IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2022

CORAM: DOTSE JSC (PRESIDING)
DORDZIE (MRS.) JSC
AMEGATCHER JSC
PROF. KOTEY JSC
AMADU JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC

WRIT NO. J1/11/2021

27TH JULY, 2022

EZUAME MANNAN ..... PLAINTIFF

VRS

1. THE ATTORNEY-GENERAL
2. SPEAKER OF PARLIAMENT } **..... DEFENDANTS**

JUDGMENT

MAJORITY OPINION

KULENDI JSC:-

"My own contribution to the evaluation of a Constitution is that, a Constitution is the outpouring of the soul of the nation and its precious life-blood is its spirit. Accordingly,

in interpreting the Constitution we fail in our duty if we ignore its spirit. Both the letter and the spirit of the Constitution are essential fulcra which provide the leverage in the task of interpretation. In support of this, we may profitably turn to the Constitution, 1992 itself which directs that we accord due recognition to the spirit that pervades its provisions."

– François JSC, New Patriotic Party v Attorney-General [1993-94] 2 GLR 35 at page 79.

INTRODUCTION

This writ invokes the exclusive original jurisdiction of this Court pursuant to **Articles 2(1) and 130(1)(a) of the Constitution**. The Plaintiff brings this action seeking the following reliefs;

1. *A declaration that Section 43 of the Narcotics Control Commission Act, Act 1019, is null and void on account of having been passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106(2)(a), (b), 106(5), (6) of the 1992 Constitution.*
2. *A declaration that Section 43 of the Narcotics Control Commission Act, Act 1019, is null and void on account of being inconsistent with, and in contravention of Ghana's obligations under Article 40(c) of the 1992 Constitution.*
3. *A declaration that Section 43 of the Narcotics Control Commission Act, Act 1019, is null and void on account of being inconsistent with, and in contravention of the intent, purpose and directions of the Directive Principles of State Policy as provided for in Article 35(2), Article 36(9) and Article 36(10).*

4. *A declaration that Section 43 of the Narcotics Control Commission Act, Act 1019, is null and void on account of being inconsistent with the letter, intent and purpose of all other provisions of Act 1019 and especially, Sections 2(c), 3, 38, 39, 41, 42, 42(4), 45, 48, 53, 54, 55, 93 and the Sixth Schedule.*
5. *Such further or other orders as the Honorable Supreme Court will deem fit to make.*

BACKGROUND

Ghana became a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988. In addition, Ghana became a party to the Single Convention on Narcotics Drugs of 1961 as amended by the 1972 protocol in 1991. These treaties govern the obligations of state parties in relation to narcotics and other prohibited substances.

Ghana subsequently incorporated the terms of the Single Convention into the Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990 (PNDCL 236). The purpose of PNDCL 236, was to bring under one enactment, offences related to illicit dealings in narcotics and psychotropic substances and to establish a Narcotics Control Board (NACOB) to regulate and ensure enforcement of these provisions. Section 9 of the PNDCL 239 defines narcotic drugs as including the drugs set out in Schedule 1, which schedule includes cannabis, cannabis resin, extracts and tinctures of cannabis.

On or about. 30th October, 2019 the Minister for the Interior presented to Parliament, the Narcotics Control Commission Bill, 2019 accompanied by a Report of the Committee of Defence and Interior. In compliance with Article 106(2)(a) and (b), an Explanatory Memorandum to the bill was published in the Gazette. The Memorandum

stated that the purpose of the bill was to establish a Narcotic Control Commission and to provide for offences related to Narcotics. The objects of the Commission were to ensure public safety by controlling and eliminating traffic in prohibited narcotic drugs and by taking measures to prevent the illicit use of precursors, collaborate with the relevant bodies to develop measures for the treatment and rehabilitation of persons suffering from substance use disorders and to develop, in consultation with other public agencies and civil society organizations, alternative means of livelihood of farmers who cultivated illicit drugs.

Before the passage of the Narcotic Control Commission Act, 2020 (Act 1019) Parliament introduced a new clause titled 'Special Provision Relating to Cannabis', which became Section 43 of Act 1019. Under Section 43, Parliament purports to grant to the Minister for the Interior, the power to license the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fibre or seed or for medicinal purposes.

The Plaintiff contends that Section 43 of Act 1019 occasions a change in the policy of the law and consequently, the failure to include an Explanatory Memorandum that articulates the proposed policy change in the law for the consideration of the public and Parliament to inform the passage or otherwise of Section 43 as part of Act 1019 is a violation of the clear terms of **Article 106(a) and (b) of the 1992 Constitution**. Consequently, the Plaintiff has invoked the original jurisdiction of this Court seeking the reliefs set out *supra*.

ISSUES FOR DETERMINATION

The joint memorandum of issues filed by the parties and adopted by this Court for determination are as follows:

1. Whether or not as a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 dated 20th December 1988, and to the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol signed on the 10th of April 1991, Ghana is obliged to prohibit the cultivation of any strain of cannabis and the production of any extract or product from cannabis.

2. Whether or not the right given to the Minister under section 43 of the Narcotic control Commission Act, 2020 (Act 1019) to grant a license for the cultivation of cannabis constitutes a violation of Ghana's obligations under the aforementioned international treaties.

3. Whether or not section 43 of Act 1019 ought to be struck down as being inconsistent with and in contravention of Ghana's international treaty obligations under the aforementioned treaties and consequently inconsistent with and in contravention of Article 40(a), (c), (d), (V) of the 1992 Constitution.

4. Whether or not the Executive and Legislature were constitutional obliged to comply with Article 106 (2) (a) & (b) of the 1992 Constitution by detailing in the explanatory memorandum to the NCC Bill in the gazette, Ghana's departure from the policy of prohibition of cultivation and production of cannabis; and of the intended introduction of a new policy to grant license for the cultivation of cannabis, prior to the first reading of the Narcotic Control Commission Bill, 2019 (NCC Bill).

5. Whether or not Parliament violated both the Constitutional requirements of Article 106 and the Parliamentary Standing Order 115, 117, 119(1), 124, 125, 126(1), 128(1), 128(4), 129(i), 132 and 133 in the manner it included section 43 into the NCC Bill which was ultimately

passed into law as Act 1019, for which reason the said section 43 ought to be struck down by this Honourable Court as violative of the 1992 Constitution.

6. Whether or not the failure or Parliament to give notice and adequate information to the public regarding the changes to the existing law, the policies and principles behind the said statutory changes before section 43 was introduced into Act 1019, constituted a violation of the spirit and letter of Articles 106(1) and (2); Article 40(c), of the 1992 Constitution.

7. Whether or not the intent of section 43 of Act 1019 is inconsistent with and in contravention of Articles 35(2), 36(9) and 36(10) of the 1992 Constitution and so should be struck down by this Honourable Court.

ARGUMENTS OF THE PLAINTIFF

The Plaintiff, per her Writ and Statement of Case is seeking the enforcement of constitutional provisions related to the passage of legislation by Parliament. Specifically, the Plaintiff avers that the insertion of Section 43 into Act 1019 amounted to an act in excess of the powers conferred on Parliament because it was passed without an explanatory memorandum detailing the policy change to be brought about by the section and was passed without debate over the change.

According to the Plaintiff, when the then Narcotics Control Commission Bill, 2019, was presented to Parliament by the Minister for the Interior in 2019, the then bill was accompanied by a report of the Committee on Defence and Interior. According to the Plaintiff, the explanatory memorandum to the bill did not include a statement explaining the varying of the policy that initially was a blanket prohibition of the

cultivation of all forms of cannabis. This, the Plaintiff argues, is in violation of **Article 106 (2)(a) and (b) of the 1992 Constitution.**

The Plaintiff is also of the view that this change in the law violates Ghana's international treaty commitments, which, in the view of the Plaintiff, amounts to a violation of **Article 40**. The Plaintiff says that this is because, per **Article 40(a), (c) and (d)** of the 1992 Constitution, there exists a constitutional imperative to honour obligations under international treaties. According to the Plaintiff, the provision in the offending **Section 43** is in contravention to our international treaty obligations and should be found as being unconstitutional and struck down accordingly.

The Plaintiff is also of the view that **Section 43 of Act 1019** is inconsistent with and therefore in contravention of the Directive Principles of State Policy found in **Chapter 6 of the 1992 Constitution.** Specifically, the Plaintiff argues that upon the passage of this act, Ghanaians '*can flock to the production of cannabis, instead of focusing on planting food'* and that this will terminate the state's ability to '*take appropriate measures needed to protect and safeguard the national environment for posterity"* as mandated by **Article 36(9) of the 1992 Constitution.** The Plaintiff further adds that "*it is only logical that all persons engaged in the farms that will produce hemp, cannabis and marijuana licensed under Section 43 and the surrounding communities will become casualties of the mental health and addictive problems that are associated with the use of psychoactive substances.*" The Plaintiff concludes this argument by saying that the operation of **Section 43** shall destroy the "*well-being of the citizens of Ghana"* and the offending section should be struck down for the above reasons.

The Plaintiff argues that **Section 43** itself is inconsistent with the remainder of **Act 1019**. She argues that **Section 43** will make it difficult for the general objectives of the Act to be met. The Plaintiff is of the view that "*Law enforcement officers cannot*

detect any distinctions between cannabis plant (sic) with not more than 0.3% THC and cannabis plants with more THC content".

The Plaintiff also asserts that the offending **Section 43,** wherein the change to the blanket prohibition on the cultivation of the plant can be found, was inserted after the August House debated the bill, but the policy change itself was not debated by the House.

ARGUMENTS OF THE DEFENDANT

The Defendant on his part, rejects the assertion that the failure to include an explainer on the contents of Section 43 in the explanatory memorandum which accompanied the Narcotics Control Commission Bill renders the inclusion of Section 43 in the Act unconstitutional.

The Defendant stresses on the fact that Parliament ought to be free to pass a bill with amendments following Parliamentary debate over the bill. According to the Defendant, the insertion of Section 43 is not unconstitutional as it was the mere exercise of the power of Parliament to amend a bill before it for consideration under **Article 106(6)** of the Constitution. Accordingly, the Defendant says that it would have been impossible for the said section 43 to have been included in the explanatory memorandum because it came as an amendment after the act had been debated.

The Defendant says that contrary to the assertions of the Plaintiff that there was no debate, there were *"extensive debates on all provisions therein"* following the introduction of the bill. The Defendant says that after the second reading of the bill, a member of parliament proposed an amendment called 'the Special Provision relating to Cannabis', which became section 43. The Defendant does not mention that the Special Provision was debated after its insertion.

The Defendant also submits that this writ is an assault by the Plaintiff on the '*autonomy of Parliament in regulating its own procedure and proceedings, exercising legislative power, and conducting its business as an arm of Government*'. The Defendant in making this submission cites **Article 110** of the 1992 Constitution which states that Parliament may, through the use of standing orders, regulate its own procedure, subject to the provisions of the Constitution. The Defendant also cites the case of **J. H. Mensah v. Attorney-General [1997-98] 1 GLR 227**, and submits that since this Court has previously held that it cannot direct Parliament on how to go about the process of granting "prior approval" to the President's nominees for ministers, it cannot also legislate how Parliament conducts its affairs when it comes to the exercise of its legislative power.

The Defendant then goes on to argue that Section 43 of the Act is not inconsistent with the Constitution and the international treaty obligations of the state. The Defendant says that the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances of 1988 do not impose a blanket prohibition of the cultivation of the Cannabis plant on state parties. The Defendant says that state parties are free to choose their own domestic control measures which are suitable in their opinion having regard to the prevailing conditions in their countries. In support of this assertion, the Defendant cites **Article 2(5)(a) and Article 22 of the Single Convention on Narcotic Drugs of 1961 (as amended by the 1971 Protocol).**

The Defendant also says that the Single Convention also permits state parties to that accord the freedom to legislate permissive cultivation of Cannabis for medicinal and industrial purposes and cites **Article 28(1)** of the Single Convention in support of this. The Defendant adds that the regulations that shall be put forward by the Minister for the Interior under **Section 112 of Act 1019**, shall reflect and observe the Country's obligations under International Treaties. The Defendant concludes this portion of his argument by saying that **Section 43 of Act 1019** adheres to the

principles and the aims of the Single Convention and the United Nations Convention against the Illicit traffic of Narcotics.

The Defendant also argues that the provisions contained in Section 43 are not new to Ghanaian law. The Defendant cites **Sections 1-6 of the Narcotic Drugs (Control, Enforcement and Sanctions) Act, 1990 PNDCL 236**, which domesticates the provisions of the Single Convention and the UN Convention, saying that those provisions already allowed for the cultivation of Cannabis in Ghana. The Defendant says that the International Narcotics Control Board, which has power under these conventions to rebuke non-compliant countries, has never written to Ghana seeking an explanation or invited Ghana for consultations in accordance with **Articles 14 and 15 of the Single Convention.**

Finally, the Defendant argues that there is a presumption of legal validity or constitutionality that should operate in favour of the law in contest in this action, and the burden should be on the Plaintiff to establish otherwise. In support of this, the Defendant cites the cases of **Republic v. High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association & Others, Interested Parties) [2009] 1 SCGLR 737, Akainyah v. The Republic [1968] GLR 330** and **Centre for Juvenile Delinquency v. Ghana Revenue Authority & the Attorney General 2017-2020 1 SCGLR 567.**

The Defendant argues that in the above-listed cases, this Court has found that there are two cardinal principles governing judicial review of legislation. These are the principle of legality and the principle of severability. The Defendant argues that there is a presumption that enactments by the legislative branch are valid or constitutional until otherwise proven. The argument is also made that if a part of the legislation is successfully challenged, that part should be struck down without striking down the entire act of Parliament.

The Defendant concludes his submission by urging this Court to decline the Plaintiff's invitation to strike down section 43 and dismiss the writ as unmeritorious and misconceived.

LAW AND ANALYSIS

Article 2(1)(b) of the 1992 Constitution states in part as follows;

> *"(1) A person who alleges that -*
> *(a)….*
> *(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"*

And Article 130(1)(a) provides that:-

> *"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;"*

The **1992 Constitution of Ghana in Article 106** also reads as follows;

> *"Mode of exercising legislative power*
>
> *1) The power of Parliament to make laws shall be exercised by bills passed by Parliament and assented to by the President.*
>
> *2) No Bill, other than such a Bill as is referred to in paragraph (a) of article 108 of this Constitution, shall be introduced in Parliament unless;*

(a) it is accompanied by an explanatory memorandum setting out in detail the policy and principles of the Bill, the defects of the existing law, the remedies proposed to deal with those defects and the necessity for its introduction; and

(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament.

3) A Bill affecting the institution of chieftaincy shall not be introduced in Parliament without prior reference to the National House of Chiefs.

4) Whenever a Bill is read the first time in Parliament, it shall be referred to the appropriate Committee appointed under article 103 of this Constitution which shall examine the Bill in detail and make all such inquiries in relation to it as the Committee considers expedient or necessary.

5) Where a Bill has been deliberated upon by the appropriate Committee, it shall be reported to Parliament.

6) The report of the Committee, together with the explanatory memorandum to the Bill, shall form the basis for a full debate on the Bill for its passage, with or without amendments, or its rejection by Parliament.

7) Where a Bill passed by Parliament is presented to the President for assent he shall signify, within seven days after the presentation, to the Speaker that he assents to the Bill or that he refuses to assent the Bill, unless the Bill has been referred by the President to the Council of State under of this Constitution.

8) Where the President refuses to assent to a Bill, he shall, within fourteen days after the refusal,

(a) state in a memorandum to the Speaker any specific provisions of the Bill which in his opinion should be reconsidered by Parliament, including his recommendations for amendments if any; or

(b) inform the Speaker that he has referred the Bill to the Council of State for consideration and comment under article 90 of this Constitution.

9) Parliament shall reconsider a Bill taking into account the comments made by the President or the Council of State, as the case may be, under clause (8) of this article.

10) Where a Bill reconsidered under clause (9) of this article is passed by Parliament by a resolution supported by the votes of not less than two-thirds of all the members of Parliament, the President shall assent to it within thirty days after the passing of the resolution."

The Constitution in Article 40(c) reads as follows;

"*In its dealings with other nations, the Government shall*

(c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means"

Article 35(2) of the Constitution states as follows;

"The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the wellbeing of all her citizens"

Article 36(9) and (10) read as follows;

"(9) The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other States and bodies for purposes of protecting the wider international environment for mankind.

(10) The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians"

There is a long line of decisions by this Court which have reiterated the fact that when it comes to the interpretation of the constitution, a living, breathing document which is the heartbeat of the aspirations of the Ghanaian people, a purposive, expansive and contextualist approach to its construction may best serve our purposes.

In an exposition on Ghanaian constitutional interpretation, Justice Sowah's evergreen dictum in the case of **Tuffuor v. Attorney General GLR [1980] 637** is always relevant. At page 647-648 of the report, the eminent jurist stated that;

"A written Constitution such as ours is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore, needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and fuller life.

The Constitution has its letter of the law. Equally, the Constitution has its spirit. It is the fountain-head for the authority which each of the three arms of government possesses and exercises. It is a source of strength. It is a source of power. The Executive, the Legislature and the Judiciary are created by the Constitution. Their authority is derived from the Constitution. Their sustenance is derived from the Constitution. Its methods of alteration are specified. In our peculiar circumstances, these methods require the involvement of the whole body politic of Ghana. Its language, therefore, must be considered as if it were a living organism capable of growth and development. Indeed, it is a living organism capable of growth and development, as the body politic of Ghana itself is capable of growth and development. A broad and liberal spirit is required for its interpretation. It does not admit of a narrow interpretation. A doctrinaire approach (His Lordship continued at page 648:) to interpretation would not do.

We must take account of its principles and bring that consideration to bear, in bringing it into conformity with the needs of the time."

In the case of **Kuenyehia v. Archer [1993-1994] GLR 525**, in its second holding, this Court found;

"*A constitutional instrument is a document sui generis to be interpreted according to principles suitable to its peculiar character and not necessarily according to the ordinary rules and presumptions of statutory interpretation. It appears that the overwhelming imperatives are the spirit and objectives of the Constitution itself, keeping an eye always on the aspirations of the future and not overlooking the receding footsteps of the past. It allows for a liberal and generous interpretation rather than a narrow legalistic one."*

In the case of **Benneh v The Republic [1974] 2 GLR 47,** Apaloo JA (as he was then) stated that a narrow, strict interpretation of a constitutional provision may not reflect the policy reasons for the provision. Thus, interpreting the constitution in that narrow manner may defeat the purpose for the provision.

