IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, 2011

CORAM: ATUGUBA JSC (PRESIDING)
AKUFFO,(MS.) JSC
BROBBEY JSC
ADINYIRA (MRS) JSC
OWUSU (MS) JSC
DOTSE JSC
BAFFOE-BONNIE JSC
ARYEETEY JSC
AKOTO-BAMFO,(MRS.),JSC

WRIT
J1 / 4 / 2010
10TH NOVEMBER,2011

1. MR. SAMUEL OKUDZETO ABLAKWA
2. DR. EDWARD KOFI OMANE BOAMAH } **PLAINTIFFS**

VRS

1. THE ATTORNEY-GENERAL
2. HON. JAKE OTANKA OBETSEBI-LAMPTEY } **DEFENDANTS**

R U L I N G

ATUGUBA, J.S.C:

By their amended writ dated 30/7/2010 the plaintiffs claim before this court as follows:

> "1. A declaration that, by virtue of Articles 20(5) & (6), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Minister for Water Resources, Works and Housing in the previous Government of His Excellency, President J.A. Kufuor, did not have the power to direct the sale, disposal or transfer of any Government or public land to the 2nd Defendant or any other person or body under any circumstances whatsoever, and that any such direction for the disposal, sale or outright transfer of the said property in dispute or any public land to the 2nd Defendant was unconstitutional and illegal.
>
> 2. A declaration, by virtue of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Government of Ghana is obliged to retain and continue to use in the public interest the property compulsorily acquired for public purpose the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 0033/019/1988, on which

is situated by the Republic of Ghana Bungalow No. 2 located at St Mungo Street, Ridge, Accra.

3. A declaration that the purported sale of the said Government Bungalow by the outgoing Government to one of its high ranking public officials, the 2nd Defendant, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and the purported direction by the Minister for Water Resources, Works and Housing in the previous Government of His Excellency, President J.A. Kufuor, for the disposal, sale or outright transfer of the said property in dispute to the 2nd Defendant smacks of cronyism, and the same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.

4. A declaration that the publication by the Lands Commission and the Land title Registration Office at page 18 of "The Ghanaian Times" published on 22/11/2008 in respect of the "Notice of Application for the Registration" by the 2nd Defendant of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St Mungo Street, Ridge,

Accra, a step taken by the Chief Registrar of the Land Title Registration Office to grant to the 2nd Defendant a Land certificate in relation to the said property so as to effectuate the purported sale of the said Government property to him, was in utter contravention of Articles 20(5), 23, 257, 258,

265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and thus unconstitutional and void and the same must be struck out as such.

5. An Order of Perpetual Injunction restraining the Chairman of the Lands Commission and the Chief Registrar of the Land Title Registration Office, their workers and agents from perfecting the registration of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St Mungo Street, Ridge Accra, in the name of the 2nd Defendant."

The 2nd defendant has raised a preliminary objection to the jurisdiction of this court to entertain this action. In summary form the 2nd defendant's objections are that the provisions of the constitution relied on by the plaintiff are clear and unambiguous and therefore on the authority of particularly *Republic v. Special Tribunal, Ex parte Akosah* [1980] GLR 592 C.A.,in such a case the submissions of a party may relate "to no more than a proper application of the provisions of the constitution to the facts in issue, a matter for the trial court." He further contends that the plaintiff's reliance on article 284 is misconceived since the Constitution has under article 287 vested the Commission on Human Rights and Administrative Justice (CHRAJ) jurisdiction to determine a claim of breach of article 284. He further contends that articles 20(5) and (6), 23, 265 and 296 relate to the scope of the power of management of public lands by Government, acting by the Lands Commission under the Land Commission Act 1994, Act 483 and that this is a matter for the High Court. In short the 2nd defendant contends that the plaintiffs' case is a non constitutional one camouflaged in constitutional robes.

Counsel for the 1st defendant raised objections to this court's jurisdiction that are very similar to those raised by the 2nd defendant's counsel. He concludes thus: "Consequently we invite this honourable court to dismiss Plaintiffs' case as being a simple land matter which can be ventilated before the High Court (Lands Division) in the first instance."

First, the contention that this case is essentially a land case which is within the jurisdiction of the High Court in the first instance. Though this action involves land it is difficult to see how it is a land case for the High Court. The Plaintiffs are not seeking any relief *inter partes*in a land suit. The typical features of a land suit have been settled by this court in *Odonkor v Amartei* (1992)I GLR 577 S.C. It was therein held as per the headnotes (1) and (2) as follows:

> "(1) an action was for a declaration of title if (i) the action was between adjoining land owners and one committed a trespass over the other's land, ie a boundary dispute; or (ii) where the party had been dispossessed of land by reason of adverse claims or possession made thereto or an actual right of occupation and enjoyment thereof; or (iii) where there had been a sale or alienation of the same land to rival purchasers. *Since the appellants had not set out any of those grounds as entitling them to call on the respondent to demonstrate his title, the action was not one for declaration of title.*
>
> (2) The appellants' claim that the land in dispute was their ancestral property over which they had granted the respondent's family farming rights postulated that the appellants had known that the respondent's family were in possession. And *trespass to land was committed by injury to or interference with one's possession*. Accordingly, *the cardinal principles in*

an action for trespass to land were that the plaintiff had to establish that he was in exclusive possession of the land at the time of the trespassand that the trespass was without justification. *"* (e.s)

Again in *Acquah and Dadzie v Loo* (1961)1 GLR 239 S.C the second plaintiff joined the plaintiff to sue the latter's step daughter to set aside a conveyance of land between the plaintiff and his said step daughter on grounds of misrepresentation. It was held that the second plaintiff lacked ***locus standi*** and that his evidence should be struck out as hearsay.

It is therefore clear that the plaintiffs in this case who are suing both grantor and grantee for alleged breaches of the constitution relating to the said land could not institute any real or meaningful cause of action in land in the High Court.

It is well settled that a private person as apposed to the Attorney-General cannot litigate purely public rights which do not touch and concern him in a particular private manner. See *Gouriet v. Union of Post Office Workers* (1977)3 AllER 70 H.L *Chokolingo v Attorney-General of Trinidad and Tobago* (1981)1 AllER 244 P.C. It is quite clear therefore that any purported action in land by the plaintiffs in this case would be purely vacuous, farcical and terminally ill. In Ghana, this position is only different in constitutional actions in this court, by virtue of article 3 of the constitution.

