IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

CORAM: ANSAH (PRESIDING
ADINYIRA (MRS) JSC
DOTSE JSC
ANIN YEBOAH JSC
GBADEGBE JSC
BENIN JSC
AKAMBA JSC

WRIT
NO.J1/10/2015

FILED ON 5TH DECEMBER 2016

BETWEEN

1. **JESSE AMISSAH TURKSON - PLAINTIFFS**
   HOUSE NO 3 B 120
   TABORA SCORPION

2. **FLORENCE KOTEY**
   HOUSE NO C 33/15
   SULLEYALAJO
   ACCRA

3. **HON. MAVIS HAWA KOOMSON**
   MP FOR AWUTU SENYA EAST
   OFFICE OF PARLIAMENT

OSU-ACCRA

AND

1. **THE EXECUTIVE DIRECTOR - DEFENDANTS**
   ECONOMIC AND ORGANISED CRIME OFFICE
   OLD PARLIAMENT HOUSE
   HIGH STREET, ACCRA

2. **ATTORNEY GENERAL, AND MINISTER OF JUSTICE**
   ATTORNEY GENERAL'S DEPARTMENT AND
   MINISTRY OF JUSTICE
   MINISTRIES, ACCRA

JUDGMENT

MAJORITY OPINION

AKAMBA, JSC

The three Plaintiffs herein, filed an amended writ on 5th February 2016, invoking this court's original jurisdiction under articles 2, 18, 19 (2) (c), 19 (10), and 130 of the Constitution 1992 and Rule 45 of the Supreme Court Rules, 1996, (CI 16) seeking the following reliefs, namely:

A declaration that:

i. On a true and proper interpretation of Article 19 (2) (c) of the 1992 Constitution, a person's property cannot be forfeited or confiscated to the

state when that person has not been tried and convicted of a crime regarding the property.

ii. On a true and proper interpretation of Article 18 of the 1992 Constitution, a person's property cannot be forfeited or confiscated to the state by an ex-parte motion praying for same.

iii. On a true and proper interpretation of Article 18 of the 1992 Constitution, unless confiscations proceedings as provided for under sections 45, 46, 47, 50 and 51 of the Economic and Organised Crime Act, 2010, (Act 804) are complied with, a person's property/assets cannot be confiscated or forfeited to the state.

iv. On a true and proper interpretation of Article 18 of the 1992 Constitution, only tainted property can be confiscated to the state and only a Court of competent jurisdiction can deem a property to be tainted after trial has been concluded regarding that property.

v. On a true and proper interpretation of Article 19 (2) (c) and Article 19 (10) of the 1992 Constitution, the non-availability of a person to assist in investigations does not make him guilty of a serious offence, even more so when investigations to establish that a serious offence has been committed yielded no evidence of probative value.

vi. That on a true and proper interpretation of Article 19 (2) (c) and 18 of the 1992 Constitution, the order of the High Court Financial Division given by His Lordship Bright Mensah dated 31st January 2013 forfeiting the funds of the 1st Plaintiff to the state when he had not been charged with any serious offence let alone convicted for same by a court of competent jurisdiction is null and void and of no legal effect.

vii. That on a true and proper interpretation of Article 19 (2) (c) and Article 18 of the 1992 Constitution, the order of the High Court (Financial Division) dated 7th March, 2013 given by His Lordship Bright Mensah seizing and forfeiting the funds of the 2nd Plaintiff to the State when she had not been charged with any serious offence let alone convicted of same by a court of competent jurisdiction is in contravention of the 1992 Constitution and of no legal effect.

viii. That on a true and proper interpretation of Article 18 and 19 (2) of the 1992 Constitution, failing to put the 1st and 2nd Plaintiffs on notice about forfeiture and confiscation proceedings of their funds when there was no evidence that the funds were tainted was in total breach of their fundamental rights to be heard.

ix. That upon a true and proper interpretation of Article 18 of the 1992 Constitution, the High Court did not have jurisdiction to order the forfeiture

or confiscation of the funds of the 1st and 2nd Plaintiffs to the state when it solely relied on Section 23 (3) of Act 804 when they had not been charged with or convicted of any offence.

x. That upon the true and proper interpretation of Article 18 of the 1992 Constitution, the High Court had no jurisdiction to rely solely on Section 23 (3) of Act 804 to forfeit or confiscate the funds of the 1st and 2nd Plaintiff to the state when there was no evidence on record that the funds in their respective accounts were received as proceeds of crime or unlawful act.

xi. That upon a true and proper interpretation of Article 18 of the 1992 Constitution, the High Court had no jurisdiction to forfeit or confiscate the funds of the 1st and 2nd Plaintiffs to the state when there were no evidence on record that the funds were tainted.

xii. An order by this Honourable Court directed at Bank of Ghana to transfer the forfeited or confiscated funds held in the exhibit account no 1028631472031 of the 1st Defendant back (sic) to the respective accounts of the 1st and 2nd Plaintiffs at Ecobank (Gh) Ltd.

xiii. An order by this Honourable Court de-freezing the accounts of the 1st and 2nd Plaintiffs with the net effect of them having unhindered access to the operation of same.

PLAINTIFFS' CASE

The three plaintiffs are all citizens of Ghana, in which capacity they have instituted this action. The 1st plaintiff is an account holder with Ecobank, Osu branch whilst the 2nd plaintiff also operates an account with the Kotobabi branch of the same Ecobank. In December 2011 an amount of USD 14,800 was lodged into the 1st plaintiff's said account but he was denied access to the sum by the bank apparently on the directives of the 1st defendant which was said to be investigating the lodgment.

The 2nd plaintiff who also received a remittance of USD 12,900 into her Ecobank, Kotobabi branch account suffered similar fate of denial of access to the funds. Having frozen the two accounts for over twelve months, the 1st defendant filed two separate motions 'ex parte' before the High Court praying the court to issue orders for the seizure and confiscation of the two respective sums. The 1st defendant deposed to two separate affidavits to accompany the ex parte applications filed on 25th January 2013 and 18th February 2013 against the 1st and 2nd plaintiffs respectively. In the two supporting affidavits the 1st defendant deposed that due to the refusal of the 1st and 2nd plaintiffs to yield themselves up to investigations, the Honourable Court should exercise its powers under S. 23 (3) of the Economic and Organised Crime Act, (Act 803) 2010 to seize and forfeit the two sums involved to the State.

