IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA-AD 2020

CORAM: BAFFOE-BONNIE, JSC (PRESIDING)
PWAMANG, JSC
MARFUL-SAU, JSC
AMEGATCHER, JSC
KOTEY, JSC
OWUSU, JSC
LOVELACE-JOHNSON, JSC

REFERENCE
NO. J6/01/2020

24TH JUNE, 2020

VALENTINE EDEM DZATSE ……. PLAINTIFF

VRS

1. MR HENRY AMETEFE
2. THE CHAIRMAN, HOHOE CONSTITUENCY (NDC)
3. THE SECRETARY, HOHOE CONSTITUENCY (NDC)
4. PROFESSOR MARGARET KWEKU
5. THE REGIONAL ELECTORAL OFFICER (HO)
6. THE MUNICIPAL ELECTORAL OFFICER (HOHOE) …… DEFENDANTS

JUDGMENT

PWAMANG, JSC:-

This case is a reference by the High Court, Ho of a question involving the enforcement and interpretation of the Constitution, 1992 that arose on the face of the processes filed in Suit No. E12/09/2020 pending in that court. We have examined the case stated in

the reference by the trial judge and considered the documents attached to it and are of the view that the appropriate question that has to be answered in this reference is whether or not C.I. 95 which is the subsisting legislation that delimits constituency boundaries in Ghana is inconsistent with Article 47(2) of the Constitution, 1992 by virtue of C.I. 112 which contains the boundaries of the newly created Oti Region, to the extent that C.I. 95 provides that the traditional areas of Santrokofi, Akpafu, Lipke and Lolobi all in the Oti Region are part of the Hohoe Constituency in the Volta Region of Ghana and therefore to the extent of that inconsistency is unconstitutional. We do not find the reference in the case stated to CI 119 which delimits District Assemblies and Electoral Areas boundaries relevant to a resolution of the real issue arising before the High Court, so we shall not consider it.

At the hearing of the case in this court the plaintiff submitted that the answer to the question posed above should be in the affirmative. His reason is that under Article 47(2) no constituency is allowed to straddle two regions but by the provisions of CI 95 made in 2016, the Hohoe Constituency falls partly within the Volta Region and partly within the Oti Region that was created by CI 112 made by the president pursuant to Article 5 of the Constitution in 2019.

The 1st to 4th defendants on the other hand submitted that as CI 95 was in existence and in force before C.I.112 was made by the president, the president in making C.I. 112 ought to have acted in conformity with it by ensuring that the traditional areas of Santrokofi, Akpafu, Lipke and Lolobi which at the time were part of the Hohoe Constituency remain part of the Hohoe Constituency, and the Volta Region for that matter, in order not to breach Article 47(2) of the Constitution. The effect of this argument is that Article 47(2) constitutes a limitation on the power of the president in the creation of new regions and it ought to take precedence over Article 5 of the Constitution.

The Electoral Commission on its part agreed in substance with the position taken by the plaintiffs and submitted that since CI 112 designates a regional boundary it ought to

take precedence over CI 95 which is on constituency boundaries. In the view of the Electoral Commission CI 95 ought to be amended to conform with the regional boundaries as set out in CI 112.

The relevant provisions of the constitution for the determination of the question before us are Articles 5 and 47 and the issue is which of the two articles ought to prevail over the other. If Article 5 prevails then it is CI 95 that is unconstitutional but if Article 47 prevails then it is CI 112 that is unconstitutional. In the celebrated case of **Republic V Special Tribunal, Ex parte Akosah [1980] GLR 592,** Anin JA identified this type of situation as one that calls for the Supreme Court to exercise its exclusive jurisdiction of enforcement or interpretation of the Constitution. He said as follows at page 604 of the Report;

"From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under article 118 (1) (a) arises in any of the following eventualities:

(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or else mean something different from or more than what they say;

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

(c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;" (emphasis supplied).

Article 5 of the Constitution provides in part as follows;

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

(a) create a new region;

(b) alter the boundaries of a region; or

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

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

(a) the creation of a new region;

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

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

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

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

Article 47 is follows;

(1) Ghana shall be divided into as many constituencies for the purpose of election of members of parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one member of Parliament.

