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

CORAM: ATUGUBA JSC (PRESIDING)
AKUFFO (MS) JSC
ANSAH JSC
DOTSE JSC
ANIN YEBOAH JSC
BAFFOE-BONNIE JSC
AKOTO-BAMFO (MRS) JSC
AKAMBA JSC
APPAU JSC

REVIEW MOTION.

No.J7/8/2016

20TH JULY 2016

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

VRS

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

RULING

MAJORITY OPINION

SOPHIA A. B. AKUFFO (MS), JSC.

On 20th July 2016 this Court entered its Ruling in this matter, dismissing the application herein for Review. I indicated whilst agreeing with the Ruling I would subsequently file by opinion in the matter.

Background

The salient background of this matter is that, on 29th April, 2013, the plaintiff/appellant/respondent/applicant, hereinafter referred to as 'the Applicant', acting by his lawyer issued a writ of summons in the High Court, Accra, against the defendant/respondent/appellant/respondent, hereinafter referred to as 'the Respondent', for certain reliefs thereon endorsed. The Respondent duly entered appearance and filed his statement of defence and a counterclaim. Thereafter, the Respondent raised a preliminary objection challenging the competence of the Applicant's action on the grounds, inter alia, that , in 2013, Justin Pwavra Teriwajah, the lawyer for the Applicant, did not have a valid solicitor's licence, pursuant to the requirements of section 8(1) of the Legal Profession Act, 1960 (Act 32), his previous license having expired in 2012. The learned trial judge, Avril Lovelace-Johnson J.A., sitting as an additional High Court Judge, upheld the objection and struck out the Applicant's writ as a nullity. Aggrieved by the ruling of the High Court, the Applicant appealed to the Court of Appeal. By a unanimous decision, the Court of Appeal reversed the ruling of the trial judge and held, in essence, that processes filed by a lawyer who has failed to comply with section 8(1) of Act 32 ought not to be invalidated. The Respondent, being dissatisfied with the decision of the Court of Appeal, appealed to this Court. On 21st April 2016, this Court by majority decision (Atuguba, Akoto-Bamfo and Akamba JJSC. dissenting), reversed the decision of the Court of Appeal and held, in effect, that a lawyer without a valid solicitor's licence for any particular year, as required by section 8(1) of Act 32, cannot practice as a lawyer in any court or prepare any

process as a solicitor within the particular period of non compliance, and that any process originated by such a solicitor is a nullity.

This is an application by the Applicant praying that this Court reviews its aforesaid decision. The ground for the application is apparent in paragraph 4 of the affidavit in support of the motion and is to the effect that '*the judgement raises exceptional circumstances that warrant a review of the same by this honourable court.*' From the supporting affidavit, as well as the Appellant's Statement of Case, the essential substance of this motion for review may be summed up as follows:-

a. This Court's said decision has occasioned an injustice to the Applicant through no fault of his, in that the default of his solicitor, which cannot be attributed to the Applicant, has been unjustly visited on him.
b. It is not a requirement that a person engaging, consulting or instructing a solicitor must first satisfy him/herself that such solicitor has a valid licence covering that period.
c. The resultant injustice occasioned by the decision has deleterious consequences not only on the Applicant but also on the general public, and the same constitutes an exceptional circumstance which has led to a miscarriage of justice, hence, a need to review the decision.

The Respondent, on the other hand, in his affidavit-in-opposition and Statement of Case submits that the Applicant has not demonstrated any exceptional circumstance which has led to a miscarriage of justice and that the application is misconceived as same is brought as an attempt to re-argue the merits of the appeal which has been already determined by the Court.

The Review Jurisdiction of the Court

This Court's jurisdiction to review its previous decisions is derived from Article 133(1) of the Constitution of The Republic of Ghana, which reads as follows:-

> *"The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court."*

Pursuant to this provision, the **Supreme Court Rules, 1996 (C.I. 16)** set out the grounds and conditions for the invocation and exercise of this jurisdiction and, in Rule 54, it is provided that:-

> *"The Court may review any decision made or given by it on any of the following grounds-*
>
> *(a) exceptional circumstances which have resulted in miscarriage of justice*
>
> *(b) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given."*

Clearly then, the jurisdiction is only available within strictly limited constraints and, particularly, in the case of an application founded on 54(a), as is the case herein, whilst the full scope of what might constitute exceptional circumstances cannot be entirely circumscribed or defined, the parameters have been enunciated by this Court on myriad occasions. In the locus classicus case of **Mechanical Lloyd Assembly Plant v Nartey [1987-88] 2 GLR 598, SC**, Adade JSC observed at p. 600 of the report that:

> **"the mere fact that a judgment can be criticized is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error must have occasioned a gross miscarriage of justice."**

Furthermore, in **Internal Revenue Service v Chapel Hill School Ltd [2010] SCGLR 827**, Date-Bah JSC referred to the views expressed by him in **GIHOC Refrigeration & Household Properties Ltd (No.1) v Hanna Assi (No.1) [2007-2008] 1 SCGLR 1** where he stated at p.12 thus:

> **"Even if the unanimous judgment of the Supreme Court on the appeal in this case were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. This is an inherent incident of the finality of the judgments of the final court of appeal of**

the land. The brutal truth is that an error of law by the final court of the land cannot ordinarily be remedied by itself, subject to the exceptions discussed below. In other words there is no right of appeal against a judgment of the Supreme Court, even if it is erroneous…"

Some more recent pronouncements include **Opoku & Others (No.3) v Axex Co. Ltd (No.3) [2013-2014] SCGLR 95** wherein my Revered Brother Akamba JSC stated, at p.106, thus:

"The review jurisdiction avails an applicant where there are exceptional circumstances which if un-redressed would perpetuate a miscarriage of justice. It is not another avenue for re-arguing or repeating or refashioning previous arguments as in an appeal. Nor is it an opportunity for a party to revisit and come out with more ingenious arguments which he believes will find favour with the tribunal. Simply put a review is not an opportunity to have another bite at the cherry."

Furthermore, in **In The Matter of Nana Yeboah Kodie Asare II and Another v Nana Kwaku Addai and Others;** (unreported Ruling in Chieftaincy Review Motion No. J7/20/2014, dated 12th February 2015), my esteemed brother Benin JSC stated that:

"... review is not another appeal process whereby the court is called upon to rehear the case even if the decision of the ordinary bench is considered wrong. Review is a special procedure so all the relevant factors to be taken into consideration, as decided in a long line of cases … must exist in order to succeed under either sub-rule a or b of rule 54 of C.I. 16."

