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

CORAM: ATUGUBA, JSC. (PRESIDING)
ANSAH, JSC
OWUSU (MS), JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC

CIVIL APPEAL
NO. J4 /52 / 2011
22ND JUNE, 2011

LABOUR COMMISSION - - - PLAINTIFF

VRS

CROCODILE MATCHET - - - DEFENDANT

J U D G M E N T.

ANSAH, JSC;

This action was commenced under the Labour Act of 2003, Act 651, when on 18 August 2006, the National Labour Commission filed a motion for an order to compel Crocodile Matchets Ghana Ltd. to comply with its orders made on 20th April 2006. The action was founded on section 172 of the Labour Act of 2003, (Act 651)

The facts which have ended in this appeal and which are deduced from and formed the case of the appellant Commission were that one James Agyemang Badu and five others, who until 19-12-2005 were employees of the Crocodile Matchets Factory, complained to the National Labour Commission of unfair and unlawful termination of their employment. They proceeded under section 64 (1) of the Act. The section read:

64 **Remedies for unfair termination.**

(1) A worker who claims that the employment of the worker has been unfairly terminated by the workers employer may present a complaint to the Commission."

The Commission sent copies of the petition to 'Crocodile Matchets' for their comments, after which the parties were summoned to the Commission for a hearing. Two persons namely, Mr. Danso-Acheampong the deputy or vice-chairperson of the Commission and Opanin Obeng Fosu both representing the Commission, sat to hear the petition, after which they found the termination of appointments of the five employees to have been unfair and wrongful and made some consequential orders against the Company. The Company refused to comply with them thus prompting the National Labor Commission, acting under Section 172 of the Labor Act,

2003 (Act 651) to file an application before the High Court, Tema, for the Company to enforce its orders. The said section provided that:

"172. **Enforcement of orders of the Commission.**

Where a person fails or refuses to comply with a direction or an order issued by the Commission under this Act, the Commission shall make an application to the High Court for an order to compel that person to comply with the direction or order."

The High Court, Tema, coram Nana Gyamera Tawia, granted the application and proceeded to order the Company to comply with the orders made by the Commission, whereupon the Company appealed to the Court of Appeal which set aside the decision by the High Court founded as it were on the proceedings and decision of the Commission on 9th July 2009.

The Commission was dissatisfied with the judgment of the Court of Appeal and appealed to this court seeking an order for the Company to comply with its decision. The National Labour Commission is hereafter called the appellant and Crocodile Matchets, the respondent.

The grounds of Appeal before us were that:

"1 The Court of Appeal erred when it held that a committee of two Commissioners that determined the petition brought against Crocodile

Matchets (GH) Ltd under Section 141 (1) and (2) of Act 651 could not have represented the Appellant Commission because the two did not form a quorum of 5 as mandated under Section 140 (3) of Act 651.

2 That the Court of Appeal erred when it doubted the competency of the Appellant to delegate its judicial function notwithstanding the express provision for delegation under Section 141 (2) of Act 651.

3 That the Court of Appeal erred when it held that even if the Appellant could delegate its judicial function, there was nothing in the record showing that the Appellant commission formed a committee to determine the petition against the Respondent.

4 The Court of Appeal erred by holding that the hearing proceedings which was captioned minutes by the recorder was of no legal effect because it was neither signed nor certified notwithstanding the fact that the Respondent never filed an affidavit in the trial High Court to dispute the content of the hearing proceedings dated 10th April 2006."

In its statement of case, the appellant argued grounds 1 and 2 of appeal together. These grounds complained against firstly, the conclusion by the Court of Appeal that there was no proper quorum for the Commission

which sat to perform its function and secondly the competence of the Commission to delegate its functions.

An appeal against a decision of the Court of Appeal to this court is as is well known, by way of a rehearing both on the facts and the law and this court is obliged to thoroughly sift the record to see whether or not the facts and conclusions are well supported by the evidence on record and construction put on documents are proper and maintainable.

The second ground of appeal deserves an early treatment as it concerns the jurisdiction of the Committee to hear the petition. The issue was about the Appellant's competence to delegate its functions to the committee which made the orders sought to be enforced at the High Court and which gave rise to these proceedings.

The first ground of appeal brought Sections 140 (1) and (2) of Act 651 into focus.

I am of the opinion that the first and second grounds of appeal quoted above call for a study of the Labour Act, 1993, (Act 651) (herein after called the Act).

