IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2014

CORAM: W. A. ATUGUBA JSC (PRESIDING)
J. ANSAH JSC
S. ADINYIRA (MRS) JSC
R. OWUSU (MS) JSC
J. DOTSE JSC
ANIN-YEBOAH JSC
P. BAFFOE-BONNIE JSC
V. AKOTO-BAMFO JSC
J. B. AKAMBA JSC

WRIT
No. JI/2/2012

30TH JULY, 2014

BETWEEN

1.	**OKOFO SOBIN KAN II** ACTING PRESIDENT, ADANSI TRADITIONAL COUNCIL BONSRA AFRIYIE PALACE FOMENA-ADANSI, ASHANTI REGION	**1ST PLAINTIFF**
2.	**NANA KARIKARI APPAU** BEKWAIHENE, BEKWAI TRADITIONAL COUNCIL OMANHENE'S PALACE, BEKWAI	**2ND PLAINTIFF**
3.	**NANA OSEI KOFI ABIRI** KENYASEHENE KENYASE (NO.1) TRADITIONAL COUNCIL KENYASE (NO.1) AHAFO	**3RD PLAINTIFF**

4. NANA ODENEHO KWABENA NSIAH ABABIO
KENYASEHENE KENYASI (NO.2) — **4TH PLAINTIFF**
TRADITIONAL COUNCIL AHAFO

5. NANA KWAMENA ENAMIL
WASSA FIASE TRADITIONAL COUNCIL — **5TH PLAINTIFF**
TARKWA WESTERN REGION

AND

1. THE ATTORNEY-GENERAL
ATTORNEY-GENERAL'S OFFICE — **1ST DEFENDANT**
MINISTRY OF JUSTICE ACCRA

2. OFFICE OF THE ADMINISTRATOR OF STOOL LANDS
ACCRA — **2ND DEFENDANT**

3. GHANA REVENUE AUTHORITY
HEAD OFFICE — **3RD DEFENDANT**
ACCRA

JUDGMENT

MAJORITY OPINIONS

ATUGUBA, JSC

Facts

In this case the five plaintiffs represent Ghanaian landowners, who share the common trait that mining companies have been extracting gold for the Republic of Ghana on their land. These companies include Anglo Gold Ashanti, Newmont Ghana Limited, and Goldfields Limited ("The Companies").

At the moment the royalties from these mining operations are not paid to the landowners, but rather collected by government agencies. The Ghana Revenue Authority (the "GRA"), one of the Defendants in this case, serves the role of royalty collector for the minerals at issue here. However, the Office of the Administrator of Stool Lands, the institution charged by the Constitution and by the Administrator of Stool Lands Act, 1994 ("Act 481), is charged with establishing stool land Accounts, collection of royalties, and disbursing revenues due and payable.

In 1992 a fund was established to provide a portion of Government mineral royalties to host communities to support local development, address the negative effects of mining in the host communities, to supplement the budget of the mining sector institutions, and to fund research in the mining sector. Accordingly, 20% of the Government mineral royalties are paid into the fund to be managed by the Minerals Commission. The Commission was to disburse 50% of this revenue to

fund development projects in the host communities, and 50% to District Assemblies, Stools, and traditional authorities in the ration of 50%/20%/20%.

The Plaintiffs believe that the Companies are required to pay royalties that, by definition and law, have to be paid to the owners of the lands on which they carry out their mining activities. Further, the royalties that the Companies pay to the Republic should and ought to go to the Plaintiffs, who hold the stool lands in trust for their subjects. Lastly, the Plaintiffs maintain that the GRA is unlawfully and unconstitutionally exercising the powers and functions reserved by the Constitution to the 2nd Defendant.

The issues in this case as per the parties memorandum of issues dated 7/5/2002 are as follows:

1. Whether or not the Plaintiffs have properly invoked the Jurisdiction of the Supreme Court, and whether or not the Plaintiffs have taken advantage of the procedure prescribed for redress of grievances(s) over apportionment of rents, royalties, etc. under Section 8(2) of Act 481 before invoking the exclusive special, original jurisdiction of the Court.
2. Whether or not revenues or incomes specified under Article 267 2(a)(b) and (c) and clause 6 of the 1992 Constitution are public funds.
3. Whether or not the collection and disbursement being done by the 3rd Defendant are inconsistent with and in contravention of Article 267 clause (2) and clause 6 of the 1992 Constitution.
4. Whether or not the rents, dues, royalties or other payments, whether in the nature of income or capital from stool lands, are revenues or other monies intended to be paid into the consolidated fund, the contingency

fund or other public funds envisaged under Article 175 and 176 clause 1 (a) and (b) or revenues or other moneys envisaged under Article 176 (2) (a) of the 1992 Constitution.

5. Whether or not the 2nd Defendant has failed, refused or neglected to perform its constitutional statutory functions under the 1992 Constitution and the Office of the Administrator of Stool lands Act, 1994 (Act 481).
6. Whether or not the 2nd Defendant is mandated to collect and disburse mineral royalties under the Constitution.
7. Whether or not the 3rd Defendant has usurped the functions and powers of the 2nd Defendant by its collection of rents, dues, royalties etc. form stool lands.
8. Whether or not rents, dues, royalties etc. from stool lands are specifically intended for Plaintiffs and other bodies mentioned under Article 267(6) (a), (b), and (c) of the Constitution of 1992.
9. Whether or not royalties obtained from mining operations and which are paid to the Republic are public funds within the meaning of Article 175 of the Constitution
10. Whether or not royalties obtained from the operations of mining companies are to be paid to owners of stool lands.

Jurisdiction

First to be considered is whether in fact these issues before the Supreme Court are appropriate, specifically as to whether or not the Supreme Court has original jurisdiction on this matter. Looking to the Constitution it becomes clear that the

jurisdiction of the Court is properly invoked in resolving the current dispute. Article 2 (1) of the 1992 Constitution states:

> "A person who alleges that – (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."

Of additional importance is article 130 (1), which states:

> "Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in; (a) all matters relating to the enforcement or interpretation of this Constitution; and (b) All matters in excess of the powers conferred on Parliament or any other authority or person by law under this Constitution.

This article is reproduced in section 3 (1) of the Courts Act, 1992 (Act 459) (3):

> "Original Jurisdiction (1) In accordance with Article 130 of the Constitution, and subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of the Constitution, the Supreme Court has exclusive original jurisdiction; (a) In matters relating to the enforcement or interpretation of the Constitution, and (b) In matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution."

The decision by the Court in the outcome of this suit will undoubtedly require the application and interpretation of the Constitution, which would on its face lend to the conclusion that the Supreme Court is the appropriate venue for this case. However, the 1st and 2nd Defendant, the Attorney-General and the Office of the Administration of Stool Lands, argue that it is mere application of the Constitution at heart in the present dispute, and not interpretation or enforcement.

How can the court possibly decide whether or not the 2nd Defendant or the 3rd Defendant is the appropriate revenue collection body without interpreting the Constitution? Application requires interpretation in this case, and further, the application of the Court requires enforcement of the Court's decision. In the present case, it is impossible to separate application from enforcement and interpretation, and as such the Plaintiffs have appropriately brought this matter before the Court. This situation obviates the necessity to pry into the useful and meticulous dissection of the question whether this court's original jurisdiction can be invoked when only enforcement of the constitution is involved in an action undertaken by Sir Dennis Adjei at pp 318-331 of his invaluable book, MODERN APPROACH TO THE LAW OF INTERPRETATION IN GHANA.

