

**IN THE SUPERIOR COURT OF JUDICATURE  
IN THE COURT OF APPEAL,  
ACCRA-GHANA, A.D. 2004.**

**CORAM:** Owusu, J. A. [Presiding]  
Owusu-Ansah, J.A  
Akamba, J.A.

H3/232/2004.

1. <b>FRANCIS KOFI ADZAYAWO</b> 2. <b>HILARIU-ANANE</b> 3. <b>EMIL ANORSIGBE</b>	}	<b>PLAINTIFFS/RESPONDENT</b>
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- versus-

<b>GHANA PRIVATE ROAD TRANSPORT UNION OF TUC [GH]</b>	}	<b>DEFENDANT/APPLICANT</b>
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**REASONS FOR RULING**  
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**OWUSU, J.A.:-** On 2<sup>nd</sup> July, 2004, the court dismissed the court dismissed the Defendant/Appellant/Applicant's application for Stay of Execution and reserved its reasons for the dismissal, which reasons I now proceed to assign: -

By their writ of summons filed on 8/3/02, the Plaintiffs claimed the following reliefs:

- [a] *"a declaration that the election that was held at the Kpando Branch of the GPRTU of TUC and conducted by National Electoral Officer of the National Electoral Commission [NEC] and all subsequent acts thereon are null and void and of no effect whatsoever, having been conducted in contravention of the mandatory provisions of Article 13[0] of the constitution of the GPRTU of TUC of Ghana.*
- [b] *"An order setting aside the said election which was held on 13/12/01 and conducted by District Electoral Officer of the NEC at the Kpando Branch of the GPRTU of TUC and all subsequent acts thereon.*
- [c] *"An order restraining the elected officers from taking office for the administration of the Kpando Branch of the GPRTU of TUC [Ghana] until the suit is determined.*

The Defendant's original defence was amended by an amended statement of

Defence filed on 25/6/03. In this statement, the defendant sought to justify the conduct of the election in contravention of the mandatory provision of Article 13 [0] of the Constitution of the Union.

The Plaintiff's thereafter filed a motion under order 25 rule 4 of the High Court [Civil Procedure] Rules LN 140 of 1954 and Inherent Jurisdiction of the court calling upon the court to rule that the defence filed disclosed no reasonable answer to the Plaintiffs' claim and therefore same ought to be dismissed.

The court below granted the Plaintiffs' motion, dismissed the amended statement of defence and entered Judgment in their favour in terms of the reliefs sought. Thus the election was declared null and void and the elected officers were restrained from taking office.

Dissatisfied with the ruling, the Defendant filed Notice of Appeal against the whole ruling on the grounds among others, that

- [I] *"The Ruling [Judgment] delivered is against the weight of evidence"*
- [ii] *"The Learned Judge erred in declaring null and void the election held at the Kpando branch of the GPRTU on 13<sup>th</sup> December 2001 which election was accepted and approved of by the High Court, Ho, presided over by His Lordship P. K. Gyaesayor J. on the 18<sup>th</sup> of January 2002 in the suit initiated MARTIN AKPOH & ANOR, VRS. THE REGIONAL CHAIRMAN, GPRTU HO & ORS., Suit No. CS 66/98 which decision has not been appealed against."*
- [iii] *"The Learned Judge erred when he held that the Defendant/Appellant's defence did not disclose any reasonable answer to the Plaintiff's/ Respondents' claim."*

Following the filing of the Notice of Appeal, the Defendant/Appellant filed a motion in the court below for stay of Execution.

When the application came on for hearing neither the Defendant nor Counsel appeared in court.

His Lordship R. Asamoah J. dismissed the application as he found same without any merit whatsoever having come to the conclusion that his brother E.K. Ayebi J, did not err in his ruling.

The present application before the court is a repetition of the earlier one, under rule 28 of the Court of Appeal Rules, C.I.19.

Arguing the application, Counsel contended that the trial Judge did not consider an earlier decision of the High Court, Ho. This decision is attached as Exhibit "UNK 5."

That the court ordered the election to be conducted and the report filed as ordered by the Court. This is attached as Exhibit "UNK 2."

Counsel referred to Article 13[0] of the Constitution of the Union under which the election was held. The Article reads as follows :

"Local and Branch elections shall be conducted by Labour Officers but Regional and National elections shall be conducted by Electoral Commission Officers.

From the report attached as Exhibit "UNK2" it was the Kpando district Electoral Officer who conducted the election in contravention of article 13[0] of the constitution.

It was urged upon this court that the Labour Officer could not conduct the election because he himself was a party in suit No. C/S.66/98 over the same Kpando Branch and therefore it became necessary for the Union to resort to article 5[iv] of the Constitution which reads that "Between the meetings of the Quadrennial or Extra Ordinary Delegates Conference, the National Executive Council shall interpret the Articles of the Constitution when necessary, and determine any point on which the Articles are silent. Any such interpretation shall become the existing practice and will be binding on all members until the next Delegates conference."

Counsel asked the court to grant the application because there are triable issues and that the elected officers have one more year to finish their term of office and to restrain them from carrying on their functions will work hardship on the members of the Kpando Branch.

In opposing the application, Counsel submitted that it was the regional Labour Officer who was involved in the suits before the court but not the District Labour Officer.

Counsel argued that the order of the court, Exhibit "UNK 5" was not complied with. That the Election was conducted in violation of art. 13[0] of the Constitution, the provision of which is mandatory. He therefore called upon the court to dismiss the application as same is unmeritorious.

Counsel for the Applicant did not tell this court the nature of the hardship that Members of the Union will suffer if the application is refused. Are the Plaintiffs/ Respondents not members of the Union?

In paragraph 28 of the affidavit in support of the motion, the applicant avers that is the instant application is not granted, the elected Executives of Kpando Branch of GPRTU would have been removed from office before the appeal is determined.

Without attempting to touch on the merits or otherwise of the appeal, may I be permitted to ask, was the resort to article 5[iv] of the constitution under which the National Executive Council purported to determine the need to conduct the election even though the Labour Officer to them was disqualified, necessary, in the light of the express provision of article 13 [0]? In my view, I do not think there was any such need.

The paramount duty of a court to which such an application is made is to see that the appeal, if successful, is not rendered nugatory. See the case of JOSEPH vrs. JEBEILE & ANOTHER [1963] 1 GLR. 387.

Mindful of this proposition of law, I have considered the affidavits both in support and in opposition to the application and submissions of respective counsel and I am of the view that on the merits, the application ought to be dismissed and for the reasons stated herein, same was accordingly dismissed.

If the appeal succeeds, the elected officers can be made to serve the remaining term of their office but should the appeal fail, and the officers had been allowed to remain in office and carried on their function as lawfully elected office, the consequences will be far searching and disastrous.

**R. C. OWUSU**  
**JUSTICE OF APPEAL**

**OWUSU-ANSAH, J.A.**:- I agree.

**P. K. OWUSU-ANSAH**  
**JUSTICE OF APPEAL**

**AKAMBA, J.A.**:- I also agree.

**J. B. AKAMBA**  
**JUSTICE OF APPEAL**

**COUNSEL:**

Francis Koku led by B.W. Tamakloe for Plaintiffs/Defendants/Appellants.

Mr. Nutifafa Kuenyehia for the Defendant/Applicant.

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