IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - AD 2021

CORAM: APPAU, JSC (PRESIDING)

PROF. KOTEY, JSC

AMADU, JSC

CIVIL MOTION
NO. J7/08/2021

20TH MAY, 2021

1. MOST REV. DR. ROBERT ABOAGYE MENSAH
2. MOST REV. DR. JOSEPH OSEI BONSU
3. RT. REV. DANIEL YINKAH-SARFO
4. EDWARD OSEI BOAKYE TRUST FUND

PLAINTIFFS/APPELLANTS/ RESPONDENTS/RESPONDENTS

VRS

YAW BOAKYE ..... DEFENDANT/RESPONDENT/ APPELLANT/APPLICANT

RULING

AMADU JSC:-

(1) This is a review application at the instance of the Defendant/ Respondent/Appellant/Applicant *(hereinafter referred to as "the Applicant")* pursuant to Article 134(b) of the 1992 Constitution. The ground of the application is that this Court constituted by a single justice as provided under Article 134 of the 1992 Constitution lacked the jurisdiction to adopt the terms of settlement executed between the Plaintiffs/Appellants/Respondents/ Respondents

(hereinafter referred to as "the Respondents") and the Applicant. The Terms of Settlement signed by the parties on 1st July, 2014 was filed in the Registry of this Court on 11th September, 2014. Subsequently, in order to secure the adoption of the terms of settlement as agreed by the parties, the Applicant filed an application in the registry of this Court headed in the following terms:

"MOTION ON NOTICE: APPLICATION FOR TERMS OF SETTLEMENT FILED ON 11TH SEPTEMBER, 2014 TO BE ADOPTED AS THE CONSENT JUDGMENT OF THE PARTIES".

(2) In the affidavit in support, the Applicant deposed in paragraphs 9 and 11 as follows:-

9. "That pursuant to negotiations intended to achieve an amicable settlement of the issues joined in the appeal and all consequential matters, the parties have resolved this suit amicably on the terms contained in the terms of settlement as filed in the Registry of this Court on 11th September, 2014."

11. "That I am advised by counsel and verily believe same to be true that per clause (A)11 of the said Terms of Settlement filed in the Registry of this Court on 11th September, 2014, the parties herein agreed that to have the terms filed and adopted by this Honourable Court as the consent judgment of the parties. Attached hereto and marked as Exhibit 'GAL' is a photocopy of the Terms of Settlement filed in the registry of this court."

(3) On 12th November, 2014 this Court constituted by a single justice adopted the terms of settlement as prayed by the Applicant and ordered as follows:- ***"These***

terms of settlement filed, are hereby adopted as a consent judgment of the suit between the parties."

(4) More than six years after the adoption of the terms of settlement as consent judgment, the Applicant has filed the instant application contending that, this court, as constituted by a single justice, lacked the jurisdiction to adopt the terms of settlement as consent judgment. The Applicant, relying on Article 134(b) of the 1992 Constitution, contended that the adoption of the terms of settlement by a single justice of this court having been made without jurisdiction, same be declared null and void and a further prayer that the order of adoption so made, be discharged or reversed together with all the processes and proceedings therefrom.

(5) It is provided in Article 134 (b) of the 1992 Constitution as follows:-

"A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court, except

(b) In civil matters, any order, direction or decision made or given under this article may be varied, discharged or reversed by the Supreme Court, constituted by three Justices of the Supreme Court".

(6) By this constitutional provision, the single justice of this court may exercise power vested in the court ***"not involving the decision of a cause or matter before the Supreme Court....."*** The two questions provoked by the instant application for our decision are: whether or not the adoption of the terms of settlement of the parties involved a decision in the cause or matter before the Supreme Court and whether the execution of the terms of settlement on 1st July, 2014 effectively as from that date, ended the dispute pending before this court for determination in the exercise of its appellate jurisdiction.

(7) In **Republic Vs. High Court, Accra, Ex-parte Deborah Atakorah (Billy Cudjoe - Interested Party) [2015-2016] 1 SCGLR 298,** this court per Atuguba JSC expounded on the nature and effect of terms of settlement on pending disputes and stated thus:

> ***"When parties settle an action whether in or out of court simpliciter, the cause of action involved in such settlement is gone and is replaced by such settlement. Upon breach of the settlement the innocent party's remedy is not to reopen the litigation so settled but to bring an action to enforce the settlement, it being an enforceable contract between the parties involved".***

(8) On the strength of this decision therefore, nothing is in doubt that, when the parties herein resolved their dispute by endorsing the terms of settlement on 1st July 2014, the cause or matter between the parties pending before this court on appeal was replaced by the settlement the same having been filed in the registry of this court. Therefore, at the time the parties appeared before this court on 12th November 2014 for the adoption of the terms of settlement on the Applicant's own prayer, there was no longer a cause or matter to be determined by this Court. The adoption of the parties own agreement did not involve the determination of the issues previously raised in the appeal which had been wholly compromised by the parties themselves.

(9) The decision to settle the hitherto subsisting appeal was on the parties' own initiative. While the courts may encourage or facilitate settlement as required under Section 72 of the Courts Act, 1993 (Act 459), the actual processes which led to the announcement of the amicable resolution of the issues in court were entirely driven by the parties themselves without the involvement of this court. The parties on their own negotiated and reached a compromise, the terms of which included the placement of the signed terms of settlement before this court for adoption by

filing same. The act of adopting the terms of settlement did not involve a resolution of any matter in contention as none existed as of 11th September 2014 when the Terms of Settlement was filed in the registry of this court.

