IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: BAFFOE-BONNIE AG. CJ (PRESIDING)

AMADU JSC

KULENDI JSC

KWOFIE JSC

DARKO ASARE JSC

WRIT NO.
J1/20/2025

21ST MAY, 2025

CENTRE FOR CITIZENSHIP CONSTITUTIONAL ELECTORAL SYSTEMS LBG (CenCES) … PLAINTIFF/APPLICANT

VRS

THE ATTORNEY-GENERAL …. 1ST DEFENDANT/RESPONDENT

HER LADYSHIP GERTRUDE ARABA ESAABA SACKEY TORKORNOO CJ …. 2ND DEFENDANT/RESPONDENT

HIS LORDSHIP GABRIEL SCOTT PWAMANG …. 3RD DEFENDANT/RESPONDENT

RULING

MAJORITY OPINION:

KULENDI JSC:

INTRODUCTION:

1. On the 15th of May, 2025, the Plaintiff/Applicant, hereinafter called the Applicant, commenced the instant suit invoking the original jurisdiction of this Court, seeking the following reliefs:

> *i. A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 23, and 296, 146(1), (2), (3)(4) and (6), of the Constitution, the purported determination by the President communicated by the Secretary to the President dated 22nd April, 2025, in respect of three petitions presented for the removal of the Chief Justice does not constitute a determination of a prima facie case and is therefore null, void and of no effect;*
>
> *ii. A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 146(1), (2), (3) and (6), 125(3), and (4), 127(1) and (2) of the Constitution, the purported determination by the President communicated by the Secretary to the President that a prima facie case has been established against the Chief Justice contravenes the constitutional prohibition of executive interference with the independence of the Judiciary prohibited by articles 125(3) and (4), 127(1) and (2) and is therefore void;*
>
> *iii. A declaration that upon a true and proper interpretation of articles 146(1), (2), (3), (4), and (6), 23 and 296 of the Constitution, the establishment of a five- member committee to inquire into three petitions against the Chief Justice without a prima facie case duly determined pursuant to article 146 (1), (2), (3), (4), and (6) violates the 2nd*

Defendant's right to equal treatment before the law guaranteed under article 17 (1) (2) (3) and right to fair trial under article 19 (13) and so is unconstitutional, unlawful, null, void and of no effect;

iv. An order restraining the committee set up by the President from proceeding to carry out the terms of reference of the committee set out in the letter dated 22nd April, 2025 and/or to inquire into the three petitions against the Chief Justice, and to restrain the 2nd Defendant from participating in proceedings of the Committee;

v. A declaration that upon a true and proper interpretation of articles 146(1), (2), (3), (4) and (6), 23, and 296 of the Constitution, the warrant for suspension issued by the President to suspend the Chief Justice dated 22nd April, 2025, violates the directions of the Constitution in articles 146 (1), (2), (3), (4), and (6), the 2nd Defendant's right to fair trial and equal treatment under article 17 and 19 (13), the right to administrative justice under article 23 and article 293, and the constitutional protection of the independence of the Judiciary pursuant to article 125 (3), 127 (1), (2), (3) and is therefore unconstitutional, null, void and of no effect;

vi. An order striking down the warrant for suspension issued by the President dated 22nd April, 2025, to suspend the Chief Justice, Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (2nd Defendant) as being arbitrary, capricious, unconstitutional, and therefore void and of no effect;

vii. *Any other order(s) as this Honourable Court may deem fit to make.*

2. The Applicant coupled the said suit with the application under consideration for interlocutory injunction, praying the grant of the following orders:

I. *An order restraining the Committee established by the President to inquire into allegations against Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025 from commencing, and or proceeding with inquiry, finding and recommendation in connection with the purported finding of prima facie case made against the Chief Justice and communicated in the correspondence of the Secretary to the President dated April 22nd 2025;*

II. *An order restraining 2nd Defendant herein from submitting to, and or participating in proceedings of the Committee established by the President to inquire into allegations against Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to Article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025*

III. An order restraining the taking of any step, action, or proceedings as part of the process of removing the Chief Justice under Article 146 or in any other manner;

IV. An order suspending the operation of the Presidential Warrant of Suspension of the Chief Justice purportedly issued by the President on April 22nd, 2025.

3. The Applicant articulated the following as the grounds which underpinned the instant application:

a. *That the reference to a determination of a prima facie case in a letter issued by the Secretary to the President and a Warrant suspending the Chief Justice cannot constitute a determination of a prima facie case pursuant to articles 17, 19, 23, 146, and 296 of the 1992 Constitution.*

b. That the issue of a warrant of suspension against a sitting Chief Justice and installation of an acting Chief Justice without a prior decision on a determination of a prima facie case to

answer violates the explicit directions of articles 17 (1) (2) (3), 19 (13), 23, 296 and 146 (1), (2), (3), (6)

c. That the appointment of a committee to inquire into three petitions for the removal of a Chief Justice without a prior determination of a prima facie case regarding each of the petitions constitutes a violation of article 17 (1) (2), (3), article 23, article 296 and 146 (1), (2), (3), (4)

d. That the issue of a warrant of suspension against a sitting Chief Justice and installation of an acting Chief Justice without indication of the advice of the Council of State violates article 146 (10) (a) and article 296.

4. The Thirty-Two (32) paragraphed affidavit in support of the present application was deposed to by Mr. James Kwabena Bomfeh Jnr., who describes himself as the Chief Executive Officer of the Applicant.

5. The Applicant asserts at paragraph 5 of its affidavit in support that it is a corporate entity that was set up with the objectives of undertaking research into constitutional issues, publishing and advocating on findings from their research, collaborating with academic and other civil society organizations and serving as a platform for engagement on all constitutional and election related or engendered matters.

6. According to the Applicant, the Secretary to the President, on the 22nd of April, 2025, *"cursorily stated that a purported prima facie finding had been made by the President against the Chief Justice of the Republic of Ghana…"*. In this communique, the Secretary to the President, among others, announced the establishment of a committee chaired by the 3rd Defendant/Respondent to inquire into the allegations made in the three petitions; and ultimately announced the immediate suspension of the Chief Justice.

7. The Applicant contends that the determination of a prima facie case, being a legal process, entails the discharge of a judicial or quasi-judicial function and as such ought to have set out the grounds for a case to answer pursuant to the various petitions and ought also to have included a reasoned discussion indicating the basis and evaluation of the evidence and material available to the President and the Council of State that culminated in the prima facie determination.

8. The Applicant takes the view that anything short of this could not be described as a prima facie determination and therefore could not have constitutionally been sufficient to support the setting up of a committee to investigate the petitions under Article 146(7) of the Constitution. The Applicant avers that having failed to meet the judicial standard for the determination of a prima facie case as evinced above, the President and the Council of State have violated the constitutional rights of the 2nd Respondent under Articles 17(1)(2) and (3), 23, 296 and 19(13) of the Constitution and have subjected her to a lower standard than the minimum standard set in Article 146(3) and (4) even for ordinary Justices of the Superior Courts.

9. The Applicant submits, in consequence of the foregoing, that the actions of the President and Council of State, in its estimation, fell short of the threshold constitutionally required for the making of a prima facie case because the letter published and furnished to the 2nd Respondent failed to indicate the reasoned basis of the decision and the evaluation of the material and evidence which sponsored the determination. In the circumstances, the Applicant argues that the issuance of a warrant and purported suspension of the Chief Justices based on this unconstitutional prima facie determination is equally void and of no legal effect, and therefore constitutes an interference with the independence of the judiciary.

10. The Applicant then proceeded to attach what it alleged to be copies of the petitions submitted to the President and their corresponding answers, ostensibly provided by the 2nd

Respondent in reaction to the various petitions. The Applicant continued from paragraphs 19 to 26 to extensively discuss the content of these alleged petitions and their impressions as to whether or not any of these petitions, when properly considered, gave rise to a prima facie case.

11. According to the Applicant, the prima facie determination by the President which did not indicate the basis for the said determination or which of the specific allegations the 2nd Respondent was required to respond to, was unreasonable, capricious, unfair and arbitrary and failed to meet the test of due process of law, equal treatment under law under Article 17, the right to a fair trial enshrined under Article 19(13) and the right to administrative justice under Article 23 of the Constitution.

12. At paragraphs 29 and 30 of the Applicant's affidavit in support, Applicant deposed to the following:

> *" 29. That unless restrained by this Honourable Court, should further proceedings for the removal of the Chief Justice under article 146 of the 1992 Constitution, including proceedings by the Committee, be allowed to continue before the conclusion of this action, the ability of the Judiciary to discharge its constitutional duties to the people of Ghana and the rule of law enshrined in the 1992 Constitution would be grossly violated and compromised.*
>
> *30. That significant injury, loss and irreparable harm would be caused to the Constitution under the rule of law, the independence of the Judiciary and the people of Ghana who have chosen to practice a democracy under three independent arms of government, if further processes in connection with the removal of the Chief Justice under article 146 are not stayed and the operation of the Presidential Warrant for the Suspension of the Chief Justice suspended pending the final determination of the instant action."*

13. On the 19th of May, 2025 one Reginald Nii Odoi, deposed to an affidavit in opposition for and on behalf of the Attorney General and by way of a preliminary legal objection, urged the Court to strike out paragraphs 17, 18, 19, 22, 23 and 26 of the Applicant's affidavit in support on grounds that :

A. *The matters deposed to are related to the Article 146 proceedings, which the Constitution mandates must be conducted in camera.*

B. *The documents exhibited are inadmissible on the grounds of authenticity.*

C. *The probative value of the said documents is far outweighed by their prejudicial effect on the ongoing proceedings for the removal of the 2nd Defendant from the office of the Chief Justice.*

D. *The matters deposed to in the said paragraphs are exceedingly speculative, exceptionally frivolous, and are an abuse of the Court process.*

14. On the issue of the insufficiency of information on the face of the letter published on the 22nd of April, 2025, the lack of a reasoned basis and record of the evaluation of evidence in reaching the prima facie determination, the Attorney General simply responded that the record of the consultative or advisory proceedings between the Council of State and the President on the three petitions had been duly supplied to the persons who are, by law, entitled to be supplied.

