IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2013

CORAM: DR. DATE-BAH JSC (PRESIDING)

ANSAH JSC

ADINYIRA JSC (MRS)

OWUSU JSC (MS)

DOTSE JSC

ANIN YEBOAH JSC

BAFFOE-BONNIE JSC

GBADEGBE JSC

AKOTO-BAMFO JSC (MRS)

WRIT

No. JI/23/2012

21ST JUNE,2013

MARTIN ALAMISI AMIDU - - - PLAINTIFF

VRS

1. **ATTORNEY GENERAL - - - DEFENDANTS**
2. **ISOFOTON S.A**
3. **ANANE- AGYEI FORSON**

JUDGMENT

DR. DATE-BAH JSC:

This is the unanimous judgment of the Court.Our esteemed brother Dotse JSC will, however, add some concurring remarks to it. Also, there is a short concurrence from our sister Justice Adinyira, who is unavoidably unable to be with us today, but has consented to our delivering the judgment in her absence.

The Facts

On the 24th day of July 2012, the plaintiff, a former Attorney-General of the Republic of Ghana, issued a writ against the defendants in this case claiming the following reliefs:

"i) 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 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 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 transactions which had never been laid before and approved by Parliament is inconsistent with and in violation of the 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 had 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 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.
g. 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.

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."

The main facts on which the plaintiff bases his cause of action are that the second defendant entered into two international business agreements with the Republic of Ghana, which were not laid before Parliament for the approval of Parliament. There was an agreement concluded with the Minister for Food and Agriculture on 22nd September 2005 for "Solar PV Powered Water Pumping and Irrigation Systems in Remote Rural Areas in Ghana" and another one concluded in 2001 with the Minister of Energy for "Solar Electrification in Ghana Phase II." Plaintiff contends that these agreements were international business or economic transactions to which the Government is a party, within the meaning of Article 181(5) of the Constitution. Accordingly, not having been laid before Parliament and approved by Parliament, they are void.

After the conclusion of the said two agreements, the Government of Ghana, through the Office of the President, approved the execution by a different company (Elecnor) of a "Solar Rural Electrification Project" and also the execution by a company called Incatcma Indema of an "Irrigation Equipment (Solar power pumps, Sprinkler Irrigation equipment" project. The approval of these projects was incompatible with the rights of the 2nd defendant, as he perceived them. The 1st defendant admits that the action by the Office of the President amounted to re-awarding the contracts that the 2nd defendant considered it had concluded. The 2nd defendant, accordingly, gave a power of attorney to the 3rd defendant to sue the Government of Ghana to enforce its contract rights. The 3rd defendant, therefore, commenced two actions, on behalf of the 2nd defendant, against the Republic of Ghana on 10th October 2008, claiming damages for breach of contract. The 2nd defendant obtained judgments in default of appearance on 5th November, 2008.

The first defendant filed a motion to have the default judgments set aside on 18th November, 2008. The motion was fixed for hearing on 25th November 2008. The first defendant filed its proposed Statement of Defence for consideration by the High Court. The application was still pending when there was a change of Government on 7th January, 2009. On

8th April 2009, Her Ladyship Amoah J set aside the default judgments "to enable parties to settle the case out of Court."

Settlement negotiations then took place between the lawyers from the 1st defendant's Office, representatives of the Ministry of Energy and the Ministry of Agriculture and the 2nd and 3rd defendants. An amicable settlement was reached and it was agreed that the 2nd defendant be paid US$ 1,300,000, comprising $450,000 in respect of the claim against the Ministry of Energy and $850,000, in respect of the claim against the Ministry of Food & Agriculture. On the instructions of the Deputy Attorney-General, a Principal State Attorney signed these terms of settlement and filed them In court on 28th September 2010. Consent judgments were entered in respect of the two suits on 29th September 2010. Accordingly, the then Attorney-General wrote to the Ministry of Finance and Economic Planning requesting payment to the 2nd and 3rd defendants of the agreed sum.

