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: J4/24/2023

27TH JULY, 2023

THE REPUBLIC

VS

BANK OF GHANA ……. RESPONDENT/APPELLANT/APPELLANT

EX PARTE:

1. JOSEPH APOR ADJEI
2. PHILIP HOMIAH } **APPLICANTS/RESPONDENTS/RESPONDENTS**
3. LINDA ESHUN

JUDGMENT

SACKEY TORKORNOO CJ:-

Background

On 8th October 2019, four natural persons and a company called Boin Microfinance Ltd, commenced an application for judicial review pursuant to **Order 55 of the High Court Civil Procedure Rules 2004 CI 47**. The application sought an order of certiorari to quash a decision of the Bank of Ghana – the 1st Respondent to the application. Three of the natural persons were supposed to be shareholders of the company, which was the 1st Applicant. The three shareholders were the 2nd, 3rd and 4th Applicant. The 5th Applicant was the chairman of the board of directors of the 1st Applicant.

According to the applicants, the Governor of Bank of Ghana issued a decision on 31st May 2019 revoking the operating license of hundreds of '*insolvent microfinance companies*' and appointing a receiver for regulation of the '*insolvent*' companies. In the supporting affidavit, the applicants insisted that the 1st Applicant was not insolvent, and that the company had not been given a hearing before the taking of the decision to revoke its license.

They further contended that the shareholders and directors had sent petitions in June 2019 to the Bank of Ghana against the revocation of the license, and taken out a writ to contest the revocation of the license of the 1st Applicant. The high court had directed that the proper proceeding was an arbitration and struck out the writ. According to the applicants, the Bank of Ghana had not shown any interest in the arbitration proceeding that they commenced. While this was going on, they contended that the receiver was taking assets of the 1st Applicant and dissipating the resources of the company. They therefore discontinued the arbitration proceeding.

They concluded by averring that first, the act of revocation of the license by the Bank of Ghana was capricious, arbitrary, deliberate and contrary to the provisions of **sections 123 to 127 of the Banks and Specialized Deposit Taking Institutions Act 2016, Act 930**. It was also contrary to the provisions of the **1992 Constitution**,

Second, that the decision by the Bank of Ghana to revoke the license of the 1st Applicant was contrary to the rules of natural justice. Third, that the revocation of the license without complying with the provisions of **Act 930** amounts to an error of law on the face of the record.

In the accompanying statement of case, the Interested Parties set out a summary of four arguments. These were that:

1. The Bank of Ghana had the duty to act fairly and reasonably and this duty imposes on the 1st Respondent the duty to Act within the confines of the law including the rules of natural justice as well as the provisions of the Banks and Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930).

2. That the failure of the 1st Respondent to notify and give the Applicants the opportunity to be heard contrary to section 16(3) and (4) as well as section 125(4) of the Banks and Specialised Deposit-Taking Institution Act, 2016 (Act 930) was a clear breach of statute as well as a breach of the rules of natural justice.
3. That the breach of the provisions of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (Act 930) is also a fundamental and patent error on the face of the record which cannot be allowed to stand.

4. That by failing to abide by the provisions of the Banks and Specialised Deposit-Taking Institutions Act, 2016 (930) and also breaching the rules of natural justice, the Bank of Ghana has breached its duty under articles 23 and 296 of the 1992 Constitution to act reasonably and fairly and has acted arbitrarily.

In a first decision after the case was called, the high court recognized that an order of the Bank of Ghana could not be an order of the Governor of the Bank of Ghana and struck out the name of the Governor as a party from the processes on 19th November 2019. In

complying with the court's order to file an amended process, it would seem that the applicants, suo motu chose to take out the names of both the 1st Applicant and the 5th Applicant as parties to the action.

When that step was contested in January 2020, the name of the 5th Applicant was restored in a new application to have his name struck out. This was granted on 4th February 2020. A third amendment to change the name of the 4th Applicant brought these proceedings to June 2020. The Bank of Ghana then applied to have the entire proceeding struck out as an abuse of due process.

By this time, an application to restrain the Bank of Ghana through its workmen and agents, from handling and dissipating the assets of '*the Applicant's Microfinance company*' had been filed before the court by the applicants. On 2nd December 2020, the high court finally purported to rule on the motion to strike out the substantive judicial review application before it in what can only be described as a very strange manner.

Apparently, there was a suit pending before the same court titled **Ideal Financial Holding Ltd v Bank of Ghana and Eric Nipah**. That suit is ostensibly numbered **HR/0022/2020** while the instant suit on appeal to us and under consideration in this ruling is numbered **HR/002/2020**.

