IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – GHANA

A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

AMEGATCHER JSC

PROF. KOTEY JSC

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

HONYENUGA JSC

KULENDI JSC

WRIT

NO. J1/07/2022

9TH MARCH, 2022

JUSTICE ABDULAI	**…….**	**PLAINTIFF**
VRS		
THE ATTORNEY-GENERAL	**…….**	**DEFENDANT**

JUDGMENT

KULENDI JSC:-

I. INTRODUCTION

This action invokes our original jurisdiction pursuant to Article 2(1)(b) and 130(1)(a) of the Constitution to challenge the constitutionality or otherwise of recent going-ons in Parliament, one of the three arms of government, and by implication, the constitutionality or otherwise of one of Parliament's internal rules for the conduct of its business.

We wish to start by reminding ourselves of the dicta of an illustrious jurist, as follows:

> ***"…where it is alleged before the Supreme Court that any organ of Government or an institution is acting in violation of a provision of the Constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy… no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged."***

Per Acquah JSC (as he then was) in **Martin AlamisiAmidu v. President Kuffour and the Attorney General(2001–2002) SCGLR 138.**

II. BACKGROUND

The antecedents, as presented by the parties, upon which the instant action is premised are as follows:

On the 26th of November 2021, when Parliament sat to approve the 2022 Budget Statement, the Minister for Finance requested Parliament to suspend the approval

process of the Budget to give the Executive an opportunity to engage the parliamentary leadership over the introduction of the Electronic Transactions Levy (E-Levy) outlined in the Budget. The Speaker subjected the request for suspension to a voice vote and ruled that those against the prayer had prevailed over those in favour.

In a challenge to the ruling of the Speaker, the Majority asked that the vote be re-taken by division. Before the re-voting, the Majority walked out from the Chamber in protest of the exclusion of the Minister for Finance from the Chamber before the vote. After a short suspension of sitting, the Speaker returned to continue with the business of the House in the absence of the Majority. With 137 members present, the Speaker put the question for approval of the 2022 Budget to a voice vote. Following the voice vote, the Speaker ruled that the motion had been lost and the Budget rejected.

On 30th November, 2021, when the House reconvened, the Majority was in the Chamber but this time, the Minority was absent. The Speaker was absent, and consequently the 1st Deputy Speaker was presiding. The Majority Leader submitted that there were only 137 members in the House when the Budget was purportedly rejected, in breach of Article 104 of the Constitution, among others. He therefore invited the 1st Deputy Speaker to set aside the decision of the House on 26th November, 2021 as a nullity. The 1st Deputy Speaker before putting the question to the House for decision pursuant to the motion, ascertained by a headcount that there were one half of Members present, as required under Article 104(1) of the Constitution. In so doing the 1st Deputy Speaker was counted as part of the half of Members present to make up 138. However, he did not vote on the question. The 1st Deputy speaker then declared that the motion had been carried and further that the previous rejection of the Budget was null and void and of no effect. The House was thereby said to have approved the 2022 Budget.

The Plaintiff, by this writ, seeks an interpretation of Articles 102, 104(1) and 104(3) of the Constitution, 1992 and contends that it was unconstitutional for the 1st Deputy Speaker to have been counted for the purpose of making up the quorum of half of the Members of Parliament as required under Article 104(1) of the Constitution.

III. RELIEFS:

The reliefs sought by the Plaintiff per his writ are reproduced below:

1. A Declaration that upon a true and proper interpretation of Article 104(3) of the Constitution 1992 of the Republic of Ghana, the First and Second Deputy Speakers' casting vote is inconsistent with Article 104(3) of the Constitution 1992 of the Republic of Ghana, and to the extent of that inconsistency same is void and of no effect.

2. A Declaration that upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992 of the Republic of Ghana, a Speaker or any other Person presiding over Parliament cannot be said to be part of the members present for the purposes of decision making.

3. A Declaration that upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992 of the Republic of Ghana, the First Deputy Speaker presiding over the meeting of 30th November, 2021 was a nullity to the extent that the First Deputy Speaker counted himself as part of the members of Parliament present in order to give them the required numbers for the purpose of taking a decision to approve the 2022 Budget.

4. A Declaration that upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992 of the Republic of Ghana, when a person is

presiding over a meeting of Parliament, that person cannot count himself as part of the Members of Parliament present in order for a decision to be taken in accordance with Article 104(1) of the Constitution 1992 of the Republic of Ghana.

5.A Declaration that upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992 of the Republic of Ghana, the First Deputy Speaker or Second Deputy Speaker when presiding over Parliament has the same authority as the Speaker of Parliament and can therefore not be counted as Members of Parliament present for the purposes of taking a decision in accordance with Article 104(1) of the Constitution 1992 of the Republic of Ghana.

6.A declaration that upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992 of the Republic of Ghana, the decision taken on the 30th of November, 2021 to the extent that 138 Members of Parliament were not present on the floor of the House is a nullity.

