

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, GENERAL JURISDICTION DIVISION 10, HELD IN ACCRA ON THURSDAY, THE 12TH DAY OF MAY, 2022 BEFORE HIS LORDSHIP JOHN EUGENE NYANTE NYADU, J.

SUIT NO.: GJ/1357/2021

DEFEAMEKPOR ROCKSON-NELSON

PLAINTIFF

VS

ATTORNEY GENERAL

DEFENDANT

RULING

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7-6-2022

REGISTRAR
HIGH COURT
GENERAL JURISDICTION, LCC-ACCRA

The plaintiff by writ filed on the 22nd of September, 2020 commenced an action against the defendant claiming the following reliefs

- (a) A declaration that the chief of staff has no authority to approve the disposal of nine vehicles in the possession of the Kumasi technical university to be sold by public auction;
- (b) A declaration that the auction sale conducted at the Kumasi Technical university on the 22nd of September, 2020 was unlawful as the approval to dispose off the vehicles was contrary to section 83 of the Public Procurement Act, 2003 (Act 633);
- (c) A declaration that the auction sale conducted at the Kumasi Technical University on the 22nd of December, 2020 is null and void as the approval off the vehicles was contrary to the section 83 of the Public Procurement Act, 2003 (Act 633);

- (d) A declaration that no valid title has passed to the various purchasers of the auction sale conducted at the Kumasi Technical university on the 22nd of December, 2020 as the auction sale was done contrary of the section 83 of the Public Procurement Act, 2003 (Act 633);
- (e) An order directing the government of Ghana to reverse the auction sale conducted at the Kumasi Technical University and the and the ownership in the vehicles; and
- (f) Cost including legal fees.

In the pleadings of the parties, the defendant averred per paragraph 14 of the statement of defence that the plaintiff's writ of summons and statement of claim "raise no cause of action, has no merit as it is vexatious and an abuse of the courts process". This averment in essence attacks the jurisdiction of this court to entertain the instant suit or the capacity of the plaintiff within the instant suit. Consequently, on 31st of March, 2022 when direction was taken the court set the issues "whether or not the plaintiff's writ of summons and claim raised a reasonable action against the defendant and ordered the parties to file their legal arguments for the issue to be dealt with a preliminary legal issue.". The defendant filed his written submission on the 14th of April, 2022 and the plaintiff filed his written submissions on the 25th of April, 2022.

THE PLAINTIFF'S CASE

It is the Plaintiff's case that sometime in November, 2020 the Registrar of the Kumasi Technical University requested for approval through a letter to the Office of the President, to dispose of nine unserviceable vehicles in the possession of the Kumasi Technical University through a public auction which approval was given by the Chief of Staff on 2nd December, 2020. According to the Plaintiff one William

Osei Badu, (sic) an auctioneer of Jactom Mart, had made a prior application to the Kumasi Technical University on 20th October, 2021(sic) to act as the auctioneer in respect of the sale of the vehicles and in the approval letter from the Chief of Staff, William Badu was permitted to be the auctioneer to sell the vehicles within 21 days. The Plaintiff further says that on 22nd December, 2020 the unserviceable vehicles were sold by public auction at the Kumasi Technical University to various purchasers for an amount totaling Fifty-Five Thousand, Nine Hundred Ghana Cedis (GH¢55,900.00) and thereafter ownership in the said vehicles were transferred to the purchasers.

The Plaintiff further says that a pre-finance valuation fee of Two Thousand and Ninety Ghana Cedis (GH¢2,090.00) and a commission of seven percent (7%) which was Three Thousand Seven Hundred and Sixty-Six Ghana Cedis (GH¢3,766.00) was deducted at source from the Fifty-Five Thousand, Nine Hundred Ghana Cedis (GH¢55,900.00) leaving a balance of Fifty Thousand, Forty-Five Ghana Cedis (GH¢5,044.00)[sic].

According to the Plaintiff, the Chief of Staff has no authority to approve the disposal of the said vehicles but rather the Minister of Education in consultation with the Board. Therefore, the sale of the vehicles was unlawful hence this suit.

