

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2019

**CORAM: ADINYIRA (MRS.), JSC (PRESIDING)
DOTSE, JSC
YEBOAH, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS.), JSC
BENIN, JSC
MARFUL-SAU, JSC**

**WRIT NO.
J1/14/2017**

23RD JANUARY, 2019

JAMES KWABENA BOMFEH JNR. PLAINTIFF

VRS

ATTORNEY GENERAL DEFENDANT

JUDGMENT

ADINYIRA (MRS.), JSC: -

The Plaintiff brings this action in his capacity as a citizen of Ghana to seek the interpretation and/or enforcement of provisions of the 1992 Constitution of Ghana pursuant to articles 2(1) and 130(1) thereof, claiming the following reliefs:

1. A declaration that upon a true, combined and contextual interpretation of the letter and spirit of the Constitution, particularly articles 258(1)(a) and (b) and 265 thereof, the Government of Ghana does not possess the legal authority to grant or allocate any public land, and consequently the decision of the Government of Ghana to allocate or grant 6.323 Ha of the public lands of Ghana for the construction of the Ghana National Cathedral to serve as Ghana's Mother Church, is unconstitutional;
2. A declaration that by the core values, basic structure and the nature of the 1992 Constitution of Ghana and upon a combined and contextual interpretation of the letter and spirit of the Constitution, particularly articles 21(1)(b)(c), 35(1)(5)(6)(a), 37(1) and/or 56 of the Constitution, it is unconstitutional for the Republic of Ghana through its organs of Government, ministries, agencies, departments and/or authorized representatives to purposely aid, endorse, sponsor, support, offer preferential governmental promotion of, and/or be excessively entangled in, any religion or religious practice;
3. A declaration that the setting up of a Hajj Board by the Government of the Republic of Ghana for the purpose of coordinating, supporting and/or aiding Ghanaian Muslims to embark on the Muslim religious pilgrimage to Mecca ('Hajj'), being one of the five pillars of the religion of Islam, together with the financial support the Government of Ghana provides to Muslims embarking on the Hajj, amounts to the Government of Ghana purposely aiding, endorsing, supporting and/or offering preferential governmental promotion of, and/or excessive entanglement of the Republic of Ghana with, a religion or religious practice, and thus unconstitutional;
4. A declaration that the nature and circumstances of the State's involvement or support for the construction of the Ghana National Cathedral to serve as Ghana's Mother Church, to be used among others, for presidential inaugurations, amount to the Government of Ghana endorsing, supporting and/or offering preferential governmental promotion of religion, and/or

excessive entanglement of the Republic of Ghana with religion, and thus unconstitutional;

5. Any further or other orders as this Honourable Court may deem fit.

The Plaintiff's case

In the elucidation of his claim the Plaintiff averred in paragraphs 6-10 of his amended statement of case filed on 9/11/2018 as follows:

6. *The instant suit is a public interest (constitutional) action wherein the Plaintiff requests this Honourable Court to conclude that by the letter, spirit and core values of the 1992 Constitution of Ghana, the Republic of Ghana must recognize, respect, safeguard and promote the formal equality of all religions practiced in Ghana, and to that end, must not confer benefits on one religion to the exclusion of others. Secondly, the Plaintiff submits that Ghana is committed to the value of "freedom of religion, belief and conscience" which can only be realized if the State recognizes the formal equality of all religions practiced in Ghana.*
7. *Thirdly, it is the humble submission of the Plaintiff that upon a careful examination of the text and spirit of the Constitution as well as core values, principles and concepts that undergird our constitutional framework the Republic of Ghana is a secular state with no state or official religion. Consequently, the Republic of Ghana is constitutionally required to stay indifferent to or show balance in dealing with all faiths and non-faiths. A fortiori, it is constitutionally impermissible for the Government of Ghana to confer any benefits, advantages or privileges on one religion to the exclusion of other religions.*
8. *But even if the Republic of Ghana elects to confer any benefits, advantages or privileges on all religions or belief systems it must do so only under a law passed by Parliament that is non-arbitrary in purpose and scope, serves*

legitimate State (and not religious) purposes and/or must not result in the excessive entanglement of the State with any religions or religious practices.