7.A Declaration that to the extent that a Member of Parliament presiding over Parliamentary sitting cannot be counted as part of the Members of Parliament present, that Member cannot be counted as part of decision making in Parliament, and as a result the decision made to approve the 2022 Budget on 30th November 2021, amounts to a nullity and is of no effect.

8.Any other or further Order(s) and or Directions that this Honourable Court may consider appropriate to give effect or enable effect to be given to any order(s) and or Declaration(s) that may be made by this Honourable Court.

IV. ISSUES FOR DETERMINATION

The joint memorandum of issues filed by the parties and adopted by this Court for determination are as follows:

1. Whether or not upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution, a Deputy Speaker of Parliament or any other member of Parliament presiding over Parliament in the absence of the Speaker, cannot be counted as part of the members present before a decision is made;

2. Whether or not upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution a Deputy Speaker or any other member of Parliament presiding over Parliament in the absence of the Speaker, can vote or take part in the making of a decision by Parliament;

3. Whether or not the decision taken on 30th November, 2021, by the Parliament of Ghana to approve the 2022 Budget was a nullity as 138 members, excluding the person presiding, were not present in Parliament before the decision was made.

V. JURISDICTION

Our jurisdiction to interpret and enforce the Constitution is provided for by Articles 2(1) and 130(1) of the Constitution as follows:

"2(1) A person who alleges –

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

(b) That any act or omission of a person is inconsistent with, or in contravention of, a provision of this Constitution may bring an action to the Supreme Court for a declaration to that effect.

…

130 (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

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

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

The parties appear to be *ad idem* that an issue of interpretation arises and for that matter, the jurisdiction of this Court has been properly invoked. Since our original jurisdiction to interpret and enforce the Constitution is what is being sought to be invoked, this Court must do a self-check to first satisfy itself that indeed, this is a proper instance where recourse can be made to our original jurisdiction. This is despite the fact that the Defendant did not put in issue any case of improper invocation of jurisdiction. This preliminary exercise is anchored on the premise that parties cannot confer jurisdiction on a court where there is none and an improper exercise of jurisdiction, may almost always lead to the resultant decision being susceptible to be set aside for nullity.

In the case of **Osei Boateng v. National Media Commission & Apenteng [2012] 2 SCGLR 1038 at 1057** this Court, relying on the *dictum* of Anin JA in the *locus classicus* of **Republic vrs. Special Tribunal; Ex Parte Akosah [1980] GLR 592 at 605**, stated the

criteria where the interpretative jurisdiction of this Court could be said to have been properly invoked as follows:

> *"From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under Article 118(1) (a) arises in any of the following eventualities:*
>
> > *(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the Court to declare that the words of the article have a double- meaning or are obscure or else mean something different from or more than what they say;*
> >
> > *b) where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*
> >
> > *(c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision should prevail;*
> >
> > *(d) where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation."*

In the instant case, the parties put rival meanings on the combined effect of Articles 102, 104(1) and 104(3) of the Constitution. The provisions, particularly, Article 104(1), do not lend themselves to a straightforward meaning. We are therefore of the opinion that a genuine issue of interpretation arises for determination and consequently, our jurisdiction under Article 130 of the Constitution has been properly invoked.

VI. PRELIMINARY OBSERVATION

We observe that this is a case of first impression in our jurisdiction, as there is no case law—or even dicta—that, directly or indirectly, answers or speaks to any of the issues presented in this dispute for judicial resolution. The first two issues are strictly issues of law; they do not turn on any particular set of facts and do not raise any issue of fact that is in dispute. Therefore, each can be answered as a matter of straightforward constitutional exegesis.

The third issue is different; it implicates particular proceedings in the House and turns, at least in part, on issues of fact or parliamentary procedure that could be in dispute. A disputation of the facts, would have been a matter of concern and a reason for caution in considering the propriety of the seizure of our jurisdiction in relation to this issue. However, the Parties are agreed on the antecedents. Indeed, we must take judicial notice of the fact that the "*decision taken on 30th November [2021] by the Parliament of Ghana to approve the 2022 Budget*" sought to reverse and undo a previous "decision" of the House disapproving the same Budget. The first vote had been taken at a sitting of the House with 137 members presided over by the Speaker, while the second vote on the same Budget, to which reference is made in issue 3, was taken with the First Deputy Speaker presiding with 138 members, including himself, during the Speaker's absence. The different decisions of the House on the different dates or sittings arose from the fact that the Speaker and the First Deputy Speaker had reached different interpretations of the applicable quorum provisions of the House.

If the disparate interpretations proffered by the parties exclusively implicated the Standing Orders, procedures and practices of Parliament, without more, we would have had no difficulty in reaching the conclusion that Parliament is and ought always to

be the master of its procedures, orders and practices, without let or hindrance from the Court. In such a case, these would have been matters that lie peculiarly within the domain of Parliament and would, therefore, not be matters appropriate for judicial determination.

