IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2018

CORAM: DOTSE, JSC (PRESIDING)

YEBOAH, JSC

BAFFOE-BONNIE, JSC

APPAU, JSC

PWAMANG, JSC

CIVIL MOTION
NO. J5/29/2018

30TH MAY, 2018

THE REPUBLIC

VRS

HIGH COURT (COMMERCIAL DIVISION, ACCRA)	**-**	**RESPONDENT**
EX-PARTE: GHACEM LIMITED	**-**	**APPLICANT**
AJ FANJ CONSTRUCTION AND ENGINEERING LIMITED	**-**	**INTERESTED PARTY/ RESPONDENT**

RULING

DOTSE, JSC:-

By these proceedings commenced in this court, the Applicants herein are seeking an order of Certiorari directed at the High Court (Commercial Division), Accra to remove and bring up into this court for the purpose of being quashed, ***the ruling of the High***

Court Accra, Coram: Samuel K. A. Asiedu J, dated 21st December, 2017 in Suit No. MISC./0184/17 intitutled In The Matter of The High Court Civil Procedure Rules 2004, Order 19 r. 1 (2) And in The Matter of Section 40 of the Alternative Dispute Resolution Act, 2010 (Act 798) And in The Matter of Arbitration Between AJ FANJ Construction Limited And West Africa Quarries Limited And in The Matter of An Application For Determination of A Preliminary Point of Law Pursuant to Section 40 of Act 798, Regarding The Joinder of GHACEM Limited To the Arbitration As a Non Signatory Party.

FACTS OF THE CASE

The facts of the instant application are fairly simple and admit of no controversy whatsoever. They may therefore be stated as follows:-

On the 8th of July, 2009, West Africa Quarries Limited (hereinafter called WAQL) entered into a contract with AJ FANJ Construction and Engineering Limited hereafter referred to as the (Interested Party) for the operation of limestone mining, crushing and haulage of limestone from it's concessions at Yongwa in the Eastern Region. Subsequent to terms of settlement executed between WAQL and the Interested Party, the parties agreed that the Interested Party shall continue to mine and supply limestone from the Yongwa Concession as they had been doing previously based on agreements beyond December 2012, which was the expiry date of the then prevailing agreement. As part of the settlement it was agreed to extend the duration of the 2009 Yongwa contract which was to end in December 2012 for an indefinite period.

In June 2016, the Yongwa Concession was attached in execution of a judgment obtained against WAQL. **Following the shutdown of the Yongwa Concession as a result of the attachment of same in execution of the judgment, the Interested Party herein, instituted arbitral proceedings against WAQL as stipulated in the contract.** WAQL not only disputed the claims of the Interested Party, but also proceeded to file it's statement of Defence, after which the Interested Party filed a Reply.

The parties thereafter proceeded to appoint a sole arbitrator to conduct the arbitral proceedings. In the course of the arbitral proceedings, the Interested Party by motion for joinder filed on the 1st of March 2017, brought an application before the Tribunal of the Ghana Arbitration Centre. The Interested Party herein, sought to join the Applicant herein (GHACEM), a non-signatory party, to the ongoing arbitration between the Interested Party and WAQL in the said application. The arbitral tribunal dismissed the application for joinder whereupon the interested party filed,in the High Court (Commercial Division),an originating motion on notice under section 40 of the Alternative Dispute Resolution Act 2010(Act 798) and order 19 r 1 (2) of C. I. 47, praying the Court for a determination of a preliminary point of law. **That is, as to whether in arbitral proceedings conducted in Ghana with the Ghanaian law as the substantive law, the court will have power to join a non-signatory party to the arbitral proceedings in the proper circumstances. The High Court assumed jurisdiction and made an order for joinder of the applicant herein as a party to the arbitral proceedings. It is the decision of the High Court that the applicant invokes the supervisory jurisdiction of the Supreme Court by way of certiorari to quash same.**

Arising from the above facts, there is the need to examine into some detail, the following:-

a. What really transpired before the sole arbitrator on the issue of the joinder of the Applicants, a non-signatory to the arbitration agreement,

b. The nature of the application that went before the High Court and the decision therein, and

c. Finally, the grounds of the application as well as the arguments in support of the certiorari application.

INTERIM AWARD OF THE ARBITRAL TRIBUNAL

The applicant after being served with the application for joinder raised a preliminary objection to the jurisdiction of the Tribunal to entertain the application for joinder. The objection was based on two main grounds:-

1. That the arbitral tribunal does not have jurisdiction to join GHACEM (applicant herein), a non signatory of an arbitration agreement to arbitration proceedings.

