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

CORAM: AKUFFO (MS), JSC PRESIDING
ANSAH JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC

CIVIL APPEAL
NO. J4/53/2016

14TH JUNE, 2017

1. KWABENA OBENG
PLOT 17 BLOCK A NEW
BREMAN- KUMASI

(FOR HIMSELF AND ON BEHALF OF KEJETIA
TRADERS ASSOCIATION OF WHICH HE IS
THE CHAIRMAN COMPRISING 402 MEMBERS
THE NAMES AND RESIDENTIALADDRESSES OF
WHOM ARE ANNEXED TO THE INSTANT WRIT)

2. ERIC AKWASI PREMPEH
PLOT 24 KROFROM
KUMASI

(FOR HIMSELF AND ON BEHALF OF KEJETIA
PETTY TRADERS ASSOCIATION OF WHICH HE IS THE
CHAIRMAN COMPRISING 2283 MEMBERS THE NAMES
AND RESIDENTIAL ADDRESSES OF WHOM ARE
ANNEXED TO THE INSTANT WRIT) …. **PLTS/APPELTS/ RESPONDENTS**

VRS

1. KUMASI METROPOLITAN ASSEMBLY (KMA)
KUMASI
2. KOJO BONSU
NHYIAESO – KUMASI **… DEFENDANTS/RESPONDENTS/ APPELLANTS**

JUDGMENT

DOTSE JSC:-

The Plaintiffs/Appellants/Respondents, hereafter referred to as Plaintiffs filed a writ of summons against the Defendants/Respondents/Appellants, hereafter Defendants in the High Court Kumasi claiming several reliefs which will be referred to in extenso.

Due to the nature of the reliefs being claimed especially against the 1st Defendants, it was statutorily incumbent upon the Plaintiffs to satisfy the requirements imposed in section 127 of the Local Government Act, 1993 (Act 462).

It must be noted at this stage that, Act 462 has been repealed by section 235 (1) of the Local Government Act, 2016 (Act 936). However, the corresponding provisions in section 210 of Act 936 are similar in context to the provisions of section 127 of the repealed Act 462. However, since at all times relevant to the cause of this action it was the repealed Act 462 that was the operating law, it is that law that will be substantially referred to herein.

What then does section 127 of Act 462 provide. This section provides as follows:-

127. Notice of suit to be given to Assembly

(1) " A suit shall not be commenced against a District Assembly until one month at least after written notice of intention to commence the suit has been served upon the Assembly by the intending plaintiff or the agent of the plaintiff.

(2) The notice shall state the cause of action, the names and place of abode of the intending plaintiff and the relief which the plaintiff claims." Emphasis

In compliance with the said provisions, learned counsel for the plaintiffs, Kwasi Afrifa issued a notice by which he sought to comply with the said statutory pre conditions.

From the above provisions, the following requirements must be met by an intending plaintiff or his or their agents who intends to institute action against any Metropolitan, Municipal or District Assemblies one month before the suit is filed and served. These are:-

1. The cause of action
2. Names of the intended Plaintiff or Plaintiffs
3. The place of abode of the Plaintiff or Plaintiffs
4. The intended reliefs to be sought

Additionally, the one month statutory period stated in Section 127 must have elapsed from the date of the notice and the date of the inception of the suit against the Defendant. Since the 1st Defendant is a Metropolitan Assembly, learned Counsel for the Plaintiffs duly complied by giving the said notice.

However since the instant appeal touches and concerns the rival interpretations placed upon the requirement and effect of this section 127 of Act 462 by the trial High Court and the Court of Appeal, respectively, we deem it expedient to set out in extenso the contents of the entire NOTICE which the Plaintiff's Lawyer gave, which states as follows:-

"1st April 2015

The Metropolitan Chief Executive

Kumasi Metropolitan Assembly

Kumasi

Dear Sir,

STATUTORY NOTICE OF INTENTION TO COMMENCE SUIT AGAINST THE KUMASI METROPOLITAN ASSEMBLY (KMA) UNDER SECTION 127 OF THE LOCAL GOVERNMENT ACT, 1993, ACT 462

OUR CLIENTS:

THE TRADERS AND SHOP OWNERS AT THE KEJETIA BUS TERMINAL

We write to your outfit on the instructions and authority of our above-named clients who are all traders at the Kejetia Bus Terminal.