From the Record of Appeal (ROA) before us, an application was placed before the high court judge in **HR/0022/2020**. Volume 2 of this ROA on suit number **HR/002/2020** shows that the high court judge rendered a ruling on the application in **HR/0022/2020,** which can be found on pages 20 to 39 of the ROA.

In the opening paragraphs of the ruling in the suit numbered **HR/0022/2020,** the judge stated that he was ruling on an application filed by counsel for Bank of Ghana, the 1st Respondent in that action, for an order '*…setting aside the originating notice of motion/Application for the enforcement of Applicant's fundamental right to administrative …*'.

The last words were not filled in and we must leave them as we see the record. He went on to say that that the 'originating application' he was dealing with had been '*filed under Articles 23, 33 and 296 of the 1992 Constitution, and in accordance with Order 67 Rule 2 (1) of the High Court Civil Procedure Rules CI 47/2004*.'

He went on to say that the substantive orders sought in that suit by the plaintiff in that suit were supposed to be

1. An Order of certiorari directed at the 1st Respondent to bring before this Court for the purpose of quashing and accordingly quashing Respondent's decision revoking Applicant's license contained in its directive dated 16/08/19.

2. An Order of injunction restraining Respondents from proceeding with the Receivership occasioned by the revocation of the license of Ideal Finance Limited until the final determination of the instant proceedings.

3. General damages for the wrongful revocation of Applicant's license and its attendant financial implications.

He then went on to evaluate the various submissions made to him and concluded that the jurisdiction of the high court in **articles 33 and 140 of the 1992 Constitution, section 15 (1) of** the **Courts Act 1993 Act 459 as amended by Act 650**, and **section 16 of Act 459** allows the high court to entertain the proceedings in that **Ideal Financial Holding Ltd** case that he was ruling on. He also evaluated that only the high court has exclusive original jurisdiction to *enforce breaches of fundamental human rights and freedoms* of individuals.

He concluded with certain 'findings' and flowing from those 'findings', the high court dismissed the application to set aside the originating motion in the **Ideal Financial Holding** suit.

Thereafter, the high court judge directed within this ruling in **suit number HR/0022/2020** that there are three other suits in which similar applications were pending. One of them is this action under consideration entitled **Republic Ltd v Bank of Ghana ex parte Joseph Apor Adjei and others**. He proceeded to hold within his ruling in **suit number HR/0022/2020** that since 'the same grounds as canvased in suit number **suit number HR/0022/2020** were raised in it, it follows that the decision this case **HR/0022/2020** has a direct bearing on these three cases'. He concluded that the interlocutory application to set aside the application for judicial review in **HR/002/2020** had been refused and awarded costs of 20,000gh against Bank of Ghana in the current suit within the **Ideal Finance Holding** ruling.

There is no controversy that this structure of proceeding in one case to rule on three other applications that have not been consolidated with the case before the judge, nor do they involve the same parties, is unacceptable, rendering all the 'rulings' as applying to the three imported suits unenforceable. And yet, this is how the background reasoning for the ruling that went on appeal and from which this appeal arose was given.

It is not clear to us where the parties in the present suit with **suit number HR/002/2020** were when the high court Judge read the ruling in **suit number HR/0022/2020.** They were not recorded as being present during those proceedings. As already stated, they are not parties to **suit number HR/0022/2020.**

Where a court gives a comprehensive ruling in one case that they find to be applicable to other cases raising similar issues before them, the proper practice is for the court to wait till they are dealing with those other cases after they have been properly heard, as per the cause list scheduling them for hearing, and parties and counsel noted. Then as part of the

ruling in the case with similar issues, the court, if they want to save themselves the burden of articulating the same reasoning in extensor, can cite the earlier decision, and the court's reasoning and evaluations in summary in the earlier case, as the basis for the holdings in the later case. Of course, care must always be taken to ensure that the proceedings and issues are in actuality, similar such as to merit the due application of the holdings in the earlier ruling.

In the present case, another matter to note is that the proceedings in this suit on appeal before us were commenced pursuant to **Order 55** of **CI 47**, which deals with the supervisory jurisdiction of the high court and not proceedings for enforcement of fundamental human rights as provided for by **Order 67**. Proceedings under **Order 55** are not in any wise of the same specie as proceedings under **Order 67**, which the trial court indicated to be the rule under which **suit number HR/0022/2020** was commenced.

