IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE (CRIMINAL COURT 4) HELD IN ACCRA ON MONDAY THE 20TH DAY OF JULY 2026 BEFORE HER LADYSHIP JUSTICE AUDREY KOCUVIE – TAY JUSTICE OF THE HIGH COURT.

CASE NO. CR /0004/2026

THE REPUBLIC

VS.

BERNARD ANTWI BOASIAKO @ WONTUMI

KWAME ANTWI (AT LARGE)

AKONTA NINING COMPANY LIMITED

JUDGEMENT

The Accused persons are a company (A3) and two gentlemen alleged to be its shareholders and directors. They were arraigned on 7th October, 2025 for the following offences:

"COUNT ONE

Statement of Offence:

Assignment of mineral rights without approval, contrary to Section 14(1) and Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: BERNARD ANTWI BOASIAKO, alias WONTUMI, 49 years old, entrepreneur; that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being the owner and controlling director of AKONTA MINING COMPANY LIMITED did, without first obtaining the prior written approval of the Minister, permit HENRY OKUM and MICHAEL GYEDU AYISI to undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only.

COUNT TWO

Statement of Offence:

Assignment of mineral rights without approval, contrary to Section 14(1) and Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: KWAME ANTWI, at large; that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being a director of AKONTA MINING COMPANY LIMITED did, without first obtaining the prior written approval of the Minister, permit HENRY OKUM and MICHAEL GYEDU AYISI to undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only.

COUNT THREE

Statement of Offence: Assignment of mineral rights without approval, contrary to Section 14(1) and Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: AKONTA MINING COMPANY LIMITED, that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being incorporated with the object of engaging in mining and exploration did, without first obtaining the prior written approval of the Minister, permit HENRY OKUM and MICHAEL GYEDU AYISI to undertake a mining operation within the mining concession which was granted to you only.

COUNT FOUR

Statement of Offence: Purposely facilitating an unlicenced mining operation, contrary to Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: BERNARD ANTWI BOASIAKO, alias WONTUMI, 49 years old, entrepreneur; that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being the owner and controlling director of AKONTA MINING COMPANY LIMITED, did purposely facilitate HENRY OKUM and MICHAEL GYEDU AYISI to, without a licence granted by the Minister, undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only.

COUNT FIVE

Statement of Offence: Purposely facilitating an unlicenced mining operation, contrary to Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: KWAME ANTWI, at large; that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being an owner and director of AKONTA MINING COMPANY LIMITED, did purposely facilitate HENRY OKUM and MICHAEL GYEDU AYISI to, without a licence granted by the Minister, undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only.

COUNT SIX

Statement of Offence: Purposely facilitating an unlicenced mining operation, contrary to Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

Particulars of Offence: AKONTA MINING COMPANY LIMITED, that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being incorporated with the object of engaging in mining and exploration, did purposely facilitate HENRY OKUM and MICHAEL GYEDU AYISI to, without a licence granted by the Minister, undertake a mining operation within the mining concession which was granted to you only."

While the 2nd accused never appeared in court, as he remains at large, the 1st accused attended and pleaded not guilty on his own behalf and on behalf of the 3rd accused.

The facts which the Republic presented to this Court are that the 1st and 2nd accused persons are the two shareholders and directors of the 3rd accused, which was incorporated on 5th November, 2010. The 3rd accused has "mining and exploration" as its object and principal business activities.

On 16th April, 2025, the police embarked on a special operation dubbed "anti-galamsey" (illegal mining) in the Western Region. This operation led to the arrest of one Michael Gyadu Ayisi and 28 others in the Samreboi Forest, within and around a concession belonging to the 3rd accused, on 17th April, 2025.

At the time of their arrest, Michael Gyadu Ayisi and his men were occupying a structure with the 3rd accused's name boldly written thereon.

The police retrieved several items from them, including eight pump-action guns, one single-barrelled gun, five pieces of metal suspected of being gold in a sachet, four machetes, several water-pumping machines, 310 AAA/BB cartridges, one grease gun, four motorcycles, two vehicles, 25 serviceable excavators, four non-serviceable excavators, and GHC 157,000.00.

Upon interrogation, Michael Gyadu Ayisi identified another man, Henry Okum, as his employer, who had assigned him to supervise mining activities on the concession. Michael Gyadu Ayisi further stated that, as part of their mining activities, he and his fellow employees undertook land reclamation on parts of the concession that had been devastated, while mining the unmined portions of the land.

Henry Okum was subsequently arrested and cautioned. During interrogation, Henry Okum told the police that sometime in September, 2024, he had an arrangement with the 1st accused, under which the 1st accused allowed him to enter the 3rd accused's concession to mine for gold because he was under the impression that the said concession belongs to the 1st accused.

Investigations established that Henry Okum and his employees Michael Gyadu Ayisi and the 28 others undertook their mining and land reclamation activities in the 3rd accused's concession with the permission of the 1st accused, without the 1st accused either on his behalf or on behalf of the 3rd accused, seeking and obtaining the statutorily mandated prior approval of the Minister responsible for Lands and Natural Resources.

At the trial, the Republic called four witnesses in all; and closed its case. These witnesses are:

(1). Michael Gyadu Ayisi (PW1)

(2). Henry Okum. (PW2)

(3). Chief Inspector Sarfo Asiedu Kwasi (PW3) and

(4). Josef Iroko (PW4).

On the other hand, the 1st accused testified on his own behalf and on behalf of the 3rd accused. The defence then called the following persons as witnesses:

1. Widom Edem Gomashie (DW1)

2. George Mireku Duker (DW2).

3. Kwabena Okyere Darko-Mensah (DW3)

4. Hon. Evans Addae. (DW4).

THE LAW ON THE BURDEN AND STANDARD OF PROOF

The law on the burden of proof in a criminal matter is well settled. In **COMMISSIONER OF POLICE V. ANTWI [1961] GLR 408**, the Supreme Court adopted Lord Sankey's all-important statement in **WOOLMINGTON V. DIRECTOR OF PUBLIC PROSECUTIONS** (1935) Vol. 25 Cr. App. R. 72 at p.95, namely:

"No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the

prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

Thus, Korsah, CJ, explained in **COMMISSIONER OF POLICE V. ANTWI [Supra]** that the burden of proving that a person is guilty is wholly on the prosecution, in this case, the Republic. At page 412 of the report, the Chief Justice said:

"The law is well settled that there is no burden on the accused. If there is any burden at all on the accused, it is not to prove anything, but to raise a reasonable doubt. If the accused can raise only such a reasonable doubt, he must be acquitted."

Also, in **Archibold Pleadings: Evidence and Practice in Criminal Cases** (36th Ed.), paragraph 1001, it is stated that:

"Where the prisoner pleads the general issue, "not guilty", the prosecution is obliged to prove at the trial every fact or circumstance stated in the indictment which is material and necessary to constitute the offence charged. The general rule is that, apart from any provision to the contrary, the burden of proof of guilt lies upon the prosecution, and it is not for the defence to prove innocence."

Finally, this rule of evidence is codified in Section 15(1) of the Evidence Act (NRCD 323), where it is provided as follows:

"Unless and until it is shifted, the party claiming that a person is guilty of crime or wrongdoing has the burden of persuasion on that issue."

See also, the following unreported cases:

1. RICHARD BANOUSIN v THE REPUBLIC, SC. CRIM/A No: J3/2/2014 dated, 18th March, 2018.
2. ABDULAI FUSEINE v THE REPUBLIC, CRIMINAL APPEAL NO. J3/02/2016, dated 6TH June, 2018.
3. RICHMOND KWABLA DZANGMATEY v THE REPUBLIC SUIT NO. J3/7/2017, dated 30th October, 2019, and many others.