The case really calls up the vexed question as to what should be the real test for determining what is a constitutional case for either interpretation or enforcement within the exclusive jurisdiction of this court under articles 2 and 130 of the constitution. It is trite law that the known test is what is the real issue or as is

sometimes put in this and other jurisdictions, what is the pith and substance of the action.

However the application of such tests can assume a very generalised character which may in effect mean the subject matter of the action. In that frame the proper jurisdiction of this court may not be properly ascertained. Thus cases such as *Mensima v Attorney-General* (1996-97) SC GLR 676, *New Patriotic Party v Attorney-General (Gba Case)* (1996-97) SC GLR 729 *Ellis v Attorney-General* [2000] SC GLR 24, *Sam (No. 2) v Attorney-General* [2000] SC GLR 305, *Agbevor v Attorney-General* (2000) SC GLR 403, *Adofo v Attorney-General* [2003-2006] SC GLR 411, *Ackah v Adjei-Acheampong* (2005-2006) SC GLR etc could have been classified as actions concerning one subject-matter or the other properly cognisable under the jurisdiction of the High Court. It has however not been seriously contested that those cases were not properly decided under the constitutional jurisdiction of this court.

In his sterling book on Ghana Constitutional Law Dr.Bimpong-Buta gives a vivid example of this scenario though he tries to rationalise the situation. At p.516 he states thus:

> "In comparison, both decisions of the Supreme Court, namely, the earlier decision of *Ghana Bar Association v Attorney-General (Abban Case)* and the subsequent decision in *Nartey v Attorney-General & Justice Adade* (Justice Adade case), had one thing in common: the real nature of the action was to cause the removal from office of a justice of a superior court. In the *Abban case*, the action was unanimously dismissed on the ground that the Supreme Court had no jurisdiction to entertain such a claim no matter in

what form, garb or disguise the action was mounted. *But in the Justice Adade case, the action was upheld by a majority decision even though in substance and reality, the action was also aimed at removing a justice of the Supreme Court from office."*

At 533-535 he gives another example of the assumption of jurisdiction in *Sallah v Attorney-General* (1970) 2G&G 493 and *Agbevor v. Attorney General* [2000] SC GLR 403 but the denial of jurisdiction in *Bimpong-Buta v General Legal Council& Three Others* [2003-2004]2 SC GLR 1200 although in all these cases the claims were founded on the termination of employment.

Judicial Activism

When the legislature distinctly entrusts a task to a judge or court it behoves that judge or court to adopt a proactive approach to it ***ut res magisvaleat quam pereat***. Thus in *Re L (a minor) (police investigation: privilege)*(1996)2 All ER at 89 H.L Lord Nicholls said:

"The 1989 Act represents a comprehensive and far reaching reform of child law. It integrates within one statute provisions regulating public and private rights and responsibilities in respect of children. *Central to the role of the court is the 'paramountcy' principle, set out in s 1*. Whenever a court determines a question with respect to the upbringing of a child or the administration of a child's property, *the child's welfare shall be the court's paramountcy consideration*. The application of this principle requires a judge to apply a particular test when deciding an issue regarding a child's upbringing. But it goes much further than this. *In practice the application*

of the paramountcy principle requires a judge, in the fashionable jargon, to be pro-active and not merely reactive. It means that in family proceedings as defined in the 1989 Act, the court is not concerned simply to decide an issue between the parties and to do so on the basis of the evidence the parties have chosen to present. The court is concerned to protect the child and promote the child's welfare. The court is not confined to the issues, or the evidence, the parties have brought forward. Nor is it confined to the alternative courses proposed by the parties: see *Re E (S A)(a minor) (wardship)* [1984]1 All ER 289, [1984]1 WLR 156. *During the proceedings the court may at any time, of its own motion, take steps which it considers necessary or desirable to protect the child or promote the child's welfare. The judge may call for more evidence or for assistance from further parties or instigate applications for appropriate orders."*(e.s)

Such a proactive approach has been emphasised in relation to the enforcement of the Fundamental Human Rights by Apatu-Plange J in *Republic v. Andrie and Others; Ex parte Kpandoave III* (1987-88)1 GLR 624. At 638 he quotes the following statement of Hayfron Benjamin J (as he then was) in *Republic v. Chieftaincy Committee on Wiamoasehene Affairs; Ex parte Oppong Kwame* (1971)1 GLR 321 at 328 (though the ultimate decision in that case was reversed on appeal), as follows:

"*The process of liberalisation is by no means complete. In the infant democracy of Ghana it is exceptionally important that the courts should not put fetters on their own ability to protect the fundamental human rights ....by adopting highly technical and artificial limitations on their powers,*

limitations which are being rapidly discarded even in monarchical regimes. Democracy in the last analysis, receives its sustenance from remedial laws and procedures; it is the availability of effective and reasonably quick remedies for doing justice that gives meaning to democracy. The High Court of Ghana has been given power under article 28 of the Constitution to issue writs and orders in the nature of habeas corpus, certiorari, etc; as it may consider appropriate for the purposes of enforcing, or securing the enforcement of fundamental human rights. It has also been given supervisory powers over all adjudicating authority under article 114 of the Constitution exercisable by the same writs and orders. *To restrict these powers by adopting self-imposed limitations would considerably impair the power of the courts to perform and fulfil their duties of securing the enforcement of fundamental freedoms and supervising other adjudicating authorities. I do not propose to do so*."

Again in *Kroye-Adujama Co-operative Society v HiawuBesease Co-operative Society* (1962)1 GLR 47 Apaloo J. (as he then was) adopted a proactive approach to the issue of jurisdiction.

The facts of the case as per the headnote are as follows:

"The business of both the plaintiff and defendant societies herein was the purchase and marketing of cocoa. The plaintiff society claimed that the defendant society had in its possession 110 bags of cocoa belonging to the plaintiff society. The plaintiff society therefore instituted an action in the High Court to recover the said bags of cocoa. The defendant society took preliminary objection to the court's jurisdiction which it claimed was ousted

by section 44(1) and (5) of the Co-operative Societies Ordinance, Cap. 190 (1951 Rev.) which provide that "*any dispute touching the business of a registered society*" should be referred to the Registrar of Co-operative Societies and that his decision once given shall be final and "shall not be called in question in any court of law."

