**IN THE SUPERIOR COURT OF JUDICATURE**
**IN THE SUPREME COURT**
**ACCRA – A.D. 2017**

**CORAM: AKUFFO (MS), JSC PRESIDING**
**ADINYIRA (MRS), JSC**
**YEBOAH, JSC**
**BAFFOE-BONNIE, JSC**
**AKOTO-BAMFO (MRS), JSC**
**BENIN, JSC**
**APPAU, JSC**

WRIT NO.
J1/16/2016

14TH JUNE, 2017

**CIVIL AND LOCAL GOVERNMENT STAFF ASSOCIATION OF GHANA (CLOSSAG) ..... PLAINTIFF**

**VRS**

**1. THE ATTORNEY-GENERAL**

**2. THE OFFICE OF THE HEAD OF CIVIL SERVICE, MINISTRIES, ACCRA**

**3. THE OFFICE OF THE HEAD OF LOCAL GOVERNMENT SERVICE, MINISTRIES, ACCRA ..... DEFENDANTS**

# JUDGMENT

**AKUFFO (MS), JSC:-**

**Brief Facts**

The Plaintiff is the Civil and Local Government Staff Association of Ghana (CLOGSAG) which is a registered Trade Union and mouthpiece of workers in the Civil and Local Government Services. The Attorney General is the Principal legal advisor to the Government and the pro-forma Defendant for all civil proceedings instituted against the State. The second and third Defendants are the bodies regulating the activities of Civil

Servants and Local Government Servants respectively and are not necessary parties in this matter since their interest in this matter is not in conflict with that of the Attorney General.

By a letter dated 19th October, 2015, from the Head of Civil Service and addressed to "All Chief Directors" and "All Heads of Departments", the addressees were requested to remind 'all staff members' that persons holding civil service positions are barred from participating in political activities including the following:

a) Attending political rallies
b) Wearing party paraphernalia
c) Subjecting one's self for party vetting
d) Holding party membership card and
e) Standing for party primaries etc.

The said letter made reference to the provisions of the Civil Service Code of Conduct (issued on 1st November, 1999), section 12(1) (b), (c) and (e) of which read as follows:

*"12. (1) The Constitution of Ghana confers rights on all citizens of Ghana, including Civil Servants to join any political party or association of their choice. However, by virtue of the traditional role of the Civil Service to serve the Government of the day loyally, and to maintain the confidence of any future Administration, a Civil Servant may not:*

*a) Accept any office paid or unpaid, permanent or temporary, in any political party or organisation;*
*b) Declare himself openly as a registered member of a political party or association;*
*c) Indicate publicly his support for any party, candidate or policy*
*d) Make speeches or join in demonstrations in favour of any political person, party, or propaganda*
*e) Engage in activities which are likely to involve him in political controversy.*

*(2)* N*otwithstanding, a Civil Servant is entitled to his views in political matters, and if so qualified, may vote at elections."*

The letter also advised that any Civil Servant who wished to participate in any political activity should resign from the service and warned to deal with anyone who flouted the directive.

Furthermore, the Code of Conduct for Staff of Local Government Service contains statements of principles on Anonymity and Permanence in the following terms:-

Anonymity

*"officers and staff of the Local Government Service shall serve the State with neutrality and anonymity in the national and local government processes"*

Permanence

*"The Local Government Service is a constitutionally mandated Public Service institution and owes allegiance only to the State and community. The permanence of the Local Government Service is integral to the achievement of the objectives of the Local Government Authorities...."*

On the foundation of these two principles the said Code of Conduct sets out, in Canon 1, a set of Minimum Standards of Conduct, which are to be adhered to by officers and staff of the Local Government Service 'in the discharge of their roles or functions in any project or task', the most pertinent for our purposes being those set out in sub-canons 1.1, 1.5, 1.6 and 1.7 as follows:

*1.1 not put themselves in a position where personal interest conflicts or is likely to conflict with the performance of the functions of their office.*

*1.5 never to act as an agent of or for the interest of a political, social, ethnic, gender or interest group.*

*1.6 not to seek election to office as member of an Assembly.*

*1.7 not to attend or support the functions, programs and activities of political, social, ethnic or gender interest group in a private capacity and name or in circumstances unrelated to the discharge of the projects and tasks of the Local Government Service."*

According to the Plaintiff, the Heads of the Civil Service and Local Government Service, respectively, have in the past subjected members of the Plaintiff association to disciplinary proceedings for their engagement in political party activities.

