IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

WRIT
NO. J1/7/2016

28TH JULY, 2016

CORAM: DOTSE JSC (PRESIDING)
ANIN YEBOAH JSC
BAFFOE-BONNIE JSC
GBADEGBE JSC
AKOTO-BAMFO (MRS) JSC
BENIN JSC
PWAMANG JSC

DR. MARK ASSIBEY-YEBOAH - PLAINTIFF

VRS

1. **ELECTRICITY COMPANY OF GHANA - 1ST DEFENDANT**
2. **GHANA NATIONAL PETROLEUM CORPORATION (GNPC) - 2ND DEFENDANT**
3. **THE ATTORNEY GENERAL - 3RD DEFENDANT**

JUDGMENT

DOTSE JSC

Our respected and eminent sister, Sophia Akuffo (Ms) JSC in the unanimous ruling of the Supreme Court in the case of ***Republic v High Court, (Commercial Division), Accra; Ex-parte Attorney-General (Balkan Energy Ghana Limited and others -Interested Parties) [2011] 2 SCGLR 1183*** held as follows:-

> *"According to the Merriam-Webster Dictionary of Law (1996) to interpret is to explain the meaning of something in order to determine intent. For the purposes of interpretation, "intent" more often than not also includes scope. Now in* ***Attorney General v Faroe Atlantic Co. Limited*** *(supra) this court expounded the meaning of the expression "an international business or economic transaction to which the Government is a party", as used in article 181 (5), within a particular context, i.e.* ***an agreement between the Government of Ghana and a foreign company****. Where, in a subsequent matter, a party contends that the scope of the provision is broader and covers an agreement between the Government of Ghana and a domestic party of a certain type,* ***then the intent and scope of the provision once again falls to be determined, not by the High Court, but by the constitutionally*** *– clothed court, the Supreme Court.* ***The matter is not merely one of applying the provisions of article 181 (5) in accordance with and along the lines of the previous interpretation."*** *Emphasis*

Has the Supreme Court since the decision in the case of ***Attorney-General v Faroe Atlantic [2005-2006] SCGLR 271*** and *Balkan Energy cases* referred to (supra), had occasion to again interpret article 181 (5) provisions of the

Constitution 1992 in a manner as to make it unnecessary for this court's original jurisdiction to be invoked in the circumstances in which it has been done?

Such an opportunity occurred for the Supreme Court to bring sufficient clarity and give guidance to the scope of the article 181 (5) provisions of the Constitution in a matter that involved the definition of international business and that decision gave sufficient guidelines on what a court is to do when faced with what set of criteria to use, i.e. a road map as it were.

That case is the decision of this Court in ***Attorney General v Balkan Energy [2012] 2 SCGLR 998 at 1034*** where this court interpreted article 181 (5) as follows:-

> *"We think that a business transaction is "international" within the context of Article 181 (5)* ***where the nature of the business which is the subject-matter of the transaction is international in the sense of having a significant foreign element or the parties to the transaction (other than the Government) have a foreign nationality reside in different countries or, in the case of companies****, the place of their central management and control is outside Ghana." Emphasis*

We think it is useful to refer extensively also to portions of the decision of the Supreme Court in the Balkan Energy case referred to (supra) on page 1029 of the report thus:-

> *"The term international business or economic transaction to which the government is a party" as stated in article 181(5) of the Constitution, if purposively construed, should not lead necessarily to the result that only agreements between entities resident abroad and the Ghana government can be embraced within the meaning of the term. Given the complexity of contemporary international business or economic transactions there will be*

transactions of such a clear international nature that they should come within any reasonable definition of an international business or economic transaction, but which may have been concluded with the Ghana government by an entity resident in Ghana. ***In such a situation, our view is that the substance, rather than the form, should prevail. What we have just said begs the question of what "international" means. In this connection, we think that there is the need to combine both the nature of the business or economic transaction criterion and the parties criterion proposed by the plaintiff in his submission, in order to formulate a test for determining what transactions come within the ambit of article 181 (5) of the 1992 Constitution"****. Emphasis*

The above guidelines set out supra will serve as a yardstick when the reliefs and the facts of the case herein are put in perspective.

A useful yardstick or guideline that is deducible from the above is that two criteria exists for the determination of whether a transaction is an international business transaction pursuant to article 181 (5) of the Constitution.

