IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2013

CORAM: J.DOTSE JSC (PRESIDING)
ANIN-YEBOAH JSC
P.BAFFOE-BONNIE JSC
V. AKOTO-BAMFO (MRS) JSC
A. A. BENIN JSC

CIVIL APPEAL.
No J4/10/2013

19TH JULY, 2013

SAM JONAH - PLAINTIFF/APPELLANT /APPELLANT

VRS.

1. **RICHMOND AGGREY - DEFENDANTS/RESPONDENTS**
2. **YONI KULENDI /RESPONDENTS**
3. **KULENDI @ LAW**

JUDGMENT

ANIN YEBOAH JSC:

This appeal is before us from a judgment of the Court of Appeal, Accra which affirmed the judgment of the High Court, (Commercial Division), Accra. The facts of this appeal appear not to be in any controversy whatsoever as from the record of proceedings before us the case at the trial High Court did not progress beyond the close of pleadings. The case was summarily dismissed on the grounds that the statement of claim did not disclose any reasonable cause of action against the respondents herein.

Now the facts as presented by the Court of Appeal. The Plaintiff/Appellant/Appellant who for sake of brevity shall henceforth be referred to as the appellant issued a writ of summons against 2nd and 3rd Defendant/Respondent/Respondent herein who shall in these proceedings be referred to as the respondent.

On the 9/07/2009, the appellant herein by a motion ex parte sought leave to issue writ of summons and serve notice thereof out of the jurisdiction.

The motion was granted by the High Court, Accra (Commercial Division) as the trial High Court was satisfied that the first defendant was residing in the United States of America. The two defendants who were at the material time resident in Ghana were Yoni Kulendi a practicing Lawyer of repute and Kulendi @ Law, a law firm as the second and third defendant respectively. In the statement of claim that accompanied the writ of summons, the respondent herein pleaded among other things that in May 1997 he entered into a Share Sale and Purchase Agreement in Accra which was dated May 1997 with the first Defendant one Richmond Aggrey.

In the said agreement the recitals stated that the said Richmond Aggreey owned twenty percent ordinary shares in a company known as Scancom Ghana Limited which was a registered mobile phone company operating in Ghana. The majority shareholders of Scancom Ghana Limited was Investcom Holdings SA, (Investcom) a company registered in the Lebanon which held sixty- seven percent shares. In the said Share Sale Agreement, the first defendant at the trial court that had agreed to place his shares in Scancom in the legal custody of an offshore company in Cayman Island, Grand View Management Limited (the custodian) for the purpose that the first defendant and Investcom were

advanced in establishing a telecommunications joint venture Spacetel Srpska, in respect of which the first defendant needed about Three million United States Dollars (US$3,000,000.00) and a further sum of Seven Hundred and Fifty Thousand United States Dollars (US$750,000) in consideration of twenty-five percent of the first Defendant 20% shareholding in Scancom and for 50% of the Defendant's share in the Joint Venture, and in consideration of the payment, the first defendants undertook to transfer to the plaintiff 25% share in Scancom (the Trust shares) held in its custody. The first defendant further undertook to transfer 50% of his shareholding in the Joint Venture to the Plaintiff.

Based on the above transactions the Appellant contended in his statement of claim that he was the beneficial owner under the Trust Shares. It was further pleaded in the statement of claim that on or about 5/7/2006, the first defendant Richmod Aggrey commenced an action at the High Court, Accra (Commercial Division) against Investcom Scancom and Grand View Management Limited (the Custodian) as first, second and third Defendant respectively. The action sought inter alia, various orders including an order to restore the said Richmond Aggrey as a shareholder and director of Scancom the auxiliary relief of perpetual injunction to restrain Investcom, Scancom and the Custodian from dealing with stock of Scancom in such manner as would adversely affect the interest of Richmond Aggrey first defendant in these proceedings, and further Scancom pay to the said Richmond Aggrey his true share of dividends declared in 2000, 2001, 2002, 2003, 2004 and 2005 financial years with interest and an order rectifying the register of Scancom to include the said Richmond Aggrey's name from the register of members of Scancom. In the said action, Investcom in a Statement of defence denied that the said Richmond Aggrey ever owned shares in Scancom.