However, to the extent that the challenge to these proceedings in the third issue are equally anchored on rival interpretations to the combined reading of Articles 102 and 104 of the Constitution, the only Court mandated under Article 130 to interpret the true and proper meaning of these provisions of the Constitution, is this Court. Consequently, this Court would be failing in its Constitutional responsibility and mandate if we were to avoid and/or fail to provide clarity and direction and take cover under a so-called political question doctrine. Which is to say that it is a function of the principle of separation of powers, that certain questions presented for resolution by the Courts, that are expressly or impliedly constitutionally committed to the elected/political branches of government for resolution, be left to those branches because such questions may be said to be non-justiciable and consequently the judiciary ought to abstain from deciding them, as doing so would cause judges to intrude upon the functions of the elected branches of government. Having regard to the issues joined in this case, such an avoidance would have been legitimate, in fact compelling, if the issues at hand rested entirely and in all respects, on parliamentary procedure, orders and practices without more.

It must be noted that the 1992 Constitution establishes constitutional supremacy as against parliamentary supremacy. Under parliamentary supremacy, as pertains in the United Kingdom, Parliament is sovereign and all laws, decisions, procedures of Parliament are final and cannot be subject to judicial review by the Courts. The courts merely apply the legislation made by Parliament and may not hold an Act of Parliament to be invalid or unconstitutional. It was once justifiably said, regarding

British Courts, in the case of **STOCKDALE V HANSARD (1839) 9 A & E 1**, that "*All that a court of law can do with an Act of Parliament is to apply it*."

According to William Blackstone in his Commentaries on the Laws of England (3rd ed.), Vol. 1, pp. 159-160:

> *"The power and jurisdiction of parliament, says Sir Edward Coke ... is so transcendent and absolute, that it cannot be confined, either for causes or persons within any bounds.... It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving, and expounding of laws, concerning matters of all possible denominations, ecclesiastical, or temporal, civil, military, maritime or criminal: this being the place where that absolute despotic power which must in all governments reside somewhere, is entrusted by the constitution of these kingdoms ... It can, in short, do everything that is not naturally impossible; and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament. True it is, that what the parliament doth, no authority upon earth can undo." Even Blackstone was obliged to express doubts concerning the effect of statutes contrary to the law of God or impossible to be performed or with absurd consequences manifestly contradictory to common reason. Even he reprobated those who talked of the omnipotence of Parliament for using "a figure rather too bold."*

Under our current constitutional dispensation, the sovereign people of Ghana have adopted for ourselves a Constitution, where it is expressly declared in Article 1(2) that the Constitution, not Parliament, shall be the supreme law of Ghana to which all other laws must conform. Accordingly, the Constitution, in Hans Kelsen's Pure Theory of Law is the grundnorm, **from which all acts or laws derive their validity**. To this extent any law or act or omission, found to be inconsistent with the Constitution shall, to the extent of the inconsistency be void. To further reinforce this constitutional supremacy, the Constitution in Article 2 confers on any person who alleges that an act or omission

of any person is inconsistent with ***any*** provision of the Constitution the right to apply to this Court for a declaration to that effect. [**Emphasis added**].

That said, the doctrine of parliamentary sovereignty is not unknown to Ghanaian constitutional experience. In Article 20 of the 1960 Republican Constitution of Ghana, the Constitution declared that Parliament is only subject to the people in its lawmaking power. Article 20(2) of the 1960 Constitution reads as follows;

> ***"20(2). So much of the legislative power of the State as is not reserved by the Constitution to the people is conferred on Parliament****; and any portion of the remainder of the legislative power of the State may be conferred on Parliament at any future time by the decision of a majority of the electors voting in a referendum ordered by the President and conducted in accordance with the principle set out in Article One of the Constitution: Provided that the only power to alter the Constitution (whether expressly or by implication) which is or may as aforesaid be conferred on Parliament is a power to alter it by an Act expressed to be an Act to amend the Constitution and containing only provisions effecting the alteration thereof."* (emphasis added)

Article 20(6) of the 1960 Constitution also provided that Parliament's power ***"to make laws shall be under no limitation whatsoever."***

In the light of the above, the Supreme Court, under the 1957 and 1960 Constitutions could not question the laws made by parliament even when they were arbitrary laws, on grounds of parliamentary sovereignty. A classical example of the lack of limits to the lawmaking power of Parliament under this constitutional dispensation can be found in the infamous case of **Re: Akoto and 7 Others, [1961] GLR 523-535.**

In that case, Parliament had enacted the Preventive Detention Act, 1958 that allowed the President of Ghana to imprison, without trial, any person whose action the President

suspected to be a threat to the security of the state for up to five years. The constitutionality of the Act itself was challenged and the Supreme Court was urged to declare the Preventive Detention Act, 1958 as being unconstitutional and arbitrary. The courts declined the invitation and said that parliament was supreme and that the judiciary had no power to strike down an Act of parliament. The court through Korsah JSC said:

> **"Parliament can make any law it considers necessary." the effect of Article 20 of the Constitution is that Parliament is sovereign and its legislative powers are qualified only with respect to the entrenched Articles thereof".**

