IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2021

CORAM: DOTSE, JSC (PRESIDING)
PWAMANG, JSC
LOVELACE-JOHNSON (MS.), JSC
HONYENUGA, JSC
AMADU, JSC

CIVIL APPEAL
NO. J4/61/2021

15TH DECEMBER, 2021

REPUBLIC

VRS

GHANA NATIONAL GAS COMPANY .....RESPONDENT/APPELLANT/APPELLANT

EXPARTE:

KINGS CITY DEVELOPMENT COMPANY ..... APPLICANT/RESPONDENT/RESPONDENT

LANDS COMMISSION ..... INTERESTED PARTY/RESPONDENT

JUDGMENT

PWAMANG JSC:-

My Lords, the kernel of this case is in a small compass and it is whether, on the facts, the procedure by which the applicant/respondent/respondent (applicant) sought redress

from the High Court was appropriate and whether the Court of Appeal ought to have upheld the arguments of the 1st respondent/appellant/appellant (respondent) and allowed the appeal. Procedural law is a vitalintegral component of law as a whole. Its remit is theprescription of remedies, theregulation of the meansby which persons who are aggrieved may seek redress and the manner in which court proceedings are to be conducted. In respect of certain matters, legal remedies and procedure areprovided for insubstantive statuteor even ina constitutional text, for example,criminal offences and evidence. But, it is mostly by subsidiary legislation and the settled practices of the courts that the detailed rules of procedure for civil casesare provided for.As a major*raison d'etre* of laws in any society is to ensure the orderly conduct of human affairs, judges have insistedperennially, that procedure rules must be observed strictly, except inspecial circumstances that are clearly stated. Consequently, the fact that a person has a claim which is judicially enforceable does not entitle her to walk into any court building or approach any judge and request for any form of remedy.

In the case of **Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal and Electoral Commission-Interested Parties) [2009] SCGLR 460**,the 1stinterested party was the National Democratic Congress (NDC) parliamentary candidate at the parliamentary election for Akwatia Constituency in 2008. At the close of voting,the Electoral Commission(EC) noticed some irregularities at six polling stations and decided to conduct a re-run at those polling stations but the interested party protested, claiming that the irregularitieswere widespread so the re-run ought to be conducted at all the polling stations. In order to stop the EC from doing the re-run at only six polling stations, the interested party filed a writ of summons in the High Court, Koforidua and obtained an order of injunction restraining the EC from conducting the re-run at the six polling stations. The New Patriotic Party (NPP) candidate, who appeared to be winning the election, applied to the High Court and was joined to the suit after which the interested party amended his writ of summons and claimed for a declaration that the elections were fraught with widespread irregularities and ought to be cancelled and for an order for a re-run of the entire election. The NPP candidate

then filed a motion to set aside the writ of summons arguing that thefiling of a writ of summons to commence the case, instead of an election petition as stated in the electoral law, denied the court jurisdiction in the case. His motion was dismissed by the High Court. On an application by the NPP candidate for certiorari to the Supreme Court, the court quashed the whole proceedings in the High Court on the ground that the procedure adopted by the plaintiff in filing a writ of summons instead of an election petition was fundamentally flawed. Dotse, JSC in his concurring opinion at page 514 of the Report observed as follows;

"In the instant case, the first interested party are in the right forum. However, the procedure adopted was clearly wrong, unwarranted and an abuse of the process of the court. It is the non-compliance with the procedural requirements that the first interested party has faulted in, thereby making the commencement of the entire action premature and unwarranted in law."

At page 511 my distinguished brother added as follows;

"I belief the time is ripe for the courts of law to frown upon and condemn any attempt whatsoever aimed and directed at circumventing laid down procedures as established by law. These specie of conduct has the effect of destroying the fabric of the constitutional and legal structure of society."

In the above case, the court conceded that the interested party had a grievance and was even in the right forum, but the means by which he entered the right forum was wrong so he was thrown out. This case is only one example of how fundamental our courts consider compliance with the rules of procedure, especially when they relate to the manner ofcommencing proceedings to seek redress from a court. See also **Republic v High Court, Winneba; Ex parte University Teachers Association of Ghana [2017-2018] 2 SCLRG (Adaare) 203.**

In the instant case, the trial judge set the first issue for her determination to be;

"whether this is an appropriate case for which an order of Mandamus shall issue."

The writ of mandamus is a remedy in law with a history and developed along similar lines as habeas corpus, certiorari, prohibition and *quo warranto* and together they are referred to as prerogative writs or orders. Mandamus, specially, is a remedy the law deploys to grant relief for causes of action arising in Administrative Law and though it has evolved over time the essential preconditions for its grant are fairly settled in Ghanaian Law. In the case of **Republic (No.2) v National House of Chiefs; Ex parteAkrofaKrukoko II (Enimil VI Interested Party)(No.2) [2010] SCGLR 134** at pages 177 to 178 of the Reportthe Supreme Court adopted the following statement of Annan J (as he then was) on the conditions precedent for mandamus;

'This issue was addressed by Annan J (as he then was) in the case of Republic v Chieftaincy Secretariat; Ex parteAdansi Traditional Council [1968] GLR 736, where an apt summary of the law and the grounds upon which a party may seek the redress for mandamus, were stated by the court. The court (as stated in holding (1) of the headnote) held thus

*"…an order of mandamus would lie to compel performance of the duty at the instance of a person aggrieved by the refusal to perform that duty unless another remedy was indicated by the statute. But before a court would make such an order of mandamus the applicant must satisfy**four main conditions, namely: (a) that there was a duty imposed by the statute upon which he relied, (b) that the duty was of a public nature, (c) that there was a right in the applicant to enforce the performance of the duty and (d) there had been a demand and a refusal to perform that public duty enjoined by statute."***

See also; **Civil Motion No. J5/10/2018, decided by the Supreme Court on 8th March, 2018 intituled The Republic v High Court, General Jurisdiction '5', Accra; Ex parte: The Minister for the Interior & The Comptroller-General of Immigration (Ashok Kumar Sivaram-Interested Party) (unreported).**

Mandamus is a special supplementary remedy to be granted where a person with a right to enforce a public duty is found to be without effective and speedy remedy within the context of the existing law. It is also discretionary so though the conditions for its grant as stated above may be made out by an applicant, the court may refuse to order it for justifiable reasons.

The facts of this case are not in dispute and are straight forward. By the affidavit in support of its application for mandamus, the applicant deposed that its land in the Western Region was compulsorily acquired under the State Lands Act, 1962 (Act 125) by Executive Instrument No. 47 made on 12th June, 2014 by the Minister for Lands and Natural Resources to be used for laying a gas pipeline from the facility of the respondent at Atuabo. The applicant says that compensation payable to it under Act 125 had been assessed by the Lands Commission to be GHS69,388,642.47 and that the Lands Commission has instructed the respondent to pay as it is the agency for whose benefit the land was compulsorily acquired. The respondent has refused to pay the assessed compensation hence the application for an order of mandamus to compel it to pay the stated sum to it or into an interest yielding escrow account. The applicant alleged in paragraph 33 of its affidavit in support, that the respondent owes a constitutional and statutory duty to pay the assessed compensation under provisions of Act 125 and the State Lands Regulations, 1962 (L.I 230).On being served, the respondent opposed the application and in its affidavit in opposition raised two main points; 1) it is not a department or agency of the Government of Ghana but a limited liability company incorporated under the Companies Act 1963 (Act 179) so it is not amenable to the writ of mandamus. 2) There is no duty imposed on it by any law to pay compensation to the applicant for the land acquired by the Government of Ghana.

From the issues raised by the respondent, the foremost question that has to be resolved by the court, having regard to the conditions precedent for mandamus as settled by the cases referred to above is; whether there is a statutory duty imposed on the respondent to pay the amount assessed by the Lands Commission as compensation to the applicant? If this threshold is not crossed, there will be no need to determine the

issue of the quasi-public status of the respondent. The effect of the decisions of our courts is, that the sine qua non for mandamus is the existence of a statutory duty incumbent on the person or body against whom the mandamus is sought and there must equally exist a right in the person applying for the mandamus to enforce the performance of that statutory duty.

There is however emerging jurisprudence from some common law jurisdictions that permit the grant of mandamus in situations where a duty of a public nature is incumbent on a respondent but the duty does not arise directly from a statute. But, that does not apply in this case as the applicant itself grounded its application for mandamus on a statutory duty arising from Act 125 and L.I. 230 and secondly, the alleged duty to pay compensation is not of a public nature.