The 2nd and 3rd defendants later initiated garnishee proceedings on the basis of these consent judgments and obtained garnishee orders nisi. The plaintiff, when he was Attorney-General, brought an application before the High Court praying for an order to set aside the proceedings and the garnishee orders nisi granted by the High Court. The grounds for his application were similar to those in the present suit. The application was dismissed by His Lordship Obimpe J, who ruled that because of the Parliamentary approval of the 2nd Ghana-Spanish Financial Protocol, there was no need for Parliamentary approval of agreements to be financed under it. He said that:

> "I am also of the opinion that if the Government of Ghana contracts a foreign loan and distributes same to Ministries and/or departments for projects to be undertaken, the contracts these Ministries and/or departments enter into with contractors subsequently can no longer be described as "international business or economic transactions"

and will no longer have Government of Ghana as a party to it, so as to require parliamentary approval."

The first defendant has appealed against that decision. In the meantime, in March 2011 the Republic of Ghana made part-payment of the judgment debt obtained against it. It has paid GHc 488,208, leaving a balance of US$ 974,528.

The Plaintiff's writ raises the issue of whether it is the Supreme Court, rather than the High Court, which has jurisdiction to interpret article 181 of the Constitution. Meanwhile, on an application by the Plaintiff for an order preserving the status quo ante pending a final determination of the constitutional issues before this Court, this Court ordered on 7th March 2013 that the status quo between the parties be preserved pending a final determination of the constitutional issues before this Court. Accordingly, the garnishee orders obtained in the High Court were to be stayed until the final determination of this suit. All other proceedings flowing from the High Court judgments were also to be stayed pending the final determination of this suit.

The Law

A preliminary point that needs to be addressed is whether the Plaintiff has capacity to bring this action. The 2nd Defendant contends that he lacks capacity to bring the action. The 2nd Defendant's argument is that since the Attorney-General, the 1st Defendant, is actively engaged in court processes and proceedings to set aside the same consent judgments as the Plaintiff is seeking to annul, the Plaintiff has no personal capacity and cause of action to sustain the present action before this Court. This argument is flawed in that a cause of action which is maintainable under article 2(1) of the 1992 Constitution cannot be debarred simply because the Attorney-General has also instituted a civil action against the same defendant. A similar point was raised in *Amidu v Attorney-General, Waterville & Woyome,* unreported Supreme Court decision delivered on 14th June 2013. It was there rejected

by the Court. This is what the Court (speaking through me) said in that case on this point:

> "The 2nd defendant's submissions on this issue of the Plaintiff's capacity are, with respect, ill-founded. The fact that the Attorney-General has brought a civil action on a particular issue cannot derogate from a citizen's right under Article 2(1) of the 1992 Constitution to seek a declaration and consequential orders from the Supreme Court in relation to the same issue if it involves any act or omission which the citizen alleges to be inconsistent with, or in contravention of, a provision in the Constitution. What is necessary for the citizen to do is to establish that he or she comes within the parameters laid down in Articles 2(1) and 130(1). If he or she does this, the mere fact that the Attorney-General is conducting litigation in the High Court which is linked to the subject-matter of his or her action will not ordinarily be a bar to the action."

We would re-affirm this position. The plaintiff, as a citizen of Ghana, is entitled as of right to challenge in this Court any act or omission which is inconsistent with, or in contravention of, a provision in the Constitution, even if the Attorney-General is also in court against the same defendant in a civil case. This right follows from the principle established in *Sam (No. 2) v Attorney-General* [2000] SCGLR 305 that in an action under article 2(1) to enforce or interpret the Constitution, as distinct from an action to enforce a fundamental human right under article 33(1), a party need not show a personal interest in the litigation. A citizen's duty under articles 3(4)(a) and

41(b) to defend the Constitution are a sufficient interest to invoke the Supreme Court's special jurisdiction under article 2(1).

The Plaintiff's case is that, at the time of the issue of the writs by the 3rd Defendant on behalf of the 2nd Defendant,*Attorney-General v Faroe Atlantic Company Ltd.* [2005-2006] SCGLR 271 had already been decided. The Supreme Court had there held that an economic or business transaction between the Government of Ghana and a foreign registered and resident company was an international business transaction within the meaning of Article 181(5) of the 1992 Constitution and therefore it had to be laid before Parliament and approved by it. Failure by the Executive to secure such Parliamentary approval would result in the nullity of the relevant agreement.