Prof. Date-Bah JSC in the case of **Prof. Stephen Kwaku Asare v. The Attorney General [28/01/2004] Writ No. 3 of 2002** went further when he cited, with approval, the words of Justice Aharon Barak from his essay "**A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002) 116 Harv. L R 19 at p 66)"** where he said;

"...the aim of interpretation in law is to realize the purpose of the law; the aim in interpreting a legal text (such as a constitution or a statute) is to realize the purpose for which the text was designed. Law is thus a tool designed to realize a social goal."

Recent iterations of this Court have gravitated towards what is sometimes referred to as the 'modern purposive approach' to constitutional interpretation. This is also reflected in **Section 10(4) of the Interpretation Act, 2009 (Act 792)**, which states as follows;

> *"(4) Without prejudice to any other provision of this section, a Court shall construe or interpret a provision of the Constitution or any other law in a manner*
>
> *(a) that promotes the rule of law and the values of good governance,*
>
> *(b) that advances human rights and fundamental freedoms,*
>
> *(c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and*
>
> *(d) that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana."*

In the case of **National Media Commission v Attorney-General [2000] SCGLR 1 at page 11,** Acquah JSC (as he then was) stated thus;

> "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 to bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers and 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 parts 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."

In the case of **The Attorney General Vrs Balkan Energy Ghana Ltd and Others (J6 1 of 2012) [2012] GHASC 35 (16 May 2012);** Dr. Date Bah JSC stated as follows;

'*One of the values of the 1992 Constitution is the promotion of probity and accountability. In the Proposals for a Draft Constitution of Ghana prepared by the Committee of Experts appointed in 1992 under PNDC Law 252 to draft the proposals that were placed before the Consultative Assembly that formulated the 1992 Constitution, the Committee makes the following important point in the General Introduction to its Proposals (paragraph 6 on p. 5):*

> *"With respect to the developments within the past 10 years, the guiding principle was that the essential attributes of institutions which are compatible with a constitutional order should be retained, subject to modifications as are appropriate. The committee feels that in this regard accent should be on substance not form. Thus, for example, the social or political values of accountability and probity and fidelity to the public interest should survive the inauguration of the constitution…."*

This passage shows that the values of probity and accountability were among those that informed the Committee's decision-making in the framing of its proposals.'

In the case of **Okudzeto Ablakwa & Another v Attorney-General & Obetsebi Lamptey [2011] 2 SCGLR 986** this Court, speaking through Her Ladyship Adinyira JSC stated as follows;

"Article 2 (1) of the 1992 Constitution imposes on the Supreme Court the duty to measure the actions of both the legislature and the executive against the provision of the Constitution. This includes the duty to ensure that no public officer conduct himself in such a manner as to be in clear breach of the provisions of the Constitution. It is by actions of this nature that gives reality to enforcing the constitution by compelling its observance and ensuring probity, accountability and good governance."

In comparison, even though not binding on this Court, we may draw inspiration from the Supreme Court of the United States in the case of **MCCULLOCH v STATE OF MARYLAND, 17 U.S. 316 (1819)** wherein the then Chief Justice Marshall stated as follows;

"We admit as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. ***Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional****." (emphasis supplied)*

Article 28(2) of the Single Convention reads as follows;

Control on Cannabis

This Convention shall not apply to the cultivation of the cannabis plant ***exclusively for industrial purposes (fibre and seed)*** *or horticultural purposes. (emphasis added)*

Section 43 of Act 1019 entitled Special Provision Relating to Cannabis which is at the heart of this suit, reads as follows;

> *(1) Despite sections 39 to 42, the Minister, on the recommendation of the Commission, may grant a licence for the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis for* ***industrial purposes for obtaining fibre or seed or for medicinal purposes****.*
>
> *(2) For the avoidance of doubt, a licence granted under subsection (1) shall not be for the cultivation of cannabis for recreational use.*

It would at this point, also be a worthwhile exercise to reiterate the law on the independence of Parliament as expounded on by this Court in the recent case of **Justice Abdulai v. The Attorney General J1/07/2022 (9th March, 2022)** as follows;

> *"...no arm of Government or agency of the State, including Parliament, is a law unto itself because, without exception, everyone and everything in Ghana is subject to the Constitution. As a result, an allegation that Parliament has acted and/or is acting in a manner that is inconsistent with, in contravention of and/or ultra vires to the Constitution, will render Parliament, the actions, orders, rules or procedures in issue, amenable to the jurisdiction of this Court."*

We cannot overemphasize our view that even though Parliament is independent, the Constitution is supreme. Consequently, Parliament, like every organ of the State, including the Judiciary is subject to the Constitution.

Accordingly, the clear terms and spirit of Article 2 entrenches the traditional role of the Judiciary, as the final arbiter of what a statute means, and how it should be

interpreted. Parliamentary Acts are presumed to be valid, and enacted in accordance with the basic law, the Constitution. However, this presumption is rebuttable and not conclusive. Therefore, absolute deference to parliamentary acts and enactments should not be the standard of the judiciary. In our view, it will be a serious dereliction of the duty of this Court to ignore a clear violation of the spirit of the Constitution.

Acts of Parliament, such as Act 1019, are therefore subject to judicial review and not immune from the scrutiny of this Court. Otherwise, both the letter and spirit of Article 2(1) would run a risk of being compromised. We must emphasize that the concept of a sovereign, and for that matter supreme, Parliament such as the English Parliament, which enjoys unfettered discretion in the creation of laws, known as the enrolled bills doctrine, is inapplicable under our Constitution. Accordingly, under our Constitution, Parliament is independent and not supreme. It is the Constitution that is supreme and consequently, this Court as the watchdog and/referee over constitutional compliance has the jurisdiction to interrogate and adjudicate any allegation of a breach of the Constitution by a legislative process resorted to by Parliament. (See the cases of **Edinburgh & Dalkeith Railway Company vrs. Wauchop 8 E.R. 279 (1842) 8 Cl & Fin 710, Marshall Field & Co v. Clark 143 US 649 (1892), United States vrs. Thomas (7th Cir. 1986) United States v Farmer 583 F. 3d 131, 151-152 2nd Cir. NY 2009) Republic v. High Court (Fast Track Division) Accra; Ex Parte National Lottery Authority (Ghana Lotto Operators Association & Others, Interested Parties) [2009] 1 SCGLR 737, Akainyah v. The Republic [1968] GLR 330** and **Centre for Juvenile Delinquency v. Ghana Revenue Authority & the Attorney General 2017-2020 1 SCGLR 567.**)

WHETHER OR NOT AN ISSUE FOR INTERPRETATION ARISES

In the case of **Gbedemah v Awoonor-Williams (1969) 2 G & G 438**, this Court held that unless there is ambiguity in a constitutional provision that has been challenged by a Plaintiff in this Court, this Court shall not go on the errand of engaging in the assiduous work of constitutional interpretation. In the second holding, this Court held as follows;

> *"Unless the word of a statute is imprecise and unambiguous, it is not the province of a court to scan their wisdom or policy by applying the rule and presumptions of construction. The contention that the respondent's action raised an issue of interpretation of Article71 (2) (b) (ii) and (d) was untenable because the provisions of that Article were plain and were to be expounded in their ordinary and natural sense."*

That case is the constitutional antecedent of the **James Kwabena Bomfeh v. Attorney General [2019] J1/14/2017**, wherein Adinyira JSC reminded us that, "*The real test is whether the words in the constitutional provisions sought to be interpreted are ambiguous, imprecise, and unclear and cannot be applied unless interpreted."*

While some issues of constitutional application may arise from the reliefs sought by the Plaintiff, this case is not one in which the Plaintiff seeks an interpretation of the Constitution, properly speaking. Rather, the Plaintiff is essentially seeking a declaration that one particular section, section 43, of the Narcotics Control Commission Act, Act 1019 was enacted in excess of Parliament's legislative powers as conferred by the Constitution. In other words, all the reliefs of the Plaintiff seek the enforcement of the Constitution and not its interpretation.

Firstly, the Plaintiff contends that the *manner* in which section 43 of Act 1019 was passed is procedurally inconsistent with, and in contravention of the mode of

exercising legislative power as prescribed by Article 106 of the Constitution, and therefore seeks a declaration to that effect.

Secondly, the Plaintiff seeks a declaration that the effect of section 43 of Act 1019 amounts to a breach of the Constitution on the grounds that on a proper construction of the international obligations under Treaties to which Ghana is a party as part of the Constitution, Parliament has enacted a domestic law which is not in congruence with the Treaty obligation, and Parliament is in breach of the constitutional obligation to promote respect for international law contained in Article 40.

Thirdly, the Plaintiff asserts that **section 43 of Act 1019** amounts to a breach of the constitutional imperative for the State to seek the wellbeing of its citizens, to protect the national environment, and safeguard the health, safety, and wellbeing of its citizens as enjoined by Articles 35 and 36 of the Constitution and seeks a declaration to that effect.

Fourthly, the Plaintiff urges on this Court that **section 43 of Act 1019** is inconsistent with the letter, intent and purpose of the entirety of Act 1019.

It is easy to see why we will respectfully decline the invitation by the Plaintiff per the fourth relief sought, as it neither has to do with the interpretation nor the enforcement of the Constitution and therefore falls outside the remit of the original jurisdiction of this Court, which the Plaintiff has invoked. Accordingly, this relief does not show up in any iteration in the memorandum of issues filed by the parties.

Similarly, the questions entailed in the first two issues agreed by the parties in their joint memorandum of issues do not, in our opinion, properly invoke our original jurisdiction under **Articles 2 and 130 of the 1992 Constitution.** Consequently,

we will not be addressing these issues in this opinion. Our attention is therefore, to address questions arising from issues three to seven.

WHETHER OR NOT THE CONVENTION AGAINST ILLICIT TRAFFIC OF NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES AND THE SINGLE CONVENTION ON NARCOTICS PROHIBIT THE CULTIVATION OF ANY STRAIN OF CANNABIS AND THE PRODUCTION OF ANY EXTRACT OR PRODUCT FROM CANNABIS

The memorandum of issues submitted by the parties first raises the issue of whether Ghana as a party to the international treaties highlighted above is obliged to prevent the production of any cannabis or cannabis related product at all, under the terms of the treaties.

Article 28(2) of the Single Convention is reproduced below for ease of reference:

> ***"Control on Cannabis***
>
> *This Convention* ***shall not apply to the cultivation of the cannabis plant exclusively for industrial purposes (fibre and seed)*** *or horticultural purposes". (emphasis added)*

Article 3(1)(a)(i) of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances reads as follows;

> *Article 3. Offences and sanctions*
>
> *1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:*

(a) (i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;"

From the above, it is apparent that there is no blanket prohibition on the production of cannabis or cannabis related products in the Single Convention. What there is, is a control of the substance. Indeed, article 28 is named *Control on Cannabis*. The 1978 United Nations Convention merely imposes a requirement on party states to make domestic laws which comply with the Single Convention.

To the extent that the domestic regulation remains within the boundaries of **Article 28(2) of the Single Convention**, we find that there is no violation of Ghana's obligations under the international treaty by the enactment of Act 1019 or Section 43 thereof.

THE JUSTICIABILITY OF THE DIRECTIVE PRINCIPLES OF STATE POLICY (CHAPTER 6 OF THE 1992 CONSTITUTION)

Even if it were found that **Section 43 of Act 1019** is in breach of our international treaty regulations, that would not be a matter mandating the exercise of our jurisdiction, unless there was an issue of constitutional enforcement or interpretation. This is what the Plaintiff has attempted to raise. According to the Plaintiff, Section 43 is in breach of our international treaty obligations and for that matter, a breach of Article 40 of the 1992 Constitution which implores the State to promote respect for international law, treaty obligations and the resolution of international disputes by peaceful means.

The first question that arises in that case, is whether Article 40, being one of the directive principles of state policy, is justiciable. While there has been an evolution away from the position that directive principles in general are non-justiciable, to the current position of the law that directive principles are prima facie justiciable, it must be established that Article 40 in and of itself is justiciable.

Even if Article 40 is justiciable, there remains the question of whether a perceived breach of an international obligation amounts to a breach of Article 40. In other words, does the fact that Ghana has breached an international treaty obligation mean that the state has breached its obligations to "**promote respect for international treaty obligations"**? The view of this court is that this is not the case. In any case, any and every breach of an international treaty obligation cannot be said to be the basis for an action against the state for failing in general to promote respect for international law. For this reason, this ground of this action fails and is dismissed accordingly.

WHETHER OR NOT PARLIAMENT VIOLATED ARTICLE 106 IN PASSING ACT 1019 OR SECTION 43 THEREOF.

Article 106(2) requires a bill not intended for the settlement of financial matters to be accompanied with an explanatory memorandum which sets out in detail, the policy and principles of the Bill, defects in the existing law, remedies in the new bill which propose to deal with those defects, and requires the bill to be published in the Gazette at least fourteen days before the date of its introduction in Parliament.

The Plaintiff says that the explanatory memorandum that was laid before Parliament did not sufficiently lay out the policy change that was being brought by the law, specifically by section 43. The Plaintiff also says that this led to the policy change not being debated enough before its passage into law. The Plaintiff also asserts that the

amendments to the new law which allowed for the growth of cannabis with less than 0.3% tetrahydrocannabinol (THC) level were belatedly inserted and there was no subsequent report made to parliament as required by Article 106(4),(5) and (6). The Plaintiff submits that this conduct is also in violation of the standing orders of Parliament as well as the letter and the spirit of the 1992 Constitution.

This is the argument of the Plaintiff that finds the most favour with this Court. Parliament, by Article 106(5) & (6) is mandated to have a bill accompanied by an explanatory memorandum as well as the committee report by the appropriate committee *and* have a full debate on a bill before passing or rejecting it.

The Defendant in his Statement of Case filed in this Court states in Paragraph 33 which relevant part can be found on page 17 of his Statement of Case, that the bill was taken through the first reading which was accompanied by "*extensive debates on all provisions therein that was [sic] gazetted together with its accompanying Report and Memorandum."* If this was done for all the provisions as stated by the Defendant above, why was there no debate had for Section 43?

Significantly, the Respondent agrees that the presumption that laws passed by Parliament are valid is a rebuttable one, even though he contends the law places the burden of establishing the constitutional propriety or otherwise of the procedure used to enact an act of parliament or other enactment at the feet of a plaintiff seeking to challenge the validity of that enactment. From the evidence before us, could it be said that the Plaintiff has successfully rebutted that presumption? That depends on the answer to a number of questions set out below.

Could it be said that the explanatory memorandum placed before Parliament set out in detail the defects of the existing law that required the policy change brought about by Section 43? Could it be said that the policies and principles of Section 43 were explained before it was passed into law? Could it be said that the manner in which

the provisions set out by Section 43 would remedy the defects of the existing law were detailed in the memorandum to the law? Was the public, the sovereign, given notice of this impending radical policy change, and the opportunity to relay comments, concerns, even queries to their members of parliament on the provision? In the end, was there debate/deliberations in Parliament as intended by the framers of the Constitution on the amendment before it metamorphosed into law? Having regard to the explanatory memorandum, did the Ghanaian people know that they were being ushered by their elected representatives into a narcotic control regime that will license the commercial cultivation of cannabis "*which has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fibre or seed or for medicinal purposes*"? Can the mode of passage resorted to by Parliament, be said to be in accordance with the letter and the spirit of the Constitution? We think not.

From the evidence submitted by the Plaintiff herein, there was no debate of this crucial amendment. The Defendant does not even assert that there was debate over the amendment which was introduced at about 5:50pm and short of Presidential assent, had become law by 6:02pm. Ironically, the Respondent contends that every provision of the bill was debated. However, when the Plaintiff positively asserts that clause 43 of the Bill was not debated in any shape or form, the Respondent conveniently fails to contradict such a direct, specific and material allegation. There was also no report which was put to Parliament specifically on what the effects of such a critical change in the law regarding the cultivation of cannabis would be.

In particular, the lack of debate on section 43 of Act 1019 amounts to not only a direct violation of the letter of Article 106 of the Constitution, but also a violation of the spirit of the law. There was conspicuously, no debate over such a critical shift in policy by Parliament. Needless to say, this conduct and mode of lawmaking defeats transparency and accountability enjoined by the Constitution. The dictates of constitutional fidelity, in our view, require that such a shift in policy, which is

intended to result in a novel exception, ought to be debated to satisfy the purpose of Article 106. Failing this, the process adopted by Parliament offends the letter and the spirit of the Constitution. This conclusion does not, in any way, derogate from Parliament's power and independence in the conduct of its own proceedings but in accordance with our supreme Constitution.

In the premises, the mode of the introduction of section 43 of Act 1019 violates the letter and spirit of the Constitution. Accordingly, section 43 is hereby struck down as unconstitutional.

E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)

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

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

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

DISSENTING OPINION

AMADU JSC:-

INTRODUCTION

(1) My Lords, the suit before us invokes the original jurisdiction of this Court for reliefs *inter alia* to strike down as unconstitutional, Section 43 of the Narcotics

Control Commission Act, 2020 (Act 1019). The crux of the Plaintiff's case is set out in paragraph 4 of her statement of case where it is submitted as follows:-

> ***"4. Respectfully, the Plaintiff's case seeks an enforcement of The Constitutional requirements for validity in the passing of legislation by Parliament, as well as the enforcement of the requirements that all laws in Ghana conform with the directions of the 1992 Constitution. The Plaintiff makes the case that in inserting Section 43 into Act 1019, the actions of Parliament were done in excess of the powers conferred on Parliament by Article 160, and in violation of Articles 160 and 40 of the Constitution. Further, Section 43 of Act 1019 is inconsistent with the directions of Articles 35 and 36 of the 1992 Constitution."***

(2) The grounds on which the Plaintiff's action is anchored are as follows:-

"i. Section 43 of Act 1019 was passed in contravention of Articles 106(2)(a) and (b), 106(5) and 106 (6) of the 1992 Constitution.

ii. Section 43 of Act 1019 is null and void because it is inconsistent with the provisions of Article 40(c) of the 1992 Constitution.

