IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2026

CORAM: BAFFOE-BONNIE CJ (PRESIDING)

PWAMANG JSC

LOVELACE–JOHNSON (MS) JSC

PROF. MENSA-BONSU (MRS) JSC

KULENDI JSC

ADJEI-FRIMPONG JSC

DZAMEFE JSC

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.....REGISTRAR
SUPREME COURT, ACCRA, G/R.
04/06/26

REVIEW MOTION NO: J7/13/2026

24TH MARCH, 2026

THE REPUBLIC

VRS.

THE HIGH COURT, TEMA

EX PARTE:

1. **THE VESSEL MT ROSE**
2. **LEMLA OIL COMPANY LIMITED**
3. **THE OWNERS AND PARTIES INTERESTED IN THE VESSEL MT ROSE**

APPLICANTS/RESPONDENTS

1. **KMO GOLDLINK INTERNATIONAL COMPANY LIMITED** ..... **INTERESTED PARTY/APPLICANT**

RULING

MAJORITY OPINION

PWAMANG, JSC:

1425816
4-06-2026

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My Lords, before us is an application for a review of the decision of the ordinary bench of the Court dated 2nd December, 2025, which, in the exercise of the Supervisory Jurisdiction of the Court under article 132 of the Constitution, 1992, quashed by order of certiorari a ruling of the High Court Tema whereby it made an ex parte order for the Arrest of a Ship. The ruling of the High Court was given on 5th September, 2024 and the application to the Supreme Court for it to be quashed under article 132 was filed on 23rd July, 2025. It was thus after about 10 months of the decision that the applicants/respondents before us (to be referred to as "the respondents") applied to invoke the Supervisory Jurisdiction of the Supreme Court.

Ordinarily, the Supreme Court would not entertain an application under its Supervisory Jurisdiction when the application has not been filed within 90 days of the impugned decision in compliance with Rule 62 of the **Rules of the Supreme Court, 1996 (C.I.16) as amended by C.I.24.** However, in line with precedent in this court, if the court takes the view that an impugned decision is a nullity, the court would waive the time limitation and quash the decision. Accordingly, despite the fact that the application before the ordinary bench was filed out of time, they took the view that the High Court acted without jurisdiction so its decision was a nullity and consequently they quashed it.

In this review application, it is the case of the interested party/applicant (to be referred to as "the applicant") that the view of the ordinary bench that the High Court acted without jurisdiction is fundamentally erroneous and the review bench ought to correct that error.

The case of **Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398,** is one of the earliest cases in which the Supreme Court explained the scope of its review jurisdiction conferred by article 133 of the Constitution, 1992. The Court therein explained as follows:

"A review jurisdiction is a special jurisdiction and not an Appellate jurisdiction, conferred on the court, and the court would exercise that special jurisdiction in favour of an Applicant only in exceptional circumstances. This implies that such an applicant should satisfy the court that there has been ***some fundamental or basic error***

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which the court inadvertently committed in the course of considering it's judgment and which fundamental error has resulted in gross miscarriage of justice. *[Emphasis supplied]*

My Lords, in order to fully appreciate the question of jurisdiction that was raised before the ordinary bench, we need to consider the facts of the case that the High Court was seized with. The case of the applicant in the High Court was that it had entered into a contract with the owners of the 1st respondent, which is a sea-going vessel, to charter the vessel to transport its cargo along the West African coast. Based on that contract, it paid various sums of money to them towards preparing the 1st respondent for the voyage. However, the owners after getting the vessel ready failed to make it available for use by the applicant but rather offered it to some other persons for it to convey their cargo. When the applicant got wind that the vessel was about to sail out of the port of Tema, they sued in the High Court for breach of contract.

Now, it ought to be noted, that besides natural persons and bodies with corporate status, the law in certain circumstances accords to sea-going vessels legal persona in courts of law such that they can be sued in their own right, independent of their owners or charterers. Because the civil jurisdiction of Courts is generally territorial, a court's authority to adjudicate in a cause or matter involving a sea-going vessel would accrue if the vessel is physically within the territorial waters of the country whose court's jurisdiction has been invoked. So, the 1st respondent was still within the territorial waters of Ghana when the applicant took out the writ of summons from the High Court Tema and endorsed the ship as the 1st defendant and the owner and other persons interested in her as 2nd and 3rd defendants respectively.

The applicant then based on the writ of summons and immediately applied ex parte for an order for the arrest of the 1st respondent and ancillary orders to forestall the situation where the ship would leave the jurisdiction and render the claims against her nugatory. The High Court, Tema granted the Arrest Order and made orders for the provision of security to satisfy the claim of the applicant. From the record before us, the 1st respondent was not restrained despite the order for her arrest, prompting the applicant to obtain another arrest warrant from a Nigerian High Court in Lagos.

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The main grounds urged before the ordinary bench for the quashing of the ex parte orders were contained in paragraphs 10, 11, 12, 13 and 14 of the affidavit in support of the respondents' application which is herein exhibited as Exhibit "KR1". They are as follows;

"10. That I am informed by Counsel for the Applicants and verily believe same to be true that the jurisdiction of the court to entertain applications made ex parte can only be invoked in emergency/urgent situations.

11. That I am informed by Counsel for the Applicants and verily believe same to be true that applications ex parte can only be entertained by the court where the rules of court make provision for such applications.

12. That I am informed by Counsel for the Applicants and verily believe same to be true that the rules on maritime action, rules on application and on injunctions do not clothe a High Court with the Jurisdiction to make the orders made by the High Court on an ex parte application.

13. That I am further informed by Counsel for the Applicants and verily believe same to be true that an ex parte order of a court must be made for a specified period or duration and that period must be expressly stated in the order.

14. The trial Judge went beyond her jurisdiction when she made the ex parte orders to be effective beyond the 10 day statutory limit for such ex parte orders.

