IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: YEBOAH CJ (PRESIDING)
DOTSE JSC
DORDZIE (MRS) JSC
PROF. KOTEY JSC
TORKORNOO (MRS) JSC
AMADU JSC
PROF. MENSA-BONSU (MRS) JSC

WRIT NO.
J1/14/2020

31ST MARCH, 2022

1. DR. ISAAC ANNAN
2. VICTOR JONAH } **……. PLAINTIFFS**

VRS

THE ATTORNEY-GENERAL ……. DEFENDANT

JUDGMENT

MAJORITY OPINION

AMADU JSC:-

1. By writ issued on 25th September 2020, the Plaintiffs sought to invoke the original jurisdiction of this Court for the interpretation and enforcement of some

provisions of the 1992 Constitution. The reliefs indorsed on the writ are as follows:

"*a)A declaration that on a true and proper interpretation of articles 178(1)(a), and 227 of the Constitution (1992) the pensions and gratituties of retired officers and employees of CHRAJ must be paid from the Consolidated Fund and no other Fund or Pension schemes established by an act of Parliament.*

b) A declaration that on a true and proper interpretation of articles 178(1)(a),and 227 of the Constitution (1992) the payment of Pensions and gratituties of retired officers and employees of CHRAJ under the Social Security Fund instead of the Consolidated Fund as provided for by the Constitution (1992) is unconstitutional.

c) A declaration that on a true and proper interpretation of articles 178(1) (a), and 227 the Constitution, (1992) it is unconstitutional for the Ministry of Finance, and Controller and Accountant-General to place retired offices of CHRAJ on the Social Security Pension Scheme instead of the Consolidated Fund.

d) A declaration that the Minister of Finance and the Controller and Accountant-General in deducting pension contributions from salaries of employees of CHRAJ as members of the Social Security Pension Fund is inconsistent with article 178(1) (a), and article 227 of the Constitution (1992) and therefore null and void.

e) A declaration that all pensions and gratutities paid by the Plaintiff's to social security Fund contravenes articles 178(1)(a), and 227 of the Constitution (1992) and therefore unconstitutional, unlawful, null and void.

f) A declaration that on a true and proper interpretation of articles 225, and 226 of the Constitution (1992), CHRAJ does not require any financial clearance from the Ministry of Finance before recruiting any person as staff.

g) A declaration that on a true and proper interpretation of articles 225, and 226 of the Constitution (1992), the insistence by the Ministry of Finance for the Commission to seek financial clearance before recruitment is unconstitutional.

h) A declaration that the refusal by the Controller and Accountant-General to place persons recruited under article 226 of the Constitution (1992) on the payroll of the Controller and Accountant-General because the Ministry of Finance has not given financial clearance is unconstitutional.

i) An order directed at the Controller and Accountant-General to place all persons duly recruited by the Commission on the government payroll.

j) An order directed at the Controller and Accountant-General to place all persons duly recruited by the Commission on the government payroll. Minister of Finance and the Controller and Accountant-General to refund all contributions made by the Plaintiffs to the interests accrued thereon.

k) And for such further orders or directions that this Honourable Court may deem appropriate to give full effect or to enable effect to be given to the spirit and letter of the Constitution (1992) in this matter

generally and particularly articles 178(1) (a), 255, 226, and 227 of the Constitution.

l) Such further or other orders as the Hnoourable Supreme Court will deem fit to.

m) Cost for court expenses and counsel fees.

2. Having observed from the joint memorandum of issues filed by the parties that, a jurisdictional issue fundamental to the determination of the suit had been glossed over, this court *suo motu* added same to the issues aforesaid and directed the parties to address the court on same. The said fundamental issue raised by this court is; ***"whether or not the jurisdiction of this Honourable Court has been invoked in this matter".*** Further to that, this Court directed the parties to file their respective submissions on the additional issue.

3. **JURISDICTION**

The original jurisdiction of this court being special in nature, it must be apparent that any matter for determination falls within the scope or remit of the provisions of the constitution. This position has been expounded in several decisions of this court as for example, **BIMPONG BUTA V. GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 1200, ABU RAMADAN VS. ELECTORAL COMMISSION, WRIT NO. JI/14/2016 and BENJAMIN K. KPODO & ANOTHER V. THE ATTORNEY GENERAL, WRIT NO.J1/03/2018**. The position of the law from the above line of authorities is that for a genuine issue of interpretation to arise, there ought to be demonstrated by a Plaintiff such ambiguity, imprecision or absence of clarity in a provision of the Constitution for the interpretation jurisdiction of the court to be properly invoked to address same. It follows therefore that where the words contained in a constitutional provision are clear and unambiguous or that those provisions have been already interpreted in a previous matter, the interpretative jurisdiction of this court cannot be said to have been properly invoked.

4. This principled attitude of this court was amplified by Akuffo C.J in the **BENJAMINKOMLA KPODO & ANOTHER VS. ATTORNEY GENERAL** case (supra) in the following words:-

> ***"Where the words of a provision are precise, clear and unambiguous, or have been previously interpreted by this court, its exclusive interpretative jurisdiction cannot be invoked or exercised. This is important for ensuring that the special jurisdiction is not needlessly invoked and misused in actions that, albeit dressed in the garb of a constitutional action, might be competently determined by any other court. Consequently, it has become our practice that in all actions to invoke our original jurisdiction, whether or not a Defendant takes objection to our jurisdiction, or even expressly agrees with the Plaintiff that our jurisdiction is properly invoked, we take a pause to determine the question of the competence of the invocation of our jurisdiction, before proceeding with the adjudication of the matter or otherwise".***

In the instant case, while we take note that the Defendant is in agreement with the Plaintiff that our interpretative and enforcement jurisdictions have been properly invoked, we shall examine the issue with the view to arriving at our own determination whether or not as contended by the parties, our jurisdiction has been properly invoked by the Plaintiff's writ.

