IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2015

CORAM: ATUGUBA JSC (PRESIDING)
ANSAH JSC
DOTSE JSC
ANIN-YEBOAH JSC
AKOTO-BAMFO (MRS) JSC

CIVIL MOTION
NO.J5/15/2015

30TH JULY 2015

THE REPUBLIC

VRS

THE HIGH COURT, (LAND DIVISION) ACCRA - RESPONDENT
EX-PARTE: THE LANDS COMMISSION, CANTONMENTS, ACCRA - APPLICANT

1. **NUNGUA STOOL - 1ST INTERESTED PARTY**
2. **SHERIF BORTEI - 2ND INTERESTED PARTY**
3. **TEMA MUNICIPAL ASSEMBLY - 3RD INTERESTED PARTY**
4. **SAMJOEBA ENTERPRISE - 4TH INTERESTED PARTY**
5. **KIMAG LIMITED - 5TH INTERESTED PARTY**
6. **WESTERN WORLD TRADING - 6TH INTERESTED PARTY**
7. **NETWORK AND FOUNDATION ESTATES - 7TH INTERESTED PARTY**
8. **GRANDEUR DEVELOPERS LTD. - 8TH INTERESTED PARTY**

RULING

DOTSE JSC: (FOR THE MAJORITY OPINION)

The Lands Commission, a Constitutional body established under article 258 of the Constitution 1992, and Lands Commission Act, 2008, Act 767 who are the Applicants herein, have applied to this court, pursuant to article 132 of the Constitution 1992 thereof, for the following:

> *"An order of certiorari directed at the High Court (Lands Division) coram Ocran J, for the purpose of quashing the judgment of the said High Court, dated 19th December 2014 and for any further orders as this court may deem fit to prevent illegality and a failure of justice*." emphasis

GROUNDS OF APPLICATION

The grounds upon which the Applicants have based their application has been stated thus:-

> **"That the High Court (Land Division) presided over by Justice S. H. Ocran committed a jurisdictional error patent on the face of the record when he declared Executive Instruments 46 and 44 of 1973 to be impliedly revoked by the conduct of two state institutions."**

BRIEF FACTS

The Applicants supported their application with a 41 paragraphed affidavit sworn to by James Dadson, the Greater Accra Regional Lands Officer of the Applicant Commission.

The 1st,4th,5th and the 7th Interested Parties have all sworn to affidavits in opposition and or in support thereof, of the instant application.

The rendition of the facts herein constitute the undisputed and bare cold facts of this case.

In 1963, the Lands (Statutory Wayleaves) Act, 1963 (Act 186) was enacted as an Act of Parliament and the headnote to the Act provides as follows:

> *"An Act to provide for entry on land for the purpose of the construction, installation and maintenance of works of public utility and for the creation of rights of way and any other similar rights in respect of the works and for related matters."*

The above is very important as it concerns the rights of the owners of the lands upon which the said Act would be made applicable.

The issue also arises as to whether the original owners of land in respect of statutory Wayleaves created in the case of the construction of the Accra-Tema, Motorway, reference E. I. 46 and 44 of 1973 have unimpeded access or not to the lands the subject matter of the said Instrument Numbers 46 and 44.

Section 1 (1) of Act 186 provides as follows:-

> *"Where the President is of the opinion that it is in the public interest that a right of way or any other similar right over a land be created in respect of the whole or a part of any of the works specified in section 2,* ***the President may subject to this Act, by executive instrument, declare the land specified in this instrument to***

be subject to the statutory Wayleave specified in the instrument." Emphasis supplied

Pursuant to the above Act 186, the erstwhile National Redemption Council Government, created a right of way over two large parcels of land by statutory instruments entitled Lands (Statutory Wayleaves) Accra-Tema Motorway (Phase 1) Instrument, 1973 (Executive Instrument No. 46) and Lands (Statutory Wayleaves) Accra – Tema Motorway (Phase II) Instrument, 1973 (Executive Instrument No. 44).

After the construction of the Accra-Tema motorway which forms part of the land covered under E. I. 46 and 44, portions of the lands covered by the said Instruments have remained unutilized to date. No doubt, the learned trial Judge Ocran J, stated in his judgment which is the subject of this Certiorari application as follows:

"It was agreed between the parties that the land in dispute falls within the land covered by Accra Tema motorway (phase 11) instrument 1973 E. I. 44. This E. I. 44 was made under Land (Statutory Wayleaves) Act, 1963, Act 186."

