IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT OF JUSTICE

ACCRA-GHANA AD 2011

CORAM: ATUGUBA, JSC. (PRESIDING)

AKUFFO (MS), JSC

ANSAH, JSC

ADINYIRA (MRS), JSC

OWUSU (MS), JSC

DOTSE, JSC

BONNIE, JSC

CIVIL MOTION

SUIT NO.J7/7/2011

13TH APRIL, 2011

NII KPOBI TETTEY TSURU III - - - PLAINTIFF

VRS:

THE ATTORNEY-GENERAL - - - DEFENDANT

J U D G M E N T

ATUGUBA, J.S.C:

The main issue raised by this Review application is whether the decision of this court (by 4-1 majority) dated 19/5/2011 that article 20(5) and (6) of the 1992 constitution is inapplicable to the La Wireless Station Land situate, lying and being at Cantonments, Accra, because the said land had been compulsorily acquired by the State in 1947, long before the advent of the said constitution, should be reversed.

The Review jurisdiction of this court is laid down in article 133(I) of the constitution as follows:

"133 Power of the Supreme Court to review its decision

The Supreme Court may review any decision made or given by it *on such grounds and subject to such conditions* as may be prescribed *by Rules of Court*."

Pursuant to this rule 54 of the Supreme Court Rules, 1996 (C.1.16) provides thus:

"54. Grounds for review

The Court may review a decision made or given by it on the ground of *exceptional circumstances* which have *resulted in a miscarriage of justice*; or *the discovery of new and important matter* or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by the applicant at the time when the decision was given." (e.s)

The present application is plainly premised on r.54(a) and does not involve r.54 (b).

It is very trite learning that r.54(a) has been construed to mean the incidence of a fundamental or basic error which has occasioned substantial injustice to a party.

Per Incuriam Decisions

It is indisputable that one of the settled fundamental or basic errors that a court can commit is to give a decision *per incuriam*. This means, as is well known, in its technical context of the doctrine of *stare decisis* that the decision overlooked consideration of a provision of a statute or a binding decision of a court, such as would have affected the outcome of such a decision were it considered. Otherwise the ordinary meaning of *per incuriam* is through oversight. Thus in *Republic v Tetteh* [2003-2004] SCGLR 140 this court unanimously reversed its earlier decision because it had overlooked certain mandatory statutory provisions relating to the rendition of Court-Martial decisions.

Inadequate Consideration of a Case

In *Ellis Tamakloe v The Republic* [J7A/1/2010] dated 20/1/2011 this court dealt with the situation where a court in reaching its decision has given inadequate consideration to vital matters, by overlooking them. But inadequate consideration of a case is also serious enough to warrant review when an important matter, though considered, is only cursorily considered. Thus in *Cordell v.Second Clanfield Properties Ltd.* (1968)3 All ER 746 at 750 Megarry J dealing with the effect of the decisions in *Bulstrode v Lambert* (1953) 2 All ER 728 and *Mason v. Clarke* (1954)1 All ER 189, C.A relating to s.65(1) of the Law of Property Act, 1925, said: "If in those cases *the court had put a particular construction on the words* "without ...any regret by him" in s.65(1), *I should, of course, bow to authority.*

However, as one judgment did not refer to the subsection and the other, although referring to it, made no mention of the particular words in question, I must discharge my double *duty of obedience to case law and to statute by giving effect to the statute"*(e.s) This principle has been followed by Ghanaian courts. See *Edusei v. Diners Club Suisse S.A* (1982- 83)2 GLR 809 C.A at 814 and *Duah v Yorkwa* (1993-94)1 GLR 217 C.A at 226. Again in *Nimolgu v. The Republic* (1980) GLR 714 at 720 Taylor J

Also stoutly said:

"It seems to me with respect that ...the case of *Abudulai Mohammed v. The Republic* (supra) ..... if.....capable of sustaining the construction which learned counsel for the appellant seeks... then *the decision was given per incuriam* and I am therefore unable to follow it. The *Darko* case *(supra) mentioned section 154 of Act 30 but apart from merely*

citing it, it did not indicate why it should be considered inapplicable. For these reasons, I am unable to accept counsel's argument...."(e.s)

Similarly in *Swaniker v Adotei Twi II* (1966) GLR 151 S.C, the headnote, which can be regarded as the *locus classicus* exposition of the Review jurisdiction of this court, states thus: "*Held, granting the application (Sakordee-Adoo C.J. dissenting): (*1*)* a review would be allowed *if the circumstances of the case were exceptional* and that *in the interest of justice there should be a review*. However, *no fixed rule could be laid down* for determining what the court ought to regard as exceptional circumstances. *Each particular case would depend on its own merits*. *A review was not intended to take the place of an appeal and was not to be dealt with as if it were an appeal; therefore the mere fact that there was a good ground upon which the judgement could be set aside on appeal was not of itself a ground for granting review*. (2) The judgement of the Supreme Court *proceeded on the footing that the reasoning of the trial court on the various controverted matters on which it pronounced a decision was fallacious.*

That being so it behoved the court to show this by its independent reasoning. That clearly was not done and was apparent on the face of the judgment. *In the circumstances, ordinary fairness required that the judgment be reviewed."*(e.s)Applying these principles to the present application for Review it is quite clear that, of the majority, only my thorough brother, Dotse JSC adverted his mind to article 257 (1) of the constitution, but to borrow the apt words of Taylor J in *Nimolgu v The Republic*, supra, at 720-721, "...*apart from merely citing it, ...did not indicate why it should be considered inapplicable."* In such situations, the issue concerned is really at large and warrants a review of the same.

Absurd Decision

In *Ellis Tamakloe v The Republic*, supra, this court held that a decision that can be described as perverse is reviewable. Equally there is no reason why an absurd decision should not be reviewable. Just consider the meaning of the word absurd. According to the Encarta World English Dictionary the word absurd, in effect, connotes a high voltage of irrationality. Surely a decision that is absurd must be the product of a fundamental or basic error which cannot conduce to justice. The distance between an absurd decision and one that is palpably wrong is so narrow that it is permissible to regard the two situations as congruent and therefore a palpably wrong decision is also reviewable as was held in *Tsatsu Tsikata (No. 2) v. Attorney-General (No. 2)* (2001-2002) SCGLR 620 and *Koglex Ltd (No. 2) v. Field* (2000) SCGLR 175

Multiple provisions of a statutory provision

A section of a statute or as here an article of a Constitution may comprise several subsections. It by no means follows that those subsections or clauses serve the same purpose, though they normally should be read together. In some cases the subsections or some of them are such that they cannot even be read together because they address very different situations, see *Hagan v Adum* (1940) AC 98 P.C.