The basic principle in construing a statute is that it shall be read as a whole to discover its meaning. Its provisions are to be purposively construed to

discover their real meaning. In *Boateng v Volta Aluminium Co. Ltd [1984-86] 1GLR 733 at 738,* the Court of Appeal held that in attempting to construe the termination clauses in a conditions of service, all the clauses have to be looked at as a whole and every clause must be compared with each other in order to discover the true meaning and intention of the parties to the contract. I am of the view that this approach applies to construing a statute like Act 651. Where there are provisions in a statute covering the same thing as the quorum to settle an industrial dispute in the relevant sections of the Act, they are in *pari materia* and as such they are to be interpreted in accordance with the rule that they are to be taken together as forming one system and interpreting and enforcing each other; see *Brefor v The Republic [1980] GLR 679* per Taylor J (as he then was) Therefore section 140 (3) and 144 (2) of the Act dealing with the quorum ought to be read together and interpreted in *pari materia* with each interpreting and reinforcing the other; they are not in opposition to or contradicting each other.

Section 135 of the Act established the National Labor Commission (hereinafter called the Commission), whereas Section 138 of the Act assigned specific functions to the commission. The section was as follows:

"138 Functions and independence of the Commission

(1) The functions of the Commission are,

(a) to facilitate the settlement of industrial disputes;

(b) to settle industrial dispute;

(c) to investigate labour related complaints, in particular unfair labor practices, and take such steps as it considers necessary to prevent labor disputes;

(d) to maintain a data base of qualified persons to serve as mediators and administrators

(e) to promote effective cooperation between labor and management and

(f) to perform any other function conferred on it under this Act or any other enactment" (emphasis supplied)

Section 140 (1) said specifically that:

"*140 Meetings of the Commission*

(1)The Commission shall meet to settle industrial dispute, but shall meet at least once in every two months to consider matters affecting its administration and the performance of its functions.

(3) The quorum at a meeting of the Commission shall consist of the chairperson and four other members of the Commission at least one person each representing Government, employees' organization, and organized labour."

'Industrial dispute' was also defined in clear terms in the interpretation section of the Act, (section 175), as follows:

"**industrial dispute" means a dispute between an employee and one or more workers or between workers and workers which relates to the terms and conditions of employment, the physical condition in which workers are required to work, the employment and non-employment or termination or suspension or termination or suspension of employment of one or more workers and the social and economic interests, of the workers but does not include a matter concerning the interpretation of this Act, a collective agreement or a matter which by agreement between the parties to a collective agreement or contract of employment or contract**

of employment does not give cause for industrial action or lock out."

It is clear under section 140 (3) (supra), that the quorum for performing the function of settling industrial disputes under the Act is five. There was no provision made for when the Commission sits to settle disputes, but it was mandated to sit bi-monthly to consider administrative matters and how it performs its functions.

It is observed that where the Legislature has in its wisdom provided in mandatory terms the numerical composition and designation of persons to form a quorum and also entrusted a specific function to it, then these provisions must necessarily be honored in their observance strictly in other to give validity to whatever they were alleged to have done; furthermore any non-compliance will have the maximum debilitating effect on what they did: see Boyefio v NTHC Properties Ltd. [1996-97] SCGLR 531.

Another provision of much relevance in the statute was Section 141 which provided that:

"141 Committees of the Commission

(1) The Commission may appoint

(a) a standing committee consisting of members of the Commission, or,

(b) an ad hoc committee consisting of non-members or both members and non-members of the Commission,

as the Commission considers necessary for the efficient performance of its functions.

(2) The Commission shall assign to any of its committees any of its functions that it may determine."

Thus under the Act, Committees may be appointed to which the Commission may assign or delegate its functions to perform in the interest of the efficient performance of its functions.

The composition of the Commission qua commission at a meeting to settle an industrial dispute, as stated above, is five (5).

"144 Regional and district committees of the Commission

The Commission has committees at the Regional and District levels. The composition of each of these committees was also provided in section 144 of the Act; thus section 144 (1) and (2) provided that:

(1) Despite section 141, the Commission may establish as it considers necessary regional and district labour committees.

"(2) The composition of a regional or district labor committee shall be determined by the Commission except that there shall be equal representation of Government, organized labor and employers' organizations".

Inferentially, the composition (number) was tripartite and equally represented; they perform such functions in the Region or district as are assigned to it in writing by the Commission, under Section 145. The combined effect of sections 141 (1) and (2) is that the commission has the power to appoint standing or ad hoc committees and assign any of its functions to it. The commission also has regional and district labour committees and the power to assign any of its functions to them.

