**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE COURT OF APPEAL**

**ACCRA – GHANA AD 2023**

***CORAM:*** ***1. CECILIA SOWAH J.A (PRESIDING)***

***2. MERLEY A. WOOD (MRS), J.A***

***3. ADJEI FRIMPONG, J.A***

*CIVIL APPEAL NO H1/203/2022*

*DATE: WEDNESDAY, 8TH FEBRUARY, 2023*

**RELIANCE PERSONNEL = RESPONDENT/APPELLANT**

**VRS**

**NATIONAL LABOUR COMMISSION = APPLICANT/RESPONDENT**

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**JUDGMENT**

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***M. WOOD (MRS), JA***

The Respondent/Appellant (hereinafter referred to as the Appellant) is appealing against the ruling of the High Court, Labour Division, Accra delivered on 14th May 2021 in which the said High Court ordered the enforcement of a decision of the

Applicant/Respondent (hereinafter referred to as the Respondent) dated 11th February 2020.

The antecedents of the case are that the Appellant offered a fixed one year term contract of employment to complainant Daniel Osei as a Field Maintenance Engineer, from 1st June 2017 to 31st May 2018. However, the Appellant by a letter dated 12th December, 2017 terminated the Complainant's contract effective 31st December 2017 in accordance with paragraph 11 of the complainant's contract of employment. The said contract provided that either party to the contract could terminate the contract by the giving of two weeks' notice or payment of two weeks salary in lieu.

The complainant on 23rd May 2018 filed a complaint to the Respondent herein claiming among others compensation of Four Hundred Thousand Cedis (GH¢400,000.00) for unfair termination, psychological and emotional trauma as well as an amount of Eight Thousand, Eight Hundred Ghana Cedis (GH¢8,800.00) being payment of deferred performance bonus from May 2017 to December 2017. The Appellant filed a response to the complaint on 19th July 2018 stating among others that the employment was terminated in accordance with the terms of the contract and as such complainant's claim of unfair termination is untenable and without any basis.

After hearing the parties on 11th February 2020, the Respondent gave its ruling by stating thus: "*We have reviewed the whole case and we are saying that the Labour Law was brought in to strengthen the position of your case against the Common Law. The complainant was given a one (sic) contract of employment and this was based on the contract you had with Huawei. Without any disciplinary reason, you just gave two weeks notice to the complainant for termination. Having heard both parties, the Commission decided that the Respondent should pay the Complainant from the period which his contract was terminated but take away the two weeks that have already been paid*." The Respondent therefore stated that the termination of the

complainant employment contract was without any disciplinary reason; that the contract was terminated based on two weeks' notice to the complainant and that the complainant should be paid salary for the unexpired period of his contract of employment.

The Appellant dissatisfied with the ruling of the Respondent filed a Notice of Appeal at the Registry of the National Labour Commission. The notice was duly received and stamped by the National Labour Commission on 11th February 2020.

The Respondent on the 26th of January, 2021 pursuant to section 172 of the Labour Act, 2003 ( Act 651) filed an application at the High Court for enforcement of its decision made on 11th February, 2020. Not surprisingly, the Appellant being opposed to the application filed an affidavit in opposition.

The trial judge on 14th May 2021 after hearing the application held in his ruling thus: "*…Another bone of contention has to do with the appeal against the decision of the National Labour Commission and as Counsel for Applicant stated until the Rules of Court Committee decides otherwise the proper forum for such Appeals would be the Court of Appeal. It is interesting to note that the said Exhibit K as exhibited by the Respondent has the Court of Appeal as its title. However, nothing on the said Exhibit indicates that the said appeal was filed……So far as this court is concerned there is nothing on record indicating that there is an appeal pending which would stop it from enforcing the said decision of the National Labour Commission. In the circumstances this court comes under section 172 of Act 651 and will grant the motion as prayed.*"

The Appellant dissatisfied with and aggrieved by the ruling of the High Court filed a Notice of Appeal to this Court on the following grounds:

i. *The learned judge committed an error of law when he failed to dismiss Applicant/Respondent's application to enforce its decision dated the 11th day of February, 2020.*

