

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2026

Filed on...

14/08/2026

11:00am

Registrar

SUPREME COURT OF GHANA

Suit No.

WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT
PURSUANT TO ARTICLES 2(1) AND 130(1) OF THE CONSTITUTION 1992
AND RULE 45 OF THE SUPREME COURT RULES, 1996 (C.I. 16)

Between:

HON. KOJO OPPONG NKRUMAH, MP
House No. B177
Akim Anyinase
Akyemansa

J1/29/2026

... Plaintiff

And

1. THE CHIEF JUSTICE OF THE REPUBLIC OF GHANA
Supreme Court Building
High Street
Accra

2. THE ATTORNEY-GENERAL
Office of the Attorney-General and Ministry of Justice
Law House, Accra

... Defendants

To:

1. The Chief Justice of the Republic of Ghana
2. The Attorney-General

IN THE NAME OF THE REPUBLIC OF GHANA, you are hereby commanded
within fourteen days after the service on you of the statement of the Plaintiff's case
inclusive of the day of service, that you are to file or cause to be filed for you a
statement of the defendant's case in an action at the Suit of

Hon. Kojo Oppong Nkrumah, MP

I. THE NATURE OF THE RELIEF(S) SOUGHT IS AS FOLLOWS:

- a. A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation is inconsistent with the letter and spirit of Articles 17(1), (2), 23 and 296(a) and (b) of the Constitution, 1992 and therefore unconstitutional, null and void;

- b. A declaration that the action of the Honourable Chief Justice to promote and facilitate the hearing of "special criminal cases" in the legal vacation to the total neglect of other criminal cases tantamount to selective justice which contravenes the letter and spirit of Article 17(1) of the Constitution 1992 and therefore unconstitutional, null and void;
 - c. A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation violate the right to health of members of the Bar and judicial service who have been affected by the directive and is inconsistent with Articles 24(1), (2) and 36(10) of the Constitution 1992 and therefore unconstitutional, null and void;
 - d. A declaration that Order 79 Rules 1(1) and 2 of the High Court (Civil Procedure) Rules, 2004 (CI 47) to the extent that they allow the Honourable Chief Justice to select some cases for hearing during legal vacations in the same manner as ordinary court sittings, they are inconsistent with Articles 17(1), (2), 23, 24(1), (2), 36(10) and 296(a) and (b) of the Constitution, 1992 and therefore unconstitutional, null and void; and
 - e. Any other order(s) or directions that this Honourable Court may consider appropriate for giving effect to the declarations and orders so made.
- II. THE CAPACITY IN WHICH THE PLAINTIFF IS BRINGING THE ACTION IS AS FOLLOWS:
- The Plaintiff brings this action as a citizen of Ghana, a Member of Parliament and a lawyer.
- III. THE ADDRESS FOR SERVICE OF THE PLAINTIFF IS AS FOLLOWS:
- C/o Davies & Davis
LawTowers
E335, Kojo Sro Street
GA-232-417
East Airport, Accra

IV. THE ADDRESS FOR SERVICE OF COUNSEL FOR THE PLAINTIFF IS AS FOLLOWS:

C/o Davies & Davis
LawTowers
E335, Kojo Sro Street
GA-232-417
East Airport, Accra

V. THE NAMES AND ADDRESSES OF PERSONS AFFECTED BY THIS WRIT ARE AS FOLLOWS:

1. THE CHIEF JUSTICE OF THE REPUBLIC OF GHANA
Supreme Court Building,
High Street, Accra Central,
Accra.
2. THE ATTORNEY-GENERAL
Office of the Attorney-General and Ministry of Justice,
Law House, Accra.

Dated at LawTowers, East Airport, Accra, this 14th day of August 2026.

Frank H. K. Davies, Esq.
(eGAR02750/26)
Lawyer for the Plaintiff
Davies & Davis

The Registrar,
Supreme Court,
Accra.



And for service on the above-named Defendants.

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HON. KOJO OPPONG NKRUMAH, MP
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1. THE CHIEF JUSTICE OF THE REPUBLIC OF GHANA
Supreme Court Building
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2. THE ATTORNEY-GENERAL
Office of the Attorney-General and Ministry of Justice
Law House, Accra

... Defendants

STATEMENT OF CASE

1.0 Introduction

- 1.1 With due difference to your Lordships, this Statement of Case is filed on behalf of the Plaintiff in support of his originating writ invoking the original jurisdiction of this Honourable Court under Articles 2(1) and 130(1) of the Constitution, 1992 for the enforcement of the Constitution and for declarations that the administrative warrants issued by the Honourable Chief Justice directing selected judges of the High Court to sit and conduct criminal trials in selected cases during the legal vacation are inconsistent with provisions of the Constitution and are consequently null and void.
- 1.2 My Lords, kindly permit us to preface our submissions with the following incontrovertible, profound and well-entrenched constitutional principle eruditely stated by His Lordship, Kulendi JSC, in the case of **Francis Osei-Bonsu v. Attorney General**, Writ No. J1/18/2023; dated 24th April, 2024, at page 22 thus:

“The concept of supremacy of the Constitution does not admit of any exception invested in any institution or person to take away or obliterate the Constitution and its values.”

- 1.3 Similarly, in the case of **Martin Alamisi Amidu v. President Kuffour and the Attorney-General [2001–2002] SCGLR 138, Acquah JSC** (as he then was) held thus:

“It follows therefore that no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged.”

- 1.4 The action concerns the constitutional validity of the exercise of administrative discretion by the Honourable Chief Justice in regulating the sittings of the High Court during the legal vacation prescribed by law. Specifically, the Plaintiff challenges the constitutional propriety of warrants directing that selected criminal cases be heard during the legal vacation from the 1st day of August 2026 to the 30th day of September 2026.
- 1.5 The Plaintiff’s complaint is not directed at the constitutional authority of the Honourable Chief Justice to administer the Judiciary or to regulate the sittings of the courts. The Plaintiff readily acknowledges that the office of the Chief Justice occupies a unique constitutional position as the head of the Judiciary and is entrusted with broad administrative responsibilities for the effective and efficient functioning of the courts.
- 1.6 However, it is a cardinal principle of Ghana’s constitutional order that every constitutional power, however extensive, is subject to the supremacy of the Constitution. The Constitution does not recognise absolute or unreviewable discretionary power. Every public authority, including the Chief Justice, must exercise administrative and discretionary powers in a manner that is fair, reasonable, transparent, non-arbitrary and consistent with the Constitution.
- 1.7 The impugned warrants have the practical effect of according priority to selected criminal cases while other pending criminal cases remain outside the scope of the warrants. The warrants create an arbitrary classification among similarly placed criminal proceedings, accused persons and litigants, thereby raising serious constitutional concerns regarding equality before the law and the prohibition against arbitrary administrative action. Such selective justice undermines the constitutional guarantee that all persons are equal before the law and entitled to equal protection and equal treatment in the administration of justice.

- 1.8 The implementation of the impugned warrants also has implications for the constitutional rights and welfare of judges, members of the Bar, Judicial Service staff and other officers required to participate in criminal trials throughout the legal vacation. Parliament has recognised the importance of legal vacation by empowering the Rules of Court Committee, under section 80(2)(g) of the Courts Act, 1993 (Act 459), to regulate court sittings and prescribe vacation periods. Those statutory provisions reflect an important public policy of ensuring orderly judicial administration while preserving periods of rest, preparation and professional development.
- 1.9 Although vacation sittings may be necessary in limited circumstances, the constitutional guarantees contained in Articles 24(1) and (2) and the directive contained in Article 36(10) require that the organisation of judicial work be undertaken in a manner that safeguards satisfactory working conditions, reasonable periods of rest and the health and welfare of persons engaged in the administration of justice.
- 1.10 This action transcends the interests of any individual litigant or legal practitioner. The impugned warrants apply to the administration of criminal justice during the legal vacation and have implications for accused persons, complainants, legal practitioners, judges, Judicial Service staff and the wider public. It concerns matters of public interest affecting the administration of justice.
- 1.11 The Plaintiff accordingly invites this Honourable Court to determine whether the impugned warrants are consistent with the constitutional requirements of equality before the law under Article 17(1), fair and reasonable administrative action under Article 23, the constitutional regulation of discretionary powers under Article 296(a) and (b), the guarantees relating to satisfactory working conditions, rest and holidays under Article 24(1) and (2), and the State's obligation to safeguard the health, safety and welfare of persons in employment under Article 36(10).

