IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A.D. 2018

CORAM: ADINYIRA (MRS), JSC (PRESIDING)
DOTSE, JSC
YEBOAH, JSC
MARFUL-SAU, JSC
DORDZIE (MRS), JSC
AMEGATCHER, JSC
KOTEY, JSC

WRIT NO.
NO. J1/28/2018

28TH NOVEMBER, 2018

1. MAYOR AGBLEZE
2. DESTINY AWLIMEY
3. JEAN-CLAUDE KOKU AMENYAGLO ……. PLAINTIFFS

VRS

1. THE ATTORNEY GENERAL
2. ELECTORAL COMMISSION ……. DEFENDANTS

JUDGMENT

KOTEY, JSC:-

Introduction

By a writ of summons issued on 12th September 2018, the plaintiffs invoked the original jurisdiction of this court under articles 2(1) and 130(1)(a) of the 1992Constitution.

The Plaintiffs in the action are Mayor Agbleze, Destiny Awlimey and Jean-Claude Koku Amenyaoglo and the 1stDefendant is the Attorney-General while the 2nd Defendant is the Electoral Commission.

The Plaintiffs are seeking *inter alia,* a declaration that upon a true and proper interpretation of articles 5, on the creation of new regions and article 42, on the right to

vote, all persons in the affected regions are entitled to be registered and to vote in a referendum on the creation of new regions scheduled for 27th December 2018.

Background

Following various petitions to the President for new regions to be created out of the Western, Volta, Brong-Ahafo and Northern regions, the President, in accordance with article 5(2) of the Constitution, on 29th June 2017, referred the petitions to the Council of State for advice.

On 15th August 2017, the Council of State advised the President to appoint a Commission of Inquiry to "inquire into the need and to make recommendations on all the factors involved in the creation of the new regions".

Subsequently on 12th October 2017, a Commission of Inquiry (Brobbey Commission) chaired by Mr. Justice S. A. Brobbey was set up under The Commission of Inquiry into the creation of New Regions Instrument, 2017 (C.1. 105) to "Inquire into the need and to make recommendations on all the factors involved in the creation of the new regions" in accordance with article 5(2) of the Constitution.

On the 27th June 2018, the Brobbey Commission presented its report to the President and recommended the creation of six (6) new regions out of the Western, Volta, Northern and Brong-Ahafo regions. The six (6) proposed regions are Western North, Oti, North East, Savanna, Ahafo and Brong East.

The Brobbey Commission also recommended to the President the holding of a referendum, specified the issues to be determined by the referendum and the places where the referendum should be held. These places were limited to where the new regions were proposed to be created.

The President referred the recommendations of the Brobbey Commission to the 2nd Defendant, pursuant to article 5(5) of the Constitution.The 2nd Defendant then set 27th December 2018, for a referendum to be held in the places where the new regions are proposed to be created.

The Plaintiffs appear to be dissatisfied with the recommendation of the Brobbey Commission and the decision of the 2nd Defendant to hold the referendum only in the places where the proposed new regions are to be created. They contend that this is unconstitutional and that on a true and proper interpretation of Articles 5 and 41 of the Constitution, the referendum should be held in the entirety of the existing regions from which the new regions are proposed to be created. They also say that all qualified persons in these regions are entitled to be registered and to vote in the referendum. This, in summary, prompted the Plaintiff's Writ before this court.

Reliefs Being Sought by the Plaintiffs

By their writ of summons, the Plaintiffs seek:

1. That on a true and proper interpretation of Article 5(1)(a) and (b) and Article 5(4) of the Constitution, 1992, the decision by the Government to hold the Referendum to decide whether or not new regions should be created out of four existing administrative regions, only in the **areas where there was substantial need** and demand for the creation of the new regions is unconstitutional, null and void as a result.

2. That on a true and proper interpretation of Article 5(1)(a) & (b) and clause 4 of the Constitution, 1992, the recommendations by the Commission of Inquiry for the Creation of New Regions for the Referendum to create new Regions out of the existing regions to be held only in the **areas where there was substantial need** and demand for the creation of the new region is unconstitutional, null and void as a result.

3. A declaration that on a true and proper interpretation of Articles 5(1)(a) & 5(4) of the Constitution, 1992, any Referendum to determine whether a new region should be created or whether the boundaries of regions should be altered must take place in and involve inhabitants of the whole of that region that is to be altered is entitled to be registered and allowed to vote such referendum in accordance with article 42 of the Constitution of Ghana, 1992.

