

**IN THE SUPERIOR COURT OF JUDICATURE,  
IN THE AUTOMATED/FAST TRACK COURT HELD IN ACCRA  
ON FRIDAY 27<sup>TH</sup> MARCH 2009  
BEFORE HER LADYSHIP, IRISMAY BROWN, (MRS.) JUSTICE OF THE  
APPEAL SITTING AS AN ADDITIONAL HIGH COURT JUDGE.**

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SUIT NO. A (EN) 1/2005.

1. CENTER FOR PUBLIC INTEREST LAW  
2. CENTER FOR ENVIRONMENTAL LAW .....PLAINTIFF

VS

1. ENVIRONMENTAL PROT. AGENCY  
2. MINERALS COMMISSION  
3. BONTE GOLD MINES .....DEFENDANTS

**VERDICT**

The Court declares that:

- That the 3<sup>rd</sup> defendant is in breach of its statutory obligations to minimize the degradation of the environment during and upon termination of its operations and/or activities at Bonteso in Ghana.
- That the 3<sup>rd</sup> defendant is in breach of its statutory obligation to rehabilitate the affected areas upon causing its degradation.
- That, 1<sup>st</sup> and 2<sup>nd</sup> defendant are under a mandatory statutory obligation to monitor and control the activities of the 3<sup>rd</sup> defendant to ensure that, their mineral operations and/or business activities are carried on without breaching their statutory obligations.
- The defendants are jointly and severally liable to the people adversely affected by the harm and damage caused to the environment and their properties as a result of the default of the defendants.
- The court is unable to make an order of mandatory injunction directed at the defendants for reasons stated in the main body of the judgment.

- The plaintiffs have locus standi and are highly recommended for pursuing this action.
- The defendants are jointly and severally liable for all costs incurred by the plaintiffs in pursuing this suit, such cost to be assessed.

**IN THE SUPERIOR COURT OF JUDICATURE,  
IN THE AUTOMATED/FAST TRACK COURT HELD IN ACCRA ON  
TUESDAY, 5<sup>TH</sup> MAY 2009**

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SUIT NO. A (EN) 1/2005

**Coram**

**HER LADYSHIP IRISMAY BROWN, (MRS.)  
JUSTICE OF THE HIGH COURT**  
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1. CENTER FOR PUBLIC INTEREST LAW
2. CENTER FOR ENVIRONMENTAL LAW ..... PLAINTIFF

i. VS

3. ENVIRONMENTAL PROT. AGENCY
4. MINERALS COMMISSION
5. BONTE GOLD MINES ..... DEFENDANTS

**JUDGEMENT**

Plaintiffs have sued the defendants to compel them to perform their statutory obligations in respect of damage to the environment caused by the mining activities of the third defendant.

**CASE OF PLAINTIFF**

Plaintiff states its objectives, contained in Regulations filed at the Registrar General's Department as including the provision of consultancy and legal services to Ghanaians on matters of public interest particularly, in environmental and human rights matters.

The first defendant (E.P.A) is a statutory body under the Ministry of Environment and Science, set up to advise on the formulation of policies on all aspects of the environment and to co-ordinate activities for the protection of the environment; and the 2<sup>nd</sup> defendant, Mineral Commission (Commission) also a statutory body is responsible for the regulation and management of mineral resources of Ghana and for the co-ordination of policies in relation to them.

The 3<sup>rd</sup> defendant (company) was a subsidiary company of a Canadian company called Akrokeri Ashanti Gold Mine Inc. registered in Ghana and operating as a mining company along the Bonte River at Bonteso in the Ashanti Region until it went into liquidation.

Plaintiff states it was alerted by a publication and by matters raised in parliament during a parliamentary debate on the 28<sup>th</sup> of January 2004. One Mr. S.C Buor –Karikari had asked the Minister of Environment and Science Prof. R.Kasim Kasanga about what plans the Ministry had to remedy the numerous ponds and the land degradation caused by the mining activities of the third defendant. The response by the Minister indicated that even as at that time it recognized that the company had reneged on its responsibility for reclamation works and this had resulted in “land degradation, public health and safety risks, and increase in mosquito transmitted illnesses due to the prevalence of the ponds in the area” quoting from the Hansard report (exhibit A).

