IN THE SUPERIOR COURT OF JUDICATURE

THE SUPREME COURT

ACCRA - AD 2024

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

PROF. MENSA-BONSU (MRS) JSC

ACKAH YENSU, (MS) JSC

ASIEDU, JSC

GAEWU JSC

DARKO ASARE JSC

ADJEI-FRIMPONG JSC

WRIT No:

J1/09/2024

18TH DECEMBER, 2024.

RICHARD SKY .... PLAINTIFF

VRS.

1. **PARLIAMENT OF GHANA .... 1ST DEFENDANT**
2. **ATTORNEY GENERAL .... 2ND DEFENDANT**

JUDGMENT

PROF. MENSA-BONSU (JSC)

… "Then lest he may, Prevent.

And since the quarrel

Will bear no colour for the thing he is,

Fashion it thus: that what he is, augmented

Would run to these and these extremities

And therefore think him as a serpent's egg

Which, hatched, would as his kind grow mischievous –

And kill him in the shell"

William Shakespeare '*Julius Caesar*' Act 2 Scene 1

INTRODUCTION:

The plaintiff, a citizen of Ghana who, in a pre-emptive strike, has invoked the original jurisdiction of the Supreme Court under Article 2(1) and Article 130 of the Constitution of Ghana,1992, to challenge the constitutionality of the 'Human Sexual Rights and Ghanaian Family Values Bill, 2021' ("the Bill") as passed by Parliament in 2024. The plaintiff says he is seeking to uphold the fundamental human rights and freedoms guaranteed under the Constitution of the Republic of Ghana,1992, and contends that the Bill, as passed by Parliament violates certain provisions in the Constitution of

Ghana,1992. In ringing tones, the plaintiff declares his purpose in paragraph 3 of his amended Statement of Case filed on 21st November, 2024 thus:

> *" My Lords, this case comes before the Supreme court not as an inquiry into the moral judgments surrounding sexual relationships within our society, nor does it seek to traverse the deeply personal and varied landscape of human sexuality through the lens of judicial scrutiny. Rather, at its core, this action embodies a profound constitutional inquiry, inviting the honourable Court to properly delineate the boundaries of legislative power as enshrined in our nations supreme legal document. It is a call to action for the judiciary to affirm its indispensable role in our democracy by making a definitive determination on the precise scope and limits of the Parliaments authority to legislate on matters that touch upon the fundamental human rights and freedoms of the individual*."

Fine words of purpose! However, putting it thus simply obscures the real significance of this suit which has at its core, the concept of separation of powers; and the scope of the powers of each arm of government in the legislative process.

FACTS AND BACKGROUND

On 28th February, 2024 the Parliament of Ghana passed a bill known as the 'Human Sexual Rights and Family Values Bill 2021.' The Bill began its life as a Private Members Bill. It was therefore subject to provisions in article 106 of the Constitution, 1992, regarding the legislative processes, but also the specific constitutional provisions under article 108 of the Constitution, 1992. The plaintiff contends in paragraph 6 of his Statement of Case that the substance of the Bill "*proposes to criminalize same-sex sexual relationships, expanding the scope of criminalization to include not only those who identify as lesbian, gay,*

bisexual, transgender, queer, or pansexual, but also allies and advocates for sexual and gender minorities' rights." Consequently, he concludes that the Bill violates the fundamental human rights and freedoms guaranteed under the Constitution of the Republic of Ghana. The Bill, as required under article 106 (1), has not yet been assented to by the President, nor have the law-making processes set down under article 106(7) (8) (9) and (10) under the Constitution, been fully exhausted.

The plaintiff has, nevertheless, initiated this legal action in the Supreme Court to challenge the constitutionality of the Bill and truncate the legislative process because "***allowing potential constitutional violations by Parliament to go unchallenged would contravene the foundational tenets of the Constitution***" (emphasis supplied).

THE WRIT

The plaintiff is before this Honourable Court to invoke the interpretative and enforcement jurisdiction of the Supreme Court in a pre-emptive move to challenge the power of Parliament to make certain types of law. Specifically, the plaintiff seeks the interpretation of articles 12, 15, 17, 18, 21, 106, 33(5) and 108 of the Constitution of Ghana,1992, and his prayer is that the entire Bill be struck down as unconstitutional, null and void. He seeks the following reliefs:

> *"a. A declaration that upon a true and proper interpretation of Article 33(5) of the Constitution of 1992, in the light of Articles 12(1) and (2), 15(1). 17(1) and (2), 18(2) and 21(1)(a)(b)(d) and (e) of the Constitution, the passage of the "The Human Sexual Rights and Family Values Bill, 2024" by Parliament on 28th February 2024 contravened the Constitution and is to that extent null, void and of no effect.*

b. *A declaration that Parliament exceeded its authority under Article 106(2) and 108(a)(ii) of the Constitution, in passing "The Human Sexual Rights and Family Values Bill,2024" as same imposes a charge upon the Consolidated Fund or other public funds of Ghana.*

c. *A declaration that the Speaker of Parliament contravened Article 108(a)(ii) of the Constitution, in light of Article 296(a)(b) and (c), by admitting and allowing Parliament to proceed upon and pass "The Human Sexual Rights and Family Values Bill,2024" into law as the same imposes a charge upon the Consolidated Fund or other public funds of Ghana.*

d. *A declaration that upon a true and proper interpretation of Article 102 and 104(1) of the Constitution, Parliament lacked the requisite quorum to pass "The Human Sexual Rights and Family Values Bill,2024".*

e. *An order restraining the Speaker of Parliament and the Clerk of Parliament from presenting "The Human Sexual Rights and Family Values Bill,2024" to the President for his assent.*

f. *An order restraining the President of the Republic from assenting to "The Human and Sexual Values Bill ,2024" as such action will directly contravene the Constitutional safeguards of liberties and rights of Ghanaians.*

g. *An injunction barring any attempts to enforce the provisions of "The Human Sexual Rights and Family Values Bill,2024" particularly those criminalizing same-sex relationships and related advocacy efforts.*

h. *Such further orders or directions as to this Honourable Court may seem meet.*

CAPACITY OF PLAINTIFF

As is required of constitutional litigation under the Constitution of Ghana, 1992, the plaintiff must establish his or her capacity to bring the suit and to invoke the original jurisdiction of the Supreme Court, as established under article 2(1) of the Constitution 1992. In his amended Statement of Case filed on 21st November, 2024, the plaintiff submitted in paragraph 10 of his statement of case that "*he is a citizen of the Republic of Ghana, maintaining a residence in Ghana, and is a lawfully registered voter*", thus entitled to invoke the original jurisdiction of the Court pursuant to articles 2(1) (b) and 130(1) (a) of the Constitution of Ghana, 1992.", The plaintiff cites ***David Kwadzo Ametefe*** v ***The Attorney-General and Martin Alamisi Amidu*** Writ No J1/3/2017; Unreported. It is also true, as the plaintiff points out, relying on ***Tuffour*** v ***Attorney General*** [1980] GLR 637 at 667, that a plaintiff need not have a personal interest beyond the commitment to the Constitution itself. All of these issues are well established and in a long line of authorities.

The point is made quite eloquently in ***Sam (No.2)*** v ***Attorney General*** [2000] SCGLR 305 [1999-2000] 2 GLR 336 by Ms Akuffo JSC (as she then was) when she restated the legal position at pp. 371-372 thus: -

> *"Every citizen of Ghana, by virtue of such citizenship, has an innate interest in the integrity of the supreme law of the land, the national constitution. As such, therefore any perceptible insistency or contravention in any enactment or act or omission of any person with the constitution constitutes a sufficient occasion for the invocation of article 2…. In the context of article 2(1) therefore there can never be an officious bystander or nosy busybody. Every Ghanaian is and must be an interested party."*

See also: ***Amidu (No. 2)*** v ***Attorney-General, Isofoton S.A. and Forson (No 1)*** [2013-2014] 1 SCGLR 167 at 180 per Date-Bah JSC.

CAPACITY OF THE DEFENDANTS

The plaintiff has initiated this action against the institution of Parliament as 1st defendant. Anticipating a challenge of sorts to this manner of proceeding, he justifies the selection of the entire Parliament as 1st defendant in his statement of case thus:

> *"it is imperative, therefore, to address the jurisdictional and procedural propriety of citing Parliament, an independent constitutional body established under article 93(2) as 1st defendant in adherence to principles of judicial efficiency and constitutional fidelity"* (paragraph 12)

He concludes in para 16 of his amended Statement of Case that

> *"the involvement of Parliament as a defendant is indispensable for the just, full and final resolution of this case. This approach ensures the principles of accountability, transparency and justice are upheld, in accordance with the Constitution. It is therefore respectfully posited that this Honourable Court admits the necessity of Parliament's inclusion as a party to this action, enabling a thorough examination and adjudication of the constitutional matters at hand, in service of the lofty ideals of our constitutional democracy."*

No doubt, these are fine words, but do they suffice to show that the institution of Parliament is the proper defendant in a suit which claims, among other things, to be challenging the manner of exercise of the Speaker's constitutionally mandated duty? It is unclear that a sufficient case has been made to include the entire institution of Parliament as 1st defendant.

With respect to the 2nd defendant, there certainly is no doubt about the competency of the 2nd defendant to be so cited, relying on article 88 of the Constitution, 1992.

SUMMARY OF PLANTIFF'S CASE AND LEGAL ARGUMENTS:

Plaintiff has presented his case under three main themes or "planks": Violation of Human Rights; Unauthorized Imposition of a Financial Burden Through a Private Member's Bill and the Non-Compliance with Quorum Requirements.

Violation of Human Rights

The plaintiff discusses the bundle of rights under chapter 5 of the Constitution of Ghana,1992. Specifically, Article 12(protection of fundamental human rights); Article 15(the inviolability of personal dignity); Article 17(prohibition against discrimination); Article 18(privacy safeguard); Article 21(freedom of expression, association and speech) and Article 35(other universal rights not provided for in the Constitution,1992). The plaintiff further in his discussion suggests that the Bill in its current state violates all these rights protected by the Constitution, 1992.

The plaintiff indicated specific clauses in the Bill which violate the Constitutional rights stated supra and how Parliament passing the Bill under its legislative process under Article 106 of the Constitution 1992 violates these aforementioned rights.

Non-Compliance with Article 108

The Plaintiff contends that the Speaker of Parliament failed to exercise proper discretion under Article 296 of the Constitution,1992 when the Bill was going through the legislative

process, without due obedience to Article 108 of the Constitution 1992. It is the Plaintiff's contention that being a Private Member's Bill, same has financial implications in its implementation, and therefore imposes a charge on the consolidated fund or public purse. This, the plaintiff views as constitutionally untenable, and a wrongful exercise of discretion by the Speaker of Parliament, by not giving an opinion to that effect as provided under article 108 of the Constitution, 1992.

Non-Compliance with Quorum Requirements

Plaintiff says here that Parliament violated the Constitution by not satisfying the prescribed quorum as provided for in Article 104(1) of the Constitution of Ghana,1992. This breach in the view of the Plaintiff is a deviation from the principles of legislative function. The plaintiff's evidence of lack of quorum is a video broadcast purported to have been taken during the voting process to pass the Bill. This the plaintiff contends is a constitutional violation for this Honourable Court to resolve.

SUMMARY OF 1ST DEFENDANT'S CASE AND LEGAL ARGUMENTS

The 1st defendant contends that the plaintiff's prayer for a declaration that upon a true and proper interpretation of Article 33(5) of the Constitution 1992, in the light of Articles 12(1) and (2), 15(1). 17(1) and (2), 18(2) and 21(1)(a)(b)(d) and (e) of the Constitution,1992, the passage of the "The Human Sexual Rights and Family Values Bill,2024" by Parliament does not properly invoke the jurisdiction of the Court.

The 1st defendant contends that the plaintiff does not demonstrate in his Statement of Case how the Bill contravenes the said provisions of the Constitution in Articles 12(1) and (2), 15(1). 17(1) and (2), 18(2) and 21(1)(a)(b)(d) and (e) of the Constitution. Further, that

the plaintiff's claim that the Speaker of Parliament contravened Article 108(a)(ii) of the Constitution by not exercising the discretionary powers as provided in Article 296(a) (b) and (c), is unfounded. He adds that the plaintiff's contention that the 1st defendant by admitting and allowing Parliament to proceed upon and pass "The Human Sexual Rights and Family Values Bill, 2024" into law is improper, as the Bill constitutes a charge upon the Consolidated Fund or other public funds of Ghana. This, the 1st defendant also submits, has no foundation in any of the constitutional provisions on which the plaintiff seeks reliefs. This is on account of the fact that he fails to point at any part of the Bill which makes provision for the matters set out in article 108, such as that the Bill may be said to be one that "*imposes a charge upon the Consolidated Fund or other public funds of Ghana*".

