

**IN THE HIGH COURT OF JUSTICE, WESTERN REGION, HELD AT SEKONDI
ON THE 19TH DAY OF MAY, 2023, BEFORE HER LADYSHIP AFIA N. ADU-
AMANKWA (MRS.) J.**

SUIT NO. E1/5/22

SAMARTEX TIMBER & PLYWOOD COMPANY LTD

PLAINTIFF

VRS.

AKONTA MINING SERVICES

DEFENDANT

JUDGMENT

The plaintiff is a company registered under the laws of Ghana, having as its core business sawmilling, moulding, and production of sliced veneer, rotary wood lumber and plywood for exports. By a deed of lease dated 1st January, 2012, the Asankragwa Agona Royal Stool leased a 1112.55-acre land situate at Samreboi to the plaintiff for industrial and residential purposes for fifty years. The plaintiff has a sawmill, an office complex, bungalows, a golf course, an airstrip, a hospital, and schools, among other amenities on the land. The defendant, a mining company, entered onto the disputed land on the strength of two separate mining leasehold agreements she had entered into with the Government of Ghana on 23rd July, 2021 to mine gold on the land. According to the plaintiff, the defendant had excavated portions of her land without her consent and mounted barricades on her private roads, which she had constructed and placed security guards to man them. The defendant had also set up a dam and a washing plant on the disputed land. The plaintiff contends that the defendant's activities on the land threaten the use of the airstrip and amount to a trespass of her land. Therefore, she has sued the defendant for the following reliefs:

"a. Declaration of title to the parcel of land situate at Samreboi particularly delineated and described as more or less on North by Lessor's land measuring 292.6, 137.4, 436.0, 561.2, 117.2, and 683.4 feet respectively more or less on the North East by Lessor's Land measuring 107.8, 611.5, 350.2, 2225.4, 165.5, 316.6, 419.6, 372.7, 790.1 and 1134.3 feet respectively more or less on the East by a lessor's land measuring 208.3, 768.1, 498.5 and 758.5 feet respectively more or less on the South East by lessor's land measuring 1447.8 and 357.3 feet respectively more or less on the South West by lessor's land measuring 1055.6, 840.1, 188.5, 222.1, 769.2, 327.2, 329.2, 208.5, 518.6, 782.5, 663.0, 462.8 and 322.6 feet respectively more or less on the North West by lessor's land measuring 679.9, 1648.8, 780.0, 391.9, 552.3, 661.6, 903.4, 451.7, 683.4, 1134.4, 790.1, 372.7, 474.4, 1680.0 898.7, 451.7 and 1344.4 feet respectively more or less which piece or parcel of land (sic)

b. Recovery of possession

c. Damages

d. Cost"

In response to the plaintiff's claims, the defendant explained that the land which formed the subject of the two mining agreements were contiguous to each other and covered an approximate land area of 89.88 square kilometres (89.99km²). The defendant contends that even though portions of the land acquired by the parties may overlap, their rights to the land are mutually exclusive, and for that matter, the plaintiff cannot claim exclusive title to it. She has also counterclaimed for:

"i/ A declaration that the Defendant has legitimately acquired a mining right to the subject land through separate Mining Lease Agreements dated 23rd July, 2021 made between the Government of Ghana and the

Defendant covering a total acreage of 44.94km² situate at Samreboi in the Wassa Amenfi West District with the following coordinates;

a. All that piece or parcel of land containing an approximate area of 44.94 km lying to the North of Latitudes 5° 35' 00" N and 5° 35' 15" N, and 5° 37' 00"; and to the South of Latitudes 5° 37' 45" N and 5° 40' 00" N; and to the East of Longitudes 2° 33' 15" W, 2° 33' 45" W and 2° 34' 15" W; and to the West of Longitudes 2° 31' 15" W and 2° 31' 30" W; located at Samreboi in the Wassa Amenfi West District of the Western Region of the Republic of Ghana which pieces or parcels of land are more particularly delineated on the plan annexed hereto for the purposes of identification and not of limitation and;

