**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT**
**ACCRA**
**AD 2015**

**CORAM: ANSAH, JSC (PRESIDING)**
**DOTSE, JSC**
**ANIN YEBOAH, JSC**
**BAFFOE - BONNIE, JSC**
**GBADEGBE, JSC**
**AKOTO - BAMFO (Mrs.), JSC**
**BENIN JSC**

**WRIT**
**NO.J1/5/2014**

**29TH OCTOBER 2015**

**JUSTICE FRANK KWADWO AMOAH** **PLAINTIFF**

**VRS.**

**THE ATTORNEY GENERAL** **DEFENDANT**

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**JUDGMENT**

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**ANIN-YEBOAH JSC:**

The plaintiff herein, a retired justice of the High Court, has by his amended writ of summons dated the 9/4/2015 sued the Attorney-General for the following reliefs:

i. A declaration that upon a true and proper interpretation of Articles 145(1) and (3) as well as Articles 127 and 58(2) of the

Constitution, 1992, the purported rejection by the President of Ghana of the plaintiff's notice of voluntary retirement as a justice of the Superior Court is unconstitutional, unlawful and of no effect.

ii. The declaration that upon a true and proper interpretation of Articles 145(1) and (3) as well as Articles 127 of the Constitution, 1992, the notice issued by the plaintiff to the president informing the president of plaintiff's voluntary retirement from the Judicial Service with effect from March, 2011 was valid and the president was obliged to accept same.

iii. A declaration that the committee set up under Article 146 of the Constitution to investigate plaintiff having failed to discharge its mandate and some members of the said committee having either died or retired as Justices of the Superior Courts, lack the constitutional capacity to investigate any compliant against plaintiff.

iv. A declaration that the plaintiff having compulsorily retired as a High Court Judge since 7th December 2011, is not subject to the processes prescribed for the removal of a Justice of the Superior Court under Article 146 of the Constitution.

v. A declaration that the purported withholding of the plaintiff's gratuity and retirement benefits since 1st March 2011 is unconstitutional.

vi. An order compelling the payment of plaintiff's gratuity and retirement benefits with interest thereon at the commercial rate from 1st March, 2011.

vii. General damages for hardship, inconvenience and undue embarrassment suffered by plaintiff.

viii. Any further order(s) as to this Honorable Court may seem meet.

The facts of this case are devoid of controversy and relatively simple. The plaintiff was before his appointment to the High Court in 2003 a private legal practitioner. He served at various stations where he exercised the functions of a High Court Judge. In 2010, the honorable Lady Chief Justice received a complaint against him alleging judicial impropriety for delivering a judgment in December 2009 and subsequently purporting in March 2010 to render a different and or separate judgment in respect of the same case. Upon receipt of the complaint, the Chief Justice referred the matter to a Justice of the Court of Appeal to conduct further investigations into the allegation. The investigation confirmed the allegation which in its nature raised a case of misconduct against the plaintiff who from the evidence that unfolded before the investigating judge had delivered four separate judgments on diverse dates in the same action. Accordingly, the Chief Justice referred the findings to the Judicial Council which also tasked its Disciplinary Committee to inquire into the matter.

On 16 September 2010, the Judicial Council accepted the findings of its Disciplinary Committee and in accordance with the provisions of the Constitution petitioned His Excellency the President for the removal of the erring judge from office as a justice of the superior court. After going through the petition, the President acting under article 146(3) of the constitution referred the matter to the Chief Justice to determine if there was a prima facie case against the plaintiff. Having been satisfied that the allegation disclosed a prima facie case of misconduct against the plaintiff, the Chief Justice proceeded to set up a committee as she was enjoined so to do by article 146(4) on 11 January 2011 to impeach the plaintiff. The membership of the committee was as follows:

1. Dr. Justice S. K. Date-Bah (Supreme Court Judge) -- Chairman
2. Mr. Justice G. M. Quaye (Court of Appeal) -- Member
3. Mrs. Justice Cecilia H. Sowah (Justice of the High Court) -- Member
4. Prof. Kofi Anyidoho, English Department, University of Ghana -- Member
5. Mr. Iddrisu Egala, Chartered Accountant and Chairman of Central Tender Review Board -- Member

