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SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA - AD 2023

SUIT NO: JI/14/2023
PLAINTIFF

ROCKSON-NELSON ETSE K. DAFEAMEKPOR
Atawanor Memorial House
Tongor-Tsanakpe South-Dayi
Volta Region

VRS.

DR. PETER APPIAHEHE
Electoral Commission
William Tubman Road
Accra

1ST DEFENDANT

ELECTORAL COMMISSION
William Tubman Road
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2ND DEFENDANT

ATTORNEY GENERAL
Attorney General's Department
Ministries, Accra.

3RD DEFENDANT

PLAINTIFF'S STATEMENT OF CASE PURSUANT TO RULE 46 OF C.I. 16

1. INTRODUCTION

1.1. Respectfully, My Lords, the Plaintiff invokes the original jurisdiction of this Honourable Court pursuant to **Articles 2(1)(b) and 130(1)(a) of the 1992 Constitution** for the reliefs endorsed on the Writ invoking the Original Jurisdiction of this Court.

1.2. My Lords, **Article 2(1)(b) of the Constitution** provides as follows:

"2. Enforcement of the Constitution

(1) A person who alleges that

(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.

1.3. My Lords, **Article 130(1)(a) of the Constitution** also provides:

"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.

1.5. My Lords, this statement of case contains the following:

- I. Plaintiff's capacity to bring the instant action.
- II. Jurisdiction of the Court to entertain the suit.
- III. Brief Background
- IV. Interpretation and Enforcement of **Articles 23, 44(1), 45, 46, 284 and 296** of the 1992 Constitution.
- V. Statutes and Decided cases relied upon by the Plaintiffs
- VI. Conclusion.

2. PLAINTIFFS' CAPACITY TO BRING THE INSTANT ACTION

2.1 My Lords, per **Article 2(1)(b) of the 1992 Constitution**, any person may invoke the exclusive original jurisdiction of this Court for the enforcement of any provision of the Constitution.

2.1 My Lords, in the case of **Amidu (No. 2) v Attorney-General, Isofoton SA & Forson (No 1)**¹, Dr Date-Bah JSC asserted at page 180 that, "We would re-affirm this position. The Plaintiff, as a citizen of Ghana, is entitled as of right to challenge in the Supreme Court any act or omission of any person which is inconsistent with, or in contravention of, a provision of the constitution, even if the Attorney-General is also in court against the same defendant in a civil case".

¹ [2013-2014]1 SGCLR 167

2.3. My Lords, the Plaintiff herein is a citizen of Ghana and the Honourable Member of Parliament for the South Dayi Constituency. By various decisions of this Court, the Plaintiff has capacity to invoke the exclusive original jurisdiction of this court by virtue of the fact that he is a citizen of Ghana – See **Tuffuor v. Attorney – General²; New Patriotic Party v Attorney – General³; Sam v Attorney – General (NO. 2)⁴; Amidu (No. 2) v Attorney – General, Isofoton SA & Forson (No 1)⁵.**

2.4. My Lords, the Plaintiff is a citizen of Ghana whose civic duty it is to protect and defend the constitution of Ghana by virtue of **Article 41(b) of the 1992 Constitution.**

2.5. My Lords, it submitted on behalf of the Plaintiff that he has the requisite capacity to mount this present action before this Honourable Court.

3. JURISDICTION OF THIS COURT TO ENTERTAIN THE SUIT.

3.1. My Lords, by **Article 130(1)(a) of the 1992 Constitution** this Court has exclusive original jurisdiction to entertain this action.

3.2. My Lords, in **Edusei (No.2) v. Attorney-General⁶**, this Court held among others that the exclusive original jurisdiction of this court arises:

- I. In the enforcement of all provisions of the Constitution except those provisions contained in chapter 5 dealing with fundamental human rights.
- II. The interpretation of any provision of the Constitution.

3.3. In **Amidu v. President Kufour⁷**, Acquah JSC (as he then was) at **page 100** delivered himself thus: “...where it is alleged before the Supreme Court that

² [1980] GLR 637

³ [1996-97] SCGLR 729

⁴ [1999-2000] 2 GLR 336

⁵ [2013-2014] 1 SGCLR 167

⁶ [1998-99] SCGLR 753

any organ of government or an institution is acting in violation of a provision of the constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy, like those of articles 33 and 99 for dealing with that particular violation. It follows therefore that no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged."

