

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA - A.D. 2024

File: 23/04/24
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SUIT NO. GJ/0628/2024.

EMMANUEL GALLO

- PLAINTIFF/APPLICANT

VRS

ELECTORAL COMMISSION

- DEFENDANT/RESPONDENT

MOTION ON NOTICE FOR INTERLOCUTORY INJUNCTION – ORDER 25

MOTION ON NOTICE by Counsel for and on behalf of the Plaintiff/Applicant herein praying for an order of Interlocutory Injunction to restrain the Defendant/Respondent, its agents or assigns from conducting the Ejisu Constituency by-election on or before 30th April 2024 or any date thereafter with one Esther Osei on the ballot, purporting to contest on the ticket or on behalf of the Convention Peoples' Party (CPP) until the instant case is finally determined on merits.

AND for any order or further orders as this Honourable Court may deem fit upon the grounds stated in the accompanying affidavit and Statement of Case.

~~COURT TO BE MOVED~~ on *now* the *29* day of April 2024 in the forenoon or so soon thereafter as Counsel for the Plaintiff/Applicant can be heard.

DATED THIS 19TH DAY OF APRIL 2024 AT DROMOH CHAMBERS, ACCRA

WAYOE GHANAMANNTI ESQ
BARRISTER & SOLICITOR
DROMOH CHAMBERS
24 ODOTEYE TSUI STREET, DROMOH
Email: lordzima7@gmail.com
TEL: 0246 487 18

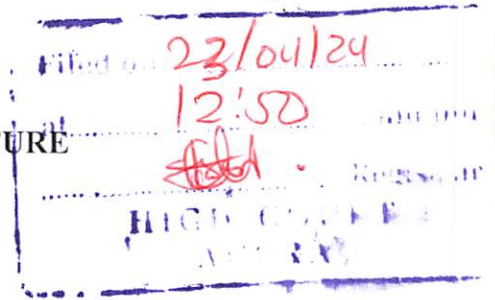


WAYOE GHANAMANNTI ESQ
LICENCE NO. eGAR 03686/24
BP 3000002732
COUNSEL FOR PLAINTIFF/APPLICANT

THE REGISTRAR
HIGH COURT, GJ
ACCRA

AND FOR SERVICE ON THE ABOVE-NAMED DEFENDANT/RESPONDENT

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA - A.D. 2024



SUIT NO.

EMMANUEL GALLO

- PLAINTIFF/APPLICANT

VRS

ELECTORAL COMMISSION

- DEFENDANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION FOR INTERLOCUTORY INJUNCTION

I, SAMUEL YEMOFIO of No. 24 Odotei Tsui Street, Dzorwulu, Accra in the Greater Accra Region of the Republic of Ghana, do make oath and say as follows:

1. That I am a Law Clerk at Dromoh Chambers and Deponent herein.
2. That I have the consent of the Plaintiff/Applicant herein to depose to the instant application as the matters herein have come to my knowledge and belief as a law Clerk on the matter.
3. That at the hearing of this application, Counsel will seek leave of Court to refer to all processes filed in this matter.
4. That Defendant is scheduled to conduct a by-election for the election of a Member of Parliament (MP) for the Ejisu Constituency on 30th April 2024.
5. That Plaintiff as the Ashanti Regional Chairman of the CPP, together with his Regional Executive Committee are in charge of the daily administration of the Party in the Ashanti Region. Thus, all CPP political activities in the Ashanti Region fall under the authority and control of the Regional Executive Committee with Plaintiff as Chairman.
6. That the CPP is currently putting together its reorganisation agenda towards the main 7th December 2024 national elections, and the Regional Executive Committee, as the officers on the ground in the region, who know first hand, the political strength of the Party in the region, has resolved to concentrate on the said reorganisation agenda to prepare the Party properly for the main 7th December national elections.
7. That, if the Party is to do anything regarding the said by-election in the Ejisu Constituency, it is the responsibility of his Regional Executive Committee chaired by

Plaintiff, to submit to the Party Headquarters and the Central Committee, any such activity for onward consideration and approval.

