THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2019

CORAM: AKUFFO (MS), CJ (PRESIDING)
DOTSE, JSC
GBADEGBE, JSC
BENIN, JSC
MARFUL-SAU, JSC
AMEGATCHER, JSC
KOTEY, JSC

WRIT NO.
J1/08/2017

12TH JUNE, 2019

THEOPHILUS DONKOR ..... PLAINTIFF

VRS

THE ATTORNEY GENERAL ..... DEFENDANT

JUDGMENT

KOTEY, JSC:-

1.0 Introduction

By a writ of summons issued on 4th January 2017, the Plaintiff invoked the original jurisdiction of this court pursuant to Articles 2 (1) and 130 seeking certain reliefs. The said writ was amended pursuant to leave of this court granted on the 8th March 2017. The Plaintiff therefore filed an amended writ and statement of case on 10th March 2017. The Defendant filed an

amended Statement of case on 23rd March 2019. The following reliefs are indorsed on the amended writ.

1. A declaration that the removal from office of such Chief Executives, Chief Executive Officers, Director-Generals (howsoever called) and members of governing boards of public corporations merely on account of the assumption of office of the person elected as President of the Republic of Ghana does not amount to a just cause and is accordingly unconstitutional;

2. A declaration that to the extent that section 14 of the Presidential (Transition) Act 2012 (Act 845) requires all Chief Executives, Chief Executive Officers, Director-Generals (howsoever called) and members of governing boards of public corporations to cease to hold office merely on account of the assumption of office of the person elected as President of the Republic of Ghana, the said section 14 is unconstitutional as being inconsistent with the letter and spirit of the Constitution, particularly Articles 70(1)(d)(iii), 190 and/or 191(b) of the Constitution;

3. An order of perpetual injunction restraining any person or authority from removing from office such Chief Executives, Chief Executive Officers, Director-Generals (howsoever called) and members of governing boards of public corporations merely on account of the assumption of office of the person elected as President of the Republic of Ghana.

1.1 Memorandum of Agreed Issues

The parties filed the following joint memorandum of agreed issues on the 9th May 2017.

1. Whether and to what extent the public services of Ghana as defined under Article 190 of the 1992 Constitution are separate from and/or independent of the executive authority of Ghana.

2. Whether or not the expression "a member of the public services" as used in Article 191 of the 1992 Constitution affects members of the governing boards of public

corporations appointed pursuant to Articles 70(1)(d)(iii), 190(1)(b) and 190(3) of the 1992 Constitution.

3. Whether or not the President of the Republic of Ghana in line with Article 297(a) of the 1992 Constitution has the legal authority to remove from office members of the governing boards of public corporations appointed pursuant to Articles 70(1)(d)(iii), 190(1)(b) and 190(3) of the 1992 Constitution without assigning any just cause.

4. Whether or not a turnover in power (that is, the assumption of office of the person elected as President of the Republic of Ghana) constitutes a just cause for the removal from office of members of the governing boards of public corporations appointed pursuant to Articles 70(1)(d)(iii), 190(1)(b) and 190(3) of the Constitution.

5. Whether or not section 14 of the Presidential (Transition) Act 2012 (Act 845) is inconsistent with articles 70(1)(d)(iii), 190 and/or 191(b) of the Constitution, 1992; and

6. Whether or not article 191(b) of the Constitution, 1992, also applies to the category of officers mentioned in section 14 of Act 845.

1.2 Issues for Trial

When the instant matter came up for hearing on 19th February 2019, this Court ordered the parties to file legal arguments on issues 3, 5, and 6 of the joint memorandums of issues on or before 12th March 2019.

The three issues set down for trial are:

1. Whether or not the President of the Republic of Ghana in line with Article 297(a) of the 1992 Constitution has the legal authority to remove from office members of the governing boards of public corporations appointed pursuant to Articles 70(1)(d)(iii), 190(1)(b) and 190(3) of the 1992 Constitution without assigning any just cause.

2. Whether or not section 14 of the Presidential (Transition) Act 2012 (Act 845) is inconsistent with articles 70(1)(d)(iii), 190 and/or 191(b) of the Constitution, 1992; and

3. Whether or not article 19(b) of the Constitution, 1992, also applies to the category of officers mentioned in section 14 of Act 845.