Notwithstanding the prolixity of the issues settled by the parties for determination the pith and substance of this action revolve around the 4th relief sought by the plaintiffs as per their writ as follows:

> "A declaration that *the collection of royalties from* the various mining companies in the country *by the 3rd Defendant* instead of the 2nd Defendant is contrary to and in contravention of the clear and unambiguous words of the 1992 Constitution and sections 2(a) (b) and (c) of Act 481 of 1994."

The functions of the 2nd defendant, the Office of the Administrator of Stool Lands are laid down in article 267 (1) (2)(a) – (c) and (6) of the 1992 constitution as follows:

"**Stool and Skin lands property**

(1) *All stool lands in Ghana* shall vest in the appropriate stool on behalf of, and in trust for, the subjects of the stool in accordance with customary law and usage.

(2) There shall be established the Office of *the Administrator of Stool Lands* which shall be responsible for

(a) the establishment of a stool land account for each stool into which shall be paid all rents, dues, *royalties*, *revenues* or other payments whether in the nature of income or capital *from the stool lands*;

(b) the collection of all such rents dues, royalties, revenues or other payments whether in the nature of income or capital, and to account for them to the beneficiaries specified in clause (6) of this article; and

(c) the disbursement of such revenues as may be determined in accordance with clause (6) of this article.

(6) *Ten percent of the revenue accruing from stool lands shall be paid to the Office of the Administrator of Stool Lands* to cover administrative expenses and the remaining revenue shall be disbursed in the following proportions:

(a) twenty-five percent to the stool through the traditional authority for the maintenance of the stool in keeping with its status;

(b) twenty percent to the traditional authority; and

(c) fifty-five percent to the District Assembly, within the area of authority of which the stool lands are situated." (e.s.)

By contrast article 257(6) of the constitution provides as follows:

> "*Every mineral in its natural state* in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf *is the property of the Republic of Ghana* and shall be *vested in the President on* behalf of, *and in trust for, the people of Ghana*."(e.s)
>
> Quite clearly mineral resources in their natural state cannot be "*the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana*" under article 257 (6) and at the same time "*vest in the appropriate stool on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage"* under article 267 (2) so as to entail the administrative powers of the Office of the Administrator of Stool Lands under article 267(2) with regard to them. The *maxims expressio unius est exclusio alterius and verba generalia specialibus non derogant* are apposite here. Quite clearly then the powers of the Office of the Administrator of Stool Lands relate to "all rents, dues, royalties, revenues or other payments whether in the nature of income or capital *from the stool lands"* under article 267 (2) (a). These powers then cannot relate to the special provisions concerning minerals in their natural state. Since it is the Trustee that administers the Trust property it is the president, being the Trustee of minerals in their natural state who should administer the same, not for the beneficiaries listed in article 267(6) as provided in art 267(2) (b) and (c), but "*on behalf of, and in trust for the people of Ghana*" as provided in article 257(6). Similarly but for the express provisions of article 267 (2) (a)-(c) and (6)-(9) the stools would have been the administrators of stool lands "*on behalf of, and in trust for the subjects of the stool in accordance with customary law and usage*" as provided in article 267(1).

However the moneys generated by the President from minerals in their natural state either directly or through administrative agencies will have to be paid into the consolidated Fund under articles 175 and 176.

They are as follows:

"**175**. The public funds of Ghana shall be the Consolidated Fund, the Contingency Fund and such other public funds as may be established by or under the authority of an Act of Parliament.

176. (1) There shall be paid into the Consolidated Fund, subject to the provisions of this article –

(a) all revenues or other moneys raised or received for the purposes of, or on behalf of, the Government; and

(b) any other moneys raised or received in trust for, or on behalf of, the Government,

(2) The revenues or other moneys referred to in clause (1) of this article shall not include revenues or other moneys –

(a) that are payable by or under an Act of Parliament into some other fund established for specific purpose; or

(b) that may, by or under an Act of Parliament, be retained by the department of government that received them for the purposes of defraying the expenses of that department."

and withdrawals will be regulated by article 178.

The constitution however does not, unlike the case of stool lands specify how the president is to administer the specific moneys accruing from minerals in their

natural state. That being so the situation is further governed, it being an executive matter, by article 58 particularly clauses (1) and (2) thereof as follows:

" (1) The executive authority of Ghana shall vest in the President and shall be exercised

in accordance with the provisions of this Constitution.

(2) The executive authority of Ghana shall extend to the *execution and maintenance* of

this Constitution *and all laws made under or continued in force by this*

Constitution."

This being so the Ghana Revenue Authority Act, 2009 (Act 791) under which mineral royalties are collected being a law made under the Constitution the president is bound to execute it by complying or seeing to compliance with it, under articles 58(1) and (2) aforesaid, unless of course, 'such law is contrary to the Constitution itself, which by article 1(2) "*shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this constitution shall, to the extent of the inconsistency, be void*."

See *Amegatcher v Attorney-General* (No. 2) (20012) SCGLR 933 at 950-951 per Dr. Date-Bah JSC and at 967 per Atuguba JSC.

Although there is some fluctuation on the matter, in *Asseh v Anto* (1961) GLR 103 SC at 104 Korsah C.J (Van Lare and Sackodee-Adoo JJ.S.C. concurring), held thus: "There is ample authority for the view that the legal maxim *quicquid plantatur solo solo cedit* is not applicable to land held under native tenure". That being so

minerals in stool land are not part of the land. However **even if they are, the courts have consistently held concerning ordinary stool land that when usufructuary titles are acquired in stool land by the stool's subjects such lands become individual or family lands as the case may be and such lands (subject to the reversion), cease to be stool lands**. Thus in *Saaka v Dahali* (1984-86)2 GLR 774 C.A. the headnote states as follows:

> "*One S, a native of Dagomba, acquired a plot of land in Tamale customarily from the chief of Tamale*. He erected a building, No G 30, on the plot in 1920 and subsequently allowed a relative M a friend U and U's aunt Y to share the house with him. Some time later S was made the chief of his village and he left the house in the care of M and U. Subsequently both M and U also left Tamale and, with the approval of S, they left the house in the sole care of Y who had by then been joined in the house by her daughter D, the mother of the defendant. Some time in 1948 a part of the house collapsed and without notifying S, Y repaired the house at a cost of £75. However, when S became aware of it he immediately refunded that amount to Y. The refund was, however, not accepted by Y who pleaded that accepting the refund would mean that S was evicting her from his house. *S died in 1948 survived by the plaintiff, his daughter, as his sole successor*. In 1979 the plaintiff who had been living in Takoradi returned to Tamale. Her attempts to make some extensions to the house were resisted by *the defendant* who *claimed the house as the property of her grandmother Y which she had inherited through the mother*. The *plaintiff therefore sued for, inter alia, declaration of title to and recovery of possession of the house*. In his judgment, the trial High Court judge *accepted the customary acquisition of the plot and the erection on it of the house by S but nonetheless dismissed the plaintiff's claim and found for the defendant on the grounds that* (i) since the death of S in 1948 Y and her descendants had been the occupants of the house; (ii) D had in 1957 been granted a year to year tenancy by the then Chief Commissioner of Lands of

the plot on which the house had been erected; and (iii) *the Stool Lands (Northern Territories) Instrument, 1963 (EI 109 of 1963) passed under the Administration of Lands (Act, 1962), s 7(1) on 4 September 1963 had vested all skin lands within the area of authority of the Tamale Urban Council in the President and thereby divesting the plaintiff of her customary title to the land*. On appeal by the plaintiff, the Court of Appeal found, inter alia, that: (i) Y and her daughter D were not relatives of S; (ii) in her affidavit in support of her application for the lease, D had falsely sworn that she was a relative and the next of kin of S the rightful owner, and (iii) D had been granted the lease on the basis of that false claim.

