IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2025

CORAM: BAFFOE-BONNIE AG. CJ (PRESIDING)

AMADU JSC

PROF. MENSA-BONSU JSC

KULENDI JSC

GAEWU JSC

6TH MAY, 2025

WRIT NO:
J1/18/2025

VINCENT EKOW ASSAFUAH … PLAINTIFF/APPLICANT

VRS

THE ATTORNEY GENERAL … DEFENDANT/RESPONDENT

RULING

MAJORITY OPINION

TANKO AMADU JSC:

BACKGROUND

(1) By writ, issued on the 27th day of March 2025 the Plaintiff/Applicant *(hereinafter referred to as "the Plaintiff")* invoked the original jurisdiction of the Court against the Attorney-General, the Defendant/Respondent, *(hereinafter referred to as "the Defendant")* seeking the following reliefs:

(i) A declaration that upon a true and proper interpretation of Articles 146(1),(2),(4),(6) and (7), 23, 57(3) and 296 of the Constitution, the President is mandated to notify the Chief Justice about a petition for the removal of the Chief Justice and obtain his or her comments and responses to the content of such petition before referring the petition to the Council of State or commencing the consultation processes with the Council of State for the removal of the Chief Justice.

(ii) A declaration that upon a true and proper interpretation of Articles 146(1), (2), (4), (6) and (7), 23 and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State constitutes a violation of Article 146(6) as well as the constitutional protection of the security of tenure of the Chief Justice who is a Justice of the Superior Court of Judicature stipulated in Article 146(1) of the Constitution.

(iii) A declaration that upon a true and proper interpretation of Articles 146(1), (2), (4), (6) and (7), 23, 57(3) and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State amounts to an unjustified interference with the independence of the Judiciary enshrined in Article 127(1) and (2) of the Constitution.

(iv) A declaration that the failure by the President to notify the Chief Justice and obtain her comments and responses to a petition for the removal of the Chief Justice before triggering the process for her removal, constitutes a violation of the fundamental right to a fair hearing contained in Articles 23 and 296 and renders the consultation processes for the removal of the Chief Justice initiated by the President null, void and of no effect;

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

(2) The Plaintiff immediately applied to the court for an order of interlocutory injunction praying the Court for an order to restrain the President and the Council of State from proceeding with the consultation processes for the removal of the Chief Justice under Article 146 of the 1992 Constitution until the final hearing and determination of the suit.

(3) On the 24th of April 2025 while the injunction application filed was pending and yet to be heard, the Plaintiff filed a second application for an order of interlocutory Injunction.

(4) In the affidavit in support of the second injunction application, it was deposed on behalf of the Plaintiff in paragraphs 4 to 6 of the affidavit that, although his first application for injunction sought to restrain the President of the Republic and the Council of State from proceeding with the process of consultation on the petitions for the removal of the Chief Justice, the consultation process nevertheless continued. This resulted in a determination that the petitions had made out *prima*

facie cases against the Chief Justice requiring the setting up of a committee to investigate them. It is further alleged that, based on this determination, the President proceeded to suspend the Chief Justice on the advice of the Council of State.

(5) From the Plaintiff's own depositions in the said paragraphs 4 to 6 of the second application, the Plaintiff's first injunction application had become moot. Indeed, in the proceedings before the Court, the Plaintiff conceded the point that the first injunction application had been overtaken by events. The Plaintiff therefore, moved his second injunction application.

THE APPLICATION

(6) In this application, the Plaintiff prays the court for two reliefs formulated as follows:

i. ***"An order restraining any step or action from being taken as part of the processes for the removal of the Chief Justice under Article 146 or in any manner, and***

ii. ***An order suspending the operation of the warrant of suspension of the Chief Justice Issued by the President under Article 146(10) of the Constitution 1992 until the hearing and final determination of the instant action."***

(7) As deposed to in paragraph 7 of the affidavit in support of the application, the pith and substance of the Plaintiff's suit before the Court on the back of which the Plaintiff invokes the discretion of the Court for injunctive relief:

"…is that ***the consultations initiated by the President with the Council of State to determine whether a prima facie case is disclosed.*** *In the three petitions against the Chief Justice,* ***when the Chief Justice had not been notified of the petitions****, was a flagrant violation of the Constitution and renders the whole process under Article 146 null, void and of no effect."*

(8) The clear import of the above deposition is that the Plaintiff takes the view that the President initiated consultations with the Council of State to **determine whether a prima facie case is disclosed in the three petitions against the Chief Justice, without notifying the Chief Justice of the petitions**. The veracity or otherwise of this position will be interrogated shortly in this ruling.

(9) In support of his case for injunction, it has been deposed in paragraphs 8 to 16 of the affidavit in support of the application that, the whole process for the removal of the Chief Justice is a contrived scheme plotted by the President and the National Democratic Congress [NDC] government to remove the Chief Justice from office. This scheme, the Plaintiff contends had been hatched even before the NDC government came into office. The deposition in paragraph 16 of the affidavit in support of the application is set out as follows:-

"That I am advised by Counsel and verily believe same to be true that, the Article 146 proceedings Initiated against the Chief Justice so far, are a ruse to give effect to the avowed determination of the current Government to unconstitutionally remove the Chief Justice from office."

MERITS OF THE APPLICATION

(10) It is now trite that in the area of public law, where this dispute belongs, one of the first principles that the Court considers in the exercise of its discretion with regard to injunction applications is that, the Applicant must show that there is a serious question to be tried. See the case of **WELFORD QUARCOO VS. ATTORNEY GENERAL AND ANOTHER [2012] 1 SCGLR 259** at page **260**. The ***Welford Quarcoo case*** was applied by this Court in the subsequent cases of **RANSFORD FRANCE (NO.1) VS. ELECTORAL COMMISSION & ATTORNEY-GENERAL [2012] 1 SCGLR 689** at page **692 AND NDEBUGRE (NO.1) VS. ATTORNEY-GENERAL, AKER ASA & CHEMU POWER CO LTD. (NO 1) [2013-2014] 2 SCGLR 1134.**

(11) In ***Welford Quarcoo Vs. Attorney General and Another (supra),*** Dr. Date-Bah JSC as reported in page 260 of the report, articulated the position of the law as follows:

> ***"It has always been my understanding that the requirements for the grant of interlocutory injunctions are; first, that the Applicant must establish that there is a serious question to be tried; second, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favor of granting him or her the interlocutory injunction. The balance of convenience of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates as here, to a public law matter (emphasis mine) particular care must be taken***

not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo" *[my emphasis].*

(12) In ***Ransford France (No.1) Vs. Electoral Commission & Attorney-General (supra),*** Ansah JSC *(of blessed memory)* quoted the dictum of Dr. Date-Bah JSC above and concluded as reported in page 692 of the report that:

"This is a good summary of the law on the grant of interlocutory injunction in an area of public law and I adopt it as my own."

(13) In the light of the authorities cited, the first question that must be determined in this application is whether the Plaintiff has demonstrated from the affidavit in support of the application that, there is a serious question to be tried in this suit having regard to the allegations on which the application is founded.

(14) To answer the question, I first interrogate the key fact on the back of which the application before the Court is made. As aforesaid, this is deposed to in paragraph 7 of the affidavit in support of the application which I reproduce as follows:

"(7) That the thrust of the instant action is that the consultations initiated by the President with the Council of State to determine whether a prima facie case is disclosed in the three petitions against the Chief Justice, when the Chief Justice had not been notified of the petitions, was in flagrant violation of

the Constitution and renders the whole process under Article 146 null, void and of no effect".

(15) The Plaintiff thus contends in paragraph 7 of his affidavit in support of the application that, the upshot of his case is that, the President initiated consultations with the Council of State **to determine whether a prima facie case is disclosed in the three petitions against the Chief Justice, without first notifying the Chief Justice of the petitions**. This contention has been is premised on the provision in Article 146(6) of the 1992 Constitution which provides as follows:

> ***"146"(6) Where the petition is for the removal of the Chief Justice, the President shall, acting in consultation with the Council of State, appoint a committee consisting of two Justices of the Supreme Court, one of whom shall be appointed chairman by the President, and three other persons who are not members of the Council of State, nor members of Parliament, nor lawyers."***

(16) It is noted that, the provision was interpreted by this Court in the case of ***Agyei Twum Vs. Attorney General & Akwetey*** **[2005-2006] SCGLR 732.** In that case, Dr. Date-Bah JSC held that the requirement that petitions for the removal of Justices of the Superior Courts must first be filtered through the *prima facie* test clearly stated in Article 146(3) of the Constitution must be read into the provisions of Article 146(6) in respect of petitions for the removal of the Chief Justice as well, even though Article 146(6) does not so specify, such that, petitions for the removal of the Chief Justice, must also first surmount the *prima facie* test.

(17) Be that as it may, to support his case that the President initiated consultations with the Council of State to determine whether a *prima facie* case is disclosed in the three petitions against the Chief Justice, without first notifying the Chief Justice of the petitions, the Plaintiff relies on Exhibits "B" and "C" attached to his affidavit in support of the application.

(18) Indubitably, Exhibit "B" is a letter from the Office of the President dated 28th March 2025. In the first paragraph of this letter, the President informs the Chief Justice of his receipt of the petitions. In paragraph 2 of Exhibit "B", it is conveyed as follows:

> *"2. Following receipt of these petitions, on 24th of March 2025, His Excellency wrote to the Chairman of the Council of State forwarding the petitions and* ***Informing Council that****, In accordance with the consultation process required under Article 146(6),* ***he Intends, as an Initial step, to send the petitions to you*** *[the Chief Justice]* ***for your preliminary comments or response.***"

(19) Clearly therefore, Exhibit "B" admits of no ambiguity at all. Exhibit "B" actually assures the Chief Justice that her comments and responses to the petitions will be sought before the *prima facie* determination is made. The President therefore caused to be categorically conveyed in Exhibit "B" that, his information to the Council of State on the petitions includes a direct communication to the Council of State that he "**he intends, AS AN INITIAL STEP, to send the petitions to you** [the Chief Justice] **for your preliminary comments or response."**

(20) There is thus no need to waste any judicial time on the meaning of the word ***"initial".*** It clearly and simply means that before any other thing is done in respect

the petitions, the first thing the President has decided to do is to have the Chief Justice provide her comments and responses to the allegations contained in the petitions, before any consultations with the Council of State can proceed to determine the question of whether a *prima facie* case has been made by the petitions. It is therefore factually incorrect as the Plaintiff puts out that, the initial consultations between the President and the Council of State was **to determine whether a prima facie case is disclosed in three petitions against the Chief Justice**.

(21) In Exhibit "B", it is clearly communicated to the Chief Justice that, her comments and responses were the first matter to be considered before the President and the Council of State will evaluate the petitions to determine whether the petitions had met the *prima facie* threshold. For this reason, it is also inaccurate that, the President initiated consultations with the Council of State to determine a *prima facie* case, without first notifying the Chief Justice of the petitions.

(22) It is also apparent from Exhibit "B" that, there is no question whatsoever that, the Chief Justice was not only to be notified of the petitions before the *prima facie* determination will be made but her comments and responses to the petitions were to be first sought before such determination. Before doing so however, the President had acted in compliance with the provisions of Article 146(6) of the Constitution to first "***inform***" the Council of State, as clearly stated in Exhibit "B", after which the petitions will be referred to the Chief Justice for her comments and responses prior to the *prima facie* determination process.

(23) As conveyed in Exhibit "B", the communication on behalf of the President states in paragraph 3 thereof thus:

> ***"3. On 27th March 2025, His Excellency received responses from the Chairman of the Council of State consenting to this request. Copies of these letters are also attached."***

(24) The initial communication with the Council of State therefore, was simply to inform the Council of State of the receipt of the pending petitions and no more. There is nothing in Exhibit "B" which directly or indirectly suggests that the President's communication to the Council of State was the beginning of the *prima facie* determination process.

(25) As noted in Exhibit "B", the reactions to the initial information from the Minister of Communications at the Presidency [Exhibit "C"] was needlessly and completely hysterical. The facts deposed to in paragraph 7 of the affidavit in support of the application before the Court which oxygenates this application, and the entire suit is undoubtedly asphyxiated by the clear words of Exhibit "B".

(26) I refer to the case of ***Owusu Vs. Addo [2015-2016] SCGLR 1479*** which although dealt with an application for stay of execution, I find the principle laid down in that case by the Chief Justice at the time, Wood CJ, relevant and applicable to all applications. In that case, the Learned Chief Justice held that applications are predicated on the facts deposed to in the accompanying affidavits and annexures, if any. In like manner, challenges to such applications

are by parity made through the factual depositions contained in opposing affidavits, including annexures if any. Consequently, a challenge to any of the material facts on either side of the legal divide, triggers the full panoply of the evidentiary rules related to the burden of proof. Thus, if a party challenges a material fact as deposed to and the party on whom the burden of persuasion lies, fails to discharge the legal burden, that fact may, properly be classified as an unproven fact and cannot ground a grant or refusal of the application as the case may be. See pages 1492-93 of the report.

(27) In the instant case, the crucial fact upon which the application is mounted has not only been denied, but has been demonstrated to be contradicted by the very proof [Exhibit "B"] on which the Plaintiff relies to make out his case.

(28) As the key fact on which the application is based has been shown to be mere perception, there can be no serious question arising to be tried from this obviously inaccurate assertion which has been vehemently denied by the Defendant (Attorney-General) in paragraph 4 of the affidavit in opposition to the application.

