IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2025

CORAM: LOVELACE-JOHNSON (MS.) JSC (PRESIDING)

AMADU JSC

ASIEDU JSC

KWOFIE JSC

DARKO ASARE JSC

CIVIL APPEAL

NO. J4/39/2024

12TH MARCH , 2025

THE REPUBLIC

VRS

BANK OF GHANA …..…… RESPONDENT/APPELLANT/RESPONDENT

EX-PARTE: EMMANUEL BABUBOA …….. APPLICANT/RESPONDENT/ APPELLANT

JUDGMENT

ASIEDU, JSC:

[1.0]. My lords, this is an appeal against the judgment of the Court of Appeal delivered on the 23rd November 2022. On the 16th day of October 2019, the Appellant herein, Emmanuel Babuboa, who described himself as a shareholder of TI Microfinance, filed

before the High Court, an originating notice of motion, under Order 55 rule 4(1) of the High Court (Civil Procedure) Rules, 2004, CI.47 against the Bank of Ghana as 1st Respondent and the Governor of the Bank of Ghana as the 2nd Respondent. The originating notice of motion was later amended by the Appellant herein by deleting the name of the 2nd Respondent, the Governor of Bank of Ghana. In the said application, the Appellant sought an order for judicial review in the nature of the following reliefs per the amended notice of motion:

> "(a). A declaration that the decision by the Respondent to revoke the licence of TI Microfinance without complying with the mandatory requirements of section 16(3) of Act 930 renders the said decision null and void and of no legal effect.
>
> (b). A declaration that the decision by the Respondent to revoke the licence of TI Microfinance without complying with section 16(3) of Act 930 contravened articles 23 and 296 of the 1992 Constitution of Ghana and to that extent null and void and of no legal effect.
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> (c). A declaration that, by revoking TI Microfinance licence without giving notice to it of the intention to revoke the licence and the opportunity to be heard, the said revocation by the Respondent breached the rules of natural justice specifically the audi alteram partem rule hence it is null and void and of no effect;
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> (d). An order of certiorari to quash the decision of the Respondent revoking the license of TI Microfinance.
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> (e). An order directing at the Respondent to restore the licence of TI Microfinance.
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> (f). An order of prohibition directed at the Respondent and all its officers, workmen, assigns or privies, from interfering with the lawful activities of TI Microfinance".

The grounds for the application are that:

> "(1). That the purported decision of the Respondent to revoke the license of TI Microfinance is without legal basis and same should be declared null and void and of no effect whatsoever;
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> (2). That the purported decision of the Respondent to revoke the license of TI Microfinance was unlawful, illegal, capricious and abuse of discretion and contrary to the requirements of administrative justice imposed on the Respondent under article 23 of the Constitution;
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> (3). That in the overall circumstances of this application, it is in the interest of justice that the said decision of the Respondent to revoke the license of the TI Microfinance be quashed for being capricious, arbitrary and illegal;
>
> (4). That in the overall circumstances of this application, it is just and equitable that the license of TI Microfinance be restored to it;
>
> (5). That under the circumstances it is fit and proper that the Respondent, their officers, workmen, assigns or privies, are prohibited from interfering with the lawful activities of TI Microfinance".

Upon the service of the processes, the Respondent caused to be filed a motion for an order to set aside the amended originating notice of motion for various reasons deposed to in the supporting affidavit. This application was opposed by the Appellant herein. On the 2nd December 2020, the High Court dismissed the application filed by the Respondent, Bank of Ghana, for an order to set aside the originating notice of motion for judicial review.

Following the dismissal of its application, the Respondent herein filed an appeal before the Court of Appeal on the 10th December 2020. In the said appeal, the Respondent sought

relief in the nature of an order of the Court of Appeal to set aside the ruling of the High Court dated the 2nd December 2020, in which the High Court dismissed the application to set aside the originating notice of motion filed by the Appellant herein.

