IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ATUGUBA, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
BENIN, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL MOTION
NO: J5/53/2017

26TH JULY, 2017

REPUBLIC

VRS

HIGH COURT, ACCRA
(INDUSTRIAL & LABOUR DIVISION COURT 2) …… RESPONDENT

EX PARTE: PETER SANGBER-DERY ……. PLAINTIFF/APPLICANT

ADB BANK LTD ..... DEFENDANT/INTERESTED PARTY

RULING

BENIN, JSC:-

The applicant herein was an employee of the Agricultural Development Bank Ltd., the Interested Party herein, to be described as the Bank. In or about November 2015, the Bank declared the applicant redundant and consequently terminated his appointment. The Bank paid the applicant some benefits which the Bank considered to be his just entitlements. The applicant, believing that he has been unjustly removed from office, instituted an action by way of a writ of summons accompanied by a statement of claim (exhibit PS1) at the High Court claiming, inter alia, these reliefs:

1. A declaration that the termination of the plaintiff's employment by way of redundancy without agreeing with the plaintiff on the amount of the redundancy pay

and the terms and conditions of the payment thereof is unlawful and in breach of the contract of employment of the plaintiff.
2. An order directed at the defendant to pay the plaintiff redundancy pay calculated at three (3) months of plaintiff's salary for each year served by the plaintiff less the amount.....paid by the defendant as severance pay into the plaintiff's bank account.
3. General damages for wrongful termination of plaintiff's employment.
The Bank filed a statement of defence wherein they contended that they negotiated the severance pay with plaintiff and that in any event what was paid to plaintiff is the industry practice which plaintiff was aware of; see exhibit PS2. The applicant filed a reply and an application for directions, marked as exhibits PS3 and PS4 respectively. The application for directions was scheduled to be taken on 4th April 2017. On the said date, the court did not consider the application at all but rather made an order declining jurisdiction in the entire case. This is the full text of the court's order:
"The business for the day is to take Directions in this matter. I have carefully perused the docket and the Court is of the firm view that this is a dispute concerning the Plaintiff's redundancy pay. Under section 65(5) of the Labour Act, such disputes are to be referred to the Labour Commission. Accordingly, the Court hereby declines to hear this matter and refers the Plaintiff to the Labour Commission. The suit is struck out for want of jurisdiction."
The applicant is saying the High Court committed a jurisdictional error, hence he has invoked this court's supervisory jurisdiction to quash the decision of the High Court which has been quoted above. By paragraph 13 of the affidavit in support of this application, the applicant gives a resume of his case in these terms:
"In so far as the Constitution or the Labour Act did not vest exclusive jurisdiction in disputes concerning redundancy pay in the National Labour Commission, the respondent Court committed an error when it held that the High Court lacked jurisdiction to entertain my suit."
This is premised on the ground that there is error of law apparent on the face of the record. Counsel for the applicant referred to decisions of this court wherein it had set out the scope of its power to grant or refuse an application founded on certiorari. Some of the cases cited are **Republic v. High Court, Accra, ex parte Commission for Human Rights and Administrative Justice (ADDO Interested Party) (2003-2004) SCGLR 312; Republic v. High Court, Accra; Ex parte Eastwood Ltd. (1994-95) GBR 557; (1995-96) 1 GLR 689.**
Counsel cited section 65(5) of Act 651 and said the use of the expression "may" was permissive, when read in the light of other provisions of the same Act 651, and in the light of section 42 of the Interpretation Act, 2009 (Act 792). Counsel submitted that "where a court or tribunal wrongfully declines jurisdiction, this court may in the exercise of its supervisory jurisdiction, grant an order of certiorari to quash that decision and to order the lower court to proceed to hear the matter." He relied on the English case of **Regina V. Norfolk Quarter Sessions; ex parte Brunson (1953) 1 QB 503** in support of his argument. In that case an order of certiorari was issued to quash a decision of the quarter sessions which had declined to try a case on indictment and had quashed the indictment, which order was held to be wrong.
For the Bank, it was argued that there was no error patent on the face of the record.

