IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA A.D.2016:

CORAM: ATUGUBA JSC
ANSAH JSC
DOTSE JSC
YEBOAH JSC
BAFFOE-BONNIE JSC
AKOTO-BAMFO (MRS) JSC
AKAMBA JSC

CIVIL APPEAL.

No.J4/56/2014

21ST APRIL 2016

HENRY NUERTEY KORBOE - **PLAINTIFF/APPELLANT/**
H/NO. 87 OWUSU ANSAH ROAD **RESPONDENT**
OYARIFA-ACCRA

VRS

FRANCIS AMOSA - **DEFENDANT/RESPONDENT**
H/NO 1 GNAT BUNGALOWS **APPELLANT**
NEW ADENTA, ACCRA

JUDGMENT

MAJORITY OPINION

DOTSE JSC:

I have had the benefit of the judgment authored by my very well respected and illustrious brother, and President of this Court, Atuguba JSC.

Save for the conclusions arrived at by my respected brother that the appeal herein fails and should be dismissed, I entirely agree with the narration of the facts of the case as well as the analysis of the laws and the cases referred to therein.

However, it is quite apparent to me that one basic reason of my inability to accept the conclusion reached by my brother Atuguba JSC, stems from my disagreement with the meaning ascribed to sections 2 and 8(1) of the *Legal Profession Act, 1960 (Act 32)*. It is worth observing that, Act 32 was enacted to consolidate and amend the laws relating to the legal profession as has been captured in the long title and preamble.

Section 2 of Act 32 states as follows:-

> ***Status of Lawyers***
>
> *"A person whose name is entered on the Roll kept under section 6*
>
> *(a) is entitled , subject to Section 8, to practice as a lawyer, whether as a barrister or solicitor or both, the fees, charges and disbursement for services rendered as a lawyer, and*
>
> *(b) is an officer of the Courts, and*

*(c) is subject, **when acting as a lawyer,** to the liabilities that attach by law to a Solicitor."*

Section 8 (1) on the other hand provides as follows:-

> *"A person other than the Attorney-General, or an officer of the Attorney-General's department, **shall not practice as a Solicitor unless that person has in respect of that practice a valid annual Solicitor's license issued by the Council duly stamped and in the form set out in the second schedule."***

The crux of the issues raised in this appeal, in my mind depends entirely on the meaning ascribed to the mandatory provisions in section 8 (1) of Act 32 which provides that a person other than the Attorney-General or his representative **shall not practice as a Solicitor unless that person has a valid annual Solicitors license issued by the General Legal Council**.

Chambers, 21st Century Dictionary, Revised Edition, page 1089 states the following as the meaning of practice, relevant to the circumstances in which the word has been used therein in section 8 (1) of Act 32 as;

> ***"to work at or follow an art or profession**, especially law or medicine."*

Black's Law Dictionary, Ninth Edition, by Bryan A. Garner, at page 9 defines Lawyer as a noun to mean – ***"one who is licensed to practice law."***

On page 1291, the learned author of Black's Law Dictionary describes Practice of Law as follows:-

> ***"The professional work of a duly licensed lawyer,*** *encompassing a broad range of services such as conducting cases in court, preparing papers necessary to bring about various transactions from conveying land to effecting corporate mergers, preparing legal opinions on various points of law, drafting wills and other estate planning documents and advising clients on legal questions. The term also includes activities that comparatively few lawyers engage in but that require legal expertise such as drafting legislation and court rules."*

Section 56 of Act 32, which is the interpretation section, defines "lawyer" as follows:-

> *"**for the purposes of the recovery of fees includes a person enrolled at the time the relevant business was done**, and for the purposes of the preparation of legal documents, **does not include a lawyer for the time being suspended from practice."***

Legal document, on the other hand is also defined by section 56 as meaning,

> *" a document, other than a Will, conferring, transferring, limiting, charging or extinguishing, or purporting to confer, transfer, limit, charge or extinguish a right, title or an interest in property, movable*

or immovable or a document, including a letter indicating that legal proceedings may be brought against the person to whom it is addressed or any other person."

Practice is also defined by the same section as *"in relation to a country other than the Republic,* ***means practice as a barrister, solicitor or advocate or in a like capacity, by whatever name called."***

From the above, it is quite clear that for a person to qualify to practice law in Ghana, he must have been called to the Bar in Ghana and have his name on the Roll of Lawyers as specified in section 6 of Act 32.

It is only such a person, who is either a barrister, Solicitor or both who shall be entitled to have his name on the roll of Lawyers in conformity with the Legal Profession Act, 1960 Act 32.

Secondly, a lawyer is also a qualified person who consults with clients and prepares legal documents for and or acts for them in a professional manner on their behalf.

Thirdly, for such a person to continue practicing as a lawyer he must have an annual valid Solicitor's license issued in the prescribed form specified therein in Section 8 (1) of Act 32. Thus, there are control mechanisms that have been put in place to regulate the conduct of lawyers to ensure their continuous enrolment at the Bar, subject to conditions stated therein.

Indeed, there are other pre-conditions that have to be met before a person is granted the valid Solicitor's license pursuant to sections 8 (2) (3) (4) and (5) of Act 32. However, since the issues germane to this appeal are not

necessarily linked to those sections, I will decline to make any further comments herein.

The question that begs for an answer in this appeal, is whether the failure of a Solicitor to take out a Solicitor's license pursuant to section 8 (1) of Act 32 renders invalid, all the processes initiated by the said Solicitor in commencing any legal process in court or otherwise such as preparation of any legal document or originating process?

In order to bring the conduct of the Respondent's lawyer into context herein, it is appropriate to recount some of the salient facts germane to the instant appeal as follows:-

FACTS OF THE CASE

The High Court, upon a preliminary objection that was taken to the propriety of the Respondent's lawyer, Justin Pwavra Teriwajah in commencing an action on behalf of the said Respondent (therein Plaintiff) against the Appellant (therein Defendant) on the basis that the said Respondent's lawyer did not have a valid Solicitor's license pursuant to Section 8 (1) of Act 32, struck out the said writ of summons.

In other words, the High Court, Accra, upheld the preliminary legal objection that a lawyer who fails to take out an annual Solicitors license pursuant to section 8 (1) of Act 32 is not permitted to practice law which includes preparation and filing of a writ of summons on behalf of Henry Nuertey Korboe, the Respondent herein

An appeal at the instance of the Respondent herein to the Court of Appeal, reversed the decision of the High Court on the grounds that it would be harsh to visit the consequences of the Solicitor's failure to take out a practicing license on the client, purportedly, following decisions in ***Akuffo-Addo v Quashie-Idun [1968] GLR 667*** and unreported Ruling of this Court, dated 11th December 2013, Suit No. ***J4/24/13 Republic v High Court, Accra Ex-parte Teriwaja 1st Applicant, and Henry Nuertey Korboe 2nd Applicant, (Reiss & Company Ghana Limited, Interested Party).***

PRELIMINARY OBSERVATIONS

When the conduct of what the Respondent's lawyer did by the preparation and filing of the Writ of Summons at the High Court is brought under close scrutiny, it becomes apparent that what the learned counsel actually did amounted to practicing as a lawyer. In that respect therefore, it is clear that, having already lost his right as a lawyer to practice law because of his inability and or failure to take out a Solicitor's license pursuant to Section 8 (1) of Act 32, the issue that arises is, did the said Solicitor have any authority to prepare any originative process like a writ of summons or practice law simpliciter?

GROUNDS OF APPEAL

At this stage, it is necessary to consider the grounds of appeal filed by the appellant before this court, in order to answer the points of substance in this appeal.

i. ”The Honourable Court of Appeal exceeded its jurisdiction by departing from and refusing to be bound by the decision of the Supreme Court in the case of **Republic v High Court, Fast Track Division, Accra, Ex parte Justin Pwavra Teriwajah (Reiss and Company Interested Party)**

ii. The Court erred in law when it gave a modern purposive approach interpretation to Section 8 (1) of the Legal Profession Act 1960 and dismissed the Preliminary Objection raised by the Respondent and thereby validated the incompetent Notices of Appeal filed by Justin Pwavra Teriwajah on 8th July 2013 at a time that he did not have a Solicitor’s License.

iii. The Honourable Court of Appeal erred in law when it granted a waiver and/or immunity to Justin Pwavra Teriwajah and all Lawyers from complying with the mandatory provisions of Section 8 (1) of the Legal Profession Act, 1960 (Act 32) and Rule 4 (4) of the Legal Profession (Professional Conduct and Etiquette) Rules 1960 (LT 613).

iv. The Honourable Court of Appeal erred in Law when it read a meaning and intendment of the Legislature into Section 8 (1) of Act 32 and held that Lawyers could practice and sign legal documents and court processes and file same in court even when

they did not have a valid Solicitor's License and practiced from unregistered Chambers.

v. The Honourable Court of Appeal erred in law when it validated the incompetent Notice of Appeal filed on 8th July 2013 and proceeded to grant the Appeal in part by making an order for the incompetent writ of summons in suit number AL 22/2014 filed on 29th April 2013 to be reinstated to the Court's list.

vi. The Honourable Court of Appeal erred in law and or exceeded jurisdiction when they proceeded to give Practice Directions contrary to the decision of the Supreme Court in the Ex-parte Teriwajah case to allow Lawyers to prepare and sign documents and also practice without Solicitors Licenses and to practice from unregistered chambers.

vii. The Honourable Court of Appeal erred in law when it held that the cost of GH¢1,000 awarded personally against Teriwajah was validly awarded by the Court below and yet proceeded to set aside the award of the cost.

viii. The Honourable Court of Appeal erred in Law when it failed in its duty to enforce the compliance by the Plaintiff and his Lawyer who were the parties in the ex-parte Teriwajah case with the decision of the Supreme Court dated 13th December 2014 which was binding on them.

ix. The Honourable Court of Appeal erred in law when it held that Justice Edward Amoako Asante gave a wrong interpretation of section 8 (1) of Act 32 and Order 75 rule 6 (1) of the High Court Civil Procedure Rules (C.I. 47).

x. The Honourable Court of Appeal erred in law when it held that there was nothing in section 8 (1) of the Legal Profession Act, 1960 (Act 32) to disqualify lawyers from practicing without a practicing licence and that Act 32 merely provided criminal sanctions and did not invalidate or nullify processes filed.

xi. The Honourable Court of Appeal erred in law when it held that the learned High Court Judge imported an interpretation into section 8 (1) of Act 32 which was not the intention of the Legislature and that Section 8 (1) of Act 32 was aimed at the General Legal Council disciplining Lawyers by applying criminal sanctions and not to invalidate or nullify processes filed by lawyers without a valid Practicing License because it would work great injustice on the Client.

xii. The Judgment is against the weight of the evidence

xiii. Further grounds of Appeal would be filed on receipt of the record of Appeal

The following additional ground of appeal was subsequently filed by the appellant

xiv. The learned Court of Appeal Judges erred in law when they requested for and relied on oral submissions by Amicus Curiae from the Bar and also written submission from Lawyer O.K. Osafo Buabeng filed on 6th May 2014 which same was also not served on the Defendant/Respondent."

