**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT OF GHANA**
**ACCRA- GHANA A.D. 2016**

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**CORAM: ATUGUBA, JSC (PRESIDING)**
**ANIN YEBOAH, JSC**
**BENIN, JSC**
**APPAU, JSC**
**PWAMANG, JSC**

**(REFERENCE)**
**CIVIL MOTION**
**NO. J5/19/2016**

**18TH JULY 2016**

**THE REPUBLIC**

**VRS**

**THE HIGH COURT,**
**GENERAL JURISDICTION 6, ACCRA … RESPONDENT**

**EX-PARTE DR. ZENATOR A. RAWLINGS**
**RIDGE, ACCRA … APPLICANT**

**1. HON. NII ARMAH ASHITTEY … 1ST INTERESTED**
**C/30/14, BLOHUM ST. DZOWULU PARTY**

**2. NATIONAL DEMOCRATIC CONGRESS … 2ND INTERESTED**
**PARTY**

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## JUDGMENT

## MAJORITY OPINION

**BENIN, JSC**:-

The original matter that brought the parties herein before this court was an application invoking our supervisory jurisdiction for an order of certiorari to quash some decisions of the High Court, Accra. The incumbent Member of Parliament for the Klottey Korle constituency, who is the 1st interested party herein, lost the opportunity to contest for the seat again on the ticket of the National Democratic Congress (NDC) in the 2016 general elections because he was defeated in the party primaries by the applicant herein. The 1st interested party took an action at the High Court to nullify the election of the applicant on ground that she was not a registered voter when she took part in the party primaries and was thus unqualified. During the pendency of the action before the High Court, certain decisions were taken by the said court which the applicant brought before this court to quash. Hence the title to the case as stated above. It was when the court was deciding that application that it concluded that a question of interpretation of Article 94(1)(a) of the 1992 Constitution had arisen from the proceedings before the High Court. The court decided to take the issue suo motu since the High Court had failed to make the reference. The question raised by the court for interpretation is this:

*When can it be properly said that a Ghanaian citizen is by reason of non-registration as a voter not qualified to be a Member of Parliament within article 94(1)(a) of the 1992 Constitution of Ghana*?

The question invites the court to interpret this provision in order to bring out clearly the scope and intent of this particular provision of the Constitution, in particular when the eligibility criteria become applicable to a parliamentary election. All the parties have proffered what in their view is the correct interpretation to be placed on this provision. We would sum up briefly, but to the point, the arguments put across by each party. However, we noticed that the applicant and the 2nd interested party have several points of convergence so we

intend to put their arguments together and consider same vis-à-vis those of the 1st interested party.

The applicant's Counsel expressed the competing positions in these words:

"*The kernel of the plaintiff/interested party's (1st interested party herein) claim is that on the true and proper interpretation of Article 94(1)(a) of the 1992 Constitution, the 2nd defendant (applicant herein) was not qualified to contest as parliamentary candidate of the 1st defendant (2nd interested party herein) at the time of the parliamentary primaries of the 1st defendant……On the contrary, it is the case of the applicant that…(she) was duly qualified and eligible to stand for the position of parliamentary candidate of the 1st defendant (2nd interested party herein) at the time of the primaries and that the requirement of being a registered voter must be met within the meaning of Article 94(1)(a) of the 1992 Constitution at the time when nominations are opened or invited by the Electoral Commission pursuant to Public Elections Regulation 2016 (C.I.91).*"

Counsel for the 2nd interested party made similar observations when he said that "*it is the case of 1st interested party that the eligibility criteria laid out in Article 94(1)(a) comes into effect at the time when political parties hold elections in their parliamentary primaries to select candidates who will subsequently be registered for the 2016 elections and not at the time when the Electoral Commission commences the process of filing parliamentary candidates for elections.*"