Our instructions are that your outfit has communicated an intention to pull down the stores constructed by our clients at the Kejetia Bus Terminal out of their own funds with a view to an alleged rehabilitation or reconstruction.

We are instructed that your outfit has not valued the property of our clients and has not evinced any intention to provide adequate and sufficient compensation as required by the Laws of Ghana particularly the 1992 Constitution.

Please note that your behaviour is unlawful and calculated to deprive our clients their right to earn a livelihood.

Your behaviour also imperils the lives and existence of dependents children and other family members of our clients.

Our clients have further instructed us that the basis of the alleged rehabilitation project by your outfit is dubious and lacks transparency.

In the light of the above we are hereby serving notice of the intention of our clients through us their agents to institute the appropriate legal action to address their grievances.

This notice is being given in line with the prescription of section 127 of the Local Government Act, 1993, Act 462.

Please take further notice that our Kwasi Afrifa, ESQ has the personal conduct of this brief and all correspondence and communication ought to directed to him.

His telephones numbers are 0201835492 or 0244312090

Having served this notice we do not expect any further direct contact on the issue with our clients as we are mandated to deal on their behalf in respect of all matters relative to the issue.

Please be advised accordingly.

Yours faithfully

Kwasi Afrifa ESQ

O & A Legal Consult

Barristers, Solicitors & Notaries Public"

As can be seen from the said notice, the date is 1st April 2015 and the writ of summons in the instant appeal was filed on 25th June 2015 thereby complying with the timelines stated therein.

Secondly, the intended Plaintiffs were described as *"The Traders and Shop Owners at the Kejetia Bus Terminal".*

However, in the Writ of Summons, the Plaintiffs were described variously as

(a) Kejetia Traders Association of which 1st Plaintiff is the Chairman comprising of some 402 members.

(b) Kejetia Petty Traders Association of which 2nd Plaintiff is the Chairman and comprised some 2283 members.

Thirdly, it should be noted that the names of the intended Plaintiffs was not attached to the Notice that has been referred to supra.

Fourthly, the place of abode of the intended Plaintiffs has also not been given.

Fifthly, it is quite apparent from the notice that, the reference to *"our clients"* as *"Traders and Shop Owners at Kejetia Bus Terminal"* is very wide, nebulous and not descriptive enough.

It is thus clear that the Defendants had not been given any guidelines that will indicate the exact number or target class of the Plaintiffs.

Furthermore, from the notice, valuation and the issue of compensation was the focus of the cause of action that the Plaintiffs intimated. It should therefore be assumed that any pre-conditions for the institution of an action against the Defendants for payment of compensation under Act 462 must be complied with

Finally, the reliefs which the Plaintiffs intended to claim against the Defendants was not explicitly stated as is mandatorily required under the provisions of the law.

At this stage, we deem it appropriate to set out in detail the lengthy and repetitive reliefs which the Plaintiffs claimed against the Defendants as follows:-

a. "A declaration that the proposed rehabilitation and/or reconstruction of the Kumasi Central Market Project does not include the Kejetia Bus Terminal.

b. A declaration that the deliberate extension of the Kumasi Central Market Project to include the Kejetia Bus Terminal is wrongful illegal and calculated to overreach the Plaintiff who have constructed permanent structures thereat with the consent and concurrence of the Kumasi Metropolitan Assembly (KMA) who collect monthly shop license fees and daily tolls from the Plaintiffs by reason of their occupation of the stalls.