9. *The Plaintiff further submits that when the Government(a symbol of national unity):*

- a. moots the idea for the construction of the Ghana National Cathedral to serve as "Ghana's Mother Church";*
- b. describes the Ghana National Cathedral Project as "a National Cathedral for the state of Ghana";*
- c. declares the construction of the Ghana National Cathedral a "priority among priorities";*
- d. allocates 6.323 Ha of prime state land without due process for the construction of the Ghana National Cathedral to serve as Ghana's Mother Church in an enclave reserved for State buildings (symbols of national unity) and at gargantuan cost to the State without any parliamentary approval;*
- e. describes the Ghana National Cathedral as a "legacy project" to commemorate the 60th Anniversary of Ghana's Independence;*
- f. sets up a Board of Trustees with offices at the Jubilee House, the seat of our President, to coordinate the construction of the Ghana National Cathedral;*
- g. cuts the sod for the construction of the Ghana National Cathedral as part of the programmes for the 60th Anniversary celebrations of Ghana's Independence;*
- h. unveils the architectural drawings/designs of the Ghana National Cathedral during the 61st Anniversary of Ghana's Independence;*
- i. stipulates that the Ghana National Cathedral, a religious symbol associated with a particular religion, shall be used, among others, for*

"presidential inaugurations", which are national public events meant for all Ghanaians regardless of faith;

- j. seeks to demolish state/public buildings including bungalows of superior courts judges, the Judicial Training Institute, the Ghana Scholarship Secretariat, and other buildings belonging to private persons, to make way for the construction of the Ghana National Cathedral;*
- k. commits to build a "new ceremonial route to the Cathedral's main entrance [to be]...accessed through a generous parkland created specifically as a gift to the nation and its visitors for leisure, recreation and reflection."*
- l. the Government of Ghana President has conferred privileges and benefits on one religion over others; preferred, supported and endorsed one religion over others; and thus has crossed an impermissible red line in the relationship between the State and Religion.*

10. *The Plaintiff further submits that when the Government of Ghana:*

- a. sets up a Hajj Board under the colour of state authority to coordinate, run and operate the Hajj, one of the five pillars of Islam, and provides public resources/ funds to support or finance the operations of the Hajj Board; and*
- b. offers financial assistance to Muslims embarking on the Hajj, when such financial support contravenes the teachings of Islam relating to Hajj,*
- c. the Government of Ghana/President has conferred privileges and benefits on one religion over others and/or has become excessively entangled in Islam by promoting, aiding and facilitating breaches of cardinal rules of Islamic law relating to Hajj. It is the respectful submission of the Plaintiff that the above conduct of the Government crosses an impermissible red line in the relationship between the State and Religion."*

The Defendant's Case

The Attorney-General [AG] submits that the Plaintiff's case does not raise an issue for the exercise of this Court's jurisdiction under Articles 2(1) and 130(1) of the Constitution and for that matter there is absolutely no cause of action.

The AG submits further that there is no constitutional issue that is legitimately raised around the authority of the President to allocate land for the construction of the National Cathedral by relying on article 257(1) that vests all public lands in the President on behalf of, and in trust for, the people of Ghana. The A-G contends that the President acted within his constitutional right to allocate public land for a specific purpose in the public interest.

The AG also contends that reliefs 3 and 4 relating to the setting up of a Hajj Board and the construction of a National Cathedral are the only substantive reliefs sought by the Plaintiff to be declared as unconstitutional. The AG however submits that the Plaintiff has formulated the reliefs in a manner without identification of the specific provisions that have been allegedly breached by the State and they therefore do not disclose a cause of action.

Issues for Determination

On the 1st of November 2018, the parties filed a joint memorandum of issues and same were adopted by this court as follows:-

- a. Whether or not Plaintiff's case raises an issue for the exercise of this Court's jurisdiction under articles 2(1) and 130(1) of the 1992 Constitution;
- b. Whether or not the Republic of Ghana has a constitutional obligation to recognize, respect and/or promote the formal equality of all religions and belief systems practiced in Ghana; and

- c. Whether or not the establishment and operations of the Hajj Board by the Government and Government support for and/or involvement in the Ghana National Cathedral Project are unconstitutional or amount to an unconstitutional entanglement by the State with religion.

