IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA- GHANA A.D. 2016

CORAM: ATUGUBA, JSC (PRESIDING)
ANIN YEBOAH, JSC
BENIN, JSC
APPAU, JSC
PWAMANG, JSC

CIVIL MOTION
No. J5/19/2016

19TH MAY 2016

THE REPUBLIC

VRS

THE HIGH COURT,
GENERAL JURISDICTION 6, ACCRA ... RESPONDENT

EX-PARTE DR. ZANETOR A. RAWLINGS
RIDGE, ACCRA ... APPLICANT

1. HON. NII ARMAH ASHITTEY ... 1ST INTERESTED
C/30/14, BLOHUM ST. DZOWULU PARTY

2. NATIONAL DEMOCRATIC CONGRESS ... 2ND INTERESTED
PARTY

R U L I N G

MAJORITY OPINION

ATUGUBA, JSC:

The applicant, Dr. Zanetor Agyeman-Rawlings per her counsel moves this court for:

"1. An order of certiorari to bring up the ruling of His Lordship KWEKU T. ACKAH BOAFO J, of the High Court, General Jurisdiction 6, dated 22nd March, 2016 for the purpose of being quashed *for wrongfully assuming jurisdiction to interpret and define the scope of application of article 94 (1) (a) of the 1992 Constitution*;

2. An order of prohibition directed to His Lordship **KWEKU T. ACKAH BOAFO J**, of the High Court, General Jurisdiction 6, Accra restraining him from proceeding to hear the dispute between the Applicant and the Interested parties pending a decision in the instant application.

On the Ground that:

1. The Learned Judge erred in law when *he wrongly assumed jurisdiction to interpret Article 94(1)(a) of the Constitution holding that once the Applicant had put herself out as a contestant in the parliamentary primaries of the National Democratic Congress she was caught by article 94(1(a) which required that she was a registered voter at the time of her participation in the primaries.*
2. The Learned Judge erred in law when he wrongly assumed jurisdiction when the entire action was premature because the cause of action has not accrued.

UPON the grounds contained in the accompanying Affidavit *and for any such further or other orders as this court may seem fit.*"(e.s)

The Facts

The facts of this case can be gleaned partly from the amended writ of the 1st interested party in the High Court (General Jurisdiction Accra) dated the 14th day of March 2016 claiming as follows:

"a. A declaration that the decision by the 1st Defendant to allow the 2nd Defendant to contest parliamentary primaries in the Klottey-Korle Constituency when she was not a registered voter within the meaning of article 94(1) (a) of the 1992 Constitution at the time of the said contest, violates the Constitution and the Internal Regulations governing the conduct of parliamentary primaries of the 1st Defendant and same is illegal and of no effect.

b. A declaration that the 2nd Defendant's election as a Parliamentary Candidate elect for the Klottey-Korle Constituency is null and void and is of no effect as same violates the constitution of the 1st Defendant and the Rules governing the conduct of the 2016 parliamentary primaries.

c. An Order of injunction restraining the 2nd Defendant, agents, privies, assigns or any one claiming through her from holding herself out or allowing herself to be held out by the 1st Defendant as the Parliamentary Candidate-elect for Klottey-Korle Constituency until the matters in dispute are heard and disposed off by this Honourable Court.

d. An Order of Court directed at the 1st Defendant for a re-run of the parliamentary primaries in Klottey-Korley Constituency between the Plaintiff and Nii John Alfonso Coleman in accordance with its constitution and the Regulation governing the 2016 parliamentary primaries within One week of the annulment of the 2nd Defendant's election.

e. Any Other(s) as the court may deem fit."

Although this application is stated as relating to the Ruling dated the 22nd March 2016, exhibit ZA4, the parties have also relied on the Ruling dated the 22nd day of February 2016, exhibit ZA2, both delivered by Kweku T. Ackah-Boafo J.