THE DEFENDANT'S CASE

The Defendant says that in November, 2020 the Registrar of the Kumasi Technical University requested for approval through a letter to the Office of the President to dispose of nine unserviceable vehicles in the possession of the Kumasi Technical University through a public auction which approval was given by the Chief of Staff on 2nd December, 2020. One William Osei Boadu, an auctioneer of Jactom Mart,

had made an application to the Kumasi Technical University on 20th October, 2020 to act as the auctioneer in respect of the sale of the vehicles. The Chief of Staff, in the approval letter also permitted that Mr. William Boadu be the auctioneer to sell the vehicles within 21 days. The Defendant say that the nine vehicles were unserviceable as a result of fair wear and tear after exposure to the weather and thus needed to be disposed of to avoid wastage. On 22nd December, 2020 the unserviceable vehicles were sold by public auction at the Kumasi Technical University to various purchasers for an amount totaling Fifty-Five Thousand, Nine Hundred Ghana Cedis (GH¢55,900.00) and thereafter ownership in the said vehicles were transferred to the purchasers. A pre-finance valuation fee of Two Thousand and Ninety Ghana Cedis (GH¢2,090.00) and a commission of seven percent (7%) which was Three Thousand Seven Hundred and Sixty-Six Ghana Cedis (GH¢3,766.00) was deducted at source from the Fifty-Five Thousand, Nine Hundred Ghana Cedis (GH¢55,900.00) leaving a balance of Fifty Thousand, Forty-Five Ghana Cedis (GH¢50,044.00).

A Board of Survey was constituted to recommend the best method of disposal of the worn out vehicles. The Board advised that as the vehicles in issue were GV Plated, which were listed under the Office of the Chief of Staff, they could not be auctioned without the authorisation of the Chief of Staff.

Before going into the merits of the submission by counsel for the parties, I will like to address the conduct of counsel for the plaintiff with respect to a statement made in his written submissions which statement this court vehemently deprecate. Counsel for the plaintiff stated in his submission in paragraph 17 as follows

“My Lord, if looking into the merits of the case involving an allegation or violation of a statute by a public official is not of interest to a court of competent jurisdiction

established to embark on judiciary enquiry into such latent violation, what else could be of interest to this court?"

It must be noted that setting down an issue that touches on either jurisdiction or capacity as a preliminary issue to be argued by the parties is not new to the legal profession especially so when either of the two can be raised at any stage of the proceedings even after judgment and may render proceedings in a suit a nullity. Indeed in the case of the **Republic vs. The High Court, Land Division 7, Accra, Exparte The Registered Trustee of East Dadekotopon Development Trust, (Adolph Tetteh Adjei, Anas Aaremeyaw Anas and Holy Quaye Interested Parties) Civil Motion Number J5/46/2020 dated 12 July, 2020** the Supreme Court speaking through Torkornoo (Mrs) JSC with respect to jurisdiction stated as follows:

"The jurisdiction given to any court to determine a suit is conferred by the pleadings and claims of the parties."

By the statement made by counsel for the plaintiff in paragraph 17, counsel for the plaintiff is insinuating that this court is not interested in ensuring that justice is served. This attack on the court is without any factual basis and I hereby send a serious caution to counsel that should such unjustified attack be made directed at this court again and the judiciary for that matter, this court will hold him for contempt without any hesitation.

EVALUATION OF THE SUBMISSIONS

The Supreme Court speaking through **Anin Yeboah JSC** (as he then was) in the case of **Nene Fiesu Gblie Gbenartey and another vs. Netas Properties and Investment unreported Civil Appeal J4/14/2014 delivered on the 13th of November, 2014** stated the circumstances under which the procedure for terminating proceedings by summary process should be applied. The court delivered itself in the following words:

"It therefore follows that this procedure of terminating proceedings by summary process should be applied only in cases where the action is clearly unsustainable, plain and obvious that it is beyond doubt that the case is unarguable, frivolous and vexatious, and even legitimate amendments could not cure the defect."

