BP NO: 2634

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA – AD 2020

SUIT NO:.....

Filed on 15/10/2020
at 11:05 am/pm
Registrar
HIGH COURT
ACCRA

THE REPUBLIC

VRS

1. **THE INSPECTOR GENERAL OF POLICE (IGP)**
   NATIONAL POLICE HEADQUARTERS, ACCRA

2. **ATTORNEY-GENERAL**
   ATTORNEY-GENERAL'S DEPARTMENT
   MINISTRIES, ACCRA

RESPONDENTS

EX PARTE:

ACP/DR BENJAMIN KWASI AGORDZO - APPLICANT
GCA 0024, SOUTH SATELLITE STREET 1
ACCRA

MOTION ON NOTICE:

APPLICATION FOR JUDICIAL REVIEW OF THE REFUSAL OF THE INSPECTOR GENERAL OF POLICE TO REVOKE INTERDICTION ORDER MADE PURSUANT TO REGULATION 105(1) OF THE POLICE SERVICE REGULATIONS, 2012 CI 76

(ORDER 55 OF CI 47)

TAKE NOTICE that counsel for and on behalf of the applicant herein shall move this Honourable Court on an application for judicial review of the refusal of the 1st respondent to revoke an interdiction order imposed on the applicant by the 1st respondent herein upon the grounds set out in the annexed affidavit and for any other/further order(s) as this Honourable Court may deem meet.

DATE TO BE FIXED

DATED IN ACCRA, THIS 9TH DAY OF OCTOBER, 2020

COUNSEL FOR THE APPLICANT
LICENCE NO. eGAR 01332/20

THE REGISTRAR
HIGH COURT
ACCRA

AND TO THE ABOVE-NAMED RESPONDENTS:

1. **INSPECTOR GENERAL OF POLICE**
   NATIONAL POLICE HEADQUARTERS
   ACCRA

2. **ATTORNEY-GENERAL**
   MINISTRIES
   ACCRA

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   ATTORNEY-GENERAL'S DEPARTMENT
   MINISTRIES, ACCRA

RESPONDENTS

EX PARTE:

ACP/DR BENJAMIN KWASI AGORDZO - APPLICANT
GCA 0024, SOUTH SATELLITE STREET 1
ACCRA

AFFIDAVIT OF ACP/DR BENJAMIN KWASI AGORDZO IN SUPPORT OF MOTION FOR JUDICIAL REVIEW

I, **BENJAMIN KWASI AGORDZO**, of House No GCA 0024, Satellite Street 1, Accra do hereby make oath and say as follows:

1. That I am the deponent and the applicant herein.

2. That the contents of this affidavit are matters which are within my personal knowledge or information, unless otherwise stated.

3. That to the extent that my depositions state or imply matters of law, such depositions are based on the advice of counsel whose advice I verily believe to be true and rely on in support of this application.

4. That at the hearing of this application, my lawyer shall seek leave of this Honourable Court to refer to all processes filed in this case including processes filed by the respondents, if any, as if same were reproduced in this affidavit *in extenso* and sworn to on oath.

5. That the 1st respondent is the head of the Ghana Police Service.

6. That the 2nd respondent is the principal legal adviser to the government of Ghana and is mandated by the Constitution (1992) to defend all suits against the State.

7. That I am advised by counsel and verily believe same to be true that the gravamen of the instant application is that the refusal of the 1st respondent herein, as per letter dated **27th May, 2020,** to accede to the demand made on him by my lawyers **on 23rd April, 2020,** to revoke an order of interdiction he imposed on me on **8th November, 2019**, is unlawful and he (1st respondent) ought to be compelled by this honourable court to revoke the interdiction.

8. That the facts on which the instant application is grounded are as follows:

9. That I am a police officer in the Ghana Police Service. That I have served in this chosen profession in various capacities for well over thirty (31) years and have risen through the ranks to the position of **Assistant Commissioner of Police (ACP)**.

10. That on the **8th day of November, 2019**, the 1st respondent herein in the lawful exercise of powers granted to him under **Regulation 105(1) of the Police Service Regulations, 2012 (CI 76)** imposed on me an interdiction order with immediate effect from the **8th day of November, 2019**. Annexed as **EXHIBIT 'A'** is a copy of the police wireless message communicating the 1st respondent's decision to me.

11. That consequently, my salary was reduced by twenty-five (25%) and I was relieved of all duties as a police officer.

12. That after five (5) months of interdiction, I sought legal advice and was advised by counsel that the 5-month old interdiction was unlawful because the 1st respondent was under obligation to revoke the interdiction after three (3) months if disciplinary proceedings were not instituted against me.

13. That I therefore instructed my lawyers to write to the 1st respondent on the **23rd April, 2020,** to demand that the interdiction be revoked because the 1st respondent was bound by Regulation 105(12) to do so, having failed to institute proceedings after three (3) months of ordering my interdiction. Annexed hereto as **EXHIBIT 'B'** is a copy of the letter to the 1st respondent herein.

14. That in a letter dated **27th May, 2020**, which was served on me on the **28th day of May, 2020**, the 1st respondent stated that he could not accede to my demand because to revoke the interdiction would among others undermine my *"right of presumption of innocence under article 19(2)(c) of the 1992 Constitution"*. Annexed hereto as **EXHIBIT 'C'** is a copy of the letter communicating the refusal. That I am advised by counsel and verily believe same to be true that I am entitled to apply, within six (6) months from the date of the refusal of the 1st respondent, for judicial review of the decision of the 1st respondent.

15. That I am further advised by counsel and verily believe same to be true that the 1st respondent cannot on the one hand exercise his power under Regulation 105(1) to interdict me but refuse to comply with the Regulation 105(12) **when there were no pending investigations nor disciplinary proceedings against me**. I am advised this is referred to as approbating and reprobating, which a court of equity would not tolerate.

16. That I am advised by counsel and verily believe same to be true

that the refusal of the 1st respondent is contrary to its own admissions in two cases that have come before this Honourable Court. These are:

a. **Re: Republic v Inspector General of Police & 2 Ors Ex parte D/Sgt Simon Nyaho** (Suit No GJ 0152/2020, 27th July, 2020, Coram: His Lordship George K. Koomson J [as he then was]); and

b. **The Republic v Inspector General of Police & 2 Ors Ex parte DSP Emmanuel Basintale & 4 Ors** (Suit No GJ 929/2017, 31st October, 2017, Coram Mrs Patience Mills-Tetteh J).

Annexed as **EXHIBITS 'D'** and **'D1'** are copies of the two judgments.

17. That in refusing to grant the demand the 1st respondent also relied on **Regulations 111 and 94(2) of CI 76** as well as **SI 56 of the Police Service Instructions, 2018** but I am advised by counsel and verily believe same to be true that the said provisions are totally inapplicable to the facts and circumstances of the instant case, particularly because, I have a constitutional right to be presumed innocent until a court of competent jurisdiction finds me guilty of a crime.

18. That furthermore, **the entire purpose of CI 76 is for the internal regulation of the Police Service as specified under article 203(2) of the Constitution (1992)**, as such, the provisions contained therein must be construed within the context contemplated by the Constitution without glosses.

19. That I am further advised by counsel and verily believe same to be true that the provisions relied on by the 1st respondent refer to **members of the service convicted of criminal offences**. That although I have not been convicted of any criminal offence, 1st

respondent insists on relying on these provisions to continue this illegality and it is obvious that if this Honourable Court does not intervene to compel 1st respondent, my rights will continue to be trampled upon by the 1st respondent.

20. That I am informed by counsel and verily believe same to be true that the fact that "criminal proceedings" referred to under **SI 56(7) of the Service Instructions (2018)** are handled by senior police officers (SPOs) amplifies the fact that **Regulation 105 of CI 76** refers strictly to internal investigation and disciplinary or criminal proceedings only.

21. That in the circumstances my continuous interdiction is in breach of my right to administrative justice and due process.

WHEREFORE, I swear to this affidavit in support of the instant application, praying that same is granted.