164. ***Compulsory references to arbitration***.

Under the Act, the mode of settlement of industrial disputes was covered by Sections 153 and 154 and is by Negotiation and Mediation respectively while Arbitration as a mode was provided for by sections 164 to 167 of the Act.

Section 160 (2) and 162 generally mentioned that where an industrial dispute has resulted in a strike and lock out which was unresolved within

seven days after commencement, then it shall have to be resolved or settled by compulsory arbitration under section 164.

Reference to compulsory arbitration was thus consequent upon failure to resolve an industrial dispute by either negotiation or mediation.

A similar provision was made for essential services under Section 162.

The composition of a compulsory arbitration was provided for by section 164 (3) thus:

"A compulsory arbitration shall be composed of **three** members of the Commission, one member each representing Government, organized labor, and an employers organization" By necessary inference a panel for compulsory arbitration comprised three members of the Commission specifically designated just like a meeting of a regional or district labor committee under section 144 (2).

There was nothing on the record to show in the least that anything was referred for a compulsory arbitration or that Mr Kwasi Danso Acheampong and Opanin Obeng Fosu compulsorily arbitrated on the petition because the conditions precedent for that contingency had arisen or materialized.

The question was when these two persons sat to hear the industrial dispute did it have the quorum to transact business or to discharge any

function assigned to it by the Commission if it was ever so assigned to them? The answer was emphatically in the negative.

Reading the Act as a whole nowhere was any provision made to ordain or sanction the composition of a two-member committee to exercise the functions for and on behalf of the Commission.

The provisions on the quorum representing as it were the Government, employers organization, and organized labor, need not be questioned, for the policy rationale is not far to see – to make sure that all possible areas of controversy are covered and all interests or stakeholders adequately represented so that an eventual solution is accepted as having been made by all but not by a selected few; no one side can complain it was excluded. That in my considered opinion is why when it came to the functions the provisions of sections 140 to 143 (supra) apply to the Commission, a regional or district labour committees mutatis mutandi.

The construction of provisions of an Act like Act 651 enacted to amend and consolidate the laws relating to labour and industrial relations and establish a National Labor Commission must be done purposively as the labor front is volatile and a veritable powder keg; a tiny spark of error in applying any

of the provisions is enough to explode or implode the front, resulting in an inferno.

The two-man committee that sat to settle the industrial dispute was like a three or five legged object with some legs missing; it is next to an impossibility that it can stand; it will certainly collapse. The composition of the two-man panel that sat to hear the petition was not well founded; it was not justified either under Section 140 (3) of the Act, it required a quorum of the chairperson, and four (4) other members of the Commission to sit and hear the petition, or any of the quorum specifically provided for in the Act.

Upon this analysis of the relevant provisions of the Act, the Court of Appeal stated in its judgment that "the quorum at a meeting of members of the respondent commission in the performance of their judicial administrative and other functions is as stated in section 140 (3) of Act 651, five persons representing government, employers and organized labor including either the chairperson or deputy chairperson of the respondent commission." I think the Court of Appeal came to the right conclusion and its conclusion and reasoning are affirmed. The first ground of appeal is therefore dismissed.

In Barnard v The National Dockworkers Labor Board [1953] 2 QBD 18, some registered Dock workers were suspended after a strike action; it was found that the power to suspend dockers lay under the statutory dock labour schemes vested in the local Dock Labour Board. The suspensions were purported to have been made by the port manager to whom the board had purported to have delegated its disciplinary powers.

The dockers succeeded in obtaining a declaration that their purported suspensions were invalid for the reason that the Board had no power to delegate its functions and should have made the decision itself.

In Barnard v National Dock Labor Board [1953] 2 Q.B. 18, Denning LJ said at that judicial power cannot be delegated and the board cannot even ratify those acts; it was administrative acts which can be so delegated.

Similarly, in Vine v National Dock Labor Board [1957] A.C. 488, where a registered dock worker was dismissed the House of Lords granted a declaration that the dismissal was invalid because the Board instead of deciding itself had entrusted the whole matter to a disciplinary committee. The House of Lords emphasized the judicial nature of the nature of the function that was to be performed – to hear and determine charges against

the worker and to decide whether or not to deprive him of his employment and livelihood. That of course is judicial in nature.

In the *Barnard* case (supra), Denning LJ said at 40 that: "While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication."

