IN THE SUPERIOR COURT OF JUDICATURE
SUPREME COURT OF GHANA
ACCRA

CORAM: **WOOD (MRS), CJ (PRESIDING)**
ANSAH, JSC
OWUSU (MS), JSC
DOTSE, JSC
ANIN YEBOAH, JSC

WRIT
J1/8/2009
18TH FEBRUARY, 2010

DAASEBRE ASARE BAAH III
NANA KWAKU SALO V
NANA KWASI DENTEH KATABOAH III ..... **PLAINTIFFS**
NANA KWASI ASAMPONG
BARIMA OWUSU-AFARI

VRS

1. **THE ATTORNEY-GENERAL** ..... **DEFENDANTS**
2. **THE ELECTORAL COMMISSION**

J U D G M E N T

WOOD (MRS), CJ:-

The Supreme Court's exclusive power of judicial review of legislative action is exercisable under articles 2(1) and 130 (1) (b) of the 1992 Constitution. By these articles, this court has exclusive original jurisdiction in "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."

Article 1 (2), which unambiguously asserts the supremacy of the constitution as the fundamental law of the land provides:

"(2) The 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."

Again, articles 2 (1) (b) and 130 of the constitution state:

2 (1) 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 is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

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.

(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."

In this action, the Plaintiffs, who are Paramount Chiefs and sub-Chiefs, on behalf of themselves, communities and traditional areas of Worawora, Bowiri, Apesokubi, Tapa and Nkonya, all in the Volta Region, invoke this original jurisdiction for a number of reliefs, two of which are declaratory in nature. They read:

i. "A declaration that the purported declaration by the President of Ghana of a Biakoye District by E.I. 11 of 2007 is a nullity in law by reason of failure by the President to direct the Electoral Commission to conduct a study and also to receive the findings and recommendations of such a study for his

consideration before declaring the said new District in breach of Section 1 of the Local Government Act, 1993 (Act 462).

ii. A declaration that the L.I purporting to establish a Biakoye District Assembly together with naming of Nkonya Ahenkro as the capital is a nullity in law by reason of the grounds of law contained in Relief 1 (supra) coupled with the fact that there was no antecedent gazette notification thereof in breach of the law.

iii. An order striking down or otherwise nullifying E.I. 11 of 2007 and L. I. 1910 of 2008.

iv. An order of injunction restraining the Defendants herein together with other departments and agencies of government such as the Ministry of Local Government and Volta Regional Co-ordinating Council and their officials from inaugurating or operationalising in any way whatever a Biakoye District Assembly by virtue of the Executive and Legislative Instruments aforementioned.

v. Consequential or further orders."

The facts which triggered this action, as appears from the plaintiffs' own narration, are not in the least complex. By Executive Instrument (EI) 11 of 2007, and in the exercise of his executive authority under the Local Government Act 1993,(Act 462), the President of Ghana, created a new administrative District known as the Biakoye District. Their chief complaint as concerns this matter is that, the President's conduct was in direct contravention of section 1 of the Local Government Act, 1993, (Act 462) in that he failed to "direct the 2nd defendant to conduct a study and submit the findings and recommendations to him for his consideration" before making the said declaration.

The plaintiffs further averred that following the creation of this District, the Parliament of Ghana by Legislative Instrument (LI) 1910 of 2008, sought to establish a Biakoye District Assembly to administer the said District with Nkonya Ahenkro as the District capital, thus raising another controversy. This time, their case is that their discontent lay in the choice of Nkonya Ahenkro as the district capital; a choice they complain was plainly contrary to the antecedent gazette notification which has named Worawora as the district capital. Additionally, they maintain that a memorandum of understanding subscribed to by all the paramount chiefs representing the five constituent traditional areas had, for good and sufficiently valid reasons, unanimously voted Worawora as their district capital, whereas the purported official naming of Nkonya Ahenkro has been

done without their prior consultation and or approval. They describe this latter imposition of a district capital on the stakeholders, as constituting "a capricious, arbitrary, unfair and unreasonable exercise of executive discretion, in contravention of or inconsistent with the governing principles of decentralisation and due process as contained in articles 240, 241 and 296 of the 1992 constitution."

