IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

KUMASI AD. 2022

CORAM:

A. M. DOMAKYAAREH (MRS) J. A. PRESIDING

A. B. POKU-ACHEAMPONG, J. A.

S. K. A. ASIEDU, J. A.

SUIT NO.: H1/67/2021

DATE: 28th NOVEMBER, 2022

ASH-TOWN PRESBY CO-OPERATIVE
CREDIT UNION OF KUMASI **PLAINTIFF /APPELLANT**
(SUING PER ITS BOARD OF DIRECTORS)

VRS

1. **BERNARD AGYEMANG DUAH OF KUMASI**
2. **KOFI BROBBEY OF KUMASI** **DEFENDANTS/RESPONDENTS**
   (BEING SUED AS EXECUTOR OF THE ESTATE OF KOFI KODUAH, DECEASED)

J U D G M E N T

POKU-ACHEAMPONG, J.A.:

This is an appeal against a judgment of a Kumasi Circuit Court dated 20th November 2019.

Background:

The Plaintiff a Credit Union formed by the Ash-Town Presbyterian Church, Kumasi and known as Ash-Town Presby Co-operative Credit Union was in the business of providing financial services to its registered members including collecting savings and granting loans.

On 19/10/2017 the Plaintiff issued a writ against the Defendants jointly and severally claiming the following reliefs:

1. Recovery of the sum of Seventy One Thousand, Five Hundred and Seventy Four Ghana Cedis, Eighty Nine Pesewas (GH¢71, 574.89)
2. Interest on the above sum from 26/06/17 till date of final payment.

Case of the Plaintiff

The Plaintiff's case is that the 1st Defendant was the Manager in charge of its business operations in Kumasi. The 2nd Defendant was the executor of the estate of Kofi Koduah, deceased, who during his lifetime was the Treasurer of Plaintiff's Credit Union.

According to the Plaintiff a major function of the Defendants as Manager and Treasurer of the Cooperative Credit Union was to receive monies from members of the Union and deposit such monies received into the Plaintiff's account with its bankers.

Plaintiff avers that an audit of its accounts for the 2015-2016 financial year revealed that the 1st Defendant and the late Kofi Koduah had failed to lodge an amount of GH¢71,574.89 into the Plaintiff's account with the bank.

The two were queried about the said amount and according to Plaintiff they admitted liability for the shortfall and undertook to pay the amount to Plaintiff.

Plaintiff's case is that the two were then asked to submit to the Plaintiff's Board of Directors a payment plan. They failed to do this and also failed to honour their promise to repay the amount.

After several demands and efforts to recover the said amount had been unsuccessful the Plaintiff instituted this action.

1st Defendant's case

The 1st Defendant denied the claim of the Plaintiff. His case was that as a member of the church with accounting background he was prevailed upon by a former Minister (Pastor) of the church to assist the operations of the Credit Union. He was thus offering voluntary services to the credit union. He offered pro bono services to the Union as a nominee of the church to the Union. He was never engaged as a formal employee or a paid employee of the Credit Union.

He offered policy advice and guidance to the Credit Union and never took on any formal position as Manager or Finance Officer. He admitted that he offered regular advice to the deceased Treasurer of the Credit Union, Kofi Koduah in respect of his duties. 1st Defendant added that the Credit Union's lodgment records and pay-in-slips when examined would show that he was not the one who lodged the monies into the Plaintiff's bank accounts.

1st Defendant added further that from the Plaintiff's business operations it was the Treasurer, the late Koduah who did the Bank lodgments.

Thus the 1st Defendant argued that the Plaintiff's action against him was legally wrong and should be struck out by the court.

Case of the 2nd Defendant

The 2nd Defendant admitted that he was the Executor of the estate of the late Kofi Koduah. He denied that the late Koduah at any point in time before his death admitted liability for the amount of ¢71,574.89 and promised to pay.

Issues for Trial

At the close of the pleadings the following issues were set down for trial and determination.

1. Whether or not the 1st Defendant and the late Kofi Koduah were in charge of the Plaintiff's operations.
2. Whether or not the Plaintiff was entitled to its claim
3. Any other issues raised in the pleadings.

