IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, AG. CJ. (PRESIDING)
AKUFFO (MS), JSC
BROBBEY, JSC
ANSAH, JSC
ADINYIRA (MRS), JSC
OWUSU (MS), JSC
DOTSE, JSC
BONNIE, JSC
AKOTO-BAMFO (MRS), JSC

WRIT
J1 / 4 / 2009
22/05 /2012

1. MR. SAMUEL OKUDZETO ABLAKWA,
2. DR. EDWARD KOFI OMANE BOAMAH
BOTH OF C/O DADZIE, ANDERSON- YEBUAH & CO,
SAMBAH CHAMBERS, H/NO. C10/28/123
NEAR BEBOA HOUSE, TEMA - - - PLAINTIFFS

VRS

1. THE ATTORNEY-GENERAL,
ATTORNEY-GENERAL'S DEPARTMENT
MINISTRIES, ACCRA - - - 1st DEFENDANT

2. HON. JAKE OTANKA OBETSEBI-LAMPTEY,
H/NO. 24, 4TH CIRCULAR ROAD,
CANTONMENT, ACCRA --- 2nd DEFENDANT

J U D G M E N T

BROBBEY JSC:

According to the plaintiffs, the subject matter of this case is the "land designated as parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No, 003/019/1988, on which is situated by the Republic of Ghana Bungalow No 2, located at Mungo Street, Ridge, Accra." This description has not been challenged by any of the parties. The subject matter will hereafter be referred to as the disputed property for short.

The two plaintiffs instituted this action in their capacities as citizens of Ghana. Attempts were made to impugn the capacities of the plaintiffs but that issue has long been settled. The settled law is that where an individual brings an action under articles 2(1) and 132 of the 1992 Constitution, he is clothed with capacity to sue if he brings the action as a citizen of Ghana**.** The issue of the capacities of the plaintiffs will therefore not be belabored in this opinion.

This being a constitutional case, the first defendant, the Attorney General, has been sued as the Chief legal advisor of the Government.

Initially, the Chairman of the Lands Commission and the Chief Registrar of Lands were also sued as the second and third defendants. They were struck out as defendants. The second defendant joined the action later in his capacity as lessee or the beneficiary of the grant of the disputed property by way of a lease.

The facts which gave rise to the instant case are these: The disputed property in question was leased to the second defendant in 2008. The

plaintiffs took the view that the lease was improper. They therefore invoked the original jurisdiction of this court for the following reliefs:

> "1. A declaration that, by virtue of Articles 20(5) & (6), 23,257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Minister of Water Resources, Works and Housing in the previous Government of His Excellency, President J. A. Kuffour, did not have the power to direct the sale, disposal or transfer of any Government or public land to the 2nd Defendant or any other person or body under any circumstances whatsoever, and that any such direction for the disposal, sale or outright transfer of the said property in dispute or any public land to the 2nd Defendant was unconstitutional and illegal.
>
> 2. A declaration, by virtue of Articles 20(5), 23, 257, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Government of Ghana is obliged to *retain and continue to use in the public interest* the property compulsorily acquired for public purpose the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St. Mungo Street, Ridge, Accra.
>
> 3. A declaration that the purported sale of the said Government Bungalow by the outgoing Government to one of its high ranking public officials, the 2nd Defendant, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and the purported direction by the Minister for Water Resources, Works and Housing in the previous

Government of His Excellency, President J. A. Kuffour, for the disposal, sale or outright transfer of the said property in dispute to the 2nd Defendant smacks of cronyism, and the same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.

4. A declaration that the publication by the Lands Commission and the Land Title Registration Office at page 18 of "The Ghanaian Times" published on 22/11/2008 in respect of the "Notice of Application for the Registration" by the 2nd Defendant of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St Mungo Street, Ridge, Accra, a step taken by the Chief Registrar of the Land Title Registration Office to grant to the 2nd Defendant a Land Certificate in relation to the said property so as to effectuate the purported sale of the said Government property to him, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and thus unconstitutional and void and the same must be struck out as such.

5. An Order of Perpetual Injunction restraining the Chairman of the Lands Commission and the Chief Registrar of the Land Title Registration Office, their workers and agents from perfecting the registration of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic

of Ghana Bungalow No. 2, located at St Mungo Street, Ridge, Accra, in the name of the 2nd Defendant."

In their amended statement of case, the plaintiffs contended that the disputed property was compulsorily acquired for public purpose, that is, for use as a Government bungalow for the accommodation of public officers. Successive Governments had been accommodating public officials in it. In 2008, the Government "surreptitiously sold the bungalow to the 2nd defendant and he subsequently applied to the Lands Title Registration Office for a land title certificate to effectuate the unwholesome transaction." The plaintiffs contended that the sale to the 2nd defendant was "in gross violation of Articles 20(5) & (6), 23, 284 and 296 of the 1992 Constitution" and the steps taken to effectuate the sale were in violation of Articles 20(5) & (6), 23, 284 and 296 of the 1992 Constitution.

MEMORANDA OF ISSUES

The parties in the case filed separate memoranda of issues.

The plaintiffs filed the following memoranda of issues:

1. "Whether or not the purported alienation, sale, disposal or outright transfer of Government Bungalow No. 2, located at St Mungo Street, Ridge, Accra situated on 1.04 acres of land compulsorily acquired by the State for public purpose to the 2nd Defendant by the Minister for Water Resources, Works and Housing in the Government of His Excellency, President J. A. Kuffour, as a sample of prime and prized public properties/bungalows at Ridge, Cantonment and Airport – all in Accra, the administrative capital of Ghana – to many of that

Government's Ministers, former Ministers, selected public officials, party officials and individuals, amounted to discrimination, lack of good exercise of discretionary power, smacked of corruption and conflict of interest, and so in gross violation of Articles 17(1), (2) & (3), 20(5), 23, 296, 35(8) and 284 of the 1992 Constitution and thus null and void.

2. Whether or not the allocation of Government Bungalow No. 2, located at St. Mungo Street, Ridge, Accra, situated on 1.04 acres of land compulsorily acquired by the State for public purpose was allocated by the 2nd defendant to himself as the 1st Chief of Staff in the Government of President Kuffour upon which Bungalow the 2nd Defendant requisitioned and spent huge public funds on its renovation to his own taste before the purported alienation or sale of that Government Bungalow by the said Government to the 2nd Defendant was discriminatory, smacked of corruption and conflict of interest, bespoke of gross abuse of discretionary power, depicted a gleeful disregard for administrative justice, and so in utter violation of Articles 17(1) (2) & (3), 20(5), 23, 296, 35(8) and 284 of the Constitution of the Republic of Ghana, 1992, and thus void."

The first defendant filed the following memoranda of issues:

1. "Whether or not the purported sale, disposal or transfer of Government and public land by the Lands Commission to the 2nd Defendant (Jake Obetsebi Lamptey) was illegal and unconstitutional.

2. Whether or not prior to the purported sale, disposal of transfer of Government or public land by the Lands Commission to the 2nd Defendant (Jake Obetsebi Lamptey) cabinet approval for the transaction had been obtained.

3. Whether or not Plaintiff's claim is one involving a mere exercise of administrative discretion involving a land transaction and is therefore masquerading as a constitutional matter.

4. Whether or not Plaintiffs have sufficient community of interest with Government or the original owners of the land to prosecute their claim.

The second defendant also filed the following memoranda of issues:

1. Whether the claim in this suit is not a complaint against the management by Government of public land within its power and discretion under articles 257(1) and 258 of the Constitution, 1992, and the Lands Commission Act 1994, Act 483 particularly s. 2 thereof.

2. If the claim is one of compliant against management of public land by Government whether the Supreme Court is the appropriate forum for adjudicating such complaint. In the alternative whether the claim in this suit raises constitutional issues requiring determination by the Supreme Court in the exercise of its original jurisdiction.

3. Whether in the allocation and/or grant of the land in issue to the 2nd defendant, and of other parcels within the Accra Area Redevelopment Scheme, the personal interest of the Minister of Water Resources, Works & Housing (the Minister) conflicted with his public duty, or he abused his discretionary power.

4. Whether the allocation and/or grant of the land in issue to the 2nd defendant and of other parcels to others within the Accra Area Redevelopment Scheme was against Government policy.

5. Whether the plaintiffs must establish previous ownership of the land in issue to maintain their claim based on article 20(6) of the Constitution 1992 and, if they must, whether they can maintain the instant claim.

The essence of the issues can be summarized under the following three heads:

a. Whether or not the plaintiffs have proved their case in respect of the allegations of corruption, cronyism, discrimination and conflict of interest, arbitrariness and abuse of discretionary power vested in a public officer.
b. Whether or not the allocation of the property to the 2nd defendant amounted to the use of the property not in the interest of the public.

c. Whether or not the plaintiffs were able to establish that the allocation of the property to the second defendant amounted to breaches of the Articles 20(5) & (6), 23, 257(1), 258, 284 and 298 of the 1992 Constitution in that the allocation amounted to wrong exercise of discretion vested in public officers.

CLAIMS IN RELIEF THREE AND FOUR OF THE WRIT

It is obvious from the memoranda of issues filed by the parties that the substratum of the plaintiffs' complaint is that the grant of the disputed property to the 2nd defendant amounted to abuse of discretionary power vested in public officers. Such complaints, like those brought by the plaintiffs, are instituted under the 1992 Constitution, arts. 23, 35(8) and 296.It is therefore not surprising that the plaintiffs based their cases on articles 23, 35(8) and 296 of the 1992 Constitution. These articles provide that:

> "ADMINISTRATIVE JUSTICE
>
> 23. Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirement 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."

This provision is further re-enforced by Article 35(8) which states that:

> "The State shall take steps to eradicate corrupt practices and abuse of power."

Article 296 also provides that:

> "EXERCISE OF DISCRETIONARY POWER
>
> 296. 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; and
>
> (c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power."

These provisions crystalize the conditions or requirements to be satisfied by anyone attacking discretionary power vested in administrative or public officers which are brought under the 1992 Constitution. Simply stated, the conditions or requirements which are to be satisfied by the complainant are that:

a. the decision or action was unfair and unreasonable or did not comply with the requirements of the law (art 23);
b. the decision or action was not fair and candid (art 296(a);

c. the decision or action was arbitrary, capricious or biased either by resentment, prejudice or personal dislike (art 296(b);
d. the decision or action was not in accordance with due process of the law art 296(b).
e. The decision or action amounted to corruption or abuse of power (art 35(8)).

For a complainant to succeed in an action brought under articles 23, 35(8) or 296 based on these conditions, it is essential to establish the following:

1. The law under which the complaint is brought to court. This law may be constitutional, statutory or legislative instrument. If the law is constitutional and it is brought under articles 23, 35(8) or 296, what follow must be established.

2. The capacity of the decision maker. He must be a public officer or administrative officer if the complaint is brought under article 23. No such requirement is necessary if it is brought under article 296.

3. Did the decision maker profit by the decision or action (to provide the basis for conflict of interest or economic gain)?

4. The capacity of the beneficiary or the recipient of the decision or action. Was the decision taken in his favour in unjustifiable preference to other applicants who were equally or better qualified but were bi-passed because of some oblique motives or obscene considerations or special favours or due to family, social or political connections (to provide the basis for establishing favouritism, nepotism, cronyism, etc.).

5. What were the grounds or the basis for making the decision for that particular recipient?

6. Were the known or established procedures or processes for taking the action or making the decision duly complied with?

7. Did the decision or action conform to the *audi alteram partem* rule or any other law relevant to that particular decision or action?

After the relevant points have been identified, it then becomes essential that the facts and evidence justifying any of the above are put before the court. That will enable the parties and the court to articulate the issue to be determined. The guidelines will further enable the presiding judge to assess the evidence in the terms of their admissibility and probative value. The evidence may be by affidavit or viva voce. The affidavit evidence will be verified so that lies or fabrications may be sanctioned by perjury proceedings if necessary. If it is viva voce, lies and fabrications may be exposed by effective cross – examination.

The admissibility of the facts and evidence has to be decided upon because there is the tendency for parties to attach to affidavits exhibits which may not be admissible if they were to have been tendered in trials. The probative value has to be considered because exhibits may be attached to affidavits which may have minimal or no probative value at all to the issues at stake.

From that assessment, the court will be in a position to decide on the proof or otherwise of the allegations in the complaint relating to arbitrariness, capriciousness, unfairness, cronyism, discrimination, favouritism,

corruption, conflict of interest, etc. The court will then be able to judge whether or not the complainant's case succeeds or fails.

This approach will be consistent with the established rule that he who asserts assumes the onus of proof. The effect of that principle is the same as what has been codified in the Evidence Act, 1975 (NRCD 323), s 17(1) which reads as follows:

> "17.(1) Except as otherwise provided by law, the burden of producing evidence of a particular fact is on the party against whom a finding on that fact would be required in the absence of further proof."

What this rule literally means is that if a person goes to court to make an allegation, the onus is on him to lead evidence to prove that allegation, unless the allegation is admitted. If he fails to do that, the ruling on that allegation will go against him. Stated more explicitly, a party cannot win a case in court if the case is based on an allegation which he fails to prove or establish. This rule is further buttressed by section 17(2) which emphasizes on the party on whom lies the duty to start leading evidence. Section 17 (2) reads as follows:

> "Except as otherwise provided by law, the burden of producing evidence of particular fact is initially on the party with the burden of persuasion as to that fact."

It is obvious that what are stated here are not exhaustive of all that may be raised. Further, it is also obvious that some of the conditions may overlap when discussing them. Nevertheless, it is my considered view that these guidelines will assist in identifying the facts and evidence and articulating

the issues in such applications. They will also conduce to the development of administrative law in this country.

In applying the above principles and guidelines to the facts of the instant case to resolve the problems of abuse of discretionary power, a number of issues will be raised and considered.

CONFLICT OF INTEREST

One of the issues in the case which does not present much difficulty relates to conflict of interest. That issue will therefore be considered first. The plaintiffs have impugned the grant of the disputed property to the 2nd defendant on the ground that the actions of the public officers who made the grant conflicted with article 284 of the 1992 Constitution. Relying on article 284 of the 1992 Constitution, they complained that the actions of the public officials in the grant of the property to the 2nd defendant were tainted by conflict of interest.

Article 284 which is described in its marginal notes as “conflict of interest” provides that:

> “A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.”

Article 284 is part of Chapter 24 which is headed “Code of Conduct for Public Officers.” The complaints of the plaintiffs were made against officials

of the Lands Commission and those of the Ministry of Water Resources, Works and Housing. They are public officers.

