IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM: BAFFOE-BONNIE JSC (PRESIDING)

PWAMANG JSC

AMEGATCHER JSC

LOVELACE-JOHNSON (MS.) JSC

PROF. MENSA-BONSU (MRS.) JSC

KULENDI JSC

ACKAH-YENSU (MS.) JSC

WRIT NO.

J1/02/2022

31ST MAY, 2023

FOOD SOVEREIGNTY GHANA ……. PLAINTIFF

VS

THE ATTORNEY-GENERAL …….. DEFENDANT

JUDGMENT

AMEGATCHER JSC:-

INTRODUCTION

The plaintiff, a Non-Governmental Organization incorporated in Ghana, invokes the original jurisdiction of this Court pursuant to articles 1(2), 2(1) and 130(1) of the Constitution, 1992 about the passage by the Parliament of Ghana of the Plant Variety Protection Act, 2020 (Act 1050), for the following reliefs:

1. **A declaration that Section 61 of the Plant Variety Protection Act, 2020 (Act 1050) which enjoins the Attorney General and Minister for Justice to ensure that the implementation of the Act does not affect the fulfilment of the obligations of Ghana pertaining to the protection of plant breeder rights under the Convention to which Ghana is a party and also Section 63 of Act 1050 which defines "Convention" to mean the International Convention for the Protection of New Varieties of Plants of 1961 is inconsistent with Articles 1 (2), 11 and 75 of the 1992 Constitution.**

2. **A declaration that Section 22 of Act 1050 which provides that a plant breeder right is subject to any measure taken by the Republic to regulate, within Ghana, the protection, certification and marketing of material of a variety or the importation or exportation of the material is inconsistent with Articles 1 (2) and 11 of the 1992 constitution.**

3. **A declaration that Section 8 of Act 1050 on Eligibility for a Plant Breeder Right and Section 9 of Act 1050 on Application for a Plant Breeder Right are inconsistent with Articles I (2), 17 (1), (2) and (3) of the 1992 Constitution.**

4. **A declaration that Sections 8, 9, 19 and 42 of Act 1050 are inconsistent with Articles 26 (1), 36 (1), 36 (2)(6), 36 (3), 37 (2) (a) and (b), 37 (3) and 40 of the 1992 Constitution.**

5. **On a true and proper interpretation of Article 41 of the 1992Constitution, the provision in Section 9 (5) of Act 1050 to treat a foreign citizen or resident in the territory of a party to a treaty to which the Republic is a party in Section 9 (2)(b) of Act 1050 and to treat a legal entity that has a registered office within the territory of a party to treaty to which the Republic is a party in Section 9 (2)(c) of Act 1050 as citizens in respect of the operation of Act 1050 is inconsistent with and contravenes Article 41 of the 1992 Constitution and Sections 18(2), 182, 345 and 347 of the Companies Act, 2019 (Act 992).**

6. **A declaration that Section 60 of Act 1050 on Offences is inconsistent with Articles 15 (2)(a) and (b) and 296 (b) of the 1992 Constitution.**

7. **An order setting aside Act 1050 as a nullity due to its unconstitutionality.**

8. **An order setting aside Section 8, Section 9, Section 9 (5), Section 19, Section 22, Section 42, Section 60, Section 61 and the definition of "Convention" as contained in Section 63 of Act 1050 as being inconsistent with the letter and spirit of the 1992 Constitution and consequently, void.**

9. **An order of perpetual injunction restraining the Defendant, his agents, servants or assigns from implementing Act 1050.**

10. **An order of perpetual injunction restraining the Defendant, his agents, servants or assigns from implementing Act 1050 in respect of Section 8, Section 9, Section 9 (5), Section 19, Section 22, Section 42, Section 60, Section 61 and the definition of "Convention" as contained in Section 63 due to their inconsistency and contravention of the 1992 Constitution and related laws (Companies Act).**

11. **Any other order(s) or direction(s) as this Honourable Court may deem appropriate to make pursuant to Articles 2(1) and (2) of the 1992 Constitution.**

PLAINTIFF'S CASE

The crux of the plaintiff's claim is that the Plant Variety Protection Act, 2020 (Act 1050) is unconstitutional and consequently ought to be declared null and void by this Court. In support of his claim, the plaintiff predominantly cites Section 61 of Act 1050, which places the defendant under a duty to ensure that the implementation of Act 1050 does not affect Ghana's fulfillment of its obligations to the protection of plant breeder rights under the International Convention for the Protection of New Varieties of Plant of 1961 (UPOV Convention).

