IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2013

CORAM: DR. DATE BAH, J.S.C. (PRESIDING)

ANSAH, J.S.C.
ADINYIRA (MRS), J.S.C.
YEBOAH, J.S.C.
AKAMBA, J.S.C.

CIVIL MOTION

No. J5/6/ 2013

20TH FEBRUARY, 2013

THE REPUBLIC

VRS

HIGH COURT(LAND DIV.),ACCRA

EXPARTE; ATTORNEY GENERAL --- APPLICANT

1. SWEATERS & SOCKS FACTORY LTD --- INTERESTED PARTIES

2. HABIB GEORGE BEANY

R U L I N G

DR. DATE-BAH JSC:

This case can easily be disposed of since the main issue in it has recently been authoritatively determined by a binding precedent of this Court. That binding precedent is the decision of this Court in *Republic v High Court (Commercial Division); ex parte Attorney-General (Maud Nongo, Interested Party) (*Suit No. J5/24/2012, unreported, delivered on 24th January 2013).

The facts of this present case are as follows: In April 2003, a High Court gave judgment in favour of the Interested Parties in this case. Under the judgment, the State was to prepare a comprehensive account on the use to which it had put the Interested Parties' factory premises and the transactions carried out there. The State failed to do so. Accordingly, on 16th May 2012, Her Ladyship Ankumah J ruled that the Interested Parties recover $28,595,600 or its cedi equivalent against the State. This sum was monetary compensation to the Interested Parties for being denied the use and running of their factory for 32 years by the State. Following this judgment debt, the Applicant herein was served with a certificate pursuant to Section 15(1) of the State Proceedings Act, 1998 (Act 555) stating that the 1st and 2nd Defendants in the original suit (in short, the State or Republic) had been adjudged liable for $28,595,600. When the State failed to pay this judgment debt, the Interested Parties instituted garnishee proceedings against the State which resulted ultimately in a Garnishee Order Absolute made on 12th September, 2012 by his Lordship Ocran J. The order was in the following terms:

> "It is hereby ordered that since the Bank of Ghana has no impediment in paying the cedi equivalent of the United States Dollars

(US$28,595,600.00) at today's selling rate of exchange from the Accounts of Ministry of Finance, the Bank of Ghana do pay the cedi equivalent of US$28,595,600.00 from the Ministry of Finance to the Plaintiffs/Judgment/Creditors."

It is this order that the Applicant seeks to have this Court quash on the following grounds:

1. "The High Court erred when it granted an order directed at the Governor, Bank of Ghana to release funds from the Ministry of Finance Accounts (Account No. unspecified).
2. The High Court does not have jurisdiction to attach public funds in satisfaction of judgment debts."

The case thus raises frontally the issue of the State's liability to execution for its judgment debts, at least through the attachment of its funds. It is this same issue which was determined in *Republic v High Court (Fast Track Division) Accra; ex parte Attorney-General (Maud Nongo, Interested Party)(supra).*The material facts of the two cases are almost on all fours.

The material facts of the earlier *Maud Nongo* case were as follows: the Attorney-General applied to invoke the supervisory jurisdiction of this Court to quash the decisions of the High Court (Fast Track Division), Accra, on the grounds that:

1. "The High Court erred when it granted an order directed at the Governor of the Bank of Ghana to release funds held in the name of the Ghana Fire Service.

2. The High Court does not have jurisdiction to attach public funds in satisfaction of a judgment debt."

The interested party in the case had filed entry of judgment in relation to a judgment debt he had obtained against the Ghana National Fire Service, in effect the Republic, but failed to obtain a Registrar's certificate in accordance with section 15 of the State Proceedings Act, 1998 (Act 555). The interested party obtained an order from the High Court (Fast Track Division) attaching the funds in the name of the Ghana Fire Service at the Bank of Ghana. In the meantime, the Attorney-General had filed a Notice of Appeal against the High Court's judgment. He also applied for stay of execution of the High Court's judgment, but this was refused by the High Court. The Attorney-General repeated his application for stay of execution before the Court of Appeal. It was while this application was pending that the High Court granted a Garnishee Order Nisi and a Garnishee Order Absolute against the Ghana National Fire Service, ordering the Governor of the Bank of Ghana to pay the interested party/judgment creditor the judgment debt obtained against the Ghana National Fire Service.

