IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT ACCRA, GHANA

AD 2016

CORAM: ANSAH, JSC (PRESIDING)

ANIN YEBOAH, JSC

BAFFOE BONNIE, JSC

BENIN, JSC

AKAMBA, JSC

WRIT

NO. J1/8/2016

26TH MAY,2016

1. HIS LORDSHIP JUSTICE PAUL UUTER DERY. - - -1ST PLAINTIFF

2. HIS LORDSHIP JUSTICE GILBERT AYISI ADDO - - -2ND PLAINTIFF

VRS

1. **THE JUDICIAL COUNCIL - - - 1ST DEFENDANT**
2. **THE HONOURABLE CHIEF JUSTICE OF GHANA - - - 2ND DEFENDANT**
3. **THE ATTORNEY GENERAL - - - 3RD DEFENDANT**

JUDGMENT

ANSAH JSC.

Whereas the 1st plaintiff is a citizen of Ghana and a High Court Judge who proceeded on an administrative leave and has just resumed sitting as a judge, the 2nd plaintiff is also a citizen of Ghana and a Justice of the High Court of Ghana but currently is under suspension; both plaintiffs bring this action to invoke the original jurisdiction of this court by issuing a writ under article 130 (1) (a) and 2 (1) (a) of the 1992 constitution for reliefs; they together filed an amended writ of summons on 28/01/16, for the following reliefs, namely:

a) A declaration that the decision of the 1st defendant on 16th December 2015, which is contained in letters dated 8th and 11th January, 2016, purporting to place the plaintiffs on "half salary with immediate effect", is inconsistent with and in contravention of Article 127(5) of the 1992 Constitution and therefore unconstitutional, null and void.

On 26th April, 2016, this court struck out the 3rd, 4th, 5th and 6th defendants from the suit and they thus ceased to be parties there to."

The plaintiffs' statement of case:

In accordance with the rules of court, the plaintiffs filed their statement of case explaining why they invoked the original jurisdiction of this court pursuant to Article 130(1)(a) and 2(1)(b) of the 1992 Constitution for the reliefs endorsed on the Writ invoking the Original Jurisdiction of this Court which were, as follows:

i. A declaration that the decision of the 1st defendant on 16th December, 2015, which is contained in letters dated 8th and 11th January 2016, purporting to place the plaintiffs on "half salary with immediate effect" is

inconsistent with and in contravention of Article 125 (5) of the 1992 Constitution and therefore unconstitutional null and void.

ii. A declaration that the decision of the 1st defendant on 16th December, 2015 which is contained in letters dated 8th and 11th January, 2016 purporting to stop the payments to the plaintiffs of all their "allowances except rent", is inconsistent with and in contravention of Article 127 (5) of the 1992 Constitution and therefore unconstitutional null and void.

iii. An order nullifying the above named decisions by the 1st defendant taken on the 16th of December, 2015 and which are contained in letters dated 8th and 11th January, 2016.

iv. An order of perpetual injunction restraining the 1st defendant, its assigns, privies, servants agents, etc, and in particular the 2nd, 3rd, 4th, 5th, and 6th defendants from implementing the two decisions of the 1st defendant taken on the 16th of December, 2015 and which are contained in letters dated 8th and 11th January, 2016.

v. Any other order(s) that this Honorable Court may deem fit to make.

1.2 The plaintiffs state that the 1st defendant's decisions to pay the plaintiffs half-salaries and stop payment of their allowances except rent, are inconsistent with and in contravention of the 1992 Constitution and is seeking a declaration to that effect.

1.3 My Lords, the instant action raises a very crucial issue as to whether any person or body howsoever described could vary the conditions of service of a Justice of the Superior Court to his disadvantage in any circumstances whatsoever and howsoever described, or, more particularly during the period when a Justice of the Superior Court is facing an administrative or disciplinary

hearing or proceedings in view of Article 127 (5) of the 1992 Constitution.

1.4 The plaintiffs are seeking an enforcement of Article 127 (5) of the 1992 Constitution in the light of the two decisions of the Judicial Council."