ISSUE 1 Whether or not the Plaintiff's case raises an issue for the exercise of this Court's jurisdiction under articles 2(1) and 130(1) of the 1992 Constitution

Jurisdiction of the Supreme Court

Articles 2(1) and 130(1) (a) of the Constitution provide:

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.

130(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in.

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

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

The Plaintiff in this case has turned to this Court to seek the interpretation and/or enforcement of certain provisions of the 1992 Constitution of Ghana which turn on the constitutional relationship between the government and religious bodies in Ghana. In effect he is first seeking interpretation of those constitutional provisions and then their enforcement.

The Interpretative Jurisdiction of the Supreme Court

The plaintiff submits that this case is a public interest action and is therefore within this Court's jurisdiction by relying on our decisions in such cases as ***Adjei-Ampofo v. Accra Metropolitan Assembly & Attorney-General (No.1)*** [2007-2008] **1 SCGLR 610**, ***Federation of Youth Association of Ghana (FEDYAG) v. Public Universities of Ghana & Others*** [2010] **SCGLR 265** and ***Samuel Okudzeto Ablakwa & Another v The Attorney-General & Another***.

The Plaintiff did not reveal his religious affiliation, but this action is certainly of public interest as they relate to issues that affect the two major Ghana, Christianity and Islam, However public interest is not the sole criteria for invoking the interpretative jurisdiction of the Supreme Court. The deciding factor is whether there is a real and genuine issue of interpretation.

"It is now trite law that no action can be brought to interpret a clear and unambiguous provisions of the 1992 Constitution." per Atuguba JSC in ***Kor v Attorney- General & Justice Douse*** [2015-2016] **1 SGLR 114 at 121**. The Supreme Court has consistently guarded against the invitation to assume jurisdiction in a matter which could clearly be discerned that the plaintiff has attempted cleverly, to create a case of interpretation, whereas no issue of interpretation genuinely arises upon a careful scrutiny of same.

A constitutional issue is not raised on account of a plaintiff's absurd, strained and far-fetched understanding of clear provisions in the Constitution. For a person to assert a

manifestly absurd meaning contrary to the very explicit meaning and effect of clear words in the Constitution does not mean that a genuine issue of interpretation of some relevant constitutional provision has arisen. See our recent decision in **Mayor Agbleze & 2 Ors v The Attorney General & the Electoral Commission, Suit No J1/28/2018 SC dated 28th November 2018, unreported.**

The Supreme Court has also guarded against enforcement of human rights actions masquerading as interpretation cases. It has also rejected the invocation of its jurisdiction, which turns the highest court of this land, into a forum for the original adjudication of ordinary civil disputes. See **Danso v. Daadam II & Another [2013-2014] 2 SCGLR 1570 at 1574, Bimpong Buta v General Legal Council & ors [2003-2004] SCGLR 1200, Edusei v Attorney-General [1996-97] SCGLR 1.**

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. If it were otherwise, every conceivable case may originate in the Supreme Court by the stretch of human ingenuity and the manipulation of language to raise a tangible constitutional question. Practically every justifiable issue can be spun in such a way as to embrace some tangible constitutional implication. The Constitution may be the foundation of the right asserted by a plaintiff, but that does not necessarily provide the jurisdictional predicate for action in the Supreme Court.

Does a Real, Genuine Interpretative Issue Arise in this Case?

We now examine whether this case discloses a genuine or real interpretative issue and whether the original interpretative jurisdiction of this Court has been properly invoked.

The Plaintiff submits in paragraph 9 of legal arguments filed on 19 November 2018 that:

*"...the Plaintiff's action raises genuine and substantial questions of interpretation within the context of the decisions in **EX-PARTE AKOSAH (1980) GLR 592***