(29) Apart from the fact that the application is premised on facts which do not bear out the case for an injunctive relief, the Defendant (Attorney-General) opposed the application by an affidavit in opposition dated the 2nd of May 2025. The Defendant (Attorney-General) referred to Exhibit "AG3" attached to the affidavit in opposition. This affidavit reveals that, the Chief Justice personally requested the President for her comments to the petitions, a request which the President had obliged per Exhibit "AG2" attached to the affidavit in opposition.

(30) Having acknowledged these developments, it is difficult to appreciate how the Plaintiff seeks an interlocutory injunction to truncate a constitutional process by seeking a discretionary remedy on grounds which the party directly affected by the alleged default on the part of the President has on the evidence compromised or waived even if the facts on which the application is based were well founded.

(31) It is on this point that the second principle in the ***Welford Quarcoo case*** becomes relevant and applicable. The second test is that the Applicant must demonstrate that, he will suffer irreparable damage which cannot be compensable by the award of damages, unless the interlocutory injunction is granted. In a reply to the Deputy Attorney-General's submission to the effect that, the Plaintiff has failed to demonstrate the damage he will suffer if the application is not granted, Plaintiff's Counsel replied that, that contention applies only to human rights matters.

(32) In my view, the Plaintiff's counsel's argument does not sit well with the position explained by this court in the ***Welford Quarcoo case.*** The case makes it clear that the test applies to constitutional matters as in the instant case. It is also obvious from the Plaintiff's counsel's response to the submission made by the Deputy Attorney General that, the Plaintiff's counsel did not find this point answerable because the Plaintiff did not show what damage he will suffer if the application is refused. The application therefore demonstrably fails this second test as well.

(33) Finally, I deal with the third test formulated in the ***Welford Quarcoo case.*** The point made for the Plaintiff is that, the alleged default by the President which has been shown to be factually incorrect, is one which potentially renders the entire

process of the removal of the Chief Justice a nullity. It has been held in a plethora of cases that, where the grant of the final declaratory relief will nullify the act complained about, the grant of an order of interlocutory injunction is inappropriate regardless of the intermediate steps that may have been undertaken during the pendency of substantive proceedings.

(34) In the case of ***Attorney-General Vs. Commission on Human Rights and Administrative Justice (No.2) [1998-99] SCGLR 894*** this Court held that, where a constitutional body exceeds its powers and or exercises functions which it does not possess, such excess or exercise is ultra vires the Constitution and therefore null and void and may be so declared by a court of competent jurisdiction. Where such an act is declared null and void, the harm that the Plaintiff will be presumed to suffer if the application for injunctive relief is not granted, would be addressed by the grant of the declaratory relief. Granted therefore that, the Plaintiff had demonstrated in the instant case that, he will even suffer any kind of damage if the injunction is refused, the fact that the Plaintiff has sought declaratory reliefs in the substantive matter to nullify the very acts in respect of which he seeks the present injunctive relief, will militate against the grant of the interlocutory injunction and suspension reliefs sought.

(35) This point was articulated in the ***Welford Quarcoo case***. At page 260 of the report, Dr. Date-Bah is quoted as follows:

> *"Where the relief sought relates as here, to a public law matter particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and* ***provided also that any***

subsequent nullification of the impugned act or omission cannot restore the status quo*" [my emphasis].*

(36) Finally, the ***Welford Quarcoo case*** requires the Court to consider the balance of convenience which means weighing the disadvantages of granting relief against the disadvantages of a refusal to grant. As already noted, the ***Welford Quarcoo case*** has provided guidance that, where the relief sought is in the realm of a public law remedy, there must be circumspection in halting further action presumptively for the public good, unless there are very cogent reasons to do so.

(37) In the instant case, without prejudice to the eventual outcome of the substantive action therefore, the nullity effect of the alleged default by the President is one which this Court has held will be completely remedied because of the declaratory reliefs sought by the Plaintiff which if successful will adequately address any unconstitutionality as alleged and a consequential return to the *status quo* prior to the petitions. Therefore, the instant case is no exception. I have earlier in this ruling demonstrated that, the factual basis of the application before the Court is flawed. The balance of convenience therefore does not favour the grant of the application.

(38) I am not oblivious of the depositions made by the Plaintiff referring the Court to statements allegedly made earlier in time by members of government and even the President himself about the need to reset the country including the judiciary. Whereas these statements may be verified to have been made, that per se does not mean that, for as long as this government remains in power, the conduct of the Chief Justice or for that matter any other judge or public officer remain insulated from question or due process under Article 146 of the Constitution or any other

law only because of such previous comments. That proposition is clearly untenable.

(39) Article 146 of the Constitution does not leave matters relating to the removal of the Chief Justice in the hands of the government of the day, nor the President to initiate. The Plaintiff does not allege let alone establish that, members of the present government provoked the petitions or are in fact, the petitioners. Granted that, members of government are the petitioners, Article 146 requires that the President consult with the Council of State and deal with any such petition by due process of law.

(40) The Council of State which includes a former Chief Justice, and other eminent statesmen/women of this Country is a constitutionally implanted institutional check and safeguard which checks the President's power to act willy nilly to prosecute statements or comments made on campaign platforms prior to his election into office or thereafter.

(41) There is also the requirement of a *prima facie* determination which the President cannot make by himself exclusively. The President is constitutionally required to make this determination in consultation with the Council of State. Even after the *prima facie* determination is made, that is not the end of the matter. The Constitution requires that a Committee which includes two of the Chief Justice's own peers be set up to enquire into the merits of the petition.

(42) By these observations, I do not write off the Plaintiff's political slant, and reliance on social media gossip. I find however that, to push the political button is too simplistic to juridically constitute the grounds for injunctive relief presumptively and prematurely. I therefore do not find any grounds which will justify the exercise of the Court's discretion in granting any kind of injunction to restrain the President or for that matter the committee set up pursuant to the President's power under Article 146 of the Constitution from performing its constitutional functions nor suspend the warrant issued under the hand of the President of the Republic to suspend the Chief Justice from office.

(43) In this ruling, I have tried not to wade into the merits of the substantive suit which is grounded on the interpretation of the proper application of Article 146 of the Constitution. The law is that, in applications for injunction, care must be taken except in unavoidable circumstances not to determine aspects of the merits of a case prematurely. Although this principle is stated in the context of private civil matters, I see no reason why it should not apply in public law actions.

(44) At this stage of the proceedings, I am unable to see any injury that has or would have occasioned the Chief Justice or the people of Ghana, since the alleged threatened injury on the rights of the Chief Justice has been fully mitigated by the actions of both the Chief Justice on the one hand and the President of the Republic on the other. To that extent, at this stage of the proceedings, and without prejudice to the merits or otherwise of the substantive reliefs sought, I do not think it will be a proper exercise of judicial discretion to grant the first injunctive relief sought by the Plaintiff pending the final determination of the action.

(45) With respect to the second relief, I do acknowledge the rich line of jurisprudence established by this court to allow for the suspension of an order, direction, ruling, or judgment when the ground rules of Court have not made provisions for the same. This was the avenue developed in situations where normally, a stay of execution is ordinarily not available against non-executable orders.

(46) The established and settled legal position is that, in order to succeed in such applications for suspension orders, the test is a demonstration of very exceptional circumstances apart from the nugatory effect test. In ***Golden Beach Hotels (Gh) Limited Vs. Packplus Int. Ltd. [2012] SCGLR 452 at 459,*** Dr. Date Bah JSC articulated the position of the law *inter alia* as follows:

> ***"According to the argument we earlier advanced in this Ruling, the criterion for suspending an order of a court below should not be identical with the criterion summarised by Akufo Addo JSC in relation to applications for stay of execution, but would embody an additional element or requirement. The precise nature of this additional element or requirement we would leave to subsequent cases to develop. However, subject to fine-tunning in the light of the facts of subsequent cases, we would propose that a possible test could be the nugatory effect, referred to in JOSEPH VS. JEBEILLE (supra) combined with the need for exceptional circumstances."***

(47) Reference is also made to the case of **ANTONIO OLIMPIO SANTOS FELIX VS. GIOVANNI ANTONELLI AND BIGLEBB CONST. & CRUSHING LTD. Civil Motion No.JS/99/2017 dated 20th July 2017** where **Appau JSC** following the

statement of the attitude of this court made by Date Bah JSC in the **Golden Beach Hotels Case** also restated the position as follows:

> ***"The courts require more than the nugatory effect from a party who wants non-executable orders to be suspended pending appeal otherwise we would be wading into a semantic quagmire, which Date-Bah JSC in the Golden Beaches Hotel case described as a 'morass of sophistry'. The criterion for the grant of applications of the nature before me, as clearly spelt out in the Golden Beach Hotels case (supra) is; will the appeal be rendered nugatory upon succeeding and if yes, are there any exceptional circumstances to necessitates the suspension of the decision complained of? The nugatory effect alone is not enough to ground an application for suspension of enforcement where an application for stay of execution is not the appropriate remedy."***

(48) As I have already indicated in this ruling, the complaint that the Chief Justice's comments have not been received to warrant the President and the Council of State to proceed with processes of her removal is not only inaccurate but no longer live, as the Chief Justice herself has submitted her comments, which was taken into account in determining whether a *prima facie* case had been made against her. It is following this constitutional step that, the President set up a committee to inquire into the allegations contained in the said petitions while also exercising the constitutional power vested in him pursuant to Article 146(10) of the 1992 Constitution to suspend the Chief Justice from office pending the final determination of the Committee's work.

(49) In my view therefore, depositions made in support of the prayer for suspension and the oral arguments advanced in support thereof, are far from the requirements of the law in granting a suspension order. As already noted, most of the depositions contained in the Applicant's affidavit are rather set out in politically conjectured language other than an invitation to judicially examine the facts within the context of the relevant applicable law. Consequently, depositions alleging political conspiracy have no place in jurisprudence. They belong to political rallies and platforms. Let it be expressed emphatically that, the Chief Justice has not been removed but suspended from office and therefore the office of the Chief Justice is not vacant. The substantive action before the court is also not an invitation for an interrogation of the lawfulness or otherwise of her suspension.

(50) That substantive action, as variously stated only provokes a determination of the constitutionality of whether the consultative processes for her removal had commenced in the absence of her comments or responses first obtained. If there is therefore any irreparable constitutional default which renders the entire process a nullity, no Judge bound by the oath of office and the judicial oath must shy away from stating so in the fullness of time. In the circumstances of this application, I am not satisfied that, the threshold to warrant a suspension of the performance of the duties of the President under Article 146 of the 1992 Constitution, especially clause 10 thereof has been met.

(51) I need to emphasise as I said in the case of **THE REPUBLIC VS. HIGH COURT, CAPE-COAST, EX-PARTE BRIGADIER GENERAL AUGUSTINE ASIEDU (APPLICANT), EBUSUAPANYIN OPPONG KYEKYEKU (INTERESTED**

PARTY) Civil Motion No.J5/54/2023 dated 27th June 2023, ***"[We] dare say that a cardinal characteristic of the 1992 Constitution, is the vesting of sovereign power in the people of Ghana. It is the people of Ghana who have delegated their powers to others in public offices to administer same on their behalf but within the framework of the laws of the land."*** Therefore, under our constitutional dispensation, no person or entity, including the President of the Republic wields or exercises supreme authority immune from constitutional checks. As a country, we invested supremacy in the Constitution. What this simply means is that, every act, omission, conduct or inaction especially pertaining to the exercise of a public law function established by the Constitution must be consistent with the provisions of the Constitution for same to pass the test of validity.

(52) The framers of our Constitution while vesting the executive with the power or authority and discretion to act in particular ways, also created necessary constitutional checks to ensure that, the same is not abused. This is central to the principle of separation of powers together with the checks and balances within the frame work of the rule of law.

(53) There is good reason why the framers of the 1992 Constitution, vested particular persons, entities or institutions with the power, discretion or authority to exercise in particular situations. When the polity decides to promulgate in clear constitutional language that, the President of the Republic can exercise a particular function under the Constitution, the prohibition of that exercise, or suspension thereof, must find recognition and justification under the very Constitution itself. In the case of the President, he wields the executive power of the state. That power

must, however, be exercised in tune with constitutional tenets to advance the welfare of the people.

(54) 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.

(55) In a more direct statement, **Ansah JSC** *(of blessed memory)* speaking for this Court in the ***Ransford France case (supra)*** stated as reported in page 693 of the report that:

> ***"[A] public authority should not be restrained by interlocutory injunctions from exercising its statutory discretionary powers unless the plaintiff shows there is a real prospect that he will succeed in his claim for a permanent injunction at the trial."***

(56) This is also the effect of the case of **REPUBLIC VS. HIGH COURT (FAST TRACK DIVISION) ACCRA; EX-PARTE GHANA LOTTO OPERATORS ASSOCIATION (NATIONAL LOTTERY AUTHORITY, INTERESTED PARTY) [2009] SCGLR, SC, 372,** Atuguba JSC said at page 400 that:

> ***"It is not surprising therefore that it has been held by this court that when a body is entrusted with statutory discretion the courts should be careful not to clog its exercise with injunctions."***

(57) 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.

(58) In the instant application, from my examination of the entire processes filed and the oral submissions of both counsel in the round, I am of the considered view that, this is not one of the exceptional situations where the court should be swayed to injunct or suspend the constitutional function of the President of the Republic or any constitutional body or committee from the performance of their constitutional or other statutory functions.

(59) Consequently, this application is in my view, devoid of any merit to justify a favourable consideration. It is accordingly dismissed.

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

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

CONCURRING OPINION

KULENDI , JSC:

INTRODUCTION:

"Fiat justitia ruat caelum" to wit, let justice be done, though the heavens fall.

