IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA GHANA

CORAM: WOOD (MRS), CJ (PRESIDING)
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC
GBADEGBE, JSC
BENNIN, JSC
AKAMBA, JSC

CONSOLIDATED WRITS NOS. J1/11/2014 AND J1/9/2014

30TH JULY 2014

ABU RAMADAN **PLAINTIFFS**
EVANS NIMAKO

VRS

ELECTORAL COMMISSION
THE ATTORNEY GENERAL **DEFENDANTS**

AND

KWASI DANSO ACHEAMPONG **PLANTIFF**

VRS

ELECTORAL COMMISSION
THE ATTORNEY GENERAL **DEFENDANTS**

REASONS FOR THE DECISION

WOOD (MRS) CJ:-

A clearly unambiguous constitutional provision which underscores the supremacy of the 1992 Constitution is the Article 1(2). It provides:

"1(2) This Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall, to the extent of the inconsistency, be void."

A further safeguard to the doctrine of constitutional supremacy is embodied in the articles 2(1) and 130(1) of the 1992 Constitution, which vest the Supreme Court with original jurisdiction to determine the constitutionality of legislations and to declare as void any law which is found to be inconsistent or in conflict with any of its provisions.

Two cases, namely, Republic v Yebbi & Avalifo [2000] SCGLR 149 and Ghana Bar Association v Attorney–General [2003-2004]1SCGLR 250, outline the ambit of this exclusive jurisdiction of the Supreme Court.

Article 2 (1) of the 1992 Constitution provides:

"A person who alleges that-

(a) an enactment or anything contained in or done under the authority of that or any other enactment ;or
(b) any act or omission of any person is inconsistent with, or in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."

Again, article 130 states:

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

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

(b) all matters arising as to whether an enactment was made in

excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

Pursuant to our jurisdiction (judicial review of legislative action jurisdiction) under articles 2(1) (a) and 130 (1) (b), viz, the power to pronounce on the constitutional validity of laws, on the 30th day of July, 2014, we unanimously upheld the principal reliefs of the Plaintiffs in the following consolidated suits:

(1) J1/11/2014 Abu Ramadan and Evans Nimako

v

The Electoral Commission &

The Attorney-General

(2) J1/9/2014 Kwasi Danso Acheampong

v

The Electoral Commission &
The Attorney- General.

In each case, we declared that upon a true and proper interpretation of article 42 of the 1992 Constitution, the use of the National Health Insurance (NHI) Card to register a voter pursuant to Regulation 1(3) (d) of the Public Election (Registration of Voters) Regulations, 2012 (C.I.72) is inconsistent with the said article 42. Additionally, in the suit numbered J1/11/2014, we granted "an order of perpetual injunction restraining the Electoral Commission from using the National Health Insurance Card in its present form and a voter identification card other than as explained under relief (2) for the purposes of registering a voter under article 42 of the 1992 Constitution."

These orders arise from the two separate writs taken out by the three Ghanaian citizens under article 2 (1) (a) of the 1992 Constitution, against

the same Defendants, namely, the Electoral Commission (EC) and the Honourable Attorney- General (A-G), for the determination of the same central constitutional question. The common question emanating from their respective writs and statements of cases relates to the constitutionality of Regulation 1 (3) (d) of the Public Elections (Registration of Voters) Regulations, 2012), C.I. 72. The only matter which set them apart is the reliefs 2 and 3 claimed by the Plaintiffs in J11/2014 and the issues related thereto, as regards the use of what they described as the "… "so called existing voter identification card" or any other document that does not prove or establish qualification to register as a voter pursuant to article 42." Even so, the claims are grounded on the same facts and law.