The applications were granted on 31st January, 2013 and 7th March 2013 in respect of the 1st and 2nd plaintiffs respectively. The High Court further ordered that the two funds be transferred into the 1st Defendant's account No 102863

1472031 at the Bank of Ghana. When the 1st and 2nd plaintiffs became aware of the respective forfeitures they consulted counsel who applied on notice on 5th September, 2014 and 10th October, 2014 to set aside the respective confiscation/forfeiture orders. The High Court differently constituted, held the view that since the orders complained of were given as far back as 31st February 2012, more than eighteen (18) months had lapsed that made the period unreasonably long hence it could not grant the 1st plaintiff's prayer. The High Court recommended an appeal as the proper option for the 1st plaintiff to pursue. The 1st and 2nd plaintiffs have been denied access to their funds under the circumstances narrated supra for the past four years. They have also been disabled from opening any new accounts with other banks, having been blacklisted by the 1st defendant. Faced with the foregoing dilemma the 1st and 2nd plaintiffs as well as the 3rd plaintiff have invoked this court's Original Jurisdiction under Articles 2, 18, 19 (2) (c), 19 (10) and 130 of the Constitution, 1992 as well as Rule 45 of the Supreme Court Rules, 1996, (CI 16) seeking a number of declaratory reliefs.

DEFENDANTS' CASE

The 2nd Defendant responded to the issues raised by the Plaintiffs. It is their contention in response to the first issue that the forfeitures having been ordered by a court of competent jurisdiction pursuant to an existing law i.e. the Economic and Organised Crime Act, (Act 803) of 2010, the resultant confiscation/forfeiture was made in accordance with law and in accordance with the Constitution. On relief two, the 2nd defendant submits that resort to ex-parte applications under certain circumstances such as in this case, is permissible by law provided that

after the grant, the affected person is given the opportunity to re-act, citing Order 19 r. 3 of the High Court (Civil Procedure) Rules, 2004, CI 47, and s. 23 (1) (c) and (3) of Act 803 of 2010. The 2nddefendant concludes that article 18 (2) of the Constitution allows for interference with the property of an individual provided it is in accordance with law as in this case as may be necessary in a free and democratic society for the prevention of crime. The 2nd defendant further submits that the confiscations/forfeitures having been made pursuant to the exercise of powers vested in the High Court does not call for the invocation of this court's original jurisdiction and denies that the plaintiffs are entitled to any reliefs in this forum.

LAWS RELIED UPON IN INVOKING JURISDICTION OF SUPREME COURT

Since the 1st, 2nd and 3rd plaintiffs invoked this court's Original Jurisdiction under Articles 2, 18, 19 (2) (c), 19 (10) and 130 of the Constitution, 1992 as well as Rule 45 of the Supreme Court Rules, 1996, (CI 16), I will set below the said provisions as follows:

"**2. Enforcement of the Constitution**

(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.

(2) The Supreme Court shall, for the purposes of a declaration under clause (1) of this article, make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made.

…….

18. Protection of privacy of home and other property

(1) Every person has the right to own property either alone or in association with others.

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economic well-being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others.

19. Fair Trial

(2) A person charged with a criminal offence shall -

(c) be presumed to be innocent until he is proved or has pleaded guilty;

(10) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

……

130. Original jurisdiction of the Supreme Court

(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; and

(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.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

Rule 45 of the Supreme Court Rules, CI 16 states as follows:

"PART IV---ORIGINAL JURISDICTION

45. Invoking original jurisdiction

(1) Except as otherwise provided in these Rules, an action brought to invoke the original jurisdiction of the Court shall be commenced by writ in the Form 27 set out in Part Three of the Schedule to these Rules which shall be signed by the plaintiff or counsel for the plaintiff.

(2) The writ shall set out as concisely as possible the nature of the relief sought by the plaintiff and shall state

(a) the full name of the plaintiff and the capacity in which the action is being brought;

(b) the address of the plaintiff and of the counsel for the plaintiff which shall be an address for service;

(c) the names and addresses of the parties who may be directly affected by the action; and

(d) any other particulars that the Court may direct.

(3) A copy of the writ shall be served on each of the parties mentioned in the writ as directly affected who shall be considered as the defendants and on the Attorney-General if not named specifically as a defendant.

(4) The Court may, on its own motion or on the application of a party, order that any other person shall be made a party to the action in addition to or in substitution for any other party. "

ANALYSIS OF ARGUMENTS

It seems obvious that the underlying undercurrents for the initiation of the present writ by the three plaintiffs are the events surrounding the seizure/confiscation of the 1st and 2nd plaintiffs' lodgments from their respective Ecobank accounts at Osu and Kotobabi branches. Be that as it may, we are obliged to ascertain whether our jurisdiction has been properly invoked. There is no dispute about the capability or capacity of the plaintiffs in initiating the present action. This court has in such cases as **Tufuor vs Attorney General (1980) GLR 637** and **Sam (No 2) vs Attorney General (2000) SCGLR 305**, determined that a person bringing an action under article 2 of the Constitution 1992, needs not demonstrate that he/she has any personal interest in the outcome of the suit in order to maintain the action. It is simply sufficient that he/she is a citizen of Ghana to entitle him/her to bring the action. Speaking generally therefore, any person natural or artificial may sue or be sued in the court under article 2 (1) but they must be citizens who are seeking interpretation of the Constitution and its eventual enforcement.

What then is the scope of this jurisdiction? This is because this special jurisdiction is circumscribed by other provisions of the Constitution itself. As clearly determined in a number of our previous decisions, our power under article 2 in the exercise of our original jurisdiction for the enforcement of the Constitution

does not cover the enforcement of the individual's human rights provisions. That power by virtue of articles 33 (1) and 130 (1) of the Constitution is vested exclusively in the High Court. The decision in **Edusei (No 2) vs Attorney General [1998-99] SCGLR 753** clearly highlights this position wherein it is stated in the head note thus:

> *"….the Supreme Court's powers of enforcement under article 2 of the 1992 Constitution did not cover the enforcement of human rights violations, which are expressly reposed in the High Court under article 33(1) of the Constitution. Thus a reading of articles 33 (1) and 130 (1) together does not, in anyway bear out the contention that the Supreme Court has concurrent jurisdiction with the High Court in human rights abuses…"*

In determining the scope or extent of the jurisdiction of this court, articles 2 (1) and 130 (1) of the Constitution must be read together. This is succinctly stated by Kpegah, JSC (as he then was) at pages 771 to 772 of the **Edusei [No 2]** report (supra) as follows:

> *"…in determining the scope or extent of our jurisdiction, we must read together articles 2 (1) and 130 (1) of the 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."

