

IN THE DISTRICT COURT HELD AT WASA AKROPONG ON THURSDAY, THE 16TH
DAY OF MARCH, 2023 BEFORE HIS WORSHIP MR. BRIGHT A. AKOANDE ESQ.
DISTRICT MAGISTRATE

SUIT NO: A1/44/2017

MICHAEL COFFIE.....PLAINTIFFS

VRS:

NANA OTENG ABABIO.....DEFENDANTS

Counsel: Kwame Boatei Adutwum Esq for Plaintiff

J. E Abekah, Esq for Defendant

JUDGMENT

The plaintiff's claim as per his writ of summons is as follows: "plaintiff claim against the defendant is for the sum of GH¢15,000 being an arbitration award published in favour of the plaintiff at the Wasa Akropong chief's palace".

I inherited this case from the previous magistrate. When I took over this case, the defendant had given his evidence – in – chief and was to be further cross-examined by counsel for the plaintiff. I must also state that the plaintiff had earlier testified and called a single witness who testified and thereafter closed his (plaintiff's) case. The defendant subsequently abandoned his defence. Counsel for the defendant too failed to appear in court after the defendant stopped coming to court. The law is settled that when a party

has been given the opportunity to defend himself against allegations made against him but he deliberately declines the invitation, the court will proceed with the trial to conclusion and make findings and conclusions based on the evidence on the record; See *In Re West Coast Dyeing Industry Limited*; *Adams V Tandoh* [1984-86] 2 GLR 561. Also, see *The Republic V High Court, Human Rights Division, Accra, Ex-parte Akita*, civil motion J5/2010 dated 17th February, 2010. In the instant suit, the first observation that a lawyer or a judge makes after reading the plaintiff's relief as endorsed in the writ is that, the plaintiff's writ is incompetent. The plaintiff's claim is for the recovery of GH¢15000 as an arbitration award. This being the case, the plaintiff is legally barred from issuing a fresh writ to re-litigate the dispute. I propose to write this judgment in a tutorial style so as to educate counsel on the proper procedure to use as far as the enforcement of an arbitration award is concerned. In deciding to write this judgment in a tutorial style, I have taken inspiration from Kpegah JSC who was one of my favorite judges. Kpegah JSC wrote his opinion in *Awuni V WAEC* [2003-2004] 1 SCGLR 471 in a tutorial style so as to educate counsel for the defendant in that case on how he should have conducted the case procedurally. The relevant words of Kpegah JSC in *Awuni V WAEC* (supra) which are applicable to the instant case are " I have therefore decided to change my normal approach and to write this particular judgment in a what I will refer to as "tutorial style", (that is to say, pointing out what I consider to be mistakes of counsel and suggesting possible solutions), so as to forestall any possible accusations of lack of sensitivity to the public interest". In *Awuni V WAEC* (supra), Kpegah JSC was incensed at the counsel for the defendant in that case when counsel sought to amend paragraphs (5) and (11) of his original affidavit and to depose to a new information in a supplementary affidavit which new information was inconsistent to the information deposed to in the original affidavit in support. The procedure adopted by counsel for the defendant in that suit was fundamentally flawed and incongruous.

In the instant suit, I can state without equivocation that the step the plaintiff took to recover the arbitration award is fundamentally flawed. This is because, the procedure that governs enforcement of arbitration awards is provided by the Alternative Dispute Resolution Act, 2010, Act 798. Section 110 of Act 798 provides that a customary arbitration award may for the purpose of record and enforcement be registered at the nearest District Court, Circuit Court or High Court as appropriate. Section 111 of Act 798 provides that an award may be enforced in the same manner as a judgment of the court. In the instant suit, the case of the plaintiff is that the dispute was customarily arbitrated and the award was given in his favour. He alleged that the chief of Japa was the arbitrator. If this is the case, it means, the dispute is *res judicata*, see *Nyame V. Kese alias Konto* [1999 -2000 31 GLR 236.

The proper procedure that the plaintiff and his counsel should have used to enforce the arbitration award in the instant case was for them to first register the award at the nearest District Court, Circuit Court or High Court in line with section 110 of Act 798. Counsel ought to know that the award must be in writing before it can be registered; see section 110 (2) of Act 798. After the award has been registered in conformity with section 110 of Act 798, the plaintiff can then execute the award in the same manner as a judgment of a court is enforced. In the instant case, if the award is registered, the plaintiff or his counsel can apply for a writ of *fifa* or a writ of *garnishee* to enforce the award. The law is settled that where an enactment has prescribed a special procedure by which something is to be done, it is that procedure alone that is to be followed.; see *Boyefio V NTHC Properties LTD* [1997-98] 1GLR 768 SC.

In the instant suit, the plaintiff has not followed the special procedure that Act 798 has provided regarding enforcement of arbitration awards. It is hoped that this judgment written in a tutorial style will guide learned counsel for the plaintiff in his future conduct of a similar case.

For the reasons given above, the plaintiff's writ of summons is incompetent. The writ is void. The subsequent proceedings founded on the writ are also void. You cannot put something on nothing and expect it to stand there; see *MacFoy V United Africa Co. Ltd* [1961] 3 All ER 1169.

Also, where a step by a plaintiff in judicial proceedings is fundamentally wrong, it renders the proceedings incompetent; see *The Republic V High Court, Kumasi; Ex-parte Atumfuwa*, CM No. 56/97 dated 15th July, 1998. He has not properly invoked the jurisdiction of this court. A writ cannot be issued to enforce an arbitration award. The plaintiff's writ is accordingly dismissed. Given the fact that the defendant abandoned his defence midway, there will be no order as to costs.

(SGD)

DISTRICT MAGISTRATE

MR. AKOANDE A BRIGHT