THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: ANSAH, JSC (PRESIDING)

DOTSE, JSC

YEBOAH, JSC

MARFUL-SAU, JSC

KOTEY, JSC

CIVIL MOTION
NO. J5/40/2018

31TH JULY, 2019

THE REPUBLIC

VRS

HIGH COURT, GENERAL JURISDICTION (6)

ACCRA

EX PARTE: ATTORNEY-GENERAL ..... APPLICANT

EXTON CUBIC GROUP LTD ..... INTERESTED PARTY

R U L I N G

MARFUL-SAU, JSC :- The applicant in this proceeding is praying for an order of certiorari directed at the High Court, General Jurisdiction (6), Accra presided over by His Lordship Ackaah – Boafo, J. to quash the ruling of that court dated the 8th of February 2018 in suit No. GJ/1424/17 entitled the Republic v. Minister for Lands and Natural Resources, Exparte Exton Cubic Group Limited and the Attorney-General,

Interested Party. In the said suit, the interested party herein had applied to the said High Court for certiorari to quash a letter written by the Minister for Lands and Natural Resource, dated 4th September, 2017, revoking the Mining Leases purportedly granted to the interested party. In its ruling dated the 8th of February 2018, the High Court found the Minister's letter revoking the Mining Leases unlawful and for that reason quashed the letter by an order of certiorari. It is this order of the High Court that has become the subject of this application.

The brief facts of the case are that the interested party, Exton Cubic Limited, on the 29th October 2016 applied for Mining Leases in respect of three areas in the Ashanti Region; namely Kyekyewere- 56.64 sq km; Mpasaso- 22 sq.km; and Kyirayaso- 32.68 sq. km. It is the case of the applicant herein that these three Mining Leases constitute about seventy-nine percent (79%) of the nation's known bauxite resources. The Minerals Commission on 10th November 2016 offered the Mining Leases to the interested party, who proceeded to pay for them on the 12th December 2016. The processes filed in this application, disclosed that no notification of the application by the interested party was published in the Gazette, to enable such Gazette exhibited at the offices of the District Assembly, which had jurisdiction over the area covering the three leases. The chief or allodial owner of the land was also not notified of the Interested Party's application.

The processes filed further disclosed that the Minerals Commission made the offer to the interested party before forwarding its recommendations on the applications to the Minister for Lands and Natural Resources, contrary to sections 12 and 13 of the Minerals and Mining Act, Act 703. It was also alleged that the interested party failed to obtain the requisite Forestry Commission and Environmental Protection Permits, before attempting to commence mining operations in the areas. Then on the 4th September 2017, the Minister for Lands and Natural Resource, wrote to revoke the three leases granted the interested party, citing several infractions of the law committed in the grant of the three Mining Leases. This was the letter quashed by the High Court, Accra, in the ruling dated the 8th February 2018, which is the subject of this application.

In his statement of case filed in support of the application, learned Counsel for the applicant, the Deputy Attorney- General argued that the grant of the three Mining Leases to the interested party was void, as the processes preceding the grant were in breach of the Constitution and several provisions of the Minerals and Mining Act, Act 703, as well as, the Minerals and Mining Regulations, 2012, LI 2176. Indeed, the main thrust of applicant's case, is that the three leases granted to the interested party violated article 268 (1) of the Constitution, as the leases had not been ratified by Parliament. The applicant also posited that the grant of the three leases violated several provisions of the Mining and Minerals Act, Act 703. These violations included the lack of publication of notice of the pendency of the application for the Mining Leases in the Gazette, and the subsequent notification of the application to the Chief or allodial owner, as well as exhibiting notice of the Gazette at the offices of the District Assembly, as required by section 13 of Act 703 and Regulation 177 of L.I.2176.

