful view is needless and unwarranted, is caused by the often invocation of the provisions in the High Court (Civil Procedure) Rules 2004 (C.I 47), to challenge service of court processes served in any manner other than provided in the said procedural rule. The relevant provision for this piece is Order 7 rule (5)(1) which provides that, "**Service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it on the chairman, or other head of the body, or on the managing director, secretary, treasurer or other similar officer of it**" (emphasis the Author's). Some practitioners have wrongly in the Author's humble view, construed this provision to mean that the only way a company can be served with a court process is by serving same on the Chairman or other head of the company, or on the Managing Director, Company Secretary, Treasurer or other person in a similar position. Some manifest this interpretation by even filing applications to challenge and set aside such service for failure to comply with Order 7(5) (1) of the High Court (Civil Procedure) Rules.

¹³ [2013] 54 GMJ 81 CA

¹⁴ [1997-98] 1 GLR 332 SC

That, the Author argues is untenable and without support in law both Substantive and Procedural.

The above (Sections 291 of Act 992, former section 263 of Act 179 and Order 7 rule 5(1) of C.I 47) is the legal regime on the manner that court processes may be served on a company or corporate bodies that are parties to civil litigation. It is the contention of the Author that, it is not the law that failure to serve a process on the Chairman, Managing Director, Company Secretary or any such is invalid service under the law. As indicated above, the Court of Appeal in the Zain Communication case *supra* and others yet to be cited have pointed us to the source of law on service of court documents on companies i.e. the relevant provision in the Companies Act.

In **Zain Communication v Ampratwum**, the Plaintiff sued for a declaration to title to a piece of land in the Asante Mampong market among other reliefs and the Defendant also counterclaimed. The trial Court entered judgment in favour of the Plaintiff, dismissing the defendant's counterclaim and awarded damages in favour of the Plaintiff. The Defendant appealed against the judgment contending, for purposes of this paper, that they (defendants) were not properly served with hearing notices. The Court found that the Defendant was not properly served with hearing notices, rendering the proceedings and judgment null and void. The Court therefore set aside the judgment and ordered a new trial before a different judge.

It is imperative to place the facts in the proper perspective in order not to be misled on the law on service of court processes on companies. In the facts, the Plaintiff gave the Defendant's service address as '8th Floor, Silver Star Tower, Airport City Accra'. The Plaintiff's Writ of Summons and Statement of Claim was served on the Defendant 'personally' in Kumasi, upon receipt of which the Defendant filed a Conditional appearance through counsel but failed to take further steps. The Plaintiff therefore applied for leave to enter judgment against the Defendant. The application was again served on the Defendant 'personally' in Kumasi, although their address for service was Accra as indicated. Defendant thereupon filed its defence and counterclaim, with the Plaintiff filing a reply and defence to the counterclaim, which was again served on the Defendant 'personally' at Defendant's Kumasi office. Issues were set down with an application for directions at the instance of the Plaintiff also served on the Defendant 'personally' in Kumasi. On the day for application for directions, Defendant was absent, and the case stood adjourned for hearing with an order for hearing notices to issue.

The hearing notice was issued but again served 'on the said Zain Communications personally at Kumasi'. It appears from the facts; all processes were served on Zain Communications at their Kumasi office instead of the registered address for service as given by the Plaintiff. An opportunity was given for an out-of-court settlement and adjourned. On the adjourned date Defendant was absent together with counsel and the Court dismissed Defendant's counterclaim and proceeded with the Plaintiff's claim granting him judgment.