15. The very next day, the 20th of May, 2025, the Applicant filed a supplementary affidavit in support, rebuffing the 1st Respondent's claim that the impugned paragraphs, together with the attached documents, were inadmissible. Specifically, the Applicant argued that, *"the*

Constitution does not create the privilege of non-disclosure of the facts in issue in favour of the 1st and 3rd Respondents". He then proceeded to argue that even if the said right existed, the 1st and 3rd Respondents have disclosed and/or permitted a disclosure of such sensitive information and therefore must be deemed to have waived the privilege. The Applicant asserted that the 1st and 3rd Respondents had sat aloof as copious volumes of information about this tentatively in camera process had been leaked online.

16. The 2nd Respondent, on the 21st of May, 2025, also filed an affidavit in answer to the motion on notice for interlocutory injunction, where she confirmed the documents attached to the application as being accurate copies of the petitions furnished to her for her responses.

17. The 2nd Respondent also filed an affidavit in answer to the affidavit of the 1st Respondent in opposition to the injunction application. In the said affidavit, the 2nd Respondent resisted the assertion by the Attorney General that portions of the Applicant's affidavit and exhibits were inadmissible and proceeded to attach copies of the petitions she received from the President and her corresponding responses.

18. The 2nd Respondent also confirmed the assertion of the Applicant that she had yet to be provided a reasoned decision for the prima facie determination or indeed a record of the evaluation of the evidence and documents which resulted in the determination. According to the 2nd Respondent, she had only received the communication dated 22nd April, 2022, within which the Secretary to the President announced the prima facie case determination, her suspension, and the setting up of the committee; and the warrant for her suspension as Chief Justice.

ANALYSIS:

PRELIMINARY LEGAL OBJECTION:

19. Because our grant or otherwise of the Respondent's preliminary objection could have a consequential effect on the application before this Court, it is pertinent that we first address this issue before we wade into the merits of the substantive application. The 1st Respondent has prayed this Court to strike out paragraphs 17, 18, 19, 22, 23 and 26 of the Applicant's affidavit in support, with corresponding attachments, on grounds that the said paragraphs depose to matters that relate to in camera proceedings, are inauthentic, have a tendency to prejudice the ongoing process for the 2nd Respondents removal as Chief Justice and are generally speculative, frivolous and are an abuse of Court process.

20. In direct response to this, the 2nd Respondent in both her affidavits filed on the 21st of May, 2025, purporting to confirm the authenticity of the said petitions and equally exhibited the alleged petitions and her responses to same.

21. Article 146(8) of the Constitution provides as follows:

> *"All proceedings under this article shall be held in camera, and the Justice or Chairman against whom the petition is made is entitled to be heard in his defence by himself or by a lawyer or other expert of his choice."*

22. In the case of **Ghana Bar Association v. Attorney-General [1995-96] 1 GLR 598** at p. 656, the venerable Kpegah JSC opined on the issue of the in camera hearing of the removal process as follows:

> "*The good sense in the constitutional prescription that impeachment proceedings be held in camera is very obvious and need not be recited here; suffice it to say that the judiciary, as an institution, thrives on the healthy estimation in which it is held by the people it serves. It is therefore not safe to impugn the integrity of a judge in public in case the allegation turns out to be unfounded; hence the constitutional provision that such proceedings be held in camera."*

23. In the case of **Agyei Twum v Attorney-General and Akwetey [2005-2006] SCGLR 732,** this Court discussed the scope and effect of Article 146(8) as follows:

> *" The constitutional requirement that the impeachment proceedings be held in camera would be defeated if the petitioner were allowed to publish his or her petition to anyone other than the President. This is likely to lead to the petitioner's allegations being aired in public, while the judge's response can only be considered in private. This would lead to grave adverse public relations consequences for the judiciary. The institution of the judiciary could be undermined without any justification. Accordingly, in my view, a petitioner under article 146 may not disclose the contents of his or her petition to the media nor indeed to any person other than the President. He or she may reveal the fact that he or she has presented a petition to the President, but not its contents, if the purpose of the framers of article 146(8) of the 1992 Constitution is to be adhered to. To conclude, on this issue, I am not persuaded by the second defendant's argument that it is only the enquiry into the contents of the petition which is confidential and that the contents of the petition itself are not confidential. That position subverts the intention and purpose embodied in article 146(8). For what purpose is served by holding the impeachment proceedings in camera if, in the meantime, the contents of the petition have been put into the public domain?"*

24. The Applicant and the 2nd Respondent have sought to suggest that neither the Attorney General nor the 3rd Respondent could enforce the *in camera* requirement under Article 146(8) because it was a privilege prescribed for the benefit of the subject of the inquiry, in this case, the 2nd Respondent. Inferentially, the Applicant suggests that only the 2nd Respondent could, by law, enforce the *in camera* prescription under Article 146(8) and therefore could similarly waive it where she was so inclined.

25. We are unable to accede to the submissions of the Applicant and the 2nd Respondent which contends that the constitutional prescription in Article 146(8) that all proceedings

under the article be held in camera, exists solely for the benefit of the specific judge or justice against whom the petition is made. Any contentions about the scope of Article 146(8) were resolved when this Court in a judgment dated the 4th of February, 2016 in Suit No.: J1/29/2015 entitled **His Lordship Justice Paul Uuter Dery vrs. Tiger Eye P.I. & Ors** per the erudite Bennin JSC. reasoned as follows:

> *"What is the true intent and purpose of this provision? Is it limited in its terms? What is the extent of the limitation, if any? The true intent is not in dispute, it is to protect the integrity of the judiciary, the personal reputation of the judge under investigation, and it also aims at protecting potential witnesses from some form of recrimination. The reasons for confidentiality could be endless, but integrity of the administration of justice is at the centre."*

26. It is therefore our considered view that the prescription that proceedings under Article 146 be conducted in camera is not a mere procedural formality inserted exclusively for the personal convenience or protection of the judge concerned. Rather, it is a constitutional directive, deliberately embedded within the removal architecture under Article 146, for the purpose of safeguarding the dignity and institutional integrity of the office itself, an entity distinct from its occupant. This directive carries a status of procedural supremacy equivalent to all other requirements of the Article.

27. While its original rationale may have been to shield the judiciary from unnecessary public ridicule and to preserve the dignity, authority, and credibility of the judicial arm of government, its codification within Article 146 certainly elevates it beyond the realm of discretionary privilege.

28. It must therefore be construed not as a personal right capable of unilateral waiver, but as a structural safeguard integral to the constitutional process for the removal of the Justice of the Superior Court of Judicature. This interpretation, in our view, more readily synergizes

with the jurisprudence of this Court, particularly in both the **Agyei Twum and Justice Paul Uuter Dery cases** quoted *supra*, where the Court emphasized that the confidentiality requirement exists to protect the judicial institution as a whole, not just the individual judge being subjected to the removal process. Therefore, the greater mischief sought to be avoided is not merely reputational harm to the individual judge concerned but the systemic erosion of public confidence in the judiciary as an institution.

29. In this light, it becomes apparent that the judiciary, and by extension the courts, bear a constitutional responsibility to ensure that the entire Article 146 removal process, including the handling and treatment of petitions, adheres strictly to the procedure laid down by the Constitution. This duty is not extinguished or suspended by any consent or waiver by the person affected. Indeed, allowing such a waiver would subvert the purpose and undermine the structural integrity of Article 146(8), opening the door for selective exposure of proceedings which the Constitution has deemed necessary to be conducted in confidence.

30. In the premises, we are of the considered view that paragraphs 17, 18, 19, 22, 23 and 26 of the Applicant's affidavit in support and paragraph 7 of the 2nd Respondent's affidavit in answer to the affidavit of 1st Respondent, to the extent that they disclose the contents of the petitions and the responses thereto, matters which the Constitution explicitly requires to be kept in camera, offend Article 146(8) and are therefore inadmissible. The relevant paragraphs, together with the corresponding exhibits which disclose the petitions and corresponding responses, are hereby struck out as being inconsistent with the constitutional requirement of confidentiality under Article 146(8).

SUBSTANTIVE APPLICATION:

31. The grounds on which an injunction application may be granted were enumerated in the case of **Welford Quarcoo v. The Attorney General and the Electoral Commission, [2012]1 SCGLR 259** by His Lordship Prof. Date Bah JSC as follows:

> *"It has always been my understanding that the requirements for the grant of an interlocutory injunction are:* ***first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally, that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief.****"*

32. The venerable jurist then continued thus:

> *"Where the relief sought relates, as here, to a public law matter,* ***particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo.*** *"*

33. More recently, in a ruling of this Court dated 6th May, 2025, in **Suit No.: J1/18/2025** entitled **Vincent Ekow Assafuah vs. The Attorney General**, in which I had the privilege of concurring in the opinion of my venerable brother Tanko JSC, the above threshold were reformulated as follows:

> "*Specifically, a Court should only issue a preemptive injunction against the Executive or coordinate arm of government where;*

i. An applicant presents a strong prima facie case of a clear illegality or a manifest unconstitutionality sufficient to rebut the presumption of constitutionality of official acts;

ii. There is a real likelihood of irreparable harm if an injunctive relief is not granted;

iii. The balance of convenience favors the applicant, and the public interest will not be unduly jeopardised

iv. The injunction or other interlocutory relief will not interfere excessively and/or unnecessarily with the executive, legislature, or other public institutions' discharge of their constitutional or statutory duties.

v. Declaratory relief in terms of an ex post facto nullification of the impugned conduct would be insufficient to restore the status quo."

