IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA A.D 2020

CORAM: DOTSE, JSC (PRESIDING)
BAFFOE-BONNIE, JSC
PWAMANG, JSC
MARFUL-SAU, JSC
AMEGATCHER, JSC
KOTEY, JSC
OWUSU (MS), JSC

CIVIL MOTION
NO. J7/12/2019

19TH FEBRUARY, 2020

THE REPUBLIC

VRS

HIGH COURT, ACCRA ..... RESPONDENT

EXPARTE: TSATSU TSIKATA ..... APPLICANT

1. **NII AMANOR DODOO**
2. **DR. KWABENA DUFFUOR**
3. **HODA HOLDINGS LTD.**
4. **HODA PROPERTIES LTD.**
5. **INTEGRATED PROPERTIES LTD.**
6. **ALBAN LOGISTICS LTD.**
7. **STARLIFE ASSURANCE**
8. **BOLTON PORTFOLIO LTD.**
9. **DR. KWABENA DUFFUOR II**
10. **OPOKU-GYAMFI BOATENG**
11. **PROF. NEWMAN KWADWO-KUSI**
12. **OWUSU ANSAH AWERE**
13. **EKOW NYARKO DADZIE-DENNIS**
14. **BOATEMAA KAKRA DUFFUOR-NYARKO**
15. **KOFI KYEREH DARKWAH**
16. **NANA BOAKYE ASAFU-ADJAYE**
17. **ALEX GADDIEL BUABENG ..... INTERESTED PARTIES/RESPONDENTS**

RULING

DOTSE JSC: -

The Supreme Court, in the oft quoted locus classicus case on the scope of the review jurisdiction of this court, held in the case ***of Quartey v Central Services Co. Ltd [1996-97] SCGLR 398*** as follows:-

> ***"A review of a judgment is a special jurisdiction and not an appellate jurisdiction, conferred on the court;*** *and the court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an applicant should satisfy the court that there has been* ***some fundamental or basic error which the court inadvertently committed in the course of considering its judgment, and which fundamental error has thereby resulted in a gross miscarriage of justice.*** *These principles have been stated over and over again by this court. Consequently, a losing party is not entitled to use the review process to re-argue his appeal which had been dismissed or use the process to prevail upon the court to have another or second look at his case." Emphasis*

In a well researched and written statement of case filed by learned counsel for the Applicant, Harold Atuguba in support of this review application, learned counsel stated explicitly in the concluding stages of the statement of case as follows:

> *"Rule 54 (a) of the Supreme Court Rules gives the Honourable Court power to review its decision in* ***"exceptional circumstances". Emphasis***

Again, the Supreme Court in a bid to stem the tide in the growing number of review applications that were flooding the apex court, came out with what it called a roadmap in the case of ***Arthur (No.2) v Arthur (No.2) [2013 – 2014] 569***, at pages 579 to 580, where the court stated in clear terms as follows:-

> *"We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this court under Rule 54 (a) of the Supreme Court Rules, 1996 (CI 16), to be mindful of the following we set out as a* ***road map****. It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon the circumstances of each case.*
>
> *i. In the first place, it must be established that the review application filed within time limits specified in rule 55 of C. I. 16, i.e. it shall be filed at the Registry of the Supreme Court not later than one month from the date of the decision sought to be reviewed;*
>
> *ii. That there exists exceptional circumstances to warrant a consideration of the application;*
>
> *iii. That these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench;*
>
> *iv. That these have resulted into miscarriage of justice. (it could be gross miscarriage or miscarriage of justice simpliciter).*
>
> *v. The review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench, and*

vi. The review process should not be used as a forum for unsuccessful litigants to re-argue their case" emphasis

What are the peculiar facts of this case to enable us determine whether the instant application has met the threshold indicated supra in the cases referred to supra?

The genesis of this review application takes its roots from the Ruling delivered by the ordinary bench on 7th May 2019 wherein the court unanimously held in part as follows:-

> ***"We are of the view that the application invoking our supervisory jurisdiction has been overtaken by events and the matter is therefore moot, and therefore struck out." Emphasis***

The above ruling was the response of the court to an application at the instance of the Applicant herein, Tsatsu Tsikata who sought an application of Certiorari to quash the decision of Her Ladyship Jennifer Dadzie alleging that, the decision of the High Court, had prevented him from appearing as counsel in a case pending before her. At the hearing of that application on the 7th May 2019, the court requested Harold Atuguba, learned counsel for the Applicant to react to an affidavit filed by the 1st Respondent therein which to all intents and purposes raised issues of mootness among others. This was to the point that the parties being represented by Atuguba and Associates in a suit at the High Court had their representation withdrawn.

