Filed on 18/02/2021
at 10:00 am/pm
Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION
PURSUANT TO LEAVE GRANTED BY THIS COURT ON 14TH JANUARY 2021
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

JOHN DRAMANI MAHAMA — **PETITIONER**
No. 33 Chain Homes
Airport Valley Drive
Accra

AND

1. **ELECTORAL COMMISSION** — **1ST RESPONDENT**
   National Headquarters
   6th Avenue
   Ridge – Accra

2. **NANA ADDO DANKWA AKUFO-ADDO** — **2ND RESPONDENT**
   House No. 02 Onyaa Crescent
   Nima - Accra

MOTION ON NOTICE FOR REVIEW OF RULING DATED FEBRUARY 16, 2021

ARTICLE 133(1) AND RULE 56 OF THE SUPREME COURT RULES, 1996 (C.I. 16)

PLEASE TAKE NOTICE that this Honourable Court shall be moved by Counsel for and on behalf of Petitioner/Applicant herein (Applicant), praying for an order of the Court reviewing its Ruling delivered on 16th February 2021 in respect of application by Applicant to re-open his case; **UPON** the grounds set forth in the Statement of Case and the accompanying affidavit, and for such further or other orders as the Honourable Court may deem fit.

0605818
0605902

18 - 2 - 2021

COURT TO BE MOVED on MONDAY the 22ND day of February 2021 at 9.30 in the forenoon or so soon thereafter as Counsel for and on behalf of Applicant may be heard.

DATED AT ACCRA THIS 17TH DAY OF FEBRUARY 2021

.....

TONY LITHUR

SOLICITOR FOR PETITIONER/APPLICANT

SOLICITOR'S LIC. NO. eGAR 00278/21

LAW FIRM REG. NO. ePP00047/21

LITHUR BREW & COMPANY
No. 1102 1ST KADE CLOSE,
KANDA ESTATES
P. O. BOX CT 3865 CANTONMENTS ACCRA
TEL: 0302208104/05

THE REGISTRAR

SUPREME COURT

ACCRA

AND COPY EACH FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS OR THEIR SOLICITORS:

1. **JUSTIN AMENUVOR, AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU, ACCRA.**
2. **AKOTO AMPAW, AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA, ACCRA.**

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION
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No. 33 Chain Homes
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AND

1. **ELECTORAL COMMISSION** — **1ST RESPONDENT**
   National Headquarters
   6th Avenue
   Ridge – Accra

2. **NANA ADDO DANKWA AKUFO-ADDO** — **2ND RESPONDENT**
   House No. 02 Onyaa Crescent
   Nima - Accra

AFFIDAVIT IN SUPPORT

I, **JOHN DRAMANI MAHAMA**, of House No. 33 Chain Homes, Airport Valley Drive, Accra, make oath and say as follows:

1. I am the Petitioner and Applicant herein. The facts in this affidavit, unless otherwise stated, are within my personal knowledge, information or belief.

2. On 16th February 2021, this Court delivered a unanimous ruling refusing an application by me to re-open my case for the purpose of causing a subpoena to be issued and directed at Mrs. Jean Adukwei Mensa to

appear in court to be cross-examined by my Counsel. The ruling is attached to this affidavit and marked as **Exhibit "3RD REVIEW 1"**.

3. At the hearing of this application, I shall, through my Counsel, seek leave of this Honourable Court to refer to all processes filed in this case up to the date of the hearing of the application.

4. In respect of Exhibit "3rd Review 1", I am advised by Counsel and verily believe that the Court made fundamental errors of law, including the ruling being *per incuriam* of constitutional provisions, statutes and previous decisions of the Supreme Court.

5. Among these errors, I am advised by Counsel and verily believe, is an error whereby the Court subordinates a provision in the Evidence Act to a rule in subsidiary legislation by the Rules of Court Committee.

6. Attached herewith marked as Exhibit **"3RD REVIEW 2"** and **"3RD REVIEW 3"** are the two affidavits of the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, whose legal effect (by virtue of the Evidence Act), the ruling attempts to sidestep by recourse to subsidiary legislation.

7. The fundamental errors which have occasioned a miscarriage of justice against me are set out in the Statement of Case herewith attached.

8. I am advised and verily believe that they constitute exceptional circumstances that warrant the Court reviewing its own decision.

9. **WHEREFORE** I swear to this affidavit in support of the application herein.

SWORN IN ACCRA THIS 18TH

DAY OF FEBRUARY, 2021]

.....

DEPONENT

BEFORE ME

COMMISSIONER FOR OATHS

FELIX AKAKPO LAWER
COMMISSIONER FOR OATHS
P. O. BOX TN 1933
TESHIE NUNGUA EST. - ACCRA

EXHIBIT "3RD REVIEW 1"

1

IN THE SUPERIOR COURT OF JUDICATURE, THE SUPREME COURT (CIVIL DIVISION) SITTING IN ACCRA ON TUESDAY THE 16TH DAY OF FEBRUARY, 2021

CORAM: YEBOAH (CJ) (PRESIDING), APPAU, MARFUL-SAU, AMEGATCHER, PROF. KOTEY, OWUSU AND TORKORNOO JJ.S.C

WRIT NO. J1/5/2021

ARTICLE 64 OF THE CONSTITUTION AND SUPREME COURT RULES, 1996 (C. I. 16) AS AMENDED BY C. I. 74 AND C. I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER, 2020

JOHN DRAMANI MAHAMA - PETITIONER

This is the Document Marked 3RD REVIEW 1 Referred To In The Affidavit This 18/02/2021 day Of... Before Me... Commissioner For Oaths

AND

1. ELECTORAL COMMISSION - 1ST RESPONDENT

2. NANA ADDO DANKWA AKUFO-ADDO - 2ND RESPONDENT

PARTIES: PETITIONER REPRESENTED BY SAMUEL OFOSU AMPOFO

1ST RESPONDENT REPRESENTED BY JEAN MENSA, CHAIRPERSON

2ND RESPONDENT REPRESENTED BY PETER MAC-MANU

COUNSEL: TSATSU TSIKATA WITH HIM TONY LITHUR FOR THE PETITIONER

CERTIFIED TRUE COPY
18/02/2021
.....REGISTRAR
SUPREME COURT, ACCRA, G/R

JUSTIN AMENUVOR FOR 1ST RESPONDENT WITH HIM A. A. SOMUAH ASAMOAH

AKOTO AMPAW FOR 2ND RESPONDENT WITH HIM FRANK DAVIES AND KWAKU ASIRIFI

BY COURT

When the Petitioner in this case closed his case with the testimony of his third and last witness Mr. Robert Joseph Mettle-Nunoo on the 8th of February 2021, the Court, as our procedure rules on trials provide, called on the 1st Respondent to open its defence by the calling of its witness, whose witness statement had already been filed on the orders of the Court. This witness happened to be the Chairperson of the 1st Respondent Mrs. Jean Adukwei Mensa. Counsel for the 1st Respondent told the Court that he had weighed or scrutinized the case of the Petitioner as presented by his three witnesses and in his view, the Petitioner had not provided any substantial evidence in proof of his case, for which the 1st Respondent had to mount the witness box to testify in answer. The 1st Respondent therefore prayed the Court to determine the petition on the oral testimonies and data presented by the Petitioner through his witnesses and decide the main issue at stake, which is; whether or not none of the twelve (12) Presidential candidates who contested the 7th December, 2020 Presidential elections did obtain more than 50% of the valid votes cast in the said elections. The 2nd Respondent, who was declared as winner of the elections by the 1st Respondent, which declaration ignited the filing of the instant petition, associated himself with the 1st Respondent on its prayer and told the Court he also did not desire to give any testimony through his attorney as contemplated. According to him, the Petitioner did not discharge the burden imposed on him by

law to produce sufficient evidence to buttress his case, so there was no need for him to say anything in explanation. He supported 1st Respondent's prayer that the Court should resolve the petition on Petitioner's evidence only, since the burden was on him to prove the reliefs he is seeking.

This position of the Respondents to close their case without adducing any evidence at all, which the law permits them to do, did not go down well with the Petitioner. Counsel for the Petitioner resisted this position of the respondents and prayed the Court to compel the 1st Respondent's Chairperson specifically, to testify as 1st Respondent's witness, since she had filed a witness statement to that effect and therefore had elected to testify. As for the 2nd Respondent, Petitioner said he was not bothered about his refusal to testify. The Court adjourned for the parties to submit legal arguments for its determination on the matter, which they did. On the 11th of February, 2021, the Court dismissed the Petitioner's objection to the Respondent's decision not to testify and gave reasons in a written ruling delivered for that purpose. One of the reasons given by the Court in dismissing the objection of the Petitioner was that this Court could not compel the 1st Respondent to call its Chairperson as its witness as Rule 3E (5) of Order 38 of the High Court Civil Procedure Rules, (C.I. 47) as amended by (C.I. 87) permits them to do so.

Immediately after the Court's ruling on the issue, the Petitioner filed the instant application. It was filed on the same 11th February, 2021 and almost around the same time that this Court delivered its ruling dismissing Petitioner's objection to the closure of respondent's case. There is no doubt that the instant motion was triggered by the ruling of this Court in which the Court endorsed the Respondents' prayer not to volunteer any evidence whatsoever. The Petitioner did not hide this feeling and expressed it lucidly under paragraphs 15, 16 and 17 of his affidavit in support of the application as follows:

"15. As a result of the ruling of the Court of Thursday, 11th February 2021, it has become necessary, I am advised and verily believe, that my counsel use the subpoena powers of the Court under Order 38 rule 10 of C.I. 47 to compel the attendance of the Chairperson of 1st Respondent to appear and testify in court.

16. At the time my counsel closed my case, the representation that had been made by each Respondent to the Court, and specifically to me, was that witnesses who had filed witness statements were going to testify. It therefore came as a surprise that both Counsel for Respondents announced on Monday, 8th February 2021 that this was no longer the case.

17. My Counsel is seeking leave of the Court to re-open my case to enable the subpoena referred to above to be served on Mrs. Jean Adukwei Mensa, so she can appear before the Court to testify."

The application is headed; "**MOTION ON NOTICE FOR LEAVE TO RE-OPEN CASE OF PETITIONER TO ENABLE CHAIRPERSON OF ELECTORAL COMMISSION TO TESTIFY**". From all indications, the target of the Petitioner in this application is not the 2nd Respondent who has also filed a witness statement through an attorney, but the Chairperson of the 1st Respondent. The application, which is not known under our rules of procedure, has been brought under our inherent jurisdiction, as contended by counsel for the Petitioner. According to Petitioner, he is praying this Court to re-open his case, which this Court has declared closed on his own instructions, to enable him subpoena the Chairperson of the 1st Respondent to testify as a hostile or adverse witness. The Petitioner advanced almost the same arguments he made before the Court during his objection to the closure of Respondents' case. The Respondents have

strongly opposed the application and have cited both local and foreign judicial decisions to support their arguments.