c. A declaration that the non-inclusion of Urban Roads Department and the Ashanti City Engineer Unit of Kumasi Metropolitan Assembly (KMA) in the proposed rehabilitation and or reconstruction of the Kejetia Bus Terminal Project is suggestive of the fact that the Kejetia Bus Terminal Project is not part of the overall project but has been surreptitiously included by the Kumasi Metropolitan Assembly (KMA) with a view to overreaching the plaintiffs and depriving them their livelihood and this view is fortified by a public declaration made by the presiding member of the Assembly that the Assembly has not discussed the Kejetia Bus Terminal Project and that the rehabilitation project is confined to the Kumasi Central Market.

d. A declaration that the non-inclusion of the Kejetia Bus Terminal in the proposed rehabilitation project estimate sent to the cabinet of the Republic of Ghana is indicative of the fact that the Kejetia Bus Terminal is not part of the overall project and any purported inclusion of it is fraudulent and calculated to infringe the proprietary of rights of the plaintiffs.

e. A declaration that the non-valuation of the plaintiff buildings situate at the Kejetia Bus Terminal with a view to paying adequate and sufficient compensation for same before any demolition is unconstitutional wrongful and infraction of the Plaintiffs proprietary rights.

f. A declaration that the proposed relocation of the plaintiffs to a place and site totally unsuitable for the nature of their work and which is in any event incapable of catering for all the plaintiffs is a ruse calculated to dignify the business of the plaintiffs and deprive them their right to earn a living at the Kejetia Bus Terminal where they currently operate their businesses.

g. A declaration that having financed the buildings they occupy at Kejetia Bus Terminal presently out of their own means the plaintiffs are entitled to adequate sufficient and prompt compensation before any attempt to relocate them therefrom.

h. A declaration that the entire process of the purported construction of Kejetia Bus Terminal is devoid of transparency and procedural integrity and against the backdrop that no compensation has been offered the Plaintiffs to enable them reorganize their affairs as would be beneficial to them.

i. A declaration that the two months periods capriciously decreed by the Kumasi Metropolitan Assembly (KMA) ordering the plaintiffs to yield vacant possession of their stores at the Kejetia Bus Terminal is wrongful arbitrary and unconstitutional against the backdrop thereat that their properties thereat have not been valued with a view to paying them adequate and sufficient compensation.

j. An order compelling the Kumasi Metropolitan Assembly (KMA) to furnish produce and disclose the contract documents covering the said rehabilitation of the Kumasi Central Market Project for transparent and open verification of the extent and scope of the project.

k. An order directing the Kumasi Metropolitan Assembly (KMA) to provide a written guarantee that even after the completion of the so-called project the present occupants of the stores thereat would be returned to the places occupied by them at the present without any further demand for the payment of monies.

l. An order directing the Kumasi Metropolitan Assembly (KMA) to respect the precedent set in this regard by the Assembly in 2000 in respect of work done at the frontage of the Kumasi Central Market and in respect of the Anloga Carpenters who were relocated to Sokoban Wood Village constructed entirely at the expense of Kumasi Metropolitan Assembly (KMA) without the payment of any monies whatsoever by the resettled carpenters.

m. Such further orders (s) as the Honourable Court may deem fit." Emphasis supplied

BRIEF FACTS

The Plaintiffs instituted this action against the Defendants on the grounds that they had constructed shops at the Kejetia Bus Terminal in or about 1995 and 2000 respectively with the consent and permission of the Defendants. However, the Plaintiffs contended that the Defendants have in February 2013 or thereabout informed them that their buildings containing the shops were to be pulled down pursuant to the rehabilitation and execution of the Kumasi Central market project.

In view of the pressure that the Defendants exerted on the Plaintiffs to move to a site which they considered unsuitable and considering also that the Plaintiffs action is capricious, arbitrary, oppressive, unconstitutional, wrongful and unlawful, the Plaintiffs instituted the action claiming the reliefs referred to supra as a means of protecting their rights. In the accompanying statement of claim, the Plaintiffs indicated that they had served the requisite statutory notice of their intention to sue the Defendants pursuant to Section 127 of Act 462 supra.

Upon service of the Writ of Summons on them, the Defendants entered conditional appearance and filed a notice of motion which substantially sought an order setting aside the Plaintiff's writ of summons and it's service thereof on the Defendants.