Following the above phenomenon, in or around 2007, the Accra Metropolitan Planning Committee with the approval of Accra Metropolitan Assembly, re-zoned portions of the exterior of the motorway corridor into industrial/commercial use and amended the planning scheme accordingly.

Based upon the above, the Applicants consequently began processing lease applications in respect of the re-zoned areas from interested individuals, companies and institutions. As a result, Samjoeda Enterprise and KIMAG

Limited (the 4th and 5th Interested parties herein) had their application approved by the Applicants, (there were earlier grants made to the same parties by the 1st Interested Party, the Nungua Stool).

The 1st Interested Party, believing that the conduct of the Applicants in granting leases in respect of the lands covered by E. I. 46 and 44 is wrong subsequently instituted an action with 2nd Interested Party as Plaintiffs as follows:-

Suit No. BL 143/08 intituled, Nungua Stool and Another Vrs Tema Municipal Assembly and Others at the High Court, Lands Division**,** in which they claimed the following reliefs against the Defendants therein, jointly and severally:

(i) Declaration of title to the land described therein.

(ii) An order cancelling the leases granted by 6th Defendants to 2nd, 3rd, 4th and 5th Defendants.

(iii) An order directed at 6th Defendant to process and plot grants by 1st plaintiff particularly the grant to 2nd plaintiff.

(iv) Damages for trespass.

(v) Perpetual injunction.

It has to be noted that, the 1st and 2nd interested parties herein were the plaintiffs in the High Court suit which is the subject of this certiorari application. The 3rd interested party herein, who did not contest the suit at the High Court was the 1st Defendant therein.

The 4th and 5th Interested parties who are in support of the Applicants application to this court, were the 2nd and 3rd Defendants therein in the High court.

The 6th Interested party herein on the other hand was the 4th Defendant therein in the High Court, whilst the 7th interested party herein was the 5th Defendant therein and the Applicants herein were the 6th Defendants in the High Court. The 8th Interested party herein were the 7th Defendants therein in the High Court.

From the pleadings in the High Court, it appears the plaintiffs anchored their case on the following:

(i) That the Applicants herein, therein 6th Defendants had made representation to the 1st interested Party of a process that will result into the release of the unused portion of the land under E.I. 46 and 44 respectively.

(ii) That the two instruments i.e. E.I. 46 and 44 did not affect their ownership and proprietary rights, but only created a right of way over their land, and they could therefore reclaim and or re-possess their land.

SUPREME COURT RULING DATED 5TH DECEMBER 2013

During the trial of the suit at the High Court, the Applicants herein filed an application to dismiss the suit on grounds of lack of Jurisdiction but this was dismissed by the learned trial Judge.

A subsequent application by the Applicants to this court, to quash that ruling was itself refused in a unanimous decision of the court, rendered on its behalf by it's President Wood C. J, in unreported Civil Motion No.J5/4/2014 dated 5th December 2013 intituled -*The Republic v The High Court, (Lands Commission) Accra, Ex-parte The Lands*

Commission, Cantonments, Accra, Nungua Stool & 7 others – Interested Parties in which it was held as follows:-

> *"The applicant commission confesses that the statutory infraction of encroachment on or disposal of public land which they complain of, which no court must in the interest of public policy countenance is not an offence of strict liability but one which is subject to the defence of reasonable cause. I hold the view that, the court, must be given the opportunity to enquire into the disputed facts, after which it must judge whether, the interested parties – respondents have proven reasonable cause, in which case the illegality plea must be examined in that light, or whether this case falls into any of the known exceptions highlighted above, wherefore it would be fraudulent, unconscionable, inequitable or for some other compelling reason be altogether unjustified to uphold the illegality question.* ***In view of the assurance allegedly made by the applicant to the 1st interested party respondent which expectations the latter claims he was encouraged to act on to his prejudice through grants made to the 2nd interested party respondent, provided evidence is led in proof of same, would require that the court scrutinizes the alleged legitimate expectations viz-a-viz the equitable doctrine of proprietary estoppel, a rule which works to prevent a failure of Justice,*** *in order to reach a fair conclusion in this matter.*
>
> *The foregoing analysis amply demonstrates that when the court dismissed the application as being premature at that stage of the*

proceedings, it acted properly within jurisdiction and not in fundamental error as alleged in this application.

