IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, A.D. 2015

CORAM: DOTSE JSC (PRESIDING)
ANIN-YEBOAH JSC
AKOTO BAMFO (MRS) JSC
BENIN JSC
AKAMBA JSC

CIVIL MOTION
№ J5/8/2015

19TH FEBRUARY 2015

BETWEEN

THE REPUBLIC

VRS.

HIGH COURT, HUMAN RIGHT DIVISION
EX-PARTE: NAA OTUA SWAYNE ------- APPLICANT
№ 5 CHANDRA LODGE
McCARTHY HILL ACCRA

1. **PRINCE KOFI AMOABENG -------- INTERESTED PARTIES**
   UT BANK LIMITED
   HEAD OFFICE, AIRPORT CITY ACCRA

2. **THE ATTORNEY-GENERAL**
   ATTORNEY-GENERAL'S DEPT.
   ACCRA.

3. DSP AIDAN DERY
CRIMINAL INVESTIGATION DEPT
POLICE HEADQUARTERS, ACCRA.

4. THE REGISTRAR
CIRCUIT COURT
COCOA AFFAIRS, ACCRA.

RULING

ANIN-YEBOAH JSC:-

My Lords,

On the 19th of February, we granted an application for certiorari and made far-reaching consequential orders but deferred our reasons. We now proceed to offer our reasons for granting the application.

To appreciate the grounds leading to the grant of certiorari against the High Court, Accra [Human Rights Division], it is crucial to briefly state the facts of the case culminating in this application.

The applicant herein, NAA OTUA SWAYNE, was at the time material to this case a complainant in a criminal case pending before His Honour Judge Francis Obiri sitting at the Circuit Court, Accra. The case was intituled as: CASE Nº D6/278/12: THE REPUBLIC V PRINCE KOFI AMOABENG AND JOHN AIDOO; and for a fuller record the charge sheet states thus:

IN THE CIRCUIT COURT
ACCRA
STATEMENT OF OFFENCE

FRAUD AS TO THING PLEDGED OR TAKEN IN EXECUTION contrary to section 143 of Act 29/60.

PARTICULALRS OF OFFENCE

PRINCE KOFI AMOABENG: BANKER; For that you between 2005 and 2007, in Accra in the Greater Accra Circuit and within the jurisdiction of this Court; with intent to defraud secretly and with deceit did release the Title Documents of property №23 Ringway Estate owned by Nana Otua Swayne which were in your custody to Alexander Adjei to use as a mortgage to secure a loan of Gh¢1,279,000 from HFC Bank.

COUNT TWO

STATEMENT OF OFFENCE

ABETMENT OF CRIME TO WIT: Fraud as to thing pledged or taken in execution contrary to section 20 and 143 of Act 29/60.

PARTICULARS OF OFFENCE

JOHN AIDOO: LAWYER; For that, you during the year 2007 at Accra in Greater Accra Circuit and within the jurisdiction of this Court with intent to commit crime did aid and abet Prince Kofi Amoabeng to commit crime to wit: fraud involving Title Documents of property № 23 Ringway Estate belonging to Naa Otuah Swayne.

The two persons named in the charge sheet were facing prosecution at the Circuit Court, Accra, presided over by His Honour Judge Francis Obiri for the charges listed against their names. According to the applicant herein, she was called by the prosecution as first prosecution witness to give evidence after the Court had recorded not guilty pleas on their behalf. The trial continued and the prosecution closed its' case. The two persons in the exercise of their rights under section 173 of the Criminal and other Offences

(Procedure) Act, Act 30 of 1960 made a submission of no case to answer but same was overruled by the trial Circuit Court judge.

The two accused persons, however, did not appeal against the ruling of the learned circuit judge. The interested party herein Prince Kofi Amoabeng opened his defence, gave evidence and was cross-examined. Before he could call a witness, he invoked the supervisory jurisdiction of the Accra High Court (Human Rights Division) presided over by His Lordship Mr. Justice Kofi Essel Mensah to quash the proceedings and prohibit the learned Circuit judge on the following grounds:

> "1. A declaration that the trial of the applicant before the Accra circuit Court is an infringement of the applicant's fundamental human rights
>
> 2. An order of certiorari to quash all the proceedings and all orders made by the trial Accra Circuit Court.
>
> 3. An order of prohibition to restrain the respondents, particularly the Accra Circuit Court from hearing and determining the said criminal suit."