These are

1. Purposive interpretation which will use the **substance** rather than the form criteria. What this means is that, in determining whether an international business transaction entered into with the Government and a resident company in Ghana is an international transaction, the above criteria should be used, i.e. substance or form

2. In determining these criteria, it is necessary to combine both the nature of the business transaction and the **parties** criteria.

In the instant transactions, what has become evident is the reliance on the enabling Acts of incorporation of the 1st and 2nd Defendants.

RELIEFS AND FACTS OF THE CASE

A core and germane issue is whether in view of the various interpretations given by this court in the following cases on the true meaning and intent of article 181 (5) of the Constitution, the transactions herein still have to be brought to this court for interpretation or if sufficiently interpreted already by this court, then applied by the High Court.

See cases of ***Attorney General v Faroe Atlantic Limited, (supra) Attorney General v Balkan Energy Ghana Limited and Others, [2012] 2 SCGLR 998, Amidu (No. 2) v Attorney-General, Waterville Holdings (BVI) Limited and Woyome (No. 2) 2013-14 1 SCGLR 606 and Klomega (No. 2) v Attorney-General & GPHA (No. 2) [2013-14] 1 SCGLR 581.***

The reliefs which the plaintiff claimed before this court are as follows:-

The Plaintiff by a writ dated the 19th June, 2015; invoked the original jurisdiction of this court under **Articles 2(1) & 130** of the Constitution 1992 seeking the following reliefs:

1. Upon a true and proper interpretation of Article 181(5) of the 1992 Constitution, the execution of the Power Purchase Agreement (PPA)

between ECG and Karpower is an International Commercial business of which government is a party; and failure and or refusal to seek Parliamentary approval prior to execution of same amount to usurpation of the Constitutional mandate of Parliament.

2. Upon a true and proper interpretation of Article 181(1) of the 1992 Constitution and Section 7(3) (a) and (b) of Petroleum Revenue Management Act, 2011 (Act 815) the issuance of Hundred Million USD bank guarantee by Ecobank upon an application by GNPC in support of a PPA between ECG and Karpower without prior Parliamentary approval is unconstitutional, void and of no legal effect.

3. Upon a true and proper interpretation of Article 181(5) of the 1992 Constitution, the PPA between ECG and Karpower constitute an International Commercial Transaction of which government is a party; and the failure by the government to seek prior Parliamentary approval by executing same is unconstitutional void and of no legal effect.

4. Upon a true and proper interpretation of Article 181(1) of the 1992 Constitution, and Section 7(3) (a) and (b) of Petroleum Revenue Management Act, 2011 (Act 815), GNPC being wholly owned by the people of Ghana cannot issue a bank guarantee, procure any loan for commercial purpose or provide any funding to any entity whether private or public, unless same is approved by Parliament in accordance with Order 171 of the Standing Orders of Parliament.

5. Upon a true and proper interpretation of Article 181(1) & (5) of the 1992 Constitution, the procurement of loans by GNPC and the execution of International Commercial agreement remain part of government business and the liability of government; and any purported exemption granted to GNPC through any legislation to proceed in any transaction without Parliamentary approval is unconstitutional, void and of no legal effect.

6. Upon a true and proper interpretation of Article 181(1) of the 1992 Constitution, and Section 7(3)(a) and (b) of the Petroleum Revenue Management Act, 2011 (Act 815), and Order 171 of the Standing Orders of Parliament, the issuance of a bank guarantee by GNPC in support of the PPA between ECG and Karpower without prior parliamentary approval amount to usurpation of the Constitutional mandate of Parliament."

FACTS

The facts, upon which the Plaintiff, a sitting member of Parliament, anchored his case are as follows:-

According to the Plaintiff, the 1st Defendant entered into a Power Purchase Agreement (hereafter PPA) with Karpower (Ghana) Limited, which was guaranteed by the 2nd defendant and facilitated by the government of Ghana through a letter of comfort dated 3rd February 2015, which according to the Plaintiff, should have been laid before Parliament for approval. The Plaintiff further contended that the said agreement being an international commercial transaction to which the Government is a party, ought to have been laid and approved by Parliament pursuant to article 181 (5) of the Constitution 1992.

The Plaintiff further contended that, the 1st Defendant even though a limited liability company cannot be said to be entirely independent because the Government of Ghana virtually controls it's activities as it is entirely owned and funded by the government.

