IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2016

CORAM: AKUFFO (MS) JSC PRESIDING
ANSAH JSC
ADINYIRA (MRS)
DOTSE JSC
BAFFOE-BONNIE JSC
GBADEGBE JSC
BENIN JSC

WRIT NO. J1/3/2017

1ST FEBRUARY 2017

DAVID KWADZO AMETEFE } PLAINTIFF/RESPONDENT

VRS.

1 .THE ATTORNEY GENERAL } 1ST DEFENDANT/RESPONDENT

2. MARTIN ALAMISI AMIDU } 2ND DEFENDANT/APPLICANT

RULING ON PRELIMINARY OBJECTION

S. A. B. AKUFFO (MS) JSC:-

Brief Background

On 23rd November 2016, the Plaintiff herein, in his capacity as a citizen of Ghana, caused to be issued in this Court a writ against the Defendants herein claiming the following reliefs:-

"1. A declaration that upon a true and proper interpretation of Articles 2(1), 128, 130 and 134 of the 1992 Constitution a single Justice of the Supreme *(Court)* has no jurisdiction to determine matter(s) involving the interpretation and enforcement of the Constitution.

2. A declaration that the ruling of his Lordship Justice Anin Yeboah, JSC, sitting as a single Justice of the Supreme Court, delivered on 16th November 2016 in the case intituled Martin Alamisi Amidu v. The Attorney General & 2 Ors (Civil Motion No. J8/9/2017) granting the opportunity to Martin Alamisi Amidu to execute the judgment in Martin Alamisi Amidu v. The Attorney General and 2 Ors Suit No. J7/10.2013 is inconsistent with the provisions of Articles 2(1), 128, 130 and 134 of the 1992 Constitution.

3. A declaration that upon a true and proper interpretation of Articles 2(1) and 88 of the 1992 Constitution, a private person does not have the capacity to execute a judgment in favour of the state.

4. A declaration that the ruling of His Lordship, Justice Anin Yeboah, JSC, sitting as a single Justice of the Supreme Court, delivered on 16th November, 2016 in the case intituled Martin Alamisi Amidu v. The Attorney General & 2 Ors (Civil Motion No. J8/9/2017) granting the opportunity to Martin Alamisi Amidu to execute the judgment in Martin Alamisi Amidu v. The Attorney General and 2 Ors Suit No. J7/10.2013 is unconstitutional.

5. An order of this Honourable Court setting aside the order of His Lordship, Justice Anin Yeboah, JSC, granting opportunity to Martin Alamisi Amidu to orally examine Alfred Agbesi Woyome.

6. Any further or other orders as this Honourable Court may deem fit."

A Statement of the Plaintiff's case was appended to the said writ, setting out the grounds for the reliefs claimed. The said grounds are not of particular relevance for the purposes of this Ruling and therefore we will advert to them only where necessary. On 5th December 2016, the 2nd Defendant filed his Statement of Case and also filed a notice of intention to raise a Preliminary Objection. The grounds for the objection were set out in an affidavit annexed to the said notice and may be succinctly summed up as follows:-

1. None of the reliefs claimed raise any issue of interpretation or enforcement of the Constitution so as to clothe the Plaintiff 'with any locus standi and/or cause of action to commence this action under Articles 2(1) and 130 of the 1992 Constitution'.
2. In substance and form, the declaratory reliefs claimed by the Plaintiff in his writ and statement of case are reliefs against a justice of the Supreme Court, Justice Anin Yeboah, for exercising the judicial power and function entrusted to him, under Articles 126, 127(3) and 134 of the Constitution, of making a judicial ruling and order while sitting as such justice of the Supreme Court on 16th November, 2016, in the matter of a civil motion entitled Martin Alamisi Amidu v. the Attorney General & 2 Ors.
3. The Plaintiff is merely seeking an advisory opinion as there are no acts or omissions on the part of any of the Defendants that would entitle the Plaintiff to sue under Article 2(1) and 130.
4. A process has been filed in this Court by the person who was 3rd Defendant in the matter that came before Justice Anin Yeboah, for the discharge or reversal of the ruling made by the said Justice on 16th November 2016 and in form and substance, the said process seeks to obtain the same reliefs as those sought by the Plaintiff herein.
5. The writ herein is a ruse and amounts to a disguised application for a review of the ruling made by Justice Anin Yeboah hence it is not a constitutional

matter at all, but is, rather, a frivolous and vexatious abuse of the processes of this court.

