IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: PWAMANG JSC (PRESIDING)
DORDZIE (MRS.) JSC
TORKORNOO (MRS.) JSC
HONYENUGA JSC
KULENDI JSC

CIVIL MOTION
NO. J5/08/2022

9TH MARCH, 2022

THE REPUBLIC

VRS

HIGH COURT
FINANCIAL AND ECONOMIC DIVISION ..... RESPONDENT
ACCRA

EX PARTE: AFIA AFRICAN VILLAGE LIMITED ..... APPLICANT

THE COMMISSIONER-GENERAL ..... INTERESTED PARTY
GHANA REVENUE AUTHORITY
ACCRA

RULING

HONYENUGA, JSC.

The instant application was filed by the Applicant to invoke the Supervisory Jurisdiction of the Supreme Court against the ruling of the High Court dated the 2nd day of November

2019. The said ruling is exhibited to the affidavit in support and marked as Exhibit A2. The ruling was delivered following the refusal of the Interested Party to refund the balance of the compensation due to the applicant.

The facts of this case as gleaned from the affidavit in support of the applicant's application for mandamus is that her Afia Beach Hotel (which included a vast parcel of land was compulsorily acquired by an Executive Instrument No. 59 under the State Lands Act, 1962 (Act 125) dated 19th April 2016 and gazetted on the 29th April 2016 for the MARINE DRIVE INVESTMENT PROJECT. The parties agreed on a compensation to be paid to the applicant in the sum of Forty-Five Million, Two Hundred and Twenty-Two Thousand, Three Hundred and Ninety-Seven Ghana cedis (GH¢45,222,397.00). The manner of payment was that the Ministry of Finance released a warrant to the Ministry of Tourism who worked on it and submitted same to the Controller and Accountant-General to pay the amount into the Ministry of Tourism account for it to wire transfer the amount into the applicant's account. The crux of the matter is that when the last tranche of the money totaling GH¢5,222,397.00 was released to the Ministry of Tourism for onward payment to the applicant, the Controller and Accountant-General withheld an amount of GH¢2,116,679.78 as tax and paid GH¢3,105,717.22 to the Applicant. Being dissatisfied with the development, the applicant drew the attention of the Ministry of Tourism to the anomaly and thereafter, the applicant caused a formal demand letter to be written to the interested party for a refund but the latter refused the request. Based upon the refusal, the applicant applied to the High Court for an order of Mandamus against the interested party for a refund of the said amount. The applicant alleged in her paragraph 14 of the affidavit in support that the interested party owes a duty to refund the said amount under section 69 of the Revenue Administration Act, 2016, (Act 915) or any other tax law.

The interested party opposed the application and in his affidavit in opposition raised three grounds for opposing the application; (1) that the payment to the applicant was validly withheld because he was of subject to Capital Gains Tax. (2) that the applicant was unable to show that the interested party was under an existing and unquestioned obligatory duty under statute or otherwise to refund the amount in dispute (3) the fact

that there exists a Refund Account under section 69 of the Revenue Administration Act, 2016 (Act 915) does not mean that the Applicant had sufficiently demonstrated to either the interested party or to the High Court that they were deserving of a refund of the tax paid.

Upon a demand by the applicant for the refund of the balance of the said compensation, the interested party refused to refund same on the ground that per section 41 of the Revenue Administration Act, 2016, (Act 915), the decision to withhold the sum in dispute as capital gains tax is a tax decision and same would be the subject of the dispute resolution mechanism under the said Act and subsequently an appeal but not mandamus. Based on the said grounds, the respondent submitted that the High Court lacked jurisdiction to entertain an action for an order of mandamus.

The High Court dismissed the application for mandamus as follows:

> "In this case, what would be most essential to be proven, to my mind, is the existence of an obligatory duty to refund monies due to the Applicant on the part of the Respondent. In my view, the Applicant has been unable to show that the Respondent has under an existing and unquestioned obligatory duty under statute or otherwise to refund the amount in dispute which he (or she) has failed to do. This is without prejudice to the fact that being a public officer, the Respondent could be subject to the order of Mandamus where the elements are present. To my mind, if the appropriate remedy were applied for in the proper circumstances, the court might well have granted it. In this case, though it appears the procedure adopted may have been improper. …The application is thus dismissed on procedural grounds."