What orders were the court expected to make, when it conclusively ruled that the facts in which the application were grounded, being facts in genuine dispute, ought to be investigated first before any effectual determination of the legal questions raised . The weight of the evidence and the law therefore justifies a dismissal of this application to invoke our supervisory jurisdiction. The same is accordingly dismissed. The trial in the High Court is to proceed accordingly, with the applicants being at liberty to raise the two legal questions afresh at any subsequent stage of the proceedings, when the matters referred to have been enquired into."*Emphasis*

Following the conclusion of the trial in the High Court, and the delivery of judgment on the 19th of December, 2014, the Applicants herein state as follows:

"Not surprisingly, no evidence was led by 1st and 2nd interested parties on the alleged representations of the Lands Commission and no reference even made to it in their counsel's written submission although the Applicant led uncontroverted evidence on the absence of any such representations."

HIGH COURT JUDGMENT

There is no dispute that Ocran J, presiding over the High Court, Accra in the suit referred to as *No. BL. 143/08* dated 19th December 2014, delivered

judgment in favour of the 1st and 2nd interested parties herein, therein Plaintiffs, against the other parties in the above suit, therein Defendants.

We have read the judgment of the learned trial Judge, and it is crystal clear that the following constitute the basis for the judgment. The learned trial Judge stated thus:

> **"Under the peculiar factual situation in this case, even though there is no evidence before me that E.I 44 and 46 have been revoked formally, the Acts of the organs of the state, being Town and Country Planning under the Ministry of Local Government Rezoning the land for industrial use, and Lands Commission leasing portions of the land for private use, is conclusive evidence that the wayleaves over the land has been revoked." Emphasis**

From the above rendition of the learned trial Judge, it is clear that the basis for his declaration that the instruments, E.I. 46 and 44 have been revoked has nothing to do with the formalities set out in sections 1(6) of Act 186 and Regulation 16 (1) and (2) of Land (Statutory Wayleaves) Regulation, 1964 (L. I. 334) but subject to what he considered as acts of commission or omission by the two state institutions mentioned Supra.

It must be noted that, after recounting some of the acts of the Applicants in granting leases to 2nd and 3rd defendants therein, herein 4th and 5th Interested Parties, among others, the learned trial Judge continued the judgment thus: -

"These Acts by the town and country planning and the 6th defendant in particular estopps the 6th defendant from saying that the Wayleaves over the land has not been revoked."

SUPERVISORY JURISDICTION OF THIS COURT

Article 132 of the Constitution 1992, provides as follows: -

"The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and directions for the purpose of enforcing or securing the enforcement of it's supervisory power."

This is the jurisdiction that the Applicant has invoked, to wit, that the learned trial judge committed a patent jurisdictional error by holding that E. I's 46 and 44 were impliedly revoked by the conduct of two state institutions that is, the Town and Country Planning Department and the Lands Commission.

Does the High Court, have jurisdiction to declare statutes and subsidiary legislations revoked by any other means other than those set out by law?

This is especially so when the method for revocation of an instrument made pursuant to a statutory Wayleaves has been spelt out under Section 1(6) of Act 186 and Regulations 6 (1) & (2) of L. I. 334 of 1964.

Besides, it should be noted that Act 186 and all the instruments made pursuant to it, including E.I.46 and 44, and Regulation 334 of 1964 constitute the existing law of the country as provided for in article 11 (1) (d) of the Constitution 1992 thereof.

That being the case, it is incumbent upon this court to examine the grounds of the Application critically in terms of article 132 of the Constitution 1992, the peculiar facts of this case as recounted supra and the litany of decided cases on the subject.

It is interesting to observe that, the affidavit of the 1st and 2nd interested parties in opposition devoted a considerable portion thereof to issues such as:

1. That passage of an instrument creating a right of way did not acquire the proprietary interest of the owners of the land under the land (Statutory Wayleaves) Act, 1963, (Act 186) and
2. That title in the said lands over which the wayleaves were created in E.I. 46 and 44 did not vest the lands in the state, so therefore the Lands Commission has no power to grant leases over the unutilised portions of the lands covered by the Instruments.

