

WRIT NO. J1/11/2022

MICHAEL ANKOMAH-NIMFAH **** * PLAINTIFF
H/NO. 65 OB APIATUAA STREET,
ASSIN-BEREKU

VRS

1. JAMES GYAKYE QUAYSON **** * 1ST DEFENDANT
HSE. NO. SD/16 SDA
ASSIN-BEREKU

2. THE ELECTORAL COMMISSION **** * 2ND DEFENDANT
HEAD OFFICE
RIDGE, ACCRA

3. THE ATTORNEY-GENERAL **** * 3RD DEFENDANT
ATTORNEY-GENERAL'S DEPARTMENT
MINISTRIES, ACCRA

AFFIDAVIT IN SUPPORT OF CASE OF 1ST DEFENDANT

I, **JUSTIN PWAVRA TERIWAJAH**, of Flat No. E3, Accra Technical University in the Greater Accra Region of the Republic of Ghana do hereby make oath and say as follows:

1. That I am the Solicitor for the 1st defendant herein and I depose to this affidavit to verify averments in the statement of case filed on behalf of 1st Defendant.
2. That 1st Defendant is the Member of Parliament for Assin North constituency, having been duly elected on 7th December 2020 and gazetted as such by 2nd Defendant. I exhibit herewith, marked "**EXHIBIT A**" the relevant page 4095 of the said gazette notice to this effect.
3. That 1st Defendant was elected by a clear majority of the voters in the Assin North constituency, precisely 54.19 per cent of the valid votes cast in the Parliamentary election on 7th December 2020.

4. That 1st Defendant was subsequently sworn in as the Member of Parliament for the Assin North constituency on the 7th day of January, 2021 and has since been faithfully and diligently representing the people of Assin North Constituency in the 8th Parliament of the Republic of Ghana.
5. That prior to the election, after 1st Defendant filed his nomination with the 2nd Defendant, a group self-described as "Concerned citizens of Assin North" petitioned the 2nd Defendant challenging 1st Defendant's qualification to be a Member of Parliament based on the claim that he owed allegiance to a country other than Ghana.
6. That by a letter dated 24th November, 2020, 1st Defendant was invited by the 2nd Defendant to appear before its Director of Electoral Service, by name Dr. Serebour Quaicoe, to answer the issues raised in the petition for the 2nd Defendant to ascertain the veracity or otherwise of the claim Exhibited herewith, marked "**EXHIBIT B**" is a copy of the invitation letter.
7. That the complainants who appeared before the 2nd Defendant on the day 1st Defendant was invited to respond to their claims were evidently not able to prove that 1st Defendant owed allegiance to a country other than Ghana, and the 2nd Defendant cleared 1st Defendant for participation in the 7th December, 2020, Parliamentary election.
8. That Plaintiff filed an election petition in the High Court, Cape-Coast, challenging the election of 1st Defendant as the Member of Parliament for Assin North Constituency. Exhibited herewith marked "**EXHIBIT C**" is a copy of the Petition.
9. That in paragraphs 9, 11 and 12 of the Petition and the reliefs sought, it is evident that it is the issue of allegiance owed to another country other than Ghana that the Petitioner himself put forward as the basis of his claims.
10. That exhibited herewith marked "**EXHIBIT D**" is a copy of the Answer of the 1st Defendant to the Petition.
11. That after the Answer of the 1st Defendant to the Petition was filed in the High Court, each party put forward their memorandum of issues and the High Court, on 12th April

2021, set down issues for trial Exhibited herewith marked "**EXHIBIT E**" is a certified true copy of the court notes at the hearing on 12th April 2021 in the High Court, evidencing the issues set down for trial by the trial judge.