The plaintiff contends that since Ghana had not executed the UPOV Convention and consequently was not "a state party" to it at the time Act 1050 was enacted, Section 61 subjecting the application of the Act to conformity with the UPOV Convention effectively amounts to ratification and domestication of the Convention, in violation of article 75 of the 1992 Constitution. The plaintiff further contends that, by the effect of article 75 of the 1992 Constitution, the UPOV Convention could only become applicable in Ghana by way of domestic legislation, after first being signed onto or executed on behalf of Ghana, and subsequently ratified by the passage of an Act of Parliament, or by a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament. The plaintiff thus, argues that the purported ratification of the UPOV Convention through the enactment of Act 1050, without prior execution of same, violates articles 1(2), 11 and 75 of the 1992 constitution.

In addition to the procedural irregularity that the plaintiff alleges in the enactment of Act 1050, it further contends that various aspects of the provisions of Act 1050 violate the 1992 Constitution, as follows:

a. That Section 22 of Act 1050 on measures to regulate plant breeder rights is inconsistent with articles 1(2) and 11 of the 1992 Constitution.

b. That sections 8 and 9 of Act 1050 are inconsistent with articles 1(2), 17(1), (2) & (3) of the 1992 Constitution.

c. That sections 8, 9, 19 and 42 of Act 1050 are inconsistent with articles 26(1), 36(1), 36(2)(b), 36(3), 37(2)(a) &(b), 37(3) and 40 of the 1992 Constitution.

d. That section 9(5) of Act 1050 contravenes article 41 of the 1992 Constitution and sections 18(2), 182, 345 and 347 of the Companies Act 2019 (Act 992).

e. That section 60 of Act 1050 is inconsistent with articles 15(2)(a) & (b) and 296(b) of the 1992 Constitution.

On the question of whether or not this Court's jurisdiction has been properly invoked, the plaintiff argues that since the case raises a real issue requiring the interpretation of the scope and effect of article 75 in the light of Section 61 of Act 1050, as well as the enforcement of the Constitution pursuant to articles 2(1) and 130(1), the original jurisdiction of this court is properly invoked.

DEFENDANT'S CASE

The defendant, on the other hand, contends that the enactment of Act 1050 and particularly, the provision of Section 61 does not contravene article 75 of the 1992 Constitution. The defendant's case, setting out the basis for the incorporation of article 61

in Act 1050, is that; under the UPOV arrangement, a nation seeking to join the UPOV regime must first demonstrate the existence of a domestic law that dwells on the tenets and obligations of the UPOV regime, before that state can become a member. The defendant further states that under the international regime for the protection of intellectual property rights, the Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994 (TRIPS Agreement), member states, including Ghana, are bound to provide national regimes for the protection of various intellectual property rights in conformity with the minimum standards of protection.

Thus, in pursuance of Ghana's implementation of the provisions of the said agreement, some legislations were enacted to grant, protect and promote the intellectual property rights of nationals and foreigners in its territory in conformity with established standards of protection. These legislations include the Copyright Act, 2005 (Act 690), Geographical Indications Act, 2003 (Act 659), Industrial Designs Act, 2003 (Act 660), Patent Act, 2003 (Act 657), and the Trademarks Act, 2004 (Act 664) as amended by the Trademarks (Amendment) Act, 2014 (Act 876).

