

SUPREME COURT

JUDICIAL BENCH

COMMON LAW DIVISION

File No .142/COM/CIV/2018

Appeal No 340/CIV/2010

Judgment No.13/COM

of 03<sup>rd</sup> June 2021

IN THE MATTER

BETWEEN

NATIONAL SOCIAL INSURANCE FUND(CNPS)

YOUNG MESAPE EWANG

And

NDAWARA TEA ESTATE

COURT DECISION:

The Court:

- The Appeal of National Social Insurance Fund and YOUNG MESAPE EWANG succeeds and consequently the Judgment of the Court of Appeal of the North West in Suit No. CANWR/84/2009 delivered on the 06/05/2010 is declared null and void and quashed;
- Re-examining and determining the appeal before the said Court of Appeal;

- On the merits, Further decides;

- The appeal of National Social Insurance Fund and Young Messape Ewang is admissible;
- The appeal of National Social Insurance Fund and Young Messape Ewang succeeds;
- Ruling No. HCBO/02/09 delivered on the 19/03/2009 by the High Court of Boyo is quashed for want of jurisdiction;
- The Parties are placed in the same position in which they were before the institution of the suit No.HCBO/02/09 before the High Court of Boyo;.

- The Respondent (Ndawara Tea Estate) shall bear the costs of these proceedings.

- Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;

Delivered by their Lordships:

BEA Abednego KALLA.....PRESIDENT,

James George NGWENE.....JUDGE;

NYIAWUNG Alexander FOBELAH.....JUDGE;

In the presence of;

MBUA Alexander ASSANGA.....Advocate General;

KOME Judith.....REGISTRAR.

- REPUBLIC OF CAMEROON -

- IN THE NAME OF THE PEOPLE OF CAMEROON

In the year two thousand and twenty-one, and on the 03<sup>rd</sup> day of June

The Common Law Division of the Judicial Bench of the Supreme Court sitting in its Ordinary session open to the public, delivered the following judgement:

IN THE MATTER

BETWEEN

NATIONAL SOCIAL INSURANCE FUND and YOUNG MESSAPE EWANG - Appellants, represented by Barrister KEMENDE Henry of Posterity Law Office BAMENDA;

ON THE ONE HAND

AND

NDAWARA TEA ESTATE - Respondent, represented by Barrister SULE ZAKARI Advocate in BAMENDA;

ON THE OTHER HAND.

THE COURT

Mindful of sections 35 and 53 (2) of Law No 2006/016 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court;

Mindful of the memorandum of written submissions filed on the 11 January 2016 by Barrister KEMENDE Henry GAMSEY;

Mindful of the memorandum of written submissions in reply filed by Barrister SULE ZAKARI of Counsel for the Respondent;

Hearing and determining the appeal filed on the 02<sup>nd</sup> June 2010 at the Registry of the Court of Appeal of the North West Region, Barrister KEMENDE Henry an advocate at Posterity Law Office Bamenda, acting for and on behalf of NATIONAL SOCIAL INSURANCE FUND & YOUNG MESSAPE EWANG, appealed to the Supreme Court against judgment N°. CANWR/84/2009 delivered on the merits in respect of the parties on 05<sup>th</sup> May 2010 by the afore-mentioned Court adjudicating on a civil matter between his clients and NDAWA TEA ESTATE;

Mindful of the submissions of the Procureur General at the Supreme Court, Mr. Luc NDJODO;

The appeal was declared admitted in judgment No 137/EP of the 12<sup>th</sup> March 2020

delivered by the Panel of Joint Divisions of the Judicial Bench of Supreme Court;

### **FACTS OF THE CASE**

On the 6<sup>th</sup> of January 2009 the Respondent (NDAWARA Tea Estate) filed a civil suit (HCBO/02/07) by way of an originating summons praying the High Court of BOYO Division to interpret Law No.2001/017 of 18/12/2001 to overhaul the procedures of recovery of social insurance Contribution and Joint Ministerial Order No. 035 of 12<sup>th</sup> July 2002 to lay down the terms of implementation of the aforementioned law, by answering the question "Whether the National Social Insurance Fund, acting through its officer namely Young Mesape Ewang can without prior notice embark on an arbitrary assessment of the Social Insurance contributions of the Plaintiff."