The 3-2 majority of the ordinary bench agreed with the respondents, that for any application to be entertained by the High Court ex parte, then either the Rules of in the **High Court (Civil Procedure) Rules, 2004 (C.I.47)** or some other enactment ought to specifically provide for it. It is contended that in the absence of such specific statutory provision, the High Court was devoid of jurisdiction to hear and determine any application unless it was brought on notice to the respondent. This argument has been made on the back of Rule 1(3) of Oder 19 of C.I.47 and some judicial

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pronouncements that were cited by the lawyer for the respondent. R 1(3) Or 19 is as follows;

(3) Except where these Rules otherwise provide, no motion shall be made without previous notice to the parties affected.

Admittedly, this is a general prohibition against ex parte applications. However, the Rule at the same time states a clear proviso permitting ex parte applications in line with other provisions of C.I.47. Therefore, to determine when ex parte applications are allowed, we need to consider what the rules have provided concerning ex parte applications. Rule 3 of Order 19 relates to ex parte applications and provides as follows;

***Ex-parte* motions**

3. (1) Subject to rule 1 subrule (3), an application by motion may be made *ex-parte* where any of these Rules provides *OR (sic)* where, having regard to the circumstances, the Court considers it proper to permit the application to be made.

(2) The Court may make an order *ex-parte* on such terms and subject to such undertaking as it considers just where it is satisfied that delay caused by proceeding in the ordinary way would or might entail irreparable damage or serious mischief.

(3) The Court shall not grant an application made *ex-parte* under subrule (2) unless the applicant shows to the satisfaction of the Court good reason for making the application *ex-parte* and the precise nature of the irreparable damage or serious mischief which will be occasioned by proceeding in the ordinary way.

(4) The Court in its discretion may refuse to hear an application *ex-parte* and may direct that notice shall be given to all the parties affected by the application.

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My Lords, Subrule (1) above stipulates two types of exceptions where ex parte applications are allowed; a) where there is specific provision in C.I.47, OR; b) where having regard to the circumstances of urgency in proceedings, the court in its discretion permits application to be made ex parte. Note that the subrule uses the word "OR", making for alternative situations. Examples of the first type of exceptions in C.I.47 are in subrules 1(7),(8) & (9) of Order 25 of C.I.47 on Interlocutory Injunctions and subrule 1(1) of Order 73 concerning Arrest of Absconding Defendant. Those are specific provisions permitting the making of applications to the court by motions ex parte.

It has been submitted that Rule 2 of Order 62, C.I.47 on Warrant of Arrest of Ship does not make specific provision for application by ex parte motion and this is correct. Rule 2 is as follows;

Warrant of arrest

2. (1) After a writ has been issued in an action, a warrant for the arrest of the property against which the action or any counterclaim in the action is brought may, subject to the provisions of this rule, be issued at the instance of the plaintiff or defendant.

(2) A party applying for the issue out of the registry of a warrant to arrest any property shall search the Caveat Book to ascertain whether there is a caveat against arrest in force with respect to that property.

(3) A warrant of arrest shall not be issued until the party applying for it has filed a request for the issue of the warrant together with an affidavit made by the party or the party's agent containing the particulars required by subrules (5) and (6) of this rule but the Court may allow the warrant to issue notwithstanding that the affidavit does not contain all those particulars.

(4) Except with leave of the Court a warrant of arrest against a foreign ship belonging to a port of a state that has a consulate in Ghana in an action for

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possession of the ship or for wages, shall not be issued until notice that the action has begun has been sent to the consul.

(5) Every affidavit shall state

(a) **the name, address and occupation of the applicant for the warrant;**

(b) **the nature of the claim or counterclaim in respect of which the warrant is required and the fact that it has not been satisfied; and**

(c) **the nature of the property to be arrested and if the property is a ship, the name of the ship and the port to which she belongs**

(6) Every affidavit in an action for possession of a ship or for wages shall state the nationality of the ship against which the action is brought and that the notice, if any, required by sub rule (4) of this rule has been sent; and a copy of the notice shall be annexed to the affidavit.

Notwithstanding the absence of a specific provision permitting ex parte application for warrant for arrest of a ship, the general exception in Rule 3(1) of Order 19 for the court in its discretion to permit ex parte application in any case involving urgent situations can be invoked by a court dealing with a matter for the arrest of a ship if the circumstances justify proceeding ex parte exist. Consequently, the argument that denies jurisdiction to the High Court to grant a Warrant of Arrest of a ship on ex parte application has no foundation in C.I.47 if Order 19 Rule 3(1) is read as a whole. That argument fails to consider the general discretionary power vested by the Rule in a Court to proceed ex parte when faced with an emergency where delay by proceeding on notice will result in irreparable loss. These were the circumstances alleged in this case before the High Court and the Court needed to act swiftly to prevent the ship from sailing away.

The respondents in addition referred to the Supreme Court decision in the case of **Barclays Bank of Ghana v Ghana Cable Co. Ltd [1997-1998] 2 GLR 61** to support their claim that, unless expressly stated in the Rules of Court, there is a prohibition against ex parte applications in our system of law. But in that case the Supreme Court never said that a court has no jurisdiction to make an order on ex

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parte application. The passage that reliance was placed on is at pages 67 to 68 and is as follows;

