IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ADINYIRA (MRS), J.S.C.
ANIN YEBOAH, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS), J.S.C.

WRIT
NO. J1/5/09
3RD FEBRUARY, 2010

FEDERATION OF YOUTH ASSOCIATION OF GHANA (FEDYAG) - - - PLAINTIFF

VRS

1. **PUBLIC UNIVERSITIES OF GHANA & ORS - - - DEFENDANTS**
2. **MINISTER OF EDUCATION**
3. **NATIONAL COUNSEL FOR TERTIARY EDUCATION**
4. **ATTORNEY GENERAL**

R U L I N G

ATUGUBA, J.S.C:

The plaintiff per its writ dated 22/4/2009 invoked the original jurisdiction of this court claiming the following reliefs:

"1. A declaration that the fee paying policy being implemented by the public universities of Ghana is inconsistent with, or in contravention of the letter and spirit of the Constitution, 1992 and more particularly articles 17(2)(3)(4)(a), 23, 25(1)(c), 34 (1), 38(1)(3)(a)(c) and 41(b)(d) thereof.

2. *An order prohibiting any further implementation of the fee paying policy by the First Defendants herein and quashing same*."

In elucidation of its claim the plaintiff averred between paragraphs 2 and 6 of its statement of case as follows:

"2. As a country, like many states, within the comity of nations, we have an obligation of welcoming citizens of the world into our universities to pursue knowledge. It means that space must be reserved by the institutions concerned for these foreign students as we call them. It has almost always been the case that the space so reserved has never been fully occupied by the targets. *The Universities instead of returning the unoccupied space to the next most qualified prospective students then sell the space to Ghanaian citizens at the same price as the foreign students*.

3. As if that is not enough, the universities realizing that a lot of money could be made out of this have decided to reserve more space than can ever be reasonably occupied by these foreign students.

4. Now this act of public universities has become an annual ritual. For e.g. they tell the world that we can only take 70% prospective students whiles in reality they can take up to 95%. They then cut the intake at say aggregate 12 instead of aggregate 15 and turn around and say, "Whoever can pay this much; come, we have a place for you".

5. This means that whilst some citizens of the country pay tuition fees others do not pay tuitions fees to access higher education in the country.

6. By acting in this manner, many qualified prospective students who could have had a place in their own capacity but for that much to pay are

relegated to the background while those who have the means have their way."

Two preliminary objections have been taken to this action. Counsel for the 1st set of defendants (the Public Universities of Ghana) has contended that the plaintiff is not a corporate body and is therefore not a legal person within the purview of article 2 of the 1992 Constitution capable of invoking our original jurisdiction.

Capacity apart, counsel for the 2nd to 4th defendants, Cecil Adadevoh, Senior State Attorney contends that the plaintiff's action is a Human Rights action over which the High Court and not this court has jurisdiction.

Though the plaintiff avers generally that the defendants' fee paying policy "is inconsistent with, or in contravention of the letter and spirit of the Constitution, 1992", it specifically "and more particularly" relies on "articles 17(2)(3)(4)(a), 23, 25(1)(c), 34 (1), 38(1)(3)(a)(c) and 41(b)(d) thereof.".

They are as follows:

"**17**. (2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

(3) For the purposes of this article, "discriminate" means to give different treatment to different persons attributable only or mainly to their respective descriptions by race, place of origin, political opinions colour, gender, occupation, religion or creed, whereby persons of one description are subjected to disabilities or restrictions to which persons of another description are not made subject or are granted privileges or advantages which are not granted to persons of another description.

(4) Nothing in this article shall prevent Parliament from enacting laws that are reasonably necessary to provide –

(a) for the implementation of policies and programmes aimed at

redressing social, economic or educational imbalance in the Ghanaian society;

x x x

23. *Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law* and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

x x x

25. (1) All persons shall have the right to *equal educational opportunities and facilities* and with a view to achieving the full realization of that right-

x x x

(c) *higher education shall be made equally accessible to all, on the basis of capacity*, by every appropriate means, and in particular, by progressive introduction of free education;

x x x

34. (1) The Directive Principles of State Policy contained in this Chapter *shall guide all* citizens, Parliament, the President, the Judiciary, the Council of State, the Cabinet, political parties and other bodies and persons *in applying or interpreting this Constitution or any other law and in taking and implementing any policy decisions, for the establishment of a just and free society.*

x x x

38. (1) *The State shall provide educational facilities at all levels and in all* the Regions of Ghana*, and shall, to the greatest extent feasible, make those facilities available to all citizens*.

x x x

(3) *The State shall, subject to the availability of resources, provide-*

(a) equal and balanced access to secondary and other appropriate pre-university education, *equal access to university or equivalent education*, with emphasis on science and technology;

(c) life-long education.

x x x

41. The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, *it shall be the duty of every citizen*—

x x x

(b) *to uphold and defend this Constitution and the law*;

x x x

(d) *to respect the rights, freedoms and legitimate interests of others, and* generally to refrain from doing *acts detrimental to the welfare of other persons;"*

There is no doubt that in essence the plaintiff's contentions are based on provisions of the constitution falling under or relating to the Fundamental Human Rights as set out in chapter 5 of the Constitution. The only articles which do not physically fall within the said chapter 5 are articles 34, 38 and 41. These fall (under chapter 6), the Directive Principles of State Policy, which article 34 requires that in applying or interpreting the constitution, their guidance cannot be discounted and therefore article 38 relating to education cannot be discounted in considering educational rights under chapter 5 nor can article 41(b) and (d) be discounted.