***Particulars of Error of Law***

a. *Applicant/Respondent's decision dated the 11th day of February 2020 is contrary to section 15(a), 17(1)(b), 63 and 64 of the Labour Act, 2003 (Act 651)*

ii. *Learned High Court judge erred when he held that the appeal filed by Respondent/Appellant at the National Labour Commission against Applicant/Respondent decision dated the 11th day of February 2020 is not a valid appeal.*

iii. *The entire ruling cannot be supported having regards to the evidence.*

The Relief sought by the Appellant is that the ruling of the High Court (Labour Division 1) dated 14th May 2021 in which the Learned Judge granted Applicant/Respondent's application for enforcement of its decision dated 11th February, 2020 should be set aside.

**SUBMISSION OF COUNSEL FOR RESPONDENT/APPELLANT**

Arguing Ground 1, Counsel for the Appellant submitted that if the High Court had reviewed the record, it would have found that the decision the Respondent sought to enforce was contrary to statute. He refers to sections 15(a) and 17(1)(b) of the Labour Act, 2003 (Act 651) and says that since clause 11 of the Complainant's contract is in accordance with section 15(a) of Act 651, the High Court fell into grave error by ordering the enforcement of the Respondent's decision which was made contrary to statute for it gave the requisite two weeks notice to the Complainant. He refers to the cases of ***Republic vrs High Court, Accra (Fast Track Division) Ex parte Ghana Lotto Operators Association (National Lottery Authority Interested Parties) [2009] SCGLR***

***372** at **397; Henry Nuertey Korboe vrs Francis Amosa [2015-2016] 2 SCGLR 1516*** at ***1546*** and the unreported case of ***George Akpass vrs Ghana Commercial Bank Limited Civil Appeal No. J4/08/2021*** dated ***16th June 2021***.

Regarding enforcement, it is the submission of Counsel that the High Court was duty bound to satisfy itself that the decision or order that the Respondent sought to enforce was justified in law and not whether or not an appeal had been filed against the Respondent's decision. He refers to the case of ***National Labour Commission vrs Ghana Telecommunications Limited [2012] 1 SCGLR 342.***

Counsel further argued that the court erred to have held that the appeal filed on 11th February 2020 was not a valid appeal. His argument is that per Rule 8(2) of CI 19, the proper forum for filing a notice of appeal in a decision emanating from the Respondent is its Registry. The rationale, he says, is to allow that forum to compile the record that formed the basis of the decision and that since the record was in the custody of the Respondent that was the proper forum. He referred to the case of ***Samuel Victor Koranteng vrs Disciplinary Committee of the General Legal Council [2018-2019] GLR 329.***

It is the submission of Counsel that the entire ruling cannot be supported having regard to the evidence, because Exhibit K which is the notice of appeal clearly shows that it was duly filed at the National Labour Commission. Having done so, the Appellant had complied with the Rules of Court and the jurisdiction of the appellate court had been duly invoked and therefore he concludes that the trial judge wrongly construed rule 8(2) of CI 19. He refers to the case of ***Frimpong & Another vrs Nyarko [1998-99] SCGLR 734***.

It is to be noted that the Applicant/Respondent failed to file its written submission when the case was heard and adjourned for judgment.

**ANALYSIS**

**GROUND 1**

1. ***The learned judge committed an error of law when he failed to dismiss Applicant/Respondent's application to enforce its decision dated the 11th day of February, 2020.***

***Particulars of Error of Law***

***a. Applicant/Respondent's decision dated the 11th day of February 2020 is contrary to sections 15(a), 17(1)(b), 63 and 64 of the Labour Act, 2003 (Act 651)***

I will start by asking whether or not the learned judge committed an error of law when he failed to dismiss Applicant/Respondent's application to enforce its decision dated the 11th day of February, 2020 and whether Applicant/Respondent's decision dated the 11th day of February 2020 is contrary to sections 15(a) and 17(1)(b) of the Labour Act, 2003 (Act 651).