2. That the Alternative Dispute Resolution Act, 2010 (Act 798) does not confer jurisdiction on an arbitrator to join a non party to a written agreement to arbitration proceedings arising out of disputes in respect of the said written agreement.

On ground one, the tribunal after a thorough examination of the ADR Act (Act 798) found, at page 3 of the interim award, that issues of joinder were procedural matters and thus by the operation of section 31 of Act 798, the tribunal had jurisdiction to determine any matter of procedure including joinder. The relevant part of section 31 is 31(3) of Act 798 which provides as follows:

> ***"Subject to the right of parties to agree on any matter of procedure, the arbitrator shall decide on matters of procedure and evidence".***

The tribunal further noted that, ***"the question whether at the end of the day the application will succeed is beside the point".*** The tribunal held that, parties to an arbitration clause may agree to vest the arbitral tribunal with the power to join a non-signatory to the dispute and that such an agreement will be within the jurisdiction of the Tribunal to determine.

The tribunal on ground one concluded, in dismissing the preliminary objection, on jurisdiction that it had jurisdiction to hear the application for joinder.

Under ground two, the tribunal reiterated the grounds upon which the application for joinder was brought namely:-

1. GHACEM LIMITED negotiated and performed the contract in which the Arbitration Agreement was contained and **merely used WAQL as the face for the contract.**

2. **GHACEM LIMITED at all material times was the alter ego of WAQL by virtue of the absolute control it exercises over WAQL which Company was bound hand and foot to the Respondent herein and never exercised any independent volition of its own.**

After a thorough examination on the subject of joinder of non signatories to arbitral proceedings, with reference to developments on it in United States, United Kingdom, Singapore and the International Chamber of Commerce (ICC), the tribunal found that in arbitrations unlike litigation cases and laws from other jurisdictions do not have binding or persuasive effect. Thus, the ADR Act and the rules of the Ghana Arbitration Centre that have been adopted by the parties did not make specific provision for adding non-signatories. At page 8 of the interim award, the tribunal therefore stated thus,

> ***"In the absence of specific provisions in the agreement and provisions referred to above, the Tribunal finds that since arbitration is a private procedure, it is an implied term of an arbitration agreement that strangers to the agreement are excluded from the hearing and conduct of an arbitration under the agreement." Emphasis supplied***

The tribunal therefore found that it did not have the power to join the non signatory to the arbitral proceedings.

The Nature of the application that went to the High Court, and the decision therein.

DECISION OF THE HIGH COURT (COMMERCIAL DIVISION)

At the High Court, the grounds under which the interested party filed their motion were that;

1. Non-signatory party (hereinafter referred to as GHACEM) negotiated and performed the contract in which the Arbitration Agreement was contained and merely used WAQL as the face for the contract.

2. GHACEM at all material times was the alter ego of WAQL by virtue of the absolute control it exercises over WAQL which company was bound hand and foot to the non-signatory party herein and never exercised any independent volition of its own.

3. There was an express collateral contract between GHACEM and AJ FANJ Limited by virtue of the fact that GHACEM's actions amounted to promises and assurances to AJ FANJ that it was a party to the contract which AJ FANJ acted upon and entered into the contract which contained the arbitration clause.

The main section under which the interested party (applicant therein) brought the motion was section 40 of ADR Act 798 which reads as follows:

> ***40(1) "Unless otherwise agreed by the parties, the High Court may on an application on notice to the other party by a party to arbitral proceedings, determine any question of law that arises in the course of the proceedings if the Court is satisfied that the question substantially affects the rights of the other party." emphasis***

The learned High Court Judge at pages 4-5 of the judgment stated that

> ***"The court has been invited to determine as a preliminary point of law, the issue as to whether or not in arbitral proceedings conducted in Ghana with Ghanaian law as the substantive law, the court will have power to join a non-signatory to the arbitral proceedings in the proper circumstances and with particular reference to the facts deposed to in the accompanying affidavit."***

The High Court stated that by Article 131 of the Constitution 1992 and section 16 of the Courts Act 1993, Act 459, it had supervisory jurisdiction over all lower courts and any adjudicating body, including arbitral tribunals.

