IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: DOTSE, JSC (PRESIDING)

APPAU, JSC

PWAMANG, JSC

DORDZIE (MRS.), JSC

OWUSU (MS), JSC

CIVIL MOTION

NO. J5/35/2019

18TH MARCH, 2020

THE REPUBLIC

VRS

HIGH COURT, ACCRA (LAND DIVISION) …….. 1ST RESPONDENT

LANDS COMMISSION …….. 2ND RESPONDENT

EX-PARTE: UT PROPERTIES LIMITED …….. APPLICANT

1. NII ANNANG NUKPA FAMILY
2. DANIEL TETTEY COMMEY
3. ROBERT TETTEY MENSAH …….. INTERESTED PARTIES

RULING

DOTSE JSC:-

On the 10th of March 2020, this court allowed an application at the instance of the Applicants herein in which they sought an order of Certiorari directed at the Ruling of the High Court, (Land Division) Accra, Coram Eric Baah J dated 15th day of April 2014 in Suit No. FAL 291/11 intitutled ***Robert Tettey Mensah and 2 Others v Seargent Abdulai Bawa and 7 Others*** and also a further order of Certiorari directed to the Registrar of Land Title Registry, Lands Commission, for cancellation of Land Title Registration Certificate No. TD 13285 and restoration of Land Certificate No. TD 9221.

The grounds of the said application are:-

1. ***Breach of the Rules of natural justice***

In support of the above ground, the Applicants allege that the High Court, Land Division Accra, presided over by the Judge referred to supra in the said Suit on 15th April 2014 breached the rules of natural justice to wit, the "audi alteram partem rule" when he delivered a ruling in the matter intitutled ***Robert Tettey Mensah and 2 others v Seargent Abdulai Bawa and 7 Others in Suit No. FAL 291/11*** and made orders directing the cancellation of the Applicant's Land Title Certificate No. TD 9221 without giving the Applicants an opportunity to be heard.

2. Wednesbury Principle

The Registrar of the Land Title Registry, of the Lands Commission improperly exercised his powers of cancellation when he purportedly cancelled Land Title Certificate No. TD 9221 belonging to the Applicant who was neither a party to the Suit No. FAL 291/11 which

produced the Ruling referred to supra that the Lands Commission purportedly relied upon to cancel Land Title Certificate No. TD 9221 in terms of the Wednesbury principle.

BRIEF FACTS

In an affidavit sworn to by one Naomi Asantewa Effah, the Managing Director of the Applicant company, she deposed to the following facts as follows:-

1. That the Applicants as a real estate development company are the owners of a 45 acre tract of land situate at Sasaabi (Oyibi) covered by Land Certificate No. TD 9221.
2. The 2nd Interested Party herein, are the allodial owners of a large tract of land at Sasaabi near Dodowa a portion of which is covered by Land Certificate No. TD 9221.
3. The 2nd and 3rd Interested Parties are all principal members of the 1st Interested Party family and that the 3rd Interested Party was at a point in time the head of the 1st Interested party family, and particularly at the material time that the land was conveyed to the Applicant company.
4. The Applicant contended that, sometime in December 2018, it came to its attention that the 2nd Respondent had commenced processes aimed at cancelling the land certificate No. TD 9221 which was in the name of the Applicants.
5. The Applicants as estate developers had developed portions of the land they acquired from the Interested Parties into residential properties.
6. It soon came to the attention of the Applicants through its clients who had purchased their developed properties on the land through searches conducted at the Lands Commission that, the Alokoto Commey family of which the 2nd Interested Party was head of family were the owners of the land instead of the Applicants who were the holders of Land Certificate No. TD 9221.

7. Enquiries by the Applicants revealed that, the 2nd Respondents, (Lands Commission) had unilaterally and without any recourse to the Applicant cancelled its Land Certificate numbered TD 9221 and issued in its place Land Certificate No. TD 13285 to the family of the 2nd Interested Party.
8. Despite the fact that, the Applicants went through all the processes with the 1st Interested Party, and negotiated with the 2nd and 3rd Interested Parties with the 3rd as the then head of family and the 2nd as a principal member, and current head of family and had fulfilled all laid down conditions before the grant and registration of Land certificate No. TD 9221. The Interested Parties orchestrated Suit No. FAL 291/11 in the High Court , Land Division, Accra intitutled ***Robert Tettey Mensah, Daniel Tettey Commey and John Tettey Ashiboye as Plaintiffs v Seargent Abdulai Bawa, Kofi Yeboah, Solomon Sackitey, Rev. Ben Larssey, Avorgbedor Kudjoe and 3 others as Defendants.***

9. It is the contention of the Applicants that the Plaintiffs in the suit referred to in paragraph 8 supra, are the same persons as the Interested Parties herein and who facilitated the grant and conveyance of the land to them as covered by Land Certificate No. TD9221.
10. The Applicants were not made parties to the suit referred to supra and the court also never gave them a hearing.
11. Be that as it may, the High Court, Accra, presided over by Eric Baah J, on the 15th day of April 2014 made the following orders:-

    "*The plaintiffs have applied to the court for an order cancelling and expunging the vesting assent made by Janet Kokaley Nikoi and Robert Tettey Mensah dated October 2010.* ***The defendants are not opposed to the application in principle but pray that all***

transactions made under the authority of the vesting assent should also be cancelled and expunged.