3.4. Also apposite is the statement of Edward Wiredu JSC (as he then was) in **Ghana Bar Association v Attorney-General (Abban case)**⁸ in which this Court held as follows: "The court, as the repository watchdog of the constitution, is enjoined to protect, defend and enforce its provisions and should not allow itself to be diverted to act as an independent arbiter of the Constitution."

3.5. My Lords, it is submitted on behalf of the Plaintiff that this Court has jurisdiction to entertain this suit. The Plaintiff is by this action seeking an interpretation and enforcement of **Articles 23, 44(1), 45, 46, 284 and 296 of the 1992 Constitution** to remedy the unconstitutional appointment of the 1st Defendant as a member of the 2nd Defendant Commission, in contravention of the spirit and letter of **Articles 23, 44(1), 45, 46, 284 and 296 of the 1992 Constitution**.

4. BACKGROUND

4.1. My Lords, on the 20th of March 2023, the 1st Defendant was sworn-in as a member of the 2nd Defendant Commission by the President upon appointing him pursuant to Article 70(2) of the 1992 Constitution. **(Attached and Exhibited as 'Exhibit RND 1' is a news article published on myjoyonline.com confirming the swearing in of the 1st Defendant as a member of the 2nd Defendant Commission)**

⁷ [2001-2002] SCGLR 86 @ 100

⁸ [2002-2004] 1 SCGLR at 259

4.2. My Lords, the 1st Defendant is a known sympathizer and affiliate of the New Patriotic Party (NPP).

4.3. The 1st Defendant has on various occasions been heard defending and touting the achievements of the New Patriotic Party on several television and radio stations.

4.4. On one such occasion, the 1st Defendant admitted to being an NPP Communicator on the Anopa Nimdee Adwasuo show which is broadcasted on Nimdee FM in Sunyani.

4.5. On another occasion, the 1st Defendant was heard on BA TV bragging about his new appointment as the NPP IT director for the Bono Region in respect of the 2020 election. **(Attached and Exhibited as "Exhibit RND 2 series" are videos of the 1st Defendant on various Television and Radio Stations)**

4.6. My Lords, the above pieces of evidence show clearly that the 1st Defendant is not neutral, impartial and fair-minded, but openly sympathizes, affiliates and identifies with the New Patriotic Party (NPP) and is therefore not fit or qualified to be a member of the 2nd Defendant Commission.

4.8. My Lords, the Plaintiff contends that on a true and proper interpretation of the letter and spirit of Articles 23, 44(1), 45, 46, 284 and 296 of the 1992 Constitution of Ghana, a person appointed as a member of the 2nd Defendant Commission must be neutral, impartial, fair-minded and non-partisan for same to qualify to be a member of the 2nd Defendant Commission.

4.9. The Plaintiff further contends that the appointment of the 1st Defendant, a known sympathizer of the New Patriotic Party, as a member of the 2nd Defendant Commission contravenes the letter and spirit of Articles 23, 44(1), 45, 46, 284 and 296 of the 1992 Constitution and therefore the said appointment is unconstitutional.

4.10. My Lords, the Plaintiff herein has initiated this present action invoking the original jurisdiction of this Honourable Court under Articles 2(1) and 130(1) of the 1992 Constitution to challenge the appointment of the 1st Defendant as a member of the 2nd Defendant Commission.

5. ENFORCEMENT AND INTERPRETATION OF ARTICLES 23, 44(1), 45, 46, 284 AND 296

5.1. My Lords, this Court has held per Francois JSC in **Kuenyehia v Archer**⁹ at page 561, that the 1992 Constitution "...is a document *sui generis* to be interpreted according to principles suitable to its peculiar character and not necessarily according to the ordinary rules and presumptions of statutory interpretation."

5.2. My Lords, because the 1992 Constitution is a document *sui generis*, it must be given an interpretation that is benevolent, broad, liberal and purposive.

5.3. In interpreting the 1992 Constitution, this Court must strive to give an interpretation that effectuates and gives life to the core values and principles that undergirds the Constitution. A strict, literal, narrow, technical or legalistic interpretation of the Constitution is to be avoided.

