IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: ADINYIRA (MRS.), JSC (PRESIDING)

DOTSE, JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

PWAMANG, JSC

CIVIL MOTION
NO. J5/62/2018

29H MAY, 2019

THE REPUBLIC

VRS

HIGH COURT, (PROBATE AND ADMINISRATION DIVISION), ACCRA

EX PARTE: PATRICK AGUDEY TEYE …… APPLICANT

NOMO AGBOSU DOGBEDA AND 5 OTHERS …… INTERESTED PARTIES

RULING

BAFFOE-BONNIE, JSC:-

The applicant has brought this application before us following the High Court's ruling delivered by the High Court on a preliminary point of law raised by the said applicant. The application before us is for,

a. An Order of Certiorari to quash the ruling of the High Court, Probate & Administration Division, Accra, dated 10th May, 2018 in suit No. GJ1845/17 and,

b. An Order of prohibition against the High Court from entertaining, hearing or determining the suit No. GJ1845/17 commenced by originating motion on the 14th December, 2017;

Attached to the application was a 24-paragraph affidavit. The grounds for the application are as follows:

1. The High Court, Accra lacks jurisdiction to entertain or determine the Motion/Application filed by the 1-5th. Interested parties herein to set aside the arbitral award dated 29th March, 2012 on grounds of fraud, same having been brought out of time.
2. To the extent that the application to set aside the arbitral award was brought out of the statutory prescribed time lime as circumscribed by Act 798, the High Court acted in excess of its jurisdiction by assuming jurisdiction to entertain the application.
3. Suit No.GJ1845/17 was commenced pursuant to the wrong provision of law, that is, section 58 of the Alternative Dispute Resolution Act, 2010 (Act 798) rather than section 112 of the same Act.

For ease of appreciation of this ruling let us give a background of this application.

There was a long-standing dispute in Ada between two gates, the Da Gate and the Ablaokorm Gate as to which of the said two gates is entitled to nominate and install the Mankralo of Ada in the Greater Accra Region.

Over the years attempts at resolving the dispute by various committees proved futile. Finally, on the recommendation of the Ada Traditional Council, the parties

submitted to a customary arbitration in respect of the dispute, paid requisite fees, participated fully and on the 29th of March, 2012, an arbitral award was delivered and same was registered at the High Court, Tema. The award was to the effect that, the Mankralo position should be ascended to by the Da gate and the Ablaokorm gate in rotation commencing with the Da gate. The Award indicated therefore that the Da Gate which had, the applicant herein, as its Mankralo candidate was to install the next Mankralo of Ada as opposed to the Ablaokorm Gate which had the 6th interested party as its Mankralo.

The 6th interested party herein, together with some elders of the Ablaokorm gate, filed a petition at the Ada Traditional Council praying to set aside the Customary Award. The applicant herein filed an application seeking to set aside the said petition but same was dismissed by the Judicial Committee of the Ada Traditional Council. The applicant herein and two others brought Judicial Review proceedings at the High Court, Tema, to quash the ruling dismissing the application and to prohibit the Judicial Committee of the Ada Traditional Council from hearing the petition.

The High Court, Tema, granted the application for judicial review and quashed the ruling of the Judicial Committee, and prohibited the Judicial Committee from hearing the petition brought before it. This was on 4th June 2013. In the said ruling ruling, the High Court determined that,

a. There had been a valid customary arbitration submitted to by the parties resulting in an award delivered on the 29th March, 2012.

b. The Customary Arbitral Award had determined the Ada Mankralo issue in favour of the applicant's gate and same was valid and subsisting.

c. That, the Arbitral Award operates as a final, binding and conclusive decision from which no party had the right to rescind.

The 6th interested party, together with the said elders from the Ablaokorm gate filed an appeal against the decision of the High Court, Tema, but same was dismissed by the Court of Appeal per its judgement dated the 24th of July, 2014. The judgment of the Court of Appeal was not appealed against, and the applicant has subsequently been admitted into the Ada traditional Council as the Mankralo of the Ada State under the name NENE AGUDEY OBECHERE III.

The 6th defendant and some elders of the Ablaokorm gate again issued a Writ of Summons seeking to set aside the Arbitral Award but the writ was struck out by the High Court. Subsequently, some elders of the Ablaokorm Gate filed an application before the High Court seeking to set aside the Customary Award. Again, this was dismissed on grounds of law including the fact that the applicants had not filed the application within the statutorily prescribed time limits.

Notwithstanding the pronouncements of the High Court and Court of Appeal as to the validity of the customary arbitration and award delivered on the 29th March, 2012, in another attempt at frustrating the applicant herein from performing his duties as Mankralo of the Ada State, the 1st -5th interested parties herein, purporting to be heads of some gates of Korgbor, sued out a writ of summons and statement of claim against the applicant herein, in the High Court on the 2nd of June, 2017 seeking among other reliefs, an order setting aside the customary award dated 29th March, 2012. Upon application by the applicant herein, the High Court struck out the writ of summons in its ruling dated 31st July, 2017.