As can be observed from the endorsements on his writ, the Plaintiff claims that, on a true and proper interpretation of Article 181(3) and (4) of the 1992 Constitution, the laying before Parliament and the approval of the terms and conditions of an agreement for a loan raised by the Government on behalf of itself or any other public institution or authority does not exempt from being laid before Parliament for approval any international business or economic transaction to which the Government is a party that will be financed by the loan approved under Article 181(3) and (4). The Plaintiff therefore contends that no cause of action can arise in respect of an international business or economic transaction with the Government of Ghana as a party to it which has not met the mandatory requirement of approval by Parliament. More specifically, the Plaintiff's claim is that the laying before Parliament and its approval on 27th July 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 Euros for the implementation of various development projects did not remove the necessity for Parliamentary approval of the two specific international business or economic transactions between the Government of Ghana and the 2nd Defendant, which were made on 25th September 2005 and in 2001 respectively. There was the need for such Parliamentary approval, even

though payment was to be made from funds made available under the loan approved by Parliament.

In response, the 2nd Defendant contends that the impugned agreements are merely project implementatiton contracts financed with funds provided under the 2nd Ghana-Spanish Financial Protocol, which do not require separate Parliamentary approval. It maintains that the Financial Protocol was in nature and substance a project loan agreement which contained comprehensive and precise material particulars. These particulars included: loan amount, repayment and grace periods, interest rate, grant elements, list of beneficiary sectors/Ministries, list of the specific projects to be funded with the loan and specific allocation of portions of the loan amount to each of the identified projects. Accordingly, it argues that on a true and proper interpretation of the provisions of Article 181(5) of the 1992 Constitution and on the authority of *The Attorney-General v Faroe Atlantic Co. Ltd.* [2005-2006] SCGLR 271 and *The Attorney-General v Balkan Energy Ghana Ltd. 2 ors*. Unreported, 16th May, 2012, implementation contracts signed by beneficiary Ministries with private companies, such as those signed with the 2nd Defendant, were not required to be submitted to Parliament for approval. It is the 2nd Defendant's view that only major and autonomous international agreements which financially commit the State are required to be submitted to Parliament for approval.

These contrasting and contending interpretations put on Article 181(5) of the 1992 Constitution by the Plaintiff and 2nd Defendant vest jurisdiction in this Court to determine the controversy under its original jurisdiction conferred by article 130 of the Constitution. (See *per*Anin JA, in *Republic v Special Tribunal; Ex parte Akosah* [1980] GLR 592 at 605). A genuine or real issue relating to the interpretation of the Constitution is joined between the two parties. (See *per* Acquah JSC, as he then was, in *Adumoa II v Adu Twum II* [2000] SCGLR 165 at p. 167). The relationship between the Financial Protocol and the impugned agreements injects a novel element not present in *The Attorney-General v Faroe Atlantic Co. Ltd* and *The*

Attorney-General v Balkan Energy Ghana Ltd. 2 ors. (s*upra*). This particular issue of interpretation is therefore not covered by *stare decisis.*

The case of the 2nd Defendant is that once the 2nd Ghana-Spanish Financial Protocol, which is a project loan agreement, was formally approved by Parliament, the resultant project implementation contracts under it are not to be regarded as "international business or economic transactions" within the meaning of article 181(5) of the 1992 Constitution.It interprets the *ratio decidendi* of the *Faroe Atlantic* and *Balkan Energy* cases*(supra)* as requiring Parliamentary approval for only "stand alone" agreements which "all by themselves alone purported to impose financial obligations on the State without any prior Parliamentary scrutiny and approval."The 2nd Defendant submits that a contrary interpretation along the lines urged by the Plaintiff is demonstrably absurd and bound to produce needless and avoidable problems.

In its Legal Arguments filed on 10th April 2013, it makes a case for the purposive interpretation of Article 181(5). It poses the following question: "What purpose or object is sought to be served by presenting the two project implementation contracts signed by Isofoton SA, 2nd Defendant, with the Government of Ghana after their parent international project loan agreement which is the 2nd Ghana-Spanish Protocol had been scrutinized and approved by Parliament?"

The 2nd Defendant's answer to this question is as follows: "The effect of the constitutional interpretation being urged by the Plaintiff on this apex Court is to impose a needlessly burdensome duty of sheer formality on Parliament that is clearly bound to increase and extend Parliamentary business to gargantuan proportions."

