IN THE SUPERIOR COURT OF JUDICATURE IN THE HIGH COURT OF JUSTICE (COMMERCIAL DIVISION) ACCRA HELD ON MONDAY THE 31ST DAY OF JULY, 2023 BEFORE HER LADYSHIP JUSTICE AKUA SARPOMAA AMOAH (MRS.)

SUIT NO. CM/MISC/0568/2023

IN THE MATTER OF AN ARBITRATION UNDER THE ALTERNATIVE DISPUTE RESOLUTION ACT, 2010 (ACT 798)

AND

IN THE MATTER OF AN ARBITRATION INSTITUTED BY CASSIUS MINING LIMITED AGAINST THE MINISTER FOR MINES, MINISTRY OF LANDS AND NATURAL RESOURCES, GHANA PENDING AT THE GHANA ARBITRATION CENTRE, ACCRA

AND

IN THE MATTER OF AN APPLICATION FOR INTERIM INJUNCTION PURSUANT TO SEECTION 39 OF THE ALTERNATIVE DISPUTE RESOLUTION ACT, 2010 (ACT 798)

THE ATTORNEY GENERAL = = = RESPONDENT

VRS.

CASSIUS MINING LIMITED = = = APPLICANT

PARTIES: ABSENT

COUNSEL: DIANA ASONABA DAPAAH (DEPUTY ATTORNEY GENERAL) WITH MRS. LEONA JOHNSON-ABASSAH (PSA) AND MRS. EUNICE OFFEI (SSA) AND ADRIANA ACHEAMPONG (ASA)) FOR THE APPLICANT – PRESENT

JOSEPH KWADWO KONADU WITH BERNICE AMA MORTEY FOR THE RESPONDENT – PRESENT

J U D G M E N T

Introduction

The Parties to this Originating Motion are the Attorney-General of the Republic of Ghana (hereinafter referred to as the Applicant) and Cassius

Mining Limited, a Ghanaian registered Company (hereinafter referred to as the Respondent).

By the present Originating Motion which is premised on ***Section 39*** of the ***Alternative Dispute Resolution Act (Act 798***), the Applicant seeks an Order of Interim Injunction restraining the Respondent from:

> ***"instituting, or pursuing any arbitration outside the jurisdiction of Ghana under the Prospecting Licence Agreement dated the 28th of December, 2016 entered into between the Government of Ghana and the Respondent, or taking any step whatsoever in international arbitration proceedings against the Government of Ghana until the arbitration instituted by the Respondent against the Applicant at the Ghana Arbitration Centre has been heard and determined***

<u>Factual Background</u>

The grounds for the Application are that on or about the 12th of October, 2016, the Respondent, applied for a Prospecting Licence from the Government of Ghana (GoG).

On the 28th of December, 2016, the GoG acting by the then Minister for Lands and Natural Resources, granted a Prospecting Licence to the Respondent for a term of 2 years expiring in December 2018.

By ***Clause 21*** of the Prospecting Licence Agreement (PLA) which is attached to the Applicant's affidavit in support as ***Exhibit AG I,*** the parties agreed

that any dispute that arose regarding the rights, powers, duties and liabilities of the parties to the said Agreement would be referred to Arbitration in accordance with ***Act 798.***

Applicant says that following what the Respondent alleged to be unlawful and arbitrary actions by the GoG, the Respondent by a letter dated the 14th of June, 2018 notified the Applicant of its intention to refer the dispute between the parties to the Ghana Arbitration Centre (GAC) in accordance with the ***Minerals and Mining Act, 2006 (Act 703)*** and ***Clause 21*** of the **PLA.**

True to its word, the Respondent, on the 26th of June, 2018, referred the dispute to the GAC and on the 5th of December, 2018 proceeded to file a Statement of Claim seeking a number or reliefs.

In response, the Applicant, on the 9th of January, 2019 filed an Answer to the Respondent's Statement of Claim at the GAC following which a three member arbitral panel was constituted.

Applicant states that whilst the matter was pending before the GAC, the Respondent applied for a 3 month stay of proceedings to allow for an attempt to be made at settling the parties' dispute.

Upon the failure of parties to reach a settlement within the said 3 month period, the Respondent applied for a further extension, still in a bid to make further attempts at settlement.