In exhibit ZA2 dated the 22nd day of February 2016 the trial judge dismissed the Applicant's motion "to dismiss the plaintiff's writ of summons and Statement of Claim," on the grounds of lack of capacity, Non compliance with provisions or requirements of the National Democratic Congress(NDC) Constitution, Estoppel, action being premature and in bad faith.

In paragraph 31 of the said Ruling the trial judge stated that the plaintiffs "are challenging the outcome of the November 21, 2015 contest in which they participated as candidates and lost to the 2nd Defendant/Applicant, on the grounds that the 2nd Defendant/Applicant should not have been allowed to compete because according to them *she was not eligible to contest based on the alleged violation of Article 94(1)(a) of the 1992 Constitution.*"(e.s)

In paragraph 32 the trial judge further stated that "without sounding repetitive, it is plain that this court is being invited to address and to make a factual *determination as to whether or not Article 94(1)(a) of the Constitution is violated. .....*

x x x

the submissions with regards to non-compliance with the internal mechanism of the NDC is also dismissed because as pleaded and argued by the Plaintiffs/Respondents, the 1st Defendant (NDC) vetting committee and officers are those accused of orchestrating the alleged breach of both the NDC regulations and the Constitution provision. *In my view when the national Constitution is said to have been breached, a party's internal mechanisms and remedies cannot be the panacea.* The Court is the appropriate forum for redress."

Again in paragraphs 42-44 his lordship held as follows:

"[42] It needs emphasizing that the case-law generated by **Article 130 of the 1992 Constitution [Article 106 of the 1969 Constitution]** referred to above, has put the matter beyond any controversy that the lower court is not obliged to state a case to the Supreme Court for interpretation, any conceivable provision of the Constitution. *It is only where that provision is ambiguous and admits different meanings or interpretations*. Consequently, *where there are no such ambiguities the court has the mandate, as a matter of law, to apply those provisions of the Constitution*. And in my respectful view that is the role of the High Court – to apply the provisions of the Constitution in dispensing justice and that does not amount to competition with the Supreme Court in interpreting the 1992 Constitution.

[43] Clearly, the judicial policy rationale underlying the thinking that where the provision admits no ambiguity there was no need to refer the matter to the Supreme Court for interpretation because no issue of interpretation arises are, to the extent as laid out by the Supreme Court would be flooded with all manner of cases for interpretation whilst at the same time work at the lower courts would come to a halt since the lower court will always have to stay proceedings in each case and to await the outcome of the decision of the higher court. That, to my mind was not what the framers of the Constitution desired for the judiciary. *The Supreme Court interprets the Constitution but the lower courts including the High court apply the constitution.*

[44] Now, *what does Article 94(1)(a) of the 1992 Constitution say?* It provides as follows:

Article 94(1) – Subject to the provisions of this article, a person shall not be qualified to be a member of Parliament unless –

(a) ***He is a citizen of Ghana, has attained the age of twenty-one years and is a registered voter;***

Now, without attempting to interpret the provision of the Constitution because as stated clearly above that is the exclusive preserve of the Supreme Court so to do and that my jurisdiction as a Justice of the High Court only begins and stops with applying the provisions of the Constitution to cases in given situations, *it is my respectful view that the words in the article of the Constitution quoted above are not imprecise and/or ambiguous to necessitate an interpretation of the Constitution by the Law Lords of the Supreme Court.* Consequently, I roundly disagree with learned Counsel for the 2nd Defendant/Applicant's contention that because the Constitutional provision is relied upon this is not the proper forum for the suit."

In his Ruling dated the 22nd day of March 2016 at paragraphs 18 – 22; the trial judge said:

"[18] Before my analysis, I have closely looked at the pleadings filed in this case and from the pleadings and available affidavit evidence on record the facts which are not in any serious dispute are as follows:

[19] The 1st Defendant organized primaries to elect its parliamentary candidate for the Klottey-Korle Constituency on November 21, 2015. The Plaintiff herein together with the 2nd Defendant were candidates. At the end of the contest, the 2nd Defendant was declared validly elected because she polled more votes than the Plaintiff and the other candidates.

