

Our Ref: TCBS/CKA/0032/21

Your Ref:

1st July, 2021

THE ATTORNEY GENERAL & MINISTER FOR JUSTICE
ATTORNEY GENERAL'S DEPARTMENT
MINISTRIES-ACCRA

ATTN: HON. GODFRED YEBOAH DAME

Dear Sir,

**NOTICE OF CIVIL ACTION AGAINST THE GOVERNMENT OF GHANA PURSUANT TO
SECTION 10 OF THE STATE PROCEEDINGS ACT 1998, ACT 555.**

1. We act as solicitors for and on behalf of
OBED OWUSU ADDAI
61 Ecowas Road
North-Legon, Accra
(hereinafter referred to as "Our Client") and on whose instructions we serve the **ATTORNEY-GENERAL** of the Republic of Ghana **NOTICE** of intention to bring a civil action against the Government of Ghana in compliance with section 10(1) of the State Proceedings Act, 1998 (Act 555).
2. Our Client is a citizen of Ghana and a member of the Civil Society Coalition working in the natural resources sector involved in the protection of forests and the environment. Our Client is bringing this action in fulfilment of his constitutional duty to safeguard the natural environment as contained in Article 41 (k) of the 1992 Constitution.
3. Respectfully Sir, our Client supports the Government's quest to develop Ghana through the utilization of natural resources to raise capital for development. It is Our Client's contention, however, that this utilization must be done in accordance with established law and procedure as provided for in Articles 268 (1) of the 1992 Constitution, the Timber Resources Management Act, 1998 (Act 547) as amended by Timber Resources Management Act, 2002 (Act 617) and the Timber Resources Management and Legality Licensing Regulation, 2017 (L.I 2254).

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4. The combined effect of the provisions in Article 268 (1) of the 1992 Constitution, Act 547 as amended by Act 617 and L.I 2254 demands that the allocation of rights to engage in commercial timber logging be granted through the issuance of Timber Utilisation Contracts (TUCs) either Large Scale or Small Scale signed on behalf of the President by the Minister responsible for Lands and Natural Resources. These TUCs are further subject to parliamentary ratification.
5. These prescriptions of law on the grant of commercial timber rights are meant to ensure a sustainable utilisation of the forest resources of the country and to prevent the fragmentation of our forest reserves. Ultimately, these provisions ensure that while the State derives the necessary revenues from the exploitation of timber resources, the environment is also protected.
6. Sir, Our Client contends that the Ministry of Lands and Natural Resources and the Forestry Commission over the years have and continue to allocate rights for the commercial logging of timber in a form and manner alien, unknown and in breach of the laws on the grant of commercial timber rights. These rights granted in flagrant breach of the laws are known variously as “special permits”, “ministerial letters or permits” or “administrative permits”.

CAUSE OF ACTION

7. This action has become necessary because of the practice of various Ministers of Lands and Natural Resources and Chief Executives of the Forestry Commission, who issued commercial timber rights in the form of “Special Permits”, “Ministerial Letters or Permits”, “Administrative Permits” among others without adherence to the dictates of the law.
8. The Timber Resources Management (Amendment) Act, 2002 (Act 617) inserted a new subsection (2) of Section 20 in the interpretation section of Timber Resources Management Act, 1998 (Act 547) which read as:
“The expression “timber utilization contract” shall apply with the modifications that are necessary to a certificate of purchase, a permit or any other authorization for timber rights approved by the Minister on the recommendation of the Commission” (emphasis mine).
9. Ministers for Land and Natural Resources, over the years, have deemed and interpreted this insertion in the interpretation section of Act 547 as a power to issue other types of commercial timber rights without following all the laid-out processes for the grant of Timber Utilisation Contracts such as the need for competitive bidding and parliamentary ratification as prescribed by the Constitution in Article 268 (1) and Sections 3, 6A, 7, 8 and 9 of Act 547.

10. A large portion of commercial timber rights granted by the Ministers of Lands and Natural Resources and the Forestry Commission fall within the category of “special permits” or “administrative permits” or “ministerial permits” which do not meet the legal requirements set by the Constitution and Act 547

11. In furtherance of streamlining the licensing regime and consolidating the subsidiary legislation on utilisation and management of forest resources, the Timber Resources Management and Legality Licensing Regulation, 2017 (L.I. 2254) was passed in 2017. The legislative intent in passing L.I. 2254 as captured by the report of the Subsidiary Legislation Committee of Parliament was stated as follows:

*“The Committee also observed that L.I. 2254 addresses the discrepancy in the identification of lands suitable for the grant of Small Scale Timber Utilisation Contracts (TUC’s). Small Scale TUCs would be awarded for areas not suitable for full harvesting cycle in a reserve area with low tree stocking, that is, areas that do not qualify for large scale TUC’s. The essence of this new provision is to eliminate the issuance of **Special Permits** and to **sanitize the regime for the grant of timber permits**” (emphasis mine)*

12. The transitional provisions of L.I. 2254 granted an amnesty in Regulation 77 for all permits granted without recourse to the prescriptions of the Constitution and Act 547 to be converted into Timber Utilisation Contracts with strict adherence to the requirement for parliamentary ratification within six (6) months of the passage of the L.I. This was an opportunity for the clean-up of the permit regime. The “special permits” or “administrative permits” or “ministerial permits” were to be converted into Small Scale Timber Utilisation Contract (SSTUC) and subjected to parliamentary ratification.