Inthe case of**The Republic vHigh Court, General Jurisdiction '5', Accra; Ex parte: The Minister for the Interior &The Comptroller-General of Immigration (Ashok Kumar Sivaram-Interested Party) (supra),** the Comptroller-General of Immigration, Mr Kwame Asuah Takyi, after investigations he carried out into the circumstances under which the interested party, an Indian National, was issued with a Ghana resident/work permit detected fraud, so he revoked the permit under **section 20** of the **Immigration Act, 2000 (Act 573).** Based on the revocation of his resident permit, the Minister for the Interior, Hon Ambrose Dery, issued a Deportation Order under **section 36 of Act 573** for the interested party to be deported from Ghana. The interested party quickly applied to the High Court which granted an order of injunction restraining the Minister from deporting him and also issued an order of mandamus directing the Comptroller-General of Immigration to restore his resident permit. On an application for certiorari by the Minister and the Comptroller-General to quash the orders of injunction and mandamus respectively, the court speaking through Benin, JSC noted as follows;

"These provisions are clear and unambiguous. When the immigration authorities revoke a permit, they have nothing to do with the matter of its restoration in the first place, unless ordered by the Minister following a petition to him. The statute has designated

the Minister for the Interior as the person to be petitioned. The statute has also set out what procedure the Minister is to follow upon receipt of a petition. Section 46 is akin to an appeal procedure enabling an aggrieved person the opportunity to have his case re-heard by a different group of people. Hence the Act totally excludes any worker in the Immigration Service in the consideration of a petition under this section. It is for the Committee set up by the Minister to advise him whether the Immigration authorities acted rightly or not and to make appropriate recommendations to the Minister. Upon receipt of the recommendations, the Minister in turn may issue appropriate directions to the Immigration authorities who will then be bound by the Minister's directions in the matter……

*Thus the High Court did not have jurisdiction to entertain an application for mandamus when the interested party had not commenced, not to talk of having exhausted the procedure provided under section 46 of Act 573.**The Comptroller has no role to play in the sense that there is no public duty cast on him in respect of proceedings under section 46 of the Act. Once he has cancelled a permit, the act does not confer on him a right of review of his decision. An aggrieved party, as earlier pointed out can only petition the Minister for redress. Consequently, the application for, and the court's order of mandamus issued against the 2nd applicant (the Comptroller) was clearly misconceived and incompetent in law."*** (Emphasis supplied).

In this case, the applicant was not able to point out from Act 125 and L.I.230 any provision that imposes a duty forthe compensation that has been assessedby Lands Commission to be paid to a person whose land is compulsorily acquired. The duty that Act 125 imposes on the Lands Commission is clear, and it is to cause the compensation payable to be assessed. Section 4(2) of Act 125 is as follows;

(2) The Lands Commission shall upon receipt of claim for compensation under subsection (1) cause to be assessed the payment of fair and adequate compensation by the government for the land acquired to the owner.

There is no ambiguity as to the nature of the duty imposed on Lands Commission by the Act and the judge of first instance recognizes clearly the absence of any duty imposed by statute on anyone to pay assessed compensation. Yet,at pages 11 to 12 of her ruling the judge moved on to consider the rights of a person whose land is compulsorily acquired to receive compensation when that is not what the settled law on mandamus is about. She referred to Section 3 of the Act which is as follows;

Section 3—Determination by High Court.

Subject to section 4, the High Court shall determine the rights or interest of any person,

(a) where there is a dispute as to the right or interest claimed by reason of conflicting claims or interest,

(b) where the person is dissatisfied with the compensation assessed by the Lands Commission.

This section does not apply to this case because the conditions for that jurisdiction of the High Court to arise are; i) where there is a dispute as to the right or interest in the land acquired by reason of conflicting claims, or ii) where the person whose land is acquired is dissatisfied with the amount of compensation assessed. Both situations are absent in this case but the judge nevertheless says as follows;

"A careful reading of both the Constitution, 1992 and the State Lands Act however reveal that the framers did not state the intended remedy that could be claimed nor the process by means of which a claim may be made. Indeed nothing is even said of a refusal to pay compensation by the appropriate body…"

But this is a basic fallacy by the judge. Article 20 of the Constitution, 1992 which she was obviously referring to falls under Chapter Five of the Constitution on Fundamental Human Rights and Freedoms and Article 33 thereunder states the remedy that is available to a person whose human rights have been violated as she was surmising.

Article 33(4) in particularrequired the Rules of Court Committee to make rules to regulate the procedure for enforcement of Human Rights by the High Court and this has been done and the rules are to be found in**Order 67** of the **High Court (Civil Procedure) Rules, 2004 (C.I.47)**. Mandamus in the High Court is a public law remedy provided for under Articles 141 and 161of the Constitution with a clear scope set out in the decided cases. If even the judge was thinking of a default procedure because no means for relief has been provided to persons in the situation of the applicant in the Constitution and Act 125, then she ought to have considered **Order 2 Rule 2 of C.I. 47** which states as follows;

" Subject to any existing enactment to the contrary all civil proceedings shall be commenced by the filing of a writ of summons."

Payment of compensation may not be a straightforward question of enforcement of human rights where there are contentious issues bordering on the rightful person entitled to be paid, the correct amount that the particular land ought to be valued for or even whether compensation has not already been paid for the acquisition in question. In those situations, the appropriate procedure to seek redress would be by action commenced by writ of summons under Order 2 Rule 2. The trial judge herself stated in her ruling that mandamus, and that goes for all the prerogative writs, is usually seen as a supplementary remedy to be resorted to where there is no alternative effective remedyprovided by statute and may be refused in the discretion of the court. But on this matter of claim for payment of compensation, more than adequate effective remedies already exist in the law. No legal impediment has been pointed out to usas likely to be experienced bythe applicant proceeding under Order 67 or Order 2 Rule 2 of C. I 47 to warrant thecleardisregard for binding judicial precedent which makes the requirement of a public duty imposed on the respondent mandatory for the invocation of the administrative law remedy of mandamus.

Besides everything, the party herein is not a competent respondent at all in the circumstances of this case because no shadow of duty has been imposed on it as Benin, JSC explained in the case of **Ex parte Minister for the Interior & Anor**

(supra).Also, in the case of **Karriapper v Wijeshuan [1968] AC 717,**the appellant was a member of the House of Representatives of Ceylon but his membership ofthe House was terminated by virtue of an Act of the legislature that barred members who had been found guilty of corruption from sitting as members. The appellant, taking the view that the Act disqualifying him was void, filed an application for a writ of mandamus directed at the Clerk and Assistant Clerk of the House to compel them to recognize him as a member of the House and to pay him his remuneration and allowances because,according to him, the Act that disqualified him was unconstitutional.On a final appeal to the Privy Council, the board held that the remedy of mandamus to be directed at the Clerks was an inappropriate procedure for redress on the facts of the case. Sir Douglas Menzie who read the opinion of the board said as follows at page 745 of the Report;

"Their Lordships have thought it proper to deal with the appeal upon its merits before considering whether the procedure actually adopted to bring the question of the validity of the Act before the Supreme Court, i.e., an application for a mandate in the nature of a writ of mandamus to the Clerk and the Assistant Clerk of the House of Representatives, was appropriate. In the Board's opinion it was not. In the end it was practically conceded by Mr. Gratiaen that ***it had not been shown that the respondent or either of them were under a duty to the appellant to pay him his parliamentary salary and allowances even if he continued to be a member of Parliament. Furthermore in their Lordships' opinion it was not shown that the respondents or either of them owed any duty to the appellant to " recognise " him as a member of Parliament even if a sufficiently precise meaning to found mandamus could be accorded to the vague word " recognise ". The duties upon which reliance was placed arose under the Standing Orders of the House of Representatives and although they were no doubt duties in respect of members of the House they were duties owed to the House itself or to the Crown as the employer. Therefore, the view of the judge of first instance that no remedy has been provided by the Constitution***

for a person in the circumstances of the applicant was grossly misconceived." (Emphasis supplied).