Jurisdiction of the Court below in Respect of Monetary Limit

Section 42 (3) of the Courts (Amendment) Act, 2002, Act 620 empowers parties before a Circuit Court to agree that the Court hears or determines their case even though the claim or action is beyond the jurisdiction of the court. To this end the trial Judge was rightly within her powers to adjudicate on the matter. The Record shows that the parties gave consent to same. It is pertinent to state that under the old Law (which prevailed at the time of the institution of the action at the court below) the monetary limit of the Circuit Court was GH¢50,000.00 but currently it is GH¢2,000,000.00 under section 2 of The Courts Regulations, 2020 (L.I. 2429).

Preliminary Legal Issue

Counsel for the 1st Defendant raised the preliminary legal point that section 45 of the Cooperative Societies Act, 1968 (NLCD 252) which states that disputes between Cooperative Societies and their members, employees, servants, nominees, agents etc. should be referred to the Registrar of Cooperative Societies for resolution when they arose had been breached.

Counsel argued that once statute had prescribed a mode of settling the dispute the Plaintiff should have resorted to the mandatory procedure prescribed by Section 45 of the Act before resorting to the Courts.

The Plaintiff's failure to do so amounted, Counsel argued, to a breach of statute which the court could not overlook. The court, Counsel contended, did not have power to grant immunity to the Plaintiff from the consequences of its breach and go ahead to entertain the matter.

In his response to the above argument Counsel for Plaintiff referred to subsection 7 of Section 45 of the Act and contended that it contravened the provisions of the 1992 Constitution. Counsel therefore urged the trial Judge to refer the matter to the Supreme Court pursuant to Article 130 (2) of the Constitution.

The Learned Trial Judge upheld the legal point put forward on behalf of the 1st Defendant and dismissed the suit.

In dismissing the action the trial Judge remarked, inter alia, as follows:

> *"In stating this I am mindful of the submission of Counsel for the Plaintiff that the statute in question is contrary to and inconsistent with certain provisions of the Constitution. I must*

say, his contention appears founded except that, this court has not got the jurisdiction to declare a statute as void (or) as being inconsistent with or contrary to the provisions of the Constitution."

Effect of Section 45 of the Cooperative Societies Act, 1968 (NLCD 252) The Supreme Court in ***Adofo & Others Vrs Attorney General & Anor (2003-2005) 1 GLR 239*** stated that a statute which provides for a total ouster of the jurisdiction of the courts in relation to rights which would otherwise be justiciable is void.

The earlier Court of Appeal case of ***Essilfie & Anor Vrs Tetteh & Others (1995-96) 1GLR 297*** made a similar point.

Statutes may however incorporate an exclusionary clause to refer disputes to a domestic tribunal before recourse to courts. In such a case the parties are required to exhaust the internal mechanisms before recourse to the courts.

See the case of ***Lawlor Vrs Union of Post Office Workers (1965) 1 ALL ER 353*** at 363 where the court per Ungoed-Thomas J held thus:

"Trade Union rules clearly cannot oust the jurisdiction of the courts. Contract … may provide that recourse to domestic tribunals shall be exhausted before there is recourse to the courts, and the courts may recognize and give effect to that contract; but that does not oust its jurisdiction."

See Tularley Vrs Abaidoo (1962) 1GLR 411 and also

Boyefio Vrs NTHC Properties Ltd (1996-97) SCGLR 531 at 546

In his book *"Modern Purposive Approach to Interpretation in Ghana"*

John Kobina Essel Edzie at Pages 1124 -1125 states as follows:

> *"However with ouster clauses that postpone the jurisdiction of the courts pending arbitration, negotiation and exhaustion of domestic remedies the legal position appears to be that the courts will generally recognize such clauses and would give effect to them subject, again, to the right of the court to interfere in certain exceptional circumstances."*

See ***Essilfie & Anor Vrs Tetteh & Ors*** *cited supra*
Hayford vrs Gbedemah Court of Appeal, 21/5/1992 (Unreported)
Republic Vrs Ghana Football Association Ex parte Tudu Mighty Jets FC High Court 23/4/2002 unreported: Yaw Appau J.