In these proceedings at the High Court, the Appellant herein as plaintiff pleaded among other things in the statement of claim that the said Richmond Aggrey whilst prosecuting the action against Investcom, Scancom and Grand View Management Ltd was in dire financial needs and persuaded the Appellants herein to advance to him a sum of US$1,000,000.00 for his upkeep and thereupon executed a support Agreement on 24/4/2009 between the appellant herein and Richmond Aggrey the first defendant herein. In the said agreement the said Richmond Aggrey (the first defendant) did undertake to repay the loan of US$1,000,000 with interest at Libor plus 5% from the sums to be received from

the suit against Investcom and others referred to above which was also pending at the Commercial Court, Accra as judgment or settlement that the loan plus interest should constitute a first ranking charge to be paid out of the judgment debt among other transactions relating to the suit; that the fist defendant (Richmond Aggrey) irrevocably agreed not to settle or compromise the suit or accept as an out of court settlement a judgment sum that is less than US$200,000,000.00 without the prior written consent of the appellant herein.

As against the Respondents herein the Appellant contended in the statement of claim that at all material times they were aware of Shares Sales Agreement and the Support Agreement and therefore recognized the rights of the appellant hereunder. Further, the appellant contended that at various stages of the suit between Richmond Aggrey and Investcom the parties herein discussed matters concerning the said suit and the Respondents herein received US$100,000.00 as fees from the Appellant in addition to the sums that the said Richmond Aggrey claimed to have paid the Respondents.

The Appellant further contended that without recourse to him and in violation of the provisions of the Support Agreement, the respondents and Richmond Aggrey (the first defendant) agreed to full and final settlement of the suit for the sum of US$54,000,000.00 (the settlement) which sum the respondents herein have received on behalf of the said Richmond Aggrey. In the Statement of Claim the Appellant pleaded that the Respondents herein after settling the matter were bent on disbursing the full sum of the settlement to the said Richmond Aggrey less legal fees, otherwise referred to as the success fee being 10% of the settlement in the sum of US$5.4 million, allegedly agreed between the Appellant and the Respondents and Richmond Aggrey.

According to the Appellant herein, as per the Share Sale Agreement the said Richmond Aggrey at all times material the custodian of the Trust Shares in trust for the Agreement herein, the Respondents herein were charged with notice of the Appellant's interest in the Trust Shares in the earlier suit between Richmond

Aggrey and Investcom *(Suit No. ACC 3/06)* and were under a duty, in law to recognize and treat the Appellant's interest as a client's interest.

The Appellant was of the opinion that the settlement of suit No. ACC 3/06 by Richmond Aggrey and the Respondents herein was in breach of the Support Agreement and the Respondents were, in the circumstances in breach of their professional duties to the Appellant in consequence of which the said Richmond Aggrey and the Respondents herein *(as defendants in these proceedings)* were jointly and severally liable to the Appellant.

Secondly, having regard to the Share Sale Agreement and the Support Agreement, the sum of US$54 million paid under the settlement was charged with the appellant's interest being 25 percent thereof, the loan and such sum as the court might determine as compensation of the plaintiff for the settlement which was in breach of the Support Agreement; thirdly, the Respondents being aware of the Appellant's equity in the settlement sum are liable for any loss that the Appellant might suffer from any disbursement of the settlement sum without regard to the Appellant's equity**.**

The Appellant finally contended that the success fee as alleged was neither negotiated with nor disclosed to him, and for that reason was not bound by the success fee and was entitled to demand that the Respondents deliver a bill of their fees to enable the Appellant apply for taxation under the Legal Profession Act, 1960 (Act 32), if the bill was found or considered to be excessive. These are the facts narrated by the Court of Appeal.

After service of the writ of summons and the accompanying statement of claim on the Respondents, they both entered conditional appearance and filed a motion on notice praying the trial court for an order to dismiss the action against them. The motion was brought under Order 11 Rule 18(1) of CI 47 of 2004.
The grounds canvassed for the dismissal of the action were as follows:

(i) Plaintiff's suit discloses no reasonable cause of action against 2nd and 3rd Defendants

(ii) The suit brought against 2nd and 3rd Defendants is frivolous and vexatious.

(iii) 2nd and 3rd Defendants have been improperly joined to the suit before this Honourable court

(iv) Plaintiff has no capacity to seek the relief claimed by him (plaintiff) against the 2nd and 3rd Defendants.

(v) 2nd and 3rd Defendants in terms of Plaintiff's cause of action are immune to the suit before this Honourable Court.

