IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

AMEGATCHER JSC

PROF. KOTEY JSC

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL APPEAL

NO. J4/31/2021

7TH DECEMBER, 2022

IVAN YELIPOIE ….. PLAINTIFF /APPELLANT/APPELLANT

VRS

BARCLAYS BANK OF GHANA LTD. ….. DEFENDANT/RESPONDENT/ RESPONDENT

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

This is an appeal emanating from the dismissal by the Court of Appeal of a writ filed by the plaintiff/appellant/appellant (hereafter called the appellant) against his former employer the defendant/ respondent/ respondent (hereafter called the respondent). The writ was filed at the Human Rights Division of the High Court for the violations of the 1992 Constitution and for payment of remuneration differentials. On the 8th November 2017, the High Court dismissed the appellant's writ and held that not only was the claim statute barred but that there had been no violation of the appellant's constitutional rights. The appellant, dissatisfied with the High Court's decision, appealed to the Court of Appeal. By a unanimous judgment dated 11th June 2020, the Court of Appeal affirmed the decision of the High Court and dismissed the appeal. Aggrieved by the judgment, and taking advantage of his constitutionally enshrined right to have a second bite at the cherry, the appellant has filed this appeal before us for a final determination on the matter.

FACTS

The appellant's claim is that he was employed as an Assistant Agricultural Development Officer of the respondent from 1985 till his redundancy in 2011. By a letter dated 6th January 1998, he was transferred to the Tamale Branch of the respondent company. According to the appellant, the letter did not specify his role in that branch. Sometime on 22nd December 2000, the Executive Head of Retail Banking after receiving a purported audit report wrote a final warning letter to the appellant blaming him for inadequate management controls and unacceptable operational risks. The appellant replied to the said letter stating that he was neither the branch Accountant nor part of management. Furthermore, on 5th September 2001, the Head of Retail Performance, North wrote to the appellant blaming him for inefficiencies in the Tamale Branch which the appellant denied. Subsequently, on 3rd December 2001, the Chief Operating Officer (COO) of the respondent company wrote a letter to the appellant titled 'gross misconduct' where he

alleged that the appellant had failed to meet the requirements of his role as Operations Officer, a position which appellant claims he never held.

The appellant pleaded that even though this letter indicated that he was being demoted, the effect was not to change his salary and bonus payments but to take away his signing powers. The appellant also contended that the role of Operations Officer was alien to the Procedure Manual; further, he had not been transferred to Tamale as Operations Officer. The appellant averred that he was never promoted past his initial Assistant Agricultural Development Officer role and received the salary and all increments attached to that position till 31st December 2001. In January 2002, he noticed that his salary was unilaterally and arbitrarily reduced without basis. Despite his protestations, this reduced salary with annual increments was paid till he was declared redundant in July 2011.

The appellant, therefore, sued at the High Court for the following reliefs:

a. **A declaration that the defendant's treatment of the plaintiff amounted to a violation of the economic rights of the plaintiff guaranteed under the 1992 Constitution.**
b. **A declaration that the defendant breached the provisions of the 1992 Constitution relating to administrative justice in its treatment of the plaintiff.**
c. **A declaration that the defendant's conduct was in breach of the provisions of the international legislations, rules, and conventions relating to the employment of labour ratified by Ghana and made part of our law pursuant to the provisions of the 1992 Constitution.**
d. **An order that the defendant pays compensation to the plaintiff for the defendant's breach of the constitutional rights of the plaintiff.**
e. **An order that the defendant pays to the plaintiff the sum of GHC 167, 098.43 being the accumulated monthly salary differences calculated from January 2002 to July 2011.**

f. **An order that the defendant pays to the plaintiff the sum of GHC 63, 944.14 being unpaid annual bonuses from year 2003 to year 2010.**
g. **An order that the defendant pays to the plaintiff the sum of GHC 4, 120.00 being the difference in overnight/transfer grants withheld by the defendant.**
h. **An order that the defendant pays to the plaintiff the sum of GHC 84, 844.41 being the difference in compulsory redundancy pay due the plaintiff.**
i. **An order that the defendant pays to the plaintiff the sum of GHC 1, 604.90 being the difference in one month's salary in lieu of notice.**
j. **Interest on all sums found due and owing from the defendant to the plaintiff at the commercial bank lending rate to the date of final payment.**
k. **An order that the defendant pays to SSNIT the differences in plaintiff's contributions and the defendant's contribution based on the plaintiff's correct salary for the period January 2002 to July 2011.**
l. **Costs inclusive of legal fees.**

The crux of the respondent's defence was that reliefs (a), (b), (c) and (d) of the appellant's reliefs were matters touching on the employer-employee relationship and as such were contractual in nature. The respondent further averred that the appellant was attempting to dress a purely contractual matter in the garb of a constitutional matter in order to throw dust into the eyes of the Court. Furthermore, the respondent stated that the appellant had filed a claim before the National Labour Commission ("NLC") and the NLC on 29th June 2009 had rendered a decision in the appellant's favour. The NLC's decision restored the appellant to his claimed status of supervisor grade 2 or its equivalent and also ordered payment of salaries and other accrued benefits from January 2002 till the date of the decision. The respondent, dissatisfied with the NLC decision appealed to the Court of Appeal. It was the position of the respondent that the NLC did not have jurisdiction to determine the matter because the cause of action accrued on 3rd December 2001 before the

enactment of the Labour Act 2003 (Act 651). The Court of Appeal unanimously allowed the appeal. It concluded that based on his evidence that he was demoted by a letter dated 3rd December 2001, the appellant's cause of action accrued on 3rd December 2001 and, therefore, his reliefs numbered (d), (e), (f), (g), (h), (i) and (k) were statute-barred, having been caught by section 4 of the Limitations Act 1972, NRCD 54.

GROUNDS OF APPEAL TO THE SUPREME COURT

By a Notice of Appeal filed on 29th June 2020, the appellant filed the following grounds of appeal to this court:

a. **The learned justices of the Court of Appeal erred when they held that all the plaintiff/appellant/appellant's claims were statute-barred.**
b. **The judgment of the Court of Appeal is against the weight of evidence on the record.**

The following additional grounds of appeal were filed as follows:

a. **The learned justices of the Court of Appeal erred when they held that the cacus beli (sic) of the plaintiff's action was the letter of demotion dated 3rd December 2001.**
b. **The learned justices of the Court of Appeal erred in holding in one breath that the plaintiff/appellant/appellant's claims were claims based on his contract of employment and in the same breath that the plaintiff/appellant/appellant's claims were common law claims or reliefs wrongly brought under the fundamental human rights provisions of the Constitution.**
c. **The learned justices of the Court of Appeal erred in raising an issue suo motu and basing their judgment on that issue without giving the plaintiff/appellant/appellant an opportunity to be heard on that issue.**

d. **The learned justices of the Court of Appeal erred in treating the plaintiff/appellant/appellant's action as a solely constitutional action based on the fundamental human rights provisions of the Constitution without recourse to the plaintiff/appellant/appellant's legitimate claims which the learned justices of the Court of Appeal recognized arose out of his contract of employment.**
e. **The learned justices of the Court of Appeal erred in failing to apply the doctrine of severability of claims to the plaintiff/appellant/appellant's case.**
f. **The learned justices of the Court of Appeal erred in misconstruing the decision of the Supreme Court in Abena Ackah v Agricultural Development Bank [2017-2018] 2 SCLRG 1, to mean that claims for breaches of fundamental human rights are barred unless they are filed within six months in the High Court.**

This appeal has been formulated on the omnibus ground. We are, therefore called upon to consider it based on the long and distinguished line of authorities settled by this court when considering such grounds of appeal. We have also not lost sight of the fact that the appeal, again, touches on concurrent findings of fact by two lower courts. We are not to interfere with concurrent findings of fact unless it is found that there were clear blunders or errors which resulted in a miscarriage of justice.