The court thus concluded that it had jurisdiction to hear the matter. **Further, the High Court after a consideration of the evidence before it and the law on the subject of lifting corporate veil, held that the applicant (GHACEM) was the "alter ego" of WAQL.** Indeed at page 18 of the judgment, the court found as a fact that, the applicant had overtly, by deeds and conduct represented to the interested party that it is the same as WAQL.

The court indeed correctly stated the legal position that, arbitration is based on agreement and a party cannot be required to submit to arbitration when the party has not consented to an arbitration agreement.

Nonetheless, the court however found that the contract in dispute which was entered into between WAQL and the interested party herein, was a contract between the applicant and the interested party.

In conclusion, the High Court held after it's consideration of the application that WAQL was used as a cover by GHACEM and for that matter in the circumstances of the case it will be unjust to let the arbitration proceed without joining GHACEM, the main actor in the whole scenario.

GROUNDS AND ARGUMENTS BEFORE THIS COURT

The two main grounds upon which the applicant made their application are as follows:-

1. That the High Court, (Commercial Division), Accra exceeded its jurisdiction when it made an order for joinder of the applicant to ongoing Arbitration Proceedings when the motion before the Court was for determination of a preliminary point of law pursuant to section 40 of the Alternative Dispute Resolution Act, (Act 798).

2. That the decision of the High Court,(Commercial Division), Accra to join the Applicant to Arbitration Proceedings arising out of an Arbitration Agreement to which the applicant is not a party and/or signatory, amounts to a patent error of law on the face of the record.

ARGUMENTS BY LEARNED COUNSEL FOR APPLICANTS

On the reception of arguments to complement their written statement of case, learned counsel for the Applicants, Yonny Kulendi referred extensively to section 40 (1) of the A.D.R Act, (Act 798) and argued as follows:-

1. That there was no doubt as to the jurisdiction of the High Court to determine whether a preliminary legal issue had arisen in the matter that needed to be dealt with before the court. In this respect, learned counsel referred to the Arbitrator's award. He reiterated the fact that what was before the arbitration tribunal was the issue of the joinder of a non-signatory to the proceedings before the arbitral tribunal. Having decided the issue, that the tribunal had no such powers to join a non-signatory party to the arbitration proceedings, it was clearly out of the scope of the jurisdiction of the High Court to proceed to make pronouncements on the matter as if the court was exercising appellate jurisdiction which it did not have. It must be noted that the arbitral proceedings had not yet commenced on the merits of the case, and the High Court proceeded as if it was exercising appellate jurisdiction.

   According to learned counsel for the Applicants, determination of the joining of the non-signatory to the arbitral proceedings did not arise before the High Court, hence it lacked jurisdiction in determining same.

2. Secondly, learned counsel submitted that, the consequential step by the learned High Court Judge in joining the Applicant to the action is not sanctioned by the ADR Act, (Act 798). In this respect, it was contended by learned counsel that since Arbitration is a voluntary agreement of the parties, the decision of the High

Court in making the consequential orders amounted to an error of law and or excess of jurisdiction. It was for the above reasons, and more especially as contained in the statement of case that the High Court decision must be quashed by certiorari by this court.

BY COUNSEL FOR THE INTERESTED PARTY

After initially misconstruing the oral submissions of learned counsel for the Applicants, learned counsel for the Interested Party Michael Gyang Owusu confined his oral submissions to the following:-

That, as the High Court has jurisdiction in all matters and as is contained in the Constitution 1992, Courts Act, Act 459 of 1993 and the ADR Act, Act 798, the Court had jurisdiction to consider the issues raised before it. According to learned Counsel for the Interested Party, this jurisdiction of the High Court was not limited only to the issue of the preliminary issue, but also to the determination of the issue of the joinder of the non-signatory to the arbitral proceedings. According to learned counsel, it was proper and within the jurisdiction of the High court to lift the corporate veil of the Applicants, since to all intents and purposes they were the "alter ego" of WAQL whom they set up for the purpose of doing business with the Interested Party.

Based on the above, learned counsel concluded that the court could not have exceeded it's jurisdiction and that the grounds upon which the application has been urged are not grounds that can sustain the grant of the application. Learned counsel therefore urged this court to dismiss the application as incompetent.

CONSIDERATION OF THE GROUNDS OF THE APPLICATION

We have perused all the processes filed by all the parties, including in particular the affidavits, statements of case, the judgments and awards of the High Court and the

Sole Arbitrator, and all the over elaborate and sometimes irrelevant exhibits that have been exhibited to the instant application.