Based on the above grounds the learned High Court Judge, Tanko-Amadu J (as he then was) granted the application and dismissed the action against the 2nd and 3rd Defendants who are the Respondents herein. The trial judge was of the opinion that the action against the Respondents herein was speculative, frivolous and vexatious on the grounds of lack of capacity on the part of the Appellant to sue and to breach the privilege between them and the first Defendant (Richmond Aggrey) and lastly the action was jurisdictionally flawed for want of compliance with the procedure provided under Act 32 referred to above.

The Appellant appealed against the judgment of the trial High Court on several grounds listed in the notice of appeal to the Court of Appeal, Accra. The Court of

Appeal on 25/11/2010 dismissed the appeal. It however, held at the concluding part of the judgment as follows:

> ***"To the extent that the appeal is allowed on the ground that the process taken by the Plaintiff by way of a writ of summons was wrongful, the appeal is dismissed".***

On the 14/2/2011, the Appellant lodged an Appeal against the judgment of the Court of Appeal, Accra, again on several grounds which is worth repeating in this judgment:

(i) The learned justices of the Court of Appeal erred in holding that the appellant never engaged the Respondents to render any professional services for and on his behalf.

(ii) The learned Justices of the Court of Appeal erred in disregarding the appellant's claim in the statement of claim that he had paid legal fess to the said respondents.

(iii) The learned justices of the Court of Appeal erred in determining in the application before the court the issue of mixed law and fact whether a solicitor – client relationship existed between the appellant and the respondents.

(iv) Other grounds of appeal to be filed upon receipt of a copy of the record of proceedings.

The respondents herein upon receipt of the Notice of Appeal lodged a cross-appeal under Rule 9 of CI 16 of 1996 on a solitary ground as follows:

> "The court below erred when it held that the Plaintiff/Appellant/Appellant's suit against 2nd and 3rd Defendants/Respondents/Respondents was properly commenced by writ of summons rather than by an application in terms of Part V of the Legal Profession Act, 1960 (Act 32)".

The cross-appeal would be considered at the later stage of this delivery.

In arguing the ground of appeals, learned counsel for the Appellant urged on this court that there was an error on the part of the Court of Appeal in holding that the appellant never engaged the Respondents as his solicitor to render professional services on his behalf. He urged on us that when a court is called upon to the strike out pleadings the judge shall assume that all the facts pleaded in the statement of claim (as in this case) are true.

According to him it did appear that the trial court and the Court of Appeal overlooked this rule which is statutorily supported by Order 11 rule 18 which was the rule invoked by the lower courts at the instance of counsel for the respondents to strike out the statement of claim and the ultimate dismissal of the action. He argued that the issue which emerged for the consideration of the court was whether based on the statement of claim a lawyer-client relationship existed between the parties to this appeal. On this, the learned trial judge and the justices of the Court of Appeal were of the opinion that from the pleadings no lawyer-client relationship existed. The court of Appeal per His Lordship Asare-Korang JA said as follows:

> ***"Nowhere in the statement of claim does the plaintiff allege that the US$100,000.00 paid by him to the 2nd and 3rd defendants forms part of the US$1million disbursed to the 1st defendant as pocket money. Would the nexus of Solicitor-client be created merely because a third person who is not a party discusses matters relating to a case with lawyers representing a party in***

this case? I cannot and do not answer this question in the affirmative as it would be ridiculous to do so".

As stated in this delivery earlier, the appellants as defendants did not file any statement of defence in answer to the statement of claim before the trial court was moved to strike out the statement of claim. The Court of Appeal is of the opinion that this procedure is sanctioned by the case of ***Evanspenny Industries Co. Ltd v Techno-Chem Associates (Gh) Ltd (1992-93) Part 2 GBR 803***. The only pleading on record at the time that the trial court's jurisdiction was invoked was the statement of claim.

We do not think that the timing of the application was irregular and indeed learned counsel for the appellant does not quarrel with it. His complaint is simply that, the learned justices of both the High Court and the Court of Appeal ought to have assumed that the statement of claim was uncontroverted and the allegations therein were true.