These decisions though not binding on this court, nevertheless, are persuasive that a body to which powers are delegated to exercise must keep within the scope allotted to them by the enabling legislation; if they do not do so, whatever would come out of their actions may be labeled ultra vires.

In this case, the appellant commission sat to settle an industrial dispute statutorily defined; in doing so the appellant was clothed with the powers of a High Court; enforce the attendance of witnesses, and examine them on oath, affirmation or otherwise, compelling the production of documents, and in respect of its proceedings enjoy the same privileges and immunities pertaining to proceedings in the High Court: see the powers of the commission under section 139 (1), (2) and (3) of the Act.

In exercising these powers in settling industrial disputes by any of the modes of settlement recognized by the Act, be it negotiation, mediation or compulsory arbitration, the commission may receive complaints from affected workers, exercise the powers entrusted to it by statute, take viva voce evidence or documents, make a determination one way or the other, publish an award in favor of the victorious party; the commission will be performing a judicial function.

In such situations where a judicial function has to be performed, Parliament must be presumed not to have contemplated delegation or assignment of the power to any other person or group of persons.

But this is not an inflexible rule and it admits of exceptions. It lies within the powers of Parliament to allow the body entrusted with the exercise of judicial power to assign or delegate those powers to be exercised by any other body (other than the one to which it has been created, permitted or named to perform it), judicial or otherwise.

But then, where that is so Parliament must confer the judicial power in express and mandatory terms. That must also be found or be discernible within the four corners of the enabling statute.

In this case the statute, (Act 651), entrusted the judicial function to the Commission itself in Section 138 and also provided for who to exercise or perform it. Parliament in its wisdom provided also that the Commission may assign the performance or exercise of the functions to any of its committees; more importantly, the Act specified the quorum needed to exercise the function.

As a general rule, the courts are vigilant to preventing the exercise of judicial function(s) by any person other than the person to whom it is entrusted by Parliament and further judicial functions cannot be delegated. ///In this case, the statute itself entrusted the duty or function of settling industrial disputes to the Commission in Section 140 and prescribed the quorum needed to settle them: see Section 140 (3) above.

Statute also expressly stated that the Commission may appoint a Standing Committee and an ad hoc committee for the efficient discharge of its functions: see section 141 (2) of the Act. The statute did not classify the functions to be assigned and they presumably comprised judicial and/or administrative functions.

///Thus, the Commission has the express Statutory power to assign such of its functions to a committee as it may determine, standing or ad hoc.

Therefore it was wrong for the Court of Appeal to hold that "there was nothing to show that the respondent-Commission formed a committee of whatever nature or scope to deal with the complaint made against the appellant." The Court of Appeal did not think it necessary to determine whether the respondent Commission might competently delegate its judicial function or not. The Court was satisfied to hold that there was no evidence any committee was formed to deal with the complaint. In the result it abandoned its duty to determine the salient issue of whether or not the commission could competently delegate its judicial duty to any committee. I think I have said enough to show my disapproval of the stand taken by the Court and that under the relevant provisions of the Act, the commission was competent to delegate its judicial functions to the committee as it did. The respondent appeared before the committee, took part in the proceedings without ever raising any questions about its formation. If the respondent had any doubts about the formation of the committee it should have raised it timeously, that was before, during or at the hearing or on appeal to the highest court as it was all a matter of

jurisdiction. As that was not done a rebuttable presumption in section 37 of the Evidence Decree 1975, NRCD 323 would be raised for: '*Omnia praesumuntur rite et solemniter esse acta'* , that was to say, all things are presumed to be done in proper and regularly with the due formality until the contrary is proved.

The crux of this opinion is that it is important to hold that where statute had provided for the quorum needed to perform a function, a strict compliance with the terms of the provision was required. That was decisive of the present appeal.

The fourth ground of appeal does not merit any lengthy consideration; it has to be dismissed as counsel for the appellant submitted that the Court of Appeal did not make any definitive pronouncement on the issue that the minutes by the recorder was of no legal effect for it was not signed. Counsel readily apologized for inadvertently raising an issue of that point.

At any rate the criticism was wrongly made for it was crystal clear from the record that the minutes for the hearing in the matter between James Agyemang Badu, Norbert Amediku and Phidelis Kodzie and Crocodile Matchets (GH) Ltd held on 10th April 2006, was duly signed by Kwasi Danso-Acheampong.