See also: *Ghana Muslims Representative Council vs. Salifu* [1975] 2 GLR 246; *Appiah vs. Boakye* [1993-94] 1 GLR 417 at 425

In the case of *Axex Company Limited vs. Kwame Opoku and 2 Others Civil Appeal number J4/23/2008* dated 19th July, 2012, the Supreme Court in determining on appeal, whether or not the Writ of Summons and Statement of Claim filed at the trial court in the suit disclosed a reasonable cause of action against the appellants stated that in making such a determination, the Statement of Claim has to be read together with the Writ of Summons to determine whether or not the impugned pleadings are indeed redundant as far as the reliefs sought by the plaintiff is concerned or that they disclose no reasonable cause of action or a defence. The court delivered itself as follows:

"...In such cases, the Writ of Summons ought to be read together with the Statement of Claim in order to determine if there was any cause of action before the court. This is so because a statement of claim may in appropriate cases as provided for in Order 11 rule 15(2) of CI 47, the High Court Rules, amplify or diminish the scope of the writ on which it is founded. The cause of action on which the claim was founded for this purpose must be determined by looking only at the writ and accompanying statement of claim, without any other extrinsic document."

This is buttressed by the fact that by rule 6 of Order 2 of the CI 47 a Writ of Summons should be issued and filed together with a Statement of Claim.

A cause of action has been defined per Lord Diplock L. J. in the case of *Letang vs. Cooper* [1965] 1 QB as follows:

"A cause of action is simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person"

It was also defined in **Ampratwum Manufacturing Co. Ltd vs D.L.C [2009] SCGLR 692** as

“the entire set or factual situation the existence of which entitles one person to obtain from the court a remedy against another person”.

and recently in the case of **John Dramani Mahama vs. Electoral Commission and Nana Addo Dankwa Akufo-Addo [Suit number J1/05/2021 delivered on 4th of March, 2021]**, the Supreme Court speaking through Anin Yeboah C.J. defined a cause of action as

“the existence of facts which gives rise to an enforceable claim or a factual situation the existence of which entitles one to obtain from the court a remedy against another”.

The substance of the plaintiff’s case in the instant suit as gathered from the pleadings and the Writ of Summons is that the Chief of Staff has approved the sale of nine vehicles belonging to the Kumasi Technical University to be sold by public auction when the power to approve the said sale has not been conferred on the Chief of Staff by any statute. In order words, the plaintiff avers that the approval given by the Chief of Staff in respect of the sale by public auction of the nine vehicles belonging to the Kumasi Technical University was contrary to **section 83 of the Public Procurement Act, 2003 (Act 663)**. The said provision, **section 83 of Act 663** provides as follows:

“Authority to dispose

83. (1) The head of a procurement entity shall convene a board of survey comprising representatives of departments with vehicles, unserviceable, obsolete or surplus stores, plant and equipment which shall report on the items and subject to a technical report on them, recommend the best method of disposal after the officer in charge has completed a board of survey form.

(2) The board of survey’s recommendations shall be approved by the head of the procurement entity and the items shall be disposed of as approved.

(3) Where items become unserviceable for reasons other than fair wear and tear, such as through accident or expiry, a set procedure established by the Board

for handling losses shall be followed before the items are boarded and disposed of.”.

Section 98 of Act 663 defines a procurement entity as “an entity conducting public procurement under this Act”. **Paragraphs (f) of subsection (2) of section 14 of Act 663** applies the Act to public Universities, public schools, colleges and hospitals. This makes the Kumasi Technical University a procurement entity and for that matter. The administrative head of that procurement entity being the Vice Chancellor of the University, is required to comply with **section 83 of Act 663** when any asset of the university is proposed to be disposed of. By **subsection (2) of section 83 of Act 663**, the approval of the recommendation of the board of survey, by the head of the procurement entity, which in the instant case is the Vice Chancellor is enough authorization of the sale of whatever was recommended and approved to be sold provided the said vehicles are unserviceable due to wear and tear.