Now, by a letter dated 23rd September, 2015, one Alexander Hedidor, an Assistant Director at the Prestea-Huni Valley District Assembly, was interdicted for involving himself in active party politics when he filed his nomination to contest the Suaman Constituency Parliamentary primaries, on the ticket of the National Democratic Congress (NDC), which was considered a contravention of the provisions of the Code of Conduct of the Local Government Service. Consequently, by a writ filed on 29th of April, 2016 the Plaintiff, pursuant to Article 2(1) and 130(1) of the Constitution, invoked the jurisdiction of this Court for the reliefs set out below:

**The Plaintiff's Action Herein**

1. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6) (d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to join any political party of his choice whilst still a member of the Civil Service.

2. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6) (d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to manifest his or her political affiliation whilst still a member of the Civil Service.

3. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to contest for elections for political party office and to hold political party office whilst still a member of the Civil Service.

4. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to remain a member of the Civil Service until he/she resigns prior to his/her nomination by a political party or otherwise to contest as a member of Parliament.

5. A declaration that the provisions of the code of conduct for members of the Civil Service enacted by the Council of the Civil Service and/or any other authority barring a member of the Civil Service from engaging in political party activities is unconstitutional.

6. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6) (d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to contest local government elections whilst still a member of the Civil Service.

7. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6) (d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Civil Service has a right to remain a member of the Civil Service after being sworn in as a member of a district assembly.

8. A declaration that the provisions of the code of conduct for members of the Civil Service enacted by the Council of the Civil Service and/or any other authority barring a member of the Civil Service from contesting and/or being a member of the Civil Service is unconstitutional.

9. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Local Government Service has a right to join any political party of his or her choice whilst still a member of the Local Government Service.

10. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Local Government Service has a right to contest for elections for political party office and to hold political party office whilst still a member of the Local Government Service.

11. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Local Government Service has a right to remain a member of the Local Government Service until he/ she resigns prior to his/ her nomination by a political party or otherwise to contest as a member of Parliament.

12. A declaration that the provisions of the code of conduct for members of the Local Government Service enacted by the Council of Local Government Service and/ or any other authority barring a member of the Local Government Service from engaging in political party activities is unconstitutional.

13. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Local Government Service has a right to contest in local government elections whilst still a member of the Local Government Service.

14. A declaration that upon a true and proper interpretation of article 12(2), article 21(3), article 21(1) (a) and (d), article 35(6)(d), article 55(1), (2) and (10) and article 284 of the Constitution, 1992, a member of the Local Government Service has a right to remain a member of the Local Government Service after being sworn in as a member of a District Assembly.

15. A declaration that the provisions of the code of conduct for members of the Local Government Service enacted by the Council of Local Government Service and/ or any other authority barring a member of the Local Government Service from contesting and/ or being a member of a district assembly whilst still a member of the Local Government Service is unconstitutional.

**Plaintiff's Case**

Although the Plaintiff, in its statement of case adverted to the question of the Jurisdiction of this court in this matter, as well as the plaintiff's capacity to bring this action, these are not contested issues and the Court has no doubt that it has jurisdiction herein and the Plaintiff, as an incorporated association of Civil and Local Government Staff of Ghana, has the capacity to bring this action on its own behalf and on behalf of its members.

The Plaintiff, in its Statement of Case hung its arguments on two issues, to wit:

a. Whether or not on a true and proper interpretation of the Constitution, members of the Civil Service and Local Government Service have a right to join political parties and hold executive positions in political parties; and

b. Whether or not on a true and proper interpretation of the Constitution members of the Civil Service and Local Government Service have a right to contest Local Government elections while still being members of their respective Services.

On the first issue, the Plaintiff made reference to articles 12(2) and 55(1), (2) and (10) of the Constitution which, respectively, provide as follows:

> *"12(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest."*
>
> *"55(1) The right to form political parties is hereby guaranteed*
>
> *"(2) Every citizen of Ghana of voting age has the right to join a political party.*
>
> *"(10) Subject to the provisions of this Constitution, every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government."*

The Plaintiff asserted that the effect of the provisions of Article 12(2) is that the rights guaranteed by the provisions of Chapter 5 of the Constitution are enjoyable as of right by all persons' subject only to the rights and freedoms of others and public interest. The Plaintiff then referred to section 12(1) of the Civil Service Code of Conduct (already quoted supra)and noted that although the provisions of this Code acknowledges the right of Civil Servants to join political parties, "there is an attempt to limit the scope of the right to join political parties and even hold political views". The Plaintiff therefore

questioned the efficacy of joining a group "if one cannot openly display membership, ideals, philosophies and views of that group". The Plaintiff moreover, referred to Article 21(3) which provides that:

> "All citizens shall have the right and freedom to form or join political parties and to participate in political activities **subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with this Constitution**."

