IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

PROF. KOTEY

OWUSU (MS.) JSC

LOVELACE-JOHNSON (MS.) JSC

KULENDI JSC

WRIT NO.

J1/08/2020

1ST NOVEMBER, 2022

ELORM KWAMI GORNI ..... PLAINTIFF

VS

1. **THE ATTORNEY-GENERAL**
2. **NATIONAL HOUSE OF CHIEFS ……. DEFENDANTS**

KULENDI JSC:-

The Plaintiff, a citizen of Ghana, commenced this action on the 19th day of November 2020, invoking the original jurisdiction of this Court under Articles 2(1) and 130(1)(a) of the 1992 Constitution of Ghana and Rule 45 of the Supreme Court Rules, 1996, C.I 24 and claiming the following reliefs:

a. An interpretation of the phrase "**active party politics**" as used in Article 276 (1) of the 1992 Constitution of Ghana.

b. A declaration that certain Chiefs who, during the electioneering campaign leading up to the 2020 General Elections, "endorsed" one or the other of the presidential candidate of the New Patriotic Party (NPP), Nana Addo Dankwa Akufo-Addo, and the presidential candidate of the National Democratic Congress (NDC), John Dramani Mahama, were, by virtue of such endorsement, involved in "active party politics," per the intent and purpose of Article 276(1) of the 1992 Constitution of Ghana.

c. That an endorsement by a Chief of any presidential and or parliamentary candidate prior to, during and after a presidential election amounts to a breach of Article 276 (1) of the 1992 Constitution of Ghana, and same amounts to an engagement in 'active party politics' as purposed and intended under Article 276 of the 1992 Constitution of Ghana.

d. Any other reliefs that this Honorable Court deems fit under the circumstances.

I. BACKGROUND

In the run-up to the 2020 General Elections, the electioneering mood in the country provided, as usual, a context and an opportunity for robust debates, commentaries, and expressions of diverse opinion of a political and partisan nature by various members of the general public. In this electioneering atmosphere, certain eminent Paramount Chiefs allegedly made statements, which according to the Plaintiff, amounted to endorsing one or the other of the presidential candidates of the two main rival political parties, namely the New Patriotic Party (NPP) and the National Democratic Party (NDC). The Plaintiff alleges, for instance, that while Osagyefo Amoatia Ofori Panin II, the Paramount Chief of the Akyem Abuakwa Traditional Area endorsed the presidential candidate of the NPP, President Nana Akufo-Addo, Nana Owusu Kontoh II, Omanhene of Mehame Traditional Area, endorsed the presidential candidate of the NDC, former President John Mahama. According to the Plaintiff, such endorsements of presidential candidates by chiefs are impermissible, as, in his view, they conflict with Article 276(1) of the 1992 Constitution.

On the basis of these alleged facts, the Plaintiff asserts the following as grounds for his action before this Court:

1. That, in the campaign for the election of the President of Ghana in 2020, certain eminent chiefs, such as Osagyefo Amoatia Ofori Panin II, the Paramount Chief of the Akyem Abuakwa Traditional Area, allegedly endorsed the presidential candidate of the NPP, President Akufo-Addo, while others like Nana Owusu Kontoh II, Omanhene of Mehame Traditional Area allegedly endorsed the former President John Mahama, presidential candidate of the NDC.

2. That the actions of the chiefs, in "endorsing" one or the other of the presidential candidates of the NPP and the NDC during the run-up to the 2020 General Elections run afoul of the 1992 Constitution.

3. That, Article 276(1) of the 1992 Constitution, as written, requires interpretation by this Court, as it is cryptic and ambiguous and, thus, might appear to provide a license or leeway for traditional rulers to dabble inappropriately in party politics.

II. ARGUMENT OF THE PARTIES

The Plaintiff begins his case on the premise that Article 276(1) of the Constitution is, in his words, cryptic, ambiguous and unclear and, thus, requires interpretation by this Court. This requirement to interpret stems, in the estimation of the Plaintiff, from the fact that without an authoritative pronouncement and clarity from this Court, the said Article 276(1) would appear, on its face, to leave traditional rulers free to dabble in party politics as long as their participation falls short of contesting for elective political office. Plaintiff picks quarrels with the conduct of certain chiefs in allegedly endorsing one or the other of the flag bearers of the two main rival political parties that contested the 2020 General Elections. In Plaintiff's view, the conduct of the eminent chiefs, in expressly announcing or indicating personal support and preference for one party candidate over the rival party candidate, amounts to participation in "active party politics" within the meaning of Article 276(1).

The Plaintiff urges that "*the Apex Court of the land should not sit unconcerned"* as the chiefs "*violate and continue to violate the ban*" against their participation in active party politics. He cites the case of **Luke Mensah of Sunyani v. Attorney-General 2003-2004 SCGLR 122,** wherein the Court stated that in fitting situations, this Court must resolve or determine disputes that are "*likely to endanger our infant democracy."*

It must be noted that even though the Plaintiff initially joined the National House of Chiefs (NHC) as a 2nd Defendant to this action, he subsequently applied to have the NHC struck out as a party because, for some reason, the NHC neglected, failed and or refused to file any process in response. Consequently, the Plaintiff applied to disjoin the NHC in order to allow this matter to progress to a hearing with the Attorney General as the only subsisting Defendant to the action.

On his part, the Defendant, responding to the Plaintiff's Statement of Case, impresses on this Court that the operative word in the phrase which the Plaintiff seeks interpretation of is the word "*active.*" In the view of the Defendant, the word "active" is clear, unambiguous and admits of no interpretation.

According to the Defendant, "active party politics" is not the same as mere or ordinary politics. The Defendant therefore submits that a chief's endorsement of a candidate for elective political office, without more, cannot be said to constitute engagement or participation in "active party politics." The Defendant contends that chiefs of the various traditional communities of Ghana, like every citizen and resident of Ghana, enjoy the Fundamental Human Rights and Freedoms guaranteed in Chapter Five of the Constitution. These include, notably, the rights to freedom of speech and expression, as well as the freedom of thought, conscience and belief, all of which guaranteed under **Article 21 of the Constitution.** The Defendant further argues that Chiefs are, in any event, not in a position to ensure that their "subjects" or communities vote in accordance with their personal endorsements. The Defendant believes that the Plaintiff is "*making a mountain out of an anthill.*"

In aid of these contentions, the Defendant relies on section 104 of the Interpretation Act, 2009 (Act 792) and submits that this statute enjoins that the Constitution be interpreted in a manner that promotes the rule of law and values of good governance, advances fundamental human rights and freedoms, permits the creative development of the provisions of the Constitution and the laws of Ghana as well as in a manner that avoids technicalities and recourse to niceties of form and language that defeat its spirit and purpose.

In the Defendant's view, upholding the Plaintiff's case and granting the reliefs sought will not advance the fundamental human rights and freedoms of chiefs as guaranteed by Chapter 5 of the Constitution. Further, the Defendant submits that even if the words of the constitutional provision are broad, the meaning of the words can be ascertained by paying attention to the context, scope, surrounding circumstances and true purpose. The Defendant further argues that, statements by chiefs endorsing one party candidate over the other are harmless and of no consequence because chiefs cannot compel their "subjects" or communities to act or vote in accordance with such endorsement.

The Defendant adds that the words "*active party politics*" have to be considered in the context of the entirety of Article 276(1), which further provides that "any chief wishing to [take part in active party politics] and seeking election to Parliament shall abdicate his stool or skin." The Defendant urges an inference that, considered in its proper context, it becomes apparent that the purpose of the provision is to prohibit chiefs from running for elective political office, specifically for Parliament. The Defendant says that this reading of article 276(1) accords with the elementary tenet of constitutional

interpretation, that words in a constitutional provision must be interpreted in context and not in isolation.

