

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
PWAMANG JSC
PROF. KOTEY JSC
HONYENUGA JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

WRIT NO.

J1/21/2021

27TH JULY, 2022

JAMES MARSHALL BELIEB PLAINTIFF

VS

1. ATTORNEY-GENERAL }
..... DEFENDANTS
2. THE CHIEF JUSTICE

JUDGMENT

AMADU JSC:-

INTRODUCTION

1. My Lords, by writ issued pursuant to Articles 2(1)(b) and 125 of the 1992 Constitution and Order 2 Rule 3(1) of the High Court (Civil Procedure) Rules, 2004, (C.I.47), the Plaintiff has invoked the original jurisdiction of this court and seeks the following reliefs:-

“(1) A declaration that the practice whereby the description “CHIEF

JUSTICE” followed by the name of the occupant of the office of Chief Justice which appears on every writ of summons issued in Ghana is wrongful, unlawful, unconstitutional, inconsistent with and in contravention of the Preamble, Article 1 and Article 125 of the 1992 Constitution of Ghana and ought to cease forthwith.

(2) A declaration that on a true and proper interpretation of the Preamble,

Article 1, Article 2(1) and Article 125 of the 1992 Constitution of Ghana Justice emanates from the people of Ghana and therefore the indication given on writs of summons issued in Ghana that it is the Chief Justice from whom Justice emanates is a continuing constitutional aberration which ought to be halted for its inherently unconstitutional nature and for its gross violation of the letter and spirit of the 1992 Constitution of Ghana.

(3) A declaration that Order 2 Rule 3(1) of the High Court (Civil Procedure)

Rules, 2004 (C.I.47) requiring every writ to conform to Form 1 of the Schedule to C.I.47 is wrongful, unlawful, unconstitutional, inconsistent with and in contravention of Article 1 and Article 125 of the 1992 Constitution of Ghana.

(4) SUCH FURTHER ORDER(S) as the Honourable Court may deem fit.”

While the above reliefs appear conceivably trivial in substance, yet at least in form, they provoke interesting legal issues which demand determination by this court, the original jurisdiction having been properly invoked.

2. In the joint memorandum of issues set down for determination, the parties formulated and settled on the following:-

“1. Whether or not the Chief Justice is a necessary party to the suit?

2. *Whether or not on a true and proper interpretation of Article 125(1)*

and Article 1(1) of the 1992 Constitution, the practice whereby the name and office of the Chief Justice appears on every writ of summons issued in the Republic, is unconstitutional?

3. *Whether or not Order 2 Rule 3(1) of the High Court Civil Procedure*

Rules, 2004 (C.I.47), which requires every writ of summons to conform to Form 1 of C.I.47, should be struck down as null and void?”

3. In our view, the first issue requires a determination of a fundamental issue of the propriety of the joinder of the 2nd Defendant. Being an issue at the threshold which will determine whether or not the 2nd Defendant will remain a necessary party to the suit, or that, the said office has been misjoined in terms of the reliefs sought by the Plaintiff in the action, it is important to determine same first before proceeding to determine the other substantive issues.

4. In the statement of case filed on behalf of the Defendants, counsel for the Defendants has raised and articulated the issue of misjoinder of the 2nd Defendant. In that statement, the Defendant’s counsel has relied on a plethora of decisions of this court. These include **NANA ADDO DANKWA ADKUFO-ADDO & OTHERS VS. JOHN DRAMANI MAHAMA & OTHERS [2013] SCGLR, (Special Edition),**

TSIKATA VS. CHIEF JUSTICE & ATTORNEY GENERAL [2002] JELR 67014 NEW PATRIOTIC PARTY VS. RAWLINGS & ANOTHER [1993-94]2 GLR 193. The Defendants' counsel has urged this court to uphold the issue of misjoinder on the ground that by virtue of Article 88(5) of 1992 Constitution, the 1st Defendant is the only proper party to be proceeded against in terms of the reliefs sought per the instant writ.