Following the dismissal of the counterclaim, Defendant sought to stay execution and set aside the judgment unsuccessfully whereupon he appealed. The material ground of appeal for the purposes of this paper was, *"the learned trial judge erred in law when he proceeded to hear the plaintiff and gave judgment when the record showed that the defendant was not served with the hearing notice of the hearing"*. The Defendant/Appellant argued inter alia that even though Defendant had provided an address for service, not one process was ever served through that address, and all services were effected on the defendant at Kumasi whereas the defendant indicated its address for service in Accra. It was further contended that no hearing notices were served on the defendant at all for the proceedings when its counterclaim was 'capriciously' dismissed without any reason and further that the case was adjourned without any hearing notice served on the defendant. The crux of the Appellant's argument on appeal can be summarized into two; one, that even though the defendant is a corporate entity having its registered office at the 8th Floor of Silver Star Towers, Airport City, Accra which was provided for service, all services were effected on the defendant in Kumasi; two, that when the case was adjourned to the 8th and 9th July 2010 respectively, no hearing notice was served on the defendant.

To the arguments of the Appellant, the Respondent contended that the processes were served on the defendant's branch manager in Kumasi and that under Order 7 rule 5(1) of C.I. 47 that was good service. The Court of Appeal rightly in the view of the Author, identified the question thus, *"So the question is whether or not service of the processes on the defendant's branch manager in Kumasi constituted good service in the light of Order 7 rule 5(1) of C.I 47"*. Their Lordships further stated that, ***"The law on service of documents on bodies corporate or companies can be found in section 263 of the Companies Act, 1963 (Act 179)... In view of this provision, the provision in Order 7 rule 5(1) of C.I 47 cannot be invoked to say that since processes were served on the defendant's branch manager in Kumasi, there was good service. This is particularly so when the defendant clearly indicated that its address for service was its registered offices in Accra."***

The Author takes the view that it was on that basis that the Court of Appeal nullified the proceedings in the court below, after holding the service improper. In other words, the processes had been served in a place other than the registered place of business of the party and that was the reason why the service was held by the Court to be invalid and therefore liable to be set aside. In the Author's view, had the processes been served on the front desk officer at the registered place of business, in this case 8th Floor, Silver Star Towers, Airport City Accra, the Court of Appeal would have upheld the service as valid, and not set same aside. This is because the processes been served at the registered place of Zain Communication in accordance with the Companies Act on a receptionist or front desk officer, and it would have been in accordance with the law as far as the receptionist and front desk officer received same in their regular line of business for which they are so stationed. Once the front desk officer received same, it is logical and a reasonable expectation that same would reach the people so entitled, the front desk officer being stationed there for that purpose.

In **Ghana Commercial Bank v Tabury**,¹⁵ Sarkodee J (as he then was) faced a similar controversy, and the Court navigated the nuances with considerable admiration. The facts relevant to this paper were that the Plaintiff issued a writ against the Defendant. The Writ was served on a clerk of the head office of the defendant bank which bank was established under the Ghana Commercial Bank Decree N.R.C.D 115, section 15 of which had provided that, a document may be served on the Bank by leaving it at or sending it by post to the Head Office of the Bank. The report does not say the type of clerk on whom service was effected and the regular line of duty of the said clerk. The Defendant bank failed to enter appearance, whereupon the Plaintiff applied and obtained interlocutory judgment in default. The Defendant upon becoming aware applied to set aside the default judgment. In that case, the legislative contention was between the old Civil Procedure Rules L.N. 140A and the Ghana Commercial Bank Decree, 1972 (N.R.C.D. 115) regarding the service of processes on companies.

The Author is not oblivious of the fact that the L.N. 140A is a procedural rule while the Ghana Commercial Bank Decree is a substantive law. The law is settled that, where there is a conflict between a provision of a procedural law and substantive law, the procedural law must bow and give way to the substantive law.

Sarkodee J (as he then was) said thus,

“Order 9, r. 8 of L.N 140A (dealing with service on corporations) drew a distinction between cases where a statute provided modes of service and where it did not so provide. All statutory modes of service must be strictly adhered to, and this

¹⁵ (1977) 1 GLR 329

obviously would exclude service of process on the defendants under Order 9 r 8. Service therefore must be effected in the manner provided by section 15 of N.R.C.D. 115 which provided that a document could be served on the bank by leaving it or sending it by post to the head office of the bank. Even though N.R.C.D. 115 was silent as to the person with whom the document or writ should be served, it would be proper to serve somebody who could represent the bank or some other responsible person who must accept service in the normal course of his business."