Facts of the case of the plaintiffs:

I now wish to state the facts of this case in brief as culled from what the plaintiffs put before this court as part of their presentation () in support of their case. They are that:

"2.1 The plaintiffs are citizens of Ghana and Justices of the Superior Court.

2.2 The 1st defendant is a constitutional body established by Article 153 of the 1992 Constitution to perform functions stated in Article 154 of the Constitution.

2.3 The 2nd defendant is the administrative head of the Judicial Arm of Government.

2.4 The 3rd defendant is the Secretary to the 1st defendant.

2.5 The 4th defendant is the head of the Finance Department of the Judicial Service.

2.6 The 5th defendant is the Paymaster General of the Judicial Service.

2.7 The 6th defendant is in charge of the payments of salaries to some public servants such as the plaintiffs.

2.7 The 7th defendant is the principal legal adviser to the Government of Ghana and the person against whom all civil proceedings against the State and its organs shall be directed at.

2.8 Sometime in September 2015, the plaintiffs were summoned to the office of the 2nd defendant where they were given letters

accompanied by petitions notifying them that one **Tigereyepi** had petitioned the President of Ghana for their removal as justices of the Superior Court

2.10 The 2nd defendant requested the plaintiffs, in accordance with Article 146 (3) of the 1992 Constitution, to submit their responses to the petition to enable her make determinations of whether in each case there is a prima facie case.

2.11 The 1st plaintiff instituted actions at the High Court and in this court challenging the petition against him….

2.12 The 2nd plaintiff however responded to the letter of the 2nd defendant denying the allegation in the petition.

2.13 After the response from the 2nd plaintiff, the 2nd defendant determined that there was a prima facie (case established) against him for him to answer before a Committee the 2nd defendant set up pursuant to Article 146 (4) of the Constitution.

2.14 The 2nd plaintiff by a writ filed at the High Court on the 17th of November, 2015, is challenging the petition brought against him as well as the finding of a prima facie case against him by the 2nd defendant.

2.15 The 1st plaintiff remained on duty whilst the 2nd plaintiff was suspended pursuant to Article 146 (10).

2.16 On 14th October, 2015, the 1st plaintiff applied for an administrative leave and same was approved by the 2nd defendant.

2.17 Pursuant to exhibit **"PUD 4"** the 1st plaintiff resumed duty on the 11th January 2016.

2.18 On the 12th of January 2016, the plaintiffs received letters dated 8th and 11th January 2016, signed by the 3rd defendant to the effect that the 1st defendant had decided at its meeting on the 16th December, 2016 to place the plaintiffs on half salaries and that the

1st defendant had also suspended the payment of allowances of the plaintiffs rent allowances; reference is hereby made to exhibits PWD5 and PWD 6 in respect of the first and second plaintiffs respectively.

The 1st plaintiff applied to be permitted to proceed on an administrative leave as per exhibit PUD 4 from 19/10/15 to 31/12/15; His application succeeded and he was resume duty on 31/01/2016.

Statement of case of the defendants:

The statement of case of the plaintiffs having been served on the defendants, they (the defendants) filed a statement of case pursuant to the order of this court dated 3rd March 2016**,** under rule 48 of the Supreme Court Rules, 1996, CI 16.

In their statement of case, the defendants submitted that the facts of this case are not disputed and are sufficiently stated in the plaintiffs' statement of case (rehearsed above) and added that the 1st plaintiff is on an administrative leave pending the completion of disciplinary proceedings against him.

The defendants next touched on the scope of Article 127 (5) of the 1992 constitution. It read:

> "(5)The salary, allowances, privileges and rights in respect of leave of absence, gratuity, pension and other conditions of service of a Justice of the Superior court or any judicial officer or other person exercising judicial power, shall not be varied to his disadvantage."

The defendants stated the abovementioned provision first appeared in our statute books as article 117 (1) and (3) of the 1969 Constitution, in the following words:

> "Salaries, allowances, gratuities and pension …., shall be a charge upon the Consolidated Fund, and shall not be varied to their disadvantage."