In considering this appeal we intend to lump together grounds (a) and (b) of the original grounds of appeal and grounds (a) (d) (e) of the additional grounds of appeal since they are interwoven. Being mindful that an appeal is by way of rehearing, let us assess the case of the appellant and the evidence that was led in support of that case.

THE DEMOTION

A perusal of the appellant's pleadings and evidence would reveal that the crux of his claim is the reduction in his salary, unpaid bonuses, allowances, and redundancy pay.

The appellant contended that there was no basis for this reduction in salary which resulted in him being paid reduced entitlements upon redundancy. The appellant claims he was constitutionally entitled to the monthly salary of GH¢417.18 together with annual increments, thus the respondent had violated his economic rights under the 1992 constitution. The appellant also claimed that the respondent violated all the known principles of administrative justice as provided for under the 1992 constitution including the rules of natural justice. The respondent also failed to comply with and observe its own Procedure Manual. Lastly, the respondent had violated all known international legislations, rules, and conventions on the employment of labour which have been ratified by Ghana and are made part of its laws as provided for in the 1992 Constitution. The appellant claimed compensation, unpaid bonuses, and differentials in salaries and entitlements based on these alleged constitutional violations.

Did the evidence on record support the claim of a unilateral and arbitrary reduction in salary? The answer is negative. When a party asserts that the other party made a unilateral or arbitrary decision, it means that the other party's action was willful, illogical, capricious, unreasonable, and, without consideration of facts and the law. Accordingly, the appellant had a duty to lead evidence on why the decision to reduce his remuneration was made without consideration of the facts or the law.

The appellant in his pleadings averred that the letter written to him by the respondent's COO and dated 3rd December 2001 was not to change his conditions of service, especially his salary and bonus payments but rather, it was to take away the signing powers that were given to him after he joined mainstream banking. The appellant further averred that the use of the term 'demote' in that letter was a misnomer because his status was already that of a non-signing officer. Also, the appellant averred that the respondent violated the rules of natural justice by not complying with and observing its procedural manner.

From the evidence that was led, the letter dated 3rd December 2001 to the appellant was a demotion letter. Exhibit K tendered in evidence by the appellant, dated 3rd December 2001 and titled 'GROSS MISCONDUCT' was written by the COO of the respondent demoting the appellant. Paragraph 2 of the letter stated as follows:

> **"This behaviour has been viewed seriously by the Bank and as a result, you have been demoted from your current position as a Supervisor to Clerk (CG2)."**

During cross-examination of the appellant at page 103 of the ROA, he testified why this letter was not a demotion as follows:

> **Q: On 3rd December 2001, the Defendant demoted you is it right?**
>
> **A: Yes. I say it was not a demotion. In the letter of 3rd December 2001, it was stated "This behaviour has been viewed seriously by the Bank and as a result, you have been demoted from your current position as a Supervisor to Clerk (CG2)." This statement did not demote me and cannot demote me for the simple reason that my salary and conditions of service was** *(sic)* **not stated in this letter. The Bank could not unilaterally demote me.**

From the above, the evidence does not bear out the basis of the appellant's contention about the unilateral and arbitrary reduction in his salary. The evidence on record shows that the appellant was demoted and his salary and other entitlements were altered subsequent to his demotion. To succeed in his contention, it was the responsibility of the appellant to prove his claim positively by demonstrating that the respondent's disciplinary procedure resulting in his demotion and reduction in his entitlements was not followed and, therefore, contrary to the law. This, the appellant sadly failed to prove.

When a party, as in this case fails to discharge the evidential burden placed on him, a court of law is entitled to presume the regularity of the steps taken by the employer, i.e., the regularity of Exhibit K, and hold that the appellant was lawfully demoted. The 11th

Edition of the **Blacks Law Dictionary** defines demotion as **"a reduction to lower rank or grade, or to lower type of position, or to lower pay scale".** The appellant's claim that his demotion was only to take away his signing powers but not to reduce his salary is not supported by the evidence on record. In fact, per the appellant's own case, the reduced salary commenced in January 2002 whereas the letter notifying him of his demotion was dated 3rd December 2001. By parity of reasoning, if you have been informed of your demotion in December and in January the next month, a reduced salary takes effect, it can only be inferred that the reduced salary was paid pursuant to the said demotion.

Additionally, under cross-examination of the appellant at pages 103 to 104 of the ROA, the following ensued:

> **Q: The post of a supervisor and a clerk in the Bank which one is higher?**
>
> **A: A supervisor is higher.**
>
> **Q: Supervisor salary is higher than that of a clerk in the Bank?**
>
> **A: Yes**
>
> **Q: Exhibit K letter dated 3rd December 2001 demoted you from supervisor to clerk?**
>
> **A: It was stated in Exhibit K**
>
> **Q: So you *(sic)* salary was reduced from that of a supervisor to that of a clerk?**
>
> **A: Yes**

The testimony above which was an admission of a reduced salary after the demotion clearly demonstrates that the appellant knew that the reduction in his salary was a result of the demotion. **S. A. Brobbey** in his book **Essentials Of The Ghana Law Of Evidence 2014** at page 112-113 comments on the importance of admissions thus;

> **"The importance of admissions lies in the fact that the court can act on them without proof of the facts constituting the admissions. Admissions therefore constitute the second category of matters which require no proof. The rationale for this rule is obvious. If a person admits or concedes to facts which are against his interest, there is no need to proceed further to prove those facts before he would be bound by the terms of those facts.**

The demotion letter specifically stated that the respondent was being demoted from supervisor to clerk, two roles with different salary grades, and the clerk grade being lower. It is, therefore, not out of the ordinary for a demotion to accompany a salary reduction.

Another vital piece of evidence in this appeal is the suit filed at the National Labour Commission (NLC) by the appellant challenging his demotion. In the ruling dated 25th June 2009 and tendered in as Exhibit Y, the NLC upheld the appellant's petition and ordered the respondent to restore the appellant to his original status of supervisor grade two or its equivalent. The respondent was also ordered to pay the difference in the appellant's salary from January 2002 and any other accrued benefits from January 2002.

