IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

AMEGATCHER JSC

PROF. KOTEY JSC

OWUSU (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL MOTION

NO. J5/67/2022

30TH NOVEMBER, 2022

THE REPUBLIC

VRS

HIGH COURT, ACCRA	**……**	**RESPONDENT**
EX PARTE: JAMES GYAKYE QUAYSON	**……**	**APPLICANT**
ATTORNEY-GENERAL	**……**	**INTERESTED PARTY**

RULING

OWUSU (MS.) JSC:-

On the 12th of July, 2022, the High Court (Criminal Division) (3) Accra, in the course of hearing the case in which the applicant is the accused person on trial, ruled as follows:

"As rightly submitted by the prosecution, the said witness is competent to testify in this matter and his evidence is relevant to their case and same is admissible. As also rightly submitted by counsel for the accused person, a witness may not testify to a matter unless sufficient evidence is introduced to support a finding that the witness has personal knowledge of the matter. The said witness has made certain positive statements in his witness statement. Having made such statements which be his evidence in chief, it is presumed that he has personal knowledge of what he is testifying to. Whether what he has stated therein are matters he knows can only be determined under cross examination to rebut that presumption. It is only after a piece of evidence has been tested under cross examination that the court will know whether what he says will assist the court to determine a fact in issue. The objection is therefore overruled. The witness statement of PW1 filed on the 15th of March, 2022 is adopted as his evidence in chief".

The above ruling followed an objection raised by counsel for the accused, the applicant in the instant application in the course of his trial in Case No. CR/O264/2022 at the High Court. The prosecution at the High Court had sought to adopt the witness statement of PW1 Richard Takyi-Mensah, as his evidence in chief. Counsel for the accused, the applicant in this application objected and the basis of the objection was that the witness, PW1 who says he is a teacher resident at Yamoransa does not have personal knowledge of the matters in paragraph 5 to 14 of his witness statement and certainly cannot speak from personal knowledge as application for Ghanaian passports are not made by teachers in Yamoransa among other things. Counsel referred to section 60 (1) of the Evidence Act 1975 (NRCD 323).

The prosecution responded to the objection raised and submitted that the objection has no basis as section 60 (1) of the Evidence Act is not couched in mandatory terms.

Secondly, per section 60 (2) of the Evidence Act, the evidence to prove personal knowledge of the matter may but need not consist of the testimony of the witness himself. The matters raised by the witness in his witness statement, he has talked about the manner in which the passport of the accused was obtained. That the prosecution has other witnesses who will come to court to testify in the matter like the Director of Passport who is going to tender documents in support of what PW1 is going to tell the court. The trial Judge ruled on the matter in the Ruling quoted above hence the application before this Court for an order of Certiorari and Prohibition seeking to quash the Ruling of the High Court, Accra dated 12th July,2022.

The grounds of the application are:

i. *That the High Court committed a fundamental error of law on the face of the record in holding that because the witness is a competent witness and his evidence is relevant the evidence is admissible;*

ii. *That the High Court committed a fundamental error of law on the face of the record in failing to apply the plain meaning of section 60 (1) of the Evidence Act 1975 that a witness may not testify to a matter unless sufficient evidence is introduced to support a finding that he has personal knowledge of the matter;*

iii. *That the High Court committed a fundamental error of law on the face of the record in deciding that a witness is presumed to have personal knowledge of the matters he testified to; and*

iv. *That the High Court committed a fundamental error of law on the face of the record in admitting testimony of a witness without the introduction of any evidence whatsoever that the witness had personal knowledge of the matters he was testifying about.*

In the 21 paragraphs affidavit in support of the application before us, junior counsel for the applicant deposed that, the witness whose evidence

