

IN THE SUPERIOR COURT OF JUDICATURE, IN THE HIGH COURT OF JUSTICE, SESSION HELD IN SEFWI WIAWSO IN THE WESTERN NORTH REGION ON FRIDAY THE 13TH DAY OF JANUARY 2023 BEFORE HIS LORDSHIP JUSTICE KWAME AMOAKO

SUIT NO. E12/16/2021

HON. PAUL EVANS AIDOO

∴

PETITIONER

V.

1. DR. KWAKU AFRIYIE

∴

RESPONDENTS

2. THE ELECTORAL COMMISSION
OF GHANA

JUDGMENT

The Petitioner, on 6th January 2021, filed a parliamentary election petition against the Respondents claiming the following reliefs:

- (i) A declaration that the Sefwi Wiawso Parliamentary Election conducted and supervised by the Electoral Commission and its officials on the 7th day of December 2020 was null and void due to non-compliance with the Public Elections Regulations, 2020 (C. I. 127) and to that extent is of no legal effect.
- (ii) That the purported declaration of the 1st Respondent, Dr. Kwaku Afriyie, as Member of Parliament-elect is null, void and of no legal effect for non-compliance with the Public Elections Regulations, 2020 (C. I. 127).

- (iii) A declaration that the 1st Respondent, Dr. Kwaku Afriyie, has not been validly elected as Member of Parliament for the Sefwi Wiawso Constituency.
- (iv) A declaration that it is the Petitioner other than the 1st Respondent that was duly elected as Member of Parliament for Sefwi Wiawso when all the results are collated in accordance with the Public Elections Regulations, 2020 (C. I. 127).
- (v) An Order of Perpetual injunction restraining the 1st Respondent, Dr. Kwaku Afriyie, from holding himself out as the Member of Parliament-Elect for the Sefwi Wiawso Constituency from 6th January 2021 till 5th January 2025, the tenure of the 8th Parliament of the Republic of Ghana.
- (vi) Any Order(s) deemed proper or fit by this Honourable Court.

On the same date, the Petitioner filed a motion ex parte for an Order to determine **Security for Cost** under *section 18 (2) of the Representation of the People Law, 1992 (PNDCL 284)*. The said ex parte motion was heard and determined on the same date, and this Court ordered the Petitioner to pay an amount of GH¢7,000.00 as security for costs before the expiration of the statutory 21 days. From the records, the said GH¢7,000.00 was duly paid within the statutory 21 days, thereby giving legal validity to the instant petition in accordance with *section 18 (2) of PNDCL 284*.

Background to the Petition

On 7th December 2020, the 2nd Respondent herein (the Electoral Commission of Ghana) which is established under *Article 43 of the Constitution* to conduct all elections and

referenda in Ghana, conducted parliamentary and presidential elections in all the two hundred and seventy-five (275) constituencies in the country. The 7th December 2020 elections were conducted pursuant to the *Public Elections Regulations, 2020 (C. I. 127)* under the supervision of the Electoral Commission, the 2nd Respondent.

The Sefwi Wiawso Constituency, in the Western North Region, was one of the 275 Constituencies in which the 7th December 2020 Parliamentary and Presidential Elections were conducted. The Sefwi Wiawso Constituency had 168 polling stations (including one special voting centre) for the 7th December 2020 polls. One of the polling stations, out of the 168 polling stations was Asawinso Community Centre '2' Polling Station with unique code number G042804.

Among the candidates who contested the Parliamentary Election for the Sefwi Wiawso Constituency in the 7th December 2020 Election were the Petitioner herein, *Honourable Paul Evans Aidoo*, who was the Parliamentary Candidate on the ticket of the National Democratic Congress (NDC) party and the 1st Respondent herein, *Dr. Kwaku Afriyie*, who was the Parliamentary Candidate on the ticket of the New Patriotic Party (NPP).

On 9th December 2020, the Returning Officer of Sefwi Wiawso Constituency for the 7th December 2020 Election declared Kwaku Afriyie, the 1st Respondent herein, as Member of Parliament-Elect for Sefwi Wiawso Constituency in the 7th December 2020 Parliamentary Election. The declared results were as follows:

Kwaku Afriyie	29,019
Aidoo Evans Paul	28,947
Louisa Nkuah-Kwayie	576
Prince Akomeah Stephen	69

Bonye Martin Kofi	5,733
Total Valid Ballots	64,344
Total Rejected Ballots	<u>1,069</u>
Total Votes Cast	65,413

A Certificate Endorsed on Writ of Election was subsequently forwarded to the Electoral Commission which in turn published it in the *Ghana Gazette* on 22nd December 2020.

Aggrieved and dissatisfied with the said declaration, the Petitioner has filed the instant petition challenging the results declared by the Returning Officer of Sefwi Wiawso Constituency and seeking, *inter alia*, it's annulment by this Court on grounds of irregularities and/or non-compliance occasioned at the Sefwi Asawinso Community Centre '2' Polling Station and at the Sefwi Wiawso Collation Centre in the 7th December 2020 Parliamentary Election.

The Case of the Petitioner

According to the Petitioner, on the 7th December 2020, the elections commenced at the various Polling Stations within the Sefwi Wiawso Constituency without any interference or confusion till the close of polls when the votes at the Polling Stations were sorted, counted and announced at the various Polling Stations with the exception of Sefwi Asawinso Community Centre '2' Polling Station where there was an allegation of over-voting which was raised by the agents of the 1st Respondent and the New Patriotic Party. The Petitioner's case is that, the votes sorted, counted and announced at the said Sefwi Asawinso Community Centre '2' Polling Station were as follows: *Paul Evans Aidoo (NDC) had 265 votes and Dr. Kwaku Afriyie (NPP) had 105 votes respectively, at the time the allegation of over-voting was raised.*

It is also the Petitioner's case that when the Ballot Boxes and all the election materials were being transported from the Sefwi Asawinso Police Station to the Collation Centre at Sefwi Wiawso, these Ballot Boxes containing the votes and other election materials were snatched by thugs, and that due to the unavailability of the full complement of the Statement of Polls, otherwise referred to as 'Pink Sheet' for the Constituency to enable the Constituency Collation to be conducted, the process was suspended indefinitely by the Returning Officer, Boakye Kwarteng, and the Municipal Director of the Electoral Commission in the person of Ernest Kwening, that the said suspension was on the instruction and directives of the Chairperson of the Electoral Commission. According to the Petitioner, the process was suspended on 8th of December 2020 in the morning.

It is also the Petitioner's case that on 9th December 2020, the 2nd Respondent called some agents of the Petitioner to come over for the resolution of the issue with the snatched ballot boxes in the midst of the Military and the Police, and that without the resolution of the matter, the Returning Officer, Boakye Kwarteng, went ahead to declare the 1st Respondent, Dr. Kweku Afriyie, as the Member of Parliament-Elect, without going through the collation process as stipulated in the *Public Elections Regulations, 2020 (C. I. 127)*.

Again, it is the case of the Petitioner that, the Petitioner, being aggrieved and dissatisfied with the process, requested for the Collated Results in accordance with the *Public Elections Regulations, 2020 (C. I. 127)* but to no avail, and also that, neither was the Petitioner nor his agents given the Parliamentary Election Results Collation Sheets (Form 1C) and the Parliamentary Results Summary Sheets (Form 1D) nor was the said result posted at a public place in accordance with the Regulations. According to the Petitioner, the Election officials refused to give the Form 1C and Form 1D to the Petitioner or his agents.

It is the claim of the Petitioner that the votes of the people of Sefwi-Asawinso Community Centre '2' Polling Station are very important and that it is their inalienable right to determine their representation as a Member of Parliament for the Constituency, and thus, their votes must be added to represent the true will of the people of the Sefwi Wiawso Constituency.

The Case of the 1st Respondent

The 1st Respondent denied materially the allegation of facts as contained in Petitioner's petition in his Answer. On Petitioner's allegation of intimidation, misconduct and non-compliance with provisions of the Public Elections Regulations, 2020, as contained in paragraph 16 of Petitioner's petition, the 1st Respondent responded per paragraph 35 of his Answer that the parliamentary election in the Sefwi Wiawso Constituency was regularly and lawfully held and conducted by the 2nd Respondent in strict compliance with the electoral laws of Ghana and that the petition is devoid of merit.

It is also the case of the 1st Respondent that at the close of voting at the Asawinso Community Centre '2' Polling Station which was without any hitch, the Presiding Officer of that Polling Station in the presence of agents and representatives of the candidates opened each ballot box for the Presidential and Parliamentary Elections, and carefully took out all the ballot papers from the box containing the Parliamentary ballots separately, and sorted out the ballot papers into valid and rejected ballot papers in accordance with *Regulation 39 of the Public Elections Regulations, 2020 (C. I. 127)*. The 1st Respondent also contended that after sorting out the ballot papers for both valid and rejected ballots, the Presiding Officer proceeded to count them publicly in the presence

of agents of the candidates who contested the elections, to the hearing of the Constituents and Media personnel.

It is also the case of the 1st Respondent that in the course of the exercise, his agent raised a protest as to the difference in the total number of votes cast in the Presidential and Parliamentary elections, which was to the effect that, whereas the total votes cast in the Presidential Election was 294 votes, that of the Parliamentary Election registered 292 votes (a difference of 2 votes) which necessitated a recount, but the recount was fraught with needless confusion. According to the 1st Respondent, the Presiding Officer sought to explain to the agents the difference of two votes whereupon a mob consisting of sympathisers of the NDC attacked the Presiding Officer and that in order to safeguard the sanctity of the ballot boxes and other boxes and documents, Police personnel assigned to the Polling Station escorted the ballot boxes and other election materials to Asawinso Police Station in the company of agents of the candidates and the Presiding Officer.

It is also the case of the 1st Respondent that after the sorting and counting of the ballots for the Parliamentary poll at the Asawinso Community Centre '2' Polling Station, the total valid votes which candidates who contested the Parliamentary election in the Sefwi Wiawso Constituency garnered were: Dr. Kwaku Afriyie (1st Respondent) 105 votes; Paul Evans Aidoo (Petitioner) 165 votes; Louisa NKuah Kwayie (Gum Party) 1 vote; Prince Akomeah Stephen (GCPP Party) 0 vote; and Bonye Martin Kofi (Independent Candidate) 15 votes, and six rejected or invalid votes.

