IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA - GHANA

CORAM: WOOD, C.J (PRESIDING)
BROBBEY, JSC
DOTSE, JSC
ANIN YEBOAH, JSC
BAFFOE-BONNIE, JSC

CIVIL MOTION
NO. J5/30/2008
26TH FEBRUARY 2009

IN THE MATTER OF

THE REPUBLIC

VS

AUTOMATED FAST TRACK HIGH COURT No. 4(ACCRA) - RESPONDENT
EX-PARTE: STATE HOUSING COMPANY LTD - APPLICANT
MRS. DINAH KORANTEN AMOAKO - INTERESTED PARTY

R U L I N G

WOOD,(MRS) CJ:-

In this motion to invoke the supervisory jurisdiction of this honourable court, the applicant prays for an order of certiorari directed at the Automated/Fast Track High Court (No 4), presided over by Her Ladyship, Mrs. Irismay Brown. The purpose is to bring up to this court and to have quashed the judgment of that court dated 20th March, 2008, granting GHC100, 000.00 to the Plaintiff (Interested Party herein) without notice to the Defendant.

The facts which triggered the present application are not complex. On the 25th day of October 2007, the learned trial judge sitting in the Fast Track High Court 4 delivered herself in the case of

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Dinah Koranten Amoako Plaintiff

Vs

State Housing Company Ltd Defendant.

as follows:

> "The verdict of the court is that the dismissal of Plaintiff was motivated by factors other than the alleged misconduct of the Plaintiff and therefore wrongful. The behaviour of management gives credence to the allegation by Plaintiff that she had been harassed, persecuted and treated in a discriminatory fashion by management in respect of the purchase of her house. She has led evidence to show that officers of lower designations had benefited from both the land and house purchase concessions offered by the Company.
>
> The Court has taken judicial notice of the frantic attempts made by management to evict Plaintiff and her family from the said accommodation soon after the institution of this suit and intends to take this into account in the award of damages which in any case plaintiff is deemed to be entitled to as a result of the finding by the court, that the purported termination of Plaintiff's employment was wrongful.
>
> Apart from being allowed to purchase her house, Plaintiff is seeking to be reinstated and the award of all benefits she is entitled to or alternatively for an award of damages***. Since the Court is not versed with the current state of affairs, the final award of the court, will be suspended pending further evidence*** :"(Emphasis ours)

Clearly dissatisfied with this decision, the applicant, acting through his counsel, filed a Notice of Appeal on the 20th of December 2007. On the 6th February 2008, when the matter came up before the trial judge for further hearing as she had directed at the previous hearing, the applicant refused, as he was legally and perfectly entitled to do; to participate in the proceedings, as the record of the day clearly reveals. It reads thus:

> "**By Court**: The matter before the court today.

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J. Aidoo: My Lord, as I pleaded on the last time, not yesterday, we think that having regard to the settlement of the matter the Defendant /Judgment/Debtor (not audible) and again, they have filed an appeal against the matter, and therefore we think that, we don't want to involve our self in this and that the court can proceed to deliver judgment.

By Court: I merely wanted to know, first of all she is still in her house, whether you are going to reinstate her, and whether she is in employment. These are the three things that should influence the court in delivering the final verdict in this matter. So there is the question of whether they are still living in the property or they have vacated the property? Whether she has obtained alternative employment or whether she is waiting to be reinstated. So these are the things that you should address me on, before I deliver a final verdict…"

Unperturbed by their refusal to participate in the hearing, the trial judge proceeded to obtain the information she thought necessary to bring closure to the proceedings, and on the 20th of March, 2008, made the orders complained of. We find however that the facts, on which the impugned decision was based, were obtained from legal counsel at the bar, and not under oath or affirmation as the statutory evidentiary rules mandate.

The instant application is predicated on the following self-explanatory grounds:

a. "(a) that the trial judge having pronounced or passed final judgment on 25th October 2007, in favour of the Plaintiff (Interested Party) she was functus officio and could not therefore cause any further evidence to be led by the said Plaintiff (Interested Party) or her lawyer(s) to state her claim on 6th February, 2008;
b. that after pronouncing final judgment as aforesaid the trial Judge lacked the jurisdiction to suo motu recall the Plaintiff (Interested Party) or afford her the opportunity to lead fresh evidence on her claims thereby enabling the court to award her reliefs on 20th March, 2008;

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c. that the judgment of the trial court on 20th March, 2008 granting reliefs to the Plaintiff (Interested Party) after delivering final judgment as aforesaid was a flagrant abuse of the rules/process of court and therefore illegal.
d. That the Defendant/Applicant herein, not having been served any hearing notice to appear in court on 20th March, 2008 the court breached the audi alteram partem rule of natural justice by conducting a hearing on the matter after final judgment had been delivered by the same court on 25th October, 2007;
e. that any proceedings after 25th October 2007 for the purpose of further hearing or evidence as aforesaid, is ultra vires the court and without jurisdiction as same was functus officio;
f. that a further or second judgment of the trial court dated 20th March 2008, wherein the court awarded GH¢ 100,000.00 without any express reason, explanation, ground or justification being offered, is without jurisdiction and therefore null and void and of no effect."