Having set out the competing claims, Counsel for the applicant proceeded to argue three main reasons as to why their view should prevail. He also addressed what he described as an 'ancillary matter'. To begin with, counsel contended that "the constitutional requirement of being a registered voter within Article 94(1)(a) of the 1992 Constitution relates only to an election done under Public Elections Regulations and since the Electoral Commission of Ghana is the body in charge of public elections the only point in time when the issue of being a registered voter is material for establishing qualification as a parliamentary candidate is when the Electoral Commission has opened nominations for parliamentary elections." Counsel for the 2nd interested party expressed a similar view and submitted "*…..that Article 94(1)(a) becomes operative at the time when the statutorily mandated body (Electoral Commission) commences the statutory processes for*

*nomination and filing of parliamentary candidates for parliamentary elections in the various constituencies and not at any time before this."* Counsel made extensive references to the processes outlined in Public Elections Regulations, 2012, (C.I.75).

Secondly, counsel for the applicant argued that the view being canvassed by the 1st interested party should be rejected because "it leads to manifest absurdity, discrimination and injustice as it results in persons who are similarly situated being treated differently." Counsel was here referring to candidates standing on the ticket of a political party as distinct from those contesting as independent candidates. In counsel's view if the 1st interested party's view is accepted then citizens of Ghana who are otherwise qualified would be disqualified a year or two before the public elections if their political party's internal mechanisms and regulations say only those who are registered as at the date of the primary elections are eligible to contest. That consideration does not apply to independent candidates. It seems this view was not seriously pursued for counsel subsequently said it was a hypothetical situation he had alluded to. It is observed that in matters of interpretation the internal mechanisms of a political party should not be applied to interpret or give effect to a provision of the Constitution. Consequently, the present exercise has nothing to do with what the NDC constitution and for that matter what any registered political party's constitution says of the provision under consideration; as far as law is concerned, they are not relevant, helpful and useful reference points. We therefore take the position that this particular reason has no substance and is accordingly rejected.

On this same point counsel contended in relevant terms that Article 51 of the Constitution enjoins the Electoral Commission to publish regulations to govern public elections and that it is only when that process has been set in motion can it be said that a person is qualified to contest for a parliamentary seat or not.

Thirdly, Counsel for the applicant contended "that the mere declaration of intent by the National Democratic Congress through its parliamentary primaries to get a parliamentary candidate elect before nomination is done with the Electoral Commission in accordance with Public Election Regulation, 2016 (C.I.91) cannot be a violation of Article 94(1)(a) or any other law. Article 94 of the Constitution,

1992, deals with eligibility and qualification to contest public elections…….and not political party primaries…..”

The ancillary matter that counsel addressed on was in respect of the incorporation by reference of the 1992 Constitution in the constitution of the National Democratic Congress. Counsel gave a legal definition of the expression ‘incorporation by reference’ and then related same to the constitution of the 2nd interested party. He proceeded to analyse the national constitution as applied to the NDC constitution and came to the conclusion that “article 43(9) of NDC Constitution must be read, understood and applied in accordance with the national laws to become operative due to the incorporation of the national law into its provisions.”

For his part counsel for the 2nd interested party submitted that “the incorporation of the eligibility criteria stated in Article 94 into Article 43 of 2nd interested party’s Constitution does not in any way alter or diminish the character of Article 94 of the 1992 Constitution as the supreme law of the land on the eligibility of persons to become members of parliament. What the incorporation of the eligibility criteria of the 1992 Constitution into the constitution and parliamentary primaries election guidelines of 2nd interested party does is that it imports the whole of Article 94 of the 1992 Constitution as the supreme law of the land on the eligibility of persons to become members of parliament.” He then submitted that “the 1992 Constitution with all of its provisions cannot be made secondary to any other document. Even if a document does not directly incorporate a constitutional provision, the requirement of Article 1(2) of the 1992 Constitution that all other laws, actions and documents must be consistent with the 1992 Constitution on the pain of being rendered void leads to the irrefutable conclusion that any purported incorporation of a constitutional provision into a document does not in any way whatsoever alter or limit the scope, meaning or effect of the constitutional provision.”