The Attorney-General's application to invoke the supervisory jurisdiction of this Court to quash the orders of the High Court was upheld, but on a ground other than those set out above, with this Court rejecting his submissions based on Chapter 13 of the 1992 Constitution. Delivering the unanimous judgment of the Court, I stated that:

> "The provisions of the Constitution governing voluntary expenditure of public funds could not have been intended to govern the extent of the jurisdiction of the High Court and thus the validity of its orders for the

> Republic to pay money. A High Court's order made within jurisdiction has to be obeyed by the Republic, even if it entails the expenditure of money beyond what is already authorized under Chapter 13 of the Constitution. In those circumstances, the Republic's duty is take the necessary steps to secure the authorization required under Chapter 13 to enable it to perform its obligation. An analogy from the situation with private persons would be helpful. If an individual is adjudged by the High Court to owe a particular sum of money, it cannot use the fact that it has not budgeted for that obligation as a defence to execution process levied against him or her. Similarly, the Republic should not be able to resist execution process simply because funds have not been authorized under Chapter 13 to satisfy the judgment debt. The judgment debt creates an obligation which it is the constitutional duty of the Republic to satisfy and hence it must comply with the necessary "housekeeping" rules in order to do so."

Although this Court thus held that the Republic was liable to the attachment of its funds in satisfaction of judgment debts, the Court decided on the particular facts of the case to quash the orders of the High Court because the Interested Party in the case had not complied with Section 15(1) of the State Proceedings Act, 1998 (Act 555). The Court held that the High Court exceeded its jurisdiction when it failed to enforce the statutory pre-condition to the Interested Party's right to execution.

The material difference in the two cases is thus that in the earlier case the interested party had failed to comply with section 15 of the State Proceedings Act, 1998 (Act 555).

The applicant's submission in the present case in support of his position is as follows: The Garnishee Order Absolute by Ocran J. is illegal and contrary to Articles 177 and 178 of the 1992 Constitution. These articles provide as follows:

> "177.
>
> (1) There shall be paid into the Contingency Fund moneys voted for the purpose by Parliament; and advances may be made from that Fund which are authorised by the committee responsible for financial measures in Parliament whenever that committee is satisfied that there has arisen an urgent or unforeseen need for expenditure for which no other provision exists to meet the need.
>
> (2) Where an advance is made from the Contingency Fund a supplementary estimate shall be presented as soon as possible to Parliament for the purpose of replacing the amount so advanced.
>
> 178.
>
> (1) No moneys shall be withdrawn from the Consolidated Fund except -
>
> (a) to meet expenditure that is charged on that Fund by this Constitution or by an Act of Parliament; or

(b) where the issue of those moneys has been authorised -

(i) by an Appropriation Act; or

(ii) by a supplementary estimate approved by resolution of Parliament passed for the purpose; or

(iii) by an Act of Parliament enacted under article 179 of this Constituted; or

(iv) by rules or regulations made under an Act of Parliament in respect of trust moneys paid into the Consolidated Fund.

(2) No moneys shall be withdrawn from any public fund, other than the Consolidated Fund and the Contingency Fund, unless the issue of those moneys has been authorised by or under the authority of an Act of Parliament."

Although the Garnishee Order Absolute does not refer to any specific account, the applicant refers to a "Dedicated Cash Proceeds Account" and proclaims that this is a public account designated for a specific project and thus the High Court has no jurisdiction to order attachment of funds in it or the release of funds from it. The applicant contends that only the Committee of Parliament specified in Article 177 can authorize payments or make releases or withdrawals from this account. The applicant claims that

the Financial Administration Act, 2003 (Act 654) supportshis submission on this issue. He cites section 5(1) of the Act, which states that:

> "(1) In accordance with article 175 of the Constitution, the public funds of Ghana consist of the Consolidated Fund, Contingency Fund and such other funds as may be established by or under an Act of Parliament."

He also prays in aid section 13 of the same Act which provides that:

> "(1) A payment shall not be made out of the Consolidated Fund except as provided by article 178 of the Constitution.
>
> (2) A payment shall not be made in excess of the amount granted under an appropriation for any service.
>
> (3) The Minister may by legislative instrument prescribe for the approval of Parliament, procedures to be followed to make payments out of the Consolidated Fund in times of emergency."

The applicant argues that section 14 of the Financial Administration Act, 2003 regulates the appropriation of public money and provides that when an appropriation for a Department is approved in accordance with article 179 of the Constitution, it shall be used only in accordance with the purpose described for it and within the limits set by its classification within the estimates of the Department. Only the Minister of Finance may authorize the reallocation of expenditure within the ambit of a Department's appropriation and this has to be done by a legislative

instrument. Accordingly, the applicant submits that the courts do not have jurisdiction to vary the estimates of a government department by attaching the funds approved for it by Parliament for specified objectives and enabling the payment of judgment debts out of these funds.

