

IN THE SUPERIOR COURT OF JUDICATURE
IN THE COURT OF APPEAL
CIVIL DIVISION
ACCRA, GHANA

CORAM: D.D ADJEL, JA (PRESIDING)
J.A BARTELS-KODWO, JA
E.K BAFFOUR, JA

CIVIL APPEAL
SUIT NO. H1/215/2021

1. ETELESE COMPANY LTD.

2. DEKTILES LIMITED

APPELLANTS

H/N0. 37 Church Street

Baatsona - Accra

VRS

ATTORNEY – GENERAL

Attorney – General’s Department

Ministries, Accra

RESPONDENT

JUDGMENT

DENNIS ADJEL, J.A

The Applicants/Appellants on 2nd March, 2020 filed an application *ex parte* to the Human Rights Division of the High Court, Accra for enlargement of time to file originating motion pursuant to Order 67 rule 3 and Order 80 rule 4 of the High Court (Civil Procedure) Rules, C.I.47 to enforce personal fundamental human rights against the State through the Attorney- General, the principal legal adviser to the State.

The thrust of the application was that the 1st Applicant constructed a two story warehouse and showroom at Dawhenya, one of the towns in the Ningo Prampram District Assembly based upon the building permit approved by the Ningo-Prampram District Assembly. The 1st Applicant constructed the two story house and rented same to the 2nd Applicant who used it as warehouse and a show room in accordance with the purpose for which the property was built. On 23rd August, 2019, the Special Weapons and Tactics Unit (SWAT) of the Police Service demolished the two story building and destroyed the materials, equipment and the goods kept in it all valuing five million United State Dollars under the erroneous impression that it was the subject matter of a demolition order issued by the High Court, Tema. The subject matter of the demolition was vividly described in the suit intituled **Kweinor Tei Kwablah v Nii Okai Adjei** and another with **Suit No. EI/17/2002, High Court, Tema**. The District Commander of the Ghana Police Service took steps to prevent SWAT from demolishing a wrong building but the damage had already been done.

The Applicants further deposed that the building which was the subject matter of demolition was different to the building of the Applicants which had been unlawfully demolished by the SWAT. The High Court on 9th day of March, 2020 dismissed the application by the Applicants for enlargement of time to invoke the fundamental human rights jurisdiction conferred on the High Court by article 33 of the Constitution of Ghana,

1992 for failing to disclose exceptional circumstances. The Applicants dissatisfied with the ruling of the High Court filed an appeal against same to this Court on 13th March, 2020.

The notice of appeal has two grounds and they are as follows:

“(a) That the decision is against the weight of evidence adduced before the Court.

(b) That the Judge erred when she refused to grant the Applicants’ application for enlargement of time within which the Applicants could file their originating motion.”

I address both grounds (a) and (b) of the appeal which state that the judgment is against the weight of evidence adduced before the Court, and, furthermore, the trial Judge erred when she refused to grant the application for enlargement of time to enforce personal fundamental human rights of the Applicants. Order 67 of the High Court (Civil Procedure) Rules C.I.47 was enacted pursuant to article 33 of the Constitution, 1992 to provide for the time frame within which personal fundamental human rights could be enforced by the High Court. Enforcement of personal fundamental human rights by the High Court cannot be discussed without reference to article 33 of the Constitution which provides for protection of fundamental human rights by the Courts.

Article 33 (1) and (2) of the Constitution confers exclusive jurisdiction on the High Court to protect and enforce personal fundamental human rights. Article 33 (1) and (2) of the Constitution provides thus:

“(1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.

(2) The High Court may under clause (1) of this article issue such directions or orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition, and quo warranto as it may consider appropriate for the purposes of

enforcing or securing the enforcement of any of the provisions on the fundamental human rights and freedoms to the protection of which the person concerned is entitled."

The Constitution re-enacted personal fundamental human rights and gave exclusive jurisdiction to the High Court to exercise. The remedies provided by the Constitution to address persons whose fundamental human rights and freedoms have been violated and obtainable from the High Court include the issuance of directions, or orders or writs in the nature of *certiorari*, prohibition, *mandamus*, *quo warranto* and *hebeas corpus*.