34. The gravamen of the Applicant's argument is that the letter published on the 22nd of April, 2025, which communicated the President's determination, pursuant to Article 146(6), that a prima facie case had been made against the 2nd Respondent, is void. The basis of this argument is that the said letter did not set out a reasoned analysis, nor did it disclose the evidential material which formed the basis of the President's decision in consultation with the Council of State.

35. In the **Vincent Ekow Assafuah** case referenced *supra,* His Lordship Justice Tanko rightly traced the foundations of the prior requirement of a prima facie determination in the context of the removal of the Chief Justice as follows:

"*It is noted that the provision was interpreted by this Court in the case of Agyei Twum Vs. Attorney General & Akwetey [2005-2006] SCGLR 732. In that case, Dr. Date-Bah JSC held that the requirement that petitions for the removal of Justices of the Superior Courts must first be filtered through the prima facie test clearly stated in Article 146(3) of the Constitution must*

be read into the provisions of Article 146(6) in respect of petitions for the removal of the Chief Justice as well, even though Article 146(6) does not so specify, such that, petitions for the removal of the Chief Justice, must also first surmount the prima facie test."

36. It seems to us that the Applicant's contention is premised on a fundamental misapprehension of the true nature and purpose of the letter authored by the Secretary to the President dated 22nd of April, 2022. The said letter, which was attached as Exhibit 1, was entitled;

"***PETITION FOR THE REMOVAL OF THE HONORABLE CHIEF JUSTICE - PRIMA FACIE DETERMINATION BY HIS EXCELLENCY, THE PRESIDENT, IN CONSULTATION WITH THE COUNCIL OF STATE PURSUANT TO ARTICLE 146 OF THE 1992 CONSTITUTION***"

37. The said letter then proceeded to disclose as follows:

"Pursuant to Article 146(6), the President consulted the Council of State by forwarding the petitions and your responses to them for their consideration. The Council of State has since conveyed its advice to the President by a letter dated 17th April, 2025, stating that, "The Council concluded that a prima facie case has been made against the Chief Justice".

*His Excellency the President, upon careful assessment of the petitions, your responses, and the advice of the Council of State, has determined that a prima facie case has been made against you in respect of all three petitions.***"**

38. In our considered view, the purpose of Exhibit 1 was merely to communicate to the 2nd Respondent the fact that a prima facie determination had been made against her. It is apparent from the face of the said Exhibit 1 that the letter was meant to serve the purpose of informing the 2nd Respondent of the determination and to some extent, conveying the

determination as made by the President, acting in consultation with the Council of State, after an evaluation of the relevant materials.

39. Accordingly, we are unable to accept the contention that the mere absence, on the face of the said Exhibit 1, of a detailed account of the evaluative process undertaken by the President and the Council of State, or an express statement of the reasons underpinning the prima facie determination, implies that no reasoned basis existed for that conclusion. That the communication in Exhibit 1 did not reproduce the evaluative process or the evidentiary matrix considered by the President and the Council of State cannot, without more, render the process constitutionally infirm. To accept otherwise would be to hold that every communication of an executive determination under Article 146 must include a full exposition of the analytical process, failing which the process collapses.

40. For the avoidance of doubt, nothing in the foregoing paragraphs should be construed as an endorsement of the Applicant's contention that Exhibit 1 was, on its face, insufficient to constitute a valid prima facie determination. This question will properly be addressed and settled in our evaluation of the substantive suit. However, even if this Honorable Court, for the sake of argument, were to accept the Applicant's view as to what elements must be present in a communication for it to amount to a prima facie determination properly so called, the Applicant's case still falls short of conclusively establishing that such documentation does not exist as there remains no categorical evidence before the Court that the evaluative and consultative record allegedly required under Article 146 were not duly undertaken.

41. This is especially so when considered in light of the 1st Respondent's affidavit in opposition, where he averred that "*the record of the consultative or advisory proceedings between the Council of State and the President on the three petitions had been duly supplied to the persons who are, by law, entitled to be supplied*". Indeed, save the 2nd Respondent's contention in paragraph

9 of her affidavit in support of the present application that she considers herself "*entitled to be supplied with the record*" there is no allegation, let alone evidence, before this Court that the 2nd Respondent has requested and been denied a copy of the said record. Accordingly, in the absence of any contrary evidence, we must presume that the constitutional procedure has been valid adhered to by the President and the Council of State.

42. We do acknowledge that the Applicant's writ, especially in the face of Exhibit 1, raises genuine constitutional issues of what could validly constitute a prima facie determination, whether or not the articulation of an evaluative or reasoned basis or analysis is a prerequisite for the determination of a prima facie case, and for that matter whether or not the President and Council of State contravened the constitution in the manner of their determination of the prima facie case in this instance. The issues implicated by this suit are even more nuanced when considered in light of the deposition by the Attorney General of the fact that the record of the consultative or advisory proceedings between the Council of State and the President have been furnished to the persons entitled by law to receipt of same.

43. Certainly, this semblance of a constitutional conundrum shall be unravelled during the substantive evaluation of the Applicant's Writ. In applications such as this however, where the Applicant is merely able to establish the existence of a real constitutional controversy, we are, in the absence of proof of a clear and egregious constitutional breach, enjoined to apply a presumption of constitutionality to the actions of public or constitutional actors and/or duty bearers which is necessary to ensure that this Court does not needless and prematurely place fetters in the discharge of a statutory or constitutional function unless it is absolutely warranted so to do.

44. In the case of Vincent Ekow Assafuah *supra* this principle was enunciated as follows:

"In such cases, a significantly higher threshold is required. The applicant must go beyond asserting inconvenience or disagreement. They must demonstrate, with compelling clarity, the threat or existence of a gross and flagrant constitutional violation. Moreover, they must establish that the continuation of the impugned public act would, absent judicial intervention, cause irreparable harm or hardship so substantial that it outweighs the public interest in allowing the constitutional process to continue."

45. Later in the Vincent Ekow Assafuah decision, I underscored the presumption of constitutionality and the need for Courts to exercise extreme restraint in injuncting constitutional and statutory actors, duty bearers and processes as follows:

"Unless faced with the most egregious and imminent breaches, which would threaten a constitutional order, courts generally refrain from issuing injunctive relief against the executive or legislature. Instead, they must prefer post-facto constitutional review, trusting in the robustness of corrective remedies, such as declarations of nullity or political accountability.

It is my considered view that such judicial self-restraint preserves the autonomy of each branch of government and accords with the above-mentioned presumption of constitutionality in executive and legislative actions. If the President and his advisers are constantly anticipating judicial interdiction, governance would inevitably become paralyzed by litigation. The principle of constitutional equilibrium demands that the judiciary not preemptively inject itself into the executive's domain except in the clearest and most extraordinary cases.

As a matter of practice, therefore, unless an applicant can prove both the obvious and egregious unconstitutionality of an action and the likelihood of irreparable damage that cannot be reversed or redressed, interim injunctive relief must be denied."

46. In the present circumstances, we are not persuaded that the Applicant has demonstrated the kind of manifest, clear and egregious unconstitutionality that would justify the grant of

injunctive relief against the constitutionally prescribed removal process triggered by the President under Article 146.

47. In respect of the onus of demonstrating that the Applicant stands to suffer irreparable damage, loss or injury which cannot be adequately remedied *ex post facto*, the sole ground alleged by the Applicant is that unless this Court halts further proceedings under Article 146 for the removal of the Chief Justice, including actions by the Committee, before this case is concluded, it would seriously undermine the Judiciary's constitutional role, the rule of law, and the independence of the Judiciary. It is further claimed that allowing the process to continue would cause significant and irreparable harm to the Constitution and democratic governance in Ghana.

48. We have long settled that even in cases where a significant constitutional issue is presented, courts must remain cautious about intervening prematurely. In the absence of demonstrable and irreversible harm, and particularly where the broader public interest favours the uninterrupted operation of constitutional governance, injunctive relief should not be granted. The standard for such extraordinary intervention is high: it requires a clear and manifest violation of the Constitution, coupled with an urgent and compelling need to avert harm that cannot later be remedied through ordinary constitutional or legal means. We are therefore at a loss as to how the performance by the President and Council of State of roles or duties commanded by Article 146 of the Constitution undermines the rule of law, and the independence and constitutional role of the judiciary.

49. Quite clearly, save the generic statements above referenced in paragraph 29 and 30 of its affidavit in support of the present application, the Applicant has not articulated and/or established any cognisable injury, let alone irreparable injury which is not amenable to sufficient *ex post facto* remedies, which will be occasioned if the process is allowed to proceed. On the other hand, an unwarranted suspension of a constitutionally sanctioned process will

not only amount to an excessive interference with the President and the Council of State's constitutional roles, but will directly and adversely affect the constitutional order, the rule of law, our democracy and for that matter the rights of all citizens who have a community of interest in the Constitution.

50. In the circumstances, the balance of convenience clearly favours allowing the presumptively valid constitutional process under Article 146 to proceed without preemptive judicial interference through the grant of an injunction. This is because the framers of our constitution at Article 146 set out a detailed framework, with deliberate safeguards, for the removal of Justices of the Superior Courts, including the Chief Justice, with clearly defined stages. Therefore, it is in the public interest that such processes, once properly triggered, be allowed to run their course to uphold the rule of law and institutional accountability. To interrupt or suspend this process based on speculative or unsubstantiated harm, which in any event can be remedied by alternative legal recourse, would set a troubling precedent, undermining both the integrity of constitutional processes and adherence to the principle of separation of powers.