Dissatisfied with the NLC's ruling, the respondent appealed to the Court of Appeal. In its judgment tendered as Exhibit 1, the Court of Appeal held that the appellant's cause of action had accrued on 3rd December 2001 because the demotion was made on that day. The Court of Appeal came to this conclusion based on the same letter which was tendered in as Exhibit K in this suit. The Court of Appeal also held that since the demotion in rank and reduction in remuneration was done in 2001, two years before the Labour Act, 2003 (Act 651) came into force, the NLC erred when it applied the Act retrospectively and as such did not have jurisdiction to entertain the matter. It is also important to note that the appellant did not appeal against the Court of Appeal's judgment.

We find it surprising that after petitioning the NLC, going through its procedures, and participating in the Court of Appeal proceedings, the appellant will turn around and allege in new action that his salary was reduced without basis and that his cause of action arose in 2011 when he was declared redundant. The trial court and the intermediate appellate court all concluded that the redress sought concerning the reduction in his salary which was hinged on his demotion is statute-barred. Whether or not this conclusion on the limitation of the action is backed by the evidence and the law will form the basis of a detailed discussion shortly below. But suffice it to say that on the issue of demotion, in the absence of any positive evidence demonstrating that the demotion was contrary to law, the demotion and its corresponding entitlements still stood. We have found no basis from the evidence on record to depart from this finding by the two lower courts. The other question we posed is whether the demotion's effects resulted in constitutional violations.

CONSTITUTIONAL BREACHES

The appellant vehemently contended that his constitutional rights had been violated by certain acts of the respondent which all stemmed from the said demotion. Despite being couched as constitutional breaches, are they in essence what they say they are? As discussed above, an appreciation of the facts show that the root of the appellant's claim is hinged on the demotion. The reduced salary and the procedure used for the demotion triggered these reliefs, which have been couched as constitutional breaches.

The nature of the relationship between employer and employee was succinctly stated in the case of **Kobea vs. Tema Oil Refinery [2003-2004] 2 SCGLR 1033. At page 1040**, Twum JSC explained as follows:

> **"As I have emphasized above, the relationship between an employer and his employees is essentially contractual". The contract may be oral or written."**

As a result of the contractual nature of the relationship between an employer and employee, rights and obligations to each other will stem from the employment contract terms. Typically, employment contracts, conditions of service, or collective bargaining agreements that govern an employee's employment with an employer set out all the terms and conditions of the employment including remuneration, entitlements, disciplinary proceedings, and sanctions. As such, if an employee is demoted, the sanctions for the demotion and the procedure used would have been stated in the employment contract.

Where a party to an employment contract is of the opinion that there was a breach in compliance with the contract, nothing stops him from institution an action based on the non-compliance and claiming the necessary reliefs open to him at law for the said breach. That step, in our view, is the appropriate cause of action that is available to an aggrieved person under our Labour Laws and not sneaking in through the back door a master-servant dispute as a purported constitutional violation. Accordingly, we are not swayed by the mere couching of a labour matter as a constitutional violation.

This Court has always looked at the substance and the essence of a claim rather than the form in which it was presented in order to determine the appropriate reliefs to grant. We are not unaware of the ingenuity of many practitioners who exhibit a creative flair and couch causes of action fit for redress in other fora in the form of constitutional violations. Thus, in the case of **The Republic v The High Court, Koforidua, Ex Parte Otutu Kono III & Akuapem Traditional Council [2009] SCGLR 1** Georgina Wood CJ in her dissenting opinion had cause to opine on a similar situation at page 11 as follows:

> **"But, it is important to bear in mind that it is possible to couch a purely commercial or labour dispute as a human rights matter; so can we couch a cause or matter affecting chieftaincy as one not falling into that category. A court's**

duty at all times is to be on the alert and unmask such clever undertakings or camouflages so that cases may be assigned to their proper forum."

Similarly, in the case of **Aduamoa II v Twum II (1999-2000) 2 GLR 409** Acquah JSC (as he then was) also stated the following:

"For a large number of actions which fall within specific causes of action can be presented in the form of interpretation or enforcement actions or both. For example, if someone goes to farm or commences building on another person's land, the latter can file a suit at the Supreme Court invoking its original jurisdiction for a declaration that the said entry unto his land constitutes an invasion of his right to his property under article 18 of the Constitution, 1992, damages for such violation, and an order to recover his property. But it is quite clear that such a suit is really a land suit falling within the jurisdiction of the lower court with the authority to handle claims of the value of the land in dispute."

The court in the **Adumoa v Twum's case** (supra) cited with approval the dictum in **Tait V Ghana Airways Corporation (1970) 2 G & G** as follows:

"In Tait v Ghana Airways Corporation (supra) the plaintiff, a pilot, was employed by the defendant in a written service agreement dated 1 January 1967. On 24 April 1967, a DC-3 plane he was piloting from Kumasi to Accra crashed in a field near Takoradi with a loss of a passenger. He was suspended "without prejudice" and an enquiry into the cause of the crash was held. The report of the enquiry was presented to the Government and his suspension was withdrawn. But in a letter dated 29 May 1970, signed by the managing director of the defendant, he was informed that his service with the defendant were no longer required and ordered to vacate his official bungalow. Dissatisfied with

the termination of his services, he invoked the original jurisdiction of the Supreme Court under article 106(1)(a) of the Constitution, 1969, (the equivalent of article 130(1)(a) of the Constitution, 1992)"

This Court in refusing to assume jurisdiction stated at page 529 as follows:

"We have already held that on its construction and having regard to the issues settled, the plaintiffs action is essentially one of wrongful dismissal and does not, therefore, fall within the ambit of article 106(1)(a) ... It is an action for wrongful dismissal under the common law, which is part of the laws of Ghana. . . Since our original jurisdiction is limited to article 106, we are driven to the conclusion that this court is not seised with jurisdiction to try this suit as a court of first instance."

Again, in the case of **Bimpong Buta V General Legal Council & Ors (2003-2005) 1 GLR 738**, this Court confronted with a similar issue per Sophia Akuffo JSC (as she then was) held:

"Clearly, these are matters of employment law and arithmetic. For, since the claimed accrued right is derived from the terms and conditions set out in the plaintiff's contract of employment and not from the Constitution, 1992 whether or not the plaintiff has an accrued or contractual right to retire at 65 years of age is determinable only by ascertaining the terms of his contract (including all the enactments, regulations, promises and assurances claimed by the plaintiff to be applicable to him)".

The Court further stated:

"All in all, the reliefs claimed, the pleadings, and submissions filed in this matter amply demonstrate that the plaintiff's action is no more than an ordinary

civil suit splendidly arrayed in constitutional clothing. In the circumstances, it is my view that our jurisdiction has not been properly invoked. The plaintiff's reliefs lie elsewhere and we cannot assume jurisdiction to adjudicate upon it under our original jurisdiction. The action must, therefore, be struck out."