5. **PLAINTIFFS' ARGUMENT**

In addressing the question whether or not the jurisdiction of this court has been properly invoked, the Plaintiffs contend that it has become necessary to invoke the original jurisdiction of this Court for :-

a. The interpretation of the Constitutional provisions referred to in reliefs (a) to (h) as indorsed on their Writ of Summons in view of the rival meanings placed on the said provisions by the Minister for Finance on one hand and

the Commissioner for the Commission for Human Rights And Administrative Justice (CHRAJ) on the other hand.

b. For the enforcement of the Constitution by the grant of reliefs (i) and (j)

6. The Plaintiffs submit that there is a plethora of decisions of this court which have held that where rival meanings are placed on the same constitutional provision(s),that constitutes a sufficient ground to invoke the original jurisdiction of this Court for the interpretation of the disputed provision(s). In support of that assertion the Plaintiffs have referred us to the case of **KOR V. ATTORNEY GENERAL AND JUSTICE DUOSE [2015-2016] 1 SCGLR 114; and OKUDZETO ABLAKWA V. ATTORNEY GENERAL AND JAKE OBETSEBI LAMPTEY (2011) 2 GLR.**

7. The Plaintiffs further submit that this is litigation in the public interest as its outcome stands to affect a significant number of people and will guide the governance of this country. The Plaintiffs refer to the case of **ADJEI–AMPOFO V. ACCRA METROPOLITAN ASSEMBLY AND ATTORNEY GENERAL (NO.1) [2007-2008] 1SCGLR**and state that in that matter, this Court held that public interest actions not involving private or personal rights may properly be litigated before the Supreme Court in the first instance pursuant to articles 2(1) and 130 of the 1992 Constitution. The Plaintiffs however press the point that although in this matter they are also personally affected by the outcome, that fact is inconsequential to the invocation of the original jurisdiction of this court. As a bolster to their capacity to institute this action the Plaintiffs have also invited our attention to our decision in the unreported case of **JUDICIAL SERVICE STAFF ASSOCIATION V. ATTORNEY GENERAL & 2 OTHERS; SUIT NO. J1/5/20215 DATED 23RD JUNE, 2015.**

8. The Plaintiffs contend that a party may invoke the jurisdiction of this court for enforcement of the Constitution whether or not there is an ambiguity in the provision sought to be enforced. It is the case of the Plaintiffs that in this matter they have raised both interpretative and enforcement issues and have thus

properly invoked the original jurisdiction of this Court. The Plaintiffs concluded their submissions by asserting that their writ has been filed in compliance with the requirements of rules 45 and 46 of the Supreme Court Rules, CI 16 (1996) and submit that the jurisdiction of this Court has been properly invoked.

9. **DEFENDANT'S ARGUMENT**

The Defendant states that Rules 45 and 46 of the Supreme Court Rules CI 16 (1996) provide the means by which the jurisdiction of this Court may be invoked under articles 2 and 130 of the 1992 Constitution. Like the Plaintiffs the Defendant has referred to a plethora of cases and outlined the guidelines for circumstances that call for the interpretation of the Constitution which we reproduce below:-

"a. *Where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the Court to declare that the words of the article have a double meaning or are obscure or else mean something different from or more than what they say;*

b. Where rival meanings have been placed by the litigants on words of any provision of constitutions;

c. Where there is conflict in meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision should prevail;

d. Where on the face of the provisions, there is conflict between the operation of particular institutions set up under the Constitution and thereby raising problem of enforcement and of interpretation." The Defendant submits that the Plaintiffs have made out a case which properly invokes the original jurisdiction of this Court for the interpretation of the disputed constitutional provisions.

10. As aforesaid, from our examination of the writ, it became apparent to us that there was a preliminary issue to be determined in this matter. By the Plaintiffs

writ, this Court is being invited to exercise its original jurisdiction to interpret and enforce specific provisions of the fourth Republic Constitution. In **OSEI – BOATENG V. NATIONAL MEDIA COMMISSION & APPENTENG (2012) 2 SCGLR 1038** this Court held as follows: "*……the requirement of an ambiguity or imprecision or lack of clarity in a constitutional provision was as much a precondition for the exercise of the exclusive original enforcement jurisdiction of the Supreme Court as it was for its exclusive original interpretation jurisdiction under articles 2(1) and 130 of the 1992 Constitution; that was clearly right in principle since to hold otherwise would imply opening the flood gates for enforcement actions to overwhelm the Supreme Court. Accordingly, where a constitutional provision was clear and unambiguous any Court in the hierarchy of Courts might enforce it and the Supreme Court's exclusive original jurisdiction would not apply to it."*

11. It is noted however that later in time this Court did not follow the above principle of law enunciated in case of **OSEI BOATENG V. NATIONAL MEDIA COMMUNICATION** (supra) when it held in **KOR V.ATTORNEY GENERAL AND JUSTICE DUOSE** (supra) that it could not be said that the Supreme Court could not compel the observation of a constitutional provision unless that provision was ambiguous.

    We have closely examined each of the provisions which the Plaintiffs have invited us to interpret and enforce. It does not appear at all to us that any of the said provisions is ambiguous or reasonably suffers from any lack of clarity. On the contrary, we find the said provisions to be plain and unambiguous and devoid of any issue of interpretation. To that end, the contention that the provisions aforesaid are not sufficiently clear and therefore require constitutional interpretation does not commend itself to us.

12. We are aware of the effect of the pronouncement of this court in **KOR V. ATTORNEY GENERAL & DOUSE** (supra) where the separability of the

interpretation and enforcement jurisdiction of this court was stated at page 124 of the report in the following words: *"It would be seen that article 2 of the constitution is headed* ***"Enforcement of the Constitution"*** *and the ensuing provisions are meant to attain enforcement of the Constitution. There is therefore express authority in the Constitution itself for the view that the enforcement jurisdiction of this court is a conspicuously independent item of jurisdiction of this court. Indeed, though it would be erroneous to say that a declaratory action cannot be brought within article 2 towards the enforcement of an ambiguous provision of the Constitution, it appears that while the enforcement purpose of that article is clear on the face of its provisions, its interpretative purpose is comparatively latent".*

13. From the formulation of the reliefs endorsed in paragraphs (i) and (j) of the Plaintiffs' endorsement of reliefs, the reliefs sought are not founded on any provision of the Constitution for purposes of properly invoking the enforcement jurisdiction of this court. The only relief which refers to particular provisions of the Constitution in articles 178(1) (a), 225, 226 and 227 is omnibus and the said relief will ordinarily not invoke the jurisdiction of the court, while reliefs (l) and (m) are consequent upon the success of the substantive action.

