IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD 2024

CORAM: **LOVELACE - JOHNSON, JSC (PRESIDING)**

PROF. MENSA-BONSU, JSC

ACKAH-YENSU, JSC

ASIEDU, JSC

GAEWU, JSC

DARKO ASARE, JSC

ADJEI-FRIMPONG, JSC

WRIT NO
J1/13/2023

18TH DECEMBER, 2024

DR. AMANDA ODOI **…** **PLAINTIFF**

VRS

1. **THE SPEAKER OF PARLIAMENT** **…** **1ST DEFENDANT**

2. **THE ATTORNEY GENERAL** **…** **2ND DEFENDANT**

J U D G M E N T

ADJEI-FRIMPONG, JSC:

Introduction

My Lords, a while ago, we delivered this Court's unanimous decision in the case of RICHARD SKY VRS THE PARLIAMENT & ATTORNEY-GENERAL, Writ No. J1/09/2024 (RICHARD SKY). That case, on account of the reliefs sought therein, spanned a broader subject spectrum. Nonetheless, it arose from the same factual background and also gave rise to a quest almost the same as what is to be seen in this case. By reason of the commonality of facts and the similarity of issue(s) in both suits, the option of delivering a composite judgment to cover both suits was on table to consider. We have however decided to deliver a separate reasoning for this case for some material considerations which we wish to put on record.

First, the parties in the suits are not exactly the same. Whereas, in Richard Sky, the Plaintiff is obviously different and the House of Parliament itself was joined as a Defendant, here the Speaker is joined as 1st Defendant and the reliefs claimed appear to be against him qua Speaker. Second, the reliefs the Plaintiff seeks are couched in words that appear to invoke this Court's jurisdiction on separate juridical grounds. Finally, we think the exclusive original jurisdiction of this Court being special and unique, it will be just and convenient to allow the cases to fully bear their separate identities from cradle to grave. It will, in our view, better serve the interest of the parties and that of the public if we proceed this way.

Similar to Richard Sky, this suit is to put to test, our subscription to the principle of separation of powers in the context of the 1992 Constitution. In a sense the dispute turns on the ambit of this Court's judicial review power over legislative acts. When all is said

and done, the threshold question we shall determine is the extent to which this Court's power of judicial review applies to strike down a Bill passed by Parliament which is yet to become law.

By the way, Article 58(1) of the Constitution vests the executive power of the State thus: *"The executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of the Constitution.* The legislative authority of Ghana is also vested in Parliament under Article 93(2) which provides that: *"Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament in accordance with this Constitution".* Finally, whereas Article 125(3) vests final judicial power in the judiciary, Articles 2(1) and 130(1) considered together, have created the power of judicial review in the Supreme Court by the following provisions:

> *"2. (1) A person who alleges that—(a) an enactment or anything contained in or done, under the authority of that or any other enactment; or (b) any act or omission of any person; is inconsistent with or, is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.*

130. (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of the Constitution, the Supreme Court shall have exclusive original jurisdiction in—

(a) all matters relating to the enforcement or interpretation of the Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution

The synthesis of these provisions reflects our specie of separation of powers under the 1992 Constitution, a practice rooted in the supremacy of the Constitution in terms of Article 1(2). It is in this sense that Wiredu JSC (as he then was) in GBA VRS ATTORNEY GENERAL [1995-96]1 GLR 598 at 605-606 pronounced:

> *"The scope and extent of the doctrine of separation of powers, in my respectful view, and, as I understand it, under the Constitution, 1992 is to ensure that each arm of state in the performance of its duties within the framework of the Constitution, 1992 is to work independently, and should not be obstructed in the exercise of its legitimate duties or be unduly interfered with [by the Constitution]. In other words, all arms of the State are answerable or responsible to the Constitution 1992. It is to ensure the smooth administration either judicial, legislative or executive governance of the State whilst checks and balances are provided to ensure strict observance by each arm of State of the provisions of the Constitution, 1992."*

The same point is reiterated by Acquah JSC (as he then was) in the case of MARTIN ALAMISI AMIDU VRS PRESIDENT KUFFOUR & ATTORNEY-GENERAL [2001-2002] SCGLR 86 at p. 100 thus:

> *"There is no doubt that the 1992 Constitution prescribes a government consisting of three branches of: the legislature, executive and the judiciary, each playing a distinct role… Now each of these branches of government, offices, bodies and institutions is, of course, subject to the Constitution, and is therefore required to operate within the powers and limits conferred on it by the Constitution."* See also NEW PATRIOTIC PARTY VRS ATTORNEY-GENERAL (31st December) [1993-94]2 GLR 35 at 52.

The Dispute.

From what we gather from the record before us, the suit journeyed to this Court this way. On 31st January 2021, several news media in Ghana reported the opening of an LGBTTQIAAP+ advocacy resource center in Accra. The news was greeted with a plethora of criticism from a cross-section of Ghanaians including religious groups, traditional authorities and other bodies calling for the resource center to be shut down and persons involved arrested and prosecuted. The general disaffection from majority of Ghanaians brought about a new national debate on the activities of LGBTTQQIAAP+ persons in Ghana.

A chain of events that followed led to the introduction of a private members' Bill by a group of seven members of Parliament. The list of the group is made of Hon. Samuel Nartey George, Hon. Emmanuel Kwasi Bedzrah, Hon Rev. John Ntim Fordjour, Hon. Alhanssan Sayibu Suhuyini, Hon. Rita Naa Odoley Sowah, Hon. Helen Adjoa Ntoso and Hon. Rockson-Nelson Etse Kwami Dafeamekpor.

At last, Parliament, on 28th February 2024, by the exercise of its legislative authority under Article 93(2) of the Constitution 1992, passed the Human Sexual Rights and Family Values Bill (The Bill).

The object of the Bill as captured in the accompanying Memorandum, is to provide for proper human sexual rights and Ghanaian family values, proscribe LGBTQ+ and related activities, proscribe propaganda of, advocacy for, or promotion of LGBTTQQIAAP+ and related activities; provide for the protection of and support for children, persons who are victims or accused of LGBTTQQIAAP+ and related activities and other persons; and related matters.

Now, the Plaintiff, a citizen of Ghana thinks that the passage of the Bill breached certain provisions in Article 108 of the Constitution for which reason the Bill lacks constitutional validity. She therefore brings the instant suit pursuant to Articles 2(1)(b) and 130(1)(a) of the Constitution. By her writ which she files against the Speaker of Parliament and the Attorney-General as 1st and 2nd Defendants respectively, she seeks the following reliefs:

> *"(a) A declaration that under Article 108 of the 1992 Constitution of the Republic of Ghana ("the 1992 Constitution"), the Speaker of Parliament has a non-discretionary duty to make a determination in a non-arbitrary manner as to whether or not a bill, other than a bill introduced by or on behalf of the President, offends against Article 108;*
>
> *(b) A declaration (1) that the Speaker of Parliament acted in breach of his non-discretionary duty under Article 108 of the 1992 Constitution by causing Parliament, including its Committee on Constitutional, Legal and Parliamentary Affairs to proceed on the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 (now the Human Sexual Rights and Ghanaian Family Values Bill, 2021) ("the Bill"), a bill not introduced by or on behalf of the President, without providing, in his capacity as the person presiding in Parliament, an opinion whether or not the Bill imposes, or would have the effect of imposing, a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction, or required the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal as required by sub paragraphs (i) and (ii) of paragraph (a) of Article 108.*
>
> *Or*

In the alternative (2) that by causing Parliament, including its Committee on Constitutional, Legal and Parliamentary Affairs, to proceed on the Bill, the Speaker has constructively or impliedly rendered an opinion to the effect that the Bill is compliant with Article 108, which opinion, is clearly erroneous and thus in breach of Article 108 subparagraphs (i) and (ii) of paragraph (a) and paragraph (b).

(c) A declaration that the failure of the Speaker to perform his non-discretionary duty under Article 108 of the 1992 Constitution amounts to a direct violation of the letter and spirit of Article 108 and renders the entire legislative process relating to the Bill, unconstitutional and void.

(d) A declaration that regardless of what the opinion of the Speaker is or might be concerning the Bill's compliance or conformity with Article 108 of the Constitution, the Bill, if allowed to become law, will in fact, impose or have the effect of imposing, a charge on the Consolidated Fund or other public funds of Ghana, and therefore, offends subparagraph (i) and (ii) of paragraph (b) of Article 108 of the 1992 Constitution.

(e) An order restraining the Speaker of Parliament, his deputies, his agents, assigns and privies from any further breaches of Article 108 of the Constitution

(f) Any further orders or other reliefs as this Honourable Court may deem fit."

So, what cases have the parties put forth for our consideration? This is a good place to set out in summary, what the Plaintiff is alleging and the responses the Defendants have provided.

Summary of the Plaintiff's case/arguments.