2.0 Removal of Members of Boards of Public Corporations Without Just Cause

The first issue set down for trial is;

> "Whether or not the President of the Republic of Ghana in line with Article 297(a) of the 1992 Constitution has the legal authority to remove from office members of the governing boards of public corporations appointed pursuant to Articles 70(1)(d)(iii), 190(1)(b) and 190(3) of the 1992 Constitution without assigning any just cause."

The relevant provisions of the Constitution in relation to this issue are articles 297(a), 70(1)(d)(iii), 190(1)(b) and 190(3). They provide as follows.

Article 297(a)

"In this Constitution and in any other law - (a) the power to appoint a person to hold or to act in an office in the public service shall include the power to confirm appointments, to exercise disciplinary control over persons holding or acting in any such office and to remove the persons from office"

Article 70(1)(d)(iii)

"70-1. The President shall, acting in consultation with the Council of State, appoint - (d) the Chairman and other members of - (iii) the governing bodies of public corporations."

Article 190(1)(b)

"190. (1) The Public Services of Ghana shall include - (b) Public Corporations other than those set up as commercial ventures…"

Article 190(3)

"Subject to the provisions of this Constitution, an act of Parliament enacted byclause (1) of this Article shall provide for - (a) the governing council for the public service to which it relates; (b) the functions of that service; and (c) the membership of that service."

The main point of contention between the Plaintiff and the Defendant is whether the express requirement for a "just cause" contained in article 191(b) of the Constitution as a basis for the removal of members of the public services of Ghana applies to both public officers appointed under Article 195 and those appointed under article 70 of the Constitution.

2.1 Members of the Governing Boards of Public Corporations

The Plaintiff argues that it is obvious from the provisions of the Constitution, 1992, that there are different categories of public officers, ranging from pubic officers who serve in the public services of Ghana, public officers who are agents of the President and serve at his will and pleasure, public officers who occupy elective positions, to public officers who perform judicial functions. Moreover, the Plaintiff argues that article 297(a) of the Constitution only applies within the context of a public officer who can be removed from office by his appointing authority where there is no requirement for the assignment of reasons for such removal.

Consequently, the Plaintiff asserts that article 297(a) of the Constitution cannot be invoked to remove a public officer from office where the Constitution or some other law imposes a just cause requirement for the removal of such public officer. In sum, the Plaintiff argues

that article 297(a) of the Constitution is wholly and totally irrelevant to the question whether the heads and members of the governing boards of public corporations set up under article 190 of the Constitution are members of the public services of Ghana, and therefore cannot be "removed from office without just cause."

The Defendant contends that article 295 defines a public corporation as: "a corporation or any other body of persons established by an Act of Parliament or set up out of funds provided by Parliament or other public funds." Unlike the definition provided in Article 190(4), this definition does include public corporations established for commercial purposes. This definition is broad and encompasses all types of public corporations including those set up for commercial ventures. The definition in Article 190(4) is more specific to article 190 and relates to the public service. Additionally, the President having the power to appoint chairmen and other members of such public corporations would have the power of removal of such officers in appropriate cases. It must be noted that the President's authority for appointment/removal from office of public officers does not extend to the entire staffing population of the public service but only to the chairmen and the governing members as indicated in article 70(1)(d)(iii) of the Constitution.

It is the Defendant's contention that the President has the power to remove public officers from office if the same is warranted by law, this is either by constitutional provisions or by provisions in an Act of Parliament establishing the public corporation.

After a thorough review and consideration of this issue and the relevant constitutional provisions we hold that members of the governing bodies of statutory boards, corporations, authorities (howsoever described) are not members of the public services, and not public

officers by virtue of their membership of the governing body of a statutory board or corporation. They are therefore not governed by article 191(b) of the Constitution.

Members of governing bodies are appointed by the President in consultation with the Council of State. Such members of governing bodies, appointed pursuant to article 70 are not members of the service in respect of which they serve on the governing body. So, for example a person who serves on the Council of the University of Ghana as a representative of the alumni association, or Conference of Heads of Assisted Secondary Schools (CHASS) or by appointment of the President does not become a public officer or a member of the public service by virtue of his or her membership of the governing council. But the issues raised are much more complex and therefore our conclusions much more nuanced than the above Public corporations, authorities (howsoever) described that fall under article 190 of the Constitution have staff and officials employed by the corporation or authority.