We must note that the 1st Defendant for its part, although it did not directly react to the Preliminary Objection, raised in its Statement of Case in defence against the writ the issue of the Court's jurisdiction under Articles 2(1) and 130 of the Constitution, on the ground that nothing in Article 134 prevents the learned Single Justice from hearing the matter that came before him, and if the Plaintiff is inclined to discharge or reverse the decision of the Single Judge, his constitutional course of action lay in the procedures set out in Article 134(b) and that, consequently, the reliefs sought raised no controversy or issues for interpretation or enforcement. According to the Attorney General, therefore, the Plaintiff's claims are a mere smokescreen to invoke, surreptitiously, this Court's original jurisdiction so as to appeal against or seek review of Justice Anin Yeboah's ruling.

Additionally, the 1st Defendant contended that the Plaintiff, being a stranger to 'the Martin Alamisi Amidu Case and the subsequent execution processes', has no capacity to bring the action herein since he has not in any manner shown that the decision made by the Single Justice affects him.

Further, and in still on the issue of jurisdiction, the 1st Defendant argued that since the crux of the Plaintiff's writ is to set aside the Single Justice's decision, the action is against the Supreme Court and the 1st and 2nd Defendants are not proper parties to be sued as nothing points to any act or omission of either person.

The Plaintiff on 16th January 2017, with the leave of the Court, filed an affidavit in opposition to the Preliminary Objection, the salient points being:

1. The Preliminary Objection herein is grounded in the 2nd Defendant's view of the scope of articles 2(1) and 127(3) whereby according to the 2nd Defendant a more narrow interpretation must be placed on Article 2(1) (b) where the 'act' is a judicial decision and the 'person' is a judge acting in his judicial capacity.
2. The action raises the novel issue of the interpretation of article 134 with regard to the span of the jurisdiction of a Single Justice of this Court sitting pursuant to that article.

We note that, in addition to the arguments made in the various parties' statements of case and affidavit hereinbefore mentioned, each party was afforded the opportunity to address the Court, when it sat to hear the Preliminary Objection on 10th January 2017, and in, particular, the representative of the 1st Defendant, whilst agreeing with the 2nd Defendant, also argued the abovementioned points raised in their Statement of Case.

Analysis

Despite the wide ranging points and references made by the parties respectively, the issues for our determination at this stage of this matter are of very narrow compass and are:

a. Whether or not under article 2(1) this Court has the jurisdiction to entertain the Plaintiff's writ under its original jurisdiction; in other words, has the Plaintiff properly invoked the jurisdiction of the Court?
b. Whether or not the proper parties are before the Court.

Subject Matter Jurisdiction

In determining whether or not our original jurisdiction has been properly invoked we need to look at the Plaintiff's writ before us, not the matter that came before the Single Justice. However, in so doing we must focus on the preliminary objection, not the substance or merits of the writ. For this purpose we need only to look at the subject matter of the writ, asking ourselves 'what is it that the Plaintiff is asking the Court to do?' In other words what is the nature of the reliefs claimed by the Plaintiff?

We have already set out, in-extenso, the said reliefs and will not repeat them here. Suffice it to say that, in relief 1, the Plaintiff is asserting a particular interpretation of the combined effect of Articles 2(1), 128, 130 and 134 of the Constitution whereby, according to him, a Single Justice of the Supreme Court has no jurisdiction to determine matters involving the interpretation and or enforcement of the Constitution. Clearly this assertion involves ascertainment of the scope and magnitude of the jurisdiction of a Single Judge and we cannot make such ascertainment without interpreting article 134 (which has never been interpreted by

the Court) and relating its meaning to the other articles mentioned, as well as article 127(3).

For ease of reference we set out, seriatim, the provisions of these Articles of the Constitution:-

"**2(1) A person who alleges that -**

> **(a) an enactment or anything contained in or done under the authority of that or any other enactment; or**
>
> **(b) any act or omission of any person;**
>
> **is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."**

"127(3) A Justice of a Superior Court, or any person exercising judicial power, shall not be liable to any action or suit for any act or omission by him in the exercise of the judicial power."

"128(1) The Supreme Court shall consist of the Chief Justice and not less than nine other Justices of the Supreme Court.

(2) The Supreme Court shall be duly constituted for its work by not less than five Supreme Court Justices except as otherwise provided in article 133 of this Constitution.

(3) The Chief Justice shall preside at sittings of the Supreme Court and in his absence, the most senior of the Justices of the Supreme Court, as constituted, shall preside.

(4) A person shall not be qualified for appointment as a Justice of the Supreme Court unless he is of high moral character and proven integrity and is of not less than fifteen years' standing as a lawyer."

"130(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in -

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

"134 A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of the cause or matter before the Supreme Court, except that -

(a) in criminal matters, where that Justice refuses or grants an application in the exercise of any such power, a person affected by it is entitled to have the application determined by the Supreme Court constituted by three Justices of the Supreme Court and

(b) in civil matters, any order, direction or decision made or given under this article may be varied, discharged or reversed by the Supreme Court constituted by three Justices of the Supreme Court."