12. That on 28th July, 2021, on the basis of legal arguments only and without a trial, the High Court, gave judgment granting all the reliefs of the Petitioner, and declaring the election of 1st Defendant as a member of Parliament for the Assin North Constituency void.
13. That in the said judgment the High Court usurped the jurisdiction of this Court in giving an interpretation of article 94(2)(a) of the Constitution.
14. That what the Plaintiff in this action is seeking from this Honourable Court relating to 1st Defendant is what Plaintiff is also seeking from the High Court in the election petition.
15. That this Writ is a frivolous and vexatious action brought in bad faith and an abuse of the process of court.
16. That on 2nd August, 2021, an appeal was filed against the decision of the High Court on behalf of the 1st Defendant.
17. That we will apply to this court, on behalf of the 1st Defendant, to strike out this Writ as frivolous and vexatious, initiated in bad faith and an abuse of the process of court.
18. That the Plaintiff cannot be allowed to undermine the constitutionally established right of appeal of 1st Defendant by this spurious recourse to this Court, especially since he is the very person who has consistently resisted recourse to this Court for the interpretation of article 94(2)(a) of the 1992 Constitution.
19. That the decision of the High Court is clearly in error and the grounds of error indicated in the Notice of Appeal, including the failure of the High Court to refer the interpretation of article 94(2)(a) to the Supreme Court, are unanswerable.
20. That an application for stay of execution of the judgment of the High Court was also filed on behalf of the 1st Defendant.

Exhibited herewith marked "**EXHIBIT F**" is a copy of the motion for stay of execution (without the exhibits).

21. That I subsequently filed in the Court of Appeal, Cape Coast, on behalf of the 1st Defendant a motion for stay of proceedings and for a reference of article 94(2)(a) of the Constitution to the Supreme Court for interpretation under article 130(2) of the Constitution.
22. That after the Court of Appeal refused to make a reference to the Supreme Court, I applied to the Supreme Court for an order of certiorari to quash the ruling and for the Supreme Court to refer to itself for interpretation article 94(2)(a) of the Constitution.
23. Exhibited herewith marked "**EXHIBIT G**" is the motion filed in the Supreme Court. After the Supreme Court announced on 9th March 2022 a majority (3-2) decision not to make a reference to itself, an application for review has been filed on behalf of the 1st Defendant.
24. That, to the knowledge of the Plaintiff, on numerous occasions right from the earliest stages of this case, the need for referral of the interpretation of article 94(2)(a) of the Constitution to the Supreme Court was put forward on behalf of 1st Defendant. In response Plaintiff has consistently claimed that there was no issue of interpretation.
25. That, for instance, in an affidavit filed by 1st Defendant on 4th January 2021, in opposition to a motion by the lawyer for the Plaintiff for interim injunction, particularly in paragraph 23 thereof, 1st Defendant explicitly indicated that there was "a genuine constitutional interpretation issue and, therefore the proceedings before the Honourable Court should be stayed and referred to the Supreme Court ...". Exhibited herewith, marked "**EXHIBIT H**", is a copy of the said affidavit (without the exhibits).
26. That in paragraphs 25 to 27 of the Statement of Case filed by 1st Defendant's lawyer - also on 4th January 2021 - opposing the application for interim injunction, under the heading, "Referral to the Supreme Court for Determination", the lawyer for 1st Defendant highlighted the need for the stay of proceedings and reference to the Supreme Court for

determination the matter of the interpretation of article 94(2)(a) of the Constitution. I exhibit herewith, marked "**EXHIBIT I**", a copy of the two pages of that Statement of Case where this matter is raised as well as the first page and the page with the stamp of the Registrar of the High Court, Cape Coast, to show that those pages are part of the Statement of Case that was, indeed, filed.

27. That the trial judge, in his ruling on the motion for interim injunction, decided that he was not required to stay proceedings and refer the matter to the Supreme Court. I exhibit herewith a copy of the said ruling marked "**EXHIBIT J**".
28. That, in the judgment of the trial judge on 28th July 2021 he, again, considered the issue as to whether he was required to stay proceedings and refer the matter to the Supreme Court and, again, decided that he was not required to do so.
29. That, in the decision the High Court and in submissions on behalf of the Plaintiff, there has consistently been the fundamental error of supposing that owing allegiance to a country other than Ghana is only about having a second nationality, which is clearly not what article 94(2)(a), on a true and proper interpretation, provides.
30. That as 1st Defendant has consistently denied the allegation of owing allegiance to a country other than Ghana and it is for the Plaintiff to establish that claim which is fundamental to his case. In that regard Plaintiff has to plead and prove the Canadian Law under which he claims 1st Defendant owes allegiance to Canada.
31. That the trial judge resorting, suo motu, to the website, Wikipedia, to make pronouncements on Canadian law and even to quote "relevant legislation" in Canada in his judgment, was in egregious error.
32. That the proof of these matters of fact regarding owing of allegiance is precisely what had been set down as issues for trial in the High Court before the trial judge decided to proceed based only on legal argument.

