IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA – AD. 2016

CORAM: **ATUGUBA, JSC. [PRESIDING]**

ANSAH, JSC.

BAFFOE - BONNIE, JSC.

BENIN, JSC.

PWAMANG, JSC.

CIVIL MOTION

NO.J5/34/2015

24TH FEBRUARY 2016

THE REPUBLIC

VRS

THE HIGH COURT ACCRA - RESPONDENT

EX PARTE: THE CHARGE D'AFFAIRES - APPLICANT

BULGARIAN EMBASSY, ACCRA

1. **THE LAND TITTLE REGISTRY** - INTERESTED PARTIES

2. **THE LAND COMMISSION**

3. **THE MINISTRY OF FOREIGN AFFAIRS.**

4. **THE ATTORNEY GENERAL**

5. **JOJO HAGAN**

(ADMINISTRATOR OF THE ESTATE OF THEOPHILUS K. LEIGHTON**)**

RULING

PWAMANG JSC.

This is an application invoking our supervisory jurisdiction pursuant to Article 132 of the 1992 Constitution praying for an order of certiorari to bring into this court the orders made on 1st September, 2014 by the High Court, Accra in **Suit No. BMISC 995/2014** for the purpose of being quashed.

The brief facts are that by a writ of summons in **Suit No. BC 285/07** dated 28th March, 2007, one Theophilus Leighton (deceased) instituted an action against the applicant herein in the

High Court, Accra claiming 21 reliefs, key among which are the following:

(i) Declaration of title to House No. 2 East Cantonments Residential Area, Accra which the defendant has been occupying as a tenant since 1987.

(ii) Payment of accumulated rent arrears of $598,252.17 by the Defendant for its occupation of the said House No. 2, East Cantonment Residential Area, Accra.

(iii) An order of ejection and recovery of possession of House No. 2, East Cantonment Residential Area, Accra.

On 21st October, 2009, the High Court, Accra presided over by His Lordship Justice Anthony K. Abada gave summary judgment in the said **Suit No. 285/07** in favour of the plaintiff, who is now being represented by his successor the 5th interested party to this present application.

The judgment of Abada J. granted the reliefs as endorsed on the writ of summons. The said summary judgment was however overturned by the Court of Appeal by judgment dated 21st July, 2011. The grounds on which the Court of Appeal overturned the judgment were that the premises in issue in the suit before the High Court were being used as a diplomatic mission so the courts of Ghana have no jurisdiction to entertain a suit in respect of the premises. Another ground was that the writ of summons had expired before it was served on the defendant so the proceedings based upon it were all a nullity.

The judgment of the Court of Appeal notwithstanding, the 5th interested party herein Mr. Jojo Hagan, relying on the judgment of Abada J, filed a motion in the High Court, Accra, on 21st July, 2014 as **Suit No. BMISC 995/2014** invoking the supervisory jurisdiction of the High Court for orders of mandamus against the Land Title Registry, the Lands Commission and the Ministry of Foreign Affairs. He prayed the High Court in exercise of its supervisory jurisdiction, to compel the issuance of a Land Title Certificate to 5th interested party, order recovery of possession, injunction and to make an order to open and evict occupants of the property in dispute being House No. 2, East Cantonments. 5th interested party also sought an order for the Ministry of Foreign Affairs to use their machinery to retrieve accumulated rent of US$1.5 million from the Bulgarian Embassy.

At the hearing of the application for mandamus 5th interested party and his counsel were the only persons present and upon hearing his counsel, the application was granted as prayed on 1st September, 2014 by His Lordship Justice Bright Mensah.

Applicant herein got to know of the orders of mandamus when the 5th interested party went to execute the writ of possession. So they filed a motion in the same suit No. BMISC 995/14 praying the court to set aside its orders on grounds that the judgment that 5th interested party relied upon in the application for mandamus had been set aside at the time he filed the application. Applicant also brought to the attention of the court the issue of diplomatic

immunity that had been decided upon by the Court of Appeal. This application to set aside was heard by His Lordship Justice Anthony Oppong who refused it on 3rd June, 2015.