III. RELEVANT PROVISIONS

Article 2(1)(b) of the 1992 Constitution, upon which the Plaintiff's right to bring this suit is founded, states:

> *"(1) A person who alleges that -*
>
> *(a) ….*
>
> *(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"*

Article 130(1)(a), from which springs this Court's jurisdiction to entertain and adjudicate this suit, provides, in relevant part, that:

> *"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;"*

Article 276(1), upon which the Plaintiff grounds the substance of his case, provides as follows:

> *"A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin."*

Numerous decisions of this Court make clear that, when it comes to the interpretation of a provision of the Constitution, a purposive, expansive and contextualist approach to construction best serves our purposes.

In **Kuenyehia v. Archer [1993-1994] GLR 525**, this Court opined that:

"A constitutional instrument is a document sui generis to be interpreted according to principles suitable to its peculiar character and not necessarily according to the ordinary rules and presumptions of statutory interpretation. 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."

Similarly, in **Benneh v The Republic [1974] 2 GLR 47,** Apaloo JA (as he was then) stated that a narrow, strict interpretation of a constitutional provision may not reflect the policy reasons for the provision. In other words, using a narrow, strict textualist approach to the interpretation of the Constitution may defeat the policy purpose for which the framers enacted that provision.

We believe the view to be settled that, when presented with a constitutional text that invites interpretation by this Court, this Court ought to follow the 'modern purposive approach' to constitutional interpretation.

IV. ISSUES AND JURISDICTION

The Parties, jointly, identified and filed the following memorandum of issues for determination.

1. Whether or not the phrase "active party politics" as used in Article 276(1) of the 1992 Constitution of Ghana needs interpretation.

2. Whether or not certain Chiefs who, in the run-up to the 2020 General Elections, endorsed either the presidential candidate of the NPP, His Excellency Nana Addo Dankwa Akufo-Addo, or the presidential candidate of the NDC, His Excellency John Dramani Mahama, were, by so doing, involved in "active party politics," per the intent and purpose of Article 276 (1) of the 1992 Constitution of Ghana.

3. Whether or not an endorsement by a Chief of any Presidential and or Parliamentary Candidate prior to, during and after a General Election is a breach of Article 276(1) of the 1992 Constitution of Ghana.

Of the three issues raised above, we find that, the last issue raises a hypothetical question, as it does not relate to or allege any actual or specific facts, event or situation, past or present, that warrants the intervention of this Court at this time. Plaintiff's right to invoke the jurisdiction of this Court pursuant to Article 2(1) of the 1992 Constitution of Ghana is not without limitation. To bring an action in this Court on the authority of Article 2(1), the plaintiff must allege 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 the Constitution. The third of the issues presented before this Court does not allege "any act or omission of any person" or "an enactment or anything contained, or done under the authority of that or any other enactment" that is inconsistent with or in contravention of a provision of the 1992 Constitution. Rather, that last issue invites this Court to answer a purely academic or hypothetical question, a possibility that has not materialized or ripened into a concrete set of facts associated with a particular person or enactment. We decline that invitation,

as indeed we must. Both a plaintiff's right to bring a suit under Article 2(1) and this Court's jurisdiction or power to entertain such a suit are limited to actual cases about actual facts. This Court does not sit in judgment of merely academic or hypothetical questions. Accordingly, we shall address ourselves only as to the first two issues presented above.

The core claim of the Plaintiff is that Article 276(1) of this Constitution has been breached by the speech acts of certain prominent traditional rulers of this land. The allegedly unconstitutional acts consist of statements allegedly made by the said chiefs and, which, in the opinion of the Plaintiff, amounted, in each instance, to an endorsement of the presidential candidate of a particular political party contesting the 2020 presidential elections.

The provision at the center of this case, Article 276(1), states as follows:

> "A chief shall not take part in active party politics; and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin."

This dispute turns on the meaning and application to the facts at hand of the phrase "active party politics", as that phrase is used in Article 276(1). Both parties agree that, before this Court proceeds to examine and answer that question, we must determine whether the phrase "active party politics" meets the threshold for judicial interpretation established by this Court. In other words, does the phrase "active party politics," as used in Article 276(1), raise a question of interpretation that warrants the exercise by this Court of its original jurisdiction, pursuant to Article 130(1)(a) of the Constitution? Only if this threshold question is answered in the affirmative, that is to say, only if there is an

interpretation to be undertaken, shall this Court proceed to resolve the case before it. See Republic v Special Tribunal, Ex parte Akosah. [1980] GLR 592, at 605 per Anin JA; Adumoah Twum II vrs. Adu Twum II (2000) SCGLR 165 per Acquah JSC (as he then was); Kwabena Bomfeh v Attorney-General [2019-2020] 1 SCLRG 137 per Adinyira JSC at p151-152

In resolving a question of whether or not the threshold has been met to warrant the exercise of our original jurisdiction, this Court speaking in a judgement dated 12th June 2019 in Suit No J1/03/2018 entitled Benjamin Komla Kpodo & Another v. Attorney General, through Akuffo CJ opined that:

"Where the words of a provision are precise, clear and unambiguous, or have been previously interpreted by this court, its exclusive interpretative jurisdiction cannot be invoked or exercised. This is important for ensuring that the special jurisdiction is not needlessly invoked and misused in actions that, albeit dressed in the garb of a constitutional action, might be competently determined by any other court. Consequently, it has become our practice that in all actions to invoke our original jurisdiction, whether or not a Defendant takes objection to our jurisdiction, or even expressly agrees with the Plaintiff that our jurisdiction is properly invoked, we take a pause to determine the question of the competence of the invocation of our jurisdiction, before proceeding with the adjudication of the matter or otherwise". (emphasis supplied.)

Similarly, in Kwabena Bomfeh v Attorney-General supra, this court at p151-152 reasoned that:

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

In answer to the Plaintiff's' plaint in the instant case, the Defendant submits that the phrase "active party politics", as used in Article 276(1), raises no issue of interpretation for this Court. In essence, the Defendant contends that the expression "active party politics" is self-explanatory or admits of only a singular uncontroverted meaning. The Defendant's position is that "active party politics" means no more than participation in partisan politics by way of contesting for elective political office, specifically for election as a Member of Parliament—and we must presume, in light of Article 62(b), that this also extends to election to the office of President. In support of this position, the Defendant leans on the fact that, having stated at the outset that "A chief shall not take part in active party politics," the remainder of Article 276(1) adds the following: "and any chief wishing to do so and seeking election to Parliament shall abdicate his stool or skin." The

Defendant thus argues that, the prohibition against a chief partaking in "active party politics", read, as it must, in conjunction with the second half of Article 276(1), can only mean that a chief may not seek election to Parliament (or, for that matter, the office of President).

We note that, the phrase "active party politics" is not a term of art among jurists or, for that matter, among the class of chiefs or politicians. Moreover, the expression defined in Article 276, where it is used, or in any other portion of the Constitution, including Article 295(1). Furthermore, contrary to the Defendant's claim, "active party politics", even read in conjunction with and in the context of the rest of Article 276(1), cannot simply mean participation as a contestant in elective political office, specifically for election to Parliament or the office of President. In fact, the particular phrasing of the second half of Article 276(1)—"and any chief wishing to do so *and* seeking election to Parliament"—implies that a chief can engage in "active party politics" without seeking election to Parliament; the two actions, then, namely participation in "active party politics" and "seeking election to Parliament," are not synonymous, though the latter is subsumed within the former. In short, while seeking election to Parliament, does constitute participation in "active party politics" of an extreme kind, thereby warranting the exceptional sanction of abdication, it does not exhaust all the different ways, forms or avenues through which a chief might engage in active party politics.