The Court went further to state the effect of the service on the clerk thus,

"In the circumstances, the service effected on the defendants' clerk was improper and the defendants therefore had no notice of the writ. The failure to serve the writ as required by law was a fundamental defect affecting the very root of the proceedings."

The Author suggests that the Court speaking through Sarkodee J (as he then was) was emphatic that the law applicable was not the procedural rules (LN 140A at the time, the equivalent of the High Court (Civil Procedure) Rules 2004 C.I 47) but the substantive legislation being the Ghana Commercial Bank Decree. It is unclear from the facts the nature or the regular duty of the defendant's clerk on whom service was effected. The Author suggests that if the service was effected at the registered place of business of the defendant company and on a person be it clerk or front desk officer, whose main duty is to receive correspondence on the company's behalf, then the court would have held the service to be proper. The Court in that case would therefore have resolved the seeming controversy and held that the substantive legislation to prevail over the procedural law.

The provision in Order 9 rule 8(2) of L.N. 140A which was replaced by Order 7 rule 5(1) of C.I 47 provided that, **"In the absence of any statutory provision relating to service on a company...service may be effected, by sending the writ or other document to be served by prepaid registered post to the secretary or other corresponding officer at the head office... or by sending the writ or document on such secretary or corresponding officers personally of such office as aforesaid"** (emphasis the Author's). That of Order 7 rule 5(1) of C.I 47 also provides in words but the same spirit as, **"Service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it on the chairman, or other head of the body, or on the managing director, secretary, treasurer or other similar officer of it"**. (emphasis the Author's).

In both the current civil procedure rules and its antecedent provision, one thing is clear from the provision, which in the Author's view is that the invocation of these provisions for service on companies is done If and only if, there is no provision

made in any other enactment for service on companies. It therefore stands to reason, and the logic is sound, that if a law has provided for how a company is served in a substantive legislation that regard may not be had to what is provided in the rules of procedure.

The Author submits that, in the case of **Ghana Commercial Bank v Tabury** discussed above, if the processes were served on a person or a clerk, whose regular duty it was to receive such documents on behalf of the company and deliver same to the powers that be, then the court would not have declared the service on the said clerk invalid. It is not the position of the Author, that service on a company can therefore be effected on any staff or officer of the company but on a person who can either represent the company or one whose regular or official duty is to receive such documents for onward transmission to the relevant officer and any such service must be upheld as in accordance with law. The Court commenting on the Commercial Bank Decree in this regard had this to say and the Author adopts same as his position on this subject,

“It seems to me therefore that even though NRCD 115 is silent as to the person with whom the document or writ should be left, the proper thing is to serve somebody who can represent the bank or some other responsible officer. If the bank is to have notice of the writ ad to appear and defend the action pending against them it will not be enough... to leave the writ with a clerk or some other person who might not know the nature or the import... The important point is that the person served must be responsible and he must accept service in the normal course of his business.”

The Author suggests that, if a company employ's a front desk officer and places him or her at the reception to receive guests and correspondences, and direct them to the appropriate quarters for necessary actions, it cannot be argued that such persons held out by the companies as such cannot be served with court processes on the basis of Order 7 rules 5(1) of C.I 47 which in the Author's humble view creates a 'sufficiency' provision as opposed to a necessary provision, to which the Author shall return.

This subject of service on companies in Civil Procedure cannot be exhausted without discussing the oft cited case of **Barclays Bank of Ghana Limited v Ghana Cable Limited**¹⁶ which is usually cited as an authority for service of documents on companies. Although in the Author's view, there is the tendency for that authority to be misapplied. The Author takes the view that the facts of that case must be distinguished, and principle applied only in the realm of the facts in that case.