SWORN IN ACCRA THIS 15th)
DAY OF OCTOBER 2020)

.....
DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS

EXH. 'A'

POLICE WIRELESS MESSAGE

FROM: INGPOL DTO: 080900/11/19

TO: ACPOL/DR. BENJAMIN KWASI AGORDZO

INFO: ALL POMAB MEMBERS, DIGENPOLs/ADMN & FIN, DEPOLs/ LOGISTICS & AUDIT, ACPOL/PAYROLL & DIPOL/IRD

ORIGNO: PSO. 2063/44 [.] INTERDICTION [.] IN ACCORDANCE WITH POLICE SERVICE REGULATIONS 105 (1) OF C.I. 76 YOU ARE INTERDICTED FROM DUTY WITH IMMEDIATE EFFECT [.] BY COPY OF THIS SIGNAL DIGENPOL/ADMN IS TO ENSURE ALL WEAPONS, UNIFORMS AND OTHER POLICE ACCOUTREMENTS ARE COLLECTED FROM YOU INTO SAFE CUSTODY [.] REGARDS [.]

ORIGINATOR'S SIGNATURE

(2) Receipt acknowledged.
However, since I'm in custody, I don't know
how I'm going to pick the items for the Police.
May be the Police will come for me to my house
for the items. But under no circumstance
should my wife be contacted for the items
without my presence please.
I'm surprised though that the ... this step since
Police Admn has ... the BNI. Again
they have no report from my office
I have not been charged for this action
So I'm surprised as the BNI ... to be sent to AG's
since the docket is yet to ... office for advice. I think the Police can do better than this.
08/11/19

"FLASH"

TEL/FAX: 0302 - 785078 E-MAIL: ...@ghanapolice.info

EXH. 'B'

MARTIN L. KPEBU, ESQ

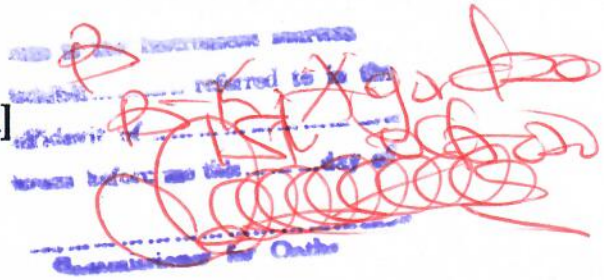
GT LEGAL
LEGAL PRACTITIONERS
1ST FLOOR, WORLD TRADE CENTRE - ACCRA
P.O. BOX 6274
ACCRA-NORTH, GHANA

TEL: 024-3176931
EMAIL: MKPEBU@YAHOO.COM

Our Ref: MLK/BKA/067/20 *Your Ref:* *Date*: 23rd April, 2020

THE INSPECTOR GENERAL OF POLICE
GHANA POLICE SERVICE
NATIONAL POLICE HEADQUARTERS
ACCRA

[ATTN: THE CHIEF STAFF OFFICER]



Dear Sir,

RE: <u>INTERDICTION OF ACP/DR BENJAMIN KWASI AGORDZO: PETITION TO REVOKE FIVE-MONTH OLD INTERDICTION</u>

I act as lawyer for **ACP/DR BENJAMIN KWASI AGORDZO** (hereinafter "my client"), on whose instructions I petition your good office to humbly exercise your powers under the **Police Service Regulation, 2012 (CI 76)** and the **Ghana Police Service Instructions (SI 2018)** to revoke his five-month old interdiction.

The humble petition of my client states as follows:

1. It would be recalled that your good office interdicted my client following an invitation, subsequent arrest, and detention by the Bureau of National Investigations (BNI) on 4th November, 2019 on suspicion of the offence of abetment of treason felony.

2. It would also be recalled that according to the Police Administration, the said interdiction was carried out, pursuant to **Regulation 105 (1) of the CI 76**. This was communicated to my client on 8th November, 2019 and my client has since been on interdiction *for over five (5) months* although CI 76 provides for a maximum period of three (3) months interdiction in respect of internal disciplinary proceedings.

3. Indeed, both **Regulation 105(12) of CI 76** and the **Service Instruction No 50(45) of 2018** provide in relation to the maximum period of three months for which an officer may be interdicted as follows:

> "If after three (3) months of interdiction, *disciplinary proceedings* are not instituted against the Officer, the Inspector-General *shall* revoke the interdiction and the Officer shall resume duty."

4. It is worthy of note that there are currently no disciplinary proceedings pending against my client, as such, it is respectfully submitted that the Inspector-General has the power and indeed, in my humble view, the duty to revoke the interdiction against my client and to instruct that he resumes his duty.

5. Respectfully, it is further submitted on behalf my client that his continuous interdiction is contrary to both **Regulation 105(12) of CI 76** and **Service Instruction No 50(45)** because he is presently not facing any disciplinary proceedings within the intendment of the two legislations.

6. Respectfully, I wish to emphasize that both Regulation 105(12) of CI 76 and Service Instruction No 50(45) cited above make references to *disciplinary proceedings* which properly interpreted, are internal disciplinary measures and are therefore distinct from *court proceedings*.

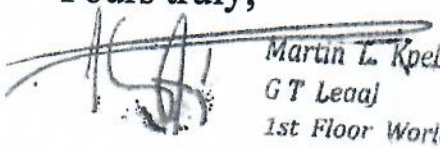
7. Indeed, nowhere in the entire **Regulation 105** was any reference made to court proceedings; nor was there an attempt to substitute *internal proceedings* for *court proceedings* in the entire **CI 76** and **SI 2018**. Thus, disciplinary proceedings are internal and court proceedings are not. It follows that the two *cannot* mean the same thing, respectfully.

8. It is therefore, clear that my client's continuous interdiction is not grounded in law. It is my respectful submission that since my client's interdiction was based on Regulation 105 (1) of CI 76; the remedy in Regulation 105(12), namely, the revocation of the interdiction after three (3) months should apply.

9. On the basis of the above, I wish to humbly and respectfully appeal to you as the Inspector-General of Police to use your good offices to revoke, pursuant to Regulation 105(12) of CI 76 and No 50(45) of SI 2018, the interdiction imposed on my client.

Respectfully prayed, sir.

Yours truly,



Martin L. Kpebu Lawyer
G T Leaal
1st Floor World Trade Centre
Accra

M. L. Kpebu

Cc:

ACP/Dr Benjamin Kwasi Agordzo
ACCRA

EXH. 'C'

RESTRICTED

In case of reply the number and date of this letter should be quoted
My Ref. PSO 2063/ TJ/S
Your Ref

HEADQUARTERS
GHANA POLICE
ACCRA

27 MAY, 2020

GLOBE TROTTERS LEGAL
LEGAL PRACTITIONERS
WORLD TRADE CENTRE, ACCRA
P.O. BOX LG 677
ACCRA

ATTN: MARTIN L. KPEBU, ESQ.

RE – INTERDICTION OF ACP/MR BENJAMIN KWASI AGORDZO: PETITION TO REVOKE FIVE-MONTH OLD INTERDICTION

Reference is made to your letter No. MLK/BKA/067/20 dated 23rd April, 2020.

BRIEF FACTS:

I am directed by the Inspector-General of Police to inform you that, your request for revocation of the interdiction imposed on your client has been declined on the following grounds:

1. That the purpose for interdicting your client was due to his involvement in the criminal offence of Abetment of Treason Felony, which if proven, is likely to lead to the imposition of a major penalty. See Regulation 105[1] of Constitutional Instrument (C.I) 76.

2. That the nature of the offence renders it undesirable for your client to remain on duty while the case is pending, particularly so, when assigning your client other duties will endanger the interest of the Service. See Regulation 105[2] of C.I 76.

3. That to respect and protect the right of presumption of innocence under article 19[2][c] of the 1992 Constitution and Regulation 97[1] of C.I 76, the IGP has been mandated by Regulation 111 of C.I 76, to resort to the procedure under the Service Instructions[S.I] 56, in dealing with officers accused of a criminal offence.

4. That the interdiction of your client was based on the procedure provided under S.I 56, which mandates IGP to interdict an officer

involved in a criminal offence until the final determination of the case by the court.

