IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

DORDZIE (MRS.) JSC

AMEGATCHER JSC

OWUSU (MS.) JSC

TORKORNOO (MRS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

WRIT NO.

J1/11/2022

13TH APRIL, 2022

MICHAEL ANKOMAH-NIMFAH …… PLAINTIFF/APPICANT

VRS

1. JAMES GYAKYE QUAYSON ……. 1ST DEFENDANT/RESPONDENT
2. THE ELECTORAL COMMISSION ……. 2ND DEFENDANT/RESPONDENT
3. THE ATTORNEY-GENERAL ……. 3RD DEFENDANT/RESPONDENT

RULING

MAJORITY OPINION

KULENDI JSC:-

INTRODUCTION:

This is an application for an order of interlocutory injunction pending the determination of a writ invoking this Court's original jurisdiction. The Plaintiff/Applicant (hereinafter called the "Applicant") is seeking an order to restrain Mr. James Gyakye Quayson, the 1st Defendant/Respondent (hereinafter called the "1st Respondent"), from holding himself out as a Member of Parliament for the Assin North Constituency, presenting himself before and/or attending Parliament to conduct the business of Member of Parliament pending the final determination of Applicant's suit.

BACKGROUND

The application under consideration is anchored on a writ which the Applicant caused to be issued on the 24th of January, 2022, invoking the original jurisdiction of this Court for the following reliefs:

1. "A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana at the time of filing his nomination form between 5th - 9th October 2020 to contest the 2020 Parliamentary elections for the Assin North Constituency the 1st Defendant was not qualified as a member of Parliament.

2. A Declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the decision of the 2nd

Defendant to permit the 1st Defendant to contest Parliamentary Elections in the Assin North Constituency when the 3rd Defendant owed allegiance to a country other than Ghana is inconsistent with and violates Article 94(2) (a) of the Constitution of the Republic of Ghana 1992.

3. A Declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the election of the 1st Defendant as Member of Parliament for the Assin North Constituency was unconstitutional.

4. A Declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the swearing in of 1st defendant as member of parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.

5. Any further Orders and / or Directions as the Court may deem fit to give effect or enable effect to be given to the Orders of the Court."

The relevant antecedents to this application can be summarized from processes filed as follows:

The 1st Respondent was elected Member of Parliament for the Assin North Constituency on December 7th, 2020. After the election of the 1st Respondent, the Applicant on 30th December, 2020, petitioned the High Court, Cape Coast and contended that at the time of the filing of Parliamentary Nomination Forms by the 1st Respondent, he held Canadian citizenship and was therefore in violation of Article 94[2][a] of the Constitution and other electoral laws. The Applicant sought various declaratory reliefs: an order annulling the elections; perpetual injunction restraining the 1st Respondent from holding himself out as Member of Parliament-

Elect for the Assin North Constituency; and an order directed at the 3rd Respondent to conduct fresh parliamentary elections in the Assin North Constituency. On 6th January, 2021, the High Court, granted an interlocutory injunction restraining the 1st Respondent:

> *"from holding himself out as the Member of Parliament-Elect for the Assin North Constituency within the Central Region and further from presenting himself to be sworn in as Member of Parliament for Assin North Constituency as such until the final determination of the substantive Petition filed against him by the Applicant."*
> **[A copy of this ruling is attached to the Applicant's affidavit in support of this application as Exhibit MAN 3]**

Subsequently, on 28th July, 2021, the High Court gave judgment after trial in favour of the Applicant and declared the election of the 1st Respondent as "null, void and of no legal effect whatsoever". Further, the High Court granted an order of perpetual injunction against the 1st Respondent from holding himself out as Member of Parliament for the Assin-North Constituency.

Aggrieved by the judgment of the High Court, the 1st Respondent appealed to the Court of Appeal, Cape Coast, seeking to set aside the judgment of the High Court.

It is against this background that the Applicant commenced the present suit and has mounted this application deposing at paragraphs 7, 8 and 9 of his affidavit in support that:

> *"7. On 28/07/21, the High Court, Cape Coast, in its judgment upheld my petition challenging 1st defendant's election as Member of Parliament and inter alia injuncted 1stdefendant from holding himself out as Member of Parliament Annexed herewith is the judgment of the high court, marked Exhibit "MAN2".*

8. The issue of the constitutionality of Article 94(2) (a)of the Constitution,1992 has come up repeatedly in processes filed by 1st defendant in the pursuit of his appeal before the Court of Appeal, Cape Coast, and this has occasioned the filing of the instant Writ in the Supreme Court.

9. The 1st Defendant, however, is contemptuously holding himself out as Member of Parliament and carrying out his parliamentary duties as if no judgment has been pronounced in the Parliamentary Election Petition I filed against him and by reason thereof, I am advised by Counsel and believe same to be true that, this situation ought not fester during the pendency of this suit."

Significantly, the Applicant continues at paragraphs 10 and 11 of his affidavit in support as follows:

"10. On 06/01/21, when the Members of Parliament were to be sworn in as such in the Chamber of Parliament, even though an order for interlocutory injunction restraining 1st defendant from holding himself out as Member of Parliament for the Assin North Constituency, had been served on the Clerk of Parliament, and this was brought to the attention of the Clerk of Parliament by the Deputy Majority Leader, who admonished and/ or advised 1st defendant to refrain from partaking in the proceedings in Parliament, the Minority Group of which 1st defendant is part, resisted the advice, and was adamant that 1st defendant remains in the Chamber of Parliament. **[Annexed herewith is the High Court's ruling on the grant of the order for interlocutory injunction, marked Exhibit"MAN3".]**

11. This incident, which is a notorious fact, was played out on national television and cannot be lost on anyone, and also that,1st defendant flagrantly and brazenly disobeyed and disregarded the orders of the high court, partook fully in the

proceedings of that day, and continues to hold himself out as Member of Parliament for the Assin North Constituency."

We must point out that with the exception of "Notice of Preliminary Legal Objection to Hearing of Motion of Interlocutory Injunction" and its accompanying affidavit which was filed on 28th March, 2022 on behalf of the 1st Respondent, no other process has been filed in answer to this application by the 1st Respondent. This Court directed, in the interest of efficiency, expedition and effective case management, that the 1st Respondent's Counsel takes his legal objection together with any argument in opposition after the application had been moved by the Applicant's Counsel.

Counsel for the Applicant submitted that on the basis of the motion, the supporting affidavit, and annexures thereto, the Applicant has established egregious breaches of the Constitution and various electoral laws of Ghana and further that in the light of the judgment of the High Court and the reliefs sought in this suit, the continuing violation of the Constitution by the 1st Respondent ought not be allowed "to fester" pending the final determination of this dispute. He further submitted in respect of the notice of intention to raise preliminary objection that this Court is vested with jurisdiction under Article 129(4) of the Constitution to entertain the instant application for interlocutory injunction and therefore the legal objection to the procedural propriety of the application is misconceived.

Counsel for the 1st Respondent on the other hand submitted that the instant application is procedurally incompetent, same having been made under Order 25 (1) and 19 (1) of the High Court Civil Procedure Rules, 2004 (C. I 47) in the absence of a prior order of this court, *suo motu,* permitting the recourse to C.I 47 under rule 5 of the Supreme Court Rules, 1996 [C.I.16]. He cited the cases of **Koglex vrs. Attieh [2003-2004]** 1 SCGLR 75 @ 85 and ***Ampofo vrs. Samanfi [2003/2004]2 SCGLR 1153 at pages 1155 to 1156*** in aid of his submissions.