Having settled the law on the burden of proof, this Court will turn to the standard of proof. The matter of standard of proof relates to the quality of evidence which the bearer of the burden of proof ought to produce to not have a ruling against him. Again, the law on the standard of proof is also well-settled. It is that in proving a crime, the prosecution is required to prove the guilt of the accused person beyond a reasonable doubt.

The framework for this position of law is explained in **Archbold's Criminal Pleading**, (36th Ed.), paragraph 1001, where it is declared that:

"Where the prosecution gives prima facie evidence from which the guilt of the prisoner might be presumed and which, therefore, calls for an explanation by the prisoner

and no answer or explanation is given, a presumption is raised upon which the jury may be justified in returning a verdict of 'guilty'. But if an explanation is given by or on behalf of the prisoner which raises in the mind of the jury a reasonable doubt as to his guilt, he is entitled to be acquitted, because if upon the whole of the evidence in the case the jury are left in a real state of doubt the prosecution has failed to satisfy the onus of proof which lies upon them."

These principles are codified in Part II of our **Evidence Act** (NRCD 323). What constitutes reasonable doubt, however, is not explained by the statute. Often, however, Lord Denning's explanation in **MILLER V MINISTER OF PENSIONS** [1947] 2 All ER 372 is considered as the "best effort" to explain the term. Lord Denning's explanation is that:

"The degree of cogency need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'Of course it is possible, but not in the least probable, the case is proved beyond reasonable doubt, but nothing short of that will suffice."

The key point in this explanation is that the doubt ought to be "reasonable" not a doubt borne out of or based on "fanciful possibilities". Meanwhile in the **Trial of William Palmer** (1856) at page 166, Lord Campbell's summing-up has stood the test of time. It is as follows:

"Unless by the evidence for the prosecution a clear conviction has been brought to your minds of the guilt of the prisoner, it is your duty to acquit him. You are not to convict him on suspicion, even on strong suspicion. There must be a strong conviction in your minds that he is guilty, and if you have any reasonable doubt, you will give him the benefit of that give him doubt."

It is along these principles of the law of evidence that this Court will consider the evidence adduced in this trial.

Before proceeding to consider the issues in the substantive case, this Court ought to address the constitutional question raised by counsel for the 1st and 3rd accused persons, in his closing address.

Counsel urged, that this Court stays, the delivery of its judgment and should refer a number of questions to the Supreme Court under Article 130(2) of the Constitution, 1992, namely: whether Section 14(1) of Act 703, and Section 99(2)(b) of Act 703 as amended, and the charges in Counts 4 and 6 founded on Section 99(2)(b), are, on a true and proper interpretation of Article 19(11) of the Constitution, unconstitutional for vagueness and overbreadth. The

Republic resisted this submission. This Court must, before all else, determine whether it is bound to accede to that prayer. It is not.

The Supreme Court's jurisprudence on Article 130 is settled and of long standing. Thus, a trial court is not obliged, upon the mere say-so of a party that a question of constitutional interpretation arises, to down its tools and refer the matter upstairs. In **THE REPUBLIC V MAIKANKAN [1971] 2 GLR 473,** Bannerman CJ made the point, which remains good law today, that a lower court needs only refer a question where, in its own assessment, the answer is not clear and unambiguous on the face of the constitutional or statutory provision. Thus, where the answer is plain, no question of interpretation truly arises, and the aggrieved party's remedy lies in the ordinary channel of appeal. This was affirmed in **ADUAMOA II V TWUM II [1999-2000] 2 GLR 409** and, more recently, in unreported case of **THE REPUBLIC V COURT OF APPEAL, CAPE COAST; EX PARTE JAMES GYAKYE QUAYSON**, Writ No. J5/17/2022, dated 27th July 2022, the Supreme Court cautioned against the "tendency of abuse of the reference jurisdiction" and directed trial courts to examine the pleadings and the issues joined to satisfy themselves that a genuine and real question of interpretation exists before staying their hand. See also, THE REPUBLIC v HIGH COURT (GENERAL JURISDICTION) ACCRA; EX PARTE ZANETOR RAWLINGS [2015-2016] 1 SCGLR 53.

What, then, is a genuine or real question of interpretation? **THE REPUBLIC V SPECIAL TRIBUNAL; EX PARTE AKOSAH [1980] GLR 592** supplies the guide. Such a question arises where the words of a constitutional provision are imprecise, unclear or ambiguous; where rival meanings have genuinely been placed on those words by the litigants; where two constitutional provisions conflict in their meaning or effect; or where there is a conflict on the face of the provisions between the operation of particular institutions established under the Constitution.

Article 19(11) is not, on its own terms, a difficult provision. It provides that "no person shall be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed in a written law." Both limbs of that command, definition and prescription, are satisfied on the face of the statute here in question. Section 99(2)(b) of Act 703, as amended, prohibits, in writing, the acting, instigating, commanding, counselling, procuring, soliciting, or purposeful aiding, facilitating, encouraging or promotion of "any acts in contravention of a provision of this Act in respect of which a penalty has not been specified," and it prescribes, equally in writing, a fine of not less than ten thousand and not more than fifteen thousand penalty units together with a term of imprisonment of not less than fifteen and not more than twenty-five years. That the provision operates by reference to contraventions of other substantive provisions of Act 703 does not deprive it of the clarity Article

19(11) demands; it is a common and lawful legislative technique, one which finds its own analogue in Section 236 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), which performs, for offences generally, precisely the function that Section 99(2)(b) performs for Act 703. Similarly, Section 14(1) of Act 703 as amended sets out, in writing and without any real obscurity, the conduct it forbids, namely, the transfer, assignment, mortgage or other encumbrance or dealing with a mineral right without the Minister's prior written approval, and it borrows its penalty, again in writing, from Section 99(2)(b). Whatever quarrel counsel for the 1st and 3rd accused persons may have with the breadth or the wisdom of that legislative choice is not a quarrel about whether the words of the Constitution bear one meaning or another; it is, at bottom, a submission that Parliament ought to have legislated differently. That is not a question of constitutional interpretation calling for this Court to stay its hand and refer the matter to the Supreme Court; it is, at its highest, a question of statutory construction which this Court is entitled, and indeed obliged, to resolve for itself in the course of this judgment.

Accordingly, this Court finds that no genuine or real question of interpretation of Article 19(11) of the Constitution, 1992, from the case, the evidence and the submissions before it. The prayer of counsel for the 1st and 3rd accused persons for a stay of proceedings and a reference to the Supreme Court under Article 130(2) is therefore refused. This Court will now proceed to deliver its judgment on the merits

CONSIDERATION OF THE EVIDENCE AND THE ELEMENTS OF THE OFFENCES CHARGED

The charge sheet contains two main offences, namely,

(1) assignment of mineral rights without approval and

(2) purposely facilitating an unlicenced mining operation.

The Court will analyse the evidence and the elements of these offences in turn and in respect of each accused person.

COUNTS 1, AND 3: ASSIGNMENT OF MINERAL RIGHTS WITHOUT APPROVAL

The 1st and 3rd accused persons are charged with the offences in Section 14(1) and Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995). The offence is defined as follows:

"A mineral right shall not in whole or in part be transferred, assigned, mortgaged or otherwise encumbered or dealt in, in a manner without the prior approval in writing of the Minister, which approval shall not be unreasonably withheld or given subject to unreasonable conditions."

It may be noted that the offence seeks to prohibit a situation where a mineral rights holder may treat the right which the State grants him in a manner that the State may not have cognizance. A careful reading of the offence in the Section may, thus, disclose the following ingredients or elements:

1. That the accused person is a holder of a mineral right,
2. That the accused person did any of the following acts in respect of the mineral rights, namely, transfer, assign or mortgage or in any other manner encumber or deal with the mineral right, and
3. That the accused person did any of the said acts or dealt with the mineral rights without the minister's prior written approval.

