IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT ACCRA, GHANA

AD 2016

CORAM: WOOD (MRS), CJ (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
ANIN YEBOAH, JSC
BAFFOE - BONNIE, JSC
GBADEGBE, JSC
AKOTO - BAMFO (MRS), JSC
BENIN, JSC

WRIT

NO. J1/2/2016

FILED ON 3RD MARCH 2016

ABDULAI YUSIF FANASH

MUHAMMED ... PLAINTIFF/RESPONDENT

AND

1. THE ATTORNEY-GENERAL ... 1ST DEFENDANT

& MINISTRY OF JUSTICE MINISTRIES

ACCRA

2. ALFRED AGBESI WOYOME ... 2ND DEFENDANT

HOUSE NO. 327/7 COMCAN CRESCENT

KOKOMLEMLE, ACCRA

3. MARTIN ALAMISI AMIDU ... 3RD DEFENDANT/APPLICANT

PLOT NO. 355 NORTH LEGON

RESIDENTIAL AREA, ACCRA

RULING

ADINYIRA (MRS), JSC:

The Plaintiff on 22nd December 2015 commenced this action invoking the original jurisdiction of this Court claiming the following reliefs:

"1. A declaration that the financial engineering claims by Alfred Agbesi Woyome arising out of the tender bid by Vamed Engineering GmbH/Waterville Holdings during the procurement process from June 2005 until its wrongful abrogation in August 2005 is not an international business transaction within the meaning of article 181 of the Constitution, 1992."

2. A declaration that on a true and proper interpretation of article 2(1), article 130 and article 181 of the Constitution, 1992 the Supreme Court has no jurisdiction to pronounce on the financial engineering claims between a citizen of Ghana and the Government of Ghana which does not fall within the ambit of purview of article 181.

3. A declaration that the review decision of the Supreme Court in suit No. J7/10/2013 intituled (sic) *Martin Alamisi Amidu v The Attorney General, Waterville Holding (BVI) Limited and Alfred Agbesi Woyome* dated 29th July 2014 is wrong in law for excess

of jurisdiction as same was obtained in violation of the Constitution, 1992.

4. A declaration that the consequential orders in Suit No. J7/10/2013 intituled (sic) *Martin Alamisi v The Attorney General, Waterville Holding (BVI) Limited and Alfred Agbesi Woyome* dated 29th July 2014 given in the review decision by the same Court are wrong in law, pull and void *ab initio* and accordingly ought to be set aside in

exercise of the powers of this Honourable Court to set aside its own void judgments.

On 19 January 2016, the 3rd defendant filed a notice of motion to raise a preliminary legal objection to the jurisdiction of this Court in this action. This point was set down as issue 4 in the joint memoranda of issues filed by the 1st and 3rd Defendants on 9 February 2016.

Issue 4 was as follows:

> "Whether or not the Supreme Court has jurisdiction to entertain the Plaintiff's action challenging the jurisdiction of the review bench of the Court in Amidu (No 3) v Attorney General, Waterville Holding (BVI) Ltd & Woyome (No 1) [2013-14] 1SCGLR]606"

On 11 February 2016, the parties agreed to this jurisdictional issue to be determined first as the outcome may determine the fate of the Plaintiff's writ one way or the other. This Court therefore set down issue 4 of the 1st and 3rd Defendants' memorandum of issues for legal arguments.

The 3rd Defendant, a former Attorney General and Minister of Justice, who was representing himself relied on paragraph 4 of his affidavit in support which was to the effect that:

> " A casual reading of the four reliefs endorsed on the Plaintiff/Respondent's Writ of Summons purporting to invoke the original jurisdiction of this Court leaves one in no doubt that none of those reliefs raises any issue of interpretation or enforcement of the

Constitution to cloth the Plaintiff/Respondent in this action with any *locus standi* to commence this action under article 2(1), and 130 of the 1992 Constitution – See the analogical reasoning and binding force of this court's ruling in *Adjei-Ampofo v Attorney General* [2003-2004] SC GLR 1."

Counsel for the Plaintiff in response said the Plaintiff has brought the action as a public minded citizen of Ghana to seek an interpretation referred to in reliefs 1 and 2 and that the engineering claims in relief 1 calls for interpretation. Counsel in midstream of his submissions before the Court conceded that reliefs 3 and 4 flows from issue I and 2 which he has come to realize were unmeritorious. He therefore asked for leave to withdraw the writ.

The 3rd Defendant objected to the request for the withdrawal on the grounds that issues were joined and arguments fully made so the court should give a ruling on his motion. He urged the court to dismiss the writ and award costs. The Court found the 3rd Defendant's request sound and decided to rule on the merit of the preliminary legal objection to jurisdiction.

We upheld the legal objection and dismissed the Plaintiff's writ or action and reserved our reasons. We now proceed to give reasons for our decision.

