IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
APPAU, JSC
PWAMANG, JSC
MARFUL-SAU, JSC
KOTEY, JSC

CIVIL MOTION
NO. J5/74/2019

12TH FEBRUARY, 2020

REPUBLIC

VRS

HIGH COURT, CAPE COAST	**……..**	**RESPONDENT**
EX PARTE: JOHN BONDZIE SEY	**……..**	**APPLICANT**
UNIVERSITY OF EDUCATION WINNEBA	**…….**	**INTERESTED PARTY**

RULING

DOTSE, JSC:-

In the celebrated case of ***Republic v High Court (Fast Track Division); Ex-parte State Housing Co. Ltd. (No. 2) Koranten-Amoako Interested Party, [2009] SCGLR 185 at 190*** the Supreme Court, per Wood C. J. stated authoritatively as follows:-

"A party who disables himself or herself from being heard in any proceedings cannot later turn round and accuse an adjudicator of having breached the rules of natural justice."

In this application before us, the principles of law espoused in the case referred to supra will be called upon as aid in determining whether the Application filed by the Applicant herein, John Bondzie Sey (hereafter) referred to as the Applicant) will succeed.

It must be noted that, in this application before this court, the Applicant's capacity to mount this application has been founded upon the decision of this court in the case of ***Federation of Youth Association of Ghana (FEDYAG) v Public Universities of Ghana and Others [2010] SCGLR at 265*** where the court held that:-

"Under article 2 (1) of the Constitution 1992, the Plaintiff as a citizen of Ghana, had the locus standi to bring an action in the Supreme Court. The requirements like the existence of "dispute" or "controversy" or "personal interest" were unnecessary." The Applicant thus has capacity in the instant application."

WHAT THEN ARE THE RAW FACTS OF THIS CASE?

On February 22nd 2018, at a Governing Council meeting of the University of Education, Winneba **(herein after referred to as "UEW") and the Interested Party** herein, Dr Samuel Ofori Bekoe who was a representative of convocation on the council, was alleged to have misconducted himself. Dr Bekoe is reported to have said **"if *this thing does not stop from tomorrow, I will start chasing people with a cutlass. Tomorrow is academic Board Meeting and I will come butchering people with a cutlass."***

Thereafter, Dr Bekoe was reported to the police by some Governing Council members.

An Investigation Committee was set up by the Ag. Vice Chancellor, Rev, Fr. Prof A. Afful-Broni to investigate the reasons for Dr Bekoe's actions and make the appropriate

recommendations. The Investigation Committee invited Dr Bekoe to attend and respond to the complaints levelled against him. Dr Bekoe failed to honour any of these invitations.

The reason for his absence was attributed to, his appearance at the District Court to answer a threat of harm charge and a meeting with his lawyers in Accra. The Investigation Committee proceeded to make its recommendations without the testimony of Dr Bekoe.

Upon receipt of the report from the Investigation Committee, the Ag Vice Chancellor set up a Disciplinary Board to further investigate the allegations and make appropriate recommendations for disciplinary action to be taken against Dr Bekoe.

The Disciplinary Board invited Dr Bekoe to appear and respond to the complaints levelled against him. The meeting was scheduled for Monday 26th March 2018. Dr Bekoe avers that he received the notice of the meeting at 5:30pm that day, by which time the meeting was already over.

The Governing Council of the University on 28th March 2018 held a meeting where Dr Bekoe was dismissed. A letter was sent to him on the 29th of March 2018 informing him of his dismissal.

Aggrieved by the decision of the Governing Council, Dr Bekoe filed an application for Judicial Review at the High Court, Cape-Coast, pursuant to Order 55 of the High Court (Civil Procedure) Rules C.I 47, praying for an order of certiorari to quash the decision of UEW (the Interested Party herein), and an order of prohibition against the Interested Party from taking any disciplinary actions against the applicant therein. He anchored his application on four main grounds, namely:-

1. Want of Jurisdiction
2. Error of law patent on the face of the decision taken by respondent as related to the applicant
3. Patent breach of Natural justice
4. Breach of the Wednesbury principles

It must be noted and appreciated that, Dr. Bekoe himself was the Applicant who invoked the jurisdiction of the High Court for the Judicial Review.

The High Court in an exhaustive and well considered Ruling, after analysing the facts and the law dismissed Dr Bekoe's application on 25th June 2019.

In that Ruling, the learned trial Judge, Patience Mills-Tettey J, carefully considered all the affidavit evidence, including all the documentary exhibits attached by both parties therein as well as the law on the subject and came out with a considered Ruling on each ground of the application before dismissing same.