The reason is that even if the High Court gave a wrong interpretation to section 65(5) of Act 651, it was not a fit case to invoke the court's supervisory jurisdiction. Counsel cited the case of **Republic v. Court of Appeal, Accra**; **ex parte Tsatsu Tsikata (2005-2006) SCGLR 612**. Counsel also cited the ex parte Eastwood Ltd case, supra, and relied on the court's expressed view that matters of statutory interpretation belong to the High Court, therefore such decisions are appealable. He referred to some decisions of this court wherein it had cautioned against invoking its supervisory jurisdiction in matters which properly belong to appeals. Counsel further submitted that in several cases the expression "may" could be construed as being obligatory and this is one such case. Advancing this submission, counsel made reference to the case of **Edusei (No. 2) v. Attorney-General (1998-99) SCGLR 753**. where the court explained the application of articles 2(1), 33(1) and (3) of the Constitution, 1992 to the effect that where a victim of human rights decides to go to court his remedy lies in the High Court only in the first instance. Counsel then referred to article 23 of the Constitution and submitted it is only the High Court which has jurisdiction to hear a person aggrieved by a decision of an administrative body in the exercise of discretion conferred on it. And so too are the court rules on appeals, which he said do not entitle a person who intends to appeal to choose his own court, even though the expression used is "may". According to counsel the use of the term "may" in these provisions "did not offer to the citizen an election between the prescribed courts and any other court of his choice as this will occasion forum-shopping."

Counsel proceeded to cite judicial decisions by various courts in the country which had held that the Labour Commission, and not the High Court, has jurisdiction in Labour matters falling under Act 651. Indeed all the cases cited by counsel were decided by the Court of Appeal, except one which was decided by this court. That is the case of **Bani v. Maersk Ghana Limited (2011) 2 SCGLR 796**, which was cited to support the decision of the court below. Since all the other decisions relied on the decision in the BANI V. MAERSK case, supra, it behoves on us to find out precisely what it decided.

In that case the plaintiff sued his employer for a declaration that the termination of his employment was unlawful, unfair and without any basis. He sought two consequential reliefs in the alternative: either an order for his re-instatement or payment of compensation. The court found his employment was lawfully terminated having regard to the facts in evidence. In the course of delivering its judgment, this court held that at common law the remedy of re-instatement was unavailable, and that what was known to the common law was damages for wrongful termination. The court went on to say that the remedy of re-instatement was introduced by statute, Act 651 to be precise, and has been made available to the Labour Commission, but not to the courts. To quote Dr. Date-Bah JSC, who wrote the lead opinion, at pages 807-808:

"The facts of the instant case call for a re-statement of the common law of Ghana on the termination of contracts of employment and the extent to which it has been modified by the provisions of...Act 651. It remains the common law that the remedy available to an employee who has been wrongfully dismissed or whose employment had been wrongfully terminated is an action for damages. An employee cannot be awarded an order for his re-instatement into a job from which he has been removed

unlawfully, unless there is a public law element which requires otherwise.....
However, increasingly, modern legislation has been intervening to give employees a right to re-instatement.....In Ghana, the statutory intervention to give employees the right to re-instatement has not set aside the equitable principle refusing specific performance to contracts involving personal service. Rather, it is remedy that is made available to the Labour Commission established under the Labour Act, 2003."
The court went on to cite section 64 of the Act 651 which empowers an employee who claims his employment has been unfairly terminated to proceed to the Labour Commission for redress. If the Commission finds a case is made out by the employee it may award him one of three remedies which includes an order for re-instatement. The court at page 810 then said "these statutory remedies are made available to the Commission but not, at least expressly, to the courts...These provisions, with respect, are to be construed as not directed at the courts." It is this statement which has been construed as ousting the jurisdiction of the Court, specifically the High Court, from dealing with any matter of wrongful termination of employment. That is quite unfortunate because the court never said the High Court's jurisdiction under the common law to entertain cases of wrongful termination of employment was ousted by these provisions. There must be maintained a clear distinction between the question of liability and what remedies are available to address the liability when it occurs. The view the court took was that the remedy of re-instatement that was unavailable at common law and for that matter to the High Court, had been made available to the Commission under Act 651 without making same available to the ordinary courts.
Though the court in **Bani v Maersk** did not cite authority for its holding that since Act 651 mentioned only the Commission as the authority that may grant the reliefs under s. 64, the jurisdiction of the High Court to grant those remedies is excluded, it appears to us that the opinion was based on the decisions of the English common law courts pertaining to the distinction between rights and remedies and the ouster of the jurisdiction of the regular courts. The genesis of the position of the English courts may be said to be the dictum of Willes J in
Wolverhampton New Waterworks Co. v. Hawkesford (1859) 6 CB (NS) 336 at 356 where the learned judge said this:
"There are three classes of cases in which a liability might be established, founded upon statute. One is where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it-The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class."
It appears that in **Bani v Maersk** the court took the view that the provisions of ss. 63 and 64 of the Labour Act on unfair termination fall under the third class of cases

