IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)
DORDZIE (MRS.) JSC
TORKORNOO (MRS.) JSC
HONYENUGA JSC
AMADU JSC
PROF. MENSA-BONSU JSC
KULENDI JSC

CIVIL MOTION
NO. J7/10/2022

27TH APRIL, 2022

THE REPUBLIC

VRS

HIGH COURT (CRIMINAL COURT '1'), ACCRA

EX-PARTE:

KWASI AFRIFA ESQ. ..... APPLICANT/APPLICANT

DISCIPLINARY COMMITTEE

OF GENERAL LEGAL COUNCIL ..... INTERESTED PARTY/RESPONDENT

RULING

AMADU JSC:-

INTRODUCTION:

(1) It is provided under Rule 54 of the Supreme Court Rules, 1996 (C.I.16) as follows:-

"54 Grounds for Review

The court may review a decision made or given by it on the ground of:

(a) exceptional circumstances which have resulted in a miscarriage of justice; or

(b) the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant's knowledge or could not be produced by the Applicant at the time when the decision was given".

(2) The scope of the application of the review jurisdiction has been pronounced upon by this court in a number of cases as for example in **MECHANICAL LLOYD ASSEMBLY PLANT LTD. VS. NARTEY [1987-1988] 2 GLR398,** this court per Adade JSC held *inter alia* that: ***"The review jurisdiction is not intended as a try on by a party after losing an appeal nor is it meant to be resorted to as an emotional reaction to an unfavourable judgment".*** Then in **QUARTEY VS. CENTRAL SERVICES CO. LTD. [1996-1997] SCGLR 398 at 399**, this court expounded on its review jurisdiction in the following words:

"A review of a judgment is a special jurisdiction and not an appellate jurisdiction conferred on the court; and the court would exercise that special jurisdiction in favour of an Applicant only in exceptional circumstances. This implies that there has been some fundamental or basic error which the court inadvertently committed in the course of considering its judgment; and which fundamental error has thereby resulted in a gross miscarriage of justice".

(3) **BACKGROUND FACTS**

The facts giving rise to the instant application are simple and undisputed. The Applicant/Applicant *(hereinafter referred to as "Applicant")* a legal practitioner, was arraigned before the Disciplinary Committee of the Interested

party/Respondent, *(herein after referred to as the "Respondent")* the statutory body responsible for regulating the conduct of legal practitioners pursuant to the provisions of the Legal Provision Act 1960 (Act 32) on charges of professional misconduct based on a complaint against the Applicant.

(4) In the course of the proceedings before the Respondent's Disciplinary Committee, the Applicant invoked the jurisdiction of the High Court for an order for judicial review in the nature of certiorari and prohibition and sought the following reliefs:-

"a) An order quashing the purported proceedings of the Disciplinary Committee of the General Legal Council dated 15th July, 2021 and 29th July, 2021 as wrongful, illegal, contrary to the rules of natural justice, bereft of administrative propriety, immersed in procedural impropriety, contrary to the Wednesbury Principle and errors on the face of the Record as well as the absence of conditions precedent to the exercise of jurisdiction.

b) An order prohibiting the Disciplinary Committee of the General Legal Council from embarking on any purported hearing based on the said fundamentally-flawed proceedings dated 15th July, 2021 and 29th July, 2021.

c. An order compelling the Respondent to perform its statutory duty in line with mandatory rules prescribed in L.I. 2424.

d. An order of injunction restraining the Respondent its agents representatives officials privies and those acting by or through its instruction order or mandate in any manner whatsoever from in any manner continuing the patent illegality and absence of administrative

transparency and opaqueness in respect of the alleged complaint against the Applicant per a letter dated 1st March, 2021 by proceeding to hear evidence in relation to the said complaint without first complying with the dictates of the law.

e. Such further order(s) as the Honourable Court may deem fit".