"Now, on the basis of this well-settled principle, ex parte applications and orders for injunctions are undoubtedly anomalies in our administration of justice. And had the Rules of Court not permitted such applications and orders to be made, they would have been nullities. Thus to prevent the misuse of ex parte applications for injunctions, the practice, as sanctioned by case law, is that such applications are to be resorted to only in cases of extreme emergency, where the interest of justice requires that the court should intervene immediately without notice to the party affected. This implies that the urgent situation must be such that it would be improper or even imprudent to give notice of the application to the other party. And if a court is satisfied that the situation is urgent enough to require its intervention, the ex parte order that the court would make thereon should be for a very limited time of about seven days. For, it is not permissible-and indeed it is a travesty of justice-or a court to make an ex parte order remain in force, pending the final determination of the suit, or pending the determination of the application on notice to the other side. In Ansah v Ansah [1977] 2 All ER 638 at 642, CA, it was pointed out that:

*"Orders made ex parte are anomalies in our system of justice which generally demands service or notice of the proposed proceedings on the opposite party...**Nonetheless, the power of the court to intervene immediately and without notice in proper cases is essential to the administration of justice. But this power must be used with great caution and only in circumstances in which it is really necessary to act immediately.**""*[Emphasis supplied]

No where in the above quoted passage was it suggested by the Supreme Court that a High Court would lack jurisdiction to make an order on ex parte application. The Supreme Court in that case, just as has been stated in Or 19 Rule 3 of C.I.47, recognised jurisdiction of a court generally to make orders on ex parte application under conditions of urgency. The question whether in a particular case the circumstances warrant the making of an order on ex parte application or the application ought to have been on notice to the opponent is a question of fact and not one of jurisdiction. A party aggrieved with an ex parte order may apply to the court

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that made the order to set it aside and may even be entitled to appeal against the order if the contention is that the factual circumstances did not justify the court allowing the application to be made ex parte.

In the circumstances therefore, the ordinary bench made a fundamental basic error when they came to the conclusion that, in the absence of specific provision in Order 62 Rule 2 of C.I. 47 for a Warrant of Arrest of a ship to be by ex parte motion, the High Court lacked jurisdiction to order the arrest of the ship in this case on an application made ex parte. We do not find any provision in Or 62 that prohibits the grant of an order for Arrest of a Ship by ex parte motion.

The applicant argued before the ordinary bench that, in line with the practice in other common law jurisdictions, Ghanaian courts had been making orders for arrest of ships by ex parte application without any challenge. This argument was dismissed by the ordinary bench reasoning that it was not backed by a provision in Order 62 of C.I.47. However, the settled position of the law has always been that when new rules are made, the law maker is deemed to be aware of the existing law and practice of the courts and unless the new rules expressly revoke the existing law and practice, then they are deemed to be continued. In the case of **Trustees Synagogue Church of All Nations v Agyeman [2010] SCGLR 717** at p 721 Atuguba, JSC explained as follows;

"Nonetheless, it is always necessary to bear in mind that the law making body legislates with the existing law in view and is not deemed to alter the same except to the extent provided expressly or by very necessary implication. In this regard the established practices of the courts cannot be discounted in applying the law. Such practices by their very nature, may often be reflected by communis opinion or by contemporanea expositio in the legal profession, both as to civil and criminal matters alike."

It has not been contended before us that the existing practice of the courts making orders for arrest of ships by ex parte application has been expressly or by necessary implication revoked by Order 62 or any statute for that matter. In the circumstances,

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that practice is valid and it was a basic error for the ordinary bench to have appeared to invalidate it by quashing the order of the High Court.

Additionally, the respondent made a submission that a court has no authority to grant an order ex parte to be in force for more than ten days. This position is alleged to be derived from the provision in subrule 1(9) of Order 25 of C.I.47 which is as follows;

(9) Where an order is made pursuant to an application made ex-parte under subrule (3) it shall not remain in force for more than ten days.

This provision statutorily limits the period of validity of ex parte orders for interlocutory injunction made under Order 25 of C.I.47. It does not curtail the general power of courts to make ex parte orders under subrule 3(1) of Order 19 of C.I.47. In the circumstances, there can be no talk of want of jurisdiction of the High Court, Tema to make the ex parte orders it made in this case simply because the Court did not add that the orders shall remain in force for ten days. On close reading of subrule 1(9) of Or 25, it would be noted that the Rule, even in respect of interlocutory injunctions, does not limit the power of the court to make the ex parte order in terms of period. The rule rather limits the period of validity of the order once made to ten days. For that reason, the practice whereby courts that make orders for interlocutory injunction on ex parte application add that the order shall remain in force for ten days is actually superfluous since without that addition the order still cannot be in force for more than ten days by virtue of Rule 1(9) of Or 25. Accordingly, the mere fact that a judge made an ex parte order without adding the ten days limitation does not erode the jurisdiction of the court to make the order.

In conclusion, we are of the considered view that the grant of the application for quashing of the orders of the High Court on the basis that statute, being C.I.47, took away jurisdiction of the High Court to order for the arrest of a ship on an ex parte application, constitutes an inadvertent basic error by the ordinary bench. That error naturally resulted in a miscarriage of justice and same ought to be corrected under the review jurisdiction of the Court. We accordingly reverse the ordinary bench and hold that the High Court has jurisdiction, in line with the existing practice, to order the arrest of a ship by ex parte application, where the urgency of the matter so requires.

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(SGD.) **G. PWAMANG**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **P. BAFFOE-BONNIE**
(CHIEF JUSTICE)

(SGD.) **PROF. H.J.A.N. MENSA-BONSU (MRS.)**
(JUSTICE OF THE SUPREME COURT)

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(SGD.) **S. DZAMEFE**
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

ADJEI-FRIMPONG, JSC:

I also agree that the ordinary bench committed a fundamental error that occasioned a miscarriage of justice thus warranting the exercise of this court's review jurisdiction. I desire to add a few words of my own in support of the majority opinion competently delivered by Pwamang JSC to which I agree subject to what follows.

The ordinary bench faulted the High Court for making the order of arrest of the Vessel *M.T ROSE* ex parte without imposing a time limit. In their view, it was not proper to allow the orders to last the pendency of the matter till a final determination. Respectfully, this view was erroneous.