What are the plaintiffs actually seeking per their writ from this court? This question can be answered by considering the plaintiffs' claims as evidenced in the pleadings, issues and reliefs sought as per their writ. The sum total of this will help determine whether the jurisdiction of the court was appropriately invoked. Bamford-Addo, JSC, in **Edusei vs Attorney General (1996-97) SCGLR 1**, expatiates this point as follows:

> *"In deciding the issue of jurisdiction, matters to take into consideration included the statute which invests jurisdiction,* ***as well as the true natures of the claim having regard to the pleadings, issues, and reliefs sought, or the actual effect of such reliefs****, regardless of the words used or the manner in which the claim and reliefs are couched"*

Thus, the reliefs sought by the plaintiffs' per their writ when juxtaposed with the articles of the Constitution invoked in support of their claims, as well as their statement of case and arguments, make it is clear that the plaintiffs' seek reliance on chapter 5 of the Constitution. The key articles invoked by the plaintiffs to mount the present action were articles 18, 19 (2) (c) and 19 (10), all of which speak of the fundamental human rights and freedoms of the individual under chapter 5 of the Constitution 1992.The choice of these articles is no mere coincidence but the fulcrum upon which the plaintiffs' initiated their action.

Quite importantly as has been stressed in many previous decisions of this court, no matter the manner in which an action is clothed, where the real issue/s arising

from a writ brought under article 2 or 130 (1) of the Constitution are not in actuality of such a character as to be determinable exclusively by this court, but rather falls within a cause of action cognizable by any other court or tribunal of competent jurisdiction, this court will decline jurisdiction. This position of the court has been echoed in such cases as **Nana Yiadom 1 v Nana Amaniampong (1981) GLR 3, SC; Ghana Bar Association vs Attorney General (Abban Case) [2003-2004] SCGLR 250; Edusei (No 2) vs Attorney General [1998-99] SCGLR 753; Aduamoa II vsTwum [2000] SCGLR 165.**

In **PPP vs Attorney General, SC, Suit No J1/8/2014 of 28th July 2015 (unreported)**

I stated, concerning the importance in knowing the true nature of a claim, which is pertinent here, as follows:

> *"It is the duty of this court to decide on the true nature of a claim, however camouflaged or disguised in another form, in order to decide whether or not it is clothed with the requisite jurisdiction to entertain a case under article 130 and other provisions of the Constitution. (See **Ghana Bar Association v Attorney General & Anor (Abban Case) [2003-2004] SCGLR 250).** No matter the nature of the fancy dressing a party gives to his reliefs, it has to pass the scrutiny of this court as to whether it is an appropriate matter that invokes our jurisdiction.*

We venture to make one observation. The Plaintiffs' by their plaint are seeking to enforce a human rights provision of the Constitution dressed up in the garb of interpretation and enforcement. In our thinking the real question arising from the

invocation of this court's jurisdiction is whether on the facts of the case as presented, real or genuine interpretative issues arise for determination. The answer would depend, among others, upon the nature of the action, reliefs sought, the pleadings and whether or not the action is one which is camouflaged or dressed up to look like one in which the original jurisdiction of this court is required. See ***per Wood, CJ, in Republic v High Court (Fast Track) Division, Accra; Ex Parte Electoral Commission (Mettle-Nunoo & Ors Interested Parties) (2005-2006) SCGLR 514.***

From the nature of the action, the reliefs sought and the pleadings filed in contention, it is obvious to us that the present action has the characteristics of a camouflage to invoke our original jurisdiction. We would decline such an invitation since there is a more appropriate forum to deal with such matters as raised herein. For the foregoing reasons the application is accordingly dismissed."

In an earlier decision of this court, Apaloo C.J. in the case of **Nana Yiadom I vs. Nana Amaniapong (1981) GLR 3** echoed similar sentiments at p.8 of the ruling of the court thus:

> *"The plain truth of the matter is that the original jurisdiction of this Court has been wrongly invoked. We will accordingly accede to the challenge to our jurisdiction. Perhaps we should point out at least for the benefit of the profession that where the issue sought to be decided is clear and is not resoluble by interpretation we will firmly resist any invitation to pronounce on the meaning of Constitutional provisions. It would, we think, be a waste of mental effort and be thoroughly pointless"*

Have the plaintiffs raised any issues to invoke our interpretative jurisdiction other than those discernible from the pleadings, reliefs and arguments?

This is quite crucial because certain preconditions must be met if a party should succeed in invoking this special jurisdiction. This court in the case of **PPP vs Attorney General,** (supra), adopted with approval the case of **Republic v Special Tribunal; Ex Parte Akosah (1980) GLR 592 at 605**, wherein the Court of Appeal summarized the case law on the enforcement or interpretation of a provision of the Constitution. It arises in any of the following eventualities listed at page 605 of the decision:

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

(b) Where rival meanings have been placed by the litigants on the words of any provision of the Constitution;

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

(d) Where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.

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

The plaintiffs' in the instant case have not pointed out for our consideration any words in the provisions cited in support of their writ which are imprecise or unclear or ambiguous or simply obscure in order for us to give an interpretation. It is also not the case that the plaintiffs and the defendants have rival meanings to any words of any particular provision/s of the Constitution. The parties have not raised any issue of conflicting meanings and effects of two or more articles of the Constitution for our resolution. Lastly no issue touching on the last item i.e. (d) arises to warrant the intervention of this court. As for the 3rd defendant in particular, apart from issuing the writ together with the 1st and 2nd plaintiffs and stating that she is a Member of Parliament, she has not shown that any issue of enforcement or interpretation arises in satisfaction of the basic requirements or circumstances listed in the **Ex parte Akosah** case worthy of our intervention.

In our recent majority (6-3) decision in **Osei Boateng v National Media Commission [2012] SCGLR 1038 at 1041** the need to satisfy the court on the basic requirement was emphasized in holding 2 as follows:

> *"the requirement of an ambiguity or imprecision or lack of clarity in a constitutional provision was as much a precondition for the exercise of the exclusive original enforcement jurisdiction of the Supreme Court as it was for its exclusive interpretation jurisdiction under articles 2 (1) and 130 of the 1992 Constitution; that was clearly right in principle since to hold otherwise would imply opening the flood gates for enforcement actions to overwhelm the Supreme Court. Accordingly, where a constitutional provision was clear*

and unambiguous any court in the hierarchy of court might enforce it and the Supreme Court's exclusive original jurisdiction would not apply to it."

It is very sad to remark that even though on the facts narrated in support of the 1st and 2ndplaintiffs' claims, they in particular appear to have been denied justice in the whole handling of their case as their remedies were not properly evaluated. The High Court judge before whom the action was filed had the greatest opportunity to determine the justice of the plaintiffs' claims but chose the timorous path of ascribing tardiness as the reason for not going into the merits of the matter. The initiative in this court, by counsel invoking our interpretive and enforcement jurisdiction appears desperate and ill conceived. Unfortunately this court does not assume jurisdiction out of compassion or sympathy. As long as there is a proper forum other than this court for the plaintiffs to ventilate their rights, this court will decline jurisdiction which we hereby do.

For the foregoing reasons the plaintiffs' writ is dismissed as same is not properly before us.

