IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2016

CORAM: ATUGUBA, JSC (PRESIDING)
AKUFFO (MS), JSC
ANSAH, JSC
ADINYIRA (MRS), JSC
BONNIE, JSC
GBADEGBE, JSC
BENIN, JSC

WRIT
NO.J1/2/2015

20TH JULY 2016

1.	**LICENSED SURVEYORS ASSOCIATION OF GHANA**	**...**	**1ST PLAINTIFF**
2.	**KWAME TENADU, SNR BOTH OF 29 SAMORA MACHEL RD. ASYLUM DOWN, ACCRA**	**...**	**2ND PLAINTIFF**

VRS

1.	**ATTORNEY-GENERAL**	**...**	**1ST DEFENDANT**
2.	**THE MINISTER, LANDS & NATURAL RESOURCES**	**...**	**2ND DEFENDANT**
3.	**LANDS COMMISSION**	**...**	**3RD DEFENDANT**

JUDGMENT

ATUGUBA, JSC:

By their writ dated 3/11/2014 the plaintiffs claim against the defendants as follows:

> "1. a declaration that the Land Commission as established by Parliament pursuant to the lands Commission Act, 2008 (Act 767) is unconstitutional.
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> 2. a declaration that section 5(g), (h), (i) and (j) of the Lands Commissions Act 2008 (Act 767) that assigns functions to the 3rd defendant which said functions by virtue of the 1992 Constitution are intended to be the preserve of existing institutions which the 3rd defendant was constitutionally enjoined to coordinate with in the performance of its functions under articles 11 and 258 of the 1992 Constitution and are unconstitutional and consequently void.
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> 3. a declaration that section 7(2) (c) of the Lands Commission Act, 2008 (Act 767) which interferes with the assessment and collection of rents in respect of stool lands and their distribution, a function assigned to the Administrator of Stool Lands by the 1992 Constitution violates, breaches and is inconsistent with and in contravention of articles 267(1), (2) and (6) of the 1992 Constitution are consequently unconstitutional and void.
>
> 4. a declaration that section 19 of the Land Commission Act, 2008 (Act 767) by making existing public agencies and government bodies divisions of the 3rd defendant and thus exhibiting an intention of the 3rd defendant not to coordinate with the existing public agencies and

government bodies in the performance of its functions relating to survey and mapping, land title registration, and land valuation violates article 258 of the 1992 Constitution and is consequently unconstitutional and void.

5. a declaration that sections 20, 21 and 22 of the Lands Commission Act, 2008 (Act 767) which exhibit an intention of the 3rd defendant not to co-ordinate with existing public agencies and government bodies in the performance of the 3rd defendant's functions and thereby depriving other commissions and entities established under the 1992 Constitution of their independent services violate articles 20(2) (a), 36(8), 258(1), 267(1) and 269(1) of the 1992 Constitution and are consequently null and void.

6. a declaration that sections 40, 41, 44 and 45 of the Lands Commission Act, 2008 (Act 767) in purporting to dissolve, transfer the assets, obligations and rights of the Survey Department, the Land Valuation Board, the Land Title Registry, the Land Registry and the Lands Commission which were in existence prior to the enactment of the Lands Commission Act, 2008 Constitution and replacing them with the above unconstitutional provisions contravene articles 20(2), 36(8) 191, 258(1), 267(1) and 269(1) of the 1992 Constitution and are consequently null and void.

7. an order directed at the defendants to abrogate the present administrative arrangement made pursuant to the impugned provisions of the Lands Commissions Act, 2008 (Act 767) by which the 3rd defendant purports to administer the Land Title Registry, the Land Valuation Board and the Survey Department and to restore the land Title Registry, the Land Valuation Board and the Survey Department as

independent government institutions to operate under their respective laws as they were before the enactment of the Lands Commission Act, 2008 (Act 767) and in accordance with article 257(1) of the 1992 Constitution.

8. An order restoring the administrative positions, ranks and offices of the Land Title Registry, the Survey Department and the Land Valuation Board purportedly dissolved by the Lands Commission Act, 2008 (Act 767)

9. An order directed at the 3rd defendant to co-ordinate with the relevant institutions after their restoration, in the exercise of the Lands Commission's functions in conformity with the 1992 Constitution."