The expression "active party politics" also means that, not every conceivable act or activity that falls within the category of "party politics" counts as "active party politics". By implication, there are a host or range of activities or forms of political engagement or participation which, though constituting "party politics" broadly speaking, do not constitute "active party politics". However, the exact contours or boundaries of what

constitutes "active party politics" and what falls outside the domain of "active party politics" cannot be determined *in abstracto.*

For the foregoing reasons, we are of the considered opinion that the phrase "active party politics," as used in Article 276(1), does raise and present an issue of interpretation sufficient to trigger the original jurisdiction of this Court pursuant to Article 130(1)(a) of the 1992 Constitution. Having so held, we must now proceed to determine whether the acts complained of by the Plaintiff and alleged to be the acts of certain chiefs constitute participation in "active party politics" in violation of Article 276(1).

V. ANALYSIS AND DETERMINATION OF THE ISSUES

The question that remains for this Court to determine is whether any of the specific acts complained of by the Plaintiff, which acts are in the form of statements or speech acts alleged to have been made by certain chiefs, amounts to participation or engagement in "active party politics" in violation of Article 276(1) of the 1992 Constitution. This question cannot be determined in the abstract. Proper determination of this question by this Court compels us to undertake an inquiry into the historical and political background to Article 276(1). Such an inquiry is necessary in this case to enable us both to assess the constitutionally appropriate role and place for chiefs in our contemporary partisan politics and to appreciate why the Framers of the 1992 Constitution felt it necessary to ban chiefs from participating in "active party politics."

A. History and Evolution of the Political Role and Place of Chiefs in Local and National Governance.

Though the law ought to serve the needs of the present and the living, we must begin our journey in this particular case with an inquiry into the past. It is through the past that we will understand the law as entailed in the joint values of the letter and spirit of the implicated constitutional provision pertaining to the institution of chieftaincy in this country. In this inquiry, it is our considered view that the judicial interpretative spectacle will provide a proper context to engage, map out and understand the salient constraining virtues on chiefs in active party politics in the Fourth Republic.

Chieftaincy is this country's oldest, most enduring, and singularly homegrown political institution. Chiefs are quintessentially political actors and have always played a political role and exercised a political voice in the governance space. We shall therefore engage the exercise of our interpretive jurisdiction in this case, using a broad, contextual and purposive approach that permits a creative and progressive approach to broadening and deepening of fundamental human rights, freedoms and responsibilities while entrenching citizenship and democratic participation and ultimately upholding not just the letter, but the spirit of the Constitution.

Pre-Colonial Period

Chiefs and the institution of chieftaincy predate colonialism. The institution of chieftaincy is a pride of our cultural heritage. It is a mark of our political and cultural identity as a people and as such an epitome of our traditional political governance. It is not doubtful, at least, from the point of view of basic history and socio-cultural studies that there was a scheme of an organized political leadership in the territories, now referred to as Ghana before the arrival of the Europeans in the 19th century. That is, there was a political system

through which political leadership was provided to the various ethnic groups that constitute Ghana today. This political system was footed on the institution of chieftaincy. It was, as it is the case today, anchored on the customs and traditions of the people. The proper context to ground its existence, powers and operationalization is embedded in the customs and usages of the people.

It was through this institution that chiefs led their people in various ways. Like the modern central government, chiefs had administrative, political, judicial economic, military, and religious functions. They were the focal point of true leadership in the customary state. The checks at custom were only to ensure that these functions were performed. Though there were no written constitutions as we have them today, the traditional political governance was not without the elements of basic laws and constitutionalism. Across all ethnic groups, our customs, traditions, values and usages provided directly implied and popularly acknowledged limits to traditional power.

Viewed in that light, the institution of chieftaincy is not a borrowed one and its purity is in its contextual customary uniqueness. That is, we should note that as a multicultural society with a remarkable sense of cultural pluralism, the institution of chieftaincy, understandably, commanded a varied and complex outlook. The procedures and substantive rules applicable to this institution very much depended upon the peculiar customary traits of a particular ethnic group. Uniformity was not and could not be contemplated though we should be modest enough to acknowledge without necessarily highlighting that there may be some similarities. Whichever way one looks at it, we cannot escape the import of the view that we were all then and now bounded by the fate and inclinations provided by the varied rules of the institution of chieftaincy.

As the institution of chieftaincy has met with new or different rivals for power in the political and constitutional space, the scope and character of the chief's political role have understandably undergone adjustment and transformation, in response to politico-constitutional realities. The imposition and evolution of colonial rule, the emergence and dynamics of party politics in the transition to independence, and the turbulent politics of the post-colonial period, including during the Nkrumah era and the successive military regimes and republican constitutional transitions through to the installation of the Fourth Republic, all have impacted the chieftaincy institution and inform, to varying degrees, the chief's role within the current politico-constitutional dispensation. Thus, the various provisions of the 1992 Constitution pertaining to chieftaincy and chiefs, including the entire Chapter Twenty-Twenty, of which Article 276(1) is but a small part, should be seen as capturing in constitutional form the contemporary national political settlement about chiefs and politics in Ghana.

In the precolonial era, the prototypical chief, in much of the territory that is now Ghana, was, like his peers in monarchies of the era elsewhere, "monarch of all that he surveyed," although his powers were exercised with due regard to customary-constitutional strictures and injunctions designed to safeguard against despotism. Functionally, the precolonial chief was, at one and the same time, the "head of state" and "head of government" of the territory over which he ruled. Governing with the assistance of a council or cabinet of functionaries and advisors, the chief's office was a composite one, combining the roles of chief executive, chief legislator, chief judge and in some cases chief priest.

The Colonial Experience

Starting in July 1874, the formal imposition of British colonial authority over territories in the Gold Coast previously held and ruled by chiefs led to a loss of sovereign power by indigenous kingdoms and the related subordination of chiefly power and institution to the dictates of the colonial project and government. The Native Jurisdiction Ordinance No. 5 of 1883 sought to "regulate the exercise in the Protected Territories of certain powers and jurisdiction by Native Authorities." Henceforth, a chief's authority and tenure depended ultimately on the pleasure of the colonial Governor, as the Governor reserved to himself the power to restrict or withdraw a chief's jurisdiction, suspend a chief for a stated period, or dismiss (remove) the chief. Thus, Gold Coast chiefs, together with the councils with which they governed, began to lose various aspects or attributes of their legislative, executive, and judicial powers and functions, as the colonial state established institutions to either take over, restrict, or oversee the chiefs' exercise of these powers and functions.

Despite their loss of absolute sovereignty and the various limitations and constraints placed on their legislative, judicial, and executive powers by the colonial state, Gold Coast chiefs remained, at all times during the colonial period, significant political actors and players, both formally and informally. The introduction of the policy of Indirect Rule with the arrival in the Gold Coast of Governor Matthew Nathan in 1900 led to the formal incorporation of chiefs and their traditional authorities into colonial local administration. In time, as both Asante and the Northern Territories were incorporated into an expanded Gold Coast colonial state, it became official colonial policy to strengthen the hands of chiefs in the system of local administration. The colonial government had come to the realization that "supporting and emphasizing the position of the paramount chief" was "the only practicable system of administering this country."