RELIEF'S SOUGHT BY APPELLANT FROM THIS COURT

Thereafter, the appellant prayed this honourable court to grant him the following reliefs:-

i. "A reversal of the decision of the Court of Appeal.

ii. An order confirming the decision in the ***Republic v High Court Fast Track Division Ex-parte Teriwajah*** suit number J4/24/2013, that a lawyer cannot practice without a valid Solicitor's License issued for the current year of practice and that any document signed or filed by the Lawyer in contravention of Section 8 (1) of Act 32 and L.I. 613 is invalid, incompetent, null and void.

iii. An order setting aside the Practice Directions and rules made by the Court of Appeal under Rule 7 of C. I. 19."

From the above grounds of appeal, it appears to me that learned counsel for the appellant sought to kill a fly with a sledge hammer.

This is because all the 14 grounds of appeal could easily have been subsumed under one ground of appeal for purposes of judicial economy and clarity of thought.

This court has in several decisions, times without number, reiterated the fact that grounds of appeal must be formulated in compliance with the rules of court.

For example, Rule 6 (4) of the Supreme Court Rules, 1996 C. I. 16 states as follows:-

> *"The grounds of appeal shall set out concisely and under distinct heads the grounds upon which the appellant intends to rely at the hearing of the appeal, without any argument or narrative and shall be numbered seriatim, and where a ground of appeal is one of law the appellant shall indicate the stage of the proceedings at which it was first raised."*

See also Rule 6 (5) of C.I. 16.

My personal observation is that, learned counsel for the appellant over reacted to the decision of the Court of Appeal in the many and repetitive grounds of appeal filed.

From the above original and additional grounds of appeal referred to supra, it is quite evident that, the Court of Appeal correctly identified the issues

germane in the appeal before them when they stated in their unanimous judgment as follows:-

> *"In the face of section 8 (1) quoted earlier in this judgment and L.I. 613, what happens to process originated and filed in court by a lawyer who has fallen foul of their provisions failing to procure his practicing license? Should the process or processes signed and filed be struck out and also deny audience to such a lawyer in this court."*

The reference therein to section 8 (1) is to the Legal Profession Act, 1960 (Act 32) and that to L.I 613 is to the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (L.I. 613)

The question that the Court of Appeal asked itself which I have referred to supra appears to me to have been earlier answered by my respected brother Anin-Yeboah JSC when he delivered the unanimous opinion of the Supreme Court in the Ruling in the unreported Civil motion No. J4/24/2013 intitutled ***Republic v High Court, (Fast Track Division) Accra Ex-parte Justin Pwavra Teriwajah (1st Applicant) Henry Nuertey Korboe (2nd Applicant) Reiss and Co. Ghana Limited, (Interested Party) dated 11/12/2013*** stated in respect of section 8 (1) of Act 32 as follows:-

> ***"The interpretation of this section is not ambiguous. It simply means that one cannot sign documents or represent a party as a lawyer in court unless he has obtained a valid Solicitor's license for that purpose. The section also sets the duration of the license, which must be annual."***

I am of the considered view that, whenever a Lawyer by his own acts of default finds himself or herself in breach of section 8 (1) of Act 32, then it follows that he automatically loses his license to practice as a Solicitor or Lawyer. The consequence thereof is that, such a lawyer must be deemed not to have any authority whatsoever to prepare an originating process in any court process or legal document on behalf of any client or represent any such client in his capacity as a lawyer. The operating words of section 8 (1) of Act 32 are

> *"a person other than the Attorney-General…* ***shall not practice as a Solicitor unless.."***

Indeed, the reference from Black's Law Dictionary already referred to supra is clear that Respondent's lawyer was practicing law by his conduct. This is because the conduct of the Respondent's lawyer in preparing the Respondent's writ of summons, amounts to the conduct of professional work of a duly licensed lawyer which forms part of what is defined as practice of law.

In essence, once Justin Pwavra Teriwajah lost his license at the material time to practice as a lawyer when he prepared and filed the process for and on behalf of the Respondent, the said processes and appearance of the said lawyer must be deemed to be invalid for all purposes. As a matter of fact, courts of law have no option other than to hold that any such defaulting lawyer should not be permitted to practice law because of the mandatory shall used therein.

The rationale for the above conclusion stems from the fact that, having lost his right to practice law pursuant to section 8 (1) of Act 32, it is apparent that no validity flows from any process or appearance that such a lawyer will offer any client. It is unfortunate that a client, through no fault of his, would have to suffer the consequences of his defaulting lawyer.

The Interpretation Act, 2009 Act 792 provides in section 42 that in an enactment the expression *"may"* shall be construed as permissive and empowering and *"shall"* as imperative and mandatory. It appears therefore that courts, must interprete *"shall not practice"* in section 8 (1) of Act 32 mandatorily to achieve the stated and desired meaning ascribed to it.

In these circumstances all the legal authorities that have been referred to by all the learned counsel except appellant's counsel as well as by the amici curiae did not really address the point of substance.

Indeed, as was stated by Anin-Yeboah JSC, the words in section 8 (1) of Act 32 are not ambiguous. I will add that, the said section admits of no controversy whatsoever.

As a matter of fact, when the Supreme Court, as per its decision in Civil Motion No. J4/24/2013 dated 11/12/2013 in the ex-parte Justin Pwavra Teriwajah case spoke with one voice through my respected brother Anin Yeobah JSC, the point was made very clear that if a lawyer is in default of section 8 (1) of Act 32, that lawyer cannot sign any legal document or represent a party as a lawyer in court. The clearest indication had been given that the Respondent's lawyer indeed acted as a Professional lawyer considering his conduct in the matter. If by his own default, Justin Pwavra

Teriwajah lost his right at that material time to practice as a lawyer, afortiori, he cannot act for any person as such in that professional relationship.

The simple consequences of the above are that all processes originated by him for the Respondent in the High Court and thereafter are deemed to have been invalid, null and void.

A critical and thorough reading of the decision of the Full bench in the ***Quashie Idun v Akufo-Addo*** case already referred to supra, indicates that the court clearly frowned upon and deprecated the invitation and allusion that Judges could grant waiver to defaulting lawyers or even condone their illegal acts prohibited under Act 32.

Amissah JA, speaking on behalf of the Court at page 688 re-emphasised the position of the court thus:-

> *"And where the balance is between inconvenience or even pecuniary harm to a party on the one hand as opposed to the condonation of law breaking on the other, as appears to be the case here, the courts should not lend their assistance to the breaking of the law.:"*

The above decision also clearly stated that, it would be wrong to assume that only criminal sanctions have been imposed for breaches of Section 8 (1) of Act 32 as are provided in section 8 (6). Indeed, the civil sanctions have already been stated in section 8 (1) of the law in that, a defaulting Solicitor or lawyer loses his right to practice as a lawyer. Aside that, if one

indeed is in breach, there is also a criminal sanction which follows a successful criminal prosecution.

It must be noted here that, criminal liabilities have to be well laid out because of Constitutional provisions to that effect. Reference to article 19 (11) of the Constitution 1992 which provides as follows:-

> *"No person shall be convicted of a criminal offence unless the offence is defined and the penalty for it prescribed in a written law."*

The specific provisions in section 8 (6) of Act 32 which states as follows therefore satisfies the above constitutional provision.

> *"A person who practices in contravention of this section commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units and shall not maintain an action for recovery of fees, reward or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice."*

An analogy can also be made of similar provisions in the Medical and Dental Act, 1972 NRCD 91 which is also a Legislation regulating Medical and Dental practice in Ghana.

Under section 20 of NRCD 91, the Medical and Dental Council is enjoined to provide three classes of registers of members, namely, **standing**, **temporary** and **provisional**.

Section 40 of the same NRCD 91 also states that "a practitioner is not entitled to

(a) Practice medicine or dentistry

(b) Recover in a court a charge or cost mentioned in section 39 or

(c) Sign a certificate or document required by law to be signed by a practitioner, unless that practitioner is registered, under, and if registered, to the extent only allowed by this Act."

Like the Legal Profession Act, the Medical and Dental Act, NRCD 91 also has detailed criminal sanctions for practitioners who are in default.

The analogy I wish to draw is that, both the Legal and Medical Profession have a registration mechanism. Default of these results in a member not only losing the right to practice, but also likely to suffer criminal sanctions.

The intention to regulate these two professions is therefore very clear and apparent.

It is therefore to be noted that both civil and criminal sanctions are available for breaches under Act 32.

RATIONALE FOR CIVIL SANCTIONS

It has been strongly urged that, because of difficulties which may be encountered by clients for whom an unlicensed lawyer has acted for, the processes prepared by the said lawyer should not be invalidated. I do not subscribe to these views, because,

1. The general public who engage lawyers to act for them need to be protected from persons who are not qualified at that material time. This is because, the legal profession is an honourable and learned

profession. For these reasons, the public must be made aware of persons who for one reason or the other are no longer qualified to be on the roll of lawyers. If a lawyer has failed to obtain his practicing license as provided for under the law, then afortiori, he loses his qualification at that material time. Strict compliance with the law as is stated in section 8 (1) of Act 32 is what will ensure that unqualified persons do not practice law when they are not permitted to. There should be a mechanism by which all such defaulting lawyers will be publicly identified.

2. The licensing regime, which requires that persons who do not obtain valid Solicitor's licenses for a given year should not be permitted to practice law is a self regulatory mechanism of the legal profession that needs to be strictly adhered to. What will be the future of the legal profession, if persons who voluntarily refuse to obtain and or renew their practicing licenses have the stamp of validity ascribe to their work irrespective of their breach? Chaos and confusion will be the order of the day.
3. There is the need to maintain high ethical and professional standards in the legal profession by ensuring strict compliance with the requirements of licensing of persons as lawyers under Act 32. This will in addition maintain the integrity of the legal profession. There is therefore the need to maintain high ethical and professional standards.

In order to achieve the above, I would endorse an interpretation of section 8 (1) of Act 32 such as would give the words therein, their natural and

plain meanings because they are not ambiguous and also admit of no controversy. Taking a cue also from the Interpretation Act, Act 792, section 42 thereof, I will mandatorily interprete *"shall"* as used in section 8 (1) of Act 32 and state that the meaning then is that, the *"shall"* is imperative and failure to comply renders a person unqualified to practice as a lawyer at all material times of the voluntary default until the valid license is obtained.

The Courts of law, such as this apex court, must lend support to the General Legal Council in their bid to enforce laws on maintenance of professional rules on ethics and integrity.

It is in pursuit of the above that I am of the firm view that a Lawyer who defaults in renewing his practicing license should not have the honour of validity ascribed to processes of any kind and or description prepared, signed and originating from such a defaulting lawyer.

Before I conclude this appeal, I wish to congratulate all who have submitted amicus curia briefs, especially Nene Amegatcher, immediate past President of the Ghana Bar Association.

CONCLUSION

For the above reasons, I will allow the appeal. The Court of Appeal judgment of 15th May 2014 is hereby set aside. I will in its place order that a lawyer who has not taken out a Solicitor's License in any year unless granted a wavier by the General Legal Council for any length of time,

cannot practice as a professional lawyer in any court of competent jurisdiction in Ghana and or sign any legal documents.

In that respect, the writ of summons filed by Justin Pwavra Teriwajah for the Respondent herein initiating the suit in the High Court is accordingly struck out as having been filed without authority or license.