I deem it expedient to set out in extenso the basis on which the charges of capriciousness, arbitrariness, unfairness and unreasonableness are founded, as these must be juxtaposed against the relevant constitutional provisions aforementioned, for a determination of whether or not these constitute valid grounds for properly exercising our legislative review jurisdiction. The following are the verified facts:

"(a)Nkonya Ahenkro is located at one extreme end of the area sought to be created as Biakoye District by E.I.11 of 2007 and therefore its choice as a District capital imposes needless hardship and inconvenience on constituents as typified by the cases of the three (3) principal Bowiri towns of Anyirase, Amanfrom and Kyirahin whose residents and elected representatives may now have to travel over 60 kilometres to Nkonya Ahenkro, unlike the previous situation where these towns were within a maximum radius of 5 kilometres of Jasikan as the District capital.

(b) Nkonya Ahenkro has no land space for the development of a District capital; and

(c) Nkonya Ahenkro has no physical and social infrastructure and amenities to help kick-start and support a new District."

The plaintiffs' action falls in two parts. Their case, as is clearly stated in the concluding part of their verified statement is that, both EI 11 of 2007 and LI 1910 of 2008 are a "nullity in law by reason of the several instances of statutory and constitutional breach and or non-compliance."

A Court's duty is to determine the real matters in controversy between parties effectually. It is therefore imperative in actions of this kind, as indeed in other civil causes or matters, that all alleged acts of statutory and constitutional invalidity, breaches or violations, inconsistencies, or non compliance be identified with sufficient particularity, with nothing being left to chance or conjecture. It is equally crucial that the relevant constitutional requirement alleged to have been violated, be sufficiently identified, to enable the court effectively measure the allegations against the confines of the relevant constitutional provisions. Therefore, unless the circumstances clearly warrant it, a general reference to an entire article or provision is insufficient. This just requirement of the law, which is based on plain good sense, serves the interests of justice well in all civil actions. It enables issues in controversy between parties to be clearly identified, so each side can adequately prepare to meet the case alleged against him or her, thereby enabling the court to firmly and effectually determine all disputed issues.

In constitutional litigation, two important principles make it imperative that particulars of invalidity or unconstitutionality be clearly stated. They are the presumption of validity or constitutionality in favour of legislation and the principle of severability of impugned legislation. A brief analysis of these principles, will cast further light on the point I have made. The presumption is that every Act of the legislature is presumed to be valid and constitutional, until the contrary is proven. A law will not be adjudged unconstitutional, unless the case is so clear as to be devoid of any doubts. Indeed, the legal principle in criminal law which enjoins doubts to be resolved in favour of accused persons, works in much the same way in this area of the law. The principle is so hallowed that it has been observed that to doubt the constitutional validity of a law, is to resolve it in favour of its validity. In other words, doubts are resolved in favour of constitutionality and not the person challenging it.

In my judgment, it is perhaps in the area of judicial review of legislative action, that on the principle of severability of impugned legislation, it becomes absolutely essential that the rule be strictly observed. In this context therefore, generality or vagueness is not the proper approach.

On the basis of this principle, the offending parts of legislation may be severed and struck down, leaving other parts intact and unaffected by the exercise. It is therefore evident that the principle can only be justly applied where the alleged particulars of unconstitutionality; however manifested or described, whether as being ultra vires the powers conferred, or as breaches, violations, conflicts, or non-compliance with constitutional requirements or procedures, are clearly spelt out.

The test for textual severability of impugned legislation has been analysed in a number of cases. I make reference to two of them, in order to clarify the point I have made. First, as was set out by the Constitution Bench of India in **R. M. D. Charmabaugwalla v. Union of India, AIR1957 SC 628** and second, by the Law Lords in **DPP v Hutchinson [1990] 2 AC 783 UKHL.**

The Indian Court expressed itself thus:

"When a legislature whose authority, is subject to limitations aforesaid enacts a new law which is wholly in excess of its powers, it is entirely void and must be completely ignored. But where the legislation falls in part within the area allotted to it and in part outside it, it is undoubtedly void as to the latter; but does it on that account become necessarily void in its entirety? The answer to this question must depend on whether what is valid could be separated from what is invalid, and that is a question which has to be decided by the Court on a consideration of the provisions of the Act. This is a principle well established in American jurisprudence, Vide Cooley's Constitutional Limitations, Vol. 1, chap. VII, Crawford on Statutory Construction, Chap. 16 and Sutherland on Statutory Construction, 3rd Edn. Vol. 2, Chap. 24." [para 12 of AIR].