14. We find from the examination of the reliefs sought in the instant action that reliefs (i), (j) and (k) are by themselves inextricably linked with and dependent on the declaratory reliefs sought in the proper exercise of the interpretative jurisdiction of this court and their availability depend on the assumption of jurisdiction to determine reliefs (a) to (h) which we have found do not provoke any issue for interpretation. Therefore reliefs (i) to (k) when examined and accessed independently do not seek the enforcement of any provision of the constitution relative to the Plaintiffs' presumed cause of action. To that extent, the facts of the instant case particularly the formulation of the reliefs sought by the Plaintiffs under the guise of invoking our enforcement jurisdiction are clearly distinguishable from the position in **KOR V. ATTORNEY GENERAL & DOUSE**

(supra). As already adumbrated above, we do not find that the Plaintiffs' writ has raised any legitimate question that call for the interpretation of any of the said provisions referred to. Consequently, we are unable to exercise our exclusive original interpretation and enforcement jurisdictions within the factual matrix presented by the Plaintiffs' writ.

15. In conclusion therefore, we hold that no legitimate question of constitutional interpretation and enforcement has been raised by the writ to invoke the original jurisdiction of this court. We find that the substance of the Plaintiffs' action is about the interpretation of constitutional provisions which are sufficiently clear and admit of no ambiguity. There being nothing to enforce from the formulation of reliefs endorsed by the Plaintiffs, and our original interpretation jurisdiction not having been properly invoked, we dismiss the Plaintiffs' action in its entirety.

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

ANIN YEBOAH
(CHIEF JUSTICE)

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

A. M. A. DORDZIE (MRS.)
(JUSTICE OF THE SUPREME COURT)

PROF. N. A. KOTEY
(JUSTICE OF THE SUPREME COURT)

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

DISSENTING OPINION

TORKORNOO (MRS.) JSC:-

As part of the jurisdictions of the Supreme Court, **Article 130 of the 1992 Constitution** provides as follows in clause (1):

> **130 (1)** *Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in*
>
> a. *all matters relating to the enforcement or interpretation of this Constitution;*
> b. *all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.*

Article 2(1) of the Constitution also provides:

"*2(1) A person who alleges that*

a. *an enactment or anything contained in or done under the authority of that or any other enactment, or*
b. *any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect*.

The case of the Plaintiff before us is premised on contentions made in relation to article 130 (1) (a) and article 2 (1) (b) of the 1992 Constitution.

Article 178(1)(a) of the Constitution directs:

> *"No moneys shall be withdrawn from the Consolidated Fund except – to meet the expenditure that is charged on that Fund by the Constitution or by an Act of Parliament"*.

In Chapter Eighteen of the Constitution on the **Commission on Human Rights and Administrative Justice, Article 225**provides:

> *"Except as provided by this Constitution or by any other law not inconsistent with this Constitution, the Commission and the Commissioners shall, in the performance of their functions, not be subject to the direction or control of any person or authority'*

Article 226:

"*The appointment of officers and other employees of the Commission shall be made by the Commission acting in consultation with the Public Services Commission*".

Article 227:

> *"The administrative expenses of the Commission including salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund"*.

The plaintiffs in this suit are seeking the following reliefs:

a. A declaration that on a true and proper interpretation of **articles 178(1)(a), and 227** of the **Constitution 1992** the pensions and gratuities of retired officers and employees of CHRAJ must be paid from the Consolidated Fund and no other Fund or Pension schemes established by an Act of Parliament.

b. A declaration that on a true and proper interpretation of **articles 178(1)(a), and 227 of the Constitution 1992** the payment of Pensions and gratuities of retired officers and employees of CHRAJ under the social security fund instead of the Consolidated Fund as provided for by the Constitution 1992 is unconstitutional.

c. A declaration that on a true and proper interpretation of **articles 178(1)(a), and 227 of the Constitution, 1992** it is unconstitutional for the ministry of finance, and controller and accountant-general to place retired officers of CHRAJ on the Social Security Pension Scheme instead of the Consolidated fund.

d. A declaration that the minister of finance and the Controller and Accountant-General in deducting pension contributions from salaries of employees of CHRAJ as members of the Social Security Pension Fund is inconsistent with **article 178(1)(a) and article 227 of the Constitution 1992** and therefore null and void.

e. A declaration that all pensions and gratuities paid by the plaintiffs to social security fund contravenes **articles 178(1)(a) and 227 of the Constitution 1992** and therefore unconstitutional, unlawful, null and void.

f. A declaration that on a true and proper interpretation of **articles 225 and 226 of the Constitution, 1992, CHRAJ** does not require any financial clearance from the ministry of finance before recruiting any person as staff.
g. A declaration that on a true and proper interpretation of **articles 225, and 226 of the Constitution 1992,** the insistence by the Ministry of Finance for the Commission to seek financial clearance before recruitment is unconstitutional.

h. A declaration that the refusal by the controller and accountant-general to place persons recruited under **article 226 of the Constitution 1992** on the payroll of the controller and accountant-general.

i. An order directed at the controller and accountant-general to place all persons duly recruited by the Commission on the government payroll.

j. An order directed at the Minister of Finance and the controller and accountant-general to refund all contributions made by the plaintiffs to the Social Security Fund from their respective dates of employment by CHRAJ and the interest accrued thereon.

k. And for such further Orders or directions that this Honourable Court may deem appropriate to give full effect or to enable effect to be given to the spirit and letter of the Constitution in this matter generally and particularly **articles 178(1)(a), 225, 226 and 227** of the Constitution.

l. Such further or other Orders as the Honorable Supreme Court will deem fit to.

m. Cost for court expenses and counsel fees.

THE CASE OF THE PLAINTIFFS

The plaintiffs assert that they are former employees of the Commission on Human Rights and Administrative Justice (CHRAJ) and present their complaints on two legs – alleged unconstitutional violations of **Article 227**that affect the financial independence of CHRAJ and its employees and staff, and alleged unconstitutional violations of **Articles 225 and 226**that affect the functional independence of CHRAJ as an institution.

FINANCIAL INDEPENDENCE

It is their case that during the time of their employment and prior to their retirement, they contributed to the Social Security Fund. Currently, their pensions and gratuities are paid from the Social Security Pension Fund. They contend that this state of affairs is unconstitutional because the clear words of Article 227 provide that *the 'salaries, allowances and pensions payable to, or in respect of, persons serving with the Commission, shall be charged on the Consolidated Fund*.