5.4. My Lords, the 1992 Constitution is no mean or ordinary document, it has its letter of the law as well as its spirit. In **Tuffour v Attorney- General**¹⁰ Sowah JSC speaking through the Supreme Court at pages 647 and 648 stated as follows: "*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.*"

⁹ [1993-94] 2 GLR 525

¹⁰ [1980] GLR 637 SC

5.5. The 'spirit' of the Constitution referred to in **Tuffour v Attorney- General** cited above, was expatiated by Dr Date-Bah JSC in **Asare v Attorney-General**¹¹ in the following words: *"The 'spirit' to which Sowah JSC refers is another way of describing the unspoken core underlying values and principles of the Constitution. Justice Sowah enjoins us to have recourse to this 'spirit' or underlying values in sustaining the Constitution as a living organism."*

5.6. In **Agyei Twum v Attorney General**¹² this Court speaking through Dr Date-Bah JSC also held as follows: *"The fact that a country had a written constitution did not mean that only its letter might be interpreted. The Courts had the responsibility for distilling the spirit of the Constitution from its underlying philosophy, core values, basic structure, the history and political systems, etc in order to determine what implicit provisions in the written constitution would flow inexorably from that spirit."*

5.7. My Lords, an interpretation of the Constitution that favours its letter while ignoring its spirit will always prove faulty. In **New Patriotic Party v Attorney General**¹³, Francois JSC sounded the following words of caution at pages 79 and 80 of the report: *"... in interpreting the Constitution, we fail in our duty if we ignore its spirit. Both the letter and the spirit of the Constitution are essential fulcra which provide the leverage in the task of interpretation. .. The necessary conclusion is that the written word and its underlying spirit are inseparable bedfellows in the true interpretation of a Constitution."*

5.8. My Lords, **Article 44(1) of the Constitution** provides that *"A person is not qualified to be appointed a member of the Electoral Commission unless he is qualified to be elected as a member of Parliament"*

5.9. Article 44(1) literally construed means that any person is qualified to be a member of the 2nd Defendant Commission, if that person is qualified to be a Member of Parliament.

¹¹ [2003-04] 2 SCGLR 823

¹² [2005-2006] SCGLR 732

¹³ [1993-94] 2 GLR 35

5.10. On a literal construction of Article 44(1) of the Constitution, a sitting General Secretary of a ruling political party will be qualified to be appointed as a member of the 2nd Defendant Commission provided that General Secretary is qualified to be a Member of Parliament.

5.11. My Lords, it will be obviously unfair and unreasonable for a sitting General Secretary of a ruling political party to conduct and supervise an election in which that General Secretary's political party would be participating in.

5.12. However, this absurd outcome would be permissible on a literal construction of Article 44(1) of the 1992 Constitution.

5.13. My Lords, in examining the issue as to who qualifies to be a member of the 2nd Defendant Commission, this Honourable Court must not interpret Article 44(1) of the 1992 Constitution in isolation.

5.14. This Court must strive to situate Article 44(1) within the context of Articles 23, 45, 46, 284 and 296 in order to fully appreciate the constitutional framework of the 2nd Defendant Commission.

5.15. My Lords, a non-purposive and literalist interpretation based solely on Article 44(1) will lead to a distorted and clearly wrong construction of the constitutional provision.

5.16. In **Danso-Acheampong and Abodakpi v Attorney General**¹⁴ Dr Date-Bah JSC made the following insightful and relevant remarks: "*These days, a literal approach to statutory and constitutional interpretation is not recommended... A literal approach is one that ignores the purpose of the provision and relies exclusively on the alleged plain meaning of the enactment in question.*"

¹⁴ [2009] SCGLR 357

5.17. My Lords, the Plaintiff is inviting this Court to look beyond the letter of Article 44(1) of the 1992 Constitution, and consider the whole constitutional architecture of the 2nd Defendant Commission in order to arrive at an interpretation that accords with the letter and the spirit of the Constitution.

5.18. My Lords, in the ensuing paragraphs we will examine Articles 284, 296, 23 and 46 of the 1992 Constitution, and show, that on a combined effect of the above provisions of the Constitution, a person seeking to be member of the 2nd Defendant must be neutral, impartial, non-partisan and fair-minded for same to qualify to be a member of the 2nd Defendant Commission.

5.19. My Lords, **Article 284 of 1992 Constitution** provides that: "*A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.*"

5.20. My Lords, public officers are required to be guided by public interest considerations in the performance of their duties as public officers.

5.21. By public interest, we mean that which is in the best interest of society in general or that which is beneficial to the general welfare of society.

5.22. As a member of the 2nd Defendant Commission, the 1st Defendant is a public officer and is therefore enjoined by Article 284 not to put himself in a position where his personal interest will actually or likely conflict with the performance of his functions as a member of the 2nd Defendant Commission.

5.23. My Lords, in determining whether there is a conflict of interest, the critical question to be answered is whether the public officer's private interest could influence, or appear to influence, the decisions of that public official in the performance of his duties or functions.

