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

CORAM: ADINYIRA (MRS), J.S.C. (PRESIDING)
DOTSE, J.S.C.
YEBOAH, J.S.C.
BAFFOE BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO BAMFO (MRS), J.S.C.
AKAMBA, J.S.C.

CONSOLIDATED
REVIEW MOTION
NO.J7/15/2014

17TH DECEMBER 2014

EMMANUEL C. PLANGE & 437 ORS …. PLAINTIFFS/RESPONDENTS/
RESPONDENTS/APPLICANTS

VERSUS

GHANA COMMERCIAL BANK LTD. ….DEFENDANT/APPELLANT/
APPELLANT/RESPONDENT

AND

BENJAMIN A. BOATENG & 72 ORS ….PLAINTIFFS/RESPONDENTS/
RESPONDENTS/APPLICANTS

VERSUS

GHANA COMMERCIAL BANK LTD.…DEFENDANT/APPELLANT/
APPELLANT/RESPONDENT

RULING

SOPHIA ADINYIRA(MRS.) JSC (PRESIDING):-

This application for a review of the judgment of the ordinary bench of 21 May 2014 is brought by 10 out of the 511 former employees of Ghana Commercial Bank (GCB) in the consolidated cases, commenced on 28 October 2006 and 18 November 2006 respectively. The reliefs sought by the Plaintiffs from their former employer were mainly for a declaration that they were entitled to participate in and enjoy the benefits of the Special Pension Scheme set up by the Defendant for the benefit of its employees; and an order for specific performance directed at the Defendant to compute and pay to the Plaintiffs their pension benefits under the said scheme with interest thereon to date of final payment. The Defendant resisted the claim on the grounds that the pension scheme was abrogated in December 1990 and since the Plaintiffs alleged rights accrued upon their respective dates of retirement their action was statute barred.

The High Court held that the abrogation of the pension scheme in December 1990 was null and void and of no legal effect as it was done without the permission of the Commissioner as required by section 24 of the Social Security Act, NRCD 127; [repealed] and consequently the pension scheme continued to be in existence. The High Court entered judgment for the Plaintiffs. And the Court of Appeal affirmed this judgment.

On appeal before the ordinary bench of the Supreme Court, the main issue was whether the Defendant had the power to terminate the private pension scheme without reference to the Commissioner. On 21 May 2014, the ordinary bench of the Supreme Court reversed the finding of the High Court by holding that Section 24 (5) of the Social Security Act, NRCD 127 was inapplicable to the situation where an employer voluntarily decided to wind up its own private scheme. Accordingly the Court held that the winding up of the Scheme by the Defendant was not in contravention of NRCD 127. The Court however held the abrogation of the pension scheme by the Defendant was a breach of a term of contract of employment.

On the liability of GCB the ordinary panel held that it is only the category of staff members who were on retirement before the abrogation of the scheme on 31 December 1990 (and satisfied the conditions set in rule 3 of the regulations of the

Special Pension Scheme) that were entitled or competent to a claim for specific performance. Further, by virtue of section 24 of the Limitation Decree such claim is not statute barred.

From the foregoing, the ordinary bench non-suited the Plaintiffs on the grounds that at the time the pension scheme was abrogated on 31 December 1990, they were still in the employment of the Defendant and were not entitled to pension and therefore could not mount a claim for specific performance against the Defendant.

The application for review before us is made under the first ground specified in rule 54 (a) of the Supreme Court Rules, 1996 CI 16, namely the existence of "exceptional circumstances which have resulted in a miscarriage of justice."

The applicants submit that they retired from service before the abrogation of the pension scheme on 31 December 1990 and had accrued pension rights therein. They contend this fact was overlooked by the ordinary panel of the Supreme Court and as a result their case was dismissed along with the other 511 Plaintiffs who did not meet the criteria set under the rules of the pension scheme. The applicants submit further that the said omission or slip had occasioned a serious miscarriage of justice which if not corrected will deny them their pension rights. Attached to their affidavit in support of their application was a list marked Exhibit A; which contained their names; date engaged by Defendant; date of leaving Defendant's employment, total period of engagement; and age at the time of leaving the Defendant's employment. This list was extracted from paragraph 1 the statements of claim in the consolidated cases.

The Respondent opposed the application and submits that contrary to the Plaintiff's assertion that they fell in a different category the applicants and the rest of the Plaintiffs conducted their case on the basis of a common action in fact and in law against the Defendant and no evidence was led of their peculiar circumstances. They further argue that the list from which the names of the 10 applicants were extracted was not an exhibit but a list attached to the statement of claim and on which no evidence was led and so should be disregarded. Counsel urged on this Court that no exceptional

circumstances have been established resulting in a miscarriage of justice to warrant a review by this Court.

The review jurisdiction of the Supreme Court is a special jurisdiction and is not intended to provide an opportunity for further appeal. It is a jurisdiction which is to be exercised sparingly and where the applicant succeeds in persuading the court that there have been some exceptional circumstances such as a fundamental or basic error which the court inadvertently committed in the course of delivering its judgment and which error has resulted in a miscarriage of justice.