(5) In determining the application, the High Court refused the application in its entirety. The Applicant subsequently invoked the supervisory jurisdiction of this court and sought to have the ruling of the High Court aforesaid, ***"quashed on grounds of error on the face of the ruling and for a further order prohibiting the interested party from proceeding to conduct a hearing based on the Nine Counts preferred against the Applicant by the Interested party on the 29th July, 2021 as the said Nine Counts are unconstitutional, extralegal, devoid of legal basis and transparency and inconsistent with the constitutional and common law rights of the Applicant..."***

(6) On the 8th day of February 2022, the ordinary bench of this court refused the Applicant's application and delivered as follows:-

"We have listened to the submission of the parties and read the processes filed in this case. We are of the considered opinion that the Applicant has failed to make out a case for us to issue the order of certiorari to quash the ruling of the High Court dated 16th December 2021. Similarly we are unable to stay the Proceedings in the Disciplinary Committee as that jurisdiction is in that High Court and not the Supreme Court. In the circumstances the application is refused".

(7) The Applicant, dissatisfied with the ruling has exercised his right to seek a review of the decision of the ordinary bench of this court. In an affidavit deposed to by the Applicant and a supplementary affidavit which verified the ruling being sought to be reviewed, the grounds of the application have been set forth in paragraphs 8, 10 and 11 of the affidavit as follows:-

"8. . . .

a. Failure to prevent the use of repealed legislation as the basis for charging me.

b. Failure to ensure the constitutional demand of there being complainant in the nine counts leveled against me by the Respondent/Respondent when they are not the subject of any complaint before the Respondent/Respondent.

c. Refusal to address non-service of supplementary complaint on Applicant/Applicant contrary to binding precedent of the court as well as well-established common law principles.

d. The use of impermissible extraneous material by the Chairperson of the Interested party as the basis of a charge against Applicant/Applicant.

e. Failure to address the illegality of different panels adjudicating the matter on different dates.

f. Refusal to address the extreme bias and predisposition indicating a predetermination of the issues by the Chairperson of the Respondent/Respondent".

"10.That the Ruling of the Honourable Court has occasioned a

substantial miscarriage of justice to me and threatens my constitutional rights and therefore exceptional circumstances exist for the grant of the instant application.

11. That the substantial miscarriage of justice occasioned me ought to be addressed by this Honourable Court by the grant of the instant application to avert the looming unconstitutionality of being arraigned on charges based on a repeated legislation, being compelled to answer charges not initiated by any person or entity contrary to law and the abject disregard to its own rules by the Interested party/Respondent"

(8) It must be placed on record that the Respondent has denied all these assertions contained in the Applicant's depositions and has urged this court to dismiss the application on the ground that it lacked merit.

(9) **ARGUMENTS OF APPLICANT**

In articulating the grounds set forth on which the Applicant's application was anchored, the Applicant presented and relied on exhaustive yet comprehensive statement of case in which copious references have been made to a plethora of case law authority both local and foreign for our consideration. From an examination of the Applicant's statement of case and oral arguments at the hearing of the application, the core complaint of the application which emerged on which the Applicant urged this court to grant the application are that:

(i) The ordinary bench of this court failed to advance reasons for the conclusion reached in the determination of the application for certiorari and prohibition.

(ii)The charges of professional misconduct levelled against the Applicant by the Interested party/Respondent are founded on a repealed statute.

(iii) The statutory composition of the panel to determine the Charges against the Applicant was flawed as the panel did not meet the requisite statutory requirement.

(10) **RESPONDENT'S ARGUMENT**

In response to the Applicant's arguments, the Respondent submitted *inter alia* that although the instant application has been presented as one invoking the review jurisdiction of this court, what the Applicant has at best done by disguise is to implicitly attack the decision of the ordinary bench as if he was arguing an appeal against the decision. To that extent, the allegations that exceptional circumstances do exist because a miscarriage of justice has been occasioned to the detriment of the Applicant are untenable within the scope of the review jurisdiction of this court. The Respondent has also referred our attention to the decisions where appropriately applicable which have circumscribed the remit of its review jurisdiction of this court. The Respondent further contended that short of arguing the grounds on which an application for review may avail him, the Applicant had failed to demonstrate the existence of any fundamental error by the ordinary bench of this court and if any such error existed at all, how it had occasioned miscarriage of justice to the Applicant's right or interest as alleged.

