IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2023

CORAM: SACKEY TORKORNOO (MRS.) CJ (PRESIDING)

AMADU JSC

KULENDI JSC

ASIEDU JSC

GAEWU JSC

CIVIL APPEAL

NO: J4/20/2023

27TH JULY, 2023

THE REPUBLIC

VS

BANK OF GHANA ……. RESPONDENT/RESPONDENT/APPELLANT

EX PARTE:

EXPRESSWAY MICROFINANCE LTD. …….. APPLICANT/APPELLANT/ RESPONDENT

JUDGMENT

SACKEY TORKORNOO CJ:-

Background to the dispute

The Applicant/Appellant/Respondent (hereafter referred to as Applicant) is a microfinance company.

According to depositions in the supporting affidavit by the majority shareholder and a director of the Applicant, the company was set up in 2013, and given a license by the Bank of Ghana to operate as a non-bank financial institution in June 2014, even before the company received a certificate to commence business in 2015. The business of the company included taking of deposits, granting of loans and investments. Three other affidavits were filed by a minority shareholder and chairman of the company, the accountant of the company, and a consultant to the company in support of the suit.

They averred that on May 31, 2019, the Bank of Ghana, the Respondent/Respondent/Appellant (hereafter referred to as Respondent) published the names of financial institutions whose licenses it had revoked on grounds of insolvency. In that publication, the Respondent also announced the appointment of one Mr. Eric Nipah as a receiver to take over the assets and liabilities of the 'insolvent' financial institutions.

According to the depositions supporting the action, certain individuals who identified themselves as staff of Price Waterhouse Coopers closed down the offices of the Applicant on 31st May, 2019, without any justification except for the reason that they had been sent by the Respondent. They also took away the company's assets and keys to the vault of the Applicant.

The supporting depositions alleged that the revocation of the Applicant's license was done any without prior notice to it by the Respondent. That the Applicant had not breached any regulatory guidelines. It was the case of the Applicant that it was solvent

and that the publication that it is insolvent was defamatory. It also urged that the actions of the Respondent has caused it to lose its goodwill, its clients, and the Applicant had been prevented from accessing its business records.

They averred that following the closure of the Applicant's business, the Applicant petitioned the Respondent on 1st June, 2019 for clarification, review and rescission of the revocation of the Applicant's license but the Respondent did not respond. Aggrieved by the actions of the Respondent, the Applicant brought an application to the High Court on 15th October, 2019, invoking the supervisory jurisdiction of the High Court under Order 55 of C.I. 47, Section 16 of Act 459 and Article 141 of the 1992 Constitution.

The Applicant sought an order of certiorari to quash the decision of the Bank of Ghana to revoke its license on the grounds that the decision to revoke the license of the Applicant is unlawful, made in breach of the enabling statutory provisions and in blatant violation of the natural justice principle of audi alteram partem.

The Applicant claimed the following reliefs;

1. *Certiorari directed to the Respondent to move into this Honorable Court for quashing the purported decision of the Respondent to revoke the license of the Applicant;*
2. *An order of interlocutory injunction restraining the Respondent, its agents, assigns privies, hirelings or otherwise howsoever described from interfering with the operations of Expressway Microfinance Limited;*
3. *Damages.*

The argument of the Applicant in its supporting Statement of Case was that, **section 16 (3) of the Banks and Specialized Deposit-Taking Institutions Act, 2016 Act 930,** provides that where the Bank of Ghana proposes to revoke the license of a bank, the Bank of Ghana shall give written notice to an affected institution, specify the grounds for its decision, and give the affected institution an opportunity to make a written

representation within thirty days of the service of the notice. Thus the actions of the Respondent in revoking their license without notice did not only breach the established statutory process, but were in breach of the natural justice rule of audi alteram partem that had clearly been built into Act 930 regarding the due process to follow in revocation of licenses. The action of Bank of Ghana was vitiated by illegality, and was therefore null and void and must be quashed by certiorari. Counsel for Applicant also submitted that the commencement of the application in the High Court was supported by article 141 of the 1992 Constitution and section 16 of the Courts Act (Act 495) which provide for the High Court to have supervisory jurisdiction over lower courts and lower adjudicatory authorities.