On want of jurisdiction, after analysing all the facts, the relevant exhibits, as well as UEW Enabling Act, 672 and Statutes and the applicable laws and legal decisions, this is how the learned trial Judge concluded on that ground:-

> *"The adjudicating body namely the Governing Council and the Vice-Chancellor acted within their mandate and they could neither be said to lack jurisdiction nor to have acted in excess of their jurisdiction."*

On error of law on the face of the record, after examining same critically, the learned trial Judge concluded thus:-

> *"The Applicant throughout his affidavit has not established any unreasonableness on the face of the record or recorded any proof of error of law or fact.* ***The Republic v High Court, Ex- Parte Appiah and Others [2000] SCGLR 389*** *held that if the "error of law or fact is not on the face of the record then* ***same must be addressed by way of appeal and not by Certiorari."*** *On breach of the Rules of natural justice, after distinguishing why the case of* ***Awuni v WAEC [2003-2004] SCGLR*** *is not applicable, the learned trial Judge concluded thus:-*
>
> *"The Applicant failed to appear on three consecutive times before the Investigative Committee. It was after the failure to attend to the invitation of the Investigative Committee that the Investigative Committee wrote a report to the Vice-Chancellor*

who constituted a Disciplinary Board which sent an invitation letter to the applicant which letter was delivered to the applicant by the head of department and which invitation he still failed to honour."

On breach of the Wednesbury principle, the learned trial Judge held thus:-

"Indeed a party who disables himself or herself from being heard cannot turn around and accuse an adjudicator for failing to hear his side of the case per Georgina Wood C.J. in the case of ***Republic v High Court (Fast Track Division) Accra Ex-parte; State Housing Co. Ltd (No. 2) (Koranten-Amoako), supra***

On the writ of Prohibition, the learned trial Judge concluded that matter tersely as follows:-

"There is no danger of the respondent taking any decision on the applicant which will be injurious to him in the future. There is nothing worse than dismissal. The application for prohibition is therefore not necessary if the status quo is maintained."

These were the reasons the learned trial Judge articulated in her dismissal of Dr. Bekoe's application before the High Court, Cape-Coast.

WHY HAS THE JURISDICTION OF THIS COURT BEEN INVOKED?

On 24th September, 2019, John Bondzie Sey the Applicant, herein, filed an application invoking the Supervisory Jurisdiction of the Supreme Court pursuant to Article 132 of the Constitution 1992 and Rule 61 of the Supreme Court rules C. I. 16 of 1996. In this application, the Applicant is seeking the following reliefs:-

(a) An order of certiorari to bring up to this Honourable Court for the purposes of being quashed the ruling of the High Court Cape Coast dated 25th June 2019 Coram: Her Ladyship Patience Mills-Tetteh, J

(b) A declaration that the decision of the interested party dismissing Dr Samuel Ofori Bekoe contained in a letter dated 29th March 2018 was in breach of the rules of Natural Justice.

(c) An order of reinstatement in favour of Dr Samuel Ofori Bekoe

And for such further order or orders as this Honourable Court may deem fit.

It is quite apparent that reliefs (b) and (c) supra appear to be in the nature of seeking to re-argue the grounds for the dismissal of Dr. Bekoe by the Interested Party or in the nature of an appeal against the Ruling of the High Court, Cape Coast. Is that permissible under the circumstances? Let us consider the legal arguments.

SUMMARY OF LEGAL ARGUMENTS

The Applicant raised two grounds in his application before the Supreme Court. These were espoused by learned counsel for the Applicant, Alexander Kwamina Afenyo-Markin who anchored his arguments on the following grounds.

1. The High Court committed an error patent on the face of the record when it dismissed the Application for review by way of Certiorari and Prohibition.
2. The High Court exceeded its Jurisdiction when it ignored the breach of the rules of Natural Justice.

In expatiating the arguments in respect of the first ground supra, learned counsel for the Applicant herein, Afenyo Markin submitted that the learned High Court Judge committed *"not just an error arising out of want of jurisdiction but an error patent on the face of the records"* by applying the enabling Act of the Interested Party (the University of Education, Winneba Act, 2004 (Act 672) to the disciplinary proceedings against a member of the Governing Council.

Learned Counsel further opined that, since the alleged misconduct of Dr. Bekoe occurred during a Governing Council meeting and as member thereof, the proper person to

investigate the said misconduct was the Minster of Education and not the Vice-Chancellor reference section 6 (3) of the U.E.W Act 672, which provides that, *"members of the University Council shall be appointed by the President acting in consultation with the Council of State."* to support his arguments.

Learned counsel referred to the following cases to support his submissions; **Network Computer Systems Ltd. V Intelsat Global Sales and Marketing Ltd. [2012] 1 SCGLR 281 at 230 per Atuguba JSC and Republic v District Magistrate, Accra, Ex-parte Adio, [1972] 2 GLR at 125.**

In support of the second ground, learned counsel for the Applicant submitted that, assuming without admitting that the Governing Council had jurisdiction in initiating disciplinary proceedings, against Council members, the failure of the Investigative Committee and Disciplinary Board to conduct a full hearing into the matter and exhibit the said report in itself amounts to an error of law patent on the record for which reason the failure of the High Court to recognise this error justifies the intervention of the Supreme Court, through its supervisory jurisdiction.