In addition to what I said in my original opinion I should draw attention to the fact that article 20(4) relating to the operation of a general law addresses a situation different from article 20(1) – (3) and cannot be said to be limited to matters occurring only after the coming into force of the 1992 Constitution; see particularly article 20(4) (a) to (d). It is also clear that while article 20(1) to (3) deals with fresh compulsory acquisitions after the coming into force of the 1992 Constitution, article 20(5) and (6) deals with the user of "*Any property* compulsorily taken possession of or acquired in the public interest or for the public purpose..." and significantly is not stated to be limited to situations governed by article 20(1), as is expressly so limited in the case of article 20(3), which plainly reveals that it is concerned with situations arising under article 20(1). The point being stressed here is clearly borne out by *Brophy v The Attorney-General of Manitoba* (1895) A.C 202 P.C. In that case the Privy Council had to construe, inter alia, s.22(1) and (2) of the Manitoba Act, 33 Vict. C.3 (Dominion) Statute) as follows:

"In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:-

Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union.

An appeal shall lie to the Governor-General in Council *from any Act or decision* of the Legislature of the Province, or of any provincial authority, affecting *any right or privilege* of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education."

Delivering the judgment of the Privy Council, the Lord Chancellor at 219 forcefully stated with regard to these provisions thus:

"It would *do violence to sound canons of construction if the same meaning were to be attributed to the very different language employed in the two sub-sections*.

In their Lordships' opinion *the 2nd sub-section is a substantive enactment, and is not designed merely as a means of enforcing the provision which precedes it*. The question then arises, *does the sub-section extend to rights and privileges acquired by legislation subsequent to the Union*? It extends in terms to "*any*" right or privilege of the minority *affected by an Act passed by the Legislature*, and would therefore seem to *embrace all rights and privileges existing at the time when such Act was passed*. Their Lordships see *no justification for putting a limitation on language thus unlimited. There is nothing in the surrounding circumstances, or in the apparent intention of the Legislature, to warrant any such limitation.* Quite the contrary."

Vested rights

It is a palpable error to equate contingent rights with vested rights. Retrospectivity concerns vested rights but not contingent rights. Thus in *Abbot v. Minister of Lands* (1895) AC 425 P.C at 431 the Lord Chancellor, delivering the judgment of the Privy Council stoutly stated thus:

"It has been very common in the case of repealing statutes to save *all rights accrued. If it were held that the effect of this was to leave it open to any one who could have taken advantage of any of the repealed enactments still to take advantage of them, the result would be very far-reaching. It may be*, as Windeyer J. observes, *that the power to take advantage of an enactment may without impropriety be termed a "right"*. *But the question is whether it is a "right accrued" within the meaning of the enactment which has to be construed.*

Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "*obligations incurred or imposed*.' *They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued*" within the meaning of the enactment. "(e.s)

Accordingly, a proper appreciation of *Ellis v Attorney-General* [2000] SCGLR 24 is that since the Hemang lands therein were already fully acquired before the 1992 Constitution it would be a retrospective application of it to require that the manner in which they had already been acquired, ought to comply with the 1992 Constitution. However if a change in the user of that land occurred after the 1992 Constitution came into force the 1992 Constitution would govern its consequences under article 20(5) and (6). This is clearly demonstrated by *Sam (No. 2) v. Attorney-General* (2000) SCGLR 305. That is what article 11(5) and (6) clearly requires.

Applying this principle it would be a palpable error to hold that any destruction of accrued rights would necessarily be involved in the application of article 20(5) and (6) to lands compulsorily acquired before the 1992 constitution and embraced by article 257(1) and (2) but with respect to which a change of user has occurred after the coming into force of the 1992 Constitution. The error in excluding other lands compulsorily acquired in the public interest or for a public purpose before the coming into force of the 1992 constitution from the purview of article 20(5) and (6) is clearly highlighted by chapter 10 of the Report of the Committee of Experts (Constitution) on Proposals for a draft Constitution of Ghana at p.138 as follows:

"304. The Committee *would stress the principle* enshrined in Article 188 of the 1979 Constitution, *that all public lands in Ghana* are vested in the President on behalf of, and in trust for, the people of Ghana. *It follows that the administration of public lands is a matter of the highest public interest and that the organisational arrangements relating to such administration should be efficient, viable and productive."*(e.s)

Clearly this relates to all lands acquired by the State before or after the1992 Constitution since they are all public lands by virtue of article 257(1) and (2).

It is however with great sorrow that I have had to maintain my original position in this case since the Review jurisdiction is not meant for the mere entrenchment of previous views. But I am constrained by the foregoing reasons so to do.

I also wish to clarify my earlier opinion by saying that the true purpose for which the La Wireless land was acquired can only be properly established by fuller evidence in the trial court and the ensuing consequences of such a finding will be governed by the interpretation of articles 20(5) and (6) and 257(1) and (2) given in my first opinion and confirmed herein.

Consequently I would allow this application.

[SGD] **W. A. ATUGUBA**

JUSTICE OF THE SUPREME COURT

SOPHIA A. B. AKUFFO [MS], JSC;

I join my esteemed brother and sister, Atuguba and Adinyria JJSC, in their conclusion that the Ordinary Bench of the Court in its decision committed an error and application herein for review be granted. Taking into account the nature of the question referred to this Court by the leaned High Court Judge, it is my view that this is one of those relatively rare circumstances wherein the review jurisdiction of the Supreme Court has been properly invoked. I fully endorse the reasons they have given and have only the following observations to make:-

This matter came before the Supreme Court by way of a reference from the High Court, pursuant to article 130 of the Constitution. Considering the language of the article, it is clear that a reference may aptly be described as an invocation of the original interpretative and enforcement jurisdiction of the Court, albeit not by any of the parties to a dispute, but rather by the referring court. Hence, regardless of the nature of the action before the court that made the reference, the decision of this Court immediately goes beyond the scope of the peculiar matter in the court below and becomes a matter involving constitutionalism, since it will affect, forever, the meaning and application of the constitutional provision(s) under consideration. Where after it has decided on the referred question there is an application for review, it becomes even more legitimate for the review panel to adopt a more liberal approach which takes into due account the underlying intents of the Constitution (as a whole and the specific provisions in particular) and the public interests as well. In such a case, demonstrable miscarriage of justice to the applicant is not necessarily a sufficient measure for determining whether or not the application should be granted. Nor should the repetitive nature of arguments of counsel be given excessively great significance. Thus, as was noted by Atuguba JSC, **in Ellis Tamakloe v. The Republic** (SC. J7A/2010, delivered on 2/1/2011);-

> "Since before an application for review can be brought the matter would have been agued invariably, it would be inconceivable that a review application is entirely free from re-argument. The formulation in the *In Re Effiduase* case… lends support to this line of reasoning. Obviously if the pursuant judgment does not contain a palpably serious error a review application in that situation can aptly be described as " *A mere re-arguing* of his original application". However if that is not the situation the argument on review cannot be described as "*a mere re-arguing …"*

His Lordship, in that case, continued as follows;-

> "It would emasculate the review jurisdiction if too much emphasis is put on the question whether the matter has previously been agued rather than on the character of the judgment emanating from the matter agued. If despite

argument on the matter a court arrives at a decision that is so palpable unsustainable as to be describable as perverse, it that not an exceptional circumstance? …."

