IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA
A.D 2011

CORAM: G. WOOD (MRS) C.J (PRESIDING)
J. DOTSE J.S.C
ANIN-YEBOAH J.S.C
N.S. GBADEGBE J.S.C
V. AKOTO-BAMFO J.S.C

Suit No: J5 /8/2011

3RD MARCH, 2011

THE REPUBLIC - RESPONDENT

VRS

HIGH COURT, HO
EX-PARTE: NANA DIAWUO BEDIAKO II - APPLICANTS
OMANHENE OF PAI TRADITIONAL AREA
OMANHENE'S PALACE
PAI KATANGA, KRACHI EAST DISTRICT
NANA ADOMAKO MENSAH
STOOL FATHER OF THE OMANHENE STOOL
PAI TRADITIONAL AREA, PAI KATANGA

1. **OPANYIN KWADWO ODUM - INTERESTED PARTIES**
2. **CONSTANCE SAFO**
3. **BEN OWUSU aka KWAKU KURU**
4. **BEATRICE BOAME aka AUNTIE B**
5. **THE REGISTRAR, HIGH COURT , HO**

RULING

JONES DOTSE JSC:

This is an application by Nana Diawuo and another, hereafter referred to as the applicants herein, who described themselves as the Omanhene and stool father of the Pai Traditional area, in the Krachi East District of the Volta Region respectively.

By this application, the applicants invoke the supervisory jurisdiction of the Supreme Court for the orders of Certiorari and Prohibition to quash all the proceedings and orders made by the High Court, Ho in respect of Suit No. F. 22/07/2011 intitutled ***Opanyin Kwadwo Odum and 3 others v The Republic*** dated 19th October, 2010 presided over by Abada J, and also prohibit the said court and Judge from further hearing any application in respect of the case.

FACTS

The applicants were complainants in the criminal prosecution of the interested persons at the Circuit Court Hohoe in a case intitutled ***The Republic v Opanin Kwadwo Odum, Constance Osarfo, Benjamin Owusu @ Kwaku Kuru, Beatrice Boame @ Auntie Bea.***

At the Circuit Court, the Interested parties herein, therein accused persons were tried and convicted on four counts of:

i. Conspiracy to commit crime contrary to section 23 (1) of Act 29/60

ii. Unlawful damage contrary to section 172 (i) (b) of Act 29/60

iii. Unlawful entry contrary to section 15 (2) of Act 29/60

iv. Stealing contrary to section 124 (1) of Act 29/60

The Circuit Court, Hohoe on the 28th day of September, 2010 sentenced each of the Interested parties to six (6) months imprisonment with hard labour on each of the counts with the sentences to run concurrent.

The complaint of the applicants against the interested parties was that on or by the 7th day of December, 2008 they broke into the stool room of the applicants where the Black stools and other stool regalia of the Omanhene stool of Pai Traditional area were kept and stole same.

The applicants allege that, after the conviction and sentence of the interested parties on the 28th day of September 2010, the interested parties who were incarcerated at the Kpando and Ho prisons respectively, on the 19th October, 2010 successfully applied to the High Court, Ho presided over by Abada J, who granted an application for bail to the interested parties.

It is this grant of bail by the High Court, Ho on 19th October, 2010 which is the crux of the applicants application.

The applicants contend that the High Court, Ho did not have jurisdiction to hear the application for bail pending appeal to the interested parties. This is because, according to the applicants, it is the Circuit Court, Hohoe, the trial Court and the High Court, Hohoe that have jurisdiction to entertain the application for bail.

The applicants also contend that the interested parties have filed an application before the High Court, Ho praying for an order of stay of Execution of the orders contained in the judgment of the Circuit Court, Hohoe dated 28th September, 2010.

The applicants therefore seek an Order of Prohibition to restrain Abada J, presiding over the High Court, Ho from presiding over the said application and indeed any other matter connected with that case.

GROUNDS

1. On the grounds of lack /want of jurisdiction

2. That the High Court, Ho has no jurisdiction to hear the application for Stay of Execution of the judgment of the Circuit Court, Hohoe without any transfer order from the Honourable Lady Chief Justice

SUBMISSIONS

The submissions of learned counsel for the Applicants, Mr. Yankyera is to the effect that once the interested parties were tried and convicted by the Circuit Court, Hohoe, it is the same Circuit Court, Hohoe and or the High Court also at Hohoe that the appeal and the subsequent application for bail pending appeal must be filed. Learned Counsel therefore submitted that once the Chief Justice had not transferred the case to the High Court, Ho the said court lacked jurisdiction to have entertained the application and hear same.