Held, allowing the appeal: xxx

(2) *S as a member of the Dagomba tribe was entitled under Dagomba customary law to be given part of the land attached to the Dagomba skin for building purposes. Once he had exercised that right and built on it, he had a usufruct of that land which could not without just cause be taken away from him by the skin. Having built on the land, it ceased to be vacant land attached to the skin and became the property of S and would revert to the skin only on the failure of his heirs. In the circumstances the Stool lands (Northern Territories) Instrument, 1963 (EI 109 of 1963), passed under the Administration of Lands Act, 1962 (Act 123), s 7 (by which all skin lands within the area of authority of the Tamale Urban Council were declared to be vested in the President in trust) did not cover the usufructuary interest which S and his heirs or assigns had in the plot*. In any case, the fundamental rule applicable to all statutes and statutory instruments was that prima facie they were prospective and unless by their specific terms or by necessary implication they had retrospective operation they did not affect rights and obligations which had already crystallized. On the evidence EI 109 of 1963 came into force 43 years after the land had been allotted and the building had been erected. It could not therefore operate retrospectively to extinguish rights S had acquired in the skin land before its promulgation."

Then follows a chain of decisions arising *in consimli casu* with *Saaka v Dahali,* supra.

Hence the head note in *Wiredu v. Kobia-Amanfi* (1991)I GLR 517 is as follows:

> "*In May 1961, one L obtained a grant of land covering plots numbers 14 and 16 in the North Dzorwulu Extension area of Accra by way of gift from the Osu stool*. The grant (exhibit 9) was duly registered in 1966. L later sold the land to one A who also duly registered her document (exhibit 10). She then in turn, sold the land to the defendant. *The plaintiff on the other hand obtained a lease of the plot in dispute from the Government of Ghana in 1976*. He also duly registered his lease. Following a dispute over the plots, the plaintiff in an action against the defendant at the Circuit Court, Accra sought for a declaration of title to the disputed plots. He relied on the strength of his document and a default judgment he had regularly obtained in 1981. The defendant denied the plaintiff's claim and counterclaimed, inter alia, for a similar relief. The trial judge found, *inter alia*, that (i) by the gift to L in 1961, the Osu stool had divested itself of any interest in the land, (ii) L sold her land to A, and (iii) though the defendant did not succeed in registering his land he would be deemed to have possession of registered documents because of his claim through A and L who had registered documents on the land. *The trial judge nevertheless held, relying on the Accra-Tema City Stool Lands (Vesting) Instrument, 1964 (EI 108), that since the whole of Osu stool lands had been vested in the Government of Ghana, after 1964 only the government could grant portions of Osu land so that exhibit 10 conferred no title on the defendant*. On appeal by the defendant, the question before the court was whether or not EI 108 legally divested all previous owners of Osu land of their title to the plots they had acquired before its coming into force.
>
> *Held, allowing the appeal: xxx*
>
> (2)The *fundamental rule applicable to all statutes and statutory instruments was* that, prima facie they were prospective and unless by their specific

terms or by necessary implication they had retrospective operation, *they did not affect rights and obligations which had already crystallized at the time they became law. EI 108 of 1964 therefore could only affect vacant land of the stool concerned.* In the instant case, *since the defendant's predecessor in title, L, obtained her title (exhibit 9) in 1961* and government concurrence was obtained and the land registered in 1966, *her title had already vested and the land so acquired no longer formed part of the land envisaged under EI 108 of 1964*. And since in compliance with section 8 of the Administration of Lands Act, 1962 (Act 123) L's grant to the defendant's vendor, by exhibit 10 also received the concurrence of the government, it did not lie in its mouth to say that the land still remained part of the Osu stool lands. Consequently, the trial judge erred in holding exhibits 9 and 10 null and void and in giving judgment for the plaintiff whose grant was made in 1976 by the government at a time when it had no interest in the land and therefore, the defendant had a better title." (e.s)

To the same effect is *Gabbs Ltd v. Boakye* (1991)1 GLR 533 C.A as reflected in its headnote as follow:

"*The plaintiff's uncle by virtue of being the prime cultivator of a virgin forest became owner of it*. The land, *through inheritance, became family property*. The plaintiff inherited it and was in active and effective possession. *The defendant-company applied to the Lands Department for land and the land granted included a portion of the plaintiff's land. The Lands Department claimed its source of ownership from the Stool Lands Act, 1960 (Act 27) and the Stool Lands Instrument, 1961 vested all stool lands within the boundaries of Nkawkaw and Koforidua in the President. The plaintiff contended that his land was family land and not stool land and therefore not subject to Act 27 and EI 195 of 1961.* The High Court, Koforidua gave judgment for the plaintiff. The defendants appealed to the Court of Appeal against that judgment.

Held dismissing the appeal: it was not until 1979 that officially family land and stool land became merged. *Stool land as defined in article 213 of the Constitution, 1979 included any land or interest in, or right over, any land controlled by a stool, the head of a particular community or a family for the benefit of the subjects of that stool or the members of that community of family*. If it needed a Constitution in 1979 to bring about the concept that "stool land" included "family land", then clearly, *in 1962, when by an executive instrument, ie the Stool Land Instrument, 1961 (EI 195 of 1961), a minister purported to seize family land in the guise that he had power to compulsorily seize stool lands, he acted without jurisdiction and his seizure was wrongful, and so a nullity.*"

The legal position regarding the privatization of stool land has been carried to its furthest end by the case of *Okwan v Amankwa II* (1991)1 GLR 123 C.A.

As stated in its headnote:

"The plaintiff and the defendants are members of the same family. The plaintiff is the occupant of the family stool and the first defendant is the head of the family. *In a dispute as to which of the two has the authority to collect and control rent received from tenant farmers in occupation of the family lands*, the stool occupant applied to the High Court for an interim injunction to restrain the family head and the other defendant members of the family from collecting rent from the tenant farmers until the final determination of the dispute. *The trial High Court judge in his ruling* granting the application and appointing the registrar as manager and receiver, *referred to the land in question as "family stool lands"*. That provoked *an amendment of the statement of defence by the defendants who contended that if the land was stool land, then the action contravened section 17 of the Administration of Lands Act, 1962 (Act 123) which vested the administration and the collection of stool land revenue in the Minister responsible for Lands. Hence they argued, the court had no jurisdiction to entertain the suit*. The trial judge *overruled the objection, holding that the*

plaintiff's action referred to private family stool land and the suit was therefore not caught by section 17 of Act 123. On appeal to the Court of Appeal, it was contended by the defendants that the trial judge erred in law because *(a) the definition of "stool land" as provided under section 31 of Act 123 did not recognize a distinction between public stool lands and private stool lands and (b) the definition of "stool lands" as provided under article 213(1) of the Constitution, 1979 specifically included family land in its definition of stool land*. Accordingly, the trial judge erred by holding that the words "family stool land" was not caught by section 17 of Act 123.