As noted from the explanation of the law on the burden and the standard of proof, the Republic has the duty to provide evidence to prove all the ingredients above and prove them beyond reasonable doubt. The accused persons, on the other hand, have no burden beyond raising reasonable doubt. To guide in the evaluation of the evidence, a reference ought to be made to the particulars of offence on the charge sheet. From the charge sheet, the Republic stated the following particulars for A1 and A3 respectively:

"BERNARD ANTWI BOASIAKO, alias WONTUMI, 49 years old, entrepreneur; that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being the owner and controlling director of AKONTA

MINING COMPANY LIMITED did, without first obtaining the prior written approval of the Minister, permit HENRY OKUM and MICHAEL GYEDU AYISI to undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only.

The particulars of offence as they relate to the 3rd Accused are as follows:

AKONTA MINING COMPANY LIMITED, that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being incorporated with the object of engaging in mining and exploration did, without first obtaining the prior written approval of the Minister, permit HENRY OKUM and MICHAEL GYEDU AYISI to undertake a mining operation within the mining concession which was granted to you only."

It is important to note the relationship between the 1st and 3rd accused persons in relation to the alleged wrongdoing. From the evidence on record, the 1st accused is a shareholder and director of A3. This set of facts is significant and will form the basis for examining the elements of the offence in Counts 1 and 3. In examining the evidence in the light of the elements of the offence under Section 14(1) of Act 703, this Court will proceed from the least to the most contested element. In that regard, the Court will first analyse the presence or absence of a ministerial approval. The Court will then turn to the prohibited acts before resolving the issues relating to the mineral rights holder.

Absence of Ministerial Approval

The law seems to be clear on the point that a mineral rights holder may not, without the approval of the minister, carry out any of the prohibited acts in Section 14(1) of Act 703. There is an elaborate process for obtaining the minister's approval in this regard. PW4, the prosecution's expert witness outlined this in his witness statement filed on 11th November 2025 and tendered as evidence in chief in this Court on 3rd February 2026. From the testimonies and the law, this Court notes that the minister's approval must be in writing. To succeed, therefore, the Republic must show that there is no such written approval. The prosecution has thus alleged in the summary of facts and in the particulars of offence that there no ministerial approval exists. Indeed, this ingredient is the least contested of all the ingredients in this offence. As a matter of fact, the Republic's allegation was never contested at all. The 1st and 3rd accused persons admit not having ministerial approval. During cross-examination, this conversation took place between PW4 and the counsel for the 1st and 3rd accused.

Q: Is it to your knowledge that mining rights are transferable under the law, Minerals and Mining Act, 2007 (Act 703) as amended?

A: Yes, my lady, they are transferable subject to ministerial approval.

Q: In the event that a license holder wants to transfer his interest, who will file the application to the Ministry to initiate such transfer?

A: The holder of the Mineral Right.

Q: In your records at the Minerals Commission do you have any such application by A3?

A: Not to my knowledge.

Q: I want to put it to you straight that A3 has never applied for a transfer of their interest in the land in Samreboi and Abekoase, the company has not done that.

A: No, my lady, they never applied."

Indeed, the admission to not having obtained a ministerial approval is also implicit in the 1st and 3rd accused persons' and denial that they ever permitted PW2 to mine the concession in the first place. Accordingly, this court finds that there was no such ministerial approval.

Dealing with Mineral Rights.

The offence in Section 14(1) of Act 703 is committed where the accused person deals with the mineral rights in any of the following manner. That is to say that (1) where he transfers it, (2) where he assigns it, or (3) where he mortgages it. However, the offence is also committed where the accused person in any other manner (4) encumbers the rights or (5) deals with it in any like manner. Indeed, much of the trial was on this aspect of the offence.

To have a thorough analysis of this ingredient of the offence, one has to begin with the particulars of offence. From the particulars of offence, it may be noticed that the Republic uses the expression "permit … to undertake a mining operation". The key question here, then, is whether permitting another person to undertake a mining operation in one's mining concession constitutes any of the five prohibited conducts listed in section 14(1) of Act 703. This question is momentous in the analysis. For any of the five prohibited conducts to be an offence, exclusivity of the mineral right to the right holder must first be established. Establishing exclusivity begins with examining the mining lease itself. For it is the mining lease which establishes the terms of the concession. It is where the rights and obligations are found.

In the mining lease, the mineral right is exclusive to the mineral rights holder. This finding is supported by Clause 1(d) of Exhibit G, the mining lease in question. The clause provides that:

"The Government hereby grants to the Company the ***exclusive rights*** *to work, develop and produce the Mineral in the Lease Area for the said Term (including transportation, processing, and storing with the rights and powers reasonably incidental thereto) subject to the provisions of this Mining Lease."*

From the recital of the mining lease, the 3rd accused is to be referred to as the "Company". More particularly, the recital states as follows:

*"THIS MINING LEASE AGREEMENT (hereinafter called "the Mining Lease") is made the 23rd day of July 2021 BETWEEN THE GOVERNMENT OF THE REPUBLIC OF GHANA (hereinafter called "the Government") acting by SAMUEL A. JINAPOR, the Minister for Lands and Natural Resources (hereinafter called "The Minister") of the one part and AKONTA MINING COMPNY LIMITED with registered address at NA 224 ASAFO - KUMASI. P. O. BOX 4030, KUMASI, GHANA (hereinafter called "**the Company**") of the other part."*

Therefore, the mineral right in Exhibit G is exclusively the third accused's own to the exclusion of any third party. Thus, permitting any other person or third party to enjoy or exercise that right in the same concession would amount to the right being encumbered. Encumbrance, according to Black's Law Dictionary, 8th Edn, is a right, other than an ownership interest, in real property. As a general principle of law, a right is encumbered if a subsequent right or incident is inconsistent with its enjoyment. The particulars of offence state that the 1st or 3rd accused permitted PW2 and PW1 to conduct mining operations on 3rd accused's concession. PW2's right to the mineral in the concession is, no doubt, inconsistent with the rights of the 3rd accused to mine the same mineral from the concession. This Court thus finds that permitting PW2 to mine in the 3rd accused's concession constitutes an act which encumbers the 3rd accused's right to mine the concession. This finding, however, does not completely and effectively resolve the issue pertaining to this ingredient of the offence. There is more to the issue.

From the trial, it appears that the key point of contention is not whether the 1st accused permitted PW2 to enter the concession. That permission is not disputed at all. In exhibit 1, PW2's investigation cautioned statement, he stated that he obtained the 1st accused's permission before entering the 3rd accused's concession. PW2 repeated this throughout the trial. Particularly in paragraph 3 of his witness statement, PW2 told this Court that:

"A1 agreed that I mine on the unmined portions of the concession. He also agreed that reclaim the portions of the land which he had previously mined by planting coconut seedlings thereon. A1 did not give me any money to do the reclamation works as I was expected to use a portion of the proceeds from my mining activities on the unmined portions of concession to defray the cost of reclamation."

The 1st accused, on the other hand, admitted permitting PW2 to enter the 3rd accused' s concession. He, however, contends firmly that his purpose in granting permission was never for mining, but only for land reclamation. In his investigation cautioned statement, exhibit C, the 1st accused made a statement which he substantially repeated in paragraph 8 of his witness statement as follows:

"I wish to state clearly and unambiguously that the permission I granted to Mr. Henry Okum was strictly and exclusively for the purpose of land reclamation, specifically, the planting of coconut seedlings on the already-mined and degraded portions of A3's concession. I did not, at any time, grant Mr. Okum permission to conduct, undertake, or carry out any mining operations or to extract any minerals from A3's concession. The permission I granted was limited solely to reclamation activities on the mined-out portions of the land."

Accordingly, this Court finds that the 1st accused permitted PW2 to enter the 3rd accused's concession. Upon this finding, the only outstanding issue regarding the ingredient of dealing with the mineral right is whether, in addition to allowing PW2 to carry out land reclamation, the 1st accused also permitted him to undertake a mineral operation in the 3rd accused's concession, as the Republic has alleged in the charge sheet.