Counsel for the 1st interested party took a different position on the interpretation of Article 94(1)(a) of the Constitution. Counsel began his argument by reference to Article 55 of the Constitution, 1992 which guarantees the formation of political parties. He emphasized clause 3 of Article 55 which entitles a political party to sponsor candidate/s for elections to any public office other than the District Assemblies and other lower local government units. Having said this, it appears

counsel descended into the merits of the case before the High Court by arguing on the materiality of the NDC internal guidelines that govern the selection of its parliamentary candidates. Counsel also emphasized clause 5 of Article 55 of the Constitution, 1992, which enjoins political parties to ensure that their actions and purposes do not contravene or be inconsistent with the Constitution or any other law. He rightly stated that any political party which decides to sponsor a candidate for public election must do so in conformity with the law, especially Article 94 of the Constitution. Thereafter Counsel's view was that "a parliamentary candidate elect ought to be battle ready to contest parliamentary elections be it by-election or general election…….It is common knowledge that if by-election had been held in Klottey-Korle between November 22, 2015 and April 27th 2016, by reason of resignation or death of the incumbent Member of Parliament, the applicant could not have been qualified to contest the Parliamentary elections in Klottey-Korle by reason of non-registration as a voter because it is public knowledge that she was not a registered voter as at 21st November 2015." Before proceeding any further, we must reject these submissions as red-herring and of no consequence in interpreting article 94 in question. As to which candidate a political party would sponsor for a by-election or a general election is for the party to decide; it may decide to sponsor one person for a by-election and then decide to sponsor a different person to contest the general election for the same seat. There is no law that forbids that. And the scenario that is pictured by the 1st interested party is not the reason why Article 94(1)(a) should be given an interpretation that would suit some person's convenience.

Thereafter counsel's arguments were focused on the process of becoming a member of parliament. It is unfortunate counsel did not make any meaningful contribution to the question posed by the court, but rather he took us back to his previous stand that Article 94(1)(a) did not call for any interpretation. In his words, "….the wording of Article 94(1)(a) of the 1992 Constitution cannot be said to admit of double meaning or ambiguous to warrant an interpretation into the meaning and effect of the provision of the Constitution……it is clear that the wording in a provision must be imprecise or unclear or ambiguous or admit of rival meanings having been placed by litigants for the Honourable Court to interpret the said provision……there is nowhere in the submissions canvassed by counsel for the parties that the wording in Article 94(1)(a) admits of double meaning or is

imprecise or unclear to warrant this Honourable Court to interpret the provision of the Constitution"

This is unfortunate because this court had firmly decided that there is the need to interpret the provision so for counsel now to say something to the contrary is disingenuous, to say the least. And one even wonders whether counsel really appreciated the issue at stake, for he himself had admitted in his statement of case that "the Constitution did not state when this qualification criteria ought to be met". Is it not for the same reason the court has set the question down for interpretation?

The fact that counsel did not appreciate or understand the question and thus made no meaningful contribution to the discussions is confirmed by his final submissions that "the 2nd interested party's Guidelines governing the conduct of the Parliamentary primaries 2016 and the NDC Constitution particularly Article 43(9) were made in obedience to the National Constitution and therefore consistent with the provisions of Article 94 of the 1992 Constitution. Thus every member who seeks to contest parliamentary primaries of the party and later be put forward to contest parliamentary elections ought to meet the qualification criteria set out in the National Constitution……..we humbly submit that applicability of Article 94(1)(a) of the 1992 Constitution was to apply at the time of the Parliamentary primaries to compel all members to comply with the said provision at the time of the parliamentary primaries on 21st November 2015." The question before the court is not the applicability of Article 94 to the NDC parliamentary primaries; it is the meaning of the said Article, clause 1(a) in particular that the parties were called upon to address the court. After the interpretation has been given by this court, the court below will apply same to the case before it.