GROUND 1

Learned counsel for the Applicants in their statement of case did not lose sight of the general grounds upon which certiorari applications are normally founded. These have been listed as follows:-

a. Want or excess of jurisdiction

b. Where there is an error of law on the face of the record

c. Failure to comply with the rules of natural justice

d. The Wednesbury principles of reasonableness

In support of the first ground of this application, the Applicants contended that the learned High Court Judge exceeded his jurisdiction when he made the order for the joinder of the applicant to the arbitral proceedings, despite the fact that what was before him was a determination of a preliminary point of law pursuant to section 40 (1) of Act 798, already referred to supra. The Applicants contended further that, the order made by the learned High Court Judge led to an abuse of his jurisdiction which he thereby exceeded.

In this respect, we are mindful of the contention of the Interested Party that the orders made by the learned High Court Judge were consequential which flowed inevitably from the determination of the preliminary point of law. We are also not oblivious of the constitutional and statutory provisions in article 141 of the Constitution 1992 as well as Section 16 of the Courts Act, 1993, Act 459 which granted supervisory jurisdiction to the High Court over all lower courts and any lower adjudicating body.

There is no doubt that the resolution of this application will naturally involve a discussion of the scope of the powers of the High Court in respect of arbitration proceedings commenced voluntarily by the parties under Act 798.

Admittedly, there are several instances where Act 798 invokes the intervention of the High Court. For example, Section 6 of the Act thereof deals with instances where there is a provision in an agreement for arbitration and a party nonetheless commences the action in the normal courts, the High Court can stay those proceedings and refer the parties to the arbitration. Section 7 on the other hand deals with instances where the court on it's own motion and with the consent of the parties refers a dispute, or part of the dispute to arbitration.

Section 18 deals with the powers of the High Court in instances where an arbitrator's authority may be revoked by the orders of the High Court.

Section 26 of Act 798 for example deals specifically with instances where a party who is dissatisfied with the ruling of an arbitrator on an issue of jurisdiction may on notice to the arbitrator and the other party apply to the appointing authority or the High Court for a determination of the arbitrator's jurisdiction.

Section 28 of the A.D.R Act, deals with the rights of a party to an arbitration agreement who has not been notified of an arbitration proceedings.

Sections 39 and 40 have far reaching provisions on arbitral proceedings. Whilst section 39 deals with general provisions aimed at protecting the sanctity and validity of arbitration proceedings, section 40 on the other hand deals with the determination of preliminary points of law.

Indeed an understanding of section 40 (1) of Act 798 gives the clearest of intentions that the agreement of the parties to an arbitration cannot be taken lightly and the High court's intervention in the determination of questions of law has been premised on the basis of the commencement of the arbitration.

What happened before the sole arbitrator which ended up in the High Court to our mind was not a determination of a question of lae in the course of the arbitral proceedings.

Sections 40 (2) and (3) in particular of Act 798 reinforces the view that the determination of the question of law mentioned therein in Section 40 (1) is a determination arising out of the course of the arbitration proper. This is the only logical interpretation that can be given when the fact that the arbitrator may continue the arbitral proceedings and even make an award whilst the application for the determination of the question of law is pending. This makes it clear that, the question of law envisaged are not the type of determination of issues of joinder of a non-signatory party that arose in this case.

Otherwise, how else can the arbitral proceedings continue and even make an award whilst the issue of joinder of a non-signatory party has not been determined?

In this instant, the power of the Arbitrator to determine the issue of the joinder of a non-signatory party arose under section 31 (3) of Act 798 and that jurisdiction was duly exercised by him.

There being no appeal available to this type of determination, the High Court clearly exceeded it's jurisdiction in granting the application.

What must be noted is that the provisions in Act 798 on arbitral proceedings must be considered as alternative methods of resolution of disputes, and therefore, in our view, the intervention of the High Court, unless expressly provided for and in clear instances devoid of any controversy, must be very slow and cautious. Otherwise, in our respective opinion, the High Courts will once again use these interventions to whittle away the functions of the arbitral tribunals and render nugatory the benefits that are to be derived from these arbitral proceedings as contained and provided for in Act 798.

