IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2012

CORAM: ATUGUBA, AG .C.J (PRESIDING)

DR. DATE-BAH, J.S.C
ADINYIRA (MRS), J.S.C.
OWUSU (MS.),J.S.C
ANIN-YEBOAH, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS.) J.S.C

WRIT No. J1/27/ 2012

17TH OCTOBER, 2012

DR. CLEMENT APAAK . . . PLAINTIFF

VRS.

1. **THE ELECTORAL COMMISSION**
2. **THE ATTORNEY-GENERAL . . . DEFENDANTS**

J U D G M E N T

DR. DATE-BAH JSC:

This is the unanimous judgment of the Court. In this case, the plaintiff challenges the authority of the Minister responsible for Local Government to create electoral areas in districts, municipalities and metropolises, which, according to the plaintiff, he has purported to do under what he has construed to be enabling power under the Local Government Act 1993 (Act 462). The plaintiff has therefore brought this action invoking the original jurisdiction of the Supreme Court, seeking a declaration that various legislative instruments specified in a Schedule attached to his Writ were made in contravention of Article 45(b) of the 1992 Constitution. Article 45 of the Constitution reads as follows:

> "The Electoral Commission shall have the following functions -
>
> (a) to compile the register of voters and revise it at such periods as may be determined by law;
>
> (b) to demarcate the electoral boundaries for both national and local government elections;
>
> (c) to conduct and supervise all public elections and referenda;
>
> (d) to educate the people on the electoral process and its purpose;
>
> (e) to undertake programmes for the expansion of the registration of voters; and

(f) to perform such other functions as may be prescribed by law".

The first defendant, which, from the above provision, is to be interpreted to have the exclusive constitutional authority to create electoral areas, admits that the Minister has no authority to create electoral areas. It, however, argues that the Minister responsible for Local Government did not, in fact and in law, establish or create electoral areas as contended by the Plaintiff.

The fact is, however, as illustrated by LI 1843, the Local Government (Ketu North District Assembly) (Establishment) Instrument, 2007 (which is appended, by way of a sample, as an exhibit to the plaintiff's Statement of Case), the Legislative Instruments do contain a subsection 2(4) in the following terms:

> "For the purpose of election to the Assembly the area of authority of the Assembly shall be divided into the electoral areas specified in the First Schedule to this Instrument."

The issue is whether this provision (and similar provisions in the other Legislative Instruments listed in the plaintiff's schedule) can reasonably be interpreted as amounting to the creation of electoral areas by the Minister. The first defendant's contention is that by the Representation of the People (Parliamentary Constituencies) Instrument, 2004 (C.I.46), the Electoral Areas specified in the Instruments made by the Minister had already been earlier created by the first defendant. Accordingly, in spite of the language of subsection 2(4), quoted above, the Minister was not really creating an electoral area, but

merely referring to one already in existence. In paragraph (5) of the first defendant's Statement of Case, it affirms as follows:

> "We admit that Section 2(4) purports to divide the area of authority of the Assemblies into the electoral areas specified in the 1st Schedule to the Instrument. This may seem to be *ultra vires* the powers of the Minister for Local Government or attributed to inelegant drafting."

This is a clear admission by the first defendant that there is a problem. This court can help to solve the problem by affirming that the Minister responsible for Local Government does not have authority to create or establish electoral areas and that to the extent there is any language in the Instruments listed in the Schedule to the plaintiff's writ that suggests that he has any such authority that language is void to the extent of its inconsistency with Article 45(b).

The first defendant argues that because section 3(2)(e) of Act 462 empowers the Minister responsible for Local Government to specify "any other matters that are required to be included in the instrument or are consequential or ancillary to it", the inclusion of the electoral areas in the offending Instruments should be construed as consequential or ancillary to the establishment of the Assemblies set up by the Instruments pursuant to enabling power under Act 462. There is danger in this ambivalence. This Court should make it clear that, to the extent that section 2(4) of the Instruments gives the impression that the Minister is establishing the electoral areas, this is *ultra vires* and unconstitutional. *A*ccordingly, this court should so declare. The Minister needs to use language which makes it plain that the electoral areas he refers to in the Instruments are pre-existing and already created by the first defendant. Any ambiguity in this

regard should be resolved against him and any offending statutory language struck down to the extent of its inconsistency with the first defendant's powers under Article 45(b) of the Constitution.

For the reasons given above, we would grant the plaintiff the first two reliefs endorsed on his Writ of Summons, namely:

1. "A declaration that the various legislative instruments specified in the Schedule attached to the writ, laid in Parliament by the Minister of Local Government, and which came into force after 21 Parliamentary sitting days, were made by the Minister in contravention of Article 45 (b) of the Constitution to the extent that those legislative instruments purported to create electoral areas for various districts, municipalities or metropolises in Ghana;
2. An order declaring the said legislative instruments null, void and of no legal effect to the extent that they sought to create electoral areas in said districts, municipalities or metropolises in Ghana."

However, it would be unreasonable to restrain the first defendant from conducting national or local elections on the basis of the electoral areas specified in the impugned legislative instruments, if those electoral areas coincide with electoral areas that the first defendant has lawfully designated. We would thus only grant the third relief sought by the plaintiff subject to a qualification. The third relief sought is in the following terms:

3. “An order of perpetual injunction restraining the 1st Defendant from conducting any national or local elections on the basis of the electoral areas specified in the impugned legislative referred to in the Schedule until those electoral areas are properly constituted in accordance with law in a manner that is not inconsistent with Article 45 (b) of the Constitution;… “

It is granted subject to the qualification that the said injunction shall not apply where any national or local elections are held on the basis of any enactment by the first defendant which complies with the Constitution.

In sum, subject to the qualification noted above, the plaintiff’s action succeeds.

(SGD) DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA

ACTING CHIEF JUSTICE

(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

(SGD) N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

(SGD) V. AKOTO – BAMFO (MRS.)

JUSTICE OF THE SUPREME COURT

COUNSEL

DR. ABDUL BAASIT AZIZ BAMBA FOR THE PLAINTIFF.

JAMES QUARSHIE-IDUN (WITH HIM ANTHONY DABI) FOR THE 1ST DEFENANT.

SYLVESTER WILLIAMS (PRINCIPAL STATE ATTORNEY) FOR THE 2ND DEFENDANT.