Ndawara Tea Estate further prayed the Court for the following relief if the question is answered in the negative:

1. That the arbitrary assessment report of 07/11/2008 signed by the Director General of CNPS in which Ndawara Tea Estate is enjoined to pay the sum of 840.927.374 francs to CNPS as social Insurance contributions be declared null and void.
2. That costs of 20million francs be awarded against CNPS in favour of Ndawara Tea Estae.

Before the hearing of the matter got underway, Barrister Kemende Henry raised a preliminary objection that the High Court of Boyo lacked jurisdiction to hear the matter. The said Court ruled as follows on the Preliminary objection:

“ The powers to interpret, construct or read into the minds of the legislator are the sole reserve of the High Court of law in our legal system.

This of course is at first Instance. There is no statute, no piece of Legislation in laws of this land that expressly or impliedly ousts this jurisdiction from our High Courts. I know of none.

That said and without much ado, as the cause of action before me is for interpretation, I find that the P.O is misconceived and it is hereby overruled.”

Aggrieved by the above ruling the National Social Insurance Fund appealed to the Court of Appeal of the North West. After the exchange of submissions between the parties and the hearing of the matter, the Court of appeal delivered its judgment on the 06/05/2010. Without answering the issues raised and argued in the two grounds of appeal by the appellants, the said Court summarily stated the reasons and verdict of its judgment as follows:

“ Learned Counsel for the appellants argued grounds “A” and “B” together and Counsel for the respondents followed the same order.

Both Counsel repeated and adopted their written submissions in CANWR/83/2009-National Social Insurance Fund vs. ELBA RANCH & 1OR as their written submissions in the instant case named as CANWR/84/2009-National Social Insurance Fund & 01 OR Vs. NDAWARA TEA ESTATE.

This Court also adopts the reasoning, conclusion and the judgment in the instant case. The two grounds of appeal, which are the same as those of CANWR/83/2009, lack merit and they are hereby dismissed and with it the entire appeal.

**Court Order:**

1. The High Court of Boyo has the jurisdiction to determine HCB/02/09-NDAWARA TEA ESTATE Vs. NATIONAL SOCIAL INSURANCE FUND (CNPS) & YOUNG MESAPE EWANG,
2. Each party shall bear their costs."

On the 11<sup>th</sup> of January 2016, Barrister KEMENDE Henry of Counsel for the appellants filed a memorandum of submissions in support of the appeal.

The Submissions in support of the appellant's appeal raised in the Submissions in support of the instant appeal three grounds of appeal;

We will proceed to examine the said grounds;

Ground A: The Learned Justices of the Court of Appeal erred in Law to hold that the High Court of

Boyo has jurisdiction to entertain a clear and manifest social insurance matter.

Section 53(2) of Law No.2006/016 of 29 December 2006, to lay down the organisation and functioning of the Supreme Court provides:

"The duly stamped memorandum of submissions in support of the appeal shall cite the provision of the Law violated and argue the Legal grounds of appeal."

By virtue of the provisions of the law cited above, for a ground of appeal to be admissible, the memorandum of submissions in support of the said ground must cite the law or principle of law alleged to have been violated, misapplied or misinterpreted and must contain arguments in support of the said ground.

In other words, this implies that not only must the said memorandum reproduce fully without errors, the legal provision or legal principle alleged to have been violated but it must explain how or in what way the said provision of law or legal principle was violated or wrongly applied by the Court that delivered the judgment on appeal.

In the memorandum of submissions in support of the appeal Counsel for the Appellant has reproduced without errors the provisions of Article 14(1) of Ordinance No. 73/17 of 22 May 1973 to Organise Social Insurance in Cameroon and Article 15(1) of the Joint Ministerial Order No.035 of 12 July 2002

of the Ministers of Labour and Social Security and Finance to lay down the clauses of implementation of Law No.2001/017 of 18 December 2001 to overhaul the procedures of recovery of Social contributions, which provisions unequivocally and succinctly state that the Reprieve Committee and the Social Insurance Dispute Commission have exclusive jurisdiction to hear and determine suits concerning the assessment and the recovery of social Insurance contributions. The said Counsel however failed to explain how or what way the Court of Appeal of the North West violated the provisions of law in question.

