

OFFICE OF THE ATTORNEY-GENERAL
& MINISTRY OF JUSTICE
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on 22/10/2024
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Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE

ACCRA - AD 2024

Suit No: J1/1/2025

BETWEEN

ALEXANDER AFENYO MARKIN

PLAINTIFF

THE MAJORITY LEADER

PARLIAMENT OF GHANA, OSU – ACCRA

AND

1. THE SPEAKER OF PARLIAMENT

1ST DEFENDANT

OFFICE OF PARLIAMENT

ACCRA

2. THE ATTORNEY – GENERAL

2ND DEFENDANT

ACCRA

STATEMENT OF 2ND DEFENDANT'S CASE

Introduction

On 15th October 2024, the plaintiff herein invoked the original jurisdiction of this Honourable Court for the following reliefs:

1. A declaration that upon the true and proper interpretation of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996(C.I.16)

- a) the filing of nomination of Hon Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an independent Member to join another party;
- b) the filing of nomination of Hon. Cynthia Morrison the current New Patriotic Party's Member of Parliament for Agona West constituency in the Central Region with the Electoral Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of her seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member ;
- c) the filing of Hon. Kwodwo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member;

2. An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwodwo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving the party of which he was a member or leaving his/her political status as an independent candidate at the time of his or her election to Parliament to another party or independent political status.
3. An injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.
4. Such further orders or direction(s) as this Honourable Court may seem meet.

We present this Statement of Case in the following order:

- A. Facts of case.
- B. Original jurisdiction of this Honourable Court.
- C. The proper and applicable principles of interpretation.
- D. Legal arguments in opposition to the plaintiff's case.

E. Conclusion.

There will be various sub-headings under some topics set out above, for the purpose of ensuring clarity in the presentation of the submissions.

FACTS OF CASE

1. The facts giving rise to the institution of the instant action have been spelt out in the plaintiff's statement of case. Plaintiff indicates that preparations towards the general elections in December 2024 have resulted in a situation likely to create chaos and disturb the peace and stability of the nation. This situation is essentially, whereby some members of Parliament representing a political party have decided to contest the next election as independent members of Parliament, and another member of Parliament (MP) who is in Parliament as an independent MP has elected to stand on the ticket of a political party in the next election.
2. Plaintiff cites the case of the current independent Member of Parliament for Fomena in the Ashanti Region, Hon. Andrew Asiamah, who has filed to contest the Fomena Parliamentary seat on the ticket of the N.P.P for the 9th Parliament commencing in January 2025. Further, Hon. Cynthia Mamle Morrison, the current Member of Parliament for the Agona West constituency in the Central Region, has also filed her nomination to contest the Agona West Parliamentary seat as an independent candidate for the 9th Parliament commencing from January 2025. Plaintiff also refers to the case of the current Member of Parliament for Suhum in the Eastern Region, Hon.

Kwadjjo Asante, who has also filed nomination to contest the Suhum Parliamentary seat in December 2024 as an independent Parliamentary candidate for the 9th Parliament commencing in January. 2025.

3. In the view of plaintiff, there is controversy regarding the meaning of article 97(1) (g) and (h) of the Constitution which provides that a member of Parliament who leaves the party of which he was a member at the time of his election to join another party or seeks to remain in Parliament as an independent member, or if he was elected a member of Parliament as an independent candidate and joins a political party, shall vacate his seat.
4. The Plaintiff contends that a true and proper interpretation of article 97(1) shows that the provision has in focus an MP who leaves his political party or changes his political party or his political status as an independent MP in the course of his tenure as MP for the 4 years (i.e. the existing term of office of a Parliament) and does not extend to an expression of interest to contest the next Parliamentary elections for the 9th Parliament of Ghana with a different political identity or status.
5. Plaintiff asserts that a literal interpretation of article 97 (1) will result in discrimination against the 3 Members of Parliament he has mentioned in his statement of claim. He indicates that the Electoral Commission opened nominations for the parliamentary contest on Monday 9th September 2024 and

ended on Friday, 24th September 2024, without any reservation for existing members of parliament to file their nomination after their present term of office had elapsed. Thus, in the view of plaintiff, “failing to file by the given dates of the Electoral Commission would have meant self-denial, disqualification and extinguishment of the right to contest the 2025 Parliament elections”.

