IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA- A.D. 2021

CORAM: APPAU, JSC (PRESIDING)
MARFUL-SAU, JSC
TORKORNOO (MRS.), JSC
HONYENUGA, JSC
AMADU, JSC

CIVIL MOTION
NO. J5/21/2021

5TH JANUARY, 2021

THE REPUBLIC

VRS

HIGH COURT, HO	**……..**	**RESPONDENT**
EX-PARTE: ATTORNEY-GENERAL	**……..**	**APPLICANT**
1. PROF. MARGARET KWEKU **2. SIMON ALAN OPOKU-MINTAH** **3. JOHN KWAME OBOMPEH** **4. GODFRED KOKU FOFIE** **5. FELIX QUARSHIE**	**…….**	**INTERESTED PARTIES**

RULING

APPAU, JSC:-

On the 23rd day of December, 2020, one Professor Margaret Kweku who was the parliamentary candidate of the National Democratic Congress (NDC) Party in the Hohoe Constituency of the Volta Region and four (4) others, namely; Simon Alan Opoku-Mintah,

John Kwame Obimpeh, Godfried Koku Kofie and Felix Quarshie who claimed to be registered voters in the Santrokofi, Akpafu, Likpe and Lolobi traditional areas in the Oti Region (hereinafter referred to as SALL Areas), initiated an action in the High Court, Ho by Originating Motion on Notice, praying for certain reliefs against the Electoral Commission as 1st respondent and three others. The three others are; Wisdom Kofi Akpakli (the Returning Officer for Hohoe Constituency, as 2nd respondent), John Peter Amewu (the NPP M.P. Elect for Hohoe Constituency, as 3rd respondent) and the Attorney-General, as the 4th respondent. Per their motion paper, the action of the applicants in the trial High Court, was premised on article 33 (1) of the Constitution, 1992; Order 67 of the High Court Civil Procedure Rules, 2004 [C.I. 47] and the Inherent Jurisdiction of the High Court.

Article 33 (1) and Order 67, rule 1 of C.I. 47 provide:

"Article 33 (1): ***Where a person alleges that a provision of this constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.***

Order 67 rule 1 of C.I. 47: ***A person who seeks redress in respect of the enforcement of any fundamental human right in relation to the person under article 33 (1) of the Constitution shall submit an application to the High Court."***

In their application, the applicants were seeking six (6) declarations, an order of mandamus and three (3) restraining orders. These are:

1.

a. A declaration that the decision of the 1st respondent, implemented by the 2nd respondent, preventing and excluding the 2nd to 5th applicants and other registered voters in the Santrokofi, Akpafu, Likpe and Lolobi traditional areas from voting for a parliamentary candidate in the Hohoe Constituency, denied the said voters their

fundamental right to vote, to democratic participation and specifically, to be represented in Parliament;

b. A declaration that the eleventh hour decision of the 1st respondent, implemented by the 2nd respondent, preventing the holding of Parliamentary elections in the Santrokofi, Akpafu, Likpe and Lolobi traditional areas from voting for a parliamentary candidate in the Hohoe Constituency was arbitrary and capricious and without recourse to due process of law as required of the 1st and 2nd respondents by article 296 of the Constitution, 1992;

c. A declaration that the decision of the 1st respondent, implemented by the 2nd respondent, preventing and excluding the 2nd to 5th applicants and other registered voters from the four traditional areas concerned from voting for a parliamentary candidate, was in violation of the right to equality before the law of the registered voters in those areas;

d. A declaration that the refusal of the 1st respondent to address concerns raised by the NDC, the party on whose platform the 1st applicant stood, about the conduct of the parliamentary elections in the Hohoe Constituency, ending up with the eleventh hour decision to exclude certain voters from participation, was wholly unreasonable;

e. A declaration that the disregard by the 1st and 2nd respondents of the fundamental nature of the right of citizens in a democracy to vote and 1st respondent's disdain for authoritative pronouncements of the Supreme Court , led to wanton abuse of power by them in the conduct of the parliamentary elections in the Hohoe Constituency on 7th December, 2020.

f. A declaration that as a result of the numerous deficiencies in the conduct of the elections by the 1st and 2nd respondents as set out above, the 3rd respondent was not duly elected as the person to represent the people of Hohoe Constituency (including the applicants and all registered voters in the subject-areas) in Parliament from 7th January 2021 to 6th January 2025.