The Plaintiff argued that, the unconstitutionality of the transactions were brought to the attention of Parliament, and His Excellency The President. The Plaintiff referred to exhibits D and E to which are Parliamentary Debates (Hansard) of Friday 20th February 2015 in which counsel for plaintiff unsuccessfully raised this issue on the floor of the house and a letter from him to the President acting as Solicitor for the plaintiff on the same PPA, subject matter of the instant suit. .

The arguments of Plaintiff are that, the decision of Government to approve through cabinet the PPA for the supply of 450 megawatts of electricity without referring same to Parliament for consideration or approval constitutes usurpation of the constitutional mandate of Parliament as enshrined in article 181 (5) of the Constitution.

In respect of the 2nd Defendant, the Plaintiff argued that the issuance of the bank guarantee by them ought to have been approved by Parliament in accordance with article 181 (1) of the Constitution and sections 7 (3) (a) and (b) of the Petroleum Revenue Management Act 2011 (Act 815).

DEFENDANT'S RESPONSE

In response, the Defendants denied that the Plaintiff is entitled to the reliefs he claims before the court. For example, it was contended on behalf of the 1st Defendant that it is a limited liability company registered under the Companies Act 1963 (Act 179), by virtue of the Statutory Corporations (Conversion to Companies) Act 1993 (Act 461). They contended rightly in our view that, this

conversion implied that the 1st Defendants are separate and distinct from it's sole shareholder, (the Government), and therefore it's acts cannot be attributed to the government. Furthermore they contended that it's operations are funded solely from it's own internally generated funds, and not from the consolidated fund.

According to the Defendants, the internationality of an agreement such as the PPA in this instance is not the only criteria for holding that such a transaction must be laid before Parliament for approval. **A key ingredient they contend is that, the government must be a party which was lacking in this instance. They therefore contended that, where for instance the 2nd Defendant is borrowing money it does so on the strength of it's own balance sheet without government support.** Such an agreement or transaction they contend, cannot be brought within the purview of article 181 (5) of the Constitution.

It is the case of the 2nd Defendant that, having obtained the approval of their own board, that act alone is sufficient assurance of the validity of the transaction. They contend further that, the enabling statute of the 2nd Defendant's has made it a distinct legal personality established to operate as a commercial concern and separate from government and its agencies and departments.

There is no doubt that the 1st Defendants had been converted into a limited liability company by the "Statutory Corporations (Conversion to corporations) Act, 1993 (Act 461). The schedule to the said Act 461 lists Electricity Corporation of Ghana as the 7th Corporation therein to have been converted among a total of 32 such state corporations.

In this respect, we wish to refer to the long title to Act 461 which reads thus:-

> *"An Act to provide for the conversion of* ***specified statutory corporations into companies limited by shares;*** *to provide for the vesting of the assets and liabilities of the statutory corporations in the successor companies; to provide for the holding of shares in the companies and for other related matters."*

The law made it quite clear that the 1st Defendants have become a limited liability company under the Companies Act, 1963 (Act 179), reference section 1 of Act 461.

Section 2 thereof of Act 461 vests all assets, properties, rights, liabilities and obligations of the former statutory corporation in the new "successor company" and that is the 1st Defendant. A perusal of Act 461 gives us clear indications that, the Minister of Finance had been given clear directives to ensure that the said converted statutory corporations such as the 1st Defendants are duly converted into limited liability companies and all references to its former legal entity shall cease to exist after the coming into force of the successor company.

In respect of the 2nd defendants, there is no doubt that they have been established by the Ghana National Petroleum Corporation Act 1983 (PNDCL 64).

Sections 1 (1) (2) and (3) of PNDCL 64 created the 2nd Defendants as a legal entity, a body corporate, having perpetual succession, a common seal, capable of suing and being sued as a corporate entity.

Section 1 (3) of PNDCL 64 states as follows:-

> *"The corporation may, for and in connection with the carrying out of its objects, acquire, hold and dispose of movable and immovable property* ***and may enter into a contract or any other transactions".*** Emphasis

We have looked at sections 2 and 3 which deals with the objects and functions of the 2nd defendants, as well as their powers as a corporate entity. It is also important to note that the 2nd defendants have been set up as a commercial venture, reference section 4 of PNDCL 64. To this end, it has a Board of Directors as stipulated in sections 5, 6, 7 and 8 of the Act which deals with qualifications of the Directors, meetings of the Board and functions thereof. For example, section 8 (1) of the Act states as follows:-

> ***"The Board shall, subject to this Act, have general control of the management, property, business and funds of the corporation and any other affairs and concerns of the corporation."*** *Emphasis*

In this respect, we are satisfied that there is infact authority vested in the 2nd Defendant's Board of Directors to have entered into the type of transaction they entered into, the subject matter of this suit.

