IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: APPAU, JSC SITTING AS A SINGLE JUDGE

CIVIL MOTION
NOS. J8/42/2018
& J8/43/2018

14TH FEBRUARY, 2018

IN THE CONSOLIDATED SUITS OF

FRANCIS XAVIER SOSU ..... APPELLANT/APPLICANT/APPLICANT

VRS

THE GENERAL LEGAL COUNCIL ..... RESPONDENT/RESPONDENT/RESPONDENT

AND

FRANCIS XAVIER SOSU ..... APPELLANT/APPLICANT/APPLICANT

VRS

THE GENERAL LEGAL COUNCIL ..... RESPONDENT/RESPONDENT/RESPONDENT

RULING

APPAU, JSC.:-

The applicant, who is a lawyer by profession, was charged under two counts of Grave Misconduct contrary to Rules 2(1) and 9(9) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 [L.I.613] and Section 19(5) of the Legal Profession Act [Act 32] of 1961 before the Disciplinary Committee of the General Legal Council. The applicant, who initially pleaded 'Guilty with Explanation' to the two charges, later changed his plea and pleaded 'Guilty' simpliciter to the two

charges. The Committee convicted him on both counts on his own plea. Section 16(1) of Act 32 makes provision for sanctions that the Disciplinary Committee could mete out to lawyers charged before it on the offence of Grave Misconduct. It reads: ***"A lawyer, who is found guilty of grave misconduct <u>in a professional respect</u>, including a conduct which, in pursuance of the Rules, is treated as grave misconduct in a professional respect, is liable***

(a) To have the name of that lawyer struck off the Roll of Lawyers, or

(b) To be prohibited from practicing as a lawyer for a period specified in the order of suspension".

The Disciplinary Committee sanctioned him by imposing a concurrent sentence of one (1) year suspension from legal practice in respect of the first count and three (3) years suspension from legal practice in respect of the second count. This was on the 1st day of June 2017. Six days after the Disciplinary Committee had imposed its sanctions on the applicant; i.e. on the 7th of June 2017, the applicant filed two separate notices of appeal against the decision of the Committee before the Court of Appeal. The record before me shows that though the two appeals were intended to be filed at the Registry of the Court of Appeal, they were indeed filed at the Registry of the High Court (Human Rights Division), Accra. They were however headed: **"IN THE COURT OF APPEAL, ACCRA" and addressed to "THE REGISTRAR, COURT OF APPEAL, ACCRA".**

On 13th June 2017; i.e. six (6) days after the filing of the two separate notices of appeal, the applicant filed at the Registry of the Court of Appeal two separate motions for stay of execution and/or suspension of the decision of the Disciplinary Committee pending the determination of his appeals before the court. The motions were placed before a single justice of the Court of Appeal per article 138 of the Constitution, 1992. The single justice consolidated the two applications and determined them in one ruling. He dismissed the applications on the main ground that there were no valid appeals pending before it because the notices of appeal, though filed within time, were filed in the wrong forum. According to the court per the single justice, the notices of appeal should have been filed at the registry of the

General Legal Council for onward transmission to the Court of Appeal but not at either the High Court or the Court of Appeal. The court relied on Rule 8(2) and 9(3) of the Court of Appeal Rules, 1997 [C.I. 19] and the decisions of this Court in the cases of **FRIMPONG & Anor v NYARKO [1998-99] SCGLR 734** and **NYANTAKYIWAA alias KISSI v KISSI & Others [1982-83] GLR 480.**

Rule 8(2) of [C.I. 19] provides: ***"The Notice of Appeal shall be filed in the registry of the Court below…"*** whilst rule 9(3) reads: "An appeal is brought when the notice of appeal is filed in the registry of the Court below". The ratio in the *Frimpong* and *Nyantakyiwaa cases* (cited supra) was that for a notice of appeal to be valid, it must be filed in the court below from which the appeal emanates as provided under the rules of court but not in the appellate court which is to determine the appeal. The ***'court below'*** from which the two appeals referred to above emanated was the National House of Chiefs. In the instant case, the body that heard the complaints against the applicant was the Disciplinary Committee of the General Legal Council. According to the applicant, the ratio in the above cases, which the Court of Appeal relied on, is not applicable in this case since the Disciplinary Committee of the General Legal Council is not a court as such as provided under article 126 of the Constitution, 1992 and Parts One and Two of the Courts Act, 1993 [Act 459]. However, in its ruling of 27th July 2017 per the single justice, the Court of Appeal held as follows: ***"Upon examining all the processes so far filed by the parties in this application, I am satisfied that Rule 8(2) of the Court of Appeal Rules, 1997 C.I. 19 as amended provides: The Notice of Appeal shall be filed in the Registry of the Court below…A flexible, liberal and purposive interpretation of the phrase, 'the Court below' may imply a High Court, a Circuit Court or any quasi-judicial body where the decision complained of was heard. In the instant case, it is not in dispute that the decision complained of was determined by the Disciplinary Committee of the General Legal Council. Consequently, the Notice of Appeal should have been filed at the Registry of the Disciplinary Committee of the General Legal Council and not at the Registry of the Court of Appeal as the appellant/applicant did'…The applicant, having failed to file the Notice of***