At the substantive hearing, Plaintiff in suit number J1/9/2014, by reason of his withdrawal of the action against the Parliament of the Republic of Ghana as 2nd Defendant, has reduced his reliefs to the following:

a. "A declaration that the **PUBLIC ELECTIONS (REGISTRATION OF VOTERS) REGULATIONS 2012** laid before Parliament on 21st February 2012 and came into force on 23rd March, 2012 and passed as Constitutional Instrument No. 72 (C.I. 72) is inconsistent with ARTICLE 42 of the 1992 Constitution in so far as **REGULATION 1 SUBREGUALTION 3 (d)** by implication extends the right to be registered as a Voter for the purposes of public elections and referenda to **PERSONS RESIDENT** in Ghana as against **EVERY CITIZEN** of Ghana as specified by ARTICLE 42.

b. An order to the Electoral Commission not to list National Health Insurance Card as one of the evidence of identification a person applying for registration as a voter must provide on grounds that the National Health Insurance Scheme is open to PERSONS RESIDENT in Ghana i.e. Citizen (sic) and Non-Citizens.

c. An order of interim injunction restraining the Electrol (sic) Commission from commencing any voter registration exercise pursuant to C.I. 72 or in the alternative an order restraining the Electoral Commission by itself, its officials and agents throughout Ghana from accepting National Health Insurance Card as evidence of identification of one's citizenship when applying for registration as a voter.

d. Such order or orders and directions as this Honourable Court may deem appropriate for giving effect to the declarations and orders sought."

In the suit numbered J1/11/2014, the Plaintiffs had also withdrawn the fourth claim and thus limited their prayer to:

1 "A declaration that upon a true and proper interpretation of Article 42 of the Constitution of the Republic of Ghana, 1992 (hereinafter, the "Constitution") the use of the National Health Insurance Card (hereinafter, the Health ID Card) as proof of qualification to register as a voter pursuant to the Public Elections (Registration of Voters) Regulation 2012 (Constitutional Instrument 72) is unconstitutional, void and of no effect.

2 A declaration that upon a true and proper interpretation of Article 42 of the Constitution the use of the so called "existing voter identification card" as proof of qualification to register as a voter pursuant to C.I. 72 would be tantamount to an applicant registering twice or more and is therefore unconstitutional, void and of no effect.

3 An order of perpetual injunction restraining the Electoral Commission from using the Health ID Card, the so-called

> "existing voter identification card" or any other document that does not prove or establish qualification to register to vote under Article 42 in any public election and referenda held in Ghana."

The commonality between the two cases was sufficient justification for consolidating the two cases; an order we suo motu issued without the least hesitation. The decision was informed not only by the sameness of the parties, but the Plaintiffs' respective reasons for invoking our original jurisdiction. Both Plaintiffs challenge the constitutionality of regulation 1 (3) (d) of the Public Elections (Registration of Voters) Regulations, 2012), C.I. 72, as being inconsistent or in conflict with article 42 of the 1992 Constitution.

Additionally, the Plaintiffs in J1/11/14 question the legality of regulation 1 (3) (e) of C.I. 72, but since the claim was predicated on the same facts and law, we found the order appropriate. Equally important, since both actions were based on common facts and law, the Defendants' responses to the two actions were either the same or similar to each other. Again, the distinct similarities in the memorandum of issues presented by the respective parties on both sides of the legal divide could simply not be discounted. It therefore came as no surprise when, at the hearing, the Plaintiff in J1/9/2014, elected to rely on the oral arguments of his counterpart in J1/11/2014, given the close similarities in their respective written case statements, filed pursuant to rule 46 of the Supreme Court Rules C.I. 16. Their detailed written and oral legal arguments thus, raised virtually the same fundamental issues.

The central question we were invited to decide is whether the use of the NHI card and an "existing voter identification card" as provided under regulation 1 (3) (d) and (e) respectively of C.I. 72, as proof of qualification to register, is inconsistent with article 42 of the 1992

Constitution. Unsurprisingly, the views of the parties diverge greatly on this issue.

