IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
AD 2017

CORAM: ANSAH, JSC PRESIDING
DOTSE, JSC
YEBOAH, JSC
GBADEGBE, JSC
BENIN, JSC

CIVIL MOTION
NO. J5/12/2017

11TH APRIL, 2017

THE REPUBLIC

VRS

1. THE JUDICIAL SERVICE OF GHANA	**-**	**1ST RESPONDENT**
2. THE ATTORNEY GENERAL	**-**	**2ND RESPONDENT**
EX-PARTE: CATHERINE DE SOUZA	**-**	**APPLICANT**

RULING

YEBOAH, JSC:-

On the 10th April, 2017 we dismissed this application and reserved our reasons which we hereby proceed to deliver.

The applicant herein has invoked our supervisory jurisdiction to quash the judgment of the High Court, Accra dated the 26th October 2016.

To appreciate the basis for invoking our supervisory jurisdiction the facts giving rise to this application must be stated for a full and proper understanding of the case.

The facts appear to be devoid of any controversy. An application for contempt intituled as ***The Republic v Anas Aremeyaw Anas & 4 Others, Ex-Parte Justice Paul Uuter Dery*** was filed at the registry of the High Court, Accra by law firm of Addo, Addo (Legal Attorney) on the 18th day of September 2015.

The Applicant herein was at the time material to these proceedings the Registrar of the Fast Track Court Division of the High Court when the process above referred to was filed. As usual, the Applicant as the Registrar fixed a date for hearing of the application and gave 12th and 13th of October 2015 as the return date. The applicant herein, however changed the return date to 28th September 2015. The Applicant however, failed to notify the Presiding Judge of the change of date for the moving of the motion for committal. As the Presiding Judge was unaware of the change in date, from the original date of 12th & 13th October 2015 she proceeded to hear the application and dismissed same on 28th September 2015 without recourse to the Applicants who had filed the application *(i.e. Justice Dery and the others).*

The applicants, therein feeling naturally aggrieved by the dismissal of the motion resorted to placing the matter in the public domain which attracted unimaginable proportions in the press and social media condemning the Presiding Judge and the Judiciary as a whole. The Chief Justice was not spared. The presiding Judge Torkornoo JA (sitting as additional High Court Judge) reported to the Chief Justice the conduct of the Applicant herein as the Registrar who had caused such embarrassment to the entire Judiciary. The Applicant was given the opportunity to respond to the report of Justice Torkornoo to the Chief Justice.

This the Applicant complied with. However, her explanation appeared not to be satisfactory and she was subsequently interdicted and invited to

appear before a Disciplinary Committee purposely set up to investigate the Applicant's conduct.

The Applicant did not appear before the Committee but resorted to file a motion for judicial review before the High Court (Human Rights Division) presided over by Her Ladyship Gifty Agyei Addo on 9th June 2016 seeking the following reliefs:

i. An order of Certiorari to bring up and quash the interdiction letter dated 4th January 2016 served on the Applicant by the 1st Respondent on 12th January 2016 as well as the invitation to appear before a disciplinary committee dated 6th May 2016.

ii. An order of Mandamus compelling the Judicial Service to restore and pay the benefits, arrears, allowances and entitlements due the Applicants from 1st January 2016 which were withheld and only half paid to her from January to date.

iii. An order of injunction against the Respondents, their agents, privies, workmen and assigns restraining them from investigating the same issues raised in the report by Torkornoo J.A.

iv. A declaration that on a true and proper interpretation of Articles 127 and 161 of the 1992 Constitution, the Plaintiff is not liable to any action or suit for any act or omission by her in the exercise of judicial power vested in her as a Registrar of the Superior Court of Ghana. Consequently, the interdiction letter dated 4th January 2016 from the office of the Judicial Secretary is null and void of no legal effect as it contravened Articles 127 and 161 of the 1992 Constitution and therefore unconstitutional.

v. A declaration that the petition or report by Her Ladyship Justice Gertrude Torkornoo dated 1st December 2015 as contained in a letter signed by one Bernard Bentil dated 8th December 2015 is also null and void since her evidence in support of her petition, is in violation

of Articles 127 and 161 of the 1992 Constitution and therefore unconstitutional.

vi. A declaration that the letter written on behalf of the 1st Respondent dated 6th May 2016 inviting the Applicant to appear before a disciplinary committee is also null and void since same is in contravention of Articles 127 and 161 of the 1992 Constitution and therefore unconstitutional.

vii. A declaration that all proceedings however and whatsoever described arising out of the contents of the Petition of Her Ladyship Justice Gertrude Torkornoo JA is null and void.

viii. A perpetual injunction against any adjudicating body however or whatsoever described restraining them from determining any issues arising out of the contents of the Petition by Her Ladyship Justice Gertude Torkornoo.

ix. An order restraining any adjudicating body howsoever described from determining any issues arising out of the content of the said Petition filed by Her Ladyship Justice Gertrude Torkornoo during the pendency of the instant suit.