6. It is material to state that whilst plaintiff suit was pending, the Speaker of Parliament on Thursday, 17th October, 2024, ruled that the three MPs together with a fourth MP, Peter Yaw Kwakye-Ackah, the MP for Amenfi Central, had vacated their seats in Parliament on account of having committed the acts stated in paragraph 2 above. i.e. filing to contest the 2024 Parliamentary election as independent candidates when they had been elected to Parliament as representing a political party or filing to contest the 2024 Parliamentary election on the ticket of a political party when they were elected as independent MPs.

ORIGINAL JURISDICTION OF THIS HONOURABLE COURT.

7. The original jurisdiction of this Court in a case as the instant one, springs from the Constitution. The explicit terms of articles 2(1) and 130(1) of the Constitution, 1992 grounds the Court’s jurisdiction to entertain actions by which a person either seeks interpretation of identified provisions of the Constitution or an enforcement of same.

8. For the avoidance of doubt, article 2(1) of the Constitution, 1992 provides thus:

“2. Enforcement of the Constitution

(1) A person who alleges that

(a) an enactment or anything contained in or done under the authority of that or any other enactment, or

(b) any act or omission of any person,

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.”

9. Article 130(1) further provides that:

“130. Original jurisdiction of the Supreme Court

(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in

article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution;

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.”

10. The Court has in jurisprudence developed for more than forty (40) years, set out circumstances in which an issue of interpretation may arise. In **Republic v Special Tribunal; ex**

parte Akosah [1980] GLR 597, the Court of Appeal, sitting as the Supreme Court, considered when an issue of enforcement or interpretation within the meaning of article 118(1)(a) of the 1979 Constitution arises. Article 118(1)(a) of the 1979 Constitution provided that:

“118. (1) The Supreme Court shall, except as otherwise provided in article 35 of this Constitution, have original jurisdiction, to the exclusion of all other courts,

(a) in all matters relating to the enforcement or interpretation of any provision of this Constitution; and

(b) where a question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution.”

11. *Anin JA*, who delivered the judgment of the Court, after reviewing previous decisions of the Court summarised the position at page 605 thus:

“Summary of the Case Law on Enforcement or Interpretation
From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under article 118(1)(a) arises in any of the following eventualities:

(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have

- a double-meaning or are obscure or else mean something different from or more than what they say;*
- (b) where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*
- (c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;*
- (d) where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.*

On the other hand, there is no case of “enforcement or interpretation” where the language of the article of the Constitution is clear, precise and unambiguous...he should certainly not invoke the Supreme Court’s original jurisdiction under article 118.”

12. The test set out in the **Ex parte Akosah case** (supra) has been applied with approval by this Supreme Court in relation to its original interpretative and enforcement jurisdiction under articles 2(1) and 130(1) of the Constitution in cases such as **Republic v Special Tribunal; ex parte Forson** [1980] GLR 529, **Ackah v Adjei-Acheampong** [2005- 2006] SCGLR 1, **Republic v High Court (Fast Track Division) Accra; ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties)** [2005-2006] SCGLR 514, **Republic v Edusei (No. 2) v Attorney General** [1998-99]

SCGLR 753; **and Republic v Court of Appeal, Accra; ex parte Tsatsu Tsikata** [2005-2006] SCGLR 612.

13. In the instant case, it is not in doubt that rival meanings have been placed on the words in issue – article 97(1)(g) and (h). Whereas the Speaker is of the view that the provision applies to a situation where an MP files a nomination to contest a future election with a different political identity, i.e. changing the party of which he was a member at the time of his election as MP to join another party or to become an independent member or to cease to be an independent candidate in the next election even though he is currently MP on the ticket of a party, the plaintiff is of the view that the provision applies only to actually changing the identity an MP clothes himself with, in the current Parliament, i.e. whether as independent or on the ticket of a particular party, and not in a future Parliament. Clearly, a genuine issue of interpretation warranting an invocation of this Court's original jurisdiction has arisen.

14. It ought to be noted that the Court had previously not interpreted the provision in question. This is not a case where one can contend that the provision is so clear on account of having previously been interpreted by the Court and therefore, it only calls for an application by a lower court. In making this point, we are mindful of the provision in **article 99(1)(a)** of the Constitution which directs that the High Court

shall have jurisdiction to determine whether the seat of a member of Parliament has become vacant. In our submission, that provision does not oust the Supreme Court's original jurisdiction to interpret and enforce the Constitution where a genuine case of interpretation is made. The Court, once again, has in many cases dating back to over fifty (50) years, established this point.

