IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: GBADEGBE, JSC (PRESIDING)
APPAU, JSC
MARFUL-SAU, JSC
DORDZIE (MRS.), JSC
AMEGATCHER, JSC
KOTEY, JSC
OWUSU (MS.), JSC

WRIT NO.
J1/01/2020

28TH JULY, 2020

PROFESSOR STEPHEN KWAKU ASARE	.....	PLAINTIFF
VRS		
1. ATTORNEY GENERAL	.....	1ST DEFENDANT
2. GENERAL LEGAL COUNCIL	.....	2ND DEFENDANT

JUDGMENT

MARFUL-SAU, JSC: -

The Plaintiff before us is described in his writ as a concerned citizen of the Republic of Ghana who is interested in upholding compliance with the 1992 Constitution and the Rule of Law. In this action he seeks to invoke our original jurisdiction against 1st and 2nd Defendants alleging that the 2nd Defendant in particular is engaged in activities that are

inconsistent with Articles 25 (2) and 296 (b) of the 1992 Constitution. What are these activities the subject of Plaintiff's complainant? The Plaintiff's case simply is that the 2nd Defendant has created a monopoly over the provision of Professional Law Course at the Ghana Law School in violation of Article 25 (1) (b) and that the distinction between the Professional Law Course, run by the Ghana School of Law, and the Academic Law Course, run by approved Universities is arbitrary and a violation of Article 296 (b) of the 1992 Constitution. Based on these facts the Plaintiff claims the following reliefs per his writ:-

1. A declaration that the current monopoly enjoyed by the Ghana School of Law in the provision of Professional and Post- Law Courses that prepare candidates for the Qualifying Certificate of Examination violates Article 25(2) of the 1992 Constitution.

2. A declaration that pursuant to Article 25 (2) of the Constitution, accredited public and private universities have the right, at their own expense, to establish and maintain Law Faculties to offer the Professional Law Course that prepares students for the Qualifying Law Certificate of Examination.

3. A declaration that the distinction between the Professional Law Course, run by the Ghana School of Law, and the Academic Law Course, run by approved universities, is arbitrary and capricious and done only to further the monopoly power of the Ghana School of Law in violation of Article 296(b) of the Constitution.

4. An order directing the General Legal Council to provide regulations that allow approved law faculties and other private institutions to provide the Professional Course, or otherwise integrate this course in their curriculum, the completion of which entitles students to take the Qualifying Certificate Examination or Examinations, pursuant to Section 13 of Act 32.

5. An order of interlocutory injunction to restrain the Defendants whether by themselves, their agents, assigns, privies, servants and whomsoever of whatever description from causing the School of Law to be opened for new students, pending the final determination of the substantive suit.

6. Any other reliefs that this Court deems necessary in exercise of its legal and equitable powers.

7. Costs for any court expenses and counsel fees.

8. An expedited and immediate hearing of the cause taking into account the significant public interest in a timely resolution and the necessity of preserving the value of the aforementioned reliefs.

The Defendants on the other hand contend that the writ issued by the Plaintiff disclosed no cause of action in the sense that it is not an action for which the original jurisdiction of this court under Article 2 (1) and 130 (1) of the 1992 Constitution should be invoked. The Defendants have argued that the General Legal Council in particular has not violated the 1992 Constitution in executing its mandate under the Legal Profession Act, Act 32 to provide and regulate legal education in Ghana. The 2nd Defendant in particular posited that if Plaintiff's case is that the Council had acted contrary to the Legal Professional Act, Act 32, the remedy was for the Plaintiff to vindicate his case at the High Court. The Defendants further argued that the two Constitutional provisions relied upon by the Plaintiff in this action are all clear and call for no interpretation. The Defendants accordingly urged this court to dismiss the Plaintiff's action.

On the 9th of June 2020, this Court and the parties by consent adopted the Memorandum of Issues filed jointly by the Plaintiff and the 2nd Defendant on the 28th February, 2020. The issues adopted were as follows:-

a. Whether the Plaintiff has met the pre-condition for the exercise of the exclusive original enforcement and interpretive jurisdiction of the Supreme Court?

b. Whether there is a real or genuine issue of enforcement and interpretation of the Constitution?

c. Whether the instant action is a public interest action?

d. Whether the General Legal Council, through Regulations 1 and 2 of LI 2355, has created a monopolist provider of the Professional Course?

e. If the General Legal Council has created a monopolist provider of the Professional Course, whether that creation violates Article 25 (2)?

f. Whether the bifurcation of legal education into an '' academic course" and a ''professional course" where the latter can be taught only at the Ghana School of Law is arbitrary and capricious in violation of Article 296 (b)?

We intend to address issue (a) of the Joint Memorandum of Issues stated above since it is very fundamental in nature. The issue is whether the Plaintiff has met the pre-condition for the exercise of the exclusive original enforcement and interpretative jurisdiction of the Supreme Court. The Plaintiff endorsed his writ issued on the 8th of October 2019 as invoking the original jurisdiction of this Court, under Articles 2 (1) and 130(1) of the 1992 Constitution. The said provisions of the Constitution are reproduced below:-

"2. (1) A person who alleges that---

(a) an enactment or anything contained in or done, under the authority of that or any other enactment; or

(b) any act or omission of any person;

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

130 (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in---

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution"

Now, the Defendants have argued that the constitutional provisions relied upon by the Plaintiff in this action does not call for any interpretation and neither has he demonstrated and proved the allegation that the 1st Defendant has breached any provision of the Constitution for which the enforcement jurisdiction of this Court should be invoked.