The minister talked about visits to the area, continuous assessment of the situation and a direction to the company to submit a Comprehensive Costed Reclamation Plan and to carry out rehabilitation work on the abandoned sites.

Workers were sent to the site to conduct investigations on behalf of Third World Network (an international non-governmental-organisation). A report on the visit was tendered in as exhibit B. Subsequently it was discovered that the company had gone into liquidation. This was considered to be very suspicious because of the short time it took to obtain a court order liquidating the company and the sudden disappearance from the country of management of the company. It was also discovered that the Company had paid only \$38,000 of the requisite bond of about \$2 million it was supposed to deposit. It owed several oil companies, and cheques it had given to compensate some farmers had bounced.

Pictures taken on site (exhibits C) confirmed the reports of extensive degradation. What used to be farm lands were no longer useable as such. There were uncovered ponds posing dangers to children. River channels were blocked by sediment and a lot of local businesses activities dependent on the company had ground to a halt.

## **RELIEFS SOUGHT**

The reliefs sought by plaintiffs include the following:

- An order of mandatory injunction directed at the company and/or its agents, servants, successor(s) compelling it to remedy the environmental degradation caused by 3<sup>rd</sup> defendant upon termination of its operations and/or activities at Bonteso.
- An order of mandatory injunction directed at E.P.A and the Commission compelling them to take appropriate administrative steps against the company to

ensure that it complies with its statutory obligations to remedy the harm caused to the environment as a result of its operations and/or activities.

- An order of mandatory injunction directed at 1<sup>st</sup> and 2<sup>nd</sup> defendants compelling them to take all steps necessary for the rehabilitation of the environment of the Republic of Ghana caused by 3<sup>rd</sup> defendant's mineral operating and /or business activities.

1<sup>st</sup> defendant accepts it has statutory responsibility of taking steps to protect the environment and ensure compliance with laid down statutory environmental assessment procedures in the planning and execution of projects. It claims to have taken administrative measures to ensure the company conducted its business activities in accordance with rules and regulations by regularly monitoring its environmental performance.

It avers when the Costed Reclamation Plans (CRP) of the company was submitted they were found to be inadequate, they were written to and ordered to resubmit. On the submission of the revised CRP it was still found to be inadequate and it was rejected. Out of US\$1,263,565.00 bond expected to be posted the company paid only US\$38,000. It was served with notice to post the full bond. The CRP was reviewed and was again found inadequate. A final request was sent to them to re-submit another by October 2003.

They sought an extension to post the requisite Bond by the end of April 2004. The extension was granted to 30<sup>th</sup> March 2004. A revised CRP assessed by AY&A consultants who worked on behalf of the company fixed their liability at US\$2, 160,638.24. On the 31<sup>st</sup> March 2004 the Agency to its surprise was notified of the company's liquidation.

The Agency formally notified the official liquidator of the liability of the company defendant then standing at US\$2, 160, 638. 24. less the US\$38,000.00 paid. They accept the 3<sup>rd</sup> defendant did not fulfil its obligations whereas the Agency had done all its was required to do. The agency alleges fraud on the part the company.

The second defendant denies being responsible for the coordination of the environmental policies in respect of exploration of mineral resources. Those are functions of the first defendant. All it does is to grant licenses on the basis of environmental permit granted by the first defendant. In its opinion the obligation to ensure compliance with conditions of the permit is the responsibility of the first defendant. It challenged the locus standee of plaintiffs and the basis of the action.

The third defendant blames all its woes on its' insolvency. That was the cause for its inability to post bigger bond and continue with its business activities. It also challenged plaintiff's capacity to sue.