Following receipt of the letter notifying him of the constitution of a committee to impeach him, the plaintiff on 17 January 2011 while being stationed at Akim Oda as a judge of the High Court wrote to the Chief Justice giving notice of his desire to voluntarily retire from the Judiciary on

the grounds that he had been elected to be installed as the paramount chief of Assin Foso Traditional Area. The said letter makes interesting reading and is quoted fully hereunder as follows:

> "I hereby give notice of my intention to go on voluntary retirement from the Judicial Service commencing from the 31st of March, 2011. I have been elected to be installed the Paramount Chief of Afutuakwa (Assin Foso) Traditional Area in the Central Region of Ghana. The installation and swearing of oath of allegiance will be on the 21st of February 2011, immediately followed by confinement. The outdooring is scheduled for Monday 7th March, 2011. I have already asked for twenty-one (21) working days casual leave in another letter.
>
> My decision to go on early voluntary retirement is informed by the fact that I have only nine months to reach my retirement age, and these few remaining months will not change my circumstances in any way because even if I should retire on 7th December, 2011 when I would be sixty-five (65) years old, I would have worked for nine (9) years and still would not be entitled to retire with full benefits."

A copy of this letter was forwarded to the President by the Chief Justice. The crux of the letter from the Chief Justice dated 01 March 2011 reads:

> "It will be recalled per my letter dated 21st January, 2011, that I informed Your Excellency about a Five-Member Committee that had been set up in terms of Article 146 of the 1992 Constitution, under the Chairmanship of Justice S. K. Date-Bah, to investigate a complaint against Justice Frank Amoah. The committee has since held two meetings and is expected to sit again on 8th March, 2011"

After receipt of the Chief Justice's letter referred to in the preceding paragraph, the President responded on 08 March 2011 to the plaintiff's request to go on voluntary retirement, the gist of which states as follows:

> "I regret to inform you that His Excellency the President is unable to grant your request of voluntary retirement, due to the notice of impeachment for misconduct served on your by Her Ladyship the Chief Justice. Beside, you failed to give adequate notice of your intention to retire voluntarily from the judiciary as required per Article 45(4) of the Constitution."

The plaintiff responded to the president's letter on 24 March 2011 by which he sought to explain his decision to retire in order to occupy the Assin Foso stool. Thereafter, the plaintiff never had any letter from the President on his request to voluntarily retire. On 26 March 2013, the plaintiff wrote to his employers to enquire about his gratuity and salary arrears. The response to his letter was that in view of the refusal of the President to accept his voluntary retirement, the Judiciary was unable to accept his

request. Subsequently, in a letter dated 15 February 2011, the Judicial Service wrote to the plaintiff to direct his letter for voluntary retirement to the President. In the said letter, the plaintiff was notified that his applications to go on quinquennial leave as well as casual leave were refused. On 18 March 2011, the Judicial Secretary on behalf of the Chief Justice acknowledging that plaintiff had voluntarily retired from the Judicial Service with effect from 01 March 2011, requested him to vacate his official accommodation and also hand over his official car. This was followed by another correspondence of some importance dated23 February 2012, by which the Judicial Secretary acting on behalf of the Chief Justice notified the plaintiff that his name had been deleted from the list of the Judicial Service. The plaintiff was, however, paid salary arrears covering 2008, 2009 and 2010 at which times he was an active judge in the Judicial Service.

The plaintiff complains in these proceedings that all efforts to effect the payment to him of his gratuity and retirement benefits have proved futile wherefore on 20 February 2014 he took out the instant action for redress based on the circumstances which have been narrated earlier on in this judgment. His contention is that ever since the impeachment proceedings were commenced against him, one of the members in the person of His Lordship Justice G. M. Quaye had died in 2011 and the chairman Dr Justice S. K. Date-Bah had also subsequently retired with no substitutions being made in their stead resulting in the proceedings being stalled. The plaintiff also contends that having attained his compulsory retiring age of 65 on 07

December 2011, he has ceased to be a judge by virtue of the operation of article 145 of the Constitution and is therefore not subject to disciplinary proceedings in the nature of impeachment.

In the course of the pendency of the action herein, the plaintiff sought leave and obtained leave to amend his writ. As stated earlier, the facts on which the action herein is grounded are not in dispute and present for our determination what may be described as the consequences of law flowing from such admitted facts. While the plaintiff is of the view that following his compulsory retirement, he is not subject to impeachment proceedings, the learned Attorney- General holds a contrary opinion and in particular asserts that he cannot retire from the Judicial Service with retirement benefits which he claims in the action herein. The question which arises from the contention of the learned Attorney-General is whether it is permissible in law for the plaintiff's entitlement to gratuity to be withheld by the defendant because of the stalled impeachment proceedings.