5. That since the criminal case is pending at the court, it would be prejudicial and contrary to Regulations 111 and 94[2] of C.I 76 as well as S.I 56 to institute disciplinary proceedings against your client, when your client has not been convicted of the criminal offence.

Thank you.

For: INSPECTOR-GENERAL OF POLICE
GEORGE AKUFFO DAMPARE, Ph.D
DIRECTOR-GENERAL/ADMINISTRATION

EXH 'D'

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON MONDAY THE 27TH DAY OF JULY, 2020
BEFORE HIS LORDSHIP GEORGE K. KOOMSON 'J'.

SUIT NO. GJ 0152/2020

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF PROHIBITION AND CERTIORARI PURSUANT TO ARTICLES 141 AND 23 OF THE 1992 CONSTITUTION AND ORDER 55 OF THE HIGH COURT CIVIL PROCEDURE RULES, C.I. 47 (2004)

AND

IN THE MATTER OF

THE REPUBLIC

VRS

1. **INSPECTOR GENERAL OF POLICE** ..... **RESPONDENTS**
   GHANA POLICE SERVICE
   POLICE HEADQUARTERS

2. **GHANA POLICE SERVICE**
   HEADQUARTERS, ACCRA

3. **THE ATTORNEY GENERAL**
   MINISTRIES, ACCRA

EX PARTE:
NO 35706
DETECTIVE SERGEANT SIMON NYAHO ..... **APPLICANT**

JUDGMENT

CERTIFIED TRUE COPY
.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

The Applicant herein has invoked the Supervisory jurisdiction of this Court under Articles 23 and 141 of the 1992 Constitution and Order 55 of the High Court (Civil Procedure) Rules 2004, C.I. 47 for the following reliefs;

i. A declaration that by Regulation 105(12) of the Police Service Regulation, 2012 (C.I. 76) the 1st Respondent is mandatorily required to revoke the interdiction of the applicant and for the applicant to resume duty if no disciplinary proceedings have been instituted against the Applicant three months of interdiction.

ii. A declaration that disciplinary proceedings were not instituted against the applicant more than three months after his interdiction.

iii. An order of certiorari calling up and quashing any purported disciplinary proceedings instituted by the 1st and 2nd Respondents against the Applicant more than three months after their interdiction.

iv. An order in the nature of prohibition requiring the 1st and 2nd Respondents to immediately cease and desist from conducting any further disciplinary proceeding against the applicant.

v. An order to reinstate the applicant to any position or rank due him which has been hindered or delayed by the purported disciplinary action which is null and void.

The Applicant filed a 20 paragraphed affidavit setting out his case before the Court. Applicant's case is that on the 31st day of August 2016, he was interdicted without any stated reason and accordingly attached the said communication as Exhibit A. That he subsequently had his lawyers write to the Respondent to revoke the interdiction and reinstate him by a letter dated 13th April 2017 which letter he attached as Exhibit B. Applicant's basis for the said letter was that three months had lapsed since he was

interdicted with no disciplinary proceedings having commenced in accordance with Regulation 105(12) of C.I. 76.

Applicant contends that he was subsequently reinstated. I must say that I find this very hard to believe which I will address later on in this ruling. Applicant contends that three years after his interdiction, the Respondents by a signal communication dated 8th October 2019 (Exhibit C) again proceeded to institute disciplinary proceedings against him and it is this proceeding which he contends is in flagrant breach of Regulation 105(12) of C.I. 76 and therefore unlawful and void hence the present application before this Court.

Respondent filed an affidavit in opposition to the application. Respondents admit of the fact that in accordance with Regulation 105(12) of C.I. 76, interdiction ought to be lifted after three months if no disciplinary proceedings has commenced but denies the fact that failure to commence the disciplinary proceedings within the three month period prohibits the institution from commencing any disciplinary proceeding, as there is no such limitation. Respondent also contended that disciplinary proceedings commenced against the Applicant on the 10th day of May 2019.

Article 141 of the 1992 Constitution has put the judicial review [supervisory] jurisdiction of the High Court on a statutory basis. The article circumscribes that jurisdiction and limits it to cover only lower courts properly so-called and any other lower adjudicating authorities, such as, for example, a public arbitration panel. It provides as follows:

> ***"The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers." see also section 16 of the Courts Act, 1993 (Act 459).***

This was made clear by Dr. Twum JSC in the case of **Republic v High Court Denu, Ex parte Kumapey (Dzelu IV Interested Party) [2003-2004] 2 SC GLR 719** where the learned Justice held that:

> *"The supervisory jurisdiction of Her Majesty's High Court of Justice in England never exercised any inherent supervisory jurisdiction. It was rather a derivative of the royal prerogative.* ***Our High Court has therefore never exercised any inherent supervisory jurisdiction either.*** *And today, article 141 of the 1992 Constitution has put the supervisory jurisdiction of the High Court on a statutory basis.* ***The article circumscribes that jurisdiction and limits it to cover only lower courts properly so-called and any other lower adjudicating authorities, such as, for example, a public arbitration panel."***

The above provision clearly confirms my jurisdiction to entertain the present application. In **Republic v. High Court (Probate and Administrative Division) Accra, Ex Parte Patrick Agudey Teye, Numo Agbosu Dogbeda & 5 others (Interested Parties) CIVIL MOTION No. J5/62/2018,Dated 29th MAY, 2019,** the Supreme Court stated the grounds upon which this Court's supervisory jurisdiction may be invoked, by citing with approval its earlier decision in **Republic v. High Court, Accra Ex Parte Asakum and Engineering & Construction Limited and others [1993-1994] 2 GLR 643,** as follows;

> ***"The grounds upon which a superior court would in the exercise of its supervisory jurisdiction issue certiorari to quash the decision of an inferior court or tribunal were that the inferior court or tribunal had acted without or in excess of jurisdiction or breached certain conditions on the administration of justice or that there was error apparent on the face of the record which was such as to make the decision a nullity: See*** *THE REPUBLIC v HIGH COURT KUMASI, EXPARTE, BANK OF GHANA AND ORS(SEFA & ASIEDU INTERESTED PARTIES)No.1, REPUBLIC v HIGH COURT KUMASI, EXPARTE, BANK OF GHANA & ORS (GYAMFI & OTHERS – INTERESTED*

PARTIES)No.1[CONSOLIDATED [2013-2014] 1SCGLR, 477

Consequently, where the inferior court had jurisdiction and there was no error on the face of the record as to make the decision a nullity, the superior court would not grant an order of certiorari on the ground that it had misconceived a point of law. The correctness or otherwise of the decision of the lower court or tribunal was in that case only a matter of appeal."

Furthermore, in **Republic High Court, Accra, Ex Parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003-2004] 1 SCGLR 312** Date Bah JSC stated the circumstances the Court's supervisory jurisdiction may be invoked as thus;

"where the High Court...has made a non-jurisdictional error of law, which was not patent on the face of the record...the avenue for redress open to an aggrieved party was an appeal, not judicial review. Therefore, certiorari would not lie to quash errors of law which were not patent...An error of law made by the High Court...would not be taken as taking the judge outside the court's jurisdiction, unless the court had acted ultra vires the Constitution or an express statutory restriction validly imposed on it."

As I earlier indicated, I find Applicant's case that he was reinstated after the submission of the letter dated 13th April 2017 Exhibit C to the Respondent very hard to believe. My reason for saying so is this. First of all, the application before this Court is hinged on affidavit evidence for which reason every statement made by a party, and which is capable of proof in any way must be supported by that proof, unless the statement is admitted. A party therefore does not prove that which they say by merely stating it in an affidavit or in his evidence in chief as Applicant has sought to do. He must prove it with, in the instant case, documents or other evidence. In the case of **Ackah v Pergah Transport Ltd & Others [2010] SCGLR 728.** Where the Supreme Court held that it is a basic principle of the law on evidence that a party who bears the burden of proof is

to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury.

The Court emphasized that it is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence.