The defendant further submits that in spite of these protections, Ghana failed to establish the requisite regime for the protection of plant breeder rights, which is also required under the TRIPS Agreement. Subsequently, Ghana decided to meet its said obligations and establish a sui generis system for the protection of plant varieties by enacting the Plant Variety Protection Act, 2020 (Act 1050). In sum, the defendant contends that the effect of Section 61 of Act 1050 is merely to demonstrate Ghana's commitment to taking the requisite steps towards joining the UPOV regime, which is a prerequisite for the execution and ratification of the UPOV Convention, and admission of a state to membership of the regime. Thus, the provisions of Sections 61 and 63 do not offend article 75 of the 1992 constitution. The defendant further contends that the specific provisions of Act 1050, which the plaintiff alleges to be in contravention of various provisions of the

constitution, are all consistent with the express provisions as well as the letter and spirit of the Constitution.

The parties filed separate Memorandum of Agreed Issues on the 14th and 15th of July 2022. The plaintiff's Memorandum of Issues filed on 14th July 2022 comprises the following:

1. **Whether or not the passage of the Plant Variety Protection Act, 2020, (Act 1050) meets the constitutional requirement of Article 75 of the 1992 Constitution?**
2. **Whether or not Sections 61 and 63 of Act 1050 are inconsistent with Articles 1(2), 11 and 75 of the 1992 Constitution?**
3. **Whether or not Sections 22 of Act 1050 are inconsistent with articles 1 (2) and 11 of the 1992 Constitution?**
4. **Whether or not Sections 8 and 9 of Act 1050 are inconsistent with Articles 1 (2), 17 (1), (2) and (3) of the 1992 Constitution?**
5. **Whether or not Sections 8,9,19, and 42 of Act 1050 are inconsistent with Articles 26 (1), 36 (1), 36 (2) (b) 36 (3), 37 (2) (a) and (b), 37 (3) and 40 of the 1992 Constitution?**
6. **Whether or not Sections 9 (2), (b), (c) and 9 (5) of Act 1050 are inconsistent with Articles 1 (2) and 41 (e) and (j) of the 1992 Constitution?**
7. **Whether or not Section 60 of Act 1050 is inconsistent with Article 15 (2), (a) (b), and 296 (b) of the 1992 Constitution of the Republic of Ghana?**
8. **Other issues arising at the trial."**

The defendant's Memorandum of Issues filed on 15th July 2022 also comprises the following:

1. **Whether or not the Plaintiff has properly invoked the original jurisdiction of the Supreme Court?**

2. **Whether or not Section 61 of the Plant Variety Act, 2020 (Act 1050) is contrary to Articles 1(2), 21(1) 11, 75 and 130 (1) of the 1992 Constitution?**
3. **Whether or not the enactment of Act 1050 before Ghana ratified or acceded to the UPOV Convention is contrary to article 75 (2) of the 1992 Constitution of the Republic of Ghana?"**

ISSUES ARISING FOR RESOLUTION

From a consideration of the arguments advanced by the parties, this Court finds the following issues pertinent for resolution in this matter:

1. Whether or not the plaintiff has properly invoked the original jurisdiction of the Supreme Court?
2. Whether or not the enactment of Act 1050 contravenes article 75(2) of the 1992 Constitution of the Republic of Ghana?

This Court at the hearing of the suit on 15th February 2023 ordered the parties to file legal arguments on the issue of jurisdiction to assist the court to determine whether its jurisdiction has properly been invoked. The plaintiff filed its further legal arguments on 7th November 2022 addressing the question of whether this Court's original jurisdiction has been properly invoked in this case. The defendant filed its legal arguments on jurisdiction on 18th November 2022.

We shall proceed to address the preliminary issue raised on our exclusive original jurisdiction. Article 2(1) and article 130(1) of the 1992 Constitution make provisions for the Supreme Court's jurisdiction to interpret and enforce the 1992 Constitution. The provisions state as follows:

ARTICLE 2 - ENFORCEMENT OF THE CONSTITUTION

(1) A person who alleges that –

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

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

ARTICLE 130 - ORIGINAL JURISDICTION OF SUPREME COURT

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

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

Constitution; and

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

Although the Supreme Court is clothed with the jurisdiction to enforce or interpret the Constitution, such jurisdiction may only be invoked in certain specific instances; as set out in a plethora of case law, by this Court. In the case of **Osei Boateng v. National Media Commission & Appenteng [2012] 2 SCGLR 1038 at 1057**, this Court, relying on the dictum of Anin JA in the locus classicus of **Republic v. Special Tribunal; Ex Parte Akosah [1980] GLR 592 at 605**, reiterated the criteria for the proper invocation of the interpretative jurisdiction of this Court 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."