Thus, over the decades, the position of the Supreme Court, regarding its review jurisdiction has remained the same. In a nutshell the principle of finality of judgments of the apex Court of the land continues to operate and the review jurisdiction is not intended to alter or in any way derogate from that; rather it is purely for the purpose of correcting egregious errors which, if not corrected, has or will work great injustice.

Analysis

It is evident from the record that the core issue that came before the Ordinary Bench of the Court was the validity of processes filed by a lawyer whose solicitors' license has expired. Consequently, in the lead opinion of the majority, my Esteemed Brother Justice Dotse, and Justices Ansah and Yeboah in their supporting opinions, examined the terms and scope of Act 32, particularly sections 2 and 8(1) thereof. For ease of reference I will quote these provisions:

> *"Section 2 - Status of Lawyers*
>
> *Every person whose name is entered on the Roll to be kept under this Part shall—*
>
> *(a) subject to section 8 of this Act, be entitled to practise as a lawyer, whether as a barrister or solicitor or both, and to sue for and recover his fees, charges and disbursements for services rendered as such, and*
>
> *(b) be an officer of the Courts, and*
>
> *(c) when acting as a lawyer, be subject to all such liabilities as attach by law to a solicitor." (my emphases)*
>
> *"Section 8 - Solicitor's Licence*
>
> *(1) A person other than the Attorney-General or an officer of his department shall not practise as a solicitor unless he has in respect of such practice a valid annual licence issued by the General Legal Council to be known as "a Solicitor's Licence" in the form set out in the Second Schedule to this Act. [deleted by Stamp Duty Act 2005 (Act 689) s.51(2)]' (*which removes the earlier requirement of stamping*)* (my emphasis)

These provisions are, in my view, so crystal clear as not to require any fancy acts of judicial interpretation. Suffice it to say that, under section 2, the entitlement of an enrolled person to practise as a lawyer, whether as barrister, solicitor or both is expressed to be subject to Section 8, which, in paragraph (1), prohibits practising as a solicitor without a valid annual licence. Their Lordships duly analysed the scope and implication of section 8(1) in particular, taking into account also the

provisions of 8(6) which penalizes practicing without a valid licence in the following terms:

> *" A person who practises in contravention of this section shall be liable on conviction to a fine not exceeding ¢200 and shall be incapable of maintaining any action for the recovery of any fee, reward or disbursement on account of or in relation to any act or proceeding done or taken by him in the course of such practice.* [As Substituted by Legal Profession (Amendment) Decree, 1972 (NRCD 88) s. 1]*"*

Their Lordships also took into account the raison d'être for the licensing regime created by the Act, which is to protect the rights and interests of those members of the general public accessing professional legal services through effective regulation of practice in the Legal Profession to assure that, at all material times, persons offering solicitor services have been duly licensed to practise as such. In other words, mere enrolment as a lawyer, would not qualify a person to practice as a solicitor in the absence of a valid licence, which has only an annual lifespan. Thus Justice Dotse, in his opinion observed:-

> **"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 ascribed to their work irrespective of their breach.... 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 meaning because they are not ambiguous and also admit of no controversy. Taking a cue from the Interpretation Act, (Act 792), section 42 thereof, I will mandatorily interpret "Shall" as used in section 8(1) of Act 32 and state that the meaning then is that "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....**"

After perusing the majority opinions, the question one must ask is, in what manner has the interpretation and application of the provisions of Act 32 been premised on some fundamental error or defect that could be classed as exceptional. I have not found any. The Appellant in his Statement of Case urges that the Appellant's

lawyer's breach of Act 32 was a default solely attributable to the lawyer and it is not a legal requirement or practice for clients to enquire into the licensing status of a solicitor before instructing him to work on the client's behalf. He also submits that Act 32, in section 8(6) completely deals with the consequences of a lawyer's breach of section 8(1) by penalising the lawyer with criminal sanction and prohibiting him from suing any one for the recovering of fees and other receivables arising from any work performed by the defaulting solicitor during the period of his default. According to the Appellant since section 8 does not nullify or void processes filed or other work done during the period of default, the Court's holding that processes or legal documents filed or prepared by a Solicitor who at all material times had no valid Solicitor's Licence are a nullity constitutes a grave error of law, which error has occasioned a miscarriage of justice. In the Statement of Case, the Appellant seeks to contrast Section 8 with sections 9, 29 and 45 of the Act, the provisions of which render void certain transactions made under certain circumstances, and he concludes that nothing would have stopped the legislature from doing the same with regard to processes produced and filed without a valid licence.

Whilst the Appellant in his statement of Case urges that, in view of the foregoing the Court in effect "sought to re-write the express provisions of Act 32." It appears that he has completely lost sight of fact that, in the application of laws, effect has to be given not only to the particular law being interpreted but also, unless specifically excepted, every other law or regulation that is relevant to the situation, for the courts will not countenance any breaches of law. One needs to observe, in this regard (trite though this may be) that the processes and procedures of the High Court of Ghana are governed by the High Court (Civil Procedure) Rules, 2004 (C.I. 47). The Appellant's writ at the High Court was sued out by his lawyer and, therefore, bears the endorsement and address of the lawyer
Order 2 r.5 of the Rules provides that:

> *5. (1) Before a writ is filed by a plaintiff it shall be indorsed,*
>
> > *(a) where the plaintiff sues in person, with the occupational and residential address of the plaintiff or if the plaintiff resides outside the country, the address of a place in the country to which documents for the plaintiff may be served; or*

(b) where the plaintiff sues by a lawyer, the plaintiff shall, in addition to the residential and occupational address of the parties, provide at the back of the writ the lawyer's firm name and business address in Ghana *and also, if the lawyer is the agent of another, the firm name and business address of his principal.*(my emphasis)

(2) The address for service of a plaintiff shall be

(a) where the plaintiff sues by a lawyer, the business address of the plaintiff or the plaintiff's lawyer or the plaintiff's lawyer's agent as indorsed on the writ; *or*

(b) where the plaintiff sues in person, the plaintiff's address in the country as indorsed on the writ.

(3) ***Where a lawyer's name is indorsed on the writ, the lawyer shall declare in writing whether the writ was filed by the lawyer or with the authority or consent of the plaintiff****, if any defendant who has been served with or who has filed appearance to the writ, requests the lawyer in writing to do so.*

It is also trite knowledge that when a lawyer prepares and endorses a writ on behalf of a client he is functioning as a solicitor. We all know the historical background of the section of the Legal Profession that is peopled by the persons who are referred to as 'solicitors' and defined by the Cambridge Dictionary as:

"a type of lawyer in Britain and Australia who is trained to prepare cases and give advice on legal subjects and can represent people in lower courts."……..

