IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2017

CORAM: ANSAH, JSC (PRESIDING)
ADINYIRA, JSC
YEBOAH, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL MOTION
NO. J5/65/2017

20TH DECEMBER, 2017

THE REPUBLIC

VRS

HIGH COURT, WINNEBA …… RESPONDENT

EX PARTE:

UNIVERSITY TEACHERS ASSOCIATION
OF GHANA (WINNEBA CHAPTER) …….. APPLICANT

SUPI KOFI KWAYERA …….. 1ST INTERESTED PARTY

UNIVERSITY OF EDUCATION, WINNEBA 2ND INTERESTED PARTY

MINISTER OF EDUCATION 3RD INTERESTED PARTY

RULING

PWAMANG, JSC:-

Before us is an application for orders of certiorari and prohibition against the High Court, Winneba. The facts giving rise to the application are as follows. On 23rd May,

2017 the 1st interested party herein by an originating motion filed in the High Court, Winneba sought against the 2nd and 3rd interested parties the following reliefs.

a. A declaration that the extension of the mandate of the Governing Council of the 1st Respondent by the 2nd Respondent to stay in office to perform such functions as properly appointed council was in breach of Section 8 Act 672.
b. A declaration that no authority or institution of state has any power to extend the tenure of a member of the Governing Council of the 1st Respondent unless such extension is in accordance with Act 627.
c. A declaration that all appointments made by the defunct Governing Council which constituted themselves as the Government Council of the 1st Respondent by virtue of the directives of the 2nd Respondent are null and void and of no legal effect.
d. A declaration that all decisions taken by the defacto body of persons who constituted themselves as Governing Council is null and void and of no effect.
e. A declaration that the contracts awarded to SparkxxGh Ltd, Paabadu Construction and C-Deck were done in breach of the Procurement Act (Act 663) and same is null and void.
f. A declaration that the Memorandum of Understanding between Ghana Highway Authority and the 1st Respondent was a sham and used as a decoy to embezzle public funds.
g. A declaration that the procurement of 8 Pickup vehicles was done in breach of the Procurement Act (Act 663).
h. A declaration that all payment made to Lamas Ltd was done without the express written consent of the Ghana Highway Authority and in breach of the Memorandum of Understanding and same must be refunded.
i. A declaration that the illegally appointed Principal Officers of the 1st Respondent willfully misappropriated public funds by failing to put to public tender for the construction of the North campus road and thereby causing financial loss to the state.
j. A declaration that the conduct of the 1st Respondent in the award of contract is discriminatory and does not provide equal opportunities for potential eligible bidders.
k. An order compelling the 1st Respondent to strictly comply with its transport policy particularly on insurance.
l. An order compelling the 1st Respondent to enact a Social Responsibility Policy for the benefit of the 3 communities where its campuses are located.
m. An order compelling the 1st Respondent to enact Local Content Policy that will require contractors executing projects to employ local artisans except where reasonable search has yielded no results.

Upon service of the originating motion on them the 2nd and 3rd interested parties applied to the High Court to dismiss the case on the grounds that the action ought to have been commenced by a writ of summons and also for want of capacity of the applicant. After hearing the parties, the High Court in a reasoned ruling dated 10th July, 2017 refused to dismiss the action. The court proceeded to hear an application for interlocutory injunction by the 1st interested party and granted same. The 2nd and 3rd interested parties appealed against the 10/7/17 ruling as well as the grant of the interlocutory injunction but they did not pursue the appeals. Meanwhile, the applicant herein who is a lecturer at the University of Education, Winneba and was President of the Winneba Chapter of the University Teachers Association of Ghana (UTAG) also applied on behalf of the members of his association to join the action but the High Court dismissed his application as well. Whereas the 2nd and 3rd interested parties have not pursued their appeal, the applicant appears undaunted and has invoked our supervisory jurisdiction praying for an order of certiorari to quash the High Court's ruling of 10/7/17 and an order prohibiting the trial High Court judge from hearing the case.

