IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: YEBOAH, CJ (PRESIDING)
DOTSE, JSC
BAFFOE-BONNIE, JSC
APPAU, JSC
PWAMANG, JSC
AMEGATCHER, JSC
KOTEY, JSC

WRIT NO.
J1/04/2018

5TH MAY, 2020

1. DYNAMIC YOUTH MOVEMENT OF GHANA
2. EDWARD TUTTOR ……. PLAINTIFFS

VRS

1. KEN OFORI-ATTA (HON. MINISTER OF FINANCE)
2. THE COMMISSION ON HUMAN RIGHT AND ADMINISTRATIVE JUSTICE
3. THE ATTORNEY-GENERAL ……. DEFENDANTS

JUDGMENT

AMEGATCHER, JSC:-

Dynamic Youth Movement of Ghana is an incorporated person registered under the laws of Ghana with the object of empowering the youth of Ghana through education, training and advocacy. Together with its director, Edward Tuttor, a citizen of Ghana, they instituted this writ exercising the powers vested in them under the provision in articles

2(1) and 130 of the Constitution, 1992. The constitutional provision vested persons the right to invoke the original jurisdiction of this court to seek an interpretation to or enforcement of any provisions of the Constitution. This writ is part of myriads of writs which the Supreme Court had been inundated with of late from individual and corporate bodies seeking to test the legality or otherwise of acts or omission of constitutional and administrative bodies and public office holders which they perceived to be inconsistent with or a contravention of provisions of the Constitution. Interestingly the predecessor constitution of 1979 also suffered from the same thirst. Some of these writs have played no mean role in shaping the jurisprudence of this court and extending the frontiers of constitutional law in this jurisdiction. Others, however, did not meet this test.

To the latter, provoked the formulation of a roadmap by the then Court of Appeal performing the functions of the Supreme Court some forty years ago to guide parties and practitioners think through the issues before them thoroughly before appearing in the apex court to seek an interpretation. That was the case of **Republic v. Special Tribunal; Ex parte Akosah [1980] GLR 592.** In that case, the roadmap was set out for triggering the interpretative jurisdiction of the Supreme Court under the 1979 Constitution. At page 605 Anin JA speaking on behalf of the court stated that the original, interpretative jurisdiction of the Supreme Court would be invoked where under the following:

"(a) the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or else mean something different from or more than what they say;

(b) rival meanings have been placed by the litigants on the words of any provision of the Constitution;

(c) there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;

(d) on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation."

Since the formulation of this roadmap, this court have reformulated and reechoed the circumstances under which its interpretative jurisdiction would be triggered in a number of cases some of which are as follows:

Nana Yiadom v Nana Amaniapong & Ors [1981] GLR 3
National Media Commission v. Attorney-General [2000] SCGLR 1.
Aduamoa II & Ors v Adu Twum II [2000] SCGLR 165 at 167
Ghana Bar Association v. Attorney General and Another [2003-2004] 1 SCGLR 250
Bimpong Buta v. General Legal Council [2003 -2004] SCGLR1200.
Oppong v Attorney-General [2003-2004] 1 SCGLR 376
The Republic v. High Court (Fast Track Division) Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Other/Interested Parties) [2009] SCGLR 390
Osei Boateng v. National Media Commission [2012] 2 SCGLR 1038.
Bortier & Anor v Electoral Commission & Anor [2012] 1 SCGLR 433
Danso v. Daaduam II & Another [2013-2014] 2 SCGLR 1570.
Abu Ramadan v. The Electoral Commission [2015-2016] 1 SCGLR 1
Mayor Agbleze & Ors v Attorney-General S. C. [Writ No J1/28/2018] dated 28th November 2018 (Unreported)
Bomfeh v Attorney-General S. C. [Writ No J1/14/2017] dated 23rd January 2019 (Unreported).
Kpodo & Anor v Attorney-General S. C. [Writ No J1/03/2018] dated 12th June, 2019 (Unreported).

The summary of these formulations is aptly captured in the dictum of Sophia Akuffo CJ in one of the latest decision on the subject. That is the case of **Kpodo & Anor v**

Attorney-General S. C. [Writ No J1/03/2018] dated 12th June, 2019 (Unreported). Explaining the court's role when writs are filed invoking the original jurisdiction of the court, her ladyship stated bluntly as follows:

"The original jurisdiction of this Court being a special one, whenever it is invoked, it must be evident that the matter falls within the parameters set by the Constitution and as clarified in several decisions of the Court…The position of the law, as expounded in the cases cited above is that, inter alia, the existence of an ambiguity or imprecision or lack of clarity in a provision of the Constitution is a precondition for the invocation and exercise of the original interpretative jurisdiction of this Court. Where the words of a provision are precise, clear and unambiguous, or have been previously interpreted by this Court, its exclusive original interpretative jurisdiction cannot be invoked or exercised. This is important for ensuring that the special jurisdiction is not needlessly invoked and misused in actions that, albeit dressed in the garb of a constitutional action, might be competently determined by any other court. Consequently, it has become our practice that in all actions to invoke our original jurisdiction, whether or not a defendant takes objection to our jurisdiction, or even expressly agrees with the plaintiff that our jurisdiction is properly invoked, we take a pause to determine the question of the competence of the invocation of our jurisdiction, before proceeding with the adjudication of the matter or otherwise."

