IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: AKUFFO (MS), CJ (PRESIDING)
ATUGUBA, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC
PWAMANG, JSC

REFERENCE

NO: J6/3/2017

28TH , FEBRUARY 2018.

JUSTICE EDWARD BOATENG ---- PLAINTIFF

Vs

1. **THE JUDICIAL SECRETARY**
2. **THE JUDICIAL SERVICE**
3. **THE ATTORNEY-GENERAL ---- DEFENDANTS**

JUDGMENT

GBADEGBE JSC:

We have before us in the exercise of our jurisdiction under article (2) of the Constitution, a reference calling for the interpretation mainly of article 140 (10) (b) of the constitution and a related provision concerning the entitlement of superior court judges to pension in terms of article 155 (1). We wish to note at the outset that although the ruling by which our reference jurisdiction has been

invoked specifies in the concluding paragraph only the issue relating to the true meaning of article 146(10) (b) of the constitution there is an implied invitation to us to pronounce on the true meaning of article 155 of the Constitution as well. In our opinion, as the interpretation of provisions of the constitution belongs exclusively to this court, it is important that once we discern from the process by which our jurisdiction under clause 2 of article 130 is invoked that some other provision of the Constitution though not specifically mentioned in the order of reference is either so closely linked with the provision of the constitution referred to us for interpretation or from the circumstances of the case likely to become an interpretative issue before the trial court, then in order to avoid multiple references, we are required at the very first opportunity to make a binding pronouncement of the said provision as well. Thus, in the matter herein, we propose to exercise our jurisdiction by way of reference on the true meaning of articles 146 (10) (b) and 155(1) of the Constitution.

We commence our determination with reference to the two provisions. Article 146 (10) (b) of the constitution states:

> *"Where a petition has been referred to a committee under this article, the President may, in the case of a Justice of the Superior Court or a of a Chairman of a Regional Tribunal acting in accordance with the advice of the Judicial Council, suspend that Justice or Chairman of a Regional Tribunal."*

In respect of article 155(1), it is provided as follows:

> *"Notwithstanding the provisions of this Chapter, a Justice of the Superior Court who has attained the age of sixty-five years or above, shall, on retiring, in addition to any gratuity payable to him, be paid a pension equal to the salary payable for the time being to a Justice of a Superior Court from which he retired where-*
>
> *(a) He has served for ten continuous years or more as a Justice of the Superior court of Judicature, or*

(b) He has served for twenty years or more in the public service at least five continuous years of which were as a Justice of a Superior Court of Judicature……"

The plaintiff contends in regard to article 146 (10) (b) that in so far as his interdiction was not pursuant to a process of impeachment that is provided for in article 146 (1) of the constitution, it was unlawful and consequently null and void and of no effect, an urging with which the defendants are in agreement. Although the defendants are in agreement with the plaintiff on the meaning of article 146(10(b)) of the Constitution, the question for our decision on the said provision being purely one of law is for the court to pronounce upon. We observe that as we are dealing with the construction of a constitutional provision, we have to read the provisions on which the matter herein turns not in isolation but together with other provisions of the constitution for the purpose of achieving a single objective that sees each and every single part of the document complementing each other such that the tune produced therefrom is harmonious and not discordant. This approach has been emphasised in several decisions of this court over the years. We refer in particular to the case entitled **N M C v Attorney-General** [2000] SCGLR 1 at page 11, wherein Acquah JSC (as he then was) observed as follows:

"But to begin with, it is important to remind ourselves that we are dealing with our national constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers in them. It gives certain rights to persons as well as to bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers and privileges and rights must be exercised and enforced not only in accordance with the letter, but also with the spirit of the Constitution. Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework. And

because the framework has a purpose, the parts are also to work together dynamically, each contributing something towards accomplishing the intended goal. Each provision must therefore be capable of operating without coming into conflict with any other."

Having placed the scope of our task within the proper perspective, we are of the opinion that the plaintiff does not contend that the letter of interdiction on which he relies is not permissible to have been directed by the appointing authority by virtue of article 297 clause (a) of the Constitution on implied power which reads:

"In this Constitution or any other the power to appoint a person to hold or to act in an office in the public service shall include the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove the persons from office."

In our view, in writing the letter of interdiction, the Judicial Secretary was performing an official act, which by section 37 of the Evidence Act, NRCD 323 has the attribute of regularity.