Thus even in cases where there is a provision that the Plaintiff must first exhaust domestic remedies, it has been held that the courts will intervene where the Plaintiff is able to show cause why the court should interfere with the contractual position.

Such a situation might arise where the Plaintiff is able to establish that the courts are better suited to deal with the issues raised in the dispute or where the parties have manifested an intention not to be any longer bound by resort to domestic tribunals.

Notice of Appeal:

Aggrieved and dissatisfied with this outcome of its action the Plaintiff filed a Notice of Appeal on 10th December 2019 with the following as the grounds of appeal:

1. That the trial Judge erred in law in dismissing the Plaintiff/Appellant's suit when it upheld the legal objection raised in the Written Address by Counsel for the 1st Defendants/Respondents for want of jurisdiction.

Particulars of Errors of Law.

(a) That the trial court erred disregarding the 1st Defendant's/Respondent's own averment that he played only a voluntary role which was pro bono in nature in the affairs of the Plaintiff which did not raise any legal obligations or liabilities on him, an averment which estops him from relying on Section 45 of NLCD 252 when the court upheld the 1st Defendant's/Respondent's legal objection.

(b) That the judgment is against the weight of evidence on record.

Constitutionality of Section 45 of the Cooperative Societies Act, 1968 (NLCD 252).

In the course of his written submissions Counsel for the Plaintiff/Appellant argued inter alia that the provisions of section 45 of the Cooperative Societies Act, 1968 (NLCD 252) contravenes Article 1(2) of the 1992 Constitution and for that matter the Learned Trial Judge should have referred same to the Supreme Court for interpretation in line with Article 130 of the Constitution.

To deal with this issue it is imperative that we remind ourselves of these Constitutional provisions and the relevant statute in this opinion.

Article 1(2) provides as follows:

"The Constitution shall be the Supreme Law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency be void".

Article 130 (1) also provides as follows:

"(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution the Supreme Court shall have exclusive original jurisdiction in –

(a) all matters relating to the enforcement or interpretation of this Constitution and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court".

Plaintiff Counsel's contention was that the provisions of Section 45(7) was unconstitutional since it seeks to oust the jurisdiction of the courts. We shall quote in extenso Section 45 and highlight the subsection 7 to make the issue clear in this opinion.

45 Settlement of disputes:

(1) A dispute touching the business of a registered society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid servant of the society, shall be referred to the registrar for decision by the registrar, where it arises:

(a) between a member, past member or a person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or a servant of the society,

(b) between the society or its committee and an officer, agent or a servant, or past officer, agent or servant or a nominee, successor or legal representative of a deceased officer, deceased agent, or deceased servant of the society, or

(c) between the society and any other registered society.

(2) Subsection (1) does not empower the registrar to decide a dispute relating to the ownership, possession or occupation of land.

(3) Without prejudice to the generality of subsections (1) and (2), a claim by a registered society for a debt or demand due to it from a member, past member or the successor or representative of a deceased member, whether the debt or demand is admitted or not, is for the purposes of this section a dispute touching the business of the society within the meaning of subsections (1) and (2).

(4) The registrar may, on receipt of a reference under subsection (1)

(a) decide the dispute, or

(b) refer it for disposal to an arbitrator appointed by the registrar.

(5) Where the registrar is satisfied that a party to a reference made under subsection (1), with intent to defeat or delay the execution of an award that is made on the dispute

(a) is about to dispose of the whole or a part of the property of that party, or

(b) Is about to remove the whole or a part of the property of that party from the local limits within which the property is situate, the registrar shall, unless adequate security is furnished, apply in writing to a Court for an interim attachment of the property or of a part of that property as the registrar thinks fit.

(6) The registrar may, or on the application of a party to a reference, revise an award by the arbitrator to whom it was referred.