5.24. My Lords, the mere appearance of a conflict is enough to sustain a charge of conflict of interest under Article 284 of the Constitution.

5.25. My Lords, the 1st Defendant is a known sympathizer and affiliate of the New Patriotic Party. The 1st Defendant is politically aligned with the New Patriotic Party and has appeared on several television and radio stations touting and defending the achievements of the New Patriotic Party. **(see "Exhibit RND 2 series")**

5.26. My Lords, even if it could be argued that the 1st Defendant would not be actually influenced by his personal or partisan interests in the performance of his duties as a member of the 2nd Defendant Commission, the mere fact that there is a real likelihood that that could happen disqualifies the 1st Defendant as a member of the 2nd Defendant Commission by virtue of Article 284 of the Constitution.

5.27. My Lords, the 1st Defendant is a member of the ruling New Patriotic Party and was once the IT director for the Bono Region in respect of the 2020 election. Given his close ties with the New Patriotic Party, it will not be far-fetched to conclude that he will in any given election prefer that his party, the New Patriotic Party, wins that election instead of the opposition National Democratic Congress (NDC). Indeed, it is in his interest that his party, the NPP, stays in power whilst the opposition NDC remains in opposition.

5.28. My Lords, in a situation where a free and fair election is what will guarantee a change in government for the National Democratic Congress (NDC) to come to power, the 1st Defendant, being a member of the NPP, would not want that to happen. His interest, which is to ensure that the NPP remains in power, will in such circumstances, conflict with the 2nd Defendant Commission's interest of conducting a free and fair election.

5.29. My Lords, insofar as the 1st Defendant remains a member of the 2nd Defendant Commission, his partisan interest will always conflict with his duties as a member of the 2nd Defendant Commission charged with the onerous responsibility of supervising and conducting free and fair elections in this county.

5.30. My Lords, **Article 296 of the 1992 Constitution** provides that: *Where in this Constitution or in any other law discretionary power is vested in any person or authority- (a) that discretionary power shall be deemed to imply a duty to be fair and candid; (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased, whether by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.*

5.31. My Lords, the exercise of discretion requires the exercise of good judgment. Article 296 of the 1992 Constitution imposes a duty on the 1st Defendant to be fair and candid in the exercise of any discretionary power that may be conferred on him.

5.32. Per Article 296, the exercise of any discretionary power must not be arbitrary, capricious or biased, or actuated by resentment, prejudice or personal dislike.

5.33. Again, **Article 23 of the Constitution** imposes a further duty on 1st Defendant to act fairly, reasonably and to comply with all requirements of law imposed on same.

5.34. **Article 23 of the 1992 Constitution** reads: *"Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."*

5.35. My Lords, in the performance of its functions, Article 46 of the Constitution guarantees the independence of the 2nd Defendant from the control or influence of any person or authority including political parties.

5.36. **Article 46 of the 1992 Constitution** provides: "Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission, shall not be subject to the direction or control of any person or authority."

5.37. My Lords, when one reads **Articles 23, 46, 284 and 296 of the 1992 Constitution** together, one comes to the irresistible conclusion that the 2nd Defendant in the performance of its functions under Article 45 must not be subject to the direction or control of any person or authority; and that all members of the 2nd Defendant Commission such as the 1st Defendant, must beyond being qualified to be a Member of Parliament, be neutral, impartial, non-partisan and fair-minded to be qualified as members of the 2nd Defendant Commission.

5.38. My Lords, in interpreting the 1992 Constitution, this Court has been admonished not to interpret the provisions of the Constitution in isolation, but to read and construe the Constitution as a whole in order to arrive at an interpretation that accords with the purpose or intention of the framers of that Constitution.

5.39. My Lords, this basic rule of interpretation is fundamental in the interpretation of the 1992 Constitution. It ensures that a perverse result is not arrived at by an interpretation that dwells on a single provision of the Constitution without recourse to the rest.

5.40. My Lords, in **Hon P.C Appiah-Ofori v Attorney General**¹⁵ the Supreme Court speaking through Wood CJ held that: "The jurisprudence of this court, as has been firmly established, clarified and developed over time is that the literal construction of constitutional provisions in isolation, without reference to other related provisions, nor the Constitution's underlying core values, cannot be the proper approach to constitutional construction."

¹⁵ (2010) JELR 68511 (SC)

5.41. In **Republic v High Court, Koforidua Ex Parte Asare (Baba Jaml and Ors. Interested Parties)**¹⁶ at page 472, Atuguba JSC quoting with approval the dictum of Acquah JSC (as he was then) in *National Media Commission v Attorney General* held that: "...in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the parts are also to work dynamically, each contributing towards accomplishing the intended goal."