2. An order of mandamus to compel the 1st and 2nd respondents, to organize and conduct the parliamentary election in respect of the Hohoe Constituency including the Santrokofi and the other three traditional areas to enable all registered voters there to have the opportunity to vote for the determination of the member of parliament.

3. An order to restrain:

a. the 1st and 2nd respondents from seeking to gazette the 3rd respondent as the duly elected M.P. for the Hohoe Constituency from January 7th 2021 to January 6, 2025;

b. the 1st and 2nd respondents from in any way, presenting the 3rd respondent as duly elected to represent the people of Hohoe Constituency in Parliament; and

c. the 3rd respondent from presenting himself to be sworn in as the Member of Parliament for the Hohoe Constituency or otherwise holding himself out as such.

On the same day that the applicants filed the originating motion on notice, they also filed an ex-parte motion, praying for interim orders of injunction pending the determination of the substantive originating motion on notice. This ex-parte motion for injunction was fixed for hearing on the same date it was filed and it was indeed heard that day and granted by the trial High court. The orders sought by the applicants in the ex-parte application were to restrain:

(a) the 1st respondent from seeking to gazette the 3rd respondent as duly elected M.P. for the Hohoe Constituency;

(b) the 1st and 2nd respondents from presenting the 3rd respondent as duly elected to represent the people of Hohoe Constituency in Parliament from January 7th 2021 to January 6th, 2025; and

(c) the 3rd respondent from presenting himself to be sworn in as the Member of Parliament for the Hohoe Constituency or otherwise holding himself out as such.

The Order made by the trial court in the interim application, was as follows:

"It is ordered that the respondents be and are hereby restrained in the interim, and in particular:

(1) the 1st respondent from seeking to gazette the 3rd respondent as duly elected to be Member of Parliament for Hohoe Constituency from January 7th 2021 to January 6th, 2025;

(2) the 1st and 2nd respondents from, in any way, presenting the 3rd respondent as duly elected to represent the people of Hohoe Constituency in Parliament... and

(3) the 3rd respondent from presenting himself to be sworn in as the Member of Parliament for the Hohoe Constituency or otherwise holding himself out as such.

The Orders shall last for 10 days effective today."

My Lords and Lady, the instant application invoking our supervisory jurisdiction in the nature of certiorari and prohibition, which was filed on 29th December, 2020 by the Attorney-General (i.e. the 4th respondent in the action before the High Court, Ho and who, hereinafter, shall be referred to as 'Applicant'), is a progeny of the interim orders made by the trial High Court on 23rd December, 2020. The Applicant is praying for two supervisory reliefs. The first is an order of certiorari directed at the Ho High Court, to bring into this Court for the purpose of being quashed, the interim restraining orders made by the court dated 23rd December, 2020 and quoted supra. The second is an order prohibiting the High Court, Ho, coram: Buadi, J. from further hearing or conducting proceedings in the said originating motion on notice.

The Applicant stated three grounds for the application. The first was that the trial High Court has no jurisdiction under article 33 (1) of the Constitution, 1992, to entertain a matter in the nature of a parliamentary election petition and to grant any relief(s), interim, interlocutory or final, available in a parliamentary election commenced under article 99 and section 16 of the Representation of the People's Law, 1992 [PNDCL 284]. The second was that the proceedings of the said date and the orders emanating

therefrom, were void as same were in violation of article 99 of the Constitution, 1992. The third was that the orders of the trial High court dated 23rd December, 2020 constituted a patent error on the face of the record to the extent that they purported to confer on the applicants therein who are the interested parties herein, non-existent voting rights in respect of the Hohoe Constituency in the Volta Region.