It is in respect of these orders that the applicant brought the instant application for certiorari on the following grounds:-

> "The learned Judge, Afia Serwah Asare-Botwe (Mrs) on the 2nd November 2021, erred in law, on the face of the record, when she ordered that the interested party

did not have an existing and obligatory duty under statute or otherwise to refund amounts wrongfully paid to it as tax.

THE SUBMISSIONS OF LEARNED COUNSEL FOR THE APPLICANT

Counsel for the applicant argued that the interested party has a statutory duty to refund amounts wrongly withheld as tax. Counsel cited Section 69 (1) and (2) of the Revenue Administration Act, 2016 (Act 915) in support of his contention and states that the use of "shall" in subsection (2) of the Act makes it obligatory and mandatory for the interested party to make payment of refunds under Act 915 or any other tax law in lieu of section 42 of the interpretation Act, 2009, (Act 792) which construe "shall" as imperative or mandatory. Counsel is of the view that "any other tax" in sub section 2 (b) of Act 915 includes common law which constitutes part of the laws under Article 11(1) (e) of the Constitution, 1992, therefore the ruling of the High Court constitutes tax law. Counsel submits that the High Court acted per incuriam by overlooking the mandatory provisions of Section 69 (1) and (2) of Act 915, hence rendering its said order amenable to certiorari. Counsel cites **Hersae v R (1991) 103 ALR AT9** per Brennan J. which defines the duty of a public officeholder to include official functions or the wielding of an influence on a particular subject matter. Counsel contended that quite apart from the express statutory obligation to refund, the interested party has a duty at common law to refund any amount he has either collected or paid to it wrongly as tax. Counsel finally submits that the order of the court below is a palpable error of law which is patent on the face of the record and same be quashed by certiorari.

THE SUBMISSION OF LEARNED COUNSEL FOR THE INTERESTED PARTY

Learned Counsel for the interested party argued that since the High Court did not make legal proposition but rather made a finding or statement of fact on the basis of the Affidavit evidence, it could not have "*erred in law, on the face of the record*." Counsel cites **Republic v High Court, Accra, ex-parte; Ghana Medical Association (Chris Arcmann-Akummey – interested party) [2012] 2 SCGLR 768** where this court restated grounds for involving the Supervisory Jurisdiction of this court. Counsel further

argued that the interested party, having communicated her contrary view to the applicant, that decision constituted a tax decision and the applicant ought to have first objected to the tax decision under section 42 of Act 915 and if dissatisfied should have invoked the High Court's jurisdiction through a Tax Appeal under section 44 of Act 915 as amended by Act 1029 and Order 54 of C.I. 47. Counsel contends that the applicant's sole ground as captured on the motion paper is an unfortunate rendition of the learned judge's ruling. Counsel submits that the application be dismissed as there was no error of law on the face of the ruling.

THE DETERMINATION OF THE APPLICATION

As stated earlier, the core issue to be resolved by this court, having regard to the conditions precedent for mandamus is whether there is any statute that has imposed a duty on the interested party to refund the balance of the compensation due to the applicant. It is settled that the courts recognize the existence of a demand and a refusal of duty and its performance by public officers as a condition for the grant of mandamus. Indeed the applicant in her paragraph 11 of the affidavit in support of the application distinctively stated as follows:

> *"That the Applicant drew the attention of the Ministry of Tourism to the fact that under the laws of Ghana the capital sum paid as compensation was not subject to tax, whereupon the Ministry wrote a formal demand letter on behalf of the Applicant, to the Interested Party herein for a refund but the later in its response refused to refund the amount."*

In the **Republic v. Chieftaincy Secretariat Exparte Adansi Traditional Council [1968] GLR 736**, Annan J (as he then was) clearly stated the prerequisites for the grant of an order of mandamus in holding (1) as follows:-

> *"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."

Recently, this court in **Republic v. High Court, Accra Ex parte Minister of Interior &Another (ASHOK KUMAR SIVARAM –Interested party) [2017-2018] 2 SCLRG 846 (Adaare)** further explained the scope of mandamus in head note (3) thus:-

"The requirement of a prior demand by the applicant for a Mandamus on the respondent to perform a statutory duty before the commencement of proceedings for an order of mandamus is still good law. The order would not be granted unless the party complained of had known what it was, he was required to do, so that he had the means of considering whether or not he should comply and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desired to enforce and that demand was met with a refusal."

