11

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

CORAM: WOOD (MRS) CJ (PRESIDING)

ATUGUBA JSC

ANSAH JSC

ADINYIRA (MRS) JSC

DOTSE JSC

ANIN YEBOAH JSC

BAFFOE-BONNIE JSC

GBADEGBE JSC

AKOTO-BAMFO (MRS) JSC

BENIN JSC

AKAMBA JSC

REVIEW MOTION
No. J7/11/2013

4TH DECEMBER 2014

MARTIN ALAMISI AMIDU - - - PLAINTIFF/APPLICANT

VRS

1. THE ATTORNEY GENERAL - - 1ST DEFENDANT/RESPONDENT

2. ISOFOTON S. A - - 2ND DEFENDANT

3. ANANE- AGYEI FORSON - - 3RD DEFENDANT/RESPONDENT

RULING

MAJORITY OPINIONS

AKOTO-BAMFO (MRS), JSC:

On the 21st of June 2013; the Ordinary Bench in a unanimous decision, entered judgment for the plaintiff/applicant hereinafter referred to as the applicant against the defendant/respondents here after simply referred to as respondents in these terms:

"In the result, the plaintiff succeeds in his action in part. The reliefs that this court should grant him are the following:

A declaration that:

a. On a true and proper interpretation of Article 181(3) and section 7 of the Loans Act , (ACT 335) the laying before and approval on 1st August 2005 of the terms and conditions of the Second Financial Protocol between the Republic of Ghana and the Kingdom of Spain for an amount of sixty-five million euro (£65,000,000) for the implementation of various development projects and programmes in Ghana did not negate the effect of Article 181 (5) of the 1992 Constitution that requires the further laying before and approval of any specific international business or economic transaction to which the Government is a party even if payment had to be made from the said loan approved by Parliament.
b. The Agreement between Isofoton S.A of Montalban 9th 28014, Madrid , Spain, a foreign registered company and the Ministry of Food and Agriculture of the Government of Ghana dated 22nd September 2005 for the execution of a project designated as "Solar PV Powered Water Pumping and Irrigation Systems in Remote Rural Areas of Ghana" is an international business or economic transaction within the meaning of Article 181 (5) of

the 1992 Constitution and never became operative because it was not laid before and approved by Parliament and is accordingly null, void and without effect whatsoever.

c. The Agreement between Isofoton S. A of Montalban 9, 28014, Madrid, Spain, a foreign registered company and the Ministry of Energy of the Government of Ghana in 2001 for the execution of the "Solar Electrification Project in Ghana Phase II " is an international business or economic transaction within the meaning of Article 181 (5) of the 1992 Constitution and never became operative because it was not laid before and approved by Parliament and is accordingly null, void and without effect whatsoever.

d. The High Court which heard and granted reliefs in two actions commenced by the 3rd defendant on behalf of the 2nd defendant in consolidated Suit Nos. BC23/2008 and BC24/2008 pursuant to the said international business or economic transaction which had not become operative under Article 181 (5) of the 1992 Constitution had acted without jurisdiction and is amenable to the supervisory jurisdiction of this Honourable Court under Article 132 of the 1992 Constitution for orders and directions to comply with the Constitution.

e. The High Court, Accra, acted without jurisdiction and usurped the exclusive and original jurisdiction of this Honourable Court in its ruling dated 24th April 2012 on an application for declaration of nullity when it purported to interpret Article 181 (3), (4) and (5) of the 1992 Constitution to mean that the approval of the terms and conditions of the Second Spanish Financial Protocol loan of aforementioned in relief (1) above by Parliament automatically excluded the further laying before and approval by Parliament of subsequent international business or economic transactions arising out of the said terms and conditions of the loan to which the Government is a party as required by Article 181 (5) of the Constitution .

f. Accordingly, the entire proceedings in the High Court culminating in any Garnishee Order Nisi issued pursuant to the above inoperative Agreements and proceedings are, therefore, also null, void and without effect whatsoever as having been made without jurisdiction.

2. It is consequentially ordered, pursuant to Article 2(2) of the 1992 Constitution, that the 2nd defendants do pay or refund to the Government of Ghana the cedi equivalent of US$ 325,472.00 received from the Government of Ghana and any subsequent payments thereafter made so far, pursuant to the contracts declared void by this court.

3. Interest is to be paid on the sum adjudged above from the date of its receipt by the 2nd defendant, in accordance with the Court (Award of Interest and Post Judgment Interest) Rules 2005 (CI 52).

It is against this decision that the applicant has made this application for review under Article 133 (1) of the 1992 Constitution and Rule 54 of the Supreme Court Rules 1996 (C.I 16).