However, the 1969 Constitution established constitutional supremacy. Sovereignty was reposed in the people of Ghana and the Constitution was made the supreme law of Ghana. In Article 1(2) of the 1969 Constitution, the principle was enacted as follows;

> *"1(2) This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void and of no effect."*

By 1979, the shift to constitutional supremacy had been further entrenched in the jurisprudence of Ghana. Indeed, Article 1 of the 1979 Constitution of the Republic of Ghana was titled 'Supremacy of the Constitution'. Article 1(1) and (2) of the 1979 Constitution are reproduced below:

> *"Supremacy of the Constitution*
>
> *1(1) The sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare* ***the powers of government are to be exercised in the manner and within the limits laid down by this Constitution****. (emphasis added)*

1(2) The Constitution shall be the Supreme Law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void and of no effect."

Article 1(1) of the 1979 Constitution was reproduced in full in Article 1(1) of the 1992 Constitution confirming our preference as a country to live under constitutional supremacy and our departure from parliamentary sovereignty.

From the foregoing, it is clear that the framers of successive Constitutions of Ghana have consistently moved in one direction, away from parliamentary sovereignty towards constitutional supremacy, wherein sovereignty resides in the people of Ghana and no authority or no institution is above the law. The sole arbiter of the constitutionality or otherwise of acts, omissions and enactments, according to Article 2 of the 1992 Constitution, and going as far back as the 1969 Constitution, has been the Supreme Court. It is also the sole body vested with the mandate to interpret and enforce the Constitution.

In exercising its interpretative and enforcement mandate, the Court has power to adjudicate all and any allegations that any acts, omissions and enactments are inconsistent with and in contravention of the Constitution without the exceptions tendered to be suggested on grounds of the doctrine of political question. This Court has predominantly, on a preponderance of the authorities, long held the view that the political question doctrine does not apply within our jurisdiction. In the case of **NPP v. Attorney-General [1993-94] 2 GLR 35 (the 31st December case)**, this Court held at page 64 that "*In any case, by Articles 1 and 2 of the Constitution, 1992, that doctrine cannot have any application to us here in Ghana. With us, issues of constitutional interpretation are justiciable only by the Supreme Court, and not by any other court: see particularly, Article 130 of the Constitution, 1992… The conclusion is inescapable, that in this country we have no doctrine of "political question" such as exists in the United States."*

This was further eloquently espoused in **Martin Alamisi Amidu v. President Kuffour and the Attorney General(2001–2002) SCGLR 138,** where this Court speaking through the illustrious Acquah JSC (as he then was) in his usual florescent tone noted thus:

> *"…But where it is alleged before the Supreme Court that any organ of Government or an institution is acting in violation of a provision of the Constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy, like those of articles 33 and 99 for dealing with that particular violation.*
>
> *It follows therefore that no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged. Thus the doctrine of the political question found mainly in the US Constitutional jurisprudence by which the courts refuse to assume jurisdiction in certain disputes because the subject-matter of those disputes are alleged to be " textually committed" to that institution, is inapplicable in our constitutional law because of the power granted to any person in article 2 of our Constitution to challenge the constitutionality of any action or omission of an individual or institution. For under the 1992 Constitution if even the body in question is independent from any other authority, the Courts can still assume jurisdiction in disputes alleging that that institution is acting in violation of the Constitution."*

(also see contra dictum of Wiredu JSC in **Ghana Bar Association v. Attorney-General [1995-96] 1 GLR 598 @ 605-606**)

While it would have been inappropriate for the Court to answer the third issue if it turned purely on the ***procedural*** validity or propriety of the acts of the Speaker and the

First Deputy Speaker, we must however say that in contexts and circumstances such as those of the present case, even though Parliament is a master of its procedure, it cannot be overemphasized that all the House's rules, orders, procedures and practices also have a master, the 1992 Constitution of the Republic of Ghana. Specifically, the authority of Parliament to regulate its own procedure is expressly subject to provisions of the Constitution as provided in Article 110(1) of the Constitution in the following terms:

> *"**Subject to the provisions of this Constitution**, Parliament may, by standing orders, regulate its own procedure."* (emphasis added)

Consequently, parliamentary standing orders are subservient to the Constitution and in any case, no arm of Government or agency of the State, including Parliament, is a law unto itself because, without exception, everyone and everything in Ghana is subject to the Constitution. As a result, an allegation that Parliament has acted and/or is acting in a manner that is inconsistent with, in contravention of and/or *ultra vires* to the Constitution, will render Parliament, the actions, orders, rules or procedures in issue, amenable to the jurisdiction of this Court. As such, any provision in the orders, rules, procedures, or practices of Parliament that contradict, are inconsistent with, or purport to confer on Parliament, powers not vested by the Constitution, will sin against Articles 1(2), 2(1) of the Constitution which read as follows:

> *1(2) This Constitution shall be the supreme law of Ghana and **any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void**.*
>
> *2(1) Any 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 in contravention of, a provision of this Constitution may bring an action to the Supreme Court for a declaration to that effect.