"I, having been appointed Justice of the Supreme Court, do in the name of the Almighty God swear, that I will bear true faith and allegiance to the Republic of Ghana as by law established; that I will uphold the sovereignty and integrity of the Republic of Ghana; ***and that I will truly and faithfully perform the functions of my office without fear or favour affection or ill-will****; and that I will at all times uphold, preserve, protect and defend the Constitution and laws of the Republic of Ghana, so help me God."*

[See Article 156 and the Second Schedule of the Constitution]

The instant application confronts us with a rather peculiar situation, one that requires us to sit in judgment of a matter which directly pertains to our distinguished sister, the head of the judiciary and the *primus inter pares* of all Justices of this apex Court. Certainly, this rather difficult task requires that we, yet again, remind ourselves of our sacred oath of office and our constitutional duty to act without fear or favour, affection or ill-will. Today, that solemn duty calls us to adjudicate over the propriety of a process affecting the fate of the Honourable Chief Justice, and yet, it is precisely in moments such as these, that justice must be most exacting, for we do not owe fidelity to persons or relationships but to the law.

FACTS:

1. On the 25th of March, 2025, in a document bearing the embossment of the Presidency of the Republic of Ghana, the following communique prepared under the hand of Hon. Felix Kwakye Ofosu, MP, Spokesperson to the President and Minister of Government Communications was published and widely circulated across all traditional and social media platforms:

   *"**President Mahama Consults with the Council of State on three (3) Petitions for the removal of the Chief Justice.***

President Mahama has received three (3) petitions from various persons seeking the removal of the Chief Justice. The President forwarded the three petitions to the Council of State to commence the consultation process mandated by Article 146 of the 1992 Constitution.

Signed
Felix Kwakye Ofosu, MP
Spokesperson to the President
Minister, Government Communications"

2. This singular yet epochal disclosure, thrust the entire country into a social and legal furore, dividing opinions about the constitutionality or otherwise of the President's conduct. Predictably, these contentions and counter-contentons crystallised into the institution of a suit by the Applicant, invoking the original jurisdiction of the Court, on the 27th of March, 2025, praying the following reliefs:

   i. A declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23, 57(3) and 296 of the Constitution, the President is mandated to notify the Chief Justice about a petition for the removal of the Chief Justice and obtain his or her comments and responses to the content of such petition before referring the petition to the Council of State or commencing the consultation processes with the Council of State for the removal of the Chief Justice;

   ii. A declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23 and 296 of the Constitution, a failure by the

President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State constitutes a violation of article 146(6) as well as the constitutional protection of the security of tenure of the Chief Justice who is a Justice of the Superior Court of Judicature stipulated in article 146(1) of the Constitution.

iii. A declaration that upon a true and proper interpretation of articles 146(1), (2), (4), (6) and (7), 23,57(3) and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State amounts to an unjustified interference with the independence of the Judiciary enshrined in article 127(1) and (2) of the Constitution;

iv. A declaration that the failure by the President to notify the Chief Justice and obtain her comments and responses to a petition for the removal of the Chief Justice before triggering the process for her removal, constitutes a violation of the fundamental right to a fair hearing contained in articles 23 and 296, and renders the consultation processes for the removal of the Chief Justice initiated by the President null, void and of no effect;

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

3. Following immediately on the back of this writ, the Applicant filed an application for interlocutory injunction praying for an order to, "*restrain the President and the Council of State from proceeding with the consultation process for the removal of the Chief Justice under Article 146 or in any manner until the hearing and final determination of the instant action.*"

4. In the Applicant's view, the conduct of the President in commencing consultations with the Council of State, ostensibly towards reaching a determination, one way or the other, as to whether a *prima facie* case had been made out against the Chief Justice; without first granting her notice of the said petitions, and the right to react to the same; contravened the sacred principles of *audi alteram partem*, which according to the Applicant, were impliedly interwoven into every stage of the Article 146 process.

5. The Applicant further asserted that this conduct constituted a blatant violation of the constitutionally stipulated safeguards for protecting the security of tenure of the Chief Justice and an egregious frontal assault on the independence of the Judiciary. According to the Applicant, his position, requiring the prior notification of the Chief Justice of the existence of petitions for her removal, and further soliciting her responses before transmitting same to the Council of State, is vindicated by a conjunctive reading of Articles 146(1), (2), (4), (6) and (7), 23 and 296.

6. In consequence, the Applicant contended that should the impugned processes under Article 146 proceed and be concluded before his substantive action was determined, same would irredeemably undermine the rule of law, the 1992

Constitution and the power of the judiciary in discharging its function as the impartial arbiter of disputes.

7. Judicial notice must also be taken of the fact that on 27th March, 2025, the very day this suit was initiated, the Chief Justice, in a letter personally signed, addressed the President of the Republic, the Chairman of the Council of State, a member of the Council of State who is also a former Chief Justice, and the Council of State itself. In that communication, the Chief Justice expressly requested to be furnished with copies of the petitions seeking her removal, *"before the conclusion of consultations between the President and the Council of State under Article 146"*.

8. The letter was also copied to the President of the Supreme Court, the President of the Association of Magistrates and Judges, and the President of the Ghana Bar Association.

9. On his part, the learned Attorney General, on the 7th of April, 2025, filed an affidavit in opposition to the injunction application deposed to by one Reginald Nii Odoi, a State Attorney, wherein they averred that, sometime between February and March 2025, the President received three (3) petitions for the removal of the Chief Justice. This, according to the learned Attorney General actuated the communique from the office of the Presidency on the 25th of March, which has been reproduced *in extenso* above for its full force and effect.

10. Significantly however, the Attorney General averred that, on 28th March, 2025 the President, through his executive secretary, wrote to the Chief Justice, formally informing her of the petitions for her removal and further requesting her to furnish

him with her responses, to be considered by the Council of State in their assessment of whether or not a *prima facie* case had been made out against her.

11. On the substantive legal question, the Attorney General roundly rejected the Applicant's contention and submitted that "*neither the Constitution nor case law (properly considered) requires the President to take a response from a Chief Justice before the determination of whether a petition for the Chief Justice's removal from office establishes a prima facie case."* In the alternative, the Attorney General submitted that assuming *arguendo,* that any such right existed, no law or precedent required that notice be given and the response of the Chief Justice be sought **before** the petitions were transmitted to the Council of State.

12. On the 8th of April, 2025, the Honourable Attorney General filed a further affidavit, supplemental to the earlier affidavit in opposition, wherein he informed the Court of the fact that the Chief Justice had, four days prior, being the 4th of April, 2025, at or around 8:30 pm, presented her responses to the three (3) petitions for her removal. According to the learned Attorney General, these responses had accordingly been transmitted to the Council of State for their consideration pursuant to the subsisting consultation process. In proof of the above enumerated assertions, the Attorney General attached as '*Exhibit AG4*' series, copies of cover letters transmitting the Chief Justice's responses to the Council of State.

13. Further, the Attorney General revealed, in paragraphs 6, 7 and 8 of the supplementary affidavit that on or about 18th December, 2024, one Professor Stephen Kwaku Asare presented a petition to the then President His Excellency William Nana Addo Dankwa Akufo-Addo for the removal of Her Ladyship Getrude Asaaba Torkonoo as Chief Justice. According to the Attorney General, the

then President had, consistent with the conduct of the incumbent President, first transmitted the petition to the Council of State to commence the consultation processes. Two days following this transmission, notice of the petition was given to the Chief Justice and her responses sought.

14. According to the Attorney General, this conduct betrayed the argument of the Applicant that there existed a time honoured trend of practice, whereby the President requested the response of the Chief Justice before transmitting the petitions to the Council of State.

15. In rebuttal, the Applicant, on the 27th of April, 2025, caused to be filed a supplementary affidavit in support of the injunction application. In this affidavit, the Applicant described the affidavits in opposition filed by the Attorney General as exposing an, *avowed disposition … to trample on the substantive rights of the Chief Justice to a fair hearing, in pursuit of their preconceived resolve to interfere with judicial independence in this country as enshrined in the Constitution, 1992, by unjustifiably removing the Chief Justice from office.*

16. The Applicant asserted among others that the *ex post facto* delivery of the three (3) petitions to the Chief Justice and subsequent request for her responses were, "a complete afterthought and a mere formality". The Applicant further submitted that the President acted in bad faith where, despite receiving a number of the petitions sometime in February, 2025, he only formally commenced the removal process in April, 2025, about six weeks after his receipt of same. According to the Applicant, these actions were stimulated by an expressed political intention by the President himself during his presidential campaign to '*appoint a Chief Justice who would not be political.*'

17. On these premises, the Applicant branded the extant removal process of the Chief Justice as, "*a charade, a farce and merely choreographed to achieve the declared intention of the Government and associates of the current government to remove the Chief Justice at all costs*."

18. The Applicant additionally attached several publications from news platforms reporting on alleged statements from National Chairman and the Deputy General Secretary of the National Democratic Congress which re-echoed the above expressed intentions.

19. Subsequently, on the 24th of April, 2025, the Applicant filed another application for interlocutory injunction seeking the following orders:

    i. An order restraining any step or action from being purportedly taken as part of the processes for the removal of the Chief Justice under Article 146 or in any manner until the hearing and final determination of the instant action.

    ii. An order suspending the operation of the warrant of 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.

20. The affidavit filed in support of this application was *in pari materia* with those urged in the affidavit in support of the earlier injunction application.

21. Significantly, the Applicant contended that despite service on the Attorney General of the earlier injunction application, the President, had nonetheless proceeded to release a press statement announcing that a *prima facie* case has been found against the Chief Justice and further announced the constitution of a five-member panel to inquire into the petition and recommend to the President whether the Chief Justice ought to be removed from office. Additionally, the said statement announced the suspension of the Chief Justice, pending the outcome of the committee's proceedings.

22. The Applicant amongst others, re-emphasised his position that the entire removal process, which had commenced with the transmission of the petitions to the Council of State without notice to the Chief Justice constituted a flagrant violation of the constitution and thus rendered every product of that impugned process, the fruit of the poisonous tree and was to that extent null, void and of no legal effect.

23. The Applicant further re-iterated what he perceived to be overt political influences and motivations that had coloured the instant removal process. In substantiation of this point, he adduced extracts of speeches from the incumbent President, (then candidate John Mahama) where the President expressed his desire for a, "*non-partisan*" Judiciary.

24. In a rather concise affidavit in opposition filed on the 2nd of May, 2025 to this second injunction application, the Attorney General reiterated his stance, endorsing the process for the removal of the Chief Justice as being constitutionally compliant and consistent with Article 146 and the prescriptions of case law.

25. By reason of the overlapping nature of the two applications, the Applicant, when the matter came up for hearing on the 6th of May, 2025, opted to withdraw his initial injunction application dated the 27th of March, 2025 and relied exclusively on this subsequent application filed on the 24th of April, 2025.

ANALYSIS:

26. In a constitutional democracy such as ours, the framers of the 1992 Constitution, in keeping with the doctrine of separation of powers, divide authority, functions and roles among the Legislature, Executive, and Judiciary. Each branch is co-equal and operates within its constitutionally assigned sphere. The Constitution establishes the Executive (presidency), Legislature (parliament), and the Judiciary (Courts) as coordinate branches, each with a realm of autonomy. The Judiciary's role as guardian of the Constitution must therefore be balanced against the need to respect the autonomy and functions of the elected branches.

27. Flowing from the separation of powers doctrine is the principle of non-interference as a general rule, which implies that each co-equal branches of government should respect the "operational space" of the others. The Judiciary, in particular, is counselled to avoid intruding on the Executive's and Legislature's domains except where constitutionally necessary and justifiable. The Courts must be conscious of the vital limits on judicial authority and the constitution's design to leave certain matters to other branches of government. Similarly, the executive and legislature must also observe the constitutional limits of their authority. This means that the judiciary should not unnecessarily and/or without constitutional justification interfere in the functions and processes of other branches of government unless to do so is mandated by the Constitution.

28. Therefore, if the court finds that the function is being performed in contravention of the Constitution, then as empowered under articles 2(1) and 130(1) of the Constitution, this Court has the power to declare the said exercise null and void.

29. Consequently, it is crucial to underscore that labelling a matter as a "political question" is not a license for the Executive or Legislature to violate the clear terms of the Constitution. If a claimant can demonstrate that a political branch has exceeded or abused its constitutional powers, this Court will intervene to say so.

30. It is for these reasons that, in a judgment of this Court dated 9th March, 2022, in suit number J1/07/2022 entitled, **Justice Abdulai v. Attorney-General**, which judgment I had the privilege of authoring, notwithstanding the fact that matters like the internal management of Parliament are deemed as political questions, this Court nonetheless proceeded to determine the issue on an allegation of a specific constitutional violation concerning the rules of quorum prescribed by the Constitution.

31. Even here however, this Court remained exclusively within the confines of its interpretative and enforcement mandate under Article 130 of the 1992 Constitution and intervened only to the extent of interpreting the constitutional prescription on Parliament's quorum and voting rules, but it did not dictate to Parliament how to schedule or conduct its business and debates.

32. Consequently, this Court, generally conscious of the doctrine of separation of powers, has been consistent in the recognition of its mandate under Article 295(8) of the Constitution, to inquire into whether any branch or authority in exercising its function or role is doing so in accordance with the Constitution. This is because, notwithstanding the express reflection of the doctrine of separation of powers Article 295(8) provides that:

"(8) No provision of this Constitution or of any other law to the effect that a person or authority shall not be subject to the direction or control of any other person or authority in the performance of any functions under this Constitution or that law, shall preclude a Court from exercising jurisdiction in relation to any question whether that person or authority has performed these functions in accordance with this Constitution or the law."

