IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)
APPAU, JSC
PWAMANG, JSC
DORDZIE (MRS), JSC
OWUSU (MS), JSC

CIVIL MOTION
NO. J5/24/2020

28TH JULY, 2020

THE REPUBLIC

VRS

HIGH COURT (COMMERCIAL DIVISION), ACCRA ..... RESPONDENT

ACCRA

EX PARTE: CHARLES ZWENNES ..... APPLICANT

AND

1. PHILIP ADDISON
2. MERLIN GAMING GHANA LIMITED
3. ERIC GBEHO ..... INTERESTED PARTIES

RULING

DOTSE JSC: -

By his application, the Applicant herein, a legal practitioner of Gaisie Zwennes Hughes & Co. is seeking an order of Certiorari to bring up to this court the proceedings and Rulings dated 9th December 2019 in the *High Court, Commercial Division, presided over by*

Koomson J, Suit No. CM/MISC/0961/2019 intitutled, In the Matter of An Application Pursuant to Section 217 of the Companies Code, 1963 (Act 179) And in The Matter of Merlin Gaming Ghana Limited – Eric Gbeho (Applicant) v (1) Philip Addision (1st Respondent) and (2) Merlin Gaming Ghana Limited, (2nd Respondent) for the orders of the High Court, dated 9th December, 2019 already referred to supra to be quashed.

The grounds of the application are the following:-

1. Breach of the rules of natural justice
2. That the order of the Judge, made without assigning reasons is in breach of the Applicant's constitutional right to work.
3. That the order is also in breach of the Applicants constitutional right to avail himself of remedy through the appellate process, and
4. That the order of the learned Judge is altogether ***irrational*** and ***unreasonable*** because it disqualified the Applicant for conflict of interest due to his compliance with statutory law laid out under section 210 (5) of Act 179.

FACTS

On the 14th day of June 2019, Eric Gbeho, hereafter 3rd Interested Party, engaged the Applicant herein, Charles Zwennes Esq. to file an Originating Notice on Motion in *Suit No. CM/MISC/0961/2019* between the parties referred to as indicated as follows:-

"ERIC GBEHO		-	APPLICANT
VRS			
1.	PHILIP ADDISION & ANOR	-	1ST RESPONDENT
2.	MERLIN GAMING GHANA LIMITED	-	2ND RESPONDENT"

Seeking the following reliefs:-

(i) "A declaration that the person going by name of ***Philip Addision, Esq.*** and, holding himself out since ***23rd May 2019 as the substantive Company Secretary of Merlin Gaming Ghana Limited and purporting to exercise statutory powers of the company under the office of Company Secretary is not the Company Secretary properly and duly so appointed*** and that any such appointed (sic) is null and void and of no legal effect, and

(ii) An order of Interlocutory Injunction restraining the said Philip Addison Esq. from ***exercising statutory powers as the Company Secretary of Merlin Gaming Ghana Limited or from holding himself out to the body of shareholders, the board of directors, the Registrar of Companies and/or directors, the Registrar of Companies and/or the public at large in that capacity and from interfering with the internal management and operation of the Company until final determination of this Suit***, and

(iii) An order cancelling as null and void any documents filed (as Certified True Copies or otherwise) and held on the pubic registrar ***or appearing there on the Register of Companies at the Registrar General's Department in which the said Philip Addison Esq. appears as Company Secretary;*** and

(iv) ***An order directed at the Board of Directors of Merlin Gaming Ghana Limited to duly convene a meeting of the Board of Directors of the Company for purposes of carrying out and exhausting the statutory provisions of Section 190 (3) of the Companies Code, 1963 (Act 179) forthwith***."