(11) As reproduced above, the ruling of the ordinary bench is brief concise and self-explanatory. While it did not contain any elaborate judicial statements nor reliance on case law authority, it is a conclusive judicial determination that the Applicant ***"failed to make out a case"*** and further that it lacked jurisdiction to

stay the disciplinary proceedings before the Respondent. In other words, the application simply lacked merit for a favourable consideration.

(12) It must be exphasized that, the exercise of the court's supervisory jurisdiction being discretionary, the ordinary panel found nothing exceptional resulting in a miscarriage of justice to the Applicant to authorize the grant of the application especially where the Applicant had an alternative remedy to pursue from the decision of the High Court.

(13) With respect to the other grounds of the application relative to the alleged impropriety of the charges levelled against the Applicant and the alleged statutory default in the composition of the panel by the Respondent, as rightly submitted by the Respondent's counsel, those issues do not belong to the instant litigation. They are matters which do not fall within the ambit of the rule under which a person aggrieved by a decision of the ordinary bench of this court may seek further redress by review.

(14) **THE REVIEW JURISDICTION OF THE COURT**

This court has noted time without number that once the right to seek review exists, any person who is aggrieved with the decision of the ordinary bench of this court has a constitutional and statutory right to seek review. In all cases however, the key question for determination is whether there exists exceptional circumstances which have resulted in a miscarriage of justice to an Applicant or that a new or important matter or evidence which after due diligence was not within the Applicant's knowledge or could not be produced by the Applicant at the time a decision was made. Though imprecise in definition; as Taylor JSC held in the case of **NASALI VS. ADDY [1987-88] 2 GLR 286** at page **288** circumstances that can be said to be exceptional include situations where the

interest republicaeut sit finis litium principle yields to an overriding interest of justice to an Applicant.

(15) Therefore though the review jurisdiction of this court has been strictly exercised within the confines of the provision of Rule 54 of C.I.16, it has been granted in deserving cases where the circumstances are not just *prima facie* exceptional but would naturally occasion a miscarriage of justice especially where the statutory and/or constitutional right of an Applicant has been erroneously denied by the ordinary bench or that a new and important matter not hitherto within the Applicant's knowledge even upon due diligence has been brought up on review.

(16) Thus, as the case law reviewed reveals, the review process is not an appellate forum which an Applicant can deploy to indirectly re-argue issues already determined by this court. It is intended to provide an opportunity to redress exceptional errors which must have resulted in a miscarriage of justice. This becomes even more compelling where there is no other available remedy for an Applicant to have the obvious error addressed by the court. In the case of **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE ATTORNEY-GENERAL, (OHENE AGYAPONG, INTERESTED PARTY) [2012] 2 SCGLR 1204,**this court, consistent with the above practice held per holding (1) as follows:-

"Where an applicant has a remedy other than certiorari open to him or her, this is a factor that may be taken into account in denying the applicant the discretionary remedy of certiorari, even if the other pre conditions for the grant of the remedy have been established. The existence of an alternative remedy is one of the factors that a court can rely on to exercise its judgment against the grant of certiorari. Republic V High Court, Accra; Ex-parte Tetteh Apain [2007-2008]1 SCGLR 72 at 75; and Barraclough V Brown [1897] AC 615 cited".

Consequently, the ordinary panel of this court could not be faulted for the

conclusion reached in refusing the application. We find no such fundamental error of law which could result in a miscarriage of justice to the Applicant to justify a review of the decision contrary to the allegations urged on us by the Applicant.

(17) Whereas this court has maintained a principled stance that the mere fact that a decision can be subjected to legal critique will not necessarily be a ground for review, the jurisdiction being special in nature has been favourably exercised in deserving cases. However, the remedy will not avail an Applicant whose grounds for the application failed the threshold test. The instant application in our considered opinion does not meet the above threshold and is accordingly dismissed.