This Court has in several cases determined or defined the circumstances under which its original jurisdiction under Articles 2 (1) and 130 (1) could be invoked. The Court has consistently held that where words or provisions of the Constitution are plain, clear and unambiguous and there is no genuine dispute as to their meaning, no constitutional interpretation arises and the Court would decline any invitation, however attractive, to embark upon any exercise of interpretation in the circumstances. In much the same way, Article 2(1) of the Constitution empowers this Court to monitor and ensure compliance of the Constitution and for that matter a person who alleges non-compliance and invokes the said Article 2 (1) must demonstrate clearly that the acts or omission complained of are inconsistent with particular provisions of the Constitution. In other words, the inconsistency of the act or omission must be plain and clear from the constitutional provisions.

In the oft cited case of Republic v. Special Tribunal; Ex-parte Akosah{1980} GLR 592 at 605, the pre-requisite for invoking the original jurisdiction of this Court was stated thus:

(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it would arise if one party invites the court to declare that the words of the article had double meaning or were obscure or else mean something different from or more than what they say;

(b) where a rival meaning have been placed by the litigants on the words of any provision of the Constitution;

(c) where there was a conflict in the meaning and effect of two or more articles of the Constitution, and the question was raised as to which provision should prevail;

(d) where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the constitution, and thereby raising problems of enforcement and interpretation.

This Court has consistently, in a plethora of cases followed the above principle of law and in these proceedings, we do not intend to depart from the decisions in the line of cases including, ***Ghana Bar Association v. Attorney –General and Another (Abban Case) [2003-2004] 1SCGLR 250; Osei Boateng v. National Media Commission and Appenteng [2012] SCGLR 1038; Bimpong- Buta v. General Legal Council [2003-2004] 2SCGLR 1200***. What it means is that a Plaintiff seeking to invoke the original jurisdiction of this Court under Articles 2 (1) and 130 (1) must satisfy at least one of the threshold requirements listed above.

Now, in determining whether the plaintiff is properly before this court, we need to examine the reliefs so endorsed on the writ. In the case of ***Daasebre Asare Baah III & 4 Others v. The Attorney- General {2010} SCGLR 463,*** this Court speaking through ***Georgina Wood, CJ, stated thus "to identify the real substance of actions brought before the court, we have observed that the proper approach is to examine the writ as well as the pleadings; in this type of litigation, the reliefs and the facts verified by affidavit……"***

We therefore begin with reliefs 1 and 2 since they all relate to the issue alleging a monopoly created by the 2nd Defendant in providing Professional and Post Call Courses at the Ghana School of Law, which according to the Plaintiff is contrary to Article 25 (2) of the Constitution. We deem it necessary to re-produce the said Article 25 of the Constitution below:

> '25. (1) All persons shall have the right to equal educational opportunities and facilities and with a view to achieving the full realization of that right—
>
> (a) basic education shall be free, compulsory and available to all;

(b) secondary education in its different forms, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;

(c) higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular, by progressive introduction of free education;

(d) functional literacy shall be encouraged or intensified as far as possible;

(e) the development of a system of schools with adequate facilities at all levels shall be actively pursued.

(2) Every person shall have the right, at his own expense, to establish and maintain a private school or schools at all levels and such categories and in accordance with such conditions as may be provided by law."

The Plaintiff's claim is that the provision of Professional and Post- Call Law Course by the 2nd Defendant only at the Ghana School of Law creates a monopoly and as such contravenes Article 25 (2) of the Constitution quoted above. We hold that the said Article 25 (2) is very clear and admits of no ambiguity and as such does not call for any interpretation, neither does the provision of the Professional and the Post-Call Law Courses by the 2nd Defendant at the Ghana School of Law, amounts to a monopoly since no such evidence has been demonstrated by the Plaintiff. We therefore fail to see any violation of Article 25 (2) of the constitution by the 2nd Defendant to give rise for an enforcement order under Article 2 (1) of the Constitution.

We observed that in his Statement of Case learned Counsel for Plaintiff sought to argue that the provision of Professional Law Course is also envisaged under Article 25 (2) of the Constitution, which argument was rejected by Counsel for the 2nd Defendant in his Statement of Case. Counsel for the Plaintiff therefore argued that since the Plaintiff and the 2nd Defendant are not ad idem on the true meaning of the phrase '' school or schools

at all levels and categories" in Article 25 (2), the Plaintiff has properly invoked the interpretative jurisdiction of this court and as such, is properly before this court. We regard this argument as very fanciful and we would not be lured by same to invoke our interpretative jurisdiction just because a party places an absurd meaning on words or phrases on constitutional provisions.