¹⁶ [1998] S.C.G.L.R 1 SC

The material facts to this paper were that the bank issued a writ of summons against the Defendants on the back of some loans granted to the first defendant and guaranteed by the other five defendants, three of whom were limited liability companies. The endorsement by the bailiff on the writ indicated that same was served "on the defendants through their company secretary Madam Alice (M.A) at their office" and a notice of appearance was purportedly entered on behalf of the defendants by a firm of lawyers. The Plaintiff then took out summons for final judgment under Order 14 r 1 of L.N.140A. At the hearing, a lawyer from the firm of lawyers appeared for defendants and the court, with the consent of the lawyers entered judgment for the Plaintiff bank. About five years later, the defendants filed an application at the court seeking to set aside the final judgment on the basis that none of them were served with the writ of summons and as a result the court had no jurisdiction to proceed against them. It was defendants' contention that, at the time of the Summary judgment, the sixth defendant was in detention at the behest of the PNDC and hence was not served. A search revealed that on the other four defendants who were limited liability companies were served through M.A as their secretary. They further demonstrated with documents from the Registrar General Department that the said Madam Alice was not their secretary and therefore had no authority whatsoever to receive service on their behalf. The trial court differently constituted refused the application to set aside the summary judgment, with the reasoning that the said MA might have held herself out as a secretary. The defendants successfully appealed to the Court of Appeal reversing the final judgment and setting same aside. The Plaintiff aggrieved by the Court of Appeal decision appealed to the Supreme Court, contending inter alia that the Court of Appeal erred in reversing and setting aside the judgment. The Supreme Court dismissed the appeal saying that the final judgment obtained by the plaintiff under Order 14 r 1 of the LA 140A was in all circumstances of the instant case a nullity, as a result the defendants were entitled to set same aside *ex debito justitiae*.

The facts showed that, even the lawyers who responded to the service of the process and entered appearance under the rules of court were not authorized by the party who had allegedly been served. The Court therefore said that the purported appearance was unauthorized and could be set aside by the party. Their Lordships in the Supreme Court still went on to state the position of the law that service on companies is governed by the Companies Act which had made express provisions on how service is made and once same is made on a person who receives such in the regular course of duty and brings to the notice of the relevant persons, that suffices according to law.

The Supreme Court further said,

“In respect of a company with a registered office or registered address, section 263(1) of the Companies Code, 1963 (Act 179) provided that a document might be served by leaving it at or sending it by post to such an office; and, on account of the provisions of sections 263(1) and (2) of Act 179, the letter containing the document should be addressed either to the registered office or the latest office registered as the registered address of the company, prepaid and posted early enough to ensure that the letter was received in such time as to enable the company file the relevant papers within the time provided by the procedural rules of court.”

In the humble view of the Author, the Court held the service in the Barclays Bank v Ghana Cable case irregular because the person on whom the process was served was unknown to the party allegedly served, the record shows that the parties served were more than one and could not have the same M.A as secretary, one of the persons allegedly served was actually in detention at the time of the alleged service and the lawyers who acted upon the service were held not to have authorization to act in the manner they did.

The Supreme Court in Barclays Bank v Ghana Cable in commenting on this provision said, **“The opening words of the above rule clearly shows that the rule applies: “In the absence of any statutory provision regulating service on a company....” Accordingly, since section 263 of the Companies Code, 1963 (Act 179) regulates service of documents on companies, Order 9 r 8 (2) of LN 140A cannot therefore be resorted to.”**

Indeed, the Author contends that, granted that the law on service on companies is Order 7 rule 5(1) which is denied, the construction of that provision is that if the process is served on any of the persons so named, it is deemed to be proper service. It is not the position that at all costs the people so named are the only persons on whom service can be effected on behalf of a company, failing which such service is irregular. The Author is fortified in this view by the position taken by the Supreme Court in the Barclays Bank v Ghana Cable case thus,

