IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2011

CORAM: ANSAH (PRESIDING)
ADINYIRA (MRS) JSC
OWUSU (MS) JSC
DOTSE JSC
YEOBAH JSC
B.BONNIE
ARYEETEY JSC
GBADEGBE JSC
A. BAMFO (MRS) JSC

WRIT
NO. J1/3/2011

7TH DECEMBER, 2011

NII TETTEH OPREMREH - PLAINTIFF
CHIEF OF SHIASHIE, EAST LEGON
ACCRA

VRS

1. **THE ELECTORAL COMMISSION - 1ST DEFENDANT**
2. **THE ATTORNEY-GENERAL - 2ND DEFENDANT**

J U D G M E N T

GBADEGBE JSC:

My Lords, by the writ of summons herein, the plaintiffs seek from us in the exercise of our original jurisdiction the following reliefs.

1. A declaration that the Local Government (Creation of New Districts Electoral Areas and Designation of Units) Instrument, 2010, LI 1983, which purportedly came into force on 24th November 2010 is unconstitutional and therefore null and void.

2. An order restraining the 3rd defendant, its agents and assigns from in any way, using the new electoral areas created under the schedule to LI 1983 for the District Assembly Elections, scheduled for 28th December 2010.

3. A declaration that on the expiration of 21 parliamentary sitting days, the original copy of LI 1983, which was laid before Parliament on 19thOctober, 2010 automatically came into force in accordance with article 11(7) of the Constitution, 1992.

4. An order directed at the 3rd defendant to use only the original copy of LI 1983 as laid before Parliament on 19thOctober, 2010 to conduct the District Assembly Elections, scheduled for 28th December, 2010.

In the course of the proceedings, the plaintiffs discontinued against the 1st defendant and, at the direction of the Court, 2nddefendant was struck out leaving the Electoral Commission and the Attorney-General as the only defendants. In this regard, the Electoral Commission became the first defendant and the Attorney General, the second defendant. From the processes filed before us by the parties to the action herein, there does not appear to be any conflict on the facts. What is in contention for our determination turning on those facts is a simple question of law. The said question is whether Parliament in the exercise of its functions under article 11.7 of the 1992 Constitution may effect changes to any instrument laid before it? This requires a careful reading not only of Article 11.7 of the 1992 Constitution but also other provisions of the constitution that deal with the law making power of Parliament. Reference is made to the speech of Acquah JSC (as he then was) in the case of **NMC v Attorney-General** [2000] SCGLR 1 at 11 as follows:

> **"But to begin with, it is important to remind ourselves that we are dealing with our national constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers in them. It gives certain rights to persons as well as bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers, privileges and rights must be exercised and enforced not only in accordance with the letter, but the spirit, of the Constitution. Accordingly, in interpreting the Constitution, care must be taken to ensure that all provisions work together as part of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework. And because the framework has a purpose, the**

parts are also to work together dynamically, each contributing something towards accomplishing the intended goal. Each provision must therefore be capable of operating without coming into conflict with any other."

I commence with a consideration of article 11.7 of the constitution that is formulated as follows:

"Any Orders, Rules or Regulations made by a person or authority under a power conferred by this Constitution or any other law shall,

(a) be laid before Parliament;

(b) be published in the Gazette on the day it is laid before Parliament; and

(c) come into force after expiration of twenty –one sitting days after being so laid unless Parliament, before the expiration of twenty-one sitting days, annuls the Orders, rules or Regulations by the votes of not less than two-thirds of all the Members of Parliament."

In myview, the above provision, that deals with the power of Parliament in relation to subordinate or subsidiary legislation under the 1992 Constitution is expressed in language that is free from any ambiguity and if I may say so by the use of words that do not suffer from imprecision. It appears that since Parliament is ordinarily engaged in the making and or passing of substantive legislation as opposed to subordinate or subsidiary legislation that are variously described as constitutional instruments, executive instruments or legislative instruments; its role in the bringing into being of the latter category of legislations is quite different from its role that involved in the making of

substantive legislation as provided for in articles 106 – 108 of the 1992 Constitution. The rationale for the difference is not too difficult to comprehend. While in the case of its exercise of legislative power under Articles 106-108, Parliament is engaged in an activity that is reserved for it by the Constitution as the legislative authority, in matters that come before it pursuant to Article 11.7 of the 1992 Constitution, Parliament as an institution of state is only being used as the medium to enable the power conferred on persons or authorities other than Parliament to make "any Orders, Rules and Regulations" as provided for in Article 11.1(c) to conform to the requirements of the law.