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

TORKORNOO (MRS.) JSC:-

I have read the enriching opinion of my brother Amadu JSC and acknowledge his statement of the background to the case. What has attracted me to write this concurring opinion is the need to reemphasize the foundational requirements for the invocation of the review jurisdiction of this court under Rule 54 (a) of the Supreme Court Rules 1996 (CI 16).

It reads:

"54 Grounds for Review

The court may review a decision made or given by it on the ground of:

(c) exceptional circumstances which have resulted in a miscarriage of justice; or

Much has been said on what constitutes the exceptional circumstances that merit a review of this court's decisions. The jurisprudential building blocks that the review jurisdiction of this court has been built on have been well formulated for all applicants to this court. In **Fosuhene v Pomaa [1987 – 88] 2 GLR 105,** the majority view was that the jurisdiction of the Supreme Court to consider applications for review of its decision ought to be founded on **compelling reasons** and **exceptional circumstances** dictated by the interests of justice.

Nasali v Addy 1987 – 88 2 GLR 286added that the review jurisdiction is exercisable in exceptional circumstances where the demands of justice make the exercise **extremely necessary to avoid irremediable harm** to an applicant. **Afranie v Quarcoo 1992 2 GLR 561** formulated the general contours of what constitutes exceptional circumstances to include fundamental or basic error committed inadvertently resulting in a grave miscarriage of justice, or a decision given per incuriam for failure to consider a statute or a **binding** case law or fundamental principle of practice and procedure **relevant** to the decision, and which if considered, would have resulted in a different decision. ; or circumstances in which the applicant had sought for a specific relief which materially affected the appeal and had argued grounds in support but the appellate court had failed or neglected to make a decision on it. The view of the court was that the 'misconstruction of the words of a statute **upon which the decision of a case depended** was such an error of law that it would deprive the court of jurisdiction to decide the matter'.

In **GIHOC Refrigeration & Household Products (No 1) v Hanna Assi (No 1) 2007 – 2008 1 SCGLR** 16, this court in a majority decision considered that where a party had set down in his pleadings and proved by evidence entitlement to a relief, but had failed to counter claim for the resultant relief, a denial of the said relief would amount to exceptional circumstance leading to miscarriage of justice to the party that had to be subjected to the review jurisdiction of the court.

I have emphasized the words '**compelling reasons**' '**extremely necessary to avoid irremediable harm 'binding/relevant decisions**' and '**principle upon which the**

decision of a case depended' to bring to attention the necessity of the foundational or fundamental nature of the exceptional circumstances that ought to invite a review of this court's decisions.

It is clear that the exceptional circumstances provided for under rule 54 (a) of CI 16 can arise only if the decision of the court was grounded on a fundamental error such as lack of jurisdiction, or misconstruction of the primary law or legal regime on which the decision depended, and circumstances that would bring irremediable harm or miscarriage of justice to the applicant. See also the decision of this court dated 29th July 2014, in **Martin Alamisi Amidu v Attorney General, Waterville Holdings (BVI) Ltd Woyome**, Civil Motion No. J7/10/2013. **Arthur (No 2) v Arthur (No 2) 2013 - 2014 1 SCGLR 569,** reiterated this road map for the review of this court's decisions.

It is also agreed that general errors in legal evaluation are corrected only on appeal. And since the Supreme Court does not sit on appeal over itself, this court cannot be invited to correct what a party before it considers to be errors in legal evaluation and application of law by the ordinary panel, especially if the party cannot show how the said errors have led to miscarriage of justice.

In refusing to review its decision **in Tamakloe v Republic 2011 1 SCGLR 29**, this court held that an applicant for the review jurisdiction of the Supreme Court had to persuade the court that there had been some fundamental basic flaw which the ordinary court inadvertently committed in the course of rendering decision and that had resulted in miscarriage of justice.

