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

ADJEI-FRIMPONG JSC

CIVIL MOTION NO. J8/113/2025

28TH MAY, 2025

HER LADYSHIP JUSTICE GERTRUDE ARABA ESAABA SACKEY TORKORNOO **……** **PLAINTIFF/APPLICANT**

VRS

1. **THE ATTORNEY-GENERAL**
2. **JUSTICE GABRIEL SCOTT PWAMANG**
3. **JUSTICE SAMUEL KWAME ADIBU-ASIEDU** **DEFENDANTS/RESPONDENTS**
4. **DANIEL YAO DOMELOVO**
5. **MAJOR FLORA BAZWAANURA DALUGO**
6. **PROFESSOR JAMES SEFAH DZISAH**

RULING

TANKO AMADU JSC:

INTRODUCTION:

(1) This application is the fifth in a series of interlocutory injunction applications which inundated this court seeking to halt the constitutional processes following three petitions presented to the President of the Republic for the removal of the Honourable Lady Chief Justice from office pursuant to Article 146 of the 1992 Constitution.

(2) On the 28th day of May 2025, this court heard arguments on the instant application for interlocutory injunction filed by the Honourable Lady Chief Justice *(hereinafter referred to as the "Applicant")* against the Defendants *(hereinafter referred to as the "Respondents").* By unanimous decision, this court dismissed the application and reserved the reasons for the decision. This delivery details my reasons for the position I took in respect of the application.

(3) The reasons herein partly reflect the view I took in an earlier ruling delivered on the 6th of May 2025, following an application for interlocutory injunction in **Writ No. J1/18/2025 intituled VINCENT EKOW ASSAFUAH VS. THE ATTORNEY-GENERAL**, which provoked the determination of the same legal issues as in the instant application. In that majority decision of this Court, which dismissed the said application, I emphasized that, the threshold to injunct the performance of a constitutional or statutory duty or process in the exercise of judicial discretion is not light, as may normally be the case in seeking remedies in interlocutory injunction applications within the realm of private law.

(4) In delivering the lead majority opinion in that application, I relied on the well settled case law regarding injunctions in public law matters as stated in cases like **WELFORD**

QUARCOO VS. ATTORNEY GENERAL AND ANOTHER [2012] 1 SCGLR 259 AND RANSFORD FRANCE (NO.1) VS. ELECTORAL COMMISSION & ATTORNEY-GENERAL [2012] 1 SCGLR 689 and restated the following tests for determining applications for injunctions in matters pertaining to public law. In that case, I held that injunctions in public law matters should be;

i. as a first rule, not be granted to restrain the carrying out of constitutional functions.

ii. be granted sparingly and with extreme circumspection only.

iii. where it is clearly demonstrated that the Applicant's case is invariably most likely to succeed for a permanent order of injunction on the final determination of the case, and

iv. there is 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. (Emphasis mine).***

(5) In the said **Assafuah case,** I articulated inter alia as follows:

> ***"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."

(6) In the same decision, my respected brother, Kulendi JSC, set out the threshold for the grant of the relief of interlocutory injunction in public law matters in the following words:

"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.

(7) His Lordship continued thus:

"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 institution's discharge of their constitutional or statutory duties.*

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

(8) Clearly therefore, the current position of the law is that no court, including this Court, must yield to any invitation to make any order that would have the effect of truncating, interfering or suffocating the duties of any duty bearer or any process under the 1992 Constitution by injuncting the performance of any constitutional or statutory functions or process, unless there is a clear violation of a provision of the Constitution or statute that confers power or authority on the duty bearer and only where jurisdiction is properly invoked by an applicant. This Court remains guided by the reasoning in the **ASSAFUAH CASE.**

(9) In the specific context of the instant application, this Court will rely on the guidance from the insightful words of Benin JSC in the case of **JUSTICE DERY VS. TIGER EYE PI,**

CHIEF JUSTICE & ATTORNEY-GENERAL [2015-2016] 2 SCGLR 812 where the Learned Justice held as reported at pages 848-849, an admonition which is a ratio applicable in the instant case as well. His Lordship Benin JSC stated the position of the law as follows:-

> ***"The petition that commences the impeachment proceedings derives its validity from the Constitution; and thus unless clear intention is expressed, that validity cannot be taken away only because there is a procedural infringement. The duty imposed on the Chief Justice to make a prima facie determination is derived from the validity of the petition. And that duty, by the terms of the Constitution, prevails until the Chief Justice has performed it. There is nothing in the Constitution that prevents the Chief Justice from performing that constitutionally imposed duty once the President has referred the petition to her. Any attempt to stop that process will be subverting the Constitution. It goes to confirm that the substantive process commenced by the petition is divorceable from the procedural steps that are, or may be put in place, to resolve the petition; the procedural steps cannot override the validity of the originating process.***

THE INSTANT SUIT.

(10) The Applicant in the instant suit is not an 'ordinary' party. The Applicant is the Honourable Chief Justice of the Republic of Ghana, who is also the Head of the Judiciary and responsible for the administration and supervision of the Judiciary and Judicial Service. In her writ, which invoked the original jurisdiction of this Court, the Applicant seeks a myriads of substantive reliefs formulated as follows:

(i) *"A declaration that upon a true and proper interpretation of Articles 17(1) and (2), 19(13) and (14), 146(7) and (8), 28(1) and 295(1) of the Constitution, a Chief Justice*

has the right to a public hearing in proceedings before a committee appointed by the President to inquire into a petition presented for the removal of the Chief Justice.