J. B. AKAMBA
JUSTICE OF THE SUPREME COURT

ANSAH JSC

I agree

J. ANSAH
JUSTICE OF THE SUPREME COURT

ADINYIRA MRS JSC

I agree

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

BENIN JSC

I agree

A. A. BENIN
JUSTICE OF THE SUPREME COURT

GBADEGBE JSC:

I have had the advantage of reading beforehand the judgment of my brother Akamba JSC and hereby express my agreement with his opinion. However, I would like to say in a few words by way of concurrence with the said judgment that is limitedto the question whether or not the present action discloses a cause of action properly so called. A careful reading of the reliefs sought in the action herein and the statement of case reveals that the plaintiff is seeking to raise for our consideration issues of law that ought properly to have been raised in the decision of the High Court which appears to have triggered the action herein.

As it is, the fact that the learned trial judge did not properly pronounce on the authority conferred on him under the relevant statute does not in my view create a new cause of action in the plaintiff to raise before us questions which ought to have been taken before the trial court and or raised on appeal there from. The fundamental principle of estoppel by judgment precludes a party from raising in a new action issues of fact and or law that ought with the exercise of due diligence to have been raised for a decision in a previous action. The essence is that the points which arose for decision in the previous action are merged in the judgment of the trial court and can only competently be questioned on appeal or by judicial review in the nature of certiorari. The mere fact that the said issues might have a bearing on the provisions of the constitution does not render the matter a constitutional one such as to bring it within our exclusive original jurisdiction under article 2 of the constitution by which are enabled to give effect to the supremacy of the constitution. In my opinion the crux of the application whose refusal has resulted in this action was primarily not a constitutional one and if the issue of the true meaning of any provision of the constitution arose for decision, the correct procedure is for the court to make a reference to the Supreme Court for its decision under article 130 of the 1992 Constitution. Article 130 of the constitution provides:

(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 jurisdiction in-

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

(b) All matters relating 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.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

I make bold to say that resort to the Supreme Court under article 1300 (2) preserves the exclusive jurisdiction of the Supreme Court in matters where the interpretation of the constitution arises in a case in which the main issue for the court's decision is not the interpretation of the Constitution-the interpretative jurisdiction is ancillary to the main cause of action. But for this provision, I cannot imagine how our courts would fashion in a democracy that is planked on the supremacy of the constitution. Therefore, when as in this case, it is being contended by the plaintiff that the High Court usurped the jurisdiction of this court in case number FTRM/25/12 entitled:

THE EXECUTIVE DIRECTOR

ECONOMIC AND ORGANISED CRIME OFFICE

VRS

JESSE AMISSAH TURKSON , when it made certain orders in the nature of confiscation of funds belonging to the 1st plaintiff and refused to have the sad order set aside upon an application in that behalf by the said 1st applicant. I would like to say at once that by virtue of the preclusion of issues of interpretation and enforcement of the Constitution being heard by courts than the Supreme Court, in accordance with the judicial oath, members of this court should jealously guard any usurpation of jurisdiction by other courts in order to give effect not only to the supremacy of the constitution as contained in article 1 of the 1992 Constitution but also to preserve

the rule of law. Accordingly, claims which raise allegations of usurpation of the exclusive jurisdiction of this court as contained in article 130, it is or duty to interrogate such claims with extreme circumspection and where the allegations are made out to make a declaration of nullity of the proceedings founded upon such wrongful assumption of jurisdiction. Where, however, the consideration of the claim is found not to have been truly made out, it is our duty not to accede to the declaration sought.

In order to determine the issue which was before the trial court and for that matter the remedies or reliefs open to the 1st plaintiff against whom the order of confiscation was made under the provisions of the Economic and Organised Crimes Act, 2010 (Act 804) for the purpose of answering the question whether in delivering herself on the application to set aside the previous order of confiscation, the learned High Court Judge, Justice Afia Serwa Asare fell into error; the error being traceable to articles 18 and 19 of the Constitution. Although before us in this new action, the plaintiffs base their claim to declaratory reliefs on the prior order of Bright Mensah J, which order they sought to have vacated by a judge of co-ordinate jurisdiction, Afia Serwa Asare J, on grounds contained in an application exhibited to the action herein as "E", I am of the considered view that in order to appreciate the issue of res judicata , the said application should be read as part of the proceedings in order to determine the issue before the trial court within the context of estoppel by previous judgment and or res judicata.

A careful consideration of the processes exhibited to the action herein leave me in no doubt that by the provisions of the applicable law, Economic and Organised Crimes Act, Act 804) of 2010, enables a person whose funds have been forfeited to the state to apply to the court in which the order of seizure was made for an order refreezing the said asset as provided for in section 38(2). In my thinking when such an application comes up before a court, one of

the issues to be considered by the court is whether the order of forfeiture is in accordance with the provisions of the Constitution including articles 18 and 19 on which the plaintiffs place great reliance to assert in these proceedings that based only upon those provisions, which they allege were violated by the High Court, the present action is properly before us for adjudication under article. As the question of the legality of the seizure made by the 1st defendant and its subsequent confirmation by the court and the refusal to vacate it raised for decision the question of compliance with provisions of the constitution earlier on referred to, I am of the opinion that the remedy of the plaintiffs if they felt aggrieved by the order of refusal is to either appeal against the decision to set aside the order of Bright Mensah J and or apply for judicial review in the nature of certiorari. The facts on which the plaintiffs rely to seek relief in the action before us could have raised the issues which form the fulcrum of this new action and from the ruling of Afia Asare-Botwe J exhibited to the processes in this action as "G", it is clear that the issues now being raised could have been competently raised before the trial court or on appeal for a decision thereon. The question which I find difficult to answer is whether courts other than the Supreme Court which try cases in which all questions of law to be good must be justified from the constitution can be able to exercise their jurisdiction and deliver judgments within jurisdiction by merely not making definitive pronouncements on provisions of the constitution. When courts try cases on points of law, they are always giving effect to provisions of the constitution which are free from disputation such as to raise any question of interpretation and to accede to the contention of the plaintiffs that once provisions of the constitution were impliedly violated, there was absence of jurisdiction that creates a distinct and new cause of action in them to invoke our original jurisdiction would not only bring the work of other courts to a halt but also undermine article 130 (1) by which when the cause of action as was in the matter herein before the high Court one derived from Act 804 of 2010, although turning on

some provisions of the constitution then there should in cases of enforcement or interpretation be referred to the Supreme Court for its decision thereon. Article 130(1), in my view enables judicial work in other courts to run without unnecessary interruption by ensuring that the decision on interpretative questions are determined only by the Supreme Court. As the questions on which the plaintiffs base their right to relief in this action could have been raised for determination in the earlier action which has triggered the instant action, the action is caught by the doctrine of res judicata the effect of which plea is to deny us of jurisdiction to inquire into the plaint now before us.