Whilst it is felt ready to accept the apology, this court also thinks it was necessary to remark that such inadvertence must be avoided for it shows counsel did not take his time to read and digest the record as thoroughly as was expected of a practitioner in the highest court of the land; such excuses are limited, with the greatest respect, to the practice in the lower courts where they may be tolerated.

The fourth ground of appeal is dismissed.

For all the foregoing, I agree with the respected President Atuguba JSC that the appeal is dismissed.

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

ATUGUBA, J.S.C:

The facts of this case have been related by my brother Ansah JSC and I will not repeat them except where necessary.

The two legal issues arising are (1) whether the 2 officers who determined this matter could be delegated by the Labour Commission so to do and (2) whether the appellant was adequately heard.

The Court of Appeal held that this matter ought to have been determined by the full complement of the quorum of the Labour Commission under s.140(3) of the Labour Act, 2003(Act 651).

This case raises the question of ***delegatus non potest delegare***. The principle, though notorious, has not always been harmoniously stated. In the celebrated case of *Vine v National Dock Labour Board* (1957) A.C. 488 H.L. most of their lordships took the view that the power to delegate depends on the character of the function to be discharged and that judicial or quasi-judicial functions as opposed to administrative functions cannot be delegated.

But notwithstanding the hierarchical and awesome status of the English House of Lords (now Supreme Court) it appears that the maxim ***delegatus non potest delegare*** is a general one. Thus in *Republic v. Inspector-General of Police; Ex parte Aniagyei II*(1976)IGLR 394 at 401 Taylor J stoutly said:

> "If I am to give effect to the words used in N.R.C.D. 236, it becomes clear that if the Regional Commissioner is satisfied that his action is in the public interest, the Regional Commissioner may himself arrest or order a member of the Armed Forces to arrest any person who is involved in any of the matters in paragraphs (a) (b) (c) or (d) of section 3(1) of N.R.C.D. 236. Furthermore such arrested person ought as a mandatory provision to be detained in military custody. If this is the language of the section, the detention of the applicant must be tested against it. The Regional Commissioner ordered the police not a member of the Armed Forces to effect the arrest. This is clearly contrary to the provision of section 3(1) of N.R.C.D. 236 and it follows that the arrest was not done in accordance with the Decree. *To ask the police to arrest the applicant in exercise of the powers given to him under section 3(1) of N.R.C.D. 236 is in effect to delegate the exercise of the power to another. A close reading of section 3(1) of N.R.C.D. 236 shows clearly that the legislature did not intend to authorise the Regional Commissioner to delegate his power of arrest to any*

other person or authority. There is in effect no power to pass on to others: see R. V. Burnley Justices (1916) 85 L.J.K.B. 1565, D.C. and *Ellis v Dubowski* [1921] 3 K.B. 621, D.C. The purported delegation is therefore incompetent and in my view its exercise by the police is unlawful, and the arrest was consequently illegal."

Similarly, in Halsbury's Laws of England, Fourth, Edition, Reissue it is stated at 30-31, as follows:

"**31. Sub-delegation of power**. *In accordance with the maxim delegatus non postest delegare, a statutory power must be exercised only by the body or officer on whom it has been conferred, unless sub-delegation of the power is authorised by express words or necessary implication*. There is *a strong presumption against construing a grant of legislative, judicial, or disciplinary power as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind*. Even where a power to make decisions is exercisable only by the delegate itself, however, considerations of practical convenience may justify entrusting powers to a committee or officers to conduct an investigation and to make recommendations as to the decisions to be taken.

A civil servant is his minister's alter ego, and a decision taken by a civil servant in the name of the minister or the department is not open to objection as a form of unauthorised sub-delegation, provided at least that the servant has actual or implied authority so to act. The courts will not seek to distinguish between those matters which are and those which are not so important as to demand the minister's personal attention. The powers of other public bodies are, in general, exercisable by their servants or agents. Local authority functions may be delegated either to officers or to committees or sub-committees of the authority.

> In general a delegation of power does not imply a parting with authority. The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an act of its delegate. It would appear that an invalid act of the delegate encroaching on individual rights cannot be validated with retrospective effect by ratification."

