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IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D.2024

**CORAM: SACEY TORKORNOO (MRS.) CJ (PRESIDING)
OWUSU (MS.) JSC
ASIEDU JSC
GAEWU JSC
DARKO ASARE JSC**

**CIVIL MOTION
NO: J1/01/2025**

30TH OCTOBER, 2024

ALEXANDER AFENYO MARKIN PLAINTIFF/RESPONDENT

VRS

1. SPEAKER OF PARLIAMENT 1ST DEFENDANT/APPLICANT

2. ATTORNEY GENERAL 2ND DEFENDANT/RESPONDENT

RULING

SACEY TORKORNOO (MRS.) CJ

INTRODUCTION

The Speaker of Parliament, as 1st Defendant in this suit and Applicant in this application, is praying this Court for an order setting aside the processes and proceedings of the Plaintiff's suit filed on 15th October 2024, and vacating an order made by this Court on 18th October 2024.

On 18th October 2024, this Court heard an application for stay of execution of a ruling of the Applicant declaring four seats in Parliament vacant on 17th October 2024. The application urged that, the effect of this ruling is that the said Members of Parliament for the four constituencies in Western, Eastern, Central, and Ashanti Regions were declared to have vacated their seats by the Speaker of Parliament and if the Speaker's ruling is enforced, the affected Members of Parliament would have had to leave Parliament and all duties and responsibilities entrusted to them by reason of their being members of Parliament from the 18th October 2024. These members of Parliament are namely Hon. Cynthia Mamle Morrison, Member of Parliament for Agona West constituency in the Central Region, Honorable Andrew Asiana Amoako, MP for Fomena Constituency in the Ashanti Region, Hon. Kwadwo Asante, Member of Parliament for Suhum Constituency in the Eastern Region, and Hon Peter Yaw Kwakye Ackah, MP for Amenfi Central in the Western Region.

Eight grounds have been presented to us in today's application. The submissions made in support of them can be summarized as follows:

1. That the Constitution and laws of Ghana provide no grounds to allow the actions of the Speaker of Parliament while presiding over Parliament to be questioned in any court, including the Supreme Court, because of the doctrine of separation of powers that guides Ghana's constitutional democracy.
2. That because of a Circular issued by the Chief Justice of Ghana in 2021 and repeated by another Circular issued by the current Chief Justice under the hand of the Judicial Secretary, the service of the processes in this suit on the Speaker of Parliament was invalid. As such, the Speaker of Parliament, under the hand of the Clerk of Parliament had returned court processes served by the bailiffs of the Supreme Court back to the Supreme Court

3. That whenever there is a vacation of parliamentary seat and this is identified by Parliament in its proceedings, the only lawful forum for disputing any issue concerning the vacation of seat is the High Court as provided for in **article 99 of the 1992 Constitution**. The Applicant urges that no jurisdiction is given to the Supreme Court in such a situation
4. Because the orders of 18th October 2024 were made after hearing only one party in the suit, and without hearing the Speaker of Parliament, the orders breached the rules of natural justice, breached the rules for exercising discretion provided for under **article 296 of the 1992 Constitution** and were invalid.
5. The orders of 18th October 2024 were made on the basis of fraudulent misrepresentations by the Applicant to the court.
6. The substantive action is incompetent because the Writ was accompanied by a Statement of Claim and without an affidavit of verification.

The application is opposed by both the Plaintiff, who is himself a Member of Parliament, and the Attorney General, who is the 2nd Defendant. We have considered the application and find that the grounds supporting the application have no merit because of the very explicit and clear directions of the 1992 Constitution, specifically, **article 2, article 130, and article 296** and established decisions of the Supreme Court from decades of the country's constitutional history. Below are the reasons behind our evaluation that the application has no merit.

INTERPRETATION AND ENFORCEMENT JURISDICTION OF THE SUPREME COURT

Article 2, on the very first page of the 1992 Constitution provides as follows:

ENFORCEMENT OF THE CONSTITUTION

"2. (1) A person who alleges that –

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

b) any act or omission of any person;

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

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

(3) Any person or group of persons to whom an order or direction is addressed under clause (2) of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction.