It was submitted on behalf of 2nd Defendant/Respondent that the instant application is an abuse of process because the judgment of the High Court of 28th July, 2021 has an injunction "embedded" in it and therefore the proper thing was for the applicant to enforce the judgment.

In addition to delivering an affidavit in answer for and on behalf of the 3rd Defendant/Respondent, its counsel contended that the preliminary objection by the 1st Respondent's Counsel was grossly erroneous since the Supreme Court has settled procedure on the grant of injunctions in constitutional matters. Citing the case of ***Ekwam vrs Pianim (No. 1) [1996-97] SCGLR 117***, he submitted that this Court has long affirmed its jurisdiction to grant injunction in constitutional matters where the justice and convenience of a case so warrants and therefore that, it is superfluous for the Applicant to purport to invoke C.I. 47 and consequently, the superfluity does not make the application incompetent.

He also submitted that apart from settled practice, the jurisdiction of the Supreme Court to grant injunctive orders is anchored on article 129(4) of the Constitution. He further argued that where the status of a person who at the close of nomination had not renounced his citizenship to another country is in issue, as in this case, the sole factor for consideration in an application for interlocutory injunction is whether having regards to the facts and the judgment of the High Court, the case is one of unconstitutional conduct. He concluded that where the justice of the case so warrants, an injunction is justified even if it will imply a multiplicity of orders, including an order of this Court which is exclusively vested with the protection of the Constitution under article 2(1) and the power to pronounce on any unconstitutionality. Counsel cited the cases of ***Yeboah vrs. Mensah {JH} [1998-99]SCGLR 49, NPP vrs NDC [2000] SCGLR 461, and Republic vrs High Court (General Jurisdiction) Accra; Ex-parte Dr. Zanetor Rawlings (Ashittey & National***

Democratic Congress, Interested Parties) (No.2) [2015] SCGLR 92, and submitted that the time for reckoning qualification is the opening of nominations which implies that the 1st Respondent was unqualified for election and thus unqualified to be in Parliament and ought to be restrained pending the final determination of this suit.

PRELIMINARY LEGAL ISSUE:

In respect of the legal objection by Counsel for 1st Respondent, we note that the 1st Respondent's Counsel neither cited any rule on the face of his "Notice of Preliminary Objection" nor made reference to any rule to justify the jurisdiction of this Court to entertain the "notice of preliminary objection". We think that this is rightly so, because the rules of Court do not supplant the established practice of the Court. The fact that the rules of this Court are silent on any procedure or practice would not affect this Court's procedural jurisdiction over same. It is important to note that, *"the Rules of Court cannot expressly cover every conceivable situation that arises"*. [See the dictum of Atuguba JSC in **Merchant Bank Ltd v. Similar Ways Ltd[2012] 1 SCGLR 440 @at page 446]**

For these reasons, we deem the 1st Respondent's "Notice Of Preliminary Objection" permissible even though his Counsel has neither indicated on the face of the motion paper nor urged, *viva voce*, the specific rule of procedure under which he has mounted his notice of objection.

Having entertained the 1st Respondent's "notice of preliminary objection" because it is proper despite the absence of any applicable Supreme Court Rule backing same, since there is no such express rule, we now consider the merits of his plaint on the procedural competency of the application for injunction.

It is beyond dispute that this Court has jurisdiction to entertain injunction applications whenever its original jurisdiction is invoked. In **Ekwam v. Pianim (No.1) [1996-97] SCGLR 117**, this Court granted an injunction application to restrain a non-party, the NPP, from carrying out its National Delegates Congress, pending the determination of a writ invoking the Court's original jurisdiction.

On the permissible procedure, the lack of express provisions in the Supreme Court Rules, has never been a bar to the exercise of this Court's jurisdiction to entertain injunction applications mounted on the back of originating processes.

Atuguba JSC in **Merchant Bank Ltd v. Similar Ways Ltd[2012] 1 SCGLR 440 @** at page 446, in commenting on the **In Re Yendi** case stated thus:

> "Nonetheless *the Rules of Court cannot cover every conceivable situation that may arise…* there is no provision in the current Supreme Court Rules, 1996 (CI.16) offering him relief. In such a situation, as was held, it is reasonable to grant an injunction to protect his interests pending the determination of an appeal even though no express rule in CI.16 warrants such a course." (emphasis supplied)

Similarly**, in Republic v High Court, Accra Ex parte Compu Ghana Ltd; Accra Mall Ltd (Interested Party):** Suit No: J5/25/2019 this Court held that theSupreme Court may grant an interlocutory injunction where the original jurisdiction of the Court is invoked.

We must emphasise that the Rules of Court, be they High Court Rules, Court of Appeal Rules, or the Supreme Court Rules do not confer substantive jurisdiction. They only provide rules and regulations for regulating practice and procedure in Court. They are not to be accorded the status of jurisdiction-conferring enactments. The 1st Respondent's objection assumes that the Rules of Court, as cited by the Applicant, is the law that grounds this Court's jurisdiction to entertain injunction Applications. This

can be inferred from the 1st Respondent's prayer that the Application be dismissed as incompetent solely on the ground that the Applicant cited the High Court Civil Procedure Rules in the absence of a prior order directing same.

In Suit No.: J8/131/2019 entitled **Ogyeadom Obranu Kwesi Atta VI vrs. Ghana Telecommunications Co. Ltd & Another Civil Motion No. J8/131/2019 (2020-04-28),** this Court its ruling dated 28th April, 2020 held that:

> "It is also settled law that jurisdiction is conferred by the Constitution or substantive enactments and that rules of court contained in subsidiary legislation only regulate the exercise of existing jurisdiction but do not confer jurisdiction and so cannot take it away or diminish or enlarge it. In the case of **Republic v High Court, Koforidua; Ex parte Ansah Otu [2009] SCGLR 141,** the celebrated Anin Yeboah, JSC (as he then was) made the following profound statement of the law at page 152 of the report;
>
> > *"The jurisdiction to grant the interlocutory injunction is exercisable by both the Superior Court of Judicature and the Lower Courts in Ghana. Both the 1992 Constitution and the Courts Act, 1993 (Act 459), have conferred jurisdiction on the courts to grant this equitable relief. It is a relief which the common law courts have always granted, in the exercise of their discretion, when the circumstances appear to be just and convenient. It is, however, granted to protect rights and in some cases prevent any injury or damage in accordance with laid down legal principles which have developed as a result of case law over the years.*
> >
> > *In my opinion, the rules of court merely regulate the procedure for applying for judicial reliefs. It does not confer the jurisdiction on the courts to grant injunctions. In my view, Order 25, r 9(1) and (2) of the High Court (Civil Procedure) Rules, 2004 (CI 47), which learned counsel for the Applicants has*

forcefully pressed on this court, is not meant to impose any serious fetters on the discretion of the court in granting an interlocutory injunction, it being a discretionary relief. I think the circumstances of the case must be looked at in considering the grant or refusal of the application for interlocutory injunction. Even though rule 9(1) and (2) of Order 25 requires of an applicant to give an undertaking, it is procedural and should not be interpreted to limit the jurisdiction imposed on the courts by the 1992 Constitution and the Courts Act, 1993 (Act 459)."

We therefore must point out that the jurisdiction of the Superior Courts to entertain applications for injunction cannot be traced to any known express rule of Court. Indeed, the Court of Appeal and Supreme Court Rules do not even make mention of the procedure by which one can invoke the jurisdiction of the Court to entertain injunction applications. The power of the Court to grant injunctive relief is not expressly crystallized in any known Statute. They are jurisdictions inherent in the Court which spring from the rules of equity and have been accorded legitimacy in our jurisprudence by Article 11(1)(e) and 11(2) of the Constitution. By the said provision, the rules of law generally known as the common law and the rules generally known as the doctrines of equity are much a part of the laws of Ghana, to be applied by our Courts.

