IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA

CORAM: WOOD (MRS,) C.J (PRESIDING)
BROBBEY , JSC
OWUSU (MS.), JSC
YEBOAH , JSC
BONNIE, JSC

CIVIL APPEAL
J4/53/2010

13TH JANUARY,2012

NATIONAL LABOUR COMMISSION ... APPLICANT/APPELLANT
APPELLANT

VRS

GHANA TELECOMMUNICATIONS LTD ... RESPONDENT/RESPONDENT
RESPONDENT

J U D G M E N T

OWUSU (MS.) J.S.C:

This is an appeal against the decision of the Court of Appeal which affirmed the decision of the High Court refusing to enforce an order of the National Labour Commission under section 172 of the Labour Act of 2003, (Act 651.)

The commission as Applicant had gone to the High Court to seek enforcement of its order against Ghana Telecommunications Ltd, the Respondent herein after hearing a petition settling a dispute between the Respondent one Williams Hayford Appiah an Ex-employee of the Respondent.

Appiah was employed by the Respondent in January 2002 as Senior General Manager with the audit department of the company and later promoted to the rank of a chief officer.

Whiles in the employment of the Respondent, Appiah was asked to furnish management with his curriculum vitae which was to include but not limited to an outline indicated in the request.

In the outline is *schools attended* set out as follows:

> "Name of Secondary/Technical/Commercial/Training College etc attended
>
> Year of Entry
>
> Year of completion
>
> Sixth form?
>
> Name of school
>
> Year of entry
>
> Year of completion"

Following this request, Appiah submitted a curriculum vitae indicating that between 1974 and 1981, he attended Benkum Secondary School, Larteh where he obtained his GCE "O" and "A" levels Certificates.

A follow up investigation revealed that Appiah did not attend Benkum Secondary School and indeed over the period stated by him, the school did not have a sixth form and has not offered a sixth form programme since its inception.

Rather, further investigations revealed that Appiah sat for and obtained the "O" and "A" level passes as a private student having attended private classes organized

by some teachers of Benkum Secondary School. The passes were obtained one at a time between 1973-81.

For his conduct, he was charged in accordance with regulation 144 (iv) of the Staff Rules and Regulation of the company and a Board of Inquiry set up to investigate the matter found him guilty of the charge of fraud or other acts of dishonesty.

Following this, he was dismissed from the employment of the company by a letter dated 26th September 2007.

By a letter dated 5th February 2008, Appiah presented a complaint to the commission against his dismissal and prayed for the following orders –

"a. A declaration that the dismissal of the complainant from respondent's employment is unfair.

b. An order compelling respondent to reinstate complainant with all his entitlements from 22/09/07 when complaint was dismissed or in the alternative;

or in the alternative;

i. Order respondent to re-employ complainant either in the work for which complainant was employed before complainant's employment was terminated.

or in the alternative;

ii. Order respondent to re-employ complainant in other reasonably suitable work on the same terms and conditions enjoyed by respondent prior to termination of his employment or in the alternative;

iii. Order respondent to pay complainant compensation for unfairly terminating complaint's employment."

The commission went into the complaint and decided that the petitioner's conduct amounted to a breach of regulation 206 (b) of the Staff Rules and regulations the punishment for which is termination and not dismissal. It therefore decided that the purported dismissal be converted to termination in conformity with the company's own staff Rules and Regulations.

Accordingly the commission ordered the Respondent company Ghana Telecom to terminate the petitioner's appointment with effect from the date that he was dismissed with all accrued benefits.

Ghana Telecom, was to comply with the decision within fourteen days of 21-08-2008, the date of the order.

The company failed to comply with the order of the commission and therefore the commission took the necessary step to have the order enforced. Consequently, the commission applied to the High Court for an Order to enforce the order.

Under section 172 of the Labour Act of 2003, (Act 651) –

> "where a person fails or refuses to comply with a direction or an order issued by the commission under this Act, the commission shall make an application to the High Court for an order to compel that person to comply with the direction or order."

In the affidavit in support of the application, one Edward Briku-Boadu, executive secretary of the commission recounted the facts which led to the presentation of the complaint at the commission by the complainant and the fact that the company has failed to comply with its orders and that it has no intention to comply with the said orders unless the court steps in.

The Respondent opposed the application. In the affidavit in opposition, one Fitnat Adjetey the company's solicitor averred among other things that for the application which is seeking to enforce the recommendations/orders of the commission to be heard, it is imperative that all documents relating to the case and that forms the basis of the recommendations/or orders be placed before the court.