What does Clause 11 of the employment contract which deals with termination stipulate? It says at pages 38 and 39 of the record of appeal that:

> *"By notice: Reliance may terminate your employment without reason by giving you two (2) weeks' notice or by paying two (2) weeks' salary in lieu of notice. You may terminate your employment without reason by giving two (2) weeks' notice to the company or repaying to the company two (2) weeks' salary in lieu of notice.*
>
> *a). Summary Dismissal: Reliance may terminate your employment forthwith and without notice in case of the following events:*
>
> *i. Any serious breach, or any breach continued after warning from the Company of your duties;*

*ii. Be found guilty of any criminal offence other than an offence which in the reasonable opinion of the Company does not affect your employment with the company;*

*ii. Any conduct by you tending to bring the company into disrepute;*

*iv. Any unauthorized disclosure by you of any matter relating to the business of Company or the Company's customers."*

Per the basic rules of interpretation of non-statutory documents such as the employment contract between the Respondent herein and the complainant, such a document will be construed by looking at the intentions of the contracting parties.

The Court of Appeal in ***Biney v. Biney 1974] GLR 318***, laid down the three basic rules of construction of deeds and documents as a) the construction must be near the mind and intention of the author as the law will permit; b) the intention must be gathered from the written instrument itself and c) technical words of limitation will have their strict legal effect. The fourth rule which was established in ***Manu v Emeruwa [1971] 1 GLR 442*** states that a document must be read as a whole so as to arrive at the true intention of the maker.

In ***Boateng vrs Volta Aluminium Co. Ltd [1984-86] 1 GLR 733***, where a month's salary given in lieu of one month's notice of termination was challenged, the Court of Appeal held that taking the document as a whole, a month's salary in lieu of notice was not provided for and hence excluded. Abban JA (as he then was) in the said case, relied on the method of construction adopted by Lord Halsbury LC in ***In Re Jodrell; Jodrell vrs Searle (1890) 44 ChD 590*** where the learned Lord said at page 605 as follows:

*"I am called upon to express an opinion on what is the meaning of this written instrument…I am prepared to look at the instrument such as it is; to see the language that is used in it; to look at the whole document and not to part of it; and having looked at*

*the whole of the document, to see through the instrument what was the mind of the testator."*

Abban JA (as he then was) also referred to the same view expressed by Huddleston B in ***Wigsell vrs The Corporation of the School for the Indigent Blind (1880) 43 LT 218*** where he said at ***219***

*"In construing covenants, the fulfilment of the evident intention and meaning of the parties to them must be looked at, not confining oneself within the narrow limits of a literal interpretation; but taking more liberal and extended view, and contemplating at once the whole scope and object of the deed in which they are contained."*

What does section 15 of the Act provide? It says as follows:

***"Section 15—Grounds for Termination of Employment.***

*A contract of employment may be terminated:*

*(a) By mutual agreement between the employer and the worker;*

*(b) By the worker on grounds of ill-treatment or sexual harassment;*

*(c) By the employer on the death of the worker before the expiration of the period of employment;*

*(d) By the employer if the worker is found on medical examination to be unfit for employment;*

*(e) By the employer because of the inability of the worker to carry out his or her work due to,*

*(i) Sickness or accident; or*

*(ii) The incompetence of the worker; or*

*(iii) Proven misconduct of the worker."*

***Section 17 Notice of termination of employment***

*(1) A contract of employment may be terminated at any time by either party giving to the other party,*

*(a) In the case of a contract of three years or more, one month's notice or one month's pay in lieu of notice;*

*(b) In the case of a contract of less than three years, two weeks' notice or two weeks' pay in lieu of notice; or*

*(c) In the case of contract from week to week, seven days notice.*

*(2) A contract of employment determinable at will by either party may be terminated at the close of any day without notice.*

*(3) A notice required to be given under this section shall be in writing.*

*(4) The day on which the notice is given shall be included in the period of the notice.*

Per clause 11 of the employment contract (Exhibit C), either party can terminate the employment by giving two weeks' notice or by paying two weeks' salary in lieu of notice. This is in accordance with section 15(a) of the Labour Act supra which states that a contract of employment may be terminated by mutual agreement between the employer and the worker.