Only two agreed issues have been settled for resolution by this Court by the parties as follows:

"(1) Whether or not the provisions of the Lands Commission Act, 2008 (Act 767) complained of by the plaintiffs, specifically sections 5(g), (h), (j), 7(2) ©, 19, 20, 21, 22, 40, 41, 44 and 45 contravene the letter and spirit of the 1992 Constitution and are therefore void and ought to be struck down?

(2) Whether or not the Lands Commission Act, 2008 (Act 767) is unconstitutional"

The upshot contention of this case is that the Lands Commission Act, 2008 (Act 767) by purporting to dissolve the Survey Department, the Land Valuation Board, the Land Title Registry and the Land Registry, which hitherto had separate statutory identities and existence and the amalgamation of the same with the Lands Commission is contrary to article 258 of the 1992 Constitution.

That article reads:

"**258. The Lands Commission**

(1) There shall be established a Lands Commission which shall, *in coordination 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;

(b) advise the Government, local authorities *and traditional authorities* on the policy framework for the development of particular areas of Ghana to ensure that *the development of individual pieces of land is co-ordinated with the relevant development plan for the area concerned*;

(c) formulate and submit to Government recommendations on national policy with respect to land use and capacity;

(d) *advise on, and assist in the execution of, a comprehensive programme for the registration of title to land* throughout Ghana;

(e) perform such other functions as the Minister responsible for Lands and Natural Resources may assign to the Commission.

(2) The Minister responsible for Lands and Natural Resources may, with the approval of the President, give general directions in writing to the Lands Commission on matters of policy in respect of the functions of the Commission and the Commission shall comply with the directions."

It is contended that the said amalgamation of these bodies is not a co-ordination with the Land Commission which is the permissible constitutional relationship between them under article 258 aforesaid.

The arguments as to offending sections of Act 767 are restated by the plaintiffs as follows:

"124. It is humbly submitted that sections 5(g), (h) 7(2) (c), 19, 20, 21, 22, 40, 41, 44 and 45 of the Act 767 are unconstitutional. Specifically section 5(g), (h), (i) and (j) of Act 767 assigns functions to the Lands Commission which the framers of the 1992 Constitution intended to be the preserve of existing institutions the Commission was enjoined to coordinate with, in the performance of its functions under article 11 and 258 of the 1992 Constitution as already earlier demonstrated in these submissions. The makers of the 1992 Constitution also clearly intended that those public institutions under the existing law should service the other commissions and entities established or to be established under article 267 and 268 of the Constitution.

125. Section 7(2) (c) of Act 767 interferes with the assessment and collection of rents in respect of stool lands and their distribution vested in the Administrator of Stool Lands and actually breaches articles 267(1), (2) and (6) of the 1992 Constitution.

126. Section 19 of Act 767 by purporting to empower the Lands Commission to carry out survey and mapping, land title registration and land valuation violates article 258 of the 1992 Constitution. The provision of these land management services is

the duty of the various institutions and government bodies in existence pursuant to the existing laws stated in article 11 of the 1992 Constitution and under article 258 of the 1992 Constitution mandatorily requires the Lands Commission to co-ordinate with these institutions and bodies and not to swallow them up.

127. Sections 20, 21 and 22 of Act 767 in exhibiting an intention not to coordinate with the affected existing public agencies and government bodies in the performance of the Lands Commission's functions and depriving other Commissions and entities established under the 1992 Constitution of those independent services violate articles 20(2), (a), 36(8), 258(1) and 269(1) of the 1992 Constitution.

128. Sections 40, 41, 44, and 45 of Act 767 in purporting to dissolve, transfer the assets, obligations and rights of independent government institutions and bodies and repealing Acts of Parliament consistent with the 1992 Constitution and replacing them with the above unconstitutional provisions, contravene article 20(2), 36(8) 191, 258(1) and 269(1) of the 1992 Constitution. A reading of the above sections of Act 767 within the context of the totality of the whole Act, clearly shows that the intention behind the enactment of Act 767 is to contravene the letter and spirit of the provisions of the 1992 Constitution hereinbefore discussed."

