IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

CORAM: DOTSE, JSC (PRESIDING)

BENIN, JSC

PWAMANG, JSC

DORDZIE (MRS.), JSC

AMEGATCHER, JSC

CIVIL APPEAL
NO. J4/74/2018

19TH JUNE, 2019

JAMES DAVID BROWN ……. PETITIONER/APPELLANT/APPELLANT

VRS

1. THE NATIONAL LABOUR COMMISSION ……. 1ST RESPONDENT/RESPONDENT RESPONDENT
2. AHANTAMAN RURAL BANK LTD. ……. 2ND RESPONDENT/RESPONDENT/ RESPONDENT

JUDGMENT

AMEGATCHER, JSC:-

It is not usual for labour petitions determined by the National Labour Commission (hereafter referred to as NLC) in favour of a petitioner to end up at the instance of the

victorious party, first on appeal to the Court of Appeal and then to the apex court of the land. The sudden awakening and consciousness of Ghanaians in the fight for their rights appears to have propelled the Appellant, who is a junior officer in one of the rural banks in the Western Region of the country, in spite of all odds, to challenge the decision of his management, the National Labour Commission and the Court of Appeal all the way to the apex court of the land. What makes the appellant's steps even more intriguing is the fact that he acted throughout the various stages of this fight in the Court of Appeal and now the Supreme Court as a litigant in person. We commend the appellant for his bravery and perseverance but also wish to caution that in highly technical matters that require expert advice, a balance of self-help with professional advice is necessary to avoid a gamble, sometimes with its attendant repercussions.

THE FACTS

The appellant, until 29th June 2016, was a chief clerk in the Audit and Compliance department of Ahantaman Rural Bank Ltd (hereafter referred to as the Respondent). On 16th June 2016, the appellant abandoned midway and without permission, a bus carrying the bank's staff to Achiase for a boot camp/bonding training. The bank held a disciplinary enquiry to investigate his conduct. The result of the enquiry was the termination of his appointment for gross misconduct. He was paid one (1)-month's salary in lieu of notice in accordance with the respondent's Collective Bargaining Agreement.

Dissatisfied with the decision of the management of the bank terminating his appointment, the appellant on 1st July 2016 petitioned the NLC for redress. The

Commission has for some whimsical reasons been added as a party in the appeal to the Court of Appeal and then to this Court and described as 1st respondent. We shall address the propriety of adding the NLC as a party in due course.

After hearings spanning between 16th August 2017 and 20th September 2017, the NLC found that the respondent had unfairly terminated the appointment of the appellant in breach of sections 62 and 63 of the Labour Act, 2003 (Act 651). The NLC awarded the appellant compensation of three (3)-months' salary devoid of tax. The appellant was dissatisfied with the compensation awarded by the NLC and filed an appeal to the Court of Appeal. The actual date for filing the appeal is not evident from the Record. The filing date is illegible on the Notice of Appeal. However, page two of the Notice of Appeal gave the only hint of the filing of the Notice. The hint is that the Notice was prepared on 9th October 2017 indicating the appeal could only have been filed after 9th October 2017. The appellant, in his Statement of Case to this Court, did not dispute this date after the Court of Appeal relied on the same date to calculate when the appeal was filed.

PROCEEDINGS AT THE COURT OF APPEAL

The appellant argued two grounds of appeal in the Court of Appeal, i.e., that the NLC erred in law when it held that the bank had already paid all his entitlements and, secondly, that the decision was against the weight of evidence. The Court of Appeal delivered its judgment on 1st March 2018. It dismissed the appellant's appeal not on the

merits of the grounds of appeal filed before it but on two technical grounds. The Court of Appeal, at pages 178-179 of the Record found in the first place as follows:

"We have examined the jurisdiction of this Court to entertain an appeal from a decision of the Labour Commission in respect of unfair termination and the consequential orders made under it. Jurisdiction of a court means the power of the Court to adjudicate. Every jurisdiction is created by either the Constitution or Statute and, therefore, where jurisdiction has not been created by the Constitution or Statute, a court of law cannot assume it... From section 134 of the Labour Act (Act 651) (sic)**, the only appellate jurisdiction conferred on the Court of Appeal against the decision of the Labour Commission is in respect of order, direction or decision made in respect of unfair labour practices. The appeal to this Court is against the decision of the Labour Commission in respect of unfair termination which jurisdiction has not been conferred on the Court."**

