

SUSTINERI
— ATTORNEYS —

CORPORATE · TRANSACTIONS · DISPUTES · TAX



LegalBite

October, 2023

www.sustineriattorneys.com

FAILURE TO ENDORSE A VALID SOLICITORS LICENCE ON PROCESSES FILED IN COURT

Case Title: EMBALINKS TELECOM SERVICES LTD. v. CAL BANK LIMITED
Suit Number: SUIT NO. J4/70/2022
Date: 22nd March 2023
Court: Supreme Court

RELEVANT FACTS

The Plaintiff's case as recounted by the Honourable Court, is that sometime in 2013, it obtained a bank guarantee and a credit facility in the sum of One Million Ghana Cedis (GH¢1,000,000.00) from the Defendant Bank. Plaintiff could not service the facility as agreed, hence, there was an agreement between the parties for the Plaintiff to convert the Credit facility into an overdraft facility, which was done. On 28th March 2016, the Plaintiff issued a Writ of Summons against the Defendant for a declaration that the interest/penal charges clauses contained in the facility agreement between the parties were unconscionable and to that extent unenforceable and prayed for other consequential reliefs as well.

High Court Decision

On 28th February 2020, the High Court, Sekondi, entered judgment in favour of the Plaintiff in terms of its reliefs. The High Court held in part that the interest/penal clauses in the agreement were unconscionable as contended by the Plaintiff and proceeded to order the Defendant bank to release forthwith all title deeds and any other property used as collateral in securing the loan agreement back to the Plaintiff company.

Court of Appeal Decision

On appeal, the Plaintiff raised for the first time an issue in respect of the legal propriety and competence of the Amended Statement of Defence filed for and at the instance of the Defendant before the trial high court on the basis that the lawyer who signed the said process endorsed it with an expired solicitors' license. In its judgment, the Court of Appeal reversed the decision of the trial high court and also dismissed the objection to the competence of the

Amended Statement of Defence which was raised for the first time on appeal by the Defendant/Appellant, and held in part that the Plaintiff sat by and allowed a full-scale plenary trial to be conducted with extensive evidence being adduced upon the alleged impugned Statement of Defence without raising timeous objection and therefore the attack against the Statement of Defence being void for being indorsed with an expired solicitor's licence is insensitive to current jurisprudence on the subject.

Supreme Court Decision

Dissatisfied with the decision of the Court of Appeal, the Plaintiff then appealed to the Supreme Court on five grounds including ground numbered (E), which was to the effect that the Court of Appeal mis-applied the ratio of the Supreme Court's decision in the case of *THE REPUBLIC VRS THE REGISTRAR & PRESIDENT OF THE NATIONAL HOUSE OF CHIEFS, KUMASI & ANOR: EX PARTE EBUSUAPANYIN KOJO YABOAH* [2018] 126 GMJ 1. On this ground of appeal, the Supreme Court resolved and held as follows:

1. *"...The premise of this ground is the Plaintiff's objection to the Amended Statement of Defence filed by the Defendant at the trial court. The objection we observe, was never raised at the trial court, but raised for the first time on appeal at the Court of Appeal. Put differently, the defectiveness or otherwise of the Statement of Defence was never an issue before the trial court. Plaintiff's attack against the Statement of Defence is that the Solicitor's licence number indicated on the said Statement of Defence had expired at the time it was filed. This, according to the Plaintiff, is sufficient evidence that at the time of filing the Defence, Counsel for the Defendant had not renewed his Solicitor's Licence...Without a doubt, the Solicitor's Licence number referred to by the Plaintiff is what appears on the Amended Statement of Defence filed on behalf of the Defendant. On its face, one may infer that it relates to the previous year. That, however, remains an inference."*

2. *"...Looking at the substance of the objection, it will clearly warrant adducing and receiving positive evidence to decide. Therefore, not having made this an issue and thus having allowed the Defendant's Solicitor to proceed with the trial, the Plaintiff cannot be heard on appeal for the first time, that the Defendant's Counsel was not licensed for that year of practice. Accepting Plaintiff's supposition will mean that it does not matter that the said Solicitor has renewed his licence but in so far as he mistakenly indicates the old Solicitors' Licence number on the process, it renders the Defence a nullity. Such thinking is not legally tenable and does not pursue the substance of the law.... The issue therefore is, was Defendant's Counsel issued with a Solicitor's Licence at the time he filed his Amended Statement of Defence? This issue, however, was never an issue for trial as aforesaid, and so the necessary evidence in proof of same was not considered. Plaintiff acquiesced and now seeks to adopt unpleasant technicalities to obviate justice."*

3. *“...It must be restated that the endorsement of the Solicitor’s Licence on court processes is not a legal requirement within the meaning of Section 8 of the Legal Profession Act, 1960 (Act 32). The endorsement of an expired licence number will only raise rebuttable presumption that the lawyer who filed the process may not be eligible at the time. This is merely presumptive because an expired licence may have been endorsed in error. Without provoking the issue of eligibility of the Defendant’s lawyer to file the Amended Statement of Defence at the trial court, the Plaintiff could not be heard to raise it for the first time on appeal at the court below nor in this Court because proof of same would be required by adducing fresh evidence...”*

Comments

By this decision the Supreme Court has no doubt redefined the contours of the effect and applicability of its previous decisions on the legal effect of a lawyer not endorsing a process filed in court with a valid license in cases such as the Republic v High Court (Fast Track Division) Accra: Ex Parte Teriwajah & Korboe [2012-2014] 2 SCGLR 1247, , The Republic V. The Registrar & President Of The National House Of Chiefs, Kumasi & Anor: Ex Parte Ebusuapanyin Kojo Yaboah [2018] 126 GMJ 1 and Henry Nuerthey Korboe v. Francis Amosa [2016] DLSC5618. In the Korboe v. Amosah case, the Supreme Court held that a lawyer who did not have a solicitor’s license was not entitled to practice for any giving year and any process filed by that lawyer will be null, void and of no legal effect whatsoever. However, in this case the Supreme Court appears to be saying that any objection to the competence of a process on the basis that the lawyer did not have a valid license ought to be raised at the earliest opportunity, preferably before the trial court and perhaps may not even be raised on appeal for the first time unless it was raised and argued before the trial court for its opinion. As noted earlier, the Supreme Court has by this decision provided much needed clarity on this aspect of Ghanaian jurisprudence and it is hoped that lawyers and all stakeholders would be guided accordingly.