Article 94(1)(a) of the 1992 Constitution provides that:

*Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless- (a) he is a citizen of Ghana, has attained the age of twenty-one years and is a registered voter.*

At what point in time do the eligibility criteria come into play? As rightly observed by the lawyers herein, there is no time element in the provision for a person to satisfy the qualification criteria. The Constitution is a living document and because

it is a brief expression of the aspirations of the people and also establishes key institutions of state, it cannot contain every conceivable matter. Thus a lot of things are left to Parliament to legislate upon by Act of Parliament and in some cases other persons, both corporate and human, are allowed to fill in the gaps by subsidiary legislation. Thus the Constitution does not leave the people in a state of helplessness when some element is missing in a constitutional provision. It is our view that where time for doing an act is not provided for in the Constitution, as in the instant, it is legitimate to have regard to other provisions of the Constitution or an Act of Parliament or Regulations made under the Constitution in order to address the question of time. In the absence of any such legislation, the rules of equity cognizable under the common law could be applied under Article 11(2) of the Constitution.

In the present constitutional dispensation, no person can become a Member of Parliament unless he has been elected at a public election; that is the true meaning of Article 93(1) of the 1992 Constitution. For that reason even where there is only one candidate at the close of nominations, the law requires that the Electoral Commission should declare such sole candidate duly elected even though no ballots are cast; see section 11(1) of the Representation of the People Law, 1992 (PNDCL 284). And Article 45(c) of the Constitution entrusts the responsibility of conducting and supervising all public elections to the Electoral Commission. It follows that it is only the Electoral Commission which is empowered to appoint the time for a person seeking to enter Parliament as a Member thereof to satisfy the eligibility criteria set out in Article 94.

The Constitution in Article 51 has provided the avenue whereby the Electoral Commission is to perform its functions in expression of its mandate and it reads:

*The Electoral Commission shall, by constitutional instrument, make regulations for the effective performance of its functions under the Constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including voting by proxy.*

It is our view that Article 94(1)(a) should not be read in isolation but in conjunction with Articles 45(c) and 51. It becomes clear that Article 94(1)(a) when read together with Articles 45(c) and 51, the power to conduct and supervise public

elections including any parliamentary election and also the date to do so has been conferred exclusively on the Electoral Commission, subject of course to any limitations imposed by the Constitution and any other law for the time being in force. Thus when it becomes necessary to conduct parliamentary elections, the Electoral Commission will have to fix the date of the election and other related matters in accordance with guidelines set out in a Constitutional Instrument. Once the date has been set and the writ of election has been issued stating the period of nominations, the times thus stated should be read as one with the provisions of Article 94 so as to bring the eligibility criteria into immediate effect in respect of that particular election.

Following these constitutional provisions and in order to bring the eligibility criteria in Article 94 into effect for purposes of particular public elections, the Electoral Commission, published Public Elections (Presidential and Parliamentary Election Dates) Instrument 1996, (C.I. 14) and Public Elections Regulations, 1996 (C.I. 15) to govern the general elections of 1996. In the same vein C.I. 31 of 2000 and C.I. 48 of 2004 were published to govern the general elections for the years 2000 and 2004 respectively. That has been the practice and it flows directly from and is in accord with the provisions of Articles 94, 45(c) and 51 of the Constitution in the conduct of parliamentary elections.

Consequently, it is our view that the eligibility criteria set out in Article 94(1)(a) come into force only when a public election of a Member of Parliament has been declared by the Electoral Commission and it has set the time to file nominations. Thus a person who qualifies to enter Parliament must be a Ghanaian citizen, of twenty-one years or beyond and a registered voter as at the date he files his nomination papers within the time stipulated by the Electoral Commission for that particular election. That is the true intendment of Article 94(1)(a) of the Constitution; the eligibility criteria come alive from time to time when the Electoral Commission sets the date to file nominations for parliamentary election/s.