The Plaintiffs argue that as far as the registration of voters is concerned, Regulation 1 (3) of C.I. 72 ought to be in such terms that meet the article 42 qualification criteria, and, relative to this consolidated suits, Ghanaian citizenship. The Plaintiffs contend that citizenship is so crucial to the right to register as a voter, that neither the NHI card, nor for that matter any document which does not on its face, establish the fact of Ghanaian citizenship, can appropriately be used for establishing the constitutional qualification for registration. Furthermore, the Plaintiffs maintain that it was a basic constitutional requirement that the C.I. 72, which replaced the existing (Public Elections (Registration of Voters) Regulations, 1993 C.I.12 conformed in every material particular to article 42 of the 1992 Constitution. The contention thus is that the impugned regulation 1 (3) (d) and (e), which allow the use of the NHI card or "an existing voter identification card", to establish qualification for registration as a voter, is void, as being inconsistent with article 42 of the 1992 Constitution.

The Plaintiffs in J1/11/2014 explain the rationale for this line of argument in their statement of case in these terms:

"7.7 Since citizenship and nationality is critical per Article 42 of the Constitution, it is Plaintiffs' view that the Health ID Card is not an appropriate form of establishing constitutional qualification to be registered to vote pursuant to Article 42 of the Constitution. The Health ID Card does not distinguish a Ghanaian from a non-Ghanaian when he or she proposes to have his or her name added to the voter's register. Indeed, the identification of a person in terms of Article 42 is not as important as the qualification of a person. While the Health ID Card identifies persons it doesn't establish qualification in terms of Article 42…

9.5 The Plaintiffs contend that the current position, taken by the 1st Defendant that the Health ID Card is valid evidence of citizenship per Regulation 1 (3) of C.I. 72 is misconceived and not in accord and harmony with the letter and spirit of Article 42."

The arguments of the Plaintiff in suit number J1/10/2014 is in similar vein. He submitted:

"ARTICLE 42 of the 1992 Constitution however provides that;

"Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public elections and referenda."

It is submitted based on the foregoing that ARTICLE 42 reserves the right to be registered as a voter in Ghana for the purposes of public elections and referenda solely in CITIZENS of Ghana of eighteen years of age and above and of sound mind and that the use of National Health Insurance Card as evidence of identification extends the right to be registered as a voter to EVERY PERSON RESIDENT in Ghana thus making the application of Regulation 1 (3) (d) of C.I. 72 and its outcome inconsistent with ARTICLE 42."

With regard to the argument pressed in support of the challenge to Regulation 1 3 (e) of C.I.72, which permits the use of the "existing voter identification card" for registration, we find it prudent to reproduce parts of the Plaintiffs' statement of case. It was submitted on their behalf, inter alia that:

11.3 "For present purposes therefore, we can deduce from the above that the only existing voter identification card can be none other than the one issued pursuant to the registration exercise in 2012 under C.I. 72. If this is so, it means then that the person bearing an existing voter identification card need not apply to have his or her name registered as a voter in any future voters registration exercise so long as C.I.72 subsists. This is

because to apply to have your name included in the voters register with an existing voter identification card would be an offence per Regulation 27…

11.5 It is further instructive to note that if "existing" in Regulation 1(3) (e) is construed to mean "old" it worsens matters because "old" voters identification cards are inoperative and ineffective and for that matter it will be illegal to admit as evidence of proof of qualification to register as a voter."

Again, the 1st Defendant's brief and verbatim answers to both actions are best reproduced. They argued inter alia:

"Relief (1)

The 1st Defendant denies that the use of the National Health Insurance Card under Regulation 1(3) (d) of the Public Elections (Registration of Voters) Regulations 2012 (C.I.72) is use (sic) as proof of qualifications to register as a voter and therefore contrary to Article 42 of the 1992 Constitution of Ghana. …

Relief (2)

The 1st Defendant denies that the use of an existing voter identification card is use (sic) as proof of qualification to register as a voter …

2. "… the Plaintiff (sic) has failed to note the distinction between Sub-regulation 1(1) of C.I. 72 which, reproducing the words of Article 42 of the Constitution, states who is ENTITLED (emphasis added) to have his name included in the register of voters, on one hand and, on the other hand, Sub-regulation 1 (3) which states what the person who APPLIES (emphasis added) for registration shall provide an (sic) evidence of identification (could have stated "identity")

3. In response to the Plaintiff's statement of Case, the 1st Defendant says that C.I. 72 has to be read as a whole and that the registration of a voter

is a PROCESS and does not comprise the single event of applying to be registered and submitting one of the items listed in regulation 1 (3) as evidence of identification."