(7) Omitted 7(7)

(8) A decision or an award under this section shall, on the application of the party in whose favour it is given, be enforced by a Court which would have jurisdiction in civil suits between the parties to the dispute to give a judgment for the payment of the amount of money awarded or, where the decision does not relate to the payment of money, to give a similar decision, in the same manner as if the decision or award had been a judgment or decision of the Court.

It is patently clear that as argued by Counsel for the 1st Defendant, *sub-section 7 of section 45* of the statute has been omitted or expunged by the Statute Law Revision Commissioner apparently as offending *Article 125 (3).*

The offending sub-section 7 which has been expunged provided as follows:

> ***"7. Any decision given by the Registrar under paragraph (a) of sub-paragraph (4) or under sub-paragraph (6) and, subject to the provisions of sub-paragraph (6) any decision of an arbitrator appointed by the Registrar under paragraphs (b) of sub-paragraph (4) shall be final and shall not be called in question in any court."***

Counsel for 1st Defendant contends that the work of the Statute Law Review Commissioner has received Parliamentary approval and adoption and has also been sanctioned by the Supreme Court in the case of ***Martin Kpebu vs. Attorney-General (No. 3) [2015-2016] 1 SCGLR page 511.***

In holding 3 of the said case the Supreme Court stated as follows:

> "(3) There was no basis for the Supreme Court to hold that the changes made by the Statute Law Revision Commissioner, by omitting the exception to the previous paragraph (g) of section 42 of the Criminal Offences Act, 1960 (Act 29), relating to the omission or deletion of marital consent as a defence for the use of force in Section 42 (g) of Act 29 were undesirable or unwarranted.
>
> In holdings 4 and 5 the apex court further held:
>
> (4) It was therefore clear that in the light of Section 8 of the Laws of Ghana (Revised Edition) Act, 1998 (Act 562) that Parliament had acted within its powers when it duly adopted and passed the Seven Volumes of the Laws of Ghana (Revised Edition) on 14th December 2006 and thereby assumed responsibility for them.
>
> In the result the fact narrative surrounding the adoption of the Seven Volumes of the Laws of Ghana (Revised Edition) has detracted from its being contrary to Article 93(2) of the Constitution, 1992.
>
> In other words there was no factual basis before the court to support the claim that the seven volumes were not the making of Parliament.
>
> (5) The Seven Volumes of the Laws of Ghana (Revised Edition) having received the necessary Parliamentary approval and adoption every statement of the Law therein contained was the correct position thereof unless pronounced otherwise."

Counsel therefore contends rightly that with its passage the piece of legislation has thus become part of the existing laws of Ghana as contained in ***Article 11 (6) of the 1992 Constitution***.

Article 11 (6) provides as follows:

> ***"The existing law shall be construed with any modifications, adaptations, qualifications and exceptions necessary to bring it into conformity with the provisions of this constitution or otherwise to give effect to, or enable effect to be given to any changes, effected by this constitution"***

Counsel for the Plaintiff/Appellant in his written submissions was under the erroneous impression that ***sub-section 7 of section 45 of NLCD 252*** was still in operation and was thus inconsistent with the provisions of the constitution and therefore should be declared unconstitutional.

As observed by Defendants' Counsel in his submissions the Learned Trial Judge unfortunately also fell into that error as demonstrated by the following remark of hers:

> *"In stating this, I am mindful of the submission of Counsel for the Plaintiff that the statute in question is contrary to and inconsistent with certain provisions of the constitution. I must say, his contention appears founded except that, this court has not got the jurisdiction to declare a statute as void or as being inconsistent with or contrary to the provisions of the constitution."*

We agree with Counsel for the 1st Defendant/Respondent that with the omission of the offending sub-section 7 of section 45 of the Act, there is no issue of conflict or inconsistency for the trial court or this appellate court to refer to the Supreme Court for determination.

Having cleared the issue of constitutionality or otherwise, we shall now deal with the grounds of appeal.

Ground One:

That the trial Judge erred in law in dismissing the Plaintiff/Appellant's suit when it upheld the legal objection raised in the written address by Counsel for the 1st Defendants/Respondents for want of jurisdiction.

