IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ATUGUBA, JSC (PRESIDING)
DOTSE, JSC
YEBOAH, JSC
GBADEGBE, JSC
BENIN, JSC

CIVIL APPEAL
NO: J4/23/2015
12TH JULY, 2017

1. **ABDULAI MAHAMADU OF**
   ABDULAI ROYAL FAMILY, YENDI

2. **NAA SULE ALHASSAN**
   NANTON NAA, NANTON
   C/O H/NO. OTB 570 ODUM STREET
   ADUM, KUMASI ..... PLAINTIFFS/RESPONDENTS/
   RESPONDENTS

VRS

1. **KAMPA KUYA NAA**
   REGENT OF DAGBON, YENDI

2. **KPAN-NAA BAWAH MAHAMADU**
   CHIEF OF KPANI ..... DEFENDANTS/APPELLANTS/
   APPELLANTS

JUDGMENT

YEBOAH, JSC:-

This appeal raises a procedural issue which has on regular basis plagued appellate courts in common law jurisdictions for centuries. It is the issue of whether an order/judgment is interlocutory or final in nature.

To appreciate the reasons for this judgment a brief account of the facts culminating in this appeal will suffice. The plaintiff/respondent/respondent, who, for sake of brevity shall be referred to as the respondent issued a writ of summons at the High Court, Tamale on 26/07/12 for the following reliefs:

a. A declaration that as a former Ya-Na of the Dagbon Traditional Area, the late Ya-Na Mahamadu Abdulai IV is entitled to be accorded full funeral rites in accordance with Dagbon Constitution and Customary practice.
b. An order compelling the 1st defendant as the Regent of Dagbon and their elders to perform or cause to be performed the funeral rites of the late Ya-Na Mahamadu Abudulai IV.

The defendants/appellants/appellants who shall (henceforth be referred to as the appellants) entered appearance and filed their statement of defence on 16/08/2012. The record shows that several interlocutory applications were filed but it appeared that none was pursued by the parties and therefore are not necessary for the determination of this appeal as the appeal before us does not turn on any of the interlocutory applications.

After the filling of application for directions, the court fixed the 21/06/2013 for the directions. On that day counsel for the defendant was the only counsel present and he applied to the court for issue one (1) set out in the application for directions to be set down for preliminary trial by legal arguments under Order 33 rules 3 and 5 of CI 47.

The issue (1) states thus:

"whether or not the late Mahamadu Abdulai should be regarded as a former Ya-Na in terms of the decision of the Supreme Court in Re Yendi Skin Affairs, Yakubu II v Abdulai No.2"

The formal order which the learned High Court judge eventually made was as follows:

"By Court: Learned counsel for the defendants is to file his written submission in respect of the preliminary legal arguments on issue 1 and the additional issue 1 on or before 2nd July, 2013 learned counsel for the plaintiff is to respond to same on or before 17th July, 2013. The case is adjourned to 19th July, 2013"

On the 14th of November, 2013, the High Court judge in delivering a lengthy ruling made the following formal order:

"The plaintiffs' claim for all the analysis made cannot be truncated at this stage. Na Mahamadu Abdulai by the decision and orders of the supreme Court in the In Re Yendi Skin affairs cited supra is a former Yaa-Na and I so hold.

With this hurdle cleared the suit should proceed for the determination of the other issues" (emphasis ours)

The defendants lodged an appeal against this order on 28/11/2013 and canvassed several grounds for the allowance of the appeal. The appeal came before the Court of Appeal which unanimously dismissed the appeal and made the following order;

"The appeal fails and same is dismissed. The parties are ordered to appear before the trial High Court for the case to proceed" (emphasis ours).

The appellant before us was not satisfied with the order to appear before the trial High Court to proceed with the case and rather lodged an appeal to this court on 24/10/2014.

When this appeal came before us we pointed out to counsel that the ruling appealed against was clearly interlocutory and that under the rules of this court, precisely Rule 8(1) (a) of CI 16 of 1996, interlocutory appeals from the Court of Appeal should be filed within twenty-one days. We accordingly dismissed this appeal for want of jurisdiction and reserved our reasons.

In this appeal, we noticed that no matter how any jurist may look at the order made by the Court of Appeal or the nature of the application to the High Court, the order

given under consideration now and that of the High Court are all interlocutory in nature. See NETWORK COMPUTER SYSTEM LTD v INTERPLAST GLOBAL SALES & MARKETING LTD [2012] ISCGLR218, in which this very court considered the two criteria for determining whether a judgment or order is final or interlocutory.

As the notice of appeal was lodged outside the statutory period we are devoid of jurisdiction as pointed out in the case of TINDANA (No.2) v CHIEF OF DEFENCE STAFF & ATTORNEY-GENERAL (No.2) [2011] SCGLR 732.

We therefore accordingly dismissed this appeal for want of jurisdiction.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

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

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

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

ATUGUBA, JSC:-

The appellant contended that the Court of Appeal had no jurisdiction to determine his appeal thereto on a different rule of court from the one he relied on. I have scrutinized

this contention and found no merit in it, since a court cannot be debarred from considering the rule of court which is relevant to the appeal before it. Since the Court of Appeal did not commit a jurisdictional error the statutory time limit for an interlocutory appeal binds him.

It was for this reason that I joined in the dismissal of the appeal.

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

COUNSEL

SHAHADU MOHAMMED FOR THE DEFENDANTS/ APPELLANTS/APPELLANTS
CHARLES AGBANU FOR THE PLAINTIFFS/RESPONDENTS/RESPONDENTS