Learned Counsel for the Petitioner urged on the Court that he wanted the Chairperson of the 1st Respondent to testify as an adverse witness of the Petitioner. Counsel also made references to paragraphs 31, 32 and 33 of the affidavit in support of the application as to why he wanted the Chairperson of the 1st Respondent to testify. The other point Petitioner's lawyer kept urging on the Court was that the Chairperson performs an important constitutional duty and must be made to account to the people for her stewardship and to vindicate herself. The question is; how can the Chairperson of the 1st Respondent vindicate herself when she is not on trial before us? She has neither been personally sued nor arraigned before this Court on any complaint or accusation (civil or criminal) for which she has to explain or account to anybody for anything she has done or not done. It is the Institution, the Electoral Commission, which she heads, that has been accused by Petitioner of not having performed its constitutional duty according to law. Does the Petitioner need the personal testimony of the Chairperson of the Institution sued before he could prove or establish the alleged non-performance of this constitutional duty by the 1st Respondent? We do not think so.

What indeed, baffles this Court is the intimation by Counsel for the Petitioner that he intends to call the Chairperson of the 1st Respondent as an adverse witness. Black's Law Dictionary, Ninth Edition, edited by Bryan A. Garner, defined a 'hostile witness' as; **'A witness who is biased against the examining party, who is unwilling to testify or who is identified with an adverse party....also termed, 'adverse witness'.** A hostile or adverse witness, as the definition shows and as we understand the term in practice, is therefore a witness who has been called by a party to testify in support of his or her case

and who, whilst in the witness box under examination in-chief, becomes hostile and gives evidence contrary to the party who called him and in support of the opponent's case. The party, in such circumstances, can apply to the Court to treat such a witness who is already in the witness box, as a hostile or adverse witness. This would enable the party calling him to cross-examine him as if he is a witness of his opponent to solicit the truth in respect of the issue at stake. A witness who has not yet entered the witness box to testify cannot therefore be called an adverse or hostile witness under any circumstances.

This Court exercises its inherent jurisdiction, inter alia, to correct errors in procedure and to ensure that no miscarriage of justice is occasioned during a trial. Inherent jurisdiction, which is also referred to as the *'inherent powers doctrine'*, is the principle that allows courts to deal with diverse matters over which they have intrinsic authority. The Petitioner has not demonstrated to us, in any way that, the decision of the Respondents not to testify, which was upheld by this Court in its ruling of 11th February, 2021, has occasioned him any miscarriage of justice. That decision is backed by law, particularly our rules of procedure, case law and settled practice. We demonstrated this in our ruling of 11th February 2021 when we rejected Petitioner's objection to the Respondents' decision not to testify.

At the time this application was filed, Petitioner had expressly closed his case, likewise the Respondents. He is therefore seeking our discretion to re-open his case and to lead further evidence, which evidence he never disclosed to the Court. He is not entitled to his prayer as of right. It is subject to our discretion and before we can exercise our discretion in his favour, he must satisfy certain basic conditions as laid down by case law. The general expectation imposed on all litigating parties is to place the whole of their case before the Court at the time of the hearing. The process of invoking the inherent jurisdiction of the Court

at the close of the cases of the parties to re-open a closed-case in order to adduce fresh or further evidence is thus, an extraordinary step, which the importance of finality of litigation frowns upon, save the presence of exceptional circumstances. In the Canadian case of **OAKLEY v ROYAL BANK OF CANADA, 2013 ONSC 145 [2013] OJ No. 109 (SC)**, Andre, J held:

"The Court requires the parties to litigation to bring forward their whole case... In both civil and criminal matters, the Crown or plaintiff must produce and enter in its own case all clearly relevant evidence it has...

On the other hand, a trial judge has the discretion to permit a plaintiff to re-open its case. This discretion however, must be exercised judicially. It must involve a scrupulous balancing of the accountability of counsel for decisions regarding the prosecution of its case and the interests of justice"

Though this Canadian case is not binding on us, it has a persuasive effect as it espouses the principles governing re-opening of closed cases for the purposes of adducing fresh or further evidence. Back at home, our own Benin, JSC (then Benin, J) gave a similar holding in the case of **KOMBAT v LAMBIM [1989-90] I GLR 324 at p. 326** as follows: ***"The general rule of evidence was that after a prisoner's case was closed, a judge should only call a fresh witness when a new matter had arisen ex improviso which could not have been foreseen. Such witness could in a civil case only be called with the consent of all the parties. And although the Evidence Decree, 1975 (NRCD 323), permitted a court to call or re-call witnesses, it was subject to the general rule".***

CERTIFIED TRUE COPY
.....REGISTRAR
SUPREME COURT, ACCRA, G/R

Though the above decision made reference to the calling or re-call of a witness by the trial court, the same principle applies where it is any of the parties who applies for such a call or re-call after the close of their cases. One of the leading cases on applications to re-open cases is the Canadian case of **671122 ONTARIO LTD. v SAGAZ INDUSTRIES CANADA INC., 2001 SCC 59, 2 SCR 983 (SCC),** which was referred to us by counsel for the 2nd Respondent. In that case, the court approved of a two-stage test, which was first articulated in **SCOTT v COOK [1970] OJ No. 1487, 2 OR 769 (HCJ).** That test, which is intended to assist the trial judge in exercising his or her discretion to re-open a trial, requires the applicant to:

1. *Show that the evidence he or she seeks to adduce is such that, if it had been presented at trial, it would probably have changed the result, and*
2. *Prove that such evidence could not have been obtained by reasonable diligence before the trial."*

This same test is what a party, who intends to lead fresh or further evidence in a trial or on appeal, must satisfy before a court could grant such a request. In the case of **POKU v POKU [2007-2008] SCGLR 996 at p. 998**, which was cited by counsel for the 2nd Respondent, this Court, per Wood, C.J. expressed the principle succinctly in the following words:

"The rule is intended to assist an applicant who has made a genuine attempt to look for the evidence and has met with failure. Courts ought therefore to be adept at unmasking attempts by a dissatisfied party coming through the backdoor and under the cloak of having come by new or fresh evidence, seeking to fill in gaps or lapses in his or her case; for the rule is not meant to aid the slothful or the indolent, the careless, negligent or reckless litigant whether acting pro se or through

counsel. The application is not granted on compassionate grounds; neither is it meant to give the slovenly, particularly a litigant acting through counsel and who fails at the trial to marshal his facts carefully or fails to conduct his case properly by presenting essential evidence at the trial or through the necessary cross-examination; or also fails to conduct the necessary investigations which would have thrown light on or strengthened his case or give him or her a second chance at rebuilding his or her case."

This same point was made in the case of **ANNOBIL v OBOSU [1982-83] 1 GLR 585 at p. 587,** per Osei-Hwere, J, which was referred to us by learned counsel for the 1st Respondent. The court, relying on the English case of **YOUNG v KENSHAW; BURTON v KENSHAW [1989] 81 L.T. (N.S.) 531 at p. 532 – CA,** held that the rationale behind the denial or grant of permission to order a new trial upon the discovery of further evidence must be the same as that which denies or grants permission to lead further evidence after the close of the case for the parties. In all the examples cited, the defendants did testify and the plaintiffs found the need to call for fresh or further evidence to buttress their case, though the courts, in almost all the instances, refused the applications. In the instant case however, the respondents decided not to testify at all so no situation arises for there to be the need for the petitioner to call further or fresh evidence to clarify anything, be it a doubt or a point raised in the testimony of the Respondents, since there was none.

The Petitioner, in his submissions, made reference to Section 26 of the Evidence Act, 1975 [NRCD 323], which he says operates as estoppel against the 1st Respondent for failing or refusing to call a witness as contemplated by the filing of a witness statement. The section provides: ***"Except as otherwise provided by law, including a rule of equity, when a party has, by that party's***

own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between (a) that party or the successors in interest of that party, and (b) the relying person or successors in interest of that person".

We wish to state emphatically that section 26 of the Evidence Act, which is on Conclusive Presumptions, is not applicable in this case in view of Order 38 Rule 3E (5). The rules permit a party to call or not to call a witness, who has filed a witness statement to testify, as the mere filing of a witness statement does not constitute an election to testify as we rightly held in our ruling on the 11th of February, 2021. Again, the Petitioner did not decide to close his case after the testimony of his third witness just because the Chairperson of the 1st Respondent had filed a witness statement. This is because, in law, a plaintiff or petitioner does not require evidence from his or her adversary, in an adversarial system as ours, to prove his or her case. The authorities are legion that a plaintiff or petitioner, succeeds on the strength of his or her own case but not on the weakness of his or her adversary's case.

Conclusion

We wish to reiterate that by settled practice, and in the absence of express rules to that effect, a trial judge, just like this Court in this trial petition, has a wide discretion to re-open proceedings before a judgment is rendered. That discretion is, however, one which should be exercised sparingly and with restraint, as motions to re-open necessarily involve a balancing of the accountability of counsel for decisions regarding the prosecution of its case and the interests of

justice. Accordingly, in weighing the propriety of re-opening proceedings to permit new or additional evidence to be led or tendered, the Court will typically consider the following broad questions:

i. ***Would the evidence, if it had been presented during the trial, have had any influence on the result?***
ii. ***Could the evidence have been obtained before or during trial by the exercise of reasonable diligence?***

The Court will also assess: the relevance, necessity, and materiality of the proposed evidence; the effect, if any, the re-opening may have on the expeditious conduct of the trial at large and the importance of the integrity of the trial process; and finally, whether the other party will be prejudiced if the re-opening is allowed or a miscarriage of justice perpetrated if it is not.

As we have already indicated in this ruling supra, the Petitioner, in this application, has not given us an inkling of the new or fresh evidence he wants to bring to the fore through the Chairperson of the 1st Respondent and how that evidence would assist this Court to do justice in the matters under consideration in this petition. Neither has he disclosed how that evidence would advance the cause of his petition. For the above stated reasons, we find no merit whatsoever in Petitioner's application to re-open his case for the sole purpose of compelling his adversary's intended witness to testify through a subpoena, without indicating the sort of evidence he intends to solicit from the said witness and how that evidence is going to help the Court in resolving the dispute before it. We accordingly refuse the application and proceed, without any hesitation, to dismiss same.

The Court adjourns the petition to Thursday the 18th of February, 2021.

(SGD) **ANIN YEBOAH**
(CHIEF JUSTICE)

(SGD) **Y. APPAU**
(JUSTICE OF THE SUPREME COURT)

(SGD) **S. K. MARFUL-SAU**
(JUSTICE OF THE SUPREME COURT)

(SGD) **N. A. AMEGATCHER**
(JUSTICE OF THE SUPREME COURT)

(SGD) **PROF. N. A. KOTEY**
(JUSTICE OF THE SUPREME COURT)

(SGD) **M. OWUSU (MS.)**
(JUSTICE OF THE SUPREME COURT)

(SGD) **G. TORKORNOO (MRS.)**
(JUSTICE OF THE SUPREME COURT)

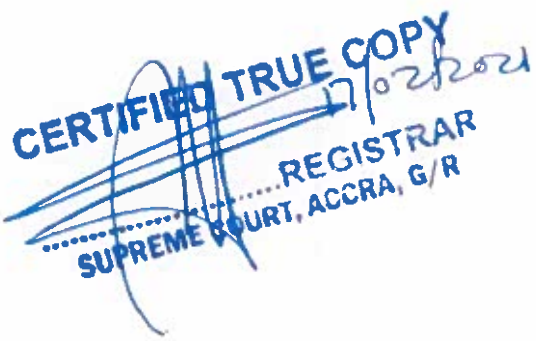

EXHIBIT "3" KD REVIEW 2

Filed at 2:55 pm/

Registrar
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

PETITION NO: J7/9/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

This is the Document Marked 3RD REVIEW 2 Referred To In The Affidavit Sworn This 18/03/2021 Day Of Before Me Commissioner For Oaths

THE PETITION OF:

JOHN DRAMANI MAHAMA
NO. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE NO. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

AFFIDAVIT OF 1ST RESPONDENT IN OPPOSITION TO MOTION ON NOTICE FOR REVIEW

I, JEAN ADUKWEI MENSA of No. E199/2 8th Avenue Ridge, Accra in the Greater Accra Region of the Republic of Ghana, make oath and say as follows:

8. I verily believe that there are no exceptional circumstances or legal basis that warrant the intervention of this Honourable Court in this application for review.