33. That the success of the appeal against the High Court, Cape Coast, judgment is in effect conceded by the Plaintiff now recognizing the need for an authoritative interpretation by the Supreme Court of article 94(2)(a).
34. That after the hearing and of the appeal and setting aside of the judgment of 28th July 2021, the issues of fact arising in the election petition against the 1st Defendant, including whether he owes allegiance to a country other than Ghana will have to be sent back to the High Court and determined by evidence.
35. That the 2nd Defendant herein, the constitutionally mandated body that conducted the election in the Assin North and other constituencies in Ghana having inquired into the allegation that 1st Defendant owed allegiance to a country other than Ghana and not finding there was any evidence to justify that so as to disqualify him from standing as a Parliamentary candidate, the Supreme Court is not the appropriate forum for re-opening that determination, especially when the 2nd Defendant has gazetted the 1st Defendant as the Member of Parliament for Assin North.
36. That the Supreme Court cannot proceed with the reliefs sought by the Plaintiff based on mere and unverified allegations of his owing allegiance to a country other than Ghana.
37. That it would be denying the people of Assin North their right of representation in the 8th Parliament of the Fourth Republic if the Supreme Court were to grant the reliefs sought by the Plaintiff even on an interim basis.
38. The Plaintiff ought not to be allowed in forum shopping and sheer manipulation of judicial process to turn justice on its head.
39. **WHEREFORE** I swear to this affidavit in verification of the statement of case filed on behalf of the 1st Defendant in this suit.

Sworn in Accra this
day of April, 2022.

[Handwritten signature]

[Handwritten signature]
DEPONENT

BEFORE ME



COMMISSIONER FOR OATHS

6. **“Exhibit F”** which is a copy of the 1st Defendant’s motion for stay of execution of the judgment of the High Court;
7. **“Exhibit G”** which is a copy of the motion filed in the Supreme Court by the 1st Defendant seeking a referral by the Supreme Court of article 94(2)(a) of the Constitution to itself for interpretation;
8. **“Exhibit H”** which is a copy of an affidavit in opposition filed by the 1st Defendant against a motion filed by the Plaintiff herein at the High Court for interim injunction against the 1st Defendant;
9. **“Exhibit I”** which is a copy of a Statement of Case filed by 1st Defendant’s lawyer on 4th January 2021 in opposition to the Plaintiff’s application for interim injunction; and
10. **“Exhibit J”** which is a copy of the ruling of the trial judge on the motion for interim injunction.

DATED AT ACCRA THIS 12th DAY OF APRIL, 2022.

BEFORE ME



THE REGISTRAR
SUPREME COURT
ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – A. D. 2022

WRIT NO. J1/11/2022

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STATEMENT OF CASE FILED ON BEHALF OF 1ST DEFENDANT

INTRODUCTION

1. The Plaintiff filed this Writ at 3pm on 24th January 2022. Earlier that morning he and his counsel had been before the Court of Appeal, Cape Coast where the counsel for the 1st Defendant had notified the court that 1st Defendant had filed an application in the Supreme Court in respect of the refusal of the Court of Appeal to stay proceedings and to refer to the Supreme Court the interpretation of article 94(2)(a) of the Constitution. Counsel for the 1st Defendant therefore asked the court not to proceed with the pending application for stay of execution of the High Court judgment which had declared as void the election of the 1st Defendant as the member of Parliament for the Assin North constituency. In response, counsel for the Plaintiff, after acknowledging that he had been served with the application filed in the Supreme Court, indicated to the court that what counsel for 1st Defendant had said about a pending application in the Supreme Court was "meaningless". He insisted that the court should proceed to hear the application for stay of execution.

2. Counsel for 2nd Defendant (who is also counsel for the 2nd Respondent to the application before the Court of Appeal, Cape Coast where the 2nd Defendant herein is the 2nd Respondent therein), indicated that he had not been served with the application invoking the supervisory jurisdiction of the Supreme Court. He also asked the court to proceed with the hearing of the application for stay of execution. After confirming from the Registrar of the Court of Appeal, Cape Coast, that service of the Supreme Court process had been effected on the court and hearing from counsel, the court decided to stay proceedings before it and await the decision of the Supreme Court in Civil Motion **No. J5/17/2022**. It was after that decision that the Plaintiff herein proceeded to file the writ herein seeking from the Supreme Court, in the exercise of its original jurisdiction, the interpretation of article 94(2)(a) of the 1992 Constitution.