The 1st Defendants argued that read as a whole, the C.I. 72, provides for a registration process, involving over eleven different steps, the first of which is the presentation of the NHI card as evidence only of name and face identification or identity, not evidence of the critical citizenship or nationality qualification as required under article 42 and consequently, the NHI card does not present as conclusive evidence of qualification. The contention then is that, contrary to the Plaintiffs' claims, the impugned regulation 1 (3) (d) of C.I.72, when read within the context of C.I. 72 is not intended to and does not automatically qualify an NHI cardholder for registration as a voter.

The 2nd Defendant while correctly identifying the central question for resolution, and the substance of the Plaintiffs arguments in support of their cause, criticizes same for lack of merit, reasoning as per their statement of case that:

"Nowhere in C.I.72 is it provided that the production of the said card is evidence of citizenship. Regulation 1 (3) OF C.I.72 provides inter alia as follows:

"**A person who <u>applies for registration</u> as a voter shall provide as evidence of identification one of the following…"**

(emphasis mine)"

The production of the card is one of the requirements that an applicant must meet. The contention of the plaintiffs is premise (sic) on the erroneous belief that the provision of the card is an irrefutable presumption of citizenship.

It should be noted that Regulation 1 (3) of C. I. 72 includes other proof of identities such as driver's licence which is also issued to any person resident in Ghana, who intends to drive, inclusive of non- citizens. Driver's licence is not issued to only citizens….

Regulation 1 (3) of C.I. 72 did not say a person who provides the card or a driver's licence is entitled to be registered as a voter. It only refers to these identification cards as one of the requirements to be submitted for consideration for registration as a voter."

The 2nd Defendants argue further that the NHI card and indeed the other documents listed under Regulation 1 (3) of C.I. 72 are not for the purposes of proof of citizenship but "identity" as relates to name of applicants only, the initial step in the long registration process, which processes include the challenge mechanism. This initial step, he maintains, is only for the limited purpose of inclusion of an applicant's name in the provisional list of the voter's register. The further contention is that any attempt to exclude the use of this "easily accessible and common" card, would lead to disenfranchisement, given that the 1st Defendant have been given wide discretionary powers to protect the inalienable right to vote. His justification for the use of the NHI card stems from the fact that:

"…the possession of the card is wide spread than other identification documents listed in Regulation 1 (3) of C.I. 72.

He contends that since there is an avenue open to the public for challenging registration, the Plaintiffs' criticisms are well and truly unjustified.

Electoral justice is legitimately the most effective medium for the protection and preservation of the sovereign will of the people, a democratic principle explicitly captured in the preamble to the 1992 constitution and implicitly reinforced under its article (1). The critical role

universal adult suffrage and equal voting play in the democratic process cannot therefore be over looked.

Again, Article 35 (1) of the Directive Principles Of State Policy, which principles have been held to constitute enforceable rights, further solidifies the sanctity of the sovereign power of the people. It solemnly declares:

"Ghana shall be a democratic state dedicated to the realization of freedom and justice; and accordingly, sovereignty resides in the people of Ghana from whom the government derives all its powers and authority through the Constitution."

It is to give full realization to this essential political objective that the entrenched article 42 of the 1992 Constitution guarantees the franchise to:

"Every citizen of Ghana of eighteen years of age or above and of sound mind…"

As this court has explicitly pronounced, in a couple of cases, notably, Tehn-Addy v Electoral Commissioner [1996-1997] SCGLR 589 and Ahumah Ocansey v Electoral Commission; Centre for Human Rights and Civil Liberties (CHURCIL) v Attorney-General [2010] SCGLR 575, the constitutional right to vote, the right on which other rights are anchored, must, at all costs be jealously guarded by the courts of this land.