In invoking this jurisdiction, the trial court must in our opinion assume that the offending pleading which the applicant seeks to strike out as not disclosing any cause of action to be true. We agree with the submission of learned counsel for the appellant on this legal point as it is clearly supported by several authorities referred to in the judgments of the two lower courts. In our respectful opinion the question is whether the allegations of facts pleaded could disclose reasonable cause of action was not frivolous and vexatious so as to avoid the penalty of striking out render the courts' summary process as one done at the High Court. It is settled in the common law by the oft-quoted case of ***Dyson V Attorney-General [1911] 1 KB 410*** over a century ago when Felectler-Moulton LJ said:

"To my mind, it is evident that our judicial system would never permit a plaintiff to be driven from the judgment seat in this way without any court having considered his right to be heard, excepting where the cause of action was obviously and almost incontestably bad".

Before the Dyson's case (supra) Lindley M. R. in ***Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark*** [***1899] 1 QB 86*** had expressed similar views as follows on page 91:

"The summary procedure is only appropriate to cases which are plain and obvious, so that the master or judge can say at once that the statement of claim as it stands is insufficient, even if proved, to entitle the plaintiff to what he asks".

As has been the settled practice under the summary process of terminating actions which was applied in this case at the trial High Court, the judge was enjoined to look at the pleadings without resort to other extrinsic evidence outside the pleadings and therefore ought to assume that the pleadings sought to be struck out were not only true but on the face of it was obviously unsustainable, clear beyond doubt and unarguable. The court ought to be satisfied that there is no reasonable cause of action raised by the pleadings and that the proceedings are frivolous or vexatious. See ***Ghana Muslims Representative Council v Salifu [1975] 2 GLR 246 CA***, ***Republic of Peru v Peruvian Guano Co. [1887] 36 Ch D 489***, ***South Hetton Coal Co. v Haswell & Co***. ***[1889] 1 Ch 465*** and ***Dominion Iron & Steel Co V Baron Inverairn [1972] WN 277*** and ***Wenlock v Moloney [1965] 1 WLR 1238***.

It must, however, be mentioned that the power exercised by the court in striking out proceedings under the summary process as was done in this case is never mandatory, but permissive. A discretion is thus vested in the court to exercise this power by terminating proceedings without hearing a party.
The learned authors of *Bullen & Leake & Jacobs; Precedent of Pleadings 18th Edition at page 141* said as follows:

> ***"The power to strike out pleadings or any part of a pleading under the rule is not mandatory but permissive and confers a discretionary jurisdiction to be exercised having regard to the quality and all the circumstances relating to the offending pleading and a reasonable latitude must be given, for this rule was not intended to enable parties to bring forward special demurrers in a new shape".***

The trial judge was of the opinion that the offending pleadings did not disclose any reasonable cause of action against the respondent herein and therefore struck them out. It was not urged on this court that the trial judge had no such power to do so. The argument was that on the face of the statement of claim a lawyer - client relationship existed between the appellant and the respondent.

The Court of Appeal was of the view that the statement of claim did not raise any issue of whether or not a lawyer-client relationship existed. This was the affirmation of the trial judge's judgment. This court has been invited to adopt a contrary opinion for the allowance of this appeal. In our opinion, the Court of Appeal considered the pleadings at great length and did not go outside it to abuse its jurisdiction. Learned counsel raised the issue of implied retainer to salvage the situation and invited the court to assume that even if no written agreement to engage the respondents is absent the circumstances of the case was such that it must be assumed that the respondents were implied retainers.

The judgment of the Court of Appeal as said above discussed this matter in detail and we find no reason convincing enough to persuade us to change course on this point.

On the pleadings there was nothing to raise about the issue of whether the respondents were assumed to be implied retainers.

The statement of claim failed to satisfy the requirements set out in the proposition of law stated in Halsbury's Laws of England quoted by learned counsel for the appellant. In the statement of claim nowhere was it alleged that the appellant for once instructed the respondents to initiate the action in the earlier suit out of which these proceedings derived its source. Receiving settlement fees for and on behalf of a party in my view is a normal instructions given to solicitors to do so on regular basis in course of civil litigation. It was not alleged that the appellants were part of the agreement known as the Support Agreement executed in 24/04/2009.

It was not alleged that the respondents were privies to this vital agreement or that as Solicitors they ought to have taken instructions from any person other than the one who engaged their services to prosecute the action.

All the above matters were conspicuously absent from the pleadings as stated earlier. Even though the learned judge's discretion to summarily terminate proceedings ought to be exercised with care and circumspection and should be sparingly exercised in civil litigation, the trial judge was of the view that the statement of claim disclosed no reasonable cause of action against the respondents.

