IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2017

CORAM: YAW APPAU, JSC (SITTING AS A SINGLE JUSTICE)

CIVIL MOTION
NO. J8/54/2017

27TH APRIL, 2017

HANSON KWADWO KODUAH - APPELT/APPLT/RESP/ APPLT/RESPONDENT

VRS

1. GENERAL LEGAL COUNCIL
2. DISCIPLINARY COMMITTEE OF THE GENERAL LEGAL COUNCIL - RESPS/RESPS/APPLTS/RESPS/APPLICANTS

RULING

APPAU, JSC:-

Article 131 (1) of the 1992 Constitution and Section 4 (1) of the Courts Act, 1993 [Act 459], make provisions as to how appeals shall lie from judgments of the Court of Appeal to this Court: (i) where the cases originated from either the High Court or the Regional Tribunal and (ii) where the cases originated from courts lower than the High Court or the Regional Tribunal (in this case the Circuit and District Magistrate courts. The applicable rule in respect of these two legs of appeal is rule 7 (1), (2) and (3) of the Rules of the Supreme Court [C.I. 16] of 1996. Aside of these, article 131 (2) of the Constitution and section 4 (2) of the Courts Act, make room for what is termed; 'special leave' to appeal to the

Supreme Court against the decisions of the Court of Appeal that do not fall under the categories specified under articles 131 (1) of the Constitution and section 4 (1) of the Courts Act or in situations where those provisions have been infringed or could not be complied with by the would be appellant. With regard to this third leg of appeals that require special leave, the applicable rule is Rule 7 (4) of [C.I. 16].

The present application before me is for special leave to appeal against the ruling of the Court of Appeal dated 8th February 2017 pursuant to clause (2) of article 131 of the 1992 Constitution and section 4 (2) of the Courts Act, 1993 [Act 459]. In this regard, the applicable rule is rule 7 (4) of the rules of this Court [C.I. 16]. It therefore belongs to the third leg of appeals. The provisions pertaining to this third leg of appeals from the Court of Appeal to the Supreme Court as re-called supra read:

i. *Article 131 (2) of the Constitution, 1992* – ***"Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter, civil or criminal, and may grant leave accordingly".***

ii. *Section 4 (2) of Act 459* – ***"Notwithstanding subsection (1) of this section, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in any cause or matter (including interlocutory matter) civil or criminal, and may grant leave accordingly".***

iii. *Rule 7 (4) of [C.I. 16]* – ***"Despite subrules (1) to (3) of this rule, an application for special leave to appeal under clause (2) of article 131 of the Constitution shall be entertained by the Court and the Court may grant leave on the term specified by the Court having regard to the circumstances of the case"***

The facts in this case are simply that; the Respondent in this application, who is a lawyer by profession, was suspended from practising as a lawyer for a number of years by the 1st Applicant herein based upon findings made against him by the 2nd Applicant herein. The Respondent appealed

against the decision of the Applicants to the Court of Appeal per section 21 (a) of the Legal Profession Act, 1960 **[Act 32]**. He thereafter applied to the Court of Appeal for the suspension of the orders made against him by the Applicants pending the determination of his appeal.

The Court of Appeal, per a single justice (vide article 138 of the Constitution), granted his application as prayed. The Applicants, not satisfied with the ruling of the single justice, applied to the Court of Appeal duly constituted, to reconsider the decision of the single justice. The duly constituted Court of Appeal reversed the orders of the single justice and re-instated the orders of the 1st Applicant. It went further to declare that the Respondent breached section 21 (b) of [Act 32] when he filed his appeal without first seeking leave of either the 2nd Appellant or the Court of Appeal so there was no appeal, *stricto sensu*, before it. This was on the 2nd day of November 2016.

Three weeks after the reversal of the orders of the single justice (precisely on 25/11/2016), the Respondent filed a motion praying the Court of Appeal to set aside its own decision of 2nd November 2016 on the ground that same was void and therefore a nullity. On the 8th of February 2017, the Court of Appeal set aside its own orders as prayed on the compendium grounds that:

(a) *the court erred when it strayed into the substantive appeal and decided that there was no proper appeal before it when the matter before it was not in respect of the substantive appeal but an application and;*

(b) *the court breached the audi-alteram partem rule when it decided the application for the reversal of the single justice's decision in the absence of the Respondent and without hearing his response to the legal objection raised in court.*