It is also the case of the 1st Respondent that when the ballot boxes and other documents for Asawinso Community Centre '2' Polling Station had been sent to Asawinso Police Station for safe custody and were subsequently being dispatched to the designated

Collation Centre at Sefwi Wiawso, some unknown thugs and assailants snatched the ballot boxes. The 1st Respondent further contends that the Presidential and Parliamentary Election results were announced after sorting and counting by the Presiding Officer of Asawinso Community Centre '2' Polling Station in accordance with law, to the hearing of agents of the various candidates and their tacit acknowledgement, for which reason the snatching of the ballot boxes did not have any effect whatsoever on the outcome of the result which was announced at the said Polling Station after sorting and counting of the ballots.

It is also the case of the 1st Respondent that the Returning Officer for Sefwi Wiawso Constituency in the 7th December 2020 Election assembled and collated the results of the Parliamentary poll of all the 168 Polling Stations including the one (1) special voting centre in the presence of the Parliamentary Candidates and their agents.

The 1st Respondent further contends that there was a temporal hold up of the collation of results on account of the fact that the Municipal or District Director or Officer in charge of the Sefwi Wiawso Constituency lodged a formal complaint at the Western North Regional Police Command with regard to the snatched ballot boxes and that collation of the Parliamentary results continued on 9th December 2020 and completed the collation in the presence of the 1st Respondent's agents and agents of other political parties whose candidates contested the Parliamentary Election. According to the 1st Respondent, the Returning Officer then declared the Parliamentary Election results and returned the 1st Respondent the winner.

It is also the case of the 1st Respondent that the authorised collation agents of all the candidates, except the Petitioner's representatives or collation agents, signed the

Election Collation Form (Form 1C) and the Parliamentary Election Results Summary Sheet (Form 1D) which was an indication of the collation by the Returning Officer.

The 1st Respondent again contends that the petition was actuated by malice aforethought with the sole motive of faulting by all means the results of the Parliamentary election, which election the Petitioner lost fair and square, and also that, the petition was designed to create disaffection for the 2nd Respondent (Electoral Commission) and blight the sovereign will of the electorates in the Sefwi Wiawso Constituency who had evinced who should be their representative in the House of Parliament.

The Case of the 2nd Respondent

The 2nd Respondent denied Petitioner's allegation of intimidation, misconduct and non-compliance with the laws governing the conduct of Elections in the Sefwi Wiawso Constituency during the 7th December 2020 Elections in its Answer to the petition. The 2nd Respondent also denied the Petitioner's allegation that collation of Parliamentary results of Polling Stations in the Sefwi Wiawso Constituency did not take place.

It is the case of the 2nd Respondent, per its Amended Answer to the petition filed on 19th January 2022, that, after sorting and counting of ballots in the Parliamentary poll at the Asawinso Community Centre '2' Polling Station, the results were announced by the Presiding Officer in the presence of agents of the parties, in accordance with law and that the snatching of the ballot boxes containing election materials of Asawinso Community Centre '2' Polling Station after the announcement of the results at the said Polling Station should not, and could not, in any way, affect the outcome of the announced results.

It is also the case of the 2nd Respondent that the Returning Officer of Sefwi Wiawso Constituency during the 7th December 2020 Election followed to the letter the procedure for collation of Parliamentary results provided for under the *Public Elections Regulations, 2020 (C. I. 127)* and also followed the procedure regarding declaration and publication of Parliamentary results.

The 2nd Respondent further contended that the Returning Officer for the Sefwi Wiawso Constituency in the 7th December 2020 election, who was appointed by the 2nd Respondent under *sub-regulation 3 of Regulation 2 of the Public Elections Regulations, 2020 (C. I. 127)*, began assembling and collating the Parliamentary Election Results at the Sefwi Wiawso Collation Centre after the close of polls on 7th December 2020, and that this was in the presence of the candidates or their representatives, including representatives of the NDC Party Candidate (Petitioner).

It is further the case of 2nd Respondent that there was a temporary hold up of the collation of the Parliamentary Results at the Constituency Collation Centre on account that the District Director or Electoral Officer in charge of the Sefwi Wiawso Constituency of the Electoral Commission went to make a formal complaint to the Regional Police Command in connection with the missing Parliamentary and Presidential ballot boxes of the Asawinso Community Centre '2' Polling Station which had been snatched on their way to the Constituency Collation Centre by thugs.

Furthermore, it is the case of the 2nd Respondent that on the morning of 9th December 2020, the District Officer of the 2nd Respondent in charge of the Sefwi Wiawso Municipality placed a call to the candidates or their representatives or agents appointed to be present at the Collation Centre to allow for the collation of the results from the

polling stations to proceed. According to the 2nd Respondent, all the parties responded to the call except the representatives or agents of the Petitioner appointed by him, who, according to the 2nd Respondent, wilfully failed and/or neglected to be present at the collation.

It is also the case of the 2nd Respondent that on 9th December 2020, the Returning Officer of Sefwi Wiawso Constituency continued collation of the Parliamentary results from the Polling Stations in the Sefwi Wiawso Constituency by projecting the results received from the Polling Stations and collated same at the Constituency Collation Centre in the full view of stakeholders including voters, local media, counting agents and observers both local and foreign.

It is also the case of the 2nd Respondent that the Returning Officer gave notice of the total number of votes before requesting the candidates or their representatives or counting agents to sign the Parliamentary Election Results Collation Form (Form 1C) and the Parliamentary Election Results Summary Sheet (Form 1D). The 2nd Respondent also contended that the counting agents appointed by the Parliamentary Candidates for the Constituency, except those of the Petitioner, signed Form 1C and Form 1D, which, according to the 2nd Respondent, is an indication that the results were collated.

With respect to the Results which were announced by the Presiding Officer of Asawinso Community Centre '2' Polling Station after the close of poll at the said polling station, it is the case of the 2nd Respondent, per the witness statement of its representative (which was adopted by the Court without objection) that, after thugs had snatched the ballot boxes containing election materials at the Collation Centre, he issued a Statement of Poll and Declaration of Results Replacement Form (Pink Sheet) to the Returning Officer (to be given to the Presiding Officer of the Asawinso Community Centre '2' Polling Station) who in turn gave same to the Presiding Officer and who, in turn, filled the Replacement

Form with the results announced by him at the Polling Station and that agents of the 1st Respondent and the candidate for the Ghana Union Movement signed the Statement of Poll and Declaration of Results Replacement Form (Pink Sheet) after they had confirmed the results announced from their agents at the polling station.

It is also the case of the 2nd Respondent that the results as announced at the Asawinso Community Centre '2' Polling Station were: Kwaku Afriyie (1st Respondent) 105 votes; Aidoo Evans Paul (Petitioner) 165 votes; Louisa Nkuah Kwayie (GUM Party) 1 vote; Prince Akomeah Stephen (GCPP) 0 vote; and Bonye Martin Kofi (Independent Candidate) 15 votes.

Issues for Determination

Following the respective issues filed by the Parties, this Court, on 11th June 2021, set down the following issues for trial:

- (1) Whether or not the Returning Officer for Sefwi Wiawso Constituency collated, published and declared the results of the Parliamentary Election conducted in the Sefwi Wiawso Constituency on the 7th day of December 2020;
- (2) Whether or not the results of the Parliamentary Election conducted in Asawinso Community Centre 2 Polling Station were included in the Parliamentary Election Results Collation and Parliamentary Results Summary Sheet for the Sefwi Wiawso Constituency;
- (3) Whether or not the results of the Parliamentary Election conducted in the Asawinso Community Centre '2' Polling Station were made available to all the

parties or the agents of the Candidates after sorting and counting of the said results at the Polling Station;

- (4) Whether or not the Returning Officer for the Sefwi Wiawso Constituency furnished the Parties or their Agents with the Parliamentary Election Results Collation (Form 1C) and Parliamentary Results Summary Sheet (Form 1D) before and after the declaration of 1st Respondent as the duly elected Member of Parliament;
- (5) Whether or not non-compliance with the laid down procedure in the collation of the Parliamentary Election results in the Sefwi Wiawso Constituency, if any, affected the Parliamentary Election conducted on 7th December 2020 in the Sefwi Wiawso Constituency so as to render the results null and void;
- (6) Whether or not the Petitioner was validly and duly elected as the Member of Parliament if the Parliamentary Election results for Asawinso Community Centre '2' Polling Station are added to results from all the Polling Stations in the Sefwi Wiawso Constituency;
- (7) Whether or not there was an incidence of over-voting at the Asawinso Community Centre '2' Polling Station with code number G042804 so as to affect the outcome of the Parliamentary Election held at the Asawinso Community Centre '2' Polling Station;
- (8) Whether or not the 2nd Respondent complied with the provisions of the Public Elections Regulations, 2020 (C. I. 127) in the conduct of the Parliamentary Election for the Sefwi Wiawso Constituency;

- (9) Whether or not after sorting and counting of ballots by the Presiding Officer of the Asawinso Community Centre '2' Polling Station after close of poll, the result for the Petitioner, as announced by the Presiding Officer, was 265 or 165;
- (10) Whether or not the total number of votes cast (valid and rejected) at the Asawinso Community Centre '2' Polling Station after the close of poll on 7/12/20 was 292 votes; and
- (11) Whether or not the total number of valid votes counted at the Asawinso Community Centre '2' Polling Station after the close of poll of the December 7 2020 Parliamentary Election was 286 votes.

The Court then ordered the Parties to file their Witness Statements on the issues set down for trial, which the Parties did. Trial of this petition ended on 1st December 2022 and the Parties were ordered to file their respective Addresses. The 1st Respondent filed his Address on 19th December 2022 and the Petitioner filed his Address on 5th January 2023. The 2nd Respondent did not file any Address.

Standard & Burden of Proof, Persuasion and Producing Evidence

In this petition, the Petitioner is asserting that he obtained 265 votes at the Asawinso Community '2' Polling Station. The Petitioner is also asserting certain irregularities and/or non-compliance with C. I. 127. The law is that he who asserts must prove. Accordingly, in law, the Petitioner has the burden of persuasion on each of these assertions throughout, on the preponderance of the probabilities.

Proof in civil trials is provided under *sections 10, 11, 12 and 14 of the Evidence Act, 1975 (NRCD 323)*. These sections on the burden of proof, burden of persuasion and burden of producing evidence which also apply to election petitions provide as follows:

“10. (1) For the purpose of this Act, the **burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or Court.**

(2) The burden of persuasion may require a party to raise a reasonable doubt concerning the existence or non-existence of a fact **by a preponderance of the probabilities** or by proof beyond reasonable doubt.

