IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA, A.D.2012

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ANSAH, J.S.C.
OWUSU (MS.), J.S.C.
ANIN-YEBOAH, J.S.C.
BAFFOE-BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS.), J.S.C.

WRIT
No. J1/1/ 2013

14TH NOVEMBER, 2012

FRANK DAVIES --- PLAINTIFF

VRS

1. THE ATTORNEY-GENERAL --- DEFENDANTS

2. THE ELECTORAL COMMISSION

J U D G M E N T

ATUGUBA, J.S.C.

On the 4th of October, 2012 the plaintiff issued in this court a writ, J/1/2013 against the defendants claiming as follows:

1. " A declaration that upon a true and proper interpretation of Article 47(6) of the Constitution of the Republic of Ghana, 1992

(hereinafter, the "Constitution") the alteration of electoral boundaries pursuant to the Representation of the People (Parliamentary Constituencies) Instrument, 2012 (Constitutional Instrument Number 78) which passed in Parliament on October 2, 2012 (hereinafter, "C.I. 78") cannot come into effect until the next dissolution of Parliament in January 2013.

2. A declaration that not having come into effect, the constituencies created as a result of the alteration of the electoral boundaries under C.I. 78 shall not be included among the constituencies to be contested in the general elections seated [SIC] for December 7, 2012.
3. An order of perpetual injunction restraining the Electoral Commission from including the newly created constituencies under C.I. 78 in the general election of December 7, 2012 or any other election howsoever described prior to the next dissolution of Parliament in January 2013."

The issues raised in this action, save as regards the reliance on Article 2(1) of Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of the Economic Community of West Africa States, dated at Dakar on 21st December, 2001and ratified by Ghana on 18th October, 2002 and Article 89(4) of the Kenyan Constitution of 2010, arose and were decided by this court on 5th March, 2004 on virtually identical facts and contentions as in this case, in *Luke Mensah v. Attorney-General* [2003-2004] SCGLR 122.

The parties did not find it necessary to file any memorandum of issues as there is no difficulty as to them. The Attorney-General did not file any statement of case and did not appear in court in any manner, following the

unwholesome precedent of his predecessor in *Luke Mensah v. Attorney-General, supra*.

The crux of the plaintiff's case centres around article 47(6) of the 1992 Constitution of Ghana which provides as follows:

> " 47. (6) Where *the boundaries of a constituency* established under this article *are altered* as a result of a review, *the alteration shall come into effect upon the next dissolution of Parliament*." (e.s.)

The plaintiff's interpretation of this provision is captured mainly in paragraphs 4.3 to 4.5 and 6 to 6.4 of his statement of case dated 18th October, 2012 as follows:

> "4.3 Plaintiff's action herein is *to challenge the constitutionality of the Electoral Commission including the newly-created constituencies in the General Elections of 2012*, in the face of Article 47(6)'s clear admonition that *any alteration of electoral boundaries following a review of such boundaries can only take effect upon the next dissolution of Parliament*.
>
> 4.4 Plaintiff respectfully takes the view that the simple and unambiguous construction of Article 47(6) requires that *the "alteration" – which simply refers to the change of boundaries, without more – will exist only upon the next dissolution of Parliament.* The current position, endorsed by this Court in Luke Mensah, *goes beyond alteration to allow elections to be held in the constituencies* which would otherwise exist once the alteration has come in to effect

BEFORE the said constituencies can be said to legally exist. In other words, *if the alteration has not come into effect, can the constituencies exist to enable elections to be held therein?*

4.5 In effect, what Plaintiff is saying is that notwithstanding the coming into force of the constitutional instrument altering electoral boundaries, *the constitution itself has placed a further condition precedent to the effectiveness of the alteration thereby caused. ….*

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6. *The Electoral Commission cannot lawfully include the constituencies created pursuant to C.I. 78 in the December 2012 general elections.*

