A CRITICAL EXAMINATION OF CONTENTIOUS MATTERS SUBJECT TO "APPEAL" AND "POURVOIR EN CASSATION" BEFORE THE ADMINISTRATIVE BENCH OF THE SUPREME COURT OF CAMEROON

Written By ***Kengo Ferdrick Angene****

Ph.D Research Scholar in Public Law, Faculty of Law and Political Science, University of Dschang, Dschang, Cameroon

ABSTRACT

It has often been said that the law is no respecter of persons and that no one can plead his own ignorance as a defense to any act or omission. Therefore, bearing in mind that the administrative bench of the Supreme Court of Cameroon has been clothe with a double role since 2006 in handling contentious matters subject to "appeal" and those subject to "cassation", the burning question which begs for an answer is, which are those contentious matters that may be appealed against? And, how can they be distinguished from those subject to "cassation"? There is no gainsaying therefore, that these two fundamental questions constitute a master plan in the understanding of the question of contentious matters capable of being appealed against as distinguished from those subject to "Cassation" thereby deserving a greater attention. In this vein, the main objective of this article is to critically examine Contentious Matters Subject to "Appeal" and those subject to "Cassation" before the Administrative Bench of the Supreme Court of Cameroon. The methodology employed in this article is purely doctrinal which is based on both primary and secondary sources of data. This article concludes with some robust recommendations which if effectively implemented and enforced will go a long way to breach the gap between theory and practice in administrative litigation law of Cameroon.

Keywords: *Critical, Examination, Contentious, Matters, Appeal, Pourvoir en Cassation, Administrative, Bench, Supreme, Court, Cameroon.*

INTRODUCTION

Although the dividing line between an Ordinary Appeal and a "Window Appeal" is thin, each is a complete body or procedure of its own. The constitutional reform of 1996 brought about several institutional adjustments in Cameroon. This explains why in the domain of administrative justice, the provisions of the 1972 ordinance, and the law of 1975 had to be amended.[i] From an organic point of view, the segmentation of the administrative justice system has introduced a delocalization of the trail court in the region and, the administrative bench of the Supreme Court which used to be a court of original jurisdiction has become a second degree jurisdiction in contentious administrative procedure.[ii] The 1996 reform took a decisive twist following the advent of the 2006 statute that is when competence to hear an appeal devolved upon the administrative bench"[iii]

In that light, it is settled that "Decision delivered at first instance under conditions provided for by separate instruments, those delivered at first instance in electoral matters and in urgent applications, shall henceforth be subject to appeal before the administrative bench with the time limits provided for by the law laying down the procedure before the administrative bench of the supreme court".[iv]

Therefore, an appeal as used in this context must be understood as the taking of an administrative dispute provided for by statute from the subordinate court within the administrative rang to a superior court, which in this case, has in principle been since 2006, the administrative bench of the Supreme Court. This should be with a view to doing or causing to be done that which the subordinate court should not be confused with that commonly referred to in French language as "*pourvoi en cassation*". Unfortunately, the English version of the 2006 statute has loosely translated this latter method as appeal thereby rendering the whole show complex for purely common law practitioners as well as law students. What should be noted is that, in matters of administrative litigation an appeal does not operate on all the decisions of the trial court.

Unless provided for by the law, redress before a superior court by way of an appeal may not be available to a dissatisfied litigant at all times, for it to be admissible, such as appeal must operate on a decision handed down at first instance, that is what is known in the French law as "*decision rendue en premier resort* [35]" as opposed to judgments delivered as a last resort or, at first and last instance, commonly referred to in French law as *"decision rendues en premier et*

dernier resort".[v] In the latter case, the only way out is a "*pourvoi en cessation*". It should be noted that Law no. 2006/016 of 29th December 2006 on the organization and functioning of the Supreme Court of Cameroon restructured the administrative bench of the Supreme Court. It henceforth divided administrative bench into sections or divisions viz- a division for civil service litigation, a division for land tenure litigation; a division for tax and financial litigation; a division for public contracts litigation; a division for nullification and sundry issues.[vi]

The above mentioned law devolved upon the Administrative Bench the double role of "cassation" and appeal.[vii] Unlike the administrative judge of "cessation", the administrative judge concerned with appeal may rehear the whole matter with a view of correcting or reversing the judgment of the trial court. However, he must not go beyond the issues that arose during the trial.

Bearing in mind that the administrative bench of the supreme court has been clothe with a double role of "cessation" and "appeal" since 2006, the burning question which begs for an answer is, which are those contentious matters that may be appealed against? And, how can they be distinguished from contentious matters that are subject to "cassation"? There is no gainsaying therefore, that these two fundamental questions constitute a master plan in the understanding of the question of matters capable of being appealed against to the administrative bench of the Supreme Court as distinguished from those subject to "Cassation" thereby deserving a greater attention.

A Prodigious knowledge of these key questions necessitates an examination of the contentious matters to appeal before the administrative bench of the Supreme Court on the one hand, while differentiating them from those subject to "pourvor en cessation" on the other hand. Therefore, the necessity of an answer or answers to these pressing questions go a long way to justify the *raison d'être* of this research article.

CONTENTIOUS MATTERS SUBJECT TO "APPEAL" BEFORE THE ADMINISTRATIVE BENCH OF THE SUPREME COURT

At the quest of an identification of the contentious matters which are subject to appeal before the administrative bench of the Supreme Court, it behooves every scholar to begin by elucidating the notion of contentious matters. That said, contentious matters as used in this

context refer to those subject and objective issues litigated upon and which emanated from the decisions of courts. This implies that there must be a pre-existing contested judgment bearing on an issue capable of being appealed against.