(10) Consequently, this court, however constituted, could not have added or subtracted from the agreed terms. The order adopting the terms of settlement in line with the application before the court did not determine the cause or matter previously pending for adjudication, as same had been terminated by the compromise reached by the parties. Thus, consistent with this position, this court in **The Republic Vs. High Court, Accra Ex Parte; Joseph Danso (NPP, EC and Others – Interested Parties) [2015 – 2016] 1 SCGLR 760 @ 764**, stated as follows:

> ***"According to the settled Court practice in such matters, the presiding judge does not interfere with the agreement and or compromise reached by the litigants and, rather, only sanctions it once it is within the law and does not raise any issue of illegality such as placing an obligation on a party to undertake an act that is prohibited by law".***

(11) Therefore, reading Article 134 of the 1992 Constitution together with these two decisions, this Court constituted by a single justice acted within jurisdiction when it adopted the terms of settlement as consent judgment of the parties as agreed by the parties. The order made did not touch or affect the merits of the appeal as the dispute had already been resolved. The adoption proceeding cannot therefore be construed as conferring the jurisdiction of the full bench of the Supreme Court on a single justice as contended by the Applicant.

(12) The practice and procedure regarding the adoption of terms of settlement as consent judgment are entirely consistent with the role of the court to promote amicable resolution of conflicts under Section 72 of Act 459. The adoption of terms

of settlement as consent judgment are intended to symbolize the end of the dispute as agreed by the parties and to enable enforcement of the agreement without the option of re-litigating the issues which have been settled and filed by the disputing parties themselves.

(13) To that extent, the submission of Counsel for the Applicant that this court constituted by five justices ought to have been empanelled to adopt the terms of settlement is not a constitutional requirement but rather an administrative choice to be exercised by the Chief Justice. Having regard to the clear mandate of the single justice of this court to exercise any power vested in this court which does not involve a decision in the cause or matter before the court, the contention of the Applicant is disingenuous and clearly lacks merit.

(14) In his oral submission, the Applicant's counsel sought to rely on the case of **Mass Projects Ltd. Vs. Standard Chartered Bank & Anor. (No. 2) [2013-2014] 1 SCGLR** at page **309** where the three-member panel of this court on an application for review of a ruling of a single justice pursuant to Article 134(b) of the 1992 constitution took the view that the Supreme Court Rules, C.I 16 1996 *(as amended)* contains no specific procedural rules on how the special jurisdiction of a single Justice of the Supreme Court may be exercised. However, in **Mensah Vs. Mensah (Review Motion No. J7/7/2014) dated 16 April 2014,** this Court held that, this part of the decision in the **Mass Project case** was rendered per incuriam in view of rule 73 of C.I. 16. Further, the decision in the **Mass Project case** is irrelevant as the issue in that case was not about whether a single Justice had jurisdiction to adopt terms of settlement. The provisions of the Gambian Constitution referred to are also irrelevant as Article 134 of the 1992 Constitution does not restrict the single justice of the Supreme Court to only interlocutory applications as clearly provided for in the Gambian Constitution.

(15) We notice that, although no timelines for filing an application under Article 134 of the 1992 Constitution have been specifically prescribed, the conduct of the instant

Applicant by seeking to set aside the order which adopted the terms of settlement more than six years after it had been made is inordinately late and unacceptable. Under Rule 55 of C.I. 16, the review jurisdiction of this court is invoked not later than one month from the date of the decision sought to be reviewed. An applicant for review under Article 134 of the 1992 Constitution cannot be permitted to enjoy a period at large for invoking the jurisdiction of this court to review the decision of a single justice of this Court. After the adoption of the terms of settlement by a single justice of this court, it was not open for the Applicant to file the instant application at any time of his choosing. This conduct, if allowed will be injurious to justice especially where benefits under the terms of settlement have been enjoyed and third party rights and interests have accrued.

(16) The timing of the instant application is not only untenable but the Applicant's affidavit in support does not disclose any exceptional circumstances which have resulted in any miscarriage of justice to him. Neither has the Applicant disclosed any injustice he has suffered as a result of the order of this court he seeks to disturb under the guise of a jurisdictional issue which in any case, does not exist. The review jurisdiction of this court has always been treated as extra-ordinary or unique and requires exceptional reasons accompanied by evidence of some detriment loss, or injustice on an Applicant or that a substantial question of law has been glossed over in delivering the ruling or judgment sought to be reviewed which will otherwise result in a substantial miscarriage of justice to an Applicant. We have stated this position in **Quartey Vs. Central Services Co Ltd. [1996-97] SCGLR 398** where this court held that: ***"A review jurisdiction is a special jurisdiction, conferred on the court, and the court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an application should satisfy the court that there has been some fundamental or basic error which the court inadvertently committed in the course of considering its judgment***

and which fundamental error has resulted in gross miscarriage of justice." *(Emphasis ours).*

(17) The application before us fails on all the applicable tests. This Court constituted by a single justice duly exercised its power in adopting the terms of settlement, which did not involve the issues which originally existed in the cause as same had been compromised by the parties themselves. There being no jurisdictional or other error giving rise to some exceptional circumstances which have occasioned any form of injury or injustice to the Applicant, the application wholly fails and we accordingly dismiss same.

I.O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

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