IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: AKUFFO (MS), CJ PRESIDING
ATUGUBA, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC
BAFFOE-BONNIE, JSC
BENIN, JSC

WRIT NO.
J1/11/2016
22ND JUNE, 2017

CLAUDE OPPON

H/NO. B. 80/30
ABEKA LAPAZ, ACCRA ..... **PLAINTIFF**

VRS

1. THE ATTORNEY GENERAL

ATTORNEY GENERALS' DEPARTMENT
ACCRA

2. COMMISSION OF INQUIRY INTO PAYMENTS FROM PUBLIC FUNDS ARISING FROM JUDGMENT DEBTS AND RELATED PROCESSES

C/O ATTORNEY GENERAL'S DEPARTMENT
ACCRA ..... **DEFENDANTS**

JUDGMENT

ATUGUBA, JSC:-

The plaintiff by his writ herein claims as follows:

"1. A declaration that the **Commission of Inquiry into payments from public Funds Arising from Judgment Debts and Related Processes** appointed by His

Excellency the President of the Republic by **C.I. 79 on 8th October, 2012** has no lawful authority to reopen, review and/or declare any decision, order or judgment of any court of competent jurisdiction an error of law or a nullity.

2. A declaration that by the findings and recommendations made by the Commission in respect of Suit No. RPC/152/2010- intituled *Alfred Agbesi Woyome vrs. The Attorney General* and the case intituled *Sky Consult vrs. Ghana Post Company* the Commission exceeded its jurisdiction and purported to exercise judicial power contrary to Articles 125(1), 3) and (5); 127(1) and (2); 129(1); and 137 of the Constitution of Ghana**.**

3. A declaration that the 'findings and recommendations' of the said Commission on the two cases and the Government White Paper thereon amounts to an interference in the judicial process and violation of the independence of the judiciary as enshrined in the 1992 Constitution and to that extent void and of no effect whatsoever.
4. An order directed at the Defendants to expunge from their records the said findings, recommendations and the Government White Paper thereon.
5. An order of perpetual injunction restraining the Defendants, their agents, servants, privies and persons claiming through them from ever referring to, relying on, or using the said findings, recommendations and the Government White Paper thereon on the said two cases for any purposes whatsoever.
6. Any further orders and directions as this Honourable Court may consider appropriate for giving effect to the declarations so made."

The parties' agreed issues for trial are as follows:

"1.Whether or not this Honourable Court has jurisdiction to entertain this action.

2. Whether or not the Judgment Debt Commission violated **Articles 125 and 127 of the 1992 Constitution** of Ghana in respect of its report on the **Alfred Woyome vrs. Attorney General and Another; Sky Consult vrs. Ghana Post cases.**

3. Whether or not the White Paper issued by the president in respect of the report of the Commission on the **Alfred Woyome vrs. Attorney General and Another; Sky**

Consult vrs. Ghana Post cases are in violation of **Articles 125 and 127 of the 1992 Constitution of Ghana** and amounts to an interference in the judicial process.
4. Whether or not the Plaintiff is entitled to the reliefs claimed."

Issue 1

Whether or not this honourable Court has jurisdiction to entertain this action

It has become almost an entrenched custom for defendants to constitutional actions to raise issues as to the jurisdiction of this court to entertain them.

In this case the thrust of the plaintiff's action is that judicial decisions cannot be reopened by administrative tribunals and declared as nullities. The plaintiff contends that such conduct is contrary to articles 125 and 127 of the 1992 Constitution of Ghana. These articles are as follows:

125. The Judicial power of Ghana

(1) Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution.

(2) Citizens may exercise popular participation in the administration of justice through the institutions of public and customary tribunals and the jury and assessor systems.

(3) The judicial power of Ghana shall be vested in the Judiciary; accordingly neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power.

(4) The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be *responsible for the administration and supervision* of the Judiciary.

(5) the Judiciary shall have jurisdiction in all matters civil and criminal, including matters relating to this Constitution, and such other jurisdiction as Parliament may, by law, confer on it.

127 Independence of the Judiciary

(1) *In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions*, including financial administration, *is subject only to this Constitution and shall not be subject to control or direction of any person or authority*,

(2) *Neither the President* nor Parliament *nor any person acting under the authority of the President* or Parliament nor any other person whatsoever *shall interfere with Justices or judicial officers or other persons exercising judicial power*, *in the* exercise of their judicial functions; and *all organs and agencies of the State shall accord to the Courts such assistance as the Courts may reasonably require to protect the independence, dignity and effectiveness of the Courts, subject to this Constitution.*

(3) A Justice of the Superior Court, or any person exercising judicial power, *shall not be liable to any action* or suit *for any act or omission by him in the exercise of the judicial power.*

(4) The administrative expenses of the Judiciary, including all salaries, allowances, gratuities and pension payable to or in respect of leave of absence, gratuities and pension payable to or in respect of, persons serving in the Judiciary, shall be charged on the Consolidated Fund.

