IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: AKUFFO (MS), CJ (PRESIDING)
ANSAH, JSC
ADINYIRA (MRS), JSC
YEBOAH, JSC
BAFFOE-BONNIE, JSC

CIVIL MOTION
NO. J5/68/2017

24TH OCTOBER, 2018

THE REPUBLIC

VRS

HIGH COURT, ACCRA ..... RESPONDENT

EX-PARTE ;

1. **SAM OKUDZETO**
2. **NENE & JANET AMEGATCHER**
3. **DR. KWAME DANSO**
4. **MABEL OCRAN**
5. **REV. DR. FRED & JOANA DEEGBE**
6. **REGISTERED TRUSTEES OF CALVARY BAPTIST CHURCH ..... APPLICANTS**

1. SAMUEL ADJEI MENSAH

2. SIMON ADJEI ADJETEY ..... INTERESTED PARTIES

RULING

YEBOAH, JSC:- My Lords, the applicants herein on 5/10/2017 filed this application for certiorari to quash the judgment of His Lordship Mr. Justice N.M.C Abodakpi, dated the 27th

of July 2015 in which His Lordship had made far-reaching consequential orders in respect of a large tract of land on which the applicants herein are in possession of their respective lands at Otano and Adjiriganoo.

The facts of this application appear not to be seriously controverted. However, this application raises several issues for our determination. In an affidavit in support of this application sworn to by Sam Okudzeto, Esquire, for himself and other applicants herein, the applicants assert that they had their respective grants at Otano and Adjirganno from Ashong Mlitse family of the Odaitei Tse, who are allodia owners of about 1,701.42 acres of land settled upon by their grantors predecessors about two hundred years ago, and even had a village therein. The said family, that is Ashong Mlitse family of the Odaite Tse We made several grants to several grantees including the applicants. According to the applicants the Court of Appeal on 26/04/1989 in a Civil Appeal No. 8/87 instituted as: Mad Emelia Kai Djanie substituted by Devine Justice Nikoi Djanie and Evelyn Archer as plaintiffs/respondents VRS Odai Banga, Ebenezer Akpal Mensah substituted by Seth Laryea Mensah as defendants/appellants and J.S. Laryea as co-defendant/appellant the Court of Appeal adjudged Adjiriganno lands to be owned by the Ashong Mlitse family of the Odaite Tse We. The said Mlitse family after the 1989 Court of appeal's judgment continued to exercise acts of ownership and said earlier sold several plots to other people including the applicants. The grantees proceeded to register their respective lands after conducting searches. They later obtained land Title Certificates and same were exhibited to this application as Exhibit "B", "C", "D", "E", "F" and "G" and developed their respective properties which were photographed and annexed to this application as Exhibits "H", "H1", to "H12".

According to the applicants, their attention was drawn to a copy of a judgment of the High Court, Accra, dated 27/07/2015 presided over by His Lordship N.M.C Abodakpi and an order

of Mandamus dated 11/08/2016 purporting to notify the applicants that the AKWRABOYE DOKU family of Teshie and Nii Nmai Mensah (substituted by SIMON ADJEI ADJETEY) had been adjudged to recover possession of 748.39 aces and 286.41 acres of land at Otano within Adjiriganno, which covers the grants made to them by the Ashong Mlitse Family.

The applicants claimed that they were not served with the judgment and the order for mandamus personally but rather copies of same were deposited with their caretakers and security personnel. They complain that some land guards subsequently harassed them regardless of the fact that they had valid grants and land Title Certificates and had enjoyed prior peaceful possession of their lands.

On 5/10/2017, the applicants herein filed this application for an order of certiorari to quash the judgment of the High Court, referred to above which now seeks to deny them title and possession of their lands.

The applicants have filed two grounds for the invocation of our jurisdiction and given the nature of the case it would serve a purpose for repeating the grounds in full, thus,

1. The High Court, Accra presided over by Mr. Justice N.M.C. Abodakpi on 27th July, 2015 breached the rules of Natural Justice and occasioned a grave miscarriage of justice when he declared title against the applicants and offered recovery of possession of the properties owned by and in possession of the applicants when the applicants were neither made parties to the proceedings nor given any hearing in the matter although the applicants had registered titles over the properties and had been in undisturbed possession since the 1990s.