2.0 Factual Background

- 2.1 The Plaintiff is a citizen of Ghana and the Member of Parliament for Ofoase/Ayirebi Constituency in the Eastern Region of the Republic of Ghana. Apart from his station of life as a lawyer, he is an avowed defender of constitutional democracy with the rule of law as its primordial vibration.
- 2.2 The 1st Defendant is the Honourable Chief Justice of the Republic of Ghana, who, by virtue of Article 125(4) of the Constitution, is the Head of the Judiciary and is responsible for the administration and supervision of the courts. In the discharge of those functions, the Chief Justice exercises administrative powers relating to the organisation and sittings of the courts, subject always to the Constitution and other applicable laws.

- 2.3 The 2nd Defendant is the Attorney-General and Minister for Justice, who is sued as the principal legal adviser to the Government pursuant to Article 88 of the Constitution and represents the State in proceedings challenging the constitutionality of acts performed by public authorities.
- 2.4 The legal vacation of the Superior Courts of Judicature is prescribed pursuant to Section 80(2)(g) of the Courts Act, 1993 (Act 459), which empowers the Rules of Court Committee, subject to the Constitution, to make rules regulating the sittings of the courts and prescribing periods of court vacations.
- 2.5 Pursuant to the administrative authority vested in the office of the Chief Justice, the 1st Defendant issued warrants directing specified judges of the High Court to sit and conduct criminal trials during the legal vacation commencing on the 1st day of August 2026 and ending on the 30th day of September 2026.
- 2.6 The warrant authorised the designated judges to hear and determine selected criminal cases during the legal vacation notwithstanding the general vacation period applicable to the High Court. The warrant did not provide any legal basis upon which some criminal cases were selected for vacation hearing while other pending criminal cases were excluded from similar treatment.
- 2.7 Consequently, accused persons whose cases were designated for hearing during the vacation period stood to have their matters heard and determined ahead of other accused persons whose cases remained pending but were not selected for vacation sittings.
- 2.8 Similarly, complainants, victims and other participants in criminal proceedings whose cases were selected benefited from expedited judicial attention during the vacation period, whereas parties in other pending criminal matters were denied access to the same opportunity without any disclosed legal basis for the distinction.
- 2.9 The impugned warrant thereby introduced a distinction among pending criminal cases and among persons participating in those proceedings by according procedural priority to one class of criminal matters while withholding the same procedural opportunity from another class of criminal matters. It gives rise to the appearance of unequal treatment and arbitrary differentiation among similarly situated criminal cases. The Plaintiff therefore believes that the impugned warrant is inconsistent with the constitutional guarantees of equality before the law, fair administrative action and the constitutional limitations imposed upon the exercise of discretionary powers.

- 2.10 The Plaintiff also avers that the implementation of the impugned warrants has significant implications for judges assigned to conduct criminal trials during the legal vacation. Those judges are required to continue presiding over lengthy criminal proceedings throughout a period which Parliament and the Rules of Court have designated as a legal vacation. Likewise, legal practitioners appearing in those selected criminal cases are required to prepare witnesses, conduct trials, undertake legal research, draft submissions and remain continuously engaged in litigation during a period ordinarily reserved for professional preparation, legal education and recuperation.
- 2.11 Judicial Service staff, including registrars, court clerks, interpreters, bailiffs, court recorders, security personnel and other supporting officers, are similarly required to remain actively engaged in the conduct of criminal trials throughout the vacation period. The cumulative effect of these administrative arrangements raises legitimate constitutional questions concerning the guarantees contained in Articles 24(1) and (2) and the State's obligation under Article 36(10) to safeguard the health, safety and welfare of persons in employment.
- 2.12 In aid of public interest and public good which frown upon selective justice, ensure that all persons are equal before the law and that right to health is fully realised, the Plaintiff has commenced this action invoking the original jurisdiction of this Honourable Court under Articles 2(1) and 130(1) of the Constitution for the following reliefs:
- (a) A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation is inconsistent with the letter and spirit of Articles 17(1), 23 and 296(a) and (b) of the Constitution, 1992 and therefore unconstitutional, null and void;
 - (b) A declaration that the action of the Honourable Chief Justice to promote and facilitate the hearing of "special criminal cases" in the legal vacation to the total neglect of other criminal cases tantamount to selective justice which contravenes the letter and spirit of Article 17(1) of the Constitution 1992 and therefore unconstitutional, null and void;
 - (c) A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation violate the right to health of members of the Bar and judicial service who have been affected by the directive and is inconsistent with Articles 24(1), (2) and 36(10) of the Constitution 1992;

- (d) A declaration that Order 79 Rules 1(1) and 2 of the High Court (Civil Procedure) Rules, 2004 (CI 47) to the extent that they allow the Honourable Chief Justice to select some cases for hearing during legal vacations in the same manner as ordinary court sittings, they are inconsistent with Articles 17(1), (2), 23, 24(1), (2), 36(10) and 296(a) and (b) of the Constitution, 1992 and therefore unconstitutional, null and void; and
- (e) Any other order(s) or directions that this Honourable Court may consider appropriate for giving effect to the declarations and orders so made.

3.0 Original Jurisdiction of the Supreme Court

- 3.1 My Lords, the first and foremost duty of this Honourable Court is to satisfy itself whether it has the requisite jurisdiction to entertain the instant action. In the case of **Alexander Afenyo Markin v. Speaker of Parliament & Attorney-General** (Writ No: J1/01/2024; 12th November, 2024), the Supreme Court held at page 10 that:

“...jurisdiction goes to the root of every court proceedings and even when the Parties themselves do not raise any jurisdictional issue, the duty lies on the Court first and foremost to satisfy itself that it has been vested with appropriate jurisdiction over the case. The above principle of the law has been explained by Acquah JSC (as he then was) in the case of Attorney General (No. 2) vs. Tsatsu Tsikata (No. 2) [2001-2002] SCGLR 620, at page 646 where after affirming the time-honoured proposition of the law that jurisdiction is so fundamental that its absence nullifies all ensuing proceedings, then went on to express himself as follows: - “It is therefore trite knowledge that the first duty of every judge in any proceedings is to satisfy himself that he has jurisdiction in the matter before him. ...”

- 3.2 This Honourable Court has the original jurisdiction to enforce or interpret the provisions of the Constitution and also to determine the constitutionality of any act or omissions of any person or institution.
- 3.3 **Article 2(1) of the Constitution** states thus:

“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."

3.4 **Article 130(1) of the Constitution** also states thus:

"Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution."

3.5 This Honourable Court has held in many cases that its interpretative and enforcement jurisdictions are separate and independent of each other. Thus, a person can invoke the original jurisdiction of the Supreme Court solely to enforce the provisions of the Constitution without demonstrating the need for interpretation.