The application is therefore based on two main grounds, firstly, that the judge having pronounced final judgment, she became functus officio and lacked jurisdiction to call further evidence and secondly that she breached the rules of natural justice in that she did not give the applicants the opportunity to be heard before delivering the impugned decision of 20th March, 2008. This latter complaint is the most unmeritorious. A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice.

Indeed, the applicant's own Exhibit "G" contradicts this unjustified attack. The record demonstrates that it was the applicant who disabled himself from being heard when in clear and unambiguous terms, he expressed his intention not to participate any further in the proceedings complained of. The Applicant's own supplementary affidavit of 8th of August 2008, confirms this finding.

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IS THE CERTIOARI APPLICATION TIME-BARRED?

One of the defences raised in response to this application, is a jurisdictional and consequently fundamental objection that the motion be dismissed in limine on the ground that the application is clearly time barred. The argument is that since on the applicant's own showing, the trial judge assumed jurisdiction to call for the further evidence on the 6th of February 2008, the grounds for this instant application first arose on that date. It was thus urged that the computation of the statutory time limit of 90 days within which the application may be brought, as mandated under Rules 61 & 62 of the Supreme Court Rules CI 16, as amended by Supreme Court (Amendment) Rules, 1999 CI 24, starts from the 6th of February and not the 20th of March, 2008, the day on which the second or final judgment was delivered.

Not surprisingly, the applicant's counter-argument is that the grounds for the application arose after the judgment of the 20th March, 2008, specifically, as soon as the Plaintiff/ Interested Party filed a Judgment After Trial to indicate "his readiness to proceed on judgment against the Defendant,"

The arguments on both sides therefore raise the question of what is the true scope and effect of rule 62 of the Supreme Court Rules CI 18 as amended by the Supreme Court (Amendment) Rules, 1999 CI 24, regarding particularly the determination of the date on which the grounds for an application to invoke our supervisory jurisdiction can be said to have arisen for the first time, that is a cause of action has accrued. Stated differently, what are the indicators a cause of action has accrued, namely that grounds exist for invoking the jurisdiction, the date from which the 90 day statutory time limit begins to run.

The rule provides:

"62 An application to invoke the supervisory jurisdiction of the court shall be filed within 90 days of the date when the grounds for the application first arose unless time extended by the court."

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Under the amended rule, the statutory period of 90 days was determinable by reference to the date when the grounds of the application first arose and not the date of the decision as existed under the previous rule.

A plain reading of the rule presupposes that the legislature envisages a situation where the grounds could even arise a second or some other subsequent time, but clearly, the time limit begins to run from the date the grounds first arose. It is therefore important that we do set some legal principles for identifying that critical first time. Therefore the following critical question arises for our consideration: how do we determine that grounds for invoking the jurisdiction of the court have indeed, at least for the first time arisen?

It is indeed impossible, if not imprudent to lay down set criteria for a determination of this vexed question. It is therefore determinable on a case by case basis, guided by some very broad principles, some of which I had occasion to allude to in the relatively recent decision in the case of **Republic v High Court, Kumasi; Ex Parte Mobil Oil (Ghana) Ltd (Hagan Interested Party) [2005-2006] SCGLR 312.** We had opportunity to determine the scope of the rule 62 and spoke with one voice.

Dr. Twum JSC delivering the lead opinion observed that:

> "With the amendment effected by CI 24, the time limit within which an application to invoke the supervisory jurisdiction of the court may be filed is determined by reference to the date when the grounds for the application first arose and not the date of the decision against which the jurisdiction is invoked. It is possible the two bases of reckoning may achieve the same result in a few cases but it is most probable that a different time limit will be determined if the amended rule 62 is used."