Second, I refer to a decision of the House of Lords in DPP v Hutchinson and DPP v Smith [1988] UKHL 11 (12 July 1990), in which Lord Bridge of Harwich spoke to the principle of severability of impugned legislation. The Law Lord expressed himself thus:

"When a legislative instrument made by a law-maker with limited power is challenged, the only function of a court is to determine whether there has been a valid exercise of that limited legislative power in relation to the matter which is the subject of disputed enforcement. If a law-maker has validly exercised his power, the court may give effect to the law validly made. But if the court sees only an invalid law made in excess of the law –maker's power, it has no jurisdiction to modify or adapt the law to bring it within the law maker's power. These are the basic principles which have always to be borne in mind in deciding whether legislative provisions which on their face exceed the law-maker's power may be severed so as to be held and enforced in part. The application of these principles leads naturally and logically to what has traditionally been regarded as the test of severability. It is often referred to inelegantly as the "blue pencil" test. Taking the simplest case of a single legislative instrument containing a number of separate clauses of which one exceeds the law-maker's power, if the remaining clauses enact free-standing provisions which were intended to operate and are capable of operating independently of the offending clause, there is no reason why those clauses should not be upheld and enforced. The law-maker has validly exercised his power by making the valid clauses. The invalid clause may be regarded as unrelated to, and having no effect upon, the operation of the valid clauses, which accordingly may be allowed to take effect without the necessity of any modification or adaptation by the court."

This Court deployed the principle, embedded in article 1 (2) of the 1992 Constitution, in the case of **Republic v Yebbi & Avalifo [2000] SCGLR 149** to conclude that:

"part of section 24 (1) of Act 459 which reads that: "a Regional Tribunal shall have concurrent original jurisdiction with the High Court in all criminal matters" is inconsistent with the said article 143 (1) of the 1992 Constitution and, to the extent of such inconsistency void."

For purposes of clarity, I set out the particulars of the alleged various acts of unconstitutionality and other statutory violations as furnished by the plaintiffs. Notwithstanding their assertion that there were several instances of statutory and constitutional breaches or non compliance, I identified only the following verified particulars:

1. The President's failure to direct the Electoral Commission to undertake a study and submit findings and recommendations for his study in contravention of s.1 of the Local Government Act, Act 462, for which reason E.I. 11 2007, being in violation of articles 240, 241 and 296 of the 1992 constitution are a nullity.

2 The purported naming of Nkonya Ahenkro, (rather than Worawora) as District capital per LI 1910 without antecedent gazette notification is in breach of the law, and constitutes a capricious, arbitrary, unfair and unreasonable of executive discretion, inconsistent with articles 240, 241 and 296 of the 1992 constitution.

It is indeed quite difficult, if not impossible, to understand what provoked the plaintiffs' second complaint, that which expresses their extreme dissatisfaction with the selection of Nkonya Ahenkro and not their veritable choice of Worawora, as the capital of the Biakoye District. This allegation is not supported by the facts on the record. Section 6 of the Local Government (Biakoye District Assembly) (Establishment) Instrument, 2007 L.I 1910 exhibited by the Plaintiffs as ***"Exhibit WBA 1"*** provides as follows:

Location of principal offices of assembly

2. The Assembly shall establish its principal offices at **Worawora** where meetings of the Assembly shall be held.

The specific words District capital has not been used to describe Worawora, but it is plain from the legislation, in which no mention is made of Nkonya Ahenkro as District capital, that the reference is to the District capital position. Plainly, under LI 1910, which the plaintiff prays be struck down, the District capital position has, in accordance with their unanimous decision, by reason of matters they have alluded to, namely its central location coupled with the existence of physical and social infrastructure, amenities and abundant land space, been conferred on Worawora. It follows that the very foundation of the plaintiff's case or the fulcrum around which it evolves is non existent.

As regards the plaintiffs' 1st relief, it is clear that on their own showing, the contravention relates s.1 of the Local Government Act, 1993 (Act 462) and not a constitutional provision. It is worth reproducing their complaint in full:

"The President of Ghana failed to direct the Electoral Commission, the 2nd Defendant herein, to conduct a study and also to receive the findings and recommendations of such a study for his consideration before declaring the said new District in contravention of section 1 of the Local Government Act, 1993 (Act 462), a fact that was acknowledged in the official Report of the Parliamentary Committee on Local Government which is attached hereto marked "WBA".