3.6 In the case of **Kor v Attorney- General & Justice Douse [2015-2016] 1 SGLR 114**, the Supreme Court held per **Atuguba JSC** thus:

"It will be seen that article 2 of the Constitution is headed "Enforcement of the Constitution" and the ensuing provisions are meant to attain the enforcement of the Constitution. There is therefore express authority in the Constitution itself for the view that the enforcement jurisdiction of this court is a conspicuously independent item of jurisdiction of this court. ... The ratio constitution is for an action to invoke the enforcement jurisdiction of this court under article 130 (a) is stated in article 2 to be that the event specified in its clauses (1) (a) and (b) "is inconsistent with, or is in contravention of a provision of this Constitution." Therefore, a cause of action thereupon accrues for access to this court for enforcement of the Constitution. ... We therefore hold that the Plaintiff has properly invoked the enforcement jurisdiction of this court..."

- 3.7 In the case of **Mark Darlington Osaе v. Food and Drugs Authority & Attorney-General**, Writ No. J1/05/2023; 19th June, 2024, the Supreme Court held per **Asiedu JSC** at pages 11-12 and 17-18 as follows:

“There is no doubt therefore, that one could bring an action in this court solely to enforce and seek compliance with a provision of the Constitution, 1992 and in the same vein, one could also bring an action in the Supreme Court solely to seek interpretation of a provision of the Constitution. ... The use of the word ‘or’ between ‘enforcement’ and ‘interpretation’ in article 130(1)(a) underlines the independence of these causes of action, so that a Ghanaian who alleges a violation or a lack of clarity of the Constitution can bring an action in the Supreme Court for the enforcement of the Constitution or for the interpretation of the Constitution. He can also bring an action in respect of the two causes of action. That is to say, a person is not bound to tag an action for the enforcement of the Constitution with the cause of action of interpretation of the Constitution. The two causes of actions are distinct in themselves and can be invoked either independently and exclusively or simultaneously.”

- 3.8 Notwithstanding that the instant action seeks to enforce Articles 17(1), 23 and 24 of the Constitution 1992, which are fundamental human right provisions normally enforceable at the High Court under Article 33(1), the action is brought in aid of public interest and public good where persons who are similarly situated ought to be treated equally in the administration of justice and protect their right to health include rest and leisure which had been violated by the impugned warrants and the Supreme Court has original jurisdiction to entertain the action.

- 3.9 In the case of **Child Rights International v. The Attorney-General**, Writ No. J1/16/2022; 28th February, 2024, the Supreme Court held per **Prof. Mensah-Bonsu JSC** at page 15 to 16 as follows:

*“It is also a matter well-covered by authority, that the plaintiff need not have a personal interest in the enforcement action. It suffices that the matter is in the interest of the public. This honourable Court in *Adjei Ampofo (No.1) v. Accra Metropolitan Assembly (No.1)* [2007-2008] SCGLR 611, cleared the doubts about the personal interest of the plaintiff in invoking the original jurisdiction of the Supreme Court as far as the enforcement or interpretation of the human rights provisions of the Constitution, 1992 were concerned.*

Having made a finding that the plaintiff was “not seeking the enforcement of his individual rights or freedoms, but rather those of the persons affected by the practice complained of, in general” Sophia Akuffo JSC (as she then was), stated that “in those circumstances, [the] matter is properly before this Court under article 2(1) and within the jurisdiction of the court under article 130(1).” On the scope of the court’s enforcement jurisdiction, she observed further, speaking for the Court, that “the [Supreme] Court’s jurisdiction in such a case is determined by whether or not the Plaintiff is pursuing a personal interest (as in *Edusei vs A.G & Anor.* [1997-1998] 2 GLR 1 and *Bimpong-Buta vs GLC & Ors.*[2003-2005] 1GLR 738 or the enforcement of a provision of the Constitution in the interest of the public good...” Thus, the jurisdiction of the High Court under Articles 33(1) and 140(2) to enforce the provisions of Chapter Five “does not operate to fetter the civic-minded citizen who has embarked on a mission to enforce a right under the Article 2(1) provision of the Constitution(including any of those under Chapter 5 of the Constitution relating to fundamental human rights and freedoms) in the general interest of the public.” (See also: *Oppong v. Attorney-General* [2003-2004] 1 SCGLR 376; and *Federation of Ghana Youth Associations of Ghana (FEYDYAG) v. Public Universities of Ghana & Others*, *supra*.” (Emphasis supplied).

- 3.10 In the case of **Boateng v National Media Commission & Berifi Appenteng** [2012] 2 SCGLR 1038, the Supreme Court per **Date-Baah JSC** (as he then was) after citing with approval the case of *Adjei-Ampofo v Accra Metropolitan Assembly* [2007-2008] SCGLR 611 held thus:

“The view of the law expressed above is now settled law, having been re-affirmed by the majority decision in *FEDYAG v Public Universities of Ghana* [2010] SCGLR 265. Thus, even if the plaintiff were relying on article 23 alone, this Court would still have jurisdiction because he would be relying on article 23, not in his own personal interest, but in order to test the constitutionality of the defendants’ action in the public interest. The plaintiff’s case is even stronger because he is claiming to enforce a further provision other than one in Chapter 5, namely, article 296.” (Emphasis supplied).

- 3.11 In the case of **Mark Darlington Osae v. Food and Drugs Authority & Attorney-General**, supra, **His Lordship, Asiedu JSC**, held further at pages 25 to 26 thus:

*“The second school of thought takes the view that the enforcement jurisdiction of the fundamental human rights provisions under chapter 5 of the 1992 Constitution granted the High Court under article 130(1) and 33(1) of the Constitution is only cognizable where the action seeks to enforce the personal fundamental human rights of the Plaintiff and that **where a Plaintiff seeks the enforcement of a communal human right as opposed to his personal human right, then the appropriate forum is the Supreme Court and not the High Court.** This view has support in cases like *Adjei-Ampofo (No.1) vs. Accra Metropolitan Assembly & Attorney General (No.1) (supra)*; *Federation of Youth Association of Ghana (FEDYAG) vs. Public Universities of Ghana & Others (supra)*.”*

- 3.12 The present action is not brought to vindicate any private or proprietary interest of the Plaintiff. The Plaintiff is not in a collision course with the judiciary headed by the 1st Defendant. On the contrary, the gravamen of this action is the constitutionality of the exercise of administrative power by the Honourable Chief Justice and its implications for the administration of justice in Ghana.
- 3.13 The issues presented are institutional and constitutional in nature. They concern the limits of the administrative authority of the Head of the Judiciary, the constitutional regulation of judicial discretion, the observance of legal vacations prescribed by law, and the protection of fundamental constitutional guarantees in the organisation of judicial work.
- 3.14 The determination of these questions will affect not only the Plaintiff but every judge of the Superior Courts, every member of the Bar, every officer of the Judicial Service, every accused person standing trial before the courts, and indeed every litigant whose case may be affected by the exercise of similar administrative powers in the future.
- 3.15 In the circumstances of the instant action, the Plaintiff properly invoked the origination jurisdiction of the Court pursuant to Articles 2(1) and 130(1) of the Constitution, 1992 to enforce Article 17(1), 23, 24, 36(10) and 296(a) and (b) in aid of public interest and for public good. This Honourable Court has the requisite original jurisdiction to entertain the instant action.

4.0 Capacity of the Plaintiff

- 4.1 As a threshold issue in constitutional litigation, the Plaintiff must establish that it has the requisite capacity to invoke the original jurisdiction of this Honourable Court under Articles 2(1) and 130(1) of the Constitution, 1992.
- 4.2 The Plaintiff is a citizen of Ghana, a Member of Parliament and a lawyer. He is therefore envisaged as a "person" within the meaning of Article 2(1) of the Constitution. He is not required to demonstrate any personal or proprietary interest in the outcome of the proceedings before invoking the original jurisdiction of this Honourable Court. He has properly invoked the original jurisdiction of this Honourable Court to seek declarations concerning the constitutionality of the impugned administrative warrant issued by the Honourable Chief Justice.
- 4.3 In the case of **Mark Darlington Osaе v. Food and Drugs Authority & Attorney-General**, *supra*, **His Lordship, Asiedu JSC**, held at page 8 thus:

"Article 2(1) and article 130(1) of the Constitution, give power and capacity to all persons to bring actions for the interpretation and the enforcement of the Constitution, 1992, where a violation of the Constitution is alleged."