In this particular instance, I have formed the opinion that the Respondent with full knowledge of the disabilities that attach to his lawyer decided to cling to him nonetheless. He appears to me to be the architect of this whole drama. I will accordingly mulct him and his lawyer in very punitive costs.

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

ANSAH JSC.

This an appeal by the defendant/respondent/appellant from the ruling of the Court of Appeal (civil division) dated 15th May 2014. The grounds of appeal are legion and are that:

i. ***The Honorable Court of Appeal exceeded the jurisdiction by departing from and refusing to be bound by the decision of the Supreme Court in the case of Republic v High Court Fast Track Division Accra; ex parte Justin Pwavra Teriwajah (Reiss &Company interested party).***

ii. ***The Court erred in law when it gave a modern purposive approach interpretation to Section 8 (1) of the Legal Profession Act, 1960, and dismissed the Preliminary objection raised by the respondent and thereby validated the incompetent Notice of Appeal filed by Justin Pwavra Teriwajah on 8th July 2013 at a time that he did not have a Solicitor's License.***

iii. ***The honorable Court of Appeal erred in law when it granted a waiver and/or immunity to Justin Pawvra Teriwajah and all lawyers from complying with the mandatory provisions of Section 8(1) of the Legal Profession Act, 1960 (Act 32) and Rule 4(4) of the Legal Profession Act, 1960 Act 32 and Rule 4 (4) of the Legal Profession (Professional Conduct and Etiquette) Rules 1969 (LI 613).***

iv. ***The honorable Court of Appeal erred in law when it read a meaning and intendment of the legislature into Section 8(1) of Act 32 and held that lawyers could practice and sign legal documents and Court processes and file same in court even when they did not have a valid Solicitor's License and practice from unregistered Chambers.***

v. ***The honorable Court of Appeal erred in law when it validated the incompetent Notice of Appeal filed on 8th July 2013 and proceeded to grant the Appeal in part by making an order for the incompetent writ of summons in suit number AL 22/2014 filed on 29th April 2013 to be reinstated to the Court's list.***

vi. ***The honorable court of Appeal erred in law and/or exceeded their jurisdiction when they proceeded to give Practice Directions contrary to the decision of the Supreme Court in the ex parte Teriwajah case to allow Lawyers to prepare and sign documents and also practice without Solicitors Licence and to practice from unregistered chambers.***

vii. ***The honorable Court of Appeal erred in law when it failed in its duty to enforce the compliance by the plaintiff and his lawyer who were the parties in the ex parte Teriwajah case with the decision of the Supreme Court dated 13th December 2014 which was binding on them.***

viii. ***The honorable court of Appeal erred in law when it failed in its duty to enforce the compliance by the plaintiff and his lawyer who were the parties in the ex parte Teriwajah case with the decision of the Supreme Court dated 13th December 2014 which was binding on them.***

ix. ***The honorable Court of Appeal erred in law when it held that Justice Edward Amoako Asante gave a wrong interpretation of Section 8(1) of the Legal Profession Act 32 and Order 75 Rule 5 (1) of the High Court Civil Procedure Rules (CI 47).***

x. ***The Honorable Court of Appeal erred in law when it held that there was nothing in Section 8(1) of the Legal Profession Act, 1960 (Act 32) to disqualify lawyers from practicing without a practicing license and that Act 32 merely provided criminal sanctions and did not invalidate or nullify processes filed.***

xi. ***The Honorable Court of Appeal erred in law when it held that the learned High Court judge imported an interpretation into section 8(1) of Act 32 which was not the intention of the Legislature and that Section 8(1) of Act 32 was aimed at the General Legal Council disciplining lawyers by applying criminal sanctions and not to invalidate or nullify processes filed by Lawyers without a valid practicing License because it would work great injustice on the client.***

xii. ***The judgment is against the weight of evidence.***

xiii. ***Further grounds of appeal would be filed on receipt of the record of Appeal."***

The appellant filed additional grounds of appeal that:

> "**A The learned Court of Appeal Judges erred in law when they requested for and relied on oral submissions by Amicus Curiae from the bar and also written submissions from lawyer O. K. Osafo- Buabeng filed on 6th May 2014 which was also not served on the defendants/respondent."**

" brief facts of the case"

I shall henceforth call the plaintiff/appellant/respondent the respondent and the defendant/ respondent/appellant the appellant respectively in this delivery and state the brief facts of the case are that the respondent filed a writ of summons in the Fast Track division of the High Court division, Accra, on 29th April 2013 claiming against the appellant herein as follows:

"a Specific performance of the contract for the transfer of the title of the late Major George Awuni in the property which is the subject matter of this suit to the plaintiff and to put the plaintiff in possession of the same;

b. Damages for breach of contract, and,

c. Costs."

The brief facts of the case are that the plaintiff/appellant/respondent (hereinafter called the respondent), sued out a writ of summons in the registry of the Fast Track Division of the High Court Accra, on the 29th April 2013, claiming for the following reliefs:

"a. Specific performance of the contract for the transfer of the title of the late Major George Awuni in the property which is the subject matter of this suit to the plaintiff and to put the plaintiff in possession of the same;

b. Damages for breach of contract, and

c. Costs."

After the writ of summons, statement of defense and counterclaim had been filed, the respondent raised issues that the plaintiff's action was incompetent on the grounds that:

"1. Justin Pwavra the plaintiff's lawyer had no valid practicing Solicitors License for 2013, and also

2. That Justin Pwavra was practicing from Joekap Chambers which was not registered by the General Legal Council at the date the writ of summons was issued."

The issues were based on section 8(1) and (2) of the Legal Profession Act, 1960, Act 32, which read:

" A person, other than the Attorney-General, or an officer of Attorney-General's department, shall not practice as a solicitor unless that person has

in respect of that practice a valid solicitor's license issued by the Council duly stamped and in the form set out in the Second Schedule."

Secondly, the respondent purported to file another objection this time based on the grounds that after the court had upheld a preliminary objection in an affidavit in opposition to an application to strike out the plaintiff's writ of summons and also that at all material times his chambers called 'Joekap', was not registered with the General Legal Council, under Rule 4(4) of the Legal Profession (Professional Conduct and Etiquette) Rules, 1969, (LI 613), which read …: "…",

Aggrieved by rulings of the learned High Court judge, the respondent's lawyer drafted and filed a Notice of appeal to the Court of Appeal.

I have stated the facts giving rise to the appeal; and also the grounds of appeal and concluded that the gravamen of the appeal is the legal effect of a process signed by a lawyer who has not been certified in accordance with the law regulating legal practice:

I also state I have had the benefit of reading before-hand the opinions by my respectable brethren and president of the panel, Atuguba and Dotse and Yeboah JJSC dissenting, respectively.

The issue is relatively novel in our reports so much that I decided to put my opinion in writing, terse as it may be.

Section 8(1) of the Legal Profession Act, 1960, (Act 32), provided that:

"8 practicing certificate"

"(1) A person, other than the Attorney General, or an officer of the Attorney-General's department, shall not 'practice as a Solicitor' unless that person has in respect of that practice, a valid annual Solicitor's license issued by the Council duly stamped out in the second schedule."

The section poses no difficulty to understand. In my opinion, it means, apart from the Attorney-General, or an officer in the Attorney-General's office, for a person to practice as a solicitor, that person must have, a valid solicitors license issued by the Council, duly stamped and in the form set out in the second Schedule of the Act.

Section 8 (6) of the Act provided that:

> "(6) A person who practices in contravention of this section commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units and shall not maintain an action for the recovery of fees, reward or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice."

Practicing law in contravention of this section, that is, without a practicing certificate is criminalized by law and a person found liable on conviction, suffers a fine not exceeding two hundred penalty units; he shall not maintain an action for recovery of fees, reward or disbursement on account of or in relation to an act or proceeding done or taken in the course of or taken in the course of that practice."

The Legal Profession Act, 1960, consolidated and amended the law relating to the legal profession. Section 8(6) of the Act criminalized and prescribed the penalty for practising in contravention of section 8 without a practising certificate. It may be noted that the section prescribed penalties for practicing in contravention of the section on the requirement of a practising certificate.

I ought to observe that the Act did not provide for the effect of such failure on processes filed by a solicitor without a licence. Akuffo-Addo and others v Quashie-Idun and others [1968] GLR 667 CA (Full Bench) did not specify any either even though the court made sound pronouncements on the matter before it.

In the course of hearing the appeal, this court decided to and did receive further submissions on the issue from counsel as amicus cureae in its efforts to untie the knotty issue raised in the appeal. In response counsel accepted the call in the best tradition of the profession and furnished us with notable submissions. We owe counsel tons of gratitude for their respective responses.

Reading the submissions submitted to us it seem to me counsel took the view that practicing without a valid license is forbidden by law, and even if it is not written in black and white in the law that such practice is forbidden, it is doubtful if any process meant for court and emanating from the practice is tainted thereby and equally forbidden from service. I agree with and adopt the meaning of practicing adopted by the learned Jones Dotse JSC in his opinion. Practising without a valid

license is not only criminalized; any process borne out there from is equally tainted; it is the fruit of the forbidden tree; it ought not to be touched, put in the mouth or swallowed, it is poison and must be spewed out of the mouth.

After studying the Legal Profession Act, 1960, (Act 32) and the Legal Profession (Profession Conduct and Etiquete) Rules, 1969, LI 613, I unreservedly endorse the conclusion by Anin Yeboah JSC in his opinion that a solicitor who is not qualified to practice by section 8 of the Legal Profession Act, Act 32, to practice, any process that he has filed without a license to practice, should not be given not be given any effect in law. Legal profession is perhaps the most honorable profession in the world and has for centuries seem to be so….."

I also proceed to allow the appeal so as to enforce the legal provisions passed to regulate the legal practice.

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

ANIN YEBOAH, JSC –

I had the opportunity of reading the opinion of my worthy brother Dotse, JSC and I entirely agree with him that the appeal ought to be allowed. The facts of this case appear to be simple and the president of this court, in his usual clarity, adequately captured same in his opinion. I therefore need not to repeat the facts.

The appellant in this case has urged on this court that a failure on the part of a solicitor to obtain a solicitor's license should nullify the processes prepared by such solicitor. This position taken by the appellant is shared by the Ghana Bar Association which prepared amicus brief to assist the court. It is, however, the duty of this court to determine this crucial issue.

As a member of the panel in REPUBLIC v HIGH COURT, ACCRA; EX PARTE TERIWAJAH and HENRY NUERTEY KORBOE (REISS & CO GHANA LIMITED (INTERESTED PARTY)) unreported as Suit No. J4/24/2013, I had the privilege of delivering the ruling in that application.

This appeal which is before us is from the Court of Appeal, Accra, which was called upon to interpret section 8(1) of the Legal Profession Act, (Act 32) of 1960 and the effect of a process filed by a lawyer who has not procured a solicitors' license. Before us in this appeal, learned counsel for all the parties have put in a lot of industry to assist this court in determining the only issue at stake. Before I proceed to offer my reasons in support, I wish to point out without any inhibitions whatsoever that the

legal profession, and the practice of law in Ghana for that matter, are regulated by statutes. The common law does not regulate legal practice and the legal profession in this country. Any decision that should be given in this case, in my respectful opinion, should centre on the interpretation of the relevant statutory provisions regulating the profession and its practice in this country.