The issue of conflict of interest raised here can easily be resolved by recourse to Article 287 of the 1992 Constitution. Article 287 mandates that complaints under Chapter 24 of the 1992 Constitution are to be investigated exclusively by the Commission for Human Rights and Administrative Justice. Article 287 (1) provides that:

"COMPLAINTS OF CONTRAVENTION

> 287(1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written submission of the contravention or non-compliance, cause or matter to be investigated.
>
> (2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission."

Since specific remedy has been provided for investigating complaints of conflict of interest, the plaintiffs were clearly in the wrong forum when they applied to this court to investigate complaints relating to conflict of interest involving those public officers. This was the decision of this court in ***Yeboah v Mensah*** [1998-99] SCGLR 492 which endorsed similar decision

of the court in ***Edusei v Attorney-General*** [1996-97] SCGLR 1 and ***Edusei v Attorney-General*** [1998-99] SCGLR 753.

The plaintiffs' complaints based on breaches of the provisions on conflict of interest in Article 284 failed.

CRONYISM, ARBITRARINESS, CAPRICIOUSNESS, DISCRIMINATION

In relief 3 of the amended writ filed on 30th July 2010, the plaintiffs claimed that:

> "The purported sale or outright transfer of the said property in dispute to the 2nd defendant smacks of cronyism, and same is arbitrary, capricious, and discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution."

In proof of the averments, all that happened was that the plaintiffs based their complaint on their bare allegations. No evidence whatsoever was led to substantiate those allegations. The plaintiffs know too well that this is a court of law, conscience and equity. The plaintiff can only get this court to make the declarations against third parties if they are able to substantiate those allegations. This insistence on the substantiation will be in accordance with the rules of the court as already explained under the reference to the Evidence Act, 1975 (NRCD 323), s 17(1) and (2).

To allege that the action of any public officer smacks of cronyism, or is arbitrary, corruption, discrimination, capriciousness, conflict of interest and abuse of discretionary power is derogatory and vituperative. These are

accusations. Every individual Ghanaian is entitled to form his/her own opinion on the actions of public officers like the allocation of the property in dispute.

This is because freedom of speech and freedom of thought, conscience and belief are enshrined in the 1992 Constitution, by art. 21 (1) (a) and (b).The plaintiffs, like other Ghanaians, are entitled to believe that public actions are tainted with all manner of illegalities and improprieties. But if they want those illegalities and improprieties tagged on to specific public officers, they should be in the position to establish the facts which support that belief and the basis of that belief in the illegalities and improprieties on the one hand and the nexus or connection with the specific public officers on the other hand. It is that facts, basis and nexus which will amount to proof and justification for the accusations. The necessity to adduce proof becomes even more imperative where, as in the instant case, the accusers invite the court to declare the actions as tainted with cronyism, corruption, arbitrariness, capriciousness, conflict of interest and abuse of discretionary power vested in a public officer.

They cannot establish that by mere averments or allegations which are unsubstantiated, as they have done in this case. There was no argument or evidence of any type adduced in support of any of those accusations.

CORRUPTION

Cronyism, arbitrariness, capriciousness and discrimination amount to corruption. No evidence was adduced to establish any of these. There were no arguments canvassed in support of them either.

The nearest that came close to attempting to justify, by implication, the accusations on corruption may be found in paragraph 7 of the plaintiffs' statement of case which read as follows:

> "In 2001, when the 2nd defendant was the Chief of Staff at the office of the outgoing President, he allotted to himself the said government bungalow as his duty post. He resided at the said duty post at very huge costs to the State from 2001 to 2008."

Most judges occupy government bungalows and so judicial notice can be taken of the way government bungalows are allocated. Since when did Chiefs of Staff start to allocate government bungalows? Government bungalows are allocated by the Bungalow Allocation committee which works under the Ministry of Works and Housing. It is not done by the Office of the Chief of Staff. Moreover, each government bungalow has a file. Government bungalows are allocated by written authority. The established rule is that where a person makes an allegation which is capable of proof by documentary evidence, he will not succeed in proving it by mere oral assertions or allegations: This was enunciated in the celebrated case of ***Majolagbe v Larbi*** [1959] GLR 190 which has been applied by the courts in several cases. The 2nd defendant disputed the fact that he allocated the property by himself to himself. If the plaintiffs were sure that what they allege were true, they could have supported their assertion with the written allocation document **signed by the second defendant and addressed to the second defendant.** That would have been definite proof of their allegation of corruption. The two plaintiffs produced no such evidence. The averments in that paragraph 7 were not made out and could not therefore

be used to support the accusations which and two the plaintiffs referred to in their reliefs.

It appears that w***hat the plaintiffs had on their mind were encapsulated in their memoranda of issues. They stated that:***

1. “Whether or not the purported alienation, sale, disposal or outright transfer of Government Bungalow No. 2, located at St Mungo Street, Ridge, Accra situated on 1.04 acres of land compulsorily acquired by the State for public purpose to the 2nd Defendant by the Minister for Water Resources, Works and Housing in the Government of His Excellency, President J. A. Kuffour, as a sample of prime and prized public properties/bungalows at Ridge, Cantonment and Airport – all in Accra, the administrative capital of Ghana – to *many of that Government’s Ministers, former Ministers, selected public officials, party officials and individuals,* amounted to discrimination, lack of good exercise of discretionary power, smacked of corruption and conflict of interest, and so in gross violation of Articles 17(1), (2) & (3), 20(5), 23, 296, 35(8) and 284 the 1992 Constitution and thus null and void.
2. Whether or not the purported alienation, sale, disposal or outright transfer of Government Bungalow No. 2, located at St Mungo Street, Ridge, Accra situated on 1.04 acres of land compulsorily acquired by the State for public purpose to the 2nd Defendant by the Minister for Water Resources, Works and Housing in the Government of His Excellency, President J. A. Kuffour, as a sample of prime and prized public properties/bungalows at Ridge, Cantonment and Airport – all in Accra, the administrative capital of Ghana – to *many of that*

Government's Ministers, former Ministers, selected public officials, party officials and individuals, amounted to discrimination, lack of good exercise of discretionary power, smacked of corruption and conflict of interest, and so in gross violation of Articles 17(1), (2) & (3), 20(5), 23, 296, 35(8) and 284 the 1992 Constitution and thus null and void.

3. Whether or not the purported alienation, sale, disposal or outright transfer of Government Bungalow No. 2, located at St Mungo Street, Ridge, Accra situated on 1.04 acres of land compulsorily acquired by the State for public purpose to the 2nd Defendant by the Minister for Water Resources, Works and Housing in the Government of His Excellency, President J. A. Kuffour, as a sample of prime and prized public properties/bungalows at Ridge, Cantonment and Airport – all in Accra, the administrative capital of Ghana – *to many of that Government's Ministers, former Ministers, selected public officials, party officials and individuals*, amounted to discrimination, lack of good exercise of discretionary power, smacked of corruption and conflict of interest, and so in gross violation of Articles 17(1), (2) & (3), 20(5), 23, 296, 35(8) and 284 the 1992 Constitution and thus null and void."

From these memoranda of issues, the plaintiffs stated that the grants of government lands

> "to many of that Government's Ministers, former Ministers, selected public officials, party officials and individuals, amounted to discrimination, lack of good exercise of discretionary power, smacked

of corruption and conflict of interest, and so in gross violation of Articles 17(1), (2) & (3),"

It was granted to the 2nd defendant who was a former Chief of Staff and a former Minister. If the plaintiffs meant that there was some law or regulation which prevented former chief of Staff from being granted the type of property in dispute, they failed to show that. The second defendant was a former Chief of Staff. In 2008 when the grant was made to him, he was not a public officer, having left public service to contest the position of Presidential Candidate of the New Patriotic Party. That was stated by the 2nd defendant in his affidavit in opposition to the plaintiffs' affidavit. The plaintiffs did not dispute that. That meant that the grant was made to the 2nd defendant at a time when he was a private citizen. The plaintiffs did not point to any rule or law that forbade the grant of government land to a former public officer who had become a private individual.

The plaintiffs referred to grants to "selected public officials, party officials" That reference was not made expressly to the 2nd defendant as one of the "selected public officials or party officials." If they did, the obvious question they would have had to answer would be this: How did the plaintiffs arrive at the conclusion that the disputed property was allocated to the 2nd defendant in his capacity as a "selected public officer or party officer?" if those statements were made to form the basis for the declaration that the grant was discriminatory, that basis remained grossly not proved. That kind of statement should have been made by an affidavit or viva voce. It was clearly improper to have expected them as proved by mere unsubstantiated averments in memorandum of issues. The plaintiffs' reliefs failed in so far

as they were based on cronyism, arbitrariness, capriciousness, discrimination or conflict of interest.

I have had the benefit of reading in advance the opinion of the President of this panel. He dismissed the claims of the plaintiffs in respect of conflict of interest, cronyism, discrimination, arbitrariness, capriciousness and corruption. What that implies is that this panel is unanimous in dismissing the claims of the plaintiffs based on cronyism, discrimination, arbitrariness, capriciousness and conflict of interest.

Where I part company with his views relates to the abuse of discretionary powers vested in public officers.

ABUSE OF DISCRETIONARY POWER VESTED IN PUBLIC OFFICERS

One of the major grounds for impugning the grant of the disputed property to the 2nd defendant was that the grant was in violation of the 1992 Constitution, articles 257(1) and 258. The contention of the plaintiffs was that the property was initially acquired for use as bungalow for public officers and that use should have been retained as such. The second contention on this issue was that the property was acquired in the interest of the public or for the purpose of the public. The Lands Commission had granted it to the second defendant in such manner that the grant contravened articles 257(1) and 258 because the use ordered in the allocation was not in the public interest or for public purpose.

Articles 257(1) and 258 on which the complaints were based read as follows:

“PUBLIC LANDS AND OTHER PUBLIC PROPERTY

257(1) All public lands in Ghana shall be vested in the President on behalf of, and in trust for, the people of Ghana.”

“LANDS COMMISSION

258(1) There shall be established a Lands Commission which shall, in co-ordination with the relevant public agencies and governmental bodies, perform the following functions –

(a) On behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the commission;

(b) advise the Government, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned;

(c) formulate and submit to Government recommendations on national policy with respect to land use and capability;

(d) advise on, and assist in the execution of, a comprehensive program for the registration of title to land throughout Ghana;

(e) perform such other functions as the Minister responsible for lands and natural resources may assign to the commission.

(2) The Minister responsible for lands and natural resources may, with the approval of the President, give general direction to the Commission on matters of policy in respect of the functions of the Commission and the Commission shall comply with the directions."

The above provisions make it clear that the President is the trustee of public lands which he holds on behalf of the people. They also make it clear that it is the responsibility of the Lands Commission, on behalf of the Government or the President, to manage public lands, in co-ordination with the relevant public agencies and governmental bodies.

The hard facts of this case are inter alia that the property in dispute is part of public lands. It was granted to the 2nd defendant by the President acting per the Chairman of the Lands Commission. A copy of the lease was exhibited to the amended statement of case filed by the 2nd defendant as exhibit JOOL 6. The exact wording which embodied the specific action on the grant was follows:

"**THIS LEASE** made this 15th day of September in the year two thousand and eight(2008) BETWEEN THE PRESIDENT OF THE REPUBLIC OF GHANA (hereinafter called "THE LESSOR" which expression shall where the context so admits or requires include his successor in office and his duly authorized officers and servants) acting by Eustace N. A. Kumi-Bruce, **CHAIRMAN OF THE LANDS COMMISSION** of the Republic of Ghana of the one part And **HON. JAKE OBETSEBI-LAMPTEY**, P. O. BOX CT 4645, CANTONMENTS, ACCRA IN THE GREATER ACCRA REGION of the Republic of Ghana (hereinafter called the "Lessee" which

expression shall where the context so admits or requires include her successors and assigns) of the other part."

The public agencies and governmental bodies which Article 258(1) requires the Lands Commission to co-ordinate with in the performance of its functions are not specified. It has been argued that cabinet approval is required in order to validate the grant. The President is the Head of the Cabinet. Exhibit JOOL 6 shows that when the Chairman of the Lands Commission signed the lease, he did so on behalf of the President. There is nothing on the face of the exhibit to show that the Chairman signed without the approval of the President. If the President authorized or approved the lease and that was why it was signed on his behalf, it can only be presumed that the President acted with his cabinet colleagues. The applicable rule is the common law principle of *Omnia praesumuntur rite esse acta.* This principle has been codified in the Evidence Act, 1975 (NRCD 323), s 37(1) which reads that:

"It is presumed that official duty has been regularly performed."

This is only a presumption which is rebuttable. But section 20 of the same NRCD 323, "imposes on the party against whom the presumption operates the burden of producing evidence and the burden of persuasion as to the non-existence of the presumed fact." In fact the view was taken by this court in ***GPHA v Nova Complex Ltd*** [2007-2008] SCGLR 806 (in holding one) that whenever the maxim is applied, the person against whom it is invoked is at liberty to lead evidence to refute the presumption. See also the application of the principle in ***Acheampong v The Republic*** [1996-97] SCGLR 566. In the instant case, the onus was on the plaintiffs to have led

convincing evidence to rebut the presumption of regularity that the facts raised in favour of the actions of the Land Commission in granting the lease to the 2nd defendant. This they have failed to do in the instant case.

In the absence of concrete evidence to the contrary, it cannot be right to assume that when a public officer signs a document which states on its face that it was signed on behalf of the President, the President probably knew nothing about it or did not approve it or did not make the necessary consultations or the appropriate contacts before he allowed the document to be signed on his behalf.

On the face of the documents before the court, the lease was granted by the appropriate authority.

It was part of the case of the plaintiffs that cabinet approval was required in order to validate the grant of lands like the disputed property. The plaintiffs did not refer to any specific law that stipulated that cabinet approval was required in such grants.

The Attorney-General is the first defendant in the case. His representative argued in his amended statement of case that the grant to the 2nd defendant was without cabinet approval and therefore void. For that contention, he relied on a document exhibited as AG1 which he described as:

> "RECOMMENDATIONS OF OVERSIGHT COMMITTEE ON REDEVELOPMENT OF RESIDENTIAL PROPERTIES IN ACCRA AND OF COMMITTEE ON LAND GUARDING AND COMPENSATIONS."