- 4.4 In the case of **Stephen Kwabena Opuni v. Attorney-General & Another**, Writ No. J1/04/2020; 25th May, 2022, the Supreme Court held per **Dotse JSC** at page 2 as follows:

"We begin our decision in this case by referring extensively to the scholarly work of Prof. Kofi Kumado in his book, "A Handbook of the Constitutional Law of Ghana and its History" from pages 282-284 as follows:- "Finally, by way of emphasis, we note that the position of the Supreme Court on its constitutionality powers under Article 2 (1) and 130 (1), as it has crystallised since the coming into force of the 1992 Constitution, has been succinctly summarised by Justice Akuffo in the Bimpong Buta v General Legal Council & Others, [2003-2004] 2 SCGLR 1206 as follows:-

1. **A person bringing an action under Article 2 of the Constitution 1992 need not demonstrate that he has any personal interest in the outcome of the suit, that he as a citizen of Ghana suffices to entitle him to bring the action** (*Tuffour v A.G. [1980] GLR, 637 SC and Sam (No.2) v A.G [2000] SCGLR 305*).

2. *The “person” referred to in the context of Article 2 includes both natural persons and corporate bodies (NPP v A.G. CIBA case, [1996-97] SCGLR 729).*²⁹¹
(Emphasis supplied)

5.0 The Legal Vacation and its Critical Importance

- 5.1 My Lords, before addressing the constitutional validity of the impugned warrants, it is necessary to appreciate the purpose and constitutional significance of the institution of the legal vacation within our judicial system. The institution of the legal vacation is an important and indispensable feature of the administration of justice in Ghana. It is not a mere administrative convenience but an integral component of the judicial system established to promote the efficient, effective and sustainable administration of justice.
- 5.2 The legal vacation serves several important institutional purposes. It affords judges the opportunity to recover from the demanding responsibilities associated with the continuous adjudication of disputes throughout the legal year. The discharge of judicial functions requires sustained intellectual concentration, careful deliberation and the preparation of well-reasoned judgments.
- 5.3 The legal vacation affords judges reasonable periods of rest and recuperation after prolonged judicial sittings. Such periods assist in preventing fatigue and maintaining the high standards of attentiveness, impartiality and intellectual rigour expected of judicial officers. The efficient administration of justice depends not merely upon the number of cases heard but also upon the quality, accuracy and fairness of judicial decisions. The vacation period enables judges to undertake these responsibilities without the constant pressure of daily court sittings.
- 5.4 The legal vacation also provides judges with the opportunity to complete reserved judgments, conduct legal research, review recent developments in the law, participate in judicial education and training programmes, and prepare for the ensuing legal year. These activities are essential to maintaining the quality, consistency and integrity of judicial decision-making.
- 5.5 Equally, the legal vacation serves an important function for members of the Bar. The legal profession is an indispensable partner in the administration of justice, and legal practitioners, like judges, are engaged throughout the legal year in demanding litigation, advisory work and professional responsibilities. The vacation period enables legal practitioners to prepare pending matters, conduct legal research, attend continuing legal education programmes, meet professional obligations that are difficult to discharge during ordinary sittings of the courts, and take necessary periods of rest and recuperation.

5.6 The administration of justice depends not only upon judges and lawyers but also upon the invaluable services rendered by registrars, court clerks, bailiffs, interpreters, recorders, secretaries, security personnel and other officers of the Judicial Service. The legal vacation provides an opportunity for court records to be organised, administrative processes to be reviewed, training programmes to be undertaken and institutional planning to be carried out in preparation for the next legal term. It also enables Judicial Service staff to enjoy periods of rest and leave consistent with the constitutional values embodied in Articles 24 and 36(10) of the Constitution.

5.7 It is for these reasons that Parliament, through **Section 80(2)(g) of the Courts Act, 1993 (Act 459)**, authorised the Rules of Court Committee to regulate the sittings of the courts and prescribe periods of legal vacation. The legislative recognition of legal vacation underscores its importance as a structural feature of judicial administration rather than an incidental administrative arrangement. The said statutory provision provides as follows:

“(2) ...the Rules of Court Committee may, subject to the provisions of the Constitution, make rules of court –

(g) for regulating the sittings of the courts and prescribing the periods of the vacations of the courts.”

5.8 The Plaintiff does not suggest that the legal vacation should result in a complete cessation of judicial work. That is why some judges are selected as vacation judges to hear only motions that does not involve substantive legal work like criminal trials. Commencement and/or continuation of trials are reserved for ordinary court sittings before or after the vacation.

5.9 In the case of **The Republic v. The High Court, Accra (Commercial Division); Ex-Parte: Dr. Kwabena Appenteng (Stephen Kwaku Asiedu Appenteng & 2 Others – Interested Parties)**, Civil Motion No. J5/6/09; 3rd February, 2010, the Supreme Court held at page 4 thus:

“In our judicial dispensation the legal vacation for the superior courts starts from the 1st day of August and ends on the 30th day of September, though in practice vacation judges are expected to hold on until the legal year ceremonies are over. Specific judges are mandated by the Chief Justice to sit as vacation judges.”

5.10 Once the legal vacation has been established by law as a period during which the ordinary sittings of the courts are suspended, any departure from that regime by directing that selected criminal cases be tried during the vacation will itself be inconsistent with the Constitutional prescription of equal treatment of all persons before the law.

- 5.11 The instant action seeks to ensure that the constitutional values of equality before the law, fairness in administrative action and the lawful exercise of discretionary power are observed whenever departures are made from the legal vacation regime. Public confidence in the administration of justice depends not only upon the efficient disposal of cases but also upon the assurance that any preferential access to judicial hearings during the legal vacation is consistent with Articles 17(1), 23 and 296(a) and (b) of the Constitution. Equally, the organisation of judicial work must be undertaken with due regard to the health, welfare and reasonable expectations of judges, Judicial Service staff and members of the Bar as guaranteed under Articles 24(1) and (2) and Article 36(10) of the Constitution.

6.0 Equality Before the Law

- 6.1 My Lords, equality before the law is one of the foundational values of our constitutional democracy. It requires that public authorities administer the law impartially and that persons who are similarly situated receive equal treatment unless a lawful and rational basis exists for differentiation. This constitutional guarantee extends to every administrative decision affecting the rights, obligations and treatment of persons before public institutions, including the courts.

- 6.2 **Article 17(1) and (2) of the Constitution**, entitled "*Equality and Freedom from Discrimination*", provides in clear and mandatory terms that:

"(1) All persons shall be equal before the law.,

(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status."

- 6.3 What is meant by to "discriminate" has been defined by Article 17(3) as follows:

"For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by raw, place of origin, political opinions, colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description."

- 6.4 In the well-celebrated case of **Nartey v Gati [2010] SCGLR 745**, the Supreme Court per **Date-Baah JSC** (as he then was) held on Article 17(1) and (2) of the Constitution above at page ... as follows:

“...equality before the law requires equal treatment of those similarly placed, implying different treatment in respect of those with different characteristics. In simple terms, equals must be treated equally, while the treatment of unequals must be different. The law must be able to differentiate between unequals and accord them the differentiated treatment which will result in enabling them, as far as practicable, to attain the objective of equality of outcomes or of fairness. ... And, one of the constitutional prescriptions that must be complied with, pursuant to article 17(1), is that a law must operate equally on all persons similarly situated. The constitutional slogan has to be: equals must be treated equally by the law.”

