IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD.2025

CORAM: PWAMANG JSC (PRESIDING)

PROF. MENSA-BONSU (MRS.) JSC

GAEWU JSC

KWOFIE JSC

ADJEI-FRIMPONG JSC

CIVIL MOTION
NO. J5/37/2025

11TH JUNE 2025

THE REPUBLIC

VRS.

THE HIGH COURT 3, KOFORIDUA …… RESPONDENT

EX PARTE:

ERNEST YAW KUMI …… APPLICANT

1. HON. HENRY BOAKYE YIADOM ……. 1ST INTERESTED PARTY

2. THE ELECTORAL COMMISSION ……. 2ND INTERESTED PARTY

3. THE CLERK OF PARLIAMENT ……. 3RD INTERESTED PARTY

RULING

MAJORIY OPINION:

ADJEI-FRIMPONG JSC:

On June 11 2025, this Court delivered its decision in this application and reserved full reasons to be rendered at a later date. Those reasons we now present. In the decision, some reliefs were unanimously refused. Others were granted by the majority. We shall in this discourse indicate how the reliefs played out. First, the background to the application which invoked the Supervisory Jurisdiction of this Court.

On December 7, 2024, the people of Akwatia in the Eastern Region went to the polls to, what is of essence in this case, elect a Member of Parliament for the constituency in that year's general elections. The Applicant was a candidate in the elections representing the New Patriotic Party (N.P.P). The 1st Interested Party contested on the ticket of the National Democratic Congress (N.D.C.). At the close of polls and on counting and collation of results the Applicant was declared winner by the 2nd Interested Party, the Electoral Commission (E.C).

On 31st December 2024 the losing 1st Interested Party filed a petition in the High Court Koforidua, seeking to challenge the results on grounds of massive irregularities and misconduct that to him, affected the final outcome of the election. The petition sought the following reliefs:

(a) *A declaration that the purported declaration of the winner of the parliamentary election held at Tesano Police Training School in Accra on Thursday, the 12th December, 2024 is void and of no legal effect.*
(b) *An order cancelling the results of the said declaration by agents of the 2nd Respondent.*
(c) *A declaration that the 1st Respondent was not validly elected as Member of Parliament.*
(d) *A declaration that upon the cancellation of all unlawful votes and upon proper collation the Petitioner is the validly elected member of parliament for the Akwatia Constituency.*
(e) *Costs and any order just and fair in the eyes of the law.*

On the back of the petition, the 1st Interested Party the same day filed an application ex parte for an interlocutory injunction restraining the Respondents therein from doing anything to hold the Applicant out as a duly elected Member of Parliament. In particular, he was to be restrained from being called, admitted, registered, sworn in or gazetted as Member of Parliament.

Senyo Amedahe J on the 2nd of January granted the ex parte application for a limited period of ten (10) days. The next day, the Applicant caused an application to be filed in that Court to set aside the ex parte order and the petition that founded it. The basis of the application was that at the time of the petition and the subsequent order, the results of the parliamentary elections had not been gazetted and by law, no valid petition could have been filed to invoke the jurisdiction of the High Court.

This position did not find favour with the trial Judge. He accepted an oral submission made on behalf of the 1st Interested Party that there was a media announcement by which the E.C declared that the results of all the 276 Constituencies had been gazetted except two, namely Dome Kwabenya and Ablekumah North. Persuaded by this submission, the Judge dismissed the application to set aside the order of injunction and the petition. Subsequent events in that court resulted in contempt proceedings being mounted against the Applicant. The Judge proceeded to convict the Applicant of contempt and issue a warrant for his arrest.