What, then, are the peculiar facts of this case which should call for our intellectual stimulation and accord this writ its place among the honours list in the development of this court's jurisprudence?

Acting in accordance with article 284 and 287 of the Constitution, 1992, one Yaw Brogya Gyenfi petitioned the Commission for Human Rights and Administrative Justice, the 2nd defendants in this writ to investigate the 1st defendant, the Minister of Finance in an

alleged conflict of interest situation in the issuance of a 7-year and 15 year bonds by the government. The petition questioned why 95% of the bonds were purchased by one single investor, Franklin Templeton Investment whose director one Trevor G. Trefgarne is also described as chairman of Enterprise Group Limited, a company partially owned by Data Bank Limited, a company 1st defendant is known to have significant interest.

The 2nd defendant investigated the complaint and published its findings in a Report dated 22nd December 2018. The plaintiffs are dissatisfied with the investigations and findings of the 2nd defendant particularly the findings on conflict of interest. According to plaintiffs, the 2nd defendant in arriving at that finding, engaged in a process of analysis and references to constitutional provisions and Supreme Court authorities in order to give and actually gave meaning to article 284. It is the case of the plaintiffs that the findings of the 2nd defendant on the conflict of interest complaint firstly is inconsistent with article 287(1) of the Constitution and secondly amount to an interpretation of article 284 of the Constitution. The plaintiffs also submit that the acts and omissions of the 1st defendant as established and published in the Report contravenes articles 284, 286 (1)(b) and 78(3). The plaintiffs, therefore, contend that this **"action is, therefore, centred on the conduct of both the 1st and 2nd defendants as established and contained in the Report……**"

On the basis of these facts the plaintiffs seek the following reliefs from this court:

a. A declaration that by going beyond investigations to make a pronouncement (of guilt or otherwise) on the 1st defendant in respect of the allegation of breach of conflict of interest, the 2nd defendant has contravened article 287 of the 1992 Constitution.
b. A declaration that by interpreting article 284 of the 1992 Constitution (as disclosed between paragraph 3 of page 127 and paragraph 3 of page 133 of the Report), the 2nd defendant has contravened article 130(1)(a) of the 1992 Constitution.
c. A consequential order that the content of the report as specified in reliefs (a) and (b) above be expunged from the Report.

d. A declaration that the failure of the 1st defendant to declare his shareholding interest in Data Bank Financial Services Limited, Data Bank Brokerage Limited and Data Bank Financial Holdings Limited to the Auditor-General before taking office as a Minister of Finance, as found by the 2nd defendant at page 120 of the Report, contravenes article 286(1)(a) of the 1992 Constitution.
e. A declaration that the occupation by the 1st defendant of the office of director in Ventures and Acquisition Limited, a private company, while in office as Minister responsible for finance without the due permission of the Right Honourable Speaker of Parliament on the grounds stated by the law, contravenes article 78(3) of the 1992 Constitution.
f. A declaration that by issuing or overseeing the issuance of the said bonds to Templeton without disclosing his relational interests with a director at Templeton, one Trevor G. Trefgarne, the 1st defendant has acted in contravention of article 284 of the 1992 Constitution.
g. A declaration that by issuing or overseeing the issuance of the said bonds without disclosing his interest in the securities industries in general, the 1st defendant has acted in contravention of article 284 of the 1992 Constitution; and
h. Any other reliefs that this Honourable court deems fit under the circumstances.

When this writ came up initially for hearing on 4th December, 2019, this court, first exercising the practice developed to properly scrutinize every invocation of our original jurisdiction and secondly considering the objection taken by the 1st and 3rd defendants in their statement of case filed on 15th February 2018 questioning the competence of the invocation of our jurisdiction ordered the parties to file submissions addressing it on that critical issue of jurisdiction. We have reviewed the submissions by the parties and carefully scrutinized the reliefs sought by the plaintiff.