(5) The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Superior Court or any judicial officer or other person exercising judicial power, shall not be varied to his disadvantage.

(6) Funds voted by Parliament, or charged on the Consolidated Fund by this Constitution for the Judiciary, shall be released to the Judiciary in quarterly installments.

(7) For the purposes of clause (1) of this article, "financial administration" includes the operation of banking facilities by the Judiciary without the interference of any person or authority, other than for the purposes of audit by the Auditor-General, of the funds voted by Parliament or charged on the Consolidated Fund by this Constitution or any other law, for the purposes of defraying the expenses of the Judiciary in respect of which the funds were voted or charged."

It is quite clear that the parties have advanced rival contentions as to the applicability of these provisions and as will presently appear, the articles relied on require interpretation and/or enforcement, on the facts of this case. This court therefore has jurisdiction to entertain this writ, see *The Republic v. Special Tribunal; Ex parte Akosah* (1980) GLR 592 C.A subject to the decisions of this court in cases such as *Sumaila Biebiel* (No. 1) V. *Adamu Daramani & Attorney-General* (No. 1) [2011]1 SCGLR 132, *Okudzeto Ablakwa v Attorney-General* (No. 1) (2011) 2 SCGLR 986 and *Emmanuel Noble Kor v. 1. The Attorney-General 2.Justice Isaac Delali Duose*, Suit no J1/16/2015, dated 10/3/2016, unreported.

Issue 2

Whether or not the Judgment Debt Commission violated Articles 125 and 127 of the 1992 Constitution in respect of its report on the *Alfred Woyome v. Attorney-General and Another, Sky Consult v. Ghana Post* cases.

To resolve this issue one has to consider (1) the terms of reference of the commission and (2) the relevant findings and recommendations of the commission relating to the said two cases.

The Commission's Terms of Reference

The Commission was set up by the Commission of Inquiry into payments from Public Funds arising from Judgment Debts and Related Processes Instrument, 2012 C.I. 79

Terms of Reference

"(a) *to ascertain the causes of any inordinate payments made from public funds in satisfaction of judgment debts since the commencement of the 1992 Constitution*;

(b) to ascertain the causes of any inordinate payments from public funds and financial losses arising from arbitration awards, negotiated settlements and related processes since the commencement of the 1992 Constitution; and

(c) to make recommendations to the Government for ensuring that, as far as practicable

(i) *the instances where public funds are utilized to make payments in satisfaction of judgment debts* and public debts arising from related processes are limited or avoided; and

(ii) Government does not incur undue financial losses when it does business with private persons or institutions."

The impugned findings and recommendations of the Commission

Though the plaintiff attacks the findings and observations of the Commission with regard to court decisions and their acceptance by the Government per its white paper separately, these matters are intertwined in the Government's white paper and are therefore herein dealt with together. These are stated in paragraphs 38 to 39 of the plaintiff's statement of case as follows:

"38. Plaintiff avers that in the White Paper published in November, 2015 by the executive (Exhibit 'C'), the Government wholeheartedly accepted and adopted the unlawful findings and unjustified attacks on the judiciary by the Commission in respect of the Woyome case, and published same at pages 3-5 of the White Paper in the following manner, among others:

"1. Alfred Agbesi Woyome v. Attorney-General and Another

The Commission reviewed the various documentation submitted to it on this matter and established the following:

"(i) Either through inadvertence or pure mischief through connivance, both the Chief State Attorney Samuel Nerquaye Tetteh who was charged with the defence of the suit in the trial court, and the trial judge did not scrutinize the processes filed before them with judicious eyes. If the trial judge, particularly,

had done so he would not have granted the application for default judgment in the first place. The bank accounts of the wife of the Chief State attorney Mrs. Nerquaye Tetteh, was later found by the Economic and Organised Crime Office (EOCO) to have ballooned by the payment into it of the sum of GH¢400,000.00 by Alfred Agbesi Woyome after the deal had become successful. The then Attorney General, in deciding to negotiate with Alfred Agbesi Woyome for the payment of the cedi equivalent of €22,129,501.74 to him as representing 2% of alleged financial engineering costs, was ignorant about the facts of the case Woyome had pleaded in court, but nevertheless went ahead to negotiate and finally ordered for such payment to be made without any scrutiny of his claim and due diligence.

(ii) The trial court seriously erred when it granted a default judgment that was procedurally flawed in many aspects. The default judgment was a complete nullity due to the procedural irregularities that completely destroyed its foundation.

