IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- 2011

CORAM: OWUSU [MS], JSC [PRESIDING]
DOTSE, JSC
YEBOAH JSC
GBADEGBE, JSC
AKOTO-BAMFO [MRS], JSC

REFERENCE
NO. J6/1/2012

31ST JANUARY, 2013

JUSTICE KWAME ANSU-GYEABOUR - - - PLAINTIFF

VRS

THE ATTORNEY GENERAL - - - DEFENDANT

R U L I N G

OWUSU[MS.],JSC.

This is a reference under Article 130(2) of the 1992 constitution to this court for the exercise of its exclusive original Jurisdiction. Under Article 130 (1) (a) of the constitution, this exclusive jurisdiction shall be exercised in –

"all matters relating to the enforcement or interpretation of this constitution; And

(b) - - - - - - - - - - - - - - - -

Under Article 130 (2) –

"where an issue that relates to a matter or question referred to in clause (1) of this article arise in any proceedings in a court other than the Supreme Court, the court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

In suit No. HRC 42/11, as titled above, pending before (Human Rights Division) of the Accra High Court, the plaintiff, a superior court Judge has commenced an action claiming:

"(1) A declaration that in view of the fact that no person has sent a petition to His Excellency, the president for the removal of the plaintiff as a Justice of the High Court, the setting up of the Justice Sophia O. A. Adinyira committee to investigate the plaintiff is null and void and a violation of the fundamental human rights of the plaintiff as contained in Article 12 (1) and (2) of the constitution of the Republic of Ghana, 1992."

(2) A declaration that in view of the fact that Her Ladyship the Chief Justice has never personally investigated the plaintiff to determine a prima facie case as required, she can not purport to set up the Justice O. A. Adinyira Committee to investigate the plaintiff.

(3) A declaration that the Judicial Council being a constitutional body set up under the Constitution of the Republic of Ghana , 1992, to perform specific functions cannot arrogate to itself the power to send a petition to His Excellency, the President to impeach the plaintiff.

(4) A declaration that by failing to inform the plaintiff from the onset that he was being investigated for possible impeachment under Article 146 of the Constitution of Ghana 1992, Article 23 of the said Constitution was not followed.

(5) A declaration that since in an intended impeachment proceeding against a superior court judge there is room for only one committee under Article 146 of the 1992 Constitution of the Republic of Ghana, the use of findings before the Justice Julius Ansah and Sophia Akuffo Committees were unconstitutional.

(6) An ORDER of the court setting aside the proceedings that occurred before the Justices Julius Ansah and Sophia Akuffo Committees.

(7) A declaration that in view of the failure of the defendant to comply with the laid down procedures for the removal of a justice of superior court of judicature, the Justice Sophia O. A. Adinyira Committee cannot purport to investigate the plaintiff.

(8) General damages for emotions, expenses and stress caused to the plaintiff due to the unconstitutional conduct of the defendant.

(9) An ORDER OF PERPETUAL INJUNCTION restraining the defendant, its agents, assigns, servants etc from any further impeachment proceedings against the plaintiff.

The plaintiff, then stationed in Kumasi presided over High Court (5) before which one Kofi Anane Agyekum was the plaintiff in the case of KOFI ANANE AGYEKUM VRS. MADAM FAUSTINA PATIENCE CUDJOE and Others. He was later transferred from Kumasi before he could sit on the case.

In a letter dated 15th June 2010, the said Anane Agyekum sent a complaint to the Director of complaints Unit which I deem it necessary to reproduce below:

"

Kofi Anane Agyekum

P. O. Box 5098
Kumasi
Mob. No. 020-7348894
15th June, 2010

Director of Complaints Unit
Judicial Service,
Box 119
Accra

Dear Sir/Madam,

Kofi Anane Agyekum }
House No. 22 } Plaintiff

Kwadaso Estate }

Vrs

Madam Faustina Patience }
Cudjoe and others } Defendants

Suit No. E1/94/08 FILED ON 20/02/2008

4 months in June, 2008, after I had filed the said suit I met a man by name Nana Anim Badwa who told me he would lead me to the sitting Judge Kwame Ansu Gyeabour to have my case speed up. Surely, he asked me to bring ¢25, 000,000.000 (GH¢2, 500.00) and he drove me in his car to the said Judge's house and gave him the money.