The High Court Civil Procedure rules only provide the procedure for the invocation of the jurisdiction of the Court. In the absence of any known procedure prescribed by the Supreme Court Rules, an Applicant who applies for interlocutory injunction and files his application in compliance with the procedure prescribed under the C.I. 47 cannot be said to be in error. This Court, being the Apex Court of the Land, is empowered to apply the rules and procedure of all courts where the justice of the case so demands.

To hold otherwise will be to limit the expansive powers of the Court under Article 129 (4) of the Constitution which states as follows:

> "***For the purposes of hearing and determining a matter within its jurisdiction*** *and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law,* ***the Supreme Court shall have all the powers, authority and jurisdiction vested in any court established by this Constitution or any other law."***

It is therefore our considered opinion that in the absence of express provisions in the Supreme Court Rules, this Court has the power whether on application or on its own motion to apply the High Court Civil Procedure rules and/or any other rules of any court to determine cases where the circumstances so warrants in order to do substantive justice to parties.

In Civil Appeal No. J7/7/2014entitled **Benjamin Amponsah vs. Margaret Ann Mensah (16/4/2014)** this Court, in its judgment dated 16th April, 2014, per Dotse JSC opined thus:

> *"We are also aware that in many instances like the above, resort has been made to the High Court (Civil Procedure) Rules, 2004 (C.I. 47). See also article 129 (4) of the Constitution 1992 which reinforces the above view. We believe that it was the above practice that made the Supreme Court to rely on provisions in the High Court Rules in C.I. 47 on Joinder and for further and better particulars in the recently concluded Presidential Election Dispute intituled Nana Addo Dankwa Akufo-Addo and two others v John Dramani Mahama and two others when such applications were brought."*

The 1st Respondent's objection may thus be likened to a mere technicality founded on alleged erroneous citation of the relevant rules.

The rules of court serve as a lubricant. They lubricate the wheels on which the substantive jurisdiction of the Courts ride. They are to grease the machinery of the law for effective justice. They cannot therefore be applied in a manner that causes friction to the administration of justice lest they lose their relevance and place in the architecture of our jurisprudence. Where it is alleged that an Applicant has cited a wrong rule of procedure, the consequential effect cannot be to declare the process of the Applicant incompetent, especially so, when no demonstrable or palpable injury is occasioned the party raising the objection. This Court will not allow unnecessary recourse to technicalities to defeat the ends of justice. The dictum of Bowen LJ in Cropper v Smith (1884) 26 Ch D 700 at 710, CA is of persuasive effect. Bowen has said that:

> "... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct if it can be done without injustice to the other party."

Even if the citation of **Orders 25 rule 1 and 19(1) of C.I. 47** were wrong, which we deem not, we are of the opinion that it is not fatal where a wrong rule is cited or no rule is cited at all, on an application or court process as in the case of the 1st Respondent's "Notice of Preliminary Objection".

The Courts have a sacred duty to do substantial justice and in so doing must, as a general rule, look to the substance of processes presented before them rather than unnecessary recourse to the form thereof especially where neither party will be overreached or occasioned injury.

In this regard, Anin Yeboah JSC (as he then was) opined in a judgment dated 1st June, 2011 in Asamoah vrs Marfo, Civil Appeal No.: J4/49/ 2010 that:

"It is not so fundamental as to disable a court of law in advancement of substantial justice to determine an application in the absence of any order or rule stated on the face of the motion paper but the relief sought must be clear and apparent on its face."

Similarly, in a judgment of this Court dated 29th April, 2020 in Suit No.: J5/20/2019 entitled **Republic vrs. High Court Accra (Commercial Division), Ex Parte Environ Solution Ltd & Others**, this Court speaking through Pwamang JSC reasoned thus:

"…The citation on court processes of the correct law on the strength of which the process has been filed is a practice that is insisted upon by judges because it enables the court to understand precisely the legal basis of the case the party is making and for the opponent to understand fully the case she is required to answer. This is a useful practice that advances the requirements of fair hearing. That notwithstanding, stating the correct statute on court processes is not a strict rule of procedure failure to comply with which can nullify a court process. It is more of a practice for the convenience of proceedings than a rule. Courts have a duty to do substantial justice to the parties in every case so a court is not disabled from hearing a party on the only ground that she cited the wrong statute on her process. The court is required to consider the substance of the case presented through the process and if it alludes to a legal right that can avail the party, the court will deal with the merits of the matter. See the case of Okofoh Estates Ltd v Modern Signs Ltd [1996-97] SCGLR 224.

By reason of the foregoing and having evaluated the cases cited in aid of the contentions of the parties by Counsel, we conclude that the preliminary objection by the 1st Respondent, is misconceived. We shall now turn to an evaluation of the application on its merits.

EVALUATION OF APPLICATION

THE LAW

The principles that govern applications for injunction, interim or interlocutory are settled in a plethora of cases. In Owusu v Owusu-Ansah [2007-2008] 2 SCGLR 870, this Court held that:

> "The fundamental principle in applications for interim injunction is whether the applicant has a legal right at law or in equity, which the court ought to protect by maintaining the status quo until the final determination of the action on its merits. This could only be determined by considering the pleadings and affidavit evidence before the court."

[Also see **Vanderpuye vrs. Nartey [1971]1GLR 428, CA; Lardan vrs. Attorney General (1957) 3 WALR 55; Punjabi Bros vrs. Namih (1958) 3 WALR 381; American Cyanamid Co v Ethicon Ltd 1975 1 All ER 504; Pountney v Doega and Musicians Union of Ghana v Abraham 1982 – 83 GLR 337; Frimpong** v **Nana Asare Obeng II** (1974)1GLR 16

From the litany of judicial decisions, it has also long been settled that in considering an application for injunction, a court ought to consider inter alia the following factors:

a. Whether the case of the Applicant is not frivolous. That is to say, whether the Applicant prima facie, has demonstrated a legal or equitable right that ought to be protected by the Court.

b. whether hardship would be occasioned if the application is granted or refused and which of the parties will suffer greater hardship.

c. Whether on the facts, it is just and convenient for the preservation of the status-quo.

d. Whether the loss, damage or injury can be quantified in money and whether damages could afford adequate compensation if the application was refused.

These principles were reiterated by this Court in the case of ***18th July vs. Yehans International Ltd (2012) SCGLR 167***, as follows:

> "Even though *[the grant of injunction]* is discretionary, we are of the view that a … court in determining interlocutory application must first consider whether the case of an applicant was not frivolous and had demonstrated that he had legal or equitable right which a court should protect. Second the court is also enjoined to ensure that the status quo is maintained so as to avoid any irreparable damage to the applicant pending the hearing of the matter. The trial court ought to consider the balance of convenience and should refuse the application if its grant would cause serious hardships to the other party…"

Further, injunctions being primarily discretionary, the *bonafides* and *malafides* of the parties cannot be ignored in ascertaining whether to grant or refuse. **[See Owusu vrs Owusu-Ansah (Supra)]**

ANALYSIS

We are clear in our minds that this application is founded on a writ invoking our original jurisdiction and does not arise directly from the prior actions in the High Court. Consequently, neither our original jurisdiction nor this application are grounded on the judgment of the High Court. However, in the exercise of our discretion, the antecedents in the High Court are relevant facts that will inform our evaluation of the equity, justness and convenience of a grant or otherwise of an order of interlocutory injunction.

