IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF GHANA

ACCRA

CORAM: ATUGUBA JSC PRESIDING

ANSAH JSC

ADINYIRA JSC

OWUSU JSC

YEBOAH JSC

BONNIE JSC

GBADEGBA JSC

WRIT

NO.J1/13/2013

23RD JULY 2014

BETWEEN

OPANIN KWADWO DANSO ----- PLAINTIFF
H/№ B59 MPRAESO

AND

1. NANA AMPADU DAADUAM II ----- DEFENDANTS
OHENE OF MPRAESO
KWAHU TRADTIONAL AREA
MPRAESO, KWAHU

2. METALEX LTD
SPINTEX ROAD
ACCRA

RULING

ANIN YEBOAH JSC:

On 23/07/2014, we upheld the preliminary objection and dismissed this action. We now proceed to offer our reasons. On the 20/05/2013, the plaintiff herein who is a citizen of Mpraeso and claims to be an affected subject of Mpraeso stool,(a town in the Eastern Region of Ghana) sued the defendants herein who are the Chief of Mpraeso and a limited liability entity respectively before this court. The nature of the case is such that it would be useful at this stage of this ruling to recap the reliefs sought on the writ;

1. A declaration that on a true and proper interpretation of Article 267(1) of the 1992 Constitution of the Republic of Ghana the 1st defendant qua Ohene "chief" of Mpraeso has no right to sell the stool lands of Mpraeso without the consent of the substools and subjects under the Mpraeso stool occupied for the time being by the 1st defendant.

2. A declaration that by virtue of Article 36(8) of the 1992 Constitution, the subjects of stools are entitled to a true and verifiable account of all revenue from stool lands from chiefs and managers of stool lands.

3. An order directing the 2nd defendant by himself or privies, servants, workers etc to cease from all activities, development or otherwise on Mpraeso stool lands leased to it by the 1st defendant.

Upon service of the writ, the 1st defendant on 5/7/2013 filed Notice of Intention to raise and rely on preliminary objection. For a fuller record the preliminary objection was couched as follows:

1. The Honourable Court should decline jurisdiction on the grounds that this is a civil right dressed as an "interpretation or enforcement action"

2. This is an abuse of the processes of the court as the plaintiff is only forum shopping.

The plaintiff has invoked our original jurisdiction for the reliefs stated above. It is therefore the duty of the plaintiff to demonstrate to this court that our jurisdiction has been properly invoked. This he can do by showing as per his writ and reliefs sought that his case presented to this court raises a real or genuine issue for interpretation or enforcement. As the plaintiff's action is founded on Articles 267(1) and 36(8) of the 1992 Constitution, perhaps it would throw more light on the geniuses or otherwise of the invocation of our original jurisdiction if both Articles are discussed in detail.

Article 36(8) of the Constitution states as follows;

> "The state shall recognize that ownership and possession of land carry a social obligation to serve the larger community and in particular, the state shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation of discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard"

Article 267(1) of the same constitution states as follows:

> "All stool lands in Ghana shall rest in the appropriate stool on behalf of, and in trust for the subject of the stool in accordance with customary law and usage"

In his statement of case which accompanied his writ, the plaintiff stated clearly that the land in dispute out of which this action culminated is part of the Mpraeso stool land. It is clear that the plaintiff is inviting this court to interpret Article 267(1) which obviously is plain and indeed calls for no interpretation. The words are clear and unambiguous and it is a cardinal rule of interpretation of statutes and constitutions for that matter, that if the provisions of a statute are clear and unambiguous, no interpretation arises. See the case of BIMPONG-BUTA v GENERAL LEGAL COUNCIL [2003-2004] 1200 where this court per KLUDZE JSC said as follows at 1241

> "The intention of the famers of the Constitution 1992 is not to transform the Supreme Court, the highest court of the land into a forum for the original adjudication of ordinary civil disputes. It is only in cases of apparent ambiguity

or inconsistency of the provisions of 1992 Constitution that the original jurisdiction of the Supreme Court may be invoked to interpret the 1992 Constitution"

If the words or the article read as a whole appears to be ambiguous and calls for its interpretation this court would obviously not shirk our responsibility. The words appear not to be imprecise or unclear or ambiguous. The defendants are indeed not putting any different interpretation on the two articles of the Constitution which are in issue. The two reliefs sought and the statement of case in support of the two main reliefs could not be construed as raising any claim founded on Article 2 of the Constitution. In any case there is also no traces of disputed interpretation which lies at the heart of the disputation.

The above requirements to enable this court to be called upon to interpret the two articles were spelt out by this court in several cases like REPUBLIC v FAST TRACK HIGH COURT, ACCRA; EX PARTE (CHRAJ) DR. ANANE, INTERESTED PARTY [2008] 4 GMJ I SC. This court has exhibited remarkable consistency since the case of REPUBLIC v SPECIAL TRIBUNAL; EX PARTE AKOSAH [1980] IGLR 59 and continued same under the 1992 constitution in cases like ADUAMOA II v ADU-TWUM [2000] SCGLR 165. It is clear that the plaintiff is resorting to the use of this court as a court of original adjudication of ordinary land case between a stool subject and the occupant of a stool

This court must not attempt to enlarge or extend its interpretative jurisdiction exclusively vested in it under Article 2 of the 1992 Constitution so as to deny the opportunity and jurisdiction vested in the lower courts to exercise their jurisdiction in areas where no interpretation arises whatsoever. In the recent case of CEPS v NATIONAL LABOUR COMMISSION [2009] 7 GMJ I, at page 46 Dotse JSC had the opportunity to restate this court's position as follows:

"It is also to be noted that where a cause or matter can be determined by a superior court, other than the Supreme Court, the jurisdiction of the lower court shall first be invoked. The Supreme Court may dismiss any cause or matter, with punitive costs to be paid personally by counsel or by the party responsible for brining such cause or matter to the Supreme Court in the fist instance"

Another issue to be worth considering is whether any of the two articles the subject of this action calls for the invocation of our enforcement jurisdiction. It is clear under the 1992 Constitution that article 267(2) has clearly spelt out the functions of the Office of the Administrator of Stool Lands whose responsibilities are clear and unambiguous. It deals with the administration of revenue, disbursements of royalties, etc arising out of stool lands of which the land in dispute is indisputably part of. It would therefore be a clear case of wrongful invocation of our enforcement jurisdiction if this court as the final court of the land under the guise of our enforcement jurisdiction assumes jurisdiction to deal with this case.

From the nature of the claim it appears clearly that the plaintiff who is a subject of Mpraeso Stool and holds a usufrucuary title as a stool subject is not pleased with the management and revenue disbursement of the Mpraeso Stool Lands and revenues accruing therefrom. We are of the view that this is not a case which could not be conveniently heard and determined by a court other than this court.

We are of the opinion that from the nature of the case this court cannot exercise any interpretation or enforcement jurisdiction which we are called upon to do.

The action is clearly misconceived for the reasons canvassed above and same is accordingly dismissed as we uphold the preliminary objection raised by the first defendant.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(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) **R. C. OWUSU [MS.]**

JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE BONNIE**

JUSTICE OF THE SUPREME COURT

(SGD) **N. S. GBADEGBE**

JUSTICE OF THE SUPREME COURT

COUNSEL:

KWAKU BAAH ESQ. FOR THE PLAINTIFF/RESPONDENT.

KIN HUSSEIN IBN ALHASSAN FOR THE 1ST DEFENDANT/ APPLICANT