The law therefore is that where it is possible to adduce evidence to prove one's case, the party must do so. Reference is made to the case of **Dzaisu v Ghana Breweries Limited [2007-2008] SCGLR 539**. In that case, the Supreme Court held that since it was the plaintiffs who pleaded in paragraph 5 of their statement of claim that the defendant maintained a second steam of employees that were categorized as regular or permanent workers who did the same jobs and performed the same duties as the plaintiffs, the burden of proof was on the plaintiffs under section 14 of the Evidence Act, 1975 (NRCD 323).

To the same effect is the case of **Ababio v Akrasi** where the court held that it is trite learning that the party who raises in his pleadings an issue essential to the success of his case assumes the burden of proving it.

Applicant in the present case failed to show by way of any documentary evidence or any signal communication or correspondence from the Respondent to him that he had been reinstated.

What is even more intriguing is the fact that Applicant in one breadth contends that he was reinstated but per his relief (v) seeks an order for reinstatement by this Court. This clearly confirms that he has not been reinstated.

Before I proceed further to determine the merits of the application, I would like to deal with submission made by the Respondent that seeks to rock the very foundation of the present application. The Respondent argues that in so far as the application has been brought in accordance with Order 55 rule 3(1) which is to the effect that an application for judicial review ought to be brought within six (6) months of the date of the occurrence of the event, the application is statute barred. Respondent's basis for this submission is that the Applicant was interdicted on the 31st day of August 2016 and that the present application is three years after the event and therefore over and above the six (6) month limitation period.

Order 55 rule 3 (1) of the High Court (Civil Procedure) Rules does not leave room for a party to bring the instant application after six (6) months of the occurrence of the event. In fact, this Court does not even have the power to extend time for an application for judicial review to be heard after the statutory six (6) months; unless it can be shown that the applicant was not aware of the event the subject matter of the application, as was held by Dotse JSC in **The Republic v Wassa Fiase Traditional Council and Another, Ex Parte Abusuapanyin Kofi Nyamekye and others; Civil Appeal Number J4/22/2014 dated 28th May 2015.**

In the present proceedings, by Regulation 105 (12) of C.I. 76, the applicant's cause of action to bring the present application for reinstatement should have been brought within six (6) month after the three months period had lapsed.

In the circumstances, I am unable to grant Applicant's relief (v) as same should have been brought within six months after the occurrence of the event and same is therefore accordingly dismissed.

I however do not think that the entire application is statute barred or does not properly invoke this Court's jurisdiction as there are other reliefs which are not caught with the effluxion of time. For example, the application for judicial review also relates to the disciplinary proceedings of 8th October 2019 which the Applicant has attached as Exhibit C. These proceedings as at the time of bringing the instant application were

within the six (6) month statutory period. I shall therefore proceed to deal with the merits of the instant application.

The main issue for determination by this Court is the interpretation to be placed on Regulation 105(12) of C.I. 76 which provides as follows;

> ***"If after three (3) months of interdiction, disciplinary proceedings are not instituted against the officer, the Inspector General shall revoke the interdiction and the Officer shall resume duty"***

The Applicant's interpretation placed on this provision is that after the three months of interdiction, if no disciplinary proceedings are commenced, then the Respondents are barred from ever conducting disciplinary proceedings against the Applicant. In support of this interpretation, the unreported High Court case of the Republic v Inspector General of Police; GJ 929/2017 was strongly urged on this Court.

Respondent's interpretation on this provision is that failure to initiate disciplinary proceedings does not bar the Respondents from subsequently initiating disciplinary proceedings against a person who has been interdicted. Respondents however contend that in so far as the present action is concerned, disciplinary proceedings had been commenced against the applicant some time ago and that the proceedings of 8th October 2019 which applicant is seeking orders of the court to quash, are further proceedings.

This contention by the Respondent in respect of the proceedings of 8th October 2019 being subsequent proceedings is very probable in light of the Applicant's deposition at paragraph 10 of his affidavit in support as follows;

> "10. That after three (3) years after my interdiction, the Respondents have **once again** proceeded to institute disciplinary proceedings against me by a signal communication dated 8/10/19 and referenced COURTS. 38/V.14." (Emphasis mine)

The use of the phrase *"have once again"* before proceeding clearly means that there was an earlier proceeding before the current proceeding which is being sought to be

quashed. Be that as it may, the real question is whether or not a disciplinary proceeding can be commenced against an officer, after three (3) months of having been interdicted?

To my mind, the purpose of interdiction is akin to that of a refusal of bail by a court. A police officer is interdicted to ensure that he or she does not interfere with investigation. An accused person is refused bail if there is the likelihood that he would interfere with investigations.

Again, once a person is interdicted, his emoluments, benefits, salaries and even livelihood are most often than not affected for which reason a police officer should not be made to suffer ad infinitum whilst he or she is being investigated; especially so, when in our jurisprudence a person is deemed innocent until proven guilty. I think it is for that reason that the framers of C.I. 76 gave a timeline in Regulation 105(12). The statutory timeline of three (3) months, in my considered opinion, is not to do with when disciplinary proceedings should commence but more to do with how long a person should be interdicted. I say so because, a police officer may well be in office whilst disciplinary proceedings are ongoing without being interdicted for which reason an officer reinstated after having been interdicted for three (3) months, cannot challenge any disciplinary action that the Ghana Police Service may want to impose. As I said earlier, this is akin to bail and I do not think that the mere fact that a person has been granted bail pending trial because the trial was delaying, meant that the State had waived its right to prosecute the person. If an officer is reinstated after three (3) months of interdiction, the **POLICE ADMINISTRATION** reserve the right to commence disciplinary proceedings anytime they deem fit. Reinstatement is not a *nolle prosequai*, or a notice of discontinuance of action; even if it were, the action can be brought afresh and the officer would have to make himself/herself available for the trial.

In the circumstances, I am unable to agree with my sister in the case of Republic v Inspector General of Police; GJ 929/2017 dated 31st day of October 2017 that the Respondents are barred from commencing disciplinary proceedings three (3) months after a police officer has been interdicted for the reasons stated above. In any case, the decision of my sister cited by the applicant, emanating from a court of coordinate

jurisdiction, is not binding on me and I depart from her understanding of the REGULATION 105(12) of C.I. 76.

It is my considered opinion therefore, that, the relief (i) of the application ought to succeed. The relief (i) is granted and accordingly, it is declared that, by Regulation 105(12) of the Police Service Regulation, 2012 (C.I. 76) the first respondent is mandatorily required to revoke the interdiction of the applicant and for the applicant to resume duty if no disciplinary proceedings have been instituted against the applicant three months of interdiction. This does not mean, I must observe that, the applicant should not face the trial in the disciplinary proceedings. For the above reasons stated in this judgment, I will dismiss the reliefs (ii), (iii), (iv) and (v).

The reliefs (ii), (iii) (iv) and (v) are dismissed.

I make no order as to cost.

(SGD)

GEORGE K. KOOMSON
JUSTICE OF THE HIGH COURT

COUNSEL:

1. **CECIL METTLE-NUNOO FOR APPLICANT**
2. **WILLIAM A. BONSU (PRINCIPAL STATE ATTORNEY) FOR ATTORNEY GENERAL**

REFERENCE

1. **Republic v High Court Denu, Ex parte Kumapey (Dzelu IV Interested Party) [2003-2004] 2 SC GLR 719**
2. **Republic v. High Court (Probate and Administrative Division) Accra, Ex Parte Patrick Agudey Teye, Numo Agbosu Dogbeda & 5 others (Interested Parties) CIVIL MOTION No. J5/62/2018,Dated 29th MAY, 2019,**

3. **Republic v. High Court, Accra Ex Parte Asakum and Engineering & Construction Limited and others [1993-1994] 2 GLR 643**
4. **The Republic v High Court Kumasi, Exparte, Bank Of Ghana And Ors (Sefa & Asiedu Interested Parties) No.1, Republic v High Court Kumasi, Exparte, Bank Of Ghana & Ors (Gyamfi & Others – Interested Parties)No.1[Consolidated [2013-2014] 1scglr, 477**
5. **Republic High Court, Accra, Ex Parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003-2004] 1 SCGLR 312**
6. **Ackah v Pergah Transport Ltd & Others [2010] SCGLR 728**
7. **Dzaisu v Ghana Breweries Limited [2007-2008] SCGLR 539**
8. **Ababio v Akrasi**
9. **The Republic v Wassa Fiase Traditional Council and Another, Ex Parte Abusuapanyin Kofi Nyamekye and others; Civil Appeal Number J4/22/2014 dated 28th May 2015.**

CERTIFIED TRUE COPY
.....REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LLC-ACCRA

EXH 'D1'

IN THE HIGH COURT OF JUSTICE GHANA (GENERAL JURISDICTION COURT 4), ACCRA, TUESDAY THE 31ST DAY OF OCTOBER, 2017 BEFORE HER LADYSHIP MRS. PATIENCE MILLS-TETTEH, J.