However, the clear cold words of the learned trial Judge referred to in the judgment show that he actually revoked the E.I. 46 and 44 on account of acts of two state institutions contrary to the contentions of the 1st and 2nd Interested Parties.

Besides, in applications of this nature, the merits of the case are immaterial. As recent as 29th March, 2011, this court in a unanimous decision rendered on behalf of the Court by our esteemed sister, Vida Akoto-Bamfo (Mrs) JSC, in the case of the ***Republic v High Court, Sekondi, Ex-parte Ampong aka Akrufa Krukoko I (Kyerefo III and Others – Interested Parties) [2011] 2 SCGLR, 716 at 722*** set out

the scope and nature of Certiorari under article 132 of the Constitution 1992, where, speaking on behalf of the court, she stated thus:-

"It is evident that, this court is being called upon to invoke it's supervisory jurisdiction in the nature of certiorari. It is therefore necessary to set out it's scope. An order of certiorari, it is trite learning, is a discretionary remedy granted on grounds of excess or want of jurisdiction and or some breach of a rule of natural justice. See *Republic v Court of Appeal, Ex-parte Ghana Cable Co. Ltd. (Barclays Bank Ghana Ltd - Interested Party)* **[2005-2006] SCGLR 107 at 118** where Dr. Twum JSC, delivering the lead judgment of the Supreme Court Said:

"Certiorari is not concerned with the merits of the decision. It is a complaint about jurisdiction or some procedural irregularity like the breach of natural Justice"

"Additionally, it would issue to correct a clear error on the face of the ruling of the court, or an error which amounts to lack of jurisdiction in the court so as to make the decision a nullity. See *Republic v Accra Circuit Court; Ex-parte Appiah [1982-83]1 G.L.R. 129, CA.* In other words, *the applicant must show the existence of an error of law apparent on the face of the record*. As to what constitutes an error of law, this court held in the case of **Republic v High Court Accra; Ex-parte Soku [1996-97] SCGLR 525** per Adjabeng JSC at 529 **that it must be an error so grave as to amount to the wrong assumption of Jurisdiction. It must be so obvious as to make the decision a nullity**. Where, however,

the High Court has made an error of law or fact not apparent on the face of the record, the applicant's remedy lies in an appeal. See *Republic v High Court, Accra; Ex-parte Industrialization Fund for Developing Countries. [2003-2004]1 SCGLR 348*. Emphasis supplied.

Applying the above stated principles to the circumstance of the instant case it shows sufficiently that, this is a fit case where this court should issue the writ of certiorari to quash the judgment of Ocran J, dated 19th December 2014 sitting at the High Court Accra. What are the reasons?

1. In the first place, it is trite learning that the error of law must be patent on the face of the record if such error went to jurisdiction. See also the cases of **Okofoh Estates Limited v Modern Signs Ltd. [1996-97] SCGLR 224 holding 4** and the notable pronouncement by the Supreme Court in the case of *Republic v Court of Appeal, Accra, Ex-parte Tsatsu Tsikata [2005-2006] 612*, where the court unanimously held whilst dismissing an application for certiorari which was directed at quashing a ruling rendered by the Court of Appeal as follows:-

   "The discretionary jurisdiction of the Supreme Court under article 132 of the 1992 Constitution should be exercised only in those manifestly plain and obvious cases where there were patent errors of law on the face of the record, which either went to jurisdiction or were so plain as to make the impugned decision a nullity. The error of law on which the decision was founded, **must therefore be fundamental,**

substantial, material, grave or so serious as to go to the core or root of the matter complained of". *Emphasis supplied*

As is manifest in the instant case, the decision of the trial High Court went to jurisdiction and is so plain and manifest that it admits of no controversy that certiorari must remove it from the records, by quashing it.

However, like was stated supra, if the error is not patent, meaning it is not clearly discernible from the record, certiorari is not an appropriate remedy. In such an instance, an appeal would be a better remedy. See also **Republic v High Court, Accra, Ex-parte Commission on Human Right and Administrative Justice (Addo Interested Party) [2003-2004]SCGLR 312 holding 4.**

We have already stated clearly that Instrument Number E.I 46 and 44, form part of the existing laws of Ghana, reference article 11(1) (d) of the constitution 1992. Being an existing law, the said Instruments have been further given constitutional validity by articles 11(4)(5) and (6) of the Constitution 1992.