Upon service of the above process on the 1st Interested Party *(Philip Addision)* he caused to be filed Notice of Appointment of Solicitors, he subsequently filed a Motion to Dismiss the suit as well as an Application to Disqualify the Applicant herein as lawyer for the 3rd Interested Party (Eric Gbeho) and the Applicant in that Suit. The Motion of Disqualification was opposed by the 3rd Interested Party acting per the Applicant herein as counsel. The 2nd Interested Party, Merlin Gaming Ghana Limited acting through its Chief Executive Officer, Francis Tachie-Menson, also filed an application to disqualify the Applicant herein as lawyer for the 3rd Interested Party and this was also opposed.

The reasons for the disqualification processes was premised on the fact that the Applicant in these proceedings was conflicted in the handling of the substantive case because the 3rd Interested Party had deposed in the substantive suit that the Applicant was a shareholder of the Interested Party Company, had also been appointed as a Director of the company and that he had accepted both appointments and was acting in these capacities through his law Firm, ***Gaisie Zwennes, Hughes and Co. (i.e. Shareholder, Director and Company Lawyer).*** The learned trial Judge then decided to hear all the disqualification applications together and accordingly informed all parties and counsel in the matter.

From the processes that have come before us in these proceedings, it appears certain that the applications were subsequently moved and heard before the learned trial Judge, Koomson J. The learned trial Judge further directed the parties to file their submissions within three days and adjourned the suit.

Parties through their counsel responded by filing their submissions. Further hearings took place before the court on 17th October 2019 and the Applicant was granted further leave to file responses to the Interested Parties, who were also granted a right of reply after service had been effected on them. All the parties and their counsel complied as usual with these orders.

On the 9th day of December 2019 the court presided over by Koomson J, delivered a Ruling in this matter. In view of the fact that it is this Ruling which is the subject matter of this Certiorari application, we deem it appropriate to set out the entire Ruling as follows:-

"IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON MONDAY THE 9TH DAY OF DECEMBER 2019
BEFORE HIS LORDSHIP GEORGE K. KOOMSON **J**

ERIC GBEHO - APPLICANT
VRS
PHILIP ADDISION & ANOR - RESPONDENTS

Parties: Absent except 2nd respondent (Rep by Frank Tachie-Menson)
Counsel: Dr. Isidore Tufuor for Dennis Agyei-Dwomoh for Respondent/Applicant

BY COURT:

This is an application for an order to disqualify Counsel Charles Zwennes and his chambers from representing the Applicant/Respondent in the suit on the grounds of conflict of interest. **I am of the considered opinion that there is a clear case of conflict of interest having been made out by the 2nd Respondent/Applicant. I accordingly grant the application. I shall give my reasons on the 10th March, 2020. Counsel Charles Zwennes and his chambers, Gaisie Zwennes, Hughes & Co. are hereby ordered to cease representing the Applicant/Respondent in this matter pending before the court.**

The Applicant/Respondent is hereby given 30 days within which to engage the services of a new lawyer to represent him in the substantive matter." Emphasis

We have also perused processes which indicate that the Applicant, acting again on the instructions of the 3rd Interested Party has filed a Notice of Appeal and Stay of Proceedings in respect of the Ruling of 9th December 2019.

GROUNDS OF THE APPLICATION

We have perused the processes of all the parties and their counsel in this application before us. These include the motion papers, affidavits, the various exhibits which are some of the record of proceedings, documents relied on by the parties and Rulings and or decisions by the trial High Court.

In view of the fact that no new points of law have been raised in this Certiorari application and in order not to be repetitive and re-invent the wheel in respect of the numerous

decisions that have been rendered by this court, in respect of this court's jurisdiction in the exercise of its supervisory jurisdiction we have decided not to belabour this point any further.

GROUND I

BREACH OF THE RULES OF NATURAL JUSTICE

If we confine ourselves to the original intendment and scope of the rules of natural justice, it is apparent that the Applicant has not succeeded in establishing the breach of any of the principles of the rule of natural justice. For example, the Applicant from the records available was given every opportunity to fully participate in the decision making process. See the case of ***Laguda v Ghana Commercial Bank [2005-2006] SCGLR 388.*** This has therefore satisfied the *"audi alteram partem"* rule of natural justice.