4. That on a true and proper interpretation of Article 5(1)(a) & (b) and clause 4 of the Constitution, 1992 it was unreasonable for the Commission of Inquiry for the Creation of New Regions to have recommended, that the Referendum to determine whether a new region should be created or not out of four existing administrative regions, should be held only in **areas where there was substantial demand** for the creation of new regions.

5. An order of discovery directed at the 1st defendant to produce a certified true copy of the final report of the Commission of Inquiry for the Creation of new regions containing the recommendations submitted to the President for the benefit of the Plaintiffs.

6. An order for interlocutory injunction directed at the 2ndDefendant to prevent the 2nd Defendant from holding or organizing or authorizing the holding of a referendum to create new regions until the final determination of the suit.

7. An order for interlocutory injunction against the 2nd defendant which will have the effect of restraining/preventing the 2nd defendant from taking any steps including but not limited to the registration of voters under a limited voter registration exercise scheduled for 16th to 25th September, 2018 for persons intended to vote in a referendum to determine whether or not new regions should be created out of four existing

administrative regions which referendum is scheduled for 27th December, 2018 pending a final determination of this suit.

8. Any order/orders or such directions the Supreme Court considers appropriate for giving effect, or enabling effect to be given, to the declarations so made.

On 31st October 2018 , the Court drew both counsel's attention to a preliminary issue of law raised by the defendants in their statements of case to the effect that the Plaintiffs' writ did not disclose any cause of action and that the original jurisdiction of the court has been improperly invoked; and directed the parties to address it on the preliminary legal point, to wit," Whether the Plaintiffs' action raises any interpretative or enforcement issue to warrant the invocation and exercise of the court's jurisdiction under Articles 2 and 130 of the 1992 Constitution."

All the parties consequently filed legal opinions addressing the court on this issue.

The Law on the Invocation and Exercise of the Original Jurisdiction of this Court to Interpret the Constitution.

We start our consideration of this issue by quoting Articles 2(1) and 130(1)(a) of the Constitution.

2(1). A Person who alleges that...

(a) an enactment or anything contained in or done under the authority of that or any other enactment; or

(b)any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

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

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

This is not the first time this court has been called upon to examine the original jurisdiction powers of the Supreme Court as provided currently in Articles 2(1) and 130(1) of the 1992 Constitution. The original jurisdiction of the court has been considered in a number of cases including the following;

Republic v. Special Tribunal, Ex parte Akosah [1980] GLR529.

Osei Boateng v. National Media Commission [2012] 2SCGLR1038.

Bimpong Buta v. General Legal Council [2003 -2004] SCGLR1200.

Abu Ramadan v. The Electoral Commission (Writ No.J1/14/2016).

Ghana Bar Association v. Attorney General and Another [2003-2004] 1 SCGLR 250

Osei-Boateng v. National Media Commission and Appenteng [2012] 2 SCGLR 1038.

Danso v. Daaduam II & Another [2013-2014] 2 SCGLR 1570.

The Republic v. High Court (Fast Track Division) Accra; Ex parte National Lottery Authority (Ghana Lotto Operators Association & Others Interested Parties) [2009] SC GLR 390;

National Media Commission v. Attorney-General [2000] SCGLR 1.

Our understanding of the law especially as expounded in the cases cited above is that the existence of an ambiguity or imprecision or lack of clarity in a constitutional provision is a precondition for the invocation and exercise of the original interpretative jurisdiction of this Court. Where the words of a provision are precise, clear and unambiguous, this court has insisted that its exclusive original interpretative jurisdiction cannot be invoked or exercised.

For instance in **Ghana Bar Association v. Attorney General [2003-2004] 1 SCGLR 250,** Bamford Addo, JSC held at page 269 thus,

"Is there a question of interpretation in relief 1? The answer is that where words in the Constitution are plain and unambiguous and there is no dispute as their meaning, the question of constitutional interpretation does not arise and the court would decline to give an interpretation is such circumstances."

Further in **Osei-Boateng v. National Media Commission and Appenteng [2012] 2 SCGLR 1038** this court held that:

"The requirement of an ambiguity/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 the exclusive original 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 floodgates for enforcement actions to overwhelm the Supreme Court. Accordingly where a constitutional provision was clear and unambiguous any court in the hierarchy of courts might enforce it and Supreme Court's exclusive original jurisdiction would not apply to it."

Again in **Danso v. Daaduam II & Another [2013-2014] 2 SCGLR 1570 at 1574,** this court speaking through Anin Yeboah JSC at page 1574 opined as follows:

"It is clear that the Plaintiff is inviting this court to interpret Article 267(1) which obviously calls for no interpretation. The words are clear and unambiguous and it is a cardinal rule of interpretation of statutes and national constitutions for that matter, that if the provisions are clear and unambiguous, no interpretation arises.