And where the constitutional provision(s) in the reference form part of the Fundamental Human Rights and Freedoms , then it becomes even more crucial that particular care be taken by the Court to assure that there is nothing in the decision sought to be reviewed that has a tendency to do damage to the word or spirit of any of these (or other) provisions of the Constitution. If there is evident inadequate consideration of any aspect of the matter, pertinent to the issues to be determined, the interpretation given by the majority should, as my learned brother Atuguba has stated in his opinion herein, be sufficient justification for review in a referral case.

Furthermore, as is aptly pointed out by my esteemed sister Adinyira, in her opinion herein, the right to private property has been one of the key underpinnings of our statehood and formally dates back to the Bond of 144. Indeed, from the standpoint of the theory of constitutionalism and the rule of Law, as a fundamental human right, it is innate to the humanity of the people and cannot even be correctly viewed as having been conferred by any document, declaration, guaranty or other legislative or executive action. As is noted by Tibor R. Machan:-

> "People are not ghosts and so they cannot act freely without taking up space. And if this space is not within their own control, they are not free but subject to the will of others. That is one of the central moral and political reasons for protecting the right to private property…." **('The Right to Freedom of Speech, Worship, and Private Property', article published by Adelton Academic Publishes in the journals of Geopolitics History and International Relations (July 2010, pages 91)**

In addition to the United Nations Universal Declaration of Human rights and Freedoms, which dates back to 1948, the African Charter on Human and People's right (entered into force October 1986), which has been ratified by Ghana, also seeks to *guarantee* the right to property, and adds that this 'may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.' It is the duty of our courts to safeguard, to the utmost, the fundamental rights enshrined in our Constitution; these are what really make us a democracy, and we ma only derogate from them where the law dictates of the law are patently clear. Where this Court is called upon to interpret or define the applicability of a provision of the Constitution, adequate consideration must be given to every provision and we must not impose an limitation that may result in a tendency to

defeat the underlying vision of the Constitution – to 'secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity …..' – and the ends of justice.

[SGD] S. A. B. AKUFFO [MS.]
JUSTICE OF THE SUPREME COURT

ANSAH, J.S.C:

I have read beforehand the judgments by Atuguba JSC, the President the court, as well as that which my brother Dotse JSC is about to read.

I agree with the reasons and conclusion reached by Dotse JSC that the application for the review of the majority judgment be dismissed.

I have nothing useful to add to it.

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COUR

ADINYIRA (MRS.), J.S.C:

"*The first objects of law are the protection of individuals and property.*
The Bond of 1844
I have read beforehand the opinion of my esteemed brother Atuguba JSC and I concur with it. I however wish to add my observations.

The applicant is seeking a review of the majority decision of this Court (by 4 to 1) on the grounds that the majority failed to consider the effect of Article 257 (1) and (2) on Article 20 (5) and (6) of the 1992 Constitution; which constituted exceptional circumstances which has resulted in a substantial miscarriage of justice.

Basically the complaint of the applicant as captured in paragraph 9 of his affidavit in support of the application for review is that:

"... The majority ruling in the said referral is gravely erroneous since they did not advert their minds to Article 257(1) of the 1992 Constitution, and consequently viewed the case solely in terms of a pre-1992 land acquisition rather than land that has been brought within the purview of the 1992 Constitution by Article 257(1) and involves public land management by the government made in the post 1992 Constitutional era."

It is to be noted that the ordinary bench at its own discretion requested counsel on both side to address the court on whether Article 257(1) is applicable to the issues before it. It is therefore reasonable to expect that the Court in its ruling would have indicated whether the said Article 257(1) applied or not.

As it is, it is only my brother Atugugba JSC who considered Article 257(1) in his minority decision and relying on holding 2 in *Omaboe III v Attorney-General & Lands Commission* (2005-2006) SCGLR 579 declared that:

"It is quite clear that the La Wireless Lands are "Pubic Lands" within the definition of that expression in article 257(2). Once acquired under Cap. 138 the La Lands have statutorily devolved on the President since then. This position is captured in holding (2) of *Omaboe III v Attorney-General & Lands Commission* (2005-2006) SCGLR 579 thus: "Portions of stool lands, like other private lands, may be compulsorily acquired by the Government of Ghana or the State under the State Lands Act, 1962 (Act 125) (as amended) and become part of public lands under article 257 of the constitution even after the coming into effect of that Constitution. But in that case, their management falls to the Lands Commission under article 258(1), and not the Office of the Administrator of Stool Lands. The regulatory regimes for stool lands and compulsorily acquired lands are simply different."

On the issue as to the effect of Article 257(1) on article 20 (5) and (6), Justice Atugugba said:

“Article 257(1) is the prevailing provision law relating to “public lands”. It is true that the definition of “public lands” in article 257(1) could have been better drafted to reflect the history of public lands in Ghana but we must interpret it *ut res magis valeat quam pereat.*

I do not think that article 257(1) can be read free from the fact that some of the lands it comprehends were originally acquired compulsorily and thus within the contemplation of article 20 (5) and (6). Article 20 (5) is quite comprehensive. It embraces “any property compulsorily taken possession of or acquired in the public interest or for a public purpose.”

The issue then is whether this Court should review the majority decision for merely failing to consider article 257(1)? Does this failure constitute an exceptional circumstance which has resulted in a substantial miscarriage of justice?

As has often been repeated, the most secured democracy is the one that assures the realisation of the Universal Declaration of Human Rights and Freedoms. This includes the right to private property. Even before Ghana’s independence this right to protection of property was proclaimed in one of the key provisions of the Bond of 1844 that: “*the first objects of law are the protection of individuals and property.”*

I am of the view that compulsory acquisition of private property by state for public purposes, primarily breach the fundamental right of private persons to own property or to shelter, as such this encroachment is subject to the universally recognised norm that the owner of such property is adequately compensated or dwellers in such areas be resettled. Our 1992 Constitution therefore guarantees the right to compensation and resettlement under (article 20 (1) (2) and (3).

