**IN THE SUPERIOR COURT OF JUDICATURE**

**IN THE SUPREME COURT**

**ACCRA-AD 2020**

CORAM: DOTSE, JSC (PRESIDING)
GBADEGBE, JSC
PWAMANG, JSC
DORDZIE (MRS), JSC
AMEGATCHER, JSC
LOVELACE-JOHNSON (MS), JSC
PROF. MENSA-BONSU (MRS), JSC

REFERENCE
NO. J6/03/2020

3RD DECEMBER, 2020

**DAVID APASERA & 42 OTHERS ..... PLAINTITTS/APPELLANTS**

**VRS**

**1. THE ATTORNEY-GENERAL**

**2. MINISTRY OF FINANCE** **DEFENDANTS/RESPONDENTS**

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**JUDGMENT**

**GBADEGBE, JSC:**-

The question presented for our decision in this case as set out in the order of reference from the Court of Appeal dated 10th day of June 2020 is in short as follows:

> "*Whether on the combined reading of the constitutional provisions, we have alluded to and referred to by the parties, i.e. Articles 71(3), 98(1), 114 and*

*295, it was constitutional for the CHC to have recommended payment of pension to the plaintiffs*? "

Although the order of reference did not fully indicate what is meant by CHC, a fair reading of the ruling of the Court of Appeal under which the order of reference was made under Article 130(2) of the 1992 Constitution informs us that it is an acronym for the Chinery Hesse Committee. That was a committee set up by the President in the exercise of his powers to determine the "salaries and allowances payable and the facilities, and privileges available," to designated public officials under Article 71 of the Constitution. The facts on which the reference turns not being in dispute, we are of the view that our jurisdiction has been properly invoked in relation to the Articles mentioned in the order of reference. The said Articles, which deal with questions of emoluments, benefits and retiring awards of various categories of public officials mentioned in Article 71 are so variously expressed that in order to put to rest the divergent meanings placed thereon, a definitive pronouncement of this Court in accordance with our mandate under Articles 2 and 130 of the Constitution is required. Although the reference before us was made under Article 130(2) of the Constitution, the authority to refer constitutional matters to this Court is derived from Article 2 (1) by which this court and none other is conferred with jurisdiction to determine questions of constitutionality.

At the outset, it is important to reiterate that this Court has repeatedly said that in interpreting the Constitution we must not read the particular provisions in isolation but as part of a single document with a view to achieving coherence and or consistency. Thus, in the case **of Opremreh** v **The Electoral Commission and Another**, [2011] 2 SCGLR,1159, the Court applying a previous statement of the principle in National Media Commission v Attorney General [2000] SCGLR 1, observed at page 1165 as follows:

*"But to begin with, it is important to remind ourselves that we are dealing with our national constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers in them. It gives certain rights to persons as well as bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers*

*privileges and rights must be exercised and enforced not only in accordance with the letter, but also with the spirit, of the Constitution. Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as part of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework. And because the framework has a purpose, the parts are also to work together dynamically, each contributing something towards accomplishing the intended goal. Each provision must therefore be capable of operating without coming into conflict with any other."*

Therefore, in approaching the task before us, we will read the various provisions dealing with emoluments together in order that together they may sing a harmonious tune as they are all parts of a common objective; that of promoting the lofty ideas and principles underlying the Constitution. Approaching our task this way, we commence with reference to the particular provisions of the Constitution on which the reference turns namely Articles 71(3), 98(1), 114 and 295. The said Articles provide in a sequential manner as follows:

*"71(3): For the purposes of this article, and except as otherwise provided in this Constitution, "salaries" includes allowances, facilities and privileges and retiring awards and benefits.*

*98(1): A member of Parliament shall be paid such salary and allowances and provided with such facilities as may be determined in accordance with Article 71 of this Constitution.*

*114: A person who has served as a member of Parliament for a "period of not less than four years shall be eligible on ceasing to be a member or on his death, for the payment of such gratuity to him or his personal representatives.*

*295(1): retiring awards includes pension and gratuity."*

In order to better appreciate the circumstances under which this case comes before us, we are pleased to adopt the statement contained in the ruling by which the reference

was made under two headings-"SUMMARY OF THE CASE OF THE PLAINTIFF AND THE DEFENDANTS."