In paragraph 8 of the affidavit the deponent averred that Ex "10" and "11" which were written after the recommendations of the commission cannot form part of the record or documents on which the honourable court should evaluate the recommendation. Paragraph 13 of the affidavit states –

> "that in answer to paragraphs 16 and 17 the Respondent says that the National Labour Commission in its investigative role makes orders in the nature of only recommendations, and like all other recommendations, it is susceptible to judicial scrutiny if not honoured by the Respondent."

In paragraph 21, the Deponent averred that –

> "by section 144 of the staff Rules and Regulations, 'fraud and other acts of dishonesty constitute major offences for which the punishment includes dismissal."

Paragraphs 23 and 24 state –

"that the National Labour Commission does not have the power to substitute its own charges for those against which the petitioner was charged and or its own discretion which acted in accordance with their laid down rules."

24 "that even though the petitioner was charged under section 144 the National Labour Commission sought to regard his prosecution with (sic) section 206 of the staff Rules and Regulation 5 which the affidavit in opposition sought to justify the dismissal.

The High Court in its ruling delivered on 18-06-09 dismissed the Application for the following reasons:

"a. applicant has no power to substitute the charge for another,

b. the applicant has not made a finding of fact on unfairness or otherwise of the dismissal of the petitioner under regulation 144 (iv) of the Staff Rules and Regulations and;

c. The decision of the applicant is incomplete."

This is so because when the commission recommended that the petitioner must be paid all his accrued benefits, it did not specify what constitutes these benefits and how much was to be paid to the petitioner.

Dissatisfied with the ruling, the commission appealed to the Court of Appeal on the grounds that –

(i) The Court below erred when it questioned the correctness or otherwise of applicant/appellant's decision instead of just enforcing the decision submitted to the court for enforcement.

(ii) The court below erred when it held that applicant/appellant's decision was incomplete and cannot be enforced.

(iii) The court below erred when it held that applicant/appellant has substituted its own case for that of the petitioner.

(iv) Further grounds of appeal will be filed upon receipt of the record of proceedings.

The Appellant therefore sought a reversal of the ruling of the court below and an order enforcing the order of the Applicant/Appellant.

On 20-05-10, the Court of Appeal unanimously dismissed the Appellant's appeal and held that the order which the Appellant sought to enforce was not justified in law or on facts and that same was manifestly wrong in that the petitioner was charged with acts of dishonesty and fraud under regulation 144(iv) of the staff Rules and Regulations yet the Appellant decided the matter under regulation 206 (b) of the staff Rules and Regulations.

The petitioner's complaint was against unfair termination of employment as set out under section 63 of the Act and not against unfair labour practice as set out under sections 127 -131 of the Act.

The Court of Appeal found that the petitioner's conduct amounted to fraud and therefore the charge preferred against him under regulation 144 (iv) was appropriate in the circumstances.

It therefore held that the High Court fell into no error when it refused to enforce the order of the Appellant.

Still dissatisfied, the Appellant mounted this appeal seeking –

"(i) a reversal of the judgment of the Court of Appeal.

(ii) An order affirming the orders of the Appellant to the effect that the petitioner's appointment ought to have been terminated by the respondent/respondent/respondent/

The Grounds of Appeal are that:

"(i) The court of Appeal erred when it held that the High Court was right when it re-opened the matter and questioned the correctness or otherwise of applicant/appellant/appellant/s decision instead of just enforcing the decision submitted to it (the High Court) for enforcement.

(ii) The Court of Appeal erred when it held that the applicant/appellant/appellant never made any order regarding the actual entitlements due to the petitioner before it (appellant).

(iii) The Court of Appeal erred when it held that applicant/appellant/ appellant had substituted its own case for that of the petitioner.

(v) The Court of Appeal erred in law when it upheld the judgment of the High Court overturning the appellant's decision in favour of the petitioner when respondent/respondent/respondent had failed to exercise its statutory right of appeal in respect of the decision sought to be enforced.

Arguing the first ground of Appeal, counsel contended that the application before the High Court was simply for purposes of enforcing the decision of the Appellant. That it had nothing to do with the merits of the case before the commission. He submitted therefore that it did not lie in the Respondent's mouth to attack the decision before the High Court when the Appellant sought to have it enforced. It is his case that every decision of the commission is appealable to the Court of Appeal. Hence any person aggrieved by the decision of the commission has a right to attack same only by way of an appeal to the Court of Appeal. If therefore a person refused to appeal against the decision/order of the commission, he must be deemed to have accepted the decision/order and cannot challenge the correctness or otherwise when the commission seeks to enforce it against him.