From the applicant's affidavit filed in support of the motion, it is obvious that the grounds for his application are that there are compelling and exceptional circumstances which have resulted in a grave miscarriage of justice necessitating a review of the decision and judgment by the Supreme Court in so far as they affect the dispute between the applicant, the 1st and 3rdrespondents.

The applicant thereafter proceeded to expound the particulars of the exceptional circumstances in his statement of case filed on 19/7/2013 as follows:

" 1. The Supreme Court decision and judgment dated 21st June 2013 in refusing to grant the plaintiff/applicant's relief (f) endorsed on the writ against the unconstitutional conduct of the 1st defendant/respondent without assigning any reasons thereto in spite of the Supreme Court's

Findings and orders for unconstitutional conduct on the part of the 2nd defendant/respondent was given per incuriam, inadvertently, patently mistakenly or unwittingly and was fundamentally erroneous and which have resulted in miscarriage of justice to the plaintiff/applicant and the public interest under the 1992 Constitution.

2. The decision and judgment of Supreme Court declining jurisdiction to hear the complaint of the plaintiff/applicant for enforcement of Article 181 (5) of the 1992 Constitution against the 3rd defendant/respondent on the grounds of lack of cause of action under Article 2(1)(b) of the 1992 Constitution was given per incuriam, inadvertently, patently mistakenly or unwittingly and was fundamentally wrong in abdicating the exclusive original enforcement jurisdiction of the Supreme Court to enforce unconstitutional acts or omission under the 1992 Constitution against any person who seeks to undermine or abrogate the constitutional order and which has resulted in miscarriage of justice to the plaintiff/applicant and the public interest under Articles 2,3, 130(1) and 181 (5) thereof."

Under Article 133 of the 1992 Constitution, the Supreme Court is granted the power to review its decisions on such grounds and conditions as may be prescribed by the Rules of Court.

Rule 54 of the Supreme Court Rules (C.I. 16) made pursuant to such powers spells out 2 grounds on which this Court may review its decision, at its discretion, on an application by a dissatisfied person thus:

54

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

or

(b) the 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 the applicant at the time when the decision was given"

It is evident that the application herein is premised on the 1st of the aforementioned grounds namely that there are "exceptional circumstances which have resulted in the miscarriage of justice by the judgment of the Supreme Court dated 21st June 2013", as per the 3rd paragraph of the applicant's Statement of Case.

It is settled in a long line of judicial decisions that an exhaustive list of the myriad circumstances which could be labeled as exceptional could not possibly be drawn up. It has been decided, for instance, that an applicant must show the existence of some fundamental or basic error affecting his substantial rights. In Re Krobo Stool No. 2 Nyamekye (No.2 v. Opoku No.2) 2000 SCGLR 567; again where the Court has inadvertently committed a fundamental error of law such as want of jurisdiction or error of fact, the court could correct such errors on review. Such errors must, however, be patent on the face of the record; the common thread being that such errors must not only be fundamental, but, more importantly, occasion a miscarriage of justice. The normal principle being that a judgment pronounced by this Court is final and a departure from the principle is justified only when circumstances of a substantial and compelling character render it necessary to do so.

In the case of Col . Avtar Singh Sekhon vs. Union of India & Ors. 1980(supp) SCC 562 the Supreme Court of India, in an application for review under Article 137 of the Constitution of India and Rule 1(1) its Code Of Civil Procedure both of which have almost identical provisions with Article 133(1) and Rule 54 respectively, of the 1992 Constitution and C I. 16 the Supreme Court Rules, the Court stated; "A review is not a routine procedure. We cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In Sow Chandra Kante v. Sheik Habib this court observed:

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. "

In Internal Revenue Service v. Chapel Hill School Ltd 2010 SCGLR 827 at 850; the Supreme Court, speaking through Prof. Date Bah JSC, at page 850 stated:

"I do not consider that this case deserves any lengthy treatment. I think that the applicant represents a classic case of a losing party seeking to reargue its appeal under the garb of a review application. It is important that this court should set its face against such endeavour in order to protect the integrity of the review process. This Court has reiterated times without number that the review jurisdiction of this Court is not an appellate jurisdiction, but a special one. Accordingly, an issue of law that has been canvassed before the bench of five and on which the Court has made a determination cannot be revisited in a review application, simply because the losing party does not agree with that determination."

His Lordship continued on pages 852 to 853 thus:

"Even if the unanimous judgment of the Supreme Court on the appeal in this case were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. This is an inherent incident of the finality of the judgments of the final court of appeal of the land. The brutal truth is that an error of law by the final court of the land cannot ordinarily be remedied by itself, subject to the exception discussed below.