The Plaintiff argued, although this might appear to permit limitations on the scope of article 12(2), because of the expression "**are consistent with this Constitution"** any limitation 'must not only be necessary for a free and democratic society, but must also be in sync with the letter and spirit of the Constitution" and that in any case article 55 does not contain any 'such apparent limitation' as in Article 21(3). The Plaintiff cited the decision of this court in the case of **Kwadjoga Adra v. National Democratic Congress**, Writ No. J1/13/2014 (unreported Supreme Court Judgment dated 15th July, 2015) and quoted the dictum of Baffoe-Bonnie, JSC that:

> *"The right to participate in political activities is a right specifically guaranteed by the Constitution, and any law or constitutional provision that seeks to limit this right must be clear and unequivocal."*

According to the Plaintiff, the freedom of association, which is among the fundamental freedoms enshrined in article 21 of the Constitution, necessarily entails the freedom to manifest and express membership of an association to which a person belongs and that therefore the right to join a political party necessarily carries with it the right to manifest such affiliation, just as in the case of freedom of assembly expression and conscience, whereas section 12 of the Civil Service Code of Conduct attempts to limit the scope of the right to join political parties and 'even hold political views.

In support of its case in this regard, counsel for the Plaintiff sought to persuade this court by referring to the Nigerian case of **Independent National Electoral Commission and the Attorney General v. Musa, [2003] 3 NWLR (part 806)** wherein (on the scope of section 40 of the Nigerian Constitution) the Supreme Court of Nigeria upheld the view that since the provision contained no exception or proviso, "every person", including public office holders and civil servants have the freedom to assemble freely and associate with other persons to form or belong to any political party or trade union etc. In that case, Ayoola JSC in his concurring opinion stated that:-

> "There is nothing reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health in prohibiting a member of the public service or civil service ... from eligibility to be registered as a member of a political party."

Therefore, according to the Plaintiff, where any constitutional right or freedom is expressed to be subject to limitations as are necessary in a free and democratic society, such limitations must be discernible from the constitution itself or provisions that do not derogate from democratic society.

The Plaintiff also relied on the case of **Osborne v. Canada (Treasury Board), [1991] 2 S.C.R. 69**to persuade us of the argument that any limitation on a civil servant's right to join a political party is in violation of their freedom of expression and freedom of association. In the said case, several public servants challenged a statutory prohibition on political activity on the grounds that it violated their freedom of expression and freedom of association under the Charter (Constitution of Canada). The majority of the Supreme Court of Canada held that the prohibition on political party activity was not a reasonable limit (as permitted under section 1 of the Canadian Constitution) on the freedom of expression. Whilst the Canadian court recognized the constitutional convention of public service neutrality, it but struck down the legislated restrictions on political activities of civil servants for the reason that the legislation was over-inclusive, as it did not account for the distinctions between the types of work at different levels of responsibility within the Civil Service.

Plaintiff herein, therefore, argued that the question of neutrality, which is the reason for the bar against Civil and Local Government employees is untenable as only a minute fraction of the Civil and Local Government Services perform tasks that may require their political impartiality and, thus, a general ban on active political activity is a fetter on the constitutional right of association of political activism.

The Plaintiff did acknowledge that there is, indeed, a need for political neutrality in the Civil service as an institution, however, they averred that this need is adequately addressed in the Constitution, in article 284, as well as other instruments, such as the obligation, stated in clause 37 of the Code of Conduct, to maintain confidentiality even after a civil servant has left office; section 87 of the Civil Service Act, 1993 [PNDCL 327] which prohibits a civil servant from placing herself in a position of conflict of interest or potentially conflicts with the performance of her office; section 91 of PNDCL 327 which requires Civil Servants to, upon recruitment to take the prescribed oath of allegiance, oath of secrecy and the official oath.

On the second issue argued by the Plaintiff, i.e., whether or not on a true and proper interpretation of the Constitution members of the Civil Service and Local Government Service have a right to contest Local Government elections while still being members of their respective Services, the Plaintiff made arguments similar to those advanced in respect of the first issue and in effect argued further that since the right to join political parties and participate in its activities, the indulgence in active participation necessarily includes the right to hold executive position in such party. The Plaintiff submitted that