In accordance with **subsection (3) of section 83 of Act 663**, where the cause of unserviceability is other than through wear and tear, the sale shall follow the procedure established by the Board of the Public Procurement Authority for handling losses.

From the written submissions for the defendant, they submit that the Vice Chancellor constituted a board of survey that made recommendations with respect to the sale of the nine vehicles as is expected of the Vice Chancellor under **subsection (1) of section 83 of Act 663**. Subsequently the Registrar of the Kumasi Technical University wrote to the Office of the Chief of Staff for approval to sell the said vehicles which approval was granted. The Republic submitted that this is so because the vehicle registration plates of the nine vehicles were issued from the Office of the Chief of Staff.

By **subsection (2) of section 83 of Act 663**, the Vice Chancellor should have approved or disapproved of the recommendation of the board of survey, in the case of vehicles the unserviceability of which was caused by fair wear

and tear; and if there were any of the vehicles the unserviceability of which had not been caused by fair wear and tear, to ensure that the set procedure established by the Board of the Public Procurement Authority is complied with.

From the reliefs indorsed on the plaintiff's Writ of Summons and his pleadings as per his Statement of Claim, it is obvious that he grounds his cause of action in the non-compliance with **section 83 of Act 663**.

The real issue for determination is who by law is mandated or vested with power to grant approval for the sale of the said nine vehicles after the recommendations of the board of survey. According to the plaintiff, the power exercised by the Chief of Staff is the statutory function of the Minister for Education. The plaintiff however, makes this assertion but in his written submission failed to refer the court to appropriate enactments that vest the said power in the Minister for Education, or a combination of enactments from which an inference of such vesting can be made. The statute the plaintiff relies on vest the power of approval for sale of unserviceable vehicles in the Head of a procurement entity or where required, compliance with established procedure for handling losses prior to the disposal of same.

Counsel for the defendant submits that in so far as the plaintiff's claim is grounded on **section 83 of Act 663** and the Ministerial responsibility with respect to the said Act is vested in the Minister for Finance the plaintiff has no cause of action against the defendant.

In the opinion of this court, whether the said power should have been exercised by the Minister for Education or the Minister for Finance, there is non-compliance with **section 83 of Act 663** and the need to determine whether the procedure applied in the approval and sale of the said nine vehicles took into consideration the nature of the unserviceability of the sold vehicles and also all laws applicable to the said sale.

The plaintiff says that he deems it a public duty in exercise of his right under **paragraph (f) of article 14 of the Constitution** to bring the alleged contravention of **section 83 of Act 663** in respect of the sale of the nine vehicles to court for redress. **Paragraph (f) of article 14 of the Constitution** provides as follows:

“The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, it shall be the duty of every citizen

- (f) to protect and preserve public property and expose and combat misuse and waste of public funds and property”

By the terms of **section 83 of Act 663**, the approving authority as observed is the Vice Chancellor of the Kumasi Technical University. The question however is whether that approval under **Act 663** is enough to enable a sale to be conducted in respect of public property allocated to the Kumasi Technical University? **Section 84 of Act 663** provides as follows:

“Disposal procedures

84. Disposal of obsolete and surplus items shall be by

- (a) transfer to government departments or any other public entities, with or without financial adjustment,
- (b) sale by public tender to the highest tenderer, subject to reserve price,
- (c) sale by public auction, subject to a reserve price, or
- (d) destruction, dumping, or burying as appropriate.”.

From the tenor of **paragraph (a) of section 84 of Act 663**, it is clear that the re-allocation of the said nine vehicles from the office of the Chief of Staff to the Kumasi Technical University was a disposal consequent to a surplus in that Office and therefore the said properties were deemed to have been transferred from the Office of the Chief of Staff to the Kumasi Technical University and formed part of the assets of that University.

Section 83A of Act 663 also provides as follows:

“Instructions and guidelines for disposal of vehicles and unserviceable stores

83A. (1) The Minister shall, in consultation with the Board, make further Regulations on the disposal of vehicles, unserviceable stores, and obsolete equipment.