In my respectful view, the Legal Profession Act, 1960 (Act 32) and the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 LI 613 and other amendments, if any, should attract the attention of this court in resolving the crucial issue before us, not the several foreign cases cited to assist us, which do not bind us.

In my respectful opinion, it is plain that the Legal Profession Act, 1960 (Act 32) which is the principal statute, was enacted primarily to regulate the legal profession and instil some discipline in the profession. That was the purpose for which the Act was enacted. A careful reading of section 8 (1) which deals with solicitors' license, which is in controversy in this appeal clearly shows the purpose for which the statute was enacted by

Parliament. For a detailed appreciation of this delivery I propose to state the section in controversy in full.

Section 8(1) states as follows:

> "A person other than the Attorney-General or an officer of his department shall not practice as a solicitor unless he has in respect of such practice a valid annual license issued by the General Legal Council to be known as a "Solicitors License" in the form set out in the second schedule to this Act [deleted by stamp Duty Act 2005 (Act 689)s.51 (2)] (emphasis mine).

I am finding it very difficult to appreciate whether this clear and unambiguous provision in controversy calls for any interpretation to deny its effect. In my view, it is a straightforward and clear prohibition against solicitors who upon failure to procure a solicitor's license are prohibited from practicing as solicitors. An exemption has been given to the Attorney-General and officers of its department. The case of AKUFFO ADDO & ORS v QUARSHIE-IDUN [1968] GLR 667 [Full Bench] which was cited by the

president of this court appears to be the first case in which the said section in controversy was considered.

The case did not, however, make any pronouncement on the validity of a process filed in judicial proceedings by a lawyer who has failed to obtain a solicitors' license. In the opinion of the Court of Appeal, the process should not be declared as void. They have given their reasons for that stance which I respectfully disagree, as, agreeing with them will not promote the purpose for which the statute was enacted.

As pointed out earlier in this delivery, the purpose for which this statutory provision was enacted and which is before us for our consideration is to regulate and instil discipline in the practice of the legal profession. It must also be noted that a careful reading of Act 32 would reveal that even the legal right of Counsel to sue for legitimate legal fees due and owing by a client is also regulated. It was based on this provision, that is, sections 30 of Act 32 that the oft-quoted case of AYARNA v AGYEMANG [1976] IGLR 306 CA was decided. One would have expected, that, in cases whereby a solicitor was contracted by a client for legal services, his legal fees upon default on the part of the client, the solicitor should have the right to sue in

contract without any inhibitions whatsoever. In Ghana any step undertaken by a solicitor to resort to legal action for his outstanding legal fees must comply strictly with the relevant provision in section 30 of Act 32. I have taken time in this delivery to demonstrate how solicitors in Ghana are not all that free to resort to the common law to enforce a contract against a client.

The clear provision under consideration has put some procedural hurdles on the way to recover legal fees duly earned by a solicitor. Indeed recent decisions of this very court in cases like: ACCAM v GBERTEY [2013 - 2014] 15 SCGLR 343 and GAISIE

ZWENNES HUGHES & CO v LODERS CROCKLAAN BV [2012] ISCGLR 363 are clear and manifest the thinking of the courts in Ghana to strictly enforce the clear and unambiguous provisions of the statute. The crucial issue of whether or not the process filed by a solicitor without license should be declared null and void has been resolved by the worthy brother with which I entirely agree. In my respectful view, a solicitor qua solicitor, must first and foremost be a qualified solicitor under the statutory provisions in force before he undertakes any solicitor's work in Ghana. The

procurement of the annual license to me is a sine qua non for the practice as a solicitor for a period. It is a statutory pre-condition imposed on solicitors in clear and unambiguous terms that should not call for any interpretation whatsoever.

It must be pointed out that in law, if statutory pre-conditions which are mandatory in terms but are not fulfilled, the person entitled to take a step under the statute would not have any authority to do so. It was one of the grounds that this very court reviewed its judgment in AFRANIE II v QUARCOO & OR [1992] 2 GLR 561 SC when section 17(1) (h) of Act 220 and regulation 18 of the Rent Regulations, 1964 (LI 369) which was a statutory pre-condition was ignored. Another case worth citing is REPUBLIC v DISTRICT MAGISTRATE, ACCRA; EX PARTE ADIO [1972] 2 GLR 125 which also speaks of mandatory pre-conditions in statutes that should be complied with before steps could be taken. In this regard the courts have shown remarkable consistency.

In my respectful opinion, section (8) of Act 32 must be complied with by every solicitor before he undertakes any solicitor's work. A solicitor without

any solicitor's license has no statutory power to appear in court or prepare any process as a solicitor within a period of time. Any interpretation that seeks to relax this clear and unambiguous provision would obviously run counter to the purpose for which the statute was enacted for the regulation and discipline of the profession. In this appeal, what the respondent seeks to urge on this court is that the "sins of the solicitor who is in default for failing to take a solicitor's license should not be visited on the head of the poor client". I will take some time to demonstrate that this is not always the case in this country and indeed our Law Reports are replete with countless cases in which actions have been dismissed based on lack of diligence on the part of solicitors. It is only in trivial infractions that the poor client is spared.

However, in my respectful opinion, this should not be a basis for this court to dismiss this appeal. In the usual course of administering justice in any adversarial system, the law has on countless occasions visited the sins of a solicitor on his client. Appeals that are filed outside the time frame set down by the mandatory rules of court are struck out freely without any considerations of the hardships and far-ranging consequences that the

result may occur to the client. See the case of JOSEPH (per lawful attorney) ADDAI v OKOMFOANKYE & OR [2013 – 2014] I SCGLR 267, TINDANA NO. 2 v CHIEF OF DEFENCE STATE & ATTORNEY-GENERAL [2011] SCGLR 732 are few cases in point. It is also settled law, that, amendments applied for and successfully granted but not effected by filing the amended processes are also declared void when solicitors with full instructions to conduct the case fail to comply with the rules.

See AYIWAH v BADU [1963] IGLR 86 SC GHANA COCOA MARKETING BOARD v AGBETTOH [1984-86] IGLR 122 and CATHLINE & OR v AKUFFO-ADDO [1991] 2GLR 292 CA. It is also the principle of law that failure on the part of a solicitor to even cross-examine a witness on an issue would result in dire consequences to the client. See AYIWAH v BADU [1963 1 GLR 86, NARTEY-TOKOLI v VOLTA ALUMINUIM CO. LTD (NO.2) [1989-90] 2 GLR 341 and TAKORADI FLOUR MILLS v SAMIR FARIS [2005-06] SCGLR 882. This court, on procedural grounds dismissed a constitutional case of OPPONG v A-G & ORS [1999-2000] 2 GLR 402 SC when counsel for a

plaintiff had resorted to a procedure which was most irregular and contrary to the procedural rules of this court.

Justice has always been administered according to laid down rules. Indeed, I am compelled to think that in the contemporary situation, justice could not be administered if there are no rules regulating the procedure which solicitors are trained for. A solicitor who in the course of handling a brief for and on behalf of a client who misconducts himself is subject to the disciplinary sanctions imposed on him in the legal profession Act, Act 32 of 1960. The common law reserves the right of the client to sue a solicitor who out of negligence fails to conduct his case with such professional diligence expected of a solicitor who has been instructed by the client. In the case of FODWOO v LAW CHAMBERS & CO [1965] GLR 363 SC, the client whose case had not been properly conducted by the solicitors he had engaged, successfully sued the law firm for professional negligence.

I have cited the above case to demonstrate that litigants or clients are not bereft of remedies if a solicitor misconducts himself in performance of his duties. In my respectful opinion, it would defeat the purpose for which the

Legal Profession Act, Act 32 of 1960 was passed if this court proceeds to endorse the position put forward by the respondent in this appeal. If this court is to endorse what the Court of Appeal said, then no default on the part of any solicitor should ever result in the loss of cases; for cases are conducted on behalf of the clients and they benefit from or burdened by the outcome. That was not the intendment of the framers of the law and that could not be sustained in any formal profession governed by rules. As a court, we must enforce statutes passed by the law makers without any inhibitions whatsoever. The president of this court in the celebrated case of REPUBLIC v HIGH COURT, ACCRA (FAST TRACK DIVISION) EX PARTE GHANA LOTTO OPERATORS ASSSOCIATION (NATIONAL LOTTERY AUTHORITY INTERESTED PARTIES) [2009] SC GLR 372 said at page 397 as follows:

> "It is communis opinio among lawyers that the courts are servants of the legislature. Consequently any act of a court that is contrary to a statute such as Act 722 s. 58 (1) – (3) is, unless expressly or impliedly provided, a nullity".

A breach of section 8 of Act 32 is a clear breach of a statute regulating a profession of which we are part. In the very same case Date-Bah JSC minced no words and said at page 401 as follows:

> "No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders. The end of the judicial oath set out in the second schedule of the 1992 Constitution is as follows: "I will at all times uphold, preserve, protect and defend the Constitution and laws of the Republic of Ghana". This oath is surely inconsistent of an Act of Parliament"

This court will be granting clear immunity to solicitors who are prohibited by mandatory provisions of a statute to freely engage in the practice of the law if we dismiss this appeal. In the more recent case of NETWORK COMPUTER SYSTEMS LTD. v INTEL SAT GLOBAL SALES & MARKETING LTD [2012] 1 SC GLR 218 at 230, the worthy president of this court had this to say:

"A court cannot shut its eyes to the violation of a statute as that would be very contrary to its raison d'etre. If a court can suo motu take up the question of illegality even on mere public policy grounds, I do not see how it can fail to take up illegality arising from statutory infraction which has duly come to its notice…"

Breach of section 8 of Act 32 is clearly an illegality which should not be endorsed by this court. In the case of BELVOIR FINANCE CO LTD v HAROLD G COLE & CO [1969] 2 ALL ER 904, Donaldson J (as he then was) had this to say at page 908 as follows on illegality:

"Illegality, once brought to the attention of the court, overrides all questions of pleadings…"

What the respondent is inviting this court to do in this appeal is for this court to shut its eyes when the very statute passed to regulate the profession of which we are part is violated with impunity by the very people who are on oath to uphold it. In the judgment of the Court of Appeal, the court said as follows:

"We find no reason to import into this enactment invalidation of processes issued and filed by an unlicensed lawyer. Any importation may be at odds with the whole scheme of the statute and in so far as it will result in injustice to parties before the court should be avoided as not the intended by the legislature"

I have great respect for the panel of the Court of Appeal who sat on the appeal, but this portion of the ruling with due respect, overlooks the basic principle of law that justice should be administered within the law. The law is as it is. In FRIMPONG v NYARKO [1998-99] SC GLR 734 this very court was confronted with a problem whereby applying the law would have severe consequences on the party but Wiredu JSC (as he then was) said at page 742:

"The notice of appeal also contravenes the mandatory provision of rule 6(1) of CI 16 thereby shutting appellants from receiving a hearing in this court. This raises an issue of jurisdiction and puts the desire to do justice in this case out of consideration by this court. The justice to be dispensed is justice within the law and not one of

sympathy. Judicial sympathy, however plausible can never be elevated to become a principle of law. The appellants

are out of court, and their case would deservedly be put out of court in accordance with law"

As a solicitor who is not qualified to practice within a time frame is prohibited by section 8 of the Legal Profession Act, Act 32 to practice, any process that he has filed without a license to practice, should not be given any effect in law. Legal profession is perhaps the most honourable profession in the world and has for centuries seems to be so. It is my wish therefore that as a privileged few, we must uphold all what the profession stands for and what has made it to survive the centuries with reverence in every country in the world.