Similarly, in the case of **Republic v Controller & Accountant-General; Ex parteDizengoff (WA) Ltd [1974] 1 GLR 337**, the applicant company was owed some money by the Eastern Regional Administration on account of services it rendered to it. The Regional Administration forwarded the requisite documentation to the respondent to make payment to the applicant but he resisted so the applicant applied for mandamus to order respondent to pay to it the amount of c91,845.00 owed. In holding that mandamus was not the appropriate remedy, Abban J (as he then was) said as follows at page 334 of the Report;

'The Financial Administration Decree, 1967 (N.L.C.D. 165), which learned counsel for the applicant seemed to have relied upon, does not create any legal duty between the respondent and the applicant. I have gone through that Decree, and I have not come across any paragraph in the said Decree which enjoins the respondent to give authorisation for payment of moneys stated on treasury drafts, such as the one the applicant is supposed to be holding at the moment. In Ex parte Napier (1852) 18 Q.B.D. 692 at p. 695, Lord Campell C.J. in discharging the rule, said:

"The applicant must make out that there is a legal obligation on the East India Company to pay him the sum he demands, and that he has no remedy to recover it by action. The latter point becomes material only when the former has been established, for the existence of a legal right or obligation is the foundation of every writ of mandamus."'

From the established principles on the remit of the writ of mandamus, the respondent herein does not come into the picture at all as no duty has been cast on it, either expressly or by necessary implication, to warrant an order of mandamus directed at it.

When the matter went on appeal to the Court of Appeal, they avoided the fundamental question whether the facts of this case come within the known boundaries of

mandamus and also went to talk about fundamental human rights. At page 19 of their judgment they said as follows;

"It cannot be in disputed that the 1st Respondent's right to the assessed compensation is a fundamental human right. The denial or refusal to pay the assessed compensation to the 1st Respondent thus constitutes a violation of that right and the 1st Respondent is entitled in the circumstances to apply for judicial review in the nature of mandamus in its quest for redress under Article 33: It is therefore our considered opinion that the procedure by which the 1st Respondent sought relief in the trial court is cognisible in law. Accordingly this ground of appeal is unmeritorious and same is hereby dismissed."

It is plain from the above quoted passage that their Lordships, with great respect to them, did not consider Article 33 of the Constitution as a whole because if they did, they would have realized, as pointed out above, that pursuant to Article 33(4) the Rules of Court Committee established under Article 157 of the Constitution to make binding rules regulating the procedures of all courts in Ghana has already madeprocedure rules for the enforcement of Fundamental Human Rights by the High Court.

The trite learning is, that where an enactment stipulates a procedure for seeking redress it is to that procedure that an aggrieved person must resort, unless there is an exception expressly made or by necessary implication.This principle was stated by the Supreme Court in the case of **Tularley v. Abaidoo [1962] 1 GLR 411** and applied in the case of **Boyefio v. NTHC Properties Ltd [1996-97] SCGLR 531 at 546.**In**Aschkar v Karim [1972] 1 GLR 1,** the Court of Appeal (Azu Crabbe, JSC, Lassey, Archer, JJA) held as follows at Holding (1) and (2) of the Headnote of the report;

"(1) rule 33 of the Supreme Court Rules, 1962 (L.I. 218), is not intended to take the place of an appeal, and an application under that rule ought not to be dealt with as if it were a further appeal. ***Therefore the mere ground that there is a good ground***

upon which the judgment could be set aside on appeal is not of itself a ground for granting review. *To justify the review of a case the circumstances giving rise to the application must be exceptional and a review must be in the interest of justice.*

(2) In any event the application was misconceived. Rule 33 contemplates the review of a judgment on the merits and does not apply where an appeal has been dismissed for non-prosecution. ***The correct procedure would be an application for relistment under rule 23 (2) and since a specific procedure has been prescribed that alone should be followed.*** *Adjani v. Agyeman III, Court of Appeal, 6 November 1969, unreported; digested in (1970) C.C. 14 and Tularley v. Abaidoo [1962] 1 G.L.R. 411, S.C. cited."* (Emphasis supplied).

Consequently, if the applicant's case is said to be for enforcement of its Fundamental rights, then it is by Order 67 of C.I.47 that it must come. To hold otherwise would make the administration of justice chaotic and dependent on the individual judge's notion of justice and soon, it will be said that a party can bring a divorce case under **Order 67** and ignore **Order 65**of C.I.47, after all the court can still arrive at the same conclusion.

Attempts to deploy mandamus in common law courts to redress private rights of persons of this typethat are not predicated on a public duty have been disallowed. In the case of **The King (Butler) v Navan Urban District Council (1) [1926] IR 92**, members of a church which perimeter wall collapsed as a result of excavations made ona public road adjourning the wall filed an application for mandamus against the urban council for the court to command it to rebuild the wall. The church contended that the council was liable to it in tort for causing the collapse of their wall. Though other ratepayers joined in the action on the basis that as rate payers, the council had an obligation to rebuild the wall as its collapse left some debris that obstructed passage of the road, the action was prosecuted by the church on behalf of all the applicants. After initially granting an interim order of mandamus the court discharged it on the application of the council which argued that the church was seeking the enforcement of

their private right against them so mandamus was not the appropriate remedy. The court held as follows;

"This Court permits one member of a class to come here as relator to put the Crown in motion for the purpose of enforcing what is in the interests of that class. If the member of that class has another and separate capacity in which his interest is antagonistic to the general interest of that class, and if he comes in as a member of that class in reality to enforce his own interest, that is, in my opinion, a prostitution of the writ of mandamus, and I think we ought not really to grant it in such a case. The Court will never grant a mandamus unless it sees that it would be an effective remedy. In the present case I am satisfied that, although the Rector and Churchwardens and members of the Select Vestry are ratepayers in the urban district of Navan, they have brought these proceedings, not as ratepayers, but as the Rector and Churchwardens and Select Vestry of the Parish Church in Navan, ***for the purpose of establishing, if possible, the liability of the Navan Urban District Council to maintain the retaining walls of the graveyard attached to that Church****. In these circumstances, I think the principles enunciated by the Lord Chief Baron in Lynam's Case (1) apply to this case, and I am of the opinion that the cause shown should be allowed and the conditional order discharged*."(Emphasis supplied).

The applicant to all intents and purposes is seeking by its application to have its claim to compensation for its private land compulsorily acquired by the state paid to it. Both the High Court and the Court of Appeal were very clear on this but mandamus is only to be granted where the right the applicant seeks to enforce derives from a statutory or public duty and not for the establishment of liability and enforcement of a private right against a respondent, whether a public, quasi-public or private entity. Furthermore, it must be borne in mind that where an order for mandamus is breached, it may only be enforced by committal for contempt but in this court the constitutionality of committing a person for non-payment of money under the Constitution, 1992, has been doubted in the case of **Republic v High Court (Fast Track Division) Accra;Ex parte PPE Limited & Paul Juric (Unique Trust Financial Services Limited – Interested**

Party) [2007-2008] SCGLR 188. So, if the order made against the respondent in this case to pay the money to the applicant is not complied with, it cannot be enforced and courts do not make orders they cannot enforce.

In the recentCourt of Appeal case;**H1/05/2015** intituled **Republic v The Administrator of Stool Lands &Ors; Ex parte Emmanuel Narh Amade & Anor**, the respondents who claimed to be entitled to a portion of mining royalties accruing from mining activities in the Yongwa Forest Reserve, which is on their stool land, applied for an order of mandamus compelling the appellant to pay the royalties to them which the High Court, Koforidua granted. On appeal, the Court of Appeal in their unreported judgment authored by Sir Dennis Adjei, JA dated 11th March, 2015 unanimously set aside the mandamus reasoning, correctly in our view, that mandamus is ill-suited as a remedy in private civil law claims.

In our jurisdiction, the law reports and the cases that come before us in this court show that mandamus is actively used in matters of chieftaincy and land registration. But we are sorry to say that we have witnessed the abuse of this remedy whereby the National House of Chiefs is commanded by mandamus to either insert the name of a person with dubious credentials as a chief on the blind side of that person's contestants or to expunge the name of a person legitimately entered in the National Register of Chiefs without notice to that chief. In the area of land registration, mandamus has been used to command the land authorities to register disputed land in the names of parties whose claim to the land is suspicious and is hotly underchallenge in court without notice to such contestants. In other cases, the name of a person whose interest in land is registered in the records of Lands Commission for more than twelve yearsis suddenly deleted on an order of mandamus in proceedings that did not involve him. Therefore, though mandamus is a very useful tool by which the courts can ensure effective justice in appropriate cases, the picture painted above shows a tendency by some judges in our jurisdiction to misapply the remedy.