The mutuality principle was affirmed by the Supreme Court in the case of **George *Akpass vrs Ghana Commercial Bank Limited Civil Appeal No. J4/08/2021*** dated 16th June 2021 where the court speaking through Amegatcher JSC stated thus:

*"One of the grounds which Act 651 justifies termination of employment is by mutual agreement between the employer and the worker. This is provided for in section 15(a). Where a contract of employment provides that either party can terminate the relationship by giving a specified period of notice or salary in lieu of notice, that mode of termination could be triggered without the employer or worker assigning any reasons. In our opinion, where termination is resorted to under this provision, the fairness or otherwise of that termination cannot be called into question.*

*There is judicial support for this. In* ***Bannerman-Menson vrs Ghana Employers Association [1996-97] SCGLR 417****, the terms of employment of the parties stated that either party may terminate the relationship by giving six months' notice. After the employer gave six months' notice of its intention to retire the appellant, being dissatisfied, the appellant sued. Aikins JSC explained the legal position as follows:*

> *"…the appellant's conditions of service states that the contract was terminable by six months' notice on either side…..the appellant could terminate the appointment by giving his employers six months' notice if he decided to, without giving his employers six months' notice if he decided to, without any reasons. So were the respondents entitled to dispense with the appellant's services by giving him six months' notice. This conforms with equitable principles. The respondents exercised their right in giving the appellant six months' notice to retire from the services of the association….The respondent owed no other obligation to the appellant…..To me it is of no consequence if the respondents gave as a reason for the termination of the appellant's employment the fact that he had reached the age of 60 years. What is important is the mutual agreement of the parties that the contract of employment could be determined by giving six months' notice of intention to do so. I think the appellant was laboring under a serious illusion in assuming that this appointment was terminated for reaching the retirement age at 60 years. The respondents were under no obligation to give him reasons for termination.'*
>
> *Where the termination is not by mutual agreement and the employer is compelled to terminate on other grounds provided for in the contract of employment such as ill-treatment or sexual harassment, medically unfit for the employment of inability of the worker to perform his role due to sickness, disability, incompetence or lack of qualification for the position employed or other reasons which do not merit summary dismissal, then the protocol envisaged under Act 651 is that the reasons for the termination must be clearly stated and must be seen to be fair."*

It is clear from the above that the termination was by mutual agreement or consent. The Court therefore erred by ordering the enforcement of the Respondent's decision which was made contrary to section 15(a).

Since the contract of employment is for one year, it satisfies section 17(1)(b) of the Labour Act (Act 651) which states that a contract of employment may be terminated at any time by either party giving to the other party in the case of a contract of less than three years, two weeks' notice or two weeks paying lieu of notice. Therefore we are of the opinion that the High Court's order for enforcement was an endorsement of the breach of statute.

Reading the entire contract as a whole to ascertain the intentions of the contracting parties, the parties had an actual idea of the terms of the contract and for that matter the terms of termination. The complainant signed the acceptance form to agree with all the terms of the employment contract.

In view of the fact that the clause 11 of the contract employment is in accordance with sections 15(a) and 17(b) of the Labour Act, we agree with Counsel for the Appellant that the High Court erred by ordering the enforcement of the Labour Commission's decision. We find that the Supreme Court speaking through Atuguba JSC in the case of ***Republic v High Court, Accra (Fast Track Division) Ex Parte Ghana Lotto Operators Association (National Lottery Authority Interested Parties) [2009] SCGLR 372*** at ***397*** gave the position of the law on the judges having to abide by their judicial oath and not to go contrary to any statute. He says as follows:

> *"It is communis opinion among lawyers that the courts are servants of the legislature. Consequently, any act of a court that is contrary to a statute such as Act 722 s. 58(1)-3 is unless expressly or impliedly provided, a nullity."*

He further stated at page 402 that:

> *"No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders."*

Again in the case of ***Amosa (No 1) vrs Henry Nuertey Korboe (No 1) [2015-2016] 2 SCGLR 1516*** at ***1546*** the Supreme Court stated forcefully that "*Breach of section 8 of Act 32 is clearly an illegality which should not be endorsed by this case. In the case of Belvoir Finance Co Ltd vrs Harold G Cole & Co [1969] 2 All ER 904, Donaldson J (as he then was) had this to say at page 908 as follows on illegality:*

> *"Illegality once brought to the attention of the court, overrides all questions of pleadings."*

It is our view that the High Court erred when it ordered the enforcement of the Respondent's decision which was made contrary to section 17(1)(b) of Act 651.