9. Wherefore I swear to this affidavit in opposition to the application herein.

SWORN IN ACCRA THIS
22ND DAY OF JANUARY
2021
BEFORE ME

.....
DEPONENT

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
P.O. BOX AC 36, ARTS CENTRE, ACCRA

COMMISSIONER OF OATHS

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE APPLICANT OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON THE 2ND OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

PETITION NO: J7/9/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:
JOHN DRAMANI MAHAMA
NO. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE NO. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

STATEMENT OF CASE OF THE 1ST RESPONDENT IN OPPOSITION TO THE APPLICATION FOR REVIEW

A INTRODUCTION

1. The facts in the application are not in dispute. The Applicant applied to the ordinary bench of this Honourable Court to serve interrogatories on the 1st Respondent. The application was opposed by the 1st Respondent and then refused by the ordinary bench on 19th January 2021.

2. It is against this ruling that the Applicant has filed the present application for a review. It is our contention that the application herein is indeed an appeal in disguise.

3. The Applicant claims that the sole purpose for the proposed interrogatories was to facilitate expeditious trial, the very essence of C.I. 99.

4. The Petitioner does not suffer any injury to his rights if the application for review is refused as he still has the opportunity to solicit the same answers during cross examination unless it is his case that he does not have the full complement of his case and needs the answers to fill in.

5. My Lords the 1st Respondent submits that it would address the Court only on the issues of whether or not the review jurisdiction of the Supreme Court has been properly invoked so as not to burden the court with matters that the ordinary

bench had already heard and determined decisively by a unanimous decision on 19th January 2021.

B SUBMISSIONS OF THE RESPONDENT COMMISSION

Ground (a) The Court fundamentally erred in regarding CI 99 as rendering Order 22 of CI 47 inapplicable.

6. My Lords, the Applicant argues under this ground that: (1) in *Akufo-Addo & Others v John Mahama & Another (No. 2)* [2013] SCGLR (Special Edition) 50, this court held unanimously that CI 47 applied in the Supreme Court, and that the decision is binding on the court; (2) there is nothing to suggest that the Supreme Court (Amendment) (No 2) Rules, 2016, CI 99 does not support discovery processes, including interrogatories in election petitions; (3) interrogatories narrow down the issues for trial and expedite adjudication as required in CI 99. Therefore, Your Lordships erred when you disallowed the application for interrogatories in the name of CI 99.

7. My Lords, the part of your decision that the Applicant impugns is as follows: 'We are strictly bound to comply with CI 99, and we will not apply Order 22 of CI 47 of 2004...' The Applicant contends that Your Lordships dicta in the above decision 'are binding on the court'. My Lords, this is not a fair rendition of stare decisis in Ghana. Article 129 of the 1992 Constitution mandates Your Lordships' Court to 'depart from a previous decision when it appears to it right to do so'.

8. My Lords in 2013 this Honourable Court heard and determined the Presidential Election Petition without the time constrains now imposed in CI 99. Parties therein were permitted to resort to external interlocutory mechanism such as interrogatories, discoveries, inspections and further and better particulars to assist the court speed up the trial. Such interlocutory applications were made under CI 47 and the court entertained them.

9. My Lords, unfortunately, that trial took eight months to reach a decision. A phenomenon which led the Rules of Court Committee to initiate reforms leading to the passing of C.I. 99 setting specific timelines and making provision for only further and better particulars as the only aid the Respondent could resort to in the name of assisting the court to expedite trial. See Rule 69(A) (5) of C.I. 16 an amended by C.I. 99.

10. My Lords, we submit that if the lawmaker had wanted to make provisions for interventions like interrogatories, discoveries, admissions and inspections the lawmaker would have said so expressly.

11. Departure from a previous decision under Article 129 of the 1992 Constitution of the 1992 Constitution is mandatory, not discretionary. This court must depart whenever circumstances necessitate a departure.

12. Your Lordships have held that CI 99 necessitates a departure from its previous decision reported in *Akufo-Addo & Others v*

John Mahama & Another (No. 2) supra; the 1st Respondent invites your Lordships to affirm your decision.

13. Following the change of the law in 2016, Your Lordships' court, as an election court, does not have the time or leisure that the High Court enjoys. CI 99 now demands that Your Lordships conclude election petitions in 42 days, for your Lordships to resolve the outcome of the election for the ship of state to raise anchor. Your Lordships explained that the changes introduced in CI 99 necessitates the application or disapplication of the rules hitherto applicable in CI 47. In *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*, there were no time constrains so interrogatories were *conveniently* made but under CI 99, they cannot be made conveniently. Order 22 of CI 47 empowers the court to grant leave to serve interrogatories on a matter 'in question' between the parties. The service of an application for leave to serve interrogatories, hearing and grant of the application, and the Respondent's answer do not fit conveniently into the timeframe in CI 99. The timelines in CI99 suggest that the need for interrogatories would arise only after the 10th day when the Respondent had appeared and filed an answer. Five days hence the Respondent must be in court for a pre-trial hearing. Order 22 r 6(2) provides that 'if a party against whom an order is made ... fails to comply with it, then, ... he shall be liable to committal for contempt.' Surely, no court would be quick to commit a party under such strict timeline situations.

14. The Respondent submits that the court was within its rights to depart from its decision in *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*. Because of the interventions of CI99.

15. My Lords, the remedy of review is unavailable where the Applicant fails to establish exceptional circumstances resulting in miscarriage of justice. The Petitioner failed to show what miscarriage of justice he has suffered. Your Lordships' ruling is an interlocutory decision made in the case management of this case to respond to the time constraints imposed on the court under CI 99. Your Lordships' order does not preclude the Petitioner from asking the questions in the interrogatories in cross-examination if he so wishes.

16. In paragraph 27 of the application, the Petitioner states that "the facts to be interrogated relate directly to the acts of the 1st Respondent, particularly its Chairperson, Mrs. Jean Adukwei Mensa and could not be answered by any other person." Surely, that cannot be a legitimate ground for seeking an order for interrogatories because as your Lordships noted in the absence of the 1st Respondent's Chairperson any other person who deputises for her, shall prepare the answers to the questions. Interrogatories elicit facts, so does cross-examination. Your Lordships have spoken that time constraints on this court render interrogatories inconvenient.

So, let the Petitioner ask those questions in cross-examination if he so chooses.

17. Additionally the Petitioner in the Notice to Admit facts that he served on the 1st Respondent contravened the provisions of Cl 47. This is because the Petitioner arbitrarily ordered the 1st Respondent to provide answers to the questions posed within three (3) days when no rules of either the High Court or the Supreme Court had set such timelines. The Petitioner sets his own imaginary timelines!

Ground (b) The Court fundamentally erred in determining that 'indeed, Rule 69(c)(4) of Cl 99 ... implies that even amendments ought not to be sought and granted...' and thus occasioned a grave miscarriage of justice to Petitioner/Applicant.

18. The Petitioner argues under this ground that it is Rule 69A(6), not Rule 69(c)(4) of Cl 99 that mentions amendments. Your Lordship's jurisdiction for review is invoked only where the Applicant seeking a review shows exceptional circumstances that resulted in miscarriage of justice to the Applicant. My Lords, the Petitioner seeks a review of your Lordships' decision dated 19 January 2021. The Petitioner does not say what 'grave miscarriage of justice' he has suffered from the pronouncement. Your Lordships are invited to dismiss this ground also.

Ground c) The Court fundamentally erred in failing to appreciate that its discretion ought to be exercised in accordance with Article 296 of the Constitution.

19. The Petitioner argues that Your Lordships 'fell into the fundamental error of misinterpreting the provisions of CI 99' resulting in an arbitrary and capricious exercise of discretionary power (paragraph 31). My Lords, this is the final court of this land; its pronouncements have the force of law. The court must not change its decisions upon a simple allegation by a party that the court is wrong. Your Lordships held that 'several statutory amendments have been made by CI 99 of 2016 which has restricted the practice and procedure of this court as regards an Election Petition. CI 99 states in plain words that a Presidential Election Petition shall be heard and completed in 42 days, also it specifies timelines for each stage of the proceeding. The Petitioner castigates your Lordships for 'fundamental error of misinterpreting the provisions of CI 99' but does not explain the alleged error. The Petitioner's conduct recalls the decision of this court in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC, per Adade JSC:

> "Let me say at once that, for all I know, virtually every judgment on this earth, arrived at as a result of evidence gathered from several sources, can be criticised. A Privy Council judgment put in the hands of any lawyer, along with the evidence grounding it, can be criticised in the same way as a High Court judgment

can be. A person who has lost a case will almost instinctively feel that the judgment must be wrong. And why not? If he had won, the decision would be right; so if he lost, how could the court be right? But the mere fact that a judgment can be criticised is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice. The review jurisdiction is not intended as a try-on by a party after losing an appeal; nor is it an automatic next step from an appeal; ***neither is it meant to be resorted to as an emotional reaction to an unfavourable judgment***." My Emphasis.

20. My Lords this court has held and rightly so that CI 99 had taken away the Court's discretion regarding the process of discovery in view to the strict timelines of the Presidential Election Petition.

21. The Petitioner's grievance in Paragraph 32 of the Statement of Case is unclear obviously because the paragraph totally ignores the context in which the dictum was made. The thrust of Your Lordships' decision is that CI 99 of 2016 has restricted

the practice and procedure of the Supreme Court as a Presidential Election Court, rendering the discovery processes under CI 47 inapplicable.

22. Indeed to borrow from Adade JSC supra, the reaction of the Petitioner to the ruling of 19th January 2021 is one of ***"an emotional reaction to an unfavourable judgment."***

23. My Lords, also in the unreported case of *Charles Lawrence Quist v Ahmed Danawi*; review motion NO. J7/8/2015 dated 5th November 2015, Dotse JSC, reading the lead judgment of the court said:

> "The authorities are quite settled that the review application is not a process for which a losing party in the Supreme Court may seek to have another bite of the cheery. Instead, an Applicant in a review application has to point out from the judgment reviewed from the exceptional circumstances which have resulted into a miscarriage of justice. None was however offered by the Applicant in this case.

