IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2016

CORAM: ANSAH, JSC ((PRESIDING);

ANIN YEBOAH;JSC

BAFFOE BONNIE JSC

BENIN JSC

AKAMBA, JJSC

WRIT NO: J1/9/2016

27TH OCTOBER 2016

BETWEEN

1. H/L JUSTICE MUSTAPHA HABIB LOGOH 1ST PLAINTIFF
2. H/L JUSTICE PAUL UUTER DERY 2ND PLAINTIFF
3. H/L JUSTICE GILBERT AYISI ADDO 3RD PLAINTIFF

VRS.

1. TIGER EYE PI 1ST DEFENDANT
2. THE CHIEF JUSTICE OF GHANA 2NDDEFENDANT
3. THE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

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AKAMBA, JSC.

PROLOGUE

This case involves serving judges on issues pertaining to allegations of corruption of office. Owing to the nature of the case, it is with the greatest trepidation that we sit in judgment over our colleagues, knowing what consequences may flow should they be found culpable. However, it is not for nothing that 'Lady Justice' has been depicted wearing a blindfold signifying objectivity; in that justice is, or should be meted out objectively, without fear or favour, regardless of money, wealth, fame, power or identity. We are therefore obliged to adhere to our judicial oaths to do justice according to law and nothing else.

BRIEF FACTS

The three Plaintiffs herein are Justices of the High Court of Justice. The 1st Defendant purports to be a company limited by shares and registered under the laws of Ghana. The 2nd Defendant is the head of the Judiciary of Ghana and responsible for the administration and supervision of the Judiciary while the 3rd Defendant is the principal legal advisor to the Government of Ghana. Sometime in early September 2015, the Plaintiffs and others were summoned to the office of the 2nd defendant where they were each given letters

notifying them that the 1st Defendant had petitioned the President of the Republic of Ghana for their removal from office as Justices of the Superior Court on allegations of bribery. The letters requested the Plaintiffs to submit their responses to the allegations contained in the 1st Defendant's petition by 14th September 2015 to enable the 2nd Defendant determine whether or not there was a prima facie case made against each of the Plaintiffs. Meanwhile the Plaintiffs embarked upon their own investigations into the backgrounds of the petitioner ostensibly from the Registrar General's Department and the Social Security and National Insurance Trust (SSNIT) as to whether or not 1st Defendant was known to them as a corporate body. The outcome of the investigations was that the 1st Defendant is not a body corporate registered under the Companies Act, 1963, Act 179. The records at the Registrar General's Department allude to the existence of a different company, known as Tiger Eye Pl Media Ltd but not the 1st Defendant. The result of the search from the SSNIT was equally unfavourable as they had no records of Tiger Eye Pl or Tiger Eye Pl Media Ltd.

Against the foregoing background, the three Plaintiffs issued an amended

writ of summons on 1st March 2016 seeking from this court the following seven reliefs:

1. A declaration that the petitions that were submitted to the President of Ghana for the removal of the Plaintiffs as Justices of the Superior Court are inconsistent with and in contravention of Article 146 (3) of the 1992 Constitution as there is no identifiable petitioner armed with the said petitions.

2. A declaration that the petitions that the 1st defendant purportedly submitted to the President of Ghana for the removal of the plaintiffs as Justices of the Superior Court are inconsistent with and in contravention of Article 146 (3) of the Constitution as the 1st Defendant does not exist in fact and as such lacks the legal capacity to file the said petitions.
3. A declaration that the petitions that the 1st defendant purportedly submitted to the President of Ghana for the removal of the Plaintiffs as Justices of the Superior Court are inconsistent with and in contravention of Article 146 (3) of the 1992 Constitution as the said petitions are vitiated by fraud.
4. A declaration that the President's referrals of the 1st Defendant's petitions to the 2nd Defendant to determine whether there is a prima facie case against the Plaintiffs are inconsistent with and in contravention of Article 146 (3) of the 1992 Constitution as the 1st Defendant does not exist in fact and as such lacks the legal capacity to file the said petitions.
5. A declaration that the 2nd Defendant's request to the 1st and 2nd Plaintiffs to respond to the petitions filed by the 1st Defendant for the determination of whether there is a prima facie case against the 1st and 2nd Plaintiffs is inconsistent with and in contravention of Article 146 (3) of the 1992 Constitution as the 1st Defendant does not exist in fact and as such lacks the legal capacity to file the said petitions.
6. A declaration that the determination by the 2nd Defendant that there is a prima facie case for the 3rd Plaintiff to answer is inconsistent with and in contravention of Article 146 (3) of the

1992 Constitution as the 1st Defendant does not exist in fact and as such lacks the legal capacity to file the said petitions.