With this, I proceed to allow the appeal so as to enforce the clear provisions of the statute which was passed to regulate this noble profession.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE - BONNIE

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

ATUGUBA, JSC:

THE FACTS

The facts of this case arise from a chequered course of litigation but those proximate to this appeal are that Avril Lavelace-Johnson J.A sitting as an additional High Court Judge in the High Court, Accra; (Fast Track Division) upon preliminary objection thereto, struck out the respondent's writ of summons on the ground that his lawyer did not have a valid solicitor's licence at the date he issued the said writ. Upon appeal by the respondent the Court of Appeal reversed the ruling of the trial judge, holding that it would be harsh to visit the consequences of a solicitor's failure to take out a practicing licence on the head of the poor client and that the decisions in

Akufo-Addo v Quashie-Idun and the *Teriwagah* case did not go that far. Hence this ultimate appeal to this court by the appellant. Although this matter would seem to be settled 48 years ago in *Akufo-Addo v Quashie-Idun* (1968) GLR 667 (Full bench) it still rages on today. The same issue arose in *Republic v High Court, Accra Ex parte Teriwaja and Henry Nuertey Korboe (Reiss & Company Ghana Limited Interested Party,* suit no J5/7/2014 and this court approved and followed the decision in *Akufo-Addo v Quashie-Idun*, supra.

In that case the appellants unsuccessfully challenged the legality of a circular issued by the Judicial Secretary on the authority of the General Legal Council and the Chief Justice to the courts advising them to deny audience and legal propriety, to, documents prepared by, defaulting lawyers.

THE LEGAL ISSUE

The principal issue arising from this appeal is whether the failure of a lawyer to take out a solicitor's licence under s.8 of the Legal Profession Act 1960 (Act 32) vitiates legal processes undertaken by such a lawyer.

The relevant provisions of that statute are as follows:

> "**8. Practicing certificate**
>
> (1) A person, other than the Attorney-General, or an officer of Attorney-General's department, *shall not practice as a solicitor* unless that person *has in respect of that practice a valid annual solicitor's licence* issued by the Council duly stamped and in the form set out in the Second Schedule.

x x x

(5) The Council may, *before issuing a solicitor's licence to a person, require that person to produce evidence specified by the Council showing that that person has not been found guilty of professional misconduct in the Republic or in any other country.*

(6) *A person who practices in contravention of this section commits an offence* and is liable on conviction to a fine not exceeding two hundred penalty units *and shall not maintain an action for the recovery of fees, reward or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice*.(e.s)

The Parties' Rival Contentions

In the present case the appellant, the Attorney-General and the Ghana Bar Association, the *amici curiae* at the invitation of this court, have taken the view that the failure of a solicitor to take out a solicitor's licience is to nullify processes prepared by such a solicitor. The Respondent naturally disagrees with them and contends that *Akufo-Addo v Quashie-Idun* and the *Teriwaja* case, supra did not go to such a length. The respondent contends, in effect that the sins of counsel with respect to a solicitor's licence should not be visited on the head of the poor client.

Conflicting foreign authorities

In a full and fair amicus curiae brief submitted by Nene Amegatcher on behalf of the Ghana Bar Association he sets out two streams of foreign

judicial decisions with regard to this matter. The English Courts support the stance of the respondent.

Mr. Amegatcher filed many Australian authorities but even though severe sanctions including disbarment were imposed on the defaulting lawyers in those cases, they did not touch on the invalidation of the processes undertaken by the said lawyers.

However in the brief submitted by the Attorney-General reliance has been placed on *Yonge vs Tonybee* (1910) 1KB 215, *Neary vs Adu-Gyamfi*, 270 Va. 28, 613 S.E 2d 429 (2005) a decision of the Supreme Court of Virginia and *Jones v Jones*, 49 Va. App. 31, 635 S.E 2d 694 (2006) a decision of the Court of Appeal of Virginia, as authorities to the effect that the failure of a lawyer to take out a practicing certificate invalidates the processes undertaken by that lawyer. Counsel's reliance on the *Tonybee* case, supra is clearly by way of analogy as that case turned on appearance filed by solicitors on behalf of their client who, unknown to them was a certified lunatic and subsequent to the said appearance further procedural steps were taken by the parties. Upon discovery of the fact of lunacy the processes pursuant to the said appearance on behalf of the defendant were nullified and the solicitors were mulcted in costs. However the analogy is false, given the different legal context of the present case. If a process does not lie because of some insurmountable legal obstacle, *cadit quaestio*. In any case the stance of the *Tonybee* case in favour of invalidation of processes pursued without the authority of the client or detrimental to his legal welfare is protective and not destructive to the client.

The Preferable English view

After very anxious consideration of this matter I hold that the English view of this matter is the preferable one. As was stated per Sowah JSC as he then was delievering the judgment of the Supreme Court in *Gwira v State Insurance Courporation* (1984-86) I GLR 132 at 137, though Ghanaian courts are not bound to follow English decisions in principle, decisions of English courts have great persuasive influence in shaping our own decisions unless "*they are considered wrong or inappropriate to our circumstances*". (e.s)

The rationale for this favourable attitude of our courts to English decisions has been succinctly explained by Amua-Sekyi J as he then was, in *Amponsah v Appiagyei and Others* (1982-83)1 GLR 96 at 110-111 as follows:

> "Decisions of the Court of England are not binding on us, but *we cannot shut our eyes to the fact that in many spheres our laws are modeled on those of England.* Let us bear in mind the wise counsel of Sowah J.A. (as he then was) in *Pokua v. State Insurance Corporation* (supra) on the attitude we should adopt towards decisions of the English courts. After pointing out that our Act of 1958 is almost a verbatim reproduction of English statutes, he said at p. 386, C.A:
>
> > "It is of course correct that our courts are not bound to follow decisions of foreign courts and are free to chart their own course; and so be it; but where the foreign piece of legislation is *in pari materia* with similar, *it does seem prudent to have regard to the experience of those who have chartered the same course before* and to observe in what manner we are in agreement with them or otherwise; and it is in this spirit that our courts should examine foreign decisions bearing upon the Act now under consideration. I do not consider that English words must necessarily alter their meaning simply because the countries using the language might make different social and economic circumstances."

> If the decision of the English Court of Appeal in *Carpenter v Ebble-white* (supra) had been properly considered, and that of the same court in *Post Office v. Norwich Union Fire Insurance Society Ltd. (*supra) been brought to their notice, *I doubt not but that our Court of Appeal would have given those decisions the weight they deserved and applied them to the case before them."*(e.s)

This has further been strengthened by Osei-Hwere and Aikins JJSC in the celebrated case of *Afraniell v Quarcoo and Another* (1992)2 GLR 561 SC. At 604 Osei-Hwere JSC said:

> "The word "landlord" appears in both section 17(1)(g) and (h) of Act 220. The English authorities like *sharpe v Nicholls* [1945] KB 382, CA and the many other authorities which follow it, like *Baker v Rosenberg* [1947] KB 371, CA have excluded personal representatives who are not beneficially entitled to the premises as landlords under the provisions of section 3(1) and Sched 1, para (*h*) of the Rent and Mortgage Restrictions (Amendment) Act, (1933). That section is not dissimilar to our section 17(1)(g) of Act 220. *We have not dared to pronounce these English decisions to be wrongly decided. If they are right and their interpretation of "landlord' can well apply to section 17(1)(h) of Act 220 then there can be no legal justification nor is there any rhyme nor reason for saying that their interpretation of "landlord" cannot apply also to section 17(1)(h) of Act 220 where the same landlord requires the premises for a different purpose*."(e.s)

It is hardly necessary to state that s.8 of Act 32 is in *pari materia* with the English legislation.

Indeed in *Akufo-Addo v Quashie-Idun*, supra, the Court of Appeal (Full Bench) relied on the English case of *Richards v Bostock* (1914) 31 TLR 70 to support its decision. Amissah J.A delivering the unanimous judgment of the court stated at 682 thus:

> "It has been suggested on behalf to the plaintiffs that it is not the duty of the Chief Justice or the Judicial Secretary to enforce the Income

> Tax Decree. And that the Decree provide penalties for its breach. But even if the Chief Justice or the Judicial Secretary or for that matter the General Legal Council is not the appropriate authority for initiating penal proceedings against lawyers who infringe the Decree, they are not prevented from discouraging breaches. And here the case of *Richards v Bostock* (1914) 31 T.L.R. 70 is in point. In that case *it appeared during the course of a trial that the plaintiff's solicitor held a country certificate only*, although his address on the writ was given as a London address in "Lombard Street E.C. "*The judge though holding that the solicitor was committing an offence* and therefore liable to a penalty, *ordered the case to stand over so that the plaintiff might be able to consult another solicitor*. The judge was not deprived of his power to refuse to continue with the case merely because of the penalty attached to the offence the solicitor was committing."(e.s)

It is instructive to set out in full the facts and decision of *Richards v Bostock* at 70 of the report as follows:

> "In a case in which during the course of the trial it appeared that the plaintiff's solicitor held a country certificate only, although his address on the writ was given as "Lombard-street, E.C., "*the Judge, though holding that the solicitor was committing an offence, declined to dismiss the action, but ordered the case to stand over so that the plaintiff might be able to consult another solicitor.*
> A question of interest to the legal profession arose in this case, which was concerned with the rights of the parties in certain land situated at Cross Keys. The Hon. Frank Russell, K.C., and Mr. G. D. Johnston appeared for the plaintiff; Mr. Micklem, K.C., and Mr. H. Church for the defendant.
> *Before Mr. FRANK RUSSELL had concluded his opening speech on behalf of the plaintiff, Mr. MICKLEM took the objection that the plaintiff's solicitor was not in a position to instruct counsel and that the proceedings could not continue*. By the Stamp Act, 1891, section 43, a person practicing as a solicitor without having a duly stamped certificate was liable to a penalty and could not recover costs. In the present case the solicitor held a country certificate only, upon which,, according to the schedule to the Act, stamp duty of £6 was payable ; but his address on the writ was given as Lombard-street, E.C., and

for a solicitor practicing within 10 miles of the General Post Office, London a certificate bearing stamp duty of £9 was necessary.
The case was then adjourned so that the Judge might consider the matter.
After the adjournment MR. JUSTICE ASTBURY said that he had now consulted the officials of the Law Society and his colleagues, and that there was no precedent under which the question could be dealt with. He *was satisfied, however, that the solicitor was committing an offence, and this must be prevented. He did not wish the plaintiff himself to so suffer, and he would order the case to stand over. The plaintiff could then consult another solicitor or take whatever steps he thought best.*
Mr. MICKLEM, K.C. – *I ask that the action be dismissed on the ground that the proceedings are void*.
MR JUSTICE ASTBURY – *No*; in *Sparling v Brereton* ([1866] L.R., 2 Eq., 64), *where a solicitor had not renewed his certificate, Vice-Chancellor Wood refused to invalidate proceedings begun by the solicitor on behalf of a defendant, saying*;-"*It would be most mischievous indeed if persons without any power of informing themselves on the subject should be held liable for the consequences of any irregularity in the qualification of their solicitor*." " (e.s)