In other words, there is no right of appeal against a judgment of the Supreme Court, even if it is erroneous. As pithily explained by Wuaku JSC in Afranie II v. Quarcoo [1992] 2GLR 561 at 591-592 : "There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court.

However, in exceptional circumstances and in relation to an exceptional category of its errors, the Supreme Court will give relief through its review jurisdiction. The grounds on which this Court will grant an applications for review have been clearly laid out in the case law. Notable in the long line of relevant cases are 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; and Attorney-General (No.2) v. Tsatsu Tsikata (No.2) [2001-2002] SCGLR 620.

The principles established by these cases and others are that 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 where the applicant succeeds in persuading the court that there has been some 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. This ground of review is currently exercised by the court pursuant to Rule 54 (a) of the Supreme Court Rules 1996 (C.I. 16), which refers to exceptional circumstances which have resulted in miscarriage of justice. This is a high hurdle to surmount"

Clearly therefore merely disagreeing with a decision, the formulation of an order, a rehash or rephrasing previous arguments or issues cannot sufficiently ground an application under Rule 54 of C.I. 16.

The exceptional circumstances must be deducible from the peculiar circumstances surrounding each case. More importantly, the applicant must demonstrably satisfy the Court that such exceptional circumstances have resulted in a miscarriage of justice.

In the matter under consideration, it is pertinent to note that the applicant's complaint was essentially that the Ordinary Bench failed to fully pronounce on relief (f) in that the judgment was silent on the 1st defendant's conduct even though findings and pronouncements were made in respect of the 2nd defendant.

This is how he put it in his statement of case:

"1. The Supreme Court decision and judgment dated 21st June 2013 in refusing to grant the plaintiff/applicant's relief (f) endorsed on the writ against the unconstitutional conduct of the 1st defendant/respondent without assigning any reasons thereto in spite of the Supreme Court's findings and orders for unconstitutional conduct on the part of the 2nd defendant/respondent was given per incuriam, inadvertently, patently mistakenly or unwittingly and was fundamentally erroneous and which have resulted in miscarriage of justice to the plaintiff/applicant and the public interest under the 1992 Constitution. "

Relief (f) as endorsed was for a declaration that:

"f. The conduct of the 1st defendant accepting the claims of the 2nd and 3rd defendants and purporting to settle same for entry in the High Court as a consent judgment when the 1st defendant knew the said two agreements between the 2nd defendant, a foreign registered and resident company, and the Government of Ghana constituted an international business or economic transaction which had to be laid before and approved by

parliament to become operative is inconsistent with and in violation of Articles 2 and 181(5) of the 1992 Constitution."

In its judgment the court considered the respective claims of the parties and at page 14 of the judgment the 2nd paragraph thereof this is what the Court stated:

"This conclusion connotes that the two impugned agreements entered into by the 2nd defendant are null and void, because they were not approved by Parliament. It should be added, for the avoidance of doubt, that the said agreements are 'major, within the meaning established in the Balkan Energy Case (Supra). There was thus no liability on the Republic of Ghana to the 2nd defendant. The unconstitutional contracts, concluded in breach of Article 181(5), cannot lawfully found the consent judgments relied on by the 2nd defendant. The said consent judgments are vitiated by the unconstitutionality of the contracts on which they are based and, apart from declaring those judgments to be in breach of Article 181(5) of the Constitution, the court has jurisdiction under Article 2(2) of the Constitution to order that the said judgments be set aside."

In the concluding part of the judgment the Court, in pronouncing on the reliefs, stated as follows:

"The plaintiff succeeds in his action in part. The reliefs that this court should grant are the following among which was this "(f): Accordingly, the entire proceedings in the High Court culminating in any Garnishee Order Nisi issued pursuant to the above inoperative Agreements and proceedings are, therefore, also null, void and without effect whatsoever as having been made without jurisdiction.

2. It is consequentially ordered, pursuant to Article 2(2) of the 1992 Constitution, that the 2nd defendants to pay or refund to the Government of Ghana the cedi equivalent of US$ 325,472.00 received from the Government

of Ghana and any subsequent payments thereafter made so far, pursuant to the contracts declared void by this court.

3. Interest is to be paid on the sum adjudged above from the date of its receipt by the 2nd defendant, in accordance with the court (Award of Interest and Post Judgment Interest) Rules 2005 (CI 52)."

The gravamen of the applicant's complaint was that even though the conduct of the 1st defendant was a subject of relief (f), the Court failed to make any specific findings and pronouncements on the 1st defendant as opposed to the 2nd defendant.

Under relief (f) the plaintiff sought for an order declaring the conduct of the 1st defendant in accepting the claims of the 2nd and 3rd defendants as basis for the consent judgments unconstitutional.

