IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, AD 2011

CORAM: AKUFFO (MS) (PRESIDING) J.S.C,
BROBBEY J.S.C,
ANSAH J.S.C.,
ADINYIRA (MRS), J.S.C
OWUSU (MS), J.S.C,
DOTSE, J.S.C,
YEBOAH, J.S.C,
BONNIE, J.S.C,
ARYEETEY, J.S.C
GBADEGBE J.S.C
AKOTO-BAMFO (MRS.), J.S.C

REVIEW MOTION
No. J1/2/2010

26th October, 2011

SUMAILA BIELBIEL Respondent

Vrs.

ADAMU DARAMANI. Applicant

THE ATTORNEY GENERAL Respondent

RULING

S. A. B. AKUFFO (MS) J.S.C

Brief Background

By a Writ of Summons issued in the High Court, Accra, on 9th February 2009, Mr Sumaila Bielbiel, the Respondent herein (who is hereinafter referred to as 'the Respondent') commenced an action against Mr. Adamu Dramani (who is hereinafter referred to as 'the Applicant') and the Attorney General, for (inter alia) the following reliefs:-

"1. A declaration that defendant is a holder of a British passport and therefore owes allegiance to a country other than Ghana and is therefore disqualified from holding the office of Member of Parliament of the Republic of Ghana.

2. An injunction against the Defendant restraining him from holding himself out as a Member of Parliament and compelling him to vacate his seat in Parliament." ... etc

The Applicant entered conditional appearance and applied to the High Court for an order setting aside the writ on the ground that the said court lacked the jurisdiction to entertain the matter, since the cause of action was in effect an election petition and, as such, was out of time and, in any event, ought to have been commenced by a Petition rather than a Writ of Summons. The Learned High Court Judge dismissed the application to set aside the Writ of Summons, and the Applicant herein, being dissatisfied with that decision, appealed to the Court of Appeal. The learned Justices of the Court of Appeal upheld the Applicant's appeal on the main ground that, since the Respondent, by his writ, was seeking an order compelling Applicant to vacate his parliamentary seat, in the circumstances of the case, he was challenging the validity of the Applicant's election to Parliament, and the matter was in effect an election petition. As such therefore, according to their Lordships, by virtue of Sections 16 and 18 of the Representation of the People Law, 1992 (PNDCL 284) (as well as the terms of

Order 2(2) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47)), not only was the action not commenced in proper form, but moreover, the same was also out of time. The Court of Appeal, therefore, set aside the Writ.

Thereafter, the Respondent, by a writ filed on March 30th 2010 against the Applicant herein and the Attorney General invoked the original jurisdiction of this Court, claiming:-

"1. A declaration that on a true and proper interpretation of articles 97(1)(e) and 94(2)(a), Adamu Daramani, also known as: Adamu Daramani-Sakande; Adamou Daramani Sakande; Adamou Sakande, who holds a British Passport and, therefore, "owes allegiance to a country other than Ghana" is acting in contravention and in continuous violation of the 1992 Constitution for as long as he continues to sit in the Parliament of Ghana.

2. Any consequential orders the Supreme Court may deem meet."

For the purposes of the instant application, the relevant event after the filing of this writ was that the Applicant herein raised a preliminary objection to the jurisdiction of this Court to entertain the Respondent's suit, on the grounds that:-

a. "The Court of Appeal being the final court in so far as matters of the kind before this Court are concerned, this court has no jurisdiction to entertain the suit before this Court which in essence seeks to question the judgment of the Court of Appeal, but not by way of an appeal or otherwise but in the exercise of the original jurisdiction of this Court.
b. The original jurisdiction of this Court is not resorted to just because a party feels helpless.
c. This suit does not lie within the exclusive original jurisdiction of this Court."

After receiving submissions from the parties, the Court, by majority decision, overruled the preliminary objection, the reasons for which are set out in its ruling dated 4th July 2011.