Exhibit AG1 was tendered as an official copy of a document. The law on such copies has been carefully codified in the Evidence Act, 1975, (NRCD 323), s 162 which reads:

> "162. A copy of a writing is presumed to be genuine if it purports to be a copy of a writing which is authorized by law to be recorded or filed and has in fact been recorded or filed in an office of a public entity or which is a public record, report, statement or data compilation if –
>
> (a) an original or a original record is in an office of a public entity where the items of that nature are regularly kept; and
> (b) the copy is certified to be correct by the custodian or other person authorized to make the certification, provided that the certification must be authenticated."

If exhibit AG1 was tendered as an official copy of a record, then it should have complied with the law regulating such copies. As stated in section 162, it should have been certified by the official from the office where the original is kept. That official should be the one who is the custodian of a person authorized to make he certification. The requirement here would have been met by the certification being made by the custodian of the original or an affidavit from the State Attorney to the effect that the certification was made by such an official from the Office of the Cabinet. The affidavit filed by the State Attorney which introduced the said exhibit AG1 did not refer to the fact of authentication of the exhibit or that the requirements of the law on such exhibits have been complied with.

In order to assess the probative value of this exhibit, there are three factors to be considered. They are the issue of its source or proper custody, the connection between the exhibit and the disputed property and the consequence of tendering that document.

Custody of exhibit AG1

Exhibit AG1 was not on any headed paper. The source from where it emanated was uncertain. It was not authenticated by any official source. The whole exhibit was typewritten. The heading alone was hand written to give it some form of identity. It was that hand written heading which stated that the document was a cabinet minute. That made the exhibit suspicious. It had on the face of it a stamp to the effect that it was a "certified true copy." That stamp did not indicate the office or source from where it came or where it was being certified. If it was a true cabinet minute, why did it not say that it was certified true copy of cabinet minute but the heading had to be written in ink and differently from the rest of the body of the document? At least it could have been signed by the person who prepared it. If he was no longer available and it was a true cabinet minutes, the Office of the Cabinet is in existence. An officer from that office could have authenticated it by signing it. That was not done to the document.

Connection with the disputed property

If exhibit AG1 was a genuine cabinet minute, there was nothing that links it with the disputed property. Exhibit AG1 referred to the fact that some 17 allocations of properties which had been made already had been annulled. The 17 allocations were not named. There is nothing to show that the application of the 2nd defendant on the disputed property was among those

17 applications. Further, exhibit AG1 contained a list of areas in Accra whose land values had been revised. The list did not include the Ridge area where the disputed property is situated.

Another serious drawback on the exhibit is that it bears no date and no name. It refers to “Attorney-General” without mentioning the Attorney-General in question. There have always been several Attorney-Generals in this country and if a name had been given the period that the person served as Attorney –General could have been used to determine the period that the document was prepared. No such information was given. In the absence of a date and a name, even if the document referred to minutes taken some years past and which are completely unrelated to the disputed property or that the document referred to discussions on some properties which have nothing to do with the disputed property, no one can tell. The exhibit was not the full report of the full minutes. It was only part of what it purported to represent. The last sentence on the exhibit was incomplete and was left hanging in the air.

Consequence of exhibit AGI

Exhibit AG1 was obviously a document thrown in to muddy the waters on the issue of the exercise of discretion in granting the property to the second defendant. The exhibit was of minimal or no probative value. Such an exhibit shrouded in uncertainty and dubiety, could not seriously be relied upon to establish that the grant was void.

Neither the representative of the Attorney-General nor the plaintiffs cited any constitutional or statutory authority for the proposition that cabinet approval is required to validate the grant of land to an individual like the 2nd

defendant. In this country, whenever cabinet approval is required to validate any action, it is expressly stated in the Constitution or a statute. Instances will be found in the taking of loans, for instance, where article 181(1) of the 1992 Constitution mandates that Parliamentary approval be obtained, by resolution, for the Government to enter into an agreement for granting of loans out of any public fund. It was the State Attorney representing the Attorney-General who canvassed this point vehemently and concluded that since, in his view, cabinet approval was not obtained before the disputed property was granted to the 2nd defendant, the grant was void. He used exhibit AG1 to buttress his argument.

I have already demonstrated that exhibit AG1 cannot be relied upon for reasons already stated. Once that source is debunked, the position will remain that there is no authority for the proposition that cabinet approval is required in order to validate the grant of lands to any person or individual made by the Lands Commission on behalf of the President. It would be disastrous to rely on exhibit AG1 for such a major proposition on cabinet approval. There are several aspects of such a decision which have to be settled if that were the case. For instance, will cabinet approval be required to grant Government land measuring four meters by four meters required to construct a kiosk by an individual? Will the value of the land matter?

Government lands are situated all over the country in the cities, municipal areas and district capitals. Such a rule will necessitate that at any time any government land is to be granted, cabinet approval will be sought from Accra, otherwise, according to the plaintiffs and the State Attorney, the grants will be invalid. The inevitable consequence will be that cabinet will be inundated with applications for approval to grant government lands. It

will be difficult to imagine the delay that will be caused by such a rule over the processing of documents in the Lands Commission.

The most serious confusion will be the effective date of the need for cabinet approval. I have stated that exhibit AG 1 bears no date. If it relates to minutes which postdate 2008, how can the minutes be used to nullify a grant like the instant one made in 2008? The well established principle is that laws of such nature are not made to have retroactive effect or to affect the rights of individuals vested before the coming into force of the law.

If exhibit AG1 were to be cabinet minutes predating 2008, what will happen to all the allocations made by the Lands Commission in respect of which no cabinet approval was granted? The effect of the decision of this court will be that all grants of government land made without seeking Cabinet approval will be annulled. Are the grantees going back to be re-granted properties already in their possession or will they remain canceled so that they will be re-allocated to the grantees or other applicants? The confusion which such a decision will generate will be too wild to fathom.

Exhibit AG1 does not refer to the Ridge area at all and does not name the disputed land. How can it be used to annul the grant if it turns out that the minutes do not have any relation with the disputed property which is situated in the Ridge area which exhibit AG1 conspicuously does not cover?

The plaintiffs attacked the processing of the grant by the Land Title Registry. The documents exhibited by the 2nd defendant showed that the grant was made after the due compliance with the procedure for granting such public lands including necessary advertisements in the press as

required by law. The details of this are unnecessary here. After an application had been made for the property, the Lands Commission, acting on behalf of the Government, offered it to the 2nd defendant in exhibits JOOL 7 and JOOL 8, both of which were attached to the amended statement of the 2nd defendant. Exhibit JOOL 9 showed that the required amount of money representing the value of the land was paid for the grant. There is no merit in the complaint against the procedure adopted in processing the grant at the Land Title Registry.

In the plaintiffs' further attack on the grant of the property to the 2nd defendant, they complained that the grant contravened article 20(5) & (6) of the 1992 Constitution. The two articles provide that:

> "20. (5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.
>
> (6) Where the property is not used in the public interest or for the purpose for which it was acquired, the owner of the property immediately before the compulsory acquisition, shall be given the first option for acquiring the property and shall, on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition."

The first point that may be made on these provisions is that this court has by the majority decision of four to three decided that article 20(5) & (6) do not apply to lands acquired compulsorily before the coming into force of the

1992 Constitution. That was the decision in ***Kpobi Tsuru III v Attorney-General*** (on review), which is to be reported in [2011] SCGLR 1042. That is the state of the law as at now until it is set aside by another decision of this court or by statute. If that is the correct state of the law, it follows that the plaintiffs' reliefs do not hold water so long as they are grounded on article 20(5) and (6).

USE OF PUBLIC LANDS IN THE PUBLIC INTEREST OR FOR THE PURPOSE OF THE PUBLIC

Article 20(5) & (6) however raise other issues. It is quite clear from the plain reading of article 20(6) that it relates to ownership of land as well as user of land. The plaintiff did not bring this action in their capacities as owners of the disputed land. Ownership of land is not in issue in this case. Article 20(6) is therefore not relevant in so far that it covers ownership of land.

At the same time, article 20 (5) & (6) deal with the use of land. It was not disputed that the property in dispute is part of public lands. It was also not disputed that it was initially acquired for use "in the public interest" or for the "purpose of the public" which implied that it was for housing public officers. By the terms of the lease, the plot is to be used or "the development of three blocks of flats of at least four storeys." It was the contention of the plaintiffs that the use to which the Lands Commission had directed the 2nd defendant to put the property contravenes article 20(5) & (6) in that it was not being put to use in the public interest or for public purpose.

The issue here centres on the meaning of "public interest" or "public purpose" contained in article 20(5) & (6). These expressions were

interpreted in ***Kpobi Tsuru III v Attorney-General*** [2010] SCGLR 904. In that case, this court took the view that the expressions should be given wide, broad, liberal and expansive interpretation. It was held in that case that:

> "With such an interpretation and understanding, it would not be contrary to "public interest" or the "public purpose" if the State as was exemplified in the authority of the President, decided to use portions of La Wireless Station Land to build Executive Mansions for visiting Heads of States who were to attend the Ghana @ 50 Independence Anniversary and the African Union Conference."

Rationalizing this decision further, my respected Brother, Dotse JSC stated that:

> "This is because, as a country, there have been numerous examples where land that had been acquired for use in the public interest for specific purpose have had the use changed without any question or blemish….For example, part of the Accra Race Course land has had to be taken away for another public interest, purpose or use, and this was the construction of the multi purpose Accra International Conference Centre. The second was the conversion of Makola No 2 Market to a modern public car park, known and described as the Rawlings Park… Once the use to which the land is to be put is not restricted to any personal or individual interest, but one to which the general public will have a benefit or the benefit of the project will inure

to the entire country either directly or indirectly, the public interest purpose will be deemed to have been adequately catered for."

In the same opinion, it was stated that even though the sale of the Executive Mansions were reckless, the sale was not inconsistent with the user clause because the actual sale of the houses was open to all members of the public based on the ability to pay.

The issue in this case is this: The plaintiffs contended that the property should be retained for the purpose for which it was originally acquired. That would mean that it would be used by one Minister or one public officer. The grant to the 2nd defendant was to develop the property into three blocks of flats of at least four storeys. Which of the two uses will benefit the public more or satisfy the public purpose as required by the constitutional provisions?

In the light of the explanations of the two expressions in the ***Kpobi Tsuru*** case referred to above, I take the view that the use to which the Lands Commission directed the 2nd defendant to put the land will serve public interest or will be for public purpose. This is because the three blocks of flats to be constructed will obviously be available to members of the public who can afford the cost involved in renting or buying them..

The allocation of the disputed property followed a scheme of development set in motion in 1999. The objective was to replace old buildings occupying huge plots of land and accommodating one person or one family with the

construction of as many new houses as the plots can accommodate. It was described as the Accra Redevelopment Scheme. The grant to the 2nd defendant was clearly consistent with that policy to the extent that the 2nd defendant was required by the offer letter to develop the land by the construction of three blocks of flats of at least four storeys in height. The offer letter specified that the grant was in conformity with the objective of the Government in increasing the utility of the land.

In discussing this issue, it is important to bear in mind that the Lands Commission has been given autonomous status to operate. This is provided in the Lands Commission Act, 1994 (Act 483). Section 3 of Act 483 provides that:

> "**Independence of Commission**
>
> Except as otherwise provided in the Constitution or in any other law which is not inconsistent with the Constitution, the Commission shall not be subject to the direction or control of any person or authority in the performance of its functions."

From the above statutory and constitutional provisions already quoted, there is no doubt that the Lands Commission has the discretion in the management of public lands. How that discretion is to be exercised is not spelt out in the 1992 Constitution or any other law. Being a public body its exercise of discretion should comply with the provisions of the Constitution. It has been argued on behalf of the plaintiffs that the way in which the Lands Commission exercised its discretion to grant the property to the

second defendant contravened articles 23 and 296 of the 1992 Constitution. The two articles have been quoted above.

The Lands Commission could have thrown light on the bodies which constituted the "Oversight Committee" that laid down the policy on land use already referred to. Unfortunately, it was struck out as a party. But the Attorney-General could have articulated the policy measures behind the conduct of the Lands Commission if they were minded to. In the performance of its functions, the Lands Commission used its discretion to allocate the disputed property to the 2nd defendant to develop it into three flats of at least four storeys. The question is whether or not the Lands Commission exercised its discretion rightly in granting the lease to the 2nd defendant for the stated purpose.

In the exercise of this discretion, the Lands Commission was expected to be candid and fair. The exercise of that discretion shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with the due process of law. As already demonstrated in this opinion, the plaintiffs showed no evidence of bias, prejudice, arbitrariness, capriciousness or personal dislike as the grounds for allocating the disputed property to the 2nd defendant. The exercise of the discretion has not been demonstrably impugned. Similar position was taken by this court in ***Tsatsu Tsikata v Chief Justice*** [2001-2002] SCGLR 437 when the discretion of the Chief Justice as a public officer was impugned without legitimate bases by the applicant.

In the absence of concrete evidence of arbitrariness, bias, prejudice, capriciousness and personal dislike or breach of due process of the law, it

is not right for the court to use article 296 to direct the Lands Commission on the use to which it should put public lands. Care should be taken not to use article 296 to stifle or subvert the independence or autonomy of state institutions which operate by the use of the knowledge of technocrats or experts.

Judicial notice is taken of the fact that land management in cities involves technical housing and town planning considerations which are the preserve of engineers, architects, town planners, surveyors and draughtsmen. Any meaningful scheme of redevelopment will necessarily involve these or most of them. When they have put in place schemes which from their technical knowledge are appropriate, those of us who are not experts should be wary not to undermine what they do in the absence of clear evidence of impropriety or illegality.

If I had my own way, I would have liked the disputed property to be used to put up blocks of flats for the accommodation of medical officers because to mind we all need to be healthy first before we can perform our duties and so the needs of doctors should take precedence over all other needs. But my views do not and cannot matter in such considerations because I am in no better position to substitute my views for those of the experts who decided on the use of the property for residential purpose of three flats of at least four storey building. This only demonstrates that the views on land user may differ from person to person and so the issue should be left to be decided by experts. The three flats will serve the public much more than one building for the occupation of one family or one person. If the grant has to be considered in the basis of the utility of the disputed property, the

public interest or its public use would have been satisfied. That manner of grant cannot be described as the wrong exercise of discretion.

I have already stated that this court is unanimous in its view that the plaintiffs have failed to prove their case in respect of the accusations relating to cronyism, arbitrariness, conflict of interest and discrimination in relief three. Let me take pains to explain the import of this unanimous aspect of the decision. We are not condoning cronyism, corruption, arbitrariness, capriciousness or discrimination. That is not what the unanimous decision is saying and we should not be taken to have said that.