Counsel for the Applicant also cited various key decisions of the courts as authorities in support of the propositions in the just articulated legal grounds for the application.

On the ambit of judicial review, counsel for Applicant admitted that such proceedings were concerned with reviewing the decision making process and not the merits of a decision. He agreed that the concern of the court in such an application is to determine whether a decision-making authority exceeded its powers, committed an error of law, committed a breach of the rules of natural justice, or reached a decision that no reasonable tribunal could have reached on the facts, and these factors all had to be found on the face of the record presented to court, and without any further factual enquiry.

He cited inter alia the decision of this court in **The Republic v High Court Sekondi, Ex Parte Ampong [2011] 2 SCGLR 716** which reiterated the just stated position, and **Tema Development Corporation and Mensah Atta Baffuor [2005-2006] SCGLR 121** which expatiated on the various grounds on which administrative action would be subjected to judicial review. These include acts that affect the rights of others, acts outside the purview of legality, acts of irrationality and unreasonableness, and acts flowing from procedural impropriety.

He rightly cited **Republic v Committee of Inquiry Into Nungua Traditional Affairs; Ex Parte Odai IV and Others [1996-1997] SCGLR 401** and **Aboagye v Ghana Commercial Bank Ltd [2001-2002] SSCGLR 797** on the position that a decision made in breach of the rules of natural justice would be quashed. Again, in order for administrative bodies and officials to pass the test of fairness and reasonableness required by article 23 of the 1992, their decisions ought to have been taken after notice of the relevant issues to those affected by the decisions. See also **Awuni v West African Examination Council [2003-2004] SCGLR 471**

He also submitted that there was authority to award damages as claimed by operation of **Order 55 rules 2(1) (e) and rule 2(3)** of CI 47nd decisions in cases such as **Awuni v WAEC** cited supra, and **Sabbah (No 2) v The Republic (No 2) [2015-2016] 1 SCGLR 402**

Counsel for the Bank of Ghana filed a notice of preliminary legal objection to the application before the high court on the premise that by appointment of the Receiver in the notice revoking the license of the Applicant, the Applicant became '*bereft of capacity*' to mount the instant application. The Applicant ought therefore to have conducted the proceedings through its Receiver, and the application was incompetent.

The Applicant's response to the preliminary objection was that a jurisdictional challenge to the supervisory jurisdiction of the high court over a decision of the Bank of Ghana on account of section 141 of Act 930 which directs that persons aggrieved by a decision of Bank of Ghana in respect of revocation of a license of a bank should resort to arbitration under the rules of the Alternate Dispute Resolution Center of Ghana, should not be upheld because, if the decision of the Bank of Ghana was illegal and made without due hearing, then it did not amount to a legally valid decision. Counsel for the Applicant urged that since the actions of the respondent were 'unlawful' and hence a nullity, it cannot deprive the Applicant of it's capacity to sue.

Again, he urged that **section 1 of the Alternative Dispute Resolution Act 2010, Act 798** exempted cases of national and public interest from being settled by arbitration. It was his submission that the act of the Bank of Ghana fell within the ambit of public interest because the subject matter of the decision in issue affected a section of the public. The factors defining what constitutes the concept of 'public interest' were evaluated and distilled in **Republic v Yebbi v Avalifo [2000] SCGLR 149** and **Okudzeto Ablakwa (No 2) & Anther v Attorney General & Obetsebi Lamptey (No 2) [2012] 2 SCGLR 845**

Counsel for Applicant urged further that, the Applicant is still an existing company and that the appointment of a Receiver pursuant to the direction of the Bank of Ghana operating within Act 930 does not operate as liquidation of the company.

Ruling

The High Court upheld the preliminary legal objection by the Respondent and declared the action before it '*a nullity for lack of capacity on the part of the applicant*'. It was his opinion that by operation of section 127 (3) (k) **of** the **Banks and Specialised Deposit-Taking Institution Act, 2016 (Act 930),** the Applicant company did not have capacity to commence legal proceedings without the agency of its Receiver, once a Receiver had been appointed by the Bank of Ghana for a specialized deposit taking institution under Act 930.