It appears to us that relief (a) is questioning the mode and scope of the investigation carried out by the 2nd defendant leading to its findings. The plaintiff is dissatisfied with how the 2nd defendant arrived at a verdict of guilty or not guilty in its investigation. Our

opinion is the investigations carried out by the 2nd defendant was within its mandate under article 287 of the Constitution, 1992 and its enabling law, Act 456 to investigate complaints and make its findings in a report. The findings may or may not confirm the complaint. A person dissatisfied with the analysis of the law and the findings made could resort to provisions made in the law for either challenging the findings or enforcing the findings. There is nothing ambiguous, imprecise or unclear about meaning of article 287 to warrant an invitation to this court to embark on a journey of interpreting that constitutional provision. The remedy if any available to the plaintiffs lie to some other adjudicating body but certainly not this court.

The plaintiffs second relief is challenging the jurisdiction of the 2nd defendant to interpret a provision of the Constitution. According to plaintiffs the 2nd defendant acted beyond its power when it purported to interpret article 284 of the Constitution. From the submission by the parties and the Report of the 2nd defendant exhibited to this writ as exhibit ET 5, what the 2nd defendant expounded in its report was to cite article 284 and apply an interpretation this court has given to that article in the case of **Okudzeto Ablakwa (No 2) & Anor v Attorney-General & Obetsebi-Lamptey (No 2) [2012] 2 SCGLR 845**.

The position of the law as this court has stated time and again is where the Supreme Court had considered and given an interpretation to any provision of the Constitution, that interpretation is binding on all courts in the hierarchy of courts as well as inferior and adjudicating tribunals and their role would be to apply the interpretation so given to that article when an issue on that came before them. In doing so the 2nd defendant neither breached any provisions of the Constitution nor did it act outside its powers by applying a provision of the Constitution. Even if we were to accept the argument of the plaintiffs that the 2nd defendant went outside its jurisdiction and interpreted a provision of the Constitution, our position would be that the 2nd defendant has acted without jurisdiction. In that case, the 2nd defendant being an inferior adjudicating body, the remedy available to the plaintiffs would be to seek relief in another forum but certainly not an interpretation from this court.

In the third relief, the plaintiffs seek an order from this court to expunge some of the findings made by the 2nd defendant in its Report on the grounds that those findings were void, illegal and beyond the jurisdiction of the 2nd defendant. We find no case made for us to interpret any provision of the Constitution under this relief. If anything, plaintiffs' remedy lies in another forum other than the Supreme Court.

Regarding reliefs four and five, the plaintiffs are seeking a declaration from this court that 1st defendant has contravened articles 286(1) (a) and 78(3) of the Constitution as a result of 1st defendant's failure to declare his shareholding interest in some companies to the Auditor-General as well as 1st defendant's continuing directorship of a private company while in office as a Minister of State without the permission of the Speaker of Parliament. Again, no issue of interpretation arises from these reliefs. The Constitution has copious provisions for dealing with any such infractions on the part of a public office holder or a Minister of State. The plaintiff's duty is to explore the reliefs provided and not to gamble before the apex court of the land.

Equally, reliefs six and seven invite us to hold that the 1st defendant had contravened article 284 of the Constitution by overseeing the issuance of the bonds to Templeton without disclosing his relational interest with a director of Templeton or disclosing his interest in the securities industries. It is our opinion that if the 1st defendant has abused his office as alleged by the plaintiffs, there are provisions in the current law of the country for an aggrieved person to resort to. There is nothing to interpret in article 284 after this court has done same in 2012 in **Okudzeto Ablakwa's case (supra).**

The test from the decided cases cited above is, do we see any ambiguity, imprecision or unclear language in a constitutional provision to be interpreted? None of the reliefs sought by the plaintiff and the constitutional provisions relied upon met that stringent test to warrant the invocation of our original interpretative jurisdiction. We will, therefore, resist the invitation by the plaintiff for us to embark on this futile exercise.

It seems to us that the plaintiff rushed to this court without considering carefully the reliefs sought, the forum where these reliefs are to be ventilated and the numerous decisions of this court on the roadmap and grounds under which the original interpretative jurisdiction of this court could be triggered. Parties exercising their constitutional rights to appear in the apex court are advised to pause and thoroughly examine their case fully. This will go a longer way to assist the court further improve on its jurisprudence and the constitutional history of this country.

We will, in conclusion, reiterate the warning of Apaloo CJ in the case of **Nana Yiadom v Nana Amaniapong & Ors (supra)** at 8 that:

"**The plain truth of the matter is that the original jurisdiction of this court has been wrongly invoked. We will accordingly accede to the challenge to our jurisdiction. Perhaps we should point out at least for the benefit of the profession, that where the issue sought to be decided is clear and is not resolvable by interpretation, we will firmly resist any invitation to pronounce on the meaning of constitutional provisions. It would, we think, be a waste of mental effort and a thoroughly pointless exercise."**

Guided by this dictum, we find no merit in the writ inviting us to exercise our original jurisdiction and same is accordingly dismissed.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

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

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

Y. APPAU
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