We see through this case an attempt to add the remedy of mandamus to claims for compensation for compulsory acquisition of land by the state. This is an area of our

national life that corrupt deals were uncovered when theCommission of Enquiry on Judgment Debts presented its report. The report revealed instances where the state has been made to pay double compensations for the same land valued at atrociously excessive amounts. We are therefore, on policy grounds, very reluctant to extend the remedy of mandamus to this area of the state's liabilities when the existing remedies have not been found to be inadequate. It is our considered opinion, that in compensation claims for the state's compulsory acquisition of land, the appropriate procedure ought to be under Or 2 R2 of C.I.47 in order that the claim can be thoroughly investigated before payment is ordered by a court.

When the applicant filed its application in the High Court, the respondent from the outset opposed the procedure and argued its case competently, drawing the attention of the courts below to some of the authorities that we have considered supra. Though these authorities are binding on the High Court and the Court of Appeal, they refused to be bound by them for reasons that have we shown to be legallyunsupportable. If the applicant had advised itself properly from the beginning and brought its action under the appropriate rule of procedure, it may have gotten a determination of its claim by now. So, there should not be any talk of doing substantial justiceand ignoring procedure in a case like this where the manner of commencing the action is so plainly flawed and the objection was raised right from the beginning.

Consequently, we find merit in the appeal and it is accordingly allowed. The judgments of the High Court dated 23rd January, 2020 and of the Court of Appeal dated 25th March, 2021 are hereby set aside. The applicant's application for mandamus is dismissed.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

DOTSE JSC:-

This case concerns an application for judicial review filed by the Applicants/Respondents hereafter referred to as Applicants "King City Development Company" seeking an order of mandamus against the Respondents/Appellants, hereafter referred to as Respondents, (Ghana National Gas Company Ltd.), for the payment of sixty nine million, three hundred and eighty-eight thousand, six hundred and forty-two Ghana Cedis and forty seven pesewas (GH¢69,388,642.47) as the compensation for the compulsory acquisition of its land, valued and assessed by a statutory body established under the Constitution 1992, for that purpose, the "Interested Party" herein – Lands Commission.

The facts of this case have been stated by my distinguished brother, Pwamang JSC, and except for the purposes of emphasis and my own understanding of the facts in this case, I rely on the facts stated by him.

I am of the view that, the posturing of the Respondents herein deserves some comment. I am further of the view that there is also the need to comment on the procedure adopted by learned counsel for the Applicants in seeking the payment of the compensation due his clients, not by the process of a writ of summons as is normally done but by the process of a judicial review in the nature of Mandamus.

In doing so, it is somewhat necessary to lay down in principle what an Applicant who is desirous to succeed in an application for Mandamus, must establish. These are:-

1. Satisfy the court that the duty to be compelled is of a public nature
2. Satisfy the court that he has a sufficient interest to be protected by the action.
3. In some instances, (indeed most of the time) satisfy the court also that despite a prior request for the performance of the duty, the duty bearer has failed to comply; and finally,
4. Satisfy the court that there is no other equally convenient or appropriate remedy available to compel the performance of the duty.

See cases like the Republic v High Court, Koforidua, Ex-parte Kofi Yeboah Affum (substituted by Opanyin Kwasi Akomeah and others, J5/24/2011 GHASC 34 15/11/201.

- Republic v Chief Accountant, District Treasury, Kumasi, Ex-parte Badu [1971] 2 GLR 285
- Republic v Chieftaincy Secretariat and Anr. Ex-parteAdansi Traditional Council [1968] GLR 736
- Republic (No. 2) v National House of Chiefs, Ex-parteAkrofaKrukoko II (Enimil VI – Interested Party) No. 2 [2010] SCGLR 132
- Kwakye v Attorney-General [1981] GLR 9

It is important to stress here that unlike my brother Pwamang JSC, whose decision I concur in, albeit for same and other reasons stated herein, I have decided to consider all the necessary pre-conditions necessary for the grant of Mandamus and relate the principles herein to the facts of the case.

However, it is in the narration of the facts herein, and the conduct of the parties, especially those of the Respondents, and to some extent, the apparent lack of candour exhibited by both the Respondents and the Interested Party that I wish to comment upon in this concurring opinion.

WHAT ARE THE REAL FACTS GERMANE TO THIS CASE?

I have found these adequately captured in the "Minutes of the Joint Central Site Advisory Committee on the Acquisition of parcels of Land and the Right of way for Ghana National Gas Company, Held on 28th May 2013 at the Conference Room of the Residency of the Western Regional Co-ordinating Council and which is produced in the record of appeal." I therefore deem it expedient to reproduce the said minutes in full as follows:-

"MINUTES OF THE JOINT CENTRAL SITE ADVISORY COMMITTEE ON THE ACQUISITION OF PARCELS OF LAND AND THE RIGHT OF WAY FOR GHANA NATIONAL GAS COMPANY, HELD ON 28TH MAY 2013 AT THE CONFERENCE ROOM OF THE RESIDENCY OF THE WESTERN REGIONAL COORDINATING COUNCIL

1.0 Members Present

Regional Coordinating Director, Sekondi	-	Chairman
Ag. Regional Lands Officer, Land Commission Sekondi	-	Secretary
Regional Valuer, Land Valuation, Sekondi	-	Member
Regional Engineer, Ghana Highway Authortiy, Takoradi	-	Member
Regional Town & Country Planning Officer, Sekondi	-	Member
Mun. Coord. Dir, Tarkwa-Nsuaem Assembly, Tarkwa	-	Member
DCE, Ahanta West District Assembly, Agona Nkwanta	-	Member
Dist, Coord, Director, Jomoro District Assembly, Half Assini	-	Member
District Coord, Director, Shama District Assembly Shama	-	Member
Reps Ghana National Gas Company		
Rep. P.V.L.M.D of Lands Commission Sekondi	-	Member/ Recorder
Rep. Regional Economic Planning Officer, Sekondi	-	Member
Rep. Reg. Director Electricity Company of Ghana Takoradi	-	Member
Rep. Regional Surveyor Takoradi	-	Member
Rep. Sekondi-Takoradi Metro Assembly, Sekondi	-	Member
Rep. Jomoro District Assembly, Half Assini	-	Member

Rep. Shama Disrict Assembly, Shama - Member
Rep. Ministry of Food and Agriculture - Member

2.0 Opening

The meeting started at about 11.20am. Members introduced themselves upon the Chairman's request after welcoming them to the meeting. He explained the purpose of the meeting, which was to ascertain the suitability of the sites to be acquired and to make recommendations for those sites to be compulsorily acquired for the Ghana Gas Infrastructure Project for Ghana National Gas Company.

3.0 Background to the Project

In the brief, Mr. GameliAgboada, a representative of Ghana National Gas Company indicated that the Ghana National Gas Company, which is wholly owned by the Government of Ghana functions to build, own and operate infrastructure required for gathering, processing, transportation and marketing of natural gas resources in the country, and also to produce fuel for power generation to eliminate the energy problems in the country.

He added that, as part of discharging their duties, the company, requested the Ministry of Lands and Natural Resources to assist in the acquisition of a site with an approximate area of 981.689 acres at Atuabo in the Ellembelle District of the Western Region for the construction of a Gas Processing Plant, which stemmed from the government's goal of laying gas pipes from the Jubilee Oilfield (which is close to Atuabo in the Ellembelle District) to the VRA Thermal Plant at Aboadze. He further stated that five (5) other parcels of land or stations which are also located within the Western Region, along the gas pipelines were also to be acquired. He again enlightened members that the gas pipeline to be laid was supposed to cover a distance of 111 kilometres on a 35 metre corridor. Following this, he justified the suitability of the sites at Atuabo to be acquired compulsorily by the government by indicating its close proximity to the Jubilee Oilfields. The five (5) stations were the Ghana Pipeline Landfall site also at Atuabo (in the Ellembelle District) measuring an approximate area of 2.39 acres, Esiama (in Ellembelle District) measuring an approximate area of 63.649 acres which would be acquired for a Gas Distribution Station, Nduabesa (in Tarkwa – Nsuaem Municipality) measuring an approximate area of 9.889 acres which would be acquired for a Block Value Station, Kwekutsiakrom (in Ahanta-West District) measuring an approximate area of 9.914 acres which would be acquired for a Block Value Station, and Inchaban (in Shama District) measuring an approximate area of 65.629 acres which would be acquired for a Regulating and Metering Station. He indicated that the Government of Ghana settled on those sites after feasibility and viability studies had been carried out by SINOPEC International Petroleum Services of China, contractors for the project.