24. My Lords it is for these reasons that we urge your Lordships to dismiss this application and proceed with the hearing of the Petition filed by the Petitioner in this Court.

25. We pray that the application herein be dismissed.

DATED AT #8 NII ODARTEY OSRO STREET KUUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA, THIS 22ND DAY OF JANUARY, 2021.

JUSTIN AMENUVOR #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR THE ELECTORAL
COMMISSION OF GHANA

AMENUVOR & ASSOCIATES
#8 NII ODARTEY OSRO STREET
(KUKU HILL FRONTLINE CAPITAL
ADVISORS BUILDING) OSU
BOX Ka9488, AIRPORT, ACCRA - GHANA
TEL: 020 926 5396

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

EXHIBIT "3RD REVIEW 3"

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

92

PETITION NO: J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

This is the Document marked 3RD REVIEW 3 referred To in The Affidavit of 18/03/2021 day Of ... before Me ... Commissioner For Oaths

THE PETITION OF:

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra GL-128-5622

PETITIONER

AND

ELECTORAL COMMISSION OF GHANA
8TH, Ridge – Accra

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
House No. 02 Onyaa Crescent
Nima – Accra

2ND RESPONDENT

AFFIDAVIT OF 1ST RESPONDENT IN OPPOSITION TO MOTION ON NOTICE FOR STAY OF PROCEEDINGS

I, JEAN ADUKWEI MENSA of No. E199/2 8th Avenue Ridge, Accra in the Greater Accra Region of the Republic of Ghana, make oath and say as follows:

RECEIVED
Date 25/1/2021

0605608
25-01-2021

1. I am the Chairperson of the 1st Respondent and the deponent herein.

2. The 1st Respondent has received service of the Petitioner's application for a stay of proceedings and is opposed to same.

3. The Petitioner invoked the jurisdiction of this court to determine the Petition herein, filed by him against the Respondents.

4. The petitioner claims that the sole purpose for the proposed interrogatories is to facilitate expeditious trial exactly the purpose of C.I. 99 which this court is bound to apply.

5. The Petitioner does not suffer any injury at all to his rights if the court dismisses this application as the Petitioner will still have the opportunity to solicit the answers he seeks now during cross examination if he so wishes unless he is actually fishing and/or trying to delay the trial.

6. I am advised and verily believe that the filing of the Petition denoted the Petitioner's acceptance that the proceeding must be conducted in this court in compliance with the relevant laws and regulations, including the requirement in CI 99 of 2016 that this court determine the Petition expeditiously and that the timelines for processes should be as specified.

7. I am further advised and verily believe that this court is bound to comply with CI 99 of 2016 especially the timelines specified in the Second Schedule to CI 99.

8. I verily believe that the application for review is without merit and has no likelihood of being granted. I attached marked exhibit "**JAM**" a copy of the affidavit in opposition and

statement of case filed by the 1st Respondent in the review application.

9. I am advised and verily believe further that a stay of proceedings will violate CI 99 of 2016.

10. I am further advised by counsel and I verily believe that this court is the final court of the land. The decision sought to be reviewed is not on appeal from the court below but a decision of this court.

11. I verily believe that the 1992 Constitution empowered this court to determine Presidential Election disputes for the sake of finality.

12. I am further advised and I verily believe that to this end, CI 99 imposes a duty on this court to determine Presidential Election disputes expeditiously i.e., in 42 days.

13. I verily believe that the public interest demands of this court that it completes the task herein timeously in compliance with the law.

14. WHEREFORE I swear to this affidavit in opposition to the application for stay of proceedings.

SWORN IN ACCRA THIS
22ND DAY OF JANUARY
2021

.....
DEPONENT

BEFORE ME

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
BOX AC 33, ARTS CENTRE

COMMISSIONER OF OATH

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

EXH "JAM"

Filed on 22-9-2021
at 2:55 am/pm
Registra
SUPREME COURT OF GHANA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

PETITION NO: J7/9/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:

JOHN DRAMANI MAHAMA
NO. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

- is the instrument marked as exhibit "..." referred to in the affidavit sworn before me this ... day of ...
COMMISSIONER FOR OATHS

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE NO. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

AFFIDAVIT OF 1ST RESPONDENT IN OPPOSITION TO MOTION ON NOTICE FOR REVIEW

I, JEAN ADUKWEI MENSA of No. E199/2 8th Avenue Ridge, Accra in the Greater Accra Region of the Republic of Ghana, make oath and say as follows:

1. I am the Chairperson of the 1st Respondent and the deponent herein.

2. The 1st Respondent has received service of the Applicant's application for review and is opposed to same.

3. I verily believe that the Applicant's affidavit in support does not show any exceptional circumstance necessitating the application for review herein. Besides, the Applicant has not raised any specific miscarriage of justice suffered by virtue of the decision of the court to refuse the application for interrogatories.

4. I believe further that the decision by the court to deny the application for interrogatories was made by the court in compliance with the dictates imposed by C.I. 99 of 2016 and that this court ought not to change its compliance with statute.

5. I verily believe that the application for review will not serve the interests of justice but rather obstruct the timely completion of the Applicant's own case in the court in accordance with C.I. 99.

6. The Applicant claims that his sole purpose for the proposed interrogatories is to facilitate expeditious trial but invites the court not to abide by C.I. 99 which was passed to achieve the same purpose with strict timelines.

7. The Applicant does not suffer any injury to his rights if the court dismisses the review application as he still has the opportunity to solicit the answers he seeks now during cross examination if he so wishes unless he is actually fishing and/or trying to delay the trial.

8. I verily believe that there are no exceptional circumstances or legal basis that warrant the intervention of this Honourable Court in this application for review.

9. Wherefore I swear to this affidavit in opposition to the application herein.

SWORN IN ACCRA THIS
22ND DAY OF JANUARY 2021
BEFORE ME

.....
DEPONENT

COMMISSIONER OF OATH

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
P.O. BOX AC 33, ARTS CENTRE, ACCRA

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE APPLICANT OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON THE 2ND OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

PETITION NO: J7/9/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:
JOHN DRAMANI MAHAMA
NO. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE NO. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

STATEMENT OF CASE OF THE 1ST RESPONDENT IN OPPOSITION TO THE APPLICATION FOR REVIEW

A INTRODUCTION

1. The facts in the application are not in dispute. The Applicant applied to the ordinary bench of this Honourable Court to serve interrogatories on the 1st Respondent. The application was opposed by the 1st Respondent and then refused by the ordinary bench on 19th January 2021.

2. It is against this ruling that the Applicant has filed the present application for a review. It is our contention that the application herein is indeed an appeal in disguise.

3. The Applicant claims that the sole purpose for the proposed interrogatories was to facilitate expeditious trial, the very essence of C.I. 99.

4. The Petitioner does not suffer any injury to his rights if the application for review is refused as he still has the opportunity to solicit the same answers during cross examination unless it is his case that he does not have the full complement of his case and needs the answers to fill in.

5. My Lords the 1st Respondent submits that it would address the Court only on the issues of whether or not the review jurisdiction of the Supreme Court has been properly invoked so as not to burden the court with matters that the ordinary

bench had already heard and determined decisively by a unanimous decision on 19th January 2021.

B SUBMISSIONS OF THE RESPONDENT COMMISSION

Ground (a) The Court fundamentally erred in regarding CI 99 as rendering Order 22 of CI 47 inapplicable.

6. My Lords, the Applicant argues under this ground that: (1) in *Akufo-Addo & Others v John Mahama & Another (No. 2)* [2013] SCGLR (Special Edition) 50, this court held unanimously that CI 47 applied in the Supreme Court, and that the decision is binding on the court; (2) there is nothing to suggest that the Supreme Court (Amendment) (No 2) Rules, 2016, CI 99 does not support discovery processes, including interrogatories in election petitions; (3) interrogatories narrow down the issues for trial and expedite adjudication as required in CI 99. Therefore, Your Lordships erred when you disallowed the application for interrogatories in the name of CI 99.

7. My Lords, the part of your decision that the Applicant impugns is as follows: 'We are strictly bound to comply with CI 99, and we will not apply Order 22 of CI 47 of 2004...' The Applicant contends that Your Lordships dicta in the above decision 'are binding on the court'. My Lords, this is not a fair rendition of stare decisis in Ghana. Article 129 of the 1992 Constitution mandates Your Lordships' Court to 'depart from a previous decision when it appears to it right to do so'.

8. My Lords in 2013 this Honourable Court heard and determined the Presidential Election Petition without the time constrains now imposed in CI 99. Parties therein were permitted to resort to external interlocutory mechanism such as interrogatories, discoveries, inspections and further and better particulars to assist the court speed up the trial. Such interlocutory applications were made under CI 47 and the court entertained them.

9. My Lords, unfortunately, that trial took eight months to reach a decision. A phenomenon which led the Rules of Court Committee to initiate reforms leading to the passing of C.I. 99 setting specific timelines and making provision for only further and better particulars as the only aid the Respondent could resort to in the name of assisting the court to expedite trial. See Rule 69(A) (5) of C.I. 16 an amended by C.I. 99.

10. My Lords, we submit that if the lawmaker had wanted to make provisions for interventions like interrogatories, discoveries, admissions and inspections the lawmaker would have said so expressly.

11. Departure from a previous decision under Article 129 of the 1992 Constitution of the 1992 Constitution is mandatory, not discretionary. This court must depart whenever circumstances necessitate a departure.

12. Your Lordships have held that CI 99 necessitates a departure from its previous decision reported in *Akufo-Addo & Others v*

John Mahama & Another (No. 2) supra; the 1st Respondent invites your Lordships to affirm your decision.

13. Following the change of the law in 2016, Your Lordships' court, as an election court, does not have the time or leisure that the High Court enjoys. CI 99 now demands that Your Lordships conclude election petitions in 42 days, for your Lordships to resolve the outcome of the election for the ship of state to raise anchor. Your Lordships explained that the changes introduced in CI 99 necessitates the application or disapplication of the rules hitherto applicable in CI 47. In *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*, there were no time constrains so interrogatories were *conveniently* made but under CI 99, they cannot be made conveniently. Order 22 of CI 47 empowers the court to grant leave to serve interrogatories on a matter 'in question' between the parties. The service of an application for leave to serve interrogatories, hearing and grant of the application, and the Respondent's answer do not fit conveniently into the timeframe in CI 99. The timelines in CI99 suggest that the need for interrogatories would arise only after the 10th day when the Respondent had appeared and filed an answer. Five days hence the Respondent must be in court for a pre-trial hearing. Order 22 r 6(2) provides that 'if a party against whom an order is made ... fails to comply with it, then, ... he shall be liable to committal for contempt.' Surely, no court would be quick to commit a party under such strict timeline situations.