Proper Forum for Human Rights Litigation

Jurisdiction for the enforcement of the Fundamental Human Rights has been ascertained and stated in varying language. Sometimes it is expressed in general terms but at times it is centered around article 33(1) of the constitution.

However the most critical appraisal of the matter has been undertaken in *Adjei-Ampofo (No 1) v. Accra Metropolitan Assembly & Attorney General (No. 1)* [2007 – 2008] 2 SCGLR 613.

The thrust of this court's reasoning in that case is highlighted in the headnote as follows:

> "*Per Curiam*. Admittedly, there is a previous line of cases wherein this court, in dealing with the question of the relative jurisdiction of the Supreme Court and the High Court in cases involving the enforcement of rights and freedoms under Chapter 5, has, it appears, held that so long as the matter involves the enforcement of this chapter, the Supreme Court has no jurisdiction. Included in this line of cases are *Edusei v Attorney-General* [1996-97] SCGLR 97 and *Edusei (No2) v Attorney-General* [1998-99] SCGLR 753.
>
> We therefore wish to take the opportunity offered by this case to correct any such impression and clarify the matter… Although *the High Court's jurisdiction in article 140(2) appears to be very broad*, the provision is nothing more than *a practical restatement of the exception to the Supreme Court's jurisdiction*, as defined by article 130(1), in cases brought under article 2(1). *The High Court's enforcement power is, therefore, to be exercised within the scope of article 33(1), the language of which is clear*. Hence the emphasis we must not lose sight of in article 33(1) is the phrase "*in relation to him."* In other words, *in the High Court, the actual, ongoing or threatened contravention of the fundamental human rights or freedom must be in relation to the plaintiff and no one else*. However, where the human right or freedom sought to be enforced is not in relation to the plaintiff's personal rights and freedoms, *but for the purpose of enforcing a provision of the Constitution* under article 2(1), the proper court is the Supreme Court. In the latter case, such a plaintiff would not have access to the High Court for lack of *locus standi*. Likewise, *in the former case a plaintiff would not have access to the Supreme Court because his or she would be*

seeking to invoke the Supreme Court's original jurisdiction to enforce he or her personal fundamental right or freedom. Thus the two jurisdictions are not concurrent. However*, the jurisdiction of the Supreme Court is not ousted simply because of the provision sought to be enforced*. The court's jurisdiction in such a case is determined by whether or not the plaintiff is pursuing a personal interest (as in the *Edusei and Bimpong-Buta* cases …, as well as the case of *Oppong v Attorney-General* [2003 – 2004] 1 SCGLR 376, for example), or *the enforcement of a provision of the Constitution in interest of the public good* (as in the CIBA Case and *Sam (No. 2) v Attorney-General…*"

This reasoning is quite admirable.

However the task of interpreting the constitution is often a herculean one and as litigation increases with regard to it, so does the interpretative light increase, thereby lightening that task.

Jurisdiction to enforce the Constitution:

The provisions of the constitution show that the Supreme Court has some exclusive area but not a monopolistic jurisdiction to enforce it. This is primarily conveyed by article 2 and clearly reflected in the side note thereto. It is trite law that in Ghana the side note though not an aid to interpretation can be of help as it shows what the provision is dealing with. The High Court however also has some jurisdiction to enforce the constitution. Thus the High court has jurisdiction to enforce those of its provisions relating to the fundamental human rights and freedoms, see articles 33(1), 130(1) and 140(2). The High Court under article 19 as reinforced by article 139(2) (d) also has jurisdiction to enforce some of the constitutional sanctions attached to disobedience of orders of the Supreme Court made in an action for the enforcement of the constitution. Furthermore the High Court can enforce the constitutional qualifications for membership of parliament and speaker thereof and their continuity in office under articles 94-97 after their respective elections to those offices; see article

99. Under article 9 (3) the High Court can enforce the provisions of the constitution relating to the loss of citizenship acquired otherwise than by birth.

The general jurisdiction of this court to enforce the constitution under articles 2 and 130 should not therefore operate to muzzle the constitutional enforcement jurisdiction of the High Court in any of such situations.

Enforcement of the Fundamental Human Rights

Article 12(1) of the constitution provides as follows:

> "**12** (1) The *fundamental human rights and freedoms enshrined in this Chapter shall be* respected and *upheld by the* Executive, Legislature and Judiciary and all other organs of government and its agencies and, where applicable to them *by all natural and legal persons* in Ghana*, and shall be enforceable by the courts as provided for in this Constitution*."