Since this formulation in 1980, the interpretative jurisdiction given to the Supreme Court under the 1992 Constitution has been explained in several decisions of this Court. **In Bomfeh v Attorney-General [2019-2020] 1 SCLRG 137**, this court per Adinyira JSC at 151-152 held 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."

Reference must also be made to **Kpodo & Another v. Attorney-General [2018-2019] 2 GLR 220** where Akuffo CJ restated the principle at page 231 thus: -

"The position of the law……. is that, inter alia, the existence of an ambiguity or imprecision or lack of clarity in a provision of the Constitution is a precondition for the invocation and exercise of the original interpretative jurisdiction of this court. 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".

Again, in **Asare v Attorney General & Anor [2020] GHASC 50,** the Court highlighted the circumstances under which its original jurisdiction could be invoked:

"The Court has consistently held that where words or provisions of the Constitution are plain, clear and unambiguous and there is no genuine dispute as to their meaning, no constitutional interpretation arises and the Court would decline any invitation, however attractive, to embark upon any exercise of interpretation in the circumstances. **In much the same way, Article 2 (1) of the Constitution empowers this Court to monitor and ensure compliance with the Constitution and for that matter, a person who alleges non-**

compliance and invokes the said Article 2 (1) must demonstrate clearly that the acts or omission complained of are inconsistent with particular provisions of the Constitution. In other words, the inconsistency of the act or omission must be plain and clear from the constitutional provisions."

Thus, any case falling within the instances set out above may warrant the invocation of this Court's interpretative or enforcement jurisdiction as set forth in articles 2(1) and 130(1) of the 1992 Constitution.

In this case, the plaintiff fundamentally contends that Parliament, by enacting the Plant Variety Protection Act 2020 (Act 1050) and incorporating the provisions of Sections 61 and 63 in the Act, amounts to a violation of the constitution. The plaintiff in support of this argument posits that Parliament's passage of Act 1050 violates article 75 of the 1992 Constitution to the extent that Parliament failed to execute the UPOV Convention before passing Act 1050 which seeks to give domestic legislative effect to the Convention. Thus, the plaintiff's argument borders on its interpretation of article 75 regarding the procedure for giving domestic effect to international conventions, treaties, and agreements. While the defendant does not contest the material facts upon which the plaintiff's claim is laid, it argues in paragraph 37 of its Statement of Case that the plaintiff has misconstrued article 75 regarding the reception of International Law within the domestic sphere of Ghana.

Thus, fundamentally, the plaintiff, on one hand, seeks this court to interpret article 75 to mean that there was a precondition for the execution or signing of the UPOV Convention before its ratification, which Parliament failed to comply with when enacting Act 1050 and incorporation Section 61. On the other hand, the defendant invites this court to hold that article 75 applies only to the harmonisation of international law into domestic law and does not limit Parliament from the exercise of its legislative powers under the Constitution.

On the face of the pleadings, an impression would be created that the parties to this case have placed rival meanings on the effect of article 75 of the 1992 Constitution in respect of the ratification of international conventions, treaties and agreements, on the one hand, and the exercise of legislative authority, on the other hand. But does the fact that one of the parties had asserted one set of meanings and the other an opposite meaning to a constitutional provision trigger our jurisdiction to interpret that particular provision of the Constitution?