In the application in this Court filed pursuant to article 132 of the Constitution and Order 61 of the Rules of this Court (C.I 16) (as amended), the Applicant on various grounds sought the following reliefs:

i. *A declaration that the Petition filed by the 1st Interested Party on 31st December, 2024 in the absence of the Gazette Notification of the Parliamentary Election*

Results to which the election relates is incompetent as a same did not properly invoke the jurisdiction of the High Court and that any Order founded on same is void and of no effect.

ii. *A declaration that the Contempt Proceedings and the Ruling dated 19th February, 2025 founded on the premature election petition filed on 31st December, 2024 is void and of no effect.*

iii. *An order of Certiorari by this Honourable Court quashing, the Ruling of His Lordship Justice Emmanuel Senyo Amedahe sitting at the High Court 3, Accra Koforidua dated 19th February, 2025 the petition filed on 31st December, 2024 and the Interim injunction Order dated 2nd January, 2025, and the Ruling dated 6th January 2025 made pursuant to the said premature Election Petition, filed on 31st December 2024.*

iv. *An order quashing the Ruling delivered on the Contempt Application and the Execution of the Bench Warrant issued by the Court dated 19th February, 2025 by His Lordship Justice Emmanuel Senyo Amedahe.*

v. *An order of prohibition against His Lordship Justice Senyo Amedahe from proceeding to sentence the applicant, Hon. Ernest Yaw Kumi pending the hearing of the instant suit.*

vi. *Any other Order(s) as the Court deem fit.*

To remind ourselves, Article 132 of the 1992 Constitution creates the supervisory jurisdiction of this Court as follows:

> *"132. The Supreme Court shall have supervisory jurisdiction over all courts and over any adjudicating authority and may, in the exercise of that supervisory jurisdiction, issue orders and direction for the purpose of enforcing or securing the enforcement of its supervisory power."*

The purpose of this power has been recognized by this Court in several of its decisions including that in ACCRA RECREATIONAL COMPLEX LTD VRS LANDS COMMISSION [2007-2008]1 SCGLR 108 at page 118—119 thus:

> *"The purpose of the constitutional provision is to enable the Supreme Court to control the actions of all other courts in matters not necessarily involving the issuance of prerogative writs and orders but also to issue such orders and give such directions as would ensure fairness and the expeditious disposal of cases. The court, in issuing such orders and directions, does not go into the merits of the case."*

The Court again in BRITISH AIRWAYS VRS ATTORNEY GENERAL [1996-97] SCGLR 547 at 553 observed:

> *"This jurisdiction ought to be exercised in appropriate and deserving cases in the interest of justice. In the exercise of that supervisory jurisdiction, the Supreme Court may issue prerogative orders as well as any appropriate orders, and directions, to lower courts to ensure the proper, lawful and fair administration of justice in any matter which comes before it."*

Touching on the grounds to exercise the jurisdiction, Brobbey JSC in the ACCRA RECREATIONAL COMPLEX case (supra):

> *"In general terms, the grounds for the exercise of the supervisory jurisdiction of this court are:*
>
> > *"(i) where there has been excess of jurisdiction fixed by the 1992 Constitution or a statute;*
> >
> > *(ii) where there has been want of jurisdiction, as it happened in Republic v Court Appeal; Ex parte Ekuntan II [1989-90]2 GLR 168 and Republic v High Court, Koforidua; Ex parte Otu [1995-96]1 GLR 177;*

(iii) where there has been error of law patent on the face of the record in such a way as to render the decision a nullity as illustrated in Republic v High Court, Accra Ex parte Industrialization Fund for Developing Countries [2003-2004]1 SCGLR 348 and

(iv) where there is breach of natural justice: see Aboagye v Ghana Commercial Bank [2001-2002]2 SCGLR 797. To these was added a fifth one described as the intervention powers of this court as enunciated in British Airways v Attorney-General [1996-97] SCGLR 547."

The grounds were further highlighted by Wood JSC (as she then was) in the oft cited case of REPUBLIC VRS COURT OF APPEAL, ACCRA, EX PARTE; TSATSU TSIKATA [2006-2006] SCGLR 612 at 619 thus:

"Our supervisory jurisdiction under article 132 of the 1992 Constitution, should be exercised only in those manifestly plain and obvious cases, where there are patent errors of law on the face of the record, which error either go to jurisdiction or are so plain as to make the impugned decision a complete nullity. It stands to reason then, that the error(s) of the law as alleged must be fundamental substantial, material, grave or so serious as to go to the root of the matter…A minor, trifling, inconsequential or unimportant error which does not go to the core or the root of the decision complained of; or stated differently, on which the decision does not turn would not attract the court's supervisory jurisdiction."