As a crucial first step to actualizing the right to vote, Ghanaian citizens of eighteen years or above and of sound mind have the constitutional right "**to be registered as a voter…"** (Emphasis supplied) for purposes which are all too evident - exercising the franchise in all public elections and referenda. If the right to vote is important in participatory democracy, the right to register is even more fundamental and critical. It is the golden key that opens the door to exercising the right to vote.

The rationale for the suffrage, pursuant to article 42 of the 1992 Constitution, as well as the constitutional responsibility which devolves upon the 2nd Defendant to ensure its strict compliance was clearly articulated by this court in the case of Tehnn-Addy v Electoral Commission (supra). This court speaking through Acquah JSC, as he then was, observed:

"…In order to give meaning and content to the exercise of this sovereign power by the people of Ghana, article 42 guarantees the right to vote to every sane citizen of eighteen years and above. The exercise of this right of voting, is therefore indispensable in the enhancement of the democratic process, and cannot be denied in the absence of a constitutional provision to that effect.

A heavy responsibility is therefore entrusted to the Electoral Commission under article 42 of the Constitution in ensuring the exercise of constitutional right to vote. For in the exercise of this right, the citizen is able not only to influence the outcome of the elections and therefore the choice of a government but also he is in a position to help influence the course of social, economic and political affair thereafter. He indeed becomes involved in the decision-making process at all levels of governance."

A meaningful actualisation of the article 42 rights requires inter alia, that the 2nd Defendant establishes credible and reliable structures, systems, processes and procedures for translating the constitutionally guaranteed rights into reality. These mechanisms- structures, systems, processes and procedures- must be such as on balance, would guard, protect and preserve the sanctity and credibility of the rights guaranteed there under. A perfect electoral system is obviously utopian; hence the notion that the structures should, on balance, not undermine, detract from, dilute, nor whittle down the right to qualify to be registered, the first crucial step that

would enable the citizen to vote. Without that, the entrenched right to the franchise remains an illusion.

Sound constitutional electoral justice principles thus demands that every enactment, regulation, administrative processes and procedures for securing these rights, must be such as would give life and effectuate the constitutional right to be registered to vote. None of these must be inconsistent with or in conflict with the constitution. To the contrary, they must be in accord and harmonise with the article 42, the primary constitutional provision, or risk being struck down on grounds of unconstitutionality.

This is what renders the 2nd Defendant's justification of the use of the NHI card on the mere ground of the 1st Defendant's wide discretionary powers wholly untenable. It is trite learning that administrative discretionary powers are subject to the Constitution, indeed both its spirit and letter, on account of its supremacy. This court's power of judicial review is thus not only restricted to challenges to the validity of legislation, but open also to administrative acts and decisions as well. By it, we determine the limits of legality of the act or decision complained of, viz a viz the relevant constitutional provision.

The utility of article 51 of the 1992 Constitution is all too patent. It mandates the Electoral Commission to make, by constitutional instrument,

"…regulations for the effective performance of its functions under this constitution or any other law, and in particular, for the registration of voters, the conduct of public elections and referenda, including provision for voting by proxy."

It is in the exercise of the constitutional duty imposed on the 2nd Defendant by article 51, that the EC set out to make The Public Elections (Registration of Voters) Regulation 2012 (Constitutional Instrument 72),

with the regulation 1 3 (d) and (e), forming the basis of this judicial review litigation.

Regulation 1 (1) of C.I. 72 provides:

1. "(1) (1) A person is entitled to have the name of that person included in the register of voters of an electoral area, if that person is

(a)a Citizen of Ghana;
(b) eighteen years of age or above;
(c)of a sound mind;

(d)resident or ordinarily resident in an electoral area; and

(e)not prohibited by any law in force from registering as a voter.