33. It is an elementary principle of constitutional law that the Judiciary, particularly this Supreme Court, stands as a sentinel of constitutional fidelity, vested with an extraordinary mandate under Articles 2(1) and 130(1) of the 1992 Constitution to scrutinize and review the actions of its coordinate arms of government; the Executive and the Legislature, ensuring that their deeds align with the venerable dictates of our Constitution. This solemn duty, in my considered opinion, places the judiciary at the heart of the democratic order and safeguards the sanctity of constitutionalism.

34. Similarly, I am of the opinion that this Court must always be conscious that while the Constitution entrusts it with the authority to review, sufficient restraint and caution must always be applied so as not to upset the delicate balance that exists between the three coordinate and co-equal arms of government. Therefore, in the discharge of our judicial mandate, the relationship of our three arms as being separate but interdependent must eternally nuance our judicial posturing to ensure that in our attempt to achieve constitutional adherence, we do not, in so doing, render either of the two arms inoperative, inefficacious or ineffective and thereby needlessly frustrate or obstruct the due exercise of their powers, functions and respective constitutional prerogatives.

35. Under constitutional law, there is a strong presumption of constitutionality or regularity in favour of official acts of the Executive and Legislature. Courts generally begin with the assumption that public bodies or officials discharge their constitutional duties lawfully and in good faith. This "presumption of regularity" is a deference doctrine that places the burden on a challenger to show otherwise. It means that judges do not lightly second-guess the stated reasons or actions by public bodies or officials, and will credit them with constitutional compliance unless clear evidence proves a violation.

36. In the specific case of the executive, the rationale for this presumption is two-fold. First, it acknowledges the constitutional role of the President as an elected official entrusted with significant responsibilities, a trust that should not be casually called into question by the Judiciary. Second, it serves practical institutional needs: if courts had to scrutinize every executive action without this presumption, they would become entangled in constant oversight of the Executive, which would undermine the separation of powers and paralyse the executive branch. In my view, this could not have been the intendment of the framers of our Constitution in investing this Court with our mandates under Articles 2(1) and 130(1).

37. This presumption is captured under section 37(1) our Evidence Act, 1975 (NRCD 323) as follows:

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

[See also the case of **Ghana Ports & Harbours Authority & Captain Ziem vrs. Nova Complex [2007-08] 2 SCGLR 806 at 808**]

38. In his essay entitled Federalist No. 78 titled "***The Judicial Department***," Alexander Hamilton noted that the judiciary has "*no influence over either the sword or the purse; neither force nor will, but merely judgment,*" highlighting that the courts cannot govern or execute policy, as that is the realm of the Executive and Legislature.

39. The framers of our Constitution, obviously influenced by both British and American constitutional traditions, created a system where each arm of government is meant to be a watchdog over the others, but not a usurper. Consequently, in a constitutional democracy such as ours, the separation of powers implies that each branch should largely be free to operate within its own sphere without undue interference from the others in so far as they remain within their constitutional remits and except as warranted by lawful and prudent checks.

40. In the judgment of this Court dated 13th April 2022, in Suit No. J1/11/2022, titled **Michael Ankomah-Nimfah v. James Gyakye Quayson**, this Court affirmed its jurisdiction to entertain applications for interlocutory injunctive relief in matters such as the instant case, invoking its original jurisdiction under Articles 2(1) and 130(1) of the 1992 Constitution. We held in that case that :

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

41. This position is consistent with a long-standing judicial tradition. In an earlier case of **Republic v. High Court, Koforidua; Ex parte Ansah Otu [2009] SCGLR 141**, Anin Yeboah JSC (as he then was) noted:

> "*The jurisdiction to grant the interlocutory injunction is exercisable by both the Superior Court of Judicature and the Lower Courts in Ghana… It is a relief which*

the common law courts have always granted, in the exercise of their discretion, when the circumstances appear to be just and convenient… It is, however, granted to protect rights and in some cases prevent any injury or damage in accordance with laid down legal principles which have developed as a result of case law over the years."

42. In the milestone case of **Welford Quarcoo v. The Attorney General and the Electoral Commission [2012] GHASC 38**, Prof. Date-Bah JSC articulated the well-settled principles for granting interlocutory injunctions as follows:

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

43. The venerable jurist then added a crucial caveat in matters involving public law:

> "*Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo. Given the reliefs that the plaintiff is seeking in the substantive suit in this case, it is clear that if he succeeds in securing the declarations he has claimed, the impugned provisions of the Local Government Act, 1993 (Act 462) will be declared void and any actions made in pursuance of them nullified.*
>
> *Accordingly, no irreparable damage will have been caused the plaintiff during the period between the issue of the writ and the date of judgment. On the other hand,*

the Government's programme for the creation of districts would suffer irreparable delay with a knock-on effect on the general elections scheduled for December, which delay cannot be remedied by monetary compensation, if the plaintiff should lose the substantive action."

44. These cautionary principles are deeply rooted in the doctrine of separation of powers. Preemptive judicial injunctive interference with the constitutionally sanctioned functions of the Executive or Legislature can destabilize the delicate balance envisioned by the framers of our Constitution.

45. As emphasized in the Canadian Supreme Court case of **Manitoba (A.G.) v. Metropolitan Stores Ltd., 1987 CanLII 79 (SCC), [1987] 1 SCR 110**, Courts in constitutional democracies are acutely mindful of the broader implications of injunctive relief against the State:

> "*A review of the case law indicates that, when the constitutional validity of a legislative provision is challenged, the courts consider that they ought not to be restricted to the application of traditional criteria which govern the granting or refusal of interlocutory injunctive relief in ordinary private or civil law cases. Unless the public interest is also taken into consideration in evaluating the balance of convenience, they very often express their disinclination to grant injunctive relief before constitutional invalidity has been finally decided on the merits. The reasons for this disinclination become readily understandable when one contrasts the uncertainty in which a court finds itself with respect to the merits at the interlocutory stage, with the sometimes far-reaching albeit temporary practical consequences of a stay of proceedings, not only for the parties to the litigation but also for the public at large…. It will be seen in what follows that the consequences*

for the public as well as for the parties, of granting a stay in a constitutional case, do constitute "special factors" to be taken into consideration"

46. Similarly, in **Dunsmuir v. New Brunswick [2008] 1 SCR 190**, the Canadian Supreme Court recognized that:

> "*As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law. It is essentially that constitutional foundation which explains the purpose of judicial review and guides its function and operation. Judicial review seeks to address an underlying tension between the rule of law and the foundational democratic principle, which finds an expression in the initiatives of Parliament and legislatures to create various administrative bodies and endow them with broad powers. Courts, while exercising their constitutional functions of judicial review, must be sensitive not only to the need to uphold the rule of law, but also to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures*."

47. Accordingly, I am firmly of the view that this principle must be rigorously applied when the Supreme Court is invited to grant injunctive relief, whether prohibitory, mandatory, or even in the form of a stay of execution, against the performance of a public function which, on its face, is constitutionally sanctioned.

48. 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.

49. 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 facto nullification of the impugned conduct would be insufficient to restore the status quo

50. Unless faced with the most egregious and imminent breaches, which would threaten a constitutional order, courts generally refrain from issuing injunctive relief against the executive or legislature. Instead, they must prefer post-facto

constitutional review, trusting in the robustness of corrective remedies, such as declarations of nullity or political accountability.

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

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

53. Even where a serious constitutional question is raised, the absence of irreparable harm and the overriding public interest in continuity of governance will weigh heavily against preemptive judicial intervention by way of an injunction. The guiding principle, therefore, is that only a blatant, undeniable breach of the Constitution, paired with a compelling necessity to prevent irreversible harm, can justify the extraordinary measure of enjoining the executive or legislature or preemptively halting a constitutionally mandated public function.

54. This doctrine is not a procedural convenience. It is a constitutional imperative woven into the very fabric of our democratic ethos. It reinforces institutional integrity, ensures functional independence, and sustains the rule of law in a manner that does not fracture the very structure it seeks to protect.

55. We must however emphasise that this admonition of extreme caution and restraint ought not be interpreted to render this court impotent to intervene in the most frontal and decisive of manners where occasion so demands. I must hasten to emphasize that where the applicant, as enjoined by the learned Prof. Date Bah in the **Welford Quarcoo** case *supra*, is able to establish that more harm would be occasioned in refusing the application than in granting same, this Court will summon its full might and act with precision and resolve to abate such devastating consequences.

56. At the core of the instant application before this Honorable Court is a plaint by the Applicant that the President committed an unconstitutionality by failing to give the Honorable Chief Justice notice of the three (3) petitions for her removal and an opportunity to respond to the said petitions before they were transmitted to the Council of State for the commencement of consultation. This conduct in the Applicant's estimation amounts to a denial of the fair hearing right of the Chief Justice and therefore tainted the entire removal process under Article 146. In consequence, the Applicant prayed this Court to halt the said process, which, in his opinion, would amount to an exercise in futility.

57. In truth, the Applicant's claim consists of both a substantive and procedural element. On the substantive leg of the Applicant's complaint, he alleges that the

Chief Justice was denied an alleged constitutional right to be heard in response to the petitions. Procedurally, the Applicant suggests that this right to a hearing ought to have been afforded the Chief Justice prior to the transmission of the petitions to the Council of State.

58. The bifurcation of the Applicant's plaint is made all the more apparent in his supplementary affidavit in support of the Application filed on the 27th of March, 2025. Though this Application (and by extension the affidavits in support) was withdrawn at the hearing of this matter, the Applicant nevertheless relied on same at Paragraph 4 of his subsequent injunction application filed on the 24th of April, 2025.

59. At paragraph 5 of the supplementary affidavit filed on the 22nd of April, 2025, the Applicant underscored the substantive head of his plaint as follows:

> "*That the affidavits filed by the Defendant/Respondent betray the avowed disposition of the Government and the Council of State to trample on* ***the substantive rights of the Chief Justice to a fair hearing*** *in pursuit of their preconceived resolve to interfere with judicial independence in this country as enshrined in the Constitution, 1992, by unjustifiably removing the Chief Justice from office*."

60. On the procedural issue, the Applicant averred at paragraph 6 of the supplementary affidavit in support as follows:

> *" That the Attorney General's assertion that neither the Constitution nor case law requires the President to take a response from the Chief Justice* ***before the determination of a prima facie case*** *exposes the clear intention of the*

Government not to respect the constitutionally guaranteed ***substantive procedural rights of the Chief Justice*** *in the purported adjudication of the petitions filed against her, and that the delivery of copies of the petitions to her after the filing and service of the instant action, was a complete afterthought and a mere formality."*

61. In my opinion, the substantive leg of the Applicants' plaint has been rendered moot by the events that ensued after the filing of the Applicant's writ and injunction application. Indeed, not only was the Chief Justice subsequently furnished with the petitions, as requested by the Applicant, she was additionally afforded a period of ten days within which to submit her responses to the various petitions. These responses were received by the Presidency and thereafter forwarded to the Council of State for their consideration in the determination of whether or not a prima facie case existed for her removal.

62. Indeed, it would seem that the Chief Justice herself, in her letter to the President, requesting to be furnished with copies of the petition, acknowledged that her right to a fair hearing was not irretractably obviated by the failure of the President to notify her of the petition before their transmission to the Council of State. It is clear on the face of her letter that she took the view that her right to a hearing, in the context of the prima facie case, could nonetheless be availed her at any time "*before the conclusion of the consultation process*". This letter was attached to the Attorney General's affidavit in opposition filed on the 7th of April, 2025 as "***Exhibit AG3***".

63. In her letter dated the 27th of March, 2025, intituled, " *REQUEST TO BE GIVEN COPIES OF PETITIONS SUBMITTED AGAINST JUSTICE GERTRUDE ESAABA SACKEY TORKONOO (CHIEF JUSTICE OF THE REPUBLIC OF GHANA)*

BEFORE CONCLUSIONS (sic) OF CONSULTATIONS *BETWEEN HIS EXCELLENCY THE PRESIDENT AND THE COUNCIL OF STATE UNDER ARTICLE 146*" she stated in the penultimate paragraph as follows:

> "*I am by this letter humbly and respectfully asking His Excellency the President and eminent members of the Council of State to forward the petitions against me to me, and allow me at least seven days after receipt of same, to provide my response to you, which response can then form part of the material that you conduct the consultations anticipated under Article 146 (6), before the possible setting up of the Committee of Inquiry under Article 146(7).*"

64. Having been afforded this opportunity, the wind was taken out of the Applicant's sails, as regards his substantive plaint of a lack of fair hearing in respect of the determination of a *prima facie* case against the Chief Justice.

65. On this score, it would seem that the Applicant was in fact, "*crying more than the bereaved*" when he stridently persisted in his claim that despite the petitions having been furnished the Chief Justice and she having submitted her responses in reaction to same which were duly considered by the Council of State, she had still, nonetheless, been denied a hearing in the determination of whether a *prima facie* case had been made out.

66. Quite clearly, the allegation of a continuing substantive breach of the alleged constitutional right to fair hearing, in that regard had been overtaken by the ensuing events and therefore could not sustain a claim of a constitutional violation or transgression which, if left unattended by this Court, would occasion irreparable injury against the Chief Justice.

67. In the circumstances, the only surviving leg of the Applicant's application, capable of provoking the grant of our sacred injunctive powers, is the claim that the right to fair hearing, which was nonetheless afforded the Chief Justice before the conclusion of consultation, ought to have availed her prior to the transmission of the petitions to the Council of State.

68. With the greatest respect to the Applicant, even assuming *arguendo*, that this Court, in its ultimate determination of the substantive constitutional suit, endorsed his view that the Chief Justice ought to have been served notice of the petitions **before the transmission of same to the Council of State**, it is my considered view that, such determination, without more, would not suffice to warrant our injunctive intervention. This is because the Applicant would have failed to establish the irreparable harm or injury that would be sustained by any party by reason of this exclusively procedural breach.