*iii. Section 43 of Act 1019 is null and void because it is inconsistent with the **intent**, **purpose** and **directives** contained in Articles 35(2) and 36(9) and 36(10) of the 1992 Constitution.*

*iv. Section 43 of Act 1019 is null and void because it is in contravention of the letter, intent, and **purpose of all other provisions of Act 1019** and in particular Sections 2(c), 3, 38, 39, 41, 42, 45, 48, 53, 54, 55, 93 and the sixth schedule of the said Act".*

THE SCOPE OF THE ORIGINAL JURISDICTION OF THE COURT

(3) In the case of **Danso Vs. Daaduam II & Anor. [2013-2014] SCGLR 1570** the Court, per Anin Yeboah JSC *(as he then was)* upheld a preliminary objection challenging the jurisdiction of the Court to determine the suit. The learned Justice now Chief Justice, noted *(as stated in page 1575 of the report)* as follows:- ***"The Plaintiff has invoked our original jurisdiction for the reliefs stated above. It is therefore the duty of the Plaintiff to demonstrate to this court that our jurisdiction has been properly invoked. This, he can do by showing as per his writ and reliefs sought that his case presented to this court raises a real or genuine issue for interpretation or enforcement."***

(4) Reference is also made to the case of **David Kwadzo Ametefe Vs. Attorney-General & Martin Alamisi Amidu, Writ No.J1/3/2017,** dated the 1st day of February, 2017. In that case the Court held as follows:- ***"In determining whether or not our original jurisdiction has been properly invoked we need to look at the Plaintiff's writ before us,…. However, in so doing we must focus on the preliminary objection, not the substance or merits of the writ. For this purpose we need only to look at the subject matter of the writ, asking ourselves 'what is it that the Plaintiff is asking the Court to do?' In other words what is the nature of the reliefs claimed by the Plaintiff?***

(5) The effect of the authorities just cited is that the Court must interrogate the reliefs claimed by a party who invokes the original jurisdiction of the Court to determine whether the original jurisdiction of the Court is properly invoked by the Plaintiff. This position is reinforced by the decision of the Court in the case of **Association of Finance Houses Vs. Bank of Ghana & Attorney-General, Writ No.J1/04/2021 dated the 28th of July 2021.** In that case my brother

Kulendi JSC held as follows: ***"...when a Plaintiff invokes the original jurisdiction of this Court in a matter of constitutional interpretation, while he is required by law to submit a statement of case to support his action, he has no burden to establish one way or another what the correct constitutional interpretation of a provision in the constitution is. Even if he is unable to convince the Court of his position on the constitutional provision, the Court is constitutionally mandated to examine the provision comprehensively and come out with a conclusive interpretation of the law which itself will become law.***

As a result, even though I am of the belief that the Plaintiff has been unable to establish its case, this Court remains under an obligation to pronounce on the issue of interpretation as well as perform its constitutional duty to enforce the constitution."

(6) In the light of the authorities just examined, the Court has an obligation to scrutinize the reliefs claimed by the Plaintiff in order to convince itself first that the case properly invokes the Court's exclusive original jurisdiction. This enquiry requires the Court to determine whether the Court's jurisdiction is properly invoked under the twin constitutional provisions of Articles 2 clause 1 and 130 clause 1 of the 1992 Constitution relative to the reliefs claimed.

RELIEFS CLAIMED BY THE PLAINTIFF

(7) I prefer to deal with the Plaintiff's fourth relief first. It is quite different from the other reliefs claimed by the Plaintiff. In the Plaintiff's fourth relief, the Plaintiff prays the Court for;

"A declaration that Section 43 of the Narcotics Control Commission Act, 2020 (Act 1019) is null and void, on account of being inconsistent with and direct contradiction of the letter, Intent and purpose of all other

provisions of Act 1019and especially Sections 2(C),3,38,39,41,42,42(4),45,48,53,54,55,93 and the Sixth Schedule."

(8) The nature of the declaration sought in this relief will not draw divergent views on its meaning and effect. Without any equivocation, the declaration prayed for by the Plaintiff is urging the Court to vitiate Section 43 Act 1019 because it is inconsistent with and a direct contradiction of the letter, intent and purpose of certain provisions of Act 1019 itself. These provisions as specified by the Plaintiff are Sections 2(c),3,38,39,41,42,42(4),45,48,53,54,55,93 and the Sixth Schedule of the Act 1019. In my view however, to the extent that this last relief contests the validity of Section 43 of Act 1019 on the ground that it is inconsistent with other provisions of the same Act 1019, ***but not the Constitution***, the Court is not the proper forum for seeking this relief.

(9) The original jurisdiction of the Court is set out in the provisions of Articles 2(1) and 130(1) of the 1992 Constitution as follows:-

"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."

It is necessary to emphasize that this Court's original jurisdiction is clearly tied to acts or omissions of persons, which, it is alleged are in inconsistent with, or in contravention of provisions of the Constitution and no other law. An allegation in the nature of the Plaintiff's fourth relief which invokes the Court's original jurisdiction to declare Section 43 of Act 1019 null and void, on account of it being

inconsistent with and a direct contradiction of the letter, intent and purpose of a statute other than the Constitution falls outside the Court's original jurisdiction.

(10) My position is confirmed by the provisions of Article 130 (1) of the Constitution, which provide thus:-

"130(1) ... the Supreme Court shall have exclusive original jurisdiction in;

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters in excess of the powers conferred on Parliament or any other authority or person by law under this Constitution."

It is therefore clear from a reading of Article 130 also of the Constitution that a matter only falls within the Court's exclusive original jurisdiction where such a matter raises an issue arising from, affecting or relating to the Constitution and not any other law. I refer to the case of **Edusei (No.2) Vs. Attorney-General[1998-99] SCGLR 753** where Kpegah JSC *(as stated in pages of the report 771-772)* as follows:-

"...in determining the scope or extent of our original jurisdiction, we must read together Articles 2(1) and 130(1) of the 1992 Constitution. And reading the two articles together, our exclusive original jurisdiction can be said to be in respect of the following situations:

(i) enforcement of all provisions of the Constitution, except those provisions contained in chapter 5 dealing with Fundamental Human Rights; or

(ii) the Interpretation of any provision of the Constitution; or

(iii) an issue whether an enactment is inconsistent with any provision of the Constitution."

(11) I think this Court is reasonably clear on the circumstances in which the Court's original jurisdiction may be properly invoked. Where the case alleges a violation of statutes of the land other than the Constitution, the Court has no original jurisdiction to determine the consequences for violations of such statutes. This point was made in the context of the acts of the President in the case of **Centre for Public Interest Law Vs. Attorney-General[2012] 2 SCGLR 1261.** In that case, Atuguba JSC *(as stated at page 1273 of the report)* noted in connection with a small issue that required resolution in the case thus; ***"A question arises whether an alleged breach of Act 815 is a matter within the Supreme Court's jurisdiction since it is an ordinary statute, whereas our jurisdiction relates to the provisions of the Constitution…if the President acts in violation of an ordinary statute his act, if done in his official capacity, can be challenged under the statute concerned by suing the Attorney-General. In such a situation the Practice Direction of this court would require the Plaintiff to proceed first in the ordinary courts or else this Court may dismiss his action…"***

(12) In the instant case, the Court's discussion of the reliefs claimed by the Plaintiff will be focused on the second and third reliefs claimed. These also raise another point deserving of preliminary analysis. The reliefs pray the Court for two declarations as follows:-

"ii. A declaration that Section 43 of the Narcotics Control Commission Act 2020, Act 1019, is null and void on account of being inconsistent with, and in contravention of Ghana's obligations under Article 40(c) of the 1992 Constitution.

iii. A declaration that Section 43 of the Narcotics Control Commission Act, Act 1019, is null and void, on account of being inconsistent

with, and in contravention of the intent, purpose and directions of the Directive Principles of State Policy as provided for in Article 35(2), Article 36(9) and Article 36(10).”

These two reliefs are different from the fourth relief just discussed because they require the Court to determine the validity or otherwise of Section 43 of Act 1019 relative to the provisions of Articles 35(2), 36(9), 36(10) and 40(c) of the Constitution rather than, as claimed in the fourth relief, Act 1019 itself.

(13) The two declaratory reliefs however raise a different constitutional issue. The issue arises from the fact that the constitutional provisions on which the said reliefs derive their force, fall under the Directive Principles of State Policy. In the case of **New Patriotic Party Vs. Attorney-General[1993-94]2 GLR 35**the **(31st December Case)** Adade JSC held that the Directive Principles of State Policy are justiciable because the whole of the Constitution is a justiciable document. At pages 66 to 67 of the report, the learned Justice delivered himself as follows:- "*I do not subscribe to the view that chapter 6 of the Constitution, 1992 is not justiciable: it is. First, the Constitution, 1992 as a whole is a justiciable document. If any part is to be non-justiciable, the Constitution, 1992 itself must say so. I have not seen anything in chapter 6 or in the Constitution, 1992 generally, which tells me that chapter 6 is not justiciable. The evidence to establish the non-justiciability must be internal to the Constitution, 1992, not otherwise, for the simple reason that if the proffered proof is external to the Constitution, 1992, it must of necessity conflict with it, and be void and inadmissible: we cannot add words to the Constitution, 1992 in order to change its meaning.*

Secondly, notice that Article 1(2) of the Constitution, 1992 speaks of inconsistency with ***"any provision of this Constitution, 1992";*** *and Article 2(1) of the Constitution, 1992 makes reference to inconsistency with or contravention of* ***"a provision of this Constitution."***

None of these articles expresses an exception in favour of chapter 6. Does it not follow that chapter 6, along with other provisions of the Constitution, is within the contemplation of Articles 1 and 2 of the Constitution, 1992?

(14) Thirdly, the very tenor of chapter 6 of the Constitution, 1992 supports the view that the chapter is justiciable. The opening Article, i.e. 34 of the chapter reads:

"34(1)The Directive Principles of State Policy contained in this Chapter shall guide all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society." *(The emphasis is mine.)*

This is a compendious provision, grouping together a whole host of state institutions and other bodies, discharging different functions. The language employed therefore has been such as caters for these different functions.

(15) The logic behind this reasoning is definitely difficult to fault but it has not found favour with the Court. In the case under reference, Bamford Addo JSC who supported the overall conclusion reached by the majority of the Court, disagreed with the position of Adade JSC that the Directive Principles of State Policy are justiciable. See pages 149-150 of the report.

(16) Then in the case of **New Patriotic Party Vs. Attorney-General (CIBA Case) [1997-98] 1 GLR 378**, the Court appeared to have emphatically settled the position that the Directive Principles of State Policy are not justiciable. At page 392 of the report, Bamford Addo JSC is recorded as referring to the very Article 34(1) relied on by Adade JSC in the**31st December Case,** but held on to her previous position in the said case that the Directive Principles of State Policy are

not justiciable. After referring to the aforesaid constitutional provision, Her Ladyship held *(as stated at page 392)* of the Directive Principles of State Policy *inter alia* as follows:-***". . . they are for the guidance only of all citizens and the persons specified therein, including political parties. In respect of the judiciary they are to guide the courts which should apply them in their interpretative duty."****(My emphasis).*Her Ladyship added *(as stated at page 393 of the report)* thus:-***"In general therefore it is correct to say that the directive principles are principles of state policy which taken together constitute a sort of barometer by which the people can measure the performance of their government. That they provide goals for legislature programmes and a guide for judicial interpretation but are not of and by themselves legally enforceable by any court."*** *(My emphasis).*

(17) In the same *CIBA* case, Ampiah JSC *(as stated page 410)* of the report also held as follows:-***"I do not think it is the intention of the framers of the Constitution, 1992 that these provisions under chapter 6 be enforced by court action. Specific provisions have been made in the body of the Constitution, 1992 for the obedience and enforcement of these rights. Any person who alleges a violation of any of these specific rights is entitled to enforce them by court action. The Directive Principles of State Policy are not justiciable by themselves."***

In my view, it is not necessary to engage in any lengthy discussion of the subject of whether the Directive Principles of State Policy are justiciable or not. A few matters are however apparent from the decisions just discussed to the effect that, the Directive Principles of State Policy is discussed in the context of enforcement, not interpretation of the Constitution. It is for this reason that justiciability is the focus of the decisions just referred to.

(18) This Court has however in many of its decisions made it clear that the enforcement jurisdiction of the Court is just one part of the Court's exclusive original jurisdiction under Articles 2(1) and 130(1) of the Constitution. The Court also has an interpretative jurisdiction under these two Articles of the Constitution. This is the effect of the decision of the Court in **Kor Vs. Attorney-General & Justice Duose [2015-2016] 1 SCGLR 114**. At page 124 of the report, Atuguba JSC a distinguished jurist of the Court is credited with the following statement:- ***"It will be seen that Article 2 of the Constitution is headed "Enforcement of the Constitution" and the ensuing provisions are meant to attain the 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 will 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."*** *(My emphasis)*

(19) The learned Justice maintains this position in the case of **Kan II & Others Vs. Attorney-General & Others [2015-2016] 1 SCGLR 691.** See especially pages 704 to 705 of the report. Significantly, the same position has been restated in the recent unanimous decision of this court in **Writ No. J1/14/2019**, in the case of **Dr. Isaac Annan & Another Vs. Attorney-General dated 31st March 2022,** where I had the privileged opportunity of delivering the opinion of the court. Therefore, to the extent that the Court retains interpretative and enforcement jurisdictions under Articles 2(1) and 130(1) of the Constitution independently, the necessity to pry by way of a meticulous dissection of the question whether or not the Plaintiff's second and

third reliefs are justiciable for purposes of invoking the Court's original jurisdiction, does not arise. This is because, the action is maintainable in the exercise of the Court's interpretative jurisdiction in the exercise of its original jurisdiction. The *CIBA* case makes it clear that the Directive Principles of State Policy are useful in the Court's interpretative exercise under its original jurisdiction.

(20) In any event, to the extent that the Plaintiff seeks to enforce the said constitutional provisions, they must first be interpreted before determining the question as to their enforceability. The Court cannot determine the crucial question whether the said constitutional provisions are justiciable and for that matter enforceable unless the Court determines the correctness or otherwise of the interpretation put on them by the Plaintiff.

(21) The Court does not resign its constitutional obligation to decide the understanding which must be placed on specific constitutional provisions in contention before it in favour of the understanding put on them by a particular party. The Court will therefore assume jurisdiction over the Plaintiff's second and third issues. As this matter requires a pronouncement on the validity of a provision of an Act of Parliament relative to the constitution rather than other statute, it is the Court which has the exclusive original jurisdiction to determine whether the Plaintiff has made out a case to be entitled to the reliefs sought, even if the constitutional provisions involved are those classified under the Directive Principles of State Policy.

(22) I shall not devote any more effort in further explaining this point which has been sufficiently clarified. I now turn to the first relief. The Plaintiff's first relief prays the Court for:-***"A Declaration that Section 43 of the Narcotics Control Commission Act, 2020, Act 1019, is null and void on account of having***

been passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106 (2) (a), (b), 106(5), (6) of the 1992 Constitution." (*My emphasis).*

I need to emphasize the relief in order to make the distinction between this relief and the two previous reliefs just discussed. The Plaintiff requires the Court to strike down Section 43 of Act 1019 as null and void on account of*(in the Plaintiff's view),*Section 43 of the said Act was ***"passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106 (2) (a), (b), 106(5), (6) of the 1992 Constitution".***

(23) The Court's obligation in terms of the prayer couched in the Plaintiff's first relief, is to find out whether or not in passing Section 43 of Act 1019, Parliament complied with the provisions of Articles 106 (2) (a), (b), 106(5), (6) of the 1992 Constitution. It is clear that in this relief, the Plaintiff requires the Court to test the validity of Section 43 of Act 1019 against the constitutional provisions relied on to claim the relief endorsed on the Plaintiff's writ. This is unlike in the case of the fourth relief where the test was required to be performed by reference to the Act itself and not the Constitution. Secondly, unlike in the second and third reliefs where the relevant constitutional provisions fall under the Directive Principles of State Policy, the constitutional provisions on which this relief is grounded, are not.

(24) With reference to the cases earlier cited, it is necessary to take into account the guide laid down by this Court in the **David Kwadzo Ametefe** case (supra), that at this stage, the Court's focus must not be on the substance or merits of the writ. It is the nature of the relief prayed for which determines whether or not the Court's original jurisdiction has been properly invoked. If this is the test, the Plaintiff's first relief has successfully performed an easy path over the substantive

jurisdictional bar and properly invokes the Court's exclusive original jurisdiction to determine it. The 1992 Constitution lays it within the exclusive jurisdictional mandate of the Supreme Court to determine matters which raise the question whether or not an act has been done in accordance with the constitutional provisions which regulate the acts or in the manner in which the Constitution requires that those acts be done. Therefore even if the Plaintiff is unable to convince the Court of a position on the constitutional provision in question, the Court is constitutionally mandated to examine the provision comprehensively and do a conclusive interpretation of the law which itself will become law by judicial precedent.

(25) In this context, as this court held in the case of **Abu Ramadan & Nimako (No.2) Another Vs. Electoral Commission & Attorney-General[2015-2016] 1 SCGLR 125**the Court's first task is to consider whether the Court has jurisdiction to inquire into the plaint herein. As was held in the case just cited, the central question for our decision is ***"regarding the jurisdictional point is whether the action herein raises any question of interpretation or enforcement of the constitution."*** See page 25 of the report. After these preliminary observations, this Court then extensively explained as follows:- ***"In our view, the jurisdiction conferred on the court in its original jurisdiction may relate to either its interpretative or enforcement function as was decided in the case of Sumaila Bielbiel Vs. Dramani [2011] 1 SCGLR 132, 143- 145.See also the case of Noble Kor Vs. Attorney-General, judgment of the Supreme Court in Suit Number JI/16/2015 dated March 10, 2016 to be reported in [2015-2016] SCGLR. For the purpose of the jurisdictional question, the question is whether the matter raises a fair case of interpretation or enforcement and the court at this stage is not required to decide on the merits if the case is weak and or sustainable.*** In the **Sumaila Bielbiel** case (supra), it was observed on the jurisdictional point at page 144 thus: ***"At this point we***

need not inquire into whether or not the case of the plaintiff is weak or one that is likely to succeed. It is sufficient if it raises a case though weak, that might proceed to trial." *(The emphasis is ours)*

(26) The Court further observed *(as stated at page 30 of the report),* as follows:-

"The essence of the jurisdiction conferred on us under the said articles is to enable us intervene in appropriate instances to declare and enforce the law regarding the extent and exercise of power by any person or authority. Although the said constitutional provisions have not used the words "judicial review", their cumulative effect is to confer on us the jurisdiction to declare what the law is and to give effect to it as an essential component of the rule of law. The nature of the court's obligation is to measure acts of the executive and legislative bodies to ensure compliance with the provisions of the constitution, but the jurisdiction does not extend beyond the declaration, enforcement of the constitution and where necessary giving directions and orders that may be necessary to give effect to its decision as contained in Article 2(2) of the constitution. The court's original jurisdiction thus enables it to determine the limits of the exercise of the repository's powers."