- 6.5 We submit that the administration of justice is itself subject to Article 17. The courts are the primary institutions through which equality before the law is realised. Consequently, administrative arrangements governing access to judicial proceedings must operate uniformly, transparently and impartially. Every accused person, complainant and litigant appearing before the courts is entitled to equal treatment in matters concerning access to justice and the administration of judicial proceedings.
- 6.6 By directing that special criminal cases be hurried and heard during the legal vacation before specialised courts, the impugned warrants create two categories of pending criminal proceedings:
- (a) accused persons whose matters have been designated as “special criminal cases” and are heard during the legal vacation; and
 - (b) accused persons whose criminal cases remain pending until the ordinary legal term resumes.
- 6.7 Both categories comprise persons awaiting the determination of criminal charges before the High Court. Both are entitled to equal access to the courts and to the equal protection of the law. Yet only one category receives the benefit of adequate preparation for the trial. The Constitution nowhere authorises the creation of such preferential classes of criminal litigants by administrative direction alone.

- 6.8 Persons falling within the second category have adequate time to prepare for their criminal proceedings, while those in the first category are denied the same opportunity as their trials are unduly hurried. However, where similarly placed accused persons are treated differently regarding the timing and availability of judicial hearings, Article 17 requires that such differentiation to be lawful.
- 6.9 Equality before the law is not satisfied merely because every person ultimately has access to the courts. It equally requires equality in the administration of justice. Constitutional equality is incompatible with a system in which similarly situated litigants receive different procedural treatment solely on the basis of an undisclosed administrative selection.
- 6.10 We respectfully submit that the impugned warrants contravene Article 17(1) and (2) of the Constitution, 1992 because they discriminate and create an arbitrary distinction between similarly placed criminal cases and litigants without any objective, transparent or constitutionally justifiable basis.

7.0 Selective justice is incompatible with constitutional equality

- 7.1 My Lords, we respectfully submit that the impugned warrants issued by the Honourable Chief Justice amount to selective justice and are inconsistent with the constitutional imperative that all persons shall be equal before the law.
- 7.2 Justice administered selectively ceases to be equal justice. The constitutional promise contained in Article 17 extends beyond substantive outcomes. It encompasses equal access to judicial processes, equal treatment in court administration and equal opportunity to have disputes determined according to law. If criminal proceedings are accelerated solely because they have been administratively selected, while equally deserving cases abide by the legal calendar, litigants are denied equal treatment by the judicial system itself.
- 7.3 Selective justice is the unequal administration of the law whereby a public authority confers preferential or adverse treatment upon certain persons or cases, while excluding others who are similarly situated, without lawful basis. Selective justice is unconstitutional because it undermines equality before the law, the rule of law, impartiality in justice administration, public confidence in the justice system, and constitutional limitations on discretionary power.
- 7.4 Although the expression "selective justice" does not expressly appear in the Constitution, the principle is firmly embedded in Articles 17, 23 and 296, which collectively prohibit arbitrary differentiation in the exercise of public power.

- 7.5 The Ghanaian courts have recognised that selective justice is incompatible with the rule of law. In the case of **Yaya v. Dugbavie and Others**, (Civil Appeal No. H1/278/04; 22nd December 2006), the Court held thus:

*“The self-assessment of compensation by the judge and the imposition on the plaintiff is void as it amounted to **selective justice** not based on any evidence or rule of law.”*

- 7.6 In the United States case of **Yick Wo v. Hopkins (1886)**, 118 U.S. 356, Justice Matthews held at pages 373-374 as follows:

“Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the constitution.”

- 7.7 The practical consequence of the impugned warrants is that the identified cases continue to enjoy uninterrupted judicial hearings during a period in which the ordinary regime established by law is that the superior courts observe the legal vacation. Numerous other criminal proceedings pending before the High Court, many involving accused persons awaiting trial, complainants seeking justice and victims awaiting determination, were not accorded similar treatment.
- 7.8 We submit that the promotion and facilitation of selected criminal cases during the legal vacation, to the exclusion of other pending criminal cases without constitutionally justifiable criteria, amounts to arbitrary selection and selective administration of justice inconsistent with the letter and spirit of Article 17(1).
- 7.9 We pray this Honourable Court to declare that the impugned warrants constitute selective justice, are inconsistent with the Constitution and are consequently unconstitutional, null and void. We also pray the Court to affirm that whenever administrative discretion is exercised in determining which cases receive procedural priority within the judicial system, that discretion must be exercised in accordance with objective, transparent and constitutionally compliant standards that secure equality before the law and preserve public confidence in the administration of justice.

8.0 Fair and Reasonable Administrative Action

8.1 My Lords, we respectfully submit that the impugned warrants issued by the Honourable Chief Justice directing selected judges of the High Court to sit and conduct criminal trials in selected cases during the legal vacation constitute administrative action within the meaning of Article 23 of the Constitution. Consequently, the exercise of that administrative power is subject to the constitutional requirements of fairness, reasonableness and compliance with the law.

8.2 **Article 23 of the Constitution entitled “Administrative Justice”** provides thus:

*“Administrative bodies and **administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law** and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.”*

8.3 In the case of **The Republic v. Social Security and National Insurance Trust and Attorney-General; Ex-Parte Ernest Thompson**, Civil Appeal No. J4/51/2021; dated 15th June, 2022, the Supreme Court per Pwamang JSC held at page 37 thus:

*“Sophia Akuffo, JSC (as she then was) in Awuni v WEAC [2003 2004] SCGLR 471, when discussing the ambit of article 23 said at p. 514 as follows; **“Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect the qualities of, fairness, reasonableness and legal compliance. I will not venture to give a comprehensive definition of what is fair and reasonable, since these qualities are dictated by the circumstances in which the administrative function is performed. At the very least however, it includes probity, transparency, objectivity, opportunity to be heard, legal competence and absence of bias and ill-will.”** So, though the grounds on which a court would grant relief under article 23 include the grounds for judicial review at common law, the article definitely encompass more.”* Emphasis supplied

- 8.4 In the case of **Awuku-Sao v. Ghana Supply Co Ltd [2009] SCGLR 710**, the Supreme Court held that:

“...even in purely administrative actions, there is the constitutional obligation under Article 23 of the 1992 Constitution to act fairly and reasonably and to comply with requirements imposed by law.”

- 8.5 Article 23 is one of the principal constitutional safeguards against arbitrary administrative action. It embodies the constitutional commitment that every exercise of administrative power must be transparent, fair, reasonable and accountable.
- 8.6 The office of the Chief Justice undoubtedly performs judicial functions. However, in organising court sittings, assigning judges and issuing warrants regulating vacation sittings, the Chief Justice performs administrative functions.
- 8.7 Administrative decisions of constitutional office holders are not immune from constitutional scrutiny merely because they relate to the administration of the Judiciary. The constitutional requirements of fairness and reasonableness impose substantive obligations upon every administrator. Fair administrative action ordinarily requires transparency, consistency, rationality, objective standards, equal treatment of similarly situated persons, and compliance with applicable law.
- 8.8 Administrative fairness necessarily requires that persons affected by official decisions be able to understand the standards governing those decisions. The warrants contain no criteria explaining what constitutes a “special criminal case”, the circumstances justifying unprecedented vacation hearings, how cases are selected, and why other pending criminal matters are excluded. Without objective standards, neither litigants nor the public can determine whether the discretion has been exercised consistently. Administrative fairness cannot depend upon undisclosed considerations.
- 8.9 Article 23 also requires administrative decisions to be reasonable. A reasonable administrative decision must bear a rational relationship to its stated objective. Assuming the objective of the warrants is the efficient disposal of criminal cases, the we submit that excluding all other pending criminal matters without lawful basis is disproportionate and unreasonable.
- 8.10 The impugned warrant does not disclose any objective legal standard governing the selection of criminal cases to benefit from vacation hearings. Where similarly situated litigants cannot ascertain why one case receives priority while another does not, the constitutional requirement of fairness is undermined. The impugned warrants fail to satisfy the requirement of fairness and reasonableness under Article 23 of the Constitution.

