IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

REVIEW MOTION
NO J7/3/2014

DATE: 4TH FEBRUARY 2014

CORAM: G. T. WOOD (MRS) CJ (PRESIDING)
R. C. OWUSU (MS) JSC
J. DOTSE JSC
ANIN-YEBOAH JSC
P. BAFFOE-BONNIE JSC
A. A. BENIN JSC
J. B. AKAMBA JSC

PATIENCE ARTHUR - PETITIONER/RESPONDENT
APPELLANT/RESPONDENT

VRS

MOSES ARTHUR - RESPONDENT/APPELLANT
RESPONDENT/APPLICANT

RULING

DOTSE JSC;

It is provided by rule 54 of the Supreme Court Rules, 1996 (C.I.16) that:

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" emphasis supplied.*

In the instant application, the Respondent/Appellant/Respondent/Applicant, hereafter referred to as Applicant has anchored his review application of the judgment of the ordinary bench of this court rendered on the 26th day of July 2013 on the following grounds stated in his statement of case.

> *"The instant application is brought pursuant to the first ground upon which this Honourable Court would usually review its jurisdiction. It is Applicant's respectful submission that there is are (sic) exceptional circumstances warranting the favourable exercise of this court's review jurisdiction in favour of the present applicant and such exceptional circumstances have resulted in a miscarriage of justice." Emphasis supplied.*

WHAT THEN ARE THE FACTS OF THIS APPLICATION?

The High Court Accra on the 10th day of May 2010 entered judgment in favour of the Petitioner/Respondent/Appellant/Respondent, hereafter referred to as the Respondent to the following effect:

1. Dissolution of the marriage entered into by the parties on the 24th day of December 1998 at the Emmanuel Presbyterian Church, Dansoman, Accra.

2. Grant of custody of the children to the Respondent, namely Freda Arthur, now aged about 16 years, Stephen Arthur aged 14 years and Priscilla Arthur aged 11 years or thereabout.

3. Grant of access to the children by the Applicant herein anytime he visits Britain where the children were at all material times or anytime the children visit Ghana.

4. The Applicant to maintain the children at GH¢100.00 per child per month with effect from February 2008 and is to be responsible for half of their school fees and medical bills.

5. The respondent was granted ownership of the house purchased for her at Kasoa old Barrier.

6. The Applicant was granted ownership of the matrimonial home. The Respondent to give up possession and deliver up to the Applicant the 2 rooms in the said house.

7. The respondent herein is to have half share of the storey building, and half share of the shops at Weija, Accra.

8. The Respondent is granted ownership of all the equipment used to operate the salon at Weija.

The Applicant who was dissatisfied and aggrieved with the decision of the High Court as summarized above appealed against same to the Court of Appeal.

COURT OF APPEAL DECISION

The Court of Appeal set aside the High Court decisions and instead made the following orders:-

1. Confirmation of the dissolution of the marriage.

2. Confirmation of the reasonable access to the children granted the Applicant both in the United Kingdom and in Ghana.

3. The Respondent was ordered to render accounts of the GH¢30,000.00 given to her to buy treasury bills within 30 days hereof failing which she shall refund the amount to the Applicant.

APPEAL TO THE SUPREME COURT

Following an appeal to the Supreme Court by the Respondent herein, the court on the 26th day of July 2013 allowed the said appeal in the following terms:-

"The appeal is accordingly unanimously allowed and the judgment of the learned trial Judge restored in its entirety. This judgment has endeavoured to maintain the gains made by Ghanaian law in the direction of the realization of the vision contained in article 16 (1) of the Universal Declaration of Human Rights 1948 to the effect that"

Article 16 (1)

"Men and women of full age, without any limitation due to race, nationality or religion, have the rights to marry and to found a family. ***They are entitled to equal rights as to marriage, during marriage and at its dissolution." Emphasis supplied.***

The court, per Date-Bah JSC, one of our most respected brothers who delivered this opinion of the court as his valedictory judgment, then concluded thus:-

"We are convinced that this principle of universal human rights deserves implementation in Ghanaian law."

This is the judgment that the Applicant wants this court to review.

We have perused the judgment of the ordinary bench as well as the motion paper for review and all its accompanying processes, to wit, affidavits and statement of case filed by the Applicant.

We have also considered in great detail the affidavit in opposition to the review application filed by the Respondent as well as the statement of case filed in support of her response to the review application.
We have also given very anxious considerations and reflections to the viva voce submissions of learned counsel for the Applicant, Egbert Faibille Jnr, and that of the Respondent, Mrs. Achiampong, when they appeared before the review panel.

SCOPE OF REVIEW APPLICATIONS

The scope of review applications has been set by this court in a long line of respectable authorities which have aptly, elegantly and eloquently settled the remit of review jurisdiction of this court.