51. Moreover, as we have enunciated in the Vincent Assafuah case *supra*, any alleged procedural irregularities or constitutional breaches which the Applicant contends have occurred in the conduct of the proceedings can be fully addressed through post-facto review and, where warranted, nullification of the impugned process. The Constitution and the judicial system provide ample remedies for redress in such instances. As such, there is no compelling necessity to injunct the process at this stage. The proper constitutional course is to allow the process to continue, with the understanding that any proven unconstitutionality can be remedied *ex post facto* and not through the preemptive judicial override sought in this application.

CONCLUSION:

52. It is for the foregoing reasons that this Court, on the 21st of May, 2025, dismissed the instant application for want of merit.

(SGD) **E. YONNY KULENDI**
(JUSTICE OF THE SUPREME COURT)

(SGD) **P. BAFFOE-BONNIE**
(AG. CHIEF JUSTICE)

(SGD) **H. KWOFIE**
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION

TANKO AMADU JSC

BACKGROUND

(1) On 15th May 2025, the Plaintiff invoked the original jurisdiction of the court under articles 2 and 130 of the 1992 Constitution per a writ praying for the following reliefs against the Defendants:

i. *A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 23, and 196, 146(1), (2), (3)(4) and (6), of the Constitution, the purported determination by the President communicated by the Secretary to the President dated 22nd April, 2025, in respect of three petitions presented for the removal of the Chief Justice does not constitute a determination of a prima facie case and is therefore null, void and of no effect;*

ii. *A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 146(1), (2), (3) and (6), 125(3) and (4), 127(1) and (2) of the Constitution, the purported determination by the President communicated by the Secretary to the President that a prima facie case has been established against the Chief Justice contravenes the constitutional prohibition of executive interference with the independence of the Judiciary prohibited by articles 125(3) and (4) , 127(1) and (2) and is therefore void;*

iii. *A declaration that upon a true and proper interpretation of articles 146(1), (2), (3), (4), and (6), 23 and 296 of the Constitution, the establishment of a five – member committee to inquire into three petitions against the Chief Justice without a prima facie case duly determined pursuant to article 146(1), (2), (3), (4), and (6) violates the 2nd Defendant's right to equal treatment before the law guaranteed under article 17(1)(2)(3) and right to fair trial under article 19(13) and so is unconstitutional, unlawful, null , void and of no effect;*

iv. *An order retraining the committee set up by the President from proceeding to carry out the terms of reference of the committee set out in the letter dated 22nd*

April, 2025 and or to inquire into the three petitiosn against the Chief Justice, and to restrain the 2nd Defendant from participating in proceedings of the Committee;

v. *A declaration that upon a true and proper interpretation of articles 146(1), (2), (3), (4) and (6), 23 and 296 of the Constitution, the warrant for suspension issued by President to suspend the Chief Justice dated 22nd April, 2025 violates the direction of the Constitution in articles 146(1), (2), (3),(4), and (6), and the 2nd Defendant's right to fair trial and equal treatment under article 17 and 19(13), the right to administrative justice under article 23 and article 293, and the constitutional protection of the independence of the Judiciary pursuant to article 125(3), 127(1), (2), (3) and is therefore unconstitutional, null, void and of no effect.*

vi. *An order striking down the warrant for suspension issued by the President dated 22nd April, 2025 to suspend the Chief Justice, Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (2nd Defendant) as being arbitrary, capricious, unconstitutional and therefore void and of no effect.*

vii. *Any other order(s) as this Honourable court may deem fit to make*

THE INSTANT APPLICATION

(2) On the same day the writ was filed, the Plaintiff applied to this court per a motion for interlocutory injunction and sought the following reliefs:

a. *An order restraining the Committee established by the President to inquire into allegations against Her ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025;*

b. *An order restraining 2nd Defendant herein from submitting to, and or participating in proceedings of the Committee established by the President to inquire into allegations against Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025;*

c. *An order restraining the taking of any step, action or proceedings as part of the process of removing the Chief Justice under Article 146 or in any other manner;*

d. *An order suspending the operation of the Presidential Warrant of Suspension of the Chief Justice purportedly issued by the President on April 22nd, 2005.*

(3) The Applicant anchored these reliefs on the following grounds:

a) *That the reference to a determination of a prima face case in a letter issued by the Secretary to the President and a Warrant suspending the Chief Justice cannot constitute a determination of a prima facie case pursuant to articles 17, 19, 23, 146 and 296 of the 1992 Constitution.*

b) *That the issue of a warrant of suspension against a sitting Chief Justice and installation of an acting Chief Justice without a prior decision on a determination*

of a prima facie case to answer violates the explicit directions of articles 17(1)(2)(3), 19(13), 23, 296 and 146(1), (2) (3), (6).

c) *That the appointment of a committee to inquire into three petitions for the removal of a Chief Justice without a prior determination of a prima facie case regarding each of the petitions constitutes a violation of article 17(1)(2), (3), article 23, article 296 and 146(1), (2), (3), (4).*

d) *That the issue of a warrant of suspension against a sitting Chief Justice and installation of an acting Chief Justice without indication of the advice of the Council of State violates article 146(10)(a) and article 296*

(4) In the affidavit in support of the application, it was deposed to on behalf of the Applicant that *a prima facie* finding is a legal process duly arrived at following the discharge of the judicial and quasi-judicial duties directed under article 146(1), (2), (3)(4) and (6) of the 1992 Constitution. According to the Applicant, by failing or refusing to provide a *prima facie* determination that sets out the grounds for a case to answer pursuant to the various petitions and failing or refusing to indicate the basis and evaluation of the material available to the President and Council of State that led to the alleged determination of a *prima facie case* to answer the President and Council of State were in willful violation of the constitution.

(5) For the Applicant, significant injury, loss and irreparable harm would be caused to the Constitution under the rule of law, the independence of the Judiciary and the people of Ghana who have chosen to practice a democracy under three independent arms of government, if further processes in connection with the removal of the Chief

Justice under article 146 are not stayed and the operation of the Presidential Warrant for the Suspension of the Chief Justice suspended pending the final determination of the instant action.

(6) Expectedly, the 2nd Defendant associated herself with the Applicant and prayed the court to uphold the application. The 1st and 3rd Defendants represented by the Deputy Attorney-General opposed the application on the basis that, the Applicant had failed to satisfy the necessary conditions that should warrant a grant of the same. For the Learned Deputy Attorney-General, the jurisprudence from the court is against a grant of applications of this nature, except in very exceptional circumstances.

EVALUATION

(7) An application to injunct a constitutional process, and an organ of the state from performing its constitutional functions through supervision of other organs of the state must be founded on exceptionally cogent grounds such as a clear violation of the Constitution and therefore could be granted in the interest of the public. The extent of any likely injury to be suffered should be one which must not just be a benefit to the citizen or the occupant of an office but the beneficiary of the injunctive order ought also be the public at large. Therefore, as has been sustained by this court in recent decisions of like nature, the threshold to injunct a constitutional process is not light. The cases of **WELFORD QUARCOO V ATTORNEY-GENERAL AND THE ELECTORAL COMMISSION [2012] 1 SCGLR 259; AND RANSFORD FRANCE VRS ELECTORAL COMMISSION & ATTORNEY-GENERAL [2012] 1 SCGLR 689** caution against a hurried attempt to injunct a constitutional body from performing its

constitutional functions in the absence of very compelling , exceptional and urgent need.

(8) In **WELFORD QUARCOO** (supra) the Court per Dr. Date-Bah JSC also sustained the opprobrium that:

> *"Where the relief sought relates, as here, to a public law matter, particular care smut be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that nay subsequent nullification of the impugned act or omission cannot restore the status quo."*

(9) In a recent decision delivered in the case of **VINCENT EKOW ASSAFUAH VRS ATTORNEY GENERLA, WRIT NO: J1/18/2025, RULING DATED 6TH MAY 2025,** I held on behalf of the majority of the court that :

"Recognising the danger to injunct or suspend a constitutional duty or power pendente lite, this court has stated the clearest legal position in a plethora of decisions that, the same must be sparingly exercised with extreme circumspection unless there is a clear demonstration that, the case of an Applicant is invariably most likely to succeed for a permanent order of injunction to be made in the substantive suit. That is, there must be extreme exceptional necessity, in the interest of the state and the public at large, as a result of a clear and manifest conduct of constitutional infraction to warrant the court to grant an interlocutory injunction against the exercise of a constitutional function by no mean a person than the President in the exercise of the powers vested in him by the constitution pending the determination of a substantive matter. The ***Welford Quarcoo case*** *makes this point loudly.*

…

Therefore the correct jurisprudence is that, the threshold to injunct the exercise of a constitutional or statutory function, duty, or discretion is not wishful thinking nor is it grounded on conjecturing political conspiracies. There must be sufficient demonstration that, the substantive action before the court is not frivolous, and must have been founded on a clear breach of the constitution or relevant statute. Of equal importance is that, the grant of the injunction pending final determination of the action will advance the public interest."

(10) My respected brother, Kulendi JSC also set out the parameters of consideration in applications seeking to injunct the Executive or coordinate arm of government, to be where :

i. An applicant presents a strong prima facie case of a clear illegality or a manifest unconstitutionality sufficient to rebut the presumption of constitutionality of official acts;

ii. There is a real likelihood of irreparable harm if an injunctive relief is not granted.

iii. The balance of convenience favours the applicant and the public interest will not be unduly jeopardized.

iv. The injunction or other interlocutory relief will not interfere excessively and/or unnecessarily with the executive, legislature r other public institution's discharge of their constitutional or statutory duties.

v. Declaratory relief in term of an ex post facto nullification of the impugned conduct would be insufficient to restore the status quo.