Undoubtedly, the impugned agreements were the fountain from which all the acts and omissions flowed. In the circumstances where the agreements were declared unconstitutional (and therefore the declaratory relief sought was granted) owing to the fact that prior parliamentary approvals were not sought and therefore these agreements were as it were "knocked down", obviously nothing was left of the superstructure worthy of note for the Court within its jurisdictional limits. A consent judgment could not be based on non existent facts or void agreements. The conduct of the 1st defendant having resulted in the consent judgment which was declared void and unconstitutional there was no need in the absence of a clear evidence of fraud for the specifications being urged by the applicant. It must be noted that the monies paid as a result of the settlement were ordered to be refunded. What then is the injustice suffered? Even if the Court had committed an error by omitting to pronounce on the whole endorsement under the relief (f) it is not permissible, in the exercise of its review jurisdiction, for the erroneous decision to be reheard and corrected without a demonstration by the applicant that the omission was material and had

occasioned a miscarriage of justice. A review has a limited scope and is undoubtedly not an appeal in disguise.

Significantly the Court set down relief (f) in its orders. The fact that the applicant would have preferred some other formulation or approach should not be a ground for an application under Rule 54 of C.I 16. It is evident that the Court did not only consider at length the respective cases of the parties but did pronounce on relief (f), the subject of the applicant's complaint in these proceedings. When a matter is put before a Court of competent jurisdiction, it has the inherent power, after a Consideration of the issues, to make orders as it deems fit. It cannot be tied to a particular formulation nor required to grant a relief in the endorsement in a particular manner.

A mere dissatisfaction with the judgment without a demonstration of a fundamental error resulting in a miscarriage of justice cannot ground an application for a review.

More importantly, when the Court declared that the applicant's action had succeeded in part and proceeded to set out the reliefs granted, it implied that those reliefs which were not specifically set out stood dismissed. Relief (f) was indeed considered and granted.

Having regard to the fact that the Court considered the claims and made definite pronouncements on the said relief (f), the attack mounted on that relief cannot succeed. The application on that limb accordingly fails.

Simply put, the applicant's complaint against the 3rd respondent was that the Constitution would be put in grave danger if it were held that a citizen could not have a cause of action against both the principal and his agent particularly in circumstances where the principal had succeeded in removing himself from the jurisdiction such that the orders and directions could not be enforced against him.

He further contended that the narrow interpretation adopted by the Court of the phrase 'any person' was fundamentally erroneous since it undermined the individual responsibility imposed upon every citizen to defend and uphold the Constitution against subversion and abrogation.
Clearly, the Court fully considered the issues raised, that is, whether an agent acting within the scope of his authority could be held liable for the Acts of his principal and came to a firm conclusion that there was no conflict between the common law principles and the Constitution.
A review is not re-hearing of the original matter .It cannot therefore be confused with appellate power which enables a superior court to correct errors made by a subordinate court. Therefore a repetition of old submissions is not sufficient to re-open concluded adjudications.
The submissions made in respect of this ground in the instant application are nothing new. They are indeed the old submissions which have been rephrased or dressed in new garments.
As long as a point was raised and dealt with in the impugned decision an applicant is not entitled to challenge the decision under the guise that a different outcome is a possibility.
The review jurisdiction, it has been noted in many judicial decisions and the principles firmly established that it is a special one and not intended to provide an opportunity for appeal. Wuaku JSC aptly put it in Afranie II v. Quarcoo supra as follows:
"There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court."
In the absence of a demonstration of any exceptional circumstances occasioning a miscarriage of justice, I would dismiss the application as being devoid of merit.
The application is accordingly dismissed.

(SGD) V. AKOTO BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

ATUGUBA JSC:-

I have had the advantage of reading the opinion of my esteemed sister Mrs. Akoto-Bamfo JSC and I agree that the application should be dismissed.

As regards the complaint relating to the 3rd Defendant/Respondent, it is quite clear that the relief sought by the applicant against him was considered fully by this court in its original decision dated 21/6/2013 and was dismissed on its merits.

The *ratio decidendi* on that issue cannot be said to be plainly and fundamentally wrong. That being so the application in that regard should fail since the review jurisdiction is not an appellate jurisdiction.