11. (1) For the purpose of this Act, the **burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party.**

11. (4) In other circumstances the **burden of producing evidence requires a party to produce sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact was more probable than its non-existence.**

12. (1) Except as otherwise provided by law, the burden of persuasion requires **proof by a preponderance of the probabilities.**

(2) Preponderance of probabilities means the degree of certainty of belief in the mind of the tribunal of fact or the court by which it is convinced that the existence of a fact is more probable than its non-existence.

14. Except as otherwise provided by law, **unless and until it is shifted**, a party has the **burden of persuasion as to each fact the existence or non-existence of which is essential to the claim or defence he is asserting.**" . [emphases added]

In the case of *Amalgamated Bank Ltd v Fraga Oil Ghana Ltd and 5 Others* June 14, 2012, Suit No. H1/66/2011, the Court of Appeal stated the position of the law, per Douse JA, at page 9 of the Judgment as follows:

"Our law is based on the adversary system in which he who alleges must prove what he alleges. This is reduced into legislative terms by section 11 (1) and (4) of the Evidence Act, 1975 (NRCD 323)."

Analysis

Issue 1

Whether or not the Returning Officer for Sefwi Wiawso Constituency collated, published and declared the results of the Parliamentary Election conducted in the Sefwi Wiawso Constituency on the 7th day of December 2020

Even though in Exhibit B, the Petitioner wrote a letter to the Returning Officer for the Sefwi Wiawso Constituency, demanding collation of the Parliamentary Election Results, and even though the Petitioner has forcefully contended that the Parliamentary Election Results for the Sefwi Wiawso Constituency were never collated because the collation process was indefinitely suspended, there is ample evidence on record that collation of the Parliamentary Election Results was done.

Exhibit 1 (Form 1C – Parliamentary Election Results Collation Form), duly filled for the various polling stations in the Sefwi Wiawso Constituency, establishes that collation of the Parliamentary Election Results for the Sefwi Wiawso Constituency in the 7th December 2020 general election, was done.

Exhibit 10 (Form 1D – Parliamentary Election Results Summary Sheet, stating the respective votes obtained by the Candidates who contested the Parliamentary Elections for the Office of Member of Parliament for the Sefwi Wiawso Constituency and which contains a signed Declaration in the following terms: “We, the undersigned, do hereby declare that the results shown above are true and accurate account of the ballots in this Constituency”, which signatory includes that of the Returning Officer for the Sefwi Wiawso Constituency, also establishes that the said Parliamentary Results were declared.

DW2 gave evidence under cross-examination at page 151 of the record of proceedings as follows:

“Q: It is your evidence before this Court that the collation for the Parliamentary Election results for the Sefwi Wiawso Constituency was in the full glare of the agents of the candidates all present at the collation centre, the media and the general public, do you have any document or visuals to attest to the fact when the collation for the Parliamentary Election was being carried out or was carried out?

A: I have no visual evidence but the collation was done and the result was duly declared at the collation centre.”

Also, Exhibit 3 (Gazette Notification) which shows publication of the Parliamentary Results of three Constituencies in the Western North Region including the Sefwi Wiawso Constituency, establishes that the Parliamentary Election Results for the Sefwi Wiawso Constituency were duly published.

Accordingly, on the evidence, the Parliamentary Election Results for the Sefwi Wiawso Constituency were collated, declared and published, and the Court so finds.

Issue 2

Whether or not the results of the Parliamentary Election conducted in Asawinso Community Centre '2' Polling Station were included in the Parliamentary Election Results Collation and Parliamentary Results Summary Sheet for the Sefwi Wiawso Constituency

Exhibit 1 (Form 1C – Parliamentary Election Results Collation Form), was duly filled for the various polling stations in the Sefwi Wiawso Constituency including the Results of the Asawinso Community Centre '2' Polling Station. The Results of the Asawinso Community Centre '2' Polling Station have indeed been captured on Exhibit 1 (the Collation Form) with Serial Number 143 and a total number of votes cast of 292.

Exhibit 10 (Form 1D – Parliamentary Election Results Summary Sheet) stating the respective votes obtained by the Candidates, represents the total of the votes each candidate who contested the Parliamentary Election for the Office of Member of Parliament for the Sefwi Wiawso Constituency in the 7th December 2020 general election obtained from the various polling stations within the Constituency, including the votes obtained by the various candidates at the Asawinso Community Centre '2' Polling Station.

This establishes that the results of the Parliamentary Election conducted in Asawinso Community Centre '2' Polling Station were included in the Parliamentary Election Results Collation and Parliamentary Results Summary Sheet for the Sefwi Wiawso Constituency, and the Court so finds.

Issue 3

Whether or not the results of the Parliamentary Election conducted in the Asawinso Community Centre '2' Polling Station were made available to all the parties or the agents of the Candidates after sorting and counting of the said results at the Polling Station

From the evidence on record, the original Statement of Polls was not filled in at the Asawinso Community Centre '2' Polling Station, and accordingly, no copies of the original executed Statement of Polls were available to be given to the candidates or their agents. In fact, no copy was even available for posting at the Asawinso Community Centre '2' Polling Station. Explaining why copies of the original executed Statement of Polls were not given to party agents or posted at the Polling Station, DW1, Ernest Kwaning, gave evidence at page 138 of the record of proceedings as follows:

“CQ: Were candidates, representatives of candidates or counting agents given copies of the results as announced by the Presiding Officer at the Asawinso Community Centre 2 Polling Station?

A: They were announced but copies were not given to the party agents because of issue of over-voting raised by the NPP agents.

CQ: Were the results as announced posted at the Asawinso Community Centre 2 Polling Station?

A: The results could not have been posted because of the issue of over-voting after announcement.”

However, there is ample evidence on record that after sorting and counting of votes, polling agents of candidates present at the Asawinso Community Centre ‘2’ Polling Station had copies of the results as announced.

PW3 gave evidence at pages 111 and 112 of the record of proceedings as follows:

“Q: Did the Presiding Officer give you a copy of the results he had recorded on the rough paper at the Asawinso Community Centre 2 Polling Station?

A: I was not given a copy.

Q: Did you personally demand from the Presiding Officer a copy of the results he had recorded on the rough paper at the Asawinso Community Centre 2 Polling Station?

A: I requested for a copy but he said it was only one paper that he had recorded the results on and that, we agents should look at the recordings and copy same.

Q: Did you copy same?

A: Yes, I did.

Q: Were the results recorded by the Presiding Officer ever posted at the Asawinso Community Centre '2' Polling Station?

A: No.

Q: Where is your copy of the results?

A: I have given same to my lawyer. It is in Exhibit C." [emphasis added]

The evidence of PW3 in this regard goes to show that the Parliamentary Election Results were not only recorded *albeit* on a rough piece of paper by the Presiding Officer of the Asawinso Community Centre '2' Polling Station but that agents had the results as copied from the recording the Presiding Officer made, the unavailability of the original completed and signed Statement of Polls notwithstanding, and the Court so finds.

Issue 4

Whether or not the Returning Officer for the Sefwi Wiawso Constituency furnished the Parties or their Agents with the Parliamentary Election Results Collation (Form 1C) and Parliamentary Results Summary Sheet (Form 1D) before and after the declaration of 1st Respondent as the duly elected Member of Parliament

The Petitioner states at pages 36 and 37 of his Address as follows:

"My lord, it has always been the case of the Petitioner that there was no collation for the Parliamentary Election Results for the Sefwi Wiawso Constituency, thus,

Petitioner and his agents were not given copies of Form 1C and 1D of C. I. 127 as provided by the Regulations. It is against this background that the Petitioner in an application dated the 25th June, 2021 that **a Motion on Notice for an Order for the Production of Documents for Inspection and Taking of copies was filed,** [and] in the Honourable Court's Ruling to the above motion, the Court observed that **since the said documents (three documents) had already been made available to the Applicant/Petitioner by virtue of the service on him of the Witness Statements of Benjamin Oppong and Ernest Kwaning,** which Witness Statements are attached to the above named three documents, hence, to save cost, there will be no need for the Court to order the production of same.

It is crystal clear that neither the Petitioner nor his representative completed and signed [a] copy of the Parliamentary Election Results Collation Form as set out in Form 1C and the Parliamentary Election Results Summary Sheet as set out in Form 1D.

The above documents which were to be given to the candidates or their agents as of right were not made available to the parties in contravention of the provisions of Regulation 43 of C. I. 127. The documents were only seen first when the Respondents filed their Witness Statements and attached them." [emphasis added]

From the evidence on record, even though there was collation of the Parliamentary Election Results for the Sefwi Wiawso Constituency, the Returning Officer for the Sefwi Wiawso Constituency did not furnish the Petitioner or his representatives with the Parliamentary Election Results Collation (Form 1C) and Parliamentary Results

Summary Sheet (Form 1D) upon the declaration of the 1st Respondent as the duly elected Member of Parliament, and the Court so finds.

The records do show that even at the time of filing this petition, the Returning Officer for the Sefwi Wiawso Constituency had still not furnished the Petitioner or his representatives with the Parliamentary Election Results Collation (Form 1C) and Parliamentary Results Summary Sheet (Form 1D). In fact, the failure of the Returning Officer to furnish the Petitioner or his representatives with Form 1C and Form 1D compelled the Petitioner to file a *Motion on Notice for an Order for the Production of Documents for Inspection and Taking of Copies* in the course of the proceedings.

From the records, however, the Petitioner has since received copies of these documents (Form 1C and Form 1D), and the Court further so finds on this issue.

Issue 8

Whether or not the 2nd Respondent complied with the provisions of the Public Elections Regulations, 2020 (C. I. 127) in the conduct of the Parliamentary Election for the Sefwi Wiawso Constituency

From the evidence before this Court, the 2nd Respondent (Electoral Commission) to a large extent complied with the provisions of the C. I. 127 in the 7th December 2020 Parliamentary Election held in the Sefwi Wiawso Constituency. Per the records, this is evident from the peaceful manner in which the election was conducted at the Asawinso Community Centre '2' Polling station up to the close of polls. The evidence of the Petitioner himself lends to this fact. PW3, in the person of Benjamin Tawiah, stated in paragraph 4 of his evidence-in-chief as follows:

“Elections commence[d] at about 7.15 am and **the process continued peaceful[ly] until the close of the poll at 5:00 pm.** The votes or ballots were sorted out in the open place and the total number of votes cast was 386.”
[emphasis added]

Even besides the C. I. 127, the 2nd Respondent (the Electoral Commission) complied with the COVID-19 Protocols that were in force at the time of the election. Again, the evidence of the Petitioner attests to this fact. PW3 gave evidence at page 112 of the record of proceedings as follows:

“Q: Did the electoral commission provide COVID-19 protocol safety materials such as sanitizers or Veronica Buckets for hand washing at the Asawinso Community Centre ‘2’ Polling Station?