(2) For the purpose of paragraph (d) of subregulation (1), a person who is confined in a penal institution located in an electoral area is resident in that electoral area.

(3) A person who applies for registration as a voter shall provide as evidence of identification one of the following:

(a) a passport;
(b) a driver's license;
(c) a national identification card;
(d) a National Health Insurance card;
(e)an existing voter identification card; or
(f) one voter registration identification guarantee form as set out in Form One of the Schedule that has been completed as signed by two registered voters

(4) Despite paragraph (f) of sub regulation (3), a registered voter shall not guarantee the identity of more than five persons."

Voter registration is crucial to the success of the entire electoral process, for it establishes the eligibility of citizens to the franchise. It is the gateway to the right to vote- the open door to participation in the governance process. Safeguarding the entire registration process, which process includes the qualification criteria, is therefore the key to securing the legitimacy of the entire electoral process, and by logical reasoning, the sovereignty of the state. The registration process must therefore be protected from under-age persons, non citizens and voter fraudsters alike, in order to avoid the process being perceived as flawed. Tehn Addy v Electoral Commission (supra) and Apaloo v Electoral Commission of Ghana [2001-2002] 103, underscore the duty of the courts to protect the constitutional right of every Ghanaian citizen to register. Bamford –Addo JSC summed up our duty in the Apaloo case thus:

"In similar manner, the courts should and would protect the right to vote at all costs as it has previously protected the right to register, otherwise democracy in this country would be undermined…"

In this matter, the parties are ad idem on the constitutional requirement for registration under article 42. They are agreed that the focus or emphasis is on the following criteria;

Age: 18 years and above,

Citizenship: Ghanaian citizenship is a sine qua non for registration,

Sanity: Soundness of mind is an equally critical criterion.

These criteria must be jealously guarded and protected if we must succeed in protecting the constitutionally entrenched right to vote. The Plaintiffs in J1/11/2014 exhibited copies of the documents that under regulation 1, subregulation 3 of C.I. 72, may be used for identification for registration purposes. These are, a passport Exh. "ABU4", a driver's licence Exh." ABU 5", a national identification card Exh. "ABU6", an existing voter identification card "Exh. 7", and an NHI card "Exh. 8a".

The Plaintiffs argue that unlike the documents listed under regulation 1 (3) subregulation (a), (b) and (c), respectively, Exh. "8a" the NHI card, under regulation 1 (3) subregulation (d) of C.I.72, identifies people's names and faces only, but offers no proof of the holder's citizenship status. In their words:

"The health ID card does not distinguish a Ghanaian from a non-Ghanaian when he or she proposes to have his or her name added to the voters register….While the Health ID card identifies persons it doesn't establish qualification in terms of article 42."

Thus, at the heart of these two opposing arguments lies this fundamental question. What construction do we place on regulation 1 and its sub regulation (3) (d) and (e) of C.I. 72. Is the subregulation (3) (d) intended for "identity" only, ie identification of name and face only or the substantive identification as meets the qualification criteria for registration under article 42 of the 1992 Constitution and the Regulation 1 of C.I. 72. In this regard, the opinion of Taylor JSC in Kwaley v Attorney- General [1981] 944-1071 at page 1070, on constitutional interpretation, is indeed instructive. He said:

"In my humble opinion, the function of the Supreme Court in interpreting the Constitution or any statutory document is not to construe the written law merely for the sake of law; it is to construe the written law in a manner that vindicates it as an instrument of justice. If therefore the provision in a written law can be interpreted in one breadth to promote justice and in another to produce injustice, I think the Supreme Court is bound to select the interpretation that advances the course of justice, unless, in fact, the law does not need interpretation at all but rather specifically and in terms provide for injustice."