is in contention before this Court can only testify to matters within his personal knowledge. He referred us to section 60 (1) of the Evidence Act 1975 and submitted that, unless the trial Judge applies the rules of evidence correctly, the prosecution will not conduct its case in accordance with laid down rules of evidence applicable in the courts. This will be a serious prejudice to the rights of the applicant in the trial in the Respondent High Court. This is because the statement in the ruling that the witness is a competent witness and that the evidence, he is giving is relevant and therefore admissible is a fundamental error of law of evidence. Similarly, the statement in the ruling in contention that "a witness is presumed to have personal knowledge of matters he testified to", was a fundamental error of law on the face of the record. Additionally, counsel deposed, in making the above statements, the trial Judge did not refer to any provision in the Evidence Act nor provide any legal basis for the statement. But more importantly, the trial Judge did not apply or give effect to the plain words of section 60 (!) of the Evidence Act which was the basis of the objection raised. He continued that, the trial Judge is bound by statute and her failure to apply the said provision was a fundamental error of law on the face of the record. Counsel for the applicant attached Exhibit 'B' the witness statement of PW1 Richard Takyi-Mensah to the affidavit in support of the application and concluded that, unless restrained by an Order of prohibition from repeating these serious errors of law, the trial Judge will continue the trial on the basis of these fundamental errors which will defeat the end of justice.

The Interested Party responded to the above depositions in its affidavit in opposition filed the 26th of July, 2022. In particular, the Interested Party narrated the sequence of events at the trial High Court that culminated in the Ruling in contention before this Court. It deposed that, the applicant was charged before the High Court on charges of deceit of public officer; forgery of

passport or travel certificate; knowingly making false declaration; perjury and false declaration for office. It continued that, after the case Management Conference (CMC), the High Court set down 12th July, 2022 for the prosecution to open its case as the applicant has pleaded not guilty to the offences charged. The prosecution called its first witness in the person of Richard Takyi-Mensah who was duly sworn in. Before the High Court could adopt the witness statement of PW1 as his evidence in chief, counsel for the applicant raised an objection to paragraphs 5 to 14 on the grounds that, on the face of PW1's witness statement, the witness did not introduce sufficient evidence to show that he had personal knowledge of the matters in his witness statement. Therefore, the said paragraphs should be struck out. The Interested Party responded to the objection raised and submitted that, it was not the proper time to raise since the witness was competent whose evidence was relevant and that per the law personal knowledge is not a mandatory requirement for the admissibility of the evidence.

The High Court after listening to the arguments from both sides overruled the objection.

Counsel for the Interested Party submitted that, the application before us is incompetent as it does not properly invoke the Supervisory Jurisdiction of the Supreme Court. Secondly, there is no fundamental error of law on the face of the record which warrants the exercise of this Court's Supervisory Jurisdiction by way of certiorari. This is because, the Respondent High Court had jurisdiction to determine whether PW1 could testify in the trial and the finding by the trial Judge did not by any stretch of imagination constitute a fundamental error of law on the face of the record. On the contrary, the Respondent High Court did not commit any error of law apparent on the face of the record which would require this Court's intervention. The Respondent

High Court exercised its judicial function by ruling on the objection raised and that was within law. Thirdly, the Respondent High Court was not required to refer to the Evidence Act 1975 in the ruling on the objection and that the ruling in contention has not occasioned any injustice to the applicant as the latter has an opportunity in accordance with the rules of court and natural justice to cross examine the witness to demonstrate that he has no personal knowledge of the matters which he seeks to testify on. But more importantly, the admission of inadmissible evidence perse is not sufficient ground to invoke the Supervisory Jurisdiction of this Court. Again, the Respondent High Court did not deprive the applicant of his Constitutional rights. The overruling of the objection of the applicant is not a breach of the right to his fair trial. Counsel for the Interested Party concluded that, a careful reading of paragraphs 12 to 20 of the affidavit in support of this application is the applicant's dissatisfaction with the overruling of his objection and not because a fundamental error of law has been committed by the Respondent High Court. The Interested Party therefore invited us to dismiss the application as same is incompetent, frivolous, misconceived and unmeritorious.

Counsel for the applicant filed 18 paragraph reply and insisted the trial Judge committed a fundamental error of law when she ruled that PW1 was a competent witness and urged us to exclude paragraphs 5 to 14 of the witness statement of PW1 in Suit No. CR/0264/2022.

Paragraphs 5 to 14 of Exhibit "B" attached to the affidavit in support of the application before us is the Witness Statement of PW1 Richard Takyi-Mensah in Suit No. CR/0264/2022. We will quote same for purposes of emphasis. It reads:

1. "My name is Richard Takyi-Mensah.
2. I am a teacher and resident of Yamoransa.

