IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA-AD 2019

CORAM: AKUFFO, CJ (PRESIDING)
ANSAH, JSC
YEBOAH, JSC
BAFFOE-BONNIE, JSC
GBADEGBE, JSC
BENIN, JSC
KOTEY, JSC

WRIT NO.
J1/22/2016

18TH DECEMBER 2019

MARTIN KPEBU ..... PLAINTIFF

VRS

THE ATTORNEY-GENERAL ..... DEFENDANT

JUDGMENT

AKUFFO, CJ:-

Brief Background Facts

On 6th September 2016, the Plaintiff, in his capacity as a private citizen and a legal practitioner, pursuant to Article 2 of the Constitution, commenced the action herein against the Defendant seeking the following reliefs:

1. A declaration that on a true and proper interpretation of article 14(3) of the Constitution, 1992, a Saturday, a Sunday, a public holiday, anytime during a civil unrest and any other day that the courts in Ghana cannot sit (e.g. during strike by judicial service staff or during a strike by any other stakeholder that will prevent the court from sitting) would be counted in reckoning the 48 hours within which a person arrested or detained on suspicion of committing a crime and not released must be brought before a court under article 14(3) of the Constitution of Ghana, 1992.

2. A declaration that on a true and proper interpretation of article 14(3) of the Constitution, 1992, section 4 of the Public Holidays Act, 2001 (Act 601) is inconsistent with article 14(3) and is void to the extent of that inconsistency only.

3. A declaration that the Government of Ghana is in breach of article 14(3) of the Constitution of Ghana, 1992 for not taking steps to ensure that some courts are opened on Saturdays, Sundays and public holidays for arrestees whose

48 hours of incarceration expire on the aforementioned days are brought to court for the court to determine the validity of their incarceration and to enable the arrestee to apply for bail.

4. A declaration that, on a true and proper interpretation of article 14(3) of the Constitution, 1992, certain courts must be made to sit on Saturdays, Sundays or any other day that the courts are ordinarily unable to sit due to strikes, civil unrest and other circumstances not contemplated, in order for the court to hear applications for bail.

5. A declaration that where a court is scheduled to sit on or seized with a criminal matter concerning an arrestee who is being brought pursuant to article 14(3) of the Constitution, 1992 is unable to sit in open court under circumstances of strike or civil unrest an arrestee in custody has a right to apply to a judge who has a jurisdiction to hear that kind of case for bail or for his release depending on the classification of the offence. The application may be made in chambers or any other place the judge may be found and should not be

subject to filing a motion in the court, but the motion may be with the judge.

6. A declaration that on a true and proper interpretation of article 14(4) of the Constitution a court seized with a criminal case must hear the substantive case against a suspect or accused who is not admitted to bail ahead of an accused who has been admitted to bail.

7. Such further or other orders as the Honourable Supreme Court will deem fit to make.

8. Cost for court expenses and counsel fees.

On 10th July 2017, the parties herein filed a Memorandum of Agreed Issues, pursuant to Rule 50 of the Supreme Court Rules, 1996 (C.I. 16) for the determination of the following questions:

1. Whether or not on a true and proper interpretation of article 14(3) of the Constitution, 1992, Saturdays, Sundays, Public holidays, anytime during a civil unrest and any other day

that the courts in Ghana cannot sit would be counted in reckoning the 48 hours within which a person arrested or detained on suspicion of committing a crime or in execution of a Court order ought to be brought before a Court.

2. Whether or not the inaccessibility of courts on Saturdays, Sundays, Public holidays, anytime during a civil unrest and any other day that the courts in Ghana cannot sit in respect of a person arrested or detained on suspicion of committing a crime constitutes a breach of article 14(3) of the 1992 Constitution.

3. Whether or not on a true and proper interpretation of article 14(3) of the Constitution, 1992 the Courts ought to be made accessible on Saturdays, Sundays, Public holidays or any other day or time that the Courts are ordinarily unable to do business.

4. Whether or not for the purposes of enforcing article 14(3) of the Constitution, 1992, judges can sit in a secure place to hear cases which have even not been filed in the registry of the Court in periods of civil unrest.