First of all, there is no provision under Order 19 of the High Court (Civil Procedure) Rules (C.I. 47), the anchor of the whole argument, requiring a time limit to be placed on an ex parte order. Where the rules required such a limit to be made, it was

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specifically provided for as under Order 25 rule 9 on Interlocutory Injunction and Preservation of Property which states: *"(9) Where an order is made pursuant to an application made ex parte under subrule (7) it shall not remain in force for more than ten days."* It was perfectly within the power of the High Court in the exercise of its discretion to make the order to last the pendency of the suit. After the order, it was open to any party who was affected thereby to make an application to the court to set aside or vary the order. The order of the court never took away that right.

More significantly, one must always situate the essence of arrest in its proper context in admiralty. The arrest in admiralty is not a mere interim order as obtains generally in other provisions of the rules. Aside it being a basis for the exercise of the court's *in rem* jurisdiction, the arrest also constitutes the res as security to stand for the underlying claim of the Claimant. If the claim is established, the res is liable to be sold and the proceeds applied to satisfy the claim. The established practice which is universally followed is that the res remains under arrest pending the final determination of the claim. This is why the rules make provisions for the owner or person interested in the res to post bail or security sufficient to secure its release. Thus, in the absence of such security, the res remains under arrest pending the adjudication of the claim. In ANCHOR LTD VRS THE OWNERS OF THE SHIP ELENI 1 PSC 14, 15; NIGERIAN SHIPPING CASES VOL. 1 PAGE 42 Foster Sutton FCJ reiterated the principle: *"...An action in rem is one in which the subject is itself sought to be affected, and in which the claimant is enabled to arrest the ship or other property, and to have it detained, until his claim has been adjudicated upon, or until security by bail has been given for the amount, or for the value of the proceeded against, where that is less than the amount of the claim."*

In this case, the order of the High Court gave the option of provision of security. The applicants had the right to provide the alternative security. As stated, they also had the right to apply for post-arrest hearing to make a case for the vacation or a variation of the order.

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The general practice in common law as obtains in Order 25 rule 19 where an ex parte order is made for a limited period is unknown to admiralty *in rem* proceedings. The arrest being the basis of the court's assumption of jurisdiction, it cannot make an order which has the effect of assumption of jurisdiction and in the same order limit or curtail its jurisdiction. That presents an absurd situation. See VISION METAL GENERAL TRADING FZC & ORS VRS MT PRIYE Suit No E1/01/2015 (unreported judgment dated 11th December 2014) H.C. where it was held:

> *"Granting an order for a limited period subject to extension is in my view unknown to the law. By the nature of an action in rem. It is the arrest that founds the Court's jurisdiction. Having assumed jurisdiction on the basis of the arrest, the Court cannot in the same order purport to curtail that jurisdiction. I think that results in an absurdity. Aside that another effect of the arrest is to constitute the res as security against the claim which is yet to be tried. Curtailing the order by time limit may defeat the rationale of the principle."*

Additionally, the view of the ordinary bench failed to take into account the procedure for *Release* under Rule 10 of Order 62. Subrule 1 provides:

> *"10. (1) Except where property arrested in pursuance of a warrant of arrest is sold under an order of the Court, the property shall only be released under the authority of an instrument of release, in this rule referred to as "release" issued out of the registry."*

The release provision as understood, underscores the principle that (unless a sale is ordered by the Court), the property is meant to remain under arrest to abide the adjudication of the claim.

In my considered opinion, the requirement of a formal procedure for release from arrest is clearly discordant with a limited order of arrest. It must be for the reason that the res must remain under arrest that the rules provide a formal procedure to follow if a defendant wanted its release in the interim. I am guided by the principle of interpretation that the provisions of a statute must be read as a whole, and effect given to every provision of the whole. LARBI VRS SALLOUN [1984-86]1 GLR 449.

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The ordinary bench failed to recognize these fundamental principles and hence committed an unfortunate error occasioning a miscarriage of justice. I find sufficient merit in the instant review application and grant same accordingly.

(SGD.) **R. ADJEI-FRIMPONG**
(JUSTICE OF THE SUPREME COURT)

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04/06/26

DISSENTING OPINION

KULENDI JSC:

INTRODUCTION

1. The Applicant herein invoke this Court's review jurisdiction pursuant to Article 133(1) of the Constitution and Rule 54(a) of the Supreme Court Rules, 1996, C.I 16 and prays for our reconsideration of the decision of the Ordinary Bench dated 2nd December, 2025 by which this Court, by a majority of 3:2, exercised its supervisory jurisdiction and issued orders to quash a ruling delivered by the High Court, Tema on 5th September, 2024.
2. In consequence, the Ordinary Bench held that any order made *ex parte* for the arrest of vessels within the territorial waters of Ghana must be framed so as to afford affected parties a reasonable opportunity to be heard; whether by requiring a repeat application on notice within a specified period, or by permitting the entry of a caveat enabling such parties to apply, upon reasonable grounds, for the setting aside of the order.

3. The relevant portions of the ruling are reproduced below:

> *"Whilst the sense of urgency that may characterise the issuing of ex parte orders for the arrest and detention of a vessel is not lost on us, we think that*

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a more progressive approach would be to afford the vessel owners or persons affected by the said ex parte orders an opportunity to be heard, by way of a repeat application on notice to affected persons or a caveat permitting such affected persons to apply to have same set aside or even to show cause why the order for the seizure ought not be made in the first place, or pendente lite or for the period of one year. This would afford the trial judge an opportunity to hear both sides before confirming warrants of arrest which per the rules have a lifespan of a year from the date of their issuance.