Essentially, the 1st defendant contends that the plaintiff's discussions under the three headings in his Statement of Case, are silent on his legal argument as to the meaning he puts to these provisions in contention, in order to establish that there is, indeed, an issue of rival meanings put on the same provision. Therefore, they do not pass the test set out on constitutional interpretation and enforcement in *Ex parte Akosah* supra. The plaintiff, according to the 1st defendant, did not show where the words of article 108 of the Constitution 1992 are either imprecise or unclear or unambiguous; neither does the plaintiff's case raise any question relating to any conflict between Parliament or any other institution. Further, the 1st Defendant says that the plaintiff has not fulfilled that duty imposed on every plaintiff in such a suit as this to demonstrate to the Court that its jurisdiction has been properly invoked.

Finally, the 1st defendant says that the plaintiff failed to exhibit any evidence to support his claim that there was no quorum during the passage of the Bill by Members of Parliament under articles 102 and 104(2) of the Constitution of Ghana,1992. In the view

of the 1st defendant, it was not sufficient for the plaintiff to allege that he saw low numbers in a video. It is therefore the 1st defendant's prayer that the declaratory reliefs being sought by the plaintiff must fail since they do not invoke the Honourable Court's exclusive original jurisdiction.

SUMMARY OF 2ND DEFENDANT'S CASE AND LEGAL ARGUMENTS

The 2nd defendant submitted that the plaintiff has invoked the Supreme Court's jurisdiction to determine whether or not the 1st defendant complied with the provisions of Article 108 of the Constitution 1992 and to that extent, rendered the passage of the Bill null, void and of no effect. The response of the 2nd defendant was canvassed along the lines of the three themes under which the plaintiff organized his argument.

The 2nd defendant contends that the plaintiff's claim that the Bill violates some human rights provision of the Constitution 1992 invokes the enforcement jurisdiction rather than the interpretation jurisdiction. The 2nd defendant holds the view that the reliefs being sought by the plaintiff are at variance with his legal arguments. Otherwise put, the plaintiff's reliefs do not advance any argument on the true and proper interpretation of Article 33(5) of the Constitution,1992. The 2nd defendant remains of the view that since the plaintiff's reliefs amount to the enforcement of human rights, the High Court is the proper forum to resort to, as provided by Article 33(3) of the Constitution of Ghana,1992 and same must be dismissed citing the decision in *Bimpong-Buta* vs *General Legal Council and Others* [2003-2004] 2 SCGLR 1200 to buttress his argument.

In respect of the plaintiff's reliance on article 108, the 2nd defendant contends that there is no evidence showing that the 1st defendant has rendered an opinion as required by

Article 108 of the Constitution,1992 on the Bill in contention. The 2nd defendant submits that the provisions of Article 108(a)of the Constitution 1992, impose both a duty and discretion by the use of the words "shall not" and unless the Bill is introduced or the motion is introduced by, or on behalf of the President the requirement of a financial implication assessment must accompany it. Such discretionary power imposed on the Speaker who is the person presiding must be exercised fairly and candidly in accordance with Article 23 and 296 of the Constitution 1992 citing ***Marian Awuni*** v. ***WAEC*** **[**2003-2004] 1 SCGLR 471; ***Gregory Afoko*** v. ***Attorney-General*** (Writ No. J1/8/2019); Unreported.

The 2nd defendant again contends that the exercise of the Speaker's discretion must be verifiable and same must not be left to speculation, inference or deduction by anybody. It is a case of whether the 1st defendant has done it or not, without leaving room for inference or supposition.

The relevance of the discretion being verifiable in the view of the 1st defendant, is that any citizen could on the basis of that discretionary power as exercised, determine whether it was done within the confines of Articles 23 and 296 of the Constitution 1992 and when any one is aggrieved they would have the right to challenge same. The 2nd defendant, thus, regards the failure of the Speaker to comply with the provision of Article 108 of the Constitution,1992 as a violation of the Constitution, to which every citizen of Ghana is subject.

In any case, the 2nd defendant submits forcefully that should the 1st defendant have expressed the opinion that the Bill was not subject to Article 108 of the Constitution, that opinion would have been erroneous and unconstitutional. This is because in the view of the 2nd defendant the Bill in contention clearly makes provision for some of the matters stated under Article 108(a) of the Constitution,1992.

Following these submissions, the 2nd defendant launches into the legislative history of article 108 of the Constitution,1992 from the Independence Constitution of 1957 until the instant one of the Fourth Republic which make provision for the same matters and in like language as the provisions in Article 108 of the Constitution 1992. Further, that a careful and objective scrutiny of the clauses of the Bill would show that the Bill fits well into the scope of the remit of article 108 of the Constitution, 1992, as there is the likelihood that the implementation would constitute a charge on the Consolidated fund. For the 2nd defendant, it would be disingenuous for anyone to suggest that Article 108 of the Constituton,1992 does not apply simply because the provisions in a Bill do not directly impose a charge on the Consolidated fund. Therefore, once the Bill does not emanate from the President, Article 108 of the Constitution kicks in. In sum, the 2nd defendant submits that article 108 of the Constitution should be construed objectively and purposively to mean a limit on Parliament's powers to pass a Bill which has financial implications for the state, without the Speaker's prior determination.

Concluding, the 2nd defendant's answer to the plaintiff's claim of lack of quorum to pass the Bill under Article 106 of the Constitution 1992 would largely be dependent on the plaintiff's evidence to support that claim.

ISSUES FOR DETERMINATION

The parties appeared unable to harmonise these issues into a joint Memorandum of Issues, and so did not file one. Instead, each party filed a separate one, as they are

permitted to do by Rule 50(30 of Supreme Court Rules 1996, as amended (C.I .16). The Court is thus left with the duty to determine the relevance of the issues so filed.

PARTIES' MEMORANDUM OF ISSUES

The plaintiff's issues were:

"1. Whether or not upon a true interpretation of article 33(5) of the 1992 Constitution in the light of Articles 12(1) (2), 15(1), 17(1) (2) 18(2) and 21(1) (a)(b) and (e), the passage of the "The Human Sexual Rights and Family Values Bill, 2024" is inconsistent with the 1992 Constitution.

2. Whether or not the "The Human Sexual Rights and Family Values Bill ,2024" should have been validly admitted by the Speaker of Parliament without an attachment of Financial Impact Analysis Report as required by Article 108(a) (ii) of the 1992 Constitution and Section 100(1) of the Public Financial management Act, 2016, Act 921.

3. Whether or not the "The Human Sexual Rights and Family Values Bill is not discriminatory, an invasion of the citizenry's privacy of home and a violation of the fundamental rights of the citizen as enshrined in the 1992 Constitution.

4. Whether or not upon a true and proper construction and interpretation of clauses 3,4,5,6,7,8,9,10,11,12,14 and 17 of "The Human Sexual Rights and Family Values Bill, same are compatible or consistent with the rights of Ghanaians as enshrined in the 1992 Constitution.

5. Whether or not Parliament was quorate at the time of passage of the Bill.

6. *And any other issue(s) arising from pleadings in this matter as the Honourable Court may seem meet?"*

On the part of the defendants, the 1st defendant filed the following issues:

"1. Whether or not the Supreme Court's jurisdiction has been properly invoked under Articles 2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of Articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), 21(1) (a), (b), (d) and (e), in terms of article 33(5)?

2. Whether or not the Supreme Court's jurisdiction has been properly invoked under Articles 2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of articles 106(2) and 108(a)(ii) of the 1992 Constitution of the Republic of Ghana?

3. Whether or not the voting requirements constitutionally provided for in article 104 of the 1992 Constitution of the Republic of Ghana is subject to the quorate requirements in Article 102 of the 1992 Constitution of the Republic of Ghana?"

The 2nd defendant's Memorandum of Issues was as follows:

1. Whether the determination by the Speaker of Parliament (or the Speaker's failure to determine that the "The Human Sexual 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.*

JURISDICTION

It is trite law that jurisdiction (or the lack thereof) is cardinal to any court's ability to assume power over any matter placed before it in any action. In ***Ghana Bar Association*** v ***Attorney-General and Another*** (Abban case) [2003-2004] SCGLR 250, the concept was explained by Edward Wiredu JSC at p. 266 thus:

> *'Jurisdiction is simply the power of a court to hear and determine a cause or matter brought before it, lack of which would render any decision taken or order made null and void and of no effect. If jurisdiction is granted a court by a statute, then what is already specified therein determines the nature and extent of that jurisdiction so granted to that court which cannot be extended or modified. Where jurisdiction is wrongly assumed, however, all proceedings taken would be a nullity'*

Therefore, whether articulated or not, every court begins from the standpoint of an enquiry into whether or not it has jurisdiction in the matter placed before it.

It is equally trite that the jurisdiction of the Supreme Court is circumscribed by the Constitution. In ***National Media Commission*** v ***Attorney-General*** [2000] SCGLR 1 at p.11, Acquah JSC (as he then was) stated thus;

> *"But to begin with, it is important to remind ourselves that we are dealing with our national constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers*

in them. It gives certain rights to persons as well as to bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers and privileges and rights must be exercised and enforced not only in accordance with the letter".

Thus, no institution under the Constitution can assume any power or act in any manner unless permitted to do so by the Constitution. Acquah CJ in ***Luke Mensah*** v ***Attorney-General*** J1/1/2004; judgment delivered on 5th March 2004; Unreported expressed the necessity for the Supreme Court to intervene in situations when it is imperative to do so. However, the matter in question must fall within the jurisdiction of the court. He intones the principle thus:

"We are convinced that as the highest court of the land, charged with the constitutional authority to interpret and enforce the Constitution, and thereby promote rule of law in our society, we should, in fitting situations, rise up to the occasion and determine disputes likely to endanger our infant democracy. And we would do this, if the subject matter falls within our jurisdiction."

Consequently, the issue of jurisdiction is not to be treated lightly. Therefore, a plaintiff who seeks to invoke the original jurisdiction of the Supreme Court to interpret and enforce the Constitution, must demonstrate that the matter falls within the ambit of the original jurisdiction conferred on the Supreme Court by the Constitution, 1992, the issue of jurisdiction being an unassailable pre-condition to the exercise of any judicial power.

Original Jurisdiction

In ***Adumoah Twum II*** vs. ***Adu Twum II*** [2000] SCGLR 165 Acquah CJ stated 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".*

Therefore, the issue set down by the 1st defendant in the Memorandum of Issues is the first barrier that every plaintiff must scale, if the action is to be grounded within the ambit of the powers of the Supreme court. Every plaintiff must first ask himself or herself, "Is this a proper case for the invocation of the original jurisdiction of the Supreme Court?"

Article 2 of the Constitution, 1992, sets down the scope of a plaintiff's duty follows:

> *"(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.*
>
> *(2) The Supreme Court shall, for the purposes of a declaration under clause (1) of this article, make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made."*

The scope of the original jurisdiction of the Supreme Court is set down under article 130 (1) as follows:

> *"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 under this Constitution."*

The duty of the plaintiff to deal with this constitutional requirement is not to be taken lightly. On its part, the Supreme Court is under obligation to ensure that it operates within the confines of its constitutional mandate and does not, like an octopus, spread its tentacles all around, vainly searching for prey. In ***Danso*** v. ***Daaduam II & Anor***. [2013-2014] SCGLR 1570, the Supreme Court, per Anin Yeboah JSC (as he then was) upheld a preliminary objection challenging the jurisdiction of the Court to determine the suit initiated by the plaintiff. He stated at p. 1575 as follows: -

> *"The Plaintiff has invoked our original jurisdiction for the reliefs stated above. It is therefore the duty of the Plaintiff to demonstrate to this court that our jurisdiction has been properly invoked. This he can do by showing as per his writ and reliefs sought that his case presented to this court raises a real or genuine issue for interpretation or enforcement."*

In ***Benjamin Komla Kpodo & Another*** v. ***Attorney-General*** Writ No. J1/03/2018; judgment dated 12th June, 2019 (Unreported) Sophia Akuffo C.J. restated the principle thus: -

> *"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 even 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"*. (emphasis supplied.)

In taking "*a pause to determine the question of the competence of the invocation of our jurisdiction*", one must resort to the text of article 2 of the Constitution, 1992, since it provides the basis for the exercise of that power.

The plaintiff has come to this court to seek the interpretative and enforcement jurisdiction under the rubric of article 2 (1) against the body of Parliament for performing a legislative function in a manner of which the plaintiff disapproves, and believes to contravene the Constitution. Is Parliament amenable to the jurisdiction of the Supreme Court? Indeed it is.

Who is amenable to the jurisdiction of the Supreme Court?