8. That due to the Party's reorganisation agenda and certain pending internal matters, Plaintiff's Regional Executive Committee has not sent any communique regarding the participation in the said by-election to the Central Committee, the Party's highest administrative body for consideration. In sum, the CPP as a political party has not taken any decision at its Central Committee to contest the said Ejisu Constituency by-election.
9. That this being the situation regarding the CPP currently, and as no such decision to participate in the said by-election in the Ejisu Constituency has been taken at the highest level of the Party's administration, the only official thing to do is for the Regional Executive Committee to inform the Defendant's Ashanti Region Directorate that the Party would not be participating in the said by-election, which was done by a letter dated 18th April 2024 and addressed to the Defendant's Ashanti Region Director. The said letter is herein attached as Exhibit "SY".
10. That after Exhibit "SY" was submitted to Defendant's Office in Kumasi, one Esther Osei showed up at the Defendant's Office and has been registered by Defendant to contest the said by-election on the ticket of the CPP as its candidate. And that, the said Esther Osei was introduced by a letter dated 18th April 2024 to the Defendant from the former chair and leader of the CPP, Nana Akosua Frimpomaa, who together with 8 other National Executives, at the Party's National Executive Council meeting on 5th December 2023, were removed from office. The said letter is herein attached as Exhibit "SY 1".
11. That I am informed by Counsel and verily believe same to be true that per **Article 53 (d)** of the CPP's Constitution, it is the duty of the Constituency Branch Party Conference **to elect a Parliamentary candidate for the Constituency for the approval of the Central Committee**. Thus, the power to get a Parliamentary candidate for the Party lies with the Party's Constituency members at a Constituency Conference held for that purpose and this has not been done to elect anybody.
12. That I am informed by Counsel and verily believe same to be true that per **Article 71 (5)** of the CPP's Constitution, **the Central Committee shall consider and approve the names of candidates submitted for election to Parliament, and where it rejects a candidate, it shall refer the matter to the particular Constituency to elect a new candidate**. Significantly, the Ejisu Constituency has not elected and submitted anybody for consideration and approval by the Central Committee, and that no Central Committee meeting has been held for this purpose, a process which is very critical to **determine the calibre and capacity of the Party's Parliamentary candidate, for such election**.
13. That I am informed by Counsel and verily believe same to be true that per **Article 60 (d)** of the CPP's Constitution, the Regional Executive Committee **shall make proposals for, and oversee all Party developmental activities in the region**. In this regard, the Regional Executive Committee has not made any such proposal concerning the said Esther Osei for consideration and approval as the Party's Parliamentary candidate, that is, even if the Party's Ejisu Constituency has not elected at a conference a candidate for the

Central Committee's consideration and approval. However, on the contrary, Exhibit "SY" presents the Regional Executives' position on the matter concerning the region.

14. That the Regional Executive Committee hold this position in paragraph 13 above because the said Esther Osei is not "properly known" to the Party in the region and thus, they cannot vouch for her persona and stature to hold a national office as a legislator on behalf of the CPP, a Party with a delicate political philosophy and developmental ideology. **That progressively, the constitutional rationale why the CPP's Central Committee must consider and approve the Party's Parliamentary candidate is to ascertain whether the person to represent the CPP has the capacity to espouse the Party's political principles and ideologies in Parliament to impact on law making for productive governance. So this process is very critical and same has not been done, which is a breach. Applicant believes that it is prudent for all to understand that the CPP ought to be a serious political party, where illegitimate conducts ought not be encouraged.**
15. That I am informed by Counsel and verily believe same to be true that given the facts herein presented, that no Ejisu Constituency Conference has been held to elect the said Esther Osei or anybody for that matter for the CPP's Central Committee to consider and approve thereof to contest on behalf of the Party, no individual can introduce anybody to the Defendant to be registered to contest on the ticket and on behalf of the CPP, a political party governed by rules and regulations. The CPP is not a sole proprietorship.
16. That I am informed by Counsel and verily believe same to be true that in the circumstance, any introduction by the former chair and leader of the CPP to the Defendant for registration and onward contest by the said Esther Osei or anybody, in the said Ejisu Constituency by-election is of no effect, as no CPP Ejisu Constituency Conference has elected for the approval of the Central Committee of any such person. And again, that the former chair and leader, **even if she had not been removed from office, does not have any such authority and duty to present anybody to the Defendant to contest public elections on the ticket and on behalf of the CPP**, as such matters are governed by Party rules and regulations and not individual whimsical fiats.
17. That I am informed by Counsel and verily believe same to be true that the **Defendant cannot go ahead with its intended Ejisu Constituency by-election on 30th April 2024 or any other date thereafter with the said Esther Osei or whoever so introduced by the former chair and leader of the CPP to the Defendant to be on the ballot for CPP because that would be an illegitimate CPP candidate in the contest and thus, rendering the entire by-elections after it has been conducted, nugatory and void.**
18. That I am informed by Counsel and verily believe same to be true that, if the former chair and leader of the CPP in her individual interest feels that she wants the said Esther Osei or anyone else to go to Parliament, she can introduce and support that person on an independent candidate slot, a route all citizens are entitled to by right but not to illegitimately, force her personal interest on the CPP against the Party's stated rules and