The arrangement that the 1st accused had with PW2 is not documented. There is also no witness to the discussion which resulted in the arrangement. So, there is no direct evidence on the matter.

Where (as in this case) direct evidence is lacking on a matter, a court of law is entitled to rely on circumstantial evidence. In **DUAH V THE REPUBLIC [1987-88] 1 GLR 343,** the Court of Appeal explained the role of circumstantial evidence as follows:

"Circumstantial evidence was evidence of surrounding circumstances which by undesigned coincidence was capable of proving a proposition with the accuracy of mathematics. In criminal cases, it was sometimes not possible to prove the crime charged by direct or positive evidence of persons present at the time the crime was committed. So, where the testimony of eyewitnesses was not available, the jury was entitled, and indeed permitted, to infer from those facts which the prosecution had proved, other facts necessary either to complete the elements of guilt or establish innocence. However, before drawing the inference of the guilt of an accused from circumstantial evidence, it was very important to make sure that there was no other co-existing circumstance which would destroy or weaken the inference. Thus, circumstantial evidence had to be closely examined and acted upon only when the circumstances were such that the guilt of the accused had of necessity to be inferred and that the facts led to no other conclusion"

At law, circumstantial evidence must lead to an irresistible conclusion, which conclusion must be incompatible with the innocence of the accused person on the fact in issue. Thus, in **THE STATE V ANANI FIADZO [1961] 1 GLR 416**, the Supreme Court held that:

"A presumption from circumstantial evidence should be drawn against an accused person only when the presumption follows irresistibly from the circumstances proved in evidence; and in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt."

In **LOGAN & LAVERICK v THE REPUBLIC [2007-2008]** Aninakwa JSC re-echoed the law on circumstantial evidence when he said:

"Conviction based on circumstantial evidence which is not supported by facts is wrongful."

See also the more recent unreported case of NOBLE ADU GYAMFI v THE REPUBLIC, CRI/APPEAL NO. J3/5/2015, dated 2/12/15, in which Her Ladyship Adinyira JSC, on behalf of the Supreme Court, discussed the application of circumstantial evidence in detail.

Having examined the law on circumstantial evidence, this Court will weigh the word of the two men in the light of the surrounding circumstances to ascertain the truth. Hence, the circumstances:

First, PW2 has testified before this Court that he is a small-scale miner. He stated this in paragraph 1 of his witness statement, which reads:

"My name is HENRY OKUM. I live at Plot 1, Block J, in Tanoso in Kumasi in the Ashanti Region. I am a small-

scale miner. I am duly licensed to operate in specific areas within the country."

Further, under cross-examination, PW2 provided further testimony to consolidate his trade and livelihood. The following conversation ensued between him and counsel for the 1st and 3rd accused persons.

"Q: In your witness statement, paragraph 1, you indicated that you are a small-scale miner. How long have you been a small-scale miner?

A: I have been a small-scale miner for about 7 years.

Q: Have you obtained any license for your activity as a small-scale miner?

A: Yes.

Q: When did you obtain this license?

A: I obtained this license in 2017."

It must be mentioned, however, that 1st accused has told this Court that he did not know that PW2 was a small-scale miner at all. He tells the Court that PW2 represented to him (the 1st accused) that he is a mine support service provider. The 1st accused, however, led no evidence to show that he ever inquired into the veracity of this representation which he alleged that PW2 had made to him. No evidence was adduced before the Court which shows that PW2 is into land reclamation or has any previous experience in land reclamation. This begs the question how the 1st accused would, of all persons and business enterprises in this country, ask PW2 to carry out land reclamation on a mining concession.

Secondly, land reclamation is costly. In fact, according to DW1, a professional mining engineer who testified for the 1st and 3rd accused persons, reclaiming mined land costs money. DW1 confirmed this during cross-examination by the Deputy Attorney-General.

"Q: In your expert opinion, does it cost money to reclaim a mined land?

A: Definitely.

Q: Tell the court if you know, how much does it cost to generally reclaim a 1km square piece of land?

A: My Lady, it differs from site to site.

Q: Can you give us a range?

A: The range is specific to the ground conditions.

Q: Do you know, since you are so confident in your witness statement that Al only authorized PW2 to carry out reclamation only and not mining and reclamation, if A1 has given any money to PW2 for the reclamation that he has asked PW2 to carry out on the concession?

A: I have no idea about that."

Meanwhile, in his witness statement, PW2 told this Court that the 1st accused did not give him any money or funds to carry out land reclamation. In paragraph 3, PW2 stated:

"A1 agreed that I mine on the unmined portions of the concession. He also agreed that reclaim the portions of the land which he had previously mined by planting coconut seedlings thereon. A1 did not give me any money to do the reclamation works as I was expected to use a portion of the proceeds from my mining activities on the unmined portions of concession to defray the cost of reclamation."

In paragraph 6 of his witness statement, PW2 stated further:

"I funded the reclamation works using proceeds from my mining operations on the concession, and A1 was fully aware of this fact."

PW2 was not cross-examined on this critical piece of evidence. Neither did the 1st accused put before this Court, any evidence to show that he had advanced money to PW2 to fund the reclamation. Thus, PW2 has maintained throughout the trial that the 1st accused had permitted him to do two things in the concession, namely, to mine for gold and then use a part of the proceeds to reclaim the damaged land. In fact, during cross-examination, when PW2 repeated his claim, counsel for the 1st and the 3rd accused did nothing about it. This is what happened:

"Q: Were you able to extract some gold in your operations?

A: Yes of course, that was my aim of going there.

Q. And when your staff were arrested from the site, they took away some amount of gold, is that correct?

A. Yes, my lady.

Q. And this gold was not from illegal miners, but from your operations.

A. Yes, my lady."

The nagging question at this stage, following from this testimony, is why any person of sound mind would volunteer to reclaim a tract of land deep in the forest that has already been mined by another at the other's own cost and at no cost to that other. More intriguing is that this person, alleged to have offered this service gratuitously, is a small-scale miner with no previous experience in land reclamation. Assuming (without admitting) that a person of sound mind would even agree to enter this alleged arrangement, PW2 has expressly, emphatically and consistently refuted the claim that he ever agreed to it. Having rejected the allegation, the burden rests on the 1st accused to lead evidence on the probabilities to show that PW2 had agreed to the alleged arrangement. No such evidence was, however, led in this case.

On the strength of the evidence, this Court holds that this is a proper case in which the circumstantial evidence will apply and does apply. Thus, on the basis of the circumstances outlined above, this Court is satisfied that no reasonable explanation exists to rival the conclusion that the 1st accused, indeed, permitted and, indeed, expected PW2 to fund the reclamation exercise, which he (the 1st accused had permitted PW2 to carry out from the proceeds of PW2's illegal mining activities carried out in the 3rd accused's concession. This Court finds that the 1st accused's subsequent explanation that he had expected PW2 to recover the cost of reclamation from the future sale of the mature coconut can only be, and is, an afterthought.

Holder of the Mineral Right

Exhibit G shows that A3 is the holder of the mineral rights in the concession. Exhibit G is the mining lease which the minister granted to the 3rd accused on 23rd July 2021. The analysis on the element of mineral right holder, however, does not end with Exhibit G. It only begins with it. This is because, the 1st accused, though not a mineral rights holder in the concession in question, is also charged in Count 1 with the offence in Section 14(1) of Act 703. From reading the particulars of offence in Count 1, it is quite clear that the 1st accused is charged with that count because of his capacity as "the owner and controlling director" of the 3rd accused. What, then, is the law on companies and their shareholders or directors in relation to crime?

