

IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA – GHANA

AD - 2022

CORAM: *OFOE, J.A. (PRESIDING)*

MERLEY WOOD, J.A.

BERNASKO ESSAH, J.A.

SUIT NO. H1/222/2020

27TH APRIL, 2022

NII KOTEI DZANI

HOUSE NO.7DR TAGOE ROAD - APPLICANT/APPELLANT

OFF DZANI ASHIE AVENUE

EAST LEGON

VRS

1. THE RECEIVER

IDEAL FINANCE LTD

- 1ST RESP/RESPONDENT

(IN RECEIVERSHIP)

ACCRA

2. THE ECONOMIC AND ORGANIZED - 2nd RESPONDENT

CRIME OFFICE

ACCRA

JUDGMENT

V. D. OFOE, J.A.

This is an appeal against the ruling of the High Court dated the 7th of February 2020 dismissing the case of the Applicant/Appellant. The Appellant sought from the High Court an order to set aside the invitation extended to him by the 2nd Respondent and all consequential matters arising therefrom. He further sought a restraining order against the 2nd Respondent from disrupting the activities of the Appellant without due process of the law. These reliefs are on the motion paper filed on the 25th November 2019. In his supporting affidavit he sought also an additional order to restrain the 2nd Respondent from conducting the illegal investigations as well as doing anything that will breach his guaranteed constitutional and human rights. In effect he is asking for:

- 1. an order to set aside the invitation extended to him by the 2nd Respondent, including all other matters arising from the said invitation*
- 2. An order restraining the 2nd Respondent from disrupting his activities without lawful excuse and due process of the law*

3. *An order restraining the 2nd Respondent from conducting the illegal investigations*
4. *Or doing anything that will breach his guaranteed constitutional and human rights*

By these reliefs sought by the Appellant he has the duty to convince the court why the whole statutorily established state investigative organ, the 2nd Respondent ((EOCO) should have its invitation, to enable investigations commenced against him, set aside. He has the further duty to convince the court that his lawful activities are being interrupted by the 2nd Respondent or there is attempt to do so. Also Appellant has a duty to prove that there is illegal investigation going on concerning him by the 2nd Respondent and therefore it should be restrained from any further investigations. Are there any constitutional rights of the Appellant which have been breached or being breached by the 2nd Respondent, EOCO?

For a better understanding of the case of the Appellant and also a better understanding of this opinion we provide a brief of the case of the parties.

The 1st Respondent is the receiver of Ideal Finance Ltd which is in receivership on the orders of the Bank of Ghana acting in accordance with Section 123 of Act 930, the *Banks and Specialized Deposit-Taking Institution Act, 2016*. The 2nd Respondent is a statutory investigative body established under Act 804, *Economic And Organized Crime Act, 2010 (Act 804)*

Before the High Court it was the complaint of the Appellant per his motion on notice and supporting affidavit filed on the 25th of November 2019 that he was invited by the 2nd Respondent through a letter his office received on the 11th of November 2019 to appear before the Executive Director of the 2nd Respondent on the 13th of November 2019. Since

he had prior engagements on this date, he responded to the letter requesting a change of date. Despite this response on the 13th of November 2019, he had a call from his office informing him a staff of the 2nd Respondent was in the office requesting to see him. He spoke on phone to the staff who wanted to know his location but he refused to disclose his location, but on the following day 14th November, 2019 in the company of his lawyer, he appeared at the offices of the 2nd Respondent. On this date he was cautioned and told to give a statement concerning GH¢23m paid to a client of Ideal Finance, land of size 200 acres he is alleged to have stolen, and that he had unlawfully used the funds of Ideal Finance to build his residence-Camp Tsatser. He responded accordingly to these allegations.

He complains about the 2nd Respondent's investigation processes where he was compelled to wait from 10am to 3pm before he was attended to in the EOCO offices. He was thereafter sent to the Ministries Police station where he left after 6pm.

He has a further complaint of what he described as unprofessional conduct of the 2nd Respondent inviting and giving his pictures to the Press who did a wide publication of him in the dailies and other social media as if he is an adjudged criminal. Appellant exhibited the publications as NKD 2, 3, 4 and 5. Even though he was granted bail in the sum of GH¢10m which was subsequently reduced to GH¢5m he was detained at the Ministries Police Station till late in the evening when he was able to satisfy the bail terms.

