

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: YEBOAH CJ (PRESIDING)

OWUSU (MS.) JSC

TORKORNOO (MRS.) JSC

ACKAH-YENSU (MS.) JSC

ASIEDU JSC

CIVIL APPEAL

NO. J4/62/2022

18TH MAY, 2023

MANFORD GYANSA-LUTTERODT

.....

COMPLAINANT/APPLICANT/APPELLANT

VS

AFAM CONCEPT

.....

RESPONDENT/RESPONDENT/RESPONDENT

JUDGMENT

ACKAH-YENSU (MS.) JSC:-

INTRODUCTION

This Ruling is predicated on an appeal filed by the Complainant/Applicant/Appellant (hereinafter referred to simply as the “Appellant”) to this Court regarding a refusal by the Court of Appeal to grant an application for extension of time to file an appeal against the decision of the National Labour Council (NLC). The Respondent/Respondent/Respondent has raised a Preliminary Objection on the ground that since the cause or matter commenced at the NLC, the Appellant ought to have sought the leave of the Court of Appeal or the Special Leave of the Supreme Court in accordance with the provisions of Article 131(1) and 2 of the 1992 Constitution, and section 4(1)(2) of the Court Act 1993 (Act 459).

BACKGROUND FACTS

The Appellant had his employment with the Respondent terminated in March 2016. Aggrieved with the termination of his appointment, Appellant petitioned the NLC on a complaint of Unfair Termination. Upon consideration of the facts, evidence, and the relevant law, the NLC made a finding that the Appellant’s employment was unfairly terminated as he was not given an opportunity to be heard, nor was he heard on the charges which Respondent relied on to terminate his appointment. In effect, the rules of natural justice had not been complied with in the process which resulted in the termination of the Appellant’s appointment.

The NLC concluded that the Respondent had breached the provisions of the Labour Act 2003 (Act 651) by unfairly terminating the Appellant’s employment, and consequently ordered the Respondent to compensate the Appellant by paying him nine (9) months’ salary (using his basic monthly salary assessed at the Ghana Cedi equivalent of US\$3,400.00) for unfair termination of his employment and the lump sum of GH¢57,000.00 for expenses incurred by the Appellant in the course of his employment owed him by Respondent.

The decision of the NLC even though delivered on 17th November 2020, was made available to the Appellant on 15th December 2020, which was after the fourteen (14) days provided by the Labour Act, within which period a dissatisfied party can file an appeal against the decision of the NLC to the Court of Appeal.

The Appellant contended that since he was already out of time to file an appeal at the time the NLC's decision was served on him, and being aggrieved with the said decision, he filed an application before the Court of Appeal for extension of time within which to appeal, with a Proposed Notice of Appeal attached thereto.

The Court of Appeal heard the application and refused to grant it for the sole reason that the Court of Appeal had no power under the Labour Act to grant extension of time. The Appellant being dissatisfied with this Ruling, has appealed to this Court on the sole ground that: *"The Honourable Court erred in law when it ruled that the court does not have jurisdiction to extend the time within which to appeal against a decision from the National Labour Commission"*.

PRELIMINARY OBJECTION

Counsel for the Respondent has raised a Preliminary Objection to the Appellant's appeal as follows:

- "1. The cause giving rise to this appeal being a case commenced at the National Labour Commission (NLC) Accra, the Appellant ought to have sought leave of the Court of Appeal before filing the appeal to the Supreme Court which he failed to do contrary to the Article 131(1)(b) of the 1992 Constitution of Ghana and Sections 4(1)(b) of the Courts Act, 1993 (Act 459).*
- 2. The appeal being without leave of the Court of Appeal ought to have been filed with special leave of the Court (Supreme Court) which he failed to do contrary to Article 131(2) of the 1992 Constitution of Ghana and Section 4(2) of the Courts Act, 1993 (Act 459).*

3. *The appeal having been filed without prior leave of neither the Court of Appeal nor the Court (Supreme Court) as indicated in grounds 1 and 2 above, the Supreme Court's jurisdiction to hear the appeal has not been properly invoked and therefore the Court lacks jurisdiction to entertain the appeal"*

Counsel for the Appellant, on the other hand, submits that the Respondent's objection is grossly misconceived. He contended that the subject matter of the appeal did not commence from the NLC. The matter was commenced by an application to the Court of Appeal for extension of time within which to appeal. The said application was thus filed seeking to invoke the jurisdiction of the Court of Appeal under Rule 9 of the Court of Appeal Rules, C.I. 19. Counsel relied on the case of **National Labour Commission v First Atlantic [2020] 170 GMJ 676 SC**.

According to Counsel for Appellant, the objection would have been properly conceived if this appeal were in respect of a substantive decision of the NLC which the Court of Appeal had confirmed, and where the Appellant was now appealing to the Supreme Court. In that situation, the Appellant would need the kind of Leave or Special Leave the Respondent contended in its Preliminary Objection.

The NLC was established under section 135 of the Labour Act 2003 (Act 651) to facilitate and settle industrial disputes. The Commission is an independent body which adjudicates labour disputes and promotes conducive industrial environment for employment sustainability and growth. The NLC is thus an adjudicating authority.

Adjudicating Authorities are governed by the respective statutes establishing them, and owe their existence to the respective statutes. The Courts of Ghana derive their existence and powers from the Constitution and the Courts Act 1993 (Act 459).

Article 125 of the 1992 Constitution provides that:

“The Judiciary shall consist of –

(a) The Superior Courts of Judicature comprising

(i) The Supreme Court;

(ii) The Court of Appeal; and

(iii) The High Court and Regional Tribunals.