We are unable to agree with this answer. The considerations which Parliament needs to take into account in approving a project loan agreement will not necessarily be the same as those applicable to whatthe 2nd Defendant calls a project implementation agreement.A ready illustration of the issue under discussion is provided by taking judicial notice

of the widespread media reports that the Government of Ghana signed in 2012 a 3 billion US dollar loan agreement with the Chinese Development Bank. It was signed after due approval of it by Parliament. The loan is meant to finance several different projects. Surely it is not reasonable to infer from the fact of approval of the loan agreement that Parliament has also approved the details of the range of different project agreements which had not yet been worked out as of the date of the approval of the loan. A distinction thereforeclearly needs to be made between the loan agreement and the agreements of projects to be financed by the loan. This Chinese loan illustration shows that Parliament has a legitimate policy interest in scrutinizing and approving project implementation agreements, even if it has already approved the loan from which they are to be financed. The terms and issues in these kinds of agreements are not identical and therefore deserve separate scrutiny and approval.

In this connection, it is relevant to recall my examination of the purpose of article 181(5) set out in the *Faroe Atlantic* case*(supra)*. I there said (at pp. 296-7):

> "From this passage, it is clear that the purpose of the framers of the original provision was to ensure transparency, openness and Parliamentary consent in relation to debt obligations contracted by the State. These original provisions of 1969 Constitution were maintained unchanged in the 1979 Constitution as article 144. It is in the 1992 Constitution that this long-standing provision on the giving and raising of loans is modified to include another category of contract, namely "an international business or economic transaction to which the Government is a party".
>
> By analogy, one can legitimately infer that the purpose of the framers of the expansion of the provision was to ensure transparency, openness and Parliamentary consent in relation to this additional category of contracts also. This purpose, to my mind, is achieved by the plain meaning of the provision. It is also to be deduced from the stated purpose of the framers of the 1969 provision and the proposal in 1991, by the Committee of

Constitutional Experts, to expand the ambit of the provision to cover the additional category of contract. Unfortunately, the *Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana* (1991), which constituted the proposals out of which the 1992 Constitution emerged, does not provide any express comment on the purpose of the expansion of ambit. The expansion is proposed, without explanation or comment, in clause 17(5) of Appendix M to the Report. This Appendix deals with Economic and Financial Order. The proposal adds the following clause to the original provision:

> "This article shall, with the necessary modifications, apply to an international business or economic transaction to which the Government is a party as it applies to a loan."

My interpretation of this proposal, which was, in substance, adopted by the Consultative Assembly which deliberated on the proposals formulated by the Experts and is embodied in article 181 of the current Constitution, is that international business or economic transactions are to be treated, *mutatis mutandis,* as the same as loan agreements, from the point of view of the requirements contained in article 181. This, to my mind, means that an international business transaction or international economic transaction to which the Government is a party must be submitted to Parliament for approval, even though the nature of the obligation embodied in such transaction is not one of debt."

It is evident that this purpose of ensuring transparency, openness and Parliamentary consent in relation to international business transactions or international economic transactionsto which the Government is a party deserves to be applied as much in relation to the so-called implementation agreements as to project loan agreements. In other words, the purposive approach insisted upon by the 2nd Defendant, when reasonably applied, should lead to the conclusion that an international business or economic transaction to which the Government of Ghana is a party should not cease

to be treated as such, under article 181(5),simply because activities under it are to be financed under a loan agreement that has already been approved by Parliament.

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 of 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, this Court has jurisdiction under article 2(2) of the Constitution to order that the said judgments be set aside. Orders made under article 2(2) are to be distinguished from those made pursuant to this Court's supervisory jurisdiction under article 132 of the Constitution. Orders made under article 2(2) may look similar to those under article 132, but they are not subject to the limits of the prerogative writs and orders. The purpose of article 2(2) is to enable full effect to be given to declarations of unconstitutionality made by this Court under article 2(1). Accordingly, it has to be interpreted liberally to give this Court wide power to ensure the supremacy of the Constitution. The time limits, for example, applicable to the prerogative writs under the rules of court do not, therefore, apply to orders made under article 2(2). Article 2(2) is in the following terms:

> "The Supreme Court shall, for the purposes of a declaration under clause (1) of this article, make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made."

What we are saying, flowing from this provision, is that the Supreme Court can, under the provision, order the setting aside or nullification of any

rulings, judgments, orders or contracts needed to give effect to a declaration it has made under article 2(1).