The applicant further argued that the grant of the three Leases were in breach of sections 12 and 13 of Act 703, in that the Minerals Commission offered the leases to interested party, before recommending the applications to the Minister for Mines and Natural Resources. The law provided that the recommendation shall first be made to the Minister, who is required to take a decision on the recommendation and inform the interested party within sixty (60) days from date of receipt of the recommendation. The applicant also alleged that interested party failed to procure the necessary Forestry Commission and Environmental Agency Permits, before it attempted to carry out its mining operations, contrary to section 18 of Act 703. The applicant finally argued that, interested party's decision to initiate proceedings at the High Court was wrong in law, because section 27 of Act 703 required that disputes arising under the Act was to be referred to Arbitration and not litigation in court.

Learned Counsel for the interested party, Mr. Osafo Buabeng, in opposing the application, argued that the non-ratification of the three Mining Leases by Parliament, as required by article 268, did not make the three Mining Leases invalid. Counsel argued that the acquisition of the three Mining Leases, was in stages and

the ratification by Parliament was the last stage of the process. Counsel contended that the Mining Lease must be in existence before Parliament can ratify.

Counsel further argued that article 268 of the Constitution must be distinguished from article 181, which deals with Parliamentary approval of International Agreements executed by the Government of Ghana. Counsel for interested party argued that the difference between the two provisions in the Constitution, is that article 181 specifically provides that such agreements without Parliamentary approval are void and unenforceable. Counsel continued that unlike article 181, article 268 did not specifically provide that non ratification of a Mining Lease by Parliament rendered such Mining Lease unenforceable. In any case, Counsel argued that, it was the responsibility of the Minister for Lands and Natural Resources to submit the three Mining Leases to Parliament for ratification and if the Minister failed to do so, the interested party should not be made to suffer for the default of the Minister.

On the Forestry Commission and Environmental Protection Permits, Counsel for interested party denied the claim and insisted that the interested party had procured all the necessary permits to enable it operate the mines. With regard to the publication of the notice of the application in the Gazette and notification to the District Assembly and the Chief or allodial owner, Counsel for interested party contended further, that these were statutory obligations of the Minister for Lands and Natural Resources and the Agencies under the Ministry; and not the interested party. On the argument that interested party was wrong in resorting to court action instead of Arbitration, Counsel for interested party argued that section 27 of Act 703 was inapplicable. Counsel contended that for section 27 to be applicable, the nature of dispute must be designated under Act 703 as one amenable to Arbitration. He further argued that disputes under section 68 of Act 703, under which the Minister revoked the Mining Leases were not disputes designated for Arbitration.

Besides, Counsel for interested party further argued that even if the disputes were amenable to Arbitration, the interested party could not have resorted to it, since under section 27 of Act 703, the right to arbitrate was vested in holders of mining rights. According to Counsel, at the time interested party commenced the action at

the High Court, the Minister had revoked the Mining Leases, so the interested party in the circumstances, was not a holder of a mining right, to enable it refer the dispute for Arbitration. Accordingly, the only option left for the interested party was to initiate the action in the court. Counsel for interested party thus urged us to dismiss the application brought by the applicant.

On these facts the applicant is urging us to bring to this court the ruling delivered by the High Court, Accra dated the 8th February 2018 for same to be quashed. The applicant formulated three grounds for this application. These are: -

1. The High Court had no jurisdiction to enforce non-existent rights claimed under a purported mining lease which had not been ratified by Parliament in accordance with article 268(1) of the Constitution, and also had failed to comply with mandatory provisions of Minerals and Mining Act, 2006 (Act 703)

2. The proceedings of the court below were void as same were in violation of Act 703

3. The High Court acted without jurisdiction when it heard and determined the interested party's suit in violation of the mandatorily prescribed provisions of section 27 of Act 703.

We observed, however, that the applicant in his statement of case argued the above grounds under three headings namely;

> ''1. Lack of jurisdiction of the Court to grant a certiorari to protect a non-existent right.
>
> 2. Wrongful assumption of jurisdiction of the court Coram Ackaah -Boafo J in violation of Act 703
>
> 3. Error of law patent on the face of the record in the proceedings in question.

The record disclosed that learned counsel for interested party also answered applicant's statement of case in the way the legal arguments were presented as indicated above. We note, however, that the said legal arguments were submitted

pursuant to the grounds on which the application was made, accordingly, we shall address the main grounds set out in the Motion initiating this action.