The second leg of his complaint questions why the 1st Respondent as a Receiver should make a referral of findings he has made in the performance of his duties as a receiver to the 2nd Respondent to investigate, which had led to Appellant's invitation and subsequent invocation of criminal processes in the offices of the 2nd Respondent. It is the case of the Appellant that the Receiver in his functions was obliged by the dictates of Act

930 to notify the Bank of Ghana if in his assignment as a Receiver he had reason to believe that any officer of the company had been engaged in any criminal or fraudulent activities. The Receiver is after that to adopt a civil suit to claim damages and restitution against the offender. It is his contention that the Receiver's referral of whatever he had found in his receivership of Ideal Finance to the 2nd Respondent, instead of the Bank of Ghana, was therefore illegal. All consequent actions of the 2nd Respondent on the bases of the referral were also illegal and void, Appellant contended.

The 1st Respondent has a simple answer to the complaints of the Appellant. In substance it is that it is within its legal mandate to refer anybody to the appropriate authorities for investigations if in the performance of his duties it comes across any act bordering on the commission of a crime in relation to the bank. It is his contention that the referral of the Appellant to the 2nd Respondent for investigation was within the contemplation of Act 930 and cannot be described in any way as illegal.

The 2nd Respondent also denied the allegations of the Appellant. In response to the allegation that he was detained and had to leave the custody of the 2nd Respondent late in the afternoon, it is the response of the 2nd Respondent that Appellant appeared with his lawyer on the 14th of November at the time he was not expected in its office and this was at the time the investigators were on other assignments. He therefore had to wait for their arrival, hence the delay. It is its case that all other processes Appellant went through were normal and usual of investigatory processes. Appellant was eventually granted bail but because he could not honour the bail terms immediately his release was delayed. It admits the referral but it is its case that through its intelligence reports it also got to know the Appellant was involved in money laundering, stealing, defrauding by false pretense, and other serious offences. They had to commence investigations pursuant to Sections 2 and 3 of the Economic and Organized Crime Office Act, 2010 (Act 804). It maintains that

the investigations of the Appellant is within its core functions and what the Appellant was seeking from the court is to gag the 2nd Respondent from performing its statutory function, the application should therefore be refused by the court.

The Appellant's further case is contained in his supplementary affidavit and is captured in paragraph 8 as follows:

"8. That I am further advised by my counsel and verily believe the same to be true that the Banks and Specialized Deposit Taking Institutions Act, Act 930 is a special Act with provisions that conflict with provisions in the Economic and Organized Crime Act, Act 804 and therefore the general investigative, arrest and search powers of the 2nd Respondent is trumped by Act 930 and the reference from the 1st Respondent to the 2nd Respondent to conduct investigations for suspected criminal activity which has resulted in the violation of the rights of the Applicant is null and void"

What we understand the Appellant to be contending here is that Act 930 is a specialized Act that should be given prominence over the EOCO Act 804 which is an Act for general criminal investigations

The substance for determination in this interlocutory appeal before us is whether the Appellant on the affidavit evidence placed before the High Court was entitled to the courts discretion granting him the orders sought for. From the facts of this case the exercise of this discretion should be based first and foremost on the determination whether the 1st Respondent had any legal mandate to refer the Appellant to the 2nd Respondent for investigations and whether the 2nd Respondent had the legal right to entertain same. If there is no such authority in the 1st Respondent making the referral and the 2nd Respondent to receive then strong reasons will be needed to stay the hands of the

court from granting the orders sought for by the Appellant. On the other hand where authority exists entitling referral of the Appellant to the 2nd Respondent for investigations and the 2nd Respondent has the statutory mandate to investigate the alleged offences, then circumstances entitling the Appellant for the restraining order will have to be provided by the Appellant. It is then that factors that need consideration as spelt out in authorities like *Ransford France (No1) vrs Electoral Commission & Attorney General (2012) 1 SCGLR689* and *Welford Quacoo vrs Attorney General & Another (2012) 1 SCGLR259* come up for consideration.