In specific reference to Parliament itself, Article 93(2) of the Constitution provides that:

93(2) ***Subject to the provisions of this Constitution,*** *the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution.*

It is worthy of note that the words "subject to the provisions of this Constitution" which preface Article 93(2) are deliberately intended by the framers of the Constitution to subordinate, subject and/or limit Parliament's primary lawmaking function to the tenets of the Constitution. Therefore, neither Parliament as an institution, nor its members, officers, orders, practices, conventions or procedures can be said to be independent of and/or exempt from the limitations imposed by the Constitution.

An alleged infringement of any other provision of the Constitution by Parliament, will render Parliament amenable to the jurisdiction of this Court as in the instant case whereby the Plaintiff contends that Parliament has acted in breach of Articles 102 and 104 of the Constitution.

The issues agreed for trial are therefore clear-cut constitutional questions that invite the Court to interpret articles 102 and 104 of the 1992 Constitution respectively and we shall now proceed to address the same. In so doing, we are mindful of the fact that the 1992 Constitution is a document *suigeneris* and should be interpreted according to rules peculiar to its character and not necessarily according to ordinary rules of statutory interpretation.

Sowah JSC in ***Tuffuor v. Attorney-General [1980] GLR 637-667*** admonished as follows:

"The Constitution has its letter of the law. Equally, the Constitution has its spirit. It is the fountain-head for the authority which each of the three arms of government possesses and exercises. It is a source of strength. It is a source of power. The executive, the legislature and the judiciary are created by the Constitution. Their authority is derived from the Constitution. Their sustenance is derived from the Constitution. Its methods of alteration are specified. In our peculiar circumstances, these methods require the involvement of the whole body politic of Ghana. Its language, therefore, must be considered as if it were a living organism capable of growth and development. Indeed, it is a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach [p.648] to interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time. And so we must take cognisance of the age-old fundamental principle of constitutional construction which gives effect to the intent of the framers of this organic law. Every word has an effect. Every part must be given effect."

Similarly, in the case of **Kuenyehia v. Archer [1993-1994] GLR 525**, this Court held that:

"*A constitutional instrument is a document suigeneris to be interpreted according to principles suitable to its peculiar character and not necessarily according to the ordinary rules and presumptions of statutory interpretation. It appears that the overwhelming imperatives are the spirit and objectives of the Constitution itself, keeping an eye always on the aspirations of the future and not overlooking the receding footsteps of the past. It allows for a liberal and generous interpretation rather than a narrow legalistic one*."

See also; see dictum of Sowah CJ in **Republic v High Court, Accra, Ex parte Adjei in [1984-86] 2 GLR 511 at 518-519 SC; Francois JSC in New Patriotic Party Vrs Attorney-General [1993-1994] 2 GLR 35**; **Amegatcher JSC in the unreported case of Ayine vs. Attorney-General, writ no: J1/05/2018 (13 May, 2020); Acquah JSC (as he then was) in *JH Mensah v Attorney General* (1996-97) SCGLR 320 at 362 and Dr. Twum JSC and Prof. Date-Bah @ 234-235 and 242 respectively *Ampiah Ampofo v Commission on Human Rights and Administrative Justice* (2005-2006) SCGLR 227.**

The learning from this plethora of case law is that in discharging our obligation under Article 130 of the Constitution we must construe the Constitution as a whole, adopting a broad liberal approach instead of a strait-jacketed, mechanical approach that does not take into account and give effect to the collective aspirations of the Ghanaian people as solemnly expressed in the preamble to the Constitution to secure for ourselves and posterity, the blessings of liberty, equality of opportunity and prosperity, and affirming our commitment, among others, to freedom, justice, probity and accountability, the principle that all powers of government spring from the sovereign will of the people and the rule of law.

VII. Whether or not upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution, a Deputy Speaker of Parliament or any other member of Parliament presiding over Parliament in the absence of the Speaker, cannot be counted as part of the members present before a decision is made.

The first issue presented for judicial determination concerns quorum. There are two separate quorum provisions that govern the business of the House. The general quorum provision is found in Article 102 of the Constitution: "*A quorum in Parliament, apart from the person presiding, shall be one-third of all the members of Parliament*." In other words, for the House to commence and proceed with the ordinary business of the day, there must

be in attendance, at least one-third of all the Members of Parliament **apart from the person presiding.**

There is a second quorum provision, found in article 104(1). This provision applies specifically and exclusively to voting to determine a matter in Parliament. Article 104(1) provides as follows: "*Except as otherwise provided in this Constitution, matters in Parliament shall be determined by the votes of the majority of members present and voting,* ***with at least half of all the members of Parliament present.***" (Emphasis added).