In the instant case, the memorandum of submissions in support of ground one failed to comply with the mandatory provisions of section 53(2) of law No. 2006/016 of 29 December 2006 cited above. The said ground is thus inadmissible.

#### Ground "B" and "C"

"The Learned Justices of the Court of Appeal of the North West Region erred in law to have held that that there was a flagrant violation of Social Insurance Text whereas the question for determination before them was whether or not the High Court of BOYO being a Court of Common Law jurisdiction, has the necessary jurisdiction to adjudicate on the matter before it which has to do with Social Insurance."

Upon examining grounds "B" and "C" reproduced in extenso above, it cannot by any stretch of imagination be said that the above are two grounds of appeal. It is only one ground albeit a flawed ground. The said ground has the following flaws:

Firstly it is palpably wrong to set out one ground of appeal and argue that there are two grounds.

Secondly, in the memorandum of submissions in support of the said "grounds "B" and "C", the appellants failed to cite or reproduce any provision of law or legal principle allegedly violated, misapplied or misinterpreted by the said Court of Appeal, let alone explaining how or in what way the said provisions were violated, misinterpreted or wrongly applied. Section 53(2) of the afore cited law was thus not complied with.

Finally the alleged grounds "B" and "C", are not raised in conformity with the provisions of section 35(1) (a) to (i) of Law No. 2006/016 of 29 December 2006 mentioned above which provides:

"35 (1) Grounds on which an appeal may be based includes:

- (a) Want of jurisdiction;
- (b) Misinterpretation of the facts of the case or the case file;
- (c) Default, contradiction or insufficient grounds;



(d) Irregularity

- Subject to the provisions of section 470(1) of the criminal Procedure Code, where the ruling appealed against was not made by the number of judges prescribed by the law or was may by judges who did not sit in all the hearing;
- Where the Legal Department was not given the rights of audience or was not represented;
- Where the rule governing the public nature of the hearing subject to exceptions provided for by the law has not been complied with;

(e) Breach of Law;

(f) Abuse of office;

(g) Non reponse to the submissions of the parties or the requisitions of the Legal Department;

(h) Violation of a general principle of Law;

(i) Non-compliance with the jurisprudence of the Supreme Court which ruled is a Panel of Joint Divisions of a Bench or of Joint Benches."

In the light of the above, it is glaring that grounds "B" and "C" are also inadmissible as it is not of the grounds upon which an appeal to the Supreme Court may be based.

The judgment of the Court of appeal of the Northwest is however irregular. It would thus be proper to raise a ground of appeal suomotu pursuant to section 35(2) of Law No. 2006/016 of 29

December 2006 to lay down the organisation and functioning of the Supreme Court.

**Ground of appeal raised suomotu:** Insufficient Grounds - Section 35(1) (c) of Law No.2006/016 (supra) as read with Section 7 of Law No. 2006/015 of 29 December 2006 on Judicial Organisation:

Section 7 of the above law provides that:

"All judgments shall set out the reasons upon which they are based in fact and in Law. Any breach of this provision shall render the judgment null and void."

The court of appeal of the North West in its judgment delivered on the 06<sup>th</sup> of May 2010 held as follows:

"The High Court of BOYO has jurisdiction to determine HCBO/02/09-NDAWA TEA ESTATE Vs. NATIONAL SOCIAL INSURANCE FUND(CNDS) and YOUNG MESAPE EWANG."

The reasons set out in the said judgment to ground the above decision are as follows:

"Learned Counsel for the appellants argued grounds A and B together; Counsel for the Respondents followed the same order.

Both Counsel repeated and adopted their written submissions in CANWR/83/2009-National Social Insurance Funds vs. ELBA Ranch and 1OR as their written submissions in the instant case named

as CANWR/84/2009-National Social Insurance & 1 OR Vs. NDAWARA Tea Estate.

