

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2024

CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING)
BAFFOE-BONNIE JSC
PWAMANG JSC
OWUSU JSC
LOVELACE-JOHNSON (MS.) JSC
PROF MENSA-BONSU (MRS.) JSC
KULENDI JSC

WRIT NO.
11/16/2022
28TH FEBRUARY, 2024

CHILD RIGHTS INTERNATIONAL PLAINTIFF

VRS

THE ATTORNEY-GENERAL DEFENDANT

JUDGMENT

PROF MENSA-BONSU (MRS.) JSC:-

The plaintiff, a private Civil Society Organisation which aims to advance the welfare of children, and the living conditions of children on the streets, invokes the original

jurisdiction of the Supreme Court pursuant to Articles 2(1) and 130(1) of the 1992 Constitution. The plaintiff concurs with William Shakespeare that, "*unaccommodated man is no more but such a poor bare forked animal...*" ('King Lear' Act 3 Scene 4.)

Facts and background

The plaintiff by this writ filed on 9th March, 2022, seeks to invoke the original jurisdiction of the Supreme Court under Article 2(1) and Article 130 that on a true and proper interpretation of Article 28(1) (c) (d), (2),(3) ,(4) ; Articles 15(1) (2) ; Article 13(1) and Article 35(5) of the Constitution of Ghana,1992, the current conditions of children living on the streets of Ghana are inconsistent with the aforementioned constitutional provisions.

Upon the determination of the above, the plaintiff is seeking the following declarations and orders from the Honourable Court:

- i. A declaration that the Government of Ghana is in breach of Articles 25(a), 28(1)(a) and (d), 28(2), (3) and (4); 13(1) and 37 of the 1992 Constitution for not taking urgent steps to ensure that children receive special protection against exposure to physical and moral hazard; do not engage in work that constitutes a threat to their health, education or development and that children are not deprived of medical treatment, education or any social or economic benefit.*
- ii. A declaration that the Government of Ghana is in breach of Article 15(1) and (2), 13(1) and 35(4) of the 1992 Constitution for not taking urgent steps to ensure that children receive special protection against exposure to physical and moral hazards as enshrined in the Constitution of Ghana, 1992.*

- iii) *An order directed at the Government of Ghana to establish Child Protection Units in the municipal in cities where child exploitation for begging and for work is at high level.*
- iv) *An order directed at the Government of Ghana to define by law penalties for family members, local government units and schools that do not guarantee the observance of children in street situation rights.*
- v) *An order directed at the Government of Ghana to define by law penalties for child exploitation for begging or other form of economic exploitation to punish all those who may try to benefit or gain money from children's work.*
- vi) *An order directed at the Government of Ghana to improve the law on health care by defining by law the provision of free primary health services to all poor children, children living in street situation or children in emergency situations.*
- vii) *An order directed at the Government of Ghana to provide rules and procedures to be followed for the provision of free basic medical services to poor children, children in street situation or children in emergency situations and the agencies that can ask for this help on behalf of children.*
- viii) *An order directed at the Government of Ghana to implement mechanisms to control and enforce the legal framework guarantee of education for all children.*
- ix) *An order directed at the Government of Ghana defining by law the facilitation procedures related to school enrolment of children in street situations and their provision with the necessary didactic material.*

- x) *An Order directed at the Government of Ghana to submit to the Honourable Court not later than three months from the date of final judgment, a plan of action detailing all the steps, strategies and measurable targets by which the defendants undertake to obey and perform the orders contained in reliefs (iii), (iv), (v), (vi), (vii), (viii) and (ix).*
- xi) *An Order directed at the Government of Ghana to submit to the Honourable Court, two years from the date of final judgment and thereafter every six months until the expiry of the three-year plan of action, a report particularizing all the steps taken, and targets met in obeying the orders of the Honorable Court contained in reliefs (iii), (iv), (v), (vi), (vii), (viii) and (ix).*
- xii) *Any other orders, directions or reliefs the Honourable Court considers just and proper to grant.*

The defendant filed a Statement of Case on June 3, 2022; and written arguments pursuant to court order of February 7, 2023 and filed on 21st February, 2023),

"wherein the Defendant argued in opposition that the Plaintiff's case raised no real issues justifying the invocation [of] this Court's Original Jurisdiction because the provisions for which the Plaintiff seeks interpretation and enforcement were clear and unambiguous" (paragraph 4).

Case for the plaintiff

The plaintiff is a registered civil society organization in Ghana, and so has standing See: **NPP v A-G** [1996-97] SCGLR 729). The plaintiff states that its action is intended to

protect the rights of children as enshrined in the 1992 Constitution and other Human Rights charters to which Ghana is a signatory.

