IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA AD 2015

CORAM: ATUGUBA JSC (PRESIDING)

AKUFFO (MS) JSC

ANSAH JSC

DOTSE JSC

ANIN YEBOAH JSC

BAFFOE-BONNIE JSC

GBADEGBE JSC

WRIT
No. J1/11/2015

27TH FEBRUARY, 2015

BENJAMIN EYI MENSAH - - - PLAINTIFF

VRS

THE CHAIRMAN - - 1ST DEFENDANT
ELECTORAL COMMISSION

THE ATTORNEY GENERAL - - 2ND DEFENDANT
& MINISTER FOR JUSTICE

JUDGMENT

The plaintiff by his writ claims against the defendants as follows:-

"A declaration that:

I. On a true and proper interpretation of Article 51 of the 1992 Constitution, a Constitutional Instrument to demarcate the boundaries for both the national and local Government elections comes into force only after the expiration of 21 sitting days after it has been laid before Parliament and that C.I. 85 could only come into force after Parliament had passed same.

II. On a true and proper interpretation of Article 51 of the 1992 Constitution, the opening and closing of nominations for District Assembly elections when there was no existing Constitutional Instrument empowering the Electoral Commission to receive nominations was unconstitutional.

III. The opening and closing of nominations for District Assembly elections by the Electoral Commission when the Constitutional Instrument empowering it to do so had been laid before Parliament for consideration was an usurpation of the Constitutional mandate of Parliament as enshrined in Article 106 of the 1992 Constitution.

IV. The opening and closing of nominations by the Electoral Commission when the C.I. 85 was still pending before Parliament for consideration is an affront on the dignity of Parliament conferred on it by Article 122 of the 1992 Constitution.

V. The opening and closing of nominations by the Electoral Commission on Sunday 21st December, 2014 when C.I. 85 was not in force was an infringement of the Right of the Plaintiff to contest in the local elections after having met all the pre-conditions to be registered as a candidate and awaiting the passage of C.I. 85 before filing his nomination forms.

VI. All the nominations forms received and the filing of same by the 1st

Defendant for the purpose of the District Assembly elections prior to the coming into force of the Constitutional Instrument (C.I. 85) is unconstitutional and of no legal effect.

VII. An order to the Electoral Commission to open nominations to enable the Plaintiff and other law abiding citizens who were awaiting the passage of C.I. 85 to file their nomination forms to participate in the upcoming District Assembly Elections."

The cardinal issue arising from this action is whether at the opening and close of nominations for the District Level elections there was any existing legislation covering the same. The 1st Defendant, the Electoral Commission per their counsel James Quashie-Idun first relied on the Public Elections Regulations, 2012 (C.I. 75). When this court drew his attention to Regulation 46 thereof which applies the Regulations of the said CI 75 "to other Public elections that the Commission may by constitutional Instrument prescribe" and whether there was such a prescribing Constitutional Instrument he could not satisfy this court on this point. Counsel then shifted their position to the Unit Committee Regulations, 2010, C.I. 68. Mr. James Quashie-Idun, however, could not satisfy the court as to the applicability of C.I. 68 to District Level as opposed to Unit Committee elections. At this stage counsel obtained adjournment to the next day 26/2/2015. When hearing resumed Quashie-Idun shifted his grounds to S.11 of the District Assembly Elections Act, 1994 (Act 473) which applies the provisions of the Representation of the People Law, 1993 (PNDCL 284) to District Assembly elections with the necessary modifications. However, PNDCL 284 has (understandably) left the matters concerning the nominations and conduct of inter alia, District Assembly Elections to the Electoral Commissioner to prescribe. Accordingly the central problem posed at the commencement of this judgment remained unanswered.

We have nonetheless taken all precautions to avoid rendering a judgment per incuriam in case there is some supporting legislation the parties are unaware of. We noted that in the parliamentary Hansard debates relating

to the District Electoral Areas and Designation of Units Instrument, 2014, C.I. 85 then pending before Parliament, there was reference to a C.I. 78 which it was contended, could before the coming into force of C.I. 85 govern the commencement of the upcoming District Level Elections slated for 3/3/2015. The reference to the said C.I. 78 proved illusory as its existence cannot be fathomed. This mysterious legislation is not even listed in the manual of the Electoral Commission entitled Electoral Laws.

For all the foregoing reasons we are driven to hold and we so hold that at the time the upcoming District level elections processes were set on foot there was no legislation covering the same. C.I. 85 can have no retrospective effect. Accordingly we declare that it is unconstitutional to proceed with the impending District level elections slated for 3/3/2015 since the same cannot be warranted having regard to articles 45 and 51 of the Constitution which mandatorily require the Electoral Commission to hold elections under regulations made by them under Constitutional Instrument.

For the avoidance of doubt we state that the District level elections processes can begin and be conducted afresh under the current C.I. 85 unless earlier revoked.

Post Scriptum: We warn that C.I. 85 covers only the creation of "District Electoral Areas and Designation of Units."

(SGD) W. A. ATUGUBA,
JUSTICE OF THE SUPREME COURT

(SGD) S. A. B. AKUFFO, (MS)
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH,
JUSTICE OF THE SUPREME COURT

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

(SGD) ANIN - YEBOAH,
JUSTICE OF THE SUPREME COURT

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

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JUSTICE OF THE SUPREME COURT

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