SUIT NO. GJ 929/2017

THE REPUBLIC

VS.

1. THE INSPECTOR GENERAL OF POLICE
2. GHANA POLICE SERVICE
2. THE ATTORNEY GENERAL :: RESPONDENTS

THIS IS EXHIBIT / DOCUMENT MARKED ..D.. REFERRED TO IN THE AFFIDAVITS SWORN AT ACCRA THIS 28th DAY OF Oct 20 17 BY S Nyaho BEFORE ME COMMISSIONER FOR OATHS

EX-PARTE:

1. DSP EMMANUEL AMADU BASINTALE
2. RSM JOHN SOVOR
3. CPL. BALETO BUAFOUR
4. CPL. IGNATIOUS ASAMOAH MENSAH
5. L/CPL. CYRUS CONDUAH :: APPLICANTS

RULING

This is an application for Judicial review pursuant to article 23 of the 1992 constitution and Order 55 of the High court civil procedure rules 2004 (C.I.) 47.

Per an originating motion on notice, the applicant applied for the following reliefs;

I. A declaration that by Reg 105 (2) of the police service REG 2012 (C.I 76) the first respondent is mandatorily required to revoke the

interdiction of police officers and for the affected officers to resume duty if no disciplinary proceedings have been instituted against interdicted officers after three months of interdiction.

II. A declaration that disciplinary proceedings were not instituted against the applicant more than three months after their interdiction

III. An order in the nature of mandamus compelling the first respondent to perform his obligatory statutory function of revoking the interdiction of the applicants and recalling them to assume duty

IV. An order in the nature of certiorari calling up and quashing any purported disciplinary proceedings instituted by the first and second respondents against the applicants

V. An order in the nature of prohibition requiring the first and second respondents to immediately cease and desist from conducting and or further disciplinary proceedings against the applicants.

The affidavit in support stated that the 1st applicant is a senior police officer stationed at Legon, and the 2nd to 5th applicants are police officers also stationed at East Legon police station. By a signal communication dated 17th February 2017 and referenced PO.2811/21, the applicants were interdicted by the 1st respondent, the Inspector General of Police without any stated reason. The applicants attached exhibit EB1 a copy of the signal communication. On the 3rd of February 2017 the Director General of CID, Deputy Commissioner of Police (DOCP Bright Oduro) in his office at the CID headquarters and in the presence of witnesses threatened the 1st applicant to wit; "I will deal with you. I will ensure that you are dismissed from the service because you think you are a lawyer so you can challenge me." He also threatened the investigators of the case at the CID headquarters to submit a report to him within two days and

that if the report was not favorable to him he will also interdict them and deal with them. A month after the notice of interdiction, the Ghana Police Service caused a publication to be made to the media that sought to link the applicants to an alleged case of stealing and dishonestly receiving of substances alleged to be gold which had been investigated and sent to court by the East Legon Police Station. The media publications contained contrite falsehood calculated at tarnishing the image and reputation of the applicants. The affidavit further stated that by the operation of regulation 105(2) of the police service regulations, 2012 (CI76) The interdiction of the applicants expired 17th May 2017 marking three months of interdiction since no disciplinary action had been instituted against them by this date. By a letter dated 18th May 2017, the applicants caused their lawyers to write to the 1st respondent demanding a revocation of the interdiction of the applicants and their reinstatement to resume duties as per regulation 105(2) of C.I76. A copy of the letter was attached as Exhibit EB2. By a letter dated 30th May 2017, the chief staff officer of the Ghana police service responded to the 18th May letter that he had been directed by the 1st respondent to inform the applicants that a service enquiry had been instituted against the applicants. The letter was attached and marked Exhibit EB3. Knowing this to be palpably false, the applicant caused their lawyers to write to the chief of staff by a letter dated 30th May 2017 to enquire inter alia about the date of the purported disciplinary proceedings and the date the applicants were notified of same. The copy of this letter was attached and marked Exhibit EB4. The Ghana police service has been unable to answer the enquiry till date. This is because it is clear that the purported institution of any disciplinary proceeding commenced against the applicants was done after the statutory prescribed three months. The demands and promptings of the applicants through their

lawyers forced the hands of the 1st and 2nd respondents to act but they acted in breach of the mandatory provisions of CI.76.

The notice of a purported formal proceeding which is advertised to be held under regulation 93(1) of CI76 was served on the applicants on 1st June 2017. By a police wireless signal dated June 15th 2017, the Ghana police service invited the applicants to a purported disciplinary proceeding commencing 20th June 2017. From the foregoing the applicants contended that:

a. The 1st respondent is mandatorily required to revoke the interdiction of the police officers and for the affected officers to resume duty if no disciplinary proceedings have been instituted against interdicted officers after three months of interdiction under regulation 105(2) of C.I 76
b. The 1st respondent has no discretion by any stretch of the legal imagination to extend the statutorily prescribed period
c. Disciplinary proceedings were not instituted against the applicants more than three months after their interdiction.
d. The purported institution of disciplinary proceedings by the 1st and 2nd respondents is an afterthought and a flagrant breach of regulation 105(2) of C.I 76 and hence unlawful, null and void
e. The 1st and 2nd respondents cannot approbate and reprobate- *quod approbo no reprobo*- to seek to apply the provisions of C.I 76 to institute disciplinary proceedings while flagrantly breaching its mandatory injunctions.

Regulation 105

(2) States as follows;

"An officer shall not be interdicted unless the nature of the offence renders it desirable that the officer should not remain on duty while the

case is pending, and the officer cannot be assigned other duties without endangering the interest of the service. "

(3) "Where a senior officer considers that a junior officer under the command of the senior officer should be interdicted, the senior officer shall request the Inspector General of Police by the quickest possible means for authority to interdict the officer."

(4) despite sub regulation (3), where a commander is satisfied that a major offence has been committed, the commander may interdict the subordinate up to a period of one month pending the submission of detailed report to the Inspector –general for confirmation or otherwise of the interdiction

(5) The Inspector –General in turn may extend an interdiction under subregulation (4) up to a period of three months.

The applicants were purportedly interdicted on the on the 17th of February 2017, information concerning commencement of disciplinary hearing was communicated to them by a letter dated 11/5 /17 after the filing of this application, the letter bore a handwritten date which creates a suspicion that it was inserted.

The applicants submitted that since the institution of this application, the respondents have revoked the interdiction of the applicants and called them back to duty signifying their admission of the applicant's position against them.

The affidavit in opposition filed 1st August 2017 contended that the fact that the interdiction is lifted did not operate as a bar to continue with the disciplinary proceedings against the applicants.

Having considered both arguments for and against I must say that the respondents acted without due consideration of the laws regulating the

Police Force. Exhibit EB1 the police wireless message sent to the respondents did not state any reason for their interdiction and for almost three months there was no attempt for commencement of disciplinary proceedings in conformity with Regulation 93(1) of the Police service regulations 2012(CI76), until the filing of this application when exhibit AG1 was sent to the respondent with an amended date of 11th May 2017.

This application called the respondents to order and but for this application the applicants would have suffered without a hearing or without due process of the law. Disrespect for law and order or rule of law is a danger to democracy. Lay down procedures must be adhered to and any act without the required legal authourity is null and void.

The respondents having admitted that they lack legal authourity to extend the period of interdiction and having revoked the interdiction the application for judicial review is also hereby granted. The disciplinary proceedings were instituted more than three months after the interdiction and therefore same is hereby quashed.

The 1st and 2nd respondents are hereby prohibited from conducting any disciplinary proceedings against the applicants.