In ***Mechanical Lloyd Assembly Plant Ltd. v Nartey [1987-88] 2 GLR 598*** the Supreme Court made it clear on review applications as follows:-

> ***"The review jurisdiction is not intended as a try on by a party losing an appeal, neither is it meant to be resorted to as an emotional re-action to an unfavourable Judgment." Emphasis supplied.***

Again in ***Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398***, the Court re-stated the legal position of review applications as follows:

> ***"A review jurisdiction 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 such an application should satisfy the court that there has been some fundamental or basic error which the court inadvertently committed in the course of considering it's judgment and which fundamental error has resulted in gross miscarriage of justice.***

These principles have been stated over and over again by this court. Consequently, a losing party is not entitled to use the review process to re-argue his appeal which has been dismissed or use the process to prevail upon the court to have another or second look at his case." Emphasis supplied.

See also cases such as the following:

1. **Bisi v Kwayie [1987-88] 2 GLR 295, S.C**
2. **Nasali v Addy [1987-88] 2 GLR 286 S.C**
3. **Ababio v Mensah (No.2) [1989-90] 1 GLR 573 S.C**
4. **Pianim (No. 3) v Ekwan [1996-97] SCGLR 431**
5. **Koglex (GH) Ltd. v Attieh [2001-2002] SCGLR 947**
6. **Attorney-General v Tsatsu Tsikata (No. 2) [2001-2002] SCGLR 620**

The principles deducible from all the above cases is that, **the review jurisdiction of this court is a special jurisdiction and is not intended to provide an opportunity for further appeal.**

Wuaku JSC was therefore very apt when he delivered himself in the case of ***Afranie v Qarcoo [1992] 2 GLR 561 at 591-592*** thus:

> ***"There is only one Supreme Court. A review Court is not an appellate court to sit in judgment over the Supreme Court."***

This latter point was reiterated by the Supreme Court in the recent case of ***Tamakloe v Republic [2011] 1 SCGLR 29***, holden 1, where the court by a majority decision of 6-1, held as follows:-

> "***The review jurisdiction of the Supreme Court was not an appellate jurisdiction, but a special one. Accordingly, an issue of law that had been argued before the ordinary bench of the Supreme Court and determined by that court, could not be revisited in a review application, such as in the instant case, simply because the losing party had not agreed with the determination. Even if the decision of the ordinary bench on appeal from the judgment of the Court of Appeal, were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. That was an inherent incident of the finality of the judgment of the Supreme Court as the final appellate court."***

See also the Supreme Court case of ***Internal Revenue Service v Chapel Hill Ltd [2010] SCGLR 827 at 850 especially 852-853*** where Date-Bah JSC summed up the principles governing the review jurisdiction as follows:-

"I do not consider that this case deserves any lengthy treatment. I think that the applicant represents a classic case of a losing party seeking to re-argue its appeal under the garb of a review application. It is important that this Court should set its face against such endeavour in order to protect the integrity of the review process.

This Court has reiterated times without number that the review jurisdiction of this court is not an appellate jurisdiction, but a special one. Accordingly, an issue of law that has been canvassed before the bench of five and on which the court has made a determination cannot be revisited in a review application, simply because the losing party does not agree with the determination. This unfortunately is in substance what the current application before this court is." Emphasis supplied.

With all the above authoritative decisions of the Supreme Court, which has clearly spelt out the principles and modalities and governing review applications, it is apparent that the task facing the Applicant herein is indeed a daunting one. That scenario we dare say has not been lost on the Applicant. Learned Counsel for Applicant has forcefully urged all the relevant authorities on review applications before this court in their statement of case correctly, but went off at a tangent to request this court to do what is really a tall order.

ANCHOR OF APPLICANT'S CASE

The anchor of the Applicant's case before this Court has been beautifully set out in paragraph 38 of the Statement of case which we reproduce in full as follows:

My Lords, Article 296 (a) of the 1992 Constitution provides that ***"where in this Constitution or in any other law discretionary power is vested in any person or authority; that discretionary power shall be deemed to imply a duty to be fair and candid".*** *It is our respectful submission that the trial High Court's order that the Respondent have half share in the Storey-building is most unfair. We say so because apart from the fact that* ***Respondent did not make any contribution to the acquisition of that property,*** *it cannot be fair that the parties be made joint owners of that property considering the acrimonious nature of the divorce and the proceedings thereof. We are of the considered opinion that the learned trial Judge should rather have ordered financial provisions for the Respondent instead of making her joint owner of the storey building because administering /managing that property by the parties will not be possible. Peace has to reign in the aftermath of the divorce and the surest way is for the disconnect of the divorce to be maintained such that the parties are not seen to be sharing any heritage apart from the children of the marriage." Emphasis supplied.*

Continuing this line of argument in the statement of case, learned Counsel for the Applicant continued in paragraph 39 thus:

"It is against this backdrop that we respectfully pray this Honourable Court to examine the evidence that was adduced before the trial High Court ***whether there was any evidence before it to the effect that the storey building at Weija was jointly acquired by the parties to***

the marriage to warrant the said orders of the High Court," Emphasis supplied.

