IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2020

CORAM: DOTSE, JSC (PRESIDING)
MARFUL-SAU, JSC
AMEGATCHER, JSC
LOVELACE-JOHNSON (MS), JSC
PROF. MENSA-BONSU (MRS), JSC

CIVIL MOTION
NO. J5/52/2020

25TH NOVEMBER, 2020

THE REPUBLIC	**…….**	**RESPONDENT**
VRS		
HIGH COURT, WA	**……..**	**RESPONDENT**
EX-PARTE OFFICIAL LIQUIDATOR DKM DIAMOND MICROFINANCE LTD	**……..**	**APPLICANT**
MOGTARI ABDUL RAHAMAN & 11 OTHERS	**…….**	**INTERESTED PARTIES**

RULING

MARFUL-SAU, JSC:-

The applicant herein who is the Official Liquidator of DKM Diamond Microfinance Ltd prayed this Court for an order of certiorari directed at the High Court, Wa presided over by His Lordship Justice Kwasi Boakye, to quash the ruling of that court dated the 7th of

July 2020 in suit number UW/WA/HC/E2/23/2020. In that suit the interested parties herein had applied for leave to issue a writ of summons against the applicant herein. The High Court granted the application for the interested parties to issue a writ of summons against the applicant. It is the order granting leave to the interested parties to issue the writ of summons that has become the subject of this application. On the 25th November, 2020, this Court by a unanimous decision dismissed the application for certiorari by the Official Liquidator and reserved its reasons which we hereby deliver.

The brief facts of the case are that on the 1st of March 2016 the Bank of Ghana, revoked the licence of DKM Diamond Microfinance Ltd under section 68 (1) of Banking Act 2004, Act 673, and the applicant was appointed the Liquidator of the company. The applicant subsequently ordered the liquidation of the company under section 1(1) (b) of then Bodies Corporate (Official Liquidation) Act, 1963 (Act 180), which is now section 81(1) (b) of the Corporate Restructuring and Insolvency Act, 2020 (Act 1015). The applicant published in the national dailies a Press Release informing the interested parties to submit their proof of debts. The interested parties who were paid portions of their claim, later filed an application in the Registry of the High Court, Wa, for leave to issue a writ of summons against the Official Liquidator. The High Court, Wa, granted the interested parties leave to issue the writ of summons on 7th July 2020.This is the order applicant sought to quash by certiorari.

The applicant formulated one ground for the application, which was that the learned justice of the High Court, Wa committed error of law apparent on the face of the record which goes to jurisdiction when he granted the interested parties leave to issue a writ against the Official Liquidator of DKM Diamond Microfinance Ltd. The issue we need to resolve in this case is whether the High Court, Wa, erred when it granted leave to the interested parties to issue a writ of summons against the applicant herein?

Now, reading the ruling of the High Court, Wa, it is clear that the interested parties herein brought their application for leave under section 93 of the new Corporate Restructuring and Insolvency Act 2020, Act 1015, which provides as follows:-

'' A person shall not on the commencement of a winding up proceed with or commence an action or civil proceedings against the company other than proceedings by a secured creditor for the realization of the security of that secured creditor except:

a) By leave of the Court and

b) Subject to the terms that the Court may impose.''

The resolution of this case depended on the interpretation of section 93 of Act 1015 to determine whether or not the High Court, Wa did commit an error in granting leave to the interested parties to issue the writ of summons. The issue with the interpretation of section 93 relates to whether unsecured creditors have the right to sue and if so under what circumstances. In this proceedings the applicant, who classified the interested parties as unsecured creditors, posited that under section 93 of Act 1015, upon the commencement of winding up it is only secured creditors who have the right to commence action against the company. According to the applicant unsecured creditors such as the interested parties have no right to sue under section 93 of Act 1015.

This Court in the case of Republic v. the High Court (Commercial Division) Ex-parte Alfredina Ofori and Nikabs Grande, unreported decision in Civil Motion No. J5/36/2016 of 3/11/2016 had the opportunity to pronounce on the scope of section 17 of the Bodies Corporate (Official Liquidation) Act, 1963, Act 180 a provision retained as section 93 of Act 1015. Pwamang JSC, who delivered the decision of the Court had this to say:

'The provision of section 17 of Act 180 is clear and unambiguous. It provides that;

On the commencement of a winding up, no action or civil proceedings against the company, other than proceedings by a secured creditor for the realization of this security, shall be proceeded with or commenced save by leave of the Court and subject to such terms as the Court may impose.''

His Lordship continued as follows:- '' What it means in simple language is that upon commencement of a winding up only secured creditors are allowed as of right to sue or continue with pending civil proceedings for the realization of their security. Any other person who has a cause of action against a company being wound up cannot sue as of right but may do so only with the prior leave of the High Court. Similarly an unsecured creditor who has pending civil proceedings cannot continue with them without leave of the High Court. So the applicants in this case who are not secured creditors were within their rights to apply for leave to continue with their case and the Judge acted in accordance with the law in granting same.''