2.2 Staff of Public Corporations

The overwhelming majority of staff of public corporations and authorities would be members of the public service as described by article 190 of the Constitution. Such staff must, in accordance with article 195 of the Constitution, be appointed by the President acting in accordance with the advice of the governing board of the corporation given in consultation with the Public Services Commission. Such persons are public officers and therefore governed by article 191(b).

3.0 The Constitutionality or Otherwise of Paragraph 6 of the Schedule to section 14(1) of Act 845

The second issue set down for trial is;

"Whether or not section 14 of the Presidential (Transition) Act, 2012 (Act 845) is inconsistent with articles 70(1)(d)(iii), 190 and/or 191(b) of the Constitution, 1992."

3.1 Relevant Constitutional and Statutory Provisions

The relevant provisions of the Constitution in relation to this issue are articles 70(1)(d)(iii), 190 and 191(b). They provide as follows.

Article 70(1)(d)(iii)

"The President shall, acting in consultation with the Council of State, appoint - (d) the Chairman and other members of - (iii) the governing bodies of public corporations."

Article 190

1. The Public Services of Ghana shall include –

a. the Civil Service,
the Judicial Service,
the Audit Service,
the Education Service,
the Prisons Service,
the Parliamentary Service,
the Health Service,
the Statistical Service,
the National Fire Service,
the Customs, Excise and Preventive Service,
the Internal Revenue Service,
the Police Service,
the Immigration Service; and
the Legal Service;

b. public corporations other than those set up as commercial ventures;

c. public services established by this Constitution; and

d. such other public services as Parliament may by law prescribe.

2. The Civil Service shall, until provision is otherwise made by Parliament, comprise service in both central and local government.

3. Subject to the provisions of this Constitution, an Act of Parliament enacted by virtue of clause (1) of this article shall provide for –

    a. the governing council for the public service to which it relates;

    b. the functions of that service; and

    c. the membership of that service.

4. For the purposes of this article "public corporation" means a public corporation established in accordance with article 192 of this Constitution other than one set up as a commercial venture.

Article 191(1)(b)

A member of the public services shall not be – (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause.

Section 14 of Act 845 provides as follows.

1. On the assumption of office of the person elected as President, a person holding any of the offices specified in the Schedule shall cease to hold that office, and shall be paid the relevant retirement benefits and enjoyment of facilities as provided by law.

2. The functions of office of a person who ceases to hold office under subsection (1) shall be performed by a person so appointed by the President for the period specified in writing by the President.

3. A public officer, whose office is not specified in the Schedule, continues to hold office on the assumption of office by the person elected as President, subject to the provisions of the Constitution and of the relevant law applicable to that public officer.

The schedule to section 14 provides that;

1. The persons holding office under the Presidential Office Act 1993 (Act 463).
2. Ministers and Deputy Ministers of State.
3. Regional and Deputy Regional Ministers of State.
4. Special Assistants, Special Aides to the President, to the Vice-President and to the Ministers of State, Deputy Ministers, Regional Ministers, and Deputy Regional Ministers.
5. Non-career Ambassadors and High Commissioners.
6. Persons appointed by the President or a Minister of State as members of Statutory Boards and Corporations.

3.2 Intepretation of the Provisions

The Plaintiff submitted that the categories of persons specified in paragraph 6 of the schedule qualify as members of the public services of Ghana pursuant to article 190(b), and as such, cannot be removed from office without just cause. He contends 'Just cause' is not satisfied by a change of President. Furthermore, the Plaintiff argued that heads and members of governing boards of public corporations possess constitutional and legal protection, which includes tenure, and cannot be removed solely due to a transition in government. The Plaintiff asserted that public corporations enjoy operational autonomy and independence, and do not operate at the whim of the President.

The Defendant on the other hand, submitted that section 14 of Act 845 satisfies the "just cause" requirement of articles 190(1)(b) and 191(b), and is consistent with the Constitution.The Defendant contended that the purpose of Act 845 is to provide for a smooth transition of power from one democratically elected government to another and that to allow Article 191(b) of the Constitution to thwart section 14 of Act 845, would create confusion and defeat the purpose of the Act. The Defendant further urged the Court to employ a purposive approach in interpreting Article 70(1)(d)(iii), 190 and/or 191(b) and section 14 of Act 845 to achieve the objective of Act 845.

After a careful consideration of the relevant constitutional provisions we are firmly of the view that section 14 of Act 845 is prima facie not unconstitutional. The constitutional and legislative provisions need to be analysed and teased out very carefully in order to delineate the full scope and application of section 14.