To be positive law inclined, "Decisions delivered at first instance under conditions provided by separate instruments, those delivered at first instance in electoral matters and in urgent applications, shall be subject to appeal before the Administrative Bench of the Supreme Court within the time limit provided for in the text laying down the procedure before the Administrative Bench of the Supreme Court.[viii] The corollary of this is that, matters subject to appeal are those which arose from final judgments handed down by subordinate courts of the same Jurisdictional channel over well-defined issues. In matters of administrative litigation such disputes include; contentious electoral matters and contentious administrative matters.

A better understanding of all the above required that, the contentious electoral matters subject to appeal before the Administrative Bench of the Supreme Court be examined succinctly in a distinct manner from the contentious administrative matters per say, subject to appeal before the said bench.

CONTENTIOUS MATTERS SUBJECT TO APPEAL IN THE DOMAIN OF ELECTORAL DISPUTES

The legal regime of appeal in electoral disputes before the administrative bench of the supreme court stems from Law No. 2006/016 governing administrative courts in Cameroon which states that: "The administrative bench shall be competent to here: appeals against decisions handed down in regional and council election disputes".[ix]

It should be noted that the appellate jurisdiction of the administrative bench has henceforth extended beyond post-electoral disputes. The bench now exercise jurisdiction over pre-electoral disputes which were formerly reserved for Council Supervisory Commission[x] and Regional Supervisory Commissions.[xi] This is thanks to the 2006 statutory reforms in the country.

With the former system, over cases of denial of justice were capable of being produced during council elections. This is because the provisions of articles 12 (2), 26, 27 and 28 all of the law of August 1992 conferred on the council's supervisory commission numerous competences on

the election of municipal councilors. At the same time article 33 of the same law conferred upon the administrative court a general competence. Only article 28 cited here above brought some harmony in the successive competence between the council supervisory commission and the senior divisional officer who could seize the administrative bench of the Supreme Court on the decision of the council supervisory commission contested and not the victim or aggrieved party. A justice tasty person could not look at such a system as just, such a scenario occurred in the case of *Edea urban council, CPDM Vs. the State of Cameroon* wherein the petition before the administrative bench of supreme court was ruled inadmissible.

The supervisory commission followed the precedence set out in the above mentioned case and went ahead to give "final ruling" on similar matters. It therefore, paved the way for two clear and separate stages in the exercise of competence over electoral matters: Pre-electoral litigation falling within the competence of the council supervisory commission and Post electoral litigations falling within the jurisdiction of the Administrative bench of the Supreme Court.

Pre-Electoral Litigation falling within the Competence of the Council Supervisory Commission

The position was clearly manifested by the administrative judge in the case of UPC Vs. the states of Cameroon on the 18th July 1996. The judge openly declared in the mater that the council supervisory commission shall rule at the first instance and as a last resort (i.e. statue en premier et dernier resort) on all disputes linked to the rejection of a list of candidates. This was reiterated in the case of S.D.F and PCR (parti conservative Republicain) vs. the state of Cameroon concerning the Yaoundé 3 urban council challenging a prefectural order making known the composition of the council supervisory commission. The court equally declined jurisdiction in the matter stating that it fell within the jurisdiction of the council commission.

The system has fallen into oblivion, since 2006 and law No. 92/002 of the 14th August 1992 has been amended and supplement by law No. 2006/10 of 26th December 2006. In the amended version, article 26 replaces the commission with the administrative court. Consequently, henceforth, such disputes can be entertained by the administrative courts of course are now operational. With this reform, all disputes pertaining to council elections shall henceforth fall within the general competence of the administrative court. It is this new legal provision that

has been taking care of disputes relating to council election since 2012[xii] although not fully implemented.

In view of all the above, there is no gain saying that pre-electoral and post-electoral council and regional council disputes shall henceforth be subject to appeal before the Administrative bench of the supreme court. For a better understanding of this, it would be necessary to examine pre-electoral disputes which can be appealed against to the administrative bench of the Supreme Court on the one hand while not losing sight of some post electoral disputes that can equally be appealed against before the said bench on the other hand.

As earlier on stated, before 2006, jurisdiction over disputes stemming from the lists of candidates was reserved for both the council supervisory commissions and the Regional supervisory commissions.[xiii] The commissions hear such matters and gave final decisions thereon. It is worth noting that the progress of pre-election disputes in Cameroon took a decisive twist as from the year 2006 thanks to the intervention of some historic legal instruments as well as jurisprudence. Competence in the domain devolved upon the administrative courts even though the law did not state with precision the administrative courts in question, there is no gainsaying that it concerned the present regional administrative courts. Following the tenets of law no. 2006/010 of 29th December 2006 cited supra, any decision to accept or reject a list of candidates could be petitioned against before a competent administrative court, either by a candidate, the representative of the list concerned or any other list, or by any registered voter in the council concerned.[xiv]

In view of the foregoing, it should be noted that the amendment of law No.92/2 of 14th August 1992 to lay down conditions for the election of municipal councilors by law No. 2006/10 of 29th December 2006 transferred competence which was formerly conferred on council supervisory commissions to the administrative courts to entertain disputes on lists of candidates for municipal elections. This competence ought to have been exercised for the first time in the July 2007 municipal elections. Unfortunately, by that time, the newly created administrative courts were not fully operational. This explains why the administrative bench of the supreme court still acting as a court of original jurisdiction heard and determined for the first time one hundred and one (101) listed matters bearing on municipal elections in the court session of the 12th June 2007 holding at Yaoundé.