5. Whether or not on a true and proper interpretation of the Constitution, criminal trials involving accused persons in pre-trial detention ought to take precedence over trials of accused persons who have been admitted to bail.

The Laws in Issue

Article 14, Clauses (3) and (4) of the Constitution provides that:

"(3) A person who is arrested, restricted or detained-

(a) for the purpose of bringing him before a court in execution of an order of a court; or

(b) upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana, and who is not released, shall be brought before a court within

forty-eight hours after the arrest, restriction or detention.

(4) Where a person arrested, restricted or detained under paragraph (a) or (b) of clause (3) of this article is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released whether unconditionally or upon reasonable conditions, including in particular, conditions reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial."

Section 4 of the Public Holidays Act, 2001(Act 601) prohibits 'business on public holidays' and stipulates that:

"4 (1) Subject to sections 1, 3 and 6 and subsection (2) of this section, a person shall not open a shop for the purposes of selling or trading or engage in a business on a public holiday.

(2) Subsection (1) does not apply to

(a) food or grocery shops;

(b) drug or pharmacy shops;

(c) licensed restaurants or hotels;

(d) local markets for sale of food or foodstuffs;

(e) premises licensed for sale of spirit, wine, and beer under the Liquor Licensing Act, 1970 (Act 331);

(f) the running of an essential public service specified in subsection (3) of this section.

(3) For the purposes of paragraph (f) of subsection (2), "essential public service" means any of the following:

(a) water supply services;

(b) electricity supply services;

(c) health and hospital services;

(d) sanitary services;

(e) air traffic and civil aviation control services;

(f) meteorological services;

(g) fire services;

(h) air transport services;

(i) supply and distribution of fuel, petrol, power and light;

(j) telecommunications services;

(k) public transport services.

Additionally, it may also be worthwhile for our purposes herein to also take into account the provisions of Sections 33, 35(3)and 42 of the Labour Act, 2003 (Act 651)and Order 79 rule 3(2) of the High Court (Civil Procedure) Rules, 2004 (C.I. 47) by virtue of which the stipulated normal working days of the Courts of law are ordinarily Mondays to Fridays for a maximum number of eight hours each day.

Order 79 rule 3(2) of C.I. 47 provides that:

> **"(2) Except as otherwise directed by the Chief Justice, the offices of the Court shall be closed on Saturdays, Sundays and public holidays."**

Summary of Plaintiff's Legal Arguments

In support of his claims, the Plaintiff submits that:

a. Ordinarily, Courts in Ghana sit only from Monday to Friday and also do not sit on public holidaysand persons arrested on suspicion of committing criminal offences often find themselves in police custody beyond the constitutionally mandated 48 hours because of these 'non-working days', and since such 'non-working days'are creatures of legislation subordinate to the Constitution, they cannot be given effect so as to breach the right of access to the Courts of Ghana. Citing ***Kpebu (No. 2) v Attorney-General***, J1/13/2015 per Wood CJ and Benin JSC, the Plaintiff submits that when a person in custody is brought to Court within 48 hours, he or she receives a timely opportunity to apply for bail.

2. Although the Constitution does not expressly stipulate the mode for calculation of the 48 hours, looking at the intendment and tenor of the Constitution as well as decisions of this Court, everyday of the calendar must be taken into account in counting apart from weekdays, and therefore,
   a. A Saturday
   b. A Sunday

c. A Public holiday
d. Any other day that the Courts in Ghana cannot sit (e.g. during strike by Judicial Service workers or during a strike by any other stakeholders that will prevent the Court from sitting).
e. During periods of civil unrest in a manner that prevents the Court from functioning ordinarily.

In any of such circumstancesarrangements must be made for the Courts to sit on such days to ensure due compliance with Article 14(3).

3. During other times and occasions such as strikes, public demonstrations and civil unrestwhen the Courtsmight be unableto sit, accused persons and suspects in custody would not have access to the Courts within the 48 hours, and their constitutional rights would be compromised. Consequently, there is the need for an interpretation that enables the person in custody to apply to the Judge directly otherwise than in formal Court proceedings, thus the prosecution and defence must be enabled to meet at a venue otherwise than in the formal Court. The Plaintiff cites as an example, the creation of

Courts in the Nsawam prison as part of the Justice For All Programme.