5. This contention by the Defendant's counsel is said to be reinforced by the fact that by virtue of Article 125(4) of the 1992 Constitution, the Chief Justice who doubles as the administrative head of the Judicial arm of the government is personified in the office holder. Therefore, it does not necessarily follow that the endorsement of the name of the occupant of the office of Chief Justice on the writ must necessarily make the occupant of that office a necessary party to the action. Referring to the decision of this court in the case of **REPUBLIC VS. HIGH COURT, ACCRA, EX-PARTE, ATTORNEY GENERAL (DELTA FOODS LTD. INTERESTED PARTY) [1999-2000]1 GLR 255 & AMPRATWUN MANUFACTURING CO. LTD. VS. DIVESTITURE IMPLEMENTATION COMMITTEE [2009] SCGLR 692** the Defendants' counsel contends that this court has directed that by virtue of Article 88(5) of the constitution, it is the office of the Attorney General and none other which shall be endorsed as Defendant in civil proceedings against the State. In consequence thereof the Defendants argue that, though the office of the Attorney General is endorsed as a nominal Defendant in constitutional actions against the state, no liability against the Attorney General arises in the final outcome of those actions.
6. In our view, these submissions urging us to hold that the 2nd Defendant has been misjoined in the instant action is totally misconceived. With all due respect to the

Defendants' counsel it would appear that the ratio of the decision in the **Delta Foods Ltd.** and the **Ampratwun Manufacturing Co. Ltd.** cases (supra) have either been misunderstood or have been referred without attending to the peculiar issues which arose for determination in those cases.

7. The office of Chief Justice, the 2nd Defendant herein is a creature of both the Constitution of Ghana 1992 and the Courts' Act 1993 (Act 459) as provided for under Article 125(4) and Section 2(1) respectively. The functions of the Chief Justice as a judicial officer on the one hand and as the administrative head of the judiciary on the other hand, have been provided by law.
8. As a judicial officer, the Chief Justice is clearly insulated from judicial proceedings arising from any cause of action in respect of the discharge of his judicial functions. To that extent, the immunity provisions contained in Article 127(3) will apply and render any such action unconstitutional. However, where a cause of action arises against the occupant of the office of Chief Justice in the exercise of the administrative duties provided for by the Constitution and the Courts' Act, a cause of action challenging the manner in which that administrative duty is exercised or any decision arising from the exercise of that administrative power is conceivably actionable against the Chief Justice *qua* Chief Justice and in some cases may be named as a party *eo nomine*.
9. The endorsement of the name of the occupant of the office of the Chief Justice *eo nomine* on writ forms particularly in the Circuit and High Courts in Judicial Form '1' is an administrative matter in form. It is neither judicial nor a significant substantive act. An action against the occupant of that office whose name has in fact

been so endorsed on the Judicial Form '1' issued in the name of the state cannot in my view be faulted for misjoinder. We think it will be rather unfair and a potential breach of the right of fair hearing of the occupant of the office if his or her joinder to an action is held to be erroneous.

10. By virtue of the combined effect of the provisions of Article 125(3) and the wide powers of this court in actions pursuant to Article 2 of the Constitution and Rule 45(3) of the rules of this Court (C.I.16), the issue of misjoinder of the 2nd Defendant raised by the Defendants' counsel is demonstrably hereby untenable. We find and hold that the 2nd Defendant is a necessary and proper party in the instant proceedings. The objection on misjoinder is consequentially rejected and hereby overruled.

11. Having so found, an interesting issue inherent in the instant action relates to the Plaintiff's description of the capacity by which he invokes jurisdiction as a "*Ghanaian citizen bent on ensuring that the 1992 Constitution of Ghana is adhered to by all in line with his duty as a citizen*". There is no doubt that as a Ghanaian citizen, the Plaintiff is clothed with the *locus standi* necessary to prosecute cases of the kind before the Court by invoking this Court's original jurisdiction. We shall refer to one case among the plethora of cases that have settled this point on capacity. In **PROGRESSIVE PEOPLES PARTY VS. ATTORNEY-GENERAL [2015-2016] 2 SCGLR 1034**, Akamba JSC posed the following question (*as stated in page 1043 of the report*). "*What indeed is the exact scope of this court's original jurisdiction under Articles 2 and 130 (1) of the 1992 Constitution?*" His Lordship answered the question (*as stated in page 1045 of the report*) in the following words:

*"This question has been ably answered by this court per my respected sister Sophia Akuffo in the case of **BIMPONG BUTA VS. GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200**. On page 1216, this court summed up the numerous*

outcomes of opportunities availed this court to define the scope of this jurisdiction. In order not to reinvent the wheel, I quote the summary thereof as follows:

“(1) A person bringing an action under Article 2 need not demonstrate that he has any personal interest in the outcome of the suit; that he is a citizen of Ghana suffices to entitle him to bring the action. (TUFFUOR VS. ATTORNEY-GENERAL [1980] GLR 637 SC AND SAM (NO 2) VS. ATTORNEY-GENERAL [2000] SCGLR 305.