C.A and KOR v ATTORNEY-GENERAL & JUSTICE DUOSE [2015- 2016] 1 SCGLR 114. *The pith and substance of the Plaintiff's case is captured in paragraphs 6-10 of his Amended Statement of Case filed on 9th November 2018. It is respectfully submitted that the correctness or validity of the legal propositions advanced by the Plaintiff at the said paragraphs 6-10 of his Amended Statement of Case cannot be determined without an ascertainment of the meaning, legal effect and/or scope of application of numerous provisions of the Constitution including articles 17, 21(1)(b)(c), 35(1)(5)(6)(a), 37(1), 56, 58(1) and (2), 258(1) and (2), and 265. And as the Plaintiff's discussion of Issues 2 and 3 will show, the parties disagree on the true and proper construction of some of these constitutional provisions, particularly, articles 17, 21 and 56 of the Constitution.*

We will therefore examine **articles 17, 21(1)(b)(c), 35(1)(5)(6)(a), 37(1), 56, 58(1) and (2), 258(1) and (2), and 265**, to determine whether there is ambiguity, imprecision or lack of clarity in these provisions calling for a genuine interpretation or enforcement, and if there has been a breach of any of them by the establishment of the Hajj Board and the idea of constructing a National Cathedral.

Article 17(2) which is of relevance in quite mandatory terms endorses a very important element of secularism – equality of all persons of any religious persuasion provides:

"A person shall not be discriminated against on grounds of gender, race, ethnic origin, religion, creed or social or economic status"

Article 21(1) (b) and (c) provision dealing with general fundamental freedoms of the citizen including religious freedom provides:

"(1) All persons shall have the right to-

(b) freedom of thought, conscience and belief which shall include academic freedom

(c) freedom to practice any religion and to manifest such practice".

Article 35(1) (5) and **37 (1)** are provisions under Chapter Six of The Directive Principles of State Policy.

Article 35(1) sets out the political objectives of the Constitution for the State to promote the integration of the people by providing:

35. (1) Ghana shall be a democratic state dedicated to the realization of freedom and justice; and accordingly, sovereignty resides in the people of Ghana from whom Government derives all its powers and authority through this Constitution.

Article 35(5) also sets out the duty of the State to promote the integration of the peoples of Ghana and prohibits discrimination in terms of Article 21(1) (b) by providing:

(5) The State shall actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs.

Article 37(1) reinforces the objectives and duties of the state by providing

37. (1) The State shall endeavor to secure and protect a social order founded on the ideals and principles of freedom, equality, justice, probity and accountability as enshrined in Chapter 5 of this Constitution; and in particular, the State shall direct its policy towards ensuring that every citizen has equality of rights, obligations and opportunities before the law.

Article 56 prohibits Parliament from enacting laws imposing one religion or a political party on the people of Ghana by providing as follows:

56. "Parliament shall have no power to enact a law to establish or authorize the establishment of a body or movement with the right or power to impose on the people of Ghana a common program or set of objectives of a religious or political nature". [Emphasis supplied]

Articles 58(1) and (2), 258(1) and (2), and 265 refer to the executive authority of the President, the functions and authority of the Lands Commissioner in respect of State and public lands. These are set out in extenso below.

Article 58

(1): *The executive authority of Ghana shall vest in the President and shall be exercised in accordance with the provisions of this Constitution.*

(2)The executive authority of Ghana shall extend to the execution and maintenance of this Constitution and all laws made under or continued in force by this Constitution.

Article 258 (1) (a):

There shall be established a Lands Commission which shall, in co- ordination with the relevant public agencies and governmental bodies, perform the following functions– (a) on behalf of the Government, manage public lands and any lands vested in the President by this Constitution or by any other law or any lands vested in the Commission;

Article 265: *Except as otherwise provided in this constitution or in any other law which is not inconsistent with this Constitution, the Lands Commission shall not be subject to the direction or control of any person or authority, in the performance of its functions.*

"All public lands in Ghana shall be vested in the President on behalf of and in trust for, the people of Ghana."

We do not find any ambiguity in the above constitutional provisions which are clear and unambiguous. The constitutional provisions as articulated in articles 17, 21(1) (b) (c), 35(1) (5) (6) (a), 37(1), 56, guarantee freedom of religion in no uncertain terms. The wordings are explanatory, simple and easy to appreciate their import and admit of no ambiguity.

The combined effect of the letter and spirit of these provisions guarantees the fundamental freedoms of the citizen including the right to practice any religion and to manifest such practice. By the letter and spirit of these provisions religious pluralism and diversity which are features of a secular state are clearly recognised and thereby discrimination on any ground is prohibited. By the Directive Principles of State Policy in articles 35 and 37, the State is to actively promote, within reasonable limits; and facilitate the aspiration and opportunities by every citizen to exercise his fundamental freedoms as a way of ensuring national cohesion.