There is also to be considered in this appeal the complaint of alleged breach of privacy in the investigative procedure adopted by the 2nd Respondent when the Appellant appeared before it.

The legal principle that when a body is created by statute and it is given a statutory duty to perform, the court should be cautious not to use injunctions to prevent it from performing its statutory function except where the body has improperly exercised its statutory discretion, did not escape the trial judge. For this proposition she relied on the cases of *Republic vrs High Court (Fast Track Division Accra): Ex parte National Lottery Authority (2009) SCGLR 39*, *Attorney General vrs Commission on Human Rights and Administrative Justice (1999-2000)1GLR 358*.

She alluded also to Article 296 of the 1992 Constitution that provides guidelines on the exercise of discretionary power and considered the rights and powers of the 1st Respondent as provided for under section 127 of Act 930 (Banks and Specialized Deposit Taking Institutions). She considered the functions of the 2nd Respondent as spelt out in section 2 of Act 804, The Economic Crime Office Act, ACT 804 and concluded that the Appellant had not canvassed anything that has demonstrated a want of, excess of or the

breach or abuse of statutory powers on the part of both Respondents that merit grant of the restraining order. To the trial judge the fact that Appellant was kept at the 2nd Respondent's office and granted bail which was executed late in the afternoon was not sufficient evidence that he was harassed or any rights of his breached. She considered these processes towards grant of bail the usual investigative processes in criminal investigation that do not amount to harassment or a breach of any rights of the Appellant.

It is these conclusions and the reasoning that has aggrieved the Appellant he is seeking by the following grounds of appeal a setting aside of the judgment of the trial High Court.

"a. The court committed an error of law and occasioned a miscarriage of justice when it gave weight to irrelevant and/or unproved matters and effectively sanctioned the conduct of the Respondents when the Appellant was arrested

Particulars of error

- i. By failing to take into consideration the capricious exercise of discretion by the 2nd Respondent when it treated the Applicant as a criminal and caused publications to be made about him, in breach of his right to presumption of innocence*
- ii. By failing to take into account the circumscribed mandate of the 1st Respondent under Act 930 which does not include reference to any other body such as the 2nd Respondent to exercise its coercive powers of the State under Act 804*

b. The judgment is against the weight of evidence"

Arguing grounds (i) of the particulars of error, Counsel for the Appellant submitted that the 2nd Respondent failed to give respect to the constitutional provision in Article 19(2) which presumes the innocence of the Appellant until proved guilty and proceeded in its investigation as if the Appellant was a common criminal. The period he was compelled to wait and the processes towards bail, including sending him to the Ministry Police Station were all in breach of this constitutional provision that presume he was innocent.

Article 23 of the 1992 Constitution provides that administrative bodies shall act fairly and reasonably and comply with the requirements imposed on them by law. The 2nd Respondent was therefore obliged to be discreet and confidential in dealing with persons before it. It is the submission of counsel that the 2nd Respondent breached this duty by the release of information from the interview to third parties, specifically the Press, and release of his pictures captured during the interview it had with the 2nd Respondent to the Press which widely carried the results of the investigations and his pictures to the public.

In response to the Appellant's reference to Article 14 of the Constitution, counsel for the 1st Respondent argues that the Article provides that a person arrested upon suspicion of a criminal offence can be detained up to 48 hours. In this case the Appellant was released within the same day he appeared before the 2nd Respondent on fulfilment of the bail conditions his complaints are therefore misconceived.

We have examined the processes filed and the submissions by the Appellant in respect of this allegation of breach of Article 14, his right to privacy and the duty of confidentiality owed by the 2nd Respondent to the public and we are in agreement with the trial judge that there was no clear evidence of capriciousness, oppression or abuse of the powers of the 2nd Respondent in the investigation processes the Appellant went through at the offices of the 2nd Respondent. We searched for evidence of harassment of the Appellant