69. Our jurisprudence on constitutional breaches has evolved significantly, and while it remains a cardinal rule that constitutional violations should not be countenanced, not every breach, however glaring, justifies a vitiating effect at the conclusion of the case, much less an injunction at the point where the alleged constitutional infraction has not been categorically established.

70. In my view, to insist that every constitutional infraction justifies a preemptive injunction and must inevitably lead to nullification would be to elevate ritual above reasoning. Indeed, even in the determination of *ex post facto* remedies, it has now become a salutary principle of law that where a breach causes no tangible harm or injurious prejudice to any party, where it leaves justice undisturbed and

rights unscathed, the Court will hasten slowly to vitiate or nullify all succeeding acts merely on the basis of a harmless flaw.

71. This notion was crystallized in the seminal decision of this Court in **Attorney-General (No. 2) v. Tsatsu Tsikata (No. 2) (2001-2002) SCGLR 620**. Acquah JSC, speaking for the Court, eloquently articulated:

> *"The applicant also complains about the majority's holding that the criminal summons served on the respondent was unconstitutional. Now it is true that the criminal summons was inadvertently issued in the name of the President, but what harm or threatened harm did that error cause the plaintiff? Did he as a result of that error go to the castle to answer the call of the President, or when he came to the Court, did he find the President of the nation presiding? The Plaintiff came to Court because he knew it was the Court that summoned him, and that whoever issued the criminal summons obviously made a mistake. The Plaintiff suffered absolutely no harm by the error, neither has he demonstrated any. That error was one obviously amendable without prejudice to the rights of the Plaintiff-Respondent. And the majority's declaration on this error was nothing but an exercise in futility."*

72. Here, the Court, in its wisdom, laid down an enduring principle: when a constitutional breach leaves no wound, when no party emerges harmed, when justice remains intact, why should the machinery of invalidation be set in motion? To do so would be to worship technicality and sacrifice justice on its unforgiving altar.

73. This approach, which harmonizes law with logic, was reaffirmed in a judgment of this Court dated 4th March, 2021 in suit No.: J1/05/2021 entitled **Mahama v. Electoral Commission and Another**, where the Court declared:

> *"It is globally established that where a constitutional infraction causes no injustice by way of injurious prejudice to a person, such infraction should not have an invalidating effect."*

74. This, in my considered view, is because, notwithstanding the apparent procedural breach, having ensured fidelity to the substantive constitutional right of fair hearing by furnishing her with the petitions, obtaining and considering her responses to same before the conclusion of deliberations on the existence or otherwise of a *prima facie* case for her removal, no actual injury was occasioned sufficient to warrant our intervention at this early stage of the suit.

75. Alternatively, even in the event where this Court, upon a determination of the substantive suit in favor of the Applicant, came to the conclusion that the procedural error was so constitutionally egregious that its breach warranted a nullification of all resultant processes, such an *ex post facto* remedy would, in my view, be the more appropriate mode of addressing the President's conduct.

76. Our Constitution provides *ex post-facto* remedies for procedural missteps. This suggests that the preferable course is to address the issue after the act is completed, rather than halting the act in advance. In my view, where an adequate remedy exists to correct or check an executive action after the fact, Courts should be extremely hesitant to intervene mid-stream.

77. This is simply because the nullification of the impugned process would effectively restore the appropriate constitutional order without occasioning injury on any

party. To borrow the words of the eminent Law Lord Prof Date Bah in the **Welford Quarcoo cas**e *supra*, " *a subsequent nullification of the impugned act would adequately and effectively restore the status quo.*"

78. I am of the considered opinion that merely procedural concerns, like those forcefully alleged by the Applicant, do not warrant a judicial blockade of the process. Especially so when the Constitution has a built-in *ex post facto* remedy.

79. In our considered opinion, we find that the Applicant, throughout this application, has failed to clearly demonstrate what irreparable injury would be occasioned, if the instant application is not granted. He has failed to satisfy this Court as to how himself, the Chief Justice, the state or the constitutional order, stands to suffer such grievous and debilitating injury if the current process persists.

80. On these premises, I find that the instant application does not justify a judicial invasion of the constitutional process commenced under Article 146, which the Applicant invites us to undertake by means of the grant of this interlocutory injunction application.

81. Both in the Applicant's affidavit in support of the instant application and also the *viva voce* submissions, much ink was spilt on the effect of the service of the Applicant's initial injunction application on the Attorney General, and the fact that, in the Applicant's view, the service of the application ought to have operated to stay the hands of the President, pending the determination of the injunction application.

82. I would indeed be remiss in my judicial duty if I did not comment on this view. The venerable Abban J (as he then was), in a quintessential moment in our civil law jurisprudence, made the following observation in **Republic v. Moffat and Others; Ex Parte Allotey [1971] 2 GLR 391-403** at page 399:

> *"I would be laying down a very dangerous precedent if I were to hold that a party, when served with an application for an order of prohibition from the High Court, can disregard or ignore the said application and treat the court with contempt, if he believes that the said application is misconceived."*

83. This principle has since crystallized into the notion that the mere service of an injunction or stay application is tantamount to its automatic grant. In practice, this has led to the colloquial assumption that **"an injunction application, once served, is as good as granted."**

84. Evidently, this was the legal position that animated the Applicant's filing of his second application for interlocutory injunction wherein he chided the Attorney General and the Presidency for refusing to suspend the removal process of the Chief Justice, despite having been served with the injunction application.

85. At paragraphs 4, 5 and 6 of his affidavit in support, the Applicant deposed to the following:

> *"4. That the plaintiff followed up with an application for interlocutory injunction restraining the President and the Council of State from proceeding on the consultation processes for the removal of the Chief Justice under article 146, or in any manner until the hearing and final determination of the instant action.*

5. That this application was duly served on the defendant, the Attorney-General, who filed relevant processes in opposition and appeared in Court on the various dates fixed for the hearing of the application.

6. That in a move indicative of complete disregard for the rule of law and due process, whilst the application for interlocutory injunction was pending and had not been heard or determined, on 22nd April, 2025, the President released a press statement stating that a prima facie case has been established in respect of the three petitions against the Chief Justice. The said press release also informed the public of the establishment of a five-member committee to inquire into the petitions and further announced the suspension of the Chief Justice pending the outcome of the committee's proceedings…"

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 dutybearers 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.

90. In good conscience and in fidelity to our judicial oath, we cannot endorse a position that could potentially be exploited by deliberate and well-resourced strategy deployed by individuals or entities pursuing parochial private interests to obstruct, delay and frustrate constitutional oversight and hold the public interest to ransom.

91. In the premises, we find that, in cases involving the discharge of constitutionally or statutorily mandated functions by specifically designated actors, be they, statutory bodies, public offices or individuals empowered by law so to act, it would be utterly imprudent to adopt a blanket rule that mere service of an application for interlocutory injunction suffices to halt constitutional or statutory action which presumptively, would inure to the collective interest of the public.

92. We further hold that in such cases, nothing short of an **express judicial grant of an injunction** would suffice to restrain a constitutional or statutory duty bearer whose actions are presumptively in line with constitutional or lawful mandates. Infact, the constitution itself envisages the continuous running of the Republic in article 64(2) with the declaration that even if this Court in a presidential election dispute declares as invalid the election of a president, such a declaration shall be without prejudice to anything done by the president before the declaration.

93. The constitution in the said article 64(2) accepts the principle of continuity of the effect of discharged constitutional duties, that being the case, we are of the considered opinion that there is no jurisprudential basis for halting or suspending the operation of the constitution by the mere filing and service of an application for interlocutory injunction. On what basis should we put clutches on constitutional and public law duty bearers by the force of mere pendency of interlocutory applications. We think that a pending interlocutory injunction application is insufficient to hold the ground and suspend the performance of a constitutional or statutory duty, irrespective of the possibility of success.

94. We are not unmindful of the fact that certain matters may require immediate injunctive relief due to their time-sensitive nature. In such exceptional constitutional cases, the Supreme Court, given its critical constitutional role, can be empaneled to hear the application immediately, without delay. The Court's unique mandate afterall, allows it to convene at any time to address urgent matters of national significance, ensuring that constitutional order and continuity is maintained and potential irreparable harm to the constitutional order and public interest is averted.

95. This balanced approach ensures that while the courts uphold the rule of law, they also prevent procedural abuse that could needlessly stifle, disrupt and/or frustrate governance. It preserves judicial integrity while safeguarding the continuous and unimpeded performance of constitutional and statutory functions undertaken for our collective welfare.

CONCLUSION:

96. It is on the basis of the foregoing that on the 6th of May, 2025, we found that the instant application for interlocutory injunction was without merit and accordingly dismissed same.

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

DISSENTING OPINION

PROF. MENSA-BONSU JSC:

> "*The judiciary, under a written constitution, is usually given the role of a watchdog against abuse or excess of power by the Executive or the Legislature. … The Executive and Legislature may therefore on occasion wish to react vigorously to the restraining action of the judiciary. However, because of the greater political power of the Executive and the Legislature, their unbridled attack on the judiciary can undermine the authority of the courts*." - Samuel Kofi Date-Bah '*Selected Papers And Lectures On Ghanaian Law*' Chapter 12 pp179-180 Digibooks, Tema, Ghana, 2021.

This is an application for interlocutory injunction by the plaintiff/applicant challenging the procedure undertaken within the processes for the removal of a Chief Justice under article 146 of the Constitution, 1992, by the President of the Republic of Ghana in the exercise of powers granted him thereunder.

INTRODUCTION

I consider it appropriate to begin this Ruling with an observation made by my brother Amegatcher JSC, when the Supreme Court had to determine whether the President had power to send the Auditor-General on leave in ***Ghana Center For Democratic Development & 8 Others*** v. ***The Attorney General*** Writ No. J1/1/2021; decided on 31st May 2023; (Unreported). The opinion expressed reflects the tone of the excursus into philosophy which we must make in the determination of the matters before the Court at this time.

In his introductory paragraph to the judgment in ***Ghana Center For Democratic Development & 8 Others*** v. ***The Attorney General*** supra, Amegatcher JSC opined that

"*Since the promulgation of the Constitution 1992, the original interpretative and enforcement jurisdiction of the Supreme Court has been a regular feature of our democracy, resorted to by persons and institutions questioning acts or omissions of persons exercising powers under the Constitution. The sudden upsurge of awareness among citizens questioning their leaders and those in authority have strengthened the country's governance structure. It has also improved*

the jurisprudence of this Court and raised our collective effort as a people in search of progress to succeed in our current democratic dispensation. It is within the context of the freedom Ghanaians enjoy that this action has been brought. We, the third arm of state charged with the responsibility of interpreting the laws, have been called upon to adjudicate and resolve these differences in views arising from the act of the President of the Republic."

I wholeheartedly endorse these sentiments

Facts and background

On Tuesday, 25th March 2025, the Spokesperson for the President put out a terse public announcement indicating that the President of the Republic of Ghana had received three petitions from various persons seeking the removal of the Chief Justice; and that the President had "*forwarded them to the Council of State to commence the consultation process*". The Statement cited Article 146 of the 1992 Constitution as the basis for the procedure adopted.

This announcement was the first time the world, and the sitting Chief Justice, the subject of the complaint, heard of the fact that some petitions had been received from persons who were not named, seeking her removal as head of the judicial branch of government.

On 27th March, 2025, the Chief Justice, Mrs Justice Araba Esaaba Sackey Torkonoo, wrote a letter to the President requesting that a copy of the petitions be made available to her, so that she could make appropriate responses to the accusations. Such responses would enable the President make a proper determination of a prima facie case against her, before triggering the process of engaging with the Council of State to initiate action on the petition.

On the same day on 27th March, 2025, the plaintiff/applicant (herein referred to as 'applicant), a citizen of Ghana, deeming the sequence of activity as a violation of article

146 of the Constitution, filed a writ seeking an interpretation and enforcement of the Constitution. The writ was accompanied by an application supported by an affidavit for an order of injunction "*restraining the President and the Council of State from proceeding on the consultation processes for the removal of the Chief Justice under article 146, or in any manner until the hearing and final determination of the instant action"*.

On 28th March, the President wrote to the Chief Justice, acceding to her request to be given an opportunity to know the substance of the petitions against her and to make responses thereto within a time-frame. She duly made her responses within the time-frame set.

On 7th April, 2025, the Attorney-General (herein referred to as respondent) filed an affidavit in opposition to the application for interlocutory injunction. He followed this up with a Supplementary affidavit on 8th April 2025.

On 9th April, 2025 the plaintiff followed up the writ with a Statement of Case.

On 22nd April 2025, while the application for injunction was pending, the President released a press statement to the effect that a prima facie case had been established against the Chief Justice and that a five-member Committee with named membership had been established to inquire into the petitions. The statement further announced the suspension of the Chief Justice from office by warrant under the hand of the President, pending the outcome of the work of the Committee.

The applicant therefore filed another application on 24th April, 2025 seeking interlocutory reliefs including a suspension of the operation of the warrant.

On 2nd May, 2025, the respondents filed an affidavit in opposition to the applicant's motion of 24th April, 2025.

Issues were then joined on the propriety of the application for interlocutory injunction.

CASE FOR THE APPLICANT

On Tuesday, 25th March 2025, the Spokesperson for the President put out a terse public announcement:

"*President Mahama has received three (3) petitions from various persons seeking the removal of the Chief Justice. The President has forwarded the three (3) petitions to the Council of State to commence the consultation process mandated by Article 146 of the 1992 Constitution*."

Two days after this ie on 27th of March, 2025, the applicant herein, filed writ seeking the interpretation and enforcement of particular provisions of the Constitution pertaining to the discipline of Justices of the Superior Courts of Judicature and in particular, to the Chief Justice, the head of the judicial branch.