As was pointed out by the Plaintiff in his Statement of Case in opposition to the Preliminary Objection, even the arguments upon which the objection is based (and one may add, as well as the arguments of the 1st Defendant) beg the question of the combined effect of these Articles on the scope of a Single Justice's jurisdiction. Thus, we are of the view that there is definitely a controversy raised as to the meaning of these articles when read together and particularly the import of article 134, the construction and interpretation of which will be of immense aid, in future, to all justices of the Court when they function singly under article 134.

The 3rd relief claimed also raises a proper issue for the interpretation of article 88 in relation to the scope of the citizen's right of action created by article 2(1), the determination of which will clarify further the meaning of the latter article and

thereby enrich the application and enforcement of the Constitution. The rest of the reliefs claimed are effectively ancillary to these two reliefs and whether or not they will necessarily arise will depend on the Court's determination on the merits of the abovementioned two reliefs.

In the light of the foregoing, it is our view that the jurisdiction of the Court, under articles 2(1) and 130, has been properly invoked.

The Parties

Concerning the 2nd issue of whether or not the proper parties are before the court, we will commence with the Plaintiff and examine whether or not he has the capacity or locus standi to bring the writ. It is our view that, in their analysis of this issue, both the 1st and 2nd Defendants went a-chasing after a red herring in the form of the case that came before the Single Justice. Whilst it is indeed the disposition of that matter which gave rise to this action, the very fact that the Plaintiff is not party to that matter completely forecloses any arguments based on access to the remedies set out in Article134(b), or for that matter any other remedies available to a party to that matter. What we need to do, in ascertaining the locus standi of the Plaintiff is to take the writ as it stands and shine on it only the light of Article 2(1) (see supra).

The Plaintiff is a person, (and a citizen of the Republic of Ghana) who, as a result of the outcome of a matter within the public domain, i.e. the decision of a court of law, which, in his view, was delivered outside the bounds of the constitutionally delineated jurisdiction of the Judge, has issued a writ for the Supreme Court to interpret and enforce certain portions of the Constitution. It is for the Court to determine the merits of his claims, but that does not derogate from his right as a person to question the constitutionality of the exercise of that judicial power, pursuant to article 2(1). Since he is not party to the case that came before the learned justice, what other avenue would be available for him to vent such concerns? We hold that the Plaintiff has the capacity to bring the action herein.

Regarding the 1st Defendant, we have no doubt that the Attorney General is a proper party to this action. Article 88 (5) provides that

> "The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the State; and all civil proceedings against the State shall be instituted against the Attorney-General as defendant".

Furthermore, Rule 45(3) of the Supreme Court Rules, 1996 (CI 16) (as amended) requires that where the Attorney General is not named as a party in a matter where the original jurisdiction of the Court has been invoked, the writ shall (nevertheless) be served on the Attorney General. This is a matter involving the proper scope of a public act performed in the course of a constitutionally prescribed duty. The fact that the person who performed the act has not been made a party in the writ is neither here nor there vis-a-vis the propriety of making the Attorney General a party and it is rather surprising that, after decades of the operation of our Constitution, the Attorney General would raise such an issue as a point of law against the validity of the writ. We, therefore, hold that the 1st Defendant is a proper party to the Plaintiff's action.

Finally, concerning the 2nd Defendant, it is our view that he is not a proper party to the action. As we have hereinbefore noted, this action is independent of the matter that came before the Single Justice and the role of the 2nd defendant in that matter is irrelevant to this writ. The Plaintiff has not shown any act or omission on the part of the 2nd Defendant that would raise a course of action under Article 2(1) against him. Consequently we hold that the 2nd Defendant, not being a proper party to the suit be and is hereby struck out as a defendant.

Conclusion

Other than striking out the 2nd Defendant as party in the suit herein, the Preliminary Objection, and the preliminary point of law raised by the 1st Defendant, are hereby overruled.

(SGD) S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

ANSAH JSC

I agree

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

ADINYIRA MRS JSC

I agree

(SGD) S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

DOTSE JSC

I agree

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

BAFFOE-BONNIE JSC

I agree

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

GBADEGBE JSC

I agree

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

BENIN JSC

I agree

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

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OSAFO BUABENG WITH HIM STEPHEN CHAWEY FOR THE PLAINTIFF /RESPONDENT.

MRS. DOROTHY AFRIYIE ANSAH (CHIEF STATE ATTORNEY) WITH HER MICHELLE KWARTENG (ASSISTANT ATTORNEY) FOR THE 1ST DEFENDANT /RESPONDENT.

2ND DEFENDANT/APPLICANT APPEARS FOR HIMSELF.