“Section 263(1) of Act 179 provides that service may be effected by leaving it at or sending it by post to, the registered office or latest office registered as the registered address of the company. For under Act 179, every company must have a registered office. The obvious reason for this is that a company being a person only with a legal existence and without any physical existence, it is necessary to know where the company can be found, where communications and notices may be addressed and where documents can be served on it. Thus sections 119, 120 and 121 of the Act 179 mandatorily require every company to have a registered office with a postal address; the notice of this registered office with its

postal address must be given to the registrar for registration, and any subsequent change in the situation of this registered office should be brought to the notice of the registrar; and finally the company is to display conspicuously on a signboard, the particulars of its registered office in front of all its offices. Now, if a company defaults in complying with the provision of section 119 to 121 of Act 179, and thereby has no registered office, Act 179 provides in section 263(3) that in such a situation, service of a document or any process on a director, or in the absence of a director on any member of the company is deemed good and effectual service on the company. Furthermore, as provided in section 263(4) of Act 179 once it is confirmed that service had indeed been received by the board of directors or the managing director, or the secretary of the company, the said document shall be deemed to have been properly served on the company notwithstanding the fact the manner in which the document got to such a recipient was not in line with any of the provisions in sections 263(1) to (3)....." (emphasis the Author's).

The Court continued thus,

"Now, as stated earlier on, section 263(1) provides that in respect of a company with a registered office or registered address, a document may be served by leaving it at or sending it by post to such an office. The question is with whom should the document be left, and of it is by post how should this be done?" The true legal position therefore is that service on a company by post should be in accordance with section 263 (1) and (2) of Act 179..... And this in effect is that the letter containing the document should be addressed either to the registered office or the latest office registered as the registered address of the company, prepaid and posted early enough to ensure that the letter is received in such a time as to enable the company file their relevant papers within the time provided by the procedural rules of court..... Now, if the service of the document is not by post but by leaving it at a registered office or registered address, as provided in section 263(1) of Act 179, with whom should the documents be left with at the place? Act 179 does not mention the persons with whom the document should be left with. Commenting on an identical section 437(1) of the English Companies Act 1948, the 1961 Annual Practice states at p 115: "It is sufficient to prove... that the writ was left at the registered office without showing with whom"

As to the specific person to serve, the Court said that, **"For once a company acts through human beings, whenever there is a dispute as to whether has been served, it may become necessary for the bailiff to point out the person with whom he left the document with, since a bailiff is not expected to throw the document**

at the floor of the offices of that company when he goes to effect service. Thus although section 263(1) of Act 179 talks of “leaving it at” the registered office or address of the company, the bailiff must obviously leave it with someone who is in a position to bring the document to the attention of the company.”

It is the submission humbly of the Author that this is the correct position of the law. The said document can be left with someone whose regular duty is to receive such processes for onward submission to the company or the relevant officer thereof. It cannot be argued in the least, that a front desk officer or a clerk placed at the front desk, being held out by the company as its front desk officer, whose regular duty is to receive visitors to and correspondences for the company cannot be served, but that one has to go round looking for the Managing Director, Company Secretary or Chairman or any similar officer on whom to effect service for a company.

The absurdity of insisting on Order 7 Rule 5(1) of C.I. 47 as the only and mandatory means of serving a company is apparent when regard is had to section 291(1)(a) of the Companies Act, 2019 (Act 992), which provides for service on companies by post. In such a case, one is not sure into whose hands the posted process will fall, yet once posted, service is deemed effected. It is obvious that it is not the Managing Director, Chairman, or even the Company Secretary who accesses the post office box of companies; neither are they the first to receive such posts. They would obviously be accessed by an employee of the company whose duty it is to ensure that the documents reach the appropriate quarters for the needed attention. If the substantive legislation permits service on a company by posting to the registered address, whether postal or residential, and it is common knowledge that such posted documents usually get to the main addressees through other employees of the company—be they the receptionist, personal assistant to the Managing Director, or any such staff—then, in the Author's view, to the extent that the person into whose hands the post is delivered receives same as part of his duties in the company, such a person is 'servable' no matter how low or high in rank that person is in the company being served.