No award as to costs.

(SGD.)

(PATIENCE MILLS-TETTEH (MRS.)
(JUSTICE OF THE HIGH COURT)

COUNSEL:

KISSI AGYEBENG FOR THE APPLICANTS

SERENA DA-SEGLAH FOR THE STATE

CERTIFIED TRUE COPY 24-10-19
.....REGISTRAR
HIGH COURT
GENERAL JURISDICTION, LCC-ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA – AD 2020

SUIT NO:.....

THE REPUBLIC

VRS

1. **THE INSPECTOR GENERAL OF POLICE (IGP)**
   NATIONAL POLICE HEADQUARTERS, ACCRA

2. **ATTORNEY-GENERAL**
   ATTORNEY-GENERAL'S DEPARTMENT
   MINISTRIES, ACCRA

RESPONDENTS

EX PARTE:

ACP/DR BENJAMIN KWASI AGORDZO - **APPLICANT**
GCA 0024, SOUTH SATELLITE STREET 1
ACCRA

STATEMENT OF CASE

1.0 Introduction

1.1 May it please Your Lordship,

This statement of case is filed in support of the applicant's motion for judicial review in the nature of mandamus directed at the Inspector General of Police (IGP). The application for judicial review is made pursuant to Order 55 of CI 47 which states in part as follows:

"ORDER 55—APPLICATION FOR JUDICIAL REVIEW

Rule 1—Cases Appropriate for Application for Judicial Review

An application for

(a) an order in the nature of mandamus, prohibition, certiorari or quo warranto; or

(b) an injunction restraining a person from acting in any public office in which the person is not entitled to act; or,

(c) any other injunction,

shall be made by way of an application for judicial review to the High Court.

Rule 2—Orders Obtainable by Judicial Review

(1) On the hearing of an application for judicial review the High Court may make any of the following orders as the circumstances may require

(a) an order for prohibition, certiorari or mandamus;..."

1.2 For purposes of hearing the application before this Court, the rules of Court require that the applicant files a statement of case "***setting out fully his arguments and relevant statutes or decided cases he wishes the Court to consider***." This requirement is stipulated in Order 55 rule 6(2) of the rules of the Court. It is in accordance with this rule of the Court that the applicant has filed the instant statement.

1.3 My Lord, the remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, ***but the decision-making process***. In the instant case, the 1st respondent interdicted the applicant under Regulation 105, as such, he is bound by the procedure provided thereunder, namely to institute investigations or disciplinary proceedings within three (3) months or revoke the interdiction. Lord Hailsham LC in **Chief**

Constable of North Wales Police v Evans [1982] 3 All ER 141 @ 143 stated that:

> "It is important to remember in every case that the purpose of [the remedy of judicial review] ***is to ensure that the individual is given fair treatment by the authority to which he has been subjected*** and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question."

2.0 Facts

2.1 The factual basis of the instant application is not complicated at all. Indeed, the most salient facts have already been deposed to in the affidavit in support. We shall therefore endeavor in this statement of case to state the facts as briefly as possible and only to the extent necessary to enable us argue applicant's case fully.

2.2 As stated in the affidavit in support of the motion, the applicant is a senior police officer in the Ghana Police Service.

2.3 On the **8th day of November, 2019, t**he 1st respondent caused **EXHIBIT 'A',** to be served on the applicant. For ease of reference, we will at this time set out the full contents of **EXHIBIT 'A'.** It reads as follows:

> *"POLICE WIRELESS MESSAGE*
>
> *DTO: 080900/11/19*
>
> *FROM: INGPOL*
> *TO: ACPOL/DR. BENJAMIN KWASI AGORDZO*
> *INFO: ALL POMAB MEMBERS, DIGENPOLs/ADM & FIN, DEPOLs/LOGISTICS & AUDIT, ACPOL/PAYROLL & DIPOL/IRD*
>
> *ORIGNO: PSO. 2063/44[.] INTERDICTION [.]* ***IN***
>
> ***ACCORDANCE WITH POLICE SERVICE***

REGULATIONS 105(1) OF C.I. 76

YOU ARE INTERDICTED FROM DUTY WITH IMMEDIATE EFFECT [.] BY THIS SIGNAL DIGENPOL/ADM IS TO ENSURE ALL WEAPONS UNIFORMS AND OTHER POLICE ACCOUTREMENTS ARE COLLECTED FROM YOU INTO SAFE CUSTODY[.]

ORIGINATOR'S SIGNATURE

"FLASH"" (emphasis supplied)

2.4 My Lord, it is quite instructive that although the 1st respondent exercised his powers conferred on him under Regulation 105(1) of CI 76 he failed to commence any investigation or institute any disciplinary proceedings against the applicant within three months as required by the CI 76. As such the applicant instructed his lawyers to write to the 1st respondent to demand a revocation of the interdiction. The demand letter is annexed to the affidavit in support of the motion as **EXHIBIT 'B'.**

2.5 In a response dated **27th May, 2020 (EXHIBIT 'C')**, the 1st respondent refused to accede to the demand made on behalf of the applicant. It is that refusal that has given rise to the instant application for judicial review.

2.6 My Lord, it is again instructive to state at this point that there is currently no pending investigations or disciplinary proceedings against the applicant within the meaning of both CI 76 or the Service Instructions of 2018.

2.7 Your Lordship will notice from **EXHIBIT 'C'** supra that the 1st respondent sought to justify the continual interdiction by relying on totally inapplicable provisions in both the **CI 76** and the Police

Service Instructions, 2018. For ease of reference, we reproduce the provisions hereunder for Your Lordship's perusal.

Regulation 94(2) of CI 76:

> "(2) **Where a member of the Service is convicted of a criminal offence in a court**, the facts shall be reported to Inspector-General who, if satisfied that the conviction has brought the Service into disrepute to an extent that warrants the dismissal, termination or reduction in rank of the person convicted, shall refer the matter to the appropriate disciplinary authority
>
> *(a)* For summary proceedings to be instituted against the person; and
>
> *(b)* The imposition of the appropriate penalty."

Regulation 111 of CI 76:

> "111. The procedure for instituting criminal proceedings against an officer shall be as provided in the Service Instructions."

and

SI 56 of Service Instructions of 2018:

> "In every case in which a member of the Service is directly accused of, or is alleged to be concerned in the commission of a crime, the investigation into the offence shall be conducted by a Senior Officer or under the personal direction of a Senior Officer.

2. If, on the conclusion of the investigation, in the opinion of the Senior Officer concerned, the evidence established a prima facie case against the member of the service, he shall take the following action:

(a) If the Senior Officer conducting or directing the enquiry is not the officer in charge of the Police Region, he shall send a request for his interdiction through the SPO in charge of the region, by the quickest possible means..."

2.8 It is obvious from the provisions cited above that they are totally inapplicable to the facts of the instant. The fact that the 1st respondent seeks to rely on them as a basis for the continued interdiction of the applicant herein demonstrates bad faith on the part of the 1st respondent. Indeed, the provisions the 1st respondent seeks to rely on are an afterthought and this Honourable Court should not permit the 1st respondent to shift the goal posts. In any case, the applicant herein has not been convicted of any criminal offence as such the provisions are totally inapplicable as we have already stated.

Grounds for judicial review in the nature of *mandamus*

3.1 In the case of ***In re Botwe & Mensah [1959] GLR 459-463***, Ollenu J as he then was) outlined the following as the condition precedent for the grant of the remedy of mandamus:

"(i) there must be a legal right to be enforced, the purpose of which cannot be enforced by any other legal remedy equally convenient, beneficial and appropriate;

(ii) there must have been a distinct demand and refusal to do the act;

(iii) the duty to be performed must be some public or quasi-public legal duty; and

(iv) it must appear that the order would be effective."