The Ruling

In arriving at its decision to overrule the preliminary objection, the Court took into account the state of the pleadings before it and concluded that, on the

undisputed facts of the case, the matter that came before the High Court, and which was heard on appeal by the Court of Appeal, was different in scope from what the Respondent has brought before this Court. Concerning the Applicant's second ground for objection, which raised issues with the Respondent's self-declared motives for bringing the action herein, his Lordship Justice Gbadegbe, JSC, in his opinion read on behalf of the majority of the Court, observed that the Respondent's apparent helplessness was just a mere description of what he perceived as a continuing constitutional infraction that neither the High Court nor the Court of Appeal appeared to be able to deal with. With regard to the third ground of objection, his Lordship noted that:-

> "A careful reading of article 130(1) reveals that the word 'and' is used in respect of the two special or exclusive jurisdictions of the Supreme Court that are not available to the High Court and is not intended to mean that for this Court to have jurisdiction in cases of enforcement, the question for decision must also involve the question whether an enactment was made in excess of the powers conferred on Parliament or any other person by law or under this Constitution. A contrary interpretation of article 130(1) would make article 2(1) of the Constitution superfluous....
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> ... it is unreasonable to say that whenever a particular statute violates the Constitution it is our duty to adhere to the Constitution by disregarding the statute and yet whenever acts of constitutional office holders which are, to be good, subject to certain limitations and restraints expressed sometimes as qualifications are breached because these acts do not involve issues of interpretation, we should decline to invalidate them. This would result in absurd consequences and have the effect not of upholding the Constitution but undermining it...."

Discussion

It is against this decision that the Applicant has made this application for review. From the Applicant's affidavit in support of his motion herein, it is evident that the ground for the application is that "*there are compelling and exceptional circumstances ... for this Honourable Court to review its decision as to allow this ruling ... to stand will result in a miscarriage of justice."*

In support of the application, the Applicant in his said affidavit asserted that the Court's decision was made per incuriam for reasons that may be summarised as follows:-

a. The decision completely ignored 'rules' set out in the Constitution and the electoral laws of Ghana governing the mode for seeking redress in matters concerning elections and completely ignored the point that the Respondent's cause of action 'falls within the category of cases known as electoral disputes and has already been determined by the Court of Appeal, which determination has not been set aside. Therefore any decision or relief given in the matter amounts to this Court's usurpation of the jurisdiction of the Court of Appeal and a breach of the Constitution.
b. The Ruling effectively creates a new ground for invoking the Court's original jurisdiction, in that it enables a party to come to this Court in the teeth of a valid judgement by a court of competent jurisdiction, without having to come by way of an appeal or an invocation of the Court's supervisory jurisdiction.
c. The decision is a departure from a long line of previous decisions of this court setting out the circumstances under which one may invoke the Court's original jurisdiction.
d. The decision also ignores 'a fundamental principle' of practice and procedure in this Court.

This is an application for review of the Court's ruling on the preliminary objection and, consequently, we need to remind ourselves that the parameters for the exercise of our review jurisdiction are rather limited. The Constitution grants the Supreme Court the power to review its decisions, which power is regulated by Rule 54 of the Supreme Court Rules, 1996 (C.I. 16). The Rule states that:-

"54. The Court may review any decision made or given by it on any of the following grounds-

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

(b) 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 him at the time when the decision was given."

The Applicant's application herein is based on the first of the aforementioned grounds and it is our view that he has failed to satisfy the conditions for the exercise of our review jurisdiction. The span of this ground has been the subject matter of numerous judicial decisions and it is well established that, whilst it is unwise and even impossible to draw up an exhaustive list of what constitutes 'exceptional circumstances', yet the scope of the jurisdiction itself is very circumscribed and an application for review cannot be allowed to be used as a second appeal to the same court. Therefore, merely disagreeing with the decision, or merely restating one's initial arguments will never be enough justification for granting an application for review. Furthermore, in an application founded on Rule 54(a), it is required that the circumstances relied upon must be exceptional, such exceptionality being deducible from the circumstances of the particular case. Additionally, an applicant must demonstrably satisfy the Court that such exceptional circumstances have resulted in a miscarriage of justice.