Held, dismissing the appeal: (1) *the courts have always excluded private family stool lands from the operation of the Administration of Lands Act, 1962 (Act 123). The rational underlying the view taken by the courts was clear since the main purpose for enacting Act 123 was to streamline the administration and revenue collection of "oman" or public stool lands to be used for maintaining the stool and the development of the areas where such stool lands were situate*. In that regard, *it was such lands as were in common use by the subjects of the area that would be within the contemplation of the legislature for achieving that purpose. The objective envisaged did not stretch to cover family lands the enjoyment and control of which were the exclusive rights of members of the family concerned*. "Family" in that context was used in the narrow acceptation of the word. *The fallacy in any other interpretation than the above would be that whenever an individual owning land died intestate his land which should have devolved on his family would become a stool land within the language of Act 123. Were it not so, section 17(7) of act 123 would be otiose since all lands in Ghana would be taken as stool lands within the language of Act 123*.

(2) To interpret "family land" in the narrow acceptation of that word as the true meaning of the word within the language of article 190 of the Constitution 1979 would produce a palpable injustice. *When the provisions of article 190 providing for the administration of stool land revenue by the Lands Commission were read together with the provisions of Act 123 the*

true intent of the two enactments would be defeated by giving a narrow interpretation to "family land" as contained in article 213 of the Constitution, 1979. The public status or nature of the property sought to be administered in the interest of the general community would be made applicable to such family land and that would arbitrarily deprive individual families of control and management of their lands, a situation not envisaged under the Constitution, 1979. It would be a case of injustice to resort to an interpretation which would deprive individual citizens of their rights to their family lands. Accordingly, where a word was capable of two interpretations one producing an injustice and the other conducive to a just result, the courts had held on to the interpretation that did not produce injustice. "Family land" as referred to in article 213(1) therefore had to be interpreted in its broadest sense to connote the public nature of the subject matter or to the same genus as the specific words which preceded its, namely "community land" and "stool land" commonly enjoyed by all subjects of the stool. Since the land in issue was a private family stool land, it was not a stool land within the language of either the Constitution, 1979, art 213(1) or Act 123, s 31. *R v Tonbridge* Overseers (1884) 13 QBD 339, CA cited.

In sharp contrast to *Okwan v. Amankwa II*, supra is the case of *Republic v. Kwadwo II* (1991) 1 GLR I C.A. The headnote thereof is as follows:

"The respondent was the Omanhene of Bekwai under whom was Fahiakobo village. After a boundary dispute between two sub-chiefs, a piece of unclaimed land, ie Fahiakobo, was given to the respondent to rule directly. All revenue accruing from the Fahiakobo lands were given directly to the respondent. The Lands Commission Secretariat however insisted that apart from money which fresh stranger farmers paid to chiefs on acquiring land, all other revenue was to be paid to the Lands Commission. The respondent however argued that his predecessors had always collected revenue from the Fahiakobo lands and that Fahiakobo was not even on the list of stool lands from which the government collected stool lands revenue.

He was subsequently charged with stealing tributes from stranger farmers and was convicted by the circuit court. On appeal to the High Court, the High Court, found, inter alia, that the trial judge convicted the accused without particularizing the counts on which he was convicted and passed one sentence for all the several counts. He was consequently acquitted. The State appealed against the decision on the grounds that (1) the High Court judge misdirected himself as to the meaning of section 17(1) of the Administration of Lands Act, 1962 (Act 123) which vested the right to collect revenue from stool lands in the Minister responsible for Lands or his agent; (2) the claim of right of the accused was not bona fide because he had had prior warning from the Lands Commission; and (3) that the failure of the High Court judge to particularize the counts for conviction was a mere irregularity.

Held, allowing the appeal: (1) it was indisputable that the management of stool lands and the collection of moneys itemized under section 48 of the Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law, 1982 (PNDCL 42), which had modified sections 1 and 17(1) of the Administration of Lands Act, 1962 (Act 123) was the monopoly of the Secretariat of the Lands Commission through the Administrator of Stool Lands. It was not in dispute that the Fahiakobo lands were stool lands. Therefore dispute the history behind how those lands became part of the stool lands of the respondent, those lands were under the management of the Stool Lands Commission Secretariat and it was only the administrator or his duly appointed agent who could lawfully collect revenue from stranger farmers on those stool lands in accordance with section 48(1) (c) of PNDCL 42. Since there was no evidence which created any exemption which took the Fahiakobo stool lands from the jurisdiction of the Administrator of Stool Lands as provided under section 48(1) (b) and (c) of PNDCL 42, the collection of revenue by the respondent and his agents was unlawful and constituted stealing."

It should be emphasized that the reversal of the Court of Appeal's decision by this court, on appeal, in *Osei Kwadwo II v The Republic* (2007-2008) SCGLR 148 does not affect the law as to the nature of stool lands as stated by the Court of Appeal.

From all the foregoing it should be clear that the powers of management of stool revenues, Royalties etc vest in the stool or the Administrator of Stool Lands where the stool concerned has proprietary title over the land or property concerned for and on behalf of a particular community as a whole. The lack of stool proprietary title over minerals in their natural state makes all stool pretences to control or management over the same idle. In clearer terms, if as demonstrated at length, *supra,* the acquisition by a customary citizen of a usufruct in stool land operates to exclude the enjoyment, management and control of such land from the stool, then it must also follow that the lodgment of the ownership of minerals in their natural state in the Republic of Ghana and the President in trust for the people of Ghana, generally, does also exclude the enjoyment, management and control of such minerals from the stools in whose lands such minerals are found. This means that the powers of control or management of revenues, royalties etc over minerals in their natural state vest *"in the President on behalf of, and in trust for the people of Ghana,"* under article 257(6) aforesaid. It should be noted that this trust over minerals in their natural state is a "*trust for the people of Ghana*" generally therefore any attempt to have the revenue, royalties accruing from such minerals vested in a stool and administered for the benefit of a stool, traditional authority or District Assembly within the area of authority of which such stool land is situate under article 267(1) (2) and (6) will be contrary to article 257(6) and accordingly null and void. There is supportive thinking, **(in a broad sense)**, on this issue from the celebrated case of *Omaboe III and Others v. Attorney-General,*

(2005-2006) SCGLR 579. At 596 -597 Professor Ocran JSC delivering the unanimous judgment of this Court held as follows:

"**The legal import of the Administration of Lands Act, 1962 (Act 123) in the context of the 1992 Constitution, arts 257, 258 and 267(1)**

The legal characterization of "vesting" under Act 123, s 7(1), appears to be the same as under article 267(1) of the 1992 Constitution, ie the acknowledgment of the allodial ownership of land in a particular entity. Indeed, this provision is little more than a re-enactment of the relevant provisions in the Ghana Constitutions of 1969 and 1979; and article 267(1) of the 1992 Constitution simply restates the constitutional policy of vesting stool lands in the appropriate stool for the benefit of the subjects of the stool.

Allodial ownership of the sort that is being referred to under article 267(1) and section 7 of the Administration of Lands Act, 1962, cannot be held simultaneously in two distinct entities unless a joint ownership was intended. The property in stool lands either vests in the President, or in the stool. Now, if, as article 267(1) provides: "stool lands in Ghana shall vest in the appropriate stool on behalf of, and in trust for, the subjects of the stool in accordance with customary law and usage …", then such lands cannot simultaneously vest in the President even as a trustee of the subjects of that stool. Therefore, after the coming into force of the 1992 Constitution on 7 January 1993, any statute or subsidiary legislation which purports to vest in the President or Government of Ghana, lands which are still stool lands, would run counter to article 267(1) of the 1992 Constitution. In that event, the constitutional provision must prevail. Article 1(2), the supremacy clause, is categorical. It states that:

> "This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."…" (e.s.)