From the High Court upwards to this Court, the crux of the Applicant's case remained unchanged. It was this, that at the time the petition was filed in the High Court on 31st December 2024, the results of the parliamentary election had not been gazetted. The results according to him was gazetted on 6th January 2025. By law, no valid petition could have been filed. In effect, the petition of 31st December 2024 was incapable of invoking the jurisdiction of the High Court whatsoever. Consequently, all the

processes filed by the 1st Interested Party and all orders/rulings he obtained upon the petition in the trial court are void.

The 1st Interested Party's case on the other hand was that the results had been gazetted as at 31st December 2014. His petition was proper and the trial court validly made all the orders/rulings.

The central issue in this case therefore was, when was the result of the Akwatia Parliamentary election gazetted? This could only be a simple question of fact even though the gazette notification carried a legal effect.

Affidavit evidence

In his affidavit in support, the Applicant attached as Exhibit D an extract of gazette notification. On the extract, the date of the gazette was stated as 6th January 2025.

The 1st Interested party filed a Further Supplementary affidavit in opposition on 11/3/2025 in which he deposed:

> *"5. That I caused my Lawyers to conduct a search at the Ghana Publishing Company Limited (Assembly Press) the official and only publishers of Gazette notification in Ghana to verify the authenticity of the said exhibit D attached to the Applicant's affidavit in support. Attached and marked as Exhibit 11 is a copy of the said letter.*
>
> *6. That the Ghana Publishing Company (Assembly Press) replied to the request by my Lawyers and stated that the said Exhibit D by the Applicant is not genuine and cannot be found in the records of the Ghana Publishing Company Limited (Assembly Press). Attached and marked as Exhibit 12 is the said response from the Ghana Publishing Company Limited (Assembly Press)."*

In the Exhibit 11 the 1st Interested Party attached two separate Gazette notifications; the applicant's Exhibit D dated 6th January 2024 and the one he had procured from the Assembly Press, that is, Gazette No 234 dated 24th December 2024.

The Electoral Commission, as 2nd Interested Party filed an affidavit to which was attached a Gazette the same as the Exhibit 11 filed by the 1st Interested Party.

From the affidavit evidence before this Court, it was established that the Gazette notification No 234 dated 24th December 2024 was the valid one. We therefore had no difficulty finding that the results of the Akwatia Parliamentary elections were gazetted on 24th December 2024 and not 6th January 2025.

Effect of Gazette of 24th December 2024

Section 18 of the Representation of People Law, 1992 (PNDC Law 284) provides:

"18--Time for Presentation of Petition.

(1) An election petition shall be presented within twenty-one days after the date of the publication in the Gazette of the result of the election to which it relates, except that a petition questioning an election on an allegation of corrupt practice and specifically alleging a payment of money or other award to have been made on his behalf to his knowledge, may be presented within twenty-one days after the date of the alleged payment."

This provision is devoid of any ambiguity. A person seeking to challenge the results of Parliamentary elections on any grounds save an allegation of corruption or payment of money or other reward on behalf of the one being challenged or to his knowledge, shall be presented within twenty-one days. No debate turned on the fact that the 1st Interested Party was challenging the results on grounds other than corruption or payment of money or other reward. The petition presented on 31st December 2024 was within the twenty-one days after the publication of the Gazette

on 24th December. It was filed within time as prescribed by the statute and was therefore a valid petition.

With this crucial fact established, the applicant's argument that at the time the petition was filed in the High Court on 31st December 2024, the results of the parliamentary election had not been gazetted and therefore no valid petition could have been filed fails. The argument also that the petition of 31st December 2024 was incapable of invoking the jurisdiction of the High Court whatsoever collapses. The contention also that all processes filed by the 1st Interested Party and all orders/rulings he obtained upon the petition in the trial court are void also fails. It was for these reasons that the reliefs (i) (ii) and (iii) sought by the applicant were dismissed by our unanimous decision.