In respect of articles **258(1) and (2), and 265**, which form the basis of the Plaintiff's claim in Relief 1, the provisions are also clear and unambiguous and the President in whom all public lands are vested by virtue of Article 257(1) can deal directly with public lands through the appropriate Ministry as was done in this case.

From the foregoing, we do not find the existence of a genuine issue for interpretation in the constitutional provisions relied on for the institution of an action under articles 2(1) and 130(1). The Plaintiff's invitation is therefore refused.

Issue B

From the foregoing **issue b.** does not arise.

Issue C

“Whether or not the establishment and operations of the Hajj Board by the Government and Government support for and/or involvement in the Ghana National Cathedral Project are unconstitutional or amount to an unconstitutional entanglement by the State with religion”

Issue C definitely raises enforcement issues. Which we pose as follows:

Does the Plaintiff's suit nevertheless raise any issues of constitutional enforcement within the terms of article 2(1) and 130(1) (a)?

It is the Plaintiff's case that the setting up of a Hajj Board to facilitate the pilgrimage of Muslims to Mecca and the provision of a piece of land for the construction of a National Cathedral (which would serve public purposes including State thanksgiving services, State funerals etc among other things) are excessive entanglement by the State in religion and also amount to unequal and unfair treatment of religions in Ghana and these acts contravenes the constitutional principles of equality or neutrality of religion.

Articles 2 (1) and 130(1) empower the Supreme Court to ensure compliance of the Constitution. Accordingly, a person who invokes the Court's jurisdiction must demonstrate clearly that the acts or omission complained of are inconsistent with the particular provisions of the Constitution he alleges have been contravened.

The A-G submits that reliefs 3 and 4 are the only substantive reliefs sought by the Plaintiff to be declared as unconstitutional. The A-G however submits that the Plaintiff did not identify the specific provisions that have been allegedly breached by the state by the proposal to build a National Cathedral and the setting up of a Hajj Board. The A-G contends that the State has not engaged in acts that should lead the Plaintiff to conclude that the State is excessively entangled with religion.

It has been the position of this Court that:

"where an act or omission of any person is challenged under article 2 of the 1992 Constitution, such an act or omission must be shown to have taken place, and it must be shown that such act or omission falls foul of a specific provision of the Constitution, or at the very least, the spirit of an actual provision." Per Wiredu JSC (as he then was) in **National Democratic Congress v Electoral Commission [2001-2002] SCGLR 954 @ 958.**

Similarly, Sophia Akuffo JSC (as she then was) in the case of **Adjei Ampofo v. Attorney-General [2003-2004] SCGLR 411**, reiterated this position of the law as follows **at page 418**:

“And although we wholeheartedly acknowledge that a Constitution, as a living document, has in addition to its written words, also a spirit, when called upon to exercise our jurisdiction to interpret or enforce the constitution, we must first be referred to a specific provision therein.”

Another way of looking at the issue is found in the dictum of Bamford-Addo JSC in **Ghana Bar Association v Attorney-General and another (Abban Case) [2003-2004] SCGLR 250 at 266 to 267** which is as follows:

“In deciding the issue of jurisdiction, matters to take into consideration include the statute which invests jurisdiction as well as the true nature of the claim having regard to the pleadings, issues and reliefs sought or the actual effect of the reliefs, regardless of words used or the manner in which the claims and reliefs are couched.”

Following the **Abban Case** we proceed to examine the reliefs sought by the Plaintiff to determine whether our enforcement jurisdiction has been properly invoked.

Relief (1)

Under the first relief which turns on articles 258(1) and (2), and 265, the claim by the Plaintiff is that the government has no authority to allocate any public land to the churches to construct the National Cathedral. As indicated earlier, the said provisions are clear and unambiguous and need no interpretation. However the relevant constitutional provision dealing with public lands is Article 257.