[20] The Plaintiff issued the instant writ seeking a declaration that the 2nd Defendant ought not to have been allowed to contest the primaries as she was not eligible because she is not a registered voter in Ghana. *The suit is anchored on the 1st Defendant Regulations and Constitution and also Article 94(1)(a) of the 1992 Constitution.*

[21] The Defendants have filed defences to the suit to deny the claim. The 2nd Defendant in her defence filed on February 26, 2016 at paragraph 5 and 9 states as follows:

5. "Paragraph 14 and 15 of the Statement of Claim are denied. In further response to the said paragraphs, *2nd Defendant says that she was duly qualified to contest the said parliamentary primary after the vetting*. Plaintiff shall be put to strict proof.

x x x

9. Paragraphs 23, 24, 25 of the Statement of Claim are denied. In further response to the said paragraphs 2nd Defendant was duly qualified and proceeded to win the parliamentary primary held on the 21st November, 2015. (Emphasis Mine)

[22] The 1st Defendant filed its statement of defence on March 11, 2016 and has averred at paragraphs 3, 8, 10, 11, 17 and 27 as follows:

3. Save that 2nd Defendant is the candidate whose name would be submitted to the Electoral Commission and or *supported by 1st Defendant when nominations open for the election of parliamentary elections*, paragraph 4 is denied. (Emphasis Mine)

x x x

10. In further answer to paragraphs 12 and 13, the 1st Defendant states that the fact that the 2nd Defendant's name was not on the register did not invalidate and or render her membership of 1st Defendant in any adverse way whatsoever and or howsoever. This is because it was aware that its present General Secretary personally signed the membership card of the 2nd Defendant with rights due to its members as well as eligibility to contest in its primaries.

11. In further answer to paragraph 12 and 13, *the 1st Defendant states that the only condition governing persons such as the 2nd Defendant is to ensure that they meet*

qualification of membership to parliament at the time of filing of the nominations for election with the Electoral Commission in November 2016.

x x x

27. The 1st Defendant contends that *the only time the 2nd Defendant would not be qualified to contest on its ticket is if she is not registered as a voter at the time of filling her candidature for election in November 2016 with the Electoral Commission.*"(e.s)

It is quite clear from exhibit ZA4 that in his Ruling the trial judge did not consider the relevance of the contentions based on article 94(1)(a) namely that as far as the applicant and the 2nd Interested party were concerned article 94(1)(a) of the constitution could not be breached until the Electoral Commission opened nominations for parliamentary candidature but that as far as the 1st Interested party was concerned the only relevant time in this matter was at the time of the contest in the National Democratic Congress parliamentary primaries. Which of these contentions can be readily said to be right or wrong on the face of article 94(1)(a) of the Constitution? Clearly an issue of interpretation of article 94(1)(a) had in the circumstances arisen which the trial judge did not appreciate in his Ruling in exhibit ZA4. On the other hand in exhibit ZA2 the trial judge had clearly ruled that article 94(1)(a) is clear and unambiguous and therefore the court was merely called upon to apply it.

It is clearly an error of law to regard article 94(1) (a) in the manner the trial judge did. Clearly an issue of interpretation had arisen concerning article 94(1)(a) and the trial judge should have stayed proceedings and referred that issue to this court under article 130(2) of the Constitution for determination by way of interpretation.

It has to be realized that the initial stance of the Supreme Court exemplified by cases such as *Republic v Maikankan* (1971)2 GLR 473, S.C, *Republic v Special Tribunal; Ex-parte Akosah* (1980) GLR 592 C.A, *Aduamoa II v Adu Twum* II(2000) SCGLR 165 which laid emphasis on the plain meaning