On the second technical ground, the Court of Appeal held at page 180 of the Record as follows:

"The appeal before this Court was not in respect of unfair labour practices and if it were so, it would still have been a nullity. An appeal against a decision, order or direction of the Labour Commission shall be filed within fourteen days from the date of the making of the order, direction or decision. The Labour Commission delivered its judgment on 20th September, 2017 and the appellant prepared his Notice of Appeal on 9th October, 2017. There is no

indication as to the time within which the Notice of Appeal was filed but there is evidence that it was prepared on 9th October, 2017, that is 19 days after the decision was rendered by the Commission and would have been void even where the appeal was against unfair labour practices which the Court of Appeal is seised with appellate jurisdiction... The Notice of Appeal filed by the Appellant and all the subsequent processes founded on them are nullity."

Based on the conclusion reached above, the Court of Appeal determined the appeal against appellant.

APPEAL TO THE SUPREME COURT

The appellant on 19th April 2018 lodged the current appeal against the judgment of the Court of Appeal to this court on two grounds namely:

1. **The sitting judges misconstrued section 63(4) of the unfair termination of the Labour Act with or to be the same as sections 127, 133 and 134 of the unfair labour practices of the Labour Act** (sic)**.**
2. **The sitting judges erred in law when they held that the Appeal Court has no jurisdiction on unfair termination.**

PROPRIETY OF ADDING NATIONAL LABOUR COMMISSION AS A PARTY

Before proceeding to deal with this appeal, we would question the propriety of adding the NLC as a party in these proceedings. The genesis of this case was a petition submitted to the NLC by the appellant dated 1st July 2016. The petition requested the NLC to intervene in the appellant's unlawful termination and grant him appropriate redress. From the Record, the appellant appeared at the hearing of his petition as the complainant and Ahantaman Rural Bank Limited as the respondent. The NLC acted as the tribunal, which heard the petition and delivered its decision on 20th September 2017. It was the Notice of Appeal, which the appellant filed at the Court of Appeal, dated 9th October 2017 appearing at page 50 of the Record, which named the NLC as 1st respondent and Ahantaman Rural Bank Ltd as 2nd respondent. This description of the parties appeared subsequently in all the proceedings filed by the parties before the Court of Appeal. It also appeared on the Notice of Appeal to this court and on all the submissions filed by the parties in this court.

We have examined the proceedings and the law. We do not think there was any legal justification for adding the NLC as a party and describing it as 1st respondent in these proceedings. We have therefore, exercised the powers vested in this court under Article 129(4) of the Constitution and the rules of court to make the appropriate orders. Article 129(4) allows us to exercise all the powers, authority and jurisdiction vested in any court established by the Constitution or any other law. The power under the rules of court permits us to exercise all the powers vested in any court at any stage of the proceedings either suo motu or on application, to order any person who has been improperly or unnecessarily made a party to cease to be a party. In our opinion, the

NLC has been improperly added as a party in this appeal. We, therefore, strike out the name of the NLC from this appeal and shall, hereafter, refer to the parties simpliciter as appellant and respondent.

PROCEEDINGS IN THE SUPREME COURT

At the hearing of the appeal on 12th February 2019, the panel on its own motion ordered the parties to file further submissions addressing it on one preliminary matter. This is the relevancy of Article 131(1)(b) and (2) of the 1992 Constitution and section 4(1) & (2) of the Courts Act, 1993 (Act 459) to the determination of the appeal. The court exercised the powers vested in it under rule 6(7) & (8) of the Supreme Court Rules, 1996, C.I. 16, which provides as follows:

"(7) Notwithstanding sub rules (1) to (6) of this rule the Court-

(a) may grant an appellant leave to amend the ground of appeal upon such terms as the Court may think fit; and

(b) shall not, in deciding the appeal, confine itself to the grounds set forth by the appellant or be precluded from resting its decision on a ground not set forth by the appellant.

(8) Where the Court intends to rest a decision on a ground not set by the appellant in his notice of appeal or on any matter not argued

before it, the Court shall afford the parties reasonable opportunity to be heard on the ground or matter without re-opening the whole appeal."