There is a long line of case law on how the review jurisdiction of this Court has been exercised; such as *Mechanical Lloyd Assembly Plant v Nartey* [1987-1988] 2 GLR 598, SC; *Bisi v. Kwayie* [1987-88] 2 GLR 295, SC; *Nasali v. Addy* [1987-88] 2 GLR 286, SC; *Ababio v. Mensah (No.2)* [1989-90] 1 GLR 573, SC; *Quartey v. Central Services Co. Ltd* [1997-97] SCGLR 398; *Pianim (No.3) v. Ekwam* [1996-97] SCGLR 431; *Koglex (Gh) Ltd v. Attieh* [2001-2002] SCGLR 947; *Attorney-General (No.2) v. Tsatsu Tsikata (No.2)* [2001-2002] SCGLR 620*, Hanna Assi (No. 2) v GIHOC Refrigeration& Household Products Ltd (No.2)* [2007-2008] SCGLR 15 v *NTHC Ltd v Antwi* [2009] SCGLR 175; and *Martin Alamisi Amidu v Attorney General and Others,* Suit No. J7/10/2013, SC*,* unreported dated 29 July 2014.

The applicants before us do not seek to reargue their appeal which was fought purely on legal issues. They claim they retired before 31 December 1990 the date the special pension scheme was abrogated and by the judgment of the ordinary bench they were entitled to their pensions under the said scheme. They submit this Court inadvertently overlooked this fact, and this amount to exceptional circumstances resulting in a miscarriage of justice.

There are several categories of exceptional circumstances. One instance is where the court has overlooked very material and practically decisive matters that would constitute exceptional circumstances. By the nature of the submissions by the parties herein, it seems the record of appeal and not just the bare judgment delivered will be required for the determination of

the review application. See *Tamakloe v The Republic* [2011] SCGLR 29, Holding 3:

> The Supreme Court has consistently held that categories of exceptional circumstances could not be comprehensively exhausted. In that regard, it was incumbent on the applicant to show that his substantial rights in the matter that had come before the ordinary bench of the Supreme Court had been prejudiced by some fundamental or basic error made by the court. Whatever factor was relied on by the applicant must be such that the exercise of the Supreme Court's power of review would become extremely necessary to avert irreparable harm to him. Therefore, a mere re-arguing of the original application would not suffice. However the review jurisdiction would be emasculated if too much emphasis were put on the question whether the matter had been previously argued. Thus where despite argument on a matter, the court arrived at a decision that was so palpably unsustainable as to be described as perverse, that would constitute an exceptional circumstance. Also where a decision was the product of a very serious inadequate consideration of the case presented i.e. where the court had overlooked very material and practically decisive matters that would constitute an exceptional circumstance. In such cases the record of appeal and not just the bare judgment delivered would be required for the determination of the review application. *In re Effiduase Stool Affairs (No3), Republic v. Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No. 3)* [2000] SCGLR] 59; *Adji & Co v Kwamang* [1982-83]2 GLR 1382 at 1394, CA; *Brutuw v Aferiba* [1984-86] 1GLR 25 at 30, CA; *Gyamerah v Brefo* [1984-86] 1GLR 110 at 115, CA; *Kambey v The Republic* [1989-9-] 1GLR 213 a 20. CA, *Akyea-Djamson v Duagbor* [1989-90] 1GLR 223 at 259, SC; *Benneh v The Republic* [1974[2 GLR 47 at 59, CA; *A/S Norway Cement Export Ltd v Addison* [1974]2 GLR 177, CA; *Swaniker v Adotei Twi II* [1966] GLR 151 at 162-163, SC; *In re Gomoa Ajumako Paramount Stool (No 2); Application for substitution, Acquah Applicant; Kwa Nana v Apau [*2000] SCGLR 394 at 397; *Republic v High Court, Kumasi; Ex parte Abubakar(No 3)* [2000] SCGLR 45; *NTHC V*

Antwi [2009]SCGLR 117; and *Koglex Ltd (No2) v Field* [2000] SCGLR 175 cited.

In Paragraph 1 of the amended Statement of Claim in Suit No AHR10/2007, filed on 2 December 2009 the Plaintiffs averred:

> The Plaintiffs were at all material times employees of the Defendant, having been employed and worked for the Defendant at various intervals between 1961 and 2002. The Plaintiffs agitate a common ground of action in fact and in law against the Defendant. The Plaintiffs attached hereto a scheme showing the particulars of each Plaintiff's name; date engaged by Defendant; date of leaving Defendant's employment, total period of engagement; and age at the time of leaving the Defendant's employment.

The 'scheme ' consist of details of the employment particulars of each Plaintiff in a form of a table, instead of setting each fact in a separate paragraph as was done in the initial statements of claim filed by the parties consisting of 131 and 290 paragraphs respectively.