A more significant innovation of colonial rule, one that has had an enduring impact on Ghanaian chieftaincy and constitutional systems to this day, was at the regional and inter-

regional or national levels, where, beginning with the 1925 (Guggisberg) Constitution, traditional authorities were organized by region or province into Provincial Councils and, then, into the Joint Provincial Council. The relevant provisions stated as follows:

> ***XVI****.-(1) There shall be established in each Province of the Colony a Council which shall be called "The Provincial Council" and which shall consist of the* ***Head Chiefs*** *whose headquarters are situated within the Province.*
>
> ***XVII****. Every Provincial Council shall be charged with the duty of electing from among its members in accordance with the provisions of this Order a representative or representatives of the Provincial Council to serve as a Member or Provincial Members of the Council; and the Provincial Councils may also discharge such other functions as may from time to time be assigned to them by Ordinance.*

Again, the Burns Constitution of 1946 continued the principle that chiefs are political actors and must be given such platforms so to act. The chiefs in that period of our political life were represented in the Legislative Council. Not only were the Provincial Councils as established under Guggisberg Constitution, maintained but for the first time, a Joint Provincial Council was established. This was made up of Paramount Chiefs of the Colony and a member each from the Native Authority for every area within the Colony not at the level of a State. It is helpful to capture what the 1946 Constitution stated:

> **22.** *(1) Of the nine Provincial Members of the Legislative Council, five shall be elected to represent the Eastern Province and four to represent the Western Province.*

(2) Subject to the provisions of this Order, the Provincial Members shall be elected by the Joint Provincial Council (constituted as provided in section 23 of this Order) in accordance with provision made under section 45 of this Order.

***23**. (1) For the purposes of this Part of this Order, the Joint Provincial Council shall consist of:-*

(a) The Paramount Chiefs of the Colony (or their accredited representatives as provided for in this section) but excluding any Paramount Chief who has not been, or who has ceased to be, recognized by the Governor as a Native Authority or as a Member of a Native Authority, or as a Paramount Chief in accordance with section 26 of this Order:

(b) one Member of the Native Authority for every area within the Colony which does not include a State, or part of a State, such Member having been chosen by such Native Authority as their representative on the Joint Provincial Council:

By virtue of chiefs being members of the Legislative Council as underscored above, section 34 of the Order in Council in respect of which Burns Constitution was enacted made it possible for chiefs to introduce any Bill or motion for a debate in the Council. It stated as follows:

***34.** Subject to the provisions of this Order and of the Standing Rules and Orders of the Legislative Council, **any Member** may introduce any Bill or propose any*

motion for debate in, or may present any petition to, the Council, and the same shall be debated and deposed of according to the Standing Rules and Orders.

We should thus observe that under both Guggisberg and Burns Constitutions of 1925 and 1946 respectively, chiefs were not only political actors but also were received and accepted as political authorities. Regardless of the intrusion into the hitherto thick political muscles of chiefs before the advent of colonialism, these pieces of colonial legislation did not provide any absolute bar to chiefs' political expression. In effect, chiefs were an integral part of law making and indeed empowered, barring any disabling forces at the entrails of general politics, to engage in a sense of active political life within the colonial regime. We see the basis of this observation in the establishment and operations of the Legislative Council, Provincial Councils and the Joint Provincial Council, which in themselves were political institutions. Their rules and procedures of operations were governed by politics.

With this colonial background, it is of interest to note that the post- independent period witnessed a similar track. For instance, the 1957 Constitution guaranteed the office of chiefs and the House of Chiefs Act, 1958, (Act 20) which was passed thereon established various Houses of Chiefs. Again, the 1969 Constitution replicated the moods of Burns Constitution of 1946 by establishing a Regional House of Chiefs as well as a National House of Chiefs. These institutions so created were continued in existence by both the 1979 and 1992 Constitutions. So we may depend on the lessons of the past in understanding the present constitutional structures and institutions. For instance, the historical context for the present Traditional Councils, Regional House of Chiefs and National House of Chiefs may be understood by recourse to the institutional mores of the Provincial Councils and Joint Provincial Councils provided in Guggisberg and Burns Constitutions.

That being the case, it is not correct to say that the past in substance is the same as the present. There are differences. But we can count on the similarities and the differences. For instance, the differences will help us articulate the point of departure. This departure is reasonably necessary in order to establish the uniqueness of the present and appreciate the demands of the constitutional provisions under scrutiny. Therefore, this survey of the past may be of essence in understanding chiefs and politics in the colonial context, but a modest balanced view must be expressed that the colonial regime did not operate through the structures of political parties. Chiefs neither participated in politics nor politically expressed themselves through political parties. This view is limited to the reduced context of the Legislative Council and the Provincial and Joint Provincial Councils.

To be more precise, the Legislative Council and the Provincial Councils were not operated by registered political parties. It was not a legal requirement to belong to a registered political party in order to satisfy the rules of qualification and eligibility to be elected into such bodies. Individual membership was not by virtue of a person belonging to or professing the ideologies of a registered political party. In the case of the chiefs and their participation, one only needed to be a "Head Chief", as under Guggisberg Constitution, or a "Paramount Chief", as under Burns Constitution. In fact, the centrality of chiefs' participation in politics was made more conspicuous and profound in Burns Constitution when they were allowed or empowered as members of the legislative council to introduce a Bill or motion for consideration. The height of politics is manifested not only in the mechanics of drafting a Bill but also the consideration of such a Bill into law. So a person who is vested with a legal right to introduce a Bill for consideration underscores such a person's right to a political expression in a significant way.

But just by way of an illustrative conjecture, it is entirely possible that this right could not have been effectively enforced. It is also entirely possible that this right of political expression was never fulfilled within the political structures of the colonial regime. Nevertheless these claims, it is our candid view, do not necessarily take away the fact that such a right as a matter of law did exist under colonial regime. After all, the formal characteristics of a law or institution do not necessarily represent the actual outplay of the practical value of that law or institution. Such a claim, if we should insist on it, might require a much deeper engagement or analysis and our instant contestation does not require such analysis. It suffices for our current purpose to merely acknowledge that colonialism, which in essence is an imposed force and will on our people, did not completely by law gag up the chiefs from engaging in politics or political expression.

So we do not need personal convictions to understand the roots of chiefs' right to engage in any form of political expression. The objectivity of our claims can be supported by history or the lessons therefrom. This is because the claims of legal rights, such as political speech or participation, are matters of law. This is beyond the private sphere or personal inclinations, though it may be possible for such private inclinations to be consistent with the internal demands of the law.

The 1950 -56 Constitutional Experience

Between the period of 1950 and 1956, the country experienced two set of constitutions. The first usually referred to as the Couseey Constitution was the result of demands of the intelligentsia and the dissatisfaction arising from Burns Constitution of 1946. The fact of the matter is that the institution of chieftaincy continued with a similar fate as was the case under the Burns Constitution. Nonetheless the native authorities came to be re-

designated as Local Authorities. State Councils were established and charged with the responsibilities to settle native customary constitutional disputes.

This was reflected in the Local Government Ordinance, No. 29 of 1951 which in essence repealed the Native Authority Ordinance of 1944. The only point to note is that the membership of the State Councils at this time included non-traditional members. The second constitution in this period was the Nkrumah Constitution of 1954. It came as a replacement of the Coussey Constitution, which was greeted with dissatisfaction and engendered a desire for constitutional reforms. Like the previous constitutions, the 1954 Constitution did not give any desired promise to the institution of chieftaincy except the hitherto positions in State Councils and local authorities.

It is reasonable to surmise that under both the Coussey and Nkrumah Constitutions, there was no room for a complete ban of chiefs participation in politics. The chiefs through the State Councils or local authorities were able to have some modicum of political expression. The role might be taken as structurally limited but such a position could not be viewed as a complete "no space" for the chiefs in politics or general matters of governance. Through these bodies, which were essentially the precursors to the current Regional and National Houses of Chiefs, chiefs secured formal collective institutional representation and voice as a special interest group beyond their local domains. From these bodies too, chiefs were selected to serve on the colonial Legislative Council.