A careful reading of the entire provisions contained in Article 11of the 1992 Constitution enhances its understanding than merely reading clause 7 of the said article in isolation. When so read in conjunction with the exercise of legislative power by Parliament that is contained in articles 106-108 of the 1992 constitution, the purpose of the restrictive power conferred on Parliament in respect of subordinate or subsidiary legislation becomes tolerably clearer and renders the meaning of the words by which the article is expressed that is pressed on us by the 2nd defendant fallacious and or perhaps strained. So approached, our task of ascertaining the true meaning of the words and giving effect to them by way of their enforcement also becomes lighter. When the true meaning of the words are measured against the circumstances in which LI 1983 came into being, we are enabled after considering whether those circumstances are in conformity or conflict with the constitutional provisions either to validate or nullify it. This plainly is the essence of our original jurisdiction under Article130 of the 1992 Constitution. This, we must approach guided by the pronouncement of this court in the case of **NMC v Attorney- General**(supra) by not reading article 11.7 as if it existed on its own but as part of a functional working document. As a

matter of fact while in the exercise of its legislative power under the 1992 Constitution, Parliament is authorised in appropriate cases to make amendments in article 106.6, in the case of subsidiary and or subordinate legislation, the Constitution only authorises Parliament to **"annul**" any instrument laid before it before the expiry of twenty-one days. When Parliament does not exercise its power of annulment within the specified period then the instrument automatically becomes law. That the framers of the constitution made specific provision in the case of the exercise by Parliament of its legislative power in article 106.6in the course of considering any bill to amend it but withheld this power from it regarding subordinate or subsidiary legislation is in our opinion supportive of the position that in the case of subsidiary and or subordinate legislation, no such authority was intended to be conferred on Parliament. Article 11.7 does not confer on Parliament any power of making changes to the instrument so laid before it and I am unable to acquiesce in the invitation urged on us by the 2nd defendant to hold that any such power could be inferred from article 297(c) of the Constitution as to **"annul"** means "**to make void, to dissolve that which once existed**" See: *Baron's Law Dictionary Fifth Edition page 26.*

Measuring the above against the facts before us in these proceedings, since the instrument laid previously before Parliament that is before us as exhibit NTO 1 was neither withdrawn by the maker nor annulled by Parliament before the expiry of the twenty-one sitting days, it matured into an order within the designation of article 11.7 of the constitution by operation of law. It being so,NTO2, a document that surfaced for the first time after the expiry of the twenty-one sitting days of NTO1 having been previously laid before Parliament and purported to deal with the same matter that was covered by NTO1, was made without constitutional and or lawful authority. In my thinking it must have been made to avoid the

conditions spelt out in article 11.7 of the constitution but the non-compliance with the conditions spelt out in the article are such as to deprive it of any validity. This latter document not having gone through the processes spelt out in artcle11.7 such as its publication in the gazette on the day it is laid before Parliament cannot be accorded any recognition as an instrument under article 11.7 of the Constitution. The explanation offered by the 2nddefendant regarding its making is that the changes were made by Parliament after NTO1 was laid before them. Unfortunately throughout the proceedings, the 2nddefendant was unable to call in aid of the changes allegedly made by Parliament any constitutional or statutory authority and frankly speaking no such lawful authority exists. See: the unreported judgment of this court in suit number J1/2/2011 entitled Stephen Okane v Electoral Commission and Another dated 23 June 2011.

In order to extricate himself from the obvious want of authority in Parliament to make the alleged changes, the 2nd defendant vainly contended that the changes made to NTO 1 are part of the procedure of Parliament and as such we cannot inquire into this. The case of **JH Mensah v the Attorney General** [1996-97] SCGLR 320 was cited to us in support of this contention. The case relied on by the 2nd defendant does not really assist its case as the point in issue here is in respect of the nature of the powers conferred on Parliament under article 11.7 of the constitution and not the procedure to be employed by it in law making. As said earlier, NTO2 must have been made purposively to avoid compliance with the mandatory requirements of article 11.7. Not having been annulled by Parliament, at the end of twenty-one sitting days, NTO 1 by operation of law became part of the laws of Ghana. In my opinion, NTO2 came into being for the very first time after the twenty-one sitting days provided for in article 11.7 and as such does not