BACKGROUND FACTS

3. 1st Defendant is the Member of Parliament for Assin North constituency, having been duly elected by a clear majority of the voters in the Assin North constituency, precisely 54.19 per cent of the valid votes cast in the Parliamentary election on 7th December 2020. Accordingly, 1st Defendant has been gazetted as such by 2nd Defendant and was subsequently sworn in as the Member of Parliament for the Assin North constituency on the 7th day of January, 2021. He has since been faithfully and diligently representing the people of the Assin North Constituency in the 8th Parliament of the Republic of Ghana.
4. Prior to the election, after 1st Defendant filed his nomination with the 2nd Respondent, there was a challenge to 1st Defendant's qualification to be a Member of Parliament, based on the claim that he owed allegiance to a country other than Ghana, 1st Defendant was invited by the 2nd Defendant to appear before it to answer the issues raised in the petition for the 2nd Respondent to ascertain the veracity or otherwise of the claim. The complainants were evidently not able to show that the 1st Defendant was unqualified to be nominated as a candidate for the elections, so the 2nd Defendant cleared the 1st Defendant for participation in the 7th December, 2020, election.

5. After the 1st Defendant was declared the winner of the parliamentary election conducted on 7th December, 2020, the Plaintiff herein filed a petition in the High Court, Cape Coast challenging his election as the Member of Parliament for the Assin North Constituency. After the Answer of the 1st Defendant to the Petition filed in the High Court, and the memorandum of issues that each party put forward, the High Court, on 12th April 2021, set down issues for trial in terms which made it clear the question of whether the 1st Defendant owed allegiance to a country other than Ghana was an issue for trial.
6. On 28th July, 2021, without a trial and after an order by the court for the filing of legal arguments after the setting down of issues for trial, the High Court gave judgment granting all the reliefs of the Petitioner, and declaring the election of 1st Defendant as a member of Parliament for the Assin North Constituency void. In the said judgment, the High Court gave an interpretation of article 94(2)(a) of the Constitution that, like the position of the Plaintiff herein, essentially equated owing allegiance to a country other than Ghana to the holding of dual nationality. On 2nd August, 2021, an appeal was filed against the decision of the High Court on behalf of the 1st Defendant. An application for stay of execution of the judgment of the High Court was also soon filed.
7. There was subsequently filed in the Court of Appeal on behalf of the 1st Defendant a motion for stay of proceedings and for a referral of article 94(2)(a) of the Constitution to the Supreme Court for interpretation under article 130(2) of the Constitution. It was after the Court of Appeal dismissed the application that an application was filed in the Supreme Court for an order of certiorari to quash the decision of the Supreme Court and for the Supreme Court to refer to itself the interpretation of article 94(2)(a) of the Constitution. The writ herein was filed during the pendency of this application before the Supreme Court.

LEGAL SUBMISSIONS

8. Without prejudice to the submissions below that the Writ herein is an abuse of the process of court and issued in bad faith and frivolous and vexatious, we first demonstrate why the interpretation of article 94(2)(a) of the Constitution put forward in the statement of case of Plaintiff as well as the

judgment of the High Court, Cape Coast, is plainly and utterly wrong.

Interpreting article 94(2)(a)

9. The 1992 Constitution of Ghana allows Ghanaian citizens to hold the citizenship of another country. The terms of Article 94 of the Constitution, which deals with qualifications and eligibility to be a Member of Parliament, clearly acknowledge the importance of this. In article 94(1) it is provided that:

“Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless –

- (a) *he is a citizen of Ghana, has attained the age of twenty-one years and is a registered voter; ...”*

Article 94 (2)(a) on the other hand makes no reference to nationality. What it provides for is clearly stated:

- (2) A person shall not be qualified to be a member of Parliament if he: (a) owes allegiance to a country other than Ghana; ...”