The plaintiff has cited a number of foreign authorities wherein specific rights have been upheld by the courts in those countries. The plaintiff cites the following cases: *Villagran-Morales et al v Guatemala* [1999] 1 ACHR 17; *Vishal Jeet v Union of India* Case AIR [1990] SC 1412; *Supreme Court of India Labourers Working on Salal Hydel v State of Jamanu and Kashmir* [1984] 3 SCC 538; *MC Mehta v State of Tamil Nadu* [1966] 6 SCC 756 (hazardous employment); *People's Union for Democratic Rights v Union of India* [1983] SCR (1) 456; *Lakshmi Kant Pandey v Union of India* [1984] AIR 469 (adoption of Indian children by person of foreign origin); *Gaurav Jain v Union of India* [1997] SCC 114 AIR 1997 SC 3021 (Equal rights of children of prostitutes).

Right to Life: *Olga Tellis v Bombay Municipal Corp.* [1985] 92) SCC 545 – recognize the right to dwell on pavements or in slurry. *Chameli Singh v State of UP* on 15th December 1995 (right to shelter as an inseparable compound for meaningful right to life; *Shantistar builders v Narayan Tolame* AIR [1990] SC 630 – right to shelter; *State of Karnataka v Narasim Harwith* [1995] (5) SCC 524 (right to shelter) and *Yakye Axa Indigenous Community v Paraguay* - Merits Reparations and Costs Judgment of June 17, 2005 series C, No. 125.

The plaintiff has also cited the following local cases: *Asare v AG* [2012 SCGLR 31 - 'right to dignity; *Adjei Ampofo (No.1) v AMA & AG (No.1)* [2007-2008] SCGLR 611; *Edusei v AG & Anor* [1997-98] 2 GLR 1 *Bimpong Buta v GLC & Ors* [2003-2005] 1 GLR 738; *FEYDAG v Public Universities of Ghana* [2010] SCGLR 265; *Republic v Tommy Thompson Books Ltd (No. 2)* [1996-97] SCGLR 484; *NPP v AG* [1997-98] 1 GLR 378 on Directive Principles of State Policy; and *Ghana Lotto Operators Association v National Lottery Authority* [2007-2008] 2 SCGLR 1088 on presumption of justiciability of Directive Principles of State Policy.

The plaintiff maintains that the conditions of the over sixty-one thousand children living on various streets of Ghana violate the provisions of Articles 15(1) and (2), 28(1) (c) and

(d),(2) (3) and (4) 13(1) and 37 of the 1992 Constitution. Further, it is the plaintiff's argument that it is difficult for the street children to maintain good health due to eating unhygienic food, and drinking water from contaminated sources and vessels. Further, they also have to pay to use public places of convenience, and in times of illness they do not readily go to the hospital or clinics, resorting instead, to the use of medicines suggested by their peers on trial and error basis, thereby delaying the possibility of recovery since they get taken to the hospital only when in critical condition. This, the plaintiff says, violates the dignity and fundamental human rights and freedoms relating specifically to children as provided for under chapter 5 of the Constitution of Ghana, 1992, and a plethora of decided cases from other Common Law jurisdictions.

It is also the plaintiff's complaint that children face a hazardous existence in the streets, and have no opportunity for proper rest as they remain in the sun for long hours. and that these constitute a violation of the duty that the Government of Ghana owes to them.

In the view of the plaintiff, the Children's Act (Act 560) assigns responsibilities of care and protection of children to the District Assemblies, and investigations into contravention of children's right are assigned to the Department of Social Welfare and Community Development. These statutory bodies, according to the plaintiff, do not in reality, perform the responsibilities assigned to them. The plaintiff states that in spite of the intent and commitment of both the legislature and the framers of the Constitution, Ghana has not made any serious or progressive attempts to safeguard the rights of the children living in the streets.

The plaintiff, by initiating this suit, is inviting this honourable Court to take judicial notice of the fact that children living on the streets of Ghana are harmed on a daily basis by adults and denied access to education and healthcare. The plaintiff's contention is also that this instant action for an interpretation and enforcement of clause 4 of Article 35 under the Directive Principle of State policy under chapter 6 of the Constitution, 1992, is presumptively justiciable as held by this honourable Court in the

case of ***Ghana Lotto Operators Association & Others vs National Lottery Authority*** [2007-2008] 2 SCGLR 1088.

Case for the defendant

The Attorney-General, who is the principal government legal advisor and defendant under Article 88 of the Constitution of Ghana, 1992, disputes the claims of the plaintiff. He states in response to the claims of the plaintiff, that the provisions upon which reliefs are being sought by the plaintiff admit of no controversy and for that matter require no interpretation by this honourable Court, neither do they raise any issue for the legitimate exercise of this Court's original jurisdiction. The defendant finds it strange that the plaintiff, after praying the Court for the interpretation of certain provisions of the Constitution in his Writ of Summons, would turn around and argue for the enforcement of these provisions of the Constitution, according to its own interpretation, in its own legal argument. The defendant cites a number of authorities, such as ***Asare v. Attorney-General & General Legal Council*** [2017] DLSC 2604; ***Danso v. Daaduum II & Anor*** [2013-2014] 2 SCGLR 1570; ***Bomfeh Jnr v. Attorney-General*** (Writ No 31/14/17); ***Ghana Bar Association v. Attorney-General & Anor*** (Abban Case) [2003-2004] 1 SCGLR 250; ***Ex Parte Akosah*** [1980] GLR 592.