And also **Republic (No. 2) v. National House of Chiefs, Ex parte Akrofa Krukoko II (Enimil IV interested party) No.2 [2010] SCGLR 134, Republic v Ghana National Gas Company Ltd Ex parte King City Development Co., Lands Commission Interested Party; Suit No. CA JA/61/2021 SC, Republic v. Chieftaincy Secretariat; Ex parte Adansi Traditional Council [1968] GLR 736** Holding (1). In sum, an applicant for an order of mandamus must establish the following in order to succeed thus:-

a. That the duty to be compelled is of a public nature.
b. That he has a sufficient interest to be protected.
c. That despite 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.

This case touches and concerns the payment of the balance of compensation to the applicant in respect of the compulsory acquisition of land on which the applicant's hotel was built. The compensation was paid but the interested party deducted from the balance of money as tax and refused to refund same.

Indeed, the learned trial judge concluded that;

> "In my view, the Applicant has been unable to show that the Respondent was under an existing and unquestioned obligatory duty under statute or otherwise, to refund the amount in dispute."

We agree with the finding of the learned trial judge which finding is not an order and we shall demonstrate this hereunder. The applicant's case hinges on **section 69(1) and (2)** of the **Revenue Administration Act, 2016 Act 915** as amended by the **Revenue Administration (Amendment) Act, 2020, (Act 1029)** which provides:

> *"1. The Minister shall set aside an amount of not more than six percent of the total revenue collected under this Act and any other enactment administered by the Commissioner-General, in an account designated as the "Ghana Revenue Authority General Refund Account."*
>
> *2. The Ghana Revenue Authority General Refund Account shall be used by the Commissioner-General to make payments for (a) refunds due under this Act, and*
>
> *(b) refunds due under any other tax."*

In a nutshell, **section 69(1) and (2) of Act 915** as amended is an account created for an amount of utmost six percent of total revenue set aside and administered by the Commissioner-General for refunds under the act and under any other tax law. This provision in the act is not a sufficient ground for the applicant to succeed, on an order of mandamus. It is clear from the record that a demand was made on her behalf and a tax

decision made on legal grounds by the interested party. Under **section 42 of Act 915** a person who is dissatisfied with a tax decision may lodge an objection to the decision with the Commissioner-General within thirty days of being notified of the tax decision and provides:-

> *"42(1) subject to a tax law to the contrary a person who is dissatisfied with a tax decision that directly affects that person may lodge an objection to the decision with the Commissioner-General within thirty days of being notified of the tax decision."*

Section 41 (1) and (2) (b) of Act 915 are relevant for our purposes and details what constitutes a tax decision by the Commissioner-General, thus:-

> "**41 (1)***A "tax decision" is a decision made by the Commissioner-General under a tax law including an assessment or omission but does not include …..*
>
> *(2) A tax decision is made (b) in the case of any other tax decision when the Commissioner-General serves the affected person with written notice of the decision."*

It is thus obvious that by **section 42 of Act 915**, as defined in **section41**, the applicant made a demand and the interested party made a tax decision and the procedure under the law was for the applicant to have lodged an objection to the said tax decision within thirty days but defaulted.

Furthermore, if the applicant was dissatisfied with the objection decision, she could then invoke the court's Jurisdiction under **section 44 of Act 915** by filing an appeal against the said decision. **Section 44 of Act 915** states:-

> *"A person who is dissatisfied with a decision of the Commissioner-General may appeal against the decision to the court within thirty days."*

In this instance, the Court is defined in **Section108 of Act 915** the interpretative section of the Act as the High Court "court" means High Court." The applicant could have

invoked the jurisdiction of the High Court under **Order 54 of C.I. 47** by an appeal. **Order 54(1) of C.I. 47** provides:-

> *"1. Where in an enactment provision is made to the High Court against a decision or order of the Commissioner the provisions of this Order shall apply to the appeal."*

From the above statute it is incumbent that upon the interested party having made a tax decision the procedure in the statute must be followed.

Moreover, the applicant having earned an income or gains from the compensation to him is required to pay capital gains tax **under section 5** of the **Income Tax Act, 2015 Act 896** as amended. **Section 35 of Act896** defines a gain made by a person from the realization of an asset or liability while section 38 states that a person who owns an asset realises the asset (a) if that person parts with the ownership of that asset including when that asset is sold among others. These provisions are clear and unambiguous that the applicant having earned a gain or an income from the compensation paid to her is obliged by law to pay capital gains tax thereon. The Interested party was therefore legally justified in withholding the tax on the balance of compensation paid.