Article 257 (1) unequivocally states: *"All public lands in Ghana shall be vested in the President on behalf of and in trust for, the people of Ghana."* Further, article 257(5) gives the right to the government to vest in itself of any land required in the public

interest for public purposes. These prime lands that the government allocated for the purpose of building the National Cathedral are already public lands vested in the President by virtue of Article 257 (1).

The Lands Commission though an independent body is to work "in co-ordination with the relevant public agencies and governmental bodies" in managing public lands (Article .258 (1). The Plaintiff has not demonstrated that the allocation of the land was done without the involvement of the Lands Commission. The only evidence proffered is that it is the Minister responsible for Lands and Natural Resources who has been handling and communicating on matters relating to the land. Without any evidence to the contrary we presume everything was regularly done by the President acting through the appropriate ministry to allocate the land in question for the construction of the National Cathedral, which when completed was to be used for public purposes by all denominations

From the foregoing we do not find any constitutional issue that is legitimately raised around the constitutional authority of the President to allocate the land for the purpose stated. Accordingly the Plaintiff fails the test for us to assume jurisdiction on the claim.

Reliefs (2), (3), and (4) can be considered together

It is evident from the wording of his relief (2), that the Plaintiff relies on **Articles 17, 21(1) (b) (c), 35(1) (5) (6) (a), 37(1), 56,** and invites this Court to make a declaration that:

"It is unconstitutional for the Republic of Ghana through its organs of Government, ministries, agencies, departments and/or authorized representatives to purposely aid, endorse, sponsor, support, offer preferential governmental promotion of, and/or be excessively entangled in, any religion or religious practice."

We see reliefs (3) and (4) as setting out the particulars of the acts of the government which the Plaintiff alleges are excessive entanglements in religion and therefore invite a

declaration that such acts are unconstitutional. These reliefs raise enforcement issues and this Court has a duty to consider these claims regardless of the words used or the manner in which the reliefs are couched. We will therefore reject the A-G's invitation to throw out in limine the Plaintiff's case.

Are the acts complained of excessive entanglement by the state in religion and hence unconstitutional?

Before embarking on this task we are mindful of the oft-quoted dictum of the Court of Appeal sitting as the Supreme Court in **Tuffour v. Attorney-General [1980] GLR 637**, that a National Constitution "mirrors the history of the people" that reflect "the basic aspirations of the people" for which the Constitution was enacted.

The 2010 Population and Housing Census (Summary Report of Final Results) gives the statistics of religious affiliation in Ghana as follows: Christianity as the dominant faith at 71.2 percent of the population with Islam at 17.6 percent and traditional religion at 5.2 percent. Only 5.2 percent reported having no religious affiliations. There are other smaller religious groups including Eckankar, Hinduism, Buddhism and Bahai Faith, making up the remaining 0.8 percent of the population.

Historically, the state in Ghana recognized the existence and importance of religious identity and affiliation in the Ghanaian society and encouraged their open and lawful expression even at national events. There has been collaboration between the state and religion in Ghana by the establishment of educational institutions, medical facilities and agricultural projects by all groups of Christian and other faiths in the country and thus contributing immensely to the socio-economic growth of the country. In some remote areas of Ghana, it is the religious bodies that pioneered the establishment of schools and health facilities before the state recently ventured in those areas.

The church has been a transforming agent, contributing to the development of the moral character of people and impartation of knowledge. While acknowledging that

there are other pressing national issues that deserved attention and resources, there are and will always be pressing needs for medical and educational facilities and infrastructures such as roads, electricity and good drinking water. The reasons and the need for establishing the Hajj Board, and the construction of the National Cathedral cannot be overlooked, given the diversity and peculiarities of the various religious groups and the heterogeneous nature of the Ghanaian society.

The Constitution of the 4th Republic, while secular in nature, affirms and maintains the historical, cultural, and religious or atheist character of Ghanaian society. Obviously secularism in the context of the Ghana Constitution must be understood to allow, and even encourage State recognition and accommodation of religion and religious identity. The Plaintiff alleges the setting up of 'a Board of Trustees with offices at the Jubilee House to co-ordinate the construction of the National Cathedral' is an example of the government crossing 'an impermissible line in the relationship between the state and religion'. We do not see this act as an excessive entanglement by the state, as the office can be relocated.