The matters complained of by the Applicant, per his unchallenged depositions in his affidavit in support and moreover borne out by the various annexures to his said affidavit are of grave concern. They are allegations of willful continuing breach of the Constitution and allegations of contemptuous defiance of the authority of the High Court, a Superior Court of Judicature. Breaches of the Constitution do not affect an individual Applicant alone but the entire Ghanaian populace which have adopted for itself the Constitution as their Supreme law.

Needless to say the Constitution is the safeguard of our democracy without which the institutions of state would not exist. It is the source of authority of the entire governance structure of the nation.

It embodies the aspirations, goals, expectations, dreams and ambitions of the over thirty million Ghanaians. It is the sourcebook that enjoins our collective efforts to usher ourselves into prosperity. Therefore it is the mirror by which every individual must do a reflection to ensure that our actions do not go contrary to, or in violation or defiance of, the collective will of Ghanaians expressed in the Constitution.

An allegation of an intentional continuing breach of the Constitution by any individual, group, institution, organ or agency must be a matter of considerable concern to all. In the case of **Network Computers Systems Ltd v. Intelsat Global Sales & Marketing Ltd [2012] 1 SCGLR 218**, this Court *per* Atuguba JSC held that "[a]court cannot shut its eyes to the violation of a statute as that would be very contrary to its *raison d'etre*". We cannot help but ask, how much more alleged willful violations of the Constitution?

Per the uncontroverted depositions in the affidavit of the Applicant before us, it is undisputed that the 1st Respondent's election as Member of Parliament for the Assin North Constituency has been declared by the High Court to be ".. null, void and of no legal effect whatsoever". It is again unchallenged that there was initially an order of interlocutory injunction dated 6th January, 2021 restraining the 1st Respondent from

holding himself out as a Member of Parliament elect for Assin North constituency and presenting himself to be sworn in as Member of Parliament until the final determination of a substantive petition filed against him.

Further, it is undisputed that the High Court in its judgment dated 28th July 2021, among others, granted an order of perpetual injunction against the 1st Respondent on the same terms as the preceding order of interlocutory injunction.

These orders notwithstanding, the Applicant laments at paragraph 9 of his affidavit in support which is set out supra that the 1st Respondent is contemptuously holding himself out as Member of Parliament and carrying out parliamentary duties because on 6th January, 2021, when Members of Parliament were to be sworn in, 1st Respondent attended the Chamber of Parliament, offered himself to be sworn in as Member of Parliament for Assin North Constituency and has since continued to hold himself out as a Member of Parliament for Assin North.

We do appreciate that it is our original jurisdiction under Articles 2(1) and 130 of the Constitution that has been invoked by the Applicant per his writ. Specifically, the Applicant seeks a true and proper interpretation to Article 94(2)(a) as well as a determination of the point in the electoral roadmap when a disqualification on grounds of allegiance to another country other than Ghana is triggered. To our minds, the Applicant's plaint is a cognisable cause of action and is by no means frivolous even though we are unable to determine at this stage whether the Applicant will be vindicated or not. Consequently, the writ discloses a *prima facie* case, is not frivolous and may warrant an injunction.

We are not unmindful of the fact that if we grant the instant application and the 1st Respondent in the end be adjudged by this Court as duly qualified to have filed a nomination and for that matter be elected Member of Parliament, he would have suffered damage, loss and injury on account of an interlocutory restraint. Similarly, his

constituents as well as the party on whose ticket he is in Parliament would have been affected. Consequently, the absence of the 1st Respondent, even if temporarily, will occasion some inconvenience.

On the other hand, the Applicant, at paragraph 12 of his affidavit in support, points to the constitutional nature of his suit and laments of "untold distress and loss" for himself and other constituents of Assin North who ought not to have "been saddled with an unqualified person to contest the parliamentary elections of that constituency" in the first place and that "this distress and loss are irreparable and can in no way be remedied by the award of damages".

The substantive suit, being a public interest action, the persons whose interest are at stake are not only the Applicant, the Interested Party or the Constituents of Assin North but every Ghanaian, because every citizen has a community of interest in the Constitution, a violation of which the Applicant has alleged in his Writ of Summons.

The Constitution itself, in Article 3(4), places on all citizens the duty to **"at all times defend the Constitution and in particular, to resist any person or group of persons seeking to overthrow the constitution."**

In assessing whether or not the circumstances of this case make the grant of interlocutory injunction just and convenient the Constitution is the expression of the sovereign will and shared aspiration of the Ghanaian people, and the pivot of governance. It is the highest law of the land and for that matter sacred. This is the reason why any law or action that contradicts and/or is inconsistent with the Constitution would be null, void and of no legal effect. The exclusive forum and sanctuary for the ventilation of any issue of a true and proper interpretation of any provision of the basic and sacred law of the land is this Court. The exclusive reservation of this jurisdiction to the Supreme Court is the constitutional indication of the sanctity with which the framers of the Constitution intended that it be treated. Consequently, an allegation of a breach and more so a subsisting and continuing

breach of the Constitution constitutes an invasion of the sovereign will of the Ghanaian people, occasions an incalculable damage, injury and inconvenience which warrants serious and urgent judicial attention and intervention. No court, organ or agency of this Republic can or should be insensitive, aloof, indifferent and/or unconcerned about an allegation of a violation of this sacred and basic law, let alone a subsisting or continuing violation. Otherwise, it would be condoning a subversion of the Constitution and sovereign will of the Ghanaian people in an irreparable way. In this regard, the balance of convenience tilts in favour of the Ghanaian people whose community of interest in the Constitution is sought to be vindicated if the Applicant's complaint is eventually upheld by this Court.

Similarly, we are of the opinion that the Applicant and the constituents of Assin North would have had an unqualified member of Parliament should the Applicant succeed in the end. In the circumstances, greater hardship, irreparable damage and inconvenience will be occasioned the Constitution, the rule of law, the tenets of democracy, the Constituents of Assin North, and the Ghanaian people as a whole, if the 1st Respondent be allowed to continue to hold himself out as a Member of Parliament for Assin North, pending the determination of this Suit.

Having regard to the subsisting judgment of the High Court, Suit No.: CRP/E/3/21, which was attached to this application as Exhibit MAN 2, the *status quo* is as determined in the judgment. That is to say that in the eyes of the law the election of the 1st Respondent has been adjudged to be null, void and of no legal effect whatsoever. Until the said judgment is vacated, overturned or set aside by a Court of Competent jurisdiction or suspended by appropriate legal steps, the 1st Respondent cannot be said to be lawfully performing the duties of an Honourable Member of Parliament. The auspicious office of a Member of Parliament is one which is created by law and therefore no person can occupy it in disregard of the law.

It is our further considered view that this Court will be failing in its exclusive mandate and duty to the Ghanaian people to uphold and protect the Constitution if it does not suspend, mitigate or abate an alleged constitutional illegality as in this case or an established, proven and adjudged constitutional illegality if the Applicant were to succeed in the end in this suit. Such a failure, neglect or omission will endanger the sanctity of the Constitution, our democracy and for that matter, the safety of the Republic.

As the highest Court of the land, it will be an indictment of the administration of justice if this Court did not uphold the subsisting judgment pending a final decision on the constitutionality question raised before us. Though we are not exercising an appellate, supervisory or some other jurisdiction in respect of the judgment of the High Court, we must note that through "Exhibit MAN 2" the 1st Respondent has been perpetually restrained from holding himself out as Member of Parliament for the Assin North Constituency. Further, the unchallenged allegation by Counsel for the Applicant from the Bar that the 1st Respondent's appeal to the Court of Appeal (Cape Coast) has been struck out.