In similar vein, learned Counsel argued that the High Court, Ho not having had jurisdiction in the earlier application, should be prohibited from hearing the pending application for Stay of Execution of the orders of the Circuit Court, Hohoe case No. cc/11/2011 entitled ***Republic v Opanyin Kwadwo Odum and three others.***

On his part, learned Counsel for the interested parties Akwasi Bosompem contended that since there is only one High Court in Ghana as established under article 139 (1) of the Constitution 1992 and section 14 (1) of the Courts, Act 1993, Act 459, the application for bail pending appeal which was filed at the High Court, Ho at a time the High Court at Hohoe did not have a functional court is proper.

In a preliminary legal objection, learned counsel for the interested parties, Akwasi Bosompem to whose arguments learned Counsel for the 5th interested party, (the Registrar of the High Court, Ho, Mr. Alex Wiredu Principal State Attorney) associated with, contended that the applicants herein have no capacity to have instituted the instant application invoking the supervisory jurisdiction of the Supreme Court. Learned Counsel contended that, being a criminal case the interested parties can only bring an action with the consent of the Attorney-General.

On the contrary, learned Counsel for the applicants, contended that on the authority of the decision of the Court of Appeal in the case of ***Republic v Korle Gonno District Magistrate Grade I Ex-parte Ampomah, [1991] 1 GLR 353,*** this court has jurisdiction. In view of the preliminary legal objection that has been raised, this court has to consider that issue first.

In the Ex-parte Ampomah case referred to supra, the Court of Appeal was called upon to decide on the issue of whether in a certiorari application, the applicant had to establish that he had locus standi i.e. real or substantial interest in the proceedings sought to be quashed.

The court of Appeal unanimously held on the above issue in the Ex-parte Ampomah case as follows:-

> "*The orders of certiorari and prohibition, as the form of the proceedings showed were means for ensuring that the machinery of public administration worked properly and that justice was done to individuals. And because these remedies had a special public aspect to them, an applicant for certiorari or prohibition did not have to show that some legal right of his was at stake. If the action concerned an excess of jurisdiction or abuse of power, for example, the court would quash it at the instance of a mere stranger, although it retained the discretion to refuse to quash it if it thought that no good would be done to the public.* ***The remedies of certiorari and prohibition were therefore not restricted by the notion of locus standi, and every citizen had a standing to invite the court to prevent some abuse of power, and in so doing he might claim to be regarded not as a meddlesome busy body but a public benefactor."***

The above principle in the Ex-parte Ampomah case was recently applied by the Supreme court in the case of ***In re-Appenteng (Decd) Republic v High Court, Accra Ex-parte Appenteng & Another [2005-2006] SCGLR 18*** where the court unanimously held on the said principle thus:

"The court upheld the following rules on the scope of the order of prohibition namely:-

a. Prohibition is not meant to prevent a person or a court from exercising general judicial functions,

b. It is rather to challenge an attempted exercise of the judicial function in specific jurisdictional situations i.e. for excess or absence of jurisdiction or departure from the rules of natural justice such as the existence of actual bias or strong likelihood of bias or interest, and

c. An applicant for prohibition or certiorari is not restricted by notion of locus standi, i.e. he does not have to show that some legal right of his is at stake.

It must be noted that, the Supreme Court in the Ex-parte Appenteng case specifically approved the scope of the above principle that was stated and applied in the ex-parte Ampomah case already referred to supra.

In the instant case, the applicants herein were the complainants in the criminal case which is the genesis of the entire application before this court. In that respect therefore, the applicants must be deemed to have more than sufficient interest in the matter to qualify them to sustain the application before this court.

With these authoritative decisions, we have no option but to dismiss the preliminary legal objection raised by the respondents to the competence and or propriety of the applicants to have mounted this application.

We will now turn to the merits of the instant application.

By virtue of article 139 of the Constitution 1992 and section 14 (1) (2) and (3) of the Courts Act, 1993 Act 459, the point can safely be made that there is only one High Court in Ghana.

What this in effect means is that, even though there is only one High Court denominated both under the Constitution and the Courts Act, for administrative and geographical reasons, there are various divisions and or

locations of the High court. If for instance, a crime is committed say in Hohoe and a report is made to the Hohoe Police, it will be completely out of place if the said case is not prosecuted at either the District Court or the Circuit Court, both of which are in Hohoe, but at Ho without an order under the hand of the Chief Justice authorising transfer as is stipulated in sections 104 or 108 of the Courts Act, Act 459. The procedure outlined where cases are prosecuted in courts within the geographical location is a mechanism designed to prevent forum shopping by prospective litigants before the courts and also for the convenience of litigants to have access to courts very close to them.

In the instant application, the case from which the interested parties were tried, convicted and sentenced was the Circuit Court, Hohoe. Using the administrative and geographical location, any appeal against that decision must be to the High Court at Hohoe.