It seems to me that should we uphold the lame invitation of the plaintiffs in this action, then many trials by courts for example which exercise criminal jurisdiction in violation of provisions of the fundamental human rights such as articles 18 and 19 cannot ever be final because once there is disclosed any non- compliance with the constitution, there is a legitimate cause of action in the persons affected thereby to be ventilated before the Supreme Court in its original jurisdiction. Such a course of proceeding would result in chaos in the court system and bring the entire judiciary into ridicule; for which reason I reject the invitation being urged on us by the plaintiffs by this action. The plaintiffs, it must be said from the foregoing are merely relitigating questions which could properly have been raised in the proceedings on which this new action is based and accordingly are caught by the doctrine of estoppel by judgment or res judicata. Having had their day fully in court, the plaintiffs present action sounds in abuse of process and vexation and must be dismissed.

N. S. GBADEGBE

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

DOTSE JSC

On the 16th day of November 2016, this court delivered judgment by a majority of 5 to 2, Dotse and Yeboah JJSC, dissenting in which the Plaintiffs had their action dismissed with reasons to be given later. I now proceed to give the reasons why I dissented from the majority.

Since my respected brother Akamba JSC has already set out in detail the facts of the case as well as the case of the parties in their entirety, it will be pointless to repeat same unless there is the need to re-emphasise same.

JURISDICTION

The core issue in this case is whether this court has jurisdiction, put in another way, **whether or not this court's jurisdiction has been properly invoked by the Plaintiffs**.

My respected and revered Sister, Sophia Akuffo JSC stated in her opinion in the case of ***Bimpong-Buta v General Legal Council and Others*** [2003-2005] 1 SCGLR 738 as follows:-

> *"Jurisdiction is always a fundamental issue in every matter that comes before any court and, even if it is not questioned by any of the parties, it is crucial for a court to advert its mind to it to assure a valid outcome. This is even more so in respect of the Supreme Court's original jurisdiction, which has been described as special."*

This need is even more crucial in this case because it involves statute which as it were authorises 1st defendant herein, to act in certain ways which affects proprietary rights which are constitutional guarantee's enshrined in the Constitution, 1992.

However, in the instant case, the Defendants have questioned the jurisdiction of the court that has been invoked by the Plaintiffs. On this score, the 1st Defendant argued that, the original jurisdiction of this court which the plaintiffs have invoked has not been properly done.

They contend that the issue is really a fundamental human rights issue because it is in relation to Articles 18 and 19 of the Constitution 1992 which fall under Chapter Five of the Constitution which deals with fundamental human rights and freedoms enshrined in the Constitution. They conclude that, since fundamental human rights provisions are justiciable by the High Court, the Plaintiffs are in the wrong forum.

The 2nd defendants on their part repeat the same jurisdictional argument of the 1st defendants. However, they contend further that, the Plaintiffs case is really one dealing more with the interpretation of statute, specifically the Economic and Organised Crime Act, 2010 Act 804 and not an interpretation of the constitutional provisions which would have clothed this court with jurisdiction.

It must be noted that the Plaintiffs have anchored their case on the violation of Articles 18 and 19 of the Constitution. This is because, the Defendants did not charge and or prosecute the 1st and 2nd plaintiffs with any criminal offences under Act 804 before proceeding to forfeit or

confiscate their properties which in this case is money. In respect of the 1st Plaintiff, this is USD14,800.00 and in respect of the 2nd Plaintiff, it is USD 12, 900.00.

In essence, the core and critical issue that calls for determination inter alia other issues is whether or not a person's property can be confiscated to the state without being arraigned and prosecuted for a criminal conduct under any of the laws of Ghana, vis-à-vis the application of Articles 18 and 19 of the Constitution which guarantee the right to fair trial and the protection and guarantee of property.

At this state, it is important to refer to the relevant constitutional provisions which state as follows:-

Article 18

(1) "Every person has the right to own property either alone or in association with others

(2) No person shall be subjected to interference with the privacy of his home, property, correspondence or communication except in accordance with law and as may be necessary in a free and democratic society for public safety or the economicwell being of the country, for the protection of health or morals, for the prevention of disorder or crime or for the protection of the rights or freedoms of others." Emphasis

Article 19 (1)

(1) A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

(2) A person charged with a criminal offence shall

(c) be presumed to be innocent until he is proved or has pleaded guilty"

See also Articles 19 (2) (d) (e) (f) and (g) of the Constitution.

There is no doubt however that, the Economic and Organised Crime Office Act, 2010 Act 804 was enacted to create an office of Economic and Organised Crime as a specialized agency to monitor and investigate economic and organized crime and consequently to prosecute these offences on the authority of the Attorney-General **to recover the proceeds of crime and provide for related matters.**It is important to note here that, the emphasis is on the proceeds of crime, and this therefore has to be proven in court. Even though the preamble to Act 804 is laudable, the fact still remains that, under Article 11 (1) (a) and (b) of the Constitution 1992 *"The Constitution"* is the Supreme Law of the land, followed in descending order by enactments made by Parliament, such as Act 804, Orders, Rules and Regulations, existing law and the Common law.

It is also another undeniable fact that, the Supreme Court is the only court among the hierarchy of courts that has exclusive jurisdiction

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

(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."

See articles 130 (1) (a) and (b) of the Constitution 1992.

Thus, it is to the Supreme Court alone that a party who alleges that an enactment or conduct is inconsistent with the Constitution must turn to.

Section 1 of Act 804 established the 1st Defendants office as a body corporate known as the Economic and Organised Crime Office. Section 2 of the Act sets out the objects of the said office as follows:-

(a) prevent and detect organized crime

(b) generally to facilitate the confiscation of the proceeds of crime.

Section 3 sets out the functions of the 1st Defendants in extenso. Section 3 (a) sets out the core mandate of the office as follows:-

"The functions of the office are to

(a) investigate and on the authority of the Attorney-General prosecute serious offence that involve

(i) financial or economic loss to the Republic or any state entity or institution in which the state has financial interest,

(ii) money laundering,

(iii) human trafficking,

(iv) prohibited cyber activity

(v) tax fraud, and

(vi) other serious offences…" emphasis supplied

From the outset, it is clear that the 1st Defendants have very wide and sweeping mandate under Act 804 but this is all subject to the over riding provisions of the Constitution 1992.

Therefore, if in the opinion of the Plaintiffs, the conduct of the 1st Defendants in seizing their monies under section 23 of Act 804 is inconsistent with and or contravenes the human rights provisions in articles 18 and 19 of the Constitution, it is only the Supreme Court pursuant to articles 2 (1) and 130 (1) (a) and (b) of the Constitution that has jurisdiction in the matter, on the interpretation and or enforcement of these rights, vis-à-vis the impugned enactments.