The key provision is Paragraph 6 of the of the schedule to section 14. Section 14 provides that on the assumption of office of the person elected as President, a person holding any of the offices specified in the scheduled shall cease to hold that office. Paragraph 6 of the category of persons specified in the schedule are "Persons appointed by the President or the Minister of state as members of Statutory Boards and Corporations."

The key question is; what category of persons is affected by paragraph 6. A purposive interpretation must be adopted in intepreting section 14 and the relevant constitutional provisions?

The interpretation Act 2009 (Act 792) enjoins us to adopt a purposive approach in the interpretation of legislation. This Court has also held in a long line of cases that a purposive

approach must be taken in the interpretation of the Constitution. Reference is made **Adjei-Twum** v. **Attorney General and Akwetey** [2005-2006] SCGLR 732; **Republic** v. **High Court (Fast Track Division), Ex parte; CHRAJ** (Richard Anane, Interested Party) [2007-2008] 213 and **Asare** v. **Attorney General** [2003-2004] 2 SCGLR 823. In **Asare** v. **Attorney General**, (supra) Date- Bah JSC encapsulated this approach in the following words:

"What interpretation is to be given to the words should depend upon the court's perception of the purpose of the provision and the context of the words, rather than on their dictionary meaning."

Kludze J.SC expressed it thus;

"I agree that we must adopt a purposive construction of the constitutional provisions. That means that we do not construe words in the abstract but within the context in which they were used…. the fundamental rule is for the court to construe every enactment with the purpose of effectuating the true intent of the framers of the 1992 Constitution."

What then is the purpose of Act 845? The objective of Act 845 is captured in the preamble to the Act. It is; "An Act to establish arrangements for the political transfer of administration from one democratically elected President, to another democratically elected President, to provide for the regulation of political transfer of power and for related matters."

3.3 Scope and Effect of Section 14 of Act 845

Having established the purpose of Act 845 we now proceed to interpret section 14 in order to determine its true scope and effect.

Section 14(1) of Act 845 provides that on the election and assumption of office of a new President, persons including those appointed by the former President or a former Minister of State as members of statutory boards and corporations shall cease to hold office.

We will begin our examination of the scope and effect of section 14 by purposively interpreting the phrase "Persons appointed by the President or Minister of State".

Article 70(1) of the Constitution provides that;

The President shall, acting in consultation with the Council of State, appoint

(d) the Chairman and other members of

(i) the Public Services Commission

(iii) the governing bodies of public corporations

Article 195 (1) of the Constitution on the other hand, provides that;

"Subject to the provisions of this Constitution, the power to appoint persons to hold or to act in an office in the public services shall vest in the President acting in accordance with advice of the governing Council of the Service concerned given in consultation with the Public Services Commission."

Members of governing bodies of public corporations are appointed by the President, acting in Consultation with the Council of State pursuant to article 70 (1)(d)(iii) and the constitutive Act of a particular corporation. The permanent staff of public corporations, on the other hand, are public officers appointed by the President, acting in accordance with the advice of the governing board of the corporation concerned given in consultation with the Public Services Commission, pursuant to article 195(1) and the constitutive Act of the public corporation concerned.

Our first conclusion is therefore that paragraph 6 of the schedule to section 14 of Act 845 only applies to members of the governing bodies of statutory boards and corporations appointed by the President or a Minister of State and not to the permanent Staff of these public corporations who are public officers and not affected by Act 845. This is reiterated by section 14(3) of Act 845 which excludes public officers from the operation of the section.

The Composition, appointment, tenure and removal of the members of the governing bodies of Statutory Boards and Corporations is determined by the constitutive Acts of particular institutions and no generalization can be made. The provisions of a random selection of constitutive Acts will be examined to buttress this conclusion.

3.3.1 Appointment of Members of Governing Bodies

Section 11 of the University of Ghana Act provides that;

11."The governing body of the University is a Council consisting of
(a) the Chancellor;
(b) a chairperson;
(c) the Vice-Chancellor;
(d) four persons appointed by the President taking into account
    (i) the need for gender balance,
    (ii) expertise in finance,
    (iii) expertise in management;
(e) one representative of the alumni of the University;
(f) two representatives of Convocation, one of whom is from the non-teaching staff;
(g) one representative of the National Council for Tertiary Education nominated by the Council for Tertiary Education;
(h) a Vice-Chancellor of an African University appointed by Council;
(i) an elected representative of the heads of second cycle institutions in Ghana;
(j) four other persons appointed by Council for outside the University two of whom are women;

(k) one representative of the University Teachers Association;
(l) one representative of undergraduate students of the University elected by the Students Representative Council;
(m) one representative of post-graduate students of the University branch of the Graduate Students Association; and
(n) one representative of the Teachers and Education Workers Union."