A: That is so.”

However, the evidence on record shows that the 2nd Respondent (the Electoral Commission) failed to comply with certain provisions of C. I. 127 in the 7th December 2020 Parliamentary Election held in the Sefwi Wiawso Constituency. These breaches of C. I. 127, as this Court finds, include:

1. Failure to give each candidate, or representative of each candidate or the counting agent a copy of the Results announced at the Asawinso Community Centre ‘2’ Polling Station before the Presiding Officer left the said Polling Station, contrary to *Regulation 39 (3) (b) of C. I. 127.*

2. Failure to post the announced Results at the Asawinso Community Centre '2' Polling Station before the Presiding Officer left the said Polling Station, contrary to *Regulation 39 (3) (c) of C. I. 127*.

3. Failure of the Returning Officer for the Sefwi Wiawso Constituency to furnish the Petitioner or his Agents with the Parliamentary Election Results Collation (Form 1C) and Parliamentary Results Summary Sheet (Form 1D) upon the declaration of 1st Respondent as the duly elected Member of Parliament, contrary to *Regulation 43 (1) (f) of C. I. 127*.

It is important at this point to state that Constitutional Instruments (C. I.s) such as C. I. 47, C. I. 127, etc.) are subordinate legislation under *article 11 (1) (c) of the Constitution*, unlike Acts of Parliament which are primary legislation under *article 11 (1) (b) of the Constitution*.

The law is that, a breach of an Act of Parliament, unless expressly or impliedly provided, results in the nullification of the proceedings or process in which the breach occurred, in respect of which no regularization or immunity whatsoever is permitted, as the Courts cannot condone breaches of Acts of Parliament.

In *NDK Financial Services Ltd (No. 1) v Glico General Insurance* [2015-2016] 1 SCGLR 564, where the Supreme Court considered the effect of *section 44 (1) of the Insurance Act, 2006 (Act 724)*, the Court stated at page 594 of the report as follows:

“No derogation is possible from the effect of section 44 (1) of the Insurance Act, 2006 (Act 724). The section states in unequivocal terms that a contract of insurance is void if there is no certainty of liability assumed by the insurer... The position of the law is that every Court is bound to apply and ensure the

compliance with statutes of the land and so Courts must give effect to such statutes and avoid anything that would amount to condoning an illegality.”

Also, in the case of *Republic v High Court (Fast Track Division), Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties)* [2009] SCGLR 390, the Supreme Court stated at 402 per Date-Bah JSC as follows:

“No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament... The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament...”

However, the law is that, unlike the breach of an Act of Parliament (primary legislation), it is not every breach of a subordinate legislation, such as a Constitutional Instrument, that results in the nullification of the proceedings or process in which the breach occurred. For this purpose, the Supreme Court has classified breaches of a subordinate legislation, such as a Constitutional Instrument, into two distinct sets.

In the case of *Frimpong and Another v Nyarko* [1998-99] SCGLR 734, which dealt with a Constitutional Instrument on Civil Procedure Rules, the Supreme Court, per Acquah JSC (as he then was), stated at pages 749 and 750 of the report as follows:

“...the rules...can be broken down into two sets...The decided cases show that defaults in connection with the rules in the first set are fundamental...However, defaults in connection with the second set of rules are not so fundamental...”

In law, fundamental breaches refer to non-compliance with the Rules or Regulations (as the case may be) which also amount to *breach of the Constitution or an Act of Parliament, or rules of natural justice or breaches which otherwise go to jurisdiction*, so as to occasion substantial injustice, and which breaches the Court has no power to cure. Conversely, non-fundamental breaches refer to non-compliance with the Rules or Regulations (as the case may be) which do not amount to breach of the Constitution or *an Act of Parliament*, or rules of natural justice or breaches which otherwise do not go to jurisdiction, in circumstances that do not occasion substantial injustice, and which breaches the Court has power to cure: see the cases of *Harkness v Bell's Asbestos & Engineering Ltd.* [1967] 2 QB 729 at page 735 and *Republic v High Court, Accra; Ex parte Allgate Co Ltd (Amalgamated Bank Ltd Interested Party)* [2007-2008] SCGLR 1041.

Thus, taking for instance a Constitutional Instrument like *the High Court (Civil Procedure) Rules, 2004 (C. I. 47)* to illustrate the point, breaches in the first set of Rules (or fundamental breaches) empower the Court to set aside either wholly or in part the proceeding in which the failure occurred under *Order 81 rule 2 (a) of C. I. 47*; whereas breaches in the second set of Rules (or non-fundamental breaches) only empower the Court to allow the necessary amendments to be made or otherwise regularize the irregularities under *Order 81 rule 2 (b) of C. I. 47*.

In *Ex parte Allgate* (supra), which dealt with the *High Court (Civil Procedure Rules), 2004 (C. I. 47)*, (a Constitutional Instrument), the Supreme Court, in circumscribing the ambit

of *Order 81 rule 1 of C. I 47*, explained ‘non-fundamental-breaches’ which the Court can cure, and ‘fundamental breaches’ which the Court cannot cure, per Date-Bah JSC at page 1054 as follows:

“...where there has been non-compliance with any of the rules contained in the High Court (Civil Procedure) Rules, 2004 (C. I. 47), such non-compliance is to be regarded as an irregularity that does not result in nullity, unless the non-compliance is also a breach of the Constitution or of a statute other than the Rules of Court or the rules of natural justice or otherwise goes to jurisdiction.”

Clarifying the position further, the Supreme Court held that whereas non-service of a process requiring service violates the natural justice Rule of *audi alteram partem* and results in nullity which the Court has no power to cure, short service of such process amounts only to a remediable irregularity and is to be regarded as an irregularity which does not cause an automatic nullity.

Being a subordinate legislation therefore, *it is not every breach of the Public Elections Regulations, 2020 (C. I. 127) that should result in the nullification* of the proceedings or process in which the breach occurred. For a breach of C. I. 127 to result in the nullification of the proceedings or process in which the breach occurred, that breach must also be either a breach of the Constitution or of an Act of Parliament or the rules of natural justice or a breach that otherwise goes to jurisdiction so as to occasion substantial injustice: see *Republic v High Court, Accra; Ex parte Allgate Co Ltd (Amalgamated Bank Ltd Interested Party)* [2007-2008] SCGLR 1041 (supra).

The breaches of C. I. 127 in the instant case, such as failure to give copies of the announced Results to the Petitioner or his representatives at the Asawinso Community Centre ‘2’ Polling Station, failure to furnish the Petitioner with Form 1C and Form 1D upon the declaration of the 1st Respondent as the duly elected Member of Parliament,

etc., in the circumstances of this case, are not fundamental, and the breaches did not occasion substantial injustice to the Petitioner so as to result in the nullification of the Parliamentary Election Results. The essence of giving or posting copies of these electoral documents are to give the requisite notice, which notice, in the circumstances of this case, the Petitioner or his representatives had.

In fact, the party agents at the Asawinso Community Centre '2' Polling Station, even though were not given copies of the completed and signed original Statement of Polls, as same was never executed, indeed copied the announced Results from the Recording of the announced Results by Presiding Officer on a sheet of paper. Also, even though the Petitioner was not furnished with Form 1C and 1D upon the declaration of the 1st Respondent as the duly elected Member of Parliament, the Petitioner has since had copies of same.

This is however not to give a blessing to these failures on the part of the 2nd Respondent, which failures this Court unreservedly castigates.

Issue 5

Whether or not non-compliance with the laid down procedure in the collation of the Parliamentary Election Results in the Sefwi Wiawso Constituency, if any, affected the Parliamentary Election conducted on 7th December 2020 in the Sefwi Wiawso Constituency so as to render the results null and void

As stated above, there was due collation, declaration and publication of the Parliamentary Election Results for the Sefwi Wiawso Constituency.

Accordingly, there was no non-compliance with the laid down procedure in the collation of the Parliamentary Election Results in the Sefwi Wiawso Constituency which

affected the Parliamentary Election conducted on 7th December 2020 in the Sefwi Wiawso Constituency so as to render the Results null and void, and the Court so finds.

Issues 7, 10 and 11

These, respectively, are:

Whether or not there was an incidence of over-voting at the Asawinso Community Centre '2' Polling Station with code number G042804 so as to affect the outcome of the Parliamentary Election held at the Asawinso Community Centre '2' Polling Station;

Whether or not the total number of votes cast (valid and rejected) at the Asawinso Community Centre '2' Polling Station after the close of poll on 7/12/20 was 292 votes;

Whether or not the total number of valid votes counted at the Asawinso Community Centre '2' Polling Station after the close of poll of the December 7, 2020 Parliamentary Election was 286 votes

From the evidence on record, in the course of counting of votes at the Asawinso Community Centre '2' Polling Station, the agent of the 1st Respondent raised a protest as to the difference in the total number of votes cast in the Presidential Election and the Parliamentary Election which was to the effect that, whereas the total votes cast in the Presidential Election was 294, that of the Parliamentary Election registered 292 (a difference of 2). This is evidenced by the entries of the total votes cast for the Asawinso Community Centre '2' Polling Station with Serial Number 143 and Polling Station Code G042804 on the Presidential Election Results Collation Form (Exhibit 11 G – Form 9) which was 294 and on the Parliamentary Election Results Collation Form (Exhibit 1 – Form 1 C) which was 292. Accordingly, there was no incidence of 'over voting' *per se*,

but rather an issue of the difference of two votes between the total votes cast for the Presidential and the Parliamentary Elections at the Polling Station.

Per Exhibit 1, the total votes cast at the Asawinso Community Centre '2' Polling Station in the Parliamentary Election was 292. On the same Exhibit 1, there were 6 rejected ballots in the Parliamentary Election at the Asawinso Community Centre '2' Polling Station. When the 6 rejected ballots are subtracted from the total votes cast (i. e. 292 – 6), we get 286, being the total valid votes cast in the Parliamentary Election at the Asawinso Community Centre '2' Polling Station.