(11) A careful examination of the affidavit in support of the application, and indeed, the grounds for the application as detailed in the motion paper makes it quite clear, that the Applicant, through this application is inviting the court to make firm pronouncements on the substantive suit before the court. The Applicant in my view is rather arguing the substantive suit through this application. As pointed above, the conditions that must be satisfied have been well set out in the **Welford Quarcoo** and **Assafuah** decision.

(12) From my examination of the entire application, I do not think that, the Applicant has met this threshold. In fact, the Applicant recognises a *prima facie* determination by the President of the Republic in respect of the petitions for the removal of the Chief Justice. The Applicant however alleges that there are faults with the processes and procedures leading to the said determination. Whether or not, the processes and procedures are not in compliance with the 1992 Constitution, and in effect renders the *prima facie* decision, no decision at all, is a subject for interrogation in the substantive suit, of which several reliefs have been sought in that regard. This is the monument of the Applicant's instant application. To that extent, it is difficult to locate the extent of injury the Applicant will suffer relative to that which the entire populace, from whom justice emanates will, should this application be refused.

(13) As already observed, unless there is some compelling reason to sanction a restraining order against the performance of a constitutional function, this court will never assume an error in the performance, and proceed to grant an interlocutory

injunction. It is my respectful view that, the reliefs being sought in the substantive suit are sufficient to ameliorate, and/or direct a positive consequence should the Applicant be successful in that suit.

(14) That said, as we held on the 28th of May 2025, when arguments were canvassed in support of, and in opposition to the application, this application lacks merit. That is why for the above reasons and the fuller reasons eruditely articulated by my esteemed brother Kulendi JSC, I dismissed the application in its entirety.

(SGD) **I. O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION:

DARKO ASARE JSC:

INTRODUCTION

1. My Lords, the instant case before this Court poses a question of immense constitutional gravity, that engages the bedrock constitutional principles of judicial independence and separation of powers, with profound implications that could potentially redefine the trajectory of our nation's democratic governance.

2. What we are however confronted with at this stage of the proceedings, is the determination of an interlocutory application by the Plaintiff/Applicant praying for the following:-

1. *An order restraining the Committee established by the President to inquire into allegations against Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025 from commencing, and or proceeding with inquiry, finding and recommendation in connection with the purported finding of prima facie case made against the Chief Justice and communicated in the correspondence of the Secretary to the President dated April 22nd 2025;*

2. *An order restraining 2nd Defendant herein from submitting to, and or participating in proceedings of the Committee established by the President to inquire into allegations against Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (CJ) pursuant to article 146 of the Constitution, and communicated in the correspondence of the Secretary to the President dated April 22nd 2025;*

3. *An order restraining the taking of any step, action or proceedings as part of the process of removing the Chief Justice under Article 146 or in any other manner;*

4. An order suspending the operation of the Presidential Warrant of Suspension of the Chief Justice purportedly issued by the President on April 22nd, 2025.

Pending the hearing and final determination of the instant action.

3. The Application herein has been brought on the back of a writ issued by the Plaintiff/Applicant (hereafter referred to as Applicant) invoking the original jurisdiction of this Court against the Attorney General (hereafter referred to as the 1st Defendant) the Chief Justice (hereafter referred to as the 2nd Defendant) and Justice Gabriel Pwamang in his capacity as the Chairman of the Presidential Committee, seeking the following reliefs:-

A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 23, and 296, 146(1), (2), (3)(4) and (6), of the the purported determination by the President communicated by the Secretary to the President dated 22nd April, 2025, in respect of three petitions presented for the removal of the Chief Justice does not constitute a determination of a prima facie case and is therefore null, void and of no effect;

A declaration that upon a true and proper interpretation of articles 17(1), (2), (3), 146(1), (2), (3) and (6), 125(3) and (4), 127(1) and (2) of the Constitution, the purported determination by the President communicated by the Secretary to the President that a prima facie case has been established against the Chief Justice contravenes the constitutional prohibition of executive interference with the independence of the Judiciary prohibited by articles 125(3) and (4), 127(1) and (2) and is therefore void;

A declaration that upon a true and proper interpretation of articles 146(1), (2), (3), (4), and (6), 23 and 296 of the Constitution, the establishment of a five-member committee to inquire into three petitions against the Chief Justice without a prima facie case duly determined pursuant to article 146 (1), (2), (3), (4), and (6) violates the 2nd Defendant's right to equal treatment before the law guaranteed under article 17 (1) (2) (3) and right to fair trial under article 19 (13) and so is unconstitutional, unlawful, null, void and of no effect;

An order restraining the committee set up by the President from proceeding to carry out the terms of reference of the committee set out in the letter dated 22nd April, 2025 and or to inquire into the three petitions against the Chief Justice, and to restrain the 2nd Defendant from participating in proceedings of the Committee;

A declaration that upon a true and proper interpretation of articles 146(1), (2), (3),(4) and (6), 23 and 296 of the Constitution, the warrant for suspension issued by the President to suspend the Chief Justice dated 22nd April, 2025, violates the directions of the Constitution in articles 146 (1), (2), (3), (4), and (6), the 2nd Defendant's right to fair trial and equal treatment under article 17 and 19 (13), the right to administrative justice under article 23 and article 293, and the constitutional protection of the independence of the Judiciary pursuant to article 125 (3), 127 (1), (2), (3) and is therefore unconstitutional, null, void and of no effect;

An order striking down the warrant for suspension issued by the President dated 22nd April, 2025 to suspend the Chief Justice, Her Ladyship Justice Gertrude Araba Esaaba Sackey Torkornoo (2nd Defendant) as being arbitrary, capricious, unconstitutional and therefore void and of no effect;

Any other order(s) as this Honourable Court may deem fit to make.

4. The application for injunctive relief was supported by a 32 paragraphed affidavit, deposed to by one James Kwabena Bomfeh Jnr (Phd), the Applicant's Chief Executive Officer. Briefly put, he complained that by not providing a reasoned prima facie determination that set out the basis and evaluation of the available material that informed the grounds for a case to answer, the President and Council of State have breached the Chief Justice's constitutional rights and compromised the judiciary's independence, violating Articles 146, 17, 23, 296, 19(13), 125(3), and 127(1)-(2).

5. Flowing from the above antecedents, the Applicant's Chief Executive Officer deposed at paragraphs 29-30 of the supporting affidavit as follows:-

29. That unless restrained by this Honourable Court, should further proceedings for the removal of the Chief Justice under article 146 of the 1992 Constitution, including proceedings by the Committee, be allowed to continue before the conclusion of this action, the ability of the Judiciary to discharge its constitutional duties to the people of Ghana and the rule of law enshrined in the 1992 Constitution would be grossly violated and compromised.

30. That significant injury, loss and irreparable harm would be caused to the Constitution under the rule of law, the independence of the Judiciary and the people of Ghana who have chosen to practice a democracy under three independent arms of government, if further processes in connection with the removal of the Chief Justice under article 146 are not stayed and the operation of the Presidential Warrant for the Suspension of the Chief Justice suspended pending the final determination of the instant action.

6. Significantly the allegations made by the Applicant are confirmed by similar depositions in an affidavit filed by the 2nd Defendant to this suit, the Honourable Chief Justice herself, who affirmed receipt of the annexed communication from the Office of the Presidency. In the end, the Honourable Chief Justice intimated her support for the application for an injunction, contending that it would be just and convenient to grant the said application.

7. The 1st Defendant, the Attorney General, filed an affidavit in opposition, and disputed the challenge raised against the legitimacy of the prima facie case made by the President. Significantly, he did not challenge the allegation that the prima facie determination made by the President was as set forth in the 22nd April 2025 letter annexed as Exhibit CenCES1**.** He rather contended that the Applicant was not

entitled to an intervention with the constitutional processes initiated under the constitution, which must be allowed to follow its natural course to completion.

Merits of the Application

8. The pivotal question before this Court is straightforward: should the Presidential Committee's proceedings be allowed to conclude without interference, notwithstanding allegations of grave constitutional breaches, and fundamental rights violations, and by so doing, favor the need to preserve the uninterrupted performance of constitutional duties?

9. Starkly put, is the public interest element in pursuing an important investigation into petitions for the removal of a Chief Justice, outweighed by the public interest in protecting the sanctity of judicial independence, the doctrine of separation of powers and the rule of law, as well as preserving the fundamental rights and tenure of office of the Head of the third arm of government, being the Honourable Chief Justice?

Jurisdictional basis for the instant application

10. That this Court is seised with unfettered jurisdiction to grant an application for interlocutory injunction to restrain the conduct of the proceedings of a statutory tribunal such as the Presidential Committee established under Article 146 of the Constitution, is not in doubt.

11. In the case of ***Michael Ankomah-Nimfah v James Gyakye Quayson Suit No. J1/11/2022 dated 13th April 2022***, this Court speaking through our illustrious brother, Kulendi JSC, highlighted the jurisdictional basis for the grant of interlocutory applications in constitutional matters when it said:-

"It is beyond dispute that this Court has jurisdiction to entertain injunction applications whenever its original jurisdiction is invoked.".

12. The parameters upon which this jurisdiction would be exercised is also far from doubt. Halsbury's Laws of England (3rd Ed) vol 9 para. 1352 at page 580 explains the legal position in this manner:-

> ***"Statutory tribunals when acting judicially or quasi-judicially are subject to the control of the High Court in so far as their jurisdiction and conduct is concerned, unless such control is specifically excluded or limited by statute. In the case of excess of jurisdiction, or of hearings of the tribunal conducted in a manner contrary to the rules of natural justice, or of error of law on the face of the record, the control is exercised by the High Court making an order of prohibition to prevent the tribunal hearing the matter"***

13. It has also been held that the courts have undoubted power to interfere if there were reasonable grounds for supposing that a disciplinary tribunal would not act fairly and especially where the risk of unfairness is further attenuated by the absence of a code of procedure providing for a carefully regulated hearing.

