IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT ACCRA
AD 2014

CORAM: ATUGUBA JSC (PRESIDING)
AKUFFO(MS) JSC
BAFFOE-BONNIE JSC
GBADEGBE JSC
AKOTO-BAMFO (MRS) JSC

CIVIL MOTION
No.: J5/45/2014

17TH DECEMBER 2014

THE REPUBLIC

VRS.

HIGH COURT (COMMERCIAL DIVISION) ACCRA

EX PARTE; REPUBLIC BANK LIMITED - APPLICANT

HFC BANK (GHANA) LIMITED - 1ST INTERESTED PARTY

SECURITIES AND EXCHANGE COMMISSION - 2ND INTERESTED PARTY

RULING

ATUGUBA JSC:-

The applicant moves this Court for:

1. "An order of certiorari directed to the High Court, Commercial Division, presided over by His Lordship Justice Koomson to move into this Court for the purpose of being quashed the ruling dated 23rd June 2014 in which it assumed jurisdiction to entertain Suit No: BFS/144/14;

2. An order of certiorari to quash the order made by the High Court (Commercial Division) in Suit No: BFS/144/14, on 23 June 2014 in which the High Court upheld a preliminary objection by the Plaintiff/1st Interested Party herein, to the application by 1st Defendant/Applicant herein to strike out the pleading of Plaintiff as disclosing no cause of action basing itself on the ground that the 1st Defendant/Applicant herein had not entered appearance;

3. Consequent upon (1) and (2) above, an order of prohibition restraining the said High Court from proceeding with the hearing of the interlocutory application and the suit;

4. Consequent upon (1) and (9) above, orders setting aside the writ of summons, striking out the suit and the application for interlocutory injunction in the said suit;

….Grounds for seeking this order:

a) The High Court lacked jurisdiction to entertain the suit when Section 8 (c) of the Securities Industry Law 1993 (PNDCL 333) required that any complaint, dispute or violation arising under the law be submitted to the Securities and Exchange Commission before redress is sought in the courts and the High Court acknowledged that this prior step had not been taken by the Plaintiff."

Several grounds were argued for and against the application by both sides. However, we propose to deal with what can be described as the principal

ground in this application, for the success or failure of that ground gravely affects the other grounds argued.

The principal ground for the application is ground (a) supra.

Section 8 (c) of the Security Industry Act, 1993 (PNDCL 333) provides thus:

"Section 8C—Submission of Complaint and Examination of Issues.

(1) A complaint, dispute or any violation arising under this Act shall, before any redress is sought in the courts, be submitted to the Commission for hearing and determination in accordance with this Part.

(2) A matter to which subsection (1) applies shall be submitted in writing to the Director-General of the Commission and where it is not in writing the Director-General shall cause the matter to be reduced into writing.

(3) The Director-General shall cause the matter to be investigated and shall unless he

(a) considers the matter to be frivolous or vexatious; or

(b) can settle the disputed matter or complaint to the satisfaction of parties concerned,

refer the matter together with the findings of the investigations to the Hearings Committee within thirty days from the date of receipt of the written complaint, dispute or violation and shall at the same time inform the complainant or persons concerned of the submission to the Hearings Committee.

(4) Subject to section 8F, the Hearings Committee shall upon receipt of a complaint or any matter under this Part examine and determine the complaint or matter.

(5) The Hearings Committee shall not determine any complaint or matter which is the subject matter of an action before a court unless the parties to the action so agree"

Mr. Ace Ankomah will always try to be resourceful and ingenious in cases he handles no matter the odds involved. Accordingly, he resists the application in relation to ground (a) on three principal grounds.

The first is that S. 8 (c) does not apply in this case in view of S. 8 (c) (5) which provides as follows:

(5)" The Hearings Committee shall not determine any complaint or matter which is the subject matter of an action before a court unless the parties to the action so agree".

There can be no doubt that if S. 8 (c) (1) is to be operative the hearings committee must have jurisdiction to deal with the matter in issue as laid down in S. 8 (c) (3) (4) which provide as follows:-

"(3) The Director-General shall cause the matter to be investigated and shall unless he

(a) considers the matter to be frivolous or vexatious; or

(b) can settle the disputed matter or complaint to the satisfaction of parties concerned,

refer the matter together with the findings of the investigations to the Hearings Committee within thirty days from the date of receipt of the written complaint, dispute or violation and shall at the same time inform the complainant or persons concerned of the submission to the Hearings Committee.

(4) Subject to section 8F, the Hearings Committee shall upon receipt of a complaint or any matter under this Part examine and determine the complaint or matter."

It is not in dispute that the subject matter of the 1st Interested Party's action in the High Court is a complaint, dispute or a violation arising under the Security Industry Act, 1993.