Section 127 of Act 930 reads:

"1. *On the appointment of the receiver, the receiver shall be* ***the sole legal representative of the bank*** *or specialised deposit-taking institution* ***and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialized deposit-taking institution****.*

2. Despite subsection (1), the receiver may instruct the shareholders, directors and key management personnel to exercise specific functions for the bank or specialized deposit-taking institution.

3. The right and powers of the receiver include;

(k). initiating or defending the bank or specialized deposit-taking institution in any legal proceedings

Appeal to the Court of Appeal.

The amended grounds of appeal submitted to the court of appeal for hearing were that

1. *The learned high Court judge erred in law in ruling that the Appellant lacked capacity (locus standi) to initiate the judicial review proceedings.*

Particulars of Error of Law

As a matter of law Judicial Review applications by their special nature are not constrained by the notion of capacity (locus standi).

2. *The learned High Court Judge erred in law in ruling that the judicial review proceedings filed by the Appellant was a nullity for lack of capacity (locus standi).*

Particulars of Error of Law

As a matter of law capacity (locus standi) is not required in applications involving the prerogative writs.

3. *The Honourable Court below erred in law in holding that merely by revoking its license and appointing a Receiver, the Appellant was bereft of capacity (locus standi) to commence an action for judicial review.*

Particulars of Error of law

As a matter of law a company has the requisite capacity (locus standi) to challenge, by an application for judicial review, the legality of the original decision to revoke its licence and to appoint a Receiver.

4. *The Honourable Court below erred in law in treating capacity (locus standi) in a judicial review application as a preliminary issue distinct and separate from the merits of the case.*

Particulars of Error of law

As a matter of law the court should have considered the issue of capacity (locus standi) in the factual and legal matrix of the whole case.

5. *The learned judge of the court below erred in applying the provision of the Companies Act 2019 Act 992 to the facts of this case when the said Act was not in force at the time the matters in issue arose.*

6. *The learned judge of the High Court erred in applying the provision of the Company Act 2019 Act 992 to the facts of this case when section 138 of Act 930 specifically prohibits the application of the said Companies Act.*

7. *The decision of the learned judge is inconsistent with binding decisions of the Supreme Court and therefore, wrong.*

8. *The judgment is against the weight of the evidence.*

The reliefs sought from the court of appeal were:

a. *An order reversing and setting aside the ruling of the court upholding the preliminary legal objection by the Respondent that the Appellant lacks capacity to initiate the proceedings.*

b. *An order directing the High Court to proceed to hear the Appellant's Application for Judicial Review.*

c. *Any further or other orders as the justice of the case shall meet.*

On 19th October, 2022 The Court of Appeal held that since the judicial review order of certiorari sought is a public remedy, the factor of locus standi was not a requirement for the Applicant to bring the instant application. With the appeal succeeding on this first ground of appeal, the Court of Appeal stated that it did not to find a need to discuss the other grounds of appeal. It thus reversed the decision of the High Court and directed the High Court to hear the application for judicial review.

Appeal to the Supreme Court.

The Respondent has brought the instant appeal in respect of the decision of the Court of Appeal on the following grounds:

a. *The judgment is against the weight of evidence.*

b. *The Court of Appeal fell in grave error in holding that the Applicant whose license had been revoked by the Respondent/Respondent/Appellant to operate as a non-bank financial institution, micro-financial institution, micro-finance (deposit-taking) under the Banking*

Act, 2004 (Act 673), was clothed with capacity to mount an application for judicial review under Order 55 of the High Court (Civil Procedure) Rule, C.I. 47, Section 16 of the Court Act, 1993 (Act 459) and Article 141 of the Constitution of Ghana 1992 praying the High Court to issue a Certiorari to quash the decision of the Respondent/Respondent/Appellant.

Submissions to the Supreme Court

By Respondent

In support of its ground that the judgment on appeal was given against the weight of evidence, the submissions of counsel for Respondent's posited that when a company has been placed under 'Receivership', that legal capacity of being in receivership must appear in court processes commenced pursuant to **Order 55 rule 4(2) (a)** which provides that any action commenced under Order 55 'shall' contain the particulars of the full name, description and address for service of the applicant.