b. All that piece of land situate at SAMREBOI in the Western Region of Ghana containing an approximate Acres of 1112.55 Acres or 450.23 Hectares more or less on North by lessor's land measuring 292.6, 137.4, 436.0, 561.2, 117.2 and 683.4 feet respectively more or less on the North East by lessor's land measuring 107.8, 611.5, 350.2, 2225.4, 164.5, 316.6, 419.6, 372.7, 790.1 and 1134.3 feet respectively more or less on the East by lessor's land measuring 208.3, 768.1, 498.5 and 758.5 feet respectively more or less on the South East by lessor's land measuring 1447.8 and 357.3 feet respectively more or less on the South West by lessor's land measuring 1055.6, 840.1, 188.5, 222.1, 769.2, 327.2, 329.2, 208.5, 518.6, 782.5, 663.0, 462.8 and 322.6 feet respectively more or less on the North West by lessor's land measuring 679.9, 1648.8, 780.0, 391.9, 552.3, 661.6, 903.4, 451.7, 683.4, 1134.4, 790.1, 372.7, 474.4, 1680.0, 898.7, 451.7 and 1344.4 feet respectively and same are valid and subsisting.

ii/ An Order by the Court directed at the Plaintiff to respect the mining right of the Defendant to the land for its quiet enjoyment and possession as envisaged under the Lease Agreements.

iii/ Any other reliefs as deemed necessary by the Court.

The issues which the parties settled and which they invite me to decide on are:

- i. Whether or not the defendant's mining activities on the disputed land comply with the mining laws of Ghana.
- ii. Whether or not the plaintiff's lease in respect to the land in dispute supersedes the defendant's lease.
- iii. Whether or not the mining activities of the defendant on the disputed land adversely affect the use of the plaintiff's airstrip.
- iv. Whether or not the defendant's mining activities on the disputed land adversely affect the plaintiff's water system, hospital, schools and residential accommodation of plaintiff's workers.
- v. Any other issues arising from the pleadings and evidence.

BURDEN OF PROOF

The plaintiff's case is that the defendant has trespassed on portions of her land. The defendant contends that she has every right to be on the land by virtue of the mineral rights she has over the land. The Evidence Act, 1975, NRCD 323, prescribes the procedure to be applied in every proceeding. It provides a useful guide on the burden required to be discharged by a party to a dispute at a trial. Section 11(1) of Act 323 obliges a party to introduce sufficient evidence to avoid a ruling against him on an issue. In seeking a declaration of title to land and damages, the plaintiff has the initial burden to produce such evidence as would satisfy the court that the defendant has trespassed onto her land. Kpegah JSC pithily captures the position of the law on proof in **Zabrama vrs. Segbedzi [1991] 2 GLR 221**, wherein he restated the well-known principle in *Majolarbi vrs. Larbi* as follows:

“The correct proposition is that, a person who makes an averment or assertion, which is denied by his opponent, has the burden to establish that his averment or assertion is true. And he does not discharge this burden unless he leads admissible and credible evidence from which

the fact or facts he asserts can properly and safely be inferred. The nature of each averment or assertion determines the degree and nature of that burden."

This burden is not discharged by merely entering the witness box and repeating the claims or averments in the pleadings. The burden is discharged by leading admissible and credible evidence from which the facts being asserted can be properly and safely inferred or concluded. The defendant has also counterclaimed and bears the same burden as the plaintiff. For once made, a counterclaim proceeds as an independent action even if the original action were concluded, stayed, discontinued or dismissed. The rules provide that in proceedings arising out of a counterclaim, the counterclaim is deemed as a writ and statement of claim. The party making the counterclaim and the party against whom it is made are also deemed the plaintiff and defendant, respectively. Therefore, both parties bear the burden of proving their claims on a balance of probabilities.

MERITS

The plaintiff's title to the disputed land is not in dispute. The human resource manager of the plaintiff company, Thomas Assasie-Gyimah, testified and tendered in evidence as exhibit "A", a lease agreement between the plaintiff and the Asankragua Royal stool. He testified that by a Deed of Lease dated 1st January, 2012, and registered at the Deeds Registry as Deed No. 6730, the Asankragwa Agona Royal Stool, represented by Nana Anyani Buadum III, leased a 1112.55 acre land situate at Samreboi to the plaintiff for commercial purposes for fifty (50) years. As an ongoing concern, the plaintiff had a sawmill, an office complex, 1000 houses and bungalows, a golf course, an airstrip, a hospital, schools, a water treatment plant, an electricity generating plant and nursery plantation on the land.