The extension granted the Respondent also lapsed without the parties reaching a settlement. Consequently, the Applicant says that the matter is "actively" pending before the GAC.

According to the Applicant, despite the pendency of the arbitration proceedings at the GAC and in breach of the Arbitration Agreement contained in ***Clause 21*** of the PLA, the Respondent on the 3rd of February, 2023 instituted arbitration proceedings against the GoG in respect of the same subject matter under ***Article 3.1*** of the ***UNCITRAL Arbitration Rules (with article 1 paragraph 5, as adopted in 2021) (UNCITRAL Rules)***

By its Originating Process titled ***'IN THE MATTER OF AN ARBITRATION UNDER A PROSPECTING LICENCE AGREEMENT DATED THE 28TH OF DECEMBER 2016',*** the Respondent proposed that the Secretary General of the Permanent Court of Arbitration (PCA) serve as the appointing body for the said Arbitration and that the Arbitration be administered by the PCA. A copy of the said Notice is attached to the Affidavit in support as ***Exhibit AG 9.***

Applicant says that the Respondent has embarked on an ill-founded search for the resolution of the parties' dispute by an International Tribunal even though fully aware that the PLA made no mention of Unilateral Rules or the PCA.

Consequently, the Applicant (as Respondent to the impugned claim before the PCA) raised objections to the International Arbitration instituted by the

Respondent and called on the tribunal to declare same a nullity and the arbitration terminated.

Applicant further notified the tribunal that it will raise a preliminary objection to the jurisdiction of the tribunal in a bifurcated phase of the Arbitration in order to avoid unnecessary expenditure and costs, not only to the parties but to the tribunal.

On the 20th of March, 2023, the PCA invited the GoG to confirm that it agrees to the PCA administering the Arbitration as proposed by the Respondent. Applicant says it however raised vehement objections to the jurisdiction of the tribunal and demanded that the PCA determine as a preliminary point the question as to whether it was clothed with jurisdiction to entertain the Respondent's request or play any role in the matter.
The response of the Secretary-General of the PCA, in sum, was that the PCA could not proceed with the Arbitration due to the failure of the parties to reach an agreement regarding the appointment of a tribunal by the PCA.

Undaunted by this legal obstruction, the Respondent instituted another International Arbitration proceeding this time titled as an "***AMENDED NOTICE OF ARBITRATION – IN THE MATTER OF AN ARBITRATION UNDER THE UNCITRAL ARBITRATION RULES (2021)*** proposing London as the seat of Arbitration. This time, the Applicant refused to respond to the said Notice on grounds of the same being a nullity for which reason no tribunal has been constituted as yet.

Applicant laments that the Respondent by its conduct is keen on enabling the High Court of England and Wales to have supervisory jurisdiction over the arbitral proceedings between the parties as opposed to the High Court of Ghana when the parties by ***Clause 21*** of the PLA had agreed that the law to govern the resolution of any dispute arising between them was to be ***Act 798***.

It is for this reason that the Applicant is before this Court praying for an Anti-Arbitration Injunction restraining the Respondent from what it describes as pursuing proceedings in breach of the PLA.

Preliminary Objection.

Contesting the instant Application, the Respondent's opening salvo was a preliminary objection to the jurisdiction of this Court to entertain Application. I informed the Parties of my intention to incorporate my Ruling on the said preliminary objection in this delivery, which I proceed to do now since a ruling in Respondent's favour on the objection will mark the end of the Applicant's case.

According to Respondent, the Applicant's motion does not meet the requirements for seeking the intervention of this Court under ***Section 39*** of ***Act 798***. Counsel for Respondent argues that the Court's jurisdiction under ***Section 39*** can only be invoked upon satisfying certain conditions.

The first is that, in terms of ***Section 39 (3)*** unless the case is one of urgency, the Court only has jurisdiction to proceed in an application founded on that section when:

i) The Application is on notice to the other party to the arbitral proceeding

ii) Is on notice to the Arbitrator

iii) Permission of the Arbitrator has been obtained

Or

iv) The parties have agreed to the intervention of the Court in writing

Counsel further argues that the only circumstances under which this Court can proceed without the conditions set out above being met is when, as provided by ***Section 39 (2);***

i. There is a case of urgency

ii. The Application is for the preservation of assets.