Post-Colonial Experience

Chiefs and chieftaincy in general, however, began to suffer a downturn in their fortunes as the colonial project drew to a close in the post-Second World War period and, especially, as rival political parties emerged from within the Gold Coast nationalist class that took ideologically divergent positions on the role of chiefs in the newly emerging political space. Indirect rule, by coopting chiefs and strengthening their hands in the service of the colonial project, alienated chiefs from both the local masses (comprising mostly youth and commoners) and the generality of the intelligentsia who viewed the chiefs with suspicion and distrust, perceiving them as agents and collaborators of a colonial power. At the same time, by enhancing the power of chiefs and, thus, the spoils associated with the office, indirect rule stimulated and intensified competition for traditional office, leading to a sharp growth in the number of destoolments and chiefly succession disputes in the Gold Coast particularly during the 1930s and 1940s. The fact that chiefs deemed themselves the "natural rulers" of the land and laid claim, on that account, to being the logical inheritors of the colonial state at some future time further drove a wedge between them and elements within the educated classes who believed themselves better qualified for the role. Thus, as the Watson Commission would later observe, by the time of the 1948 Riots, "the star of rule through the chiefs was on the wane." (*Report of the Commission of Inquiry into Disturbances in the Gold Coast*, 7).

The birth of the Convention People's Party (CPP) in 1949 forced a closing of ranks between chiefs and the intelligentsia but also put chiefs and chieftaincy under severe and unrelenting pressure. The CPP drew its support from the "commoner" classes and the youth, social groups that resented their exclusion from the chief-based Native Authority system and deemed it oppressive. The lawyer-dominated United Gold Coast Convention (UGCC), from which the CPP had broken away, was quickly eclipsed by the new party led by Kwame Nkrumah. Beginning with its victory in the first party-based elections to the Legislative Assembly in 1951, the CPP remained the unassailable political force in the

country for the remainder of the colonial period, leading the country to Independence in 1957 and keeping power firmly in its hands until its overthrow by *coup d'etat* in February 1966.

Chiefs and the institution of chieftaincy were, by far, the biggest losers in the new political landscape brought about by the rise of rival political parties and the ascension to power of the CPP. Even before it won its first elections, the CPP had served notice of its intentions in relation to chiefs. In October 1969, a pseudonymous columnist in the CPP's *Accra Evening News* described chiefs as "our imperialists" who "have oppressed and suppressed us for a century . . ." (Richard Rathbone (2000), *Nkrumah and the Chiefs: The Politics of Chieftaincy in Ghana*, 1951-66, p. 101). On the eve of CPP's declaration of a campaign of Positive Action in January 1950, the party's paper, drawing a distinction between "those of our chiefs who were with us" and "those in league with the imperialists who obstruct our path," threatened that the latter would "one day run away and leave their stools." (Quoted in Rathbone, p. 23). From the time it assumed the reins of government in 1951, the CPP systematically pursued and implemented policies and reforms, both legislative and constitutional, that had the purpose and effect of whittling down the formal role and power of chiefs in both local and national affairs.

The process of phasing chiefs out of local government began with the passage of the Local Government Ordinance (No. 29 of 1951). Under the reformed local government set-up, all local government functions and general administration hitherto performed by chiefs under the Native Authority system were transferred to new local government councils. To carry out these responsibilities, the new councils were given powers to make and enforce by-laws. The State Councils (Colony and Southern Togoland) Ordinance (No. 8 of 1952) subsequently expressly limited the traditional authorities' residual judicial function to settling customary law disputes. The new local government council consisted of a two-thirds elected membership, elected directly by inhabitants of the area by

universal adult suffrage, with the remaining one-third comprising traditional members appointed by the traditional authorities. The president of the council was the chief of the area, but he was only a figurehead with no voting right. The operating head—the chairman of the council—was elected by the members of the council themselves. The 1951 ordinance effectively abolished the Native Authority system.

Another major reform made in the 1951 Ordinance concerned the administration of stool lands and related revenues. While ownership of stool land remained with the stool as custodians for the community, any disposition of stool land now required the consent of the local government council. Furthermore, all revenue from stool lands were to be paid to the council which, in turn, would pay them into a special fund in the custody of the central government's Accountant-General, with the revenues to be divided between the council and the traditional authorities in accordance with an agreement between the parties, or, in default of such agreement, in proportions determined by the Minister of Local Government. Later, under the 1954 (Nkrumah) Constitution, chiefs could no longer secure representation in the Legislative Council through the territorial councils, although they remained free to contest elections in their individual capacities.

Independence did not reverse the pattern of marginalization of chieftaincy that had been established in the years following the rise to power of the CPP. If anything, chiefs and chieftaincy endured a further narrowing of their political space. The Akim Abuakwa (Stool Revenue) Act, No. 8 of 1958, and the Ashanti Stool Lands Act of 1958 (Act 28), struck at the economic base of the power of two traditional authorities considered hotbeds of resistance and opposition to Nkrumah and the CPP, by vesting firm control of their stool lands and associated revenues in the central Government. The Chiefs (Recognition) Act of 1959 (Act 11) provided that no enstoolment or destoolment of a chief after December 18, 1959 would have effect unless recognized by an Order of the Governor-General (effectively, by the Prime Minister). Extensive though the powers

conferred by the Chiefs (Recognition) Act on the Government were, they still limited the Government to the function of approving or refusing to approve actions in relation to the status of a person as chief that had been initiated by traditional processes. The Government still could not, on its own accord initiate an enstoolment or a destoolment. This gap was, however, closed, at least as to destoolment, by the Chieftaincy Act of 1961. This Act defined a chief as "an individual who—(a) has been nominated, elected and installed as a Chief in accordance with customary law and (b) is recognized as a Chief by the Minister for Local Government." The Minister was authorized to withdraw recognition from a chief who had been destooled, or when "the Minister considers it to be in the public interest to withdraw recognition." Upon withdrawal of recognition, the Minister "if he considers it to be expedient in the public interest" may require a former chief to live outside a specified area or prohibit other persons from treating him as a chief. In the month of September, 1959 alone, the CPP Government "recognized" the enstoolment of 84 and the destoolment of 32 chiefs. By this time, virtually all the paramount chiefs in the country were CPP sympathizers or had pledged their loyalty to the "government of the day".

The overthrow of Nkrumah in 1966 led to a turnaround. The newly established National Liberation Council (NLC), which drew support largely from Nkrumah's opposition, proscribed the CPP. With NLC Decree 112, the first attempt was made to remove all those chiefs who had come to power only on account of the CPP. Over 100 chiefs were destooled. Sub-chiefs who had been made paramount chiefs by the CPP were downgraded. The power of Government to withdraw recognition from a chief was not abolished by the NLC or by the Busia Government after it. Nonetheless, with the passage of the Chieftaincy Act of 1971, which introduced the National House of Chiefs, government intervention in chieftaincy matters was significantly reduced. Chiefs, however, continued to have no direct access to stool revenues.

The significant reform in this area introduced by the 1979 Constitution was to remove from the control of the Government the power to determine or recognize who became a chief. This power was now left to the chieftaincy institutions. With the overthrow of the Third Republic on December 31, 1981, the Provisional National Defence Council (PNDC) proceeded to return chiefs and the chieftaincy institution to the regime of uncertainty and instability of the past. PNDCL 107 amended section 48 of the Chieftaincy Act of 1971 by stating, in subsection 2, that "no person shall be deemed to be a chief . . . unless he has been recognized as such for the existence of that function by the Secretary responsible for Chieftaincy Matters by notice published in the Local Government Bulletion."