2. The interested parties and the High Court breached the rules of Natural Justice when they purportedly sued and heard a claim respectively against the Ashong Mlitse family for the recovery of possession of a total of 1,034.80 acres of land at Otano and Adjirigano out of the total land area of 1,701.42 when they knew or ought to have known that the Ashong Mlitse family had divested itself of its interest in the lands to other parties including the applicants and over ten thousand property owners. By

failing to sue or join the applicants who had bought the properties for valuable consideration, had obtained legal title to the properties and were in actual physical possession of the fully developed residential and commercial properties at Otano and Adjiriganno and later purporting to enforce the judgment against the applicants, the interested parties misled the High Court to believe that the suit was over vacant plots of land and the court when it ordered title and possession in favour of the interested parties and against the applicants and over ten thousand property owners without giving them a hearing"

In sum, the applicants contend that the judgment of the High Court was delivered in clear breach of the "audi partem" rule of natural justice because they (applicants) were not made parties to the said suit and had no opportunity to be heard in defence of their interests to their respective properties. In support of this contention, the applicants placed reliance on several authorities from this court, namely: In Re Ashalley Botwe Lands [2003-2004] SCGLR 420, Barclays Bank v Ghana Cable [1998 – 1999] SCGLRI, The Republic v High Court) Human Rights Division), Accra; Ex Parte Kwadwo Asante Boateng aka Kwadwo Baah, Numo Mashie Family per Samuel Larbi Darko and Lands Commission SC Civil motion J5/34/2017 (unreported).

Applicants further relied on the case of Banga v Djanie & or [1989 – 90] 1 GLR 510 which according to them established that the lands previously belonged to their grantors, the Ashong Mlitse Family before the said family granted them leases and in some cases freehold interests. They contended further that after registration of their respective titles and complying with the Land Title Registration Act, 1986 [PNDCL 152] they had enjoyed quiet and uninterrupted possession of their lands, the judgment of the High Court being impugned in this application is unlawful and clear violation of their rights. It was also argued in the statement of case of the applicants that as the Ashong Mlitse family had already divested itself by granting freehold and leases to some of their grantees, they the applicants ought to have been sued as they have developed the area and were also in possession of their respective lands.

The 1st interested party to this application has raised three preliminary objections to have the application dismissed in limine. Firstly, the first interested party contends that under Rule 62 of the Supreme Court Rules, 1996 (CI 16) as amended the application for certiorari ought to have been filed within ninety days from the date the grounds for the application first arose. The second objection relates to capacity of the applicants in this application. It is the contention of the interested party that the applicants cannot bring an application of this nature by putting up pictures of properties belonging to over ten thousand nameless and faceless owners of properties which have no probative value as the origin is not known their had any nexus been established between those pictures and Otano lands. Further to the above it was contended that there were no power of Attorney to the first applicant to commence this application as per the searches the 1st interested party conducted at the Lands Commission.

Another point also raised against the application was the fact that the application seeks to raise for our determination issues based on facts or mixed facts and law which appear to be too complex for resolution in a certiorari application.

On the substantive merits, the 1st interested party contends that the proceedings south to be quashed does not raise any breach of the Rules of Natural Justice in that, the High Court has not issued any writ of possession which ought to be served on the applicants as occupiers and moreover, the applicants not being parties to the High Court case sought to be quashed, there was no requirement of service on them of any process for them to be heard.

We think it would be necessary to consider first the preliminary objections raised in conformity with the settled practice of this court. The objection as to the time for bringing this application would in our respective opinion should be computed from the very time the applicants became aware of the proceedings sought to be quashed. In the affidavit of the first applicant, it was made clear that they only became aware of the judgment when the interested parties proceeded to execute same by serving copies on their respective care takers and security personnel in the middle of July, 2017. It would, in the absence of any challenge to this deposition, be safe for this court to find that the

applicant's assertion was true and that on the 5th October 2017 when this application was filed they were within time. We accordingly hold that this application is not statute barred. See THE REPUBLIC v HIGH COURT, KUMASI, EX PARTE MOBIL OIL GHANA LIMITED (HAGAN INTERESTED PARTY). [2005-2006] SCGLR 312.