The parties complied with the order and filed their additional Statements of Case as directed by the court. We have considered the fact that the appellant is a litigant in person, and as part of his rights under the Constitution, is entitled to have the proceedings in this case and the judgment of this court explained to him fully and in as simple a language as possible. This, we believe, will remove any anxiety on the part of the appellant about the workings of the justice delivery system. It would also assist him to appreciate fully the laws that Ghanaians have voted to govern their affairs. We have, therefore, after a careful review of all the documents placed at our disposal, decided to deal with ground two in the Notice of Appeal, the holding by the Court of Appeal that the appellant was out of time when he filed his appeal and the preliminary matter. We do not consider the first ground to be proper since the Court of Appeal did not go into the merits of the appeal lodged before it to be faulted by the appellant on that ground.

APPEAL TO THE COURT OF APPEAL FROM THE DETERMINATION OF THE NLC ON UNFAIR TERMINATION

The appellant petitioned the NLC under section 64 of the Labour Act, which provides that a worker who claims that his employment has been unfairly terminated under section 63 of the Act may present a complaint to the NLC. After investigations, the NLC may, among other remedies order re-instatement, order re-employment in the same or similar position, or payment of compensation.

In the case of unfair labour practice, the Labour Act mandates the NLC to investigate and determine complaints of unfair labour practice and make appropriate orders. Sections 127, 128, 129, 130, 131, 132 and 133 of the Labour Act defines unfair labour practices as discrimination, intimidation, dismissal or threatened dismissal of any worker because of his membership or holding of office of a trade union; or any act calculated to prevent a worker from joining, continuing his membership or holding office of a trade union. Thus, an employer who, by use of threats, intimidates his or her workers during negotiations for collective bargaining agreement is guilty of unfair labour practice. Further, an employer who takes part in the formation of a trade union, or with the intention of adversely influencing a trade union, contributes, in money or money's worth, to that trade union, is guilty of unfair labour practice. If an employer, after not less than twenty-four hours' notice, fails to allow any officer of a trade union whose members include any of his or her workers reasonable facilities and time to confer with the employer or its workers on matters affecting the members of the trade union, it is guilty of unfair labour practice. The guilt does not end only on the side of the employer.

On the part of the workers, a worker or group of workers who intimidates an employer during negotiations for collective bargaining is guilty of unfair labour practices. Any activity carried on by a worker intended to cause serious interference with the business of his or her employer that may result in financial loss, constitutes unfair labour practice. Any attempt by an officer of a trade union to persuade, induce or confer with a worker not covered by collective agreement, during normal working hours and without the consent of the employer, to become a member or an officer of a trade

union constitutes a breach. Equally so, a worker who confers on trade union matters while the worker is on the premises of his or her employer commits an unfair labour practice.

The NLC performs administrative and executive functions, in addition to its function to settle industrial disputes. It is neither chaired nor composed of judges. Yet it adjudicates cases. Adjudication is simply the legal process of resolving disputes. One, therefore, could describe the NLC as a court. This description fits into Article 295 of the Constitution, which defines a "court" to mean a court of competent jurisdiction established by or under the authority of this Constitution and includes a tribunal. This makes the NLC's work of adjudicating disputes a quasi-judicial one. Thus, in exercise of its quasi-judicial functions, the Labour Commission is not only a commission established by law, but also a tribunal or an adjudicatory body.

One of the orders the NLC is required to make as a tribunal is relevant for the purposes of this appeal. It is in section 133(2) and (4) of the Act, which provides as follows:

133 (2) Where the Commission finds that a person has engaged in an unfair labour practice under section 127 which involves the termination of employment of a worker, the alteration of his or her employment or of the conditions of his or her employment, the Commission may, if it considers fit, make an order requiring the worker's employer

(a) to take such steps as may be specified in the order to restore the position of the worker; and

(b) to pay to the worker a sum specified in the order as compensation for any loss of earnings attributed to the contravention.

(4) For the purposes of enforcing an order of the Commission under this section, the order shall have effect as if it were made by the High Court.

The concept of unfair termination as provided for in section 63 of the Act is very different from unfair labour practice in sections 127-133 of the same Act. Admittedly, penalising a worker in the form of terminating his employment because of his involvement in trade union activities constitutes an offence of unfair termination as well as unfair labour practice. However, the scope of unfair termination is much broader than mere union activities.