This Court also adopts the reasoning, conclusion and the judgment in CANWR/83/2009-National Social Insurance Fund vs. ELBA Ranch and 1 OR as the judgment in the instant case. The two grounds of appeal, which are the same as those of CANWR/83/2009, lack merit and they hereby dismissed and with it the entire appeal."

The above reasons set out by the said Court of appeal as the ratio decidendi of its judgment are not only insufficient and erroneous, but above all most unfortunate.

The said reasons are insufficient because the Lower Court failed to set out in its judgment the legal grounds upon which its judgment is based.

In other words, no provision of law or legal principle was referred to, to buttress its decision.

In the same vein, no facts were set out in the said judgment to justify the decision of the Court that the High Court of Boyo has the jurisdiction to hear and determine suit No. HCBO/02/09. It is from the facts set out in the judgment to ground its decision that it will be relatively easy to know whether the issues raised in the grounds of appeal for determination relate to territorial Jurisdiction or subject matter Jurisdiction. The Lower Court failed to do so, let alone attempting to relate the

applicable law to the facts of the case.

It was erroneous for the Court of appeal of the North West to adopt the reasoning, conclusion and the judgment in a previous case namely suit No. CANWR/83/2009 as the judgment in suit No. CANWR/84/2009 without first of all setting out the grounds of appeal, replying to all the issues raised in the said grounds, stating its findings and above all setting out the reasons in fact and in law for its decision.

It was also erroneous for the said Court to adopt the reasoning, conclusion and the judgment in a previous case as its judgment in the instant matter simply because the two grounds of appeal are the same as those in the suit relating to the said previous judgment, without first of all, stating that the reasons in fact and in law upon which the previous judgment was based and without stating that the legal issues raised in the grounds of appeal concerning the previous judgment are the same legal issues that were raised in suit No. CANWR/84/2009 before them. Grounds of appeal in two suits may be the same but the legal issues raised in connection with the said grounds may not necessarily be the same.

Finally the reasons advanced by the Court of appeal of the North West to ground its decision are most unfortunate because from its judgment in suit No.

CANWR/84/2009 it is not possible to know the decision in suit No. CANWR/84/2009 which it adopted, It is not also possible to know the ratio decidendi of the said previous judgment. How can we appraise the judgment which is the subject of the instant appeal? The said judgment is palpably irregular regarding its form and its substance in the face of the facts and circumstances pointed out above? In the light of the foregoing it is abundantly clear that the reasons set out by the Court of Appeal of the North West to ground its judgment were insufficient. Insufficient reasons are equivalent to no reasons and this is tantamount to a violation of section 7 of Law No 2006/015 of 29 December 2005 on Judicial Organisation.

The ground of appeal raised suo motu, is thus founded and the judgment appealed against must be declared null and void and quashed. The Respondents must bear the costs of these proceedings.

Besides, we consider it significant to make it abundantly clear that it is the inherent duty of all Courts to interpret the laws applicable to the issues raised before them for determination. It is patently wrong for the Court of Appeal of the North West to adopt or confirm the decision of the High Court of Boyo that "the powers to interpret, construct or read into the minds of the Legislator are the sole reserve of High Courts in our Legal system and that there is no statute or piece of

Legislation in the Laws of this land that expressly or impliedly outs this jurisdiction from our Court.”

By virtue of section of section 14(1) of Ordinance No.73/17 of 22<sup>nd</sup> May 1973 to organise social insurance in Cameroon, the National disputes Commission of the National Social Insurance Fund has exclusive jurisdiction to hear and determine disputes relating to the assessment and recovery of social insurance contributions or dues. The action before the National Social Insurance Disputes Commission is admissible only after the Reprieve Committee set up at the level of the management of the Board of Directors of the National Social Insurance Fund has been seized of the matter pursuant to section 20(1) of Joint Ministerial Order No.035/METPS/MINEFI of 12 July 2002 of the Ministers of Labour and Social Security and Finance to lay down the terms of implementation of Law No. 2001/017 of 18 December 2001 to lay down the procedure for the recovery of Social Insurance contributions.

