IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- AD 2019

CORAM: YEBOAH, JSC (PRESIDING)

GBADEGBE, JSC

APPAU, JSC

MARFUL-SAU, JSC

KOTEY, JSC

CIVIL APPEAL
NO. J4/15/2018

23RD JANUARY, 2019

NDK FINANCIAL SERVICES LIMITED ..,…. PLAINTIFF/APPELLANT/RESPONDENT

VRS

JOSEPH ADE COKER ……. DEFENDANT/RESPONDENT/APPELLANT

JUDGMENT

APPAU, JSC:-

The substantive appeal before us is an appeal against the ruling of the Court of Appeal in respect of an appeal brought before it against the ruling of the High Court in a post-judgment proceeding. When the appeal came up for hearing in this Court on the 5th of December 2018, the Court, in the exercise of its jurisdiction under Rule 6 (8) of the rules of this Court; i.e. **C.I. 16** of 1996, invited both counsel in the case to address it on whether or not our jurisdiction had been properly invoked. The order we made specifically was; ***Whether or not the appeal complies with article 131 (2) of the 1992 Constitution.***

Article 131 (1) & (2) of the Constitution provides:

*"131. (1) An appeal shall lie from a judgment of the Court of Appeal to the Supreme Court – **(a)** as of right in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; or*

***(b)** with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest.*

*(2) Notwithstanding clause (1) of this article, the Supreme Court may entertain an application for special leave to appeal to the Supreme Court in **any cause or matter, civil or criminal**, and may grant leave accordingly".*

Section 4 (1)(a) (b) (c) and (2) of the Courts Act, 1993 **[Act 459]** which gives fuller expression to article 131 (1) and (2) also provides:

*"4. (1) In accordance with article 131 of the Constitution, an appeal lies from **a judgment** of the Court of Appeal to the Supreme Court – **(a)** as of right, in a civil or criminal cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court or a Regional Tribunal in the exercise of its original jurisdiction; **(b)** with the leave of the Court of Appeal, in any other cause or matter, where the case was commenced in a court lower than the High Court or a Regional Tribunal and where the Court of Appeal is satisfied that the case involves a substantial question of law or is in the public interest; **(c)** as of right in a cause or matter relating to the issue or refusal of writ or order of habeas corpus, certiorari, mandamus, prohibition or quo warranto.*

*(2) Notwithstanding subsection (1), the Supreme Court may entertain an application for **special leave** to appeal **in any cause or matter** (**including an interlocutory matter**) civil or criminal, and may grant leave accordingly".*

In his submissions in brief which he filed on the 18th of December 2018, counsel for the respondent argued that the nature of the ruling or decision from the High Court and the Court of Appeal determines the procedure required to validly invoke the appellate jurisdiction of this Court. In his view, the ruling of the High Court dated 22nd August 2014 was an interlocutory one and being so, the right to appeal to this Court against the ruling of the Court of Appeal was not automatic or in other words, did not lie as of right, as it is regulated by article 131 (2) of the 1992 Constitution and section 4 (2) of the Courts Act, 1993 **[Act 459]**. Counsel sought support from the unreported judgment of this Court in the case **of KWASI OWUSU & Another v JOHN NMAI ADDO & Another (Civil Motion Number J4/50/2014 dated 30th July 2015)** and urged or impelled the Court to dismiss the appeal as the Court's jurisdiction had not been properly invoked.

Contrary to this position held by Counsel for the respondent, the appellant's Counsel was of the opinion that the appellant did not need either the leave of the Court of Appeal or the special leave of this Court, to appeal against the decision or ruling of the Court of Appeal to this Court. In his submissions filed on 20th December 2018, he contended that the case leading to this appeal was not commenced in a court lower than the High Court or a Regional Tribunal as provided under article 131 (1)(b) of the Constitution. Counsel referred to article 131 (1) and (2) already quoted supra and posed two questions, i.e.;

1. *Is the appeal before us a civil cause or matter? and*
2. *Is it one involving a judgment of the High Court in the exercise of its original jurisdiction?*

Counsel answered both questions in the affirmative. He explained that since the appeal before us is a civil cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court in the exercise of its original jurisdiction, the appellant did not need leave of the Court of Appeal or special leave of

this Court to appeal against the ruling of the Court of Appeal to this Court. In his view, the appeal lies as of right as provided under article 131 (1)(a) of the Constitution.

Article 295 of the Constitution, 1992 defined or interpreted the word **'JUDGMENT'** to include **'an ORDER'** or **'DECREE'** of the court. The word 'judgment' as used under article 131 (1)(a) therefore applied *mutatis mutandis* to an 'order' or a 'decree'. No distinction was made with regard to the nature of the order or decree in question. The paramount consideration for the invocation of article 131 (1)(a) is whether or not the appeal to the Court of Appeal from which the appeal to this Court emerged was one against a judgment or decision of the High Court in the exercise of its original jurisdiction. In the *Kwasi Owusu case* supra, the appeal before the Supreme Court was not an appeal to the Court of Appeal against a decision of the High Court exercising its original jurisdiction but rather it was an appeal against a ruling of the Court of Appeal on a repeat application for stay of execution. It did not therefore fall under article 131 (1)(a) of the Constitution, 1992 so the Supreme Court dismissed the appeal on the ground that the appellant should have sought special leave of the Court first before appealing which he did not do.