It is clear from provisions of the Constitution that the other branches of Government, as well the Judicial branch itself, are amenable to the jurisdiction of the Supreme Court. This was forcefully restated by the Court in respect of the Executive branch in ***Martin Alamisi Amidu*** v. ***President Kuffour and The Attorney-General*** [2001-2002] SCGLR 86 at p.100. per Acquah JSC as follows:

"There is no doubt that the 1992 Constitution prescribes a government consisting of three branches: 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. And in order to maintain the supremacy of the constitution and to ensure that every individual organ, body or institution of state operates within the provisions of the Constitution, authority is given in article 2 thereof to any person who alleges that a conduct or omission of anybody or institution is in violation of a provision of the Constitution to seek a declaration to that effect in the Supreme Court. Thus so long as an individual, body or institution or organ of government performs its functions in accordance with the relevant constitutional provisions and the law, the Supreme Court has no business or jurisdiction to interfere in the performance of its functions. ***But where it is alleged before the Supreme Court that any organ of Government or an institution is acting in violation of a provision of the Constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy... no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged***."(emphasis supplied)

In ***Ezuame Mannan*** v. ***The Attorney General*** Suit No: J1/11/2021Unreported; The plaint of the plaintiff was that Parliament had not complied with the constitutional processes in article 106 in enacting Section 43 of Act 1019. The plaintiff successfully proved that the provision in question was belatedly inserted in the Bill that was laid before Parliament; and that consequently, the Memorandum that accompanied the Bill as required by Article

106(4),(5) and (6) of the Constitution, 1992, did not sufficiently lay out the policy change that was being brought by the tenor of the new law, and therefore the provision did not comply with the constitutional requirement. The offending section 43 was duly struck down by the Supreme Court.

The point is reiterated in a number of cases such as ***Okudzeto Ablakwa & Another*** v ***Attorney-General & Obetsebi Lamptey*** [2011] 2 SCGLR 986; and ***Justice Abdulai*** v. ***The Attorney General*** J1/07/2022 (9th March, 2022); Unreported. In ***Okudzeto Ablakwa & Anothe***r v ***Attorney-General & Obetsebi Lamptey*** (supra), the Supreme Court, speaking through Sophia Adinyira JSC stated as follows:

> *"Article 2 (1) of the 1992 Constitution imposes on the Supreme Court the duty to measure the actions of both the legislature and the executive against the provision of the Constitution. This includes the duty to ensure that no public officer conduct himself in such a manner as to be in clear breach of the provisions of the Constitution. It is by actions of this nature that gives reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance*."

The same point is taken at p.16 of ***Justice Abdulai*** v ***Attorney-General*** (supra), when Kulendi JSC reiterated the point and stated thus:

> *"...no arm of Government or agency of the State, including Parliament, is a law unto itself because, without exception, everyone and everything in Ghana is subject to the Constitution. As a result, an allegation that Parliament has acted and/or is acting in a manner that is inconsistent with, in contravention of and/or ultra vires to the Constitution, will render Parliament, the actions, orders, rules or procedures in issue, amenable to the jurisdiction of this Court."*

There is thus sufficient authority to state without any equivocation that the Supreme Court has jurisdiction over all the branches of government.

In the instant case, the plaintiff alleges that the provisions of an enactment, *The Human Sexual Rights and Family Values Bill, 2024*, constitute a breach of his constitutional rights. He relies on article 2(1) to invoke the jurisdiction of the Supreme Court, where it is provided that

> *"(1) A person who alleges that _*
>
> *(a) an* ***enactment or anything contained in or done under the authority of that or any other enactment****, m*ay seek redress in the Supreme Court." (emphasis supplied)

The question is what "enactment" is in issue in the suit by the plaintiff? The answer purports to be, "The Human Sexual Rights and Family Values Bill, 2024". The inevitable question is whether a Bill qualifies to be described as "an enactment" within the meaning of article 2 (1). Here, the dictum of Wiredu JSC (as he then was) in ***National Democratic Congress*** v ***Electoral Commission*** [2001-2002] SCGLR 954 at 958 is apposite when he states the law as follows: -

> *"Where an act or omission of any person is challenged under article 2 of the 1992 Constitution such an act or omission must be shown to have taken place, and it must be shown that such act or omission falls foul of a specific provision of the Constitution, or at the very least, the spirit of an actual provision."*

Is there an "enactment" in issue in the instant case? How does the Constitution define "enactment"? Article 295 defines "enactment" as

> *"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 is provided in section 1(1) of the Interpretation Act, 2009 (Act 792).

What then is an "Act of Parliament"?

As generally understood, it is obviously a law passed by Parliament by the exercise of its legislative power under the Constitution. *'Act of Parliament'* is itself defined in article 295(1) of the Constitution to mean "*an Act enacted by Parliament and includes an Ordinance."*

Article 106 of the Constitution of Ghana, 1992, provides the steps in the law-making process for an "Act of Parliament" to be born.
Article 106 of the 1992 Constitution provides as follows;

> *"Mode of exercising legislative power*
>
> *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 of 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 all 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 the Bill, unless the Bill has been referred by the President to the Council of State under 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 recommendations 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 a 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 the 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."* (emphasis supplied).

These provisions mean that the act of making law is based upon cooperation between the Executive and the Legislature. The Constitution has prescribed steps that are to be taken for any law-making activity of Parliament to mature into "an enactment" capable of coming within the ambit of the provision in article 2 (1). The Constitution contemplates that there might be disagreement between the President and Parliament and has prescribed a means by which the matters would be concluded. When these steps have not been exhausted, the judicial role does not arise. However, after the steps have been concluded, then the judiciary may be called upon to measure the provisions against constitutional provisions, which may lead to the legislation, or parts of it being struck

down, if found to be inconsistent with the Constitution by the Supreme Court. But not until then.

Thus, where the plaintiff in the instant case invites the Supreme Court to interpret a Bill which has not completed its life-cycle to mature into an Act, and to count as "an enactment", one is confronted with a novel situation. In paragraph 29 he submits as follows:

> *"Turning our attention to the specific issues at hand, we confront a legislative proposition that, if fully enacted, would not only infringe upon the constitutionally guaranteed rights of individuals, but also set a dangerous precedent for legislative overreach into the private lives and freedoms of citizens."*

It would seem that the plaintiff has short-circuited the process of legislation and not permitted the "enactment" to be born, before seeking to invoke the original jurisdiction of the Supreme Court to interpret the "as-yet-unformed enactment" and strike it down. The plaintiff sees danger if such Bills are allowed to be passed. What must be made clear here, is that whatever danger the plaintiff sees is all on the side of an insupportable interference in the legislative process, which is properly the domain of Parliament. A resort to the Supreme Court to prevent Parliament from passing law in exercise of its legislative powers would count as undue interference. How would the plaintiff have viewed a legislative act of which he approved, being interrupted by the Supreme Court on the ground that the proposed provisions had the potential to enhance privileges intended for the plaintiff and not for everyone similarly situated? It is certain the move by the Supreme Court would have elicited howls of protest from everyone, including those who stood to benefit, for the undue interference in the legislative process, which such an act by the Supreme Court would present. The framers of the Constitution being

conscious of the dangers of "mission creep" understood the need to define and delineate the bounds of any jurisdiction or powers conferred on any institution, and entrusted the Supreme Court with power to police same. It thus cannot be in anybody's interest for the Supreme Court to sully forth at will and stop Parliament or anyone else from thinking of, debating or taking a position on particular issues by prematurely making value judgments and blocking whatever proposition is under discussion because it is speculated that it does not measure up to any provision in the Constitution. The Supreme Court is not in the business of giving advisory opinions or anticipating and suppressing Parliament's law-making powers. It is for good reason that article 2(1) speaks of "enactment" so that there would be a definitive product of the legislative process to consider, and to measure against any constitutional provision. Everything has its appointed time and place, and much harm could be done to an otherwise good case by a hasty anticipation of its possible effects, which could prove to be largely speculative.

Beyond being required to be "an enactment" properly so-called, there are conditions that enable the Supreme Court to exercise its power of interpretation, which the plaintiff is anxious to invoke to his cause.

This position is also reiterated in *Kwabena Bomfeh* v *Attorney-General* [2019-2020] 1 SCLRG 137 per Sophia Adinyira JSC at pp151-152 as follows:

> *"The real test as to whether there is an issue of constitutional interpretation is whether the words in the constitutional provisions the court is invited to interpret are ambiguous, imprecise, and unclear and cannot be applied unless interpreted.* ***If it were otherwise, every conceivable case may originate in the Supreme Court by the stretch of human ingenuity and the manipulation of language to raise a tangible constitutional question. Practically, every justifiable issue can be spun in such a***

way as to embrace some tangible constitutional implication. *The Constitution may be the foundation of the right asserted by the plaintiff, but that does not necessarily provide the jurisdictional predicate for an action invoking the original jurisdiction of the Supreme Court."* (emphasis supplied).

This is a danger of which Sophia Akuffo JSC (as she then was) had already warned in ***Bimpong-Buta*** v ***Attorney-General***, supra.

Plaintiff's Reliefs

The reliefs the plaintiff seeks do not even arise. Even so, it is of moment to comment on three of them.

> *"e. An order restraining the Speaker of Parliament and the Clerk of Parliament from presenting "The Human Sexual Rights and Family Values Bill,2024" to the President for his assent.*
>
> *f. An order restraining the President of the Republic from assenting to "The Human and Sexual Values Bill ,2024" as such action will directly contravene the Constitutional safeguards of liberties and rights of Ghanaians.*
>
> *g. An injunction barring any attempts to enforce the provisions of "The Human Sexual Rights and Family Values Bill,2024" particularly those criminalizing same-sex relationships and related advocacy efforts."*

Relief (e) seeks an order to restrain the Speaker and Clerk of Parliament from presenting the Bill to Parliament. Since article 106 (7) prescribes that a bill passed by Parliament be presented to the President for assent, how could the Supreme Court validly make such

an order? The constitutional provision does not end there. It has, in anticipation of occasions when the President might disagree with Parliament on any bill, made provision as to procedures to follow should the President refuse to assent to a bill. With such clearly stated options for the President, how could the Supreme Court issue an order restraining him from assenting to the bill, without violating the Constitution? Therefore, plaintiff's relief (f) is also impracticable.

Relief (g) is superfluous as there is no legally-binding instrument yet, that anybody could seek to enforce. Article 106 (11) is clear as to when a bill shall become law, and when it shall come into force. Therefore, no one has legal authority to enforce a Bill when it is an "unborn enactment", with no legal force.

CONCLUSION

The plaintiff has been unable to satisfy the first requirement of any party seeking to invoke the original jurisdiction of the Supreme Court: jurisdiction under article 2 and article 130(1). The invocation of the interpretative jurisdiction is based upon an "enactment" or any act done under the authority of an enactment. In the instant case, there is not, as yet, an "enactment" properly so-called, since the legislative process which would transform a Bill into an Act with the force of law has not yet terminated. The action, if at all based on the supposed interpretative jurisdiction of the Supreme Court, is as yet premature as there is nothing on which to hang the exercise of the judicial review jurisdiction of the Supreme Court.

The Constitution itself has prescribed the mode by which an "enactment", properly so-called, can come into being after Parliament has exercised its powers to make legislation.

By the principle of Separation of Powers, those processes must be exhausted to produce a tangible product that can be assented to by the President, the head of the Executive, to give it legal effect, the judicial power cannot intrude at this time. Until there is presidential assent, there is no Act of Parliament over which the Supreme Court can exercise its original jurisdiction to strike down, if found to be inconsistent with the Constitution, 1992.

The plaintiff's action is dismissed.

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

(SGD.) **S. K. A. ASIEDU**
(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 sister Mensa-Bonsu 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

I have had the advantage of reading in draft the lead judgment of my worthy sister, Prof. Mensa-Bonsu, JSC and express my agreement with her on the conclusion reached in the matter herein. I do, however wish to write my concurring opinion in my own words.

INTRODUCTION

My Lords, in the recent case of **Mark Darlington Osae v. Food and Drugs Authority & Attorney General, Writ No. J1/05/2023 Dated 19th June 2024,** I observed the essence of constitutionalism as follows:

> *"[Constitutionalism is one of the principles and concepts upon which our legal system and nation is founded. This is a concept which advances against limitlessness in the exercise of governmental powers and functions. By its practice, the Government, and indeed its agencies including the 1st Defendant, are placed within constitutional constraints regarding how the powers vested in them by the people are exercised. Contextually, the*

facts that undergird the present suit call in question both the procedural and substantive limitations on the 1st Defendant in the exercise of its powers under its enabling legislation to make guidelines in furtherance of its objectives.

It cannot be overemphasized that any law, conduct, or activity which is pursued under the authority of a statute will only be valid if it passes the test of constitutionality. That is, to the extent that any such conduct, law, or activity operates inconsistently with the 1992 Constitution, then, same ceases to be valid as same is unconstitutional."

This present action seeks to test whether the concept, as applicable in our legal system, has been upheld by the law-making body, the Legislature. The present action invokes our interpretative and enforcement jurisdictions to consider a situation where a Bill (**The Human Sexual Rights and Family Values Bill, 2024**), yet to be crystalised into a statute, is being impeached for not being compliant with the provisions of the 1992 Constitution, especially Article 108 thereof.