Where solicitor's work is performed by a lawyer whose solicitor's license has expired can that lawyer be properly functioning as a solicitor? I do not think so. Although by the tenor of Section 1 of Act 32 there is, in Ghana, no such separation of the Legal Profession as pertains in certain common law jurisdictions, it is my view that where, as in section 8, the term solicitor is applied it is applied as a term of science and means precisely what in the legal fraternity is meant by 'solicitor', in relation to the activity the lawyer is undertaking. If he cannot be functioning as a

solicitor, then in what capacity would he be endorsing the writ? Effectively, the writ would be legally incomplete and therefore not properly sued out; it would be *non est* because the lawyer performing the solicitor function would be unlicensed at the material time.

Finally, if the Applicant (or any member of the public for that matter), whether out of diffidence or ignorance, fails to exercise his clear right to verify the credentials and legal capacity of his lawyer to perform the services he is engaged to undertake, that cannot give rise to an exceptional circumstance which has resulted in miscarriage of justice such as would merit the exercise of our review jurisdiction. Any injustice (if there be any, and I say there is none) in the matter has been generated by the unlicensed solicitor, not this Court.

Conclusion

All in all, it is my view that the Applicant has woefully failed to show that the Court committed any error of law, or that a miscarriage of justice has occurred though the decision of the Court. In other words, he has failed to establish the merits of his application and the same must, therefore, be refused as failing to satisfy the terms of Rule 54 of the Supreme Court Rules. Hence the application for review must be dismissed.

(SGD) S. A. B. AKUFFO (MS)

JUSTICE OF THE SUPREME COURT

ATUGUBA, JSC:

On 20th July, 2016, I concurred in the dismissal of the Review Application in this case for reasons to be subsequently given.

I agree that the impassioned repeated plea of injustice to the client on account of the default of his solicitor to take out a solicitor's licence is not an exceptional circumstance within r.54 (a) of CI 16 relied on by the Applicant. The occasional judicial thunderstorms in favour of a review premised on extreme necessity to avoid injustice cannot destroy the far greater body of the decisions of this court to the contrary, nor would this instance be covered by the true range of those thunderstorms.

However, in one respect, this application does meet the requirement of exceptional circumstances. The Applicant queries that if the requirement of S.8. (1) relating to default to obtain a solicitor's licence attracts the ban "*shall not practise as a solicitor"* as therein provided, why should that ban affect a lawyer in respect of his capacity as a barrister?

There is considerable force in this argument and indeed this identical argument was accepted by the Court of Appeal as possibly correct in **Akufo-Addo v. Quashie-Idun (1968) [LR66] CA (Full Bench) 667 at 678 – 682,** but the Court held that paragraph 81 and the schedule thereof of the Income Tax Decree, 1966 (N.L.C.D 78) required the *"Lawyer in private practice*" to be registered by the Commissioner of Income Tax as a precondition of the practice of his profession and therefore had to be complied with irrespective of whether the lawyer is practicing as a barrister or solicitor. It was because of that provision that the trial judge's decision that the solicitor's licence requirement of S.8. (1) of Act 32 affected a lawyer only in his capacity as solicitor and that therefore, the Respondents could practice as barristers without licence, was faulted.

In my original judgment in this case, I refrained from considering this point because it was not raised, so I assumed that the registration under the Income Tax

Laws still applies and was not observed by the Applicant. The Applicant has not shed light on this.

I should have thought that the practice of the legal profession in Ghana is the same as it is recounted in respect of New Zealand in **Harley v. McDonald (2001) 5 LRC 82 P.C at 99-100**.

As thereat stated per Lord Hope of Craighead, delivering the judgment of the Board;

> *"*...in New Zealand all practitioners, whether or not they choose to practice solely as barristers or solely as solicitors, are qualified and admitted as both. Admission is by order of the High Court upon the judge being satisfied that the applicant is qualified under the Law Practitioners Act 1982 and is a fit and proper person to be admitted: Law practitioners Act 1982, s.46. *No person can be admitted by the court as a barrister only or as a solicitor only. The Act provides that all those admitted by the court are to be admitted as barristers and solicitors of the court:* s.43(1). Barristers and solicitors enter the profession by the same route, and they may not practice unless they are the holders of a current practicing certificate issued by their District Law Society: s.56. *The practicing certificates may be for practice as a barrister only or for practice as a barrister and solicitor. But the same rights of audience before any court or tribunal apply to all such practitioners, irrespective of the type of practicing certificate which they have*: s.43(4). The expression 'practice' is defined in s.2 of the Act as meaning 'a person enrolled as a barrister or solicitor of the court'. Similarly, for the purposes of the Law society's rules of professional conduct the expression 'practitioner' includes both barristers and solicitors: New Zealand Law Society Rules of Professional Conduct for Barristers and Solicitors (5th edn, 1998). Barristers owe the same duties t to the court as solicitors." (e.s)

I would have thought that this decision being in respect of a statute in *pari materia* with our own, it should be held that a solicitor's licence in Ghana should cover practice by its holder as a barrister as well. The fact that that position is expressly covered by statute in New Zealand ought to be regarded as declaratory only of the

import of the nature of the call to the Bar there. Whatever it is, I recall, when at the Bar that the courts took the view that failure to obtain a solicitor's licence disentitled a lawyer from practicing either as a barrister or solicitor, in respect of both civil and criminal matters. I have no reason to suppose that that *contemporanea expositio* has changed and I would conclude therefore that in any event if that be an error, then *communis* error *facit jus*.

If the first limb of this application had been based on exceptional circumstances I would have granted it, since to my mind it is patently incongruous and absurd for this court to be at *ad idem* that the purpose of the provisions on solicitor's licence is the protection of clients and yet hold that their breach should injure the very clients sought to be protected.

However for all the reasons aforegiven I dismissed this application.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

ANSAH JSC:-

I agree

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

DOTSE JSC:-

I agree

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

YEBOAH JSC:-

I agree

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

BAFFOE - BONNIE JSC:-

I agree

(SGD) P. BAFFOE - BONNIE

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

YAW APPAU, JSC:

Before the enactment of the 1992 Constitution and the current Rules of the Supreme Court 1996, [C.I. 16], neither of the previous Constitutions of this country; i.e. the Republican Constitution of 1960, the 1969 Constitution and the immediate past Constitution of 1979, expressly conferred on the Supreme Court the power to review its previous decisions. The same applied to the repealed Courts Act, 1972 [Act 372] and the repealed Supreme Court Rules, 1970 [C.I. 13] with all their amendments. Strangely enough, this review power was, however, expressly conferred on the two superior courts lower than the

Supreme Court; i.e. the Court of Appeal and the High Court by their then respective procedural rules – Rule 33 of the then Court of Appeal Rules, 1962 [L.I. 218] and Order 39 of the repealed High Court (Civil Procedure) Rules, 1954 [LN 140 A].