(ii) *A declaration that upon a true and proper interpretation of Articles 17(1) and (2), 19(13) and (14), 23, 146(7) and (8), 281(1) and 295(1) of the Constitution, the right of a Chief Justice to a public hearing and all the incidents of a fair hearing may only be excluded in the interest of public morality, public safety, or public order;*

(iii) *A declaration that upon a true and proper interpretation of Articles 179(1) and (2), 19(13) and (14), 23, 146(7) and (8), 281(1) and 295(1) of the Constitution, a Chief Justice who is called upon to participate in a hearing conducted by a committee constituted under Article 146(6) to inquire into the merits of a petition seeking the removal from office of the Chief Justice can waive the privilege of "in camera proceedings".*

(iv) *A declaration that upon a true and proper interpretation of Articles 19(13), 23, 146(1), (2), (4) and (6) and 296 of the Constitution, a determination of a prima facie case in respect of a petition for the removal of a Chief Justice or a Justice of the Superior Court of Judicature is a quasi-judicial process requiring a judicious evaluation, culminating in a reasoned decision.*

(v) *A declaration that upon a true and proper interpretation of Articles 19(13), 23, 146(1), (2), (4) and (6) and 296 of the Constitution, the purported prima facie finding in respect of three petitions presented for the removal of the Chief Justice and served on the Plaintiff by a letter dated 22nd April, 2025, does not amount to a proper determination of a prima facie case and is therefore null, void and of no effect;*

(vi) A declaration that upon a true and proper interpterion of Articles 19(13), 23, 146(1), (2), (4) and (6) and 296 of the Constitution, the purported finding by the President that a prima facie case has been made against the Plaintiff and served on the President by a letter dated 22nd April, 2025, was arbitrary, capricious, in violation of the right of the Plaintiff to a fair trial, and therefore unconstitutional, void and of no effect;

(vii) A declaration that upon a true and proper interpretation of Articles 146(1), (2), (4), 125(3) and (4), 127(1) and (2) and 296 of the constitution, the purported determination by the President that a prima facie case has been established against the Plaintiff as conveyed in the letter dated 22nd April 2025, together with the warrant of suspension of the Plaintiff, constitute an unjustified attempt to remove the Plaintiff as Head of Ghana's Judiciary and thus, an undue infringement on the independence of the Judiciary;

(viii) A declaration that upon a true and proper interpretation of Article 146(6) and (7) of the Constitution, the failure to serve the Plaintiff with a judicious determination of a prima facie case before appointing a committee to purportedly inquire into the petitions for the removal of the Plaintiff as Chief Justice constitutes a violation of the Plaintiff's right to substantive administrative justice and fair hearing, rendering the entire proceedings initiated null and void;

(ix) An order setting aside the warrant for suspension issued by the President dated 22nd April, 2025 to suspend the Plaintiff as Chief Justice of the Republic.

(x) A declaration that upon a true and proper interpretation of Articles 23, 146 (6) and (7) and 296(a) and (b) of the Constitution, the 2nd defendant, Justice Gabriel Scott Pwamang, is not qualified to be a chairman or member of the committee set up by the President to inquire into the petitions against the Plaintiff on account of having adjudicated and given various rulings in favour of one of the petitioners, Daniel Ofori in actions filed in the Supreme Court;

(xi) An order prohibiting the 2nd Defendant, Justice Gabriel Scott Pwamang, from presiding as Chairman of the committee or participating in the proceedings of the committee set up to inquire into the petitions against the Plaintiff;

(xii) A declaration that upon a true and proper interpretation of Articles 23, 127(1) and (2), 146(6) and (7) and 296(a) and (b) of the Constitution, the appointment of the 3rd Defendant, Justice Samuel Kwame Adibu-Asiedu, as a member of the committee set up by the President to inquire into the petitions against the Plaintiff, at a time when he had already sat as a member of a panel of the Supreme Court constituted under Article 128(2) of the Constitution to hear an application for interlocutory injunction filed by a Ghanaian citizen challenging the ***"Article 146 proceedings"*** *initiated against the Plaintiff, violates the independence of the Judiciary;*

(xiii) An order prohibiting the 3rd Defendant, Justice Samuel Kwame Adibu-Asiedu, from sitting as a member of or participating in the proceedings of the committee set up to inquire into the petitions against the Plaintiff;

(xiv) A declaration that upon a true and proper interpretation of Articles 146(1), (2), (4), 23 and 296 of the Constitution and Sections 1, 2, and 4 of the Oaths Act, 1972, the 4th, 5th and 6th Defendants are not qualified to undertake the functions entrusted on them as

members of the committee set up by the President to inquire into the petitions against the Plaintiff;

(xv) An order restraining the committee set up by the President to inquire into the three petitions against the Chief Justice composed of the 2nd, 3rd, 4th, 5th and 6th Defendants from proceeding to carry out the terms of reference of the committee set up under Article 146(6) as laid out in the letter dated 22nd April, 2025;

(xvi) Any other order(s) as to this Honourable Court may seem meet."

THE INSTANT APPLICATION

(11) In an application to this Court filed on 21st May 2025, the Applicant prayed the Court for orders of injunction to restrain the committee set up by the President of the Republic to inquire into the three petitions brought for the removal of the Applicant from office as Chief Justice. The Applicant specifically sought to restrain the committee from;

i . inquiring into the three petitions brought against her for her removal from Office as Chief Justice.

ii. executing their [the committee] terms of reference.

i i . proceeding with the execution of the terms of reference of the committee.

iv. taking any action in connection with the determination that a prima facie case has been made against the Applicant by the petitions.

v. presiding over or participating in proceedings of the committee to inquire into three petitions for the removal of the Applicant as Chief Justice.

(12) The Applicant further prayed this Court for ***"an order suspending the operation of the warrant for suspension of the Chief Justice purportedly issued by the President under***

Article 146(10) of the Constitution, 1992, until the hearing and final determination of the instant action."