The dignity of the rule of law is non-negotiable. There can be no justification for ignoring the submissions on the continuing disregard of the orders of the High Court which have not been suspended or overturned. This makes the grant of this application more compelling.

For these reasons, we have no hesitation in concluding that an order of interlocutory injunction restraining the 1st Respondent, from holding himself as a member of Parliament for Assin North Constituency, presenting himself, and/or attending before Parliament to conduct the business of Member of Parliament pending the

determination of this Suit. However, in order to ensure that the case is expedited the Court directs that they cooperate with the Court. To this end, the Court, by way of case management, will issue directives and if necessary, make orders, as to the future conduct of this case.

In this respect, the parties are to file their joint memorandum of issues failing which they can file their separate memorandum of issues on or by 25th of April 2022.

CONCLUSION

We have considered, in detail, the processes filed in this Application as well as submissions made by both Applicant and the Respondents. We are of the considered view that the instant application has merit and same is hereby granted as prayed. The 1st Respondent is hereby restrained from holding himself out as Member of Parliament for Assin North Constituency, presenting himself, and/or attending before Parliament to conduct the business of a Member of Parliament pending the determination of this Suit.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

G. TORKORNOO (MRS.)

(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)

(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

DORDZIE (MRS) JSC:-

Facts:

After the December 7 Parliamentary elections in this country, the plaintiff applicant herein, Michael Ankomah-Nimfah filed a petition at the High Court Cape Coast challenging the eligibility of the election of the first defendant / respondent herein, James Gyakye Quayson as member of Parliament for the Assin North Constituency. The applicant in the said petition claimed the following reliefs against the first and second defendants/respondents:

a. a declaration that the filing of Parliamentary nominations forms by 1st Respondent when he held a Canadian Citizenship at the time of filing the said nomination form between 5th and 9th October, 2020, violates Article 94 [2][a] of the Constitution of the Republic of Ghana 1992, Section 9[2][a] of Representation of the People Act 1992 [PNDCL 284] as Amended, as well as Public Elections Regulations, 2020 [C.I. 127] and same is illegal, void and of no effect whatsoever.

b. a declaration that the decision of the 2nd Respondent to clear the 1st Respondent to contest Parliamentary Elections in the Assin North Constituency when the 1st Respondent was not qualified as a candidate on account of his holding dual nationality violates Article 94 [2] [a] of the Constitution of the Republic of Ghana 1992, Section 9 [2][a] of the Representation of the People Act 1992 [PNDCL 284] as Amended as well as the Public Elections Regulations, 2020 [C.I. 127] and same is void and of no effect whatsoever.

c. a declaration that the decision by the 2nd Respondent to allow the 1st Respondent to contest Parliamentary Election in the Assin North Constituency when he held a Canadian citizenship at the time of filing his nomination form violates Article 94 [2] [a] of the Constitution 1992, the Representation of People Act 1992, [PNDCL 284] as Amended, as well as Public Election Regulations, 2020 [C.I. 127] and same is illegal and of no effect whatsoever.

d. A declaration that 1st Respondent's election as Member of Parliament for the Assin North Constituency is null and void and of no effect whatsoever as same violates Article 94 [2] [a] of the Constitution of the Republic of Ghana 1992, Section 9 [2] [a] of the Representation of People Act 1992, [PNDCL 284] as Amended, as well as Public Election Regulations, 2020 [C.I. 127] being laws regulating Parliamentary Elections in Ghana.

e. A declaration that 1st Respondent at the time of the Parliamentary Elections in the Assin North Constituency was not qualified to contest as a candidate for the Assin North Constituency in accordance with the electoral laws for the time being in force in Ghana.

f. An order of the Court cancelling the Parliamentary Elections in the Assin North Constituency and further Orders directed at 2nd Respondent to conduct fresh Elections in the Assin North Constituency.

g. An order of Perpetual injunction restraining 1st Respondent from holding himself out as Member of Parliament-Elect for the Assin North Constituency or presenting himself to be sworn in as a Member of Parliament".

On 28 July2021,the High Court delivered its judgment in favour of the plaintiff applicant; it granted the petition and made the following orders:

a. The filing of Parliamentary nomination forms by 1st Respondent when he held a Canadian Citizenship at the time of filing the said nomination forms between 5th -9th October 2020 with 2nd Respondent violates article 94(2)(a) of the 1992 Constitution, section 9(2)(a) of PNDCL 284 and C.I. 127.

b. 2nd Respondent's decision to clear 1st Respondent to contest the Parliamentary Elections in the Assin North Constituency when the latter was not qualified as a candidate on account of his holding allegiance to Canada other than Ghana violates article 94 (2)(a) of the 1992 Constitution, section 9 (2)(a) of PNDCL 284, as amended and C.I. 127.

c. The decision by 2nd Respondent to allow 1st Respondent to contest Parliamentary Elections in the Assin North Constituency when he held a Canadian Citizenship at the time of filing his nomination forms violates the electoral laws of Ghana and same is of no legal consequence.

d. 1st Respondent's election as Member of Parliament for Assin North Constituency in the 2020 Parliamentary Elections organized by 2nd Respondent is null and void and of no legal effect whatsoever as same violates the electoral laws of Ghana.

e. At the time of the Parliamentary Elections in the Assin North Constituency in 2020, 1st Respondent was not qualified to contest as a candidate in accordance with the electoral laws of Ghana.

f. The Court hereby cancels the Parliamentary Elections in the Assin North Constituency organized in December 2020 and further orders 2nd Respondent to conduct fresh Parliamentary Elections in the Assin North Constituency as such.

g. First Respondent is hereby restrained perpetually from holding himself out as a member of Parliament-Elect for Assin North Constituency and or presenting himself to be sworn in as a Member of Parliament.

The 1st defendant respondent herein, dissatisfied with the decision of the High Court filed an appeal at the Court of Appeal Cape Coast.

Subsequent to the above decision of the High Court, and while the appeal was pending before the Court of Appeal, the applicant herein issued a writ in this court invoking the original jurisdiction of the court for the following reliefs:

h. A declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution 1992, of the Republic of Ghana at the time of filing his

nomination form between 5th and 9th October 2020 to contest the 2020 Parliamentary Elections for the Assin North Constituency, 1st defendant was not qualified as a member of Parliament.

i. A declaration that upon a true and proper interpretation Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana, the decision of the 2nd defendant to permit the 1st defendant to contest Parliamentary Elections in the Assin North Constituency when the 1st defendant owed allegiance to a country other than Ghana is inconsistent with and violates Article 94(2) (a) of the Constitution of the Republic of Ghana.

j. A declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the election of the 1st defendant as Member of Parliament for the Assin North Constituency was unconstitutional.

k. A declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the swearing in of the 1st defendant as member of Parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.

l. Any further orders and/or directions as the Court may deem fit to give effect or enable effect to be given to the Orders of the Court.

Whiles the writ is still awaiting determination, the applicant brought the present application the subject matter of this ruling.

Prayer for Interlocutory injunction

By a motion filed on the 27th of January 2022 the applicant herein is praying the court for an interlocutory injunction order, restraining the first defendant/respondent from holding himself out as Member of Parliament for the Assin North Constituency, presenting himself and or attending Parliament to conduct the business of Member of Parliament pending the determination of the suit before the court. This application was brought under Order 25(1) & 19 (1) of the (High Court Civil Procedure) Rules, 2004 C. I. 47.