13. The process for the conversion commenced in 2018, your honourable Office reviewed and approved the form for the Small-Scale Timber Utilisation Contracts (SSTUC). In a letter dated the 29th of April 2020 addressed to the Chief Executive Office of Forestry Commission, your Office explicitly stated in paragraph 3 that:

*“Article 268 (1) of the 1992 Constitution and Section 9(1) of Act 547 makes it **obligatory** that Parliament ratifies any TUCs executed by the Minister. Hence a TUC is **non-operative unless it has been duly ratified by Parliament.**”*

14. In the 29th of April 2020 letter, your Office further cited the cases of **Ndebugri v. Attorney General and 2 Ors Writ No. JI/5/2016** and **Exton Cubic Group Ltd v. Attorney – General and 2 Ors Suit No. HRC 17/2018** to buttress the need for parliamentary ratification of timber rights granted and indicated that:

“It is further recommended, that given that the grant of timber rights under section 7 of Act 547 is vested in the Minister in charge of Lands and Natural Resources, acting for and on behalf of the President, the Minister should lay the TUCs before Parliament for ratification after execution”. (emphasis mine)

15. A 2020 Technical Evaluation Report of the Ghana Legality Assurance System (GhLAS) –the system set up to ensure the legal trade in timber both on the domestic and international market revealed a rise in the grant of “special permits” or “administrative permits” or “ministerial permits” in blatant disregard of the law. The report indicated that the number of “special permits” or “administrative permits” or “ministerial permits” granted was increasing steadily; One Hundred and Twenty-Four (124) “special permits” or “administrative permits” or “ministerial permits” were in operation as of 2014, a further One Hundred and Ninety-Nine (199) “special permits” or “administrative permits” or “ministerial permits” were issued in 2018 and Two Hundred and Sixty-Two (262) were issued in 2020. All in blatant disregard of the Constitution and the laws on the grant of timber rights in Act 547.

16. Sir, the continuous disregard of the provisions in Article 268 (1) and Act 547 by the Ministers of Lands and Natural Resources and Chief Executives of the Forestry Commission does not bode well for good governance and the sustainable management of our timber resources.

17. Our Client is aware of recent efforts by the current Minister of Lands and Natural Resources instructing the Forestry Commission to cease the issuance of special permits” or “administrative permits” or “ministerial permits” in forest reserves. Though laudable, Our Client believes that this administrative action of the current Minister of Lands and Natural Resources if not backed by a definitive judicial pronouncement on the legality of special permits” or “administrative permits” or “ministerial permits”, the grant of these special permits” or “administrative permits” or “ministerial permits” will continue.

18. It is against this backdrop that Our Client serves notice of his intention to commence a legal suit against the Government of Ghana, should the latter fail to convert extant leases that existed before LI 2254, cancel all special permits” or “administrative permits” or “ministerial permits” issued post LI 2254 and stop the issuance of special permits.

19. The intended reliefs include:

- I. A declaration that the issuance of commercial timber rights known as “special permits” or “administrative permits” or “ministerial permits” constitute a transaction, involving the grant of a right for the exploitation of a natural resource of Ghana and is subject to ratification by Parliament;
- II. A declaration that the interpretation given to section 20(2) of the Timber Resources Management Act, 1998 (Act 547) by the Minister of Lands and Natural Resources and the Forestry Commission that purports to allow the issuance of commercial timber rights known as “special permits” or “administrative permits” or “ministerial permits” without recourse to Parliamentary ratification is erroneous and unconstitutional;
- III. A declaration that all such “special permits” or “administrative permits” or “ministerial permits” involving the grant of a right to exploit the timber resources of Ghana granted by the Minister of Lands and Natural Resources or the Forestry Commission without Parliamentary ratification are null and void, illegal and ineffective.
- IV. An order restraining the Minister of Lands and Natural Resources and the Forestry Commission from entering into any transaction, contract or undertaking involving the grant of a right or concession for the exploitation of commercial timber rights without Parliamentary ratification.
- V. Any other orders consequential to the enforcement of the provisions in article 268(1) of the Constitution 1992 of the Republic of Ghana.

Yours truly,

CLEMENT KOJO AKAPAME
(Solicitor for Obed Owusu Addai)
Solicitor No. eGAR 00613/21

Cc:

HON. SAMUEL ABU JINAPOUR (MP)
Minister for Lands and Natural Resources
Ministries, Accra

MR. JOHN ALLOTEY
Chief Executive Officer
Forestry Commission
Corporate Head Office
Accra

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