5.42. My Lords, the 1992 Constitution does not expressly state that a person must be neutral, impartial, fair-minded and non-partisan for same to qualify to be a member of the 2nd Defendant Commission. However, if one reads Articles 284, 296, 23 and 46 together with Article 44(1) purposively, it becomes clear that in addition to qualifying as a Member of Parliament, a person must be neutral, impartial, non-partisan and fair-minded to qualify as a member of the 2nd Defendant Commission.

5.43. Again, it can be gleaned from the constitutional architecture of the 2nd Defendant Commission, that the framers of the Constitution intended its members to be neutral, impartial and non-partisan.

5.44. My Lords, the framers of the 1992 Constitution had occasion to consider the constitutional framework or architecture the 2nd Defendant Commission in the **Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana.**

5.45. After tracing the history of the two forms of Electoral Commissions the country has had over the years, the Committee of Experts recommended for the creation of an Electoral Commission which is either manned by a sole commissioner or a body of commissioners.

¹⁶ [2009] SCGLR 460

5.46. However, it appears from a careful reading of the committee of expert report that, regardless of the form that the Electoral Commission was to take, the Commission was expected to be independent, neutral, impartial and focused primarily on conducting elections and other referenda.

5.47. The following excerpts are captured at pages 103, 105 and 106 of the Committee of Expert report: *"Ghana has had two forms of Electoral Commission between 1969 and 1988. In both 1969 and 1979 the Electoral Commission consisted of a sole commissioner whose main functions were to organise public elections and to perform functions that are incidental to the electoral process. The second type of Electoral Commission in the form of a National Commission for Democracy (NCD) was provided for by PNDC Proclamation, 1981... Beyond the issue of what are the proper functions of the Electoral Commission, there are other considerations which should inform the selection of either of the two models. A sole Electoral Commissioner can be manipulated more easily than an Electoral Commission consisting of a number of people. Equally, the pressures and stresses of general and other elections can be borne better by a corporate body than by a single person... However, it is easier and quicker for a sole commissioner to arrive at decisions than a body of Commissioners. Additionally, a sole Commissioner has a personal stake in the electoral process: the whole nation looks up to him for an honest, impartial and fair elections; and there is therefore an irresistible urge to meet these expectations..."*

5.48. My Lords, the framers of the Constitution envisioned an Electoral Commission which could not be manipulated; an Electoral Commission which was neutral, fair-minded and impartial.

5.49. In paragraph 230 of the Committee of Experts Report, the Committee of Experts noted that an Electoral Commission manned by a sole commissioner was more likely to be manipulated than an Electoral Commission that was made up of multiple members.

5.50. To secure an Electoral Commission that was neutral, impartial and could not be easily manipulated, the framers of the Constitution, in their wisdom, opted for an Electoral Commission that was made up of seven (7) members.

5.51. The framers of the Constitution further enacted Article 46 to guarantee the independence of the Electoral Commission and to insulate the Commission from the control and influence of any person or authority including Political Parties and the Presidency.

5.52. My Lords, the mere fact that the Electoral Commission is made up of seven (7) members instead of a sole commissioner does not in itself guarantee that the Electoral Commission cannot be manipulated and influenced by any person or authority.

5.53. It must be noted that all the members of the 2nd Defendant Commission are appointed under Article 70(2) of the Constitution by a partisan President with a vested interest in the outcome of the elections conducted by the 2nd Defendant Commission.

5.54. My Lords, per **section 6(3) of the Electoral Commission Act, 1993 (Act 541)** "*quorum at a meeting of the Commission is four including the chairman or one of the deputy chairmen*"; and "*decisions at the meetings of the Commission shall be that of the majority of the member present and voting...*"¹⁷

5.55. A corrupt President bent on controlling the 2nd Defendant Commission need only appoint four (4) die-hard party loyalists to infiltrate the ranks of the 2nd Defendant Commission in order to corrupt and pollute same.

5.56. My Lords the idea of a corrupt President appointing four die-hard party members to infiltrate the 2nd Defendant Commission must not be seen as a remote idea with no possibility of occurrence. The current President of the Republic, His Excellency Nana Addo Dankwa Akufo-Addo, has had the rare

¹⁷ See section 6(6) of the Electoral Commission Act, 1993 (Act 541)

privilege of appointing five (5) out of the seven (7) members of the Electoral Commission in his two (2) terms as President of the Republic.