In support of the above, learned counsel for the Applicant referred to the case of ***Republic v High Court, Winneba; Ex-parte Professor Mawutor Avoke (Applicant) Supi Kwayera and 2 others (Interested parety) [2019] 128 G.M.J 171 S.C..***

ARGUMENTS BY THE INTERESTED PARTY – UNIVERSITY OF EDUCATION, WINNEBA

In response to the Applicant's arguments, learned Counsel for the Interested Party submitted that, Dr Bekoe as a Senior lecturer of UEW was elected as a convocation representative onto the Governing Council pursuant to **section 6(2) (f) of Act 672**, the Statute that established the Interested Party as a Tertiary Institution.

According to learned Counsel, Dr Bekoe is therefore a staff of UEW and thereby subject to the disciplinary proceedings of the Interested Party under their relevant operating statutes, which are their enabling Act and Statutes of the University which makes the Vice-Chancellor the Chief Disciplinary Officer of the Interested Party. Learned Counsel for the Interested Party, submitted that not all the members of the Governing Council are appointed by the President. Some persons are appointed by various stakeholders in the University such as UTAG, Convocation, SRC etc.

Dr Bekoe as a senior lecturer was elected as a convocation representative together with three others to serve as members of the Governing Council pursuant to **section 6(2)(f) of Act 672**.

CONSIDERATION OF CONTRASTING LEGAL ARGUMENTS

The grounds for which a person can invoke the Supervisory Jurisdiction of the Supreme Court has been stated in several cases and one such case worth referring to is the case of ***Republic vs High Court, Kumasi; Ex Parte Appiah And Others [1997-98] 1 GLR 503*** where the court stated as follows:

> "*There is however power given to the Supreme Court to exercise supervisory jurisdiction over all courts (including the High Court) and any adjudicating authority and may in the exercise of such jurisdiction issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power- vide article 132 of the Constitution, 1992. Consequently, if it is found that the* ***High Court in exercising its jurisdiction has breached any of the rules of natural justice*** *or* ***on the face of its orders erred in law****, or* ***has acted in excess of its jurisdiction*** *or* ***lacks jurisdiction in the matter it has acted on****, this court would have power to order the removal of those proceedings before it for the purpose of having those proceedings quashed****. It must be stated however that a prayer for the grant of certiorari must be considered from a very broad perspective and that being a discretionary power, it must be shown that there is a real justification for its grant.*****"** **Emphasis**

See other cases like the following:-

1. ***Republic v Court of Appeal, Accra, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612 at 619***
2. ***Republic v High Court, Accra, Ex-parte Ghana Medical Association (Arcman-Akumey – Interested Party) [2012] 2 SCGLR***
3. ***The Republic v High Court, Accra Ex-parte Attorney-General (Ohene Agyapong Interested Party) [2012] 2 SCGLR 1204***

This case established that the existence of an alternative remedy is one of the factors that a court can rely on to exercise its judgment against the grant of certiorari.

4. ***See also Republic v High Court, Accra; Ex-parte Tetteh Apain [2007-2008] SCGLR 72***
5. ***High Court, Accra, Ex-parte Hanawi (aka) Ali (Owusu & Owusu Interested Parties) [2013-2014] 2 SCGLR 1169***

In this case, the Supreme Court, reiterated the principle in earlier decided cases like ***Republic v High Court; Accra, Ex-parte Sosu [1996-97] 2 SCGLR 525 and Republic v High Court, Accra, Ex-parte Attorney-General (Delta Foods Ltd – Interested Party) [1999-2000] 1 GLR 255, Republic v High Court, Accra Ex-parte Attonrey-General (Delta Foods case) [1998-99] SCGLR 595,*** and concluded as follows:-

> *"an applicant may succeed in invoking the Supreme Court's supervisory intervention upon demonstrating that the High Court wrongly assumed jurisdiction in the matter which was patent on the face of the record. The error must be so grave as to amount to the wrong assumption of jurisdiction. The error must be obvious as to make the decision a nullity. And an order of certiorari is a discretionary remedy and hence it would not be automatically issued by the Supreme Court except in cases of want of jurisdiction." Emphasis*

The grounds for which the Supreme Court will exercise its Supervisory Jurisdiction as can be gleaned from the above-mentioned cases are:

1. Where there has been the breach of the rules of Natural Justice
2. Error of law on the face of the record

3. Excess of Jurisdiction
4. Lack of Jurisdiction

The Supreme Court has maintained a credible but flexible principle as it sometimes has held that even though an applicant is not deserving of a grant of it's supervisory jurisdiction, it nonetheless issues directives and directions consistent with article 132 of the Constitution 1992. See the following cases

