IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: ATUGUBA, JSC (PRESIDING)

ANSAH, JSC

YEBOAH, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/09/2017

8TH MARCH, 2018

NICHOLAS AFFENYI & 76 ORS …… PLAINTIFFS/RESPONDENTS/RESPONDENTS

VRS

ABOSSO GOLDFIELDS LIMITED …… DEFENDANT/APPELLANT/APPELLANT

JUDGMENT

PWAMANG, JSC:-

In this final appeal the main contention of the appellant is that upon a proper construction of Section 71(1) of the Minerals and Mining Act, 1986 (PNDCL 153) it had no statutory obligation to pay compensation in respect of buildings at Kyekyewere and farms at the old village since Kyekyewere and the old village were not within the land designated in its mining lease.

Section 71 of PNDCL 153 is as follows;

(1) The owner or occupier of any land subject to a mineral right may apply to the holder of the right for compensation for any disturbance of the rights of such owner and for any damage done to the surface of the land, buildings, works or improvements or to livestock, crops or trees in the area of such mineral operations.

(2) An application for compensation under subsection (1) of this section shall be copied to the Secretary and the Land Valuation Board.

(3) The amount of compensation payable under subsection (1) of this section shall, subject to the approval of the Land Valuation Board, be determined by agreement between the parties concerned and if the parties are unable to reach an agreement as to the amount of compensation, the matter shall be referred to the Secretary who shall in consultation with the Land Valuation Board determine the compensation payable.

However, the facts of this case are that the appellant, for the convenience of its operations on the land designated in its mining lease, requested the respondents and other inhabitants of Kyekyewere which adjoins its mining area to vacate the village. After they vacated respondents' dwellings at Kyekyewere were demolished by the appellant. Therefore, the vacation of Kyekyewere was as a direct consequence of the mineral operations of the appellant. The plain purpose of Section 71 of PNDCL 153 was to ensure that prompt and adequate compensation was paid for disturbances to owners and occupiers of lands affected by mineral operations. The appellant seeks to place a restricted construction on Section 71(1) of the Act because of the opening phrase; " **The owner or occupier of any land subject to a mineral right may apply…"** but in construing the provision recourse ought to be had to its concluding part which is; "… buildings, works or improvements or to livestock, crops or trees in the **area of such mineral operations."** In our view, the provision does not necessarily limit statutory compensation claims to owners or occupiers of land designated in a mineral lease.

In the interpretations section of the Act, Section 84, "mining area" is defined as "the land designated as the mining area in a lease" so if the legislature had intended to

limit the compensation payments to lands designated in a mineral lease it would have used the words "mining area" or similar words instead of the more general words "area of such mineral operations". It is a canon of interpretation that statutes are to be construed as a whole and within the context of the purpose intended to be achieved by the statute. We would therefore purposively construe "land subject to a mineral right" in Section 71(1) of the Act broadly to include other lands in the area directly affected by the operations of the holder of a mineral right besides the land designated in the mineral lease.

Consequently, since the operations of the appellant affected Kyekyewere, owners or occupiers of land there were entitled to statutory compensation. What this means is that whereas compensation for the buildings of the respondents was settled by agreement with the appellants, and this is permitted under s.71(3) of the Act, compensation for the disturbance of their farming activities at the old village, which was as a result of their relocation, was outstanding. In the circumstances, such compensation was payable to the respondents and, in the absence of agreement, it was lawful to order the Land Valuation Board to assess the compensation payable for loss of the farms of the respondents.

From the above exposition of the true import of Section 71(1) of the Act, it becomes apparent that the parties before coming to court conducted themselves on the basis of an erroneous understanding of the law but it is the duty of a court to enforce the law notwithstanding the wrong opinions of the parties if even they are mutual.

The High Court and the Court of Appeal came to the right conclusion in the case but their reasons are not sound in law as Counsel for the appellant rightly submitted. We therefore set aside those reasons and substitute the reasons explained above as the basis for the judgment in favour of the respondents.

Before we retire this delivery, we wish to express agreement with Counsel for the appellant that the reliance by the Respondent on the provisions of the Minerals and Mining Act, 2006 (Act.703) is misconceived. The activities that gave rise to this action took place before the passage of Act 703. That statute having been passed after the

coming into force of the Constitution, 1992, it could not operate retroactively on account of Article 107(b) of the Constitution.

In conclusion, the appeal is dismissed and the judgment of the Court of Appeal upheld but on different grounds.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

ATUGUBA, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

APPAU, JSC:-

I agree with the conclusion and reasoning of my brother Pwamang, JSC.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

COUNSEL

SALLY HAYFRON BOATEN FOR THE DEFENDANT/APPELLANT/APPELLANT.

ALEXANDER KODWO ABBAN WITH HIM ALFRED PAPAAPA DAKWA FOR THE PLAINTIFFS/RESPONDENTS/RESPONDENTS.