The rationale for having two separate quorum provisions is simple. The business of Parliament is diverse. Parliament is, first and foremost, a deliberative Chamber, where Members meet to debate and discuss various matters of public moment. For that deliberative function, when Members are not yet called upon to vote to decide or determine a matter (e.g., approve a proposed contract or a bill) but merely to discuss or debate it, the Constitution, per Article 102, sets a lower quorum threshold, that is, one-third of the full membership of Parliament—not counting any member (Deputy Speaker) who may be presiding at the time. However, where Parliament must exercise its legislative power to decide or determine a matter before it, the Constitution sets a higher quorum threshold, requiring, in that instance, at least half of all the members of Parliament to be present before a vote can be taken.

In effect, the Framers of the Constitution placed voting in Parliament on a higher order of importance or magnitude than debating. Thus, while Parliament can commence business and proceed to debate a matter as long as at least one-third of its members are in attendance, it cannot proceed to take a decision on the matter (by vote) unless and until at least one-half of all members are present. The higher quorum threshold for voting, set at a minimum of half the membership of Parliament, is designed to ensure that decisions of the House, which carry legal or legislative consequences, are not taken unless at least half of the membership of Parliament is in attendance. It is designed, in

effect, to prevent a minority of the members of Parliament from proceeding to decide a matter with binding legal effect.

The more specific question presented by Plaintiff's Issue 1 is whether the Deputy Speaker, when presiding in the absence of the Speaker, is to be counted for the purpose of determining the "*voting quorum*" which is set at one-half of all the members of Parliament. This question appears to stem from the fact that, pursuant to Article 102, the general quorum of Parliament is determined without counting "*the person presiding*." But, as previously explained, this general quorum provision is not the provision that governs quorum for the purpose of voting in Parliament. That is dealt with under Article 104(1), which sets the voting quorum at one-half of the membership of Parliament. Thus, read together with Article 104(1), the quorum contemplated in Article 102 should be properly understood to mean the quorum for all other business of Parliament other than voting (i.e., the ***"non-voting quorum"***). As to that non-voting quorum, Article 102 makes it clear that a presiding Deputy Speaker, who is a member of Parliament and present, shall not be counted in determining the number. However, when it comes to determining the "*voting quorum*" under Article 104(1), no such restriction or limitation is placed on a presiding member or Deputy Speaker. The clear implication, consistent with the *expression uniusest exclusio alterius* rule, is that being one of the members present, a presiding Deputy Speaker is entitled to be counted in determining the quorum that is required for the House to proceed to vote on a matter. The non-inclusion of the phrase "apart from the person presiding" in article 104(1) must have been deliberate. To hold otherwise would amount to impugning the wisdom of the framers of the Constitution and supplanting their clear intent.

The exclusion of a presiding Deputy Speaker from the "*non-voting quorum*", on the one hand, and his or her inclusion in the "*voting quorum*", on the other hand, again underscores the fact that the different functions of Parliament are not regarded as being

on the same order of importance or magnitude. It also suggests, anticipating Plaintiff's second issue, that a presiding Deputy Speaker, even if, like the Speaker, he may not participate in debates on the floor of the House while in the Speaker's chair, is entitled to a vote on the matter. If he may not participate in debates while presiding, then he need not be counted for purposes of the debating quorum. However, if he is entitled to vote on a matter, as he is, then it makes sense to count him or her in determining the voting quorum. This point is raised more specifically by the second issue from the Memorandum of Agreed issues.

In view of the foregoing, we answer the Plaintiff in the negative and declare that a presiding Deputy Speaker is entitled to be counted for the purposes of forming quorum under Article 104(1).

VIII.Whether or not upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution a Deputy Speaker or any other member of Parliament presiding over Parliament in the absence of the Speaker, can vote or take part in the making of a decision by Parliament.

The 1992 Constitution makes provision for a Speakerand two Deputy Speakers in two distinct provisions the relevant parts of which are reproduced as follows:

> *THE SPEAKER*
>
> *95. (I) There shall be a Speaker of Parliament who shall be elected by the members of Parliament from among persons who are members of Parliament or who are qualified to be elected as members of Parliament.*
>
> *DEPUTY SPEAKERS*
>
> *96. (1) There shall be two Deputy Speakers of Parliament—*

(a) who shall be elected by the members of Parliament from among the members of Parliament; and

(b) both of whom shall not be members of the same political party.

The Speaker is elected by members of Parliament either from among members of Parliament or from persons qualified to be elected as members of Parliament. If elected from among the membership of Parliament, the member elected as Speaker must relinquish his or her membership of Parliament upon being so elected. These are the clear terms of Article 97(1)(b) which states that:

TENURE OF OFFICE OF MEMBERS

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

(b) if he is elected as Speaker of Parliament

In short, the Ghanaian Speaker cannot concurrently be a member of Parliament. However, unlike the Speaker, both the First and Second Deputy Speakers are ***required*** to be members of Parliament and must remain members of Parliament to hold office as Deputy Speakers.