(13) Before I review the affidavits of the parties and the legal submissions of both counsel in the application, I wish to place on record some preliminary comments on the prayer for injunction sought by the Applicant. What is evident from the processes filed by the Applicant in respect of the injunction application before the Court is that, the Applicant acknowledges the following facts:

i. ***a prima facie determination has been made in respect of the petitions presented for the removal of the Chief Justice.***

ii. ***the President of the Republic has set up the committee made up of the second to sixth Respondents to inquire into the petitions for the removal of the Chief Justice.***

iii. ***the committee has commenced the Inquiry into the petitions in camera as prescribed by the Constitution.***

(14) The above factual events confirm that the matters sought to be injuncted by the Applicant are steps prescribed by the Constitution to be taken upon a petition for the removal of the Chief Justice. Against this background, the clear effect of the application brought before the Court was an invitation to temporarily truncate the proceedings initiated pursuant to Article 146 of the 1992 Constitution, pending the final determination of the substantive matter.

(15) In **GHANA BAR ASSOCIATION VS. ATTORNEY-GENERAL AND ANOTHER [1995-96] 1 GLR 598,** an eminent jurist of this Court, Bamford Addo, JSC, stated in respect of the Article 146 procedure as it applies to a Chief Justice at pages 617 to 618 of the report thus:

> ***"The power to remove the Chief Justice is given only to the President under article 146(6) of the Constitution, 1992 who appoints him as provided by article 144(1) of the Constitution, 1992... The Supreme Court has no such concurrent jurisdiction to remove the Chief Justice with the President under article 146(6) of the Constitution, 1992."***

(16) The Learned Justice proceeded to hold at page 618 of the report as follows:

> ***"…the Constitution, 1992 itself has provided the grounds and the procedure for the removal or suspension of a person who has been constitutionally appointed Chief Justice, and no court has jurisdiction to suspend or grant an injunction to prevent him from discharging his duties or to remove a Chief Justice. Indeed, it would be a violation of the Constitution, 1992 for any court to attempt to do this and clearly this court has no jurisdiction in such a case…"***

(17) In the same case, Wiredu, JSC *(as he then was)* and later Chief Justice, held at page 611 of the report as follows:

> ***"The court does not have original concurrent jurisdiction with the body empowered to exercise jurisdiction to adjudicate on matters properly falling within the parameters of article 146 of the Constitution, 1992."***

(18) In view of these definitive statements emanating from these eminent jurists of this Court as demonstrated in their respective dicta quoted above, what then will be the legal basis for the Court or any other court to order the committee to refrain from:

i. ***inquiring into the three petitions brought against Chief Justice for her removal from Office.***

iii. ***executing and or proceeding with their terms of reference in accordance with the provisions of the constitution.***

iv. ***taking any action in pursuance of the prima facie determination made in respect of the petitions for the removal of the Applicant from office as Chief Justice.***

v. ***(The Chairman) from presiding over or participating in proceedings of the committee to inquire into the three petitions for the removal of the Applicant from office as Chief Justice?***

(19) Further, given the powers conferred on the President of the Republic pursuant to Article 146(10)(a) of the 1992 Constitution, on what basis will the warrant issued under the hand of the President of the Republic suspending the Chief Justice, while the petitions for her removal from office are being considered by a Committee appointed by the President pursuant to article 146(6) of the 1992 Constitution, be suspended?

(20) The facts deposed to in the affidavit in support of the application, as in the previous applications aforementioned, clearly fall far short of the threshold required to injunct the performance of a constitutional or statutory function, duty, process or discretion. The affidavit is laden with the Applicant's personal views of what ought to be the case, rather than what is clearly laid down by constitutional prescriptions, which the Applicant has

urged on the Court to disregard in order to vindicate her reliefs in the application. Like in the earlier applications determined by this court, the Applicant's affidavit contains speculations and suggestions of political conspiracies that are devoid of any substance. I will shortly set them out briefly in this delivery.

THE APPLICANT'S CASE

(21) In the affidavit in support of the application, deposed to by the Applicant herself, she recounted the background to the setting up and composition of the committee currently tasked with inquiring into the petitions submitted to the President for her removal from office. She indicated that, about the same time she submitted her responses to the petitions, a Ghanaian citizen and **Member of Parliament for the Tafo Constituency**, **Vincent Ekow Assafuah**, invoked the original jurisdiction of this Court for the reliefs endorsed on his writ and also applied for an interlocutory injunction to restrain the President and the Council of State from proceeding with the consultative processes for her removal until the hearing and final determination of the action. According to the Applicant, notwithstanding the pendency of that application, a fact known to the Attorney-General, she was surprised to read in the media, a press statement from the Office of the President indicating that a *prima facie* case had been made in respect of the three petitions for her removal from office as Chief Justice.

(22) The Applicant further deposed that, on the same day which was 22nd April 2025, she received a letter from the Office of the President informing her that a *prima facie* case had been established in respect of the three petitions for her removal as Chief Justice. That, the letter also stated that a five-member committee had been constituted to inquire into the petitions against her and also communicated her suspension as Chief Justice pending the outcome of the committee's inquiry. The Applicant bemoaned the processes triggered for

her removal from office, and contended that they violate various constitutional provisions and have gravely infringed on her fundamental rights.

(23) Furthermore, the Applicant deposed that, the initiation of consultations between the President and the Council of State regarding her removal as Chief Justice when she had neither been notified of the receipt of any petition nor had her comments been elicited in response to the allegations contained therein constituted a violation of the constitutionally stipulated safeguards protecting the security of tenure of the Chief Justice and amounts to interference with the independence of the Judiciary.