article 55(8) of the Constitution, which proscribes political parties from having a founding member, leader or executive member who is not qualified to be elected a member of parliament, must not be interpreted or applied so as to disqualify a member of the Civil Service or Local Government from holding an executive position in a political party. The reason for the Plaintiff's position is that article 94, which stipulates the requirements for qualification and eligibility for election to Parliament, makes a distinction between eligibility and qualification. The plaintiff notes that article 94(1) and (2), which list the criteria for qualification to be elected to Parliament, do not exclude members of the Civil or Local Government services. Rather it is in 94(3), which lists those excluded from eligibility, that members of the Civil Service are mentioned. The plaintiff therefore concludes that under the constitution of a civil servant is qualified to be a Member of Parliament but not eligible, consequently, such a civil servant is permitted under the Constitution to be an executive member of a political party. Thus the Plaintiff submitted that Section 26 of the Political Parties Act, 2000 (act 574) which fuses qualification with eligibility to bar Civil and Local Government employees is unconstitutional.
They further submitted that in light of their foregoing submissions, a member of the Civil or Local Government is also entitled to remain as such member and undergo political party primaries for participation as member of the Local government.

The Plaintiff furthermore relied on article 35 (6) (d) of the 1992 Constitution (part of the Directive Principles of State Policy), which states that:

> *"Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to -*
>
> > *"(d) make democracy a reality by decentralizing the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government; …*

and submitted that in view of this principal objective of the Constitution, which is a call on the citizenry to participate in decision making processes at local level (as well as national level), it would be absurd to enjoin any class of persons just because they are officially working in the local government administration.

**Defendant's Case**

The Defendant was ad idem with the Plaintiff with respect to the core issues for determination namely:

i. **Whether or not on a true and proper interpretation of the Constitution, members of the Civil Service and Local Government**

**Service have a right to join political parties and hold executive positions in political parties; and**

ii. **Whether or not on a true and proper interpretation of the Constitution members of the Civil Service and Local Government Service have a right to contest Local Government elections while still being members of their respective Services.**

The Defendant referred to the hereinbefore quoted provisions of Article 12 of the Constitution and submitted that the rights guaranteed under the Constitution are not absolute but, rather, are subject to a limitation test as far as the rights of other persons and the larger public interest is concerned as prescribed by Article in 12(2). In that vein the Defendant cited Articles 21(3), 94(3) and 284 of the 1992 Constitution which state:

> *"21(3) All citizens shall have the right and freedom to form or join political parties and to participate in political activities* ***subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with this Constitution.***
>
> *"94(3) A person shall not be eligible to be a member of Parliament if he -*
> *(a) is prohibited from standing election by a law in force in Ghana by reason of his holding or acting in an office the functions of which involve a responsibility for or are connected with the conduct of, an election or responsibility for, the compilation or revision of an electoral register; or*
>
> *(b) is a member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service,* ***the Civil Service****, the Audit Service, the Parliamentary Service, the Statistical Service, the Fire Service, the Customs, Excise and Preventive Service, the Immigration Service, or the Internal Revenue Service; or*
>
> *(c) is a Chief.*
>
> *"284.A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office."*

The Defendant urged that the combined effect of Articles 21(3), 94(3) and 284 of the 1992 Constitution is to oust the members of the Civil Service and Local Government Service from participating in political activities. This is because the nature of a Civil Servant's role is such that he or she must, at all times, maintain neutrality in political matters in order to ensure political impartiality and gain public confidence in the Service.

She submitted that the Code of Conduct for the Ghana Civil Service recognizes the rights of all citizens to participate in political activities as contained in Section 12(1) of the Civil Service Code. According to the Defendant, the restrictions placed on Civil Servants in relation to politics and political activity are designed to ensure that the actions of a Civil Servant do not give rise to a perception of bias or influence from political party motives.

On 7th March 2017, the parties herein filed a Memorandum of Agreed Issues setting out the following for determination:-

**ISSUES**

1. Whether or not on a true and proper interpretation of the Constitution of Ghana 1992, a member of the Civil Service or Local Government Service has right to join any political party of his or her choice and to participate in political party activities whilst still a member of the Civil Service or Local Government Service.

2. Whether or not on a true and proper interpretation of the Constitution of Ghana, 1992 a member of the Civil Service or Local Government Service has a right to contest for elections for political party office and to hold political party office whilst still a member of the Civil Service or Local Government Service.

3. Whether or not on a true and proper interpretation of the Constitution, 1992 a member of the Civil Service or Local Government Service has a right to remain a member of the Civil Service or Local Government Service until he/she prior to his/her nomination by a political party or otherwise to contest as a member of parliament.

4. Whether or not the provisions of the code of conduct for members of the Civil Service or Local Government enacted by the Councils of the Civil Service and the Local Government Service and/or any other authority barring a member of the Civil Service or the Local Government Service from engaging in political party activities is unconstitutional.