The disqualification is not for dual nationality. Yet the Plaintiff herein, like the High Court judge, whose judgment is riddled with numerous errors, as set out in the Notice of Appeal, seeks to have this court determine that: “You cannot be a citizen of a country and claim not to owe allegiance to that country.” (Paragraph 5 on last page but one (pages are unnumbered) of the statement of case filed by the lawyer for Plaintiff). In the conclusion of the statement of case, (paragraph 7 on last page) the lawyer for the Plaintiff states: “A person who seeks to contest as a candidate for the office of a Member of Parliament in Ghana shall not be qualified if he owes allegiance to a country other than Ghana. Once that person is a citizen of another country, he owes allegiance to that country ...”

10. If the Constitution makers had wished to make the disqualification in article 94(2)(a) simply a matter of holding the nationality of another country, they would surely have stated just that. They did not. There was obviously good reason for them to have expressed themselves as they did in terms of “ow[ing] allegiance to a country other than Ghana”, rather than simply “being a national of a country other than Ghana”.

Conflating the holding of dual nationality with the issue of “ow[ing] allegiance to a country other than Ghana”, which is what article 94(2)(a) provides for, undermines the Constitution and takes away the right that Ghanaians with dual nationality have to serve the country as members of Parliament. Whoever seeks to debar them must show that the person they seek to debar “owes allegiance to a country other than Ghana”. The determination of whether a person is serving two masters on which Counsel for Plaintiff hinges his whole case cannot be settled by the blanket assertion that the holding of dual nationality automatically means owing allegiance to another country.

11. This blanket claim is neither supported by the long passage quoted from the **minority opinion** of the Supreme Court in **Asare v. Attorney-General** [2012] 1 SCGLR 460 at 483-485 (per Atuguba JSC) nor the passage from Professor Kumado’s ‘A Handbook of the Constitutional Law of Ghana and its History’. It is even more absurd to make such a claim when, the undisputed fact in the case of the 1st Defendant, is that the Canadian nationality he held had been conclusively renounced by him by the time the 2nd Defendant considered the complaint brought against him, which was well before the election date. At the time of the election, therefore, there was absolutely no question that 1st Defendant was not even a dual national.

12. The expression “shall not be **qualified to be a member of Parliament** if he ...” (emphasis added) which precedes the grounds of disqualification in article 94(2) of the Constitution is crucial to the interpretation issue. The time of being “a member of Parliament” is not when a person puts in his nomination to stand election. It is when he is elected as such and, consequently, is gazetted and, then, takes his seat in Parliament after “taking and subscribing before the Speaker and in the presence of members of Parliament, the oath of allegiance and the oath of a member of Parliament set out in the Second Schedule of this Constitution.” (Article 100 (1) of the Constitution).

13. It is also significant that, in section 20(1)(d) of the Representation of People’s Act, PNDC Law 284, the time of the election is the critical time for reckoning with the issue of qualification or disqualification of a person. It is there provided that: “(1) The election of a candidate shall be declared void on an election petition if the High Court is satisfied:

*“(d) that the candidate was **at the time of his election** a person not qualified or a person disqualified for election.” (Emphasis added).*

The operative phrase “**at the time of his election**” in this statute is, without doubt, a confirmation of the interpretation put forward above as regards article 94(2)(a) of the Constitution. Moreover, while section 9(1) of the Representation of People’s Act, 1992, PNDC Law 284, which is the antecedent of article 94(1)(a) of the Constitution – “(1) A person shall not be qualified to be a candidate for the office of member of Parliament unless” -refers to candidacy only as when the qualification under that statute is determined, in respect of section 9(2) – “(2) A person shall not be qualified to be a member of Parliament if he” -, the antecedent of article 94(2)(a) of the Constitution, the disqualification is expressed only in terms of being a member of Parliament; there is candidacy.

14. An Australian case cited in paragraph 6 of the statement of case filed on behalf of the Plaintiff -**Re Gallagher** [2018] HCA – in which an application for renunciation of British citizenship by an Australian Senator had not been processed by the British authorities until after the election and, therefore, could not save the Senator from disqualification, actually supports our contention about the interpretation of article 94(2)(a) of the Constitution; it is the time of election that is the operative time under that Australian legislation also.

15. It is also noteworthy that, in **Republic v. High Court (Commercial Division) Accra; ex parte Electoral Commission, Papa Kwesi Nduom Interested Party** [2015-2016] 2 SCGLR 1091, the Supreme Court decided that the right of the Interested Party to be heard had been denied when no opportunity was given him to address issues arising from the nomination form he filled. The Electoral Commission was required to allow a period beyond the designated nomination period to enable the exercising of the rights of the candidate. That decision does not support the fixation on the time of nomination and no later in the judgment of Boakye J and the statement of case of the Plaintiff.