The judgment merely states the position that the plaintiffs have applied to the court to make specific declarations against some public officers. They base their claim for the declarations on specific facts. They were not able to prove those facts. Their applications remain baseless and without any justification. Therefore their applications for those declarations have failed. That is all.

The import of the unanimous decision on those points is that anyone who makes such accusations against public officers should be able to establish the basis or justification for those accusations if he/she invites the court to make declarations in support of those accusations. Any court confronted with that situation will definitely insist on proof or decline to make the declaration. This is all that we have done in this case.

This is a court of law, a court of equity and a court of justice. As a court of law, we are governed by rules and regulations. For the purpose of this case, some of rules are as provided in the 1002 Constitution, the Evidence Act, 1975 (NRCD 323) and the Lands Commission Act. Our rules and

regulations mandate that people who invite the court to condemn others for wrong doing should be in the position to justify what they call on the courts to do. When it is stated that this is a court of equity and a court of justice, we imply that the plaintiffs who are inviting the court to make the declarations will themselves not want similar declarations made against them if they were to be accused of similar illegalities and improprieties without proof of the justification for the accusation**s.**

For the foregoing reasons, the plaintiffs' applications for the reliefs fail in toto and I would dismiss all of them.

[SGD] S. A. BROBBEY

JUSTICE OF THE SUPREME COURT

ANSAH JSC.

The facts of this case are simple unlike the legal issues arising therefrom.

Simply rehashed, they are that the Lands Commission purporting to act under the direction of the President of the Republic of Ghana, sold the property described as Bungalow No. 2, St. Mungo Street, Ridge, Accra, to the second defendant. This property was built by the Government of Ghana on land acquired compulsorily in the public interest for public use as it was meant for accommodation of public officers.

The plaintiffs contended that this sale was unconstitutional and void for being discriminatory, a gross abuse of discretionary power, and enmeshed in conflict of interest. It was in contravention of and inconsistent with the

letter and spirit of the Constitution, 1992, especially Articles 20(5), 17(2), (3) and 4(a), 23, 258 and 296.

They, ie, the plaintiffs issued a writ to invoke the original jurisdiction of this court, which writ was amended on 20/7/2010. The reliefs claimed were adequately quoted in the judgments of my brethren who read their opinions a few moments ago which I had the privilege to read before hand. I will therefore spare my self the boredom of repeating them here.

1 A declaration that, by virtue of Articles *20(5), and (6),* 23, 257 265 284 and 296 of the Constitution of the Republic of Ghana, the Minister for Water Resources, Works and Housing in the previous Government of His Excellency, President J.A Kufour, did not have the power to direct the sale, disposal, or transfer of any Government or public land to the 2nd defendant or any other person or body under any circumstance whatsoever, and that any such direction for disposal , sale or outright transfer of the said property in dispute or any public land to the 2nd defendant was unconstitutional and illegal.

2. A declaration, by virtue of Articles *20(5),* 23, 257, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Government of Ghana is obliged to retain and continue to use in the public interest the property compulsorily acquired for public purpose the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St. Mungo Street, Ridge, Accra.

3. A declaration that the purported sale of the Government Bungalow by the outgoing Government to one of its high ranking public officials, the 2nd defendant was in utter contravention of Articles *20(5),* 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and the purported direction by the Minister for Water Resources Works and Housing in the previous Government of His Excellency, President J.A. Kufour, for the disposal, sale or outright transfer of the said property in

dispute to the 2nd defendant smacks of cronyism, and the same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.

4. A declaration that the publication by the Lands Commission and the Land Title Registration Office at page 18 of the 'Ghanaian Times' published on 22/11/2008 in respect of the "Notice of Application for the Registration" by the 2nd defendant of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2 located at St. Mungo Street, Ridge, Accra, a step taken by the Chief Registrar of Land Title Registration Office to grant to the 2nd defendant a Land Certificate in relation to the said property so as to effectuate the purported sale of the said Government property to him was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, and thus unconstitutional and void and the same must be struck out as such.

5 An order of perpetual injunction restraining the Chairman of the Lands Commission and the Chief Registrar of the Land Registration Office, their workers and agents from perfecting the registration of the parcel of land designated as Parcel No, 29, Block 12, Section 019 in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2, located at St. Mungo Street, Ridge, Accra, in the name of the 2nd defendant."

Each party submitted a statement of case consisting of their respective arguments of the law applicable to the application, verified by an affidavit. Each also submitted a memorandum of issues from which the issues at stake were distilled. These have been set out in full in the judgment of my brother Atuguba JSC and I will therefore not repeat them here.

At the bottom-line of this case lie the facts that the bungalow in question is a public property having been built on land acquired compulsorily by the state in the public interest for public use, namely, the running of efficient, effective and good governance of the people of Ghana.

That being so, the policy of government to dispose of the bungalow to the second defendant was inconsistent with or in contravention of Articles 17(1), (2) and (3), 20(5) and (6), 23 and 256, 257, 284 and 296 of the Constitution, 1992. The plaintiffs therefore seek to challenge the grant of land in question to the second defendant and other unnamed persons by invoking the courts original jurisdiction to seek the enforcement and compliance with these articles of the constitution.

That the land in question is public land is not in doubt, as, Article 257 provided that:

"(1) All public lands in Ghana shall be vested in the President on behalf of, and in trust for the people of Ghana."

The Constitution defined what public land is in article 257 (2) as:

(2) For the purpose of this article, and subject to clause (3) of this article, "public lands" includes any land which immediately before the coming into force of this Constitution was vested in the Government of Ghana on behalf of, and in trust for the people of Ghana for the public service of Ghana, and any other land acquired in the public interest, for the purposes of the Government of Ghana before, on or after date.

(5) Clauses (3) and (4) of this article shall be without prejudice to the vesting by the Government in itself of any land which is required in the public interest for public purposes."

It is clearly next to impossibility for the President to manage public lands all by himself alone so arrangement was made that a Lands Commission be established to assume responsibility and manage them for and on behalf of

the President. The Lands Commission was thus established under article 258 (1) of the Constitution charged with the function of *inter alia*, to

> (1)There shall be established a Lands Commission which shall in co-ordination with the relevant public agencies and governmental bodies, perform the following functions –
>
> *(a)* on behalf of the Government, *manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;*
> (b) advise the Government local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that the development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned;
> (c)formulate and submit to Government recommendations on national policy with respect to land use and capability;
> (d) advise on and assist in the execution of a comprehensive programme for the registration of title to land throughout Ghana; and
> (e) perform such other functions as the Minister responsible for lands and natural resources may assign to the Commission;
> 2. The Minister responsible for lands and natural resources may with the approval of the President, give general directions in writing to the Lands Commission on matters of policy in respect of the functions of the Commission and the Commission shall comply with the directions."

It becomes apparent that the Lands Commission has an onerous duty and wide powers to exercise in discharging its functions under its constitutional mandate.

The constitution does not define or describe how the Lands Commission may 'manage lands vested in the President by this constitution' or itself; it will not be necessary to do so for it entails a lot. The least that can be said is that within the context in which the word is used, it may refer to

managing resources, or dealing with the lands carefully and prudently, so as not to waste or depreciate their value or lose them completely.

It is in connection herewith that article 20 (5) and (6), come in handy. These articles said that:

" 20 (5) Any property compulsorily taken possession of or acquired in the public interest or for a public purpose shall be used only in the public interest or for the public purpose for which it was acquired.

(6) Where the property is not used in the public interest or for the purpose for which it is acquired, the owner of the property immediately before the compulsory acquisition shall be given the first option for acquiring the property and shall on such re-acquisition refund the whole or part of the compensation paid to him as provided for by law or such other amount as is commensurate with the value of the property at the time of the re-acquisition."

'Public interest' was defined in Article 295 to "include any right or advantage which enures or is intended to ensure to the benefit generally of the whole of the people of Ghana."

'Public purpose' was not so defined but its ordinary meaning is not mind boggling; giving a broad, wide and liberal meaning to it, it may mean the aim or the reason for or behind a particular activity was definitely or intentionally for the public benefit or good.

In Kpobi Tetteh Tsuru III v Attorney-General [2010] SCGLR 904, a reference from the High Court, Accra, to the Supreme Court under article 130 (2) of the Constitution for determination of some issues pertaining to the acquisition of land in Accra known as the 'La Wireless Station land', Atuguba JSC said that article 258 on the power of the Lands Commission to manage public lands, applied to the land just like other articles of the constitution, particularly articles 20 (5) and (6) of the constitution. I share the same view with him on this.

In that case, this court held that it would not be contrary to the public interest if the state represented by the President, decided to use portions of the land in question to build Executive Mansions for visiting Heads of State who were to attend Ghana @50 Independence Anniversary and the African Union Conference then slated only a few months away from those activities.

Concurring on this point, Dotse JSC said at page 968 that there have been numerous instances in this country where land acquired in the public interest for specific purposes had had the use changed without any question or blemish. The learned judge went on to buttress his point by referring to how: "…for example part of the Accra Race Course Land has had to be taken away for another public interest, 'purpose or use' and this was the construction of the multi purpose Accra International Conference Centre. The second is the conversion of Makola No. 2 Market to a modern car park, known and described as Rawlings Park."

He went on to say that: "My view of the matter therefore is that, once the land is not restricted to any personal or individual interest, but one to which the general public will have a benefit, or the benefits of the project would enure to the entire country either directly or indirectly, the public interest purpose would be deemed to have been adequately catered for."

He did not favor the sale of the houses built for public purpose and interest to private individuals, calling it a reckless exercise of discretion extenuated only by the fact that the actual sale of the houses was opened to all members of the general public based on the ability to pay. In that respect therefore it could be stated that such a use is not inconsistent with the user clause.

Dotse JSC did not mean to give any exhaustive examples of how properties meant for specific purposes were diverted for others, all in the interest of the public, and it is trite learning they are found in other cities and towns throughout the length and breadth of the country.

In Kpobi Tetteh Tsuru III v Attorney-General (supra) I concurred with the views of Dotse JSC, and I have not repented for doing so.

In his amended statement of case filed in response to the amended writ and statement of case by the plaintiff on 30 July 2010, the second defendant submitted that the public land was given to him for redevelopment as part of a scheme initiated by the Government in or about 1999, for the rationalization of large tracts of public lands on which residential property had been constructed for use by a very limited number of persons or families.

The limpid fact in this case is that it was the Lands Commission which granted the lease to the second defendant to develop the land for residential purpose only, consisting of three blocks of flats consisting of at least four storeys. The lease document was tendered in evidence as Exhibit JOOL 6. In it, it was agreed between the parties that the lease was for a term of fifty years commencing from the 25th day of June 2008, and was subject to renewal. Furthermore it contained clause '(l)' that at the end of the term, the lessee was to quietly yield the demised premises together with the buildings thereon in such state of repair and condition as covenanted upon by the parties, observing and performing all implied covenants under a lease for valuable consideration imposed on the lessee by the provisions of the Conveyancing Decree, 1973, NRCD 175.

Above all, the lease agreement contained the right of re-entry clause, and also that if the lessee was not able to develop the property within the period agreed upon, the lessor has the right to refund the money paid to the lessee as the consideration but not so with the ground rents paid to the lessor.

The total cost of the plot allocated to the second defendant was GH¢390,000.00 quite tidy by all standards. In other words the land was not leased out to the second defendant for a pittance.

It ought to be appreciated that the lease transaction was not conducted in any clandestine or surreptitious manner; it was granted following the Accra Re-development Scheme which entailed the demolition of old bungalows located at vantage points in Accra; a look at most of them left no doubt that they had seen better days. What was noticeable of these bungalows was that they contained very few rooms but occupied large areas of land and conspicuously virtually wasted land.

With all these, I find it difficult to say, in my candid opinion, how the plaintiffs succeeded in saying that Article 20 (5) was breached or contravened in leasing the plot of land to the 2nd defendant.

In their amended statement of case the first defendant stated that "the scheme had been initiated in 1999 when the cabinet approved the scheme as well as the bidding rules and guidelines for the selection of selection of prospective bidders based on a fair and transparent bidding system."

With all these, the public interest in the property was adequately safeguarded. The state had its reversionary interest well covered in the lease document implying that the public nature or interest in the property was not in danger of being lost.

Judicial notice is taken of the fact that by 1999, the Kuffuor government was not in power and could not have been the architect of the scheme.

The 2nd defendant accepted the lease offer and paid in full, the amount charged in bankers draft drawn on Stanbic Bank.

The Lands Commission and the Land Title Registration Office were not left out of the transaction. Going by the plaintiffs own showing, these bodies published the Notice of Application by the 2nd defendant in the 22 November 2008 issue of the '*Ghanaian Times*' an Accra daily newspaper of wide circulation, before the grant was made. It can hardly be said the grant did not follow the due process so as to taint it with any breach of the constitution or any statute or enactment governing such grants of public lands.

In the result I am not satisfied the plaintiff succeeded in convincing me that Article 20 (5) was breached or contravened in leasing the plot of land to the 2nd defendant.

The plaintiff rested his case on another article in the constitution and submitted that the Lands Commission breached the discretion it had in managing the public so. By that the plaintiff meant Article 296 of the constitution was breached. The provision referred to was in the following terms that:

"296 Exercise of discretionary power

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 personal dislike and shall be in accordance with due process of law; and

(c) where the person or authority is not a Justice or other judicial officer, there shall be published by constitutional instrument or statutory instrument, Regulations that are not inconsistent with the provisions of the Constitution or that other law to govern the exercise of the discretionary power.

The law on the exercise of discretionary powers appeared in our constitution, 1969, under article 173 thereof, and it is presumable that the proper exercise of discretion is marked by fairness and candor, whereas any conduct which can be described as being capricious, born out by resentment, or bias by personal dislike, or falls short of due process, is ante-thesis of the proper exercise of discretionary power and constitutes abuse of discretionary power.

I have read over the statement of plaintiffs' case several times over but discovered that they never said anything in expatiating or demonstrating how the Lands Commission or any other person or authority breached their discretion in granting the lease to the 2nd defendant. In the circumstances, I will spare myself the burden of writing at length on what has apparently been abandoned *sub silentio*. I rather hold that that ground was not made out by the plaintiffs. To be precise, they did not show the Lands Commission or any other persons or defendants were arbitrary or actuated by caprice, personal dislike or bias by resentment and prejudice when it granted the lease to Jake Obetsebi Lamptey. That ground of relief is therefore dismissed.

Article 297 on implied power was also relevant, as it provided that:

"297. Implied power

In this constitution and in any other law,

(c) where a power is given to a person or authority to do or enforce the doing of an act or a thing, all such powers shall be deemed also as necessary to enable that person or authority to do or enforce the doing of the act or thing;"

The Lands Commission had this implied power to do what it did when it purported to grant the lease of the plot in question to the second defendant.