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13. Following the change of the law in 2016, Your Lordships' court, as an election court, does not have the time or leisure that the High Court enjoys. CI 99 now demands that Your Lordships conclude election petitions in 42 days, for your Lordships to resolve the outcome of the election for the ship of state to raise anchor. Your Lordships explained that the changes introduced in CI 99 necessitates the application or disapplication of the rules hitherto applicable in CI 47. In *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*, there were no time constrains so interrogatories were *conveniently* made but under CI 99, they cannot be made conveniently. Order 22 of CI 47 empowers the court to grant leave to serve interrogatories on a matter 'in question' between the parties. The service of an application for leave to serve interrogatories, hearing and grant of the application, and the Respondent's answer do not fit conveniently into the timeframe in CI 99. The timelines in CI99 suggest that the need for interrogatories would arise only after the 10th day when the Respondent had appeared and filed an answer. Five days hence the Respondent must be in court for a pre-trial hearing. Order 22 r 6(2) provides that 'if a party against whom an order is made ... fails to comply with it, then, ... he shall be liable to committal for contempt.' Surely, no court would be quick to commit a party under such strict timeline situations.

14. The Respondent submits that the court was within its rights to depart from its decision in *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*. Because of the interventions of CI99.

15. My Lords, the remedy of review is unavailable where the Applicant fails to establish exceptional circumstances resulting in miscarriage of justice. The Petitioner failed to show what miscarriage of justice he has suffered. Your Lordships' ruling is an interlocutory decision made in the case management of this case to respond to the time constraints imposed on the court under CI 99. Your Lordships' order does not preclude the Petitioner from asking the questions in the interrogatories in cross-examination if he so wishes.

16. In paragraph 27 of the application, the Petitioner states that "the facts to be interrogated relate directly to the acts of the 1st Respondent, particularly its Chairperson, Mrs. Jean Adukwei Mensa and could not be answered by any other person." Surely, that cannot be a legitimate ground for seeking an order for interrogatories because as your Lordships noted in the absence of the 1st Respondent's Chairperson any other person who deputises for her, shall prepare the answers to the questions. Interrogatories elicit facts, so does cross-examination. Your Lordships have spoken that time constraints on this court render interrogatories inconvenient.

So, let the Petitioner ask those questions in cross-examination if he so chooses.

17. Additionally the Petitioner in the Notice to Admit facts that he served on the 1st Respondent contravened the provisions of CI 47. This is because the Petitioner arbitrarily ordered the 1st Respondent to provide answers to the questions posed within three (3) days when no rules of either the High Court or the Supreme Court had set such timelines. The Petitioner sets his own imaginary timelines!

Ground (b) The Court fundamentally erred in determining that 'indeed, Rule 69(c)(4) of CI 99 ... implies that even amendments ought not to be sought and granted...' and thus occasioned a grave miscarriage of justice to Petitioner/Applicant.

18. The Petitioner argues under this ground that it is Rule 69A(6), not Rule 69(c)(4) of CI 99 that mentions amendments. Your Lordship's jurisdiction for review is invoked only where the Applicant seeking a review shows exceptional circumstances that resulted in miscarriage of justice to the Applicant. My Lords, the Petitioner seeks a review of your Lordships' decision dated 19 January 2021. The Petitioner does not say what 'grave miscarriage of justice' he has suffered from the pronouncement. Your Lordships are invited to dismiss this ground also.

Ground c) The Court fundamentally erred in failing to appreciate that its discretion ought to be exercised in accordance with Article 296 of the Constitution.

19. The Petitioner argues that Your Lordships 'fell into the fundamental error of misinterpreting the provisions of CI 99' resulting in an arbitrary and capricious exercise of discretionary power (paragraph 31). My Lords, this is the final court of this land; its pronouncements have the force of law. The court must not change its decisions upon a simple allegation by a party that the court is wrong. Your Lordships held that 'several statutory amendments have been made by CI 99 of 2016 which has restricted the practice and procedure of this court as regards an Election Petition. CI 99 states in plain words that a Presidential Election Petition shall be heard and completed in 42 days, also it specifies timelines for each stage of the proceeding. The Petitioner castigates your Lordships for 'fundamental error of misinterpreting the provisions of CI 99' but does not explain the alleged error. The Petitioner's conduct recalls the decision of this court in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC, per Adade JSC:

> "Let me say at once that, for all I know, virtually every judgment on this earth, arrived at as a result of evidence gathered from several sources, can be criticised. A Privy Council judgment put in the hands of any lawyer, along with the evidence grounding it, can be criticised in the same way as a High Court judgment

can be. A person who has lost a case will almost instinctively feel that the judgment must be wrong. And why not? If he had won, the decision would be right; so if he lost, how could the court be right? But the mere fact that a judgment can be criticised is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice. The review jurisdiction is not intended as a try-on by a party after losing an appeal; nor is it an automatic next step from an appeal; ***neither is it meant to be resorted to as an emotional reaction to an unfavourable judgment***." My Emphasis.

20. My Lords this court has held and rightly so that CI 99 had taken away the Court's discretion regarding the process of discovery in view to the strict timelines of the Presidential Election Petition.

21. The Petitioner's grievance in Paragraph 32 of the Statement of Case is unclear obviously because the paragraph totally ignores the context in which the dictum was made. The thrust of Your Lordships' decision is that CI 99 of 2016 has restricted

the practice and procedure of the Supreme Court as a Presidential Election Court, rendering the discovery processes under CI 47 inapplicable.

22. Indeed to borrow from Adade JSC supra, the reaction of the Petitioner to the ruling of 19th January 2021 is one of ***"an emotional reaction to an unfavourable judgment."***

23. My Lords, also in the unreported case of *Charles Lawrence Quist v Ahmed Danawi*; review motion NO. J7/8/2015 dated 5th November 2015, Dotse JSC, reading the lead judgment of the court said:

> "The authorities are quite settled that the review application is not a process for which a losing party in the Supreme Court may seek to have another bite of the cheery. Instead, an Applicant in a review application has to point out from the judgment reviewed from the exceptional circumstances which have resulted into a miscarriage of justice. None was however offered by the Applicant in this case.

24. My Lords it is for these reasons that we urge your Lordships to dismiss this application and proceed with the hearing of the Petition filed by the Petitioner in this Court.

25. We pray that the application herein be dismissed.

DATED AT #8 NII ODARTEY OSRO STREET KUUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA, THIS 22ND DAY OF JANUARY, 2021.

JUSTIN AMENUVOR #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR THE ELECTORAL
COMMISSION OF GHANA

AMENUVOR & ASSOCIATES
#8 NII ODARTEY OSRO STREET
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BOX Ka9488, AIRPORT, ACCRA - GHANA
TEL: 020 926 5396

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA – A.D. 2020

WRIT NO. J1/5/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION
PURSUANT TO LEAVE GRANTED BY THIS COURT ON 14TH JANUARY 2021
PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020.

JOHN DRAMANI MAHAMA — **PETITIONER**
No. 33 Chain Homes
Airport Valley Drive
Accra

AND

1. **ELECTORAL COMMISSION** — **1ST RESPONDENT**
   National Headquarters
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APPLICATION FOR REVIEW OF THE RULING OF 16TH FEBRUARY, 2021 DISMISSING THE APPLICATION TO RE OPEN THE CASE OF PETITIONER. (ARTICLE 133(1) AND RULE 56 OF THE SUPREME COURT RULES, (C.I. 16)).

STATEMENT OF CASE OF PETITIONER/APPLICANT

A. INTRODUCTION

1. This is an application for the review of the unanimous ruling of this Court on 16th February 2021, dismissing the application by Counsel for the Petitioner/Applicant to re-open the case of Petitioner/Applicant with a view to subpoenaing the Chairperson of 1st Respondent to testify.

We show below how the Court committed a number of fundamental legal errors in its ruling, including failing to apply constitutional and statutory provisions and, thereby, occasioned a grave miscarriage of justice to the Petitioner/Applicant.

B. REVIEW JURISDICTION

2. This application for review is based on the jurisdiction of this Court provided for in Article 133(1) of the Constitution as follows:

> *"The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by the rules of court".*

Rule 54 of the Supreme Court Rules (C. I. 16) provides the grounds and conditions for review to include ***"Exceptional circumstances which have resulted in miscarriage of justice".***

3. In **Republic v. Tetteh [2003-2004] SCGLR 140**, a unanimous decision of the Supreme Court was overturned upon a review application. The unanimous decision, it was realized, failed to take into consideration a provision in the Armed Forces Regulations (C.I. 12). Accordingly, the Court's decision was held, on review to have been given *per incuriam*. Acquah C.J. stated:

> *"... the Armed Forces Regulations (CI 12) in article 112.42(2) provides that the court-martial makes findings of "guilty or not guilty" without the addition of further words. Thus the judgment of this court, in our view, was clearly given per incuriam as it did not take the above regulations into account. We would allow the application for review and it is hereby allowed."*

4. Our submissions below show the gross and fundamental legal errors that this Court committed by not taking into due consideration multiple statutory provisions, thus occasioning a grave miscarriage of justice to Petitioner/Applicant. This necessitates this application for review.

5. In **Daniel Ofori v. Ecobank Ghana, Civil Motion J7/22/2018**, this Court, on 27th February 2019, reviewed a decision it had earlier given in respect of interest payments, in order to reflect statutory provisions it had overlooked in its earlier decision. In **Royal Dutch Airlines (KLM) v. Farmex (No. 2) [1989-90] 2 GLR 682**, also, an application to the Supreme

Court for a review and/or clarification of an earlier majority ruling on the calculation of interest was successful. Similarly, in ***Antwi v NTHC Ltd* CM J7/3/09,** the Supreme Court (coram: Sophia Akuffo, Dr. Date-Bah, Sophia Adinyira, R C Owusu, Dotse, Anin Yeboah and Baffoe-Bonnie JJSC) unanimously reviewed its previous judgment reported as ***NTHC Ltd v Antwi* [2009] SCGLR 117,** by adjusting its award of interest in terms of duration and currency, because it had overlooked certain material facts which were before the court at the time of its earlier decision.

C. GROUNDS FOR REVIEW

6. Our grounds for seeking the review are as follows:

   a) The ruling of the Court was *per incuriam* section 72 of the Evidence Act 1975 (NRCD 323), and has occasioned a grave miscarriage of justice to the Applicant;

   b) The ruling of the Court was in fundamental error in subjecting statutory provisions in the Evidence Act, 1975 to the provisions of subsidiary legislation, specifically Order 38 rule 3E(5) of C.I.47, as amended by C.I. 87, and has occasioned a grave miscarriage of justice to the Applicant;

   c) The Court fundamentally erred in its interpretation of Order 38 rule 3E(5) of C.I. 47, as amended by C.I. 87;

   d) The ruling of the court was per incuriam Order 38 rule 10 of C.I. 47 and section 58 of the Courts Act, 1993 (Act 459);

   e) The ruling of the Court was per incuriam Article 19(13) of the Constitution and has occasioned a grave miscarriage of justice to the Applicant;

   f) The ruling of the Court was in breach of Article 296 of the Constitution and has occasioned a grave miscarriage of justice to the Applicant.