set out by Willes J . The House of Lords in the case of **Barraclough v Brown [1897] A.C. 615,** endorsed these principles of the common law stated in Willes J's dictum. The facts of that case are as follows. Section 47 of the Aire and Calder Navigation Act of 1889 provided that if any vessel should be sunk in any part of the navigation of the river Ouse and if the owner should not remove it, it shall be lawful for the undertakers to remove the vessel and the 'undertakers may, if they think fit, recover such expenses from the owner of such vessel in a court of summary jurisdiction.' The undertakers having removed a sunken vessel, sued in the High Court for recovery of the expenses from the owners of the vessel. On an objection as to jurisdiction, it was held by the House of Lords that the right conferred by the statute to recover the expenses not being a common law right, but a right created by the statute which itself provided for the remedy in a court of summary jurisdiction, the normal remedy of a direct approach to the High Court was excluded. In other words where a statute creates a new right which did not previously exist apart from the statute creating it, and the same statute goes on to provide a remedy and a method of enforcing it, it is that method that must prevail.

However, it was the recent decision of the United Kingdom Supreme Court in the case of **A v B (Investigatory Powers Tribunal: jurisdiction) (2009) UKSC 12; (2010) 1 All ER 1149** that put the principles in the correct perspective having regard to developments in the law. In that case A who was a former senior personnel of the security service, wanted to publish a book about the work of the security service, and he required the permission of B who was the Director of the Establishment. B refused to grant permission. Consequently, A applied for judicial review of B's order in court on the ground that it violated section 7(1) of the Human Rights Act 1998 which came into force on 2nd October 2000, under which he could bring an action in court. Section 65(2) of Regulation of the Investigating Powers Act 2000 which also came into force on 2nd October 2000 setting up the Investigatory Powers Tribunal (IPT) provides that for purposes of section 7(1) of the Human Rights Act the IPT shall be the only appropriate tribunal when the proceedings are against any of the intelligence services. In holding that the IPT had the exclusive jurisdiction in the matter and the judicial review proceedings in court were not maintainable, the Supreme Court pointed out that before 2nd October 2000 there was no pre-existing common law or statutory right to bring a claim based on an asserted breach of the convention and the right and the remedy are here given together and one cannot be dissociated from the other.

It bears emphasising that the United Kingdom Supreme Court did not talk only of a previously existing right at common law but added an existing right under statute before the new statute that confers the right and the remedy came into force.

But the court in **Bani v Maersk** appears to have confined itself to the rights and remedies available to aggrieved employees in Ghana law prior to Act 651as they existed only at common law but did not consider those that were already conferred by statute and, we shall add, decisions of our courts. Upon a close look at section 63 of the Act, it will be noticed that the grounds stated therein as grounds of unfair termination of employment are largely taken from the Human Rights provisions of the 1992 Constitution particularly articles 24, 26 and 29 and it appears the legislature was merely seeking to give effect to those provisions. The High Court has been given the jurisdiction under article 33(1) to enforce all these rights. What this

means is that prior to the coming into force of Act 651 the rights under s 63 existed and were enforceable by the High Court. It would thus be untenable to say that when such provisions are transported into an Act of Parliament, the jurisdiction of the High Court is excluded. That could never have been the intention of the lawmaker who is deemed to know the state of the existing law before the passage of Act 651.

Besides the Constitution, before the passage of Act 651 this court in the **Nartey-Tokoli v.Valco [1989-90] 2 GLR 341**, granted all the reliefs the plaintiffs were seeking because, among others, it considered the termination of their appointments to be illegal as same was an infringement of an existing statute. That decision was cited with approval in **Ashun v. Accra Brewery Ltd (2009) SCGLR 81** and in a recent decision of this court delivered on 25th March 2015. That is the case numbered **CA J4/47/2014 titled John Tagoe v. Accra Brewery Ltd,** unreported. Several decisions have been rendered by the courts in this country to the same effect, that where termination of employment was contrary to a statute it was illegal and the High Court has jurisdiction. What s.64 did was to provide new remedies which did not exist at common law, by the decisions of the courts and provisions of previous statutes. As for re-instatement, our courts had long ago held that it could be ordered in cases of employment governed by statute.