[2.0]. After the hearing of the appeal, the Court of Appeal came to the conclusion that since the Appellant, ultimately, sought to challenge the revocation of its licence by the Respondent, Bank of Ghana, section 141 of the Banks and Specialized Deposit-Taking Institutions Act, 2016, (Act 930) provides that, the Appellant shall resort to arbitration under the Alternative Dispute Resolution Act, 2010, (Act 798). The Court of Appeal reasoned thus, at pages 275 to 277 of the record of appeal:

> "The law stipulates that in the event of a dispute concerning revocation of licence, the matter shall be referred to an arbitration under the Alternative Dispute Resolution Act, [Act 798]. In the circumstance, we hold that the alternative remedy of arbitration as provided in S. 141 of Act 930 is apt and shall apply to this case. That provision of the law stipulates:
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> "141. Where a person is aggrieved with a decision of the Bank of Ghana in respect of
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> a) matters under Sections 107 to 122 or sections 123 to 139;
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> b) withdrawal of the registration of a financial holding company;
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> c) matters which involve the revocation of a license of a bank or a specialized deposit-taking institution; or
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> d) an action under Sections 102 to 106 and where the Bank of Ghana determines that there is a serious risk to the financial stability or of material loss to that bank or specialized deposit-taking institution or financial holding company and that person desires redress of such grievances, that person shall resort to arbitration

under the rules of the Alternative Dispute Resolution Centre established under the rules of the Alternative Dispute Resolution Act, 2010 (Act 798).

By this provision of the law, a party aggrieved with the decision of Bank of Ghana and desires to seek legal redress shall resort to arbitration. For, the Arbitrator is vested with power under the Alternative Dispute Resolution Act, [Act 798] commonly referred to as "the ADR Act", to make the appropriate orders including award of damages if he so finds that the respondent was entitled to it, which orders the High Court has power to enforce them. The provision of the law uses the word "shall", and that makes the resort to arbitration mandatory. In the said arbitration, the issue shall be whether or not the licence was properly revoked which may result in the award of damages in favour of the affected institution if the case was proved to the satisfaction of the Arbitrator. The issue shall not be, as it were, for enforceability of Articles 33 of the 1992 Constitution.

It bears stressing that in referring the matter to arbitration, the jurisdiction of the High Court is not completely ousted if we were to hold that the applicant [the respondent herein] properly invoked the supervisory jurisdiction per Article 141 of the 1992 Constitution and Order 55 of the High Court [Civil Procedure] Rules, 2004 [CI 47]. The referral by the court to arbitration is only meant to suspend the consideration and determination in that forum. For, on the authorities, ouster clauses in documents and statutes do not oust the entire jurisdiction of the courts. Rather, it suspends or postpones the original as well as the supervisory jurisdiction of the High Court. As a rule of procedure, after the Arbitrator has dealt with the matter, the case comes back to the court in the final analysis for enforcement of the awards of the Arbitrator. Therefore, the order of the court to refer the matter to arbitration bears no brand of invalidity upon its forehead.

In the light of this legal proposition, we roundly disagree with the view that the instant case is non-arbitrable as canvassed by the respondent. This is because, as sufficiently explained supra, the respondent never made enforceability of Article 33 of the Constitution a ground for judicial review. The Arbitrator has the power to determine all issues the case raises except the enforceability of fundamental human rights under Article 33. Since the law, Act 930, has provided a remedy for an aggrieved person or entity to resort to arbitration, the applicant is enjoined by law to submit himself to arbitration. For, after all, it is the duty of the courts to uphold Acts of Parliament. It has been said that the court are the servants of the legislature in terms of construing laws passed by Parliament.

The appeal, therefore, succeeds in its entirety on this ground alone".

Finally, the Court of Appeal concluded that:

"In summary, the application for an order for certiorari in the instant case fails and is hereby dismissed on the following grounds:

1. the application was procedurally flawed on account of the infractions stated supra;
2. an application for judicial review is of a special jurisdiction and is not pro tanto granted even where the technical grounds have been established. With the appointment of the Receiver in May 2019 who is now in charge of the management of the affected institutions listed in Exhibit EB, it shall be inappropriate to issue an order of certiorari; and
3. there is an alternative remedy under Act 930. The respondent is enjoined to submit himself to arbitration.