(4) Failure to obey or carry out the terms of an order or direction made or given under clause (2) of this article constitutes a high crime under this Constitution and shall, in the case of the President or the Vice President, constitute a ground for removal from office under this Constitution.

(5) A person convicted of a high crime under clause (4) of this article shall

(a) be liable to imprisonment not exceeding ten years without the option of a fine; and

(b) not be eligible for election, or for appointment, to any public office for ten years beginning with the date of the expiration of the term of imprisonment."

From the above, it can be seen from the very first page of the 1992 Constitution, that the most fundamental and hallowed right of every Ghanaian, that the 1992 Constitution gives and jealously guards, is that when ANY ONE, including the President and Vice President, is embarking on any act that violates any provision of the Constitution, or if ANY ONE is of the considered opinion that any law or rule enacted by any legislative body breaches the Constitution, that person can run to the Supreme Court for enforcement of the Constitution. That person does not even need to be directly affected by the act or law. This Supreme Court regularly exercises this original and exclusive jurisdiction for citizens of this country.

Second, article 130 provides:

"130 (1) Subject to the jurisdiction of the High Court in the enforcement of the fundamental human rights and freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction and

- A. All matters relating to the enforcement or interpretation of this constitution*
- B. All matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or persons by law or under this Constitution*

2. Where an issue that relates to matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

This means that, if anyone finds that a meaning is being given to any provision of the 1992 Constitution that the person disputes, or that any act is being done by reason of a disputed meaning given to the Constitution, then article 2, and article 130 (1) (a) mandates that, only the Supreme Court has jurisdiction to provide the people of Ghana with the correct interpretation of the provision in the Constitution.

Third, it is the most basic tenet of our legal system that different courts operate different jurisdictions, and every court is given its own jurisdiction. So, the type of case that can be settled in any court depends on the nature of the dispute. Thus, if someone is challenging that a Member of Parliament has not lawfully won their seat, that challenge must be done at the high court in the region that the Constituency is in. However, if any two people challenge that, the process of electing the same Member of Parliament did not conform with a constitutional provision, that dispute over the correct interpretation or meaning of the constitutional provision must be brought to the Supreme Court for interpretation. Indeed, if the dispute over correct interpretation or meaning of the relevant provision occurs while the parties are before the High Court, the High Court must, by direction of article 130 (2) stop hearing the case, and refer the dispute over the correct interpretation of the Constitution to the Supreme Court. There are many cases on this manner of resolving disputes requiring constitutional interpretation including the Republic vrs High Court, General Jurisdiction, Accra; ex parte Zanetor Rawlings (Ashithey & National Democratic Congress – Interested parties) (No.1) [2015-2016] 1 SCGLR 53 and Republic vrs High Court, General Jurisdiction, Accra; ex parte Zanetor Rawlings (Ashithey & National Democratic Congress – Interested parties) (No.2) [2015-2016] 1 SCGLR 92. In every given month and year, the Supreme Court regularly deals with cases seeking interpretation and enforcement of provisions of the 1992 Constitution and every law report issued every month is filled with such cases.

It is therefore misinformation and misapprehension of law for the Applicant to present that the Supreme Court has no jurisdiction to provide the correct interpretation of **article**

97 (1) (g) because **article 99** gives jurisdiction over determination of membership of Parliament to the High Court.

Article 99 reads:

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DETERMINATION OF MEMBERSHIP

"99. (1) The High Court shall have jurisdiction to hear and determine any question whether –

(a) a person has been validly elected as a Member of Parliament or the seat of a member has become vacant; or

(b) a person has been validly elected as a Speaker of Parliament or, having been so elected, has vacated the office of Speaker.

(2) A person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal."