Furthermore, like all legislation, the enabling law or the Constitution 1992, has procedure for amendment, repeal or revocation of such laws or Statutory Instruments, (legislative or executive). It is only where there is a conflict and an inconsistency between provisions of the existing law and any constitutional provision that the judiciary intervenes. Even in such cases, it is only the Supreme Court that has exclusive jurisdiction to all other courts to decide such issues. Reference articles 1(2), 2(1) (a) and (b) and (2) and 130(1) (a) and (b) of the Constitution 1992.

2. Secondly, the learned trial judge in assigning reasons for revoking Executive Instrument Numbers 46 and 44 stated quite clearly that he was doing so because of the acts of conduct of two state institutions, namely Town and Country Planning Department and the Lands Commission.

   However, a perusal of all the relevant laws applicable, to wit, Act 186, LI. 334 and E.I. 46 and 44 makes it clear that the learned trial High Court Judge has no such jurisdiction to declare as revoked the said Instruments arising from the reasons assigned.

In the unreported Supreme Court ruling referred to supra, it was stated that the trial court must be given the opportunity to enquire into the disputed facts, to wit, that the Applicants gave assurances to the 1st Interested Party about the possibility of releasing the lands covered by the Wayleaves, Instruments, E. I. 46 and 44. It was also stated that the 1st Interested Party was encouraged to act on those assurances in making grants to the 2nd Interested Party to their prejudice.

We have perused the judgment of the learned trial Judge but has not found any analysis or discussion of the said issues even though the Applicants herein, therein 6th Defendants addressed on it. The inference to be drawn thereby is that, the 1st Interested Party did not lead any evidence on the said assurances.

Even if any evidence was led it would still not cloth the trial High Court with jurisdiction to revoke the E.I. 46 and 44 for the said reasons.

That way of thinking by the 1st Interested Party is suggestive of the fact that, they are aware of the fact that, the Lands (Statutory Wayleaves) Act, 1963 Act 186 operated to deprive them of the use and ownership of the land and hence were awaiting a decision from the Applicants before they can re-possess the land.

We have already referred to the preamble to the Act. We have also referred to the creation of statutory Wayleaves as provided for in section I (1) of the Act elsewhere in this judgment.

It is however worthy of note that, Section 1, (6) of Act 186 provides as follows:-

> *"A land subject to a statutory Wayleave shall despite a rule of law, continue to be subject to the Wayleave until the Wayleave is terminated in accordance with Regulations made under this Act."*

What must be noted very clearly is that, once the parent legislation, in this case Lands (Statutory Wayleaves) Act 1963, Act 186 and the Regulations made under it, to wit L.I.334 of 1964 and E. I. 46 and 44 of 1973 respectively, contain specific and clear procedures by which Instruments enacted therein are to be terminated, revoked and or repealed, it is only these procedures that must be used and or applied whenever any issue of revocation, termination etc of the Instrument is called into question.

Since the revocation of E. I. 46 and 44 by the learned trial Judge completely falls short of laid down procedures, it is clear that the court was in error since it had no jurisdiction to have given the decision it rendered. Under these circumstances certiorari will lie to quash the said decision of 19th December 2014.

The combined and total effect of all the above pieces of legislation is that, where appropriate, a land in respect of which the Wayleaves has been created cannot be available for use by the original owner unless specific legislative steps are taken in accordance with the Act and Regulations made there under.

For example in the instant case, the lands in respect of E. I. 46 and 44 had been created to make way for the construction of the motorway and its related matters. It is therefore clear that, any land in respect of which an instrument had been duly created in respect of Act 186 cannot be revoked, terminated, repealed, amended or taken away unless in accordance with

due process. The procedure adopted by the learned trial Judge in revoking the lands in respect of which a statutory Wayleaves has been created is illegal, wrongful and is a patent error of law on the face of the record.

Certiorari will lie to quash such impugned decisions containing patent errors of law.

3. Thirdly, what a court like this Supreme Court must do whenever such applications are brought before the Court is to consider what the net effect of the decision of the trial court is? In the instant case, when that is considered, the result is that, the learned trial judge, without any jurisdiction whatsoever has purportedly struck down an existing law in E.I. 46 and 44 as having been revoked. Armed with that bold decision, the learned trial judge proceeded to deliver judgment in favour of the 1st and 2nd Interested Parties on their claims and dismissed the counter claims of the Applicants, among others.

