IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)

PWAMANG JSC

PROF. KOTEY JSC

AMADU JSC

PROF. MENSA-BONSU (MRS.) JSC

CIVIL MOTION
NO. J5/63/2022

26TH JULY, 2022

REPUBLIC

VRS

HIGH COURT (LABOUR COURT 1), ACCRA ..... RESPONDENT

EX PARTE: A & C DEVELOPMENT COMPANY LIMITED ..... APPLICANT

1. GLADYS FORSON ABOAGYE
2. LIBERTY ESTATE AGENCY ..... **INTERESTED PARTIES**
3. JAMES ORLEANS-LINDSAY

RULING

PWAMANG JSC:-

On 26th July, 2022, we dismissed the applicant's motion praying for certiorari to quash the ruling of the High Court, Labour Division, Accra dated 1st April, 2022 but reserved

our full reasons to be given on 14th October, 2022 which we now do. The Applicant in the instant proceedings was, by an order of the court, joined to suit No. LD/0986/20 pending in the High Court, Labour Division, Accra, as 4th defendant for alleged acts of trespass to the workplace of the Plaintiff in that suit who is the 1st interested party herein. Of the reliefs claimed by the plaintiff in the High Court, the following are relevant for purposes of these proceedings;

a. Recovery of possession from the 1st, 2nd, 3rd and 4th defendants of all that parcel of land measuring an approximate area of 0.81 acre (workplace), less the portion of the workplace affected by the judgment in suit number FAL/301/2013.
b. An order of perpetual injunction restraining the 1st, 2nd, 3rd and 4th defendants, their respective agents, assigns and representatives from interfering with the Plaintiff's possession and use of the portion of the workplace which is not affected by the judgment in suit number FAL/301/2013.
c. An order directed at the 4th defendant to demolish the said high rise building located on a portion of the workplace not affected by the judgment, and to bring the said portion of the workplace to the state it was before the said construction works.

When the applicant was served with the processes, it entered conditional appearance and filed a defence. Thereafter, the Applicant filed a motion to strike out the action against it on the ground, that by virtue of **Section 98** of the **Land Act, 2020 (Act 1036),** the plaintiff's action in the High Court against it was premature. The provision is as follows:

> *"An action concerning any land or interest in land in a registration district shall not be commenced in any court unless the procedures for resolution of disputes under the Alternative Dispute Resolution Act, 2010 (Act 798) have been exhausted"*

The case of the Applicant is that where the land in dispute lies, being East Legon, Accra was declared a registration district by LI 1534. Therefore, the plaintiff could not commence an action in court concerning that land without first exhausting the procedures under the **Alternative Dispute Resolution Act, 2010 (Act 798).** The High Court,

after hearing the parties, dismissed the motion, hence this application invoking our supervisory jurisdiction for an order of certiorari to quash the decision of the High Court, alleging that the judge exceeded his jurisdiction by not complying with section 98 of Act 1036.

We are at a loss as to how the High Court judge who is alleged to have misconstrued a statute can be accused of exceeding his jurisdiction. You the applicant made an application to the judge urging on him a certain construction of the statute you rely on and the judge disagreed with your construction in his ruling. That decision certainly was made within the jurisdiction of the judge. What the submissions in the statement of case of the applicant amount to is that the judge committed a fundamental error of law that affects his jurisdiction to proceed with the hearing of the case. In that case, the applicant ought to have applied for an order of prohibition, and since the error is alleged to entail a breach of statute by the judge, then if applicant's claim is upheld, the judge could be prohibited from continuing with the case and not to apply for certiorari.

However, the applicant's submission that the judge erred in his interpretation of section 98 of Act 1036 has been competently responded to by Mr Yaw Kyere Ampadu Esq, counsel who appeared for the 1st interested party. He submits that the applicant's interpretation of the section is misconceived and that the provision does not have the effect the applicant has attributed to it. He referred to the court the case of **Boyefio v NTHC Properties Ltd [1996-97] SCGLR 531** in which the Supreme Court construed a provision which is almost the same as section 98 of Act 1036.

Act 1036 is a new statute and as it is being implemented, issues of interpretation are likely to arise and there is the need for the courts to deal with them to ensure smooth implementation of the Act. We shall therefore tackle the main issue in this application which is whether section 98 of Act 1036 bars the commencement in the regular courts of an action in relation to land within an area declared a registration district under the Act?

As rightly submitted by the counsel for the 1st interested party, section 98 of Act 1036 is not novel in the statutory framework for land registration in this country. It has an

antecedent in section 12(1) of the **Land Title Registration Act, 1986 (PNDCL 152),** the Act that immediately preceded Act 1036 on registration of interests in land. It provided that:

> *"An action concerning land or an interest in land in a registration district shall not be commenced in a Court until the procedures for settling disputes under this Act have been exhausted."*

We shall repeat section 98 of Act 1036 for ease of comparing the two provisions;

"An action concerning any land or interest in land in a registration district shall not be commenced in any court unless the procedures for resolution of disputes under the Alternative Dispute Resolution Act, 2010 (Act 798) have been exhausted"

The only real difference in these two provisions is, that whereas section 98 of the Act 1036 makes reference to procedure for resolution of disputes under Act 798, PNDCL 152 talks of the procedures for settling disputes under "this Act". That Act established an Adjudication Committee and set out an adjudicating procedure to be followed if a dispute arose in the course of registration of land or interest in land.