It is also their case that **article 227** was designed to give **financial independence** to CHRAJ and its staff and employees, and so the practice of making officers and staff of the Commission of Human Rights and Administrative Justice to contribute to the Social Security Pension Fund, and pay their gratuities from that fund is unconstitutional.

The Plaintiffs further urge that **article 227** quoted supra, is in pari materia with **article 187 (14)** which reads:

187(14): "*The administrative expenses of the office of the Auditor-General including all salaries, allowance, gratuities and pensions payable to or in respect of persons serving in the Audit Service shall be a charge on the Consolidated Fund.*

They submit that **Article 187 (14)**was interpreted by this court in the case of **Brown v Attorney-General (Audit Service Case) [2010] SCGLR 183**(hereinafter referred to as **Brown v Attorney General**).

It is their case that in **Brown v Attorney General,** this court unanimously granted the relief (6) of the Plaintiff William Brown crafted in the following terms: *That the payment of pensions and gratuities of retired officers and employees of the Audit Service under the Social Security and National Trust (SSNIT) Pension Fund instead of the Consolidated Fund as provided for by the 1992 Constitution is unconstitutional*.

To the extent therefore that this Court has construed **Article 187 (14)** to mean that the payment of pensions and gratuities of retired officers and employees of the Audit

service should be a charge on the Consolidated fund and not the Social Security Pension Fund, the same interpretation ought to be applied to **Article 227** relating to officers and employees of CHRAJ because **Article 187 (14)** and **Article 227** carry the same words with the same meaning.

The plaintiffs also cite the case of **Ampiah Ampofo v Commission on Human Rights and Administrative Justice [2005 – 2006] SCGLR 227**, in which a constitutional question was referred to the Supreme Court pursuant to **Article 130 (2)**.

Regulation 6(1) and (2) of the **Commission on Human Rights and Administrative Justice (Complaint Procedure) Regulations, 1994 (CI 7)** provide that:

> *(1) For the purposes of regulation 5 the Commissioner may on the recommendation of any other member of the Commission, an investigator of the Commission or any other officer of the Commission, constitute a panel to investigate any complaint and report to the Commission*
>
> *(2) The panel shall be composed of a chairman who shall be a member of the Commission or any legal officer in the employment of the Commission and not less than two other officers of the Commission*

The question referred to this court under **Article 130 (2)**in the **Ampiah Ampofo** case cited supra was whether '*whether in the face of **article 216** which defines the Commission, CI 7 can confer investigative powers on any other body like the panel defined in regulation 6(2) of CI 7*

It was the case of the plaintiff in the **Ampiah Ampofo** suit that the Commission provided for in Chapter Eighteen of the Constitution comprised only the three persons enumerated in **article 216** – namely the Commissioner and two Deputy Commissioners of the Commission on Human Rights and Administrative Justice (described in that case by the epithet 'the trinity', which epithet will be adopted in this judgment when describing the Commission qua the body of Commissioner and two Deputies created under **articles 216 and 217** of the Constitution). As such regulation 6 (1) and (2) of

CI 7 which allowed the setting up of panels comprising other officers of CHRAJ, with the Commissioner, violated the Constitution.

This Court disagreed with the plaintiff in the **Ampiah Ampofo** case and held that **regulations 6 (1) and 6(2)** were not made in violation of the 1992 Constitution, but were in accord with the spirit of the Constitution. In determining the issue of validity of the proceedings complained off, this court admitted that there was an ambiguity in the description of 'Commission' within article 216 and article 220 of the Constitution.

Article 220 reads:

220. *An Act of Parliament enacted under article 216 of this Constitution shall provide for the creation of regional and district branches of the Commission*'

In the words of Dr Twum JSC on page 235, '*in my view, the word 'Commission' appearing in Chapter Eighteen of the Constitution is used in two senses. In articles 216 and 217, it must refer to the three persons, namely the Commissioner and the two Deputy Commissioners. In particular, when article 217 speaks of appointing the members of the Commission, it can only be a reference to these three persons. But where article 220 provides for the creation of regional and district branches of the Commission, this can only refer to something which can have branches. It would lead to manifest absurdity if the word 'Commission' in article 220 were to be interpreted to mean the three persons who would thus have regional and district branches. In this context, the word must refer to an organisation, a body, an institution, an establishment or a bureaucracy. Now, obviously, the officers who will man the regional and district branches cannot be the Commission in the narrow sense of the Commissioner and his two Deputy Commissioners. The word 'Commission' must refer to the wider sense in which the Commission is used. This will include the narrow sense Commission and the supporting staff and employees*'

This court therefore adopted a two-pronged approach in construing the word 'Commission' within articles 216, 217 and 220 of the 1992 Constitution. The first was a narrow construction of 'Commission' as provided for in articles 216and 217 to mean the

trinity of Commissioner and his two Deputy Commissioners, and the second was a wider construction of the word 'Commission' as provided for under article 220 to include supporting staff and employees.

It was the holding of the court that it was in the application of the two models of construction that the appointment of officers and other employees of the Commission mentioned in **article 226** could be a meaningful activity, enabling such officers to share in the execution of the functions of the Commission spelt out in **article 218**.

This reasoning was supported in the opinion of Date Bah JSC in the following words quoted by Plaintiff:

'*Applying a purposive approach to the interpretation of the provisions of Chapter Eighteen of the Constitution 1992 with Commission on Human Rights and Administrative Justice Act, 1993 (Act 456), I am of the view that the interpretation contended for by the plaintiff is not viable and not in keeping with the spirit and purpose (both subjective and objective) of the provisions concerned. I am further of the view that the Commission should be viewed as a particular kind of statutory corporate entity comprising the Commissioner, the two Deputy Commissioners and the staff employed by them to assist them in carrying out the functions of the Commission. The employees of an organisation can hardly be sensibly conceived of as apart from the organisation. Thus the employees of the Commission, for which section 20 of Act 456 makes provision, can reasonably be interpreted as forming a part of the Commission. This implies that what the Commission does through its employees, it does itself*

Relying on this fusion of narrow and broad interpretations given to the word 'Commission' in the **Ampiah Ampofo** case, the Plaintiffs are urging under the present writ that **Article 227** should, just as was done in the **Brown v Attorney General** case, be construed to mean that the administrative expenses of all employees and officers of CHRAJ, including their salaries, allowances and pensions shall be a charge on the Consolidated Fund. This is what makes the contributions to the SSNIT pension fund,

and payment of pensions from that fund unconstitutional for the plaintiffs and all employees of CHRAJ

FUNCTIONAL INDEPENDENCE

The second leg of the Plaintiffs' case contests the mode of **recruitment** of staff of CHRAJ. The plaintiffs urge that the practice of seeking financial clearance from the Minister for Finance before CHRAJ can recruit staff is unconstitutional and violates **article 226**.