It is trite law that all the provisions of a statute are intended to have effect and such construction should be made that, if possible, all such provisions have effect. It is also trite law that the courts must always interpret a statute *ut res magis valeat quam pereat*. It is obvious that Mr. Ace Ankomah's submission as to S. 8 (c) (3) will utterly defeat the object of S. 8 (c) (1) if a full literal interpretation is given to it. It is trite law that except for very clear words the supervisory jurisdiction of the court cannot be taken away.

Therefore during the pendency of such supervisory proceedings relating to a matter before the 2nd Interested Party's Board under S. 8 (c) (1) the Board cannot as provided under S. 8 (c) (5) determine a subject matter of such proceedings.

In ***Republic v Accra Circuit Court; Ex Parte Appiah [1982-83] 1 GLR 129 C.A at 169-170 Roger*** Korsah J said:

> *"I would …call attention to the rule of interpretation which enjoins the courts to have regard to all sections of a statute and their interaction or interdependence on each other…"*

In former times there was a rule of construction which gave precedence of a last provision in the same statute which conflicts with a preceding one. Even in those days that would only be so if the two provisions could not be construed in any manner that would induce consistency with each other. We think that S. 8 (c) (1) can survive nullification if S.8 (c) (3) is confined to matters that are ab initio properly brought before the courts without disregard of S. 8 (c) (1). It must be noted that S. 8 (c) (3) is part of a series of subsections which in statutory construction parlance is termed as, machinery, for the implementation not defeasance of S. 8 (c) (1).

The second contention of Mr. Ace Ankomah is that S. 8 (c) (1) is procedural and therefore since the applicant took steps in the action in the High Court it thereby submitted to the jurisdiction of that court and is concluded by the same. We do not see how the jurisdiction of the Board per the hearings committee in respect of *"A complaint, dispute or a violation under this Act .. submitted… for hearing and determination"* can be regarded as procedural. It is clear that S.8 (c) (1) vests substantive adjudicatory jurisdiction on the Board of the Securities and Exchange Commission. The kindred jurisdiction that was involved in **Boyefio v NTHC Properties Ltd [1997-98] 1 GLR 768** was held by this Court to be substantive.

The matter, even long before that decision was not *res integra;* see **Osei Yaw v Nsiah [1968] GLR 951** in which Annan J held that the resort to court for maintenance relief without a prior application to the Social Welfare Department was an invalidating precondition.

It has been trite law from early times that the consent of the parties cannot (except in a few cases such as common law jurisdiction under the rules of Private International Law), confer jurisdiction where there is none, see ***Watson v Petts (No.2) (1899) I QB 430***. Clearly therefore whether the applicant took steps in the matter in the High Court or not is of no avail. As is well known, a point of jurisdiction can be raised at any stage of proceedings

The third and final submission of Mr. Ace Ankomah is that the non resort to the Board of the 2nd Interested Party is justified on the grounds of the emission of bias from its handling of investigations in a matter in which the 1st Interested Party claims to be interested without notice to it.

We are unimpressed by this contention. Ordinarily the trite principle of law that a statutory duty must be performed in case of necessity, despite the element of bias would have concluded this issue.

However, the incidence of the 1992 Constitution with regard to ordinary statutory provisions would require some cautious treading. Nonetheless we do not see how the question of non joinder or misjoinder of a party to proceedings ordinarily points to a breach of the *nemo judex in causa sua* principle of natural justice rather than the *audi alteram partem* principle.

But counsel for the applicant Mr. Fui Tsikata in his reply to the 1st Interested party's statement of case dated 29th July 2014 for and on behalf of the applicant, which exudes nostalgic competence, aptly quotes the words of the joint judgment of Gaudron and Mchugh JJ in the **Australian case of Laws v Australian Broadcasting Tribunal**, **[1990] HCA 31; (1990) 170 CLR 70 28 June 1990,** to the effect that;

(a) "reasonable bystander does not entertain a reasonable fear that a decision-maker will bring an unfair or prejudiced mind to an inquiry merely because he has formed conclusion about an issue involved in the inquiry… when suspected prejudgment of an issue is relied upon to ground the disqualification of a decision-maker, what must be firmly established is a reasonable fear that the decision-maker's mind is so prejudiced in favour of a conclusion already formed that he or she will not alter that conclusion irrespective of the evidence or arguments presented to him or her" (paragraph 5 of their judgment as reported in [1990] HCA 31]"

Indeed the Statement of case of the 1st Interested Party dated 23/7/2014 at page 7 thereof, though complaining that the 2nd Interested Party had conducted private investigations into the transaction in issue, also admits that the said Interested Party *"wrote to it… on 11th June 2014 (after it instituted the suit) to request all records relating to the transaction the subject matter of the suit*."

This should indicate that the 2nd Interested Party was still keeping an open mind on the issue. The preliminary investigations are even required by S. 8 (c) (3) of PNDCL 333 and do not therefore necessarily point to bias.

For all the forgoing reasons the application is granted.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)

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

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NANIA OWUSU ANKOMA FOR THE 1ST INTERESTED PARTY.

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