It therefore seems to us that the case of ss.63 and 64 of Act 651 would appropriately fall in the first class of cases in Willes J's dictum; they merely affirmed existing rights but provided a special form of remedy different from what existed before and going by the dictum, unless the statute contains words which expressly or by necessary implication exclude the existing remedy, the party suing has his election to pursue either that or the statutory remedy.

The situation with ss.63 and 64 of Act 651 is best illustrated by the House of Lord's case of **Pyx Granite Co Ltd v Ministry of Housing and Local Government [1960] AC 260** the facts of which are very similar to the case at hand. In that case the Town and Country Planning Act, 1947 incorporated an agreement between a quarry company and the local authority by which agreement long term permission was granted to the quarry company to mine only a portion of its freehold land but placed restrictions on its operations in respect of other portions. Under the provisions of the Act, a party requires the permission of the local authority before he can carry out mining activities. At section 17 of the Act it was provided that where there was a dispute as to whether a permit was required in any particular case, an aggrieved person may apply to the Minister of Housing and Local Government for determination which "shall be final". The plaintiff contended that since its agreement had been incorporated into the Act, it did not require permission before mining in the agreed portion of its freehold land. It sued in the High Court for a declaration to that effect and the defendant took objection to the jurisdiction of the High Court on the ground that since the Act provided that any such dispute be determined by the Minister and whose determination shall be final, the jurisdiction of the High Court was excluded. On a final appeal to the House of Lords, Viscount Simmons observed as follows at pages 286-287:

"The question is whether the statutory remedy is the only remedy and the right of the subject to have recourse to the courts of law is excluded....It is a principle not by

any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words. That is, as McNair J. called it in **Francis v Yiewesly and West Drayton Urban District Council,** a "fundamental rule" from which I would not for my part sanction any departure. It must be asked then, what is there in the Act of 1947 which bars such recourse? The answer is that there is nothing except the fact that the Act provides him with another remedy. Is it, then, an alternative or an exclusive remedy? there is nothing in the Act to suggest that while the new remedy, perhaps cheap and expeditious, is given, the old and, as we like to call it, the inalienable remedy of Her Majesty's subjects to seek redress in her courts is taken away."

Viscount Simmons then distinguished **Barraclough v Brown,** supra, in the following words. "And it appears to me that the case would be unarguable but for the fact that in Barraclough v Brown upon a consideration of the statute there under review it was held that the new statutory remedy was exclusive. But the case differs vitally from the present case. There the statute gave an aggrieved person the right in certain circumstances to recover certain costs and expenses from a third party who was not otherwise liable in a court of summary jurisdiction. It was held that that was the only remedy open to the aggrieved person and that he could not recover such costs and expenses in the High Court. "I do not think," said Lord Herschell "that the appellant can claim to recover by virtue of the statute and at the same time insist upon doing so by means other than those prescribed by the statute **which alone confers the right.**" Or as Lord Watson said, "the right and the remedy are given uno flatu, and the one cannot be dissociated from the other. The circumstances here are different. The appellant company are given no new rights of quarrying by the Act of 1947. Their right is a common law right and the only question is how far it has been taken away. They do not uno flatu claim under the Act and seek a remedy elsewhere."

In the case of ss 63 and 64 they do not confer any right which did not previously exist. It is only s 64 that offers a remedy that did not exist prior to Act 651 so the sections can be dissociated and are not uno flatu. Therefore, to the extent that in **Bani v Maersk** the court did not take into account rights of employees that existed under statute and by virtue of decisions of the courts before the passage of Act 651 as required by the decisions of the English common law courts that would have justified the position of the court, it appears to us to have been decided *per incuriam*. But an even more fundamental ground on which, in our humble opinion, the **Bani v. Maersk** decision was *per incuriam* is that it did not consider article 140(1) of the Constitution which provides that:

"The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, civil and criminal matters and

such original, appellate and other jurisdiction as may be conferred by this Constitution or any other law."