5. Whether or not on a true and proper interpretation of articles 12(2), 21(3), 21(1) (a) and (d), 35(6) (d), 55(1), (2) and (10); and 284 of the Constitution, 1992 a member of the Civil Service or Local Government Service has the right to contest in local government elections whilst still a member of the Civil Service or Local Government Service.

6. Whether or not on a true and proper interpretation of articles 12(2), 21(3), 21(1) (a) and (d), 35(6) (d), 55(1), (2) and (10); and 284 of the Constitution, 1992 a member of the Civil Service or Local Government Service has the right to remain a member of the Civil Service or Local Government Service after being sworn in as a member of a district assembly.

7. Whether or not the provisions of the code of conduct for members of the Civil Service or the Local Government Service enacted by the Councils of the Civil Service and Local Government Service and/or any other authority baring a member of the Civil Service or Local Government Service from contesting and/or

being a member of a district assembly whilst still a member of the Civil Service or Local Government is unconstitutional.

Although the list of issues is longer than the two issues both parties focused on in their respective statements of case, a close analysis of the same shows that the memorandum merely particularizes the sub-issues that arise from the matters argued in the statements.

**Analysis**

The parties herein are in general agreement that the rights and freedoms guaranteed under the Constitution are not absolute but subject to limitations and/or restrictions consistent with provisions of the Constitution. It is, therefore, not in contention whether or not the Constitution permits restrictions or places limitations on the exercise of the Plaintiff's freedom of association, particularly political association. The core question at issue is whether or not the limitations sought to be imposed on the political activities of the Plaintiff by the Civil Service Code of Conduct and the Local Government Service Code of Conduct (as well as section 26 of Act 574) are consistent with the Constitution.

Prima facie, constitutional rights and freedoms are to be enjoyed fully but subject to the limits which Constitution itself places thereon, in the terms of Article 12(2). However, in recognition of the fact that the enjoyment of political rights must be also governed by certain regulations and standards Article 21(3) makes room for 'laws and qualifications' so as to assure that, in the enjoyment of the fundamental freedom to form or join political parties, there will be order as well as proper service to the public good. This is an important aspect of good governance. Hence, in determining the validity of any statutory or other limitation placed on a constitutional right, the questions that need to be determined are:

a. Is the limitation necessary? In other words is the limitation necessary for the enhancement of democracy and freedoms of all, is it for the public good?

b. Is the limitation proportional? Is the limitation over-broad such as to effectively nullify a particular right or freedom guaranteed by the constitution?

**Necessity and Proportionality**

For ease of reference I set out again provisions of Articles 12, 21(3), 94(3), 284as well as 295, for these are, in my view the provisions that properly govern limitations and restrictions.

*"12 (1) The fundamental human rights and freedoms enshrined in this chapter shall be respected and upheld by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them, by all natural and legal persons in Ghana, and shall be enforceable by the Courts as provided for in this Constitution.*

*"(2) Every person in Ghana, whatever his race, place of origin, political opinion, colour, religion, creed or gender shall be entitled to the fundamental human rights and freedoms of the individual contained in this Chapter* ***but subject to respect for the rights and freedoms of others and for the public interest".***

and Articles 21(3), 94(3) and 284, respectively, state as follows:

*"21(3) All citizens shall have the right and freedom to form or join political parties and to participate in political activities* ***subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with this Constitution.***

*"94(3) A person shall not be eligible to be a Member of Parliament if he -*

*(c) is prohibited from standing election by a law in force in Ghana by reason of his holding or acting in an office the functions of which involve a responsibility for or are connected with the conduct of, an election or responsibility for, the compilation or revision of an electoral register; or*

*(d) is a member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service,* ***the Civil Service****, the Audit Service, the Parliamentary Service, the Statistical Service, the Fire Service, the Customs, Excise and Preventive Service, the Immigration Service, or the Internal Revenue Service; or*

*(c) is a Chief.*

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

Additionally, Article 295 states:

***"public interest"*** *includes any right or advantage which enures or is intended to enure to the benefit generally of the whole of the people of Ghana;*

***"public office"*** *includes an office the emoluments attached to which are paid directly from the consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament;*

***"public service"*** *includes service in any civil office of Government, the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and service with a public corporation;*

Distilled into their barest essence, these provisions show that:

i. Fundamental human rights and freedoms are subject to respect for the rights and freedoms of others and for the public interest

ii. The public interest is not defined in any particular way and is founded on the overall benefit of the people of Ghana. Thus its interpretation and application is necessarily situational and environmental.

iii. Political rights and freedoms are subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with this Constitution

iv. Civil Servants are part of the exclusion list with respect to eligibility for members of Parliament and although the exclusion list in article 94 makes a distinction between qualification and eligibility, yet, at the same time, being qualified to become a member of Parliament does not make a member of the Civil or local government Service Eligible.

v. Public Officers, which includes Civil Servants, are enjoined to avoid conflict of interest situations in the performance of their official duties.