We have, as a Court, grappled with such numerous writs inviting us to interpret the Constitution using as justification, criteria 'b' formulated by Anin JA in the Ex-parte Akosah's case (supra). What then is the scope of that criterion i.e., **where rival meanings have been placed by the litigants on the words of any provision of the Constitution?**

In **Agbleze & Others v. Attorney-General & Electoral Commission [2017-2020] 2 SCGLR 740,** the court took the view that parties merely putting rival meanings on a provision of the Constitution should not amount to a genuine interpretative issue raised under principle (b) of Ex parte Akosah. The parties must, first, demonstrate that the rival meanings arise from the provisions which are unclear and ambiguous. The court per Kotey JSC stated at 754-755 as follows:

"In the eyes of counsel for the Plaintiffs, because the parties were not ad idem on who is qualified to vote in the referendum a genuine issue of interpretation arises under principle (b) in Ex-Parte Akosah (supra). We have reviewed the submissions of the parties and have no doubt in our minds to decline the invitation by Plaintiffs' counsel. We find the invitation untenable and based on a misapprehension of the nature, import and circumstances envisaged in by eventuality (b) in Ex parte Akosah (supra)…The words are clear and unambiguous, and it is a cardinal rule of interpretation of statutes and national constitutions for that matter, that if the provisions are clear and unambiguous, no interpretation arises. **If we were to accede to Plaintiff's counsel's**

invitation, the floodgate would be open for parties to place rival meanings on any provision of the Constitution and that alone should be sufficient to trigger this court's interpretative powers, a step that would create chaos in the functioning of the Court."

See also Republic v. Baffoe-Bonnie & Ors [2017-2020] 1 SCGLR 327: Osei-Boateng v. National Media Commission & Anor [2012] 2 SCGLR 1038: Justice Abdulai v. Attorney-General [2022] JELR 109669 (SC) Boateng v. Attorney-General & Ors [2017-2018] 1 SCGLR 648: Judicial Service Staff Association of Ghana v. Attorney-General & Ors [2016] GHASC 63.

The requirement that there is a constitutional issue to be resolved as parties have put rival meanings to a provision of the constitution in contention does not admit subjectivity or outrageousness. The fact that parties have put rival meanings to a provision does not mean that any alleged rival meaning will simply be countenanced. In such a situation, it is expected that there is ambiguity in the words in that constitutional provision. In other words, the constitutional provision ought to have more than one meaning due to its ambiguity which ambiguity is either patent or latent. With the patent ambiguity, the language of that constitutional provision, within the context or read as a whole, could be interpreted in more than one way. On the other hand, a latent ambiguity, though not readily visible, could arise where the language, though not ambiguous, is applied to the subject matter it deals with and then the ambiguity appears. It follows that even before the court considers the rival meanings placed by parties on a constitutional provision, it must first be satisfied that the relevant provision does not lend itself to plain or clear, unambiguous, and straightforward meaning. The meaning must also not be fanciful, whimsical, or odd.

The Supreme Court will then exercise its authority to determine the correct interpretation of the constitutional provision in question. In so doing, the Court will consider the

arguments and rival meanings presented by the litigants, examine the language, context, and purpose of the provision, and ultimately provide a conclusive interpretation.

From the foregoing, it can, therefore, be deduced that the Supreme Court may decline jurisdiction to interpret a constitutional provision under criteria (b) when there is no genuine issue of interpretation. This can occur in the following circumstances:

a) Where the meaning of the provision is evident and leaves no room for doubt or the language of the constitutional provision in question is clear and unambiguous, and there is no room for different interpretations.

b) Where the parties do not present conflicting interpretations or fail to provide alternative meanings.

c) Where the interpretation of the constitutional provision is not relevant or essential to the resolution of the legal dispute at hand, because the court typically focuses on constitutional provisions that are directly relevant and necessary to decide the issues in the case, rather than engaging in unnecessary, fanciful or abstract interpretations.

d) Where the interpretation sought by the litigants has already been established by previous decisions of the Court or settled legal principles making it irrelevant to revisit or re-analyse an interpretation that has already been resolved.

e) Where the interpretation sought is frivolous, lacks substance, or does not raise any genuine issue that requires judicial intervention, hence trivial or immaterial to the case.

In sum, placing rival meanings on an unambiguous provision of the constitution by parties, as held in a plethora of cases, will not satisfy criterion (b) in Ex-parte Akosah and the Court will decline jurisdiction to interpret the constitutional provision in question.