15. In **Gbedemah v. Awoonor-Williams** (1970) 2 G & G 438, the 5-member Court of Appeal sitting as the Supreme Court, unanimously held in an action challenging the qualification of a person elected as a member of Parliament, that the original jurisdiction of the Supreme Court to enforce the Constitution had been rightly invoked, to the extent that the plaintiff's writ raised a question requiring an enforcement of the 1969 Constitution.

16. In **Sumaila Bielbiel (No 1) v Dramani and Another [2011] 1 SCGLR 132**, this Court upheld its jurisdiction to settle questions relating to the qualification and eligibility criteria for members of Parliament under **article 94(2) (a)**. By a majority of 6-3, the Supreme Court was satisfied that to the extent that the dispute raised issues bordering on an interpretation of **article 94 (2) (a)**, and its enforcement, the plaintiff had rightly invoked the jurisdiction of the Supreme Court as the Court's jurisdiction was different in scope from the issues earlier raised in the High Court, where an action commenced by writ to invalidate the election of the defendant

had been struck out for incompetence. It was the exclusive jurisdiction of the Supreme Court to examine the facts and issues and determine whether there was a breach of the Constitution, and by so doing, enforce the Constitution.

Gbadegbe JSC speaking for the majority expressed himself thus:

"In my opinion the jurisdiction conferred on the court in making declarations under article 130 (1) coupled with the ancillary power conferred on it under article 2(2) to make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made is an effective tool in ensuring and or compelling observance of the constitution. These provisions require us to measure acts of the legislative and executive branches against the constitution and where there is a violation to declare such acts unconstitutional provided the act in question does not come within the

designation of a 'political question' It is worthy of note that article 2(1) confers the right to seek a declaration that an act or omission of any person is inconsistent with or in contravention of a provision of the constitution while article 130(1) provides the means by which a person may exercise the right conferred on him to seek relief in cases which provisions of the constitution have been breached... I think articles 2(1) and 130(1) confer on us the jurisdiction of judicial review although there are no specific words in the constitution to that effect. In my opinion, a preference of the meaning placed on

the relevant constitutional provisions by the defendant would result in our shutting the door to the opportunity provided by the constitution to persons to give reality to its provisions by compelling observance with its carefully drafted provisions and rather unfortunately open the door to unchecked violations of its provisions."

17. In **Adjei Ampofo (No. 1) v. Accra Metropolitan Assembly and Attorney-General (No. 1)** [2007-2008] SCGLR 611, the Supreme Court asserted its exclusive original jurisdiction to interpret all provisions of the Constitution, including cases where the provision in question is part of Chapter Five of the Constitution on fundamental human rights.

See also: **Republic vs High Court [General Jurisdiction, Accra; Ex Parte Dr. Zanetor Rawlings (Ashithey and National Democratic Congress as interested Parties)** [2015-2016] 1 SCGLR 92.

18. Similarly, quite recently, in **Michael Ankomah Nimfah vrs. Gyakye Quayson & 2 Others** (SC unreported) Judgment delivered on 17th May, 2023, the Court emphasised the exclusivity of its original jurisdiction under the Constitution, 1992, to interpret and enforce the Constitution. Speaking through Amegatcher JSC, the Court noted as follows:

*“However, if parties raise rival positions regarding the meaning and application of the text of the Constitution or the words of a constitutional provision are imprecise, unclear, or ambiguous, then the exclusive jurisdiction of this court is properly invoked for the resolution of the proper interpretation to place on the relevant provision under **article 130**. See the oft-cited decision in **Republic v Special Tribunal; Ex Parke Akosah 1980 GLR 592**. Again, if there is a breach of the Constitution, the enforcement jurisdiction of this court conferred in **article 2** is rightly invoked...”*

19. Respectfully, considering the strong jurisprudence of the Court established over a period of over 50 years (some of which we have set out above), we are drawn to the irresistible conclusion that the original jurisdiction of the Court has been rightly invoked by the plaintiff herein to resolve the following important questions:
 - a. Whether an expression by an MP of an intention to contest a future parliamentary election on the ticket of a party different from the one an MP was a member at the time of his election, or as an independent candidate, results in a vacation of the seat of that MP in the current Parliament;
 - b. Whether the filing of nomination by an MP to contest an upcoming parliamentary election with a different identity, i.e. as an independent candidate even though he is in the current Parliament as a member of a political party, or as

a member of a political party even though he is in the current Parliament as an independent member, results in a vacation of his seat.