Although several issues emerged from the facts and memorandum of issues settled by the parties, we are of the opinion that the crucial issues for our determination in the action herein are:

i. Whether or not His Excellency the President is bound to accept a request of a Superior Court Judge to voluntary retire from the Judicial Service at a time impeachment proceedings are pending against the said judge;

ii. Whether or not a Superior Court judge upon attaining the compulsory retiring age is amenable to impeachment proceedings;
iii. Whether or not inordinate delay in pending impeachment proceedings should deny the benefits to a retired judge upon attaining the compulsory retirement age.

We commence with the resolution of the above issues by making reference to article 145 (3) of the 1992 for guidance. The said article reads:

> "A justice of the Superior Court of Judicature or a Chairman of a Regional Tribunal may resign his office in writing signed by him and addressed to the President."

We are of the opinion that the requirement of notification to the President is to enable him as the appointing authority to take steps to ensure that the judge seeking to resign does not have any pending disciplinary proceedings against him before going on voluntary retirement. This provision, in our view accords not only with principle but common sense as well. The only question which arises from the said provision is whether the President as has been complained to us in these proceedings by the plaintiff can refuse to give accession to the decision by a superior court judge to resign. We think that as the date the plaintiff notified the President of his intention to resign there was disciplinary proceedings pending against him, the President was not bound to accept same. We are

equally of the opinion that had the President accepted the letter of resignation, its effect would be to undermine the carefully drafted disciplinary provisions in relation to superior court judges under the constitution. Accordingly, we are unable to yield to the plaintiff's argument that the refusal was wrong; we hold that the President acted within the scope of the constitution and cannot therefore be said to have conducted himself unconstitutionally.

It must be pointed out that even under the common law, an employee who tenders his resignation to his employer is obliged to do so as the employer may hold him accountable for any wrong done during his tenure. We note that the constitution does not expressly confer on the President the power to reject or accept the resignation of a judge but implicit in the power conferred on him to be notified by the superior court judge who intends to resign his office is the power to either accept or reject such a request. Reference is made in this regard to article 297 (c) by which it is provided thus:

> "In this Constitution and any other law where a power is given to a person or authority to do or enforce the doing of an act or thing, all such powers shall be deemed to be also given as are necessary to enable the person or authority to do or enforce the doing of the act or thing."

A combined and purposive reading of articles 144(5) and 145(3) makes it tolerably clearer that the President as the appointing authority may either

accept or refuse to accept any such request addressed to him. We think that any other interpretation will render the provision useless and ineffective and defeat the presumption that it was inserted to achieve a purpose. The meaning of the articles urged on us by the defendant arises from a disjunctive reading of the provisions and we accordingly reject same.

We next turn our attention to the issue relating to whether having reached the compulsory retiring age, the plaintiff is still subject to disciplinary proceedings contemplated against superior court judges in article 146. We pause here to observe that the point for our determination that arises from this issue is one which belongs to an area that has not been decided previously but mindful of our oath as judges and guardians of the constitution, we must adopt an interpretation that will be in conformity with the letter and spirit of the constitution and above all enhance public confidence in the administration of justice. We also note that inherent in the office of a judge is responsibility and accountability as well as the constitutional requirement of high moral caliber contained in articles 128(4), 136 (3) and 139 (4).

We have carefully given thought and consideration to the various articles in the constitution to which reference has been made in the course of this judgment and have come to the opinion that article 146 of the constitution deals with persons who are in the employment of the Judiciary as judges

and does not apply to judges who have retired by operation of law compulsorily. We are of the view that as impeachment proceedings are for the purpose of removing a serving judge from employment on clearly stated constitutional grounds, it is unreasonable to impute to the law-maker that the provision was intended to apply to retired judges as well. A judge who has compulsorily retired is clearly outside the scope of article 146. The operative words which describe the consequence of impeachment as provided in article 146 "*shall be removed from office"* render any other interpretation of the consequences of retirement on the impeachment process not only unreasonable but an abuse of language.