The crux of the applicant's case is that the trial High Court judge committed an error of law on the face of the record when he dismissed the challenge to the propriety of the action and assumed jurisdiction in the matter. In the application to dismiss the action that was brought before the High Court, the 2nd and 3rd interested parties had argued among other grounds that, in view of the reliefs sought by the 1st interested party, the provisions of the **High Court (Civil Procedure) Rules, 2004 (C.I.47)** required that the action ought to have been commenced by a writ of summons and not originating motion. The 1st interested party who was respondent to that application answered the challenge to the procedure he adopted in initiating his action by relying on Order 19 R 2 of C.I.47 which provides as follows;

" 2) Proceedings by which an application is to be made to the Court or a Judge of the Court under any enactment shall be initiated by motion and where an enactment provides that an application shall be made by some other means, an application by motion shall be deemed to satisfy the provision of the enactment as to the making of the application."

In dismissing the objection to the proceedings by originating motion the trial judge said as follows;

"From Order 19 R 2 of C.I.47 it is clear that when one is suing an enactment such as the Procurement Act, Act 663, the action can be commenced at the High Court and the action must be commenced by a motion."

The applicant has submitted before us that the judge committed a fundamental error of law in his construction of Order 19 R 2 in that the provision relates to proceedings embarked upon to vindicate rights created under a statute and not proceedings alleging breaches of statutes. At paragraph 3 of his affidavit in opposition to this present application the 1st interested party stated that the gravamen of his action in the High Court is the breaches of the University of Education, Winneba Act, 2004 (Act 672) and the Public Procurement Act, 2003 (Act 663) committed by the respondents and that the trial judge by upholding the procedure of originating motion for initiation of the proceedings committed no error of law. Besides the substantive legal grounds upon which the 1st interested party has opposed this application, he has also challenged the standing and capacity of the applicant. He contended that the interest that the applicant and the group of lecturers he was representing have in the case is coterminous with that of the 2nd interested party. He said the 2nd interested party filed processes in the High Court and has a pending appeal against the ruling of 10/7/2017 so the court has a discretion to deny the applicant audience. He further submitted that the Winneba Chapter of UTAG that the applicant was representing have no separate and distinct legal existence in the Constitution of UTAG so they have no capacity to sue and same goes for the applicant.

We shall first deal with the issues of standing and capacity of the applicant raised by the Interested Party. This court has held repeatedly that applications for prerogative writs have a special public aspect to them and are therefore not restricted by notions of *locus standi*, i.e. one does not need to show that some legal right of his is at stake. They may be granted to a total stranger. See **In Re Appenteng (Decd); Republic v High Court, Accra, Ex parte Appenteng [2005-2006] SCGLR 18.** Our opinion is that since the issues in this application are in respect of the proper administration of justice in conformity with the rules of court, a stranger to the proceedings in the High Court and an unincorporated group of persons would have capacity to raise them since it is in the interest of the public that the machinery of the administration of justice works properly.

On the substantive grounds of the application, our view is that the trial judge did not properly direct himself on the conditions under which Order 19 R 2 of C.I.47 becomes operative for the purpose of initiating proceedings in the High Court. It ought to be noted that the provisions in Order 19 R 2 talk of "proceedings by which **an application is to be made to the court…under any enactment** shall be initiated by motion...". That refers to court proceedings that are directed to be taken by provisions of an enactment either by way of application or otherwise. In many instances, the legislature in passing statutes create rights for the benefit of classes of persons or remedies for persons aggrieved by the exercise of authority conferred

by a statute to have recourse to the courts for redress. The statute would usually provide that the beneficiary of the right or the aggrieved person may have recourse to the court by application or some other means. It is where such provision has been made in a statute that a person alleging to be entitled to a right created by that statute or aggrieved by the exercise of authority under the statute may properly invoke the jurisdiction of the High Court by using the procedure provided for in Order 19 R2 of C.I.47. As was rightly pointed out by lawyer for the applicant in his statement of case, one example of a statute that creates rights for a class of persons is section 217 of the Companies Act, 1963 (Act 179) which provides as follows;

"217. Injunction or declaration in the event of illegal or irregular activity

(1) The Court on the application of a member may by injunction restrain the company from doing an act or entering into a transaction which is illegal or beyond the power or capacity of the company or which infringes a provision of its Regulations, or from acting on a resolution not properly passed in accordance with this Act and the company's Regulations, and may declare that act, transaction or resolution already done, entered into, or passed to be void."