Notwithstanding the absence of any express power on the part of the Supreme Court to review its previous decisions prior to the enactment of the 1992 Constitution and the Supreme Court Rules, 1996 [C.I. 16], this Court, by a majority decision of 3–2, in the celebrated case of **FOSUHENE v POMAAA [1987-88] 2 GLR 105**, interpreted article 116 of the 1979 Constitution liberally to confer on itself the power of review of its previous decisions. Adade, JSC who, with Taylor, JSC and Abban, JA (as he then was) formed the majority with Sowah, C.J. and Francois, JSC dissenting, defined the review power of the Court as being inherent, placing it beyond the ambit of procedural rules. He stated at page 124 of the report cited supra as follows:

"The power to review is not procedural; it is jurisdictional, and my position is that this can never be created and vested in a court by the Rules Committee. If the Supreme Court (1960) was exercising this power, and we concede that it was properly exercising the power, then unless we are able to trace the source to a statute, we shall be obliged to conclude that it was extra-statutory, which is a way of saying that it was inherent."

The above decision was affirmed the same day by the same Court in the case of NASALI v ADDY, reported at page 286 of the same report. Since then, there have been dramatic changes both constitutionally and statutorily. Now, this review jurisdiction of the Supreme Court has been given graphical expression in the Constitution of 1992, the Court's Act, 1993 [**Act 459**] and the Supreme Court Rules, 1996 [**C.I. 16**].

Article 133 (1) of the 1992 Constitution provides: - ***"The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of Court."***

Section 6 (1) of the Courts Act, 1993 [Act 459] also provides: - ***"By virtue of article 133 of the Constitution, the Supreme Court may on the grounds and***

subject to the conditions prescribed by the Rules of Court, review a decision made or given by it."

Rules 54 to 60 of C.I. 16 of 1996 contain provisions for this review jurisdiction. Rule 54 in particular on **'Grounds for Review'** provides:

"The Court may review a decision made or given by it on the ground of

(a) exceptional circumstances which have resulted in miscarriage of justice, or

(b) the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the decision was given."

Rule 55 provides for the time frame within which such an application could be made, which is; *not later than one month from the date of the decision sought to be reviewed.*

It must be emphasized that the considerations that must inform the mind of this Court in the exercise of its review jurisdiction have not changed much since the days of the *Fosuhene and Nasali cases* (supra). The parameters that this Court has been laying emphasis on in granting a review of its previous decision have been beautifully set out by my respected brother Dotse, JSC in the case of **AMIDU (No.3) v ATTORNEY-GENERAL, WATERVILLE HOLDINGS (BVI) LTD & WOYOME (No.3) [2013-2014] 1 SCGLR 606 at p. 617**. They are: –

(a) *compelling and exceptional circumstances dictated by the interests of justice, and;*

(b) *exceptional circumstances where the demands of justice made the exercise extremely necessary to avoid irreparable damage.* {Emphasis mine)

Though there is no exact definition as to what 'exceptional circumstances' mean in the two situations captured above, the paramount consideration is; the existence of the absence or denial of justice. Where there is the

appearance of denial of justice or absence of justice in any manner or form, then the 'exceptional circumstances' criterion would have been established.

Before I set out to outline the reasons behind the applicant's application before us to review the 4-3 majority decision of the ordinary bench of this Court, I wish to give a brief historical account of the genesis of this application.

The applicant herein Henry Nuertey Korboe, was the plaintiff in the High Court, Accra (Fast Track Division), presided over by Avril Lovelace Johnson (Ms), J. A. (sitting as an additional High Court Judge). Upon a preliminary objection raised by the respondent herein, Francis Amosa, who was the defendant in the case initiated by the applicant in the High Court, the applicant's writ of summons with an accompanying statement of claim was struck out on the ground that his lawyer Justin Pwavra Teriwajah, Esquire, who prepared and signed it, did not have a valid Solicitor's licence at the time he issued the writ in question.

The application before the trial High Court to strike out the writ and the accompanying statement of claim was grounded on section 8 (1) of the Legal Profession Act, 1960 [**Act 32**]. The section reads:

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

Upon an appeal by the applicant to the Court of Appeal against the decision of the trial High Court striking out the said writ of summons and statement of claim, the Court of Appeal reversed the ruling holding that it would be harsh to visit the consequences of a solicitor's failure to take out a practising licence on the head of the poor client. The respondent, not satisfied with the decision of the Court of Appeal, appealed to this Court. In a split decision of 4 – 3, the ordinary bench of this Court reversed the Court of Appeal and allowed the appeal.

The Majority view

In an epitome, the opinion of the Court per its majority was that; a Solicitor who is not qualified to practise within a time frame for not possessing a licence within the meaning of section 8 (1) of Act 32, is prohibited from filing any process in court. Therefore, any process filed without such a licence is a nullity and should not be given any effect in law.

The Minority view

The minority view, on the other hand in brief was 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 who is licenced, if necessary, to continue with the processes, but not to invalidate the processes filed by the defaulting lawyer for and on behalf of the client. Rather, such a defaulting lawyer should be made to suffer the consequences provided in the Act for practising without the requisite licence.

It is the dichotomy in legal opinion of the seven (7) learned justices of the highest court of the land that has triggered the present review application before us. The applicant contends that by this decision, he has been denied justice since the processes that have been nullified belonged to him but not the defaulting solicitor.

The preliminary issue to be determined in this application is; do the circumstances in this case warrant the invocation of the review jurisdiction of this Court?

Whilst the answer of the applicant to this question is in the affirmative, the respondent holds a contrary view. The respondent contends that the applicant is seeking to have a second bite at the cherry, a practice this Court seriously frowns upon. The applicant, on the other hand, says the decision has occasioned a miscarriage of justice since it was tantamount to visiting the sins of a lawyer on his client.