The essential issues for consideration by the court are:

- i. What were the statutory obligations of the 1<sup>st</sup> defendant towards the 3<sup>rd</sup> defendant to ensure that 3<sup>rd</sup> defendant's mining activities did not cause harm to the environment and whether or not 1<sup>st</sup> defendant was in breach of its obligations.
- ii. Whether or not 1<sup>st</sup> defendant breached its statutory obligations when it failed to extract the appropriate cost reclamation bond from 3<sup>rd</sup> defendant before permitting and/or allowing it to carry on its mining activities.
- iii. Whether or not 2<sup>nd</sup> defendant breached its statutory obligation to regulate the exploitation of mineral resources within the territorial jurisdiction of the Republic of Ghana by the 3<sup>rd</sup> defendant.

Attempts were made by all the three defendants to scupper the case on the basis of lack of capacity of the plaintiffs. The plaintiffs had described themselves as companies limited by guarantee registered under the laws of the Republic of Ghana and as specialists in environmental and human rights protection. By law the right to commence proceedings is regulated by High Court Civil Procedures Rules (C.I 47) Order 4 specifically rule 1(1) which states that any person may begin and carry on proceedings in person or by a lawyer. Essential requisites are that the person must be a legal entity in existence and must have an interest recognized by law in the subject matter of the suit. The mere possession of commercial interest in the subject matter and the fact that the outcome is likely to affect one's pocket is not sufficient to clothe one with the capacity to sue.

**[RE FARBENINDUSTRIE A.G 1943] 2 ALL ER 525 @ 528**

The court has always jealously guarded suits pursued in the public interest and will rarely assist in attempts to exclude such cases on the basis of lack of capacity. **PENNIE AND ANOTHER v. EGALA AND ANOTHER [1980] GLR 234-257** and **WARD BREW v GHANA BAR ASSOCIATION (NO..1) [1993-94] 2 GRL 439-453**

This public interest under **Article 295** of the Constitution is defined to include any right or advantage, which ensures or is intended to ensure to the benefit generally of the whole of the people of Ghana. The right, to a safe environment is a constitutional right recognized by Article 36(9) which imposes a duty on the state to take appropriate measures needed to protect and safeguard the national environment for posterity and to seek co-operation with other states and bodies for purposes of protection the wide international environment for mankind. The state includes any authority or body authorized by the executive to perform functions of the government in accordance with the tenets of the Constitution.

.....particularly persuaded by **HALSBURY (4<sup>th</sup> EDN) Para 199** which states that

“Where a statute imposes a duty to exercise the power or entrusts control over an activity in such a way as to carry with it an implied duty, any person or any member of a class of persons for whose benefit the duty is imposed may maintain an action for injury arising out of failure to fulfil the duty”

There is not doubt as stated above that the right to a safe environment and the duties imposed statutorily on the defendants is for the benefit of all Ghanaians. The right of every Ghanaian including the plaintiffs to ensure due compliance of the duties imposed on bodies duly appointed to protect the environment is therefore a right duly recognised at law as enabling plaintiff to maintain this action. To succeed however the onus lies on plaintiff to show the defendants are in breach of their statutory duties meant to found civil liability in favour of a class of people plaintiff belongs to and secondly the class has suffered damage which statute meant to prevent **Kuni v State Gold Mining Cooperation and Another [1978] GLR 205 H.C.** Finally the court has to decide what remedies sought by the plaintiff can be granted.

This is so even if the venture is for private profit although the courts are less indulgent in the latter event. The acts however must be exercised with reasonable care to avoid causing unnecessary damage. The standard of care required depends on the circumstances of each case. If the act causes nuisance then the offending body must bear the ensuing consequence. **RADSTOCK CO-OPERATIVE AND INDUSTRIAL SOCIETY LTD v NORTON RADSTOCK UDC 68 CH 605 68] 2 ALL ER 59, CA**

The exception is where the behaviour is alleged to be fraudulent; the law does not sanction or protect fraudulent behaviour.

The Agency has declared the activities of the 3<sup>rd</sup> defendant as fraudulent. These were enumerated.