Upon these facts counsel for the parties submitted inter alia as follows:

> "Counsel for the defendant society said in answer to the court that the purchase and marketing of cocoa is the ordinary business of a registered society. This was not disputed by counsel for the plaintiff and for the purpose of construing section 44 of the Ordinance, I will accept that as the business of both societies. The words which call for construction in this case are "dispute touching the business". In the view of counsel for the plaintiff society, this means that both societies must be doing business between themselves and therefore the dispute must arise from contract not from tort. He contended that the defendant society's liability in this case (assuming the plaintiff society's case to be established) arose ***ex delicto not ex contractu***. Accordingly, he contended that the court's jurisdiction is not outsted by section 44."

Apaloo J at 48-49 stoutly rejecting the restrictive contention of counsel for the plaintiff aid:

> "In my opinion, a dispute which touches the business of two societies is *a difference which arises between them in a matter concerning their business*. In this case the business of both societies is the purchase and marketing of

cocoa. The plaintiff society claims that 110 bags of cocoa now in possession of the defendant society properly belongs to itself and seeks to recover it. The defendant society disputes it and that is the matter in controversy between them. *The fact that in investigating the dispute, a crime may be found to have been committed by some officers of one or other of the societies is, in my opinion, an irrelevant circumstance.* I assume that if a crime is actually disclosed in the course of the investigation, the person charged with investigating the dispute would act on the principle in *Smith v Selwym* and stay investigation until criminal proceedings have been taken. But that by itself ought not, in my judgment, to amount to an ouster of jurisdiction in favour of the court. In my opinion, *there is no basis for excluding from the ambit of section 44 a dispute touching the business of registered societies, if that dispute arose from tort.* If that had been the intention of the legislature, I see no reason why it did not so specifically provide. *There is* in my view*, no room here for limiting the wide scope of section 44 by applying anything like the* ***ejusdem generis***rule. *Unless there is very good reason for it,* or unless there is any authority binging on me and which I ought to follow, *I should not interpret section 44 of Cap. 190 in a manner that substantially limits its scope and makes its object almost nugatory.*

Accordingly, I decide that *the present dispute touches the business of the plaintiff and defendant societies and that by the combined effect of subsections (1) and (5) of section 44 of Cap. 190 the jurisdiction of this court is ousted*."

The constitutional Trust reposed in this court is nakedly stated at 122-123 of the Report of the Committee of Experts (Constitution) on Proposals for a Draft Constitution of Ghana as follows:

"**JUDICIAL REVIEW**

262. *Judicial review, including the power of the Judiciary to pronounce on the constitutionality of Acts of Parliament, other enactments and also Executive action, is a potent and far-reaching aspect of judicial power.* Judicial review is an established doctrine of the constitutional law of the United states and was adopted in Ghana under the 1969 and 1979 Constitutions. In view of the limited duration of these two constitutional regimes, it can hardly be denied that Ghana under the 1969 and 1979 Constitutions. In view of the limited duration of these two constitutional regimes, it can hardly be denied that *Ghana has had a comparatively limited experience of the doctrine in its more radical form of pronouncing on the constitutionality of actions taken by the Legislature and the Executive, and indeed any other authority.*

263. The practice of this concept of judicial review in other countries, not excluding the United States, has not been free from difficulty. Many Governments and Legislatures do not welcome the prospect of their action being nullified by the unelected branch of Government. Disputes as to the constitutionality of the action taken by the Legislature or the Executive, therefore, frequently generate bitter confrontations between state organs that tend to threaten the constitutional order itself. In some cases, constitutional challenges to the Executive or the legislature may disclose

genuine philosophical differences with the Judiciary as to the issues before the Court. Thus, in the United States, there was a genuine question as to whether the Roosevelt Administration's programme of social legislation to regulate and ameliorate working condition was violative of constitutionally guaranteed contractual rights. Similarly, the attempts of the Indira Ghandi government to introduce land reform in India were challenged as repugnant to the constitutionally protected property rights of the large landowners. Thus, *what the Judiciary considers as a principled stand in defence of clear provisions of the Constitution may be seen by other branches of Government as an unduly conservative or radical posture that impedes much-needed social reforms. In Ghana, the Sallah Case and the Apaloo Case demonstrated the extent to which constitutional confrontations could threaten the foundations of the political system.*

264. *Notwithstanding these difficulties, the Committee is of the considered view that judicial review in all its forms should be firmly established under the Constitution. This means (1) the power to pronounce on the constitutionality of the acts of other branches of the Government, and (2) judicial review of administrative acts. Judicial review of the latter category is necessary where there is a breach of natural justice or where administrative bodies act in excess of their powers.* Nevertheless, having regard to our bitter experience of confrontations generated by the exercise of this power, the Committee strongly urges that appropriate mechanisms be instituted to minimize and diffuse the prospects of such confrontations. The special role defined for the Judicial Committee of the Council of State addresses this concern.

265. *Subject to the foregoing, as well as the jurisdiction of the High Court to enforce human and other constitutionally guaranteed individual rights, the Committee fully endorses vesting the power of judicial review in the Supreme Court as set forth in Article 118 of the 1979 Constitution as follows*:

"The Supreme Court shall have original jurisdiction to the exclusion of all other courts:

(a) in all matters relating to the enforcement or interpretation of any provision of the Constitution; and

(b) where a question arises whether an enactment was made in excess of the powers conferred upon Parliament or any other authority or person by law or under this Constitution".

Clearly the Committee of Experts had endorsed the assumption of jurisdiction by the Court of Appeal (sitting as the Supreme Court) in the *Sallah* and *Apaloo*cases.

In view of the nature of this Trust, namely, the task of upholding constitutionality in our country it is the duty of this court to assume jurisdiction when the essential nature of an action before it has to do with the question of constitutionality of the act or omission in question rather than the nature of the subject matter from which the constitutional action has arisen.

This is also the thrust of Dr.Bimpong-Buta's review of the test for a constitutional action within the jurisdiction of this court in his invaluable book The Role of the Supreme Court in the Development of Constitutional Law in Ghana. At p. 615 he states poignantly thus:

> "The theme running through the preceding chapters of this book is that the Supreme Court, as explained in detail in chapter 1, has a significant role to play in the promotion, enforcement and sustenance of a proper democratic system of government, good governance and fundamental human right and freedoms in Ghana. *The success of the Supreme Court ought to be judged by the extent to which its interpretation and enforcement roles advance the cause of such basic democratic values and the upholding of constitutionalism."*

Consequently he makes certain pertinent points with regard to the true ascertainment of the jurisdiction of this court in constitutional cases. Thus at 529 – 530 he stresses that this court should not proceed "as though *it must in all cases interpret a provision* of the Constitution *before* exercising its *exclusive* jurisdiction under article 130(1)(a) of enforcing the provision as interpreted by it. And yet the Supreme Court's original jurisdiction in matters relating to enforcement and interpretation under article 130(1)(a) is *disjunctive* and not *conjunctive*, ie it extends to "all matters relating to the enforcement or interpretation of [the]Constitution".