In reply the Judge told me I have a good case so he will let me give evidence as early as possible so I shouldn't worry. In December that same year, Nana demanded 20, 000,000.00 (GH2, 000.00) for the Judge because he was putting up a new building and for that matter he needed same to buy some materials. Again, I went with him and he delivered the money to the judge. Between January and May 2009, Nana took from me to the said Judge (GH¢5, 500.00)

In mid June, before I was to give evidence on 7th July, 2009 and on which day he announced in the court the docket was missing, Nana, my sister Helena Agyekum and myself went to the judge's house and gave him (GH¢3,500.00)

The said evidence he promised never came on so, I demanded my money back, but always empty promises I do receive. Upon that I have no choice but to fall on the Judicial Complaints Units to intervene to help me have my money totaling ¢135,000,000.00 (GH¢13,500.00) paid back to me. I also demand an investigation into the rent matter in house number OTB 312 at Adum which amounts to over GH¢200,000.00

Thank you

Yours faithfully,

Signed
ANANE AGYEKUM ”

Following receipt of the letter, Her Ladyship the Chief Justice set up a three member committee to investigate the allegations made by the complainant against His Lordship. The committee was chaired by the Director of the Unit His Lordship Julius Ansah with a Representative of Association of Magistrates and Judges (AMJG) and first Deputy Judicial Secretary as members, the Chief Registrar-General as Secretary.

Before the setting up of the committee, copy of the letter of complaint, had been sent to His Lordship Ansu-Gyeabour for his comments.

The committee sat on the matter and submitted a report to Her Ladyship in which a finding of fact was made that His Lordship Ansu-Gyeabour took the money, the

total sum of thirteen thousand, five hundred Ghana Cedis (GH¢13, 500.00) as alleged by the complainant among others.

The committee finally recommended that the disciplinary aspect with regard to the Judge be left with the Judicial Council.

At its meeting held on 16th September 2010, the Judicial Council referred the Justice Ansah's Committee report to the Appointments and Disciplinary Committee for necessary action.

That committee was constituted by Her Ladyship Sophia A. B. Akuffo as Chair, Justice J. B. Akamba J.A. (as he then was) Mr. Barton Odro, Deputy Attorney-General and Mr. D. R. K. Sankah as members. His Lordship A. B. Poku-Acheampong, Judicial Secretary as Secretary.

By a letter dated 8th October, 2010, his Lordship Ansu-Gyeabour was invited to appear before the committee. In the letter, he was informed of his right to attend the hearing with his counsel.

His Lordship chose to attend the hearing without any counsel on 14th October 2010.

The committee after going into the matter issued a report and recommended that:
"In view of the gross nature of the Judge's conduct, we recommend that her Ladyship the Chief Justice should bring the matter to the attention of His Excellency the president for necessary action under Article 146 of the constitution."

In line with the recommendation, the council by a letter dated 2nd November 2010, signed by Her Ladyship the Chief Justice, petitioned His Excellency the President of the Republic for the removal of Justice Ansu-Gyeabour in accordance with Article 146 of the constitution.

Upon receipt by His Excellency, the President, He referred the petition to the Lady Chief Justice to make a determination as to whether there is a prima facie case against the plaintiff.

Under Article 146 (3) –
"If the president receives a petition for the removal of a Justice of a superior court other than the Chief Justice or for the removal of the chairman of a Regional Tribunal, he shall refer the petition to the Chief Justice, who shall determine whether there is a prima facie case."

When Her Ladyship received the petition, she in accordance with Art. 145 (4), set up a committee of three Justices of the superior courts appointed by the Judicial council and two other persons who are not members of parliament, nor lawyers appointed by her on the advice of the council of state to investigate the complaint.

Article 146 (4) of the constitution reads as follows:
"where the chief Justice decides that there is a prima facie case, he shall set up a committee consisting of three Justices of the superior courts or chairmen of the Regional Tribunals or both, appointed by the judicial council and two other persons who are not members of the council of state, nor members of parliament,

nor lawyers and who shall be appointed by the Chief Justice on the advice of the council of state."

Under Art. 146 (5), the committee so appointed shall investigate the complaint and make its recommendations to the Chief justice who shall forward it to the president.

The committee so set up is constituted by Mrs. Justice Sophia O. A. Adinyira J.S.C. Chairperson ---;
2. Mr. Justice R. K. Apaloo J. A., Member;
3. Mr Justice Charles Quist J., Member,
4. Rev. Samuel Otu Pimpong, Member
5. Surveyor Yvonne Sowah, President of Ghana Institute of surveyors, Member

By a letter dated 21st January 2011, signed by the Judicial Secretary, the plaintiff was duly informed of the formation of the committee and its mandate. Paragraph 4 of the letter states that:
"Having been satisfied that a prima facie case of misconduct has been established against you. The honourable Lady Chief Justice proceeded to set up a committee to investigate the matter."

In the letter, reference was made to the Sophia Akuffo committee on the same subject matter.