In a rather lengthy affidavit in support of the application at the Accra High Court (Human Rights Division), the 1st respondent herein Prince Kofi Amoabeng deposed to the following salient parts of the affidavit as follows:

> "28. That it is my view that the continuation of the said criminal trial would not serve any purpose for the facts and the evidence do not disclose any criminal liability against me.
>
> 29. That it is also my view that an illegality would be committed if the 3rd respondent court is allowed to proceed with any future hearing of this case.
>
> 30. That my fundamental human rights as granted under the Constitution 1992 is being frowned upon by the trial court. The

illegality complained of is still ongoing for the case has been adjourned by the trial Circuit Court to 4th April 2014.

31. That in the circumstances of this matter the only option open left to me is to apply for the order of prohibition to restrain the 3rd respondent court from any further adjudication in respect of the criminal suit as its continuation infringes on my fundamental human rights and for a further order of certiorari to quash the entire proceedings. I have now being made aware that my fundamental human rights is being flouted.

We have quoted ad longum the basis on which the first respondent herein PRINCE KOFI AMOABENG sought to invoke the High Court's supervisory jurisdiction to intervene in a criminal case at the Circuit Court at a stage when the prosecution had closed its case and he the respondent had given evidence.

When the application was moved the learned trial judge quashed the whole proceedings and further prohibited the learned Circuit Court judge from further hearing the case. The applicant herein, who was the complainant in the criminal case at the Circuit Court filed this application to also invoke this court's supervisory jurisdiction to quash the ruling of the learned High Court Judge dated the 20/10/2014. For a more detailed record, the grounds for this application were stated thus:

> "(a). That the High Court, Human Rights Division, Coram: His Lordship Kofi Essel Mensah wrongly assumed jurisdiction or far exceeded his jurisdiction in the judgment dated 20th October 2014 in the suit the subject-matter of this application.

(b). That there is error of law apparent on the face of the record".

The learned High Court judge, basing himself exclusively on the salient depositions of the affidavit of the first respondent that his fundamental human rights have been abused, granted the application, quashed the whole proceedings of the Circuit Court and prohibited it from further hearing the case. It must be made clear that when the proceedings at the High Court was annexed to this application the panel was baffled and asked itself whether the proceedings at the High Court did not have some novelty surrounding it.

It was not the case that the Circuit Court had no jurisdiction to hear the case in which the charges which the accused persons were facing were mere misdemeanours. It was not the case that the learned Circuit Court judge was by law not qualified to sit on the mater or that there were traces of any patent procedural irregularities apparent on the face of the proceedings or any ground which could have called for the superintendence by the High Court. It was also not the case that the learned Circuit Court judge went outside its statutory limits and exceeded its jurisdiction or breached any common law rules of natural justice. To appreciate the main reason for the invocation of the High Court's supervisory jurisdiction over the matter a passage of the ruling will suffice:

"It is often thought that once a person has been before court on a criminal charge, he must necessarily go through the trial even if the

charge has no basis in law. This view is shared by many unfortunately including some lawyers. Criminal prosecution stripped of its justification under article 14(1) of the Constitution 1992 impinges on the fundamental human rights of the accused"

The learned High Court judge professing to safeguard the first respondent's constitutional freedom went further to deliver as follows:

"Human rights are inviolable and inalienable human entitlements. The High Court has constitutional duty to protect, safeguard and to enforce those rights. And so, where violations of fundamental human rights are alleged in the manner the applicant is complaining about, the court must feel obliged to inquire into the allegation and not to drive the applicant from the seat of judgment on the sole ground that he failed to mention the violation of this right or the specific articles on the Constitution on which he relies.