3. I am a Ghanaian citizen.
4. I know the accused person James Gyakye Quayson as the sitting Member of Parliament for Assin North Constituency.
5. On 29th July, 2019, the accused person applied for a Ghanaian passport
6. The accused person indicated on the application form for a Ghanaian passport that he does not have a dual citizenship which was false because he was a Canadian citizen at the time and had a Canadian passport with number HN426280, issued on 3rd October, 2016 to expire on 3rd October 2026.
7. Based on the information in the passport application form which included the statement that he was not a dual citizen at the time, the accused was issued a Ghanaian passport with passport number G2538667 on 2nd August 2019.
8. Prior to the 2020 parliamentary elections held on 7th December 2020, the Electoral Commission opened nominations from 5th October 2020 to 9th October 2020.
9. The accused person picked up nomination Forms to contest for the position of Member of Parliament for Assin North Constituency.
10. In Part iv of the nomination Forms, the accused person signed a Statutory Declaration that he did not owe allegiance to any country other than Ghana although at the time, he still held his Canadian citizenship and owe allegiance to Canada.
11. The accused person subsequently filed his nomination Forms on Thursday 8th October 2020 with the Statutory declaration included in the Forms and his nomination was accepted.

12. Based on the false information in the nomination Form including the Statutory Declaration, the accused person contested in the 2020 general elections and subsequently won the seat.
13. The accused person was issued a renunciation certificate by the government of Canada on 26th N0vember 2020, weeks after he had filed his nomination Forms with the false declaration that he did not owe allegiance to any country other than Ghana.
14. Being a concerned citizen, I petitioned the Director-General of the Criminal Investigations Department of the Ghana Police Service on 11th January 2021 with the information I had so that investigations could be concluded on the allegations made against the accused person.

STATEMENT OF TRUTH

I, RICHARD TAKYI-MENSAH verify that the Statements contained in this Witness Statement are true to the best of my knowledge and belief.

SIGNED

RICHARD TAKYI-MENSAH".

After a careful reading of the affidavits in support and opposition to the application before us and the accompanying statements of case filed, the arguments of the applicant seem to be equating admissibility with truth. From paragraphs 4 to 14 of the Witness Statement of Richard Takyi-Mensah quoted above, nowhere did the witness say he was told of the matters stated in his Witness Statement. If I may ask, what then is the purpose of cross examination. It is to test the truth and personal knowledge of the matters a witness testifies to. The testimony of a witness if not subject to cross examination would be expunged from the record of proceedings or better still cannot be relied upon by a trial Judge in evaluating or making a finding of fact as such evidence is untested This assessment can only be

done by the trial Judge after the witness has testified. See ***section 62 (1) and (2) of the Evidence Act 1975*** which provides:

"(1) At the trial of an action, a witness can testify only if he is subject to examination of all parties to the action, if they choose to attend and examine.

(2) If a witness who testified is not available to be examined by all the parties to the action who choose to attend and examine, and the unavailability of the witness has not been caused by any party who seeks to cross examine the witness, the court may in its discretion exclude the entire testimony or any part of the testimony as fairness requires".

Counsel for the applicant referred us to section 60 (1) of the Evidence Act 1975 (NRCD 323) and the case of **REPUBLIC v HIGH COURT (Fast Track Division) ACCRA; EX PARTE NATIONAL LOTTERY AUTHORITY [2009] SCGLR 390** where Dr Date-Bah JSC admonished Judges not to countenance a party violating a statute and submitted that, the trial Judge erred on the face of the record in not applying the clear terms of the statute governing qualification of witnesses and admissibility of evidence.

With all due respect to counsel for the applicant, at the risk of sounding repetitive, he is equating admissibility with truth. Section 60 (1) of the Evidence Act which he finds solace in is not couched in mandatory terms. The section reads:

"A witness ***may*** (our emphasis) not testify to a matter unless sufficient evidence is introduced to support a finding that he has personal knowledge of the matter", and by *section 42 of the Interpretation Act 2009, Act 792:*

"In an enactment the expression "may" shall be construed as permissive and empowering, and the expression "shall" as imperative and mandatory.