PNDCL 152 stated the functions of that Adjudication Committee under **section 37(2)** thereof to include the following:

> *"Where an uncertainty or a dispute arises as to the position of a boundary, the adjudication committee, on the application of an interested person, shall, on the evidence that it considers relevant, determine and indicate the position of the boundary"*

We notice that by **section 91(2), Act 1036** also has a similar provision which is as follows;

> *"Where an uncertainty or a dispute arises as to the position of a boundary within a registration district, the Land Registrar shall advise the claimants to refer the dispute for resolution under the Alternative Dispute Resolution Act, 2010 (Act 798)*

for the purposes of the determination and indication of the position of the boundaries."

The similarity in the two statutes convinces us that the law maker did not intend to change the existing arrangement for dispute resolution in land matters as they relate to the nature of issues that were to be dealt with by a body other than the regular courts. It is clear that the function of the Adjudicating committee under PNDCL 152 is now to be performed in accordance with the provisions of the Alternative Dispute Resolution Act, 2010(Act 798) with the enactment of Act 1036.

So, what was the regime for resolving land disputes in our jurisdiction when PNDCL 152 was in force? It must be pointed out that after the enactment of PNDCL 152 in 1986, there arose doubts within the legal community as to whether the provision in section 12(1) of PNDCL 152, reproduced above, ousted the jurisdiction of the regular courts in respect of disputes affecting land or interests in land in a registration district or the ouster applied to only actions relating to disputes arising from the process of registration of title to land or interest therein.

In **Boyefio v NTHC (supra)**, the plaintiff instituted an action in the High Court against the defendant for damages for trespass, ejectment and perpetual injunction in respect of a piece of land in an area that had been declared a registration district. The defendant then applied to the court to dismiss the action on the ground that section 12(1) of PNDCL 152 operated to oust the jurisdiction of the regular courts in land disputes. The plaintiff's counsel argued in response, that by Article 140 of the Constitution, 1992, the High Court has been given jurisdiction in all matters, civil and criminal and that jurisdiction cannot be diminished by a statute. The High Court judge therefore referred the matter to the Supreme Court for interpretation pursuant to article 130(2) of the Constitution. The Supreme Court interpreted section 12(1) of PNDCL 152 and stated as follows:

"the true import of section 12(1) of PNDCL 152 is that whenever in a registration district, a dispute arises in the course of a registration of title to land or interest therein in the Land Title Registry, no party to such a dispute shall commence any

action in respect of this dispute in any court, until the Land Title Adjudication Committee has had the opportunity of first determining the said disputes. Accordingly, the ban on taking actions in the courts as imposed in section 12(1) of PNDCL 152, is restricted solely to actions relating to disputes arising in the course of the Land Title Registry's exercise of registering such titles to land and interests therein."

The court went on to state that the Court of Appeal's decision in **Amar v Mireku Court of Appeal, Accra, 9 December 1993, unreported** which implied that the court in that case had no jurisdiction to determine the defendant's counterclaim for title to a house because of section 12(1) of PNDCL 152, was erroneous. The court also made reference to the case of **Kasser v Raziel Construction Ltd [1993-94] 1 GLR 241, CA** where Aikins JSC rightly pointed out:

"It is a misconception therefore to assert that the mere declaration of a registration district gives automatic jurisdiction to the adjudication committee to entertain claims of proprietors of lands or of interest in land within the registration district."

The Supreme Court stated that the adjudication committee's jurisdiction was in respect of only disputes arising in the course of registering titles and interest in land at the Land Title Registry in a registration district. If the dispute arose outside the registration exercise of the Land Title Registry, then notwithstanding that the area had been declared a registration district, the courts were the proper forum for its determination. After that decision of the Supreme Court, the ordinary courts continued to exercise jurisdiction in land disputes.

Having regard to what has been explained above regarding the similarities between PNDCL 152 and Act 1036, the established principle of interpretation of statutes which applies here is, that where a statutory provision has received judicial interpretation and the law maker repeats that provision in a subsequent enactment, then the law maker is to be presumed to intend the meaning ascribed to the provision by the judicial interpretation, unless express qualifying words are introduced in the later provision or the

court is convinced that the earlier interpretation was not sound. See **Republic v. Tekperbiawe Divisional Council & Another; Ex Parte Nene Korle II [1972] 1 GLR 199-209.**

We do not find any qualifying words in Act 1036, and none has been pointed out to us by the applicant, which portray an intention by Parliament to change the existing law on litigation in land disputes in Ghana. Furthermore, we are satisfied about the soundness of the interpretation by this court in **Boyefio v NTHC (supra),** which is ordinarily binding on us anyway. In our considered opinion, section 98 of Act 1036 refers to only disputes that arise in the course of the process of registration of title or interest in land falling within a registration district. The section is not meant to affect the well established and long standing jurisdiction of the regular courts in land disputes even if the land fall within a registration district. The complicated rules that apply in the determination of land ownership disputes make the courts more suitable, competent and the tested forum for resolving such disputes, while matters of a technical nature about the land title registration process may be settled by the arbitration under Act 798.

Therefore, our view is that the High Court judge came to the right conclusion by dismissing the application made pursuant to section 98 of Act 1036 to strike out the suit that was filed by the 1st interested party. Section 98 of Act 1036 does not take away the jurisdiction of the regular courts in land disputes in a registration district. We accordingly dismiss this application for certiorari.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(CHIEF JUSTICE)

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

I.O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

PROF. H.J.A.N. MENSA-BONSU (MRS.)
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DR. KWEKU AINUSN ESQ. FOR THE 1ST INTERESTED PARTY.