6.1. The plaintiff submits that *the Electoral Commission, per the clear and unambiguous language of Article 47(6), taken in its ordinary meaning, cannot include the constituencies created by C.I. 78 in the December 7, 2012 general elections.* While it is admitted that the Electoral Commission is clothed with constitutional authority to create constituencies pursuant to an alteration of existing constituency boundaries, *Plaintiff contends that the clear and ordinary meaning of "alteration" as used in Article 47(6) requires that the changes to existing constituency boundaries will only be effective when parliament next dissolves.*

6.2 Plaintiff contends that the current position endorsed by this Court in Luke Mensah, which enables the Electoral Commission to conduct elections in the

constituencies which have been created as a result of the "alteration" is misconceived and not in accord with the letter and spirit of Article 47(6). Indeed, to accept the current position, Article 47(6) would have to be unnecessarily stretched in interpretation to support the contention that the "alteration" is effective upon the coming into force of the relevant constitutional instrument save that the members of parliament elected consequent upon the conduct of elections in such alteration – derived constituencies cannot take their seats in Parliament established. In the face of the simple and clear language of Article 47(6) such an interpretation is unwarranted.

6.3 With respect, Plaintiff contends that there is absolutely no legal or interpretive basis for such a position to be adopted. In the result, *Plaintiff says that interpretive fidelity to the text of Article 47(6) could only lead to one conclusion: that the changes to existing constituency boundaries themselves (as a result of an "alteration") do not legally exist until such time as the constitutional condition precedent, i.e., the dissolution of Parliament has occurred.* On this view, *Plaintiff says that if the changes do not yet exist legally, the Electoral Commission cannot purport to conduct elections in affected constituencies (which do not yet exist) as a matter of law.* As the age-old judicial dictum goes, "you cannot put something on nothing and expect it to stand".

6.4 Again, *Article 47(6) does not say at all that the constituencies created as a result of an alteration are effective and therefore may be the subject of electoral contests.* To assume same and adopt it as an interpretive outcome would be import words unnecessarily into the Constitution which are otherwise no there at all and thereby thwart the intent of the framers of the Constitution."

Admittedly Article 47(6) could have been better formulated if its literal purport were not intended. However, it is trite law that if the real intent of a statute is ascertainable the court may even modify the drafting formulation employed in several ways *ut res magis valeat quam pereat*.

The first thing to notice about Article 47(6) is that it considers that the next dissolution of Parliament would be the opportune time for the alteration of the constituencies to take effect. What then is attractive about the time of dissolution of Parliament?

We know that under our constitutional dispensation Parliament is dissolved on the 6th day of January marking the end of a 4 year parliamentary term. If one restricts oneself literally to that day for the altered constituencies to take effect one would be left in the wilderness as to the purpose for which that date was chosen. In *Inland Revenue Commissioners v. Hinchy* (1960) A C 748 at 768, that great judicial mind, Lord Reid said: *"One is entitled and indeed bound to assume that Parliament intends to act reasonably,* and therefore *to prefer a reasonable interpretation of a statutory provision if there is any choice."* Again in *Rao v Attorney-General* (1989) LRC (Const.) 527 S.C. at 584 the Zambian Supreme Court per Bweupe AJS stated thus:

" *We now know from the foregoing the circumstances under which s 2 was enacted*. It was primarily enacted to detain without trial those engaged in activities of burning bridges, violence,

intimidation, unlawful assembly, riots. *We have therefore to visit s 2 in that light. To visit the section so as to include trafficking of emeralds, elephant tusks, rhino horns, cobalt, mandrax, illegal externalisation of foreign exchange by reason of the word 'includes' would mean carrying the extension beyond the border line of doubtful cases which was not the intention of Parliament and, to put it mildly, an abuse of language.* And to quote Turner LJ in *Hawkins v Gathercole* (1855) 6 De G M & G 1 at 22 (43 ER 1129 at 1136) who said:

> '*We have therefore to consider not merely the words of this Act of Parliament, but the intent of the legislature*, to be collected *from the cause and necessity of the Act* being made, *from a comparison of its several parts*, and *from foreign (meaning extraneous) circumstance*s, so far as *they can justly be considered to throw light on the subject.*'

I am not unaware of the clear statement of Lord Denning in *Escoigne Properties Ltd v IRC* [1958] AC 549 at 565-566 where he said:

> '*A statute is not passed in vacuum, but in a framework of circumstances, so as to give a remedy for a known state of affairs. To arrive at its true meaning, you should know the circumstances with reference to which the words were used: and what was the object, appearing from those circumstances, which Parliament had in view*. …"

This is essentially the thrust of section 10(4) of the Interpretation Act, 2009 (Act 792). If therefore the Constitution tied the effect of the new or altered constituencies to the Parliamentary calendar it follows that the operation of Parliament is relevant to the effect accorded to the new constituencies.

We do not think that the expression "upon" is any different from "consequent upon", for I would think that the implication of "consequent" is embedded in the word "upon". In *Donkor v. The Republic of Ghana, Donkor v. The Republic of Ghana (Consolidated)* (1971) 1 GLR 30 C.A the court had to construe section 13(3) of the Transitional Provisions of the 1969 Constitution giving immunity "in respect of any act or omission *relating to, or consequent upon*,

(a) *the overthrow of the government in power before the formulation of the National Liberation Council;* or

(b) *the suspension of the Constitution* which came into force on the first day of July, 1960, or any part thereof; or

(c) the establishment of the National Liberation Council; or

(d) the establishment of this Constitution."

The plaintiffs' cars were seized on the order of the National Liberation Council and their suits were for damages for their wrong seizures. Delivering the judgment of the court Apaloo J.A. (as he then was) said at 33 thus:

> "The question for which an answer is required is really a short one which does not admit of a great deal of elaboration. It is, *were the seizures of the cars consequent upon the overthrow of the former government*? The words "consequent upon" are not terms of art and have no recognised legal meaning. They must therefore be given their ordinary dictionary meaning. According to the *Concise Oxford Dictionary*, the key adjective *"consequent" means "following as a result*." In one case, *the seizure was effected only four days after the overthrow of the former government* and in the other case *the seizure was made within a month of it. The seizures were so proximate in time to the overthrow of the government that it would be a perfectly normal use of language to say that the seizures followed as a result of the change or were "consequent*

upon" it. And in so far as we are entitled to draw any inference from this, *we think the National Liberation Council must have considered the seizures necessary for its own purposes.* The fact that it enacted legislation several months afterwards to enable it make a good title to a prospective purchaser does not affect the question." (e.s.)

The analogy being drawn in this case from that case is that acts done or events occurring shortly after the dissolution of a previous regime are relevant to that act of dissolution and are interconnected with the same. In the present case article 112(4) of the Constitution has the closest connection with the effect of a dissolution of Parliament under article 113(1) and therefore constitutes the range and catchment area of the expression *"upon the next dissolution of Parliament"* in article 47(6). Article 47(6) is therefore referable to article 112(4). This is so because article 47(6) cannot and was not intended to operate in the wilderness or vacuum of a dissolution of Parliament *simpliciter*. The courts, aforesaid, have often stressed that Parliament does not act in a vacuum. Articles 112(4) and 113(1) are as follows:

"112. (4) Subject to clause (2) of *article 113* of this Constitution, *a general election of members of Parliament shall be held within thirty days before the expiration of the period specified in clause (1)* of that article; *and a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period*.

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113. (1) Subject to clause (2) of this article, *Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved.*" (e.s.)

Clause 2 of this article relates to war time situations and therefore not relevant to the facts of this case.