The Defendants deposed to an affidavit in support thereof in which they contended that none of the plaintiffs in the action has demonstrated their compliance or otherwise with the statutory preconditions set out in section 127 of Act 462 for invoking the jurisdiction of the court and that in any case, that the trial High Court has no jurisdiction to entertain the suit.

An affidavit was sworn to by the 1st Plaintiff, Kwabena Obeng on behalf of the Plaintiffs in which they denied the contentions of the Defendants.

RULING BY THE HIGH COURT KUMASI

On the 27th day of July 2015 Richardson J, presiding over the Kumasi High Court delivered a Ruling which is to the following effect as follows:-

> *"In the oft-cited case of* ***Boyefio v NTHC Properties [1996-97] SCGLR 531 SC it was held that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed. As the Respondents failed to follow the procedure provided under the Act before coming to Court, I am not clothed with jurisdiction to entertain the writ of summons herein. I therefore hereby grant the Defendants/Applicants application and order the writ of summons set aside. And it is set aside accordingly." Emphasis***

And with that rendition, the Plaintiffs action was dismissed as the writ was set aside.

APPEAL TO COURT OF APPEAL AND DECISIONS

Dissatisfied with the Ruling and its effect on their case the Plaintiffs appealed to the Court of Appeal, Kumasi which on the 19th day of November 2015 delivered a

judgment in which it set aside and reversed the decision of the High Court in the following words:-

> ***"It must be noted that the letter giving notice was issued by the agent of the appellants who succinctly set out the complaint of the Appellants and their positions on that complaint. His letter, found on page 106 of the Record of Appeal presented the complaints of an intention to pull down stores and the failure to value the property of the traders and thereby failing to evince the intention to provide adequate and sufficient compensation as required by law and the constitution. The said lawyers described the acts complained of as unlawful.***
>
> ***With such a description of complaint and the legal position of the complainant, it is not clear what other details of relief could be expected at this point. Ground c of the appeal is upheld. Ground f of the appeal is also upheld." Emphasis***

The Court of Appeal thereafter ordered as follows:-

> ***"The appeal is allowed and the ruling striking out the action is set aside. Appellants' suit is restored to the list of the High Court and ordered to be put before a different court."***

It must however be stated that the Court of Appeal apart from considering that the notice given by the Plaintiffs in compliance to section 127 of Act 462 was proper, disagreed with the learned trial Judge on other issues as well.

For example it reversed the interpretation of Section 56 of Act 462 by which the learned trial Judge held that the Plaintiff had no jurisdiction to come to court for claims in respect of compensation without exhausting the remedies in the said section.

APPEAL BY DEFENDANTS TO THE SUPREME COURT

Aggrieved and dissatisfied with the decision of the Court of Appeal, the Defendants appealed against that decision to the Supreme Court with the following as the grounds of appeal.

i. "The Court below erred when it held that Plaintiffs/Appellants/Respondents had served 1st Defendant/Respondent/Appellant with a notice of their intention to commence suit against 1st Defendant/Respondent/Appellant as required by the provisions of section 127 of the Local Government Act, 1993 (Act 462.

ii. The court below erred when it held that the notice on record complied with the requirements of section 127 of the Local Government Act, 1993 (Act 462).

iii. The Court of Appeal erred and accordingly misdirected itself when it held that the application of provisions under section 56 of the Local Government Act 1993 (Act 462) is discretionary and not mandatory.

iv. The court below erred when it held that Plaintiffs/Appellants/Respondents' written submission complied with the requirements of rule 20 (1) of the Court of Appeal Rules, 1997 (C.I. 19) as amended by the Court of Appeal (Amendment) Rules, 1999 (C.I. 25).

v. The Court of Appeal erred when it held that the High Court had jurisdiction to entertain and hear the Plaintiffs/Appellants/Respondents' suit as instituted before the High Court.

vi. The Court of Appeal erred when it held that the ruling of the High Court dismissing the Plaintiffs/Appellants/Respondents' suit was against the weight of the affidavit evidence before the High Court.

vii. The Court of Appeal erred and accordingly acted in excess of the jurisdiction when it made consequential orders prohibiting the trial Judge from hearing the matter.

viii. Further grounds of appeal would be filed upon receipt of the record of appeal.