regulations, as her individual interest, though of no effect anymore in the Party, cannot override that of a political party of a group of people, governed by rules and regulations.

19. That I am informed by Counsel and verily believe same to be true that with this legal action to address the matter, the Defendant will do the needful and not allow its process and progress, especially, regarding this budgeted public by-election to be overshadowed by needless personal stuffs not in the holistic interest of political parties that are its stakeholders. Significantly, it is like the NDC as a political party not ready to participate in the said by-election and an individual going behind to illegitimately, present someone in the name of the NDC and the Defendant register that person to contest on that ticket, and it is trite, that it does not work that way.
20. That I am informed by Counsel and verily believe same to be true that, the CPP is a political party governed by a Constitution and that no individual is above its stated rules and regulations. Thus, any conduct by any group of individuals, especially, the instant attempt to run down the entire rules and regulations on electing and approving a Party Parliamentary candidate, which is similar to conducting a party primaries, is a conduct of backwardness and lack of civility and same ought not to be entertained by institutions like the Defendant herein, in a democratic dispensation, as we are not in a jungle.
21. That I am informed by Counsel and verily believe same to be true that, this is a very simple matter, that no CPP Ejisu Constituency Branch Conference has elected anybody for the Party's Central Committee to consider and approve as a Parliamentary candidate for any by-elections. The Regional Executive Committee has also not, made any proposal to that effect. Thus, neither the said Esther Osei nor anyone, illegitimately introduced to the Defendant currently, can pass as the CPP's candidate for the said by-election.
22. That Plaintiff/Applicant humbly pray that the instant application be granted to restore the CPP's rules and regulations governing such matters, as same have not been followed.

WHEREFORE, I swear to this Affidavit in Support of the application.

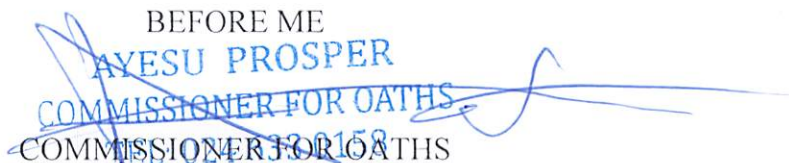


.....
Deponent

SWORN AT ACCRA

THIS 28th DAY OF April 2024

BEFORE ME
AYESU PROSPER
COMMISSIONER FOR OATHS
~~COMMISSIONER FOR OATHS~~



Exh. 4 SP 21

CONVENTION PEOPLE'S PARTY

REGIONAL OFFICE: ASHANTI

Regional Office
H/No. NTER: 112,
FANTE NEW TOWN,
0244777950 / 0278111800
Email: cppashregion@gmail.com

P. O. Box BA 213,
Bantama,
Kumasi/Ashanti.



MOTTO: FORWARD EVER BACKWARDS NEVER

Our Ref: _____ Your Ref: _____ Date: _____

TO;
THE REGIONAL DIRECTOR
ELECTORAL COMMISSION
OF GHANA
ASHANTI REGION

EXHIBIT MARKED.....
REFERENCED TO IN THE AFFIDAVIT

23/04/2017

AYESU PROSPER
COMMISSIONER FOR OATHS
ACCRA, GHANA

Dear Sir,

**CONVENTION PEOPLE'S PARTY (CPP) IS NOT CONTESTING IN THE UP COMING
BYE - ELECTION IN EJISU CONSTITUENCY**

I've been directed by our regional chairman to officially inform your office that CPP is not interested and will not contest in the up-coming bye-election in the Ejisu constituency. Hence, no one is allowed to contest in the name or on behalf of CPP in the bye election at Ejisu.