"**SUMMARY OF THE CASE OF THE PARTIES**

**THE PLAINTIFFS**

The simple case of the plaintiffs that we gathered from their pleadings is that the CHC recommended pension payments to them amongst other benefits. All the other recommended benefits have been paid to them, just like other office holders under Article 71, except their pension. Even though both the 1st defendant who is the chief legal adviser and the leadership of previous governments had instructed the 2nd defendant to pay them their pension, the defendants have refused till date.

**THE DEFENDANTS**

The defendants on the other hand had denied the plaintiffs are qualified for any pension payments and maintained that the recommendation of the CHC which provided pension payment to the plaintiffs, including Deputy Ministers and Ministers of state, was unconstitutional since there is no constitutional provision backing that recommendation. Because of its unconstitutionality, according to the defendants, other provisions contained in other committees established subsequently to the CHC to determine remunerations of Article 71 office holders did not make provision for any pension payments. Defendants mention the committees as the Professor Ewurama Addy Committee and Ishmael Yamson Committee. It is the case of the defendants that the CHC exceeded its mandate in making the pension award.

The defendants contend further that even if the plaintiffs are entitled to pension, which they deny, the CHC report was not given approval by the President to entitle them any such payments."

Referring to the statement of defendants' case, we note that the narration mixed up the order of sequence in which the Committees set up under Article 71 were appointed. The Ishmael Yamson Committee came after Chinery Hesse Committee and before the Ewurama Addy Committee.

As the plaintiffs had ceased to be members of Parliament, the significant question for our decision is what does the Constitution provide in the event of cessation of membership by way of retiring benefits for that category of Article 71 officials? As the right on which the plaintiffs' case is planked is derived from the Constitution, it is to that document that we must turn our attention in order to determine whether in recommending pension payments to the plaintiffs, the Committee acted within the bounds of its constitutional remit? And in doing so we must consider not only the provision contained in Article 71 (1) which is the source of authority of the President to constitute a committee but also by reference to related provisions of the Constitution referred to earlier in this delivery. Indeed, we are enabled for the purpose of reaching a true meaning of the provisions set out in the order of reference to consider other provisions of the Constitution as the various parts of the Constitution have to operate seamlessly.

Although we have previously referred to the said provisions, it repays for a better understanding to make further reference to Articles 71 (1) (a), (3) and 114(1). Reference is made to Article 71 (1) (a) which was not specified in the order of referral because it is the source of the President's authority in constituting the Chinery Hesse Committee.

By Article it 71 (1) (a), it is provided as follows:

> *"The salaries and allowances payable and the facilities, and privileges available, to-*
>
> *(a) The Speaker and Deputy Speakers and members of Parliament…. being expenditure charged on the Consolidated fund, shall be determined by the President on the recommendations of a committee of not more than five persons appointed by the President acting in accordance with the advice of the Council of State."*

Article 71 (3) provides:

> *"For the purposes of this article, and except as otherwise provided in this Constitution, "salaries," includes allowances facilities and privileges and retiring benefits or awards."*

The authority to determine the emoluments of Article 71 appointees being derived from the Constitution, it is important that we spend some time on its provisions for the purpose of determining what it provides with reference to the said determinations. Reading Article 71 closely, we observe that it has put in place an internal conflict resolution mechanism, so to say, by which it is expressly specified in Article 71 (3) that in the event of any other stipulation to the contrary in the Constitution, the enactment contained in Article 71 (3) shall yield to the contrary provision. Although we have previously quoted Article 71(3) of the Constitution, reference is made to it again for emphasis as much of our task in these proceedings turns on it. Article 71(3) states:

> *"For the purposes of this article, and except as is otherwise provided in this Constitution, "salaries," includes allowances, facilities and privileges and retiring benefits or awards."*

Pausing here, we note that as Article 71 is the effective source of authority in the determination of the salaries and other earnings to be provided to all designated officials appointed under it, its provisions are general in nature , so that whenever a specific provision is made for any category of appointees under the Article, the specific provision will as provided in Article 71 (3) prevail. This is, in our view an instance of that well-known maxim of the construction of statutes ''expressio unius est exclusio alterius'', which means express mention and implied exclusion. For an exposition of the said rule, we refer firstly to the case of **R** v **Secretary of State for the Home Department ex-parte Crew** [1982] Imm 941 in which the decree excluded the father of an illegitimate child from rights under immigration law because the applicable statute at the time mentioned only the mother. There is also the case of **Togbe Akpoma and Another** v **Gladys Mensah** [2017-2018] 2 SCGLR 144 in which the Court rejected the invitation to include the family of the deceased intestate in the class of persons mentioned in section 5 (2) of the Intestate Succession Act, 1985 (PNDCL 111). In both cases referred to, the decision of the Court was an instance of the application of the Latin maxim expressio unius est exclusio alterius. Delivering the judgment of the Court in the Akpoma case (supra), Akoto Bamfo (JSC) at page 153 observed as follows:

*"It is to be noted that the Intestate Succession Act, 1985 (PNDCL 111), was enacted to give the nuclear family a greater portion of the estate. Where the law intends that the larger family inherits the deceased intestate, it expressly states so. That the protection and well-being of the children and surviving spouses of the deceased were of paramount interest to the framers of the Act is beyond question; significantly, the word " family" never appeared under the relevant section 5 of the Act, the operative word being " customary." In the absence of clear words clearly vesting the one- fourth share of the residue of the estate in the family, the court cannot import these words into the statute in construing its provisions."*

Accordingly, we are of the view that the other provisions of the Constitution referred to in the order of reference namely Articles 98(1), 114 and 295 have to be measured against the provision contained in article 71 (3 ) in order to determine their scope and effect in the determination of salaries, allowances and retiring benefits to the plaintiffs.

Article 98(1) provides that:

*"A member of Parliament shall be paid such salary and allowances and provided such facilities as may be determined in accordance with article 71 of the constitution."*

In our opinion, the above provision deals with what members of Parliament are to earn before the cessation of membership as provided in Article 114(1) of the Constitution. It actually does not proceed to make any provision but states the mode by which the salary and related benefits would be determined. Therefore, it is not of much value to the determination of the question posed under the order of reference. We add that although the heading of enactments is not an aid to construction , where, as in this case, the heading is consistent with what it relates to then it has the effect of being likened to a signpost that indicates its intention as was decided in **Antie and Adjuwuah** v **Ogbom** [2005-2006] SCGLR , 494.It being so, we hold that it relates only to earnings by members of Parliament during their tenure before the cessation of membership, the latter being specifically provided for in Article 114 (1) of the Constitution in the following words:

*"A person who has served as a member of Parliament for a period of" not less than four years shall be eligible, on ceasing to be a member or on his death for the payment of such gratuity to him or his personal representative."*

It is clear from the above Article that the framers of the Constitution intended to provide only gratuity to members of Parliament a purpose that was effectuated without the mention of "pension", which by the definition clause in article 295 is included in the definition of "retiring awards". Accordingly, by the specific provision in Article 114(1) not specifically mentioning 'pension', the maxim expressio unius est exclusio alterius to which reference was made earlier on in the course of this delivery applies to limit the entitlement of members of Parliament in the case of cessation of membership only to gratuity.

