

**IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE COMMERCIAL DIVISION
HELD IN ACCRA ON THURSDAY THE 21ST DAY OF OCTOBER 2021
BEFORE HIS LORDSHIP EMMANUEL KWESI MENSAH 'J'.**

SUIT NO. CM/MISC/0519/2021

1. ENI GHANA EXPLORATION & PRODUCTION LTD - APPLICANTS
2. VITOL UPSTREAM GHANA LIMITED

VRS

ATTORNEY GENERAL & MINISTER OF JUSTICE - RESPONDENT

AND

SPRINGFIELD EXPLORATION & PRODUCTION LTD - INTERESTED PARTY

RULING

On the 12th April, 2021, the Applicant's herein filed an originating Notice of Motion for Judicial Review pursuant to Order 55 of the High Court (Civil Procedure) Rules, C.I.47/2004. The Application seeks or prays for the following reliefs and remedies.

- a. A declaration that the purported directives of the Minister of Energy dated 14th October, and 16th November, 2020 purportedly in posing terms and conditions for the unitization of the Afina Oil discovery in West Cape Three Points Block 2 Area (WCTR2) and Sankofa Canomanian Oil Fields Sankofa field in offshore Cape Three Points Area (OCTP) are illegal.
- b. A declaration that the Minister did not follow due process of law in issuing the purported directives.
- c. A declaration that the purported directives are arbitrary, unfair and unreasonable
- d. An order quashing the purported directives

CERTIFIED TRUE COPY

REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LCC-ACCRA

- e. An order of interlocutory injunction restraining the Respondents from taking any step to seek to enforce the purported directive pending the final determination of this application and
- f. Any further order or orders as the Honourable Court may deem fit.

Applicants filed a one hundred and fifteen (115) paragraphed affidavit in support and attached exhibits AO1 to AO20 in further support of their application. It is on record that the Applicants per counsel on the 16th April, 2021, filed their thirty two (32) paged statement of case to better prop up their case.

The Respondent Attorney General and Minister of Justice upon the receipt of the Applicants processes for Judicial Review, filed its seventeen paragraph affidavit in opposition on the 12th July, 2021. It also filed its statement of case on the 1st July, 2021. SPRINGFIELD EXPLORATION AND PRODUCTION LIMITED, the Interested Party sought leave of the Court because it was out of time to file its (47) paragraphed affidavit in opposition on the 21st July, 2021, and also filed its statement of case on the same 21st July, 2021. The two Applicants per the records filed their affidavit in opposition to and in response to the Interested Party's affidavit in opposition to the Judicial Review application on the 12th July, 2021.

When this matter came before the Court for the hearing of the Judicial Review application, the Court ordered the suitors to file written submissions to which the parties complied by way of their statements of case. This Court has carefully reviewed all the affidavit evidence on record in respect of the instant Judicial Review application together with their exhibits thereto attached and of course the statements of case filed by counsels on behalf of their respective clients and has come to the firm conclusion that the Judicial Review application filed by the Applicants on the 12th of April, 2021 is unmeritorious for which reason it should fail and of course accordingly dismissed. The reasons for the Court's decision are as follows:

- (i) The motion paper to the application is incompetent. In fact, the provisions of Order 55 Rule 1 of the Rules of Court says that the Judicial Review jurisdiction of the

Court is properly invoked only when an application for judicial review is filed. The rules of the Court clarify that where it is required that jurisdiction of the Court be invoked by application, a motion suffices to invoke that jurisdiction. Having set out the process required to invoke the judicial review jurisdiction of the Court, the rules then provide the details of the mode of making the judicial review application. They require that the motion paper which invokes the jurisdiction of the Court be supported by an affidavit and require that the said affidavit which supports the motion must contain some specific particulars as provided for by Order 55 Rule 4(2) of C.I.47/2004 and needs no extrapolation. It says that the affidavit in support of the application must contain the relief or remedy sought by the Applicant and the grounds on which the Applicant seeks the relief or remedy. The Applicants must therefore state the relief and remedy in the affidavit and nowhere else as was done in the motion paper in this case.

- (ii) One also sees in the instant application that a reading of the affidavit in support of the application confirms that the application does not state the reliefs claimed by the Applicants in the proceedings before the Court. It is my view that this omission to state the relief or remedy sought by the Applicant in the affidavit in support of the application violates the provisions of Order 55 Rule 4(2) (c) of the Rules of Court.
- (iii) Furthermore, and in the instant application, one recognizes that the reliefs and remedies sought by the applicants are rather on the face of the motion paper which act on the part of the applicants violates two rules of the Court. First, it breaches the provisions of Order 55 Rule 1 which categorically says that the application for judicial review prays the Court for any of the reliefs properly categorized as obtainable by the exercise of the Court's Judicial Review Jurisdiction; second, the application (by motion) must simply pray the Court for "Judicial Review" and nothing else. This is clearly stated in the provisions of Order 55 Rule 1 of the rules of the Court that is C.I. 47/04.