1. ***Republic v High Court, Cape Coast; Ex-parte Ghana Cocoa Marketing Board, (Apotoi III – Interested Party) [2009] SCGLR 603***
2. ***Republic v High Court, Kumasi; Ex-parte Bank of Ghana and Others; (Sefa and Asiedu- Interested Party) No. 1 Republic v High Court, Kumasi, Ex-parte Bank of Ghana and Others (Gyamfi and Others – Interested Parties (No 1) consolidated [2013-2014] I SCGLR 477.***

GROUND 1

THE HIGH COURT COMMITTED AN ERROR PATENT ON THE FACE OF THE RECORD WHEN IT DISMISSED THE APPLICATION FOR REVIEW BY WAY OF CERTIORARI AND PROHIBITION

Whilst the Applicant argued that the High Court committed an error patent on the face of the record and also exceeded its jurisdiction by its holding that Act 672 and the Interested Party's Statutes applied to disciplinary proceedings against a member of the Governing Council for misconduct that occurred during a Governing Council meeting which should have been dealt with by the Minister of Education, the Interested Party (UEW), on the other hand, contended that, since Dr. Bekoe is a Senior lecturer of UEW who was elected as a convocation representative onto the Governing Council pursuant to section 6 (2) (f) of Act 672, he is a staff of UEW and therefore subject to disciplinary proceedings pursuant to statute 6 (a) of UEW Statutes 2007 wherein the Vice Chancellor is the Chief Disciplinary Officer.

Section 6(3) of Act 672 provides that ***"The members of the council shall be appointed by the President acting in consultation with the Council of State"***

The question that arises is does this provision apply to all the members of the Governing Council or to some selected members.

It is our opinion that the provision applies to some selected members and not all the members of the Governing Council. It is further stated that, this conclusion is the logical result of a true and proper interpretation of the relevant statutes.

In support of this opinion, a comparison will be made between the Acts governing the University of Ghana, University of Health and Allied Sciences and the University of Education, Winneba. The relevant provisions are as follows:

UNIVERSITY OF GHANA ACT, 2010 ACT 806

"Section *11*

The governing body of the University is a Council consisting of

(a) the Chancellor;

(b) a chairperson;

(c) the Vice-Chancellor;

(d) four persons appointed by the President taking into account

(i) the need for gender balance,

(ii) expertise in finance; and

(iii) expertise in management;

(e) one representative of the alumni of the University; ….."

UNIVERSITY OF HEALTH AND ALLIED SCIENCES ACT 2011, ACT 828

"Section *5 (1)*

The governing Body of the University is a council consisting of :

(a) a chairperson, nominated by the president

(b) the Vice-Chancellor

(c) five persons nominated by the president

(d) one representative of the National Council for tertiary Education

(e) two elected members of Convocation representing the professorial and the non-professorial staff;

(f) one elected representative of the University Teachers Association of Ghana; ….

(2) The President, in making the nominations under paragraphs (a) and (c) of subsection (1), shall have regard to the academic qualifications, leadership qualities, gender, expertise in finance, management, knowledge and relevant experience in health and allied sciences.

(3) ***The chairperson and other members of the Council shall be appointed by the President in accordance with article 70 of the Constitution****."*

THE UNIVERSITY OF EDUCATION, WINNEBA ACT, (ACT 672) OF 2004

"Section 6

(1) The University shall have a Council which shall be the governing body of the University.

(2) The Council shall be composed of the following members:

(a) Four persons nominated by the Minister one of whom shall be appointed chairperson;

(b) the Vice-Chancellor of the University;

(c) a representative of the Ghana Education Service;

(d) the Director-General of the Ghana Education Service;

(e) a representative of Professional Teacher organizations:

(f) four elected members of Convocation; one from each of the Colleges of the University*;*

(g) a representative of the Teachers and Educational Workers Union;

(h) a representative of the Alumni;

(i) two students (one for under-graduate and one for postgraduate):and

(j) a representative of National Council on Tertiary Education (NCTE)

(3) The members of the Council shall be appointed by the President acting in consultation with the Council of State*."*

To understand the import of these provisions, the unreported Supreme Court case of ***Theophilius Donkor vrs The Attorney General Writ No. J1/08/2019 dated 12th June, 2019*** is instructive. Our illustrious brother, Kotey JSC after reproducing section 11 of the University of Ghana Act concluded in the Theophilius Donkor case supra as follows:-

"*It is quite clear that* ***apart from the Chairperson and four other persons appointed by the President, members of the University Council are not appointed by the President***."

The Court in the ***Donkor case supra*** proceeded to review **Section 3 of National Petroleum Authority Act, 2005 (Act 691)**, **Section 4 of the Forestry Commission Act, 1999 (Act 571)**, and other statutes where the relevant section states

"***The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution***."

The court after reproducing the relevant portions of these Acts concluded thus:-

"The members of the governing board of the National Petroleum Authority are therefore appointed by the President in consultation with the Council of State. Section 4 of the Forestry Commission Act, 1999 (Act 571) also provides for the appointment of members of the board by the President acting in consultation with the Council of State"

In comparison to the University of Ghana Act where the court stated that the power of appointment of the President is limited to only the Chairperson and the other four persons, in the National Petroleum Authority Act and Forestry Commission Act, 1999 (Act 571) the President in consultation with the Council of State, appoints all members.