4. Since Article 14(4) abhors unreasonable delay in trials especially for those accused persons who are in custody, the accused persons who are in custody should generally have their cases prioritised and heard ahead of those not in custody.

The Plaintiff makes reference to cases such as *Kpebu (No. 2) v AG* (supra), *Ocansey& Anor. v EC* [2010] SCGLR 575 at 608 and *Kpebu (No. 1) v A-G* J1/7/2015 on constitutional interpretation in respect of human rights, and calls on the Court to discount any argument that the grant of his reliefs would inconvenience some Judicial Officers, as the Court will only be carrying out the wishes of the framers of the Constitution by recognizing the right of the arrested person /suspect, which right, the Court did not create.

The Plaintiff also contends that even though in the case of *Mornah v Attorney-General* [2013] SCGLR [Special Edition] 502 (hereinafter referred to as 'Mornah' or 'the Mornah case') it

was held that the Court cannot be opened for business on any day other than a normal weekday because the Courts are part of the territory of Ghana, that decision cannot be read so as to foreclose his submissions for the Courts to sit on a public holiday because Article 14 (3) of the Constitution did not form part of the subject matter of the *Mornah* case. He submits, in the alternative, that if this Court is persuaded that any court sittings on a public holiday in fulfilment of Article 14 (3)must still be subject to an Executive Instrument, then the Attorney-General ought to be ordered to take steps to secure the same, pursuant to section 6 of Act 601, from the President within a certain time frame after judgment of this case.

According to the Plaintiff, besides the dictates of the Constitution, it is clear that Ghana has similar international obligations, which require that a person in custody must be brought to Court within 48 hours of arrest and that, as Ghana strives to improve other infrastructure, the Judiciary should also improve access to the Court in line with the Constitution as part of the Judiciary's contribution to Ghana's development.

Summary of Defendant's Legal Arguments

The Defendant acknowledges that Article 14 of the Constitution guarantees the right to personal liberty of every person in Ghana but provides exceptions under which such rights could be curtailed, i.e., in the execution of an order of a Court or on reasonable suspicion of an offence having been committed. The Defendant further acknowledges that Article 14 does notallow for an indefinite curtailment in the form of pre-trial detention, and that the Constitution, therefore,compels law enforcement agencies to bring any person arrested, with or without warrant, before a Court within 48 hours of such arrest. The Defendant, however, submits that:

1. Whilst the Constitution did not expressly exempt any day and any period in reckoning the 48 hours, the enforceability of Article 14 (3) is dependent on the accessibility of the Court. Therefore, a declaration to the effect that an arrested person is to be brought before Court regardless of what day or time of the day the 48 hours of arrest expires, would be unreasonable in the face of practical realities.
2. The Court must apply the modern purposive approach to interpretation to ascertain the true purpose of the statute as

has been reinforced in the Memorandum to the Interpretation Act, 2009 (Act 729) and also section 10 (4) of the Act which calls for interpretation of a provision of the Constitution or other law in a manner that, amongst other things, provides forthe rule of law and the values of good governance, advances human rights and fundamental freedoms and avoids technicalities and niceties of form and language which defeats the purpose and spirit of the Constitution and the laws of Ghana. Due regard must be given to cases such as*Mekkaoui v Ministry of Internal Affairs*(1981) GLR 664 SC at 719 and *Ransford France (No. 3) v Electoral Commission and AG* (No. 3) [2012] 1 SCGLR 705, since applying a literal meaning will lead to absurdity because the existing state of affairs in the Ghanaian context is such that, there are certain times and days which fall outside the ordinary Court days and times.