It is also instructive to set out the reasoning of Wood V. C. in *Sparling v Brereton*, supra, partially quoted by Astbury J in *Richards v Bostock*, supra, as set out by Amegatcher in his amicus curiae brief as follows;

"Sir W. Page Wood, V.C., delivered his Ruling in the following words at page 67:

"*The cases at common law seem to show that although great difficulties are thrown in the way of any recovery of his costs by a Solicitor who acts for a client without being duly qualified, the proceedings themselves are not void*. It would be *most mischievous, indeed, if persons, without any power of informing themselves on the subject, should be held liable for the consequences of any irregularity in the qualification of their Solicitor. As against third parties the acts of such a person acting as a Solicitor are valid and binding upon the client on whose behalf they are done*. A client who might ascertain by inquiry that his Solicitor was on the roll, would have no means of

> finding out if his certificate was taken out and stamped at the proper time. I do not, therefore, think myself justified in interfering, because, at the time when the appearance which it is sought to vacate was entered, the Solicitor had no certificate. The result of the authorities is thus stated by Erle, J., in *Holgate vrs. Slight* 21 L.J. (Q.B.) 74: "*It seems to me, therefore, that an attorney, though uncertificated, may do acts in his capacity of attorney, but that the result will be that he will, in such a case, lose his fees*." (e.s)
>
> The learned Vice-Chancellor concluded:
>
> "*I should be injuring both plaintiffs and defendants if I were to hold that the absence of a certificate had the effect of invalidating all proceedings taken in the suit*"."(e.s)

It is noticeable that in the case of *Richards v Bostock*, supra, the judge, upon noticing the truncated ambit of the solicitor's licence of the plaintiff's solicitor did not nullify the proceedings so far based on the licence of the plaintiff's solicitor but merely "*ordered the case to stand over so that the plaintiff might be able to consult another solicitor*"

I however, with respect, disapprove of the way Erle J put the matter in *Holgate vrs Slight*, supra, since it is inter alia, plainly criminal for an uncertificated attorney to do acts in his capacity as attorney. However the law as regards the consequences of a solicitor's failure to take out a solicitor's license seems to remain settled as stated supra. Thus in his amicus curiae brief Mr. Amegacher states thus:

> "The learned authors of Halbury's laws of England in their commentary on the effect of a lawyer practicing without a valid practicing certificate which is the equivalent of our solicitor's licence, state in **44 Halbury's Laws of England (4th Edition) Paragraph 353 and 354** as follows:
>
> 353. Unqualified persons acting as solicitors in litigious maters.

> Subject to certain exceptions no person is qualified to act as a solicitor unless he has been admitted as a solicitor, his name is on the roll of solicitor and he has in force a practicing certificate authorizing him to practice as a solicitor. "Unqualified person" means a person who is not so qualified to act as a solicitor. A body corporate cannot be qualified to act as a solicitor, and may be prosecuted for pretending to be qualified.
>
> *Proceedings are not invalidated between one litigant and the opposite party merely by reason of the litigant's solicitor being unqualified, for example by his not having a proper practicing certificate in force.*"

It is also noteworthy that the Attorney-General in his brief noted that one of the judges in the Virginia Court of Appeal's decision in *Jones v Jones*, supra dissented from the majority view which held that processes undertaken by an unlicensed solicitor are a nullity.

Inherent statutory support for the Respondent's contention.

It is noticeable that the ire of the Legal Profession Act, 1960(Act 32) is heavily weighted against the defaulting solicitor in paternalistic protection of the supine and vulnerable client. Hence s.8(5) and (6) provides as follows:

> "**8. Practicing certificate**
>
> x x x
>
> (5) The Council may, *before issuing a solicitor's licence to a person, require that person to produce evidence specified by the Council showing that that person has not been found guilty of professional misconduct in the Republic or in any other country.*
>
> (6) A person who *practices in contravention of this section commits an offence* and is liable on conviction to a fine not exceeding two hundred penalty units and *shall not maintain an action for the recovery of fees, reward or disbursement on account of, or in relation*

to, an act or proceeding done or taken in the course of that practice."(e.s)

In particular s.8(6) by providing inter alia that a person who unlawfully practices law "shall not maintain an action for the recovery of fees, reward or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice" incorporates the doctrine that the parties are not in *pari delicto* in the statutory breach and does not hold the documents or acts of the defaulters as vitiated to the detriment of the client and others affected by such documents or acts, but only debars the defaulter from recovering any "fees, rewards or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice."

Again sections 30 and 31 further illumine the paternalistic stance of the legislation in favour of the client. They are as follows:

"**30**. **Bill of fees**

(1) A lawyer is not entitled to commence a suit for the recovery of fees for a business done as a barrister or solicitor *until the expiration of one month after the lawyer has served on the party to be charged a bill of those fees.*

(2) The bill shall be signed by the lawyer, or in the case of a partnership by a partner personally or in the name of the partnership, and shall be enclosed in or accompanied by a letter signed in like manner referring to the bill.

31. Application to tax bill

Where the party to be charged applies to the Court within the month referred to in section 30, *the Court may refer the bill and*

the demand of the lawyer to be taxed and settled by the taxing officer of the Court."

In *Ayarna v Agyemang* (1976)1 GLR 306 C.A, which has been followed consistently in this court, it was held that the Act was so protective of the client against the solicitor that even if the fees had been agreed between the lawyer and client the sections still applied and the fees charged could still be taxed down. The benign protective thrust of Act 32 in favour of the client against the solicitor has further been laid bare by Dr. Date-Bah JSC delivering the lead opinion in *Nartey v Gati* [2010] SCGLR 745 (Sophia Akuffo, Brobbey, Ansah, R.C Owusu, Dotse, Anin Yeboah, Baffoe-Bonnie and Gbadegbe JJSC, concurring), at 758 thus:

"In *Ayarna v Agyeman* [1976] 1GLR 306, the Court of Appeal held that the true object of section 30(1) of the Legal Profession Act, 1960 (Act 32), was to enable the court to oversee and supervise the charging of professional fees if a dispute arose between a lawyer and his client as to the quantum or propriety of the fees charged and that compliance with section 30(1) of Act 32 was a mandatory pre-condition for the commencement of an action by a lawyer to recover his fees. *This decision provides a rational and legitimate basis for differential treatment between lawyers and their clients*. Parliament, *with a view to protecting the interest of clients of lawyers*, has thought it fit to enact section 30(1) of Act 32. This is a legitimate use of the legislative authority which is not inconsistent with article 17(1) whose meaning has been explained above.

In other words, the inequality or discrimination necessitated by section 30(1) of the Legal Profession Act, 1960 bears a just and

reasonable relation to the purpose of that provision, which is to protect the clients of lawyers. The provision does not, thus, provide for unlawful discrimination or unlawful inequality. It represents justifiable discrimination; it is neither arbitrary nor unreasonable. Indeed, article 109(1) of the 1992 Constitution, expressly gives Parliament the authority to regulate professional, trade and business organizations. That article therefore confirms the interpretation of article 17(1) which has been laid out above." (e.s)

Furthermore O.75 r.5(1) (a) (b), (4) and (5) of the High Court (Civil Procedure) Rules, 2004 strengthen the foregoing construction of Act 32, for it is trite law that subsidiary legislation must be read together with the substantive Act and may be explanatory of each other, except where there is an inconsistency.

They are as follow:

"**5. Removal of Lawyer from record**

(1) Where

(a) *a lawyer who* acts for a party in a cause or matter dies or becomes bankrupt or cannot be found *or fails to take out a practicing certificate* or has been struck off the roll of lawyers or has been suspended from practicing or has for any other reason ceased to practice; and

(b) *the party has not given notice of change of* lawyer or notice of intention to act in person in accordance with rule 3,

any other party to the cause or matter *may apply to the Court for an order declaring that the lawyer has ceased to be the lawyer acting for the first-mentioned party in the cause or matter*, and the Court may make an order accordingly.

x x x

(4) Where the Court makes an order under this rule, the Registrar shall immediately notify every party to the cause or matter, who has filed an appearance, of the making of the order.

(5) *An order made under this rule shall not affect the rights of the lawyer and the party for whom the lawyer acted as between themselves*."

It will be seen that O.75 does not invalidate the processes filed by a solicitor who has failed to take out a practicing certificate. O.75 r.(5) may even be said to contravene s.8(6) of Act 32 but "the rights of the lawyer and the party" therein referred to ought to be construed as not derogating from s.8(6) of Act 32.

In the circumstances the courts should so construe the provisions of Act 32 so as to insulate the client against the statutory failings of counsel, *ut res magis valeat quam pereat*. This results from a construction of the whole purpose and design of the Act. See by analogy *Benneh v The Republic* (1974)2 GLR 47 C.A (Full Bench) and *Pauley v Kenaldo Ld*. (1953) 1 WLR 187.

That when the purpose of a statute is clear it is that purpose which is enforced by the courts, especially in recent times throughout the common law world, rather than the bare literal words of the statute, is incontrovertible. Thus in Alawiye v Agyekum (1984-86)1 GLR 179 C.A at 187 Osei-Hwere J.A (as he then was) delivering the judgment of the Court of Appeal stressed that the protective statutory prerequisites for the recovery of rented premises from a tenant should not be lightly taken as proven, as follows:

> "We think that we would be taking a view simple to the extreme to hold that those matters contained in the plaintiff's affidavit, if even the trial court was entitled to take them into consideration, afforded sufficient evidence. *The Rent Act, 1963 (Act 220) may well be described as the charter of the liberties of the tenant. It contains many onerous provisions for the protection of the tenant.*"(e.s) *Act 32 plainly stands in consimili casu.*

It is such an approach that leads courts to characterize statutes as mandatory or Directory and their breaches as irregularities or vitiating.

It is true that in some of my judgments I have made statements to the effect that a court cannot shut its eyes to the breach of a statute. But their context matters. In a supervisory jurisdiction context the remedy of certiorari, because of its prerogative peculiarity, remains discretionary even though the proceedings in respect of which it is invoked are a nullity. Thus in *Republic v Circuit Court*, *Accra; Ex parte Komeley Adams & Others (Komietteh Adams (substituted by) Otsiata IV Interested Party)* (2012) 1 SCGLR 111 at 116 I stressed thus: "It must be remembered that *the prerogative origin of the prerogative orders* of certiorari, mandamus, etc *holds that it is a specialized residual jurisdiction and therefore has some peculiarities which the ordinary remedies of the courts do not entail*." (e.s)

The peculiarity of the supervisory jurisdiction was also stressed, (though erosion has since set in) by Cecilia Koranteng-Addow J in *Republic v GIHOC; Ex parte Amartey Kwei & Ors.* (1982-83)IGLR510.

Hence by contrast under ordinary common law principles a court has no discretion with regard to the setting aside of its order that is null and void.

Even there see *Ampofo v Samanpa* (2003-2004)2 SCG LR 1153.