(iv) Another defect in this application is the title of the application. In the case of the REPUBLIC v DISTRICT COURT GRADE 6, KORLE-GONNO, ACCRA; EX-PARTE AMPOMAH, the Supreme Court made a practice directive as to the form of applications to invoke the supervisory jurisdiction of the superior courts and it is stated below:

“In such applications to invoke the supervisory jurisdiction of the superior courts, the applicant is a relator to the Attorney General, that is to say, the conduct of the proceedings is in the name of the Attorney General. Hence, the title of the application is always REPUBLIC v MR X & Y; EX-PARTE - the applicant.

In principle, the applicant to such an application ‘borrows’ the Attorney General’s authority to institute the application and the real Respondent is the opposing party in the proceedings sought to be prohibited or quashed. For the instant case, a reading of the title of the application will reveal that it does not disclose that the applicants relate to the Attorney General in any way. The application therefore omits “REPUBLIC” in the formulation of the title of the case. In fact, the title of the case should have been as follows:

AND IN THE MATTER OF:

THE REPUBLIC

VRS

ATTORNEY GENERAL & MINISTER OF JUSTICE

EX-PARTE:

- 1. ENI GHANA EXPLORATION AND PRODUCTION LTD**
- 2. VITOL UPSTREAM GHANA LTD**

AND

SPRINGFIELD EXPLORATION AND PRODUCTION - INTERESTED PARTY

(v) This Court also holds the view that the timing of the instant application is wrong. Order 55 Rule 3 of the rules of Court provides that the application for Judicial Review shall be made not later than six months from the date of the occurrence of the event giving grounds for making the application. In fact, sub Rule 3 of the same order provides that where an order of certiorari is sought in respect of any judgment, order, conviction or other proceedings, the date of the occurrence of the event giving grounds for the making of the application shall be taken to be the date of that judgment, order, conviction or proceeding. In the instant application before the Court, one will not run away from the fact that the subject matter of the application is a directive made by a minister of state. The application therefore is not targeted at any judgment order, conviction or other proceeding. Significantly, the application before the Court also does not pray the Court for an order of certiorari, and for this reason, the provision of rule 3 (2) of Order 55 of C.I. 47, does not apply to this matter for the purposes of reckoning time.

(vi) It is also the view of the Court that, the affidavit filed by the applicants in support of their application is incompetent. I have noted that the affidavit in support of the application before the Court is deposed to by one Abena Owusu; and she describes herself as the first Applicant's Legal Manager. The Deponent however deposes to the application also for and on behalf of the 2nd Applicant. The deponent makes no deposition to show the connection between her and the 2nd Applicant on whose behalf she also purportedly deposes to the affidavit.

It is my view with respect to the Applicants that to the extent that the deponent to the affidavit in support of the application has omitted to make any deposition to demonstrate her connection with the 2nd Applicant, and the depositions relating to and/or affecting second Applicant are made without authority and are also matters of hearsay. The rules of Court requires all deponents to affidavits to depose to

matters within their personal knowledge or within their information and honest belief and this is expressly stated in Order 20 Rule 8 (1) of C.I. 47/04.

- (vii) A careful read through of Section 34 (1) of the Petroleum Exploration Act, (Act 919) of the year 2018 does not show that the Minister for Energy's directive violated the said provision of the law. There is no doubt to the fact that there are numerous other reasons that could ground a refusal of the instant application as has been done in the early part of this ruling. However, it is my view that the reasons stated above can also confirm the decision of the Court in dismissing the application. Cost of GH¢10,000 to each of the Attorney General's Department and the Interested Party.

(SGD)

**EMMANUEL KWESI MENSAH
(JUSTICE OF THE HIGH COURT)**

COUNSELS

**NANIA OWUSU ANKOMAH WITH PAPA KWA KU ANNAN FOR ACE
ANKOMAH FOR APPLICANTS**

ADWOA OBENG WITH AFRAKOMA BOATENG FOR THE RESPONDENT


**NANA BOAKYE MENSAH BONSU LED BY SEAN POKU FOR INTERESTED
PARTY**

AUTHORITIES

(1) C.I. 47/2004

**(2) REPUBLIC v DISTRICT COURT GRADE 6, KORLE-GONNO, ACCRA; EX-
PARTE AMPOMAH**

CERTIFIED TRUE COPY


REGISTRAR
HIGH COURT
COMMERCIAL DIVISION, LCC-ACCRA