From the foregoing, the rights accrued to the appellant in respect of his monthly salary and compliance with the respondent's procedural manual are all rights that are derived from the appellant's terms of employment. There is nowhere in the Constitution, 1992 that guarantees the respondent a specific monthly salary or which prescribes the respondent's disciplinary procedure. Neither are there such rights in any international legislation, rules, or conventions. The creation of the employee-employer relationship is one that is preceded by the exercise of autonomy. The employee has the autonomy to decide to proceed with the employment if he or she is comfortable with the terms being offered and an employer also has the autonomy to pick among several candidates its preferred choice. However, once both parties decide to enter into the contract, they are bound by the terms. In the appeal before us, the determination of the appellant's agreed monthly salary can only be done with recourse to his terms of employment. Further, a determination of whether the procedural manual was complied with can also only be made with recourse to the employment contract and the said procedural manual. In that vein, we shall rehash the statement made by this Court in the **Aduamoa II V Twum II** case (supra) that:

"**The reliefs claimed by the plaintiffs obviously fall within the above definition. And the fact that the plaintiffs claim to base their action on a provision of the Constitution, 1992 does not change the true nature of the action."**

That is not to say that an employer can never breach an employee's constitutional right. In fact, employers sometimes take certain actions which result in human rights violations

as held by the Supreme Court in **Ackah v Agricultural Development Bank [2017-2020] SCGLR 226**. In this appeal, we intend to analyse the appellant's claims individually against the specific constitutional provisions cited to assess whether his claims are sustainable. The determination of whether the 1992 constitution has been breached requires this Court to consider the particular constitutional provisions, facts of the breach, and or the events that culminated in the breach.

BREACH OF ECONOMIC RIGHTS TO PAY APPROPRIATE MONTHLY SALARY

The appellant claimed he was constitutionally entitled to the monthly salary of GH¢417.18 together with annual increments so the respondent had violated his economic rights under the Constitution, 1992. **Article 24** prescribes economic rights as follows:

> **"(1) Every person has the right to work under satisfactory, safe and healthy conditions, and shall receive equal pay for equal work without distinction of any kind.**
>
> **(2) Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.**
>
> **(3) Every worker has a right to form or join a trade union of his choice for the promotion and protection of his economic and social interests.**
>
> **(4) Restrictions shall not be placed on the exercise of the right conferred by clause (3) of this article except restrictions prescribed by law and reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others."**

Despite the appellant's claim that his economic rights had been violated, he did not specify which of the rights had been infringed upon. It was essential to the success of the appellant's case to plead the specific economic rights under the 1992 Constitution that had been breached. It is not our duty as the appellate court to speculate on which of the rights the appellant seeks to assert. Economic rights as enshrined under the 1992 Constitution cover a number of different but specific areas. Thus, in order for the appellant to assert that his rights under this provision have been violated, he had to plead it and lead evidence to show the nature of the violation. A perusal of the pleadings, evidence, and submissions before the trial High Court shows that the appellant did not point out which of these economic rights had been violated.

We have also reviewed the facts of this appeal and are satisfied that they do not fall within the purview of breaches of rights anticipated by the framers in Article 24 (2) and (3) of the Constitution, 1992. Even if the appellant had Article 24(1) in mind, he did not lead evidence to show that he was working in unsatisfactory, unsafe, or unhealthy conditions and that he had not received equal pay for equal work done. As stated earlier, the reduction in the appellant's remuneration was done pursuant to a demotion and not unilaterally as he asserted. By the evidence on record, the appellant was demoted from a supervisor to a clerk and received the salary grade for a clerk's role. The appellant at the trial asserted that he was paid less than the job he was doing. However, no evidence was led to buttress this claim. Furthermore, the appellant did not lead evidence to show that other clerks were receiving higher salaries than his or that there had been a distinction in the salaries paid between him and other clerks on his grade.

BREACH OF ADMINISTRATIVE JUSTICE PROVISION

The appellant also claimed that his treatment by the respondent had violated all the known principles of administrative justice as provided for under the Constitution, 1992

including the rules of natural justice and that the respondent had failed to comply with and observe its own procedure manual.

In respect of administrative justice, article 23 of the 1992 constitution states:

> **"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."**

In the case of **George Akpass v Ghana Commercial Bank [SC Civil Appeal No. J4/08/2021 dated 16th June 2021] (unreported)**, the Supreme Court explained the scope of Article 23 as follows:

> **"The fairness expected by the framers of the Constitution has been further given a boost in Article 23 where administrative officials and tribunals of administrative bodies have been charged to act fairly……. Administrative bodies, therefore, exercising discretionary power to determine the fate of workers facing disciplinary hearings are to make a conscious effort to guard against illegality, irrationality and procedural impropriety….."**

It is without a doubt that Article 23 is not an isolated provision. It is a guide that must be followed alongside laid down procedures of administrative bodies. These administrative bodies are tasked to guard against illegal, irrational, and improper procedures. However, the essence of the procedure used is usually prescribed by agreement or law. In respect of employment agreements, strict compliance with the procedure is required to validate the disciplinary action. In this appeal, the appellant failed to articulate or lead evidence on the specific breach of the respondent's procedural manual as it relates to Article 23.

BREACH OF INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Lastly, the appellant pleaded a violation of all known international legislations, rules, and conventions on the employment of labour which have been ratified by Ghana and are made part of our law pursuant to the provisions of the Constitution, 1992. Similar to relief (a) and (b), the appellant did not indicate which international legislation had been breached. Even though this court is mandated to comb through the whole record and to reassess all the evidence led, this court will not go on a speculative exercise to try and determine which said international legislations, rules, and conventions are the subject of the appellant's complaint. It is trite that a party has the burden of persuasion regarding each fact, the existence or non-existence of which is essential to the claim or defence he is asserting. See **Section 14** of the **Evidence Act 1975 (NRCD 323)** and **Bank Of West Africa v Ackun [1963] 1 GLR 176**.

In our opinion, there have been no violations of the appellant's constitutional rights as he claims. In any case, there are no violations because the matters which have been couched as constitutional breaches are all rooted in contract. In fact, they are contractual claims which have been dressed up as constitutional claims despite this Court's admonition against this practice in several cases cited above.

SCOPE OF REMEDIES UNDER CHAPTER FIVE OF THE CONSTITUTION

The fundamental human rights provisions were framed into the Constitution to foster the building of a society where fairness, justice, tolerance, and, equality abound and where Ghanaians are expected to live in peace and harmony with one another, free to develop their potential as human beings and to make choices that will liberate them from fear, harassment, and discrimination. These rights have been framed in such a way that any encroachment shall have dire consequences under article 33 of the Constitution.