It is this second decision of the Court of Appeal duly constituted that the Applicants are seeking special leave of this Court to appeal against. The Respondent opposed the application on the grounds that:

i) *The Applicants have not provided cogent and reasonable grounds why the application was not brought within the stipulated time before the Court of Appeal but had to apply lately to this Court;*

ii) *The application does not meet the Supreme Court's standard requirements for invoking its discretionary special jurisdiction;*

iii) *That the interest of justice shall be served if the decision of the Court of Appeal is preserved since its reversal shall cause him greater and substantial miscarriage of justice;*

iv) *That the public interest shall be served if the status quo ante is preserved until the substantive appeal before the Court of Appeal is finally determined;*

v) *That the appeal before the Court of Appeal is ripe for hearing and it would be sheer waste of time if the application is granted; and*

vi) *That, there are no particularised legal issues for the Supreme Court to determine in the intended appeal.*

I have to emphasize that the Applicants' motion before this Court for special leave to appeal against the ruling of the Court of Appeal, was not premised on the fact that they were out of time as implied by the Respondent by his paragraph 13 of the affidavit in opposition filed on 14/03/17. The application was filed twenty (20) days after the delivery of the ruling in question. The fact is that the application did not emanate from a case that originated from the High Court or Regional Tribunal for which the Applicants could appeal as of right as provided under article 131 (1) (a); neither did it emanate from a case that originated from a court lower than the High Court or the Regional Tribunal for which the Applicants needed leave of the Court of Appeal first as provided under article 131 (1) (b). Article 131 (1) is therefore inapplicable to the Applicants.

The application is rather an off-shoot of a case that originated from the 2nd Applicant as provided under section 18 of the Legal Profession Act, 1960 [Act 32]. Being a case that did not fall under either of article 131 (1) (a) or 131 (1) (b) of the 1992 Constitution, Or section 4 (1) (a) or (b) of Act 459, the only means by which the Applicants could reach this Court on an appeal is by recourse to article 131 (2) of the 1992 Constitution;

section 4(2) of Act 459 and rule 7 (4) of C.I. 16 as reproduced above. The application before the Court was therefore made within jurisdiction.

With regard to the argument that the reversal of the decision of the Court of Appeal would occasion him substantial miscarriage of justice therefore there was the need to preserve the status quo to protect the public interest, I think these are not grounds to be canvassed before me in this application. They are issues to be determined by this Court duly constituted in the appeal itself if the Applicants are given the nod to file their appeal. I am therefore not qualified to pronounce on them since the intended appeal is not before me. What I am supposed to consider in this application is; whether or not the Applicants have satisfied the requirements for the grant of special leave to appeal as provided under article 131 (2) of the 1992 Constitution and section 4 (2) of Act 459.

Again, the fact of the ripeness of the substantive appeal for hearing before the Court of Appeal cannot operate as a bar to a party who is aggrieved by an interlocutory decision of the court from appealing to this Court against same. What is important and necessary is that the party satisfies any of the requirements laid down by this Court in the Dolphyne case reported as; **(DOLPHYNE (NO 2) v SPEEDLINE STEVEDORING CO LTD [1996-97] SCGLR 373**, referred to by the Respondent in his submissions and re-echoed in **KOTEY v KORLETEY [2000] SCGLR 417.** These are:

(a) *that there was a prima facie error on the face of the record;*

(b) *that a general principle of law had arisen for the first time; and*

(c) *that a decision by the Supreme Court on the point sought to be appealed against would be advantageous to the public.*

The Applicants are saying that the Court of Appeal's ruling of 8th February 2017 contains fundamental errors (factual and legal) that go to jurisdiction for which a final decision by this Court on those issues would be advantageous to the public. Some of the issues raised in the application *inter alia* are: ***i.*** *whether or not the Court of Appeal erred in setting aside its previous decision on the ground that it was void;* ***ii.*** *whether or not the*

audi alteram partem rule or principle was misapplied by the Court of Appeal in its ruling of 8th February 2017 and ***iii.*** *whether or not the Court of Appeal erred when it went ahead to disqualify Respondent's substantive appeal before it during the determination of the re-consideration application for the reversal of the decision of the single justice.*

In my view, the above issues which the Applicants want to contest in their intended appeal among others are not a mere gimmick meant to delay the hearing of the substantive appeal before the Court of Appeal no matter how the Respondent perceives them. They are issues that are so fundamental that a decision by this Court on the points raised would be advantageous to the public. I would therefore not shut the appellate door to this Court against the Applicants on the ground that opening it would delay the hearing of the substantive appeal before the Court of Appeal. I accordingly grant applicants' motion for special leave to appeal to this Court against the ruling of the Court of Appeal dated 8th February 2017. The applicants have seven (7) days from this date to do so.

SGD **YAW APPAU**
(JUSTICE OF THE SUPREME COURT)

COUNSEL

Hansen Kwadwo Koduah appears in person for the Appellant/Applicant/Respondent/Applicant/Respondent.

Nana Yaw Ntrakwah for the Respondents/Respondents/Applicants/ Respondents/Applicants.