Section 172 of the Labour Act (Act 651) which deals with enforcement provides thus:

> "*Enforcement of orders of the Commission*
>
> *Where a person fails or refuses to comply with a direction or an order issued by the Commission under this Act the Commission shall make an application to the High Court for an order to compel that person to comply with the direction or order."*

What was the trial High Court judge expected to do when the application for enforcement was put before him? Was he expected to examine the record before coming out with his decision? The case of ***National Labour Commission vrs Ghana***

***Telecommunications Limited supra*** cited by Counsel for the Appellant provides the answer. The Supreme Court speaking through H/L Rose Owusu JSC stated thus:

> *"The Labour Commission does not have power to enforce its decision, hence the application to the High Court. It is not for nothing that the decision must be sent to the court for its enforcement. The intendment of the law maker to me is to ensure that due process was followed and that the decision is justified on the facts and the law. A court of law which seeks to do justice cannot make an order for the enforcement of the Commission's order without satisfying itself that the order sought to be enforced is justified in law especially where there is an affidavit in opposition as to why the order cannot be enforced."*

The above mentioned decision from the apex court makes it abundantly clear that the High Court was required to review the record to satisfy itself that the order sought to be reviewed was in accordance with law especially when the Appellant was vehemently opposed to the application for enforcement. We agree with the Appellant that the High Court failed in its duty to ensure that the decision of the Respondent accords with law. If the learned judge had reviewed the record to satisfy himself that it was justified in law, he would have realized that the termination of the Complainant's contract of employment was in accordance with clause 11. He should have examined the legal justification of the Respondent's decision before ordering enforcement.

It is our opinion from the authorities referred to above that the termination followed the procedure outlined in the contract of employment between the parties. As per clause 11 of the said employment contract, the Complainant was to be given two weeks' notice or two weeks' salary in lieu of notice and this was accordingly done. Therefore, the High Court should have dismissed the application for enforcement of the Respondent's ruling. Accordingly, this ground of appeal succeeds.

**GROUND II**

***The Learned High Court judge erred when he held that the appeal filed by Respondent/Appellant at the National Labour Commission against Applicant/Respondent's decision dated the 11th day of February 2020 is not a valid appeal.***

The High Court ruled that:

> *"Another bone of contention has to do with the Appeal against the decision of the National Labour Commission and as Counsel for Applicant stated until the rules of Court Committee decides otherwise the proper forum for such appeals would be the Court of Appeal. It is interesting to note that the said Exhibit K as exhibited by the Respondent has the Court of Appeal as its title. However, nothing on the said Exhibit indicates that the said appeal was filed……So far as this court is concerned there is nothing on record indicating that there is an appeal pending which would stop it from enforcing the said decision of the National Labour Commission."*

Let us consider what the Court of Appeal Rules, 1997 (C.I 19) say. Rule 8 deals with the Notice and grounds of appeal. It stipulates thus:

(1) *"Any appeal to the Court shall be by way of re-hearing and shall be brought by a notice referred to in these Rules as "the notice of appeal."*

(2) *The notice of appeal shall be filed in the Registry of the court below and shall*

- *(a) Set out the grounds of appeal;*
- *(b) State whether the whole or part only of the decision of the court below is complained of and in the latter case specify the part;*
- *(c) State the nature of the relief sought; and*
- *(d) State the names and addresses of all parties directly affected by the appeal."*

From the above, the notice of appeal is to be filed in the Registry of the Court below. What is the Court below? Counsel for the Appellant argues that it should be the Registry of the forum which gave the impugned decision which in this instance is the registry of the National Labour Commission. Counsel buttresses his submissions with the case of ***Samuel Victor Koranteng vrs Disciplinary Committee of the General Legal Council [2018-2019] GLR 329*** where the Court being faced with similar circumstances held that *"an appeal against a decision of the Disciplinary Committee of the General Legal Council may be filed at the registry of the Court of Appeal for appropriate fees to be charged in accordance with Civil Proceedings (Fees and Allowances) Rules, 2007 (CI 55). However, an appeal filed at the General Legal Council shall not be invalidated on grounds that no filing fees were paid. We dismiss the application and hold that the notice of appeal was filed within the time prescribed by law at the registry of the Court of Appeal and it is valid."*