Grounds for the application: Applicant's case

In his application for review of the decision of the ordinary bench of this Court dated 21st April 2016, the applicant, in a not too detailed but compact statement of case filed on 13th May 2016, contended that the sole ground of his application was in respect of sub-rule (a) of rule 54 of the rules of this Court [C.I. 16] of 1996; i.e*. "exceptional circumstances which have resulted in miscarriage of justice".*

Quoting Dotse, JSC in the *Amidu (No.3) case* cited supra that; *"ensuring justice was at the core of considerations that might lead to a grant of a review application"*, applicant contended that to make him suffer the consequences of his defaulting lawyer through no fault of his, constitutes an act of injustice to warrant the consideration of his application before the Court. He again referred to the case of ADAMU DARAMANI (No.2) v SUMAILA BIELBIEL & ATTORNEY-GENERAL (No.2) [2011] 2 SCGLR 853, where Sophia Akuffo, JSC opined at page 862 thus; *"in terms of rule 54(a) of the Supreme Court Rules, 1996 [C.I. 16], an applicant for review must demonstrate that the exceptional circumstances that have flawed the decision sought to be reviewed have resulted in a miscarriage of justice".*

According to him, it is an extreme height of injustice to make him suffer the consequences of his defaulting lawyer when he could not, by any stretch of imagination, have conjectured that his lawyer had not complied with section 8 (1) of Act 32. He argued that it is not the practice or even a legal requirement for clients to request for the licence of a Solicitor before they engage such a Solicitor to work on their behalf. The assumption is that the Solicitor is presumed by the client to have obtained all the relevant authority or licence that enables him or her to practise as such. However, if it turns out otherwise, it would be the height of all injustice to hold, as the ordinary bench of this Court did on the 21st of April 2016 that the client should be affected adversely by the acts of the Solicitor, when the law does not say or contemplate so.

The applicant drew an analogy to the case in point to stress why the decision of the ordinary bench of this Court occasions a miscarriage of justice. According to him, it would be a denial of justice for a court in say Sekondi, to nullify in the middle of proceedings, processes filed for and on behalf of an

illiterate cocoa or vegetable farmer from a remote area in the region before the court just because, unknown to the farmer, the lawyer he engaged to conduct the case for him, had not renewed his solicitor's certificate, after he had paid all the necessary fees to such a lawyer for the work done.

Applicant submitted that when the Legal Profession Act, 1960 [Act 32] is construed as a whole, it would constitute a grave error of law occasioning a miscarriage of justice to hold that processes or legal documents prepared and filed by a lawyer who had no valid Solicitor's licence at the time of the preparation and filing, are a nullity. Referring to section 8 (1) & (6) of the Act, applicant forcefully argued that a Solicitor who defaults in obtaining a practising licence suffers both criminal and civil sanctions; i.e. **(a)** he could be prosecuted and convicted to a fine not exceeding two hundred penalty units and **(b)** he could not maintain an action for the recovery of fees, reward or disbursement from the client who engaged him. However, the section did not make any provision for the fruits of such practice to be voided as was rightly observed by Ansah, JSC in his opinion at page 26 of the judgment sought to be reviewed. This is because the client is not the target of the legislation. The target of the legislation, i.e. (**Act 32**) is the lawyer who is a member of the profession that the legislation has been passed to regulate.

Applicant contends that the failure by the lawmakers and the draftsman to introduce such a provision in the legislation was deliberate but not an unintentional omission to be filled in by the courts. Any such extreme polishing or filling-in, would therefore amount to the usurpation by this Court of the role and functions of the legislature. Applicant recalled the dictum of Lord Simonds in the English case of MAGOR & ST. MELLONS RDC v NEWPORT CORP [1952] AC 189 at p. 191, which Azu Crabbe, JSC quoted with approval in the case of ASSIBEY III v AYISI [1974] 1 GLR 315 at p. 316 that; ***"the court could not take it upon itself to supply an omission in an enactment, for this would amount to usurping the functions of the legislature under the guise of interpretation"***.

Applicant concluded his submissions by indicating that he has met the 'injustice' criterion spelt out by this Court in the *Amidu (No.3) case* (supra).

According to him, it is simply not feasible for clients to demand to see the Solicitor's licence of lawyers they wish to engage for their perusal and, or examination before engaging them, just as patients who attend hospitals for treatment could not demand to see and peruse the practising certificates of Medical or Dental Practitioners, who have similar provisions in their Act; i.e. the Medical and Dental Act, 1972 [NRCD 91], before allowing them to attend to them. In the same vein, it would be preposterous to contend that a passenger boarding a commercial vehicle, under the management of a drivers' union, should demand to see if the driver in charge of the vehicle has a valid driving licence before he boards the vehicle.

In all these examples, it is the defaulting Dentist, or Medical Officer or Driver who faces the full rigors of the law but not the innocent patient or passenger. Why should a client, in the case of justice dispensation, be presented with a different end-result and be made to suffer the consequences of his lawyer's failings when the law does not say so?

It is for the above reasons that the applicant is praying this Court to take a second look at the decision of the ordinary bench and have it reviewed in the interest of justice.

Respondent's case

"We submit that in accordance with the well-established principles, the review jurisdiction of the Supreme Court was a special jurisdiction and was not intended to provide an opportunity for further appeal. It was jurisdiction which was to be exercised where the applicant has succeeded in persuading the court that; ***there has been some fundamental or basic error which the court inadvertently committed in the course of delivering its judgment****. The question that arises in this case is whether the Applicant has surmounted the first test of demonstrating what basic error or fundamental error had been committed by the majority of this Court in the decision sought to be reviewed".*

The above quotation is a paraphrase that introduced respondent's case against any attempt by this Court to review its previous decision dated 21st April 2016 as prayed by the applicant. The respondent recounted a host of

decisions of this Court on the legal position of its review jurisdiction and prayed the Court not to succumb to applicant's prayer but to dismiss it with costs. The cases referred to include: MECHANICAL LLOYD ASSEMBLY PLANT LTD v NARTEY [1987-88] 2 GLR 598; QUARTEY & Others v CENTRAL SERVICES CO. LTD [1996-97] SCGLR 398; AFRANIE II v QUARCOO [1992-93] GBR 1451; CHARLES LAWRENCE QUIST v AHMED DANAWI (Review Motion No. J7/8/2015, dated 5th November 2015) – Unreported Decision of this Court; ARTHUR (No.2) v ARTHUR (No.2) [2013-2014] SCGLR 569; PIANIM (No.3) v Ekwam [1996-97] SCGLR 431; KOGLEX (GH) LTD v ATTIEH [2001-2002] SCGLR 947; ATTORNEY-GENERAL (No.2) v TSATSU TSIKATA (No.2) [2001-2002] SCGLR 620; TAMAKLOE v REPUBLIC [2011] 1 SCGLR 29; OPOKU & Others (No.3) v AXEX CO. LTD (No.3) [2013-2014] SCGLR 95 and INTERNAL REVENUE SERVICE v CHAPEL HILL LTD [2010] SCGLR 827.