From the above, it can be seen that if anyone raised a question whether a person has been validly elected as a Member of Parliament or a seat of a Member of Parliament has become vacant as a matter of fact, that person was required to go the High Court for the High Court to resolve any issues around that question.

In the instant case, the records brought to the Supreme Court submitted that, the question was raised on the floor of Parliament that by filing nominations to contest as independent members of the 9th Parliament, members of the 8th parliament should be deemed, by reason of the meaning of article 97 (1) (g) to have vacated their seats in the 8th Parliament. Thus, the vacation of seats is not as a matter of fact from death or resignation, or notice by the parties themselves to Parliament. It is to be taken from an interpretation and enforcement of article 97 (1) (g).

It has been argued by Counsel for the Speaker that, what the Speaker presented to Parliament on 17th October did not constitute a ruling that was executable or amenable to the controversy raised in this suit. On the contrary, we find that nothing can be clearer in the record from Parliament that was brought to this Court and considered before this Court's ruling of 18th October 2024 that it is an executable ruling.

The Speaker's ruling is headed '**FORMAL COMMUNICATION BY THE SPEAKER**'. It set out the background of issues he was considering, and covers ten pages of evaluation of law and fact. He concluded by declaring that '**The MPs cannot be allowed by law, and my good self to continue to pretend to be representing people that they do not believe in and have no loyalty for in this House any longer. The House is accordingly informed**'.

These are words that affect the rights of these MPs to remain in Parliament and the rights of their constituents to their representation. Thus, if a controversy is raised as to the propriety of the interpretation of article 97 (1) (g) that led to this conclusion, then this court is rightly seized with jurisdiction to provide a hearing to the Plaintiff.

According to the Plaintiff, the Speaker's interpretation of article 97 (1) (g) was wrong, because he the Plaintiff also interpreted article 97 (1) (g) as affecting Members of Parliament who wanted to change party affiliation. He also interpreted it as affecting the status of parliamentarians in the next parliament, and not while sitting in the same 8th Parliament, These, and others, are the disputed interpretations that the Plaintiff presented to the Supreme Court to give the nation the correct meaning of. For the sake of the record, we set out article 97.

TENURE OF OFFICE OF MEMBERS

"97. (1) A member of Parliament shall vacate his seat in Parliament –

- a) upon a dissolution of Parliament; or*
- b) if he is elected as Speaker of Parliament; or*

- c) if he is absent, without the permission in writing of the Speaker and he is unable to offer a reasonable explanation to the Parliamentary Committee on Privileges from fifteen sittings of a meeting of Parliament during any period that Parliament has been summoned to meet and continues to meet; or
- d) if he is expelled from Parliament after having been found guilty of contempt of Parliament by a committee of parliament; or
- e) if any circumstances arise such that, if he were not a member of Parliament, would cause him to be disqualified or ineligible for election, under article 94 of this Constitution; or
- f) if he resigns from office as a member of Parliament by writing under his hand addressed to the Speaker; or
- g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or
- h) if he was elected a member of Parliament as an independent candidate and joins a political party.

(2) Notwithstanding paragraph (g) of clause (1) of this article, a merger of parties at the national level sanctioned by the parties' Constitutions or membership of a coalition government of which his original political party forms part, shall not affect the status of any member of Parliament."

Now clearly, with the disputed interpretations alleged in the Plaintiff's Statement of Case, even if the parties had gone to the High Court under article 99, the High Court would have been compelled by article 130 (2), as happened in the case of Ex Parte **Zanetor Rawlings** supra, to refer these contested meanings to the Supreme Court to determine the correct interpretation.

It is therefore disingenuous and wrong, including being an act of disinformation, for the argument to be presented that the jurisdiction of the Supreme Court could never be invoked to determine a constitutional interpretation, because of the High Court's jurisdiction to hear and determine disputes on elections and vacation of seats of Members of Parliament under article 99.