In other contexts if there is implication in the statute itself, as here, against attaching nullification to its infraction, *cadit quaestio*. The interpretation adopted by my brethren in the majority in this case reflects the lamentation of the very distinguished American jurist, Benjamin Nathan Cardozo quoted per Abban JSC in *New Patriotic Party v Attorney-General* (1993-94)2 GLR 35 S.C at 118 thus:

> "Judges march at times *to pitiless conclusion* under the *prod of remorseless logic* which is supposed to leave them no alternative. *They deplore the sacrificial rite. They perform it nonetheless, with averted gaze, convinced as they plunge the knife, that they obey the bidding of their office.* The victim is offered up to the gods of jurisprudence on the alter of regularity."

However at 127 of the same report, Amua-Sekyi JSC quoted a panacea to such situations from Taylor JSC's dissenting judgment in *Kwakye v Attorney-General* (1981) GLR 944 at 1070 as follows:

> "In my humble opinion, *the function of the Supreme Court in interpreting the Constitution or any statutory document, is not to construe written law merely for the sake of law; it is to construe the written law in a manner that vindicates it as an instrument of justice. If therefore a provision in a written law can be interpreted in one breadth to promote justice and in another to produce injustice, I think the Supreme Court is bound to select the interpretation that advances the course of justice unless, in fact, the law does not need interpretation at all but rather specifically and in terms provide for injustice.*" (e.s)

The justice of this case should not be far to seek. Since this court unanimously held in *Nartey v. Gati*, supra, that it is constitutional for Act 32 to discriminate against the solicitor in protection of the client it is just that this court held against a solicitor who mounts an action against a client for fees without complying with s.30 of Act 32 in that case which was followed in *Gaisie Zwennes Hughes & Co v Loders Oracklaan BV* (2012)1 SCGLR 363 and *Accam v Gbertey* (2013-2014)1 SCGLR 343 but should protect the client against the solicitor's excesses.

Indeed the English decisions I have set out supra, show that s.8 of Act 32 can be interpreted in a way that avoids injustice and therefore an alternative construction that leads to injustice must be avoided.

General common Law Principles

The courts generally are loath to visit the wrongdoing of a person on another where the latter is not in position to control the acts of the former. See *Ameyibor v Komla* (1980)GLR 20 C.A, *Gyamera v Brefo* (1984-86) 1 GLR 110 C.A and *Republic v High Court, Kumasi; Ex parte Ackaah* (1995-96)1 GLR 270 S.C. And so the familiar judicial saying that the sins of counsel should not be visited on the head of the poor client, see *Republic v. Asokore Traditional Council; Ex parte Tiwaa* (1976)2 GLR 231 at 238 C.A.

As was agonized by Page Wood V.C in *Sparling v Bereton*, supra, the client cannot know of the default of the lawyer in taking out a solicitor's licence. In our simple Ghanaian society this is even more so.

Conclusion

Since Ghanaian statutes, especially in the formative years of our legal system, are often patterned on English legislation, it is reasonable to hold that when the Legal Profession Act, 1960 (Act 32) was being introduced it stood to be influenced by the English decisions referred to supra, dating from 1866 to 1914 rather than decisions from America, Australia, etc which are of very recent vintage. In any event, since upon scrutiny, it will be realized that though the Court of Appeal in *Akufo-Addo v Quashie-Idun* upheld the propriety of the implementation of the circular of the General Legal Council regarding the representation of clients in court and the preparation of legal documents by defaulting lawyers, it also approved and applied the English decision of *Richards v Bostock*, supra, that decision [i.e *Akufo-Addo v Quashie-Idun*), means that (1) a solicitor who defaults to obtain a licence cannot continue as solicitor for his client in court but that (2) processes undertaken by him for his client will not be invalidated. The *Teriwaja* case which approved the decision in *Akufo-Addo v Quahsie-Idun*, therefore also has the same meaning.

It is true that the client can sue his defaulting solicitor for damages arising out of his default to take out a solicitor's licence, but I do not think that the decisions I have referred to were arrived at in ignorance of that remedy. Such a remedy may prove to be vacuous since the defaulting solicitors, like many of their Australian counterparts, may be impecunious. In any event if for his default to obtain a solicitor's licence the solicitor is open to a multiplicity of sanctions why should the poor client be left to only one perilous remedy of an action against the defaulting solicitor in the face of a high voltage possibility that he is *non dignis litis*? However as stated supra, the tenor, scheme, context and purport of Act 32 are to invest the client with protective devices against the vices of his solicitor. When the purpose

of a statute is clearly ascertained it must be so construed as to effectuate that purpose, see *Benneh v The Republic* (1974)2 GLR 47, CA (full bench), supra. Indeed in *Amegatcher v Attorney-General* (2012) 1 SCGLR 679 at 686 Dr. Date-Bah JSC forcefully stated thus:

> "…. a literal reading of article 88(5) of the 1992 Constitution cannot be allowed to stand in the way of the aspiration of the people, expressed in an acknowledged core value of the Constitution. *If the plain meaning of a constitutional text runs counter to a core value of the Constitution, it calls for reflection and a purposive interpretation to reconcile the particular core value or aspiration of the people with the language employed in the text* with a view to *extracting a meaning* by a process of interpretation that expresses *the spirit of the Constitution*." This *mutatis mutandis* is also applicable to ordinary statutory construction.

Again in *In re Presidential Petition* (No. 4); (2013) Special Edition 73 at 1471 also said: "In *modern times, the courts do not apply or enforce the words of statutes* but their *objects, purposes and spirit or core values*."(e,s) All this has the modern ample support and requirements of s.10(4) of the Interpretation Act (2009) Act 792.

I would conclude therefore that the failure of a lawyer to take out a solicitor's licence should lead to an adjournment of proceedings to enable the client instruct another lawyer, if necessary but not the invalidation of the processes filed for the client. This applies also to the question of an unregistered chambers.

In deserving cases the courts can even resort to contempt powers, referral to the disciplinary committee of the General Legal Council or the Police, so as to stamp out the virus of solicitor's failure to take out a licence. The Bar in Ghana should note that, as per their amicus curiae submissions in this case, disbarment is a sanction that is readily resorted to in Australia and Canada for practicing despite failure to take out a practicing certificate and this sanction, in fitting cases, can be applied in Ghana by the appropriate statutory body.

Commendation

I wish to thank the amici curiae, i.e. the Attorney-General and Nene Amegatcher (on behalf of the GBA) for their diligent briefs which have greatly helped us to resolve this thorny issue.

However, for all the foregoing reasons I would dismiss the appeal.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

AKAMBA, JSC:

I have been privileged to have read the opinion of my esteemed brother and President of this court, Atuguba, JSC, dismissing the appeal as well as the opinions of my able and equally respected brothers Dotse and Anin Yeboah, JJSC to the contrary. After reading the divergent views, I have had but anxious moments trying to unravel the core issue in this discourse. I would not be serving my conscience right by simply associating myself with one of the two divides without assigning my own reasons for the stance I take. Also, considering the serious implications this action has on the development and conduct of the legal profession in Ghana and our jurisprudence in this area of the law, I deem it appropriate to state my views which I proceed to do.

The facts of this case are succinctly stated in the judgment of the President. This matter comes on appeal from the Court of Appeal. The matter calls for a close look at the statutes that regulate the Legal Profession in Ghana. At the Court of Appeal, the court was called upon to interpret section 8 (1) of the Legal Profession Act (Act 32) of 1960 and the effect of a process filed by a lawyer who has not procured a solicitor's license. Also relevant to this discourse is the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 LI 613.

The Legal Profession Act 1960, Act 32 was passed to consolidate and amend the law relating to the legal profession. Under section 1 of the Act, the General Legal Council is conferred with the power to regulate the

affairs of the profession. Section 1 (1) (b) of the Act mandates the General Legal Council to be concerned with the legal profession and particularly with upholding standards of professional conduct.

Section 2 of Act 32 states as follows:

Status of Lawyers

"A person whose name is entered on the Roll kept under section 6

(a) is entitled, subject to Section 8, to practice as a lawyer, whether as a barrister or solicitor or both, the fees, charges and disbursement for services rendered as a lawyer, and

(b) is an officer of the courts, and

(c) is subject, when acting as a lawyer, to the liabilities that attach by law to a Solicitor."

S. 8 (1) of Act 32 also provides as follows:

"A person, other than the Attorney General or an officer of Attorney-General's department, shall not practice as a solicitor unless that person has in respect of that practice a valid annual solicitor's license issued by the Council duly stamped and in the form set out in the Second Schedule."

This provision is clear and unambiguous but that is what circumscribes its present difficulties. In other words, underlying its simplicity comes its complexity.

In the case of Republic v High Court, Accra; Ex Parte Teriwajah and Henry Nuertey Korboe (Reiss & Co, Ghana Ltd (Interested Party) unreported Suit No J4/24/2013 delivered on 11th December 2013 we unanimously held that the respondent, not having obtained his solicitor's licence for the year under consideration could not be granted audience before the courts. That case did not determine the fate of processes filed by an aberrant solicitor or lawyer. Therein lies the difference between what was determined in the aforementioned case and the present case in which the core issue for determination is what happens to processes filed by such lawyer following his disbarment from audience by the courts.

The present case calls for an interpretation of the relevant provisions of Act 32 and in particular sections 1 (b) and 8 (1) of Act 32 quoted supra. The Act mandates any person, other than the Attorney General or an officer in his department to practice as a solicitor only upon (that person) obtaining a valid annual license issued to him/her by the General Legal Council, in the form set out in the 2nd Schedule. Section 8 (6) prescribes a penalty for a defaulting person practicing as a lawyer. There is equally a penalty prescribed for a person who is not enrolled as a lawyer but prepares any document for reward or pretends to be a lawyer. (See Section 9 of Act 32). In the present stalemate it is important to interpret the provisions of this Act to achieve the purpose for which it was enacted. The purpose is obvious from a reading of the Act which was enacted to regulate the practice of the legal profession. Reading the legislation as a whole the target of this legislation becomes obvious. Aside that, the wording of sections 8 and 9 of the Act in particular, discloses those who are targeted

by those sections and for that matter the whole legislation - lawyers or members of the legal profession. Viewed from this standpoint one can begin to appreciate the decision in Akuffo-Addo vs Quashie Idun (1968) GLR 667. The court upheld the view that the Chief Justice as the foremost upholder of the law and the General Legal Council with the charge to supervise the conduct of lawyers are duty bound to see that lawyers do not break the law. Amissah JA, delivering the judgment of the court cited reliance on the English case of Richards v Bostock (1914) 31 TLR 70 which is relevant to our discussion on the point of interpreting the extent of section 8 (1) of Act 32. In that case it appeared during the course of a trial that the plaintiff's solicitor held a County Certificate only, although his address on the writ was given as a London address in 'Lombard Street E.C.' The judge though holding that the solicitor was committing an offence and therefore liable to a penalty, ordered the case to stand over so that the plaintiff might be able to consult another solicitor. The judge was not deprived of his power to refuse to continue with the case merely because of the penalty attached to the offence the solicitor was committing." (e.s)

The authors of Halsbury's Laws of England provide a very useful commentary on the effect of a lawyer practicing without a valid practicing certificate which is equivalent to our solicitor's license. In the 44 Halsbury's Laws of England (4th Edition) Paragraphs 353 and 354 it is stated thus:

"353. Unqualified persons acting as solicitors in litigious matters.