3.2 These essential requirements were also discussed in ***The Republic v Chieftaincy Secretariat; Ex parte Adansi Traditiional Council***[1] as consisting of the following:

> *"The applicant for the order must have a right in him to the performance of a legal duty by the party against whom the mandamus is sought. It must therefore be shown by the applicant who requests the court to compel the performance by mandamus of a duty that there is such a duty imposed by the statute upon which he relies, that the duty is of a public nature and that there is a right in the applicant to enforce the performance of the duty."*

3.3 My Lord, from the facts narrated above and from the annexures contained in the applicant's affidavit in support of the application, it is obvious that this is a proper case for the exercise of this Honourable Court's power of judicial review; a case in which to order the respondent to revoke the unlawful interdiction against the applicant herein. By the 1st respondent's own showing, he interdicted the applicant herein as per powers conferred on him under Regulation 105(1) of CI 76. It follows that the 1st respondent was bound to revoke the interdiction after three (3) months when he failed to initiate disciplinary proceedings against the applicant.

Legal right

3.4 First and foremost, there is no doubt that the duty to revoke the interdiction order made against the applicant is a public duty that cannot be performed by any other person but the respondent herein. The applicants therefore have no alternative but to rely on the respondent to revoke the order.

---

[1] [1968] GLR 736

mandamus to compel the engineer-in-charge to re-connect the water supply to her house."

3.7 The learned writer after analyzing the decision and concluding that it was largely in line with the principles governing the remedy of mandamus further stated that:

> *"It is to be noticed, though, that in the present case, there was no alternative remedy available to the applicant."*

3.8 In the instant case, there is no alternative open to the applicant herein as such a case has been made for the exercise of this Honourable Court's discretion in favour of the applicant.

3.9 On the issue of legal right and whether or not there exists alternative remedies, the Supreme Court has stated that the courts could exercise their discretion in favour of an applicant even in cases where other remedies were available to the applicant. In the celebrated case of **Republic v Lands Commission ex parte Vanderpuye Orgle Estates Ltd[3], Hayfron-Benjamin JSC** stated the principle quite aptly when he said @ page 700 of the report thus:

> "In my respectful opinion even where there is an alternative process it is not an inflexible rule that the statutory procedure so laid down must necessarily be followed."

3.10 On this same principle, Ampiah JSC stated @ 707 of the report thus:

> "An order of mandamus is an order of most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunals, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a

[3] [1998-99] SCGLR 677

public duty. see *Halsbury Laws of England*, (3rd ed), Vol 11, page 84 para 159. In Ghana, the Supreme Court in the exercise of its supervisory jurisdiction, is given power to order mandamus: see article 132 of the 1992 Constitution. The order of mandamus will issue where there is a specific legal right and no specific legal remedy enforcing that right, or where, although there is an alternative legal remedy, that mode of redress is less convenient, beneficial and effectual: see *R v Thomas* [1892] 1 QB 426. An order of mandamus will be granted ordering that to be done which a statute requires to be done: see *Ex parte Nash* (1850) 15 QB 92 at p 96.

3.11 The legal right of the applicant to a revocation of the interdiction order should indeed not detain this court because, the respondents herein have conceded previously conceded that fact in the case of **DSP Emmanuel Basintale & Ors v Inspector General of Police & Ors** (Suit No GJ 929/2017, 31st October, 2017, Coram Mrs Patience Mills-Tetteh J). Stated differently, the respondents herein have previously conceded that the 1st respondent has no power under the statute to extend the interdiction of an officer beyond the statutory limit of three (3). Court stated on page 5 of the certified true copy of the judgment that that:

> "The applicants submitted that since the institution of this application, the respondents have revoked the interdiction of the applicants and called them back to duty signifying their admission of the applicant's position against them."

3.12 It instructive to note that the respondents therein (which included the 1st respondent herein) did not deny this averment. On the contrary, he contended, as captured in Her Ladyship's judgment **@ page 5** of the certified true copy of the judgment that that:

"...the fact that the interdiction is lifted did not operate as a bar to continue with the disciplinary proceedings against the applicants."

3.13 Her Ladyship therefore concluded as follows:

"Having considered both arguments for and against I must say that the respondents acted without due consideration for and against the laws regulating the Police Force (sic). ...[T]he wireless message sent to the respondents did not state any reason for their interdiction and for almost three months there was no attempt for the commencement of the disciplinary proceedings in conformity with Regulation 93(1) of the Police Service Regulations 2012 (CI 76), until the filing of this application...

This application called the respondents to order and but for this application the applicants would have suffered without a hearing or without due process. Disrespect for law and order or rule of law is a danger to democracy. Lay (sic) down procedures must be adhered to and any act without the required legal authority is null and void.

The respondents having admitted that they lack legal authority to extend the period of the interdiction and having revoked the interdiction the application for judicial review is ...granted." (emphasis supplied)

3.14 The position taken by the respondents in the ***Ex parte Basintale*** case (ie the respondents herein) is consistent with their position in ***Ex parte D/Sgt Simon Nyaho*** where His Lordship Koomson J (as he then was stated on page 3 of the certified true copy of the judgment that:

"Respondent admit of the fact that in accordance with Regulation 105(12) of CI 76, interdiction ought to be

lifted after three months if no disciplinary proceedings has commenced…"

3.15 It is obvious from the above analysis that the applicant has a legal right provided for under both CI 76 and the Service Instructions of 2018. It is also quite clear from that mandamus is an appropriate remedy under the circumstances of this case.

Demand and refusal

3.16 My Lords, there is also clear evidence that there has been a clear demand by the applicants which has been met by a refusal of the respondent herein. There was an express demand made by counsel for the applicant as per **EXHIBIT 'B'.** The 1st respondent's express refusal is contained in **EXHIBIT 'C',** namely the letter dated 27th May, 2020.

3.17 In the Supreme Court decision of ***Republic v High Court, Koforidua Ex parte Affum (decd) (substituted by) Akomeah (Frimpong Manso IV and Registrar, Eastern Regional House of Chiefs Interested Parties)*** [2012] SCGLR 78, the apex court held that the refusal to act could either be express or constructive.

3.18 The apex court stated per Atuguba JSC as follows:

"Constructive notice of Refusal

It is a well-accepted principle of law that refusal to act or do a thing may be express, but can also be constructive, in the form of conduct."

3.19 On this same issue of demand and refusal, Date-Bah JSC held in the unanimous decision of the Supreme Court in ***Republic (No 2) v. National House of Chiefs; Exparte Akrofa Krukoko II (Enimil VI Interested Party)(No 2)*** **[2010] SCGLR 134 @ 165 that:**

"I would like to adopt the statement on demand and refusal as a precondition to the grant of mandamus which is made in Halsbury's Laws of England 4th Ed., para. 156 at p. 259 as follows:

> *"**156. Demand for performance must precede application.** As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal. The requirement, however, that before the court will issue a mandamus there must be a demand to perform the act sought to be enforced and a refusal to perform it cannot be applicable in all possible cases, and does not apply where a person has by inadvertence omitted to do some act which he was under a duty to do, and where the time within which he can do it has passed."*

Public duty

3.20 Furthermore, it is quite clear that the duty to revoke the interdiction is public duty.

3.21 The **Constitution (1992)** defines public services under article 190(1) to include the following:

> *"190. (1) The Public Services of Ghana shall include -*
> *(a) the Civil Service,*
> *the Judicial Service,*
> *the Audit Service,*
> *the Education Service,*
> *the Prisons Service,*
> *the Parliamentary Service,*

the Health Service,
the Statistical Service,
the National Fire Service,
the Customs, Excise and Preventive Service,
the Internal Revenue Service,
the Police Service,
the Immigration Service; and
the Legal Service;
(b) public corporations other than those set up as commercial ventures;
(c) public services established by this Constitution; and
(d) such other public services as Parliament may by law prescribe."

3.22 It is respectfully submitted that the 1st respondent, being a member of the Police Service is a public officer, as such he performs a public duty.

Mandamus as an appropriate remedy

3.23 Finally, we submit that the remedy of mandamus is an effective remedy under the circumstances.

3.24 My Lord, it is obvious that the 1st respondent would not perform his statutory duty under Regulation 105(12) of CI 76, unless he is ordered by this Court.

3.25 It is our respectful submission that the respondent acted ultra vires his statutory powers when he refused to revoke applicant's interdiction. The justifications for his refusal are not grounded in law.