but found none. However we think there was some level of unreasonableness in certain steps taken by the 2nd Respondent. It is its explanation that the Appellant responded to its invitation on a day he was not expected by the 2nd Respondent and this accounted for the delay in commencing the investigation processes since the investigators to attend to him had gone on other assignments. We find the explanation of the 2nd Respondent in the circumstances of this case not reasonable. In the first place what was it that made it not a proper choice for the 2nd Respondent to request the Appellant to come on another day if its officers were out on assignments? That the Appellant will escape? We ask this question because firstly, the Appellant came to the offices of the 2nd Respondent himself even though he knew the allegations made against him. Secondly, the 2nd Respondent did not consider the Appellant a flight risk so they did not arrest him immediately they had information of the alleged offences but wrote to him on the 11th November 2019 to come to the offices of the 2nd Respondent in two days time on the 13th of November 2019. In the invitation letter they stated what the alleged offences are. These allegations did not provoke any attempt by the Appellant escaping the jurisdiction but was in the country on his way to attend to official assignments as a Council of State member on the 13th of November 2019. In these circumstances when such a person had appeared voluntarily in the 2nd Respondent's office was it reasonable to hold him for hours with the reason that its officers were attending to assignments outside so Appellant should wait all that number of hours? From 10am, it was at 3pm that he was informed he was under arrest for stealing and granted bail in the sum of GH¢10m cedis, which was reduced to GH¢5m cedis to be justified. Offices close by 5pm. Was the 2nd Respondent officers expecting the bail conditions to be satisfied within day light or in the dark and which investigator was to wait after working hours to supervise the execution of the bail bond after office hours? The bail was to be justified. No doubt the Appellant was left at the mercy of the

investigator who may choose to stay after office hours to supervise the execution of the bail or leave for home for the Appellant to spend the night at the Ministries Police Station. Definitely a tense and threatening situation was created for the Appellant. Bail conditions had to be bargained for from GH¢10m cedis to GH¢5m cedis. It is not surprising the Appellant complains he was treated like a common criminal. It is always important to keep in mind that until proved guilty an accused person is innocent and should therefore be treated as such. It is at this stage of the investigation processes of the 2nd Respondent we find the unreasonableness. It is not enough to say that the investigating agencies with powers of arrest have 48 hours within which to keep a suspect. That definitely is a backward investigating mentality. The 48 hours period has its purpose and it does not include freedom of the 2nd Respondent officers to breach all sense of decency and display unreasonableness. If it is not to intimidate the Appellant what else could it be, carrying Appellant to the Ministries Police Station for bail to be executed, when bail is a documentary process that can be handled in the offices of the 2nd Respondent. Of course where it becomes obvious that the bail conditions cannot be satisfied then the choice of a police station becomes unavoidable if the 2nd Respondent has not its own facilities for keeping suspects.

The other area of concern for the Appellant is the lack of confidentiality in the processes adopted at the beginning stages of the investigations. Why should the investigation results including his pictures which were taken when he appeared before the 2nd Respondent be given to the Press? It is Appellant's counsel's submission that it is worth the 2nd Respondent noting that it is a specialized investigative body expected to operate in most cases discreetly, as the circumstances will permit. It has the jurisdiction to deal with very serious offences it is most likely to have citizens of high profile before it. The expectation is therefore that it will adopt the best practices in its investigation procedures

so as to avoid embarrassment and trial by public opinion or the Press, of persons before them. That will be a fulfillment of the constitutional provision of innocence until proved guilty, counsel emphasized. This area of investigations introduces a vexed question. Vexed in the sense that the democratic constitutional dispensation we are operating, with the attendant myriads of laws in operation, will have to be considered exhaustively to determine whether investigations like that of the 2nd Respondent should be for public consumption and if so at what point and to what extent? We have read Section 71 of the EOCO Act, Act 804 referred to by counsel for the Appellant. Even though the provision on confidentiality is directed at officers of the 2nd Respondent it sounds reasonable to expect the 2nd Respondent in all its operation to observe some level of confidentiality in its investigative processes. It has control of its investigations, when and how, and therefore capable of keeping results of information confidential. For the press to have pictures of the Appellant during his interrogation cannot be applauded as a hall mark of confidentiality. For what value did the 2nd Respondent release the picture of the Appellant to the press? Press trial? We ask another question, could the Appellant not have appeared before the 2nd Respondent without press notification? What will be lost to the 2nd Respondent if its investigations are not publicized until a decision is taken to charge the suspect? These are questions the 2nd Respondent needs to examine and find appropriate answers for.