Applicant has therefore filed this application praying for certiorari to quash the orders of Bright Mensah J. on the following grounds:

(i) The court had no jurisdiction to make orders in respect of premises being used for a diplomatic mission on account of diplomatic immunity pursuant to the Diplomatic Immunities Act (1962) Act 148.

(ii) The orders of the court are void because they were premised on a judgment that had been set aside by the Court of Appeal to the knowledge of the 5th interested party.

(iii) The orders of the court for possession forcing premises open, eviction of occupants', recovery of rents were not warranted by any law, enactment or rule of procedure since the matter that was before the court was an application for mandamus.

The 4th and 5th interested parties have resisted this application for certiorari. They submitted in their statements of case that the applicant filed an appeal against the orders he is now seeking to quash by certiorari and that the two cannot be maintained simultaneously. They have also argued that the application has been filed out of time since the impugned decision was made on 1st September, 2014 and this application is filed on 9th July 2015, more than the 90 days provided under the rules of this court. It is

also their case that the applicant was not a party in **Suit no. BMISC 995/14** so he has no *locus standi* to apply for certiorari.

Finally the interested parties argue that on the merits, 5th interested party is the owner of the premises as a 50 years lease applicant is relying on to claim the premise is invalid.

It is well-settled that certiorari will be granted to quash a decision of a court that has been made without jurisdiction or in excess of jurisdiction or where there is an error of law apparent on the record that makes the decision a nullity. Certiorari will also be granted to quash a decision given in breach of a rule of natural justice. See the cases of;

Republic V High Court, Accra; Ex Parte Salloum [2011] 1 SCGLR 574 and Pobee Tufuhene Elect of Apam V Yoyoo [2013-2014] 1 SCGLR 208.

An examination of the application for mandamus filed by the 5th interested party on 21st July 2014 shows clearly that he was placing reliance on the decision of Abada J. which to his knowledge had been set aside by the Court of Appeal three years earlier.

Relief (c) on the motion paper is as follows;

> "(c) for an order of mandamus to compel the Lands Commission to fully comply with the orders of mandamus issued by the High Court, Accra in High Court, Accra **Suit No.BC285/07**."

Further, at paragraphs 14, 16, and 18 of the affidavit in support of the application for mandamus, 5th interested party referred to the suit against Bulgarian Embassy and stated that judgment had been given against them for ejectment, recovery of possession and accumulated arrears of rent. We shall quote the said paragraphs;

> "14. The Bulgarian Embassy entered into a Tenancy Agreement in respect of the house in dispute with the late Mr Theophilus Kofi Leighton on 17/10/79. The initial term was 5years from 1/2/79 to 31/1/84.
>
> 16. That when the Bulgarian Embassy was not paying the accrued rents that had accumulated to over US$1.5 million Applicant herein was forced to take them to court for redress.
>
> 18. That judgment has been given against the Bulgarian Embassy for ejectment and recovery of possession of the premises in dispute for nonpayment of rent and accumulated areas of rent."

From the above facts it is clear that 5th interested party was basing on the non-existing judgment of Abada J to seek the orders he prayed the court for. This is a clear instance of placing something on nothing and as Lord Denning said in **Mcfoy v United Africa Co. Ltd [1961] 3 All ER 1169. PC;**

> "You cannot put something on nothing and expect it to stay there. It will collapse"

See also **Mosi v Bagyina [1963] 1GLR 337.**

The 5th interested party was well aware of the fact that the judgment in his favour in Suit No. BC 285/07 had been set aside and the impression we get is that the application for mandamus was calculated to undermine the judgment of the Court of Appeal and overreach that court. The processes filed in this application show that 5th interested party has filed an appeal against the decision of the Court of Appeal to this court and that is the proper course of conduct that a party in 5th interested party's position can embark upon.