Any Guidance from Professor L.C Gower's report?.

The learned Professor Phillip Ebow Bondzi-Simpson¹⁷ in his book, Company Law in Ghana, identifies three pillars of Company law, as Statute, Case law and Company Law Theory. The respected author explains Company law theory as the *why* and *why not* of the law which is essential in applying and reforming the law.

¹⁷ LL. B (Hons) (Ghana), LL.M (Saskatchewan), SJD (Toronto), Founding Dean Faculty of Law University of Cape Coast, former Dean GIMPA Law School and currently Vice Chancellor, Methodist University Ghana

He posits that, "Relevant Company Law Theory can be gleaned from academic texts, reports of various relevant commission, and legislative working papers. Indeed, in Ghana, the accompaniment to the Act is the Gower Report."¹⁸ The history and theory of Ghana's company law cannot be discussed without the mention and resorting to the work of Professor L.C Gower. "Professor L.C Gower was appointed in 1958 by the Government of Ghana as the Commissioner to inquire into the working and administration of the then applicable Company Law in Ghana and in the light of such inquiry to make recommendations for the amendments and alteration of the then existing Companies Ordinance and such other laws of Ghana as he may consider necessary. It was pursuant to the Gower Report, which also contained draft legislation and commentary thereon, that the 1963 Code was enacted."¹⁹ It is the importance Professor Gower's report plays in company law theory that compelled the Author to enquire his comments on service of court processes on company, the former section 263 of Act 179 and now section 291 of Act 992.

Professor Gower in his report and commentary on the said section 263 now 291, said that "(1) This section is adopted from sections 168, 169 and 171 of the present Ordinance which are superior to section 437 of the English Act in that they provide for the alternative to service at the registered office." "(2) Subsection (3) is wider than section 171 of the present Ordinance which is restricted to documents in legal proceedings in the High Court" (3) "Subsection 4 has been inserted to prevent raising of technical objections such as those that were taken in *Stylo Shoes Ltd v Prices Tailors Ltd* (1960) 2 W.L.R 8." (4) The first part of subsection (5) is inserted in view of section 261(7). This subsection also makes it clear that, as the present section 171 does not, that the court may give specific directions regarding service of documents on proceedings before it"

Does the Interpretation Act 2009 (Act 792) provide any guidance?

The Author further sought guidance from the Interpretation Act 2009 (Act 792), which makes provisions for the service of documents thus, ***"Where an enactment authorises or requires a document to be served by post that document shall be sent by registered post to the person on whom the document is to be served at that person's last known place of abode or business."***²⁰ It provides further that ***"When an enactment authorises or requires a document to be served on a person without directing it to be served in a particular manner, the service of that document may be effected (a) by personal service; or (b) by post in accordance with subsection (1); or (c) by leaving it with an adult person at that person's usual***

¹⁸ Company Law in Ghana, 1st Edition, p. 2

¹⁹ Company Law in Ghana, 1st Edition, p. 2

²⁰ Section 29 (1) Interpretation Act 2009 (Act 792)

or last known place of abode, occupation, vocation or business; or (d) in the case of a corporate body or of an association of persons, whether incorporated or not, by delivering it to the secretary or clerk of the body corporate or association at the registered or principal office of the body corporate or association or serving it by post on the secretary or clerk at that office; or (e) where it is not practicable after reasonable enquiry to ascertain the name or address of any owner, a lessee, or an occupier of premises on whom the document ought to be served, by addressing the document to that person by the description of “owner” or “lessee” or “occupier” of the premises (naming them) to which the documents relate, and (i) by delivering it to an adult person on the premises, or (ii) by affixing it, or a copy of it, to a conspicuous part of the premises if an adult person is not on the premises to whom it can be delivered.”²¹ (emphasis the Author’s).