The role of Government is not lost on us, as there are sufficient indications in sections 16, 21, 22 and 24 which all deals with, Government advances and grants payments into the consolidated fund, importation of goods and the role of the Minister of Finance therein, and actions requiring ministerial approval respectively.

In critically assessing the enabling statutes of the 1st and 2nd defendants, we are clear in our minds that they are juristic persons capable of entering into the transactions into which they entered into herein.

The role of Government if any in our mind does not merit the "alter ego" relationship mentioned in the Klomegah (No. 2) cases supra to qualify the transactions as having the Government as a party. The ministerial role of the 1st and 2nd defendants is no more than an oversight responsibility, period.

PRELIMINARY ISSUES

1. The 2nd Defendant argued that the bank guarantee issued on their instructions cannot form the basis of the invocation of the original jurisdiction of this court because the matter does not raise any constitutional interpretation or enforcement issues, it is if at all, a breach of a statute.

2. Secondly, the 2nd Defendant argued that the issues raised by the Plaintiff although dressed as a constitutional issue in essence does not require interpretation but rather application of the Constitution. This is because this court has already interpreted and given guidelines in a plethora of previous decisions which have to be applied to indicate that the transactions herein do not require laying before Parliament as provided for under article 181 (5) of the Constituiton.

MEMORANDUM OF ISSUES

The following memorandum of issues were settled and agreed upon by the parties. These are:-

1. Whether or not the original jurisdiction of the supreme Court under Article 130(1) has been wrongfully invoked.

2. Whether or not 1st Defendant is "Government" within the meaning and intent of Article 181 of the Constitution as to make its international business transactions amenable to the said Article.

3. Whether or not the Power Purchase Agreement between 1st Defendant and Karpowership Ghana Company Ltd constitutes an international business or

economic transaction of which the Government of Ghana is a party within the meaning of Article 181(5) thereby requiring Parliamentary approval

4. Whether or not 2nd Defendant is *"Government"* within the meaning of Article 181 of the 1992 Constitution as to make the said Article applicable to it.

5. Whether or not the guarantee issued by 2nd Defendant in favour of Karpowership Ghana Co Ltd constitutes an international business or economic transaction and/or a loan within the respective meanings of Article 181(5) and 181(3) so as to require Parliamentary approval within the meaning of the above-mentioned constitutional provisions and the Loans Act, 1970 (Act 335).

6. Whether or not the bank guarantees issued at the instance of 2nd Defendant offend Article 181(5) of the Constitution and Section 7(3(a) & (b) of the Petroleum Revenue Management Act, 2011 (Act 815).

After a perusal of the reliefs, the memorandum of issues filed as well as the pleadings of the parties in this case, we cannot help but agree with the 2nd Defendants when they stated in their statement of case that the issues germane to this case are the following:-

a. Whether or not the power purchase agreement (PPA) between 1st Defendant and Karpowership Ghana Company Limited (Karpower) constitutes an international commercial business within the meaning and contemplation of Article 181 (5), and therefore requires parliamentary approval.

b. Whether or not the agreement made between 2nd Defendant and Karpower to supply fuel to Karpower in relation to the PPA and the guarantee issued by 2nd Defendant in favour of Karpower in support of the PPA constituted international commercial business and a loan within the respective meanings of Articles 181 (5) and 181 (3) so as to require parliamentary approval.

But before we proceed to a discussion of the above issues, which we think has the potential of disposing of the entire suit, we are of the considered opinion that, there is the need to review the scope of the original jurisdiction of this court as has been formulated and followed in a long line of respected authorities.