Therefore, it important here to note that such matters are subject to appeal henceforth before the Administrative Bench of the Supreme Court (AB/SC). That is the decision of the administrative judge over them. The disputes could range from the acceptance or rejection of lists of candidates to the disqualification of some candidates. It was equally the case in the September 2013 municipal elections. Two hundred and sixty (260) petitions were entertained relating to municipal elections through still by AB/SC setting as a court of original jurisdiction.

Post Electoral Litigations falling within the Jurisdiction of the Administrative Bench of the Supreme Court

Post-electoral disputes are disputes which arise from the conduct of the elections and, the election of municipal councilors. Section 33 of law No. 92/2 of 14 August 1992 as amended by law No. 2006/010 of 29th December 2006 cited supra is to the effect that any voter, candidate, representative or any person acting on behalf of Government for the election may petition to the competent administrative court for annulment of the pools in the council area concerned.

With regard to post-electoral disputes on municipal elections, the administrative Bench of the Supreme Court acting at the time as a court of original jurisdiction pending the full existence of administrative courts, heard and determined two hundred and sixteen (216) petitions bearing on the July 22nd 2007 municipal elections.[xv] The petition emanated from the manner in the conduct of the elections and the election of municipal councilors. The Administrative Bench of the Supreme Court acting in lieu of the Regional Administrative Courts which were already created but not existing cancelled municipal elections in ten (10) constituencies. For instance, in the case of Kwemo Pierre vs. the State of Cameroon (MINATD),[xvi] the petitioner who was a candidates and representative of the SDF list for the Bafang council during the July 22, 2007 municipal election petitioned to the bench (AB/SC) praying for an order of annulment of elections in the said council area. The petitioner's prayer was granted and the decision was grounded by irregularities.

In other area, the Administrative bench still is acting in place of the courts (i.e. regional administrative courts) nullified elections on grounds of irregularities ranging from systematic acts of selective registration of voters, ambulant voters, multiple voting, corruption, to massive fraud.[xvii] This statutory right to contest or challenge the conduct of municipal election has

clothe the administrative court with jurisdiction to entertain petitions from moral persons in public law like political parties or Associations and their attorney who may neither be candidates nor votes. In the case of U.P.C (CR) Penka Michel, the petitioner was recognized the capacity of a candidate and consequently the right to bring an action though he was not a candidate in the election whose results were contested. The petitioner was simply representing his party in the capacity of chairman who was assigned the duty of depositing the list of the party's candidates in the electoral constituency where he campaigned. All appeal against the decisions of the Administrative Bench of the Supreme Courts acting as an original jurisdiction was directed to Plenary Assembly acting as an appellate Jurisdiction.

Another post electoral specificity concerns the election of council executives. Should irregularities mar elections into the office of a mayor or deputy mayor, the administrative authority with jurisdiction over the area or a voter in that council may within ten (10) days following the council session during which elections into the executive organ took place, petition the administrative court as a court of First Instance to obtain an annulment of the election.[xviii] Considering the fact that only councilors do elect the mayors and their deputies in Cameroon, it is needless to say that such councilors possess the capacity to bring an action for annulment. The decision of the administrative court over such council disputes is subject to appeal before the administrative bench of the Supreme Court as examined hereof.

Other electoral disputes falling within the competence of AB/SC include but not limited to contestation relating to the elections into the chambers of agriculture or the chambers of commerce since 2006.[xix] Before this time, anybody interested or the bureau of the chamber of commerce could bring an action before the administrative bench of the Supreme Court within fifteen (15) days following the publication of the final lists against the decisions, registration disqualifications or omissions done by the national or provincial electoral commission, the minister in charge of commerce or the president of the commission. Since 2006, competence in the domain was transferred to the administrative courts. Hence, the decisions of the administrative courts on such issues are capable of being appealed against before the AB/SC.

CONTENTIOUS MATTERS SUBJECT TO APPEAL IN THE DOMAIN OF ADMINISTRATIVE DISPUTES PROPER

According to the provisions of section 9 (2) of law No. 2006/016 governing administrative courts, "Each division shall hear appeals relating to matters within its jurisdiction". It should be noted that the English version of the section of the law is ambiguous. It does not make a distinction between appeals and pourvois: This French version is very clear. It states in french that: chaque section connait des appels et des pourvois en "appeals" or "appels" are different from "pourvois en cassation". It would appear the legislator of the 2006 reforms neglected these distinctions which give different meaning to the whole texts.

In addition to the above stated provision of the law, section 114 (1) of law No. 2006/022 evokes amongst other things decisions delivered at first instance in urgent applications. In such matters, an appeal may be filled against the decisions before the Administrative bench of the Supreme Court either by one of the parties to the dispute or by both parties passu that is, the Commoner and the Administration.

Generally, three types of decisions or judgments of the administrative courts delivered at first instance in urgent applications can be subject to appeal before the administrative bench of the Supreme Court. These may include an interlocutory application, a judgment in the substantive matter and ruling in urgent administrative matters.

RULING ON INTERLOCUTORY APPLICATIONS (DÉCISIONS AVANT DIRE DROIT)

An interlocutory ruling or "decision avant dire droit" is an interim relief. It covers every remedy, temporary in nature, which is granted by the court at the instance of a party to an action, usually the plaintiff, pending the final determination of the action. Such a remedy is more often than not, granted to the applicant during the pendency of the main suit.[xx] The particularity of interlocutory rulings in matters of administrative litigations is that, there are mostly directed to the question of competence or jurisdiction.