of a statute preceded the new era of constitutional interpretation based on the now dominant principle of purposive construction of statutes, particularly the constitution. Indeed beginning with *Republic v High Court (Fast Track Division) Accra; Ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties)* [2005-2006] SCGLR 514 the tide against ready referral for interpretation began to change. In that case apparently very clear and unambiguous constitutional provisions were held to be referable ambiguities. Thus in *Republic v High Court (Fast Track Division) Accra; Ex parte Commission on Human and Administrative Justice (Richard Anane Interested Party)* 2007-2008) SCGLR 213 this Court held that the word "complaint" in article 218(a) of the Constitution was ambiguous and was referred to this court for interpretation. Indeed in that case the court held that a lower court ought not readily to assume that a constitutional provision is plain and unambiguous. This trend of thought has been followed in *Republic v. High Court (Commercial Division, Accra, Ex parte Attorney-General Balkan Energy Ghana Ltd & Others Interested Parties)* [2011]2 SCGLR 1183.

The Certiorari Relief

For the foregoing reasons both aforementioned Rulings ought to be quashed for error of law on the face of the record. It must in this regard be borne in mind that the applicant also prays "*for any such further or other orders as this court may seem fit*" see *Republic v James Town Circuit Court Judge; Ex parte Whiteside* (1977)1 GLR 99.

Referral

The more important matter in this case is that since an issue of the interpretation of the constitution has clearly arisen in the proceedings from the court below but the trial judge failed to refer the same to this court the more appropriate remedy even than certiorari or prohibition is the referral of the same to this court *suo motu*. Quite apart from the applicant's prayer "*for any such further or other orders as this court may deem fit*" aforesaid, it has been well established by this court that in the exercise of the supervisory jurisdiction some other remedy may be resorted to, and that expeditiously, rather than the traditional common law remedies of

certiorari, prohibition, etc, if more effectual for the speedier attainment of justice in the matter, see *Republic v James Town Circuit Court Judge; Ex parte Whiteside,* supra, *Republic v High Court, Sekondi; Ex parte Slippi Mensah,* CM 18193 and CM5194 (Consolidated), S.C unreported, In *Re Appenteng (Decd); Republic v High Court, Accra; Ex Parte Appenteng and Another* [2005-2006], SCGLR, 18, *Accra Recreational Complex Ltd v Lands Commission* [2007-2008]1 SCGLR 108 and *Republic v High Court (Commercial Division), Accra; Ex parte Attorney General)Balkan Energy Ghana Ltd & Others Interested Parties)*, supra.

Indeed it was vigorously stated in the celebrated case of *British Airways and Another v Attorney-General* (1996-97) SCGLR 547, as per holding (1) of the headnote thereof as follows:

> "*the Supreme Court's supervisory jurisdiction* under articles 132 and 161 of the 1992 Constitution *ought to be exercised in the appropriate and deserving cases in the interest of justice.* Therefore, *whenever in the course of any matter brought before the court, it was found that there existed in any lower court any matter which in the long run would result in injustice or in illegality, it was the duty of the court to at once intervene and issue orders and directions, with a view to preventing such illegalities or injustice even before they occurred.* In the instant case, *a timely intervention by the court was required to prevent the plaintiffs from going through the futile trial in the circuit tribunal* since –following the repeal of PNDCL 150- they could neither be convicted nor punished in the absence of any written law defining the offence or providing punishment for same as required by article 19(11) of the Constitution. The continued trial would be a negation of the court's duty and a condonation of an illegality which if not stopped, would result in the interference and breach of the plaintiffs' rights to liberty. Dictum of Charles Hayfron-Benjamin JSC in *Republic v High Court Sekondi; Ex parte Slippi Mensah, Supreme Court*, 24 May 1994, unreported cited." (e.s) See also *Republic v High Court Kumasi, Ex parte Bank of Ghana & 2 Ors*, dated April 10, 2013 S.C unreported.

It should be noted that that case was an action invoking the original jurisdiction of this court, see also *Benneh v The Republic* (1974)2 GLR 47 C.A Full Bench at 78-79.