The first ground is that the High Court had no jurisdiction to enforce non-existent right claimed under a purported mining lease which had not been ratified by Parliament in accordance with article 268 (1) of the Constitution and also had failed to comply with the mandatorily provisions of the Minerals and Mining Act, Act 703.

The application that went before the High Court was for certiorari to quash the letter written by the Minister for Lands and Natural Resources, which revoked the three Mining Leases granted to the interested party herein. In that letter of 4th September 2017, the Minister catalogued legal infractions committed prior to the grant of the three Mining Leases to the interested party. These infractions were against article 268 of the Constitution and provisions of the Minerals and Mining Act, Act 703 and the Regulations made pursuant to Act 703. The application was opposed by the applicant herein, (then the interested party in the High Court), on grounds that the Mining Leases as granted were non-existent as they had not been ratified by Parliament in accordance with article 268 of the Constitution. It was also argued that the grant was made in violation of provisions of Act 703.

The High Court in determining the application did not restrict itself to the issue whether the Minister for Lands and Natural Resources had the legal right to revoke the Mining Leases granted to the interested party, but assumed jurisdiction to determine the issues raised by the applicant herein in opposing interested party's (then applicant) application. The High Court then made two profound findings and held that the interested party had no mining right as the three Mining Leases had not been ratified by Parliament and also sections 12 and 13 of Act 703 were breached by the Minerals Commission prior to the grant of the three Mining Leases. This forms the basis of applicant ground (1) in this application.

We understand the applicant as arguing that, having found that the three Mining Leases were illegal and as such no mining right had been acquired by the interested party, the High Court erred in law in granting the application for certiorari to quash the Minister's letter, which in effect dealt with the illegalities, the High Court itself

found and held that no mining right was acquired by the interested party. At this stage we will like to quote the findings made by the High Court concerning the illegalities in its ruling of 8th February 2018.

At page 35 to 37 of the ruling, the learned Judge delivered as follows: -

> ***'' (98) The fundamental issue dovetails with other sub-issues such as the thorny issue as to whether or not there were non-compliance with statute and whether or not Applicant has a ''Mining Right''. I shall therefore address the arguments made before considering the main issue. A cursory look at the materials filed and in particular the affidavit in opposition and the Exhibits 1 to 5 show, prima facie, that the application and the circumstances leading to the signing of the lease did not comply with the statute even though the applicant vehemently denies same and has submitted that it should be presumed to have complied with the statute.***
>
> ***(99) By section 12 of the Minerals and Mining Act, 2006, the Minerals Commission is required by law to submit its recommendation on an application for mineral right to the Minister within ninety days after receiving an application. The provision of the law runs as follows:***
>
> ***12. The Commission shall, unless delay occurs because of a request for further information from an applicant or a delay is caused by the applicant, submit its recommendation on an application for a mineral right to the Minister within thirty days of receipt of the application.***
>
> ***(100) Significantly, the Minister is required by law to within sixty days upon the receipt of the recommendation make a decision and notify the applicant in writing. This proposition is reinforced by section 13 of Act 703, which provides:***
>
> ***Grant of Mineral Right***

13. (1) The Minister shall within sixty days on receipt of recommendation from the Commission make a decision and notify the applicant in writing of the decision on the application and where the application is approved, the notice shall include details of the area, the period and the mineral subject to the mineral right.

(2) The Minister shall, not less than forty-five days prior to making a decision under subsection (1), give a notice in writing of a pending application for the grant of a mineral right in respect of the land to a chief or allodial owner and the relevant District Assembly.

(3) A notice given under subsection (2) shall

(a) state the proposed the boundaries of the land in relation to which the mineral right is applied for and

(b) be published in

(i) a manner customarily acceptable to the areas concerned, and (ii) the Gazette and exhibited at the office of the District Assembly within those districts, a part of the area is situated.

(4) The applicant shall within sixty days of receipt of notification of approval, notify the Minister in writing of acceptance of the offer of the grant.