It must be noted, pursuant to section 15 (1) (b) of the Courts Act, Act 459 that an appeal against the Circuit Court, Hohoe decision in a criminal trial is to the High Court, and this by our understanding must be to the High Court, Hohoe, unless it is established that the said court is not functional or a transfer order has been signed under the hand of the Chief Justice.

We have seen a copy of the Notice of appeal filed by the interested parties against their conviction and sentence by the Circuit Court, Hohoe. It appears the said process was filed at the High Court, Hohoe.

We have also seen exhibit NDB2A, which is the motion on notice for bail pending appeal which was filed by the interested parties at the High Court, Ho. The said process was filed on or by the 14th October, 2010 and fixed for hearing on 18th October, 2010; but the said application was granted on 19th October, 2010.

From exhibit NDB2 it is clear that there was a representative of the Attorney-General who was present in court before the application for bail was granted.

We have also apprised ourselves of the contents of a search attached to this application as exhibit NDB5 which indicated that even though a High

Court Judge had been appointed for the High Court Hohoe, since 1/10/2010 he did not assume duty until on or by 1/11/2010.

What must be noted is that, since applications for grant of bail pending appeal, affects the fundamental rights of the persons involved, these must be handled expeditiously. In view of the fact that, there was no functioning High Court in Hohoe who could have taken the said application, there was nothing wrong in filing the application before the High Court, Ho.

Before we consider the merits of the application as to whether certiorari will lie to quash the proceedings and orders of 19th October, 2010 made by the High Court, Ho or not, we have to decide whether the application for bail pending appeal which was granted by the High Court, Ho was properly filed before the said court.

This is because, learned counsel for the applicants had contended that the application for bail by the interested parties ought to have been filed before the Circuit Court, Hohoe in the first instance.

Section 33 of the Courts Act, 1993 Act 459 provides on this matter thus:

> ***"The court before which a person is convicted or the court to which an appeal is made may, on the application of an appellant, grant bail pending the determination of the appeal."***

It should therefore be noted that, unlike civil appeals, where applications of this nature must first be made to the trial court and repeated to the appellate court, the situation in criminal appeals is quite fluid. This therefore means that, an appellant in a criminal case who has been incarcerated as a result of the conviction and sentence and is desirous of being released on bail pending appeal has the option of either applying to the trial court, or to the appellate court.

In our considered opinion, once the interested parties chose to go to the High Court, they cannot be faulted.

We are also of the view that the practice generally is that applications for bail pending appeal unlike applications for bail pending trial are always made to the appellate court in the first instance.

We think there are sound policy measures behind this rule of practice. This is because if the trial court has considered it fit and proper to convict and sentence the appellant to a term of imprisonment, it will be absurd to go back to the same Judge or Magistrate requesting for a release whilst the appeal is pursued. Perhaps this explains why in practice, it is rare for appellants in criminal cases to go to the trial courts for an application for bail pending appeal. The objection by the applicants herein to the propriety of the 1st - 4th interested persons filing the application at the High Court and not the Circuit Court is thus dismissed.

We will therefore bend on the side of caution, and hold that the applicants have not satisfied any jurisdictional ground, or error of law to sustain the application for certiorari to quash the orders of the High Court, Ho dated 19th October, 2010. What must be noted is that, in such situations each application must be considered on case by case basis.

See ***Republic v High Court, Accra, ex-parte Anyan (Platinum Holdings – Interested Party) [2009] SCGLR 255, at 262 – 263*** where the court speaking with one voice through Rose Owusu (Ms) JSC held thus:-

> *"The law is well settled that the supervisory jurisdiction of the court under article 132 of the 1992 Constitution is exercised only in those* ***manifestly plain, obvious and clear cases where there are patent and obvious errors of law on the face of the record which error must go to the jurisdiction of the court so as to make the decision of the court a nullity."***

In the instant case, there is nothing manifestly clear and obvious that the High Court, Ho did not have jurisdiction or exceeded its jurisdiction at the time it heard and determined the application for bail pending appeal.

In respect of the order of Prohibition, we are of the considered view that once there is as at now a functional High Court at Hohoe, a report of the

entire appeal and any consequent application be made to the Chief Justice for a transfer of the said appeal to Hohoe High Court. It must however be understood that the said order is neither based on bias nor real likelihood of bias. This has been necessitated solely by the geographical location of courts throughout the country to facilitate the distribution and hearing of cases on sound principles. The High Court, Hohoe being now functional with a presiding Judge must therefore be made to hear the application and appeal.

Save as is stated supra the application is dismissed.

[SGD] J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

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

[SGD] ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

[SGD] N. S. GBADEGBE
JUSTICE OF THE SUPREME COURT

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

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GEORGE KWADWO OFORI, P. S. A. FOR THE 5TH INTERESTED PARTY RESPONDENT.