We state without hesitation however that we did not reach the above findings and conclusions without anxiety. It was clear to us that the Applicant and the trial Judge did not have any documentary evidence of the gazette notification at the time the petition was entertained and the subsequent orders made upon it. We were at the hearing of this application dismayed by the fulsome admission by Counsel for the 1st Interested Party that, he stood on his feet at the bar to merely tell the trial Judge that his source of the gazette information was media announcement. It was strange to relate that the Judge would rely on such perfunctory allusion to make such far reaching restraining orders in an electoral dispute. As it turned out, it was whilst this application was being heard in this Court that a search by the 1st Interested Party led to the discovery of the documentary evidence in Exhibit 11 which proved that the results were actually gazetted on 24th December 2024. In spite of our discontentment at the manner in which the trial Judge proceeded without any proper evidence before him, the evidence of the 'latecomer' Exhibit 11 validated the petition and same stood for all purposes.

Again we must strongly deprecate the decision of the trial Judge to grant the application for an interlocutory injunction ex parte in a matter as sensitive as parliamentary electoral dispute when from the facts available, the application could have been heard on notice to the applicant. The application was filed on 31st December and for what we gather, it was mainly to stop the Applicant from being sworn in as Member of Parliament which was to happen on 7th January. Given that what was required was three clear days between the service and hearing (See Order 19 rule 2 sub-rule 1 of C.I.47) which could occur within the period before the 7th January, the trial Judge could have exercised his powers under Order 19 rule 4 of the High Court (Civil Procedure) Rules (C.I. 47). The provision states:

> *"(4) If on hearing a motion the Court is of the opinion that any person to whom notice has not been given ought to have or ought to have had notice, the Court may either dismiss the motion or adjourn the hearing in order that the notice may be given upon such terms as it considers just."*

It is right to state here that generally, the rules of practice and procedure do not look favourably to ex parte applications. And why should they? Is the principle not universal that every person who may be affected by a decision of court must be given an opportunity to be heard? It is plain that the principle of *audi alteram partem* is the nerve center of the fair trial rules enshrined in the 1992 Constitution. It is for this reason that ex parte applications are granted only in exceptional cases and in cases of extreme urgency where it is near impossible to proceed in the normal way. The matter in question involved the election of a Member of Parliament. The people of the constituency had elected their representative to Parliament. In a society where electoral violence has regrettably, become a feature of our elections, our courts should exercise extreme caution and utmost circumspection in making such one-sided orders so as not to exacerbate the usual tension and acrimony that attend the electoral process.

The Contempt application.

As noted, following the presentation of the petition, the High Court granted an ex parte injunction against the Applicant. The order dated 2nd January 2025 was to remain in force for 10 days. On 13th January 2025, the 1st Interested Party mounted a contempt application against the Applicant. In the affidavit in support of the application, the 1st Interested Party deposed as follows:

> *"7. That on 2nd day of January 2025, upon hearing Counsel for Applicant, this Honourable Court granted an Order for interim injunction to restrain the respondents herein, their representatives, agents, servants and all privies from proceeding to call, admit, register, swear in, recognize, gazette the respondent from holding himself out as member of parliament until the final determination of the dispute. Copy of Order for interim injunction is hereby attached and marked Exhibit AM2.*
>
> *8. That the applicant after being granted the said order, proceeded to facilitate service of the order on respondents to the petitioner.*
>
> *9. That on the 4th of January, the applicant was served with copies of an application filed in this court by the respondents herein praying the Honourable Court for an order to set aside the interim order.*
>
> *10. That the Court heard and dismissed the application on Monday 6th January 2025 and affirmed the interim injunction order against the respondent. A copy of the said ruling is hereby attached and marked as Exhibit AM3.*
>
> *11. That on the said day of the ruling the respondent was present in court when the ruling on his application was delivered by the learned trial judge.*
>
> *12. That in the morning of 7th January, 2025, when members of the 9th parliament had convened to be sworn in as Members of Parliament, the respondent was present as member-elect for Akwatia Constituency.*
>
> *13. That the clerk to parliament cautioned the respondent that parliament had been served with the said restraining order and that the respondent should advise himself.*

14. That the member for Efutu constituency who is also the leader of the respondent's group Mr Alexander Afenyo-Markin indicated that Ernest Kumi knows the implication of his actions and would proceed.