As Sowah, JSC. (as he then was) famously noted, every constitution has its letter, as well as its spirit, which is gleaned from the intention of the framers of the constitution. Clearly, if the framers of the Constitution had intended the enjoyment of the fundamental human rights and freedoms to be absolute, they would have expressly stated same. Granting limitations on the exercise of these rights is a clear indication that the framers of the Constitution must have contemplated certain overriding interests i.e. the public interest in respect of the exercise of these rights as well as the public interest in the assurance that public officers will as much as possible serve the public rather than political interests.

Whilst facts in the Canadian case of **Osborne v. Canada (Treasury Board), [1991] 2 S.C.R. 69**appear similar to the ones herein, it is crucial not to lose sight of its socio-political context which formed the basis of the majority opinion regarding proportionality. On the issue of necessity, the Canadian court did acknowledge, nevertheless, that the legislative objective of maintaining neutrality in the Public Service is of sufficient importance to justify some limitation on freedom of expression and association. That is the position we also take in this matter, and ad we have already noted above, such limitations are known and inherent in the enjoyment of rights, provided they are proportional enough as not to be overbroad.

In this matter, the determination of whether the limitations on the enjoyment of political rights by members of the Civil and Local Government Services are proportional, it is essential to take into account the Statutory role of the Civil Service (pursuant to article 190) and the constitutionally determined function of the Local Government Service in the overall governance structure in Ghana. Sections 2 and 3 of the Civil Service Act, 1993 (PNDCL 327) provide as follows:

> *"2. Object of the Service*
>
> *The object of the Service is to assist the Government in the formulation and implementation of government policies for the development of the country.*
>
> *"3. Functions of the Service*
>
> *(1) For the purposes of achieving its object, the Service shall*
>
> *(a) initiate and formulate policy options for the consideration of the Government,*
>
> *(b) initiate and advise on government plans,*
>
> *(c) undertake the necessary research for the effective implementation of government policies,*
>
> *(d) implement government policies,*
>
> *(e) review government policies and plans,*
>
> *(f) monitor, co-ordinate and evaluate government policies and plans,*

It is clear from the foregoing functions that a large measure of apparent political anonymity or neutrality is required in order for the Civil Service to function satisfactorily and effectively as part of the national government machinery. To be effective, the work of a Civil Servant in Ghana, no matter the level of operation, requires some expectation

of efficiency, discretion, loyalty and public trust. At this stage or our socio-political development, when political discourse is all pervasive and rivalry can easily trigger a whole range of reactions, including even violence, it would be most unhealthy to countenance Civil and Local Government servants who publicly proclaim their partisan leanings in the public space. Whilst their membership of a party is their right, the open manifestation of such leanings in cannot augur well for a neutral workplace, and demonstrable assurance of transparency and anonymity/neutrality in decision-making or execution of functions. Otherwise a public perception of political corruption in all its forms, including bias, nepotism, abuse of position, opacity and lack of accountability will be engendered, thereby weakening the effectiveness of these government services, to the detriment of the nation as a whole. In this regard, the following reasoning in the dissenting opinion of Stevenson J., in the Osborne case (supra) is quite persuasive:

> *".... An effective civil service is essential to modern day democratic society and a measure of neutrality is necessary in order to preserve that effectiveness. No civil servant must owe, or be seen to owe, appointment or promotion to partisan activities since visible partisanship by civil servants would severely impair, if not destroy, the public perception of neutrality. In that context, section 33(1) (a) of the Act is an acceptably proportional response to Parliament's objective. The section does not suffer from over-breadth and meets the "minimal impairment" test. The proposed less restrictive means, which distinguish between various levels of public servants (and thus abandon any restraint on the so-called lower level civil service), would not satisfy the objective of preserving the civil service's political neutrality. Finally, there is an appropriate proportionality between the effects of the measure and the objective. The provision does not deny freedom of expression.* ***It imposes a limitation on that freedom in the context of partisan political activities upon persons who must know, or at least be deemed to know, that employment in the public service involves acceptance of certain restraints****.*

In relation to the instant case, it is evident that political neutrality is very important and still relevant within the Public Service. Best practices and Ghana's socio-political evolution require that no civil servant or local government servant should owe, or be perceived to owe, appointment or promotion to partisan activities. Partisan activities tend to be obvious and explicit and they are more often than not visible and known to those in and out of the public service. Once these commitments are known, the principles of neutrality, impartiality and integrity are weakened and endangered.