(2) The ‘person’ referred to in the context of Article 2 includes both natural persons and corporate bodies (of NEW PATRIOTIC PARTY VS. ATTORNEY-GENERAL (CIBA CASE) [1996-97] SCGLR 729.”

12. Undoubtedly therefore, it is now a moot question to decide the question of capacity when a person invokes the original jurisdiction of the Supreme Court. Indeed, the clarity with which the provisions in Article 2(1) of the Constitution has couched, renders it quite questionable to argue that it is only citizens of the Republic of Ghana who are vested with the constitutional right to invoke the original jurisdiction of the Court for the interpretation and enforcement of the Constitution.

13. It is provided in Article 2 (1) of the 1992 Constitution as follows:

“2(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.”*

14. It would ordinarily appear that the above constitutional provision vests every person with the capacity to institute proceedings for the interpretation and enforcement of the Constitution. The language of the provision is quite open and flexible in the manner in which it confers capacity. In our view however, the unrestricted use of the word "*person*" cannot be construed to mean that a non-Ghanaian citizen may assume such capacity. Questions of *locus standi* (as distinguished from *capacity simpliciter*) may arise and the person's interest, in the matter if not a citizen of Ghana, may legitimately be raised for determination. The above discussion of the subject of capacity is however, not the focus of the point we consider interesting with respect the instant Plaintiff's description of the capacity in which he brings this action.

15. In his endorsement on the writ, the Plaintiff states that he is "*bent on ensuring that the 1992 Constitution of Ghana is adhered to by all in line with his duty as a citizen*". In other words, the capacity in which he invokes the jurisdiction of the Court is not only anchored on the general right conferred on every person to institute proceedings for the interpretation and enforcement of the Constitution, but his perceived obligation, as a Ghanaian citizen, to ensure "*that the 1992 Constitution of Ghana is adhered to by all*". The Plaintiff's action therefore also assumes the additional obligation of a commitment of ensuring that "*the 1992 Constitution of Ghana is adhered to by all*" which the constitution has not placed on any person including the Plaintiff.

16. We must state that, our reading of the Constitution as a whole leaves us in no doubt that the Constitution does not place this assumed burden on the Plaintiff. The only capacity which the Constitution confers on the Plaintiff as a Ghanaian citizen is the capacity to invoke the original jurisdiction of this court to "*bring an action in the Supreme Court for a declaration to that effect*" as clearly stated in Article 2(1)(b) of

the Constitution. The Plaintiff's commitment, as in being "*bent on ensuring that the 1992 Constitution of Ghana is adhered to by all*" is therefore not a constitutionally mandated obligation.

17. Without a doubt, the power to enforce the Constitution is exclusively vested in this Court. It is this Court that must be *bent on ensuring that the 1992 Constitution of Ghana is adhered to by all in line with the Court's constitutional responsibility of interpreting and enforcing the Constitution*. The scope of this power is provided in Article 130(1)(a) of the Constitution as follows:-

"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*".

18. For the purposes of giving effect to this constitutional obligation placed on this Court by Article 130(1) of the Constitution, it is also provided in Article 2(2) of the Constitution which is usually invoked together with Article 130(1) that upon making a declaration on any particular constitutional provision in issue, the Supreme Court may proceed to make orders and directions as it may consider appropriate for giving effect or enabling effect to be given to its declarations on the true and proper position of the Constitution on any matter. The Constitution does not give any Ghanaian citizen "*in line with his duty as a citizen*", as the Plaintiff asserts, the responsibility of "*ensuring that the 1992 Constitution of Ghana is adhered to by all*".

19. We note further that, even for purposes of enforcement, it takes the complimentary effort of another arm of government to ensure that the enforcement powers of this Court are given effect. This is with particular reference to the President of the Republic in whom, by virtue of Article 58(1) of the Constitution, the *“executive authority of Ghana”* is vested and in the exercise of that authority, the President is mandated by virtue of Article 58(2) of the Constitution to ensure *“the execution and maintenance of this Constitution and all laws made under or continued in force by this Constitution.”*

20. The Plaintiff’s exaggeration of the capacity in which, he invokes this exclusive jurisdiction may have been a technical ground on which to disqualify him especially that his capacity is linked to his misconceived obligation of *“ensuring that the 1992 Constitution of Ghana is adhered to by all”*. We must reiterate that no such capacity is conferred on him by the Constitution and even worse is the arrogation to himself of the constitutional powers vested in the judiciary and the executive by the very constitution he seeks to protect by invoking the jurisdiction of this court.