After referring to various dicta of learned justices of this Court in the cases cited supra, respondent ended with a quote from the judgment of Date Bah, JSC in the *Internal Revenue case* supra, which is a summary of the Court's view or position on its review jurisdiction. He wrote: ***"That the review jurisdiction of this Court is not an appellate jurisdiction, but a special one. Accordingly, an issue of law that has been canvassed before the bench of five and on which the court has made a determination cannot be revisited in a review application, simply because the losing party does not agree with the determination".***

Respondent concluded his submissions that the applicant has not established or shown that the decision of the ordinary bench was given *per incuriam*, or contains a fundamental error or an inadvertent error. Rather, what the applicant has sought to do in this review application is to indulge in arguments which are calculated to re-open the case for rehearing on its merits, which is frowned upon by this Honourable Court.

Evaluation of the two positions presented by the parties

I am not unaware that I am not sitting on appeal over the decision of my learned and respected brothers of the ordinary bench. For, as this Court has stated with utmost consistency, a review application is not an avenue for

rehearing a case or matter already decided by the ordinary bench of the Court. As the respondent rightly contended in his submissions, this Court frowns upon attempts by losing parties to re-open their cases for rehearing under the guise of review applications when it is clearly a case of the losing party not agreeing with the decision of, or the determination by the ordinary bench of the Court.

But the two important questions to be answered here are:

(i) *Is the current application before us an attempt by the applicant to have a second bite at the cherry? Or;*

(ii) *has the applicant demonstrated that there are exceptional circumstances arising from the decision of the ordinary bench of this Court that constitute a fundamental or basic error resulting in a miscarriage of justice that makes the decision reviewable?*

My simple answer to the first question above is in the negative whilst it is in the affirmative in respect of the second.

In an attempt, albeit futile, by the losing party to convince this Court to review its unanimous decision in **ARTHUR (No.1) v ARTHUR (No.1) [2013-2014] 1 SCGLR 543** per Date Bah, JSC, the review panel of the Court, in one voice expressed through Dotse, JSC in the case of **ARTHUR (No. 2) v ARTHUR (No 2) [2013-2014] SCGLR 569 at 579-580**, set out the parameters which it called the 'road map' for those who would want to invoke the review jurisdiction of this Court under rule 54(a) of C.I. 16 to note. The Court stated:

"We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this Court under rule 54(a) of the Supreme Court Rules, 1996 (C.I. 16), to be mindful of the following which we set out as a road map. It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon circumstances of each case:

(i) in the first place, it must be established that the review application was filed within the time limits specified in rule 55 of C.I. 16, i.e. it shall be filed at the Registry of the Supreme Court not

later than one month from the date of the decision sought to be reviewed;

(ii) that there exists exceptional circumstances to warrant a consideration of the application;

(iii) that these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench;

(iv) that these have resulted into miscarriage of justice (it could be gross miscarriage or miscarriage of justice simpliciter);

(v) the review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench; and

(vi) the review process should not be used as a forum for unsuccessful litigants to re-argue their case.

It is only when the above conditions have been met to the satisfaction of the Court that the review panel should seriously consider the merits of the application".

I hold the view that the applicant herein has satisfied the above criteria to warrant the exercise by this Court of its review jurisdiction.

The issue that was germane to the appeal before the ordinary bench of this Court was; *whether the failure of a lawyer to take out a Solicitor's licence pursuant to section 8 (1) of Act 32 renders invalid or vitiates all such processes initiated by the said lawyer*. The majority view per my respected brothers Dotse, Ansah, Anin-Yeboah, and Baffoe-Bonnie, JJSC was 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.

Though I have already quoted *supra* Section 8 (1) of Act 32 which is in contention, I deem it necessary to repeat it here. It reads:

"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 licence issued by the General Legal Council to be known as a 'Solicitor's Licence' in the form set out in the second schedule to this Act…"

According to the majority, the above provision of the Act is clear and unambiguous and does not call for any interpretation to deny its effect. Its effect, in the words of my brother Anin-Yeboah, JSC is that; *"it is a straightforward and clear prohibition against solicitors, who upon failure to procure a solicitor's licence, are prohibited from practising as solicitors"*. Flowing from the above, the majority interpreted the section to mean that any process filed by such a defaulting lawyer is a nullity and therefore void because any other interpretation that seeks to relax the clear and unambiguous provision, in their view, would obviously run counter to the purpose for which the statute was enacted for the regulation and discipline of the profession.

In countering the argument advanced by the applicant herein, which was supported by the minority of the ordinary bench that nullifying processes filed by such defaulting lawyers was tantamount to visiting the sins of the solicitor on the head of his poor client, the majority said our law reports are replete with countless cases in which actions have been dismissed based on lack of diligence on the part of solicitors. They gave examples of cases that clients have lost due to failings on the part of their lawyers without the courts giving any considerations of the hardships the clients suffer. Some of the examples being: appeals that have been struck out freely for having been filed outside the time frame set down by mandatory rules of court; amended pleadings that are declared void by the court when solicitors, with full instructions to conduct the cases, fail to comply with the rules; the failure of solicitors to cross-examine on crucial issues with dire consequences on their clients and the striking out of even constitutional cases where solicitors fail to comply with procedural rules.

Citing the case of **FODWOO v LAW CHAMBERS & CO. [1965] GLR 363 SC**, where a client sued his lawyer claiming damages for breach of duty, my brother Anin-Yeboah, JSC contended that litigants or clients are not bereft of remedies if a solicitor misconducts himself in the performance of his duties. This argument implies that a client who loses financially and precious time by the nullification of processes filed on his behalf by a solicitor who did not

possess a valid solicitor's licence has a remedy in pursuing such a solicitor in court for redress.

Concluding this line of thinking, the majority per my brother Anin-Yeboah, JSC wrote: *"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 practise, any process that he has filed without a licence to practise should not be given any effect in law. Legal profession is perhaps the most honourable profession in the world and has for centuries seemed 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".*

I agree totally with my respected brother Anin-Yeboah, JSC of the majority side that the Legal profession is a very honourable profession, if not the most honourable, for which we must uphold all what it stands for. I will add that it is not only honourable but a very noble one. However, with the greatest respect to my brothers on the majority, I think the goal they scored to win the day on 21st April 2016 is reminiscent of the Maradonna 'hand of God' goal that he scored in the 51st minute during the quarter final match between Argentina and England in the 1986 FIFA World Cup, which propelled Argentina to win the world cup after beating Germany in the final match.