have any of the attributes that are essential prerequisites to it being given recognition and consequently must be struck down as unconstitutional. It is to be observed regarding the insertion at the back of the said document, NTO2 that it was published previously on 19th October 2010 that it cannot be legally correct as the enabling constitutional provision contained in article 11.7 of the constitution contemplates only one order being laid before Parliament in respect of the same subject matter-the **"Creation of New District Electoral Areas and Designation of Units**". I do not make any accession to the contention by the 2nd defendant thatNTO1 was substituted with NTO2 on the same day that it was laid. As NTO2 was purportedly laid after NTO1 whatever was done in respect of it to bring it within article 11.7 is without any significance at law. After having been so laid over the requisite sitting days of Parliament, NTO1 must be accorded the recognition of law in preference to NTO2. This conclusion should bring the action herein to an end, but then there is one matter that we must consider.

It relates to the submission by the 2nd defendant that to so construe article 11.7 would result in an absurdity as its effect is to constitute Parliament into a "**rubber stamp".** I have carefully examined the point made on behalf of the 2nd defendant and have come to the view that in cases where Parliament after considering an instrument laid before it under article 11.7 comes to the decision (which it is entitled to as the representatives of the people) that any order, rule or regulation so laid before it need not become part of the laws of Ghana for reasons including those provided for in Order 166 of the Standing Orders of Parliament, then it may before the expiry of the twenty-one sitting days " **annul"** it in which case the paper so laid before it may not thereby come into law. In my view, this is an effective and potent tool in the

hands of Parliament and there is therefore no substance in the contention by the 2nd defendant to the contrary. It seems to me that our law-makers are reasonable persons who would in appropriate instances utilise the sanction of annulment to prevent undesirable orders, rules or regulations from coming into effect.

I do not think that for the purpose of our decision in this matter we are required to embark upon any inquiry as to what the law ought to have provided for in article 11.7 regarding the role of Parliament when an Order, Rule or Regulation is laid before it. Our duty is to apply the very clear words of the article to the case before us and determine whether or not in bringing into being LI 1983, the provisions of the 1992 Constitution were complied with. This, in our thinking answers the substance of the submissions urged on us by the 2nd defendant. Having resolved the question that was posed at the opening of this delivery in the negative, I conclude that the Local Government **(Creation of New Districts Electoral Areas and Designation of Units) Instrument**, 2010, LI 1983 is unconstitutional and therefore null and void. I also grant a declaration that on the expiration of twenty-one sitting days, the original copy of LI 1983 which was laid before Parliament on 19th October, 2010 automatically came into force in accordance with article 11.7 of the Constitution, 1992. In order to give effect to the conclusion reached in this judgment and by virtue of the powers conferred on this court under article 2.2 of the 1992 to **"make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made**.", It is hereby directed that elections held in electoral areas not specified in NTO1 are hereby invalidated.

(SGD) N. S. GBADEGBE

[JUSTICE OF THE SUPREME COURT]

CONCURRING OPINION

JONES DOTSE JSC:

The plaintiff who described himself as a citizen of Ghana, the Chief of Shiashie, Accra and the custodian of the Apaitse We Family Lands also in Accra and on which some of the newly created electoral areas under L.I. 1983 the Local Government (Creation of New District Electoral Areas and designation of Units) Instrument for the 2010 District Assembly Elections, the subject matter of the instant suit are located, claims against the defendants as per his writ filed on 23rd December, 2010 the following reliefs:

1. A declaration that the Local Government (Creation of New District Electoral Areas and Designation of Units) Instrument, 2010 (L.I. 1983), which purportedly came into force on 24th November, 2010 is unconstitutional and therefore null and void.

2. An order restraining the 1st defendant, its agents and assigns from in any way, using the new electoral areas created under the schedule to L.I. 1983 for the District Assembly Elections, scheduled for 28th December, 2010.

3. A declaration that on the expiration of 21 parliamentary sitting days, the original copy of L.I. 1983, which was laid before parliament on 19th October, 2010 automatically came into force in accordance with article 11 (7) of the Constitution, 1992.

4. An order directed at the 1st Defendant to use only the original copy of L.I. 1983 as laid before Parliament on 19th October, 2010 to conduct the District Assembly Elections, scheduled for 28th December, 2010

In a supporting statement of case, the plaintiff averred that pursuant to section 3 (3) and (4) of the Local Government Act, 1993, (Act 462), the Minister of Local Government has statutory responsibility for making Instruments in the nature of creation of District Electoral Areas for the purposes of conducting District Assembly Elections.