- The plaintiff had no mandate under the rules of court to amend his writ of summons twice without leave before pleadings were closed. Order 16 Rule 1(1) gives the plaintiff one opportunity. He amended his writ of summons twice without leave but the trial court either failed to scrutinize the records before granting the application or turned a blind eye to it.
- When the plaintiff amended the endorsement on his writ of summons to change completely his cedi claim to a Euro claim with other reliefs, he did not amend his original statement of claim to correspond to the new claim which was completely different from the original claim.
- At the time plaintiff filed the motion for default judgment in default of defence, the defendants had not been served with any statement of Claim as required under the Rules of Court in support of the amended Writ of Summons to which they could respond by way of statement of defence.

- On 14th May 2010, just seven (7) days after the service of the amended writ of summons on the 1st defendant, plaintiff caused a motion for judgment in default of defence to be filed. This was contrary to Order 16 Rule 3(2)(b), which provides for a period of fourteen (14) days after the service of an amended statement of claim on the defendant.

(iii) Though the parties in the action filed a supposed Terms of Settlement intending it to be adopted as a consent judgment, the State, before the date slated for the adoption of the said terms, had declared its intention not to go by the terms anymore since it had realized it had a defence to the action. That conduct alone served as a caveat to the trial court in treating the terms as Consent Judgment since it had been robbed of its consensual content. The trial court regrettably forced a Consent Judgment on the State. What the trial court described as a "Consent Judgment" was therefore not a Consent Judgment properly so-called. It was a judgment forced on
the State by the trial court, which makes it a complete nullity.

(iv) There was no basis for the payment of the sum of over Gh¢51 million to Alfred Agbesi Woyome. This is because he was not entitled to any such payment as the EOCO rightly found and stated in its interim report.

(v) The trial court should have set aside the default judgment it had wrongly entered against the State and allowed the Attorney-General to defend the action as she intimated. The failure of the trial High Court to do so led to the wrong payment of the huge sum of over Gh¢51 million to Alfred Agbesi Woyome who did not deserve it in the least.

(vi)The payment to Alfred Agbesi Woyome was inordinate and at the same time fraudulent. It therefore constituted a huge financial loss to the State."

"x x x

39. At page 42 of the White Paper, the Government again accepted and repeated the unlawful findings and review of the judicial decisions by the Commission in respect of the Sky Consult case in the following manner:

"The Commission made the following findings and observations:

(i) The interest that was computed and added to the principal sum was wrongly computed and the trial court therefore erred in entering summary judgment for the amount claimed;

(ii) The summary judgment was applied for and granted before the expiry of the period allowed for entry of appearance, contrary to the provisions of Order 14 rule 1 of the High Court civil Procedure Rules, C.I 47 of 2004. In the Commission's own words, "this was error apparent on the face of the record which should not have escaped the attention of any prudent court";

(iii) The trial court did not exercise due diligence in granting the application and the Court of Appeal also did not observe the High Court (Civil Procedure) Rules properly before dismissing the appeal;

(iv) The unfortunate developments compelled Ghana Post to pay more money than what Sky Consult deserved;

(v) Ghana Post should have proceeded further to the Supreme Court for a final determination of the matter"

The Common Law Position

As far as the nullity of a decision of a court of competent jurisdiction is concerned, the balance of judicial decisions in Ghana has swung to the position that the judgment of a court cannot be treated as null and void without recourse to court. Before that cases like *Mosi v. Bagyina* (1963) IGLR 337SC based on the celebrated case of *Macfoy v UAC Ltd* (1962) AC 152 P.C had held that a void order was ipso facto void without the need for a court to set it aside. In the course of time the courts tried to restrict the ambit of

the nullity principle to cases in which the nullity is patent or obvious on the face of the order.

All this was finally reviewed and settled by this court in the remarkable case of *Republic v High Court, Accra; Ex parte Afoda* [2001 – 2002] SCGLR 768 wherein this court for public policy reasons, unanimously held per Kpegah JSC at 773 thus:

> "We . . . reiterate the law to be: *the fact that an order of, or a process from, a court of competent jurisdiction is perceived and considered void or erroneous should not give a party who is affected by the order, or to whom the process is directed, the slightest encouragement to disobey it; and when cited for contempt, only to turn round to justify the said disobedience by the fact that the order ought not to have been made or the process issued in the first place.* The proper thing to do is to either obey, or sue for a declaration to that effect or apply to have it set aside. The proponent of the order then assumes the burden to justify the order on which he relies and so prove that the order or the process was not improvidently made. *As a matter of public policy* it is *important that the authority of the court and the sanctity of its process be maintained at all times*. It is too dangerous to give a litigant and his counsel the right to decide which orders or process of the court are lawful and therefore deserving of obedience, and if not, must be disobeyed. An order or process of a court of competent jurisdiction cannot be impeached by disobedience. That way, we should needlessly be empowering lawyers, in their various chambers, to have supervisory jurisdiction over the courts. That is an effective way to undermine, if not destroy, the administration of justice."