(24) Additionally, she deposed that, prior to her suspension, an opinion poll had purportedly been conducted by a pollster known to be close to the Government, in which it was alleged that she was so unpopular that she had to be removed. She further deposed that, there had been leaks of the petition and her responses to the public and contended that, the situation has fundamentally and irremediably prejudiced both her case and the cases purportedly brought against her, and that no purpose would be served by holding the committee's proceedings ***in camera***. She further contended that justice and fairness would rather be served by a public hearing of the petitions against her, as such a hearing would pose no harm to public morality, public safety, or public order.

(25) The Applicant asserted further that, the purported establishment of a *prima facie* case against her containing no reasoning was bereft of a judicious determination and simply fell far short of the requirements of a *prima facie* determination known to the Constitution and the laws of Ghana.

(26) In consequence of the above, the Applicant asserted that the determination by the President that, a *prima facie* case has been established against her, as conveyed in the letter dated 22nd April 2025, together with the warrant of suspension served on her, constitute an unjustified attempt to remove her as Head of Ghana's Judiciary and amounts to an undue infringement on the independence of the Judiciary.

(27) According to the Applicant, there is no committee properly and constitutionally constituted to inquire into the petitions for her removal as Chief Justice under Article 146 of the Constitution, as Justice Gabriel Scott Pwamang, the named Chairman, is not qualified to serve as either chairman or member of the said committee, on account of having adjudicated and delivered various rulings in favour of one of the petitioners, Daniel Ofori, in actions filed in the Supreme Court, in which she was a member of the panel.

(28) In respect of Justice Samuel Kwame Adibu-Asiedu, the Applicant contended that, he is also not qualified to serve as a member of the committee set up by the President on account of having already sat as a member of a panel of the Supreme Court constituted under Article 128(2) of the Constitution to hear an application for interlocutory injunction filed by Vincent Ekow Assafuah. Consequently, the said appointment of Justice Asiedu violates the independence of the Judiciary.

(29) With respect to the other Respondents, the Applicant alleged that, not having taken the oath as required by law, they were not qualified to be members of the committee and thus could not discharge the functions constitutionally entrusted to them as of their first sitting on 15th May 2025.

(30) In consequence of the above depositions, the Applicant asserted that irreparable damage and grave injury will be occasioned to her good self and the people of Ghana if the committee proceeds with the tainted process.

THE OPPOSITION

(31) The Attorney-General, represented by the Deputy Attorney- General, who was also Counsel for the other Respondents opposed the application referring to the admitted facts and the legal consequences that flow therefrom.

(32) By an affidavit in opposition filed on the 26th of May 2025, the Respondents refuted the allegations of the Applicant and defended the legal propriety of the processes triggered to remove the Applicant from office. The Respondents' affidavit denied all the material depositions suggesting impropriety of the processes for the removal of the Applicant as Chief Justice.

(33) The Deputy Attorney-General argued that, the requirement for the proceedings to be held *in camera* is a constitutional command intended not only to preserve, protect, and safeguard the dignity of the applicant's high office as Chief Justice, but also to protect the interest of other concerned parties, the integrity of the process, and the judiciary as a whole. Further, the Deputy Attorney-General referred the Court to the decision of May 21, 2025, in the case of **CENTRE FOR CITIZENSHIP CONSTITUTIONAL AND ELECTORAL SYSTEMS LBG VS. THE ATTORNEY-GENERAL (Writ No.J1/20/2025) dated 21st May 2025,** where this court dismissed that Applicant's claims founded on similar depositions as are contained in paragraphs 20, 21, 22, and 23 of the affidavit in support of the instant application. In that case under reference by the Deputy Attorney-General, this court held that, the said depositions were insufficient to warrant the grant

of an injunction to interfere with a constitutional process or to restrain the performance of a constitutional or statutory duty bearer from performing his constitutional or statutory duty. According to the Deputy Attorney-General, just as in that case, the instant Applicant has also simply failed to make a case to warrant the grant of the instant application.

EVALUATION OF AFFIDAVIT EVIDENCE AND LEGAL ARGUMENTS

(34) What then in sum is the contention of the Applicant on whom the burden of persuasion lies? Unless I have misapprehended her affidavit evidence, it is that, since in her view, the petitions and her responses are already in the public domain, the hearing should likewise be open to the public notwithstanding that, the 1992 Constitution, the supreme law of the land, under which the Applicant was appointed Chief Justice, explicitly and mandatorily prohibits under Article 146(8), publicity of the process. The Applicant, the foremost judicial officer of the state, who is at the centre of the inquiry has expressed a desire to waive what she perceives as a "***right***" to public hearing of the committee's proceedings as against the ***in camera*** prescription under the constitution. But does such a right even exist at all?

(35) In advancing her preference for a public hearing of the committee's proceedings, the Applicant has failed to disclose the motivation for an invitation to this court to consciously usurp or to say the least ignore a constitutional prescription for her personal choice without taking into consideration the confidentiality and integrity of the process and the interest of other parties to the process. In fairness to the Applicant, I think she believes that, publicity of the proceedings or opening same to the public will ensure her understanding of ***"fairness"*** of the process. But the question is, how exactly would that be achieved? Is it that the Applicant does not believe in the integrity and impartiality of the five distinguished citizens including two of her colleagues in the Supreme Court

constitutionally tasked with conducting the inquiry? Is the Applicant's claim for this court to order a public hearing of the process suggestive that, by virtue of their appointment as chairman and members respectively of the committee, the committee memebers will somehow abandon their sense of fairness and impartiality such that they can only act "justly" and "fairly" when under public observation and scrutiny?