In initiating the filing of the writ invoking the original jurisdiction of the Supreme Court, the plaintiff/applicant, in his capacity as a citizen of Ghana, is seeking the following declarations:

(i) A declaration that upon a true and proper interpretation of articles 146 (1) (2), (4)., (6) and 7, 23, 57 (3) and 296 of the Constitution, the President is mandated to notify the Chief Justice about a petition for the removal of the Chief Justice and obtain his or her comments and responses to the content of such petition before referring the petition to the Council of State or commencing the consultation processes with the Council of State for the removal of the Chief Justice;

(ii) a declaration that upon a true and proper interpretation of articles 146 (1) (2), (4)., (6) and 7, 23, 57 (3) and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State constitutes a violation of article 146(6) as well as the constitutional protection of the security of tenure of the Chief Justice who is a justice of the Superior Court of Judicature stipulated in article 146(1) of the Constitution.

(iii) a declaration that upon a true and proper interpretation of articles 146 (1) (2), (4)., (6) and 7, 23, 57 (3) and 296 of the Constitution, a failure by the President to notify the Chief Justice and obtain his or her comments and responses to a petition for the removal of the Chief Justice before triggering the consultation process with the Council of State amounts to an

unjustified interference with the independence of the Judiciary enshrined in article 127(1) and (2) of the Constitution.

(iv) a declaration that the failure by the President to notify the Chief Justice and obtain her comments and responses to a petition for the removal of the Chief Justice before triggering the process for her removal, constitutes a violation of the fundamental right to a fair hearing contained in articles 23 and 296, and renders the consultation processes for the removal of the Chief Justice initiated by the President null, void and of no effect.

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

The plaintiff/ applicant also filed an application on 27th March 2025, for an order of injunction, "*restraining the President and the Council of State from proceeding on the consultation processes for the removal of the Chief Justice under article 146, or in any manner until the hearing and final determination of the instant action*".

However, that application, which had been overtaken by events, was subsequently withdrawn in favour of the second application for interlocutory injunction filed on 24th April, 2025.

In his affidavit in support of the application for interlocutory injunction, the applicant averred that as a citizen of Ghana, he was "*concerned about the patent disregard for the well-established constitutional principles of due process and the independence of the Judiciary manifest in the action of the President in commencing the consultation process for the removal of the Chief Justice*", without notifying the Chief Justice nor eliciting responses from her. Further that such act was "*in blatant violation of constitutionally stipulated safeguards for protecting the security of tenure of the Chief Justice and also interferes with the independence of the Judiciary*."

The applicant further contended that the act of the President in commencing consultations with the Council of State when he had not "*even notified the Chief Justice about the existence of three petitions for her removal, let alone seek her responses"* constituted "*an egregious contravention of the constitutional protections in articles 141 and 146 for the*

offices of Chief Justice and a Justice of the Superior Court of Judicature." Further, that upon a true and proper interpretation of articles 146(1), (2), (4), (6), (7), 23 and 296, the comments/responses of the Chief Justice on the petitions ought to have been obtained before commencing the consultation process.

This application, however, was overtaken by events. For, before the matter could be heard by the Supreme Court, the President on 22nd April, 2025, announced that he had established a committee to take the process of inquiry forward, and make recommendations as prescribed under article 146 (10). Further, that he had by a warrant suspended the Chief Justice pending the conclusion of the committee's proceedings.

Following upon this development, the applicant, on 24th April, 2025, filed a second application for interlocutory injunction praying for the following reliefs:

i. An order restraining any step from being purportedly taken as part of the processes for the removal of the Chief Justice under article 146 or in any manner until the hearing and final determination of the instant action;
ii. 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.
iii. Any further orders at [sic] to this Honourable Court may seem meet."

In the accompanying affidavit in support, the applicant averred that although the Attorney-General had been served with the processes of the first application, and had filed relevant documentation in opposition, the process under article 146(6) had not been halted, but had continued as if nothing had taken place. In paragraph 6, he further averred as follows

"That in a move indicative of complete disregard for the rule of law and due process, whilst the application for interlocutory injunction was pending and had not been heard or determined, on 22nd April 2025, the President released a press statement stating that a prima

facie case has been established in respect of the three petitions against the Chief Justice. The said press release also informed the public of the establishment of a five-member committee to inquire into the petitions and further announced the suspension of the Chief Justice pending the outcome of the committee's proceedings…"

He further averred in paragraphs 7-9 thus:

"7. That the thrust of the instant action is that the consultations initiated by the President with the Council of State to determine whether a prima facie case is disclosed in the three petitions against the Chief Justice when the Chief Justice had not been notified of the petitions was in flagrant violation of the Constitution and renders the whole process under article 146 null, void and of no effect.

8. That the entire proceedings triggered by the President, including the establishment of a committee to inquire into the petitions against the Chief Justice, are a farce and the product of a pre-conceived orchestration to unconstitutionally remove the Chief Justice from office.

9. That as disclosed in a letter to the Chief Justice filed by the defendant in the instant proceedings, the President received the first two petitions against the Chief Justice in ***February 2025*** *and it was not until end of March 2025 that he indicated receipt of same and the initiation of consultations with the Council of State via a press release by his Spokesperson."* (emphasis in original).

On these grounds the applicant sought another injunction to restrain the President, and also to declare his actions taken without notice to the subject of the petitions, and not affording a hearing before drawing conclusions as to a prima facie case null and void, Further, that steps taken to consult the Council of State to establish the five-member Committee be declared null and void.

CASE FOR THE RESPONDENT

On 7th April, 2025, the respondent filed an affidavit in opposition to the application for interlocutory injunction, and followed it up with a Supplementary affidavit in opposition on 8th April.

On 2nd May, 2025, the respondents filed an affidavit in opposition to the applicant's second application dated 24th April, 2025.

The respondent also filed a Supplementary Affidavit in opposition deposed to by the same State Attorney in which he averred that on 4th April 2025, Her Ladyship the Chief Justice had presented her responses to His Excellency the President and that on 7th April 2025, these responses had been transmitted to the Council of State "*as part of the mandatory consultation process*."

In the affidavit in opposition filed on 2nd May 2025, the respondents averred in paragraph 5, "That they were opposed to "*a second concurrent order of interlocutory injunction in this matter."*

In paragraph 7 of the said affidavit in opposition, the respondents stated,

"…that the steps which the President or the Council of State have so far taken in the process for the removal of Her Ladyship Justice MRS GERTRUDE ARABA ESAABA SACKEY TORKORNOO from office of the Chief Justice are sternly consistent with the provisions of the Constitution and case law."

The respondent therefore prayed for the application to be dismissed.

ANALYSIS

The issues raised by this writ and accompanying application for injunction are weighty and have serious implications for our democracy. However, in any application for interlocutory injunction, the first issue that the Supreme Court must establish is whether it has jurisdiction over the matters raised and for which reason it is being called upon to grant an interlocutory injunction pending the determination of the suit.

Jurisdiction

The issue of whether the Supreme Court has jurisdiction in respect of every situation was addressed in ***Edusei (No. 2)*** v. ***Attorney-General*** [1998-99] SCGLR 753. The Supreme Court per Acquah JSC (as he then was) at p.781 that,

"Jurisdiction is the power of the court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties. Jurisdiction defines the powers of courts to inquire into facts, apply the law, make decisions and declare judgments".

The main issue here is whether the President, as well as the Council of State, are amenable to the jurisdiction of this honourable court. In ***Martin Alamisi Amidu*** v**.** ***President Kuffour and The Attorney General*** (2001-2002) SCGLR 86, Acquah JSC (as he then was) at p.100 stated the position thus:

"There is no doubt that the 1992 Constitution prescribes a government consisting of three branches: the legislature, executive, and the judiciary, each playing a distinct role…. Now each of these branches of government, offices, bodies and institutions is, of course, subject to the Constitution, and is therefore required to operate within the powers and limits conferred on it by the Constitution. And in order to maintain the supremacy of the constitution and to ensure that every individual organ, body or institution of state operates within the provisions of the Constitution, authority is given in article 2 thereof to any person who alleges that a conduct or omission of anybody or institution is in violation of a provision of the Constitution to seek a declaration to that effect in the Supreme Court. Thus, so long as an individual, body or institution or organ of government performs its functions in accordance with the relevant constitutional provisions and the law, the Supreme Court has no business or jurisdiction to interfere in the performance of its functions. But where it is alleged before the Supreme Court that any organ of Government or an institution is acting in violation of a provision of the Constitution, the Supreme Court is duty bound by articles 2(1) and 130(1) to exercise jurisdiction, unless the Constitution has provided a specific remedy... no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged."

More than a decade later, this position was restated by Gbadegbe JSC in ***Sumaila Bielbiel (No.1)*** v ***Dramani & Anor.*** [2011] 1 SCGLR 132, when he stated thus:-

"In my opinion the jurisdiction conferred on the court in making declarations under article 130(1) coupled with the ancillary power conferred on it under article 2(2) to "make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made" is an effective tool in ensuring and or compelling observance of the constitution. These provisions require us to measure acts of the legislative and executive branches against the constitution and where there is a violation to declare such acts unconstitutional provided the act in question does not come within the designation of a "political question". It is worthy of note that article 2(1) confers the right to seek a declaration that an act or omission of any person is inconsistent with or in contravention of a provision of the constitution while article 130(1) provides the means by which a person may exercise the right conferred on him to seek relief in cases which provisions of the constitution have been breached. The special jurisdiction that this Court exercises in such cases is described by the constitution as original in contradistinction to the appellate or supervisory jurisdiction. I think articles 2(1) and 130(1) confer on us the jurisdiction of judicial review although there are no specific words in the constitution to that effect."

In the case of ***Tuffuor*** v ***Attorney-General*** [1980] GLR 637 the oft quoted words of Sowah JSC at pp. 647-648 have become the evergreen principles to be borne in mind when interpreting the Constitution. His Lordship stated that:

"A written Constitution such as ours is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and fuller life… The Constitution has its letter of the law. Equally, the Constitution has its spirit. It is the fountain-head for the authority which each of the three arms of government possesses and exercises. It is a source of strength. It is a source of power. The executive, the legislature and the judiciary are created by the Constitution. Their authority is derived from the Constitution. Their sustenance is derived from the Constitution. Its methods of alteration are specified. In our peculiar circumstances, these methods require the involvement of the whole body politic of Ghana. Its language, therefore, must be considered as if it were a living organism capable of growth and development. Indeed, it is a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a

narrow interpretation. A doctrinaire approach of interpretation would not do. We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time".

Not to be outdone, Date-Bah JSC in **Ransford France (No 3)** v **The Electoral Commission & Attorney-General** [2012] 1 SCGLR 705 at p-723 re-affirmed the position of the Supreme Court thus:

"*We continue to be persuaded of the need for the Supreme Court to interpret the Constitution as a living document, so to speak. This remains the preferable route to distilling the right meaning from the Constitution. Accordingly, article 296(c) has to be interpreted as part of a living Constitution that provides a workable and functional framework for governance in Ghana…*"

See also, the position reiterated by Sophia Adinyira JSC in ***Okudzeto Ablakwa & Another*** v ***Attorney-General & Obetsebi Lamptey*** [2011] 2 SCGLR at p. 986.

The fact of the President being amenable to the jurisdiction of the Supreme Court finds constitutional grounding in Article 57 (4) which provides as follows:

> *Without prejudice to the provisions of article 2 of this Constitution, and* ***subject to the operation of the prerogative writs****, the President shall not, while in office, be liable to proceedings in any court for the performance of his functions, or for any act done or omitted to be done, or purported to be done, or purported to have been done or purporting to be done in the performance of his functions, under this Constitution or any other law."*

See also : ***New Patriotic Party*** v **Rawlings** [1993-94] 2 GLR 193.

It is thus well-covered by authority, that all arms and agencies of government operate under, and are subject to the Constitution, and that it lies with the Supreme Court to ensure adherence and compliance. The courts have jurisdiction over all persons and the

President is amenable to the jurisdiction of the courts when article 2 and the prerogative writs are in issue. Therefore, it is clear that no one is above the Constitution, and that each of the branches of Government and institutions thereunder must operate within the confines of the law.

Does the applicant have a legal right on which to hang the application for injunction?

In this regard, there is little argument. In ***Sam (No. 2)*** v ***Attorney-General*** [2000] SCGLR 305 Sophia Akuffo JSC (as she then was) held that every citizen has an interest in the enforcement of the Constitution. For which reason, the applicant has a legal right on which to hang the application. In her inimitable style, she stated without equivocation At p. 340 that,

"It is therefore the intent of the Ghanaian Constitution that every citizen should play an active role in the enforcement so that there will never again be in this country a "conspiracy of silence" that results in the emasculation of the citizenry and the destruction of constitutionalism …In my view, article 2(1) is one of the most important provisions of the Constitution since it deals with enforcement. To limit its scope below the levels intended by the framers of the Constitution would be to enfetter one of the most crucial built-in mechanisms for assuring the people of Ghana that their Constitution would always remain a living and vibrant instrument of social and political management and good governance. ***Every citizen of Ghana, by virtue of such citizenship, has an innate interest in the integrity of the supreme law of the land, the National Constitution.*** *As such, therefore, any perceptible inconsistency or contravention, in any enactment or act or omission of any person, with the Constitution constitutes a sufficient occasion for the invocation of article 2.* ***The perceived existence of any unconstitutional enactment act or omission is, ipso facto, a matter of public standing, personal interest and public duty to bring an action in this court to challenge its constitutionality.*** *That is the regime created by article 2(1) to assure the effectiveness of article 1(2).* ***In the context of article 2(1), therefore, there can never be an officious bystander or nosy busybody. Every Ghanaian is and must be an interested party."*** (emphases mine).