The 1992 Constitution

In terms of the protection and independence of the institution of chieftaincy, the Constitution of the Fourth Republic is arguably the most progressive yet in the history of the country. The 1992 Constitution, following a precedent first established under the 1969 Constitution and repeated in the 1979 Constitution, establishes a National House of Chiefs and various Regional Houses of Chiefs, with well-delineated advisory and adjudicatory roles and functions, including vesting in the National House of Chiefs appellate jurisdiction in any cause or matter affecting chieftaincy which has been determined by a Regional House of Chiefs, subject to further final appeal to the Supreme Court. See Chapter 22 of the 1992 Constitution. Under Article 106(3) of the Constitution, no bill affecting the institution of chieftaincy may be introduced in Parliament without prior reference to the National House of Chiefs, which body is also charged with responsibility for reviewing and updating outmoded customary practices. The 1992 Constitution restores the position under the 1979 Constitution by denying Government the power to recognize or withdraw recognition from a chief. Under the current dispensation, Parliament is without power to enact any law that would confer on any

person or authority the right to accord recognition to or withdraw recognition from a chief. Traditional councils and the Regional and National Houses of Chiefs are placed in charge of establishing and administering a procedure for registering chiefs and publishing Gazette notifications about any changes in the status of persons as chiefs.

The 1992 Constitution introduces two new provisions not found in any of the previous constitutions. First, Article 275 disqualifies a person from being a chief if he has been convicted of certain offences, including fraud, dishonesty, moral turpitude, and an offence involving the security of the State. The second is at the heart of this dispute, Article 276(1), which prohibits chiefs from taking part in active party politics. Clause (2) of Article 276 clarifies that, notwithstanding section (1), a chief may be appointed to any public office if he is otherwise qualified for that office.

The 1992 Constitution also specifically makes provision for the appointment of the President of the National House of Chief to the Council of State, a representative of the National House of Chiefs to the Judicial Council, the Prisons Council, and the Lands Commission, and a representative of the Regional House of Chiefs to the relevant Regional Coordinating Council and Regional Lands Commission.

B. Participation of Chiefs in Party Politics

An immediate consequence of the rise of political parties in Ghana was that it drew draw chiefs and chieftaincy into the partisan political fray. As the respected Ghanaian anthropologist, Professor Maxwell Owusu, has noted:

"The emergence of political parties . . . forced the chief and his elders to **take sides** in the political sphere—the chief supporting this and a few of his elders supporting that party—

and even to be involved in the secular and 'dirty game' of party politics **instead of acting, as in the past, as a neutral source of social integration and local political unity**."

(Maxwell Owusu (1970), *Uses and Abuses of Political Power: A Case Study of Continuity and Change in the Politics of* Ghana. Chicago, p. 190) (Emphasis added).

Drawing on his case study of politics in Agona Swedru, Professor Owusu notes:

"It is true that the Swedruhene was never a card-carrying member of any of the political parties, yet it was clear from his actions that his sympathy was on the side of the forces and factions that were opposed to the CPP. In the 1951 general elections, he emerged as the principal nominator of Dr. Kuta-Dankwa, the Agona candidate who lost a straight contest to Bensah, an Ewe and the CPP official candidate; also, when the NLM was inaugurated in Swedru in 1955, it was in his palace (ahenfie) that the ceremony was performed. The local branch of the NLM was blessed with chiefly legitimacy. The chief consequently lost much of what respect and influence he had enjoyed among many of the migrant, and many local Agona, youth." (Ibid., p 200)

This was not an isolated case. Instances of chiefs lending their open support to one candidate or party against their rivals were fairly common across the country during this period. In fact, not only did chiefs "take sides" in party politics, at least three Paramount Chiefs stood for election against party candidates in the 1951 general elections: Nana Sir Tsibu Darku of Assin Atandasu, Nana Akompi Firim III of Kadjebi, and Nana Agyeman Badu of Dormaa. In each of these instances, the CPP protested the candidature of the chief as resulting in intimidation of their candidate and supporters. In the case of Sir Tsibu Darku, an open letter to the colonial Government queried whether the influential paramount chief was standing "as a chief or as a man". All three chief-candidates were defeated by their CPP rivals.

By all accounts, chiefs' "taking sides" in partisan politics—even being perceived to have done so—has been damaging to the prestige and fortunes of the chieftaincy institution as well as the particular chiefs. Although CPP's targeted marginalization of chiefs and chieftaincy during its long tenure had ideological and historical roots predating the advent of party politics at the national level, the fact or suspicion that a certain chief belonged to or had made common cause with the ruling party's rivals has often been seized upon as an excuse or a justification to meddle directly in local chieftaincy affairs, fueling chiefly contestation and succession disputes. Instructively, the first year of CPP rule saw a spike in incidents of destoolment. The CPP destooled chiefs who did not support their party. In turn, some chiefs who supported the CPP were subjected to undue hostility and destoolment by their people. This pattern of partisan meddling, both on the part of government and on the part of chiefs, has persisted to the detriment of the institution of chieftaincy and to local peace and development. Partisan meddling is widely believed to be at the root or persistence of the many protracted chieftaincy succession disputes and ensuing conflicts that have plagued and divided communities across the country.

As early as 1953, chiefs themselves had become concerned about the deleterious impact of partisan politics on their institution and role. Thus, the Joint Provincial Council in a Memorandum on Constitutional Reform stated: "In pursuance of our appreciation of the position we have resolved that, in order to maintain the dignity of chieftaincy and let the new constitutional machinery work unhampered, chiefs have no place in party politics." (Memorandum of the Joint Provincial Council on Constitutional Reform, Dodowa, 1953, quoted in David Apter, Ghana in Transition; New York, 1963, p. 197).

The question of the participation of chiefs in party politics also came before the Van Lare Commission on Enquiry into Representational and Electoral Reforms (1953). As there were no longer "territorial members" from the regional councils of chiefs in the

Legislative Assembly, and no second chamber, the question arose as to whether or why chiefs should not have a right to stand for election to represent a constituency. The debate was not over the wisdom or morality of such a vote; it was over whether chiefly candidature for elective political office ought to be made illegal. The commission could not come to an agreement or consensus on this matter. In the end, it recommended that matters be left as they stood—i.e., no legal bar against a chief standing as a candidate in a direct election. The commission took this position partly because the issue appeared largely theoretical, as no paramount chief stood for election again after the 1951 experience. However, chiefs continued to take sides in party politics in other ways, including by openly campaigning for particular candidates. (Dennis Austin, Politics in Ghana 1946-1960. Oxford, 1964, p. 106-07).

Since it was last considered and left unresolved by the Van Lare Commission (1953), the question of banning chiefs from participating in party politics does not appear to have arisen again or engaged the attention of government or another commission of enquiry or a constitution-making body until it emerged during the deliberations of the Consultative Assembly ("CA") in connection with the crafting of the constitution of the Fourth Republic. As far as the record shows, no such proposal was considered by the Committee of Experts whose report and recommendations formed the basis of the work of the CA. The provision that eventually became Article 276(1) of the 1992 Constitution emanated as a proposal from a member of the Consultative Assembly. The ensuing debate on the floor of the CA, considered in the light of the foregoing historical background and the entirety of Chapter Twenty-Two of the Constitution, provides useful guidance and insight on what the Framers of Article 276(1) intended to accomplish or what mischief they wished to cure with that novel provision. We turn to that next.