The circumstances under which the original jurisdiction of the Supreme Court may be invoked are well stated now. In the ***Republic v Special Tribunal; Ex Parte Akosah [1980] GLR 529*** at 605, Anin JA, after reviewing the existing law, stated the legal position thus:-

> *"From the foregoing dicta, we would conclude that an issue of enforcement `or interpretation of a provision of the Constitution under article 118 (1) (a) arises in any of the following eventualities:-*
>
> *a. Where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or else mean something different from or more than what they say.*
> *b. Where rival meanings have been placed by the litigants on the words of any provision of the Constitution.*

c. *Where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provisions shall prevail.*
d. *Where on the facts of the provision, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation*

On the other hand, there is no case of "enforcement or interpretation" where the language of the article of the Constitution is clear, precise and unambiguous. In such an eventually, the aggrieved party may appeal in the usual way to a higher court against what he may consider to be an erroneous construction of those words; and he should certainly not invoke the Supreme Court's original jurisdiction under article 118. Again where the submission made relates to no more than a proper application of the provision of the Construction to the facts in issue, this is a matter for the trial court to deal with; and no case for interpretation arises." Emphasis

See also the following cases which all follow the Ex-parte Akosah case (supra). In ***Aduamoa II v Twum II [2000] SCGLR 165 at 171*** where Acquah JSC (as he then was) stated and re-emphasised the said views as follows:-

"In summary then, whereas the original jurisdiction to interpret and enforce the provisions of the 1992 Constitution is vested solely in the Supreme Court, every court and tribunal is duty bound or vested with jurisdiction to apply the provision of the Constitution in the adjudication of disputes before it. And this jurisdiction is not taken away merely by a

party's reference to or reliance on a provision of the Constitution. ***If the language of that provision is clear, precise and unambiguous, no interpretation arises and the court is to give effect to that purpose."*** Emphasis

See also the cases of ***Bimpong Buta v General Legal Council*** [2003-2004] SCGLR 1200 and the ***Practice Direction that was given by the Supreme Court as Practice Direction (Practice and Procedure of the Supreme Court) June 15, 1981 reported in 1981 GLR 1*** as follows:-

"It is also to be noted that where a cause or matter can be determined by a superior court, other than the Supreme Court, the jurisdiction of the lower court should first be invoked.

The Supreme Court may dismiss any such cause or matter, to the Supreme Court in first instance".

The Supreme Court would not entertain any cause or matter dressed up as a constitutional issue which in essence or substance is an issue cognizable by a lower superior court. Punitive costs will be awarded which in such cases shall be paid personally by counsel or by the party responsible for bringing the cause or matter to the Supreme Court." Emphasis

See also the judgments of both the majority and the minority in the unreported Supreme Court case No. JI/5/2015 intitutled ***Judicial Service Staff Association v Attorney-General and 2 others***, dated 23rd June 2016. Which also dealt with this jurisdictional issue of the Supreme Court.

Having discussed in detail, the scope of the original interpretative and enforcement jurisdictions of the Supreme Court, it is apparent that, this court is

not a clearing house to assume jurisdiction which otherwise belongs to other lower superior courts. It must be noted that, this court exercises it's jurisdiction only in those manifestly clear and obvious cases that are deserving.

APPLICABILITY

In our opening pages in this rendition, we referred in extenso to our previous decision in the Balkan Energy cases (supra). It is important to reiterate the point that a later decision of this court in the case of Klomegah (supra) had already interpreted the scope of all the issues raised in the instant case.

This was when similar matter came up before this court for determination in ***Felix Klomegah v Ghana Ports and Harbours Authority & Another*** (supra) where Dr. Date-Bah JSC, reading the unanimous decision of the court, held that:

> *"The cumulative points made by the Respondents above amount to an irresistible case that in the context of article 181 (5) and the facts of this case, the 2nd Respondent (Ghana Ports and Harbours Authority) is not to be regarded as coming within the meaning of "Government". As pointed out by the Respondents, to subject statutory corporations with commercial functions to the Parliamentary approval process prescribed in article 181 (5) would probably increase the weight of Parliament's responsibilities in this regard to unsustainable level. Accordingly, it is reasonable to infer that the framers of the 1992 Constitution in the context of article 181 (5) should mean, ordinarily, the central government and not operationally autonomous agencies of government. Where an agency has a separate legal personality distinct from central government, it usually comes under sectorial ministerial supervision.* ***The Board of the corporation and the appropriate Ministry should then exercise oversight over its***

international business or economic agreements*. That oversight should be exercised within the context of the procurement laws of this country. Parliament would be sucked into unnecessary minutiae if it were to have the function of approving the international business or economic agreements of statutory corporations.* ***That is why "Government", in the context of article 181 (5), should be interpreted purposively to exclude corporations such as the 2nd Defendant.*** *Emphasis*