Having said that the more important question we need to answer is should the 2nd Respondent's unreasonableness in handling the Appellant when it came to its offices as found in this opinion and leakage of the investigations results and Appellant's picture be sufficient to attract the order sought by the Appellant from the trial court? In other words should these omissions be sufficient grounds for granting the order setting aside the whole invitation of the Appellant by the 2nd Respondent and also granting a restraining

order against the 2nd Respondent from continuing the investigations and thereby truncating the whole investigation processes? We do not think so. We do not think so because not only are these breaches not statutory breaches but we consider them the types that only need to be addressed by the 2nd Respondent so as to strengthen the image and integrity of the 2nd Respondents operations before the public.

A weightier case of the Appellant on the other leg of the appeal is better captured by Paragraphs 50, 51 and 52 of the Appellant's submission. They provide:

"50. The aim of the provisions under section 123 to 139 is to preserve the property of the institution and secure all assets for the creditors. Neither the receiver nor institutions such as the 2nd Respondent is mandated to cause the arrest and incarceration of anyone for an alleged commission of a crime under Act 930.

51. Further, section 137 of Act 930 stipulates the procedure which a Receiver is to abide by if he has a reason to believe that any officers of a deposit taking institution has engaged or are engaging in a criminal or fraudulent activity in relation to the business of that deposit-taking institution.

52. That to notify the Bank of Ghana immediately and institute a civil action to claim damages and restitution. The receivers mandate does not include making or submitting reports to EOCO (the 2nd Respondent) for investigations to be conducted into officers of the Institution for which the receiver was appointed"

The contention of the Appellant is that Section 137 provides for what the receiver should do if he notices any criminal or fraudulent activity of specified persons in relation to his receivership. He is to notify the Bank of Ghana to be followed by the issue of a civil action and not to refer the matter to the EOCO, the 2nd Respondent as happened in this case. We quote Section 137

Section 137 of the Act provides

“Where a receiver has sufficient reason to believe that shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in a criminal or fraudulent activity in relation to the business of a bank or a specialized deposit –taking institution, that receiver shall

(a) Notify the Bank of Ghana immediately and

(b) Institute a civil action to claim damages and restitution”

It is reliance on this section that the Appellant’s counsel argues that the receiver, i.e. 1st Respondent, had no legal right to have referred the matter to the EOCO for it to have invoked its investigative powers of arrest. It is the submission of counsel that by the Banks and Specialized Deposit Taking Institutions Act, 2016 (Act 930), the Bank of Ghana can appoint receivers for endangered Banks and such appointed receivers who are accountable to the Bank of Ghana are to operate within the mandate provided for it by statute. He contended that by this Act 930 there is a laid down procedure that the receiver is enjoined to follow if he has reason to believe that any officer of a deposit taking institution has engaged in a criminal or fraudulent activity in relation to the business of that deposit taking institution. Making reference to Sections 123 to 139 of Act 930 he emphasized that nowhere is it provided for a referral to any investigative body like the 2nd Respondent in the performance of his functions as a receiver. He reports to the Bank of Ghana and additionally institute civil action to claim damages and restitution from the affected officers.

1st Respondent’s counsel in his response makes reference to Section 123 of Act 930 and submits that the 1st Respondent has been appointed and by law is to take control of the assets and liabilities of the specialized deposit taking institution. By Section 126 he is to be

accountable to and take directives, instructions and guidelines from the Bank of Ghana. This section according to counsel is a reporting provision which does not prevent the 1st Respondent from making any referral of criminality to any organization provided it will inure to the effective and efficient management of the distressed institution. He refers further to Section 127(4)(b) which confers on the 1st Respondent the power to take any action necessary for the efficient liquidation of the specialized deposit-taking institution. In the performance of his functions, 1st Respondent found that the Appellant could not account for GHS 700m under his management, he was found to have diverted some funds into other companies in which he has personal interest and diverted huge sums of the distressed institution into his personal accounts and accounts of other companies which he owns or has interest. According to counsel it is these preliminary findings which compelled the 1st Respondent to seek the assistance of the 2nd Respondent. There is nothing in any law, particularly Act 930 that prohibits the 1st Respondent from referring any findings to the 2nd Respondent. The reference is a fair and reasonable application of the law that has occasioned no breach of any law. Concluding his submission counsel reminded us to note that both Respondents are public bodies whose activities should be enjoined only when a special case is made and the courts should be slow in granting any restraining orders that will clog the exercise of such functions.