Unfair termination covers complaints against employers for breaches of the terms and conditions of employment in relation to the worker specifically where the employer had acted unreasonably or cannot show any justifiable reasons for the termination. Examples are termination on grounds of pregnancy and maternity leave, disability, gender, religion, political persuasion and the like. However, unfair labour practice is limited to issues such as discrimination, threats and dismissal among others arising from labour union activities and no more. The remedy open to an aggrieved person dissatisfied with a determination by the NLC in unfair labour practice is to appeal to the

Court of Appeal. Regrettably, in the case of unfair termination under section 63, no remedy was provided for a dissatisfied party. It is the failure on the part of the lawmaker to provide a remedy for a party dissatisfied with the decision of the NLC in petitions for unfair termination, which created the confusion. Out of this uncertainty, the Court of Appeal in its judgment held that it had no jurisdiction to deal with the appeal lodged by the appellant.

We have reviewed the entire provisions of the Labour Act, especially the remedies available to dissatisfied parties after a determination by the NLC. Under sections 134 and 167(2) of the Act, the Court of Appeal is given power to hear appeals from determination of the NLC in unfair labour practice cases and compulsory arbitration awards. For some unexplained reasons, in other provisions of the same Act where the NLC is required to make a determination, no remedy is provided for a dissatisfied party. The presumption then would be that the NLC's decision in those provisions is either final or one could appeal to the High Court. However, the NLC, being a lower adjudicating body, cannot have its decisions clothed with finality. Its decisions are and would continue to be subject to the supervisory jurisdiction of the High Court in cases falling within the purview of Judicial Review. It would also be subject to the appellate jurisdiction of the courts in final decisions determined on merit. Even in those provisions such as section 65(5) where the NLC's decision is stated to be final, this court in the case of **Republic v High Court Accra (Industrial Labour Division) Ex-parte Peter Sangber-Dery & ADB Bank Ltd, Civil Motion N^{o} J5/53/2017 dated 26th July, 2017 (unreported)** cited with approval Viscount Simmons dictum in the English

case of **Pyx Granite Co Ltd v Ministry of Housing & Local Government [1960] AC 260 at 286-287** and held that a statutory remedy cannot clothe a lower adjudicatory body with finality in its decisions and thus, whittle down the citizen's right to have recourse to the courts. In the Pyx Granite's case, under the Town and Country Planning Act, 1947 a quarry company was granted permission to mine only a portion of the local authority's freehold land but placed restrictions on its operations in respect of other portions. A party required the permission of the local authority before he can carry out mining activities. Section 17 of the Act provided that where there was a dispute if 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. The House of Lords per Viscount Simmons at pages 286-287 held as follows:

"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.

In determining the court to exercise appellate jurisdiction over NLC decisions where no provision is made in the Labour Act the general rule is that the High Court of Justice exercises original jurisdiction in all matters including appeals from lower courts and adjudicating bodies as was in the Pyx Granite's case (supra). However, sometimes, in the wisdom of Parliament, the appellate jurisdiction over determinations of a lower adjudicating body is exercised by some other court other than the High Court. In such situations, clear and specific provision is made in the law. A few examples would suffice for our purposes. In the Legal Profession Act, 1960 (Act 32), decisions of the Disciplinary Committee of the General Legal Council imposing disciplinary sanctions on a lawyer is made appealable to the Court of Appeal. Again, in the Medical and Dental Act, 1972 (NRCD 91), a medical practitioner against whom a disciplinary measure determined by the Disciplinary Committee of the Medical and Dental Council is to be applied could appeal to the Court of Appeal against the determination. Another express provision is found in the Professional Bodies Act, 1973 (NRCD 143) where decisions of the Registrar in applications for registration as a Professional Body were made appealable to the Court of Appeal.

The question is why should Parliament in the Labour Act provide remedies for some determinations by the NLC and fail to provide for others? Are there provisions which are more important than others are? We do not think that it was the intention of the lawmaker to grade some determinations as more important than others or downplay some sections of the Act as insignificant. In our opinion, in formulating the appellate remedies in the Labour Act, Parliament inadvertently omitted to make provisions for the

court a dissatisfied party should appeal to after a determination by the NLC in other labour issues in the law. Examples of sections affected by the omission are sections 55(3), 56(3), 64, 65(5), 70(4), 77(6) and 170(3) of the Labour Act. Accordingly, while considering our role not to overstep the functions of Parliament as the lawmaker, we must state emphatically that where in a legislation a gap left by the lawmaker will work manifest injustice to a party, the courts would not gloss over that error in the name of the supremacy or the sovereignty of Parliament to make laws. After all, the lawmakers are also human beings subject to all the frailties and failings of man. Finding ourselves at this crossroads, it would be the responsibility of this court to construe the legislation purposively and in a way that will address the omission, avert a denial of justice and enhance the realisation of a constitutional right. No citizen should suffer for the mistakes of Parliament.