20. We make these submissions purely in the spirit of intellectual honesty and in the quest for fidelity to the Constitution. It ought to be noted that in a constitutional action, as held in **Tuffour v. Attorney-General** [1980] GLR 637, the only concern is the Constitution. The jurisdiction of the Court is only to do as dictated by the Constitution. There is no cause from which the action arises and therefore, there is no cause of action against a particular person. That is why the defendant in every constitutional action is the Attorney-General who is required to be the defendant in proceedings against the State. The Attorney-General is the defendant not because of the perpetration by him of an act giving rise to a cause or suit against him but merely because it is a proceeding to either interpret the Constitution or enforce same.

**THE PROPER AND APPLICABLE PRINCIPLES OF
CONSTITUTIONAL INTERPRETATION**

21. The jurisprudence of this Honourable Court has clearly established over the years that the literal construction of the Constitution without reference to other related provisions of the Constitution and its underlying core values and objects,

cannot be the proper approach to constitutional interpretation.

22. It is submitted that the starting or reference point for any discussion on purposive interpretation of the Constitution has to be the locus classicus of **Tuffuor v. Attorney-General** [1980] GLR, C.A sitting as SC. *Sowah JSC* (as he then was) in his oft-quoted dictum, gave a clue as to what constitutes the spirit of the Constitution and the need to depart from a doctrinaire and narrow interpretation of the Constitution, at pages 647-648:

“The Constitution has its letter of the law. Equally, the Constitution has its spirit ... Its language, therefore, must be considered as if it were a living organism capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time”.

Georgina Wood JSC, quite recently in **Brown v. Attorney-General (Audit Service Case)** [2010] SCGLR 183, gave the necessary direction as to the most preferred approach to interpreting the Constitution of Ghana.

“The purposive and literal approach in proper context is commendable; it is the purely mechanical or literal that pays

no heed to the legislative purpose or intent, that has no place in this area of the law ... In the proper context, the objective purpose approach would be the preferred approach, if the Constitution must be read as a whole, in terms of both its explicit and implicit language, and read as a living document, with a view to actualizing core values and meeting the hopes and aspirations of the people for whom it was crafted. The spirit of the 1992 Constitution, a judicially established aid to interpretation is embodied not only in the actual texts, under consideration, but also the goals and objectives as captured in the Preamble, the Directive Principles of State Policy, and indeed the entire document.”

23. In **Agyei-Twum v. Attorney-General & Akwettey [2005-2006]** SCGLR 732, *Date-Bah JSC* obviously inspired by *Sowah JSC*'s dictum in *Tuffuor v. Attorney-General* (supra), stated thus:

“The fact that a country has a written constitution does not mean that only its letter may be interpreted. The courts have the responsibility for distilling the spirit of the Constitution from its underlying philosophy, core values, basic structure, the history and nature of the country’s legal and political systems, etc. in order to determine what implicit provisions in the written constitution would flow inexorably from that spirit”.

See also: **National Media Commission v. Attorney-General [2000] SCGLR 1**; **Asare v. Attorney-General [2003-2004] 2**

**SCGLR 823; Omaboe III v. Attorney-General [2005-2006]
SCGLR 579; and Ghana Lotto Operators Association v.
National Lottery Authority [2007-2008] 2 SCGLR 1088**

24. In light of the foregoing, it is correct to say that the mechanistic, literal way of interpreting the Constitution is now completely out of date and unhelpful to the realization of our objects as a nation as enshrined in the Constitution. In contrast to the blindly literal approach, the modern purposive approach adopted by the courts invites judges to interpret and apply the Constitution in a way that brings to life and gives meaning to the core values, objects, and history that underpin its text.
25. This approach also cautions against judges deeming themselves impotent or incapacitated when faced with situations where there are lacunae or gaps in the law, and, instead, admonishes them to fill such gaps or omissions in appropriate cases, being mindful to do so in a way that harmonizes with the values and goals of the nation as enshrined in the Constitution. The underlying rationale of this modern approach to constitutional interpretation is to avoid a blindly “strict construction” that would give rise to profound absurdity, manifest injustice, and social retrogression.

LEGAL ARGUMENTS IN OPPOSITION TO THE
PLAINTIFF'S CASE

26. In the same spirit of intellectual honesty and fidelity to the Constitution which has animated the foregoing submissions, we will invite the Court to hold, upon a careful examination of the relevant provisions of the Constitution and the submissions herein, that:

Parliament is for a fixed period as determined by the Constitution.