The salient facts deposed to by the applicant in support of this application are found in paragraphs 6 to 15 and they are:

> "6.The clear provisions of the electoral laws require that a person who seeks election as a member of Parliament is not qualified to contest as such if he/she owes allegiance to a Country other than Ghana, and also that, 1st defendant held Canadian Citizenship together with his Ghanaian Citizenship, at the time of filing his nomination to contest the Parliamentary Election for the Assin North Constituency.
>
> 6. On 28/07/21, the High Court, Cape Coast, in its judgment upheld my petition challenging 1st defendant's election as Member of Parliament and inter alia injuncted 1st defendant from holding himself out as Member of Parliament. Annexed herewith is the judgment of the high court marked Exhibit "MAN2"
>
> 8. The issue of the constitutionality of Article 94(2) (a) of the constitution, 1992 has come up repeatedly in the processes filed by 1st defendant in the pursuit of his appeal before the Court of Appeal, Cape Coast, and this has occasioned the filing of the instant Writ in the Supreme Court.

9. The 1st defendant, however, is contemptuously holding himself out as Member of Parliament and carrying out his parliamentary duties as if no judgment has been pronounced in the Parliamentary Election Petition I filed against him and by reason thereof, I am advised by Counsel and believe same to be true that, this situation ought not fester during the pendency of this suit.

10. On 06/01/21, when the Members of Parliament were to be sworn in as such in the Chamber of Parliament, even though an order for interlocutory injunction restraining 1st defendant from holding himself out as Member of Parliament for the Assin North Constituency, had been served on the Clerk of Parliament, and this was brought to the attention of the Clerk of Parliament by the Deputy Majority Leader, who admonished and/or advised 1st defendant to refrain from partaking in the proceedings in Parliament, the Minority Group of which 1st defendant is part, resisted the advice, and were adamant that 1st defendant remains in the chamber of Parliament. Annexed herewith is ***the high court's ruling on the grant of the order for interlocutory injunction, marked Exhibit "MAN3"***.

11. This incident which is a notorious fact, was displayed out on national television and cannot be lost on anyone, and also that, 1st defendant flagrantly and brazenly disobeyed and disregarded the orders of the high court, partook fully in the proceedings of that day, and continues to hold himself out as Member of Parliament for Assin North Constituency.

12. I am advised by Counsel and believe same to be true that, although in a constitutional matter such as the present suit, I need not establish a personal injury, interest or loss, it is pertinent to note that a refusal of this application will occasion untold distress and loss for me and the other constituents of Assin North who ought not to been saddled with an unqualified person to

contest the parliamentary elections of that constituency in the first place not to mention the fact that *there is now indeed a judgment operating against him. This distress and loss are irreparable and can in no way be remedied by the award of damages*.

13 . I am also advised by Counsel and believe same to be true that, unless and until 1st defendant is restrained by an Order of this Court, he would continue to hold himself out as the duly elected Member of Parliament for the Assin North Constituency during the pendency of this suit when he has been declared as not to have been so duly elected.

14 . I am further advised by Counsel and believe same to be true that, there exists a serious question to be tried and the balance of convenience in the circumstances of this case tilts in favour of a grant of this application.

15 . In the premises, I am again advised by Counsel and believe same to be true that, this is a proper case in which this Court should intervene to restrain 1st defendant from holding himself out as member of parliament, presenting himself and/or attending before Parliament to conduct the business of Member of Parliament until the final determination of this suit as it will be fair and just so to do."

The applicant filed a statement of case as well as required by Order 25 rule 1(3) of C. I 47.

The first defendant respondent filed a notice of preliminary objection to the effect that "The High Court (Civil Procedure) Rules, 2004 (C. I. 47) do not automatically apply in

the Supreme Court in the manner in which the plaintiff/applicant has filed his motion for interlocutory injunction in reliance upon C. I. 47."

The grounds of the objection are stated in the notice as follows:

1. "The plaintiff/Applicant's motion is incompetent

2. Until the Supreme Court makes an order allowing for the application of C. I. 47 to its proceedings, no party has the right to file processes in the Supreme Court in reliance on or in accordance with the rules of C. I. 47"

The court deemed it wise, in the spirit of case management to have the preliminary objection and the motion heard at the same time to enable it consider the preliminary objection and the substantive application together for its ruling.

In arguing the application counsel for the applicant submitted that the decision of the High Court, Cape Coast still operates against the 1st Defendant and that the people of Assin North need a qualified person as a Member of Parliament. The balance of convenience counsel argued should inure to the benefit of the Applicant herein.

In respond to the preliminary objection counsel for the applicant submitted that by virtue of Article 129 (4) of the Constitution, where there is no express provision in C. I. 16, the Court has always had resort to C.I. 47. There is no need to come for leave before coming to this court to use C.I. 47.

Counsel for the first defendant/respondent in arguing the preliminary objection made reference to Rule 5 of the Supreme Court Rules, 1996 C. I. 16;the cases of Koglex (Gh) Ltd. (N0.2) v Attieh (N0.2) [2003-2004]1 SCGLR 75 and Ampofo v Samanpa [2003-2004] 2 SCGLR 1153 at 1155-56. Counsel submitted that it is wrong for the applicant to bring this application under the High Court Civil Procedure Rules, itis the court, which must prescribe the applicable rule and not blanket resort under other Rules. Rule 5 of C. I. 16

does not grant such a position. The rational is that, Rule 5 prescribes the court to give directions before the Rules of the High Court must be used.

The second defendant/respondent, Electoral Commission opposed the application. Counsel for the second defendant/respondent's position is that the application is an abuse of the court process and must be dismissed. He argued that the High Court had given judgment and had granted perpetual restraining orders the applicant prayed for in the trial court. The applicant should take steps to enforce those orders, it is wrong for the applicant to be seeking interim restraining orders from this court.

The 3rd defendant/respondent, the Attorney General's submission is that preliminary objection to the application is erroneous. The Supreme Court has jurisdiction under Article 129 (4) of the constitution to entertain the application. The court also has the jurisdiction to grant an injunction order depending on the justness and convenience of the case. He further submits that in view of the judgment of the High Court, it is unconstitutional for the 1st defendant /respondent to remain in Parliament. Therefore, the application ought to be granted

Consideration of the Preliminary Objection.

It appears there is some misconception of the decision of this court in the Koglex (Gh) Ltd. (N02)[2003-2004] 1 SCGLR case upon which the objection was taken. The court expressly stated in that case that it is in a situation where there is no express practice or procedure provided that the party must apply to the court for directions and should not arrogate to itself the court's powers under Rule 5 of C. I. 16. The court's position was expressed per Adzoe JSC at page 85 of the report in the following words **"In my opinion, where a party has difficulty, or is in doubt, as to what steps to take *where there is no express practice or procedure provided,*the party must apply to the court for**

directions rather than arrogate to itself the powers given to the court under rule 5" (Emphasis mine)

It has been the express practice of this court to rely on Article 129 (4) and Section 2(4) of the Courts Act, 1993 to adopt the procedural rules of the High Court where it finds it necessary, so as to completely and effectually adjudicate all issues in controversy.
Article 129(4) of the Constitution reads ***"For the purposes of hearing and determining a matter within its jurisdiction and the amendment, execution or the enforcement of a judgment or order made on any matter, and for the purposes of any other authority, expressly or by necessary implication given to the Supreme Court by this Constitution or any other law, the Supreme Court shall have all the powers, authority and Jurisdiction vested in any court established by this Constitution or any other law."***

Section 2(4) of the Courts Act repeats the above provisions of the 1992 Constitution. This court in a number of cases had relied on this constitutional provision to adopt and use the procedural rules of the High Court where it finds it expedient to do so. For example in the case of ***Quist (N01) V Danawi N01 [2015-2016]2 SCGLR 1444,*** the ordinary bench of this court followed the practice and by itself raised a defence of waiver, and determined the case in favour of the respondents. In an application for review in ***Quist (N02) v Danawi (N02) [2015-2016] SCGLR 1461***, this court per Dotse JSC at page 1471 of the report held ***"The procedure adopted by the ordinary bench of this court cannot be faulted, as this court has by article 129 (4) of the Constitution1992, all the powers of the courts established under the Constitution 1992 … This means that this court can exercise, all the powers of the trial High Court and the Court of Appeal in order to completely, and effectually adjudicate all issues in controversy."***
Some other cases in which this court followed the same practice are***Owuo v Owuo [2017-2018]SCGLR 730 and Republic v High Court (Commercial Division), Accra; Ex***

Parte Attorney-General, (Balkan Energy Ghana Ltd. & others Interested parties) [2011]2 SCGLR 1183

In my view this court in line with the express practice of the court, under the provisions of Article 129(4) of the 1992 Constitution can adopt the procedure in Order 25 of C. I. 47and entertain the application, without the applicant necessarily applying to the court for directions. I would therefore dismiss the preliminary objection.