It is quite clear that apart from the Chairperson and four other persons appointed by the President, members of the University Council are not appointed by the President.

On the other hand, section 3 of the National Petroleum Authority Act, 2005 (Act 691) provides that;

3.(1) "The governing body of the Authority is a Board consisting of
(*a*) the chairperson,
(*b*) the Chief Executive
(*c*) one representative of the consuming public other than a person specified in paragraphs (*d*)and (*e*),
(*d*) one representative of the petroleum workers union,
(*e*) one representative of
(i) the Ghana National Chamber of Commerce, or
(ii) the Ghana Chamber of Mines, and
(*f*) three persons, at least one of whom is a woman and each of whom has specialised knowledge and experience in matters relevant to the functions of the Authority.
(2) The members of the Board shall be appointed by the President in accordance with article 70 of theConstitution."

The members of the governing board of the National Petroleum Authority are therefore appointed by the President in consultation with the Council of State.

Section 4 of the Forestry Commission Act, 1999 (Act 571) also provides for the appointment of members of the board by the President acting in consultation with the Council of State;

4.(1) The governing body of the Commission is a Board consisting of
(*a*) the chairman,
(*b*) the Chief Executive of the Commission,
(*c*) one representative of the National House of Chiefs,
(*d*) one representative of the timber trade and industry,
(*e*) one representative of the wildlife trade and industry,
(*f*) one representative of the Ghana Institute of Professional Foresters,
(*g*) one representative of non-governmental organisations involved in forest and wildlifemanagement,
(*h*) one representative of the Lands Commission, and
(*i*) three other persons with financial, commercial or managerial experience nominated by theMinister, at least one of whom is woman.
(2) The members of the Board shall be appointed by the President in accordance with article 70 of theConstitution.

Section 4(1) and (2) of the Securities Industry Act, 2016(Act 929) provides for the governing board of the Securities and Exchange Commission as follows;

4.(1) The governing body of the Commission is a Board consisting of

(a) a chairperson;
(b) the Director-General;
(c) the two Deputy Directors- General;
(d) one representative each from the following:
    (i) Bank of Ghana not below the rank of a Director;
    and
    (ii) Ministry of Finance not below the rank of a Director;
(e) the Registrar-General or the representation of the Registrar-General; and

(f) four other persons comprising
(i) a lawyer qualified to be appointed a Justice of the Superior Court of Judicature nominated by the General Legal Council;
(ii) a chartered accountant nominated by the Institute of Chartered Accountants, Ghana;
(iii) an academic researcher in a relevant field; and
(iv) a woman
(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

Section 8(1) and (2) of the National Pensions Act, 2008 (Act 776) provides for the appointment of members of the Governing board as follows;

8.(1) The governing body of the Authority is a Board consisting of
(a) a chairperson,
(b) the Chief Executive of the Authority,
(c) one person nominated by the President,
(d) a representative of the Ministry responsible for pensions, not below the rank of a director,
(e) a representative of Bank of Ghana,
(f) a representative of the Securities and Exchange Commission,
(g) two representatives of OrganisedLabour,
(h) one representative of the Ghana Employers' Association,
(i) one representative of the National Pensioners Association, and
(j) a representative of the Attorney-General and Minister for Justice not below the rank of a Principal State Attorney.
(2) The chairperson and the other members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

3.3.2 Tenure of Members of Governing Bodies

Section 13 of the University of Ghana Act 2010 (Act 806) provides that;

13. (1) A member of the University other than the Vice-Chancellor who is a member of the Council shall hold office for a period of two years and eligible for re-appointment for a second term.

(2) A member of the Council who is not a member of the University shall hold office for a period of three years and is eligible for re-appointment for a second term.

(3) A member of the Council is not entitled to remuneration for membership of the Council but the member is entitled to allowances that the Council may determine.

Section 5 (1) of the Forestry Commission Act 1999 (Act 571) provides that;

5(1). A member of the Board, other than the chief executive and the representative of the Lands Commission, shall hold office for a period not exceeding four years and is eligible for re-appointment.