From the above, one cannot take one's view off the critical elements that are required to succeed in a review application being a case that points to fundamental error in the judicial process, or lack of legality, and or compelling reasons arising from the need to avoid irremediable harm or miscarriage of justice; and not just the view that a court had misapprehended the law in an impugned decision. On page 3 of his statement of case, counsel for the Respondent before us, purporting to quote from **Arthur (No 2) v Arthur (No 2)** cited supra, quoted these words from my opinion in **Republic v High**

Court Criminal Division 1, Ex Parte Stephen Kwabena Opuni, Attorney General (Interested Party) Civil Motion No. J7/2021 dated 26th October 2021: '*at every material time, the supervisory and review jurisdictions of the Supreme Court, being jurisdictions that are distinctive from its appellate jurisdiction, are concerned with the structural pillars on which the edifice of judicial function is exercised, and seek to deal with nullities and dislocations in the pathway of arriving at a decision lawfully*'. I believe that this is a helpful guideline for identifying the nature of decisions that a review panel may find amenable to the review jurisdiction.

Clearly therefore, the error in a decision that can attract the review jurisdiction of this court cannot be an error in which the court failed to immaculately comprehend a legal principle or the proper interpretation of a statute or constitutional provision. In order for the exceptional circumstance to occur, the decision of the court ought to have turned on the patently wrong misconstruction or application of the statute or constitutional provision, such that there is a miscarriage of justice to the parties before the court such as occurred in **Afranie v Quarcoo** cited supra.

A look at the grounds of the application before us shows that the applicant, having failed to entice the ordinary bench to delve into the correctness of the trial Judge's decision that was not on appeal before it, has come again to try and push the review panel to look at the same questions that are premised on the legal correctness of the composition of, and conduct of a panel of the disciplinary committee of the General Legal Council.

The applicant is inviting this review panel to examine issues that he believes ought to have been considered by the ordinary bench. And he has invoked the review jurisdiction because he perceives the refusal of the ordinary bench to be drawn into the determination of whether the high court judge's decision included any misapprehension of law, to be erroneous. Clearly, the applicant is a very long way away from appreciating that the review jurisdiction of this court has a very narrow and special context.

Was there a compelling legal reason that should have led the ordinary bench bringing up the high court decision to be quashed by certiorari? The answer is a firm no.

According to the applicant himself, his primary complaint is against a series of decisions of the disciplinary committee of the General Legal Council. And his application to the high court was to exercise supervisory jurisdiction over those decisions of the disciplinary committee of the General Legal Council pursuant **to Article 141 of the 1992 Constitution** that reads:

Supervisory Jurisdiction of the High Court

141. *The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers*

So when the high court refused to issue supervisory orders against the disciplinary committee, it was properly exercising the jurisdiction invoked by the applicant – to consider the application and rule on it, and nothing more.

The basic duty of a court is to make determinations on matters of fact and law, and once that determination is done, there are likely to be contrary opinions to that of the court. From that point, it is only an appellate court that is given jurisdiction to correct any error of law or misapprehension of the import of facts through a re-hearing, and on the basis of the grounds for appeal.

Thus having properly exercised its jurisdiction, albeit unfavorably where the applicant is concerned, the high court had not committed any fundamental error of law that should have brought the applicant to this court to exercise supervisory jurisdiction against the high court pursuant to **Article 132 of the 1992 Constitution**. If the applicant was unhappy with the high court's evaluation of its duty in the complaint against the Disciplinary complaint, the answer could not lie in quashing the decision of the high

court, because the high court indeed had jurisdiction to decide one way or the other, on the matters brought to it.

And to the extent that the opinion of the ordinary bench of this court was simply that the threshold for exercising supervisory jurisdiction against the high court did not exist, there is no basis now to call on are view panel to find exceptional circumstances in the decision of the ordinary bench of the Supreme Court too. This application must resoundingly fail as being without merit, because it cannot attack the foundational legality of the decision of the high court, much more the decision of the ordinary bench.

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
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