From the above provision in the Interpretation Act, the Author answers in the affirmative that some guidance is further given as to the manner in which a processes is served on a company and the Author takes the view that, the Interpretation Act confirms the view that the provisions in Order 7 rule 5(1) of the High Court (Civil Procedure) Rules 2004 (C.I 47) is not and cannot be argued to be the main or only mode by which service of court processes can be effected on a corporate body, neither is it a sine qua non for service on companies.

Necessity versus Sufficiency

The Author for purposes of this paper draws a distinction between a provision that creates necessity and one that suggests sufficiency. From the wording of these provisions, it suggested that, it is enough or sufficient that court processes are served on a company through the means provided under both the Companies Act and the High Court (Civil Procedure) Rules 2004 (C.I 47), to the extent that the permissive word ‘may’ is used in both instances. In the Author’s view, a necessary condition would have employed the mandatory word ‘shall’ to signal that you cannot serve a company without following that process. It seems therefore that from the provisions discussed above, none creates a necessary provision for service of processes on companies.

More instructive to the position of the Author is when regard is paid to sections 291 (2) (3) (4) and (5) of the Companies Act 2019 (Act 992). Section 291 (2) provides that, **“A document to be served by post on a company shall be posted in the time that admits of its being delivered in the due course of delivery within the time prescribed for the service of the document.”** Subsection 3 deals with how to prove service and is to the effect that, **“In proving service it shall be sufficient to prove that a letter containing the document was properly addressed, prepaid and**

²¹ Section 29 (2) Interpretation Act 2009 (Act 792)

posted whether or not by registered post." Section 291 (4) provides that, **"Where the registered office of a company cannot be traced, service on a director of the company, or if a director cannot be traced in the Republic, on a member of the company shall be deemed good and effectual service on the company"** (emphasis the Author's). The position is clear therefore that primacy for service is to the registered address of the company as provided in section 291 (1) of Act 992, and it is when the office cannot be located, that if the processes are served on a director, or any such officer it is sufficient. Making it more emphatic is section 291 (5) which provides that, **"Where it is proved that a document was in fact received by the director, managing director or Company Secretary, the document shall be deemed to have been served on the Company despite the fact that service may not have been effected in accordance with sections (1)(2)(3) or (4)"**. According to section 291(6), **"This provision shall not derogate from a provision in this Act relating to service of a document, or from the power of a Court to direct how service shall be effected of a document relating to legal proceedings before that Court."** The import of this subsection 6 of section 291 is that, a court may order for processes to be served in a manner other than provided in section 291 but the Author suggests that, until so ordered by a Court, the mode of service in section 291 of the Companies Act when adopted is proper service and cannot be overridden by the provisions in Order 7 rule 5(1) of the High Court (Civil Procedure) Rules 2004 (C.I 47).

Having reviewed the above legal regime on this subject, the Author takes the humble view that, regarding service on companies, Order 7 rules 5(1) may not always be the applicable law. The Author takes this view for reasons including

First, a review of the provision is clear to the effect that the mode of service in Order 7 rule 5(1) is applicable only when a provision is not made by another enactment. For the avoidance of doubt and ease of reference, the provision is repeated, **"Service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it on the chairman, or other head of the body, or on the managing director, secretary, treasurer or other similar officer of it"** (emphasis the Author's). It is the Author's view that, regarding the subject of service on companies, a provision has been made by another enactment and not just any other enactment, but the Companies Act that governs companies as well as the Interpretation Act. With the provisions made by another enactment, it is legally untenable to suggest that Order 7 rule 5(1) of the High Court (Civil Procedure) Rules 2004 (C.I 47) applies to service on companies.