7. Any other order (s) and directions that this Honourable Court may deem fit to make to give effect to the declarations made herein pursuant to Article 2 (2) of the 1992 Constitution."

PLAINTIFFS' CASE

The facts giving rise to the Plaintiffs' writ are devoid of any complexities. It is the case of the Plaintiffs' that the petition of the 1st Defendant, (Tiger Eye Pl) seeking their (Plaintiffs') removal from office as Justices of the Superior Court of Ghana is inconsistent with and in contravention of Article 146 (3) of the 1992 Constitution. The Plaintiffs' reason for this conclusion is that the 1st defendant does not exist in fact and law and therefore did not have the legal capacity to submit any petition/s to the President for their removal from office. The Plaintiffs' further contend that the 1st defendant's petition was a fraud on the 2nd Defendant, the Plaintiffs', Ghanaians and the International community as a whole since it (1st Defendant) had no capacity to act as it did. According to the Plaintiffs', there are no records of the 1st Defendant's registration as a company at the Registrar General's office. The records at the Registrar General's office rather attest to the registration of a company called Tiger Eye Pl Media and Stallion Tiger Ltd with Anas Aremeyaw Anas and another as Directors with their registered office as 'Apomah House, Dzorwulu', which is different from the 1st Defendant Company. For the foregoing reasons, the Plaintiffs' invoke the original jurisdiction of this court to interpret the true and proper meaning of article 146 (3) of the 1992 and in particular, as to whether a non-existent entity in law can purport to submit a petition under article 146 (3) of the 1992 Constitution. The Plaintiffs' further seek a

determination, (based upon the assumption that the 1st Defendant lacked the requisite capacity) as to whether the President and the 2nd Defendant can validly act on a petition of/from a non-existent Petitioner who may have acted fraudulently.

DEFENDANTS' CASE

The defendants' take issue with the Plaintiffs' on the basis upon which they (Plaintiffs') initiated the writ. The Defendants' contend that the Plaintiffs' have no cause of action given that the Plaintiffs' action is premised upon a mistaken belief that the petition for their removal was made by the 1st Defendant. The petition, according to the defendants was made by Anas Aremeyaw Anas in his personal capacity as a citizen and a lawyer and signed by him on a letterhead of the 1st defendant company. Nowhere in the letter did the petitioner state that the petition was made on behalf of the 1st defendant or any company for that matter.

ISSUES FOR DETERMINATION

The parties filed independent issues having failed to agree on a joint memorandum of issues. This is in compliance with Rule 50 (3) of the Supreme Court Rules, 1996, CI 16, which provides that:

"50 (3) Where the parties cannot agree on the issues each party may file that party's own memorandum of issues."

The 1st, 2nd and 3rd plaintiffs filed the following issues on 29/04/16 for determination:

"1. Whether the 1st Defendant, Tiger Eye P.I, existed as a limited liability company at all time material to its submission of the petitions

to the President for the removal of the Plaintiffs as Justices of the Superior Court pursuant to Article 146 (3) of the 1992 Constitution.

2. Whether the 1st Defendant had the legal capacity to submit the petitions to the President for the removal of the Plaintiffs as Justices of the Superior Court pursuant to Article 146 (3) of the 1992 Constitution.

3. Whether the 1st Defendant's petitions for the removal of the Plaintiffs as Justices of the Superior Court pursuant to Article 146 (3) of the 1992 constitution are vitiated by fraud."

The 1st Defendant for his part filed the following issues on 04/05/2016:

(i) Whether the petition submitted to the President for the removal of the Plaintiffs from office as Justices of the Superior Court was submitted by an identifiable petitioner.
(ii) Whether the petition submitted to the President for the removal of the plaintiffs from the office as Justices of the Superior Court is vitiated by fraud.

Lastly, the 2nd and 3rd defendants also filed the following issues for determination:

(i) Whether or not a breach of Article 146 (8) of the 1992 Constitution in publishing some evidence touching on the contents of a petition to the general Public violates the plaintiff's right to procedural fairness in the consideration of the defendant's petition before the Chief Justice and /or the-5man committee under Article 146 (2) and (3) thereof?

(ii) Whether or not balanced assessment of the competing public interests in Article 21(1) (a) of the 1992 Constitution (guaranteeing freedom of speech and expression to the 1st Defendant) and Article 146 (8) of the 1992 Constitution (guaranteeing confidentiality in impeachment proceedings to the Plaintiff) ought to be resolved in favour of the 1st Defendant or the Plaintiff having regard to all the circumstances of the instant case.