The protest necessitated a recount but the recount was fraught with confusion. The Presiding Officer sought to explain out to the Candidates' agents the difference of two votes but he could not do so because of the said confusion.

It was within the competency of the Presiding Officer to explain out the difference of two votes, but as he could not do so because of the confusion, that issue of difference of two votes remains *res nova*.

The difference of two votes, the subject matter of the protest, did not affect the outcome of the Parliamentary Election held at the Asawinso Community Center '2' Polling Station, and the Court so finds.

Issues 6 and 9

They, respectively, are:

Whether or not the Petitioner was validly and duly elected as the Member of Parliament if the Parliamentary Election results for Asawinso Community Centre '2' Polling Station are added to results from all the Polling Stations in the Sefwi Wiawso Constituency;

Whether or not after sorting and counting of ballots by the Presiding Officer of the Asawinso Community Centre '2' Polling Station after close of poll, the result for the Petitioner, as announced by the Presiding Officer, was 265 or 165

In this petition, the Petitioner is asserting that he obtained 265 (and not 165) votes at the Asawinso Community '2' Polling Station.

It is noted from the records that the difference in the votes between the 1st Respondent and the Petitioner, as things stand now, is 72. If the Petitioner's assertion is proven on the preponderance of the probabilities, he would obtain more votes than the 1st Respondent.

The Petitioner carries the burden of proof on his assertion that he obtained 265 votes at the Asawinso Community '2' Polling Station: see *sections 10, 11, 12 and 14 of the Evidence Act, 1975 (NRCD 323)* and the case of *Amalgamated Bank Ltd v Fraga Oil Ghana Ltd and 5 Others* 14 June, 2012, Suit No. H1/66/2011 (supra).

It must be stated that, from the records, there are both 'intra-witness' and 'inter-witness' contradictions / inconsistencies in the evidence adduced by the Petitioner.

To prove his assertion that he obtained 265 votes at the Asawinso Community '2' Polling Station, the Petitioner tendered in evidence Exhibit C (Agent Record Card recorded by Benjamin Tawiah, PW3, who was the Polling Agent for the Petitioner at the Asawinso Community Centre '2' Polling Station).

Exhibit C gave the following details:

No. of people verified by the BVD	387
No. of votes cast	387
No. of Valid votes cast	386
NPP	105
NDC	265
GUM	1
Independent	15
Rejected ballot	1

First, even though Exhibit C states that the total number of votes cast at the Asawinso Community Centre '2' Polling Station as 387, the Petitioner's own witness, PW3, in the person of Benjamin Tawiah, stated in his evidence-in-chief that the total number of votes cast at the Asawinso Community Centre '2' Polling Station was 386, thereby contradicting his own deed, Exhibit C (i. e. 'intra-witness' contradiction / inconsistency). Benjamin Tawiah stated in paragraph 4 of his evidence-in-chief as follows:

"Elections commence[d] at about 7:15 am and the process continued peaceful[ly] until the close of the poll at 5:00 pm. The votes or ballots were sorted out in the open place and **the total number of votes cast was 386.**" [emphasis added]

Again, PW3, Benjamin Tawiah, contradicts himself in the very next paragraph of his evidence-in-chief, namely paragraph 5, which is as follows:

“At the close of counting of the votes for the Parliamentary Election results held at Asawinso Community Centre ‘2’ Polling Station, the National Democratic Congress’ candidate, Paul Evans Aidoo, had 265 votes, New Patriotic Party’s candidate, Dr. Afriyie, had 105 votes, Martin Bronye, the Independent candidate, had 15 votes, Louisa had 1 [vote] and I rejected vote.”

Mathematically adding the figures in the said paragraph 5 gives a total of 387 votes, not 386. Thus, $265+105+15+1+1 = 387$. Therefore, it is evident that PW3 contradicted himself in his evidence-in-chief (i. e. ‘intra-witness’ contradiction / inconsistency).

On the contradiction in the evidence of PW3, the 1st Respondent states at page 56 of his Address as follows:

“My Lord, going by PW3’s testimony in paragraph 5 of his witness statement, when the total valid votes cast is added to the rejected vote of one then the total number of votes deemed to have been cast at Asawinso Community Centre ‘2’ Polling Station was 387 votes. The statement in paragraph 5 of the witness statement of PW3 is in sharp contradiction of his (PW3’s) statement in paragraph 4 of his witness statement...”

Indeed, PW3 repeated and admitted these same statements under cross-examination by Counsel for the 1st Respondent at pages 99 and 100 of the record of proceedings as follows:

“Q: In paragraph 4 of your witness statement you stated as follows:

“Elections commenced at about 7:15 a.m. and the process continued peacefully until the close of poll at 5:00 p.m. The votes or ballots were sorted out in open place and the total number of votes cast was 386.” Is that not the case?

A: That is correct.

Q: In paragraph 5 of your witness statement you stated that: ‘at the close of counting the votes for the Parliamentary Election results held at Asawinso Community Centre ‘2’ Polling Station, the NDC candidate, Paul Evans Aidoo, had 265 votes; NPP candidate, Dr. Afriyie, had 105 votes; Martin Bonye, the Independent Candidate, had 15 votes, Louisa had 1 vote and 1 rejected vote’. Is that not the case?

A: That is so.

Q: Look at Exhibit “C”, were you not the one who wrote the words and figures in exhibit C?

A: I wrote the contents in Exhibit “C”.

Q: Add these figures 265 plus 105 plus 15 plus 1 and give the results?

A: It will be 387”

Also, contrary to the evidence of PW3 in paragraph 4 of his evidence-in-chief that the total number of votes cast at the Asawinso Community Centre ‘2’ Polling Station was

386, PW2, in the person of Thomas Mintah, gave evidence under cross-examination at page 92 of the record of proceedings as follows:

“Q: Put, if the Petitioner really obtained 265 together with the other results obtained by the candidates, then the total votes cast which is 392 will far exceed the total number of voters captured by the BVD?

A: No my Lord. The figures the Petitioner has put before this Court as results obtained by him and other candidates are:

Evans Paul Aidoo	-	265
Hon. Dr. Kwaku Afriyie	-	105
Loiusa Nkuah-Kwayie	-	1
Prince Ahenkorah Stephen	-	0
Martin Bonye Kofi	-	15
And the rejected ballot	-	1

So the total is 387 and not 392

Q: Further put, the figure that you have obtained that is the 387 is incorrect, since it will far exceed the total voters who were biometrically verified by the BVD?

A: I know from the information given to me by my agent that the number of people verified by the BVD is 387.” [emphasis added]

Thus, the evidence of PW2 materially contradicted paragraph 4 of PW3’s evidence-in-chief (i. e. ‘inter-witness’ contradiction / inconsistency).

Since the number of votes of 265 claimed by the Petitioner as votes he obtained at the Asawinso Community Centre '2' Polling Station is a composite of the total number of votes cast at that Polling Station, the contradictions / inconsistencies in the evidence adduced by the Petitioner as to the total number of votes cast at the said Polling Station are material: they cannot be said to be minor.

The law is that the Court may gloss over minor contradictions / inconsistencies in the evidence of a party in assessing credibility. In the case of *Efisah v Ansah* [2005-2006] SCGLR 943, the fourth and last grounds of appeal were that the Court of Appeal had glossed over anomalies, inconsistencies and contradictions in the evidence of the plaintiff therein. In dismissing the appeal, the Supreme Court pronounced upon inconsistencies, conflicts, contradictions, etc. in evidence led at trial, per Georgina Wood JSC (as she then was) at page 960 as follows:

“Finally, I have no difficulty in dismissing the appellant’s co-defendant’s final complaint that the Court of Appeal glossed over anomalies, inconsistencies and contradictions in the plaintiff’s evidence. In the real world, evidence led at any trial which turns principally on issues of fact, and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions and the like. In evaluating evidence led at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus, in any given case, minor, immaterial, insignificant or non-crucial inconsistencies must not be dwelt upon to deny justice to a party who has substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts are clearly reconcilable and there is a critical mass of evidence or corroborative evidence on crucial or vital matters, the Court would be right to gloss over these inconsistencies.”

In the case of *Oppong v Vaughan-Williams* (per lawful attorney) Acquaye [2015-2016] SCGLR 781, which affirmed the position of the law as pronounced upon in the *Efisah* case, the Supreme Court, in affirming the decision of the Court of Appeal and dismissing an appeal before it, held at page 789 per Sophia Adinyira JSC as follows:

“From the foregoing, we would hold that the Court of Appeal had rightly held that the inconsistencies the trial Judge identified in the evidence of the plaintiff and her caretaker, the first plaintiff witness, are not on material evidence and as such cannot be used to impeach the credibility of the plaintiff and her witness and thereby reject her claim.”

From the above cases, it is clear that minor, immaterial, insignificant or non-crucial conflicts, inconsistencies, contradictions, etc. in evidence are not fatal to the case of the party in whose favour the evidence was given.

However, on the other side of the coin, the law is that material, significant or crucial conflicts, inconsistencies, contradictions, etc. in evidence are fatal to the case of the party in whose favour the evidence was given. In *Atadi v Ladzekpo* [1981] GLR 218, CA, it was held that whenever the testimony of a party on a critical issue is in conflict with the testimony of his own witness on that issue, it is not open to the trial Court to gloss over such a conflict and make a specific finding on that issue in favour of the party whose case contained the conflicting evidence.

Inviting the Court to reject the Petitioner’s assertion that he obtained 265 votes at the Asawinso Community Centre ‘2’ Polling Station, the 1st Respondent stated on the

materiality of the contradiction and inconsistency in the Petitioner's evidence at page 56 of his Address thus:

"My Lord, this contradiction and inconsistency is material as it borders on a very important issue in the resolution of this suit.

My Lord, the accepted principle of law is that where discrepancy or discrepancies is/are material on an issue and make(s) the version of the witness on the point or points in issue highly improbable, when viewed against the general background of the dispute, then the Court may rightly disbelieve and reject what such a witness has testified about: see Republic v Adekura [1984-86] 2GLR 345, CA; RT Briscoe Ghana Ltd v Boateng 1968 [GLR 9]."