Secondly, it is seen in both provisions, the word "may" is employed. Section 291 (a)(a) of the Companies Act 2019 (Act 992), **"A document may be served on a**

company by leaving it at, or sending it by post to, the registered office of the company, or the latest office registered by the Registrar as the registered address of the company." (emphasis the Author's) and Order 7 rule 5(1), "**Service of a document on a body corporate may, in cases for which provision is not otherwise made by any enactment, be effected by serving it on the chairman, or other head of the body, or on the managing director, secretary, treasurer or other similar officer of it**" (emphasis the Author's). It is the Author's view that the use of the word "may" instead of "shall" implies a discretion and not a mandatory provision. The law is that "In an enactment the expression "may" shall be construed as permissive and empowering, and the expression "shall" as imperative and mandatory".²² This means that, by the combined effect of the two laws, a person may decide to serve a company by either of the two modes and that would be in accordance with law. It is not mutually exclusive.

Thirdly, if there is a conflict between the two legislation, then the substantive legislation must prevail over the procedural law. Hence a process served on a front desk officer of a company, whose duty in the regular course of work is to receive visitors and correspondence on behalf of the company, or delivered by registered post cannot be challenged as invalid mainly because it was not served on a director, Chairman, Secretary or any such officer. Once the document is served or given to a person through whom the company receives correspondence in their regular line of duties, the service is valid and cannot be challenged merely because it was not served on the persons named in Order 7 rule 5(1) of C.I. 47.

Further to the above, the rule of interpretation is that where two legislation, even if on the same footing conflicts, the latter in time is said to prevail over the earlier in time. The High Court (Civil Procedure) Rules 2004 (C.I 47) (although not on the same footing as the Companies Act) was enacted in 2004 while the Companies Act was enacted in 2019. There is another rule or maxim of interpretation termed '*generalia specialibus*' to the effect that where a general rule conflicts with a specific rule, the general rule must give way to the specific rule to prevail. In the case of **Bonney & 4174 Others v GPHA**²³ the Supreme Court applied this principle and held inter alia thus, "...It is trite that by the operation of the maxim, '*generalia specialibus non derongant*', whenever there is a general enactment in a statute which if taken in its most comprehensive sense, would override a particular enactment in the same statute, the particular enactment must be operative,..... In the instant situation, it is imperative to note that the enactments from the procedure rules and substantive legislation are not even in the same statute,

²² Section 42 Interpretation Act 2009 (Act 792)

²³ [2014] 75 G.M.J 76 SC

neither are they on the same level in terms of the hierarchy of laws in Ghana. It can however be argued that the procedure rules are general while the Companies Act aside being substantive, is a specific legislation and therefore must prevail over the procedure rule on the subject.

Fourthly, to argue that a company must at all cost be served through the means in Order 7 rule 5(1) of C.I 47 will lead to procedural absurdity and unimaginable substantive injustice to parties who sue companies in the sense that it is inconceivable to expect court bailiffs to know and follow Managing Directors of Companies, Chairmen of Board of Directors among others for service of Court processes. One must not be oblivious to the fact that Managing Directors and Directors of companies are not easily accessible, some do not even work in the same companies apart from the Managing Director who is an Executive Director and to insist on same may prove a huge challenge in service. There are companies whose company secretaries are body corporate, and it is not the intent of the lawmaker that such people should be the ones to receive court processes on behalf of corporate bodies for whom they act as Company Secretaries.

Conclusion

In conclusion, it is the view of the Author, there ought not be any controversy about service of processes on companies. The law is clear on how a company must be served with processes of the court and the substantive laws, in this regard the Companies Act 2019 (Act 992) and the Interpretation Act 2009 (Act 792) must not be overridden by the often appeal to a subordinate legislation High Court (Civil Procedure) Rules 2004 (C.I 47) which provisions expressly say that its invocation is only when an enactment has not provided for service. When an enactment provides for service on companies, the provision in C.I 47 must bow in obeisance and give way to the substantive law and the Courts must, as servants of statutes²⁴ give effect to the law.

²⁴ Republic v High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association & Others –Interested Parties) [2009] SCGLR 390