- 8.11 We respectfully submit that the selection of particular criminal cases for hearing during the legal vacation without objective, transparent and publicly ascertainable criteria is inconsistent with Article 23 because it fails to demonstrate the fairness, reasonableness and legal accountability demanded by the Constitution. We accordingly pray Your Lordships to declare that the impugned warrants are inconsistent with Article 23 of the Constitution and are consequently unconstitutional, null and void.

9.0 Constitutional Control of Discretionary Power

- 9.1 My Lords, we respectfully submit that even if this Honourable Court should find that the Honourable Chief Justice has the constitutional and statutory authority to issue the impugned warrants, the exercise of that authority nevertheless remains subject to the constitutional limitations imposed by Article 296 of the Constitution.
- 9.2 Article 296 constitutionalises the manner in which discretionary powers are to be exercised. It recognises that although public authorities such as the Honourable Chief Justice may possess discretion, such discretion is never absolute. Every discretionary power carries implied constitutional duties.

- 9.3 **Article 296(a) and (b) of the Constitution 1992** states as follows:

“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.”

- 9.4 In the case of **The Republic Vrs Ghana Institute of Management and Public Administration (GIMPA); Ex Parte: Evans Gyamfi & 2 Others**, (Civil Appeal No. J4/39/2021; dated 14th April, 2021), the Supreme Court per **Kulendi JSC** held at page ... thus:

“Article 296 of the Constitution equally places a duty on all persons exercising constitutional or statutory discretion such as judges, public bodies, public officers, etc to act within the parameters of the enabling law and ensure that the exercise of the discretion is not influenced by caprice, bias, prejudice, arbitrariness, resentment, or dislike.”

- 9.5 In the case of **Kwasi Afrifa v. Ghana Revenue Authority**, Reference No. J6/02/2022; dated 30th November, 2022, the Supreme Court per **Torkornoo JSC** (as she then was) held at page 13 thus:

*“To be fair and reasonable, an administrative or statutory regime must not incorporate the option for officials to operate with **arbitrariness** and caprice, or bias provoked by resentment, prejudice or personal dislike.”*

- 9.6 In the case of **Agbemava v. Attorney-General; Tuah-Yeboah v. Attorney-General and Bediatuo v. Attorney-General (Consolidated) [2018-2019] 1 GLR 490**, the Supreme Court per **Benin JSC** (as she then was) held at page 524 as follows:

“...the proper exercise of discretion should be marked by fairness and candour and thus any conduct in the exercise of such discretion which may be described as being capricious, borne out of resentment, or bias by personal dislike, or falls short of due process, is not the proper exercise of discretionary power and constitutes abuse of same. The rationale for article 296 is to check the abuse of discretionary power.”

- 9.7 The discretion exercised by the Honourable Chief Justice in determining which criminal cases should proceed during the legal vacation is subject to Article 296. A discretion affecting judicial administration must be exercised through objective standards capable of uniform application. Article 296 seeks to prevent the replacement of legal standards with subjective preferences.
- 9.8 **Article 296(a)** provides that every discretionary power “shall be deemed to imply a duty to be fair and candid.” Fairness requires that discretion be exercised upon objective and relevant considerations rather than undisclosed preferences. Candour requires transparency sufficient to demonstrate that the exercise of discretion is based upon legitimate constitutional considerations.
- 9.9 A public officer exercising discretionary power should therefore be able to identify the objective principles that informed his decision. In the present case, the impugned warrants disclose no objective criteria by which particular criminal cases were selected for hearing during the legal vacation. The absence of disclosed standards is inconsistent with the constitutional duty of candour imposed by Article 296(a).

- 9.10 **Article 296(b)** expressly prohibits discretionary powers from being exercised arbitrarily or capriciously. A decision may be arbitrary even where it is honestly made if it lacks objective standards, rests upon irrelevant considerations or cannot be rationally justified. Similarly, capricious decision-making refers to decisions made without consistent principles, according to whim, unpredictability or undisclosed preference.
- 9.11 The Constitution therefore insists that discretionary powers affecting the rights, obligations or legitimate expectations of persons must be exercised according to ascertainable legal standards. We submit that where some criminal cases are selected for vacation sittings while others are excluded, the Constitution requires that the differentiation be capable of objective explanation which none exist.
- 9.12 Article 296(b) further provides that discretionary powers shall be exercised "in accordance with due process of law." The expression "due process of law" embraces constitutional legality, rationality, transparency, consistency and procedural fairness in the exercise of public power. Due process is not satisfied where discretionary choices are not based on objective standards but subjective preferences.
- 9.13 The impugned warrants create precisely the uncontrolled discretion Article 296 was enacted to restrain. The absence of objective criteria creates arbitrary differentiation. Constitutional safeguards exist not merely to prevent actual arbitrariness but also to prevent circumstances capable of generating reasonable perceptions of arbitrariness.
- 9.14 We therefore pray Your Lordships to declare that the impugned warrants constitute an unconstitutional exercise of discretionary power since they contravene with Article 296(a) and (b) of the Constitution and are hence null, void and of no legal effect.

10.0 Right to Safe Working Conditions, Rest and Leisure

- 10.1 My Lords, we respectfully submit that the impugned warrants directly affect the constitutional rights of judges, Judicial Service staff and members of the Bar, who are required to participate in the selected criminal trials throughout a period specifically reserved by law as the legal vacation, to health including the right to safe working conditions, rest and leisure.
- 10.2 **Article 24(1) and (2) of the Constitution** states thus:

*"(1) **Every person has the right to work under satisfactory, safe and healthy conditions**, and shall receive equal pay for equal work without distinction of any kind.*

(2) **Every worker shall be assured of rest, leisure and reasonable limitation of working hours and periods of holidays with pay, as well as remuneration for public holidays.**

10.3 **Section 10(a) and (c) of the Labour Act, 2003 (Act 651)** reiterates this constitutional right as follows:

“The rights of a worker include the right to

(a) work under satisfactory, safe and healthy conditions;

(c) have rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays.”

10.4 The above constitutional and statutory provisions confer enforceable constitutional rights designed to safeguard the dignity, health and welfare of every worker in Ghana. In fact, judges, registrars, court clerks, bailiffs, interpreters, court recorders, secretaries, security officers, and other employees of the Judicial Service are all “workers” within the meaning of Article 24. Likewise, legal practitioners are indispensable participants in the administration of justice whose professional obligations are directly affected by the organisation of court sittings during the legal vacation.

10.5 Accordingly, where the organisation of court sittings substantially affects the working conditions, rest periods and welfare of judges, Judicial Service staff and legal practitioners, the administrative authority responsible for those arrangements must have due regard to the constitutional rights protected by Article 24.

10.6 The legal vacation constitutes an important institutional mechanism through which these constitutional guarantees of safe and healthy working conditions, rest and leisure are realised within the administration of justice. It provides judges with the opportunity to complete reserved judgments, undertake legal research, participate in continuing judicial education and obtain necessary physical and mental rest after sustained judicial sittings.

10.7 It similarly affords members of the Bar the opportunity to prepare pending matters, undertake legal research, attend continuing professional development programmes, reorganise their practices and attend to personal and family responsibilities. It also serves as a period of recuperation. Judicial Service staff likewise benefit from structured periods during which administrative work may be reorganised and annual leave or periods of rest may be taken without disrupting the ordinary functioning of the courts.