As regards the 1st respondent, I do not think that the recitals leading to the infringement of article 181 (5) of the 1992 Constitution are, with all due respect to the ingenuity of the applicant, necessary for the determination of the constitutionality of the impugned agreements. In other words whatever the frame of mind of the transgressor of article 181 (5) the determinant matter is whether the transaction in question is caught by the provisions thereof. ***Causa proxima non remota spectatur.***

What has to be established by a suitor in respect of article 181 (5) is what the ordinary bench of this court based its judgment on, namely, whether each of the two impugned agreements was an international business or economic transaction within the meaning of article 181 (5) of the Constitution which to be constitutionally valid ought to be laid before and approved by Parliament. Whether the violation of this article was premeditated as contended by the applicant, in essence, or was by sheer oversight is irrelevant. Such matters may be relevant when the court is considering what orders to make to effectnate the court's decision under article 2 (2) of the Constitution, very much like the sentencing stage of a criminal trial, by analogy. This thinking is also relevant even to the grievance in respect of the 3rd Respondent, already dealt with. Accordingly, even if it can be said that relief (f) of the applicant's case was not considered by the ordinary bench there has been no ensuing miscarriage of justice.

I would add that the right of access to the courts is an inferential fundamental constitutional right which should not be hindered. If a party has a flagrantly, bad or unconstitutional case that is for the court to pronounce on.

The courts have remedies against incontestably bad or frivolous and vexatious cases under the common law which is part of the laws of Ghana under article 11 of the Constitution.

Those remedies adequately redress such situations but the initial resort by the offending party to the courts in such circumstances cannot be regarded as illegal or unconstitutional. Justices Edusei and Taylor (when in the High Court) took the lead in this direction, (see **Republic v Commissioner of Income Tax, Ex Parte National Employers Mutual General Insurance Association Ltd., 556, Taylor J**); see also, by analogy, **In re Effiduase Stool Affairs (No.3); Republic v Numapau, President of the National House of Chiefs; Ex parte Ameyaw II (No.3) [2000] SCGLR 59**, H. (3) of the headnote thereof, **Republic v Duffour, Ex parte Asare [2007-2008] SCGLR 394,** H. (3) thereof. The 1st defendant's resort to court for consent judgment in this matter must therefore be seen in this light.

In any event whether the position of Attorney-General relates to the particular occupant of that office or not, see **J.H. Mensah v Attorney-General [1996-97] SCGLR 320** the charges the applicant seems to make against the then Attorney-General, Mrs. Betty Mould Iddrisu) *eo nomine (see paragraph 31 of the Plaintiff/Applicant's statement of case dated 24/7/2012),* could not have been fairly gone into without at least fair notice to her so as to be heard on the matter. This has been stressed by our courts over the years, see **People's Popular Party v Attorney-General (1971) I GLR 138** at 143.

Without such notice to her even if this court had in its original decision overlooked that charge, there has been no miscarriage of justice.

As the applicant has complained that this court itself has decided his claims in respect of relief (f) in the case of the 1st respondent and the whole relief against the 3rd respondent per incuriam it is difficult to see how it can be said that the conduct of the then Attorney-General in this case was indulged in inspite of her knowledge of the law on the matter. I need not further elaborate this matter and in any case her perceived shortcomings in this matter may be inter alia, of administrative consequences. A close study of the facts of the case of **Attorney-General v Faroe Atlantic Company, Limited [2005-2006] SCGLR 271** and those of the present case shows that they are not the same. In the present case there was the preceding complication that the bulk loan for development projects had been approved by Parliament and the consequential user of that loan (from foreign source) could not readily suggest a further resort to Parliament. There is

therefore no miscarriage of justice in the alleged overlooking by this court of such aforesaid matters in it's original decision.

For all these reasons I will dismiss the application.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

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

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

(SGD) A. A. BENIN
JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

MINORITY OPINION

ANIN YEBOAH JSC:-

The applicant herein who was the plaintiff in the original suit has invoked our review jurisdiction under article 133(1) to review part of the judgment given by this court on 21st of June, 2013. To appreciate the circumstances leading to the invocation of our jurisdiction the facts of the case must be set out in detail for a fuller record.

The applicant on 24th of July 2012 filed a writ against the respondents to this application and claimed the following reliefs:

"A declaration that:

a. On a true and proper interpretation of Article 181(3)(4) and section 7 of the Loans Act, (Act 335) the laying before and approval on 1st August 2005 of the terms and conditions of the Second Financial Protocol between the Republic of Ghana and the Kingdom of Spain for an amount of sixty-five million Euro (€65,000,000) for the implementation of various development projects and programmes in Ghana did not nullify the effect of Article 181 (5) of the 1992 Constitution that mandates further laying before and approval of any specific international business or economic transaction to which the Government is a party even if payment had to be made from the said loan approved by Parliament.

b. The agreement between Isofoton S.A of Montalban 928014, Madrid Spain, a foreign registered company and the Ministry of Food and Agriculture of the Government of Ghana dated 22nd September 2005 for the execution of a project designated as "Solar PV Powered Water Pumping and Irrigation Systems in Remote Rural Areas of Ghana" is an international business or economic transaction within the meaning f Article 181(5) of the 1992 Constitution and never became operative because it was not laid before and approved by Parliament and it accordingly null, void and without effect whatsoever.