In effect, a litigant or plaintiff may file an appeal against a ruling bearing on the exceptions of jurisdiction or competence raised by a party to the suit, in most cases the defendant, who is no other than the Administration.[xxi] However, an appeal against an interlocutory ruling must only be filed alongside an appeal against the judgment in the substantive matters.[xxii]

Jugements on the Merits (Les Décision Sur Le Fond)

This has to do with some final decisions delivered after a full hearing. In this case, the appellant may contest the ratio decidendi of the trial judge notably, the reasoning of the judge or the sufficiency of his motivations. In any case, where a prospective litigant feels that the law was not properly applied at first instance with regard to the facts or the arguments presented to the court by the parties, he or she is at liberty to appeal against the said decision.[xxiii] Hence, in this case only the facts are agued.

This is in effect demonstrates that some judgments on substantive matters delivered by the administrative courts are subject to appeal.

Rulings on Administrative Motions (Des Decisions D'urgence)

Urgent applications bear no matters which must be dealt with expeditiously for purposes of preventing irreparable injury to the applicant. There are urgent administrative matters otherwise known as le refere administrative. Such urgent matters permit the President of the trial administrative court seized of the matter to take urgent preventive measures without going into the merits of the case in order to protect the interest of the application.[xxiv] Such rulings are subject to appeal before the Administrative bench of the Supreme Court.

It is worth stating that an appeal in matters of an urgent administrative action or "le refere administrative takes the same form like an appeal in matters of electoral disputes because in both cases, it is the President of the court who is seized directly on the matter.

CONTENTIOUS MATTERS SUBJECT TO "CASSATION" BEFORE THE ADMINISTRATIVE BENCH OF THE SUPREME COURT

It would appear that the English language has not yet had an exact equivalence of the French word ''cassation''. The French lexique des termes juridiques defines "cassation" as "the annulment by the Supreme Court of a decision that has become final and delivered in violation of the law. In other words, it is only the Supreme Court that has the pourvoir De Cassation in Cameroon. Therefore, judging from the foregoing, one can draw the conclusion that before the court of "cassation" only points of law are in principle raised. The Cameroon legislator has

pointed out in section 35(1) of law No. 2006/016 57 supra the grounds on which a "cassation" translated loosely as an appeal may be based. They include: - Want of jurisdiction (l'incompetence), misinterpretation of the fact of the case or the case file (la denaturation des faits de la cause ou des pieces de la procedure) default, contradiction or insufficient grounds (le defaut, la contracdition ou I'insuffisance de motifs), irregularity (le vice de forme), breach of law (le violation de la loi), non-response to the submissions of parties or requisitions of the legal department (la non response aux conclusions des parties ou aux requisitions du ministere public), abuse of office (le detournement de pouvoir), violation of general principle of law (la violation d'un principe general de droit) and non-compliance with the jurisprudence of the Supreme Court which rules in a panel of joint benches (le non-respect de la jurisprudence de la cour supreme ayant statue en sanctions Reunies d'une chamber ou en chambers Reunies). Furthermore, sub-section 2 of the same text stresses that the Supreme Court may raise on its own motion, these grounds.

For a better understanding of contentious matters subject to "cassation" before the Administrative Bench of the Supreme Court, it is necessary to examine those outline above juxtaposed the provisions of section 2(1) of law No. 2006/022 of 29th December 2006 supra[xxv] to know that it involves disputes relating to administrative acts. The 2006 law[xxvi] affirmed that the administrative bench shall hear 'des appels et des pourvois en cassation' relating to matters within its jurisdiction.

On that score, it is provided that "judgments delivered by the administrative court at first instance or as a court of last resort shall be subject to "Pourvoi" before the Administrative Bench of the Supreme Court in the manner and time limit laid down by the law fixing the organization of the Supreme Court".[xxvii] There again, the English version has not made any distinction between appeal and "cassation". If one has to be attached to the positive law more especially looking at the French version of the text "La chamber administrative est competente pour connaitre: des pourvois forms contre les decisions rendues en dernier resort par les jurisdictions interieures en matiere de contentieux administrative".[xxviii] In view of the foregoing, there is no gainsaying that, matters subject to "pourvoi en cassation" are those bearing on judgments delivered by lower courts of the same jurisdictional order.

For a better understanding of the matter subject to "Cassation" before the Administrative bench of the Supreme Court as distinguished from those subject to appeal, it is necessary to examine the domains outlined herein above in connection to the control of the external legality of

judgments on the one hand and, on the other hand, with regard to the control of internal legality of such Judgments thereof.

Recourse to a "Window Appeal" on Grounds of Controlling the External Legality of a Court Judgments

As earlier on indicated, the judge of "cassation" does not have as responsibility to rehear matters. His role is to make pronouncements on the legality of the judgments brought before him. An action commenced by way of "Pourvoi en cassation is admissible where a substantive or procedural irregularity in the conditions which led to the decisions is raised. The two instances here include: want of jurisdiction and control on the regularity of the procedure followed by the court that handed down the decisions.

WANT OF JURISDICTION

It is trite principle of law that where an administrative authority takes upon him to exercise a jurisdiction which he does not possess his decision amounts to nothing and he judgment of that court is void and of no effect. Similarly, where a court takes upon itself to exercise a jurisdiction which it does possess, it decisions amounts to something.

Worthy of note is that, jurisdiction is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. It defines the powers of courts to inquire into facts apply the law, make decisions, and declare judgment. It is the legal empowerment of an authority to intervene. It applies to the administrative authority and the court. With regard to the administrative court therefore, if it intervenes in a matter without jurisdiction, it may give rise to a "pourvoi" against the decision delivered. Hence, want of jurisdiction may be examined from a double perspective viz: from the perspective of its consecration and, its content respectively.