Conclusion

The contention of the applicant that the trial court should be prohibited from hearing the matter on jurisdictional grounds is misconceived. The parliamentary primaries in the Klottey-Korle constituency in this case were conducted vastly in accordance with the National Democratic Congress party's constitution and guidelines. Such rules of a club or voluntary association are enforceable by the High Court, see *Pennie v Egala* (1980) GLR 234. The involvement of article 94(1)(a) in the matter did not deprive the High Court of its jurisdiction, see *Tait v Ghana Airways Corporation, Supreme Court*, 29 July 1970, unreported, followed in several cases in this court such as *Aduamoa II v Adu Tum II,* supra. However since an issue of interpretation of article 94(1)(a) had clearly arisen in the proceedings in the court below that court ought to stay the proceedings and refer that matter to this court for interpretation pursuant to article 130(2) of the Constitution. As that court failed to do so this court hereby *suo motu* does so, see *Benneh v The Republic*, supra, *Republic v High Court (Fast Track Division) Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party),* supra and *Republic v High Court (Commercial Division), Accra; Ex parte Attorney-General (Balkan Energy Ghana Ltd & Others Interested Parties),* supra. In the latter case this court unanimously held as per holding (3) of the headnote as follows:

> "(3) The remedies available to the Supreme Court, when exercising its supervisory jurisdiction under article 132, were *not limited to the issuing of the conventional writs of certiorari, mandamus, prohibition, etc. The court was also empowered under article 132 to issue orders and directions as shall be necessary, to prevent illegalities, failure of justice and needless delays in the administration of justice*, "for the purpose of enforcing or securing the enforcement" of the court's supervisory power. *Additionally, the*

court would, in the exercise of its jurisdiction under article 129(4), which had vested in the Supreme Court "all the powers, authority and jurisdiction vested in any court established by [the] Constitution or any other law", to refer to itself, in order to expedite the determination of the constitutional issue at stake, the determination of the following questions: (i) whether or not the power purchase agreement dated 27 July 2007 between the Government of Ghana and Balkan Energy (Ghana) Ltd constituted an international business or economic transaction within the meaning of article 181(5) of the Constitution ' and (ii) whether or not the arbitration provisions contained in clause 22.2 of the power purchase agreement dated 27 July 2007 between the Government of Ghana and Balkan Energy (Ghana) Ltd constituted an international business or economic transaction within the meaning of article 181(5) of the Constitution. Republic v High Court (Fast Track Division) Accra; Ex parte Electoral Commission (Mettle-Nunoo & Others Interested Parties) [2005-2006] SCGLR 514 cited." (e.s)`

We therefore stay the proceedings in the High Court herein and refer to ourselves the following question for interpretation;

"When can it be properly said that a Ghanaian citizen is by reason of non registration as a voter "not qualified to be a member of Parliament" within article 94(1)(a) of the 1992 Constitution of Ghana?"

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

(SGD) A, A. BENIN

JUSTICE OF THE SUPREME COURT

(SGD) YAW APPAU

JUSTICE OF THE SUPREME COURT

(SGD) G. PWAMANG

JUSTICE OF THE SUPREME COURT

DISSENTING OPINION

ANIN YEBOAH, JSC

I have been unable to agree with my respected brothers in this application and I have thus been compelled to take a solitary path in arriving at a decision. As I dissent from the ruling of my respected colleagues, I wish to briefly state my grounds for the dissent.

The facts of this application appear not to be in dispute whatsoever. This application arose from the ruling of an Accra High Court dated the 22/03/2016. The facts could be easily gleaned from the statement of claim, statement of defence and the affidavits filed as the case did not go for hearing by adduction of evidence.

The applicant herein filed her nominations to contest the parliamentary primaries of the National Democratic Congress, a political party, for the

Klottey Korle constituency. As usual, she went through the formalities required by the party and was cleared to contest. On the 21/11/2015, the applicant won the parliamentary primaries and the 1st interested party lost.