c. The agreement between Isofoton S.A of Montalban 928014, Madrid Spain, a foreign registered company and the Ministry of Energy of the Government of Ghana in 2001 for the execution of the "Solar Electrification Project in Ghana Phase II" is an international business or economic transaction within the meaning of Article 181(5) of the 1992 Constitution and never became

operation because it was not laid before and approved by Parliament and is accordingly null, void and without effect whatsoever.

d. The conduct of the 2nd defendant in suing for breaches of the said Agreements through his lawful Attorney the 3rd defendant when he knew that the Agreements were international business or economic transaction which had never been laid before and approved by Parliament is inconsistent with and in violation of Articles 2 and 181 (5) of the Constitution.
e. The conduct of the 3rd defendant, a Ghanaian citizen, in holding himself out as an Attorney to sue in the courts of Ghana on behalf of the 2nd defendant for damages in an international business transaction which has not been laid before and approved by Parliament is also inconsistent with Articles 2 and 181 (5) of the Constitution.
f. The conduct of the 1st defendant accepting the claims of the 2nd and 3rd defendants and purporting to settle same for entry in the High court as a consent judgment when the 1st knew the said two Agreements between the 2nd defendant, a foreign registered and resident company and the Government of Ghana constituted an international business or economic transaction which had to be laid before and approved by Parliament to become operative is inconsistent with and in violation of Articles 2 and 181(5) of the 1992 Constitution.
g. The High Court which heard and granted reliefs in two actions commenced by the 3rd defendant on behalf of the 2nd defendant in international Consolidated Suit Nos. BC23/2008 and BC24/2008 pursuant to the said international business or economic transaction which had not become operative under Article 181(5) of the 1992 Constitution had acted without jurisdiction and is amenable to the supervisory jurisdiction of this Honourable Court under Article 132 of the 1992 Constitution for orders and directions to comply with the Constitution.
h. The High Court, Accra, acted without jurisdiction and usurped the exclusive and original jurisdiction of this Honourable Court in its ruling dated 24th April 2012 on an application for declaration of nullity when it purported to interpret Article 181(3) (4) and (5) of the 1992 Constitution to mean that the approval of the terms and conditions of the Second Spanish Financial Protocol loan aforementioned in relief (1) above by Parliament automatically excluded the

further laying before and approval by Parliament of subsequent international business or economic transactions arising out of the said terms and conditions of the loan to which the government is a party as mandated by Article 181 (5) of the Constitution.

i. In the premise the entire proceedings of the High Court culminating in any Garnishee Order Nisi issued pursuant to the above inoperative Agreements and proceedings are, therefore, also null, void and without effect whatsoever as having been made without jurisdiction.

ii. An order directing the 2nd and 3rd defendants to pay or refund to the Government of Ghana the sum of Gh¢488,208.00 being the cedi equivalent of US$325,472.00 in March 2011 received from the Government of Ghana and any subsequent payments thereafter so far pursuant to the foregoing void contracts.

iii. And for such other orders or directions that this Honourable Court may consider necessary and appropriate to give full effect or enable effect to be given to the spirit and letter of the Constitution in redressing the unconstitutional conduct complained of herein"

In his statement of case and the other processes filed in the original suit, the applicant alleged that the second defendant entered into two intentional business agreements with the Government of Ghana which were never laid before the Parliament of Ghana for approval as enjoined by the Constitution. The agreements were with the Ministry of Food and Agricultural and Ministry of Energy for the supply of "Solar PV Powered Water Pumping and Irrigation Systems in Remote Areas of Ghana and Solar Electrification respectively.

The applicant contended that these agreements fell within the ambit of article 181(5) of the Constitution and as the Government of Ghana failed to lay them before Parliament for approval they were void. According to the second defendant, soon after the conclusion of these agreements the second and third respondents claimed that the Government of Ghana approved the execution of the two projects to other companies thereby breaching the agreements as it claimed the office of the President had awarded the contracts to these companies.

As a result of the alleged breach the second respondent granted a Power of Attorney to the third respondent to sue the Government of Ghana for the breach. Based on the Power of Attorney, the third respondent sued at the High Court claiming damages for breach of contract. On the 5th of November, 2008 the second respondent successfully

applied for and obtained judgment in default of appearance against the Government of Ghana.