Starting with the Plaintiff's case, we reproduce *in extenso* the provisions in Article 108, which constitute the peg on which the Plaintiff's case hangs to better appreciate his arguments. The provisions are as follows:

> *"108. Parliament shall not, unless the bill is introduced or the motion is introduced by, or on behalf of, the President—*
>
> *(a) Proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for any of the following—*
>
> *(i) The imposition of taxation or the alteration of taxation otherwise than by reduction; or*
>
> *(ii) The imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction; or*
>
> *(iii) The payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or*
>
> *(iv) The imposition or remission of any debt due to the Government of Ghana; or*
>
> *(b) Proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the purposes specified in paragraph (a) of this article."*

The Plaintiff's argument is that by the above provisions, the 1st Defendant (the Speaker, being the person presiding) was under a strict constitutional duty to provide an opinion as to whether or not the Bill imposed a charge on the Consolidated Fund or other Public Funds. To render such an opinion required an objective assessment of the fiscal

implications of the Bill since without the assessment, the 1st Defendant could not reasonably determine whether or not the Bill complied with Article 108.

Further, the Plaintiff argues that the Constitution has imposed strict conditions on how the 1st Defendant's duty under Article 108 is to be performed in terms of who performs it and when it is to be performed. She contends that the duty must be performed by the *"the person presiding*" and no other person and the time for the performance is when the Bill was *"introduced"* and not at a later time in the legislative process. According to her the Bill is introduced when it is first laid before the House and the person presiding has no discretion to proceed with the legislative process when the duty has not been performed.

Additionally, whereas the person presiding has no discretion to waive or refuse to perform the constitutional duty, the performance must be in terms of the exercise of discretion under Article 296 of the Constitution which implies a duty to be fair and candid and not to act arbitrarily or capriciously.

It is the Plaintiff's case that the 1st Defendant who was the person presiding failed to perform the constitutional obligation. The effect was to render the Bill invalid, unconstitutional and void.

Having taken the above position, the Plaintiff under an alternative relief, proceeds upon an argument that by allowing the bill to proceed, the 1st Defendant has delivered an opinion which opinion in any event is erroneous. He puts his argument this way:

> *"66. Alternatively, the fact that the 1st Defendant authorized the Bill to go through additional legislative processes, including the First Reading (Attached hereto is a copy of the Hansard of 2 August 2021 where the 1st Defendant permitted the First Reading of the*

Bill as exhibit DAO 4) and the Committee Stage implies that the Speaker was of the unexpressed and erroneous view that the Bill met the requirement of Article 108."

The error the Plaintiff complains about is based on what he anticipates to be the effect the Bill, when it becomes law on the public purse. She anticipates fiscal expenditure and other costs to be incurred by the State to enforce the law. These include the cost of investigating complaints, arresting and detaining persons charged under the law, as well as the cost associated with policing and responding to public order incidents arising out of vigilante actions by persons and group of persons.

Additional fiscal expenditure will be incurred on the prosecution and trial of offenders by various courts of law including the cost of maintaining offenders on remand and transporting them to and from courts for trial. Additional fiscal expenditure will be incurred on prison facilities for holding and maintaining persons sentenced under the law including their feeding and health needs.

The Plaintiff makes reference to Articles 176, 177, 178, 179 180, 181, 182 relative to public funds and argues that by virtue of the provisions in those Articles, the executive is in charge of public funds under the supervision of Parliament. Consequently, Article 108 imposes a legislative bottleneck on Bills and proposals other than those introduced by or on behalf of the President. The person presiding in Parliament is therefore mandated to exercise a supervisory function by scrutinizing the contents of Bills or proposals to be sure that the Bill or proposal does not in effect constitute or impose expenses that will be a charge to public funds.

She contends that whilst Article 108 does not bar Private Member's Bill per se, it bars from parliamentary consideration only those Private Member's Bills that are calculated to bring about, or have the effect, whether intended or not, of bringing about adverse fiscal impacts or consequence on the public treasury. She cites the Zimbabwean case of CHOMBO VRS PARLIAMENT OF ZIMBABWE & OTHERS No. SC5 5/2013 to support her argument.

It is her further contention that the 1st Defendant having breached his constitutional duty, all processes the Bill went through are tainted with unconstitutionality and are therefore of no effect.

In the Plaintiff's argument the breaches of Article 108 she pointed out necessitates the intervention of the Supreme Court to prevent the Speaker from continuing to flagrantly flout the law and to protect the rule of law and democracy. She says the Bill whether in its original or revised form will, if enacted into law impose or have the effect of imposing a charge upon, or causing the expenditure of moneys, from the Consolidated Fund or other public funds of Ghana. She argues that this is a proper case where the Court can intervene without waiting for the Bill to be enacted into law.

1st Defendant's case/arguments

In response to the case of the Plaintiff, the 1st Defendant argues that there is no constitutional requirement that a Bill introduced in Parliament must be accompanied by a fiscal impact analysis or a document detailing the financial implications on public funds

as Plaintiff has contended. He says the constitutional obligation on the person presiding to form an opinion in terms Article 108 has nothing to do with a fiscal impact assessment.

According to the 1st Defendant, the requirement to conduct a fiscal impact analysis is a prescription of Section 100 of the Public Financial Management Act (Act 921) but not Article 108. That, granted *arguendo*, that Act 921 is applicable to the Plaintiff's case, the matter has been initiated in the wrong forum and by a wrong procedure for which reasons the exclusive original jurisdiction of this Court has not been properly invoked.

The 1st Defendant further contends that there is no constitutional and/or parliamentary rule which prescribes the manner in which the person presiding over Parliament at the time the Bill was introduced must express his opinion. Again, the formation of such an opinion was not subject to the consultation or advice of the 2nd Defendant or any person.

Accordingly, the 1st Defendant's reference of the Bill to the appropriate committee was in accordance with the constitutional provisions and the Standing Orders of Parliament regulating the legislative process after the 1st Defendant formed the opinion that the Bill does not fall foul of the matters which preclude the introduction of Bills other than those introduced by the President in Parliament. Thus, according to the 1st Defendant, he does not disagree with the aspect of the Plaintiff's case that says that the 1st Defendant has formed an opinion by allowing the Bill to proceed to the various stages of passage. Hence there is not issue to interpret since both sides agree that the 1st Defendant must have formed an opinion before allowing the Bill to proceed.

The 1st Defendant therefore says following from the above, that the Plaintiff's action raises no issue properly falling within the exclusive original jurisdiction of the Supreme Court.

And citing the principles distillable from the case of REPUBLIC VRS SPECIAL TRIBUNAL; EXPARTE AKOSAH (1980) GLR 592 at 605, the 1st Defendant contends that the Plaintiff fails to demonstrate that the words in Article 108 are imprecise, unclear and ambiguous, also there are no rival meanings placed on them by the parties, there is no conflict in the meaning and effect in any of those provisions and there is no conflict between the operation of particular institutions set up under the Constitution. OSEI BOATENG VRS NATIONAL MEDIA COMMISSION also cited.

According to the 1st Defendant, what the Plaintiff has done is to rephrase and reconstruct the words in Article 108 and on the basis of the reconstruction sought an interpretation of the provisions. However, even if this Court is to accept the subtle invitation to change the words in Article 108, the Plaintiff still does not demonstrate that any of the grounds prescribed in the AKOSAH case has been established.

The 1st Defendant urges this Court to note that he (1st Defendant) accepts the clear, ordinary, grammatical and literal meaning of the words in Article 108. The Plaintiff however fails to demonstrate any justification for a recourse to a secondary meaning to be attached to the words or even a recourse to a purposive approach to decipher the meaning of the words.

Having so argued, 1st Defendant recognizes the Plaintiff's position that the action seeks not only the interpretation of Article 108 but also its enforcement. KAN II VRS ATTORNEY-GENERAL & OTHERS [2015-2016]1 GLR 691; OKUDZETO ABLAKWA & ANOTHER VRS ATTORNEY-GENERAL & OBESTEBI LAMPTEY [2011]2 SCGLR 986 cited. Even then, contends the 1st Defendant, a close scrutiny of the reliefs the Plaintiff seeks will reveal them as empty barrels as there are clear indications that the 1st Defendant navigated safely within the contours of Article 108 without any constitutional infractions.

The 1st Defendant then takes the Plaintiff's reliefs and analyzes them one after the other to make his case that the reliefs do not raise any proper issue of interpretation or enforcement of the provisions in Article 108.

2nd Defendant's case/arguments.

At variance with the position of the 1st Defendant is the learned Attorney-General's view that the Plaintiff's action properly invokes the exclusive original jurisdiction of the Supreme Court. For this, he proposes for the Court's determination, the following question:

> *"Whether the determination by the Speaker of Parliament (or the Speaker's failure to determine) that the Bill complied with article 108 of the Constitution was contrary to the letter and spirit of article 108 of the Constitution and to that extent, rendered the passage of the Bill null void and of no effect."*

Addressing the above issue, the learned attorney-General set out the following facts:

(i) That there is to date, no evidence of a determination by the Speaker of whether the Bill is one that makes provision for any of the matters spelt out in Article 108(a) of the Constitution

(ii) The Bill proceeded through the various stages laid out in article 106 for its passage and was eventually passed by Parliament. Counsel for the 1st Defendant in his Statement of case filed on 1st March, 2024 stated that there was no such determination by the Speaker.

(iii) That although Counsel for the 1st Defendant had indicated to the Court, contrary to his own Statement of Case that his attention had been drawn to a determination

made by the Speaker in terms of Article 108 yet till date none was filed despite this Court's order to that effect.