Although we gave prolonged consideration to this action because the literal meaning of article 258 prima facie favours the plaintiffs' action, it dawned on us on closer scrutiny that the action is ill founded.

To begin with the said bodies are not established by the constitution but by various ordinary statutes which the legislature can amend or repeal, in a manner consistent with the constitution, as it deems fit. The question is whether the said amalgamation of these bodies with the Lands Commission infringes article 258. The essence or substance of the provision (article 258) is what matters, since the Constitution has both its letter and its spirit which must move together in constitutional interpretation, see *Tuffuor v Attorney-General* (1980) GLR 34 C.A (sitting as the Supreme Court), *Kuenyehia v Archer* (1993-94)2 GLR 525 S.C and a plethora of subsequent cases, such as *Asare v Attorney-General* (2003-2004) SCGLR 823, etc.

Accordingly applying these principles to this case we find that the essence or spirit of article 258 is that the Lands Commission works in co-operation with bodies such as these complaining bodies, to maximize the proper planning and development of the use of land in the national interest.

It is clear that their amalgamation with the Lands Commission enables them to work even better together for the attainment of the maximization of proper land development and use in the national interest.

Accordingly it will be plainly absurd to hold that the various sections of Act 767 which conduce to that goal or the whole of that Act are or is unconstitutional. It could hardly reasonably be thought that the Constitution by leaving the establishment of the Lands Commission to Parliament under article 258(1) contemplated merely the ipsissima reproduction of the

provisions of articles 258 and 259. We think that Act 767 is also an emanation from article 298 which provides thus:

> "**298. Residual powers of Parliament**
>
> Subject to the provisions of Chapter 25 of this Constitution, *where on any matter whether arising out of this Constitution or otherwise*, there is no provision, express or by necessary implication of this Constitution *which deals with the matter that has arisen*, Parliament shall, by an Act of Parliament, not being inconsistent with any provision of this Constitution, *provide for that matter to be dealt with*."

At first blush the charge of unconstitutionality relating to s.7(2)(c) based on article 267(1), (2) and (6) is plausible. However on close scrutiny the power to make that regulation is governed by the opening words of sub s.2 namely "*....relating to collaboration and co-ordination ....*"(e.s) The plaintiffs' said complaint of infraction notwithstanding those words of limitation remains only in uninspired human prophecy. We think that it is only when the regulation is in fact made that its true constitutional colour will emerge either consistently or inconsistently with article 267(1) (2) and (6) of the constitution and then this court may need to be approached. That will arise, since constitutional provisions are involved, if the regulation, in substance, goes beyond "*collaboration and co-ordination*" for which purpose the power to make it is given aforesaid.

The amalgamation of these bodies with the Lands Commission makes access to them easier and more economical since they now share a common secretariat. In the terms of s.10(4) of the Interpretation Act 2009(Act 792) Act 767, the said amalgamation is conducive to the rule of law by making the

law relating to these institutions more certain and conduces to good governance. When it is borne in mind that these bodies are carried into the Lands Commission, together with their functions as Divisions thereof, the plaintiffs' complaint deeply steeped in the sterile bleakness of the words "*shall, in co-ordination with the relevant public agencies and governmental bodies*," appearing in article 258 is an accomplishment of technicality hiding behind the veil of the incorporation of the Lands Commission which is hereby pierced pursuant to leave granted us in that regard by the common law and s.10(4) of Act 792 which we set out as follows:

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

For similar considerations we dismissed a similar action in *John Deporres Ayimbire v The Attorney-General and the Ghana Revenue Authority*, writ no. J1/2/2013 S.C, unreported, dated 11/6/2015. See also *Ampiah Ampofo v. Commission on Human Rights and Administrative Justice* (2005-2006) SCGLR 227.

For all the foregoing reasons we dismiss this action.

(SGD) W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO (MS)
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

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NANA YAW NTRAKWA FOR THE 3RD DEFENDANT.