It is curious to note that the plaintiffs did not make any submission on the applicability of article 20(6) in their statements of case and for the reasons just given they are deemed abandoned and will not be commented upon in my opinion. Even if I erred in so saying, to put it as bluntly as I possibly can, the plaintiffs did not prove to my satisfaction that the provisions in that article were proved.

I am fortified in this stand for it is recognized that in applications of this nature, it is not enough for a plaintiff to just refer to articles upon articles to make a case of breaches or contraventions of the constitutions; he should as a matter of duty go on to demonstrate how they were breached or contravened: see National Democratic Congress v Electoral Commission of Ghana [2000-2001] SCGLR 954, where the court held in its unanimous judgment that:

"(1) the plaintiffs allegation that the defendant Electoral Commission had breached the provisions of article 89(2)(c) and 294 of the 1992 Constitution required the production of sufficient cogent and clear evidence."

As these were not forthcoming, the action failed.

In my opinion the plaintiffs fell foul of this requirement and imperiled the success of their action.

The plaintiffs founded their action on yet another article of the constitution namely, article 284, which was on conflict of interest by an officer in the performance of the functions of his office. There are two reasons why the article does not merit any consideration in my opinion; one was that there were no submissions on how it applied in this case; in other words there was no proof by the plaintiffs of conflict of interest by any officer in the

performance of his duty. Secondly, even if there was any, I hold that this court is not the proper place to seek a remedy, for article 287 provides an answer.

It is that:

"287. (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(1) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be may take such action as he considers appropriate in respect of the results of the investigation or the admission."

The allegation of conflict of interest by an officer was not made out by the plaintiffs and therefore the declaration that article 284 of the constitution was breached will be and is accordingly refused. Where the constitution provided a remedy as well as the forum to ventilate grievances, it was imperative that these ought to be followed strictly and failure to do so may spell the doom for the applicant: see Yeboah v J.H. Mensah [1998-99] SCGLR 492.

I wish to recommend the plaintiffs for their public mindedness in taking this action which I have good reasons to believe was geared towards defending the constitution and the public good; it resonates in activating the ideals in Chapter 6 of the constitution under the rubric 'The Directive Principles of State Policy'. As part of its economic objectives, article 36 provided that:

"(8) The state shall recognize that ownership and possession of land carry a social obligation to serve the larger community and in particular, the State shall recognize that the managers of public, stool, skin and family

lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard."

When the plaintiffs stated that the lands were divested to people in a manner which smacked of cronyism, they meant those in authority used their authority to favor their friends; that would be evidence of abuse of power or discretion, a serious accusation indeed, which if proved would be of much serious consequences. However, there was no such proof of that damnable accusation. It is rejected on that account.

The conclusion is that for all the foregoing reasons, I agree with the opinion of my brother Brobbey JSC that the plaintiffs' action failed and is dismissed.

[SGD] J. ANSAH

JUSTICE OF THE SUPREME COURT

ADINYIRA (MRS.), J.S.C:

On 10th October 2011, in overruling the preliminary objection raised by the 1st and 2nd defendants to the jurisdiction of this court to entertain this matter, my main concern was that where there is any perception of inconsistency or contravention in the acts or omissions of any office holder or any person in contravention with the provisions of the constitution in respect of his public duties, and for our purpose here, the management or administration of public lands; the Constitution confers the right or duty on any citizen to bring an action for enforcement of the Constitution under Article 2 of the Constitution.

It is by actions of this nature that give reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance.

The allegations by the plaintiffs which were in very strong terms, were to the effect that, the grant of land designated as Parcel No. 29, Block 12, Section 019, located at St Mungo Street, Ridge, Accra to the 2nd Defendant smacks of cronyism and was therefore arbitrary, capricious, discriminatory and abuse of discretionary power vested in a public officer under the Constitution.

These are allegations that are capable of proof either by viva voce or documentary evidence as required by section 17 (1) and (2) of the Evidence Act of 1975 (NRCD 323). The Plaintiffs who bore the burden of proof however failed to discharge the burden of proving these allegations. Apart from the bare affirmation of facts made by the plaintiffs in their statement of case and memorandum of issues they offer no further proof of the facts alleged in them. This point has been adequately expounded by my brothers Atuguba Ag CJ and Brobbey JSC and therefore I have nothing useful to add.

I however associate myself with the reasoning and conclusion of my brother Brobbey that the plaintiffs have failed to establish their claims.

I wish to state by way of obiter that the Accra Redevelopment Scheme of residential properties policy as implemented by both the Rawlings and Kuffuor Administrations has not been wholly satisfactory and has raised a lot of negative comments and issues of morality from the populace.

The implementation of this scheme has dislodged a lot of government and public officials from their homes to give way to luxury apartments which only a few Ghanaians can afford to rent or buy.

I would stress that since these public lands were initially used to provide housing for government and other public officials, space should be made available to decently house these officials most of whom hold sensitive positions and thus need adequate privacy and security.

I would also dismiss the Plaintiffs' action.

[SGD] S. O. A. ADINYIRA (MRS.)

JUSTICE OF THE SUPREME COURT

OWUSU (MS.)JSC:

I have had the opportunity to read the Judgments of my esteemed brothers i.e. that of the respected brother, the president and that of Brobbey J. S. C. who incidentally happens to be exercising his Judicial Jurisdiction in this court for the last time at close of work to-day.

The reliefs sought by the plaintiffs and Memoranda of issues have been exhaustively set down in their Judgments. The relevant provisions of the constitution have been adequately considered. My respected brothers however failed to reach an agreement in their final decisions.

Whereas the president sustained the plaintiff's action in part, Brobbey J. S. C. dismissed the action in its entirety.

I agree that on the facts and on the strength of the respective cases of the plaintiffs and the Defendants the plaintiffs failed to lead any evidence to prove the allegation of discrimination, corruption, cronyism, arbitrariness and capriciousness and for that reason the claim based on them must fail as both of my esteemed brothers concluded.

With regard to conflict of interest, the plaintiffs came to the wrong forum i.e. this court for redress in contravention of the constitution which has specifically provided for avenue for its redress.

However my respected brothers failed to agree on the issue of abuse of discretionary power as envisaged under Arts. 23 and 296 of the constitution.

Article 258 (1) of the constitution sets up a Lands Commission with specific functions laid down under 258 (1) (a-e).

With the exercise of DISCRETIONALRY POWER under Art. 296 by 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; and
(c) -

The grant of the subject matter of this action was made in line with a scheme instituted by the Government in or about 1999 for redevelopment aimed at rationalizing the use of large tracts of public lands on which residential property had been constructed for use of a very limited number of persons of families. (see paragraph 1 of the amended statement of case by 2nd Defendant.)

It is noteworthy that this averment was not disputed by the plaintiffs.

The grant was in accordance with due process. If the plaintiffs failed to lead any evidence to establish that the grant was made in violation of Art. 296 as they alleged, then I am unable to appreciate how any person or authority can be accused of abuse of discretionary power.

It is for these reasons and reasons assigned by Brobbey J. S. C. that I agree with the conclusion reached by him on the issue of

abuse of discretionary power and for that reason, agree that the plaintiffs' claim be dismissed in its entirety.

[SGD] R. C. OWUSU (MS.)

JUSTICE OF THE SUPREME COURT

DOTSE JSC:

I have been privileged to have read the opinions of my respected brothers Atuguba Ag. C J and Brobbey JSC.

After applying my mind to the reasoning and conclusions contained in those judgments, I am of the respectful opinion that the views, reasoning and conclusions expressed in the judgment of my brother Brobbey JSC best address my own views, understanding as well as what best satisfies the tenets of law as applicable to the circumstances of this case.

I am particularly delighted that I find myself concurring with my respected and esteemed brother Brobbey JSC who begins his compulsory retirement tomorrow 23rd May 2012 the day on which he completes his constitutional term of 6 months as contained in Article 145 (4) of the Constitution 1992. This must indeed be a memorable day for my brother Brobbey JSC, who has not only distinguished himself on the Bench, but has proven to be a prolific and distinguished author as well. It is infact admirable for a Judge to peacefully retire after 40 years of distinguished service. For my part, I can only congratulate Brobbey JSC for his meritorious service to mother Ghana. On this occasion let me see him off with

these words of George Washington in his letter to Edmund Randolph, dated 31st July, 1795 when he wrote thus:-

"There is but one straight course,

And that is to seek truth

And pursue it steadily"

Is it a co-incidence that the above words are similar to the motto of a famous Hall of the University of Ghana, Commonwealth Hall, that is *"Truth Stands",* which incidentally happens to be the Hall of Residence of Brobbey JSC , myself and another member of this panel who shall remain nameless.

In deciding to concur with the opinion of Brobbey JSC, and by that it means the plaintiffs must have their action against the defendants dismissed in its entirety, I have been guided by the principle that in a court of law, the applicable rule of practice is that, he who asserts must prove. This does not change whether it is a criminal, civil or constitutional case such as the instant one.

The nature of the allegations against the defendants, contained in the pleadings of the plaintiffs are such that this court at some point offered the parties to give oral evidence in proof of their case. However both turned down the offer.

In any case, what should be noted is that, the burden of proof is on the plaintiffs, and no matter in what negative light one considers the sale of a Government bungalow with the large space of land measuring 1.04 of an acre to the 2nd defendant, the rules of evidence governing proof of cases in our courts as contained in Section 17 (1) & (2) of the Evidence Act, 1975, NRCD 323 cannot be departed from and wished away.

No evidence whatsoever was led to establish that the sale of the property in dispute to the 2nd defendant herein smacks of cronyism

and same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power.

It might be fairly easy and cheap to make unsubstantiated claims in the public and put same in the public domain. However, when these same allegations are made in a court of law such as this Supreme Court, then they have to be proven and substantiated against specific provisions of the Constitution and or statutory Law. No doubt, both Atuguba and Brobbey JJSC have come to the same conclusion that these allegations have not been successfully established and proven.

Secondly, it must be properly understood that Article 257 (1) of the Constitution 1992 actually vests all public lands in the President who holds same in trust for the good people of Ghana.

Then article 258 (1) of the Constitution 1992 established a Lands Commission which shall in co-ordination with the relevant public agencies and governmental bodies, perform the functions listed in article 258 1 (a) (b) (c) (d) and (e).

What this means is that, it is the Lands Commission which manages all the Public lands on behalf of the President i.e. the Government.

The Lease in this case had been issued in the name of the President for and on his behalf by the Chairman of the Lands Commission.

Is there any evidence before this court which suggests that in exercise of that function, the Lands Commission did not follow laid down procedure as outlined in the Constitution?

At the time the plaintiffs instituted this action, perhaps they could not have had access to all the documents but the same position cannot be said of them now. They therefore have the duty to lead the necessary evidence to rebutt the presumption of regularity in the Lease of the property to the 2nd Defendant.

Thirdly, since the process of sale or lease of Government bungalows had been put in place and executed since 1999, there ought to have been proper evidence to establish a criteria or measure indicating that there had been default in the procedure of the processing of the lease to the 2nd defendants based on the said Redevelopment of Residential Properties in Accra.

For example, the membership of the Oversight Technical Committee that dealt with the processes of the Redevelopment of Residential Properties Scheme had not been made known for this court to decide whether the role assigned the sector Minister for Lands and Natural Resources in the Constitution as well as those of the Lands Commission had been taken over and or hijacked by some invisible hands.

Since there is a lacuna in the evidence that the plaintiffs sought to proffer in support of their case, I am not prepared to make far fetched assumptions in their favour.

It is for the above and the other detailed reasons contained in the valedictory judgment of my esteemed Brother Brobbey JSC and more especially his exposition of the law on the tendering of official records or documents with special reference to section 162 of the Evidence Act, 1975 NRCD 323 which I will henceforth call the Brobbey Principles, that I agree that the plaintiffs action should fail and same be and is hereby dismissed.

[SGD] J. V. M. DOTSE

JUSTICE OF THE SUPREME COURT

BAFFOE-BONNIE JSC;

I agree with the opinion of my respected brother Brobbey JSC that the plaintiffs' action failed and is dismissed.

[SGD] P. BAFFOE BONNIE

JUSTICE OF THE SUPREME COURT

ATUGUBA, AG. C.J:

Having received the majority opinions a few minutes to this sitting, I cannot refer to or deal much with them. The plaintiffs per their writ claim as follows:

1. A declaration that, by virtue of Articles 20(5), 20(6), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Minister of Water Resources, Works and Housing in the previous Government of His Excellency, President J.A. Kufour, did not have the power to direct the sale, disposal or transfer of any Government or public land to the 2nd Defendant or any other person or body under any circumstances whatsoever, and that any such direction for disposal, sale or outright transfer of the said property in dispute or any public land to the 2nd Defendant was unconstitutional and illegal.
2. A declaration that, by virtue of Articles 20(5), 23, 257, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992, the Government of Ghana is obliged to retain and continue to use in the public interest the property

compulsorily acquired for public purpose the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2 located at St. Mungo Street, Ridge, Accra.

3. A declaration that the purported sale of the said Government Bungalow by the outgoing Government to one of its high ranking public officials, the 2nd Defendant, was in utter contravention of Articles 20(5), 23, 257, 258, 265, 284 and 296 of the Constitution of the Republic of Ghana, 1992 and the purported direction by the Minister of Water Resources, Works and Housing in the previous Government of His Excellency, President J. A. Kufour, smacks of cronyism, and the same is arbitrary, capricious, discriminatory and a gross abuse of discretionary power vested in a public officer under the 1992 Constitution.
4. A declaration that the publication by the Lands Commission and the Land Title Registration Office at page 18 of "The Ghanaian Times" published on 22/11/2008 in respect of the "Notice of Application for the Registration" by the 2nd Defendant of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2 located at St. Mungo Street, Ridge, Accra, a step taken by the Chief Registrar of the Land Title Registration Office to grant to the 2nd Defendant a Land Certificate in relation to the said property so as to effectuate the purported sale of the said Government property to him was in utter contravention of Articles 20(5), 23, 257, 258. 265, 284 and 296 of

the Constitution of the Republic of Ghana, 1992, and thus unconstitutional and void and the same must be struck out as such.

5. An order of Perpetual Injunction restraining the Chairman of the Lands Commission and the Chief Registrar of the Land Title Registration Office, their workers and agents from perfecting the registration of the parcel of land designated as Parcel No. 29, Block 12, Section 019, in extent 1.04 acres more or less, as delineated on Registry Map No. 003/019/1988, on which is situated by the Republic of Ghana Bungalow No. 2 located at St. Mungo Street, Ridge, Accra, in the name of the 2nd Defendant.