In our Constitutional Law jurisprudence, our courts have been confronted with several situations where relief is sought to pronounce legislation as invalid for noncompliance with the constitutional processes. A typical instance occurred in the case of **Ware v. Ofori-Atta & Ors [1959] GLR 181** which is very familiar to every Constitutional Law student in the Republic. In that case, an Act affecting the institution of chieftaincy was pronounced to be invalid as its Bill was not first referred to the National House of Chiefs before it was passed into law. This invalidation was grounded on the fact that under section 35 of the hitherto The Ghana (Constitution) Order-in-Council, 1957, the Speaker was mandated to, upon the introduction of a Bill affecting the institution of chieftaincy, forthwith refer the same to the House of Chiefs of the Region in which the Chief concerned exercised his functions, and where the Bill affected all chiefs the requirement was that the same be

referred to all the Houses of Chiefs. A similar provision is contained in our present 1992 Constitution under Article 106(3). See also this Court's recent decision in **Ezuame Mannan v. Attorney-General & Speaker of Parliament, Writ No. J1/11/2021 Dated 27th July, 2022 (Unreported).**

What however distinguishes the peculiarity of this case from previous cases is that this Court has not been invited to examine a piece of legislation in the proper sense of it having been passed by Parliament and assented to by the President, and thus a fully-fledged statute. In the context of the instant case even before the Bill is assented to as law, this Court's jurisdiction has been invoked to pronounce the Bill as unconstitutional.

My Lords, in the making of laws the Legislature is constrained by constitutional procedures. The law-making power, albeit vested in the Legislature, does not imply that it can make any law it deems fit. More fundamentally and within the present peculiar facts, the legislative process cannot be side-stepped and must at all times be strictly adhered to lest the actions and inactions deviating from that process become susceptible to constitutional sanction. The resultant legislation also may be pronounced unconstitutional.

In admonishing against the supposition that the Legislature can make any law it likes, the Supreme Court held in the celebrated **New Patriotic Party v. Attorney-General [1993-94] 2 GLR 35 (The 31st December Case)** that:

> *"Although Parliament had the right to legislate, every such legislation had to be within the parameters of the powers conferred on the legislature by the Constitution, 1992 because under article 1(2) of the Constitution, any law found to be inconsistent with any provision of the Constitution should, to the extent of the inconsistency, be void. And once an Act was*

null and void, the President or the executive could be restrained by injunction from enforcing or obeying it."

BACKGROUND

On 28th February 2024, the Parliament of the Republic of Ghana passed a Bill known as "**The Human Sexual Rights and Family Values Bill, 2024**". The Bill intends by its long title, upon receiving the Presidential Assent, to be "*AN ACT to provide for human sexual rights and family values and related matters*." The Bill criminalises same sexual relationships and prescribes severe punishments against persons engaged in such conducts. The Plaintiff contends that this Bill does not only violate some sacrosanct rights of the individual as guaranteed under the 1992 Constitution, but has also exceeded the legislative jurisdiction granted to Parliament under the Constitution, the same being a Private Member's Bill yet imposing a financial burden on the State contrary to Article 108 of the 1992 Constitution. Further, that the Bill was passed without compliance with the required quorum for Parliamentary business.

Anchored by these grounds, the Plaintiff filed a writ on the 5th of March 2024 claiming the following reliefs against the Defendants:

"i. A declaration that upon the true and proper interpretation of Article 33(5) of the Constitution of 1992, in light of Articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), and 21(1) (a) (b)(d) and (e) of the Constitution, the passage of "The Human Sexual Rights and Family Values Bill, 2024" by Parliament on 28th February 2024 contravened the Constitution and is to that extent null, void and of no effect.

ii. *A declaration that the Speaker of Parliament contravened Article 108(a)(ii) of the Constitution, in light of Article 296(a) (b) and (c), by admitting and allowing Parliament to proceed upon and pass "The Human Sexual Rights and Family Values Bill, 2024" into law as the same imposes a charge upon the Consolidated Fund or other public funds of Ghana.*

iii. *A declaration that Parliament exceeded its authority under Articles 106(2) and 108(a)(ii) in passing "The Human Sexual Rights and Family Values Bill, 2024," as the same imposes a charge upon the Consolidated Fund or other public funds of Ghana.*

iv. *A declaration that, upon the true and proper interpretation of Articles 102 and 104(1) of the Constitution, Parliament lacked the requisite quorum to pass "The Human and Sexual Rights and Family Values Bill, 2024."*

v. *An order restraining the Speaker of Parliament and the Clerk to Parliament from presenting "The Human and Sexual Values Bill, 2024" to the President of the Republic for his assent.*

vi. *An order restraining the President of the Republic from assenting to "The Human and Sexual Values Bill, 2024," as such action will directly contravene the Constitutional safeguards of liberties and rights of Ghanaians.*

vii. *An injunction barring any attempts to enforce the provision of "The Human Sexual Rights and Family Values Bill 2024," particularly those criminalizing same-sex relationships and related advocacy efforts.*

viii. *Such further orders or directions as to this Honourable Court may seem meet".*

In his Statement of Case, it was submitted on behalf of the Plaintiff by his Counsel that, first, the Bill violates the fundamental human rights of its targeted culprits, especially by Articles 12, 15, 17, 18, 21, 106, 108 and 33(5) of the 1992 Constitution. According to Counsel, a combined reading of Articles 33 and 106 of the 1992 Constitution establishes a robust framework for recognising and protecting human rights, including those not explicitly mentioned. For Plaintiff, viewing sexual orientation through the lens of human dignity and freedom places it squarely within the ambit of rights protected by the Constitution. As such, any legislative attempt to criminalise sexual relationships based on orientation starkly contravenes the constitutional principles which strike at the very core of our democracy and human dignity. It was further argued that the Bill's provisions that seek to criminalise same-sex relationships, advocacy, support, or funding for LGBTTQAP+ rights, endanger Articles 12, 15, 17, 18, 21 and 35 of the 1992 Constitution.

On the second plank of Plaintiff's arguments, anchored on non-compliance of Article 108 of the 1992 Constitution, the Plaintiff's main contention simply is that the Bill occasions a financial burden on the public purse and as such the same could not have been sanctioned through a private member. Counsel put it eloquently as follows:

> *"My Lords, the constitution provides a safeguard in Article 108 against precipitous legislative excursions that might unduly encumber the state's financial resources. It is a provision that echoes the constitutional forebears' wisdom, stipulating that bills imposing a charge upon the Consolidated Fund or other public funds can only emanate from the Executive arm of government. This, in essence, is not a mere procedural formality but a substantive bulwark against fiscal imprudence."*

Counsel then submits that the Bill under scrutiny, originating from the benches of Private Members of Parliament rather than the Executive, presents a clear deviation from the established constitutional protocol. For Counsel, the nature of the Bill clearly falls under those envisaged under Article 108 of the 1992 Constitution.

Finally, it was submitted on behalf of the Plaintiff that in passing the Bill, the quorum requirements under Article 104(1) of the 1992 Constitution was not complied with. Relying on the case of **Justice Abdulai v. Attorney-General, Writ No. J1/07/2022 Dated 9th March 2022,** Plaintiff argued that there ought to have been a minimum of one-third of all members of Parliament present before the Bill could have been passed. In support, the Plaintiff relies on a video footage to contend that the members present were not even up to fifty (50).

SUMMARY OF THE 1ST DEFENDANT'S ARGUMENTS

The 1st Defendant first takes issue with the invocation of the jurisdiction of the Court by the Plaintiff to interpret the referred to provisions of the Constitution. In his submissions, Counsel argued that the Plaintiff merely camouflages his case as one requiring interpretation when in essence there is nothing to interpret. Counsel observes that the Plaintiff, in his Statement of Case, actually alludes to an understanding of the constitutional provisions he relies on, and that the necessary test to trigger the proper invocation of the Court's jurisdiction has not been met. Counsel also took his time to point out to the Court that it has made pronouncements and delivered judgements on several of the provisions which the Plaintiff is seeking interpretation of.

Regarding compliance with Article 108 of the 1992 Constitution, Counsel for the 1st Defendant points out that certain facts were undisputed, being that:

i. The Bill was presented to Parliament on 29th June 2021 as a Private Members' Bill.

ii. 1st Defendant nonetheless referred the Bill to Parliament's Committee on Constitutional, Legal and Parliamentary Affairs for deliberations without an opinion, as to whether or not the Bill imposes a financial burden on the State.

iii. The Committee's Chairman wrote a letter to the 2nd Defendant [the Attorney General] to request his opinion on the Bill.

iv. The 2nd Defendant responded to the Committee's letter and opined that the Bill "*may hold financial implications for the state*" and that a determination of the financial implications be made in accordance with the provisions of Article 108 of the Constitution. (Exhibit 1D1).

v. The Committee presented its report in which the Committee made it clear that it had taken the 2nd Defendant's advice and made amendments to the Bill. (Exhibit 1D2).

Flowing from the above, it was submitted on behalf of the 1st Defendant by learned Counsel that:

a. Article 108 of the Constitution places it exclusively in the 1st Defendant's

constitutional province as the person presiding over Parliament at the time a Bill is first introduced by a person other than the President in Parliament, to determine whether in the 1st Defendant's opinion the Bill makes provisions for any of the matters stated in Article 108 of the Constitution.

b. That, a plain reading of the constitutional provisions of Article 108 of the Constitution will leave the Court in no doubt whatsoever that the said constitutional provision does not provide for, imply, nor even hint at any requirement that any Bill laid 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.

c. The requirement to conduct a fiscal impact analysis is the prescription of Act 921 and L.I. 2378, but not Article 108 of the Constitution.

d. The Plaintiff's case before the Court, like in the *Amanda Odoi Case*, is grounded on the provision of Act 921 L.I. 2378.

e. The Committee has considered the 2nd Defendant's advice on the Bill and made necessary amendments to the same.

f. Contrary to the case of the Plaintiff, it is rather legislations submitted by covered entities that require compliance with Act 921 and LI 2378.

g. Not only does Article 108 of the Constitution make no mention of a fiscal impact analysis report, but also that the provisions of Act 921 and L.I. 2378 do not arise in the instant matter.

h. To the extent that the facts which ground the Plaintiff's action disclose that the Bill submitted was one introduced by private members and not covered entities, the Plaintiff's case is of no moment as the procedure used to lay the Bill before Parliament falls outside the ambit of section 100 of Act 921 and regulation 12 of LI 2378.

SUMMARY OF THE 2ND DEFENDANT'S ARGUMENTS

For the learned Attorney-General:

a. The allegations of contraventions of fundamental human rights by the Plaintiff fall within the original jurisdiction of the High Court as enshrined in Article 33(3) of the Constitution;

b. The Supreme Court does not have original jurisdiction in human rights action, save where genuine issues of interpretation of the Constitution arise;

c. No genuine or real issues of interpretation have been canvased by the Plaintiff in his writ or statement of claim. The Court is therefore invited to dismiss the Plaintiff's relief (i).

d. 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;

e. 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;

f. The exercise of the discretionary power by the Speaker is subject to Articles 23 and 296 of the Constitution;

g. There is no evidence of the determination by the Speaker whether the Bill is subject to Article 108. Such default on the part of the Speaker is a violation of the Constitution and constitutes an omission under Article 2(1) of the Constitution, grounding an invocation of the Court's original jurisdiction;

h. 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.

i. Regarding the claim of a lack of quorum to take a decision passing the Bill, same will depend on the cogency of evidence to be produced by the Plaintiff.

MEMORANDUM OF ISSUES

Quite uncustomarily, but not surprisingly, the parties decided to file their separate Memorandum of Issues. Clearly, they were not in unison in filing one Memorandum of Issues. The Plaintiff posited the following issues for consideration by the Court:

> *"1. Whether or not upon true and proper interpretation of Article 33(5) of the 1992 Constitution in the light of Articles 12(1)(2), 15(1), 17(1)(2), 18(2), and 21(1)(a)(b)*

and (e), the passage of the "Human Sexual Rights And Family Values Bill, 2024" is inconsistent with the 1992 Constitution.

2. *Whether or not the "Human Sexual Rights And Family Values Bill, 2024" should have been validly admitted by the Speaker of Parliament without an attachment of Financial Impact Analysis Report as required by Article 108(a)(ii) of the 1992 Constitution and Section 100(1) of the Public Financial Management Act, 2016 (Act 921).*

3. *Whether or not the Human Sexual Rights and Family Values Bill is not discriminatory, an invasion of the citizenry's privacy of home and a violation of the fundamental rights of the citizens as enshrined in the 1992 Constitution.*

4. *Whether or not upon true and proper construction and interpretation of clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 17 of the Human Sexual Rights and Family Values Bill, same are compatible or consistent with rights of Ghanaians as enshrined in the 1992 Constitution.*

5. *Whether or not Parliament was quorate at the time of passage of the Bill.*

6. *And any other issue (s) arising from pleadings in the matter as this Honourable Court may seem meet".*

1ST DEFENDANT'S MEMORANDUM OF ISSUES

The 1st Defendant also suggested the following issues in his Memorandum of Issues filed:

"1. Whether or not the Supreme Court's jurisdiction has been properly invoked under Articles 2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), 21(1)(a), (b), (d) and (e), in terms of article 33(5)?

3. Whether or not the Supreme Court's jurisdiction has been properly invoked under articles 2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), 21(1)(a), (b), (d) and €, in terms of article 33(5)?

4. Whether or not the voting requirements constitutionally provided for in Article 104 of the 1992 Constitution of the Republic of Ghana is subject to the quorate requirements in Article 102 of the 1992 Constitution of the Republic of Ghana?"