21. However, to the extent that this suit invokes the original jurisdiction of this Court, it is the Court’s long-standing policy to be liberal and to avoid the perdition occasioning constitutional cases on the basis of technicality. This is even more apparent because in paragraph 4 of the Plaintiff’s statement of the case, the Plaintiff now simply states as follows:

“4. The Plaintiff brings this action as a citizen of Ghana to challenge the long-standing practice where the description CHIEF JUSTICE followed by the

name of the occupant of the office appears on every writ of summons in Ghana."

22. However, conspicuously absent from the above statement is the Plaintiff's assumed responsibility of *"ensuring that the 1992 Constitution of Ghana is adhered to by all"*. We shall therefore deal with the substance of this suit in order not to cause a fatal blow to the instant action on a technicality.

23. From the endorsement of reliefs, the Plaintiff brings this action against the Defendants for three main reliefs. They are all declaratory and at the risk of being repetitive, have been formulated as follows;

"1. A declaration that the practice whereby the description "CHIEF JUSTICE" followed by the name of the occupant of the office of Chief Justice which appears on every writ of summons issued in Ghana is wrongful, unlawful, unconstitutional, inconsistent with and in contravention of the Preamble, Article 1 and Article 125 of the 1992 Constitution of Ghana and ought to cease forthwith.

2. A declaration that on a true and proper interpretation of the Preamble, Article 1, Article 2(1) and Article 125 of the 1992 Constitution of Ghana Justice emanates from the people of Ghana and that therefore the indication given on the writ of summons that is the Chief Justice from whom Justice emanates is a continuing constitutional aberration which ought to be halted for its inherently unconstitutional nature and its gross violation of the letter and spirit of the 1992 Constitution of Ghana.

3. A declaration that Order 2 Rule 3 (1) of the High Court (Civil Procedure) Rules, 2004(C.I.47) requiring every writ to conform to Form 1 of the Schedule

to C.I. 47 is wrongful, unlawful, unconstitutional, inconsistent with and in contravention of Article 1 and Article 125 of the 1992 Constitution of Ghana.”

24. The justification for seeking the above reliefs is set out in perhaps one of the briefest statements of case this court has encountered in actions brought for reliefs relating to the interpretation and enforcement of the 1992 Constitution. We must however commend the Plaintiff for the brevity and conciseness with which the basis of the reliefs he seeks from this court have been set out in his statement of the case. In that statement of case, made out in only seven pages, two of the pages, are dedicated to reproducing in full, the preamble to the 1992 Constitution and the provisions of Articles 1, 2, and 125 of the 1992 Constitution. There is, however, no attempt whatsoever in discussing the meaning, context and effect of the constitutional provisions quoted *ipsissima verba*.

25. After quoting the constitutional provisions just referred to, the Plaintiff's arguments are set out in four paragraphs the contents of which may just be procedurally sufficient, but deficient in substance. The Plaintiff contends as follows:

“5. The Plaintiff states that the practice complained appears to be sanctioned by subsidiary legislation, to wit, the High Court (Civil Procedure) Rules, 2004 (C.1.47) and is for all practical purposes a mandatory requirement without which a writ of summons cannot be validly filed in Ghana. It is to be noted that the relevant legislation preceding the said C.I. 47 which is the High Court (Civil Procedure) Rules 1954, (LN.140 A) is the name “ELIZABETH II OF ENGLAND” which appears on every writ of summons. This was at a time Ghana was a British Colony and even then, there is justification for the Queen's name on the writ because under English law power sovereignty and justice emanate from the Queen/King/Crown. In Ghana, however, it cannot be

reasonably controverted having regard to the constitutional prescription outlined above that power, sovereignty, and justice firmly rest with the People.