Before the Court of Appeal, counsel for the Appellant submitted that in an application before the High Court, the High Court has no appellate Jurisdiction over the commission and therefore the High Court cannot be called upon to examine the correctness or otherwise of the decision.

Alternatively, the Respondent could have invoked the supervisory Jurisdiction of the High Court against the decision if respondent was aggrieved by same.

Counsel thus submitted that the Court of Appeal erred when it held as follows:

"In the present case, the respondent/respondent did raise issues that called for the re-opening of the investigations or production of the investigation proceedings … the trial High Court was entitled to look at all the depositions filed in the proceedings before reaching its decision, and it did so. (Kindly refer to page 500 of the record).

Appellant's main complaint is with respect to that part of the High Court's ruling which seeks to question the basis of Applicant's decision rather than proceed to enforce it.

In reply, counsel for the Respondent argued grounds (i) and (iv) together. In support of these grounds, the Appellant has argued that the Appellant has power to enquire into and determine complaints of unfair labour practices brought before it. He (Appellant) relied on section 134 of the Labour Act to submit that the Respondent had 14 days within which to appeal against the commission's decision failing which the Respondent was deemed to have accepted same and therefore would be bound by it.

Appellant has also argued that in seeking the orders of the High Court to enforce its decision, the investigation proceedings cannot be laid before the High Court.

Counsel submitted that these grounds must fail if it can be established that the above two premises are wrong.

He contended that the Appellant's argument that the only remedy available to the Respondent to question the correctness or otherwise of the decision of the Appellant is to appeal against the decision as provided for under section 134 of the Labour Act is misconceived and misplaced.

In quoting the section, the Appellant disingenuously omitted the crucial phrase "*under section 133*." Section 133 of the Act relates to unfair labour practices. Unfair Labour practice has been defined under section 127- 131

He submitted that the complaint of the petitioner in the instant case was not one of unfair Labour practice. It was rather one of unfair termination of employment. Consequently, section 134 of the Act is not applicable.

He referred to the dicta of His Lordship Brobbey JSC and Her Ladyship Wood JSC (as she then was) in the case of GHANA COMMERCIAL BANK LIMITED VRS COMMISSION FOR HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE [2003 – 2004] SCGLR 91.

He therefore submitted that the High Court exercised its powers correctly when it assessed the decision embodying the recommendation to see whether it was supported by the proceedings.

It is also his case that since the enforcement proceedings were founded on affidavit evidence, the High Court was bound to look at all the depositions filed in the proceedings before reaching its decision whether to grant or dismiss the application. From the affidavits, if it can be established that the decision of the commission which is sought to be enforced is "unjustified in law or in fact, the High Court, cannot ignore it.

Counsel submitted that the decision or order which the Appellant sought to enforce was not justified in law or fact and that it was manifestly wrong and perverse in that, even though the petitioner was charged with fraud or other acts of dishonesty under regulation 144 of the staff Rules and Regulations, the commission decided to substitute a case of its own under regulation 206 (b) and therefore based the decision on 206 (b) instead of 144 (iv).

This gave cause for the commission to decide that the punishment for that offence warranted termination of appointment but not dismissal which is warranted under 144 (iv)

He argued further that the function of the Appellant, like all other investigative bodies are purely investigative and the decision is in the nature of recommendations. The commission has no enforcement power of its own and it is for this reason that the commission resort to the High Court for enforcement of its orders. Counsel submitted that the High Court is not a rubber-stamp which

merely stamps these recommendations and orders regardless of whether such recommendation or orders can be supported by the evidence placed before the commission.

The petitioner's complaint before the commission was unfair dismissal. What constitutes unfair dismissal? The position of the Law stated by Bamford-Addo JSC (as she then was) in the case of VIVIAN BANNERMAN VRS. STATE TRANSPORT CORPORATION, CIVIL APPEAL NO. 15/2001 and dated 2nd April 2002 is as follows:

> "The employer must first show that the principal reason for dismissal was one of four potentially fair reasons (capability, conduct, redundancy, statutory requirement) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held."

Counsel concluded that the Respondent had shown that the principal reason for the dismissal was based on conduct.

The petitioner's termination was in accordance with fair procedure having been charged, he was heard, and offered opportunity to be represented by counsel to put across his case.

APPEALS

Section 134 of the Labour Act states that:

> "A person aggrieved by an order direction, or decision made or given by the commission under section 133 may within fourteen days of the making or giving of the order, direction or decision, appeal to the Court of Appeal."