- 10.8 The guarantees recognise that productive and effective public service depends upon adequate opportunities for physical and mental recuperation. Rest is therefore not a matter of administrative generosity. It is a constitutional entitlement. Likewise, leisure is not a luxury reserved for a few. It is recognised by the Constitution as an essential component of humane working conditions and an important safeguard of workers' health and productivity.
- 10.9 Even though the Constitution permits vacation courts and recognises the necessity for urgent judicial work during vacation periods, those exceptions should not be administered in a manner that substantially undermines the constitutional guarantees of rest and leisure.
- 10.10 The impugned warrants affect working conditions of the participants. They require selected judges to continue presiding over criminal trials during a period otherwise designated by law for legal vacation. Correspondingly, counsel representing parties in those proceedings must continue preparing cases, examining witnesses, making legal submissions and attending court throughout the vacation. Judicial Service personnel assigned to those courts are likewise required to continue performing their official duties during that period.
- 10.11 These administrative arrangements by the Honourable Chief Justice adversely affect the constitutional rights guaranteed under Article 24. This is particularly so where the warrants contemplate the continuation of lengthy criminal proceedings extending throughout a substantial part of the legal vacation.
- 10.12 We do not suggest that every vacation sitting constitutes a violation of Article 24. Nor do we contend that urgent judicial work may never be undertaken during vacation periods. Rather, our constitutional complaint is that where departures from the ordinary vacation regime become extensive or excessive, they substantially diminish the constitutional guarantees of rest and leisure which Article 24 seeks to protect.
- 10.13 It is our respectful submission that an unrestricted expansion of vacation sittings risks transforming what Parliament intended to be an exceptional arrangement into the ordinary conduct of judicial business during the legal vacation. Such an approach would substantially erode the institutional purpose of legal vacation and the constitutional values in Article 24.

10.14 The impugned warrants, to the extent that they substantially diminish the constitutional protection afforded by Article 24 without demonstrable constitutional justification, are inconsistent with Article 24(1) and (2) of the Constitution. We accordingly pray Your Lordships to declare that the exercise of the administrative discretion contained in the impugned warrants violates the constitutional rights guaranteed under Article 24(1) and (2) of the Constitution, and is therefore unconstitutional, null and void.

11.0 State's Duty to Safeguard Health, Safety and Welfare

11.1 My Lords, the impugned warrants issued by the Honourable Chief Justice must further be examined in the light of Article 36(10) of the Constitution, which imposes a constitutional obligation upon the State to safeguard the health, safety and welfare of all persons in employment.

11.2 Even though Article 36(10) forms part of the Directive Principles of State Policy, this Honourable Court has consistently held that the Directive Principles are presumptively justiciable. In **Ghana Lotto Operators Association and Others v National Lottery Authority [2007-2008] SCGLR 1088**, the Supreme Court on justiciability or otherwise of the Directive Principles of State Policy held in holding (5) and (6) thus:

"An issue is justiciable if it is capable of being settled by a court. Prima facie, everything in a constitution is justiciable. The starting point of analysis should be that all the provisions in the 1992 Constitution are justiciable unless there are strong indications to the contrary in the text or context of the Constitution... A presumption of justiciability in respect of Chapter 6 of the 1992 Constitution, dealing with the Directive Principles of State Policy, would strengthen the legal status of Economic, social, and Cultural rights in the Ghanaian jurisdiction. There may be particular provisions in chapter 6 which do not lend itself to enforcement by courts. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter 6 should be insisted upon and would be a way of deepening the country's democracy and liberty under law that it entails..."

11.3 We are not oblivious of the fact that a duty is cast on the Plaintiff to satisfy Your Lordships that Article 36(10) is justiciable. In the case of **Child Rights International v. The Attorney-General**, supra, this Honourable Court held through **Prof. Mensah Bonsu JSC** at page 20 thus:

"...although parts of chapter 6 of the Constitution 1992 may be justiciable, it would depend upon the ability of the plaintiff to demonstrate that the applicable provisions in his particular case fall into the category of the "justiciable"."

- 11.4 It is our respectful submission that Article 36(10) clearly falls within that category of "justiciable". Article 36(10) creates a definite constitutional obligation as follows:

"The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians."

- 11.5 The language employed by the Constitution is mandatory. The word "**shall**" is ordinarily imperative and denotes a binding constitutional obligation unless the context clearly suggests otherwise. There is nothing in either the text or context of Article 36(10) suggesting that the obligation imposed upon the State is merely aspirational or dependent solely upon political discretion. On the contrary, Article 36(10) prescribes a concrete constitutional duty capable of objective judicial assessment. A court is perfectly capable of determining whether a particular act or omission of a public authority is consistent with, or derogates from, the constitutional obligation to safeguard the health, safety and welfare of persons in employment.
- 11.6 The justiciability of Article 36(10) is further strengthened because it operates in close harmony with express fundamental rights to health including rest and leisure contained in Article 24 of the Constitution. Article 24(1) guarantees every person the right to work under satisfactory, safe and healthy conditions. Article 24(2) guarantees every worker the right to rest, leisure, reasonable limitation of working hours and periods of holidays with pay. These provisions are unquestionably justiciable. Article 36(10) supplies the corresponding constitutional obligation of the State to protect those very interests.
- 11.7 It would produce an anomalous constitutional result if the individual rights guaranteed under Article 24 were judicially enforceable while the corresponding constitutional obligation imposed upon the State under Article 36(10) were immune from judicial scrutiny. The Constitution must instead be interpreted harmoniously so that rights and corresponding State duties reinforce one another.
- 11.8 The Directive Principles of State Policy also constitute fundamental constitutional values which guide the interpretation and application of the Constitution and inform the exercise of public power. **Article 34(1) of the Constitution** provides thus:

"The Directive Principles of State Policy contained in this Chapter shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society."

- 11.9 Accordingly, where an administrative decision of a constitutional office holder such as the Honourable Chief Justice affects the health, safety and welfare of workers in the administration of justice, the decision must be interpreted and assessed in a manner consistent with the objectives embodied in Article 36(10).
- 11.10 The language employed by Article 36(10) is mandatory. The Constitution does not merely encourage the State to promote the welfare of workers, it imposes an affirmative constitutional obligation upon the State to safeguard their health, safety and welfare. The Judiciary is an organ of the State established under Chapter Eleven of the Constitution and is therefore equally bound by the constitutional obligations imposed upon State institutions. Consequently, in organising the administration of the courts, the Honourable Chief Justice must exercise administrative authority consistently with the constitutional obligation imposed by Article 36(10).
- 11.11 The obligation to safeguard health extends beyond protecting workers from physical injury. Modern constitutional understanding recognises that health includes physical, mental and psychological well-being. Judges, lawyers and Judicial Service personnel routinely undertake demanding intellectual work involving prolonged concentration, preparation of complex legal materials, management of substantial caseloads and the determination of matters affecting the liberty, property and constitutional rights of citizens. The Constitution recognises that sustained professional performance of this nature requires reasonable opportunities for rest and recuperation.
- 11.12 It is for this reason that Article 24 expressly guarantees periods of rest, leisure and holidays, while Article 36 obliges the State to safeguard workers' health and welfare. The impugned warrants which substantially diminish or deny those opportunities undoubtedly violate Articles 24 and 36(10) of the Constitution.
- 11.13 We accordingly pray this Honourable Court to declare that the impugned warrants, to the extent that they undermine the constitutional protection afforded by Article 36(10), are inconsistent with the Constitution and are therefore null, void and of no legal effect.

12.0 The Regulation of Court Sittings and Legal Vacations are subject to the Provisions of the Constitution

12.1 The statutory framework governing court sittings and legal vacations reinforces, rather than diminishes, the constitutional limitations placed upon the exercise of the Chief Justice's administrative powers.