15. That the respondent herein therefor availed himself to be sworn in as Member of Parliament for Akwatia Constituency. All these were captured in the Vote and Proceedings (Official Record) of Parliament on 7th January 2015 marked as Exhibit EM4

19. That I am advised by my lawyers and verily believe same to be true that the Respondent has conducted himself in a manner that scornfully prejudice a fair disposition of the injunction order.

20. That the conduct of the Respondent show a complete and gross disregard for the authority of this Honourable Court which seriously interferes with and impedes the smooth administration of justice.

21. That I am again advised by Counsel for Applicants and believe same to be true Respondent's behavior was willful, deliberate and intended to defeat the end of justice and smacks disrespect to the Honourable Court.

22. That I am further advised by my lawyers and verily belive same to be true that the Respondent has conducted himself in a manner that brings the name of this Honourable Court into disrepute.

23. That the Respondent should be convicted and punished for wilfully disrespecting the Court Order."

From the above depositions, the gravamen of the contempt application was that the Applicant availed himself to be recognized, announced and sworn in as Member of Parliament for Akwatia at the time he knew that there was an order of injunction from the High Court restraining him from doing any of those. This conduct, it is said was contemptuous. It was on this account that the Interested Party on 13th January 2025 filed the contempt application.

Service of the Contempt application.

The contempt application was said to have been served on the Applicant by substituted service upon an ex parte application by the Interested Party. The ex parte application is not on record. However, the ruling of the court in granting same as contained in the 1st Interested Party's Exhibit 13 states:

> *"By Court: This is an application filed ex parte and moved by Counsel for the Appellant to have the Respondent Ernest Kumi to be served with their application for Contempt served on him electorally [sic] since they were not able to serve him physically. I grant the same under Order 7 of C.I 47 that the Respondent be served by Substituted Service the mode of service shall be the mode prescribed the Applicant in paragraph 7 of the affidavit supporting his motion. The documents shall be served together with a Hearing Notice. Suit adjourned 31st January, 2025."*

The Order of substituted Service was drawn as follows:

> *"IT IS HEREBY ORDERED that an Application on Notice for Committal for Contempt be served on the Respondent through electronic means together with Hearing Notice in the following manner;*
>
> *(a) By posting copies of the said processes together with Hearing Notice through Whatsapp on the Respondents telephone number 0244742922*
> *(b) By posting copies of the said processes together with a Hearing notice onto the Respondent's Social Media Handles/pages.*
> *(c) By posting copies of the said processes on the High Court's Notice Board in Koforidua.*

We gathered from the order granting service by substituted service that the Judge made the order as if the applicant was a mere party in a civil litigation. We think he was not. As at the 13th of January 2025 when the contempt application was filed, the

applicant had been sworn in as Member of Parliament and as such service of processes on him was to be regulated not just by the normal rules of procedure but also by the provisions in articles 117 and 118 of the 1992 Constitution.

At the hearing of this application, the question of the propriety of the mode of service of the contempt application on the Applicant and whether given the facts available the order of substituted service was proper in law was raised for Counsel to address. The basis of the question was that, not only had the Applicant been sworn in as a Member of Parliament but also there was evidence before the trial Court that the Applicant was at the material time attending parliamentary sessions. The judge himself had taken note of this when he wrote in his ruling delivered in the contempt application thus:

> *"On the same night of 6th January 2025, the Respondent availed himself at the chambers of the Parliament of Ghana and took part in the swearing in of Members of Parliament. He also participated in the election of the Speaker of the 9th Parliament of the 4th Republic. According to Applicants, the Respondent participated in these proceedings despite cautions from the Clerk to Parliament. These activities of the Respondent on the 6th and 7th of January 2025, constituted disobedience of the Orders of this Court made on the 2nd of January, 2025.* ***The Respondent has since been attending the sessions of the 9th Parliament of the 4th Republic."*** [See page 3 of Exhibit N].