At this stage of development of our democratic development, it is always crucial and necessary to establish and safeguard a high standard of neutrality and objectivity in governance and the delivery of public service, so as foster and strengthen public confidence in the democratic process. The elements necessary for knitting a nation

together, including in particular the avoidance of the abuse of discretionary power and observance of mutual respect in the public space, are still evolving. Moreover, (and related to the foregoing) the maturity level of most stakeholders within the Ghanaian governance system are as yet at a growth stage, and it is not surprising that, nearly 30 years into our Forth Republic, there are still obvious sensitivities concerning the stability of our democracy. We need not burden the delicate developmental process by the removal of all forms of legitimate restrictions and limitations on the enjoyment and exercise of fundamental human rights and freedoms particularly, the open manifestation of such membership and the mixing of public service with overtly political office. Our Constitution will continue to serve us well only if the application of its provisions is supportive of the upward evolution of the national ethos, our hopes and aspirations.

With every guaranteed human right under the Constitution, comes an overriding responsibility, which is toward the public interest or greater good. It is for this reason that the framers of the 1992 Constitution placed limitations on the exercise of some human rights by certain classes of persons, including members of the Civil Service and Local Government Service. These Services have been long hallowed institutions whose utility lie entirely in their presumed anonymity/neutrality and permanence. From one political administration to the next, the Civil Service and Local Government Service are expected to remain in place, functioning in a professional manner, to assure continuity and process integrity in the administration of day to day governance. Visible partisanship and overt displays of lack of professional neutrality and objectivity would be a betrayal of the just expectations of the People of the Republic of Ghana and impair (even further) the efficiency and effectiveness of these key governance services.

It is therefore our view that the Codes of Conduct of the Civil Service and the Local Government Service, in general do not deny Civil and Local Government Servants the freedom of association, particularly the right to join political parties of their choice. They merely seek to place a limitation on the manifestation of that right while in-service, in order to maintain the neutrality of the Civil and Local Government Service and foster the principles of anonymity and permanence. What they say, in sum is, if you wish to broadcast or otherwise manifest your political party allegiance and/or run political office, step away from the said Services.

In the particular case of the Local Government Service, in addition to the foregoing considerations, it is important to bear in mind, which we do, the following factors:

a. Article 240(2)(d) provides that *"as far as practicable, persons in the service of local government shall be subject to the effective control of local authorities"*

b. By virtue of article 241(3) the District Assembly is the highest political authority in a district and has deliberative, legislative and executive powers.

c. Under Article 245, the functions of the District Assembly includes:

*"(a) the formulation and execution of plans, programmes and strategies for the effective mobilization of resources necessary for the overall development of the district*

*(b) the levying and collection of taxes, rates duties and fees."*

In addition, the Local Government Act, 2016 (Act 936) enumerates in greater detail the scope and magnitude of the functions of the District Assembly, which leaves no doubt in our minds that membership of an Assembly is not a casual position to be undertaken for fancy or on a whim. Section 12 is as follows:

*"Functions of District Assemblies*

*(1) A District Assembly shall*

*(a) exercise political and administrative authority in the district*

*(b) promote local economic development; and*

*(c) provide guidance, give direction to and supervise the other administrative authorities in the district as may be prescribed by law.*

*(2) A District Assembly shall exercise deliberative, legislative and executive functions.*

*(3) Without limiting subsections (1) and (2), a District Assembly shall*

*(a) be responsible for the overall development of the district;*

*(b) formulate and execute plans, programmes and strategies for the effective mobilisation of the resources necessary for the overall development of the district;*

*(c) promote and support productive activity and social development in the district and remove any obstacles to initiative and development;*

*(d) sponsor the education of students from the district to fill particular manpower needs of the district especially in the social sectors of education and health, making sure that the sponsorship is fairly and equitably balanced between male and female students;*

*(e) initiate programmes for the development of basic infrastructure and provide municipal works and services in the district;*

*(f) be responsible for the development, improvement and management of human settlements and the environment in the district;*

*(g) in co-operation with the appropriate national and local security agencies, be responsible for the maintenance of security and public safety in the district;*

*(h) ensure ready access to Courts in the district for the promotion of justice;*

*(i) act to preserve and promote the cultural heritage within the district;*

*(j) initiate, sponsor or carry out studies that may be necessary for the discharge of any of the duties conferred by this Act or any other enactment; and*