It is based on the judicial decisions and the principles discussed above that we interrogate the present writ with the view to answering the question of whether our interpretative jurisdiction had appropriately been invoked by the plaintiff in this writ. We intend to examine the language of article 75 and the provisions of the Act alleged to be in breach of the Constitution. Article 75 of the 1992 Constitution whose meaning has become subject to different interpretations by parties, provides as follows:

> (1) The President may execute or cause to be executed treaties, agreements, or conventions in the name of Ghana.
>
> **(2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by-**
>
> **(a) Act of Parliament; or**
>
> **(b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.**

Article 93(3) of the 1992 constitution on the legislative authority of Parliament to pass Act 1050 states as follows:

"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."

Yet again, it is important for us to consider the language of Section 61 of Act 1050, which the parties have argued its effect, i.e., whether or not the provision amounts to a ratification of the UPOV Convention, requiring the invocation of article 75.

SECTION 61 - Application of Convention

"61. (1) The Minister shall ensure that the implementation of this Act does not affect the fulfilment of the obligations of Ghana pertaining to the protection of plant breeder rights under the Convention to which Ghana is a party."

From a combined reading of articles 75 and 93 above, one observes that the objective of the framers is to ensure checks and balance mechanisms among the two arms of State. The Constitution of Ghana, 1992 provides for the three arms of State, the Executive, Legislature and Judiciary. The scope and functions of these three arms of State have been clearly defined by the same constitution. As stated above, Parliament is vested with the legislative power of Ghana to be exercised in accordance with the constitution.

Article 106 lays down the procedure for legislation which may include foreign policy initiatives. Parliament as the legislative branch is tasked with the duty of oversight under article 75. In our constitutional jurisprudence, Parliament in the exercise of its constitutional mandate and in line with the constitution, is permitted to indicate its support for executive action or policy by various means, including passing an Act to evince such support. This is exactly what Parliament did in this case. The passage of Act 1050 satisfies and complies with that spirit.

The defendant has argued that Act 1050 was enacted in accordance with article 106. Indeed, the plaintiff's lawyer admitted during the hearing of the case that the plaintiff is not challenging the procedure under Article 106 by which Act 1050 was enacted. Thus, the plaintiff agrees that none of the procedures under article 106 was breached by Parliament. What we discern is that the plaintiff's fears are that the ascension of Ghana to UPOV will create a path for commercial plant breeders of multinational companies or individual scientists sponsored by these multinational companies to invade Ghana's agricultural industry to make profit to the detriment of the ordinary Ghanaian peasant farmer since they could never compete with these commercial breeders. In as much as we desire that these arrangements will benefit the ordinary farmer in Ghana and Ghana as a whole, the plaintiff has not per the facts before us established that Act 1050 is in conflict with the clear and unambiguous provisions of the Constitution. Consequently, we fail to see any imprecision or ambiguity to give rise to an invocation of our jurisdiction to interpret or enforce Article 75 of the 1992 Constitution.

Moreover, a critical reading of Sections 61 and 63, in the light of Act 1050 as a whole would reveal that the provisions only seek to place Ghana in a position to be able to take the necessary steps to align itself with the UPOV regime. These steps may then involve the execution of the treaty as necessary, and the subsequent ratification and domestication of the treaty through the passage of relevant enactments to comprehensively cover Ghana's obligations under the regime. A reference to, and expression of the nation's intent to initiate steps to become aligned with an international treaty regime does not of itself amount to a ratification or domestication of that international regime. Lest we narrowly restrict the exercise of Parliament's authority in making laws to respond to the needs and aspirations of the people of Ghana.

Furthermore, the entirety of the plaintiff's submissions against the specific provision of Act 1050 which it alleges to be unconstitutional, upon careful consideration, appear to border on the desirability of such provisions and not their constitutionality.

Adinyira JSC in the case of **Bomfeh Jnr. v. Attorney-General (supra)** captured what this Court looks out for in all such writs in the following words:

'' A Constitutional issue is not raised on account of a Plaintiff's absurd, strained and farfetched understanding of clear provisions in the Constitution. For a person to assert a manifestly absurd meaning contrary to the very explicit meaning and effect of clear words in the Constitution does not mean that a genuine issue of interpretation of some relevant Constitutional provision has arisen.''