Our clear view is that article 99 gives the jurisdiction to hear cases involving questions on validity of election or vacation of seat of a Member of Parliament and the Speaker. It does not in any way, take away the jurisdiction of the Supreme Court to interpret and enforce any provision of the Constitution including article 99 itself.

We have considered the objection to the procedure used to serve the Speaker because of the Administrative Circular of the Chief Justices in 2021 and 2024. We are satisfied that administrative procedures cannot override the potency of legality, and every procedure used by the Supreme Court to serve the processes on the Speaker of Parliament were actually in conformity with law and the circulars issued by the Chief Justices in 2021 and 2024.

EXERCISE OF DISCRETION

The Speaker of Parliament is urging that the Supreme Court breached the rules of natural justice and rules prescribing the manner for exercising discretion in the orders made on 18th October 2024 in hearing the application ex parte and granting orders to stay execution of the Speaker's ruling pending the resolution of this suit.

It is a very basic and primary principle of law that an order of stay of execution must be made on consideration of exceptional circumstances that can affect the parties, which exceptional circumstances include the wreaking of irreparable harm if an order of stay of execution is not granted. See the cases of NDK FINANCIAL SERVICES VRS YIADOM CONSTRUCTION AND ELECTRICAL WORKS & ORS. (2007-2008) 1 SCGLR 93

In the ruling of the Supreme Court on 18th October 2024, the Supreme Court was very clear that its orders were being made because of the exceptional circumstances that would flow from the effect of the ruling of the Speaker of Parliament declaring the four seats vacant and a determination not to allow the MPs to remain in parliament. What are some of the effects that weighed on our minds as exceptional circumstances that were alluded to in the ruling?

The four constituencies of Amenfi Central, Fomena, Agona West, and Suhum, in the Western Region, Ashanti Region, Central Region and Eastern Regions of Parliament are made up of hundreds of thousands of Ghanaians who had queued to elect these Members of Parliament to represent their interests in Parliament, as their voices. By declaring that their duly elected representatives in Parliament had vacated their seats for acts that were interpreted within the light of article 97 (1) (g) by the Speaker, the Speaker was actually enforcing this interpretation of article 97 (1) (g) against those hundreds of thousands of Ghanaians, and not just the four people that sit in Parliament. He was also doing so at a time that from the official records of Parliament presented to the Supreme Court, the Speaker knew that a contrary interpretation was being placed on the same constitutional provision and that the Supreme Court's jurisdiction had been invoked to provide the correct interpretation.

By reason of law, there could be no by-election to replace these elected representatives between 17th October 2024 and 7th January 2025. So, these Ghanaians would have been left without a voice and representation in Parliament from 18th October 2024 until 7th January 2025, when the 9th Parliament can be duly constituted in Ghana. This exceptional circumstance arising from the outcome of the ruling weighed on the mind of the Supreme Court to grant an order directing a stay of execution of the ruling of the Speaker on 17th October 2024.

Second, the effect of this ruling would be that the salaries, allowances, and other emoluments of these Members of Parliament would have had to stop being paid

immediately. They would have had to vacate their offices in parliament, and cease functioning on any committee of Parliament that they were serving on. If any of them was a Minister or Deputy Minister and had been appointed as such by reason of being Members of Parliament, the ruling that they had vacated their seat could have brought those duties to an immediate halt. Indeed, one of the four Members of Parliament is the current 2nd Deputy Speaker of Parliament. The Supreme Court was very clear that these were outcomes that could cause irreparable harm to the constituencies in issue and the MPs themselves, constituted exceptional circumstances to warrant a halt of the ruling of the Speaker. The consideration of these exceptional circumstances was clearly spelt out in the ruling of 18th October 2024, so it is surprising that, the Applicant should urge that the discretion of the Supreme Court was exercised in breach of article 296.