It was after all these applications and rulings that the 1st – 5th interested parties, by an originating motion, mounted an action in the High Court, on 14th December,

2017, seeking an order to set aside the arbitral award dated 29th March, 2012 on a number of grounds, including fraud. The applicant herein, filed an opposition to the motion and additionally raised a preliminary legal objection to the motion filed by the 1st – 5th interested parties herein on the grounds that;

i. The application by the 1st – 5th interested parties was brought out of the statutorily prescribed time period so same is incompetent.

ii. The applicants are not parties to the arbitration, and do not have the locus standi to bring the application.

In a ruling delivered on 10th May 2018, the High Court dismissed the preliminary legal objection as unmeritorious and decided to determine the application on its merits. It is the ruling delivered by the High Court on the preliminary objection raised by the self-same applicant herein, that the applicant is seeking to quash on the grounds that,

a. In the first instance the 1st – 5th interested parties brought the motion in suit No. GJ1845 under the wrong provision of law, the High court and the Court of Appeal having adjudged the Award to be a valid Customary Award; and

b. the High Court acted in excess of its jurisdiction when it dismissed the preliminary legal objection and decided to assume jurisdiction over the application that was before it in complete disregard of the provisions of the alternative Dispute Resolution Act, 2010, (Act 789) relating to time limits for applications of such nature.

I must state that the narration of the facts as recounted here is that given by the applicant. The narration of the facts and events by the respondent is slightly different. However, as it will be presently demonstrated, the accuracy or otherwise

of the facts as recounted, is not germane to the resolution of the application before us.

The applicant has brought this application pursuant to Article 132 of the constitution and Rule 61 of the Supreme Court Rules, 1996 C.I. 16

Article 132 reads

132. The Supreme Court shall have supervisory jurisdiction over all courts and 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 supervisory power.

Rule 61 on the other hand provides;

61(1). An application seeking to invoke the supervisory jurisdiction of the Court under Article 132 of the constitution shall be by motion on notice as specified in the Form 29 set out in Part IV of the Schedule to these Rules and shall be filed with a copy of the decision against which the application is sought and accompanied by an affidavit.

It is pursuant to these provisions that the applicant has invoked our supervisory jurisdiction seeking to quash by way of certiorari, the ruling and orders of the High Court dated 10th May 2018 in suit No GJ 1845/17.

HAS OUR JURISDICTION BEEN PROPERLY INVOKED?

The first question that we asked ourselves is; In view of the facts upon which the applicant has mounted his application, has our jurisdiction been properly invoked?

Without seeking to encase our answer in any legal niceties, it is our view that the answer is No! What exactly is the applicant asking this court to quash by a writ of certiorari? Is it the ruling delivered by the learned trial judge on the preliminary point of law he raised, or the originating motion issued by the interested party in the instant proceedings? If it is the ruling of the High Court Judge that we are being

asked to quash, what is the basis for this request? Is the applicant saying that the trial High Court did not have jurisdiction to pronounce on a point of law that he himself had raised, or that he is dissatisfied with the judge's pronouncement on the preliminary objection?

There is abundant case law on the subject as to when and how the supervisory jurisdiction of this court in the form of certiorari can be invoked. In the case of **Republic v High Court, Accra; Ex parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003 – 2004] 1 SGLR 312,** our esteemed brother Dr. Date-Bah JSC noted, (as stated in holding (4) of the headnote at page 316 that;

> *"where the High Court…has made a non-jurisdictional error of law, which was not patent on the face of the record…the avenue for redress open to an aggrieved party was an appeal, not judicial review. Therefore, certiorari would not lie to quash errors of law which were not patent…An error of law made by the High Court…would not be taken as taking the judge outside the court's jurisdiction, unless the court had acted ultra vires the Constitution or an express statutory restriction validly imposed on it."*

On the same -subject-matter, the Supreme Court **in Republic v High Court, Accra; Ex Parte Industrialisation Fund for Developing Countries [2003-2004]1SCGLR 348** held (as stated in holding (1) of the headnote) that;

> *"Certiorari is a discretionary remedy which would issue to correct a clear error of law on the face of the ruling of the court; or an error which amounts to lack of jurisdiction in the court as to make a decision a nullity. In the case of errors of law or fact not apparent on the face of the ruling, the avenue for redress is by way of an appeal."*

In this case, the applicant is praying for an order of Certiorari not because the trial judge did not have jurisdiction to give a ruling on the matter but that he is dissatisfied with the ruling. This may be a ground of appeal but definitely not a ground for certiorari. The judge might have erred in his appreciation of the facts and the conclusions drawn from them. If that is the case, it would not be an

egregious error on the face of the record to be cured by certiorari. Where a judge has jurisdiction, he has jurisdiction to be wrong as well as to be right and the corrective machinery to a wrong decision in the opinion of a party is an appeal: see **Republic v High Court, Kumasi; Ex parte Fosuhene [1989-90] 2 GLR 315.**

We would therefore reiterate the famous words of our learned sister Georgina Wood JSC (as she then was) in the case of **Republic v Court of Appeal; Ex parte Tatsu Tsikata [2005-2006] SCGLR 612 at 619** that;

"The clear thinking of this court is that, our supervisory jurisdiction under article 132 of the 1992 constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors either go to the jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of law alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter."