   What is therefore certain is that, the said exercise of jurisdiction where none is available to the judge amounts to an exercise which is not only so patent and discernible but laden with errors on the record and thus amounts to a jurisdictional error upon which this court must exercise its supervisory Jurisdiction by quashing it.

CONCLUSION

Having satisfied ourselves, that the Applicants have met requirements for grant of certiorari, we will accordingly proceed to issue certiorari to quash the error contained in the decision of the High Court, Accra presided over by Ocran J, in suit No. BL.143/08 dated 19th December 2014 intituled *Nungua Stool and Another V Tema Municipal Assembly & Others* wherein by that decision two existing executive instruments numbered E.I

46 and E.I. 44 of 1973 were declared to have been impliedly revoked by conduct of two state Institutions. The said proceedings and judgment are accordingly brought up and same are therefore quashed.

We state and emphasise without any reservation whatsoever that the grant of this certiorari application is necessary to correct the patent jurisdictional error committed by the said judge and restore the validity of the two Instruments, E.I. 46 and 44.

Without prejudice to the decision we have come to in this case, we feel constrained to address an issue that is dear to our hearts.

That is, Applicants, as the constitutional body charged with responsibility to manage all public and vested lands must exercise that constitutional mandate prudently.

In that respect, it is recommended that the Applicants and the 1st Interested Party engage themselves in discussions aimed at using ADR to resolve their differences.

The Application thus succeeds in its entirety.

(SGD) **V. J. M. DOTSE**

JUSTICE OF THE SUPREME COURT

(SGD) **J. ANSAH**

JUSTICE OF THE SUPREME COURT

(SGD) **ANIN YEBOAH**

JUSTICE OF THE SUPREME COURT

(SGD) V. **AKOTO - BAMFO [MRS.]**

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

ATUGUBA JSC

FACTS OF THE CASE

The facts of this case, as contained in the statement of case dated the 10th day of April 2015 filed for and on behalf of the 7th Interested party, are as follows:

> "Brief Facts:
>
> The Government of Ghana passed the Lands (Statutory Wayleaves) Act, 1963 (Act 186) to enable entry on any land in the country for purposes of construction, installation and maintenance of works of public utility, and
>
> for the creation of rights of way and other similar rights in respect of such works and other connected purposes. Consequently, in exercise of the powers conferred upon the National Redemption Council by subsection 1 of Section 1 of the Lands (Statutory Wayleaves) Act, 1963), E.I. 46 and E.I. 44 were passed, declaring that in the public interest the disputed land is subject to a wayleave for purposes of a public utility service to enure to the benefit of the Public Works Department.
>
> The lands which were subject to the way leaves, have been sufficiently described in E.I 46 and E.I. 44

....

According to the 1st and 2nd Interested parties, the entire land so described above is owned by 1st interested party and forms part of its ancestral land, but in 1973 the Government of Ghana passed an Executive Instrument, E.I. 44, that is, Lands (Statutory Wayleaves) (Accra-Tema Motorway) Phase II Instrument, 1973 creating statutory wayleaves over the land. 1st and 2nd interested parties contended that the E.I.s of 1973 were issued pursuant to the Statutory Wayleaves Act of 1963 (Act 186) and that only created a right of way over the land but 1st interested party's ownership and title to the land was never interfered with.

....

The Government of Ghana used a portion of this land for the entire Accra-Tema Motorway but could not develop the entire width of the subject land described in E.I. 46 and 44.

In or around 2007, the Applicant herein with the approval of the Metropolitan Authority and the Town and Country Planning rezoned portions of the exterior corridor of the Accra-Tema motorway into commercial/industrial plots and processed grants for leases from the interested parties in respect of portions of the subject land where upon the 1st and 2nd interested parties instituted an action in the respondent High Court"

Claiming declaration of title and ancillary reliefs. Judgment was given "for the said interested parties. The applicant thereupon has brought this application for an **Order of Certiorari** directed at the High Court (Lands Division) presided over by His Lordship Justice S.H. Ocran, to move into this Honourable Court for the purpose of quashing the judgment dated 19th December, 2014, ... and for any further orders as this Honourable Court may deem fit to prevent illegality and a failure of justice.