Further, it is the defendant's contention that the Government of Ghana has rolled out policies to give effect to the constitutional provisions the plaintiff is praying this Court to interpret, and give effect to. The defendant listed various pieces of legislation enacted by Parliament in fulfilment of the constitutional duty to enact legislation for the protection of the rights of children in Ghana, including the Children's Act of 1998 (Act 560), as amended. The defendant draws the attention of this Court to sections 6,8,10,12,13,47,87 and 88 of Act 560, which were enacted in accordance with Article 28 of the Constitution of Ghana, 1992, fortifying the general rights and application of children. The defendant further elaborates his argument by stating that the main focus of Act 560 is the welfare of the child and that broad provisions have been made to cater for the educational, health and shelter and other social needs of the children. This act is further supported by other legislation such as section 71 of the Criminal Offences

Act,1960 (Act 29) as amended; and the Beggars and Destitutes Act,1969 (Act 392), all of which make it a criminal offence when children are exposed to danger and exploitation, including being used for begging by adults.

On the justiciability of the reliefs of the plaintiff, the defendant contends that though the matter has been settled in earlier decided cases (**CIBA** and **Lotto** cases) by this Court, the plaintiff ought to consider the availability of resources in further enforcement of the expectations of the provisions on the right of Children.

The constitutional provisions of which the plaintiff seeks interpretation, provide standards for the Government in the provision and protection of children's rights (including those of the children on the streets), and Government has progressively put in place initiatives, programmes and interventions to ensure that children's rights are adequately protected, taking into account the availability of resources at a given time (***Federation of Youth Association of Ghana (FEYDYAG) v. Public Universities of Ghana and Others*** [2010] SCGLR 265).

Issues

The parties filed a Joint Memorandum of issues on 16th December, 2022, which raised the following agreed issues.

1. *Whether or not the Plaintiff had properly invoked the Original Jurisdiction of the Supreme Court under Articles 2(1) and 130(1)?*
2. *Whether or not the reliefs sought by the Plaintiff are justiciable?*
3. *Whether the current conditions of children living on the streets of Ghana violate Article 28(1) (c) and (d), (2), (3) and 4 of the 1992 Constitution of Ghana?*

4. *Whether the current conditions of children living on the streets in Ghana are consistent with Articles 13(1), 15(1) and (2) and 35(4) of the 1992 Constitution of Ghana.*

5. *Whether the Government is in breach of Articles 28(1)(a), (d), (2), (3), (4), 13(1) and 37 of the 1992 Constitution of Ghana for not taking urgent steps to ensure that children receive special protection against exposure to physical and moral hazards?*

6. *Whether the Government is in breach of Articles 28(2) of the 1992 Constitution of Ghana for not taking steps to ensure that children do not engage in work that constitutes a threat to their health, education or development?*

7. *Whether the Government is in breach of Articles 28(4) of the 1992 Constitution of Ghana for not taking steps to ensure that children on the streets are not deprived of medical treatment, education or any social or economic benefits?"*

The parties having agreed on issues in the Joint Memorandum of Issues filed, we proceed to discuss the issues as set down.

Issue 1

Whether the jurisdiction of the Supreme Court under Article 2(1) and 130(1) has been properly invoked? The original jurisdiction of the apex Court, under the combined effect of articles 2 (1) and 130 (1), is in respect of Interpretation and/or Enforcement of the Constitution, 1992.

Articles 2 (1) and 130 (1) of the Constitution, 1992 provide respectively as follows"

(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.

130. (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; and

(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 under this Constitution.

In ***Ghana Bar Association v. Attorney-General and Another*** (Abban Case) [2003-2004] SCGLR 250 Edward Wiredu JSC at p. 266 explained that,

“‘Jurisdiction’ is simply the power of a court to hear and determine a cause or matter brought before it, lack of which would render any decision taken or order made null and void and of no effect. If jurisdiction is granted a court by a statute, then what is already specified therein determines the nature and extent of that jurisdiction so granted to that court which cannot be extended or modified. Where jurisdiction is wrongly assumed, however, all proceedings taken would be a nullity.”

In the much-cited case of **Republic v. Special Tribunal; Ex parte Akosah** [1980] GLR 592 at p. 606, the court stated the criteria for determining when the interpretative jurisdiction of this Court can be properly said to have been invoked:

"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

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 should 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.