- i. Disturbing additional sites it failed to disclose
- ii. Failing to disclose its financial distress to the first defendant
- iii. Knowing its winding up was imminent yet sought extension for posting of the bond close to the period of winding up.
- iv. Misrepresenting to the first defendant that it had the capacity to fulfil its obligation with regard to the reclamation bond.

The court can only echo the declaration. The 3<sup>rd</sup> defendant ventured into areas not authorized and embarked on activities without fulfilling conditions imposed. Pictures taken and exhibited showed extensive damage caused to the area generally and to adjoining farmlands. As stated by plaintiffs the damage affected an area of about 8 kilometers and subsisted for over 8 years. The company had cleared vegetation, stockpiled large quantities of sand gravel and stones resulting in the creation of ponds which had become breeding ground for mosquitoes and water borne diseases. Farming land had been leached of all nutrients rendering them unsuitable for farming. The activities had had “negative impact” on Ewease and Jeni rivers from which the company drew its water for operations. The damage caused to the environment according to the Agency has been assessed as US\$2,160,638.24 (less 38,000.00 already paid).

The excuse of the company was that a lot of illegal mining “galamsay” took place in the area, contributing to further degradation.

The fact that others contributed to the damage by their activities proffers no defence. Duties imposed by statute cannot be waived or dispensed with. Where breach caused plaintiff's damage then the fact that other may have contributed to the damage will not affect plaintiff's right to recover full damages unless the damage was prior to plaintiff's breach and was as substantial contributor.

Evidence before the court showed the Agency had anxieties about the Company, right from the onset. In 1998 they had written to the company that there was no Environmental Management Plan and the Agency has no information on current environmental status on existing mining activities. They were approached by the company and the two embarked on negotiations. The company submitted a Costed Reclamation Plan (CRP). The amount quoted was found to be grossly inadequate so they were asked to resubmit. Two revised figures were rejected also as grossly inadequate. A revised version submitted on or about 31<sup>st</sup> July 2001 valued placed the value at US\$1,263,565.00.

The Agency demanded US\$38,000 dollars as cash component and warned the company to take all appropriate and necessary measures to post the full Reclamation Bond. The company had failed to file regular reports and when it did the reports were grossly inaccurate. The Agency had on July 26<sup>th</sup> 2001 issued a warning to the Company about serious acts of degradation and asked for reclamation of mined areas and the removal of blockages of river to allow free flow of water. In August 2001 it demanded that the Company pays US\$38,000.00 without further delay and to pay balance of US\$1,225,565.00

In June 2002 among other critique was of pools of stagnant water, and the fact that the rate of reclamation had fallen far behind the rate of mining. On the 10<sup>th</sup> of September 2003 there was an observation of serious degradation.

The insufficiency of the bond posted (38,000.00 out of 1, 264,535.00) was still prevailing. The Agency gave a deadline to the Company to post the bond by the end of December and to submit Costed Reclamation Plans by October, 2003. On the 19<sup>th</sup> of September 2003 the Company sought for and extension, agreed to on the 1<sup>st</sup> of October by the Agency extending the deadline to the 30<sup>th</sup> of March 2004. The winding up order of the court was made on the 25<sup>th</sup> of March 2004; the Agency was notified of the fast unfolding events by electronic mail on the 30<sup>th</sup> March 2004. Within one week of the application for liquidation the company had abandoned the company, the workers, the ruins and its workers and the two directors had exited the country.

There is no dispute that the company had flagrantly breached its statutory obligation to reclaim and rehabilitate the mining area during and upon termination of its operation. It failed to post the bond which was to be used to compensate victims of its operations in accordance with its statutory obligations.



There were demands, there were requests but no steps were taken by the Agency to enforce obligations undertaken by the company. The failures of the Agency are clearly revealed by the following provisions.