For obvious procedural reasons it is prudent to resolve issue one (1) raised by the 1st defendant first. This is because the early determination of the capacity in which the 'petitioner' submitted the petition to the President could determine whether the plaintiffs have a subsisting 'cause of action' against the 1st defendant in particular and the other defendants in general under the circumstance and failing which to terminate the action against them. The outcome will also determine whether it is necessary to consider the remaining issues raised for determination in this dispute since they all hinge on the primary identification of the actual petitioner to the President. This development has become necessary in the light of denials and refutations of responsibility by the 1st defendant for the submission of the petition. The 1st defendant points rather to an identifiable individual as author of the petition and not the company.

EXHIBIT AG1

The Petition submitted to the President which is the subject of divergent accusations and counter accusations by the parties, is exhibited in this case file as exhibit AG1. A scrutiny of exhibit AG1 would assist us in unraveling and resolving the identity and capacity of its maker. The primary responsibility of this court is to ascertain the identity of the author of exhibit AG1 since this will assist in resolving the current impasse. I will therefore quote the significant parts of the exhibit here below as follows:

"

Box CT 11251
Cantonments, Accra,
Ghana.

THE PRESIDENT OF THE REPUBLIC OF GHANA, FLAGSTAFF HOUSE, ACCRA.

THROUGH: HER LADYSHIP
CHIEF JUSTICE
SUPREME COURT
ACCRA.

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION OF THE REPUBLIC OF GHANA

IN THE MATTER OF A PETITION BY ANAS AREMAYAW ANAS FOR THE REMOVAL FROM OFFICE AS JUSTICES OF THE SUPERIOR COURT(HIGH COURT) OF THE FOLLOWING PERSONS:

(The names of twelve (12) Justices of the High Court including the three Plaintiffs herein are given)

ON THE GROUNDS OF STATED MISBEHAVIOUR

Citizen Petition

This is the humble petition of Anas Aremeyaw Anas, under article 146 of the constitution of the republic of Ghana, to the president of the republic of Ghana, in my capacity as a citizen of Ghana, and by profession an investigative journalist and a lawyer, humbly requesting that you commence and put in place the processes provided for under article 146 aforesaid for the removal from office the under listed superior court judges for stated misbehaviour.

The misbehavior complained about is that each of them at various times, derived illegal private gains from the public offices which they hold justices of the superior courts of the republic of Ghana, through demanding and/or receiving bribes in order to deliver judgments,

orders or rulings in favour of some accused persons and litigants appearing as parties before them in court.

Bases of Action Requested

For the period of two (2) years, I have carried out an investigation into the perceived corruption in the judicial service. The investigation sought to ascertain whether there was any truth in that perception. It spanned across the regions of Ghana. During the stated period, I found hard evidence that proves that corruption in the judicial is more than just a perception: it is true to a very large extent.

I found that some judges are very corrupt, and that they demand and receive bribes to perform their public functions, in flagrant breach of the law and the judicial oath sworn or subscribed to by virtue of article 165 of the constitution, and set out under the second schedule to same, to " bear true faith and allegiance to the republic of Ghana as by law established;…..uphold the sovereignty and integrity of the republic of Ghana;…..truly and faithfully perform the functions of [the] office without fear or favour, affection or ill-will; and …..all times uphold , preserve, protect and defend the constitution and the laws of the republic of Ghana."

I also found other judges who took their oaths seriously and would threaten to jail anyone who sought to influence their decisions.

I present hereunder, the list of corrupt judges and humbly request that you cause to be put in place, the procedure provided under article 146 of the constitution for the removal of judges of the superior courts of the judicature on the ground of " stated misbehavior." As a Ghanaian proverbs goes "a little bad meat spoils the whole soup." It is my

respectful view that it is of utmost importance that the few dad nuts identified in this petition are removed from office to preserve the sanctity of the judiciary, to act as deterrent to other who may be engaged in such acts but were lucky no to have exposed, and to encourage the loyal and dedicated judges that honesty pays.

(This is followed by a list the twelve judges and the stated misbehavior by each one and the occasion.)

Dated in Accra this 29th day of August 2015."