Again at p. 536 he strongly states thus:

> "It is also respectfully suggested that *the proper test for determining whether or not the Supreme Court is vested with exclusive jurisdiction to enforce the Constitution* under article 130(1), *is to examine the plaintiff's claim to find out whether, in fact, it alleges a complaint of an infringement of a constitutional provision even if the claim is founded on termination of employment such as happened in* the *Sallah and Agbevor cases* (supra).

That proper test was subsequently recognised by Prof Ocran JSC in his opinion in support of the majority decision in *Republic v High Court (Fast Track Division), Accra; Ex parte Electoral Commission (Mettle-Nunoo& Others Interested Parties)*[2005-2006]SC GLR 514 at 551 where he said:

> "The Supreme Court in the Bimpong-Buta case viewed the plaintiff's action as the vindication of all alleged infraction of his employment contractual right, and therefore dismissed the application.
>
> *However, mere labels like 'contractual right', 'property right', 'constitutional right' etc do not always clear the stables; for the alleged infraction of a contractual right might very well involve the infraction of the applicant's constitutional right under chapter 5 of the Constitution, for example, where the reason for a dismissal or differential treatment in an employment contract case has to do with the applicant's ethnic or sexual status, or with any of the grounds of discrimination mentioned in article 17(2) of the Constitution.*"

However this passage is more apt to the ascertainment of the High Court's jurisdiction over the enforcement of the Human Rights provisions of the Constitution. It can however, ***mutatis mutandis*** be applicable to the true test for the presence of jurisdiction in the Supreme Court over an action before it. That would be in line with the statement of Edward Wiredu JSC (as he then was) in*Ghana Bar Association v Attorney-General (Abban Case),* [2002-2004]1 SCGLR 250 at 259:

"The court, *as the repository watchdog of the Constitution*, is enjoined to protect, defend and enforce its provisions and *should not allow itself to be diverted to act as an independent arbiter of the Constitution."*

Also apposite is the statement of Acquah JSC in the case of *Amidu v President Kufuor* [2001-2002] SCGLR 86 at 100 that:

"....where it is alleged before the Supreme Court that *any organ of government or an institution is acting in violation of a provision of the constitution, the Supreme Court is in duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy, like those of articles 33 and 99 for dealing with that particular violation. It follows therefore thatnoindividual nor creature of the Constitution is* exempted from the enforcement provision of article 2 thereof. *No one is above the law. And no action of any individual or institution under the Constitution is immuned from judicial scrutiny if the constitutionality of such an action is challenged."*

Conclusion

The problem of ascertaining the presence of jurisdiction of this court in constitutional matters can largely be arrested by focusing more on the nature of the law that will be relevant to the resolution of the issues raised in an action before this court rather than the nature of the subject-matter. It is quite clear that it is the upholding of the supremacy of the constitution that is the fulcrum of this court's jurisdiction in actions commenced before it. Accordingly some such test (in addition to what has been hereinbefore stated) as, with which law the

issues to be determined inthe action have the closest connection or which law, the application of which to the action before the court wholly or substantially will dispose of it, could be of great pertinence. Thus in *Arthur v Sika*(1960) GLR 34 it is stated as per the headnote thus:

> "By a specially endorsed writ *the plaintiff claimed from the defendant £G700 as money expended by him in erecting a block building on top of the defendant's ground floor building "upon consideration which had failed owing to the defendant's refusal for the plaintiff to complete the said building*." He further claimed that in arbitration proceedings the defendant had been found liable to pay the said amount. In her statement of defence, the defendant ***inter alia*** pleaded (paragraph 3) that at the material time she was the concubine of the plaintiff and living with him and that the extension to her building was paid for out of her money, £G2,ooo, which she had earned as a petty trader and had entrusted to the plaintiff. Admitting there was an arbitration, she denied that she had been found liable. She further averred (paragraph 8) "that the claim of the plaintiff is not maintainable under native custom and law, as under the said custom and law, any property, money or anything that passes to a party during the subsistence of a concubinage is never recoverable after the cessation of the said concubinage." In his reply, the plaintiff denied the averments of the defendant. In particular he pleaded (paragraph 2) in answer to paragraph 8 of the statement of defence, "*the plaintiff says there was a valid marriage, in accordance with native customary law, subsisting between him and the defendant at the time he incurred the amount of expenses claimed herein in raising the one storey house of the defendant to a tow-storey building; the*

plaintiff therefore is entitled to recover from the defendant payment of the amount spent by him on the said house when the defendant refused to continue the said marriage with the plaintiff, and insisted upon the same being dissolved, *and it was so dissolved at an arbitration* held at the instance of the defendant...

Held: (1) *the plaintiff's claim was based on his allegation that at all material times the defendant was his wife by customary law*, and that the defendant had brought about *the dissolution of the marriage in such circumstances as entitled plaintiff to recover moneys he had spent on her behalf during the subsistence of the marriage*;

(2) *a suit claiming such relief was one concerning divorce between persons allegedly married under native customary law*. As such it was properly cognizable by the Native Court "B", to which the parties must therefore be referred."(e.s)

Again in *Papafio v Sam* (1960) GLR 126 the facts of the case as per the headnote are:

"*The plaintiff claimed a declaration of title to land, recovery, of possession, damages for trespass and perpetual injunction*. At the hearing of the summons for directions, the defendant raised a preliminary point as to the jurisdiction of the High Court to hear the action. He contended that the defence relied on a grant of the land in his favour by customary law and *the suit was therefore one properly cognizable by a local court.*(Local Courts

Act, 1958 s.55). The plaintiff contended *that the issue between the parties did not depend on customary law and that mainly statute law applied."*

Upon these facts, at 128 it is stated,applying*Tackie v Nelson and others* (12 WACA) 419 thus:

"*In that case the plaintiff as landlord claimed arrears of rent and recovery of possession of premises demised to the defendants*. The co-defendant to whom the defendant had been paying rents was joined as a party. In her defence she pleaded that she was the real owner by right of succession to her mother, and that the plaintiff was not the owner, and therefore not entitled to his claim. *It was contended on behalf of the co-defendant that by reason of her defence that the property, the subject-matter of the suit, is vested in her by customary law of succession as against the plaintiff, the suit was one properly cognizable by a native court and that the jurisdiction of the High Court was thereby ousted.* The West African Court of Appeal held that *the claim before the court was a claim under the Rent (Control) Ordinance, 1947 and a deed of lease, and its determination did not involve the application of customary law, and therefore it was not one which was properly cognizable by a native court and that the defence of the co-defendant that, as between her and the plaintiff, she was the owner of the property by customary law, did not take the suit out of the jurisdiction of the High Court*."