It is on the basis of the strong stance taken by this court specifying the circumstances under which its interpretative power would be triggered that this Writ would be measured.

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

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

As can be gleaned from the Writ, apart from the consequential and ancillary reliefs, the Plaintiffs primarily seek an interpretation of Article 5 of the Constitution.

Article 5 of the Constitution provides that:

5.(1) Subject to the provisions of this article, the President may, by constitutional instrument

(a) create a new region;

(b) alter the boundaries of a region; or

(c) provide for the merger of two or more regions.

(2) If the President, upon a petition being presented to him and, on the advice of the Council of State, is satisfied that there is a substantial demand for-

(a) the creation of a new region;

(b) the alteration of the boundaries of a region, whether or not the alteration involves the creation of a new region; or

(c) the merger of any two or more regions;

he shall, acting in accordance with the advice of the Council of State, appoint a Commission of Inquiry to inquire into the demand and to make recommendations on all the factors involved in the creation, alteration or merger.

(3) If notwithstanding that a petition has been presented to him, the President is, on the advice of the Council of State, satisfied that the need has arisen for taking any steps referred to in paragraphs (a), (b) and (c) of clause (1) of this article, he may, acting in accordance with the advice of the Council of State, appoint a Commission of Inquiry to

inquire into the need and to make recommendations on all the factors involved in the creation, alteration or merger.

(4) Where a Commission of Inquiry appointed under clause (2) or (3) of this article finds that there is the need and a substantial demand for the creation, alteration or merger referred to in either of those clauses, it shall recommend to the President that a referendum be held, specifying the issues to be determined by the referendum and the places where the referendum should be held.

(5) The President shall refer the recommendations to the Electoral Commission, and the referendum shall be held in a manner prescribed by the Electoral Commission.

(6) An issue referred for determination by the referendum under clauses (4) and (5) shall not be taken to be determined by the referendum unless at least fifty percent of the persons entitled to vote cast their vote at the referendum, and of the votes cast at least eighty percent were cast in favour of that issue.

(7) Where a referendum involves the merger of two or more regions, the issue shall not be taken to be determined unless at least sixty per cent of the persons entitled to vote at the referendum in each such region voted in favour of the merger of the two or more regions; and accordingly, clause(6) of this article shall not apply to the referendum.

(8) The President shall, under clause (1) of this article, and acting in accordance with the results of the referendum held under clauses(4) and (5) of this article, issue a constitutional instrument giving effect, or enabling effect to be given, to the results.

It is also important to refer to the terms of reference of the Commission of Inquiry as provided for by Rule 4 of C.I. 105.

"The terms of reference of the Commission are:

(a)To inquire, pursuant to the petitions, into the need and substantial demand for the creation of new regions and, thereby the alteration of Western Region, Brong-Ahafo Region, Northern Region and Volta Region.

(b)To make recommendations to the President, based on its findings, on the creation and alteration of the regions; and

(c)To specify the issues to be determined by referendum and the places where the referendum should be held, where it makes recommendations for the creation and alteration of regions.

We have taken pains to reproduce in full the provisions of Article 5 of the Constitution and the Rule 4 of C.I. 105 to demonstrate that the provisions of articles 5(4) and 5(5) on the creation and/or alteration of the boundaries of a region are clear and contain no ambiguity. Article 5(4) provides that the Commission of Inquiry shall recommend to the President the issues to be determined in a referendum and the places where the referendum should be held. Clause (5) provides that the 2nd Defendant will prescribe the manner the referendum shall be held.

In their submissions to the court, Counsel for the parties quoted in extenso the holding by Anin JA (as he then was) in the case of **Republic v. Special Tribunal; Ex parte Akosah [1980] GLR 592** where the Court of Appeal sitting as a Supreme Court identified four principles under which the interpretative jurisdiction of the Supreme Court under the 1979 Constitution would be triggered. The Court stated at page 605 that the original, interpretative jurisdiction of the Supreme Court is invoked where *inter alia*

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

(c) 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) 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."

While counsel for the Defendants invited the court to apply the holding of that case to mean that no genuine issue of interpretation arises in this case because the Constitution mandated the Brobbey Commission to determine the "places" the referendum shall be held, counsel for the Plaintiff argued otherwise and invited this court to interpret "places" in Article 5 to mean every person in the regions affected by the creation of the new regions. In the eyes of counsel for the Plaintiffs, because the parties were not ad idem on who is qualified to vote in the referendum a genuine issue of interpretation arises under principle (b) Ex-Parte Akosah (supra).