We are therefore of the considered opinion that whilst the Court was initially, within its jurisdiction to entertain the motion ex parte, the court exceeded its jurisdiction when it made its ex parte orders to subsist pending the final determination of the suit without affording the Applicants any opportunity, whatsoever, to be heard."

2. In its application for review, the Applicant canvassed the following grounds for the consideration of the Court:

    a. *This court wrongly applied Order 19 of C.I 47 to Order 62 when the Court agreed with the argument of the Respondents that the request for a warrant of arrest by the Applicant ought to have been on notice to the parties in the suit.*

    b. *This Court misapprehended the legal character of the warrant of arrest when the Court supported the argument of the Respondents that since the warrant of arrest was issued pursuant to an ex parte application, the warrant ought to have been made as an interim order for a limited period.*

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c. *That this Court failed to appreciate and abide by international law and settled practice pertaining to the invocation of the in rem jurisdiction of the Court in maritime actions for the arrest of ships.*

BACKGROUND:

3. Before delving into the merits of the present application, it may be useful to recount the factual antecedents that culminated in the present application.

4. The Applicant issued a Writ of Summons and Statement of Claim together with a motion *ex parte* for, among others, the arrest of the 1st Respondent vessel. The High Court granted the said *ex parte* motion and ordered as follows:

> *IT IS HEREBY ORDERED that the 1st Defendant THE VESSEL "MT ROSE" which is presently docked at Tema Harbour, Tema be arrested and detained at the Tema Port or anywhere within the jurisdiction of this Court pending the provision of a Bank Guarantee in the sum of One Hundred and Fifteen Thousand United States Dollars (US$115,000.00) and Ninety-five Thousand Ghana Cedis (95,000.00) inclusive of interest and costs to be issued by a reputable Ghanaian Bank and to be deposited with the Registrar of this Court.*
>
> *IT IS AGAIN ORDERED that the Officers of the Ghana Navy confiscate the following documents of the 1st Defendant: THE VESSEL MT. ROSE*
>
> *i. International Tonnage Certificate (1969).*
> *ii. International Loadline Certificate.*
> *iii. International Certificate of Registration.*
> *iv. Cargo Ship Safety Equipment Certificate.*

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v. *Cargo Ship Safety Construction Certificate and Attachment.*

vi. *International Ship Safety Management Certificate.*

vii. *Crew List and Crew Passport*

viii. *Discharge books of all the Ship Crew*

IT IS FURTHER ORDERED that the Officers of the Ghana Navy Service be stationed on board THE VESSEL MT ROSE at the anchorage to enable and facilitate the enforcement of the order of arrest and detention.

The Captain of the said VESSEL MT. ROSE is to deposit the Log Book and Registration documents of the 1st Defendant THE VESSEL MT. ROSE with the Tema Port Harbour Master.

IT IS FURTHER ORDERED that Plaintiff's Writ of Summons and Statement of Claim filed on the 27th of August 2024 be affixed thereof on the mast of THE VESSEL MT. ROSE or on the outside of any suitable part of the said Vessel."

5. Aggrieved by the foregoing orders of the High Court, the Respondents invoked the supervisory jurisdiction of this Court by an application for certiorari seeking to quash the said orders, which application was granted by the Ordinary Bench, by a majority decision of 3:2, in a ruling dated 2nd December, 2025.

6. In the present application for review, the relevant paragraphs of the affidavit in support state as follows:

9. I am advised by Counsel for the Applicant that these are fundamental errors of law which have occasioned a miscarriage of justice against the Applicant as far as the exercise of the statutory

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right of action in rem against the vessel MT ROSE is concerned and to the entire maritime community in Ghana.

10. The Applicant's action in rem against the 1" Respondent vessel is still pending at the trial High Court and the Applicant has no security for the in rem action commenced against the vessel.

11.I am advised by Counsel for the Applicant that the inclusion of the 2nd and 3rd Respondents as parties in the original suit pending at the High Court (2nd and 3rd Defendants in the High Court Suit do not change the character of the Applicant's action as an in rem action against the res, the vessel MT ROSE.

12. I am further advised by Counsel for the Applicant that it is the arrest of the vessel MT ROSE (the 1" Defendant in the original suit at the High Court) that gave effect to the High Court's exercise of her in rem jurisdiction against the vessel.

13. That it is not a requirement of Order 62 rule 2 that other defendants who are sued in personam in the same action should be given notice of the request for a warrant of arrest.

14. The order by the trial Court for the provision of the Bank Guarantee in the sum of US$115,000.00 served as security for the claim of the Applicant in place of the res (i.e. the vessel MT Rose) and also to ground the in rem jurisdiction of the High Court over the said vessel.

15. The High Court's in rem jurisdiction over the MT ROSE is now practically non-existent/extinguished by the decision of this Court

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since the vessel is no more within the territorial waters of Ghana and there is no security to sit in place of the vessel.

THE LAW

7. The review jurisdiction of this Court is one engrained in the Constitution as well as statute. Both article 133(1) of the Constitution and the Section 6 of the Courts Act 1993 (Act 459) vest this Court with the requisite jurisdiction to review any decision on such grounds as may be prescribed by the rules of Court.

8. Rule 54 of the Supreme Court Rules, 1996 (C.I 16) permits a review of this Courts decision on only the following two grounds;
    a) exceptional circumstances which have resulted in miscarriage of justice;
    b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given.

9. It is necessary to point out that the present application is predicated solely on the existence of alleged exceptional circumstances which, per the Applicant, are significant enough to warrant a review of the decision of the Ordinary Bench; it does not rely on the discovery of any new or important matter or evidence, and the burden of establishing such exceptional circumstances rests squarely on the Applicant.

10. This Court has, in a plethora of decisions, observed that unsuccessful parties are often inclined to allege a miscarriage of justice; however, in the absence of exceptional circumstances, such complaints constitute a poor foundation for the exercise of the review jurisdiction, since it is only in truly exceptional

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circumstances that the principle of *res publicae ut sit finis litium* yields to the overriding interests of justice.