The 1992 Constitution on Parliamentary Privileges and Immunities provides for the following:

> *"117. Civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to, the Speaker or member or the Clerk to Parliament while he is on his way to, attending at or returning from, any proceedings of parliament.*

118. (1) Neither the Speaker, nor a member of, nor Clerk to, Parliament shall be compelled, while attending Parliament to appear as a witness in any court or place out of Parliament.

(2) The certificate of the Speaker that a member or the Clerk is attending the proceedings of Parliament is conclusive evidence of attendance at Parliament."

The above provisions are about immunity from service of processes (Civil or Criminal) from a court or place outside Parliament. It means that the person cannot be served by any process of service when he is on his way to, attending at or returning from the proceedings of Parliament. In any of those situations, the immunity operates and unless it ceases, no service can be effected. Therefore the issue of whether the immunity is in motion or has ceased is always crucial for purposes of determining the question of service of civil or criminal process on a Member of Parliament.

In recent times, there had been a tussle between Parliament and the Judiciary as to the proper way to effect service of court processes on Members of Parliament in terms of articles 117 and 118 of the Constitution. This has led to the Chief Justice issuing a direction as to how to proceed to satisfy the requirement in Article 117 and 118 of the Constitution. The directive dated 12th July 2024 stated:

"ENFORCEMENT OF ARTICLES 117 AND 118 OF THE CONSTITUTION— IMMUNITY FROM SERVICE OF PROCESS AND ARREST

The Honourable Lady Chief Justice's attention has been drawn by the Rt. Hon. Speaker of Parliament, to potential breaches by action of some persons acting on behalf of the Judicial Service, of Articles 117 and 118 of the a992 Constitution.

Articles 117 and 118 of the Constitution provides:

"117. Civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to, the Speaker or member or the Clerk to

Parliament while he is on his way to, attending at or returning from, any proceedings of parliament.

118. (1) Neither the Speaker, nor a member of, nor Clerk to, Parliament shall be compelled, while attending Parliament to appear as a witness in any court or place out of Parliament.

(2) The certificate of the Speaker that a member or the Clerk is attending the proceedings of Parliament is conclusive evidence of attendance at Parliament."

These provisions ensure that the office holders listed above may not be served any process of court or compelled to appear as a witness in court, unless Parliament is not in session or the Speaker so certifies that the holder in question is not on his way to, attending or returning from any proceedings of Parliament. Attention has also been drawn to a circular issued on 22nd February 2021. The Honourable Lady Chief Justice is informed that there have been attempts to serve court processes on Members of Parliament, the Clerk to Parliament and the Speaker of Parliament while these office holders are attending to the business of Parliament.

In view of foregoing, the Honourable Lady Chief Justice has therefore directed that, in serving processes to the above-mentioned officials, the following should be adhered to henceforth…"

In respect of Members of Parliament, all processes shall be served on the Member of Parliament on Mondays, other Weekdays (Tuesday-Friday) between 7.00 am and 8.00 am and when Parliament is on recess.

It thus seems to us that when the 1st Interested Party appeared in Court with the application for substituted service, it was not sufficient to merely state his inability or the impracticability to effect service on the Applicant. The fundamental hurdle was to demonstrate with cogent evidence that the attempt at service was made at the time the immunity had ceased. Then and only then will the question of inability or impracticability of service will arise for the Court to consider.

Addressing the question, learned Counsel contended that it was for the applicant to prove to the Court that at the time of service, he was on his way to, attending at or returning from proceedings in Parliament. What Counsel failed to realize was that his application for substituted service was ex parte and therefore the Applicant was not present in Court to make that proof.

In our well-considered opinion, since substituted service is made on an application ex parte, it is for the person making the application to demonstrate that at the time of the attempt at service, the Member of Parliament was not on his way to, attending at or returning from Parliament. In the absence of any such evidence before the Court, it will not be right to order substituted service merely on account of a deposition that it had become impracticable to effect personal service. There can be no doubt that the application for an order of substituted service was seeking the discretion of the Court. It is common learning that an applicant who seeks a court's discretion must assemble before the court all the material facts to enable the Court exercise the discretion. We are of the view that the order for substituted service was not properly issued. In effect there was no proper service of the contempt application and the High Court could not have properly proceeded to determine the application and convict the Applicant.