After a somewhat technical analysis of the said provision, Counsel for Respondent conceded the dearth of local authorities on this point but drew this Court's attention to the English case of ***CETELEM v ROUST HOLDINGS LTD [2005] 4 AER 52*** where the Court construed ***Section 44*** of the ***English Arbitration Act (English Act)*** the provisions of which I find to be in pari materia with ***Section 39*** of ***Act 798***

<u>Section 39 of Act 798</u>

Now, before I proceed to address the relevance or applicability of the ***CETELEM case*** to the facts on hand, I think it will be helpful to reproduce ***Section 39 (1) to (4)*** of ***Act 798*** here, as it is around the correct interpretation to be placed on these provisions that Respondent's preliminary objection revolves. The other parts of the said section are immaterial for our purposes.

The relevant parts of the said provision read as follows;

"39. Unless otherwise agreed by the parties, the High Court has power in relation to an arbitral proceeding to make an order

(a) for the taking of evidence of witnesses;

(b) for the preservation of evidence;

(c) in respect of the determination of any question or issue affecting any property right which is the subject of the proceedings or in respect of which any question in the proceedings arise

(i) for inspection, photographing, preservation, custody or detention of property; or

(i) for the taking of samples from or the observation of an experiment conducted upon, a property and for that purpose authorizing any person to enter any premises in the possession or control of a party to the arbitration;

(d) for the sale of goods the subject of the proceedings;

(e) for the granting of an interim injunction or the appointment of a receiver.

(2) Where the case is one of urgency, the court may, on the application of the party to the arbitral proceedings, make orders as it considers necessary for the purpose of preserving evidence or assets.

(3) If the case is not one of urgency the court shall act only where the application to the Court is upon notice to the other party and to the arbitrator and is made with the permission of the arbitrator and is supported by an agreement in writing of the other party."

(4) In any case, the Court shall act if the arbitrator or other institution or person vested by the parties with power in that regard, is unable for the time being to act effectively.

I accept the correctness of Counsel for Respondent's submission that a statutory provision should not be considered in isolation or disjointedly but must be construed as a harmonious whole with its various parts interpreted within their wider statutory context, in order to ascertain the intention of the Legislature. This also requires bearing in mind the policy, spirit and intent of the Act as a whole.

As ***Benin JSC*** put it in the case of ***DE SIMONE LIMITED v OLAM GHANA LTD J/4/03/2018 GHASC 22 (28 MARCH 2018);***

"....it is a cardinal principle in the construction of a statute that all its provisions must be read together in order to make any construction of a particular provision therein fit in to the purpose and object of the statute. It is also permissible to construe provisions of the statute by reference to other existing statute in order to unearth the legislative intent"

Scope of Act 798

Before I delve into the interpretation of the said provision, I think it should be necessary to make certain observations about ***Act 798.***

The first point to note is that ***Act 798,*** like most modern statutes on Arbitration is fashioned upon the ***United Nations Commission On International Trade Law (Uncitral) Model) Law on International Commercial Arbitration of 1985*** as amended. It adopts and incorporates (with the necessary modifications) the need to uphold and enforce arbitration agreements and to avoid excessive Court intrusion into the arbitral process. This principle was emphasized by ***Adinyira JSC*** in the case of ***BCM v ASHANTI GOLDFIELD LTD [2005-2006] SCGLR 602*** as follows;

"The Courts must strive to uphold dispute resolution clauses in agreements which I consider to be sound business practice"

Consequently, if parties ***"otherwise agree,"*** an Application such as the present will not be entertained by the Court.

But it is well-settled that an Arbitration Agreement cannot totally oust the jurisdiction of the Court under ***Act 798***. See the case of ***DESIMONE v OLAM*** (supra). This fact is evident from certain provisions of the said Act such as ***Sections 16, 18, 19, 22, 26, 28 and 40*** which imbue this Court with considerable powers of legal control over arbitral proceedings. Quite

obviously, it is in furtherance of this objective that ***Section 39*** vests this Court with the power to support arbitral proceedings through various interventions "***unless otherwise agreed by the parties".***

The default position therefore is that this Court has the power to support arbitral proceedings unless the parties otherwise agree. See also the case of ***ROCKSON v GHANA FOOTBALL ASSOCIATION [2010] SCGLR 443.***

It is also noteworthy that the circumstances under which the powers granted the High Court under ***Act 798*** may be exercised are not exhaustive as far as they relate to supporting or assisting arbitral proceedings.