5.57. My Lords, If the President is allowed to appoint a known party sympathizer as a member of the Electoral Commission, what stops the next President from appointing the Director of Elections of his political party, or his General Secretary or campaign manager as a member the 2nd Defendant Commission.

5.58. My lords, a literal interpretation of Article 44(1) of the Constitution affords the President the opportunity to manipulate and control the 2nd Defendant Commission by appointing party loyalist as members of the 2nd Defendant Commission.

5.59. My Lords, a literal interpretation of Article 44(1) makes mockery of the independence of the 2nd Defendant Commission guaranteed under Article 46 of the 1992 Constitution, and defeats the very independence of the 2nd Defendant Commission envisioned by the framers of the Constitution.

5.60. My Lords, even though the framers of the Constitution did not expressly state that members of the 2nd Defendant Commission are to be neutral, fair-minded and impartial, a careful study of Articles 23, 46, 284 and 296 of the Constitution and pages 103, 105 and 106 of the Committee of Expert Report, show that the framers of the Constitution envisioned or intended an Electoral Commission manned by neutral, fair-minded and impartial members.

5.61. My Lords, studies of the various Electoral Commissions of the fifteen (15) member states of the Economic Community of West African States (ECOWAS) confirms that the Electoral Commission of Ghana was intended to be manned by neutral, fair-minded and impartial members.

5.62. In their book titled **Electoral Commission in West Africa: A Comparative Study Second Edition**, Mathias Hounkpe and Prof Ismail Madior Fall conducted a comparative study of Electoral Commissions across West Africa.

5.63. The study which was conducted at the behest of the Electoral Assistance Unit of the Economic Community of West African States (ECOWAS) in partnership with Friedrich-Ebert-Stiftung (FES), examined the Electoral Commissions of the fifteen (15) member states of the Economic Community of West African States (ECOWAS).

5.64. The study examined the enabling statutes, the appointment of members and operations of the various Electoral Commissions, among other things, of the 15 member states of the Economic Community of West African States (ECOWAS).

5.65. According to the study, there are two types of Electoral Commissions, with respect to membership, among the 15 member states of the Economic Community of West African States (ECOWAS).

5.66. The first type has its members appointed or selected to the Commission on the basis of their political affiliation. The second type is constituted by members who are expected to be neutral and not affiliated to any political party.

5.67. At page 11 of the study the authors noted the following: *"In the determination of the "profile" of the members of the Electoral Commissions, the first option involves appointing only members who are not politically inclined, or on the contrary including people selected on the basis of their political affiliation. In other words, the neutrality expected of the Electoral Commission may take two shapes:*

- *Either a deliberate consideration of the political dimension, with the risk of partiality which is expected to be averted precisely through a balanced representation of political forces;*
- *Or an exclusion, in principle, of any political consideration, which is manifested not only in the exclusion of political parties in the selection of the members of the Commission, but also in the demand for non-*

partisan affiliation of the members to be appointed into the Commission."

5.68. My Lords, Burkina Faso, Benin, Guinea Conakry, Cape Verde, Mali and Togo are examples of countries with Electoral Commissions whose membership are appointed, selected or elected on the basis of political affiliation. At pages 13, 14 and 15 of the study, the authors make the following remarks about the above mentioned countries: ***"in Burkina Faso, the INEC is made up of 5 members proposed by the party in the majority, 5 members proposed by the opposition parties, 5 members by civil society organizations (CSO) among which 3 are proposed by religious organizations, 1 by traditional rulers and 1 by associations for the defence of Human Rights and freedoms... In Benin, members of the Autonomous National Electoral Commission (ANEC) are officially appointed by the president of the country upon the proposal of government, parliament (quotas allotted proportionally according to the size of the political parties in the National Assembly), and civil society covering all socioprofessional bodies or associations... Guinea Conakry also has this type of tripartite composition of the INEC with 10 representatives from the majority party, 10 representatives from opposition parties, 3 representatives of civil society and 2 representatives from Government...In Togo, following the Comprehensive Political Agreement, the number of members from the opposition was two times higher than that of the ruling government, however, the opposition and parliamentary majority now have (05) members each... The Cape Verde Electoral Commission, called National Elections Commission (NEC) is made up of five (05) members. Its members are elected by members of parliament through secret ballot with two third (2/3) majority."***