In view of the fact that this appeal touches and concerns section 56 as well as section 127 of Act 462, we deem it expedient at this stage to set the provisions of this 56 out, since 127 has already been referred to supra.

56. Claims for compensation

(1) Subject to this Act, a person

(*a*) whose property is adversely affected by the coming into operation or the execution of an approved development plan, or

(*b*) who for the purpose of complying with an approved development plan incurs expenditure
(i) by a subsequent revocation or modification of the plan, or

(ii) by a subsequent revocation or variation of a development permit granted to that person by a district planning authority, or

(*c*) **who is aggrieved by a decision, an action or a policy relating to an approved development plan or the enforcement of it, may, within six months after the date of the approval of the plan or of the revocation or variation of a permit or of the taking of the decision or action complained of, lodge a claim for redress or compensation**
with the district planning authority." Emphasis

In dealing with the relevant grounds of appeal herein, we shall handle grounds (i) and (ii) together as they are almost similar in content and scope.

GROUNDS I AND II

I. **The Court below erred when it held that Plaintiffs/Appellants/Respondents had served 1st Defendant/Respondent/Appellant with a notice of their intention to commence suit against 1st Defendant/Respondent/Appellant as required by the provisions of section 127 of the Local Government Act, 1993 (Act 462.**

II. **The court below erred when it held that the notice on record complied with the requirements of section 127 of the Local Government Act, 1993 (Act 462).**

The learned trial Judge had stated of this matter of notice under section 127 of Act 462 thus:-

"But what is notice if it does not contain what the law requires it to contain? It is not for nothing that the law requires certain pieces of information to be put

down in the notice. Certainly those pieces of information are to enable the Defendant prepare for battle to seek out the intended Plaintiff for settlement before he goes to court to do battle." Emphasis

We have looked critically at the relevant statute referred to supra and we are certain that it is intended to afford the District Assembly and in this instance the Defendants an advance opportunity and knowledge to know beforehand identities of the intended plaintiffs and the nature, scope, content and magnitude of the reliefs intended to be claimed against them.

The rationale for the above is quite obvious. What comes easily to mind is the fact that, quite often, actions commenced in the courts are all time bound. For example, in the instant case, it would have required the Defendants to have made the necessary enquiries within 8 days and conclude whether they intend to contest the action against the over 2000 real Plaintiffs on behalf of whom the case was filed or instituted.

It should have been quite apparent that, quite apart from the procedural timelines set out in the various procedure rules of the trial courts to wit C.I 59 of 2009 for the District Courts and C. I. 47 of 2004 in respect of the Circuit and High Courts Courts, the requirement of notice in section 127 of Act 462 also may afford an opportunity to the Defendants to consider the necessity of settling the intended suit out of court. The crux and relevance of the notice is to enable the Defendants assess their liability or otherwise within the period of the notice.

To us in the apex court, the requirements of this notice in section 127 of Act 462 are so critical and therefore basic, that if not complied with would result in the very mischief that the law was intended to cure.

We have perused the detail and elegant statements of case of learned counsel for the parties on these grounds of appeal.

We note also that, the information that the notice in the statute is required to provide is so very basic and crucial that in the scheme of laws in Ghana, reference article 11 (1)

(b) of the Constitution 1992, in the absence of any constitutional provision to the contrary, it must be enforced and given pride of place.

In order to re-emphasise this information, let us repeat them again. The statute, (i.e. section 127 of Act 127) states that the notice shall contain the following mandatory and specific information about the intending Plaintiff or Plaintiffs:-

i. Names
ii. Place of abode
iii. Cause of action
iv. Reliefs being sought against the relevant Metropolitan, Municipal or District Assembly

In the narration of the facts of this case, reference had been made to the said Notice in extenso and the linkage to the instant case.

The differences in the compliance with the Statutory Notice in section 127 and the suit that has been filed in the instant suit are quite clear and already referred to.