Consequently, the appeal is allowed in its entirety. The ruling of the lower court is set aside together with its consequential orders".

[3.0]. It ought to be pointed out that, the application for the exercise of the powers of the High Court, to order judicial review was not heard by the High Court and no judgment or order was given by the High Court with respect to that application which was the basis for the originating notice of motion filed before the High Court. It is also clear from the record of appeal that, the said application for judicial review against the decision of the Respondent herein was not the subject matter of the appeal before the Court of Appeal and indeed, the parties to the appeal, particularly, the Appellant herein, was not heard on his application. It implies, therefore, that there was no basis for the elaborate discussion that the Court of Appeal devoted to the analysis of the application for certiorari as if that was the subject matter of appeal before the Court of Appeal. It follows, therefore, that the dismissal of the originating notice of motion or the application for judicial review by the Court of Appeal was wrongful, since that was not the matter before the Court of Appeal, and since the parties thereto were not heard on that application. For this reason alone, we hold that the judgment of the Court of Appeal is not borne out by the record before the Court and should on that score be set aside.

[4.0]. More importantly, since the Court of Appeal held that section 141 of the Banks and Specialized Deposit-Taking Institutions Act, 2016, (Act 930), enjoined the Appellant herein to resort to arbitration where he challenges or is aggrieved by the revocation of the licence of the TI Microfinance by the Respondent herein, it did not lie within the powers of the Court of Appeal to dismiss the case of the Appellant. The Court of Appeal should have stayed proceedings before the High Court and remitted the case to the High Court with an order that the parties go to arbitration as required by section 141 of Act 930. That

would have been in accord with section 7, especially subsection 5 of the Alternative Dispute Resolution Act, 2010, (Act 798) which provides that:

> "7. Reference by court
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> (1) Where a court before which an action is pending is of the view that the action or a part of the action can be resolved through arbitration, that court may with the consent of the parties in writing, despite that there is no arbitration agreement in respect of the matter in dispute, refer the action or any part of the action for arbitration.
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> (2) A reference under subsection (1) shall state
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> (a) the reasons for the reference;
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> (b) the nature of the dispute;
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> (c) the monetary value of the claim; and
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> (d) the remedy sought,
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> and shall have attached copies of the pleadings and any other documents the court considers relevant to it.
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> (3) Where at the time of reference under this section pleadings are closed, the pleadings shall be deemed to be the claim, defence, reply, counterclaim and defence to counterclaim as the case may be in the arbitration proceedings.
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> (4) For the purpose of a reference under this section the plaintiff in the original action shall be the claimant and the defendant shall be the respondent in the arbitration.

(5) Where in any action before a court the court realises that the action is the subject of an arbitration agreement, the court shall stay the proceedings and refer the parties to arbitration".

Even though the tenor of the provisions in section 7 of Act 798 suggests that it is most applicable where the action was began by the issuance of a writ of summons, since in this case, section 141 of the Banks and Specialized Deposit-Taking Institutions Act, 2016, (Act 930), specifically enjoins aggrieved parties to resort to arbitration under the rules of the Alternative Dispute Resolution Centre established under the rules of the Alternative Dispute Resolution Act, 2010, (Act 798), an order staying proceedings with a subsequent order for the parties to go for arbitration is most appropriate.

[5.0]. For the above reasons, therefore, we hold that the appeal succeeds. We set aside the judgment of the Court of Appeal delivered on the 23rd November 2022, and consequently order that the case be remitted to the High Court for re-trial.

(SGD.) S. K. A. ASIEDU
(JUSTICE OF THE SUPREME COURT)

(SGD.) A. LOVELACE-JOHNSON (MS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

(SGD.) H. KWOFIE
(JUSTICE OF THE SUPREME COURT)

(SGD.) Y. DARKO ASARE
(JUSTICE OF THE SUPREME COURT)

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