5.69. The study noted that Senegal and other English speaking countries such as Ghana operate under a different regime where the members of their Electoral Commissions are either expressly or implicitly enjoined by law to be neutral. The study makes the above point in the following words: ***"In Senegal, it is on the other hand very clearly indicated that members of the INEC must***

be independent minded persons, of course of Senegalese nationality, and above all, known for their political neutrality... It is this Senegalese option of a political neutral Commission which appears to be expressly or implicitly accorded more importance in most of the English speaking countries (Gambia, Ghana, Nigeria, Sierra Leone, Liberia)"

5.70. The Study concludes its analysis of the membership of the various Electoral Commissions at page 18 with the following concluding remarks: "...in general, the conditions which must be fulfilled to become a member of an Electoral Commission are not excessively rigorous. The concern for qualifications is aimed at having people within the Commission could guarantee neutrality or a balanced representation of political forces taking part in the electoral contest... These qualities are often integrity, probity, morality, neutrality and impartiality."

5.71. My Lords, this Court has power to read in words into the Constitution by means of construction, when the words are implied and are necessary to fill a gap and lacuna in the law.

5.72. In **Hon P.C Appiah-Ofori v Attorney General**¹⁸, this Court speaking through Wood CJ held as follows: "I conclude, as did, the defendants, that there is a lacuna, a gap, which must be filled through the process of constitutional interpretation along the principles analysed. In our jurisprudence, it is legally permissible, in appropriate cases, to fill in gaps or omissions arising under the Constitution or statutes... Constitutional construction, in its proper context, therefore provides the legal route for filling in gaps or omissions in a written constitution. It permits the importation of implicit words to fill in whatever constitutional lacuna or omission appears to exist in a written Constitution. This does not amount to a re-writing of the constitution."

5.73. My Lords, it is the humble prayer of the Plaintiff that this Honourable Court will interpret Articles 23, 44(1) 45, 46, 284 and 296 of the 1992

¹⁸ (2010) JELR 68511 (SC)

Constitution purposively to disqualify the 1st Defendant, a known sympathizer and affiliate of the New Patriotic Party as a member of the 2nd Defendant Commission.

6. CONCLUSION

In conclusion, my Lords, the Plaintiffs respectfully submit as follows:

6.1. That on a true and proper interpretation of letter and spirit Articles 23, 45, 46, 284 and 296 of the 1992 Constitution, a person must be neutral, non-partisan, fair-minded and impartial to qualify as a member of the 2nd Defendant Commission

6.2. That on a true and proper interpretation of Articles 23, 45, 46, 284 and 296 of the 1992 Constitution, the 1st Defendant, a known sympathizer and affiliate of the New Patriotic Party, is not neutral, fair-minded and impartial and therefore is not qualified to be a member of the 2nd Defendant Commission.

6.2. That on a true and proper interpretation of Articles 23, 45, 46, 284 and 296 of the 1992 Constitution, the appointment of the 1st Defendant as a member of the 2nd Defendant Commission contravenes the letter and spirit of Articles 23, 45, 46, 284 and 296 of the 1992 Constitution and therefore null and void.

6.3. It is the prayer of the Plaintiff that this Honourable Court grants all the reliefs endorsed on his Writ.

Respectfully submitted.

DATED IN ACCRA THIS 5th DAY OF JUNE 2023


Nii Kwakpo Samoa Addo
Solicitor for the Plaintiff
License No. eGAR 00652/23

**The Registrar
Supreme Court
Accra.**

LIST OF AUTHORITIES RELIED ON

CONSTITUTION

1. The 1992 Constitution of Ghana

STATUTES

1. Electoral Commission Act, 1993 (Act 541)

DECIDED CASES RELIED ON

1. Amidu (No. 2) v Attorney – General, Isofoton SA & Forson (No 1) [2013-2014]1 SGCLR 167
2. Tuffuor v. Attorney – General [1980] GLR 637
3. New Patriotic Party v Attorney – General [1996 – 97] SCGLR 729
4. Sam v Attorney – General (NO. 2) [1999-2000] 2 GLR 336
5. Edusei (No.2) v. Attorney – General [1998-99] SCGLR 753
6. Ghana Bar Association v Attorney-General [2002-2004]1 SCGLR at 259
7. Kuenyehia v Archer [1993-94] 2 GLR 525
8. Asare v Attorney-General [2003-2004] 2 SCGLR 732
9. Danso-Acheampong and Abodakpi v Attorney-General [2009] SCGLR 357
10. Hon. P.C. Appiah-Ofori v Attorney-General [2010] JELR 68511 (SC)
11. Republic v High Court, Koforidua Ex Parte Asare (Baba Jamal & Ors Interested Parties) [2009] SCGLR 460