It stands to reason that article 47(6) has its eyes on the constituent representation of the people in Parliament after a dissolution of Parliament. Article 47(6) therefore means that the effect of altered or new constituencies shall manifest or come to play in the constituent representation of the people of Ghana in the new Parliament after the dissolution of the earlier Parliament. What this means is that even though a review of constituencies under article 47(5) may result in the alteration of the boundaries of constituencies those pre-existing constituencies, by virtue of article 47(6) should remain as they were before the alteration and function in Parliament without being affected by the said alteration until after the dissolution of the old Parliament during which the alteration occurred and have then effect in the next new Parliament. After all without its representation in Parliament how can the effect of a constituency whether intact or altered be felt or made real?

Consequences of the Position taken by the Plaintiff as to the proper construction of article 47(6)

The plaintiff is quite certain that by reason of article 47(6) an altered constituency does not legally exist until the dissolution of Parliament. However, article 47(5) and (6) clearly are to the effect that a review of the division of constituencies can result in an alteration of the boundaries thereof, but that "*the alteration shall come into effect upon the next dissolution of Parliament."* Clearly if there has been no alteration at all there will be none that can come into effect upon the next dissolution of Parliament.

The plaintiff also contends that elections in respect of the newly created constituencies cannot take place until after the dissolution of Parliament. What this means is that only persons who were elected in respect of the surviving unaltered constituencies can take their seats in Parliament as soon as the first session of the new Parliament takes off under article 112(4). It will then mean that new budgetary allocation has to be made and new plans will be put in place

by the Electoral Commission to fill the newly created constituencies. This will run counter to article 47(1) which provides as follows:

> "47. (1) Ghana shall be divided into as many constituencies for the purpose of election of members of Parliament as the Electoral Commission may prescribe, *and each constituency shall be represented by one Member of Parliament.*" (e.s.)

In the face of this provision and going by the plaintiff's position some constituencies will be represented in Parliament whilst others (the new ones) will remain unrepresented for as long as supplementary elections cannot be held. Were such a situation within the acceptable contemplation of Parliament it is startling that no period of time is specified for the expeditious holding of such elections since the Constitution hates a vacuum in Parliament by reason of articles 47(1) and 112(4) and (5). Again it will mean that by virtue of articles 97(1)(a) and 113(1) the members of Parliament under the unaltered constituencies will have a parliamentary term of 4 years whilst the supplementary ones would have lesser terms. The occurrence of new vacancies in the course of the functioning of a Parliament under article 97 would be what is the subject of a by-election under article 112(5) and is inapplicable to the facts of this case.

Again the plaintiff's case runs counter to article 112(4) which requires that "*a general election of members of Parliament shall be held within thirty days before the expiration of the period specified in clause (1) of" article 113; and "a session of Parliament shall be appointed to commence within fourteen days after the expiration of that period*". Quite clearly this provision permits the premature holding of a general Parliamentary (not partial or fractional) election even though the term of a current Parliament has not yet run , no doubt, a welcome departure from the position under the 1969 Constitution, for the sake of continuity and good governance. Both the letter and spirit of this provision would also warrant the holding of elections in respect of the altered

constituencies even though such constituencies will have effect in their altered form only after the dissolution of the current Parliament and the members of Parliament-elect then take their new seats in Parliament along with their colleagues coming from unaltered constituencies, all on an even and clean sheet of membership of Parliament.

If the plaintiff's position is sustained it would mean that since article 112(4) requires "a general election of members of Parliament ... within thirty days before the expiration of the period specified in clause 1 of" article 113, the Electoral Commission will be compelled to hold elections throughout the pre-existing constituencies in their unaltered form and then when Parliament is dissolved and according to the plaintiff the newly created constituencies then come into existence a new election will now be held in respect of them. The grave and startling implications of such a situation should be clear. It would mean that only those members of Parliament who were elected in respect of constituencies that have not been affected by the new alterations to constituency boundaries will survive the quake that would have hit the old constituencies. However, if the alterations affect the boundaries of two adjoining constituencies or result in the break up of an existing constituency into two new constituencies, what would be the resultant position? Could the elected parliamentary candidates contend that they have a vested right in respect of their elections which cannot be affected by the new changes affecting the boundaries of their constituencies? What then will be the correct effect of the creation of the new constituencies? Wait until the next dissolution of Parliament? No, because according to the plaintiff's contention they were to come into existence and elections held in their respect *"upon the dissolution of Parliament"* which must mean the immediate past Parliament. Utter confusion and chaos would abound in the wake of the plaintiff's interpretation of article 47(6). Despite the maxim that *lex non cogit ad impossibilia*, the plaintiff presses on his stance!

