IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: AKUFFO (MS), CJ (PRESIDING)

ANSAH, JSC

ADINYIRA (MRS), JSC

YEBOAH, JSC

BAFFOE-BONNIE, JSC

CIVIL APPEAL
NO. J4/57/2017

9TH MAY, 2018

1. FRANCIS OWUSU-MENSAH
2. STEPHEN O. ADJAPONG ……. PLAINTIFFS/APPELLANTS/APPELLANTS

VRS

1. NATIONAL BOARD FOR PROFESSIONAL & TECHNICAL EXAMINATIONS (NAPTEX)
2. PROF. PAUL N. BUATSI
3. MR. FRANCIS W.Y. TAGBOR … DEFENDANTS/RESPONDENTS/RESPONDENTS

JUDGMENT

YEBOAH, JSC:-

On the 17/12/2013, the appellants herein applied for judicial review under Order 55 of the High Court [Civil Procedure] Rules, CI 47 of 2004 for the following reliefs;

(a). A declaration that the termination of employment of the applicants as contained in the letters dated 28th November 2013 is unlawful.

(b). An order of certiorari to bring and quash the decision of the Board chairman of NABPTEX to terminate the employment of the applicants as being unlawful violation of due process and relevant service conditions of NABPTEX and Civil Service of Ghana as well as the 1992 Constitution of Ghana.

(c). An Order of interim injunction restraining the respondents from employing anybody to fill the positions of the applicants pending the final conclusion of this matter.

(d). An order of Mandamus compelling the Executive Secretary and Board of NABPTEX to reinstate to applicants to their previous positions before the unlawful termination of their employment and payment of all their salaries arrears and allowances to them.

(e). Any further order(s) as this court may deem meet.

The facts of this appeal appear not to be in controversy whatsoever. The appellants herein were at the material time to these proceedings senior officers of the first respondent herein. The first respondent, the National Board for Professional and Technical Examinations (NABPTEX) is a statutory body set up under Act 492 of 1994, with the core mandate to formulate and administer examinations, evaluations, assessments, certification and standard, for skill and syllabus competence for non-university tertiary institutions, professional bodies and private institutions with due

accreditation. The second respondent was the board chairman of the first respondent and the third respondent was the Executive Secretary of the first respondent. The fourth respondent is the Attorney-General constitutionally mandated to represent the Government of Ghana.

As said earlie,r the appellants were senior officers of the first respondent and both of them were engaged in 2006 under Act 492, the governing statute of the first respondent and their service conditions were also regulated under the said Act. The first appellant was employed as Deputy Executive Secretary rose to become Acting Executive Secretary for a period of six months before reverting to his former position of the Deputy Executive secretary, which position he held at the material time to these proceedings.

The second appellant was engaged as Assistant Curriculum Development and Research Secretary and was promoted to the position of Test Development Secretary till the appointment was terminated in 2003.

The evidence on record revealed that the 2013 May/June certificate II core subject Examinations was organized by the first respondent as part of its statutory responsibilities including the supervision of the examinations. The uncontroverted evidence established that the integrity of the said examinations was so compromised following a massive leakage nationwide resulting in the cancellation of the examinations which ultimately had to be reorganized. As the massive leakage had embarrassed the first respondent for not delivering on its core mandate, the first respondent therefore constituted a committee to investigate the leakage.

During the investigations into the leakage, the appellants were asked to proceed on leave in order not to impede the investigations. The appellants, were not given the outcome of the investigations and same was not disclosed. The appellants were invited to appear before a Disciplinary Committee at which charges were preferred against them. Upon their appearance, the appellants were served with letters of interdiction and finally with letters terminating their appointments. The appellants did not take it lying down and resorted to the judicial process by instituting these proceedings at the High Court by way of judicial review. The procedure will be addressed later in this delivery as it formed the basis for the dismissal of the appeal before the Court of Appeal.

The learned High Court judge in a detailed ruling delivered on the 29/10/2014 granted all the reliefs sought by the appellants and ordered that the appellants be restored to their respective positions in the first respondent's institution. The respondent lodged an appeal to the Court of Appeal, Accra, on several grounds. The Court of Appeal on 30/07/2015 allowed the appeal. It however, considered the matter on the merits after declaring that the High Court had no jurisdiction to entertain the matter on procedural grounds.