The learned High Court Judge dismissed the application as unmeritorious and held among other things that the applicant herein could not seek refuge under those constitutional provisions in issue, precisely articles 127 and 161 of the 1992 Constitution.

The applicant by this application is praying this court to quash by certiorari the judgment of the learned High Court Judge dated 26th October 2016 on the following grounds:-

1. That in the judgment dated 26th October 2016, Her Ladyship Gifty Agyei Addo, a Justice of the High Court, sought to interprete Articles 127 (3) and 161 of the Constitution which power is reserved only for the Supreme Court under the Constitution.

2. That in her judgment dated 26th October 2016, Her Ladyship Gifty Agyei Addo stated as follows:- *"I called in aid the definition inferred to me by the Respondent in respect of the definition of judicial power per the Black's Law Dictionary 8th Edition see page 6 of Exhibit".* It is abundantly clear that the learned trial Judge interpreted a provision in the Constitution instead of applying same to the facts.

3. The learned trial Judge pronounced and declared that if Article 125 (3) of the 1992 Constitution stated that the judicial power shall be vested in the judiciary and those who constitute the Judiciary are the ones listed in Article 126 (1) of the 1992 Constitution, then the irresistible conclusion that can be drawn is that although the Registrar of the Superior Court is a judicial officer, to that extent she is not one of the persons mentioned in Article 126 (1) as exercising judicial power, she cannot find protection in Article 127 of the 1992 Constitution. It is not for nothing that the Constitution specifically addressed the position of the Registrar of the Superior Court.

A careful reading of the processes filed by the applicant herein revealed several procedural lapses which as a final court of the land it should not be allowed to pass without our comments.

First, the title of this application which is for Certiorari under our supervisory jurisdiction is plainly wrong. This application is to quash the judgment of Her Ladyship Gifty Agyei Addo J, sitting at the High Court, Accra. It is not directed to quash the decision of the Judicial Service of Ghana and the Attorney-General as the title of the application seeks to indicate. From a careful reading of all the processes filed, Judicial Service of Ghana and the Attorney-General have done nothing wrong which should make them respondents to the application under consideration. Indeed from the affidavit in support of this application there is nothing to establish that the two parties should be the respondents as they had not made any

underlining decree or judgments sought to be quashed. The application under consideration as apparent on the motion paper seeks to quash the judgment of Her Ladyship Gifty Agyei Addo J delivered on 26th October 2016. If the application is indeed mounted against Judicial Service and Attorney General, this court's supervisory jurisdiction could not be invoked, in that the Supreme Court does not exercise supervisory jurisdiction over the Judicial Service and Attorney-General but have under Article 132 of the Constitution and section 5 of the Courts Act, Act 459 of 1993, such jurisdiction is exercisable over adjudicating bodies.

We however, think that the procedural inadequacies notwithstanding, we should proceed to assume jurisdiction and determine this application on the merit as this court with the case of ***Okofo Estates Ltd. v Modern Signs Limited & Others [1996-1997] SCGLR 124*** cautions against resort to declining jurisdiction when such patent procedural errors could be treated as mere technicalities.

On the merits, Counsel for the applicant attacked the judgment of the learned High Court Judge on the grounds that she lacked jurisdiction to interpret articles 127 (3) and 161 of the 1992 Constitution as such jurisdiction is exclusively reserved for the Supreme Court. This argument if sustained, could have warranted our interference by quashing the judgment on lack of or excess of jurisdiction. However, that appears not to be the case. The learned Judge had to refer to those constitutional provisions as the applicant herein sought indemnity on the grounds that she was at the time material to her interdiction a judicial officer and could not have been subjected to the Disciplinary proceedings which eventually culminated in these proceedings. From the judgment of the learned Judge it is clear that she did not subject any of the constitutional provisions to any interpretation whatsoever and indeed in any manner or form. It was the applicant who sought refuge as a Judicial Officer under those provisions referred to in the judgment sought to be quashed. As a court of law, she was bound to consider the effect of those constitutional provisions.