The learned Attorney-General argues that the words *"shall not"* in the provision in Article 108(a) is a prohibition on Parliament from proceeding with the legislative process if a Bill was one that made provision for any of the items listed in the paragraph. Also, the words *"unless the bill is introduced or the motion is introduced by, or on behalf of the President"* denotes an exception to the applicability of Article 108. Therefore, in so far as a Bill or motion is not introduced by or on behalf the President, it is subject to the requirements stipulated in Article 108.

It was further contended that Article 108 contains both a duty and a discretionary power on the part of the Speaker. The discretionary power is implied by the use of the words *"in the opinion"* of the person presiding. And being a discretionary power, it was subject to the requirements in Articles 23 and 296 of the Constitution. AWUNI VRS WAEC [2003-2004]1 SCGLR 471; GREGORY AFOKO VRS ATTTORNEY-GENERAL (Writ No. J1/8/2019) cited.

In addition, the exercise of the discretion must be verifiable. It cannot be left to speculation, inference, or deduction by anybody. Therefore, the contention that the progress of a Bill through the stages laid down in Article 106, for its passage should be inferred as an indication that there was a determination by the Speaker is untenable. There was a duty on the part of the Speaker to be fair and candid. The determination made by him should be reasonable and the reasonableness can only be determined based on a document upon which the assessment can be made. He contends that in this case, the Speaker did not perform his obligation under Article 108 and that constitutes an omission under Article 2(1) of the Constitution.

Also contended by the learned Attorney-General, is that assuming the Speaker rendered any opinion that the Bill was not subject to Article 108, that opinion would be palpably erroneous and unconstitutional since the Bill clearly makes provision for some of the matters listed in Article 108. He proceeds to list a number of grounds which shall occasion a burden on the public purse if the Bill was enacted and implemented.

Memorandum of Issues

In this case each party filed a separate memorandum of issues. In terms of Rule 50 subrule 1 of the Supreme Court Rules, 1996 (C.I. 16) (as amended), the parties can agree to file a [joint] memorandum specifying the issues agreed by them to be tried at the hearing of the action. However, where the parties cannot agree on the issues, each party may file his own memorandum of issues pursuant to subrule 3 of Rule 50. It appears the parties could not agree hence their separate memoranda of issues. The Plaintiff filed the following issues:

> *"(a) Whether upon a true and proper interpretation of Article 108 of the 1992 Constitution, the 1st Defendant, before he may allow Parliament to proceed on a bill that is not introduced to Parliament by or on behalf of the President, is under a duty to render or provide an objective explicit opinion as to whether such a bill imposes or has the effect of imposing a charge on the Consolidated Fund or other public funds of Ghana.*
>
> *(b). Whether or not, the 1st Defendant failed to carry out his duty to render or provide an objective opinion as to whether the Bill satisfied the requirements of Article 108 of the Constitution in terms of imposing or having the effect of imposing a charge on the Consolidated Fund or other public funds of Ghana.*

(c) Whether or not, regardless of the opinion or ostensible opinion of the 1st Defendant, the Bill or the Revised Bill, assuming it is made into law, will impose or have the effect of imposing a charge on the Consolidated Fund or other public funds of Ghana in violation of Article 108 of the Constitution.

(d) Whether or not Parliament violated Article 108 of the 1992 Constitution in passing the Revised Bill, consequently the bill is tainted by unconstitutionality and cannot be assented to by the President."

The 1st Defendant filed the following issues:

"1. Whether or not the Plaintiff has in his statement of case established that the first Defendant [the Speaker of Parliament] was required to provide an opinion regarding whether the Private Members' Bill [the Bill] offends any of the matters provided for in Article 108 of the Constitution.

2. Whether or not the Plaintiff has in his statement of case established that the first Defendant by providing or not providing an opinion on the Bill mentioned in (1) above acted in breach of Article 108 of the Constitution, 1992.

3. Whether or not the Plaintiff has by his statement of case established that the revised Bill which has not yet been assented into law is made in breach of any provision of the Constitution and to that extent should be null and void."

The learned Attorney—General filed two issues one of which has been addressed in his Statement of Case. The other issue added is whether or not in passing the Human Rights and Family Values Bill 2024, Parliament had exceeded authority.

Exclusive Original Jurisdiction

The exclusive original jurisdiction of this Court is a special one and must be upheld as such. Like any issue of jurisdiction, it is basic, fundamental and at the core of the competence of this Court to go into any matter for which it is invoked. As a prerequisite to the adjudication of every litigation brought pursuant to the provisions in Article 2(1) and 130(1) of the Constitution, this Court always assumes a duty to make that threshold determination in order to satisfy itself of its competence to decide the matter on the merits. The Court has always warned itself against entertaining a matter that does not properly invoke its exclusive original jurisdiction.

In BIMPONG-BUTA VRS GENERAL LEGAL COUNCIL [2003-2004]2 SCGLR 1200 at 1215, this Court per Sophia Akuffo JSC (as she then was) noted of the Supreme Court's jurisdiction under Articles 2(1) and 130(1) in the following words:

> *"Since by his suit the plaintiff has sought to invoke the original jurisdiction of the court, we must, of necessity ascertain whether or not our jurisdiction under articles 2(1) and 130(1)(a) has been properly invoked, even though the fourth defendant (at that time in the person of Hon Papa Owusu Ankumah per his Counsel, Hon Ambrose Dery, the Deputy Attorney-General) withdrew at the hearing of the action on 20th January 2004 (with the approval of this court), a notice of preliminary objection to our jurisdiction, which he had previously filed. In other words, does the plaintiff's writ properly raise any real legal issues of interpretation and enforcement of the Constitution that can only be resolved by this court exercising its original jurisdiction? Jurisdiction is always a fundamental issue in every matter that comes before any court and, even if it is not questioned by any of the parties, it is crucial for a court to advert its mind to it to assure a valid outcome. This is*

even more so in respect of the Supreme Court's original jurisdiction, which has been described as special."

The former Chief Justice was unbending on the position when in the case of BENJAMIN KPODO, MP, RICHARD QUASHIGAH, MP VRS ATTORNEY GENERAL, Suit No. j1/03/2018 (12th June 2019) she said:

"The original jurisdiction of this court being a special one, whenever it is invoked, it must be evident that the matter falls within the perimeters set by the Constitution and as clarified in several decisions of the Court, such as Ghana Bar Association v Attorney General [2003-2004]1 SCGLR 250, Bimpong Buta v General Legal Council [2003-2004]2 SCGLR1200 and Abu Ramadan v Electoral Commission Writ No. J1/14/2016…This is important for ensuring that the special jurisdiction is not needlessly invoked and misused in actions that, albeit dressed in the garb of a constitutional action, might be competently determined by any other court. Consequently, it has become our practice that in all actions to invoke our original jurisdiction, whether or not a Defendant takes objection to our jurisdiction, or expressly agrees with the plaintiff that our jurisdiction is properly invoked, we take a pause to determine the question of the competence of the invocation of our jurisdiction, before proceeding with the adjudication of the matter or otherwise." See SOLOMON FAAKYE VRS UNIVERSITY OF GHANA & ATTORNEY-GENERAL, Writ No. J1/10/18; J1/13/19, dated 24th April 2024.

Judicial review of legislative acts and prematurity of action.

In determining the question of jurisdiction, we shall first proclaim the judicial review power of this Court under Articles 2(1) and 130(1) of the Constitution. And we do so

recalling from one treatise of Lord Denning where he attempts a rendition of the evolution of judicial review under the English and American systems. In his characteristic wordsmith element, he notes:

> *"You must remember that the party which has obtained the greatest number of seats at an election can enact any legislation it likes. Is there a remedy? Nearly 400 years ago, Lord Coke said that: "When an Act of Parliament is against right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge that Act to be void." This sapling planted by Lord Coke failed to grow in England. It withered and died. But it grew into a strong tree in the United States of America. Under the guidance of the great Chief Justice Marshall, the judges there constantly review legislation; and as constantly set it aside if it is against right reason or repugnant to the Constitution."* Denning, *"When Next in the Law"* (Oxford University Press, Reprinted in 2020, page 319).

In our jurisdiction we see the "sapling" the legendary Denning talks about nurture and grow through our constitutional adaptation. In the words of Bimpong-Buta in his seminal work:

> *"The power of judicial review of legislative action has been vested in the Ghana Supreme by article 130(1)(b) of the 1992 Constitution. Under the said article, the Supreme Court has been vested with exclusive original jurisdiction to declare any enactment or legislation null and void on the grounds that the legislation in question has been made in excess of the powers conferred on Parliament or any other authority or person by law or under the Constitution. In effect, the exercise of the power of judicial review is founded on the supremacy of the Constitution. The Supremacy of the Constitution, 1992 over any other law in Ghana as enshrined in article 1(2) of the Constitution, has been reinforced by article*

2(1) of the Constitution…" (Bimpong-Buta, The role of the Supreme Court in the Development of Constitutional law in Ghana, 2005, p. 206-207)

In the exercise of this power of judicial review over legislative actions, the Supreme Court has not relented in striking out various legislative enactments. Our law reports are replete with cases of such nature. We do not intend any long excurses on those cases the list of which will be tall and endless. Suffice it to refer to a couple of them that will only reflect the thinking of this Court when its judicial review power had been invoked.