We are of the view that article 146 aside, there is ample power in the appointing authority, the President of the Republic of Ghana in the light of the public knowledge that the plaintiff had been charged with a crime involving dishonesty to direct his interdiction. Interdiction is a common feature of disciplinary action exercised by employers over employees and as such can be resorted to independently of impeachment proceedings and that the appointor must be deemed to have authorised the interdiction. We are of the opinion that it was not necessary for the Judicial Secretary in communicating the interdiction to the plaintiff to specifically mention that it was done on the authority of the appointor. Further, in our opinion the process of impeachment is not the only method by which Justices of the Superior Courts may be disciplined, to hold otherwise would mean that even in cases in which there is no reasonable likelihood of an erring judge being dealt with under article 146, there is no power in the appointor to exercise any other form of disciplinary control over such judges.

In the circumstances, in the absence of any factual challenge that displaces the presumption of regularity, we are unable to accept the plaintiff's contention that the interdiction was unconstitutional; the presumption of regularity not having been displaced must prevail. Accordingly, the question referred to us by the High Court in regard to article 146(10)(b) of the Constitution to wit: " Whether on a true interpretation of article 146(10)(b) of the Constitution, the Chief Justice can interdict a Justice of the Superior Court of Judicature who has been arraigned before a court of competent jurisdiction on a criminal charge involving element of dishonesty in lieu of the provision on the procedure to adopt to suspend a Justice of the Superior Court of Judicature" receives an affirmative answer. In particular, we answer that the Chief Justice can interdict a Justice of the Superior Court on the presumed authority of the President.

We now proceed to the issue arising under article 155, the effect of which is that the plaintiff having retired on 31 December 2011, without being impeached is entitled to pension and gratuity notwithstanding the undeniable fact that he was convicted on July 19, 2013 for an offence involving dishonesty. The said conviction, from the processes filed before us in the matter herein has not been set aside so for all purposes, the plaintiff is an ex-convict. In respect of this issue, learned counsel for the plaintiff did not make any submission thereon as he limited himself to the sole issue mentioned in the concluding paragraph of the ruling of the learned trial judge dated November 17, 2016 by which the questions for our consideration in this matter were referred to us. Learned counsel for the defendants, however submitted a response to the question arising under article 155. In his submission on the said article, he was of the view that to deprive the plaintiff of his entitlement to pension and gratuity would have a retrospective effect contrary to the provisions of the Constitution, and accordingly we are invited to yield to the plaintiff's demand to be paid his said entitlements. The defendants also relied on the case of **Justice Frank Amoah v The Attorney General**, an unreported judgment of this court in Case number J1/5/ 2014 dated October 29, 2015 and section 298 of the Criminal Offences (Procedure) Act, 1960, Act 30. As earlier on noted, issues of law are the province of judges and so,

our task is to determine the true meaning of article 155 (1) to which reference was earlier made in the course of this delivery.

We are of the opinion that in answering the question that arises under article 155(1) of the Constitution, we have to consider the effect of the said conviction and sentence on the status of the plaintiff as a Justice of the Superior Court. The undisputed facts are that while a serving judge, he was on May 10, 2005 served with a letter of interdiction and never resumed work until his retirement and conviction. In our view, from the date of his interdiction, he was not in continuous service and would in order to satisfy the situation envisaged in article 155(1) have to be restored to continuous service by virtue of an acquittal for the offence with which he was charged. Having been convicted of the offence, it meant that as at the date of his interdiction, his continuous service was brought to an end by an act that rendered him unqualified to continue to hold the office of a High Court Judge as provided for in the following words in article 139(4) of the Constitution.

> *"A person shall not be qualified for appointment as a justice of the High Court unless he is a person of high moral character and proven integrity and is of at least ten years' standing as a lawyer."*

