IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, JSC. (PRESIDING)
DR. DATE-BAH, JSC
ANSAH, JSC
ADINYIRA (MRS), JSC
OWUSU (MS), JSC
DOTSE, JSC
ANIN YEBOAH,JSC
BAFFOE BONNIE, JSC
GBADEGBE,JSC
AKOTO-BAMFO (MRS), JSC
AKAMBA,JSC

REVIEW MOTION
No. J7 / 5 / 2012

23RD JANUARY,2013

1. MR. SAMUEL OKUDZETO ABLAKWA : PLAINTIFFS
2. DR. EDWARD KOFI OMANE BOAMAH /APPLICANTS

VRS

1. THE ATTORNEY-GENERAL :1st DEFENDANT /RESPONDENT

2. HON. JAKE OTANKA OBETSEBI-LAMPTEY :2nd DEFENDANT RESPONDENT

R U L I N G

DR. DATE-BAH,JSC;

This is an application for a review of the judgment of this Court delivered on 22nd May 2012 by a panel of nine judges. Being a review application, the burden on the applicants is to satisfy this Court that there are, in the words of Rule 54(a) of the Supreme Court Rules, 1996 CI 16, in this case "(a) exceptional circumstances which have resulted in miscarriage of justice." This Court has held time and time again that a review application is not an appeal and should not be argued as if it were. Accordingly, before this Court enters into the full merits of the review application, it should be satisfied that the case falls intoone of the categories that existing case law has held to justify the exercise of the review jurisdiction or into a new category justifying such review, since the cases have also held that the categories justifying review are not closed.

I made a similar point in *Gihoc Refrigeration & Household Products (No. 1) v Hanna Assi (No. 1)* [2007-2008] SCGLR 1, where in concurring with the lead judgment (at pp. 12 – 15), I said:

> "I wish, however, to add a few general comments with a view to giving further guidance to prospective applicants for review before this court. In my view, counsel before this court and their clients too lightly apply for review in circumstances which are far from exceptional. The law is clear and should really not need any further clarification by this Court.
>
> Even if the unanimous judgment of the Supreme Court on the appeal in this case were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct

that error. This is an inherent incident of the finality of the judgments of the final court of appeal of the land. The brutal truth is that an error by the final court of the land cannot ordinarily be remedied by itself, subject to the exception discussed below. In other words, there is no right of appeal against a judgment of the Supreme Court, even if it is erroneous. As pithily explained by Wuaku JSC in *Afranie v Quarcoo [1992] 2GLR 561* at pp. 591-592:

> "There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court."

However, in exceptional circumstances and in relation to an exceptional category of its errors, the Supreme Court will give relief through its review jurisdiction. The grounds on which this Court will grant an application for review have been clearly laid out in the case law. Notable in the long line of relevant cases are *Mechanical Lloyd Assembly Plant v Nartey* [1987-88] 2 GLR 598; *Bisi and Others v Kwayie* [1987-88] 2 GLR 295; *Nasali v Addy* [1987-88] 2GLR 286; *Ababio v Mensah (No.2)* [1989-90] 1 GLR 573; *Quartey v Central Services Co. Ltd.* [1996 – 97] SCGLR 398; *Pianim (No. 3) v Ekwam* [1996-97] SCGLR 431; *Koglex (Gh) Ltd. v Attieh* [2001-2002] SCGLR 947; and *Attorney-General (No. 2) v Tsatsu Tsikata (No.2)* [2001-2002] SCGLR 620. The principles established by these cases and others are that the review jurisdiction of the Supreme Court is a special jurisdiction and is not intended to provide an opportunity for

a further appeal. It is a jurisdiction which is to be exercised where the applicant succeeds in persuading the Court that there has been some fundamental or basic error which the Court inadvertently committed in the course of delivering its judgment and which error has resulted in a miscarriage of justice. This ground of the review jurisdiction is currently exercised by the Court pursuant to rule 54(a) of the Supreme Court Rules 1996 (CI 16), which refers to "exceptional circumstances which have resulted in miscarriage of justice." This is a high hurdle to surmount."

In this case, the applicants have the added burden of convincing this court that it should depart from a previous decision, which is ordinarily binding on it, when during the argument before the bench of nine judges their counsel did not raise the issue of the need for this Court so to depart from its own previous decision. During the oral argument of this review application, this matter was brought to the attention of Mr. Senanu, counsel for the applicants, and he confirmed that, before the bench of 9, he had not made a request for the Court to depart from its previous decision in *Nii Kpobi Tetteh Tsuru III v Attorney-General* [2011] SCGLR 1042.

In spite of this, one of the applicants' two main grounds for seeking this review (as captured in their Statement of Case) is:

> "In view of exceptional circumstances where a fundamental error was made in the interpretation and enforcement of Article 20(5) & (6) of the Constitution of the Fourth Republic, 1992, in relation to the State or public property at the centre of the Plaintiffs' writ,

which have resulted in miscarriage of justice by the majority decision, the matter should be looked at again."

Similarly in the affidavit of Samuel Okudzeto Ablakwa in support of the motion for review, he deposes, in paragraph 5, to two main grounds for the application as follows:

"(1) There are exceptional circumstances as fundamental errors were made in the interpretation and enforcement of Article 20(5) & (6) of the Constitution of the Fourth Republic, 1992, in relation to the State or public property at the centre of our writ which have resulted in miscarriage of justice by the majority decision of this Court delivered on May 22, 2012.