The general position of the law is that a company is a separate legal entity from its shareholders. This is known as the doctrine of separate legal entity rule. See **MORKOR V KUMA (NO. 1)** [**1990 – 2000] 1 GLR 721**, where Akuffo

JSC confirmed the common law position in **SALOMON V SALOMON & COMPANY [1897] AC 22** as follows:

"A company, after its registration, has all the powers of a natural person of full capacity to pursue its authorised business. In this capacity a company is a corporate being, which, within the bounds of the Companies Code, 1961 (Act 179) and the regulations of the company, may do everything that a natural person might do. In its own name, it can sue and be sued, and it can owe and be owed legal liabilities. A company is, thus, a legal entity with a capacity separate, independent and distinct from the persons constituting it or employed by it."

From this, the 3rd accused, being a company, is a separate legal entity from its shareholder, the 1st accused. This position of the law is however not without exceptions. The law acknowledges situations where shareholders are not truly separate from the personality of the company. In such a case, the law allows the corporate veil to be lifted, in which case the owners are held to liability. Accordingly, in **Halsbury's Laws of England** (4th ed), Vol 7(1), the point was made at para 90, that:

"Notwithstanding the effect of a company's incorporation, in some cases the court will 'pierce the corporate veil' in order to enable it to do justice by treating a particular company, for the purpose of the litigation before it, as identical with the person or persons who control it."

Again, in **MORKOR v KUMA (NO. 1),** *supra,* the Court reasoned as follows:

"Therefore, whether or not a situation is one in which the lifting of the veil of incorporation is merited, is dependent on the peculiar factors driving each particular case."

The question then is, having regard to all the circumstances of this case, who is truly the mineral rights holder in the concession in question? In the proceedings, the 1st accused has testified that his co-shareholder and director, 2nd accused, has been out of the jurisdiction since 2021 or 2022. When, during cross-examination, the Deputy Attorney-General inquired about the 2nd accused's whereabouts from the 1st accused, this conversation ensued:

Q: Where does he [A2] live?

A: He was then living at Tarkwa, but between the year 2021 and 2022 he made his mind to travel. Since then, I have not heard from him.

Q: How are you related to this Kwame Antwi?

A: We are directors of Akonta Mining Company Limited.

Q: Tell the court the last time you as directors of Akonta Mining Company Limited filed your annual returns with the Office of the Registrar of Companies?

A: My lady, I cannot remember.

These responses give a clear indication of the corporate governance culture at the 3rd accused. First, they show that the 3rd accused did not have a functioning board of directors at the time the alleged acts, which form the basis of this trial, were committed. They also suggest that the 1st accused alone, at least from 2021 or 2022, was the controlling mind and hand of the 3rd accused. In fact, Exhibit G was issued in the name of the 3rd accused at a time when the 1st accused was the only mind and hand of the 3rd accused. Further, the alleged acts which are the subject of this offence are stated to have occurred in the years 2024 and 2025. This testimony is significant in that it leaves the 1st accused alone as the sole controlling mind and hand of the 3rd accused at all times material.

Secondly, the evidence on record shows that much of the 1st accused's conduct in relation to the 3rd accused was undocumented and did not reflect regular corporate governance practices. The 1st and 3rd accused persons called five witnesses (including the 1st) in this trial. Four of the five witnesses (including the 1st accused) have testified that the 1st accused did not put his dealings with PW2 into writing. Indeed, all these witnesses (including the 1st accused himself) sought to cite the lack of documentation of the 1st accused's dealings with PW2 as a defence to the charges.

For instance, the instant discourse partly took place between the Deputy Attorney-General and DW1 during cross-examination:

Q: For an expert who is interested in drawing a distinction between written and unwritten legal instruments and contracts, did you find out if Al's permission to PW2 to go and conduct a reclamation on the concession was in writing or not?

A: My lady, I humbly reiterate my point that the criminal charge is based on assignment. And, respectfully, I have indicated that a verbal communication between PW2 and A1 does not constitute an assignment

"Q: And that you will also agree that a person has not complied with Section 14 if his transfer, assignment, mortgage or any of the activities mentioned in Section 14 was not done in writing. True or false"?

A: My lady, there is no verbal activity as enshrined in Section 14 or there is no activity at all in Section 14 if it is not done as rightly enshrined under Section 14 of Act 703.

Q: I am suggesting to you that a person who fails to put a transfer, assignment, mortgage or any of the activities mentioned in Section 14 of Act 703 in writing has not complied with the requirements of Section 14.

A: My Lady, the learned counsel is right. If there is no written document to meet the dictate of Section 14, it becomes clear that there is no action at all."

The 1st accused himself latched very tenaciously on to lack of documentation as an explanation to why he could not be held liable for allowing PW2 on to the concession in question. He said the following in paragraph 9 of his witness statement:

"9. *I did not enter into any written contract with Mr. Okum in respect of the reclamation arrangement. I acknowledge that the absence of a written agreement was an oversight on my part. However, the absence of a written contract does not, in law or in fact, transform a reclamation arrangement into a mining operation or an assignment of mineral rights."*

Indeed, lack of or weak documentation of corporate affairs may not necessary be a criminal offence. However, it speaks to the level of compliance with corporate governance rules and standards. One way of showing a separation between shareholders and their company is compliance with the rules of corporate governance. Compliance with the rules of corporate governance, thus, in a way speaks to whether the company is truly acting as a company or that it is just someone else who is acting through the company.

Additionally, PW2 has testified before this Court that he approached A1 because of the 1st accused's relationship with the 3rd accused. In paragraph 2 of his witness statement, PW2 said:

"Sometime in September 2024, I discovered a mining site located in Samreboi. Upon conducting a search at the

Minerals Commission, I was informed that the area in question was a registered concession standing in the name of A3. Following this confirmation, I contacted A1 to discuss the possibility of mining on the unmined portions within the said concession."

Further, PW2 testified that he knew the 3rd accused as the 1st accused, materially. More particularly, this conversation transpired between PW2 and counsel for the 1st accused and 3rd accused, during cross-examination:

> *"Q: Do you know A2, Kwame Antwi?*
>
> *A: No, I do not know him.*
>
> *Q: How do you know A3, Akonta Mining Company.*
>
> *A: I know Akonta Company Mining which is Chairman. He happens to be my friend.*
>
> *Q: How long have you known Akonta Mining Company Limited?*
>
> *A: I know Akonta Company Mining for quite some time."*

What this Court understands from these answers and PW2's evidence-in-chief is that he (PW2) approached the 1st accused because, to him, the 1st accused is the 3rd accused. This is confirmed by the 1st accused's own testimony in paragraph 7 of his witness statement. In that statement, the 1st accused stated that:

"Sometime in October 2024, one HENRY OKUM [PW2] approached me and expressed his desire to undertake land reclamation works on portions of A3's mining concession at Samreboi that had previously been mined and were in a degraded state. Mr. Okum represented to me that he was experienced in land reclamation and that he wished to plant coconut seedlings on the mined-out portions of the concession to restore the land."

That, however, was not all. The more rigorous test of the 1st accused's role in the matter is provided by cross-examination by the 1st accused's own lawyer. The following transpired:

"Q: Did you receive any permission from Akonta Mining Company, A3? At this point, I need to explain to you that, A3 is not the same as A1, Bernard Antwi Boasiako. So, under the law, we see them as two separate entities. A1 is a human person. A3 is corporate and, therefore, an artificial person. There are different ways of the two entities engaging in transactions with third parties.

A. I said I do understand. But when you go to Samreboi, nobody knows Akonta Mining Board of Directors. And, as I said earlier on, I am not a director or board of director of Akonta Mining; and so what I know is that Chairman Wontumi owns Akonta Mining, and Akonta Mining is Chairman Wontumi.

Q: You will agree with me that in the transaction between your good self and Akonta Mining Company Ltd in the alleged transaction, there was no document from Akonta Mining or Chairman Wontumi to you.

A: I did not have any agreement or transaction with Akonta Mining as a company, but I have a verbal agreement with Chairman Wontumi."