By a letter dated 31st January 2011, the Judicial Secretary wrote to the plaintiff inviting him to appear before the committee on 7th February for the commencement of the impeachment proceedings.

The plaintiff thereafter instituted the action for the reliefs as endorsed on his amended writ of summons. At the close of pleadings, the issues set down for trial among others included the following:

"1. Whether or not in the exercise of her constitutional powers under Article 146(3) of the 1992 constitution; Her Ladyship the Chief Justice could delegate her administrative powers;"

"2. Whether or not the use of the proceedings before the Justice Ansah and Justice Sophia Akuffo Committees as basis for impeachment proceedings against the plaintiff under Article 146 of 1992 constitution was unconstitutional."

"3. Whether or not the Judicial Council established under Article 153 and 154 of the 1992 constitution has the constitutional mandate to forward a petition to His Excellency the president of Ghana for the impeachment of a superior court Judge of Ghana."

According to the trial Judge, both counsel for the plaintiff and Defendant, agreed with the court that these three issues are constitutional and needed to be resolved by legal arguments.

It is the case of the plaintiff that the duty cast on the Chief Justice to determine a prima facie case against a superior court Judge under Article 146(3) is non-delegatable.

Counsel in his submission relied on the case of AGYEI-TWUM VRS THE ATTORNEY-GENERAL & Another [2005-6] SCGLR 732, contending that in determining a prima facie case, the Chief Justice must personally investigate the allegation made against the Judge.

With regard to issue 2, I do not think it calls for interpretation. The two committees were not set up under Article 146 of the constitution. Justice Ansah's committee is an administrative committee set up following the complaint against the Judge to the Complaints Unit.

The Justice Akuffo's committee is the Appointments and Disciplinary committee set up by the Judicial Council in exercise of its functions under Article 154 (2) of the constitution.

Issue 3 touches on whether under Article 153 and 154 of the constitution, the Judicial Council has the constitutional mandate to forward a petition to His Excellency the President of Ghana for the impeachment of a superior court Judge of Ghana.

The Defendant is of the view that the interpretation that counsel for the plaintiff has put on Article 146(3) of the constitution is untenable. She has urged upon the court to construe the relevant provision from a liberal, benevolent and purposive perspective so as to give effect to the spirit and letter of the constitution relying on the celebrated case of TUFFUOR VRS ATTORNEY-GENERAL [1980] GLR 137.

The trial court, realizing it has no such jurisdiction to interpret the provisions of the constitution therefore referred the issues to this court for its interpretative Jurisdiction.

It is the case of the plaintiff that he has not appeared before the Chief Justice personally and that in carrying out her constitutional duty under Article 146 (3),

the Chief Justice cannot delegate that duty of making the determination of a prima facie case.

The interpretation that this court is being called upon to give to the "Chief Justice who shall determine a prima facie case" has the potential to affect the security of tenure of any holder of the office of superior court Judge and therefore is of serious significance.
The approach to interpretation of statutes and for that matter constitutional provisions is two fold. The literal and purposive approaches.

What then is the interpretation of the phrase "the Chief Justice who shall determine whether there is a prima facie case? "We start by reminding ourselves of the major aids to interpretations bearing in mind the goals that the constitution intends to achieve. Our first duty is to take the words as they stand and to give them their true construction having regard to the language of the provision of the constitution, always preferring the natural meaning of the words involved but nonetheless giving the words their appropriate construction according to the context. Per Viscount Simon L. c. in BARNCARD VRS GORMAN [1941] A. C. 378 at 384 H. L. quoted with approval by Sowah C. J. in Tuffuor's case already referred to.
In ascertaining the meaning to be attached to the phrase, in Article 146 (3) the first step to take is to ascertain the meaning from a consideration of the Article itself if that is possible. The next step is to look at the context in which it is used. In REIN VRS LANE [1867] L. R. 2 Q. B. 144, Black burn J. said at p. 157.

"It is, I apprehend, in accordance with the general rule of construction in every case, that you are not only to look at the words, but you are to look at the context, the collocation , and the object of such words relating to such a matter, and

interpret the meaning according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstance."
See the case of BENNEH VRS THE REPUBLIC [1974] 2 GLR 47 at 64 per Azu Crabbe C. J.
"Modern Judicial technique had tended away from simple literalism towards a purposive approach to interpretation which was more likely to achieve the ends of Justice. It was a flexible approach which would enable the Judge to determine the meaning of a provision, taking into account the actual text of the provision and the broader legislative policy underpinnings, and purpose of the text -" See ASARE VRS the ATTORNEY-GENERAL [2003-4]SCGLR 823.