- i. A proper textual analysis of the Constitution, i.e. both the plain and contextual examination of same, leads to the conclusion that the Constitution intended to deny MPs the right to continue representing their constituents if, in the current term of Parliament, they leave the party of which they were members at the time of election to join another party or seeks to remain in Parliament as an independent member. A vacation of seat results.
- ii. Filing nomination to contest an upcoming election for a place in a future Parliament does not lead to a vacation of seat.
- iii. The filing of nomination by a sitting MP to contest a future parliamentary election on the ticket of a political party when he had been elected for the life of the

current Parliament as an independent candidate does not result in a vacation of seat.

27. Respectfully, in coming to the conclusions above, we will invite the Court to read the Constitution as a whole giving effect to the various parts connected with the subject matter of the instant action. When this is done, there will be no doubt that "*Parliament*" as used in article 97 refers to a session of Parliament or the life of a particular Parliament and nothing more. Further, any inhibition placed on an MP constraining the performance of his functions thereby resulting in a vacancy of seat must relate to acts specifically done and which have effect in the life of the particular Parliament as determined under the Constitution and not a future Parliament of which, subject to the decision of the people, he may not even be a member and in which he has no immediate right or interest.
28. In our submission, "Parliament" used in article 97 refers to a session of Parliament duly convened after the holding of a general election (or recalled by the President during a state of emergency) and continuing until it is dissolved in accordance with **articles 112** and **113** of the Constitution. Thus, the relevant parts of articles 113 and 112 are reproduced below.

*"**113** (1) Subject to the clause (2) of this article, Parliament shall continue **for four years from the date of its first sitting** and shall then stand dissolved.*

...

(4) Unless the life of Parliament is extended under the provisions of clause (2) of this article, the general election of members of Parliament shall proceed and **the Parliament that has been recalled** shall, if not sooner dissolved, again stand dissolved on the date appointed for the general election.”

“**112** (1) A session of Parliament shall be held at such place within Ghana and shall commence at such time as the Speaker may, by constitutional instrument, appoint.

(2) A session of Parliament shall be held at least once a year, so that the period between the last sitting of Parliament in one session and the first sitting of Parliament in the next session does not amount to twelve months.

...

(4) Subject to clause (2) of article 113 of this Constitution, a general election of members of Parliament shall be held within thirty days before the expiration of the period specified in clause (1) of that article; and a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period.”

29. The upshot of this is that Parliament is for a definite session and the use of the word “Parliament” in article 97 refers to a particular Parliament in session whose term is in force and has not expired. It is for this reason that sessions of Parliament are variously described as “First Parliament”, “Second Parliament”, etc. In point of fact, the current Parliament is referred to as the “Eighth Parliament” the term lapses on 6th January, 2025, and a new Parliament takes office on 7th January, 2025. Nothing better illustrates the point being made herein than the words of **article 113(4)** which allude to “...***the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the date appointed for the general election.***”. These words show the Constitution’s deliberate attempt to distinguish between the life of one Parliament and another Parliament whose life is yet to begin.

30. In our submission, **article 97 (g)** and **(h)** intrinsically contains provisions which clearly provide a clue to any careful and reasonable reader of the Constitution that the disability sought to be placed on an MP who undertakes any of the acts frowned upon in article 97((1)(g) and (h) only kicks in when the acts complained about takes effect in the life of the current Parliament which has not been dissolved and not a future Parliament which has not commenced. **Article 97(g)** and **(h)** provides as follows:

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30. In our submission, **article 97 (g)** and **(h)** intrinsically contains provisions which clearly provide a clue to any careful and reasonable reader of the Constitution that the disability sought to be placed on an MP who undertakes any of the acts frowned upon in article 97((1)(g) and (h) only kicks in when the acts complained about takes effect in the life of the current Parliament which has not been dissolved and not a future Parliament which has not commenced. **Article 97(g)** and **(h)** provides as follows:

“97. (1) A member of Parliament shall vacate his seat in Parliament –

*(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or **seeks to remain in Parliament** as an independent member; of*

(h) if he was elected a member of Parliament as an independent candidate and joins a political party.”

31. Respectfully, the words “**seeks to remain in Parliament**”, provide ample clue that it is the situation of an MP engaging in acts with consequence in the life of the current Parliament, which is prohibited by the Constitution, and which will result in a vacation of seat. The purpose is to prevent clear abuse of the mandate of the people given to an MP taking into account relevant considerations like the political party the candidate represented or his independent status at the time of election into the current Parliament. It is intended to prevent the “**cross carpeting**” scenarios as have occurred in the constitutional history of this Country, particularly, the First Republic and in the early years of the Fourth Republic. In our submission, a person who has filed nomination to contest a future parliamentary election only serves notice of his intention for the future and not in the current Parliament.