It is a settled learning that any process that initiates a legal action is to be personally served on the Defendant or Respondent in accordance with law. See BARCLAYS BANK OF GHANA LTD VRS GHANA CABLE CO LTD & ORS [1998-99] SCGLR 1. The case on hand required even a higher consideration as the law in question is the Constitution itself. It is the basic duty of every Court to ensure that constitutional provisions are strictly adhered to. The immunity provisions in articles 117 and 118 are meant to ensure that Members of Parliament perform their duties without unwarranted interference and obstruction. The essence lies in the fact that every legislature is entitled to have a first claim upon the services of its members and any

person or authority who prevents or obstructs an MP from attending to his parliamentary duty breaches his privilege. This is not to say that MPs are above the law. However, whilst ensuring that Members of Parliament do not act outside the rule of law and legal accountability, the privilege guaranteed by the Constitution should not be obstructed.

It was for the foregoing reasons that we in the majority granted reliefs (iv) and (v) and ordered that the conviction of the Applicant for contempt was to be brought up for the purpose of being quashed, and accordingly quashed whilst the trial Judge was also prohibited from proceeding to sentence the Applicant.

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

(SGD.) PROF. H.J.A.N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)

(SGD.) E. Y. GAEWU
(JUSTICE OF THE SUPREME COURT)

CONCURRING OPINION:

KWOFIE JSC:

I have read the ruling of my respected brother Adjei-Frimpong JSC and I am in full agreement with the reasoning and conclusions therein. I wish to however add a

paragraph or two of my own to show my displeasure at the manner this contempt application was handled. The background and circumstances of the contempt has been already set out in the opinion of my brother Adjei-Frimpong and I do not intend to repeat same.

Determination

It is necessary to state that the affidavit evidence and the submissions of counsel for all the parties show that the document Exhibit ST1 attached to the affidavit of Samuel Tettey, Deputy Chairperson of the Electoral Commission filed on10th March 2025 was not available to the parties at the time of the hearing of the case by the Koforidua High Court on 2nd January 2025. The document Exhibit ST1 same as Exhibit 11 is the official gazette of the Parliamentary Election results 2024 including Akwatia Constituency. That explains the controversy at the High Court as to whether the Parliamentary Election results 2024 had been gazetted at the time the 1st interested party filed his initial petition on 31st December 2024. There is no doubt that if Exhibit ST1 same as Exhibit 11 had been available to the parties at the time of the hearing of the petition on 2nd January 2025, this controversy would have been unnecessary. What was strange about the proceedings before the High Court Koforidua was the decision by the trial judge to grant an ex parte application of interim injunction which application had been filed together with the election petition. The interim order was to restrain the respondents, their servants etc. from "*proceeding to call, admit, register, swear in, recognize, gazette the 1st Respondent as the elected Member of Parliament for the Akwatia Constituency and for the 1st Respondent from holding himself out as a Member of Parliament for Akwatia Constituency*"

This order was valid for 10 days only. As counsel for the applicant has stated in his statement of case, it is obvious from the date of the grant of the order (that is 2nd January 2025) that; the 1st interested party sought to disable the applicant from being sworn in as a Member of Parliament on 7th January 2025.

This was inspite of the fact that the applicant had in line with Regulation 43(d) of the Public Elections Regulations 2020, C.I. 127 been publicly declared as elected in the parliamentary election in the Akwatia Constituency. This court takes judicial notice of the fact that newly elected Members of Parliament are sworn into office on the morning of the 7th January after elections are held on the 7th December in an election year.

And this order of interim injunction was granted by the trial judge ex parte knowing fully well that it injuriously affected the applicant the Member of Parliament elect of Akwatia. It is conceded that ex parte orders of interim injunction are permissible under Order 25 Rule 1 (7) (8) and (9) of the High Court Civil Procedure Rules 2004 C.I.47. but in a situation such as the instant case where the grant of the ex parte application has the effect of disabling a duly elected Member of Parliament from being sworn in as a Member of Parliament, this court should frown on that practice and show its disapproval of such orders. For this is not an issue of the dispute being over land or other immovable property where it can be argued that time is of the essence and the respondent is hastily developing the land or property with intent to change its character.