The court finds the application to be of merit, especially where it serves the two sides and the ends of justice. The vesting assent aforesaid, and all transactions made thereunder are hereby cancelled. The Lands Commission is ordered forthwith to expunge the said vesting assent and all transactions made pursuant to same from its records.

The Court further orders the Lands Commission to restore on its records, the former registration of the land in the name of Nii Annang Nukpa family*." Emphasis*

Quite clearly, the beneficiary of the above ruling is the 1st Interested Party, Nii Annang Nukpa family and the other Interested Parties.

12. Based on the facts recited supra, the Applicants contend that not having been made parties to the said suit in the High Court and obviously not having heard them before the said orders were made, constitute a breach of the rules of natural justice to wit the audi alteram partem rule and in addition, it was an improper and unreasonable exercise of discretion by both the trial High Court and the Lands Commission the 1st and 2nd Respondents herein.

We have observed that, the 2nd Respondents Lands Commission have been served with this application and they have responded by an affidavit in opposition on 6th May 2019.

We note however that the Interested Parties were served by substitution and they have failed to file any processes in rebuttal.

We however take the view that, the points of substance urged on this court by the Applicants are unanswerable and that explains why perhaps the Interested Parties did not bother to respond.

APPLICABLE LAW

Having apprized ourselves with the facts of the case and the applicable law which takes its source from article 132 of the Constitution 1992 and a host of respected judicial decisions, we are of the considered opinion that Certiorari is a proper remedy which the Applicants can apply to right the wrong that has been done to them.

That explains why this court on the 10th March 2020 after hearing learned counsel for the Applicants granted the application for Certiorari and reserved its reasons.

RULE 62 OF C. I. 16

Before we proceed any further, it is considered desirable to determine the competence of the application seeing as appears on the face of the ruling of the High Court that it is dated 15th day of April 2014. This is because Rule 62 of the Supreme Court Rules, 1996 (C.I. 16) provides as follows:-

> *"An application to invoke the supervisory jurisdiction of the court shall be filed within ninety days of the date when the grounds of the application first arose unless the time is extended by the Court."*

We have interrogated these issues and confirmed that, the instant application was filed by the Applicants on 25th March 2019, that is almost 5 years from the date of the ruling on 15th April 2014.

However, from depositions contained in the affidavit in support of the application it is certain that the Applicants became aware for the first time about the effect of the 15th April 2014 Ruling in or about December 2018.

In the celebrated case of the ***Republic v High Court (Fast Track Division) Accra; Ex-parte State Housing Co. Ltd. (No.2) (Koranten- Amoako) Interested Party [2009] SCGLR 185*** the Supreme Court spoke with unanimity and brought clarity to Rule 62 of the Supreme Court Rules referred to supra through Wood C.J, in the following hallowed words:-

"Under rule 62 of the Supreme Court Rules, 1996 (CI. 16), as amended by the Supreme Court (Amendment) Rules, 1999 (CI 24), the statutory period of ninety days was determinable by reference to the ***"date when the grounds for the application first arose" and not the date of the decision against which the jurisdiction is invoked"*** *as existed under the old rule 62. A plain reading of the amended rule presupposes that the legislature envisages a situation where the grounds could even arise a second or some other subsequent time****, but clearly the time limit begins to run from the "date when the ground for the application first arose."*** *It is therefore important that the court does set some legal principles for identifying that critical first time. It is, indeed, impossible, if not imprudent to lay down a set criteria for a determination of that vexed question.* ***It is therefore determinable on a case by case basis, guided by some very broad principles."*** *Emphasis*

See also the case of ***Republic v High Court, Kumasi, Ex-parte Mobil Oil (Ghana) Ltd. (Hagan Interested Party) [2005-2006] SCGLR 313 at 322*** cited.

With the above cases as a guide, we are of the considered view that the Applicants herein became aware for the first time in or about December 2018, and expanding the above principle of when the grounds for the application first arose will admit of the instant application filed on 25/3/2019 as having been filed within time pursuant to Rule 62 of C. I. 16.

Having decided that the application herein had been duly filed within time, we now proceed to give reasons on the substance of the application.