The footnote (2) as to the exercise of a power to delegate is also useful and I set it out as follows:

> " x x x
>
> The sub-delegation must be in the prescribed manner and form (cf Customs and Excise Comrs v Cure and Deeley Ltd [1962] I QB 340, [1961]3 All ER 641), and *there must have been a formal delegation of the power to the person or body which purports to exercise it* (see eg R v Liverpool City Council, ex p Professional Association of Teachers (1984) 82 LGR 648). The primary delegate must not purport to vest in the sub-delegate powers properly exercisable only by himself: *Ratnagopal v A-G* [1970] AC 974, PC. Authority to delegate powers does not imply authority to delegate duties unless the two are inseparably interconnected: *Mungoni v A-G of Northern Rhodesia* [1960] I All ER 446, PC."

I must not be taken, however as endorsing hook, line and sinker all that this edition of Halsbury's Laws of England has stated on this subject. It is notorious that judges often overrule the law as it is stated by text writers. Nonetheless the thrust of the legal position as therein stated, namely that the question whether a statutory power can be delegated depends on the provisions of the statute, bearing in mind a presumption against the delegation of certain particular powers, inclusive of judicial powers or functions, appears acceptable.

In this case does the Labour Act, 2003 (Act 651) authorise delegation of judicial or quasi-judicial functions? The appellant contends that it does not. To my mind the answer to this question depends on sections 135 – 141 of the Act. As far as relevant, they are as follows:

"135. **Establishment of Commission**

There is established by this Act a National Labour Commission.

136. **Composition of the Commission**

(1) The Commission consists of:

(a) the chairperson who shall be nominated by the employers' organisation and organised labour except that where there is failure to nominated to chairperson within sixty days as provided, the employers' organisation in consultation with organised labour shall submit the matter to a mediator agreed on by them, and

(b) *six representatives, two each nominated by the Government, employers organisation and organised labour*.

(2) The chairperson and the other members of the Commission shall be appointed by the President acting in consultation with the Council of State.

137. Qualifications of chairperson and other members of the Commission

A person is qualified to be appointed a member of the Commission if that person

(a) does not hold office in a political party, and

(b) has knowledge and expertise in labour relations and management, except that *in the case of the chairperson,* that person *is also knowledgeable in industrial law.*

138. Functions and independence of the Commission

(1) The functions of the Commission are,

(a) *to facilitate the settlement of industrial disputes*

(b) *to settle industrial disputes;*

(c) to investigate labour related complaints, in particular unfair labour practices, and take such steps as it considers necessary to prevent labour disputes;

(d) to maintain a data base of qualified persons to serve as mediators and arbitrators;

(e) to promote effective labour co-operation between labour and management; and

(f) to perform any other function conferred on it under this Act or any other enactment.

(2) In the exercise of *its adjudicating and dispute settlement function*, the Commission is not subject to the control of any person or authority.

x x x

140 Meetings of the Commission

(1) The Commission shall meet to settle industrial disputes, but shall meet at least once in every two months to consider matters affecting its administration and the performance of its functions.

(2) The Commission shall at its first meeting nominate one of its members as deputy chairperson.

(3) *The quorum at a meeting of the Commission shall consist of the chairperson or, in the absence of the chairperson, the deputy chairperson and four other members of the Commission at least one person each representing Government, employers' organisation and organised Labour.*

(4) The Commission may co-opt a person to attend meetings of the Commission as an adviser or a consultant.

(5) A person co-opted to attend a meeting of the Commission does not have the right to vote on *a matter for determination or decision by the Commission.*

(6) The Commission may permit to be in attendance at its meetings any other persons that the Commission may determine.

(7) Subject to subsection (2), the Commission shall regulate its own proceedings.

141. Committees of the Commission

(1) The Commission may appoint

(a) *a standing committee consisting of members of the Commission*, or

(b) *an ad hoc committee consisting of non-members or both members and non-members of the Commission*. as the Commission considers necessary for the efficient performance of its functions.

(2) *The Commission shall assign to any of its committees any of its functions that it may determine*.

x x x

144. Regional and district committees of the Commission

(1) Despite section 141, *the Commission may establish as it considers necessary, regional and district labour committees*.

(2) *The composition of a regional or district labour committee shall be determined by the Commission except that there shall be equal representation of Government, organised labour and employers' organisations.*

(3) The members of a regional or district labour committee *shall be persons with knowledge in industrial relations.*

(4) A regional or district labour committee shall elect from among its membership, a chairperson and a deputy chairperson.

145. Functions of a regional or district labour committee

A regional or district labour committee *shall perform* in the respective Region or district *any of the functions of the Commission assigned to it in writing by the Commission.*

146. Meetings of a regional or district labour committee

The provisions under *sections 140 to 143* in respect of the Commission *shall apply with the modifications that are necessary* to the regional and district labour committees provided for under this Act."