It was thus firmly held that there is no case of enforcement and/or interpretation where the language of the alleged infringed provisions of the Constitution is clear, precise and unambiguous, and this has been an enduring guide to the Supreme Court in determining whether its interpretative jurisdiction has been properly invoked. In **Bimpong-Buta v. General Legal Council** [2003-2005] GLR 738, the Supreme Court per Sophia Akuffo JSC at p. 749 expounded on the duty of the Court to ascertain, first and foremost in

constitutional matters, whether its jurisdiction had been properly invoked. She stated thus:

“The plaintiff has sought to invoke the original jurisdiction of this court, we must, of necessity, ascertain whether or not our jurisdiction under articles 2(1) and 130(1) (a) of the Constitution, 1992 has been properly invoked. ... In other words does the plaintiff’s writ properly raise any real issues of interpretation or enforcement of the Constitution, 1992 that can only be resolved by this court in exercising its original jurisdiction? Jurisdiction is always a fundamental issue in every matter that comes before any court and, even if it is not questioned by any of the parties, it is crucial for a court to advert its mind to it to assure a valid outcome. This is even more so in respect of the Supreme Court’s original jurisdiction, which has been described as special.”

At p.750 she also stated as follows:-

1. *A person bringing an action under Article 2 of the Constitution 1992 need not demonstrate that he has any personal interest in the outcome of the suit, that he as a citizen of Ghana suffices to entitle him to bring the action (Tufuor v A.G. [1980] GLR, 637 SC and Sam (No.2) v A.G [2000] SCGLR 305).*
2. *The “person” referred to in the context of Article 2 includes both natural persons and corporate bodies (NPP v A.G. CIBA case, [1996-97] SCGLR 729).*
3. *The Supreme Court’s power of enforcement under Article 2 of the Constitution, 1992 by exercise of its original jurisdiction, does not cover the enforcement of the*

individual's human rights provisions, that power by the terms of articles 33 (1) and 130 (1) of the Constitution 1992 is vested exclusively in the High Court (Edusei v A.G, [1998-99] SCGLR 1, Edusei (No. 2) v A.G. [1998-99] SCGLR, 753, Adjei-Ampofo v A.G [2003-2004] SCGLR 411).

4. *Regardless of the manner in which they are clothed, where the real issues arising from a writ brought under Articles 2 or 130 (1) of the Constitution, 1992 are not, in actuality, of such character as to be determinable exclusively by the Supreme Court, but rather fall within a cause of action cognizable by any other court or tribunal of competent jurisdiction, this court will decline jurisdiction (cf Yiadom 1 v Amaniampong [1981] GLR 3, S.C, Ghana Bar Association v A.G. (Abban case) [2003-2004] SCGLR 250, Edusei No. 2 v A.G supra, Adumoa II v Twum II [2006] SCGLR 165.*

....In light of the foregoing, despite the plaintiff's submission to the contrary my respectful view is that the suit herein does not raise any real or genuine issues of constitutional interpretation such as would justify our exercising our original jurisdiction under article 2 or 130(1)"

Expounding further on the scope of the provisions on the original jurisdiction of the Supreme Court in **Adumoa II v. Adu Twum II** [2000] SCGLR 165, Chief Justice Acquah stated thus:

"the original jurisdiction vested in the Supreme Court under Articles 2(1) and 130(1) to interpret and enforce the provisions of the Constitution is a special jurisdiction to be invoked in suits raising genuine or real issues of

interpretation of a provision of the Constitution; or enforcement of a provision of the Constitution; or a question whether an enactment was made ultra vires Parliament or any other authority or person by law or under the Constitution”.

In ***Edusei v. Attorney-General & Anor*** [1996-97] SCGLR and ***Gbedemah v. Awoonor-Williams*** (1970) 2 Gyandoh & Griffiths (A Sourcebook of Constitutional Law) 438, it was held that the enforcement jurisdiction of the Supreme Court relates to all the provisions of the Constitutions of 1992 and 1969 respectively. The exception was made for the human rights provisions. It is, thus, very clear that the enforcement jurisdiction of the Supreme Court relates to all provisions of the Constitution, 1992, with the notable exception of those relating to Fundamental Human Rights (in relation to individual rights) as provided for under Chapter 5 of the Constitution 1992. The jurisdiction over that part of the Constitution has been conferred on the High Court under Article 33 of the 1992 Constitution See: ***Federation of Ghana Youth Associations of Ghana (FEYDYAG) v. Public Universities of Ghana & Others***, supra.