Significantly, the powers of the Ghanaian High Court appear more expansive than those granted its counterpart under the English Act. It will be noted from a careful reading of the provisions of ***Act 798*** that even though the circumstances under which the Ghanaian Courts may intervene in arbitral proceedings are clearly set out, there is no limit placed on their powers of intervention in the course of arbitral proceedings.

The English Act on the other hand expressly seeks to limit Court intervention in arbitral proceedings under ***Section 1(c)*** by providing under its "**General Principles"** that;

"The provisions of this Part are founded on the following principles, and shall be construed accordingly-

"**.....**

(c) in matters governed by this Part the court should not intervene except as provided by this Part."

As noted, there is no provision analogous to ***Section 1*** of the ***English Act*** in ***Act 798***.

It is for this reason that the decision in ***CETELEM SA v ROUST HOLDINGS LTD***, (supra) (relied on by the Respondent) may not be of much help here, for the provisions of ***Section 44*** of the English Act were obviously interpreted in a different spirit and context. It is also against the backdrop of the observations so far made that I shall proceed to construe our ***Section 39***.

Counsel for Applicant argues with considerable force that the Respondent's arguments on this point amount to a distortion of the nature of the present Application, which is launched solely under ***Section 39(1) (e)***. Counsel further contends that it is only when an order for preservation is sought that an Applicant is required to demonstrate "urgency".

I am inclined to agree with the Applicant that the requirement for the demonstration of urgency has a direct connection with the preservation of evidence and assets whereas the Court's powers to grant an injunction to restrain a threatened breach under ***Section 39 (1) (e)*** have a far wider reach and will embrace every situation where the Court is satisfied that the twin elements of "just" and "convenient" have been established. See ***Order 25 Rule 1*** of the ***High Court (Civil Procedure) Rules, 2004 (CI 47).***

The rationale behind the requirement for the Court to act in cases of urgency as regards the preservation of evidence or assets should not be too hard to discern. It is to prevent the possible loss or destruction of evidence upon which the resolution of the parties' dispute may depend.

In any event, the question as to whether or not a case is urgent is one for the Court to determine in the final analysis. The determination of urgency is not based on the subjective interpretations placed on the word by the parties who more likely than not, will tailor its meaning to advance their respective cases.

It however bears pointing out that applications for injunction, whether interim or interlocutory, by their very nature suggest some urgency as the purpose is to maintain the status quo and to protect the rights of an Applicant from imminent harm, danger or prejudice pending the determination of a dispute. I therefore do not think the Legislature intended that the Court will shut its doors against an Applicant upon failure to meet the conditions set out under ***Subsections (2)*** and ***(3).***

Assuming however (but not conceding) that I am wrong in this view, ***Section 39 (4)*** grants the Court the power to act if the Arbitrator or any person vested with powers to grant the reliefs listed under ***Section 39*** is unable to act effectively.

The question as to whether or not an Arbitrator can be said to be in a position to act effectively as far as Orders in the nature of those listed under ***Section 39*** are concerned will depend on the circumstances of each case.

It however goes without saying that the Orders of an Arbitrator who derives his authority from the Parties' Agreement and sometimes only upon receipt of judicial blessing cannot have the same force and teeth of a Court Order. It is for this reason among others, that a party to arbitral proceedings, such as the Applicant in this case should not be barred from approaching the Court for judicial relief when necessary.

It is well-settled that the law will not interpret a statute as cutting down common law rights that favor an individual unless that is necessary and the only interpretation possible from the wording of that statutory provision.

Indeed, the English case of ***SMITH V PETERS (1875) 3 LR 20 EQ 511*** suggests ***@ 513*** that so far as applications for injunction are reasonable and necessary ancillaries to the administration of justice, there is no limit to their scope. I adopt this position as reflective of our law and hold that the same is applicable to the Court's powers under ***Section 39 (1)***.

This principle will of course, cover the grant of an Anti-Arbitration Injunction if it is demonstrated that the Applicant's legal or equitable rights have been or are being infringed upon or are threatened by a Respondent who institutes arbitral proceedings in a foreign jurisdiction in breach of the

parties' Agreement. See the case of ***ATTORNEY GENERAL v BALKAN ENERGY SUIT NO BDC/32/10 DATED THE 6TH OF SEPTEMBER 2010.***

I am therefore not persuaded by the arguments canvassed by Counsel for the Respondent in support of its preliminary objection. It is accordingly overruled.