3.26 The term *ultra vires* is used to describe any situation in which a public official or body exceeds the scope of his or its statutory power. The 9th edition of Black's Law Dictionary therefore defines the term *ultra vires* as;

"...beyond the powers of, unauthorized, beyond the scope of power allowed or granted... by law."

3.27 Article 23 of the Constitution (1992) incorporates the ultra vires principle. It is there recognised as a breach of a person's right to administrative justice whenever an ultra vires act is committed by an administrative body or official. provides as follows:

> *"Administrative bodies and administrative officials shall act fairly and reasonably* ***and comply with the requirement imposed on them by law*** *and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."*

3.28 Whenever an administrative body or official acts contrary to or outside the scope of "***the requirement imposed on them by law***", any person affected by such act has suffered a breach of their right to administrative justice and is therefore entitled to relief from the Court.

3.29 Judicial attitude towards ultra vires acts was summed up by Lord Green in the case of **Carltona Ltd v Commissioners of Works**[4] thus:

> *"All courts do is to see that the power which it is claimed to be exercised is one which falls within the four corners of the powers given by the Legislature* and to see that those powers are exercised in good faith."

3.30 It is applicant's submission that respondent acted *ultra vires* when he refused to revoke the interdiction imposed on applicant after the expiry of three (3) months as directed by the regulations particularly Regulation 105(12) which states:

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[4] [1943] 2 ALL ER 560

"If after three months of interdiction, disciplinary proceedings are not instituted against the officer, the Inspector-General shall revoke the interdiction and the officer shall resume duty."

3.31 Applicant's case is that, at all times material to the present suit, applicant was not accorded the statutory rights stipulated in the regulations. The only person mandated to perform that duty is the 1st respondent who has refused to perform that duty.

3.32 In the case of ***Awuni,*** Dr. Twum JSC held @ page 566 as follows:

"The next element of the article 23 duty which we need to examine is the duty to comply with the requirements imposed on administrative bodies and officials by law. I understand this element to be additional to what has been discussed above. In other words, administrative bodies and officials, in addition to complying with the rules on procedural fairness embodied in audi alteram partem and its derivatives and independent constitutional obligations (if any) distilled by Ghanaian courts from the duty to "act fairly and reasonably", must comply with all other applicable rules of law. Such other relevant applicable rules of law will often be in the constitutive enactment relating to the administrative body concerned."

3.33 The arguments so far made, put it beyond doubt that 1st respondent acted in excess of his statutory powers when he refused to perform the functions which by virtue of the office he occupies is bound to perform. We rely on the text of the statute (CI 76) and submit that the grounds relied upon by 1st respondent to continue sanctions against the applicant are *ultra vires*, and wrong statutorily as they are inconsistent with Regulation 105(12). Same smacks of reliance on 1st

respondent's substitution opinion contrary to the position espoused in **Chief Constable of North Wales Police v Evans**[5]

3.34 This same principle found expression in the Ghanaian Supreme Court decision of **Professor Stephen Kwaku Asare v Attorney-General & General Legal Council**[6] where the apex court held that good intentions are no substitute for the strict requirements of the law. In that case, the apex court did not shy away from its duty of declaring that the actions of a very revered and respected statutory body chaired by no mean a person than the Chiefs Justice void because same was ultra vires the powers granted the body under state.

3.35 In that case, the 2nd defendant, just like the 2nd respondent in this case, went outside the scope of its statutory powers and introduced entrance examination as a means of selecting qualified students for the Professional Law Course. The court held that although the intentions behind the actions were noble, same could not be allowed to stand because they were ultra vires the powers conferred on the 2nd defendant.

3.36 My Lord, **the entire purpose of CI 76 is for the internal regulation of the Police Service as specified under article 203(2) and (3) of the Constitution (1992)**, as such, the provisions contained therein must be construed within the context contemplated by the Constitution without glosses.

3.37 In fact, the Constitution (1992) further empowers the Police Council in article 203(3)*(e)* to include in such regulations "powers to discipline" personnel internally. In fact, the processes contemplated by CI 76 are akin to what pertains in the military relative internal discipline, which is governed by separate and

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[5] [1982] [1982] 3 All E.R. 141, p. 143 per Lord Hailsham L.C.

[6] Writ No J1/1/2016 22nd June, 2017, Supreme Court [Unreported]

distinct body of legal norms and rules and is special to that institution.

3.38 Thus, Regulation 95 of CI 76 and SI 50(6) & (7) clothe the Ghana Police Service with various means of conducting investigations into the conduct of its personnel and based on such investigations, decide to interdict the officer.

3.39 Accordingly, in instituting disciplinary proceedings, the 1st respondent has been mandated by Regulation 111 of CI 76 to resort to the procedure for instituting criminal proceedings in SI 56 of the Service Instructions of 2018 in dealing with officers accused of criminal offences.

3.40 The above reinforces the fact that disciplinary proceedings based upon which the 1st respondent could interdict officers is purely an internal matter and there is nowhere in SI 56 that such interdiction should continue if no disciplinary proceedings are instituted against the officer.

3.41 Furthermore, my Lord, prosecutions in disciplinary or criminal proceedings according to SI 56(7) relied on by the 1st respondent, are handled by senior police officers (SPOs) which again amplifies the fact that disciplinary or criminal proceedings is purely an internal matter.

3.42 The procedure for instituting and trial of disciplinary offences in the Ghana Police Service is provided for under regulations 93 – 112 of CI 76 and SI 50 of the Service Instructions of 2018.

3.43 In the **Ex parte Sgt Simon Nyaho** case supra, the Court stated at page 9 of the certified true judgment as follows:

> "[Once] a person is interdicted, his emoluments, benefits salaries and even livelihood are most often than not affected for which reason a police officer should not suffer ad infinitum whilst he or she is being

investigated; especially so, when in our jurisprudence a person is deemed innocent until proven guilty. I think it is for that reason that the framers of CI 76 gave a timeline in Regulation 105(12)."

3.44 Although, we have challenges with certain aspects of that decision, we are in perfect agreement with His Lordship Koomson J (as he then was) on his position on interdiction as cited above.

3.45 It follows that the current court trial cannot and must not be the basis for my continuous interdiction. It is important to note that at no point did CI 76 or Service Instructions of 2018 attempt to substitute internal disciplinary proceedings with court proceedings. It stands to reason then that the continuous interdiction of the applicant for the past eleven (11) months despite the fact that he has been granted bail at the High Court is not grounded in law and is prejudicial to the court trial; and in breach of the presumption of innocence under article 19(2) (c) of the 1992 constitution of Ghana.

3.46 Finally, the reference to regulation 94(2) of C.I 76 in the response of the 1st respondent only reinforces the point by the applicant that the interdiction is prejudicial and breaches the presumption of innocence. Regulation 94(2) enjoins the 1st respondent to wait for the facts upon which a member of the service has been convicted in criminal offence in court to be reported to the Police; and "...if satisfied that the conviction has brought the Service into disrepute...shall refer the matter to the appropriate authority."

3.47 Implied in the above regulation is the fact that where 1st respondent unable to institute disciplinary proceedings as in my case, the 1st respondent must wait for the outcome of the court case where there is a conviction as a basis to activate disciplinary criminal proceedings against the officer as specified in regulation 94(2) (a) and (b).

3.48 This means that the 1st respondent cannot continue to hold onto interdiction where his outfit is unable to proceed with disciplinary proceedings under the excuse that the applicant's duties might be "endangering the interest of the service" (Regulation 105(2) of CI 76).

3.49 Thus, the combined effect of Regulations 105(12) and 94(2) of CI 76 is that interdiction without any disciplinary proceedings offends the law as such the 1st respondent must be ordered to revoke the interdiction and wait for the outcome of the trial before court

4.0 Conclusion

In conclusion, the applicant humbly submits that he has amply demonstrated that, his claim is meritorious. The applicant respectfully prays the Honourable Court to grant an order of mandamus to compel the 1st respondent to revoke the interdiction against the applicant.

DATED IN ACCRA THIS 14TH DAY OF OCTOBER, 2020.

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THE REGISTRAR
HIGH COURT (GENERAL JURISDICTION)
ACCRA