The Attorney-General filed a motion to set aside the default judgment and same was granted on 8th of April 2009. The Court, however, adjourned the matter to enable the parties to settle the case out of court. The office of the first defendant and representative of the two ministries who were the beneficiaries of the two agreements and the second and third respondents settled the matter. It was agreed that the second respondent should be paid US$1,300.000; $450,000 was in respect of the claim against the Ministry of Energy and $850,000 against the Ministry of Food and Agriculture.

Terms of settlement were accordingly signed and same entered as consent judgment on the 29th of September 2010. The Attorney-General then wrote to the Minister of Finance and Economic Planning to effect payment of the judgment debt to the second respondent.

The second respondent subsequently proceeded to enforce the consent judgment by garnishee proceedings. The applicant herein who was then the Attorney-General moved the High Court to set aside the entire proceedings on the grounds that the action was flawed and void under Article 181(5) of the Constitution. The High Court refused the application, culminating in an appeal by the first respondent. The Government of Ghana, however, paid US$488,208 leaving a balance of US$974,528.

The plaintiff subsequently issued the writ in these proceedings for the reliefs referred to above. On the 21st of June 2013, this court by an unanimous decision granted the reliefs sought, save relief (f).

The applicant has invoked our review jurisdiction on two grounds set out in his statement of case as follows:

> "1. The Supreme Court decision and judgment dated 21st June 2013 in refusing to grant the plaintiff/applicant the plaintiff/applicant's relief (f) endorsed on the Writ against the unconstitutional conduct of 1st defendant/respondent without assigning any reasons thereto in spite of the Supreme Court's findings and orders for unconstitutional conduct on the part of the 2nd defendant/respondent was given *per incuriam*, inadvertently, patently mistakenly or unwittingly and was fundamentally erroneous and which have resulted in miscarriage of justice to the plaintiff/applicant and the public interest under the 1992 Constitution.

2. The decision and judgment of the Supreme Court declining jurisdiction to hear the plant of the plaintiff/applicant for enforcement of Article 181(5) of the 1992 Constitution against the 3rd defendant/respondent on the grounds of lack of cause of action under Article 2(1)(b) of the 1992 Constitution was given *per incuriam*, inadvertently, patently mistakenly or unwittingly and was fundamentally wrong in abdicating the exclusive original enforcement jurisdiction of the Supreme Court to enforce unconstitutional acts or omission under the 1992 Constitution against any person who seeks to undermine or abrogate the constitutional order and which has resulted in miscarriage of justice to the plaintiff/applicant and the public interest under Articles 2,3,130(1) and 181(5) thereof.

It must be pointed out that the second ground for this application for review is based on this court's striking out of the third respondent (the Attorney of the second respondent) as not a proper party to this suit. A careful reading of the applicant's complaint against the judgment for review under this head as captured above could be answered from the judgment sought to be reviewed. It was very clear in pages fifteen to seventeen of the judgment. That in a detailed discussion of the capacity of the third defendant, the court held, inter alia, that basic Common law principles on principal and agent relationship existed in this case and that the third defendant was not liable for acts done on behalf of the second respondent who was his principal. In conclusion it was held thus:

"As the third defendant points out in his supplementary legal Agreements, the provisions of the Constitution embedded in the common law principle is the notion that the act or omission in question is that of the principal and not of the agent. This notion holds good, when in the constitutional context, unless there is an express overriding of it. The third defendant sums up his position thus "To the extent that the lawful attorney is only a conduit through which the principal acts and to the extent that the acts complained of by the plaintiff were all acts performed by the third defendant in his capacity as lawful attorney, it is submitted that the joinder of the third defendant to this action herein on the sole basis of the latter's capacity as the second defendant's attorney, is improper". We are inclined to accept this argument and hold that the third defendant be struck out as a defendant. There is a cause of action against m on the plaintiff's pleadings"

With the above consideration of the issue of whether the third defendant as agent of the second defendant was never considered, the judgment considered the common law position of the matter and came to a conclusion. Indeed, in the statement of case of the

applicant, the applicant could not point out any error of law on this issue to lead us to consider whether it has occasioned any exceptional circumstances which have resulted in miscarriage of justice. This court has in several cases repeated itself that there must be a fundamental error which ought to be corrected by review. In QUARTEY & ORS v CENTRAL SERVICES CO. LTD & ORS [1996-97] SCGLR 398 this court per Abban CJ said at page 399 as follows:

> "A review jurisdiction is a special jurisdiction and not an appellate jurisdiction conferred on the court; and the court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an applicant should satisfy the court that there has been some fundamental or basic error which the court inadvertently committed in the course of considering its judgment; and which fundamental error has thereby resulted in a gross miscarriage of justice"

In this application it was not even demonstrated that there was any fundamental error in the first place. Secondly, it was not demonstrated by the applicant that the alleged error, if any at all, has resulted in any gross miscarriage of justice. The mere striking out of a party on the grounds that there was no cause of action against him when his principal is adjudged by the judgment to refund the money illegally paid to the principal would not in my view amount to any miscarriage of justice in anyway. This ground for review in my respectful opinion is without any merits.