In pursuit of the said statutory functions and powers, the Minister for Local Government in preparations towards the holding of District Assembly Elections in 2010 on the 19th of October 2010 laid before Parliament the Local Government (Creation of New Districts Electoral Areas and Designation of Units) Instrument 2010 L.I. 1983.

The plaintiff further averred that the said Instrument was referred to the Parliamentary Subsidiary Committee on Legislation which considered the said Instrument pursuant to Order 77 of the standing orders of Parliament.

It is the case of the plaintiff that in considering the Instrument, the subsidiary legislation committee altered some of the original electoral areas as was contained in L.I. 1983 and laid before Parliament.

Contending that the method by which Parliament altered the Instrument laid before it (i.e. for the creation of the new Electoral Areas) is inconsistent with article 11 (7) of the Constitution 1992, in that when Parliament eventually announced the coming into force of L.I 1983, it was discovered that the Legislative Instrument, so put forward by the Parliamentary Subsidiary Committee on Legislation, is not what the Minister for Local Government originally laid before Parliament on 19th October 2010, but that Parliament unlawfully and unconstitutionally altered the said L.I. 1983 by its subsidiary Committee on Legislation.

The thrust of the plaintiff's argument is that, as provided under article 11 (7) of the Constitution 1992, once the original copy of the L.I. 1983 that was laid before Parliament was not annulled by two thirds of the votes of the members of Parliament that L.I. 1983 remained the authentic L.I. The plaintiff therefore contends that the L.I. 1983 in so far as it sought to change the status of the said electoral areas is unconstitutional.

In view of the fact that article 11 (7) of the Constitution 1992 features prominently in this judgment, it is quoted verbatim as follows:

> *"Any Orders, Rules or Regulations made by a person or authority under a power conferred by this Constitution or any other law shall,*
>
> *a. be laid before Parliament*
>
> *b. be published in the Gazette on the day it is laid before Parliament; and*
>
> *c. come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Orders, Rules or Regulations by the votes of not less than two-thirds of all the members of Parliament".*

In support of his case, the plaintiff has attached hereto Exhibit NTO 1 which is the original copy of the L.I. 1983 that was laid before Parliament on 19th October 2011.

On page 106 of that exhibit, is headed District: - *KPESHIE – with BURMA CAMP* as item 6 and the following names appearing thereunder>

> *"Max mart shopping Mall, Airport City Road, Accra Mall/Spintex Road, Airport/Afgo Road, Burma-Camp"*

Total Electoral Areas under Kpeshie District total 10 under exhibit "NTO" 1. On the same page 105 under the sub-heading DISTRICT LEDZOKUKU KROWOR appears Agblesaa- Martey-Tsuru as item 7. On page 106 the following divisions appear, AGBLESAA-MARTEY-TSURU, Agblesaa, Regimanuel Estates, Obediben, Manet Villa, Manet Court and Martey Tsuru.

The total number of electoral areas stated under LEDZOKUKU KROWOR District are 24.

Also attached to the Plaintiff's case and marked as Exhibit NTO 2 is the L.I. 1983 purportedly passed by Parliament after it has been reviewed by the Subsidiary Legislation Committee of Parliament. Under this exhibit

NTO 2, Burma Camp continues to be under KPESHIE-District with the following as the new divisions:-

> *"Max mart shopping mall, Airport City Road, Korjoor stream Airport/Aviance Road, Burma Camp"*

Under exhibit NTO 2, Accra mall/Spintex Road no longer form part of Burma Camp, electoral area.

Under Exhibit NTO 2, AGBLESAA and MARTEY-TSURU have been severed into two distinct electoral areas numbered 7 and 8 with the following divisions:

AGBLESAA

Agblesaa, Penny, Obediben, New England

MARTEY-TSURU

"Regimanuel Estates, Manet Villa, Manet Court and Martey Tsuru, **Action Chapel area, Accra Mall area, Bank of Ghana Warehouse**" *(all these are on the Spintex road)*

The total number of electoral areas therein in exhibit NTO 2 is 28 instead of 24 in exhibit NTO 1.

Another clear difference is the fact that, divisions such as Spintex Road, which includes Action Chapel area, Bank of Ghana warehouse area which were all under Burma Camp under Kpeshie District in exhibit NTO 1 have now been moved to Martey-Tsuru under Ledzokuku-Krowor with the creation of Agblesaa as a distinct and separate electoral area still under Ledzokuku-Krowor.