Article 33(1) of the Constitution provides for three instances under which a personal fundamental human rights may be enforced in the High Court. The three instances are: where a person alleges that his fundamental human rights and freedoms under the Constitution has been, or is being or likely to be contravened. The Constitution used present participle, present continuous tense, and future tense to describe contravention of personal fundamental human rights without providing for the specific time frames within which to bring those actions. The Constitution under article 33(4) of the Constitution clothed the Rules of Court Committee with power to provide for rules of court regarding practice and procedure of the Superior Courts with respect to the enforcement of fundamental human rights and freedoms. Article 33 (4) of the Constitution provides thus:

" The Rules of Court Committee may make rules of court with respect to the practice and procedure of the Superior Courts for the purposes of this article."

The Rules of Court Committee acted in accordance with article 33(4) of the Constitution and provided for the procedure and practice for the enforcement of fundamental human rights and freedom in the High Court and the time frames within which such applications may be filed. The Rules of Court Committee acting under the powers conferred on it under article 33 of the Constitution enacted Order 67 of the High Court (Civil Procedure) Rules, C.I.47 to provide for the procedure and practice for the enforcement of personal

fundamental human rights and freedoms in the High Court. Order 67 rule 1 of C.I.47 provides for enforcement of fundamental human rights in the High Court. It provides thus:

“A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33.

(1) of the Constitution shall submit an application to the High Court.”

Therefore, a person who seeks remedy under article 33 of the Constitution shall submit an application to the High Court. Order 67 rule 3 of C.I.47 which is on time for the submission of application provided under article 33(1) of the Constitution provides as follows:

“(1) The application shall be submitted to the High Court within

(a) six months of the occurrence of the alleged contravention; or

(b) three months of the applicant becoming aware that the contravention is occurring or likely to occur.”

From the above, the Rules of Court Committee defined the phrase “has been” be contravened in relation to him” to mean six months of the occurrence of the alleged contravention. Therefore, any application brought after six months after the occurrence of the alleged contravention of his fundamental human rights shall be void as it shall fall within past participle and would move from

“has occurred” to “had occurred” and cannot take benefit under the enforcement of fundamental human rights under article 33 of the Constitution and Order 67 of C.I.47. A person who fails to avail himself within the six months provided by Order 67 rule 3 (1)(a) of C.I.47 shall have his fundamental human rights being submerged under common law and may invoke his right by the issuance of writ of summons.

There are some procedural rules whose infractions may be cured without infringing any rights and these are the rights intended to be cured under Order 81 of C.I.47 and there are others which cannot be waived. Some of the rules whose infractions cannot be waived

include those which go to the root of the matter. Judicial review applications under Order 55 of C.I.47 are some of the applications where noncompliance with time cannot be waived as time goes to the root and shall be religiously observed. See the case of **The Republic Vrs Wassa Fiase Traditional Council and Another Ex parte Abusuapanin Kofi Nyamekye and Others SC (unreported Civil Appeal No. J4155 2014 delivered on 28th May, 2015)**. The rules on appeals cannot be waived and therefore where the rules provide for time frame to file an appeal or an extension of time to file an appeal and the person fails to avail himself within the time, he shall forever be barred. See the case of **Bosompem v Tetteh Kwame [2011] SCGLR 397** and the appeals created by C.I.47 including Orders 51-appeals from the District to the High Court; Order 52-appeals from Registrars and Referees to the High Court; and Order 54A-disallowance and surcharge appeals to the High Court. An application founded on procedure which derives its source from the Constitution as is the case in point cannot be extended as it would amount to re-writing the Constitution.

In the case of **Kwasi Appenteng & 78 Others Vrs Ghana Commercial Bank (Civil Appeal No/H1/192/12, delivered on 17th January, 2013, SC unreported)** the Supreme Court in discussing the legal effect of failure to comply with the time frame provided under Order 67 of C.I. 47 held thus:

“There are no express provisions in Order 67 of C.I 47 which permits us to infringe the period of limitation of 6 months or 3 months set out in the law. It is therefore wrong for the High Court to assume jurisdiction to hear the matter and when it had no such power.”

The six months period within which a person who alleges that his fundamental rights has been contravened or violated may bring an application under Order 67 of C.I.47 shall be lost where the person fails to avail himself within the time frame and his action shall lie in common law which may be addressed by issuance of a writ. The appeal fails in its entirety and both grounds of appeal are dismissed as unmeritorious.

SGD
DENNIS DOMINIC ADJEI
JUSTICE OF APPEAL

J.A BARTELS-KODWO, JA I agree

SGD
J.A BARTELS-KODWO
JUSTICE OF APPEAL

E.K BAFFOUR, JA I also agree

SGD
ERIC KYEI BAFFOUR
JUSTICE OF APPEAL

COUNSEL:

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2. VERONICA ADIGBO ESQ FOR RESPONDENT/RESPONDENT