Respondent's Case

Turning now to the substance of the Respondent's case as contained in its 65 paragraphed Affidavit in Opposition, I propose to deal with the points raised therein only as I consider them necessary for the determination of this matter.

Now, probably, in an attempt to bring clarity to its case, the Respondent distinguishes the proceedings which appear to have provoked the instant Application into 2 phases. Namely the 1st Arbitration and the 2nd Arbitration.

According to Respondent, the 1st Arbitration related to the GoG's unlawful re-demarcation of the Respondent's licence area and the refusal to issue an operating permit whilst the 2nd Arbitration relates to the GoG's refusal to extend the term of the Respondent's Prospecting Licence. Steps are being taken to discontinue the 1st Arbitration instituted at the GAC as the reliefs being sought thereunder have been rendered otiose, says the Respondent.

With respect to the 2nd Arbitration, Respondent concedes that ***Clause 21*** of the PLA does not mention the UNCITRAL Rules or the PCA, however, it contends that since the subject of dispute of the 2nd Arbitration, is the refusal to renew the Respondent's Prospecting Licence, the same constitutes a dispute which by virtue ***Section 35(2)*** of ***Act 703*** is brought within the ambit of ***Section 27*** of ***Act 703.***

Further, in the Statement of Case filed by Counsel on Respondent's behalf in opposition to the present Application, Counsel @ ***Paragraph 60*** argues that:

"...***Cassius is not a citizen of Ghana. It is not controlled by the Republic; it is a subsidiary of an Australian company, Accordingly Section 27(3) of the Mining Act applies".***

In light of this contention of the Respondent, finding an answer to one question I think, becomes paramount

<u>Is Section 27(3) of Act 703 applicable to the Respondent and by extension to the PLA?</u>

In the affidavit filed in support of the present Motion, the Applicant in ***Paragraph 3*** describes the Respondent as a company incorporated under the laws of Ghana with Registration number at the office of the Registrar of Companies, Accra being ***CS079902016***.

Now, even though the Respondent claims that it is not a citizen of Ghana, nowhere in its Affidavit in Opposition is the Applicant's assertion regarding the fact of its incorporation in Ghana denied.

Indeed, in the opening paragraph of its Statement of Case, the Respondent confirms that it is a company incorporated in Ghana. It states that it is its Parent Company that is incorporated in Australia.

It seems to me that, if the effect of the distinction between the Respondent and its Parent Company had been constantly kept in mind, there would have been no difficulty in determining which provision of ***Section 27*** of ***Act 703*** was or is applicable to the Respondent.

For the sake of pellucidity, I shall reproduce ***Section 27*** of the Act. It provides as follows:

"Dispute Resolution

27(1) Where a dispute arises between a holder of a mineral right and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred to resolution, all efforts shall be made through mutual discussion and is agreed between the parties, by reference to alternative dispute resolution procedures, to reach an amicable settlement
(2) Where the dispute arises between a holder who is a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution, which is not amicably resolved as

provided in subsection 1 within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may be submitted by a party to the dispute, to arbitration for settlement in accordance with the Arbitration (Act 38) or any other enactment in force for the resolution of disputes.

(3) Where the dispute arises between a holder who not a citizen and the Republic in respect of a matter expressly stated under this Act as a matter which shall be referred for resolution under this section, which is not amicably resolved as provided in subsection (1) within thirty days of the dispute arising or a longer period agreed between the parties to the dispute, the dispute may by a party to the dispute giving notice to all other parties, be submitted to arbitration,

submitted by a party to the dispute, to arbitration,

- *a) in accordance with an international machinery for the resolution of investment disputes, as agreed to by the parties, or*
- *b) if the parties do not reach an agreement under paragraph (a) within thirty days , or a longer period agreed between the parties , of the matter being submitted to arbitration, in accordance with*
  - *(i) first , the framework of a bilateral or multilateral agreement investment protection to which the Republic and the country of which the holder is a national , are parties, or*
  - *(ii) secondly, if no agreement contemplated by subparagraph (i) exists , the rules of procedure for arbitration of the United Nations Commission on International Trade Law, UNCITRAL Rules"*

What appears to be the Respondent's Sheet Anchor is the fact that its resort to the UNCITRAL Rules is backed by law i.e. ***Section 27(3)*** of ***Act 703*** because it is not a citizen of Ghana.