The first ground for this review application touches on relief (f) indorsed on the writ of summons. It is the case of the applicant that this court did not make any pronouncement on relief (f) in the judgment under review. It is plain that the assertion of the applicant is right as no pronouncement was indeed made in respect of that relief. The applicant complains that this constitutes a ground for review as it has occasioned gross miscarriage of justice.

It must be made clear that his court in exercising its original jurisdiction heard this matter as a trial court. It is the settled practice in trial courts that the reliefs sought by a plaintiff must be considered in the judgment, for the plaintiff and the parties to know which of the reliefs were granted and those he may enforce. The same is applicable to counterclaims if any. In this case under review, this court as a trial court considered all the reliefs save relief (f) indorsed on the writ of summons. No reason whatsoever was advanced for this patent omission. It would appear that his resulted from inadvertence on our part.

The applicant is before us to review our decision as regards relief (f). He does not seek to re-argue his appeal or introduce any new point of law for our consideration. This court has on numerous occasions in cases like HANNA ASSI NO.2 v GIHOC REFERGERATION & HOUSEHOLD PRODCUTS LTD NO.2 [2007-2008] SCGLR 16, ATTORNEY-GENERAL NO.2) v TASTSU TSIKATA NO.2 [2001-2002] SCGLR 620, made it clear that a sharp distinction ought to be drawn between appeal and reviews at this court and that reviews which seek to re-argue the appeals in disguise ought to be refused and the court has exhibited remarkable consistency. In this application before us, no attempt whatsoever has been made for us to have a second look at our decision on the merits. Our attention has been drawn to an omission to pronounce on or consider a very vital relief indorsed on the writ which was inadvertently overlooked by us.

The relief (f) clearly talks of a violation of Article 181(5), an important article in our constitution which article formed the basis of our decision in this case. The relief seeks a declaration against a very important institution of state, constitutionally mandated to represent the Government of Ghana in such matters under Article 88 of the Constitution. To me, this omission on the part of this court to pronounce on relief (f) which covers a constitutional provision ought to be corrected as it has occasioned substantial miscarriage of justice.

As we are fully aware, the constitution is the fundamental law of the land on which the plaintiff sought relief (f), and this court should correct its error resulting from our omission if our attention has been drawn to same. We cannot as a Supreme Court refuse to grant a relief which clearly ought to have been granted as the conduct of the institution runs counter to the clear provisions of the constitution.

SOWAH JSC (as he then was) in the oft-quoted case of TUFFOUR v ATTORNEY-GENERAL (1980) GLR 63C said at page 659 as follows:

> "This court does not think that any act or conduct which is contrary to the express or implied provisions of the constitution can be validated by equitable doctrines of estoppels. No person can make lawful what the constitution says it is unlawful. No person can make unlawful what the constitution says it is lawful. The conduct must conform to due process of law as laid down in the fundamental law of the land or it is unlawful and invalid"

As the first defendant's conduct clearly infringed the clear provisions of Article 181(5) of the constitution but out of omission this court ignored it, it behoves us as the Supreme Court to correct this error which is patent on the face of judgment.
This court in the case of AFRANIE II v QUARCOO & OR [1992] 2 GLR 561 seized the opportunity for the first time under this current constitution to correct an error committed by itself in failing to take into consideration section 17(i) (h) of the Rent Act, 1962 (Act 220) and Rent Regulations, 1964 (LI 369) regulation 18. The question is; if this court in exercising the same jurisdiction under Article 133(1) could correct an error arising out of an omission to apply the provisions of an ordinary statute, should this court shirk its responsibility when there is a clear omission to pronounce on a constitutional provision? I think not! In the AFRNAIE II case, supra, this court was of the opinion that a fundamental and basic error might have inadvertently been committed by the court resulting in gross miscarriage of justice should be a ground for review. Exceptional circumstances thus exist for a review and same is hereby granted by granting relief (f) indorsed on the writ.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

(SGD) G. T. WOOD (MRS)
CHIEF JUSTICE

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

COUNSEL

PLAINTIFF/APPLICANT APPEARS FOR HIMSELF.

GRACE OPPONG ESQ. (SNR. STATE ATTORNEY) FOR THE 1ST DEFENDANT /RESPONDENT .

CARL ADONGO ESQ. WITH HIM NANA KWEKU NSIAH ASARE AND EDZE AGBEVEY FOR THE 3RD DEFENDANT/RESPONDENT.