In GHANA BAR ASSOCIATION VRS ATTORNEY-GENERAL (supra) Edward Wiredu JSC (as he then was) opined at page 605 of the report:

"The constitution 1992 has vested the power of judicial review of all legislation in the Supreme Court. It has dealt away with either executive or parliamentary sovereignty and subordinated all the arms or organs of State to the Constitution. The Court as the repository and watchdog of the Constitution, 1992 is enjoined to protect, defend and enforce its provisions and should not allow itself to be diverted to act as an independent arbiter of the Constitution 1992."

Again, in ADOFO VRS ATTORNEY-GENERAL [2003-2005]1 GLR 239 at 245 Date-Bah JSC stated the position thus:

"The power to strike down legislation in conflict with any provision of the Constitution, 1992 is one of the most important powers of this Court. It is a power to safeguard liberty from encroachment by the legislature, whether constituted under our current Constitution, 1992 or under any earlier Constitution or constitutive document, subject to the transitional provisions of the various Constitutions we have had. It is a power accorded

this Court by clear provisions in the Constitutions, 1992 whose exercise is indorsed and mandated by binding precedent of this Court. That binding precedent includes Sam (No. 2) v Attorney-General and the clear provision of the Constitution, 1992 is article 1(2) of the Constitution which provides as follows: "This Constitution shall be the Supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitutions shall, to the extent of the inconsistency, be void." See also GBEDEMAH VRS AWOONOR WILLIAMS (1969)2 G&G 438; KWAKYE VRS ATTORNEY-GENERAL (1981) GLR 9; MENSIMA VRS ATTORNEY-GENERAL [1996-97] SCGLR 676; NEW PARTRIOTIC PARTY VRS ATTORNEY-GENERAL (31ST DECEMBER CASE) [1993-94]2 GLR 35.

True to this thinking, the Court in the case of ADJEI AMPOFO VRS ATTORNEY--GENERAL & NATIONAL HOUSE OF CHIEFS [2011]2 SCGLR 1104 at 1135 struck down Section 63(d) of the Chieftaincy Act, 2008 (Act 759) as follows:

"Finally, regarding the fourth relief endorsed on the Plaintiff's amended writ, this court will grant it only in relation to the first relief. In other words, the provision in section 63(d) of Act 759, namely: "deliberately refuses to honour a call from a chief to attend to an issue" is hereby expunged, deleted and struck out from Act 759 on the grounds that it is unconstitutional. This court unquestionably has the authority to make this order under article 2(2) of the 1992 Constitution."

From the well-heeled jurisprudence of this Court that settles its power of judicial review beyond peradventure, one can see that the Court has always gone after a legislation or an Act of Parliament. The considerable body of case law on the subject does not point to an attitude of the Court to strike down a Bill that is yet to become law. This is what makes the claim of the Plaintiff an invitation to tread an uncharted path. For the issue urged

upon this Court presently is not whether, the power of judicial review can be exercised in respect of an Act of Parliament or an enactment. We are not to consider striking down a provision of any law. The issue concerns a bill which is yet to become law.

The Plaintiff anchors his grief in article 2(1)(b) alleging essentially that there is an *"act or omission"* on the part of the 1st Defendant which is inconsistent with or in contravention of a provision in the Constitution and which renders the Bill unconstitutional and a nullity.

In JOHN EPHRAIM BAIDEN VRS ATTORNEY GENERAL & BANK OF GHANA, Writ No. J1/7/2014, 22nd July 2025, this Court per Adinyira JSC stated the following on deciding the question of jurisdiction:

> *"In deciding the issue of jurisdiction, matters to take into consideration include the statute which invests jurisdiction, as well as the true nature of the claim having regard to the pleading, issues and reliefs sought or the actual effect of the reliefs regardless of words used or manner in which the claims and reliefs are couched."*

In DAVID KWADZO AMETEFE VRS ATTORNEY-GENERAL & MARTIN ALAMISI AMIDU, writ No. J1/3/2017 judgment of 1st February 2017, the Court again held that:

> *"In determining whether or not our original jurisdiction has been properly invoked, we need to look at the Plaintiff's writ before us, … However, in doing so we must focus on the preliminary objection, not the substance or merits of the writ. For this purpose, we need only to look at subject matter of the writ, asking ourselves 'what is it that the Plaintiff is asking the Court to do'? In other words, what is the nature of the reliefs claimed by the Plaintiff.*

We have soberly considered the reliefs the Plaintiff has set out in his writ. Disrobed of all the garbs of interpretation, we think all the Plaintiff is asking this Court to do by those reliefs, is to declare and strike down the Human Sexual Rights and Family Values Bill as unconstitutional because the Speaker failed to render any opinion in terms of Article 108 or that any purported opinion rendered was erroneous. If this position is right which we think it is, then we ask ourselves the following. Is this the appropriate time and stage to invoke the Judicial review power of this Court when the Bill is still in the law-making process? Is the action to strike down the Bill not premature? If it is premature, does the action present a real and genuine case for interpretation or enforcement? Is it not the case that this Court's judicial review jurisdiction must co-exist with Parliament's legislative authority equally vested in it by the Constitution? Can the constitutionality of a Bill be questioned when the process of law-making is still in motion and in the hands of another or other constitutional organ(s) of Government? Given that the *act or omission* alleged is in connection with the law-making power of Parliament vested in it by the Constitution, will it be the right point in time to invoke this Court's judicial review jurisdiction? What would happen to the President's withholding power and the provisions that ensue thereafter? What will be the fate of separation of powers if we go the Plaintiff's way? We consider all these put together a threshold jurisdictional question which ought to be determined preliminarily.

Any act or omission

In the determination of the question, we are fully mindful that the Plaintiff's case is anchored in Article 2(1)(b) which provides for the bringing of an action where a person alleges that *"any act or omission of any person"* is inconsistent with or in contravention of a provision of the Constitution. Unlike the provision in Article 2(1)(a), there is no mention of "enactment" in Article 2(1)(b).

Whilst it is clear, that the words *"any act or omission"* are phrased in general terms to capture any act or omission, the alleged act or omission in this case made against the 1st Defendant is connected to his role in the legislative process. That is to say, the constitutional infraction alleged against the 1st Defendant occurred in the law-making process. And if this Court is to intervene as is being urged upon it, the Court is to intervene in the legislative process. For purposes of the jurisdictional question within the peculiar circumstances of this case therefore, we take the view that it makes no difference that the action is anchored in Article 2(1)(b) and not 2(1)(a). In effect, the jurisdictional question remains whether the judicial review power of this Court can be invoked to strike down the Bill which is yet to become law.

Now what is the process of law-making under the Constitution and the nature of a Bill in the context?

The law-making process under the Constitution and the nature of a bill

Whereas Article 93(2) vests the legislative power in Parliament by providing thus: *"Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution"*, Article 106 provides for the mode of exercising the power as follows:

"106. (1) The power of Parliament to make laws shall be exercised by bills passed by Parliament and assented to by the President.

(2) No bill, other than such a bill as is referred to in paragraph (a) of article 108 of this Constitution, shall be introduced in Parliament unless—

> *(a) it is accompanied by an explanatory memorandum setting out in detail the policy and principles of the bill, the defects in the existing law, the remedies proposed to deal with those defects and the necessity for its introduction; and*
>
> *(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament.*

(3) A bill affecting the institution of chieftaincy shall not be introduced in Parliament without prior reference to the National House of Chiefs.

(4) Whenever a bill is read the first time in Parliament, it shall be referred to the appropriate committee appointed under article 103 of this Constitution which shall examine the bill in detail and make such inquiries in relation to it as the Committee considers expedient or necessary.

(5) Where a bill has been deliberated upon by the appropriate committee, it shall be reported to Parliament.

(6) The report of the committee, together with the explanatory memorandum to the bill, shall form the basis for a full debate on the bill for its passage, with or without amendments, or its rejection, by Parliament.

(7) Where a bill passed by Parliament is presented to the President for assent he shall signify, within seven days after the presentation, to the Speaker that he assents to the bill or that he refuses to assent to the bill, unless the bill has been referred by the President to the Council of State under article 90 of this Constitution.

(8) Where the President refuses to assent to a bill, he shall, within fourteen days after the refusal—

(a) state in a memorandum to the Speaker any specific provisions of the bill which in his opinion should be reconsidered by Parliament, including his recommendation for amendments if any; or

(b) inform the Speaker that he has referred the bill to the Council of State for consideration and comment under article 90 of this Constitution.

(9) Parliament shall reconsider the bill taking into account the comments made by the President or the Council of State, as the case may be, under clause (8) of this article.

(10) Where a bill reconsidered under clause (9) of this article is passed by Parliament by a resolution supported by votes of not less than two-thirds of all the members of Parliament the President shall assent to it within thirty days after the passing of the resolution.

(11) Without prejudice to the power of Parliament to postpone the operation of a law, a bill shall not become law until it has been duly passed and assented to in accordance with the provisions of this Constitution and shall not come into force unless it has been published in the Gazette."

