**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT**
**ACCRA**

**CORAM: AKUFFO (MS), JSC**
**ADINYIRA (MRS), JSC**
**OWUSU (MS), JSC**
**BAFFOE-BONNIE, JSC**
**ARYEETEY, JSC**

**WRIT**
**J1/9/2009**
**24TH FEBRUARY, 2010**

**DANIEL ROCKSON ... PLAINTIFF**

**VRS**

**GHANA FOOTBALL ASSOCIATION ... DEFENDANT**

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## R U L I N G

**ADINYIRA(MRS), JSC**:

The plaintiff a citizen of Ghana and a supporter of Tema Youth Football Club is claiming against the Ghana Football Association (GFA) per his writ dated 1September 2010, the following reliefs:

(a) "A declaration that article 17.1.11.1- 6 of the statutes of the Ghana Football Association seeking to oust members and their supporters from resorting to the law courts to ventilate their grievances as of right and further purporting to coerce football clubs from associating themselves with such actions to save themselves from expulsion, in so far as they constitute acts of the Ghana Football Association, is inconsistent with and

or are in contravention with the letter and spirit of chapter five of the 1992 Constitution of the Republic of Ghana and are thereby void an d have always been null and void for all purposes.

(b) An order restraining the Ghana Football Association, it's agents and members from requesting any member to file or publish a disclaimer in respect of an action in Court commenced by a supporter of a football club in which the said club obviously has an interest in same

(c) Such further or other reliefs that this honorable court may seem meet."

The defendant has raised a preliminary objection to the jurisdiction of this Court to entertain this action. The objection is premised on three grounds:

i) The plaintiff's suit raises no issue or matter falling within the exclusive jurisdiction of this court.

ii) The reliefs claimed by the plaintiff in this suit allege a violation of the fundamental human rights chapter of the Constitution 1992 of the Republic of Ghana, a matter within the province of and jurisdiction of the High Court and not this Court.

iii) The plaintiff's suit raises the question as to whether or not a provision in a private instrument is null and void and could be dealt with by any other court.

In response, Counsel for the plaintiff submitted that the plaintiff's claim is not for an enforcement of a provision of Chapter 5 of the Constitution. It is for a declaration that certain acts of the defendant infringes on that chapter of the Constitution, consequently the Supreme Court has jurisdiction in the matter.

It is necessary to set out articles 2(1), 33 (1) 130 (1) and 140 (2) of the 1992 Constitution which deals with the respective jurisdiction of the Supreme Court and the High Court:

"2 (1) A person who alleges that—

(a) An enactment or anything contained in or done under the authority of that or any other enactment; or

(b) Any act or omission of any person,

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."

"33 (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."

"130(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution

140 (2). The High Court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution."

By the combined effect of articles 33(1), 130(1) and 140(2) supra the proper forum for the **enforcement** of the provisions of the Constitution relating to violation of fundamental human rights is within the original jurisdiction of the High Court. See the case of Edusei ***(No. 2) v. Attorney-General [1998-99] SCGLR 729*** where this Court specifically held that the Supreme Court has no concurrent jurisdiction with the High Court in the enforcement of an infringement of Fundamental Human Rights. However the Supreme Court has exercised **its original and exclusive jurisdiction** in matters where the central issue involves the **interpretation of the provisions of the Constitution relating to the enjoyment of a fundamental human right in contrast to the enforcement of a fundamental human right by a victim of a breach of those rights**. See the case of ***Federation of Youth Association of Ghana v. Public Universities & Others, Suit No. Writ J1/51/2009, unreported judgment dated 3/2/2010*** **S.C.** There are also those line of cases which are instituted under articles 2(1) (a) and 130(1) to strike down legislations which

were considered to be inconsistent or in contravention with some provisions relating to fundamental human rights. See ***New Patriotic Party v. Inspector-General of Police [1993-94] 2GLR 459***, ***Mensima v. Attorney-General [1996-97] SCGLR 67*** and***, New Patriotic Party v. Attorney-General (CIBA CASE) [1996-97] SCGLR 729***.