A perusal of the amended reliefs of the plaintiffs in my opinion are nothing but a declaration to the effect that the provisions of section 23 of Act 804 under which the 1st Defendants proceeded to have the properties of the 1st and 2ndplaintiff's confiscated, (to wit various sums of money already referred to supra) are inconsistent and or contravene the provisions of Articles 18 and 19 of the Constitution.

This in my humble view, calls for interpretation of whether the 1st Defendants have violated the Plaintiffs constitutional rights and to that extent, enforce same. I must concede that the plaintiff's writ of summons has been inelegantly couched to such an extent that one needs to read

between the lines to achieve the desired meaning and effect. As a matter of fact, this being the apex and constitutional court of the land, strict adherence to form will in some cases deny justice to those deserving of it.

See the case of ***Bako-Alhassan v Attorney-General [2013-2014] 2 SCGLR 823at 826***where I spoke on behalf of the Supreme Court in a unanimous judgment as follows:-

> *"On the surface, one might be tempted to summarily dismiss the plaintiff's writ as not satisfying the test that has been laid down in cases over the years such as:* ***Edusei v Attorney-General [1996-97] SCGLR 1****;* ***Taitv Ghana Airways Corporation (1970) 2 G & G****; and* ***Yiadom I v Amaniampong [1981] GLR 3 at 8, SC****. However, we have restrained ourselves from such a course of conduct because of our realization that, at the highest level of generality, the Supreme Court should be construed as acting as the guardians of human and constitutional rights.* ***In this respect, the interpretative obligation imposed on the court is a very extensive one and in reaching a decision, the court has to make a selection from a number of possible ways in which impugned legislation, if any, could have been construed or affected by the powers of judicial review…"***

Explaining further the rationale of our decision, I stated as follows:-

> *(2) Strict adherence to form had given way to substance.* ***Thus, despite the existence of laws and especially procedure rules for the courts, non-compliance with procedural rules based***

on form, would not lead to the striking down of an action provided it contained substance. *Looking at the plaintiff's writ as a whole, even though one could state that it did not conform to the rules of court… as well as Form 27 of the Supreme Court Rules, 1996 (CI 16),* ***yet in substance, what the plaintiff wanted from the supreme Court had been accurately captured in the words used by her.*** *The court would therefore hold that the plaintiff's writ of summons had satisfactorily met the requirements of the substantial justice principle and by that strict compliance with rules of procedure would not be allowed to defeat the aims of substance discernible from the pleadings of the plaintiff." Emphasis supplied.*

With the above exposition, I am clear in my mind that I can label this case as a constitutional case seeking interpretation and enforcement of the Constitution in line with notable pronouncements made in the celebrated cases of

1. **Edusei v Attorney-General(supra)**
2. **Yiadom v Amaniampong (**supra)
3. **Tait v Ghana Airways Corporation (Supra)**
4. **Gbedemah v Awoonor-Williams, (1969) 2 G& G 438**
5. **Republic v Special Tribunal, Ex-parte Akosah (1980) GLR 592, CA**, and

6. **Adumoah v AduTwum II, [2000] SCGLR 165** where AcquahJSC, (as he then was), speaking on behalf of the court summed up the courts views after reviewing all the cases referred to supra as follows:-

> *"In summary then, whereas the original jurisdiction to interpret and enforce the provisions of the 1992 Constitution is vested solely in the Supreme Court, every court and tribunal is duty bound or vested with jurisdiction to apply the provisions of the Constitution in the adjudication of disputes before it. And this jurisdiction is not taken away merely by a party's reference to or reliance on a provision of the Constitution. If the language of that provision is clear, precise and unambiguous, no interpretation arises and the court is to give effect to that provision."*

From the above, it is crystal clear that it is only the Supreme Court that has the jurisdiction to declare whether an enactment is in contravention of a provison of the Constitution, or interprete a provision of the Constitution within the meaning and scope of the courts jurisdiction.

As illustrated in a most recent decision of the court, the instant case is one of such cases that the court has this jurisdiction to determine.

See also the unreported unanimous decision of this court in case WritNo.JI/16/2015 dated 10th March 2016, intitutled Emmanuel Noble Kor v Attorney-General &Anr. whereAtugubaJSC spoke on behalf of the court as follows:-

"Certainly, it cannot be said that this court cannot compel the observance of a provision of the Constitution unless it first acquires the murkiness of ambiguity and is processed in the interpretative refinery of this court."

Indeed, taking a cue from the above decision and several others from this court, **it can fairly be stated that there is no standard formula or set of words or phrases which alone can qualify an action as a constitutional case or not.** I have already pointed out that, although learned counsel did not set out the reliefs in the Plaintiffs writ with clarity of thought and clear understanding, **a simple reading between the lines together with the statement of case will give one the indication that it is a case cognizable under the constitution.**

For the above reasons, I will dismiss the preliminary objection and declare that it is not sustainable.

However, before I proceed to the substance of the plaintiffs action, let me summarily dispose of the issue raised concerning the 3rd Plaintiff, who has been described by the Defendants as not having any interest in the matters put before this Court. This is because her money was not one of those confiscated.

One of the important philosophical underpinnings of the decisions of the Supreme Court in the 4th Republic is that, they have continued the principle of law decided in the celebrated case of **Tuffour v Attorney-General [1980] GLR 637**, **SC** which has been re-emphasied in a long line of cases such as **Sam (No.2) v Attorney-General [2000] SCGLR 305** which

state the principle that a person bringing an action under Article 2 of the Constitution 1992 need not demonstrate that hehas any personal interest in the outcome of the suit. The fact that he or she is a citizen of Ghana suffices and or qualifies him to bring an action.The 3rd Plaintiff is one such person.

In my opinion, it is this very liberal and expansive proposition of who is entitled to institute actions in the Supreme Court invoking it's original jurisdiction that has sustained constitutional development in this country. I will therefore be very hesitant in curbing the scope of this principle.

Having declared that the 3rd Plaintiff is also qualified and has the requisite locusstandi to have instituted the action in this court, let me very briefly discuss why I granted the Plaintiffs' reliefs as I understand them.

FORFEITURE OF PLAINTIFFS PROPERTIES

What must be noted is that, since the Constitution protects property rights and also guarantee's fair trial, non observance of these rights or a casual approach to their observance must not be countenanced. The operative word in section 23 (3) of Act 804 is **Forfeiture.** It isthis which enables the 1st Defendant's herein to seek to forfeit currency by court order already in his possession to the Republic under some circumstances. I have looked at section 74 of Act 804, the Interpretation section for the definition of forfeiture but that is not to be. However, the word confiscation is defined as follows:-

"Means the permanent deprivation of funds or other assets by order of a competent authority or court."