It is clear from the provisions of section 134 that it is only in respect of orders made under 133 that a person aggrieved by the order is given the right of Appeal.

Section 132 gives the commission power to inquire into and determine complaints of unfair labour practices brought before it in accordance with its rules of procedure.

Sections 127-131 provide for what constitutes unfair labour practice.

Following thereafter is the power given to the commission to make orders.

Section 133. Commission to make orders:

> "(1) Where the commission finds that a person has engaged in an unfair labour practice it may, make an order forbidding that person to engage or continue to engage in the activities specified in the order.

(2) Where the Commission finds that a person has engaged in an unfair labour practice under section 127 which involves the termination of employment of a worker, the alteration of the employment or of the conditions of the employment, the Commission may, make an order requiring the worker's employer

(a) to take the steps specified in the order to restore the position of the worker, and

(b) to pay to the worker a sum specified in the order as compensation for the loss of earnings attributed to the contravention.

(1) Where the Commission finds that a person has engaged in an unfair labour practice under section 128 by making a contribution to a trade union, the Commission may, order that the trade union refund the contribution.

(2) For the purposes of enforcing an order of the Commission under this section, the order shall have effect as if it were made by the High Court."

The petitioner's case before the commission was not one of unfair Labour practice and thus the order made by the commission was not made under section 133.

Counsel for the Appellant had relied on section 134 and argued that the Respondent should have appealed against the order it sought to enforce and if he failed to appeal, it should for ever hold its peace.

Under regulation 144 (iv) no room has been provided for Appeal. Regulation 144 deal with major offences under the staff Rules and Regulations.

Among such offences is the offence of fraud or other acts of dishonesty.

Regulation 144 states that:

"The following shall constitute major offences for which the punishment shall be dismissal, removal, reduction in rank or suspension without pay or not less than 14 days, except that embezzlement shall always attract dismissal.

144 (iv) is the offence of

"*fraud or other acts of dishonesty"*

Such a conduct constitutes major offence which warrants dismissal and the complainant's dismissal was based on this Regulation.

Under Regulation 146 of the Staff Rules and Regulations –

"(a) Disciplinary authority for all offences shall be the Board or the Managing Director exercising the Board's authority.

(b) Subject to (a) above, disciplinary authority may be exercised for purposes of administrative convenience in accordance with relevant Administrative Instructions issued from time to time by the Managing Director.

Naturally under the Regulation it is an employee who has a right of Appeal against any disciplinary action that may be instituted against him and this is to the Board of Appeal.

Under the Labour Act therefore, the Respondent Company has no conferred right to Appeal and I am inclined to agree with counsel for the Respondent that the Respondent could register his dissatisfaction by his failure to comply with an order and register his disapproval by opposing an application for its enforcement when the commission seeks to do so.

The next issue raised is whether the High Court has power to question the correctness or otherwise of the decision when the commission seeks to enforce same.

On this point, both counsel heavily relied on the case of GHANA COMMERCIAL BANK VRS CHRAJ, already referred to.

In that case, the commission had gone to the High Court for the enforcement of its decision and recommendations by the High Court. The High Court had granted the application and issued an order to enforce the decision and recommendation of the commission. The Court of Appeal upheld the decision of the High Court and this culminated in the appeal to the Supreme Court.

The facts related to termination of appointment of an employee of the Bank who was a manager. The reason for the termination was that he had contravened the regulation of the Bank by granting a loan facility to a customer of the bank without prior approval from its head office.

Dissatisfied with the termination of his appointment, he petitioned the Respondent commission for redress. After investigation, the commission decided in favour of the petitioner and made recommendations to the Bank which failed to comply with them.

The commission therefore applied to the High Court for enforcement. The High Court granted the application and issued an enforcement order which the Court of Appeal affirmed.

On appeal to the Supreme Court, the issue for determination, was whether the investigation proceedings before the Commission on Human Rights and

Administrative Justice may have to be laid before the trial court. One of the grounds of appeal being that:

> "the trial court not having seen and examined the evidence adduced before the commission, erred in seeking to enforce a ruling based on the evidence."

The Labour Commission does not have power to enforce its decision, hence the application to the High Court. It is not for nothing that the decision must be sent to the court for its enforcement. The intendment of the Law maker to me is to ensure that due process was followed and that the decision is justified on the facts and the law.