C. Origin and Debate on the Meaning of Article 276(1)

The records of the proceedings of the CA show that Article 276(1) originated as a simple idea put forth by a member of the Assembly: "Chiefs, as a rule, must be banned from active party politics." (Proceedings of the Consultative Assembly, No. 12, col. 383). The idea gained support from a second member of the Assembly who offered somewhat more specific language: "All paramount chiefs shall not take part in active party politics; and those wishing to do seek election to Parliament should abdicate their tools or skins." The proponent of this text offered this justification for his proposal:

"[The omanhene] is the unifying force of the people in the traditional area. He occupies the great ancestral stool in the name of the people. He vowed to the people to lead them in whole in time of peace and in time of crisis, and this presupposes his positive neutrality in the affairs of the area . . . He should not take active part in party politics. What do I mean? The omanhene cannot be a founding member of any political party. He cannot put on political jerseys and caps, jumping from one van to another propagating one side of a story of a political party."

(Ibid.)

He continued:

"What we need in the Fourth Republic is a positive, neutral, dynamic chief who would bring all his people to the path of development and peaceful co-existence. . . . We need the neutrality of our paramount chiefs, who should stand and tower above all divisiveness."

In reaction to a member-Paramount Chief who objected to restricting the proposed prohibition only to "paramount chiefs," the proposal's proponent amended the proposal to apply to all chiefs.

Pressed on the meaning and scope of the proposal (as amended), the proponent clarified that, by "active party politics" he meant more than standing for election or seeking election to Parliament. He explained that, while seeking election to Parliament would require the chief to abdicate his stool or skin, other acts or behavior that fell short of standing for election and, thus, did not warrant abdication could also constitute taking part in active party politics. He gave as examples of such acts, campaigning for or standing on the campaign platform of a party and being a founding member of a party.

In the ensuing debate in the CA, supporters of the proposal defended it as necessary or desirable to preserving the neutrality and dignity of the institution of chieftaincy and preventing chiefs from causing social division on account of the inherently divisive nature of party politics. Opponents of the proposal, among them prominent chiefs, felt it was unfairly discriminatory against chiefs. When it was put to a vote, the proposal was adopted by the CA in the form it is currently found in Article 276(1).

While the debate in the CA on the meaning and scope of Article 276(1) is of great assistance to this Court, alone it is not sufficient to resolve the instant case, as the specific situation or matter of a chief's "endorsement" of a person or party contesting an election for political office was not raised or anticipated in the debate before the CA. The proponent of Article 276(1) offered only a few illustrative cases or examples of acts by a chief that would constitute "active party politics", none of which involved speech acts of the kind at issue in this case.

More important than the examples of conduct that would breach Article 276(1) are the rationale or justifications provided for the ban by its proponents and supporters in the CA. The principal concern was with acts or conduct on the part of a chief that, within the context of political party competition, appear reasonably to show or indicate that a chief was "taking sides" between or among rival candidates for elective political office. Taking sides in a partisan political fray or contest is seen as unbecoming of a chief, as such

conduct has the tendency to divide the local polity or community whereas a chief is supposed to be a unifying figure. Importantly, the concern that undergirds Article 276(1) is not that the chief's lack of partisan neutrality would exert undue pressure on members of the community to vote in accordance with the chief's demonstrated or declared preference; it is that, such an act would be unduly divisive and also likely to damage the dignity and honour attached to the chief and stool or skin.

The eminent legal scholar Nana S.K.B. Asante, who is himself a Paramount Chief and also chair of the Committee of Experts on the Proposals for the 1992 Constitution, has had occasion to express himself on this matter. We find his perspective insightful and persuasive:

"This ban does not appear in the proposals of the Committee of Experts, but I fully endorse it . . . . The participation of chiefs in active party politics, an essentially divisive undertaking, would undermine the unity which chiefs symbolize in their areas of authority. Such an undertaking is also repugnant to the dignity of the institution of chieftaincy and incompatible with the chief's role as an impartial arbiter of the interests of the people. On more pragmatic grounds, the prospects of development in the various traditional areas are likely to be prejudiced by conflicts between chiefs and governments of the day if they belong to different political parties."

(Kofi Akpabli (ed.), Critical and Biographical Essays on Nana Dr. S.K.B. Asante: From an African Village to the Global Village and Back, 2022, p. 364-65).

Also illuminating for our purposes is the perspective offered by Professor Kwesi Yankah, the preeminent ethnolinguist and scholar of culture. Professor Yankah writes thus:

"[T]he Constitution also takes steps to protect the conservative institution against political exploitation. It denies Parliament the power to enact any law that accords or withholds recognition of a chief. Neither can Parliament enact any law that detracts or

derogates from the honor and dignity of chieftaincy.To further insulate the institution against the hazards of mundane politics, and enable them to maintain neutrality in the management of partisan politics, chiefs are prohibited from taking part in active politics."

(Kwesi Yankah, Cultural Influences on Government, in Baffour Agyeman-Duah (ed.), Ghana: Governance in the Fourth Republic, 2008, p. 69.)

Professor Yankah, in essence, sees Article 276(1) and Article 270 as related to each other in a mutually reinforcing way—as two sides of the same coin, so to speak; both are about protecting the institution of chieftaincy from "political exploitation". This is an important insight, as it implies the existence of a constitutional bargain or settlement, wherein, pursuant to Article 270, the political class (Parliament and Government) would refrain from meddling in chieftaincy matters and chiefs, in turn, would refrain from meddling in party politics, pursuant to Article 276(1). To read Article 276(1) and Article 270 in conjunction, as creating a system of mutual forbearance or a bargain between chiefs and politicians, in which each side respects and refrains from breaching the domain or boundaries of the other, shows an appreciation of the turbulent history of the relationship between party politics and chieftaincy in Ghana. We cannot, but fully endorse this view of the intent that inspired the framers to adopt the language in Article 276(1).

D. Does a Chief's Endorsement of a Candidate for Elective Political Office Constitute Participation in "Active Party Politics"?

Having painstakingly reviewed the historical background and experience that have informed Article 276(1), and taking due cognizance of the debate in the Consultative

Assembly relating to that provision and other relevant perspectives from learned scholars, including the mutually reinforcing nature of the relationship between Article 276(1) and Article 270, this Court is of the considered view that a Chief's endorsement of a candidate for elective national or local political office to the exclusion of rival candidates amounts to participating in "active party politics" within the meaning of Article 276(1). We are led to this conclusion by the belief that such an interpretation best vindicates the principles and policy rationale or intent behind Article 276(1), which is that, Chiefs must not take sides or be seen to have taken sides in a partisan political contest, as to do so risks creating or exacerbating social division to the detriment of their communities and damaging the prestige, honor and reverence of the stool, skin and the Chief's office.

We acknowledge that the interpretation of Article 276(1) we embrace here constitutes a restriction of the fundamental right of chiefs to freedom of speech and expression as well as freedom of thought and belief. However, we believe that Article 276(1), which is of equal constitutional status, is a narrowly-tailored and reasonable restriction on the rights of Chiefs and is, in light of the history and the importance of the concerns at stake, justifiable in the public interest. In this, we are again in accord with Nana S.K.B. Asante who has also expressed the opinion that, "To the extent that this prohibition constitutes a restriction of the fundamental rights of chiefs, such restriction is justifiable in the public interest."