If one is to simply apply what the Supreme Court has stated to the Acts governing the Universities, one may conclude that in the case of the University of Ghana, the President's power to appoint is limited, however, in the case of the University of Health and Allied Sciences and University of Education, Winneba one may conclude that the legislature intended that all the Governing Council members will be appointed by the President as has been submitted by the Applicant.

The absurdity that will arise from such an interpretation is that the President in consultation with the Council of State must appoint representatives of Student Representative Council and even Alumni of the Universities.

A true and proper interpretation of the relevant statutes would indicate that, this is not the case. One must realize that the Vice Chancellor is part of the Governing Council. According to **Article 195(3) of the Constitution 1992**which states:-

> "**The power to appoint persons to hold or act in an office in a body of higher education, research or professional training, shall vest in the council or other governing body of that institution or body**" Emphasis

The Supreme Court in the ***Donkor case (supra)*** in interpreting the said article stated thus:

> *"In accordance with article 195(3), the University of Ghana Act, 2010 (Act 806), for example, provides in section 9 as follows:*
> *9 (1) The University Council shall appoint the Vice-Chancellor who is answerable to the Council and is the academic and administrative head and chief disciplinary officer of the University.*
> *(2) The Vice-Chancellor shall hold office on terms and conditions specified in the letter of appointment.*
> *(3) The Vice-Chancellor shall hold office for a period of up to four years and is eligible for re-appointment for another term only.*
> ***Vice Chancellors and heads of institutions of higher education are appointed by their councils and not the President or Minister of State**." Emphasis*

The conclusion one may arrive at from the above analysis is that the Vice Chancellor is part of the Governing Council because he is the Vice Chancellor not because he is appointed by the President.

As such, other persons are members of the Governing Council by virtue of the fact that they are representatives of a particular group or entity albeit within the University.

The power of appointment of the President should be limited to the Chairperson and those who are on the Council as representatives of the President. It is necessary to note that some members are on the Council purely as appointees of the President as can be seen from Section 11(d) of the University of Ghana Act, 2010 Act 806, Section 5(1)(C) of the University of Health And Allied Sciences Act 2011, Act 828 and Section 6 (2) (a) of The University Of Education, Winneba Act, 2004 Act 672.

The Legislative intent behind Section 6(3) of the University of Education, Winneba Act, 2004, Act 672 is that, it spells out the mode of appointment of persons who are to be appointed by the President and not the mode of appointment of all the members of the Governing Council. Only these "special persons" can be removed by the President. All other members of the Governing Council are subject and can be removed by the governing laws of the university or the body or institution they represent. The limitation as placed in the University of Ghana Act and as stated in the Donkor case should apply to all Universities.

The Supreme Court can under the circumstances of this case rectify the lacuna inherent in the laws of the Interested Party by using its rectification powers as was stated by Akuffo C.J ***in the unreported case of Martin Kpebu vrs Attorney-General Writ No.J1/22/2016 dated 18th December 2019*** where she stated:

> "*this Court hereby exercises its **power of rectification** and exempts 'Court Services' by the addition to the exemption list in subsection 3 after paragraph (k) the following:*
>
> ***"(l) Court Services for the determination of issues concerning the personal liberty of any person."***

*See the case of **Sasu v Amua-Sakyi [1987-88] GLRD 45**, wherein the Court inserted into section 3(2) of the erstwhile Courts Act, 1971 (Act 372) as amended by PNDCL 372, the words **"with leave of the Court of Appeal"** so as to make the section intelligible."*

When the rectification is thus done, the phrase "*to be appointed by the President*" must be added to the relevant section to now read thus:-

> ***"**The members of the Council "**to be appointed by the president" shall be appointed by the President acting in consultation with the Council of State."***

In applying the above analysis to the facts of this case, Dr Bekoe was therefore subject to the Disciplinary process as contained in the UEW Act and statutes.

This is as a result of the fact that he is a member of the Governing Council because he is a Senior lecturer and has been elected as one of four elected members of Convocation; one from each of the Colleges of the University pursuant to Section 6 (2) (f) of Act 672.

The High Court therefore did not commit an error patent on the face of the record and also did not exceed its jurisdiction by holding that the University of Education, Winneba Act, 2004, Act 672 and UEW Statutes applied to disciplinary proceedings against Dr Bekoe.

Applicant contends further that, assuming without admitting that the Governing Council had jurisdiction in initiating disciplinary proceedings against Council members, the failure of the Investigation Committee and Disciplinary Board to conduct a full hearing into the matter and their failure to exhibit the full proceedings of the Disciplinary Board hearings at the High Court meant that no evidence was taken either at the Investigation Committee or the Disciplinary Board. **This according to learned counsel also constituted an error apparent on the face of the record.**

It is respectfully submitted that such a position is erroneous as a look at page 3 of Exhibit JKBS 5 as exhibited by the Applicant shows that staff members were interviewed.