The court after listening to learned counsel for sometime observed that his response did not address the points of substance and accordingly rendered the ruling referred to supra.

However, in support of the instant application, the Applicant herein deposed to the following depositions in paragraphs 6, and 7 of his affidavit in support of the instant review application. It reads as follows:

6 "That I am advised by counsel and hold same to be true that the decision to strike out the application could only have been made as a result of a fundamental misapprehension of the application that was before the Honourable Court, a misapprehension which has occasioned a grave injustice."

7. That their Lordships erroneously assumed that the application before them was intended to be in respect of the role of the Solicitors for the 1st and 4th Defendants which has been assumed by different lawyers. That was not what the application was about."

Applicant then proceeded in the subsequent paragraphs to narrate what in his view were the reasons behind the application to quash the decision of Her Ladyship Jennifer Dadzie which to then was premised on the fact that,

"Once there was a named counsel on record, the applicant therein could not appear in the same case as a lawyer when there was another one on record."

We have considered in detail all the processes put before us by the Applicant and the 1st and 4th Respondents herein as well as the viva voce arguments of their respective counsel in respect of this review application.

Fortunately, three members of the ordinary bench are still on this review application and are well informed of what really transpired in court and thereby informed the decision of the ordinary bench on the 7th of May 2019..

We have also apprized ourselves with the equally well researched and written statement of case of the 1st and 4th Respondents counsel Jospeh Kwadwo Konadu.

After considering and evaluating the contrasting positions of learned counsel for the parties herein, we are of the view that, a review application such as the instant one, is not available to a party as of right simply because the party disagrees with the ordinary bench decision and believes that he can demonstrate that the decision of the ordinary bench was wrong. It has further been re-stated times without number that a review application is not an appeal.

The Supreme Court in the case of ***Okudzeto Ablakwa (No.3) and Another v Attorney-General and Obetsebi-Lamptey (No.3) [20213-2014] I SCGLR 16, at 18,*** when faced with a similar review application of a 6-3 majority decision reported as ***Okudzeto Ablakwa (No.2) v Attorney-General and Obetsebi Lamptey (No.2) [2012] SCGLR 845***, unanimously and authoritatively clarified the scope of this review jurisdiction as per our respected brother Dr. Date-Bah JSC as follows:-

> *"Being a review application, the burden on the applicants is to satisfy this court that there are, in the words of rule 54 (a) of the Supreme Court Rules, 1996 (C. I. 16), in this case, "(a) exceptional circumstances which have resulted in a miscarriage of justice". This court has held time and time again that a review*

application is not an appeal and should not be argued as if it were. Accordingly, before this court enters into the full merits of the review application, it should be satisfied that the case falls into one of the categories that existing case law has held to justify the exercise of the review jurisdiction, or into a new category justifying such review, since the cases have also held that the categories justifying review are not closed." Emphasis

Before we can proceed to consider the merits of the instant application, we have to ensure that the road map and criteria, set out in the cases referred to supra have been met. Having considered the authorities already referred to supra and others like ***Mechanical Lloyd Assembly Plant Ltd. v Nartey [1987-88] 2 GLR 598, Afranie v Quarcoo [1992] 2 GLR 561, Internal Revenue Service v Chapel Hill Ltd. [2010] SCGLR 827***, and using these cases as a guide, it is quite clear that the Applicant herein has not made a good case sufficient enough to go past the criteria set out in the cases listed supra.

That means, we have not been convinced that there exists exceptional circumstances to warrant a further consideration of the application for review on the merits.

Under the circumstances, we have no other option than to dismiss this application. The result arising from the ruling of the ordinary bench on 7th May 2019 in our view did not breach the rules of natural justice and had the expected result at the end of the submissions of learned counsel for the parties.

The review application thus fails and is accordingly dismissed.

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

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

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

PROF. N. A. KOTEY
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