Consideration of the application for Interlocutory injunction

Order 25 Rule 1 of C. I. 47 provides:

"The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the Court considers just."

It is clear from the wording of the above rule, that the grant or refusal of an application for interlocutory injunction is at the discretion of the court. The courts over the years have developed their own guiding principles in the exercise of this discretion. Some of the recent decisions of this court which have outlined the state of the law on these guiding principles are the cases of ***Welford Quarcoo v Attorney General & Another [2012] 1 SCGLR 259; and Ghana Independent Broadcasters Association (N01) v Attorney-General & National Media Commission (N01) [2017-2020] 1 SCGLR 498.***

In the case of Welford Quarcoo v Attorney-GeneralDr. Date-Baah JSC numerated these principles at page 260 as follows:***"It has always been my understanding that the requirements for the grant of an interlocutory injunctionare first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory."***

In the case of Ghana Independent Broadasters Association v Attorney-General & another, Pwamang JSC quoted the above decision in the Welford case stating the same principles as the guiding principles the court ought to follow in considering the grant or refusal of an application for interlocutory injunction. Going by these principles, the first question to be answered in considering the merits of the application is whether the applicant has established that there is a serious question to be tried in the suit before us. The applicant in paragraphs 7 & 9of his affidavit in support of this application, which I have quoted above, has deposed that the High Court Cape Coast upheld his petition and restrained the 1st defendant/respondent from holding himself out as Member of Parliament. However, he had continued contemptuously to hold himself out as a Member of Parliament and has been carrying out Parliamentary duties as if the judgment does not exist. In paragraph 8, the applicant deposed that in the appeal pending against the judgment the question of constitutionality of Article 94(2) (a) of the Constitution had come up repeatedly hence the issuing of the writ before this court.

Counsel for the applicant has however informed the court in moving the application that the appeal filed by the 1st defendant/respondent in the Court of Appeal had been struck out, though he did not back this information with any document, counsel for the first respondent, who was the appellant in the Court of Appeal has not denied it. This information coming from the officers of the court I take as the truth of the situation. If there is no appeal pending against the decision of the High Court, Cape Coast, then there is no doubt that, that judgment exhibited in this application, as exhibit MAN2 is valid and subsisting. Counsel for the applicant had repeated in his submissions to the court that it is the first respondent's persistent contemptuous violation of the judgment and orders of the High Court that drove him to this court.

It is my view that filing this application in this court is not the remedy open to the applicant. The remedy open to him is the execution of the judgment of the High Court. For the violation of the orders of the High Court, nothing prevents the applicant from seeking redress in that forum by instituting contempt proceedings against the first defendant /respondent.

It is pertinent to note that the orders the High Court made in its judgment virtually addressed and determined almost all the prayers of the applicant in the writ generating this application. I have outlined the orders of the High Court at the beginning of this ruling, as well as the prayers in the writ before us. Reading the orders of the High Court alongside the prayers in the writ before us demonstrates that the decision of the High Court had determined the issues that may arise for determination of the suit before us. It is trite that the High Court has no jurisdiction to interpret the constitution, but the question is, in view of the High Court decision exhibited, as MAN2 is there any need for the interpretation of Article 94(2) (a) of the constitution. In my view, there is no serious questions to be tried by this court. If this court should interpret the said article at all, I consider it an academic exercise.
I hold therefore that the applicant has failed to establish that there is a serious question before us to be tried.

On the question of injury to the applicant or balance of convenience, if the plaintiff applicant ever suffered any injury or inconvenience at all he had been given remedies since 28th of July 2021 when the High Court delivered its Judgment, Exhibit MAN2, which perpetually restrained the 1st defendant/respondent from holding himself out as Member of Parliament. Applicant's concern should be the enforcement of the judgment he obtained from the High Court several months ago.

In the circumstances, it is my view that the applicant has not made out a case for the grant of interlocutory injunction, the application lacks merit, and I would therefore dismiss it.

A. M. A. DORDZIE (MRS.)

(JUSTICE OF THE SUPREME COURT)

CONCURRING DISSENTING OPINION

AMEGATCHER JSC:-

I have no doubt in my mind that under Article 129(4) of the Constitution, 1992 and Rule 5 of C.I. 16, the Supreme Court has the jurisdiction to grant an order of interlocutory injunction pending the hearing and determination of a substantive matter pending before it. I am fortified in this conviction by the case of **Ekwam v Pianim (No 1) [1996-97] SCGLR 117.** In that case, after the applicant had filed his nominations, paid a non-refundable deposit, gone through vetting by the party's screening committee and was cleared to contest the presidential primaries of the New Patriotic Party (NPP),which had been planned to elect the party's 1996 presidential candidate, out of the blue, one Rosemary Ekwam, a member of the party filed a Writ challenging the eligibility of the applicant to contest the elections. Since the Writ will inhibit the chances of the applicant at the delegate's congress already fixed for a date, the

applicant applied for an interlocutory injunction to restrain the NPP from proceeding with the Party's national delegate's congress until after the disposal of the substantive suit.

Although the NPP was not a party to the Writ, the Supreme Court held that the Writ will adversely affect the applicant's chances at the congress. The Court further held that a worst predicament will befall both the applicant and the NPP if the congress proceeded and the applicant won, only to be declared not qualified by the outcome of the Writ; a political fallout which would be incalculable as the party will have to organise another congress all over again. On the basis of these, this Court granted an order of interlocutory injunction to restrain the NPP from proceeding with the national delegates' congress to elect the presidential candidate until the Writ was determined. However, in my view, the grant or refusal being equitable and discretionary the applicant must place evidence before the Court that an irreparable loss or damage would be occasioned which cannot be remedied in any other way whatsoever. Thus, in this court's case of **Quarcoo v Attorney-General & Anor [2012] 1 SCGLR 259 at 260,** Date-Bah JSC, confronted with a similar predicament dealt with it in the following words:

"It has always been my understanding that the requirements for the grant of an interlocutory injunction are: first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and

provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo. Given the reliefs that the plaintiff is seeking in the substantive suit in this case, it is clear that if he succeeds in securing the declarations he has claimed, the impugned provisions of the Local Government Act, 1993 (Act 462) will be declared void and any actions made in pursuance of them nullified. Accordingly, no irreparable damage will have been caused the plaintiff during the period between the issue of the writ and the date of judgment. On the other hand, the Government's programme for the creation of districts would suffer irreparable delay with a knock-on effect on the general elections scheduled for December, which delay cannot be remedied by monetary compensation, if the plaintiff should lose the substantive action.Applying the principles outlined above, my decision is that the interlocutory injunction sought should be dismissed."