Under section 2 of its regulating ENVIRONMENTAL PROTECTION AGENCY ACT, 1994 (ACT 490) the Agency is:

- To ensure compliance with any laid down environmental impact assessment procedures in the mining and execution of development projects, including compliance in respect of existing projects;
- To impose and collect environmental protection levies in accordance with this Act or regulation under his Act;

Enforcement and control measures are contained in PART II of the Act under the following sections:

### **Section 12**

1. (1) The Agency may by notice in writing require any person responsible for any undertaking which in the opinion of the Agency has or is likely to have adverse effect on the environment to submit to the Agency in respect of the undertaking an environmental impact assessment containing such information within such period as shall be specified in the notice.
2. (2) Where the Agency issues a notice under sub-section (1) it shall inform any organ or department of government that has responsibility for the issue of any licence, permit, approval or consent in connection with any matter affecting the environment that the notice has been issued, and the organ or department shall not grant the licence, permit, approval or consent unless it has been notified by the Agency that the notice has been complied with.

### **Section 13**

Where it appears to the Agency that the activities of any undertaking poses a serious threat to environmental or to public health, the Agency may serve on the person responsible for the undertaking, an enforcement notice requiring him to take such steps as the Agency thinks necessary to prevent or stop the activities.

An enforcement notice shall specify-

- a. The offending activity;
- b. The steps required to be taken; and
- c. The time within which the steps shall be taken

The Agency may in an enforcement notice direct the immediate cessation of the offending activity where it considers that the circumstances so demand.

Any person who acts contrary to an enforcement notice issued under this section commits an offence and shall be liable to summary conviction to a fine not exceeding €2 million and in default to imprisonment for a term not exceeding one year.

#### **Section 14**

1. Where a person to whom a notice has been served under subsection (1) of section 13 fails to comply with the directives contained in the notice within the stipulated time or such further period as the Agency may grant, the Minister, may without prejudice to a prosecution under subsection (4) of section 13, take such steps as he considers appropriate to ensure compliance with the notice.
2. Where authorized by the Minister acting by virtue of subsection (1), a police officer, an officer of the Agency or any public officer authorized by the Minister may use such force as may be necessary for the purpose of ensuring compliance with the enforcement notice.
3. Any person who hinders or obstructs any person acting under this section commits an offence and shall be liable to summary conviction to a fine not exceeding €500,000 or to imprisonment for a term not exceeding six months.
4. Any amount reasonably incurred by the Minister or any institution to prevent or stop the offending activities may be recovered from the person responsible as a civil debt, unless a court considers that the amount was incurred unnecessarily.

#### **Section 15**

1. There shall be appointed by the Board officers designated as Environment Protection Inspectors referred to in this Act as “Inspectors”.
2. An Inspector or any person authorized by the Board may at any reasonable time enter any premises for the purpose of ensuring compliance with this or any other law pertaining to the protection of the environment and shall, if required to do so by the person in charge of the premises, produce his authority to the person.
3. Any person who assaults or obstructs a duly authorized person acting in execution of his duty under subsection (1) commits an offence and shall be liable on summary conviction to a fine not exceeding €500,000 or to imprisonment not exceeding six months or to both.

#### **Section 27**

The Executive Director or any officer of the Agency authorized by the Executive Director may request in writing any person or request any person to attend at a time and place specified to have any information which the Executive Director considers reasonably necessary for the purposes of this Act.

Any person who-

- a. Without reasonable excuse fails to provide information requested under subsection (1); or
- b. Without reasonable excuse refuses or fails to attend as requested under subsection (1); or
- c. Knowingly provides false information or any information which he has no reason to believe to be true; or

- d. Obstructs any public officer in the lawful execution of any powers under this Act;
- e. Commits an offence and is liable on conviction to a fine not exceeding ₵2million or to imprisonment for one year or to both.

Where an offence is committed under this Act or regulations made under it by a body of persons

- a. In the case of body corporate other than a partnership, every director or an officer of the body shall also be deemed to be guilty of the offence.