It is trite law that where a statute has provided a right with remedies and also prescribed the procedure to follow in order to secure the right or remedy, it is that procedure which must be followed. The Supreme Court has made this point very clear in the cited case of **Boyefio v NTHC Properties Ltd [(1996-97)] SCGLR 521** at 546. See also **Tularlay v. Abaidoo [1962] 1 GLR 411**. It is thus evident that the applicant did not exhaust the prescribed procedure for invoking the jurisdiction of the High Court for an order of mandamus. It is the exceptional rule, that mandamus will not be granted where a person had by inadvertence omitted to do some act, he was under a duty to do, and where the time to do the act had passed. See **Republic v High Court Accra, Ex parte Minister of Interior & Another (Ashok Kumar Sivaram, interested party)** (Supra) holding (3) and other authorities. In the instant case, the applicant was under a duty to under **section 42 of Act 915** to have filed an objection to the interested party within

thirty days of being notified of the tax decision. Under **section 44 of Act 915** as amended by **Act 1029** the applicant had a right to have filed an appeal against the decision of the Interested party within thirty days of the decision to the Independent Tax Appeals Board. Furthermore, dissatisfaction with the decision of the Tax Appeals Board entitled the applicant to appeal to the High Court as clearly stated in **Section 108 of Act 915.** Indeed, it is at this stage that the applicant could invoke the jurisdiction of the High Court under **Order 54 of C.I. 47**. It is thus clear that the applicant did not exhaust the procedures as envisaged before filing the application invoking the jurisdiction of the High Court under **Article 141 of the Constitution, 1992**.

> *"The High Court shall have supervisory jurisdiction overall 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."*

Section 16 of the Courts Act, 1993 (Act 459) as amended expatiated on the Constitutional provision and states clearly thus:-

> *"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."*

Indeed, the applicant also invoked **Order 55 of C.I.47** which spelt out the procedure for judicial review 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."

It is thus evident that the applicant had not commenced, not even talk of having exhausted the procedure provided under **sections 41(1) and (2) (b), 42 and 44** of the **Revenue Administration Act**, **2016** as amended by **Act 1029 of 2020** before filing the application for an order of mandamus in the High Court under **Article 141** of the **Constitution, 1992, the Courts Act, Act 459 and Order 55 of C. I. 47.**

In this instance, the High Court has no jurisdiction to have entertained the application for mandamus because its jurisdiction was prematurely invoked by the applicant. The applicant had all the time at her disposal to have fulfilled these apparent conditions or legal steps before embarking on mandamus before the High Court but rather sat down and allowed time to elapse. It is trite that mandamus is granted where the right the applicant seeks to enforce is of a public nature and not for the establishment of a liability for a private right against the interested party. Instantly the applicant is just seeking her compensation paid to her for compulsory acquisition of her land.

The law has made adequate provisions for refunds due under the tax laws but the applicant in the instant case refused to abide by them. The applicant's resort to mandamus is premature and very wrong in law as the interested party was not under statute to refund same. The trial High Court judge was right in dismissing same on procedural grounds.

Has the applicant invoked the supervisory jurisdiction of the Supreme Court to enable her succeed? It is important to emphasize that for an applicant to invoke the supervisory Jurisdiction of this court under Article 132 of the Constitution, 1992, the following valid grounds must be invoked and these include:-

1. Want or excess of Jurisdiction.
2. Where there is an error of law on the face of the record.
3. Failure to comply with the rules of natural Justice and

4. Breach of the Wednesbury, principle, namely that an administrative action or decision was illegal, irregular or procedurally improper.