The said exhibit is the report of the Disciplinary Board. Paragraph 7.0 headed "findings" states that "the *Board made the following findings from the investigation Committee's report and* ***from interactions with the staff that were invited to assist the board in its work***"

It must be stated that no rules of court require the Interested Party (UEW) to exhibit the full proceedings of the Investigation Committee or Disciplinary hearings. The Interested party was therefore right when it submitted that the Court should consider the ruling in ***Republic vs Ghana Railway corporation, Ex parte Appiah and Annor [1981] GLR 752*** supra where the High Court held that:-

> "*Disciplinary procedure in administrative law simply meant that a party ought to have reasonable notice of the case he has to meet and ought to be given the opportunity to make his statement in explanation of any question or to answer any arguments put forward against him.* ***The principle does not, in my view, require that there must be a formal trial of a specific charge akin to court proceedings***." Emphasis

Even though this is a High Court decision, the principle of law espoused is sound, and we therefore apply it.

There is absolutely no basis for the arguments in respect of this ground, it is accordingly dismissed.

GROUND 2

THE HIGH COURT EXCEEDED ITS JURISDICTION WHEN IT IGNORED THE BREACH OF THE RULES OF NATURAL JUSTICE.

The applicant further argued that the interested party breached the rules of natural justice namely audi alteram partem and nemo judex in causa sua.

NEMO JUDEX IN CAUSA SUA

With respect to Nemo judex in causa sua, it is respectfully submitted that the submissions of the Applicant are untenable.

This is simply due to the fact that the duty of the Vice Chancellor and the Governing Council have been clearly spelt out in the UEW Act and statutes in respect of disciplinary proceedings.

The applicant did not argue that they failed to comply with any of the statutory requirements. His only complaint is that the Vice Chancellor and the Governing Council purporting to act in accordance with due process, were not fair to him.

The oft quoted aphorism as stated in the case of ***Rex v Sussex Justices, ex parte McMarthy[1924]1 KB. 256***"Not *only must justice be done; it must also be seen to be done*" does not apply when it comes to complying with Statutory requirements.

This position was clearly stated in ***Akufo-Addo & Ors. Vrs Quashie-Idun & Ors. (1968) GLR 667*** where the court stated: "*where a statute clearly enjoins a person to perform an act,* ***he has to do it even if its performance is incompatible with the strict rules of natural justice.***"

Also, this was further stated in ***Tsatsu Tsikata vrs Chief Justice and Attorney General [2001-2002] SCGLR 437*** and ***Agyei Twum v Attorney-General& Akwetey [2005-2006] SCGLR 732***

The Learned High Court judge fully appreciated the law and the facts before her and as such cannot be said to have turned a blind eye to the breach of Nemo judex in causa sua rule of Natural justice.

AUDI ALTERAM PARTEM

In ***Serbeh-Yiadom v Stanbic Bank (Gh) Ltd [2003-2005] 1 GLR 86*** the Supreme court stated that:-

> ***"It is a salutary and well-known principle of law that a person should be given the opportunity of being heard when he is accused of any wrong doing before any action is taken against him".*** Emphasis

The effect of the failure to hear a person was stated in ***The Republic V. High Court, Accra Ex-Parte Salloum (Senyo Coker (interested party) [2011] 1 SCGLR 574*** where the Supreme Court stated thus:-

> "*Equally so, if a party is denied the right to be heard as in this case, it should constitute a fundamental error for the proceedings to be declared a nullity. The courts in Ghana and elsewhere seriously frown upon breaches of the audi alteram partem rule to the extent that no matter the merits of the case, its denial is seen as a basic fundamental error which should nullify proceedings made pursuant to the denial.*" Emphasis

However, a party can waive his right to be heard. In ***Republic v Court of Appeal Ex Parte Eastern Alloy [2007-2008]1 SCGLR*** **371** the court stated thus:

> "*It is trite law that the rules of natural justice can be waived, see* ***Bilson v Apaloo (1981) GLR 24*** *SC.* ***There is no suggestion that the applicant was unaware of the hearing date of the motion, yet it absented itself without even representation by counsel. A clearer case of waiver of the right to a hearing could not be imagined.*****" Emphasis**

Therefore, deliberately absenting oneself would constitute a waiver. This was discussed in the cases of ***Republic vrs High Court (Human Rights Division), Accra; Ex parte Josephine Akita (Mancell – Egala and A-G, Interested Parties) [2010] SCGLR 374 and Others*** and ***Republic vrs High Court (Fast Track Division); Ex parte State Housing Co. Ltd. (No.2) Koranteng-Amoako Interested supra*** where the court stated in the Egala case as follows:-

> ***"a person who has been given the opportunity to be heard but deliberately spurned that opportunity to satisfy his own decision to***

boycott proceedings cannot later complain that the proceedings have been proceeded without hearing him and then plead in aid the audi alteram partem rule".