Subsequently, the first interested party and one Nii John Alphonse Coleman commenced an action at the High Court, Accra against the applicant and the National Democratic Congress claiming as follows:

a) **A declaration that the decision by the 1st Defendant to allow the 2nd defendant to contest as parliamentary primaries in the Klottey Korle when she was not a registered voter within the meaning of Article 94(1) of the 1992 Constitution at the time of the said contest violates the Constitution and the internal regulation governing the conduct of the parliamentary primaries of 1st defendant and same is illegal and f no effect.**

b) **A declaration that 2nd defendant's election as a parliamentary candidate elect for Klottey Korle Constituency is null and void and is no effect as same**

violates the Constitution of the 1st defendant and the rules governing the conduct of the 2015 parliamentary primaries.

c) **An order of injunction restraining the 2nd defendant, agents, privies, assigns and anyone claiming through her from holding herself out or allowing herself to be held out by the other defendants as the Parliamentary candidate elect for Klottey Korle Constituency until the matters in dispute are heard and disposed off by this Honourable Court.**

d) **An order of court directed at the 1st defendant for re-run of the Parliamentary primaries in Klottey Korle constituency for the two other contestants in accordance with its constitution and regulations governing 2015 parliamentary primaries within two weeks of the annulment of the 2nd defendant's election.**

Subsequent to the entry of conditional appearance by the applicant herein, she applied by motion to dismiss the writ of summons and the statement of claim. The applicantion was dismissed and the applicant proceeded to file her statement of defence. The applicant again filed a motion to dismiss the

writ and statement of claim on grounds that the action was premature and further, the jurisdiction of the High Court was wrongfully invoked. The trial court heard arguments and on the 22/03/2016 refused the application to dismiss the action.

The applicant has moved this court, seeking our intervention by way of invoking our supervisory jurisdiction under Article 132 of the 1992 Constitution to quash the said ruling on the grounds stated in the motion paper as follows:

1. An order of certiorari to bring up the ruling of His Lordship Kweku T. Ackah Buafo J. of the High Court, General Jurisdiction 6, dated the 22nd March 2016 for purpose of being quashed for wrongfully assuming jurisdiction to interpret and define the scope of application of article 94(1) (a) of the 1992 Constitution.
2. An order of prohibition directed to His Lordship Kweku T. Ackah Boafo J. of the High Court, General Jurisdiction 6, Accra restraining him from proceeding to hear the dispute between the applicant and the interested parties pending a decision in the instant application.

The grounds on which the applicant sought the above two reliefs are as follows:

1. The learned judge erred in law when he wrongly assumed jurisdiction to interpret Article 94(1) of the Constitution holding that once the applicant had put herself out as a contestant in the parliamentary primaries of the National Democratic Congress she was caught by Article 94 (1) (a) which required that she was a registered voter at the time of her participation in the primaries.
2. The learned judge erred in law when he wrongly assumed jurisdiction when the entire action was premature because the cause of action has not accrued.

In arguing the motion, learned counsel for the applicant has urged on us that the learned High Court judge erred when he sought to interpret Article 94(1) (a) of the 1992 Constitution. According to counsel, article 2(1) and 130(1) of the Constitution has reserved the exclusive jurisdiction to the Supreme Court if it comes to the interpretation of any provisions of the constitution. In my respectful opinion, learned counsel is right, but the issue here is whether or not the learned judge by referring to article 94(1) (a) of the Constitution was interpreting the provisions of the Constitution and for that matter usurped this court's exclusive jurisdiction. It must in my opinion be made clear that qualification to be a Member of Parliament under this Constitution is regulated under article 94 of the Constitution.

The candidature of every prospective parliamentarian must certainly satisfy the provisions of Article 94 of the Constitution. Even though in the course of the proceedings at the High Court references were made by both parties and the judge to Exhibit "N3" the constitution of the National Democratic Congress, Exhibit N3 with due respect could not be read in isolation without reference to the provisions of Article 94 which any candidate for Parliamentary elections must strictly satisfy.