(101) The combined effect of these statutory provisions is that where a party applies for a mineral right, the Commission is required to submit a recommendation to the Minister and he makes the decision to either approve or reject same. But is that what happened based on the materials filed in this case? Exhibit 1 shows that the application was made on or about October 26, 2016. Exhibit 2 shows that on November 10, 2016, the Minerals Commission informed the Applicant that it would recommend to the Minister to grant the lease but advised the Applicant to pay the required fees and says the offer is open for 60 days from the date of the letter. The Applicant went

ahead to make the payment on December 12, 2016. Consequently, by Exhibit 4, the Commission by a letter dated December 28, 2016 recommended to the Minister to grant the Applicant a 22-year Mining Lease and accordingly attached three mining leases for the Minister's signature. The Minister signed the leases the next day. Clearly, based on the law as stated above and a thorough review of the materials filed, I have no hesitation in concluding that the Minerals Commission had no authority to offer the Applicant the leases and request it to make payment before the recommendation. It is the prerogative of the Minister to offer the lease and not the Commission. It is also clear that the statutory timelines were not complied with in this case.

(102) Further, before turning to the main question of this application, it is convenient, in so far as it is relevant to also address the issue of Parliamentary ratification of the lease signed. I do not understand learned counsel for the Applicant to argue that the lease is ratified by Parliament. The Applicant concedes that there is no Parliamentary ratification but argues that it cannot be the basis for the invalidation of the lease because the Respondent is the one who is to place same before Parliament for ratification and not the Applicant. In the light of Clause 1 (f) of the signed lease and article 268 of the Constitution, I agree with the submission in principle but it raises the question as to whether or not the absence of that, the Applicant has a mineral right to empower it to start mining or just has a signed lease awaiting Parliamentary ratification. To my mind, without a Parliamentary ratification the Applicant cannot be said to have a mineral right based on the wording of the lease and the Constitutional provision and case law."

We have taken the trouble to reproduce the above portion of the ruling to enable us better appreciate the case put up by the applicant herein, that the High Court had no jurisdiction to grant certiorari to protect a non-existent right.

WHAT IS THE LAW ON PREROGATIVE WRITS?

The law is now well settled by this court. In the case of **Republic v. High Court (Commercial Division) Accra; Ex parte the Trust Bank Ltd (Ampomah Photo Lab Ltd & Three Others (Interested Parties) {2009} SCGLR 164,** this court speaking through Dr. Date-Bah, JSC stated the law at page 169 to 171 as follows:

> **'' The current law on when prerogative writs will be available from the Supreme Court to supervise the superior courts in respect of their errors of law was re-stated and then fine- tuned in the cases of Republic v. High Court Accra; Ex parte Commission on Human Rights and Administrative Justice(Addo Interested Party) {2003-2004} 1 SCGLR 312 and Republic v. Court of Appeal; Exparte Tsatsu Tsikata {2005-2006} SCGLR 612 respectively. In my view, the combined effect of these two authorities results in a statement of the law which is desirable and should be re-affirmed. This court should endeavour not to backslide into excessive supervisory intervention over the High Court in relation to its error of law. Appeals are better suited for resolving errors of law. In Exparte CHRAJ (supra), this court, speaking through me, sought to reset the clock on this aspect of the law (as stated at pages 345-346 of the Report) as follows:**
>
> **''The ruling of this court in this case, it is hoped, provides a response to the above invitation to restate the law on this matter. The restatement of the law may be summarised as follows: where the High Court(or for that matter the Court of Appeal) makes a non-jurisdictional error of law which is not patent on the face of the record(within the meaning already discussed), the avenue for redress open to an aggrieved party is an appeal, not judicial review. In this regard, an error of law made by the High Court or the Court of Appeal is not to be regarded as taking the Judge outside the court's jurisdiction, unless the court has acted ultra vires the**

Constitution or an express statutory restriction validly imposed on it.

To the extent that this restatement of the law is inconsistent with any previous decision of this Supreme Court, this court should be regard as departing from its previous decision or decisions concerned, pursuant to article 129(3) of the 1992 Constitution. Any previous decisions of other courts inconsistent with this restatement are overruled''.