4.0. Availability of funds and compensation

Making reference to Regulation 3 of the State lands Regulation, 1962, LI 230, the Acting Regional Lands Officer asked the company to indicate whether or not they had

enough funds for the project to be undertaken and payment of compensation for the land and other incidental costs including crops. In his response, Mr. Kwame Addo-Yobo, also of the Ghana National Gas Company responded that enough funds had been made available by the company for the project which also covered compensation to be paid to the rightful land owners for the parcels of land earmarked for acquisition. He added that a loan of One billion United States Dollars (US$1,000,000,000.00) had been secured from the China Development Bank (CDB) for the project. He also disclosed that about 95% crop compensation had already been paid to farmers whose crops were affected when the gas pipes were being laid, after a valuation of those crops was carried out by the Lands Valuation Division of the Lands Commission. This prompted the Acting Regional Lands Officer to caution them to ensure that an Executive Instrument to that effect was published before the company paid compensation to the claimants with regards to the parcels of land to be acquired.

5.0 INSPECTION OF SITES

An inspection to the sites to be compulsorily acquired was carried out by Members. It was found out that the laying of the pipes was almost at the completion stage, while developments on the Atuabo site and the station sites to be acquired were at various stages.

The sites to be acquired are as follows:-

1. The right of way covering a distance of 111 Kilometres on a 35 metre corridor from Atuabo to the VRA Thermal Plant at Aboadze.
2. Atuabo (Gas Processing Plant Site) in Ellembelle District
3. Gas Pipeline Landfall Site at Atuabo (in Ellembelle District)
4. Esiama Station site (in Ellembelle Division)
5. Nduabesa station site (in Tarkwa-Nsuaem Municipality)
6. Kwekutsiakrom Station site (in Ahanta West District)
7. Inchaban station site (in Shama District)

6.0 Recommendation

Members unanimously recommended the six parcels of land for acquisition under the State Lands Act, 1962 (Act 125) in addition to the right of way under the Lands (Statutory Wayleaves) Act 1963 (Act 186) for acquisition. They then appended their signatures to the site plans after making the following recommendations:-

1. The Land Valuation Division should carry out an interim valuation of the project
2. The Ghana National Gas Company should make the funds available for the payment of the compensation after the Executive Instrument had been published.
3. The Land Valuation Division should also take into consideration the benefits the project would inure to the inhabitant of the sites, to be acquired so that it would offset part of the compensation to be paid to those whose interest would be affected by the acquisition.
4. Compensation should be paid to farmers whose crops would be affected within a width of 35 metres of the gas pipeline.

7.0 Closing

The closing of the meeting was moved by the Representative of Ghana Highways and was seconded by the Representative of the Regional Town and Country Office. The meeting then came to a close at about 1.30pm.

Ag. Reg. Coordinating Director	Ag. Regional Lands Officer
K. Osei-Poku	Stephen Oduro-Kwarteng
Chairman	Secretary

KEY POINTS ARISING FROM THE CENTRAL SITE ADVISORY COMMITTEE MEETING OF 28TH MAY 2013

1. Ascertain the suitability of the land i.e. sites to be acquired for the project.
2. Make recommendations for these parcels of land to be compulsorily acquired for the Ghana Gas infrastructure project for the Respondents herein.
3. Mr. GameliAgboada, a representative of the Respondent Company, informed the meeting that, the Respondents were to build, operate an infrastructure required for gathering, processing, transportation and marketing of natural gas resources and also produce fuel for power generation in the country.
4. The said official of the Respondent Company, then requested the Ministry of Lands and Natural Resources to assist in the acquisition of a land approximately of 981.689 acres at Atuabo in the Ellembele District of the Western Region for the purpose of a Gas processing plant, and also to facilitate the governments goal of laying gas pipes from the Jubilee oilfields to the VRA Thermal Plant at Aboadze.
5. The site of lands identified also included the Applicant's land, the subject matter of these renditions.
6. The Acting Regional Lands Officer for the Western Region (Interested Party) herein asked the Respondent Company whether they had enough funds for the project and payment of compensation pursuant to Regulation 3 of the State Lands Regulations, 1962, L. I. 230.
7. Arising from this request, another representative of the Respondent Company, this time Mr. Kwame Addo Yobo responded that enough funds had been made available by the company for the project which also covered compensation for the land owners of all lands earmarked for acquisition.
8. The said official then added that a loan of One Billion United States Dollars (USD 1,000,000,000.00) had been secured from the China Development Bank (CDB) for the project.
9. The official also added that about 95% of crop compensation had been paid to farmers whose crops had been affected when the gas pipe lines were being laid, after valuation.
10. This prompted the Acting Regional Lands officer of the Interested Party to caution that an Executive Instrument to that effect had to be published first before compensation was paid to claimants whose lands had been acquired.
11. An inspection to all the sites compulsorily acquired was undertaken by the officials at the meeting and it was found out that the laying of the gas pipelines was almost at the completion state.

12. The meeting accordingly recommended for compulsory acquisition of all the parcels of land including the area in dispute herein under the State Lands Act, 1962 (Act 125) in addition to the right of way under the Lands (Statutory Wayleaves) Act 1963, (Act 186) for acquisition.

13. It was also further recommended as follows:-

i. That the Land Valuation Division should carry out an interim valuation of the project.

ii. The Applicant Company should make the funds available for the payment of the compensation after the publication of the Executive Instrument for acquisition.

iii. In carrying out their valuation, the Land Valuation Division was to take into consideration the benefits to be enjoyed by the inhabitants of the project area, before concluding their compensation.

iv. Compensation should be paid to persons whose crops would be affected within a width of 35 metres of the gas pipeline.

The above constituted the discussions and decisions that should have informed the conduct of all the major parties in this case and which no doubt should guide any adjudicating body such as this court, in determining issues of relevance provided they are germane to the legal issues raised substantively and procedurally.

ISSUES RAISED IN THIS APPEAL

In my mind, the issues raised in this appeal can therefore be said to be the following:-

1. Whether or not, the Respondents, (Ghana Gas) being a private limited liability company is amenable to an order of Mandamus.

2. Whether or not the payment of compensation is a public duty in respect of which an order of Mandamus is available.

3. Whether or not the duty to pay compensation in respect of the subject matter of the application and dealt with under the minutes of the Joint Central Site Advisory Committee Meeting on the acquisition of lands held on 28th May, 2013, is borne by the Government of Ghana or the Respondents herein, and finally

4. Whether or not on the facts of this case and the laws applicable, Mandamus is an appropriate remedy to be granted.

In order to understand the nature and scope of this appeal, it is considered worthwhile to consider in some detail the scope and current trends in the grant of Mandamus.

ISSUE 1

Whether or not the Respondents (Ghana Gas) being a private limited liability company is amenable to an order of Mandamus

It is often stated that Mandamus can only be granted in respect of public bodies on whom public duties are imposed. Is this really the case?

On a review of the authorities, it becomes clear that the proper statement of the rule is that an order of mandamus is available to compel non-discretionary duties of a public nature. See Ex-parte Abban (1969) 2 G& G 420. These duties of a public nature are usually imposed on public bodies, but more so, in today's world, they are increasingly

imposed on private bodies as well. As such, it is submitted that the rules governing the availability of the writ of mandamus are properly concerned, not necessarily with the officer or office involved but rather, primarily with the nature of the function which is to be controlled by the writ, among other considerations.

In A Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto, and Prohibition, James L. High defined the order of mandamus as a "command issuing from a common-law court of competent jurisdiction, in the name of the state or sovereign, directed to some corporation, officer, or inferior court". In the case of The Queen v Criminal Injuries Compensation Board; ex parte Lain [1967] 2 Q.B. 864, which concerned an application for judicial review where the relief sought was an order of certiorari, Lord Parker C.J observed that while on the surface, the limits of the order had "varied from time to time being extended to meet changing conditions (…) [the] only constant limits throughout were that it was [always available in respect of bodies that were] performing a public duty".