The petition was signed by its author. [Underline Mine]

ANALYSIS

It is important to state that Exhibit AG1 was typed on a letter head of 'tigereyepi' bearing the inscription 'Africa's leading private investigative firm'. It appears that it is this use of the 'tigereyepi' letter head that informed the plaintiffs' choice of defendants, particularly the 1st defendant. Furthermore, it is this letterhead background that the Plaintiffs consider as pointing to the 1st defendant rather than its Chief Executive Officer, Anas Aremeyaw Anas, as the petitioner. In so concluding it is apparent that the Plaintiffs are looking to the form of the document rather than its intent. Such a position is obviously contrary to the legal maxim that holds that 'the intention of the person is the soul of the instrument' (Animus hominis est anima scripti). Also that 'words are indications of the intention' (Verba sunt indices animi)

The Plaintiffs rely on section 121 (1) © of the Companies Act, 1963 (Act 179) to buttress their conclusion. The section provides as follows:

"121 Publication of name of company

(1) A company shall

© have its name accurately mentioned in legible characters at the head of all business letters, invoices, receipts, notices, or any other publication of the company and in the negotiable instruments or orders for money, goods or services purporting to be signed or endorsed by or on behalf of the company." [Underline mine]

Without doubt, the above quoted section as the underlined portion affirms creates a 'rebuttable presumption' upon the production of a letterhead of a business entity purporting to be signed by or on behalf of the company. Section 19 of the Evidence Act, (1975), Act 323 provides that 'an enactment providing that a fact or group of facts is prima facie evidence of another fact creates a rebuttable presumption.'

Black's Law Dictionary, Eight Edition, by Bryan A Garner, further highlights on this type of presumption when it defines 'rebuttable presumption as:

"An inference drawn from certain facts that establish a prima facie case, which may be overcome by the introduction of contrary evidence. Also termed *prima facie presumption; disputable presumption; conditional presumption*."

On the other hand, the best evidence rule requires that to prove the contents of a writing or recording or photograph, a party must produce

the original writing (or a mechanical, electronic, or other familiar duplicate, such as a photocopy) unless it is unavailable, in which case secondary evidence may be admitted. (See Black's Law Dictionary, Eight Edition by Bryan A Garner)

Exhibit AG1 satisfies the best evidence rule, being a colour photocopy of the original petition submitted to the President. The answer to the issue as to who is its author and the capacity in which it was made, can only be found in that letter which may rebut or affirm the maker as the company or not. Thus exhibit AG1 takes the issue beyond conjecture. In the present context, the identity of the maker of exhibit AG1 commences from the very first paragraph of the exhibit where he stated that, this is the humble petition of Anas Aremeyaw Anas'. To put this issue beyond doubt, the author appended his signature at the end of the letter in his personal capacity. It is also not without significance that the author of the petition resorted to the use of the pronoun 'I' throughout his petition and ended it with his signature to clearly designate his intention, which is that it was his personal undertaking.

Now that the identity of the author of exhibit AG1 and the capacity, in which he authored it has been established, these established facts rebut any presumption that, the mere use of the company letterhead, must necessarily lead to the conclusion or imputation that it was the making of the company as advocated by the plaintiffs. We cannot accede to any unwarranted academic or theoretical conjectures in the light of the obvious indications that the petition was written by no other than Anas Aremeyaw Anas, a citizen of Ghana and an investigative journalist and lawyer by profession in his personal capacity.

CONCLUSION

In the light of this finding it is obvious that the choice of the 1st defendant as a party in this action was not well informed nor founded.

The submission by the plaintiffs' that the 1st defendant is an un-incorporated body and therefore incompetent to submit a petition to the President is not only dis-ingenious, it is a ruse to sway us from the real issue. We find the submission unwarranted and dismiss same.

In the light of the foregoing conclusion, no useful purpose would be served in considering the other issues raised by the applicants as these have become otiose. The plaintiffs' action fails and is dismissed.

J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

J. ANSAH
JUSTICE OF THE SUPREME COURT

ANIN - YEBOAH
JUSTICE OF THE SUPREME COURT

P. BAFFOE - BONNIE
JUSTICE OF THE SUPREME COURT

A. A. BENIN
JUSTICE OF THE SUPREME COURT

COUNSEL

NII KPAKPO ADDO WITH HIM STEPHEN OPOKU FOR THE PLAINTIFFS.

KISSI ADJEBENG WITH HIM DENNIS FRIMPONG ADJEBENG FOR THE 1ST DEFENDANT

MRS. AFRIYIE ANSAH (CHIEF STATE ATTORNEY) WITH HER ZEINAB AYARIGA (ASSISTANT STATE ATTORNEY) FOR THE 2ND AND 3RD DEFENDANTS.