It is true that the plaintiffs make a general reference to constitutional provisions, but as I have already noted this is plainly insufficient and clearly inconsequential. No merit lies in making such bare assertions and leaving it at that. This court has adroitly gone behind mere words to unveil the real nature or substance of actions filed. We have not hesitated to do so in causes or matters affecting chieftaincy, or other matters in which our jurisdiction have been clearly ousted. (see **Edusei v. Attorney-General [1996-97] SCGLR I, Adumoah 11 v. Adu Twum [2000] SCGLR 165 and Republic v. High Court (Fast Track Division) Accra; Ex Parte Electoral Commission (Mettle –Nunoo & Others Interested Parties).**

To identify the real substance of actions brought before the court, we have observed that the proper approach is to examine the writ as well as the pleadings; in this type of litigation, the reliefs and the facts verified by affidavit.

The plain facts are that the Plaintiffs' first complaint, which relates to the establishment of the Biakoye District by virtue of Executive Instrument (E.I.) 11 of 2007, is not linked to any constitutional provision, let alone its violation or contravention. Despite the bare assertion that EI 11 is a nullity "by reason of the several instances of …constitutional breach and or non-compliance", reference is not made to any specific constitutional provision, neither are particulars of any constitutional requirements been provided. To the contrary, the pith of the plaintiffs' action, as can be seen from both the reliefs and the verified statement of case, is that the executive authority failed to comply with an Act of Parliament, specifically the s. 1 of the Local Government Act, 1993, (Act 462). Their grievance did not relate to the non-compliance of constitutional provision, but an Act of Parliament. This forms the basis of their prayer that the L.I. 2007 must therefore be declared a nullity. The legitimate question is whether an invocation of this court's original jurisdiction via the process of judicial review of legislative action, is the proper method for seeking redress.

It is trite, but I must emphasise that, incontrovertibly, this special power is exclusively limited to the striking down of legislation made in excess of the powers conferred under the 1992 Constitution, not those made ultra vires the power conferred by some other enactment. In other words, this court will only strike down legislation which is found to be violative of a constitutional provision, namely, that the legislation is either inconsistent with, in breach, or violation or contravention of provisions of the Constitution. The breach or violation complained of must therefore derive from the constitution, not an Act of Parliament or some other subsidiary legislation. Where the inconsistency or violation complained of lies outside of the Constitution and does not therefore relate to any of its provisions, but rather, an Act of Parliament, as in this particular complaint, the action to strike down must fail. That is not to say that under these circumstances, i.e. where the violation complained of relates to an Act of Parliament or some other subsidiary legislation, the aggrieved person has no cause of action or is without remedy. The aggrieved does have a cause of action which is clearly not cognisable under the article 2 (1) and 130(1) (b) of the 1992 Constitution. He or

she has a remedy but it lies in some other forum, not the Supreme Court, exercising its power of judicial review of legislative action under our constitutional scheme.

In conclusion, I hold that our jurisdiction has been wrongly invoked. I dismiss the plaintiffs action in its entirety as not been cognisable under the legislative review jurisdiction of this court.

G. T. WOOD (MRS)

CHIEF JUSTICE

DOTSE, JSC:-

The facts of this case have been satisfactorily narrated by Wood C.J, and since I agree with her statement of the facts, there is no need to state or repeat them again.

I have also had prior discussions with the Honourable Chief Justice on the outcome of this case and I agree with her on the conclusions reached in this matter, that the writ herein filed against the Defendants be dismissed.

This concurring opinion is just for purposes of emphasis and expatiation of some points of law which I believe need to be expanded for the development of the law and as a guide to legal practitioners who intend to invoke the original jurisdiction of this Court.

INVOCATION OF ORIGINAL JURISDICTION

From a close study of the reliefs the plaintiffs seek against the Defendants, and amplification of same in their statement of case, it is clear that the plaintiffs in the instant action are seeking to invoke the original jurisdiction of the court.

The plaintiffs have given clear proof and indication of this intent in their statement of case where they refer to articles 2(1) (a) and (b) as well as 130 (1) (a) and (b) of the constitution 1992.