11. On what constitutes exceptional circumstances, whiles the Court agrees that a "fit for all" definition of exceptional circumstance may not be permissible, the Court has held that "the review jurisdiction of the Supreme Court was a special jurisdiction to be exercised at the discretion of the court in exceptional circumstances where a ***fundamental and basic error might have inadvertently been committed by the court resulting in a grave miscarriage of justice. The court would consequently not permit a review to be used merely to re-argue an appeal or as an automatic next step from an appeal. The fact that there was a good ground upon which the judgment could be set aside on appeal was not therefore of itself a sufficient ground for granting review.***

12. It has therefore been the posturing of this Court not to indulge applicants who make frivolous cases calculated to reopen the case for a rehearing on its merits.

13. This Court does not, under the pretext of hearing a review application, permit applicants to reopen or reargue their case which has been conclusively determined by the Ordinary Bench. There is no automatic right of appeal against the decision of the Supreme Court and the review jurisdiction of this court was not intended to confer a further right of appeal on litigants.

14. It is a special kind of jurisdiction held in reserve to be applied in exceptional situations where there has been a fundamental error that has occasioned a miscarriage of justice. An error which is therefore not exceptional in character and which does not occasion a miscarriage of justice would not be a legitimate basis to invoke the review jurisdiction of the Supreme Court.

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15. In demonstrating the existence of exceptional circumstances, the applicant must, on the face of the processes filed, demonstrate that a legitimate case exists for a review on the basis of the decision being *per incuriam* for failure to consider a statute, case law, fundamental principle of procedure and practice relevant to the decision, and which if properly considered would have resulted in a different decision. In other words, it must be clearly demonstrated that the Ordinary Bench failed to consider what it ought to have considered or considered what it ought not to have considered in arriving at the impugned decision which has occasioned an applicant a miscarriage of justice.

16. An exceptional circumstance may also be said to arise where the decision complained of is void in the terms prescribed in **Mosi v. Bagyina [1963] 1 G.L.R. 337, S.C.**

[See Bisi v. Kwayie [1987-88] 2 GRL 295 SC; Fosuhene v. Pomaa [1987-88] 2 G.L.R. 105, S.C.;Nartey v. Mechanical Lloyd Assembly Plant Ltd. [1987-88] 2 G.L.R. 314, S.C.;]

17. In the case of **Afranie II vs. Quarcoo [1992] 2 GLR561** this court enumerated some of the circumstances that ought to be considered as exceptional as follows:.

> ***"Although what exactly constituted exceptional circumstances had not been spelt out, on the authorities the court had found exceptional circumstances where (a) the circumstances were of a nature as to convince the court that the judgment should be reversed in the interest of justice and indicated clearly that there had been a miscarriage of justice; or (b) the demands of justice made the exercise extremely necessary to avoid irremediable harm to the applicant; or (c) a fundamental and***

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basic error might have inadvertently been committed by the court resulting in a grave miscarriage of justice; or (d) a decision had been given per incuriam for failure to consider a statute or a binding case law or a fundamental principle of practice and procedure relevant to the decision and which would have resulted in a different decision; or (e) the applicant had sought for a specific relief which materially affected the appeal and had argued grounds in support but the appellate court had failed or neglected to make a decision on it."

18. It is to be noted that the language of Rule 54 of C.I 16 is permissive rather than mandatory, therefore Rule 54 which spells out the threshold for the invocation of our review jurisdiction states that "*The Court* ***may review*** *any decision made or given by it on the following grounds..."*

19. The expression "may review" denotes that the jurisdiction is discretionary. Accordingly, as with all exercises of judicial discretion, the Court is entitled to take into account the *bona fides* or *mala fides* of the parties, together with the circumstances of each case. It follows that an Applicant whose conduct, as disclosed on the processes, is tainted by bad faith or mischief ought not to be assisted by the Court's discretion, as to do so would offend the fundamental tenets of justice.

20. Ultimately, when this Court undertakes to exercise its review jurisdiction, the circumstances must be such as the ends of justice dictate while also ensuring that litigants do not flood the Court with unwarranted recourse to the review jurisdiction.

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EVALUATION:

21. Having set out the applicable law above, we shall now delve into a discussion of the application on its merit.

22. We note that in this application for review, neither the Applicant nor the Respondent attached or exhibited the full reasoning of the Court to the processes filed.

23. The Applicant only attached the short ruling of the Court dated 2nd December 2025 wherein the Court held as follows:

> *"By a majority of 3:2, Mensa Bonsu JSC and Adjiei Frimpong Dissenting. The application for certiorari is granted. The order of the High Court Tema dated 5/9/2024 is to be brought up to this court for quashing. It is accordingly granted. Full reasons to be filed in the registry of the court by 28/1/2026"*

24. Even though the Applicant failed to attach the full reasoning of the Court below to the present motion, this Court heard the motion and on the basis of the processes filed and arguments canvassed, granted the application and by so doing, reviewed the decision of the ordinary bench.

27. It is evident that the Court is invited to exercise its review jurisdiction without the benefit of the full reasoning underpinning the decision of the Ordinary Bench. This Court's ruling was delivered on 2nd December 2025, with the Court indicating that its full reasons would be made available on 28th January, 2026. The present application, having been filed on 30th December 2025, necessarily preceded the release of those reasons; accordingly, the Applicant could not, at the time of filing, have annexed the ruling to the processes before this Court.

28. In those circumstances, the proper procedural recourse would have been for the Applicant, upon the subsequent availability of the ruling, to seek leave to

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file a supplementary affidavit exhibiting the reasoned opinion of the Court, thereby affording the full Bench the opportunity to scrutinise same in determining whether the threshold for the exercise of the review jurisdiction had been met.