In ***Adjei-Ampofo*** v. ***Accra Metropolitan Assembly & Attorney General (No. 1)*** [2007-2008] SCGLR 611, this honourable court noted that though the plaintiff therein was not pursuing his own interest but that of the public interest, he had sufficient interest to pursue the action. Sophia Akuffo JSC (as she then was) delivering the unanimous opinion of the Court stated at p.620 that:

"*whilst the outcome of an action under article 2(1) is, invariably, primarily of benefit to the citizens in general, it may not necessarily inure to the direct or personal benefit of the Plaintiff herein. For that reason, therefore, every Ghanaian, natural or artificial, has locus standi to initiate an action in the Supreme Court to enforce any provision of the Constitution. In respect of article 33(1), however the objective is to facilitate the enforcement by any person of his or her individual fundamental human rights and freedom under Chapter Five of the 1992 Constitution through access to the High Court, in the first instance, for redress*".-

See also the dicta of Date-Bah JSC when he restated in ***Ransford France (No 3)*** v ***The Electoral Commission & Attorney-General,*** supra, at p.719, the position of Sowah JSC in *Tuffour* v *Attorney-General* [1980] GLR 637; and in ***Martin Alamisi Amidu (No.2)*** v. ***Attorney-General, Isofoton S.A. & Forson*** [2013-2014] SCGLR 167, at p.180 , respectively. The plaintiff/applicant therefore has, like all citizens of Ghana, a legal right to challenge the acts of the President which he deems contrary to the Constitution.

Fair opportunity to be given a hearing

The applicant herein says the Chief Justice as the subject of a petition, is entitled to notice and an opportunity to be heard by way of comments on a petition before the processes for consultation may be triggered. The respondent says there is no such need, and that in his opinion, the only matter in issue is: "At what time in the process was it was proper to afford her the opportunity to be given a hearing?" Arguing the point, counsel for the respondent stated that there was no question about the fact that the

Chief Justice had been notified and that she had filed her responses accordingly. Counsel urged on the court the fact that having had the opportunity to submit her responses, the requirement of "opportunity to be heard", had been met. It appeared to be of no moment to counsel for the respondent that the timing of the supposed "opportunity" was a critical matter in the determination of whether any opportunity to be heard that she had been given could be said to be "fair opportunity". She had received personal notification of the petitions three whole days after the public announcement of the initiation of the proceedings, and one day after she herself had sent a written request asking to receive information about the petition. Had her right to a "fair opportunity" to be heard in her own defence been respected by that time? I should think not. Counsel further says the order of sequence of events is immaterial, and does not amount to putting the cart before the horse, since she ended up receiving notification anyway. According to counsel she was notified and she submitted her response. End of story. But is it really the end?

Counsel for respondent seems to believe that as long as one is given a chance to respond at some point in time, one has been given a hearing. Not so. The importance of the need for "fair opportunity" for a hearing was restated in ***O'Reilly*** v Mackman [1983] 2 A.C. 237 at p276 by Lord Diplock as follows:

"A fair opportunity of hearing what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that … a failure to observe should render null and void any decision reached in breach of this requirement."

The determination of what a right to be heard is, cannot be merely contingent upon any official's interpretation of what entitlement there is, but a well-recognised principle of Administrative Law. A "***fair opportunity of hearing what is alleged against him and of presenting his own case***", does not appear to have been respected if opportunity is given after the fact, merely to enable the requirement of "right to be heard" to have been met. Nor would the "right to be heard" have been met if granted perfunctorily, or

as an afterthought after proceedings have commenced. Such opportunity, though eventually made available to the person concerned, would not qualify to be considered as having met the requirement for fairness.

How, then, can it be said that when a Chief Justice is informed of a petition for her removal from office , and of the commencement of proceedings thereto in a public announcement, at the same time as the whole world was being informed, that there has been procedural fairness? Certainly, such manner of operation is neither fair nor respectful of the rights of the subject of the petition. Such manner of proceeding should never be part of our constitutional jurisprudence.

In the situation underlying the instant case, the media frenzy that accompanied the announcement from the President's Spokesperson was to be seen and heard, to be believed. The public had not been informed of the contents of the petitions, yet with little decorum or decency, the subject of the petition was tried in the media, and, in a manner of speaking, ferociously "thrown out of office" by vociferous members of the public. The airwaves were thronged with legal and social pundits ranged on either side to express opinions which the public lapped up with enthusiasm. The merits of opinions were weighed by those who believed they knew the contents of the petitions, and cheered with approbation as people who had an axe to grind with the judiciary, used the opportunity to mercilessly flay the entire judiciary. It was a sorry occasion for the judiciary. In such an atmosphere, what chance did the President have, to consider the responses provided objectively, and to revise his opinion accordingly, when performing the quasi-judicial function of determining whether a prima facie case had been made against the Chief Justice? The door to fair assessment of the responses with an open mind was thus firmly closed when the furore engendered by the announcement released such vitriol towards the subject of the petitions and all in the judiciary, that thereafter, to not proceed with the processes when he received the

responses from the subject of the petitions which he announced had already been activated, would have entailed loss of face and even loss of political capital.

The mode of proceeding completely undermined the constitutional value of respect for the judicial branch and its officers. In the famous case of ***Republic*** v ***Liberty Press Ltd & Others*** [1968]1GLR 123, the following words of an enduring quality were uttered by Akufo-Addo C.J. during a trial for contempt of court of 28 Lecturers of the University of Ghana. At p.135, he stated that respect for the judiciary was cardinal in upholding and maintaining respect for the judicial system as a whole:

"Justice, it has been said, is not a cloistered virtue, and those who have responsibility to dispense justice will certainly not want to live in cloisters. But the important position of the judiciary in any democratic set-up must be fully appreciated. Performing, as they are called to do, the sacred duty of holding the scales between the executive power of the state and the subject and protecting fundamental liberties of the individual, the courts must not only enjoy the respect and confidence of the people among whom they operate, but also must have the means to protect that respect and confidence in order to maintain their authority."

At a minimum the judiciary as an institution as well as its officials deserve some respect as they are charged with the exercise of the judicial power on behalf of the people, under the Constitution, for that is fundamental to the proper functioning of the institution in a democracy. Where should the people turn to, when they are in need of assistance to vindicate their rights peaceably, if not to the courts? That is why the recent happenings have, to say the least, been lamentable.

The feeding frenzy engaged in by the media upon the sudden announcement was to be expected, when, initially, only hints were dropped as to serious malfeasance of the head of the judiciary. That kind of cryptic announcement was sure to sufficiently awaken the curiosity of any journalist, and to make a leakage of the contents of the petitions into the

public domain inevitable and only a matter of time. That this did happen, is neither unexpected nor unwarranted.

The right to be heard

This is a proper occasion to address the sequence of what is expected of the President upon receipt of a petition, and before initiating his consultations with the Council of State. In line with the authority of the ***Agyei-Twum*** case, the applicant states that the President must make a prima facie determination of the worth of the complaint before he transmits the petitions to the Council of State, and that such determination must precede the transmission to the Council of State. The process of making the determination, then, is a quasi-judicial act, and should necessarily include steps to actualize the right of the person who is the subject of the petition, to a fair opportunity to be heard. This would be achieved by acts such as notifying the Chief Justice of the petitions against her and then giving her opportunity for her responses to be taken. Counsel for respondents, however, did not think this was of any consequence since she had received the information and sent her responses anyway. It did not appear to matter that the Chief Justice in the instant case, received information that the process for removing her from office had begun, and that this was by way of a public announcement addressed to the people of Ghana and the world at large, by the Spokesperson of the President. The subject of the announcement immediately became a target for unhealthy commentary and verbal stoning by anyone who cared to indulge. Yet, all of this, was even before she had been told in what manner she was alleged to have offended. It was completely inappropriate and a violation of her right to be heard in response to allegations made against her before a prima facie case could be made. One can state without equivocation that wherever a standard of "fairness" is required,

what happened between the 25th of March 2025 and 28th of March 2025, would never pass the test.

One would have thought that there would be little controversy as the right to be heard, which right has been enshrined in administrative justice under article 23 of the Constitution. The respondent has averred in his supplementary affidavit in opposition that, from the example of the handling by the then President of a 2024 petition for the removal of the Chief Justice, what the current President has done is consistent with what the immediate past President did in 2024. With all due respect, the fact that both Presidents have done the wrong thing in identical situations is no argument to repeat same. Nor is it sufficient reason to maintain that there is no right way of doing things. The right to be heard is premised upon a "fair opportunity" to be heard.

Core values of the Constitution

Counsel for respondents maintains that there is no specific mention of the right to be heard in article 146 (6). This is strange argument from the respondent since it seeks to jettison the prescription and renowned authority of the case of ***Agyei Twum*** v ***Attorney-General & Akwetey*** [2005-2006] SCGLR 732. In that case, the second defendant presented a petition to the President seeking a removal of the Chief Justice from office pursuant to Article 146 of the Constitution. The plaintiff brought this action for a declaration that Article 146 required the establishment of a prima facie case by the President before the President could set up a committee to go into the contents of the petition. The question was what was the President's constitutional duty upon receipt of such a petition the President. Ought the President to immediately enter into consultations with the Council of State and set up a committee to go into the contents of the petition, or require the establishment of a prima facie case before the President could initiate consultations with the Council of State and set up a committee to go into

the contents of the petition? Writing the Lead Judgment, Date-Bah, JSC held inter alia, at p.758 that

"*Analysis of the concept of the purpose of a constitutional provision reveals that there are two kinds of purpose: subjective and objective. The subjective purpose is what the framers of the Constitution actually intended. The objective purpose, on the other hand, is what the provision should be seeking to achieve, given the general purposes of the Constitution and the core values of the legal system and of the Constitution. In other words, it is the purpose that a reasonable person would have had if he or she were faced with formulating the provision in question. .. The spirit of a constitutional provision includes its objective purpose".*

Indeed, a written constitution has its objective purpose and underlying values which give substance to the letter of the Constitution at any point in time. As Date-Bah JSC has pointed out in ***Amegatcher*** v ***Attorney-General & Ors (No 1)*** [2012] 1 SCGLR 679, there are core values underlying the Constitution which must be recognized as shaping the meaning of particular provisions in the Constitution. Consequently, even when a literal meaning would stand in the way of adherence to these values, the Constitution must be interpreted in such a way as to give recognition to these core values. He stated at pp. 686-687 as follows:

"*Thus, a literal reading of article 88 (5) cannot be allowed to stand in the way of the aspiration of the people, expressed in an acknowledged core value of the Constitution. If the plain meaning of a constitutional text runs counter to a core value of the Constitution, it calls for reflection and a purposive interpretation to reconcile the particular core value or aspiration of the people with the language employed in the text with a view to extracting a meaning by a process of interpretation that expresses the spirit of the Constitution.*

One of the fundamental principles of the 1992 Constitution is that of separation of powers between the Executive, the Legislature and the Judiciary. Although the separation is not absolute, it is one of the cornerstones of the Constitution. Another fundamental principle is that of checks and balances, according to which certain bodies created by the Constitution are given relative autonomy to enable them to maintain oversight responsibility over other organs of State. It follows that the Constitution should be so construed as to preserve and not undermine these fundamental principles."

How then could a constitution that has prescribed fairness in administrative justice in article 23 and article 296, to be interpreted to yield a result which is manifestly unfair to a person holding the high office of Chief Justice? That is surely at odds with its stated core values.

Another underlying value of the Constitution is the principle of accountability. In a scholarly and erudite piece by Samuel Opoku-Agyakwa "*Reforming Ghana's Nolle Prosequi Jurisprudence: Lessons from other Jurisdictions*." University of Ghana Law Journal (2024 Vol. 33(2) pp.86-129, he expresses the notion of the constitutional value of the accountability of public officials succinctly when he states at p. 120 thus:

"*The preamble to Ghana's Constitution identifies accountability as one of its foundational principles. Chapter 6 of the Constitution captures the Directive Principles of State Policy; these principles must influence state institutions and public officials in making public policy and steering the ship-of-state. The need for public officials to account for their stewardship is evident in the Directive Principles of State Policy. Accountability necessitates the existence of laws, standards, norms, values, and rules against which all conduct, including that of the Attorney-General, must be assessed. When deviations from these standards occur, the appropriate state institution or the electorate must hold the responsible official accountable*."

Any act or posture of a public official that would be at odds with the underlying values of the Constitution cannot but denigrate the integrity of the fabric of the Constitution and must, accordingly, be deprecated.

Clearly, the, it was thus to maintain respect for the core and underlying values of the Constitution and constitutionalism, that Date-Bah JSC in ***Agyei Twum*** v ***Attorney-General & Akwetey***, supra, expressed views on purposive interpretation at p.766, and that that was an appropriate case to interpret article 146(6) of the Constitution, 1992 by reading a requirement of "prima facie case" into article 146(6). At that time, all the Justices were agreed that it would be unconscionable that the person at the head of the justice institution, which has the responsibility to ensure administrative justice for

others could not, claim any such consideration herself. We are in full support of the authority of ***Agyei Twum*** v ***Attorney-General & Akwetey,*** supra.

As to the nature of what constitutes a prima facie case, an answer is proffered in ***Justice Uuter Dery*** v ***Tiger Eye P.I. Chief Justice & Attorney-General*** [2015- 2016] 2 SCGLR 812. Benin JSC, indicated that it was a quasi-judicial exercise of power. Speaking for the court, he stated at pp.833-834 that

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

Enough has been already said about when the right to be heard must be respected in proper form in order to meet the constitutional standard for a prima facie case before consultations begin.