This is the decision taken by the Regional Executive after meeting to discuss the party chances in the election and the way forward of the party in terms of reorganizations.

Counting on your usual cooperation.

THANK YOU.

Your's in service

ISSAH ABDUL SALAM

ASHANTI REGIONAL SECRETARY

0244777950

Ext. 841



CONVENTION PEOPLE'S PARTY

National Headquarters: AG No. 25 House No. 64, Mango Tree Ave
Asylum Down, Accra, Ghana

18th April 2024.

The Presiding Officer
Electoral Commission
Ejisu, Kumasi - Ashanti Region

AS EXHIBIT MARKED... 841
REFERRED TO IN THE AFFIDAVIT
DATE: 23/04/2024
GD: *[Signature]*
AYESU PROSPER
COMMISSIONER FOR OATHS
HIGH COURT ACCRA, GHANA

Dear Sir/ Madam,

Letter of Introduction and Payment: Esther Osei

I hope this letter finds you well. I am writing to introduce to you Comrade Esther Osei, our parliamentary candidate for the upcoming Ejisu by-election on the ticket of the Convention People's Party.

I request for your kind support for Comrade Esther Osei as she goes through the registration formalities to contest in this crucial by-election.

Also, kindly find below the bankers draft payment for your attention.

Counting on your kind cooperation.

Yours sincerely,

Nana Akosua Frimpomaa
Chairperson and Leader
(Convention People's Party).

Filed at 23/04/24
at 12:50
High Court
ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA - A.D. 2024

SUIT NO.

EMMAUEL GALLO

- PLAINTIFF/APPLICANT

VRS

ELECTORAL COMMISSION

- DEFENDANT/RESPONDENT

CERTIFICATE OF EXHIBITS

AYESU PROSPER

I, Commissioner for Oaths hereby certify that the following exhibits were referred to in the Affidavit of Samuel Yemofio and marked accordingly as:

1. Exhibit "SY" – Applicant’s Regional Executive Committee's letter to Defendant dated 18th April 2024.
2. Exhibit "SY 1" – Letter from the former chair and leader of the CPP to the Defendant dated 18th April 2024.

SIGNED

~~AYESU PROSPER
COMMISSIONER FOR OATHS
TEL: 024 633 0158~~

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
GENERAL JURISDICTION
ACCRA - A.D. 2024

Filed on 23/04/24
12:52 am/pm
HIGH COURT

SUIT NO.

EMMANUEL GALLO

- PLAINTIFF/APPLICANT

VRS

ELECTORAL COMMISSION

- DEFENDANT/RESPONDENT

STATEMENT OF CASE

Your Lordship, this is a statement of case filed on behalf of Plaintiff/Applicant, herein below is a brief facts of the case and the arguments by Counsel.

Brief Facts

The Plaintiff/Applicant is the Ashanti Regional Chairman of the CPP, and together with his Regional Executive Committee, are in charge of the daily administration of the CPP in the Ashanti Region. Thus, all CPP political activities in the Ashanti Region fall under their leadership. The CPP is currently, putting together its reorganisation agenda towards the 7th December 2024 national elections. The Regional Executive Committee, as a body of officers on the ground, has first hand knowledge regarding the political strength of the Party in the region, and has thus, resolved to concentrate on the reorganisation agenda to prepare the Party properly for the 7th December national elections. The Defendant/Respondent Electoral Commission herein, as the constitutional body responsible for public elections in Ghana, has put out notices regarding the Ejisu Constituency by-election slated for 30th April 2024. The CPP as a political party, just like some other political parties, is concentrating on the main 7th December 2024 national elections.