In these proceedings, the Interested Party in their application to the High Court for the determination of a preliminary point of law under section 40 of the ADR Act 2010, (Act 798) prayed the High Court for ***"a determination of a preliminary point of law as to whether or not in arbitral proceedings conducted in Ghana with Ghanaian***

law as the substantive law, the court will have power to join a non-signatory party to the arbitral proceedings in the proper circumstances and with particular reference to the facts deposed to in the accompanying affidavit and more particularly on the grounds that,

a. Non-signatory party (hereinafter referred to as GHACEM) negotiated and performed the contract in which the Arbitration Agreement was contained and merely used the Respondent (hereinafter referred to as WAQL) as the face for the contract.

b. ***Ghacem at all material times was the alter ego of WAQL by virtue of the absolute control it exercises over WAQL which company was bound hand and foot to the Non-signatory party herein and never exercised any independent volition of its own.***

c. There was an express collateral contract between GHACEM and AJ FANJ Limited by virtue of the fact that GHACEM's actions amounted to promises and assurances to AJ FANJ that it was a party to the contract which AJ FANJ acted on and entered into the contract which contained the arbitration clause." *Emphasis supplied*.

In order to determine the scope of the Court's jurisdiction in respect of the above reliefs, the High Court no doubt has become an appellate court process over and above the decisions of the sole arbitrator.

In our opinion, this phenomenon amounted to clear breach of the scope and mandate of the provisions of section 40 (1) of Act 798 which limited same to the determination of only preliminary legal points.

As a matter of fact, the sole arbitrator dealt with the preliminary legal points raised before him and delivered himself in the following terms:-

"The Tribunal finds that issues of joinder are procedural matters which may not necessarily engage the attention of the Legislators when passing substantive laws such as the ADR Act, Act 798. Accordingly the failure on the part of the Legislators to specifically make provision for joinders of parties will not take away the jurisdiction of the Tribunal to hear and determine an application for joinder as in the current application before it."

Section 31 of the ADR Act vests the parties and arbitrator with a wide scope to determine any matter of procedure**. The Tribunal finds this powers includes applications for joinder. **The question whether at the end of the day the application will or will not succeed is beside the point.** The tribunal holds that parties to an arbitration clause may agree to vest the arbitral Tribunal with power to join a non-signatory to the dispute and that such an agreement will be within the jurisdiction of the Tribunal to determine. **Accordingly the Tribunal disagrees with the submission by the non-signatory that it does not have jurisdiction to hear and determine the current application on the basis of the fact that Act 798 did not make provision for joinder of non-signatories. The Tribunal therefore holds that it has jurisdiction to hear the current application and to rule on it. The preliminary objection to jurisdiction of the Tribunal fails and is accordingly dismissed. Emphasis

Having dealt with the preliminary issue, it is our respectful view that, the determination of the subsequent issue of joinder of non-signatory party to the agreement is definitely outside the scope, remit and therefore jurisdiction of the High court. To proceed therefore to deal with the resolution of that issue despite the clear terms of that decision referred to supra, meant that the High Court acted in excess of it's jurisdiction.

A perusal of the grounds which were formulated by the Interested Party before the High Court for determination and which have been referred to copiously supra had

infact been set out by the sole arbitrator and dealt with by him in the following terms as well.

> *"The rules of the Ghana Arbitration Centre that has been adopted by the parties did also not make any specific provision for adding non signatories in the absence of specific provisions in the agreement and provisions referred to above, the Tribunal finds that since arbitration is a private procedure, it is an implied term of an arbitration agreement that strangers to the agreement are excluded from the hearing and conduct of an arbitration under the agreement".*

It must be noted that in the instant case, the parties in their arbitration agreement chose Ghanaian law as the lex arbitri, that is the law that should govern their arbitration. The arbitral Tribunal, rightly in our views came to the conclusion that it had no power to join the Applicant herein to the arbitral proceedings. **As we have stated elsewhere in this rendition, the main purpose of an arbitration is to settle the dispute outside court or without the influence and intervention of the courts.**

Even though, as has been pointed out, the Courts have been granted some control mechanisms over the conduct of arbitral proceedings under the Act, the scope and extent to which the High Court intervened in this instance has far exceeded it's jurisdiction. It is in our resolve to limit the unbridled interference of the court into the workings of arbitral Tribunals under Act 798 that has culminated into this decision.

The issues of ***lifting the corporate veil*** as espoused in the celebrated case of ***Morkor v Kuma [1998-1999] SCGLR, 620*** and the doctrine of *"alter ego"* which the learned High Court Judge embarked upon and used to join the Applicants, a non-signatory to the arbitral proceedings in our respectful view amount to the learned trial Judge exceeding his jurisdiction.

As a matter of fact, all the renditions by the learned trial Judge on these two principles were irrelevant and need not have been taken into consideration by him.