32. We contend that an application of article 97(g) and (h) to an

MP who merely files nomination to contest a future election will work manifest injustice and absurdity. It is not in doubt that nominations for future elections are open only during the life of the current Parliament. The combined effect of **articles 112(4), 113(1) and (4)** of the Constitution make this clear. If it is not disputed that nominations for general elections are only open during the life of the current Parliament, to interpret article 97(g) and (h) to mean that sitting MPs cannot file nominations to contest an upcoming election with a political status different from what they are in Parliament with, it is submitted that, such MPs can never change their political status for an election. If they have entered Parliament as independent candidates, they must forever file to contest all future parliamentary elections as independent candidates, except when they have lost an election and are not afflicted by the burden of article 97(g) or (h). This is because nominations are always opened during a session of Parliament. This, with the greatest respect, cannot be the intendment of the framers of the Constitution.

33. It is submitted that the object of the Constitution - to prevent members from cross-carpeting during a session of Parliament - is achieved by construing article 97(g) and (h) to cover a change of the political identity with which an MP comes to Parliament during the life of a particular Parliament or cross-carpeting during a session of a particular Parliament (whose life is still in force), and **not** an expression of an intention to contest a future election into a future Parliament whose

session has not commenced and of which the MP is not even guaranteed to be a member of.

34. The Court will note that **article 95(2)** of the Constitution sets out circumstances within which the Speaker shall vacate his office. They include “*if he becomes a Minister of State or a Deputy Minister*”. The question the Court ought to ask itself is, if the Speaker announces to the world that in the next government (after an upcoming general election), he holds an interest to become a Minister of State, will that result in a vacation of his office as Speaker of the current Parliament? If the answer is no, we respectfully submit that an MP’s office is not vacated simply on account of the filing of a nomination to contest a future parliamentary election in a political capacity or identity different from what he currently holds.

35. Further, the Court will note that under **article 47(5)** of the Constitution, the Electoral Commission is required to review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population, whichever is earlier, and may in consequence, alter the constituencies in Ghana. However, taking account of the fundamental policy discernible from the spirit of the Constitution that, an anticipated change to the composition of Parliament only takes effect upon the next dissolution of Parliament, **article 47(6)** explicitly provides as follows:

“Where the boundaries of a constituency established under this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament”.

36. Thus, if the boundaries of a constituency are altered in the life of one Parliament, it does not take effect until the next dissolution of Parliament. The MP for the constituency whose boundaries have been altered, remains in Parliament as MP for the whole constituency before the alteration of the boundaries notwithstanding an alteration of the boundaries of the constituency he represents. In our submission, this further bolsters the contention of the 2nd defendant herein that whenever the Constitution anticipated a change to the composition of Parliament, it anticipated same to kick in upon the next dissolution of Parliament. Applying this *mutatis mutandis*, we submit that notwithstanding the expression of an interest to contest a future parliamentary election with a political identity different from the one he is currently in Parliament with, an MP does not vacate his seat. Article 97(1)(g) and (h) has effect only when the MP elects to alter his political identity with immediate effect or in the life of the current Parliament of which he is a member.

**Supreme Court’s determination of the issue does not
fetter parliamentary autonomy**

37. Respectfully, we deem it important to address the Court on

its power to issue orders and directions for Parliament to comply with, following the exercise of its interpretative jurisdiction. As amply illustrated above, the Court's power to embark on this exercise springs from the Constitution itself. In furtherance of the interpretative jurisdiction conferred on it, **article 2(2)** vests the Supreme Court with the power to "*make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given to, the declarations so made.*"

38. The competence of the Supreme Court to issue such orders and directions to any person is explicitly stated in **article 2(1)** which indicates that the Court may pronounce on the constitutionality of the "*act or omission of any person*". Further, **article 2(4)** directs that "***any person or group of persons*** to whom an order or direction is addressed under clause (2) of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction."
39. An excursion into the constitutional history of the country shows many instances in which the Supreme Court in exercise of its original jurisdiction to interpret the Constitution, has declared as unconstitutional decisions by Parliament and acts of the Executive. We will discuss a few of these decisions of the Supreme Court. However, we immediately set out to examine the framework of the Constitution itself in so far as the subject is concerned.
40. It is not in doubt that Chapter 10 of the Constitution on the