(27) Based on the authorities referred to, the Plaintiff's case is properly within the Court's exclusive original jurisdiction to determine. The Attorney-General's own statement of case makes a case in favour of the Plaintiff in terms of the Plaintiff invoking the original jurisdiction of the Court. In paragraph 11 of the Attorney-General's statement of case, it is submitted as follows:-

"11. The Plaintiff seeks an enforcement of the Constitutional requirements for validity in the passing of legislation by Parliament, as well as the enforcement of all requirements that

all laws in Ghana conform with the directions of the Constitution 1992 and avers that in inserting Section 43 into Act 1019, the actions of Parliament were done in excess of the powers conferred on Parliament by Article 106…"

(28) There is no need to spill ink in justifying the fact that the Plaintiff's first three reliefs fall within the original jurisdiction of the Court to determine. The Attorney-General's summary of the Plaintiff's case is that he seeks an enforcement of the Constitution. For good measure, reference is made also to paragraph 26 of the Attorney-General's statement of case. In that paragraph, the Attorney-General submits as follows:-

"26. The Plaintiff prays for the enforcement of Article 106 in relation to the manner in which Section 43 was inserted into Act 1019, and the interpretation of Articles35, 39 and 40 as to the duties of Parliament in enacting provisions such as Section 43 of Act 1019…"

(29) From the Attorney-General's submissions referred to above, there can be no fear of contradiction whatsoever that it is only this Court which can entertain a case of enforcement of the Constitution. Therefore, it is with the function of interpretation which the Attorney-General's statement of case concedes, the Plaintiff seeks before the Court. The Plaintiff's suit is therefore properly before the Court in respect of the first three reliefs endorsed in the writ.

PARLIAMENTARY AUTONOMY.

(30) There is an objection to the jurisdiction of the Court latent in paragraph 34 of the Attorney General's statement of case. It is there submitted as follows:-

"34. Fifthly, the 1st Defendant respectfully submits that this Honourable Court should not accept Plaintiff (sic) attempt to destroy the autonomy of Parliament in regulating its own

procedure and proceedings, exercising legislative power and conducting its business as an arm of Government..."

The above submission is anchored with support from the case of **J. H. Mensah Vs. Attorney-General[1997-98] 1 GLR 227**. The 1st Defendant submits in paragraph 35 of his statement of case that it was in that case held that; ***"the court could not under Article 2 and 130(1) of the Constitution direct Parliament on how to conduct its proceedings".*** The Attorney-General also cites the case of **Tuffuor Vs. Attorney-General [1980] GLR 637** and submits in paragraph 37 of his statement of case as follows:-

"37. It therefore goes without saying that subject to the provisions of the Constitution, the court cannot under Article 2 and 130(1) of the Constitution direct Parliament on how to conduct its proceedings."

(31) The submission made by the Attorney-General on the autonomy of Parliament once again raises an important issue of constitutional law. This is the political question doctrine. The doctrine was discussed in the **J. H. Mensah** case and it has been held that although it was not expressly mentioned in the **Tuffuor** case, it was applied in it. See the judgments of Hayfron-Benjamin JSC in the case of **Ghana Bar Association Vs. Attorney-General[1995-96] GLR** and Kpegah JSC in the case of **Amidu Vs. Attorney-General[2001-2002] SCGLR.** It may not have been necessary to discuss the political doctrine question but it becomes imperative whenever this Court has the opportunity to bring clarity to the question.

(32) The political question is undoubtedly a function of separation of powers and our Constitution recognises the doctrine. It is undoubtedly in herein the 1992 Constitution. The doctrine of separation of powers, as applied in many decisions of the Court does not require that each branch be cocooned within the confines

of their constitutionally created functions. The Court has always made it clear, that the interactive element of the doctrine of separation of powers is evident from the very functions assigned to each branch of government by the Constitution and the manner in which the Constitution has specified how these functions be carried out.

(33) To that extent, following the decision of the case of **Justice Abdulai Vs. Attorney General in Writ No.J1/07/2022 dated 9th March, 2022,** the Attorney-General's submission on the point that the autonomy of Parliament will be undermined by determining the reliefs prayed for by the Plaintiff in this case, is on the current position of the law untenable.

(34) The formulation of the doctrine of separation of powers by Justice Jackson in the case of **Youngstown Sheet & Tube Co Vs. Sawyer**, **343, U.S 579 [1952]** has been repeatedly quoted by decisions of this Court to explain how the doctrine applies under the 1992 Constitution of the Republic of Ghana. In that case Justice Jackson is reported to have stated thus:- ***"While the Constitution diffuses power, the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."*** In line with this statement Wood C.J held in the case of **Brown Vs. Attorney-General** *(Audit Service case)* **[2010] SCGLR 183** as follows:- ***"Separation of powers and the equally salutary principle of checks and balances, with the aim of ensuring that all organs of State, as far as is possible, operate harmoniously within the constitutional framework is a core value underpinning the 1992 Constitution…"***

(35) The decisions of this court on the political question doctrine therefore has been that, where an allegation is properly made under article 2(1)(b) of the

Constitution such an allegation is justiciable in the Supreme Court as the only forum for interrogating the allegation and is answerable by the arm or organ of State against which such an allegation is made. Nothing done under the Constitution which is ultra vires its provisions can be justified under a plea of political immunity and therefore privileged so as to oust the jurisdiction of the Supreme Court as the organ charged with the responsibility to ensure to due compliance with the provisions of the Constitution. This point is acknowledged by all the decisions which touch on the political question doctrine.

(36) In the **Justice Abdulai** decision therefore, my brother Kulendi JSC clearly drew the distinction between invoking the original jurisdiction of the Court for an interpretation to determine whether a particular matter has been constitutionally committed to another branch of government, and that interpretation which is to find out whether that branch of government has exceeded its power in the performance of that duty or omitted to perform that duty. In line with the point as expounded by Kulendi JSC, this Court is required to first examine the Plaintiff's case in the context of the political question by determining the following:-

i. Whether the matters impugned by the Plaintiff in these proceedings are by certain constitutional provisions of the 1992 Constitution, committed to Parliament? if so;

ii. Second, has Parliament exceeded its power in the performance of that duty or omitted to perform that duty as prescribed by the Constitution?

(37) To properly discharge this duty, the Court must first interpret the Constitution and for that matter determine what power the Constitution has conferred on Parliament with respect to the matters placed before the Court. This is exactly what the Plaintiff's first relief requires us to do. It is acknowledged that there are other tests formulated for purposes of deciding the impact of the doctrine on a specific case such as;

i. ***Whether the issue presented to the Court for determination would require the Court to move beyond areas of judicial expertise?***

ii. ***Do prudential considerations counsel against judicial intervention?***

See the case of **New Patriotic Party Vs. Attorney, General** (Supra) the **(31st December case)** where Hayfron-Benjamin JSC referred to in the American cases of **Baker Vs. Carr**,**369, US, 186 [1962]**though did not follow that decision and **Powell Vs. McCormack, 395, US, 486 [1969].**

The Plaintiff's first issue requires the Court to do a check list of the constitutional provisions of Articles 106 (2)(a), (b), 106(5), (6) of the 1992 Constitution, and to tick the boxes to find out whether the procedural steps outlined by the Constitution for law making have been scrupulously followed by Parliament in the circumstances in which Section 43 of Act 1019 was inserted in the said Act, as a provision. This duty is exclusive to this court.

(38) In embarking on this enquiry, it is conceded therefore that it lies solely in the legislative power of the Parliament of the Republic of Ghana as conferred on it by Article 93(2) of the Constitution to decide how Section 43 of the Act is inserted into Act 1019 as a part of the provision. The Court must however, after making this concession determine whether in inserting Section 43 into Act 1019, Parliament exceeded its power or that it circumvented provisions of the constitution, in the manner in which the aforesaid section was inserted into Act 1019. This duty can be discharged by an examination of the legislative process.

THE LEGISLATIVE PROCESS.

(39) The process by which the Parliament of the Republic of Ghana exercises its legislative power is set out in Article 106 of the 1992 Constitution. The article is

headed; ***Mode of exercising legislative power***. The Attorney-General relies heavily on this article in his submissions in paragraph 28 of his statement of case but does not discuss them. The article covers only:-

i. ***The gazetting of the Bill and its explanatory memorandum.***
ii. ***introduction in Parliament of the Bill.***
iii. ***first reading of the Bill in Parliament.***
iv. ***reference of the Bill to the appropriate Committee of Parliament for deliberation.***
v. ***return of the Bill by the Committee to Parliament together with a report on the Bill for second reading.***
vi. ***second reading of the Bill, the explanatory memorandum and the report of the Committee which deliberated on the Bill.***

The rest of the stages which the Bill passes through after the second reading of the Bill is covered only by the Standing Orders of Parliament.

(40) For purposes of law making, it is provided in article 106 clause (1) that the power of Parliament to make laws shall be exercised by Bills passed by Parliament and assented to by the President. To be passed by Parliament for assent by the President however, the Bill, accompanied by an explanatory memorandum must first, in accordance with the provisions of Article 106(2)(b) of the Constitution, be published in the Gazette at least fourteen days before the date of its introduction in Parliament. This is provided for also in Order 119 of the Standing Orders of Parliament. The explanatory memorandum of the Bill must contain the following matters;

i. ***the policy of the Bill.***
ii. ***The principles of the Bill.***
iii. ***the defects of the existing law.***
iv. ***the remedies proposed to deal with those defects and***
v. ***the necessity for its introduction.***

(41) Thus it is only after its publication in the Gazette for a period of fourteen days that in accordance with the provisions of Article 106 clause (2)(a) of the Constitution, the Bill is introduced in Parliament, together with an explanatory memorandum. Order 115 of the Standing Orders of Parliament repeats the requirement of Article 106 clause (2)(a) that the Bill be introduced in Parliament together with an explanatory memorandum. In the case of a Bill affecting the institution of chieftaincy, Article 106 clause (3) requires that it shall not be introduced in Parliament unless it is first referred to the National House of Chiefs. This case however has nothing to do with the provision of article 106(3) of the constitution.

(42) In respect of the explanatory memorandum, the Plaintiff submits as follows:-

13. The explanatory Memorandum to the NCC Bill did not include a statement of change in policy to vary the existing prohibition of cultivation of all forms of cannabis and production of extracts from cannabis, neither was it accompanied by any policy document to introduce into the new law, a right for the Minister to grant lincenses for the cultivation of any type of cannabis in Ghana, and the principles behind the introduction of cultivation of any type of cannabis in Ghana.

14. The NCC Bill and its accompanying Memorandum contained no statement of intention to change Ghana's commitments to its international obligations and Ghana's existing policies prohibiting the production of all forms of cannabis in compliance with the existing domestic law. Indeed, on page viii, the Memorandum states in the second paragraph that 'A person shall not, without lawful authority proof of which lies on that person, cultivate a plant that can be used or consumed as a narcotic drug or from which a narcotic drug can be extracted or processed.

15. Specifically, the explanatory Memorandum to the NCC Bill that was gazetted in accordance with Article 106(2) (b) did not include a statement of policy to allow the minister to grant licenses for the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medical purposes within the jurisdiction."

(43) The submissions quoted above reflect the Plaintiff's compliant that the explanatory memorandum of the Bill did not contain some information which in the Plaintiff's view ought to have formed part of it. In particular, the Plaintiff submits that the explanatory Memorandum to the NCC Bill did not have the following:-

i. a statement of change in policy to vary the existing prohibition of cultivation of all forms of cannabis and production of extracts from cannabis. See paragraph 13.

ii. a policy document to introduce into the new law, a right for the Minister to grant incenses for the cultivation of any type of cannabis in Ghana, and the principles behind the introduction of cultivation of any type of cannabis in Ghana. See paragraph 13.

iii. a statement of intention to change Ghana's commitments to its international obligations and Ghana's existing policies prohibiting the production of all forms of cannabis in compliance with the existing domestic law.

iv. a statement of policy to allow the minister to grant licenses for the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medical purposes within the jurisdiction.

(44) On the face of the above submissions they appear persuasive, unless examined in substance. The reason for these submissions is the provision in Section 43 of Act 1019 which constitutional validity is being challenged in the instant proceedings. The section allows the cultivation of a specie of cannabis subject to obtaining a licence from the Minister. In paragraph 14 of the Plaintiff's statement of case however, it is submitted that in page viii of the Memorandum to the Bill, it was stated in its second paragraph that; ***"A person shall not, without lawful authority proof of which lies on that person, cultivate a plant that can be used or consumed as a narcotic drug or from which a narcotic drug can be extracted or processed".***

(45) If the memorandum to the Bill specifically states that lawful authority is required to cultivate a plant that can be used as a narcotic drug, it is difficult to support the argument that section 43 introduced into the Bill which is to the effect that the Minister may licence such cultivation is not contemplated or mentioned in that memorandum. It is in this context that I am unable to agree with the Plaintiff's submission in paragraph 15 of the memorandum where she contends thus;

> ***"15. Specifically, the explanatory Memorandum to the NCC Bill that was gazetted in accordance with Article 106(2) (b) did not include a statement of policy to allow the minister to grant licenses for the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medical purposes within the jurisdiction."***

(46) Further, if the memorandum to the Bill specifically says that lawful authority is required to cultivate a plant that can used as a narcotic drug, why must it also require that the minister may grant licenses for the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medical purposes

in order for the memorandum to the Bill to be consistent with the provisions of Article 106(2) (b) of the Constitution? The Plaintiff's complaint as I diagnose from the submissions quoted above is that the memorandum is not as detailed as she expected, nor stated in the language she prefers. This is not persuasive to vitiate Section 43 of Act 1019 at this stage. The Plaintiff faults Section 43 of the Act on other grounds outlining the subsequent steps resulting in its inclusion in the Act.

(47) The Plaintiff appears to be well versed in this legislative procedure required for purposes of introducing a Bill in Parliament. In respect of publication in the Gazette, the Plaintiff submits in paragraph 12 of her statement of case that;

"12. The explanatory Memorandum to the NCC Bill … was published in the Gazette in compliance with Article 106(2) (a) and (b) …" In the same paragraph 12 of her statement of case the Plaintiff submits that the Narcotic Control Commission was to be established with the following objectives:- ***". . . to provide for offences related to narcotics. The objects of the Commission were to ensure public safety by controlling and eliminating traffic in prohibited narcotic drugs and by taking measures to prevent the illicit use of precursors, and to develop, in consultation with other public agencies and civil society organization, alternative means of livelihood for farmers who cultivated illicit narcotic plants."***

(48) In my view, the highlighted part of the Plaintiff's submission states with reasonable clarity that, the Bill contemplated the cultivation of **illicit narcotic plants** by farmers by recommending that the farmers who cultivate them be provided with **alternative means of livelihood**. Be that as it may, the Plaintiff states in paragraph 11 of her statement of case that after publication in the Gazette, the Bill was introduced to Parliament by the Minister of Interior

accompanied by a Report of the Committee on Defence and Interior in 2019. She submits thus;

11. The Narcotics Control Commission Bill 2019(NCC Bill) was Presented to Parliament by the Minister of Interior accompanied by a Report of the Committee on Defence and Interior in 2019. The NCC Bill is attached hereto as Exhibit "EMB" and the Report of the Committee on Defence and Interior in 2019 is attached hereto as Exhibit EM.C".

(49) The impression one gets from reading paragraph 11 of the Plaintiff's submission is that the Bill introduced by the Minister in Parliament, did not have attached to it, the explanatory memorandum required by the provisions of Article 106 clause (2) of the Constitution. This would have raised prima facie a constitutional breach because Article 106 clause (2) requires that the Bill be introduced in Parliament together with the explanatory memorandum. This initial impression is made manifest by the fact that in her submissions she makes reference to the explanatory memorandum in discussing the legislative process of Parliament. It would therefore appear from the Plaintiff's submissions in her statement of case that, she admits that the legislative process leading to the passing and assent of the President to Act 1019 was complied with. The Plaintiff's case however is specific to the provisions of Section 43 only of Act 1019 and not the whole Act.

(50) In the Plaintiff's first relief, she prays the Court to declare that Section 43 of the Narcotics Control Commission Act, 2020, Act 1019, is null and void because it was passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106 (2) (a) and (b) of the 1992 Constitution. This is because, the Plaintiff, appears to acknowledge that in passing Act 1019 by Parliament, the Bill resulting in Act 1019 was published in the Gazette and introduced in Parliament as ***The***

Narcotics Control Commission Bill2019 (NCC Bill) before it was introduced. The Plaintiff's case is however quite technical.

(51) The Plaintiff's case in this regard is that Section 43 of the Act was not part of the Bill which was published in the Gazette and introduced as required by the provisions article 106(2)(a) and (b) of the Constitution. She therefore submits in paragraph 10 of her statement of case as follows:-

"10. VIOLATION OF ARTICLES106(2) (a), b:

Article 106(2) (a) of the 1992 Constitution enjoins to be attached to a Bill to be introduced in Parliament, an explanatory memorandum setting out in detail the policy and principles of a new bill, the defects of the existing law, the remedies proposed to deal with those defects and the necessity for its introduction. This explanatory memorandum with these details ought to be published in the gazette at least fourteen days before the date of the introduction of the Bill in parliament."