To return to disposing of the appeal before us, we note that on page 40 of Volume 2 of the Record of Appeal, there is a record of a ruling in **suit number HR/002/2020**, on the same 2nd December 2020. It is properly titled, and the parties and counsel present are recorded. There is a spare record following the heading of the case and the record of parties and counsel present. It reads:

BY COURT:

1. **Ruling delivered in open court. Application dismissed.**
2. **Costs of GH20,000 against the Applicant herein (Bank of Ghana) and in favour of Resondent herein.**
3. **This case is adjourned to 22/12/2020 at 9.30 am for substantive application to be moved.**

What we can appreciate therefore is that this is the ruling of 2nd December 2020 that was ostensibly appealed against, because this is the only ruling on the case numbered

HR/002/2020 on that date. In essence therefore, the ruling of 2nd December 2020 in the present suit did not include any background facts or considerations.

Court of Appeal

The grounds of appeal to the court of appeal were:

i. The ruling is against the weight of affidavit evidence;
ii. The cost of GH¢20,000.00 awarded in favor of applicants/respondents is excessive;
iii. Further grounds to be filed upon receipt of the record of appeal.

At the end of its hearing, the court of appeal dismissed the appeal against the ruling of the 2nd December 2020 on 19th October 2022. While correctly noting in the opening lines of its ruling that the applicants in the suit on appeal filed an application for judicial review in the nature of certiorari to, inter alia, quash the decision of the Bank of Ghana dated 31st May 2019, the court of appeal went on to state that the applicants brought their application under **articles 23, 33 and 296** of the Constitution of Ghana, *and* **order 67 of CI 47.**

This latter assertion, is surely not the legal context of these proceedings in **suit number HR/002/2020** which were commenced pursuant to **Order 55**.

It was the evaluation of the court of appeal that the crux of the appeal was about the meaning to be given to **section 141 of the 930** which reads:

Section 141

1. *Where a person is aggrieved with a decision of the Bank of Ghana in respect of*

a. Matters under Sections 107 to 122 or Sections 123 to 139;
b. Withdrawal of the registration of a financial holding company;

c. *Matters which involve the revocation of a licence of a bank or a specialized deposit taking institution; or*

d. *An action under Sections 102 to 106 and where the Bank of Ghana determines that there is a serious risk to the financial stability or of material loss to that bank or specialized deposit-taking institution or financial holding company and that person desires redress of such grievances, that person shall resort to arbitration under the rules of the* ***Alternative Dispute Resolution Act, 2010 (Act 798)***

The court of appeal described **section 141 of Act 930** as an ouster clause, and said that it is a trite position of law that ouster clauses are meant to oust the ordinary jurisdiction of the courts. It was its opinion that the ordinary jurisdiction of the court means the original jurisdiction of the courts. It was the view of the court of appeal that though the original or ordinary jurisdiction of the courts may be ousted or deferred by statute, an ouster clause cannot be used to oust the supervisory jurisdiction or judicial review jurisdiction of the high courts which is conferred by **article 141** of the Constitution.

Article 141 reads: **Supervisory Jurisdiction of the High Court**

141. *The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers*

The court of appeal went on to posit that **article 23** of the **1992 Constitution** mandates administrative bodies and officials to act fairly and reasonably and comply with the requirements imposed on them by law, and persons aggrieved by the exercise of their acts and decisions may seek redress before a court. Since administrative justice is a fundamental human right enforceable under **article 33 of the Constitution**, it was the reasoning of the court of appeal that a statute – to wit Act 930 – cannot controvert the directions of the Constitution.

It went on to state that **additionally, section 1 (a) of the Alternative Dispute Resolution Act 2010, Act 798** forbids matters of national or public interest to be resolved through alternative dispute resolution, and human rights enforcement are matters of national interest. The enforcement of human rights could not therefore fall within the contemplation of **section 141 of Act 930**. Ergo, issues centered on administrative justice could not be settled under **section 141 of Act 930,** and **section 141 of Act 930** could not oust the supervisory jurisdiction of the high court. On these grounds centered on the evaluation that the fundamental right to administrative justice is a human right which is not amenable to settlement by alternative dispute resolution, the court of appeal dismissed the appeal.