From the clear language of the Constitution, certain important implications flow from this fundamental distinction between the Speaker and the Deputy Speakers. Notably, whilst Article 104(2) of the Constitution provides unequivocally that "*The Speaker shall have neither an original or casting vote*," no such outright voting disqualification is placed on a Deputy Speaker, whether or not he or she is presiding in the House in the absence of the Speaker. The only disqualification placed on the voting right of a member of Parliament is in Article 104(5) with regard to a member "*who is a party to or a partner in a firm which is a party to a contract with the Government.*" Not only is such a member

required to disclose or declare his or her interest, they are also expressly disqualified from voting on any question relating to the contract. In other words, as to a member of Parliament, only a contract-specific conflict of interest would suffice to deprive him or her of their right to vote on a matter before the House. Consequently, we are of the considered opinion that in all other instances or matters, other than those expressly excluded by Article 104(5), a member of Parliament is entitled to vote on a matter for decision in the House.

Further, we must emphasize that no voting disqualification attaches to the mere fact of presiding over the conduct of the business of the House. Significantly, the voting disqualification in Article 104(2) is specific to the Speaker and therefore does not apply generally to "*the person presiding*"—which is the formulation used in the Constitution when a provision is intended to apply to the Speaker as well as a Deputy Speaker presiding in the Speaker's absence as can be seen in Article 102 with regard to the provision on general quorum for commencement of business in the House.

In our view, the fact that the Speaker alone is disqualified from voting in all circumstances, while members of Parliament, which includes both Deputy Speakers, are disqualified from voting only on a contract where that member has a specific conflict of interest lends the necessary clarity to the following two propositions. Firstly, the Speaker is disqualified from voting not because he or she presides at sittings of Parliament, but because the Speaker is not a member of Parliament, voting being a right only for members of Parliament. Secondly, presiding at a sitting of Parliament is not intended by the framers of our Constitution to be a disqualifying conflict of interest and therefore, a presiding Deputy Speaker does not forfeit his or her right to vote merely by virtue of presiding in the absence of the Speaker.

Further, we are of the considered opinion that these voting disqualification rules highlight a crucial point. Members of Parliament sit in Parliament as elected

representatives of their respective constituencies. Parliament operates on the standard democratic principle of equal representation or "one member, one vote," with matters decided by majority vote. Therefore, to cause a member to forfeit their vote in Parliament merely on account of having to preside over the business of the House in the Speaker's absence would unfairly disenfranchise not only the presiding member but also their constituents. Such an interpretation would likely give rise to certain perverse outcomes and/or incentives. For example, it could lead to opportunistic absences by a Speaker or one or the other Deputy Speakers, as an absence would mean a vote loss by the presiding member and their party. In particular, as Article 96(1)(b) of the Constitution requires that the First and Second Deputy Speakers come from different political parties, an interpretation that deprives a presiding Deputy Speaker of their vote could give the rival party an unfair advantage in a sharply divided vote.

In view of the foregoing, we are compelled by the Constitution to hold that a Deputy Speaker or person presiding does not lose their right to vote when they are presiding over the proceedings of Parliament. It must be emphasised however that the procedural and or operational rules to practicalise the protection of this constitutional right in a member presiding in the absence of a Speaker and his or her duty to represent his or her constituents in the vote and decision are matters within the exclusive domain of parliament itself. Parliament may achieve this by amending its orders or adopting parliamentary practices to give effect to this constitutional imperative.

IX. A COMPARATIVE ANALYSIS

The position of the Ghanaian Constitution on the question of the right of a presiding officer of Parliament (Speaker or presiding member) to vote on a matter is in consonance with the law or practice in Commonwealth and Anglo-American

jurisdictions generally. Thus, in jurisdictions where, as is the case in Ghana, the Speaker (or presiding officer) is not a Member of the legislative body, the general practice is that the Speaker has no vote in matters before the House. For example, in Kenya, where the Speaker of the National Assembly is not a member of the assembly (but where Deputy Speakers are), the Kenyan constitution (2010) is categorical in its article 122(2)(a) that "the Speaker has no vote." Again, similar to the provision in the Ghanaian Constitution, the only other voting disqualification in Parliament, per article 122(3) of the Kenyan constitution, applies to a member who has a "pecuniary interest" in the matter to be voted upon. Therefore, unless disqualified by a pecuniary conflict of interest, a presiding Deputy Speaker in Kenya is entitled to vote in legislative matters.

In contrast, in jurisdictions such as the United Kingdom, the United States, Canada, and Australia, where the Speaker is also an elected member of the popularly elected legislative chamber, the Speaker has a right to vote.

It must be noted that this is not a universal rule. In Botswana, for example, "the person presiding in the National Assembly," whether the Speaker or Deputy Speaker (both of whom are members of the Assembly), has neither an original nor a casting vote. However, in contrast to the language of Article 104(2) of the 1992 Constitution of Ghana, which outrightly precludes, specifically, the Speaker from having a casting or original vote, the words of the Botswanan Constitution in its article 74(3) are more expansive and limits "the person presiding" from having either an original or a casting vote. While the Ghanaian Constitution distinguishes between "the Speaker" and "the person presiding", the Botswanan Constitution does not. It simply alludes to the person presiding, whether a Speaker or a Deputy Speaker.