To arrive at a proper construction of regulation 1 (3) (d) and (e), firmly established principles of statutory interpretation require that the C.I.72 be read as a whole, not piecemeal, and purposively construed and with the

impugned legislation interpreted in the context of the other parts of C.I. 72. From that perspective, the term "evidence for identification" as used in sub regulation (3) is referable, not in the strict and narrow sense as advocated by the Defendants, to a person's mere "identity" by way of name and face only, but the important constitutional criteria that qualifies a person for registration as provided under the primary source, article 42 of the 1992 Constitution, and repeated under the regulation (1) of C.I.72. The narrow interpretation defeats the intendment and purposes of the C.I. 72, which is for establishing qualification in terms of article 42, and in the context of this adjudication, the critical citizenship requirement.

This conclusion is informed firstly, by the heading of the entire regulation 1, which reads: "Qualification for Registration." Secondly, the subregulation (3) (f) which provides:

"A person who applies for registration as a voter shall provide as evidence of identification one of the following:

…(f) one voter registration identification guarantee form as set out in Form One of the Schedule that has been completed and signed by two registered voters."

Included in the Plaintiffs exhibits is the ABU3, Schedule Form One of C.I. 72, referred to in subregulation (f) as "Electoral Commission of Ghana Voter Identification Guarantee Form." Guarantors who intend to use it to support the registration of a voter are mandated to make the following solemn declaration.

"We solemnly swear or affirm that we know that

Mr/Mrs/Miss…….**is qualified** to register as a voter at the above named registration centre." (Emphasis supplied)

It does not make reference to applicant's identity, but the person's qualification to register, obviously in terms of article 42 of the Constitution and regulation 1 of C.I. 72.

The documents listed under subregulation (3) of C.I.72, on their faces, provide clear information as to whether a person meets the stringent constitutional qualification for registration or not. The NHI card, however, is the only document among the lot that does not provide undoubted information on the holder's nationality. The NHI card owes its existence to the National Health Insurance Act, 2012 (Act 852), from the preamble, its purpose, being inter alia:

"…to secure the provision of basic health care services **to persons resident in the country…**" (Emphasis supplied)

It identifies the holder by name and face alright, but makes no disclosure about the holder's nationality unlike Exhs. "ABU 8a" and "8b", and thus fails to meet the citizenship restriction test.

We have given anxious consideration to the claim that it is the most widely used document in our jurisdiction. But we juxtapose that against the constitutional mandate on us to uphold constitutional supremacy- the court's sacred role in judicial review adjudication. Our mandate under articles 1 (2) and 130 (b) of the 1992 Constitution as we all clearly understand is to strictly determine the limits of legality within the context of the relevant constitutional provision(s), and the enactment(s) or administrative decision(s) under review, and to declare as void those that fail to meet the constitutionality test. On this we drew guidance from a US case, a jurisdiction known for its strong jurisprudential regime in judicial review of legislation actions. We refer to the dictum of Justice Sutherland, in Home Building & Loan Association v Blaisdell 290 US 398 at 483. He stated:

"I quite agree with the opinion of the court that whether the legislation under review is wise or unwise is a matter with which we have nothing to do. Whether it is likely to work well or work ill presents a question entirely irrelevant to the issue. The only legitimate enquiry we can make is whether it is unconstitutional. If it's not its virtues, if it has any, cannot be invoked to accomplish its destruction. If the provisions of the constitution be not upheld when they pinch as well as when they comfort then they must as well be abandoned."

The argument that the first steps outlined in subregulation (3) of C.I. 72, which enjoins the presentation of an identification document, is only for the "purpose of inclusion of an applicant's name in the provisional list of the voter's register" and the further argument that in any event, a process for challenging or complaints about the inclusion of unqualified individuals under regulation 16 of C.I. 72, is dangerous and must be rejected. No amount of rationalisation can justify this contention. Plainly in our view, that challenge mechanism is the final window of opportunity for removing the names of those unscrupulous individuals, who in spite of the necessary due diligence, all possible human care and attention, have nonetheless managed to slip through the net, beat the system, so to speak, and fraudulently managed to have their names included as qualified individuals.