Criminal prosecution interferes with the fundamental human rights of an accused person in this manner. Right from his/her arrest through investigations to his/her arraignments before a court, the accused person's right to free movement is curtailed. Attendance to court is a huge burden and a bother to an accused person".

We have quoted at length the reasons canvassed for the grant of certiorari by the learned High Court judge who was of the view that when no evidence is led in support of a charge in a criminal trial, the prosecution interferes with the fundamental human rights of the accused. His Lordship did not say that the charges the interested party was facing at the Circuit Court was unknown to the Criminal Law of this country. His main intervention in the proceedings as a superintending judge was on grounds of breaches of the interested party's fundamental human rights.

When the application was moved, learned counsel for the interested party, Mr. Addington opposed it on several grounds. The first ground was that the applicant herein NAA OTUA SWAYNE who was the complainant in the case has no capacity to invoke our supervisory jurisdiction to quash the ruling of the High Court. We notice that his point of law was fully addressed by counsel for the interested party but no authority was cited to support his contention. We wondered if this legal point could have availed him. This point of law is settled by authority. In the case of STATE v ASANTEHENE'S DIVISIONAL COURT BI; EX PARTE KUSADA [1963] 2 GLR 238 the Supreme Court, held, inter alia that, an applicant for an order of certiorari must be either a person aggrieved or a person who has a real or substantial interest in the proceedings sought to be quashed.

The scope of the locus standi of an applicant has been extended by this court in the recent case of REPUBLIC v HIGH COURT, HO, EX PARTE BEDIAKO II & ANOR (ODUM & ORS INTERESTED PARTIES) [2011] 2 SCGLR 705 in which the worthy president of this court Dotse, JSC after referring to the previous authorities on this point; notably, REPUBLIC v KORLE GONNO DISTRICT MAGISTRATE GRADE I; EX PARTE AMPOMAH [1991] IGLR 353CA and APPENTENG, IN RE (DECD); REPUBLIC v HIGH COURT, ACCRA; EX PARTE APPENTENG [2005 -2006] SCGLR 18 said at page 712 as follows;

> "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"

The court went further to hold that the remedies of certiorari and prohibition were not restricted by the notion of locus standi; and every citizen has the capacity to invite the court to prevent some abuse of power, and in so doing, he might claim to be regarded not as a meddlesome busybody but a public benefactor.

In this case, as the applicant was the sole complainant who had indeed given evidence before the trial Circuit Court, she had more than sufficient interest to protect than anybody else. It is also the duty of every citizen that justice must be seen to be done to all manner of persons by ensuring that the courts in this country established by statutes with limited jurisdiction observe the law within the statutory limits. Even though the learned High Court judge had jurisdiction to supervise the Circuit Court under Article 141 of the 1992 Constitution and section

1C of the Court's Act, Act 459 of 1993, his powers to supervise should be exercised within the limits imposed by law. The objection that the applicant has no locus standi is thus misconceived.

It must also be made plain that even though the High Court has jurisdiction to issue prerogative writs, which by their nature afford a more speedy way of redress under certain circumstances, its invocation should be in conformity with the law. In the case of REPUBLIC v CAPE COAST DISTRICT

MAGISTRATE GRADE II; EX PARTE AMOO [1979] GLR 150 CA Apaloo CJ in his concurring opinion said at page 160 thus:

> "As is well known, the remedy of certiorari is a useful tool in aid of justice and ought to be used to correct defects of justice whether they arise from illegality, fraud, breach of the rules of natural justice, error on the face of the record and the like. I am not even prepared to say that the category of cases in which this useful remedy can or should be used is closed. There is no reason why I should stifle the development of the law by any such assertion"

The courts have been consistent in issuing certiorari only when the grounds exist for its use. In this case the applicant complains that the ground for the issuance of the writ of certiorari never existed to warrant the High Court's intervention. The learned High Court judge, with due respect never canvassed any of the grounds stated above for his intervention. He however, professed to justify his intervention on the grounds that there was no evidence to support the charge which the interested party herein was facing and that the continuous prosecution of the interested party was against his fundamental human rights as enshrined in the 1992 Constitution. He proceeded to review the evidence on record in his ruling unmindful of the fact that the matter before him was not an appeal but certiorari. In the often-quoted case of R v NORTHUMBERLAND COMPENSATION APPEAL TRIBUNAL, EX PARTE SHAW [1952] I KB 338 Morris LJ (as he then was) stated the position as follows:

> "It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for

rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction where shown"

The interested party had the option to either appeal against the submission of no case which was overruled by exercising his right of appeal for the High Court to have considered the evidence led as at the close of the case for the prosecution. The High Court was not enjoined to review the evidence in a manner as it did as if it was entertaining an appeal. Appeals and prerogative writs e.g. certiorari are conceptually different and this has been strictly observed in several judicial decisions. In the case of REPUBLIC v HIGH COURT, ACCRA, EX PARTE APPIAH & ORS [2000] SCGLR 389, this court held that where the court adjudicating a matter had jurisdiction to entertain an action, its judgment or ruling could not be impeached on the mere grounds that its decision is wrong and under such circumstances an appeal would be the proper thing.

In this matter nothing illegal was canvassed against the proceedings by the learned High Court judge save that the fundamental human rights of the interested party was being infringed by his prosecution and no more. It follows, therefore, that none of the legal requirements to warrant the grant of certiorari ever existed. Indeed, on record there was none.

It is for the above reasons that this court quashed the ruling of the High Court judge on the grounds canvassed in this delivery as he had no jurisdiction under the circumstances to quash the proceedings of the Circuit

Court in the manner he did and the error committed by the judge is so patent as to nullify the whole proceedings.

We also have to place on record the conduct of the office of the Attorney-General in these proceedings. It appears that lip service was paid to the application at the High Court where the Circuit Court's proceedings was quashed and same prohibited from further hearing of the criminal case. It took the active intervention of the complainant (the applicant herein) to mount this application at this court to quash the ruling of the High Court. In the recent case of GYIMAH v ABROKWAH [2011] ISCGLR 406 this court had the opportunity to condemn counsel who ignore their avowed duty as officers of the court. If the applicant had not mounted this application, the Attorney-General's office who were indeed served with the processes from the High Court [Human Rights] Division, Accra, wouldn't have questioned the orders made by the learned High Court judge, which orders had no legal basis whatsoever.

It was for the above reasons that we granted the application the 19th February, 2015 and made the following orders;

1. The proceedings and judgment of the High Court, Human Rights Division, Coram: *Kofi Essel Mensah J*, in suit No. HRCM 167/14 intitutled ***Prince Kofi Amoabeng v Naa Otua Swayne & Others*** dated 20th October, 2014 be hereby brought before this court for the purposes of being quashed and same are accordingly quashed by order of Certiorari by this Court.

2. It is further ordered that, the said High Court, be prohibited from having anything to do whatsoever with the above suit and more particularly interfering with the prosecution of the Criminal trial involving the 1st interested party herein at the Circuit Court, Accra case No. D6/278/12.
3. For the avoidance of doubt, it is hereby directed that the Circuit Court, Accra, Coram Francis Obiri shall continue with the prosecution of case No. D6/278/12 intitutled **The Republic v Prince Kofi Amoabeng, John Aidoo** and conclude the hearing process and deliver judgment according to law.
4. The Registrar of this Court is directed to serve these orders on the Registrars of the High Court, Human Rights Division, Accra and the Circuit Court, Accra to endure compliance with the orders made herein.

Considering the merits of the instant application and taking into account the dangerous precedent that would have been set had the applicant not moved timeously to arrest this phenomenon, we award costs of GH¢10,000.00 against the 1st Interested Party, Prince Kofi Amoabeng, but direct that the said costs be paid personally by learned Counsel Gustav Addington.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

(SGD) A. A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

COUNSEL

E. A. VORDOAGU FOR THE APPLICANT.

GUSTAV ADDINGTON FOR THE 1ST INTERESTED PARTY.

JOAN KING (MS.) S.S.A. WITH HER MISS GRACE OPPONG S.S.A. AND HENRIETA KWAKYE A.S.A. FOR THE ATTORNEY GENERAL.