However, in order to preserve the appearance of impartiality associated with the Speaker's role as a presiding officer, various conventions and practices have evolved in

these jurisdictions that limit the exercise of the Speaker's right to vote in legislative matters.

In the U.K., the Speaker of the House of Commons is a Member of Parliament. However, he is expected to be politically impartial and avoid taking a political stance. For this reason, the Speaker must resign from his party once elected to the office and, though maintaining his seat as a Member of Parliament, is not supposed to campaign in general elections—usually standing unopposed by the major political parties. Being a Member of Parliament, the Speaker of the House of Commons has a vote. However, the exercise of this right by the Speaker is governed by long-standing principle and convention aimed at maintaining the impartiality of the Speaker. Thus, the Speaker is expected to exercise only a casting vote (in the event of tie). See Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament (24th Edition) at page 420.

Like her counterpart in the British House of Commons, the Speaker of the United States House of Representatives is an elected member of the House. Unlike the Speaker in Westminster, however, the American Speaker is also leader of the majority party in the House. As a member of the House, the Speaker has the same rights, responsibilities, and privileges as all Members. However, as with the House of Commons, the exercise of these rights by the Speaker is bound by various conventions and precedents. Thus, while the Speaker has a right to vote on legislative matters, he or she is only expected to vote when his or her vote would be decisive (i.e., a casting vote) or when the House is voting by ballot.

The same practice obtains in Canada per section 49 of its Constitution Acts, 1867 to 1982, and Australia per section 40 of the Australian Constitution, both of which have Speakers who are also members of the legislative body. In Australia's case, the provision restricting the Speaker to a casting vote also applies to a member presiding over the House in the absence of the Speaker.

In short, in jurisdictions where the Speaker or a presiding member, by virtue of being a member of the legislature, is entitled to vote on a matter before the House, parliaments have evolved rules or conventions that regulate the exercise of that right, typically restricting it to situations when it is absolutely necessary (i.e., casting vote), so as to maintain at least the appearance of impartiality on the part of the Speaker or presiding member.

This Court is not unaware of the provisions of Article 295(2) of the Constitution which provide as follows:

> *"(2) In this Constitution and in any other law-*
>
> *(a) a reference to the holder of an office by the term designating his office, shall,* ***unless the context otherwise requires,*** *be construed as including a reference to a person for the time being lawfully acting in or performing the functions of that office;* (emphasis added)

However, we wish to note that the words "*unless the context otherwise requires*" used in 295(2) above are instructive. With regards to the positions of Speaker and Deputy Speaker, the two are distinguished and contradistinguished by the intra-constitutional context discussed above and found in Articles 95 and 96 in particular, but more generally in all of Chapter 10 of the Constitution.

X. Whether or not the decision taken on 30th November, 2021 by the Parliament of Ghana to approve the 2022 Budget was a nullity as 138 members, excluding the person presiding, were not present in Parliament before the decision was made.

By virtue of our reasoning and conclusions in respect of the two substantive issues concerning the quorum required for the House to (a) proceed with business and (b)

determine a matter by votes, it is both obvious and implicit that any order, rule, procedure or practice that has the net effect of overriding a presiding member's right to be counted in forming a quorum as well as to vote in a decision, is to that extent, now void and of no legal effect.

Consequently, no proceedings of Parliament can be invalidated by reason of the fact that a member presiding has exercised his or her constitutionally sanctioned right to be counted for quorum and to vote in a decision. Accordingly, the decision of the House on the 30th of November 2021, whereby it approved the 2022 Budget was in accordance with Articles 102 and 104 of the Constitution and for that matter, valid and unimpeachable. For the avoidance of doubt, order 109(3) of the Standing Orders of Parliament, which provides that *"A Deputy Speaker or any other member presiding shall not retain his original vote while presiding"*, is struck down as unconstitutional, null, void and of no legal effect.

XI. CONCLUSION

In conclusion, we wish to restate, in respect of the issues agreed for determination as follows:

1. That upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992, a Deputy Speaker of Parliament or any other member of Parliament presiding over Parliament is entitled to be counted as part of one-half of all members of Parliament present. That is to say that a presiding Deputy Speaker is entitled to be counted for the purposes of forming quorum under Article 104(1) of the Constitution 1992.

2. That upon a true and proper interpretation of Articles 102 and 104(1) of the Constitution 1992, a Deputy Speaker or any other member of Parliament presiding over Parliament, in the absence of the Speaker, can vote and take part in a decision by Parliament. That is to say that a Deputy Speaker or person presiding, other than the Speaker, does not lose their right to vote when they are presiding over the proceedings of Parliament.

   Accordingly, Order 109(3) of the Standing Orders of Parliament is struck down as unconstitutionalthe same being inconsistent with and in contravention of Article 102 and 104(1) of the Constitution 1992.

3. That the decision taken on 30th November, 2021 by Parliament of Ghana to approve the 2022 Budget was valid as 138 members, including the person presiding were present in Parliament when the decision was made.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

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