(52) It is on the basis of the Plaintiff's observation stated in paragraph 10 of her statement of case quoted above, that the Plaintiff submits in paragraphs 16-18 of her statement of case as follows:-

16. Contrary to the requirement of, and in contravention of Articles 106(2)(a) and (b) of the 1992 Constitution, Parliament introduced into the Narcotics Control Commission Bill, before its passage into the Narcotics Control Commission Act, 2020 Act 1019, a new clause titled 'Special Provision relating to Cannabis' in Section 43 of Act 1019.This 'Special provision ' purports to grant the Minister a right to license the cultivation of an allegedly special strain of cannabis within the jurisdiction.

17. The offending Section 43reads:43(1) Despite Sections 39 to 42, The Minister, on the recommendation of the Commission, may grant a license for the cultivation of cannabis which has not more than 0.3% THC

content on a dry weight basis for industrial purposes for obtaining fiber or seed or for medical purposes(2). For the avoidance of doubt, a license granted under Subsection (1) shall not be for the cultivation of cannabis for recreational use.

18. It is the case of the Plaintiff that the failure to include in or with the explanatory memorandum a policy document that informs the citizenry about the intention to change the policy in the existing law that prohibits the production in the jurisdiction of all forms of cannabis, and to change Ghana's commitment under international treaties, by giving the Minister a right to license the cultivation and production of the prohibited narcotic of cannabis, constituted a blatant violation of the requirement of Article 106(2) (a) and (b) of the 1992 Constitution. Parliament also exceeded and acted ultra vires its duties when passing laws that introduced changes to existing law."

(53) There is a suggestion in the Plaintiff's submission above quoted that, Parliament can only pass that which is contained in the Bill as published in the Gazette and introduced thereafter into Parliament. The Plaintiff's view is that Parliament has no authority to introduce changes to the Bill especially as the Plaintiff has observed, changes which involve a policy change in the existing law since the explanatory memorandum of the Bill gazetted and introduced in Parliament must contain;

i. the policy of the Bill.

ii. the principles of the Bill.

iii. the defects of the existing law.

iv. the remedies proposed to deal with those defects and

v. the necessity for its introduction.

(54) The Plaintiff's submission is that if the Bill intended any policy changes especially in the existing law, the explanatory memorandum must address it in order for Parliament to consider it in its deliberations on the Bill. As already observed the Plaintiff's grievance is that there was no hint of a provision to allow the Minister power to licence the cultivation of some specie of cannabis. The Plaintiff therefore contends on that Parliament has no power in the course of the legislative process, to introduce changes to the Bill introduced in Parliament. To determine this point raised by the Plaintiff, it is necessary to interrogate the process through which a Bill passes before it becomes law.

(55) When a Bill is introduced in Parliament, the next thing that occurs as provided for in clause (4) of Article 106, is for it to be read the first time. The first reading of the Bill is done by the Speaker calling successively each Member or Minister in whose name a Bill stands on the Order Paper. The Member or Minister so called rises in his place and bows to the Chair, whereupon the Clerk reads aloud the long Title of the Bill. The Bill is considered as read the First Time after this process.*(See Order 122 of the Standing Orders of Parliament).*After its first reading, Article 106 clause (4) requires that the Bill be referred to the appropriate Committee of Parliament which shall examine the Bill in detail and make such inquiries in relation to the Bill as the Committee deems expedient or necessary. This constitutional procedure is also provided in Standing Order 124 of the Standing Orders of Parliament.

(56) After deliberation by the appropriate Committee, the Committee sends a report to Parliament, which, together with the explanatory memorandum to the Bill, forms the basis for a full debate on the Bill for its passage, ***(with or without amendments)***, or its rejection by Parliament. This is provided for in article 106 clause (5) and (6) and also provided for in Order 125 of the Standing Orders of Parliament.

(57) The Plaintiff's first relief prays the Court to declare Section 43 of Act 1019 null and void on account also of it having been passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106 clause (5) and (6) of the 1992 Constitution. The Plaintiff's contention is that Section 43 of Act 1019 was not part of the parliamentary legislative process stipulated in the provisions not only of Article 106 clause (2)(a) and (b) but also clauses (5) and (6) of the same article. The provision in clause (6) of Article 106 is significant. It provides thus:-

> ***"(6) The report of the Committee, together with the explanatory memorandum to the Bill, shall form the basis for a full debate on the Bill for its passage, with or without amendments, or its rejection by Parliament."***

When the Bill is returned to Parliament after it has been deliberated upon by the appropriate Committee, the Committee writes a report on the Bill. This report, together with the explanatory memorandum to the Bill, forms the basis for a ***full debate on the Bill for its passage***.

(58) It is provided by Order 126 of the Standing Orders of Parliament that on a motion made that a Bill be read a Second Time, a full debate arises **on the principle of the Bill** on the basis of the explanatory memorandum **and the report from the committee**. It is important to note that the report of the committee to which the Bill was referred did not form part of the Gazette notification nor first introduction of the Bill in Parliament. There appears however to be no restriction on what this report may contain relative to the explanatory memorandum which was gazetted and introduced in Parliament before it was referred to the Committee.

(59) The debate contemplated by Article 106(6) yields one of three results, which are, the passage of the Bill,

i. with amendments, or

ii. without amendments, or

iii. rejection of the Bill.

Clause (6) of Article 106 of the Constitution therefore clearly and reasonably contemplates a situation where the Bill as introduced will suffer changes by way of amendments. The amendment could be based on the explanatory memorandum which was gazetted and introduced in Parliament together with the Bill or **the report of the appropriate committee** which deliberated on the Bill although the report was not gazetted together with the explanatory memorandum and the Bill. The article does not state the extent of amendments that Parliament may make to the Bill such as the introduction of a new Section 43, the subject of the instant suit, nor the deletion of a whole section of the Bill and the consequences thereof.

(60) As already pointed out, the Constitution does not go beyond this point in the legislative process. From the second reading of the Bill in Parliament, Order 127 of the Standing Orders of Parliament provides for a winnowing stage. The Winnowing Process is the stage where if more than twenty (20) amendments are proposed to the Bill, any Member proposing an amendment may appear before the Committee dealing with the subject-matter to defend his amendment(s) proposal, and the Committee shall submits a report to the House on the result of this exercise before the consideration stage of the Bill is taken. The Order states thus;

"Winnowing Process

127. Where after a Bill has been read a second time more than Twenty (20) amendments are proposed to it, any Member proposing an amendment may appear before the Committee dealing with the subject-matter to defend his amendment(s) and

the Committee shall submit a report to the House on the result of this exercise before the consideration stage of the Bill is taken."

(61) It is clear from Order 127 of the Standing Orders of Parliament that regardless of the fact that a particular matter has not been part of a Bill and the explanatory memorandum submitted gazetted, introduced in Parliament, read for the first time, referred to the appropriate Committee for deliberation and the return of the Bill to Parliament for the second reading together with the Committee's report and the explanatory memorandum, Members of Parliament are permitted to introduce amendments to the Bill. Such amendments are provided for in Article 106 clause (6) of the Constitution. This then brings into focus the Plaintiff's submission in paragraph 18 of her statement of case. She submits therein as follows:-

"18. It is the case of the Plaintiff that the failure to include in or with the explanatory memorandum a policy document that informs the citizenry about the intention to change the policy in the existing law that prohibits the production in the jurisdiction of all forms of cannabis, and to change Ghana's commitment under international treaties, by giving the Minister a right to license the cultivation and production of the prohibited narcotic of cannabis, constituted a blatant violation of the requirement of Article 106(2) (a) and (b) of the 1992 Constitution. Parliament also exceeded and acted ultra vires its duties when passing laws that introduced changes to existing law.

The effect of the above submission is that where any matter which was not included in the explanatory memorandum gazetted, as required by the provisions of Article 106(2)(a) and (b) of the 1992 Constitution, its inclusion subsequently by way of an amendment to the Bill for passage by Parliament, constitutes a violation of the requirements of Article 106(2) (a) and (b) of the 1992 Constitution.

(62) The Plaintiff further submits that Parliament is deemed to have exceeded and acted ultra vires its legislative powers if it entertains such subsequent amendment of a Bill to include matters which were not gazetted with the Bill and its explanatory memorandum. If this contention is accurate then the following questions must be answered;

i. How does Parliament exercise its constitutional power to amend the Bill under Article 106 clause (6) of the Constitution during the second reading of the Bill?

ii. If Parliament's power to amend the Bill as submitted by the Plaintiff requires only of Parliament to rubber stamp the Bill and its explanatory memorandum in their pure form as introduced in Parliament during the next stage of second reading of the Bill, then why did the Constitution give Parliament the option of amending the Bill?

iii. If Parliament's power to amend the Bill as submitted by the Plaintiff requires Parliament to rubber stamp the Bill and its explanatory memorandum in their pure form, why did Article 106 clause (6) of the Constitution not close the options to Parliament in the course of the second reading of the Bill, to just passing the bill;

a. without amendments, or

b. its rejection?

iv. Better stated, why did Article 106 clause (6) of the Constitution not just take out the power of Parliament in the course of the second reading of the Bill, to pass the bill with amendments?

v. Further, what then is the relevance of the Committee's report during the deliberative process, if all that is intended is to endorse the Bill and its explanatory memorandum as introduced in Parliament and even then is the deliberative process even necessary at all?

(63) A proper interrogation of the above questions naturally drifts to a position that Parliament has Constitutional has power even at the latter stages of the legislative process to introduce the amendment the subject of the Plaintiff's first relief. The provisions of article 106 clause (2)(a) and (b) of the Constitution which require the Bill and its explanatory memorandum to be gazetted before introduction into Parliament must be read together with the provisions of Article clause (6) of the very Article 106 and Standing Order 127 which permit Parliament in the course of the second reading of the Bill in Parliament to make amendments to the Bill taking into account not just the explanatory memorandum but also the report submitted to Parliament by the appropriate Committee on the Bill. The settled practice is that, the Constitution must be read as a whole. This is a consistent and a trite rule of interpretation. See the case of **Amidu (No.3) Vs. Attorney-General, Waterville Holdings (Bvi) Ltd. & Woyome [2013-2014] 1 SCGLR 606**at page 659, Per Wood CJ.

(64) In paragraph 19 of her statement of case, the Plaintiff submits in respect of article 106 clauses (5) and (11) thus;

"19. VIOLATION OF ARTICLES, Articles 106(5) and (11): After the introduction of the NCC Bill to Parliament, the first reading of the Bill was conducted on Wednesday, 30th October 2019. This reading was accompanied by extensive debates on all provisions in the NCC Bill that was gazetted and its accompanying Report and Memorandum. Parliament never debated nor considered the introduction into the law, this Section 43 that allows the Minister to license the cultivation in Ghana of a type of cannabis which is a strictly prohibited substance under the United nations treaties on narcotics that Ghana is signatory to. The records of the first reading of the Bill that was conducted on Wednesday, 30th

October 2019 is attached to the affidavit in verification of the plaintiff's case as Exhibit "EM.D"

(65) The above submission has to do with the first reading of the Bill in Parliament as required by the provisions of Article 106 clause (5) of the Constitution. Although the submission refers to the provisions of clause (5) of Article 106, the submissions are clearly founded rather on clause (4) of the same article. The reason is that the Plaintiff's submission in paragraph 19 refers to ***"the first reading of the Bill... was conducted on Wednesday, 30th October 2019."***

Clause (5) of Article 106 deals with deliberations of the Committee on the Bill referred to it by Parliament but not the first reading. The Plaintiff's argument in paragraph 19 of her statement of case is that although the first reading of the Bill; ***". . . was accompanied by extensive debates on all provisions in the NCC Bill that was gazetted and its accompanying Report and Memorandum. Parliament never debated nor considered the introduction into the law, this Section 43 that allows the Minister to license the cultivation in Ghana of a type of cannabis..."***

(66) The effect of the above submission is that, even during the first reading of the Bill in Parliament Section 43 of Act 1019 was not discussed. This position is erroneous. The error is evident from Article 106 clause (6) of the Constitution. The reason is that it is only during the second reading of the Bill in Parliament under Article 106 clause (6) that amendments by way of introducing Section 43 of Act 1019 is considered. The procedure in so far as the first reading of the Bill in Parliament is concerned is set out in Order 122 of the Standing Orders of Parliament. It provides thus;

"First reading of bills

122. When the time for presenting Bills arrives Mr. Speaker

shall call successively each Member or Minister in whose name a Bill stands on the Order Paper. The Member or Minister so called shall rise in his place and bow to the Chair, whereupon the Clerk shall read aloud the long Title of the Bill which shall then be considered as read the First Time."

(67) It is not at this stage that the Bill is subject to extensive debate. If the Bill was subjected to extensive debate as submitted by the Plaintiff, then Parliament needlessly exerted itself at this stage. As stated in Order 122, all that is required during the first reading of the Bill is for the Speaker to call on the Member in whose name the Bill stands on the Order Paper, to respond by ***rising from his place and bow to the Chair, whereupon the Clerk reads aloud the long Title of the Bill*** and the Bill is considered as read the First Time after this process.

(68) The Learned authors of the book ***"How Parliament Works",*** **Paul Silk and Rhodri Walters** writing on the first reading of a **Bill in Parliament (4th Edition)** stated at page 117 as follows:-"***The term reading is taken literally in some countries-for example, in Peru each bill was until recently literally read out from beginning to end in the Chamber. In Britain in modern times nothing of this type happens,..."***

There was therefore no need for the extensive debate let alone the introduction of Section 43 of Act 1019 in contention in this suit.

(69) In respect of the second reading, the Plaintiff submits thus;

"20. The NCC Bill was presented for a second consideration on 20th March 2020, in accordance with Article 106 (4). The Bill still did not have accompanying it any change in policy and principles regarding prohibited substances. The Committee's debates on

the second consideration did not include any information and consideration of any change in policy regarding the cultivation of prohibited substances in the country. The records of the second reading of the Bill that was conducted on 20th March 2020 is attached to the affidavit in verification of the Plaintiff's case as Exhibit EM.E."

Here, the Plaintiff's complaint is that there was still no hint during the second reading of the Bill as to the rationale for the introduction of Section 43 of Act 1019.The Plaintiff then proceeds to submit in respect of the second reading of the Bill in paragraphs 21 to 23 of her statement of case as follows;

"21At 5.50pm on 20th March 2020, and at the tail end of the second consideration at Committee level on 20th March 2020, a member of parliament begged to move the house by adding a new clause to the law with the heading 'Special Provision relating to Cannabis 'which allowed the Minister to grant license for the cultivation of cannabis which has not more than '0.3% THC content on a dry weight basis for industrial purposes only for obtaining fibre or seed or for medicinal purpose'. The relevant motion can be found on pages 251 and 252 of the proceedings attached as exhibit FD.E.

22. When clarification was sought as to whether the substance sought to be licensed was not an illicit and prohibited narcotic substance, he was answered that "if it is (THC content) 0.3%, then it is a narcotic but if it is below then it is not. So up to 0.3 per cent, it is still within the narcotic range that is why a license is needed". Following this statement, a cursory and oblique reference was made to the failure to present a policy document for debate on the inclusion of this new clause in the following words:' Honorable Chairman, I was advised about a policy issue

but I told them to tell you. What is the position? Should I put the question?'

23. Without waiting for an answer to this enquiry, the next words recorded are:' Very well. I would put the Question'. Thereafter, a Question was put and this new clause described as 'Special Provision relating to Cannabis' that would allow the cultivation and production of the illicit and prohibited drug of cannabis on license was accepted for insertion in the law."

(70) It is clear from the Plaintiff's submission in paragraphs 21 to 23 of her statement of case that Section 43 of Act 1019 was introduced during the second reading of the Bill. This is permitted by the provisions of Article 106 clause (6) of the Constitution. The article empowers Parliament to pass the Bill **with or without amendments**, after a full debate on the Bill. The article does not provide for the extent of debate. The Plaintiff's case as can be gleaned from paragraphs 22 and 23 of her statement of case is that there was insufficient consideration of the matters which necessitated the amendment which introduced Section 43 of Act 1019. She makes this submission as follows;

"23. ...a cursory and oblique reference was made to the failure to present a policy document for debate on the inclusion of this new clause in the following words:' Honorable Chairman, I was advised about a policy issue but I told them to tell you. What is the position? Should I put the question?'

Without waiting for an answer to this enquiry, the next words recorded are:' Very well. I would put the Question'. Thereafter, a Question was put and this new clause described as 'Special Provision relating to Cannabis' that would allow the cultivation and production of the illicit and prohibited drug of cannabis on license was accepted for insertion in the law."

(71) It may well be true that there was insufficient consideration of the policy reason for introducing Section 43 of Act 1019 but how is this to be measured? The rules which the Court has been presented with by the Plaintiff with which the Court is to measure the constitutionality or otherwise of the introduction of Section 43 of Act 1019into the said Act do not expatiate on the extent of engagement required to introduce such an amendment. It is for this reason that I disagree with the Plaintiff that clause 11 of Article 106 was breached by Parliament when it introduced Section 43 of Act 1019. The relevant part of the aforesaid article provides that;

"(11)... a Bill shall not become law until it has been duly passed and assented to in accordance with the provisions of this Constitution and shall not come into force unless it has been published in the Gazette".

(72) My review of the relevant constitutional provisions and the Standing Orders of Parliament convinces me that Section 43 of the Act was not unconstitutionally introduced during the legislative process. After the winnowing stage, Order 128 of the Standing Orders of Parliament provides for the Consideration Stage of the Bill. This Order has no equivalent in the Constitution nor is it even provided for. It is a matter of parliamentary practice or procedure. The **Justice Abdulai, Tuffuor** and **J. H. Mensah** cases caution that the Court should not interfere with such procedure and practice unless an issue of constitutionality genuinely is raised regarding them. The Plaintiff's case does not raise any such issue of unconstitutionality after the second reading of the NCC Bill. I do not think this Court should grant the Plaintiff's first relief which is accordingly dismissed.