More pertinent support for my view that land or property vested in the State or the President in trust is outside the purview of article 267(2) and consequently

outside the purview of stool ownership and administration by the Office of the Administrator of Stool Lands is found at 599 as follows:

" When we put together articles 257, 258 and 267, the following appears to be the scheme of landholding policy establishing 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." (e.s.)

In sharp contrast to this legal position, Professor Justice Ocran continues at 600 thus:

"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 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 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) indicated 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 part 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*." (e.s.)

From all the foregoing it is quite clear that (1) Revenues, royalties, rents etc accruing from stool lands which have not been privatized through the subjects'

acquisitions of usufructuary titles vest in the stool and consequently in the administrator of stool lands, (2) that revenues, royalties, rents etc accruing from lands privatized by individuals and families out of stool lands vest in such private owners and consequently not in the stools and therefore the Administrator of stool lands, and (3) similarly, since minerals in their natural state are the property of the Republic of Ghana it follows that royalties, charges etc relating to them belong to the Republic and not to any stool or skin and subsequently vest in the President in trust for the people of Ghana and cannot therefore be administered by the Administrator of Stool Lands.

However since the constitution, apart from payments into the consolidated Fund, does not stipulate, unlike article 267 in the case of stool lands how revenues, royalties etc, can be collected and administered the matter falls to be regulated, if need be, under the residual powers of Parliament under article 298 as follows:

> "**298**. Subject to the provisions of Chapter 25 of this Constitution, where on any matter, *whether arising out of this Constitution* or otherwise, there is *no provision, express or by necessary implication* of this Constitution which deals with the matter, that has arisen, Parliament shall, by an Act of Parliament, not being inconsistent with any provision of this Constitution, provide for that matter to be dealt with."

Accordingly parliament has rightly assigned the revenue collection tasks of the government or of the President to the Ghana Revenue Authority Act, 2009 (Act 791), particularly under ss. 2(c), 3(h) and 28 thereof. This is further supplemented by particularly ss.22 – 26 of the Minerals and Mining Act, 2006 (Act 703).

It is obvious that s. 23(2) of Act 703 maintains the distinction drawn at length in this judgment between land revenues belonging to private persons and to stools respectively. It is as follows:

> "Payments of annual ground rent shall be made to the owner of the land or successors and assigns of the owner except in the case of *annual ground rent in respect of mineral rights over stool lands*, *which shall be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Stool Lands Act 1994 (Act 481).*"

It must be emphasized that the Constitution has to be read with relevant ordinary legislation where compatible, see *Kangah* v. Kyere (1982-83) 2 GLR 649, SC.

The Constitution never intended that the management of Lands and Mineral resources should be fused in one state agency, even such as the Lands Commission let alone the Office of the Administrator of Stool Lands. Thus at p.139 of the Report of the Committee of expert on Proposal for a Draft Constitution of Ghana it is stated as follows:

> "<u>THE LANDS COMMISSION</u>
>
> <u>STATUS OF THE COMMISSION</u>
>
> 305. The 1979 Constitution charges the Lands Commission with responsibility for the management of any land or minerals vested in the President. *The fusion of the management of lands and mineral resources in one state agency is not conducive to efficiency. Most countries have a separate agency dealing with mineral resources, and it is hardly surprising that the Lands Commission was divested of this responsibility by PNDCL 42. The Committee endorses this development.*"

Conclusion

The administrative correspondence set out by my respected brother Dotse JSC refers to "mineral royalties ceded to the Administrator of Stool Lands" the word **cede** does not connote entitlement as of right on the part of the recipient of what is ceded to him. However, since article 257 (6) itself concedes that though minerals in their natural state are thereby made "*the property of the Republic of Ghana* and shall be vested in the President on behalf of, and in trust for the people of Ghana", those minerals are undoubtedly, "in , under or upon … land in Ghana", it follows that the lands in which they are found, if they are stool lands, can attract "*annual ground rent* in respect of *mineral rights over stool lands*", in accordance with section 23(2) of the Minerals and Mining Act, 2006 (Act 703). In my opinion such rents are receivable by the Office of the Administrator of Stool Lands under article 267(2). Such annual ground rent is therefore not within the remit of the third defendant but rather of the second defendant, as per the provisions of s 23(2) of Act 703, aforesaid.

However as there is no claim in respect of such rent it would seem that there has been no infraction in respect of the same.

For all the foregoing reasons I would dismiss the plaintiffs' action.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

SOPHIA ADINYIRA (MRS.) JSC:

This court is unanimous in its decision that the Plaintiffs have properly invoked our jurisdiction under Articles 2 (10 (a) and 130 (1) of the 1992 Constitution. I had the privilege to read beforehand the contrasting opinions of my respected brother, Atuguba and Dotse and I seem to agree with the conclusion reached by my brother Atuguba that the Plaintiffs' action be dismissed.

Upon my reflection and appreciation of the facts and submissions filed on behalf of the parties, I think in those circumstances I can properly express my own views as to the capacity in which the 3rd defendant, the Ghana Revenue Authority acts in collecting revenue from the exploitation of mineral resources in this context gold from stool lands, instead of the 2nd Defendant, the Office of the Administrator of Stool Lands the body mandated under Article 267 to collect revenue, royalties etc accruing from stool lands.

The facts, and issues for determination are fully and ably set out in the opinions of my eminent brothers and I need not set them out here. The position of the Supreme Court on the role of the Office of the Administrator of Stool Lands and the Lands Commission was clearly set out by the Supreme Court in the case of ***Omaboe III and Others v. Attorney-General and Lands Commission*** [2005-2006] SCGLR 579

The Plaintiffs claim to be allodial owners of land on which some mining companies have their concessions and have been extracting gold. The Plaintiffs are seeking from this Supreme Court a declaration that the 2nd Defendant, the Office of thee Administrator of Stool lands who is mandated to collect royalties in the nature of income or capital from stool lands is the constitutionally mandated to collect royalties from the minerals mined in stool lands in Ghana under Article 267 clauses 2 (a) (b) and (c) and clause. Further Plaintiffs seek to have the 3rd Defendant the Ghana Revenue Authority restrained from collecting royalties from the various mining companies which they claim is contrary and in contravention of the clear words of Article 267 clauses 2 (a) (b) and (c)and clause 6.

Chapter 21 of the Constitution 1992 deals with Land and Mineral Resources. Article 267 which deals with Stool and Skin Lands falls under this Chapter. One 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 would lead into internal inconsistency. In applying this principle in construing the constitution the Court must look at all the provisions under this chapter as a whole.

It seems to me that the real issue for determination before us turns on who owns the mineral resources for which mining companies pay royalties, who is mandated to collect such mineral royalties; and how it is to be disbursed. It should be pointed out that Article 267 does not contain the words 'mineral royalties' as described by the plaintiffs; but simply 'royalties' from stool lands.

In relation to mineral resources, Article 257(6) of the 1992 Constitution under chapter 21 provides:

> *"Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water course throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana." [e.s]*

It is noted though, that Article 257 is headed '*Public Lands',* the side notes says *Public Lands and Other Public Property*. From the reading of the whole of Article 257, it is evident that only clause (6) deals with public property which is natural resources found in any land which is vested in the President on behalf of and in trust for the people of Ghana. [e.s].

