IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE TAMALE, NORTHERN REGION

Suit No.NR/TL/HC/CC16/61/23

Delivered on 17th October, 2023

IN THE MATTER OF ISSAH DRAMANI V IBRAHIM AWAL BEFORE DISTRICT MAGISTRATE COURT, TAMALE

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW IN THE FORM OF CERTIORARI (ORDER 55 OF C.I.47)

THE REPUBLIC

VRS

DISTRICT MAGISTRATE COURT (TAMALE) --- RESPONDENT

EX PARTE: IBRAHIM AWAL --- APPLICANT

ISSAH DRAMANI --- INTERESTED PARTY

Counsel

Douglas Kwame Adjei for Applicant

Mohammed Alhassan for Interested Party

Coram

His lordship Justice Eric Ansah Ankomah

DECISION

Introduction

The applicant herein (defendant in the court below) was sued at the District Court, Tamale for a refund of cash the sum of Twenty Thousand Ghana Cedis (GHs 20,000.00) being the payment for the cost of plot number 209, Block B, Lahagu, a village along

Tamale-Salaga road in the Northern region land that the Applicant sold to the Interested Party (plaintiff at the court below).

The Applicant pleaded liable with explanation but after the court recorded the explanation, the Magistrate found that the explanation of the Applicant was untenable and found the Applicant liable to the claim. The court entered final judgment for the Interested Party for the recovery of cash the sum of GHs 20,000.00 and thereafter awarded cost of GHs 5,000.00 against the Applicant. The court did not award interest.

Not satisfied with the judgment of the District court, the Applicant engaged the services of a lawyer to file this judicial review application in the nature of certiorari to quash the decision of the District court.

Applicant case

The summary of the applicant's case as evidenced by his affidavit in support of the motion paper is as follows;

That the interested party issued a writ of summons containing particulars of claim, reliefs and summary of subject matter of claim against him on 14/4/2023 at the District court, Tamale. A copy of the writ of summons was attached to the application and marked as exhibit A.

That per the hearing notice accompanying the writ of summons, the case was fixed for hearing on 27/4/2023.

That on 27/4/23 he appeared before the District Court and without being sworn-in he was interrogated by the judge on the matter wherein, he admitted having a contract with the plaintiff for the sale and purchase of land and also receiving consideration.

That even though there was initial problem with the transfer of the land to plaintiff this was later resolved and documents covering the property was given to the plaintiff.

That the plaintiff did not give evidence in court for the Applicant to cross-examine him to enable the court to make findings. A copy of the judgment was attached to the application and marked as exhibit B.

That he is advised by his counsel and verily believe same to be true that by his explanation he gave to the court, he had a defence to the action and the court should have ordered him to file answer to the plaintiff claim.

That he is further advised by his counsel and verily believe same to be true that the court should have given him permission to formally defend the suit before judgment was entered in favour of the plaintiff.

That evidence was not led in the matter and that what the parties and their witnesses' stated on oath or affirmation constitutes evidence.

That suit no. NR/DCT1/A1/10/23 was not tried on its merit.

That he is advised that, the procedure adopted by the court on 27/4/2023 amounts to wanton disregard of due process and the requirement of natural justice.

That the judge erred in law when he made conclusions without evidence.

That he is advised that he was not given appropriate opportunity to be heard on the matter as the suit by the plaintiff was not put on the undefended suit under Order 8 of C.I. 59.

That he is further advised that having regard to the nature and circumstances of the suit filed by the plaintiff the court should have complied with Order 18 of C.I.59 in the interest of justice.

That he is advised that the reasons given by the court in support of the judgment dated 27/4/2023 were highly speculative as there was no evidence before the court to enable such reasons to be given.

That he prays that the Court quash the judgment dated 27/4/2023.

Interested Party Case

The Respondent upon being served did not file any process in Court. It was the Interested Party who filed affidavit in opposition to the application and the salient points raised are as follows:

That he is advised that the application is misconceived.

That he is further advised that the trial magistrate if he committed any error at all (which he denies) is a non-jurisdictional error and certiorari will not lie to quash his decision and/or order.

That the Applicant pleaded liable after his claims were read and explained to him. The decision to enter judgment for him was based on the Applicant plea of liable and not the explanation he gave. That nowhere in the record did the magistrate say that he found for him because he did not accept the Applicant explanation.

That he is further advised that a party need not be sworn before his plea in civil matter is taken before the District court. That paragraph 5 of the affidavit in support is misconceived.

That the magistrate only commented on the Applicant's explanation. In fact the magistrate did not accept the Applicant's explanation and entered judgment against him. A party need not be sworn to give an explanation as given by Applicant is no evidence for him to be cross-examined on (sic).