(2) We have made discovery of new and important matter or evidence which, after the exercise of due diligence, was not within our knowledge or could not be produced by us at the time when the decision was rendered on May 22, 2012."

At the hearing of this application, counsel for the applicants announced that he would not argue the second main ground deposed to above. The success of this application therefore depends entirely on his sustaining the contention contained in the first ground. He however has a major technical hurdle to surmount, if he is to succeed in that task. It is this: where the Supreme Court has follow edits unchallenged earlier decision which is ordinarily binding on it, it can hardly be argued that it is in error.

It is true that article 129(3) provides as follows:

"(3) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous

> decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law."

Accordingly, the Supreme Court may depart from its own previous decision. However, until it has decided so to do, it would in our view be incorrect to argue that the Supreme Court is in error when it is following its own previous and unchallenged decision. In this review application, therefore, the applicants face a difficulty in persuading this court that there was fundamental error in the judgment of May 2012, when the alleged error is based on the Court following its own previous decision. The place for inviting this court to depart from its decision in *Nii Kpobi Tettey Tsuru* should have been before the bench of 9 and not before this review bench.

In their Statement of Case, the applicants state as follows:

> "In the light of the foregoing, it is, with the utmost respect, urged upon this Honourable Supreme Court to depart from its previous decisions in the ***Kpobi Tettey Tsuru III Cases (supra).*** For, as clearly made out in Article 133(1) of the 1992 Constitution:
>
> > "133.(1) The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court." [Emphasis supplied].
>
> Furthermore, the Supreme Court has the power and jurisdiction to depart from its previous decision, such as its decisions in the ***Kpobi Tettey Tsuru III Cases (supra)*** and the instant one from which this review is being prayed for by the

Plaintiffs/Applicants. This power of the Supreme Court is derived from Article 129(3)…"

Indeed, the applicants based their case for review primarily on inviting this Court to depart from its previous decision in*Nii Kpobi Tettey Tsuru.* In our view, a review application will usually not be the right context in which to exercise the power of the Supreme Court to depart from its own previous decision. This is so particularly when the applicant in question has not previously invited the Court, during the argument beforeit prior to the judgment sought to be reviewed, to depart from its earlier binding decision. In short, in our considered view, the applicants have not made a sufficient case for this court to enter into a full review of this case on its merits. This is because they have not established an essential element in the legal concept of "exceptional circumstances which have resulted in miscarriage of justice" as interpreted in the case law. That essential element is proof of a fundamental error of law by the Supreme Court. Rule 54 of the Supreme Court Rules, 1996 (CI 16) requires reliance on either exceptional circumstances or discovery of new and important matter or evidence. Given that the applicants abandoned their initial intention torely on the discovery of new and important matter or evidence, they needed to prove exceptional circumstances which have resulted in miscarriage of justice. Having failed to prove fundamental error of law, or indeed any error of law, their application has no merit. The mere fact that they disagree with the outcome of the Supreme Court's judgment does not mean that the judgment was in error. As shown above, the applicants have failed to prove fundamental error because what they are asking of this Court is an improvement, as they perceive it, of the existing law, rather than showing that there was an error of law when the Supreme Court

decided to follow its own previous decision. We would accordingly dismiss the application as being unmeritorious.

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

JUSTICE OF THE SUPREME COURT.

ATUGUBA, J.S.C.

I am reluctantly compelled to agree that this Review application should be dismissed.

Much attention has been concentrated on the decision of this court in *Kpobi Tsuru III v. Attorney-General* (2011) SCGLR 1042, which turned on the majority construction of article 20(5) and (6) of the 1992 Constitution to the effect that land compulsorily acquired before the coming into force of that constitution were unaffected by those provisions.

However, on a close scrutiny of this case the decision in that case does not detract from the merits of this case. Article 20(6) relates to the reversionary interest of the previous land owner when there has been cessation of the public purpose or interest in the land in question.

In this case the applicants' case is not that the land in question ought to be returned to the previous owners but that it must continue to be held by the state in the public interest. That is governed by articles 20(5) and 36(8). Even if the majority did not expressly advert to article 36(8) they did consider the question of public interest under article 20(5) which is essentially the same as article 36(8). But assuming that the applicants felt that in any event the property in this case should have reverted to the previous owner under article 20(6) it is rather unfortunate that the applicants have not adduced evidence as to the terms of the acquisition so as to enable this court determine whether the change of user of the same in this case is warranted by the same or not.

I dare say that certain matters which I raised in my original judgment could have raised issues on this Review application, whether inter alia, the original decision of this court was *per incuriam* in certain respects. However,

since the applicants do not raise those issues it means that they may not necessarily agree with them.

In the circumstances I do not see my way clear, in the absence of arguments based on issues raised as to them, to say that the original decision was wrong in any exceptional respects.

(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) J. V . M. DOTSE

JUSTICE OF THE SUPREME COURT.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT.

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT.

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT.

(SGD) V. AKOTO BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT.

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT.

COUNSEL

KWABLA SENANU FOR THE PLAINTIFFS/APPLICANTS.

CECIL ADADEVOH PSA, FOR THE 1ST DEFENDANT/ RESPONDENT.

R. O. SOLOMON (LED BY MIGUEL RIBEIRO) FOR THE 2ND DEFENDANT/RESPONDENT.