3. No reasonable inference should be drawn from the provisions of Article 14 of the Constitution that the framers of the Constitution intended the reckoning of the 48 hours included times and days when courts of the land do not, or cannot, sit to do business such as weekends, public holidays, times outside the normal working hours and periods of civil

unrest. Accordingly, it is sufficient that a person under arrest, who is not placed before a court, due to the fact that the 48 hours expires on a weekend, a public holiday or during a period of civil unrest is brought before the Court on the next working day during Court during normal working hours. On the strength of *section 44 (5), (6) and (7) of the Interpretation Act, 2009 (Act 729)*, therefore, the situation does not call for the setting up of 24-hour Courts, although there as incidences of abuse whereby some law enforcement officers deliberately arrest and keep persons well over the 48 hours under the guise that the Courts do not sit on such days.

4. The reliefs the Plaintiff seeks from the Court pose practical difficulties that would amount to extraordinary circumstances in the Ghanaian context, where days and times when the Courts are not accessible ought to qualify as extraordinary circumstance because Ghana does not have mechanisms and systems in place to ensure 24-hour Court Services, including Judges sitting elsewhere during periods of civil unrest to hear unfiled motions, as suggested by the Plaintiff.

   Rather, the proper test to be applied in the enforcement of Article 14 (3) is whether or not there was reasonable delay

in putting the arrested person before the Court and it is the duty of law enforcement agencies to justify any delay by demonstrating the existence of a *bona fide* emergency or other extraordinary circumstance that accounts for the failure to put such an arrested person before Court within the constitutionally mandated 48 hours.

5. Although our Constitution does not provide an exception to the 48 hour rule, this Court ought to draw inspiration from jurisdictions such as Nigeria, South Africa and Kenya, whose constitutions expressly create exceptions, and declare that where the 48 hours from the time of arrest expires on a day that the Court is unable to sit, the affected person's appearance before the Court on the first working day thereafter should be deemed to have been duly done in accordance with the Constitution.

In addition, the Defendant also submits that, in the light of Article 19, which mandates expeditious trial for all persons charged with a criminal offence, it would be unfair, impracticable and also create practical difficulties for the Justice system for the Court to direct that cases involving persons in pre-trial detention be prioritized over persons on bail,. It is the Defendant's case that Article 14(4) has provided enough safeguard in addressing the

issue of lengthy trials and this protects all accused persons whether in detention or on bail.

The Defendant submits that there is nothing in Article 14 (3) that prevents the institution of public holidays, neither does the provision under section 4 of the Public Holiday Act, 2001 (Act 601) detract from the right to personal liberty, particularly when the Act provides an avenue for the Courts to sit on public holidays, by an executive instrument from the President. According to the Defendant, the Act itself allows for a situation where the President can permit an organization, including the Courts, to work on holidays under section 6 thereof which provides that:

> "Where the President is satisfied that it is in the public interest to do so, the President may by executive instrument exempt a class of business or a particular business from section 4 (1)."

Citing the Mornah case, the Defendant submits that the inaccessibility of the Courts on public holidays does not constitute a breach of Article 14(3) of the Constitution.

The Defendant concludes that, in making declarations on Article 14(3) and (4) of the Constitution, the Court must be guided by

the practical realities or obstacles which are unavoidable and do not detract from the purpose of the framers of the Constitution.

Analysis

Despite the span of the Memorandum of Agreed Issues and the scope covered by both counsels' submissions, it is patently clear that there are only 2 main issues properly arising from this action and these are:

1. Whether or not upon a true and proper interpretation of Article 14(3) of the Constitution the unavailability of judicial and Court Services, to persons under arrest or in detention on suspicion of criminal conduct, on public holidays, weekends and during events of civil unrest, is in consonance with or is in contravention of the Constitution and
2. Whether or not upon a true and proper interpretation of the Constitution, the trial of accused persons who are in pre-trial detention must take precedence over trials of persons who have been admitted to bail.

The 2nd issue, raises more of a question of effective case management and it requires no constitutional declaration to develop the requisite practices for ensuring that, on a case by

case basis, matters such as applications for bail are disposed of before consideration of other applications and proceedings in substantive trials. What matters is that such application or matter is determined by the Court that day. In general, this is already the practice in a majority of Courts, and ought to be standardised by all magistrates and judges, for efficient trial management. We, therefore, at this point dismiss the 6th relief claimed.