(73) With regard to the second and third reliefs, the Plaintiff appears to have endorsed them as an alternative to the first relief. This is because the second relief claims a declaration that Section 43 of the Narcotics Control Commission

Act 2020, Act 1019, is null and void on account of it being inconsistent with, and in contravention of Ghana's obligations under Article 40(c) of the 1992 Constitution. The effect of this relief is that, granted that Section 43 of Act 1019 was passed in accordance with the provisions of Articles 106 (2)(a) (b), 106(5), (6) of the 1992 Constitution, which the Plaintiff denies, it is nevertheless void because it is inconsistent with, and in contravention of Ghana's obligations under Article 40(c) of the 1992 Constitution.

(74) It is provided in Article 40(c) of the Constitution provides as follows;

"40.International relations

In its dealings with other nations, the Government shall

(a) promote and protect the interests of Ghana;

(b) seek the establishment of a just and equitable international economic and social order;

(c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means;

The opening part of the article reveals an initial problem that the Plaintiff's second relief must deal with. It says that: ***"In its dealings with other nations".*** The relevant question which arises from this statement whether Plaintiff's case raise any issue regarding the Government's ***"dealings with other nations"?*** The answer to this question is obviously in the negative. If the matters raised in this action raise nothing relating to the Government's dealings with other or any nation, then the Court cannot proceed to consider the other provisions which set out the matters which the Court must consider in its dealings with other nations. To appreciate the Plaintiff's understanding of Article 40 in relation to this case, the Court must read some additional words into the said article. This is not permitted in interpretation.

(75) In any event, an examination of other provisions of Article 140 such as in Sub clause(a) provides that, its international relations, Government must ***"promote and protect the interests of Ghana".*** The Plaintiff has not demonstrated how licencing the cultivation of a specie of cannabis undermines the Government's constitutional obligations under this provision. As submitted by the Plaintiff herself in paragraph 12 of her statement of case, Act 1019 provides for the establishment of a Narcotic Control Commission which is tasked among other things with the responsibility of developing; ***"...in consultation with other public agencies and civil society organization, alternative means of livelihood for farmers who cultivated illicit narcotic plants."*** How can it be construed that his does not promote the interest of Ghana.

(76) In paragraph 17 of her statement of case, the Plaintiff submits thus;

> ***"17. The offending Section 43 reads:43 (1) Despite Sections 39 to 42, the Minister, on the recommendation of the Commission, may grant a license for the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fibre or seed or for medical purposes (2) For the avoidance of doubt, a license granted under subsection (1) shall not be for the cultivation of cannabis for recreational use."***

The highlighted part of the Plaintiff's submission above does not require any serious effort to communicate its implications. I am unable to agree that the Government's international obligations to other nations which does not arise in this case, to seek the establishment of a just and equitable international economic and social order and promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means has anything to do with the issue at hand.

(77) In Plaintiff's third relief, as earlier referred to, the Plaintiff seeks a declaration that Section 43 of, Act 1019, is null and void, on account of it being inconsistent with, and in contravention of the intent, purpose and directions of the Directive Principles of State Policy as provided for in Articles 35(2), 36(9) and 36(10) of the Constitution. These provisions deal with the political and economic objectives of the State. Article 35 clause (2) provides as follows:-

"35. Political objectives

(2) The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the well being of all her citizens."

I do not see how this constitutional provision is relevant to the issues raised by the Plaintiff in this case. I shall therefore decline any inclination to discuss it. Article 36 clauses (9) and (10) also provide thus;

"36. Economic objectives

(9) The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek cooperation with other States and bodies for purposes of protecting the wider international environment for mankind.

(10) The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians."

(78) I shall also spare myself the tedium of interrogating these constitutional provisions. From my analysis of the Plaintiff's second and third reliefs, I do not agree with the Plaintiff's submissions in paragraphs 28 and 29 of her statement of case, where she submits as follows;

"28. It is the Plaintiff's case that the failure to include in the

explanatory Memorandum accompanying the NCC Bill, the contents of Section 43, the failure to provide information on the policies and principles that can support the introduction and implementation of the Said Section 43, the lack of debate and open discussions on it prior to its insertions, and the flagrant violation of Ghana's international obligations under international law that Section 43 constitutes, renders the inclusion of the said Section 43 in Act 1019 unconstitutional and null and void.

29. The manner in which the said Section 43 was included in Act 1019, and the content of Section 43, does not only Violate the letter, but also the spirit of the 1992 Constitution which demands that the public is given notice and information on changes to existing law, and the policies and principles behind the introduction of statutory changes."

(79) The changes complained about were reasonably communicated in the parts of the explanatory memorandum quoted by the Plaintiff herself. In any event as I have already pointed out the amendment and for that matter the insertion of Section 43 into Act 1019 was not out of accord with the legislative procedure stated in the Constitution. In this regard and to put the issue to rest, I refer to the Plaintiff's submissions in paragraph 26 of her statement of case where is submitted as follows;

"26. The Plaintiff submits that this entire procedure was not only in violation of the Constitutional requirements of Article 106, but was also ultra vires and in gross violation of Parliamentary Standing Orders, especially Orders 115,117,119(1),124,125,126(1),128(1),128(4),129(i) and 133.The procedures adopted to insert Section 43 into Act 1019 constituted an untoward abuse of parliament's legislative

powers. A copy of Parliamentary Standing Orders is attached as Exhibit "EM.G".

30. The manner in which the said Section 43 was included in Act 1019 also violated Parliamentary Standing Orders, especially Order 115,117,124,125,126, and especially 128,129 and 132 attached as Exhibit "EM.G".

(80) In my view, the ratio in the **Justice Abdulai**, and the earlier cases of **J. H. Mensah and Tuffuor Vs. Attorney-General** answer the point made in those paragraphs of the statement of case. The submissions there do not raise any issues of constitutional violations. They merely question parliamentary procedure. My brother Kulendi JSC recently reiterated the position of law in the **Justice Abdulai** case by affirming the position of the Court that in respect of such matters, Parliament is the master of its own business.

(81) Thus, whereas in the subjective view of the Plaintiff the business of parliament resulting in the passage of the bill for presidential assent fell short of the requirement of the provisions of Article 106 of the Constitution, this court's power cannot be successfully invoked to embark on an enquiry on the scope or quality of the law making business of parliament. In my view, it is sufficient for the legislative process to pass the constitutional threshold however brief it may be. For this court to attempt to embark on any such enquiry aforesaid under the guise of a purposive interpretation of the Constitution, it will be provoking a tall and difficult, yet unanswerable political question. And to actualize it will be tantamount to an avoidable interference with the legislative function of parliament in a manner not contemplated by the framers of the Constitution. Whereas I appreciate the clear undertones in the Plaintiff's case with respect to her reservations on the licencing of cultivating cannabis, that may be another

moral or at best legal issue which does not belong to the instant litigation. This is obviously so because the constitutional provisions relied upon to invoke this court's original jurisdiction in the instant suit, are so clear that there can be no reason whatsoever to fault the procedure adopted by Parliament in including Section 43 as part of Act 1019.

(82) While it may well be that there was no extensive debate when the impugned statutory provision was considered, it cannot be the case that the requirement of debate in Parliament demands that each member of Parliament must make a statement on the business of the House at all material times. I am also definitely not in agreement with any suggestion that there must be opposing arguments on each debate before the constitutional threshold for legislation is met.

(83) Therefore, any suggestion that Parliament must always appear to the public to be in disagreement during deliberation on a Bill before a decision is reached, is an improper understanding of the parliamentary process. This is because it is well known that Parliament employs and deploys various ways and means of achieving its legislative obligations. Some of these include caucusing and lobbying. If this is factual as in my view it is, why should the Court strike down a piece of legislation on the ground that it was not extensively debated? Even more so when the court is not in a position to determine whether the debate was rendered unnecessary by reason of extensive caucusing and lobbying before a common position was reached?

(84) In any event, and as already noted, in the legislative process, the relevant committee of Parliament deliberates on the Bill and its accompanying memorandum after its first reading. Subsequently a report is submitted to the House. In the instant case, the Plaintiff did not make available to this court, the Committee report to assist the Court in determining the extent of engagement

which took place at the Committee level before the Bill was returned to Parliament for its second reading. In the light of these observations, I am inclined to apply the cardinal rule of interpretation, the literal rule, with the effect that where the letter of the law is clear, there is no justification whatsoever to have recourse to any other rules of interpretation in order to determine an issue before the Court.

(85) In the case of **Kuenyehia Vs. Archer, [1993-94] 2 GLR 525SC, a** celebrated jurist of our jurisdiction Francois JSC noted at page 562 of the report thus;

> ***"In interpreting the relevant provisions of the Constitution, 1992 we must be very careful to avoid importing into the written document what does not appear therein. For there could be no difficulty, if an extension was intended as a desired result, for it to be explicitly expressed, in precise terms. Rules of construction do not permit a passage which has a clear meaning, to be complicated or obfuscated by any interpretation, however well intentioned."***

(86) The Learned Jurist made the observation quoted above after first acknowledging as follows; ***"Any attempt to construe the various provisions of the Constitution, 1992 relevant to the present inquiry must perforce start with an awareness that a constitutional instrument is a document sui generis to be interpreted according to principles suitable to its peculiar character and not necessarily according to the ordinary rules and presumptions of statutory interpretation. Though basic rules of statutory construction may provide the first steps, they should strictly be kept at the first ruing as servants and never elevated in flight as masters."*** His Lordship proceeded to note at page 563 of the report that:-

"Tedious though it may appear, one must here repeat the well-known canon of construction that the courts will presume that the law giver would use and unmistakable words if the intention were to abrogate a long standing rule of law."

(87) Indeed, His Lordship Francois JSC is credited with a strong affinity to a contextual interpretation of statutes rather than a slavish approach and commitment to text. His Lordship however notes that a departure from the plain words of a statute is justified in obvious circumstances where absurdity will be an unavoidable result. He puts it cryptically by reference to the statement of Lord Simon in **Black-Clawson International Ltd. Vs. Papierwerke Waldof-Aschaffenburg AG [1975] 1 All ER 810** where it is reported at page 847 that;

"It is refusing to follow what is perhaps the most important clue to meaning. It is perversely neglecting the reality, while chasing shadows. As Aneurin Bevin said: ***"Why gaze in the crystal ball when you can read the book? Here the book is already open; it is merely a matter of reading on."***

(88) Consequently, I find nothing in the wording of the constitutional provisions under review in the instant case to justify having to apply some other meaning to those provisions in their interpretation in order to be properly understood without more. In the **Kuenyehia Vs. Archer case** therefore, Francois JSC further noted thus;

"In considering the articles of the constitution and the sections of the Transitional Provisions of the constitution, the interpretation of which gave rise to this controversy, the language therein has to be given its ordinary everyday meaning. If the language is clear and the words used are familiar and are

in use, the courts need not proceed further to define them by judicial interpretation."

(89) Let me place on record my tribute to the wisdom of our forbearers in this court for their counsel of abiding value that this Court must as much as practicable adopt a liberal approach to interpretation of the constitution rather than a narrow legalistic one. In so doing, the intention of the framers of the Constitution, and the purpose for which every provision is intended, having regard to the traditions and usages, as well as the overwhelming imperatives of the spirit and objectives of the Constitution itself must be paramount. It is important therefore to always bear in mind the aspirations of the future and not overlooking the receding footsteps of the past. This counsel however does not mean that the court must adopt an attitude which will result in avoiding its obligation of declaring the law as it is, otherwise the Court will be assuming a role not constitutionally arrogated to it.

(90) In this context, reference must be once again made to the statement of Francois JSC in the case of **New Patriotic Party Vs. Attorney-General [1993-94] 2 GLR 35**at page 79 where he held thus; ***"A constitutional document must be interpreted sui generis, to allow the written word and the spirit that animates it, to exist in perfect harmony. It is interpreted according to principles suitable to its particular character and not necessarily according to the ordinary rules and presumptions of statutory interpretation... This allows for a broad and liberal interpretation to achieve enlightened objectives while it rejects hide-bound restrictions that stifle and subvert its true vision."***

(91) In my considered view, the Plaintiff's case presents no constitutional ambiguity nor default in complying with any of the provisions of the constitution in pursuance of which this court's jurisdiction has been invoked. There is nothing in

the Plaintiff's submissions which demonstrate the broader vision of the Constitution in relation to cannabis cultivation. If I am to find any such vision, objective or purposive in this case, I need to envision same by some extraterrestrial effort but not in the instant case before the Court. In the instant case, the Plaintiff's cause of action has been anchored on incidents to be deduced from Ghana's affirmation of certain protocols and treaties. As already pointed out, the Constitution itself has made it clear that where it is necessary for Ghana to demonstrate its commitment to any international treaty or protocol, the constitutional process of incorporation is adopted to domesticate any such international commitment. This may well have been one of the incidents that will demonstrate Ghana's objective and purpose for which cannabis cultivation is a subject of domestic legislation.

THE PURPOSIVE APPROACH

(92) In very recent times when this Court has preferred the purposive approach to interpretation over the literal, it has always acknowledged that the foundation of the purposive approach to interpretation is the literal rule of interpretation. In the case of **Republic Vs. High Court (Fast Track Division) Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane- Interested Party, [2007-2008] 1 SCGLR 213**Wood C.J after referring to a host of judicial authorities stated at page 248 of the report as follows:-"*However, I do recognize these as statements made on the peculiar facts of each relevant case. In other words*, ***I do not get the faintest impression from the authorities that the ordinary and plain meaning rule known also as the textualist or originalist or literalist rule is dead and buried, no longer applicable to constitutional construction, and perpetually consigned to history.*** *To the contrary, the speech of my respected brother, Dr. Date-Bah JSC in* ***Asare Vs. Attorney-General [2003-2004] 2 SCGLR 823*** *coincides with my views that, though it may not be the pre-eminent or the often-used rule of constitutional construction,* ***it is still***

relevant and in appropriate cases, might be the answer to the controversy."

(93) Then in the case of **Republic Vs. High Court, Accra Ex-parte; Yalley (Gyane & Attor-Interested Parties) [2007-2008] 1 SCGLR 513** Her Ladyship stated at page 519 of the report thus;

"It is well established, that as a general rule, the correct approach to construing statutes is to move away from the literalist, dictionary, mechanical or grammatical to the purposive mode. Admittedly, there may be instances where the ordinary or dictionary or grammatical meaning of words or phrases yield just results and there remains little one can do about that. Even so, it can be said that the purposive is embedded in the grammatical. In other words, the ordinary meaning projects the purpose of the statutory provision and so readily provides the correct purpose oriented solution. Indeed, the purposive rule of construction is meant to assist unearth or discover the real meaning of the statutory provision, where an application of the ordinary or grammatical meaning, produces or yields some ambiguous, absurd, irrational, unworkable or unjust result or the like."

(94) The Learned Chief Justice then proceeded to hold as follows:-

"In my opinion in the Richard Anane case at pages 251-252, I made reference to the mechanics of the purposive approach as expounded by Bennion, the learned author on statutory interpretation. He stated that (as quoted by my learned brother Dr. Date-Bah JSC in his opinion in the Asare Vs. Attorney-General[2003-2004]2 SCGLR 823 at 836) that:

"A purposive construction of an enactment is one which gives effect to the legislative purpose by-

(a) ***following the literal meaning of the enactment where that***

meaning is in accordance with the legislative purpose (in this code called purposive - and- literal construction) or

(b) ***applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in this code called a purposive-and strained meaning."***

(95) From all the processes filed in the instant case, I am convinced that a plain reading of the constitutional provisions under construction accords with the intent of the framers of the Constitution, in terms of their legislative purpose. I will therefore adopt a literal construction of them as I find nothing in the instant case to justify the application of any other meaning to the constitutional provisions in question on the ground that a literal reading of the said constitutional provisions is not in accordance with the legislative intent and purpose.

(96) In solidarity with my brothers in the minority, I think it apt to rest this analysis with the words of Archer C.J in the case of **New Patriotic Party Vs. Attorney-General [1993-94] 2 GLR 35** where His Lordship stated thus; ***"I have found it unnecessary to dive and delve further into what is meant by the spirit of the Constitution because I am convinced that it is a cliche used in certain foreign countries when interpreting their own constitutions which were drafted to suit their own circumstances and political thought. Whether the word "spirit" is a metaphysical or transcendental concept, I wish to refrain from relying on it as it may lead me to Kantian obfuscation. I would rather rely on the letter and intendment of the Constitution, 1992.***

(97) Having said that, I will now align the issues settled by the parties for determination by the Court with this delivery. The first issue settled is whether or

not as a signatory to the ***United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,*** dated 20th December 1988 and to the ***Single Convention on Narcotic Drugs of 1961*** as amended by the 1972 Protocol signed on the 10th of April 1991, Ghana is obliged to prohibit the cultivation of any strain of cannabis and the production of any extract or product from Cannabis.

(98) Outside of Article 40 of the Constitution earlier discussed, it is Articles 73 and 75 of the Constitution which state enforceable provisions relative to Ghana's international relations. In article 73 of the Constitution, it is provided that;

"73. The Government of Ghana shall conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest of Ghana."

As the Plaintiff does not urge on the Court any principles of international law and diplomacy relative to her case before the Court, there is no need for an extensive discussion of this article. The constitutional provision I consider proximate to making a case for the Plaintiff is Article 75 of the Constitution. It provides as follow:-

"75. Execution of treaties

(1) The President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana.

(2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by

(a) an Act of Parliament, or

(b) a resolution of Parliament supported by the votes of more than one-half of all the members of

Parliament.

(99) This constitutional provision empowers the President to execute or cause to be executed treaties, agreements or conventions in the name of Ghana. In accordance with this constitutional provision, it is contended that Ghana is a signatory to:

i. the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, dated 20th December 1988 and

ii. the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol signed on the 10th of April 1991.

The Plaintiff submits that by virtue of the international instruments referred to above, ***"Ghana is obliged to prohibit the cultivation of any strain of cannabis and the production of any extract or product from Cannabis."*** To render it obligatory for Ghana to act in accordance with the international instruments that the Plaintiff has relied on to make this submission, the Constitution itself sets the criteria for enforceability of such international instruments. It provides in clause (2) of Article 75 that any treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by;

i. an Act of Parliament, or

ii. a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament.

Therefore, it is only when an international instrument has endured either of the two requirements stipulated in Article 75 clause (2) of the Constitution that its enforcement is guaranteed. This is without a doubt straightforward.