On the issue of whether words that are clear on their face can be the basis of its enforcement jurisdiction, the Supreme Court has, in a number of authorities, approved the invocation of its original jurisdiction on the threshold set in ***Ex-parte Akosah*** although the words or text complained of were very clear. In ***National Media Commission v. Attorney-General*** [2000] SCGLR 1 where the President was alleged to have acted in excess of the powers conferred on him by the Constitution, 1992, the Supreme Court considered its enforcement jurisdiction properly invoked even though the said provision was clear on its face. In that case the President of the Republic purported to appoint Chief Executive officers for public corporations of the state-owned media, when the clear language of the Constitution vested the power of these appointments in the National Media Commission. The Court, therefore, exercised judicial review to invalidate the exercise of power by the President as unlawful.

It is also a matter well-covered by authority, that the plaintiff need not have a personal interest in the enforcement action. It suffices that the matter is in the interest of the public. This honourable Court in ***Adjei Ampofo (No.1) v. Accra Metropolitan Assembly (No.1)*** [2007-2008] SCGLR 611, cleared the doubts about the personal interest of the plaintiff in invoking the original jurisdiction of the Supreme Court as far as the enforcement or interpretation of the human rights provisions of the Constitution, 1992 were concerned. Having made a finding that the plaintiff was “*not seeking the enforcement of his individual rights or freedoms, but rather those of the persons affected by the practice complained of, in general*” Sophia Akuffo JSC (as she then was), stated that “*in those circumstances, [the] matter is properly before this Court under article 2(1) and within the jurisdiction of the court under article 130(1).*” On the scope of the court’s enforcement jurisdiction, she observed further, speaking for the Court, that

“the [Supreme] Court’s jurisdiction in such a case is determined by whether or not the Plaintiff is pursuing a personal interest (as in Edusei vs A.G & Anor.[1997-1998] 2 GLR 1 and Bimpong-Buta vs GLC & Ors.[2003-2005] 1GLR 738 or the enforcement of a provision of the Constitution in the interest of the public good...”

Thus, the jurisdiction of the High Court under Articles 33(1) and 140(2) to enforce the provisions of Chapter Five

“does not operate to fetter the civic-minded citizen who has embarked on a mission to enforce a right under the Article 2(1) provision of the Constitution (including any of those under Chapter 5 of the Constitution relating to fundamental human rights and freedoms) in the general interest of the public.”

(See also: ***Oppong v. Attorney-General*** [2003-2004] 1 SCGLR 376; and ***Federation of Ghana Youth Associations of Ghana (FEYDYAG) v. Public Universities of Ghana & Others***, *supra*.

In the instant suit the gravamen of the plaintiff's case is that the conditions under which over sixty-one thousand children living on various streets of Ghana violate the provisions of Articles 13(1); 15(1) and (2); 28(1) (c) and (d), (2), (3) and (4); 35(4) and 37 of the 1992 Constitution. There is thus, ordinarily, no doubt that the plaintiff can bring the action to seek the interpretation and enforcement of the Supreme Court, even if the plaintiff is not affected personally, and the action is only intended to protect the interest of others affected by the actions (or the lack thereof), complained of. The Supreme Court has never hesitated to make pronouncement on public interest cases which seek to protect the political and social wellbeing of citizens where the provisions of the Constitution brought under challenge are clear, unambiguous and without conflict in meaning. In ***Ahumah-Ocansey v. Electoral Commission; Centre for Human Rights & Civil Liberties (CHURCIL) v. Attorney-General & Electoral Commission (Consolidated)*** [2010] SCGLR 575 where the main issue was whether prisoners were entitled to vote in public elections, the plaintiffs therein had complained that the Electoral Commission of Ghana had refused to respect the voting rights of remand prisoners and prisoners in general. That was a clear case of public interest litigation, but the Supreme Court did not hesitate to uphold the right of the plaintiffs to bring the action on behalf of incarcerated persons. Therefore, there is no novelty in recognizing the right of the plaintiff herein, a registered civil society organization, to bring this action. Nevertheless, it is not every issue, however dressed, that can be the basis for the invocation of the jurisdiction of the Supreme Court.

Issue 2

Whether or not the reliefs sought by the plaintiff are justiciable

It is unclear why the Joint Memorandum of Issues captures the issue in that manner. With respect, is it the justiciability of the plaint or the justiciability of the reliefs that is in

issue? Clearly, unless the court holds the plaint as justiciable, no reliefs can be ordered. Consequently, Issue two must be read in the amended form to give it substance. In **New Patriotic Party v. Attorney-General** [1993-94]2 GLR 35, Adade JSC at pp. 66-67 held that the Directive Principles of State Policy are justiciable because the whole of the Constitution is a justiciable document. As he put it:-

"I do not subscribe to the view that chapter 6 of the Constitution, 1992 is not justiciable: it is. First, the Constitution, 1992 as a whole is a justiciable document. If any part is to be non-justiciable, the Constitution, 1992 itself must say so. I have not seen anything in chapter 6 or in the Constitution, 1992 generally, which tells me that chapter 6 is not justiciable. The evidence to establish the non-justiciability must be internal to the Constitution, 1992, not otherwise, for the simple reason that if the proffered proof is external to the Constitution, 1992, it must of necessity conflict with it, and be void and inadmissible: we cannot add words to the Constitution, 1992 in order to change its meaning.