The plaintiff overlooks the importance of reading the Constitution or any document for that matter as a whole. The danger of not doing so is real and was exposed in *J H Mensah v Attorney-General* [1996-97] SCGLR 320 at 361 to 363, per Acquah JSC (as he then was, his brethren concurring) as follows;

> "*The Attorney-General finds solace in article 64(2)(a) of the 1969 Constitution of Ghana* which provides, *that a minister's office becomes vacant, inter alia, on the dissolution of the National Assembly.* In his view, *once such a provision is absent in article 81 of the 1992 Constitution, the dissolution of the National Assembly in the first term of the Fourth Republic did not terminate the office of a minister or deputy minister.*
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> Now article 81 of the 1992 Constitution provides that the office of a minister or deputy minister becomes vacant if:
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> "(a) his appointment is revoked by the President; or
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> (b) he is elected Speaker or Deputy Speaker; or
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> (c) he dies."
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> *By the defendant's contention , it logically follows that a minister or deputy minister in a previous government whose appointment is not revoked before a new President comes into power, will continue to be a minister even under this new President, unless the said President revokes the appointment.* And even if the succeeding President is of a different political party from that of the previous minister, that previous minister will continue to be a minister under the opposition party's President. And unless the new President revokes that minister's appointment, the minister will continue to hold himself out as such and be entitled to the salary and benefits attached to that office. *Even when the new President appoints his own minsters, the previous ministers whose appointments still stand unrevoked by the new*

President (for the defeated President's mandate would have expired with his defeat) would, on the defendant's submission, be deemed to be in office. Is this not absurd?

Certainly, the correct position is that, even if the same President is re-elected for a second term, his previous ministers whose appointments were not revoked before he was inaugurated for a second term, cannot claim to continue indefinitely as such in the second term, unless they are re-appointed by the President. Indeed the very fact that the President announced that some of his former ministers were to be retained, is an implied admission that none of the previous ministers has an indefinite tenure of office or an automatic right to continue as a minister in the second term of the President. Otherwise why should the announcement be made, if subject to article 81, the previous ministers hold an indefinite tenure of office?

I think it is now firmly settled that a better approach to interpretation of a provision of the 1992 Constitution is to interpret that provision in relation to the other provisions of the Constitution so as to render that interpretation consistent with the other provisions and the overall tenor or spirit of the Constitution. An interpretation based solely on a particular provision without reference to the other provisions is likely to lead to a wrong appreciation of the true meaning and import of that provision. Thus in Bennion's *Constitutional Law of Ghana* (1962) it is explained at page 283 that *it is important to construe an enactment as a whol*e:

> "… since *it is easy, by taking a particular provision of an Act in isolation, to obtain a wrong impression of its true effect.* The dangers of taking passages out of their

> context are well known in other fields, and they apply just as much to legislation. *Even where an Act is properly drawn it still must be read as a whole. Indeed a well-drawn Act consists of an inter-locking structure each provision of which has its part to play. Warnings will often be there to guide the reader*, as for example, that an apparently categorical statement in one place is subject to exceptions laid down elsewhere in the Act, *but such warnings cannot always be provided*."