The determination of salaries and allowances of Justices of the Superior courts of Justice is provided for in article 71 (1) and (3) of the 1992 constitution which provided that:

"1 The salaries and allowances payable, and the facilities and privileges available, to –

(a) the Speaker and Deputy Speaker and members of Parliament;

(b) the Chief Justice and the other Justices of the Superior Court of Judicature;

……

being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendations of a committee of not more than five persons appointed by the President, acting in accordance with the advice of the Council of State.

(3) For the purposes of this article, and except as otherwise provided in this Constitution, 'salaries' includes allowances, facilities and privileges and retiring benefits or awards."

The defendants further referred to article 158 (2) of the 1992 constitution which provided that:

> "158 (2) The Judicial Council shall, acting in consultation with the Public Services Commission and with the prior approval of the President, by Constitutional Instrument, make regulations prescribing the terms and conditions of service of the persons to whom clause (1) of this article applies."
>
> Article 158 (1) of the 1992 provided that:

“158 (1) The appointment of officers and employees of the Courts other than those expressly provided for by other provisions of this Constitution, shall be made by the Chief Justice or other Justice or other officer of the Court as the Justice Chief Justice may direct in writing.”

It is pertinent to note that ever since article 51 (1) of the 1960 Republican Constitution, the Judicial Service has been defined as part of the public services of Ghana. Indeed currently, under article 190 of the 1992 Constitution, it is listed as the second of fourteen public bodies which form part of the public services of Ghana. The plaintiffs herein are for these reasons judges and public servants: see the interpretation section of the 1992 definition of the following words:

““public office” includes an office the emoluments are attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament;

“public service” includes service in any civil office of Government, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and service with a public corporation.”

Further to this, article 196 of the 1992 Constitution empowers the Public Services Commission to establish standard and guidelines on the terms and conditions of employment in the public service when it stated other functions of the public services commission and provided that:

“196 The Public Services Commission shall have such powers and exercise such supervisory, regulatory and consultative functions as Parliament shall by law prescribe, including as may be applicable,

the supervision and regulation of, entrance and promotion examinations, recruitment and appointment into or promotions within, the public services, and the establishment of standards and guidelines on the terms and conditions of employment in the public services."

Besides this,

"197. The Public Services Commission may, subject to the approval of the President, make regulations, by constitutional Instrument, for the effective and efficient performance of its functions under this Constitution or any other law."

Memorandum of issues by the plaintiffs and defendants:

The parties filed their memorandum of issues to be tried at the hearing of the action as:

"1Whether or not the Judicial Council has the authority to vary the conditions of service of a Justice of the Superior Court during the pendency of any impeachment proceedings against the said Justice of the Superior Court in the light of Article 127(5) of the 1002 Constitution.

2 Whether or not the plaintiffs are public servants within the meaning of Article 190 (1) of the 1992 Constitution?

3 Whether or not the plaintiffs are bound by the Public Services Commission Regulations governing the conditions of service of public servants

By the provisions of **Article 71 (1)** of the 1992 Constitution:

"The salaries and allowances payable, and the facilities, and privileges available to –

(a) the Speaker and Deputy Speakers and members of Parliament;

(b) the Chief Justice and the other Justices of the Superior Court of Judicature;

(c) the Auditor General, the Chairman and Deputy Chairmen of the Electoral Commission, the Commissioner for Human Rights and Administrative Justice and his Deputies and the District Assemblies Common Fund Administrator;

(d) the Chairman Vice-Chairman and the other members of –

> ***(i) a National Council for Higher Education howsoever described;***
> ***ii)the Public Services Commission;***
> ***iii) the National Media Commission;***
>
> ***iv) the Lands Commission; and***
>
> ***v) the National Commission for Civic Education;***

being expenditure charged on the Consolidated Fund, shall be determined by the President on the recommendations of a committee of not than five persons appointed by the President, acting in accordance with the advice of the Council of State.

"The defendants submitted they are not aware of any such determination by any 5-man committee on the conditions of service of justices of the superior courts during in the course of any disciplinary proceedings. The defendants then asserted that justices of the superior courts were bound by any regulations in the absence of any such regulation.

The governing regime for determining the conditions of service of Justices of the Superior Court judges facing disciplinary hearing.

The defendants submitted, rightly, in my opinion, that justices of the superior courts are subject to the terms and conditions outlined

by the Public Services Commission, as well as the general labor laws of the land.