Out of abundance of caution, let me refer to these constitutional provisions:

Article 2 (1) "*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 is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect".

Article 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."

The fact that article 130 (2) of the Constitution 1992 contains provisions whereby whenever any issue such as are provided for in article 130 (1) of the Constitution call for and or arise in proceedings before any other Court, other than the Supreme Court, then that Court shall stay the proceedings and refer the matter or issues for determination to the Supreme Court, confirms that it is only the Supreme Court that has **exclusive original jurisdiction** in the matters reserved for it, pursuant to articles 2 (1) (a) and (b) and 130 (1) (a) and (b) of the constitution 1992.

Original jurisdiction in this context must be understood to mean the sum total of the jurisdiction that has been provided for and is available to be exercised by the Court that has power to initially hear a lawsuit. This therefore means that, it is the Supreme Court that has been clothed with power (jurisdiction) to hear and determine at first instance the following:

i. All matters relating to the enforcement or interpretation of the Constitution other than provisions on the enforcement of Fundamental Human Rights and Freedoms as enshrined in article 33 of the constitution, 1992.

ii. Any matter 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.

iii. The passage of any enactment by Parliament, or the acts of commission or omission by any person or authority considered to be inconsistent with or is in contravention of a provision of this Constitution.

The above are the broad areas under which the original jurisdiction of this court may be invoked. The above should not be taken as an inflexible tabulation, but capable of expansion and should in that respect therefore be considered as a guide only. At the core of this guide list is the point that, there must always be a constitutional provision as a reference point.

However, after applying the above considerations to the nature of the reliefs being claimed by the Plaintiffs in the instant suit, I am convinced the plaintiffs do not qualify for the consideration by this court of the said reliefs, let alone the grant of same.

This is so because, the plaintiffs, by their writ, seek the following reliefs:

i. A declaration that, the declaration by the President of Ghana of a Biakoye District, pursuant to E. I. 11 of 2007 is a nullity in law because the President failed to direct the Electoral Commission to conduct a study and receive the report and recommendations of such a study for his consideration before establishing the said Biakoye District in breach of section 1 of Local Government Act, 1993 (Act 462).

ii. A further declaration that L.I. 1910 which purported to establish a Biakoye District Assembly together with the naming of Nkonya Ahenkro as the capital is a nullity in law for the same reasons stated supra, i.e. failure to direct the Electoral Commission to conduct a study and no antecedent gazette notification had been given.

iii. An order striking down or nullifying E. I. 11 of 2007 and L. I. 1910 of 2008.

iv. An order of injunction restraining the Defendants herein together with other departments and agencies of government such as the Ministry of Local Government and Volta Regional Co-ordinating Council and their officials from inaugurating or operationalising in any way whatever a Biakoye District Assembly by virtue of the Executive and Legislative Instruments aforementioned.

v. Consequential orders.

None of the above reliefs is cognisable under article 2 (1) (a) and (b) or 130 (1) (a) and (b) of the Constitution 1992 already referred to supra or put bluntly, the plaintiff's writ does not disclose any cause of action.

1. This is so because in relief one (1) supra, the plaintiffs talk about the President acting in breach of section (1) of the Local Government Act, 1993 (Act 462) in the creation of the Biakoye District Assembly.

The preamble to the Local Government Act, 1993, (Act 462) provides as follows:-

> "An Act to establish and regulate the local government system **in accordance with the constitution** and to provide for related matters."

This means that, Act 462 has recognised the Supreme and basic nature of the Constitution, 1992 as is provided for under article 1 (2) of the Constitution, 1992 to the extent that as the Constitution and basic law of the land, the Constitution is Supreme and any law inconsistent with the Constitution must to extent of the inconsistency be void.

Act 462 contains the following relevant provisions on the establishment of District Assemblies.

Section 1 (1) *"The districts in existence immediately before the coming into force of the 1992 Constitution shall continue as districts for the purpose of this Act*

(2) *The President may, by executive instrument,*

(a) *declare an area to be a district, and*

(b) *assign a name to the district*

(3) The President shall in the exercise of the powers under sub section 2 (a) direct the Electoral Commission to make the appropriate recommendations"

Sub-sections 4 (a) (i) (ii) (iii) and (b) of section 1 of Act 462 contains the list of what factors the Electoral Commission should take into consideration before making recommendations to the President on the creation of new districts.