We are also not unaware of the caution given by the Supreme Court in the same Klomegah No. 2 case (supra) wherein the court stated as follows:-

"The Supreme Court would interprete article 181 (5) of the 1992 Constitution as meaning ***that generally that contracts of statutory corporations were not within the ambit of the provisions. However, in exceptional circumstances, through the application of a customized Ghanaian version of the doctrine of "alter ego", the contracts of a Ghanaian statutory corporation could be brought within the intendment of article 181 (5).*** *Whilst the court did not consider that the facts of the instant case could reasonably be interpreted as following within the notion of an agency of government constituting an alter ego for the Government, the court would, nevertheless consider that* ***the idea that a statutory corporation, though legally distinct from the Government, could in appropriate circumstances be held to be an alter ego of the Government was one that should serve the useful purpose of an exception to the general rule as stated. Bridas SAPIC v Government of Turkmenistan [2006] 447 F 3d 411 cited.*** *Emphasis*

We have in our deliberations and decision making process considered all the caveat that the Supreme court warned itself about. As a result, we have carefully taken into consideration the legal nature of the 1st and 2nd Defendants from their enabling statutes, already referred to supra.

We have also taken into deep consideration the role of the 2nd defendant in securing the bank guarantee for the entire loan transaction for the purchase of the Karpowership as well as the role of Government as exemplified in the letter of Comfort referred to supra. With all the above considerations, the fact still remains that, the legal entities of the 1st and 2nd defendants remains the same and their positions are the same as that Ghana Ports and Harbours Authority the Defendants therein, in the Klomegah case (supra).

We have also considered the further warning by the Supreme Court in the Klomegah case (supra) where they opined thus:-

> **"***The Supreme Court should, however, not lay down an absolute rule. if on the facts of a particular case, central government were found to have made a particular statutory corporation its alter ago under the circumstances of that particular case, the possibility of holding that, that statutory corporation would come within article 181 (5) should not be rule out."* *Page 586 of the report. Emphasis*

All the above words of caution have been taken into consideration vis-à-vis the plaintiff's complaint about the complicity of executive control i.e. cabinet in the entire transactions involving the Karpower and the 1st and 2nd Defendants.

Despite the fact that the Government stands to benefit tremendously from the successful operation and implementation of the transactions entered into with the PPP i.e. purchase of the Karpowership, the fact still remains that the mechanism through which the funding was arranged still falls within the remit of the 1st and 2nd Defendants under their enabling enactments.

From the nature of the transactions in the instant case, it is clear that the 1st and 2nd Defendants, as juristic persons had the capacity to enter into the transactions they entered into with the relevant institutions without seeking parliamentary approval as stipulated in article 181 (5) of the Constitution.

This is because, the position of the 1st and 2nd defendants herein are just like those of the Ghana Ports and Harbours Authority Defendants therein in the Klomegah (No.2) case (supra). That being the case, we are of the considered view that the role of Government in the instant transactions exemplified by the letter of Comfort does not really qualify Government to be made a party using all the criteria's mentioned in the said judgment. These are the substance or form, or the nature and party criteria.

Looking critically at the nature of the transactions, we are unable to conclude that the role of government therein can be likened to the Ghanaian version of an alter ego. We do not see any such role, and this is because the said role is not inconsistent with the role assigned Government in the enabling Acts of Incorporation of the said Defendants. In essence, once the Board of Directors of the Companies have approved the said transactions and there is no evidence that the Boards have not approved of these transactions, then afortiori, it follows that they approved of them and entered into those transactions on their own strengths and capacities.

Taking a cue from the decided authorities referred to supra and also from the settled practice of this court, what is certain is that, the above definitions of what constitutes "international business" and also, whether an entity, such as the 1st and 2nd Defendants herein are coterminous with *"Central government"* such as to bring them into line and subsequently under the purview of article 181 (5) of the Constitution arises and calls for definition and pronouncement from this court.

However, in real terms this transaction does not call for fresh interpretation as the issues raised in article 181 (5) have been overflogged by this court in it's previous decisions

Consequently, we have strained ourselves to bring our minds to understand the arguments of plaintiff in relation to the reliefs he claims vis-à-vis the settled judicial decisions referred to supra, but we are more than convinced that the plaintiff has not been able to shift our minds to depart from our previous decisions.

