IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA – GHANA A.D. 2016

CORAM: DOTSE, JSC (PRESIDING)

BAFFOE - BONNIE, JSC

GBADEGBE, JSC

AKOTO-BAMFO (MRS.), JSC

PWAMANG, JSC

CIVIL MOTION

NO. J5/29/2016

28TH JULY 2016

THE REPUBLIC

VRS

HIGH COURT, (CRIMINAL DIVISION) ACCRA

EXPARTE: FRANCIS ARTHUR ---------- APPLICANT

THE ATTORNEY GENERAL ---------- INT. PARTY

RULING

AKOTO-BAMFO (MRS.), JSC:

Before us is an application on notice for an order of certiorari pursuant to Article 132 of the 1992 Constitution to quash the ruling dated the 9th of March 2016 delivered by Abdullah Iddrisu J sitting at the High Court, Criminal Division, Accra; and a further order prohibiting the learned Judge from hearing the matter.

In the said ruling, an order was made "rescinding the bail granted to the accused person on the 23rd of November 2013 and remanding the applicant into prison custody".

The following are the grounds relied on by the applicant:

a. "His Lordship exceeded his Jurisdiction when he rescinded the bail granted to the applicant and remanded him into prison custody when the terms of the said bail bond had not been breached by the applicant.

b. The ruling dated 9th March 2016 was made in breach of the rules of natural justice".

In order to appreciate the issues raised, it is necessary to give a brief background of the events which led to the instant application.

The facts as gleaned from the affidavits filed in these proceedings are as follows:

On the 18th of July 2013, the applicant herein was arraigned before the High Court, Accra (Criminal Division) on charges of stealing and forgery contrary to sections 124 and 158 respectively of the Criminal Offences Act 29 of 1960. He was not admitted to bail and therefore remained in custody until the 23rd of November 2013 when he regained his liberty after satisfying the bail conditions imposed by the learned trial Judge.

Having obviously tasted the harsh conditions obtaining in our prisons, he thereafter ensured that he continued enjoying his freedom by religiously appearing before the Court on all the subsequent adjourned dates. The same could not, however, be said of his lawyer who almost regularly absented himself from court on account of his parliamentary engagements.

The learned judge was apparently not enthused about the conduct of counsel for the applicant; (as evidenced by the orders made on the 9th of March 2016)

The case, nonetheless proceeded to trial; the prosecution led evidence and closed its case on the 15th of February 2016 (not without the several adjournments at the instance of counsel for the applicant)

At the conclusion of the case for the prosecution, learned counsel for the applicant intimated to the court that he was desirous of making a submission of no case. An adjournment was granted for the purpose, and thereafter the hearing of the

application suffered several adjournments at the instance of the counsel for the applicant.

On the 9th of March 2016, learned counsel again absented himself with the usual excuse that he was attending to parliamentary duties. He was represented by his junior whose application for an adjournment was strenuously resisted by the prosecutor on grounds, inter alia, that same was a ruse to delay the proceedings and thus defeat the ends of justice.

After hearing both submissions, the learned judge proceeded to deliver his ruling in these terms:

> I have heard counsel on both sides in respect of the adjournment requested by counsel for the accused who gave this date to the court and the court accepted it. This court on 23rd November, 2013 granted bail to the accused based on the submission of his counsel to the fact that the accused has been cooperative with the court and that there would be no changes in attitude. Counsel prayed that they will report for the matter to be heard and that the general steadfastness will be fulfilled. It seems that things have rather changed in respect of the accused being steadfast by ensuring that the trial goes on in an acceptable manner. It is however shown by the attitude and behavior of the accused that he is only interested in delaying the trial. Accused applied for submission of no case which was granted. The application was to be moved on 15th February, 2016 but at the request of counsel for the accused it was adjourned to 29th February, 2016 and on 29th

February, 2016 it was further adjourned to 9th March, 2016 at the instance of the counsel for the accused. Today 9th March, 2016 this court is once again being asked to adjourn to 22nd March, 2016. Previously attitude of the accused through his counsel is nothing worth writing about as shown by the record of proceedings in this court. It seems the accused through his counsel is taking this court for a ride and wants to determine to this court how this case should be conducted.

On the basis of the above, and to ensure that the dignity of this court is respected, I will grant the request of counsel for the accused to come back on the 22nd March, 2016 to move his motion, however, based on issues raised above, I hereby rescind the bail that was granted the accused on 20th November, 2013 and remand the accused into prison custody today"

It was contended on behalf of the applicant, that the learned judge exceeded his jurisdiction when he made the order for the rescission of the bail without giving the applicant the opportunity to be heard. It was also urged on behalf of the applicant that since the issue for consideration before him at the material time, was whether the application for adjournment ought to be granted, in so far as the learned judge, suo motu made the order complained of without hearing the applicant on the issue; there was a breach of the audi alteram partem rule. Therefore the gravamen of the applicant's case was that even though the Learned Judge commenced the hearing within his clear jurisdictional powers, he exceeded same in making the order without offering him the opportunity to address him on

the issue and thereby denying him his right to be heard. The issues turning on the said contentions clearly appear to undermine the requirement of procedural fairness and integrity the absence of which, we think results in jurisdictional absence. See: The unreported judgment of the Supreme Court dated January 21, 2015 in the case of: The republic v High Court 17, Ex- parte Kwame Eyiti and Others.

Article 132 of the 1992 Constitution provides: "The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervision power"

The remedies available to an applicant who triggers the court's supervisory jurisdiction under article 132 by virtue of article 161, includes writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto.