The appellants thereafter lodged this appeal before this court to seek the reversal of the judgment of the Court of Appeal on several grounds. In our respectful opinion ground (vi) which deals with the jurisdiction of the High Court to entertain these proceedings must be seriously addressed. It states thus:

"(iv). The Court of Appeal erred when it set aside the entire ruling of the High Court solely on the basis that the procedure of judicial review adopted by the appellants for redress was inappropriate".

As said earlier the issue of jurisdiction was addressed by the Court of Appeal in its judgment and it was on that basis that the Court of Appeal allowed the appeal when it held thus:

"Although on the evidence we find that the termination of the respondents was not done in compliance with Article 191 of the 1992 Constitution which required just cause, we find that we are unable to agree with the trial judge that the case was made out for the decision to be quashed by resort to certiorari and for the respondents to be reinstated upon the operation of an order of mandamus. The procedure of judicial review adopted by the respondents being clearly wrong for the redress they sought, the findings and remedies consequent upon them cannot stand"

The above holding led the Court of Appeal to allow the appeal. It is trite learning that jurisdiction is fundamental to every proceedings and therefore if a court of law or tribunal lacks jurisdiction to hear or determine any matter, the decision or order from the Court or tribunal is a nullity. See the case of TIMITIMI v AMUABEBE [1953] 14 WACA 374.

In our respectful view, it behoves every court hearing a matter to address the issue of jurisdiction first if it is raised as an issue. If a court upon embarking on an inquiry

finds that its jurisdiction has been put in issue later on in the proceedings, it must address in as it is fundamental to every proceedings. In this appeal, the court of Appeal ought to have addressed the jurisdictional issue first before dealing with the merits of the appeal in its entirety. It was, indeed, at the conclusion stage of the judgment that the Court of Appeal stated that it had no jurisdiction given the procedure the appellants had adopted at the High Court.

As said earlier, the proceedings culminating in this appeal originated at the High Court. It cannot be said that the High Court as a superior court of jurisdiction established under the constitution had no jurisdiction in matters of this nature. The Court of Appeal concerned itself with the procedure adopted by the appellants in the nature of judicial review which denied the court jurisdiction to determine the matter. A court may have jurisdiction to entertain a cause or matter but the procedure invoking its jurisdiction may deny the court the jurisdiction. This usually occurs when a statute has specifically laid down the procedure for redress. See the case of BOYEFIO v NTHC PROPERTIES LTD [1997-98] IGLR 768. Cases which fall under the representation of the People Law, 1992 PNDC L 284 section 16(1) must be commenced by petition at the High Court in respect of Parliamentary Election petitions. Any resort to a procedure not sanctioned by the statute would deny the High Court of jurisdiction. In this appeal, the Court of Appeal was of the opinion that judicial review was inappropriate. The High Court [Civil Procedure] Rules CI 47 of 2004, Order 2 rule 2 states thus;

> "(2) Subject to any existing enactment to the contrary all Civil Proceedings shall be commenced by the filing of a writ of summons"

It should be made clear that the statute creating the first respondent, that is, National Board for Professional and Technical Examinations Act, 1994, Act 492 does not prescribe any procedure to commence legal proceedings if a citizen is seeking redress under the statute. It therefore follows that the resort to the High Court [Civil Procedure] Rules CI 47 was appropriate; but the issue is whether judicial review was the appropriate procedure in these proceedings. Generally speaking in actions for wrongful dismissal the plaintiff issues a writ in compliance with order 2 rule 2 of the High Court Civil Procedure Rules. In these proceedings however, the appellants were facing a Disciplinary Committee which had been set up to consider the damming allegation of nationwide leakage of exanimations. A very serious matter indeed.

The Disciplinary Committee set up to conduct the investigations did not offer the appellants any hearing and never published any adverse findings allegedly established against the appellants. The Court of Appeal found that the appellants indeed were made to appear before a Disciplinary Committee and later a Committee of Inquiry but were never heard. As the statute creating the first respondent makes it a public institution it owes a duty to the employees like the appellants to go through the due process. It cannot be said that the first respondent as a public institution created by an act of Parliament and empowered to perform crucial services to the public should not be amenable to judicial review if it flouts due process in determining the rights involving its workers like the appellants. Another point which eluded the Court of Appeal was article 23 of the 1992 Constitution which states thus;

"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal"

Administrative bodies are generally controlled by resort to judicial review which in most cases afford speedy and less expensive mode of trial. The High Court [Civil Procedure] Rules CI 47 of 2004 has specifically spelt out the orders which a High Court may in the exercise of its jurisdiction under Order 55 rule 2(1) make. It states thus:

"2(1) on hearing of an application for judicial review, the High Court may make any of the following orders as the circumstances may require

a. An order for prohibition, certiorari or mandamus
b. An order restraining a person from acting in any public office in which that person is not entitled to act;
c. Any other injunction
d. Devaration
e. Payment of damages

It is clear from the reading of the rules that all the reliefs sought by the appellants could in appropriate cases be granted by a High Court in hearing an application for judicial review. It does appear that the new rules has widened the scope of orders which a High Court seised with jurisdiction for judicial review could make in appropriate case. What was sought to be quashed by certiorari was the decision which both courts held were given without hearing. In the case of REPUBLIC v COMMITTEE

OF INQUIRY INTO NUNGUA TRADITIONAL AFFAIRS; EX PARTE ODAI IV & OTHERS [1996-97] SCGLR 401 this court after examining the case law expanded the scope of certiorari and made it clear that "any fact finding tribunal or commission of inquiry, whether statutory or not, which has made any decision based on evidence, affecting rights of subjects would be "acting judiciary" and would thus be amenable to supervisory jurisdiction of the courts".

This court relied on the oft-quoted dictum of Lord Denning MR in RE PERGAMON PRESS LTD [1971] 1 CH 388 at 399 where the law was stated thus:

> "Seeing that their work and their report may lead to such consequences, I am clearly of the opinion that the inspectors must act fairly. This is a duty which rests on them as on other bodies even though they are not judicial or quasai-judicial but only administrative"

Another issue which the learned justices of the Court of Appeal took into consideration and allowed the appeal was the fact that the resort of judicial review limits the courts to only documentary evidence and affidavit evidence which may not lead to satisfactory findings of fact upon which a determination may be made. The settled practice is that in hearing cases which are commenced not by writ but by originating notice of motion, strictly bound to only consider the affidavit and documentary evidence in the application. If a court in considering the matter is of the view that oral evidence is needed to prove crucial facts the determination of which would advance substantial justice it could order the taking of oral evidence and could even order the filing of pleadings in appropriate cases to assist the court and the parties to

arrive at a just conclusion. In this case, it appeared that the parties never had any difficulty with the affidavit and documentary evidence on record. With due respect to the Court of Appeal, it was wrong for it to conclude that the procedure was inappropriate for lack of findings of facts in determination of the matter at the High Court.

This court in the case of REPUBLIC v HIGH COURT, ACCRA; EX PARTE ALLGATE CO. LTD (AMALGAMATED BANK LTD INTERESTED PARTY) [2007-2008] SCGLR 1041, which appears to be one of the first cases on non-compliance upon the coming into force of the current High Court [Civil Procedure] Rules CI 47 of 2004, has laid down the guidelines for determination of circumstances under which non-compliance could be treated as a nullity. In the view of this court, non-compliance will nullify proceedings if the irregularity complained of amounts to a breach of the Constitution or a statute [e.g. Peoples Representation Law PNDC L284 of 1992] or breach of the rules of natural justice. We think that the above pronouncement of this could should lead us to conclude that as the application for judicial review is sanctioned by Order 55 of the High Court rules any irregularity complained of should not be declared as a nullity. The proceedings under consideration was mounted purposely to quash the letter from the first respondent terminating the appointments of the appellants. This was even acknowledged by the Court of Appeal when it observed as follows:

> "In the exercise of their functions, administrative bodies set up implement executive policies exercise judicial or quasi-judicial functions that determine the rights of persons in relation to inter alia, executive policy and/or their implementation. Judicial review is the power of the court to ensure that such

activity that affects the rights of persons is done fairly. It controls public administration by checking the abuse or misuse of public power"

We think that with the above accurate statement of the law by the Court of Appeal, it should have intervened to quash the letter terminating the appointments of the appellants when the respondents woefully failed to take the appellants through the due process as required by the provisions of the Constitution. Failure of the Court of Appeal to intervene when there was obvious violation of Articles 191 and 23 of the 1992 Constitution should be deemed as an error for the allowance of the appeal.

We think that a case of lack of due process was sufficiently made by the appellants to warrant the intervention of both the High Court and the Court of Appeal. We accordingly proceed to quash the letter terminating the appointments of the appellants for the reasons above stated and allow the appeal.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

AKUFFO (MS), CJ:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS), JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

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

BAFFOE-BONNIE, JSC:-

I agree with the conclusion and reasoning of my brother Yeboah, JSC.

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

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