The second objection attacking the capacity of the applicants appears to be misconceived. The applicants are owners of properties affected by the judgment which is being impugned by these proceedings. Indeed, from the evidence available, it appears that the 1st interested party is not in any way denying the fact that the applicants are in occupation of their respective lands. Their interests could be easily captured by the several exhibits which were also annexed to this application. It must also be pointed out that in certiorari proceedings the strict application of the law relating to locus standi as in actions in other areas of the law is relaxed. A plethora of decided cases like: R v THAMES MAGISTRATE COURT; EX PARTE GREENBAUM [1957] 55 LGR 129 CA, R v BRIGHTN BOROUGH JUTICES; EX PARTE JARUIS [1954] I WLR 203, STATE v ASAHNTEHENE'S DIVISIONAL COURT B I, EX PARTE KUSADA [1963] 2 GLR 238 SC and REPUBLIC v IGRLE GONNO DISTRICT MAGISTRATE GRADE I; EX PARTE AMPONSAH [1991] I GLR 353 CA establish the principle that in certiorari proceedings a member of the public not directly affected by the proceedings sought to be quashed can initiate the application but the discretion to grant same may be narrowed.

The appropriateness of judicial review as a remedy in these proceedings was raised on the basis that the application which contains mixed facts and law and several issues which were too complex should be suited for an appeal and not certiorari.

We think that the two grounds on which this application for certiorari was mounted limited the determination of this application to the issue of whether there was breach of the rules of natural justice. This court was enjoined to consider whether the applicants ought to have been made parties or notified by the interested parties of the pendency of the High Court case sought to be quashed. In our view, we have not been invited to consider the substantive merits of the High Court's judgment in these proceedings. Breach of the rules of natural justice that is the audi alteram partem has always been a ground for our

intervention in appropriate cases. See REPUBLIC V HIGH COURT, ACCRA; EX PARTE SALLOUM & ORS (SENYO COKEER INTERESTED PARTY) [2011] I SCGLR 574, REPUBLIC v HIGH COURT, BOLGATANGA; EX PARTE HAWA YAKUBU [2001 – 2002] SCGLR 53.

On the main grounds for this application, the applicants contend that they were never joined to the suit which was decided against their grantor, the Ashong Mlitse family even though they were in possession of their respective properties.

In actions for declaration and possession of land of this nature, the presence of the occupiers was necessary. Order 4 rule 8 of the High Court [civil procedure] Rules 2004 CI 47 states thus:

> 8(1) Without prejudice to rule 5, the court may in an action for possession of immovable property at any stage of proceedings order any person who is not a party to the action but who is in possession of the immovable property whether personally in possession or by tenant or agent, to be made a defendant"

The 1st interested party as the plaintiff in the suit never joined the applicants herein. The applicants claiming that they had no knowledge of the pending proceedings would never applied to the court to be joined as parties to defend their interests. The Ashong Mlitse Family never applied to join the applicants to the suit on the grounds that it had as their grantor divested itself of ownership by granting leases and freeholds in some cases to several grantees affected by the action. The High Court probably unaware of the interests of the applicants also did not deem it fit to join them. The suit thus travelled its normal course without the applicants. It must, however, be noted that the trial judge was not disabled from hearing the case, neither did the absence of the applicants destroyed his jurisdiction to hear the case. The Order regulating the procedure is Order 5 rule 1 of the High Court (Civil Procedure) Rules which states thus:

> 5(1) No proceedings shall be defeated by reason of misjoinder or non-joinder of any party; and the court may in any proceedings determine the issues or questions in dispute so far and they affect the rights and interests of the persons who are parties to the proceedings.

(2) At any stage of proceedings the court may on such terms as it thinks just either of its own motion or on application

(a) Order any person who has been improperly or unnecessarily made a party or who for any reason is no longer a party or a necessary party to cease to be a party.