Section 3 of Act 462 gives power to the Minister of Local Government to establish by Legislative Instrument, a District Assembly for any District, Municipality and Metropolis which has been created in accordance with article 241 (3) of the Constitution 1992.

This section also specifies the following as the ingredients that the Legislative Instrument must contain. These are:

i. The name and area of the authority

ii. The number of elected and appointed members of the Assembly

iii. The jurisdiction, functions and responsibilities

iv. The capital of the Assembly

v. Other matters

It is clear therefore that Act 462 had been enacted pursuant to the Constitution and is to that extent subject to the Constitution. This therefore connotes that, in construing the true effect of Act 462, one must consider the total and combined effect of the powers of the President as contained in chapter 8 of the Constitution, and the entire Constitution 1992 for that matter. Special mention must therefore be made of article 78 (1) of the Constitution 1992 which vests the power of appointment of Ministers, basically with the President with the prior approval of Parliament. In essence therefore, as an executive President, it means that the President whenever an enactment specifies an act to be done or exercised by a Minster such as in the instant case, then the inference can be drawn that the, influence, power and authority of the President in the performance of such a function cannot be understated.

It is therefore unacceptable for the plaintiffs to question the propriety and or validity of Executive and Legislative Instruments passed by the Minster of Local Government acting on behalf of the President and pursuant to Act 462 in the creation of the Biakoye District Assembly.

In the instant case, the enactment which is inconsistent with the constitutional provision has not been stated by the plaintiffs. References to the statement of case filed by the Plaintiffs in support of their writ has not helped matters. As a result, relief one (1) just stands alone without the necessary constitutional linkage or nexus showing the inconsistent portions of the enactment complained about vis-a-vis the Constitution.

It should be noted that articles 241 (1) (2) and (3) of the Constitution 1992 deal with local government administration and also mandate Parliament to be responsible for the re-drawing of the boundaries of existing districts or for the reconstitution of the said districts.

In addition to the above, E. I. 11 of 2007 and L. I. 1910 were all laid before Parliament pursuant to article 11 (7) of the Constitution 1992.

Besides, when attention was drawn to the fact that the 2nd defendant i.e. the Electoral Commission was not consulted as required by Act 462 already referred to, before the Biakoye District Instrument was laid before Parliament, it was withdrawn for the necessary consultations to be done and re-laid later before Parliament.

For the plaintiffs reliefs to be cognisable under the remit of the original jurisdiction of the Supreme Court, the reliefs must be so clearly stated and couched as to admit of no controversy, for example that, Parliament or for that matter an authority, be it the President or any other person has in acting pursuant to an enactment made by Parliament exceeded the parameters of the powers conferred on Parliament by the Constitution under article 1 (2) of the Constitution 1992. It should be noted that, what the Constitution states in article 1(2) is very clear and should not pose any interpretation problems. Out of abundance of caution, this is what the article provides:

> *"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 extend of the inconsistency, be void".*

There is therefore this element of constitutional supremacy of the Constitution 1992.

The Supreme Court in a number of cases has stated quite clearly this principle of constitutional supremacy under the Constitution 1992 as is evident in articles 1 (2), 2 (1) (a) and (b) and 130 (1) (a) and (b) of the Constitution 1992.

Cases which readily come to mind are the following:

1. **New Patriotic Party vrs Attorney-General (31st December case) [1993-94] 2 GLR 35, S.C.** Aikins JSC in his opinion in support of the majority decision stated as follows:-

> *"In my view, even though Parliament has the right to legislate, this right is not without limit, and the right to enact a law that June 4 and December 31 should be declared public holidays cannot be left to linger in the realm of public policy.* ***Such legislation must be within the parameters of the power conferred on the legislature, and under article 1 (2) of the Constitution, 1992 any law found to be inconsistent with any provision of the Constitution (the Supreme Court)*** **shall to the extent of such inconsistency be void."**

i National Media Commission vrs Attorney-General [2000] SCGLR 1 and

ii. Agbevor vrs Attorney-General [2000] SCGLR 403 which both declared the actions of the President as being inconsistent with various sections of the Constitution, 1992 and therefore unconstitutional and void.

iii. Edusei (No 2) vrs Attorney-General, [1998 -99] SCGLR 753 at 754, where the majority opinions of Bamford Addo JSC as she then was, and Kpegah JSC are relevant, and therefore appropriate.