Section 5 (1) of the National Petroleum Authority Act, 2005(Act 691) provides that;

5(1). A member of the Board other than the Chief Executive shall hold office for a period not exceeding four years and is eligible for re-appointment but a member shall not be appointed for more than two termsin succession.

3.3.3 Removal of Members of Governing Bodies

The University of Ghana Act does not expressly provide for the removal of a member of Council. Section 14 of the Act specifies a member of circumstances in which the office of a member of Council shall become vacant.

Section 5(4) of the Forestry Commission Act 1999 (Act 571), on the other hand expressly provides that;

5.(4) The chairman or any other member of the Board may be removed from office by the President forinability to perform the functions of office or for a stated misbehaviour or for any other just cause.

Section 5(5) of the National Petroleum Authority Act, 2005 (Act 691) provides that;
5.(5) The President may by letter addressed to a member revoke the appointment of that member forjust cause and in consultation with the nominating body.

The just cause requirement for the removal of members of the governing bodies of statutory boards and corporations is not provided for by some constitutive Acts of statutory boards and corporations. For example, section 9 of the National Pensions Act, 2008 (Act 766), which establishes the National Pensions Regulatory Authority, provides that;

9. (1) A member of the Board shall hold office for a period not exceeding three years and is eligible for re-appointment but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Chief Executive.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board, who is absent from three consecutive meetings of

the Board without reasonable excuse ceases to be a member of the Board.

(5) The President may by letter addressed to a member revoke the appointment of that member.

Similarly, section 9 of the Securities Industry Act, 2016 (Act 929), which establishes the securities and Exchange Commission does not require just cause for the removal of a member of the Board of the Commission. Section of Act 929 provides that;

9. Members of the Board and members of the committee of the Board shall be paid allowances approved by the Minister.

3.4 Effect of Section 14 on Members of Governing Bodies of Statutory Boards and Corporations

What then is the effect of section 14 of Act 845 on the tenure of members of the governing bodies of statutory boards and corporations of persons appointed by the President or a Minister of State? The intendment of Section 14 is clear. It is to ensure that a new President is not saddled with non-career office holders appointed by a previous President. And yet section 14 conflicts with the tenure provisions of the constitutive Acts of many statutory boards and corporations. Act 845 is later in point of time than many of the constitutive Acts. Act 845 is also specific, in that it applies only to Presidential transitions. The respective constitutive Acts are also specific in the sense that they apply to particular Statutory Boards and Corporations. On balance, and applying a purposive approach to the interpretation to the Constitution and all the relevant legislation, we hold that the effect of Section 14 of Act 845 is to automatically remove from office all persons appointed by a previous President or Minister of State as a representative of the President or Minister on the assumption of office

of a new President, irrespective of the tenure provisions of the Act establishing the Statutory Board or Corporation. However, section 14 of Act 845 does not affect representatives of constituent bodies and interests on the governing body who can only be removed by the body or interest that they represent, and in accordance with the tenure and removal provisions of the Act establishing the statutory board or corporation.

3.5 Chief Executives of Statutory Boards and Corporations

This brings us to a consideration of the position of the executive heads (howsoever described) of statutory boards and corporations. Executive heads of statutory boards and corporations are usually members of the governing body of their institution but they are members of the governing body by virtue of their position as executive head. Are they affected by section 14 of Act 845 or not? In our considered opinion the answer to the above question lies in the mode of appointment of the executive head concerned and the terms and conditions of his appointment.

Article 195 (3) of the Constitution provides that; "The power to appoint persons to hold or act in an office in a body of higher education research or professional training shall vest in the council or other governing body of that institution or body".

In accordance with article 195(3), the University of Ghana Act, 2010 (Act 806), for example, provides in section 9 as follows:

> 9. (1) The University Council shall appoint the Vice-Chancellor who is answerable to the Council and is the academic and administrative head and chief disciplinary officer of the University.
>
> (2) The Vice-Chancellor shall hold office on terms and conditions specified in the letter of appointment.

(3) The Vice-Chancellor shall hold office for a period of up to four years and is eligible for re-appointment for another term only.

Vice Chancellors and heads of institutions of higher education are appointed by their councils and not the President or Minister of State. They are also public officers under article 190 and therefore not within the ambit of section 14 of Act 845.