That the explanation given by the Applicant did not negate his plea of liability. That his explanation further solidified his plea when he said:

"I told the plaintiff to take it and he objected. I told him to give me time to sell it and give him his money."

That he denies paragraph 6 and to the best of his knowledge the problem was not sorted out hence his demand for his money.

That he is further advised that when a party pleads liable to a claim, his adversary need not lead evidence to prove the claim.

Paragraphs 8, 9, 11, 12, 13, 14 and 15 of the affidavit in support were denied and that the advised contained there are misconceived.

That in relation to paragraph 16, the magistrate did not find the Applicant liable based on evidence. That his comments and/or alleged reasons were therefore inconsequential and the Applicant was found liable based on his plea. That the Applicant explanation did not find favour with the magistrate.

That the Applicant's explanation re-echoed the particulars of his (plaintiff) claim. That the explanation could not be a defence to warrant the trial magistrate ignoring the Applicant's plea and permitting the case to be tried as though, Applicant pleaded not liable.

That he is advised by counsel and verily believe same to be true that the Applicant's motion does not disclose any good ground for an order of certiorari to be made by this honourable Court.

That the trial magistrate had jurisdiction to entertain the matter and gave the Applicant opportunity to be heard and was heard, he pleaded liable and as such certiorari will not lie.

That he is further advised that no error of law is apparent on the face of the record for certiorari to lie.

That he shall make reference to processes so far filed in the matter particularly Applicant's exhibits A and B.

Counsel for the Applicant did not file his statement of case pursuant to order 55 rule 6 (2) of C.I. 47 which requires the filing of statement of case of the Applicant within 14 days after filing the application. This Court granted the Applicant counsel leave to file the of statement case out of time.

Argument by counsel for the Applicant

The grounds of the application counsel argued are mainly on:

i. *Breach of the natural justice rule as the Applicant was not given opportunity to be heard when he was found liable to the plaintiff claims.*
ii. *That the explanation given by the Applicant after pleading liable amounted to a defence and that the magistrate should have given the Applicant opportunity to defend the action.*
iii. *That there is error on the face of the record since the court below applied non existing procedure of plea taking and failing to order full hearing of the case to enable the defendant cross-examine the plaintiff and also to put his case across.*

Counsel further argued that the rules regulating due process under the District Court Rules C.I. 59 are provided for under Orders 8, 18 and 25 of C.I. 59 and none provided for the taken of plea of a defendant in civil matter. That the magistrate adopted a criminal procedure in taken the plea of the Applicant as if he was conducting criminal proceedings thus denying the Applicant the opportunity to be head.

Counsel submitted that under article 141 of the 1992 constitution of Ghana and section 16 of the Courts Act (Act 459) as amended, the High Court has supervisory jurisdiction over lower courts and any lower adjudicating authority and may in the exercise of that jurisdiction enforce or secure enforcement of its supervisory powers.

Argument by Counsel for the Interested Party

Counsel for the interested party submitted that the grounds canvassed by the Applicant are untenable having regard to the proceedings from the court below.

That counsel for the Applicant perception about the breach of the natural justice rule at the court below has no legal basis as the Applicant was given opportunity to be heard. The fact that his explanation after he pleaded liable was not accepted by the court cannot be a denial of opportunity to be heard.

Counsel further submitted that a defendant is not required by law or rules of court to take oath before pleading to a claim or give explanation in trials before the District court.

That granted that the magistrate erred in not accepting the explanation of the Applicant as amounting to a defence, the Applicant remedy lies in appeal and not judicial review application. That such errors if any, are non-jurisdictional or breach of the natural justice rule. Counsel relied on the case of **REPUBLIC v JUDICIAL COMMITTEE OF BARHC EX PARTE OBAAPANIN AMMA MENSAH AND OTHERS (NANA YAA ADUTWUMWAA & OTHERS, INTERESTED PARTIES) [2013-2015] 1 GLR 682@ 686** to buttress the point that the Applicant remedy lies in appeal and not certiorari.

Counsel further argued that the allegation by counsel for the Applicant that, there was settlement was not borne out of the record of the court and same should be rejected. For him the interested party resiled from the transaction and the Applicant agreed to refund his money to him and that moved the transaction away from land transaction to recovery of money.

That whatever rule that the court below adopted even if they were not sanction by Orders 8, 18 and 25 of C.I. 59 the submission only raise legal issues at best and not a breach of natural justice rules.

That order 18 (1) of C.I. 59 allows cases to be dealt with in a summary manner thereby permitting the taken of plea in civil cases to achieve the purpose of the rule is not misplaced.