The problem areas of these provisions are said to center around sections 136 (1), 140(1), (3) and 141, supra. It is particularly aid that s.140(1) and (3) are decisive as to who is competent to determine a labour dispute. That contention involves a wastage of s.141, which the rules of construction of statutes disallow. It is quite clear that s.141 is a qualification or proviso to s.140. Accordingly the question is whether the Labour Commission can delegate its quasi-judicial functions with regard to the adjudication of disputes to its committees, standing or ad hoc. There is no doubt that the answer must be in the affirmative.

The power of delegation under s.141(2) is in terms of the ability of the commission to "assign to any of its committees *such of its functions as it may determine*"
Under s. 138(1) those functions of the Commission include *"(a) to facilitate the settlement of industrial disputes; (b) to settle industrial disputes*;" Thus there is statutory authority to delegate those functions including the quasi-judicial functions covered by s. 138 1(a) and (b) aforesaid. If this were not so it would be impossible to understand how the Regional and District Committees of the Commission can

exercise any of these functions conferred on them by practically the same phraseology under s. 145 which provides as follows:

> "**Functions of a Regional or District Labour Committee**
>
> 145. *A Regional or District Labour Committee* shall perform in the respective region or district *such of the functions of the Commission as shall be assigned to it in writing by the Commission*."

The real question is whether such delegation can be made to two persons.

In *Vine v. National Dock Labour Board*, supra at 506 Lord Cohen said:

> "I would add that *the constitution of the local board which was so devised as to secure equal representation for employer and employed* seems to support the view that the power conferred by clause 16 cannot be delegated. *For if delegation were permissible there is nothing to control the selection of the persons to whom the power is to be delegated*."(e.s)

In other words the power to delegate is a free rein. However the context of Act 651 herein is different.

Lord Cohen did not address in any explicit terms, the question of the numerical strength of a delegated committee. However **in the context of Act 651 the problem as to the balance in the type of personnel and the number thereof has been inferentially** *addressed*. Section 144(2) requires in respect of a regional or district labour commission, at all cost, "*equal representation of Government, organised labour and employers' organisation*" and as by reason of s.146 the provisions of sections 140 to 143 apply ***mutatis mutandis*** to regional and district labour committees, a quorum of any of them must, in that manner, comply with s.140(3) which provides as follows:

> "140 (3) The quorum at a meeting of the Commission shall consist of the chairperson or in the absence of the chairperson the deputy chairperson and

four other members of the Commission at least one person each representing Government, employers' organisation and organised Labour."

Again s.164(3) preserves both the numerical strength and balanced composition of membership of a compulsory arbitration body as follows:

"164. (3) A compulsory arbitration shall be composed of *three members of the Commission, one member each representing Government, organized labour and employers' organiszation."*(e.s)

Clearly then it will be quite absurd and out of tune with the purpose, design and structure of Act 651 to hold that any committee envisaged under s.141(a) and (b) can be an erratic one and can fall short of three persons, each representing Government, organised labour and employers' organisation; the only difference in respect of s.141(b) is that such persons need not be members of the National Labour Commission. Thus in *Metcalfe v. Cox* (1895) AC 328 at 344-345 H.L Lord Watson said in relation to powers of university affiliation conferred on Commissioners but with special mention and some variation respecting two particular universities:

"It appears to me that, *not only the terms of sect. 16, but the whole context of the statute, so far as it may have a bearing on that clause, tend to the inference that so important a change in the constitution of the university*, necessarily affecting the status and interests of many members of the university, and, it may be, of the college also, whose collective or individual interests were not represented by the University Council, or by the council of the college, *was not meant to be effected, unless by an ordinance which was not to become operative until approved by Her Majesty, after those members had full opportunity of submitting their objections* to the Commissioners, to Parliament, and to the Queen in Council.

Sects. 15 and 16 are, in my opinion, cognate clauses, and they are classed together under the statutory title, "Extension of Universities." Sect. 15 provides that the Commissioners may, if they think fit, "make ordinances to extend any of the universities by affiliating new colleges to them," subject to certain conditions specified in five sub-sections, which it is unnecessary to notice in detail. The powers conferred by the clause are limited to affiliation, which, as interpreted by sect. 3, means nothing more than the establishment of such a connection between the university and the college as will not interfere with the separate and independent constitution of either body, and does not include their incorporation so as to make them form one body.