The 2nd Respondent relies on its establishment instrument, Economic and Organized Crime Office Act, 2010, (Act 804) and contends that by this Act it has the jurisdiction to investigate the offences referred to it by the 1st Respondent and by the same Act it is enjoined where necessary to enter into collaboration with any other body to achieve its overriding objective. It is in this light it accepted the referral from the 1st Respondent to investigate the allegations made against the Appellant. Just like the 1st Respondent it argues against the grant of the application of the Appellant drawing the courts attention

to the legal authorities that require of courts to be cautious in granting restraining orders against Public Institutions.

That Act 930 is a Specialized Act providing for the supervision and control of Banks and specialized deposit taking institutions is not in doubt. By its Section 3, the Bank of Ghana is made the overall supervisory and regulatory authority in respect of all deposit taking institutions. The Act provides for matters of registration, licensing and qualification of operators of such institutions. It has also detailed provisions conferring on the Bank of Ghana the power to establish monitoring structures, auditing and where there are breaches by any of these deposit taking institutions of any provisions of the Act the type of remedial measures and punishment to be exacted by the Bank of Ghana. There are several provisions instituting an in house punishment for breaches of some of the provisions of the Act in the form of administrative penalties. Some of these can be found in Sections 19(6), 33(2), 35(5), 36(6), 39(1) 40(4), 706(2). The offender pays some monies calculated in the form of penalty units to the Bank of Ghana. It is noteworthy that despite the legislative policy of seeking to control breaches of the statute with these out of court none criminal sanctions the legislature confers on the Bank of Ghana the discretion in certain situations to resort to the criminal courts for appropriate sanctions. This is found in Section 103 of the Act. Contravention of any provision of the Act, regulations or directive issued under the Act and the Bank of Ghana is entitled to invoke the criminal process. But the generality of the Act seeks non- prosecution remedial measures administratively by the Bank of Ghana

It is in pursuance of the Bank of Ghana's overwhelming supervisory and control mechanism provided by the Act that Section 123 of the Act provides additionally for the appointment of a Receiver by the Bank of Ghana where a deposit taking institution is insolvent or is likely to become insolvent within the next 60 days. By Section 123(3) the

receiver shall take possession and control of the assets and liabilities of the bank or specialized deposit taking institution. Reading the provisions of Sections 123 to 138 one does not fail to come to the conclusion that apart from the Bank of Ghana's oversight role, the receiver is the sole body entrusted in total with the operation of the institution in receivership. The oversight role of the Bank of Ghana demands of the receiver to act in accordance with the directives, instructions and guidelines given by the Bank of Ghana. This is provided for by Section 126. But by Section 127 however on his appointment the receiver shall be the sole legal representative of the bank or the special deposit taking institution and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialized deposit taking institution. Section 127(3) provides in detail the powers and rights of the Receiver clearly indicating that he is the sole controller of the institution for which he has been appointed. It is amidst such powers of the Receiver that Section 137 comes in for consideration. As quoted above where the receiver has sufficient reason to believe that certain identified persons have engaged in some criminality or fraud in relation to the business under the Receiver, the receiver shall notify the Bank of Ghana immediately and institute a civil action to claim damages and restitution. By way of emphasis we reproduce this section again.

“ Where a receiver has sufficient reason to believe that shareholders, directors, officers, attorneys, accountants or other professionals have engaged or are engaging in a criminal or fraudulent activity in relation to the business of a bank or a specialized deposit-taking institution, that receiver shall