The Respondent further urged that pursuant to **section 127 (3) (k) of Act 930**, it is the Receiver who has capacity in law to initiate or defend the bank or specialized deposit taking institution in any legal proceeding. He supported the submission with authorities he cited as coming from other common law countries such as Zambia and Nigeria which had articulated the same principle that, when a company is under receivership, it has no locus standi to commence or defend a legal action independent of the Receiver. The Zambian case was cited as **Magnum (Zambia) Ltd v Basit Quadri (Receivers/Managers) & Grindlays Bank International Limited (1981) Z.R. 141** and the Nigerian case was cited as **Intercontractors Nigeria Ltd v National Provident Fund Management Board (1988) LPERL – SC 94/1987**.

Counsel for Respondent went on to urge that the grievance of the Applicant before the Court of Appeal was that the decision to revoke its license was done in breach of the

natural justice rule audi alteram partem, and in breach of Act 930, and not that the act of Bank of Ghana was void.

The determinations of the Court of Appeal also failed to properly appreciate the issue under consideration, because the issue for determination was not whether locus standi was a requirement for capacity to commence an action demanding judicial review of a public administrative act, but whether the Applicant before the court had capacity to commence a legal action of any kind.

By Applicant

While conceding on the fundamental issue of capacity that capacity to sue must be present in any party who appears before a court and supporting that concession by citing the decision of this court in **National Investment Bank Ltd (No 1) v Standard Bank Offshore Trust Co Ltd (No 1) [2017-2020] 2 SC GLR 28**, counsel for the Applicant went on to urge that '*it is also a principle with respectable pedigree that applications for the prerogative writs and declarations are not restricted by the notions of locus standi, or capacity*'.

This latter position on the principle with 'respectable pedigree' was supported with several decisions of this court and from other jurisdictions, inter alia, the decision of this court in **In Re Appenteng (decd); Republic v High Court, Accra; ex parte Appenteng and Another [2005-2006] SCGLR 18** at 23 where this court reiterated the established position of the law that when a party seeks remedies for public acts and rights, '…*it does not have to show that some legal right of his was at stake*.'

The next submission made by counsel for Applicant is that when a '*company/bank is even under receivership, it still has the capacity in law to institute an action in its own name to challenge the legality of the decision to revoke its license and to put it under receivership*'.

Counsel for Applicant cited a plethora of cases as authorities for the proposition that a company/bank, even when under receivership, still has the capacity in law to institute an

action in its own name to challenge the legality of the decision to revoke its license and to put it under receivership, including the High Court decision in **Nii Amanor Dodoo (suing as Receiver of Unibank Ghana Limited) v Dr Kwabena Duffuor & 15 others & Attorney General Suit Number CM/RPC/0624/2018**.

Consideration

We think that that there is an obfuscation of issues emanating from the Applicant's grounds of appeal and its responses to the Respondent's contentions concerning its capacity to commence the present action. It is this obfuscation that has led to the error we recognize in the Court of Appeal's decision.

Despite the strong submissions and extensive material placed before us by counsel for Applicant regarding the residual powers of directors and shareholders of a company in receivership to raise questions regarding the interests of the company as a private body, it is clear to us that the dispositive question the courts have been called on resolve in this suit, by reason of the Respondent's preliminary objection, is whether a corporate entity, whose license to operate a financial institution had been revoked pursuant to the provisions of **Banks and Specialised Deposit-Taking Institution Act, 2016 (Act 930)** and is under receivership, **can bring an action in its own name in a public interest action and for a public remedy,** without acting through its Receiver**.**

In his decision, the the trial judge only focused on whether the application for judicial review was a nullity on the premise of the Applicant's inherent incapacity to commence any legal action, and answered that question by holding the applicant to be without inherent capacity to commence a legal action. The High Court failed to address the response of the Applicant that it retained its residual existence and powers as a company even if in receivership, and it was in that capacity that it was questioning a decision that

was made outside of the rules of natural justice and the law pursuant to which the decision was made

On appeal, the Applicant introduced another strand into the legal journey by presenting the concept of 'capacity' ruled on by the trial court, as if it means the same thing as 'locus standi'. A simple look at the grounds of appeal show the two words being stated together with a separating dash, as if they can be used interchangeably.