We have reviewed the submissions of the parties and have no doubt in our minds to decline the invitation by Plaintiffs' counsel. We find the invitation untenable and based on a misapprehension of the nature import and circumstances envisaged in by eventuality (b) in **Ex parte Akosah** (supra).

It is clear that the Plaintiffs are inviting this court to interpret Article 5 of the Constitution which obviously calls for no interpretation. The words are clear and unambiguous and it is a cardinal rule of interpretation of statutes and national constitutions for that matter, that if the provisions are clear and unambiguous, no interpretation arises**.**

The Plaintiffs must have misread or misunderstood the clear provisions made in the various clauses of Article 5 of the Constitution. For example, the Plaintiffs submits before this court that "**the framers always intended the decision to create, alter and merge regions to be a regional matter".** No doubt, Plaintiffs' confusion stems from the fact that they purported to lump together, the intention of the framers of the Constitution in referendums leading to the creation, alteration and merger of regions. However, the framers never intended a one size fit all.

The framers drew a clear distinction between situations where the referendum would be held when a region in Ghana has to change by reason of creation and alteration on one hand as in Article 5(6) and on the other hand the provisions where referendum shall be held where regions change by merger of two or more regions as in Article 5(7).

In the first situation on creation and alteration of a region, power has been given to the Commission established in Clause 2 of Article 5, **to identify the places where the referendum shall be held** after which the Electoral Commission shall hold the referendum in those areas. The Constitution provides that at least fifty percent of the persons entitled to vote must cast their votes and at least eighty percent votes must be cast in favour of the issue for it to pass.

In the second situation on merger of two or more Regions, a separate provision has been made. At least sixty percent of persons entitled to vote at the referendum in **EACH SUCH REGION** voted in favour of the merger. Thus, it is clear that **in change of regions by merger of two or more regions, the Constitution specifies that the referendum takes place in the regions affected;** it is not the Commission which determines the PLACES the referendum should be held in that situation.

If we were to accede to Plaintiff's counsel's invitation, the floodgate would be open for parties to place rival meanings on any provision of the Constitution and that alone should be sufficient to trigger this court's interpretative powers, a step that would create chaos in the functioning of the Court.

From the arguments advanced by the parties, it appears the Plaintiffs' issue with the Brobbey Commission is that they are not happy with the discretionary power given to the Commission to determine the places where the referendum should be held. Plaintiffs argue as follows:

"**can the Commission of Inquiry recommend for the referendum to be held in two (2) towns because they have the discretion to determine the "place" where the referendum should take place? My Lords, it is the unfettered discretionary power the 1st and 2nd Defendants claim the Commission of Inquiry has which the Plaintiffs humbly submits should be checked by judicial interpretation or review so that it is exercised in non-arbitrary and reasonable manner as required by Article 296…"**

Throughout the Constitution, discretion has been vested in persons or bodies charged with the responsibility to exercise one power or the other. Where the discretionary power is not exercised according to law, the recourse by an aggrieved party lies in some other remedy provided for in the Constitution and not an invitation to invoke the original jurisdiction of this court, as submitted by the Plaintiffs "to check by judicial interpretation or review the power so that it is exercised in a non-arbitrary and reasonable manner".

Conclusion

We conclude by emphasizing that we have carefully considered the issues in this case. The provisions of Article 5 of the Constitution are clear and contain no ambiguity. No rival meanings have been placed on any other words or phrases. The mandates of the Commission of Inquiry and the 2nd Defendant are clear. The Commission of Inquiry recommended the places where the referendum should be held pursuant to article 5(4) of the Constitution.

The 2ndDefendant has, pursuant to article 5(5) prescribed the manner the referendum shall take place. Therefore no question of interpretation arises.

We therefore hold that the exclusive original interpretative jurisdiction conferred on this court by articles 2(1) and 130(1)(a) of the Constitution has not been properly invoked by the plaintiffs in this case.

Accordingly, the Plaintiffs Writ is dismissed in limine.

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

ADINYIRA (MRS), JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

DOTSE, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

YEBOAH, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

MARFUL-SAU, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

DORDZIE (MRS), JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

AMEGATCHER, JSC:-

I agree with the conclusion and reasoning of my brother Kotey, JSC.

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

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JUSTIN AMENUVOR WITH HIM MATTHEW APPIAH, MIRACLE ATATSI AND HOPE AGBOADO FOR THE 2ND RESPONDENT.