In **Republic v. High Court, Accra Exparte Ghana Medical Association (Clinic) Arcmann Akummey (Interested Party)[2012] 2 SCGLR 768 at page 778** the Supreme Court clearly stated the grounds on which it could exercise its supervisory jurisdiction upon referring to its earlier decision in **Republic v. Court of Appeal; Ex parte Tsatsu Tsikata [2005-2006] 612** as follows:-

> *"Thus, the grounds upon which this court proceeds to grant application of this nature, following the authorities are: - want or excess of jurisdiction, where there is an error on the face of the record, failure to comply with the rules of natural justice; and breach of the Wednesbury principle, namely, that an administrative action or decision would be subject to judicial review on the grounds that it was illegal, irregular or procedurally improper."*

There are other plethora of cases on this subject. Since the applicant's ground is that there was an error in law on the face of the record, we would refer to **Republic v Court of Appeal, Accra, Ex parte, Tsatsu Tsikata** (supra) at page 619 thus:-

> *"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 either go to jurisdiction or are so plain as to make the impugned decision a complete nullity."*

In the **Ex parte Tsatsu Tsikata** case (supra) Georgina Wood JSC (as she then was) further explained at the same page 619 that:

> *"... It stands to reason then, that the error(s) of law alleged must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. A minor, trifling, inconsequential or unimportant error or for that matter an error which does not go to the core or root of the decision complained of; or stated*

differently, on which the decision does not turn, would not attract the court's supervisory jurisdiction."

And also **Republic v. High Court (Commercial Division), Accra, Exparte Electoral Commission (Nduom Interested Party) [2015-2016] 2 SCGLR 1091 at pages 1098-1099 Republic v High Court Kumasi, Ex parte Bank of Ghana & others (Sefa and Asiedu interested parties, Republic v High Court Kumasi, Ex parte Bank of Ghana & others (Gyamfi & others interested parties) consolidated (2013 -2014) 1 SCGLR 477** Holding (1).

The case of Ex parte Tsikata (supra) stressed the law which invoked our supervisory jurisdiction that certiorari would lie to quash a decision of a superior court where such a serious error of law alleged is fundamental, substantial, material, grave or so serious as to go to the root of the matter. What is the decision of the High Court which the applicant complains of? Learned Counsel for the applicant stated thus:-

"The learned Judge Afia Serwah Asare-Botwe (Mrs), on the 2nd of November, 2021, erred in law, on the face of the record where she ordered that the Interested party did not have an existing and obligatory duty under statute or otherwise to refund amounts wrongfully paid to it as tax." (emphasis mine)

We agree with counsel for the interested party that the trial judge did not make an order, nor a legal proposition but rather made findings or statement of facts on the basis of the affidavit evidence. Indeed the relevant ruling of the learned High Court Judge is captured on pages 15 to 16 of the Ruling as follows:

"In this case, what would be most essential to be proven, to my mind, is the existence of an obligatory duty to refund monies due to the Applicant on the part of the Respondent. In my view, the Applicant has been unable to show that the Respondent was under an existing and unquestioned obligatory duty under statute or otherwise, to refund the amount in dispute which he (or she) has failed to do."

It is based on these grounds that the High Court Judge dismissed the application. It is observed that the High Court Judge in her findings or observation, had taken into consideration, the fact that the interested party had communicated to the applicant his tax decision and it was for the applicant to have objected to this tax decision under **section 42 of Act 915.**If aggrieved by the objection decision by the interested party she should appeal within thirty days of the decision to the Tax Appeals Board under **section 44 of Act 915** as amended by **section 1 of Act 1029 of 2020**. If further dissatisfied, the applicant could within thirty days from the decision of the Tax Appeal, appeal to the High Court, **under order 54 of C.I.47**. It is noteworthy that the applicant did not avail herself of the various avenues available under Acts 915 and 1029 to enable her claim the balance of her compensation which was statutorily deducted by the interested party. It is our view that it is the failure to further pursue her claim and her inability to prove that the interested party was under a legal duty to refund the money to her that the learned High Court Judge made that statement of fact which is not a legal proposition. As observed earlier, the applicant's application for mandamus is premature because she had not exhausted the procedure to enable her claim the balance of her compensation withheld as tax. It is trite that certiorari is a discretionary remedy and for that matter it ought to be granted for legitimate purposes as in protecting a legal right. Indeed, certiorari is granted or issued to correct a wrong but not to protect a wrong or illegalities. A court should therefore frown on decreeing orders of certiorari to protect non-existent rights vitiated by illegalities. See the **Republic v. High Court, General jurisdiction (6) Accra Ex parte Attorney-General [Exton Cubic Group Ltd – Interested party] [2019] DLSC 6978** at page 12 per Marful-Sau JSC (of blessed memory). In the instant case, the applicant has no legal right to be protected when she refused to exhaust the procedure under the tax law. Certiorari cannot be granted on such an application. We do not think that there is an error of law on the face of the record.