The Court of Appeal seemed attracted to this twinning of 'capacity' and 'locus standi' and determined that the High Court judge erred in law in its ruling on 'capacity' because judicial review applications do not require locus standi to commence. This twinning of the two legal concepts led to the error that we have to disentangle in our ruling.

We agree with counsel for the Applicant that there is a plethora of cases to the effect that in a public interest action such as an application for judicial review, the applicant does not need to prove an interest in the subject matter to have the 'locus standi' to commence the action. This position has been long established and is too trite for any extensive discussion. We thus agree with the citation of the decision of this court in the **Republic v High Court, Accra; Exparte Sam Okudzeto and 5 Others (Samuel Adjei Mensah and Anor Interested Parties) [2019-2020] 1 SCLRG 824** in which this Court held that,

"it must also be pointed out that in proceedings for an order of certiorari the strict application of the law relating to locus standi as in actions in other areas of the law is relaxed. A plethora of decided cases like: **R v Thames Magistrate Court; Ex Parte Greenbaum [1957] 55 LGR 129 CA, R v Brightin Borough Justice; Ex parte Jaruis [1954] 1 WLR 203, State v Asantehene's Divisional Court B1, Ex Parte Kusada [1963] 2 GLR 238 SC and Republic v Korle Gonno District Magistrate Grade 1; Ex Parte Amponsah [1991] 1 GLR 353 CA** *establish the principle that in proceedings for an order of certiorari a member of the public not*

directly affected by the proceedings sought to be quashed can bring the application for the order of certiorari".

See also **Republic v High Court, Winneba, ex parte Professor Mawutor Avoke And Supi Kwayera, University of Education, Winneba, Minister of Education [2019] 128 GMJ 171**, and Republic **v Court of Appeal, Accra Ex Parte East Dadekotopon Development Trust (Lands Commission Interested Party) [2017-2020] SCGLR 1008.**

However, locus standi in relation to a cause of action, is distinct and different from capacity to act as a juristic person or a person empowered by law to take legal actions. This is where Applicant, seems to have lost the handle on the objection that was upheld by the High Court. 'Locus standi' simply means a '*right to bring an action or to be heard in a given forum*' – as defined in **Blacks Law Dictionary Thomson Reuters 11th Edition 2019**, while 'capacity' speaks to the inherent qualification or competence to act at all in situations. Without prior capacity, the issue of locus standi cannot even arise.

It has always been understood that capacity is so fundamental that if a person does not have capacity, that party cannot even cross the threshold of invoking the court's jurisdiction to determine if they have locus standi to sustain an action or not. Thus in **National Investment Bank Ltd (No 1) v Standard Bank Offshore Trust Co Ltd (No 1) [2017-2020] 2 SC GLR 28**, the determination of this court was that any person that appears before a court – whether human or juristic, must be properly identified and known, and have the requisite identity or capacity to act in law, or the action they commence is void, because they lack the legal power to invoke the jurisdiction of the court. In pedestrian language, who is this person standing there?

This was the issue dealt with and answered in **Nii Amanor Dodoo (suing as Receiver of Unibank Ghana Limited) v Dr Kwabena Duffuor & 15 others & Attorney General** in the High Court, albeit without the semantic brevity we have stated above. The identity

of the plaintiff in that suit was Nii Amanor Dodoo, suing as Receiver of Unibank. And the question was, could Nii Amanor Dodoo, as Receiver of Unibank, justify a competence to appear before a court to litigate in that suit?

After extensive review of decisions from various jurisdictions, the High Court appreciated that the Receiver's in his personal capacity had no competence to commence the action, and so his personal name ought not to have been stated as the plaintiff. The Receiver was not the plaintiff, and he had no business before the court. The Receiver was the statutorily appointed agent and legal representative of Unibank Ghana Limited, which was the plaintiff. It therefore went on to conclude that the identity of the plaintiff in the suit should have been correctly stated as Unibank Ghana Ltd acting by Nii Amanor Dodoo as Receiver, and not the other way round.