Taking inspiration from the above decision of this Court, we find it difficult to see any error committed by the High Court, Wa in granting leave to the interested parties to commence an action against the applicant. We hold that the High Court was right in granting the interested parties leave to issue the writ of summons. The High Court, Wa, was within jurisdiction and it rightly granted the leave on the 7th July 2020, thus no error was committed to warrant the order of certiorari sought by the applicant.

It is now settled that when a High Court acts within jurisdiction and commits an error, that decision will only be quashed under the supervisory jurisdiction of this Court if only the error is so fundamental to render the impugned decision a nullity. So in a case where the High Court acts within jurisdiction and no error is committed as held in this case certiorari will not lie.

WHAT IS THE LAW ON CERTIORARI?

The law is now well settled by this court. In the case of **Republic v. High Court (Commercial Division) Accra; Ex parte the Trust Bank Ltd (Ampomah Photo Lab Ltd & Three Others (Interested Parties) {2009} SCGLR 164,** this court speaking through Dr. Date-Bah, JSC stated the law at page 169 to 171 as follows:

'' The current law on when prerogative writs will be available from the Supreme Court to supervise the superior courts in respect of their errors of law was re-stated and then fine- tuned in the cases of Republic v. High Court Accra; Ex parte Commission on Human Rights and Administrative Justice (Addo Interested Party) {2003-2004} 1 SCGLR 312 and Republic v. Court of Appeal; Exparte Tsatsu Tsikata {2005-2006} SCGLR 612 respectively. In my view, the combined effect of these two authorities results in a statement of the law which is desirable and should be re-affirmed. This court should endeavour not to backslide into excessive supervisory intervention over the High Court in relation to its error of law. Appeals are better suited for resolving errors of law. In Exparte CHRAJ (supra), this court, speaking through me, sought to reset the clock on this aspect of the law (as stated at pages 345-346 of the Report) as follows:

''The ruling of this court in this case, it is hoped, provides a response to the above invitation to restate the law on this matter. The restatement of the law may be summarised as follows: where the High Court (or for that matter the Court of Appeal) makes a non-jurisdictional error of law which is not patent on the face of the record (within the meaning already discussed), the avenue for redress open to an aggrieved party is an appeal, not judicial review. In this regard, an error of law made by the High Court or the Court of Appeal is not to be regarded as taking the Judge outside the court's jurisdiction, unless the court has acted ultra vires the Constitution or an express statutory restriction validly imposed on it. To the extent that this restatement of the law is inconsistent with any previous decision of this Supreme Court, this court should be regarded as departing from its previous decision or decisions concerned, pursuant to article 129(3) of the 1992 Constitution. Any previous

decisions of other courts inconsistent with this restatement are overruled".

At page 170 of the report the learned jurist continued the re-statement of the law as follows;

''In Exparte Tsatsu Tsikata (supra), Georgina Wood JSC (as she then was) said (as stated at page 619 of the Report) thus:

The clear thinking of this court is that, our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors either go to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of law alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. The error of law must be one on which the decision depends. A minor, trifling, inconsequential or unimportant error, or for that matter an error which does not go to the core or root of the decision complained of; or stated differently, on which the decision does not turn, would not attract the court's supervisory jurisdiction.''

The learned jurist continued on the same page as follows:

'' The combined effect of these two authorities, it seems to me, is that even where a High Court makes a non- jurisdictional error which is patent on the face of the record, it will not be a ground for the exercise of the supervisory jurisdiction of this court unless the error is fundamental. Only fundamental non-jurisdictional error can find the exercise of this court's supervisory jurisdiction. The issue which arises, on the facts of this case then, is whether the trial High Court either committed a jurisdictional error which is so fundamental as to attract the supervisory jurisdiction of this court.''

The record in this case is clear that the trial High Court had jurisdiction to hear the application that was brought before it, which resulted in the ruling of the 7th July 2020. From the re-statement of the law, we can only exercise our supervisory jurisdiction as invoked by the applicant herein, if we find that the High Court, Wa, committed error of law patent on the record. The other condition is that the said error should be fundamental or substantial going to root of the matter. In this case no error was committed by the High Court, Wa and for that reason our supervisory jurisdiction under Article 132 of the 1992 Constitution was not properly invoked, hence our decision to dismiss the application by the Official Liquidator on the 25th of November 2020.

S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)

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

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

AVRIL LOVELACE-JOHNSON (MS)
(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS)
(JUSTICE OF THE SUPREME COURT)

COUNSEL

GEORGE KOFI BEKAI FOR THE APPLICANT.

ISAAC BORRIDO FOR THE INTERESTED PARTIES/RESPONDENTS.