Clearly by the use of the words **'any land in Ghana'** in Article 257 (6), no distinction is made between public and stool lands. This constitutional provision is clear and unambiguous, and the plain and ordinary meaning one can give is that all the mineral resources found in the territorial area of Ghana including water course, the economic zone, sea and continental

shelf; is the property of the Republic of Ghana and is vested in the President on behalf of and in trust for the people of Ghana

It follows that irrespective of where mineral resources in its natural state are found in Ghana, no person including the stool, skin, family or individual is entitled to any mineral in its natural state found in, under or upon land of which he/she holds title or rights.

It is important to stress that since the Constitution has vested the ownership of mineral resources in the President, by necessary implication, the management of royalties accruing from the exploitation of same also vests in the President on behalf of and in trust for the people of Ghana Accordingly all revenue accruing from mineral resources extracted from any land in Ghana including stool land is primarily public funds and therefore shall be paid into the Consolidated Fund under Articles 175 and 176 of the Constitution. The disbursement and use of such revenue is by the discretion of the executive contained in appropriate legislation.

Although the Constitution was silent as to what body that was to actually collect and administer the revenue accruing from minerals in their natural state for and on behalf of the people of Ghana; it is the executive arm of government that is to carry out the function, purpose and policy flowing from Article 256 (6). In this connection I refer to Article 58 (1) and (2) which provides:

(1) The executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of this Constitution.
(2) The executive authority of Ghana shall extend to the execution and maintenance of this Constitution and all laws made under or continued in force by this Constitution.

The 3rd Defendant, the Ghana Revenue Authority is the body set up by an Act of Parliament, the Ghana Revenue Act, 2009, Act 791 as amended by Act 794 to collect tax, royalties or other moneys raised or received for the purposes of, or on behalf, of government and any other monies raised or

received in trust for, or on behalf, of government. The Minerals (Royalties) Regulations, 1987 (L.I. 1349) specifically mandates the Ghana Revenue Authority to collect royalties on behalf of the government.

The executive usually acts with the authorization of the legislature and "[W]here the Executive Branch of government acts with the authorization of the legislature, one would be hard put to question the authority of the executive, unless, of course, the legislature itself had exceeded its constitutional authority in enacting the enabling power for the executive" Per Date-Bah JSC in ***Amegatcher v Attorney-General (No 2)*** [2012] 2 GLR 933 at 956.

There is no conflict between these two legislations and Article 267 (2) since the mineral being exploited is vested in the President; the Office of the Administrator of Stool Lands is therefore not the proper body to collect royalties from the exploitation of mineral resources. What properly falls within the constitutional ambit of the office of the Administrator of Stool Lands is the 10% of mineral royalties collected by the Ghana Revenue Authority and paid into the Consolidated Fund that in compliance with the provisions of the Minerals and Mining Act, is paid out of the Consolidated Fund as disbursable revenue to the Accounts of the Office of the Administrator of Stool Lands for disbursement to beneficiary stools. The correspondences attached to the Plaintiffs'statement of case amply support this view. This arrangement is not unconstitutional.

Further the exploitation of any such mineral resources is regulated by the Minerals and Mining Act, 2006, Act 703. Section 1 reproduces Article 257 (6) of the Constitution ***supra,*** and section 9(1) of Act 703 provides that:

> *"Despite a right or title which a person may have to land in, upon, or under which minerals are situated, a person shall not conduct activities on or over the land in Ghana for the search, reconnaissance, prospecting, exploration or mining for a mineral unless the person has been granted a mineral right in accordance with this Act."*

The owner of such mineral enriched land is however entitled to receive payment of ground rent from the holder of a mineral right acquired under section (1) of Act 703 ***supra*** and also compensation for the disturbance of his rights as provided under section 73(1) of Act 703:

> *"The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier, in accordance with section 54."*

Meanwhile Section 23 (1) and (2) of Act 703 provide:

(1) *A holder of a mineral right shall pay an annual rent as prescribed.*

(2) *Payments of annual ground rent shall be made to the owner of the land or successors and assigns of the owner <u>except in the case of annual ground rent in respect of mineral rights over stool lands, which shall be paid to the Office of the Administrator of Stool Lands, for application in accordance with the Office of the Administrator of Lands Act ,1994 ,Act 481.</u>* [e.s]

In applying the section 23 (2) of Act 703, it means the only revenue that the Office of the Administrator of Stool Lands collects, and disburse is the <u>annual ground rent</u> paid by the holder of a mineral right operating on stool land as required under Article 267 (2)of the Constitution and Act 481.

From the foregoing I will dismiss the Plaintiffs' action.

(SGD) S. O. A. ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT

AKAMBA, JSC:-

I have had the privilege of reading in draft the divergent opinions in this proceeding of my two respected brothers Atuguba, JSC and President of the Court and Dotse, JSC. I fully agree with the views of my esteemed President and the conclusions arrived that the plaintiffs' writ be dismissed. I however wish to express myself, on a few matters arising from this case in the light of this court's decision in Omaboe III and others v Attorney General (2005-2006) SCGLR 579, in the hope that some confusion regarding that case may be clarified.

The facts and issues for determination have been fully and ably set out in the opinions of my two respected brothers, hence I will skip repeating them. The Omaboe case was a case stated by the High Court, Accra under article 130 (2) of the 1992 Constitution for interpretation by this court of the following: "Whether or not by virtue of article 267 (1) of the 1992 Constitution, the vesting power of E.I. 108 of 1964, namely, the Accra-Tema City Stool Lands (Vesting) Instrument, 1964 has lapsed."

The court by its unanimous decision held that upon a true and proper construction of article 267 (1) of the Constitution 1992, the Accra-Tema City Stool Lands (Vesting) Instrument 1964 (EI 108 of 1964) made under section 7 (1) of the Administration of Stool Lands Act, 1962, (Act 123) has not lapsed. The decision also significantly construed that, article 267 (1) of the Constitution 1992 does not bar the state, subject to the protective terms of article 20, from compulsory acquisition of stool lands, under appropriate legislation pointing out that portions of stool lands, like other private lands, may be compulsorily acquired by Government 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. However, in such case the 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. The court construed that the management regime for stool lands vested in the appropriate stools under article 267 (1) and other consequential matters come under the various provisions of article 267 of the Constitution, including the management

role of the Office of the Administrator of Stool lands and the concurrence role of the Lands Commission.

The decision appreciates the distinction between proprietary title over minerals in their natural state which are vested in the state and proprietary title over land which may be vested in a stool for and on behalf of a particular community. Article 257 of the Constitution 1992 deals with Public Lands and other Public Property. Article 257 (1) states that: "All public lands in Ghana shall be vested in the President on behalf of, and in trust for, the people of Ghana." Article 257 (6) also states that: "Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water course throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and shall be vested in the President on behalf of, and in trust for the people of Ghana." The article is quite clear and devoid of any complexities as to who should be entitled to royalties accruing from the extraction of mineral wealth even if those lands fall within stool lands. The stools may be entitled to rents and other benefits for the use over their stool land as provided by article 267 (2) of the Constitution (1992) but not the minerals in or under their stool lands. The Office of the Administrator of Stool Lands created under article 257 (2) is entitled to collect rents, dues, royalties, revenues or other payments whether in the nature of income or capital from the stool lands. As I indicated above since all minerals belong to the Republic of Ghana by virtue of article 257 (6) they cannot be part of the stool's ownership of the stool land and hence cannot derive royalties, so called from them.