From the above provisions we sift the following salient pointers:

1. Whilst legislative power is vested in Parliament, the President is part of the law-making process.
2. A bill passed by Parliament requires Presidential assent to become law (enactment)
3. The President may withhold his assent. If he so does, he shall within fourteen days send a memorandum to the Speaker indicating the particular provisions of the Bill he wants reconsidered and his recommendations for amendment if any.

4. The President may inform the Speaker within the same period that he has referred the matter to the Council of State pursuant to Article 90 of the Constitution.
5. Parliament will reconsider the Bill on the basis of the comments and recommendation of the President.
6. Upon reconsideration, Parliament may pass the Bill with the votes of at least two-thirds of all members of Parliament.
7. The President shall assent to the Bill so passed within thirty days after the passage.
8. The legislative process begins with the introduction of a Bill in Parliament and does not end until assented to by the President.
9. Between the passage of a Bill and its receipt of presidential assent the Bill may return to Parliament for a reconsideration.

In RICHARD SKY where I delivered a concurring opinion, this is what I said about a bill:

My Lords, a bill is not an enactment. The Constitution does not define a bill. It however defines an enactment under Article 295 as follows:

> *""enactment" means an Act of Parliament, a Decree, a Law or a constitutional instrument or a statutory instrument or any provision of an Act of Parliament, a Decree, a Law or of a constitutional or of a statutory instrument."*

The same definition appears in Section 1 of the Interpretation Act, 2009 (Act 792) as:

> *""enactment" means an Act of Parliament, a Decree, a Law or a constitutional instrument or a statutory instrument or any provision of an Act of Parliament, a Decree, a Law or of a constitutional or of a statutory instrument."*

An "Act of Parliament" is defined under the same Article 295 as "an Act enacted by Parliament and includes an Ordinance"

A bill is defined in Order 6 of the Standing Orders of Parliament (2023) in the following simple terms:

"Bill" means a draft of an Act of Parliament."

A bill is therefore a draft in the process of becoming an Act of Parliament. It is a draft because it has not gone through the full hog of the law-making process. It is yet to crystallize into law. It is inchoate. Because it has not become law, it has no legal consequence. It is a blueprint, an abstract of a sort. To my mind it is questionable to tag a Bill as capable of contravening a provision of the Constitution when all it entails is a proposal."

Beyond what is established by the jurisprudence of this Court to be a strong and decisive attitude to strike down legislations and enactments that are inconsistent with the Constitution we can only confess to paucity of judicial authorities on the exercise of judicial review power of this Court over pre-enactment acts such as a Bill. Nonetheless, we find sufficient case law to demonstrate a Supreme Court which is not prepared to exercise judicial review over what is not a legislation, or an enactment properly so called.

We see this posture in the Court's recent decision in DAFEAMEPKOR ROCKSON-NELSON & OTHERS VRS ATTORNEY GENENERAL, writ No. J1/13/2021 judgment dated 24th April where in respect of the status and constitutionality of the Ntiamoah-Badu Commission Report on Emoluments of Article 71 Office holders, the Court per Prof Mensah Bonsu JSC posited:

"As it is obvious from Apasera & 42 Others supra, and KOR, supra, that the President was not obliged to accept all recommendations of the Committee and, indeed, not all recommendations of past presidential committees on emoluments were accepted and

implemented by the respective Presidents. However, it is after such determination by Parliament or the President that the "recommendation" matures into a "decision" which may be amenable to judicial review. Therefore, the constitutionality of those acts of Executive or of Parliament could come within the purview of the enforcement jurisdiction of the Supreme Court only after Parliament has acted to convert the recommendations made to it, into a legislative act by its acceptance for implementation…"

The same Recommendation was the subject matter in KWAME BARFO @ Abronye VRS ATTORNEY GENERAL (Writ No. J1/12/2021, 24TH April 2024 where this Court per Torkornoo CJ held thus:

"The settled position is therefore that notwithstanding the necessity of respecting the constitutional mandates of advisory bodies such as the Judicial Council (as determined in GBA V ATTORNEY GENERAL) and the PCE under article 71 (as determined in KOR V ATTORNEY-GENERAL) their advice and recommendation cannot attain the elevated status of enforceable edicts. For this reason, we are satisfied that there is no genuine issue for determination regarding the constitutionality or otherwise of the recommendations of the NBC. All parties before this court must be mindful of the consistent reminder from the cases such as Adumoah Twum II V Adu Twum ii [2000] SCGLR 165 distilled in its first holding that "the original jurisdiction vested in the Supreme Court under Articles 2(1) and 130(1) to interpret and enforce the provisions of the Constitution is a special jurisdiction to be invoked in suits raising genuine or real issues of interpretation of a provision of the Constitution; or enforcement of a provision of the Constitution; or a question whether an enactment was made ultra vires Parliament or any other authority or person by law or under the Constitution."

In RICHARD SKY, I cited this Court's decision in ROCKSON VRS GHANA FOOTBALL ASSOCIATION [2010] SCGLR 443, where the Court refused to strike down the Statutes of the Ghana Football Association by judicial review under Article 2(1) and 130(1). The reason was inter alia that, the Statutes were not an enactment and therefore, not part of the laws of Ghana as set out under Article 11 of the Constitution. Sophia Adinyira JSC who delivered the ruling of this Court upon a preliminary objection observed at page 449 thus:

"The first hurdle to be cleared is whether the Statutes of the GFA can properly be classified as an enactment or regulation as envisaged under article 11(1) of the 1992 Constitution, to warrant a scrutiny by this Court under its exclusive and original jurisdiction under article 2(1) to determine the constitutionality or otherwise of some of its provisions. It is necessary to set out article 11(1) of the Constitution on what comprises the "Laws of Ghana". It states: "11(1) The Laws of Ghana shall comprise—

(a) This Constitution;

(b) Enactments made by or under the authority of the Parliament established by this Constitution;

(c) Any orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution;

(d) The existing law; and

(e) The common law." (The emphasis is ours). The GFA is a voluntary association even though it may receive subventions from the National Sports Authority under section 4(1) of the Sports Act, 1976 (SMCD 54). The Statutes of the GFA definitely are not an Act of Parliament and nothing in the Statutes of GFA made at its congress on 1 December 2005, suggests that the GFA is a statutory body nor were its Statutes made "by any person or authority under the power conferred by this Constitution."

The distinguished judge concluded the decision in the following words:

> *"The Supreme Court's original and exclusive jurisdiction under articles 2(1) and 130(1)(a) in testing the validity of any Laws of Ghana, can only be invoked in relation to Laws of Ghana as stipulated under article 11 of the 1992 Constitution. Consequently, we do not think this case raises any constitutional issue to warrant an interpretation or enforcement by this court… From the foregoing, we find that the preliminary objection is valid and is therefore upheld. We would accordingly dismiss the Plaintiff's action for lack of jurisdiction."*

From the authorities we know, what transpires in this Court is plain unwillingness to exercise judicial review to strike down what is not yet law such as a Bill. The pendulum of judicial authorities bearing on the matter, swings densely to the direction of the Court striking at full blown legislations and enactments not Bills or pre-enactment acts. This is a line we decide to toe in this case especially when the legislative process is still in motion and the Bill is still going through the rites of passage into law.

This approach is not peculiar to the Ghana Supreme Court. Courts in other jurisdictions especially those of the common law block by act of comity, generally refrain from striking down Bills which have not yet become law. I cited some of the cases in RICHARD SKY for their persuasive value. We still consider them useful to rehearse in making up our minds in this case.

May we quickly state however, that such comparative study has been part of the development of the jurisprudence of this Court in constitutional law. Date-Bah JSC in the

case of ARTHUR VRS ARTHUR [2013-2014]1 SCGLR 543 made the point when it became necessary to seek wisdom from the practice in other common law jurisdictions on property settlement in matrimonial disputes. In the course of his judgment at page 555, he noted:

> *"From Mensah v Mensah, therefore, the principle that is to be distilled is that there is presumption in Ghanaian law in favour of the sharing of marital property on an equality basis in all appropriate cases between spouses after divorce. What needs to be spelt out in subsequent case law is the range of appropriate cases. Comparative legal material from other common law jurisdictions should be useful in helping this court to clarify the range."*

Continuing at page 556 of the report, the distinguished jurist gathered:

> *"In the task of interpretation, analogies from other jurisdictions can be helpful. For instance, the USA provides interesting comparative legal materials… Each of the states follows individual and nuanced rules governing property distribution in the event of marriage dissolution which often lead to the creation of hybrid systems that rely on unique mixtures of community property and equitable distribution principles."* See also GHANA CENTER FOR DEMOCRATIC DEVELOPMENT & ORS VRS ATTORNEY-GENERAL, Writ No. J1/01/2023 judgment of 31st May 2023.

For our purpose, we refer to the Nigerian case of NATIONAL ASSEMBLY VRS ACCORD; ATTORNEY-GENERAL OF THE FEDERATION AND INDEPENDENT NATIONAL ELECTORAL COMMISSION [2021]18 NWLR 193 Pt 1808 where the Court of Appeal (ABUJA DIVISION) in 2018 had to deal with the issue of judicial review and its enforceability against a Bill which was yet to receive presidential assent as we have in the instant case.