We note that Chiefs are not alone in having their free speech rights so restricted. Holders of independent constitutional or statutory offices, notably judges, members of the Electoral Commission, the Commission on Human Rights and Administrative Justice, and the National Commission on Civic Education, are, by implication from their independent status, similarly constrained in their freedom or ability to actively take sides in partisan politics. Although chiefs are not public officers in the strict sense of the term, they are not ordinary citizens either. Chiefs occupy an elevated position in our social

order and, in partnership with the State, play an influential role in the governance and development of their communities and the country. It is on account of the exceptional social and public status of chiefs that, although chiefs are not public officers, the Constitution disqualifies certain persons, notably persons convicted of offenses involving fraud, dishonesty or moral turpitude, from being chiefs. (Article 275). It is the same heightened concern with preserving and protecting the dignity of the chief's office that partly underpins Article 276(1)'s banning of chiefs from taking part in active party politics.

We hasten to emphasize that, the conclusion we have reached in this matter applies only to endorsements of **the person or the party of a candidate.** A Chief does not breach or contravene Article 276(1) if he endorses or praises (or criticizes, denounces) **a policy, a programme, or a project** of a candidate for elective political office or of his or her party. As champions and advocates for the development and welfare of their communities, Chiefs are free to make an endorsement of the latter kind, as to interpret Article 276(1) to prohibit such non-personal endorsements would hamper the ability of chiefs to perform and fulfil one of the critical roles and expectations of their office. As long as they do not go the extra step of endorsing one or the other party or candidate as their personal preference in an election, endorsing or expressing support for a policy, programme, or project does not affront Article 276(1). Of course, chiefs also remain generally free to participate in and express their opinion about matters that are the subject of public debate and discussion. We are again of the considered opinions that this strikes the right balance between the rights of Chiefs, the reasonable expectations associated with their role, and the public interest concerns that animated Article 276(1).

It is in the light of the framework and contours we have outlined here that the Plaintiff's case must be assessed. The Plaintiff presented five exhibits: **Exhibit EG 1, Exhibit EG 2, Exhibit EG 3, Exhibit EG 4,** and **Exhibit EG 5.** We note that **Exhibit EG 1,** is of no

relevance to the case, as it did not emanate from a chief. Differently put, this is not a communication or act directly engaged in by a known chief. It is a self-assessment or assertion by a politician. The said exhibit is simply a publication on *Ghanaweb* dated the 5th day of October, 2020 with a caption **"95% of chiefs have endorsed Akufo-Addo – Eugene Arthin".** In that light it is of no consequences to the analysis of the issues that we are herein engaged with.

It is **Exhibit EG 2** to **Exhibit EG 5** that have a direct bearing to the plaintiff's case. There, certain statements are attributed to chiefs. We should note that no proper evidentiary grounds have been established to show that the chiefs mentioned in those publications actually made the statements attributed to them. Importantly, as they are not named defendants to this suit, the said chiefs did not have an opportunity to contradict or rebut the claim that such statements attributed to them were, in fact, not made by them. We shall, however, proceed on the assumption that, as these are matters within the public domain and published in the media, they are matters of public interest to consider with the view to achieving a meaningful resolution of the case. That is, the statements, as they appear in the listed exhibits, would be taken as a proper and acceptable context for assessment only. For the avoidance of doubt, we say, for the record that our views of the exhibits and statements contained in them are neither a direct nor indirect indictment of any of the chiefs alleged to have made those statements.

That said, it is important to highlight the relevant parts of the statements for assessment. In **Exhibit EG 2,** the following statements are made: "the Paramount Chief of the Duayaw Nkanta Traditional Council, Nana Boakye Tromo III, told the President, *"you have distributed the national cake equitably, and we, in Duayaw Nkwanta, have gotten our fair share of development".*

The publication proceeded to state that:

"Citing several examples of projects undertaken in Duayaw Nkwanta, together with policies such as Free SHS, 1-District -1-Factory, and the prgramme for Planting for Food and Jobs, Nana Boakye Tromo III stated that "this clearly shows that you have been sent by God to lead us"….We are solidly behind you, and that we are declaring today that 'four more for Nana', 'four more to do more".

The Krontihene of Techimantia, Nana Ampong Koromantan is reported to have said:

"Today, we just want to tell you that we, in Techimantia, will never forget you for the construction of the construction of the Bechem-Techimantia-Akomadan road. Indeed, the presence of a lot of the townsfolk at this durbar testifies to the fact that we have already accepted you as one of us. It is four more for you".

On his part, the Omanhene of Kenyasi No. 1, Nana Kofi Abiri reportedly stated as follows:

"We pleaded with him to construct our roads for us, and we also needed a TVET institute. He didn't ignore our requests as we can see machines constructing the road. We also said that we needed a mobile phone network at Wamahiniso, you have done it for us we are grateful.

On **Exhibit 3**, the Okyenhene, Osagyefo Amoatia Ofori Panin II is reported to have stated as follows:

"Your One District One Factory, One Village One Dam, Free SHS, Planting for Food and Jobs, the NABCO initiative, your numerous infrastructural projects like roads have yielded good fruits; like Jesus said a tree that yields good fruits must be made to grow"

"Just like the singer, Lucky Mensah, said in his songs, Nana Akufo-Addo has exceeded all expectations as President and must be given the nod to continue for a second term".

With regard to **Exhibit 4,** the Omanhene of Mehame Traditional Area, Nana Owusu Kontoh II, is said to have stated the following:

"I have a good road, electricity, ICT centre, health centre and nursing training college, among other infrastructure developments and they are all because of Mr Mahama and Alhaji Collins Dauda, who is our MP"

Finally, **Exhibit 5** captured a statement assigned to the Paramount Chief of the Waala Traditional Area, Naa Fuseini Seidu Pelpuo IV. It statement is as follows:

"we have observed that during your tenure as president, you made an indelible mark on the fundamentals of the national economy. No one, at least not one that has lived in this country can deny the fact that the evidence of your achievements during your tenure abound before us. I am therefore justified to bless your decision to contest the flagbearer position of your party and by extension to seek a re-run for power in 2020"

We wish to repeat the point that these statements and attributions are presented to us in the third category. That is, these statements are believed to have been made by chiefs in various fora in the first place; secondly the statements are then culled out from such speeches delivered by the chiefs, and thirdly, the statements are represented to the world in a medium by journalists. With this track of transmission, we are unable to vouch for the accuracy of the statements represented in **Exhibit 2 to Exhibit 5**. We will, therefore, take them as they are rendered. The conclusions reached in this judgment thus stand on the presumption that the statements are accurate as stated in the said exhibits.

Applying the analysis and framework we have painstakingly articulated, we hold that, those statements or portions thereof that praise or laud the prior or current performance, a policy, a programme, or a project of one or the other candidate or their party are permissible endorsements and, thus, do not breach the ban against chiefly participation in "active party politics". Those statements are, in our view, consistent with the role of a

Chief as a champion and an advocate for the welfare and interests of their communities. On the other hand, those other statements or particular portions of a statement where a Chief is heard to endorse the person of the candidate or his party, by declaring their preferential support for the election of the candidate or his party or urging voters to vote for them are the kind of "taking sides" in a partisan political contest that, as we have opined, Article 276(1) disapproves of.

To sum up: We hold that the phrase "active party politics" contained in Article 276(1) is amendable and subject to interpretation by this Court in exercise of our original jurisdiction under Article 130(1)(a). We further hold that commendations or expressions of appreciation (or criticism) by Chiefs about the policies, projects, and programmes of a candidate or their party, whether past, present or proposed, do not amount to participation in "active party politics." However, endorsement of the person of the candidate or of their party, whether free-standing or embedded in an otherwise innocuous statement, is violative of Article 276(1).

It is for these reasons that this Court on the 1st November, 2022 unanimously dismissed the Plaintiff's Writ in part.

E. YONNY KULENDI

(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

M. OWUSU (MS.)

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

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PLAINTIFF APPEARS HIMSELF.