<u>The Ground for the Application is as follows</u>:

1. That the High Court (Land Division) presided over by Justice S.H. Ocran committed a jurisdictional error patent on the face of the record when he

declared Executive Instruments 46 and 44 of 1973 to be impliedly revoked by the conduct of two State institutions"

Decision

For error of law on the face of the record to lead to the quashing of a decision the error as held in *Republic vrs Court of Appeal, Accra, Ex parte Tsatsu Tsikata* [2005-2006] SC GLR 612 at 619 "must be fundamental, substantial, material, grave or so serious as to go to the root of the matter. The error of law must be one *on which the decision depends*. *A minor, trifling, inconsequential or unimportant error, or for that matter an error which does not go to the core or root of the decision complained of; or stated differently, on which the decision does not turn, would not attract the court's supervisory intervention*." (e.s)

In this case though the holding of the judge that the aforementioned Executive instruments were impliedly revoked by the applicant's conduct is erroneous in law his decision cannot be said to be thereby vitiated since it is also based on the ground that the said Instruments did not vest title in the land in question in the state or institution concerned. The latter holding is quite clearly right in law and therefore the decision remains sound despite the said error of law. Indeed in *National Trust for places of Historic Interest* or *Natural Beauty v Midlands Electricity Board* and Another (1952)1 Ch 380 the grantees of a statutory wayleave were sued for breaches of covenants relating to the land in question by the owners of the land. Though unsuccessful their title thereto was never questioned.

The headnote of that case as far as relevant is as follows:

"By a deed dated April 2, 1936, and made between the Ecclesiastical Commissioners (the predecessors in title of the Church Commissioners, the second defendants) of the one part and the plaintiffs of the other part, it was recited that the commissioners had agreed to impose on certain common lands of which they were the owners restrictive covenants therein contained for the benefit of Midsummer Hill (owned and occupied by the plaintiffs) and for the purpose of preserving the amenities of the Malvern Hills, and the two relevant restrictive covenants were: (1) No act or thing shall be done or placed or permitted to remain upon the land which shall injure prejudice affect or destroy the natural aspect and condition of the

land and (2) No building shall at any time hereafter be erected upon any part of the land by or with the consent of the covenantors.

The first defendants, an area board constituted under the Electricity Act, 1947, entered on a small part of those common lands and began to erect poles on it for the purpose of carrying electric cables across it. In an action brought by the plaintiffs claiming an injunction against both defendants to restrain the erection or maintenance of the poles on the common lands:-

Held, (1) that the first covenant was void for uncertainty and therefore unenforceable; (2) that it was only *as owners of Midsummer Hill that the plaintiffs would have had any right of action in respect of those covenants and no right of theirs as such owners had been infringed*; (3) that there had in fact been no breach of either covenant and (4) that in any event the first defendants were acting within their statutory powers, so that, even if the covenants had been (a) enforceable and (b) infringed, both defendants were relieved from any obligation to comply with the restrictions." (e.s)

This case clearly shows that the statutory wayleave there granted to the first defendants did not affect the ownership rights of the owners of the land in question except to the extent warranted by the terms of the said wayleave. See also *Central Electricity Generating Board v Jennaway* (1959)I WLR 937. This is reinforced by reference, to s.6(2) of Act 186 which shows that where the operation of the wayleave results in an accretion to the value of the land the owners' compensation for loss is to be reduced by the amount of such accretion in the said land of the owner. The Act thereby acknowledges that ownership of the land subject to a way leave remains in the owner thereof.

If I had considered it useful to do so I would have granted the Certiorari but limited to that part of the decision relating to the revocation by conduct of the statutory Instruments in question. But in view of my conclusion I see no utility in that course.

There is nothing however in my opinion which warrants an owner of land's interference with the terms of a wayleave. Neither can a statutory wayleave

warrant the subversion of the rights of the owner of the land in question which are consistent with the terms of the wayleave involved.

It follows that the error complained of is not the operative basis for the respondent court's decision.

I say nothing about the disputed questions of fact which are matters for appeal.

For these reasons I dismiss the application.

(SGD) **W. A. ATUGUBA**

JUSTICE OF THE SUPREME COURT

COUNSEL

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JOE SLOV TIA ESQ.(WITH HIM CEPHAS MATEY FOR 7TH INTERESTED PARTY).