IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA GHANA

CORAM: WOOD (MRS), CJ (PRESIDING)
ANIN YEBOAH, JSC
BAFFOE-BONNIE,JSC
GBADEGBE, JSC
BENIN, JSC

CIVIL MOTION
No. J8/108/2016

5TH JULY 2016

1. ABU RAMADAN **PLAINTIFFS/APPLICANTS**

2. EVANS NIMAKO

VRS

1. THE ELECTORAL COMMISSION **DEFENDANTS**
RESPONDENTS
2. THE ATTORNEY GENERAL

RULING

GBADEGBE JSC:

Pending before us is an application by the plaintiffs-judgment creditors-applicants(the applicants) for clarification and further directions in respect of our judgment dated May 05 2016. The application was expressed in the body

of the motion paper to have been brought under our inherent jurisdiction and rule 5 of the Supreme Court Rules, CI 16 of 1992.The reliefs prayed for by the applicants numbering four are as follows;

(a) A declaration that the order made by this honourable court pursuant to the judgment in the instant suit dated May 5th, 2016 that the 1stDefendant/Respondent to"delete or clean" the current register of voters to conform to the provisions of the 1992 Constitution and applicable law means the immediate removal of names of persons who registered with the National Health Insurance Scheme Card and who had otherwise not established qualification to register or remain on the register of voters; and

(b) A declaration that the said order is made pursuant to Article 2(2) of the Constitution of Ghana and provides the legal basis and authority for 1st Defendant/Respondent to comply with same forthwith.

(c) A declaration that the dismissal of Plaintiffs/Applicants reliefs 4(a) and (b) in the suit does not bar 1st Defendant/Respondent from adopting the validation process as an auditing tool to clean the current register of voters.

(d) An order further directing the 1st Defendant/Respondent to remove the names of persons who used the National Health Insurance Scheme Card and others who had not lawfully established qualification to register from the current register of voters forthwith and provide those who remain eligible and subsequently establish qualification to

register under law an opportunity to do so in time to participate in the general elections of 2016.

The application was supported by an affidavit which provided the factual basis of the motion. The Defendants/Respondents in their answer to the application raised objections to the substantive reliefs claimed by the applicants in the matter. The respondents contend that the applicants having invoked the court's jurisdiction for the clarification of the judgment of 05 May 2016, the reliefs sought should be limited to the scope and meaning of the orders made under it and that it is incompetent for the applicants to seek substantive declaratory reliefs.

The respondents also take issue with the applicants for pursuing reliefs which were clearly granted in the judgment of the court on which this application is premised. Finally, the respondents argue that there is no ambiguity in the judgment requiring clarification.

We think that thesaid objections are fundamental in nature and turn on the jurisdiction of the court and will accordingly proceed to consider them before proceeding to the merits of the application.In our view, as these proceedings are based on a judgment by which the substantive dispute between the parties had been determined, the applicants cannot seek from the court orders that are new and have the effect of altering the judgment in the main action dated 05 May 2016. The power of the court to clarify its judgment and orders enables it to give effect to their true meaning. As there is a dearth of decided cases in the jurisdiction, wemake reference to the case of Light v Grimes, 136 Conn. App. 161, 166, 43 A. 3d 808,305 Conn. 926 (2012), a case decided in the United States which though of only

persuasive effect correctly expounds the jurisdiction exercised by courts in applications for clarification as follows:

> *"The purpose of a clarification is take a prior statement, decision or order and make it easier to understand. Motions for clarification, therefore, may be appropriate where there is an ambiguous term in a judgment or decision….. but, not where the movant's request would cause a substantive change in the existing decision. Moreover, motions for clarification may be made at any time and are grounded in the in the court's equitable authority to protect the integrity of its judgments. A motion for clarification is a post judgment motion which does not modify or alter the substantive terms of a prior judgment*."

In the application before us, the parties contend that there is no ambiguity in the orders of the court but we have observed that they all place different meanings on the scope and meaning of the orders of 05 May 2016.

In our opinion when the parties to a judgment express strong divergent opinions on the true meaning of a judgment or order made by a court,,the court's inherent jurisdiction arises to clarify the judgment or order to put an end to the controversy. Accordingly, in the face of the strong divergent opinions expressed by the applicants and the 1st respondent, there is a dispute as regards the true meaning of the consequential ordersof 05 May 2016 and this requires our clarification.