The parties elected to file separate memoranda of issues. The plaintiffs' issues dated 24/12/2010 are as follows:

"1. Whether or not the purported alienation, sale, disposal or outright transfer of Government Bungalow No. 2, located at St. Mungo Street, Ridge, Accra situated on 1.04 acres of land compulsorily acquired by the State for public purpose to the 2nd Defendant by the Minister for Water Resources, Works and Housing in the Government of His Excellency, President J. A. Kufuor, as a sample of prime and prized public properties/bungalows at Ridge, Cantonments and Airport – all in Accra, the administrative capital of Ghana – to many of that Government's Ministers, former Ministers, selected public officials, party officials and individuals, amounted to discrimination, lack of good exercise of discretionary power, smacked of corruption and conflict of interest, and so in gross violation of Articles 17(1),(2), (3), 20(5), 23, 296, 35(8) and 284 of the 1992 Constitution and thus null and void.

2. Whether or not the allocation of Government Bungalow No. 2, located at Mungo Street, Ridge, Accra, situated on 1.04 acres of land compulsorily

acquired by the State for public purpose by the 2nd Defendant to himself as the 1st Chief of Staff in the Government of President Kufour upon which Bungalow the 2nd Defendant requisitioned and spent huge public funds on its renovation to his own taste before the purported alienation or sale of that Government Bungalow by the said Government to the 2nd Defendant was discriminatory, smacked of corruption and conflict of interest, bespoke of gross abuse of discretionary power, depicted a gleeful disregard for administrative justice, and so in utter violation of Articles 17(1), (2) and (3), 20(5), 23, 296, 35(8) and 284 of the Constitution of the Republic of Ghana, 1992 and thus void."

Those of the 1st Defendant dated 31/12/2010 are as follows:

"1. Whether or not the purported sale, disposal or transfer of Government and public land by the Lands Commission to the 2nd Defendant (Jake Obetsebi Lamptey) was illegal and unconstitutional.

2. Whether or not prior to the purported sale, disposal or transfer of Government or public land by the Lands Commission to the 2nd Defendant (Jake Obetsebi Lamptey) cabinet approval for the transaction had been obtained.

3. Whether or not Plaintiff's claim is one involving a mere exercise of administrative discretion involving a land transaction and is therefore masquerading as a constitutional matter.

4. Whether or not Plaintiffs have sufficient community of interest with Government or the original owners of the land to prosecute their claim."

Those of the 2nd Defendant dated 16/12/2010 are as follows:

"1. Whether the claim in this suit is not a complaint against the management by Government of public land within its power and discretion under articles 257(1) and 258 of the Constitution 1992, and the Lands Commission Act 1994, Act 483 particularly s.2 thereof.

2. If the claim is one of complaint against the management of public land by Government whether the Supreme Court is the appropriate forum for adjudicating such complaint. In the alternative, whether the claim in this suit raises constitutional issues requiring determination by the Supreme Court in the exercise of its original jurisdiction.

3. Whether in the allocation and /or grant of the land in issue to the 2nd Defendant, and of other parcels within the Accra Area Redevelopment Scheme, the personal interest of the Minister of Water Resources, Works & Housing (the Minister) conflicted with his public duty, or he abused his discretionary power.

4. Whether the allocation and/or grant of the land in issue to the 2nd Defendant and of other parcels to others within the Accra Area Redevelopment Scheme was against Government policy.

5. Whether the plaintiffs must establish previous ownership of the land in issue to maintain their claim based on Article 20(6) of the Constitution 1992, and if they must, whether they can maintain the instant claim."

It is discernible that substantially common threads run through the parties' issues. I will therefore consolidate these issues as far as their essence is concerned and deal with them accordingly.

I shall deal first with the plaintiffs' allegation as to discrimination and smack of corruption and conflict of interest contained in the plaintiffs' first issue of their memorandum of issues. As to conflict of interest, that is a matter constitutionally assigned to the Commission of Human Rights and Administrative Justice under article 287 of the Constitution since article 284 which deals with conflict of interest by a public official falls under Chapter 24 relating to CODE OF CONDUCT FOR PUBLIC OFFICERS. Article 287 provides as follows:

"*COMPLAINTS OF CONTRAVENTION*

287. (1*) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice* and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice *who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.*

(2) The Commissioner for Human Rights and Administrative Justice or the Chief Justice as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission." (e.s)

It is settled law that where a special remedy has been provided for a matter only that remedy must be resorted to unless there is anything to the contrary, see *Ghana Bar Association v. Attorney-General & Justice Abban* [2003-2004] SCGLR 250, *Yeboah v. J.H. Mensah* (1998-99) SCGLR 492. As to discrimination and corruption, no evidence has been led thereon. The allegations as to them are dismissed.

Abuse of Discretionary Power

Issue has been joined as to whether the allocation of Government Bungalow No.2 situate on 1.06 acres of land at St. Mungo Street, Ridge, Accra is a wrong exercise of discretionary power under, inter alia, articles 23, 257(1), 258 and 296 of the Constitution. These articles are as follows:

"ADMINISTRATIVE JUSTICE

23. 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.

PUBLIC LANDS AND OTHER PUBLIC PROPERTY

257.(1) All public lands in Ghana shall be *vested in the President on behalf of, and in trust for, the people of Ghana.*

LANDS COMMISSION

258. (1) There shall be established a Lands Commission which *shall, in co-ordination with the relevant public agencies and governmental bodies*, perform the following functions –

(a) on behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;

(b) *advise the Government*, local authorities and traditional authorities on the policy framework for the development of particular areas of Ghana to ensure that development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned ;

(c) *formulate and submit to Government recommendations on national policy with respect to land use and capability*;

(d) advise on, and assist in the execution of, a comprehensive program for the registration of title to land throughout Ghana;

(e) perform such other functions as the Minister responsible for lands and natural resources may assign to the Commission.

(2) *The Minister responsible for lands and natural resources may*, with the approval of the President, *give general directions in writing to the Lands*

Commission on matters of policy in respect of the functions of the Commission *and the Commission shall comply with the directions*."

EXERCISE OF DISCRETIONARY POWER

296. 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 ether by resentment, prejudice or personal dislike* and shall be *in accordance with due process of law*; and

(c) where the person or authority is not a judge or other judicial officer , there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power." (e.s.)

The 2nd defendant contends that this issue is misconceived as it relates to management of public land by Government and therefore not justiciable within the original jurisdiction of this court. This contention is difficult to fathom. The power of management of public land has been constitutionally provided for and it is inexplicable why this court which has power to enforce the provisions of the

Constitution under articles 2 and 130 should lack jurisdiction to enforce articles of the Constitution relevant to that matter. This court has even gone as far as to hold that Chapter 6 relating to the Directive Principles of State Policy is enforceable by this court, see *New Patriotic Party v. Attorney-General* (1993-94) 1 GLR 35, S.C. and *Ghana Lotto Operators Association v. National Lottery Authority* [2007-2008] 2 SCGLR 1088. If the 2nd defendant's said contention is based on article 23 which is under Chapter 5 pertaining to the Fundamental human rights, this court's decisions in *Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General (No.1)* [2007-2008] 1 SCGLR 610, *Federation of Youth Association of Ghana (FEDYAG) v. Public Universities of Ghana & Others* [2010] SCGLR 265 and the Ruling of this court on the preliminary objection in *Samuel Okudjeto Ablakwa & Another v. The Attorney-General & Another*, J1/4/2010 dated 10/11/2011 establish that public interest actions not involving private and personal rights or matters can be litigated in this court under articles 2 and 130. The plaintiffs' action is such a public interest action so far as article 23 is concerned and is therefore within this court's jurisdiction.

The Soundness of the allocation of the plot to 2nd Defendant

The question whether the allocation of this property to the 2nd Defendant should stand or not should be situated in its proper context, that is the spirit behind the Constitutional provisions concerning land tenure. In *Owusu v. Agyei* (1991) 2 GLR 493, C.A. at 516, Aikins JSC stated concerning the constitutional creation of **an enforceable trust** relating to stool lands by article 164(1) of the 1969 Constitution as follows:

" … even though the chiefs had from time immemorial been holding lands on behalf of their respective communities, the government in 1958 promulgated the Akim Abuakwa (Stool Revenue) Act, 1958 and the Ashanti Stool Lands Act, 1958 *ostensibly to provide for the control of revenue and property of the stools* of Akyem Abuakwa State and Ashanti and for the administration of those revenues. In actual fact the main purpose was to create:

> "a stool revenue account for each stool into which stool land revenue was paid, and out of which account amounts determined by the Minister for Local Government were paid to the urban and local councils in these areas."

It was almost a well-known fact that *after the moneys had been paid into the urban and local councils, the moneys secretly found their way into the pockets of party activists and functionaries of the government of the day*, leaving insufficient money for the maintenance of the traditional authorities.

The legislators made it clear that it was to stop this state of affairs from gaining root that article 164(1) was proposed, and they emphasised this in paragraph 709 of the Proposals thus:

> "709. We do not think that that state of affairs should be allowed to continue in the new Ghana in which we live. *We therefore propose that there should be a provision in the Constitution which should vest*

all stool lands in Ghana in the appropriate stool on behalf of, and in trust for, the subjects of the Stools. Here we include skin lands in stool lands."

There is nothing in the Proposals which indicates that article 164(1) was included merely to declare what the customary law had been for ages, ie the unaccountability of chiefs in their traditional holding of land in trust for their people, as held by the Court of Appeal. In my view, *the holding of the Court of Appeal that the Constitution, 1969 had introduced nothing new is unfortunately a wrong assessment within the context of the true legal position.* But even if it is said to be a declaration of the customary law, did the customary law still prevail and supersede the statutory provision in the Constitution, 1969? I think not. It seems to me, under the circumstances, *that the customary law was embraced by the statutory provision of article 164(1). It definitely ceased to exist, giving way to the statute*, and *the beneficiaries had the right to seek intervention of the court, and require the trust fund to be brought into the court*: see *Bastlett v. Bastlett* (1845) 4 Hare 631." (e.s.)

Similarly in *Republic v. Lands Commission; Ex parte Vanderpuye Orgle Estates Ltd* [1998-99] SCGLR 677 at 723-724, Acquah JSC (as he then was) commenting on section 8(1) and (2) of the Administration of Lands Act, 1962 (Act 123) said:

"… In fact, before 1962 when the function of granting concurrence became a ministerial prerogative, it was either the chairman or clerks of the defunct district and urban councils which performed this function. *The substitution of the minister by section 8(1) of Act 123 for these local officials had its own drawbacks. Accordingly, when the 1969 Constitution was being prepared, the excesses of the previous regime as to its land policy led to the framers and, later, the Constituent Assembly, to look far and wide for an institution to manage and administer stool and other lands with a minimum of political interference.* The English Lands Commission, set up by the Labour Government in 1966, captured the imagination of the Constituent Assembly and its report was incorporated into the 1969 Constitution with significant adaptations. *Thus the 1969 Constitution established, for the first time in Ghana, the Lands Commission in article 163(1) thereof.* And in article 164(3), it provided that there could be no assurance of any stool land unless executed with the consent and concurrence of this commission. It also provided that a person aggrieved by a refusal of the Lands Commission to grant its concurrence had a right of appeal to the High Court and not to the appeal tribunal established under Act 123. The Lands Commission Act, 1971 (Act 362), was subsequently enacted. *The 1979 Constitution also continued with the existence of the Lands Commission under its article 189(1)*, and the Lands Commission Act, 1980 (Act 401), was in consequence made. …" (e.s.)

Against this background the 1992 Constitution has continued and reinforced the trust holding of lands whether public or communal in articles 257 and 258, aforesaid, not forgetting the general superintendence of articles 23 and 296. **The Constitution could not be more forthright as to its spirit and intention than as in article 36(8) of the Directive Principles of State Policy. It lays them bare as follows**:

> " (8) *The State shall recognise that ownership and possession of land carry a social obligation to serve the larger community* and, in particular, the State shall recognise that *the managers of public*, stool, skin and family lands *are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana*, of the stool, skin or family concerned and *are accountable as fiduciaries in this regard.*" (e.s.)

Coincidentally, judicial opinion and attitude towards this enforceable Trust idea of land holding square with the provisions of article 36(8). Thus, in *Republic v. Lands Commission; Ex parte Akainyah* (1975) 2 GLR 487 the facts of the case as stated in the head note reveal as follows:

> "The applicant, a subject of the Samenyi stool of Western Nzima, in *consideration of free legal services rendered to the said stool*, was under a deed of gift granted 320 acres of the stool land for farming purposes but the Lands Commission refused to give their consent and concurrence to the grant to validate. *The applicant therefore applied to the High Court for an order for mandamus to compel the Lands Commission to give the statutory*

consent and concurrence to the grant in compliance with article 164(3) of the Constitution, 1969. The Lands Commission contended, inter alia, that the grant of 320 acres was in excess of the statutory limits and that the application to the High Court was misconceived because the proper procedure for him was to have served a request in writing on the commission to state a case for the High Court under section 2(4)-(6) of the Lands Commission Act, 1971 (Act 362).

Upon these facts, Edusei J (as he then was) stated stoutly, *inter alia*, as summarised in holding (1) of the head note thus:

"(1) *since the management of stool lands was given to the Lands Commission for the benefit of stool subjects, they, in the course of performing their duties, must exercise their power or discretion judicially and judiciously but not capriciously.* They must see to it that *a grant did not operate to the disadvantage of the stool and its subjects.* Since the applicant was a stool subject and was by customary law entitled to a determinable estate in the stool land, the refusal of the Lands Commission to give their consent and concurrence was unreasonable and oppressive."

In *Nana Hyeaman II v. Osei* (1982-83) 1 GLR 495 at 499-500 Twumasi J as he then was said:

"The juxtaposition of Acts 123 and 124 is in itself of tremendous significance, for they reflect **a continuing legislative response to one**

identifiable problem, namely *how best* stool lands can be administered to *optimum public advantage*." (e.s.)

Accordingly, in *Republic v. Regional Lands Officers, Ho, Ex parte Kludze* (1997-98) 1 GLR 1028, Acquah JA (as he then was), sitting as a Justice of the High Court said at 1033 thus:

" All what article 36(8) of the Constitution, 1992 does is to *acknowledge and point out that all those who are in charge of public*, stool, skin and family *lands are trustees for the beneficiaries of such lands, and that such managers are accountable to the beneficiaries*."(e.s.)

