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# **SUPREME COURT STRIKES DOWN ORDER 66 RULE 3 OF THE HIGH COURT CIVIL PROCEDURE RULE, 2004 (C.I. 47)**

**Case Title:** The Republic v. High Court (Commercial Division), Accra; Ex Parte Yvonne Amponsah Brobbey; Gladys Nkrumah, (Interested Party).  
**Suit No.:** Civil Motion No. J5/82/2022  
**Date:** 1st February 2023

## **A. RELEVANT FACTS**

The Interested Party filed an Originating Notice of Motion for an order of the Honourable Court to punish the Applicant for intermeddling in the estate of one Richard Nkrumah who died intestate in October 2019. The Application was brought under Order 66 Rule 3 of the High Court Civil Procedure Rules, 2004. Upon service on her of the motion, the Applicant filed a notice of preliminary legal objection to the application and contended that giving the fact that intermeddling under Order 66 Rule 3 is a criminal offence, it cannot be prosecuted by a private citizen through a motion in civil proceedings; that the Rules of Court Committee acted in excess of its jurisdiction when it purported to create a criminal offence under Order 66 Rule 3 of C.I. 47; and that the High Court lacked the necessary jurisdiction to entertain an application to punish for intermeddling in the manner prayed for by the Interested Party.

## **B. DECISION OF THE HIGH COURT**

The High Court dismissed the preliminary legal objection and held that an action to punish for intermeddling may be commenced by civil proceedings under Order 66 Rule 3 and therefore, it had the jurisdiction to hear the Interested Party's application. The Applicant invoked the supervisory jurisdiction of the Supreme Court for an order in the nature of certiorari to quash the decision of the High Court (Commercial Division), Accra, by which order, the trial High Court dismissed the preliminary objection to its jurisdiction to entertain the application.

### **C. DECISION OF THE SUPREME COURT**

The Supreme Court held in part that “...the ruling of the High Court (Commercial Division), Accra wherein it held that it had jurisdiction to entertain and enter into an enquiry of an alleged offence of intermeddling pursuant to Order 66 Rule 3 of C.I 47 is a clear, obvious, and patent error of law, in the context of the express indication of the Constitutional basis of C.I 47 in its preamble...From the clear reading of Article 157(2), the mandate of the Rules of Court Committee as exercised by them in the promulgation of C.I. 47 is limited to the making of rules to regulate the practice and procedures of the Court. Such rules made must strictly be confined to the remit of rules of practice and procedure as against substantive legislation that vests jurisdiction in courts. The power to make rules of practice and procedure conferred on the Rules of Court Committee must be distinguished from the power to enact substantive legislation... In a proper sense, Section 17 of PNDCL 111 ought to be deemed as the offence creating law in matters of intermeddling...”

### **D. CONCLUSION**

From the holding of the Supreme Court in this case, we can learn the following.

1. To the extent that Order 66 Rule 3 purports to create the criminal offence of intermeddling, it is a substantive legislative provision, and therefore falls outside of the remit of the Rules of Court Committee under Article 157(2) of the Constitution.
2. As noted by the court, any rule promulgated pursuant to Articles 157(2) and 33(4) of the Constitution that goes beyond the scope of rules of practice or procedure would be contrary to the enabling provisions and therefore ultra vires the Constitution.
3. In all appropriate cases, the relevant offence creating provision for the purpose of intermeddling should be construed to be Section 17 of PNDCL 111 and not Order 66 Rule 3. Also the Court noted that , in accordance with Article 88(3) of the Constitution, it is only the Attorney General who may initiate prosecutions for the offence of intermeddling.