The above clearly demonstrates that in so far as the Greater Accra Region was concerned, the subsidiary Legislation Committee of Parliament reviewed, varied, amended and modified the original L.I. that was laid before Parliament in respect of the Kpeshie and Ledzokuku-Krowor districts.

If this situation is considered alongside the memorandum of issues filed by the plaintiff before this court, then the facts of the plaintiff's argument about the procedure in the passage of subsidiary legislation

such as Legislative Instruments in this case L.I 1983 vis-à-vis article 11 (7)becomes really critical.

What then are the memorandum of issues filed by the plaintiff?

1. Whether or not Parliament has the constitutional power to amend, review or re-write a legislative instrument laid before it in accordance with Article 11 of the 1992 Constitution.

2. Whether or not the original copy of the Local Government *(Creation of New Districts Electoral Areas and Designation of Units) Instruments, 2010 L.I. 1983* which was laid before parliament on 19th October 2010 was rejected by majority of two thirds vote by parliament.

3. Whether or not the original copy of the Local Government *(Creation of New District Electoral Areas and Designation of Units) Instrument, 2010 L.I. 1983* which was laid before parliament on 19th October 2010 automatically came into force in accordance with article 11(7) of the Constitution 1992 on the expiration of 21 parliamentary sitting days.

4. Whether or not the version of the Local Government *(Creation of New District Electoral Areas and Designation of Units) Instrument, 2010 L.I. 1983* amended and released to the public by Parliament should be declared null and void and struck down as unconstitutional.

It is clear that in the formulation of the memorandum of issues, the plaintiff took into consideration the fact that the District Assembly Elections scheduled for 28th December, 2011 has already been held.

As a result, reliefs 2 and 4 of the plaintiffs writ have become redundant or superfluous as the event sought to be prevented from taking place has already been held.

In a well prepared statement of case, the 2nd Defendants raised so many legal arguments prominent among them is that of Parliamentary sovereignty and supremacy. This connotes the fact that, Parliament as a body and an organ of state has the right to regulate its own procedure

and that no court can question this procedure when adopted and applied by Parliament.

The traditional view has long been held that Parliament is sovereign and there are basically no legal restrictions on its legislative competence.

However, once there is a written Constitution in Ghana, which is the basic and primary source of all laws in Ghana, the Constitution itself has conferred on the Supreme Court to strike down any legislation that is inconsistent with or in contravention with the Constitution. See article 1 (2) and 130 (1) (b) of the Constitution 1992. It is therefore possible for the Supreme Court to intervene in the work of Parliament.

In the case of subsidiary legislation such as the one with which we are concerned with here, L.I. 1983, which takes its source from the Constitution 1992, article 11 (7) to be precise and statutory law, the Local Government Act, 1993 Act 462 section 3 (3) and (4) thereof the L. I. must conform to the mode of passage contained therein. It follows therefore that Parliament in the passage of the said subsidiary legislation must comply with the procedure provided in the Constitution and any other substantive law.

In my quest to examine whether Parliament complied with the procedure outlined in article 11 (7) of the Constitution, care must be taken not to erode the time honoured caution of the courts in their relationship with Parliamentary Sovereignty.

Fortunately for this court, the issues raised for determination in this case have recently been dealt with by this court in a similar case Suit No JI/2/2011 dated 23rd June 2011 intitutled ***Stephen Nii Bortey Okane & 5 others – plaintiff v Electoral Commission of Ghana and Attorney-General – Defendants.***

During the reception of arguments in this case, learned counsel for the plaintiff Peter Okudzeto cited and relied on the said case as his authority in addition to the case of ***Boyefio v N.T.H.C [1996-97] SCGLR 531 at 533 holden 5.***

On his part, learned Principal State Attorney, Sylvester Williams for the 2nd Defendant, in the best traditions of the Bar, conceded the fact of the force of the legal authority in the unreported case just referred to supra.

What then are the facts of this Stephen ***Nii Bortey Okane & Others v Electoral Commission & Another case?***

In view of the fact that this case falls on all fours with the decision of the Supreme Court in the **Stephen Okane case**, I am inclined to quote the facts of the case as recounted by my well respected brother Brobbey JSC in his lead and unanimous judgment.