Counsel further submitted that the so-called errors the Applicant is complaining of are not patent on the face of the record and are also not errors that go into wrong assumption of jurisdiction by the court.

In conclusion counsel for the interested party submitted that where there is alternative remedy available to a party certiorari will not lie as it is reserved as a residuary remedy.

The law on certiorari

In application for judicial review in the nature of certiorari, the orders are made by the Court to correct errors of law and not errors of fact. Thus where the error complained of is not error of law, the Court will not grant such application. See the case of;

REPUBLIC v COURT OF APPEAL, ACCRA; EX PARTE TSATTSU TSIKATA [2005-2006] SCGLR 612 holding 4
REPUBLIC v COURT OF APPEAL, ACCRA; EX PARTE GHANA CABLE LTD (BARCLAYS BANK OF GHANA LTD INTERESTED PARTY) [2005-2006] SCGLR 107 holding 3.

In the instant case before me, the error of law the Applicant is complaining of are as follows:

i. That the court below took the plea of the Applicant when no such provision is made in the District Court Rules C.I. 59.
ii. That the explanation given by the Applicant after a plea of liable amounted to a defence and the trial magistrate should not have entered judgment for the interested party.
iii. That the rules of natural justice was breached when the magistrate did not allow the Applicant to file a defence for the case to be heard on its merits.

Before I evaluate the evidence on record and the arguments made by the Applicant, there is the need for me to set out the parameters within which errors of law if detected or found in decisions of lower courts and other lower adjudicating bodies are considered or dealt with in judicial review application in the nature of certiorari.

The position of the law is that, it is not just any error of law in the proceedings that are amenable to be quashed by certiorari. The error of law complained of must be apparent on the face of the record or must go into the root of the matter.

See **REPUBLIC v HIGH COURT, ACCRA; EX PARTE INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES [2003-2004] 1SCGLR 348**

"Certiorari is a discretionary remedy which would issue to correct a clear error of law on the face of the ruling of the court; or error which amounts to lack of jurisdiction in the court so as to make the decision a nullity."

In the instant case before me, the Applicant plaint is not that the District Court lacks jurisdiction to hear the case or exceeded its jurisdiction. In fact, the District Court has jurisdiction on the subject matter it being recovery of money far below the monetary

limits set out by law. The parties are all residents in Tamale. The land the sale of which brought about this case is situate within the jurisdiction of the court.
For the fact that there is no jurisdictional issues in this application, I will find out whether the non-jurisdictional error being complained of by the applicant is so patent on the face of the record to make it amenable to be quashed by certiorari.

In the first place it is indeed true that there is no specific order or rule in the District Court Rules 2009 (C.I. 59) as amended that states that a plea of a defendant should be taken in a civil case that is placed on the general course list.

The procedure adopted by magistrates in District courts on taking of plea of defendants have been a time honoured practice that is virtually inherent in the District court. This time honoured practice though not specifically sanction by any specific rule of the District court rules, the practice has been in existence for many years and indeed it has helped the District court to deal with cases summarily and expeditiously. No wonder Order 18 (1) of C.I.59 provides that an action shall ordinarily be heard and determined in a summary manner without written statements but the court may direct otherwise.

This provision makes the application of the District Court rules a little flexible to enable magistrates to deal with the numerous cases at that level in a summary manner unlike the High Court Civil Procedure Rules 2004 (C.I. 47) as amended. If a defendant pleads liable to all claims of the plaintiff and it is proven that the defendant understood the plea and believe in it, what it means is that there is nothing for the magistrate to do except to enter final judgment for the plaintiff in summary manner. I therefore do not think that the mere taking of the plea of the defendant per se caused any error of law apparent on the face of the record for me to use this judicial review application to quash and I so hold.

I must however be quick to add that the explanation given by the Applicant for me amounted to a defence in law and the trial magistrate ought to have considered it and granted the Applicant time to sell the plot and thereafter pay.

Per the interested party claim for recovery of the purchase price of the land in dispute, the trial magistrate ought to have known that there was a complete sale of the land to the interested party by the applicant. The sale transaction had ended as title had passed and consideration paid. That being so, ordinarily suing for a refund of the purchase price in this manner raises serious questions of law had it not been the admission made by the applicant to refund the money to the interested party after the sale of the plot to another person. For a fact that the sale was completed five months before calling for a refund, the interested party action was properly put on the general cause list since the claim was not liquidated in nature. The fact that the plaintiff is claiming recovery of cash does not make it a liquidated claim in all cases. The claim is from a land transaction that the interested party resiled from it and in such cases the claim cannot be in strict sense a liquidated claim. The Applicant explanation for time to sell the plot before the refund after five months after the sale of the plot in issue to the interested party raises reasonable defence to the action. That notwithstanding, it was only time the Applicant was praying for in order to pay since the transaction was no longer a land transaction anymore.