That provision is peculiar and special in the sense that only a provision of the Constitution may limit the jurisdiction of the High Court, and not by an Act of Parliament. The legislature may enhance but not diminish the High Court's jurisdiction by an Act of Parliament. Thus it seems to us that the legislature could not by Act 651 take away the jurisdiction of the High Court in the light of article 140(1) of the Constitution which grants it jurisdiction in all matters. There are instances where the jurisdiction of the ordinary courts is differed by statute in favour of an inferior tribunal with specialisation in a particular field, but that is not the case here. Under article 140(1) the High Court has jurisdiction to enforce every right created by statute except it is ousted by a provision of the Constitution. In the case of **Ghana Bar Association v Attorney-General, unreported, Writ No 14/95,** the Supreme Court in a unanimous judgment dated 7th February, 1995 upheld the ouster of the jurisdiction of the High Court in chieftaincy matters only because it interpreted article 274(5)(d) of the Constitution as conferring that jurisdiction on the Traditional Councils and Houses of Chiefs to the exclusion of the High Court. The authority granted the Commission to hear certain cases arising from section 63 of Act 651 cannot, and is not exclusive of the High Court's jurisdiction in all matters, civil and criminal, under the Constitution. We shall therefore state that the High Court has concurrent jurisdiction with the Labour Commission in granting the reliefs set out in s. 63 of Act 651.

Be that as it may, a critical reading of section 65 of Act 651 shows that the Commission's remit in matters of redundancy is limited to disputes relating to the severance benefits only; it has no jurisdiction when the issue is the lawfulness or otherwise of the redundancy exercise and matters pertaining thereto. The substance of the case made by the plaintiff is that the defendant failed to observe the command of Act 651 for a negotiation of the quantum and the terms and conditions of payment of his severance pay. The Bank claims there was negotiation and in any event it was justified in paying the amount it paid to the plaintiff. So it is for the court to determine those questions and the Commission does not have the jurisdiction in that.
Section 65 of Act 651 has the sub-heading Redundancy and it provides:

(1) When an employer contemplates the introduction of major changes in production, programme, organization, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking, the employer shall
(a)provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, all relevant information including the reasons for any termination, the number and categories of workers likely to be affected and the period within which any termination is to be carried out; and

(b)consult the trade union concerned on measures to be taken to avert or minimize the termination as well as measures to mitigate the adverse effects of any termination on the workers concerned such as finding alternative employment.

(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes

(a)severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation; and

(b)as a result of and in addition to the severance that the worker becomes unemployed or suffers any diminution in the terms and conditions of employment, the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as "redundancy pay".

(3) In determining whether a worker has suffered any diminution in his or her terms and conditions of employment, account shall be taken of the past services and accumulated benefits, if any, of the worker in respect of the employment with the undertaking before the changes were carried out.

(4) The amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.

(5) Any dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall subject to any other law be final.

Section 65(5) assumes that all matters pertaining to a redundancy exercise are undisputed and if what remains to be resolved is the severance award then the Commission has jurisdiction. Put in another way, where the parties have negotiated the amount of severance pay and the terms of payment thereof but they are unable to agree on these matters and a dispute arises, it is that dispute that the Commission has power to resolve. The lawmaker was careful in restricting the Commission to only severance award, leaving other issues to the courts. By making specific jurisdictional provision under section 65(5), the ***expressio unius est exclusio alterius*** rule will apply to exclude jurisdiction of the Commission in respect of any other dispute arising from redundancy since it is an inferior tribunal and is not presumed to have any jurisdiction not specifically conferred. The court therefore has jurisdiction when the very fact of the redundancy is challenged and when it decides on the liability of the employer, it has the power to make the relevant award on the strength of the applicable law, terms of employment and evidence adduced before it. As we explained in our discussion of the **Bani v Maersk case,** the right of a worker to severance pay upon redundancy existed long before the coming into force of Act 651 so any new relief in that regard by the Act can be granted by the High Court.

In the instant case, besides the severance enhanced pay arising from redundancy

that the applicant was claiming by the endorsement on his writ, he also sought damages for wrongful termination of his employment. The latter relief is a common law liability and remedy which has always been cognizable by the High Court. The Commission has no jurisdiction to investigate such a case. Where several reliefs are placed before a court and it takes the view that it has jurisdiction to hear some of them whilst its jurisdiction is excluded in respect of others, it does not entitle the court to decline jurisdiction altogether. In such scenario, there are two options open to such a court: it may strike out those reliefs which are outside of its jurisdiction and proceed to hear those that fall within its jurisdiction, or it may hear the whole case but decline to grant the reliefs it is not competent to grant when it delivers its final judgment in the matter.