Appeal in the proper forum; i.e. the registry of the Disciplinary Committee of the General Legal Council, it is my view that no appeal has been brought as required by Rule 9(3) of C.I. 19 which states that an appeal is brought when the notice of appeal has been filed in the Registry of the Court below. This invalidates the notice of appeal as it goes to the root of the appeals". The Court of Appeal, duly constituted, affirmed the decision of the single justice when the applicant filed a reconsideration motion before it against the decision of the single justice. The court held as follows: ***"...we are satisfied that the Learned Single Justice did not err, as urged on us by the applicant, when he dismissed the applicant's applications for the reason that the court had no jurisdiction because there was no valid subsisting 'Notice of Appeal'.***

The applicant, not satisfied with the ruling of the Court of Appeal, has brought this application seeking special leave to appeal to this Court against the said ruling. Applicant brought the application on the strength of article 131(2) of the Constitution, 1992; Section 4(5) of the Courts Act [Act 459/93] and Rule 7(4) of the Supreme Court Rules, 1996 [C.I. 16]. The points applicant raised in his application were:

1. **The word 'COURT' as stated in rule 8(2) of C.I. 19 can only refer to a court of competent jurisdiction and not a Disciplinary Committee of the Respondent. The Disciplinary Committee of the General Legal Council is therefore not a court and therefore outside the strict ambit of rule 8(2) of C.I. 19.**
2. **That he made attempts to file the notice of appeal at the offices of the General Legal Council but he was told by an official of the respondent that the respondent had no registry for the filing of appeals so he should do so at the registry of the Court of Appeal.**
3. **That in the absence of any specific rules of law relating to the forum for filing appeals in respect of decisions of the respondent, his appeal was competent and appropriately filed in accordance with existing rules of practice and procedure.**

The respondent opposed the application as incompetent. The respondent argued that whilst the applicant did not comply with rule 7(2) of C.I. 16, he did not satisfy the conditions precedent to the grant of special leave to appeal to this Court. Curiously, the respondent, in its affidavit in opposition filed on 19/01/2018, did not specifically deny the depositions made by the applicant that he attempted to file the notice of appeal at the offices of the respondent but he was warded off by a staff who said they did not accept for filing notices of appeal against the respondent so he should go to the Court of Appeal. This is a material fact which the respondent should have denied in its affidavit in opposition but it didn't. Respondent only relied on the alleged impeccability of the ruling of the Court of Appeal, which was based on the provisions of rule 8(2) and 9(3) of C.I. 19 as correctly applied by this Court in the *Frimpong and Nyantakyiwa cases* supra.

Clearly, the applicant is not deprived by law from bringing this application before the Court. Special Leave applications provided for under article 131(2) of the 1992 Constitution are, by their nature and description, special. They are neither fettered by rules of practice nor even legislation. This Court in the case of **DOLPHYNE (NO.2) v SPEEDLINE STEVEDDORING CO. LTD [1996-97] SCGLR page 173 @ 174** made that point clear. The Court held that; in exercising its unfettered discretion under article 131(2) of the Constitution, the Supreme Court is not bound by any rules of practice or procedure or any legislation. This Court therefore has the power in appropriate cases, to ignore the provisions of article 131(1) and grant special leave to appeal in respect of appeals from any judgment or decision of the Court of Appeal. The Court, however, does not exercise this power without any limitation. The Court is guided by laid down principles which govern its decision-making on whether to grant or to refuse such an application. These have been catalogued in the *Dolphyne case* (supra) and subsequently applied by this Court in several cases including **KOTEY v KOLETEY [2000]; ANSAH v ATSEM [2001-2002] SCGLR 906 and OSEI v ANOKYE [2007-2008] SCGLR 463.** These are:

1. ***Where the Court finds that there is a prima facie error on the face of the record; or***
2. ***Where a general principle of law has arisen for the first time; or***

3. Where a decision by the Supreme Court on the point sought to be appealed against would be advantageous to the public.

I wish to recall a statement I made in my ruling concerning special leave applications in the case of MINING & CONSTRUCTION LIMITED v ANGLOGOLD; (CIVIL MOTION NO. J8/68/2016, dated 19/05/2016): ***"The authorities have made it clear that the discretion of the Court in entertaining such applications under article 131(2) of the Constitution, 1992 and rule 7(4) of C.I. 16 is a perfectly free one, unlimited by any rules of procedure. The only question that confronts the Court for an answer when considering such applications is; whether upon the facts of the particular case or the case in question, the discretion should be exercised in applicant's favour".***

Commenting on special leave applications in the case of **KOTEY v KOLETEY [2000] SCGLR 417** at page 422-423, Bamford Adoo, JSC said: ***"This leave is under section 4(5) of the Courts Act, 1993 [Act 459], not subject to any condition of appeal under the rules of court, i.e. [C.I. 16]. It is a special favour which is given to litigants who have good and valid appeals".*** The rationale behind the grant of such applications is basically to prevent the denial or failure of justice.