In the premises, we are of the considered view that the Applicants have made a strong case for the exercise of our jurisdiction in ground one of this application. Certiorari will therefore lie to quash the decision of the High Court (Commercial Division) Accra, dated 21st December 2017.

GROUND 2

The second and final ground of this application is that the joinder of the applicant a non-signatory to the arbitral proceedings amounted to an error of law patent on the face of the record.

In the first place, what must be noted and taken seriously into consideration is that, all the parties to this arbitral agreement knew the prevailing facts and circumstances of the case.

Indeed, as a reminder, there have been series of agreements between the parties herein, including the Interested Parties and Applicants. Then subsequently, WAQL was established and took over the roles, functions etc. of the Applicants. The Interested Party knew of all these facts and yet voluntarily entered into the agreement which expressly stated that the agreement which was to expire in December 2012 should go beyond that period with the position of the Interested Party and WAQL as the parties to the arbitration agreement.

In the determination of the application before it, the learned High Court Judge in our opinion took into account extraneous and erroneous matters and that led it to conclude thus:-

> *"From the totality of the evidence on record the court is absolutely convinced that* ***West Africa Quarry Limited was used as a cover by Ghacem*** *and for that matter in circumstances of this case, it will* ***be unjust to let the arbitration proceed without the participation of Ghacem, the main actor*** *in the whole scenario." Emphasis supplied.*

In our respective opinion, it is the consideration of these extraneous matters that have led to the learned trial Judge to make the prejudicial statements which are erroneous and amounts to error of law on the face of the record, and this is quite patent.

For example, the learned trial Judge without taking evidence from the parties, made very far reaching comments and conclusions on the matter. In one breadth, he concluded that the Applicant had made fraudulent representations to the Interested Party and also that, he would lift the veil of incorporation in order to expose the fraud that had been perpetuated and do substantial justice.

As we have already observed in this Ruling, the Parties negotiated and entered into the agreement on their own volition and consent. The ADR Act, indeed contains very useful provisions all aimed at illustrating the fact that arbitration agreements are voluntary decisions which are entered into by consenting persons or corporate entities. That was what happened in the instant case.

See sections 2 (1) and (2) and 135 of Act 798 which reiterate the above positions with much clarity.

See also cases on the point which support the view that error of law which is patent in the decision of the High Court is subject to the supervisory jurisdiction of the Supreme Court.

These cases are:-

1. ***Republic v High Court, Accra Ex-parte Commission on Human Rights and Administrative Justice (Addo Interested Party) [2003-2004] SCGLR***

2. ***Republic v High Court, Accra Ex-parte Laryea [1989-90] 2 GLR 99 per Amua-Sekyi JSC at 101.***

In the case of **Republic v Court of Appeal, Ex-parte Tsatsu Tsikata [2005-2006] SCGLR 612**, the Court held as follows:-

> *"The clear thinking of this court is that our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those* ***manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors go to the jurisdiction or are so*** *plain as to make the impugned decision a nullity." Emphasis*

In view of the above decisions and many others too numerous to refer to here, it is our opinion that the decision of the High Court, Accra (Commercial Division) dated 21st December 2017 contains patent errors of law on the face of the record, and that these errors also go to jurisdiction and must therefore not be allowed to stand. This ground of the application also succeeds.

CONCLUSION

In the premises, we are of the considered view that the Applicants have established a case for the grant of certiorari to quash the decision of Samuel Asiedu J, presiding over the High Court, Accra (Commercial Division***) dated 21st day of December 2017 in Suit No. MISC./0184/17*** intitutled ***In the Matter of The High Court Civil Procedure Rules, 2004 (Order 19 r 1 (2)) And in The Matter of Section 40 of The ADR Act, 2010 (Act 798) And in The Matter of Arbitration Between AJ FANJ Construction Limited (The Interested Party Herein) And WAQL, And In The Matter of An Application For Joinder of GHACEM (The Applicants) As A Non-Signatory Party*** *is hereby* ***ordered*** to be ***brought up and same is*** *accordingly brought up and quashed.*

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

YEBOAH, JSC:-

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

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

BAFFOE-BONNIE, JSC:-

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

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

APPAU, JSC:-

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

Y.APPAU
(JUSTICE OF THE SUPREME COURT)

PWAMANG, JSC:-

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

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

YONNI KULENDI WITH HIM DANIEL SAGU OSEI FOR THE APPLICANT.

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