OllennuJ(as he then was) further stated at 129 thus:

> "Finally since both the plaintiff and the defendant rely upon the same root of title, if the evidence should prove that the area in dispute has been granted to each of them, or forms part of the area of land granted to each of them by the same grantors, *the question will be: which of these two grantees has priority as far as the interest in that piece of land is concerned?* The determination of *that important issue will depend upon the construction of section 21 of the Land Registry Ordinance Cap. 133. That interpretation is not one which is within the competency of a local court*. In view of these points which I have discussed, I cannot form the opinion that this is a suit which is properly cognizable by a local court. That being so, *I cannot refuse exercise of jurisdiction which belongs to me under section 24 of the Courts Ordinance, because although I am satisfied that there is a competent local court established in this Region, I am not of the opinion that this suit is one properly cognizable by a local court."*

In this case the plaintiffs' case stands or falls only upon the grounds upon which he relies and they are all based on articles of the constitution. It is clear that these provisions are stated in such generalised terms that they are inherently ambiguous and require interpretation by this court. In any event it is clear that the plaintiffs are out to enforce those provisions of the constitution with regard to the acquisition of the land in issue by the 2nd defendant and the observance of those provisions by the government, the Minister for Works and Housing and the Lands Commission.

Clearly the law applicable is constitutional law within the jurisdiction of this court. I hasten to add that with regard to articles 20(5) and (6) and 23 they pass for public interest matters and they are within the jurisdiction of this court as laid down in *Adjei-Ampofo v Accra Metropolitan Assembly and Attorney-General (No. 1)* [2007-2008]1 SCGLR 610 and *Federation of Youth Association of Ghana (Fedyag) v Public Universities of Ghana* [2010] SCGLR 265. As regards the contention that because CHRAJ can investigate allegations of conflict of interest such matter is outside the jurisdiction of this court assuming the same is well founded, that alone cannot divest this court of entire jurisdiction over this action. Even if this case were a land case I do not see how the special and exclusive jurisdiction of this court regarding the issues upon which its resolution depends could be dominated by the general jurisdiction of the High Court under article 140, as if *verba generalia specialibus derogant*.

Nothing stated herein should be construed as departing from those decisions that hold that where the constitutional issue is only incidental this court has no jurisdiction but such issue must be truly incidental in the light of the foregoing.

For all the foregoing reasons the preliminary objection to our jurisdiction is overruled.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

AKUFFO (MS.) J.S.C.

I have had the priviledge to read the opinion just read by my brother, Justice Atuguba, as well as those about to be read by my sister, Justice Adinyira and my brother, Justice Dotse. For the reasons stated by Justice Adinyira, I am in full agreement that this is clearly a case wherein the original jurisdiction of the court has been properly invoked. I, therefore, agree that the preliminary objection be overruled.

(SGD) S. A. B. AKUFFO, (MS.)

JUSTICE OF THE SUPREME COURT

BROBBEY, J.S.C

Having considered all the submissions of the parties and having read the opinion of my brothers Atuguba , Dotse and sister Adinyira JJSC. I am of the opinion that there is no merit in the objection and same should be dismissed so that the case will take its normal course.

(SGD) S. A. BROBBEY

JUSTICE OF THE SUPREME COURT

ADINYIRA (MRS.), J.S.C:

The plaintiffs' claim before this court as per their amended writ dated 30/7/2010 is as follows:

"1. A declaration that, by virtue of Articles 20(5) & (6), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Minister for Water Resources, Works and Housing in the previous Government of His Excellency, President J.A. Kufuor, did not have the power to direct the sale, disposal or transfer of any Government or public land to the 2nd Defendant or any other person or body under any circumstances whatsoever, and that any such direction for the disposal, sale or outright transfer of the said property in dispute or any public land to the 2nd Defendant was unconstitutional and illegal.

2. A declaration that by virtue of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Government of Ghana is obliged to retain and continue to use in the public interest the property compulsorily acquired for public purpose the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 0033/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2 located at St Mungo Street, Ridge, Accra.

3. A declaration that the purported sale of the said Government Bungalow by the outgoing Government to one of its high ranking public officials, the 2nd Defendant, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and the purported direction by the Minister for Water Resources, Works and Housing in the previous Government of His Excellency, President J.A. Kufuor, for the disposal, sale or outright transfer of the said property in dispute to the 2nd Defendant smacks of cronyism, and the same is arbitrary,

capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.

4. A declaration that the publication by the Lands Commission and the Land title Registration Office at page 18 of "The Ghanaian Times" published on 22/11/2008 in respect of the "Notice of Application for the Registration" by the 2nd Defendant of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St Mungo Street, Ridge, Accra, a step taken by the Chief Registrar of the Land Title Registration Office to grant to the 2nd Defendant a Land certificate in relation to the said property so as to effectuate the purported sale of the said Government property to him, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and thus unconstitutional and void and the same must be struck out as such.

5. An Order of Perpetual Injunction restraining the Chairman of the Lands Commission and the Chief Registrar of the Land Title Registration Office, their workers and agents from perfecting the registration of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St Mungo Street, Ridge Accra, in the name of the 2nd Defendant."

In sum, the plaintiffs allege that the government is obliged to retain and continue to use in the public interest the property compulsorily acquired for public purpose, the parcel of land designated as Parcel No. 29, Block 12, Section 019 and therefore they claim the decision to grant the property to the 2nd defendant smacked of cronyism, and the same was arbitrary, capricious, discriminatory and abuse of discretionary power vested in a public officer, and hence unconstitutional. The plaintiffs rely especially on articles 20 (5), 23, 257, 258, 265, 284 and 296.

