HE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: DATE-BAH,JSC (PRESIDING)

OWUSU , JSC

DOTSE, JSC

BONNIE, JSC

GBADEGBE, JSC

CIVIL APPEAL
J4/24/2011

1ST FEBRUARY,2012

GAISE ZWENNES HUGHES & CO.	**--**	**PLAINTIFF/APPELLANT/ APPELLANT**
VRS.		
LODERS CROCKLAAN B. V.	**---**	**DEFENDENT/RESPONDENT/ RESPONDENT**

J U D G M E N T

DR. DATE-BAH JSC:

I have had the privilege of reading before-hand the lucid and authoritative judgment about to be read by my brother Gbadegbe JSC and I agree with him. The interpretation put on section 30(1) of the Legal Profession Act, 1960 (Act 32) by the Court of Appeal in Ayarna & Anor V Agyemang & Ors [1976] 1 GLR 306 and by the Supreme Court more recently in Narter v Gati [2010] SCGLR 745 makes it inevitable for us to dismiss this action.

(SGD) DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

GBADEGBE JSC:

On or about 14 March 2006, the defendant instructed the plaintiff, a firm of legal practitioners, regarding a contract that they had previously entered into with a company known as International Business Group, Ghana Ltd and its managing director. It appears from the pleadings in this case that the contract was one of purchase of shea-nuts for which the defendant had made payment but did not receive supplies due to it.

The instructions from the defendant to the plaintiff provided for differential schemes of payment of professional fees in the event of a settlement or a full scale trial of the dispute. Based upon the agreement reached between the parties herein, the plaintiff issued a writ to demand payment of the outstanding amounts owed to the client and in the course of the pendency of the action reached an agreement with the debtors and executed terms of settlement dated 20 December 2006. The said terms of settlement were consequently duly entered as a judgment of the court in the matter.

Following the conclusion of the case, the plaintiff basing himself on the retainer agreement took out a writ of civil summons to claim from its client (the defendant herein) professional fees owing to it following the recovery of judgment in the action that it had concluded against International Business Group and the managing director. In paragraph 11 of the statement of claim filed on its behalf, it was averred as follows:

> **"As a consequence of the above and in line with their Retainer Agreement, Plaintiff requisitioned for payment of US$44,50, being 1.25% of the settlement sum recovered and received by Defendants of US$3,564,000.00 as a result of professional services rendered by the Plaintiffs."**

The action proceeded to a trial that was determined against the plaintiff by the High Court. An appeal to the Court of Appeal was also determined against the plaintiff and as a result the proceedings herein were initiated before us by way of a further appeal seeking a reversal of the decision of the Court of Appeal. Before us, the parties submitted their respective statements of case and in the course of considering the matter before judgment; we raised for their consideration a point of law that was carefully drafted by the court as follows:

> "**Was Section 30 of the Legal Profession Act 1960(Act 32) regarding the submission of a bill of fees by a legal practitioner to his client at least a month before the commencement of suit against the client complied with in this case?**

The above question was responded to by the parties and we now proceed to consider the arguments presented to us in the matter. In my thinking, the question that we first have to decide in the appeal herein is that which turns on section 30 of the Legal Profession Act, which was raised by us. In its answer to the said question, while admitting non-compliance with section 30 of Act 32, the Legal Profession Act, the plaintiff in what I consider to be a confession and avoidance submitted that

notwithstanding the non-compliance by it with section 30 of the Act, the defendant by its conduct in not raising the point regarding same is deemed to have waived the non-compliance with the statutory provision. In the supplementary statement of case filed on its behalf on 21 November 2011, it was stated at page 1 thus:

> "**However could it be said that the failure by the Plaintiff to comply with the provisions section 30(1) of the Legal Profession Act renders the entire action null and void? We respectfully do not think so. It must be noted that the Defendant who was represented by Counsel in the trial court entered appearance unconditionally to the action and filed a Defence as well as a Counterclaim did not raise any such legal objection. Not having done so we submit that Defendant is deemed to have waived any such non-compliance to the irregularity."**

This view of the matter that is urged on us by the plaintiff does not find support in the pronouncement of this court in the case of **Nartey v Gati** [2010] SCGLR 745.In the course of his judgment in the above case my respected brother, Date- Bah JSC reading the lead judgment of the court expounded the applicable law at page 758 as follows:

> **" In Ayarna v Agyemang [1976] 1 GLR 306, the Court of Appeal held that the true object of section 30(1) of the Legal Profession Act, 1960 (Act 32), was to enable the court to oversee and supervise the charging of professional fees if a dispute arose between a lawyer and his client as to the quantum or proprietary of the fees charged and that compliance with section 30 (1) of Act 32 was a mandatory pre-condition for the commencement of an action by a lawyer to recover his fees."**

In my opinion, not having satisfied the mandatory requirement of Act 32 regarding the service on the client of a bill of fees before suing out the action herein, the action was improperly constituted and the appeal herein must fail. The non-compliance with the mandatory statutory requirement contained in section 30 of the Legal Profession Act,

(Act 32) rendered the action in the form in which it was taken before the High Court one that was not sanctioned by law and as such it was competent for the court by itself to raise the point of law turning on it under rule 6(7) (b) of CI 16, the Supreme Court Rules. The non-compliance in this case being a failure to comply with a mandatory statutory requirement invalidated the writ of summons on which proceedings in the matter herein were based as was decided by this court in the case of **Republic v High Court, Accra, Ex-parte Allgate CoLtd** [2007-2008] SCGLR, 1041. The decision of the Supreme Court in this case appears to have overruled the collection of cases including **Heward Millsv Heward Mills** [1992-93] GBR 239 which hold that non-compliance with rules of court renders an action incompetent; to have a nullifying effect, the non-compliance must also be a breach of the Constitution or of a statute or the rules of natural justice such as to affect jurisdiction. The situation that we are confronted with in the appeal herein being one of non-compliance with the provisions of a statute has the effect of invalidating the action. I add that in view of the breach of the statutory provision, we are left with no discretion in the matter such as to make any substantive order or orders in the action.

Regarding rule 6 (7) of the Supreme Court Rules, CI 16, I think that the framers of the rule conferred a power on us to be utilised in instances such as for example, that which has unfolded before us in the matter herein in order that proceedings commenced in clear violation of mandatory statutory requirements might not escape the scrutiny of the law. It seems to me that this is a useful tool in the hands of the court by which we are enabled to strike down proceedings even though the default in complying with mandatory statutory requirements might have escaped notice in the courts below. It is a weapon that enables us to uphold the rule of law as to do otherwise would have the effect of condoning breaches of statute. The above rule is of considerable standing and one on which there is no conflict of judicial opinion. The judgment of my worthy brother, Date-Bah JSC in the case of **Republic v High Court (Fast Track Division) Accra; Ex-parte National Lottery Authority** [2009] SCGLR 390 is an illustration of this rule. At page 402, the learned judge observed as follows:

"**No judge has authority to grant immunity to a party from consequences of breaching an Act of Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law rather than condoning breaches of Acts of Parliament by their orders."**

The result is that the appeal herein is dismissed and the action that was commenced before the High Court in the matter herein on 15 November 2006 is also dismissed.

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) R. C. OWUSU (MS.)
JUSTICE OF THE SUPREME COURT

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

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

COUNSEL

PETER ZWENNES FOR THE PLAINTIFFS/ APPELLANTS/APPELLANTS.

MRS. ABENA NTRAKWAH-MENSAH FOR THE DEFENDANTS/ RESPONDENTS /RESPONDENTS.