Black's Law Dictionary, 9th edition however defines forfeiture **as the divestiture of property without compensation**. It follows to say that, it isthe loss of rights, privilege over property because of a crime. The question which then begs for an answer is what crime did the 1st and 2nd Plaintiffs commit for their properties in the nature of the funds already referred to supra to have been forfeited to the Republic?

From the pleadings and records before the court, it is clear that the plaintiffs had not been charged with any crime before any court of competent jurisdictionprior to the forfeiture of their funds.

It must also be noted that, because the Defendants failed to arraign the Plaintiffs before any court in respect of any criminal offences, they could not have also complied with the fair trial rules enshrined in article 19 of the Constitution.

The Defendants have always anchored their case on the alleged refusal of the 1st and 2nd Plaintiffs to appear before them to assist in the investigations about the suspicious nature of the transactions regarding their funds, in their respective bank accounts as constituting a waiver of their rights to be heard. This is because of the Defendant's contention that the letter to the Plaintiff clearly indicated to them as follows:-

"You are kindly requested to meet the Executive Director, EOCO to assist in investigations."

My understanding of the said letter is that, if the Plaintiffs fail and or refuse to appear before the 1st Defendants, then it was incumbent upon him to call in aid the coercive powers of the State to arrest and or prosecute the said plaintiffs.

In essence, it must be noted that, the Defendants never gave an opportunity to the Plaintiffs to be heard before the decision was unilaterally taken to forfeit and deprive them of their properties.

As I stated supra, the 1st Defendants should have established beyond all reasonable doubt that the plaintiffs were indeed guilty of the offences charged. This will indeed be proof of the legal maxim *"Actore non probante, res absoluitus"* (which literally means that, if the Plaintiff does not prove his case, the defendant is acquitted) and this principle cannot be over emphasized.

The defendants should have proven the guilt of the plaintiff before proceeding to forfeit their properties.

As the definition of forfeiture connotes, it is the absolute and complete deprivation of a person's property. **The crux of the matter therefore is that,the unlawful and unconstitutional deprivation of property cannot be glossed over by a court of competent jurisdiction such as this court**. At this stage, it must also be noted that quite apart from the rules of natural justice especially the *"Audi alterampartem rule"* there are also constitutional injunctions in articles 18 and 19 of the Constitution by which the Plaintiffs ought to have been given a hearing before they are

condemned by the forfeiture of their money which is the life blood of human existence.

It is upon the above breaches of the constitution that compelled me to depart from my brethren in the majority. In the unanimous decision of the Supreme Court, speaking through me in the case of ***Bako-Alhassan v Attorney-General,***the Supreme Court, speaking through me stated as follows:-

> *"Courts all over the common law jurisdiction are striving to achieve substantial justice in ensuring that they move away from the straight jackets of mechanical application of rules of procedure."*

Before I conclude my dissent in this judgment, I wish to refer and rely on some observations I made in my dissenting opinion in the unreported Supreme Court judgment, case No. J5/26/2014 dated 22nd July 2014 intitutled, **The Republic v High Court, Accra – Respondent, Ex-parte NiiNuehOdonkor – Applicant (The Executive Director, Economic and Organised Crime Office, Bank of Ghana and Ecobank) – Interested Parties** where I stated as follows:-

> "*However, it has to be noted and observed that the enactment of Act 804 does not absolve the staff of the Economic and Organised Crime Office and the Attorney-General's Department from following due process. In addition to the issue of due process, the Constitution 1992 has detailed provisions designed to protect persons from arbitrariness, breach of the rules of natural justice, protection against unlawful deprivation of property among several other rights which*

are designed to ensure fair trial. See article 19 of the Constitution 1992. Since Act 804 is in it's formative years, a great deal of caution and circumspection is required from the staff of the relevant investigating agencies and the officers who will implement the law against suspected criminals. The bedrock of our criminal justice system is that, a person is presumed innocent until proven guilty. It is in this respect that the rules of natural justice which have also formed part of our basic laws must not only be adhered to, but seen to be scrupulously observed. In this respect, the courts have a very important role to play in ensuring that the operatives of Act 804 do not take the citizens of Ghana for granted. ***The courts must therefore ensure that in the implementation and execution of the Act 804, the words of the statute are interpreted taking into account relevant constitutional provisions guaranteeing fair trial among others and also best practices in criminal jurisprudence." Emphasis supplied.***

See also my dissenting opinion in the unreported judgment of the Supreme Court in the case of **The Republic v High Court, (Financial Division) Accra, Ex-parte TweneboahKoduah- Applicant, The Executive Director, Economic and Organised Crime Office - Interested Party**dated 29th July, 2014, case No. CM J5/22/2014

There is the need therefore to be cautious, and circumspect about how Act 804 is to be operationalised and or practicalised in order to ensure that the operatives within EOCO do not become monsters by the negligence and or abdication of the protective role of the courts granted under Article 125 (3)

of the Constitution 1992. I will endorse the position where the guaranteed rights and freedoms in the Constitution 1992 are held as sacred and duly enforced by the courts having jurisdiction to do so. This will prevent a return to the bad old days when the Supreme Court, in the **Re-Akoto case, [1961] GLR 523, SC** abdicated their watch dog position and by that all legitimate dissent to oppressive laws came to an end. I cannot follow that path.

For the above reasons I will uphold the plaintiffs' claims and hold that the conduct of the Defendants in relying upon and applying provisions of Act 804 have been in contravention of articles 18 and 19 of the Constitution which protect and guarantee property rights as well as ensure fair trial procedures, so that a person is deemed innocent until proven guilty by a court of competent jurisdiction. I will therefore direct that the 1st and 2ndplaintiffs have their monies which were unconstitutionally and unlawfully forfeited and or confiscated refunded to them. It is therefore certainly unconstitutional to forfeit property without due process.

V. J. M. DOTSE

JUSTICE OF THE SUPREME COURT

YEBOAH JSC:

I had the opportunity of reading both the majority and minority opinions of my worthy brothers Akamba and Dotse JJSC respectively, but after I had deeply applied myself and thoughts, I am unable to agree with the reasons and conclusions of the majority.