A court of law which seeks to do justice cannot make an order for the enforcement of the commission's order without satisfying itself that the order sought to be enforced is justified in law especially where there is an affidavit in opposition as to why the order cannot be enforced. The affidavit in opposition did not only raise issues of facts but law as well and in my view the trial court fell into no error as the Court of Appeal held when it examined the depositions filed in the proceedings before reaching its decision.

Since the application was to be determined on the affidavit evidence, the trial Judge had no option but to look at them. If satisfied with that kind of evidence, Judgment may be given by him on the basis of that evidence. To ensure that substantial justice is done to the parties, the trial Judge, depending on the facts of each case, may even on his own order the investigation proceedings of the commission to be laid before the court.

Where one party, usually the defendant, raises issues that can only be resolved by re-examination of the evidence before the investigation body or by production of the record of proceedings before the investigation body, i.e. the commission, then the investigation proceedings before the commission may have to be laid before the court.

See holding 3 of the court in the GHANA COMMERCIAL BANK case referred to above.

I find no merit in this ground of Appeal.

As counsel for the Appellant argued grounds 1 and 4 together, my resolution covers both grounds I and 4.

On ground (ii), the commission did not make any recommendation or order as to what specifically the petitioner was entitled to by way of accrued benefits.

The trial Judge had asked in his ruling –

> "So what decision am I to decide on? If the decision of the applicant is upheld, how can I then say that the parties should go and sit down to agree on what to pay?"

It is for this reason that the trial court concluded that the decision of the Applicant is incomplete and cannot therefore be enforced.

Ex "NLC 10" did not form part of the proceedings before the commission. The decision which the Appellant sought to enforce is as follows:

> "It is the view of the commission that a punishment of such a breach is termination and not dismissal, therefore the purported dismissal should be converted to termination to conform with your company's own staff rules and regulations.
>
> Accordingly the commission orders the respondent company Ghana Telecom to terminate his appointment with effect from the date that he was dismissed with all accrued benefits."

The High Court's jurisdiction was to enforce this order as made.

It is the case of the Appellant that the fact that the Appellant did not go to the trouble of calculating the specific sum due the interested party did not render its decision incomplete and for that matter unenforceable by the High Court.

In support of his case, counsel relied on the situation where after Judgment for a liquidated sum, the High Court makes a further order that the sum so awarded is to attract interest from a particular date to the date of final payment. What constitutes the interest is not specified by the court. The Judgment creditor calculates the interest and invokes the coercive powers of the High Court to ensure enforcement by the court.

The judgment of the High Court is not deemed incomplete and unenforceable because the High Court did not specify the exact sum due the Judgment creditor by way of interest.

In reply, counsel for the Respondent argued that the decision was not complete because without taking evidence on the entitlements, the petitioner sought an order to compel the Respondent to pay what is contained in Ex "NLC" prepared unilaterally by the petitioner after the orders of the commission.

Regarding the Appellant's argument inviting the court to use the analogy of the award of interest in recovery of the award of interest in recovery cases, counsel submitted that same is misconceived. He contended that the award of interest on recovery cases which is sanctioned by the court (Award of interest and post judgment interest) Rules, 2005 (C. I. 52) and case law is different from

entitlements due an employee which is based on conditions of service. The petitioner's entitlements are indeed based on his conditions of service which needed to be proved. The award of interest is based on a fixed interest rate. The Appellant's argument that what is contained in Ex "NLC 10" was not challenged and therefore is deemed to have been accepted by the Respondent is not borne out from the record.

In paragraph 13 of the affidavit in support of the motion, it is averred that the respondent company through its solicitors requested for a two week period to revert to the petitioner.

At least from Ex "NLC 11", the Respondent's counsel had advised an out of court settlement in respect of the petitioner's entitlement but not acceptance to pay what is contained in Ex "NLC 10" as the petitioner's entitlement.

In the affidavit in opposition, the Respondent in paragraph 11 averred –

> "That in answer to Ex "NLC 10", the Respondent says that even if the recommendations were right, which is denied, the need for the proof of entitlement would have required evidence to be taken - - - - - - - - - - - - -

In paragraph 10, the Respondent averred that Ex "NLC 10" is self serving and therefore of no evidential value, the calculation of the petitioner's entitlement is false. The Respondent before the High Court therefore disputed the entitlements as contained in Ex "NLC 10".

The case of IBRAHIM VRS ABUBAKARI [2001 -2] 1 GLR cited by counsel in support of his point with due deference to counsel is inapplicable in the instant case.

Again, the analogy drawn by counsel for the Appellant is misconceived and cannot sustain his case as argued and demonstrated by Respondent's counsel.