I am therefore of the considered view that having regard to the obvious absurdity involved in determining the tenure of office of a minister or deputy minister solely on article 81, a recourse must be made to the broad outline of the type of government created in the 1992 Constitution. Our 1992 Constitution provides for a government, as distinct from the legislature and the judiciary, of an Executive President (article 58(1) and (4); assisted by the Vice-President (article 60), ministers and deputy ministers of state (article 78 and 79). The President is both the Head of State and the Head of the Government (article 57), and he is assisted in the determination of the general policy of the Government by the Cabinet which is made of the above team minus the non-cabinet ministers (article 76). Now because the ministers are part and parcel of the Executive President's Government, article 58(5) acknowledges that the signature of a minister is sufficient to authenticate any constitutional or statutory instrument made or issued in the name of the President.

The 1992 Constitution therefore creates a government of an Executive President. And thus the term of office of the Executive

President is the term of office of that government. Of course, where the Executive President dies before the end of his term of office, the Constitution empowers his Vice-President to complete that term. *Accordingly, the term of office of the Executive President is the term of office of those who constitute the government,that is the Vice-President, ministers and deputy ministers. Thus understood, it becomes clear that article 81 provides for circumstances under which the office of the minister or deputy minister will become vacant within the tenure of office of the government under which that minister or deputy minister is serving. The term of office of a minister or deputy minister does not extend beyond that of the Government which appointed that minister.* If that government is re-elected into power, the minister or deputy minster may be reappointed to the same office. And that was why it was necessary for the NDC Government to announce that some of the previous members were going to be re-appointed or retained.

The contention therefore that unless the office of a minister or deputy minister becomes vacant in any of the ways provided for in article 81, he has an indefinite term of office, is certainly untenable and inconsistent with the governmental structure provided for in the Constitution. I would therefore uphold the plaintiff's contention that the term of office of a minister or deputy minister is coterminous with that of the government which appointed the minister, and that in-between that term, the minister or deputy minister may lose his office in any of the ways specified in article 81." (e.s.)

Assuming even that the plaintiff's argument is a possible one the alternative construction pursued in this judgment is also possible. It would therefore mean that article 47(6) is somewhat ambiguous. In such a situation it

is settled law as stated (per Gonsalves-Sabola J) in the Bahamas case of *Whitfield v. Attorney-General* 1989 LRC (Const.) 249 at 263 that:

> "In 44 Halsbury's Laws of England (4th edn) para 896 there appears the following passage dealing with the interpretation of statutes:
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> > '*If the language of a statute is ambiguous* so as to admit of two constructions, *the consequences of the alternative constructions must be regarded*, and *that construction must not be adopted which leads to manifest public mischief, or great inconvenience, or repugnance, inconsistency, unreasonableness or absurdity, or to great harshness or injustice.* …"

I have left out such portions of the quotation that tend to hold that if a statute is plain and unambiguous it must take its literal course regardless of the consequences, as such a view is now outmoded, see *Ransford France v The Electoral Commission & The Attorney-General*, J1/19/2012, dated 19th October, 2012, unreported.

Where the legislature intends that certain provisions should move together the subsequent mention of only one of them does not necessarily dismiss the other from application to the one expressly mentioned, see *Khoury v. Mitchual* (1989-90) 2 GLR 256 S.C. and *Newns v. Macfoy*, Leading Cases in Sierra Leone 82. This court was therefore right in *Luke Mensah v Attorney-General, supra* in holding that article 47(6) cannot be construed free from article 47(1) which clearly shows that for a constituency to be complete there must be the demarcation of the constituency as well as representation in Parliament by one member of Parliament thereof. Accordingly article 47(6) addresses itself to the consequent representation in Parliament pursuant to the alteration of the boundaries of a constituency and it is that aspect which it holds in check until after the dissolution of a current Parliament.