(b) Such lower courts or tribunals as Parliament may by law establish”.

Article 295 also provides that:

“Court “means a court of competent jurisdiction established by or under the authority of this Constitution and includes tribunal”

Similar provision may be found in the Courts Act 1993 (Act 459) regarding the constitution of Courts in Ghana. Section 23 of the Courts Act, Act 459, deals with Regional Tribunals. Section 39, which deals with Lower Courts, states thus:

“Section 39 – Establishment of Lower Courts.

The following are by this Act established as the lower courts of the country –

(a) Circuit Courts;

(b) District Courts;

(c) Juvenile Courts;

(d) The National House of Chiefs, Regional Houses of Chiefs and every Traditional Council, in respect of the jurisdiction of any such House or Council to adjudicate over any cause or matter affecting chieftaincy; and

(e) Such other lower courts as Parliament may by law establish”.

Thus, even though the NLC is an adjudicating authority/body, it is not part of the court system. This is notwithstanding the fact that its proceedings are akin to those of the High Court and its decisions are subject to the supervisory jurisdiction of the High Court in cases

falling within the purview of Judicial Review. Its final decisions are also subject to the appellate jurisdiction of the courts. Article 142 of the Constitution provides for the establishment of Regional Tribunals.

Section 139(3) of the Labour Act 2003 (Act 651) provides that *“The Commission shall in respect of its proceedings enjoy the same privileges and immunities pertaining to proceedings in the High Court”*.

Section 134 of the Act also provides that *“A person aggrieved by an order, direction or decision made or given by the Commission under section 133 may, within fourteen days of the making or giving of the order, direction or decision, appeal to the Court of Appeal”*.

There is however nowhere in the Constitution, or the Labour Act where the NLC is defined as a Court or Tribunal.

It is now settled that the High Court has concurrent jurisdiction with the NLC in hearing cases of unfair termination of employment. That is, the Labour Act, Act 651, did not vest exclusive jurisdiction in disputes relating to unfair termination in the National Labour Commission. Article 140(1) of the 1992 Constitution provides that the High Court has jurisdiction in all criminal and civil matters; and that where the Constitution intended to limit the powers of the High Court, it did so expressly. An example of such an express limitation of the High Court’s powers is in the case of Chieftaincy matters which may be found in section 57 of the Courts Act, 1993 (Act 459), and Section 15 of the Chieftaincy Act, 1971 (Act 370) by virtue of Article 273 of the 1992 Constitution. Thus, a person who alleges that his employment has been unfairly terminated may either seek redress at the NLC or the High Court. See the case of **Republic v High Court, Accra (Industrial and Labour Division Court 2); Ex Parte Peter Sanghah-Dery (Civil Motion No. JS/53/2017)**.

In the instant appeal, the Respondent has contended that the Appellant has failed to comply with the provision of Article 131(1)(b) of the 1992 Constitution and sections 4(1)(b) of the Courts Act, 1993 (Act 459). Article 131(1) and (2) states as follows:

“131(1) an appeal shall be from a judgment 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 an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly.

Section 4(1) of the Courts Act, Act 459, is in *pari materia* with Article 131(1) and (2) of the Constitution. These provisions apply to decisions that originated from the decision of a court or tribunal lower than a High Court. The obligation of an Appellant who intends to appeal against a decision of a court or tribunal lower than a High Court to seek leave of the Court of Appeal before filing an appeal to this Court is both a statutory and constitutional. If an appellant fails to seek leave prior to filing an appeal to this Court, where leave is required, the purported appeal will be a nullity.

From the evidence on record, the instant appeal is not one which originates from the decision of a lower court or tribunal. The original decision that triggered the appeal to the Court of Appeal is the decision of the NLC dated 17th November 2020.

The Court of Appeal is an appellate court and not a court of original jurisdiction. Hence, the instant case can be distinguished from the case of **National Labour Commission v First Atlantic** (supra). In that case, the respondent therein applied to the High Court to enforce the decision of the NLC pursuant to section 172 of the Labour Act. Being dissatisfied with the dismissal of its application, the respondent appealed to the Court of Appeal, and the first appellate court granted the appeal and ordered the appellant to pay the entitlements of the two ex-employees in terms of the relief claimed by the respondent. Dissatisfied with the decision of the Court of Appeal the appellant appealed to the Supreme Court.

On appeal to this Court, the respondent therein raised a preliminary legal objection to the effect that since the cause or matter commenced at the NLC, the appellant ought to have sought the leave of the Court of Appeal or the Special Leave of the Supreme Court in accordance with the provisions of Article 131(1)(b) and (2) and section 4(1)(2) of the Courts Act 1993 (Act 459). It is significant that in determining the issue of the propriety of the appeal, this Court held *inter alia* as follows:

“In the instant case however, the appeal originates from the ruling of the High Court and it is the decision of the High Court that was under attack on appeal and not that of the Respondent (National Labour Commission). Consequently, the argument that the appeal originates from a cause or matter commenced in a court lower than the High Court is untenable and fails.

In essence, the instant appeal falls under Article 131(1)(a) of the 1992 Constitution. The appeal is not a nullity because pursuant to Article 131(1) (a) of the 1992 Constitution, it lies as of right; and as such, it does not require leave of the Court of Appeal or special leave of this Court to be filed. On this note, this issue stands dismissed”.

CONCLUSION

In the instant case, having come to the conclusion that the National Labour Commission is not part of the court system, albeit an adjudicatory body, the provisions of Article 131(1) and (2) are not applicable.

The Preliminary Objection is accordingly overruled.

B. F. ACKAH-YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

M. OWUSU (MS.)
(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

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