As a Superior Court of record it had ample powers to enforce basic rules of pleadings to prevent the prosecution of actions which are manifestly groundless and devoid of any cause of action. It appeared to both lower Courts that there was no contract between the appellant and respondent for any legal services and indeed the Statement of Claim did not disclose any. On this ground alone the courts below were supported by authority in **Bullen & Leake And Jacobs** (Supra) at page 143 as follows:

> ***"Thus, in action on contract, if it appears clearly that there is no contract between the plaintiff and the defendant, or no contract***

valid in law or an illegal contract, or if the action be brought to obtain relief which the court has no power to grant or if the relief be asked on a ground which is no ground for such relief the statement of claim will be struck out and the action dismissed." [emphasis mine]

We are of the opinion that the discretion to invoke the court's summary process to strike out and dismiss the action at the trial court, even though should be done with circumspection and in plain and obvious cases, was duly exercised given the nature of the Statement of Claim which in our view disclosed no reasonable cause of action against the respondents.

In supporting the learned trial judge in the dismissal of the action, the Court of Appeal referred to a host of legal authorities on solicitor-client relationship like ***Mercer v Brempong II [1975] 2 GLR 376, Harley v Ejura Frams [19977*]** ***2GLR 179***, ***Ayarka & Ors V Agyemang & Anor***[***1976]1GLR 306*** and the recent case of ***Accam & Anor V E.A. Gbertey & Anor [2007] 3GMJ 102*** to hold that the party who is to be charged for the recovery of legal fees can be no other person than the lawyer's client who in the peculiar circumstances of this case can be no other person than the first defendant. (Richmond Aggrey).

The above proposition of law has not been shown to be wrong by the appellant and to reverse the decision on this point without convincing grounds would amount to departing from basic principles of law when there is no justification to do so on under the circumstances. We are of the opinion that having dismissed ground one of the grounds of appeal, the entire appeal herein fails completely, as the remaining grounds of appeal are repetitive of the issues raised and dealt with in ground one.

CROSS-APPEAL

The respondents herein have cross-appealed on only one ground as follows:

> ***"The court below erred when it held that the Plaintiff /Appellant/Appellant's suit against 2nd and 3rd Defendants/Respondents/Respondents was properly commenced by writ of summons rather than by an***

application in terms of Part V of the legal Profession Act, 1960 (Act 32)"

The Court of Appeal was of the view that the learned trial judge was in error when he formed the opinion that the case against the appellants in this cross-appeal ought to have been by application and not by writ which was the procedure adopted in these proceedings.

The trial High Court was of the opinion that as the relief sought against the appellants to the cross – appeal was covered by Part V of the Legal Profession Act, 1960 Act 32 the relief/claim against them by the respondent to the cross-appeal, ought to have been in the manner regulated by the statute conferring that right of action. The Court of Appeal was of the view that the trial High Court was wrong and set aside that part of the judgment. As said earlier this case terminated before the respondents could file their statements of defence and for that matter there was no counterclaim lodged by the respondent against the propriety of the action against the respondents.

It must be pointed out that Order 2 rule 2 of the High Court (Civil Procedure) Rules, 2004 CI 47 regulates the commencement of proceedings at the High Court. The rules states as follows:-

2. "Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons."

In these proceedings the right to a relief against the respondents is provided for in a substantive statute, that is the Legal Profession Act, Act 32 of 1960. It is therefore inappropriate to utilize the ordinary mode of initiating actions in respect of causes of action therein. Clearly, the Appellant's right of joining two separate causes of action in one writ against the parties under Order 4 (1) (c) of C. I. 47 to an action of this nature with two distinct causes of action ought to have been initiated with the prior leave of the court and under Order 4 (2) of C.I. 47 by a motion ex-parte before the writ was issued, assuming the two distinct causes of actions would be grounded in one action.

This procedural irregularity was fully addressed by learned counsel for the respondents who lodged the cross-appeal before us. The joinder of two distinct causes of action under the circumstances was clearly contrary to the rules under consideration. Learned counsel for the appellant in an attempt to answer the submission referred us to two leading cases ***Edusei (No.2) v Attorney-General [1998-99] SCGLR 752***, ***Awuni v WAEC [2003-2004] SCGLR*** 471 and Darko v Amoah [1989-90] 2 GLR 214 to establish that where the procedure for utilizing a substantive legal provisions in a statute are not spelt out a litigant is enjoined to adopt the procedure which is the nearest reasonable mode of utilizing the right accorded by law.