An example of a provision that gives relief against exercise of authority under a statute is section 39 of the Economic and Organised Crime Act, 2010 (Act 804) which states that;

"39. (1) A person who claims an interest in property which is the subject of a freezing order shall apply to the Court for a review of the order on notice to the Executive Director, within fourteen days after the issue of the freezing order."

In the instant case the provisions of Acts 663 and 672 that the 1st interested party alleged had been breached did not create rights in him to apply to the court for redress. He was simply exercising his general legal right to seek a declaration from a court of law on any matter that is justiciable and therefore had to come under Order 2 R 2 of C.I.47 which stipulates the procedure for initiating civil proceedings generally. It provides as follows;

"Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filling of a wit of summons."

The declaratory reliefs and consequential orders sought by the 1st interested party in the High Court are regular civil proceedings and therefore ought to have been initiated by writ of summons pursuant to the provisions of Order 2 R 2 and not Order 19 R 2. The trial judge was therefore clearly in error when in the face of the reliefs sought he held that the proceedings were properly constituted with the use of the

originating motion. In our opinion, the jurisdiction of the High Court was not properly invoked in this case.

This court has held that where a High Court or Court of Appeal in a decision commits an error of law apparent on the record which error is material, grave, fundamental, substantial or is so serious as to go to the root of the matter, certiorari will issue to quash the decision. The error in this case has to do with the originating process by which the jurisdiction of the High Court was invoked. Jurisdiction is fundamental to a court's authority to adjudicate matters placed before it so where its jurisdiction is wrongly invoked a court of law has to correct that process before it can proceed with the case, no matter the importance of the matters raised in the processes before it.

The 1st interested party has argued in the alternative that certiorari is discretionary so if even this court is of the view that the trial judge committed an error of law apparent on the record we should refuse this application since there is the alternative remedy of an appeal. He further submitted that since the substance of his case is about breaches of statutes and courts are required to enforce statutes, the court ought to exercise its discretion in refusing the application. We have given deep thought to these matters raised by the 1st interested party but have taken the position that the process by which the jurisdiction of a court is invoked is so fundamental to the orderly administration of justice that we cannot gloss over the error in this case and allow it to persist in the processes before the High Court. In the case of **Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal & Others) Interested Parties [2009] 460,** this court quashed by certiorari proceedings which the statute stipulated ought to be commenced by petition but were initiated by a writ of summons. Just as we have here, in that case the High Court had refused an application to set aside the originating process and proceeded to grant an injunction in the matter so the interested party moved the Supreme Court for certiorari. This court unanimously held as follows in the Headnote;

"the decision of the trial judge, dismissing the motion by the applicant to strike out the writ, was an error of law apparent on the face of the record and would therefore be quashed by an order of certiorari."

Though that case dealt with a substantive statute, the reasoning of the court there is very instructive. From the nature of the case in the High Court and the serious allegations made by the 1st interested party, justice would require that the rules of court be strictly complied with to ensure complete and effective adjudication.

In the circumstances we grant the application for certiorari, quash the decision of the High Court, Winneba dated 10/7/17 and set aside the 1st interested person's originating motion filed on 23/5/17 with liberty to him to issue a writ of summons to have his grievances redressed. In coming to this conclusion we are not without

sympathy for the 1st Interested Party who, apparently out of public spiritedness, wants the right thing to be done.

But before we rest this delivery, we noticed among the processes filed before us a letter from the new Chairman of the Governing Council of the University of Education, Winneba announcing its due constitution in accordance with the provisions of Act 672. Since this case is about the governance of the University, we say for the avoidance of doubt that our decision does not affect whatever the newly constituted Governing Council has done.

G. PWAMANG
(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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