A High Court cannot and should not under the guise of interpreting a statute usurp the functions of the above bodies (the Reprieve committee and the National Social Insurance Disputes Commission) vested with exclusive Jurisdiction to hear and determine disputes concerning the assessment and recovery of Social Insurance contributions or dues. To hold otherwise will be tantamount to perilously getting close to accepting that a High Court has

jurisdiction to interpret Law No.2006/022 to lay down the organisation and functioning of Administrative Courts and can make orders setting aside Administrative acts which are matters exclusively within the Jurisdiction of Administrative Courts.

The facts in issue before the High Court of Boyo were whether the Social Insurance contribution which the Respondents were requested to pay were assessed arbitrarily or not. If a High Court must interpret a statute, it must also have jurisdiction to make the declarations and consequential orders prayed for in the suit. An originating summons cannot be used as an engine of fraud for High Courts to entertain suits in respect of which they have no jurisdiction.

The judgment of the Court of Appeal concerned the issue whether the High Court of Boyo had jurisdiction to hear and determine suit No. CANWR/84/2009-National Social Insurance and 1OR VS.NDAWARA TEA ESTATE. This was the only issue submitted to the said Court for adjudication. A decision on jurisdiction will be on the merits if it determines a matter once and for all. The provisions of section 67(2) of Law No. 2006/016 of 29 December 2006 referred to above, are hereby invoked and the matter shall be re-examined and determined on the merits on the issue whether the High Court of Boyo has or lacks Jurisdiction to hear the suit.

Considering the report of the rapporteur, Mr WANKI Richard TSENIKONTSA (JSC), the President of the Common Law Division of the Supreme Court;

Considering that Mr MBUA Alexander ASSANGA, Advocate General at the Supreme Court, representing the Legal Department, addressed the Court;

Considering that the appellants, and the Respondents were duly served through their Counsel to appear before the Court for the hearing of this appeal the Court and they failed to do so;

Considering that the instant judgment is being delivered in a public hearing after having deliberated on the matter in accordance with the law;

### **UPON THESE GROUNDS**

- The Appeal of National Social Insurance Fund and YOUNG MESAPEP EWANG succeeds, and consequently the Judgment of the Court of Appeal of the North West in Suit No. CANWR/84/2009 delivered on the 06/05/2010 is declared null and void and quashed;
- Re-examining and determining the appeal before the said Court of Appeal;



- On the merits, Further decides;
  - The appeal of National Social Insurance Fund and Young Messape Ewang is admissible;
  - The appeal of National Social Insurance Fund and Young Messape Ewang succeeds;
  - Ruling No. HCBO/02/09 delivered on the 19/03/2009 by the High Court of Boyo is quashed for want of jurisdiction;
  - The parties are placed in the same position in which they were before the institution of the suit No. HCBO/02/09 before the High Court of Boyo;.
  - The Respondent (Ndawara Tea Estate) shall bear the costs of these proceedings.
  - Orders the Registrar-in-Chief of the Judicial Bench of the Supreme Court to notify a copy of this judgment to the Procureur General at the Court of Appeal of the North West Region and to the Registrar in Chief of the said Court for inscription or mention in their respective records;
- So has it been judged and pronounced by the Common Law Division of the Judicial Bench of Supreme Court in its open ordinary session

held on the third day of June two thousand and twenty-one composed of their Lordships;

**BEA Abednego KALLA.....PRESIDENT,**

**James George NGWENE.....JUDGE;**

**NYIAWUNG Alexander FOBELAH.....JUDGE;**

**In the presence of Mr MBUA Alexander ASSANGA, Advocate General at the Supreme Court, representing the Legal Department;**

**And with the assistance of Mrs KOME Judith Registrar;**

**In witness whereof, the judgment has been signed by the President, the Judges, and the Registrar;**

**Inappropriate words cancelled- none;**

**THE PRESIDENT, THE JUDGES, THE REGISTRAR.**