14. Hence in the case of ***Buckoke and others v Greater London Council [1971] 2 All ER 254,*** the only reasons for refusing an injunctive relief was because there had not been demonstrated sufficient grounds to suppose that the disciplinary tribunal would not do what was just and also because there existed a code of procedure for carefully regulating the hearing. This is how Sachs LJ. expressed himself at pages 263-264 of the report:-

"Although the courts had power to interfere if a disciplinary tribunal did not act fairly, there was no reason to suppose that the firemen's disciplinary tribunal would not do what was just and, normally, the courts would not intervene before service disciplinary proceedings were heard and where there existed, as under the 1948 regulations, a code of procedure providing for a carefully regulated hearing ….."

15. A discernible legal principle that could be distilled from the above authority is that, an injunction may be an appropriate remedy in cases where the record raises concerns about a fair trial and there is a lack of procedural rules to govern the disciplinary process, factors that will be crucial in determining the outcome of this application.

Principles guiding the grant or refusal of an injunction

16. This being an application for an interlocutory injunction to restrain the further conduct of the Presidential Committee's proceedings, it may be appropriate by way of preliminary remarks to briefly recall to mind the applicable principles to guide the Court in the grant or refusal of such applications, particularly in a public interest matter such as this one.

17. The principles for an injunction are now so well entrenched as to require no detailed re-statement. The conclusion to be drawn from the authorities is that an injunctive order is a discretionary equitable remedy which will not be granted by the court, unless it is just and convenient to do so. See the case of ***Ekwam v Pianim [No.1] [1996-97] SCGLR 117***.

18. In the seminal case of ***Welford Quarcoo v A-G [2012] 1 SCGLR 259,***, this Court speaking through Date Bah JSC, laid down certain factors, which must generally guide the Court in determining whether or not to grant an application for an injunction:-

> ***"It has always been my understanding that the requirements for the grant of an interlocutory injunction are: first, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction……..."***

19. I will now proceed to test the facts on record against the established principles governing the grant or refusal of an interlocutory injunction in order to ascertain whether the injunctive relief sought by the Applicant herein is well founded.

Serious issue to be tried

20. It is true that the ***American Cynamide American Cynamide. v. Ethicon Ltd (1975) AC 396, HL,*** case has often been cited for the proposition that the test for the grant or refusal of an interlocutory injunction, enjoins the Judge to direct his attention to the balance of convenience as soon as he has satisfied himself that there is a serious question to be tried, at which point any further examination of the Plaintiff's prospects of success may not be necessary.

21. It is instructive however to note that subsequent cases have sought to clarify the true ambit of the above proposition, requiring in certain exceptional circumstances, some assessment of the merits more than merely that there was a serious issue to be tried. In such cases, a wider survey of the merits may sometimes be necessary, including an assessment of the Plaintiff's prospects of success at trial.

22. Thus in the case of ***NWL Ltd v Woods [1979] 3 All ER 614*** at 625, [1979] 1 WLR 1294 at 1306 Lord Diplock explained the import of the ***American Cynamide*** case and clarified that in appropriate circumstances, a Judge ought to *"give full weight to all the practical realities of the situation to which the injunction will apply"* Lord Diplock continued: *"Cases of this kind are exceptional, but when they do occur they bring into the balance of convenience an important additional element."* See also for instance the case of ***Lansing Linde Ltd v Kerr [1991] 1 All ER 418***.

23. The question thus to answer is: do the facts of this case which engage public interest elements, in a constitutional setting, constitute such exceptional circumstances as to render necessary, a wider survey of the merits of the substantive suit, including an assessment of the Plaintiff's prospects of success at trial?

24. The same question seems to have been neatly raised and answered by Ansah JSC in the case of ***Ransford France v Electoral Commission [2012] 1 SCGLR 705,*** when he stated thus:-

"I believe I state the principle correctly that a public authority should not be retrained by interlocutory injunctions from exercising its statutory discretionary powers unless the plaintiff shows that there is a real prospect that he will succeed in his claim for a permanent injunction at the trial.

25. An identity of reasoning likely informed the pronouncement by this Court speaking through Date Bah SC in the case of ***Welford Quarcoo v A-G*** (supra) when he expressed himself quite lucidly as follows:-

"Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo."

26. Applying the above principles to the facts on record, it seems the Applicant is well confronted with a high hurdle to surmount and must go beyond the mere test of establishing a serious case to be tried to one of establishing a real prospect of success at the trial. Does the Plaintiff succeed in this quest? That is the question to which I will now turn.

Prima facie determination - a pre-condition to the setting up of the Presidential Committee

27. At the core of this application is the argument that a *"prima facie determination"* under Article 146, when interpreted in harmony with related constitutional provisions, necessitate a judicious and reasoned decision, a standard not met by the brief, terse statement in the President's letter of 22nd April 2025.

28. In the Applicant's view, the President's failure to provide a reasoned prima facie determination outlining the basis and evaluation of evidence leading to the said determination, fell far short of the Constitutional threshold required under Article 146, and in that event rendered the establishment of the Presidential Committee a nullity.

29. Obviously the learned Deputy Attorney General contended otherwise and argued that the bare statement in the 22nd April 2025 letter satisfied all the constitutional prerequisites of what a *"prima facie determination"* entails. According to the learned Deputy Attorney General, there is nothing in a literal reading of the language of Article 146 that suggests that a prima facie determination entailed a reasoned determination. That being so, once the President declares that a prima facie determination has been established in accordance with the provisions of Article 146 that is sufficient, rendering such a declaration effectively insulated from any further judicial scrutiny.

30. The requirement for a prior prima facie determination, as a pre-condition for the establishment of the Presidential Committee, though not an express constitutional prerequisite under Article 146(6) impeachment proceedings against a Chief Justice, was imported by necessary implication into the provision in the case of ***Agyei Twum***

v. Attorney General & Akwetey [2005-2006] SCGLR 732, where this Court held as follows:-

> ***"The court would, therefore, declare that upon a proper purposive construction of the whole article 146 in the context of the 1992 constitution viewed in its entirety, the Chief Justice must be given the benefit of a prior determination of whether a prima facie case had been established against him before the President might lawfully establish a committee to consider a petition for his removal."***

31. Meanwhile, the communication setting out the determination of a prima facie case as per the President's letter of 22nd April 2025, and attached to the application as ***Exhibit CenCES1***, stipulated quite tersely, as follows:-

> ***His Excellency the President, upon careful assessment of the petitions, your responses, and the advice of the Council of State, has determined that a prima facie case has been made against you in respect of all three petitions"***

32. I have thoughtfully weighed the processes on record in this application and given careful audience to the rival contentions by learned Counsel for all disputing parties. I have also critically reminded myself that at this stage, the merits of the case must not be considered, and nothing ought to be said or done, which may prejudice a fair and judicious hearing of the merits of the substantive suit.

33. That said however, to assess whether the Applicant has demonstrated a serious case with a real likelihood of success, a critical examination of the legal foundation for

the argument that a prima facie determination must be supported by well-articulated reasons, is essential.

34. As this application turns on an interpretation of the term *"prima facie determination"*, within the context of Article 146 impeachment proceedings, it may perhaps be appropriate to commence this inquiry by briefly recalling to mind the appropriate tools for constitutional interpretation. In so doing, this Court will be primarily guided by the principles of the law to which Evershed M.R. in the famous case of ***Ernest (Prince) of Hanover v. Attorney-General [1956] Ch. 188*** at p. 201, C.A directs attention, namely that a statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it.

35. Supplementing the aforementioned principle of statutory interpretation is the now widely accepted foundational rule of interpretation, which has become the cornerstone in judicial thinking, known as the modern purposive approach. See the views of Date Bah JSC in ***Asare v Attorney-General [2003-2004] SCGLR 823,*** at 834, Wood CJ (as she then was) in ***Ahumah Ocansey v Electoral Commission [2010] SCGLR 575*** and again Wood CJ (as she then was) in ***Brown v Attorney General [2010] SCGLR 183,***

36. The longstanding jurisprudence emerging from an examination of the above authorities strongly indicate that the purposive approach to constitutional interpretation which is guided by a broad, liberal and harmonious construction in line with the spirit, history and core values of the Constitution with a view to promoting and enhancing human rights rather than derogating from it, is a more

preferable approach, as opposed to the strict, literalist, doctrinaire, and mechanical construction that restricts itself only to the textual language of the provision in question without more, which ought to be deprecated.

37. Relating the above principles to the facts herein, it is difficult to deny, even at first blush, that the interpretation of the term *"pima facie determination"* within the context of Article 146 impeachment proceedings, urged by both learned Counsel for the Applicant and 2nd Defendant, appear to be at once formidable and quite well-reasoned.

38. Without doubt, a purposive reading of the Article 146 impeachment provisions and the need to establish a prior *prima facie determination* as a precondition to the setting up of a Presidential Committee leaves one in no doubt that the intention of the framers of the Constitution, was to infuse transparency and thereby check abuse of discretionary power by those upon whom it is conferred, all in a bid to promote the supremacy of the Constitution, judicial independence, and preserve fundamental freedoms of the citizenry.

39. Happily there appears to be no dearth of judicial authority which reinforces the view of the law urged by both learned Counsel for the Applicant and 2nd Defendant in support of the purposive interpretation of the term *"prima facie determination"* within the context of Article 146 impeachment proceedings.