In his Statement of Case in support of the application herein, Counsel for the Applicant has given us a comprehensive overview of the state of the law on review, for which we are most grateful. However, although the said Statement of Case purports to set out a rather expansive discussion of the grounds of the application, all that it succeeds in doing is to re-present the Applicant's preliminary objection, which he had already argued before the court. In an application for review, it is not enough to restate and present more eloquent variations on the same theme.

In determining the preliminary objection, the Court took into account all the matters that were relevant in the circumstances. No aspect of the ruling justifies the Applicant's litany that the decision was made per incuriam. The possibility that, according to the Applicant, the result of the Court's decision might be that a party who loses an action brought under article 99(1) may be able to obtain the same end result by bringing a writ invoking the original jurisdiction of the Court (instead of appealing or bringing an application invoking the supervisory jurisdiction of the Court) is quite immaterial. So long as such a person is able to show that her suit properly falls within the scope of the Court's special jurisdiction to enforce and interpret the Constitution the Court will not shirk its constitutional duties. Hence, **Yeboah v. J. H. Mensah [1998-99] SCGLR, 492**

cannot be applied in this case to defeat the purposes and intendments of Article 94(1) (a) and, indeed, the Court was justified in ignoring Counsel's copious arguments concerning its applicability. One would venture, even further, to state that to have relied on and applied the decision in that case would have resulted in the highest Court of the Republic of Ghana declining jurisdiction to determine a question of whether or not a Parliamentary seat is being occupied by an alien. That would have been a most undesirable outcome.

Moreover, as has already been intimated above, in the terms of Rule 54(a) of the Rules of this Court, an Applicant for review must demonstrate that the exceptional circumstances that have flawed the decision sought to be reviewed 'have resulted in miscarriage of justice'. In our view, it is self evident from the state of the pleadings before the Court that the ruling has not occasioned (nor is it bound to occasion) any miscarriage of justice to the Applicant in particular, or the Ghanaian public in general. This is because, if indeed there is at present in our Parliament a member who owes allegiance to a country other than Ghana, it only serves the ends of justice for the Court, in the exercise of its original jurisdiction, to make a determination on whether or not that person is acting in contravention and continuous violation of the Supreme Law of the Land for as long as he continues to sit on one of the hallowed Seats in the Parliament of the Republic of Ghana. The mere possibility that, the Respondent's action herein, were it to succeed, will result in unseating the Applicant cannot, in the circumstances, amount to a miscarriage of justice since, in such an event, the ends of constitutional integrity (and, hence, of the greater public interest) would have been duly served. In truth, this is not a personal action, whatever are the personal motives of the Respondent. It is a constitutional action which raises crucial issues of the deepest public interest and constitutional concern. It cannot be resolved by mere technicalities and it would be aberrant, indeed, for this Court to abandon its constitutional responsibilities by declining jurisdiction. This reason alone would have sufficed to justify the dismissal of this application for review.

Conclusion

In conclusion, the jurisdiction of the Supreme Court of Ghana is founded on the Constitution of the Republic of Ghana, not on any editorial categorisations. In all cases where its original jurisdiction is under consideration, what matters is whether the cause of action is properly within the scope of the provisions of the Constitution. Where the Court determines that it does have jurisdiction, it will

review such decision only on the clearest showing that its decision has inimical repercussions on the Constitution and the public good.

In the light of the foregoing the application herein for review of the Ruling of the Court on the Applicant's preliminary objection is hereby dismissed as being entirely devoid of any merit whatsoever.

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

[SGD] S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD] S. O. ADINYIRA (MRS.)
JUSTICE OF THE SUPREME COURT

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

[SGD] J. M. V. DOTSE
JUSTICE OF THE SUPREME COURT

[SGD] ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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