A principle of law is that, where, in a parliamentary election petition, the petitioner asserts a contrary number of votes obtained at a polling station and that assertion is challenged, he has the burden of persuasion on his assertion, and in discharging that burden, if he gives in evidence two conflicting / different figures as being the total number of votes cast at that polling station, such conflict or inconsistency in the petitioner's evidence, inasmuch as the contrary number of votes asserted forms part or is a composite of the total number of votes cast at that polling station, is material to impeach the credibility of the petitioner's evidence so as to delve a fatal blow to the petitioner's assertion.

Interestingly, the 1st Respondent is inviting this Court to ignore Exhibit C on the basis that it is a self-serving document and also that it is not one of the documents which was supplied by the Electoral Commission for the conduct of the 7th December 2020 election at the Asawinso Community Centre '2' Polling Station, and further that there is no

provision in C. I. 127 supporting its existence. The 1st Respondent states at page 57 of his Address as follows:

“My Lord, it is submitted that exhibit ‘C’ tendered in evidence by PW2 should be ignored as incredible piece of paper or document without any probative value and unreliable in resolution of the issues at stake. This is so because firstly exhibit ‘C’ the content of which is alleged to have been made by PW3 is self-serving document alleged to have been designed by leaders of the NDC Party. It is not one of the documents which was supplied by the Returning Officer of Sefwi Wiawso Constituency to the Presiding Officer of Asawinso Community Centre ‘2’ Polling Station for the conduct of the 7th December, 2020 election at the said polling station. Also there is no provision in C. I. 127 supporting the existence of any such document.”

It must be noted that, on the evidence adduced before this Court, Exhibit C was prepared on the instruction of the Presiding Officer for the Asawinso Community Centre ‘2’ Polling Station. PW3 gave evidence at page 112 of the record of proceedings:

“Q: Did you personally demand from the Presiding Officer a copy of the results he had recorded on the rough paper at the Asawinso Community Centre ‘2’ Polling Station?

A: I requested for a copy but he said it was only one paper that he had recorded the results on and that, we agents should look at the recordings and copy same.

Q: Did you copy same?

A: Yes, I did.

Q: Where is your copy of the results?

A: I have given same to my lawyer. It is in Exhibit C.”

Thus, Exhibit C cannot be said to be a self-serving document *strictso senso* with respect to the votes cast at the Asawinso Community Centre ‘2’ Polling Station. The figures therein were copied from the figures recorded by the Presiding Officer himself. It is not as if, on the evidence, the figures were recorded from PW3’s party records. The Presiding Officer, as agent of the Electoral Commission of Ghana, indeed, had the power derivable from the general inherent powers under *article 45 of the Constitution*, which general inherent powers entitle the Electoral Commission to make such administrative decisions as are necessary for the smooth conduct and supervision of elections and referenda, to decide to write the announced results on a piece of paper (ostensibly for onward transmission to the Statement of Poll) and to instruct the polling agents at the Asawinso Community Centre ‘2’ Polling Station to copy from same. It is also not the law that in an election petition, a document admitted in evidence should be considered by the Court only if it is supplied by the Electoral Commission or that there is a provision in the governing C. I. supporting its existence. If that had been the case, then it would mean that Exhibit A (Extract from the Police Diary of Action on the Report of the Snatching and Destruction of Ballot Boxes and other Electoral Materials) ought to be ignored by this Court because Exhibit A was neither supplied by the Electoral Commission nor is there any provision in C. I. 127 supporting its existence. Exhibit C will not be ignored by this Court, and same shall be considered, and has, indeed, been considered by this Court for what it is worth.

Thus, Exhibit C is not incredible because it is a self-serving document or it was not supplied by the Electoral Commission or that there is no provision in C. I. 127 supporting its existence: Exhibit C, taken together with other evidence adduced by the Petitioner in proof of his assertion that he obtained 265 votes out of the total votes cast at the Asawinso Community Centre '2' Polling Station, is incredible by reason of the material contradictions / inconsistencies hereinbefore explained, which contradictions / inconsistencies have delved a fatal blow to the credibility of the Petitioner's evidence.

An equally fatal blow to the Petitioner's assertion that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station is his failure to call or subpoena the Presiding Officer for the Asawinso Community Centre '2' Polling Station to come and testify in Court to materially support his assertion and/or for the Court to have the opportunity of observing the Presiding Officer's demeanor as a witness, when the Petitioner's own witness, PW3 (Benjamin Tawiah) gave evidence that the Presiding Officer for the Asawinso Community Centre '2' Polling Station recorded the announced results on a sheet of paper, the very source document which he, PW3, copied from, and which is the subject matter of Exhibit C. The evidence of the Presiding Officer was therefore very material to the Petitioner's case that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station.

PW3 gave evidence under cross-examination at page 106 of the record of proceedings as follows:

"Q: So how did you come by these figures you have just stated?"

A: The counting was done at the polling station in the presence of many people which I myself was there. **The Presiding Officer had a rough sheet and after the counting he recorded the figures on the said paper and I sighted that paper** on which the recording had been made.” [emphasis added]

The law is that where a party carries the burden of proof to establish his case but fails to call any material witness essential for establishing his case, that failure is fatal to the party’s case. In *Owusu v Tabiri* [1987-88] 1 GLR 287, the defendant therein contended that the issue before the Court was *res judicata* as it had been resolved by a chief at a valid arbitration. The plaintiff therein, on the other hand, argued that what took place before the chief was a negotiated settlement. The chief, who alone could have established that there was a valid arbitration was not called to testify. The Court held that since the onus of proof was on the defendant who asserted that there was a valid arbitration, his failure to call the chief was fatal to his allegation that there was a valid arbitration.

Writing on the sub-topic “Failure to call material witness or lead vital evidence” and referring to section 11 (1) of the Evidence Act, 1975 (NRCD 323), Justice S. A. Brobbey provides in his book, *Practice & Procedure in the Trial Courts and Tribunals of Ghana* 2011 (2nd Edition) at pages 378 and 379 as follows:

“In civil proceedings, the consequences of a party’s failure to call a material witness depend on the onus of proof placed on him by the facts of the case. If a party has to establish his case and therefore assumes the onus of proof, he must call witnesses material to establish that case. In that event, **his failure to call a material witness may result in a ruling being given against him** for the reason

that he has failed to establish that case: see NRCD 323, s 11 (1).” [emphasis added]

Accordingly, the Petitioner’s failure to call the Presiding Officer, who provided the source document from which PW3 copied the Parliamentary Election results (including the 265 votes the Petitioner claims he obtained at the Asawinso Community Centre ‘2’ Polling Station), the subject matter of Exhibit C, and who was the only person who could have established the veracity or otherwise of Exhibit C, was fatal to the Petitioner’s claim of 265 votes: see *Owusu v Tabiri* [1987-88] 1 GLR 287 (supra).

Also, at page 112 of the record of proceedings, PW3 gave evidence as follows:

“Q: Did you personally demand from the Presiding Officer a copy of the results he had recorded on the rough paper at the Asawinso Community Centre ‘2’ Polling Station?

A: I requested for a copy but he said it was only one paper that he had recorded the results on and that, **we agents should look at the recordings and copy same.** [emphasis added]

Even though the Petitioner’s own witness, PW3, testified that the polling agents at the Asawinso Community Centre ‘2’ Polling Station were asked by the Presiding Officer to copy the results from the Presiding Officer’s Recording of the results on a sheet of paper, the Petitioner failed to call any of the these polling agents to testify in Court to support his assertion that he obtained 265 votes at the Asawinso Community Centre ‘2’ Polling Station or to otherwise corroborate his evidence on the matter. This failure also

delved a heavy blow to the Petitioner's assertion that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station.

The failure of the Petitioner to call any material witness, such as the Presiding Officer or any of the other polling agents (other than his own polling agent) in support of his case that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station, is fatal to the Petitioner's case. Accordingly, the burden on the Petitioner on the matter did not shift to the Respondents within the meaning of *section 14 of the Evidence Act, 1975 (NRCD 323)*.

In opposing the Petitioner's assertion that he obtained 265 votes cast at the Asawinso Community Centre '2' Polling Station as per Exhibit C, the Respondents have tendered in evidence, Exhibits 4 and 8 (Replacement Form 8A – Statement of Poll for Office of Member of Parliament). Exhibits 4 and 8 refer to the same document and for convenience, I will hereinafter stick to Exhibit 4. Exhibit C is the evidence on oath of the Petitioner against Exhibit 4, the evidence on oath of the Respondents – what is described by jurists as “oath against oath”: see *Practice & Procedure in the Trial Courts and Tribunals of Ghana* 2011 (2nd Edition) by Justice S. A. Brobbey at page 375.

The Petitioner argues that Exhibit 4 is neither authentic nor valid. He states at page 25 of his Address as follows:

“Thus, with the ballot boxes and election materials for the said polling station being snatched by thugs on the 7th December, 2020 and the incident reported on the 9th of December, 2020 as evidence[d] by extracts from the Station Diary of the Western North Regional Police Command which was admitted as Exhibits A, A1, A2, and A3, it is crystal clear that the Parliamentary Election Results in Asawinso Community Centre '2' Polling Station were not made available to any of the

parties. Hence, if the official document that authenticate[s] the results was unavailable, how could Exhibit[s] 4 and 8, the purported Replacement results be said to be authentic and valid especially when the two parties have different figures as what was announced at the Polling Station at the close of the Polls.”

First, it must be made clear that, from the evidence on record, the rough sheet of paper on which the Presiding Officer recorded the Results of the Parliamentary Election at the Asawinso Community Centre ‘2’ Polling Station was not part of the electoral materials that were snatched and destroyed by thugs. If the original Form 8A had been filled in at the Polling Station, it is obvious that the source document for the filling in would have been the Results as recorded on the rough paper by the Presiding Officer. It should therefore not be difficult for any person to surmise that the Replacement Form 8A would equally be filled in from the same source document, especially where it has been established that the said source document was not snatched or destroyed by thugs.

Even if evidence adduced by the Petitioner (per Exhibit C) in proof of his assertion that he obtained 265 votes out of the total votes cast at the Asawinso Community Centre ‘2’ Polling Station had not been materially contradictory and the burden had shifted to the Respondents, this Court would have still found Exhibit 4 to be more credible than Exhibit C for purposes of establishing the true Parliamentary Results obtained at the Asawinso Community Centre ‘2’ Polling Station.