6. *The Plaintiff states that because of this practice which is inimical to the 1992 Constitution of Ghana the office of the Chief Justice is elevated above the Constitution and that office has become the personification of the People from whom sovereignty, power, and justice emanates.*
 7. *The Plaintiff further states that the said requirement gives a deceptive garb of supremacy to the office of Chief Justice which manifest itself in several ways undermining the independence of judges and the conditions under which they serve and the tendency to effect arbitrary transfers without regard to the constitutional duty to be fair and candid as required by Article 296 of the 1992 Constitution. The impression of unquestioned authority further finds expression in entitlements bestowed on the office to the exclusion of other serving Supreme Court Judges as well as unfettered decision-making in respect of perks to being enjoyed by Superior Court Justices.*
 8. *The Plaintiff states that the Honourable Court must give the spirit and letter of the 1992 Constitution the required trenchant potency with the deletion of the title CHIEF JUSTICE and the name of the officeholder on all writs of summons issued in Ghana."*
26. We shall now proceed to discuss the Plaintiff's case by reference to the submissions made and the constitutional provisions relied on for the reliefs sought. The crux of the Plaintiff's case before the Court is that the long-standing practice whereby the

description "*Chief Justice*" is followed by the name of the occupant of the office appears on every writ of summons in Ghana does not sit well with the constitutional provisions the Plaintiff refers to in his submissions.

27. The Plaintiff contends in paragraph 6 of his statement of case that, the practice is inimical to the 1992 Constitution of Ghana because the office of the Chief Justice is elevated above the Constitution, because by the practice, that office has become the personification of the '*People*' from whom sovereignty, power, and justice emanates. While we are not certain in our minds what exactly agitates the Plaintiff, regrettably the Plaintiff himself does not demonstrate in his statement of case why his own interpretation of the practice is factual and not a mere perception by the Plaintiff exclusively.

28. We shall refer to the constitutional provisions quoted verbatim in the Plaintiff's statement of case but will refrain from reproducing them because they all presumably acknowledged that the Constitution has been in force for about three decades now. In reference particularly to the preambular part of the Constitution, the Plaintiff does not demonstrate the relevance of, or the link between the preamble to the Constitution and the rest of the articles he relies on to make out his case. Thus, unless such demonstration is apparent and well grounded, it remains in the realm of the Plaintiff perception which he is entitled to but will be insufficient to attract the favourable grant of the declaratory reliefs he seeks from this court in the instant proceedings.

29. The provision on Article 1(1) states the focus that must inform the application of the Constitution. The effect of the provision is that, whatever functions, duties, and/or

powers are discharged and/or exercised by any of the arms of government, it must be always borne in mind that it must be done for the welfare of the people of Ghana in whom the abstraction of sovereignty resides. Article 1, clause 2 then affirms the undoubted fact that the Constitution is the supreme law of the land. The Plaintiff provides no material on Article 1 which directly connects to the Plaintiff's complaint about it not being constitutionally acceptable that the words "*Chief Justice*" are immediately followed by the name of the occupant of the office in a writ of summons.

30. We take the same view regarding the Plaintiff's reference to Article 2 of the Constitution. It also affirms the right of any person to seek a declaration before this Court that an enactment or something contained in, or done under the authority of that enactment or any other enactment, or that some act or omission of some person or authority is inconsistent with, or is in contravention of a provision of the Constitution. The Plaintiff does not explain why this article makes it unconstitutional if the words "*Chief Justice*" followed by the name of the occupant of the office appears on a writ of summons as in Judicial Form '1'.

31. The constitutional provision which in my view is closely relevant to the Plaintiff's complaint is Article 125 of the Constitution. It is under the rubric "*the judicial power of Ghana*". Clause 1 of the Article 125 provides that:-

"(1) Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution."

Although the Plaintiff does not directly make this submission, it is noted that, the Plaintiff highlights the part of the provision which stated that: "*Justice emanates from the people and must be administered in the name of the Republic by the Judiciary...*" and unless we have misapprehended the Plaintiff's case, it is simply that because the

constitutional provision provides that *“Justice emanates from the people and must be administered in the name of the Republic by the Judiciary...”*, it is inappropriate to have the words *“Chief Justice”* appear on the writ of summons followed by the name of the occupant of that office.

32. In the context of the instant action, it is presumed that by reference to writ of summons, the Plaintiff and this Court are *ad idem* that the writ referred to is that process with the national Coat of Arms embossed thereon deployed in commencing actions in the Circuit and High Courts pursuant to Order 2, Rule 2 of C.I.47. The reason is that the Plaintiff’s writ by which he invokes the original jurisdiction of this Court does not have any of the matters complained of by the Plaintiff in this suit. This conclusion is put beyond doubt by the Plaintiff’s submissions in paragraph 5 of his statement of case in which he provides the historical and legal basis for the matters which have given rise to his suit. The Plaintiff states as follows:- *“...the practice complained (sic) appears to be sanctioned by a subsidiary legislation, to wit, the High Court (Civil Procedure) Rules, 2004 (C.1.47) and is for all practical purposes a mandatory requirement without which a writ of summons cannot be validly field in Ghana...”* The Plaintiff only refers to the rules which regulate practice and procedure in the Circuit and the High Courts of Ghana. No reference is made to Part IV of the Supreme Court Rules, 1996 (C.I. 16) which provides for the writ by which the original jurisdiction of the Supreme Court is invoked. We shall therefore narrow our analysis to an examination of the writ of summons applicable in the Circuit and the High Courts for purposes of determining the merits of the Plaintiff’s claim.