It also follows from our view expressed above that the purported interpretation of article 181 in the ruling by His Lordship Ernest ObimpeJ in the High Court on 24th April 2012 was made without jurisdiction and is therefore void. Once this Court assumes its special original jurisdiction on the basis that there is a real and genuine issue for interpretation of the Constitution, it implies that any High Court that has purported to interpret the same provision lacked jurisdiction.

The nullity of the two impugned agreements and the consent judgments based on them disposes of the case against the 2nd Defendant. It has therefore not been found necessary to consider the merits of the submissions made by the plaintiff on the invalidity of the 3rd defendant's power of attorney to act for the 2nd defendant and the response of those parties that the validity of the power of attorney is not an issue in this suit, as pleaded. A just outcome to this suit can be reached without going into the merits of the submissions on power of attorney.

We come next to the Plaintiff's cause of action against the 3rdDefendant. This is endorsed on the Plaintiff's writ in the following terms:

> "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 is an international business transaction which had not been laid before and approved by Parliament is also inconsistent with Articles 2 and 181 (5) of the Constitution".

Also, in the Plaintiff's Statement of Case he affirms in his paragraph 6 that:

> "The 3rd defendant, Anane Agyei Forson, is a citizen of Ghana who holds himself out as an Attorney of the 2nd defendant pursuant to an instrument of appoint *(sic)* made on 1st September 2008, amongst other things, "to institute Court suit in the name of the Principal in

> Ghana for damages for breaches of contract … and to do all necessary and lawful things for the purpose of giving effect to the power and authority hereby granted. (A photocopy of the said Instrument of Appointment of the 3rd Defendant is annexed to paragraph 40 hereunder as part of the Exhibit marked "MAA11" thereto for ease of reference)."

In response, the 3rd Defendant has argued in his Statement of Case that an attorney or agent is at common law not liable for the acts or omissions of his principal. He therefore contends that he has been improperly joined in this action. He stresses that, by the Plaintiff's own pleadings, the 3rd defendant is sued solely in his capacity as the lawful attorney of the second defendant. He contends that no cause of action lies against himself personally for being an agent and therefore he has been improperly joined to this action and he should be struck out as a party. During the argument before this Court, the Court decided to consider this issue of misjoinder along with the substantive issues in the case and announce its decision in the course of its judgment in this case.

The Plaintiff's riposte to the 3rd defendant's argument in favour of his having been improperly joined is to contend that Article 2(1)(b) speaks in terms of "any person" who is responsible for an act or omission which is inconsistent with or in contravention of a provision of the Constitution. He maintains that if it had been the intention of the framers of the Constitution to limit the scope or categories of persons against whom an action could be brought under article 2(1)(b) by the common law or any statutory provision they would have said so by qualifying the words "any person."

The plaintiff's riposte is not persuasive. As the 3rd Defendant points out in his Supplementary Legal Arguments, the principle of the common law relied upon by him is not in conflict with the provisions of the Constitution. Embedded in the common law principle that an agent is not liable for acts done on behalf of his or her principal is the notion that the act or omission

in question is that of the principal and not of the agent. This notion holds good, even in the constitutional context, unless there is an express overriding of it. The 3rd 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 3rd defendant in his capacity as lawful attorney, it is submitted that the joinder of the 3rd defendant to the action herein on the sole basis of the latter's capacity as the 2nd defendant's attorney, is improper."We are inclined to accept this argument and hold that the 3rd defendant be struck out as a defendant. There is no cause of action against him on the plaintiff's pleadings.

Conclusion

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

1. 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 negative 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 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 Defendantis 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).

Complaints about lawyers

The Plaintiff in his Statement of Supplementary Legal Arguments urges this Court to examine the role of lawyers as officers of this Court who assist foreign registered and resident companies who fail or refuse to register as non-Ghanaian companies with an established place of business in Ghana before bringing actions in the courts of Ghana against the Government. Because of considerations of procedural fairness, it would be best if this matter were gone into rather by the Disciplinary Committee of the General Legal Council. Accordingly, this complaint by the Plaintiff is hereby referred to the General Legal Council for consideration by its Disciplinary Committee. The Plaintiff is invited to cooperate with the General Legal Council in its investigations into the matter.The Registrar of this Court is hereby ordered to serve a copy of this judgment on the General Legal Council.