40. In the case of ***Justice Dery v. Tiger Eye PI, Chief Justice & Attorney General [2015-2016] 2 SCGLR*** *812* the Supreme Court held in holding (3) as follows:

"By clause (3) of Article 146, the Chief Justice is required to make a prima facie decision upon receipt of the petition from the President. The expression prima facie signifies that upon an initial examination of a case there is sufficient evidence to warrant further detailed inquiry. It may also mean that on the available evidence it is sufficient to prove a fact unless it is rebutted. Under clause (3) of Article 146 prima facie is used in the first sense. In the context of impeachment proceedings, it means the petition raises serious issues bordering on misconduct, misbehaviour or incompetence or physical infirmity; and that notwithstanding whatever response the respondent has to offer, the Chief Justice believes the petition deserves further investigations. There are no hard and fast rules in place but the rules of natural justice and the right to fair hearing will just dictate that the Chief Justice should at least seek a response to the petition from a named respondent before making a prima facie determination under that provision. ***The fact that it would involve examination of available evidence in order to make that determination whether or not a prima facie case existed, was a quasi-judicial decision-making****…"* (emphasis)

41. The importance of this case to the issues raised for this Court's determination in the present application lies in the fact that it reinforces two very fundamental principles, first that the prima facie determination involves a process of evidence evaluation, and second that it is a quasi-judicial decision making process.

42. Now, if flowing from the logic of this Court's decision in the ***Justice Dery v. Tiger Eye PI, Chief Justice & Attorney General*** case (supra), a prima facie determination involves a process of evidence evaluation, then there certainly must be some sound logic in the Applicant's contention, deserving of serious introspection, that any

outcome of that evaluation must necessarily be reason-based and supportive of the underlying evidence which informed the basis of that determination.

43. Whilst restraining myself from reaching any concluded opinions on this matter, it seems plain to me even at this stage, that requiring evidence evaluation in any process, while simultaneously insisting that the outcome be devoid of a reasoned justification, invariably gives rise to a jurisprudential paradox that erodes the foundations of the decision-making process, as it disconnects the decision from the underlying rationale and evidence, thereby undermining the legitimacy and integrity of the outcome.

44. Infact, this Court's characterization of the prima facie determination as a quasi-judicial process in the ***Justice Dery v. Tiger Eye PI, Chief Justice & Attorney General*** case (supra), further reinforces the need for such a determination to be accompanied by stated reasons, apparent on the face of the record.

45. I am persuaded by the reasoning that once one accepts that the President was acting in a quasi-judicial capacity, then he was clearly bound to give a reasoned determination for his findings. This is more so as administrative justice, generally requires that judicial and quasi-judicial bodies exercising original jurisdiction are expected to provide reasoned conclusions, stated in the decision or *"staring"* from the record, thereby ensuring transparency and accountability in their decision-making processes.

46. Thus for instance in ***R v Civil Service Appeal Board, ex parte Cunningham [1991] 4 All ER 310,*** the English Court of Appeal held that having regard to the facts that the

Civil Service Appeal Board carried out a judicial function, natural justice required the board to give reasons for its conclusions. According to Lord Donaldson of Lymington MR, at page 317 of the Report,:-

> ***"….there is a general rule of the common law or, if that be different, a principle of natural justice that a public law authority should always or even usually give reasons for its decisions"***

47. Reasons serve as the crucial link between the evidence and conclusions, demonstrating the rational nexus and synthesis between the facts considered and the outcome, revealing the thought process and coherent basis for the decision, thereby ensuring that the decision is not arbitrary, unfair, or unjust, and compliant with constitutional requirements. It is therefore clearly in the public interest to know either expressly or inferentially stated, precisely what it was to which the decision makers were addressing their mind in arriving at their conclusion.

48. The rationale for the requirement for recorded reasons to back decisions by judicial and quasi-judicial authorities may thus be summed as follows:-

a) *It is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions.*
b) *It is a well-known principle that justice should not only be done but should also appear to have been done.; and*
c) *It allows for transparency, independent assessment and accountability.*

49. The rule requiring reasons to be given in support of an order is, as underscored by Lord Donaldson of Lymington MR in the case of ***R v Civil Service Appeal Board, ex parte Cunningham*** (supra), akin to the principal of *"audi alteram partem"*, a basic principle of natural justice which must inform every judicial or quasi-judicial process, and this rule must be imperative, as being in consonance with the constitution's spirit and core values. Resultantly, a mere pretense of compliance with it would not satisfy the requirement of law.

50. Adopting the 1st Defendant's interpretation of prima facie determination therefore, would insulate the decision from independent review, undermining even this Court's oversight capacity in critical proceedings that could potentially result in the removal of its own members, a proposition which I find to be quite remarkable.

51. It will thus be seen that the interpretation of the term *"prima facie determination"* urged on this Court by learned Counsel for the Applicant and 2nd Defendant, is imperative, not merely as a procedural requirement but as a substantive constitutional safeguard against arbitrariness, executive overreach, and threats to judicial independence.

52. The next compelling argument which favours the interpretation that a prima facie determination under Article 146 requires reasoned justification, is that this specific determination is the only legal springboard that enables the President to trigger his constitutional powers of suspending a Chief Justice. It is the solitary mandatory pre-condition for the exercise of the President's power to suspend the Chief Justice. Without a prior prima facie determination, the President is absolutely bereft of any

mandate under the Constitution to issue a warrant of suspension under Article 146(10)(a) of the Constitution.

53. That being the case, it would appear quite an extravagant proposition to allow such a critical constitutional pre-condition, to be inscrutable and unreviewable, rather than being transparent and subject to independent assessment, aligning with the principles of fairness and justice.

54. It bears emphasis that the Constitution cannot reasonably be construed to empower the President to peremptorily suspend the Head of another arm of government based on an unreviewable, obscure decision.

55. There is yet another quite significant consideration that bolsters the view that a prima facie determination under Article 146 requires reasoned justification. As this ruling will presently elucidate, Article 146 is acknowledged to be perhaps one of the most notably deficient provisions in the Constitution in its current form, specifically with regard to safeguarding the rights to a fair hearing in impeachment proceedings against Superior Court Judges.

56. Considering the acknowledged deficiencies in Article 146, there is every reason for this Court, in seeking to effectively address these shortcomings, to adopt an interpretation that prioritizes scrupulous adherence to fundamental rights, particularly the right to a fair hearing, and construe Article 146 as requiring a prima facie determination that is grounded in discernible reasons, rather than an unreasoned, bald, bare assertion, to prevent arbitrary decision-making and ensure

that the Executive's actions are transparent and subject to independent evaluation, and judicial oversight.

57. An additional compelling factor that lends weight to the interpretation that a prima facie determination under Article 146 demands reasoned justification, is that given its role in safeguarding the fair hearing rights of Superior Court Justices., a prima facie determination lacking reasoning, analysis, or substantive engagement with the petition's substance risks facilitating *"ambush"* litigation, thereby violating constitutional fair trial guarantees, an approach severely deprecated by this Court speaking through Adinyira JSC in the case of ***Rep v Baffoe Bonnie.***

58. Lastly, it may also be pertinent to point out that the requirement for a reasoned prima facie determinations under Article 146, appears to be consistent with established Executive precedent and convention.

59. In January 2025, Former President Akuffo-Addo, in responding to a petition lodged by Professor Stephen Kweku Asare for the removal the Honourable Chief Justice, issued a 14-page reasoned decision on why no prima facie case had been established. That decision, rendered under Article 146 of the Constitution, exemplified procedural best practices through its detailed legal analysis and reasoned consideration of the facts.

60. Based on all the available materials on record in this application, and without expressing any concluded opinion on the matter, I am persuaded that the arguments urged by learned Counsel for the Applicant and the 2nd Defendant are altogether daunting, and require clear, thoughtful, and in-depth evaluation and

determination of their merits or otherwise; they can in no way be cursorily dismissed.

61. Indeed whenever an allegation is presented to the Court that a person's rights to fundamental justice have been violated, the Courts have rarely, in the interests of justice, held back at intervention through interim restraining orders

62. Thus in the case of ***Abbott v Sullivan and Others [1952] 1 All ER 226*** at page 233, Lord Denning MR cited with approval the statement by Lord Birkenhead LC in the case of ***Weinberger v Inglis (No 2),[1919] AC 606*** at 616 where it was stated thus:-

> ***"… if I took the view that the appellant was condemned upon grounds never brought to his notice, I should not assent to the legality of this course, unless compelled by authority."***

63. At this stage, it is not the intention of the Court to delve into the full merits of the claims filed by the Applicant in this suit. Accordingly, I do not intend to decide or pronounce on the final legal rights of the Parties to this suit and I must not be taken to have so decided.

64. But for the purposes of considering the question whether the case is an appropriate one for injunctive relief I will, for the time being, assume it against the 1st Defendant, and find that the available evidence is compelling enough to justify any court in granting an interlocutory injunction on the strength of it.

65. On that footing, as Counsel for the Applicant points out, the case is not simply one of a person discharging his constitutional duties without more; it is one that

profoundly affects the foundations upon which the democratic polity of this country is itself founded.

66. At paragraph3 15-16 of its affidavit in support of the application herein, it was deposed as follows:-

> *15. That by failing or refusing to provide a prima facie determination that sets out the grounds for a case to answer pursuant to the various petitions, and failing or refusing to indicate the basis and evaluation of the material available to the President and Council of State that led to the alleged determination of a prima facie case to answer as required by articles 146 (1), (2), (3) and (4) prior to purporting to setup committee to inquire into the petitions under article 146 (7), the President and Council of State have subjected the 2nd Defendant to a wilful violation of her constitutional rights under article 17 (1),(2),(3), article 23, article 296 and article 19 (13) of the 1992 Constitution thereby subjecting the Chief Justice to a standard lower than the minimum thresh hold set in Article 146(3) and (4) for ordinary Justices of the Superior Courts.*
>
> *16. That by failing or refusing to provide a prima facie determination that sets out the grounds for a case to answer pursuant to the various petitions, and failing or refusing to indicate the basis and evaluation of the material available to the President and Council of State that led to the alleged determination of a prima facie case to answer as required by articles 146 (1), (2), (3) and (4), prior to issuing a warrant to suspend the Chief Justice under article 146 (10) and appointing an acting Chief Justice to head the Judiciary, the said acts constitute a violation of the constitutional prohibition against interference with the independence of the Judiciary directed in article 125 (3) and article127(1)and (2).*

67. Seen in light of the above therefore, I do not entertain any doubt at all that, if what is being alleged by the Applicant, represents indeed, an unprecedented assault on judicial independence, I ought peremptorily to grant the injunction *pendent lite* which the Applicant seeks, in order to restrain it.