DOCUMENTS AND OTHER EVIDENCE TO BE RELIED ON

1. News article published on myjoyonline.com on the 21st of March 2023 (Exhibit "DCF 1")
2. Videos of the 1st Defendant on various Television and Radio Stations (Exhibit "DCF 2 series")
3. Fall I. M. & Hounkpe M. (2011) *Electoral Commission in West Africa: A Comparative Study Second Edition (2nd ed.)* Friedrich Ebert Stiftung
4. Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana (presented to the PNDC, July 31, 1991)

Filed on... 12-06-2023
at... 12:30 am
Registrar
THE COURT OF CHIEF JUSTICE
IN THE SUPREME COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA - AD 2023

SUIT NO:

ROCKSON-NELSON ETSE K. DAFEAMEKPOR
Atawanor Memorial House
Tongor-Tsanakpe South-Dayi
Volta Region

PLAINTIFF

VRS.

DR. PETER APPIAHEHE
Electoral Commission
William Tubman Road
Accra

1ST DEFENDANT

ELECTORAL COMMISSION
William Tubman Road
Accra

2ND DEFENDANT

ATTORNEY GENERAL
Attorney General's Department
Ministries, Accra.


3RD DEFENDANT

AFFIDAVIT OF VERIFICATION

I, **JOSEPH WELLINGTON BOWUAH BLAY**, of No. 34, Spintex Road, Accra
make oath and say as follows:

1. That I have the consent and authority of the Plaintiff to depose to this Affidavit.
2. That I verify that the facts contained in paragraph 4.0 to paragraph 4.10 of the Plaintiff's Statement of Case together with the Exhibits attached thereto are true to the best of my knowledge and belief.

SWORN this 12th
day June 2023
of 2023


.....
DEPONENT

BEFORE ME



COMMISSIONER FOR OATH

DATED AT ACCRA THIS 5th DAY OF JUNE, 2023.

“RNDI”

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National

Akufo-Addo swears in 3 new members of Electoral Commission

Source: Myjoyonline.com

21 March 2023 8:25am



Listen to this article



532



...is the instrument in it
as exhibit... .. refer
to the affidavit... ..
sworn before me this... ..
day of... ..

COMMISSIONER FOR OATHS

J. W. S. Blay
12th June 2023

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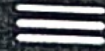
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Joy
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President Akufo-Addo has sworn in three new members of the Electoral Commission (EC).

Dr Peter Appiahene, Salima Ahmed Tijani and Rev Akua Ofori Boateng were inducted into office on Monday, March 20, at the Jubilee House.

The President urged them to uphold diligence in executing their mandate.

According to him, even though their work will be subject to strict scrutiny by the general public, "that, however, should not scare you and, indeed, let no one try to cow you into submission."



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“On the contrary, let this expectation of the Ghanaian people spur you onto great heights and above all the works of the will of the Ghanaian people is upheld,” he added.

After the swearing-in, Dr Appiahene who spoke on the members’ behalf said they are ready to deliver and contribute to strengthening Ghana’s democracy.

“We are, therefore, aware of the massive



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"We are, therefore, aware of the massive responsibilities and tasks that come with it.

"We want to state that we are poised and more prepared to deliver and contribute to the development of our democracy, especially in this digital era."

Dr Peter Appiahene

He is an Assistant Professor with over 10 years working experience in the



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Dr Peter Appiahene

He is an Assistant Professor with over 10 years working experience in the Computer Science Industry and Academic Institutions both Domestic and International.

He has a PhD in Computer Science with specialization in Reinforcement Learning and Machine Learning.

He is currently a faculty member of the




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He is currently a faculty member of the Department of Computer Science & Informatics at the University of Energy and Natural Resources, Ghana.

Rev. Akua Ofori Boateng

She is an expressive Anglican Priest and philanthropist with a strong belief in excellence. 

She is the Founder and Managing Director of Sabine Solutions Limited.

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She is the Founder and Managing Director of Sabine Solutions Limited. Sabine Solutions provides Market Entry & Business Development Services for global firms.

She is the Director of Programmes for the Anglican Diocese of Accra and also a member of the United States Trade Advisory Committee on Africa. She served on the 2020 Eminent Advisory Committee of the Electoral Commission (EC) of Ghana.



RNB2

This is the instrument made
as exhibit. RNB2 referred
to the affidavit J. W. B. Blay
sworn before me this 12th
day of June 23


COMMISSIONER FOR OATHS