Epilogue

The Roman poet Horace in one of his Odes declares: *"Dulce et decorum est pro patria mori."* Literally translated, this means it is sweet and honourable to die for one's country. Whilst we are not suggesting that the plaintiff has died in his efforts to safeguard the public purse, there is no doubt that he has sacrificed to

achieve that objective. It is only right that we should once again put on record (for the second time in a week, the first time having been in *Amidu v Attorney-General, Waterville & Woyome (supra)*) this Court's appreciation of his public-spiritedness which has led to the examination of the important legal and policy issues that have been settled in this case. He has served the public interest well by securing the clarification of the law embodied in this judgment as well as the orders made.

(SGD) DR. S. K. DATE BAH

JUSTICE OF THE SUPREME COURT.

S. O. A. ADINYIRA (MRS)

I have read the judgment of my eminent brother Prof. Date-Bah; and I fully support his reasoning and conclusion.

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

JUSTICE OF THE SUPREME COURT.

CONCURRING OPINION

DOTSE JSC:

I have had the honour and privilege to have read the judgment just delivered by my very respected brother Dr. Date-Bah JSC.

I am in complete agreement not only with the narration of the facts and the law, but also concur with the conclusions reached therein in the well researched and written judgment. I however add the following words of my own in concurring to the said judgment.

There is only one area in respect of which I wish to comment and that is the decision of the trial court when an application was made by the Attorney-General to set aside the proceedings and the garnishee order nisi granted by the Court when the 2nd and 3rd Defendants herein initiated garnishee proceedings to execute the consent judgments entered on the 29th September 2010.

It is fairly well settled that it is only the Supreme Court, that has jurisdiction to interprete and or enforce the Constitution 1992 save provisions on Fundamental Human Rights and Freedoms enshrined in article 33 of the Constitution.

See article 130 (1) (a) (b) and (2) of the Constitution 1992

> ***"130. Original jurisdiction of the Supreme Court***
>
> ***(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights***

and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution;

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a Court other than the Supreme Court, that 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 view of the fact that it is only this court that has original jurisdiction in dealing with the issues raised before the trial court in respect of article 181 of the Constitution, 1992, the only thing that the learned trial Judge should have done was to take advantage of the provisions in article 130 (2) of the Constitution 1992 already referred to supra and refer the matter to the Supreme Court for interpretation.

Trial Courts, must accordingly take note of the fact that matters of constitutional interpretation and or enforcement which genuinely and seriously arise in any proceedings before them must be referred to the court that has jurisdiction to deal with such matters, and that is the Supreme Court.

The brazen and bold attempt by the learned trial Judge to usurp the powers of this Court are not in tune with the jurisdictional limits of the High Court as provided for in articles 140 and 141 of the Constitution 1992 and sections 15, 16, 17, 18, 19, 20 and 21 of the Courts Act, 1993 Act 459.

Trial courts must therefore hasten slowly when issues of constitutional interpretation are raised before their courts and unless the constitutional provisions in issue have been over flogged by this Court, the necessary reference must be made to the Supreme Court for it to assume its jurisdiction.

It is only by strict adherence to these basic principles that the jurisdictional limits set in the Constitution 1992, the Courts Act, 1993 Act 459 and other statutes will be honoured in their observance than in their breach.

Save for the above comments I concur with the judgment of Dr. Date-Bah in its entirety.

(SGD) **J. V. M. DOTSE**

JUSTICE OF THE SUPREME COURT

(SGD) **J. ANSAH**

JUSTICE OF THE SUPREME COURT.

(SGD) R. C. OWUSU (MS.)

JUSTICE OF THE SUPREME COURT.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT.

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT.

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT.

(SGD) V. AKOTO BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT.

COUNSEL

PLAINTIFF APPEARS FOR HIMSELF.

MRS. SYLVIA ADUSU (PSA) WITH HER MRS. STELLA BADU (PSA), ANNA PEARL AKIWUMI SIRIBOE (PSA) AND GRACE OPPONG (SSA) FOR THE 1ST DEFENDANT .

OWUSU-YEBOAH WITH HIM OWUSU-NYAMPONG FOR THE 2ND DEFENDANT.

KIZITO BEYUO FOR THE 3RD DEFENDANT.