> *"The plaintiff in this case issued a writ invoking the original jurisdiction of this court. The reliefs sought in the writ were as follows:*

a. *A declaration that Local Government (Creation of New District Electoral Areas and Designation of Units) Instrument L.I 1983 which came into force on 24th November 2010 was made in contravention of the Constitution 1992.*

b. *An order declaring the said L.I. 1983 null and void and of no legal effect.*

c. *An order directed at the 2nd defendant restraining the Commission from holding any District level and Unit Elections as scheduled to take place on 28th day of December 2010, based upon the said Local Government (Creation of New Districts Election Areas and Designation of Units) Instrument L.I. 1983 which came into force on 24th November 2010."*

> *The Ledzekuku-Krowor District Assembly was made up of two constituencies of Ledzekuku for Teshie and Krowor for Nungua. The electoral areas for the two constituencies were twelve for Ledzekuku and twelve for Krowor, thus making a total of twenty four.*
>
> *The Local Government (Creation of New District Electoral Areas and Designation of Units) Instruments, 2010 (LI 1983) was*

prepared and laid before Parliament. When LI 1983 was first laid before Parliament, it had twenty four electoral areas.

As required by the 1992 Constitution, art 11(7), such a Legislative Instrument had to be published in the Gazette and laid before Parliament for twenty-one days from the day of being published in the Gazette. When it was laid before Parliament, Parliament referred it to its Committee on Subsidiary Legislation, in accordance with its Standing Orders.

The rule is that after 21days, the LI automatically came into force. In the instant case, by the time the LI came into force, the number of electoral areas in Ledzekuku had been increased to 16 while the electoral areas for Krowor remained as twelve.

By increasing the numbers, Parliament, through the Subsidiary Legislation Committee had interfered with the LI as laid before Parliament. The main question raised in this case was how far Parliament could interfere with such legislation when it is laid before it for 21 days under the 1992 Constitution.

The answer to this question was provided in paragraph 4 of the statement of case filed on behalf of the first and second defendants which read as follows:

> *"As part of the said committee's work a lot of memoranda were received from the catchment area of the Ledzekuku – Krowor Municipal Assembly, These were in addition to representations made by interested parties in the same areas as well. These memoranda and representations assisted the committee enormously. The effect of these memoranda and representations was that the committee saw the need to add four more electoral areas to the Ledzekuku (Teshie), thus giving it sixteen (16) Electoral Areas instead of the original figure of twelve (12) Electoral Areas, whilst Krowor still has twelve Electoral Areas."*

In the instant case, the 2nd defendants have stated virtually the same position in their erudite statement of case thus.

This has been captured in their paragraphs 10, 13, 14, 15, 16 and 17 of the statement of case which states as follows:-

10. "My Lords, the plaintiffs are contending that the passage of the Local Government Areas and Designation of Units) Instrument, 2010 (L.I. 1983) is unconstitutional and therefore null and void is untenable. Their main reason appears to be that Parliament should have passed the original L.I. 1983 into law, otherwise Parliament should have by two-thirds majority annul the L.I. 1983. That is to say that Parliament has no constitutional mandate to even refer the L.I 1983 to the Committee for deliberation, and for that matter the amendments made to the original L.I. 1983 are unlawful and unconstitutional and sins against article 11 (7) of the Constitution 1992 and therefore renders L.I. 1983 null and void.

13. My Lords, it is quite clear that the plaintiffs' case hinges on the true interpretation of subsection C of article 11 (7) of the 1992 Constitution. By their interpretation, the plaintiffs are saying that whenever any Order, Rule or Regulation is laid before Parliament, the Speaker has no business referring the matter to the Committee. This assertion is contained in paragraphs 8 and 9 of the Plaintiff's Statement of Case filed on 23rd December, 2010. Additionally, the Plaintiffs are saying that Parliament cannot introduce any amendment to any Order, Rule or Regulation, except to pass it in its original form or annul it.

14. My Lords, it is submitted that this interpretation placed on article 11 (7) especially subsection C is wrong and cannot stand the test of time. It is incongruous with real parliamentary practice and procedure. Indeed, there is no provision in our Constitution, 1992, which restricts parliament from referring an Order, Rule or Regulation to a committee of parliament. Parliament works through committees and the work of any committee of Parliament is deemed to be that work of Parliament. Article 11 (7) as formulated does not imply that Parliament cannot effect any

changes to any such order, rule or regulation. What it does say is that Parliament, before the expiration of the twenty-one sitting days can annul the order, rule or regulation.

15. My Lords, it is submitted that any legal notion which says that a Legislative Instrument has to be passed in it's original form unless annulled by Parliament has outlived its usefulness in Ghana's legal system since 1992, when we chose to be ruled by a written Constitution. Our Constitution, 1992 contains among other things the hopes and the aspirations of our people and may not contain all details needed in our democratic dispensation.