It is Counsel's submission that the appeal filed in the registry of the forum where the appeal emanates, that is the registry of the Respondent, is valid since the purpose of filing a notice of appeal in the registry of the court that gave the impugned decision is to allow the forum to compile the record that formed the basis of the decision and remit same to the Court of Appeal. Counsel submits further that since the National Labour Commission had custody of the record, it was the proper forum to file the notice of appeal to enable it compile the records for the purpose of aiding the appeal.

Additionally, Counsel submits that bearing in mind that the stamp of the Respondent could clearly be seen on the face of the Notice of Appeal found at page 60 of the record of appeal, the High Court committed a grave error by holding otherwise. Furthermore, it is his submission that this decision of the Supreme Court is binding on the High Court in view of Article 136(5) of the 1992 Constitution which provides that "*subject to clause (3) of Article 129 of this Constitution, the Court of Appeal shall be bound by its own previous decisions; and all courts lower than the Court of Appeal shall follow the decisions of the*

*Court of Appeal on questions of law.*" In support thereof, the case of ***Republic vrs High Court (Criminal Division 1) Accra Exparte: Stephen Kwabena Opuni (Attorney-General, Interested Party/Applicant) Civil Motion No. J7/20/2021*** of 26th October, 2021 states that when the Supreme Court lays down a legal principle, all lower courts are bound to follow it. Torkonoo JSC put it succinctly thus: "*...It requires that when a higher court, definitely the highest court, in our jurisdiction being the Supreme Court, has outlined the contours of a legal principle, that decision upon a question of law is conclusive, and becomes an authoritative precedent that must stand or stare decisis, and bind all lower courts…"* Dotse JSC in the same case at page 22 put it thus: "*This therefore meant that, at all material times, when there is an authority on a subject matter from the Supreme Court, all courts lower than that court are bound to follow the decision of the Supreme Court*."

In ***Sosu vrs General Legal Council [2018] GHASC 9***, Appau JSC stated thus:

> "*From the provisions of the Constitution and the Courts Act, Act 459, whilst the judicial committees of the Houses of Chiefs have been categorised as lower courts created on the authority of the Constitution, 1992, the Disciplinary Committee of the General Legal Council has not been listed as one of such courts. Again, under the interpretation section of the Court of Appeal Rules [C.I. 19], 'court' has been defined to mean "a court of competent jurisdiction" whilst 'court below' means, "the court from which the appeal is brought". Applicant's contention is that the Disciplinary Committee of the General Legal Council is not a court of competent jurisdiction as defined under the Courts Act and the Constitution therefore Section 8(2) of C.I. 19 was not applicable to it. The Court of Appeal therefore erred in dismissing his application on the ground that he had no appeal pending, because the notice of appeal was filed in a wrong forum. The two cases the Court of Appeal cited to support its decision were all matters that came before the Supreme Court from decisions of the Judicial Committee of the National House of*

*Chiefs. These Judicial Committees are categorised as 'courts' as defined under section 39 of Act 459 so the two decisions have statutory foundations. Decisions from Judicial Committees of Houses of Chiefs are therefore quite peculiar from that of the Disciplinary Committee of the General Legal Council. There has never been an authoritative decision on the issue before the Court; i.e. whether or not rule 8(2) is strictly applicable to appeals from the Disciplinary Committee of the General Legal Council, when read together with section 39 of the Courts Act, Act 459.*

*"The authorities are legion that every case must be determined on its peculiar circumstances and that no two cases are alike. In the instant case before this Court, did the applicant err in filing the notice of appeal in the Court of Appeal instead of at the offices of the General Legal Council and if yes, was the error so fundamental or fatal that the door of justice should be completely shut against the applicant from seeking a redress of any kind whatsoever, particularly where he has appealed against the harshness of the sentence of three (3) years suspension from practice? Would the decision to invalidate the appeal amount to the denial or failure of justice in this current era of justice dispensation when the courts are being constantly admonished to ensure that substantive justice, devoid of form, is done at all times? Would injustice be caused to the respondent if rules 8(2) and 9(3) of C.I. 19 are waived in applicant's favour on the strength of rule 63 so that the appeal is determined on the merits? These are some of the crucial questions that keep echoing for answers, having taken cognizance of the peculiar nature of the matter before me.*