Even though from the motion paper the applicant is seeking to quash the ruling delivered by the judge on the 10th May 2018, the arguments canvassed in his statement of case, do not address this at all. He argued as if he was seeking to quash the originating motion, on the grounds of procedural impropriety and also in breach of some specific time lines. Even when respondent's counsel tried to draw his attention to this obvious flaw in his statement of case, the applicant's counsel still never addressed this basic issue of whether the court's jurisdiction had been properly invoked in his statement of case in response.

Indeed in the statement of case attached to the application this is what the applicant said at page 3;

"On the 10th of March 2018, the High Court dismissed the preliminary objection and issued instructions for an Application for Directions to be filed which has been done. **It is in consequence of the dismissal of the objections raised that the Applicant herein has brought the instant application seeking orders of certiorari and prohibition.**

GROUNDS

Before the originating application was moved the Applicant raised a preliminary objection before the honourable Court. The Honourable Court heard submissions from Counsel on **the preliminary objection** and the **instant submissions are supplementary to the arguments so far on the preliminary objection." (emphasis added)**

The applicant is seeking an order of certiorari to quash the ruling of the High Court, Probate and Administration Division, Accra dated 10th May, 2018 in suit No. GJ 1845/17. To our mind counsel for the applicant in such applications to invoke the supervisory jurisdiction of the Supreme court ought to focus on the ruling or orders that he seeks an order to quash. The gravamen of the instant application concerns the ruling of the High Court, dated 10th May, 2018 and not the originating motion on notice to set aside arbitral award on grounds of fraud and the section under which the said motion was commenced.

The law is well settled that in an application founded on the court's supervisory jurisdiction, the court must confine or restrict itself to the decision or ruling complained of and not the substance of the suit.

If this court restricts or confines itself to the ruling complained of, as we are obliged to do, and not whether or not suit No. GJ 1845/17 was commenced pursuant to wrong provision of law, that is, section 58, rather than section 112 of the Alternative Dispute Resolution Act 2010 Act 798, we find that it does not constitute an error going to the wrong assumption of jurisdiction to make the ruling of the High Court Probate and Administration Division dated 10th May 2018, a nullity.

In the case of **Republic vs. High Court, Accra ex-parte Soku & Another [1996-1997] SCGLR 525 @ 526,** the Supreme Court delivered itself as follows; Holding 2

> *"Where there was a claim that there was an error of law appearing on the face of the record of a superior court such as the instance case-warranting intervention by the exercise of the Supreme Court's supervisory jurisdiction – it must be such an error going to the wrong assumption of jurisdiction as the error was so obvious as to make the decision a nullity."*

The ruling or the High Court, Probate and Administration Division dated 10th May, 2018, which is the subject matter for this application for judicial review, does not turn on which section of the ADR Act, Act 798, 1st to 5th respondents ought to have commenced their action by.

The preliminary legal objection was heard and determined by the court acting within its jurisdiction. In such a case a decision made becomes a subject of appeal rather than certiorari. The correctness or otherwise of the ruling of the Probate Division of the High Court should be a matter of appeal. In **Republic vs High Court, Accra ex parte Asakum and Engineering and Construction Limited and others [1993-1994] 2 GLR 643** the court noted as follows;

"The grounds upon which a superior court would in the exercise of its supervisory jurisdiction issue certiorari to quash the decision of an inferior court or tribunal were that the inferior court or tribunal had acted without or in excess of jurisdiction or breached certain conditions on the administration of justice or that there was error apparent on the face of the record which was such as to make the decision a nullity. Consequently, where the inferior court had jurisdiction and there was no error on the face of the record as to make the decision a nullity, the superior court would not grant an order of certiorari on the ground that it had misconceived a point of law. The correctness or otherwise of the decision of the lower court or tribunal was in that case only a matter of appeal."

If practitioners were to appreciate the obvious sense in this statement, we are sure many of the applications inundating this court and invoking the supervisory jurisdiction of this court will not be brought.

It is our view that the application for certiorari before the court is misconceived. For emphasis we wish to repeat what we said earlier in this ruling,

"Where a judge has jurisdiction, he has jurisdiction to be wrong as well as to be right and the corrective machinery to a wrong decision in the opinion of a party is an appeal": Republic v High Court, Kumasi; Ex parte Fosuhene (supra)

The applicant is obviously in the wrong forum, seeking the wrong reliefs. The application is therefore REFUSED.

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

ADINYIRA (MRS.), JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

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

DOTSE, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

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

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

I agree with the conclusion and reasoning of my brother Baffoe-Bonnie, JSC.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWESI AUSTIN FOR THE APPLICANT.

EDWARD SAM CRABBE FOR THE INTERESTED PARTIES/RESPONDENTS.