We do not think that the principle enunciated in these cases answer the point raised by the respondents. A statute like the Legal Profession Act, Act 32 of 1960 could also be procedural and substantive. It confers rights to be exercised and regulates the procedural steps for seeking reliefs for violations of those rights.

In our respectful opinion, as the Act itself regulates its own procedure for redressing any cause of action arising from it, this court should not resort to any statute for assistance. In the case of ***Boyefio v NTHC Properties [1996-97] SCGLR 531 at 533*** this court was of the opinion that the law was clear that where an enactment had prescribed a special procedure by which something was to be done, it was that procedure alone that was to be followed.

An application to the court must be made by motion as stated clearly under section 41 of the Act and it does not call for any statutory interpretation in view of its plain and unambiguous language. To place any interpretation on section 41 to extend it to cover writ of summons would thus be improper under the circumstances. For example, the Representation of the People Law, 1992 PNDCL 284 is both substantive and procedural in nature. It contains elaborate electoral laws in this country and also regulates the procedure for redressing violations thereunder. It mandates the citizenry to resort to the judicial process by commencing proceedings as regards Parliamentary elections by petition. It would therefore be an absurdity for an aggrieved individual to side step this statutory requirement and resort to a writ of summons on the simple ground that a

subsidiary legislation like the High Court [Civil Procedure] Rules C I 47 of 2004 allows actions to be commenced by writ.

For the above reasons canvassed on this cross-appeal, we are of the opinion that the cross-appeal ought to be allowed as the learned justices of the Court of Appeal in our respectful view ignored clear statutory provisions that regulates the procedure for seeking redress under the Legal Profession Act, 1960 Act 32.

We therefore proceed to allow the cross-appeal.

(SGD) **ANIN YEBOAH**

JUSTICE OF THE SUPREME COURT

DOTSE JSC:

I have been greatly privileged to have read the erudite judgment delivered by most respected brother, Anin-Yeboah JSC. Even though I agree with his narration of the facts, exposition of the law and conclusions reached in the matter, I however wish to make the following observations and comments which I hope will enrich our learning on the issues raised in this case.

ENDORSEMENT OF WRIT BY APPELLANT IN THE HIGH COURT

A perusal of the endorsement on the writ of summons filed by the Appellant in the High Court clearly shows that there was indeed no real and sound basis to have joined the 2nd and 3rd Respondents, herein to the action.

For example, it is also clear that, the only reference made by the appellant to the Respondents herein in the endorsement is in paragraph (f) thereof which is to the effect that

> ***"an order of court pursuant to section 39 of the Legal Profession Act, 1960 (Act 32) that the 2nd and 3rd defendants deliver to the Plaintiff and the 1st defendant their bill for professional services rendered."***

It must be noted that, whilst the pleadings on record indicate quite clearly that the Respondents herein had been sued mainly because of their rendering of professional legal services to the 1st Defendant, there is nothing on record to indicate that the 1st Defendant has complained about the quality of legal service or questioned the bill of fees charged by the Respondents.

The Appellant must have been aware of the fact that, once there was no lawyer/client relationship between him and the Respondents, there was absolutely no cause of action against them.

DID THE APPELLANT PAY LEGAL FEES TO THE RESPONDENTS?

In order to answer the above question it is important once again to look at the relationship between the parties herein critically and also in the Ghanaian societal context. Whilst it is certain that there was absolutely no lawyer/client relationship between the appellant and the respondents, the issue of payments if any made to the respondents by the appellant has to be considered in the Ghanaian context.

Whilst not admitting the fact of payment of $100,000USD to the Respondents by the appellant, it is not uncommon in our social context to have friends and or relatives recommend this or that lawyer to anyone who has need of such a service. It is equally also not uncommon for anyone who has been into serious private legal practice to observe that some of these intermediaries play some important roles not only in the engagement of the professional legal services for their friends or relatives, but in the payment of their fees as well. What must be

noted is that, the professional relationship between the lawyer and the client is the only relationship that will be recognized under the law to qualify for the commencement of legal proceedings in case of breach under the Legal Profession Act, 1960 Act 32

Assuming without admitting that the appellant paid the respondents any amount, such a payment cannot ripen and qualify him for any benefits of a client relationship with respondents to entitle him sue under Act 32.