However, if the CPP is to take up any activity regarding the said by-election in the Ejisu Constituency, it is the responsibility of Applicant's Regional Executive Committee chaired by him, to submit to the Party Headquarters and the Central Committee any such activity for onward consideration and approval. In light of the CPP's reorganisation agenda and certain pending internal matters, Applicant's Regional Executive Committee has not sent any communique regarding the Party's participation in the said by-election to the Central Committee, the Party's highest administrative body for consideration. In sum, the CPP as a political party has not taken any decision at its Central Committee to contest the said Ejisu Constituency by-election. In this regard, the Regional Executive Committee wrote to inform the Defendant's Ashanti Region Directorate that the CPP would not be participating in the said by-elections, which was done by a letter dated 18th April 2024 and addressed to the Defendant's Ashanti Region Director, as evident

by Applicant's Exhibit "SY". However, after Exhibit "SY" was submitted to Defendant's Office in Kumasi, one Esther Osei showed up with a letter from the former chair and leader of the CPP, Nana Akosua Frimpomaa, Exhibit "SY 1", to introduce her to the Defendant and, Defendant has registered the said Esther Osei to contest the said by-election as the CPP's candidate.

Applicant presents that, this attempt to get the said Esther Osei to contest in the Defendant's intended Ejisu Constituency by-election is unconstitutional regarding the rules and regulations governing such exercise in the CPP. The Applicant thus, contests that the said Esther Osei has not been elected and approved under the requirement of the CPP Constitution and therefore, Defendant cannot conduct the said Ejisu Constituency by-election with the said illegitimate person on the ballot as the CPP's candidate to contest on behalf of the CPP.

Legal Submissions

Your Lordship, it is trite that for an order for interlocutory injunction to be made, first the Applicant must establish that there is a serious question to be tried. Thus, in the case of **WELFORD QUARCOO VRS. ATTORNEY GENERAL & ANOTHER (2012) 1 SCGLR 259, 260**, the Supreme Court posited that the requirements for the grant of an interlocutory injunction are first, the applicant must establish that there is a serious question to be tried; secondly, that the applicant would suffer irreparable damage which cannot be remedied by the award of damages and finally, the balance of convenience is in favour of granting the interlocutory injunction. Significantly, the courts in the case of **FRIMPONG VRS. NANA ASARE OBENG II [1974] 1 GLR 16 at page 21, paragraph 3**, have long held this view, where Edward Wiredu J, (as he then was) summarized the position of the law as follows:

"It is the duty of a court in dealing with applications for interim order of injunction to consider among other matters the following:

- (a) the hardship that would be caused if the application is granted or refused; in other words the relative convenience or inconvenience which might result to the parties from granting or withholding an interlocutory injunction;
- (b) whether on the facts before the court it is just and convenient for the preservation of the status quo;
- (c) whether damages will afford an adequate compensation for the loss if the application be refused."

It is Counsel's humble submission that there is a serious question to be tried in the instant Suit, and that a potent breach of the CPP's Constitution in respect of how the Party selects its Parliamentary candidate for a Parliamentary election, and this is a matter of great concern. Respectfully, the case of **VANDERPUYE VRS. NARTEY [1977] 1 GLR 428** decided that there must be a serious question to be tried, it means no more than that the applicant must satisfy the court on the pleadings or by affidavit evidence, that he has some right which has been or is threatened to be infringed unless the Respondent is restrained.

The Plaintiff/Applicant has demonstrated that there is a legal right, which requires the protection of the court. Applicant's case is certainly not frivolous nor vexatious and there is a serious question that needs to be tried. The Plaintiff's Party Constitution is about to be breached by the Defendant, should Defendant go ahead and register and allow a person the Plaintiff's political

party has not elected and approved under the Party's Constitution to contest a public election on behalf of the Plaintiff's party. The Defendant herein, cannot allow an illegitimate person to contest its elections on any political party's ticket, thus, Plaintiff surely needs the protection of the courts in this regard.

Your Lordship, the authorities supra, are clear that an interlocutory injunction would be granted if Applicant would suffer irreparable damage, and thus, has the balance of convenience in his favour. Counsel submits that irreparable hardship would be caused to the CPP as a political party should the Defendant go ahead with the intended Ejisu Constituency by-election with the said Esther Osei, an illegitimate person contesting on the ticket and on behalf of the CPP, when the CPP has not elected and approved her for such an election. This means a person the CPP as a political party has not approved would be committing fraud against the party in a public exercise of this magnitude. On the other hand, no hardship would be caused to the Defendant/Respondent, if the said illegitimate person is disallowed from contesting on behalf of the CPP, as the CPP has not elected and approved her for such a contest. Counsel submits that the balance of convenience herein is in Applicant's favour, as Defendant herein suffers no hardship by getting an illegitimate person out of the contest, especially, when same borders on unconstitutionality.