The facts of this case like any constitutional case appear to be devoid of factual controversies and same have been captured in the opinion of my worthy brother Akamba, JSC. The plaintiff issued a writ for several declarations by invoking our original jurisdiction to seek the following reliefs:

i. On a true and proper interpretation of Article 19(2)(c) of the 1992 Constitution, a person's property cannot be forfeited or confiscated to the state when that person has not been tried and convicted of a crime regarding the property.

ii. On a true and proper interpretation of Article 18 of the 1992 Constitution, a person's property cannot be forfeited or confiscated to the state by an ex-parte motion praying for same.

iii. On a true and proper interpretation of Article 18 of the Constitution, unless confiscations proceedings as provided for under sections 45,46,47,50 and 51 of the Economic and Organised

Crime Act, 2010 (Act 804) are complied with, a person's property/assets cannot be confiscated or forfeited to the state.

iv. On a true and proper interpretation of Article 18 of the 1992 Constitution, only tainted property can be confiscated to the state and only a court of competent jurisdiction can deem a property to be tainted after trial has been conclude regarding that property.

v. On a true and proper interpretation of Article 19 (10) of the 1992 Constitution, the non-availability of a person to assist in investigations does not make him guilty of a serious offence, even more so when investigations to establish that a serious offence has been committed yielded no evidence of probative value.

vi. That on a true and proper interpretation of Article 19(2)(c) and 18 of the 1992 Constitution, the order of the High court Financial Division given by His Lordship Bright Mensah dated 31st January 2013 forfeiting the funds of the 1st plaintiff to the state when he had not been charged with any serious offence let alone convicted for same by a of competent jurisdiction is null and void and of no legal effect.

vii. That on a true and proper interpretation of Article 19(2)(c) and Article 18 of the 1992 Constitution, the order of the High Court (Financial Division) dated 7th March 2013 given by His Lordship

Bright Mensah seizing and forfeiting the funds of the 2nd plaintiff to the state when she had not been charged with any serious offence let alone convicted of same by a court of competent jurisdiction is in contravention of the 1992 Constitution and of no legal effect.

viii. That on a true and proper interpretation of Article 18 and 19(2) of the 1992 Constitution failing to put the 1st and 2nd plaintiffs on notice about forfeiture and confiscation proceedings of their funds when there was not evidence that the funds were tainted was in total breach of their fundamental rights to be heard.

ix. That upon a true and proper interpretation of Article 18 of the 1992 Constitution, the High Court did not have jurisdiction to order the forfeiture or confiscation of the funds of the 1st and 2nd plaintiffs to state when it solely relied on section 23(3) of Act 804 when they had not been charged with or convicted of any offence.

x. That upon a true and proper interpretation of Article 18 of the 1992 Constitution, High Courts has no jurisdiction to rely solely on section 23(3) of Act 804 to forfeit or confiscate the funds of the 1st and 2nd plaintiffs to the state when there was no evidence on record that the funds in their respective accounts were received as proceeds of crime or unlawful act.

xi. That upon a true and proper interpretation of Article 18 of the 1992 Constitution, the High Court had no jurisdiction to forfeit or confiscate the funds of the 1st and 2nd plaintiffs to the state when there were no evidence on record that the funds were tainted.

xii. An order by this Honourable Court directed at Bank of Ghana to transfer or confiscate funds held in the exhibit account №1028631472031 of the 1st defendant bank (SIC) to the respective accounts of the 1st and 2nd plaintiffs at Ecobank (Gh) Ltd.

xiii. An order by this Honourable Court de-freezing the accounts of the 1st and 2nd plaintiffs with the net effect of them having unhindered access to the operation of same.

This action, according to the majority should be truncated at this stage on the simple ground that his court has no jurisdiction to determine the issues set down by the parties herein. I have taken my time to repeat all the reliefs sought in this action to demonstrate how this court should examine the reliefs in detail. It must, however, be pointed out that some of the reliefs, by their nature, are consequential or ancillary and the fate of those reliefs would only be considered upon the grant of the main reliefs sought. Precisely, reliefs (xii) and (xiii) fall within the consequential reliefs and the determination of this preliminary point makes them issues of less relevance.

The reliefs sought under this court's original jurisdiction, basically, is an invitation to this court to determine, in my respectful view, whether as citizens of this country their moneys could be confiscated when they had not been charged,

tried and convicted of any crime known in the laws of Ghana. References were made to several sections, precisely sections 45,46,47,50 and 51 of the Economic and Organised Crime Act of 2010 (Act 804) and the statutory conditions which the first defendant should fulfill before the plaintiffs could be made to forfeit their moneys.

In my respectful view the parties to this action have placed different interpretations on the Economic and Organised Crime Act, Act 804, vis-à-vis the constitutional provisions referred to in the reliefs sought from this court, specifically, Articles 18 and 19 of the 1992 Constitution and whether the Act 804 conflicts with the Constitution.

I am convinced beyond doubt that the task before this court is clearly for interpretation and enforcement of the Constitution. Article 130 of the 1992 Constitution vests this court with our original jurisdiction, and this jurisdiction includes the determination "as to whether an enactment was made in excess of the powers conferred on Parliament". In my opinion the Economic and Organised Crime Act, 2010, (Act 804), specifically sections 45,46,47,50 and 51 are in issue here. The plaintiffs as citizens of this

country have by virtue of article 2 of the Constitution appeared before us to question Act 804 and its infringement of articles 18 and 19 of the Constitution. The only court which in my view could interpret Articles 18 and 19 of the Constitution is the Supreme Court and no other court. I do not in the least think that if the High Court is presumed to have jurisdiction in this matter, even as a human rights matter, it could place any interpretation on Articles 18 and 19 of the Constitution without resorting to the usurpation of our exclusive jurisdiction.

I have carefully considered the reliefs sought in this case which should in law determine whether this court has jurisdiction in this matter. I hold that, adopting the opinion of Bamford-Addo JSC in EDUSEI v ATTORNEY-GENERAL [1996-97] SCGLRI would clearly resolve the issue of jurisdiction in favour of the plaintiffs.

The true nature of the claim is simply a matter of interpretation and enforcement and we owe it as a duty not to shut out the plaintiff from this court, moreso when the order freezing their moneys was made ex parte.

I think the often-quoted case of REPUBLIC v SPECIAL TRIBUNAL; EX PARTE AKOSAH [1980] GLR 592 which clearly spelts out the circumstances under which our original jurisdiction could be said to have been invoked supports the case of the plaintiff in that rival interpretations have been placed on Articles 18 and 19 of the Constitution by the parties herein and this controversy could be resolved by this court and no other court.

I think my worthy brother Dotse, JSC has captured the other grounds which I wholly agree for this court to assume jurisdiction. It would suffice to agree without repeating what he has already said in his erudite dissent.

Before I rest, I wish to make it clear that in our constitutional dispensation, care must be taken not to create statutory institutions without checks by the courts on how they deal with the citizenry. Failure to hold them in check would be a throwback to the era of unlimited executive powers which will certainly undermine our democratic dispensation. It is for the reasons canvassed in this concurring opinion in dissent that I hold that his case should travel the normal course. I therefore agree with my worthy brother Dotse JSC that his court has jurisdiction to determine the plaintiffs' claim.

ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

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