The provisions of sect. 16 are not general; they apply to one university and one college only. They empower the Commissioners, in dealing with the University of St. Andrews and the University College of Dundee, to go beyond affiliation, and to make the college "form part of the said university." *The clause is not a wholly independent enactment, but is connected with sect.15 by its introductory words, which appear to me to have a material bearing upon the present question. It commences thus: "Without prejudice to any of the powers hereinbefore conferred,* the Commissioners shall, with respect to the University of St. Andres and the University College of Dundee, have power": then follows an enumeration of the specific things which the Commissioners are authorized to do for the purpose of incorporating the college with the university. *It is clear that the powers thus conferred were meant, not to supersede, but to be supplementary to, the powers already given to the Commissioners of dealing with the university and college under sect. 15*. In my opinion *the introductory reference to "the powers hereinbefore conferred" has exclusive relation to those changes in the university system which, by sect. 15, the Commissioners are authorized to make, and does not extend to the manner in which those changes are to be accomplished*. If that be so, *it necessarily follows that the*

machinery provided for carrying into effect the powers added by sect. 16 must be the same with that provided in sect. 15."

In this case the connection of s.141(1) (a) and (b) with sections 140(3), 144(2), 146 and 164(3) is obvious since the emphasis of those provisions on a balanced representation of Government, organised labour and employers' organisations and knowledge in industrial relations is so consistent that s.141(1)(a) and (b) cannot be free from the spirit of those other provisions. Especially it should be noted that the Regional and district branches of the Commission are also committees of the Commission just like those under s.141(1) (a) and (b) and the expression "*Despite section 141*" in s.144(1) is only for the avoidance of doubt as to the power of the National Labour Commission to establish such committees to operate at particular Regional and District levels and not that they should constitutively be radically different from those under s.141(1)(a) and (b). If there be any ***casus omissus*** regarding the intendment of the Legislature as to the character of the committees in s.141(1)(a) and (b) I would on the authority of *Agyei Twum v. Attorney-General & Akwetey* [2005-2006] SC GLR 732 and *Appiah-Ofori v Attorney-General* (2010)SC GLR 484 hold that this is a fit and proper case to fill it in the terms I have indicated, supra. Otherwise it would be most illogical that the committees in s.140(1)(a) and (b) and 144 of one and the same National Labour Commission and designed to perform the same functions should not be governed by the same statutory spirit, admired by the English House of Lords in the *Vine v. National Dock Labour Board*, with regard to balanced employer and employee representation (with governmental addition in the Ghanaian context). It would certainly be strange that a Regional or District level committee or a compulsory arbitration body should be better composed than their counterparts at the national level.

However, looking at the statutory framework of Act 651 it should be clear that as one descends from the full complement of the National Labour Commission to a quorum thereof and then to committee level, there is entailed a condensation or shrinking of

numerical dynamics and therefore a body of at least 3 persons reflective of Government, organised labour and employers' organisations will satisfy both sections 141(1)(a) and (b) as well as 146. This is the significance also of the words "*shall apply with the modifications that are necessary*" with regard to sections 140 to 143 in s.146. The inclusion of s.141(1)(a) and (b) in sections 140-143 which are applied by s.146 to the Regional and District committees shows that they are all to share essentially of the same character with regard to their composition and functioning.

It follows that the delegation in this case to a committee of only 2 persons is contrary to s.141 (a) and (b) and therefore invalid. I could not lay hands on the memorandum accompanying the Bill leading to the enactment of Act 651 but I am convinced that the interpretation that I have given of it here should accord with it.

This holding removes the platform upon which the other contentions of the parties rest, e.g. that there was no evidence of the delegation, etc and therefore need no consideration.

For these reasons I do also dismiss the appeal.

[SGD] W. A. ATUGUBA
[JUSTICE OF THE SUPREME COURT]

GBADEGBE, J.S.C.;

I have had the advantage of reading the judgments circulated in draft by my brethren. Atuguba JSC, (Presiding) and Ansah JSC and I am in agreement with the decision about to be delivered in open court.

[SGD] N. S. GBADEGBE
[JUSTICE OF THE SUPREME COURT}

[SGD] R. C. OWUSU [MS.]
JUSTICE OF THE SUPREME COURT

[SGD] V. AKOTO-BAMFO [MRS]
JUSTICE OF THE SUPREME COURT

COUNSEL;

KWESI DANSO-ACHEAMPONG FOR THE APPELLANT.

OSAFO-BUABENG FOR THE RESPONDENT.