As already noted the court's power to clarify judgments arises fromits inherent jurisdiction. Applying the settled practice in such applications, the respondent's contention that reliefs (b) and(c)arenot properly cognizable

by this court is justified. We emphasise in regard to the relief(c) by which the applicants invite the court to adopt the process of validation, that it was specifically sought in the action that was determined on 05 May 2016 and refused. It is therefore surprising, if not baffling that the applicants thought it fit to re-package the same relief and present it to this court by way of a post judgment motion when the real purpose is to seek an alteration or modification of thejudgment or orders of 05 May 2016. This is a jurisdiction which we cannot assume in an application for clarification.

To reinforce the point that we have made in relation to the validation method canvassed by the applicants (then plaintiffs) in the main action we refer to a portion of the judgment at page 23 as follows;

> "*While there appears to be some reason in the proposal for validation, it is without statutory authority and seeks to introduce a mechanism that the law maker did not make provision for to be utilized in deleting the names of ineligible and deceased persons from the register of voters. In carrying out its functions under the law, the Electoral Commission cannot employ non-statutory remedies, as the law does not give it that mandate. It is observed that it is unreasonable to demand from a public officer whose authority is derived from law, performance that is not authorised by law*."

In regard to relief(d) by which an order is sought directing the removal of certain names from the current register of voters, our view is that it is a subsisting order of this court dated 05 May, 2016 on which this application

for clarification is based. It being so, we cannot be invited in an application that derives its source from that judgment to make the same order again.

We find that there is merit in the objections raised by the respondentsto reliefs (b) (c) and (d).It is plain that we are precluded from determining the same reliefs not only on grounds of res judicata, which renders the judgment of 05 May 2016 conclusive between the parties and the whole world, but merger of cause of action in the judgment. In relation tothe conclusive effect of the judgment of 05 May 2016,reference is made to the discernible principle which appears at paragraph 550 of Halsbury's Laws of England, (Volume 26) (Fourth Edition) at page 275 as follows:

> *"A party who has once sued a defendant to judgment may not, while the judgment stands, even though not satisfied, sue him again for the same cause, not because he is estopped from doing so (although he, as well as the defendant, is estopped from averring anything contrary to the record), but because the cause of action is merged in the judgment, which creates an obligation of a higher nature." See: Isaac & Sons v Salbastein [1916] 2KB, 139.*
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> The learned authors continue at para 551 on page 276 under the heading "Merger of cause of action in judgment" as follows:
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> *"When judgment has been given in an action, the cause of action in respect of which it was given is merged in the judgment and its place is taken by the rights created by the judgment so that a second action may not be brought on that cause of action".*

This leaves only relief (a) for our consideration. Although the formulation of the said relief is prefaced with "A declaration", it substantially seeks the

true meaning of the court's order of 05 May 2016 that names of persons who utilized the NHIS card to register be deleted or "cleaned" from the current register of voters a prayer, which is properly cognizable under our jurisdiction of clarification of judgments and orders. It was for this reason that we directed on that the matter be proceeded with on the merits. We thought that as issues affecting the right to be registered are at the heart of democratic governance, a strict adherence to technicalities would undermine the quest for justice. The fundamental principle is that the court looks at the substance of every application and not the form and this principle must apply with greater force in issues arising under the constitution. See also: State v Denya, 294 Conn. 516, 528,986A. 2d 260(2010).

In exercising the court's jurisdiction in relation to clarification of judgments and orders the caveat is that attempts to introduce new facts outside of what was available at the trial or hearing preceding the judgment or order sought to be clarified should be avoided in order not *t*o re-open settled matter or matters.The reason by which the introduction of new facts is foreclosed is one of the pillars of the common law under the doctrine of estoppel by res judicata.

The orders of 5th May 2016 on which the application for clarification turns are:

(a)"That the Electoral Commission takes steps immediately to delete or as is popularly known "clean" the current register of voters to

comply with the provisions of the 1992 Constitution and applicable laws of Ghana."

(b) That any person whose name is deleted from the register of voters by the Electoral Commission pursuant to order (a) above be given the opportunity to register under the law."