12.2 The legal vacation is not a matter of administrative convenience dependent solely upon the discretion of the Honourable Chief Justice. It is a legal institution established pursuant to statutory authority and regulated by Order 79 rule 4 of CI 47.

12.3 **Section 80(2)(g) of the Courts Act, 1993 (Act 459)** provides that:

"(2) ...the Rules of Court Committee may, subject to the provisions of the Constitution, make rules of court—

(g) for regulating the sittings of the courts and prescribing the periods of the vacations of the courts."

12.4 This provision expressly stipulated that the making of those rules is "**subject to the provisions of the Constitution.**" Accordingly, every administrative act undertaken pursuant to those rules must likewise conform to the Constitution.

12.5 Pursuant to **Section 80(2)(g)**, the Rules of Court Committee enacted **Order 79 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended**, which regulates the sittings of the High Court, office hours and periods of legal vacation. The said Order 79 states thus:

"ORDER 79—SITTINGS, OFFICE HOURS AND VACATIONS

Rule 1—Days and Hours of Sittings

(1) Subject to the Courts Act, 1993 (Act 459) as amended, the Chief Justice may appoint any day including vacations for the hearing of causes or matters as circumstances require.

(2) The sittings of the Court shall be for such hours as the Chief Justice shall direct.

Rule 2—Order of Business

Subject to special arrangements for any particular day, the business of the day shall be taken as nearly as circumstances permit in the following order

(a) at the commencement of the sitting, judgments shall be delivered in matters standing over for the purpose;

(b) motions shall be taken in the order in which they stand in the motion list; and

(c) the causes or matters on the cause list shall then be called on in their order unless the Court sees fit to vary the order.

Rule 3—Office Hours

(1) The offices of the Court shall, subject to subrule (2), be open to the public on every day of the year for such hours as the Chief Justice shall direct.

(2) Except as otherwise directed by the Chief Justice, the offices of the Court shall be closed on Saturdays, Sundays and public holidays.

Rule 4—Vacations

Subject to rule 1 (1) the following periods shall be observed in the High Court as vacations

(a) the period commencing on the Tuesday immediately following Easter Monday in each year and ending on the Friday immediately following;

(b) the period commencing on 1st August in each year and ending on 30th September in the year; and

(c) the period commencing on 23rd December in each year and ending on 6th January in the next year."

- 12.6 The Rules of Court Committee expressly subjected Order 79 of CI 47 to the Courts Act which in turn subjected the making of the rules by the Committee to the Constitution. It follows that every provision of Order 79 must be interpreted, applied and implemented consistently with provisions of the Constitution, particularly, Articles 17(1) and (2), 23, 24, 36(10) and 296(a) and (b).
- 12.7 Undeniably, Order 79 Rule 1(1) of CI 47 authorises the Chief Justice to constitute vacation sittings where circumstances so require. The Rules of Court however exist to facilitate the administration of justice. They cannot diminish or violate constitutional rights, nor can they enlarge administrative powers beyond the limits imposed by the Constitution.
- 12.8 Accordingly, insofar as Order 79 Rules 1(1) and 2 of CI 47 can be construed as authorising the Honourable Chief Justice to select some criminal cases for hearing during legal vacation in the same manner as ordinary court sittings in flagrant violation of the right of litigants, accused persons, complainants to equal treatment and protection before the law and in grave violation of the rights of affected judges, lawyers and judicial officers to health including rest, leisure and welfare, it is inconsistent with Articles 17(1), (2), 23 24(1), (2), 36(10) and 296(a) and (b) of the Constitution. To the extent of that inconsistency, it null and void.

- 12.9 **Article 1(2) of the Constitution** which provides for the supremacy of the Constitution states thus:

“This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void.”

- 1.1 In the case of **Mensima & Others v. Attorney-General & Others [1997-98] 1 GLR 159, Acquah JSC** (as he then was) had this to say at pages 200 as follows:

“For Article 1(2) of the Constitution, 1992 contains an in-built repealing mechanism which automatically comes into play whenever it is found that a law is inconsistent with the Constitution, 1992.”

- 1.2 In the case of **Matekole & Azago Kwesitsu v. Electoral Commission and Attorney-General (No. 2) [2012] 1 SCGLR 244**, the Supreme Court unanimously held at page 254 as follows:

*“The Constitution of Ghana by virtue of articles 1 and 2 is the supreme and most fundamental law of Ghana and it is clear from articles 2 and 130 as construed by this court that subject to the High Court’s jurisdiction in the enforcement of private fundamental human rights this court is the Trustee of the 1992 Constitution of Ghana. Clearly then if a genuine break with the infamous case of *In Re Akoto* (1961) 2 GLR 253, SC is to be made by this court then this court cannot shut its eyes to breaches of the Constitution when they loom large in a case before it.”*

13.0 Conclusion

- 13.1 With the greatest respect, my Lords, this action concerns the constitutional limits within which the administrative authority of the Honourable Chief Justice must be exercised. The Constitution recognises no public power that is above constitutional scrutiny. Every constitutional office holder, irrespective of the importance of the office occupied, remains subject to the supremacy of the Constitution and the rule of law.

- 13.2 We have demonstrated that the powers conferred by Section 80(2)(g) of the Courts Act, 1993 (Act 459) and Order 79 of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) as amended are expressly made subject to the Constitution. Consequently, neither those provisions nor any administrative warrants issued pursuant to them may derogate from the guarantees contained in Articles 17(1), (2), 23, 24(1), (2), 36(10) and 296(a) and (b) of the Constitution.
- 13.3 We have further demonstrated that the impugned warrants confer preferential treatment upon selected criminal cases during the legal vacation without objective and constitutionally ascertainable criteria regulating that selection. The inevitable consequence is that similarly situated criminal cases receive materially different treatment in the administration of justice without lawful constitutional justification.
- 13.4 Such unequal treatment amounts to selective justice. It is inconsistent with the guarantee that all persons shall be equal before the law under Article 17(1); it falls short of the constitutional standard of fairness and reasonableness required by Article 23; and it constitutes an exercise of discretionary power contrary to Article 296 because the discretion is exercised without transparent, objective and ascertainable standards.
- 13.5 We have also established that the impugned warrants substantially affect the constitutionally protected rights of judges, Judicial Service staff and members of the Bar to satisfactory, safe and healthy working conditions, rest, leisure and reasonable periods of holidays guaranteed by Article 24 of the Constitution. Furthermore, the warrants must be assessed against the mandatory obligation imposed upon the State under Article 36(10) to safeguard the health, safety and welfare of persons in employment. That constitutional obligation is justiciable and enforceable by this Honourable Court.
- 13.6 We respectfully submit that the present action raises issues of exceptional public importance concerning the administration of justice, the constitutional limits of administrative discretion within the Judiciary and the supremacy of the Constitution. These are matters that transcend the interests of the parties and require authoritative determination by this Honourable Court in the exercise of its original jurisdiction under Articles 2(1) and 130(1) of the Constitution.
- 13.7 A decision of this Honourable Court in favour of the Plaintiff will not impede the administration of justice. On the contrary, it will strengthen the constitutional order by affirming that the administration of justice itself must always be conducted according to the Constitution. It will preserve public confidence in the Judiciary by ensuring that decisions affecting the allocation of judicial business are exercised transparently, fairly, reasonably and according to objective constitutional standards.

13.8 We therefore humbly pray Your Lordships to uphold the supremacy of the Constitution and protect the integrity of the administration of justice by granting the reliefs endorsed on the Writ.

Respectfully submitted.

Dated at LawTowers, East Airport, Accra, this 14th day of August 2026.

Frank H. K. Davies, Esq.
(eGAR02750/26)
Lawyer for the Plaintiff
Davies & Davis

The Registrar,
Supreme Court,
Accra.



And for service on the above-named Defendants herein.