(b) Order any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in dispute in the proceedings are effectively and completely determined and adjudicated upon to be added as a party"

It is usually the practice that parties may on application join new parties to the suit or persons not parties may apply to join the suit for the sole purpose of fulfilling the objects of the above-quoted rule so that there would not be any multiplicity of suits and thereby allowing the court to completely and effectively determine all the issues in controversy. This is the ideal situation as illustrated by cases like APPLICATION FOR JOINDER, IN RE: DIVESTITURE IMPLEMENTATION COMMITTEE, APPLICANTS; SAME No. 1 v ATTORNEY-GENERAL [2010] SCGLR 102, AGO SAI v KPOBI TETTEH TSURU [2010] SCGLR 762 and USSHER v DARKY [1977] IGLR 476 CA.

However, in the absence of the joinder of all the proper parties the trial court's jurisdiction could not be said to be lacking.

Before us, there is no evidence that in the course of hearing the matter at the High Court, any of the parties did apply for joinder or to intervene. The applicants themselves say that they only had notice of the judgment after the attempted service of the copy of the judgment and the order for mandamus. We do not think that the court breached the basic rules of Natural Justice when it proceeded to hear the case in the absence of the occupiers of the land who ordinarily in land cases in which title and damages are sought could have been proper parties to the suit.

From the copy of the judgment annexed to the affidavit of the first interested party, it is clear that the suit itself in this certiorari application was commenced in 1997 as suit No. 1997/92. All the exhibits evidencing the grants to the applicant by the Ashong Mlitse Family were subsequent to the commencement of the action. For example, the lease to second applicant herein is dated 1st April of 2004; the lease granted by the same Ashong Mlitse Family to the 3rd applicant is dated 1st January 1998, the sub-lease to the 5th applicant is dated 4th July 2002. It stands to reason that at the time the suit was commenced the applicants had not probably acquired their grants from the Ashong Mlitse Family. The legal effect of the judgment so delivered which binds the grantors also bind the grantees. If the grantees, the applicants herein, had been sued as parties and the grantors, the Ashong Mlitse Family had knowledge of the suit but did not join they equally would have been bound by the judgment. See AKWEI v COFIE [1952] 14 WACA 143 and FISCIAN v TETTEH [1956].

The statement of case of the first interested party seeks to raise several issues of law which could be considered, but we notice that Exhibit AD-03 annexed to the affidavit of the interested party is a Notice of Appeal against the very judgment sought to be quashed. The said notice of appeal was filed by the law firm of the first applicant. It seeks to attack the judgment sought to be quashed on several grounds by raising serious questions of facts and law to be addressed before the Court of Appeal, Accra. We, think that it would be inappropriate to delve deeper into other contentious issues which counsel for the interested party is inviting us to do as in our respectful view, it may prejudice the appeal before the Court of Appeal, especially on issues of title, recent act of ownership, etc. We think that the issues of freehold interest under the current constitution, the legal effect of Land Title Certificates, etc., would be better addressed on appeal which is pending, moreso, when this court is not seized with the whole proceedings at the High Court and our jurisdiction is limited to quashing the judgment if we find that it was given in clear breach of the grounds canvassed before us.

We hold that the grounds on which this application is based could not, properly, with due respect, invoke our supervisory jurisdiction.

We do think that the trial judge without joining the applicants as parties and therefore not offering them a hearing did not offend against the rules of natural justice. We therefore proceed to dismiss the application.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

AKUFFO (MS), CJ:-

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

S. A. B. AKUFFO (MRS)
(JUSTICE OF THE SUPREME COURT)

ANSAH, JSC:-

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

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ADINYIRA (MRS), JSC:-

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

S. O. A. ADINYIRA (MRS)
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

COUNSEL

VICTORIA BARTH WITH ISAAC LARTEY FOR THE APPLICANT.

EDWARD DARLINGTON FOR THE 1ST INTERESTED PARTY/RESPONDENT.

NO REPRESENTATION FOR 2ND INTERESTED PARTY.