The sum total of applicant's arguments in his statement of case, in brief, was that this application is meant to prevent a palpable abuse of the human rights jurisdiction of the Ho High Court for the ventilation of a non-existent parliamentary election grievance, when there exists a specific remedy prescribed by the Constitution and an act of Parliament for that purpose. The Applicant contended that the reliefs sought by the interested parties herein in the Ho High Court; particularly reliefs **1 (f), 2** and **3 (a), (b**) and **(c)**, constituted a challenge against the conduct of Parliamentary elections in the Hohoe Constituency and the consequent election of the 3rd respondent in the action, Mr. John Peter Amewu as the Member of Parliament for Hohoe Constituency from 7th January, 2021 to 6th January, 2025. As a matter that constitutes a challenge to the due election of a contestant in the parliamentary elections held on 7th December, 2020, the Ho High Court has no jurisdiction under article 33 of the Constitution and Order 67 of C.I. 47 to grant remedies available only in a parliamentary election petition constitutionally required to be instituted under article 99 of the Constitution, 1992 and section 16 of PNDCL 284. The interim orders made by the High court on 23rd December purporting to restrain the 1st respondent from gazetting the 3rd respondent as the Member of Parliament elect for the Hohoe Constituency and also from presenting him to Parliament to be sworn in as the Member of Parliament for the said constituency, were therefore void as they can only be made in an election petition instituted under article 99 of the Constitution, 1992 and section 16 of the Representation of the People's Law PNDCL 284.

Quite apart from that, the order of the trial High court purporting to restrain the Electoral Commission from gazetting the 3rd respondent, was made at a time the Commission had already gazetted the 3rd respondent, making it a spent order or

otiose. Applicant attached Exhibit 'AG 1' titled; "Ghana Gazette No. 195 dated Tuesday 22nd December 2020", to her application, which showed that the results of the December 7 Parliamentary Elections, including that of the 3rd respondent, was gazetted on 22nd December 2020; i.e. a day before the institution of the action in the Ho High Court by the interested parties.

Applicant contended further that per the decision of this Court in Suit No. J6/01/2020, titled **VALENTINE EDEM DZATSE v HENRY AMETEFE & 5 Others**, **dated 24th June 2020**, the inclusion of the SALL Areas in the Hohoe Constituency of the Volta Region, is inconsistent with article 47 (2) of the Constitution, 1992 to the extent that these traditional areas form part of the Oti Region created by C.I. 112. Consequently, C.I. 128 was passed, placing the traditional areas of SALL under the Buem Constituency in the Oti Region. This being the case, the assumption of jurisdiction by Buadi, J. of the Ho High Court constituted a patent error on the face of the record.

The Applicant accordingly prayed the Court to quash the interim orders made by the High Court on 23rd December, 2020, as same constituted a flagrant abuse of the process of the court and to halt further proceedings by the court of the originating notice of motion before it. Aside of the constitutional provisions and statutes referred to supra, the applicant recalled the Court's attention to its own decisions in **YEBOAH v J. H. MENSAH [1998-99] SCGLR 492; EDUSEI v ATTORNEY-GENERAL [1996-97] SCGLR 1; IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY; ZAKARIA v NYIMAKAN [2003-2004] 1 SCGLR 1**; etc. to buttress her submissions.

The 1st Interested party, who happened to be the 1st applicant in the Originating Motion on Notice at the Ho High Court, filed an affidavit in opposition, for herself and on-behalf of the other interested parties, to the applicant's application. They also filed a supplementary statement of case to expatiate their opposition to the application. The affidavit made very interesting reading. In fact, the crux of the affidavit and the statement of case filed by the interested parties were in respect of an alleged violation of the human rights of the interested parties and other voters in the four traditional

areas of SALL, due to alleged acts of the Electoral Commission and its agents. Paragraph 18 of the affidavit in opposition was as follows:

"18. That the fundamental human rights that are implicated in the Human Rights action includes (but are not limited to) the right of the Interested Parties, the chiefs and people of SALL Area to:

a. vote and fully participate in political activities,
b. administrative justice and
c. equality and non-discrimination."