29. Absent such a step, this Court is left to consider the application without the benefit of the reasoning of the Ordinary Bench; a position which risks undermining a proper evaluation of whether the invocation of the review jurisdiction is justified, or whether it amounts, in substance, to an impermissible rehearing of the matter. That said, since the ruling of the Ordinary Bench remains a public record, judicial notice has been taken of same for the purposes of this opinion.

30. With the utmost respect to my venerable brothers and sister in the majority, it is apparent that their evaluation of the instant review application was similarly constrained by the Applicant's failure to exhibit the full ruling of the Ordinary Bench. Deprived of the benefit of the actual reasoning and full terms of the decision sought to be reviewed, the majority was left largely to infer the scope, content, ratio and effect of the ruling from the characterisations and commentary contained in the Applicant's affidavit in support.

31. Regrettably, this omission appears to have led the majority into proceeding upon a mistaken apprehension of the true ratio, import and effect of the decision of the Ordinary Bench. In the absence of the full reasoning, the Court was effectively left to speculate and conjecture as to the precise basis upon which the Ordinary Bench arrived at its decision. Consequently, it would appear that the majority ultimately embarked upon a review of a decision materially different in ratio, scope, content, and effect from the one actually rendered by the Ordinary Bench. The ratio attributed to the Ordinary Bench and on the basis of which the majority concluded that a fundamental error had been occasioned is materially different from the ratio enunciated in the reasoning of the Ordinary Bench.

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32. In our respectful view, had the full ruling and reasoning of the Ordinary Bench been placed before the Court and subjected to careful scrutiny, the majority may well have arrived at a different conclusion.

33. In order of properly evaluate this application however, it is necessary to reproduce herein, relevant extracts of the majority opinion of the Ordinary Bench as follows:

> *"Having obtained the Order for the Arrest of the Vessel by motion ex parte, the affected parte must be granted an opportunity to be heard before crystalising the order into one that subsists until the final determination of the suit or for the period of one (1) year as warranted by Order 62 of C.I 47. That is to say, an order made ex parte must afford the affected party the right to have the matter determined on notice at a future time by way of a repeat application by the beneficiary of the order, or upon an application by the person affected to have same set aside, or upon an invitation to the affected persons to show cause why the order should not be made to subsist for a period of one (1) year.*
>
> ...
>
> *The arrest of a vessel consequent upon a warrant obtained ex parte must be done in ways that do not foreclose the right of an interested party to be heard in respect of the vessels continuous detention, so that, even where owners of a vessel under arrest chooses to post bail for its immediate release, the warrant of arrest can still be challenged at a future date in order to discharge the bail bond that may have been unjustifiably obtained.*
>
> ...
>
> ***The exigencies associated with vessels generally and the risk of rendering an action moot should a vessel which is a subject***

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matter of a court suit leave the jurisdiction makes it understandable that courts may resort to Order 19 rule 3 of C.I 47 and in appropriate and justifiable cases, entertain such applications for a warrant of arrest ex parte and make such orders as may be necessary to secure the rights of the parties. This recourse does not deviate from the reasoning and logic behind ex parte applications. Nonetheless, in order to do justice to arrested vessels, there ought to be an opportunity afforded affected persons to be heard before a court may confirm such warrant of arrest which per the rules are to subsist for a period of one (1) year from the date of its issuance.

Whilst the sense of urgency that may characterise the issuing of ex parte orders for the arrest and detention of a vessel is not lost on us, we think that a more progressive approach would be to afford the vessel owners or persons affected by the said ex parte orders an opportunity to be heard, by way of a repeat application on notice to affected persons or a caveat permitting such affected persons to apply to have same set aside or even to show cause why the order for the seizure ought not be made in the first place, or pendente lite or for the period of one year. This would afford the trial judge an opportunity to hear both sides before confirming warrants of arrest which per the rules have a lifespan of a year from the date of their issuance.

We are therefore of the considered opinion that whilst the Court was initially, within its jurisdiction to entertain the motion ex parte, the court exceeded its jurisdiction when it made its ex parte orders to subsist pending the final determination of the suit without affording the Applicants any opportunity, whatsoever, to be heard."

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31. A cursory consideration of these excerpts from the decision of the Ordinary Bench demonstrates that the present application is fundamentally misconceived. At no point did the Court hold that vessels cannot be arrested by motion *ex parte*; on the contrary, the majority expressly acknowledged that, in maritime actions, the exigencies of the case and the imperative of preserving the *res* may justify the arrest of vessels by *ex parte* applications.

32. The true crux and *ratio* of the decision of the Ordinary Bench, however, was that such *ex parte* orders for the arrest of vessels must be structured so as not to deprive an affected party of a reasonable opportunity, at a subsequent stage, to contest same or apply for the setting aside of the order upon sufficient grounds. It is this safeguard, ensuring procedural fairness without undermining the efficacy of maritime arrest, that lies at the heart of the Ordinary Bench's decision.