Firstly a careful reading of the reliefs indicate that reliefs 1 and2 on which reliefs 3 and 4 are grounded was a smokescreen to invoke our original jurisdiction under articles 2 (1)and 130; as what issue of interpretation or enforcement, if any, is raised by the Plaintiff for determination of this court? The Plaintiff's reliefs 1 and 2 admit of no controversy at all and for that matter require no interpretation by this Court. In respect of article 181 that he referred to this court has already made authoritative interpretation on it. See Attorney General V Faroe Atlantic [2005-2006] SCGLR 271

So far as such litigations, which are often and invariably public interest litigation or constitutional law litigation; the points of law so resolved binds any subsequent plaintiffs seeking to litigate the same issue by invoking the original jurisdiction of the Supreme Court. A court may preclude relitigation

of a matter decided in a prior litigation by invoking its inherent jurisdiction to prevent abuse of its process.

Secondly, what the Plaintiff seeks to do is to have this court review its previous decision in Amidu case (No 3), by a declaration to set aside the said ruling and consequential orders. In paragraph 5 of his statement of case the Plaintiff states:

> "The Plaintiff brings this action as a citizen of Ghana to challenge the decision of the review bench of the Supreme Court in the case of [Amidu (No 3), supra]…and its consequential orders as being void ab initio for excess of jurisdiction in violation of the powers of the Supreme Court as provided for in the Constitution, 1992 and the Courts Act, 1993(Act459)"

This statement by the Plaintiff is a clear misconception of the nature of the original jurisdiction of the Supreme Court under articles 2(1) and 130 which we have taken pains to explain on several occasions.

Though by article 129(3) the Supreme Court may depart from its own previous decision, the place for inviting the Court to do so is not by invoking our original jurisdiction by simply clothing a relief as an interpretation issue. In any case, a review application will usually not be the right context in which the Supreme Court may exercise its discretion to depart from its own previous decision. However when an occasion arises in an action brought under this Court's original jurisdiction or in an ordinary civil or criminal appeal hearing or by the exercise of its supervisory jurisdiction, in which an issue for determination requires an application of its previous decision, it is within a party's legal right to invite the Court to depart from the said decision. However the undergirding doctrine of *stare decisis* and related principles is the assumption that the legal principle or proposition from which a departure is urged was conclusively determined in the previous action.

By way of analogy I refer to *Okudzeto Ablakwa (No3) & another* [2013-2014] 1 SCGLR 16 where the Supreme Court, in a review application, held that the place for inviting the Supreme Court to depart from its own previous decision should be before the ordinary bench and not before the

review bench. In that case the Supreme Court in referring to article 129 (3) and setting it out stated at page 21 that:

> "Accordingly, the Supreme Court may depart from its own previous decision in terms of article 129(3) of the Constitution. However, until it has decided to do so, it would, in our view be incorrect to argue that the Supreme Court is in error when it is following its own previous and unchallenged decision. In this review application, therefore, the applicants face a difficulty in persuading this court that there was a fundamental error in the judgment of 22 May 2012, when the alleged error is based on the court following its own previous decision. The place for inviting the court to depart from its decision in *Nii Kpobi Tettey Tsuru III (No2) v Attorney General (No2)* should have been before the bench of nine justices and not before the review bench."

Thirdly, although the Plaintiff purported to bring this action as a citizen of Ghana under articles 2(1) (b) and 130(1) (a) and the Supreme Court Rules, 1996 C.I. rule 45; this was only a camouflage.

A review of the decision of the ordinary bench in the Martin Amidu case put an end to that litigation and becomes res judicata which is not confined to the issues that the court has been actually asked to decide but covers issues or facts which were clearly part of the subject matter and could have been raised; and it would be an abuse of the process of the court to allow a new litigation to be started. See *the Republic v High Court, Accra (Commercial Division); Ex parte Hesse (Investcom Consortium Holdings SA & Scancom Ltd Interested Parties) [2007-2008] SCGLR 1230 at 1235.*

Finally, we considered this action frivolous and an abuse of the court process as there is no provision in either the Constitution or an enactment giving this Court the jurisdiction to review or to set aside a judgment by the review bench of the court. This Court in no uncertain terms called Counsel to order as he should have known there is no such procedure under Supreme Court Rules, 1996 C.I. rule 45 under which is seeking a review of the court judgment.

It is for these reasons that the Court upheld the preliminary legal objection to our jurisdiction and dismissed the Plaintiff's writ or action.

It is for the same reasons that we departed from our previous practice of not awarding costs in constitutional cases, and awarded such costs as would deter others from embarking on frivolous and vexatious constitutional litigation.

Consequently, the Plaintiff's action was dismissed. The 1st defendant was awarded cost assessed at GH 5,000, and the 3rd Defendant awarded cost assessed at GH 10,000. All costs awarded were to be paid by Counsel for the Plaintiff.

S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

G. T. WOOD (MRS)
CHIEF JUSTICE

J. ANSAH
JUSTICE OF THE SUPREME COURT

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

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

P. BAFFOE - BONNIE
JUSTICE OF THE SUPREME COURT

N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

V. AKOTO - BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

A. A. BENIN

JUSTICE OF THE SUPREME COURT

OR THE PLAINTIFF/RESPONDENT.

DOROTHY AFRIYE A

COUNSEL

KWESI AFRIFA ESQ. F NASAH (CHIEF STATE ATTORNEY) WITH STELLA BADU (CHIEF STATE ATTORNEY) FOR THE 1ST DEFENDANT.

KEN ANKU ESQ. FOR THE 2ND DEFENDNT.

3RD DEFENDANT/APPLICANT APPEARS IN PERSON.