The controversy in the case turned on the passage of the Electoral Act (Amendment) Bill by the National Assembly, the appellant in the case. The Bill was to amend the Electoral Act, 2010 (introducing new clause 25) which prescribed the sequence order in which the general elections into the offices of President and Vice President of the Federal Republic of Nigeria, the Governor and Deputy Governor of a State, membership of the Senate the House of Representatives and the House of Assembly of each State of the Federation should take place. After the passage of the Bill and before the President of the Republic could assent to it, the 1st Respondent challenged the constitutionality of Section 25 of the Bill. In the High Court, a preliminary objection was raised against inter alia the jurisdiction of the Court to entertain the action. This was overruled. On appeal, one of the issues that the Federal Court of Appeal had to resolve was whether the Court had jurisdiction to declare a bill yet to become law null and void. The Court's decision is aptly captured under holding 4 of the headnote of the report as follows:

> *"A court has no jurisdiction to declare a Bill still undergoing legislative process or rites of passage into law null and void. Because it is not yet a law. A bill is incapable of being tagged as contravening section 13 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) for reason that it is not yet a Law or an Act of the National Assembly. The validity of a Law or an Act of the National Assembly can only be questioned in a court of law on the ground that it violates section 13 of the 1999 Constitution or any other section of the 1999 Constitution for that matter. The onus will then be on the challenger to establish or prove that the impugned Law or Act was enacted by the National Assembly in breach of the provision(s) of the Constitution and not otherwise.*
>
> *In the instant case, the trial court was under the impression or mistaken belief that the Electoral Act (Amendment) Bill, 2018 particularly section 25 thereof proposed had been*

passed into law or an Act of the National Assembly. The rights of the 1st Respondent to sue or complain about the Electoral Act (Amendment) Bill, 2018 had not crystalized. The initiation or commencement of the suit was precipitated by the 1st Respondent as it was premature. It was an action designed to obstruct the legitimate powers of the National Assembly to make laws or pass a bill into law or Act. The action was not justiciable and it disclosed no reasonable cause of action. The 1st Respondent's action was capable of undermining the doctrine of separation of powers contained in sections 4, 5 and 6 of the 1999 Constitution, It smacked of abuse of process. It was nipped in the bud." See also A-G BENDELSTATE VRS A-G FED [1982] 3 NCLR 1

It is significant to note that the Nigerian Constitution of 1999 creates the power of judicial review over legislative power in the courts under Section 4(8) of the Constitution of that country and Section 58 which is *in pari materia* with Article 106 of the 1992 Constitution prescribes the mode of exercising legislative power. To clear any doubt, we set out the provision in Section 58 of that country's Constitution as follows:

"58— (1) The power of the National Assembly to make laws shall be exercised by Bills passed by both the Senate and the House of Representatives and, except as otherwise provided by subsection (5) of this section, assented to by the President.

(2) A Bill may originate in either, the Senate or the House of Representatives and shall not become law unless it has been passed and, except as otherwise provided by this section and section 59 of this Constitution, assented to in accordance with the provisions of this section.

(3) Where a Bill has been passed by the House in which it originated, it shall be sent to the other House, and it shall be presented to the President for assent, when it has been passed by that other House and agreement has been reached between the two Houses on any amendment made on it.

(4) Where a Bill is presented to the President for assent, he shall within thirty days thereof signify that he assents or that he withholds his assent.

(5) Where the President withholds his assent and the Bill is again passed by each House by two-thirds majority, the Bill shall become law and the assent of the President shall not be required."

Then in 2006, the South African Constitutional Court in the case DOCTORS FOR LIFE INTERNATIONAL VRS THE SPEAKER OF THE NATIONAL ASSEMBLY & OTHERS [2006] ZAAC 11 had to decide among other issues whether it was competent for the Court to grant declaratory relief touching on a bill (The Sterilization Amendment Bill) which had been passed by Parliament but not yet signed by the President. The Court held that until the President had assented to and signed the bill, it was not competent for the Court to grant the declaratory relief in relation to the bill save at the instance of the President and in the limited circumstances provided for in Section 79 of the Constitution. The Cout observed that the constitutional arrangement contemplated that, challenges to the constitutional validity of a bill passed by Parliament must await the completion of the legislative process. Once the process was complete, the public and interested groups may challenge the resulting statute. This arrangement in the view of the Court was to ensure that judicial intervention in law-making process was kept to the minimum.

In India, also a common law jurisdiction, the Courts have declined writs to strike down bills before they become law for the reason that until a bill becomes law, the legislative process is not complete and the Courts do not interfere. In CHOTEY LAL VRS STATE OF UP AIR 1951 All 228 the petitioner sought to challenge a proposed legislation known as Zamindari Abolition & Land Reforms Bill for the reason that the Bill will deprive him of his right to hold and dispose of his property as he wished. One key issue that a division of the High Court was to determine was whether it was open to the courts to interfere

with the Bill which was yet to complete the legislative cycle. The Court held that since the legislative process was incomplete until the Bill received a Presidential assent, the president being part of the "union legislature" the court could only assume jurisdiction under article 32 of the Constitution (the judicial review provision) after the Bill has become law.

My Lords would have realized that what runs through the cases is the basic conception that where there is a flaw in the process of law making which may result in the invalidity or unconstitutionality of the law, the appropriate time to intervene is after the completion of the legislative process. What drives the conception is the constitutional principle of separation of powers a key consequence of which is that the courts would respect the independence of the legislature in the exercise of its law-making function and would generally refrain from determining the validity of the legislative process whilst it is in motion.

This Court must be persuaded by this line of thinking that reflects best external constitutional and parliamentary practice some obtainable from jurisdictions some with relevant constitutional provisions with which ours are *in pari materia.* The position also reflects the attitude of this Court demonstrable from the cases cited and in clear consonance with the ever-abiding constitutional doctrine of separation of powers and its ideals.

My Lords, in the final analysis, on all the arguments made and all relevant authorities considered, we must come to the decision that the judicial review jurisdiction of this Court under Article 2(1) and 130(1) of the Constitution cannot properly be invoked to strike down the Human Sexual Rights and Family Values Bill at this stage when the Bill

is going through the legislative process to become law. We think it is premature on the part of this Court to exercise the jurisdiction in the Plaintiff's favour.

In our judgment, within the context of the relevant constitutional provisions, the appropriate time to invoke the jurisdiction is when the Bill has become law. Then, and not before, can all the arguments made to impugn the law be properly received and addressed and if well founded, the resultant statute struck down. Constitutionally, we think it will turn more on sound reasoning and rationalization for the Court not to strike at the embryonic stage of the law-making term.

As the relevant provisions set out supra have stipulated, whereas article 93(2) creates the legislative power, the power is exercisable under Article 106. In terms of Article 106, a Bill does not become law until assented to by the President. That makes the President a participant in the law-making process. Other bodies that may also play a role, are the Council of State in accordance with Articles 106 and 90 and the National House of Chiefs in terms of Article 106(3).

We all know that the Human Sexual Rights and Family Values Bill is yet to be assented to by the President. The President may if he does not assent to the Bill, exercise any of his powers under Article 106 including referring the Bill to the Council of State in terms of Article 90 and 106. The Bill then returns to Parliament. All these steps are provided for by the same Constitution we are being asked to anxiously safeguard by the power of judicial review.

It is plain that the 1992 Constitution did not envisage a judicial participation in the law-making process proper. We are afraid the legislative process under Article 106 has no

specific role for the Courts. The power this Court has is what is provided for under Article 2(1) and 130(1). We are inclined to the view that as it stands, the constitutional scheme envisages that challenges to validity or constitutionality of Bills must abide the consummation of the legislative process which is signified by a presidential assent in terms of Article 106(1). Anything before that could amount to assumption of an unassigned role in law-making.

Whilst we must jealously secure our power of judicial review, there must also be reasonable restraint on the power when pushed to review and strike at a Bill which is only a proposal. We believe the Court should be cautious not to dictate the course of the legislative process. We run the risk of tying the hands of Parliament in the discharge of its vested law-making function and the result will be that the value of rule of law and separation of powers will wane. We think the wheel of law-making should not be bogged down by pre-emptive litigation and supervening court orders. That was not what the framers of our Constitution conceived of.

On this note, we disallow all the reliefs sought by the Plaintiff on his writ and dismiss the action.

(SGD.) R. ADJEI – FRIMPONG
(JUSTICE OF THE SUPREME COURT)

(SGD.) PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E.Y GAEWU**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

LOVELACE – JOHNSON JSC:

I have read the judgment of my brother Adjei-Frimpong JSC and agree that the Plaintiff's action be dismissed.

(SGD.) **A LOVELACE – JOHNSON (MS.)**
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

ACKAH-YENSU, JSC

INTRODUCTION

This suit is the second suit (albeit filed first in time) which questions whether the Speaker of Parliament and the Parliament of the Republic of Ghana violated Article 108 of the 1992 Constitution in passing the **Human Rights and Family Values Bill 2024.** In the

earlier decision, I held that the 1st Defendant did not act in violation of Article 108 of the 1992 Constitution. I remarked that it was not the province of the courts to direct the Legislature the manner to discharge their constitutional functions, especially when Parliament's procedure is consistent with the Constitution. It is this holding and reasoning which I stand by in this second delivery.