Although counsel for the plaintiff submitted that the action is for a declaration that certain acts of the defendant infringes on chapter five of the Constitution 1992, in substance he is seeking a declaration by this Court that the dispute resolution mechanism set out under article 17.1.11.1-6 in the statutes of GFA is inconsistent with and in contravention with the letter and spirit of Chapter Five of the Constitution.

This action, in our opinion is being brought under article 2(1) (a) of the Constitution 1992 as it is asking this Court to strike down some provisions in the statute of GFA as being unconstitutional, as they infringe or contravene the letter and spirit of chapter five of the 1992 Constitution and are thereby null and void. The first hurdle to be cleared is whether the statutes of GFA of 2008 can properly be classified as an enactment or regulation as envisaged under Article 11 of the Constitution to warrant a scrutiny by this Court under its exclusive and original jurisdiction under article 2(1) (a) to determine the constitutionality or otherwise of some of its provisions? It is necessary to set out Article 11(1) of the 1992 Constitution on what comprises the Laws of Ghana. It states:

11(1) "The Laws of Ghana shall comprise -

(a) this Constitution;

(b) enactments made by or under the authority of the Parliament established by this Constitution;

(c) **Any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution**; (The emphasis mine.)

(d) the existing law; and

(e) the common law."

The GFA is a voluntary association even though it may receive subventions or grants from the National Sports Authority under section 4 (1) (i) of the **Sports Act, 1976 (SMCD54).** The statutes of GFA is definitely not an Act of Parliament and nothing in the statutes of the GFA made at its Congress on 1 December 2005 suggests that the GFA is a statutory body nor were its statutes made ***under the authority or power conferred by this Constitution.*** (See preamble to the Statutes GFA which states: "In exercise of the power conferred on the Ghana Football Association (GFA) by the GFA Congress these Statutes are hereby made on 1st December 2005").

The Statutes of GFA is accordingly not part of the Laws of Ghana but a private agreement or arrangement between members of a voluntary association to regulate the conduct of their affairs. It is therefore our considered opinion that any challenge against any provision of its statutes must be made at another forum other than the Supreme Court.

Secondly, the relief sought by the plaintiff is vague as on the face of the pleadings he has not pointed to any particular articles under Chapter Five of the 1992 Constitution which article 17.1.11.1-6 may be said to be inconsistent with and for which reason, it should be declared void.

Thirdly, it is trite law that parties can voluntarily agree to resort to alternate dispute resolution mechanism, such as arbitration or mediation. It is an accepted public policy in all legal systems. In reality a person's right to resort to the law courts is not entirely ousted in any agreement containing alternate dispute resolution. This is due to the principle of the rule of law that where in the process of alternate dispute resolution there is a breach of the rules of natural justice or any irregularity, the aggrieved party may seek redress in the courts other than the Supreme Court. It can be observed that article 17.11.5 states that: "*Any club which violates these provisions of the Statutes and Regulations of the Association shall forthwith cease to be a member of the Association* ***but without prejudice to its rights under the Constitution of the Republic of Ghana."*** [Emphasis mine]

CONCLUSION

The Supreme Court's original and exclusive jurisdiction under Articles 2(1) and 130(1) in testing the **validity of any laws of Ghana** can only be invoked in relation to 'Laws of Ghana' as stipulated under article 11 of the Constitution 1992. Consequently, we do not think this case raises any constitutional issue to warrant an interpretation or enforcement by this Court. The criteria of public interest cases set in **Adjei- Ampofo v. Accra Metropolitan Assembly &Attorney-General (No1) [2007-2008] SCGLR 611,** does not even arise, here.

From the foregoing, we find that the preliminary objection is valid and is therefore upheld. We will accordingly dismiss the plaintiff's action for lack of jurisdiction.

S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

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

P. BAFFOE-BONNIE
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