We do remind ourselves of what Adinyira (Mrs.), JSC stated in the case ***of James Kwabena Bomfeh Jnr. v. Attorney-General, Writ No 31/14/17, unreported judgment of Supreme Court dated 23rd January 2019***:

> ***'' A Constitutional issue is not raised on account of a Plaintiff's absurd, strained and farfetched understanding of clear provisions in the Constitution. For a person to assert a manifestly absurd meaning contrary to the very explicit meaning and effect of clear words in the Constitution does not mean that a genuine issue of interpretation of some relevant Constitutional provision has arisen."***

Again, as we have observed in this judgment, no evidence has been adduced in these proceedings that the 2nd Defendant has prohibited any citizen or body from establishing a private school or schools of any level or category contrary to Article 25 (2), for which our jurisdiction under Article 2 (1) could be invoked by the Plaintiff. We wish to recall the dictum of Wiredu JSC (as he then was) in ***National Democratic Congress v. Electoral Commission [2001-2002] SCGLR 954 @ 958***. The learned jurist delivered thus:

> ***'' where an act or omission of any person is challenged under article 2 of the 1992 Constitution, such an act or omission must be shown to have taken place, and it must be shown that such act or omission falls foul of a specific provision of the Constitution, or at the very least, the spirit of an actual provision."***

We will now address relief 3 as endorsed on the Plaintiff's writ in our assessment as to whether the Plaintiff has properly invoked our original jurisdiction as set down in issue (1) of the agreed joint Memorandum of Issues. Relief (3) complains that the distinction

between the Professional Law Course run by the Ghana School of Law, and the Academic Law Course, run by approved universities is arbitrary, capricious and done only to further the monopoly power of the Ghana School of Law in violation of Article 296 (b) of the 1992 Constitution.

Article 296 (b) of the Constitution provides thus:

> ***"the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law."***

We note that the separation of the Professional Law Course run by the Ghana School of Law and the Academic Law Course run by approved universities are all grounded in substantive law and not mere discretions exercised by the 2nd Defendant and the various approved universities.

The provision of the Professional Law Course separately at the Ghana School of Law is a product of the Legal Profession Act, 1960, Act 32 and the Legal Profession(Professional and Post- Call Law Course) Regulations, 2018 (L.I 2355). The Academic Law Courses are provided separately not by the discretion of the 2nd Defendant but by the Statutes of the various Universities that have been approved to offer the course. For the Plaintiff therefore to argue that the provision of the two courses at different levels and by different institutions is aimed at furthering the monopoly of the Ghana School of law and as such contrary to Article 296 (b) is very far-fetched and untenable. The laws that govern the operations of the two courses have designated them as ''Professional'' and ''Academic'' and have nothing to do with a discretion exercised by the 2nd Defendant. Clearly, we find the arguments advanced by the Plaintiff on this relief as very much misconceived and without any legal basis.

The rest of Plaintiff reliefs namely, reliefs 4, 5, 6, 7 and 8 do not make reference to any provision of the 1992 Constitution and we fail to see how our original jurisdiction under

Articles 2 (1) and 130(1) of the Constitution could be invoked by the Plaintiff. The Plaintiff's failure to refer to specific provisions of the Constitution, which has been breached by the Defendants, clearly send his case outside cases which can be brought under the interpretative and enforcement jurisdiction of this Court. The Plaintiff cannot also be seen as invoking the spirit of the Constitution in seeking the said reliefs as endorsed on his writ, for the simple reason that the spirit of the Constitution must follow the letter. Put differently, where there is no letter there can be no spirit. This Court, speaking through ***Sophia Akuffo, JSC (as she then was)*** in the case of ***Adjei Ampofo v. Attorney –General [2003-2004] SCGLR 411,*** reiterated this position of the law as follows:

> ***"And although we wholehearted acknowledge that a constitution, as a living document, has in addition to its written words, also a spirit, when called upon to exercise our jurisdiction to the constitution, we must first be referred to a specific provision therein."***

Accordingly, since the said reliefs 4, 5, 6, 7, and 8 are not cognizable under our original jurisdiction under Articles 2 (1) and 130 (1) of the Constitution they are all struck out.

Now regarding reliefs 1, 2, and 3 endorsed on the writ, we come to the firm conviction, after our evaluation of same, that this Court's jurisdiction to interpret or enforce the Constitution under Articles 2(1) and 130 (1) has not been properly invoked and for that matter the action commenced by the Plaintiff ought to be dismissed. This Court has resisted the abuse of its exclusive original interpretative and enforcement jurisdiction; and its laudable policy not to assume jurisdiction in actions that fall short of the measuring threshold, such as in this case, should not be compromised or lowered in any way. Now, having so held that this Court's original jurisdiction has been wrongly invoked by the Plaintiff, we deem it unnecessary to address issues b, c, d, e, and f of the Joint Memorandum of Issues as agreed by the parties. The entire action of Plaintiff is accordingly dismissed.

S. K. MARFUL-SAU

(JUSTICE OF THE SUPREME COURT)

N. S. GBADEGBE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

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NANA YAW NTRAKWA WITH PAULINA AKOSUA DANSO FOR THE 2ND DEFENDANT.