In applying this to the facts of this case, it can be said that Dr Bekoe waived his right to appear before the Investigation Committee after 3 separate invitations were made to him. Secondly, even though there was another invitation to Dr. Bekoe to appear before the Disciplinary Board, which invitation appears not to have been honoured, the learned trial Judge adequately dealt with those matters and the avenue opened therein is for an appeal.

Even though there are legitimate grounds to question the conduct of the proceedings by the Disciplinary Board, those matters were raised by Dr. Bekoe himself in his Judicial Review application before the Respondent court. In our opinion, the learned High Court Judge adequately dealt with those procedural irregularities and may have given a wrong or right decision.

She may not have reached a decision that the Applicant wanted. However, as is stated elsewhere in this rendition, the avenue opened to Dr. Bekoe is to appeal.

What must be noted is that, the Judge in deciding the case has a discretion to be right or wrong.

The authorities are very clear that in such circumstances, the right avenue is an appeal. Secondly, as is dealt with in this delivery, the dangerous phenomenon which is creeping into our jurisprudence where other third parties invoke the jurisdiction of this court seeking same reliefs which either this court has refused in an earlier application, or seeking to quash a decision of the High Court in similar applications in which they were not parties must be quickly stopped before it gains roots which will make it difficult to be uprooted.

Article 23 of the Constitution 1992 provides that:-

"*Administrative bodies and administrative officials* ***shall act fairly and reasonably*** *and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal*'

It is respectfully, submitted that the right to be heard is a right to be heard within a reasonable time and to ensure that you can put up a defence. The time given to Dr Bekoe to respond was woefully unreasonable, considering the fact that it could result in his dismissal. It appears that the board were in a hurry to dispose of the matter, by so doing they denied Dr Bekoe the right to be heard.

The above notwithstanding, the breach of audi alteram partem was in respect of the Disciplinary Board and NOT proceedings at the High Court.

It is trite that judicial review is not concerned with the decision but rather the way the decision was made.

The High Court did not commit any breaches of the rules of natural justice. Applicant contends that by failing to recognize the breach of natural justice the High Court had exceeded its jurisdiction. This is respectfully an erroneous assertion by the applicant.

In the recent case of ***Republic vrs High Court, (Probate And Administration Division), Accra Ex Parte: Patrick Agudey Teye, (Interested Parties) Nomo Agbosu Dogbeda And 5 Others Civil Motion No. J5/62/2018 29h May, 2019 (Unreported)*** the Supreme Court stated that:

"*In this case, the applicant is praying for an order of Certiorari not because* ***the trial judge did not have jurisdiction to give a ruling on the matter but that he is dissatisfied with the ruling***. ***This may be a ground of appeal but definitely not a ground for certiorari.*** *The judge might have erred in his appreciation of the facts and the conclusions drawn from them. If that is the case, it would not be an egregious error on the face of the record to be cured by*

certiorari. ***Where a judge has jurisdiction, he has jurisdiction to be wrong as well as to be right and the corrective machinery to a wrong decision in the opinion of a party is an appeal***'. Emphasis

See also ***Republic v High Court, Accra; Ex Parte Industrialisation Fund for Developing Countries [2003-2004]1SCGLR 348***, ***Republic v High Court, Kumasi; Ex parte Fosuhene [1989-90] 2 GLR 315***. ***Republic vs High Court, Accra ex parte Asakum and Engineering and Construction Limited and others [1993-1994] 2 GLR 643.***

What the above authorities seek to point out is that a wrong decision of the High Court does not in itself give rise to the grant of Certiorari. It must be noted that, Learned Judges are capable of making mistakes. These mistakes which are not fundamental are cured on appeal and not by certiorari.

EPILOGUE

There is a growing phenomenon which is creeping into the practice of the invocation of the supervisory jurisdiction of the Supreme Court, which if not checked and nipped in the bud will add dangerous dimensions to the scope and remit of the parameters of this court in respect of it's supervisory jurisdiction.

Article 132 of the Constitution 1992, which deals with the supervisory jurisdiction of the Supreme Court provides as follows:-

"*The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority* ***and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory power***.*"* Emphasis

Order 55 of rule (1) a, b and c of C.I. 47, the High Court (Civil Procedure) Rules 2004, C.I. 47 referred to supra, grants the High Court, supervisory jurisdiction in the following cases:-

(a) Orders in the nature of mandamus, prohibition, certiorari and quo warranto
(b) An injunction restraining a person from acting in a public office in which the person is not entitled to act
(c) Any other injunction

As stated supra, these judicial reviews or prerogative writs are issued by the High Court and the Supreme Court when these courts are called upon to exercise their supervisory jurisdiction over lower courts and adjudicating bodies.

