**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT OF JUSTICE**

**ACCRA - GHANA A.D. 2016**

**CORAM: DOTSE, JSC. (PRESIDING)**

**YEBOAH, JSC.**

**BONNIE, JSC.**

**BAMFO (MRS), JSC.**

**PWAMANG, JSC.**

**CIVIL MOTION**
**NO. J5/21/2016**

**28TH JULY, 2016**

**THE REPUBLIC**

**VS**

**HIGH COURT**
**LAND DIVISION - ACCRA**
**EX- PARTE: NII NOI MORTON - APPLICANT**

**1. F. K. A. COMPANY LTD - INTERESTED**
**2. LANDS COMMISSION PARTIES**

**R U L I N G**

**PWAMANG, JSC.**

This is an application invoking the supervisory jurisdiction of the court for an order of certiorari to issue to quash order of mandamus granted by the High Court, Accra in Suit No. LD/0214/2015 dated 18th January, 2016. The order directed the Executive Director, Lands Commission to cancel, delete and expunge from the records of the Lands Commission all registrations and plotting in the names of the applicant and four others.

The brief facts are that on 13th May, 2013, the High Court (Land Division) presided over by Justice Amos Buertey, gave judgment in favour of the 1st Interested Party and against applicant herein and others for declaration of title to a parcel of land at Danchira in the Ga South District of the Greater Accra Region. The judgment further ordered the Lands Commission, which was 6th defendant, to "cancel, delete, expunge, remove, reverse all registrations, plotting , processing of all or any portions of the land the subject matter of this suit" that had been entered in the names of the other defendants including applicant herein.

Then on 15th January, 2014, the Supreme Court gave judgment against the applicant herein and others and in favour of Nii Tackie Amoah VI, who is the grantor of 1st interested party. In its judgment the Supreme Court affirmed the judgment of the Court of Appeal which declared Nii Tackie Amoah VI owner of a larger land at Danchira including the land of the 1st interested party and directed

the deletion of applicant's documents from the records of the Lands Commission.

Basing on the judgment of the Supreme Court, Nii Tackie Amoah VI filed an application for judicial review in the nature of mandamus in the High Court, Accra against the Executives Secretary, Lands Commission for an order directed at him to lapse the plotting of documents in the name of Nii Noi Morton (Applicant herein) in their records. The application was Suit No. FAML/86/15 and was filed on behalf of Nii Tackie Amoah VI by Lawyer Nathaniel Myers. Though the Applicant herein was not made a party to the application, he was served as someone who was to be affected by the order sought. He filed an affidavit in opposition in which he prayed the court to order the director of surveys to demarcate the lands in dispute before any deletion since, according to him, the case was a boundary dispute. When lawyer for Nii Tackie Amoah VI was served with the affidavit in opposition, he abandoned the application all together and it was finally struck out for want of prosecution.

Meanwhile, unknown to Applicant herein, the 1st Interested Party, using his judgment given by Justice Amos Buertey and acting through the same Lawyer Nathaniel Myers, filed another application on 14/12/15 for mandamus against the same the Executive Secretary, Lands Commission praying for the same reliefs as those in the mandamus application by Nii Tackie Amoah VI. The second application was assigned Suit No. LD/0214/2015 with a return

date of 18th January, 2016. This application was placed before a different Judge, Justice Anthony Oppong, and when it was called on the return date it was granted. The order of mandamus on the face of it does not indicate that the Executive Secretary, Lands Commission was served with that application for mandamus.

It is this order that applicant prays the court to quash on the grounds that the High Court had no jurisdiction to make the order and secondly breach of natural justice as he was not served with the second application in which the order was made. He has exhibited a search report as Exhibit "A6a" as evidence that he was not served. He has contended that he ought to have been served with the application for mandamus so that he could be heard since he stood to be affected by the order sought.

The first interested party filed an affidavit in opposition on 29/4/2016 through Frederick Kofi Asare, its Managing Director. At paragraphs 6, 9, 10 and 11 of that affidavit he deposed as follows:

"6. That the application (the mandamus application) affected the rights of the present applicant Nii Noi Morton.

9. That in further answer to the above, I will say that the applicant was served with hearing notice and I attached same as Exhibit "FA2."

10. That the applicant filed an affidavit in opposition per Exhibit "FA3" attached.

11. That it is thus clear that the complaint of the applicant is not grounded that in law and this application must fail."

However, the Hearing Notice that is exhibited and supposed to have been served on Applicant herein is a Hearing Notice for 30th October, 2015 in the application of mandamus by Nii Tackie Amoah VI which is Suit No. FAML 86/15. Applicant's affidavit in opposition exhibited is also in respect of the said Suit No. FAML 86/15.

This corroborates what applicant has stated in his affidavit in this court that he was served for the mandamus application in Suit No. FAML/86/15 but not the in the second one which is Suit No. LD/0214/2015. The present application before us is seeking to quash the order made in Suit No. LD/0214/15 and it is clear that the depositions of Frederick Kofi Asare in the affidavit in opposition were meant to mislead this court. No wonder he and his lawyer failed to attend the hearing of this application though they were served and they filed affidavit in opposition. What it means is that the 1st interested party knew very well that applicant herein stood to be affected by the order of mandamus. He also knew that there was an earlier application that applicant opposed yet he failed to have the application served on applicant.

It is a well-settled that one of the grounds on which this court will quash proceedings by an order of certiorari is where there has been a breach of any of the rules of Natural Justice; namely *nemo judex in causa sua* and *audi alteram partem*. In the case of **Republic v**

**High Court, Bolgatanga; Exparte Hawa Yakubu [2001-2002] SCGLR 53**, Acquah JSC (as he then was) explained the scope of the *audi alteram partem* rule which requires a person to be heard in proceedings wherein a relief is sought that will affect him. He said as follows at page 59 of the report;

> "Finally, the contention that the proceedings and order of 6th January 2001 were made in violation of the *audi alteram partem* rule is certainly indefensible. Madam Hawa Yakubu was the NPP parliamentary candidate in the disputed election. The petition sought not only a recount of the votes, but also an order to restrain her from holding herself out as the duly elected Member of Parliament for the Bawku Central Constituency. On the facts and in the face of the reliefs claimed in the petition, even if she was not made a party in the petition, the High Court itself on its own motion, has authority to join her in the petition."

On the facts giving rise to this application, since the 1st interested party chose to enforce the judgment by applying to the court for an order of Mandamus, then it ought to have served applicant with the processes not withstanding that judgment had already been given in the matter. The natural justice rule of giving a party a hearing before making an order that would affect that party is not concerned with the merits of the case of the party to be affected. Though the interested party claimed applicant was served, the evidence shows that he was not so there was a violation of the

natural justice principle of *audi alteram patem*. For that reason we shall grant the application for the order of certiorari to issue.

**(SGD) G. PWAMANG**
**JUSTICE OF THE SUPREME COURT**

**(SGD) V. J. M. DOTSE**
**JUSTICE OF THE SUPREME COURT**

**(SGD) ANIN YEBOAH**
**JUSTICE OF THE SUPREME COURT**

**(SGD) P. BAFFOE-BONNIE**
**JUSTICE OF THE SUPREME COURT**

**(SGD) V. AKOTO-BAMFO (MRS)**
**JUSTICE OF THE SUPREME COURT**

**COUNSEL**

**TETTEH JOSIA FOR APPLICANT**

**FRANCIS ADJEI FOR THE 1ST INTERESTED-PARTY**