The defendant contends that she entered the disputed land on the strength of two mining leases obtained from the Government of Ghana. Mr. Edward Akuoko, the general manager of the defendant company, testified that in 2021, the defendant, a registered mining company under the laws of Ghana, acquired from the Government of Ghana a mining lease at a location called Abakoase in the Wassa Amenfi West District in the Western Region of Ghana. This lease was registered as a deed numbered 19560 under Serial No. 1637/2021, covering a land mass of 44.94 sq. km. The defendant also acquired another mining lease from the Government of Ghana registered as a Deed with number 19559 under Serial number 1636/2021, which covered a land mass 44.94 sq. km at a location called Samreboi in the Wassa Amenfi District. He tendered in evidence as exhibits "1" and "2", the lease agreements. Exhibit "2", in particular, affects the land at Samreboi, which forms part of the disputed land. I must point out that the schedules describing the lands were inadvertently swapped such that the schedule to exhibit "1" is affixed to exhibit "2" and vice versa. Based on exhibit "2", the defendant entered the land.

The defendant has carried out activities on the land. According to the defendant's representative, the company had set up modern mining equipment and a washing plant, a chemical-free equipment with no adverse effect on the environment. Again, the defendant, upon entering the land, was confronted with several abandoned deep (galamsey) mined pits. She had to reclaim the land to avert danger and also to make the reclaimed land useful. It then converted some of the larger deep pits into a dam and used the reclaimed land to establish the washing plant. Even though, per the Minerals Cadastre Map, a miner was to leave a buffer zone of 100 meters from roads, according to the defendant's representative, the defendant's dam was about 600 to 700 meters away from the plaintiff's abandoned airstrip.

At the heart of this case lies the issue of the competing interests of the parties. The case has nothing to do with the determination of who has title to the land. The defendant does not dispute the plaintiff's title to the land. The defendant's entry onto the land is also based on her mining lease (exhibit "2"). The determinant question is whether the plaintiff's lease takes precedence over the defendant's and vice versa.

I would begin the discussion by stating that until the expiration of her lease, the plaintiff holds the land subject to the covenants contained in the lease. However, the plaintiff's interest in the land is limited by Article 257(6) of the 1992 Constitution, which provides that:

"Every mineral in its natural state in, under or upon land in Ghana, rivers, streams, water courses throughout the country, the exclusive economic zone and any area covered by the territorial sea or 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".

Flowing from the above constitutional provision, it is undisputed that every mineral in its natural state in any land within Ghana's territory is vested in the Republic of Ghana, and the President holds it on behalf of and in trust for the people of Ghana. To this end, several Acts have been enacted to regulate mining and its related activities. Some of these Acts include the Minerals and Mining Act, 2006 (Act 703), the Minerals and Mining (Amendment) Act 2015 (Act 900) and the Minerals Commission Act, 1993 (Act 450). There are also several subsidiary legislations backing these main Acts. Every land is subject to a mineral right. This is confirmed by section 3 of Act 703, which states that:

"Land in the country may be made the subject of an application for a mineral right in respect of a mineral specified in the application, other than land which is

(a) the subject of an existing mineral right in respect of the specified mineral, or

(b) expressly reserved, by or under this Act or any other enactment from becoming the subject of a mineral right".

The Minister for Lands and Natural Resources, on behalf of the President and on the recommendation of the Minerals Commission, may grant or renew mineral rights and shall determine the land subject to the grant. See **sections 5(1) and (2) of Act 703**. In the light of these provisions, the defendant applied for and was granted a mineral right through the mining leases, as shown by exhibits "1" and "2". The leases conferred on the defendant certain rights provided for under section 46 of Act 703, which states:

"Subject to this Act and Regulations made under this Act, a mining lease authorises the holder, the holder's agents and employees and a person authorised by the holder, in accordance with this Act, to enter upon the land the subject of the mining lease, to

(a) conduct mineral operations including, without limitation, to mine for the specified minerals of the mining lease,

(b) erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered by the holder during the mining operations,

(c) take and remove from the land the specified minerals and dispose of them in accordance with the holder's approved marketing plan,

(d) stack or dump a mineral or waste product as approved in the holder's 'Environmental Impact Statement, and

(e) conduct other incidental or ancillary activity.

