IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2015

CORAM: ANSAH JSC (PRESIDING)

ANIN YEBOAH JSC

BAFFOE BONNIE JSC

GBADEGBE JSC

AKOTO BAMFO (MRS) JSC

BENIN JSC

AKAMBA JSC

WRIT
No. J1/10/2014

16TH JULY, 2015

MUSAH MUSTAPHA - - PLAINTIFF

VRS

UNIVERSITY OF GHANA - - 1ST DEFENDANT

THE ATTORNEY GENERAL & MINISTER FOR JUSTICE - - 2ND DEFENDANT

JUDGMENT

GBADEGBE JSC:

The action herein concerns the announcement by the first defendant of road user charges on some of the roads leading into and outside its campus effective 01 February 2014. The plaintiff, a student of the University of Ghana (1st defendant herein), caused the instant action to issue claiming among others a declaration that the said charges amount to the imposition and or levying of taxation contrary to the provisions of article 174(1) of the 1992 Constitution and therefore unconstitutional for which reason we are invited in the exercise of our exclusive jurisdiction to declare same as null and void. The parties to the action herein have in compliance with the rules of practice and procedure of this court filed their respective statements of caseas well as the memorandum of issues for our consideration. At the last adjourned hearing, in view of the point raised by the first defendant regarding the propriety of the invocation of our original jurisdiction, we took time to consider the said point as it is essentially a jurisdictional point that we must first consider before proceeding to determine the matter herein on its merits.

We have carefully considered the processes before us in the matter herein and come to the opinion that the issues raised for determination in the action herein are not constitutional in nature as article 174 (1) on which the plaintiff's claim to an order of declaration of the unconstitutionality of the road user fees does not present us with any issue of interpretation. The words by which the said provision of the constitution are expressed are quite plain and indeed, in the briefs submitted to us by learned counsel on behalf of the parties, there appears not to be any genuine dispute as to the meaning of the article

such as to require us and not any other court to give effect to it by enforcing its provisions against the first defendant. Pausing here, we make reference to an earlier decision of this court in the case of**Bimpong Buta v General Legal Council** [2003-2004] SCGLR, 1200 at 1249 wherein the learned Justice Dr Date-Bah JSC(as he then was) observed in a manner that is relevant to the question with which we are concerned in this delivery as follows:

> *"It is clear that none of these reliefs sought by the plaintiff raises a genuine issue of interpretation or enforcement of the Constitution within the meaning established by the case-law.* "

It is observed that the plaintiff in the action herein has also made demands from us that touch and concern allegations of breach of the right to equal educational opportunities, a cause or matter that clearly is outside our exclusive jurisdiction, which we cannot inquire into notwithstanding the fact that the said breach is consequent upon the alleged unconstitutional act of the first defendant in purporting to levy and or impose road user fees. We do not think that the mere fact that the enjoyment of the right to equal educational opportunities that is a consequence of the road user fees renders the claim one properly before us. In our opinion, the issue of the writ herein that includes a claimwhich isalleged to be derived from an unconstitutional conduct said to be in violation of article 174(1) of the Constitution but which is free from any disputation as to its truemeaning shouldnot without more constitute the claim into a competent matter for the exercise of our

exclusive jurisdiction under articles 2 (1) and 130(1) of the Constitution. See:**Republic vSpecial Tribunal, Ex-parte Akosah** [1980] GLR 592 at 604-605. To make an accession to the claim herein would mean that lower courts cannot handle any claim in which there is a reference to a constitutional provision; a situation which would lead to absurdity sincein a constitutional democracy such as ours any act or omission to be good must be measured with the provisions of the constitution and have the effect of the Supreme Court by a single pronouncement depriving other courts in the realm of exercising the jurisdiction conferred on them to inquire into disputes giving effect toprovisions of the Constitution which pose no real issue for interpretation. Indeed, article 130(2) of the Constitution recognises the fact that claims such as the action herein could be tried by courts other than the Supreme Court and accordingly hasprovided a clear mode for dealing with cases in which the determination of questions as to the interpretation and or enforcement of the Constitution arise incidentally by providing for the reference of such questions to the Supreme Court for decision whiles the court in which the question arisesis bound to stay its proceedings to abide by our pronouncement on the question of law. The wisdom of the legislature in making this provision is one that we cannot brush aside but give effect to in determining the jurisdictional question before us.

Since by this ruling we are declining jurisdiction in the matter herein, which in our opinion raises questioins not rooted in frivolity and or vexation for the consideration of some other court, we refrain from making any pronouncement that might have the effect of prejudice when the claim is placed before the appropriate forum in view of the

doctrine of judicial precedent. The foregoing reasons are sufficient in our opinion to dispose of the question of jurisdiction which receives an affirmative answer from us. Accordingly, we are unable to inquire into the issues raised in the action herein on the ground of absence of jurisdiction.

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

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

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

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

(SGD) J. B. AKAMBA
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