At page 170 of the report the learned jurist continued the re-statement of the law as follows;

''In Exparte Tsatsu Tsikata (supra), Georgina Wood JSC (as she then was) said (as stated at page 619 of the Report) thus:

"The clear thinking of this court is that, our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which errors either go to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of law alleged 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 jurisdiction.''

The learned jurist continued on the same page as follows:

'' The combined effect of these two authorities, it seems to me, is that even where a High Court makes a non- jurisdictional error which is patent on the face of the record, it will not be a ground for the exercise of the supervisory jurisdiction of this court unless the

error is fundamental. Only fundamental non-jurisdictional error can find the exercise of this court's supervisory jurisdiction. The issue which arises, on the facts of this case then, is whether the trial High Court either committed a jurisdictional error which is so fundamental as to attract the supervisory jurisdiction of this court."

The above restatement of the law was adopted and affirmed by this court in the case of ***Republic v. High Court, Kumasi; Ex parte Bank of Ghana & Others (Sefa & Asiedu Interested Parties) (No. 1); Republic v. High Court, Kumasi; Exparte Bank of Ghana & Others (Gyamfi & Others Interested Parties (No. 1)(Consolidated) {2013-2014} 1 SCGLR 477.***

The record in this case is clear that the trial High Court had jurisdiction to hear the application that was brought before it, which resulted in the ruling of the 8th February 2018. From the re-statement of the law, we can only exercise our supervisory jurisdiction as invoked by the applicant herein, if we find that the trial High Court committed error of law patent on the record. The other condition is that the said error should be fundamental or substantial going to the root of the matter and rendering the impugned decision a nullity. It has been urged by learned counsel for applicant that the trial High Court committed error of law patent on the record, by granting the remedy of certiorari to protect a right that was non-existent.

Now, the question we need to address is whether or not, the High Court in the application before it did enforce a non -existent right. We can only answer this question upon a careful examination of the relevant provisions of the Constitution and the Minerals and Mining Act, Act 703. In this regards, we will start our examination from article 257(6) of the Constitution which provides as follows: -

''257 (6). Every mineral in its natural state in, under or upon any land in Ghana, rivers, streams, water courses throughout Ghana, the exclusive economic zone and any area covered by the territorial sea or continental shelf is the property of the Republic of Ghana and

shall be vested in the President on behalf of and in trust for the people of Ghana.

The above provision is very clear and our understanding of it is that, every mineral found in Ghana is for the Republic as a whole and the President holds the mineral in trust for the people of Ghana, whose representatives are in Parliament. The Constitutional provision in article 268 that such mining leases shall be subject to Parliamentary ratification derive its source and wisdom from article 257 (6). It was for a good reason that the framers of our Constitution provided that the people of Ghana, who are the owners of the minerals found in Ghana, had a voice in any contract or undertaking involving the grant of any such mineral, through their representatives in Parliament.

The reason is that the President on whose behalf the Minister for Land and Natural Resources acts is only a trustee of the mineral.

Article 268 (1) of the Constitution then provides thus: -

"Any transaction, contract or undertaking involving the grant of a right or concession by or on behalf of any person including the Government of Ghana, to any other person or body of persons howsoever described, for the exploitation of any mineral, water or other natural resource of Ghana made or entered into after the coming into force of this Constitution shall be subject to ratification by Parliament."

The intention of subjecting any transaction involving the exploitation of any mineral to Parliamentary ratification, was to ensure that such transaction had received the approval of the actual owners of the mineral, the people of Ghana, such approval expressed through their representatives in Parliament as engineered by the Constitution. 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.