“Legislature” establishes the Parliament of Ghana. **Article 93(2)** prescribes that “**subject to the provisions of this Constitution**, the legislative power of Ghana shall be vested in Parliament and shall be exercised **in accordance with this Constitution**.” Thus, in Ghana, there is no such thing as parliamentary supremacy or parliamentary sovereignty by which every act, decision or legislation by Parliament will be held as lawful. The lawfulness of an enactment, anything contained in an enactment or resolution or decision of Parliament is measured against the Constitution. It is the Constitution which is supreme. The scope and confines of legislative power and the manner for the exercise of legislative power by Parliament are set out in the Constitution. The words “*subject to the provisions of this Constitution*” which preface article 93(2) were deliberately intended by the framers of the Constitution to subject, limit and circumscribe Parliament’s primary legislative function to the supreme law of Ghana which is the Constitution. Thus, it goes without saying that every legislation or decision by Parliament must be in accordance with the Constitution itself. In our submission, such legislation or decision by Parliament must satisfy some standards. It must:

- (i) have been passed or made in accordance with the procedure prescribed by the Constitution itself;
- (ii) not infringe on a provision of the Constitution which accords some substantive rights or imposes a substantive obligation on persons living in Ghana.

A failure of this test will lead to the Supreme Court striking down any legislation or decision by Parliament as unconstitutional.

Please see: **Ezuame Mannan vrs. The Attorney-General** (unreported) Judgment delivered on 27th July, 2023.

41. In our submission, the Supreme Court's power to pronounce on the constitutionality or otherwise of decisions by Parliament registers no offence to Parliament's freedom of speech, debate and proceedings. Parliament is free to regulate its procedure and to carry out its debate and proceedings in a manner that cannot be controlled by the courts. However, the limit is compliance with the law or the Constitution. The courts may call into question a decision of Parliament if it offends the Constitution. Barring that, Parliament is at liberty to control its affairs. This principle was succinctly affirmed by the Court in **Tuffour v. Attorney-General** (supra), where it was held at page 650- 651 thus:

“There is a long line of authorities which establishes two important principles governing the relationship that subsists or should exist between Parliament and the courts:

*(a) that the courts can call in question a decision or **Parliament**; but that the courts cannot seek to extend their writs into what happens in Parliament; and*

(b) that the law and custom of Parliament is a distinct body of law and, as constitutional experts do put it, “unknown to the courts.

.... In so far as Parliament has acted by virtue of the powers conferred upon it by the provisions of article 91(1), its actions are a closed book”

42. It is noted that article 115 of the Constitution provides thus:

“There shall be freedom of speech, debate and proceedings in Parliament and that freedom shall not be impeached or questioned in any court or place out of Parliament.”

43. In our respectful view, what this provision guarantees to Parliament is the liberty to conduct its proceedings and organise debates on matters constitutionally permitted, without restriction from any quarters, and immune from any challenge outside Parliament, including the courts. In other words, the actual conduct of proceedings in Parliament is left unto Parliament itself to regulate. The courts may only intervene where an action or decision by Parliament violates a specific provision of the Constitution or a law. However, in so far as the conduct of proceedings in Parliament is concerned, same is constitutionally removed from the judicial review powers of the courts.

44. Taking account of the long-established relationship between

the courts and Parliament, this Court in **J. H. Mensah v. Attorney-General** [1996-97] SCGLR 320, unanimously allowed the plaintiff therein's first relief that all ministers and deputy ministers (whether retained or new) shall receive the prior approval of Parliament, contrary to the position held by the Speaker of the Second Parliament. Holding (6) in the summary of decisions by the Court, at pages 325 – 326, is in these terms.

*“(6) The effect of article 110 (1) of the Constitution was to empower Parliament by standing orders to regulate its own procedure provided the same did not infringe a provision of the Constitution. Thus the courts could not intervene at the suit of a person who desired a different procedure, **if the one he objected to was equally constitutional**. Consequently, the court could not under articles 2(1) and 130(1) of the Constitution direct Parliament or the Executive on how to conduct its proceedings or perform its business **if the procedure or action adopted did not infringe any provision of the Constitution.**”*

At page 341, Aikins JSC, stated as follows:

*“The court cannot justifiably avoid its constitutional responsibility, and **it will be palpably wrong to suggest that the court will be usurping the constitutional function of Parliament if the court exercises its original and exclusive jurisdiction to interpret and enforce the Constitution**, as the Attorney-General seems to contend. **The***

fact that such matter involves a political question does not necessarily mean that it cannot be adjudicated upon as is illustrated by Powell v. McCormick (supra)”.