***a.** Notify the Bank of Ghana immediately and*

***b.** Institute a civil action to claim damages and restitution”*

The Section is clear in its import and does not appear to require any interpretation. That is our opinion. Where the receiver comes across any of the offences mentioned therein his statutory duty is to notify the Bank of Ghana and institute a civil action to claim damages and restitution. It is worth the emphasis that the Section is directed at a Receiver under the Act and nobody else. We do not find in this Section a denial of jurisdiction to any other investigative body from delving into matters concerning banks and distressed banks where suspicion of crime is exposed. It is our view that if the lawmaker intends such, it would have spelt that out clearly and expressly. It is possible therefore to have civil action by the Receiver and criminal action by another crime investigative body running parallel, a procedure not unknown within our justice system. The section may look startling in its avoidance of criminal sanctions but there should be reason the law maker provides for this remedy and procedure in respect of the Receiver. We have noted counsel for the Appellant's reference to the well-known principle confirmed in in the case of *Boyefio vrs NTHC Properties Ltd (1997-98)1GLR 768* that where an enactment had prescribed a special procedure by which something was to be done, it is that procedure alone that is to be followed and that the 1st Respondent is bound by this procedure and never to have proceeded to the 2nd Respondent investigative body. We do not think there is any doubt about this principle but on detail consideration of the record of appeal we are of the view the application of this principle should abide the facts and circumstances of each case. In our situation we are here dealing with referral of alleged criminal offences to a specialized investigative body with jurisdiction to investigate the referral. We have mentioned that this provision is directed specifically at the Receiver appointed under the Act and nobody else. Again we have noted that we do not read in this section a bar to any other investigative body delving into any of the offences mentioned in Section 137. EOCO operates under a different enactment and with jurisdiction to investigate offences

including those mentioned under Section 137. Whilst it may be admitted that the Receiver had faltered in not abiding by the directives under the Section we find it far-fetched the contention that because of this omission the EOCO which has jurisdiction to investigate such offence referred to it should be restrained from performing its functions under its enabling Act pursuant for which it called upon the Appellant to subject himself to its investigative processes.

We have mentioned that the EOCO under its statute has jurisdiction to investigate the offences the Receiver referred to it for further investigations. If the court is to accept the invitation of the Appellant to restrain the EOCO from investigating the Appellant because of the wrong referral, what prevents EOCO initiating its own investigations of the Appellant this time not based on the receiver's referral? In its processes filed before this court the EOCO i.e. the 2nd Respondent, has mentioned that it also got wind of the alleged offences committed by the Appellant through its own information network. With this clear indication that it is poised to investigate the Appellant will a restraining order against it because the referral to it was wrongful prevent it from assuming its own jurisdiction to investigate the Appellant for the alleged offences?. It appears to us that in the circumstances of this case the restraining orders sought by the Appellant if granted will be an exercise in futility and in vain. Courts are to guard against making vain orders.

We took note of the invitation by counsel for the Appellant seeking our endorsement of his view that the Banking Act is a Specialized Act and therefore the EOCO Act should be subservient to it. So that if the Banking Act has provided what is to be done by the receiver when he comes across offences mentioned in the section then the EOCO with generalized criminal jurisdiction is excluded from investigating any such offences under

Section 137 of the Banking Act. We gave thought to this submission of counsel but found ourselves not influenced by his thoughts. The two provisions are distinct and as they stand now can coexist without any crossing the other in its operation.

From the foregoing we have found no reason from the records to set aside the invitation extended to the Appellant to appear before the EOCO for investigations. We found nothing on record entitling a restraining order in favour of the Appellant against the EOCO from carrying on its investigations. The records do not disclose any breaches of the Appellants Fundamental Human Rights beyond the peripheral omissions we have noted in this opinion. All put together we have no reason to set aside the ruling of the trial court refusing to grant the request of the Appellant. Grounds of appeal (a) is hereby dismissed.

The Appellant's ground of appeal (b) that alleges the judgment is against the weight of evidence is a rehashing of submissions on grounds of appeal (a). It is accordingly dismissed just as grounds of appeal (a)

(SGD.)

V. D. OFOE

[JUSTICE OF APPEAL]

MERLEY A. WOOD (MRS.), (JA), I agree

(SGD.)

**MERLEY A. WOOD [JUSTICE
OF APPEAL]**

S. R. BERNASKO ESSAH (MRS.), I also agree (SGD.)

S. R. BERNASKO ESSAH (MRS.)
[JUSTICE OF APPEAL]

COUNSEL:

ABU ISSAH FOR 2ND RESPONDENT/RESPONDENT

DOMINIC OKYERE FOR APPLICANT/APPELLANT

JUSTICE OTENG FOR 1ST RESPONDENT/RESPONDENT