In support of the interpretation we have stated, there are two decisions of this court cited by counsel for the applicant which have relevance to this discussion. The first in time is YEBOAH v. J.H. MENSAH (1998-99) SCGLR 492. That case was about the qualification or otherwise of the defendant to be elected a member of parliament, on account of residency criterion. In the course of delivering his

opinion at page 548 of the report, Atuguba JSC made reference to, inter alia, article 71 of the 1969 Constitution which contained a provision that disqualified a person from being eligible to be elected a member of parliament on certain occurrence and then proceeded to state in material terms that

*"……the provisions of article 71 concerning qualifications for membership of the National Assembly were inextricably bound to the actual electoral process and had significance only in terms of the actual electoral process. It is crystal clear that…….no cause of action could lie against anyone for failing to meet the qualifications for membership of Parliament unless he took a step in the electoral process."*

The electoral process the learned judge was talking about is the national one set in motion by the body responsible for conducting the process, and not the internal process conducted by a political party. The learned judge went on to cite and rely on the case of LUGUTERAH v. INTERIM ELECTORAL COMMISSIONER (1971) 1 GLR 109 which in his view "*demonstrates vividly the inseparable link between the qualifications for Parliament and the actual electoral process."*

The other case is NEW PATRIOTIC PARTY v. NATIONAL DEMOCRATIC CONGRESS and Others (2000) SCGLR 461. In that case the 1st defendant was said to have decided to put up the 2nd and 3rd defendants as parliamentary candidates in the 2000 parliamentary elections. The court's original jurisdiction was invoked because the 2nd and 3rd defendants were said to be members of the Civil Service and therefore not qualified to contest for a seat in Parliament by virtue of Article 94(3)(b) of the 1992 Constitution. The court upheld a preliminary objection to the court's jurisdiction on ground, inter alia, that the electoral body had not taken any formal step in the electoral process of inviting nominations for parliamentary candidates, so the cause of action was premature.

These views expressed above are apt and germane to the ongoing discussion and the view of Article 94(1)(a) that we have expressed herein. In short the eligibility criteria do not arise unless the Electoral Commission has put up a notice of election of member of Parliament.

To recap in a nutshell, the time when a Ghanaian citizen of twenty-one years of age can be said not to be qualified to contest for a seat in Parliament because he is

not a registered voter, within the meaning of Article 94(1)(a) of the 1992 Constitution, is when the Electoral Commission, acting under the mandate conferred upon it by Articles 45(c) and 51, has declared that a public election of member of Parliament be held on a particular date and has also set the period for the filing of nominations by prospective candidates. That is, the eligibility criteria under Article 94(1)(a) will become applicable only when the actual electoral process has been set in motion by the Electoral Commission. For it is only then that time could be imported into the said provision to make it completely viable and enforceable.

**(SGD) A. A. BENIN**

**JUSTICE OF THE SUPREME COURT**

**(SGD) W. A. ATUGUBA**

**JUSTICE OF THE SUPREME COURT**

**(SGD) Y. APPAU**

**JUSTICE OF THE SUPREME COURT**

**(SGD) G. PWAMANG**

**JUSTICE OF THE SUPREME COURT**

## DISSENTING OPINION

**ANIN YEBOAH, JSC**

I have had the advantage of reading beforehand the opinion of my respected brother Benin JSC in this matter which is before us for our consideration. I am however, unable to agree with him.

Given the importance of this matter, and the fact that it concerns the interpretation of one of the most important articles in the 1992 Constitution which deals with qualification of citizens to be elected as Members of Parliament, I have decided to offer as my dissenting opinion.

To appreciate the reasons for this my dissenting opinion, I propose to set out the facts which have led to the determination of the solitary issue put forward by this court suo motu for our interpretation.