Particulars of errors of law:

(a) that the trial court erred disregarding the 1st Defendant/Respondent's own averment that he played only a voluntary role which was pro bono in nature in the affairs of the Plaintiff which did not raise any legal obligations or liabilities on him, an averment which estops him from relying on section 45 of NLCD 252 when the court upheld the 1st Defendant/Respondent's legal objection.

The Counsel for Plaintiff/Appellant's main arguments in respect of this ground are two-fold:

Firstly, Counsel argues that because 1st Defendant/Respondent's case both in his statement of defence and in his written witness statement is that he played only a voluntary role in the operations of the credit union and that all that he did was pro bono the provisions of section 45 of the NLCD 252 cannot avail him.

He contends that the provision covers a situation where the person seeking to rely on it was a paid employee, member or officer of the cooperative society. Thus, the 1st Defendant who strongly averred that what he did was pro bono and was never formally employed by Plaintiff cannot rely on same.

Is this argument right judging from the language of the section? We have carefully studied the provision and are unable to agree with the Plaintiff's interpretation of same.

We are persuaded more by the contention of Counsel for Defendants/Respondents that the only dispute that cannot be handled by the Registrar for the Cooperative Societies is a dispute regarding a disciplinary action taken by the society or its Committee against a paid servant of the society.

In fact, Section 45 (1) states clearly as follows:

> ***"A dispute touching the business of a registered society, other than a dispute regarding disciplinary action taken by the society or its Committee against a paid servant of the society, shall be referred to the Registrar for a decision by the Registrar."***

The qualification refers to a dispute involving disciplinary action taken by the society or its Committee against a paid servant or paid employee.

We agree with the position of Counsel for 1st Defendant/Respondent that his client need not be a paid servant or employee before he can invoke *section 45 of NLCD 252.*

Again, the facts in the record indicate that the 1st Defendant served the Plaintiff credit union for a period of time by providing policy guidance and advice to the 2nd Defendant in the 2nd Defendant's discharge of his duties as a treasurer.

In the written submission of 1st Defendant's Counsel, he states as follows:

> ***"He (1st Defendant) however maintained that as a nominee to the Union by the church from which the idea of the credit union originated, to help in its***

management, he only assisted with the policy advice and guidance of the activities of the Plaintiff Union."

By this, the 1st Defendant clearly admitted to falling under the category of being a Nominee to the union, and therefore falls directly under *Section 45 (1) (b) of NLCD 252* which categorizes a Nominee as under the purview of *Section 45 of NLCD 252*.
The argument by the Plaintiff that 1st Defendant is not covered by the Act is therefore without merit.

The next issue we will like to touch on is whether or not there was a good reason to sidestep the Registrar.
Having established that the 1st Defendant falls under *Section 45 of NLCD 252* the next issue is whether or not there was a valid reason for Section 45 to be sidestepped for the parties to resort to court directly instead of going through the Registrar as prescribed by the Act.

In Essilfie v. Tetteh [1995-1996] 1 GLR 297 cited supra the court outlined some of the factors which will justify a recourse to the courts by an aggrieved party notwithstanding the exclusionary clause postponing resort to the ordinary courts to include the following:

1. ***Where there is no competent domestic forum***
2. ***Where the principle of natural justice will be breached***
3. ***Where the issues involved are purely issues of law; and***
4. ***Where it can be established that members by their previous conduct evince a clear intention not to resort to the domestic procedure (i.e. estopel by conduct)***

We hold that the Plaintiff did not, from the record, provide any tangible reason to the court for sidestepping the laid down procedure.

The provision in Section 45 creates a condition precedent which any one seeking to bring an action in a Cooperative Society Credit Union case must fulfil before invoking the court's jurisdiction.