We now turn our attention to the continuing withholding of the plaintiff's gratuity by the defendant because of the pending disciplinary proceedings which on the facts of this case have been stalled for more than three years now. On the facts of this case, the committee was constituted in 2011 but to date notwithstanding the unavailability of two members no explanation has been offered by the defendant for the inability of the constituting authority to have the committee reconstituted before the plaintiff retired compulsorily. We have noted from the proceedings before us that the delay in proceeding with the investigation is not attributable to any act or omission of the plaintiff such as to disentitle him from seeking to benefit from his own wrong doing. We are of the opinion that as the proceedings have stalled for quite a considerable length of time without any explanation resulting in the plaintiff acquiring an accrued right by virtue of article 145 (2) (b) as a compulsorily retired superior court judge and now properly

belongs to the category of pensioners and entitled to retiring awards. We are of the view, however, that if the proceedings were on-going before the retirement of the plaintiff, his retirement cannot bring them to an end as the matters giving rise to the proceedings would have arisen during his tenure.

As the status of the plaintiff arises from a constitutional provision, we are bound to give effect to it. The fact of his compulsory retirement and the legal consequences supersede whatever constraint he may have had by virtue of the pendency of the impeachment process that was put in place in January 2011 in so far as the proceedings were not on-going before the effective date of his retirement. The plaintiff has had to wait since his compulsory retirement on 07 December 2011 until 20 February 2014 when he caused the action herein to be issued on his behalf. Even when the writ was issued and the action progressed slowly towards trial, no steps were taken by the constituting authority to have the disciplinary proceedings completed. In the meantime, the plaintiff's entitlements under the constitution remain unpaid. We are of the opinion that in the absence of clear statutory authority the plaintiff cannot continue to have his gratuity and benefits withheld from him. We are also of the view that the period of waiting that he has had to endure while in the reasonable expectation that the proceedings will resume and be concluded which is almost four years previous to his compulsory retirement is such that he cannot continue to be deprived of the benefits that have accrued to him and accordingly declare that he is entitled to be paid his gratuity and other benefits as

provided in the constitution. We are unable, however, to make an order compelling payment of his entitlement to him as it is not the business of our courts to undertake execution on behalf of parties. This is a fact too well known to the plaintiff and we are surprised that he has made such a demand on us.

By relief 6, the plaintiff puts the effective date for the computation of his gratuity at 03 March 2011 when he served the President with the notice under article 145 but we are unable to accept this for the reasons earlier on referred to in this judgment. In our view, the effective date is when he compulsorily retired-07 December 2011.

We would like to say that the requirement of fair hearing within a reasonable time contained in article 19 (13) in relation to adjudicating authorities is equally applicable to disciplinary bodies set up by law and that where there has been a considerable delay such as occurred in the action herein, such a delay might be an instance of breach of fundamental human rights remediable by an action for appropriate redress. The facts of this case have brought up the issue of what to do with public servants who have had allegations of impropriety and or misconduct raised against them but not dealt with before they compulsorily retire. We think that our pension laws should be amended to make provision for such pending cases to be dealt with whiles the persons to whom the cases relate are on retirement in order to avoid creating escape routes for erring public servants, a situation which tends to undermine respect for the law governing employees in terms of good conduct. We also recommend that

cases involving persons who are about to retire be handled expeditiously and concluded before their retirement.

The plaintiff has also claimed damages for hardship, inconvenience and undue embarrassment suffered by him on account of the matters which led to the issue of the action herein. We think that the finding by the Chief Justice of a prima facie case which finding is presumed to have been regularly exercised means that but for the delay resulting in his retirement, the committee would have gone through the disciplinary proceedings set in motion in respect of the allegations levelled against him. As the impeachment proceedings are provided for by the constitution, its initiation cannot create a cause of action in damages and accordingly, we are unable to accede to his request for damages which claim is accordingly dismissed. In our opinion the plaintiff's constitutional right as a compulsorily retired superior court judge is his entitlement to gratuity and pension.

The plaintiff has also sought an order for commercial interest on the gratuity and pension to which he is entitled but we are of the view that since the complaint leading to the initiation of disciplinary proceedings against him are derived from the constitution, he has not been unlawfully deprived of his entitlements to render it a good ground for the award of interest which serves as compensation for keeping his entitlements away from him.

The result is that plaintiff's action succeeds on reliefs 3, 4, 5 only.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

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

(SGD) N. S. GBADEGBE
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