Thus, in the case of **Quartson v Quartson [2010-2012] 2 GLR 481**, the 1992 Constitution provided that Parliament shall, as soon as practicable after the coming into force of the Constitution, enact legislation regulating the property rights of spouses so that spouses shall have equal access to property jointly acquired during marriage on dissolution of the marriage. Fifteen years after the promulgation of the Constitution, Parliament had not passed the legislation. The appellant, whose right having accrued in the divorce matter between her and her husband, argued in the Court of Appeal that the sins of Parliament in failing to pass the legislation should not be visited on her. The Court of Appeal held that because Parliament had failed to enact a law to regulate the distribution of jointly acquired property as mandated by the Constitution, 1992, the

appellant should bear the brunt of the inaction of Parliament. On further appeal to the Supreme Court, the court unanimously held at page 492 that:

"[A] country's democratic development and the realization of the rights of the citizenry cannot be stunted by the inaction of Parliament. We do not think that this court is usurping the role of Parliament, especially in cases where the inaction of Parliament results in the denial of justice and delay in the realization of constitutional rights."

With the manifest intentions of Parliament clearly expressed in other legislations such as the Legal Profession Act, the Medical and Dental Act and the Professional Bodies Act where the Court of Appeal is given appellate jurisdiction to determine appeals from all decisions of those adjudicatory bodies, we find it odd for the lawmaker to have intended different courts in the same piece of legislation to assume appellate jurisdiction over NLC determinations in different sections of the Labour Act. It would accord more with the mode of operation of the Legislature and common sense to assign the appellate jurisdiction in all determinations by the NLC in the Labour Act to one court. Accordingly, based on the provisions already made by Parliament that the Court of Appeal shall determine appeals from determinations of the NLC in unfair labour practice matters and awards in compulsory arbitration cases, we formulate our opinion as follows: wherever in the Labour Act, the NLC is required to make a determination and no remedy is provided for the aggrieved party, a dissatisfied party shall be entitled to appeal within 14 days of the making or giving of the order, direction or decision to

the Court of Appeal. This is in consonance with similar provisions made by the lawmaker. The implications of this opinion is that ground two of the appellant's appeal is allowed.

TIME LIMIT FOR APPEALING FROM THE DETERMINATION OF THE NLC TO THE COURT OF APPEAL

Apart from appeals from interlocutory decisions where the time limit prescribed by the Rules is 21 days, generally, appeals from final decisions of the Circuit Court and High Court to the Court of Appeal is as of right and must be filed within three months from the date of the decision. After the expiration of the first three months, a party has another window of three months within which to appeal but with leave of the Court. Parliament, in its wisdom, decided to limit the time in specific legislation where a right of appeal to the Court of Appeal is given. In the Legal Profession Act, section 21 provided a time limit of 21 days from the date of the decision. In the Professional Bodies Act, a time limit of one month and 21 days is provided for appeals to the Court of Appeal from different determinations of the Registrar. It is not surprising that the lawmaker again in providing the time limit for appeals from the determination of the NLC limited the time to 14 days in the case of appeals from a determination on unfair labour practice and 7 days in the case of arbitration awards from compulsory arbitration.

The Court of Appeal held that even if the appellant's appeal was properly lodged before it, the appellant was caught by the 14 days' limitation period prescribed by the statute for filing an appeal. The basis for the Court of Appeal's conclusion was that the appellant's appeal was prepared 19 days after the NLC's determination and filed subsequent to that date. The law is clear on the matter. Where Parliament has provided a time limit within which an act should be performed, the time must be strictly adhered to unless in the same legislation, a window is provided for extension. In our opinion, the construction given to section 134 of the Labour Act by the Court of Appeal and the findings that the appeal lodged by the appellant to it was outside the 14 days limitation prescribed is sound in law and unassailable. Accordingly, it is our opinion that the appeal filed by the appellant to the Court of Appeal from the determination of the NLC is incompetent and, therefore, a nullity. The Court of Appeal was right in dismissing the appeal on that ground.

WHETHER APPEAL FROM A DETERMINATION BY THE NLC TO THE COURT OF APPEAL REQUIRES LEAVE OR COULD BE FILED AS OF RIGHT.