Going by these guidelines, starting with the ordinary meaning of the words used in Article 146(3) the determination of whether there is a prima facie case must be made by the Chief Justice herself. "Shall" is obligatory and therefore that duty cast on her cannot be delegated. Indeed in the present case, she made no such attempt to delegate that duty to anybody.

After the petition was referred to her by His Excellency the President, she satisfied herself that there is a prima facie case and therefore set up the Justice Adinyira's committee.

In the letter to His Lordship Ansu-Gyaebour, inviting him to appear before the committee, it is stated that Her Ladyship was satisfied that a prima facie case of misconduct has been established against him.
How did she make that determination? Did she personally have to interrogate His Lordship? Reading Article 146 (3) and (4) together, is that what the framers of the

constitution intended? To answer these questions in the affirmative will overburden the Chief Justice in the discharge of her duties under Article 125 (4) of the constitution which reads as follows:

"The Chief Justice shall, subject to this constitution, be the Head of the judiciary and shall be responsible for the administrative and supervision of the Judiciary."

'Determine' in the Oxford Advanced Learners Dictionary has been defined as "calculate something exactly; officially decide and / or arrange something."

When the petition came back from His Excellency the President, could Her Ladyship not officially decide on whether there was a prima facie case of misconduct against His Lordship Ansu-Gyaebour? Adopting a flexible approach, at least she had the reports from the two previous committees initially set up to investigate Anane Agyekum's complaint. On the basis of these reports, could she not make a determination of a prima facie case? I am of the view she could and therefore did not need to personally interrogate Justice Ansu-Gyaebuor.

L. B. Curzon's Dictionary of Law defines prima facie as "of first appearance; on the face of it."

So therefore on the face of the two reports she could make that determination.

The Judicial Council is a constitutional body set up under Article 153 of the constitution. The Article reads –

"There shall be a judicial council which shall comprise the following persons – xxxx

Under Article 154 (1), the functions of the Judicial Council are –

"(a) to propose for the consideration of Government, Judicial reforms to improve the level of administration of Justice and efficiency in the Judiciary;

(b) to be a forum for consideration and discussion of matters relating to the discharge of the functions of the judiciary and thereby assist the Chief Justice in the performance of his duties with a view to ensuring efficiency and effective realization of Justice; and
(c) to perform any other functions conferred on it by or under this constitution or any other law not inconsistent with this constitution.

Under 154 (2) –
"The Judicial Council may establish such committees as it considers necessary to which it shall refer matters relating to the Judiciary."

Article 146(3) does not indicate who shall send a petition for the removal of the Justice of the superior court. The question then is, could the Judicial Council send the petition?

Counsel for the plaintiff does not think it has the power to do that relying on the case of Agbevor already referred to.

In this case, the court per Kpegah JSC has castigated the council for recommending to the president to remove the plaintiff, a judicial officer from office. The court's abhorrence was for the reason that the president has no such power to remove a judicial officer. The court did not hold that the Judicial Council could not send such a recommendation to the President for the removal of a superior court Judge when He, the President is the authority to so remove.

Under the constitution, in case of a judicial officer, the Chief Justice has the authority to remove.

Under Article 154(b), the Judicial Council is the forum for consideration and discussion of matters relating to the discharge of the functions of the Judiciary (emphasis mine). In considering and discussing the complaint against His Lordship Ansu-Gyaebour therefore, if the council found that His Lordship did misconduct himself in a manner that was grave and likely to influence him in the discharge of his functions as a superior court Judge, and thus accepted Her Ladyship Akuffo's committee recommendation, as a body which has been set up as advisory, then nothing should stop it from petitioning the president for his removal.

"Article 146 did not prescribe any capacity requirements for petitioners seeking the removal of a Justice of a superior court or of the Chief Justice. There was no justification for implying such a capacity requirement, since a prior prima facie case had to be established, even in relation to the removal of a Chief Justice (sic) No unnecessary impediments should be put in the way of those seeking to hold judges to account for stated misbehaviour, - - - - - - - - subject to establishing a prima facie case against the judge complained of"
The court per Dr. Date-Bah in the Agyei Twum case holding 5 at p.741.

Without any hesitation therefore, I conclude that the Judicial Council has the constitutional mandate to forward a petition to His Excellency the President for the impeachment of a superior court judge.

Consequently, the case is to be remitted to the trial court for continuation in accordance with the decision of the court.

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

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO-BAMFO [MRS]
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S. OPPONG-TWUMASI FOR THE PLAINTIFF.

STELLA BADU (P.S.A) WITH HER HELENA FRENCH (S.S.A.) FOR THE DEFENDANT .