(36) Further, is the demand on the Supreme Court to order a public hearing a ploy to plunge the entire process into constitutional illegality, with the effect that this same Court would then be invited to declare the entire process a nullity by virtue of having ordered the committee to violate a clear provision of the constitution in preference to the Applicant's personal wishes? On the other hand, can it also be reasonably inferred that, the invitation to this court to direct the committee to proceed with the process in a manner which is clearly against a mandatory constitutional provision, betrays a timidity of conviction on the part of the Applicant?

(37) The answers to these relevant interrogatories are better left to legal commentators and constitutional law scholars in order not to drift away from answering the issue directly provoked by this application. And that issue is, whether or not the Applicant is entitled to all or part of the reliefs she sought in the instant application.

(38) As I have already outlined in the introductory remarks, an applicant seeking such injunctive reliefs in matters within the realm of public law must meet a higher threshold. The applicant is required to present an exceptional case of a breach or threatened breach of a statutory provision or of the Constitution itself, the consequence of which would affect the public interest. The applicant must therefore demonstrate a violation or threatened violation of the Constitution or other statutory provisions that underpin the

impugned process. In all cases, the injury or damage likely to be suffered must be of such a nature that it cannot be remedied even if the applicant ultimately succeeds in the substantive suit.

(39) Against this background, and with the utmost deference to the Applicant herein, I have struggled to appreciate how some of the depositions in the affidavit in support of the instant application can justify or authorise the grant of a restraining order against the functioning of the Committee of Inquiry pursuant to Article 146 of the 1992 Constitution. In paragraph 16 of the affidavit in support, the Applicant deposed as follows:

> ***"That before my suspension, an opinion poll had purportedly been organized by a pollster known to be close to the Government in which he alleged that I was so unpopular that I had to be removed as the Chief Justice. Attached herewith and marked as Exhibit "GST 4" is a copy of a press report on the said opinion polls.***

(40) Further, at paragraph 17 the Applicant deposed thus:

> ***"That there have been leakages of various documents purportedly constituting the petitions against me and alleged responses by me to same in the press, and there have been widespread media discussions about the processes under Article 146 of the Constitution on all radio and television networks as well as newspaper publications about same."***

(41) Grounded on the above depositions, the Applicant claims the situation has irremediably prejudiced her case, and that, fairness and the national interest will rather be served by a public hearing of the petitions against her since same will present no harm to public morality, public safety, or public order.

(42) Suffice it to state that, the alleged pollster and the allege leakages in the public domain are neither issues arising from the substantive writ nor matters in respect of which any relief has been sought. Moreover, the instant application does not seek a mandatory injunction to compel a public hearing of the petition. The interlocutory injunction sought in this application is, by its very formulation, clearly prohibitive rather than mandatory. The aforementioned depositions are, with all due respect to the Applicant, mere red herrings.

(43) The next ground on which the Applicant invites the Court to restrain the Committee is that, the *prima facie* determination was not judicious, as it was rendered without reasons. I have cautioned myself against prejudicing the substantive reliefs sought in this action. However, it is not in doubt that the Applicant herself has acknowledged the existence of a *prima facie* determination, however described. Whether the form and content of that determination render it a nullity due to the alleged absence of reasoning is a matter to be determined at the substantive hearing. Be that as it may, I am not oblivious to the jurisprudence from this Court that a judgment rendered without reasons is, by any means, a judgment.

(44) While it is in the interest of justice that reasons accompany judicial or quasi-judicial outcomes, there is no known jurisprudence in our courts to the effect that, a decision rendered without detailed reasons is thereby a nullity. This holds especially true when a *prima facie* case is said to have been made without reasons, but which merely requires the adversary to present a defence, or as in the instant case, to appear before a committee of enquiry in response to the allegations for which the *prima facie* determination has been made.

(45) In respect of the allegations of potential bias as alleged, the law is settled that, the test for bias in our jurisdiction has been one of a real likelihood of bias or actual bias. See cases such as **REPUBLIC VS. NUMAPAU AND OTHERS; EX-PARTE AMEYAW II [1997-1998] 2 GLR 368, ATTORNEY-GENERAL VS. SALLAH (1970) 2 G & G 487, SC, STATE VS. GENERAL OFFICER COMMANDING THE GHANA ARMY EX-PARTE BRAIMAH [1967] GLR 192, AKUFFO-ADDO VS. QUARSHIE-IDUN [1969] GLR 667, AGYEI-TWUM VS. ATTORNEY-GENERAL & ANOR [2005-2006] SCGLR 732, BILSON VS. APALOO [1981] GLR 15.** At the risk of delving into some of the substantive reliefs sought at this stage, I do not think that the Applicant has met the threshold to warrant the disqualification of the 2nd and 3rd Respondents.

(46) With respect to the other Respondents, the bare allegation that they ought to be disqualified on the grounds of not having taken oaths as members of the Committee is misplaced, as that allegation is neither factually nor legally substantiated. Indeed, the affidavit evidence on behalf of the Respondents denied the Applicant's assertion. In seeking to disqualify all the members of the Committee at this stage of the suit, while simultaneously requesting an order of this Court directing a public hearing of the Committee's proceedings, the Applicant, in my view, and with all due deference to her, simply blew a muted trumpet. In fact, it is clear that, the issues provoked by this application can better be resolved in the determination of the substantive action before this court, and not at this interlocutory stage. Thus, the test as established by this court in the **WELFORD QUARCOO AND ASSAFUAH CASES** have not been met. Therefore, this application, on the facts and the law fails.