The Plaintiff's case, premised on **Articles 225 and 226** set out supra, is that the constitutional authority mandated to appoint officers and other employees of the Commission, other than the Commissioners, is the Commission itself acting in consultation with the Public Services Commission.

To this end, the approval by some other authority such as the ministry of finance, prior to recruitment of employees of CHRAJ, is not a constitutional requirement and for that matter the insistence of the Ministry of Finance on giving financial clearance before CHRAJ can undertake any recruitment exercise, or have the Accountant-General place the names of those recruited on the government payroll is in breach of **articles 225 and 226** of the Constitution. They urge that this interferes with the functional independence of the trinity of Commissioners, and CHRAJ as an organisation, as intended by **articles 225 and 226**

Article 225 provides that

Independence of Commission and Commissioners

225. *Except as provided by this Constitution or by any other law not inconsistent with this Constitution, the Commission and the Commissioners shall in the performance of their functions, not be subject to the direction or control of any person or authority*.

According to the Plaintiffs, prior to coming to taking out its Writ, CHRAJ, acting per its Commissioner wrote to the Minister of Finance on 10th April 2019 in a letter exhibited as 'Exh A' to this court. In that letter, the Commissioner informed the Minister that the

Commission had carefully studied the judgment in **William Brown v Attorney General** and from an application of that judgment, CHRAJ, as an Independent Constitutional Body (ICB) established pursuant to **Article 216 of the 1992 Constitution** and the **Commission on Human Rights and Administrative Justice Act, 1993 (Act 456),** should be given the same treatment regarding its finances and recruitment that would ensure its independence as this court had determined regarding the Ghana Audit Service in **Brown v Attorney General** cited supra case.

A letter from the Minister of Finance, attached to the Plaintiffs' affidavit in verification of facts as **Exh B,** was that the Ministry did not have jurisdiction to grant the reliefs from the petition. This position of the Minister of Finance had driven the plaintiffs to commence this court.

THE CASE OF THE DEFENDANT

The plaintiffs' position that urges a mirroring of **article 187 (14)** and **article 227** is opposed by the Defendant. While agreeing that the words of **article 227** are largely clear and unambiguous, the defendant contends that the '*bone of contention*' lies with the words '*persons serving with the commission*'. The defendant points to the functions of the Commission in **article 218** and submits that there are certain roles which are directly related to the functions of the Commission that are investigative and legal in nature and which are performed by the directors, investigators and registrars. It is the persons performing the functions delineated in **article 218** who have been referred to as '*persons serving with the commission*', and not the entire body of staff of CHRAJ, as presented by the plaintiffs' case.

The defendant's position in summary therefore is that **article 187 (14)**, which provides for '*persons serving **in the Audit Service***' (emphasis mine) relates to the entire body of the Audit Service, does not mirror **article 227**, which refers to a specific group of persons '*serving **with** the Commission*' (emphasis mine) in the constitutional functions outlined in **article 218**.

The Attorney General's statement of case goes on to point to the decision of this court in **Judicial Service Association of Ghana (JUSAG) v Attorney-General, The National Pension Regulatory Authority, The Fair Wages and Salaries Commission Writ No J1/5/2015**, (JUSAG case) which reveals the intention of the framers of the 1992 Constitution to enact different functions and conditions of work for different categories of officers within the same organisation. In the JUSAG case, the third defendant, had submitted to the court that the Constitution had provided constitutional processes and regimes for the determination of the gratuities and pensions of different categories of persons working in the Judiciary as is evident in articles 71, 149 and 158 of the Constitution

ISSUES

The parties settled a Joint Memorandum of Issues in these terms:…

i. Whether on a true and proper interpretation of articles 178 (1) (a) and 227 of the Constitution (1992) the pensions and gratuities of **only retired officers and employees of CHRAJ whose roles were directly linked to the functions of CHRAJ** must be paid from the consolidated fund and no other Fund or Pension schemes established by an Act of Parliament

ii. Whether on a true and proper interpretation of articles 178(1)(a), and 227 of the Constitution (1992) the payment of pensions and gratuities of only retired officers and employees of CHRAJ whose roles were directly linked to the functions of CHRAJ under the Social Security Fund instead of the Consolidated Fund as provided for the Constitution (1992) is unconstitutional.

iii. Whether the practice of the minister of finance and the Controller and Accountant-General in placing the employees of CHRAJ on the Social Security Fund and deducting pension contributions from their salaries as members of the Social Security Pension Fund is inconsistent with article 178(1)(a), and article 227 of the Constitution (1992) and therefore null and void.

iv. Whether all pensions and gratuities paid by the plaintiffs to the Social Security Fund contravene articles 178(1)(a), and 227 of the Constitution (1992) and are therefore unconstitutional, unlawful, null and void.

v. Whether on a true and proper interpretation of articles 225, and 226 of the Constitution (1992), CHRAJ does not require any financial clearance from the Ministry of Finance before recruiting any person as staff.

vi. A declaration that on a true and proper interpretation of articles 178(1)(a); 179(2)(b); 225; 226; and 227; the subjection of the annual estimates of administrative expenses of CHRAJ to budget policy directives of the Executive branch of Government including budget ceiling and hearings at the Ministry of Finance is unconstitutional as the Ministry is empowered to hear and provide ceiling on only expenses subject to annual appropriation.

JURISDICTION

On the preliminary issue of whether the jurisdiction of this court has been properly invoked, the Plaintiff asserts that they are private citizens seeking to enforce the public interest of ensuring that constitutional provisions are properly implemented for thousands of staff of CHRAJ nationwide, and not violated. As such, it does not matter that the plaintiffs would be personally affected by the outcomes of the case. They point out that reliefs a – h are requesting for interpretation of **Articles 226 and 227** because rival meanings have been placed on the provisions by the Minister of Finance and the Commissioner of CHRAJ. They point to decisions of this court in **Kor v Attorney-General and Justice Duose [2015 -2016] 1 SCGLR**, **Okudzeto Ablakwa v Attorney – General and Jake Obetsebi Lamptey [2011] 2 SCGLR 968**, in which this court utilized its original and exclusive jurisdiction to clarify the proper meaning of constitutional provisions within the context of rival meanings placed on them.