Learned Counsel then sought to refer to bits and pieces of evidence to support this ancient **archaic** and **backward** proposition of law, to wit the substantial contribution or contribution principle to qualify for a share in property acquired during marriage upon dissolution of the said marriage.

What should be noted is that, the Courts in Ghana have for a some time now started whittling down the over reliance on the contribution /substantial contribution principle as a basis for the sharing of properties acquired during marriage upon dissolution of the marriage.

Cases like ***Clerk v Clerk [1981] GLR 583***, ***Boafo v Boafo [2005-2006] SCLGR 705*** and the very recent decision of this Court in ***Mensah v Mensah [2012] 1 SCGLR 391*** just to mention a few, show the gradual shift in the decisions of this Court which culminated in the ordinary bench decision in ***Arthur v Arthur*** which is now on review in this application.

By these decisions, it is clear that the Supreme Court has now endorsed the ***"Jurisprudence of Equality"*** principle in the sharing of marital property upon divorce. In this regard, it is very difficult for us to appreciate any exceptional circumstances that have arisen to warrant a review of the ordinary bench decision rendered on 26th July 2013.

As has been stated already, we have perused and considered all the processes that have been filed before us. In this regard, we cannot help but to endorse the

opinions of learned Counsel for the Respondent when she stated in her statement of case that:

> "*Indeed this default in the argument of Counsel in his argument of the Review application has led him to be indirectly re-arguing the appeal which sins against the legal directions for review already cited and stated." Emphasis supplied.*

Indeed, this whole application for review has been nothing short of a re-hash of previous arguments at all the other levels of court, especially the ordinary bench which did not find favour with the court.

For example, the reliance on article 296 (a) of the Constitution 1992 to bolster the case of the Applicant is nothing short of reducing this review jurisdiction to an appellate jurisdiction. Furthermore the reference to the said article 296 (a) of the Constitution 1992 creates the false and unfortunate impression that the learned trial Judge in this case did not exercise her discretion properly. It is not a very easy task to attack lack or improper exercise of a Judge's discretion. Whenever such an attack is made, the onus is on the person attacking the exercise of discretion to show how the Judge was wrong in the exercise of discretion. Having failed to establish this proof, the Applicant must be denied this remedy. See cases of

1. ***Buabeng v Fokuo 1970 CC. 59,*** quoted with approval in the case of
2. ***Traboulsi v Patterson Zochonis [1973] 1 GLR 133 at 138***

Secondly, the Applicant has failed to convince this Court how the half share of the property granted the Respondent has caused exceptional circumstances which has resulted into miscarriage of justice.

We are of the firm view that, the linkage of the failure of the learned trial Judge to have made a financial provision for the Respondent instead of the half share granted her in the marital properties because of perceived difficulties in the management of the properties cannot and should not be used as a basis to otherwise condemn the excellent evaluation of the facts of the case and sound application of the law.

We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this court in respect of rule 54 (a) of C. I. 16 to be mindful of the following which we set out as a road map. It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon the circumstances of each case.

1. In the first place, it must be established that the review application was filed within the time lines specified in rule 55 of C. I. 16.

2. That there exists exceptional circumstances to warrant a consideration of the application.

3. That these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench.

4. That these have resulted into miscarriage of justice (it could be gross miscarriage or miscarriage of justice simpliciter).

5. The review process should not be turned into another avenue as a further appeal against the decision of the ordinary bench.
6. The review process should not be used as a forum for unsuccessful litigants to re-argue their case

It is only when the above conditions have been met to the satisfaction of the Court that the review panel should seriously consider the merits of the application.

In the instant case, having considered the review application in the light of the above criteria and or road map and also in line with the phletora of cases that have been cited by both Counsel and also referred to in this judgment, we are of the considered and firm view that this application for review fails in its entirety and is dismissed.

Under the circumstances, we affirm the decision of this court, delivered by the ordinary Bench on July 26th 2013.

The review application therefore stands dismissed.

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

(SGD) G. T. WOOD (MRS)
CHIEF JUSTICE

(SGD) R. C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE
JUSTICE OF THE SUPREME COURT

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

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

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EGBERT FAIBILLE JNR. WITH HIM STEPHEN OWUSU AND SABAH BONNIE FOR THE RESPONDENT/APPELLANT/ RESPONDENT/APPLICANT.

MRS. M. Y. N. ACHIAMPONG FOR THE PETITIONER/RESPONDENT/ APPELLANT /RESPONDENT.