The question is; for what purpose was the Legal Profession Act, [**Act 32**] passed? In other words, who are the targets of the law? As the majority rightly stated, it was enacted for the regulation and discipline of the profession. It is meant to regulate the practice of law by members of the legal profession to avoid any abuse. This means that it is only members of the profession that have to suffer the consequences of any breach of its provisions, not outsiders. It is for this reason that sections 8 (6); 29 (1); 44 and 45 of the Act are carved in the following words:

"8 (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".

"29 (1) An agreement intended to secure to a lawyer a remuneration, or to constitute the conditions of employment other than authorised by this Act is void".

"44 (1) A person who is not a lawyer shall not directly or indirectly for or in expectation of a fee, gain or reward draw or prepare a legal document.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one hundred penalty units".

"45 (1) An agreement to pay a fee or reward to a person, other than a lawyer, in consideration of the drawing or preparation of a legal document is void.

(2) A person who pays to a person, other than a lawyer, a fee or reward for having drawn or prepared or agreed to draw or prepare a legal document, may sue for and recover the amount of the fee or reward from the person to whom it was paid". {Emphasis mine}

What these sections of the Act quoted supra mean is that if you are not a lawyer or a person licensed to practise as a lawyer or a solicitor, any agreement or contract you sign with any person for a consideration in the form of a fee or a reward for any process or document prepared for that person is not enforceable. The Act is against persons, who are not solicitors qua solicitors, which includes lawyers who have not taken Solicitors licence, benefitting financially or in kind from processes or documents prepared for others, when they are not licensed to do so. The law does not talk of the nullification of documents or agreements prepared by such unqualified persons. It is only the remuneration that follows the work done that the unqualified person is not permitted by law to take or benefit from aside of the punishment that the law prescribes for such persons.

So if the ordinary bench of the Court says the Act is clear and unambiguous, I totally agree with them. In the words of my respected brother Anin-Yeboah JSC in his judgment already referred to above; *"It is a straightforward and*

clear prohibition against solicitors who, upon failure to procure a solicitor's licence, are prohibited from practising as solicitors". That is perfectly right. That is why the law has provided means of punishment for solicitors who practice for fees without taking their solicitor's licence but did not go further to prescribe any punishment for innocent persons who happened to become clients of such solicitors. The law even protects such innocent clients from paying money to such solicitors for work the errant solicitors had done for them but said nothing about the work done or documents prepared for the client who is the beneficiary.

The position taken by the majority of the Ordinary Bench of the Court in extending penal measures meant for members of the legal profession to innocent clients who are non-members, is tantamount to adding to the legislation what the legislators never intended. Professor Kludze, JSC (of blessed memory), speaking for this Court in the case of **REPUBLIC v FAST TRACK HIGH COURT, ACCRA; EX-PARTE – DANIEL [2003-2004] 1 SCGLR 364 at p. 370**, on the interpretation of documents, cautioned as follows: *"…In the area of statutory interpretation, we cannot amend a piece of legislation because we dislike its terms or because we suppose that the law-giver was mistaken or unwise…Where the words of a statute are unclear or ambiguous, it is only then that we must try to apply the well-known canons of construction to ascertain and enforce the law. Where the words of a statute are clear, our duty is to enforce the statute as written. That is the fundamental rule of constitutional and statutory interpretation…We must not insert our own words or remove words from the legislation in order to arrive at a conclusion that we consider desirable or socially acceptable. If we do that, we usurp the legislative function which has been consigned to the legislator".*

To borrow the words of Oliver Wendell Holmes, Jnr in the case of **U.S. v WHITRIDGE [1904] 197 U.S. 135;** in interpreting a statute, *"the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down"*. Again, in **PANHANDLE OIL CO. v MISSISSIPPI EX REL. KNOX [1928] 277 U.S. 233**, the same celebrated judge reiterated; *"Courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them".*

There are real and factual situations where persons who are not lawyers (including some court registrars or officials), prepare documents or processes for litigants to sign and file in court as if the processes were prepared by the litigants themselves. These documents are not thrown out because they do not bear the stamp of any qualified or licensed lawyer or solicitor. Why should processes filed by an unlicensed lawyer on behalf of a client be thrown out just because they bear his/her stamp instead of meting out to the unlicensed lawyer the punishment that the law imposes on such defaulting solicitors/lawyers? Who is the owner of these documents that the majority says should be thrown out; the defaulting lawyer or the client on whose behalf they were prepared? Is it the intention of the legislature to punish the innocent client instead of the defaulting lawyer? Obviously, the Act did not envisage the innocent client as someone who has to suffer for any breach of its provisions by his/her solicitor. The target of the Act is the solicitor who flouts the law that regulates his/her practice.

As Aharon Barak rightly stated in his book; 'Purposive Interpretation in Law', published in 2005 by Princeton University Press; *"Judges should realise the intent of the Legislature by giving expression to the statute's subjective purpose, but they also should integrate the statute into the legislative system as a whole by giving expression to the fundamental values of the system".* He continued; *…"to ignore subjective purpose in interpretation is to interpret based on words, as opposed to goals".*

Coming back to the examples that my respected brother Anin-Yeboah, JSC gave of instances where the failings of lawyers had led to litigants losing their cases; I wish to state that every case is 'fact-sensitive' or in other words, has its peculiar circumstances. The cases he cited, with the greatest respect to him, are not analogous to the one presently before us. They are cases where the rules of court have provided the 'dos' and 'don'ts' for litigants to follow. Where the rules provide timelines for initiating appeals and the timeline is flouted, the axe falls. But even that; the rules are not water-tight as there are exceptions in some cases.

In the case of **KOTEY V KOLETEY [2000] SCGLR 417**, this Court, under powers conferred on it by article 131 (2) of the Constitution, granted the applicant special leave to appeal even though under the rules, the applicant was completely out of time within which to appeal. This was after the Court had found that the failure to file the appeal within time was not due to the failings of the applicant but his lawyer. The principle applied was not to visit the sins of the lawyer on his client. Also in the case of **REPUBLIC v HIGH COURT, ACCRA; EX-PARTE LANDS COMMISSION (VANDERPUYE ORGLE ESTATES LTD, INTERESTED PARTY) [1995-96] 1 GLR 208**, the Court of Appeal failed to nullify, and rightly so, the disposition of Stool land by the then James Town Mantse to the respondent when subsequently, the election and installation of that chief was declared a nullity. The essence of that judgment was to protect the innocent third party purchaser who purchased the land in good faith without notice of any defect in the chief's election and installation, to avoid the denial of justice.