This ground of Appeal also fails and same is dismissed.

Ground (iii) which should have been argued first would have disposed of the appeal. This ground of appeal attacks the court of Appeal decision affirming that of the High Court that the Appellant did substitute its own case for that of the petitioner.

The petitioner having been charged under Regulation 144 (iv) with an offence of fraud and other acts of dishonesty, the commission in investigating the petition, proceeded under Regulation 206 (b) of staff Rules and Regulations. Regulation 206 (b) is headed concealment of facts and reads as follows:

> "Concealment of facts or any intentional false statement will be considered a sufficient ground for non-employment or for subsequent termination of employment."

The commission came to a conclusion that what the petitioner did amounted to a breach of the above Regulation hence its decision that his dismissal should be converted to termination under the Regulation.

Counsel for the appellant contends that in determining a dispute, submitted to it, the commission is not bound to adopt any earlier proceedings involving the parties. That the commission was to hear the matter in the exercise of its statutory Jurisdiction under section 138 of the Labour Act. Among the functions of the commission is the settlement of Industrial disputes.

Counsel submitted that it was erroneous for the Court of Appeal to hold that because the appellant disagreed with the respondent's board of enquiry's conclusions and decided the matter before it in its own way, on the authority of DAM VRS J.K. ADDO and Brothers [1962] 2 GLR 200, the Appellant substituted its own case for that of the petitioner.

Counsel submitted that in hearing the matter submitted to it therefore the commission was entitled to look at the matter de novo and reach its own conclusions. It is the case of the commission that as earlier submitted, if the commission acted in error at all, the Respondent's remedy was to appeal and not to raise it as a defence in an enforcement proceedings.

In reply, counsel for the Respondent stated the principle of law as laid down in DAM VRS ADDO already referred to.

Counsel submitted that the Appellant fell into a grave error when it substituted the charge for which the Respondent proceeded against the petitioner by basing their decision on regulation 206 of the Staff Rules and Regulations instead of regulation 144 under which the petitioner was charged and investigated.

Regulation 206 was not relied on by any of the parties.

In the case of DAM VRS ADDO the Supreme Court as at the time held that:

> "A court must not substitute a case proprio motu, nor accept a case contrary to, or inconsistent with that which the party himself puts forward, whether be the plaintiff or the defendant."

The Appellant had sued the Respondent in the High Court for accounts and for money due and owing to him. The trial Judge after the consideration of the respective cases of the parties, resolved the issues as set out in the summons for directions and thereby rejected the respondent's case. He did not however give

judgment for the appellant but gave judgment for the Respondents basing himself on details on which no evidence had been adduced since they did not form part of the Respondent's case as disclosed by the pleadings.

In the proceedings before the commission, no reference was made to regulation 206 (b) of the Staff Rules and Regulations. The petitioner's petition was against unfair dismissal based upon fraud or other acts of dishonesty. Fraud because he has misrepresented to the Respondent that he obtained his "O" and "A" Level certificates from Benkum Secondary School, a representation he well knew to be false.

The issue which the commission was called upon to determine is whether or not the petitioner's dismissal was unfair.

The commission from its report, found as a fact that the petitioner gave a false information with regard to a secondary school he claimed he attended and obtained his "A" and "O" Level Certificates. What it should have decided upon was whether the dismissal was unfair or not.

The commission had no Jurisdiction to prefer its own charge against the petitioner and proceed against him for an offence for which he was not charged.

The Appellant's contention that under its statutory Jurisdiction, the Appellant is not bound to adopt any earlier proceedings involving the parties and that it was entitled to look at the matter de novo is fallacious and untenable.

The commission could not substitute a case of its won for the petitioner and adjudicate on it when the dispute between the petitioner and the Respondent was not based on concealment of facts as laid down under regulation 206 (b).

To condemn the Respondent under regulation 206 (b) and order it to terminate the petitioner's appointment instead in conformity with the said regulation will be acting without jurisdiction and a denial of justice for not giving the Respondent on opportunity to be heard on that charge.

"To condemn a person on a ground of which no fair notice has been given may be as great a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded." Dictum of Lord Normand in ESSO PETROLEUM CO. LTD VRS SOUTH PORT CORPORATION [1956] A. C. 218 relied on and applied in DAM's case.

This ground of Appeal does also not find favour with the court. Consequently, the appeal fails in its entirety and same is accordingly dismissed.

It is for these reasons that the court unanimously dismissed the appeal on 13-01-12.

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

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

(SGD) S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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