BACKGROUND

On 1st June 2023, the Plaintiff invoked the original jurisdiction of this Court per a writ praying for the following reliefs against the Speaker of Parliament and the Attorney-General, as 1st and 2nd Defendants respectively:

"a. *A declaration that under Article 108 of the 1992 Constitution of the Republic of Ghana ("the 1992 Constitution"), the Speaker of Parliament has a non-discretionary duty to make a determination in a non-arbitrary manner as to whether or not a bill, other than a bill introduced by or on behalf of the President, offends against Article 108;*

b. *A declaration (1) that the Speaker of Parliament acted in breach of his non-discretionary duty under Article 108 of the 1992 Constitution by causing Parliament, including its Committee on Constitutional, Legal, and parliamentary Affairs, to proceed on the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 (now the Human Sexual Rights and Ghanaian Family Values Bill, 2024) ("the Bill"), a bill not introduced by or on behalf of the President , without providing, in his capacity as the person presiding in Parliament, an opinion whether or not the Bill imposes, or would have the effect of imposing, a*

charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction, or required the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal as required by sub paragraphs (i) and (ii) of paragraph (a) and paragraph (b) of Article 108;

or

in the alternative (2) that by causing Parliament, including its Committee on Constitutional, Legal and Parliamentary Affairs, to proceed on the Bill, the Speaker has constructively or impliedly rendered an opinion to the effect that the Bill is compliant with Article 108, which opinion is clearly erroneous and thus in breach of article 108 subparagraphs (i) and (ii) of paragraph (a) and paragraph (b)

c. *A declaration that the failure of the Speaker to perform his non-discretionary duty under Article 108 of the 1992 Constitution amounts to a direct violation of the letter and spirit of Article 108 and renders the entire legislative process relating to the Bill, unconstitutional and void.*

d. *A declaration that, regardless of that the opinion of the Speaker is or might be concerning the Bill's compliance or conformity with article 108 of the Constitution, the Bill, if allowed to become law, will, in fact, impose, or have the effect of imposing, a charge on the Consolidated Fund or other public funds of Ghana, and therefore offends sub paragraph (i) and (ii) of paragraph (a) and paragraph (b) of ARticle108 of the 1992 Constitution.*

e. *An order restraining the Speaker of Parliament, his deputies, his agents, assigns, and privies from any further breaches of Article 108 of the 1992 Constitution.*

f. *Any further orders or other reliefs as this Honourable Court may deem fit".*

THE PLAINTIFF'S CASE

According to the Plaintiff, on a true and proper interpretation of Articles 108 of the 1992 Constitution, the 1st Defendant has a duty to provide an opinion as to whether or not the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill, 2021 imposes a charge on the Consolidated Fund and/or other public funds. The Plaintiff contends that the opinion of the 1st Defendant as required by Article 108, must be based on an objective assessment of the fiscal implications of the Bill and must, in compliance with Article 296(b), not be arbitrary, capricious or biased. Plaintiff also contends, that the 1st Defendant breached this constitutional duty and as such, all the processes the Bill has gone through, are tainted by unconstitutionality and therefore of no effect. Plaintiff further submitted, that the Bill, whether in its original or revised form will, if enacted into law, impose or have the effect of imposing a charge upon, or causing the expenditure of monies, from the Consolidated Fund or other public funds of Ghana, contrary to the dictates of Article 108 of the 1992 Constitution.

SUMMARY OF THE 1ST DEFENDANT'S CASE

In response, the 1st Defendant submitted through his Counsel, in his Amended Statement of Case, that there is no constitutional requirement that a Bill introduced in Parliament must be accompanied by a fiscal impact analysis or a document detailing the financial implications in respect of public funds, at the time it is first laid in

Parliament. According to the 1st Defendant, the requirement in the provisions of Article 108(a) of the 1992 Constitution that the person who presides over Parliament at the time a Bill is introduced by a person other than the President will form an opinion as to whether or not such a Bill falls foul of the aforesaid provision of the Constitution, has nothing to do with the fiscal impact analysis of such a Bill.

1st Defendant contends that the requirement to conduct a fiscal impact analysis is the prescription of section 100 of the Public Financial Management Act, 2016 (Act 921) but not Article 108 of the Constitution. Moreover, there is no constitutional and/or parliamentary rule which prescribes the manner in which the person who presides over Parliament at the time a Bill is introduced by a person other than the President must express their opinion on the Bill introduced. For the 1st Defendant, the Bill was rightly passed in tune with the constitutional and parliamentary procedures.

SUMMARY OF THE 2ND DEFENDANT'S CASE

The 2nd Defendant argued that Article 108 of the Constitution contains a duty on the Speaker of Parliament to determine whether a Bill, which does not emanate from the President or is introduced on his behalf, is subject to the requirements of paragraph (a) of Article 108. According to the 2nd Defendant, the process of determining whether a Bill is subject to the requirements of Article 108(a) involves the exercise of a discretionary power by the Speaker, which is subject to Articles 23 and 296 of the Constitution.

The learned Attorney-General continued that there is no evidence of the determination by the Speaker on whether the Bill is subject to Article 108 and that

such a default on the part of the Speaker is a violation of that Article of the Constitution. The 2nd Defendant concludes by submitting that assuming without admitting that there was a determination by the Speaker, the discretionary power of the Speaker was wrongly exercised as clearly the Bill contains many provisions which have the effect of imposing a burden on the Consolidated Fund or mandating a withdrawal, issue or payment from the Consolidated Fund.

MEMORANDUM OF ISSUES FILED BY THE PARTIES

THE PLAINTIFF;

*"(a) Whether upon a true and proper interpretation of **Article 108 of the 1992 Constitution**, the 1st Defendant, before he may allow Parliament to proceed on a bill that is not introduced to Parliament by or on behalf of the President, is under a duty to render or provide an objective explicit opinion as to whether such bill imposes or has the effect of imposing a charge on the Consolidated Fund or other public funds of Ghana;*

*(b) Whether or not, the 1st Defendant failed to carry out his duty to render or provide an objective opinion as to whether the Bill satisfied the requirements of **Article 108** of the 1992 Constitution in terms of imposing or having the effect of imposing a charge on the Consolidated Fund or other public funds of Ghana.*

(c) Whether or not, regardless of the opinion or ostensible opinion of the 1st Defendant, the Bill or the Revised Bill, assuming it is enacted into law, will impose or have the

*effect of imposing a charge on the Consolidated Fund or other public funds of Ghana in violation of **Article 108** of the Constitution.*

d. *Whether or not Parliament violated **Article 108** of the 1992 Constitution in passing the Revised Bill, consequently the Bill is tainted by unconstitutionality and cannot be assented to by the President".*

THE 1ST DEFENDANT:

1. *"Whether or not the Plaintiff has in his statement of case established that the first Defendant (the Speaker of Parliament) was required to provide an opinion regarding whether the Private Members' Bill [the Bill] offends any of the matters provided for in Article 108 of the Constitution, 1992?*

2. *Whether or not the Plaintiff has in his statement of case established that the first Defendant by providing or not providing an opinion on the Bill mentioned in (1) above acted in breach of Article 108 of the Constitution, 1992?*

3. *Whether or not the Plaintiff has in his statement of case established that the received Bill which has not yet been assented into law is made in breach of any provision of the Constitution 1992 and to that extent should be null and void?"*

THE 2ND DEFENDANT:

1. *Whether the determination by the Speaker of Parliament (or the Speaker's failure to determine) that the Human Rights and Family Values Bill 2024 complied with article 108 of the Constitution was contrary to the letter and spirit of article 108 of the Constitution and to that extent, rendered the passage of the Bill null, void and of no effect.*

2. *Whether or not in passing the Human Rights and Family Values Bill 2024 (the Bill), Parliament had exceeded its authority.*

From the Memorandum of Issues filed separately by the parties, I find a resolution of the issues presented by the learned Attorney-General to be sufficient in disposing off this action. The issues are:

"a. *Whether the determination by the Speaker of Parliament (or the Speaker's failure to determine) that the Human Rights and Family Values Bill 2024 complied with article 108 of the Constitution was contrary to the letter and spirit of article 108 of the Constitution and to that extent, rendered the passage of the Bill null, void and of no effect.*

b. *Whether or not in passing the Human Rights and Family Values Bill 2024 (the Bill), Parliament had exceeded its authority".*

EVALUATION

Although none of the parties presented the issue of whether the Court's jurisdiction has been properly invoked to entertain the action, it has become the accepted practice of this Court to, first, in actions of this nature, satisfy itself that the jurisdiction of the

Supreme Court has been properly invoked. The jurisdiction of the Supreme Court to interpret and/or enforce the 1992 Constitution stems from a combined reading of both Articles 2(1) and 130(1) of the Constitution. They provide thus:

Article 2

(1) A person who alleges that-

(a) an enactment or anything contained in or done under the authority of that or any other enactment; or

(b) any act or omission of any person;

is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

Article 130

(1) subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in –

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

It is quite clear that the Court's jurisdiction to interpret the Constitution is distinct from its enforcement jurisdiction. And a Plaintiff invoking the original jurisdiction of the Court may invite the Court to interpret a provision of the Constitution, or enforce a constitutional provision, or interpret and enforce a constitutional provision. See **Emmanuel Noble Kor v The Attorney-General J1/14/2016 Dated 5th May 2016 (Unreported).**

An examination of the entirety of the Plaintiff's Amended Statement of Case puts in no doubt that the Plaintiff's principal qualm lies in her allegation that the 1st Defendant violated the procedures enshrined under Article 108 of the 1992 Constitution. Truly, I do not find any aspect of the case of the Plaintiff which necessarily warrants an interpretation of the Constitution. I therefore, resolve the jurisdictional issue to be, that the Plaintiff has invoked our jurisdiction to enforce provisions of the 1992 Constitution, especially the provision under Article 108 thereof.