Plaintiffs also urge that in their *reliefs i. to j,* they are praying for enforcement of **Article 227** which is necessary for the financial independence of CHRAJ intended for the framers of the Constitution, and the enforcement of article 226 in terms that assure

the functional independence of CHRAJ. In this wise, the Plaintiffs have cleared the threshold in invoking the Jurisdiction of the courts.

The Attorney General concedes that the case properly invokes the jurisdiction of the Court. The defendant posits as such because the plaintiff is '*seeking to invoke the original jurisdiction of the Supreme Court to deal with the total compliance with provisions of the constitution*'. Citing the dictum in **Gbedemah v Awoonor –Williams 1979 2 G & G 739 (2d) at 1167** to the effect that a plaintiff may invoke the original and exclusive jurisdiction of the Supreme Court if the action raises an issue relating to the enforcement of a provision of the Constitution, the interpretation of a provision of the constitution, and the validity of an enactment made by Parliament, defendant draws attention to the relevance of this suit in the first two contexts.

Consideration on the issue of Jurisdiction

The authorities are legion, and as expressed in **Oppong v Attorney –General [2003-2004] SCGLR 376 at 380**, the original jurisdiction of this court under **articles 2(1) and article 130 (1)** to interpret and enforce the provisions of the Constitution is a ' special *exclusive jurisdiction meant to be exercised in suits raising genuine and real issues involving interpretation of a provision of the Constitution and its enforcement…*'

This court has resisted attempts to invoke this exclusive jurisdiction where the answer to the contentions raised are clear and unambiguous on the face of the provisions of a statute or the Constitution. The following words of Bannerman CJ stated per curiam in **Republic v Maikankan 1971 2** GLR 473 at 478 attest to it.

'*We wish to comment that …if the answer to a submission is clear and unambiguous on the face of the provisions of the Constitution or laws of Ghana, no reference need be made since no question of interpretation arises* ….'

Also in cases such as **Osei-Boateng v National Media Commission & Appenteng 2012 2 SCGLR 1038**, **Bimpong Buta v General Legal Council [2003-2004] 2 SCGLR 1200**, and **Oppong v Attorney –General** cited supra**,** the court has clarified

the resolve to resist any cleverly garbed presentation of claims for personal rights as questions requiring constitutional interpretation and enforcement.

However this court has never shirked the responsibility to take on its jurisdiction to conduct the difficult task of interpretation and enforcement of the Constitution in whatever era of our Republics. As summarized in **Republic v Special Tribunal: Ex Parte Akosah [1980]GLR 592 at 605, (CA)**,it is accepted that '*an issue of enforcement or interpretation of a provision of the Constitution under article 118(1) (a) (of the 1979 Constitution) arises in any of the following eventualities*:

a. *Where the words of the provision are imprecise or unclear, or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double meaning or are obscure or else mean something different from or more than what they say;*
b. *Where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*
c. *Where there is a conflict in the meaning and effect of two or more articles of the Constitution and the question is raised as to which provision should prevail; and*
d. *Where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.*

On the other hand, there is no case of 'enforcement or interpretation' where the language of the article of the Constitution is clear, precise and unambiguous.'

To my mind, the dispute before us presents a sobering set of contentions. The plaintiff urges that the words of **article 227** are clear because the use of the words 'Commission' has been interpreted to mean both the trinity of Commissioner and Deputy Commissioners, and the organisation known and called Commission on Human Rights and Administrative Justice, in the **Ampiah Ampofo** Case. Again, the right to obtain payments of expenses, salaries and pensions from the consolidated fund has been settled through an interpretation of **article 187 (14),** which they claim is in pari

materia with **article 227,** in the **Brown v Attorney General** case. The plaintiff is therefore seeking only enforcement of Article 227.

The defendant on the other hand, points to another meaning that ought to be placed on the word 'Commission' which meaning sits between the narrow meaning of the trinity of Commission as the Commissioners, and the broad meaning of the Commission as the organisation. The defendant, as legal adviser and defender of Government under **article 88**, urges this third median interpretation as what is the purposive intent of the framers of the Constitution when article 227 made the provision in relation to '*persons serving with the Commission*'. This would therefore mean that the decision in **Ampiah Ampofo** did not exhaust the various usages of the word 'Commission' in Chapter Eighteen, requiring this court to settle whether the use of the words '*persons serving with the Commission*' mean a different group of functionaries different from the 'regional and district branches' as used in **article 220**, and 'officers and other employees' as used in **article 226,** that were interpreted to mean the whole organisation of CHRAJ in the **Ampiah Ampofo** case.

It is apposite to recall, as pointed out by the Attorney General, that in the **JUSAG** case, this court agreed that serious, genuine and real constitutional issues had been raised because it was important to identify which group of persons were actually within the purview of the Constitution when it gives direction for different sources of payments of emoluments and gratuities. In that case, the questions were: '*who are to be considered members of the Judiciary under articles 127 (4) and (5) of the Constitution to bring them under the CAP 30 pension scheme*?' '*Who among the Judiciary under the Constitution have been placed on SSNIT pension scheme contrary to article 127 (4) of the Constitution*'?

In other words, a determination of the proper actors within even the same organisation, where the provisions of the Constitution necessitate the identification of different actors within the same group invoking different constitutional responsibilities and rights, is a necessary conundrum inviting interpretation for the purpose of achieving a realisation of the intents of the framers of the Constitution, and enforcing that intent. To my mind,

this kind of conundrum, resolved in the **JUSAG** case, and the **Ampiah Ampofo** case, falls within the first two categories set out in the **Ex parte Akosah** summary.

Further, the foundations set by the **Ampiah Ampofo** case, the **JUSAG** case, and the **Brown** case compel an urgent reason to utilize the jurisdiction of this court to clarify what the framers of the Constitution meant by 'persons serving **with** the Commission' as opposed to 'persons serving **in** the Audit Service' found in **article 187 (14)** that plaintiffs claim serves as the anchor of their case.