From a fair reading of the entire legislation, one may want to question the wisdom and propriety of handling this important national constitutional exercise, namely, the rather taxing and expensive process of registration without regard to legality and in a slip-shod manner, on the assumption that the challenge mechanism will correct any errors or flaws. To advocate that the only data needed to prepare the provisional list of registered voters is only the name of an applicant, to the total exclusion of the other critical qualification criteria, is to misconstrue the C.I.72. Although provisional registers are interim measures, and are therefore subject to verification, they form one of the critical and useful tools for

securing overall electoral legitimacy. Given the imperfection of human systems, it is for the ultimate purpose of achieving a more credible and reliable register, that avenues are subsequently created for "cleaning" the provisional registers, as the expression has come to be known in our jurisdiction. But provisional registers are expected, for all purposes, to be prepared in full compliance with legal requirements at any given time. An unhealthy reliance on the challenge and complaints tier is bound to generate chaos, confusion and anarchy at registration and polling centres. It would indeed be palpably wrong to view the registration process as a license for either throwing overboard the constitutional restrictions or handling the registration process itself hap-hazardly. The interpretation urged by the 2nd Defendant counsel and its underlying philosophy is negative; it does not promote excellence in work ethic and the same ought to be rejected. It dignifies mediocrity, which certainly is not a value that we in this court should endorse nor promote.

As regards the reliefs 2 and 3 in the Suit numbered J1/11/2014, we are not persuaded by the arguments of the Plaintiffs' Counsel. We reckoned that reference to "existing voter identification card", per Regulation (1) (3) (e) of C.I. 72, is to all intents and purposes, directed at the "old" voter identification card in use under the previous regulation C.1. 12, and in respect of which provision was made for biometric registration and voting under C.I.72. Our decision was informed by the same principles on which we based the decision in favour of the Plaintiffs, namely, that to pass the constitutional validity test, any document listed under Regulation 1 subregulation (3) must contain the constitutional requirements that qualifies an applicant for registration as a voter. The critical requirements which are clearly stated on the old voter registration card include the age, and citizenship status of the applicant. It may indeed be legitimately argued that for all practical purposes, the old voter card is the best prima facie evidence of an applicant's eligibility under the C.I.72. Certainly,

if the holder were not qualified for registration as a voter, how did he or she come by a voter registration card under C.I.12, the law then in force?

The need for a credible and reliable multipurpose national identification system comprising the relevant data and communication infrastructure that would answer to most of our national needs, whether for electoral, planning or developmental, or other purposes, is greater than ever before. We think the time has come for the appropriate authorities to respond to this need.

(SGD) **G. T. WOOD (MRS)**
CHIEF JUSTICE

(SGD) **S. O. A. ADINYIRA (MRS)**
JUSTICE OF THE SUPREME COUR

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

(SGD) **ANIN YEBOAH**
JUSTICE OF THE SUPREME COURT

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

(SGD) **A. A. BENIN**
JUSTICE OF THE SUPREME COURT

(SGD) **J. B. AKAMBA**
JUSTICE OF THE SUPREME COURT

COUNSEL FOR WRIT NO. J1/11/2014

NANA ASANTE BEDIATUO WITH HIM GARY NIMAKO MARFO AND MISS OFOSUWAA AMAGYEI FOR THE PLAINTIFFS.

JAMES QUARSHIE IDUN WITH HIM ANTHONY DABI FOR THE 1ST DEFENDANT.

WILLIAM KPOBI (CHIEF STATE ATTORNEY) FOR THE 2ND DEFENDANT.

COUNSEL FOR WRIT NO. J1/9/2014

PLAINTIFF APPEARS IN PERSON.

JAMES QUARSHIE IDUN WITH HIM ANTHONY DABI FOR THE 1ST DEFENDANT.

WILLIAM KPOBI (CHIEF STATE ATTORNEY) FOR THE 2ND DEFENDANT.