Ground a)

7. Section 72 of the Evidence Act, 1975 makes explicit provision for the calling of a witness even if that witness is an adverse party or is related in interest to an adverse party. The section states:

"72. *Adverse witness in a civil action*

(1) *Subject to the discretion of the Court, in a civil action a party, or a person whose relationship to a party makes the interest of that person substantially the same as the party, may be called by an adverse party and examined as if on cross-examination at any time during the presentation by the party calling the witness."*

8. Yet, their Lordships resorted to Black's Law Dictionary instead of this statutory provision in their entire consideration of the eligibility of Mrs. Jean Adukwei Mensa, Chairperson of 1st Respondent, to be called as a witness by Petitioner/Applicant, if allowed to re-open his case. Their Lordships said: "Black's Law Dictionary, Ninth Edition, edited by Bryan Garner, defined a 'hostile witness' as: **'A witness who is biased against the examining party, who is unwilling to testify or who is identified with an adverse party, ...also termed, 'adverse witness'**. A hostile or adverse witness, as the definition shows and as we understand the term in practice, is therefore a witness who has been called by a party to testify in support of his or her case and who, whilst in the witness box under examination in-chief, becomes hostile and gives evidence contrary to the party who called him and in support of the opponent's case. The party, in such circumstances, can apply to the Court to treat such a witness who is already in the witness box, as a hostile or adverse witness. This would enable the party calling him to cross-examine him as if he were a witness of his opponent to solicit the truth in respect of the issue at stake. A witness who has not yet entered the witness box to testify cannot therefore be called an adverse or hostile witness under any circumstances." (at pages 5-6 of ruling).

9. With the greatest respect to their Lordships, the claim that Mrs. Jean Adukwei Mensa would have to be a witness giving evidence-in-chief before an application is made for her to be cross-examined is contrary to the clear provision of section 72 of the Evidence Act, that calling the adverse party as a witness enables cross-examination without a prior examination-in-chief. The words *"may be called by an adverse party and examined as if on cross-examination at any time during the presentation by the party calling the witness"* in section 72(1) admit of no other interpretation. Indeed, section 72(2) of the Evidence Act goes on to provide as follows: *"Where the witness is cross-examined by the lawyer of that witness or by a party who is not adverse to the party with whom the witness is related, that examination shall be treated as if it were a re-examination."*

The claim, therefore, in their Lordships' ruling, that the witness had to be giving evidence before being declared a "hostile witness" also ignored the clear terms of the statute. This claim is not even a correct rendition of the English common law. The simple, inescapable obligation of courts in Ghana is to comply with legislation in Ghana. Their Lordships nowhere even mention Section 72 of the Evidence Act in their ruling.

10. In the oft-cited case of **Republic v. High Court, ex parte National Lottery Authority [2009] SCGLR 390** at 397, Atuguba JSC stated:

> **"...the Courts are servants of the legislature. Consequently, any act of a court that is contrary to statute ... is, unless otherwise expressly or impliedly provided, a nullity".**

Dr. Date-Bah JSC also pronounced as follows:

> **"No judge has authority to grant immunity to a party from the consequences of breaching an Act of Parliament. But this was the effect of the order granted by the learned judge. The judicial oath enjoins judges to uphold the law, rather than condoning breaches of Acts of Parliament by their orders."**

Section 72 is what their Lordships were under a constitutional obligation to apply, not Black's Law Dictionary. This case is thus on all fours with **Republic v. Tetteh** and this court ought, with the greatest respect, to reverse unanimously the fundamental error it committed unanimously.

Grounds b) and c) will be argued together

11. Counsel for Petitioner/Applicant had urged on the Court that statements made by the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, in two affidavits before the Court had legal consequences. Mrs. Mensa had stated that Petitioner would suffer no injury if the Court dismissed each of the applications *"as the Petitioner will still have the opportunity to solicit the answers he seeks now through cross-examination"*. In the submission of Counsel, Mrs. Jean Adukwei Mensa had thus clearly represented that she would be available to be cross-examined. That representation was made in the context of Petitioner/Applicant applying for review of the Court's ruling that it would not grant leave for interrogatories to be served on 1st Respondent. It was also made in the affidavit of Mrs. Mensa in opposition to the application on behalf of Petitioner/Applicant for a stay of proceedings pending the hearing of the review application.

12. Counsel for Petitioner/Applicant, in response to a direct question from the Bench, had submitted that the Chairperson for 1st Respondent was

estopped from going back on her word in respect of her availability to be cross-examined. She could not resile from the position expressed in her affidavits which had been relied on by Petitioner in conducting his case.

13. These positions of Counsel are clearly backed by section 26 of the Evidence Act, 1975 (NRCD 323) which provide as follows:

> *"Except as otherwise provided by law, including a rule of equity, when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest."*

14. This provision was applied by the Supreme Court, comprising Anin-Yeboah JSC (as he then was), Baffoe-Bonnie and Gbadegbe JJSC, in **Sefa Asiedu (No. 2) v. Bank of Ghana (No. 2) (Consolidated) [2013-2014] 1 SCGLR 530**, where their Lordships reversed the decision of a Single Justice who had granted the Bank of Ghana leave to adduce new evidence in an appeal, because of statements made in an affidavit by the Bank of Ghana. In the words of Gbadegbe JSC who read the ruling:

> *"By the operation of the effect of the depositions made in the application before the High Court, the applicant, i.e. the respondent Bank of Ghana is caught by section 26 of the Evidence Act, 1975 (NRCD 323), which is commonly referred to as estoppel by own statement or conduct.."* (at p. 539).

After quoting section 26 of the Evidence Act, Gbadegbe JSC continued:

> *"Since the said paragraphs (6) and (7) [of the affidavit] give rise to a conclusive presumption within the scope of section 24(1) of the Evidence Act, 1975 (NRCD 323), the court which heard the application for leave to adduce evidence ought to have come to the conclusion that the facts on which leave was sought for evidence thereon to be led in the appeal had long been available to the applicant Bank of Ghana .. ".* (ibid).

15. Based on the operation of the Evidence Act, it was submitted that the averments in the affidavits of the Chairperson of 1st Respondent created a conclusive presumption that she would be available to be cross-examined. These representations in affidavits, which 1st Respondent filed in opposing applications by Petitioner, also created a conclusive

presumption that 1st Respondent would rely at the trial on the evidence of the witness who made the statement. The representations were also consistent with her having filed a witness statement on behalf of 1st Respondent.

16. After referring to the provisions of section 26 of the Evidence Act, 1975, the Court claimed: "We wish to state emphatically that section 26 of the Evidence Act, which is on Conclusive Presumptions, is not applicable in this case in view of Order 38 rule 3E(5)" (page 10 of ruling), and Mrs. Jean Adukwei Mensa could still not be called upon to testify. This amounts to having subsidiary legislation - C.I. 47, as amended by CI. 87 - override the express terms of statute, again a fundamental legal error. The hierarchy of the laws of Ghana as set out in Article 11(1) of the Constitution puts *"(b) enactments made by or under the authority of the Parliament established by this Constitution"* directly after *"(a) this Constitution"* and higher than *"(c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution;"*. It is inconceivable that a Constitutional Instrument of the Rules of Court Committee would be made to override an Act of Parliament. Yet this is exactly what the ruling purported to do.

    Furthermore, with the greatest respect, the Court should have recognized that there was a conclusive presumption from the affidavits of the Chairperson of 1st Respondent that she would be available for cross-examination, a presumption of law which could not be rebutted.

17. What Order 38 rule 3E(5) of C.I. 47 seeks to do really has no relevance as regards the operation of the conclusive presumption from the affidavits of Mrs. Jean Adukwei Mensa. That rule reads:

    > *"If a party who has served a witness statement does not call the witness to give evidence at the trial or put the witness statement in as hearsay evidence, any other party may put the witness statement in as hearsay evidence "*

    This provision has no bearing whatsoever on the operation of section 26 of the Evidence Act. The two provisions deal with separate matters and this rule in subsidiary legislation does not qualify, in any way whatsoever, the operation of section 26 of the Evidence Act.

18. Obviously Petitioner/Applicant is not seeking to put the witness statement of Mrs. Jean Adukwei Mensa in evidence as a hearsay statement. He rather seeks to rely on the conclusive presumption arising from the affidavits sworn to by Mrs. Jean Adukwei Mensa that she

would be available to be cross-examined. That conclusive presumption cannot be negated by Order 38 rule 3E(5) of C.I. 87. Furthermore, Order 38 rule 3E(5), in its terms, underlines the distinction between ***"a party"*** and ***"the witness to give evidence at the trial"***. Mrs. Jean Adukwei Mensa is not a party in this action, as Counsel for Petitioner has said in response to questioning from the Bench.

19. The distinction between Mrs. Jean Adukwei Mensa as an individual, even as Chairperson of 1st Respondent, on the one hand, and 1st Respondent as a corporate body, on the other hand, is a well-established legal principle - the landmark case of **Salomon v. Salomon** [1897] AC 22 being often the reference point therefor (see **Morkor v. Kuma (East Coast Fisheries Case) [1998-99] SCGLR 620.** That distinction is also firmly expressed in the Constitution. Articles 5(5), 43-45, 47(5), 51-54 , 63(1) –(2) provide for functions of the Electoral Commission as a corporate body, while Article 63(9)(a) has a specific role for "the Chairman of the Electoral Commission" albeit "under the seal of the Commission".

20. The Public Elections Regulations, 2000 (C.I. 127), Regulations 2(1) and 44(10)-(12) also have different roles assigned to the Commission on the one hand and its Chairperson on the other. It may be noted that C.I. 127 was an amendment to the existing C.I. 94, which the 1st Respondent brought into being with new provisions such as Regulation 44(10).

Ground d)

21. In its ruling, the Court did not advert its mind to the terms of Order 38 rule 10 of C.I. 47, which Counsel for Petitioner/Applicant had indicated as to how he would proceed were the Court to allow Petitioner/Applicant to re-open his case. That rule provides very simply for how this power of the Court to compel attendance can be invoked:

"10(1) A writ of subpoena shall be as in Form 14 in the Schedule.

(2) The issue of a writ of subpoena takes place upon its being sealed by an officer of the registry of the Court out of which it is issued.

(3) Before a writ of subpoena is issued a request as in Form 15 in the Schedule for the issue of the writ shall be filed in the registry out of which the writ is to issue and the request shall contain the name and address of the party issuing the writ,..."

It is this rule that Petitioner/Applicant is to comply with rather than anything in Order 38 rule 3E(5) of C.I. 47, as amended by C.I. 87.

In not adverting to this rule and rather proceeding on the basis of Black's Law Dictionary, the fundamental error of the Court, above explained in our submissions on Ground a), was compounded.

22. After the issue of a subpoena on Mrs. Jean Adukwei Mensa, it would be open to her to invoke any claim of witness immunity or claim she might wish to invoke, as happened in **Tsatsu Tsikata v. The Republic [2011] SCGLR 1.** Indeed, if she wished to claim that she is somehow a party to this suit and to make a claim based on 1st Respondent being a party, she, and **not** the Court, is the one to put forward that claim, lest it appear that the Court is proactively seeking to shield the witness from even being subject to a subpoena.