The questions to consider in this application are:

(i) *Would the applicant be denied justice if the application is refused?*

(ii) *Has the applicant demonstrated, through his affidavit in support and the proposed grounds of appeal that there would be failure of justice if his application is not granted?*

It appears to me that article 131(1) of the Constitution, 1992 does not cover proceedings from the Disciplinary Committee of the General Legal Council (GLC), which de facto, is not a lower court as defined under section 39 of the Courts Act, 1993 [Act 459]. Article 126 (1) of the Constitution, 1992 provides: ***"The judiciary shall consist of (a) the Superior Court of Judicature comprising; (i) the Supreme Court; (ii) the Court of Appeal; and (iii) the High Court and Regional Tribunals; (b) such lower courts or tribunals as Parliament may***

by law establish". Pursuant to paragraph (b) of clause (1) of article 126 of the Constitution quoted above, Parliament passed the Courts Act, [Act 459] in 1993. Section 39 of Act 459 established the following as the lower courts of Ghana in addition to the Superior Courts created by the Constitution:

a. **Circuit Courts;**
b. **District Courts;**
c. **Juvenile Courts; and**
d. **The National House of Chiefs, Regional Houses of Chiefs and Traditional Councils, to adjudicate over causes or matters affecting chieftaincy.**

From the provisions of the Constitution and the Courts Act, Act 459, whilst the judicial committees of the Houses of Chiefs have been categorised as lower courts created on the authority of the Constitution, 1992, the Disciplinary Committee of the General Legal Council has not been listed as one of such courts. Again, under the interpretation section of the Court of Appeal Rules [C.I. 19], ***'court'*** has been defined to mean ***"a court of competent jurisdiction"*** whilst ***'court below'*** means, ***"the court from which the appeal is brought".*** Applicant's contention is that the Disciplinary Committee of the General Legal Council is not a court of competent jurisdiction as defined under the Courts Act and the Constitution therefore Section 8(2) of C.I. 19 was not applicable to it. The Court of Appeal therefore erred in dismissing his application on the ground that he had no appeal pending, because the notice of appeal was filed in a wrong forum.

The two cases the Court of Appeal cited to support its decision were all matters that came before the Supreme Court from decisions of the Judicial Committee of the National House of Chiefs. These Judicial Committees are categorised as **'courts'** as defined under section 39 of Act 459 so the two decisions have statutory foundations. Decisions from Judicial Committees of Houses of Chiefs are therefore quite peculiar from that of the Disciplinary Committee of the General Legal Council. There has never been an authoritative decision on the issue before the Court; i.e. whether or not rule 8(2) is strictly applicable to appeals from the Disciplinary Committee of the

General Legal Council, when read together with section 39 of the Courts Act, Act 459.

The authorities are legion that every case must be determined on its peculiar circumstances and that no two cases are alike. In the instant case before this Court, did the applicant err in filing the notice of appeal in the Court of Appeal instead of at the offices of the General Legal Council and if yes, was the error so fundamental or fatal that the door of justice should be completely shut against the applicant from seeking a redress of any kind whatsoever, particularly where he has appealed against the harshness of the sentence of three (3) years suspension from practice? Would the decision to invalidate the appeal amount to the denial or failure of justice in this current era of justice dispensation when the courts are being constantly admonished to ensure that substantive justice, devoid of form, is done at all times? Would injustice be caused to the respondent if rules 8(2) and 9(3) of C.I. 19 are waived in applicant's favour on the strength of rule 63 so that the appeal is determined on the merits? These are some of the crucial questions that keep echoing for answers, having taken cognizance of the peculiar nature of the matter before me.

In my view, the Court of Appeal by its decision of 6th December 2017 has made the administrative arrangements set out in the rules of court for filing appeals to override the applicant's substantive right of appeal and this deserves to be looked at by the Supreme Court. Furthermore, I think, having taken judicial notice of the upsurge of complaints at the General Legal Council against professional lawyers for professional misconduct of late, it would be in the public interest if a duly constituted Supreme Court in its collective wisdom, is given the opportunity to pronounce on the point sought to be appealed against; i.e. whether the Disciplinary Committee of the General Legal Council is a court as envisaged under rules 8(2) and 9(3) of the Court of Appeal Rules [C.I. 19] and whether or not the said rules are strictly applicable to appeals emanating from the Disciplinary Committee of the General Legal Council to the Court of Appeal.

It is in the light of the above, that I think the application before me must be given a serious thought. I therefore feel inclined to grant the application for special leave to

appeal to this Court against the decision of the Court of Appeal dated 6th December 2017 for this Court to give a final pronouncement on the points raised by the applicant. Application accordingly granted.

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

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