First, Exhibit 4 was filled in and signed by an official namely, the Presiding Officer for the Asawinso Community Centre ‘2’ Polling Station, which makes Exhibit 4 a product of an official act in favour of which the presumption of regularity of the performance of official duties operates: see *section 37 of NRCD 323* on the presumption of regularity of official duties. See also the case of *GPHA v Nova Complex Ltd* [2007-2008] 2 SCGLR 806

which applied the common law rule rendered in Latin as *omnia praesumuntur rite esse acta* (there is a presumption that officials perform their duties regularly). On the other hand, Exhibit C was neither issued nor filled in by an official and as such the presumption of regularity of the performance of official duties does not operate in its favour.

It has been established from the evidence on record that, a Replacement Form is issued as a stop-gap measure where there is an error on the original Statement of Poll or when the need otherwise arises.

At page 123 of the record of proceedings, DW1, in the person of Ernest Kwaning (the District Officer of the Electoral Commission for the Sefwi Wiawso Municipality) gave evidence under cross-examination as follows:

“Q: Can you tell this Honourable Court where in your procedures (procedures of Electoral Commission) you issue replacement for statement of poll for polling station?

A: A replacement statement of poll is issued only when there is an error made by the Presiding Officer or there is a need for such replacement to be done.”

Then at pages 129 and 130 of the record of proceedings, DW1 continued under cross-examination as follows:

“Q: Can you point out to this Honourable Court the basis in your procedure and processes that support you as the District Election Officer to issue a replacement form when you had not seen the original statement of poll?”

A: In this circumstance the original statement of poll for Asawinso Community Centre ‘2’ Polling Station was destroyed by thugs and as such there was no statement of poll for that centre so there was a need to issue a replacement.”

Under *article 45 of the Constitution*, the functions of the Electoral Commission include:

“(c) To conduct and supervise all public elections and referenda.”

In the course of the proceedings, Counsel for the 2nd Respondent assisted the Court upon request, stating as follows:

“There is no provision in our electoral laws that specifically provides for the issuance of a Replacement Form when the need arises. It is by practice.”

The research conducted by this Court so far has not revealed any specific provision in our electoral laws for the issuance of a Replacement Form when the need arises. Even though this Court has not found any express provision in our electoral laws for the issuance of a Replacement Form when the need arises, the law is that, the issuance of a Replacement Form when the need arises is, indeed, an inherent power of the Electoral

Commission under *article 297 of the Constitution* and *section 21 (1) of the Interpretation Act, 2009 (Act 792)*.

Article 297 (c) of the Constitution provides as follows:

“Where a power is given to a person or authority to do or enforce the doing of an act or a thing, all such power shall be deemed to be also given as are necessary to enable that person or authority to do or enforce the doing of the act or thing.”

Section 21 (1) and (3) of the Interpretation Act, 2009 (Act 792) provides as follows:

“21 (1) where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed, as occasion requires.”

“21 (3) where a power is given to a person or authority to do an act, or a thing, or enforce the doing of an act or a thing, that power includes any other power that are reasonably necessary to enable that person or authority to do that act or thing or are incidental to the doing or enforcement of that act or thing.”

In the case of *John Dramani Mahama v Electoral Commission and Nana Addo Dankwa Akufo Addo* Writ No. J1/05/2021 dated 4th March 2021 (unreported) SC, where it was argued on behalf of the petitioner therein that the 1st respondent therein (the Electoral Commission) could not have, on her own, corrected the error she made without consulting the stakeholders of the 2020 Election, the Supreme Court, in a unanimous decision, pronounced upon the ambit of article 297 of the Constitution and section 21 (1) of the Interpretation Act, 2009 (Act 792) per Anin Yeboah CJ, as follows:

“No statute or Regulation was cited to us by Counsel for the petitioner for this submission and our collective industry has not revealed any. This submission does not find favour with the Court in view of article 297 (c) of the Constitution... It is also important to make reference to section 22 of the Interpretation Act, 2009 (Act 297) which deals with omission and errors in the course of executing administrative or executive functions... We are therefore of the considered opinion that the Chairperson of the 1st respondent had the right to effect the correction she made...”

Accordingly, the Electoral Commission, in the performance of its function to conduct and supervise public elections, has the inherent power to issue a Replacement Form as a stop-gap measure where the original Statement of Poll is destroyed or stolen or when the need otherwise arises.

In the circumstances of the instant case, the Replacement Form was therefore lawfully issued, under the inherent powers of the Electoral Commission under *article 297 of the Constitution* and *section 21 (1) and (3) of the Interpretation Act, 2009 (Act 792)*: see ***John Dramani Mahama v Electoral Commission and Nana Addo Dankwa Akufo Addo*** Writ No. J1/05/2021 dated 4th March 2021 (unreported) (*supra*).

Having been lawfully issued and filled in and/or executed by electoral Officers, the presumption of regularity of official duties operates in favour of Exhibit 4, and that presumption, on the evidence adduced before this Court, has not been rebutted by the Petitioner.

Quite apart from the unrebutted presumption of regularity of official duties which operates in favour of Exhibit 4 as against Exhibit C, on the face of the two documents,

Exhibit 4 was, apart from the signature of the Presiding Officer, signed by two polling agents who were present at the Asawinso Community Centre '2' Polling Station when the results were announced, whereas **Exhibit C which is an unsigned and undated document**, was prepared and/or completed by only one polling agent who was present at the Asawinso Community Centre '2' Polling Station when the results were announced. This obviously makes Exhibit 4 weightier than Exhibit C.

From the totality of the evidence on record, the Petitioner failed, on the preponderance of the probabilities, to prove his assertion that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station: see *section 12 (1) of the Evidence Act, 1975 (NRCD 323)*.

Before I come to my conclusion, I wish to touch on a few things.

Condemnation

This Court raises its voice in condemnation against the dastardly act of 'thugsterism' which resulted in the snatching and destruction of ballot boxes and other election materials on their way to the Sefwi Wiawso Constituency Collation Centre. Such acts have the effect of completely taking away the scrutiny power of the High Court under *section 21 of the Representation of the People Law, 1992 (PNDCL 284)*, subsection 1 of which provides as follows:

“Where on an election petition the election is claimed for an unsuccessful candidate on the ground that the candidate had a majority of lawful votes, the High Court may direct an examination of the votes cast at the election by the Commission or any other person determined by the Court.”

See the case of *Enos v Electoral Commission* [1999-2000] 1 GLR 564, per Heward-Mills J (as she then was), where the scrutiny power of the High Court was duly exercised.

From the records, the unfortunate dastardly act has been blamed on security lapses during the election; and the darkness at the time provided a fertile ground for these thugs to carry out their offensive operation.

DW1, Ernest Kwaning, gave evidence on 29th November 2022 at page 139 of the record of proceedings as follows:

“CQ: As the District Electoral Officer, what will you recommend to be done in future to forestall the unfortunate situation that happened at Asawinso Community Centre ‘2’ Polling Station and also the incidence that took place at the collation centre regarding the thugs?”

A: These are security issues and as such I will recommend that enough security is provided at each polling station and the constituency collation centres. If there were to be **enough security** at the Asawinso Police Station **at that night**, the thugs could not have destroyed these boxes.” [emphasis added]

Even though Police investigations into the matter, as per Exhibit A, have not linked any Party in this petition to the said dastardly act, such dastardly acts are highly condemnable as they have the potential of derailing us as a country from our democratic path!

The next thing I want to deal with is the use of the word “declaration” in Regulation 39 (3) (b) of C. I. 127 and in the Statement of Poll otherwise known as ‘Pink Sheet’ (i. e. Form Eight A), which this Court finds inappropriate.

Results are not declared at the polling station; they are only announced at the polling. It is rather at the collation centre that parliamentary election results are declared.

This is evident from the heading of the entire Regulation 39 of C. I. 127 i.e. “Result of elections” which outlines the duties of the presiding officer for a given polling station and which duties include to “announce the results” at that polling station (Regulation 39 (3) (a) of C. I. 127). This is quite distinct from Regulation 43 of C. I. 127 headed “Declaration and publication of parliamentary election results” which outlines the duties of the returning officer for a given constituency and which duties include to “declare” the election results for that constituency as provided in Regulation 43 (1) (d) of C. I. 127.

The evidence and records in this petition bear out this position.

DW1, in the person of Ernest Kwaning, the District Electoral Officer for the Sefwi Wiawso Constituency, gave evidence at page 138 of the record of proceedings as follows:

“CQ: Are results declared or announced at the polling station?”

A: They are announced.”

Also, PW2 (Thomas Mintah) gave evidence under cross-examination by Counsel for the 2nd Respondent at page 85 of the record of proceedings as follows:

“Q: Mr. Mintah, you will agree with me that results of polling stations are not declared after counting but announced in the full view of the general public?

A: Yes, my Lord.”

In the course of the proceedings, Counsel for the 2nd Respondent offered to assist the conduct of cross-examination and stated (at page 109 of the record of proceedings) as follows:

“My Lord, I want to assist the conduct of cross-examination. Results of elections are announced at the Polling Station; they are not declared at the Polling Station. Results of Parliamentary Elections are declared only at the Constituency level.”

Notwithstanding the clear position that election results are announced (not declared) at the polling station, *Regulation 39 (3) (b) of C. I. 127* provided as follows:

“The presiding officer shall (b) give each candidate or the representative of each candidate or the counting agent a copy of the **declaration** of results” [emphasis added]

Also, at the last part of Form Eight A (the Statement of Poll otherwise known as ‘Pink Sheet’), we find the following:

“DECLARATION

We, the undersigned, do hereby **declare** that the results shown above are a true and accurate account of the ballots in this polling station.” [emphasis added]

The effect of the inappropriate use of the word “declaration” or “declare” in Regulation 39 (3) (b) of C. I. 127 and in Form Eight A (the Statement of Poll otherwise known as ‘Pink Sheet’) is the confusion it leaves in its wake. Thus, the apparent confusion of the Petitioner when he took the view that election results in the Sefwi Wiawso Constituency were declared at the various polling stations within the Constituency, bears witness to this.