Thus, subject to all other requirements stipulated in the Act and other regulations, the defendant, as a holder of a mineral right, is entitled to mine on the land, erect equipment, plants and buildings, dump mineral waste etc. Based on these rights conferred on her by the Act, the defendant set up the washing plant and dam and constructed offices on the land for her mining activities.

The area where these activities have been carried out forms part of the plaintiff's land for which she carries out her activities and contends that the defendant has trespassed onto her land. More often than not, land, the subject of a mineral right, may have other occupiers on the land with surface rights. Such occupiers may include the allodial owners, customary law freeholders, leaseholders, customary tenants, licensees and others in occupation as of right. Owners of surface rights shall retain the right to graze livestock or cultivate the land's surface as long as such grazing and cultivation do not interfere with the mineral operations in the area. In effect, the Republic of Ghana cannot exploit or mine the mineral in its raw state or grant a mineral right to an entity to mine under the land without either acquiring the land as required in the public interest for public purposes with the payment of appropriate compensation to the owner or authorize a holder of a mineral right to mine and pay appropriate compensation to the owner of the land.

Reading the Act and its subsidiary legislations, the law envisages different sets of rights at play on the same land. A land granted to one for grazing or cultivation may also be subject to the mineral rights of another. Thus, a land may be mined and used for other purposes as well. **Section 72 of the Mineral and Mining Act, supra** states:

72. Surface rights

(1) The holder of a mineral right shall exercise the rights under this Act subject to limitations that relate to surface rights that apply under an enactment and further limitations reasonably determined by the Minister.

(2) In the case of a dispute between a holder of a mining lease and the Minister concerning the limitations determined by the Minister under this subsection, the dispute shall be referred for resolution under section 27.

(3) The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.

This section clearly shows that the two rights over land can coexist simultaneously as long as the operations of the holder of the surface rights do not interfere with the mining operations of the licence holder. The right to determine whether animal grazing or cultivation of the land would or would not interfere with the mining operations would be determined by the holder of the mining lease. Where there is an interference with an owner's surface rights, the owner or lawful occupier of the land is entitled to be compensated by the mineral rights holder for the disturbance of his surface rights. The surface right holder may be entitled to compensation for the deprivation of the use or a particular use of the natural surface of the land, loss of or damage to immovable property, in the case of land under cultivation, for loss of earnings and loss of expected income depending on the nature of the crops on the land and their life expectancy. See **sections 73 and 74 of the Act**. Even though both rights may exist simultaneously on the land, where there is an interference with the rights of the holder of the mineral right, the surface right holder shall cave in to the rights of the mineral rights holder subject to the payment of compensation as envisaged by section 74 of the Act.

The plaintiff contends that the defendant has trespassed unto her land and therefore seeks damages for trespass. Giving further particulars of this trespass, the plaintiff's representative testified that the defendant had entered unto the plaintiff's land with heavy equipment and excavated portions of the plaintiff's land without her consent. The defendant had also mounted barricades on the private roads the plaintiff had constructed and placed security guards to man them. When officers of the plaintiff company confronted the workmen on the land, they said they were there at the defendant's behest and that the excavated land would be used to construct a plant to wash and sort gold from their mining operations in the area. The plaintiff's representative contended that the portions of the land the defendant had excavated and was preparing to construct a plant formed part of the plaintiff's leased land and within the 200-metre exclusive zone around the plaintiff's airstrip approved by the Ghana Airforce and the Civil Aviation Authority. Again, the activities of the defendant fell squarely within the coordinates of the airstrip and were a threat to its use and amounted to a trespass of the plaintiff's land. Further, the defendant's activities on the encroached land had affected the plaintiff's water and electricity system. The sites the defendant was operating from were so close to the bungalows and houses of the plaintiff's workers and were adversely affecting the livelihoods of the workers of the plaintiff company.