The 1st issue, however, raises other more pertinent questions:

a. What is the intent and purpose of Article 14(3)?

b. What should be the method of reckoning the 48 hours time limit set by the Article?

c. Are there any circumstances that will justify an exception to the 48 hours time limit without contravening the Constitution?

Article 14(3) forms part of Chapter 5 of the Constitution, which deals with the Fundamental Human Rights and Freedoms. The centrality of these rights and freedoms in our jurisprudence cannot be gainsaid in any way, as confirmed by Article 290, which includes the entirety of the said Chapter among the entrenched provisions of the Constitution. It cannot be amended except by a

national referendum of at 40% of eligible voters on a bill to amend a specified provision, and must be passed by 75% of such voters. It is also significant to note that these rights, which are enshrined in our Constitution, are derived from an internationally acknowledged normative framework for the protection of human rights that harks back to the United Nations Universal Declaration of Human Rights, 1948. This instrument, for the first time, enunciated a body of rights and freedoms that reflect the ethos of multi-cultural origins common to the very basic concept of being human. Numerous treaties, conventions, charters and protocols have evolved and continue to evolve from the grounding principles set out in this Declaration intended to strengthen and better protect specific groups (Children, Women, the Youth, the Aged, Refugees, etc.) or groups of rights. These formal legal norms include the International Covenant on Civil and Political Rights (1966), the African Charter on Human and Peoples' Rights (1986) and the African Charter on the Rights and Welfare of the Child (1990, coming into force in 1999). All these instruments uphold and reinforce the principle that there are certain rights which are fundamental and inherent in the very fact of being human; they are not granted by any political or royal act, they are universal and adhere to every human being, wherever he/she

is, and of whatever gender, religion or social status. Included in these inherent rights are the right to life, the right to personal liberty, the right to hold opinions and religious beliefs of one's choice, etc. All such rights are subject to respect for the rights of others, and to laws that are necessary for assurance of a just and peaceful society in which rights may be enjoyed equitably. It is in this spirit that we have in our Constitution Article 14(3), which protects the right to personal liberty by requiring that, even where such rights are curtailed by lawful means, the custodian is obliged to bring the arrested or detained person before a Court of law within 48 hours of arrest or detention, or release the person conditionally or unconditionally. This is clearly the intent and purpose of Article 14(3). When the person arrested or detained is brought before a court of law within the 48 hours, the court is afforded the opportunity to make timely determinations on issues concerning personal liberty arising therefrom, so as to prevent the infraction or continued infraction of such rights, because, in the final analysis, it is only the decree of a court of competent jurisdiction that carries power to deprive a person of his/her liberty for a period which longer than that stipulated by the Constitution.

The language of Article 14(3) is clear and unambiguous and, in our view, "within 48 hours" means exactly that. Although it would have been an easy matter for the drafters of the Constitution to have included in the provision words such as those the Defendant has invited us to read into Article 14(3), the fact remains that the provisions contain no such words of exception and no matter how attractive the constitutional or statute law of other jurisdictions might seem to the Defendant, we cannot adopt or use it as an interpretative tool when our superior law, the Constitution in so clear in its language. We are, therefore, bound to give effect to the clear and unambiguous intentions of the framers of the Constitution by giving the words their plain and ordinary meaning. This is all the more so when we take due note of the option afforded to the custodian/police to release the arrested or detained person without bringing him/her before a Court, conditionally or unconditionally. Furthermore, we are not at all convinced by the Defendant's assertion that giving effect to the plain or the ordinary meaning of article 14(3) would result in absurdity or would make it unworkable or incongruous and we reject the same. Before we dilute the effect of the article, we need more convincing indices than assertions of inconvenience, incongruity or difficulty. Human life and liberty are too precious.

Turning to the provisions of the Public Holidays Act, we need to juxtapose the same against the dictates of Article 14(3). We need to weigh the rights and/or interests protected by the said Article against those covered by the Act. When we do that, the paramountcy of the protective cover of constitutional provisions overwhelms whatever interests are served by the Act; in other words, a human rights protective cover, versus social, recreational and/or celebratory interests. Furthermore, any public interest served or intended to be served by section 4 of the Act for the observance of public holidays are subservient to the human rights enshrined in Article 14(3) of the Constitution.