However, article 20 (5) and (6) serve a different purpose and for clarity I set them out.

Article 20(5) “Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

(6) Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall, on such reacquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the reacquisition.”

The combined effect of Article 20 (5) and (6) is to enforce and sustain the judicious use of public lands and to prevent capricious compulsory acquisition of property by the State. These two clauses serve as one of the constitutional safeguards to promote, enforce and sustain a truly democratic system of government, accountability, good governance and fundamental human rights and freedoms in Ghana.

Guided by the principles of the purposive approach followed by this Court on constitutional interpretation in such cases as *Tuffuor v. Attorney-General [2003-2004] 2 SCGLR 823, Adjei Twum v. Akwetey & Attorney-General [2005-2006] SCGLR 732*, I am inclined to give a pragmatic and purposive approach to the interpretation of Article 20 (5) and (6) to cover public lands acquired before the 1992 Constitution.

I therefore share the views expressed by my esteemed brother Atuguba that whereas article 20 (1) (2) and (3) clearly address acquisitions made after the 1992 Constitution, article 20 clauses (5) and (6) on the other hand are wider in scope and apply to any property compulsorily acquired in the public interest and for public purposes irrespective of the time of acquisition and where there is any issue or question about the use or purpose for which the property was compulsorily acquired by the state.

It is my thinking that our approach to constitutional interpretation should not be to whittle down the abundant rights guaranteed by the 1992 Constitution. These rights are not only restricted to the personal liberty of person but extends to his property and economic rights etc. It is the judiciary that is assigned the role of the sentinel of the constitution, to uphold these rights and to even the scale of justice between the state and the individual. The court's vigilance in protecting the citizen against any encroachments on his liberty by the executive becomes meaningful and real only when pursued on the basis of this principle of maintaining the equilibrium, see *State v. General Officer the Commanding the Ghana Army; Ex parte Barimah [1967] GLR 192; C.A (full bench); Mensima v. Attorney-General [1996-97] SCGLR 676;*

But even then, Section 21 of the repealed Public Lands (Leasehold) Ordinance, 1950, Cap. 138 under which the La Wireless lands were compulsorily acquired gave the original owner of the land the right to petition to the Governor in Council to seek the surrender of his land or part thereof where there is a misapplication of the use or purpose of the compulsorily acquired land. I therefore agree with Justice Atuguba that:

"But if the constitution has plainly altered or substituted a new right in the circumstances of the matter it is the new order that ought to prevail. I would therefore conclude that the rights of the parties in this case are governed by article 20(5) and (6) and 257(1) of the 1992 Constitution." Accordingly I hold that under article 257 (1) and(2) the, expression, "public lands" embraces lands compulsorily acquired in the public interest both before and after the coming into force of the 1992 Constitution and they are all to be commonly administered by the new Lands Commission under article 258(1); and that article 20 (5) and (6) is applicable to all public lands regardless of the time of acquisition; provided that the change of the purpose for which the property was acquired occurred after the 1992 Constitution. To hold otherwise would amount to discrimination and denial of justice and a clear departure from the basic tenets of the ConstitutionI do not think the decision *in Ellis v. The Attorney General [2000] SCGLR 24* which was heavily relied on by my esteemed brother Dotse JSC in his opinion on the ordinary bench is applicable to the facts of this case. In the *Ellis* case, the applicant was seeking a declaration that the Hemang Lands [Acquisition and Compensation] Law 1992 [PNDCL 294] was null and void, whereas in the instant case, the applicant was not challenging the acquisition of the La Wireless land made in 1947 but was rather seeking a purposive approach in the interpretation and application of Article 20 (5) and (6) in matters which occurred after the coming into force of the 1992 Constitution over the purpose for which the land was acquired for public use. Our jurisprudence on the scope of the review jurisdiction of the Supreme Court and the stand the Court has taken to bar any attempt to turn the review jurisdiction into a further arena for appeal is quite extensive but clear. This is demonstrated by the numerous cases cited in both the majority and minority opinions expressed by the ordinary bench. The Supreme Court has exercised its power to review in exceptional circumstances where the failure to intervene would amount to a miscarriage of justice. The eminent scholar and Justice of the Supreme Court, Justice Modibo Ocran (of blessed memory) in the case of *Hanna Assi (No.2) v. GIHOC Refrigeration & Household Products Ltd (No. 2) [2007-2008] SCGLR 16*; after undertaking an academic journey to appraise the depth of cases on the special jurisdiction of the Supreme Court in these matters stated strongly at page 39 that:"Underlying all these later cases on conditions of grant of review, is the basic concern that reviews should be motivated by a desire to do justice in circumstances where the failure to intervene would amount to a miscarriage of justice. The question was asked at some point in our last hearing in this application: "What is justice?" I would refer to justice in this context not simply in the Aristotelian sense of commutative or rectifiable justice; but more importantly to justice as an external standard

by which we measure the inner quality of the law itself. Upon reviewing all these precedents, I have arrived at the conclusion that the case presently before us is reviewable, because the effect of our failure to correct the majority decision handed down at the ordinary panel of this court would be to brush aside a legitimate case of exceptional circumstances that would in turn result in a substantial miscarriage of justice. I would adopt the definition of miscarriage of justice as "prejudice to the substantial rights of a party." And I base my opinion on the real likelihood that applicant would be confronted with a brickwork defence of res judicata if he should return to the High Court to file a fresh case of recovery of title"

Having read the opinions of the ordinary bench in respect of the reference from the Accra High Court, I hold the view, respectfully, that the majority committed a substantial error when it ruled that article 20 (5) and (6) is inapplicable to acquisitions of property before the coming into force of the 1992 Constitution. This error is prejudicial to the substantial rights of the applicant which is yet to be determined by the High Court. This constitutes exceptional circumstances calling for a review. Our failure to correct the majority decision at the ordinary panel would result in a substantial miscarriage of justice.

After drafting this opinion, I had the opportunity to read the opinion of my esteemed brother Dotse JSC which he is about to be read. I regret to say that I differ from his opinion that the *Omaboe* case supra answers the points at issue as to the effect of article 257(1) on article 20 (5) and (6), in this case.

For the above reasons I concur with the views of Atuguba JSC that the application ought to be granted in the interest of justice.

[SGD:] S. O. A. ADINYIRA (MRS.)