45. Date-Baah JSC in **Adofo & Others v The Attorney-General & Cocobod** [2005-2006] SCGLR 42 had this to say on the supremacy of the Constitution and the power granted the Supreme Court under Article 2(1) and 130(1):

“This constitutional provision unequivocally and authoritatively establishes a doctrine of supremacy of the Constitution in the Ghanaian jurisdiction. This doctrine implies that the supremacy of Parliament is limited and that enactments by Parliament and those of previous legislatures are subject to the supremacy of the Constitution. ... The doctrine of the supremacy of the Constitution should logically imply the power of judicial review of the constitutionality of legislation in order to enforce the supremacy.”

46. More recently, in an emphatic fashion, the Supreme Court delineated what the independence of Parliament implied in **Derrick Adu-Gyamfi v. The Attorney-General and Speaker of Parliament**, Writ No. J1/18/2022 (Supreme Court, 8th November, 2023, unreported) the Court held as follows at pages 13 to 15:

“The law on the independence of Parliament is expounded on by this Court in the case of Justice Abdulai v The Attorney-General (J1/7/2022) [2022] GHASC 1 (9 March 2022) as follows:

... no arm of Government or agency of the State, including Parliament, is a law unto itself because, without exception, everyone and everything in Ghana is subject to the Constitution. As a result, an allegation that Parliament has acted and/or is acting in a manner that is inconsistent with, in contravention of and/or ultra vires to the Constitution, will render Parliament, the actions, orders, rules, or procedures in issue, amenable to the jurisdiction of this Court.”

See also: **Justice Abdulai vrs. The Attorney-General** (unreported) Judgment delivered on 9th March, 2022; **Asare v. Attorney-General** [2003-2004] 2 SCGLR 823.

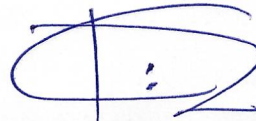
CONCLUSION

47. The 2nd defendant herein sums up the submissions made herein as follows:
 - a. The Court’s original and exclusive jurisdiction to determine the constitutionality of any act or omission by any person in Ghana is not ousted by any law. Irrespective of the circumstances surrounding an action, a genuine case for interpretation of the Constitution correctly invokes the jurisdiction of the Court under articles 2(1) and 130(1) of the Constitution.

- b. The instant case raises serious questions bordering on:
- i. Whether an expression by an MP of an intention to contest a future parliamentary election on the ticket of a party different from the one the MP was a member of at the time of his election, or as an independent candidate, results in a vacation of the seat of that MP in the current Parliament;
 - ii. Whether the filing of nomination by an MP to contest an upcoming parliamentary election with a different identity, i.e. as an independent candidate even though he is in the current Parliament as a member of a political party, or as a member of a political party even though he is in the current Parliament as an independent member, results in a vacation of his seat.
- c. Parliament is for a fixed period as determined by the Constitution.
- d. A proper textual analysis of the Constitution, i.e. both the plain and contextual examination of same leads to the conclusion that the Constitution intended to create a vacancy of seat of an MP if, in the current term of Parliament, the MP leaves the party of which he was a member at the time of election to join another party or seeks to remain in Parliament as an independent member.

- e. Filing nomination to contest an upcoming election for a place in a future Parliament does not lead to a vacation of seat.
- f. The filing of nomination by a sitting MP to contest a future parliamentary election on the ticket of a political party, when he had been elected for the life of the current Parliament as an independent candidate, does not result in a vacation of seat.
- g. Every arm of Government or agency of the State, including Parliament, is subject to the Constitution and to the Supreme Court's judicial review powers of determining the constitutionality of actions and decisions by that arm or agency. Consequently, an order, decision, ruling or determination by the Speaker of Parliament, in contravention of and/or ultra vires to the Constitution, will render such order, decision, ruling or determination, amenable to the jurisdiction of the Supreme Court.

**DATED THIS 21ST DAY OF OCTOBER, 2024 AT THE
ATTORNEY-GENERAL'S CHAMBERS, ACCRA**



**GODFRED YEBOAH DAME
ATTORNEY-GENERAL
2ND DEFENDANT**

**The Registrar
Supreme Court
Accra.**

**AND TO: (1) THE PLAINTIFF OR HIS LAWYERS
(2) THE 1ST DEFENDANT, SPEAKER OF
PARLIAMENT**