2ND DEFENDANT'S MEMORANDUM OF ISSUES

Finally, the 2nd Defendant's Memorandum of Issues reads:

"1. Whether the determination by the Speaker of Parliament (or the Speaker's failure to determine) that the Human Sexual 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 independent Memorandum of Issues filed, it is apparent that a resolution of the underlisted will dispose of this matter:

a. Whether the jurisdiction of the Supreme Court has been properly invoked by the Plaintiff to entertain the suit?

b. Whether or not the Human Sexual Rights and Family Values Bill is discriminatory, an invasion of the citizenry's privacy of home and a violation of the fundamental rights, as enshrined in the 1992 Constitution.

c. 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.

d. Whether or not Parliament was quorate at the time of passage of the Bill.

THE JURISDICTIONAL QUESTION & WHETHER THE BILL VIOLATES THE FUNDAMENTAL HUMAN RIGHTS OF THE CITIZEN

The first question for interrogation is; **whether the jurisdiction of the Supreme Court has been properly invoked to determine the present dispute**? It is rudimentary law, that a court is not seized with a matter unless that court's jurisdiction has been properly invoked. A determination of whether the court's jurisdiction has been rightly invoked

must be contingent on the Constitution or the statute investing the court with that jurisdiction.

Regarding the Supreme Court, ours is clearly defined under the 1992 Constitution. The Constitution has made it clear that the Court has exclusive original jurisdiction in the interpretation and/or enforcement of the 1992 Constitution. Article 130(1) of the 1992 Constitution informs this when it provides as follows:

> 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 the Constitution.*

This Court has clarified in several cases that the interpretative jurisdiction of the Court is distinct and independent of the Court's enforcement jurisdiction. That is, the original jurisdiction of the Supreme Court can be invoked to only enforce a provision of the Constitution, or to interpret provisions of the Constitution, or to do both. In **Noble Kor v The Attorney-General, J1/14/2016 Dated 5th May 2016 (Unreported,** this Court, departing from its earlier position in **Osei Boateng v National Media Commission [2012] 2 SCGLR 1038,** observed as follows:

"It will be seen that article 2 of the Constitution is headed "Enforcement of the Constitution" and the ensuing provisions are meant to attain the enforcement of the Constitution. There is therefore express authority in the Constitution itself for the view that the enforcement jurisdiction of this court is a conspicuously independent item of jurisdiction of this court."

My Lords, Article 2(1) of the 1992 Constitution dovetails the compass of citizens in invoking the original jurisdiction of the Supreme Court upon an allegation of a law, act, or omission being inconsistent with or in contravention of the 1992 Constitution and seek an enforcement of the Constitution. In any such situation the Court is empowered to make necessary declarations and give such orders in upholding the sanctity of the Constitution. Article 2(1) of the 1992 Constitution provides as follows:

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.

2. *The Supreme Court shall, for the purposes of a declaration under clause (1) of this article, make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.*

It needs to be observed however that in seeking an enforcement of the Constitution, there must be a real and genuine issue at stake, especially relative to situations where the object

of the enforcement is a legislation. As was very recently observed by this Court in **Dr. Prince Obiri Korang v Attorney-General, Writ No. J1/18/2021 Dated 24th July, 2024;**

> *"Thus, although Article 2(1) of the 1992 Constitution provides for the right to invoke the jurisdiction of this Court upon an allegation of an enactment having been made in excess of the powers of parliament, or being inconsistent with any provision of the Constitution 1992, such allegations should be real, genuine and live not frivolous, fanciful or merely academic. Therefore, where the court as already decided on any such enactment or a provision of the Constitution, this court will decline jurisdiction to re-open any such question already determined unless there is a special consideration to depart from its earlier decision."*

In his Amended Statement of Case, learned Counsel for the 1st Defendant argued forcefully that the Plaintiff has not properly invoked the jurisdiction of the Court to interpret the Constitution. According to learned Counsel, the Plaintiff has failed to meet the established test to invoking the Court's jurisdiction to interpret provisions of the Constitution. It appears also that the learned Attorney-General shares in agreement, but limits the same to a consideration of the 1st relief being sought by the Plaintiff, and invites the Court to interpret certain provisions of the Constitution under Chapter 5 thereof.

The *locus classicus* to determining whether a case for constitutional interpretation has arisen was settled in the case of **Republic v Special Tribunal; Ex Parte Akosah [1980] GLR 592 CA.** In that case, the court gave the test to interpret the Constitution to be:

a. *Where the words of the statute are imprecise, unclear, or ambiguous. Put in another way, it arises if one party invest the court to declare that the words of the article have a double meaning or are obscure or else mean something different from or more than what they say;*

b. *where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*

c. *where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provisions shall prevail;*

d. *where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.*

The court then remarked, that:

> *"On the other hand, there is no case of "enforcement or interpretation" where the language of the article of the Constitution is clear, precise and unambiguous. In such an eventuality, the aggrieved party may appeal in the usual way to a higher court against what he may consider to be an erroneous construction of those words; and he should certainly not invoke the Supreme Court's original jurisdiction under article 117. Again, where the submission made relates to no more than a proper application of the provisions of the Constitution to the facts in issue, this is a matter for the trial court to deal with; and no case for interpretation arises."*

The above tests have been followed in several decisions from this Court, including but not limited to: **Republic v High Court (Fast Track Division) Accra; Ex Parte Electoral Commission (Mettle-Nunoo & Others Interested Parties) [2005-2006] SCGLR 514; Edusei (No. 2) v Attorney-General [1998-99] SCGLR 753**

The Plaintiff's first relief reads:

> *"A declaration that upon the true and proper interpretation of Articles 33(5) of the Constitution of 1992, in light of Articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), and 21(1)(a)(b)(d) and (e) of the Constitution, the passage of "**The Human Sexual Rights and Family Values Bill, 2024** by Parliament on 28th February 2024 contravened the Constitution and is to that extent null, void and of no effect."*

Glaringly, this is a confused relief. There is nothing to interpret regarding those referred to human rights provisions under the Constitution relative to the case put before us by the Plaintiff. Those provisions, we share in agreement with both Defendants, are clear and unambiguous and the mere references to them do not trigger any genuine issue of constitutional interpretation. Indeed, the Plaintiff has also not in the least suggested in his Statement of Case that there are conflicting interpretative propositions placed on those provisions in the Constitution, or that those provisions are vague, ambiguous or imprecise, to have found solace within the **Akosa** principles.

More importantly, if our constitutional mandate is to declare or not to declare an Act of Parliament as being inconsistent with a provision of the Constitution (in this case, various provisions of Chapter 5 of the Constitution on Fundamental Human Rights), then the timing of the commencement of the instant action in seeking to pre-empt the decision of the President to assent or not to the Bill, in my humble opinion, is premature. To pass the threshold, the President must see the Bill and take his decision as to whether to assent or not before any cause of action can be said to have accrued and become vested, especially in the instant case in which the Bill was passed unanimously by Parliament.

The first relief is clearly misplaced and the same is accordingly dismissed.

I however find it needful to comment on an incidental submission of the learned Attorney-General that to the extent that those provisions fall within the Chapter 5 of the Constitution, then the appropriate forum ought to be the High Court and not the Supreme Court. I struggle to accept this line of thinking, except that the Attorney-General intimated a correction when he further submitted that where however there are genuine issues of constitutional interpretation the Supreme Court may assume jurisdiction.

Indeed, this Court has settled, in the case of **Adjei Ampofo v Accra Metropolitan Assembly & Attorney-General [2007-2008] SCGLR 611,** that notwithstanding the exclusive jurisdiction given the High Court to enforce fundamental human rights provisions under the Constitution, 1992, where the matter, albeit, a human rights matter is being pursued not in the personal interest per se of the Plaintiff but to advance a public benefit and in defence of the Constitution, the Supreme Court is the appropriate forum. This observation notwithstanding, we do not see any genuine issue raised by the first relief and the arguments canvassed in support of the same for us to interpret the Constitution.

While I reject the invitation from the Plaintiff to interpret certain provisions of the Constitution as not meeting the threshold for interpretation, I am without any doubt that the enforcement jurisdiction of the Court has been triggered, relative to the provisions under Article 108 of the 1992 Constitution in particular, for which reason, this is the only court invested with constitutional power to enforce. I therefore, sustain the action and assume jurisdiction to investigate the issues put before us by the Plaintiff, and enforce the Constitution as the case may be.

For a better appreciation, **Article 108 of the 1992 Constitution** which grounds the present action reads:

"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."

From the above provision, the Constitution places a procedural fetter against a consideration of a Bill or a motion other than one being introduced by the President, if in the opinion of the person presiding it makes provisions for the situations as provided for under 108(a) of the 1992 Constitution. Clearly, there is no dispute regarding the meaning of Article 108 of the 1992 Constitution to require any novel interpretation of the same. Rather, what the Plaintiff's action implies within the nuances of the invocation of our jurisdiction simply is that, the 1st Defendant and/or the Parliament of the Republic failed to adhere to the dictates of Article 108 of the 1992 Constitution, especially its proscription

against private members introducing the Bill in a situation when the nature falls within the constitutional disallowances provided for under the Article.

That is, the invitation to this Court is to question and seek answers as to whether the 1st Defendant and Parliament did comply with the provision. This is a clearest situation of the enforcement of a constitutional provision and it is this Court that has the exclusive jurisdiction to so enforce. In proper context, the Plaintiff is contending both a positive act and an omission against the 1st Defendant and Parliament, which in his view violate the provisions of Article 108 of the 1992 Constitution.

Plaintiff alleges that the 1st Defendant failed to express an opinion as required under the Article. Secondly, that Parliament could not have passed the Bill since it places a financial burden on the
Consolidated Fund and other public funds. These allegations are grounded within the purviews of the enforcement empowerments under Article 2(1) of the Constitution which provides that:

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.

As can be observed, the item under consideration is not an 'enactment' but a Bill. Therefore, the Plaintiff's action cannot be sustained under Article 2(1)(a) of the 1992

Constitution. However, the Plaintiff's complaints of certain acts and omission being inconsistent with the Constitution by the Speaker of Parliament and the Parliament of Ghana fortifies the proper invocation of our jurisdiction under Article 2(1)(b) of the 1992 Constitution.

Clearly therefore, this Court's jurisdiction is not only properly invoked upon the crystallization of the Bill into law and its constitutional legality being tested, but also, even at the stage of the Bill, the procedural propriety for the law-making process can be questioned in this Court by way of ensuring the enforcement of the Constitution. Simply put, if the Bill is of the nature that falls within Article 108 exceptions, and the same is not being introduced by the Executive, then this Court possesses the powers to enforce the constitutional provision. In sum, our jurisdiction to enforce the Constitution, under the provision of Article 108 thereof has been rightly invoked, and I so hold.

WHETHER THE DETERMINATION BY THE SPEAKER OF PARLIAMENT (OR THE SPEAKER'S FAILURE TO DETERMINE) THAT THE HUMAN SEXUAL 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.

It must be emphasised that nowhere in Article 108 of the 1992 Constitution has the requirement for a fiscal impact assessment and/or report been provided for, as contended by the Plaintiff. What the provision says is what has been stated therein, and the same already produced.

Therefore, the important query here is whether the 1st Defendant did express an opinion on Article 108 relative to the impugned Bill?

At this stage we need to caution ourselves as an organ of the State to be slow in appearing to be dictating the form and way Parliament (another State organ) goes about its business. While this Court is empowered by the provisions of the 1992 Constitution to question the constitutionality of acts of Parliament, the Court should not be seen to veer unnecessarily into how Parliament internally goes about the discharge of its constitutional mandates. That is, our interest should only be to a satisfaction of the constitutional obligations on the Legislature and not how the Legislature goes about that exercise, simply because the Legislature is a master of its own procedures.

In **J.H. Mensah v The Attorney-General [1997-98] 1GLR 227,** when the Supreme Court was urged to interpret the word "*prior approval of parliament*" under Article 78(1) of the 1992 Constitution to mean vetting, the Court declined by proclaiming that it was not its duty to direct Parliament as to how it goes about its approval processes. The Court opined thus:

> *"In my view, the above provision empowers Parliament by standing orders to regulate its own procedure provided same does not infringe a proviso info the Constitution, 1992. Thus the courts cannot intervene at the suit of a person who desires a different procedure, if the one he objects to is equally constitutional. For it is not the province of the court under articles 2 and 130(1) of the Constitution, 1992 to direct Parliament or the Executive on how to conduct its proceedings or perform its business if the procedure or action adopted infringes no provision of the Constitution, 1992. As succinctly stated in Tuffour v Attorney-General:*

"In so far as Parliament has acted by virtue of the powers conferred upon it by the provision of article 91(1) [of the Constitution, 1979], its actions within Parliament are a closed book." ...And Archer CJ also said in New Patriotic Party v Attorney-General."

"The Constitution, 1992 gives the judiciary, power to interpret and enforce the Constitution, 1992 and I do not think that this independence enables the Supreme Court to do what it likes by undertaking incursions into territory reserved for Parliament and the executive. The court should not behave like an octopus stretching its eight tenacles here and there to grasp jurisdiction not constitutionally meant for it."