Counsel for the Bank strenuously argued that the High Court judge merely interpreted section 65(5) of Act 651 therefore it is a matter for appeal. He sought to justify the High Court's interpretation by reference to articles 23, and 33(1) of the Constitution, 1992 where, though the term 'may' is used, yet the party has no option but to take his case to the High Court. He also referred to the rules regulating the appeal procedure and said a party has no option but to appeal to a particular court at a time when he decides to appeal. With respect, these provisions do not apply, for in all those instances the jurisdiction of those courts is not in doubt and have been provided for by the Constitution itself. The same cannot be said here where the very decision of this court in **Bani V. Maersk** upon which all the courts have relied to reject labour dispute claims did not decide that the court has no such jurisdiction at all in unlawful termination cases.

The High Court relied on section 65(5) of Act 651 in declining jurisdiction. Contrary to what counsel for the Bank submitted, it is not a mere question of interpretation, but one which goes to jurisdiction; it is a decision which is jurisdictionally flawed, in view of articles 11(1)(d) and (e) and 140(1) of the Constitution. The court's jurisdiction was appropriately invoked by the nature of the reliefs placed before it. The relief based on the severance pay which must have informed the court's decision, does not exist in isolation, but must be considered after the question of the wrongfulness of the termination has been resolved.

What are the consequences when a court which is legally clothed with jurisdiction declines to exercise same? As earlier mentioned it is not for appeal even though a party affected may choose that option; it is also subject to the court's prerogative power in the nature of certiorari and mandamus. The court may quash the decision and issue a consequential order for the court below to hear and determine the matter. In other jurisdictions the court has issued an order of mandamus, which effectively and inherently quashes the original decision by the court below. Thus any of these orders an aggrieved party opts for will achieve the same result. One such case which was cited by counsel for the applicant is **R v. Norfolk Quarter Sessions**, supra. Another case in similar vein is **R v. Devun Justices, ex p. DPP (1924) 1 KB 503**, which decided that an order of mandamus would lie to courts of quarter sessions to hear and determine an appeal in which they had declined jurisdiction. See also **R. v. Newham Justices, ex p. Hunt (1976) 1 All ER 839; (1976) 1 WLR 420; R. v. Harrington (1984) AC 473; (1984) 2 All ER 474, HL.** In the case of **R. v. Judge Dutton Briant, ex p. Abbey National Building Society (1957) 2 All ER 625**, where a county court judge mistakenly declined to

hear an action for possession by mortgagees on the ground that the court had no jurisdiction, he was ordered to hear and determine the case.
The principle running through these cases which we endorse is that where a court has jurisdiction in a matter but for some reason, whatever it may be, it declines to assume jurisdiction, that decision is amenable to the orders of certiorari and mandamus. The court below clearly committed an error when it declined jurisdiction and referred the parties to the Commission when the issue of wrongful termination was cognizable before the High Court as well as what damages or compensation arises from such termination. The error is patent so the applicant should have his remedy in these proceedings.
Consequently, we grant the application, set aside the order of the High Court and order the High Court to assume jurisdiction to hear and determine the matter.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

PWAMANG, JSC:-

I have been privileged to read beforehand the well-researched and authoritative judgment delivered by my noble and respected brother, Benin JSC and I agree with

the reasoning and conclusions arrived at. However, by way of emphasis, I wish to add a few words. It is a well-known principle of interpretation of statutes at common law that where a statute sets out rights and provide a particular remedy for the ventilation of those rights, only that remedy is intended to be available to an aggrieved person. However, that principle is a presumption and not an invariable rule of law. It is a presumption that in those circumstances the maker of the enactment intended to exclude all other previously existing remedies and jurisdictions. That presumption has been qualified by other rules of the same common law to the effect that where the rights stated in the statute can be dissociated from the remedy prescribed by the statute, then the maker of the enactment is deemed to have intended that the previously existing remedies and jurisdiction are not excluded. That is the import of the decision of the House of Lords in **Pyx Granite Co. Ltd v Ministry of Housing and Local Government [1960] A.C. 260**. The presumption to exclude previously existing jurisdictions must arise by necessary or plain implication upon a consideration of the whole enactment taking into account the statutory framework pursuant to which the statute was made. This is so because there is a higher principle of the common law which says that the ordinary jurisdiction of a superior court cannot be taken away by a later statute except through an exceptionally strongly worded formula. See **Anisminic Ltd v. Foreign Compensation Commission [1969] 2 A. C. 147.** Save for these few words, I fully endorse the opinion in the lead judgment.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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