The decision in the Mornah case, to the effect that the Courts cannot be expected to sit on statutory public holidays, could only represent the general position, as the Court in the said case was not called upon to enforce Article 14(3) of the Constitution.That provision never formed part of the core matter before the Court, and the decision cannot amount to a precedent of any relevance to the matter herein. It is, therefore, irrelevant to or at best distinguishable from, the determination of this case.

Consequently, it becomes clear that a specific exception ought to have been made under section 4 of Act 601 enabling the sitting of the Court on public holidays to determine issues concerning personal liberty. Indeed, and all the better, the determination of whether or not a court should sit on a public holiday should have been excepted from Act 601 and properly left to the discretion of the Chief Justice. Hence, to the extent that section 4 of Act 601 has the tendency to bar, or effectively bars, the courts from sitting on public holidays to determine issues of personal liberty, pursuant to the right enshrined in Article 14(3), it is unconstitutional.

In order to make section 4 of Act 601 compliant with Article 14(3) of the Constitution, this Court hereby exercises its power of rectification and exempts 'Court Services' by the addition to the exemption list in subsection 3 after paragraph (k) the following:

> *"(l) Court Services for the determination of issues concerning the personal liberty of any person*."

(See the case of ***Sasu v Amua-Sakyi*** [1987-88] GLRD 45, wherein the Court inserted into section 3(2) of the erstwhile Courts Act, 1971 (Act 372) as amended by PNDCL 372, the words

"with leave of the Court of Appeal" so as to make the section intelligible.)

We declare further that, any rights guaranteed under a statute, such as *section 42 of the Labour Act, 2003 (Act 651),* regarding weekly rest periods, are subservient to the rights enshrined under Article 14(3) of the Constitution.

In the same vein, to the extent that sub-section 3 of section 35 of Act 651 and Order 79 Rule 2(3) of C.I. 47 bar the Courts from sitting on public holidays and weekends to determine issues of personal liberty under Article 14(3), the sub-section and the Rule are unconstitutional.

Section 35(3) of Act 651 is hereby rectified by the addition to the exemption listafter paragraph (b) the following:

> *"(c) regarding Court Services for the determination of issues concerning the personal liberty of any person*."

Order 79 Rule 3(2) of C.I. 47 is hereby rectified by the insertion of the following after "Chief Justice":

> *"and except for the determination of issues concerning the personal liberty of any person"*

We reiterate that the constitutional expectation is that a person must not lose his/her liberty for more than 48 hours unless that person has been brought to a Magistrate or a Judge and the issue of his/her personal liberty has been determined. The interest being protected under Article 14(3) of the Constitution must override all other considerations such as pre-existing statutory rights, inconvenience, any attendant administrative costs, etc.

Thus, even though the Courts are generally to observe statutory public holidays in terms of the decision in *the Mornah case* or generally enjoy weekly rest periods under section 42 of Act 651, etc., the provisions of Article 14(3) ought to be enforced as a matter of constitutional priority. The issuance of a presidential Executive Instrument under section 6 of Act 601, as submitted by the Plaintiff, is not a solution, since such an instrument is not required for the enforcement of a constitutional provision, such as Article 14 (3).

To assure enforcement of requirements of Article 14(3), certain Courts across the country (mainly District Courts) must be designated to sit additionally as special applications Courts on public holidays, etc., at such places and times as the Chief Justice may decide, to deal with issues pertaining to personal liberty, and

accordingly, the necessary arrangements must be put in place for the effective operationalisation of those constitutional provisions.

Indeed, as is evident, it is for a very good reason that the law, per section 45(1) of the Courts Act, 1993 (Act 459) requires that, at least, one District Court be established in each District of Ghana. Furthermore, the provisions of **Section 12(3)(h) of the Local Governance Act, 2016 (Act 936)** were enacted to ensure due performance of magisterial responsibility, and for this reason, the District Court Magistrate must be resident and constantly available in the magisterial District. This clearly underscores the need for Assemblies to comply strictly with their statutory obligation to provide Courthouses and residences for Judges and Magistrates throughout Ghana, for the assurance of access to justice for all the people of Ghana, wherever they may reside and wherever they may find themselves arrested, detained or otherwise restrained by the Police.