From the perspective of its consecration, as a ground on which a "pourvoi en cassation" can be based, want of Jurisdiction is consecrated by the 2006 law laying down the organization of the Supreme Court of Cameroon.[xxix] This implies that the administrative courts which heard and determined the matter must be empowered or, clothes with the jurisdiction to hear and determine such matters. The jurisdiction of the judge who hears a matter at first instance know

in French Language as "judge de premier resort" and that of the administrative court in matters of administrative litigations is determined by the law.

The constitutional text first provided for this competence to hear the entire administrative litigation.[xxx] This was followed by some legislative enactment which defined the functions of the administrative bench distinguishing it from the administrative courts.[xxxi]

Furthermore, the jurisdiction of the administrative court which relates to matters bearing on administrative litigations was equally determined by the judge himself. The later proceeded to an extension of his competence by way of jurisprudence or case-law. He recognized his jurisdiction in public works contentions [xxxii] and in matters of road accidents involving administrative vehicles etc. [xxxiii] In another instance, the judge adopted a restrictive interpretation of its competences. This was demonstrated in his self-restriction faced with the problem of the special responsibility of the administration [xxxiv] as well as in the general exclusion of private law disputes within it competencies.[xxxv] Lack or want of jurisdiction therefore, consists of ruling on matters out of the matters or out of the well-defined frame work.

From the perspective of its content, the judge who is ruling over a matter must limit himself within the frame work of his jurisdiction. The administrative bench receives cases of "pourvoi en cassation" grounded on want of jurisdiction on the strength of element of both material and territorial competence.[xxxvi]

Territorial competence is that which the empowerment to rule is given to a court of law within a defined geographical area. It is at times termed a jurisdictional circumscription. From the year 1972, lack of territorial competence was not much a problem. This was because the administrative bench which was the sole court that heard matters relating to administrative litigations at first instance (premier resort) was in charge of handling all of such disputes at the national territory.[xxxvii]

Since 2006, administrative courts were created with subordinate courts as intended by the constitutional provisions. These courts have in principle a territorial jurisdiction restricted to the regions. In this light, if there is a dispute in a given circumscription, then it is only the court of the region concerned will have jurisdiction, but where another administrative court comes up to hear the matter, the judgment delivered shall be subject to "pourvoi en cassation" and not to appeal.

Strictly speaking, the material dimension of lack of jurisdiction is raised in the "pourvoi en cassation". This could be summarized into "inter-jurisdiction" and "intra-Jurisdictional" incompetency. An "inter-jurisdictional" incompetency or lack of jurisdiction simply refers to the fact that the administrative court which ruled on the matter exceeded it jurisdiction by trespassing into the province of the judicial judge, the judge of the second resort (or that of the first resort as the case may be) of his jurisdictional channel or, that of another judge, unlike the "inter-jurisdictional" competency where the judge exceeds his bounds, and "intra jurisdictional" incompetency is manifested within the jurisdiction. This concern cases like substantive matter whereupon the judge in charge of urgent applications proceeds to entertain. Therefore, there is lack of jurisdiction where a trial court within the administrative rank hears a matter trespassing into the domain of another administrative court or that of the court of a different rank. "Pourvoir en cassation" equally extends to the procedure which was adopted.

CONTROL ON THE REGULARITY OF THE PROCEDURE

Where the regularity of the procedure before the trail court that delivered the judgment is contested, it can pave the way for a ''cassation''. Therefore, the procedure in question is neither that which was followed by the "judge of cassation" act. In this connection, the irregularities concerned could range from default, ex facie irregularities, non- response to submissions and requisitions, contradiction or insufficient grounds.

From the perspective of default, contradiction or insufficient ground, the black law dictionary apprehends a default as a failure, an omission of that which ought to be done.[xxxviii] A default could emanate from the plaintiff who fails to appear. A default may give rise to an irregularity in a situation where the parities were not served. If the court fails to ensure that the parties are served with the hearing notice, or where the deadlines for service are not respected, the proceedings shall be considered as not being in conformity with the procedure.[xxxix] This therefore, attracts a situation of default as used in law No. 2006/016 supra.

Moreover, "La contradiction" loosely translated in the law as "contradiction" was intended to mean a fair trial. If looked upon differently, then it would not bring out the spirit of the 2006 legislator. A fair trial or "La contradiction" is closely linked to the notion of default already examined. It is manifested in allowing the parties adequate opportunities to present arguments and evidence and to challenge or respond to opposing arguments or evidence before the court.

If one examines critically the definition given to "La contradiction" by Gohin, then there will be no gainsaying that "La contradiction" as used in French language cannot be interpreted as "Contradiction" in English. According to the author, "La contradiction se définit comme le droit pour toute personne directement intéresses de se voir assure une information utile dans l'instance par la communication des différents éléments du dossier produit.»[xl]

In view of the foregoing, La contradiction» as used in French language could summarily imply equality of arms between the parties to the proceeding. As such arguments and evidence of one party must be communicated to the adverse party for the latter's respond to opposing arguments or evidence. A fair trial or "le contradiction" is considered to have been ensures where the parties are given adequate opportunities to present their respective memoranda. The non-respect of the procedure of a full trial may give rise to "cassation".

As to the grounds, it constitutes a notice of and reasons for the decision. This is expressed in the maxim "ratio decidendi" that is, the ground or reason of decision. It is the point in the case which determines the judgment. A default or contradiction in the grounds or more still insufficient grounds may pave the way for a "pourvoi en cassation".