Preliminary legal objection by the 1st and 2nd defendants founded on want of jurisdiction of the Supreme Court

The defendants have raised objections to the jurisdiction of this court upon grounds inter alia that this is not a constitutional matter for which the original jurisdiction of the Supreme Court must be invoked.

Objections by 1st defendant to the jurisdiction of the Court

1. The provisions relied on by the plaintiffs are clear and unambiguous and does not call for interpretation.
2. The matter is a simple land case which can be ventilated before the High Court (Lands Division) in the first instance.

Objections by 2nd defendant to the jurisdiction of the Court

1. The provisions relied on by the plaintiffs are clear and unambiguous and does not call for interpretation. The 2nd defendant referred to the guidelines provided in the *Republic v. Special Tribunal, Ex parte Akosah* [1980]GLR 592 CA
2. Article 20 (5) and (6), articles 23, 265 and 296 relate to the management of public lands by the Lands Commission on behalf of the Government and this action is thus a matter for the High Court.
3. The Constitution has under Article 287 vested the Commission on Human Rights and Administrative Justice (CHRAJ) the power to determine a claim of breach of article 284 and consequently the plaintiffs cannot come to the Supreme Court at first instance to ventilate their grievance relating to the alleged breach of article 284

Plaintiffs' response

The plaintiffs claim that the allocation of a parcel of government land to the 2nd defendant was illegal and unconstitutional and their case "hinges on the interpretation of the said constitutional provisions in relation to the acts and/ or policies of the previous government in alienating land compulsorily

acquired by the state in the public interest and for public use, i.e. for the accommodation of public officers"

Consideration

Is this a case for mere interpretation of the provisions of the Constitution?

The Plaintiffs by this suit are invoking the original jurisdiction of the Supreme Court under articles 2 (1) and 130 (1) (a). We must of necessity, ascertain whether or not our jurisdiction has properly been invoked. To put it differently, does the plaintiffs' writ properly raise any issue for interpretation or enforcement that can only be resolved by this court in exercising its original jurisdiction?

The law relating to where and when the exclusive jurisdiction of this Court to interpret the Constitution can be invoked is well settled; as there has been adequate judicial opportunity to interpret the relevant constitutional language. The locus classicus case on point is the *Republic v. Special Tribunal ex parte Akosah* **supra**. Other cases are *Gbedemah v Awoonor Williams* [1969] 2 G & G 438*; Tait v Ghana Airways Corp*. [1970] 2 G & G*; Republic v Maikankan* [1971] 2 GLR 473; *Aduamoah II v Adu Twum II* [2000] SCGLR 165; *Oppong v Attorney-general* [2003-2004] 1 SCGLR 376; *Bimpong-Buta v General Legal Council* [2003-2004] 2 SCGLR 1200; *Republic v High Court*(*Fast Track Division); Ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties)* [2005-2006] SCGLR 514; *Republic v High Court(Fast Track Division); Ex parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party) [2007-2008]* SCGLR 213 and *Federation of Youth Association of Ghana (FEDYAG) v. Public Universities of Ghana &Ors [2010] SCGLR 265.*

The defendants submitted forcefully that the constitutional provisions relied on by the plaintiffs are plain and unambiguous and does not need any interpretation. However on the authorities, this is not the only criteria for the determination of this Court's interpretative jurisdiction. The real issue that arises when the Supreme Court's jurisdiction is invoked either by a writ or by referral from the High Court or any other adjudicating body

such as the Commission on Human Rights and Administrative Justice (*CHRAJ*), "is the question as to whether on the facts of any given case real or genuine interpretative issue for referral has arisen depends among other things, on the nature of the pending action the relief sought, as well as the pleadings…and whether or not the action is one which has been neatly clothed as a case in which our original jurisdiction is required." Per Georgina Wood, CJ in *EX parte Electoral Commission* **supra** at page 541 of the report

If this case is masquerading as one for mere interpretation then the plaintiffs ought to be non-suited as the salient articles they rely on in their writ have received prior judicial interpretation by this Court**.** For example the Supreme Court considered and constructed: article 20 (5) in *Kpobi Tettey Tsuru III v. Attorney-General* [2010] SCGLR 904; article 23 in *Awuni v. West Africa Examination Council* [2003-2004]1SCGLR 471; article 257 in *Omaboe III v Attorney-General & Lands Commission* (2005-2006) SCGLR 579 and *Tsuru III* **supra;** and article 258 in *Tsuru III* **supra.**

In the circumstances, the proper forum for this action would be at the High Court where the trial judge is bound to follow and apply the constitutional provisions as interpreted by the Supreme Court to the facts of the case. See *EX parte Electoral Commission* **supra**

Is the plaintiffs' case a land matter masquerading as a constitutional case?

The 1st defendant also submitted that the case is a land matter and accordingly the proper forum for it is the High Court. This is quite a lame argument for the reason that although the endorsement on the writ can easily pass for a land suit, the plaintiffs are not laying any adverse claim or interest in the said land, unlike in *Tsuru III* **supra,** where the plaintiff, the La Manche, sought a declaration in the High Court that, under clauses (5) and (6) of article 20 of the 1992 Constitution, the La Wireless Station Land compulsorily acquired under a certificate of title dated 9 August 1957 had ceased to be used as a wireless station for which it was acquired; and that the plaintiff as the original owner of the land was entitled to be given the

first option to reacquire the land. In the course of the trial the High Court issued a referral to the Supreme Court under article 130(2) of the Constitution for interpretation as to scope and application of article 20 (5) and (6) of the Constitution 1992 to the La Wireless Land.

Is this a case for administrative review?

It seems to me that this writ is in essence questioning an administrative action or decision taken by the past government and the Lands Commission in respect of public land on the grounds inter alia that it contravenes the Constitution. Meanwhile the Constitution provides under article 23 that:

> "23. Administrative bodies and administrative officials shall act fairly and reasonably comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal."

Admittedly article 23 falls under the chapter of fundamental human rights and its enforcement is within the exclusive jurisdiction of the High Court. I therefore agree with the 2nd defendant to the extent that the plaintiffs could have lodged a complaint at CHRAJ under article 218 on grounds of abuse of administrative discretion.

But does this prevent the plaintiffs from mounting an action in the Supreme Court to challenge the acts of public officials as being in contravention of the provisions of the Constitution? I do not think that paragraph 6 of the *Practice Direction* by the Supreme Court reported in [1981] 1GLR 1 SC which requires that:

> "where a cause or matter can be determined by a superior court other than the Supreme Court, the jurisdiction of the lower court shall first be invoked,"

are meant to curtail or exclude the original jurisdiction of the Supreme Court when the matter in issue is primarily in relation to the enforcement of the Constitution.