Ground e)

23. The Court did not advert its mind to Article 19(13) of the Constitution which guarantees, as a fundamental human right, the right to a fair trial. Not allowing Petitioner/Applicant to re-open his case was a clear denial of his right to a fair trial in the circumstances of this case. Article 19(13) of the Constitution provides:

> *"An adjudicating authority for the determination of the existence or extent of a civil right or obligation shall, subject to the provisions of this Constitution, be established by law and shall be independent and impartial; and where proceedings for determination are instituted by a person before such an adjudicating authority, the case shall be given a fair hearing within a reasonable time."*

24. It is important to put in context the ruling of 16th February 2021. Earlier on in these proceedings, Counsel for Petitioner applied for leave to serve interrogatories on 1st Respondent seeking answers to a number of questions. The application was opposed by both Respondents, and the Court dismissed the application as well as an application for review filed on behalf of Petitioner. In response to the application for review, the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, deposed to an affidavit filed on 22nd January 2021 in which, at paragraph 7, she states that:

> *"The Petitioner does not suffer any injury to his rights if the court dismisses the review application as he still has the opportunity to*

solicit the answers he seeks now during cross examination if he so wishes ...".

25. In the Statement of Case filed by Counsel for 1st Respondent in opposition to the application for review, Counsel also makes the same statement at page 2. In another affidavit filed on 25th January 2021 on behalf of 1st Respondent in opposing an application for stay of proceedings and sworn to by Mrs. Jean Adukwei Mensa, she again states in paragraph 5:

> *"The Petitioner does not suffer any injury to his rights if the court dismisses the review application as he still has the opportunity to solicit the answers he seeks now during cross examination if he so wishes ....."*

26. Respectfully, the adjudicating authority in a trial such as this is bound to hold the scales of justice evenly and to recognize that these repeated statements by 1st Respondent, its Chairperson and its Counsel do have consequences. Mrs. Jean Adukwei Mensa not only filed a witness statement but also put before the Court her statements on oath to the effect that Petitioner could cross-examine her. In the circumstances Petitioner's right to a fair trial is denied when 1st Respondent and Mrs. Jean Adukwei Mensa are simply allowed to disregard their own previous statements so as to deny Counsel for Petitioner the opportunity to cross-examine Mrs. Jean Adukwei Mensa.

27. It must also be emphasized that Counsel for 1st Respondent had cross-examined the witnesses of Petitioner extensively, putting to them the claims of Mrs. Jean Adukwei Mensa as to certain facts about which the witnesses testified. For instance, Counsel for 1st Respondent insisted that PW 2 was not telling the truth in the witness's account of the circumstances in which he and his colleague, PW 3, left the premises of 1st Respondent to go and deliver a message from Mrs. Mensa to Petitioner. Counsel for the 1st Respondent maintained that the witness was not being truthful. This could only have been on the basis of instructions of Mrs. Jean Adukwei Mensa. Indeed, Counsel for 1st Respondent would have been acting contrary to the tenets of his profession if he did not have his client's instructions and, particularly, the instructions of Mrs. Jean Adukwei Mensa, in pursuing that line of cross-examination.

28. In the specific circumstances before this Court, we respectfully submit, that it is necessary for a fair trial, that even independently of Mrs. Jean Adukwei Mensa being held to her word as to her availability to be cross-

examined and not shielded, as the ruling effectively did, Petitioner's right to a fair trial entitles him to be able to call Mrs. Mensa as a witness by virtue of section 72 of the Evidence Act and Order 38 Rule 10 of C.I. 47, as demonstrated in our submissions above. Holding the office of the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, no doubt knew that the declaration of the winner of the Presidential election was a matter within her sole prerogative. Only she can, therefore, provide the best evidence of what informed the declaration she made and the subsequent attempts by 1st Respondent to publish purported corrections to what was declared, as well as corrections of the corrections.

29. The ruling of the Court also, with respect, manifested a failure to appreciate that, in seeking to re-open his case and subpoena the Chairperson of the 1st Respondent, Petitioner was acting consistently with the legal framework of the adversarial system. As clearly demonstrated above, section 72 of the Evidence Act allows the Petitioner to elicit evidence from an adverse witness to strengthen his case. Thus the statement in the ruling of their Lordships that: "..in *law, a plaintiff or petitioners does not require evidence from his or her adversary, in an adversarial system as ours, to prove his or her case*" fails to take into account the opportunity offered under section 72 to call an adverse witness. The further statement: "The authorities are legion that a plaintiff or petitioner, succeeds on the strength of his or her own case but not on the weakness of his or her adversary's case" expresses a trite but wholly irrelevant legal issue that arises in a consideration of the case of the plaintiff as a whole, not when what the plaintiff is doing is asking for leave to re-open his case to call a witness. Indeed, Petitioner, in seeking to re-open his own case, was not re-opening the Court's ruling in respect of 1st Respondent closing its case without calling its Chairperson to testify. Counsel for the Petitioner made this explicit in his submissions and emphasized the recourse to section 72 of the Evidence Act and Order 38 Rule 10 of C.I. 47, neither of which their Lordships made reference to.

30. The right to fair trial is a constitutional right whose fundamental significance was underlined by this Supreme Court in **Tsatsu Tsikata v. The Republic** as follows:

> *"In any event upon proper construction of the provisions of LN 9 in the light of the 1992 constitutional provisions, particularly, article 19(1), the provisions thereof cannot deprive a person of his right to subpoena the country director or other officer or employees of the IFC to produce documents necessary for his defence. That article*

provides as follows: "19(1) A person charged with a criminal offence shall be given a fair hearing within a reasonable time." .... Article 11 (6) mandatorily requires that:

> *"The existing law shall be construed with any modifications, adaptations, qualifications, and exceptions necessary to bring it into conformity with the provisions of this Constitution, or otherwise to give effect to, or enable effect to be given to, any changes effected by this Constitution."* (The emphasis is mine).

31. Clearly at the time LN 9 was enacted there was no Constitution in Ghana that provided so elaborately for the fundamental human rights as contained in the 1992 Constitution. The construction of LN 9 must now reflect this new situation. This court's decision in **Republic v. Court of Appeal, Accra; Ex parte Tsatsu Tsikata [2005-2006] SCGLR 612** states the trite constitutional position that the fundamental rights are *"subject to respect for the rights and freedoms of others and for the public interest."* See article 12(2) of the 1992 Constitution. However, it does not mean that every right and freedom of others or the public interest shall in all cases uncritically override the fundamental rights. The nature, extent and quality in that respect depend on a balancing act of the competing rights and freedoms: see **Republic v Tommy Thompson Books Ltd (No 2) [1996-97] SCGLR 484" (per Atuguba JSC at pp. 11-12).**

32. Unfortunately, in the instant decision of the Court, it did not even advert its mind to the right to fair trial which, for civil trials, is provided for in Article 19(13), much less engage in a balancing act as to competing rights and freedoms. What the court did was to throw a pre-emptive shield of undeserved and wholly unwarranted protection to Mrs. Jean Adukwei Mensa on the basis of which Petitioner/Applicant could not even re-open his case. Instead of the Court allowing for the situation whereby upon a subpoena served on her by Petitioner/Applicant for her to be an adverse witness, called by Petitioner/Applicant in terms of section 72 of the Evidence Act, the ruling refused the application to re-open the case of Petitioner/Applicant simply to enable her evade a subpoena. That cannot advance the ends of justice, particularly having regard to the constitutional role of Mrs. Jean Adukwei Mensa, and all the issues that have arisen in this case regarding her purported declaration. The 1st Respondent has issued an unsigned statement about "inadvertent error" in that declaration and to date, that is the only declaration that has been made and published in the gazette as constitutionally required. It would be in the interest of "judicial economy" as Professor Ocran JSC

described it in ***Hannah Assi (No. 2) v. Gihoc Refrigeration*** **[2007-2008] SCGLR 16** at p. 41. for Mrs. Jean Mensa to testify at the behest of the Petitioner.

33. In its consideration of the importance of the fundamental right to a fair trial, the Supreme Court in **Tsatsu Tsikata v. The Republic** (supra), further stated:

> *"It must be remembered that LN 9 was enacted pursuant to the International Bank, Fund and Finance Corporation Agreements of the United Nations Organization which same body now, if not in 1958, at the time of the enactment of LN 9, is at the forefront of defence of human rights. It is clear that in this new international order, the fundamental right to a fair trial is ranked even above relationships with other states."* (per Atuguba JSC at page 13).

34. The Court also cited with approval a case in the Netherlands – **Algemene Bank Nederland v. KF [1987] 96 ILR 344** - which is analogous in significant respects to the instant case. A Plaintiff seeking to initiate proceedings against an international organization, the International Tin Council (ITC), acting pursuant to the provisions of the Open Government Act, requested information from the Dutch Minister for Economic Affairs concerning meetings of the ITC and its subcommittees, the ITC buffer stock price stabilization programme and reports of the Dutch representative attending the ITC. This request was refused and an appeal against this decision was brought to the Judicial Division of the Council of State and, pending resolution of the case, the Plaintiff applied to the President of the Division for provisional relief. In proceedings before the President, the Minister of Foreign Affairs contended that the disclosures sought would constitute a breach by the Netherlands of its obligations in an international agreement and thus have serious consequences for its relationships with the ITC and other Member States.

35. On these facts, the Supreme Court of the Netherlands held as follows, as quoted at pages 14-15 of the judgment of Atuguba JSC:

> "(1) ***Article 68 of the Constitution, Article 98-99(b) of the Criminal Code and Article 4 of the Act did not grant persons who had represented the Netherlands in international consultations with other States exemptions from giving testimony concerning confidential matters arising out of those consultations*** (pp. 354-5).

(2) *The obligation to maintain confidentiality that was incumbent upon the Dutch representatives to the ITC stemmed from their participation as representatives of the Netherlands and not necessarily from the Rules [the buffer stock operational rules of the ITC] (p. 356)*

(3) ***The Court of Appeal had correctly held that the importance of ascertaining the truth in civil proceedings outweighed the ITC's confidentiality requirements*** (p. 356)

(4) However, ***the importance of ensuring that the truth came to light in civil proceedings outweighed the need to ensure that the Netherlands was perceived as a reliable partner in relations with other States*** (p. 357) (The emphasis is mine). "

Atuguba JSC then continued:

> *".....Surely, if the Netherlands Supreme Court so held with regard to civil litigation the position is far stronger in a criminal case." (at p. 15)*

He also stated further on in the judgment:

> *"It is clear that if Ghanaians are to be free from the effects of decisions such as the infamous case of Re Akoto [1961] 1 GLR 523, SC when an opportunity of upholding fundamental human rights was allowed to slip away from the Supreme Court, the courts of today should strive to uphold these rights wherever a construction in that regard is possible ..... "*

We submit that in a context where there is no immunity applicable, shielding a public officer from giving testimony in a way that amounts to a *de facto* immunity, where no immunity has been given by statute or the constitution, amounts to a denial of the right of the Petitioner to a fair trial.