Thus, from the above, this Court finds that this is a proper case where the 3rd accused's corporate veil should be lifted. Thus, there is no real difference between the 1st accused and the 3rd accused in relations with the dealings with PW2. Indeed, the 3rd accused never had any proper corporate governance structures in place. There is no evidence that the 3rd accused had a functioning management board or executive officers in place to behave as a company. All decisions and dealings with PW2 were with the 1st accused and him alone; and were all informal and never in writing.

This Court finds that the 1st accused was the true and *de facto* mineral rights holder in the concession in question. See **AMARTEY V SOCIAL SECURITY BANK; SOCIAL SECURITY BANK V ROBERTSON (CONSOLIDATED**) [1987 – 88] 1 GLR 497.

COUNTS 4 AND 6: PURPOSELY FACILITATING AN UNLICENCED MINING OPERATION

The 4th and 6th Counts of the offences which the 1st and 3rd Accused Persons are charged with is based on Section

99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995). This law provides that:

> *"A person who acts or instigates, commands, counsel, procures, solicits, or in any manner purposely aids, facilitates, encourages, or promotes any acts in contravention of a provision of this Act in respect of which a penalty has not been specified, commits an offence ..."*

The following elements may be deduced from this offence:

(a) **Prescence of a contravening act**: That a person other than the accused person has engaged in an act which contravenes a provision of the Act.

(b) **Absence of a penalty**: That the Act does not specify a penalty for such a contravention.

(c) **Abetment by the Accused Person**: That the accused person acted or instigated, commanded, counselled, procured, solicited, aided, facilitated, encouraged, or promoted the contravention.

(d) **Presence of purpose**: That the accused person abetted the contravention purposely for breaching the law.

The particulars of offence from the charge sheet in respect of the 1st accused are as follows:

> *"BERNARD ANTWI BOASIAKO, alias WONTUMI, 49 years old, entrepreneur; that you, in the year 2024, in*

Samreboi in the Western Region and within the jurisdiction of this Court, being the owner and controlling director of AKONTA MINING COMPANY LIMITED, did purposely facilitate HENRY OKUM and MICHAEL GYEDU AYISI to, without a licence granted by the Minister, undertake a mining operation within the mining concession which was granted to the said AKONTA MINING COMPANY LIMITED only."

The particulars of offence as they relate to the 3rd accused are as follows:

"AKONTA MINING COMPANY LIMITED, that you, in the year 2024, in Samreboi in the Western Region and within the jurisdiction of this Court, being incorporated with the object of engaging in mining and exploration, did purposely facilitate HENRY OKUM and MICHAEL GYEDU AYISI to, without a licence granted by the Minister, undertake a mining operation within the mining concession which was granted to you only."

The Court will proceed to analyse each of the elements together with the evidence on the Court's record as follows:

A. **Prescence of a Contravening Act**

Contravention entails violation. In other words, an act or an omission is in contravention with a provision of law if that act or omission is contrary to that law. Consequently, a behaviour which is contrary to a provision of Act 703 as amended is a contravention of the Act itself. Applying this reasoning to the facts of this case, one may say that to be compliant with the terms of Act 703, the mining and mining-related activities of PW1 and PW2 on the 3rd accused's concession must be with the minister's approval or licence.

As found above, however, there is evidence before this Court, which shows that, that the accused persons have allowed PW1 and PW2 to enter onto the concession in Exhibit G (the 3rd accused's Mining Lease) to conduct a mining operation and to undertake reclamation. The evidence on record shows that the accused persons did not apply or obtain the required ministerial approval. These acts are contrary to (and, therefore, are in contravention of) two provisions of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995), namely, Section 14(1) and Section 99(2)(b).

Further, Act 703 regulates the provision of mine support services". Section 59 provides as follows:

> *"Persons or companies providing prescribed services to a holder of a mineral right and registered with the Commission may be granted concession as prescribed."*

Consequently, the Mining and Minerals (Support Services) Regulations, 2012 (LI 2174) regulates the provision of such mine support services. By Regulation 2, such mine support services include land reclamation. This is confirmed by both PW4 and DW1. The following partly transpired between the Deputy Attorney-General and DW1 during cross-examination:

Q: In your expert opinion, do you require a license to carry out Mine Support Services?

A: Yes.

Q: In your expert opinion, is reclamation a Mine Support Service?

A: Yes.

Q: In your expert opinion, a Mineral Right Holder is required by law to reclaim land in respect of which he has mined, true or false?

A: Yes.

DW1's testimony tallies with that of PW4. This is confirmed by the discourse that took place between counsel for the 1st and 3rd accused persons, during cross-examination, thus:

"Q: You are also familiar with the Minerals and Mining (Support Service) regulations, 2012

(L.I 2174).

A: Yes, my lady.

Q: So, under the L.I 2174, can you tell this court who is a Support Service Provider?

A: I need to correct that question, the correct provision in the law section 59 of Act 703 and then LI.2174 as *counsel has already mentioned, the correct description is Mines Support Service Provider. It is important to say so because these are companies providing services to the mines so the definition cannot be complete without adding the word 'Mines' to the Support Service Provider. With the correction out of the way, the Mines Support Service Provider is any other person other than a Mineral Right Holder who are licensed to provide all manner of services to the Minerals and Mining Sector. So, in L.I 2174 it has been stated and they are in category A to C, so contract mining or reclamation activities are two examples of the kind of Support Service that a Licensed Mines Support Provider can do."*

PW2 has thus admitted to undertaking a reclamation exercise on the 3rd accused's mining concession. The 1st accused has also admitted to permitting PW2 to undertake such reclamation exercise. This admission is contained in exhibit C, the 1st accused investigation cautioned statement. Also, in paragraph 8 of his witness statement of the 1st accused, he stated as follows:

"8. I wish to state clearly and unambiguously that the permission I granted to Mr. Henry Okum was strictly and exclusively for the purpose of land reclamation - specifically, the planting of coconut seedlings on the already-mined and degraded portions of A3's concession. I did not, at any time, grant Mr. Okum

permission to conduct, undertake, or carry out any mining operations or to extract any minerals from A3's concession. The permission I granted was limited solely to reclamation activities on the mined-out portions of the land."

Later in paragraph 17 of his Witness statement, the 1st accused stated further:

"Mr: Okum's mining activities were conducted without my knowledge, consent, or authorisation, and in excess of the limited reclamation permission I granted him. I cannot be held criminally liable for the unauthorised acts of Mr. Okum."

A mine support service provider ought to be registered by the Minerals Commission and be licenced or granted a concession to provide such a service. Failure to comply with these requirements constitutes a breach of Section 59 of Act 703. There is evidence on record that PW2 has not registered nor obtained a licence of concession to provide reclamation services. In fact, PW2 has maintained that he is a small-scale miner and not a mine support service provider. Yet, the 1st accused has admitted to permitting PW2 to enter onto the 3rd accused's concession to provide land reclamation services, while PW2 has testified to this Court that he and his employees have planted coconut trees to reclaim the mined portions of the 3rd accused's concession. This, also, constitutes a contravention of Section 59 of Act 703.

B. **Lack of a Specific Penalty**

This element relates to only the Counts on 4, and 6 on the offence of purposely abetting an unlicenced mining activity contrary to Section 99(2)(b) of the Minerals and Mining Act, 2006 (Act 703) as amended by Section 3 of the Minerals and Mining (Amendment) Act, 2019 (Act 995).

As found above, PW2's reclamation exercise constitutes a contravention of Section 59 of Act 703. Act 703, however, prescribes no specific penalty for a failure by a person to register or obtain a licence or concession before providing a mine support service to a mineral right holder. Therefore, PW2's reclamation exercise satisfies this essential element of the offence under Section 99(2)(b) of Act 703 as amended.