Subject to certain exceptions no person is qualified to act as a solicitor unless he has been admitted as a solicitor, his name is on the roll of

solicitors and he has in force a practicing certificate authorizing him to practice as a solicitor. "Unqualified person" means a person who is not so qualified to act as a solicitor. A body corporate cannot be qualified to act as a solicitor, and may be prosecuted for pretending to be qualified.

Proceedings are not invalidated between one litigant and opposite party merely by reason of the litigant's solicitor being unqualified, for example by his not having a proper practicing certificate in force."

EFFECT OF INFRINGEMENT OF S.8 (1)

Any interpretation to the effect that a person who infringes s. 8 (1) of Act 32 be not only amenable to suffer the penalty attached thereto but to extend to all processes filed by him would be outrageous. The fact of the matter is that when a lawyer files process on behalf of a client, he does so as an agent of the client. The lawyer does not own the processes. Those processes belong rather to the client on whose behalf they were filed. It is for that reason that a lawyer is entitled to sue for his fees under normal conditions where the lawyer has satisfied certain preconditions laid in the Act. However, where the lawyer has failed to comply with section 8, the lawyer suffers the penalties provided in section 8 (6) of the Act. The relevant provisions of section 8 (6) of Act 32 states the following:

"A person who practices in contravention of this section commits an offence and is liable on conviction to a fine not exceeding two hundred penalty units and shall not maintain an action for the recovery of fees,

reward or disbursement on account of, or in relation to, an act or proceeding done or taken in the course of that practice."

It is instructive to note that the errant lawyer cannot maintain an action for recovery of fees for anything done in relation to the proceeding or taken by him which to my mind is part of the sanction such lawyer suffers. Were it intended that the client should also be mulcted; the section would have specifically stated so, even though the client could not be sanctioned without first being given a hearing in his defence.

It is trite to observe that when a client discontinues with the services of a lawyer, the client is entitled as of right to the return of his brief. The brief constitutes all processes conducted on his behalf prior to the disengagement of their relationship.

Black's Law Dictionary, Eight Edition by Bryan A Garner, defines brief as:

"A written statement setting out the legal contention of a party in litigation, esp. on appeal; a document prepared by counsel as the basis for arguing a case, consisting of legal and factual arguments and the authorities in support of them. -Also termed legal brief; brief of argument.

A process on the other hand is defined as:

"The proceedings in any action or prosecution <due process of law>. 2. A summons or writ, esp. to appear or respond in court< service of process>. The term 'process' is not limited to 'summons'. In its broadest sense it is equivalent to, or synonymous with, 'procedure' or 'proceeding.' Sometimes

the term is also broadly defined as the means whereby a court compels a compliance with its demands."

It is equally instructive to refer to the Legal Profession (Professional Conduct and Etiquette) Rules, 1969 (LI 613) rule 5 thereof which deals with 'Briefs and Pleadings" as follows:

"Rule 5 - Briefs and Pleadings.

(1) A lawyer in practice is bound to accept any briefs in the Court in which he professes to practise at a proper professional fee depending on the length and difficulty of the case. Special circumstances may justify his refusal at his discretion to accept a particular brief.

(2) A lawyer should be separately instructed and separately remunerated by fees for each piece of work done, and he shall not undertake to represent any person, authority or corporation in all their court work for a fixed annual salary. But a lawyer may accept a retainer for advice.

(3) Where a lawyer withdraws from a case and returns the client's brief, it is his duty to hand it back to the client from whom he received it. A lawyer who accepts a brief is in a confidential position, and he shall not communicate to any other person the information which has been confided to him as such lawyer; and he shall not use either such information or his position as a lawyer to his client's detriment. The duties here stated continue after the relation of lawyer and client has ceased.

(4) The papers in a brief delivered to a lawyer are the property of the client, and the lawyer has no right to lend them to any person without the consent of the client.

(5) A lawyer shall not accept a brief limiting his ordinary authority, or take a subordinate position in the conduct of a case or share such conduct with the client even if the litigant is himself a lawyer; and he shall not accept a brief on the condition that his discretion as to offering no evidence is fettered.

(6) A lawyer who finds on receiving a brief that another lawyer has previously been retained shall not accept the brief without—

(a) communicating in the first instance with the lawyer who first handled it; and

(b) enquiring whether he has any objection to his accepting the brief.

Such communication shall be by the latter lawyer to the former one direct, and not through his clerk.

(7) If the first lawyer does indicate any objection to the brief being taken away from him, the second one ought, where practicable, to ascertain from the client what are the exact reasons why the brief has been taken away from the first lawyer; and unless a satisfactory explanation is given shall refuse or return the brief.

(8) A lawyer is, in all his practice, but especially with regard to settling and signing of pleadings, under responsibilities to the Court as well as to his client. He shall not put into a pleading any allegation which is not

supported by the facts which are laid before him by his client. If on the material before him there is no cause of action or no defence in law, he may ask for further instructions to find if more material can be obtained; and if it cannot, he may advise his client accordingly. In particular, where a lawyer is instructed to allege fraud, he shall not subscribe to such an allegation without having before him clear instructions that the client does wish to allege fraud and will support the allegation in the witness-box. In addition the lawyer must have before him material which, as it stands, establishes a prima facie case of fraud. If the material before him is not sufficient in his view to warrant the allegation, he shall advise his client that this is his view and that he cannot put his signature to the pleadings if it is to contain that charge." (Underlined for emphasis)

It is therefore clear that the section under consideration, when determined purposively, the processes filed on behalf of the client remain the property of the client for the purposes for which they were filed. The lawyer who filed those processes remains dis-barred subject to other initiatives that the General Legal Council may make. The General Legal Council cannot lapse in its oversight role and rather support an interpretation that would carry out its role for it by shifting responsibilities elsewhere. It is the duty of the General Legal Council to invoke the appropriate sanctions against aberrant lawyers.

DOES S. 8 SUPPORT FORFEITURE OF PROCESS FILED ON BEHALF OF CLIENT?

What purpose would be served by extending the punishment for infringing s. 8 to affect the client who is not required by law to satisfy any statute prior to engaging the services of any lawyer? Any attempt to extend such punishment to the client may deprive him of the timeous filing of processes and therefore the right to a fair hearing. In other words it may lead to a deprivation of substantive rights of the client. It is equally instructive to state that in interpreting a statute, it is not only the black letter law that should be considered. Equally relevant to the interpretation is the social context element. Thus considered, the peculiar environment in which the law was adopted bears consideration. In this context the fact that the majority of the citizenry of this country are illiterate does not commend itself to an interpretation that seeks to deprive a client of processes filed on his behalf solely because the lawyer whose services he engaged turned out not to have his solicitor license in place. The loss or forfeiture of fees by a lawyer who had not obtained his solicitor's license prior to the filing of processes on behalf of his client in addition to the fine stipulated in s 8 (6) of the Act is sufficient punishment for such lawyer. Should the General Legal Council form the opinion that the penalty prescribed under the present law is inadequate, proper steps ought to be initiated to amend the Act. It is quite disquieting and indeed dreadful to suggest that by engaging the services of a lawyer despite the knowledge that such lawyer had been disbarred for not possessing his license, the client ought to be equally punished by striking out the processes filed on his behalf in order to satisfy the desire to bring sanity to the legal profession. As between the lawyer and the client, who advises the other on the law? The lawyer has been

trained at a great expense either to himself or the state or both, to offer professional and/or legal advice ostensibly for a fee hence he cannot allow himself to be dictated to even to the point of infringing the law which he professes to uphold. The lawyer must suffer for his disobedience alone and not drag his ignorant client with him. I am yet to learn of a 'client' on whom a person unqualified to practice dentistry, (for failure to register under the Medical and Dental Act, 1972, NRCD 91) having already repaired and fixed artificial teeth, is ordered to surrender the artificial teeth as a punishment for the actions of the defaulting dentist. To my mind, the aberrant dentist suffers the punishment prescribed under the Decree alone. It does not extend to whatever 'unauthorized' practice that has already taken place.

The case of Ashley v General Legal Council (2007-2008) SCGLR 443 is quite apposite. In this case Ashley was appointed to the Ghana bench as magistrate following advertisements in the local newspapers. He was appointed as a Magistrate Grade II in 1977, became a Magistrate Grade I in 1979 and a Circuit judge in 1986. After fifteen years' service on the bench, objection was raised to his continued service on grounds that his name was not on the Roll of Lawyers in Ghana and also that he did not possess a University degree prior to his entry on the bench. He was retired in 1992. The case centred on the issue that the appellant Ashley was not qualified to be enrolled on the Roll of Lawyers in Ghana in terms as required by section 3 (4) and 4 of Act 32, of the Legal Profession Act, as inserted by paragraph (a) and (b) of NLCD 213 and as such could not be appointed to any position on the bench apart from a district magistrate

grade II. This court held that the appellant's appointment to the Ghana bench beyond the Magistrate grade II level was made in breach of the law (the Legal Profession Act, Act 32 as amended) and could not found any estoppel against the General Legal Council as urged by the appellant. The court also stated that this case could not form a basis for any compensation as counsel tried to urge upon the court. This case exemplifies the intendment of the Legal Profession Act, Act 32 which is to regulate the conduct of lawyers and not beneficiaries of the lawyers work. In the Ashley case the disqualification of Ashley beyond his Magistrate grade II position did not affect the functions he performed while unqualified as a Magistrate Grade I and as a Circuit Judge. The reason being that the legislation targets the lawyer and not the beneficiary of his/her services, though rendered while unqualified.

Ashley was promoted beyond the Magistrate Grade II level on the assumption that his name was on the Roll of Lawyers in Ghana. His name could be on the Roll of lawyers if he held a degree in law, which was not the case. Nevertheless he rose to become a Circuit judge. He rendered several decisions and orders all the while when he was not qualified for those positions. His decisions, orders and other official renditions were not nullified when he was retired for his disqualification in terms of the entry requirements. The reason being that he was the person who had infringed the legislation and consequently had to suffer the penalty alone and not the society at large that benefitted or suffered from his actions.

For the above reasons I associate myself with the reasons and conclusions of My Lord President, Atuguba, JSC, that this appeal be and is hereby dismissed.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

AKOTO – BAMFO (MRS), JSC

I have had the benefit of reading before-hand the well-reasoned opinions of my respected brothers. Even though I agree with the reasons admirably set down by them that full effect be given to the provisions of Section 8(1) of the Legal Profession Act, 32 of 1960, it is my considered view that nullifying processes filed on behalf of clients by such errant lawyers, would be manifestly unjust to the said client.

Requiring an ordinary person in need of legal services to embark upon an inquiry as to whether or not the intended lawyer has obtained the requisite annual license in a society in which there is a dearth of database on licensed legal practitioners would be an arduous task.

It is for these reasons that I agree with the conclusions of my respected brothers Atuguba and Akamba, JJSC, that processes filed by such a lawyer should not be nullified.

(SGD) V. AKOTO – BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

COUNSEL

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JUSTIN PWAVRA TERIWAJAH ESQ. FOR THE PLAINTIFF/APPELLANT/ RESPONDENT.