This position did not quite carry the day till much later in cases such as **New Patriotic Party v. Attorney-General** (CIBA Case) [1997-98] 1 GLR 378. However, in **Ghana Lotto Operators Association & Others v. National Lottery Authority** supra, this Court stated, per Dr. Date-Bah JSC at p.1113, as follows: "We would humbly submit that the right rule is a presumption of justiciability in relation to the provisions of chapter 6 of the Constitution, 1992..." In holdings 3 and 4 as follows:

"An issue is justiciable if it is capable of being settled by a court. Prima facie, everything in a constitution is justiciable. The starting point of analysis should be that all the provisions in the 1992 Constitution are justiciable unless

there are strong indications to the contrary in the text or context of the Constitution..."

Holding (4) continues that:

"A presumption of justiciability in respect of Chapter 6 of the 1992 Constitution, dealing with the Directive Principles of State Policy, would strengthen the legal status of Economic, social, and Cultural rights in the Ghanaian jurisdiction. There may be particular provisions in chapter 6 which do not lend itself to enforcement by courts. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter 6 should be insisted upon and would be a way of deepening the country's democracy and liberty under law that it entails..."

The plaintiff, is contending in this instant action that it is seeking to advocate for the social welfare of children, and that it can be captured under the social objectives of the Directive Principle of State Policy. Consequently, that if it is a matter capable of being settled by a court, then, presumptively, it is justiciable. The plaintiff then relies on article 35(4) of the Directive Principle of State policy under chapter 6 of the Constitution, 1992, as being presumptively justiciable. The relevant article is as follows:

35(4) "The State shall cultivate among all Ghanaians respect for fundamental human rights and freedoms and the dignity of the human person."

It is uncertain why the plaintiff chooses to rely on this article to prove justiciability of the Directive Principles of State Policy, and to support its action on behalf of children of the streets. Even if this lofty ideal were achieved, would that resolve the issues the

plaintiff has canvassed before this court? It would not make the slightest difference, in my considered opinion. A careful study of the constitutional provisions that have been presented by the plaintiff seeking this honourable Court's interpretative jurisdiction, do not raise any real or genuine issues of constitutional interpretation.

Be that as it may, by initiating this suit, the plaintiff is inviting this honourable Court to take judicial notice of the fact that children living on the streets of Ghana are harmed on a daily basis by adults and denied access to education and healthcare. The litany of complaints the plaintiff makes would be as true of children in the streets as of children in many homes in Ghana. The plaintiff concedes that there are institutions under Act 560 that have the responsibility to see to the welfare of children in the streets, but that they are not working well. Surely, that is not a situation that can invoke the interpretative/enforcement intervention of the Supreme Court under articles 2(1) and 130 (1)?

Secondly, it must be noted that article 2 (1) of the Constitution, 1992 speaks of inconsistency with "*any provision of this Constitution, 1992*". Wherein lies the "inconsistency that the plaintiff is anxious to show? The Attorney-General has stated the kind and content of the legislation he believes respond to the constitutional requirements in article 28. The plaintiff's only response is that the institutions to which certain responsibilities for the care of children has been confided are not doing a good job. Surely there is no issue of "inconsistency" with any constitutional provision requiring the exercise of the Supreme Court's original jurisdiction?

The Editor to the Ghana Law Reports summarises, in Holding (4) of ***Ghana Lotto Operators Association & Others v. National Lottery Authority*** supra, thus:

"There may be particular provisions in chapter 6 which do not lend itself to enforcement by courts. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself

to enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter 6 should be insisted upon and would be a way of deepening the country's democracy and liberty under law that it entails..."

Therefore, although parts of chapter 6 of the Constitution 1992 may be justiciable, it would depend upon the ability of the plaintiff to demonstrate that the applicable provisions in his particular case fall into the category of the "justiciable". This, the plaintiff in the instant case, has failed to do.