As in the instant case, the case of R v Panel on Take-overs and Mergers; Ex parteDatafin PLC [1987] QB 815 was one that involved a plaintiff seeking a remedy in public law, opposed by a defendant who asserted that the plaintiff's remedy, if any, lay in private law. The defendant in that case had argued that the sole test of whether a body is subject to judicial review was the source of its power. Per its argument, since the Panel on Take-overs and Mergers was a purely private body, it could not be amenable to the review jurisdiction of the courts.

In his judgment, Lloyd L.J responded to that argument at par. 64 & 65 as follows "I do not agree that the source of the power is the sole test whether a body is subject to judicial review (…) Of course the source of the power will often, perhaps usually, be decisive. If the source of power is a statute, or subordinate legislation under a statute, then clearly the body in question will be subject to judicial review. If, at the other end of the scale, the source of power is contractual, as in the case of private arbitration, then clearly the arbitrator is not subject to judicial review: see R. v. National Joint Council for the Craft of Dental Technicians, ex parte Neate [1953] 1 Q.B. 704. But in between these extremes there is an area in which it is helpful to look not just at the source of the power but at the nature of the power. If the body in question is exercising public law functions, or if the exercise of its functions have public law consequences, then that may, as Mr. Lever submitted, be sufficient to bring the body within the reach of judicial review." He added at par. 68, "The distinction must lie in the nature of the duty imposed, whether expressly or by implication. If the duty is a public duty, then the body in question is subject to public law." Emphasis

It is observed that this is not a position that is alien to Ghanaian case law. In the case of Mould v DeVine [1962] 1 GLR 533-535, the Court in explaining what an order of mandamus was, chose its words very carefully, saying at p. 535 that "an order of mandamus (…) may be made where a body charged with a public duty to do an act has failed to do so."

It is also important to note that as was observed in Ex parte Lain (supra), the public-private dichotomy is not self-justifying, but rather rests on the fact that within the private domain, rights are affected by contract and founded on the expressed will of the parties to be bound in a private relationship by contract. It is for this reason that it is not open to parties to resort to judicial review remedies which have public law consequences.

However, in cases where private bodies assume powers, which exist independently of any contract, but can nonetheless affect the rights of members of the public, or indeed where such private bodies exercise powers that have public law implications, then that dichotomy ceases to be of relevance.

It is further submitted that with the rise of neo-liberal economic theory since the 1980s, the lines separating the private from the public have, in cases where the government is involved, been so blurred as to render the distinction almost meaningless. Prior to the 1980s, the Government of Ghana was involved in the commercial marketplace for a number of reasons, key among which included the provision of essential services to the public and the generation of revenue to the state. The primary vehicle used by the Government of Ghana to achieve these ends was the statutory corporation. Statutory corporations were legal entities, resembling companies, which were established by the Government of Ghana under an Act of Parliament to carry on a specific business or object, usually the provision of an essential service to the public. Some of these included the Electricity Corporation of Ghana, the Ghana Water Corporation, the Ghana National Petroleum Corporation and the State Transport Corporation for example. These entities, having been set up pursuant to an Act of Parliament, and providing services either to the public or in the interest of the public, were very amenable to the review jurisdiction of the Courts.

Following the rise of neo-liberal economic philosophy, the Government of Ghana, under pressure from the Bretton-Woods, institutions had to convert many of these statutory corporations to companies with shares, under the Statutory Corporations (Conversion to Companies) Act, 1993 (Act 461), for the purposes of selling them off to private persons. Indeed, many of the Statutory Corporations – turned – Companies were sold, but others remained wholly or partly owned by the Government of Ghana.

Since then, the idea of total withdrawal of the Government of Ghana from the marketplace has been abandoned, but no longer is the statutory corporation the go-to vehicle for the Government's involvement in the marketplace. It has become more commonplace for the Government to incorporate companies under the Companies Act for that purpose. Functionally, however, companies owned by the Government do not behave any differently than the statutory corporations of years past. Many of them, like the Respondents herein, still provide essential services in the interest of the public. See for example minutes of the Central Site Advisory meeting referred to supra. They are still owned, controlled and supported by the Government of Ghana.

For example, the Government of Ghana appoints the Boards of these companies, funds their activities where necessary and any profits where untouched are appropriated to

the Consolidated Fund. In fact, the controversy that forms the subject matter of this case can be traced to the compulsory acquisition of land belonging to the applicants, by the Government of Ghana, for the Respondent to be used in the discharge of its mandate.

Accordingly, given the nature of the mandate of the Respondents, and the nature of the service it provides to the country and its citizens, the nature of its ownership, the nature of the support it receives from the Government, it would thus appear there maybe a case for its amenability to an order of mandamus than otherwise.

I would however under the circumstances err on the side of caution, and urge that the legislative and procedural regime is not ripe for the Respondent Company to be amenable to the Writ of Mandamus. This is because, in my mind, the constitutional, statutory and procedural regime does not permit the introduction of these prerogative writs like Mandamus to compel payment of debts. I must add however that, but for the above restrictions which will be discussed in detail later, Mandamus can lie against the Respondents, in other words, the Respondents can be amenable to the order of Mandamus, subject to these restrictions.

ISSUE 2

Whether or not the payment of compensation is a public duty in respect of which an order of Mandamus is available.

Public duties are duties that are imposed on persons or bodies to act in the interest of the public at large. Public duties may be imposed by statute (i.e. statutory duty) or they may exist as a result of a mandate. Thus, whenever a person or body is charged with providing certain services or exercising certain functions for the benefit of the public at large, instead of for private profit, that person or body is said to be charged with a public duty. See Bradley, A. W., and K. D. Ewing. "Constitutional and Administrative Law." Parliamentary Affairs 26.1972 dec (1972): 250-252.

It should at this stage be recalled that an order of mandamus is available to enforce performance of a public duty, provided that the duty is one which is owed to the applicant. R v Special Commissioners for Income Tax (1888) 21 QBD 313.

That the Respondent herein ordinarily exercises functions that are in the interest of the public at large is not in question. However, the order of mandamus is not being sought to compel the performance of the duties that the Respondent is ordinarily charged with performing. Instead, it is being sought to compel the payment of compensation pursuant to compulsory acquisition of the Applicant's land as enjoined by Article 20. This to me is the crux of the matter. In view of the clear procedural rules in the High Court, (Civil Procedure) Rules, 2004, C. I. 47, I think that is not the ideal and recommended procedure that is permitted under the rules of procedure.

At this stage, it is perhaps necessary to look at the constitutional, statutory and procedural landscape. For now, it is sufficient to state that, even though payment of compensation is a public duty in respect of which an order of Mandamus may lie, it is inappropriate to grant it under the circumstances of this case as will be set out shortly. It should be borne in mind that the Applicants herein are a private entity seeking the

payment of compensation from the Respondents, a public company albeit using a procedure that is not untenable and therefore null and void.

Issue 3

Whether or not the duty to pay compensation in respect of the subject matter of the application is borne by the Government of Ghana or the Respondent

Having determined that private bodies are amenable to the order of mandamus, and that the payment of compensation is a statutory duty whose performance may be compelled by same, the question as to whose duty it is to pay said compensation must now be addressed.

Article 20(2) of the Constitution 1992 provides that "Compulsory acquisition of property by the State shall only be made under a law which makes provision for —

(a) the prompt payment of fair and adequate compensation; and

(b) a right of access to the High Court by any person who has an interest in or right over the property whether direct or on appeal from any other authority for the determination of his interest or right and the amount of compensation to which he is entitled.

Section 4 of the State Lands Act (Act 125) under which the land in question was compulsorily acquired provides as follows:-

(1) "Any person who claims a right or has an interest in any land subject to an instrument made under section 1 of this Act or whose right or interest in any such land is affected in any manner shall, within six months from the date of the publication of the instrument made under section 1, submit in writing to the Lands Commission—

(a) particulars of his claim or interest in the land;

(b) the manner in which his claim or interest has been affected by the executive instrument issued under this Act;

(c) the extent of any damage done; and

(d) the amount of compensation claimed and the basis for the calculation of the compensation.

(2) The Lands Commission shall upon receipt of claim for compensation under subsection (1) cause to be assessed the payment of fair and adequate compensation by the Government for the land acquired to the owner.

(3) In assessing the compensation for land under subsection (2) regard shall be had to—

(a) the market or replacement value of the land;

(b) the cost of disturbance or any other damage suffered thereby; and

(c) the benefits to be derived by the people of the area in which the land is situated from the use for which the land is acquired.