The said article 94(1) (a) to me is devoid of any ambiguity in anyway whatsoever. For a more detailed appreciation of the matter I prefer to state the said article in full:

> 94(1) "Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless
>
> (a) He is a citizen of Ghana, has attained the age of twenty-one years and is a registered voter;"

On my part, I find no ambiguity in this constitutional provision which counsel for the applicant urges forcefully that the learned High judge interpreted and thereby usurped the exclusive jurisdiction of this court. This issue has been settled by authorities since the 1969 Constitution, which had very similar provisions on the jurisdiction of the Supreme Court

in matters of interpretation of the Constitution. In the REPUBLIC v MAIKANKAN [1971] 2GLR 473, 478 Bannerman CJ said as follows:

> "Lower Court is not bound to refer to the Supreme Court every submission alleging as an issue the determination of question of interpretation of the constitution or of any other matter contained in article 106(1) (a) or (b). If in the opinion of the Lower Court the answer to a submission is clear and unambiguous on the face of the provision of the Constitution or laws of Ghana, no reference need be made since no question of interpretation arises and a person who disagrees with or is aggrieved by the ruling of the Lower Court has his remedy by the normal way of appeal, if he so chooses. To interpret the provisions of article 106(2) of the Constitution in any other way may entail and encourage references to the Supreme Court of frivolous submissions, some of which may be intended to stultify proceedings or the due process of law and may lead to delays such as may in fact amount to denial of justice". (emphasis mine).

In TAIT v GHANA AIRWAYS CORPORATION [1970] 2 G & G 527, the court said as follows:

> > "...unless the words of an article of the Constitution are imprecise and ambiguous, an issue of interpretation does not

arises where the language of the Constitution is not only plain but admits of one meaning, the task of interpretation can hardly be said to arise. The mere fact that a party invokes in support of his case, a provision of the constitution which is couched in plain unambiguous language, does not turn an action the true nature of which is one of wrongful dismissal into one relating to the interpretation of a provision of the constitution within the meaning of article 106(1) (a)". [emphasis mine]

I have taken some time to refer to other cases decided before the 1992 Constitution. The situation or the law is not different under this 1992 Constitution. In the often-quoted case of ADUAMOA II v TWUM II [1999-2000] 2 GLR 409. It was held by this very court as follows:

" the original jurisdiction vested in the Supreme Court by articles 2(1) and 130(1) of the Constitution, 1992 to interpret the provisions of the Constitution was a special jurisdiction meant to be invoked in suits raising genuine and real issues of the interpretation of a provision of the Constitution or the enforcement of a provision of the Constitution or a question whether an enactment was made ultra vires Parliament, or any other authority or person by law or under the Constitution.

This special jurisdiction was not meant to usurp or to be resorted in place of the jurisdiction or a lower court; so that where the said jurisdiction had been invoked in an action which properly fell within a particular court of action at a lower court, the Supreme Court would refuse to assume jurisdiction in that action, notwithstanding the fact that it had been presented as an interpretation or enforcement actions or both. Furthermore, where the main thrust of the action was not one of enforcement or interpretation or both, the issue of interpretation, if it arose, was ancillary to the determination of the claims of the parties, the proper procedure was for the suit to be filed at the court or tribunal which had jurisdiction over the claims of the parties; and if that court in the course of determining the claim, took the view that the said issue was one of interpretation, that court could refer that issue to the Supreme Court under article 130(2) of the Constitution, 1992. In effect, whereas the original jurisdiction to interpret and enforce the provisions of the Constitution, 1992 in the adjudication of disputes before it; and this jurisdiction was not taken away merely by a party's reference to or reliance on a provision of the Constitution, 1992.