CONDUCT OF CASE IN THE TRIAL HIGH COURT

The learned trial Judge in the High Court, Tanko Amadu J, (as he then was) must be greatly commended for the industry he put into the case in dealing with very intricate and important legal issues with distinction.

As a matter of fact, the findings made by the learned trial Judge have been accepted by this court as well as the Court of Appeal. The analysis of the law made by the learned trial Judge were so excellent that, the variation made by the Court of Appeal has been rightly reversed by this court, and the entire decision of the trial High Court, accepted and thereby restored.

CROSS-APPEAL

It is in this respect that I endorse my respected brother's decision that the cross-appeal should succeed.

It is therefore quite clear that, if the Court of Appeal, had considered the superior nature of the provisions in section 41 of the Legal Profession Act, 1960, Act 32, vis-à-vis the High Court (Civil Procedure) Rules 2004, C. I. 47 which is a subsidiary legislation, perhaps they would have upheld the impeccable decision of the trial High Court.

A similar issue arose in the case of ***Republic v High Court Koforidua; Ex parte Asare (Baba Jamal & Others – Interested parties) [2009] SCGLR 460***

In that case, the issue that came up was the effect of the Representation of the People Law, 1992 (PNDCL 284) which provided in section 16 (1) thereof that

"the validity of an election to Parliament may be questioned only by a petition brought under sections 17 to 26".

In the Ex-parte Asare case referred to supra, the Interested Parties therein exercised their right under C. I. 47 and commenced proceedings to question an election contrary to provisions and the procedure laid out in PNDCL 284.

PNDCL 284, it must be noted is a substantive law as opposed to the C.I. 47 which is subsidiary to an Act of Parliament just as in the instant one. In the Ex-parte Asare case, I stated in part as follows:

"There is a clear intention on the part of the framers of the Constitution and PNDCL 284 to raise the procedure for commencement of electoral disputes to a higher pedestal or level. This level is that of petition, which is a separate and distinct procedure from the generally accepted mode of initiating action in the High Court, which is stated in CI 47 to be by writs of summons. In this regard, the Supreme, must consider these provisions as a manifestation of pubic policy. One might then legitimately ask why the procedure for initiation of electoral disputes is separate and distinct from those generally stated in the initiation of all other actions in the High Court? The answer might be that, since there must be an element of early resolutions of election disputes and finality in the determination of early election results, to enable whoever has emerged victorious to be known as well as the defeated candidates, a process which is fast, swift but fair and just must be adopted for the above objectives to be achieved."

The procedure outlined under the Legal Profession Act, 1960 (Act 32) must therefore be deemed to be superior to any rule of procedure stated in order 2, rule 2 of the High Court, (Civil Procedure) Rules, 2004 C. I. 47 which states that:

"Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons."

Since the procedure in Act 32 is contrary to that provided in C.I. 47 and is contained in a substantive law, that contained in C. I. 47 must give way as is regulated by Article 11(1) (a) to (e) of the Constitution 1992. By these provisions, the laws of Ghana comprise the Constitution itself, enactments made by order of Parliament, such as Act 32, orders, rules and regulations passed by or under authority of Parliament such as C. I. 47, the existing law and the common law in this descending order of superiority. It is therefore clear that the procedure in Act 32 for the initiation of proceedings under Act 32 has been clearly stated in section 41 thus:

> ***"Application made under this Act to refer a bill to be taxed and settled or for the delivery of deeds and documents or things shall be made by motion in the matter of the lawyer concerned."***

The suit initiated by the appellant against the respondents herein is squarely within the ambit of Act 32 and since the procedure used by the appellant is contrary to law, there is no way a Court of law should give any recognition to it. This must not be allowed to blossom, it must be denied any existence.

It is for this and the other more elaborate reasons contained in the judgment of my respected brother Anin-Yeobah JSC that I also agree that the appeal by the Appellant be dismissed as unmeritorious and that the cross-appeal be allowed.

(SGD) **J. V. M. DOTSE**

JUSTICE OF THE SUPREME COURT

(SGD) **P. BAFFOE BONNIE**

JUSTICE OF THE SUPREME COURT

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

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