33. A cursory examination of the information contained in the writ forms applicable in the Circuit and the High Courts will reveal that it displays the Coat of Arms. The

Court is entitled to take judicial notice of the fact that the Coat of Arms is embossed at the very top of all official documents to confirm that the document on which it is embossed, is a document which emanates from and on the authority of the state, the Republic of Ghana and it is the official symbol in every document issued or sealed in the name of the state. Wherever the official state symbol of the Coat of Arms appears on any document therefore it is a *prima facie* representation that, the document or instrument does not derive its force and validity from any person as an individual or even the designated state official from whom it originates, or even the person who circulates same, but from the Republic of Ghana and to that extent, the *People* in whom sovereignty resides. These instruments include warrants and orders issued by judicial officers in their respective names but acting in the name of the State. It is this which gives the document its commanding authority and which makes the writ once issued and sealed with the symbol of the Coat of Arms and in the name of the head of the judicial arm of the State, the *Chief Justice*, a commandment by the state for the Defendants so endorsed thereon, to enter an appearance within a stipulated time as provided by law.

34. That is not all, the Coat of Arms which appears at the top of the writ is followed by the words "*REPUBLIC OF GHANA*" underneath it. If therefore the Coat of Arms contained no words communicating that its driving force is the Republic of Ghana and necessarily its *people*, it has been put beyond every doubt whatsoever by the descriptive words written thereunder. This observation in our view completely diminishes any force in the argument that the words *Chief Justice* endorsed on the writ form followed by the name of the occupant of the office offends the provision of Article 125 of the Constitution. In our view, the form of the writ is formulated and

must be construed with the provisions of Article 125 (1)(2) and (3) and Clause 4 which specifically provides for the office of the "*Chief Justice*" in mind.

35. Having regard to the fact that the writs issued out of the registries of the Circuit and the High Courts emanate from the Republic of Ghana and not the Chief Justice nor the occupant of that office, the Plaintiff's contention that "*it cannot be reasonably controverted having regard to the constitutional prescription outlined above, that power, sovereignty and justice firmly rests with the People*" Though factual has been totally misconceived by the Plaintiff. The reason is that the writ form clearly expresses itself as deriving its commanding force and authority from the *people* without whom there will be no Republic. This is clear from a reading of Article 125 clause 1 of the Constitution.

36. In the context of Article 125(1) therefore, there can be no doubt that the writ expresses itself as emanating from the *people* of Ghana. In this context, it affirms that justice is "*administered in the name of the Republic*" especially that the words "*Republic of Ghana*" are written right underneath the official symbol of the Republic. These formalities also appear in writs that invoke the original jurisdiction of the Court. A reading of the Plaintiff's writ by which the instant proceedings have been commenced will reveal that, it also has the Coat of Arms and the words Republic of Ghana right under that symbol of State authority.

37. Further to the above observation the constitutional provision under discussion provides that justice must not only be *administered in the name of the Republic*" but also "*by the Judiciary...*" It is for this reason that immediately after the Coat of Arms,

and the words *“Republic of Ghana”*, the judicial forum from which the writ is issued is indicated. Therein we find the writ commanding as follows:- *“WRIT (IS) ISSUED FROM”* and then the ellipsis is filled in by inserting the court from which the writ is issued, that is; either the Circuit Court or the High Court.

38. We shall delve further on the meaning and effect of Article 125 to demonstrate how the Plaintiff’s case is not just a storm in a tea cup but is not even a storm at all. We do not even think there is a tea cup by reference to which one may even conceive of an inconsequential storm. Apart from the fact that Article 125 clause (1) provides that justice must not only be **administered in the name of the Republic**” but also *“by the Judiciary...”*, Article 125 clause (3) also provides that the *“judicial power of Ghana shall be vested in the Judiciary.”* Clause (4) of the same article goes on to say in plain language thus;

“(4) The Chief Justice shall, subject to this Constitution, be the Head of the Judiciary and shall be responsible for the administration and supervision of the Judiciary.”