JUSTICE OF THE SUPREME COURT

OWUSU (MS.), J.S.C:

I have read the judgments of my brothers Atuguba and Dotse JJSC and I am in entire agreement with the conclusion of Dotse J.S.C. . that this application must fail. I however have a few observations to make.

On 19/05/10, this court by a majority decision (of 4-1) held that Article 20 (5) and (6) of the 1992 constitution do not operate retrospectively to affect the La wireless station Land situate, lying and being at Cantonments, Accra compulsorily acquired by the state in 1947.

The applicant who is the Mantse (chief) of La had instituted an action against the Attorney-General for a declaration at that the said land which was compulsorily acquired for the purpose of a wireless station had ceased to be used as a wireless station and that the La Stool was entitled as the original owner to be given the first option to reacquire it under the said Article of the 1992 constitution.

The High Court presided over by His Lordship Justice Ofoe, Justice of Appeal sitting as an additional High Court Judge referred the issue of interpretation of Article 20(5) (6) to this court to assist the High Court in the determination of the suit.

The application is brought under Article 133 (1) of the constitution and rule 54 of the Supreme court Rules of 1996 (C.I. 16) which provides that:-

> "The court may review a decision made or given by it on the ground of
>
> (a). exceptional circumstances which have resulted in a miscarriage of justice,
>
> (b). or
>
> For purposes of this application, sub-rule (b) is of no relevance.

The exceptional circumstance which has resulted in a miscarriage of justice according to the Applicant is that the majority ruling is gravely erroneous since they did not advert their minds to Article 257 (1) of the constitution of 1992 and consequently viewed the case solely in terms of a pre 1992 land acquisition rather than land that has been brought within the purview of the 1992 constitution by Article 257(1) and involves public land management decision by the Government made in the post 1992 constitution era.

The failure of the majority to advert their minds to the said Article (257) (1) raises very profound public policy issues in the administration of public lands since contrary to the provisions of the 1992 constitution, the majority's ruling sanctions discriminatory methods of management of public lands acquired before and after the coming into force of the said constitution.

The Applicant in his affidavit in support of the application also avers that the majority's interpretation of public purpose or public interest is wide, broad and expansive and will render meaningless the constitutional limitation that lands acquired in the public interest or for a public purpose must be used only for that purposes or interest. It is his case that such an interpretation is gravely erroneous and amounts to exceptional circumstance resulting in a miscarriage of Justice.

I agree with counsel for the Respondent that it is indeed a misleading statement for the applicant's counsel to say that the majority in our Judgment failed to advert our minds to Article 257(1) of the constitution.

If we had not adverted our minds to that Article, the court would not have found it necessary to call upon the parties to address us on it.

A review application is not a process for which a losing party in the Supreme Court may seek to have another bite of the cherry. This principle has been stated over and over again and has become too notorious to be re-echoed.

In the case of AFRANIE VRS. QUARCOO [1992] 2 GLR 561, Wilaku J.S.C. had this to say:

> "There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court."

In MECHANICAL LLOYD ASSEMBLY PLANT VRS NARTEY [1987-88] 2 GLR 598, this court held that:

> "The review jurisdiction is not intended as a try on by a party losing an appeal neither is it meant to be resorted to as an emotional reaction to an unfavorable judgment."

Rule 54 of C.I. 16 clearly spells out when this special jurisdiction of the court can be invoked. To me the second limb on which the application is premised will be more of a ground of appeal if indeed the interpretation which the applicant describes as "*grossly erroneous*" is indeed so. On that ground the application must fail.

At the time when the 1992 constitution came into force, there is a valid leasehold for a term certain between the parties which has not lapsed, under which the applicant can seek redress if there is a breach.

I am of opinion that the Applicant cannot seek protection under Article 20(6) of the constitution.

Consequently, even if the majority in our judgment had inadvertently over looked Article 257(1) and (2) as the Applicant contends, though not accepted that there was any such inadvertence, I am of the view that the inadvertence has occasioned no miscarriage of justice.

It is for these other reasons and the reasons that informed my brother Dotse J.S.C's conclusion that I will also dismiss the application as not a proper one under rule 54 (a) of C.I. 16 and therefore same is dismissed.

[SGD:] R. C. OWUSU (MS.)

JUSTICE OF THE SUPREME COURT

JONES DOTSE, J.S.C:

The facts of this review application admit of no complexities whatsoever.

The Applicant, on 3rd November, 2006, among other reliefs, prayed the High Court that, the piece of land known as the La Wireless Station which was compulsorily acquired from the La Stool by the Gold Coast Government by way of a leasehold, under a Certificate of title dated 9th August, 1957 and had since ceased to be used as a Wireless Station entitled the La Stool *(Applicant herein)* as the original owners under provisions of article 20 (5) & (6) of the Constitution 1992 to be given the first option to re-acquire the said parcel of land.

On the 11th day of July 2008, the High Court, Accra presided over by Ofoe J.A, sitting as an additional Judge of the High Court made a reference to this Court pursuant to article 130 (2) of the Constitution 1992 for the interpretation of article 20 (5) and (6) of the Constitution 1992 to assist the High Court in the determination of the suit.

On the 19th day of May 2010, this court by a 4 to 1 majority decision held as follows that:

1. Article 20 (5) & (6) of the Constitution 1992 is inapplicable to acquisitions of property made before the coming into force of the Constitution 1992.

2. Article 20 (5) & (6) does not have retrospective effect or application.

3. Public purpose or public interest should be given a wide, broad and expanded interpretation such as would admit of a use that will have a beneficial effect on the entire community or is open to members of the public.

The dissenting opinion of the court was however of the view that the case of the applicant as presented in the High Court, is governed by article 20 (5) & (6) and 257 (1) of the Constitution 1992.

Dissatisfied with the majority decision of the court, the applicant, on the 18th day of June 2010 filed this review application seeking to set aside the majority decision and adopting the minority opinion.

Basically, the grounds of the Applicant in seeking the review application can be deduced from paragraphs 9, 10 and 11 of the affidavit of the application in support of the application. These are:

1. That the majority decision is gravely erroneous since they did not advert their minds to article 257 (1) of the Constitution 1992 and wrongly considered the case solely in terms of a pre-1992 land acquisition rather than land that has been brought within the purview of the Constitution 1992 by article 257 (1) of the Constitution.

2. That the failure of the majority decision to advert their minds to the issues raised in article 257 (1) of the Constitution and the policy issues raised in the administration of public lands since the coming into force of the Constitution, renders the majority decision discriminatory in the management of public lands acquired before and after the coming into force of the Constitution 1992 and which therefore constitutes exceptional circumstances which has led to a miscarriage of justice.