(100) The next issue is whether or not the right given to the Minister under Section 43 of the Narcotic Control Commission Act, 2020 (Act 1019) to grant a license for the cultivation of cannabis constitutes a violation of Ghana's obligations under the aforementioned international treaties. The answer to this issue is explicitly set out in the first issue already discussed. It is with the third issue which requires a discussion of the question whether or not Section 43 of Act 1019 ought to be struck down as being inconsistent with and in contravention of Ghana's international treaty obligations under the aforementioned treaties and consequently inconsistent with and in contravention of Article 40(a), (c), (d), (v) of the 1992 Constitution. This issue has been already answered.

(101) The answer to the fourth issue is also adequately settled. The fourth issue is whether or not the Executive and Legislature were constitutionally obliged to comply with Article 106 (2) (a), (b), of the 1992 Constitution by detailing in the explanatory memorandum to the Narcotic Control Commission(NCC) Bill in the gazette, Ghana's departure from the policy of prohibition of cultivation and production of cannabis; and of the intended introduction of a new policy to grant license for the cultivation of cannabis, prior to the first reading of the Narcotic Control Commission Bill 2019.

(102) The fourth issue is substantially the same as the sixth issue which demands an answer to the question whether or not the failure of Parliament to give notice and adequate information to the public regarding the changes to the existing law, the policies and principles behind the said statutory changes before Section 43 was introduced into Act 1019, constituted a violation of the spirit and letter of Articles 106(1) and (2); Article 40(c), of the 1992 Constitution. That may well be so, but the extent of detail required to communicate the point embedded in this issue has not been specified in Article 106(2)(a) and (b) of the Constitution. For this reason, to the extent that we find a reference to any such matters, it is unsustainable to question the constitutionality of the legislative process on the

argument that the details are subjectively insufficient or do not match the Plaintiff's ones expectation of them.

(103) The question arising from issue five has also been well answered in this judgment. It is the question whether or not Parliament violated both the Constitutional requirements of Article 106 and the Parliamentary Standing Order 115, 117, 119(1), 124, 125, 126(1), 128(1), 128(4), 129(1), 132 and 133 in the manner it included Section 43 into the NCC Bill which was ultimately passed into law as Act 1019, for which reason the said Section 43 ought to be struck down by this Court as violative of the 1992 Constitution. Issues seven and eight have also been dealt with clearly in this judgment. These require a discussion of the questions whether or not the intent of Section 43 of Act 1019 is inconsistent with and in contravention of Articles 35(2), 36(9) and 36(10) of the 1992 Constitution and ought to be struck down by this Court, and further whether or not Section 43 of Act 1019 is inconsistent with all other provisions of Act 1019 that prohibit and criminalize the cultivation, production and creation of stated substances inclusive of cannabis and ought to be struck down. These issues have been exhaustively dealt with in this judgment.

(104) In the result, not having found any defect nor omission in the legislative process as provided under Article 106,nor in any other provision of the Constitution, in the inclusion of Section 43 as part of the Narcotics Control Commission Act, 2020 (Act 1019) and the issues settled for determination having been resolved without reaching a conclusion that any provision of the Constitution has been breached, I find no merit in this action. The reliefs sought by the Plaintiff are consequently dismissed.

I.O. TANKO AMADU

(JUSTICE OF THE SUPREME COURT)

AMEGATCHER JSC:-

The Plaintiff has filed this Writ seeking the following reliefs:

a) A Declaration that Section 43 of the Narcotics Control Commission Act, 2020 Act 1019, is null and void on account of having been passed in a manner that is inconsistent with, in excess of, and in contravention of the powers conferred on Parliament under Articles 106 (2) (a), (b), 106(5), (6) of the 1992 Constitution.

b) A Declaration that Section 43 of the Narcotics Control Commission Act, 2020 Act 1019, is null and void on account of being inconsistent with, and in contravention of Ghana's obligations under Article 40(c) of the 1992 Constitution.

c) A Declaration that Section 43 of the Narcotics Control Commission Act, 2020 Act 1019, is null and void on account of being inconsistent with, and in contravention of the intent, purpose and directions of the Directive Principles of State Policy as provided for in Article 35(2), Article 36(9) and Article 36(10).

d) A Declaration that Section 43 of the Narcotics Control Commission Act, 2020 Act 1019, is null and void on account of being inconsistent with, and in direct contradiction of the letter, intent, and purpose of all other provisions of Act 1019 and especially Sections 2(c), 3, 38, 39, 41, 42, 42(4), 45, 48, 53, 54, 55, 93 and the Sixth Schedule.

e) Such further or other orders as the Honourable Supreme Court may deem fit to make.

THE CASE BY PLAINTIFF

It is the case of the plaintiff that the Narcotics Control Commission Bill 2019 ("NCC Bill") was presented to Parliament by the Minister for Interior accompanied by a report of the Committee on Defence and Interior in 2019.The explanatory memorandum to the Bill that was published in the Gazette stated that the Bill was purposed to establish the

Narcotic Control Commission and to provide for offences related to narcotics. The objects are stated to ensure public safety by controlling and eliminating traffic in prohibited narcotic drugs by taking measures to prevent the illicit use of precursors and to develop, in consultation with other public agencies and civil society organizations alternative means of livelihood for farmers who cultivated illicit narcotic plants.

The plaintiff asserts that the NCC Bill that was passed into law incorporated a section that allowed the Minister to license the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medicinal purposes within the jurisdiction. Plaintiff contends that the explanatory memorandum that accompanied the Bill did not include a statement of change in policy to vary the existing prohibition of cultivation of all forms of cannabis and production of extracts from cannabis. It was also not accompanied by any policy document to introduce into the new law, a right for the Minister to grant licences for the cultivation of any type of cannabis in Ghana, and the principles behind the introduction of cultivation of any type of cannabis in Ghana. Plaintiff says further that the explanatory memorandum to the NCC Bill that was gazetted did not include a statement of policy to allow the Minister to grant licences for the cultivation of a type of cannabis for obtaining fiber for industrial purposes or seed for medical purposes within the jurisdiction.

It is also the case of the plaintiff that the NCC Bill and its accompanying memorandum contained no statement of intention to change Ghana's commitment to its international obligations and Ghana's existing policies prohibiting the production of all forms of cannabis in compliance with the existing domestic law.

For these reasons, the plaintiff contends that Parliament contravened Articles 106(2) (a) and (b) of the 1992 Constitution. Plaintiff submits that **the failure to include in or with the explanatory memorandum a policy document** that informs the citizenry about the intention to change the policy in the existing law that prohibits the production in the jurisdiction of all forms of cannabis and to change Ghana's commitment under international treaties, by giving the Minister a right to licence the cultivation and

production of the prohibited narcotic of cannabis **constituted a blatant violation of the requirements under Article 106 (2) (a) and (b) of the 1992 Constitution**. According to the plaintiff, Parliament also exceeded and acted ultra vires its duties when passing laws that introduced changes to the existing law. Plaintiff contends that Section 43 of Act 1019 is inconsistent with and in contravention of Ghana's international treaty obligations and therefore, inconsistent with and in contravention of Article 40(a), (c), and (d) (v) of the 1992 Constitution.

According to the plaintiff, in compliance with Article 106(2)(a) of the 1992 Constitution, the NCC Bill's explanatory memorandum was published in the Gazette at least 14 days before the first reading. The explanatory memorandum contained no mention of Section 43. On 30th October 2019, Parliament conducted its first reading of the NCC Bill and debated the various provisions included in the explanatory memorandum and the committee report. On 20th March 2020, the NCC Bill was presented for a second consideration without any changes or amendments from the initial reading. Towards the end of the second reading, a Member of Parliament moved to add Section 43 to the NCC Bill, later titled the 'Special Provision relating to Cannabis.' Section 43 allows the Minister, on the Commission's recommendation, to grant licence for the cultivation of cannabis that has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fibre or seed or for medicinal purposes. After a ten-minute discussion regarding the provision, the provision was introduced into the NCC Bill. No subsequent report on the matter was submitted to Parliament.
The third reading of the NCC Bill, according to the plaintiff was conducted on the same day, 20th March 2020. The reading commenced at 6.00 pm, and the NCC Bill was passed at 6.02 pm. Prior to the 'Special Provision relating to Cannabis,' which created an exception for cultivation of cannabis in special circumstances, all cannabis production was banned in Ghana.

The plaintiff has, therefore, brought this action against the Attorney-General and the Speaker of Parliament in this Court, alleging that Parliament violated the constitutional

requirements of Article 106, which outlines the procedure for passing a bill. In particular, the plaintiff argues Parliament's failure to include Section 43 in the explanatory memorandum and the failure to conduct a 'full debate' on the provision constituted misconduct. Second, the plaintiff alleges that Section 43 violates the letter, spirit, and intent of the NCC Bill, as well as the 1992 Constitution of Ghana. Lastly, the plaintiff argues Section 43 is inconsistent with and in contravention with Ghana's international treaty obligations under Article 40 of the 1992 Constitution.

Based on her submissions, the plaintiff's contentions can be split into two parts.

a) **That Section 43 of Act 1019 is unconstitutional as it contravenes Article 106(2) of the 1992 Constitution on parliamentary procedures and processes.**
b) **That Section 43 of Act 1019 is unconstitutional as it contravenes Articles 35(2), 36(9)(10), and 40(c) of the 1992 Constitution on the Directive Principles of State Policy.**

THE DEFENDANT'S CASE

The Attorney-General, in his statement of case rejects the position canvassed by the plaintiff. On the alleged failure to include an explanatory memorandum accompanying the NCC Bill, the failure to provide information on the policies and principles that can support the introduction and implementation of section 43, the flagrant violation of Ghana's international obligation under international law and the lack of debate and open discussion prior to its insertion which renders the inclusion of section 43 unconstitutional and null and void raised by the plaintiff, the 1st Defendant first submits that the assertion is untenable since by the introduction of the Bill, Parliament was merely exercising its powers to amend the Bill on the strength of Article 106 (6) of the Constitution and that it was not possible for those who prepared the explanatory memorandum to the Bill to have anticipated that Parliament would amend the Bill and so provide for that contingency prior to the gazetting of the Bill.

Secondly, the learned Attorney-General submits that Parliament bears no responsibility for the contents in the explanatory memoradum as it was to be placed before it for a full debate after which it could amend the Bill and in so doing took the Bill through all the constitutional procedures as well as its Standing Orders before passing the Bill into law and therefore plaintiff's cry is an attempt to destroy the autonomy of Parliament in regulating its own procedures and proceedings. On the conflict between section 43 and the constitutional provisions on International Treaty Obligations, the Attorney-General submits that section 43 rather adheres to the principles in or the aims and ideals of the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and therefore, section 43 is not inconsistent or in contravention of Articles 35(2), 36(9), 36(10), and 40(a), (c) and (d)(v) of the Constitution, 1992.The Attorney-General finally submits that the plaintiff's apprehension towards the introduction of section 43 into the Act stems from the lack of research or documentation on the use of cannabis as an industrial agricultural crop as opposed to information available on the effect and abuse associated with the use of narcotics such as cannabis in Ghana and, therefore, the plaintiff's writ should be dismissed.

JOINT MEMORANDUM OF AGREED ISSUES:

The parties filed the following joint memorandum of agreed issues.

1. Whether or not a signatory to the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988dated 20th December 1988, and to the Single Convention on Narcotic Drugs of 81961 as amended by the 1972 Protocol signed on the 10th of April 1991, Ghana is obliged to prohibit the cultivation of any strain of cannabis and the production of any extract of product from cannabis.

2. Whether or not the right given to the Minister under section 43 of the Narcotic Control Commission Act, 2020 (Act 1019) to grant a license for the cultivation of

cannabis constitutes a violation of Ghana's obligation under the aforementioned international treaties.

3. Whether or not section 43 of Act 1019 ought to be struck down as being inconsistent with and in contravention of Ghana's international treaty obligations under the aforementioned treaties and consequently inconsistent with and in contravention of Article 40(a), (c), (d), (v) of the 1992 Constitution.

4. Whether or not the Executive and Legislature were constitutional obliged to comply with Article106 (2) (a) (b) of the 1992 Constitution by detailing in the explanatory memorandum to the NCC Bill in the gazette, Ghana's departure from the policy of prohibition of cultivation and production of cannabis; and of the intended introduction of a new policy to grant license for the cultivation of cannabis, prior to the first reading of the Narcotic Control Commission Bill, 2019 (NCC Bill).

5. Whether or not Parliament violated both the constitutional requirements of Article 106 and the Parliamentary Standing Order 115, 117, 119(1), 124, 125, 126(1), 128(1), 128(4), 129(i), 132 and 133 in the manner it included section 43 into the NCC Bill which was ultimately passed into law as Act 1019, for which reason the said section 43 ought to be struck down by this Honourable Court as violative of the 1992 Constitution.

6. Whether or not the failure or Parliament to give notice and adequate information to the public regarding the changes to the existing law, the policies and principles behind the said statutory changes before section 43 was introduced into Act 1019, constituted a violation of the spirit and letter of Articles 106(1) and (2); Article 40(c), of the 1992 Constitution.

7. Whether or not the intent section 43 of Act 1019 is inconsistent with and in contravention of Articles 35(2), 36(9) and 36(10) of the 1992 Constitution and so should be struck down by this Honourable Court.

8. Whether or not section 43 of Act 1019 is inconsistent with all other provisions of Act 1019 that prohibit and criminalize the cultivation, production and creation of stated substances inclusive of cannabis and so ought to be struck down.

The Memoradum of Agreed Issues 1, 2, and 8 do not call for our interpretative jurisdiction weighed against the constitutional provisions. I would, therefore, strike them out and focus on issues 3, 4, 5, 6 and 7. Even of the remaining five issues, only two broad issues are germane to the determination of this writ i.e. first, whether Parliament complied with the procedure and proceedings for passing legislation enshrined in Article 106 of the Constitution and its Standing Orders, and second, if Parliament complied, whether section 43 of Act 1019 is inconsistent with and contravenes the Directive Principles of State Policy enshrined in Articles 35(2), 36(9) and 36(10) of the Constitution, 1992 and so should be struck down by this Court.

Plaintiff's submissions underscore the importance of two constitutional principles:

a) Supremacy of the Constitution and Judicial Review of Legislative Acts.
b) Justiciability of Articles 35(2), 36(9)(10), and 40(c) of the 1992 Constitution.

SUPREMACY OF THE CONSTITUTION AND JUDICIAL REVIEW OF LEGISLATIVE ACTS

To begin with, Article130(1)(b) of the 1992 Constitution vests the Supreme Court with exclusive original jurisdiction that empowers it to declare any enactment as null and void on the grounds that the legislation in question has been made inexcess of the powers conferred on Parliament or any other authority or person by law or under the 1992 Constitution.

In effect, the exercise of the Supreme Court's power of judicial review is founded on the supremacy of the Constitution, entrenched under Article 1(2) of the 1992 Constitution.

Article 93(2) of the 1992 Constitution also provides that the legislative power of Ghana shall be exercised in accordance with the Constitution. Therefore, it goes without saying that no legislation in Ghana can be regarded as valid unless it satisfies the test of consistency with the Constitution, 1992.

Acquah JSC (as he then was) expressed himself on the subject in this Court's case of **Mensima And Others v Attorney-General And Others [1997-98] 1 GLR 159, at pages 199-200** as follows:

"In my view, therefore, Article 1(2) of the Constitution, 1992 is the bulwark which not only fortifies the supremacy of the Constitution, but also makes it impossible for any law or provision inconsistent with the Constitution, 1992 to be given effect to. And once the Constitution, 1992 does not contain a schedule of laws repealed by virtue of Article 1(2), whenever the constitutionality of any law vis-à-vis a provision of the Constitution, 1992 is challenged, the duty of this court is to examine the relevant law and the Constitution, 1992 as a whole to determine the authenticity of the challenge. And in this regard, the fact that the alleged law had not specifically been repealed is totally immaterial and affords no validity to that law. For Article 1(2) of the Constitution, 1992 contains an in-built repealing mechanism which automatically comes into play whenever it is found that a law is inconsistent with the Constitution, 1992."

Constitutional supremacy mandates that every institution of governance is subject to the norms embodied in the constitutional text. The 1992 Constitution does not allow for the existence of absolute power in the institutions which it creates-See the cases of **Ghana Bar Association vs. Attorney-General (Abban Case) [2003-2004] SCGLR 250**, **Republic vs. Yebbi & Avalifo [2000] SCGLR 149, Amidu vs. Electoral Commission& Assembly Press [2001-2002] SCGLR 595.**

The controversy arising for the consideration of this Court in this writ relates to the constitutionality or otherwise of **Section 43** of **Act 1019**, which section the plaintiff submits not only offends the procedure laid out in **Article 106(2)** of the 1992

Constitution but also the directive principles under Articles 35(2), 36(9)(10), and 40(c) of the 1992 Constitution, which in larger part, offends against the 1988 Treaty on Narcotic Drugs and Psychotic Substances as well as 1961Convention on Narcotic Drugs as amended by the 1972 protocol. The benchmark for constitutionality being the 1992 Constitution, this discussion ought to be limited to the 1992 Constitution, which is the ultimate law of the land, granted however that Ghana is a signatory to the 1988 Treaty on Narcotic Drugs and Psychotic Substances as well as the 1961 Convention on Narcotic Drugs as amended by the 1972 protocol.

Article 106 (2) of the 1992 Constitution deals with the mode of exercising legislative power and provides as follows:

> **(2) No bill, other than such a bill as is referred to in paragraph (a) of Article 108 of this Constitution, shall be introduced in Parliament unless -**
>
> **(a) it is accompanied by an explanatory memorandum setting out in detail the policy and principles of the bill, the defects of the existing law, the remedies proposed to deal with those defects and the necessity for its introduction; and**
>
> **(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament.**

Clause (5) and (6) of Article 106 provides that:

> **(5) Where a bill has been deliberated upon by the appropriate committee, it shall be reported to Parliament.**
>
> **(6) The report of the committee, together with the explanatory memorandum to the bill, shall form the basis for a full debate on the bill for its passage, with or without amendments, or its rejection, by Parliament.**

The task at hand, therefore, is to ascertain whether in enacting Section 43, there has been an overhaul by Parliament of this constitutional mode of exercising its power. It must be kept in mind that the plaintiff's grievance lies with the explanatory

memorandum which accompanied the Bill, which according to the plaintiff did not provide for a policy change, which would justify the discretion given to the Minister under Section 43 of Act 1019 to, on the recommendation of the Commission, grant a licence for the cultivation of cannabis.