36. Clearly, in its ruling on 16th February 2021, the Court did not take into account the fundamental human right to a fair trial that is enunciated in Article 19(13) of the Constitution and occasioned a grave injustice to the Petitioner/Applicant, while even disabling itself from establishing the truth concerning the Presidential Elections of 7th December 2020, and the purported declaration of the Chairperson of 1st Respondent, Mrs. Jean Adukwei Mensa, on 9th December 2020. We respectfully submit that this Court, in its consideration of the fundamental right to a fair trial

under Article 19(13) of the Constitution ought to adopt the approach of the Netherlands Supreme Court above-cited. This is indeed consistent with what our own Court of Appeal (sitting as the Supreme Court) said in the celebrated case of **Amoako Tuffuor v. Attorney-General [1980]GLR 637**: "The Constitution has its letter of the law. Equally, the Constitution has its spirit... Its language.. must be considered as if it were a living organism capable of growth and development ... A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach to interpretation would not do." (per Sowah JSC at 647-648). The right to fair trial is now a well-established fundamental human right recognized explicitly in our Constitution. Unfortunately, their Lordships entirely failed to take it into account in their ruling on 16th February 2021. Had their Lordships adverted to that right, in the manner that the Netherlands Supreme Court did (as cited with approval by our own Supreme Court) it would have avoided the fundamental errors that it unfortunately fell into in its ruling.

Ground f)

37. Article 296 of the Constitution provides as follows:

> *"Where in this Constitution or in any other law discretionary power is vested in any person or authority -*
> *That discretionary power shall be deemed to imply a duty to be fair and candid."*

The Supreme Court, in the exercise of its powers of judicial review of administrative actions, has expounded important principles which, we submit, are not only applicable to the conduct of 1st Respondent and its Chairperson, but also to itself in exercising its discretionary powers. In **TDC & Musah v. Atta Baffuor [2005-2006] SCGLR 121**, their Lordships gave extensive consideration to the issue of discretionary powers and their powers of review. In the words of Date-Bah JSC:

> *"I believe that the requirement of "reasonableness" in administrative decisions should be given as fundamental a role in Ghanaian law as it has attained in English law. Indeed, as my learned brother, Atuguba JSC has today in his judgment in this case shown, article 23 of the 1992 Constitution, which is contained in the chapter on fundamental human rights, contains within it a similar*

concept and therefore ***reasonableness in administrative decisions is a matter of fundamental human rights in this jurisdiction.***" (at pp. 152-3) (Emphasis supplied).

38. In the judgment of Atuguba JSC, he made the following pertinent observation after considering the principles stated in a number of English cases:

> "*Often administrative authorities gleefully take up statutory powers or functions but seem to be oblivious of the fact that they are public accountable powers. They ought always to bear in mind the adage that* ***qui sentit commodium et onus sentire debet*** *or that one cannot take* ***a beneficium sine onero.***"

The benefits of the powers conferred on a body such as the Electoral Commission or its Chairperson come with burdens, such as having to give an account in court, when there is a clear need to explain important matters.

39. Atuguba JSC went further to say:

> "*All these principles have sometimes been put into a sort of judicial diskette for ease of reference and it is in that condensed form that I sought to state them when in* ***Apaloo v. Electoral Commission of Ghana [2001-2002] SCGLR 1*** *at 45, I said: 'I must also stress, that the power to determine how effectively to discharge its electoral functions, vests in the Electoral Commission. It is trite law, that a court would not interfere with the decision of an administrative officer having statutory power to take that decision, but that the court is restricted to the question, whether the officer concerned followed the correct legal process in arriving at his decision or otherwise, exercised his said powers in accordance with law: see Chief Constable of Wales Police v. Evans [1982] 3 All E.R. 141." (The emphasis is mine) ..... Were this case to arise after the commencement of the 1992 Constitution all that I have said would have been condensed into article 23 thereof...*" (at p. 151).

40. The judgment of Georgina Wood JSC (as she then was) also delved into English case law, particularly

> "*two important cases, namely, Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223, and the celebrated case of Council of Civil Service Unions v. Minister for the Civil Service*

[1948] 3 All ER 935, HL in which Lord Greene's formulation of the basic principles of judicial review, often referred to as the Wednesbury principles, was reformulated by Lord Diplock .. at page 949 ..." (at p. 129).

She proceeded to explain Lord Diplock's decision as follows;

> *"Lord Diplock identified three grounds to start with, and rightly left the classification open, for further development on a case by case basis. They are illegality, irrationality and procedural impropriety. He explained these grounds at pages 950-951 of the Report as follows:*
>
> > *"The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety..."*
> >
> > *By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of a dispute, by those persons, the judges, by whom judicial power of the state is exercisable.*
> >
> > *By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness ....' It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.*
> >
> > *I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even when such failure does not involve any denial of natural justice. ""*(at pages 130-131).

41. In her application of the principles to the case at hand, Her Ladyship Wood JSC (as she then was) indicated that the plaintiff satisfied all the requirements, including that:

".....he succeeded in showing that the case fell within the irrationality or unreasonableness rule in that the decision arrived at by the TDC defies logic and common sense or accepted moral standards and that, without meaning any disrespect to the TDC, no sensible or reasonable person called upon to apply his or her mind to the decision to be taken, could have come to that decision. In short, the decision to throw him out of the house and foist a residential plot on him, is irrational and unreasonable." (at page 131).

42. In its ruling of 16th February 2021, we submit that the Supreme Court infringed the provisions of Article 296 of the Constitution. Unfortunately, in the exercise of its discretionary powers, their Lordships failed to advert their minds to relevant statutes but rather introduced irrelevant considerations which prejudiced a fair exercise of discretion as required by Article 296 of the Constitution. Holding 1st Respondent and, particularly, its Chairperson, accountable for the exercise of powers conferred by the Constitution and statute surely justify, in the circumstances of this case, that the Chairperson, as part of judicial oversight of their actions, be called upon to testify as Petitioner sought to do using the time-tested subpoena procedure and the ability to call an adverse witness under the applicable statute. Serious circumstances such as evidence of irregularities, including changing figures of election results at various levels, two documents being in evidence as the summary report from a regional collation centre when only one could have been the authentic one, arithmetical errors even acknowledged by Counsel for the Respondents, all these and more are in evidence before the court. Enhancing transparency and credibility in respect of the role of 1st Respondent and its Chairperson are essential to democracy. The decision of their Lordships was, therefore, wholly unreasonable in terms of *"Wednesbury* unreasonableness", in the words of Lord Diplock adopted by Wood JSC (as she then was).

43. On the facts in this case, at no earlier stage could the Petitioner have caused a subpoena to be served on Mrs. Jean Mensa than at the time after Petitioner had closed his case, since she had earlier filed a witness statement which indicated she was going to testify on behalf of the 1st Respondent. At the earliest opportunity after Petitioner became aware that she would no longer be testifying for 1st Respondent, Petitioner now sought to re-open his case to call her as an adverse witness. Even if the application to re-open the Petitioner's case had been tardy, it is our submission that the Court of Appeal decision in **Mireku v. Yebuah [1984-86] 1 GLR 326**, represents a

preferable approach to advance the interests of justice and ensure a fair trial. The Court of Appeal there held that a motion to re-open a suit adjourned for judgment a day before judgment should have been granted in the interests of justice. As Osei-Hwere J.A. remarked: "No doubt the learned trial judge must have been irritated at the conduct of the defendant's counsel in filing his motion to reopen the case only one day before the judgment or eleven days after he had had notice that the case had been adjourned for judgment. Counsel for the defendant blundered somewhat. But even there it was improper for the trial judge to have put on the blinkers in disregard of the motion which was brought to his notice or of which he had notice. The utmost recourse was for the trial judge to have compensated the other party in costs to permit the motion to be taken first. As pointed out by this court in **Republic v. Asokore Traditional Council; Ex parte Tiwaa [1976] 2 G.L.R. 231** at 238, "Unless it can be said to result in injustice, lateness per se, is not a disabling factor."" (at pages 331-332).

44. Furthermore, in our respectful submission, the fact that this Court itself has power under Section 58 of the Courts Act to summon the Chairperson of 1st Respondent to testify should have been factored into the exercise of the Court's discretionary power. The section provides as follows:

> *"In any proceedings, and at any stage of the proceedings, a court either on its own motion or on the application of any party, may summon any person to attend to give evidence, or to produce any document in his possession or excerpts from it subject to any enactment or rule of law."*

This power was exercised by the then apex court, the Court of Appeal, in **Wordie v. Bukari [1976] 2 GLR 371** where the court decided to *"ascertain the truth in the matter"* by itself taking additional evidence by virtue of the provision in the Courts Act (at page 378).

D. CONCLUSION

45. When in **Koglex Ltd. No. 2) v Field [2000] SCGLR 175** the Supreme Court, by a majority decision, reversed, upon a review application, an earlier majority decision, Acquah JSC (as he then was) expressed the seriousness with which he undertook the consideration of the review application in the following words:

> *"I am aware that I am not sitting on an appeal over a decision of my learned and respected colleagues. However, I find myself in the invidious position of observing the problems from a fresh outlook.* ***For in fairness to my conscience and my judicial oath, I cannot condone the perpetuation of such a glaring fundamental error as occurred in this case."*** *(Emphasis added).*

It was held that the decision of the majority of the Court of Appeal had failed to detect an error of law and this error had been affirmed by the majority of the Supreme Court, thus occasioning a grave miscarriage of justice to the plaintiff-applicant. The majority decision of the Supreme Court was, therefore, reversed by a majority (4-3) decision on a review. Difficult as it obviously is for error to be acknowledged, Acquah JSC recognized that fairness to conscience and the very oath that judges swear made it imperative for him not to condone the perpetuation of the glaring fundamental error that occurred in that case.

46. The words of Aikins JSC in **Afranie II v Quarcoo** (at 609) are also pertinent:

> "...it is essential that this court *accommodates a re-examination of the judge's previous thinking...with a view to correcting a fundamental mistake that has occurred.* If this is not done, the exercise of the review power *would end in futility and would only serve to rubber stamp or confirm a previous stance of the court which may result in a miscarriage of justice."*

47. Rather than apply the clear provisions of Ghanaian statutes and recognizing that the constitutional provisions regarding fundamental human rights had to be at the centre of its considerations, and also being cognizant of the constitutional roles of 1st Respondent and its Chairperson, the Court, in fundamental error, elevated Black's Law Dictionary above statute, elevated subsidiary legislation above statute, and failed in its duty to uphold the Constitution. There can hardly be a more appropriate case for their Lordships to correct clear and fundamental errors that have occasioned a serious miscarriage of justice.

48. We are, therefore, respectfully inviting their Lordships, in the words of Acquah JSC, in fairness to their consciences and their judicial oaths, and, in the interests of justice, to acknowledge the exceptional circumstances herein and review their ruling of 16th February 2021. It is undoubtedly in the interests of justice that Petitioner/Applicant be allowed to re-open

his case so that a subpoena is served on the Chairperson of 1st Respondent to testify in these proceedings. The exceptional circumstances shown in this application in terms of fundamental errors as shown above, require this Court to grant the application for review to achieve substantial justice.

Respectfully submitted.

DATED AT ACCRA THIS 18TH DAY OF FEBRUARY 2021.

.....

TONY LITHUR

SOLICITOR FOR PETITIONER/APPLICANT

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THE REGISTRAR

SUPREME COURT

ACCRA

AND COPY EACH FOR SERVICE ON THE ABOVE-NAMED RESPONDENTS OR THEIR SOLICITORS:

1. **JUSTIN AMENUVOR, AMENUVOR & ASSOCIATES, NO. 8 NII ODARTEY OSRO STREET, KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU, ACCRA.**

2. **AKOTO AMPAW, AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA, ACCRA.**