On the other hand, the defendant claims to be on the land as of right, based on her mining lease to mine gold. She contends that if the plaintiff has any claim against her activities, her remedy is to proceed against the Minister of Lands and Natural Resources, who granted her the leases. I understand the plaintiff's claim that despite the defendant's assertion to be a holder of a mineral right over her land, she is unlawfully on the land. Trespass to land occurs when a person directly enters another's land without permission, remains upon the land, places, or projects any object upon the land. The defendant would have trespassed on the land if she was not entitled to be there. The question is whether a mining lease

without more entitles the mineral right holder to mine the land. Reading through the Act, the grant of a mining lease is not enough for the purposes of commencing operations to mine. The mining lease is subject to the fulfilment of certain conditions, one of which is its ratification by Parliament. Section 5(4) of the Act provides that:

“A transaction contract or undertaking involving the grant of a right or `concession by or on behalf of a person or body of persons, for the exploitation of a mineral in Ghana shall be subject to ratification by Parliament”.

This provision was further incorporated into the lease agreement (exhibit “2”) by section 1 (e), which provides that:

“This Mining Lease is subject to ratification by Parliament in accordance with Article 268(1) of the Constitution and section 5(4) of Act 703. Upon execution of this Mining Lease, the Minister shall cause the Mining Lease to be laid in Parliament for ratification”.

Therefore, it is mandatory that all mining transactions, contracts or undertakings to which the Government of Ghana is a party are ratified by Parliament except where Parliament by a resolution supported by not less than two-thirds of all the members of Parliament dispenses with the ratification of the contract or transaction or the undertaking. Parliament's failure to ratify such a mining lease renders the lease invalid. On the effect of non-ratification by parliament, the Supreme Court per Marful Sau JSC in the case of **The Republic vrs. High Court, General Jurisdiction(6) Accra, Exparte: Attorney-General [Exton Cubic Group Ltd]-Interested Party** [2019] DLSC6520 stated thus:

“We wonder the essence of Article 268(1) in the Constitution, if it was not intended that, mining leases shall only become valid upon Parliamentary

ratification. We are of the considered opinion, therefore, that without Parliamentary ratification a mineral lease granted by the Executive arm of Government shall be invalid. In other words, we hold that pursuant to article 268(1) every mineral lease granted pursuant to the Minerals and Mining Act, Act 703, requires the ratification of Parliament to be valid"

Again, undertaking operations on land subject to a mining right is contingent on obtaining permits from the Environmental Protection Agency (EPA) and Forestry Commission. Section 18(1) of the Act provides that:

"Before undertaking an activity or operation under a mineral right, the holder of the mineral right shall obtain the necessary approvals and permits required from the Forestry Commission and the Environmental Protection Agency for the protection of natural resources, public health and the environment".

This provision is self-explanatory. Permits from the Environmental Protection Agency (EPA) and the Forestry Commission are required before undertaking an operation under a mineral right. Obtaining the permits is a sine qua non for mining the land. This is to ensure that the mining activities of the holders of the mineral right do not flout the laws aimed at protecting natural resources, public health and the environment.

Even though, in her pleadings, the plaintiff claimed that the mining activities of the defendant did not comply with the mining laws of Ghana, she failed to testify on these matters. She never made any such allegations against the defendant, much less to lead evidence in support of them. On the other hand, the defendant sought to show that her operations on the land complied with the law. Given her counterclaim for a declaration that she had legitimately acquired a mining right to the plaintiff's land, the burden lay on her to show or lead evidence that she

had acquired a mining right and complied with all terms and conditions pursuant to the mining right.