    One of the details that supplement the Constitution and make it work to achieve the aims and aspirations of the people of Ghana is for example the procedure adopted by Parliament in dealing with delegated legislations. Article 103 of the constitution empowers Parliament to set up standing committees for effective discharge of the work of Parliament. The changes made to the original L.I. 1983 were done in accordance with procedures adopted by Parliament, and which in effect was meant to assist the 1st defendant conduct credible elections. Any objections thereof were matters for the Executive to deal with and not the Courts.

16. My Lords, the referral of the L.I. 1983 to the select committee of Parliament is in tandem with Parliament's own procedure. In fact it would be absurd to suggest that when any L.I. is submitted to the Committee, the Committee has no rights to effect any changes to the L.I., even if that change is to further the course of the L.I. in question. To advance such an argument is to suggest that, the said Committee and for that matter Parliament is to "rubber stamp" any Legislative Instrument that comes before it.

17. My Lords, the plaintiffs by their interpretation of article 11 (7) of the Constitution 1992 suggest that Parliament is obliged to annul any order, rule or regulation instead of effecting any change should there be the need to do so. It is submitted that it would take an unduly long time or no legislative instrument could be passed if that was the ture intendment of the said article. These

subsidiary legislations are needed to assist government machinery to run smoothly or to solve problems peculiar to certain sectors of the economy, and it would be absurd to suggest that the framers of the Constitution 1992 intended the meaning placed on article 11 (7) by the Plaintiffs."

By the above statements the 2nd Defendants have as it were tacitly admitted that Parliament indeed made changes to the original L.I. 1983 that was laid before it in Parliament on 19th October, 2011 in the manner stated supra in the Kpeshie and Ledzokuku and Krowor Districts.

Learned Counsel for the 2nd Defendant has argued that Parliament has power to pass this delegated legislation in the form of the L.I. There is certainly no doubt about that. What must be well noted is that, the courts exist to ensure that the power to make or enact such laws are always conferred by the Constitution or the statute dealing either with substance, form or procedure. The courts will therefore ensure that in the performance of their duties in the passage of this delegated legislation the procedure and or substance are not ultra vires the enabling constitutional provision or parent legislation. It is also the duty of courts of law to ensure that in the passage of such laws whenever a discretion exists, there is no arbitrariness or unreasonableness in the exercise of this discretion such as will result into abuse of power.

For instance the courts as in this case will be called upon to make a determination as to whether procedural requirements e.g. prior consultation with the body required to be consulted or laying before and approval by Parliament have been complied with, and if not, whether the failure to observe such basic requirements renders the legislation invalid. See cases like:

1. ***R v Secretary of State for Social Services, ex-parte Association of Metropolitan Authorities [1986] 1 WLR 1***
2. ***Council of Civil Service Unions v Minster for the Civil Service [1985] AC 374***

3. R v Secretary of State for Social Services, ex-parte Camden London Borough Council [1987] 1 WLR 819.

In all the above cases, it was held that failure to comply with rules of procedure rendered the passage of delegated legislation void.

The same point has been restated with emphasis by the learned Authors in Judicial Remedies in Public Law by Clive Lewis, Sweet and Maxwell 1992, reprinted in 1996 pages 118-119.

In the case under review, it is quite clear that after the work of the Subsidiary Legislation Committee on L.I. 1983, Parliament made changes to it and as was interpreted by the Supreme Court in the **Stephen Okane & others v Electoral Commission and another case**, the legal effect of article 11 (7) of the Constitution 1992 is that Parliament cannot do what it did.

This matter has been dealt with unanimously by a panel of nine Justices of this court with characteristic clarity and logic by Brobbey JSC with a concurring and masterly written opinion by Atuguba JSC, in the said case, and since this court has not seen any good reason to depart from the said decision, I consider it binding upon this court and accordingly apply it.

This is how it was put by my respected brother Brobbey JSC in the seminal judgment under reference as follows:

> *"In effect, what the Constitution mandates Parliament to do is to annul the Regulation in question. When that happens, the Regulation will have to go back to source from where it was prepared for such comments, suggestions or memoranda as Parliament or the Committee on Subsidiary Legislation will deem necessary to be considered in the making of the Regulation. In fact, it is that source which has the power to amend the legislation. This is supported by the 1992 Constitution, art 297(d) which provides that:*
>
> *"Where a power is conferred to make any constitutional or statutory Instrument, Regulations or Rules or to pass any resolution or give any direction, the power shall be construed as*

including the power exercised in the same manner, to amend or to revoke the constitutional or statutory instrument, Regulations or Resolutions or direction as the case may be."