39. There is provided in Article 125 of the Constitution four key components in so far as the judiciary is concerned. These are that;

- a. *Justice is administered in the name of the Republic”.*
- b. *The justice which is dispensed in the name of the Republic must be “administered...by the Judiciary...”*
- c. *The judiciary is therefore the only organ of the Republic vested with the judicial power of Ghana.*
- d. *The Chief Justice is the Head of the Judiciary, and is*
- e. *Responsible for the administration and supervision of the Judiciary.*

40. Having identified and set out clearly the components of Article 125, the Plaintiff’s claim based mainly on Article 125 (1) to which the Plaintiff only partially directs his

mind cannot be accurate. The reason is that the Plaintiff conveniently ignores the fact that in Article 125 (1), the constitutional provision says that justice that *emanates from the people must be administered by the judiciary*.

41. If the judiciary is tasked with the constitutional obligation of administering the justice which emanates from the people, it must be clear from the writ by which proceedings to assert one's right to justice are initiated that, the judiciary is involved in the process of administering the justice which emanates from the people from the commencement of an action to its final outcome. There must be evidence from the writ itself that the writ by which a person seeks justice is issued under the authority of the judiciary which is vested with the judicial power of Ghana which pursuant to Article 125 (4) is headed by the *Chief Justice*. This explains why after the Coat of Arms and the words the *Republic of Ghana* embossed thereunder, the judicial forum from which the writ is issued is indicated. This situation in our view is in compliance with Article 125(3) which provides that the judicial power of Ghana is vested in the judiciary.

42. For the purposes of complying with Article 125(4) and (5) it is necessary to assure all who seek justice that indeed the Chief Justice, the Head of the Judiciary, in judicial power is vested and entrusted with the responsibility of administering justice, will also ensure the discharge of his responsibility under Article 125(5) *for the administration and supervision of the Judiciary*. It is therefore within the ambit of the constitutional mandate of the Chief Justice to ensure that the judicial mechanism is put in place for the purposes of achieving the justice to be administered on behalf of the *people*. This is the reason for the reference to the Chief Justice in the writ and the endorsement of the name of the occupant of the Office. These endorsements do

not detract from the constitutional framework on which justice is delivered in the name of the state and for the *people*.

43. It is this observation that naturally leads to the rejection of the Plaintiff's argument in paragraph 6 of the statement of the case that because of the words complained about, "*...the office of the Chief Justice is elevated above the Constitution and that office has become the personification of the People from whom sovereignty, power, and justice emanates.*"

In furtherance of the above we also reject the following submission made in paragraph 7 of the statement of a case where the Plaintiff submits that, if the words *Chief Justice* appear with the name of the occupant of the office, it; "*...gives a deceptive garb of supremacy to the office of Chief Justice which manifest itself in several ways undermining the independence of judges and the conditions under which they serve and the tendency to effect arbitrary transfers without regard to the constitutional duty to be fair and candid as required by Article 296 of the 1992 Constitution.*"

44. The above submission is in our view subjective and speculative. There is no substance in the argument to support the assertion. No evidence whatsoever has been placed before this Court to demonstrate how by the endorsement of the words "*Chief Justice*" in the writ followed by the name of the occupant, that will *ipso facto* undermine the independence of judicial officers and the conditions under which they serve. The *Chief Justice* does not determine the conditions under which judicial officers discharge their judicial functions. In fact, as aforesaid, under our constitutional arrangement, the *Chief Justice* is also a judicial officer whose decisions if made as a justice of the High Court or Court of Appeal pursuant to Articles 136(1), (a) and 139(1) (a) of the constitution are subject to appeal or other review procedure

as provided by law. As a Justice of the apex court, the *Chief Justice* is at par with other justices of the Supreme Court in the exercise of judicial power. Secondly, the submission that there is “*the tendency to effect arbitrary transfers without regard to the constitutional duty to be fair and candid as required by Article 296 of the 1992 Constitution*” is a mere allegation founded on perception and not supported by any scintilla of evidence at all.