It must be emphasized that in including the new constituencies in the upcoming elections the Electoral Commission is merely preparing to give effect to them, for smooth governance, like a deed delivered in escrow and does not infringe any part of the Constitution but is rather warranted, apart from article 112(4), also by article 297(c). It is as follows:

> "297. *In this Constitution and in any other law –*
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> xxxxxxx
>
> (c) where a power is given to a person or authority to do or enforce the doing of an act or a thing, *all such powers shall be deemed to be also given as are necessary to enable that person or authority to do or enforce the doing of the act or thing;* …" (e.s.)

Gerrymandering

The plaintiff contends that article 47(6) of our Constitution is to forestall gerrymandering, which he perceives involves a situation where electoral boundaries are manipulated through alteration to suit a particular electoral outcome. He seeks to bolster this stance, aforesaid, by reliance on article 2 (1) of Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of the Economic Community of West Africa States ratified and Article 89(4) of the Kenyan Constitution. The former provides that

> "[n]o substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of political actors."

It is sufficient to say of this, that article 46 of the Constitution makes the Electoral Commission, which has the sole mandate to create and review parliamentary constituencies in Ghana, *"in the performance of its functions"* completely independent of "*the direction or control of any person or authority*".

Clearly it is a notorious common law and statutory presumption that official acts when performed are duly and regularly performed.

The reliance by the plaintiff on some alleged adoption by the Electoral Commission of electoral areas created by the Minister of Local Government is misconceived since the law expects even high officers of state to collaborate, see the New Zealand Case of *R v. Pora* (2001) 5 LRC 530 at 572 C.A. It was only recently that this court held that the Minister of Local Government has no constitutional power to create electoral areas. In such circumstances the Electoral Commission cannot be faulted for such prior collaboration.

It is clear that in creating the new constituencies the Electoral Commission is not altering any electoral laws close to an election but carrying out the provisions of particularly articles 47(1), (5) and 112(4) of the Constitution. The Kenyan Constitution expressly provides the contrary of its Ghanaian counterpart and it is clear that our Constitution is the supreme law under article 1(2) overriding all other laws. Its amendment can only be effected in accordance with its express provisions under Chapter 25 thereof. The plaintiff also quibbles about the stance of the Electoral Commission that for every new District there should at least be one constituency. As *magnus continent in se minus* and on sheer common sense of purposive governance this stance of the Electoral Commission is so logical and irresistible that one can only be amazed at the plaintiff's equation of this with gerrymandering! This stance of the Electoral Commission was championed strongly at the Consultative Assembly by Mr. S.P. Adamu. And even though his further proposal that no constituency should fall within not only within two Regions but also within two Districts was not carried, it is now a known convention of the Electoral Commission. Mr. S.P. Adamu had during the debates of the Consultative Assembly on the "Representation of the People 11 February 1992 Consideration Stage" said as follows:

> "Madam Speaker, *the creation of a District automatically comes with the creation of a new constituency... I am saying that if there is a need to create a new District, then for the very reason they were given the District should also entitle them to a new constituency.*" (e.s.)

We sit *foribus apertis*, and not *in camera*, both by common law and constitutional prescription (see article 126(3)) because the courts belong to the public, to interpret and/ or enforce the Constitution for the best interest and welfare of the people of Ghana, as enjoined by article 1(1) of the Constitution and we are convinced that, going by such considerations, inter alia, the plaintiff's action is misconceived.

For all the foregoing reasons we affirm the decision of this court in *Luke Mensah v. Attorney-General*, *supra* as having been correctly decided and consequently dismiss the plaintiff's action.

[SGD] W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

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

[SGD] ANIN-YEBOAH
JUSTICE OF THE SUPREME COURT

[SGD] P. BAFFOE-BONNIE

JUSTICE OF THE SUPREME COURT

[SGD] N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

[SGD] V. AKOTO – BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT

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NANA ASANTE BEDIATUO FOR THE PLAINTIFF.
JAMES QUARSHIE-IDUN (WITH HIM ANTHONY DABI) FOR THE 2ND DEFENANT.
NO APPEARANCE FOR THE 1ST DEFENDANT.