The language of article 33 is very clear. Unlike other common law or contract remedies where the cause of action must have accrued to invoke the jurisdiction of the court, remedies under chapter five have been expanded to actual breaches, continuing breaches, and suspected or anticipated breaches of any of the specific provisions. The remedies the court may grant under article 33 (2) to abate the breaches and ensure compliance with the fundamental rights were more of public law and not necessarily private law or common law remedies. This is not to say that in a given scenario, human rights violations under chapter five may not also give rise to some other specific private law, common law, or contractual violations. While human rights violations may find redress under article 33 of the Constitution the same cannot be said of the common law or contractual violations. This is justified by the proviso in article 33 (1) that **"without prejudice to any other action that is lawfully available."**

Again, so serious are breaches of the fundamental human rights provisions viewed by the framers that actions instituted under article 33 seeking reliefs under chapter five must necessarily have the Attorney-General as a defendant as is the case in article 2 actions for interpretation and enforcement of the Constitution. Such actions have national interest attached to them unlike actions brought to enforce a contract or common law remedies which do not require the Attorney-General's presence as a party. Clearly, a person's remedy to enforce such private rights lay in some other forum other than the human rights court.

Our understanding of the scope of chapter five of the Constitution, 1992 has been adequately explained recently by Gbadegbe JSC in the case of **Ackah v Agricultural Development Bank (supra)**. Contributing to the opinion of the court, Gbadegbe JSC at page 274 correctly stated the position of the law as follows:

"In creating the right for redress in respect of violation of the specified rights and freedoms, the constitution acknowledges that other means of redress may be available

to persons against violators and in order not to prejudice the utilization by persons of the other means of redress available to them at common law and or under particular statutory provisions specifically limited the remedies to be granted to persons who avail themselves of the constitutional provision only to contraventions of such rights and freedoms. From this backdrop, it is clear that to be good, any application made under article 33 as subsequently regulated by the appropriate authority by virtue of the power conferred on it under clause 4 of article 33 by the making of specific provisions contained in Order 67 of the High Court (Civil Procedure) Rules, CI 47 of 2004, should be limited to matters that properly speaking arise only from violations of rights and freedoms contained in articles 12-30 of the Constitution. The effect of this is that when a person's rights and or freedoms "has been, is being or is likely to be contravened" as contained in article 33(1) of the constitution but that person takes no remedial action to obviate the contravention so that there is a new and or additional intervening cause of action that is redressible, for example at common law then in addition to the remedies available under article 33 the person who alleges the violation of a constitutional right in relation to him may pursue some other remedy being a remedy that is not derived solely from article 33."

It follows from this interpretation that breaches of articles 12 to 32 and 33 (5) of the Constitution, 1992 are redressible by the High Court by reviewing decisions made by persons in authority which infringe on the fundamental rights of others and granting appropriate remedies such as quashing the offending conduct, compelling a person to perform a duty which failure has occasion an interference with the right of another, and restraining a person from doing or continuing with conduct which injures or likely to injure the right of another. Since under article 33, the remedies a court may grant are not exhaustive, other remedies the courts may grant under fundamental rights breaches may

include declarations, injunctions, imprisonment for contempt, and a ban from holding public office for a specified period among others. The list is inexhaustible at this stage.

The question of awarding damages as compensation for breaches of articles 12 to 32 and 33 (5) has exercised our minds in this appeal. By the nature of the rights specified in chapter five of the Constitution, every effort ought to be put in place to minimize its breaches. Thus, the opportunity should not be created for a rich or wealthy individual or institution to opt for the payment of damages as compensation for deliberately interfering with, or breaching the fundamental right of another. Such a course will defeat the whole purpose of the formulation of these rights and their entrenchment in the Constitution. It is because of this reason that even though the courts have the discretion to award damages in appropriate cases in such breaches, we think it should be minimized to limited situations where damages would be the only remedy available to show the disapproval of the courts to the conduct of the offender. We also believe that if damages should be awarded it must bite as a deterrent. What we are recommending is punitive damages. We cannot agree more with the position put forth forcefully on this issue by Gbadegbe JSC in Ackah v Agricultural Development Bank (supra) where he opined that:

"In considering the applicant's right to a monetary award, it is important that we caution ourselves that the provisions for the enforcement of fundamental human rights are designed to give teeth and meaning to the rights and freedoms and our courts must be innovative in crafting remedies that would bring about attitudinal changes, which would enure to all in the enjoyment of those rights. Looked at in this context, it does not seem to me that merely awarding damages would bring about the clear constitutional intent of better enforcing or securing the enforcement of the rights contained in articles 12-30 of the 1992 Constitution. We should in future be directing our minds to making orders, and or directions that will make it abundantly clear to those who have no regard for the fundamental rights and freedoms that it does not pay

to be a violator of those rights. As monetary awards have not been clearly specified in relation to infringements of the fundamental rights and freedoms, care should be taken in making such awards in order that constitutional tort actions do not come before us under the guise of article 33 of the 1992 Constitution. In my view, the power conferred on the High Court under article 33, which we have assumed by virtue of the appeal herein is to issue such directions or orders that are considered appropriate in enforcing or securing the enforcement of the fundamental rights and freedoms to which the award of a monetary relief does not appear to properly belong."

In this appeal, the reliefs the appellant placed before the High Court for the alleged breaches of his fundamental human rights, administrative justice rights, and rights under other international conventions were all claims for compensation, in some cases general damages and in other special damages. These claims and reliefs do not fall within those contemplated by the framers of the fundamental human rights provisions under articles 12-32 and 33 (5). Surely, the appellant's remedies in all the claims for damages for breaches of his fundamental human rights and accumulated salaries and unpaid bonuses, redundancy pay, allowances, entitlements, and benefits lay appropriately in some other forum where evidence would be taken to ascertain the appropriateness of those private law remedies.

On the basis of the above, we affirm the conclusion by the Court of Appeal that there were no violations of the appellant's constitutional rights.

STATUTE OF LIMITATION-DOES TIME RUN IN CONSTITUTIONAL BREACHES

As a general rule time will not run against claims for breaches of the Constitution. This is because the Constitution being the supreme law of the land any act on the part of any person that contravenes its letter and spirit cannot take on the character of legality over

the passage of time. But is that the case in this appeal? The appellant's argument is that the Court of Appeal erred when it held that the cacus beli *(sic)* of the appellant's demotion was the letter of demotion dated 3rd December 2001. According to the Oxford Dictionary, the term *casus belli* is a Latin phrase that means **"an act or situation that is used to justify a war"**. In other words, the Court of Appeal held that the root of the matter was the demotion letter dated 3rd December 2001. As a result, the action was statute barred.