The appellants came to this court on the following grounds of appeal:

Grounds of appeal from the Supreme Court

a. The judgment is against the weight of evidence;

b. The Court of Appeal fell in grave error in holding that the applicants' cause of action masqueraded as a human right action was a human rights enforcement action and of national interest and had properly invoked the jurisdiction of the High Court, and this error has occasioned on respondent/appellant/appellant a substantial miscarriage of justice;

c. The Court of Appeal misdirected itself and failed, refused and/or neglected to appreciate that the main plaint on the applicants was a grievance against the decision of respondent/appellant/appellant (under section123 of the Banks and Specialized Deposit Taking Institutions Act, 2016 (Act 930) in revoking the licence granted to the applicants to operate as a microfinance company, and thereby erred in law in holding that the applicants were not mandatorily bound under section 141 of Act 930 to resort to arbitration as set out in the statute.

d. The Court of Appeal erred in holding that section 141 of Act 930 was only meant to cater for persons who may decide to exercise the ordinary jurisdiction of the High Court and not the supervisory or enforcement jurisdiction meant to protect fundamental human rights;

e. Additional grounds to be filed upon receipt of the record of appeal

We absolutely agree with ground (a) of the appeal, but must point out that the remainder of the grounds of appeal sin against **Rules 6 (4)** and **(5) of the Supreme Court Rules 1996 CI 16.** They provide that:

6 (4) *The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal,* ***without any argument or narrative*** *and shall be numbered seriatim; and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised*

6 (5) *No ground of appeal which is vague or general in terms or discloses no reasonable ground of appeal shall be permitted, except the general ground that the judgment is against the weight of evidence; and any ground of appeal or any part of it which is not permitted under this rule may be struck out by the Court on its own motion or on application by the respondent*.

Our ruling will therefore be a determination of the first omnibus ground of appeal that allows us to consider the entire record, review the evidence, and evaluate whether the court of appeal properly evaluated the evidence before it and applied the law correctly. See the well known directions of this court as established in cases cited to us such as **Aryeh & Akakpo v Ayaa Iddrisu [2010] SCGLR 891**, **Akufo-Addo v Catheline [1992] 1 GLR 377**, and **Djin v Musa Baako [2007-2008] 1 SCGLR 687**.

Consideration

It is not clear how the court of appeal misapprehended the records and processes presented to it. We appreciate that confusion in these proceedings was introduced by the high court through the ruling in the case of **Ideal Finance Holdings v Bank of Ghana and Eric Nipah** where high court judge indicated that the originating application in that suit was filed '*under articles 23, 33 and 296 of the 1992 Constitution and in accordance with Order 67 Rule 2 (1) of the ……*'.

By failing to recognize the clear heading of this suit as an application founded on Order 55, and the parties as different from the parties in the the **Ideal Finance Holdings v Bank of Ghana and Eric Nipah** ruling, the decision of the court of appeal reveals a substitution and consideration of a case totally different from the proceedings that the Applicants had commenced in **suit No HR/002/2020**.

What we find before us is the classic case of the breed of decisions long held to be void by what is classically known as the principle in **Dam v Addo [1962] 2GLR 282,** where it was held that *a court must not substitute for a party, a case contrary to and inconsistent with, that which the party himself had put forward by his pleadings and evidence*

In Bisi & Others v Tabiri alias Asare [1984- 86] 2 GLR 282 at 298, the Court of Appeal through Adade JSC, in an effort to capture the principles deducible from this fundamental requirement for justice, recognized situations such as when the new case the court had relied on was not pleaded either expressly or by necessary implication or was irrelevant to the resolution of the issues on hand.

We find this to be the situation in the present matter. This suit was neither premised on an Order 67 application, nor was there a basis for all the evaluations that the court of appeal put out, because the high court ruling on this instant suit did not contain any facts, issues or evaluations. It is for the same reason that we will not expend evaluation on the submissions of counsel that speak to arguments outside of the bare ruling rendered in this suit on 2nd December 2020.

This is our conclusion

From the record, the duty of the court of appeal should have been to recognize that the ruling of 2nd December 2020 carried no background of facts, submissions, or evaluations. The decision of the court of appeal dated 19th October 2022 is not only against the weight of evidence, but it substituted facts and issues different from the facts and issues raised in suit **No HR/002/2020** which was the suit on appeal before the court of appeal. We allow the appeal on this ground, and set aside the decision of the court of appeal dated 19th October 2022.

Article 129 (4) of the 1992 Constitution provides as part of the 'General Jurisdiction' of the Supreme Court, as follows:

129 (4) *For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law*

For the purpose of determining the matter submitted to the court of appeal, and on a rehearing of the appeal, the decision of the high court in suit No HR/002/2020 expressed in simple words '*Ruling delivered in open court. Application dismissed. Cost of 20,000 GHC against Applicant herein (Bank of Ghana) and in favor of Respondent herein*' is construed as an order refusing the preliminary objection to strike out the substantive application before the high court in suit No HR/002/2020, without any reasons being given. We cannot evaluate this ruling and order on account of the absence of the reasoning behind it. The parties are ordered to return to the high court for the hearing of the substantive application on its merits.

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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