Secondly, from the processes filed by the Applicant, it is certain that his complaints against the learned trial Judge, stems from the comments allegedly made by the Judge during the course of the hearing which the Applicant considered as being prejudicial as if the Judge had descended into the arena of conflict. This according to the Applicant rendered the Judge biased in his role as a Judge.

We further observe that, one other serious complaint by the Applicant which found expression in the grounds of this application is the fact that, by the Ruling of 9th December 2019 which the Judge rendered, he reserved his reasons for the said judgment for a future date.

This method of managing the case loads in the courts has virtually become an acceptable phenomenon of expeditiously disposing of cases albeit for the detailed reasons to be given later. By this method, the decision is made known bringing to an end the speculation on the fate of the litigation. It is only the detailed reasons that are given later. This court itself has in the past couple of years adopted the same procedure to expeditiously bring litigation to an end with expedition.

We have under the circumstances looked at cases such as ***Republic v High Court, Kumasi Ex-parte Mobil Oil (Ghana) Limited Applicant, (Hagan- Interested Party) [2005-2006] SCGLR 312, Republic v Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612, Republic v High Court, Accra, Ex-parte CHRAJ, [Addo – Interested Party) [2003-2004] 1 SCGLR 312 and Republic v High Court, Accra, Ex-parte Ghana Medial Association [Arcman-Ackumy – Interested Party] 2012, 2 SCGLR 768*** where the Supreme Court laid down the following as the grounds upon which the supervisory jurisdiction of the court may be ***invoked.*** These include:-

1. Want or excess of jurisdiction
2. Failure to comply with the rules of natural justice
3. Breach of the Wednesbury principle

The principle of law, generally decided in the cases referred to supra, when applied to ground one of the instant application and to the remaining grounds two to four, makes it abundantly clear that the instant application is not based on any of the established and

known grounds for invoking the supervisory jurisdiction of this court, but instead has been premised and borne out by an emotional outburst of anger and frustration.

This application has therefore not been brought on any substantial and material grounds to merit any serious evaluation. This ground is accordingly dismissed as inapplicable for the grant of the application sought.

GROUND TWO

Delivery of decisions with reserved reasoning as has been stated supra has become an accepted method of adjudication of disputes not only in this country, but everywhere in common law jurisdiction. Failure to render reasons with the delivery of the main decision does not amount to breach of the Applicant's constitutional right to work as has been erroneously laid out by the Applicant. The scope of this court's exercise of its supervisory jurisdiction has been stated in the cases refereed to supra. Failure to render reasons for a particular decision when rendered is not and has never been one of the accepted and known grounds for the successful invocation of this court's supervisory jurisdiction. Like ground one, this ground two of the application fails and is dismissed.

GROUND THREE

Having already filed an appeal against the said decision and similarly filed other processes including the instant one, the substance, scope and worth of this ground pales into insignificance and is thus dismissed.

GROUND FOUR

Irrationality and unreasonableness which does not fall within the scope of the exercise of this court's supervisory jurisdiction cannot stand the test of time notwithstanding the vehemence with which the application is made. What should be noted is that, Certiorari is a discretionary remedy which is very technical and precise in nature. However, for an Applicant to succeed, he must focus on the established and proven grounds which are in the motion paper, supporting affidavits, the record of the court attached and the principles of law applicable.

The availability of an equal but effective remedy may lead to the denial of the exercise of this court's jurisdiction.

Thus, notwithstanding the fact that the Applicant may have established the ***"technical grounds"*** on which the application may be generally considered, the court may dismiss the application if it fails to comply with the other established conditions precedent, including availability of another equally effective remedy, the conduct of the Applicant or that of his lawyer, for example.