16. In the High Court, Cape Coast, Boakye J. had sought to back his position about the time of nomination with a stark falsehood: “article 94(2) of the Constitution **has received judicial consideration and clarity by the Supreme Court**

which is by law, the highest court and the final court of appeal in Ghana in Republic vs High Court [General Jurisdiction], Accra; Ex Parte Dr. Zenator Rawlings [Ashithey and National Democratic Congress as Interested Parties]". (See p. 55, emphasis added). This false claim is repeated in the following passage on page 56 of the judgment: "In the considered view of the Court the answer to the issue as to whether the eligibility or qualification to become a Member of Parliament begins from the filing of nomination forms with 2nd Respondent or at the time a person is elected and sworn in as such can be found in Ex Parte Zenator Rawlings' case, supra. Why? It is **the recent and authoritative decision by the Supreme Court on what point in time the eligibility or qualification criteria as set out in article 94[2][a] of the Constitution come into play.**" (Emphasis added). Article 94(2) did not receive judicial consideration in the **Zanetor Rawlings** case. It was article 94(1)(a) which was before the court in that case and the provisions of the two articles differ in material respects.

17. Though on the following pages of the judgment., -Pages 57 and 58 -where Boakye J even quotes from the court's judgment in the Zanetor Rawlings case, he indicates the constitutional provision under consideration in that case to be article 94(1)(a), Boakye J. soon relapses into his earlier error at page 59 where he says: "It can be said that the Supreme Court held that the applicability of article 94(2)(a) of the 1992 Constitution did not deprive the High Court of its jurisdiction." The Supreme Court in **Ex parte Zanetor Rawlings** did not make any such holding; article 94(2)(a) was not before the Court in that case. However, the reason for this falsehood in the judgment of Boakye J. is evident in the sentences following the just quoted falsehood. His Lordship exclaims: "The Court finds the argument from 1st Respondent to the contrary shocking. **The decision by the highest court and final court of appeal is coming from his own party backyard.** It is therefore intriguing as to why he could not take a cue therefrom." (Emphasis added). He goes on in more mocking and unjudicial terms to attack the contentions by 1st Respondent. In all this, what comes into plain view is partisan political decision-making and not judicial consideration of the issues before the court.

18. Boakye J could not hide the resentment and partisan political prejudice which biased his decision to the point of repeatedly making false statements about what the Supreme Court held in the **Zanetor Rawlings** case. As such, he was in

flagrant breach of Article 296(a) and (b) of the Constitution which provides that:

Where in this Constitution or in any other law discretionary power is vested in any person or authority –

(a) that discretionary power shall be deemed to imply a duty to be fair and candid;

(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law;”

19. The invitation by Counsel for Plaintiff to this Court to adopt the position of Boakye J. in the High Court, Cape Coast, in respect of the interpretation of article 94(2)(a) is obviously to be declined. This is not only because Boakye J. usurped the jurisdiction of the Supreme Court in putting forward an interpretation of the article that he falsely attributed to the Supreme Court, but also because his interpretation, as shown above, is quite wrong given the language of article 94(2)(a) of the Constitution.

20. Finally, as regards the operation of article 94(2)(a), recourse would be needed to the law of the foreign country to which it is claimed allegiance is owed. The trial judge resorting, suo motu, to the website, Wikipedia, to make pronouncements on Canadian law and even to quote “relevant legislation” in Canada in his judgment, was in egregious error. The Supreme Court, in our respectful submission, would not only need to interpret the provision in article 94(2)(a) of the Constitution in terms of deciding the time when the disqualification takes effect but would also need to direct the lower court to take evidence to establish such foreign law in a Ghanaian court as provided for in Section 1(2) of the Evidence Act, 1975:

*“The determination of the law of an organization of states to the extent that such law is not part of the law of Ghana, or of the law of a foreign state or sub-division of a foreign state, is a **question of fact**, but it shall be determined by the court.”*
(Emphasis added).

Otherwise, this Supreme Court would be required to engage in evidence-taking for the determination of foreign law as well as evidence of whether there have been acts that show the allegiance of 1st Defendant to a foreign country, when the

High Court is the appropriate forum for those aspects of the matter.