Paragraph 7 of the instant petition provides as follows:

1. “That at the **various Polling Stations** within the Sefwi Wiawso Constituency, the 2020 Presidential and Parliamentary Results were announced and the **winner declared** in accordance with law except the Asawinso Community Centre ‘2’ Polling Station with CODE NO. G402804 which was **announced but no winner was declared** because an allegation of over-voting was raised by the agents of the NPP and it was agreed that the said votes and all the electoral materials be sent to the Constituency Collation Centre for recounting and resolution of the matter.” [emphasis added]

Also, the confusion created by the inappropriate use of the word “declaration” or “declare” in Regulation 39 (3) (b) of C. I. 127 and in Form Eight A (the Statement of Poll

otherwise known as 'Pink Sheet') obviously informed the failure of the Presiding Officer for the Asawinso Community Centre '2' Polling Station to complete and give copies or post the said Form at the Polling Station, as, from the evidence, he appeared to have laboured under the mistaken impression that the results of the said Polling Station ought to be 'declared' first, before copies of same were given to the Candidates' representatives or posted at the said Polling Station.

The last thing I want to deal with here is the total absence of any provision in the Statement of Poll otherwise known as 'Pink Sheet' for challenging the results as announced at the polling station.

Sub-regulations 4 and 5 of Regulation 39 of C. I. 127 provide as follows:

- "4. A candidate or a representative of a candidate or a counting agent may, if present when the counting of the ballots is completed, request the presiding officer to –
 - (a) re-count the ballots; and
 - (b) again re-count the ballots for a second time.
5. The presiding officer may refuse to comply with the request to re-count the ballots for a second time if, in the opinion of the presiding officer the request is unreasonable, and shall report the matter to the returning officer; who shall re-count the ballots for that polling station only at the constituency collation centre."

However, no provision whatsoever was made for the recording of a challenge in the Statement of Poll form otherwise known as 'Pink Sheet', to cater for situations where a candidate or a representative / counting agent of a candidate challenges or disputes the results as announced at the polling station. A case in point is a situation where a polling

agent challenges the announced results and requests that the ballots be recounted for a second time and the presiding officer exercises his discretion to refuse the request to recount the ballots for a second time: that polling agent is left with absolutely no remedy at the polling station. This is a clear recipe for confusion. In fact, in this petition, the absence of such provision was the cause of the confusion or misunderstanding that occurred at the Asawinso Community Centre '2' Polling Station on the day of the election.

Paragraphs 6, 7 and 8 of the evidence-in-chief of PW3 (Benjamin Tawiah) provide (as per his witness statement) as follows:

- “6. It was after the counting that the NPP Polling Agent, one Michael raised issues of over-voting together with the Presiding Officer and demanded for recounting of the votes.
7. The Presiding Officer recounted the votes and it was the same results as it was counted at the first time. The said Michael, the Polling Agent, **will not agree that the results are entered on the Statement of Polls** for it to be given to the Polling Agents to sign and also given a copy as it is the practice.
8. The **misunderstanding that ensued at the said Polling Station** with the lights being put off made it imperative for the Security Officers there to request that all the electoral materials be put into the Ballot Boxes, both the Presidential and the Parliamentary Results, and be sent to the Asawinso Police Station for the process to continue. Thus, everything was sent to the Asawinso Police Station.” [emphasis added]

PW3 gave evidence at page 116 of the record of proceedings as follows:

“Q: In your examination-in-chief per paragraphs 6 & 7 of your witness statement you stated that the NPP agent, one Michael, ‘will not agree that the results are entered on the statement of polls for it to be given to the polling agents to sign and also given a copy as it is the practice’ what exactly do you mean by ‘he will not agree’?”

A: The manner in which he conducted himself prevented the Presiding Officer from entering the information on the statement of polls. He was not in agreement with anybody at all.”

Indeed, from the records, the NDC polling agent did not sign and/or fill in the 5th column at the last part of Exhibit 4 (the Replacement Statement of Poll) headed “REASON, IF REFUSED TO SIGN”, for, as one would surmise, why should an agent who challenges or disputes the results of an election assign reasons for his refusal to sign in *a document affirming the very results* he challenges or disputes, or he otherwise disbelieves? Besides, the space provided in the said column is too small or too limited for any such purpose!

Recommendations

I wish to make some recommendations to help guide the future conduct of general elections in this country.

Accordingly, the following recommendations are hereby made:

1. There is the need for a regimented timetable to ensure the expeditious hearing and disposal of Parliamentary Election Petitions in the High Court. In this regard, it is recommended that the *High Court (Civil Procedure) Rules, 2004 (C. I. 47) as amended by C. I. 87* be amended to provide for a regimented timetable for the conduct of Parliamentary Election Petitions; just as the Supreme Court Rules, 1996 (C. I. 16) was amended by C. I. 74 and C. I. 99 to provide for a regimented timetable for the conduct of Presidential Election Petition in the Supreme Court.
2. From the experiences of this case, where ballot boxes and other election materials were snatched and destroyed by thugs under the cover of darkness, it is recommended that the time of close of polls in general elections in this country be brought forward to 3:00 pm.
3. Going forward, provisions should be specifically made in future Public Elections Regulations C. I.s to cater for the grounds for the issuance of, and the procedure for completion and execution of Replacement Forms.
4. Also, provisions should be specifically made in future Public Elections Regulations C. I.s to cater for the manner, form and procedure for notifying or inviting candidates or their representatives to reconvene at the constituency collation centre to continue collation of election results in unexpected situations where there is a break in, or suspension of the collation process and the process has to continue at a future time, and such notices or invitations should specify the date, exact time and place for the collation to continue.

5. Future Public Elections Regulations C. I.s should avoid the use of the word “declaration” and all its grammatical forms in the Statement of Poll form and also in the text provisions dealing with the ‘result of elections’ at the polling station.

Accordingly, *Regulation 39 (3) (b)* which provided under C. I. 127 as:

“The presiding officer shall (b) give each candidate or the representative of each candidate or the counting agent a copy of the declaration of results.”

Should read:

“The presiding officer shall (b) give each candidate or the representative of each candidate or the counting agent a copy of the announced results.”

Also, the last part of Statement of Poll (Pink Sheet) which provided under C. I. 127 as:

“DECLARATION

We, the undersigned, do hereby declare that the results shown above are a true and accurate account of the ballots in this polling station.”

Should be:

“AFFIRMATION OF ANNOUNCED RESULTS

We, the undersigned, do hereby affirm/disaffirm that the results shown above are a true and accurate account of the ballots in this polling station.”

6. The heading of the 5th column at the last part of the Statement of Poll (Pink Sheet) should change from:

“REASON, IF REFUSED TO SIGN”

to either:

“SIGNATURE, IF I CHALLENGE THE RESULTS”

or

“SIGNATURE, IF I DISAFFIRM THE RESULTS”

Then, as regards the:

“AFFIRMATION OF ANNOUNCED RESULTS

We, the undersigned, do hereby *affirm/disaffirm* that the results shown above are a true and accurate account of the ballots in this polling station.”

as recommended above, the presiding officer should:

- (a) where the results are challenged or disaffirmed by all the polling agents, cross out *“affirm”*,

- (b) where the results are not challenged by any of the polling agents or the results are otherwise affirmed by all the polling agents, cross out "*disaffirm*",
- (c) where the results are challenged by some polling agents and affirmed by other polling agents, leave the "*affirm/disaffirm*" as it is.
7. Security at future general elections should be increased, especially during the transportation of ballot boxes and other election materials from the polling stations to the constituency collation centres.
8. Presiding officers should be given adequate training on their duty to ensure that the Statement of Poll is completed and signed at the polling station and copies thereof given to candidates or their representatives / polling agents and also posted at the polling station, before they leave the polling station on the day of the election.

Appreciation

I want to appreciate the efforts of the Registrar of this Court, in the person of Mr. Francis Oscar Asmah, in the timeous printing of the record of proceedings in this case. I also appreciate the efforts of the Court Clerk, in the person of Mr. Francis Nimoh Yeboah, who went through thick and thin to ensure that I received the Addresses filed in this case, even during the Legal Vacation for Superior Judges. I also appreciate the

efforts of the other Staff of this Court who had to work under pressure in the trial of this case.

I also appreciate the outstanding industry displayed by the Lawyers in this case, especially Lawyer Victor Kwadjoga Adawudu, who, even though I was informed by the Registrar of this Court that he was indisposed, managed to file his Address to assist this Court in giving its decision.

The year has just begun. I take this opportunity to wish all and sundry a very prosperous New Year.

Conclusion

The 2nd Respondent (Electoral Commission) to a large extent complied with the provisions of C. I. 127 in the 7th December 2020 Parliamentary Election held in the Sefwi Wiawso Constituency. The few breaches of C. I. 127 that occurred in the instant case were not fundamental and the breaches did not cause substantial injustice to the Petitioner so as to result in the nullification of the said Parliamentary Election Results. In fact, the said breaches have since been remedied. Accordingly, the Petitioner's prayer for nullification of the Sefwi Wiawso Parliamentary Election conducted and supervised by the Electoral Commission on the 7th day of December 2020, due to non-compliance with the Public Elections Regulations, 2020 (C. I. 127), is declined.

Also, from the totality of the evidence on record, the Petitioner has failed, on the preponderance of the probabilities, to prove his assertion that he obtained 265 votes at the Asawinso Community Centre '2' Polling Station. Accordingly, the Petitioner's prayer for declaration that it is the Petitioner, rather than the 1st Respondent, that was

duly elected as Member of Parliament for the Sefwi Wiawso Constituency effective the 6th day January 2021 till the 5th day of January 2025, the tenure of the 8th Parliament of the Republic of Ghana, is declined.

The petition fails in total and same is accordingly dismissed.

This Court hereby declares that the 1st Respondent, Dr. Kwaku Afriyie, was duly elected.

In compliance with *section 22 (1) of the Representation of the People Law, 1992 (PNDCL 284)*, this Court certifies its decision, as given above, to the Electoral Commission of Ghana. The Registrar of this Court is hereby ordered to serve the Commission with the above certification forthwith; and the Commission shall within 21 days on receipt of the certification, make the necessary arrangements for purposes of complying with the requirements specified under *section 22 (1) of PNDCL 284*.

Let the Registrar of this Court certify a copy of this decision to the Inspector General of Police for his necessary action.

Costs

Cost of fifty thousand Ghana Cedis (GH¢50,000) is awarded to the each of the Respondents against the Petitioner.

H/L KWAME AMOAKO

JUSTICE OF THE HIGH COURT

REPRESENTATION

Petitioner present

1st Respondent absent, represented by Bright Kwaku Appiah

2nd Respondent represented by Ernest Kwaning, the District Electoral Officer

Victor Kwadjoga Adawudu for the Petitioner present

Paul Nkuah-Gyapong for Frank Davies for 1st Respondent with him Paul Yeboah present

Emmanuel Addai for 2nd Respondent present