In our opinion, gratuity, and pension though related concepts, applicable to employees upon retirement are quite different in their scope and extent. While gratuity is a form of appreciation of the service rendered to an employee expressed in the form of a lump sum payment, pension on the other hand relates to periodic monthly instalments paid to an employee after his retirement or death.

As pronounced in relation to the heading in article 98(1) of the Constitution, the heading to Article 114(1) which reads "Gratuities for Members of Parliament "evinces a clear intention to withhold pension from members of Parliament. As the framers of the Constitution are deemed to be aware of the provisions of Article 71 but limited members of Parliament to gratuity only, the provision triggers the application of the principle relating to express mention and implied exclusion the effect of which is that it was never intended to provide pension benefits to members of Parliament. And we also infer from the making of separate provisions under Articles 98(1) and 114 (1) of the Constitution to cater for salaries and allowances during the tenure of membership and retirement or cessation of membership respectively that the word "salary" is utilized differently from the word " salaries" in Article 71 (3) of the constitution. This conclusion is fortified by the provisions of Article 71(3) of the Constitution which authorizes the making of a contrary

provision. Accordingly, salary was used in Article 98(1) to refer to income that is ordinarily earned by an employee.

Proceeding further, we add that the meaning and scope of the relevant provisions of the Constitution on which this case is based and in particular Article 114(1) is reinforced by the separate provisions made for the Speaker of Parliament in Article 95 and for Justices of the Superior Court in Article 155 (1) as well as the Commissioner and Deputy Commissioners of the Commission on Human Rights and Administrative Justice in Article 223 (1) of the Constitution. The specific provisions made for such appointees prevails by virtue of Article 71 (3). We deem it unnecessary to refer to the various provisions of the Constitution that are expressed contrary to Article 71(3) and will refer only to that of the Speaker of Parliament and Justices of the Superior Court contained in Articles 95(5) and 223 (1) of the Constitution. Article 95(5):

> *"The Speaker shall receive such salary and allowances and on retirement, such retiring awards as may be determined in accordance, be paid a pensionwith article 71 of this of Constitution.*
>
> Article 223(1):
>
> "*Notwithstanding the provisions of this Chapter, a Justice of the Superior Court of Judicature who has attained the age of sixty years shall, on retiring, in addition to any gratuity payable to him, be paid a pension ……"*

In the light of the above, the construction that we have placed on the articles specified in the order of reference is consistent with the provision made for Parliamentarians in article 95 (1) of the 1979 as follows:

> *"A person who has ceased to be a member of Parliament for a period of not less than five years shall be eligible, on ceasing to be a member or on his death, for the payment of such gratuity to him or his personal representatives as the case may be, as shall be determined by the President on the advice of the Council of State."*

Prior to that, the 1969 Constitution had similarly provided in relation to them in article 90 (4) as follows:

*"Any person who shall have served as a member of the National Assembly for a period of not less than five years shall be eligible, on retirement or death, for the payment of such gratuity to him or his personal representatives as the case may be determined by the President, acting in consultation with the Council of State."*

For these reasons, we conclude that the only retiring award provided under the Constitution for members of Parliament is that of "gratuity" contained in article 114(1). Therefore, in exercising its mandate under Article 71, the Chinery Hesse Committee exceeded its authority when it purported to recommend the payment of pension to the plaintiffs. The said recommendation is in the words of Article 2(1) of the Constitution "inconsistent with and in contravention of "Article 114(1) of the Constitution.

In answer to the question posed for our decision in the exercise of our jurisdiction, we respond as follows:

"*That on the combined reading of Articles 71 (3), 98(1), 114 and 295 of the 1992 Constitution, it was unconstitutional for the Chinery Hesse Committee (CHC) to have recommended payment of pension to the Plaintiffs"*

**N. S. GBADEGBE**
**(JUSTICE OF THE SUPREME COURT)**

**V. J. M. DOTSE**
**(JUSTICE OF THE SUPREME COURT)**

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

**A. M. A. DORDZIE (MRS)**
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