Interlocutory Injunction Applications

The applicant has applied for an interlocutory injunction to restrain the processes from going forward. Does the Supreme Court have such a power? Without a doubt, the power of the Supreme Court to grant interlocutory injunction is well-travelled terrain and grounded in article 129(4). However, this power is to be exercised with caution and great circumspection when determining the appropriateness of the grant and the nature of the case involved.

In ***Republic*** v ***High Court, Koforidua***; ***Ex parte Ansah Otu*** [2009] SCGLR 141, Anin Yeboah, JSC (as he then was) at p.152 of the report, stated as follows:

"The jurisdiction to grant the interlocutory injunction is exercisable by both the Superior Court of Judicature and the Lower Courts in Ghana. Both the 1992 Constitution and the Courts Act, 1993 (Act 459), have conferred jurisdiction on the courts to grant this equitable relief. It is a relief which the common law courts have always granted, in the exercise of their discretion, when the circumstances appear to be just and convenient. It is, however, granted to protect rights and in some cases prevent any injury or damage in accordance with laid down legal principles which have developed as a result of case law over the years….

I think the circumstances of the case must be looked at in considering the grant or refusal of the application for interlocutory injunction."

In terms of the applicable principles that a court ought to consider in determining the appropriateness of an application for injunction, many are the judicial decisions that have settled the principles. These operative factors are:

a. Whether the case of the Applicant is not frivolous. That is to say, whether the Applicant prima facie, has demonstrated a legal or equitable right that ought to be protected by the Court.

b. whether hardship would be occasioned if the application is granted or refused and which of the parties will suffer greater hardship.

c. Whether on the facts, it is just and convenient for the preservation of the status-quo.

d. Whether the loss, damage or injury can be quantified in money and whether damages could afford adequate compensation if the application was refused."

In ***Welford Quarcoo*** v. ***Attorney General & Another*** [2012] 1 SCGLR 259 at p. 260 provided an answer. Dr. Date-Bah JSC stated therein as follows:

"it has always been my understanding that the requirements for the grant of an interlocutory injunction are: First, that the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally, that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience, of course, means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt the action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo."

The case of ***Owusu*** v. ***Owusu Ansah and Another*** [2007-2008] 2 SCGLR 870 at 876, Sophia Adinyira JSC, speaking for the court said *'The fundamental rule therefore is … whether the applicant has a legal right at law or in equity, which the court ought to protect by granting an interim injunction*" In like manner, the case of ***18th July*** **Ltd** v. ***Yehans International Ltd*** [2012] SCGLR 167, also stated the condition for the grant of an interlocutory injunction as follows:

"Even though [the grant of injunction] is discretionary, we are of the view that a … court in determining interlocutory application must first consider whether the case of an applicant was not frivolous and had demonstrated that he had legal or equitable right which a court should protect. Second the court is also enjoined to ensure that the status quo is maintained so as to

avoid any irreparable damage to the applicant pending the hearing of the matter. The trial court ought to consider the balance of convenience and should refuse the application if its grant would cause serious hardships to the other party…"

It would be appropriate at this stage to examine each of those principles.

a. Whether the case of the Applicant is not frivolous. That is to say, whether the Applicant prima facie, has demonstrated a legal or equitable right that ought to be protected by the Court.

From the issues raised as to the implications of this case in respect of judicial independence, both functional and institutional, it becomes clear that the questions raised in the instant case are neither frivolous nor of idle speculation and that there is a right to be protected at law. As already discussed the right to a hearing under administrative justice has been raised to a constitutional right under article 23 of the Constitution. In ***Awuni*** v ***West African Examinations Council*** [2003-2004] 1 SCGLR 471 at p.514 Akuffo JSC (as she then was) stated the law inherent in article 23 of the Constitution thus:

Where a body or officer has an administrative function to perform, the activity must be conducted with, and reflect the qualities of fairness, reasonableness and legal compliance. …At the very least however, it includes probity, transparency, objectivity, opportunity to be heard, legal competence and absence of bias, caprice or ill-will. In particular, where, as in this case, the likely outcome of an administrative activity is of a penal nature, no matter how strong the suspicion of the commission of the offence, it is imperative that all affected persons be given reasonable notice of allegations against them and reasonable opportunity to be heard…"

Again, in the recent case of ***Republic*** v. ***High Court, (General Jurisdiction 13), Accra; Ex Parte The National Democratic Congress and 6 Others; (The Electoral Commission of Ghana and 7 Others - Interested Parties).*** Civil Motion No: J5/17/2025; Ruling delivered on 27th December, 2024 ; (Unreported); Pwamang JSC had this to say about the right to be heard:

"Our courts and courts globally, especially throughout the common law world, have consistently held the audi alteram partem rule to be a fundamental and sacrosanct rule."

In ***Ankomah-Nimfah*** v. ***Gyakye Quayson & Others*** [2020-2022] 1 GLR 412, the Supreme Court relied on the same considerations to grant an interlocutory injunction. Kulendi JSC speaking for the majority of the court, stated at pp.430-431 that:

"We do appreciate that it is our original jurisdiction under Articles 2(1) and 130 of the Constitution that has been seized by the Applicant per his writ. … To our minds, the Applicant's plaint is a cognisable cause of action and is by no means frivolous even though we are unable to determine at this stage whether the Applicant will be vindicated or not. ***Consequently, the writ discloses a prima facie case, is not frivolous and may warrant an injunction****. …*

In assessing whether or not the circumstances of this case make the grant of interlocutory injunction just and convenient we cannot but reiterate our thinking that the Constitution is the expression of the sovereign will of the Ghanaian people, our shared aspirations and how we wish to govern ourselves. It is the highest law of the land and for that matter sacred. This is the reason why any law or action that contradicts and/or is inconsistent with the Constitution is null, void and of no legal effect. The exclusive forum and sanctuary for the ventilation of any issue of a true and proper interpretation of any provision of our basic and sacred law of the land is this Court. The exclusive reservation of this jurisdiction to the Supreme Court is the constitutional indication of the sanctity with which the framers of the Constitution intended that it be treated. ***Consequently, an allegation of a breach and more so a subsisting and continuing breach of the Constitution constitutes an invasion of the sovereign will of the Ghanaian people, occasions an incalculable damage, injury and inconvenience which warrants serious and urgent judicial attention and intervention.****"* (emphasis mine)

The point is further strengthened by recourse to academic literature. In the 2020 University of Ghana School of Law publication, '*Mobilizing the Law for Ghana's future. Appraising to Revolutionise*.', Christine Dowuona Hammond, Ama F. Hammond & Raymond Atuguba (eds), Professor Atudiwe P. Atupare in his seminal piece on "*Judicial*

Independence and the Authority of Law in Ghana", pp.100-131, states the implications for the legal system thus at pp.103-104

"It seems to me that the integrity and viability of a country's judiciary will determine in part if not entirely, the extent to which the values of justice, human rights and the rule of law are realized for the people of a state. If judicial institutions lack a coherent structure and independence, they cannot be expected to secure justice and the proper enforcement of constitutional norms. Unless judicial jurisdiction appointment and dismissal procedures, and composition are subject to robust constitutional protection, then it may be better to shelve any hopes for judicial impartiality and independence. A rationally organized and constitutionally protected judiciary is an essential part of guaranteeing for democratic politics the benefits of good governance, the rules of law and the substantive aims of justice."

These sentiments are not just rhetoric, but well-grounded in reality.

Knowing the importance of the preservation of judicial independence in the courts' ability to protect the citizen against the powerful in the community, many are the provisions and safeguards provided under the Constitution. It is not for nothing that judges are required to take a judicial oath to administer justice "*without fear or favour, affection or ill-will*." How can the judiciary guarantee everyone's constitutional right to fair treatment, if it cannot enjoy any such right when allegations of impropriety are made against the head of that institution itself? The people of Ghana would certainly be the poorer for having a judiciary that cannot protect them against the overweening power of the executive. Another class of citizens on whom there would be hardship is the class of persons who have made the decision to serve the country in the role of judges. Perhaps, they may be forced to re-think their options and career choices if removing the head of the institution is no more difficult than removing a class prefect of a school from office.

Thus, when weighty issues such as threats to judicial independence emerge in any dispute, it requires that we push the 'pause' button, to give us time to reflect and assess our situation. Shrill and even deafening mob-cries of "crucify him", may yield momentary political victories, but may have resounding effect of perpetual import on hallowed values. In the words of a loosely-translated Twi proverb, one does not stand within a colony of soldier ants to brush off attacking ants. Wisdom dictates that one should first move out of the reach of the aggressive soldier ants so that those who may have successfully stung the person could be brushed off more effectively. The practice of constitutional democracy and the blessings of the rule of law are dependent upon the proper functioning of courts around the country, not on acts by street mobs, or the expression of opinions that are fashionable with the public at any point in time. Therefore, any case that raises serious issues on judicial independence, security of tenure of judges and any related matters that affect the integrity of the judicial system within the legal system and the tenets of democratic governance can neither be seen as trivial nor frivolous. To my mind, granting an interlocutory injunction in this case would give us all the necessary space and perspective to reflect and act with wisdom and rectitude.

b. *whether hardship would be occasioned if the application is granted or refused and which of the parties will suffer greater hardship.*

The exercise of the power to remove the head of a branch of government may be intoxicating in its effect but may, on sober reflection give cause for regret. The skill to administer justice is a specialized area which takes a long time to train for, and to practice successfully for the benefit of society at large. Therefore, any action to give effect to such power must proceed with all sobriety and caution because of the precedent value, and the implications for those in office as well as those who seek to

administer justice in service to the country in the future. The position of a judge makes one vulnerable to negative sentiments of the losing party, and even occasionally, of the winning party who does not get as high an award as was desired. If, in the ordinary course of litigation, no case is able to yield victory to both parties at once, then at any point in time, someone is bound to be annoyed with the judge. Pitted against the power of the Executive, the Judicial branch is a very vulnerable branch of government.

"Executive power has the advantage of concentration in a single head in whose choice the whole Nation has a part, making him the focus of public hopes and expectations. In drama, magnitude and finality his decisions so far overshadow any others that almost alone he fills the public eye and ear. No other personality in public life can begin to compete with him in access to the public mind through modern methods of communication. By his prestige as head of state and his influence upon public opinion he exerts a leverage upon those who are supposed to check and balance his power which often cancels their effectiveness. Moreover, the rise of party systems has made a significant extra constitutional supplement to real executive power. …I cannot be brought to believe that this country will suffer if the Court refuses further to aggrandize the presidential office." Per Justice Jackson in ***Youngstown Sheet & Tube Co*** v ***Sawye***r 343 US579 72 S Ct 863, 96 L.Ed 1153 (1952) concurring.

The vulnerability of judges makes any act that enhances the state of vulnerability of great moment to the population at large, as the well-being of the country, sound development, progress, ability to attract foreign investment and the integrity of the entire constitutional system would be thereby compromised.

As far as may be seen by objective eyes, the respondent is under no pressure to deliver an empty office of the Chief Justice, whilst the applicant, representing the public interest has no recourse if the courts fail to restrain the President. The Chief Justice risks not just being removed as Chief Justice, but also losing her position as a Supreme Court justice, with consequences for all litigants in cases over which she may be presiding. Why inflict such hardship on citizens when there is no need for such haste? There is no doubt where the balance of hardship lies in this case, and this calls for a time of

reflection and circumspection on the part of everyone involved. The grant of an injunction would assist to arrest any irreversible damage before it is too late.

c. *Whether on the facts, it is just and convenient for the preservation of the status-quo.*

Clearly, from the position articulated above, preserving the status quo by a pause and some peace and quiet would be beneficial to all concerned. In ***Musicians Union of Ghana*** v. ***Abraham*** [1982-83] 1 GLR 337, which was litigation emanating from the then famous 'Sweet Talks Band', and employees in respect of royalties from copyright for its works. The court relied on Lord Diplock's statement of law in ***American Cyanamid Co***. v. ***Ethicon***, [1975] 1 All E.R 504 at 509, where he had stated the law thus:

"The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against a corresponding need for the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where the 'balance of convenience' lies."

This dictum enabled the court to come to the conclusion that weighing the interests of the parties, the injunction could be granted without undue hardship to either side

d. Whether the loss, damage or injury can be quantified in money and whether damages could afford adequate compensation if the application was refused."

The need to balance the interests of both parties to ensure no other alternative responds adequately to the protection of interests that are at stake. In ***Musicians Union of Ghana*** v. ***Abraham***, supra, this point was strongly made. In the instant case, the essence is not about damages, but about the intendment of the Constitution in respect of hallowed constitutional principles of the protection of judicial independence and also administrative justice. The stakes are high for the subject of the petitions and the judicial system at large, at a time when nothing much would be lost by pressing the 'pause' button to enable due reflection and action. On all the grounds, therefore an interlocutory injunction would be the appropriate course of action to take until the weighty issues herein are determined.

Reliefs

The plaintiff/applicant has asked for reliefs including a suspension of the operation of the warrant until the final determination of the case. This is not an unreasonable request, and I would grant it. There is no reason to be hasty in this novel terrain. Accordingly, the President should immediately suspend the operation of the warrant until the full case can be heard and concluded.

CONCLUSION

The golden rule of "*Do unto others as you would have them do unto you*" is more apposite then ever in this situation. There are weighty issues to be addressed in this suit, and this cannot be done on the run, and while irreversible steps are being taken to the prejudice the result of the constitutional challenge. Therefore, granting the injunction until a determination of all relevant considerations have been undertaken would, to my mind, not only be dictated by caution and wisdom, but by the wider interests of the system at large.

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