3. That the majority's interpretation of public purpose or public interest is wide, broad and expansive and will render meaningless the constitutional limitation that lands acquired in the public interest or for a public purpose must be used only for that purpose or interest. The applicant therefore contended that the majority interpretation is also gravely erroneous and amounts to exceptional circumstances which have resulted in a miscarriage of justice.

Learned Counsel for the Applicant, W.A. Addo, in a well prepared and lucid Statement of Case, articulated the above grounds.

Learned Counsel for the Respondent, Mrs. Sylvia Adusu (Principal State Attorney) in a brief but incisive statement of case debunked the submissions of the Applicant and contended that the majority decision considered in detail the provisions of article 257 (1) of the Constitution 1992 alongside the other provisions before arriving at their conclusions. Learned Counsel for the Respondent therefore prayed the court to dismiss the application for review since the applicant has not proved the existence of any exceptional circumstances that merit a consideration of the review application.

In his arguments before this court, learned Counsel for the applicant did not depart from the grounds stated in the affidavit and statement of case, both of which have been referred to supra.

Expanding upon the said submissions, learned counsel for the applicant argued as follows:-

1. That the Constitution 1992 basically frowns upon discriminatory legislation and enforcement of laws and since the majority decision seems to have one set of legal regime for pre and post Constitution 1992 acquisitions of land, there is the need to review the majority decision. This is because not doing so will result into a miscarriage of justice as exceptional circumstances have been shown to exist to warrant the case for a review.

2. That the majority decision either did not advert their minds properly to article 257 (1) of the Constitution 1992, or whether if they did, they were in error by the view they took of their wide, broad and expanded interpretation of what constitutes public interest or public purpose. Learned Counsel therefore referred the court to various constitutional provisions spanning the 1969 and 1979 Constitutions to buttress his argument that there has been exceptional circumstances which has led to miscarriage of justice.

On her part, learned Counsel for the respondent argued that this is not a fit and proper case for review since no exceptional circumstances have been proven to exist. Counsel therefore argued that the application be refused.

SCOPE OF REVIEW JURISDICTION

There appears to be some inconsistency in the application of the scope of the review jurisdiction of this court. This inconsistency is the result of the desire on the part of applicants to reduce this review jurisdiction of the Supreme Court into an appellate process.

What must be noted is that, the failure of an ordinary bench of this court to accede to the points of law canvassed before it should not automatically entitle an applicant to apply for a review of a decision that has been given against him.

This is because, the scope of the review jurisdiction vested in this court pursuant to article 133 (1) & (2) of the Constitution 1992 and Rules 54 (a) & (b) of the Supreme Court Rules, 1996 C. I. 16 has been held in a long line of cases as not an appellate process.

Wuaku JSC in the celebrated case of *Afranie v Quarcoo [1992] 2 GLR 561 at pp. 591-592* stated as follows:-

> *"There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court".*

Other cases which espouse the above principle of law are the following:

Mechanical Lloyd Assembly Plant v Nartey [1987-88] 2 GLR 598, where the Supreme Court held as follows:-

> *"The review jurisdiction is not intended as a try on by a party losing an appeal neither is it meant to be resorted to as an emotional re-action to an unfavourable judgment."*

In the instant case, it does appear sufficiently to us that the applicant herein has embarked upon this review application simply because of the unfavourable decision or interpretation that the majority decision has given in the matter. It is our considered opinion that irrespective of how an applicant considers the decision of the ordinary bench of the court to be once there are no exceptional circumstances which amount to a miscarriage of justice, a review process must not be countenanced and or tolerated in order to ensure the integrity, sanctity and legitimacy of the scope of the review jurisdiction of the Supreme Court as provided for in article 133 (1) of the Constitution 1992 and rule 54 (a) & (b) of the Supreme Court Rules, 1996 C. I. 16.

The Supreme Court stated this position quite clearly in the case of *Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398* as follows:

> *"A review jurisdiction is a special jurisdiction and not an appellate jurisdiction, conferred on the court, and the court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an application should satisfy the court that there has been some fundamental or basic error which the court inadvertently committed in the course of considering it's judgment and which fundamental error has resulted in gross miscarriage of* justice. These principles have been stated over and over again by this court. *Consequently, a losing party is not entitled to use the review process to re-argue his appeal which had been dismissed or use the process to prevail upon the court to have another or second look at his case."*

See also cases like:

Bisi v Kwayie [1987-88] 2 GLR 295, S.C

Nasali v Addy [1987-88] 2 GLR 286

Ababio v Mensah (No. 2) [1989-90] 1 GLR 573 S.C.

Pianim (No. 3) v Ekwan [1996-97] SCGLR 431

Koglex (GH) Ltd. V Attieh [2001-2002] SCGLR 947 and

Attorney-General (No. 2) v Tsatsu Tsikata (No. 2) [2001-2002] SCGLR 620

In an apparent call upon his brethren in the Supreme Court to protect the integrity, sanctity and usage of the review process as conferred by article 133 (1) of the Constitution 1992 and also rules 54 (a) & (b) of the Supreme Court Rules, 1996 (C. I. 16) and also to ensure that the scope of the review jurisdiction is not abused, Dr. Date-Bah JSC in his concurring opinion in the majority (5-2) decision in dismissing a review application in the unreported ruling in the Civil Motion No. J7/10/2009 dated 5th May, 201 intitutled *Chapel Hill School Limited – Plaintiff/Appellant/Respondent v The Attorney-General, The Commissioner, Internal Revenue Service – 2nd Defendant/Respondent/ Applicant* stated in clear and unambiguous language as follows:

"I do not consider that this case deserves any lengthy treatment. I think that it represents a classic case of a losing party seeking to re-argue it's appeal under the garb of a review application. It is important that this court should set its face against such an endeavour in order to protect the integrity of the review process. This court has reiterated times without number that the review jurisdiction of this court is not an appellate jurisdiction, but a special one. Accordingly an issue that has been canvassed before the bench of five and on which the court has made a determination cannot be revisited in a review application, simply because the losing party does not agree with that determination. This unfortunately is in substance what the current application before this court is."

From the above decisions, the principle seems to be fairly well established as follows that:

1. The review jurisdiction of this Supreme Court is a special jurisdiction and is not intended to provide an opportunity for a further appeal.

2. This special review jurisdiction can however be exercised when an applicant succeeds in convincing the court that:

    a. there has been some fundamental or basic error which the court committed in the course of delivering the judgment,

    and

    b. that, this error has resulted in a miscarriage of justice

3. There must be the discovery of an important matter of evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not have been produced by him at the time judgment was given.