a. Per Bamford Addo JSC

> *"I find that this is not a case which calls for the interpretation of the Constitution so as to invest the Supreme Court with the appropriate jurisdiction under article 130 (1) (a), but a case of enforcement of human rights, which should have been instituted at the High Court"*

b. Per Kpegah JSC

> *"In determining the scope or extent of our original jurisdiction, we must read together articles 2 (1) and 130 (1) of the 1992 Constitution. And reading the two articles together, our exclusive original jurisdiction can be said to be in respect of the following situations:-*
>
> *i.* ***enforcement of all provisions of the Constitution****, except those provisions contained in chapter 5 dealing with Fundamental Human Rights,*
>
> *ii. the interpretation of any provision of the constitution; or*

iii. an issue whether an enactment is inconsistent with any provision of the Constitution" and

iv. Bimpong-Buta vrs General Legal Council and others [2003 -2004] SCGLR 1200 at 1205 where the Supreme Court unanimously held, whilst striking out the plaintiffs action for want of jurisdiction as follows:

> *"The plaintiffs action did not raise any real or genuine issues of constitutional interpretation such as would justify the court exercising its original jurisdiction under articles 2 (1) and 130 (1) (a) of the 1992 Constitution. The plaintiff's action was no more than an ordinary civil suit splendidly presented as a constitutional issue"*

The combined effect of all these cases on the instant suit is that, the plaintiffs have not properly invoked the original jurisdiction of the Supreme Court. What must be noted is that, unless a plaintiff can identify the ultra vires nature of the act or acts complained of, or put simply, that the provisions of an enactment are ultra vires the Constitution 1992, then the invocation of the original jurisdiction cannot be justified under articles 1 (2), 2 (1) (a) and (b) and 130 (1) (a) and (b) of the Constitution 1992.

The instant writ by the plaintiffs apart from the fact that it does not satisfy this basic requirement, also clearly does not disclose any cause of action.

The position might therefore be stated that whenever a plaintiff invokes the original jurisdiction of the Supreme court in its enforcement or interpretative functions of the Constitution pursuant to articles 1 (2), 2 (1) (a) and (b) and 130 (1) (a) and (b) of the Constitution, 1992, the court must before assuming jurisdiction satisfy itself that the reliefs are clearly cognisable under the said constitutional provisions and that the plaintiff has a cause of action under the purview of the Constitutional provisions. Whenever there is certainty that a plaintiff has not met the criteria set out in the said constitutional provisions referred to supra and as has been espoused in line with the several decided cases, the Court should not waste time but dismiss the plaintiffs case in limine.

This is so because, the said jurisdiction conferred on the Supreme Court is such a serious jurisdiction that it should not be invoked on fanciful, trifling conjectures, but on solid, concrete and substantial constitutional grounds capable of withstanding the litmus test.

2. When reliefs two (2) through to five (5) are also put under the constitutional telescopic observation, it is clear that they also do not measure up to the required standard capable of sustaining the invocation of the original jurisdiction of the Supreme Court.

I am therefore of the considered view that, the entire writ filed by the plaintiffs is incompetent as it basically fails to disclose any cause of action. Not one constitutional provision has been cited in support of the plaintiffs' case.

In arriving at the decision I have come to in this case, I am certain the original intent of the Constitution 1992 on the invocation of this original jurisdiction of the Supreme Court is to establish the principle of supremacy of the Constitution pursuant to article 1 (2) of the Constitution, 1992. Besides, to qualify to come under articles 2 (1) (a) and (b) and 130 (1) (a) and (b) of the Constitution, 1992 the plaintiff must narrate serious allegations of conduct which have linkages to breaches of constitutional provisions of the constitution 1992 or breach of an enactment with a constitutional provision.

It appears to me that the plaintiffs only resorted to the instant action to stultify and or prevent the bringing into fruition the operationalisation of the Biakoye District Assembly. Such blatant abuse of the legal and judicial processes should be and are hereby frowned upon and deprecated.

In the premises, I agree with the conclusion reached by the Chief Justice that the plaintiffs action herein fails and same is accordingly dismissed.

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

J. ANSAH
JUSTICE OF THE SUPREME COURT

R.C. OWUSU (MS)
JUSTICE OF THE SUPREME COURT

ANIN YEBOAH
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