The issue that surfaces for determination in the instant matter is; whether or not the appeal that was filed as of right in this Court by the appellant is a civil cause or matter in respect of which an appeal has been brought to the Court of Appeal from a judgment of the High Court in the exercise of its original jurisdiction. If the appeal is a civil cause or matter in respect of which an appeal had been brought to the Court of Appeal from a judgment of the High Court in the exercise of its original jurisdiction, then as counsel for the appellant rightly contended, he did not require any leave of the Court of Appeal or the special leave of this Court to appeal as provided under article 131 (2) of the Constitution and section 4 (2) of the Courts Act, 1993 [Act 459] but rather he could appeal as of right as provided under article 131 (1)(a). However, if the appeal to this Court is not a civil cause or matter in respect of which an appeal had been brought to the Court of Appeal from a judgment of the High Court in the exercise of its original jurisdiction, then the appellant should have sought the special leave of this Court as

provided under article 131 (2) of the Constitution, section 4 (2) of the Courts Act, 1993 **[Act 459]** and rule 7 (4) of the rules of this Court **[C.I. 16]**.

Having carefully perused the record before us, it is our firm conviction that though the appeal before us is a civil cause or matter, it is not one in respect of which an appeal had been brought to the Court of Appeal from a judgment of the High Court in the exercise of its original jurisdiction as provided under article 131 (1)(a) of the Constitution. The facts in this case are that when the trial High Court delivered its judgment against the appellant on the 26th day of March 2010 in the total sum of **GHc1, 286,373.43**, the appellant initially filed an appeal against same to the Court of Appeal on 20th April 2010. However, the appellant did not pursue the appeal as the parties, in the cause of the execution of the judgment, compromised the judgment, which was their right. The appellant therefore abandoned the appeal and entered into terms of settlement with the respondent dated 5th May 2011 in which the parties agreed that the appellant should pay the sum of **GHc1, 000,000.00** within nine (9) months beginning 1st April 2011 and ending 31st December, 2011 under some agreed terms instead of the judgment sum of **GHc1, 286,373.43** entered by the trial court. Though the terms of settlement was filed in the trial High Court on 13th May 2011, the trial High Court did not on any occasion sit on the matter again to admit the terms as consent judgment. So in effect, there was no appeal pending in the Court of Appeal against the judgment of the High Court in the exercise of its original jurisdiction. Unfortunately however, the appellant could not comply with the terms of settlement under the compromised judgment so the respondent filed a writ of Fieri Facias (Fi:Fa) in the High Court to execute the compromised judgment. The appellant responded by applying to the trial court for stay of execution of the writ of Fi:Fa. The contention of the appellant was that the compromised judgment sum which the respondent was demanding was over and above what they had agreed on that he should pay and that he had fully discharged his obligations under the compromised judgment. The respondent also contended otherwise. The trial High Court as a result, stayed the execution of the compromised judgment on the ground that there was the need to go

into the parties accounts to ascertain the true state of indebtedness, if any, of the appellant under the compromised judgment. The trial court, coram Richard Adjei Frimpong, J, accordingly appointed **MESSRS INTELLISYS, CHARTERED ACCOUNTANTS OF ACCRA** to reconcile the accounts of the parties. This was on the 5th day of December 2013.

When the accountant completed his assignment, the trial court differently constituted and presided over by S. K. A. Asiedu, J, placed him in the witness box on the 6th of June 2014 to testify and to tender his report in evidence. After his testimony, the respondent decided not to cross-examine him as it was satisfied with the report. The appellant, however, embarked on a lengthy cross-examination of the court witness during which the appellant challenged his findings. In his ruling dated 22nd August 2014, the trial judge disagreed with the findings of the accountant and went ahead to set his report aside as unconscionable and unacceptable. He then went further to make the following consequential orders: ***"The parties are hereby directed to appear before the Registrar of the Court on the 28th day of August 2014 with evidence of payments made by the defendant up to the 31st December 2011. The Registrar shall then on the basis of the evidence ascertain how much of the GHc1, 000,000.00 was still outstanding and owing by the defendant on 31st December 2011. The interest shall then be calculated at simple interest at the rate of 6% per month on the amount due and owing by the defendant on 31st December 2011. The interest shall be calculated on the amount due from 19th September 2008 to the date of final payment".***

Dissatisfied with this post-judgment ruling of the High Court, the respondent successfully appealed against same to the Court of Appeal. It is the judgment of the Court of Appeal dated 17th November 2016 in which it allowed the appeal of the respondent against the ruling of the High Court that the appellant has brought before us to be impeached. Clearly, the appeal to the Court of Appeal against the post-judgment ruling of the High Court in respect of the compromised judgment entered into by the parties is not in respect of an appeal brought against the judgment of the High

Court in the exercise of its original jurisdiction so the appellant could not have appealed as of right. This is one of the causes or matters envisaged under article 131 (2) of the Constitution and section 4 (2) of the Courts Act which demand that leave be sought first from the Court of Appeal and upon refusal, special leave from this Court as provided under rule 7 (2) of C.I. 16 or to apply for special leave directly from this Court without necessarily applying for leave of the Court of Appeal as provided under rule 7 (4) of C.I. 16. Having failed to comply with the constitutional and statutory provisions re-called supra, the appeal cannot be sustained as our jurisdiction has not been properly invoked by the appellant. In a strict sense therefore, there is no appeal pending before us which we have to determine on the merits. We accordingly dismiss it.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

GBADEGBE, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

KOTEY, JSC:-

I agree with the conclusion and reasoning of my brother Appau, JSC.

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

COUNSEL

KWAME AMENANO-TANNOR FOR THE PLAINTIFF/APPELLANT/RESPONDENT.

ENOH AMAH ANDOH FOR THE DEFENDANT/RESPONDENT/APPELLANT.