It has long been settled in this court that the fact that a person has appealed against a decision does not preclude him from applying for that decision to be quashed under the supervisory jurisdiction of this court conferred by Article 132 of the 1992 constitution. In the case of **Republic v. High Court**, **Cape Coast; Ex parte Ghana Cocoa Board (Apotoi III Interested Party**) **[2009] SCGLR 603 at 612** Dr. Date-Bah JSC. Stated as follows:

> "It is no answer to this want of jurisdiction to argue, as does the interested party's counsel, that *certiorari* is a discretionary remedy and that because the applicant has filed an appeal against Ayimeh J's refusal to set aside the garnishee order, this court should dismiss the application. The right to appeal from the High Court to the Court of Appeal and the right to apply for the exercise of the supervisory jurisdiction of this court are both constitutional rights and I see nothing in the constitutional provisions governing these rights that makes

them mutually exclusive. In particular, the supervisory jurisdiction is conferred in article 132"

See also the case of **Republic v. High Court Accra; Ex parte Komley Adams** [2012] 1SCGLR 111

The interested parties in this case have argued that the applicant is out of time and that they ought to have filed the application within ninety days of the decision being sought to be quashed; that is within ninety days from 1st September, 2014. It does appear as if counsel for the interested parties have not taken note of the change in the rules of this court with regard to the supervisory jurisdiction of the court.

The original provision in the **Rules of the Supreme Court, 1996 (CI.16)** provided as follows;

"62. An application to invoke the supervisory jurisdiction of the court shall be filed within three months of the date of the decision against which the jurisdiction is invoked unless the time is extended by the court."

This provision has been amended by the **Supreme Court (Amendment) Rules 1999 (CI 24)** which states as follows;

"An application to invoke the supervisory jurisdiction of the court shall be filed within 90 days of the date when the grounds for the application first arose unless time is extended by the court."

In the case of **Republic v. High Court, Kumasi; Ex parte Mobil Oil (Ghana) Ltd (Hagan Interested Party) [2005-2006] SCGLR 312**, Dr Twum JSC delivering the lead judgment of the court observed as follows:

> "With the amendment effected by CI 24, the time limit within which an application to invoke the supervisory jurisdiction of the court may be filed is determined by reference to the date when 'the grounds for the application first arose,' and not the "date of the decision against which the jurisdiction is invoked.' It is possible the two bases of reckoning may achieve the same result in a few cases but it is most probable that a different time limit will be determined if the amended rule 62 is used."

This court has been cautious about laying down strict guiding principles in determining the existence, for the first time, of sufficient grounds for invoking our supervisory jurisdiction and the recommended approach has been to deal with the issue on a case by case basis. See the case of **Republic v. High Court (Fast Track Division) Accra, Ex parte State Housing Corporation Co. Ltd (No.2) (Koranten-Amoako Interested Party) [2009]SCGLR 185.**

On the facts of this case the applicant, who was not made aware of the mandamus application and the orders made on 1st September 2014 got to know about them when 5th interested party attempted to go into execution and applicant filed a motion before the court which made the orders to have the court set aside its own orders. This application was determined on 3rd June, 2015, that is after

more than five months. Applicant then filed this present application on 9th July, 2015. From this set of facts our interpretation of the date the grounds for invoking the supervisory jurisdiction of this court first arose is the date the High Court refused applicant's motion to set aside the orders of mandamus.

We think it is a commendable practice to first go before the court which made the impugned decision to ask it to set aside its orders the moment you become aware of those orders. We should however not be understood to be laying down a fixed rule that no matter how long it takes an applicant to apply to the high Court to set aside its decision, this court will consider the date of refusal of that application as the date the grounds for an application to invoke the supervisory jurisdiction of this court first arose. For instance, an application made to the High Court in circumstances that is considered an abuse of the process of the court will not be taken into account in determining the date the grounds for invoking the supervisory jurisdiction of this court arose for the first time.