This is why I would state without equivocation that the jurisdiction of this court has been properly invoked.

Are the plaintiffs entitled to their claims?

This is the next necessary issue to be confronted. Without question, the decision in the **Ampiah Ampofo** case did not deal with an interpretation of **article 227**, which specifically speaks on the finances of the Commission. It dealt with the operational capacities of the functionaries who were not part of, but sat with the trinity of Commissioners, and found the source of the authorisation of these functionaries as arising from article 220, such that regulations 6 (1) and 6(2) of CI 7 could not be said to be in violation of the Constitution.

It then went on to identify that the plain words of article 225 anticipated that the trinity of Commissioners would engage officers and employees to assist them in their work, and therefore the word Commission also anticipated a whole group of persons working with the trinity of Commissioners. This court did not have to decipher if this entire group of persons, making up the organisation known as CHRAJ, were those anticipated in **article 227**, when the Constitution directed that the salaries, allowances and pensions payable to '*persons serving with the Commission*' were to be charged on the Consolidated fund. This is the new question raised by this suit.

In his submissions, the position of the Attorney General is that even in the face of the broad meaning of the word 'Commission' the words '*persons serving with the*

Commission'as used in article 227, relates to certain class of officers within CHRAJ, and not the entire body of staff and employees that work with the institution, as provided for in article 225. **This class of officers are those who perform the constitutional functions assigned to the trinity of Commissioners under article 218,** (emphasis mine) and not every employee of CHRAJ. To add to this mix, the defendants have shown that this model of identifying different contexts of emoluments for offices set in the Constitution has been settled from cases such as the **JUSAG** case.

Opinion

My humble view is that the rival contention of the Attorney General poses an urgent need to settle whether **article 227**anticipated three levels of functionaries to be identified as the Commission in Chapter Eighteen, being the trinity of Commissioners, experts such as lawyers and investigators serving with them in the discharge of their Constitutional functions under article 218 – who can be described as *'persons serving with the commission*' - and the larger body of employees and staff, provided for under article 225, and sought to make provision for those functionaries who assisted the trinity of Commissioners to discharge their constitutional duties?

Or did the Constitution anticipate only two levels of functionaries as comprising the Commission – namely the trinity of Commissioners and the entire body of officers, staff and employees of CHRAJ, and so article 227 intended that everyone working at CHRAJ was to receive their salaries, allowances and pensions from the consolidated fund?

My evaluation is that on a studied reading of Chapter Eighteen of the 1992 Constitution, and Act 456 and CI 7, one will not be left in doubt that the provisions of the entire set of constitutional provisions and substantive and subsidiary legislations are dedicated to the creation of the narrow body of the trinity of Commissioner and Deputy Commissioners, the constitutional mandate they are to discharge, and the structures required to discharge that constitutional mandate. **These three persons are central to any use of the word 'Commission' such that any expansion of the trinity,**

such as is found in article 220 and 226 and 227, must be tightly tied to these three persons.

Chapter Eighteen begins with **article 216**. It establishes the functionaries identified as the Commission to be the Commissioner and the two deputies, and no other persons.

Article 216 reads:

216. COMMISSION ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE

There shall be established by Act of Parliament within six months after Parliament first meets after the coming into force of this Constitution, a Commission on Human Rights and Administrative Justice which shall consist of –

(a) a Commissioner for Human Rights and Administrative Justice; and
(b) two Deputy Commissioners for Human Rights and Administrative Justice.

Article 217 goes on to provide that

217. *The President shall appoint the members of the Commission under article 70 of this Constitution*

These '*members of the Commission*' are identified in **Article 70 (1) (a)** as

70 (1) *The President shall, acting in consultation with the Council of State appoint –*

*(a) the Commissioner for Human Rights and Administrative Justice and **his** Deputies;*(emphasis mine)

After catering for the establishment of the three member Commission through an act of Parliament in **article 216,** and the appointment of its membership in **article 70**, **article 218** identifies the functions of this trinity of persons.

Article 219 creates special powers for the functions that this body of three known as the Commission are to discharge. **Article 220** directs that the Act of Parliament to be enacted pursuant to **article 216** should cater for regional and district branches of the Commission. Thus in **article 220**, what becomes clear is a pragmatic intention to

broaden the group of actors to discharge the constitutional functions of the trinity of Commissioners. This court settled this position in the **Ampiah Ampofo** case.

Article 221 provides for the qualifications of the trinity of Commissioner and Deputies. **Article 222** bars the Commissioner and Deputy Commissioners from holding any other public office, and **article 223** provides for the terms and conditions of service of the Commissioner and Deputy Commissioner. **Article 224** deals with conditions pertaining to anyone acting in the stead of the Commissioner on account of death, resignation, removal or inability to perform the functions of office.

Article 225 provides for the independence of '*the Commission and the Commissioners*'. My understanding of the use of the words '*Commission and the Commissioners*' in **article 225**, is that having provided for regional and district branches of the Commission, these functionaries, together with the Commissioners appointed pursuant to **articles 70 and 216**, were being guaranteed independence in the discharge of their constitutional duties set out in **article 218**.

Article 226, which forms the premise for the Plaintiffs' second set of contentions, provides that '*the appointment of officers and other employees of the Commission*' shall be made by the Commission acting in consultation with the Public Services Commission.

My view is that these words are clear and unambiguous. It allows the Commission qua the trinity created under **article 216**, to appoint officers and other employees. In order to do so, the Commission is to act in consultation with the Public Services Commission. The plaintiffs are therefore to settle any alleged impropriety of procedures from that premise, and within the appropriate legal forum. There are no obscurities requiring interpretation of how officers and other employees of the Commission are to be engaged.

Jumping **article 227** which I will address anon, **articles 228 and 229** address the conditions for removal of the Commissioner and Deputy Commissioners. And the last article in Chapter Eighteen, being **article 230**, directs the Commission to make

regulations regarding the manner and procedure for bringing complaints before 'it' and the investigation of such complaints.