Issues3-7

These issues are all set down below and can be dealt with together as they are all interlinked:

3. *Whether the current conditions of children living on the streets of Ghana violate Article 28(1) (c) and (d), (2), (3) and 4 of the 1992 Constitution of Ghana?*

4. *Whether the current conditions of children living on the streets in Ghana are consistent with Articles 13(1), 15(1) and (2) and 35(4) of the 1992 Constitution of Ghana.*

5. *Whether the Government is in breach of Articles 28(1)(a), (d), (2), (3), (4), 13(1) and 37 of the 1992 Constitution of Ghana for not taking urgent steps to ensure that children receive special protection against exposure to physical and moral hazards?*

6. *Whether the Government is in breach of Articles 28(2) of the 1992 Constitution of Ghana for not taking steps to ensure that children do not engage in work that constitutes a threat to their health, education or development?*

7. *Whether the Government is in breach of Articles 28(4) of the 1992 Constitution of Ghana for not taking steps to ensure that children on the street are not deprived of medical treatment, education or any social or economic benefit?*

The plaintiff relies on article 28 which provides as follows:

"1. *Parliament shall enact such laws as are necessary to ensure that ...*" Clearly this is a provision which is intended to be fulfilled by Parliament. Has Parliament defaulted in enacting the legislation or has it enacted legislation that contravenes these constitutional desiderata? The plaintiff does not address this, except to complain that the institutions assigned with the responsibility to ensure the welfare of children generally in Ghana, are not working well. If that is so, then wherein lies the need for constitutional interpretation or the invocation of the original jurisdiction of the Supreme Court?

The plaintiff holds the Government as being in breach of article 28 for the failure of some institutions to appropriately discharge their mandate. That may very well be the case, but is the remedy constitutional interpretation or declarations by the Supreme Court?

The plaintiff cites other constitutional provisions to support its case, but their relationship to the plaintiff's case is equally difficult to appreciate. The plaintiff cites article 13(1) which states:

"No person shall be deprived of his life intentionally except in exercise of the execution of a sentence of a court in respect of a criminal offence under the laws of Ghana of which he has been convicted."

This is the provision that preserves the sanctity of life and guarantees the right of any citizen or other resident in Ghana to life. It is again unclear what this provision has to do with the plaint of the plaintiff.

The plaintiff has also cited article 15(1) which provides that "*The dignity of all persons shall be inviolable.*" Again, the plaintiff fails to show what this provision he is seeking to rely on, has to do with his plaint. In **Danso v. Daaduum II & Anor**. [2013-2014] SCGLR 1570, at p. 1575, the Supreme Court, per Anin Yeboah JSC (as he then was), upheld a preliminary objection challenging the jurisdiction of the Court to determine the suit and stated as follows:-

"The Plaintiff has invoked our original jurisdiction for the reliefs stated above. It is therefore the duty of the Plaintiff to demonstrate to this court that our jurisdiction has been properly invoked. This he can do by showing as per his writ and reliefs sought that his case presented to this court raises a real or genuine issue for interpretation or enforcement."

This duty, the plaintiff in the instant case has woefully failed to do. The plaintiff has failed to show "*per his writ and reliefs sought that his case presented to this court raises a real or genuine issue for interpretation or enforcement.*"

Again, in **Kwabena Bomfeh v. Attorney-General** [2019-2020] 1 SCLRG (Adaare)137 at pp.151-152 Sophia Adinyira JSC said emphatically that:

"A constitutional issue is not raised on account of a Plaintiff's absurd, strained and far-fetched understanding of clear provisions in the constitution for a person to assert a manifestly absurd meaning contrary to the very explicit meaning and effect of clear words in the constitution does not mean that a genuine issue of interpretation of some relevant constitutional provision has arisen...."

The real test as to whether there is an issue of constitutional interpretation is whether the words in the constitutional provisions the court is invited to interpret are ambiguous, imprecise, and unclear and cannot be applied unless interpreted. If it were otherwise, every conceivable case may originate in the Supreme Court by the stretch of human ingenuity and the manipulation of language to raise a tangible constitutional question. Practically, every justifiable issue can be spun in such a way as to embrace some tangible constitutional implication. The Constitution may be the foundation of the right asserted by the plaintiff, but that does not necessarily provide the jurisdictional predicate for an action invoking the original jurisdiction of the Supreme Court.”

The Attorney General says the Children’s Act 1998, Act 560 was enacted pursuant to Article 28. Are the provisions adequate to meet the constitutional standard? Are there other pieces of legislation governing the various aspect of the lives of children which ought to be passed to deal with the poor conditions the plaintiff highlights? The plaintiff does not say anything in that regard. Indeed, if state institutions responsible for the welfare of children who are in the streets, are not functioning well, the remedy is to hold the institutions responsible by any of the known measures, and/or to petition the government to take action against them. It certainly is not to invoke the original jurisdiction of the Supreme Court. The submissions do not do enough to provide particularities based upon which any reliefs, even if available, could be premised.

Conclusion

The plaintiff has failed to demonstrate that the jurisdiction of the Supreme Court has been properly invoked towards obtaining reliefs that could resolve issues for children who are the beneficiaries of the plaintiff’s concern. The constitutional provisions the plaintiff relies on to make its case are of doubtful utility. So also are the very many

foreign cases which the plaintiff has cited. Although these may demonstrate the depth of research undertaken on the law of other jurisdictions, they do little to advance issues pertaining to the provisions raised by the plaintiff under the Constitution of Ghana. The plaintiff's action is hereby dismissed.