In the circumstance, I am also unable for reasons that follow shortly, to agree with Dotse, JSC that because the Ministry of Finance and the Controller and Accountant General, both represented by the 1st defendant herein, have by some correspondences ceded to the Administrator of Stool Lands, mineral royalties otherwise due to the Government of Ghana, that this tantamounts to a 'clear recognition ' and indications that 'they have all acknowledged the 10% revenue that is due to the 2nd defendant for disbursement as mineral royalties as is contained in article 267 (6) of the Constitution 1992.' Such an interpretation is clearly unsupportable in view of the distinction between Public Lands and other

Public Property on one side and Stool and Skin Lands and Property on the other as formulated in articles 257 (1) to (6) and 267 (1) to (9) respectively of the Constitution 1992.

The State per the President, acting with proper authorization and through the appropriate Ministry may cede what is rightly for the State to the Administrator of Stool Lands for development purposes of a stool area but this would not be because they are under any Constitutional obligation arising from section 257 so to do. The Office of the Administrator of Stool Lands is created to be responsible for stool land accounts. It also has the responsibility under article 267 (6) of the Constitution to disburse revenue accruing from stool lands according to laid down formula. The Administrator of Stool Lands has no business in disbursing revenue accruing from the State's ownership of minerals in their natural state. The assignment by the State for the Administrator of Stool Lands to distribute the ceded funds appears to be the source of the confusion which could have been avoided by using the Lands Commission for the undertaking. Revenue accruing from mineral extraction from any land in Ghana, be it ordinarily public land or stool land, remains public funds payable into the appropriate funds as provided in articles 175 and 176 of the Constitution.

For these reasons and those advanced by Atuguba, JSC I find the Plaintiffs' writ bereft of any merit and is dismissed in its entirety.

J. B. AKAMBA

JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH

JUSTICE OF THE SUPREME COURT

(SGD) R. C. OWUSU

JUSTICE OF THE SUPREME COURT

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

DOTSE JSC:-

I have been privileged to have read the opinion of my respected brother Atuguba JSC and President of the Court this morning. Unfortunately I am unable to agree with the conclusions reached in his opinion. I am therefore constrained to proceed to give my opinion in this case, because it is my view that, looking at the reliefs the plaintiffs have claimed in this court, especially their claims in reliefs (a) (b) and (c), and the unanimous decision of this court in the case of

Omaboe III and others v Attorney-General & Land Commission [2005-2006] SCGLR 579 from which this Court has not departed from, the Plaintiffs must succeed on their claims.

In this action, the Plaintiffs have invoked the original jurisdiction of this court, claiming the following reliefs:

a. Declaration that:-

i. It is the 2nd Defendant which is mandated to collect and disburse royalties due to the beneficiaries mentioned under Article 267 clauses 6 (a) (b) and (c) of the 1992 Constitution.

ii. The royalties mentioned under Article 267 Clauses (2) (a) (b) and (c) and clause (6) are to be shared by or among the institutions, mentioned under the said Article and in the manner specified therein.

b. A declaration that the Plaintiffs and the other beneficiaries under Article 267 (6) (a) – (c) have been underpaid consistently since the coming into force of the Constitution on the 7th day of January 1993 by the Defendants which have ceded only ten per centum (10%) of all royalties collected by the 3rd Defendant from the various mining companies operating on the plaintiffs' respective stool lands to the 2nd Defendant and all the beneficiaries named under Article 267(6).

c. A declaration that the 2nd Defendant has failed, refused or neglected to perform its Constitutional and statutory functions under the 1992 Constitution and the Office of the Administrator of Stool lands Act, 1994 (Act 481).

d. A declaration that the collection of royalties from the various mining companies in the country by the 3rd Defendant instead of the 2nd Defendant is contrary to and in contravention of the clear and unambiguous words of the 1992 Constitution and sections 2 (a) (b) and (c) of Act 481 of 1994.

e. An order directed to the 2nd Defendant to strictly perform its functions in accordance with Article 267 (2) (a) (b) and (c) and (6) of the 1992

Constitution and sections 2 (a) (b) and (c) and 8 (a) (b) and (c) of Act 481 of 1994.

f. An order prohibiting the 3rd Defendant or any other state institution or agency from performing the constitutional and statutory functions clearly and expressly reserved for the 2nd Defendant.

g. An order directed to the Defendants to account for the collection of royalties from the various mining companies since the 7th day of January 1993 and to pay the total sum being the difference between what has been paid and what ought to have been paid between the 7th day of January 1993 and the dates of final Judgment to the Plaintiffs.

h. Legal costs

I have perused the erudite statements of case filed by Counsel for the respective parties in the suit.

In this very brief judgment, I have decided to refer to some exhibits (letters) that have been attached to the case of the Plaintiffs. As will presently be seen in these letters, they have been authored by Institutions, to wit, the 3rd Defendants, the Ministry of Finance and the Controller and Accountant General, all represented therein by the 1st Defendants, Attorney-General. These then are as follows:

"3rd April 2012

"The Hon. Minister
Ministry of Finance & Economic Planning
P. O. Box M.40
Accra

Dear Sir,

PAYMENT OF MINERAL ROYALTIES CEDED TO THE ADMINISTRATOR OF STOOL LANDS FOR THE MONTHS OF SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER 2011

Kindly find enclosed the statement of account of Mineral Royalties collected by the Domestic Tax Revenue Division of the Ghana Revenue

Authority and ceded to the Administrator of Stool Lands for the above-stated period.

The total Royalties collected by the Service over the period amounted to Seventy Six Million Three Hundred and Thirty-Two Thousand Three Hundred and Seventy one Ghana Cedis thirty-eight Ghana Pesweas (GH¢76,332,371.38) based on amounts credited by Bank of Ghana of which 10% portion amounting to seven Million, Six Hundred and Thirty-Three Thousand, two Hundred and Thirty-Seven Ghana Cedis Fourteen Ghana pesewas (GH¢7,633,237, 140 is ceded to the Minerals Commission in accordance with letter No. AB. 85 136/01 dated 21st January 1999.

We wish to request you to authorize Bank of Ghana and Controller & Accountant General to transfer (7,633,237.14) into the Administrator of Stool Lands' Account Number 01256=600740-25 (Disbursable Revenue) with Bank of Ghana from the Consolidated fund.

We count on your usual co-operation

Yours faithfully,

For: Commissioner-General
Comfort Boohene-Osafo (Mrs)
Ag. Commissioner- DTRD"

Based on the above letter, the Hon. Minister of Finance, to whom the letter of the Ghana Revenue Authority, dated 3rd April 2011 replied as follows:

"10th May 2012

Our Ref. No. 040/MLNR/MC/12/05

PAYMENT OF MINERAL ROYALTIES CEDED TO THE ADMINISTRATOR OF STOOL LANDS FOR THE MONTHS OF AUGUST, SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER 2011

Please refer to Ghana Revenue Authority letter dated 2nd November 2011 and **3rd April 2012** and addressed to this Ministry on the above subject (copy attached).

2. Authority is hereby conveyed to you to transfer the sum of GH¢8,998,403.37 (Eight Million, Nine Hundred and Ninety Eight Thousand, Four Hundred and Three Ghana Cedis and Thirty Seven Ghana pesewas) from the Consolidated Fund into **the Office of the Administrator of Stool Lands Account No. 01256-600740-15 (Disbursable Revenue) lodged at the Bank of Ghana for disbursement to beneficiary stools**.