C. **Facilitation by the Accused Person**

As noted above, the evidence on record in this trial shows that the 1st and 3rd accused persons had allowed or permitted PW2 to enter onto the concession in Exhibit G (the 3rd accused's Mining Lease) to conduct a mining operation and to undertake reclamation. PW1 and PW2 undertook these activities without ever obtaining the requisite licences or approvals. By permitting PW2 who, in turn, employed PW1 to carry out a reclamation exercise in the 3rd accused's concession, the accused persons have abetted the contravention of Section 59 of Act 703. Indeed, in his witness statement filed on 5th May 2026, the 1st accused admitted this very emphatically. He stated in paragraph 8 as follows:

> *"The permission I granted was limited solely to reclamation activities on the mined-out portions of the land."*

This Court, thus, finds that the accused persons did facilitate PW2 and PW1's contravention of the Act.

D. **Presence of purpose**

In his investigation-cautioned statement, Exhibit C, the 1st accused stated that he, indeed, permitted PW2 to enter the concession, but only to plant coconut trees to reclaim the mined portion of the concession. He stated therein as follows:

> *"In October 2024, Henry Okum came to me that he wanted do reclamation on the land, so I permitted him without any written contract to so."*

It is important to state that merely permitting someone onto a concession by and of itself, even to carry out a mining operation or a mine support service, does not satisfy the requisite criminal element in the offence. It must be shown further that such permission was for the purpose of acting to breach Act 703. To establish purposefulness, one must examine the entire circumstance under which the permission was granted.

PW2 testifies that the 1st accused introduced him to an excavator seller from whom he (PW2) made part payment for some excavators, the 1st accused having made an initial part payment. During cross-examination, PW2 partly stated as follows:

"Q: So how did you procure equipment onto the site?

A: Between Chairman Wontumi and I, our verbal agreement shows that I have some of the machines myself and because there are a lot of pits, Chairman Wontumi also promised to provide me with some bulldozers to make my work easy. And these bulldozers were acquired by Chairman Wontumi in Kumasi from a friend of mine. So, when I was going for the bulldozers to the site, my friend told me that chairman wontumi did not pay all the money and therefore, I had to pay the money and so I called chairman womtumi and he spoke to the guy that he should allow me to go with the bulldozers, so that whiles I was working, I will pay the rest of the money in instalment. So, chairman is aware."

This testimony was denied by the 1st accused, but only to the extent that he only introduced PW2 to the vendor and nothing more. In paragraph 11 of his witness statement, the 1st accused stated as follows:

"11. Regarding the allegation that I introduced Mr. Okum to an excavator seller and made an initial

part payment for excavators; I wish to clarify the following: I did assist Mr. Okum in identifying a contact who could supply equipment. However, this assistance was rendered in the context of the reclamation exercise, as land reclamation activities may require the use of heavy equipment for earthmoving and land preparation. I did not procure or supply excavators for the purpose of mining operations. Any equipment I assisted Mr. Okum in acquiring was intended for, and represented to me as being for, the reclamation exercise."

Thus, even in his denial and explanation, the 1st accused admits emphatically that he did "assist Mr. Okum in identifying a contact who could supply equipment." He went further to state that his assistance was intended only for the reclamation purposes and not for mining purposes. This evidence constitutes the purposefulness with which the 1st accused facilitated the PW1's contravention.

Further, it is the duty of a mineral rights holder to reclaim or ensure that the mined land is reclaimed. The 1st accused has, in his testimony admitted to knowing that duty. The confluence of the following circumstances is helpful: First, the 1st accused knew that it was his duty to reclaim the land. Second, PW2, whom the 1st accused has allegedly tasked to carry out this duty, had no previous experience in land reclamation. The 1st accused made no effort at ensuring that he tasked a competent person to carry out the reclamation. Third, the time which was a time where illegal mining was the most serious threat to national security. This is confirmed by DW3 at paragraph 8 of his witness statement as follows:

> *"In my capacity as Chairman of the Western Regional Security Council, I presided over the Councils meetings, coordinated the Council's responses to security threats and challenges in the Region, and had direct access to and familiarity with the official records, correspondence, and proceedings of the Council. I was personally involved in the Council's deliberations on matters relating to illegal mining in the Western Region, which was one of the most significant security and environmental challenges facing the Region during my tenure."*

The 1st accused knew or ought to have known this. With all these circumstances, one would expect that a mineral rights holder would ordinarily visit the mining site to monitor and ensure that his agent was performing only land reclamation, doing so effectively. The evidence before the court shows, however, that the 1st accused never visited the mines site ever. During cross-examination, PW2 confirmed this to the Court as follows:

> *"Q: During the time that you started mining in the Akonta Concession, did A1 ever come to the site to supervise your operations?*

A: No, my lady, A1 did not."

Indeed, the 1st accused himself told the Court that he never visited the mine site after tasking PW2 to carry out land reclamation on the land. That, however, is not all. There is evidence on record that the 1st accused actively sought assistance from the Western Regional Security Council to protect PW2's activities on the concession. The following conversation took place between PW2 and counsel for the 1st accused and the 3rd accused:

Q: So, now that you understand that they are two entities separately identified, the question now is, did you receive any permission from A3 being Akonta Mining Company Limited?

A: I do not know Akonta Company; and again, before I went there, it was chairman Wontumi who went to do the operation on the ground for me through Regional Security Council (REGSEC) and the letter that we wrote to REGSEC was on Akonta Mining Letter Head and that was signed by Chairman Wontumi."

The above facts and circumstances show that the accused persons were purposeful when they facilitated PW1 and PW2's contravention of Act 703.

VI. **OTHER MATTERS RAISED IN DEFENCE**

Before setting down its verdict, this Court must also dispose of certain further submissions pressed on behalf of the 1st and 3rd accused persons in the written address, which have not already been addressed in the body of this judgment.

The "Ejusdem Generis" Argument on Section 14(1)

Learned counsel for the 1st and 3rd accused persons submitted that the residual words of Section 14(1), "or otherwise... dealt in, in a manner," must, applying the ejusdem generis rule, be confined to transactions of the same genus as "transferred, assigned, mortgaged," that is to say, formal transactions which alienate or dispose of an interest in the mineral right, and that a mere informal permission to a third party to mine cannot, on this reading, amount to a "dealing" within the section. This Court does not accept that submission. The ejusdem generis rule is a rule of last resort, to be applied only where the general words genuinely admit of ambiguity and where a discoverable common genus confines them. Here, Parliament's own choice of language forecloses so narrow a reading. The specific words "transferred, assigned, mortgaged" are themselves followed not merely by "or otherwise dealt in" but by the additional qualifier "or otherwise encumbered," a term which itself extends beyond formal alienation to any burdening or fettering of the right. Read as a whole, and having regard to the evident statutory purpose, namely, to ensure that the State, through the Minister, retains oversight of who in fact exploits the nation's mineral resources under cover of a granted concession, the residual words are deliberately broad. A mineral right, as Exhibit G makes plain, is the exclusive right to work, develop and produce the mineral in the concession. To permit a stranger to the grant to exercise that very right, to work, develop and produce minerals within the concession, whether by a written instrument or by word of mouth, is to deal with the right in a manner Section 14(1) was enacted to control. To hold otherwise would permit any mineral rights holder to achieve, by the simple expedient of an oral arrangement, precisely the mischief which a formal assignment would achieve, while escaping entirely the statute's reach. This Court declines to construe Section 14(1) in a manner that would defeat its evident purpose.

