IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT ACCRA
AD 2014

CORAM: AKUFFO (MS) JSC (PRESIDING)
ANSAH JSC
GBADEGBE JSC
AKOTO- BAMFO (MRS) JSC
BENIN JSC

CIVIL MOTION
No.: JS/5/2015

22ND JANUARY 2015

THE REPUBLIC

VRS.

HIGH COURT , ACCRA

EX PARTE; JOSEPH DANSO - APPLICANT

NEW PATRIOTIC PARTY(NPP) - 1ST INTERESTED PARTY

THE ELECTORAL COMMISSION - 2ND INTERESTED PARTY

KWAME OWUSU ANSAH - 3RD INTERESTED PARTY

SARPONG KUMANKUMA - 4TH INTERESTED PARTY

ANTHONY GYAMFI-AMEYAW - 5TH INTERESTED PARTY

RULING

GBADEGBE JSC:

We have before us an application for judicial review in the nature of certiorari to be directed at the judgment and or decision of the High Court, Accra dated 29 August in a suit that concerns the parties herein numbered as BMISC 634/2014 and entitled **Kwame Owusu Ansah and Others v the New Patriotic Party and Another**. The grounds on which the application is brought are breach of the right to a fair hearing and what is described 'as procedural impropriety'. The facts that gave rise to the application are shortly stated as follows:

Following the conduct of elections in some constituencies by the New Patriotic Party (NPP), some members of the party, feeling aggrieved by the processes leading to the election and the declaration of results in the Kumawu Constituency, petitioned the national headquarters of the party which annulled the elections and ordered a re-run. The first three interested parties herein subsequently lodged a claim before the High Court, Accra seeking an order confirming the annulment of the results. The plaintiffs in the said matter named the NPP and the Electoral Commission as defendants who were duly served with the processes and submitted themselves to the court by entering notices of appearance to the action. The applicants herein who were elected at the Kumawu elections having become aware of the pendency of the action before the High Court, Accra, applied to be joined to the action. Although the application was fixed for a specified date, when they realised that by the return date of the application for joinder they would have been prevented from taking part in the re-run elections and also on account of an

interlocutory injunction granted restraining them from taking part in the said elections, the applicants herein sought an abridgement of time to have their application determined but this was refused by the court. In the course of the pendency of the action before the High Court and at a time when the application for joinder at their instance had been pending, the learned trial judge was informed in court on 29 August 2014, at the hearing of an application to vacate an order of interlocutory injunction, that the parties to the cause had reached a settlement. Having been so informed, the learned trial judge adopted the terms of the compromise as its judgment. It seems to us that notwithstanding the failure by the learned trial judge to clearly indicate on the face of the order which appears as the minutes of the proceedings of that day that it was made by consent, it was indeed, an order made with the consent of the parties to the action and accordingly, we shall in this delivery consider it as such.

We now turn our attention to the grounds of the application. In respect of that which alleges breach of the right to a fair hearing, much as we are aware that this is a fundamental right that is available to parties to an action, we are unable to extend its scope to persons who have not yet become parties strictly so to speak on the record. Indeed, we venture to say that, although their applications were pending and had been on the docket since April 2014 that does not bring them within the designation of 'parties' such as to entitle them to be heard on the settlement. We are of the view that, at the hearing of the matter on 29 August 2014, the parties to the cause were those whose names appeared as such as there had been no order for joinder made by which the title of the action would have been amended to include the applicants herein. Accordingly, much

as we share the concern of the applicants that, in view of the pendency of their application for joinder, it would have been fairer and more reasonable that, having made their interest in the subject matter of the action known, they be notified of the settlement processes. In our view, the failure to consult them or hear them does not amount an error of law that affects jurisdiction such as to be a good ground for certiorari. We observe that, in future, trial judges will be well advised to ensure they do nothing which would create any semblance of preventing any person, who is interested in an action, from being heard timeously on an application for joinder the grant of which is in the discretion of the court. We also observe that the record in the instant case does not explain to us why the application for joinder was not disposed of from April to the date the order in question was entered - 29 August 2014 - but in our opinion a more diligent applicant would have demonstrated greater vigilance to ensure that it is taken long before then, since such applications are, as a matter of practice, taken early to enable the action progress towards its hearing.

According to the settled Court practice in such matters, the presiding judge does not interfere with the agreement and or compromise reached by the litigants and, rather, only sanctions it once it is within the law and does not raise any issue of illegality such as placing an obligation on a party to undertake an act that is prohibited by law. The learned trial judge, from the record of proceedings of that eventful day, which is annexed to the application before us acted in accordance with the practice of the court and, although he did not indicate on the face of the order the agreement which he said he had adopted as a consent

judgment, we believe that the use of the word “adopt” has the same effect as approving and or sanctioning the compromise. That being so it is in substance a consent judgment. The procedure adopted by the learned trial judge in our view satisfies the various modes that are discussed in the case of **Green v Rozen** [1955] 2 All ER 797 at 799 per Slade J. In order to make our thinking on this aspect of the matter clearer, reference is made to a statement of the existing practice contained in Volume 26 of Halsbury’s Laws of England (4th Edition) paragraph 52 at page 257 as follows:

> “**If either party is willing to consent to a judgment or order against himself or if both parties are agreed as to what the judgment or order ought to be, due effect may be given by the court to such a consent.”**

In our opinion the second ground of procedural impropriety would have properly arisen if the applicants herein were, at the date the settlement was adopted by the Court, “parties” in the matter as the failure to notify them of the compromise would have been an instance of breach of the right to a fair hearing and consequently had the attribute of illegality. We think that, in their essence, the second ground is just a restatement of the first ground as, when this terminology is employed, it involves the following concepts:

(a) The need to comply with the adopted (and usually statutory) rules for the decision making process;

(b) The common law requirement of fair hearing;

(c) The common law requirement that the decision is made without an appearance of bias. The requirement to comply with any procedural legitimate expectations created by the decision maker;

(d) In respect of administrative bodies, it may also connote alleged lack of consultation; See: In **R (Elphinstone) v WestminsterCC** [2009] ELR 24

In our view therefore, the second ground is inappropriate to the case before us and it is no wonder that at the hearing, learned counsel for the Applicants based his submissions mainly on the aforesaid first ground of the denial of the right to be heard.

For the above reasons, we refuse the application for judicial review in the nature of certiorari.

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) S. O. A. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

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ANTHONY K. DABI FOR THE 2ND INTERESTED PARTY.

GARY NIMAKO-MARFO LED BY DR. POKU ADUSEI FOR THE 3RD , 4TH AND 5TH INTERESTED PARTIES.

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