We think a distinction should be drawn between interpreting a constitutional provision and applying constitutional provisions to a set of facts in a case before a court of law for adjudication. This point was adequately considered in the case of ***Adumoah II v Twum II [1999-2000] 2 GLR 409 SC*** when Acquah JSC *(as he then was)* said at page 414 as follows:-

> "*Article 130 (2) of the Constitution, 1992 therefore empowers any court below to refer to the Supreme Court for determination of any issues relating to article 130 (1) thereof. Now it is very important to understand and appreciate that the Constitution 1992 is the fundamental and supreme law of the land, the provisions of which no other law is permitted to contradict. As stated in article 1 (2) thereof. (2) This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provisions of this Constitution shall to the extent of the inconsistency be void. Therefore all courts, tribunal institutions including the Government, and all individuals are bound by its provisions.* ***Accordingly all courts, tribunals and indeed all adjudicating authorities in Ghana are obliged to apply the provisions of the Constitution, 1992 in the adjudication of disputes before them"***

It would certainly be a denial of justice to parties if constitutional provisions referred to in the course of litigation are not considered by a court of law or any adjudicating authority for that matter.

It is only when the issue of interpretation arises that a court must stay its proceedings and refer same to the Supreme Court. As it happened in these proceedings, the learned trial Judge did not attempt to interpret any provisions of the Constitution, she did not go contrary to law and denied herself the jurisdiction to determine the issues before her. The learned Judge was merely called upon to ascertain whether the applicant as a Registrar of the Supreme Court was a holder of a judicial office. This she

did and placing reliance on the case of ***Judicial Service Staff Association of Ghana (JUSAG) v The Attorney General and 2 Others, Suit No. JI/5/2015*** unreported decision of this Court, proceeded to adopt the judgment of our worthy brother Dotse JSC and held that the Applicant was a Judicial Officer. We think that beyond this holding the trial Judge did not proceed to interpret the provisions of the Constitution referred to in the judgment.

The next ground for this application is the issue of definition of judicial power by the learned trial Judge. Counsel has strongly contended that as the learned Judge placed a meaning on judicial power, she sought to interpret the Constitution.

We think that a court like the High Court being a court of law and superior court for that matter may call in aid any recognized means of ascertaining the meaning of a word if the statute in which that word (s) was used does not offer any statutory meaning. This in our respectful views would not amount to any interpretation of the Constitution.

It is clear from Article 161 of the Constitution that the framers of the Constitution did not define judicial power. Equally so, article 295 of the Constitution does not define judicial power. We think that the trial Judge did not destroy her jurisdiction to warrant our intervention when she in her judgment resorted to the Black's Law Dictionary for interpretation of it. From the definition, a Registrar of a superior court like the applicant cannot in anyway whatsoever claim to exercise judicial power. The fact that she was a judicial officer does not clothe her with judicial power. We think that not all judicial officers exercise judicial power. The learned High Court Judge therefore did not commit any error or destroy her jurisdiction to warrant our supervisory jurisdiction.

The last ground which was based on the judge's reference and application of articles 126 (1) and 127 (2) was well argued by learned counsel for the applicant who contended that as a judicial officer the applicant was not amenable to the disciplinary proceedings. Indeed article 127 read as a

whole seeks to establish the independence of the judiciary and the indemnity offered to those exercising judicial power. We find it unacceptable for learned counsel to press on us that as a judicial officer the applicant could not be taken through disciplinary proceedings. We declare that, the class of persons who are exempted or indemnified under articles 125 (3) of the Constitution are limited to those exercising judicial power.

We are therefore of the considered views that the applicant has not made a case to invoke our supervisory jurisdiction to quash the proceedings of the learned High Court Judge. It was therefore upon the basis of the above reasons that we dismissed the application as unmeritorious on the 10th day of April 2017.

SGD. ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

SGD. J. ANSAH
(JUSTICE OF THE SUPREME COURT)

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

SGD. N. S. GBADEGBE
(JUSTICE OF THE SUPREME COURT)

SGD. A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

COUNSEL

AUGUSTINE OBOUR FOR THE APPLICANT
STELLA BADU (CHIEF STATE ATTORNEY) FOR THE 2ND RESPONDENT