(2) No constituency shall fall within more than one region.

(3) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(4) For the purposes of clause (3) of this article, the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

(6) Where the boundaries of a constituency established under this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

(7) For the purposes of this article, "population quota" means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided under this article.

In the case of **Asare (No.2) v Attorney-General [2015-2016] 2 SCGLR 899 at p 925** Wood, CJ said as follows in respect of the interpretation of our Constitution;

"In construing the relevant article 289 and other constitutional provisions, in a bid to unlock the mind of the framers of the 1992 Constitution, I have been guided by the basic well-established constitutional principles that have influenced constitutional interpretation in this court. These include the need for a purposively broad, liberal and benevolent interpretation of the Constitution as a whole, so far as the language of the constitution would admit, having due regard to the underlying values and principles that

need to be promoted to safeguard our system of participatory democracy, the principle that the constitution is a document sui generis, and allied to this, the principle that the constitution must be interpreted in the light of its own words, and not words found in some other written constitution."

So, in order to determine which of these articles was intended by the framers of the Constitution to prevail over the other, we have to interpret the language used in the Constitution itself and only resort to other methods of interpretation if the language is found to be imprecise or leads to an absurdity. A close reading of Article 5 of the Constitution reveals that the power of the president to create new regions by constitutional instrument is subject only to Article 5 itself and is not subject to any other provision of the Constitution. When Article 5 is read as a whole there is no substantive limitation on the power to create new regions. The only conditions to the exercise of that power are procedural in terms of the president consulting the Council of State, setting up a commission to enquire into the demand or need for the new regions and the holding of a referendum to approve the proposed regions. There is no limitation on the number of regions or the population or number of traditional areas a region must contain or the boundaries that may be set for a new region. Consequently, the argument of the 1st to 4th defendants that the president in creating new regions is limited by Article 47(2) is not supported by the provisions of the Constitution.

Article 47 on the other hand in granting power to the Electoral Commission to divide Ghana into constituencies places some substantive restrictions on the exercise of that power. One of those substantive restrictions is in Clause 2 of the Article to the effect that a constituency shall not fall within more than one region. Another substantive restriction is that constituencies created shall in terms of population be nearly as possible to the population quota.

So when we compare and contrast the provisions of the two Articles, it becomes abundantly clear that Article 5 prevails over Article 47 as far as the relationship of regions to constituencies is concerned since the restriction under Article 47(2) is

imposed on the Electoral Commission in the creation of constituencies but no such restriction is imposed on the president in creating regions under Article 5. We therefore hold that it is the Constitutional Instrument on constituency boundaries that should be aligned to the regional boundaries and not the other way round. It is our considered view that if the framers of the Constitution had intended it the otherwise they would have expressly made Article 5 subject to Article 47(2) of the Constitution. In the circumstances, we reject the argument of the 1st to 4th defendants. What this means is that whenever regional boundaries are changed in a manner that affects existing constituencies, the constituency boundaries have to be amended to align with the new regional boundaries.

For the reasons explained above, we hold that, as things stand now, CI 95 is inconsistent with Article 47(2) of the Constitution to the extent that the traditional areas of Santrokofi, Akpafu, Likpe and Lolobi which fall within the Oti Region are stated to be part of the Hohoe Constituency which is in the Volta Region and to the extent of that inconsistency CI 95 is unconstitutional. We therefore answer in the affirmative the rephrased question referred to us.

However, it is provided under clause 6 of Article 47 that any review of constituencies shall take effect upon the next dissolution of parliament. That is understandable because currently there are sitting Members of Parliament who were elected and are serving on the basis of the constituencies in CI 95. For that reason we shall not declare CI 95 as void despite our holding that it is unconstitutional. See; **Margaret Banful v Attorney-General Writ No. J1/7/2016, Judgment delivered on 22/6/2017**. Accordingly, we order the Electoral Commission to amend CI 95 to bring it in conformity with CI 112. Such amendment shall take effect upon the next dissolution of parliament, that is after midnight of 6th January, 2021.

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

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

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

N. A. AMEGATCHER
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PROF. N. A. KOTEY
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