CONCURRING OPINION

PWAMANG JSC:

My Lords, I read beforehand the brilliant lead judgment written by Prof Mensa-Bonsu, JSC and am in agreement that this action be dismissed. Nonetheless, I wish to say a few words of my own.

My Lords, while I am of the opinion that the grievances of the plaintiff stated in its writ and statement of case are legitimate and that article 28 and the other provisions of the Constitution 1992, which guarantee rights of children in Ghana are justiciable, I am unable to grant any of the reliefs prayed for in this case for the reason that the plaintiff's legal advisors failed to adopt the correct approach for litigating Economic, Social and Cultural (ESC) rights on the facts in this case. The plaintiff is a notable civil society organisation that has over the years been in the forefront of the promotion of the welfare of children in Ghana. On this occasion, the plaintiff's focus is on the appalling conditions of street children and it is praying the Supreme Court to make orders compelling the Government of Ghana to institute effective measures for improving the wellbeing of street children.

In its writ and statement of case, the plaintiff grounded its case substantially on the Rights of Children guaranteed under articles 28 of the Constitution which provides as follows;

28. (1) Parliament shall enact such laws as are necessary to ensure that -

(a) every child has the right to the same measure of special care, assistance and maintenance as is necessary for its development from its natural

parents, except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with law;

(b) every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents;

(c) parents undertake their natural right and obligation of care, maintenance and upbringing of their children in co-operation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interest of the children are paramount;

(d) children and young persons receive special protection against exposure to physical and moral hazards; and

(e) the protection and advancement of the family as the unit of society are safeguarded in promotion of the interest of children.

(2) Every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development.

(3) A child shall not be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

(4) No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

(5) For the purposes of this article, "child" means a person below the age of eighteen years.

However, the truth of the matter is that the Parliament, and the Government of Ghana for that matter, which the plaintiff sued, has already complied with what the Constitution requires of it under article 28(1) by promulgating a number of laws for the protection of children. The defendant pointed these out as including the Children's Act, 1998 (Act 560), the Criminal Offences Act, 1960 (Act 29), the Beggars and Destitutes

Act, 1969 (Act 392) and the Local Governance Act, 2016 (Act 936). Clauses (2), (3) and (4) of article 28 are hardly applicable in this case. It is not part of the case of the plaintiff that the Government of Ghana has subjected children to torture, cruel and inhuman punishment or deprived children of medical treatment on religious grounds.

In the circumstances, what the plaintiff ought to have done to meet the requirements for redress for its complaints about the plight of street children was to identify the bodies that have been assigned responsibilities for the welfare of children under the above enactments and to sue those authorities in court for not discharging effectively the statutory obligations placed on them. Such suits would not even need to be filed in the Supreme Court but in the High Court and would have to be based on credible evidence gathered by the plaintiff to prove that the responsible authorities have not carried out faithfully their obligations towards street children. In such suit, whatever explanation is offered by the public authority with responsibility would be analysed by the court to determine the commitment of the defendant to its statutory responsibilities and the effectiveness of any measures it adopted, before any orders may be made.

It is intriguing that in most of the foreign cases cited by the plaintiff, copies of which it provided to the court, the plaintiffs there sued as defendants local government authorities and the department of social welfare and relied on enactments that impose duties on those authorities. That notwithstanding, the plaintiff in this case has sued the Attorney-General, whereas the averments made in the action indicted certain Departments of Social Welfare of some Metropolitan District Assemblies whom the plaintiff itself stated have responsibility to protect children. District Assemblies are separate entities under the decentralised governance structure of the country and are distinct from the central government so the Attorney-General is not the one to be sued in matters concerning their statutory duties. I am not saying that there can never be grounds for suing the Government of Ghana through the Attorney-General on matters to do with the welfare of children but what I mean is that, on the basis of the matters complained about in this action, suing the Attorney-General in the Supreme Court was the wrong procedure to seek redress.

There is reference in the plaintiff's pleadings to articles 13(1), 25(1)(a), 35(4) and 37 of the Constitution. These are very broad policy provisions covering respectively, the right to life, provision of basic education, cultivation of respect for human rights and promotion of equality. Regrettably, the plaintiff did not make any attempt in its statement of case to indicate in what specific ways the Government of Ghana has violated these general provisions. In litigating Economic, Social and Cultural Rights that are provided for in broad terms in enactments, it is not sufficient to refer to the provisions without explaining in specific terms what conduct or omission of the defendant amounts to a violation of the provisions.

It is my expectation that when next the plaintiff considers litigation the appropriate means, as against advocacy, for achieving its objectives, it will prepare better to satisfy the requirements of the law necessary to obtain legal remedies in ESC rights litigation.

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