(2) The Board shall issue detailed instructions and policy guidelines related to the disposal of vehicles, unserviceable stores and obsolete equipment.”

None of the parties especially the plaintiff has referred the court to the existence of any Regulations made pursuant to this section.

Date-Bah JSC in the case of Republic vs. High Court (Fast Track Division) Accra; Ex parte National Lottery Authority [2009] SCGLR 390 stated at page 402 of the report thus

“No judge has authority to grant immunity to a party from consequences of breaching an Act of Parliament. The judicial oath enjoins judges to uphold the law rather than condoning breaches of Acts of Parliament by their orders.”

Subsection (1) of section 5 of the Interpretation Act, 2009 (Act 792) provides as follows:

“Public Acts

5. (1) An Act is a Public Act and shall be judicially noticed as a Public Act; unless the contrary is expressly provided by the Act.”

Act is defined in **section 1 of Act 792** to mean an Act of Parliament. As a Public Act, it is to be judicially noticed as affecting the rights of all persons within the jurisdiction of its application.

Subsections (3) and (6) of section 9 of the Evidence Act, 1975 (NRCD 323) states that judicial notice may be taken whether requested by a party to a suit or not, and same may be taken at any stage of the proceedings.

On the basis of the provisions cited supra, I take judicial notice of the **Public Financial Management Act, 2016 (Act 922)** and the **Technical Universities Act, 2016 (Act 922)** which has a bearing on this case.

It is significant to note that the **Public Financial Management Act, 2016 (Act 921)** also provides for disposal of public assets. **Section 2 of Act 921** applies the Act to statutory corporations. **Section 2 of Act 921** is in the following terms:

"2. Application

(1) This Act applies to

- (a) a covered entity; and
- (b) a public officer responsible for receiving, using, or managing public funds.

(2) This Act shall be read together with any other enactment relevant to public financial management.

(3) Where there is a conflict or inconsistency between the provisions of this Act and any other relevant enactment, the provisions of this Act shall prevail.

Section 102 of Act 921 defines a covered entity as

"covered entities" means

- (a) the Executive, Legislature and Judiciary;
- (b) constitutional bodies;
- (c) Ministries, Departments Agencies and local government authorities;
- (d) the public service;
- (e) autonomous agencies; and
- (f) statutory bodies;

By Statutory bodies is meant, bodies created by statute which obviously include a statutory corporation like the Kumasi Technical University. Pursuant to **section 101 of the Act 921 the Public Financial Management Regulations, 2019 (L. I. 2378)** was enacted

“Application

1. (1) These Regulations apply to a covered entity, a **public corporation** and a state-owned enterprise.

(2) Where the covered entity referred to in subregulation (1) is a local government authority, these Regulations apply unless otherwise expressly stated.

It is further provided for in **regulation 158 of LI 2378** as follows:

“Acquisition and disposal of vehicles

158. (1) The **Principal Spending Officer of a covered entity shall obtain the prior written approval of the Minister** for the

- (a) acquisition of new vehicles;
- (b) **transfer**, exchange, sale, donation, contribution-in kind, trust, and any other disposal of any vehicles of the covered entity;
- (c) lease, rental or use of any vehicles of the covered entity; and
- (d) transfer of the management of any vehicle of the covered entity to any other covered entity or local government authority.

(2) The Minister shall establish a ceiling on the number of vehicles each covered entity may acquire, with the breakdown the Minister considers appropriate.

(3) The Minister shall not approve the acquisition of a new vehicle by a covered entity under subregulation (1) (a) unless

- (a) the acquisition does not exceed a ceiling on the number of vehicles referred to under subregulation (2); and
- (b) in the case of an acquisition to replace a vehicle, the vehicle has been disposed of in accordance with subregulation (5).

(4) **The Minister shall not approve the disposal of any vehicle of a covered entity under subregulation (1), unless**

- (a) the price of the disposal is determined by an auction in accordance with the Auction Sales Act, 1989 (P.N.D.C.L. 230) and at or above the market price; and
- (b) the method of the disposal is in accordance with the Public Procurement Act, 2003 (Act 663).