From the perspective of the decision being bad in form (i.e vice de forme) and, the non-response to submissions of parties or those of the legal department, it is in the same legislative provision that a decision being bad in form (i.e vice de form) non response to submissions either of the parties or the legal department as we all default, contradiction or insufficient grounds can pave the way to pourvoi.[xli]

Furthermore, "Le vice de forme" which is translated in English language as irregularity[xlii] is understood in extenso considering that it is viewed as a breach of procedure. The situation of these irregularities targeted by the text states that: "Subject to the provisions of section 470(1) of the 2005 Criminal Procedure Code of Cameroon, where the ruling appealed against was not made by the number of judges prescribed by the law or was made by judges who did not sit in all the hearing, where the legal Department was not given the right of audience or was not represented, where the rule governing the public nature of the hearing, subject to exceptions provided for by law, has not been complied with".[xliii]

It is worth stating that, the enumeration herein above made in itself defective reason being that, it has reduced the field of the application of such irregularities. Failures such as the absence of the signatures of some of the judges who sat as a college or the non-mention of the registrar in

attendance could be some of the cases of irregularity or "vice de forme". However, the above mentioned elements are the substantial ones because they have to do with the responsibility of the judge who is acting in full knowledge of the facts, the taking into consideration of the opinion of the Legal Department and, the possibility given to third parties to follow the proceedings. The court is equally called upon to determine matters taking into consideration the arguments presented by the parties and the submission of the Legal Department. Therefore, if the court does not address it mind on the addresses of the parties and the submissions of the legal department, it may be tantamount to a ground for "pourvoi en cassation". The same holds when it comes to the internal legality of court judgments.

Recourse to a "Window Appeal" on Grounds of Controlling the Internal Legality of Court Judgments

Under this head, the law has underlined cases like breach of the law and abuse of office on the one hand, and, cases of irregularities such as misinterpretation of the fact of the case or the case file, violation of a general principle of law or non-compliance with jurisprudence on the other hand.

Breach of the Law and Abuse of Office

Interesting of note is that, the law laying down the organization and functioning of the Supreme Court of 2006 explicitly includes the breach of law and abuse of office in the list of items subject to "Pourvoi en cassation".[xliv] These elements are worth examining one after the other.

From the view point of breach of law, a breach of law is considered generally as the breaking or violating of a law either by commission or omission. This does not border on the judgment ex facie but on its substance. In his control mission of an eventual breach of the law, the judge in charge of "cassation" does not revisit the case on it merits. What he does is to verify the legality of the final judgment. It is in this light that the control of the motivation of the judgment falls in the framework of a breach of the law.

The court of "cassation" controls errors in law committed by the trail judge. Such errors could take the form of a poor interpretation, a legally fallacious reasoning,[xlv] an error on the legal qualification of the facts etc. It could equally operate where a judgment lacks the legal basis.

In this light, it should not be overlooked that decisions of the administrative bench "shall be reasoned and indicate the legal provision, the general principles of law or provisions of jurisprudence that were used".[xlvi]

From the view of an abuse of office contrary to what obtains in France, the Cameroon administrative judge in charge of entertaining matters "en cassation" is competent to hear matters bearing on abuse of office. This Preclusion of the French administrative judge in the domain has a jurisprudential origin[xlvii] whereas the consecration of it Cameroon counterpart is based on status as abuse of office could be described as a departure from reasonable use of that office or immoderate from improper use of same. In this context, it is directed to the goal of the act. It is established when personal goals are manifested in a decision taken. With the exception of ultra vires which concerns an administrative authority who acted with an abusive motive, abusive of office used in matter of "cassation" concerns the decision of the trial judge. It is designed in two form viz, either that the trial judge ended up in the judgment protecting personal interests (i.e. his or those of other persons) or that he was guided by the safe guard of other public interests.

However, a decision rendered in favour of the administrative to preserve authority and to protect public funds can be founded. This explains why the legislator has desired that the goal of the decision should be for justice. The calls for prudence on the part of judges and equally a call for the protection of the rights of litigants are imperative at this juncture.

Irregularities stemming from a Misinterpretation, Violation of a General Principle of Law or a Binding Case-Law

The above stated three elements could be founded on the breach of the law and most especially the last two because they have to do with a situation of disregard of legal rules and their hierarchy. It is therefore, mandatory for the trial judge to ensure respect for the pyramid of legal norms when ruling. For a better understanding, it is necessary to examine these element one after the other.

From the perspective of misinterpretation, section 35(1) (b) of the 2006 law cited supra provides that the misinterpretation of the facts of the case or the case file shall constitute a ground for "pourvoi en cassation". Here, focus is on the misinterpretation of the facts of the case and, on the misinterpretation of the evidence adduced. Misinterpretation of the facts is a

means put at the disposal of the judge in charge of matters "en cassation" by the legislator to enable the said judge rule on the facts. At this juncture, the "judge de cassation" is not called upon to appreciate the facts by hearing the mater de novo but to verify if the trial judge took the facts into consideration in their entirety. The control conducted here is situated between the existence of the facts, their appreciation and qualification.[xlviii] With regard to judicial jurisprudence, the Supreme Court of Cameroon dealt with a case of misinterpretation of facts not by making reference to the facts which gave rise to the sit but, on whether the facts as they appeared were considered by the judge of appeal. In this case therefore, "cassation" appears as a corrective measure when the judge of appeal distorts or misinterprets the facts of the initial judgment. A manifest error committed by an appeal judge on the date of judgment was pointed out by the Supreme Court.