The above is however inapplicable or inappropriate to the circumstances of this case.

We should by no means be misunderstood to be saying that this court does not review its decisions. What we have laboured to state is that there is a big and often times an insurmountable hurdle in the review jurisdiction of this court unlike the appellate jurisdiction which is automatic and as of right provided it is filed within time.

However, as was pointed out by Atuguba JSC in his lead and majority, (6-1) ruling in the unreported ruling in Criminal Motion No. J7A/1/2010, of 20th January, 2011 intitutled *Ellis Tamakloe – Applicant v The Republic – Respondent* the Supreme Court has indeed reviewed its previous decisions in the following cases:

1. In *Re Gomoa Ajumako Paramount Stool (No. 2), Applicant for substitution, Acquah Applicant, Kwa Nana v Apaa and Another [2000] SC GLR 394.*

In the above case, the Supreme Court unanimously granted an application for review because at the time the ordinary bench of the court gave it's decision the court was misled into believing that a process had been served on Kwa Nana who was dead at the time and could not have been served. Based on the fundamental error principle, the previous decision was reviewed.

2. In the case of *Republic v High Court, Kumasi; ex-parte Abubakar (No.3) [2000] SCGLR 45*, the Supreme Court reviewed its earlier decision mainly because this court had overlooked certain basic and material facts relating to the election of a Moshiehene.

3. Finally, the Supreme Court was compelled to review it's decision on the exigible interest rates, applicable in the previous judgment because of certain factual errors relating to its duration and computation, in the case of *NTHC Ltd. v Antwi [2009] SCGLR 117*.

After referring to the above and other cases, Atuguba JSC in the unreported ruling in the *Ellis Tamakloe v Republic* case, already referred to supra, rightly in our view stated as follows:

> *"All this should not be surprising because as a matter of principle, since it is trite law that this court can review a decision which is per incuriam as to the law, why can't it also review a decision that is per incuriam as to compelling facts. After all, the expression per incuriam simply means through oversight. It is also trite law that a statute must be construed as a whole and purposively. The second ground of this courts review jurisdiction, namely r. 54 (b) relates to 'discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decision was given.' Quite clearly then, the legislature is anxious that any fact that could have altered the decision of the court, were it known, should be given effect even after judgment* has been delivered*. Very clearly then, it stands to reason that if 'important matter or evidence" was adduced but was overlooked by the court such a situation should qualify as an exceptional circumstances under r. 54 (a) of C I 16. After all it is trite law that the spirit of a statute cannot be divorced from its true consideration. This means that if the substance of an application for review is that a different decision from the earlier one is merely preferable and not that the earlier decision is starkly wrong, it is a proper matter for appeal not review."*

What then is the fate of the instant application for review bearing in mind all the decided cases and their respective principles stated supra?

The applicant has anchored the substance of the review application on the erroneous impression that the majority decision did not consider the provisions of article 257 (1) of the Constitution 1992.

In the first place, it must be noted that the reference and application of the said constitutional provision was at the instance of the court which then elicited submissions on the point from both counsel, which they did.

Secondly, it must be noted that, the said article 257 (1) of the Constitution had been adequately considered by the majority before the decision was arrived at. The fact that the decision was not favourable to the applicant should not be a ground for the applicant to conclude that the court did not consider the provision.

Thirdly, since it is almost impossible for the applicant to know what operated in our minds when we considered the said constitutional provision, the conclusion that we did not consider it is untenable.

It is to be noted that the majority actually considered in detail not only the constitutional provisions provided for in article 257 (1) but went on to consider article 257 (2) and 295 of the Constitution 1992 which is the definition article before it arrived at its decision, the subject matter of this review.

Basing ourselves on the cases referred to supra on the scope of review jurisdiction of this court, especially cases already referred to such as, *Afranie v Quarcoo, Mechanical Lloyd Assembly Plant v Nartey, Quartey v Central Services Co. Ltd, Bisi v Kwayie, Nasali v Addy, Ababio v Mensah (No. 2) Pianim (No.3) v Ekwam, Koglex (Gh) Ltd. v Attieh [2001-2002] SCGLR 947, Attorney-General (No.2) v Tsatsu Tsikata (No.2), unreported decisions in Chapel Hill School Ltd. v Attorney General & Anr, and Ellis Tamakloe v Republic,* we are of the considered view that the instant application does not come within the scope of review applications permitted under the rules of this court

In our considered opinion, this application which has been very well prepared and argued, is only a re-harsh of the previous referral case and is nothing but a subtle attempt to re-argue the very issues that had been raised and considered in the previous decision.

In arriving at the decision we have come to in the instant case, we take note and are emboldened by the unanimous decision of this court in the case of *Omaboe III and others v Attorney-General & Another, [2005-2006] SCGLR 579, holding 1, 2 & 3* especially at pp. 599-601.

The Editorial note at page 584 of the Omaboe case states as follows:

"The unanimous decision of the Supreme Court in the instant case of Omaboe III v Attorney-General & Lands Commission is in line with its previous decision in Ellis v Attorney-General [2000] SCGLR 24, which was regrettably not cited to the court. In Ellis v Attorney-General, the Supreme Court held that it could not declare the Hemang Lands (Acquisition and Compensation Law) 1992, (PNDCL 294) a nullity under the 1992 Constitution because those lands had been acquired and vested in the Republic under PNDCL 294 before the coming into force of the Constitution, which could only be applied prospectively and not retroactively. In so holding, the Supreme Court applied and followed its previous decision in Fattal v Minister of Internal Affairs [1981] GLR 104."

FACTS IN THE OMABOE CASE

Like the instant case, the Omaboe case was a referral case from the High Court, Accra per Owusu Arhin J, pursuant to article 130 (2) of the 1992 Constitution requesting for interpretation by the Supreme Court of the constitutional issue whether or not by virtue of article 267 (1) of the Constitution, the vesting power of the Accra-Tema City Stool Lands (vesting) Instrument, 1964 *(EI 108 of 1964)* had lapsed.

It is interesting to observe that in the High Court, the Plaintiffs therein in the Omaboe case claimed inter alia the following reliefs:

1. *"A declaration that the control and management by the defendants of the Osu Mantse Layout lapsed with the promulgation of the 1992 Constitution.*

2. *A declaration that all leases renewed after the promulgation of the 1992 Constitution are null and void and of no effect."*

We have decided to refer to the above two reliefs claimed in the *Omaboe III vrs Attorney-General Case* because of the similarity between that and the reliefs in the instant case.