See the dictum of Atuguba JSC, in the case of the ***Republic v High Court, Denu, Ex-parte Agbesi Awusu II (N0.2) Nyonyo Agboada (Sri III) Interested Party [2003-2004] 2 SCGLR 907*** where he stated thus:-

> ***"It is well known that Certiorari is a discretionary remedy and therefore it does not necessarily follow that, when the technical grounds upon***

which Certiorari lies are established, it will be pro tanto granted." Emphasis

See also case of ***Republic v High Court, Accra Ex-parte Attorney-General, [Ohene Agyapong – Interested Party] [2012] 2 SCGLR, 1204 at 1205***, where the Court stated with clarity that, where an Applicant has a remedy other than certiorari open to him, that is a factor that may be taken into account in denying him the discretionary remedy.

Even though we are not concerned with the merits of the substantive case at this stage, the issue of conflict of interest levelled against the Applicant is a formidable one, considering the status of the Applicant as a shareholder, Director and his Law Firm acting against the company for which he is a part owner and secretary. These are serious matters for consideration and what we think the Applicant needs to do at this stage is to step back and re-consider his entire role as a Lawyer in the dispute vis-à-vis the positions he claims to hold in the Interested Party Company.

Whichever way one looks at this ground four of the application, and the cases of ***Republic v High Court, Fast Track Division Accra, Ex-parte CHRAJ (Hon. Dr. Richard Anane – Interested Party) [2007-2008] SCGLR 340 at 365 and Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB at 223,*** which have been relied on by the Applicant are actually inapplicable to the facts and circumstances of this case. This is because, as was indeed stated in the Statement of case of the Applicant, the much talked about lack of rendering the reasons

for the decision on 9th December 2019 had indeed been rendered on 10th March 2020. Applicant has also since filed an appeal and other processes.

Having thus examined and evaluated all the processes filed in this application and also taking into consideration the scope of this court's jurisdiction in the exercise of its supervisory jurisdiction in seminal cases such as the following ***Republic v High Court, Accra, Ex-parte Ghana Medical Association [Arcman-Ackumy – Interested Party]*** supra.

See also the unreported decision of this court in ***Suit No. J5/14/2019 dated 19th June 2019 intitutled***, ***The Republic v High Court Commercial Division 6, Accra Nowfill S. Laba – Applicant; Wissam Laba and 2 Others, (i.e. Latex Foam Rubber Products case),*** where the court speaking with unanimity reiterated all the principles established in the pivotal and seminal cases on this courts exercise of its supervisory jurisdiction referred to supra.

The decision rendered by the learned trial Judge, Koomson J, on 9th December, 2019 is quite explanatory, specific and admits of no controversy because of the clarity of thought and purpose that it brought to an understanding of the case.

CONCLUSION

Flowing from our brief rendition supra, we hereby conclude that, from our considered evaluation of the Application herein, we are of the opinion that the Applicant's application for an order of Certiorari to quash the proceedings and decision of Koomson J presiding over the High Court, Accra in Suit No. CM/MISC/096/2019 dated 9th December 2019

intitutled *"In The Matter of An Application Pursuant to Section 217 of the Companies Code, 1963 (Act 179) and In the Matter of Merlin Gaming Ghana Limited; Eric Gbeho (Applicant) v Phillip Addision 1st Respondent and 2. Merlin Gaming Ghana Limited (2nd Respondent)* fails in its entirety and is accordingly dismissed.

EPILOGUE

We reiterate and affirm the long held cherished views that the Legal Profession is an honourable, learned and noble profession. In this respect, those who practice the legal profession, must like what Benjamin Franklin, an American statesman wrote on the "Poor Richards Almanack, 1733 that,

"God works wonders now and then

Behold a lawyer an honest man."

If indeed Lawyers are honest people which by their training and codes of ethics and the position they occupy in society they ought to be, then they must in the practice of the profession endeavor to eschew any practices, and or tendencies that are likely to give any indication of conflicting their roles in the discharge of their professional responsibilities. That is the way for the profession to maintain its dignity, honour and respect.

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

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS)

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

CHARLES ZWENNES APPEARS IN PERSON FOR THE APPLICANT.

DENNIS AGYEI DWOMOH FOR THE 1ST AND 2ND INTERESTED PARTIES/RESPONDENTS.