Misinterpretation equally concerns the evidence adduced during the trial. The 2006 law supra has termed it misinterpretation of case file. In my humble opinion, this translation is not equivalent to its French expression "La deturation des pieces de la procedure". It is obligatory for the trial judge to make use of the document tendered thought a proper appreciation. This includes the entire case file. In France, the "Conseil d'Etat" held that there was misinterpretation retation of a case file by an administrative court of Appeal reason being that the claim was inaccurately evaluated or analyzed.[xlix] The Cameroonian judicial judge followed the same line of reasoning as he went ahead to quash (casse) an arret of an appeal court which misinterpreted the arguments of a party.

Herein-below is an excerpt of the decision of the Supreme Court on that premise:

> "Attendu du, déclare la cour suprême, que les juges d'appel se sont bornes a tort, état d'une prétendue condamnation du mari pour coups et blessures, que l'épouse n'avait même pas invoquée comme cause de divorce, alor que cette dernière n'a cessé, au contraire tant dans sa requête introductive d'instance que dans ses conclusions d'appel, de se référer à cette condamnation pour appuyer sa requête en divorce ; qu'ainsi, l'arrêt attaque a …….. dénature les document de la cause''.[l]

It should be noted that this jurisdiction given to the judge de "cassation" to ensure control for the misinterpretation of facts and evidence adduced has made of him to equally be considered

as a judge of the facts. Whereas, the intention here was not the facts of the matter but to see into it that such facts are properly considered by the trial judge.

From the perspective of the violation of a general principle of law and the non-compliance with an "imperative" Jurisprudence, these two grounds which can give rise to a "pourvoi en cassation" are provided for in section 35.[li.] The violation of a general principle of law and the non-compliance with an imperative jurisprudence make allusion to a situation of the violation of the notion of the block of legality.

When the administrative judge is ruling over administrative litigations, he is bound to respect any-existing general principles of law. He cannot act in obligation of such principles. There is no gainsaying that jurisprudence shapes the work of the judge. The law is clear as to the extent of respect to be given to jurisprudence. Consequently, the decisions of the Administrative bench holding in joint Divisions shall be binding on lower courts in matters of administrative litigation, on all the points of law considered. [lii] Also, the non-compliance with the jurisprudence of the Supreme Court which ruled in a panel of joint Division of a bench or of joins Benches[liii] may be a ground on which a "pourvoi en cassation" can be based.

CONCLUSION AND THE WAY FORWARD

From the above, we will discovered that this research paper was centered on ordinary appeal know in French law as ''l'appel » as opposed to an appeal based on special grounds commonly referred to in French as « pourvoi en cassation ». Unfortunately, the English translations of the 2006 statutes supra have neglected the distinctions. This gives the terms a different meaning if one was to rely only on the English version of the text. It therefore, became compelling to make a distinction between those matters subject to ordinary appeal (l'appel) and those that can be subject to appeal based on special grounds (pouvoi en cassation). It should be recalled that before 2006, the procedure of "pouvoi en cassation" could only be employed when the grounds of appeal were based on point of law. The 2006 statute has given the administrative bench of the Supreme Court powers to examine issues based on both points of law and of facts. Again, it has further compounded the situation thereby limiting the sphere of the bench sitting as a court of appeal. All that notwithstanding, the starting line in an appeal is that judgment must not have been delivered at first instance and as a court of last resort whereas; with "cassation" it must be contrary.

Against this backdrop, the following recommendations are inevitable: firstly, the problem of the translation of texts must be taken seriously so as not to mislead some citizens. For the poor translation pointed out in the 2006 statutes are not cured, then, the law may be applied differently in both Francophone and Anglophone Cameroon whereas it is the same law. This may equally make it difficult for practitioners to know when to seize the administrative bench as a court of appeal or as a court of "Cassation." Secondly, it must be seen into it that the number and quality of judges appointed to various administrative tribunals match the increasing rate and sophiscation of administrative actions in the society. In this light, all persons engaged in the administration of justice viz: judges, members of the legal Department, registrars etc. should be given regular raining by means of refresher courses, seminars and workshops. Lastly, in order to reduce the burden on the judges and, to enhance their efficiency and speed, stenographers may be provided in every court to record the evidence of witnesses and other proceedings in shorthand. The present practice of evidence and proceeding recorded by the judges in long hand is time consuming and cumbersome.

It is hoped that, if these proposed solutions are effectively implemented and enforced, the dispensation of contentious matters before the administrative bench of the Supreme Court will be a thing of the past in Cameroon.

ENDNOTES

[i] See Art 114(1) of law no. 2006/02 of 29th December to lay down the organization and function of Administrative Courts.
[ii] CF law No. 96/6 of 18th January 1996 on the revision of the constitution in its article No. 10
[iii] Ordinance No. 77-4 of 26th August 1972 on Judicial organization modifies by ordinance No. 72/21 of 19th October 1972, No 73/9 of 25th April 1973, No. 76/17 of 8th July 1976 and No. 83/3 of 21st July 1983, and law No. 75-17 of 8th December 1975 fixing the procedure before the supreme court.
[iv] Art 114 (1) of law No. 2006/022 cited supra.
[v] Art 116 of law supra.
[vi] Art 9 (1) of law 2006/016 of 29th December 2006 to lay down the organization and functioning of the Supreme Court.
[vii] Art 9 (2) law supra.
[viii] Art 114(1) of law No. 2006/022 cited supra.
[ix] Article 38(a) and 114(1) of law No. 2006/016.
[x] Art 12 of law No. 92/2 of 14 August 1992 to lay down conditions for the election of municipal councilors, as amended by law No. 95/24 of 11th December 1995 and law no. 2006/10 of 26th December 2006.
[xi] CF law No. 2006/4 of 14 July 2006 to lay down conditions governing the election of regional councilors.
[xii] SIETCHOUA DJUTTCHOKO (C) revue de jurisprudence de la cour suprême-chambre administrative, juridis periodique, No 77, jan-Feb-Mar 2009 P. 49-57.
[xiii] Article 12 of law No. 14 August 1992 cited supra and law No. 95/24 of 11 December 1995 cited supra.