The Interested parties then denied that their action in the Ho High Court was an election dispute and contended under paragraph 31 thus:

"31. That I am advised and I verily believe same to be true that it is two events, namely:

a. the failure of the Electoral Commission to comply with this Honourable Court's order in the Dzatse case to amend C.I. 95 to bring it in conformity with C.I. 112; and
b. the unceremonious public notice in Exhibit MK3, which effectively revoked the rights of the chiefs and people of the SALL Area,

that constituted the egregious violation of the fundamental human rights of the Interested Parties and that of the chiefs and people of the SALL Area."

After a careful consideration of the interested parties' affidavit in opposition and the lengthy submissions made by their counsel, we noticed that the interested parties did not say anything in justification of the interim orders made by the High Court, which are in the nature of orders made in an election petition. Counsel for the interested parties made extensive submissions on C.I.128 and concluded that the constitutional instrument in question was unconstitutional and therefore lacked any legal justification. C.I. 128 is the **'REPRESENTATION OF THE PEOPLE (PARLIAMENTARY CONSTITUENCIES) INSTRUMENT, 2020'**, which purportedly revoked C.I. 95 of 2016 and placed the people

in the SALL Area previously under the Hohoe constituency per C.I. 95 under the Buem Constituency upon the creation of the Oti Region.

Our jurisdiction in the instant application before us does not extend to the determination of the constitutionality or otherwise of C.I. 128. The interested parties have not invoked the jurisdiction of this Court to challenge the constitutionality or otherwise of C.I. 128. Whether the SALL Area people have to vote either in Hohoe Constituency or Buem Constituency is not the issue before us in this application. That is a matter between the interested parties and the Electoral Commission as they themselves have deposed to severally in their affidavit in opposition to the application. In the affidavit in support of the motion on notice for leave to file supplementary statement of case, the 1st interested party, representing the other interested parties deposed at paragraph 23 as follows:

"23. I am further advised and verily believe that the announcement of the Electoral Commission on 6th December 2020 that the voters in the SALL area could not vote in Parliamentary elections on 7th December 2020 and the resultant denial of the right to representation in the 8th Parliament of Ghana are <u>at the heart</u> of the action for the enforcement of fundamental human rights that we have initiated in the High Court, Ho." {Emphasis ours}.

Invariably, what is at the heart of the interested parties' action in the Ho High Court, as they themselves claim, for which they are seeking to enforce their fundamental human rights, is the alleged denial of their right to vote in the December 7 Parliamentary elections and consequently their right to representation in the 8th Parliament of Ghana. If the Interested parties claim is against the Electoral Commission for violating their rights to vote with the creation of the Oti Region, what has that got to do with the gazetting of the 3rd respondent whom the Electoral Commission has declared as the winner of the contest in the Hohoe Constituency Parliamentary elections? The fact is that, Mr. John Peter Amewu has nothing to do with the denial by the Electoral Commission of the right of the people in the SALL Area to vote. He is not an agent of the Electoral Commission and never performed any functions for and on behalf of the Electoral Commission. He was a candidate who put himself up to be elected and never took any decision as to who

to vote and where to vote. If the contention of the interested parties was that Mr. John Peter Amewu was not duly elected due to certain infractions of the Electoral Commission and therefore does not deserve to be gazetted or presented to Parliament to be sworn into office as a Member of Parliament, then they have to comply with the law and resort to the specific remedy and procedure provided by law to ventilate such grievance.