As noted earlier the Constitution does not specifically prohibit the Government from **supporting, assisting or cooperating** with religious groups. What the letter and spirit of the constitutional provisions forbids is the state hindering freedom of worship, religion and belief in the country and discrimination on grounds of religion. The Constitution specifically prohibits Parliament from enacting a law "to impose on the people of Ghana a common program or set of objectives of a religious or political nature".

The Constitution guarantees the equal right of all persons to subscribe to the religious belief and faith of their own choosing without interference or imposition by the State. The State is thus prohibited from discriminating against any person on grounds of religion or creed or the establishment of a State religion, and also preventing the free expression of religious orientations.

In this respect the benchmark for determining whether any act or omission of the President or any other authority in Ghana infringes any of the constitutional provisions is whether the actor omission complained of, prevents any person resident in Ghana to practice any religion or belief of his choice, or discriminates against any person with different religious persuasion.

It is our considered opinion that the acts complained of i.e. the construction of the National Cathedral and the setting up of the Hajj Board does not contravene the guarantees of the freedom of religion and manifestation of beliefs of the people of Ghana. The State is free to lend support or aid to a religious group if it deems such beneficence to be for the good of the nation.

We rather see the government's plan to build a National Cathedral and the setting up of the Hajj Board as the desire of the state to provide for social cohesion and unity in a country where 88.8 percent of its population is predominantly Christian and Islamic. We find this to be in tune with the political and social objectives as set out in the Directive Principles of State Policy under the provisions of articles 35 and 37 of the Constitution, referred to by the Plaintiff. We take note that the Government has maintained a consistent theme about the unifying effects of the Cathedral on Ghanaian Christians. So far its contribution is to provide land for the cathedral, and the actual construction to be sponsored and financed by the churches.

Counsel for the Plaintiff contends further that by his understanding of the relevant constitutional provisions, the Government is supposed to be neutral but if the Government is to assist or support religious groups then the support should be extended to all known religious groups in the country. In our opinion, the Plaintiff by this submission is making a statement of a case for 'minority' religions and a request for equal treatment by the government for all religions.

If this is a claim for minority rights then it is misconceived as nowhere in his brief has the Plaintiff alleged a request by any specified religious group for any form of assistance

which has been denied by the State. The Plaintiff does not allege or allude to any action, policy or legislation by the State which seeks to project one religion over the others. In our considered opinion, lending a helping hand to one religious community does not mean a denial or preclusion of similar or other support/ assistance to another in similar circumstances. This support to the Christians and Moslems is not necessarily discriminatory and would not necessarily have the effect of indoctrinating the citizens with a particular religion. These acts by the government are to satisfy the particular needs of these religious groups which ultimately are for the public good and interest.

Accordingly we hold that the acts complained of do not infringe the constitutional provisions relied on by the Plaintiff.

In conclusion, we do not see a legitimate question of constitutional interpretation and enforcement such as would justify our exercising our original jurisdiction under articles 2 (1) or 130(1) of the Constitution. The Plaintiff's action fails. It is therefore dismissed.

**S. O. A. ADINYIRA (MRS.)
(JUSTICE OF THE SUPREME COURT)**

DOTSE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

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

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

**ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)**

GBADEGBE, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

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

AKOTO-BAMFO (MRS.), JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

**V. AKOTO-BAMFO (MRS.)
(JUSTICE OF THE SUPREME COURT)**

BENIN, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

**A. A. BENIN
(JUSTICE OF THE SUPREME COURT)**

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my sister Adinyira, JSC.

**S. K. MARFUL-SAU
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

AZIZ BAMBA FOR THE PLAINTIFF.

GODFRIED YEBOAH DAME, DEPUTY ATTORNEY-GENERAL FOR THE DEFENDANT WITH HIM MRS. HELEN ZEWU, SOLICITOR GENERAL, SYLVESTER WILLIAMS, CHIEF STATE ATTORNEY, GRACE OPPONG, PRINCIPAL STATE ATTORNEY, MS. YVONNE BANNERMAN, SENIOR STATE ATTORNEY, MODESTA LEGIPO, ASSISTANT STATE ATTORNEY AND ORIEL ASARE BOATENG, ASSISTANT STATE ATTORNEY.