In our opinion, to remain in continuous and uninterrupted service such as would entitle a judge to pension and gratuity, such judge should not lose any of the qualifications required of him as a judge including "high moral character and proven integrity' which by his conviction the plaintiff no longer had. From the moment of his conviction, the plaintiff lost the dignity that attaches to his office having been stripped bare and became a person "*not of high moral character and proven integrity*", so to say. Having lost those very significant qualities that were a condition precedent to render him qualified for appointment as a judge, it is unreasonable to contend that notwithstanding the fact that his trial endured beyond the date when he compulsorily retired, his conviction cannot relate backwards. That is taking a simplistic view of article 155(1) of the constitution. Such a view of the matter would defeat the foundational principles underpinning

our constitution including accountability, transparency and in particular as regards the imperatives of a judge like Caesar's wife, living above suspicion. We have to remind ourselves that the special provisions made for Justices of the Superior Courts are an acknowledgment of the very important role that we have to play in our constitutional dispensation and society expects a high standard of behavior in return as exemplified in the qualifications for office contained in articles 128(4), 136(3) and 139(4) of the Constitution. Hence the task before us requires a patient and dispassionate consideration of the various provisions of the Constitution in order to arrive at a conclusion that would advance the lofty principles enshrined in the Constitution. This calls for a purposive approach in the construction of the provisions of the Constitution under reference to us. See**:** **Ampiah Ampofo v Commission on Human Rights and Administrative Justice** [2005-2006] SCGLR, 227. Applying ourselves purposively we are of the opinion that the status of the plaintiff as a judge became severed when he was convicted for an offence, which by his own admission involved dishonesty since it was in relation to an act done while a sitting judge, the said conviction relates back to the date that the offence was committed. To contend that the effect of the conviction should be prospective and not retrospective would have the effect of persons convicted of crimes not suffering the consequences of their act. As the interdiction was justified, to give prospective effect to the conviction would deny the interdiction of legitimacy and accordingly the view of the matter inherent in the plaintiff's case is rejected.

Turning to the Amoah case (supra), it is observed that there are clearly distinguishing features that affect the applicability of the said decision to this matter. In the first place, Amoah's case did not involve the commission and conviction for a crime involving dishonesty that strikes at the fundamental qualification required of a judge of the High court in terms of article 139 (4) of the Constitution. Then there is the fact that in that case although the process of impeachment was initiated by the appointment of a committee to inquire into the allegations made against him, the committee never proceeded to deal with the mater for a considerable period before the judge compulsorily retired. It was

clearly noted in the said judgment that at particular times before the judge proceeded on compulsory retirement there was deficiency in the composition of the committee but nothing was done by the authorities to ensure that a proper body was put in place to undertake the constitutional process of impeachment. Unlike the situation before us, Amoah was not convicted and stripped of fundamental qualities required of a judge in terms of article 139 (4) and as such his status as a Justice of the Superior Court remained intact when he retired.

In regard to section 298 of the Criminal Offences (Procedure) Act, it was contended by the defendants that the absence of an order by the learned trial judge who presided over the conviction and sentence of the plaintiff to make specific orders declaring his office vacant and forfeiting his pension, entitles him to receive pension and gratuity. We are of the contrary opinion as from the moment he was convicted, the plaintiff no longer had the status of a Justice of the High Court such as to enable him benefit under article 155 (1) of the Constitution. We are of the firm opinion that section 298 of Act 30 is inapplicable to a Superior Court Judge who finds himself in the unfortunate position of the plaintiff. But as the conviction of the plaintiff was subsequent to his retirement, no such orders could have been made by the learned trial judge after his conviction. A person who has retired cannot have his office declared vacant as the very act of retirement implies that he is no longer at post. The use of the word "and" after "shall forthwith become vacant" and before "a pension, superannuation, allowance or entitlement shall forthwith determine and be forfeited from the date of the conviction" clearly inform us that the orders contemplated under section 298 of Act 30 are to be made only in relation to serving officers, which the plaintiff unfortunately was not at the date of his conviction.

In view of the above, our response to the second question which arises by implication under article 155 (1) concerning the plaintiff's conviction after retirement and his entitlement to pension is that he is not entitled to gratuity and pension.

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

AKUFFO (MS), CJ: -

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC

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

ATUGUBA, JSC:-

I agree with the conclusion of my brother Gbadegbe, JSC

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

ADINYIRA, JSC: -

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC

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

DOTSE, JSC: -

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC

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

AKOTO-BAMFO (MRS), JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC..

V. AKOTO-BAMFO (MRS)
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Gbadegbe, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

THOMAS HUGHES FOR THE PLAINTIFF.

DR. E.I. KORAY, CHIEF STATE ATTORNEY LED BY WILLIAM POBI, CHIEF STATE ATTORNEY FOR THE DEFENDANTS.