*"In my view, the Court of Appeal by its decision of 6th December 2017 has made the administrative arrangements set out in the rules of court for filing appeals to override the applicant's substantive right of appeal and this deserves to be looked at by the Supreme Court."*

Though the learned Justice did not state categorically whether or not Tribunals such as the Respondent are not specifically mentioned but adjudicate over disputes are courts within the meaning and intendment of the statute, it can be deduced from his pronouncement that adjudicating bodies such as Respondent are not within the meaning of a Court but a person's right of appeal as enshrined in the Constitution should not be taken away due procedural anomalies.

In sharp contrast, Amegatcher, JSC in ***Brown vrs National Labour Commission and Ahantaman Rural Bank Limited (J4/74 of 19th June 2019) [2019] GHASC 43*** stated that *"The NLC performs administrative and executive functions, in addition to its function to settle industrial disputes. It is neither chaired nor composed of judges. Yet it adjudicates cases. Adjudication is simply the legal process of resolving disputes. One, therefore, could describe the NLC as a court. This description fits into Article 295 of the Constitution, which defines a "court" to mean a court of competent jurisdiction established by or under the authority of this Constitution and includes a tribunal. This makes the NLC's work of adjudicating disputes a quasi-judicial one. Thus, in exercise of its quasi-judicial functions, the Labour Commission is not only a commission established by law, but also a tribunal or an adjudicatory body".*

Since the two opinions of His Lordships give conflicting positions, I will construe the meanings of rules 8(2) and 9(3) of C.I. 19 on the maxim: Ut res mages valeat quam pereat literally meaning "*it is better that a thing should have effect than be made void*." It means that the document should be construed in a manner that would save it rather than rendering it void or illegal.

Rule 9(3) of C.I. 19 provides that an appeal is brought when the notice of appeal has been filed in the Registry of the court below.

In ***Curtis vrs Stovin (1889) 22 QBD 513***, Bowen LJ stated thus:

*"The rules for the construction of statutes are very like those which apply to the construction of other documents, especially as regards one crucial rule, viz., that, if it is possible, the words of a statute must be construed so as to give a sensible meaning to them. The words ought to be construed ut res magis valeat quam pereat".*

Again in ***Nokes vrs Doncaster Amalgamated Collieries Ltd. [1940] AC 1014*** Viscount Simon LC noted:

*"If the choice is between two interpretations, one of which would fail to achieve the manifest purpose of the legislature, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bring about the effective result".*

Also, in ***Davies vrs Attorney-General and Electoral Commission [2012] 2 SCGLR 1155*** the Supreme Court held that:

*"The provisions in article 47(6) of the 1992 Constitution was somewhat ambiguous. It was however, well settled that* ***where the language of a statute was ambiguous so as to admit of two constructions, the consequences of the alternative construction must be considered, and that construction must not be adopted which would lead to manifest public mischief, or great inconvenience, inconsistency, unreasonableness or absurdity or to great harshness or injustice.*** *In effect, the view that where a statute was plain and unambiguous, it must take its literal course regardless of the consequences was now outmoded." (Emphasis added)*

Article 137 of the Constitution, 1992 provides that:

*"(1) The Court of Appeal shall have jurisdiction throughout Ghana to hear and determine, subject to the provisions of this Constitution, appeals from a judgment, decree*

*or order of the High Court and Regional Tribunals and such other appellate jurisdiction as may be conferred on it by this Constitution or any other law.*

*(2) Except as otherwise provided in this Constitution, an appeal* ***shall lie as of right from a judgment, decree or order of the High Court and a Regional Tribunal to the Court of Appeal****.* (Emphasis added)."