The applicant's argument as to jurisdiction is, with respect, erroneous. The jurisdiction of the High Court is governed by article 140(1) of the 1992 Constitution, which provides that:

> "(1) The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law."

In spite of this clear conferment of a comprehensive jurisdiction on the High Court, the applicant makes the following unreasonable proposition in his Statement of Case:

> "My Lords, the departmental estimates of Ministries, Departments and Agencies do not include a budget line for judgment debts. The Appropriation Act therefore in relation to Ministries, Departments and Agencies does not include a vote for judgment debts. It is our respectful submission therefore that the courts do not have jurisdiction to attach any funds in satisfaction of a judgment debt."

He continues:

"My Lords, sections 15, 16 and 17 of the State Proceedings Act, 1998, Act 555 deal with satisfaction and enforcement of Orders as well as attachment of money. Even in those prescribed circumstances it is clear the courts do not have jurisdiction to attach public funds in execution of a judgment debt against the Republic. These provisions, specifically section 16 and 17 do not apply when the Republic is a judgment debtor.

Respectfully, my Lords, it is only the Ministry of Finance and Economic Planning that has a vote or budget line for the payment of debts and compensations. However, even those funds held by the Ministry of Finance for the specified purpose of paying judgment debts and compensations cannot be directly attached by a Court in satisfaction of a judgement debt.

We are not by any stretch of the imagination postulating that the Government of Ghana will not pay its just debts, indeed it will, but since it is in perpetuity, well resourced and endowed, it must be allowed to settle judgment debts in the manner prescribed by law.…

If the orders of the courts were to be allowed to stand, the operations of government hospitals, schools and departments will be affected and their operations greatly hampered. And by the stretch of one's imagination the accounts of the Judiciary and Parliament could be attached by prospective judgment creditors."

The applicant's propositions of law above are misguided and clearly erroneous. They are also against the public interest in that they would result in the destruction of the government's creditworthiness.

The Interested Parties filed a Statement of Case on 22nd November, 2012 in which they countered the applicant's arguments. They rely on article 140(1) of the 1992 Constitution, which we have already set out above. More specifically, they also rely on Order 43 of the High Court (Civil Procedure) Rules, 2004 (CI 47) which states as follows:

> **"Enforcement of judgment for payment of money**
>
> 1. (1) Subject to these Rules, a. judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means
>
> *(a)* writ *of fieri facias;*
>
> *(b)* garnishee proceedings;
>
> *(c)* a charging order;
>
> *(d)* the appointment of a receiver;
>
> *(e)* in a case in which rule 5 applies, an order of committal or a writ of sequestration."

They contend therefore that the High Court has jurisdiction to entertain garnishee proceedings against the Republic. They further argue that there is nothing in the Financial Administration Act, 2003 (Act 654) which prevents the High Court from making orders which may affect the Consolidated Fund or the Contingency Funds.

In our view, these submissions of the Interested Parties are well-founded and we hold that there is no legal basis for the applicant's contention that public funds cannot be attached in satisfaction of the judgment debts of the Republic. As already pointed out above, it would be against public policy to hold otherwise, since this would destroy the credit of the Republic. Moreover, as already explained above, this court has quite recently held in *Republic v High Court (Commercial Division); ex parte Attorney-General (Maud Nongo, Interested Party)* (*supra*) that although the jurisdiction thus conferred on the High Court by the 1992 Constitution is expressed to be subject to the other provisions of the Constitution, it would not be reasonable to construe the provisions of Chapter 13 (on Finance) as abridging any aspect of the jurisdiction conferred on the High Court. Certainly, the provisions of the Financial Administration Act, 2003 cannot derogate from the jurisdiction conferred on the High Court.

This Court is bound to follow its own recent previous decision in *Republic v High Court (Commercial Division); ex parte Attorney-General (Maud Nongo, Interested Party).* Thus in conformity with principle and authority, the applicant's controversial propositions of law should be, and are hereby, rejected.

The application for *certiorari* is accordingly dismissed as being entirely bereft of any merit.

(SGD) DR. S. K. DATE-BAH

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) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

CLARENCE KUWORNU (CHIEF STATE ATTORNEY) FOR THE APPLICANT.

GEORGE ESHUN FOR THE INTERESTED PARTIES.