Further, it is noted that at page 8 of the High Court Judge's Ruling, Her Ladyship identified two issues to be determined in the application before her. They are:-

1. On whether the jurisdiction of this court has been properly invoked.

2. Whether on the merits, the Applicant may succeed.

Her Ladyship determined the preliminary question of jurisdiction at page 16 of the Ruling thus:

> *"To my mind, if the appropriate remedy were applied for in the proper circumstances, the court might well have granted it. In this case, though, it appears the procedure adopted may have been improper. The case having been thus concluded; there will be no merit in assessing whether capital gains tax was properly assessed in the circumstances of the applicant's hotel having been compulsorily acquired. The application is thus dismissed on procedural grounds."*

It is evident from the said ruling of the High Court that she did not go into the merits of the application but dismissed same on the basis that the procedure adopted by the applicant was improper and dismissed same on that ground. It is thus obvious that the High Court Judge knew that she lacked jurisdiction to hear the application as her jurisdiction was not properly invoked. It is strange that Counsel for the applicant maintained in his statement of case that **section 69(1) and (2) of Act 915** obligated the interested party to pay refunds from the specially designated accounts. With respect to counsel for the applicant, **section 69(1) and(2)** only designated special accounts for refunds of excess tax but that is conditional on the fact that the applicant had demonstrated that all the conditions stated in **Act 915** i.e. **sections 41, 42, 44 as amended by Act 1029** were met in this case, the applicant demonstrated nothing. In any case, the High Court did not determine **section 69 (1) and (2)**. We do not see any error of law in that statement of fact of the High Court Judge since the applicant had not exhausted the procedure under Act 915 as amended by Act 1029 before the attempt to invoke the jurisdiction of the High Court. In **Republic v. High Court, Accra Ex parte Minister for Interior & Another (Ashok Kumar Sivaram – Interested Party)** (supra),the interested party, an Indian national, has been lawfully resident in this country for a number of years prior to his deportation on the orders of the first applicant the Minister of Interior. The Comptroller of Immigration after investigations carried out by

him into the circumstances under which the interested party was issued with a Ghana resident permit detected fraud so he revoked the permit under **Section 20 of the immigration Act, 2000** (**Act 573)**. Based on the revocation of the resident permit, the Minister for the Interior issued a Deportation Order under **section 36 of Act 573** for the interested party to be deported from Ghana. The interested party quickly applied for an order of mandamus which was issued by the High Court ordering the Comptroller of Immigration to restore his resident permit and an injunction against the Minister for the Interior restraining him from deporting the interested party. On an application for certiorari by the Minister and the Comptroller to quash the mandamus order and the injunction respectively, the court speaking through Benin JSC observed at page 864 of the Report 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 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 the 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 the appropriate directions to the Immigration authorities who will then bound by the Minister's direction in the matter…*
>
> *The High Court did not have jurisdiction to entertain an application of mandamus in this matter, when the interested party had not commenced, not even 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 upon 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 this 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 second applicant was clearly misconceived and incompetent in law."

And also **Republic v Ghana National Gas Co Ltd Ex parte King City Dev. Co Ltd Land Commission (interested party)** (supra). In this case, not to sound repetitive, the applicant did not exhaust the procedure under **Act 951** as amended which we have earlier clearly stated to enable the interested party who had made a tax decision to perform his public duty. Instead of the applicant filing an objection under **section 41 of Act 951** and appeal against the decision on the objection thereafter, if aggrieved, file an appeal to the Tax Appeal Board under **section 44 of Act 951** as amended by **Act 1029** and if she was still dissatisfied, file an appeal to the High Court under **Order 54 of C.I. 47**, she chose to file mandamus. It is noteworthy that the applicant ignored all the necessary procedures and wrongly and prematurely invoked the jurisdiction of the High Court for mandamus under **Order 55 of C. I. 47**.

The High Court Judge rightly dismissed the application for mandamus on procedural grounds. Therefore we find no error of law on the face of the record in so far as the application was properly dismissed.

In conclusion, since the condition precedent to the invocation of the High Court's jurisdiction had not yet arisen in view of **sections 41, 41, 44 of Act 951** as amended by **Act 1029** and the High Court Judge having dismissed the application for mandamus on that ground, the application to invoke this court's supervisory jurisdiction to wit:- certiorari to quash the Ruling of the High Court dated the 2nd day of November, 2021 is hereby dismissed.

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

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