Other executive heads are provided by article 195(1) and the relevant provisions of the constitutive Acts of particular statutory boards or corporations. Article 195(1) provides that public officers shall be appointed by the President in accordance with the advice of governing council of the service concerned given in consultation with the Public Services Commission.

Section 48(1) to (3) of the National Petroleum Authority Act, 2005 (Act 691) provides for the appointment, tenure and conditions of service of the Chief Executive as follows;

48. (1) The President shall in accordance with article 195 of the Constitution, appoint the Chief Executive for the Authority.

(2) The Chief Executive shall hold office on the terms and conditions specified in the letter of appointment.

(3) The Chief Executive shall be a member of the Board

Section 12 of the Forestry Commission Act, 1999 (Act 571) provides for the appointment and tenure of the chief Executive as follows:

12. (1) There shall be a chief executive of the Commission who shall be the executive and administrative head of the Commission.

(2) The chief executive shall be appointed by the President in accordance with article 195 of the Constitution and shall hold office for the period and on the other terms and conditions specified in the letter of appointment.

Section 16 of the National Pensions Act, 2008 (Act 766) provides for the appointment and tenure of the Chief Executive of the National Pensions Regulatory Authority as follows;

16. (1) The President shall, in accordance with article 195 of the Constitution, appoint a person with expertise in pensions, actuarial science, insurance or related field as the Chief Executive Officer of the Authority.

(2) The Chief Executive Officer shall hold office on the terms and conditions specified in the letter of appointment.

And lastly, section 11 (1) and (2) of the Securities Industry Act, 2016 (Act 929) provides for the appointment and tenure of the Director-General of the Securities and Exchange Commission as follows;

11. (1) The President shall in accordance with article 195 of the Constitution appoint a Director-General of the Commission who shall be the chief executive of the Commission.

(2) The Director-General is shall hold office on the terms and conditions specified in the letter of appointment.

It can be deduced from article 195(1) and the sample legislation we have examined that the Executive heads of Statutory Boards and Corporations are appointed by the President acting

in accordance with the advice of the governing board concerned given in consultation with the Public Services Commission.

Their tenure and terms and conditions are specified in their letters of appointment.

Are executive heads of Statutory Boards and Corporations affected by section 14 of Act 845?

Upon a careful consideration and a purposive interpretation of relevant constitutional and legislative provisions, it is our considered view that executive heads of statutory boards and corporations are not affected by section 14 of Act 845. They are public officers under article 190 of the Constitution. They hold office under terms and conditions stated in their letters of appointment and may only be removed in accordance with those terms.

3.6 Act 845 and the Dissolution of Boards

A purposive interpretation of section 14 of Act 845 leads us to the conclusion that the provision must be interpreted restrictively. Thus interpreted, we hold that the section does not have the effect of dissolving all governing bodies of Statutory Boards and Corporations on the election and assumption of office of a new President. In fact, there is no reference to governing bodies in section 14. The section refers to "a person holding any of the offices specified in the schedule shall cease to hold that office." The Schedule then lists the persons holding specified offices. By no stretch of the imagination can this be interpreted to mean the automatic dissolution of governing bodies. If Section 14 intended to automatically dissolve the governing bodies of Statutory Boards and Corporations, it would have said so. All that section 14 does is that certain specified persons shall cease to hold office. The precise effect on the viability of a governing body following the ceasure of persons appointed by a President or Minister of State to hold office will depend on the composition of the governing body and the provisions of the constitutive Act of the Statutory Board of Corporation.

3.7 State Companies

The Republic of Ghana is the sole, majority or significant shareholder in a number of companies. These include Ghana Airports Company Ltd, GCB Bank Ltd, Goil Ltd, State Housing Company Ltd and National Investment Bank Ltd. These are not Statutory Boards or Corporations. They are limited liability companies incorporated under the Companies Act, 1963 (Act 179). Some are listed on the Ghana Stock Exchange. Upon purposive interpretation of section 14 of Act 845, we hold that members of the governing boards of these companies and chief executives are not affected by section 14 of Act 845. Members of the boards and Chief executives of such companies shall only be removed in accordance with the articles of incorporation of the company and the Companies Act, 1963 (Act 179).