Instead of learned counsel for the Plaintiffs, Kwasi Afrifa, addressing these issues, he rather took us on a path of research and treatise on interpretation and why this court should adopt the purposive approach to the interpretation.

For example, the reference and reliance by the said learned counsel for the Plaintiffs on the following materials and cases, even though considered, have been found to be inappropriate, and therefore inapplicable. These are:-

1. The dictum and approach of Prof. Ocran of blessed memory in the case of ***Hanna Assi (No.2) v GIHOC Refrigeration and Household Products Ltd. (No.2) [2007-2008]***
2. Sir Dennis Adjei's J.A's book on ***Modern Approach to the law of Interpretation at page 62***
3. **Osman v Tedam 1970 Current cases, 41**

4. ***Larbi Mensah IV a.k.a Aryee Addoquaye v National House of Chiefs [2011] 2 SCGLR 883 at 884*** and
5. ***Republic v High Court, Ex-parte Attorney-General 1998/1999 SCGLR 595 at 618*** just to mention a few.

As already stated, even though we have considered the invitation made to us by learned counsel to consider the **purpose**, **substantial justice principle**, **substance and not form** and other principles of interpretation urged upon is in the plethora of cases referred to by him in the statement of case, **we are not convinced that the legislative effect of section 127 of Act 462 should be defeated by reference to such principles of interpretation.**

On the contrary, learned counsel for the Defendants, Thaddeus Sory, contended that it was wrong for the Court of Appeal to have endorsed the breach of the statutory provisions in section 127 of Act 462 supra.

In this context, we agree with learned counsel and his reliance on the following cases to support that contention.

1. See the case of ***Republic v High Court (Lands Division) Accra, Ex-parte Lands Commission (Nungua Stool and Others – Interested Parties, Civil Motion No. J5/4/14 dated 5th December 2013*** where Wood CJ, presiding quoted with approval the dictum of Atuguba JSC in the case of ***Network Computers Limited v Intelsat Global Sales and Marketing [2012] 1 SCGLR 218 at page 231*** where our respected brother observed thus:-

> *"Unless a substantive Act can be regarded as directory and not mandatory or* ***its infraction is so minimal*** *that it can be observed that it can be covered by the maxim de minimis non curat lex* ***or such that the complaint about it is mere fastidious stiffness in its construction***

or the breach relates to part of it *which in relation to others, can be regarded as subsidiary and therefore should not be allowed to prejudice the operation of the dominant part or purpose thereof,* ***or the strict enforcement of the statute would amount to a fraudulent or inequitable use of the statute or some other compelling reason, I do not see how a court can gloss over the breach of a statute****." Emphasis supplied.*

2. See also cases like ***Republic v High Court (Fast Track Division) Accra, Ex-parte National Lottery Authority (Ghana Lotto Operator Association and Other – Interested Parties, [2009] SCGLR 390***
3. ***Republic v Michael Conduah, Ex-parte George Supi Asmah, unreported judgment of the Supreme Court in Civil Appeal No. J4/28/12 dated 15th August 2013*** where Akamba quoted with approval the dicta of our brother Atuguba and Dr. Date-Bah JJSC respectively in the Ex-parte National Lottery Authority case referred to supra.

The principle of law which is clearly discernible from the above cases is that unless the provisions in the statute are so manifestly and incurably bad, no Judge or court for that matter has the right or authority to grant immunity to a party from the consequences of the breach of an Act of Parliament or disable the enforcement of the provisions of an Act of Parliament.

In the instant case, it is the breach of substantial provisions of section 127 of Act 462 that are in contention, i.e. a statutory provision.

We have, after a perusal of the contending arguments of learned counsel been satisfied that the enforcement of Section 127 of Act 462 is a necessary

pre condition that has to be fully met in order for the rationale behind the passage of the Act to be enjoyed by the Defendants herein.

The mischief which the law was intended to cure would be seriously denied and affected if the interpretation put upon the section and the requirement of notice by the Court of Appeal is allowed to stand.