I therefore hold that the Plaintiff's invitation to us to read into Article 108 of the 1992 Constitution as not compliant with an impact analysis and/or a report thereof, as well as urging this Court to order a particular direction of compliance as regards the satisfaction of expression of opinion regarding the person presiding within the intendment of Article 108 of the Constitution, is farfetched and will amount to an endangering incursion into the legislative province.

Truly, while upholding the principle of separation of powers in our jurisdiction, and recognising that each of the organs of the State acts as a check on the other, those checks do not operate in vacuum. They are circumscribed by constitutional and governance tenets. Ours is to interpret and enforce the law and that should be it. We cannot be seen to be directing Parliament on the procedure to adopt in satisfying its constitutional mandates. The entire action of the Plaintiff grounded on this particular leg falls and the same is accordingly dismissed.

WHETHER OR NOT PARLIAMENT WAS QUORATE AT THE TIME OF PASSAGE OF THE BILL.

Plaintiff claims that from a video footage Parliament was not of the requisite quorum when it passed the Bill. The Plaintiff relies on the provision of Article 104 of the 1992 Constitution and contends that there ought to have been at least 1/3rd of members of Parliament present before the passage of the Bill.

Neither the Plaintiff nor any of the parties has put before us any credible evidence to allow an assessment of this issue. In fact, the Plaintiff who claims to be relying on a video footage has also not furnished the Court with the said footage. Moreover, it appears the Plaintiff confuses the provision under Article 104(1) with Article 102 of the Constitution. Article 102 of the Constitution rather deals with Parliament's quorate requirements while 104(1) deals with voting in Parliament. The two provisions are distinct and read as follows:

102. Quorum in Parliament:

A quorum of Parliament, apart from the person presiding, shall be one-third of all the members of Parliament.

104:

Except as otherwise provided in this Constitution, matters in Parliament shall be determined by the votes of the majority of members present and voting, with at least half of the members of Parliament present".

Undoubtedly the Plaintiff has not discharged the evidential burden on this issue and the same is accordingly resolved against him.

In summation, although I am in total agreement that The Human Sexual Rights and Family Values Bill, 2024 is incapable of invoking this Court's jurisdiction and thus the Plaintiff's case ought to be dismissed, the Plaintiff's case is also, in my view, unmeritorious. The instant case is accordingly dismissed in its entirety.

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

CONCURRING OPINION

ADJEI-FRIMPONG, JSC:

My Lords, subject to what follows, I agree with the reasoning and conclusion of the learned and highly esteemed Professor, Mensah Bonsu JSC whose speech I have had the privilege of reading beforehand. This opinion is my own to contribute to a subject I consider to be dear to the people of this country.

On 28th February 2024, the Parliament of Ghana, in the exercise of its legislative power conferred by article 93(2) of the Constitution 1992, passed the Human Sexual Rights and

Family Values Bill (The Bill). The process of the Bill was initiated and sponsored by a group of seven Members of Parliament. The list of the crusading septet, I choose to call them, 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.

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.

Coming across as a Bill that seeks to alter significantly, the prevailing statutory framework on sexual orientation and gender identity in Ghana, the process leading to its passage inevitably stood to occasion rival debates, even bitter shouting match, both within and outside the Parliament.

In the midst of this, the Plaintiff, a citizen of Ghana chose to come to this Court to challenge the constitutionality of the Bill. He seeks to invoke the exclusive original jurisdiction of this Court under Article 2 of the Constitution. According to him, whereas several provisions of the Bill contravene specific provisions of the Constitution, the process leading to its passage itself also breached certain provisions. These, he believes, render the Bill wholly unconstitutional and a nullity. By his writ filed on 5th March 2024, he seeks the following reliefs:

i. *A declaration that upon the true and proper interpretation of Article 33(5) of the Constitution of 1992, in light of Articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), and 21(1) (a) (b) (d) and (e) of the Constitution, the passage of the 'Human Sexual Rights and Family Values Bill, 2024" by Parliament on 28th February 2024 contravened the Constitution and is to that extend null, void and of no effect.*

ii. *A declaration that the Speaker of Parliament contravened Article 108(a)(ii) of the Constitution, in light of Article 296(a) (b) and (c), by admitting and allowing Parliament to proceed upon and pass "the Human Sexual Rights and Family Values Bill, 2024" into law as the same imposes a charge upon the Consolidated Fund or other public funds of Ghana.*

iii. *A declaration that Parliament exceeded its authority under Articles 106(2) and 108(a)(ii) in passing "The Human Sexual Rights and Family Values Bill, 2024" as the same imposes a charge upon the Consolidated Fund and other public funds of Ghana.*

iv. *A declaration that, upon the true and proper interpretation of Article 102 and 104(1) of the Constitution, Parliament lacked the requisite quorum to pass "The Human Sexual Rights and Family Values Bill, 2024.*

v. *An order restraining the Speaker of Parliament and the Clerk to Parliament from presenting "The Human Sexual Rights and Family Values Bill, 2024" to the President for his assent.*

vi. *An order restraining the President of the Republic from assenting to 'The Human Sexual Rights and Family Values Bill, as such action will directly contravene the Constitutional safeguards of liberties and rights of Ghanaians.*

vii. *An injunction barring any attempts to enforce the provisions of the "The Human Sexual Rights and Family Values Bill", particularly those criminalizing same-sex relationships and related advocacy efforts.*

viii. *Such further orders or direction as to this Honourable Court may seem fit."*

The Plaintiff's action is brought against Parliament itself as 1st Defendant and the Attorney General as 2nd Defendant. At first blush, I murmured a reservation at the joinder of Parliament in the action when the Attorney General, the innate Defendant to such actions was a party. Pausing for judicial thought however, I think the joinder of Parliament in the action was legitimate. First it will be noticed anon, that in some respects, the 1st Defendant and the Attorney-General take conflicting positions on a key issue in the matter which rationalizes their parting ways. See JANET NAAKARLEY AMEGATCHER VRS ATTORNEY GENERAL & ORS, J1/1/2012 9th May 2012 S.C.

Second, I am content to buy into the Plaintiff's argument justifying the joinder of Parliament, that by the provisions in Article 2(1) of the Constitution, no organ of government, including the legislature enjoys absolute immunity from judicial scrutiny when allegations of constitutional breaches are made specifically against that organ. Parliament, I am convinced is as amenable to the jurisdiction of this Court under Article 2(1) and 130(1) as any other body, constitutional or otherwise, provided a genuine and sustainable allegation of constitutional breach is launched specifically against it.

In any event, the 1st Defendant has not contested its joinder in the action, and has, just like the Attorney-General filed a Statement of case to defend the action pursuant to Rule 48 of the Supreme Court Rules, 1996 (C.I 16).

Summary of the cases of the Parties.

Before touching on the issue(s) germane to dispose of this matter, the illuminating starting point will be to set out in summary, the case the Plaintiff has presented to this Court to ground the reliefs he is seeking and the responses this has provoked from the

Defendants. For convenience, the Plaintiff has benevolently organized his case under three main heads, which he prefers calling the three "planks". They are the allegations that the Bill (i) constitutes Violation of certain Human Right provisions in the Constitution (ii) Occasions unauthorized imposition of a Financial Burden through a Private Member's Bill and hence violates Article 108 of the Constitution and (iii) was passed without due Compliance with the constitutional quorum requirement of Parliament. I shall proceed to present the summaries under those three heads.

Summary of the Plaintiff's case.

1. *Violation of Human Rights*

Under this head, the Plaintiff anchors his argument on the provision in Article 33(5) of the Constitution which, to put his argument in perspective, I quote thus:

> *"(5) The rights, duties, declarations and guarantees relating to the fundamental human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man."*

The Plaintiff contends that the provision acknowledges the Constitution as a living document, one that evolves alongside the peoples' collective understanding of human rights as including those rights related to sexual orientation. In this sense, Parliament in undertaking its legislative process under Article 106 ought to have scrutinized the Bill so as not to enact a legislation criminalizing sexual orientation.

It is his case that an enactment of such nature by Parliament would not only breach the spirit of Article 33(5) but also neglect the meticulous constitutional examination required by Article 106. He argues that any legislative attempt to criminalize sexual relationships

based on orientation starkly contravenes these constitutional principles, striking at the very core of democracy and human dignity.

In the context of the foregoing, the Plaintiff argues, this Honourable Court ought to declare the Bill as passed by Parliament incompatible with the constitutional guarantees enshrined in Articles 12, 15, 17, 18, 21 and 35. He contends that he is entitled to challenge a legislative proposition which, if fully enacted would not only infringe upon the constitutionally guaranteed rights of individuals, but also set a dangerous precedent for legislative overreach into the private lives and freedoms of citizens.

The list of the provisions in the Bill which the Plaintiff thinks infringe upon the constitutionally guaranteed rights includes the following:

(i) Prohibition against subverting family values LGBTTQAP+ and Related Activities
(ii) Prohibition of LGBTTQAP+ and Related Activities
(iii) Prohibition of propaganda of, promotion of and advocacy for activities prohibited under this Act
(iv) Prohibition of funding, sponsorship, or promotion of prohibited activities
(v) Disbandment of LGBTTQAP+ group, society, association, club or organization
(vi) Prohibition of LGBTTQAP+ group, society, association, club or organization

He contends that the Constitutional provisions in Articles 12, 15, 17, 18, 21 and 35 collectively mandate the protection of fundamental human rights and freedoms, underscore the inviolability of personal dignity, prohibit discrimination, safeguard privacy, and enshrine the freedoms of speech, expression and association.

For him, provisions of the Bill that seek to criminalize same-sex relationships, advocacy, support or funding for LGBTTQAP+ rights represent a clear and present danger to these constitutional protections.

He contends that while it is undisputed that Parliament holds the constitutional mandate under Article 106 of the Constitution to legislate on matters that govern the affairs of the state, this mandate does not extend to legislating on the intimate details of personal sexual relationships between consenting adults. This overreach into private matters is not only beyond the intended scope of parliamentary authority, but also infringes upon the fundamental human rights and freedoms guaranteed by the Constitution.

Further, the Plaintiff argues that the framers of the Constitution in their wisdom delineated the powers of Parliament with the understanding that the realm of personal relations lies within the inviolable sanctity of individual privacy and autonomy.
He contends that the regulation of sexual relationships between two consenting adults does not fall within the exceptions contained in the provision, as such relationship, inherently, do not threaten public safety, economic well-being, health, morals or the rights and freedoms of others. For him, it is paramount that this Court recognizes the inherent danger in allowing Parliament to legislate on matters that so deeply encroach upon the personal lives of individuals. Upholding such an obnoxious legislation would set a precedent that could lead to further erosions of such constitutional rights and freedoms.

Additionally, argues the Plaintiff, the right to freely identify with one's sexuality is an integral aspect of the individual's autonomy and personal identity. To attempt to criminalize the right of individuals to identify with a particular sexuality, as well as the criminalization of funding for activities related to certain sexual orientations, represents

a flagrant violation of the Constitution. According to his view these legislative endeavours threaten the foundational principles of freedom of association, expression and the right to privacy enshrined in Articles 21 and 18.

Turning specifically to what he describes as Infringement of free Speech and expression, the Plaintiff argues that the Bill if allowed to become law would set a dangerous precedent that gravely endangers the rights of free speech and expression as enshrined in the Constitution. He says an alarming scenario is the potential criminalization of journalistic activities. He says, journalism is a profession that serves as the cornerstone of a democratic society, functioning as watchdog and medium for the dissemination of information and various viewpoints. Under the shadow of the Bill a journalist interviewing a gay or lesbian who has, for example been subjected to mob violence would risk incarceration on the basis of promoting a prohibited activity simply by performing their duty. This is not only a direct attack on the profession but also a blatant violation of the constitutional rights to free speech and expression. He refers to Article 21(1)(a) and (f) and contends that by criminalizing the mere act of interviewing or reporting on a specific group of individual, the Bill directly contravenes the provisions of that Article.

Turning to some provisions under the Directive Principle of State policy in Chapter Six of the Constitution, the Plaintiff pleads that the Constitution under Articles 37(1) and 39(1) and (2) unequivocally asserts the State's duty to foster a social order premised on the principles of freedom, equality, justice, probity and accountability and to adopt customary values to the evolving needs of society, especially those practices detrimental to the health and well-being of individuals.

He says while customary law remains an integral part of Ghana's legal landscape (Article 11 referred), its application cannot and should not contravene the fundamental human

rights protections enshrined within the Constitution. He contends that the legislative attempt, as embodied in the Bill, to potentially infringe upon the rights of individuals under the guise of upholding customary values fails to appreciate the Constitution's directive that all customs and traditions must evolve in tandem with the principles of human dignity, equality and freedom.

According to him the envisaged social order under Article 37(1) is one where the rights and obligations of every citizen are balanced and protected under the law, signifying a clear directive towards nurturing a society that values and upholds human dignity and rights above all. The State's duty to enact laws that ensure effective participation in development process, protect vulnerable groups and align with international human rights instruments emphasizes the necessity for legislative actions to be in harmony with the fundamental principles of human rights protection. For him, the Bill fails to meet these critical universal principles.