Some of the general guiding principles I thought should prove useful in determining the existence, for the first time, of sufficient grounds for invoking this jurisdiction are discernible from the observation I made, which is at page 335 of the Ex Parte Mobil case (supra). I stated:

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"It follows that until it has become firmly established that a judge has been entrusted with the actual hearing of a case under consideration, and that he or she has evinced a clear intention not to disqualify himself or herself , when matters which call for his or her recusance are brought to his or her attention or formal objections are raised as to his or her impartiality, or (sic) a party might be acting prematurely or even lack sufficient grounds to invoking our supervisory jurisdiction for the appropriate orders to be made."

It is to be understood that these are not intractable rules, cast in iron, but guiding principles; with room for expansion and which also allows for reasonableness, flexibility and adaptability in their application. They include the following:

(a) an applicant must not act prematurely, but have sufficient grounds for invoking this special jurisdiction,
(b) the judge must evince, for the first time, a clear intention that he or she is clothed with jurisdiction, put in other words manifest a clear intention that he or she will not disqualify himself or herself on the jurisdictional ground complained of.

(c) ordinarily, such an intention is made manifest when a formal or informal objection to jurisdiction is raised and the judge firmly rules against the objection.

It does appear to me then that ordinarily, a judge's first conclusive claim to jurisdiction, whether express or implied, is the date of the decision that he or she does indeed have jurisdiction, not the date on which an objection, if any, whether formal or informal is raised. I would not make the date on which the objection is raised the reference point, the reason being that even when a formal legal objection to jurisdiction is raised, under normal circumstances, the judge must assume jurisdiction to determine that jurisdictional question. The date the judge proceeds to hear and determine that jurisdictional question then cannot be the reference point, but the date on which the judge rules that he or she has jurisdiction and perhaps proceeds to exercise it. Even so I hesitate to present this as the inflexible rule of law.

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On the plaintiff's own showing, the reference date is the 20th of March, 2008, the date on which the court delivered its final decision, implying that it had jurisdiction not merely to collect the relevant information and even more importantly using the information so gathered to make the impugned orders. The 90 day statutory period thus runs from this date, in which case the applicant is out of time as regards this instant application, albeit for only one day. The motion must therefore be dismissed in limine.

In this instant case, the judge clearly had jurisdiction to take further evidence before ruling on the case finally. It was indeed obvious from her ruling of 25th that the decision was not a final but an interlocutory judgment. On that day she had ruled:

"Apart from being allowed to purchase her house.(sic) Plaintiff is seeking to be reinstated and the award of all benefits she is entitled to or alternatively for an award of damages. Since the court is not versed with the current state of affairs the final award of the court, will be suspended pending further hearing."

The 2nd Edition, Volume 19 of Halsbury's Laws of England, defines a final judgment as follows:

> *"A Judgment or order which determines the principal matter in question is termed "final" An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute but is merely on a matter of procedure; or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out is termed 'interlocutory'"*

In POMAA AND OTHERS v. FOSUHENE [1987-88] 1 GLR 244-265 S. C, the court declared: that

> "An inference whether a decision or order was final or interlocutory was dependent essentially on the nature of the decision or order and consequently on

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the answer to the question whether the decision or order finally disposed of the rights of the parties or the matter in controversy. An interlocutory decision did not assume finally to dispose of the rights of the parties. It was an order in procedure to preserve matters in status quo until the rights of the parties could be determined. The test was not to look at the nature of the application but at the nature of the order made..."

Could the judgment of Justice Irismay Brown therefore be said to be final, thus rendering her functus officio? Certainly not! She never effectively determined the substantive matter to finality. In other words, she never dealt with the final rights of the parties. The judge therefore had jurisdiction to admit further evidence-facts she believed was crucial or relevant to the assessment of damages for wrongful dismissal. The application therefore fails on this ground also.

In applications to invoke the supervisory jurisdiction of this court, the mere failure of the stated ground on which the application is purportedly based, does not end the matter. If there exists on the record some other legally justifiable or sufficient ground for the grant of the order sought or indeed any other order, the applicant is clearly entitled to the appropriate order.

Consequently, although the objection to jurisdiction on the specific ground that the judge was functus officio is not maintainable, the applicant may, if he finds that other grounds exist for invoking the supervisory jurisdiction of this court to have the decision quashed, set the necessary processes into motion to achieve the desired results.

G. T. WOOD(MRS)
(CHIEF JUSTICE)

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I agree

S. A. BROBBEY
(JUSTICE OF THE SUPREME COURT)

I agree

J. V. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

I agree

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

I agree

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

COUNSEL:-

FRANK DAVIES WITH NII AYITEY OKAI FOR THE INTERESTED PARTY
JOHN AIDOO FOR THE APPLICANT

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