BREACH OF THE RULES OF NATURAL JUSTICE

There is abundant evidence that the Applicants herein were neither parties in Suit No. FAL 291/11 nor were they heard before the ruling dated 15th April 2014 was delivered by the learned trial Judge.

From the facts, it is clear that the Interested Parties herein, cleverly conceived of a design to hoodwink and defraud the Applicants and possibly the court by initiating the suit against the Defendants therein who as it were compromised the case possibly for their own personal economic recovery programmes.

This phenomenon of owners of land, who had already divested their families title to other 3rd parties contrive with previous heads of families and or instigate artificial divisions and or conflicts within families with the purpose of over reaching their own grantees/lessees/licensees is becoming too rampant that this court has to speak and act against it.

We are strengthened in the comments and observations we have just made from the affidavit in opposition sworn to by Jonathan Quaye, an Assistant Land Administration Officer of the 2nd Respondents, who deposed to as follows:-

12. "That in cancelling the land certificate of the Applicant, the 2nd respondent inadvertently failed to advert its attention to Exhibit L. C. I and re-issue the land certificate of the Applicant based on it.

13. That exhibit L.C.I was obtained directly from the 1st Interested party and it is not a transaction pursuant to the Vesting Assent.
14. That the 2nd Respondent prays this Honourable Court to restore the Land Certificate of the Applicant based on Exhibit LC 1.
15. **That the 2nd Respondent pray this Honourable court to restore the Land Certificate to 1st Applicant and order cancellation of TD 13285 issued to Alokoto Commey Family." Emphasis**

It is a pity, that public officials who have been employed to manage public lands and administer lands generally will be so lackadaisical in their conduct so as to enable fraudulently minded persons such as the Interested Parties to do what they did. Perhaps

the time has come for punitive action to be applied against such officials and lawyers who aid them in the perpetuation of the acts to stem the tide of this dangerous phenomenon.

In the case of ***Serbeh-Yiadom v Stanbic Bank (GH) Ltd [2003-2005*] 1 GLR 86**, the Supreme Court held and stated thus:-

> *"It is a salutary and well known principle of* ***law that a person should be given the opportunity of being heard when he is accused of any wrong doing before any action is taken against him" emphasis***

See also the cases of ***Republic v High Court, Accra, Ex-parte Saloum (Senyo Coker , Interested Party) [2011] I SCGLR 574*** where the court reiterated the principle that failure to give a hearing is a fundamental error which should nullify proceedings made pursuant to it.

Based on the above, it is quite palpably clear that the 1st and 2nd Respondents having denied the Applicants a hearing before expunging their Land Certificate No. TD 9221 constitutes a denial of their basic fundamental rights of being heard. This in our opinion is so grave as to entitle them to succeed on their prayer.

BREACH OF THE WEDNESBURY PRINCIPLES

We are also of the considered view that, the combined decisions of the 1st Respondent, the trial High Court, and the 2nd Respondent, the public constitutional body set up to manage and administer lands generally in Ghana have acted most unreasonably that no sane person can ever comprehend that a decision can be taken to deprive the Applicants of their duly registered Land Title Certificate in what appears to be an ex-parte proceedings.

See the cases of ***Associated Provincial Picture Houses v Wednesbury Corporation [1948] 1 KB 223*** and the unreported Supreme Court case of Suit No. J5/45/18, dated 31/10/2018

intitutled ***Republic v High Court, Winneba, Ex-parte Avoke (Kwayera and others Interested Parties)*** where the Supreme Court exercised its supervisory jurisdiction on the ground of breach of this Wednesbury principle of unreasonableness.

CONCLUSION

In the premises, the above constitute sufficient justification for this court to exercise its supervisory jurisdiction in quashing the ruling of the High Court, Land Division, Accra coram: Eric Baah J, dated 15th April 2014 in Suit No. FAL 291/11 intitutled ***Robert Tettey Mensah and 2 others v Seargent Abdulai Bawa and 7 Others*** and same is accordingly quashed by Certiorari.

Accordingly, and consistent with our ruling, we order the 2nd Respondents to embark upon the immediate cancellation of Land Certificate No. TD 13285 which was wrongly and inadvertently issued by them to the Alokoto Commey Family, and restoration of Applicants Land Certificate No. TD 9221 to them forthwith.

We hereby further advice all trial courts to be circumspect and read between the lines whenever cases are put before them like the instant Suit No. FAL 291/11 in which both the Plaintiffs and Defendants therein appeared to have come together for the common purpose of overreaching the Applicants they had already alienated their lands to.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

Y. APPAU

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. M. A DORDZIE (MRS)

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS)

(JUSTICE OF THE SUPREME COURT)

COUNSEL

CHRISTOPHER AMANORTEY AKWESI FOR THE APPLICANT.