The law as constitutionally and statutorily provided and judicially considered by this apex Court in a plethora of decisions, does not permit the interested parties to include reliefs **1 (f), 2** and **3** in the reliefs sought in their apparent human rights action when these reliefs were purporting to challenge the due election of John Peter Amewu as the Member of Parliament elect for the Hohoe Constituency. In the *Yeboah v J. H. Mensah case* supra, a case whose ratio is similar to the instant matter before us, though factually different, the veteran politician Mr. J. H. Mensah of blessed memory, was elected as the Member of Parliament for the Sunyani East Constituency in the then Brong-Ahafo Region in the 1996 Parliamentary elections on the ticket of the New Patriotic Party (NPP). On 25th February 1997, one Michael Yeboah caused a writ to be filed in this apex Court, invoking the original jurisdiction of the Court in terms of articles 2, 94(1) and 130 of the Constitution, 1992 and rule 45 of the Supreme Court rules, 1996 [C.I. 16]. The plaintiff claimed that Mr. J. H. Mensah was not qualified or competent to become a Member of Parliament in terms of article 94(1)(b) of the Constitution, 1992. The defendant, who denied plaintiff's contention, raised a preliminary objection to the action on the ground that plaintiff's action was incompetent, having been instituted in a wrong forum. The Supreme Court upheld the objection on the ground that the Court was not the proper forum for the action. This Court relied on the provisions of section 16 of PNDCL 284 and article 99 of the Constitution, whose combined effect is that the validity of an election to Parliament may be questioned only by a petition presented to the High Court. The Court re-echoed the decisions in **WILKINSON v BARKING CORPORATION [1948] 1 KB 721 @ 724** per Asquith, L.J. & **PASMORE v OSWALD TWISTLE UDC [1898] AC 387 @ 394,** per Lord Halsbury that; "where a statute creates a right and in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking

to enforce the right must resort to that specific remedy or tribunal and not others." In the *Pasmore case* supra, Lord Halsbury stated it bluntly that; ***"the principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law."***

It is quite clear that our Constitution, 1992 per article 33(1), clothes only the High Court with authority to hear and determine matters pertaining to the violation or infringement of the fundamental human rights of persons. In the same vein, the same Constitution per article 99, clothes only the High Court with jurisdiction to hear and determine any question as to whether or not a person has been validly elected as a Member of Parliament. With regard to the provisions under article 99, there existed a law before the promulgation of the Constitution, 1992, i.e. PNDCL 284, which law was saved by article 11(1)(d) of the Constitution. This law provides under section 16(1) that the validity of an election to Parliament may be questioned only by a petition brought under sections 17 to 26 of that law. In the wake of these two provisions; i.e. article 99 of the Constitution, 1992 and section 16 of PNDCL 284 of 1992, a person cannot sidestep this procedure and commence an action in the High Court invoking any of the High Court's other jurisdictions to ventilate a grievance that border on the validity of an election to Parliament. Substantively therefore, the jurisdiction of the High Court conferred by article 99 of the Constitution, 1992 and section 16 of PNDCL 284 of 1992, for the determination of a Parliamentary dispute, is fundamentally different from a human right action pursued under article 33(1) of the Constitution, 1992.

Article 99 of the Constitution, 1992 provides: ***"The High Court shall have jurisdiction to hear and determine any question whether (a) a person has been validly elected as a Member of Parliament or the seat of a member has become vacant..."*** And Section 16 of PNDCL 284 also provides that; ***"(1) The validity of an election to Parliament may be questioned <u>only</u> by a petition brought under sections 17 to 26".***

Article 33(1) of the Constitution also provides: "***Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."***

Meanwhile, counsel for the interested parties has invited us to hold that PNDCL 284 is subservient to the Constitution, 1992 so the provision under section 16 of that law that says that the validity of an election to Parliament may be questioned only by an election petition, does not take away their right to seek redress under article 33 (1) of the Constitution, particularly, where there exists the phrase; *"without prejudice to any other action that is lawfully available".*

With all due respect to learned counsel for the interested parties, that argument, in our view, is untenable. The fact that PNDCL 284 has prescribed a specific remedy for the ventilation of grievances in election matters does not mean the law is in contravention of the Constitution. It is a specific legislation made for a specific purpose in compliance with article 99 of the Constitution, 1992. As was stated by Hayfron-Benjamin, JSC in the *Yeboah v J. H. Mensah case* supra, ***"when a remedy is given by the constitution and a forum is given by either the Constitution itself or statute for ventilating that grievance, then it is to that forum that the plaintiff may present his petition."***

Article 99 of the Constitution, 1992 vests the High Court with jurisdiction to hear and determine any question as to whether or not a person has been validly elected as a Member of Parliament and the procedure prescribed by statute, in this case PNDCL 284, is only by an election petition. So whilst the High Court has power to hear and determine actions brought under article 33 of the Constitution pertaining to an alleged violation or infringement of the fundamental human rights of persons, it has no jurisdiction to make orders that in their nature, appear to challenge the validity of any parliamentary election conducted by the Electoral Commission when exercising its jurisdiction under that article. The only time that the High Court has power to make orders affecting the validity of any

parliamentary election is when an election dispute is initiated under article 99 of the Constitution. It is therefore not surprising that the interested parties' affidavit in opposition did not provide any answer to applicant's submissions against the propriety of the interim orders made by the trial High court on 23rd December, 2020.