For purposes of convenience, all District Courts, Circuit Courts and the various Judicial Committees of the Houses of Chiefs and other Administrative Bodies, unless otherwise specifically provided in their enabling enactments, are amenable to the supervisory jurisdiction of the High court, and not the Supreme Court.

In practice therefore, the Supreme Court exercises its supervisory jurisdiction conferred on it in respect of the High Court and Court of Appeal and in those specific cases or instances where the adjudicatory body or tribunal is stated to have the powers of a High Court or Court of Appeal in their enabling legislations.

It may be instructive to state herein that, these prerogative orders are granted in specific legal/technical grounds as exemplified in the principles espoused in the following cases:-

a. ***Republic v Commission on Human Rights and Administrative Justice; Ex-parte Richard Anane, [2007-2008] SCGLR 340 at 365***
b. ***Asor II and Others v Amegboe & Others [1978] GLR 153***
c. ***Republic v High Court, Accra; Ex-parte Appiah & 2 Others supra***

In the above case for example, the Supreme Court reiterated the following as the general grounds for the grant of Certiorari:-

> "*An order of Certiorari would be granted where the order to be quashed has been made without jurisdiction either because the court has exceeded its jurisdiction or lacks jurisdiction. However, a court having jurisdiction, may lose that jurisdiction*

if its decision is made in bad faith; or it has failed in the course of the enquiry to comply with the requirement of natural justice, or it has refused to take into account something which it was required to take into account, or it might have based its decision on a matter it has no right to take into account. The list cannot be said to be exhaustive." Emphasis

The Supreme Court has also set out the parameters and the essence of the grant of Certiorari in the case of ***Republic v High Court, Kumasi, Ex-parte Bank of Ghana and Others, (Sefa and Asiedu- Interested Parties) (No.1) Republic v High Court, Kumasi, Ex-parte Bank of Ghana and Others (Gyamfi and Others Interested Parties No. 1) Consolidated supra***

Over the years, the courts have established guidelines for the grant of these judicial review applications of Certiorari, prohibition, and mandamus. These are:-

a. Availability of alternative effective remedies such as (i) appeals (ii) application to set aside the proceedings sought to be impugned.
b. The conduct of the applicant and in some cases, conduct of Counsel for the applicant which may be found to be reprehensible and therefore underserving of the grant of the courts discretion in their favour.

That being the case, any matter seeking to question the mode of arriving at the decision of any such administrative body or tribunal by way of judicial review must be commenced in the High Court. It was in respect of the above settled practice that Dr. Bekoe sought to impugn the decisions of the Investigative Committee and the Disciplinary Boards of the Interested Party at the High Court, Cape-Coast.

Whilst the Applicant herein might have a legitimate legal point in his submissions before this court, it is also the duty of this court to protect the integrity of the settled practices, before this court and thereby ensure that the processes available to parties before this court are not abused.

It is an open fact, that Dr. Bekoe failed in his bid to secure the reliefs he sought at the High Court, Cape Coast to overturn the decisions against him.

However, the Applicant herein has embarked upon these processes in a bid to outwit the rules of procedure and overreach the settled practice in this court. Even though we have stated elsewhere in this rendition that the Applicant herein has capacity to mount the instant action, it is apparent that, he is a surrogate for Dr. Bekoe who is the eventual beneficiary of any orders emanating from this court.

This court must therefore be very vigilant in ensuring that third parties like the Applicant herein do not turn the provisions provided for in Article 132 into an appellate and or review process against prior applications that had failed appropriately in the High Court prior to the initiation of the proceedings before this court. This court will refuse to offer its platform to persons who want to abuse the court process. We refuse this invitation and nip such practices in the bud and it is accordingly rejected.

CONCLUSION

In view of our rendition supra, the instant application for the orders of certiorari to quash the decision of the High Court, Cape Coast, presided over by Patience Mills-Tetteh J, dated 25th June, 2019 fails, and is accordingly dismissed in its entirety.

However, in view of our powers under article 132 of the Constitution 1992, which grants us powers to give directives and or directions, and consistent with our decision in the case of ***Republic v High Court, Kumasi; Ex-parte Bank of Ghana and Others (Sefa and Asiedu – Interested Party (No. 1) Republic v High Court, Kumasi; Ex-parte Bank of Ghana and others (Gyamfi and Others –Interested Parties (No 1) Consolidated*** supra, we proceed to give the following directive.

Since Universities are places of higher learning and research, we advise the Interested Party herein to concentrate its energies and resources on its core mandate and put in place mechanisms to have internal bodies such as Appeals Board to settle all disputes.

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

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

S. K. MARFUL-SAU

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWAMINA AFENYO MARKIN WITH KORKOR OKUTU FOR THE APPLICANT.

PAA KWESI ABAIDOO WITH MRS. OHENEWAA ABOAGYE AND ATO ASHUN FOR THE INTERESTED PARTY/RESPONDENT.