The Plaintiff invites this court at paragraph 10 of its Statement of Case filed on 11/11/2021 to consider **Banful & Anor. v Attorney-General & Anor. [2017-2018] 1 SCGLR 82**, which it relied on to argue that the failure to obtain parliamentary ratification of an agreement entered by the President rendered the agreement unconstitutional.

The current writ is manifestly distinguishable from the Banful Case. In the Banful case, there had been an agreement executed by the President which was not ratified by

Parliament in compliance with Article 75. This Court was thus called upon to interpret whether documents exchanged between the Governments of Ghana and the United States of America described as 'Note Verbal' fell in the category of the agreements contemplated by Article 75 of the 1992 Constitution, which ought to have been submitted to Parliament for ratification. This Court held that the 'Note Verbal' exchanged by the two States constituted an agreement envisaged under Article 75 and as such requires Parliamentary ratification.

In the present case, there is no such execution of an international convention or agreement that requires any ratification whatsoever. It is rather the content of an enactment duly passed by Parliament, which is being challenged on grounds that it domesticates international obligations, and thus necessitates compliance with Article 75. The principle espoused in Banful is therefore inapplicable.

We would, therefore, conclude this writ, by reference to the dictum of **Date-Bah JSC** in the case of **Janet Naakarley Amegatcher v. Attorney-General & Anor [2012] 2 SCGLR 933,** when he opined on the law-making role of Parliament:

"**It is dangerous, from a public policy standpoint, to construe the legislative authority of Parliament too restrictively, since this is likely to incapacitate it from dealing with exigencies and contingencies in relation to which the public interest may require it to take legislative action, of necessarily different kinds within a wide range. Undesirable legislation needs to be distinguished from unconstitutional legislation**…….. **The legislative power thus vested in Parliament should be expansively interpreted in the interest of the effective representative democratic governance of this country. Parliament should be regarded as authorised to pass any legislation on any matter so long as in doing so it does not breach any express or implied provision of the Constitution.** This is axiomatic! Were the legislative power of Parliament to be restricted beyond what the provisions of the Constitution require, this would be an assault on the sovereignty of the people, whose representatives constitute Parliament. To me, therefore,

it is clear that Parliament has the fullest legislative power, subject only to what the Constitution prohibits, expressly or impliedly. Democratic principles demand this conclusion."

We are in total agreement with the views of the Court expressed above. Parliament has the fullest legislative power, subject only to what the Constitution prohibits, expressly or impliedly. Thus, so far as there is no express or implied prohibition in the constitution of a particular subject or a thing that Parliament cannot legislate, it has all the powers to enact any law as it so wishes. One of such prohibition is Article 3 (1) of the constitution which provides that Parliament shall have no power to enact a law establishing a one-party state.

CONCLUSION

It is our firm view that the entire suit of the plaintiff was based on a lack of appreciation of the expansive powers of Parliament to legislate. If this court were to proceed to interpret the claim by the plaintiff, it will literally mean that anytime Parliament passes a law, any citizen or group of citizens who are unhappy with the law can evoke the jurisdiction of the Supreme Court to strike the Act down however, crystal clear the relevant constitutional provision may be. This will certainly be against the public policy standpoint as opined by Date Bah JSC. As the submission of both parties shows, the plaintiff is not challenging the jurisdiction of Parliament to enact Act 1050 nor is it also challenging the procedure under which the law was passed. As pointed out in the **Amegatcher** case (supra)**, "Undesirable legislation needs to be distinguished from unconstitutional legislation".** Therefore, a reference to a clear constitutional provision in opposition to an Act that has been duly enacted is insufficient to invoke the exclusive original jurisdiction of the Supreme Court under articles 2(1) and 130 of the constitution. The plaintiff's action is totally misplaced and hereby dismissed.

N. A. AMEGATCHER

(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE

(JUSTICE OF THE SUPREME COURT)

G. PWAMANG

(JUSTICE OF THE SUPREME COURT)

A. LOVELACE-JOHNSON (MS.)

(JUSTICE OF THE SUPREME COURT)

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