For example, it would under the circumstances mean that, the definition of *"international business"* in the Balkan Energy case (supra) does not bring the transactions in which the 1st and 2nd defendants were involved in the acquisition of the PPA for the 1st Defendants to come under the searchlight of article 181 (5).

Similarly from the decisions and definitions of what government qua government actually means and in line with the decision in the Klomegah case, (supra) the 1st and 2nd defendants, being limited liability entities with their own enabling statutes and funding arrangements are separate and distinct from Central Government as envisaged in article 181 (5) of the Constitution.

Even though we might sound to be repetitive, it is useful to quote portions of the rendition of the words of our illustrious Dr. Date-Bah JSC in the Klomegah case (supra) as follows:-

> *"As pointed out by the Respondents, to subject statutory corporations with commercial functions to the Parliamentary approval process prescribed in article 181 (5) would probably increase the weight of Parliament's responsibilities in this regard to unsustainable level. Accordingly, it is reasonable to infer that the framers of the 1992 Constitution did not intend such a result. " Emphasis*

We entirely agree with the above words and adopt them as our own. This is because we also reason that, to go contrary to the above would not only over burden Parliament, but will also lead to very absurd results as Parliament, would in those instances be interfering in the enabling statutes of the various Statutory Corporations which have now been converted into limited liability companies under the Companies Act like the 1st Defendants.

In a nutshell, it is certain that the Plaintiff, even though has very good intentions of ensuring compliance with relevant constitutional provisions, to wit article 181 (1) (2) (3) (4) and (5) provisions of the Constitution 1992, has not been successful to establish any clear breaches of the Constitution vis-à-vis the transactions upon which he has anchored his case.

Instead, the crux of the complaint seems to us to be on perceived breaches of section 7 (3) (a) and (5) of the Petroleum Revenue Management Act, 2011 (Act 815) and the Loans Act, 1970 (Act 335).

However, the PPA in this case between the 1st defendants and Karpowership Ghana Company Limited does not constitute an international business transaction with Government entity to require compliance with article 181 (5) of the Constitution. Any breaches if at all with (Act 815) the Petroleum Revenue Management Act, (Act 335) will not be justiciable in this court.

More importantly, the Supreme Court directed in the Klomegah No. 2 case supra as follows:-

> *Per curiam" **With the determination of this case, it is now our expectation that article 181 (5) would lend itself to application by the High Court, rather than further interpretation by this court. Legal advisers to foreign entities that contract with the Government of Ghana need to be aware of this important case law in order to guide them appropriately on the Ghanaian law on this issue**." Emphasis*

We might just as well add that, legal practitioners in Ghana should take guidance from the above decision and advice their clients whenever they are consulted.

This will prevent them from rushing to this apex court with a view to turning it into a clearing house. We would henceforth no longer countenance this attitude of legal practitioners and parties for that matter turning this Supreme Court into a clearing house for all matters which appropriately should have been initiated in courts lower to the Supreme Court. We daresay that, indeed the time has come for this court to crack the whip by ensuring that it's jurisdictions in article 2 (1) and 130 (1) of the Constitution which are frequently invoked by parties are consistent with previous decided cases on the point.

CONCLUSION

In the premises, the plaintiff's case is dismissed in it's entirety. This is because in our opinion, the transactions to which this particular case relates is not an *"international business or economic transaction"* as envisaged in article 181 (5) of the Constitution, and as variously interpreted by this court in several decisions referred to supra.

It should be noted that, the 1st and 2nd Defendants, being separate and distinct legal entities from their enabling statutes referred to supra, it follows that the role of Government as portrayed through the letter of comfort does not connote an interpretation such as would link them to Government.

The transactions mentioned in the instant case involving the 1st and 2nd Defendants is thus not an international business or economic transaction as envisaged under article 181 (5) of the Constitution. Furthermore, the 3rd Defendant's letter of comfort does not qualify the transactions as international business or economic such as to bring them under the purview of article 181 (5) of the Constitution.

For the above reasons, the Plaintiff's action fails and is dismissed in their entirety.

(SGD) V. J. M. DOTSE
JUSTICE OF THE SUPREME COURT

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JUSTICE OF THE SUPREME COURT

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JUSTICE OF THE SUPREME COURT

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DR. DOMINIC AYINE ,DEPUTY ATTORNEY-GENERAL WITH MISS GRACE OPPONG, PRINCIPAL STATE ATTORNEY AND CEPHAS MOTEY FOR 3RD DEFENDANT.