The second interested party to these proceedings, that is the National Democratic Congress on the 21/11/2015, organised its National Parliamentary primaries including the Klottey-Korley Constituency in the Greater Accra Region. The applicant herein, Dr. Zenator Agyemang Rawlings and the first interested party who is the incumbent Member of Parliament, Hon. Nii Armah Ashitey and another

person, one Nii John Coleman contested. The applicant was declared winner of the primaries. Prior to the polls the contestant had appeared before the second interested party's Vetting Committee and were duly cleared as qualified to contest the primaries. After the applicant herein had been declared as the winner of the primaries, the first interested party and one Nii John Alfonso Coleman issued a Writ of Summons against the applicant and the second interested party claiming several reliefs as follows:

a. A declaration that the decision by 1st defendant to allow the 2nd defendant to contest the Parliamentary primaries in the Klottey-Korle Constituency when she was not a registered voter within the meaning of Article 94(1) (a) of the 1992 Constitution at the time of the said contest, violates the constitution and the Internal Regulations governing the conduct of parliamentary primaries of the 1st defendant and same is illegal and of no effect.

b. A declaration that the 2nd defendant's election as a Parliamentary Candidate elect for the Klottey-Korle constituency is null and void and is of no effect as same violated the constitution of the 1st defendant and the Rules governing the conduct of the 2016 Parliamentary Primaries.

c. An order of injunction restraining the 2nd defendant agents, privies assigns or anyone claiming through her from holding herself out or allowing herself to be held out by the 1st defendant as the Parliamentary Candidate-elect for Klottey-Korley Constituency until the matter in dispute are heard and disposed off by this Honourable Court.

d. An order of court directed at the 1st defendant for a re-run of the Parliamentary Primaries in Klottey Korley Constituency between the plaintiff and Nii John Alfonso Coleman in accordance with its Constitution and the Regulation governing the 2016 parliamentary

primaries within one week of the annulment of the 2nd defendant's election.

e. Any other order(s) as the court may deem fit.

f. Cost including legal fees.

The suit which is actively pending before the High Court, Accra, has entertained several interlocutory applications some of which are not necessary for our consideration now. However, on the 26/04/2016 the applicant herein after filing her statement of defence filed an application invoking the

jurisdiction of the High Court to dismiss the action on the simple ground that the action was premature and that the jurisdiction of the High Court had been wrongfully invoked to entertain the action. After hearing arguments in the application, the learned High Court judge Mr. Kweku Ackaah-Boafo on 22nd of March 2016 dismissed the application with costs.

On the 30/3/2016, the applicant herein invoked our supervisory jurisdiction under Article 132 of the 1992 Constitution for an order of certiorari to quash the ruing of 22nd March, 2016 on grounds of wrongful assumption of jurisdiction to interpret and define the scope of Article 94(i) (a) of the 1992 Constitution and an order of prohibition from further proceeding to hear the matter.

This court on the `9th of May 2016 granted the application and in the exercise of our jurisdiction conferred on us by Article 132 of the 1992 Constitution and section 5 of the Courts Act, Act 459 of 1992 propio motu raised the question for interpretation thus:

> "When can it be properly said that a Ghanaian citizen is by reasons of non-registration as a voter not qualified to be a Member of Parliament within Article (94) (1) (a) of the 1992 Constitution of Ghana"

The interpretation of the above provision of the Constitution demands a careful consideration of the whole of article 94 of the 1992 Constitution. The article under consideration deals with qualification to contest parliamentary elections or in a broad sense, qualification and eligibility of people to Parliament of Ghana. Article 94(1) which is under consideration states as follows:

> 94 (1) Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless-
>
> (a) He is a citizen of Ghana, has attained the age of twenty one years and is a registered voter,
>
> (b) He is resident in the constituency for which he stands as a candidate for election to Parliament or has resided there for a total period of not less than five years out of the ten years immediately preceding the election for which he stands, or he hails from that constituency; and
>
> (c) He has paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of his takes”

I think it is only article 94(1) (a) that has been the source of controversy. The applicant contends that the provisions of 94(1) (a) only becomes operative when a person who is contesting parliamentary elections when nominations are opened or invited by the Electoral Commission pursuant to the Public Elections Regulation 2016 (C.I.16).