(5) Subregulation (3) does not apply to military vehicles as designated by the Minister.

(6) Any disposal, lease, and other action referred to in subregulation (1) that is made without the prior written approval of the Minister, is void."

By section 1 of the Technical Universities Act, 2016, (Act 922), the Kumasi Technical University was set up as a public university and a statutory body for that matter (see paragraph (4) of the First Schedule to the Act). Subsection (1) of section 1 of Act 922) provides as follows;

" The institutions specified in the First Schedules are established as Technical Universities".

Subsection (2) of that section states as follows;

" A Technical University established under this Act is a corporate body with perpetual succession" .

The governing body of the University as established by section 5 of the Act 922 is a University Council which by paragraph (c) of section 6 of Act 922 is responsible for the management and administration of finances and properties and determine the allocation and proper use of funds of the Kumasi Technical University.

Section 31 of the Act 922 deals with property and contracts of a Technical University. Subsection (1) of section 31 of Act 922 provides as follows;

"(1) Despite section 1 (2) and (3), a Technical University shall not acquire, hold movable and immovable property, sell, lease, mortgage or otherwise alienate or

dispose of that property without the approval of the Minister given in consultation with the National Council for Tertiary Education”.

Minister is defined under Act 922 to be the Minister responsible for Education.

Clearly from this provision in Act 922, being the latest in time declaring the latest intent of the lawmaker with respect to the disposal of the assets of a public University, **subsection (1) of section 31 of Act 922** modifies **section 83 of Act 663**.

It therefore appears to this court that even though **section 83 of Act 663** applies to a Public University with respect to the disposal of its assets, when it comes to a Technical University, **subsection (1) of section 31 of Act 922** applies and that being the latest intention of the legislature, modifies **section 83 of Act 663** with respect to any consistency between the two provisions.

Section 83 of Act 663 therefore appears not to be all-in all provision as far as matters concerning the disposal of vehicles owned by a statutory corporation is concern.

It is trite law that when two enactments deal with the same subject matter, one being of general application and the other being specific, where the two provisions cannot be construed harmoniously, the specific provision prevails over the enactment of general application. In the instant case of **subsection (1) of section 31 of Act 922**, it will appear that the Minister of Education in consultation with National Council for Technical Education, is made the approving authority for the disposal of any asset belonging to a Technical University if the said vehicles were properly or effectively transferred from the Office of the Chief of Staff to the Kumasi Technical University. Again, this position is modified by **subsections (2) and (3) of Act 921** which provide that **Act 921** shall be construed together with any enactment of relevance and that where there is any inconsistency or conflict between the provisions of **Act 921** and the relevant enactment, **Act 921** will

prevail. The current position with respect to these laws would have to be resolved by this court and same applied to findings of fact to be made.

From the legal analysis made, there are triable issues for determination. There is the need to determine whether or not the nine vehicles were duly transferred from the Office of the Chief of Staff to the Kumasi Technical University prior to their sale. If not, whether the Office of the Chief of Staff sought the approval of the Minister for Finance before disposing of the said vehicles? There is also the need to determine the appropriate approving authority for the alleged sale of the nine vehicles.

I therefore find that the plaintiff has a reasonable cause of action against the defendant even though he grounds his case on a limping legal proposition or the wrong legal authority.

The suit will accordingly take its usual course. Suit is adjourned to the 27th day of June, 2022 for Case Management Conference. No award as to cost.

CERTIFIED TRUE COPY
 2-6-2022
 HIGH COURT
 GENERAL JURISDICTION, LCC-ACCR/

(SGD.)

JOHN EUGENE NYANTE NYADU
JUSTICE OF THE HIGH COURT

LEGAL REPRESENTATION: NANA EFUA NYAMEKYE AMANFU HOLDING
 BRIEF FOR NII KPAKPO SOMOA ADDO FOR THE
 PLAINTIFF/APPLICANT – PRESENT

ANASTASIA EDUSEI-TAWIAH, ASSISTANT
 STATE ATTORNEY FOR DEFENDANT-PRESENT