The defendant's representative testified that the defendant entered on the land after she had paid the requisite ground rent as demanded by the Office of the Stool Land Administration. In addition to these payments, the defendant compensated persons who had their crops on the land before erecting her offices and equipment on part of her leased property. Again, in accordance with the rules of best practices, the defendant notified the Environmental Protection Agency (EPA) of her intention to mine gold in the demarcated area, and the EPA, in turn, directed the defendant on what to do. He tendered copies of the EPA letters as exhibits "7" and "8". Exhibits "7" and "8", dated 15th September, 2021, are referable to the two leases granted to the defendant by the Government of Ghana. They are not the permits required for purposes of this Act. The letters reiterated that an Environmental Impact Assessment was to be conducted as the basis for the agency's consideration of an Environmental Permit. The letters directed the defendant to conduct an environmental assessment for purposes of the permit. As of 14th June, 2022, when the defendant's representative testified, he did not indicate that EPA had issued the permit. He stated that EPA had allowed the defendant to commence operations, and at no point during their operations had they stopped her from working. In another breath, he did indicate that the permit process was ongoing. But the law emphatically states that the permits must be secured before the commencement of the mining operations on the land. Regarding the ratification of the mining lease and the permit from the Forestry Commission, the defendant was silent on this and therefore failed to show that she had the permit to commence operations on the land. The effect of Parliament's non-ratification of the mining lease renders it invalid. Again, the defendant cannot commence operations on the land without permits from the EPA and Forestry Commission.

Commencing mining operations without the necessary permits makes the defendant's entry onto the land illegal and, therefore, a trespass. The mineral leases granted by the government are invalid. They can only be valid by Parliament's ratification of them. Even if the leases were valid, the defendant could not commence operations on the land without permits from the EPA and the Forestry Commission. The defendant committed trespass when she went unto the land to commence operations without the necessary permits.

It is trite learning that trespass is a wrong to possession. By virtue of this claim, the plaintiff is required under the law to provide evidence to warrant the award of damages. She must also provide facts that would form the basis for assessing the damages she claims. Factors to be considered in assessing damages were given in the case of **Laryea vrs. Oforiwa** [1984-86] 2 GLR 410 @ 429. The Court of Appeal, per Abban J. A. (as he then was) stated thus:

"In awarding damages for trespass to land, regard should be had to the acreage of the land on which the trespass was committed, the period of wrongful occupation and the damage caused".

Not much evidence was led by the plaintiff regarding the extent of land trespassed upon. The encroachment the plaintiff complained of had to do with her airstrip. According to her, the defendant's activities were within the 200-metre exclusive zone around her airstrip. The acreage of the encroached land is not known. The period of this trespass could only have been after July 2021, given that the mining leases were executed on 23rd July, 2021. According to the plaintiff, the defendant's activities had affected her water and electricity system and the livelihoods of her workers. Taking these factors into consideration, I assess damages at GHc50,000.00.

In conclusion, I declare title to the parcel of land situate at Samreboi described as "more or less on North by Lessor's land measuring 292.6, 137.4, 436.0, 561.2,

117.2, and 683.4 feet respectively more or less on the North East by Lessor's Land measuring 107.8, 611.5, 350.2, 2225.4, 165.5, 316.6, 419.6, 372.7, 790.1 and 1134.3 feet respectively more or less on the East by a lessor's land measuring 208.3, 768.1, 498.5 and 758.5 feet respectively more or less on the South East by lessor's land measuring 1447.8 and 357.3 feet respectively more or less on the South West by lessor's land measuring 1055.6, 840.1, 188.5, 222.1, 769.2, 327.2, 329.2, 208.5, 518.6, 782.5, 663.0, 462.8 and 322.6 feet respectively more or less on the North West by lessor's land measuring 679.9, 1648.8, 780.0, 391.9, 552.3, 661.6, 903.4, 451.7, 683.4, 1134.4, 790.1, 372.7, 474.4, 1680.0, 898.7, 451.7 and 1344.4 feet respectively more or less which piece or parcel of land" as designated per the site plan in exhibit "A" in the plaintiff.

The plaintiff is entitled to recover possession of her encroached land.

Even though the defendant has acquired a mining right to the subject land situate at Samreboi through the mining lease agreement made between the Government of Ghana and the defendant on 23rd July, 2021 (exhibit "2"), that mining lease is invalid until Parliament ratifies it.

In the circumstances, the defendant's counterclaim is dismissed.

(SGD.)
H/L AFIA N. ADU-AMANKWA (MRS.)
JUSTICE OF THE HIGH COURT

COUNSELS

George E. Ansah (holding Samuel Adinkrah's brief) appears for the Plaintiff.

Esther A. Opoku (holding Kwame Adom-Appiah's brief) appears for the Defendant.