The question that is begging for answer is whether or not this non-jurisdictional error in not entering a not liable plea after the explanation of the Applicant is an error that is so apparent on the face of the record for this Court to issue a writ of certiorari to quash same.

Is there any other remedy available to the Applicant in such a situation instead of certiorari application?

The law recognizes that a judge acting within his jurisdiction may commit an error which is not patent on the face of the record. Such errors cannot be subject to judicial review orders.

See **THE REPUBLIC v HIGH COURT, ACCRA; EX PARTE INDUSTRIALIZATION FUND FOR DEVELOPING COUNTRIES [2003-2004] 1 SCGLR 348.**

See also **REPUBLIC v HIGH COURT, ACCRA; EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (ADDO) INTERESTED PARTY [2003-2004] 1 SCGLR 312**

The Courts have held that, where the error of law is not apparent on the face of the record but the decision is made within jurisdiction, the proper way to seek redress is by way of appeal.

The Supreme Court further held in **THE REPUBLIC v COURT OF APPEAL, ACCRA; EX PARTE TSATSU TSIKATA** supra as follows;

The clear thinking of this court is that, our supervisory jurisdiction under article 132 of the Constitution, should be exercised only in those manifestly plain and obvious cases. Where there are patent errors of law on the face of the record, which errors either go to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of law alleged must be fundamental, substantial, material, grave or so serious that it goes to the root of the matter. The error must be one of which the decision depends, a minor, trifling, inconsequential or unimportant error, or for that matter error which does not go to the core or root of the decision complained of; or stated differently, on which the decision does not turn, would not attract the court's supervisory intervention. Also where the proceedings are regular, the charge

that the court has misread or misconceive a point of law or misdirected itself, does not per se constitute a sufficient ground for the grant of the order. Similarly, the complaint that there has been an improper exercise of the discretionary jurisdiction is insufficient."

In applying these authorities to this case, I do not see the refusal of the trial magistrate from granting this prayer of the Applicant to sell the land in order to pay the interested party as an error so patent on the face of the record. The Applicant agreed to refund the money to the interested party only that he was looking for time to sell the land in order to raise the purchase price for the interested party. The error can be remedied on appeal as an alternative remedy instead of this discretionary remedy of certiorari.

The courts are very careful in not using judicial review applications as a substitute for appeals which can properly assess the entire proceedings and come to a logical conclusion. Certiorari applications usually will not look at the merits of the case as done in appeals but rather on jurisdictional issues, errors of law patent on the face of the records and abuse of the natural justice rule. The orders flowing from certiorari may not determine the substance or merits of the suit hence the need not to abuse it in its application.

See **REPUBLIC v COURT OF APPEAL, ACCRA; EX PARTE GHANA CABLE LTD (BARCLAYS BANK GHANA LTD-INTERESTED PARTY) [2005-2006] SCGLR 525 @529**

I agree with the submission of learned Counsel for the Interested Party that, certiorari is a residual remedy held in reserve. The order of certiorari will not be granted under circumstances where an alternative remedy exist for the Applicant.
In this instant case the alternative remedy for the Applicant is appeal.

Learned Counsel for the Applicant spent considerable time to address the Court on alleged breach of the natural justice rule by the trial magistrate for not allowing the Applicant to defend the action after his explanation.

The proceedings before me does not suggest that the Applicant was not given a hearing. In fact it was the Applicant who voluntarily pleaded liable with explanation. The magistrate allowed the Applicant to give his explanation in open court. The explanation of the Applicant was dully recorded by the magistrate only that he did not see the explanation as a defence. Under the circumstances, the Applicant cannot complain that he was not heard or given opportunity to testify. He was heard and as such the audi alteram partem rule was not breached by the court below and I so hold.

I am impressed with the submission of learned counsel for the Interested Party in his response to the entire application and industry that went into it.

On the totality of the affidavit evidence and the submissions of learned counsel for the parties, I hereby dismiss the application for writ of certiorari to quash the judgment of His Worship Amadu Issifu of the District court dated 27th April, 2023.

I will make no order as to cost because the interested party is in possession of the plot and on my enquiry in open Court the interested party informed the Court that he is having in his custody the title deeds on the Plot in issue as well.

SIGNED

HIS LORDSHIP JUSTICE ERIC ANSAH ANKOMAH

JUSTICE OF THE HIGH COURT

TAMALE