45. In any event, as already pointed out, the constitutional requirements of Article 125 are not offended by having the words *Chief Justice* endorsed in the writ, accompanied by the name of the occupant of the office. And just how the writ as in Judicial Form ‘1’ affects the administrative matters of transfers and the terms and conditions of judges is difficult to comprehend. As in the submissions aforesaid, we also do not find any merit in the submission at the same paragraph 7 of the statement of case where the Plaintiff submitted thus; “*The impression of unquestioned authority further finds expression in entitlements bestowed on the office to the exclusion of other serving Supreme Court Judges as well as an unfettered decision-making in respect of perks to being enjoyed by Superior Court Justices.*”

46. In his statement of case, the Plaintiff has made an effort to draw parallels with that of the case of **TSATSU TSIKATA (NO.1) VS. ATTORNEY-GENERAL [2001-2002] SCGLR 189**. This case does not assist the Plaintiff’s case at all. The case referred to is distinguishable from the instant case because in that case, the relevant arm of government whose actions were questioned by reference to the constitutional provisions under consideration was the executive in whose province the administration of justice and judicial power does not lie. The court took the view that to the extent that criminal justice shall be administered in the name of the Republic *by the judiciary* as required by the provisions of Article 125(1) of the Constitution, those

provisions were clearly undermined when the process used to summon the plaintiff to court was issued in the name of the *President* rather than the Republic. It was therefore held therein that the summons issued was contrary to the express provisions of the Criminal and Other Offences (Procedure) Act 1960 (Act 30) and are inconsistent with Articles 1(1) and 125(1) of the Constitution. It was therefore declared unconstitutional and null and void because it amounted to a threat to the independence of the judiciary as guaranteed under Articles 125(1) which had the responsibility of administering justice, and a contravention of Article 127(1) which insulates the judiciary from the control or direction of any person or authority in the exercise of the judicial power of Ghana on behalf of the *people* in whom sovereignty resides and in whose behalf justice is administered in the name of *the Republic*.

47. It is also clear from the **Tsikata Case** that this Court affirmed the position taken in the instant case that Article 125(1) of the Constitution requires that justice be "*administered in the name of the Republic*". In the instant case, this is put beyond doubt by the Coat of Arms placed at the middle top of the writ and beneath it written the words the *Republic of Ghana*. This analysis makes it irrelevant to decide the question of the impact of the review decision of the Court in **ATTORNEY-GENERAL (NO.2) VS. TSATSU TSIKATA [2001-2002] SCGLR 620** This is because even the decision in **TSATSU TSIKATA (NO.1) VS. ATTORNEY-GENERAL** (supra) under reference does not support the Plaintiff's case, let alone the review decision which overturned it.

48. In the light of the above analysis , the Plaintiff's claim that the practice whereby the description "*CHIEF JUSTICE*" followed by the name of the occupant of the office of Chief Justice which appears on every writ of summons issued the Circuit and High Court of Ghana is wrongful, unlawful, unconstitutional, inconsistent with and in

contravention of the preamble, to the Constitution, Articles 1 and 125 of the 1992 Constitution of Ghana, and ought to cease forthwith cannot be sustained and is hereby dismissed.

49. We are not unmindful of the fact that the Plaintiff's claim which is also for a declaration but which asserts that on a true and proper interpretation of the preamble, Articles 1, 2(1) and 125 of the 1992 Constitution of Ghana, justice emanates from the people of Ghana and therefore the indication given on the writ of summons that, it is the *Chief Justice* from whom justice emanates, results from a factually incorrect premise. The writ clearly shows it emanates from the *Republic of Ghana*. It is the reason for which this Court will not declare that there is any continuing constitutional aberration that ought to be stopped only because, as the Plaintiff submits, it is inherently unconstitutional in nature and amounts to a gross violation of the letter and spirit of the 1992 Constitution of Ghana.

50. For all the reasons set forth, this Court will also refuse to declare that Order 2 Rule 3 (1) of the High Court (Civil Procedure) Rules, 2004 (C.I.47) requiring every writ to conform to Form 1 of the Schedule to (C.I.47) is wrongful, unlawful, unconstitutional, inconsistent with, and in contravention of Articles 1 and 125 of the 1992 Constitution of Ghana. In the result, the Plaintiff's action wholly fails and is accordingly dismissed.

I. O. TANKO AMADU
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA
(JUSTICE OF THE SUPREME COURT)

PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

COUNSEL

KWASI AFRIFA ESQ. FOR THE PLAINTIFF.

**UMMU ZAKARI (MS.) (PRINCIPAL STATE ATTORNEY) FOR THE DEFENDANT
LED BY DIANA ASONABA DAPAAH (DEPUTY ATTORNEY-GENERAL).**