The Companies Act and the Personal Liability of the 1st accused

It was further submitted, relying on Section 147(1) of the Companies Act, 2019 (Act 992) and DALEX FINANCE AND LEASING COMPANY LTD V EBENEZER DENZEL AMANOR & OTHERS, Civil Appeal No. J4/02/2020 (14th April 2021), that the acts of a managing director carrying on the usual business of a company are, in law, the acts of the company alone, and that Section 147(1), being later in time, has by implication repealed Section 107(1)(a) of Act 703 as amended, which deems each director or officer of a corporate offender also to have committed the offence. This Court is unable to accept that submission. The doctrine of implied repeal applies only where two provisions are in irreconcilable conflict, such that "the two cannot stand together." There is no such conflict here. Section 147(1) of Act 992 relates to an act done in the ordinary course of business to the company as principal. Section 107(1)(a) of Act 703 goes further and, once an offence under Act 703 has been established against a corporate accused, it extends criminal responsibility to the directors and officers who stood behind that offence. The two provisions operate at different stages and address different questions: the one fixes the company with primary liability for the acts of those who direct its affairs, and the other fixes those very directors with a derivative liability of their own. They coexist perfectly well, as indeed general principles of company law and directors' criminal liability have long permitted. In any event, this finding is not the basis upon which this Court has held the 1st accused liable in this matter. As set out at length in the analysis of the holder of the mineral right above, this Court has found, independently of Section 107(1)(a), that the 1st accused was, on the facts peculiar to this case, namely, the complete absence of any functioning board or corporate governance structure at the 3rd accused, the total absence of the 2nd accused from the company's affairs since 2021 or 2022, and the wholly personal and informal character of every dealing between the 1st accused and PW2, the true and de facto mineral rights holder, the true and de facto mineral rights holder, such that the corporate veil properly falls to be lifted. That finding does not rest on any statutory presumption but on this Court's own assessment of the evidence, an assessment which the authority of Morkor v Kuma (No.1) and Kwabena Duffour & Others v The Republic, Criminal Appeal No. J3/05/2023 (3rd May 2023), both cited by the defence, in fact support; for those very authorities teach that whether the veil should be lifted turns on the peculiar facts of each case, and the facts of this case, unlike those in Duffour, disclose precisely the kind of informality and absence of governance that justifies piercing the veil.

Absence of Documentary Evidence and the Credibility of PW2

Learned counsel further submitted that the Republic's failure to produce any written instrument of transfer, assignment or conveyance, and the absence of any evidence that PW2 was held out as having authority to mine on the 3rd accused's behalf, are fatal to Counts 1 and 3. PW2's evidence, coming as it does from a man who was himself found in flagrante delicto on the concession, ought to be treated with the greatest caution and should not, without more, ground a conviction. This Court has already addressed and answered the first branch of this submission in the body of this judgment. The very absence of documentation is not a defence but part of the informal and undocumented pattern of dealing this Court has found to be the true character of the 1st accused's conduct of the 3rd accused's affairs, a finding that a rights holder cannot use his own default to defeat.

As to PW2's credibility, this Court reminds itself of the caution enjoined by the three-stage test in **LUTTERODT V COMMISSIONER OF POLICE [1963] 2 GLR 429**, and has, in truth, already applied it. It has not accepted PW2's account uncritically or on his oath alone. It has tested that account against the 1st accused's own witness statement, The 1st accused's own investigation cautioned statement, the unchallenged and uncontroverted evidence that PW2 in fact extracted gold from the unmined portions of the concession, the equally unchallenged evidence that PW2 funded the reclamation exercise from those very proceeds with 1st accused's knowledge, and the absence of any evidence, beyond bare assertion, that the 1st accused ever advanced funds, verified PW2's claimed line of business, or supervised the site to ensure that only reclamation, and no mining, was underway. It is that convergence of independently tested circumstances, and not PW2's word alone, upon which this Court's findings rest. The submission is accordingly rejected.

CONCLUSION

Having regard to all of the foregoing, this Court makes the following findings on each count of the charge sheet.

On **Count 1 (Assignment of mineral rights without approval (1st Accused)**

This Court has found, beyond reasonable doubt, that no ministerial approval was ever sought or obtained. And that the 1st accused dealt with the 3rd accused's mineral right by permitting PW2 to conduct mining operations, and not merely land reclamation, on the unmined portions of the 3rd accused's concession; and that the 1st accused was, at the material times, the true and de facto holder of that mineral right. The 3rd accused's corporate veil having properly been lifted on the facts of this case. Each ingredient of the offence under Section 14(1) as read with Section 99(2)(b) of Act 703, as amended, has accordingly been established against the 1st accused to the required standard. A1 is accordingly found guilty as charged on Count 1. He is accordingly convicted.

On **Count 3** (Assignment of mineral rights without approval (3rd Accused) For the same reasons aforesaid, and the 3rd accused being the registered holder of the mineral right under Exhibit G, this Court finds that the same ingredients have been established against the 3rd accused. The 3rd accused is found guilty as charged on Count 3. The 3rd accused is accordingly convicted.

On Count 4 (purposely facilitating an unlicensed mining operation (1st Accused):

This Court has found that PW2's mining and reclamation activities on the concession contravened Section 14(1) and Section 59 of Act 703. That no penalty is separately specified in the Act for a contravention of Section 59, that the 1st accused facilitated PW1 and PW2's contravention by permitting them onto the concession, introducing PW2 to a supplier of excavators, and enlisting the Western Regional Security Council to protect PW2's operations, and the 1st accused did so purposely, as demonstrated by his knowledge of his own duty to reclaim the land, his failure ever to verify PW2's competence or to supervise the site, and his own admissions. Each ingredient of the offence under Section 99(2)(b) of Act 703, as amended, has accordingly been established against the 1st accused to the required standard. The 1st accused is therefore found guilty as charged on Count 4 and is convicted.

On Count 6 (Purposely facilitating an unlicenced mining operation (3rd Accused)

For the same reasons, this Court finds that the ingredients of the offence have equally been established against the 3rd accused, the registered holder of the concession on whose behalf and through whose sole directing mind, the 1st accused's, the facilitation was carried out. The 3rd accused is therefore, found guilty as charged on Count 6, and is convicted.

SENTENCING

The Court takes notice of the gravity of the offences, and the need for deterrence to avert the environmental disaster that might befall the nation, the more law enforcement stays aloof, and allows illegal mining activities to persist in the country.

The offences in this case relate to illegal exploitation of mineral resources, which are the property of the State. The conduct of the 1st and 3rd accused persons undermines the regulatory framework for the mining sector and contributes to environmental degradation associated with illegal mining.

Having listened to counsel for 1st and 3rd accused plea in mitigation, the 1st and 3rd accused person are sentenced as follows;

Taking into account, the fact that the 1st and 3rd accused persons are 1st time offenders, and generally their plea in mitigation, the court sentences the accused persons as follows:

On **count 1** the 1st accused is sentenced to serve a term of 20 years imprisonment in hard labour, and also to a fine of 10,000.00 penalty units in default serve 3 years in hard labour.

On **count 4,** the 1st accused is sentenced to serve a term of 20 years imprisonment in hard labour, and also to a fine of 10,000.00 penalty units in default serve 3 years in hard labour.

On **count 3** the 3rd accused is sentenced to pay a fine of 15,000 penalty units.

On **count 6,** the 3rd accused is sentenced to pay a fine of 15,000 penalty units.

The sentences are to run concurrently.

In addition to the above pursuant to section 9 of the minerals and mining Act 2006 ACT 703 as Amended by the Mineral and Mining (amendment) Act 2019 Act 995. All items retrieved from the 3rd accused's concession as aforesaid are forfeited to the State. In dealing with the forfeited item the Minister shall comply with section 10 of the Act.

SGD
H/L AUDREY KOCUVIE - TAY (J)
JUSTICE OF THE HIGH COURT

COUNSEL: DR JUSTICE SREM-SAI (DAG) WITH ESI DENTAA YANKAH(PSA), PRISCILLA LARTEY (SA) AND NATALIE KORKOR HAMMOND (ASA) FOR THE REPUBLIC

SAMUEL ATTA AKYEA FOR THE 1ST AND 3RD ACCUSED PERSONS