In the ***Boyefio vs. NTHC Properties case [1996-1997] SCGLR 531,*** the apex court enunciated this principle as follows in holding 5:

> ***"The law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed. Thus, Section 12 (1) of PNDCL 152 was in consonance with the modern practice of setting up an internal tribunal as an institution to have a first bite at disputes arising within that institution before recourse was made to the courts if the matter did not end at the internal tribunal.***
>
> ***Where a person has ignored the internal tribunal by resorting to the courts in respect of any such internal dispute, the court would invariably order him to go back to the internal tribunal, if that person had no substantial reason for ignoring the internal tribunal."***

The case of Boyefio Vrs NTHC Properties Ltd (Supra) was a reference from the High Court, Accra to the Supreme Court under *Article 130 (2) of the 1992 Constitution* to determine the question whether or not having regard to the provisions of ***Article 125 (3) and 140 (1) of the 1992 Constitution Section 12 (1) of PNDCL 152*** has ousted the jurisdiction of the High Court in land matters arising within areas which have been declared as registration districts under PNDCL 152.

See also the cases of ***Republic v. High Court, Koforidua; Ex parte Asare (Baba Jamal & Others Interested Parties) [2009] SCGLR 460; Aboagye Frimpong & Anor. vs. MEG 99 Via Valle Bagmate Rome (suing per their lawful attorney Agyemang Boateng) [2013] 58 GMJ 131 CA.***

In the case of ***Manya Krobo Rural Bank Ltd Vrs Evans Amartey Kwasi and Cepime Kwao Afluku Civil Appeal No H1/13/2019 dated 30/1/2020 unreported:***
This Honourable court dealt with the issue of a provision in the old Companies Act, Act 179 Section 32 of the Code of Register of Members.

In the said case the Plaintiff/Respondent sought the following relief:
An order compelling the Defendant to disclose the details of all its shareholders from date of incorporation to date.

The old Companies Code had provided a procedure for obtaining this relief in Section 33(3) as follows:

> *"A member or any other person may require a copy of the register or a part of the register on payment of ¢10,000 (ten thousand cedis) or a lesser sum that the Company may prescribe and the Company shall cause a copy so required by a person to be sent to that person within a period of ten (10) days commencing on the day next after the day on which the requirement is received by the company.*
>
> *(5) In the case of a refusal or default the court may by Order compel an immediate production of the register for inspection or direct that the copies required be sent to the person requiring them.*

The Plaintiff/Respondent failed to comply with this precondition and the court Coram: Mabel Agyemang, AB Poku-Acheampong, Merley Wood sitting in Koforidua held relying on the ***Boyefio vrs NTHC properties Ltd*** (1997-98) 1GLR 768-786 case:

> The Companies Act has provided a special procedure for the relief sought by the Plaintiff/Respondent. *"The Respondent should have complied with same by paying the required fee for the inspection of the register. It is only after his request for inspection had been refused that the Respondent could then fall on the Section 33(5) of the Companies Act, 179 as a remedy"*

Thus in the instant case the Plaintiff's failure to comply with the preconditions as stated in NLCD 252 before resorting to the court effectively deprived the court below of the jurisdiction to entertain the matter.

The Learned Trial Judge can therefore not be faulted for dismissing the action for lack of jurisdiction.

Again in the case of ***Republic vs. High Court, Cape Coast; Ex parte Marwan Kort [1998-1999] SCGLR 833 at page 843*** Acquah, JSC (as he then was) relied on Lord Loreborn LC dictum in Attorney General v. Birmingham TRDD Board [1912] AC 788 at 795 as follows:

> ***"A court of law has no power to grant dispensation from obedience to an Act of Parliament."***

This was a case in respect of the provision in ***Section 21 (3) of the Courts Act, [1993] (Act 459)*** as follows:

"21 (3) An appeal under this section against a decision of a Community Tribunal shall, subject to any transfer directed by the Chief Justice, be made to the Judge of the High Court exercising jurisdiction over the area of jurisdiction of the Community Tribunal."

In the said case, the Defendant therein instead of appealing to the Swedru High Court had brought his petition before the Cape Coast High Court.