[xiv] CF section 26 (new)(1) of law No. 2006/010 of 29th December 2006 cited supra and sections 194(1) and 267(1) both of law No. 2012/001 of 19th April 2012 relating to the electoral code, amended and supplemented by the law No. 2012/017 of 21st December 2012.
[xv] Cf session of 22,23 and 24 August aswell as 3 and 4th September 2007 AB/SC.
[xvi] suit No. 289/06-07/CE of 29th August 2007.
[xvii] kalamback Kollo Jean debonnaire V. The State of Cameroon (MINATD) and Kadji Deffoso Joseph. The Bench (AB/SC) ordered for a rerun of elections in the areas concerned. See judgment No. 283/060-07/CE of 29th August 2007. See also the case of Issola Blaise, Moussi paul Simplice and Ekoh Ekombou Christine V. the state of Cameroon and Sop Jean Georges; Judgment No. 191/06-07/CE of 29 August 2007.
[xviii] CF section 53(new) of law No.92/002 of 14 August 1992 amending certain provision of law No. 74/23 of 5th December 1974 on the organization of councils as amended.
[xix] See the 2001 amended version of Decree No. 78/525 of 12 December 1778 laying down the status of the chamber of Agriculture and Decree No. 86/231 of 13 March 1980 laying down the statue of the chamber of commerce.
[xx] Rt Honourable Joseph Mbah Ndam in "Practice and Procedure in civil and commercial Litigations".
[xxi] Cf Kamto (M) "Droit administrative processuel du cameroun", P.U.C, Yaounde, 1990, P 78.
[xxii] CF section 114(3) of la No. 2006/002 cited supra.
[xxiii] See NGOLE PHILIP NGUESE, BINYOUM (J), Elements de contentieux administrative camerounaise le Harmattan, paris 2010. P. 121.
[xxiv] See NGOLE PHILIP NGUESE, BINYOUM (J), Eléments de contentieux administrative camerounaise le Harmattan, paris 2010, pp. 121.
[xxv] Law of 29 December 2006 to law down the organization and functioning of the Supreme Court.
[xxvi] To lay down the organization and functioning of administrative courts in Cameroon.
[xxvii] Section 9(2) of law No. 2006/016 cited supra.
[xxviii] Section 116 of law No. 2006/002 of 29th Dec. 2006 cited supra.
[xxix] Section 38(b) of law No. 2006/016 cited supra.
[xxx] Cf art 40 of law No 06 of 18 January 1996 to amend the constitution of 2 June 1972.
[xxxi] CF section 9(2) of law No. 2006/016 cited supra and section 2 and 3 of law No. 2006/022 cited supra.
[xxxii] CF judgment No. 42 of the 22 February 1979 delivered by the administrative bench of supreme court Yaoundé in the matter between Month Robert Vs. the State of Cameroon.
[xxxiii] CF Arête No. 1 of the 23rd day of December 2000 delivered by the plenary assembly of the Supreme Court between ONDO OVONO CHARLES VS the State of Cameroon.
[xxxiv] Cf Arête No. 213 of 18 August 1972 delivered by the administrative bench of the federal court of justice Yaoundé between Dame Aoua Hadji VS the State of Cameroon.
[xxxv] Judgment No 72 of 26th may 1983 delivered by the administrative bench of the Supreme Court in NKONDOCK Emile – Valentine VS the state of Cameroon.
[xxxvi] Cf Article 10 of ordinance No. 72/6 of 26th August 1972 to fix the organization of the supreme court modified by law No. 76/28 of the 14 December 1976.
[xxxvii] Cf Article 10 of ordinance No. 72/6 of 26th August 1972 to fix the organization of the supreme court modified by law No. 76/28 of the 14 December 1976.
[xxxviii] Cf Josephe Owana in Droit administrative special de la Republic du Cameroon, EDICED, 1985 PP 219-220.
[xxxix] Henry Campell Black's law dictionary sixth edition cited supra p. 417.
[xl] Cf Section 99 and 100 of law No. 2006/016, cited supra.
[xli] Gohin (o) Contentieux administrative, Litec, 4e edition, 2005 P 223.
[xlii] Article 35(1) of law No. 2006/016 cited supra.
[xliii] Ibid.
[xliv] See section 35(1) (d) of law No. 2006/0116 cited supra.
[xlv] Section 35(1) of law No. 2006/0116, cited supra.
[xlvi] Infra.
[xlvii] Cf section 105(6) of law No. 2006/016, cited supra.
[xlviii] *CE 6 Mars 1953, Abbe Giloteaux.*
[xlix] See PEISER (G) contentious administrative, 10e ed, Dalloz, 1997 P 209.
[l] CE, 11 December 1991, administration generale assist. Pub. A paris, reg 108688.
[li] Cf. Section 35 (1) (h) and 35 (1) (i) respectively both of law No. 2006/016 cited supra.
[lii] Ibid.
[liii] Cf Section 107 of law No. 2006/016 cited supra.