The first interested party, Hon Nii Armah Ashietey contends otherwise. The is of the opinion that on the true and proper interpretation of the 1992 Constitution, the applicant herein, Dr. Zenator Agyemang Rawlings was not eligible to contest the primaries of the second interested party, the National Democratic Congress, as she was not a registered voter at the time of the primaries. This contention of the first interested party herein who was the plaintiff in the suit that culminated in these present proceedings relied on the provisions to vigorously argue that as the applicant was not a registered voter (a fact not denied by any of the parties herein) at the time of the primaries,

her eligibility was squarely caught by article 94(1) (b) of the 1992 constitution and therefore not qualified to contest the primaries.

The second interested party, that is, National Democratic Congress which on the undisputed facts organised the primaries has expressed similar opinions in support of that of the applicant. This was what the 2nd interested party the National Democratic Congress said in the statement of case"

> "…that Article 94(1)(a) becomes operative at the time when the statutorily mandated body (Electoral Commission) commences the statutory processes for nomination and filing of parliamentary candidate for parliamentary elections in the various constituencies and not at any time before this"

It must be noted that the second interested party as a political party has its own Constitution. The Constitution of the party could have its own eligibility criteria but same cannot run counter to the 1992 Constitution. It may be expansive of the constitutional provisions under Article 94 but certainly it cannot take away anything that is conferred by the Constitution. Indeed, the Constitution which is in evidence has done nothing of the sort. It is therefore not the duty of this court to consider the eligibility provisions set out in exhibit "N3" as it would not assist this court in interpreting the provisions of Article 94 of the Constitution.

A careful reading of Article 94 (1) (a) appears to be a straightforward and clear provisions which in my respectful opinion must not call for any interpretation based on the authorities of AWOONOR-WILLIAMS v GBEDEMAH [1970] CC 18 but that is not the situation in these proceedings. The first authoritative case that comes to mind upon the coming into force of the 1992 Constitution is that of YEBOAH v J.H. MENSAH [1998-99] SC GLR 492. Even though that case was decided by the interpretation of Article 94 of the Constitution 1992 it was limited to the eligibility criteria on grounds of residency and no more. However, the court per the worthy president of this Court, was of the view that unless the person takes a step in the actual electoral process he is not caught by the provisions of Article 94 of the Constitution. It seems to me that from this decision, primaries ought not to be considered as an active step in the electoral process. The second case which this court was called upon to consider under Article 94 was the case of NEW PATRIOTIC PARTY v NATIONAL DEMOCRATIC CONGRESS & ORS [2000] SCGLR 461. It was decided on article 94(3) (b) of the constitution and it seeks to reinforce the position of the president of this court in the YEBOAH v J.H. MENSAH, supra.

I think both cases are authoritative on the interpretation of Article 94 of the Constitution but certainly not on Article 94(1) (a)). My only problem with the

interpretation which my learned predecessors and this court are placing on Article 94 is that it clearly ignored the purpose for which Article 94 provision

stands for. It is, if read as a whole, seeks to lay down extensive criteria on several matters like citizenship, tax payments, bankruptcy, soundness of mind, previous convictions, to mention just a few. In my respected opinion these qualification criteria was not inserted in the constitution for nothing. Indeed, the history of this country shows that similar provisions had existed in all the previous republican constitutions since 1960.