3. The total amount of GH¢8,998,403.37 represents 10% of Mineral Royalties collected by the Ghana Revenue Authority for the month of August, September, October, November and December, 2011 amounting to GH¢8,998,403.37 and ceded to the Administrator of Stool Lands.

Hon. Seth Terkper
Deputy Minister
For: Minister

The Controller and Accountant-General

Cc: The Hon. Minister MOFEP
The Hon. Minister, MLNR
The Hon. Deputy Minister (EP), MOFEP
The Chief Director, MOFEP
The Chief Director, MLNR
The Director of Budget, MOFEP
The Auditor-General
The Administrator, OASL"

"My Ref. No: C2/BTA/G& S/12/3732 11th June 2012

The Director
Banking Dept
Bank of Ghana

Accra

Dear Sir,

BANK TRANSFER ADVICE

Please transfer the sum of GH¢8,998,403.37 (Eight Million, Nine Hundred and Ninety Eight Thousand, Four Hundred Three Ghana Cedis and Thirty Seven Ghana pesewas) from the Govt Main Treasury Cash Account, Account No.01213-600140-39 into the Ministry of Lands and Forestry SUB CF Operational Account No. 01211360074001.

This transfer is to facilitate the payment representing 10% of Mineral Royalties collected by the GRA for the months of August, September, November and December 2011.

Grace Adzroe
Dep. Cont. & Acct. Gen. (F& A)

Cc: Auditor-General
Reconciliation Unit, CAGD
Director-Research, Bank of Ghana
Head of Accounts, MLNR"

As can be seen from all the above letters, clear recognition and indications has been given to the provisions contained in article 267 (2) and (6) of the Constitution 1992. Specifically, it is observed that the relevant state institutions therein mentioned, namely the 3rd Defendants, the Ministry of Finance and Controller and Accountant General represented by the 1st Defendants, have all acknowledged the 10% of the revenue that is due to the 2nd Defendant for disbursement as mineral royalties as is contained in article 267 (6) of the Constitution 1992.

There is a further recognition of the management role that the office of the 2nd Defendant is required to perform under the Constitution 1992. There is therefore some consistency between the rule of practice that has developed between the relevant state institutions in respect of their management role over royalties and the applicable constitutional provisions in article 267 (2) and (b) of the Constitution 1992.

I have also looked at the memorandum of agreed issues filed jointly by the counsel in the case on 7th May 2012. From the said memorandum of agreed issues, the issues that are germane to the resolution of the real and genuine issues in this case are the following.

1. Whether or not revenue or incomes specified under Article 267 (2) (a), (b) and (c) and clause 6 of the 1992 Constitution are public funds.

   (Note that, public funds is defined in article 175 of the Constitution as "the public funds of Ghana shall be the consolidated fund, the contingency fund and such other pubic funds as may be established by or under the authority of an Act of Parliament.)

2. Whether or not the collection and disbursement being done by the 3rd Defendant are inconsistent with and in contravention of Article 267 clause (2) and clause 6 of the 1992 Constitution.

The remaining issues are all subsumed under these two issues. Before the substantive issues are dealt with, the issue as to whether this court has jurisdiction in the action has to be dealt with.

The defendants have argued that the plaint of the plaintiffs is cognisable before the High Court and that, this Supreme Court lacks jurisdiction. The argument of the Defendant is that no serious constitutional issue has been raised, and as a result, this court must decline jurisdiction. I beg to differ.

Having perused the submissions on this issue of jurisdiction, I am of the considered view that the plaintiffs action is perfectly sustainable in this court and is warranted by article 2 (1) (a) and 130 (1) of the Constitution 1992.

I will therefore dismiss this preliminary objection.

After a careful analysis of the pleadings, the statements of case, relevant constitutional provisions, substantive and subsidiary legislations as well as case law, I am of the considered opinion that the resolution of the issues set out supra has already been properly dealt with by the unanimous decision of the

Supreme court in the case of **Omaboe III and Others v Attorney General & Lands Commission** [2005-2006] SCGLR 579, especially holding 3 and 4. Wherein it was held as follows:-

> *"(3) The management regime for stool lands vested in the appropriate stools under article 267 (1) and other consequential matters come under the various provisions of article 267 of the Constitution, including the management role of the Office of the Administrator of Stool Lands and the concurrence role of the Lands Commission.*
>
> *(4) Article 267 (2) of the same Constitution directly establishes the Office of the Administrator of Stool Lands whose function 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 of Stool Lands 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 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."*

In view of this lucid and authoritative decision of the Supreme Court, I do not think there is any reason to depart from same. In deciding to anchor my decision on this Omaboe case, I have taken into account, the provisions of article 257 (6) of the Constitution 1992 which vests all minerals in their natural state in the Republic through the President as a trustee.

I have also looked at the definition of stool lands as has been captured in article 295 of the Constitution 1992 as well as definitions or inferences of what is a mining royalty under the Minerals and Mining Act, 2006, Act 703. In view of the lack of clarity in all the relevant constitutional provisions and statutes, I am of

the view that, once the Constitution has distinguished the fact that *"ownership of all minerals"* in their natural state are vested in the President and there is the same distinction between stool lands and public lands, the clear words of article 267 (2) and (6) of the Constitution 1992 make the decision in Omaboe very compelling and irresistible to follow.

In view of my analysis and appreciation of the facts of this case based on the above decision in Omaboe case, I am of the view that pubic funds have been so defined that it admits of no complexities or absurdity.

Any funds which are public in nature and which are paid into the consolidated, contingency or other funds established by authority of an Act of Parliament are public funds. It therefore follows that, mining royalties collected under the Minerals and Mining Act, Act 703 are public funds.

Besides, this court in the Omaboe case clearly spelt out the functions of the 2nd Defendants to include among others management, revenue collection and disbursement of the revenue so collected. If they are to collect revenue and disburse same, it follows that, revenue collection and disbursement can only be of the public funds that have been entrusted to them under the Constitution. I therefore hold that, the revenue or incomes specified under Article 267 (2) (a) (b) and (c) and clause (6) of the Constitution 1992 are public funds with clear mandate as to the agency authorised to collect and disburse same in contra distinction to utilization of other public funds which do not have any such limitation.

Flowing from the above and the decision of this court in the Omaboe case, it follows that the collection and disbursement of these funds as is being done by the 3rd Defendants is in contravention and inconsistent with the provisions of article 267 clause (2) and clause (6) of the Constitution 1992.

Under the circumstances, I am of the considered opinion that, from the nature the plaintiffs have couched their reliefs, it is imperative that, based on the decision in the Omaboe case, they must succeed substantially in their action as follows:

Based on the above decision, I will grant the plaintiff's the following:

Reliefs (a) (i) and (ii) are hereby granted. Relief (b) is also granted, however there will be a provisio that funds not paid since 7th January 1993 need not be paid, but any arrears from January 2012 must be paid. This is because, from records, the last disbursement to the 2nd Defendants was in December 2011.

Relief (c) is also granted

Relief (d) is also granted

Relief (e) is also granted

With the grant of the reliefs (a), (c) and (d) relief (f) has become superfluous.

Relief (g) is refused as that is likely to lead to confusion. Save as stated above, the plaintiffs' succeed on their claims.

(SGD) J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

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