The Company not only started operating but continued to do so for 8 years without compliance with these strict mandatory provisions. It may be as contended by the Agency that the statutory requirement for posting of reclamation bonds was instituted in 1999, sometime after the company started its operations, but it is obvious from the above provisions that not only was the Agency empowered to ensure compliance with strict statutory protective measures before the commencement of any project but for the duration by the imposition of punitive measures which included the imprisonment of any person or officers of a company found liable.

Under regulation 5(2) (c) of L.I. 1652, the company is required to indicate clearly in its Costed Reclamation Plans (CRP) and to regularly issue reports on its mining activities. It must state steps being taken to address and avoid environmental and health hazards.

The essence of the CRP was to safeguard against any default by the company. Failure to comply with the above meant the Agency has no information on the environmental status and the mining activities of the company.

The posting of a reclamation bond was to secure a deposit which can be used to repair any damage caused upon termination of the company's activities. In failing to prevent and or control the operations of the Company till it had exacted the full amount needed to compensate persons likely to be affected, the Agency abysmally failed the nation, failed the residents and renege on its statutory responsibilities.

In respect of the Commission its functions and statutory obligations are contained in section 2 of MINERALS COMMISSION ACT, 1993 (ACT 450). Provisions of the Act state:

1. The commission shall be responsible for the regulation and management of the utilization of the mineral resources of Ghana and the co-ordination of the policies in relation to them.
2. For the purpose of subsection (1) of this section, the Commission shall
  - a. Formulate recommendations of national policy for exploitation of mineral resources with special reference to establishing national priorities having due regard to the national economy;

- b. Advise the Minister on matters relating to minerals;
- c. Monitor the implementation of laid down government policies on minerals and report on this to the Minister;
- d. Monitor the Operations of bodies or establishments with responsibility for minerals and report to the Minister;
- e. Receive and assess public agreements relating to minerals and report to Parliament
- f. Secure a firm basis of comprehensive data collection on national mineral resources and the technologies of exploration and exploitation for national decision making; and
- g. Perform such other functions as the Minister may assign to it.

It is true that its functions and obligations overlap with those of various bodies including the Agency other officials of the Ministry of Mines under the Minerals and Mining Act (703). However as omitted by the witness for the commission, it sits on various committees with the Agency to look at environmental impact statements, it is the commission which makes recommendations to the Minister for the granting of mining certificates. Considering the provisions above particularly the applications of section 2(c) (d) (e) it is ridiculous of the Commission to maintain it merely issues permits on the recommendations of the Agency with no further obligations. Inherent in the duty of licensing is that there are continuing conditions and obligations to be met which require continuing monitoring. The ultimate sanction where conditions are not met is the withdrawal or refusal of a licence.

Articles of the Constitution cited by the plaintiffs are reproduced below:

**Article 23** – Administrative bodies and administrative officials shall act fairly and reasonable to comply with the requirements imposed on them by law and person aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

**Article 36(4)** - Foreign investment shall be encouraged within Ghana, subject to any law for the time being in force regulating investment in Ghana.

**Article 36(9)** – The state shall take appropriate measures needed to protect and safeguard the national environment for posterity and shall seek co-operation with other states and bodies for purposes of protecting the wide international environment for mankind.

The court accepts contention of the plaintiffs that the defendants had failed and neglected their respective statutory duties and obligations. And that the result of this failure meant that the company has avoided its obligations to repair the environment, the people of Bonteso and the Republic of Ghana by its operations and activities.

The plaintiff is asking the court to make declarations of the failure of duties of the defendants together with a mandatory injunction directed at the defendants to remedy situation.

Mandamus is said to lie as a command to a person or body in respect of anything that appertains to this office and is in the nature of a public duty. See Halsbury para. 81(4<sup>th</sup> edn). An injunction is granted to restrain, prohibit or correct imminent threat, commission or continuation of unlawful acts. **RELAND BRICKS LTD v MORRIS [1970] AC 652 1969] 2 ALL ER 576 HL**

Plaintiffs only need to prove damage or interference to a public right which he has substantial personal interest in but not necessarily limited to him.