FORM AGAINST SUBSTANCE

Faced with the difficulty of supporting the Court of Appeal decision, learned Counsel for the Plaintiffs relied to a large extent on the shield of form against the weapon of substance. This is how learned counsel forcefully put forward that argument:-

> "*We submit by way of emphasis that rules relating to form are never to be elevated above substance and in all cases the court looks at substance rather than form.*"

Even though the above statement may be applicable on case by case basis, in the instant case the form is regulated by statute and we have not been convinced why we should abandon a statutory provision in favour of a sentimental recourse to substance.

What is at stake here is more than mere form, it is an opportunity for effective dispute management to forestall where possible unnecessary litigation.

In actual fact, the substance of the statutory notice is to ensure that the Defendants are not taken by surprise by the nature of the writ against them, are afforded an opportunity within the one month notice period to investigate the claims and decide whether they are liable or not whether or not it would be more prudent or economical to settle claims and also determine the identities of the intended plaintiffs and, the bonafides of the reliefs etc.

An intending plaintiff has all the time at his disposal to evaluate the basis of the action he intends to initiate against Defendants before actualising same.

It is to give practical effect to the requirement of this notice under section 127 supra that having considered grounds 1 and 2 of this appeal, we allow the said grounds of appeal.

This means therefore that, the court below erred when it held that the notice on record, which we have referred to extensively supra complied with the requirements of section 127 of the Local Government Act, 1993 (Act 462). The said notice is seriously defective and the Plaintiffs action against defendants is accordingly set aside.

Ground III

The Court of Appeal erred and accordingly misdirected itself when it held that the application of provision under section 56 of the Local Government Act 1993 (Act 462) is discretionary and not mandatory.

We have already referred to the relevant provisions contained in section 56 of Act 462. There is no doubt that one of the claims by the Plaintiffs are that no compensation has been paid to them. It is section 56 which deals with payment of compensations by the Metropolitan, Municipal and District Assemblies. It also sets out the procedure by the Metropolitan, Municipal and District Assemblies. It also sets out the procedures which are to be followed. It also sets out the appeals process when one is aggrieved by the decision of the Assembly.

In reality, we need not belabor this point. This is because section 56 (1) (c) of the Act puts the matter beyond per adventure. It states in part that:-

> *"subject to this Act, a person who is aggrieved by a decision, an action or a policy relating to an approved development plan* ***or the enforcement of it,*** *may within six months after the date of the approval of the plan* ***or of the revocation or variation of a permit or of the taking of the decision or action complained of lodge a claim for redress with the District Planning authority"*** **Emphasis**

In order to streamline the appeals process, section 57 (1) of Act 462 provides that, an aggrieved person may appeal within 6 months against the decision of the Planning authority to the Regional Minster who may refer same to the Ministry's Advisory Board."

In this respect, the High Court was of the view as expressed below by the learned trial Judge as follows:-

> *"One of the claims by the Plaintiffs is that no compensation has been paid to them. Section 56 of Act 462 deals with compensation and sets out the procedure which ends with appeals and which (sic) one is aggrieved by the carrying out of an approved development plan should follow to get compensation*. ***The person does not come to court straightaway"***

The Court of Appeal on the other hand, held as follows on the same provision thus:-

> *"A cursory reading of this Section 56 shows that, even if all the Appellant's (sic) claims centered on compensation and they did not, the court was still palpably wrong in the interpretation he placed on this provision. The language of the statute regarding lodging of a claim for redress or compensation with the district planning authority is discretionary and in no way mandatory.* ***To interprete these steps as ousting the jurisdiction of the High Court to entertain the present action is manifestly wrong****."* Emphasis

The Court of Appeal in their interpretation are of the opinion that the use of the word "may" is discretionary. But we have been persuaded to go by the decision of this court in the case of ***Edusei (No. 2) v A.G. [1998-99] SCGLR 753 at 788-789*** where the court held as per Acquah JSC (as he then was) as follows:-

> *"In respect of the second expression, the "may" gives the victim of a human right violation the option of going to court to seek redress.* ***The victim is under***

no compulsion to go to court for redress if he does not wish to do so." Emphasis

See also the decision of this court where "may" even though not stated in mandatory terms was held to have such an effect in **Republic v High Court (Commercial Division) Ex-parte, Republic Bank Limited (HFC Bank (Ghana) Limited and Securities and Exchange Commission- Interested Party CM. No. JS/45/14 dated 17/12/2014**.