(47) Before signing off, let me address an issue raised by the Applicant in paragraph 12 of the affidavit in support. There, the Applicant deposed as follows:

> ***"That notwithstanding the pendency of the application which had been duly served on the Attorney-General, who filed relevant processes in opposition and the hearing of same had been duly adjourned on two occasions by this Honourable Court, on 22nd April, 2025, I was again surprised to read in the news a press statement from the Office of the President, stating that a prima facie case had been established in respect of the three petitions for my removal as the Chief Justice. Attached herewith and marked as Exhibit GST 3* is a copy of the said press release."***

At common law, the general position is that a party to judicial proceedings together with his agents and assigns, however described, must refrain from any conduct that may potentially and unfairly prejudge or prejudice the hearing or outcome of a matter pending before a court of law, provided he or she is aware of such pendency of the proceedings. Thus, when an application for an interlocutory injunction is pending before a court, the party against whom the interlocutory order is sought, if served with the application, is ordinarily enjoined from proceeding with the conduct or activity in question, whether the injunction sought is mandatory or prohibitory in nature.

(48) Indeed, except in very extreme and exceptional circumstances, disregarding the pendency of a duly served application and engaging in the very conduct for which an interlocutory injunction is sought is contemptuous of the court. In explaining the nature of such contempt, Baffoe-Bonnie JSC (now Ag. CJ) articulated the traditional common law position in the case of the **REPUBLIC VS. BANK OF GHANA AND 5 OTHERS EX-PARTE BENJAMIN DUFFOUR CIVIL APPEAL No.J4/34/2018 dated 6th June 2018** in the following words:

"… They (the Respondents) fail to consider the fact that contempt may arise where a party that a case is sub judice, engages in an act or omission which tends to prejudice or interfere with the fair trial of the case despite the absence of an order of the court. The judicial power of Ghana, by. Article 125(3) of the 1992 Constitution, has been vested in the Judiciary. This power cannot be fettered by any person, agency or organ including the President and Parliament. Any conduct that contravenes this provision is clearly unconstitutional and as such null and void. When a court is seized with jurisdiction to hear a matter, nothing should be done to usurp the judicial power that has been vested in the court by the Constitution of Ghana. In effect, the state of affairs before the court was seized with the matter must be preserved until the court delivers its judgment. This is so whether or not the court has granted an order to preserve the status quo or not. A party to the proceedings will be in contempt if he engages in an act, subsequent to the filing of the case, which will have the effect of interfering with the fair trial of the case or undermine the administration of justice. The conduct must be one which has the effect of prejudging or prejudicing the case even before a judgment is given."

(49) In my view, the restatement of the correct legal position which is a clear departure from the above position was succinctly articulated by my esteemed brother Kulendi JSC in the **ASSAFUAH CASE** (Supra) which has distinguished the general principle central in the case of **REPUBLIC VS. MOFFAT AND OTHERS EX-PARTE ALLOTEY [1971]2 GLR 391-403,** from situations in the realm of pubic law which affects the general public interest. For a better appreciation, I will reproduce *in extenso* the position contained in paragraphs 86-89 of the opinion of Kulendi JSC in the **Assafuah case.**

"86. While I acknowledge the utility and essence of the principle

*enunciated in the **MOFFAT CASE** (supra), in preserving judicial authority and preventing the erosion of the potency of court orders by the overreaching preemptive activities of unscrupulous persons as well as frivolous and vexatious especially in private disputes; I believe this case presents an opportunity to refine the application of this principle, especially in light of our contemporary constitutional realities.*

87. *Instructively, our constitution, unlike those of some jurisdictions, lacks preliminary procedural filters at the Supreme Court to weed out frivolous cases before a hearing. Consequently, the doors of **Article 2(1) and Article 130** remain open for any individual to contest the constitutionality of public actions, regardless of merit. This legal openness, while essential for upholding fundamental rights and holding duty bearers accountable, also makes the system susceptible to exploitation.*

88. *Without the introduction of useful nuance in the application of the **Moffat Principle** to applications touching on constitutional duties, statutory bodies, public offices and functions; litigants could initiate baseless cases paired with frivolous injunction applications, with the sole intention of frustrating essential governmental functions.*

89. *To judicially endorse the notion that a competent constitutional actor must consider their hands tied merely due to the service of an injunction application, particularly one that seeks to restrain or impede the execution of a critical constitutional mandate, would risk paralyzing essential state functions and could lead to catastrophic consequences for our public and constitutional order.*

(50) Therefore, if the position of the law in the ***Ex parte Duffour*** case (supra) is generally applied to constitutional and statutory office holders, it could result in potential chaos and a shutdown of the State machinery. This would occur where the mere pendency of an injunction application against a constitutional or statutory duty bearer is construed as operating as an actual injunction, such that it would be deemed unlawful, and potentially contemptuous, for the duty bearer to proceed with the discharge of their functions.

(51) In my view, contextually, the caution expressed by this court in the ***Ex parte Duffour*** case should apply only to private law disputes involving contract and tort and other similar actions within the realm of private law. I am of the firm view that, litigants must not be allowed to use the instrumentality of the courts, particularly through the filing of frivolous and vexatious processes, to disrupt our collective governance through constitutionally established organs of state, bodies or committees. The correct public law policy was recognised by the Court of Appeal (Coram: Benin, Akoto-Bamfo and Owusu-Ansah JJA) in **RPEUBLIC VS. HIGH COURT, SEKONDI; EX-PARTE PERKOH II [2001-2002] 2 GLR 460** within the context of the public office functions of a chief. There, the court held *inter alia* as follows:

> ***The mere filing of an application for an interim injunction seeking to restrain a chief from performing the functions of a chief would not operate to restrain him from performing the functions of his office when he had not been destooled and the court had not so ordered. Since a chief played key roles in the traditional set up, a decision to the contrary would result in chaos and anarchy in the society by encouraging a chief's detractors to bring frivolous actions against him and on applying for interim injunction, automatically compel him to cease to perform as a chief."***

I am in agreement with the above position of the law as I also fully agree with my respected brother Kulendi, JSC in his restatement of the same position of the law within the context of the exercise of statutory and constitutional functions.