We further observed that it is not for nothing that article 268 (1) is virtually repeated in section 5 (4) of the Minerals and Mining Act, Act 703 as follows;

> **''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.''**

Then the Lease Agreement itself also provides for Parliamentary ratification and the procedure for the ratification in Clause 1 (f) as follows: -

> ***''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 the execution of this Mining Lease, the Company shall submit a certified true copy of the Mining Lease to the Minister to be laid in Parliament for ratification.''***

Clearly, from the above provisions in the Constitution and Act 703, it cannot be denied that a holder of a Mining Lease has a responsibility to ensure that the lease is ratified by Parliament to make the Lease valid. Counsel for the interested party in his argument contended that the responsibility was on the Minister to get the Mining Lease ratified by Parliament and also that there is no time frame for the ratification by Parliament. The contention is wrong, as Clause 1(f) of the Lease Agreement clearly stipulate that, upon execution of the Agreement the Company, in this case the interested party, shall submit a certified copy of the Lease to the Minister to place same before Parliament. In this case the Mining Leases were executed on 29th December 2016. The application for Judicial Review to quash the Minister's revocation letter was filed in the High Court on 10th October 2017, and as at that date there was no evidence that a certified copy of the Lease Agreement had been submitted to the Minister to be laid in Parliament. This was a clear violation of Clause 1 (f) of the very Mining Lease Agreement which the interested party sought to enforce in the High Court.

We are of the considered opinion that the three Mining Leases of the interested party were granted in violation of Constitutional and Statutory provisions as demonstrated in this ruling. We think going forward the Minerals Commission and all Agencies involved in the grant of Mining Lease in this country would enforce the laws regulating the grant of mining rights, in order to promote a better management of our natural resources, such that the aspiration of the framers of our Constitution are met. Clearly, therefore the interested party herein from the record had no mining right that was enforceable and the High Court Judge was right when he found so in his ruling of 8th February 2018. However, on founding that the interested party had no mining right in law, it was wrong for the High Court to have purported to protect the very non-existent right. Indeed, having found that interested party had no mining right, it was illogical and absurd for the same court to grant the certiorari application, which for all intent and purposes amounted to protecting the three Mining Leases with their illegalities. In the circumstances, we find that the High Court Judge seriously committed error of law patent on the record, which was very fundamental and the said ruling ought to be quashed.

As we have earlier observed in this ruling, the trial High Court had jurisdiction to entertain the application by the interested party and the law, as we have stated is clear that when a superior court, such as the High Court commits non-jurisdictional error the remedy for an aggrieved party is to appeal, however, where there is clear error of law patent on the record, which is fundamental rendering the decision a nullity, then that decision is amenable to certiorari to be quashed.

It is trite that certiorari is a discretionary remedy and for that matter it ought to be granted for legitimate purpose as in protecting a legal right. Indeed, certiorari is granted or issued to correct a wrong but not to protect wrong or illegalities. A court should therefore frown on decreeing orders of certiorari to protect non-existent rights or rights vitiated by illegalities such as in this case.

The Minister's letter which was quashed by the trial court, was an administrative measure he took to ensure that the constitution and relevant statutes regulating the grant of the three Mining Leases were complied with. As already observed in this ruling, the Minister's letter recited several infractions of the law committed by the

Minerals Commission in the course of granting the Mining Leases to the interested party. These irregularities were confirmed by the profound findings and holding of the trial court; that being the case, we are of the view that there was no legal basis for quashing the said letter. We think that the Minister in exercising his oversight responsibility was enjoined by law, to correct or prevent any wrong or infraction of the law by institutions or agencies under his administrative supervision.

The law as we have known it, must be applied in all cases, with an objective of achieving justice and good governance in our constitutional dispensation. The law, therefore should not be applied against a public officer who's conduct was to ensure compliance of the very laws, the courts are established to protect and enforce. It is for the above reasons that we recall what **Acquah, JSC (as he then was) said in the case of Republic v. High Court, Accra, Exparte Attorney – General (Delta Foods Case) {1998-1999} SCGLR 595. At page 610 of the report the learned jurist of blessed memory delivered thus:**

> **''It is, important to appreciate that the prayer for the grant of certiorari must be considered from a very broad perspective. For, being a discretionary remedy, it must be demonstrated that there is real justification and benefit for its grant. Accordingly, where the results of granting the order achieves no real or just result, the discretion would not be exercised. Thus, in Halsbury's Laws of England (3rd ed), Vol 11, page 266 it is stated: where grounds are made out upon which the Court might grant the order, it will not do so where no benefit could arise from granting it.''**

The instant case is one for which the court should not have granted the order of certiorari, in view of the constitutional and statutory infractions committed leading to the grant of the three Mining Leases. Indeed, the trial High Court being a superior court had the inherent power, at the hearing of the application, to declare the three Mining Leases invalid in view of the illegalities that had occurred in the course of acquiring the leases.