It is our opinion that in order not to whittle down the Constitutional right of the Appellant to appeal, the Amegatcher JSC opinion in ***Brown vrs National Labour Commission supra*** to be adopted to construe "*Court below*" as contained in Rule 8 (2) of C.I 19 to include adjudicating bodies such as the Respondent to give meaning to the true purpose and intendment of the legislature concerning Appeals. As recommended by the justices in the case of ***Samuel Victor Koranteng vrs Disciplinary Committee of General Legal Council supra***, the Rules of Court Committee should provide rules to govern the for filing notices of appeal.

This ground of appeal therefore succeeds.

**GROUND III**

***The entire ruling cannot be supported having regard to the evidence***

It is trite that every appeal is by way of rehearing and our jurisdiction is invoked by Rule 8(1) of the Court of Appeal Rules, CI 19. This involves going through the entire record to satisfy ourselves that a party's case is more probable than not, and that the finding of the court below is supportable from the evidence led. See the cases of ***Ansu-Agyei vrs Fimah [1993-94] 1 GLR 299*** at *305* and ***Tuakwa vrs Bosom [2001-2002] SCGLR 61.*** The Appellant who complains that a judgment is against the weight of evidence bears the burden of demonstrating that certain pieces of evidence on the record which having not been properly evaluated led to a different conclusion from what ought to have been. See the case of ***Djin vrs Musa Baako [2007-2008] SCGLR 686.***

It is also trite law that it is the trial court that has the right to make primary findings of fact and where they are supported by the record, the appellate court is not permitted to interfere with same. The findings will however be interfered with upon certain conditions.

The High Court made a finding that *"It is interesting to note that the said Exhibit K as exhibited by the Respondent has the Court of Appeal as its title. "However, nothing on the said Exhibit indicates that the said appeal was filed….So far as this Court is concerned, there is nothing on record indicating that there is an Appeal pending which would stop it from enforcing the said decision of the National Labour Commission."*

Contrary to the finding of the learned trial judge, Exhibit K found at page 60 of the record of appeal, bears the stamp of the National Labour Commission which is dated 25th February 2020. The trial judge further states that there is nothing on record indicating that there is an appeal pending. We find these two statements to be contradictory.

As we have already said elsewhere, the employment contract was terminated in accordance with clause 11 of the said contract. These terms were in accordance with sections 15(a) and 17(1)(b) of Act 651. In spite of these clear provisions and evidence on record, the court ordered the enforcement of the Respondent's ruling.

Counsel referred to the case of ***Frimpong & Another vrs Nyarko [1989-99] SCGLR 734*** where the Supreme Court made an observation concerning the proper forum for filing the notice of appeal where the Appellant in an appeal against an order of the Judicial Committee of the National House of Chiefs, filed the notice of appeal in both the National House of Chiefs and the Court of Appeal. The Court held that the court below under reference is the National House of Chiefs. We find that the High Court wrongly

construed rule 8(2) of CI 19 when the requirement is that the notice of appeal should be filed in the court below.

We find that the findings made by the trial judge are not supported by the evidence. Accordingly, this ground of appeal succeeds.

**CONCLUSION**

In light of the analysis of case law and the statutory provisions, it is our considered opinion that the entire ruling cannot be supported having regards to the evidence. Accordingly, we set aside the ruling of the High Court dated 14th May 2021. Furthermore, based on our analysis, we hold that the trial judge ought to have refused the Respondent's application before him for the enforcement of its Ruling dated 11th February, 2020. Having reheard the case and concluded that the application should have been refused, we assume the powers of the High Court pursuant to Rule 32(1) of CI 19 and dismiss the said application. In effect, the reliefs sought by the Appellant are allowed in their entirety.

Cost of Five Thousand Ghana cedis (GH¢5,000.00) against the Applicant/Respondent in favour of the Respondent/Appellant.

***(SGD)***

**MERLEY A. WOOD (MRS.)**

**(JUSTICE OF APPEAL)**

***(SGD)***

**I AGREE** **CECILIA H. SOWAH**

**(JUSTICE OF APPEAL)**

**I ALSO AGREE** ***SGD)***

**RICHARD ADJEI-FRIMPONG**

**(JUSTICE OF APPEAL)**

***COUNSEL:***

- **BERNET ANIM WITH JOSHUA A. BOOWURO FOR APPELLANT**
- **NO LEGAL REPRESENTATION FOR RESPONDENT**