This legal exposition brings us to the salient question in this action - whether a financial institution for which a Receiver has been appointed, has the inherent legal identity and competence in law (capacity), that would enable it to commence an action against an external third party such as a public institution independently, without acting by its Receiver. In essence, can a specialized deposit taking institution in receivership undertake an excursion to enforce a public interest cause of action?

The High Court determined that without acting by the Receiver, the Applicant did not have the requisite identity and competence in law to start the action against anyone, and arrived at this conclusion by applying the provisions of Act 930. The Court of Appeal determined that from general principles of common law that place no fetter on interest in cause of action where public interest actions are concerned, the Applicant as a company, could commence such an action.

What is lacking in the answer of the High Court is that though a company under receivership retains its inherent identity as a juristic person, it loses legal competence to

act except in the very limited circumstances where the company, its directors and shareholders retain residual powers under common law. And commencing an application for judicial review to quash the decisions of a public institution is certainly not one of those extremely limited circumstances. What is erroneous in the answer of the Court of Appeal is that though direct interest in a cause of action is not needed for locus standi to commence a public interest action, capacity as a juristic person is needed to commence any action in court, and a company in receivership is not competent as a juristic person except in the very limited circumstances under which it retains residual powers under common law.

Regulation of financial institutions

Section 123 of the **Banks and Specialised Deposit-Taking Institution Act, 2016 (Act 930)** provides;

"1. *Where the Bank of Ghana determines that the bank or specialized deposit taking institution is insolvent or is likely to become insolvent within the next sixty days, the Bank of Ghana shall revoke the license of that bank or specialised institution.*

2. The Bank of Ghana shall appoint a receiver at the effective time of revocation of the license under subsection (1).

3. The receiver appointed under subsection (2), shall take possession and control of the assets and liabilities of the bank or specialized deposit-taking institution".

Section 127 of Act 930 provides:

"1. *On the appointment of the receiver, the receiver shall be* ***the sole legal representative of the bank*** *or specialised deposit-taking institution* ***and shall succeed the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialized deposit-taking institution****.*

2. Despite subsection (1), the receiver may instruct the shareholders, directors and key management personnel to exercise specific functions for the bank or specialized deposit-taking institution.

3. The right and powers of the receiver include;

(k). initiating or defending the bank or specialized deposit-taking institution in any legal proceedings

While **section 123 of Act 930** grants the Bank of Ghana the power to revoke the Applicants license and appoint a receiver even under circumstances where the Bank of Ghana thinks that a financial institution is likely to be insolvent, section 127 appoints the receiver as the sole legal representative of the financial institution when such a step is taken by the Bank of Ghana. Immediately the said license is revoked, the Bank of Ghana must appoint a receiver. In this case, the records before us indicate that in the same notice that the Bank of Ghana revoked the licenses of the listed institutions, it appointed a Receiver for the companies.

What would be the effect of the appointment of a Receiver by the Bank of Ghana whether or not due process was followed in revoking the license of the financial institution? Per **section 127**, the Receiver succeeds the rights and powers of the shareholders, the directors and the key management personnel of the bank or specialized deposit-taking institution and becomes the sole legal representative of the bank or specialized deposit-taking institution.

The capacity of the company, qua company, to tackle external parties becomes absolutely circumscribed by these statutory edicts and conditions. In similar fashion, the company, qua compny, is protected from external forces by the shield of the Receiver. It cannot sue and be sued by itself through the efforts of its directors and shareholders when it comes

to the outside world. It is this position that renders the High Court decision right, and the Court of Appeal decision wrong.

We have disagreed with the Court of Appeal because we are satisfied that to the extent that Act 930 has given directions regarding the identity and competence of the Receiver as the one with power to act in law in the name of financial institutions regulated by Act 930, after they have been put into receivership, the conundrum in this suit around the capacity of the Applicant to commence the action before the high court ought to have been solved in the proper context of this statutory regulation as the High Court did.