Additionally, it is essential that every unit of the Police Service of Ghana become aware of the need to comply with the spirit of article 143)(b), which empowers the police to release an arrested person. Our understanding of this is that,

having arrested a person, there is nothing that compels the police to hold on to that person and certainly is there is no possibility of that person being brought before a court within the 48 hours, he/she ought to be released. Thus, as a cogent example, if a person is arrested and detained or restrained by the police in the evening of Maundy Thursday there can be no justification to hold him/her until the Tuesday after Easter Monday. The police have the power, and ought, to release the person on whatever reasonable condition/conditions, such as that he/she reports daily to the unit and appears in court the first working day or any other date, as they will determine.

Conclusion

The expression "within forty-eight hours" in Article 14(3) of the Constitution includes all days – public holidays, weekends, periods of strike action or civil unrest, subject to the reasonable assurance of the safety and security of Judicial Officers and Service Staff. Court Services must be available on the aforementioned days to determine issues pertaining to personal liberty, in due compliance with Article 14(3) of the Constitution.

There is the need for the necessary administrative adjustments to be made to make it possible for the 48-hour rule to be completely complied with.

Orders

In order to effectively activate the provisions of Article 14(3) of the Constitution, therefore, the following orders are hereby made:

1) The Chief Justice must, within six (6) months of this judgment, designate in each Metropolitan, Municipality and District of Ghana such number of Courts, as may be necessary in the circumstance, to sit on public holidays, weekends and periods of civil unrest, where the safety of the Judge/Magistrate, Court Staff and Court Users can be assured, to determine issues pertaining to personal liberty.

2) During periods any legal or illegal strike action, which affects the normal operations of courts, the Chief Justice must put in place such measures for the determination of issues pertaining to personal liberty, including the holding of proceedings in the chambers or residence of the

Judge/Magistrate, etc., as may be necessary under the circumstances.

3) The Judicial Secretary must, within six (6) months, make the necessary arrangements and provisions for the determination of rates for overtime work and payment of same to Judges/Magistrates and Staff who will be affected, in accordance with section 35 of the Labour Act, 2003 (Act 651) and regulation 23(3) of the Judicial Service Regulations, 1963 (L.I. 319).

4) The Director of the Judicial Training Institute (JTI) must, within six (6) months, ensure that all Judges/Magistrates and Staff of the Judicial Service are duly sensitized to the optimal operationalisation of Article 14(3) of the Constitution.

5) The Inspector-General of Police must, within six (6) months, ensure that Police Prosecutors and Investigators are duly sensitized to:

    i) the operationalization of Article 14(3) of the Constitution;

ii) the fact that completion of investigation into the matter for which a person is arrested or detained is not a requirement for processing that person to Court under Article 14(3), and accordingly, the carrying out of investigation into the case is not a legitimate justification for failure to bring that person before a court within 48 hours of the arrest or detention;

iii) the fact that a person arrested or detained must be brought before a court as soon as the minimum paper work necessary for bringing that person before Court under Article 14(3) is completed, without the need to wait for the exhaustion of the 48 hours.

iv) the fact that the police may suo motu release an arrested person conditionally or unconditionally, at any time after arrest, even within the 48 hours.

So Ordered.

S. A. B. AKUFFO
(CHIEF JUSTICE)

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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

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

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

COUNSEL

MARTIN KPEBU APPEARS IN PERSON FOR THE PLAINTIFF.

EVELYN KEELSON (MRS), CHIEF STATE ATTORNEY WITH RICHARD GYANBIBY, SENIOR STATE ATTORNEY AND PENINAH ASAH DANQUAH (MRS), SENIOR STATE ATTORNEY LED BY GLORIA AKUFFO (MS), ATTORNEY-GENERAL FOR THE DEFENDANT.