This article affects the power which is making the regulation. The question to be considered is "Who is making the Regulation or who are the makers of the Regulation?" The makers of the Regulation are those who initiated the Regulation and actually drew up its terms. They are the source from where the Regulation was made. They comprise people on the ground who are conversant with the issues, facts and circumstances which informed the making of the Regulation. If suggestions, comments or memoranda are made, it is the makers who are in the best position to appreciate and consider them, their implications and ramifications before coming to the final determination on the form and content that the Regulation should take when it becomes law. That is why article 297(d), gives the power to the makers to make amendments to the Regulation.

The makers are different and distinct from Parliament. While article 297(d) empowers the makers to make amendments, article 11(7) empowers Parliament to annul Regulations.

If the power to make amendments were to be given to Parliament, it would mean that Parliament could interfere with Regulations laid before it without the involvement of the very people who saw reason for initiating and bringing about the Regulation. That would be wrong. That cannot be taken to have been the intendment of the framers of the Constitution as far as article 11(7) is concerned.

In the instant case, what Parliament did by increasing the number on the electoral area of Ledzekuku from twelve to sixteen amounted to amending the Regulation laid before it. That amounted to usurping the powers of the makers as provided in article 297(d). There is no provision in article 11(7) quoted above for Parliament to amend the Regulation as laid before it. Parliament is authorized to annul the Regulations. To annul has been defined in the Annulment differs from amendment.

Annulment, as defined in the Chambers 21st Dictionary, 1996 ed., at page 49 as:

"To declare … publicly as invalid."

To amend is to alter or vary. The effect of annulment is to revoke, abolish or render legally nonexistent. The effect of amendment is to bring about a variation, alteration or change. The latter pre-supposes the continued existence of a fact or situation. The former pre-supposes the abolition of the fact or thing or its non-existence.

Amendment therefore differs from annulment. If the legislature intended to give power to Parliament to amend such regulations, it would have done so in no uncertain terms.

Standing Order 2 which counsel for the defendants relied on does not empower Parliament to make amendments to such regulations.

To the extent that Parliament amended the Local Government (Creation of New District Electoral Areas and Designation of Units Instrument, 2010 (LI 1983) differently from what was laid before Parliament instead of annulling it, the LI is ultra vires article 11(7) of the 1992 Constitution. It is therefore void and of no legal effect."

CONCLUSION

With the above decision as a guide and binding authority, my decision in this matter is that:-

i. Parliament has the constitutional power to amend, review, or re-write a legislative instrument laid before it in accordance with article 11 of the Constitution 1992. This they can do by annulling what has been so laid before them by the votes of not less than two thirds of all the members of Parliament. In such a situation it would mean that Parliament has rejected the legislative instrument so laid before it, and in common parlance means **"***return to sender".* It would then be sent back to its source of origin, perhaps with the amendments, variations and reviews of Parliament for

that body to consider and re-submit to Parliament. In essence the power of Parliament in this respect is pyrrhic and is of no real moment.

ii. It is also clear that the original L.I, 1983 that was laid before Parliament on 19th October, 2011 was not rejected or annulled by the votes of two thirds of the members of Parliament.

iii. By the interpretation given above, it is correct that the Local Government (Creation of New Districts Electoral Areas Designation of Units) Instrument 2010 L.I. 1983 which was laid before Parliament on 19th October, 2010 automatically came into force by virtue of the operation of article 11 (7) of the Constitution 1992 after proof that there were 21 sitting days of Parliament after it was so laid before it.

iv. The combined effect of the above decision is that, the L.I. 1983 marked in these proceedings as Exhibit NTO 2, which contains the variations, amendments and or reviews made by the Subsidiary Legislation Committee of Parliament to the original L.I. 1983 and which was released to the public by Parliament in so far as it relates to the affected electoral areas is hereby declared null and void and accordingly struck down as unconstitutional.

(SGD) J. V. M. DOTSE

[JUSTICE OF THE SUPREME COURT]

(SGD) J. ANSAH

[JUSTICE OF THE SUPREME COURT]

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

[JUSTICE OF THE SUPREME COURT]

(SGD) R. C. OWUSU [MS.]
[JUSTICE OF THE SUPREME COURT]

(SGD) ANIN YEBOAH
[JUSTICE OF THE SUPREME COURT]

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