Writ an Abuse of Process of court

21. What the Plaintiff in this action is seeking from this Honourable Court relating to 1st Defendant are exactly what he sought from the High Court in the election petition. Essentially, this Writ is a frivolous and vexatious action brought in bad faith and an abuse of the process of court, and we will apply to this court on behalf of the 1st Defendant, to strike it out as frivolous and vexatious, initiated in bad faith and an abuse of the process of court.

Whatever the Writ issued by Plaintiff, on the surface, seeks to achieve, namely a reference to the Supreme Court of the issue of interpretation of article 94(2)(a) of the Constitution, is something the 1st Defendant had been putting persistently before the courts below since the early stages of the election petition. On the numerous occasions that lawyers for the 1st Defendant tried to get a reference to the Supreme Court of the interpretation of article 94(2)(a) of the Constitution, Plaintiff claimed that there was no issue of interpretation to be referred to the Supreme Court.

22. The application by the 1st Defendant to the Court of Appeal filed in November 2021 for a reference to the Supreme Court was the latest in the efforts of 1st Defendant to obtain an authoritative interpretation from the Supreme Court. When the Court of Appeal refused to make the reference, 1st Defendant invoked the supervisory jurisdiction of the Supreme Court to have the reference made. If the Plaintiff had a genuine interest in having the Supreme Court interpret Article 94(2)(a) of the Constitution, all he needed to do was not to oppose the application before the Court of Appeal in Cape Coast or, more recently, the application invoking the supervisory jurisdiction of the court in respect of the ruling of the Court of Appeal, Cape Coast, and asking the Supreme Court to refer the matter of interpretation to itself. He did not do so. On the contrary, each time, Plaintiff and his counsel stoutly resisted the application to refer the matter to the Supreme Court to provide an authoritative interpretation.

23. Knowing on 24th January 2022 that there was an appeal pending in the Court of Appeal and that an application for stay of execution was also pending in the Court of Appeal, in relation to which the Court of Appeal had that day decided to stay

proceedings pending the decision of the Supreme Court on whether to refer the interpretation issue to itself, the Plaintiff issued this writ in the Supreme Court. What the Plaintiff is asking the Court to do is what was already pending in the court at the time the new writ was issued. This is a classic instance of vexatious litigation, in this case brought in absolute bad faith after a failed effort to get the Court of Appeal to disregard what was pending in the Supreme Court. The Plaintiff, with respect, cannot also be allowed to undermine the constitutionally established right of appeal of 1st Defendant by this spurious recourse to this Court.

24. The Supplementary affidavit in support of application of the 1st Defendant records the admission of counsel for the Plaintiff Counsel for 1st Defendant that an ex parte application for interim injunction that he had put before the Supreme Court on 25th January 2022 was an "attempt to sneak a fast one on you," adding. "I apologize, I apologize". This apology, however, has only been followed by further actions in bad faith by the Plaintiff and his counsel in respect of this writ.

25. Plaintiff also, in resisting the application for certiorari to quash the decision of the Court of Appeal and refer the matter of constitutional interpretation to the Supreme Court, claims, remarkably, in paragraph 14 of his affidavit in opposition to the application, that his recent writ invoking the original jurisdiction of the Supreme Court renders the already pending application for a reference to the Supreme Court "otiose". A majority (3-2) decision of this Court, differently constituted, in a decision announced on 9th March 2022, upheld this proposition of the Plaintiff. 1st Defendant has applied for a review of the said ruling.

26. This court should, with respect, not allow any litigant to act in such bad faith and engage in blatant forum shopping in instituting a new action for the determination of a matter already before another panel of this Court and also pending before other lower courts. The Plaintiff, while urging the panel of the Supreme Court before whom 1st Defendant's application to quash the decision of the Court of Appeal, Cape Coast and for the Supreme Court to refer to itself the interpretation of article 94(2)(a) of the Constitution was pending, not to make the reference, issues a new writ to be put before another panel of the court. The new writ seeks to obtain what is already pending before another panel of the Supreme Court. This is

unacceptable forum-shopping and it would set a dangerous precedent if such conduct should be countenanced by this court.