2. *Non-Compliance with Article 108*

The Plaintiff's grievance under this head is rooted in the fact that the Bill is a private Members' Bill. His contention is that the Bill in its entirety places a charge on the public purse and should have emanated from the executive in terms of Article 108 of the Constitution. The Speaker, under that provision was to express an opinion without which the Bill could not be proceeded upon. The culmination of his argument is captured in paragraph 68 of his Statement of Case where he states:

> *"The Bill under scrutiny, originating from the benches of Private Members of Parliament rather than the Executive, presents a clear deviation from the established constitutional*

protocol. This is particularly so when the nature of the bill clearly falls under those envisaged under Article 108. The bill in its entirety places a charge on the public purse and the Speaker of Parliament, ought to have known. The Speaker of Parliament in allowing the bill to be passed which constitutionally should have emanated from the Executive, is a clear contravention of Article 108. The procedural anomaly transcends mere parliamentary formalities, striking at the very core of our constitutional checks and balances. It isa deviation that, by its nature challenges constitutional equilibrium designed to safeguard the public purse from unwarranted legislative burdens."

In further argument, the Plaintiff claims that the provision in Article 108 which required the Speaker to express an opinion imposed a discretion on the Speaker which was to be exercised in accordance with Article 296 of the Constitution. In this case, according to the Plaintiff, the Speaker did not express an opinion and even if he did (by allowing the Bill to proceed), the opinion was erroneous since the Bill, *"with its significant enforcement, judicial and custodial financial implications, unequivocally imposes a substantial fiscal burden upon the Republic"*.

To further impugn the Bill, the Plaintiff relies on the provisions in Section 100(1) and (2) of the Public financial Management Act, 2016 (Act 921) as well as Regulation 12(1) of the Public Financial Management Regulations, 2019 [L.I 1373] the essence of which is that it was mandatorily required that the Bill before being laid before Parliament for approval should have been accompanied by a fiscal impact analysis stating the estimated effect on revenue and expenditures for the financial year in which it was expected to come into force. EZUEME MANNAN VRS ATTORNEY GENERAL & SPEAKER OF PARLIAMENT, Writ No. J1/11/2021 dated 27th July 2022 cited.

3. *Non-Compliance with Quorum Requirement*

The Plaintiff's case under this head turns on Article 104 of the Constitution which has the following provision:

> *"104. (1) Except as otherwise provided in this Constitution, matters in Parliament shall be determined by the votes of the majority of members present and voting, with at least half of all the members of Parliament."*

According to him, the above provision which regulates voting in Parliament is different from the 'ordinary' quorum in Parliament for business as provided for in Article 102 thus:

> *"A quorum of Parlimant, apart from the person presiding, shall be one-third of all the members of Parliament."*

He posits that unlike the provision in Article 102, Article 104 stipulates a specific quorum for voting on matters within Parliament which requires the presence of majority of members, with at least half of all members of Parliament present. He explains that the higher quorum requirement is a constitutional safeguard that makes sure that decisions with serious legal or legislative effects are supported by a large part of the Parliamentary body. This way, a small group of people cannot make decisions that everyone has to follow.

The Plaintiff's allegation that the Bill did not meet the quorum requirement was formulated under paragraph 75 of his Statement of Case as follows:

"Unfortunately, in the instant case, the numerical requirements of the law was flouted. My Lords, there is nothing more vivid in support of this fact than a video recording of membership in session. The plenary was totally captured on tape, and my Lords, a cursory count shows not more than fifty (50) of Honourable members in attendance on both sides, out of the total number of 275. It is thus, suggestive that less than fifty (50) members constituted the one-third (1/3) quorum required by the Constitution. This deficiency in attendance, clearly observable in the official video broadcast of the Parliament session as at the time of the vote, is presented by the Plaintiff as a stark violation of constitutional mandates."

Summary of 1st Defendant's Response.

In its amended Statement of Case filed with leave of this Court on 27th November 2024, the 1st Defendant responds to the Plaintiff's amended Statement of Case in the same arrangement contained in the latter and I sum it up accordingly.

1. *Violation of Human Rights*

The 1st Defendant takes the position that the Plaintiff has merely set out the Constitutional provisions in Articles 12, 15, 17, 18, 21, 106 and 108 without demonstrating a case that properly invokes the exclusive original jurisdiction of this Court under Articles 2(1) and 130 of the Constitution.

The 1st Defendant points out that having set out the various provisions under those Articles, the Plaintiff devotes considerable time and effort on the solitary provision of Article 33(5) and in the end makes the submission thus: *"…that the enumeration of specific*

rights within the Constitution does not preclude the existence and protection of other rights deemed inherent in a democracy, aimed at securing the freedom and dignity of man."

The 1st Defendant argues that the above submission by the Plaintiff himself is a demonstration that he has a clear understanding of the provision in Article 33(5) on which he [Plaintiff] planks his hopes. For the 1st Defendant therefore, the provision in Article 33(5) is plain, the Plaintiff does not ask the Court to give the provision a different meaning and in any event this Court in a recent decision in the case of *Prince Obiri-Korang v Attorney General* (Writ No. J1/10/20210 recognized a meaning to the provision not different from what the Plaintiff asserted.

Going further, the 1st Defendant points out that beyond Article 33(5) what the Plaintiff does, is to again merely, set out the provisions in Articles 12, 15, 17 18 21 and 35, submitting thereupon that he is confronting a legislative proposition which, if fully enacted, would not only infringe upon the constitutionally guaranteed rights of individuals but also set a dangerous precedent for legislative overreach into the private freedoms of citizens. The Plaintiff then embarks upon what it [1st Defendant] considers a wholesale and undiscussed dumping of parts of the Bill he perceives to be unconstitutional capping it with reference to the State's responsibility under Articles 37 and 39 to foster social order among other things.

In the 1st Defendant's argument, in an action of the nature before the Court, the Court's duty is to decide the true nature of the claim however camouflaged or disguised, in order to decide whether or not it's jurisdiction under Article 130 has been properly invoked. A reading of the Plaintiff's amended Statement of Case on this plank does not demonstrate that the jurisdiction of the Court has been invoked.

Moreover, the 1st Defendant contends that the Plaintiff's case in reality, is the enforcement of fundamental human rights provisions in the Constitution which by the provisions in Article 33(1) and 130 of the Constitution and as determined by several decisions of this Court is a matter within the province of the High Court and thus out of the scope of the exercise of this Court's exclusive original jurisdiction.

For the reasons advanced therefore the 1st Defendant submits that the Plaintiff's prayer for a declaration that upon a true and proper interpretation of Article 33(5) of the Constitution and in the light of Articles 12(1) and (2), 15(1). 17(1) and (2), 18(2) and (21(1) (a), (b), (d) and (e) of the Constitution the passage of The Human Sexual Rights and Family Values Bill, 2014 by Parliament on 28th February 2024 contravened the Constitution and is to that extent null, void and of no effect is clearly of no moment.

Finally, 1st Defendant refers to this Court's previous decision in the Obiri Korang case which held that the laws which outlaws the very acts which are the subject matter of the Bill do not violate the fundamental human rights provisions of the Constitution.

2. *Non-Compliance with Article 108*

The 1st Defendant's response under this head is conveniently summed up in the following outline:

(a) The provision in Article 108 of the Constitution is clear. A Bill offends the provision when such a Bill makes provision for (i) the imposition of taxation or the alteration of taxation otherwise than by reduction (ii) the imposition of a charge on the Consolidate Fund or any other public fund 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 moneys not charged on the Consolidated Fund or any increase in the amount of that payment, issue or withdrawal or (iv) the composition or emission of any debt due to the Government of Ghana.

The Plaintiff's amended Statement of Case contains no submission that demonstrates that the Bill makes provision for any of the items listed.

(b) The provision in Article 108 does not prescribe the form in which the opinion of the person presiding must take in discharging his duty under the Article. A plain reading of the provision shows that the 1st Defendant is to halt the progress of the Bill if in the opinion of the person presiding, the Bill makes provision for any of the items listed under the provision. Therefore, in this case, whether or not the Bill made provision for any of the items, or the Speaker rendered an opinion is answered by the fact that the 1st Defendant allowed the Bill to proceed.

(c) The Plaintiff's view that the Bill made provision for any of the items listed and that the Speaker did not properly exercise his discretion must be rejected because the Speaker's discretion cannot be substituted for by that of the Plaintiff or even of this Court.

(d) The Plaintiff misread the provision in Article 108 when he posits that the Bill was to be accompanied by a fiscal impact analysis report before its admission by the Speaker for consideration and debate by Parliament. All the provision states is that the 1st Defendant shall not unless the Bill is introduced by or on behalf of the President, proceed upon a Bill or a motion if in the opinion of the person presiding, the Bill or the motion makes provision for any of the specific items listed under the provision.

(e) The Plaintiff's action to the extent that is based on the provisions of the Public Financial Management Act (Act 921) and the Regulation made thereunder (L.I.

2378) is founded on statute and not on the constitution. This being the case, the action does not properly invoke the jurisdiction of the Court and the proper forum lies elsewhere.

3. *Non-Compliance with quorum requirement.*

The 1st Defendant's response to the Plaintiff's claim under this head is that the Article 104 on which the plank is founded says nothing about Parliament's quorate requirements and is therefore completely irrelevant to the Plaintiff's case. In any event the Plaintiff does not attach or exhibit the video footage he refers to. It must have also become necessary to make available the one who took the recording for cross-examination as to angles from which any such footage was taken. At any rate, an attendance record of Parliament rather than a video footage should be the appropriate evidence to rely on to determine such an issue.

Summary of 2nd Defendant's Response

The Learned Attorney General's responses to the three heads of the Plaintiff's case are intriguing. Whilst he appears to agree with the 1st Defendant's position that the allegation of violation of the human rights provisions in the Constitution does not properly invoke the exclusive original jurisdiction of this Court, he agrees with the Plaintiff's position on the Non-Compliance with the provision in Article 108. When it came to the issue of Non-Compliance with the quorum requirement, he appeared indifferent when in the very last sentence at page 30 of the Statement of Case, he simply submitted:

> *"Regarding the claim of lack of quorum to take a decision passing the Bill, same will depend on the cogency of evidence to be produced by the Plaintiff."*

The Attorney-General's position on the allegation of violation of the human rights provision does not differ much from that of the 1st Defendant for which reason I do not intend to rehearse it. To put it in the simplest of terms, he posits that the claim in actuality goes to allegation of breach of fundamental human rights which does not properly invoke the interpretation and enforcement jurisdiction of the Court and which is clearly within the province of the High Court in terms of Article 33(1) and 130 of the Constitution.

For the head about Non-Compliance with Article 108 of the Constitution, the Learned Attorney General argues contrary to the 1st Defendant's position that there is an issue of interpretation that properly invokes the jurisdiction of this Court. He couches the issue in the following terms under paragraph 8 at page 5 of the Statement of Case:

> *"8. In the instant case, it is humbly submitted that the Supreme Court's jurisdiction has been invoked to determine the single important 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."*

On the issue the pith of his arguments is contained in the following chronicle captured in his Statement of Case:

> *"d. 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;*
>
> *e. 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*

f. The exercise of the discretionary power by the Speaker is subject to articles 23, and 296;

g. There is no evidence of the determination by the Speaker whether the Bill is subject to article 108. Such default on the part of the Speaker is a violation of the Constitution and constitutes omission under article 2(1) of the Constitution grounding an invocation of the Court's original jurisdiction;

h. 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.

i. It is not the direct imposition of a charge or direct making of a withdrawal, issue or payment out of the Consolidated Fund which would result in a trigger of article 108. The potential effect of the provisions in a bill or motion to mandate a charge on the Consolidated Fund or to mandate payment, issue or withdrawal from the Fund is what the Court must examine in light of the modern objective and purposive rule of interpretation firmly recognized by this Court."

Memorandum of Issues

Rule 50 subrule 1 of the Supreme Court Rules, 1996 (C.I. 16) (as amended) permits the parties to 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. In this case, the Plaintiff and 1st Defendant filed separate memoranda of issues which unless the Court had otherwise ordered is permissible.