33. The present application, quite clearly, is premised on a mistaken belief that the ordinary bench held that Courts are prohibited from entertaining *ex parte* applications for the arrest of vessels. There can be nothing further from the truth than this. The Ordinary Bench was of the clear and unambiguous opinion that the orders issued for the arrest of the vessel ought to have been such as would

> *"afford the vessel owners or persons affected by the said ex parte orders an opportunity to be heard, by way of a repeat application on notice to affected persons or a caveat permitting such affected persons to apply to have same set aside or even to show cause why the order for the seizure ought not be made in the first place, or pendente lite or for the period of one year. This would afford the trial judge an opportunity to hear both sides before confirming warrants of arrest which per the rules have a lifespan of a year from the date of their issuance."*

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34. Similarly, the allegation of the Applicant of a miscarriage of justice resulting from the decision of the ordinary bench is not borne out of the record. This is evident from the decision of the Ordinary Bench where the Court recounted a deposition of the Applicant (then, Interested Party) as follows:

> *" It was deposed that after the High Court, Tema issued the above orders for the arrest and detention of the 1st Applicant, the ship sailed out of the waters of Ghana on 16th September, 2024 and was found in the Nigerian waters. The Applicant had to cause the arrest of the vessel by an order of the Federal Court of Nigeria issued on 30th September, 2024 by a motion ex parte."*

35. Therefore, on the Applicant's own showing, the orders of the High Court were not complied with by the Respondents who sailed the vessel out of the territorial waters of Ghana. To therefore suggest that the decision of the Ordinary Bench has occasioned the Applicant a miscarriage of justice is far fetched and disingenuous. In any case, nothing precludes the High Court from making orders for the arrest of the vessel by motion ex parte subject to a caveat that the affected party may apply to have same set aside upon reasonable grounds.

36. We note that the Applicant has argued that the provisions of our Civil Procedure in respect of ex parte applications are not applicable to maritime actions and that recourse ought to be made to the practice in Ghana as are applicable in foreign jurisdictions. Apart from the fact that this argument is repetitive as same was canvassed before and considered by the Ordinary Bench; same cannot be justified having regard to our applicable law.

37. In Ghana, the practice and procedure of the Courts are governed primarily by the applicable Rules of Court; accordingly, recourse to the laws or procedural practices of foreign jurisdictions arises only where there is a *lacuna* in our own rules. It is needless to say that the procedural framework of our Courts cannot be subjected to validation by reference to foreign practice where clear

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provisions exist in our Rules of Court. The governing regime in this regard is the High Court (Civil Procedure) Rules, 2004 (C.I. 47). It is therefore only in the absence of a specific provision within C.I. 47 that the Courts may justifiably look to the practice of other common law jurisdictions for persuasion.

38. In that regard, Order 82(1) of C.I. 47 provides as follows:

> *"Where in respect of any matter or procedure,* ***no provision*** *is made by this rules, the practice for the time being in force in any common law country may where convenient be applied'*

39. Implicit in the above is the fact that this Court has no business resorting to a practice in other countries where our rules make express provision for a specific matter. In this case, it cannot be soundly urged on this Court that C.I 47 makes no provisions in respect of applications generally or *ex parte* applications in particular. It cannot also be reasonably contended that there is a *lacuna* in respect of the rules of procedure on how motions *ex parte* ought to be made or entertained. Order 62 of C.I 47, which is, specifically, in respect of maritime actions, permits an application to be made for the arrest of a vessel. The said order is however silent on whether the application ought to be on notice or ex parte.

40. In our view, the silence in Order 62 was not inadvertence on the part of the Rules of Court Committee but rather a deliberate restraint from unnecessary repetition as there are ample rules on applications that may be entertained on notice as well as those that may be entertained *ex parte*.

41. Like the trial Court, the Ordinary bench was of the opinion that motions *ex parte* for the arrest of vessels in our territorial waters is the appropriate way to go due to the urgency with which vessels must be prevented from leaving our territorial waters *pendente lite*. The point of disagreement or diversion of the Ordinary Bench was in respect of the duration of such orders and an

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accommodation in such orders to allow affected parties an opportunity to be heard at a future date.

42. As demonstrated in the ruling of the Ordinary Bench, the admiralty laws of other common law countries like Nigeria does not permit the arrest of a vessel *pendente finis lite* without an avenue to an affected party to obtain immediate redress. The Ordinary Bench noted in the majority opinion as follows:

> *"In Nigeria, the mischief occasioned by the ex parte nature of orders for arrest warrants of vessels is cured by order 10 rules 1, 2 and 4 of the Admiralty Jurisdiction Procedure Rules, 2023 which permits the setting aside of Orders for Arrest Warrant to be made as follows:*
>
> *"1.—(1) A party to a proceeding may apply to the Court for the release of a ship or other property that is under arrest in the proceeding.*
>
> *(2) On an application under sub-rule (1) of this rule, the Court may order the release from arrest of the ship or other property as in Form 12 on such terms as are just.*
>
> *"4.—(1) Where the writ of summons is served simultaneously with an order for the arrest of any ship or other property, an interested person may apply for the release of the arrested ship or other property and the Court shall, **within 3 days** of filing and service of the application for release of the said ship or other property entertain the said application."*
>
> *In contrast, there are no similar provisions in our admiralty rules in C.I 47 in general or Order 62 in particular.*
>
> *The arrest of a vessel consequent upon a warrant obtained ex parte must be done in ways that do not foreclose the right of an interested*

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party to be heard in respect of the vessels continuous detention, so that, even where owners of a vessel under arrest chooses to post bail for its immediate release, the warrant of arrest can still be challenged at a future date in order to discharge the bail bond that may have been unjustifiably obtained."

43. We cannot, under the guise of conforming to the procedures of other jurisdictions, subject ourselves to a rigid and inflexible regime which disregards the safeguards those same jurisdictions have developed to mitigate the hardship occasioned by an unqualified application of such procedures.

CONCLUSION:

44. It is for these reasons that we are firmly of the view that the present application for review is wholly without merit.

45. The Applicant has, in substance, invoked the review jurisdiction as a surrogate appellate recourse in an attempt to relitigate matters that were fully canvassed before the Ordinary Bench but did not find favour. In our considered view, no exceptional circumstances whatsoever have been demonstrated to warrant a departure from the decision of the Ordinary Bench.

46. Accordingly, the application fails and is hereby dismissed.

(SGD.) E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

(SGD.) A. LOVELACE-JOHNSON (MS)
(JUSTICE OF THE SUPREME COURT)

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