*(k) perform any other functions that may be provided under another enactment.*

*(4) A District Assembly shall take the steps and measures that are necessary and expedient to*

*(a) execute approved development plans for the district;*

*(b) guide, encourage and support sub-district local structures, public agencies and local communities to perform their functions in the execution of approved development plans;*

*(c) initiate and encourage joint participation with any other persons or bodies to execute approved development plans;*

*(d) promote or encourage other persons or bodies to undertake projects under approved development plans; and*

*(e) monitor the execution of projects under approved development plans and assess and evaluate their impact on the development of district and national economy in accordance with government policy.*

*(5) A District Assembly shall co-ordinate, integrate and harmonise the execution of programmes and projects under approved development plans for the district and other development programmes promoted or carried out by Ministries, Departments, public corporations and other statutory bodies and non-governmental organisations in the district.*

*(6) A District Assembly in the discharge of its duties shall*

*(a) be subject to the general guidance and direction of the President on matters of national policy, and*

*(b) act in co-operation with the appropriate public corporation, statutory body or non-governmental organisation…."*

and

d. By virtue of article 248 candidacy for election to a District Assembly is purely on an individual basis and political parties are proscribed from endorsing, sponsoring offering a platform to or in any way campaigning for or against any such candidate.

Thus, where a person who is a member of the Local Government Service also becomes a member of the District Assembly, issues of anomaly and conflict of interest are likely to arise by virtue of Articles 240(2)(d), 241(3) and 245(a) and (b). For example, how can the person responsible for the collection of fees in the District be part of the membership that fixed the fees in the first place, and when issues of accountability arise, who will 'police the police' as it were? Furthermore, since the Assembly is the highest authority in the District, in the light of section 12 of Act 936, it is in the best interest of the public that its members be able to dedicate the optimal amount of time to the execution of its functions. Conversely and at the same time, a member of the Local Government Service is also expected, and indeed ethically and duty-bound, to earn his or her salary through dedicated and full time performance of his or her functional responsibilities.

**Conclusion**

Consequently, we determine the issues set out in the Memorandum of Agreed Issues as follows:-

1. On a true and proper interpretation of the Constitution, a member of the Civil Service or Local Government Service has a right to join any political party of his or her choice, however, such a person does not have the right to participate overtly in political party activities whilst still a member of the Civil Service or Local Government Service.

2. On a true and proper interpretation of the Constitution, a member of the Civil Service or Local Government Service does not have a right to contest for elections for political party office or hold political party office whilst still a member of the Civil Service or Local Government Service.

3. On a true and proper interpretation of the Constitution, a member of the Civil Service or Local Government Service does not have the right to remain a member of the Civil Service or Local Government Service after his or her nomination by a

political party or otherwise to contest for election as a member of parliament. Moreover, such a person shall resign from his or her office immediately his or her political activities become overt.

4. The provisions of the Code of Conduct for members of the Civil Service or Local Government Service, enacted by the Councils of Civil Service or Local Government Service and any other authority barring a member of the Civil Service or Local Government Service from engaging in political party activities are not in contravention of the Constitution and are therefore not unconstitutional.

5. On a true and proper interpretation of articles 12(2), 21(1)(a) and (d), 21(3), 35(6) 55(1),(2) and (10) and 284 of the Constitution, a member of the Civil Service or Local Government Service has the right to contest in local government elections whilst still a member of the Civil Service or Local Government Service.

6. However, on a true and proper interpretation of articles 12(2), 21(1)(a) and (d), 21(3), 35(6) 55(1),(2) and (10) and 284 of the Constitution, a member of the Civil Service or Local Government Service does not have the right to remain a member of the Civil Service or Local Government Service after being sworn in as a member of a District Assembly.

7. The provisions of the Code of Conduct for members of the Civil Service or Local Government Service enacted by the Councils of the Civil Service or Local Government Service and or any other authority, barring a member of the Civil Service or Local Government Service from contesting election to become a member of a District Assembly, while still a member of either service, are not in consonance with the provisions of the Constitution and are therefore unconstitutional;

   HOWEVER, the provisions of the Code of Conduct for members of the Civil Service or Local Government Service enacted by the Councils of the Civil Service or Local Government Service and or any other authority, barring a member of the Civil Service or Local Government Service from being a member of a District Assembly while still a member of the Civil Service or Local Government Service do not contravene any provision of the Constitution and the same are not unconstitutional.

We so declare accordingly.

**S. A. B. AKUFFO (MS)**
**(JUSTICE OF THE SUPREME COURT)**

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**(JUSTICE OF THE SUPREME COURT)**

**ANIN YEBOAH**
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