But more importantly, if counsel for the applicant has gone a step further to read section 60 (2) of the Evidence Act, the provision in section 60 would have been clearer***. Section 60 (2) provides:***

"Evidence to prove personal knowledge <u>may but need not consist of the testimony of the witness himself".</u> (Our emphasis)

In the context of Suit No. CR/0264/2022 before the High Court for which the Ruling in contention was delivered, the prosecution has just opened its case by calling its first witness PW1. From the affidavit in opposition the Interested Party deposed that it intends calling other witnesses including the Director of Passport in Ghana.

The Respondent High Court that gave the Ruling in contention before this Court was within jurisdiction in that, in the course of a trial, if an objection is raised, the trial Judge has to give a ruling one way or the other. Overruling or sustaining an objection in the course of a trial is part of a judge's job and therefore, no fundamental error of law on the face of the record was committed by the Trial Judge. Consequently, no error of law was committed by the trial Judge to warrant this Court's Supervisory Jurisdiction.

In their reply counsel for the applicant referred to section 60 (2) of the Evidence Act and submitted that, that provision rather reinforces his argument, but we beg to differ for reasons stated above in this delivery. Counsel for the applicant also referred to a number of cases in his reply to support his arguments. We have looked at the cases and have come to the conclusion that, the facts and the ratio decidendi in those cases differ from the case under consideration. For instance, in the case of the **RRPUBLIC v HIGH COURT, KOFORIDUA; EX PARTE (Baba Jamal & Others Interested Parties) [2009] SCGLR 460, 509** deals with a situation where a

Statute has made a provision for certain steps to be taken in order to comply with the law. This is completely different from the instant case where the correct process has been initiated in the prosecution of the applicant. What is in issue is the evidence PW1 is giving. Counsel for the applicant says the witness has no personal knowledge of the matters he has stated in his witness statement. The witness in the said statement does not say he was told. At this stage how can counsel for the applicant ascertain whether the witness has personal knowledge of matters he has testified to unless the witness is cross examined. Similarly, in the case of **REPUBLIC v MICHAEL CONDUAH, EX PARTE AABA (Substituted by Asmah, [2013-2014] SCGLR 1032,1060,** where the Respondent in that case filed Motion on Notice for Interim Injunction without filing a writ of summons. This Supreme Court held that the Respondent in that case failed to comply with the basic requirement of Order 50 rr7 and 8 of the applicable *High Court (Civil Procedure) Rules 1954 (LN 140A)* the relevant High Court Rules at the time material to the application, which is that a writ of summons should be filed before application for injunction. In the case of the **REPUBLIC v HIGH COURT (Land Division) ACCRA; EX PARTE LANDS COMMISSION (Nungua Stool & Others Interested Parties) [2013-2014] 2 SCGLR 1235**, which is also one of the cases counsels for the applicant referred to in his reply to buttress his point relates to jurisdiction and legal questions founded on disputed facts. The issue and ratio are different from the case under consideration in that the applicant is not questioning the jurisdiction of the High Court to prosecute him.

As demonstrated above, the adoption of the evidence in chief of PW1 in Suit No. CR/0264/2022 which evidence we have quoted extensively is not an error of law which can be said to violate section 60 (1) of the Evidence

Act to warrant the invocation of the Supreme Court's supervisory jurisdiction. Even if it was an error which we do not agree is an error, that error was made within jurisdiction and certiorari would not lie to quash same.

Counsel for the applicant is asking this Court to prohibit the trial Judge from continuing with the hearing of the case. No basis has been canvassed to ground this assertion. It is speculative to say that unless prohibited, the prosecution will not conduct the case in accordance with the laid down rules of evidence applicable to the courts and this will be serious prejudice to the rights of the applicant at the Respondent High Court.

In the circumstances the application for certiorari is refused and same is hereby dismissed. Similarly, the application for prohibition has not been made out and is also dismissed.

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

PROF. H.J.A.N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

TSATSU TSIKATA ESQ. FOR THE APPLICANT WITH JUSTIN PWAVRA TERIWAJAH ESQ.

ALFRED TUAH YEBOAH ESQ. (DEPUTY ATTORNEY GENERAL) FOR THE RESPONDENT/ INTERESTED PARTY, WITH RICHARD GYAMBIBY (PRINCIPAL STATE ATTORNEY) AND DORCAS FELLI (STATE ATTORNEY)