It is a trite principle of law in our constitutional dispensation that statutory direction takes precedence over general common law principles. By operation of priority of law conferred on acts of parliament above common law principles in **article 11 (1) (b) of the 1992 Constitution,** it was erroneous for the Court of Appeal to apply an inapplicable general common law principle over the directions of **Act 930**.

The next strand of the issue before us that we must address is whether the Applicant retained its corporate identity in any legal context or it had completely 'lost' itself to the Receiver? If from our determination, a financial institution in receivership by Bank of Ghana must act by its Receiver, are there circumstances when the company can exert any specie of rights by itself? What if the shareholders, directors and key management personnel find any cause of action to protest the management of the company by the Receiver, or the regulation of the company by the statutory regulator? Would they be without a forum in law?

Definitely not. This is addressed in the valid arena of common law that deals with the residual exceptions to the capacity of a company subjected to a Receiver, to sue in common law, which were articulated by counsel for Applicant in much of his submissions. The only difficulty was that if he had closely read those cases, he would

have appreciated that the contexts were not in relation to the company's ability to independently function as a free company – such as to enable it commence judicial review applications that pursue matters of 'public interest', but to function in extremely limited circumstances.

As a policy court, it is important to us to clarify that this decision does not present the principle that a company under administration, liquidation or receivership by the Bank of Ghana loses its existence, or that its shareholders and directors cannot have any window to ventilate any derived cause of action against their Receiver or a third party.

However, such an action will not be an arms-length action in public interest, allowed under the special specie of actions in judicial review litigation, no matter how short a route a judicial review application may seem. Such rights will invariably be private rights, which must be pursued with the proper procedure.

To put this instant dispute to rest, we add that the present action on appeal is not an action by shareholders, or directors of the company in receivership acting with their residual powers, but an action by the company itself to protest the legality of the process used to revoke its license through public administrative law.

As rightly pointed out by counsel for Applicant, an application for certiorari is not concerned with the merits of the matter in issue. As such, in order for an application for judicial review to be sustained, the defect complained of must reflect on the face of the record in court. Since this is the law, how is any court going to determine the veracity of the Applicant's allegation of solvency and non-notice prior to the announcement on the face of the announcement? How is any court going to be able to determine whether or not the Applicant was actually insolvent or stood in danger of insolvency as stated on the face of the impugned notice? How is any court going to be able to determine whether or not there existed any communications between the Applicant and Respondent prior to

this notice – that would respond to the allegations of breach of audi alteram partem rule, especially since the Applicant's deponents urged in their affidavits that there had been communications that had gone on regarding the Applicant's liquidity? And how is any court going to be able to justify quashing a notice involving more than three hundred companies just by listening to allegations of lack of due process by one company in the list of hundreds?

Clearly, on a very practical level, the issues raised for determination in this contest that has travelled for almost four years could not in any way be resolved by looking at the face of the notice sought to be quashed. An action for judicial review of the Bank of Ghana's notice commenced by the party who filed the suit is therefore not sustainable.

The High Court rightly recognized the specialized nature of the corporate entity before it, and the special circumstances of receivership and the statutory regulations around those special circumstances. It was therefore erroneous for the Court of Appeal to reverse the legally valid construct on the capacity of the party before it as articulated by the high court.

Concluding comments

The financial sector is a very sensitive sector which can pose a threat to the very security of the state if the capital of investors and the funds of depositors are handled by institutions set up for the purpose in a way that require intervention to save those funds and investments. For this reason, **Article 183 of the 1992 Constitution** provided for the Bank of Ghana to keenly regulate that sector. **Act 930** provides statutory conditions that are supposed to respond to these obligations. Where these provisions are allegedly applied, and private rights are affected, it is important that the courts weigh the constitutional and statutory obligations provided for the proper regulation of this sensitive sector of the national economy and ensure that legal questions are properly and

promptly answered and litigation that affects the financial sector is resolved efficiently, effectively and with finality.

The Court of Appeal decision of 19th October 2022 is reversed and the decision of the High Court dated 12th March 2020 upholding the preliminary legal objection that the applicant in this suit lacks capacity to prosecute the action presented to court is restored.

G. SACKEY TORKORNOO (MRS.)

(CHIEF JUSTICE)

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(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

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