Continuing at 1037 he concluded on article 36(8) thus:

"The article simply draws attention to the *fiduciary nature of the responsibility imposed on managers of public*, stool, skin and family *lands*. In the *case of family lands* this has already been *given the force of law in the Head of Family Accountability Law*, 1986 (PNDCL 114)" (e.s.)

An accountable fiduciary must, I think, manage the subject-matter of his Trust with as much care, diligence and prudence as he would manage his own affairs, so as to produce the optimum benefit for the cestui que trust. This involves a balancing act, a weighing of one benefit against other competing benefits, so as to arrive at and settle for the best of them all.

Thus in *Mahama v. Issah* [2001-2002] 1 GLR 694 C.A. it was held as stated in head note 2(b) concerning the 1969 Constitution thus:

> "(2) … (b) while article 162 *vested public lands in the President for all the entire people of Ghana and catered for the interest of all the people*, article 164(1) vested *stool land* in the stool or skin and *catered only for the interest of the subjects of the stool* or skin, which was *a well defined, limited and small group of people.*" (e.s.)

This implies that **there are degrees of public interest at play, for the subjects of a particular stool or matters concerning their welfare are also of a public character but are of a narrower public scope as compared with the wider generality of the Ghanaian public. Certainly then a decision which weighs more in favour of the wider generality of the Ghanaian public is preferable to one that is of a more limited public interest.**

This line of thought is inherent in the opening words of article 36(8) as follows:

> "The State shall recognise that ownership and possession of land carry a social obligation to serve *the larger community*…" (e.s.)

In *Tema Development Corporation & Musah v. Atta Baffour* [2005-2006] SCGLR 121 the facts of the case as captured in the head notes are as follows:

> " The Tema Development Corporation (TDC) was established by the Tema Development Corporation Instrument, 1965 (LI 469), as a

public body or institution responsible for the planning and development of the Tema Municipality. In 1977, the TDC rented its property, a one bed-roomed rental unit (the disputed premises), to one Mr. E Q Quartey who subsequently died in November 1980.

Before his death, ie in June 1980 Mr Quartey, without informing his landlord, the TDC, sublet the disputed house to and did receive six months rent advance from one Mr Atta Baffour (hereinafter called the plaintiff). Before then **Mr Quartey had also invited one Mr Mamudu Musah (hereinafter called the second defendant), to live with him sharing the same bedroom. Subsequently, the second defendant moved to occupy the kitchen in the disputed house rent free.**

For the period of eight years after the death of Mr Quartey, the plaintiff was solely responsible for the payments of the monthly rents to the TDC together with other outgoings in the name of the legal tenant, the deceased E Q Quartey. He also kept the house in a tenantable condition. In August 1988, the plaintiff made a formal application to the TDC, requesting a formal transfer of the premises into his name as the sitting tenant in substitution of Mr. Quartey. In 1989, the TDC recognised him as the new legal tenant of the disputed house.

However, *in October 1990, the second defendant, petitioned the TDC against the transfer of the disputed house to the plaintiff.* The TDC therefore set up a rent tribunal which investigated the

competing claims of the parties. *The TDC decided, on recommendation of its rent tribunal, to grant tenancy of the disputed house to the second defendant whilst the plaintiff was to be offered a plot upon which to build his own house.*

Aggrieved by the decision to deprive him of the disputed house, the plaintiff sued the TDC and the second defendant in the High Court, Tema for, inter alia, a declaration that he was the legitimate sitting tenant of the disputed premises and for an order for ejectment of the second defendant. The second defendant counterclaimed for the same relief.

The trial judge, having found, inter alia, that the plaintiff had been paying monthly rents to the TDC since 1980, gave judgment for the plaintiff and dismissed the second defendant's counterclaim. The defendants appealed to the Court of Appeal from the decision of the trial High Court. The Court of Appeal, having found, inter alia, that on the evidence, the plaintiff was the only person who had applied to the TDC for the legal tenancy of the disputed house, affirmed the decision of the trial judge and thus ordered that the plaintiff be made the legal tenant. The defendants further appealed on the sole ground that the judgment of the Court of Appeal was against the weight of the evidence. The TDC did not file its statement of case and appeared to have abandoned the appeal.

Upon these facts this court held as per head notes (2) and (3) as follows:

"(2) The grounds upon which an administrative action would be subject to judicial review were illegality, irrationality and procedural impropriety. By *"illegality" was meant the decision maker must understand correctly the law regulating his decision-making power. "Irrationality"* could be succinctly referred to as *Wednesbury unreasonableness – applicable to a decision which was so outrageous in its defiance of logic or of accepted moral standards that no sensible person, applying his mind to the question to be decided, could have arrived at it.* By "*procedural impropriety*" *was meant* not only failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who would be affected by the decision but *also failure by an administrative tribunal to observe procedural rules expressly laid down in legislation by which its jurisdiction was conferred*, even where such failure did not involve any denial of natural justice. *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 and *Council of Civil Service Unions v. Minister for the Civil Service* (supra) (per Lord Diplock at 949 and 950-951) cited.

(3) On the facts of the instant case, the three grounds for judicial review had been satisfied. The Court of Appeal had therefore rightly affirmed the decision of the High Court to interfere with the impugned decision of the TDC. *The mandate of the TDC under the Tema Development Corporation Instrument, 1965 (LI 469), Part II,*

(b)(ii): to **"prepare and execute housing schemes and maintain, manage and control any such housing scheme"** *did not confer on it very wide discretionary powers. The corporation could not do as it pleased; it had to act within the confines of the law.* Thus the *impugned decision* by the TDC *was irrational or unreasonable* because first, *it sought to deprive the plaintiff of the use of the property which the TDC had, since August 1988, upon application for tenancy, permitted him to use,* and in respect of which he had a legitimate expectation that he would not be thrown out except upon some rational grounds. Second, *the decision to grant the tenancy to the second defendant defied logic and common sense or accepted moral standards; no sensible or reasonable person called upon to apply his or her mind to the decision to be taken, could have arrived at that decision.*" (e.s.)

In that case this court clearly contrasted the two applicants and settled for the proven reliable one as against the other. This court was able to do so by applying the comparatively more restrictive common law principles for the review of administrative action. This court has by the terms of article 36(8) ampler power. Here is a bungalow renovated and refurbished at very considerable cost to the nation to render it suitable for the residence of a minister. The bungalow has been used for many years for public official accommodation. The location of the house and the plot on which it stands are obviously strategic for easy access to the Ministries, the hub of governmental activity. Judicial notice is taken of the scarcity of bungalows for high ranking officials including judges. If the plot of land could be used "*for the development of three blocks of flats of at least four-*

storeys" (see Exbibit JOOL 8) which the 2nd defendant undertook to build under the terms of the grant of the plot to him why could it not hold more bungalows for public official accommodation? It is also hard to think that the bungalow became a shanty and run down building so soon after its massive renovation works.

By contrast the substantial privatisation of this land means that the flats to be erected thereon would go for competitive commercial rentals and public official accommodation therein is inconceivable and at any rate at high cost to the state or its officials. Certainly a public trustee of that land with fiduciary accountability under 257 (1) and 258 as clearly constitutionally expounded in article 36(8) cannot be said to have taken such a decision so as to *"serve the larger community"* in the best manner. I am compelled by the force of the facts and common sense (which is also a rule for the construction of statutes), to reach this conclusion.

Let me hasten to add that even though the 2nd defendant, by the terms of his grant is required to erect residential flats on the land that does not entitle the 1st defendant to opt for an inappropriate alternative of providing accommodation, aforesaid. Though an officer may be acting strictly within his statutory power yet he can be held to have made a faulty decision in the manner he has exercised that power, see *Republic v. Assistant Director of Prisons; Ex parte Dagomba* (1979) GLR 1 and *Westminster City Council v. Greater London Council* (1986) 2 All ER 278 H.L. at 295-296 per Lord Templeman. In any case as I have already pointed out, supra, the ambit of this court's power to review the exercise of discretion

concerning the allocated plot in this case depends on the stark and undisguised amplitude of article 36(8). I am even more emboldened by the fortuitous and revolutionary provisions of section 10(4) of the Interpretation Act, 2009 (Act 792) as follows:

> "10(4) Without prejudice to any other provision of this section *a court shall construe or interpret a provision of the Constitution or any other law in a manner*
>
> (a) *that promotes the rule of law and the values of good governance*,
> (b) that advances human rights and fundamental freedoms,
> (c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and
> *(d) that avoids technicalities and niceties of form and language which defeats the purpose and spirit of the Constitution and the laws of Ghana."*(e.s.)

The welfare of Ghanaians, private or official alike depends first and foremost on the apparatus of the State. Where therefore the needs of that apparatus are not met it would be a preposterous decision to privatize the relevant official assets.

The next issue, though not wholly unrelated to the first I have dealt with, is whether the grant of the said plot to the 2nd defendant was in breach of article 258 in particular, especially in violation of cabinet policy relating to the management of land in Ghana.

Article 258 has been set out already *ut supra*. Clause (1) of this article requires that the "Lands Commission … *shall, in co-ordination with the relevant public agencies and governmental bodies, perform* the following *functions* …" The importance of this part of article 258 is highlighted by the forthright recommendations of the Report of the Committee of Experts (Constitution) on Proposals for Draft Constitution of Ghana, at pages 138-139 between paragraphs 302-306 as follows:

" **CHAPTER TEN**

ADMINISTRATION OF LAND

302. *Ghanaians need no reminder that land in this country has political, economic, social and religious implications*. Our traditional political systems and our political economy revolved around our system of land ownership and tenure. Some of the earliest manifestations of nationalism in Ghana were fuelled by the determination and united opposition of the people of Ghana to what was regarded as an inadmissible assertion of ownership of our lands by the colonial authorities. It is equally true that industrial and agricultural development in these modern days depends very much on a rational and effective system of land management. And yet it is all too true that in Ghana no such system has emerged. *Land management in Ghana has been bedevilled by a host of factors such as insecurity of title, wasteful and protracted land litigation, lack of effective coordination among the various agencies concerned with land management, a chaotic system of land tenure and the failure to*

appreciate the technique of sound land management. All this seriously impedes the delivery of land for development.

303. *The Committee is of the view that this situation calls for a major reform. What follows is a preliminary attempt to identify some of the problems.*

304. The Committee would stress the principle enshrined in Article 188 of the 1979 Constitution, that all public lands in Ghana are vested in the President on behalf of, and in trust for, the people of Ghana. *It follows that the administration of public lands is a matter of the highest public interest and that the organisational arrangement relating to such administration should be efficient, viable and productive.*

THE LANDS COMMISSION

STATUS OF THE COMMISSION

305. The 1979 Constitution charges the Lands Commission with responsibility for the management of any land or minerals vested in the President. The fusion of the management of lands and mineral resources in one state agency is not conducive to efficiency. Most countries have a separate agency dealing with mineral resources, and it is hardly surprising that the Lands Commission was divested of this

responsibility by PNDCL 42. The Committee endorses this development.

306. *However, we would go further to question the functional basis for the Constitutional guarantee of the autonomy of the Lands Commission. The 1979 Constitution proclaimed that the Lands Commission was subject to no authority other than the Constitution. Whatever the merits of autonomy in the abstract sense, it would seem unrealistic to insulate a vital economic agency from the entire apparatus of Government concerned with the management of the economy. One of the serious impediments to effective land management in this country is the lack of co-ordination among the various agencies with responsibility in this area. In principle, a constitutionally guaranteed autonomy of any one of such institutions seems unrealistic. The Committee, accordingly, proposes that the Lands Commission should be responsible to the Minister of Lands and Natural Resources."*

It is discernible that the framers of the 1992 Constitution gave these recommendations concerning the need for co-ordination in the functioning of the Lands Commission a much broader dimension than being responsible to the Minister of Lands and Natural Resources. The co-ordination required of the Lands Commission in article 258 (1) is "*with relevant public agencies and governmental bodies* …" Without attempting an exhaustive roll call of the institutions contemplated by this provision, some of them inherently are present. Clauses

(1)(a)(b) (c) (e) and (2) of this article show that the Government (as defined in article 295) and the Minister for Lands and Natural Resources are major stakeholders in the functioning of the Lands Commission as far as policy at least is concerned.

The evidence upon which the parties rely in this action clearly shows that the Lands Commission in making the disputed allocation and grant of the land in question in this action acted pursuant to a request made by the Minister of Works and Housing in favour of the 2nd defendant. Thus exhibit JOOL 7, as far as relevant, states thus:

"

LANDS COMMISSION

P.O. BOX CT 5008

CANTOMENTS

ACCRA

GHANA

2nd June, 2008

HON. JAKE OBETSEBI-LAMPTEY

P.O. BOX CT 4645

CANTOMENTS

ACCRA

WITHOUT PREJUDICE

Dear Sir,

ALLOCATION OF PLOT NO. 2. ST. MUNGO STREET RIDGE RESIDENTIAL AREA FOR REDEVELOPMENT

The Lands Commission *at the request of the Ministry of Water Resources, Works and Housing has decided to offer you* plot No.2, St. Mungo Street Ridge Residential Area, edged pink on the attached plan and enclosing an area 1.06 acres at a price of the Three Hundred and Ninety Thousand (GH) Cedis (GH¢ 390, 000.00) for *redevelopment*.

The terms and conditions of the offer are as follows:

A. **PURPOSE**: The plot shall be used for the development of a two-storey duplex or detached houses.

B. **TERM**: 50-year renewable lease on terms and conditions usually embodied in leases in government land for residential development. …

Yours faithfully,

SIGNED

EXECUTIVE SECRETARY

(ALHAJI H. I. BAREYH)" (e.s.)

This shows that the Minister of Lands and Natural Resources was not involved in the alleged land filling policy the Lands Commission was purportedly carrying out, as evidenced by the disputed allocation of the land to the 2nd defendant. Clause 2 of article 258 contemplates that the Minister of Lands and Natural Resources can *suo motu,* with Presidential approval, issue policy instructions to the Lands Commission in respect of its functions "*and the Commission shall comply with the directions.*" However, this Minister will also be enabled to do so if "*in co-ordination with*" him, among others, the Minister is let into the intended approach regarding land use by the Lands Commission.