3.8 Section 14 and Constitutional Governing Bodies

The Constitution establishes a number of governing bodies for public services. These include the Judicial Council, the Police Council and the Public Services Commission. These governing bodies are established by the Constitution, not legislation and the public services they govern are not Statutory Boards and Corporations. A purposive interpretation of the section 14 of Act 845 therefore leads us to the inexorable conclusion that the section does not apply to such constitutional governing bodies and such governing bodies are not automatically dissolved upon the assumption of office of a new President. We are not unmindful of the fact that some of the members of such constitutional governing bodies would have been appointed by a previous President and that the purpose and intendment of Act 845 is not to saddle a new President with the appointees of a previous President. We are, however of the considered view that the dissolution of such constitutional governing bodies is not required for the purpose and intendment of Act 845 to be realized. A new President must make his

appointments unto such bodies as soon as possible upon his assumption of office. It is important that the work and functioning of these bodies are not unduly paralysed following the assumption of the office of the new President. The situation where such bodies are incapacitated, sometimes for upwards of six months, following the assumption of office of a new President is not mandated by the Constitution and Act 845, and should not continue.

4.0 Are Members of the Governing Bodies of Statutory Boards and Corporations Covered by the "Just Cause" Requirements of Article 191(1)(b) ?

The third issue set down for trial is whether or not article 191(b) of the Constitution, 1992, also applies to the category of officers mentioned in section 14 of Act 845.

Article 191(b) of the Constitution provides that a member of the public services shall not be "dismissed or removed from office or reduced in rank or otherwise punished without just cause". A member of the public services shall not be – (b) dismissed or removed from office or reduced in rank or otherwise punished without just cause.

The Plaintiff maintained that article 191(b) applies to members of the public service of Ghana only. He contended that this includes the heads and members of the governing boards of public corporations as well as the "permanent staff" of the public services of Ghana. He further argued that the categories of persons specified in paragraphs 1, 2, 3, 4 and 5 of the schedule to section 14 serve at the pleasure of the President, and can therefore be removed from office at any time for any reason or no reason at all. But he submitted that those specified in paragraph 6 are members of the public service and cannot be removed on the

assumption of office of a new President as this would violate article 191(b) of the Constitution.

The Defendant on the other hand asserted that a purposive approach reveals that the objective of Act 845 is to allow the new President to select the people who believe in his policies and programs, as opposed to those who may frustrate his intentions. He therefore maintained that the "just cause" requirement of Article 191(b) is satisfied by Act 845.

We have carefully examined the submissions of the parties and analysed the relevant constitutional and statutory provisions and it is our considered opinion that the contention of the plaintiff is misconceived. The category of officers mentioned in section 14 of Act 845, with the exception of public officers appointed in accordance with article 195(1), are not members of the public service and therefore not governed by article 191(b).

5.0 Conclusion

From the foregoing we conclude as follows:

1. Members of governing boards of statutory boards and corporations appointed in accordance with article 70(1)(d)(iii) of the Constitution are not members of the Public Service and their tenure is not governed by articles 191 and 195 of the Constitution. Therefore, each person may be removed at will by the President. We declare accordingly.

2. Upon a true and proper interpretation, a Public Service Officer appointed in accordance with article 195 of the Constitution and may not be removed save in accordance with the terms and conditions of his or her contract of engagement or in the absence of such, for 'just cause' pursuant to articles 191 and 195 of the Constitution.

3. To the extent that section 14 of the Presidential (Transition) Act 2012, (Act 845) requires Chief Executives or Directors-General (howsoever described) of public boards or corporations to cease to hold office upon the assumption of office by a person elected as President of the Republic of Ghana, the same is hereby declared to be unconstitutional and void for being in contravention of articles 190 and 191 of the Constitution.

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

AKUFFO (MS), CJ:-

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

S. A. B. AKUFFO (MS)
(CHIEF JUSTICE)

DOTSE, JSC:-

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

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

GBADEGBE, JSC:-

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

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

BENIN, JSC:-

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

A. A. BENIN
(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)

AMEGATCHER, JSC:-

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

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

COUNSEL

SYLVESTER WILLIAMS, CHIEF STATE ATTORNEY FOR DEFENDANT WITH HIM AURIEL ASARE BOATENG, ASSISTANT STATE ATTORNEY, AKAWARE ATENDAM, ASSISTANT STATE ATTORNEY AND VIVIAN OPOKU AGYAKWA, SENIOR STATE ATTORNEY FOR THE DEFENDANT.

GODWIN TAMEKLO FOR THE PLAINTIFF.