The next question therefore, is who is a citizen of Ghana within the meaning of ***Act 703?*** The answer to this question can be found in ***Section 111*** of the said Act.

Under that Section, a citizen of Ghana is defined to include:

"A body corporate which is incorporated under the companies code, 1963 (act 179)".

By virtue of ***Section 35*** of the ***Interpretation Act, 2009 (Act 792),*** reference to ***Act 179*** should be construed as reference to the current ***Companies Act, 2019*** (***Act 992)***. Consequently, there can be no doubt that the Respondent, contrary to its belief or assertions, is by law deemed a citizen of Ghana.

What the Respondent appears to have overlooked is the fact that having been incorporated under the laws of Ghana, it remains a Ghanaian Company despite the fact that it is a subsidiary of and wholly owned by a Company incorporated in Australia.

The Learned author ***Ferdinand D. Adadzi*** in his elucidating book on ***"MODERN PRINCIPLES OF COMPANY LAW IN GHANA" s***heds light on this well-received principle at ***page 218*** of his book as follows;

"An important element to be aware of in defining the relationship between a parent or holding company and the subsidiary company is that the two companies are two separate entities. The ownership of all the issued shares of the subsidiary company by the holding company, making the subsidiary company a wholly owned subsidiary company does not change this position"

See also the dictum of ***Sarkodee J*** in the case of ***KUNI v STATE MINING CORPORATION AND ANOTHER [1978] GLR 205 @ 207***

It is obviously the failure of the Respondent to recognize this distinction that seems have misled it into "*chasing a mirage in foreign climes*" to borrow the words of Francois JA in the case of ***EDUSEI v DINERS CLUB SUISSE SA [1982-83] GLR 809 @ 811.***

It follows therefore that the Respondent's reliance on ***Section 27(3)*** of ***Act 703*** is fundamentally flawed. The provision applicable to Respondent as a Ghanaian juristic person is ***Section 27(2)*** and by extension ***Act 798*** and not ***Section 27 (3)*** that it clings tenuously to.

This will also mean that the Respondent indeed had no legitimate basis for venturing to foreign jurisdictions to seek a resolution of dispute arising under ***Act 703*** between 2 Ghanaian citizens or in proposing the PCA and

the UNCITRAL Rules as being applicable to the dispute arising under the so called "2nd Arbitration|".

Clearly, the avenue available for dispute resolution under ***Act 703*** as far as the parties' herein are concerned is that provided for under Section ***27 (2)***. The Respondent's resort to International Dispute Resolution under the UNCITRAL Rules was therefore a misdirected step.

In my view, the GoG's alleged refusal to renew the Respondent's licence just like the previous complaint about the GoG's unlawful re-demarcation of the Respondent's licence area falls squarely under ***Clause 21*** of the PLA which provides that:

*"**Subject to the provisions of this Agreement if at any time during the continuance of this Agreement or after its termination any question or dispute shall arise regarding the rights, powers, duties and liabilities of the parties such question or dispute shall be referred to arbitration in accordance with the Alternative Dispute Resolution Act, 2010 (798) ".***

A careful reading of ***Section 27(4)*** also reveals that ***Act 703*** recognizes and seeks to uphold the supremacy of an Arbitration Agreement voluntarily entered into by parties. This fact, I think is quite clear and requires no elaboration.

<u>Bindingness and Enforceability of Arbitration Agreements</u>

In concluding, it must be emphasized that Arbitration Agreements as a matter of established law, are like any other contract, binding and enforceable. This is the very essence of principle of *pacta sunt servanda* which requires that parties honour agreements that they have freely and voluntarily entered into .

Consequently, the Respondent cannot now be heard to say that "proper practice" requires that that a neutral seat be chosen because the dispute involves the GoG.
It was for the Respondent who entered into the PLA voluntarily to have negotiated for the terms of the PLA to reflect the so called' proper practice" at that time of entering into same.

Any cavil about the neutrality of arbitral proceedings in this jurisdiction will therefore not be countenanced at this stage. In any event, the Respondent has provided no proof that its concerns or fears about proceeding with arbitral proceedings in this jurisdiction, are justified.