In the **Republic v. High Court, Kumasi; Exparte Bank of Ghana , & Others (Sefa & Asiedu, Interested Parties) (No. 1); Republic v. High Court, Kumasi; Exparte Bank of Ghana & Others (Gyamfi & Others, Interested Parties) (No.1) (Consolidated), (supra),** this court delivered itself at holding (4) as follows:

> **''It was also well settled that a court which had made a void order or a superior court could set aside a void order no matter how the void order was brought to its notice. A court could not shut its eyes to the violation of a statute as that would be very contrary to its raison d'etre. If a court could suo moto take the question of illegality even on mere public policy grounds, then a court could not fail to take up the issue of illegality arising from statutory infraction which had duly come to its notice. The courts were servants of the Legislature. Consequently, any act of a court that was contrary to statute would be a nullity unless expressly or impliedly provided. No judge had authority to grant immunity to a party from the consequences of breaching an Act of Parliament.''**

See **also Network Computers Systems Ltd v. Intelsat Global Sales & Marketing Ltd {2012} 1 SCGLR 218 and Republic v. High Court (Fast Track Division) Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others, Interested Parties) {2009} SCGLR 390.**

From the discussions above, we find that the interested party had no mining rights in the three Mining Leases it purportedly acquired from the Minister for Lands and Natural Resources. The people of Ghana acting through their representatives in Parliament never ratified the three Mining Leases as required by the Constitution, thus denying the interested party any right in the said Leases. We shall conclude on ground (1), that the trial High Court committed error of law patent on the record, when he granted the certiorari application brought before it by the interested party herein.

After making a profound finding and holding that the interested party had no mining right, the High Court proceeded to quash the letter by the Minister, which sought to revoke the grant of the three Mining Leases, for reasons that the grant was made in violation of Constitutional and Statutory provisions as discussed. We therefore hold that ground (1) succeeds and on that ground alone, the ruling of the High Court dated the 8th of February 2018 will be quashed.

Looking at the other two grounds on which this application was based, we observed that ground (2), which alleged that the proceedings in the High Court were void in violation of Act 703, had been addressed in this ruling under ground

(1) The last ground relates to the claim that interested party was wrong in initiating the action in the High Court, rather than proceeding under section 27 of Act 703 for the dispute resolution mechanism provided therein. We think that no useful purpose will be served under the circumstances of this case, in addressing same, since we have made a finding that the interested party had no mining right. Without a mining right, the interested party could not have resorted to the dispute resolution mechanism under section 27 of Act 703.

In conclusion, we think that the instant application for certiorari is well grounded, as demonstrated and same is hereby granted. Accordingly, the ruling of the High Court dated the 8th February 2018 is to be brought up for same to be quashed. The application succeeds accordingly.

(SGD) S. K. MARFUL-SAU

(JUSTICE OF THE SUPREME COURT)

ANSAH JSC:-

I agree with the reasoning and conclusion of my brother Marful-Sau JSC.

J. ANSAH

(JUSTICE OF THE SUPREME COURT)

DOTSE JSC:-

I agree with the reasoning and conclusion of my brother Marful-Sau JSC.

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

YEBOAH JSC:-

I agree with the conclusion and reasoning of my brother Marful- Sau JSC.

ANIN YEBOAH

(JUSTICE OF THE SUPREME COURT)

PROF. KOTEY:-

I agree with the reasoning and conclusion of my brother Marful-Sau JSC.

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

COUNSEL

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WITH HIM MRS STELLA BADU (CHIEF STATE ATTORNEY), MISS VERONICA ADIGBO

(SENIOR STATE ATTORNEY) AND MISS YVONNE BANNERMAN (SENIOR STATE ATTORNEY)

REINDORF TWUMASI ANKRAH FOR THE INTERESTED PARTY WITH HIM GLORIA AMOAH