(6) Where compensation for land is assessed but cannot be paid owing to a dispute, Government shall, pending the final determination of the matter, lodge the accrued amount in an interest—yielding escrow account and the amount together with the interest shall be released to the person entitled upon the final determination of the matter. Emphasis

The import of the provisions reproduced above is as follows. First, the power of compulsory acquisition is vested in the State. The key players in any compulsory acquisition are the President, under whose authority the instrument that executes the acquisition is made; the Lands Commission, the constitutional body set up under the Constitution and which is tasked with assessing the appropriate compensation payable and; the High Court which hears appeals in respect of the aforementioned.

Compensation is thus to be paid by the party that acquired the property. This is in accordance with sound logic and common sense. According to the Interested Party, land may be compulsorily acquired either by the Government per se or upon application to the President to be acquired for, and on behalf of, an applicant.

In the latter scenario, because the land is not needed by the Government per se, the convention is that it is the applicant who is tasked with paying the compensation as assessed instead of the Government, unless a contrary intention is evinced by the Government. This is certainly also in accordance with sound logic and common sense as well.

The Respondent was well aware of this when the compensation was assessed. The Respondent believed itself bound to pay the compensation to the Applicant, and it was on the strength of this belief that the Respondent felt obliged to falsely represent to the Interested Party that it had the means, the capacity and will, to pay the compensation to the Applicants. For the Respondent to now make a U-turn and allege that it is not under any obligation to pay the compensation as assessed is the height of dishonesty.

It was quite apparent from the minutes of the Central Site Advisory Committee meeting held on the 28th May 2013 that the Respondents' representatives at the said meeting gave every indication that they had the financial muscle to pay compensation for the land acquired for the project.

Indeed, they even boasted that the compensation to the farmers whose crops had been destroyed as a result of the project had been fully paid, and the percentage payment was about 95%.

Payment of compensation under the circumstances is therefore to be borne by the Respondents and not the Government of Ghana.

If this issue were the only criteria or condition precedent for the payment of the compensation and determination of this appeal, I would have acceded to the Applicants request and dismissed this appeal.

But this condition must be considered alongside the others yet to be dealt with. I will at this instance urge that we err on the side of caution and analyse all the competing and equally important conditions precedent to the grant of an order of Mandamus before we finally decide the fate of this appeal.

Issue 4

Whether or not on the facts of this case and the laws applicable Mandamus is an appropriate remedy to be granted

The final question that remains to be answered is whether on the merits, facts and the law, the order of Mandamus is an appropriate remedy and should be granted. Recall that the following are the grounds an applicant for the grant of Mandamus must establish.

a. satisfy the Court that the duty to be compelled is of a public nature;

b. satisfy the Court that he has a sufficient interest to be protected.

c. satisfy the Court that despite a prior request for the performance of the duty, the duty bearer has failed to comply

d. that there is no other equally convenient remedy available to compel the performance of the duty

Indeed the existence of an alternative remedy alone should not deprive the Court of jurisdiction, but requires the court to exercise its discretion as to whether to grant the remedy or not. In R v Falmouth Port Health Authority, ex p South West Water Ltd [2001] QB 445, it was held that the court, in deciding whether or not to exercise its discretion, may consider such matters as the comparative speed, expense and finality of the alternative processes, the need for fact-finding and the desirability of an authoritative ruling on points of law.

This matter concerns the payment of compensation in respect of land that the Applicant originally acquired for commercial purposes for their own use. The Respondent interfered with the Applicant's enjoyment of this land for two years before, instigating the compulsory acquisition of the land in 2014. As such, the Applicant has been denied enjoyment of its land, and the commercial benefits arising therefrom, for close to nine years in total.

In the instant case, there is the need to analyse the procedural rules available to the Applicant and the choices they had to make. In this respect, I have been minded to consider in detail, the constitutional, statutory and procedural Rules of procedure that the Applicant had to embark upon in their quest to ventilate their claims against the Respondents.

CONSTITUTIONAL AND STATUTORY JURISDICTION OF THE HIGH COURT

Articles 140 (1) and (2) and 141 of the Constitution 1992, confers jurisdiction on the High Court as follows:-

140. JURISDICTION OF THE HIGH COURT

1. "The High Court shall, subject to the provisions of this Constitution, have jurisdiction in all matters and in particular, in civil and criminal matters and such original, appellate and other jurisdiction as may be conferred on it by this Constitution or any other law.

2. The High Court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution.

3. The High Court shall have no power, in a trial for the offence of high treason or treason, to convict any person for an offence other than high treason or treason.

4. A Justice of the High Court may, in accordance with rules of court, exercise in court or in chambers, all or any of the jurisdiction vested in the High Court by this

Constitution or any other law. 5. For the purposes of hearing and determining an appeal within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any appeal, and for the purposes of any other authority, expressly or by necessary implication given to the High Court by this Constitution or any other law, the High Court shall have all the powers, authority and jurisdiction vested in the Court from which the appeal is brought."

141. SUPERVISORY JURISDICTION OF THE HIGH COURT

"The High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority; and may, in the exercise of that jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of its supervisory powers "

The Courts Act, 1993, (Act 459) whilst reiterating the constitutional remit of the jurisdiction of the High Court as having original jurisdiction in all matters and in particular, civil and criminal matters, in section 15 (1) (a) thereof, also mentioned it's jurisdiction to enforce Fundamental Human Rights provisions and appellate jurisdictions over all lower courts and adjudicating bodies.

Section 16 of the Courts Act provides further that the High Court shall have supervisory jurisdiction over all lower courts and any lower adjudicating authority, and may in the exercise of that jurisdiction, issue orders and directions including orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto for the purpose of enforcing or securing the enforcement of its supervisory powers.

The High Court also has jurisdiction over acts of piracy, in relation to infants, persons of unsound mind, and in maritime matters among others. See Sections 17, 18, 19 and 20 of Act 459.

It is worth referring to Article 157 (1) of the Constitution 1992 which provides for the establishment and composition of a Rules of Court Committee and article 157 (2) provides as follows:-

"The Rules of Court Committee shall, by constitutional instrument, make rules and regulations for regulating the practice and procedure of all courts in Ghana. Similarly, Section 15 (4) of the Courts Act also stipulates as follows:-

"A Justice of the High Court may in accordance with rules of court, exercise in court or in chambers, all or any of the jurisdiction vested in the High Court by the Constitution, this Act or any other Law." Emphasis

It was in pursuant of the powers conferred on the Rules of Court Committee by clause (4) of article 33 and clause (2) of article 157 of the Constitution already referred to supra, that the High Court (Civil Procedure) Rules 2004 C. I. 47 as amended have been enacted.

Order 1 rule (1) of this C. I. 47 provides as follows:-

"These Rules shall apply to all civil proceedings, in the High Court and the Circuit Court, except that the application by the Circuit Court shall be with such modifications as may be necessary."

Order 2 rule 2 of C. I. 47 provides thus:

"Subject to any existing enactment, to the contrary, all civil proceedings shall be commenced by the filing of a writ of summons."
Order 3 of C. I. 47 then states the form in which a writ should be and the particulars contained therein.
Order 55 of C. l. 47, on the other hand has spelt out in detail provisions for judicial review and states as follows:-
"An application for
(a) An order in the nature of mandamus, prohibition, certiorari or quo warranto, or
(b) An injunction restraining a person from acting in any public office in which the person is not entitled to act, or
(c) any other injunction
shall be made by way of an application for judicial review to the High Court." Emphasis
I have perused the entire Order 55 of C. I. 47 dealing with Judicial Review which includes Mandamus, the process by which the Applicants herein instituted or initiated their action against the Respondents in the High Court.
This perusal has revealed that, whilst the provisions specified in Order 55 deal with prerogative orders and are therefore specialized, and not of general application, but limited in scope, Order 2 r 2 of C. I. 47 deals generally with the commencement of actions by writ in all other instances not specifically provided for.
I cannot help but refer to my previous decision in the case of Republic v High Court, Koforidua; ex-parte Asare (Baba Jamal and Electoral Commission – Interested Party) [2009] SCGLR 460 at 514 where I stated thus:-
"As has already been stated by me, looking at the substance and the form, it is clear that the reliefs in the instant case are election related and are meant to circumvent the legal requirement of filing petitions in such cases. In the instant case, this type of conduct is unacceptable and this court will frown upon it and condemn it in no uncertain terms as an abuse of court process." Emphasis
What are the reliefs that the Applicants claimed against the Respondents in the High Court? Apart from the bare statement in the motion paper requesting for "an order in the nature of mandamus against the respondents in accordance with the terms set out in the supporting affidavit."? the applicants relied on a 35 paragraphed affidavit in support thereof. Paragraphs 28 and 33 are considered relevant and germane to this delivery and are referred to as follows:-
28. "That I am also advised and verily believe same to be true that payment of compensation for compulsory acquisition is not only a constitutional obligation but also a statutory duty under the State Lands Act, 1962 (Act 125) and the State Lands Regulations, 1992 (L.I. 230) and neglect or failure to perform same can be compelled by the prerogative orders of this Honourable Court in the nature of a Mandamus". Emphasis
33. That I am advised and verily believe same to be true that this Honourable Court has the powers under Order 55 Rule 1 to compel and exercise its judicial review powers to make orders in the nature of mandamus to compel the Respondent to pay the