Injunction

An application for injunction whether interlocutory or interim has its foundations in Equity and Equity follows the law.

Consequently an Applicant for injunctive relief must establish that he has a legal right that Equity must protect.

Secondly, the Applicant must establish that he will suffer actual or potential harm if the injunction is not granted and that the said harm cannot be remedied by any means.

Such Applicant must also demonstrate that the balance of convenience weighs in his favour.

Each of these ingredients are not considered in isolation but as interrelated. Having done so, I think the Applicant has succeeded in showing that his case is not frivolous and that he has a right to protect under ***Act 798*** and ***Clause 21*** of the PLA.

The balance of convenience also tips in Applicant's favour since permitting the Respondent to continue in its unwarranted pursuit of foreign arbitral proceedings, is not only oppressive and vexatious to the Applicant but will result in waste of this country's scarce resources which no doubt will be at great cost to the Ghanaian taxpayer.

As noted by the Applicant, the exorbitant cost of engaging Counsel to represent the GoG in foreign proceedings cannot be gainsaid. This is especially unacceptable when the foreign proceedings being embarked upon by Respondent are in violation of the parties' binding Agreement.

The Respondent on the other hand has failed to demonstrate that it stands to suffer greater hardship or inconvenience, should the present application be granted. After all, it will not be deprived of the opportunity to vindicate

its rights in a forum it has itself chosen. I am indeed inclined to conclude that it was because the Respondent recognized that it would not suffer any inconvenience by the dispute being determined in this country, that it readily submitted the so called 1st Arbitration to the GAC without a whimper.

Finally, the effect of permitting the Respondent to run roughshod over Ghanaian laws can be well-imagined. As rightly observed by the Applicant, the State's right to insist on compliance with it laws through ensuring the observance of ***Acts 703*** and ***798*** would be severely undermined if not lost, if the Respondent is left unbridled to choose any forum that suits its convenience, in violation of the PLA. Such conduct which impinges on the sovereignty of Ghana as a nation cannot be remedied by the award of damages. In the circumstances, the Application is granted as prayed.

Accordingly, the Respondent is hereby restrained from;

Instituting, or pursuing any arbitration outside the jurisdiction of Ghana under the Prospecting Licence Agreement dated the 28th of December, 2016 entered into between the Government of Ghana and the Respondent, or taking any step whatsoever in international arbitration proceedings against the Government of Ghana until the arbitration instituted by the Respondent against the Applicant at the Ghana Arbitration Centre has been heard and determined.

I make no order as to costs.

(SGD)

AKUA SARPOMAA AMOAH (MRS.)

JUSTICE OF THE HIGH COURT

Cases referred to:

CETELEM v ROUST HOLDINGS LTD [2005] 4 AER 52

DE SIMONE LIMITED v OLAM GHANA LTD J/4/03/2018 GHASC 22 (28 MARCH 2018);

BCM v ASHANTI GOLDFIELD LTD [2005-2006] SCGLR 602

ROCKSON v GHANA FOOTBALL ASSOCIATION [2010] SCGLR 443.

SMITH V PETERS (1875) 3 LR 20 EQ 511 suggests ***@ 513***

ATTORNEY GENERAL v BALKAN ENERGY SUIT NO BDC/32/10 DATED THE 6TH OF SEPTEMBER 2010.

KUNI v STATE MINING CORPORATION AND ANOTHER [1978] GLR 205 @ 207

EDUSEI v DINERS CLUB SUISSE SA [1982-83] GLR 809 @ 811.

Statutes referred to:

THE ALTERNATIVE DISPUTE RESOLUTION ACT (ACT 798),

THE MINERALS AND MINING ACT, 2006 (ACT 703)

THE HIGH COURT (CIVIL PROCEDURE) RULES, 2004 (CI 47).

THE INTERPRETATION ACT, 2009 (ACT 792),

THE COMPANIES ACT, 2019 ACT 992

THE ENGLISH ARBITRATION ACT (ENGLISH ACT)

<u>Stated edition</u>:

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) MODEL) LAW ON INTERNATIONAL COMMERCIAL ARBITRATION OF 1985

MODERN PRINCIPLES OF COMPANY LAW IN GHANA