This decision has been followed fairly consistently in cases such as *Republic v Conduah; Ex parte Aaba (substituted by Asmah*) (2013 – 2014) 2 SCGLR 1052

As regards administrative bodies, it is settled that unless the relevant statute provides otherwise they have no supervisory authority over the decisions of the courts – see *Lutterodt v Mensa Nyarko* (1984-86)1 GLR 277 C.A and *Koranteng II v. Klu* (1993-94)1 GLR 280 S.C. In the latter case it was held that not even the Chief justice can unsettle

a decided case in his administrative capacity, even though the judgment on the case cannot be found.

Admittedly some of the broad terms of the provisions of the constitution, particularly articles 278(1) and 280(1) can give the impression that a Commission of Inquiry can enquire "*into any matter of public interest*" inclusive of the merits or demerits of the decisions of the courts. But as Acquah JSC said in *JH Mensah v Attorney-General*(1996-97) SCGLR 320 at 362:

"*I think it is now firmly settled that a better approach to the interpretation of a provision of the 1992 Constitution is to interpret that provision in relation to the other provisions of the Constitution so as to render that interpretation consistent with the other provisions and the overall tenor or spirit of the Constitution. An Interpretation based solely on a particular provision without reference to the other provisions is likely to lead to a wrong appreciation of the true meaning and import of that provision*. Thus in *Bennion's Constitutional Law of Ghana* (1962) it is explained at page 283 that it is important to construe an enactment as a whole:

> ". . . since *it is easy, by taking a particular provision of an Act in isolation, to obtain a wrong impression of its true effect*. The dangers of taking passages out of their context are well known in other fields, and they apply just as much to legislation. Even where an Act is *properly drawn it still must be read as a whole. Indeed a well drawn Act consists of an inter-locking structure* each provision of which has its part to play. *Warnings will often be there to guide the reader*, as for example, *that an apparently categorical statement in one place is subject to exceptions laid down elsewhere in the Act, but such warnings cannot always be provided*."

> I am therefore of the considered view that *having regard to the obvious absurdity involved in determining the tenure of office of a minister or deputy minister solely or article 81, a recourse must be made to the broad outline of the type of government created in the 1992 Constitution."* (e.s.)

One must therefore match articles 278(1) and 280(1) with the specific and insistent provisions of the Constitution in articles 125(1), (4), 127(1) – (3) and 154 and it becomes clear that the Judiciary was meant to be a self disciplining institution and outside interference was not countenanced. The appellate and supervisory jurisdictions of the courts are also in point. This is laid bare by paragraphs 251 – 252 of the Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana, as follows:

> "INDEPENDENCE OF THE JUDICIARY
>
> 251. The independence of the Judiciary should be guaranteed by the State and enshrined in the Constitution. *It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*
>
> 252. It is the view of the Committee that the concept of judicial independence has several aspects, and that *there can be no meaningful constitutional guarantee for the basic integrity of the judicial process unless the following fundamental principles are acknowledged and reflected in the provisions relating to the Judiciary*:
>
> 1. There should be *an unequivocal prohibition of Executive interference with the judicial process. The Judiciary must not be subject to any control or directive from the Executive or any other quarter in the discharge of its judicial functions.* Nor should *the Executive, or indeed the Legislature, pronounce on the adjudication of cases or attempt to alter or revise the outcome of such adjudication*. This principle is without prejudice to mitigation or commutation by competent authorities of sentences imposed by the Judiciary, in accordance with the law."

Furthermore, article 280(2) provides thus:

> "**Functions of commission of inquiry**

(2) Where a commission of inquiry *makes an adverse finding against any person*, *the report of the Commission* of inquiry shall, for the purposes of this Constitution, *be deemed to be the judgment of the High Court and* accordingly, an appeal shall lie as of right from the finding of the Commission to the Court of Appeal."

The effect of this provision if applicable to the Judiciary will place the Judiciary under the supervisory authority of the Executive arm. Certainly such a situation would not be a construction that would operate as regards the independence of the Judiciary *ut magis floreat quam pereat*. The chequered history of the independence of the Judiciary in this country does not permit of a contrary interpretation.

For all the foregoing reasons we uphold the Plaintiff's action in so far as it relates to the portions of the findings and expressions of the Judge in the two cases of *Alfred Woyome v. Attorney-General and Another and Sky Consult v. Ghana Post Company* which sought to fault the judge with regard to his adjudication of those cases and to nullify the same.

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

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

S. O. A ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

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