Again in **France (No 1) v Electoral Commission & Attorney-General [2012] 1 SCGLR 689 at 695,**Ansah JSC opined in a similar application brought before the court pending the hearing and determination of a substantive Writ:

"If these reliefs are granted by the court, it will nullify the impugned acts by the first defendant and consequently no irreparable damage will be caused the plaintiff should he fail in the interim, that is between now and when the substantive action is heard and determined, to restrain the defendants from doing what they are allowed by the law to do.On the other hand, if the application by the plaintiff succeeds here and the defendants are restrained from doing what has been complained against them, but the plaintiff fails in the substantive action the injury caused the nation will be irreparable; the national electioneering programme for the year will grind to an abrupt halt. The balance of convenience tilts in favour of the defendants and therefore the application for interlocutory injunction ought to fail. The additional reason is that granting the application will cause more harm to the nation as a whole than the applicant…….. This flattened the submissions that the CI 78

was not passed validly. Whether or not CI 78 was validly passed may be determined in the substantive suit, but not here. After all the CI has only been laid before Parliament undergoing the necessary metamorphosis to become a full grown law. Therefore after studying the motion paper, the respective affidavits in support of and in opposition to the application, statements of case of the parties as well as their viva submissions in court, I find myself unable to grant the application, for it is not just and convenient to do so.My decision is to dismiss it and it is hereby dismissed."

In the application before us, the applicant is praying this Court to grant it an order of Interlocutory Injunction to restrain the 1st respondent from holding himself out as a Member of Parliament for Assin North Constituency, presenting himself and/or attending before Parliament to conduct the business of Member of Parliament pending the determination of the Writ filed in this Court. The reliefs sought from this court in the Writ of the plaintiff/applicant are as follows:

a. A declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution 1992, of the Republic of Ghana at the time of filing his nomination form between 5th and 9th October 2020 to contest the 2020 Parliamentary Elections for the Assin North Constituency, 1st defendant was not qualified as a member of Parliament.

b. A declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana, the decision of the 2nd defendant to permit the 1st defendant to contest Parliamentary Elections in the Assin North Constituency when the 1st defendant owed allegiance to a country other than Ghana is inconsistent with and violates Article 94(2) (a) of the Constitution of the Republic of Ghana.

c. A declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the election of the 1st defendant as Member of Parliament for the Assin North Constituency was unconstitutional.
d. A declaration that upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the swearing in of the 1st defendant as member of Parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.

e. Any further orders and/or directions as the Court may deem fit to give effect or enable effect to be given to the Orders of the Court.

The grant of these reliefs sought by the applicant would have the effect of disqualifying the 1st respondent from occupying his seat in the Parliament of Ghana and representing the people of the Assin North Constituency. Until the final determination of the Writ, we are in the interim being invited to restrain the 1st respondent from performing his duties in Parliament. In my opinion, the net effect of acceding to this interim invitation would also temporarily achieve the same results as the reliefs being sought in the substantive Writ before this court.

The reasons advanced for this invitation could be gleaned from the affidavit in support of the motion for interlocutory injunction. They are first, that the High Court had delivered a judgment dated 28th July 2021 upholding applicant's claim that 1st respondent was not validly elected as a Member of Parliament for the Assin North constituency and had also injuncted1st respondent from holding himself out as Member of Parliament. Secondly, the applicant asserts that the constitutionality of Article 94(2)(a) of the Constitution, 1992 had come up repeatedly in processes filed by the 1strespondent in pursuit of his appeal before the Court of Appeal, Cape Coast and this had occasioned the filing of the instant Writ. Thirdly, the 1st respondent is

contemptuously holding himself as a Member of Parliament and carrying out his Parliamentary duties despite the High Court judgment against him and that the situation should not be allowed to fester during the pendency of the Writ. Fourthly, during the swearing in of the 8th Parliament on 7th January 2021, the 1st respondent supported by the minority in Parliament of which he was a member resisted an order for interlocutory injunction by the High Court restraining him from holding himself as a Member of Parliament for Assin North Constituency but he fragrantly and brazenly disregarded the orders of the High Court and fully partook in the proceedings and continues to so hold himself as such. Fifthly, since there is a High Court judgment operating against him, the distress and loss are irreparable and can in no way be remedied by an award of damages. The applicant finally prayed the court to restrain the 1st respondent pending the hearing and determination of the Writ otherwise he will continue to hold himself out as a duly elected Member of Parliament for the Assin North Constituency.

There is no dispute about the fact that a petition under the Representation of the People Act, 1992(PNDCL 284) was filed to challenge the validity of the election of the 1st respondent as the Parliamentary Candidate of the Assin North Constituency. There is also no dispute that the High Court, Cape Coast delivered a judgment on 28th July 2021 and declared 1st respondent's election null and void and restrained him from holding himself as the Member of Parliament for the Assin North Constituency. There is further no doubt that the 1st respondent appealed against the judgment to the Court of Appeal, Cape Coast which by the decision of this court in **In Re Parliamentary Election For Wulensi Constituency; Zakaria v Nyimakan [2003-2004] SCGLR 1** is the final Court of Appeal in election petitions brought to challenge the validity of Parliamentary Elections. A breach of the order of injunction issued by the High Court should have been enforced at the High Court or the Court of Appeal as the case may be. It seems to me that by the grounds stated in the affidavit in support of the motion for an interlocutory injunction in this court, all that was urged on us is the breach of the

Injunction order issued by the High Court. In my view, it is not the responsibility of the Supreme Court to enforce orders of a lower court which are breached unless the matter is on appeal before it and it is seized of the matter. Even if we were to accept the argument of the applicant that the present application is founded on the Writ, its determination will prejudice the outcome of the Writ in the sense that ultimate outcome of the Writ is what the applicant is seeking from this Court to grant to him in the interim. In my view, where the outcome of an interlocutory application will prejudice one way or the other the outcome of the substantive application, a court must be firm in exercising its case management powers and fix an early date for the expeditious hearing of the substantive action. Such a directive will dispose of the interlocutory and substantive application in one hearing. The only exception, in my view, is where there was likely to be an irreparable damage or loss which ought to be curtailed by a restraining order as held in Ekwam v Pianim (supra).

In this case, the 1st respondent had been in Parliament from the 7th of January 2021 and despite the order restraining him from holding himself as a Member of Parliament for Assin North Constituency had continued to perform his functions in Parliament without the applicant invoking the enforcement powers of the High Court to deal with him under the Rules of court. In my view, since the 1st respondent is already occupying his seat in Parliament, to continue to perform his Parliamentary duties for another few weeks to enable this Court determine this constitutional action currently before us will not occasion any irreparable loss or damage to applicant or anyone. On the contrary, restraining the 1st respondent from Parliament in the interim during which time debates would be ongoing on the floor of the House and votes would be taken without the input of the Member of Parliament from the Assin North Constituency when the Writ had not been determined against the 1st respondent would rather cause an irreparable damage to the people of the Assin North Constituency who would have missed out on their involvements and contributions in Parliamentary proceedings. In my view, if the applicant would not trigger the necessary legal processes available to

him in the Rules to enforce the orders of the High Court made against the 1st respondent, the Supreme Court is not the forum to employ legal ingenuity by the filing of a constitutional action and then disguise this application as an offshoot of the Writ while in substance an enforcement of the High Court orders which is not on appeal before us. It is for these reasons that I concurred with the opinion of my learned and respected sister Dordzie JSC which I have had the privilege of reading that the application for interlocutory injunction be refused.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

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