The Public Services Commission prepared a document called ***the Human Resources Management Policy framework and Manual for the Ghana Public Services***.

Section 9.4.12.0 thereof is on **'Interdiction'** and provided that:

"9.4.12.1" "Where the Disciplinary Authority considers that it is in the interest of the organization that an accused officer shall cease forthwith to exercise the powers and functions of that office, the Disciplinary Authority may interdict that officer.

9.4.12.4 A public servant who is interdicted shall be paid 50% of that public servant's salary. If the outcome of the disciplinary proceedings does not result in dismissal/determination, the remaining 50% of the salary withheld shall be restored with interest at the prevailing rate when the final decision is made.

9.4.12.5 All allowances enjoyed by the public servant shall be forfeited on account of the interdiction."

One may also refer to a document of the Judicial Service on 'Administrative Leave' and **Policy on Administrative Leave**", (see **Exhibit AG2 infra)**

For a proper understanding and appreciation of what an 'administrative leave' is and entails, I have quoted it out in full hereunder:

"Exhibit AG2

Policy on Administrative Leave

1.0BJECT -

The object of this policy is to define situations where a Judge/Magistrate may be required by Management to take temporary leave from his /her judicial functions for specific reason.

2.0 Conditions for Administrative Leave on grounds of Alleged Misconduct.

2.1 The policy on Administrative Leave may be invoked /ordered when all other forms of leave already stipulated in the Conditions of Service will not sufficiently serve the purpose for which administrative leave may be required.

2.2 A Judge/Magistrate may be directed to proceed on administrative leave, where investigative processes do not warrant immediate suspension.

2.3 Where it becomes obvious that the alleged conduct/condition will not permit the Judge/Magistrate to continue to perform his/her judicial functions, but the said Judge/Magistrate cannot be suspended, Administrative Leave may be ordered for a specified period.

3.0 Duration of Administrative Leave.

3.1 The period of Administrative leave granted shall not exceed three months during which period the Judge/Magistrate may be entitled to full salary and other benefits.

3.1 The Administrative Leave may be extended for a further three (3) months but on half salary with other benefits.

4.0 Restoration

If after the investigative process, the Committee makes a finding that a Judge/Magistrate has not committed or engaged in any misconduct his or her full salary which may have been with held, shall be restored.

It may be observed that the 1st plaintiff applied to be allowed to proceed on an administrative leave, which was granted to him to commence from …., and end on… In fact he resumed duty on 11-1-2016. The 2nd plaintiff has since been on suspension as a judge since….

The defendants further referred to **Regulation 8 of the Labor Regulations, 2007**, **(LI 1833),** dealing with the conditions of service of an employee during the period of interdiction. It provided that**:**

"(1) Where an employee interdicts an employee, the employer shall:

(a)pay not less than fifty per cent of the employee's salary for six months, during investigations, disciplinary or criminal proceedings for an offence for which the employee has been charged, and

*(b)*Pay *the employee the salaries withheld during the interdiction, if the employee is exonerated from the offence for which the employee has been charged.*

These are the laws and regulations that governed and affected the plaintiffs' employment as justices of the High Court. Properly read, it could be seen that the Judicial Council acted within its' jurisdiction when it acted and applied the laws and regulations on the matter before it.

The Constitutionality or otherwise of the 1st defendant's conduct.

The 1st defendant interdicted the plaintiffs and put them on half salary and the plaintiffs complained that they thereby suffered a diminution in their conditions of service and that by

this conduct did violence to Article 127 (5) which prohibited the variation of the salary, allowances, privileges and rights of a justice of the superior court to his disadvantage. The defendants dispute this assertion.