> If the language of that provision was clear, precise and unambiguous, no interpretation arises and the court was to give effect to that provision." [emphasis mine]

In this application, if one carefully considers the reliefs sought by the 1st interested party at the High Court, it becomes abundantly clear that the court was never called upon to interpret Article 94(1) (a) of the Constitution. A mere reference to a provision of the Constitution for a court lower than the Supreme Court to consider would not amount to interpretation as envisaged under articles 2(1) and 130(1) of the 1992 Constitution. In the more recent unreported case of: WRIT №JI/10/2014: MUSAH MUSTAPHA v UNIVERSITY OF GHANA & OR, this court unanimously per our worthy brother Gbadgbe JSC after relying on the case of BIMPONG-BUTA v GENERAL LEGAL COUNCIL [2003-2004] SCGLR, 1200 stated the law clearly as follows:

> "in our opinion, the issue of the writ herein that includes a claim which is alleged to be derived from an unconstitutional conduct said to be in violation of article 174(1) of the Constitution but which is free should not without more constitute the claim into a competent matter for the exercise of our exclusive jurisdiction under articles 2(1) and 130(1) of the Constitution. See REPUBLIC v SPECIAL TRIBUNAL,

EX PARTE AKOJAH [1980] GLR 592 AT 604-605. To make an accession to the claim herein would mean that lower courts cannot handle any claim in which there is a reference to a constitutional provision; a situation which would lead to absurdity since in a constitutional democracy such as ours any act or omission to be good must be measured with the provisions of the Constitution and have the effect of the Supreme Court by a single pronouncement depriving other courts in the realm of exercising jurisdiction conferred on them to inquire into disputes giving effect to provisions of the constitution who pose no real issue of interpretation".

Perhaps it would serve a purpose for our profession to state that a clear distinction should be drawn between the interpretation of a constitutional provision and application of a constitutional provision in cases which are filed before us for adjudication. As Acquah JSC (as he then was) in the ADUAMOA II v TWUM II supra, pointed out at page 414 as follows:

"In summary then, whereas the original jurisdiction to interpret and enforce the provision of the Constitution, 1992 is vested solely in the Supreme Court, every court and tribunal is duty-bound or vested with jurisdiction to apply the provisions of the Constitution in the adjudication of disputes before it.

> And this jurisdiction is not taken away merely by a party's reference to or reliance on a provision of the Constitution. If the language of that provision is clear, precise and unambiguous, no interpretation arises and the court is to give effect to that provision"

I have struggled to find out from the ruling to ascertain whether there was usurpation of our exclusive jurisdiction. I have found none. The High Court judge was merely applying the provisions of article 94(1) (a) of the Constitution and no more.

As the ground for certiorari was lack of jurisdiction, I think the applicant has not successfully satisfied this court that the High Court judge committed any jurisdictional error to warrant our intervention. It has been pointed out that this supervisory jurisdiction could be only invoked by way of certiorari if there is want of jurisdiction or patent error that amounts to a nullity.

Several cases like REPUBLIC v HIGH COURT ACCRA EX PARTE COMMISSION FOR HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE (CHRAJ) ADDO INTERESTED PARTY [2003-04] ISCGLR 312 and REPUBLIC v COURT OF APPEAL, EX PARTE TSATSU TSIKATA [2005-06] SCGLR 612 establish that this court should only intervene with our

supervisory jurisdiction over lower courts when the grounds for doing so exist. I am of the opinion that there is no material before us to show any want of jurisdiction. I will therefore proceed to dismiss the application on this ground as clearly unmeritorious.

On the second relief, it was not proved to the satisfaction of this court that the High Court had no jurisdiction to proceed with the matter. As a Superior Court of record if there is any attempt to prohibit it from hearing a case on grounds of want of jurisdiction, it must be carefully shown that there was clear defect of jurisdiction. Our jurisdiction to intervene in such matters must only be exercised when the record shows that indeed the superior court has no jurisdiction in the matter. I accordingly proceed to also dismiss this ground. It is for the above reasons that I took a solitary path in this matter.

(SGD) ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

COUNSEL

GODWIN KODZO TAMEKLO ESQ WITH HIM MRS SANJA MORRISON MAHAMA, THEOPHILUS DONKOR AND REINDORF TWUMASI ANKRAH FOR THE APPLICANT.

GARY NIMAKO MARFO ESQ. FOR THE 1ST INTERESTED PARTY.

MAAME SANA BARTON - ODURO ESQ. FOR THE 2ND INTERESTED PARTY