Is this a case primarily for the enforcement of the provisions of the Constitution?

The question then is whether the plaintiffs' writ properly raises any real issue of enforcement of the Constitution that can only be resolved by this Court in exercising its original jurisdiction, given the explicit language of articles 2(1) and 130 (1) (a)?

Articles 2(1) and 130 (1) (a) provide as follows:

> "2. (1) A person who alleges that-
>
> (a)an enactment or anything contained in or done under the authority of that or any other enactment; or
>
> (b) an act or omission of any person-
>
> is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.
>
> 130 (1)(a) Subject to the jurisdiction of the High Court in enforcement of the fundamental Human Rights and Freedoms as provided in article 133 of this Constitution, the Supreme Court shall have exclusive jurisdiction in-
>
> all matters relating to the enforcement or interpretation of this Constitution…"

It is well settled by decisions of this Supreme Court that any citizen of Ghana has the capacity as a matter of public interest to uphold and defend the Constitution by challenging in the Supreme Court any perceptible inconsistency or contravention in any enactment, or act of omission of any person, with the Constitution, irrespective of personal interest. It would suffice to mention the case of *Sam (No 2.) V. Attorney-General* [2000] SCGLR 305 at 315, where the eminent and learned Mrs. Joyce Bamford-Addo JSC (as she then was) held that:

> "[A]rticle 2(1) gives standing to any person, who is a citizen to seek an interpretation and enforcement of the Constitution, in furtherance of the duty imposed on all citizens to defend the Constitution under articles 3(4) (a) and 41(b)…It is clear then that article 2(1) (a) is a special jurisdiction available to citizens of Ghana only, irrespective of personal interest."

At pages 340 to 341 of the same law report my sister Sophia Akuffo JSC also held that:

> "In my view article 2(1) is one of the most important provisions of the Constitution since it deals with enforcement. To limit its scope below the levels intended by the framers of the Constitution, would be to enfetter one of the most crucial built-in mechanisms for assuring the people of Ghana that their Constitution, would always remain a living and vibrant instrument of social and political management and good governance. Every citizen of Ghana, by virtue of such citizenship, has an innate interest in the integrity of the supreme law of the land, the National Constitution. As such, (therefore,) any perceptible inconsistency or contravention in any enactment or act or omission of any person, with the Constitution constitutes a sufficient occasion for the invocation of article 2. The perceived existence of any unconstitutional enactment, act or omission is ipso facto, a matter of public standing, personal interest and public duty to bring an action in this court to challenge its constitutionality… In the context of article 2 (1), therefore, there can never be an officious bystander or nosy busybody. Every Ghanaian is and must be an interested party. This has always been the position of this court since the 1992 Constitution came into existence"

It seems to me that the plaintiffs' contention is based mainly on an infringement of articles 20 and 23 which fall under the Fundamental Human Rights and Freedoms as set out in Chapter Five of the 1992 Constitution. Even where the High Court is vested with the exclusive

jurisdiction of enforcement in the area of fundamental human rights and freedoms by the combined effect of articles 33 (1), 130 (1) (a) and 140 (2), and the Supreme Court not having concurrent jurisdiction; yet the jurisdiction of the Supreme Court in this domain is determined by whether or not the plaintiff is pursuing a personal interest as in *Edusei (No.2) v. Attorney-General* [1998-99] SCGLR 753 and *Bimpong-Buta v. General Legal Council* **supra**, or a public interest or a matter in the interest of public good as in *Adjei- Ampofo (No.1) v. Accra Metropolitan Assembly & Attorney-General(No.1*)[2007-2008] 1SCGLR 611 and *Federation of Youth Association of Ghana (FEDYAG) v. Public Universities of Ghana & Ors* **supra**. In the *Edusei* and *Bimpong Buta* cases, the Supreme Court declined jurisdiction as the plaintiffs were pursuing matters of personal interests. In the *Adjei- Ampofo (No.1) and FEDYAG* cases the Supreme Court assumed jurisdiction because the plaintiffs were pursuing matters where the outcome invariably and primarily was to benefit the citizenry in general. Also in the FEDYAG case the substance and nature of the plaintiff's claim involved the interpretation of the constitutional provisions relating to the fundamental human rights to education.

In any event, "[But] even those matters, made subject to the enforcement jurisdiction of the High Court, may themselves require interpretation by the Supreme Court, since they form part of the Constitution" Per Prof. Modibo Ocran in The Republic V. High Court (Fast Track Division); Ex parte Electoral Commission(Mettle-Nunoo & Others Interested Parties, **supra,** at page 547.

The subject matter of the constitutional challenge before us is in relation to part of public lands which is held in trust by the President for the people of Ghana and administered by the Lands Commission on his behalf. The plaintiffs' challenge to the constitutionality of the alienation of public property is premised on an alleged violation by the previous government of article 20(5) of the 1992 Constitution that provides that:

> "20 (5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be

used only in the public interest or for the public purpose for which it was acquired."

The plaintiffs are alleging that the grant to the 2nd defendant of a parcel of government land was in utter contravention of article 20(5) and "smacks of cronyism, and the same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution." At this point I need not enquire whether or not the plaintiffs' action is likely to succeed or fail.

My concern is that where there is any perception of inconsistency or contravention in the acts or omission of any office holder or any person in contravention with the provisions of the constitution in respect of his public duties, and for our purpose, the management or administration of public lands; the Constitution confers the right or duty on any citizen to bring an action for enforcement of the Constitution. In this respect the interpretation of the provisions of the Constitution is only ancillary to the enforcement of those provisions.

Accordingly the submissions by the 1st and 2nd defendants that our jurisdiction is ousted because the constitutional provisions relied on by the plaintiffs are plain and unambiguous and do not need interpretation are of no moment and are rejected. In effect the plaintiffs are rather urging us to invoke our enforcement jurisdiction to correct, or prevent a constitutional breach by public office holders and to enforce compliance of the Constitution.

Article 2 (1) imposes on the Supreme Court the duty to measure the actions of both the legislature and the executive against the provisions of the Constitution. This includes the duty to ensure that no public officer conducts himself in such a manner as to be in clear breach of the provisions of the Constitution. It is by actions of this nature that give reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance.