WHETHER THE DETERMINATION BY THE SPEAKER OF PARLIAMENT (OR THE SPEAKER'S FAILURE TO DETERMINE) THAT THE HUMAN RIGHTS AND FAMILY VALUES BILL 2024 COMPLIED WITH ARTICLE 108 OF THE CONSTITUTION WAS CONTRARY TO THE LETTER AND SPIRIT OF ARTICLE 108 OF THE CONSTITUTION AND TO THAT EXTENT, RENDERED THE PASSAGE OF THE BILL NULL, VOID AND OF NO EFFECT.

As was held in the suit filed by Richard Sky, the legislative province is sacred to the Legislature, and the Judiciary and indeed the Executive, should not be seen to be overly trespassing that arena. This Court has pronounced quite clearly, that by the constitutional supremacy, established under Article 1(2) of the 1992 Constitution, and with the

empowerment under Article 2(1) of the Constitution, the Supreme Court is empowered to, at all times, question the constitutionality of actions which are not compliant with the dictates of the 1992 Constitution. Whiles the Court is vested with the power of constitutional review as well as judicial review of legislative actions and inactions, the Court is careful not to overly side-step this power by usurping the authority of the Legislature in very obvious and glaring situations. See **Tuffour v Attorney-General [1980] GLR 637; J. H. Mensah v Attorney-General [1997-98] 1GLR 227.**

Article 108 of the 1992 Constitution provides as follows;

> *Parliament shall not, unless the bill is introduced or the motion is introduced by, or on behalf of, the President-*
>
> *(a) proceed upon a bill including an amendment to a bill, that, in the opinion of the person presiding, makes provision for any of the following-*
>
> *(i) the imposition of taxation or the alteration of taxation otherwise than by reduction; or*
>
> *(ii) the imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction; or*
>
> *(iii) the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal; or*
>
> *(iv) the composition or remission of any debt due to the Government of Ghana; or*

(b) proceed upon a motion, including an amendment to a motion, the effect of which, in the opinion of the person presiding, would be to make provision for any of the purpose specified in paragraph (a) of this article.

The above provision presents no issue of constitutional interpretation. What it simply means is that, as a general rule, Bills should be introduced by or on behalf of the President. However, other persons, and as has now received parliamentary practice "private members", can also introduce Bills. The Bills introduced by a private member, such as the Bill under consideration, should not be one which will impose a financial burden on the Consolidated Fund or public funds of the State. That is, in a situation where there will be a burden on the funds of the State, then such a Bill can be introduced only by the President. The determination of whether or not such a burden will arise, has been vested in the person presiding at the time. That person, from the language of the Article should have, in his opinion, thought that the Bill, albeit being introduced by a private member, is not of a nature as contemplated under Article 108 of the 1992 Constitution.

The entire case of the Plaintiff is to the effect that the Speaker of Parliament ought to have expressed an opinion before the Bill was advanced to the next stage. Further, that his opinion ought to be measured within the constitutional yardstick. This is where the Plaintiff struggles! It is not the duty of the Court to dictate and mandate the Legislature how the opinion ought to be expressed. This point is pivotal, as the Plaintiff is urging the Court to read into the Article that it was obligatory for a financial impact analysis to have been made before the passage of the Bill. There is nothing in Article 108 which requires this.

Having traveled through the legislative processes, and the Plaintiff's only concern being the manner in which the opinion of the person was expressed or not, the action fails. I

find that our holding and reasoning in **Richard Sky v The Parliament of Ghana & The Attorney-General, Suit No. J1/9/2024** to be equally applicable to the instant facts. I do not have any reason to decide otherwise.

Accordingly, the Plaintiff's action fails, and all her reliefs are refused.

(SGD.) B. F. ACKAH – YENSU (MS.)
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

ASIEDU, JSC.

I have had the privilege of reading the opinion expressed by my Lord Adjei-Frimpong, JSC and I agree with his conclusion that the instant suit be dismissed. I however wish to add the following in concurrence; in relation to the provisions of article 108(a) of the 1992 Constitution on which the Plaintiff's claims are anchored.

Article 108(a) of the Constitution, 1992 provides as follows:

> 108. Settlement of financial matters
>
> Parliament shall not, unless the Bill is introduced or the motion is introduced by, or on behalf of, the President
>
> (a) proceed upon a Bill including an amendment to a Bill, that, in the opinion of the person presiding, makes provision for any of the following:

(i) the imposition of taxation or the alteration of taxation otherwise than by reduction;

(ii) the imposition of a charge on the Consolidated Fund or other public funds of Ghana or the alteration of any such charge otherwise than by reduction;

(iii) the payment, issue or withdrawal from the Consolidated Fund or other public funds of Ghana of any monies not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal;

(iv) the composition or remission of any debt due to the Government of Ghana

It must be pointed out that, article 108(a) of the Constitution, 1992, does not prohibit the passage of a private members Bill into law if the implementation of the law would involve the making of some expenditure from State funds.

What article 108(a) prohibits is the passage or the consideration of a private members' Bill that makes provision for the imposition of taxation or the increment of an existing tax otherwise than by reduction and also, the imposition of a charge or other expenditure or withdrawals from the Consolidated Fund or other Public Funds.

It is difficult to conceive of a law whose implementation by the State does not involve the use of Public Funds. If any exist at all, they are bound to be very few indeed.

If the effect of the implementation of the law and its possible associated financial implications were to be the focal point of consideration, no bill can ever be introduced by Ghanaians in their capacity as private persons. It means, therefore, that in order for article 108 (a) to be workable, this Court must not add to the words used in that article.

Hence, the Court must confine or limit itself to investigate whether any Bill introduced by private persons makes specific and direct provisions for the items of prohibition provided in sub-clause (i) to (iv) of article 108(a). The Court must thus, ask itself whether a bill introduced by a private person makes direct provision for the imposition of a tax or makes provision for the increment of an existing tax. The Court must ask itself whether a bill introduced by a private person imposes a charge on the Consolidated Fund or other public funds of Ghana. The Court must question whether the bill, introduced by a private person, calls for the payment or issue or withdrawal of funds from the Consolidated Fund or other public funds of Ghana. The Court, further, needs to consider whether the Bill, introduced by a private person, seeks to forgive a debt obligation which is owed to the Government of Ghana.

These questions which the Court ought to consider whenever a bill is challenged under article 108(a) of the Constitution are the very questions which the person presiding, at the time of the introduction of the Bill, is required to express his opinion upon. If any of the questions above is answered in the positive, the person presiding is enjoined to direct Parliament not to proceed upon the said Bill. However, the Bill shall be allowed to proceed to the next stage of the legislative process if all the questions raised above are answered in the negative.

The effect of the implementation of the law after it has progressed from a Bill, is not the point of focus under article 108(a). The article does not want private persons or Ghanaians for that matter to usurp the functions given to the Executive under the Constitution to manage the economy by directly attempting to legislate on tax matters and on matters bordering on expenditure of State Funds generally, including the Consolidated Fund.

In the instant matter, once the person presiding allowed the Bill to progress to the next stage of the law-making process as prescribed under article 106 of the Constitution, the operative presumption is that he has duly performed all acts and duties that the Constitution imposes on him, including his duty to consider the Bill and come to an opinion that the Bill in question makes no provision against any of the prohibited matters mentioned in article 108(a) (i) to (iv).

Article 108(a) does not prescribe the mode or the manner in which the person presiding shall express his opinion. It is purely a matter for the discretion of the person presiding. It would have been more desirable that the expression of the opinion as to the conformity of the Bill with article 108(a) is made in writing so as to afford members of the public to verify, at least, the fact that an opinion has been expressed. Nonetheless, the non-existence of a written and a verifiable opinion by the person presiding cannot be taken to mean that he did not discharge his constitutional obligation under article 108(a). Again, the non-existence of a written and a verifiable opinion by the person presiding does also not mean that the provisions in article 296 of the Constitution have in any way been breached. The fact that the Bill was allowed by the 1st Defendant to proceed to the other stages of the legislative process, by itself, is indicative of compliance with article 108(a) of the Constitution. Evidence to the contrary is required from the Plaintiff to rebut the presumption of the regular performance of official duties and functions embedded in the actions of the 1st Defendant by virtue of the provisions in article 108(a). The Plaintiff has not produced any such evidence.

That said, I do not find merit in the plaintiffs' actions and neither do I find that the jurisdiction of this Court has been properly and not prematurely invoked in relation to the other reliefs. I will vote to dismiss the action in toto.

(SGD.) S. K. A ASIEDU
(JUSTICE OF THE SUPREME COURT)

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