Whether the defendants can be compelled to remedy the situation requires a construction of the regulating statutes above to see whether the following conditions are met.

1. The reliefs sought must be imposed by way of a duty and not as a mere discretion. That means the defendant must be under an obligation to perform the acts required.
2. There must be no other effective, adequate, convenient, or more beneficial remedy.
3. The order must not require constant supervision of the court.

**CONTROLLER OF CUSTOMS AND EXCISE v AKAM AND OTHERS [1956] 1 WALR 61**

Finally Person seeking their relief must show he has legal right to insist on the performance of that duty and that he has made a demand for performance of the duty and this had been willfully refused by the defendant. As stated above the courts orders will not issue orders in futility or where the action required is impossible to perform or which require the supervision of the court.

The Officers of the company the real culprits in this matter, through the inaction of the other defendants have escaped the clutches of the law and were not represented during the proceedings. The plaintiffs during the directions stage indicated they would bring an investigator of Third World Network who had actually visited the area affected. Witnesses were also to include two residents of Bonte to give evidence as to the extent of environmental damage to the area and presumably suffered by them. None of these turned up so that at the end of the day there was no evidence from any victims as to the quantum of their loss.

Apart from trying to seek information from the defendants, there was no evidence as to the nature of efforts made to compel the defendants to perform their statutory duties and cost incurred by the plaintiffs in the whole exercise. Evidence of willful refusal is a pre requisite for an order of mandatory injunction.

There is no evidence whether the liquidation and winding up of the company has been concluded and whether there are sufficient assets to pay for the reliefs sought. As stated above the relief of mandatory injunction cannot be granted where statute has prescribed a remedy. The court will not go outside the statutes and make an award unless the remedy is insufficient, inadequate and or not appropriate. Where statute has imposed criminal sanctions it is considered at law to be sufficient unless there is proof that the party has

suffered loss beyond that contemplated by the law. **CUTLER WANDSWORTH STADIUM LTS 1949 AC 398 1949] 1 ALL ER 544.**

The relief sought to force the defendants to remedy the situation presumably is to fill up the ponds, prevent galamsey activities, dredge up river beds and ensure victims are adequately compensated. These measures require a body to plan a course of action and ensure compliance with obligatory procedures. Mandatory injunction is not available if the court is required to see to the supervision of its orders.

Again plaintiffs, in asking the court to order defendants, to “rehabilitate the environment” are being excessively ambitious. The court is prevented from making awards if futile in result and impossible to perform.

Plaintiffs had undertaken a mammoth task unprecedented in legal history in terms of physical and financial sacrifice. They had however not consolidated their gains by overcoming the shortcomings some of which have been highlighted above.

The court thus hampered could only make declarations in accordance with the reliefs sought and as indorsed on the writ of summons issued by the plaintiff.

It is for the above reasons that the court in delivering its verdict on the 27<sup>th</sup> of March 2009 declared that:

- a. That the 3<sup>rd</sup> defendant is in breach of its statutory obligations to minimize the degradation of the environment.
- b. That the 3<sup>rd</sup> defendant is in breach of its statutory obligation to rehabilitate the affected areas upon causing its degradation during and upon termination of its operations and/or activities at Bonteso in Ghana.
- c. That, 1<sup>st</sup> and 2<sup>nd</sup> defendants are under a mandatory statutory obligation to monitor and control the activities of the 3<sup>rd</sup> to ensure that, their mineral operations and/or business activities are carried on without breaching their statutory obligations
- d. The defendants are jointly and severally liable to the people adversely affected by the harm and damage caused to the environment and their properties as a result of their default.
- e. The court is unable to make an order of mandatory injunction directed at the defendants for reasons stated in the main body of the judgment.
- f. The defendants are jointly liable for all cost incurred by the plaintiffs in pursuing this action such cost be assessed.

**JUSTICE IRISMAY BROWN  
SITTING AS AN ADDITIONAL  
HIGH COURT JUDGE**