The appellant argues that his cause of action arose in 2011 when the respondent declared him redundant while the respondent asserts that the appellant's cause of action accrued on 3rd December 2001 when the appellant was demoted. The appellant in explaining his cause of action in his statement of case submitted as follows:

> **"Thus, the immediate cause of action is the calculation of the appellant's redundancy pay on the basis of a reduced salary, unilaterally effected by the respondent, which resulted in the appellant being paid a lesser amount as redundancy pay than the appellant would have been paid if the respondent had not illegally reduced the appellant's salary."**

The important question here is when the appellant's salary was reduced and why? We have already determined that the appellant's salary was reduced following his demotion which was communicated to him in a letter dated 3rd December 2001. We also note that the appellant is not challenging the redundancy or the mode by which the said redundancy was effected. As such, if the appellant's salary had not been reduced in 2001 and his redundancy pay and all entitlements were paid based on his salary pre-demotion, he would not have instituted this action. Consequently, the root cause of this claim is hinged on the alleged wrongful demotion and not the redundancy as he asserts. As stated earlier, the procedure for disciplinary proceedings and any reduced entitlements flowing

from it is rooted in an employment contract. Therefore, the breach of the terms of that employment contract gives rise to a cause of action.

In **MAHAMA VRS ELECTORAL COMMISSION AND ANOTHER [SC 4th March 2021 unreported]** this Court held that:

> **"A cause of action is the existence of facts which give rise to an enforceable claim or a factual situation the existence of which entitles one to obtain from the court a remedy against another. Generally, before a party issues a writ, he must have a right recognized in law, which right has been violated by the defendant."**

As such, the facts which would have given rise to a claim by the appellant against the respondent to contest the differential in salary and entitlements stemmed from the said reduction in remuneration. A perusal of reliefs (e), (f), (g), (h), (i) shows that in addition to unpaid bonuses from 2003, the appellant is also claiming payment of the difference in salary from 2002, the difference in overnight transfer grants, the difference in compulsory redundancy pay, the difference in one month's salary in lieu of notice, interest, and the difference in payment of SSNIT contributions. These differences are all hinged on the appellant's pre-demotion salary which the appellant erroneously believed he was constitutionally entitled to. Couching this as a cause of action based on redundancy only looks at the tail end as opposed to the commencement of the accrual of rights. Additionally, claims founded on contract are subject to the Limitations Act 1972 (NRCD 54) which bars actions founded on simple contracts to 6 years after the cause of action accrued. We, accordingly, agree with the trial court and the Court of Appeal that since the demotion was effected on 3rd December 2001 and this claim was filed in August 2014, the appellant is caught by Limitation Act, making his claim statute-barred.

The appellant also argued that under the Limitations Act, time stopped running after the person against whom the statute operated took action after the course of action accrued.

Therefore, the appellant's contention was that the petition before the NLC stopped time from running. This contention is misconceived, wrong in law, and not reflective of NRCD 54. There are provisions in NRCD 54 that extend the limitations period but they do not stop time from running. See **Part II** of **NRCD 54**. Time is extended in limited cases of disability, fraud, mistake and where material facts are not known to the plaintiff. Also, there is fresh accrual on acknowledgment or part-payment of a debt. The petition before the NLC did not satisfy any of these exceptions.

There is no doubt that if the claim of the appellant and the reliefs being sought fell within breaches of the Constitution, time will not run and the claim will not be barred by the Limitation Act. As it is, the two lower courts have all found that the reliefs sought by the appellant are not constitutional in nature. The application of the Limitation Act is sound in law.

SEVERABILITY OF CLAIMS

The next two grounds of appeal that is, grounds (d) and (e) of the appellant's additional grounds shall be addressed together since they both touch on the issue of severability. First is that the Court of Appeal erred in treating the appellant's action as a solely constitutional action based on the fundamental human rights provisions of the Constitution without recourse to the appellant's legitimate claims which the Court of Appeal recognized arose out of his contract of employment. Next is that the Court of Appeal erred in failing to apply the doctrine of severability of claims to the appellant's case.

The appellant argued that the Court of Appeal dismissed all his reliefs on the basis that the action should have been brought earlier and that being constitutional claims, the form of the action was incompetent. We are baffled by how the appellant arrived at this

conclusion from the Court of Appeal judgment. It is pertinent to set the facts right. The Court of Appeal at page 353 of its judgment at 353 of the ROA determined as follows:

> **"As has been noted above, the instant action is rooted in common law, specifically breach of contract, and therefore the Appellant's cause of action was in contract. The so-called infringement of the Appellant's human rights, in this case, is ancillary. It has also been noted that the bulk of the reliefs sought at the trial High Court are capable of being granted under common law; and will therefore be considered as such. As stated earlier, the principle is that the jurisdiction of a court is determined by the plaintiff's reliefs."**

Subsequently, at page 354 of the ROA, the Court of Appeal in referencing the trial High Court's judgment stated as follows:

> **"The learned trial judge in resolving the issue as to whether or not there were violations of the Appellant's constitutional and economic rights posed the question as follows:**
>
> > **"The question is looking at the evidence on record is there a violation of the constitutional right of the Plaintiff by the Defendant for which same required its protections by the Court?"**
>
> He then concluded as follows:
>
> > **"Having examined the evidence on record especially the reliefs claimed by Plaintiff, I hold that same flow from his contract of employment and have nothing to do with any constitutional provision.**
> >
> > **Thus there is no violation of his constitutional rights as claimed by him."**

Following this, at page 355 of the ROA, the Court of Appeal arrived at its conclusion as follows:

> **"I have already come to the same conclusion earlier in this judgment. I will now examine the issue as to whether or not the Appellant's cause of action was statute-barred."**

From the foregoing, it is obvious that the appellant's argument is misconceived. The above reproductions are clear and admit no ambiguity. The Court of Appeal after considering the facts of the case rightly determined that the appellant's claim was rooted in contract. Interestingly, the appellant throughout the High Court and the Court of Appeal proceedings vehemently advanced the argument that this was a constitutional claim as opposed to a contractual dispute. Therefore we are surprised at the appellant's new argument.

Our understanding of the Court of Appeal's judgment is that after reaching the conclusion that the appellant's cause of action was rooted in contract, the Court of Appeal addressed and categorized the appellant's human rights claims as ancillary. Thus, the Court of Appeal recognized the dual nature of the presented claims. Further, the Court of Appeal recognized that the bulk but not all of the reliefs were capable of being granted under common law i.e. the payment of bonuses and differentials in salary. Hence, having determined that there were no constitutional breaches, the Court of Appeal found that the cause of action originating from the remaining reliefs was statute-barred. The Court of Appeal's finding that the action was statute-barred was based on contract and not the 1992 Constitution i.e. the fact that bonuses and salaries are contractual entitlements and thus being contractual entitlements, a right to enforce same accrued from the date that they were altered contrary to the contract. Therefore, in this case, the cause of action

accrued from the date the demotion occurred i.e. 3rd December 2001, and a suit instituted 13 years after was caught squarely by the Limitations Act.