CONCLUSION

27. The writ filed invoking the original jurisdiction of the Supreme Court is simply an abuse of the process of court. Plaintiff is not engaged in a genuine quest for an authoritative interpretation from this court of a constitutional provision. Rather, under the guise of an invocation of the original jurisdiction of this court he is seeking reliefs which are the subject-matter of the pending suits in the lower courts, as well as this court. What Plaintiff is seeking in the election petition that he instituted against the 1st Defendant is clearly the process that this court ought to have him continue pursuing as against this new suit

DATED AT KAPONDE & ASSOCIATES, SUITE 606/607, 6TH FLOOR, REPUBLIC HOUSE, GHANA SUPPLY COMPANY BUILDING, ACCRA THIS 11TH DAY OF APRIL, 2022.



COUNSEL FOR THE 1ST DEFENDANT
JUSTIN PWAVRA TERIWAJAH, ESQ.
SOLICITOR'S LICENCE NO. eGAR 00011/22
CHAMBER'S REGISTRATION NO. ePP00756/21

JUSTIN PWAVRA TERIWAJAH
LL.B (GHANA), LL.M (PEKING)
SOLICITOR AND BARRISTER
TEL: +233 544 181818 / +233 233 181818
+223 277 181818/ +233 208 101010
Email: jpteriwajah@pku.edu.cn

THE REGISTRAR,
SUPREME COURT,
ACCRA.

AND TO:

1. THE PLAINTIFF/RESPONDENT OR HIS LAWYER, FRANK DAVIES ESQ., OF MESSRS DAVIES & DAVIS, E 335, KOJO SRO ST. GA 232-4172, BEHIND FOUNTAIN OF GLORY ASSEMBLIES OF GOD CHURCH, EAST AIRPORT, ACCRA;
2. THE 2ND DEFENDANT/RESPONDENT OR ITS LAWYER, EMMANUEL ADDAI ESQ., ELECTORAL COMMISSION, # 8TH AVENUE RIDGE, ACCRA; AND
3. THE 3RD DEFENDANT/RESPONDENT, ATTORNEY-GENERAL, ATTORNEY-GENERAL'S DEPARTMENT, MINISTRIES, ACCRA.

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – A. D. 2022

SUIT NO. J1/11/2022

MICHAEL ANKOMAH-NIMFAH **** * PLAINTIFF
H/NO. 65 OB APIATUAA STREET,
ASSIN-BEREKU

VRS

1. JAMES GYAKYE QUAYSON **** * 1ST DEFENDANT
HSE. NO. SD/16 SDA
ASSIN-BEREKU
2. THE ELECTORAL COMMISSION **** * 2ND DEFENDANT
HEAD OFFICE
RIDGE, ACCRA
3. THE ATTORNEY-GENERAL **** * 3RD DEFENDANT
ATTORNEY-GENERAL'S DEPARTMENT
MINISTRIES, ACCRA

LIST OF DECIDED CASES AND STATUTE LAW

1. **Republic v. High Court (Commercial Division) Accra; ex parte Electoral Commission, Papa Kwesi Nduom Interested Party [2015-2016] 2 SCGLR 1091.**
2. **Republic vs High Court [General Jurisdiction], Accra; Ex Parte Dr. Zanetor Rawlings [Ashithey and National Democratic Congress as Interested Parties]. [2015-2016] 1 SCGLR 53**
3. **Republic vs High Court [General Jurisdiction], Accra; Ex Parte Dr. Zanetor Rawlings [Ashithey and National Democratic Congress as Interested Parties (No. 2)]. [2015-2016] 1 SCGLR 92**
4. **Republic v. High Court (Commercial Division), Accra; Ex parte Attorney-General (Balkan Energy Ghana Ltd & Others Interested Parties) [2011] 2 SCGLR 1183**
5. **British Airways v. Attorney-General [1996-1997] SCGLR 547**
6. **Representation of People's Act, PNDC Law 284**
7. **Evidence Act, 1975, NRCD 323**

DATED AT KAPONDE & ASSOCIATES, SUITE 606/607, 6TH FLOOR, REPUBLIC HOUSE, GHANA SUPPLY COMPANY BUILDING, ACCRA THIS 11TH DAY OF APRIL, 2022.



COUNSEL FOR THE 1ST DEFENDANT
JUSTIN PWAVRA TERIWAJAH, ESQ.
SOLICITOR'S LICENCE NO. eGAR 00011/22
CHAMBER'S REGISTRATION NO. ePP00756/21

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