In Paragraph 1 of the amended statement of defence filed on 9 December 2009, the Defendant averred:

> The Defendant admits paragraph 1 of the amended statement of claim that says the Plaintiffs were employees of the defendant bank between 1961 and 2002 but denies that they agitate a common ground of action in fact and in law against the Defendant in view of the varied sets of facts of employment that pertain to each individual as an employee.

The Defendant by the averments in paragraph 1 of the Statement of defence did not deny the employment history of the Plaintiffs. What was put in issue by the pleading above was whether the Plaintiffs were agitating a common ground of action "in view of the varied set of facts of employment that pertain to each individual as an employee"; which was contained in the scheme or list.

Furthermore the defence that the Plaintiffs action was statute barred was made in reference to their respective date of retirement as specified in the statement of claim. This is contained in Paragraph 7 of the Statement of defence. It reads:

> " Defendant says since the Plaintiffs' alleged rights accrued upon their retirement as specified in the statement of claim, the claims put forward are statute barred under the Limitation Decree 1972(NRCD 54)"

The amended statement of claim and statement of defence filed by the parties in Suit No AHR/3/2007 filed on 21/01/08 and 30/01/08 respectively are literally the same as in the other consolidated suit.

Since the respective dates of retirement were not in issue, the evidence given on behalf of all the Plaintiffs by Emmanuel Christian Plange was on their common efforts to get the management to pay them their pension benefits; in the belief that the scheme was still in existence and applicable to all category of staff leaving the employment of the Defendant.

There was also evidence that the Defendant was willing to pay the pension benefits of staff members who retired before the abrogation of the pension scheme.

The High Court in its judgment did not make a distinction between the two categories of staff in its judgment as it was of the view that the pension scheme was in existence and applicable to all retired staff members and thus gave judgment for those who met the criteria in Rule 3 (a) of the pension regulations. He dismissed the case of 137 staff members who did not meet the criteria. He used the lists attached to the statements of claim to make these decisions.

We note that Counsel for the Respondent did not raise any objection to the use of the lists by the High Court in the grounds of appeal at both the Court of Appeal and the ordinary bench of the Supreme Court. Counsel is therefore precluded from raising this objection now.

At this point the issue we have to consider is whether the applicants have established any exceptional circumstance to warrant the exercise of our review jurisdiction.

The ordinary bench made a finding that all the Plaintiffs left the employment of the Defendant in the year 2000 or thereabout. This finding was based on the evidence put before the Court by the Defendant that the Plaintiffs were retrenched in the year 2000. Both Counsels failed to bring to the attention of the ordinary bench the fact that the applicants before us retired before 31 December 1990 and were therefore in a different category from the rest of the Plaintiffs although they were pursuing a common ground of action.

The ordinary bench, in its judgment held that staff members who had retired before the abrogation of the scheme on 31 December 1990 were legally entitled or competent to mount a claim for specific performance after the termination of the scheme. And that by section 6 (1) of the Limitation Act, such a claim is not statute barred. Nine of the applicants have made a case that the ordinary bench glossed over the fact that they had retired before the abrogation of the scheme. By this omission, the court inadvertently treated them in the same manner as the other staff members who were still in active service at the time the scheme was abrogated and dismissed their case as well.

In our opinion exceptional circumstances exist for a review. Failure to correct the decision of the ordinary bench would be to brush aside a legitimate case of exceptional circumstance that would result in a miscarriage of justice. Ordinary fairness requires that this Court should make good its omission; otherwise the applicants would be missing out on their accrued pension benefits.

We will accordingly grant the review of the judgment of 21 May 2014 in respect of 9 of the Plaintiffs in the consolidated suits namely:

1. No. 81/1.Kuto Thomas Komla
2. No.158/1 Samuel Alex Kofi Mensah
3. No.195/1 Stephen Owusu-Boahene

4. No.238/1 Lawrence Amankwah
5. No.266/1James Kwame Danso
6. No.279/1 Braimah Busanga
7. No.318/1 Busanga Abdulai
8. No.67/3 David Bampoe
9. No.71/3 J W, Cudjoe

From the foregoing,we enter judgment for the above 9 Plaintiffs/Applicants and hereby make a declaration that the 9 Plaintiffs/Applicants are eligible to enjoy their accrued pension benefits under the Special Pension Scheme before it was abrogated. The Defendant is ordered to compute and pay to the 9 Plaintiffs/Applicants their special pension benefits with interest at the Bank of Ghana rate. The interest is to be calculated from the date of the High Court Judgment to date of final payment.

We however dismiss the review application in respect of Plaintiff/Applicant 230/1; Dennis Nii Lassey who according to the list attached to the Statement of claim retired on 31/12/ 1999 and therefore fell outside the category of the other applicants.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

KWEKU PAINTSIL ESQ. FOR THE PLAINTIFFS/RESPONDENTS/ RESPONDENTS/APPLICANTS.

THADEUS SORY ESQ. WITH HIM NANA SEKYIWAA FOR THE DEFENDANT /APPELLANT/APPELLANT/RESPONDENT.