The call for the protection of courts of justice and the justices thereof is clarion in the broad spectrum of the world these days, Ghana not being excepted, hence legal clauses fashioned out in legislations. Article 127 (5) of our 1992 Constitution (quoted earlier), bears clear testimony to this. The learned Justice Date-Ba upheld this acclaim in his ***"Judicial Independence and the rule of law in Ghana, a microcosm of West African Commonwealth Jurisdiction"*** where he wrote in a passage quoted by the defendants in their statement of case, that:

"The security of tenure of Superior Court Justices is further buttressed by the provision in article 127 (5) of the 1992 Constitution which states that the salary, allowances privileges and other conditions of service of a Justice of the superior court officer or other person exercising judicial power, shall not be varied to his disadvantage. This provision gives the protection of the levels of remuneration referred to in the ***Latimer House Principles*** and is an important element in the financial security of Superior Court Justices. Finally, in relation to the financial security of Superior Court Justices, article 71 of the 1992 Constitution, includes Superior Court Justices in the category of public servants whose remuneration is independently determined in accordance with the process embodied in that article." See the, ***March Commonwealth Legal Education West African Regional Chapter, Public Lecture 12, 2015***.

The defense submitted further that the true spirit behind article 127 (5) is about a justice "exercising judicial power, "but not being or has been interdicted, awaiting an enquiry into charges of misconduct of any kind or actually specified. Such superior justices are catered for when provisions are fashioned out for ensuring fair trials for them."

Giving a purposive interpretation to the term 'sitting justice' in the context, it means: (a) a judge who occupies a judicial seat; (b) to hold a court or perform a judicial function, to hold proceedings,

and, 'to 'interdict a judge' is to forbid him or her or to restrain him or her from performing or exercising the action of administering justice through duly constituted courts.

It becomes plain that the first and second plaintiffs are not 'sitting judges' as from what I have endeavored to state above, they are either on administrative leave or suspension, respectively.

It is not difficult to find that the plaintiffs are not performing any function as judges, but the articles on salary of judges properly apply to judges performing judicial functions purposively defined above.

Where it is clear they are not then it is only fair and proper to state their salaries can legitimately be varied. It is also fair and proper and legitimate to vary them without causing any disadvantage to them.

Reading the provisions regulating their employment, I infer a fair amount of fairness from them for it was provided that if, after the investigations nothing was found against them the amount of salary withheld temporarily, would be restored to them. The variation in the salary was only for a period during the investigations to establish the veracity or otherwise in the charges leveled against them.

The circumstances justifying the invocation of the issuing of a writ of summons to invoke the original jurisdiction of this court: are well known: Trying to resolve the

issue as to when an issue of interpretation was properly raised within the meaning and scope of article 118 of the 1979 Constitution, (currently article 130 of the 1992 constitution) the Court of Appeal suggested the way forward and Anin J.A, writing for the Court of Appeal, propounded a fourfold test that

"Firstly, it arises when there is an ambiguity in the provisions in question, Secondly, where the issue raised is one of conflict between provisions in various parts of the constitution and the question is which provision shall prevail. Thirdly, where the matter raised is of such public importance that to avoid the possibility of various interpretations by lower courts, the matter ought in the public interest be referred to the Supreme Court for the guidance of the lower courts. Fourthly, where legislation has been incorporated into the constitution by specific reference and should be read along with the constitution;" see **Republic v Special Tribunal; Ex parte Akosah [1980] GLR 592 at 599 and 602-603.**

CONCLUSIONS: For all this it becomes clear that the plaintiffs did not satisfy this court that they are entitled to the reliefs or any of them in their writ to invoke the original jurisdiction of this court**.** The further reason is that the law is settled that where it appears that the plaintiffs seek by their action to enforce personal rights such as in this case, then, this court is bound to follow its own decision in *Bimpong-Buta v General Legal Council and others [2003-2004] 1 GLR 752* that:

"All in all the reliefs claimed, the pleadings, and submissions filed in this matter, amply demonstrate that the plaintiff's action is no more than an ordinary civil suit splendidly arrayed in constitutional clothing. In the circumstances it is my view that our jurisdiction has not been properly invoked. The plaintiffs reliefs lie elsewhere and we cannot assume jurisdiction to adjudicate upon it under our original jurisdiction. The action must therefore be struck out."

The facts show limpidly that whatever garb in which they are attired and regardless of the manner in which they are packaged, this suit

does not merit any interpretation of any provision of the Constitution;

For all these reasons, I dismiss the plaintiffs' writ.

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) ANIN - YEBOAH
JUSTICE OF THE SUPREME COURT

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

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

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