As we have pointed out in respect of this court's decisions in **Ex parte Mobil Oil (supra) and Ex parte State Housing Corporation (supra)**, this decision is to be confined to the facts of this case.

Another reason why the argument of time-bar in this case does not impress us is that we have taken the view that the orders made by the court in the application for mandamus were in excess of the jurisdiction of the court since there was no judgment granting the reliefs 5th interested party was purporting to enforce. The decision of

the court is patently void and time limitations do not apply where the decision sought to be quashed is a nullity as in this case. See **Republic v. High Court, Accra, Ex parte Speedline Stevedoning Ltd [2007-2008] SCGLR** and **Republic v. High Court, Accra Ex parte Ghana Chartered Institute of Bankers [2011]2 SCGLR 941.**

The interested parties have argued before us that since the applicant was not a party to the motion for mandamus they have no *locus standi* to invoke our supervisory jurisdiction to quash the decision made in that suit. On the facts of this case the applicant is a person who is aggrieved by the impugned decision and therefore they have every right to seek to have it quashed. Once a person is aggrieved as being directly affected by a decision, though he may not be a party to the proceedings culminating in the decision, he has standing to apply for this court to exercise its supervisory jurisdiction to correct the proceedings or quash the decision. See the case of **Republic v. High Court, Ho Exparte Awusu(No.1) (Nyonyo Agdoada(Sri III) Interested Party)[2003-2004] SCGLR. 864.**

This matter of locus standing for an application for certiorari has been taken even further by the decisions in the cases of **Republic v. Korle Gonno District Magistrate Grade I; Exparte Amponsah [1991] 1 GLR 353, CA**; In **re Appenteng (Decd): Republic v. High Court, Accra Ex parte Appenteng [2005-2006] SCGLR 18** and **Republic v. High Court, Ho: Ex parte Diawuo Bediako II & Anor**

(Odum & Ors Interested Parties [2011]2SCGLR 704. The decision in **Ex parte Amponsah,** which has been endorsed by this court in the judgments referred to above, is as follows (as stated in holding (1) of the headnote to the case);

> "The orders of certiorari and prohibition, as the form of the proceedings showed, were means for ensuring that the machinery of public administration worked properly and that justice was done to individuals. And because these remedies had a special public aspect to them, an applicant for certiorari or prohibition did not have to show that some legal right of his was at stake. If the action concerned an excess of jurisdiction or abuse of power, for example, the court would quash it at the instance of a mere strange, although it retained the discretion to refuse to quash it if it thought that no good would be done to the public. *The remedies of certiorari and prohibition were therefore not restricted by the notion of locus standi, and every citizen had a standing to invite the court to prevent some abuse of power; and in so doing he might claim to be regarded not as a meddlesome busybody but a public benefactor."*

We have taken note of the complaint of the 5th interested party that the applicant's lawyer appears to be taking inappropriate advantage of diplomatic immunity of his client and frustrating the 5th interested party's efforts at vindicating what he claims to be his

rights in respect of the property. We however fail to see that continuing, if that is what applicant's lawyer was doing, for according to the interested parties, the premises is no longer being used as a diplomatic mission.

In our view, whatever challenges the applicant faced in the vindication of his rights cannot warrant the apparently deliberate act of undermining the decision of the Court of Appeal and applying for orders that clearly had not been granted by the trial court. One instance is that, 5th interested party prayed for an order for payment of rent of US$1.5million when even the judgment that had been set aside granted 5th interested party only US$598,225.17. To refuse to quash the orders of the High Court dated 1st September, 2014 will be to allow the 5th interested party to hold on to the benefit of a judgment that has ceased to exist.

For the above reasons we grant the application.

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE - BONNIE

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T. N. WARD - BREW ESQ. FOR THE 5TH INTERESTED PARTY.