The appellant further submitted that where a party institutes an action where there are mixed claims, a court ought not to dismiss all the claims on the ground that some cannot be granted by the Court or that some of them are statute-barred. The appellant further submitted that the proper thing for the Court to do is to sever off those claims that the court cannot grant and to grant those claims that the Court finds that the party is entitled to.

The concept of 'mixed claims' is recognized by our law. Parties are at liberty to mix claims in certain limited situations. For example, a party may allege some contractual breaches and damages for the breach in action for the declaration of title to land. Hence mixed claims are a normal part of our civil proceedings and courts will treat each claim individually, grant the reliefs that merit the same, and dismiss those that are not supported by the facts and the evidence. However, for specific remedies available to a party where a rule of procedure prescribes the mode for instituting an action, that is the mode that has to be complied with regardless of the ancillary reliefs claimed.

Again, in **Abena Ackah v Agricultural Development Bank (supra)**, cited by the appellant, the applicant initiated action in the Human Rights Division of the High Court pursuant to Article 33 (1) of the Constitution, 1992, and Order 67 of the High Court (Civil Procedure) Rules, C.I. 47, by Notice of Motion for enforcement of the said rights. In determining the appeal this Court through my esteemed brother Dotse JSC held that:

> **"In this delivery, we observe that the procedure adopted by the Applicant in invoking article 33 (1) of the Constitution and Order 67 rule 3 (1) (a) and (b) of**

C.I. 47 already referred to supra, has put the determination of the reliefs claimed therein in the trial High Court in a straight jacket situation.

It has to be noted however that, it is only the reliefs that are capable of being granted under articles 33 (1) and (2) of the Constitution that the Applicant would be entitled to in this delivery.

Where however, a determination is made on a ground of appeal not relevant under the constitutional provisions referred to supra, that determination or delivery should be considered as relevant only for the purposes of clarification of points of law or of procedure. In any case, what is considered of importance are the reliefs that this court will grant at the end of the case.

As we have already stated supra, the appropriate procedure after the Applicant's employment was terminated with the Respondents should have been an action commenced by the filing of a writ of summons and not one under article 33 (1) and (2) of the Constitution as regulated by order 67 rule 3 (1) (a) and (b) of C.I. 47.

This is because, the commencement of the action by a writ of summons would have afforded the Applicant an opportunity to have led evidence on what definitely appears to be her wrongful termination of employment and subject herself to cross-examination. That procedure would have entitled her for damages for wrongful termination under heads of claim in respected legal authorities such as:-

i. **Nartey-Tokoli v VALCO [1987-88] 2 GLR 532**

ii. **Hemans v GNTC [1978] GLR 4**

iii. G.C.M.B. v Agbettoh [1984-86] 1 GLR 122 just to mention a few.

As such this Court did not grant the Applicant the reliefs that were capable of being granted under Order 33. "

In the matter before us, the claims were allegedly a mixture of constitutional violations and orders for payment of some monies under a contract of employment. However, this suit was not commenced pursuant to Article 33 (1) of the Constitution, 1992, and Order 67 of the High Court (Civil Procedure) Rules, C.I. 47. The suit was commenced by a writ of summons and statement of claim in the Human Rights Division of the High Court. Consequently, the Courts below were not limited in the reliefs that could be granted. After reviewing the facts and the evidence before it, both lower Courts determined that the claims were unmeritorious and dismissed the action.

Yet, in support of his argument on the severability of claims, the appellant urged us to apply the ratio in **Abena Ackah v Agricultural Development Bank (**supra). The appellant also cited two more authorities which we now turn to examine. Firstly, the authority of **Republic v High Court, Ex Parte Sangber-Dery & ADB (2017-2018) SCGLR 552**. In that matter, this Court held as follows:

"Where several reliefs are placed before a court and it takes the view that it has jurisdiction to hear some of them whilst its jurisdiction is excluded in respect of others, it does not entitle the court to decline jurisdiction altogether. In such scenario, there are two options open to such a court: it may strike out those reliefs which are outside of its jurisdiction and proceed to hear those that fall within its jurisdiction, or it may hear the whole case but decline to grant the reliefs it is not competent to grant when it delivers its final judgment in the matter."

Next, the appellant cited the dissenting opinion in the case of **Ayikai v Okaidja III & Ors (2011) 1 SCGLR 205** where Atuguba JSC sought to sever averments in the pleadings which touched on chieftaincy (because the High Court is not clothed with jurisdiction to handle Chieftaincy matters) so that the averments founded on the remaining pleadings could be maintained since those averments fell within the jurisdiction of the High Court.

We must point out that the cases referred to above deal with the Court's jurisdiction to hear certain claims. Jurisdiction is the nucleus of our civil procedure ecosystem and it is trite that claims that are outside of the Court's jurisdiction cannot and should not be entertained. The latter two cases reiterated the longstanding position that courts should not grant claims that fall outside their jurisdiction. The initial case also limited the Court's jurisdiction in respect of a constitutionally prescribed procedure. Hence, once claims had been filed under Article 33 of the 1992 constitution, there are corresponding reliefs that the constitution also guarantees. Therefore, an applicant will not be entitled to any other reliefs not covered under that constitutional provision.

These cases being urged on us did not endorse the severability of two causes of action that were not based on jurisdiction and which had been brought and validly determined by the Court. The appellant's argument is once again misconceived and inapplicable to the facts before us. There was, therefore, no basis to sever any of those claims as they were all determined to be unmeritorious. The doctrine of severability of claims is usually rooted in jurisdictional issues. For example, in cases of arbitration where certain claims accruing from an agreement may be arbitrable while others are not.

Again, the appellant raised the arguments that the provisions of articles 23 and 33 of the Constitution, 1992 did not place any time limit for instituting actions for human rights violations. To the appellant, the time limit of six months of the occurrence of the alleged contravention or three months of the applicant becoming aware that the contravention is

occurring or is likely to occur is the product of Order 67 Rule 3(1)(a) & (b) which is a subsidiary legislation and therefore cannot override the Constitution which is the parent law and did not impose any time limitation.

We have stated time and again that a Constitution must be read as a whole and not piecemeal. If the appellant had considered the Constitution holistically, this argument would not have been made. The subsidiary legislation, Order 67 of C.I. 47 derives its authority from the Constitution itself. Article 157 (1) & (2) of the Constitution establishes a Rules of Court Committee and article 33(4) grants it jurisdiction, by constitutional instrument, to make rules of court for regulating the practice and procedure of the superior courts for the purposes of the article. Order 67 of C.I. 47 was passed pursuant to that power vested in the Rules of Court Committee. The time limit imposed by Order 67 of C.I. 47 for instituting actions under the Fundamental Human Rights Provision is constitutional and does not conflict with the provisions of the Constitution. We, therefore, decline the invitation urged on us by the appellant to allow the appeal on this ground.