So why did the Supreme Court grant orders after hearing this application ex parte or without notice to the Speaker of Parliament? Once again, the ruling stated the reason clearly. The Official records of Parliament for 17th October 2024, was placed before the Supreme Court as an exhibit. The record showed that the processes of court had been served through the legal department of Parliament and this had been brought to the notice of the Speaker. He bantered extensively on this information with the Plaintiff on the floor of parliament. And the Speaker's only reason for choosing to quarrel with a summons from the Supreme Court and application for injunction to restrain him from ruling on a matter premised on interpretation of article 97 (1) (g) was that as Speaker, he was only supposed to be served with court processes on Monday. This is an unfortunate interpretation of the first column of the Circular referred to, because this Circular provides for the Speaker of Parliament to be served personally on Mondays, and through the Legal Department of Parliament on any day. But whatever interpretation of the Circular that the Speaker chose to put on how he was to be served, the Supreme Court is satisfied that the Speaker was well served with notice of the action that had been started on 15th October 2024 seeking the correct interpretation of article 97 (1) (g) of the Constitution. He was well served before he delivered his ruling on 17th October 2024 that would lead to the exceptional circumstances enumerated herein. And the Supreme Court

carried the constitutional obligation to give the correct interpretation of article 97 (1) (g) for its enforcement, if need be, by the High Court or any person that that the interpretation comes to. Hence, the scope of the orders made to stay enforcement of the Speaker's interpretation of article 97 (1) (g)

GRANT OF ORDERS BEYOND TEN DAYS

The Speaker's lawyer urges that, because of order 25 rule (1) (8) of the High Court (Civil Procedure) Rules 2004 CI 47 that enjoins high courts to grant injunctions and other preservation orders for ten days in the first instance if heard ex parte and without notice to one party summoned before the court, the Supreme Court was also enjoined to grant the ex parte order for ten days as a matter of rules and practice. This is a submission that fails to appreciate the import of **article 2 (2) and (3)** which guide the Supreme Court when dealing with a constitutional matter such as this.

We will quote again article 2 (2) and 2(3) and 2 (4) of the Constitution

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

(3) Any person or group of persons to whom an order or direction is addressed under clause (2) of this article by the Supreme Court, shall duly obey and carry out the terms of the order or direction.

(4) Failure to obey or carry out the terms of an order or direction made or given under clause (2) of this article constitutes a high crime under this Constitution and shall, in the case of the President or the Vice President, constitute a ground for removal from office under this Constitution."

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The Constitution enjoins the Supreme Court to make orders that are appropriate for giving effect, or enabling effect to be given, to its final declarations on the correct meaning of a constitutional provision. And the Constitution is so serious about ensuring the obedience of such orders that it creates the crime of 'high crime' for failure to obey such orders in article 2 (4). Not even the President and Vice President are exempt from obeying the orders of the Supreme Court when they are made to give effect to its duty to prevent a violation of the Constitution.

IRREPARABLE DAMAGE

Because of the irreparable harm to the constituencies made up of hundreds of thousands of Ghanaians who would have lost their MPs without the option of a by-election, and the irreparable harm to the MPs who would have lost their seats in Parliament in these last few weeks to the 7th December elections, if the meaning put on article 97 (1) (g) by the Speaker was enforced without a clear determination of the dispute around it, this Court found it expedient to compel the parties to allow an early hearing, rather than make an order that would last only ten days.

This is the reason for the Supreme Court's orders abridging the 14 days allowed for defending a constitutional action through a Statement of Case, and directing the parties to file their respective Statement of Cases within 7 days and present the issues for resolution immediately thereafter. If the parties had complied with the court's orders, this would have taken all of the ten days that Applicant urges an ex parte order ought to last.

Compliance would also have enabled this court to dispose of this case by this week, including the question of whether the suit is competent in form, or the jurisdiction of this court has been properly invoked. It is important to place on record that both the Plaintiff and the Attorney General have complied with these orders, and this court is able to complete hearing of this suit, if the Speaker chooses to file no processes. For the above reasons, the application is refused.

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(SGD.) G. SACEY TORKORKOO (MRS.)
(CHIEF JUSTICE)

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

(SGD.) S.K.A. ASIEDU
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