To quote my respected elder brother Akamba, JSC, who is on the verge of vacating his seat on the highest bench of the land after over forty (40) years of dedicated and meritorious service to the Judiciary and country, in his concurring opinion to that of the President of the ordinary bench of this Court Atuguba, JSC on the minority side; *"The lawyer has been trained at a great expense either to himself or to 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 practise 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 'unauthorised' practice that has already taken place".*

The provision under section 8 (1) & (6) is intended to penalise or punish a practitioner who has failed to take or renew his licence but not to punish the

innocent client who has suffered financially for the processes filed in his favour, which processes invariably belonged to him but not the defaulting practitioner.

The power granted us to review our previous decisions upon application, to use the exact words of Hayfron-Benjamin, JSC (of blessed memory) in the *Afranie case* (supra), is to; ***"correct mistakes, misstatements and misapplications of the law"***. In fact, we should eschew hardened reluctant positions and instead exhibit genuine willingness for introspection on our part so that where it becomes apparent or obvious that a fundamental error has occurred, we will be prepared to admit and correct it upon review. On this score, I commend the boldness and candidness with which my respected elder brother Ansah, JSC, in the case of **HANNA ASSI (NO.2) v GIHOC REFRIGERATION & HOUSEHOLDS PRODUCTS LTD (NO.2) [2007-2008] SCGLR 16**, made a volte-face from his earlier stand in the majority judgment of the ordinary bench and allowed the application for review of the previous decision of the Court which he concurred with.

The meaning ascribed to section 8 (1) & (6) of Act 32 by the ordinary bench, when read in conjunction with other sections of the Act as a whole, particularly sections 9, 29, 44 and 45 quoted supra, show clearly that the majority opinion cannot be allowed to stand as authority binding on all other courts within our jurisdiction.

It has been alleged that the applicant is not bereft of any remedy as he could sue his client for the fees he paid for the preparation of the documents that have been nullified, citing the case of *Fordwoo v Law Chambers* (supra), so no exceptional circumstances have been established to warrant a review. That argument, however, with the greatest respect to its proponents, is not appealing to me. In the *Hannah Assi (No.2) case* supra, which this Court found proper to review on grounds of exceptional circumstances, the applicant who was the defendant/appellant in that case, also had the opportunity to go to the trial High Court to institute a fresh action to claim the relief of declaration of title which he did not counter-claim for, as the ordinary bench of this Court in that case decided. But on review of that decision, the majority members of the

review panel held a contrary view. Notwithstanding the fact that the applicant in that case could have gone back to the trial High Court to seek the relief he did not expressly ask for in the original matter before the trial court, this Court held that *doing so would be tantamount to undercutting the importance of judicial economy and at the same time increasing the costs of the citizen's access to justice.* This Court, accordingly, granted a review of its previous decision in that case.

In my view, it is not a question of the applicant being or not being bereft of a remedy. It is a question of the unwarranted costs involved and other extenuating circumstances like unnecessary delay with its accompanying consequences that the innocent applicant would be confronted with, when the decision of the ordinary bench is allowed to stand.

To request the applicant herein to contract a new lawyer to begin afresh with the filing of a new writ, after paying his defaulting lawyer for the same exercise, with no opportunity to recoup the fees already paid without suffering extra costs, constitutes exceptional circumstances where the demands of justice makes the exercise of our review jurisdiction extremely necessary to avoid irreparable damage. The irreparable damage is the inability to retrieve monies already paid without incurring extra costs and the consequent delay and other stumbling blocks like the likelihood of being caught by the limitation Act that can defeat the ends of justice. *"This would be tantamount to undercutting the importance of judicial economy and at the same time unduly increasing the cost of the citizen's access to justice"* – to use the words of the late Prof. Ocran, JSC in the *Hanna Assi (No.2)* case (supra) at page 41 of the report.

The rationale behind the decision of the ordinary bench to nullify the processes filed for and on behalf of the applicant, as they indicated, was to instil discipline and sanity in the legal profession. I do not see how the mere nullification of documents belonging to an innocent litigant, who has paid money for their preparation and in the absence of any personal infraction of the law on his part, could instil discipline and sanity in the legal profession. How does the nullification of the documents of the applicant, affect Lawyer

Teriwajah who infringed the Legal Profession Act? It does not in any way, because the documents are not his and he loses nothing.

With this decision, a lawyer who has not renewed his/her licence can prepare legal documents, take his fees, and allow the person on whose behalf the documents have been prepared, to sign them personally and then file them. With the absence of any indication that the documents were prepared by someone without a licence, while in reality they were prepared by such a person, the documents are accepted and the unqualified lawyer goes scot free. Later, after such a lawyer has taken his licence, he could come into the same case with a notice of appointment as solicitor. No law stops him/her from doing so. This is the development that such a decision is going to breed. It is an interpretation that tends to look at the surface only; i.e. the letter but not the spirit of the legislation.

The spirit of the Legal Profession Act is to instil discipline and order in the profession that is why penalties (both civil and criminal), have been prescribed in the law for members who breach the Act. The law says that a person without authority under the Act, which includes a lawyer who has not taken his solicitor's licence, cannot take fees or earn remuneration when they prepare legal documents for innocent clients. In addition, they could suffer other penalties or punishments. The Act considered these provisions as those that could instil discipline in the profession because when implemented, they affect members directly. The Act did not consider the nullification of documents already prepared and filed on behalf of an innocent client or litigant as punishment for the unqualified lawyer who filed them, because such a decision flies in the face as the unqualified lawyer suffers nothing consequentially. For this reason, the Act did not say such documents have no validity. The Act says such unqualified practitioners must face penalties prescribed under the law. It is therefore a basic or fundamental error if we import into the provisions of the Act, using our powers of interpretation, an intent that the legislature never contemplated.

I therefore hold the strongest view that the applicant has demonstrated beyond all doubts that exceptional circumstances that have led to a

miscarriage of justice exist, which make the majority judgment of the ordinary bench reviewable.

I, accordingly, grant the application that the judgment be reviewed for the restoration of applicant's processes that were nullified by the trial High Court.

(SGD) YAW APAAU

JUSTICE OF THE SUPREME COURT

AKOTO – BAMFO (MRS) JSC:-

I agree

(SGD) V. AKOTO – BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

AKAMBA JSC:-

I agree

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

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