If one reads Article 94 as a whole (which by law should be the case), the purpose for which this provision was inserted in this constitution would become clearer. On this, I remind myself of what Justice White of the Supreme Court of the United States of America had to say in the landmark case of SOUTH DAKOTA v. NORTH CAROLINA [1940] 192 US 268 at page 465 in the Lawyers Edition where he said as follows:

> "I take it to be an elementary rule of Constitutional construction that no one provision of the Constitution is to be segregated from all the others and considered alone, but that all provisions bearing upon a particular subject are

to be brought into view and are to be interpreted as to effectuate the great purpose of the instrument".

Article 94 is perhaps the only provision in the Constitution dealing with the eligibility criteria of members of Parliament under the Fourth Republican Constitution. It is a Constitution which has a preamble touching on probity and accountability and other matters spelt out above.

Their eligibility criteria were spelt out obviously for a purpose and to me it was to lay a foundation for members of Parliament to fall within a certain category of the persons to occupy the office. It is not for nothing that one of the eligibility criteria is that one should be a registered voter before she or he could be elected to Parliament.

In my respectful opinion , it would clearly lead to gross absurdity if a person who puts himself or herself up to be elected to Parliament at one stage of the process was (clearly on his or her own admission) unqualified but nevertheless would be qualified at a later stage of the electoral process. This clear absurdity must be avoided.

I have carefully considered the two decisions of this court which were decided by consideration of Article 94. I do not think that Article 94(i) (a) was in issue in any of the two cases, as I have already said. I am of the view that this court should resort to the purposive approach to the interpretation of the Article in controversy.

This court has on countless occasions resorted to the interpretation that would advance the purpose for which provisions of the Constitution must be interpreted. I remind myself of what Her Ladyship the Chief Justice Wood said in the case of BROWN v ATTORNEY-GENERAL [2010] SCGLR 183 at page 202 as follows:

> "This court has over the years so adeptly dealt with the vexed question of the proper approach to construing national Constitutions that, the legal principles of governing this area of the law, cannot be said to be uncertain. We have drawn from the rich storehouse of both domestic and foreign jurisprudence to fashion out the general principles that serve as interpretive guides to constitutional interpretation. As I observed in the case of REPUBLIC v HIGH COURT (FAST TRACK DIVISION) ACCRA; EX PARTE COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (RICHARD ANANE INTERESTED PARTY) [2007-2008]

SCGLR 213 at 247, the literalist or strict approach, that is a mechanical approach that does not look to the purpose of the contested provisions as a legitimate part of the exercise, is clearly to be deprecated".

Her Ladyship the Chief Justice, however, in the course of her judgment acknowledged that the 'subjective-based purpose, as already noted, is however, not the sole criteria for construing a national Constitution'.

Acquah JSC (as he then was) was of similar opinion in NATIONAL MEDIA COMMISSION v ATTORNEY-GENERAL [2000] SCGLR at page 11 as follows:

"Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the

parts are also to work dynamically, each contributing something towards accomplishing the intended goal".

If one resorts to the purposive approach, which of late has gained notoriety in our interpretation of this 1992 Constitution in cases like OMABOE III v ATTORNEY-GENERAL & LANDS COMMISSION [2005-2006] SCGLR 579 and DANSO-

ACHEAMPONG & ABODAKPI v ATTORNEY-GENERAL [2009] SCGLR 355, it becomes clearer that the purpose for which Article 94 was inserted in our Constitution was to strictly get rid of some category of citizens to contest Parliamentary elections under the Constitution.

**(SGD) ANIN YEBOAH**

**JUSTICE OF THE SUPREME COURT**

**COUNSEL**

GODWIN KUDZO TAMEKLO ESQ (WITH HIM MRS. SANJA MORRISON MAHAMA, THEOPHILUS DONKOR AND REINDORF TWUMASI ANKRAH) FOR THE APPLICANT.

GARY NIMAKO MARFO ESQ. FOR THE 1ST INTERESTED PARTY.

MAAME SAMA BARTON-ODURO ESQ. FOR THE 2ND INTERESTED PARTY.