It is also worthy of note to emphasize that the orders made by the trial High court on 23rd December, 2020, which the applicant is praying this Court to quash, were made ex-parte and therefore limited by time. Order 25 rr. 1 (1) and (9) of the High Court Civil Procedure Rules, 2004 [C.I. 47] provide:

"1(1) The Court may grant an injunction by an interlocutory order in all cases in which it appears to the Court to be just or convenient to do so, and the order may be made either unconditionally or upon such terms and conditions as the Court considers just.

(9) Where an order is made pursuant to an application made ex-parte under subrule (3) it shall not remain in force for more than ten days."

Though the trial judge has jurisdiction to issue ex-parte interim orders as shown above, such orders, by operation of law, are limited by time. It is for the above provision in C.I. 47 that the trial High court, Ho, stated emphatically that its interim orders were to last for only ten (10) days, which is the life time statutorily provided for such ex-parte orders. So by operation of law, the interim orders of the trial High court, though wrongly made or *void ab initio*, lapsed ten (10) days after the date they were made. This means that, the wrong orders of the trial High court made on 23rd December, 2020, died a natural death by the close of 2nd January 2021 and has long been buried. {Ref. Order 80 r. 1(5) of the High Court Civil Procedure Rules, 2004 [C.I. 47]}

So in effect, as of today 5th January 2021, there are no subsisting orders of the trial High Court to be brought to this Court to be quashed. However, since the trial High court has no jurisdiction to determine reliefs **1(f), 2** and **3(a), (b) and (c)** as endorsed in the originating motion on notice under the authority invoked before the court; i.e. article 33(1) of the Constitution, 1992, we shall strike out the said reliefs for wrongful

assumption of jurisdiction and we hereby do. This Court would however decline to grant the second order of prohibition sought by the applicant against the trial judge, since the other reliefs which are founded on the alleged violation or infringement of the fundamental human rights of the interested parties to vote and choose their representation in the 8th Parliament of Ghana, i.e. reliefs **1 (a); (b); (c); (d) and (e),** fall within the mandate of the trial High court as invoked. However, it is for the trial High court to determine whether or not the right to vote, which is not a provision under Chapter 5 of the Constitution on fundamental human rights but under Chapter 7 on the Directive Principles of State Policy, is a human right issue or not.

Again, apart from the failure of the applicant to demonstrate in any way that there is the likelihood of bias on the part of the trial judge in determining the alleged human right issues, the fact that the trial judge erred in granting the interim orders was not conclusive that he would be biased or there is the likelihood of bias on his part in the determination of those reliefs. We therefore decline the invitation by the applicant to injunct the trial judge from hearing and determining the remaining reliefs.

For the reasons stated above, we grant the first leg of the applicants prayer but refuse the second, which seeks to prohibit the High court, Ho from hearing and determining the apparent human right reliefs under relief 1 (a) to (e). We accordingly order that the entire proceedings of the High Court, Ho dated 23rd December, 2020, which led to the making of the void interim orders of mandamus and injunction, be brought to this Court for the purpose of same being quashed and they are hereby quashed.

Y. APPAU
(JUSTICE OF THE SUPREME COURT)

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

G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)

C. J. HONYENUGA
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GODFRED YEBOAH-DAME (DEPUTY ATTORNEY-GENERAL) WITH HIM MRS. VERONICA ADIGBO (PRINCIPAL STATE ATTORNEY) AND (MS. YVONNE BANNERMAN) FOR THE APPLICANT.

TSATSU TSIKATA WITH HIM EMILE ATSU AGBAKPE FOR THE INTERESTED PARTIES/RESPONDENTS.