Section 43 of Act 1019 provides that:

> ***Section 43—Special provision relating to cannabis***
>
> **(1) Despite sections 39 to 42, the Minister, on the recommendation of the Commission, may grant a licence for the cultivation of cannabis which has not more than 0.3% THC content on a dry weight basis for industrial purposes for obtaining fiber or seed or for medicinal purposes.**
>
> **(2) For the avoidance of doubt, a licence granted under subsection (1) shall not be for the cultivation of cannabis for recreational use.**

Where there is a challenge to the constitutional validity of a law enacted by Parliament, the Supreme Court ought to keep in mind that there is always a presumption of constitutionality of enactments unless a clear transgression of constitutional principles is shown. Although Parliament has the right to legislate, this right is not without a limit, and the right to enact Section 43 must be within the parameters of the power conferred on the legislature, and under Article 1(2)of the Constitution, 1992 under which any law found to be inconsistent with any provision of the Constitution (the supreme law) shall, to the extent of such inconsistency, be void.

An explanatory memorandum, as gleaned from Article 106(2)(a), details the policy and principles of the bill, the defects of the existing law, the remedies proposed to deal with those defects, and the necessity for its introduction.

ARTICLE106 AND THE PROCEDURAL REQUIREMENTS OF PASSING A BILL

Article 106 begins by granting lawmaking authority to Parliament, stating "the power of Parliament to make laws shall be exercised by bills passed by Parliament and assented

to by the President." The remainder of the Article outlines the procedural steps in which Parliament must adhere to in order for a bill to come into law.

Was Parliament required to include Section 43 in the Explanatory Memorandum

The first procedural complaint raised by the plaintiff is the failure of Parliament to include Section 43 in the explanatory memorandum. The Plaintiff points to Article 106(2)(a) and (b), which requires a proposed bill to be "accompanied by an explanatory memorandum setting out in detail the policy and principles of the bill" and "submitted to the Gazette at least fourteen days before the date of its introduction to Parliament." The Plaintiff argues that all provisions of the final bill must be included in the explanatory memorandum.

Although the Plaintiff correctly notes that Article 106(2)(a) does require all proposed bills to include an explanatory memorandum, the same Article 106 allows for additions and amendments but makes no reference to republication after the fact. Specifically, Article 106(6) states "the explanatory Memorandum to the bill, shall form the basis for a full debate on the bill for its passage, with or without amendments." The phrase "with or without amendments" indicates an expectation for changes to the originally proposed bill, which may be impossible to foresee when submitting the explanatory memorandum. Additionally, the allowance for a "full debate" also points to an expectation for changes as it provides a constitutionally sanctioned opportunity for the bill to evolve. As Article 106 allows for amendments, it would be untenable to demand that Parliament include Section 43 in the explanatory Memorandum before it was proposed to Parliament.

In any case it is my opinion that as far as the Bill itself is concerned, it did not offend against the due process laid out in Article 106(2), in that the Bill was accompanied by an explanatory memorandum as provided in the Constitution. While this Court through the power of judicial review is mandated to insist on due process laid down in the 1992

Constitution, I believe to do so in this instant when it is obvious that the due process was followed granted that the explanatory memorandum was inadequate tows the line of judicial micro-management.

It is true that the procedure and conduct of the business of Parliament are governed by Parliamentary Standing Orders, which are subject only to the provisions of the Constitution. While Parliament functions within the limits of the 1992 Constitution, it has plenary powers to control its own procedure. Consequently, when a question of constitutionality is raised concerning parliamentary due process, I believe that it is proceedings which are tainted as a result of a **substantive illegality or unconstitutionality** (as opposed to a mere irregularity) that should be subjected to the wrath of this Court's constitutional powers of Judicial Review.

So, the important question here becomes whether this matter is one of those cases that are tainted by substantive illegality or constitutionality. I am of the respectful opinion that it is not. This case presents a matter of parliamentary proceedings being tainted by a mere irregularity (if any). I hold this opinion because a careful perusal of plaintiff's whole case discloses that the crux of the matter has to do with the i**nadequacy or insufficiency of the explanatory memorandum which accompanied the Bill. While plaintiff's contentions are legitimate, I believe but for the lack of policy change in the explanatory memorandum, Section 43 will stand the test of constitutionality.** It is my respectful opinion that in this instant, Section 43 should be sparred this Court's powers of Judicial Review.

Did Parliament comply with the 'full debate' provision in Article 106(6)

Next, the plaintiff argues that the Section 43 was not given a 'full debate' thereby violating Article 106(6). Article 106(6) states "the report of the committee, together with the explanatory Memorandum to the bill, shall form the basis for a full debate." The plaintiff alleges that Section 43, was only introduced at the tail end of the second reading of the bill and the relevant discussion occurred between 5.50pm and ended at

6.00pm. The plaintiff alleges the third reading started at 6.00pm on 20th March 2020, and the NCC Bill was passed 2 minutes later. The plaintiff argues that the hasty imposition of Section 43 without a longer debate was a breach of Article 106(6)'s requirement for a 'full debate.'

In my opinion, Parliament did not breach the requirement for a 'full debate' over a proposed bill. As stated in Article 110 of the Constitution, "Parliament may, by standing orders, regulate its own procedure." Thus, in **Tuffuor v. Attorney General[1980] GLR 637** the plaintiff attempted to nullify Parliament's procedure of vetting and rejecting a nomination for Chief Justice. The Court of Appeal, sitting as the Supreme Court, emphasized that the "freedom of speech, debate and proceedings of Parliament should not be questioned in any court or place out of Parliament." The Court ultimately held that the plaintiff could not question the procedure used by Parliament, so long as Parliament was granted the power to vet and reject a nominee in the Constitution.

In this case, the plaintiff's argument regarding the insufficient debate and inadequate declaration to the public is untenable based on the Constitution and precedent. It does not matter whether Parliament debated Section 43 for two minutes or two hours, the determination should be left to the discretion of Parliament. If members of Parliament had contention with Section 43 they had three options, first raise their concerns in the second or third readings to extend the time spent debating the provision, second postpone the operation of law and third reject Section 43 as allowed under Article 106(6). As succinctly stated in **Tuffuor v Attorney-General (supra**) "**in so far as Parliament has acted by virtue of the powers conferred upon it by the provisions of the 1979 Constitution of Ghana, its actions within Parliament are a closed book."**

Was Parliament required to republish the updated bill in the Gazette

The third procedural argument raised by the plaintiff is whether Parliament is required to publish updated versions of the proposed bill in the Gazette. The relevant Article

(Article 106) mentions the Gazette in two of its provisions. First, in Article 106(2)(b) which requires any proposed bill to be published in the Gazette at least fourteen days before the date of its introduction in Parliament. As previously stated, the Constitution is a holistic document and must be read and analyzed as a whole rather than in segmented parts. Article 106(2)(b) should be read in relation to Article 106(6), which allows for the subsequent addition of amendments to the proposed bill. As the bill must be published **before** introduction to Parliament, it would be impossible to include any amendments that would come to fruition after multiple readings and a full debate. Therefore, Article 106(2)(b) does not discredit the ability of Parliament to insert amendments such as section 43 after initial publication.

The second mention of the Gazette occurs in Article 106(11), which states that a bill "shall not come into force unless it has been published in the Gazette." The plaintiff argues that the original publication of a proposed bill is insufficient if there are any subsequent amendments added to the NCC Bill. The question remains, whether an updated version of the NCC Bill needed to be republished in the Gazette before coming into force. This Court should refrain from implementing a new requirement for the republication of updated bills under Article 106. Instead, this Court should give deference to Parliament to decide how to regulate its proceedings considering Article 106 does not explicitly mention the necessity of republication of updated versions of the bill. As stated above, Article 110 of the Constitution of Ghana dictates that Parliament has the authority to regulate its own procedures.

BREACH OF ARTICLES 35(2), 36(9)(10), AND 40(c) OF THE DIRECTIVE PRINCIPLES OF STATE POLICY.

The rule of law under the Constitution, 1992 has glorious content. Chapter 6 embodies the Directive Principles of State Policy. It enjoins all citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties, and other bodies and persons to be guided by the principles in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions, for the

establishment of a just and free society. The 2nd leg of the plaintiff's contention is that Section 43 of Act 1019 offends against Articles 35(2), 36(9)(10), and 40(c) of the 1992 Constitution.

The provisions are as follows:

> **ARTICLE 40 INTERNATIONAL RELATIONS**
>
> **In its dealings with other nations, the Government shall—**
>
> **(c) promote respect for international law, treaty obligations and the settlement of international disputes by peaceful means.**
>
> **ARTICLE 35 POLITICAL OBJECTIVES**
>
> **(2) The State shall protect and safeguard the independence, unity and territorial integrity of Ghana, and shall seek the well-being of all her citizens.**
>
> **ARTICLE 36 ECONOMIC OBJECTIVES**
>
> **(9) The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind.**
>
> **(10) The State shall safeguard the health, safety, and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians.**

The plaintiff alleges that Ghana's decision to sign the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol signed in 1991 (hereinafter referred to as Treaty 1) and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Treaty 2) prohibits the addition of Section 43 of the NCCA. The plaintiff argues that the two treaties represent Ghana's pledge to

prohibit the cultivation of any strain of cannabis and the production of any extract or product from cannabis therefore prohibiting the addition of Section 43.
Without hesitation, we find the plaintiff's argument erroneous for two reasons. First, the Republic of Ghana is an independent state and has the freedom to choose which international treaties to enter and enforce under Ghana's Constitution and democratic government. In **Margaret Banful v Attorney-General Writ No. J1/7/2016***,* the Supreme Court of Ghana noted that an international agreement forms when "the Government of Ghana binds the Republic of Ghana to certain obligations in relation to another country or group of countries." The plaintiffs in **Margaret Banful** challenged the government's authority to enter into an agreement with the U.S. Government to receive and resettle two Guantanamo detainees without Parliament's approval. In response, the Attorney-General erroneously argued that international law stops a state from invoking its constitutional requirements as an excuse to avoid a treaty obligation. The Court struck down the Attorney-General's argument as "**untenable in the context of the modern dispensation of international relations, which is characterised by, and operates within an environment of democracy and written constitutions**." In other words, a duty laid out in a treaty does not diminish the enforcement of the State's own Constitution. In its holding, the Court held any informal or formal international agreement should receive parliamentary ratification in compliance with Article 75 of the Constitution. In the present case, signing the aforementioned treaties does not prevent the government of Ghana from operating in accordance with the laws of its Constitution.

Second, Section 43 of the NCCA does not infringe upon the obligations of either treaty. Contrary to the Plaintiff's argument, the treaties do not ban **all** cultivation of cannabis but instead, leaves freedom for the Republic of Ghana to decide how to control the substance. For example, Article 28 of Treaty 1 outlines the control of cannabis. Section 1 begins with "**if a Party permits the cultivation of cannabis plant…."** clearly referring to the ability of State parties to choose the control measures in relation to the prohibition of the cannabis plant. Assuming Parliament abided by the correct procedural

requirements to pass the NCC Bill, it is within the States purview to decide how to regulate the cultivation of cannabis including permitting the cultivation for medical purposes. Because Treaty 2 is merely a supplement for the enforcement of the guidelines of Treaty 1, the leeway to control the cultivation of cannabis again lies with the State. In conclusion, the drafters of the treaties left room for the signatories to pass laws that permitted legal uses of cannabis cultivation according to the language of both treaties.

The justiciability or otherwise of these provisions are part of Chapter 6, and have been the subject of a few of this Court's decisions beginning as early as 1993 in this Court's case of **New Patriotic Party vs Attorney-General [1993-94] GLR 35** (**31ST December Case**). In this case, this Court in a majority decision, through the opinion of Adade JSC held that the Directive Principles were justiciable provisions.

The question of justiciability was again raised for consideration by the Supreme Court in the case of **New Patriotic Party vs. Attorney-General [1996-97] SCGLR 729,** which is also popularly known as the CIBA CASE. Here, the plaintiffs, sued under Article 2(1) of the 1992 Constitution, among others, for a declaration, that the Council of Indigenous Business Associations Law, 1993 (PNDCL 312), was inconsistent with and in contravention of some specified Articles of the Constitution, 1992 including Articles 35(1) and 37(2)(a) and to the extent of that inconsistency, was void. The Attorney-General raised a preliminary objection to the claim on the grounds, that Articles 35(1) and 37(2)(a) relied upon by the plaintiffs, fell under chapter 6 of the Constitution, i.e., the Directive Principles of State Policy, which were not justiciable. The Supreme Court dismissed the preliminary objection on the grounds, inter alia, that even though the directive principles, were not of and by themselves legally enforceable by any court, they had the effect of providing goals for legislative programmes and a guide for judicial interpretation. Ultimately, this Court through Bamford-Addo JSC and Sophia Akuffo JSC (as she then was), drew a clear distinction between some provisions of the Directive Principles of State Policy, which form an integral part of some of the rather

enforceable provisions relating to fundamental human rights and freedoms because they qualify them, and those provisions of the Directive Principles of State Policy, which can be held to be rights in themselves. In the case of the former, they can be considered as also justiciable and enforceable; whilst with the latter, they are not to be so considered.

Later, this Honourable Court in **Ghana Lotto Operators Association& Others vs. National Lottery Authority (2007-2008) SCGLR 1088** on the justiciability or otherwise of Chapter 6 stated at holding (3) as follows:

> **"Even if the impugned Article 35(1) of the constitution, which is a general provision vesting sovereignty in the people of Ghana, is justiciable, the Plaintiff's statement of case does not spell out how Act 722 breaches the said Article 35(1)(4). An issue is justiciable if it is capable of being settled by a court. Prima facie, everything in a constitution is justiciable. The starting point of analysis should be that all the provisions in the 1992 Constitution are justiciable unless there are strong indications to the contrary in the text or context of the Constitution…"**

Holding (4) continues that:

> **"A presumption of justiciability in respect of Chapter 6 of the 1992 Constitution, dealing with the Directive Principles of State Policy, would strengthen the legal status of Economic, social, and Cultural rights in the Ghanaian jurisdiction. There may be particular provisions in chapter 6 which do not lend itself to enforcement by courts. The very nature of such a particular provision would rebut the presumption of justiciability in relation to it. In the absence of a demonstration that a particular provision does not lend itself to enforcement by courts, however, the enforcement by the court of the obligations imposed in chapter 6 should be insisted upon and would be a way of deepening the country's democracy and liberty under law that it entails…"**

These Directive Principles from the decided cases discussed above are justiciable. The question here is has the plaintiff made any case in this court to convince me that section 43 of Act 1019 conflicts with Articles 35(2), 36(9)(10), and 40(c) of the 1992 Constitution? I find no such submissions and will not spill any further ink discussing what the plaintiff perceives to be the conflict between section 43 and the provisions of the Directive Principles.

Let me conclude with the caution given by this Court on the temptation to limit narrowly the legislative authority of Parliament to make laws captured in the dictum of Date-Bah JSC in **Amegatcher (No 2) v Attorney-General [2012] SCGLR 933 at 953-954** that:

"It is dangerous, from a public policy standpoint, to construe the legislative authority of Parliament too restrictively, since this is likely to incapacitate it from dealing with exigencies and contingencies in relation to which the public interest may require it to take legislative action, of necessarily different kinds within a wide range. Undesirable legislation needs to be distinguished from unconstitutional legislation. The plaintiff clearly prefers that districts should be created by Parliament itself and that task not delegated or allocated to the President. (This was indeed the situation under the 1969 Constitution.) This preference should not, however, necessarily mean that such delegation or allocation is unconstitutional. Parliament should have the option to choose what the plaintiff prefers or what is embodied in the Local Government Act, 1993. To proscribe the option adopted in the Act would be tantamount to limiting the plenitude of the legislative authority of Parliament too narrowly. According to article 93(2) of the 1992 Constitution:

"(2) Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution."

The legislative power thus vested in Parliament should be expansively interpreted in the interest of the effective representative democratic governance of this country. Parliament should be regarded as authorised to pass any legislation on any matter so long as in doing so it does not breach any express or implied provision of the Constitution. This is axiomatic! Were the legislative power of Parliament to be restricted beyond what the provisions of the Constitution require, this would be an assault on the sovereignty of the people, whose representatives constitute Parliament. To me therefore, it is clear that Parliament has the fullest of legislative power, subject only to what the Constitution prohibits, expressly or impliedly. Democratic principles demand this conclusion."

For the foregoing reasons, I am of the opinion that Parliament followed its constitutional obligations when it added Section 43 to the NCC Bill and passed it into law. The Narcotic Control Commission Act (NCCA), therefore, does not violate Ghana's commitments in the aforementioned treaties or any of the constitutional provisions allegedly violated. For the above reason, I, on my part, will dismiss the plaintiff's reliefs in its entirety.

N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)

PROF. KOTEY JSC:-

I have read the lead majority opinion of my esteemed brother Kulendi JSC concurred in by my distinguished brother and classmate Dotse JSC and some other colleagues.

Unfortunately, l am unable to agree with the reasons and conclusions of my colleagues in the majority.

I have also had the privilege of reading the dissenting opinions of my esteemed colleagues Amegatcher and Amadu JJ.S.C. I agree with them that the original jurisdiction of this Court to determine issues of constitutionality, particularly in relation to constitutionality of an Act of Parliament, must be exercised with the utmost circumspection.

It is my considered opinion that this case did not legitimately raise any issue of procedural unconstitutionality. In my considered opinion the reasoning and conclusions of my esteemed brothers Nene Amegatcher and Tanko Amadu are to be preferred and I join them in dismissing the Plaintiff's writ.

PROF. N. A. KOTEY

(JUSTICE OF THE SUPREME COURT)

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DIANA ASONABA DAPAAH (DEPUTY ATTORNEY-GENERAL), UMMU ZAKARI (PRINCIPAL STATE ATTORNEY) AND LILLY ADDAE MENSAH (SENIOR STATE ATTORNEY) FOR THE DEFENDANTS.