Acquah, JSC delivered himself as follows on the matter:

> *"But in the absence of a transfer order, the Defendant cannot on his own file his appeal at the Cape Coast High Court and further move the court to stay execution of the judgment of the Agona Swedru Community Tribunal. Of course, that is an issue the High Court Judge ought to have raised suo motu for a court of law has no power to grant dispensation from obedience to an Act of Parliament."*

Again, in ***Network Computers Ltd. vs. Intelsat Global Sales and Marketing [2012] 1 SCGLR 218 & 231*** the apex court stated the law as follows:

> *"A court cannot shut its eyes to the violation of a statute as that would be very contrary to its raison d'etre. If a court can suo motu take up the question of illegality even on mere public policy grounds, I do not see how it can fail to take up illegality arising from statutory infraction which has duly come to its notice."*

It is our position that the Trial Judge was right in dismissing the suit on the basis of lack of jurisdiction as the Plaintiff failed to comply with the preconditions outlined by the ***Cooperative Societies Act [1968] NLCD 252 Section 45.***

The second major argument put up by Plaintiff/Appellant in support of the contention is that the trial Judge erred in that the Judge shirked her constitutional duty to refer the question of unconstitutionality or otherwise of *Section 45 (7) of NLCD 252* to the Supreme Court for interpretation. We have mentioned briefly at the outset of this opinion and would like to reiterate that the clear omission of sub-section 7 of section 45, the offending section by the Statute Law Revision Commissioner from the Act makes this point moot or otiose.

In fact, there is no offending provision that conflicts with the Constitution. There is therefore nothing to be referred to the apex court for interpretation.

In his submissions Counsel for Plaintiff argues that the trial Judge ought to have stayed proceedings and referred the matter to the Supreme Court for interpretation relying on Article 130 and the ***Republic v. Maikankan [1971] 2 GLR 473 authority***.

In the ***Republic v. The High Court General Jurisdiction, Accra, Ex parte Dr. Zanetor Rawlings and Ors., [2015-2016] 1 SCGLR 53,*** the apex court noted that in matters where there are no ambiguities there need not be a reference from the lower court to the Supreme Court.

Indeed, in the Maikankan case cited by the Plaintiff Bannerman C. J. at page 478 observed as follows:

> ***"Lower Court is not bound to refer to the Supreme Court every submission alleging as an issue the determination of question of interpretation of the constitution or of any other matter contained in Article 106 (1) (a) or (b), if in the opinion of the lower***

court the answer to a submission is clear and unambiguous on the face of the provision of the constitution or laws of Ghana….."

From all the above arguments and analysis, we conclude that ground one of the appeal has not been made out and there is no merit in it. The ground is therefore dismissed.

Ground Two:

That the judgment is against the weight of evidence.

This is the omnibus ground. There is a plethora of authorities on what an appellant is required to do in respect of this ground and the obligations of an appellate court when this ground of appeal is put forward.

See: ***Tuakwa v. Bosom [2001-2002] SCGLR 61*** and ***Djin vs. Musa-Baako [2007-2008] SCGLR 686.***

Both authorities are cited by the Plaintiff/Appellant in his submissions.

Counsel for the Appellant's main contention is that the court below labored under the impression that it lacked jurisdiction to hear the case because of the legal point raised. It thus failed to examine the evidence on record. The trial Judge remarked that *"the merit of the case cannot be gone into in the circumstances".*

Counsel therefore invites this court to evaluate the evidence on record and determine the case on its merits. We are afraid we cannot accept this invitation. As indicated above, the Learned Trial Judge was right in dismissing the action for lack of jurisdiction.

In our considered opinion it will be pointless to go into the merits of the case where a jurisdictional issue has been raised and upheld.

In conclusion, the appeal fails in its entirety and the judgment of the trial court dated 20th November, 2019 is hereby affirmed.

SGD

ALEX B. POKU-ACHEAMPONG

(JUSTICE OF THE COURT OF APPEAL)

SGD

I agree, **ANGELINA M. DOMAKYAAREH (MRS)**

(JUSTICE OF THE COURT OF APPEAL)

SGD

I also agree, **SAMUEL K. A. ASIEDU**

(JUSTICE OF THE COURT OF APPEAL)

COUNSEL:

1. Osei Wusu Antwi for Plaintiff /Appellant

2. Ackah Himans with Stephen Adjei Nimoh for 1st Defendant /Respondent.
3. Henry Adomako Mensah for 2nd Defendant/Respondent