SUO MOTU ISSUE RAISED BY THE COURT OF APPEAL

Lastly, the appellant appealed on the ground that the Court of Appeal erred in raising an issue suo motu and basing their judgment on that issue without giving the appellant an opportunity to be heard on that issue. The appellant also appealed on the ground that the Court of Appeal erred in misconstruing the decision of the Supreme Court in **Abena Ackah v Agricultural Development Bank (supra)**, to mean that claims for breaches of fundamental human rights are barred unless they are filed within six months in the High Court.

The Court of Appeal before examining the merits of the appeal, suo motu discussed what it deemed a crucial issue of procedure. The Court of Appeal discussed the procedure to

be used where a party sought remedies in respect of a violation of fundamental human rights. Reference was made to Article 33 of the 1992 Constitution and Order 67 of C.I. 47 which were the provisions relating to a breach of one's fundamental human rights. In addition, the Court of Appeal discussed the case of **Abena Ackah v Agricultural Development Bank (supra)** and the timelines for instituting a human rights infringement claim.

In arguing this ground of appeal, the appellant submitted that the Court of Appeal considered this matter suo motu without giving him an opportunity to be heard on that point contrary to the position of the law. Rule 8 of the Court of Appeal Rules 1997 (C.I. 19) provides as follows:

> **"Notwithstanding sub rules (4) to (7) of this rule, the Court in deciding the appeal shall not be confined to the grounds set out by the appellant but the Court shall not rest its decision on any ground not set out by the appellant unless the respondent has had sufficient opportunity of contesting the case on that ground."**

It is not in doubt that the Court of Appeal raised the issue of compliance with Article 33 of the 1992 Constitution and Order 67 of C.I. 47 and discussed it extensively in its judgment. However, did the decision rest on this ground? Once again, we answer this question in the negative. At page 352 of the ROA, this is what the Court of Appeal had to say.

> **"In view of the above analysis, I am of the considered view that the Appellant's action in the High Court which resulted in this appeal did not comply with the provisions of Article 33 of the Constitution and Order 67 Rule 3(1)(a) and (b) of C.I. 47. This point which has been raised by the Court itself cannot be a fetter to the consideration of the substance of the appeal."**

Thus, regardless of the findings made by the Court of Appeal, it still proceeded to consider the substance of the appeal which it did by making findings on the constitutional breaches and the statute-barred nature of the claim. The Court of appeal did not dismiss the appeal for non-compliance with Article 33 of the 1992 Constitution and Order 67 of C.I 47.

Even if the Court of Appeal had based its decision on the issue raised suo motu, there is authority from this court to the effect that where the issue raised would be unanswerable in law, it would be a pointless exercise to invite the parties to address the court on the issue. Two cases come to mind.

In Akufo-Addo v Catheline [1992] 1 GLR 377, in the course of the hearing of a suit, the plaintiff filed notices to amend the writ to add a Kaneshie house to the reliefs claimed. However, after the amendment was granted no step was taken by the plaintiff to file an amended writ pursuant to the rules that failing to do that within 14 days, the amendment granted became ipso facto void. The High Court proceeded and delivered judgment and considered the amendment granted as if a pursuant notice was filed. On appeal, the Court of Appeal suo motu raised the legal effect of failure to file the pursuant amended notice and concluded that the amendment became void so there was no amendment before the trial judge. On a further appeal to the Supreme Court, one of the arguments advanced by the plaintiff was that the Court of Appeal breached Rule 8(6) of the then Court of Appeal Rules, 1962 (L.I. 218) by raising the issue of amendment suo motu without giving the plaintiff an opportunity to contest the appeal on that ground.

The Supreme Court held that the proviso to rule 8(6) of the Court of Appeal Rules, 1962 (L.I. 218) which required the Court of Appeal not to rest a decision on a ground not canvassed by the appellant unless the respondent had been given sufficient opportunity to controvert that ground, should not be given an interpretation which would inhibit or stultify the rule that an appeal "shall be by way of rehearing." The proviso could not be

said to imply an absolute prohibition and in certain special or exceptional circumstances, such as where no satisfactory or meaningful explanation or legal contention could be advanced by the party against whom the point was being taken even if an opportunity was given him to present an explanation or legal argument, it would not apply.

Another case is **Tindana (No 1) v Chief of Defence Staff [2011] SCGLR 732**. In this case, after a careful perusal of the record of appeal the court detected that the appeal was filed outside the time frame provided in rule 19 of C.I. 19 and consequently there was no jurisdiction for the court to consider the appeal on the merits. The court then considered the procedural issue in rule 6 (8) of C.I. 1**6** to afford the parties reasonable opportunity to be heard on grounds it intends to rest its decision which is not argued or set forth by the appellant in the notice of appeal.

Gbadegbe JSC speaking on behalf of the court held that:

"The point touching rule 6 (8) is in our view wholly unanswerable and as such no useful purpose can be served by giving the parties the opportunity to answer it. The appeal which was filed long after the three months period provided under rule 9 of the Court of Appeal Rules was plainly incompetent resulting in the absence of jurisdiction in the Court of Appeal to determine it. Consequently, the entire proceedings acquire the attribute of nullity and same are hereby set aside."

The appellant in this appeal partly argued that his claim has been founded on a breach of the fundamental human rights provisions of the Constitution. But he instituted his action by writ of summons and filed it six months after the occurrence of the alleged contravention. Though matters dealing with the fundamental human rights provision are constitutional in nature, the Court of Appeal was right when it stated that matters falling under chapter five of the Constitution have been ceded by the Constitution to the High Court to deal with under article 33. The rule of procedure regulation article 33 is Order

67 of C.I. 47 which derives its authority from Article 33(4) of the Constitution, 1992. Clearly, in as much as the appellant claims to be invoking a constitutional right under chapter five, the procedure in instituting the action by writ instead of application and after six months instead of within six months is unanswerable and no useful purpose would be served in inviting the appellant to present an argument over a procedural matter which he had clearly breached and had no answer to.

The appellant himself acknowledges this statement made by the Court of Appeal. However, he argues that the Court of Appeal was influenced by its conclusions on Article 33 and Order 67 before arriving at its final decision. We have already concluded that the Court of Appeal did not determine the appeal based on the point it raised suo motu. There is no evidence to suggest that the Court was influenced. Portions of the judgment have been reproduced above which clearly show that the Court of Appeal went into the merits of the appeal as well.

The next ground of appeal about the interpretation the Court put on the **Abena Ackah v Agricultural Development Bank** (supra) has been disposed of earlier in this opinion.

Ground b of the additional grounds of appeal was not argued and is therefore struck out as abandoned.

The Appeal fails in its entirety and is hereby dismissed. The judgment of the Court of Appeal is affirmed.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE- BONNIE

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

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

(JUSTICE OF THE SUPREME COURT)

COUNSEL

ALBERT ADAARE ESQ. FOR THE PLAINTIFF/APPELLANT/APPELLANT

CHARLES HAYIBOR ESQ. FOR THE DEFENDANT/RESPONDENT/RESPONDENT WITH DANIEL EVANS DZAM