We now come to the preliminary matter raised suo motu by the court. The fundamental issue to the determination of this appeal is the relevance of Article 131(1) (b) and (2) of the 1992 Constitution and section 4(1) & (2) of the Courts Act, 1993 (Act 459). The appellate jurisdiction of this court is triggered when a party before it satisfies the stringent requirements of Article 131 of the Constitution. The same constitutional provision is replicated almost verbatim in section 4 of the Courts Act, 1993 (Act 459).

For the sake of brevity, we shall limit ourselves in this judgment to the provisions of the Constitution.

Article 131(1) and (2) is reproduced in full below:

> **(1) An appeal shall lie from a judgement of the Court of Appeal to the Supreme Court-**
>
> > **(a) as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or**
> >
> > **(b) with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.**
>
> **(2) Notwithstanding clause (1) of this article, the Supreme Court may entertain application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly.**

The framers of the Constitution have provided three different ways to lodge an appeal to the Supreme Court. These are appeal as of right, appeal with leave of the Court of Appeal and special leave to appeal obtained from the Supreme Court.

Appeal as of Right

Under Article 131(1)(a), a party can file an appeal as of right from the Court of Appeal to the Supreme Court if he can satisfy the following requirements:

i. The appeal is in respect of a civil or criminal cause or matter.
ii. The appeal has been brought to the Court of Appeal from the judgment of the High Court or a Regional Tribunal.
iii. The High Court was exercising its original jurisdiction.

The current appeal clearly does not satisfy the requirements above because it did not emanate from the High Court to the Court of Appeal in the exercise of its original jurisdiction. An appeal, therefore, could not be filed as of right in this case as the appellant purported to do. Our understanding of the appellant's submission is that because the NLC under sections 133(4) and 139(2) & (3) of the Labour Act has the powers of the High Court in respect of enforcing the attendance and examining witnesses, compelling the production of documents and privileges and immunities pertaining to proceedings in the High Court, the NLC should be equated to a High Court.

As already discussed above, the lawmaker for very good reasons made appeals from decisions of certain tribunals and adjudicatory bodies directly to the Court of Appeal and

not the High Court. The implications of that line of reasoning by the appellant would mean that any tribunal or adjudicatory body which is vested with the power of the High Court to summon witnesses and the production of documents or whose decision is appealable to the Court of Appeal automatically assumes the status and power of a High Court. In our opinion, this reasoning is not only absurd but would defeat the manifest intentions of the legislature. To illustrate this point, a reference to clause 2 of Article 280 of the 1992 Constitution is apt. It provides that:

"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."

Evidently, the intention expressed by the framers of the Constitution in formulating this provision is to make a report of a commission of enquiry to "be deemed" to be a judgment of the High Court, and thus have the effect and consequences of it, more particularly for a subsequent appeal to lie as of right to the Court of Appeal. In other words, it is not the fact of an appeal to the Court of Appeal from an adverse finding of a commission of enquiry under Article 280 of the Constitution, which makes the report a High Court judgment. It is the specific provisions added to the Article that the report shall be deemed to be a judgment of the High Court. Interestingly, this phrase "**shall be deemed to be a judgment of the High Court"** was omitted by the legislature in

section 134 of the Labour Act, the Legal Profession Act, the Professional Bodies Decree and the Medical and Dental Act already referred to above.

It is clear that if the lawmaker had intended to equate adjudicatory bodies like the Labour Commission to the High Court in the exercise of its functions for an appeal to lie as of right to the Court of Appeal and then the Supreme Court, it would have expressly stated so. In the absence of any such clear provision, the NLC could not be deemed to be a High Court for its decisions to lie as of right from the Court of Appeal to this Court.

Appeal with the Leave of the Court of Appeal

Another way to trigger the appellate jurisdiction of the Supreme Court is by seeking leave of the Court of Appeal. In ordinary parlance, leave implies praying to the court to grant permission to file the appeal. The issue for determination boils down to this: does a further appeal to the Supreme Court from the Court of Appeal with respect to a matter emanating from the Labour Commission require leave of the court or is it an appeal as of right?

The answer is in Article 131(1)(b). Leave of the Court of Appeal arises in circumstances where a civil or criminal cause or matter started in a court lower than the High Court and the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest. The decisions of the NLC in this matter is a civil matter and, therefore, satisfies the first precondition. Since our opinion above is conclusive that the

NLC is not a High Court, but an adjudicatory body lower than the High Court, the second requirement would also have been satisfied.