The applicantscontended that the order of the court requires steps to be taken immediately to delete or clean names of persons who registered with NHIS cards as well as those of deceased persons and minors ostensiblywithout recourse to those affected. The 1st respondent however,holds a contrary view and argues that the processes of deletion and or cleaning should be done under the Public Elections (Registration of Voters) Regulations, CI 91 of 2016.The different interpretations placed on the order of the court by the applicants and the first respondent constitutes a dispute as to the scope and meaning of the court's order which we must clarify. It was for these reasons and in order to expedite the hearing of the application for clarification that we made two interim orders directed at the 1st respondent to provide in writing to the court the full list of persons who utilized the National Health Insurance Card as a means of identification to register and also submit clearly in writing to the court the steps and or modalities it intends employing to ensure full compliance with the courts consequential orders made in the judgment in the action on 05 May, 2016.

The 1st respondent complied with the interim order and at the hearing on 30 June 2016, we had before us a list of persons alleged by the Commission as having utilized the NHIS card to register. The said list was contained in a bundle of documents filed at the registry of the court and made available to the parties. In the course of the hearing on that day, learned counsel for the

applicants raised objections to the list amongst other reasons that it was not authentic as some of them did not bear NHIS card numbers. Another objection raised to the list appeared to be the total number of persons involved. In view of the nature of objections raised by the applicants, they were ordered to have them formally presented to the court.

The applicants have complied with the court's order by filing an affidavit detailing the objections to the list submitted to the court by the Electoral Commission. By the affidavit and the documents exhibited thereto, the applicants challenged the accuracy and credibility of the list of NHIS registrants filed by the Electoral Commission on 29 June 2016. In particular, it was deposedto in paragraphs 26 and 27 as follows:

"*26. Plaintiffs would contend that the list of NHIS registrants filed by the 1st Defendant on 29th June 2016, is neither accurate, nor credible, or of doubtful integrity, riddled with manifest, contradictions and inconsistencies.*

27. Plaintiffs contend that the 1st Defendant has acted in bad faith and has not been candid and it is important that the full picture regarding the instant issue be brought to light in order for the court to be fully seized with all the facts."

We have given due consideration to the objections tendered to the list of persons submitted to the court by the 1st defendant respondent. We are of the opinion that we are precluded in the instant post-judgment application for clarification from veering into issues that are not immediately covered by this application. The determination of those questions does not properly belong to an application for clarification. Our jurisdiction is limited to clearly indicating what we meant by the portions of the judgment on which this application is

based-- the consequential orders made under article 2 (2) of the 1992 Constitution.

We are of the opinion that an inquiryin to the authenticity and credibility of the list submitted might result in the modification or alteration of the substance of the judgment.The issues raised by the objections to the list submitted by the 1st respondent seeks to introduce new elements which are outside the orders on which this post=judgment clarificatory application is based.seek to introduce new elements which are outside the judgment on which this post judgment application is based.

We now turn our attention to the merit of the application. After reading the processes filed by the parties before us and listening to their arguments in open court, our view is that the consequential orders on which this application turns should not be read in isolation but as part of the entire judgment to which it properly belongs. In construing judgments, which are a species of documents, the rules which guide the construction of documents should be applied in order to ascertain its true meaning. And a disjunctive reading of the orders made in the judgment as though they standalone does not reflect its true meaning. This suggested approach is made clearer when we recognise that the order was made under article 2(2) of the 1992 Constitution by which the court is empowered as follows:

> *" The Supreme Court shall, for the purposes of a declaration under clause(1) of this article, make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made."*

By way of clarification ofthe orders made under the judgment of 5th May 2016, the 1st defendant respondent was to take immediate steps that is forthwith to take steps to remove from the current register of voters all persons who had used NHIS cards to register. This order having been made under Article 2 (2) of the constitution therefore takes precedence over any existing statutory provision including CI 91. Accordingly,the 1st respondent was to take steps forthwith to remove the names of all persons who had registered with NHIS cards. In order not to violate their fundamental electoral rights and in order not to disenfranchise such persons, the 1st respondent was to give adequate notice to those affected by the order of the processes of deletion and re-registration subject to proof of eligibility. The removal of the names from the register was to precede the processes of re-registration as clarified.

By the order requiring the 1st respondent to 'delete" we meant that the first respondent was to take the necessary steps to remove the names of such affected persons from the register and give them the opportunity to re-register early enough to take part in the 2016 general elections.

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

WOOD (MRS) CJ:-

I agree.

(SGD) G. T. WOOD (MRS)
CHIEF JUSTICE

ANIN YEBOAH JSC:-

I agree.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE JSC:-

I agree

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

BENIN JSC:-

I agree

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

COUNSEL

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