(52) As a court, we risk endangering the workings of the Constitution by failing to recognise that, in the sphere of public law, particularly in actions challenging the constitutionality of the conduct of public bodies or individuals, especially those entrusted with functions under the Constitution or relevant statute, the mere filing of a suit and an application for an injunction should not, in itself, automatically restrain a constitutional or statutory entity or duty bearer from discharging the lawful mandates.

(53) To that extend, supplanting the constitutional ethos with the stratagem of a section of the populace, merely to frustrate or place in abeyance the longevity of constitutional institutions, may lead to a "**nuclear meltdown**" in the performance of constitutional bodies, to borrow the words of Akufo-Addo, CJ (*as he then was*). Such an approach is contrary to the spirit of the Constitution and should never be countenanced. While it is acknowledged that this may not be a perfect yardstick, because I know of no doctrine of judicial infallibility, in every situation where an interlocutory injunction is sought, the judicial administration must ensure that it is expeditiously determined, so as not to offer an otherwise meritorious applicant seeking justice by injuncting the performance of a constitutional or statutory duty a *fait accompli.*

(54) Having said that, it is my hope that, as a polity, we will respect the independence of each organ of the State, and especially, acknowledge the constitutional checks and balances embedded in our constitutional architecture and allow institutions demanding accountability to work.

(55) I will end this delivery by reference to the dictum of one of the most respected jurists of our time, Benin, JSC in the case of **JUSTICE DERY VS. TIGER EYE PI, CHIEF JUSTICE & ATTORNEY-GENERAL [2015-2016] 2 SCGLR 812** where the Learned Justice held as follows:

> ***"It is … a matter of public policy that allegations of misconduct or misbehaviour against a public official, including a judge, should not be swept under the carpet. Indeed, the very integrity of the Judiciary is at stake if such allegations are unexamined and found to be false. In the words of Berger CJ in the Landmark case. The operations of the courts and the judicial conduct of judges are matters of utmost public concern."*** His Lordship further stated thus: ***"The State and the people of Ghana have cause to demand that, like Caesar's wife, judges should live above suspicion…"***

CONCLUSION

(56) The above observations provoked by paragraph 12 of the Applicant's affidavit aside, I need hardly say that, I arrived at the conclusion that this application must fail without relish, mindful of the fact that, the Applicant, the Honourable Lady Chief Justice of the Republic, is going through a process that may define her career on the bench as Chief Justice and as a Judge, one way or the other.

(57) However, guided by my judicial oath, I am bound to demonstrate fidelity to the law and to justice, and to uphold the Constitution and laws of Ghana, which I have sworn to defend, in dispensing justice without fear or favour, affection or ill will, on behalf of the people of Ghana, from whom justice emanates.

(58) In the result, this application lacked merit and that is why I dismissed same in its entirety.

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

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

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

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

CONCURRING OPINION

ADJEI-FRIMPONG JSC

I have had the privilege of perusing beforehand the reasoning and conclusion of my esteemed brother Tanko JSC. I am of the same mind that the instant application be dismissed. I can however afford a brief opinion on the alleged unconstitutionality of *in camer*a hearing put forth by the Honourable Lady Chief Justice, the applicant herein, as basis to injunct the on-going article 146 committee proceedings. This opinion I proceed to express.

By the way, I consider it right to reiterate the towering threshold required to obtain an injunction *pendente lite* against the exercise of a constitutional duty or obligation. It must always be recognized that a constitutional interpretation or enforcement suit as here, is a lot crucial than a conventional courtroom dispute in which one party asserts that another has breached a legal rule and which the court can provide a determinate and easily administered remedy. The distinction here, lies in the potential intrusion into the exercise of a constitutional duty or responsibility conferred on that other office or body by the same constitution which vests in the court the exercise of judicial power. Consequently, whilst ordinarily, the grant or refusal of an interlocutory injunction ultimately rests in the sound discretion of the court exercised in light of specific facts and circumstances of each case, an applicant in a constitutional interpretation or enforcement action otherwise called public law suit, must sufficiently demonstrate prima facie, that not granting the order was likely to cause an irreversible prejudice or injury to him or will irredeemably jeopardize the very subject matter of the case before a final decision is rendered. See WELFORD QUARCOO VRS ATTORNEY-GENERAL & ANOR [2012]1 SCGLR 257; VINCENT EKOW ASAFUAH VRS ATTORNEY-GENERAL, Writ No. J1/18/2025.

Part of the reasons the applicant wants the proceedings before the committee truncated is the fact that it is being held *in camera*. The applicant wants the provision in article 146(8) which provides inter alia, that "*All proceedings under this article shall be shall be held in camera…*"

construed to allow public hearing on account of her waiver. Material to this issue she seeks the following three (3) of the sixteen (16) reliefs on her writ:

(i) *A declaration that upon a true and proper interpretation of articles 17(10) and (2), 19(13) and (14), 146(7) and (8), 281(1) and 295)(1) of the Constitution, a Chief Justice has the right to a public hearing in proceedings before a committee appointed by the President to inquire into a petition presented for the removal of the Chief Justice;*

(ii) *A declaration that upon a true and proper interpretation of articles 17(1) and (2), 19(13) and (14), 146(7) and (8), 281(1) and 295)(1) of the Constitution, the right of a Chief Justice to a public hearing and all incidents of a fair hearing may only be excluded in the interest of public morality, public safety, or public order;*