assessed compensation of sixty nine million, three hundred and eighty-eight thousand, six hundred and forty-two Ghana Cedis and forty seven pesewas (GH¢69,388,642.47) to the Applicant in accordance with section 4 (6) of Act 125". Emphasis

These indeed are very audacious reliefs by the Applicants.

It should further be noted that, the Applicants themselves were quite apprehensive that there might be some factors that might militate against the swift payment of the said amount due them hence even requested that the said amount be paid into an escrow account of the court as directed by statute and same invested into an interest yielding account.

In response to the said depositions, one Emmanuel Appiah Essel, General Manager of Finance of the Respondents made the following depositions in paragraphs 7 and 8 thereof in opposition to the grant of the order of Mandamus as follows:-

7. "That I am advised by Counsel and verily believe same to be true that the Respondent is not required by law to pay compensation to claimants for lands required by the Government under E.I. 47."

8. "That I am advised by Counsel and verily believe same to be true that not being a public body with any statutory obligation, an order for Mandamus will not lie against the Respondent." Emphasis

It appears certain and clear that issues have been joined by the Respondents to the claims of the Applicants. This should have informed the Applicants that it was no longer a straight forward case as they might have anticipated.

It has already been stated in Ex-parte South West Water Ltd. supra that the factors a court should consider when considering whether Mandamus is an appropriate remedy and factors the court may take into consideration when exercising its discretion to grant or not to grant Mandamus are the following:-

- comparative speed of the process
- expense involved
- finality of the alternative processes
- the need for fact finding, and
- the desirability of an authoritative ruling on points of law.

The above should not be considered as exhaustive, but only as a guide, since many more factors may be added, as each case may depend on its own peculiar circumstances.

For instance, the trial High Court would definitely be precluded from enquiring into the issues raised by the respondents in their brief but incisive depositions in their affidavit in opposition. How should the court deal with those issues? How can the court ascertain the facts upon which there is no consensus between the parties?

How can the Court deal with the reception of evidence to answer any of the above issues? Consider the fact that, in such applications, only the affidavit evidence and the exhibits attached that are available to be relied upon by the Court.

On the whole, the process of a writ of summons, and its clearly defined adversarial systems which affords the parties and the Courts to enquire into the merits and

demerits of the case put forward by the parties after these have been tested under oath, (i.e. under cross-examination) appears to be the best.
The process under Order 55 where the Mandamus application was founded is ill equipped and considered as inappropriate under the circumstances.
PROCEDURE RULES FOR DIFFERENT OTHER HEADS OF CLAIMS OR ACTIONS
Apart from the Writ of Summons and Judicial review applications dealt with under C. I. 47 supra, Order 66 also has special procedural rules for initiation of Probate and Administration actions. See Order 66 r. 1 (1) and (2) of C. I. 47. Order 66 r. 8 (1) for example provides as follows:-
"Every application for grant of probate or letters of administration shall be supported by an affidavit sworn by the applicant and with such other documents as the court may require." Emphasis
Order 66 r.8 (2) prescribes the relevant forms that are to be used to support the grant of the Probate or Letters of administration.
Matrimonial Causes or Matters
Similarly, Order 65 provides exclusively for the methods by which matrimonial Causes or related matters shall be proceeded with in the courts.
Order 65 r. 1 and 2 state as follows:-
1. "This order applies to proceedings under the Matrimonial Causes Act, 1971 Act 367, referred to in this order as "The Act".
2. Proceedings to be commenced by Petition
All proceedings for divorce, nullity, presumption of death, and dissolution of marriage, maintenance orders and child custody orders under the Act, shall commence by petition." Emphasis
Order 65 r. 6 (1) (a) – (l) of the High Court, Civil Procedure Rules, 2004, C.I. 47 then sets out the contents of a petition.
Election Disputes
Similarly, adjudication of disputes as to whether a person has been validly elected as a Member of Parliament have been provided for in Article 99 (1) (a) and (b) of the Constitution 1992 and the Representation of the People Act, 1992, PNDCL 284. Under section 26 of PNDCL 284, the rules and procedure applicable to a civil cause or matter in the High Court shall be applicable to Parliamentary election petitions. In this respect, specific Constitutional Instruments have been made to regulate the conduct of each Parliamentary election dispute. The procedure for the commencement of this dispute is strictly by a Petition.
I have tried in the preceding discourse to set out in proper context the fact that, even though there exists various Causes of actions, there are procedure Rules making provisions for what types of procedure to be applied for in each case or instance.

I have also apprized myself to the provisions of Order 81 of C. I. 47 supra, and I am of the considered opinion that, if the wrong procedure has been used to commence an action as happened in this case in the High Court, such a phenomenon is not an

irregularity that can be cured, but is a nullity to start with and remains throughout as a nullity. See for example the ex-parte Asare (Baba Jamal and Electoral Commission) case supra, where the Supreme Court quashed the decision of the High Court, Koforidua on same grounds.

I will under the circumstances state without equivocation that, where a law or rule of procedure prescribes a method by which an action should be commenced and that procedure or method has not been followed, such a phenomenon would render that entire process and all actions therein invalid and the procedure cannot be deemed to have been properly initiated. The procedural rules stated in Order 2 r. 2 of C. I. 47 (Writ of Summons) under the circumstances of this case present the best procedure for the Applicants to have commenced their action against the Respondents. Not having done that, the process of invoking Mandamus to seek payment of compensation due them is flawed and must be deemed as having resulted into a nullity.

My examination of the nature of the reliefs the Applicants issued against the Respondents which I have copiously referred to supra, reveals quite clearly that, a writ of summons should have been the proper mode of the commencement of these proceedings instead of the Judicial review procedure of Mandamus.

This conclusion has been reached by me in view of the analysis I have made of the different methods of initiating civil processes other than writs of summons explicitly spelt out in C. I. 47 supra.

CONDUCT OF THE RESPONDENTS

From my analysis of the facts in this case as has been adequately stated herein, it bears emphasis that the Respondents appear to have encouraged the Applicants to persist in their mistaken belief that they can succeed with the wrong procedure.

This type of conduct by the Respondents must be condemned in no uncertain terms and they must be made to understand that the constitutional provisions referred to supra which require prompt, fair and adequate compensation is paid for the said compulsory acquisition of land must be complied with by them. See Article 20 (1) – (6) of the Constitution referred to supra.

The representatives of the respondents at the Central Site Advisory meeting referred to supra, gave sufficient indications and assurances that the funds for the compensation have been secured and will be readily paid to the various claimants once the process required for the acquisitions have been duly followed.

Public officials who have official responsibility for these assignments must hold their heads in shame for their conduct in denying the Applicants the use of their land for the intended purpose and also of the assessed compensation.

In circumstances like this, the officials who have contributed to this undue delay could be held liable for any interest charges that may be due at the end of a legitimate demand and or request for the payment of the assessed compensation.

It is for the above reasons that I agree with the conclusion reached by my worthy brother Pwamang JSC that the appeal must succeed. But for the assault and marked departure from settled rules of procedure which may result in changing in a very

dramatic way, the commencement of debt demand cases without affording the respondents sufficient opportunity to contest the action, and the procedural nullities inherent therein, I would have decided otherwise.
The appeal thus succeeds, but the respondents in my opinion because of their conduct are not entitled to costs.

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

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(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA
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