It is clear from this walk through that the Constitutional provisions in all of Chapter Eighteen have only one focus, and that is the Commissioner and his Deputies appointed by the President under **article 70**. They make up the team described as the Commission, and when addressed individually, they are described as the Commissioner, the Commissioners, or the Commissioner and Deputy Commissioners. These three are the constitutional functionaries required to discharge the duties set out under **article 218**, and who have been given special powers of investigation under **article 219**. It is the independence of this trinity, in whatever expanded form from **article 220**, that is protected under **article 225**. **Article 226** allows them to appoint officers 'and other employees'. But beyond this, no mention of the officers and employees is mentioned, neither does the Constitution provide for a corporate organisation from which they are to operate.

Chapter Eighteen as a basket of provisions is very different from the provisions within which **article 187 (14)** is encapsulated.

A glaring distinction between the language of **article 187 (14)** and **article 227** is that **article187 (14)** refers specifically to the institution known as Audit Service, which is created as a constitutional body under **articles 188 and 189**, whereas **articles 216 to 230** make no reference whatsoever to the organisation that we have come to know as CHRAJ. The Constitution focuses entirely on the trinity of Commissioners, and in **article 220**, provides for them to have branches, and enables them under **article 226**to make appointments of officers and other employees in consultation with the Public Services Commission.

Unlike CHRAJ as an organisation, which the Constitution is silent on, the same Constitution, after creating the office of the Auditor General under **article 187**, creates the Audit Service as an organisation with a board, under **articles 188 and 189**, and

tucks within the protection of the Auditor General, the provision in **187 (14)** for '**persons serving <u>in</u> the Audit Service'**.

There is therefore no ambiguity that **Article 187 (14)** was seeking to move the salaries, allowances, gratuities and pensions payable to or in respect of persons serving within the constitutionally created organisation known as the Audit Service along with the administrative expenses of the office of the Auditor General, into a charge on the Consolidated Fund. The Constitution does not do this for CHRAJ as an organisation. What the Constitution does is provide for the '*persons serving with the Commission*' in **article 227**, instead of the body of 'officers and other employees' engaged pursuant to **article 226**.

Thus Article 227, when it provides that '*The administrative expenses of the Commission including salaries, allowances and pensions payable to, or in respect of,* ***<u>persons serving with the Commission</u>****, shall be charged on the Consolidated Fund*' cannot be construed as referring to the entire body of officers and employees engaged by the Commissioners in consultation with the Public Services Commission, and working within what we have come to appreciate as the organisation called CHRAJ. It can only be construed in its plain language as providing for those who serve with the Commission in the discharge of their Constitutional mandate as commissioners.

Indeed, this envisaged body of technically proficient people, required to execute the constitutional functions set out for the Commissioners in **Article 218** are also described as representatives of the Commission in **Section 11 of Act 456**. They are further described as '**person holding an office or appointment under the Commission**' under section 17 of act 456.

11. Functions of regional and district representatives

A representative of the Commission in a regional or district office of the Commission shall

a. *receive complaints from the public in the Region or district,*

b. make an on-the-spot investigation that may be necessary, and

c. *discharge any other duties relating to the functions of the Commission that may be assigned by the Commissioner*

17. Maintenance of secrecy

1. The Commissioner or a Deputy Commissioner and every person holding an office or appointment under the Commission shall maintain secrecy in respect of the matters that come to their knowledge in the performance of their functions

2. A person holding office or appointment under the Commission who is likely to have access to confidential information of the Commission shall, before proceeding to carry out any functions under this Act, take and subscribe to the Oath of Secrecy set out in the Second Schedule to the Constitution

3. The Commission shall determine the category of persons to whom subsection (2) of this section shall apply

My respectful view is that the words of Twum JSC in **Ampiah Ampofo** at pages 237 and 237 provide strong direction in understanding the purposive intent of the framers of the Constitution in **article 227** when they separately provided for the finances of the Commission and persons serving with the Commission under article 227.

The retired Justice said: '*At the moment, the Commissioner and his two deputies are lawyers. But I am persuaded that lawyers are not necessarily endowed with special investigative skills to unravel well-concealed white collar crimes. There is expertise and skill acquired by special training in this field of investigation and there is no legal reason why the Commission cannot employ officers of specialized skills to bring their expertise to bear on investigations. There will be a need for auditors, financial analysts, forensic examiners, if the work of the Commission is to produce the desired results. A reading of Chapter Eighteen of the Constitution, Act 456 and CI 17 which insists that only the Commissioner and his two deputies are the persons with legal authority to discharge the Commission's function will sound the death-knell of the Commission. The duty of*

the Commission under article 218 (f) of the Constitution to educate the public on human rights and freedoms, similarly disavows the view that the three persons must do this themselves.'

It is also my respectful view that it is the duty of the Commission, qua the trinity of Commissioners created by Chapter Eighteen of the Constitution who perform their duties subject to Act 456 and CI 7, to clearly determine the category of persons who constitute their representatives, and who hold an office or appointment under the Commission.

To throw back a look at the decision of this court in the **JUSAG** case, Dotse JSC distinguished in clear tones the constitutional intent of which persons were to have their expenses, salaries, allowances, gratuities and pensions charged on the Consolidated Fund. He said on page 28 of the judgment

'*…it is clear that, the expression 'judiciary' as used throughout the Constitution 1992, can only be deemed to refer to the body of persons exercising judicial power in the sense that they are charged with the responsibility of administering justice.*

Thus article 127 (4) can literally be said to mean that, 'the administrative expenses including all the salaries, allowances, gratuities and pensions payable to or in respect of, persons administering justice or who have been given the responsibility of interpreting the laws of the country shall be an encumbrance or a lien on the consolidated fund.'

With the above definition and explanation of the entire article 127 (4), it is clearly apparent that, taken in context, where the word 'Judiciary' is used in article 127 (4) there is a clear reference to only persons exercising judicial power and administering justice, in the sense that they are those persons entrusted with the responsibility of interpreting the Constitution and laws of the country in contra distinction to those in the Executive and Legislative branches of Government, <u>and therefore does not include the supporting staff of the Judiciary who do not exercise judicial power</u>' (emphasis mine)

From the above, I think that a very salient issue arises for the Plaintiffs to consider: If the framers of the Constitution did not intend all the salaries and allowances of the supporting staff of the Judiciary to be a charge on the consolidated fund, why would they intend this purpose for the supporting staff of CHRAJ, without more?

In conclusion, I would hold that the interpretation placed on article 227 by the Attorney General ought to be upheld, and the interpretation placed on it by the plaintiffs ought to be dismissed. Further, the reliefs sought by the plaintiffs must be dismissed.

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