(iii) *A declaration that upon a true and proper interpretation of articles 17(1) and (2), 19(13) and (14), 146(7) and (8), 281(1) and 295)(1) of the Constitution, a Chief Justice who is called upon to participate in a hearing conducted by a committee constituted under article 146(6) to inquire into the merits of a petition seeking the removal from office of the Chief Justice can waive the privilege of "in camera" proceedings.*

In the affidavit in support of the application, the applicant has deposed:

> *"17. That there have been leakages of various documents purportedly constituting the petitions against me and alleged responses by me to same in the press, and there have also been widespread media discussions about the processes under article 146 of the Constitution on all radio and television networks as well as newspaper publications about same.*

18. That this has fundamentally and irredeemably prejudiced my case and the case purportedly against me, and therefore no purpose will be served by the in camera proceedings in the instant case.

19. That on the contrary, justice, fairness and the national interests will rather be served by a public hearing of the petitions against me since same will present no harm to public morality, public safety, or public order."

First, it sounds to me disturbing that the applicant wants the proceedings held in open mainly by reason of alleged leakages of the petitions and her responses. The alleged leakages whoever caused them committed plain illegality in terms of the prevailing provisions in article 146(8) which mandates *in camera* holding of all proceedings. To stand on an illegality to request a departure from a provision of the constitution is a dangerous position to take and must be discountenanced by any Court of law. One may ask, if examination questions get leaked, what follows, free for all copying? I do not think so. A legal maxim I have come across is, *quod contra rationem juris receptum est, non est producendum ad consequentias;* translated as; that which has been received against the reason of the law is not to be drawn into a precedent.

In any event, by the reliefs set out above, the applicant is seeking an interpretation of part of article 146(8). She is not merely seeking enforcement as a stand-alone cause of action which from the jurisprudence of this Court is equally maintainable (See KOR VRS ATTORNEY GENERAL [2015-2016]1 SCGLR 114]. I try at this stage to stay off any attempt at interpreting article 146(8) or any related provision of the Constitution for that matter. The right time to do so is when the substantive matter is considered. But it should not be wrong to indicate that the provision in article 146(8) touches on two matters when it provides:

"(8) 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."

Nothing in this litigation turns on the part of the provision that deals with representation in the proceedings. I surmise the applicant is, with respect, clear in her mind what that part means in terms of the right it creates in her favour. She seeks interpretation of the part that deals with the *in camera* proceedings.

Speaking for myself, implicit in the relief of interpretation of that part of the provision is an admission of lack of clarity. That is to say, one does not seek an interpretation of a constitutional provision unless he sees lack of clarity, ambiguity or the like either in words or effect which may manifest itself in varied forms. This is what will make sense of the learning contained in the oft-cited decision in REPUBLIC VRS SPECIAL TRIBUNAL, EX PARTE AKOSAH [1980] GLR 592 and followed in a tall list of cases in this Court, thus, the need for interpretation arises:

"(a) where the words of the provisions were imprecise, or ambiguous. Put in another way, it would arise if one party invites the court to declare that the words of the article had a double meaning or were obscure or else meant something different from or more than what they were said;

(b) where rival meaning had been placed by the litigants on the words of any provision of the Constitution;

(c) where there was a conflict in the meaning and effect of two or more articles of the Constitution and the question was raised as to which provision should prevail; and

(d) where on the face of the provision, there was a conflict between the operation of particular institutions set up under the Constitution…"

In my well-considered view, if the applicant is saying that there is the need to interpret article 146(8) for any of the reasons in Ex parte Akosah or some other, then, for the time being, the very basis upon which she is asking for interlocutory injunction stands challenged. For, by her own reliefs, the very legal basis for the order sought is undetermined in the interim. Should this Court grant an interlocutory injunction to retrain the performance of a constitutional duty or obligation when the provision on which the prayer is based is unclear and requires an interpretation on account of the applicant's own demand? Would it be, (to adopt here, the phrase in the provision in Order 25 Rule 1 of the High Court (Civil Procedure) Rules, C.I 47), just [and] or convenient to injunct the performance of a constitutional duty at this stage on the basis of what the applicant thinks the provision in article 146(8) should be interpreted to mean? For now, is the law what the applicant says it should be or is what appears for the time being a plain English phraseology of a law? What if the interpretation does not go the applicant's way at the end of the trial of the substantive matter?

I have, reflecting on these questions, sought from the applicant's affidavit to see if there were any genuine and formidable depositions of matters to demonstrate an irreversible prejudice or irredeemable injury to her cause, if the proceedings were held *in camera* which but for the interpretation she seeks, is the clear language of article 146(8). Regrettably, I find none. On this ground, I think the prayer does not meet the high threshold which the well-founded authorities of this Court have set for a grant of such order in the applicant's favour.

Subject to the foregoing, I wholly agree with the points articulated in the lead judgment.

(SGD) R. ADJEI-FRIMPONG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

GODFRED YEBOAH DAME ESQ. FOR THE PLAINTIFF/APPLICANT WITH KOW ABEKA ESSUMAN ESQ, MISS YAA KOBI FRIMPOMAH ESQ, YAW BOAMPONG AND ERIC OFORI-KWAAH ESQ LED BY PROFESSOR EBOW BONDZIE-SIMPSON ESQ.

DR. JUSTICE SREM SAI (DEPUTY ATTORNEY-GENERAL), FOR THE DEFENDANTS/RESPONDENTS WITH AKAWARI ATINEDM (SENIOR STATE ATTORNEY), AND REGINALD NII ODOI (STATE ATTORNEY).