The Plaintiff filed the following issues:

1. *Whether or not upon a true and proper interpretation of Article 33(5) of the 1992 Constitution in the light of Articles 12(1(2), 15(1), (17(1)(2), 18(2), and 21(1)(a)(b) and (e), the passage of the "Human Sexual Rights and Family Values Bill, 2024" is inconsistent with the 1992 Constitution.*
2. *Whether or not the "Human Sexual Rights and Family Values Bill, 2024" should have been validly admitted by the Speaker of Parliament without an attachment of Financial Analysis Report as required by Article 108(a)(ii) of the 1992 Constitution and Section 100(1) of the Public Financial Management Act, 2016, Act 921.*
3. *Whether or not the Human Sexual Rights and Family Values Bill is not discriminatory, an invasion of the citizenry's privacy of home and violation of the Fundamental rights of the citizens as enshrined in the 1992 Constitution.*
4. *Whether or not upon true and proper construction and interpretation of clauses 3,4,5,6,7,8,9,10,11,12,14, and 17 of the Human Sexual Rights and Family Values Bill, same are compatible or consistent with the rights of Ghanaians as enshrined in the 1992 Constitution.*
5. *Whether or not Parliament was quorate at the time of passage of the Bill*
6. *And any other issues(s) arising from the pleadings in this matter as this Honourable Court may seem meet.*

The 1st Defendant filed the following issues:

1. *Whether or not the Supreme Court's jurisdiction has been properly invoked under Articles 2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of articles 12(1) and (2), 15(1), 17(1) and (2), 18(2), 21(1)(a), (b), (d) and (e), in terms of article 33(5)*

2. *Whether or not the Supreme Court's jurisdiction has been properly invoked under Article2 and 130(1) of the 1992 Constitution of the Republic of Ghana to interpret the provisions of articles 106(2) and 108(a)(ii) of the 1992 Constitution.*
3. *Whether or not the voting requirements constitutionally provided for under Article 104 of the Constitution of the Republic of Ghana is subject to the quorate requirements in Article 102 of the Constitution of the Republic of Ghana.*

It does not appear that the learned Attorney-General filed a memorandum of issues in this particular matter.

Jurisdiction and prematurity of action.

Jurisdiction is simply the authority of a court to decide matters before it or take cognizance of matters presented to it for a decision. It is the power of a court to enter upon the inquiry, actually, the legal weapon which it must possess to cut into the body of the dispute. It is fundamental, indeed the very foundation on which the action must stand. It may be controlled or circumscribed by the law that created it and where none was created or existed, whatever was delivered was a nullity.

I recall BAMFORD-ADDO JSC in the case of GHANA BAR ASSOCIATION VRS ATTORNEY GENERAL & ANOR (The Abban case) [2003-2004]1 SCGLR 250 at 266 say of jurisdiction as:

> *"Jurisdiction is simply the power of a court to hear and determine a cause or matter brought before it, lack of which would render any decision taken or order made null and void and of no effect. If jurisdiction is granted a court by statute, then what is already specified*

therein determines the nature and extent of that jurisdiction so granted to that court which cannot be extended or modified. Where jurisdiction is wrongly assumed, however, all proceedings taken would be a nullity. For this reason, it is the court's duty to act only within the jurisdiction with which it has been clothed."

The nature and scope of the jurisdiction of the Supreme Court under Articles 2(1) and 130(1) of the Constitution naturally feature in every action in which that jurisdiction has been invoked. The remarkable thing is the special attitude the court brings to bear on it when its exercise is invoked. And this is rightly so because it is that special jurisdiction which makes the Supreme Court, the constitutional court of Ghana.

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 made a similar observation in the case of BENJAMIN KPODO, MP, RICHARD QUASHIGAH, MP VRS ATTORNEY GENERAL, Suit No. j1/03/2018 (12th June 2019) which when I had the privilege of delivering the decision of this Court in SOLOMON FAAKYE VRS UNIVERSITY OF GHANA & ATTORNEY GENERAL, Writs Nos. j1/10/18; j1/13/19, dated 24th April 2024, I relied on as follows:

"It appears a settled practice in this court that whenever in an action, its exclusive original jurisdiction under articles 2(1) and 130 has been invoked, the court has always satisfied itself that it is properly seized with the matter. It is considered an unavoidable duty. It is not far from right to state that jurisdiction is always in issue in such matters. This position finds support in the well-articulated words of Akuffo CJ in BENJAMIN KPODO, MP, RICHARD QUASHIGAH, MP VRS ATTORNEY GENERAL, Suit No. j1/03/2018 (12th June 2019) thus:

> *"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, is 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."

In determining the question of jurisdiction, let me first recognize the judicial review power of this Court under Articles 2(1) and 130(1) of the Constitution. The provisions are as follows:

"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 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 rich jurisprudence of this Court has established that the above provisions vest the power of judicial review in the Supreme Court. The learned S.Y Bimpong-Buta in his invaluable treatise; *The Role of the Supreme Court in the Development of Constituting Law in Ghana 2005, p. 206-207* states:

> *"The power of judicial review of legislative action has been vested in the Ghana Supreme Court 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 as 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 which states "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 contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect"*

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 biding 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 DECEMEBR CASE) [1993-94]2 GLR 35.

Let it be stated here that whilst this power of judicial review is well settled by the enduring jurisprudence of this Court, the issue that confronts the Court now is the extent to which the power is exercisable against a Bill in Parliament which is yet to become law. Must the power be exercised at the stage where the Bill is in the law-making mill? This is the quest at the heart of the issue of jurisdiction of this Court, in particular whether the Plaintiff's writ as constituted to challenge a Bill is capable of invoking the exclusive original jurisdiction or as it were, the judicial review jurisdiction of this Court.

Judicial review power and a bill which is not yet law

At this stage, let me point out some salient matters which all sides agree upon or have not controverted in the trajectory of this dispute. All sides agree that the Bill was introduced in Parliament on 29th June 2021 as Private Members' Bill. All sides agree that the Bill after being read the first time was referred to the Committee on Constitutional, Legal and Parliamentary Affairs (the Committee) for consideration and report pursuant to Article 106 of the Constitution and Order 179 of the Standing Orders of the House. All sides agree that the Committee after deliberating upon the Bill reported to the House. All sides agree that the Bill went through the various stages of passage before being passed finally by the House on 28th February 2024. All sides agree that the House was unanimous on the passage of the Bill. All sides agree that the Bill is yet to be assented to by Mr President. Until it is so assented, I believe all sides agree that it remains a Bill.

And may I also interpolate to set out the law-making process provided for by Article 106 of the Constitution which is 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."

The foregoing provisions contain the following highlights:

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.

As noted, the Plaintiff is asking this Court to exercise its exclusive original jurisdiction in respect of a Bill. I have already in this delivery set out the reliefs the Plaintiff seeks from this Court. They are couched in terms that appear to invoke this Court's interpretative and enforcement jurisdiction under the provisions in Articles 2(1) and 130(1) as set out above. In my well-considered view, stripped of all the costume of interpretation and enforcement in which the reliefs are dressed, all the Plaintiff is asking of this Court is to declare and strike down the Bill as wholly unconstitutional and a nullity for the reason thus, whereas several provisions of the Bill contravene specific provisions of the Constitution, the process leading to its passage itself also breached certain provisions of the Supreme law. In DAVID KWADZO AMETEFE VRS ATTORNEY-GENERAL & MARTIN ALAMISI AMIDU, writ No. J1/3/2017 judgment of 1st February 2017, the Court decided 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."*

Bill vrs Enactment

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 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.

Understanding a Bill this way, can it be said that the Plaintiff has presented a genuine issue of interpretation and enforcement capable of invoking the Court's jurisdiction under article 2(1) and 130(1) of the Constitution? I do not think so. Significantly Plaintiff himself, in the instant case says he is in this Court to challenge *a **legislative proposition** which, if fully enacted would not only infringe upon the constitutionally guaranteed rights of individuals, but also set a dangerous precedent for legislative overreach into the private lives and freedoms of citizens.*

The settled jurisprudence of this Court points to the Court not allowing itself to be drawn into a matter that does not present a genuine issue of interpretation regardless of the garb in which it is dressed. See ADUMOAH TWUM II VRS ADU TWUM [2000] SCGLR 165; EDUSEI VRS ATTORNEY-GENERAL [1996-97] SCGLR 97 and recently KWAME BARFO VRS ATTORNEY GENERAL (Writ No. J1/12/2021, 24TH April 2024 where in respect of a recommendation of the Presidential Emoluments Committee, this Court decided per Torkornoo CJ 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 the case of ROCKSON VRS GHANA FOOTBALL ASSOCIATION [2010] SCGLR 443, this Court declined an invitation to exercise judicial review jurisdiction under Article 2(1) and 130(1) to strike down the Statutes of the Ghana Football Association for the reason inter alia that it was not an enactment and not part of the laws of Ghana, 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."

Whilst the issue in the ROCKSON case related to Statutes of the GFA, the very scholarly opinion delivered which points to what must be the attitude of this Court in such matters, is so instructive as to attract adoption and application to the facts of this case even if by analogy. From my standpoint, the focus should be on the subject matter which is sought to be impugned and struck down and whether it passes as law in terms of Article 11 of the Constitution. The use of the provisions in Article 11 as the criteria to measure the sort of law that is capable of invoking our jurisdiction under Article 2(1) and 130(1) is sound and I adopt it to decide this matter. Doing so, I hold that a Bill does pass the test. I shall therefore come to the same decision that the Bill is incapable of invoking our jurisdiction under Articles 2(1) and 130(1).

Persuasive Authorities

In 2018, the Nigerian Court of Appeal (ABUJA DIVISION) had to deal with the issue of judicial review and its enforceability against a bill in the case of NATIONAL ASSEMBLY VRS ACCORD; ATTORNEY-GENERAL OF THE FEDERATION AND INDEPENDENT NATIONAL ELECTORAL COMMISSION [2021]18 NWLR 193 Pt 1808. By the way, the Nigerian Constitution creates the power of judicial review over legislative power in the courts under Section 4(8) of the Constitution of that country as follows:

> *"Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law; and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts, or purports to oust the jurisdiction of a court of law or judicial tribunal established by law."*

And Section 58 of the Constitution which is *in pari materia* with our Article 106 has the following provisions:

> *"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."

The case under reference concerned 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."

Then in 2006, the South African Constitutional Court in the case DOCTORS FOR LIFE INTERNATIONAL VRS THE SPEAKER OF THE NATIONAL ASSEMBLY & OTHERS [2006] 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.

I have indulged myself the above authorities, which although only persuasive, point to the trend of constitutional practice in other common jurisdictions and thus affords sound basis to take a cue from especially as our constitutional architecture is formulated on similar constitutional arrangements. I admit that the 1992 Constitution was designed to fit the circumstances of this country, nonetheless, comparative learning has not been alien to the development of the jurisprudence of this Court. See for instance GHANA CENTER FOR DEMOCRATIC DEVELOPMENT & ORS VRS ATTORNEY-GENERAL, Writ No. J1/01/2023 judgment of 31st May 2023; ARTHUR VRS ARTHUR [2013-2014]1 SCGLR 534.

Judicial review and legislative power

The legislative power of the Ghana is vested in Parliament by the provision in article 93(2) as follows:

> *"(2) Subject to the provision of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution."*

Whereas article 93(2) creates the legislative power, the power is exercisable under Article 106. It must be emphasized that 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).

It is common ground that Human Sexual Rights and Family Values Bill is yet to be assented to by the President. The President may exercise any of his powers under Article 106 in which case the Bill may go back to Parliament for a reconsideration and a possible amendment. That is why it is a good caution to this Court not to interfere at this stage. Any attempt on our part to strike down the Bill will amount to striking at an unborn baby. I am inclined to the position that the rightful stage to invoke the jurisdiction of the Court is when the Bill has become a full-blown enactment in terms of Article 2(1).

When the framers of the Constitution vested in the Supreme Court, the power of judicial review of legislative action in Articles 2(1) and 130(1), it was never intended to make the Court part of the law-making process. Indeed, implicit in the power of judicial review

which ultimately makes this Court the chief warden of the Constitution is an attitude that will allow each other organ to function in accordance with the Constitution. We cannot pretend to be protecting the Constitution whilst at the same time impeding the exercise of the powers duly vested in the other organs. That will be a slap on the face of separation of powers, a cornerstone of the constitutional architecture. The observation of Wiredu JSC (as he then was) in GBA VRS ATTORNEY GENERAL [1995-96]1 GLR 598 at 605-606 is worth recalling as follows:

> *"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."* See also NEW PATRIOTIC PARTY VRS ATTORNEY-GENERAL (31st December) [1993-94]2 GLR 35 at 52; NATIONAL MEDIA COMMISSION VRS ATTORNEY-GENERAL [2000] SCGLR 1 at 11.

May I be understood clearly that whereas, this Court's power under Article 2(1 and 130(1) to strike at constitutional breaches on the part of Parliament or any other organ or body for that matter, remains intact and unalloyed, the proper stage allowed to judicially review a Bill is when it has become a full-blown law in terms of the provision in Article 106. It is the only way the ideals of separation of powers shall be maintainable.

It is for the foregoing analysis that I also dismiss all the reliefs on the Plaintiff's writ.

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

COUNSEL

PAA KWESI ABAIDOO ESQ. FOR THE PLAINTIFF WITH ARTHUR CHAMBERS ESQ.

THADDEUS SORY ESQ. FOR 1ST DEFENDANT WITH PUUMAYA NANTOGMA

GODFRED YEBOAH DAME, ATTORNEY – GENERAL WITH DIANA ASONABA DAPAAH (DEPUTY ATTORNEY-GENERAL), DR. SYLVIA ADUSU (CHIEF STATE ATTORNEY), VICTORIA ADOTEY (STATE ATTORNEY) AND NANA KONADU FREMPONG (ASSISTANT STATE ATTORNEY)