The lawmakers in promulgating the Representation of the People Act 1992 (PNDC Law 284) (as amended) anticipated that after the declaration of parliamentary election results, the duly elected candidate in each constituency will be sworn into office even if petitions are filed challenging the election. In the end, if the said person is found to have been wrongfully elected, he will have to vacate his seat and the properly elected candidate takes over the seat.

In this instant case, upon the applicant becoming aware of the order of interim injunction, he filed an application to set aside the order of interim injunction granted on 2nd January 2025. That application was refused by the trial judge.

The applicant on the 7th of January 2025 presented himself to be sworn-in as a Member of Parliament for Akwatia. It was on the back of the interim injunction order that the 1st interested party filed a contempt application against the applicant for having presented himself to be sworn-in as a Member of Parliament in defiance of the order of interim injunction. That contempt application was served on the applicant by substituted service. The applicant upon being made aware of the contempt proceedings filed an application to set same aside which applicant was fixed for hearing on the 26th of February, 2025. On the 18th of February, 2025, the applicant caused to be filed a Motion on Notice to arrest the ruling of the judge on the contempt application but the judge refused to hear counsel for the applicant on the basis that he had not filed an appearance in the contempt application. The next day 19th of February 2025, the trial judge proceeded to read his ruling in the contempt application and convicted the applicant of contempt and issued a Bench Warrant for the arrest of the applicant.

It is worth noting that the ex parte order of interim injunction and the consequent committal for contempt was clearly a weaponisation of the election petition process which was not the intention of the lawmakers. Worse still, was the service of the contempt application on the applicant by substituted service. It should be noted that at the time of the order for substituted service of the contempt application on 22nd January 2025, the applicant was a Member of Parliament and the service of the contempt process ought to have been in line with Article 117 of the 1992 constitution. The order of substituted service was clearly a flagrant breach of this provision of the constitution which grants immunity from service of process and arrest to Members of Parliament.

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

DISSENTING OPINION:

PWAMANG JSC:

On 19th February, 2025, the High Court, Koforidua, convicted the applicant of contempt of court in his absence and issued a bench warrant for him to be arrested and brought to Court for sentencing. The applicant became aware of the warrant for his arrest and filed an application in this court on 24th February, 2025 praying for an order of certiorari to issue to quash the warrant and his conviction.

From the record placed before the Court by the applicant himself, he was served with the application for committal for contempt but he refused to participate in the hearing. He rather filed other motions seeking to stop the hearing but those applications were dismissed by the trial judge who proceeded to hear the application and rendered a reasoned judgment convicting the applicant. The law is settled that a party who, while being aware of proceedings, chooses not to participate cannot complain if the decision goes against him.

However, we are now being told that the applicant upon getting himself sworn in as a member of parliament, albeit in violation of the order of injunction of the High Court, the service of the application for contempt did not conform to the provisions of Article 117 of the Constitution, 1992. That provision may be relied upon and become operational only on the averment and proof of certain facts by admissible evidence,

but I do not find any such averment and evidence in any of the affidavits before the court.

From the reasoned decision of the court dated 19th February, 2025, the applicant was served with the application for committal for contempt and he chose to absent himself from the hearing. Accordingly, his conviction for contempt was made within jurisdiction and without any error of law and the pursuant bench warrant is valid.

In the circumstances, I hereby dismiss the application to quash the conviction and the warrant of arrest.

(SGD.) G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

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BERNARD BEDIAKO BAIDOO ESQ. FOR THE 1ST INTERESTED PARTY WITH HIM ISAAC MINTAH LARBI ESQ, THEOPHILUS DZEMEGAH ESQ AND BERNARD ARKO BAAH ESQ.

HOPE AGBOADO ESQ. FOR THE 2ND INTERESTED LED BY MIRACLE ATTACHI ESQ