We accordingly agree with the contention of learned counsel for the Defendants that "all that the word "may" used in Section 56 (1) (c) of Act 462 means is that a person who is aggrieved by the acts or omission of a district assembly "may" seek compensation if he desires so to do but if he decides to claim compensation then it must be within six months. It is the reason for which it says clearly that the person aggrieved by the decision of a district assembly *"may within six months….lodge a claim for redress or compensation with the District Planning Authority"* Emphasis

The "may" therefore is referable to the decision to pursue the payment of compensation if at all.

In this respect therefore, we are of the view that the reliance by the High Court on the **Boyefio v NTHC Properties [1996-97] SCGLR 531 SC** where it was held that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed, is more sound and acceptable than the Court of Appeal position.

See also the decision of this court in the case of **Republic v High Court, Koforidua; Ex-parte Asare (Baba Jamal & Others Interested Parties) 2009 SCGLR 460 at 509 where Dotse JSC in his opinion explained thus:-**

"Where a statute has made provisions for certain steps to be taken in order to comply with the requirements of the law, then no other steps other than those prescribed must be taken or followed. In this case, once the first interested

parties have failed to strictly adhere to the provisions of PNDCL 284 as will be shortly established, it follows that their actions falls flat in the face of the law."

In our considered opinion therefore, where a statute has set out the procedure for seeking relief, a party cannot resort to any other procedure especially when that procedure is statutory. See the effect of decisions such as ***Republic v Central Regional House of Chiefs and others, Ex-parte Nana Ehunabobrim unreported judgment of the Supreme Court Civil Appeal No. J4/11/13 and Ahinakwa II substituted by Ayikai v Odjidja III and others [2011] 1 SCGLR 205 and 208***.

Instead of arguing the real points of substance urged upon us by learned counsel for Defendants in their statement of case, learned counsel for Plaintiffs, Kwasi Afrifa sought to appeal to our emotions by reference to a litany of judicial principles from American text writers and Judges. These include inter alia:-

i. John P. Frank - Judicial Decisions are binding liked or not – Page 119
ii. Hugo Black - A biography by Roger Newman
iii. Simple Justice by Richard Kluger
iv. Importance of Supreme Court **where it's stated that perhaps the court has won such vast hegemony precisely because Americans believe that it's nine life –membership Justices are beyond the rough and tumble of everyday politics.**
v. Courts Protection of Rights
vi. Laws must not seek to annoy a class
vii. Laws which whilst appearing impartial is in truth administered with evil eye. Emphasis

We have considered all the above principles and found them to be inapplicable in the circumstances of this case. We must however reiterate the fact that most of the above principles can be found in Chapter 5 of the Constitution 1992 which deals with fundamental human rights and freedoms and the Directive Principles of State Policy in chapter 6.

We also wish to state that, even though Justices of the Supreme Court in Ghana do not have life membership, their tenure secures for them the same hallowed principles and effect subject to good behaviour which Counsel alluded to as applicable to the nine Justices appointed for life in the U.S.

CONCLUSION

In conclusion, we also allow ground III of the grounds of appeal.

In substance therefore, having dealt with the very essential and procedural grounds of appeal which go to the root of the appeal herein, it is considered worthwhile not to deal with the remaining grounds of appeal.

Accordingly, the appeal filed herein against the decision of the Court of Appeal dated 19th November 2015 is hereby set aside. In its place, the judgment of the High Court, dated 27th July 2015 is restored.

Appeal therefore succeeds.

There will be no order as to costs.

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

S. A. B. AKUFFO (MS)
(JUSTICE OF THE SUPREME COURT)

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

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