The 1st defendant (the Attorney-General) by his amended statement of claim dated 30/12/2009 averred in paragraphs 2 to 7 as follows:

> " Hon. Jake Obetsebi-Lamptey was allegedly granted a Lease of No. 2 St. Mungo Street on 15th September 2008, by the 2nd Defendant *following allocation by the then Minister for Water Resources, Works and Housing.* The Lease was made in consideration of a premium of three hundred and ninety thousand Ghana Cedis (GH¢390, 000,000.00) paid by Hon. Jake Obetsebi-Lamptey.
>
> The said Lease was granted in furtherance of *the Accra Re-development Scheme* which included among others *the demolition of*

old run-down bungalows often located in the centre of huge plots of land and *the construction of as many new houses as the plots can take. This Scheme had been initiated in the year 1999 when Cabinet approved the Accra Redevelopment Scheme and also approved the bidding rules and guidelines for the selection of prospective developers based on a fair and transparent bidding system.*

The Committee on the Redevelopment Scheme which was chaired by the Minister for Works and Housing was required to submit its evaluation report and recommendations to an Oversight Committee for consideration and onward transmission to Cabinet for approval.

In spite of the requirement of Cabinet approval, the Minister for Water Resources, Works and Housing failed to seek such approval. Rather, the Minister allocated plots meant for redevelopment to prospective developers without following the laid-down procedure, which included approval by Cabinet (ref. AGI).

The Minister for Water Resources, Works and Housing did not obtain Cabinet approval before allocating the property to Hon. Jake Obetsebi-Lamptey. It is submitted that the purported transfer and sale of the property to Hon. Jake Obetsebi-Lamptey was irregular, without authority and therefore void.

The subsequent acts of the Hon. Jake Obetsebi-Lamptey in obtaining a lease from the Lands Commission and paying the compensation required therefore does not ratify the wrong which had been done at the time of the allocation." (e.s.)

The 2nd defendant indeed does not dispute that the Lands Commission has to act in co-ordination with, inter alia, the cabinet (or Government) for he contends in paragraphs 2 and 5 of his amended statement of case dated 5/11/2010 as follows:

"1. The 2nd defendant was allocated the property in issue (the land) at a time he *was not in public office*. *The land*, like other public lands in Accra granted to over 100 private persons, *was granted to the 2nd defendant for redevelopment within a scheme initiated by Government in or about 1999, aimed at rationalising the use of large tracts of public lands on which residential property had been constructed for use of a very limited number of persons or families.*

2. Further to the allocation the Lands Commission granted to the 2nd defendant a lease of the property dated 15 Sept 2008. By the lease, and letters from the Lands Commission dated 2 June 2008 and 24 July 2008 respectively, the 2nd defendant was obligated to develop on the land, for residential purpose only, three blocks of flats of at least

four storeys *in conformity with Government objective of increasing the utility of the land.* The 2nd defendant accepted the terms by letter dated 28 July 2008. The grant, like the other grants, was consequently in the public interest, *with Government leaning on private investment to meet its objectives.* We contend that Government was not in breach of article 20(5) of the Constitution, 1992, (the Constitution) in the grant of land.

5. *The allocation and grant in issue*, as well as the other parcels *within the re-development scheme*, we contend, were made *within the mandate and discretion of the Executive or Government in the management of public land pursuant to article 258(1) of the Constitution*, *particularly within the mandate of the Minister who was in charge of housing policy and management of government housing stock*; and of section 2(1) of the Lands Commission Act, 1994, Act 483. *The use of discretion is inherent in* the vesting in the President of the Republic, of all public land in trust for the people of Ghana under article 257 of the Constitution; and *in the Executive's authority to set policy for use of public land under article 258(1)*. The allocation of the land to the 2nd defendant was in conformity with the *re-development scheme and is not illegal as claimed by the plaintiffs* or by the 1st defendant. The subsequent grant of the lease by the Lands Commission to the 2nd defendant was also within its constitutional

and statutory mandate was perfectly legal, and regularly effected." (e.s.)

The 2nd defendant further contends in his paragraph 10 in answer to the 1st defendant's said statement of case thus:

" 10. *The extract of the minutes of cabinet* exhibited by the 1st defendant to the affidavit of Cecil Adadevoh Senior State Attorney dated 11 Dec 2009 shows that *the main concern of cabinet was to prevent disposal of properties within the redevelopment scheme* at inadequate values. The value paid by the 2nd defendant (GH¢390, 000) has not been challenged as inadequate. And if it is, it is not for the Supreme Court, however, to adjudicate on it." (e.s.)

The said cabinet minutes relied on by the parties is exhibit AGI. It is as follows:

"**13. RECOMMENDATION OF OVERSIGHT COMMITTEE ON REDEVELOPMENT OF RESIDENTIAL PROPERTIES IN ACCRA AND OF COMMITTEE ON LANDGUARDING AND COMPENSATIONS.**

13.1 Presenting *the memorandum* on the above subject *the Attorney-General and Hon. Minister for Justice* recalled that *Cabinet, on 21st January, 1999, considered a report submitted by the Hon. Minister for Works and Housing on Redevelopment of Residential Properties in Accra*, and decided that *an Oversight Committee should review the*

whole exercise of redevelopment of Government residential properties. Another Committee was also established to examine the "Landguard" phenomenon and the issue of outstanding compensations in respect of public lands acquired by the State.

13.2 The Hon. Minister informed Cabinet that the two Committees operated jointly to consider the issue and, recommended, among others, as follows: -

(i) **Re-development of Residential Properties In Accra**

(a) *the 17 applications of prospective developers approved by the Lands Commission should be declared null and void, due to the fact that the selection of the applicants/prospective developers for plots was not based on a fair and transparent bidding system* and also that the values for the listed properties were on the lower side and did not reflect current land values in the areas earmarked for re-development;

(b) the Committee on the redevelopment scheme chaired by the Hon. Minister for Works and Housing should be guided in its work by the following:

* *proposed bidding rules attached to the memorandum*;

* recommended minimum land values submitted by the Ministry of Lands and Forestry for grant of public lands in the specified areas as follows: -

Location	**Value**
Switchback	¢950,0 million per acre
Airport	¢890,0 million per acre
Cantoments	¢850,0 million per acre
Kanda	¢750,0 million per acre

(c) in the specific case of SSB Ltd., the offer should stand out but the value of the land granted to it should be based on the recommended values in paragraph (b) (i) above;

(d) *the Committee on the redevelopment Scheme should submit its evaluation report and recommendations to the Oversight Committee for consideration and onward transmission to Cabinet for approval.*

(e) the Executive Secretary of the Lands Commission should submit a report on all cases of transfer of interest by multi-national companies (to third parties) in grants originally made to them by Government and the lease periods of which were nearing expiry."

A close study of exhibit AGI and the pleadings and the irresistible inferences flowing therefrom clearly show that:

(a) **The Minister for Works and Housing and the Lands Commission disregarded the policy decision of the Government requiring that the Scheme for Redevelopment of Lands be submitted to an Oversight Review Committee for their review and submission to cabinet for approval.** The evidence clearly shows that **this process was not completed before the land was granted by way of a 50-year leasehold to the 2nd defendant.** This therefore **violates the Government's (Cabinet's) policy, in co-ordination with which the Lands Commission is constitutionally required to act.** It is noticeable that in that policy there was an input from the Minister of Lands and Natural Resources regarding minimum land values for grant of public lands in specified areas.

(b) The Cabinet held that the "*17 applications of prospective developers approved by the Lands Commission should be declared null and void, due to the fact that the selection of the applicants/prospective developers for plots was not based on a fair and transparent bidding system and* **also that the values for the listed properties were on the lower side and did not reflect current land values in the areas earmarked for re-development**" (e.s.)

The spirit of the Government and letter of this policy are clear. In this case **the grant of the land to the 2nd defendant was certainly not based on any fair and transparent bidding system as exhibit JOOL 7 shows**.

These constitutional infractions certainly vitiate the grant of land to the 2nd defendant. Authority is hardly needed for this than article 2 of the Constitution. In any case in *City & County Waste Ltd v. Accra Metropolitan Assembly* (2007-2008) 1 SCGLR 409 this court held that **the award of a waste disposal contract by the AMA to the appellant company without recourse to the district tender committee of the Assembly** and without the inclusion of the increment of the expenditure involved in the Assembly's approved budget was illegal, null and void for contravention of inter alia sections 39(1) and 87(1) of the Local Government Act 1993.

The Validity of exhibit AG1

I have always thought that the law of Evidence is such that when the parties admit or agree on certain facts their proof is dispensed with. There is even an English Court of Appeal decision to the effect that when parties plead documents they become part of the pleadings and the court is entitled to look at them without their being exhibited even by an affidavit, see *Day v. William Hill (Park Lane) Ltd* (1949) 1 All E.R. 219, C.A. Exhibit AG1 comes from the Attorney-General's affidavit and he and his office are the principal legal advisers to the Government. He is himself a cabinet minister and therefore particularly suited as to its authenticity. Authenticity under the Evidence Decree 1975 (NRCD 323) has been very widely and liberally provided for and is also satisfied on the facts of this

case. I do not also think that section 9 of the Evidence Decree 1975 (NRCD 323) as to judicial notice of matters capable of ready and accurate ascertainment as to their veracity was meant to be left idle. Indeed in *Ekwam v. Pianim* (1996-97) SCGLR 120 this court took judicial notice of a reprieve granted by the President to the defendant when annexed to the pleadings. Indeed this court has held often that evidence other than affidavit evidence is hardly led in this court in view of rules 46 and 48 of the Supreme Court Rules, 1996 C.I. 16. These are provisions which are *specialibus* and not *generalia*. A court is entitled to rely on documentary or other evidence available to it at any stage of its proceedings.

Here the parties themselves have no issues as to the authenticity of the relevant documents and have founded or argued their cases based on their contents. In any case if the presumption of regularity of official acts is to be respected then the certificate of authenticity on exhibit AG1 ought to hold good *donec probetur in contrariam*.

It is unnecessary to multiply further the reasons for this decision. The plaintiffs' action therefore succeeds to the extent appearing in this judgment.

[SGD] W. A. ATUGUBA

AG. CHIEF JUSTICE

AKUFFO (MS), JSC:

I have been privileged to read beforehand the opinion read herein by my learned Brother, Atuguba, JSC., and for the reasons he gives therein, I am in full agreement with his conclusions. However, there are a number of observations that I wish to make concerning a number of matters of particular concern to me.

Firstly, I have become extremely concerned of late that, in the handling of matters involving the interpretation and/or enforcement of our Constitution, there is a growing tendency for this Court to become (in my view) unnecessarily ensnared by the particularities and specificities of the facts of the suit and the technicalities of the manner in which it has been pleaded. The big picture, being constitutional interpretation and enforcement, and its necessary legal impact not only on the individual parties to the suit, but more, importantly, also on the generality of the Ghanaian citizenry for the present and future, it seems to me, sometimes tends to become of secondary importance. In my humble view, it is incumbent on this court, where a matter comes before it by way of a writ invoking its original jurisdiction, to trawl through the pleadings in a quest to identify the core constitutional question(s) in issue, rather than, just what the parties claim to be matter(s) in issue. In the instant matter the real issue was, unfortunately rather obfuscated by the manner in which the writ (including its subsequent amended versions) was couched, with so much red-herring and personalisation.

Furthermore, once this court has determined that its jurisdiction has been properly invoked, it behoves it to ensure that, the purpose of the court's original jurisdiction is not defeated by technicalities or procedural errors that do not amount to miscarriage of justice, the primary concern being to serve the greater interest of the citizens of the Republic of Ghana. In this matter, the core issue was whether or not in the administration and management of public lands the government and the Lands Commission had proceeded in accordance with the Constitution or had in any respect contravened any part of it, in word or in spirit. That the proper administration and management of the land and natural resources of Ghana is of crucial importance is evidenced by the sheer fact that a whole chapter is reserved for it in the Constitution. (My brother Atuguba discusses quite extensively in his opinion herein, the rationale for such treatment, and in particular the raison d'être for the establishment and structure of the Lands Commission, I will, therefore, not

belabour that point.) All I wish to add is that the Lands Commission is not intended to be a mere rubber stamp of ministerial fiat, but rather an important catalyst for sound land policy formulation, administration and management. When that role is not allowed to operate or when the arrangements made in the Constitution for guiding land management and administration are ignored, and the institutions that have been specifically earmarked to function in relation to these responsibilities, are for whatever reason, ousted or sidelined, then we have operations and activities that are not in consonance with the Constitution. In this case one of the clearest manifestations of non compliance with the Constitution was the controlling role played by the Ministry of Water Resources, Works and Housing to the virtual exclusion of the Minister responsible for Lands and Natural Resources, to whom the Constitution has assigned such role.

Finally, in fulfilling our task herein, it was incumbent upon us to take into due account article 257 (which vests public lands in the President on behalf of and in trust for the people of Ghana; including lands vested in the government for the public service of Ghana or acquired in the public interest), and article 258 (which establishes the Lands Commission and spells out, in remarkable detail, its functions and modus operandi). We also needed to take into account provisions such as Article 20 (5) and (6) which, in my view, enfetter the manner in which the functions under articles 257 and 258 may be exercised so as to protect public lands and, in particular lands acquired by the Republic for specified use, such as the lands in issue in this matter. Whilst the Court cannot instruct or dictate to the government what policies it may make, the Constitution gives us the power, when called upon to do so to examine such policies to ensure that they are, indeed, in consonance with its provisions. That is part of our role in assuring good governance and we must never shirk from it.

In my brief opinion in the case of Nii Kpobi Tettey Tsuru III v. The Attorney General, Writ No. J7/7/2010, I seized the opportunity to make an observation which I deem appropriate to repeat here:-

> "It is the duty of our courts to safeguard, to the utmost, the fundamental human rights enshrined in our Constitution; these are what really make us a democracy, and we may only derogate from them where the dictates of the law are patently clear. Where this Court is called upon to interpret or define

the applicability of a provision of the Constitution, adequate consideration must be given to every provision and we must not impose any limitation that may result in a tendency to defeat the underlying vision of the Constitution – to '*secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity....*' (Preamble to the Constitution) - and the ends of justice."

[SGD] S. A. B. AKUFFO (MS.)

JUSTICE OF THE SUPREME COURT

AKOTO-BAMFO (MRS) JSC:

I agree with the reasoning and conclusions of my respected brother; Atuguba The Acting Chief Justice and therefore have nothing useful to add except as to note that when the original jurisdiction of this Court is invoked to enforce any of the provisions of the Constitution, Rule 53 of C1 19, the Supreme Court Rules sets out a peculiar procedure for the mode of trial, adducing and reception of evidence before the Court.

[SGD] V. AKOTO-BAMFO (MRS)

JUSTICE OF THE SUPREME COURT

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