The nature and scope of the writ of certiorari have been expatiated in several decisions of this court; among its attributes are the following: it is a discretionary remedy granted on grounds of excess or want of jurisdiction; it should be exercised in cases in which it is manifestly plain and obvious that there are patent errors on the face of the record which either went to jurisdiction or were so plain as to make the impugned decision a nullity; additionally it is not concerned with the merits but a complaint about jurisdiction or absence of procedural fairness like a breach a breach of natural justice . That the excess or lack of jurisdiction is a

ground for certiorari is so settled as was pronounced by this court in the following cases.

(1) Rep v. Court of Appeal Ex parte Ghana Cable Co Ltd. (Barclays Bank Ghana ltd) Interested party 2005-2006 SCGLR 107.

(2) Rep v. High Court, Accra; Ex parte Industrialization Fund for Developing Countries (2003-2004) 1 GLR 348

(3) Rep v. High Court, Accra Ex parte CHRAJ (Addo Interested party) 2003-2004 SCGLR 312.

(4) Rep v High Court Registrar, Kumasi and Anor; Ex parte Yiadom 1(1984-86 2GLR 606

(5) Rep v High Court, Accra; Ex Parte Soku and Anor (1996- 97) SCGLR525

(6) Rep v Court of Appeal & Thormford Ex Parte Ghana Institute of Bankers (2011) 2 SCGLR 941

In the Thomford case Supra, the Supreme Court, speaking through the esteemed Date- Bah JSC stated as follows:

> '… This Supreme Court has held several times recently that non-compliance with the audi alteram partem rule results in nullity. In the Republic v High Court Accra, ex parte Salloum and Ors (Senyo Coker, Interested Party), Suit No. J5/4/2011, judgment of the Supreme Court, delivered on 16th March 2011 and reported in (2011) SCGLR 574

(ante), Anin Yeboah JSC, delivering the majority opinion of the court, held (as stated at page 585 of the Report) that:

"The courts in Ghana and elsewhere seriously frown upon breaches of the audi alteram partem rule to the extent that no matter the merits of the case, its denial is seen as a basic fundamental error which should nullify proceedings made pursuant to the denial ".

As noted earlier, the main complaint of applicant is that the learned Judge made the order without offering him the opportunity to be heard.

A perusal of the record shows that on the 9th of March 2016, when the case was called and it became evident that the substantive counsel was absent; an application for adjournment was made by Ms. Okutu, his junior, and therefore, at the material time, the only issue before the learned Judge was whether or not to exercise his discretion in favour of the applicant, i.e. to grant her request for an adjournment on account of the reasons given. Indeed, the arguments canvassed by both the prosecution and the defence on the day of the ruling, left no doubt as to the issue for determination or resolution.

When therefore the learned Judge decided to rule on matters outside the scope of the matters before him on the day of the ruling, he was required to have adhered to this well-known principle, the audi alteram rule, which enjoins the court to ensure that the applicant is not deprived of an opportunity to present his side of the story;

a basic rule of natural justice being that no man should be condemned without being heard.

Should there be good reasons for sending back into custody, the applicant, who had not breached any of the bail conditions imposed on him since 2013, the least that the Learned Judge could have done, was to have asked him to "show cause" as it were, why he should not be remanded into custody. See Rep v. High Court, Bolgatanga: Ex Parte Hawa Yakubu (2001-2002) SCGLR 53.

The grant of bail (even though regulated by Statute) is essentially discretionary but like every judicial discretion, it should be exercised in accordance with laid down principles; it should neither be arbitrary nor capricious; in other words, it should be exercised judicially.

A reading through the exhibits annexed to the application, reveals that the learned Judge had in the course of the proceedings before him in relation to the applicant unduly indulged Counsel for the applicant, who regularly asked for adjournments on grounds of attending to Parliamentary duties. A person, who has freely chosen to perform the dual roles of a legislator and a legal practitioner, should endeavour to strike a balance so as to ensure that the practice of one does not unduly suffer at the expense of the other. The learned trial judge, we think has himself to blame for conducting the business of the court as though it is secondary to that of counsel for the applicant. The constitutional obligation imposed on courts under article 19 to try criminal cases within a reasonable time imposes an onerous responsibility to

ensure timely disposal of such cases, and, to accede to adjournments simply for the reasons stated by counsel appears to us to be a shirking of the responsibility imposed on judges by the said Article. The trial of criminal cases affect the liberty of the individual and as such efforts should be made to minimize the incidence of adjournments in order to have the trials expedited This calls for sound judicial case management by our judges and we make the unhappy observation that the hearing of a criminal matter which was commenced in 2013 should not still be doing the rounds in the Courts in the year 2016.

Adjournments are largely within the discretion of the Court and applications should be considered with the primary object of ensuring a speedy hearing and determination, a presiding judge has to have control over his court; where therefore it became obvious that it was the lawyer as opposed to the applicant whose conduct was causing the delays, the court's indignation ought to have been directed at counsel; the phrase "Applicant through his counsel' has no place in the management of the adjudication process particularly in a criminal trial where mens rea plays a significant role. Surely the applicant and his lawyer are not the same, in circumstances where the applicant was always in court whereas his lawyer was not; the learned Judge ought not to have vented his displeasure on the applicant, for visiting the sins of a lawyer on the client is deprecated by our courts. The circumstances in which the judge rescinded the subsisting order for bail call for our intervention to correct what seems to be a clear case of a capricious exercise of the discretion of the learned Judge. We would in the circumstances grant the order as prayed and order that the order rescinding the bail granted to the

applicant herein on 09 March, 2016 by Abdallah Iddrisu J be brought up before us for the purposes of being quashed and the same is hereby quashed.

(SGD) V. AKOTO-BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

<u>COUNSEL</u>:

KORKOR OKUTU FOR THE APPLICANT LED BY AFENYO MARKIN.

MRS. EVELYN KEELSON (PSA) FOR THE INTERESTED PARTY.