In this respect, I share the views expressed by my brother Gbadegbe JSC in Suit No. J1/2/2010 entitled *Sumaila Bielbiel v. Adamu Daramani & Attorney-General,* unreported, dated 4th July, 2011, to the effect that:

> "In my view it is important that we do nothing to undermine the confidence that the ordinary person (thus) has in our ability to compel observance of the Constitution by invalidating in appropriate cases not only enactments that are in breach of it but also acts of among others constitutional office holders that do not derive their legitimacy from the Constitution in terms of article 2(1). [Emphasis mine]

This is an exclusive jurisdiction conferred on us by the Constitution under article 130 (1) of the Constitution and we must not shirk it.

For these reasons I dismiss the preliminary objection to our jurisdiction to determine the matter on its merits.

Preliminary objection overruled.

(SGD) S. O. A. ADINYIRA (MRS.)

JUSTICE OF THE SUPREME COURT

OWUSU (MS.) JSC:

I have read the opinions of my respected brother, the president , my sister Adinyira and that of Dotse JJSC and I am in full agreement with the conclusions arrived at by them. I will for the reasons informing their conclusions overrule the Preliminary Objection and same is hereby overruled.

(SGD) R. O. OWUSU (MS.)

JUSTICE OF THE SUPREME COURT

CONCURRING OPINION

JONES DOTSE JSC:

I have been privileged to have read the lead opinion by my very well respected brother Atuguba JSC and President of this panel as well as the opinion of Sophia Adinyra JSC and like both of them, I also agree that the preliminary objection by the 1st and 2nd defendants be dismissed. Since the facts have been very well articulated by Atuguba JSC, I need not recount them in this short concurring opinion.

On the facts and the law, I am inclined to go along with the reasons espoused in the opinion of my Sister Sophia Adinyra JSC as best addressing directly the issues germane to this application. However, I wish to add these few comments to expatiate on the Ruling

Undoubtedly, the scope of the powers granted citizens of Ghana under the Constitution 1992 to seek compliance with the Constitution have been so widely interpreted so much so that it has become a pillar of constitutional protection that lies in the hands of the citizens.

Indeed, I am certain in my mind that it is for the very liberal and expansive interpretation that was given to articles 2 (1) and 130 (1) of the Constitution 1992 that has given constitutional rights and locus standi to all citizens of the country to bring actions to challenge breaches, actions done in excess or in contravention of the Constitution 1992 etc.

It is for that singular reason that "a person" even though has no interest in a matter can as a matter of course embark upon a constitutional action in this court without any inhibition that he does not have capacity. See cases like:

1. **NPP v Attorney-General (CIBA Case) [1996-97] SCGLR 729 and**
2. **Adjei-Ampofo [No.I] v Accra Metropolitan Assembly and Attorney-General (No. I) [2007-2008] SCGLR 611, holden I**

just to mention a few.

The Supreme Court must therefore be highly commended for expanding this scope to enable persons both natural and or corporate to access the original jurisdiction of the Supreme Court in the interest of the general public. It is this timely and early liberal interpretation by the Supreme Court that ensured that all citizens have access to the Supreme Court as provided for in article 2 (1) of the Constitution 1992 that actualised the rights of the citizen to an unimpeded access to the courts to ventilate rights not only when a personal benefit or rights accrue, but for the general protection, interpretation, enforcement and due observance of the Constitution 1992 for the general public.

It must therefore be noted that, the plaintiffs herein at the material time that they initiated the action were ordinary citizens and did

not articulate their own rights or benefits but did so in the public interest. It was also to ensure that the actions of the elected government of the day was in tandem with the provisions of the Constitution 1992 which have been referred to in the lead Ruling just delivered. Thus, unless expressly ousted by the Constitution 1992, such as was held by the Supreme Court in the celebrated case of ***J.H Mensah v Attorney-General, [1996-97] SCGLR, 320 at holden 6 325***, where it was held that the effect of article 110 (1) of the Constitution was to empower Parliament by standing orders to regulate its own procedure provided the same did not infringe the Constitution, a court is bound to give effect to the constitutional provisions in the plainest of terms.

The Supreme Court as provided for under the Constitution 1992 reference articles 129 – 135 of the Constitution 1992, remains the only constitutionally mandated institution to give protection and succour to all persons who perceive a constitutional provision as being breached or violated.

In this respect, it is my view that it does not really matter whether the person invoking the original jurisdiction is from a weak, vulnerable and or marginalised group or from the rich, elite or ruling class.

What I think should be noted at all times in such actions is the principle of reasonableness which should guide the court in the performance of their role as guardians of the Constitution. Courts, especially the Supreme Court must resist all tendencies towards unreasonableness and avoid decisions which are an affront to justice and good sense.

The plaintiffs must be seen as seeking to invoke the jurisdiction of this court to preserve what in their view are infractions with the Constitution. I believe this court must give them a hearing and find out whether they can be successful.

I cannot end this brief concurring opinion without reference to the powerful words of John Adams, a former U.S President on his Thoughts of Government, 1776 as follows:-

> *"The dignity and stability of government in all its branches, the morals of the people, and every blessing of society* ***depend so much upon an upright and skillful administration of justice, that the Judicial Power ought to be distinct from both the legislature and executive,*** *and independent upon both that so it may be a check upon both, and both should be checks upon that*.

The above constitute other main reasons why I agree with the decision in dismissing the preliminary objection. The courts constitute our greatest hope in upholding the defence of the Constitution.

(SGD) J. DOTSE

JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE JSC:

For the reasons very well articulated in the judgment read by my sis Sophia Adinyira (JSC) I also agree that the preliminary object should be overruled for the merits of the case to be gone into.

(SGD) P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

ARYEETEY ,J.S.C.:

I also agree that his preliminary objection be overruled.

(SGD) B. T. ARYEETEY

JUSTICE OF THE SUPREME COURT

AKOTO BAMFO (MRS.),J.S.C.

I have had the Privilege of reading beforehand the will reasoned opinions ably delivered by my respected brother & sister.

I am in full agreement with them that the preliminary objection be overruled since I am of the firm view that this court is clothed with jurisdiction to hear the matter.

The preliminary objection is accordingly overruled.

(SGD) V. AKOTO BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT

COUNSEL

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R. O. SOLOMON (LED BY MIGUES RIBEIRO)FOR THE 2ND DEFENDANT.

SAMUEL NEEQUAYE TETTEH (WITH HIM TRITIA QUATEY) FOR THE 1ST DEFENDANT.

C