It is submitted that Defendant's decision to register the said Esther Osei to contest on the ticket of the CPP is in breach of the CPP's Constitution on such matters . It is important to state that this application is a specie of **Quia Timet Injunction**. Under this head, a violation or infringement of a right may be feared or threatened, and in such a situation, it may be better to prevent the infringement than to wait until it has occurred.

Prof. Kludze JSC in his book on Modern Principles of Equity at page 132, posited thus: "Therefore, where a Plaintiff fears that a threatened violation of his rights will be committed by the Defendant, he may seek an injunction to restrain the Defendant's conduct even before a violation is committed".

The learned author cites the cases of LITCHFIELD SPEAR VRS. QUEEN ANNE'S SYNDICATE LTD (No. 2) [1919] 1 Ch. 407, 412 and MEDCALF VRS. STRAWBRIDGE LTD [1937] 2 KB 102, 111 in support of the principle. Counsel respectfully submits that, the authorities herein supra, reinforces Applicant's position that an interlocutory injunction is appropriate to restrain Defendant from conducting the said Ejisu Constituency by-election with the said Esther Osei on the ticket of the CPP because the CPP's constitutional provisions regarding the election and approval of the Party's Parliamentary candidate would be breached should the Defendant herein go ahead with the said Esther Osei on behalf of the CPP, when the CPP as a political party has not elected and approved her for such an election.

Also, in the case of OWUSU VRS. OWUSU ANSAH & ANOTHER (2007-2008) SCGLR 870 at page 875, the Supreme Court held as follows:

"While agreeing that in an interlocutory application for an interim relief, the court ought to refrain from expressing an opinion on the merits of the case before the hearing, we are of the view that this does not absolve the trial court from considering the material before it in order to guide it to either grant or refuse the request before the court. The guiding principle in such application is whether an applicant has, by his pleadings and affidavit established a legal or equitable right

which has to be protected by maintaining the status quo until the final determination of the action on its merits.”.

Your Lordship, as demonstrated from the pleadings and the affidavit filed, the Plaintiff/Applicant has a legal right, which requires the protection of this Honourable Court. The Constitution of the CPP is very clear on how the Party’s Parliamentary candidate is gotten for such a public election, and it is clear from the pleadings and affidavit that the required processes have not been followed, as the person, illegitimately introduced by the former chair and leader to the Defendant herein, cannot pass as the Party’s elected and approved candidate for such elections. Significantly, if Defendant is allowed to go ahead with the said Esther Osei on the ticket of the CPP in the election, same would be void as it would be a breach of the CPP’s Constitution regarding **Articles 53 (d) and 71 (5)** as submitted in the Applicant’s affidavit in support of the application and reproduced below:


Article 53 (d) provides **...the Constituency Branch Party Conference shall elect a Parliamentary candidate for the Constituency for the approval of the Central Committee.**

Article 71 (5) provides **...the Central Committee shall consider and approve the names of candidates submitted for election to Parliament, and where it rejects a candidate, it shall refer the matter to the particular Constituency to elect a new candidate.**

Your Lordship, the Applicant presents that these constitutional provisions above have not been followed, only for the Defendant to register for the by-election, one Esther Osei, introduced by a letter from an individual to the Defendant. It is respectfully submitted that the Applicant’s case satisfies the above criteria set out in the authorities for the grant of an interlocutory injunction and accordingly, Counsel humbly pray that the instant application be granted.

Humbly submitted.

DATED THIS 19TH DAY OF APRIL 2024 AT DROMOH CHAMBERS, ACCRA


WAYOE GHANAMANTTI ESQ
BARRISTER & SOLICITOR
DROMOH CHAMBERS
24 ODOTEYE TSUI STREET, DZOMAH
Email:lordzima76@gmail.com
TEL: 0246 407 185
WAYOE GHANAMANTTI ESQ
LICENCE NO. eGAR 03686/24
COUNSEL FOR PLAINTIFF/APPLICANT

THE REGISTRAR
HIGH COURT, GJ
ACCRA

AND FOR SERVICE ON THE ABOVE-NAMED DEFENDANT/RESPONDENT