68. As was said by Lord Denning MR in the case of ***Stafford Borough Council v Elkenford Ltd [1977] 2 All ER 519*** at page 527:-

> ***"It is open to the court in its discretion to grant an injunction straightaway, at all events when the breach of the law is plain and where there appears to be an intention by the defendants to continue with the breach."***

69. In taking the view of the law I have held above, I have also been influenced by implicit submissions by learned Counsel for the Applicant and 2nd Defendant suggesting that the absence of formal procedural rules governing impeachment proceedings against the Chief Justice undermines the constitutionality of the process under Article 296 of the Constitution. Please see the case of ***Buckoke and others v Greater London Council*** (supra),

70. In the final analysis, I have thoughtfully given the materials on record the best consideration and carefully listened to oral arguments by learned Counsel for the respective Parties, and I am satisfied that some very grave and consequential concerns have been raised regarding the validity of the Presidential Committee's establishment and proceedings, lending considerable credence to Applicant's contention that continuing the impeachment proceedings with such a

constitutionally flawed body, would severely taint the integrity of the process and be at odds with basic tenets of justice

71. In light of the preceding discussion, I hold the respectful view that the Applicant has demonstrated a serious case to be tried with a reasonable likelihood of success, thus meeting the initial threshold for an interlocutory injunction, in a public law matter such as this.

Balance of convenience

72. I will now turn to a consideration of the second hurdle to be surmounted by the Applicant, which is to satisfy this Court that on the balance of convenience, it would be more justifiable to grant the prayer for interlocutory injunction, than to refuse it. The balance of convenience test, simply means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief.

73. The balance of convenience test in constitutional public interest matters has been explained in the oft cited dictum of Date Bah JSC in the case of ***Welford Quarcoo v. Attorney-General [2012] 1 SCGLR 259***- where he stated as follows:-

> ***"The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo. Given the reliefs that the plaintiff is seeking in the substantive suit in this case,***

it is clear that if he succeeds in securing the declarations he has claimed, the impugned provisions of the Local Government Act, 1993 (Act 462) will be declared void and any actions made in pursuance of them nullified"

74. I must now apply these principles and balance the risk of irreparable damage from continuing the investigations against the potential consequences of temporarily halting them, to enable this Court make a final and informed determination of all the quite grave and weighty matters raised by the Applicant in this case, while evaluating whether a later annulment would sufficiently address any harm caused in the interim

75. In proceeding upon this inquiry, I must first of all observe that upon a careful review of the record, I note that the 1st Defendant has not provided any significant material addressing the balance of convenience or weighing the potential impact of halting the investigations, and the Deputy Attorney General's oral submissions were similarly lacking in this regard. This, I find to be rather striking.

76. In my considered opinion therefore, the 1st Defendant's response, examined in its entirety, has failed to recognize that the potential harm that might flow from a continuation of the investigation by the Presidential Committee, only for the Applicant to succeed at the end of the trial of this case, was not simply directed alone at the individual fundamental rights of the Chief Justice, and her tenure of office, but as ably contended by learned Counsel for the Applicant and the 2nd Defendant, was directly targeted at the entire judiciary and its independence, ultimately translating into an unprecedented assault against our democratic architecture as a whole.

77. At paragraph 29 of its supporting affidavit, the Applicant deposed to the fact that unless restrained by this court, continuing the removal proceedings against the Chief Justice would severely compromise the Judiciary's ability to fulfill its constitutional mandate and uphold the rule of law.

78. Subsequently at paragraph 30 of its supporting affidavit the Applicant further contended that the continuation of the impugned proceedings and enforcement of the suspension warrant would result in substantial and irreparable harm to the rule of law, the Constitution, and the independence of the Judiciary, thereby justifying the stay of further processes and suspension of the Presidential Warrant.

79. I have thoughtfully reviewed the above depositions by the Applicant, and I am fully convinced that they resonate with considerable persuasive force.

80. Under the circumstances, I am led to the conclusion that denying this application may result in irreparable harm with lasting consequences that cannot be fully rectified even if the challenged acts are later declared null and void,

81. As rightly observed by Prof. Mensa-Bonsu JSC in her dissenting but rather illuminating Opinion when considering an analogous application for interlocutory injunction on facts quite similar to this instant case in the case of ***Vincent Ekow Assafuah v Attorney-General Writ No. J1/18/2025 dated the 6th of May 2025***:-

> ***"In the instant case, the essence is not about damages, but about the intendment of the Constitution in respect of hallowed constitutional principles***

of the protection of judicial independence and also administrative justice. The stakes are high for the subject of the petitions and the judicial system at large, at a time when nothing much would be lost by pressing the 'pause' button to enable due reflection and action. "

82. Refusing this application could result in significant and irreparable harm, including damage to the judiciary's dignity, and reputation due to its perceived politicization or manipulation, that may be impossible to rectify. The erosion of public trust would impede the judiciary's ability to function effectively and uphold the rule of law, setting a perilous precedent that threatens judicial independence, and potentially emboldening future attempts to politicize and interfere with the judiciary, ultimately casting a lasting chill over the entire justice system.

83. As this Court cautioned in the case of ***Abu Ramadan & Anor v Electoral Commission & 4 Ors In Re: 1. The Owner of the Station – Montie FM 2. Salifu Maase @ Mugabe 3. Alistair Nelson 4. Godwin Ako Gunn Civil Motion No J8/108/2016; 27th July 2016***:--

"Indeed, it is because the judicial function is for the cohesion of society at large that, even during all the various periods of military rule which this country endured in times past, the courts were always preserved with their powers intact. There cannot be an efficiently run State wherein all persons could thrive in peace and security, without an independent and dignified Judiciary, operating fearlessly and competently, beholden to no one."

84. As already indicated above, the 1st Defendant did not direct attention to any matters relating to the question of the balance of convenience in his affidavit in opposition, nor did the learned Deputy Attorney General articulate any submissions in that direction in his oral submissions to the Court. There is therefore no material from the 1st Defendant upon which one can assess what irreparable harm would be occasioned to the President should the *"pause button"* be briefly pressed, to enable this Court effectually interrogate the grave and weighty constitutional matters raised in this suit

85. In the premises, and having meticulously examined all the materials on record in this application, I am satisfied that the balance of justice and convenience unequivocally favors granting the application for interlocutory relief, with no basis to conclude that the public interest would suffer greater hardship as a result. In fact, the record is devoid of any such indication.

86. In this landmark case, which significantly shapes the doctrine of separation of powers in our constitutional history, it cannot be doubted that, the judiciary is presented a critical opportunity to robustly assert its independence and dignity, and resist any perceived threat of executive overreach. This clearly is not an occasion for the Court to diffidently roll over and acquiesce in a narrow, doctrinaire, literal interpretation of constitutional provisions that compromises judicial autonomy, and whittles down fundamental rights.

87. Given therefore, the gravity of the concerns raised about the Presidential Committee's legitimacy, the conclusion is inescapable that allowing such a constitutionally flawed body to proceed with the hearing of petitions for the

removal of the Chief Justice would be a gross affront to the fundamental principles of justice and fairness.

88. Indeed, it must be deeply perturbing to contemplate a disciplinary body beset and afflicted by such grave concerns regarding the validity of its establishment and proceedings, continuing with its proceedings to conclusion, only to be declared a nullity in the end.

89. Again to quote another illuminating passage from the dissenting views of the very esteemed Prof. Mensa-Bonsu JSC in the case of ***Vincent Ekow Assafuah v Attorney-General*** (supra) :-

> ***"Thus, when weighty issues such as threats to judicial independence emerge in any dispute, it requires that we push the 'pause' button, to give us time to reflect and assess our situation. Shrill and even deafening mob-cries of "crucify him", may yield momentary political victories, but may have resounding effect of perpetual import on Hallowed values".***

90. The above wise counsel of my very noble and esteemed Sister, is no doubt rooted in deep juridical wisdom, and it bears adding that any appearance of judicial capitulation to executive overreach, can only have far-reaching consequences, potentially tarnishing this judiciary's legacy and inviting harsh scrutiny from history.

91. When all has been said and done, I am fully persuaded that the balance of evidence fastidiously lies in granting the Applicant the injunctive reliefs it seeks. In my respectful opinion, the justice of the case is clear beyond argument or dispute.

92. I will therefore order that the Applicant be entitled to the reliefs set out in its motion paper which are all hereby granted.

93. Since the facts upon which the injunctive relief was sought are intertwined with the prayer for the suspension of the operation of the President's warrant of arrest, I will not hesitate in acceding to that supplication as well. Consequently I hereby order that the operation of the President's Warrant of Suspension issued on the 22nd of April 2025 be suspended forthwith, until the final determination of the suit.

94. Before taking leave of this delivery it bears emphasis that this is an application for interlocutory relief only. It is not an application with regard to which the rights of the parties have been finally decided. They are to be finally decided in the substantive action which will be tried, hopefully without further tarrying.

(SGD) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

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