The Supreme Court stated their response to the referral from the High Court in the following words:

"Upon a true and proper construction of article 267 (1) of the Constitution, the vesting power embodied in the Accra-Tema City Stool Lands (vesting) Instrument, 1964 E.I 108 of 1964 has not lapsed."

On pages 599-601 of the report, the Supreme Court per Prof. Modibo Ocran JSC of blessed memory stated by way of explanation, the rationale behind the referral thus:

"*In the absence of any extrinsic aid, we must still make sense of the Constitution that we have been called upon to interpret. One age-old canon or maxim of interpretation is that there is a presumption of consistency among the various parts of the same document; and that one should as far as possible avoid an interpretation that will lead to internal inconsistency.*

When we put together articles 257, 258 and 267, the following appears to be the scheme of landholding policy established under the 1992 Constitution: First of all, stool lands that had not been vested in the President or Government of Ghana prior to January 7 1993, that is, those stool lands properly envisaged under article 267 (1), continue to be duly vested in their respective stools in trust for the subjects of the stool in accordance with customary law and usage.

Even though such lands have been legally vested in the stool, article 267 (2) of the same Constitution directly establishes the Office of the Administrator of Stool Lands whose functions are undoubtedly those of management, revenue collection and disbursement; and whose authority covers all stool lands. More specifically, article 267 (2) directs that the Administrator of Stool Lands establish a stool lands account for each stool into which all rents, dues, royalties, revenues or other payments shall be paid. The Administrator is to account for monies so collected to the beneficiaries named in that article; and to make disbursements to his office and to the beneficiaries according to a formula also spelt out in the same article. There is no inconsistency between article 267 (1) and article 267(2) because, as already explained, the vesting of title in one party may go side by side with management functions being lodged in another entity. Nor is there any absurdity in the constitutional arrangement, even though others might question the policy choices made by the framers of the 1992 Constitution on land tenure.

There is a further stricture on the powers of the stools even as the holders of the allodial title. Under article 267 (3), there can be no disposition of an interest in such lands, and no development thereof, unless the Regional Lands Commission of the region in which the land is situate has certified that such an act is consistent with the development plan approved by the planning authority for the area concerned. Further, under article 267 (5), the stools cannot, subject to other provisions of the Constitution, create and transfer a freehold interest in stool lands to any person. But what is also clear from the constitutional provisions is that the Lands Commission cannot by itself create any interest in stool lands.

The role of the Lands Commission is confined in this respect to giving consent and concurrence under provisions such as article 267 (3).

The second landholding policy arrangement concerns those lands that were once stool lands, but which had been vested at some point in time in the President or Government, without any subsequent de-vesting in favour of the original stools by a statutory or constitutional provisions. Our position is that they continue to be vested in the President or Government of Ghana, without any subsequent de-vesting in favour of the original stools by a statutory or constitutional provision. Our position is that they continue to be vested in the President or Government of Ghana until the State takes measures by an express statutory language to de-vest itself and re-vest them in the original stool owners. As long as they remain vested, they come under the administration and management of the Lands Commission created under article 258 of the Constitution.

A close look at article 258 (1) (a) indicates that there are three basic categories of lands entrusted to the management of the Lands Commission on behalf of the Government of Ghana: public lands, lands vested in the President by the Constitution or by any other law, and any lands vested in the Lands Commission itself. The distinction drawn in this article between lands vested in the President and public lands is amplified by the definition of public lands in article 257 (2), which confines them to lands vested or to be vested in the Government of Ghana as such. The clause reads in parts as follows:

> *"…'public lands' includes any lands which immediately before the coming into force of this Constitution, was vested in the Government of Ghana on behalf of , and in trust for, the people of Ghana for the public service of Ghana, and any other land acquired in the public interest for the purposes of the Government of Ghana before, on or after that date."*

The import of the distinction in article 258 (1) (a) between public lands and lands vested in the President is probably of historical significance only, since article 257 (1) also vests public lands in the President, and both public lands and lands vested in the President are held by the State in trust for the people of Ghana and for the public service of Ghana. At any rate, both categories of land, as envisaged under article 258 (1) (a), are expected to be managed by the Lands Commission. It follows that the Osu Mantse Layout, as lands vested in the President, comes under the management portfolio of the Lands Commission, and not the Office of the Administrator of Stool Lands.

> *Finally, there are lands which might have had no stool origins or connections, such as family or individual lands, but which could also become public lands by virtue of compulsory acquisition or negotiated transactions. These would also fall under the Lands Commission's management umbrella."*

The net effect of the decision of the Supreme Court in the Omaboe case, vis-à-vis the constitutional relationship between the stools as original owners of lands and the vested authorities i.e. the President as captured in articles 257, 258, and 267 of the Constitution 1992 is that once stool lands, such as the La Wireless Lands, had become vested in the President or Government of the Gold Coast as far back as 1957, they remain so vested in the President irrespective of the express provisions of the Constitution 1992 per articles 257, 258 and 267, unless there is a specific statutory regime to de-vest and re-vest in the original stool owners.

Secondly, the Supreme Court has amply stated the distinctions between public lands as defined in article 257 (2) of the Constitution and lands vested in the President as being of historical significance only, since both are held by the State in trust for the people of Ghana for the use of the public service of Ghana.

Since our interpretation is in tandem with the decision in the Omaboe III case, we feel emboldened to stick to our original decision in the instant case. The above constitute sufficient justification in our refusal of the review application.

The application is thus refused.

[SGD:] J. V. M. DOTSE
JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE, J.S.C:

I have had the benefit of reading before hand the opinions of my Learned Brothers, Atuguba and Dotse JJSC and those of my Learned Sisters, Sophia Adinyira and Rose Owusu JJSC and I am of the view that the application for review should be dismissed.

It is my honest opinion that the application is only an attempt to take a second bite at the cherry. Learned counsel's submissions is nothing new as it merely rehashes his earlier submissions before the ordinary panel.

The falsity in counsel's claim that the majority did not consider the effect of article 257 (1) on Article 20 of the Constitution lies in the fact that it was the court itself, that drew counsels attention to the said article and asked for submissions on same. That the majority's consideration did not support counsel's position on the matter is not a ground for review. See the case of Chapel Hill School Limited v The Attorney-General and the Commissioner of IRS (unreported dated 5/05/2010 particularly the opinion of Date – Bah JSC.

It is for these reasons that I concur with the majority that the application for review should fail.

[SGD:] P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

COUNSEL;

WILLIAM ADDO FOR THE APPLICANT.

MRS. SYLVIA ADUSU (CSA) FOR THE RESPONDENT.