In this court's decision in **Nii Kojo Danso II v. The Executive Secretary, Lands Commission; The Executive Secretary, Land Valuation Board, The Attorney-General and Joshua Attoh Quarshie; Civil Appeal No. J4/35/2017, dated 28th November 2018,** (unreported) this court in a dictum recognised that appeals which emanated from the Labour Commission require the leave of the Court of Appeal. In the words of Pwamang JSC: **"Category (ii) cases would include the determination of an appeal by the Court of Appeal against a decision of the Labour Commission under section 167(2) of the Labour Act, 2003 (Act 651). Here, the appeal to the Court of Appeal is not in respect of a judgement delivered by the High Court so though it may be a final decision, leave would be required."**

We accept the conclusion reached in the Nii Kojo Danso's case supra and adopt it as our own to support our conclusion in this matter.

Special Leave

This judgment would be incomplete without exploring an exceptional provision the law has made concerning appeals to the Supreme Court, which is the special leave. Clause 2 of Article 131 provides that notwithstanding the previous clause the Supreme Court may entertain an application for special leave to appeal to it. This means that the mandate of granting leave to appeal to the Supreme Court does not lie solely with the

Court of Appeal. The Supreme Court also can grant leave for a person to bring his appeal - see the case of **Dolphyne v. Speedline Stevedoring Co. Ltd. and another [1995-96] 1 GLR 532** where the court held that the word 'notwithstanding' meant that without being affected by the provisions of clause (1) of article 131 of the 1992 Constitution, the Supreme Court may entertain an application for special leave to appeal.

In the case of **Sarkwa v. Ahunaku [1966] GLR 244, SC** this court laid down the principle that where the rules prescribe for special leave before an appeal can be lodged, unless the special leave to appeal is granted, no appeal can be filed and if an appeal purports to have been filed against a judgment without special leave, the court should not have jurisdiction to entertain it.

Conclusion

The present appeal falls within the boundaries imposed by Article 131(1)(b) and thus, the leave of the Court of Appeal should have been sought by the appellant before it was brought. Failing to have applied for the leave of the Court of Appeal, nothing prevented the appellant from bringing an application seeking the special leave of the Supreme Court. At the end of the day, since neither the leave of the Court of Appeal nor the Supreme Court was sought before the appeal was lodged, the appellant's appeal under consideration is a nullity.

In delivering this opinion, we are mindful of the admonition placed on us by Parliament in section 10(4) of the Interpretation Act, 2009 (Act 792) that:

"A Court shall construe or interpret a provision of the Constitution or any other law in a manner

(d) **that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana**.

However, this court in the past has differentiated between mere technicalities and mandatory provisions of the law expressed in clear language. Thus, in the case of **Sandema-Nab v. Asangalisa and Others [1996-97] SCGLR 302** this court deliberated over the legal effect of rights provided in Statute and the Constitution in the same way as the rights we have been called upon to construe in this case. We reiterate the opinion of this court at page 306 as follows:

> **Now it must be appreciated that an appeal is a creature of statute and therefore no one has an inherent right to it. Where a statute does not provide for right of appeal, no court has jurisdiction to confer that right in a dispute determined under that statute. Similarly, where a right of appeal is conferred as of right or with leave or with special leave, the right is to be exercised within the four corners of that statute and relevant procedural regulations, as a court will not have jurisdiction to grant deviations outside the parameters of that statute.**

It is instructive to note that the right to appeal is a creature of statute, and not inherent. It must be conferred on a party by law. See the case of **Nye v. Nye [1967]**

GLR 76. Since this court does not have jurisdiction to grant deviations outside the parameters of statute, our opinion is the appellant's appeal is incompetent, since it was filed without following due process. Appellant failed to seek the leave of the Court of Appeal or the special leave of this court. Except on the point that the Court of Appeal does have jurisdiction to determine appeals from the NLC in determinations in unfair termination, the appeal fails and is hereby dismissed

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

DOTSE, JSC:-

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

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

BENIN, JSC:-

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

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

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

DORDZIE (MRS.), JSC:-

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

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

PETITIONER/APPELLANT/APPELLANT IN PERSON.

DAVID OWUSU TACHIE FOR THE 2ND RESPONDENT/RESPONDENT/RESPONDENT.