Provision for the enforcement of the fundamental rights and freedoms as contemplated by article 12 is to be found in articles 33(1), 130(1) and 140(2).

They are as follows:

> "**33** (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened *in relation to him* then without prejudice to any other action that is lawfully available, that person *may apply to the High Court for redress*.
>
> x x x
>
> **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—
>
> x x x
>
> **140**. (2) *The High Court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution*."

Relationship between articles 33(1) and 140(2)

Article 130(1) acknowledges the fact that specific provision has been made for the enforcement of the fundamental human rights and freedoms. Not only that. Were the enforcement of the fundamental rights and freedoms not an enforcement of the Constitution, there would have been no need for article 130(1) which deals, ***inter alia***, with the enforcement of the Constitution, to worry itself about the jurisdiction of the High Court in the enforcement of those rights. It is sometimes thought that article 140(2) is a mere confirmation of article 33(1). Such a view would render article 140(2) as mere surplusage or repetition. It is however trite law that if possible all parts of a statute must have effect. Thus in *Hill v. William Hill (Park Lane) Ltd*. (1949) A C 520, H.L at 546-547 Viscount Simon said. "[I]t is to be observed that though a Parliamentary enactment (like. Parliamentary eloquence) is capable of saying the same thing twice over without adding anything to what has already been said once, this *repetition in the case of an Act of Parliament is not to be assumed. When the legislature enacts a particular phrase in a statute the presumption is that it is saying something which has not been said immediately before.* Similarly in *Ditcher v Denison* (1857)11 Moo PCC 324 at 337 the Privy Council said; "It is also *a good general rule in jurisprudence that one who reads a legal document, whether public or private, shall not be prompt to ascribe, should not without necessity or some sound reason, impute to its language tautology or superfluity, and should be rather at the outset indined to suppose each word intended to have some effect, or be of some use*"

Therefore, very anxious to observe this rule of construction in *Ahmed v. Government of the Kingdom of Saudi Arabia* (1996) 2 All ER 248 C.A at 256 Hutchinson L. J said: "*It is a curious fact that, so construed, s.16 appears almost completely to emasculate s.4. I should therefore, have been receptive to any viable argument on construction which did not lead to this result."*

I shall therefore strive to give effect to both articles 33(1) and 140(2) and in so doing I will call to aid another trite rule of construction. It is ***verba generalia specialibus***

non derogant. It is stated in various ways. But I find some of them particularly lucid. Thus in *Churchill v. Crease* (1828)5 Bing 177 at 180 Best C.J said:

> "I shall have thought…. that *where a general intention is expressed,* and the act expresses *also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception.*"

Similarly in *Pretty v Solly* (1859) 26 Beav 606 at 610 Romilly MR said:

> "The rule is that *where there is a particular enactment, and a general enactment in the same statute and the latter taken in its most comprehensive sense would override the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.* Again whenever two parts of a statute are contradictory, *the court endeavours to give a distinct interpretation to each of them*, looking at the context."

I would therefore hold that article 33(1) has made a special provision for the enforcement of the fundamental human rights where an individual has suffered a breach of the fundamental human rights and freedoms in a personal particular. This special emphasis on the protection of personal grievances is not surprising, for, the celebrated case of *Tuffuor v. Attorney-General* (1980) GLR 634 C.A (sitting as the Supreme Court) teaches that the Constitution mirrors our past experience and history as a nation. It is therefore a special response to the severe deprivation of individual liberties that occurred in Ghana in the First Republic owing to the courts' construction of the presidential declaration regarding human rights as reflected by the infamous decision in *Re Akoto* (1961)2 GLR 523 S.C and its aftermath.

Article 33(1) therefore not only addresses itself to the situation where an individual complains that the fundamental human rights have been or are likely to be infringed "*in relation to him"* but also to the speedy means of obtaining redress in such a situation by providing that he "*may apply*" to the High Court for redress. If the words

"*in relation to him*" are of special importance in article 33(1) so also are the words "*may apply*" therein.

There is no doubt that this is the fastest of all the procedures provided or contemplated by the constitution for obtaining judicial relief. This right to "*apply*" is in contrast to access to the courts by "*action*" under article 2(1)(b) and "*petition*" under article 64(1) with regard to a challenge to a presidential election or a parliamentary election under the Representation of the People Law, 1992 (PNDCL 284). Furthermore, reflective of our national history with regard to the denial of a right of appeal from, particularly habeas corpus cases in the *Re Akoto* era, the Constitution has nervously and unambiguously, ***ex majore cautela*** provided by article 33(1) rights of appeal from the High Court right up to the Supreme Court. Nor is it surprising that article 33(5) is a residual clause in augmentation of these rights. Indeed my views herein as to the special mission of article 33(1) are substantially supported by this court's decision in *Awuni v. West African Examinations Council* (2003 – 2004) SC GLR 471, especially per Kpegah and Sophia Akuffo JJSC as highlighted in the headnote as follows:

> "*Per Kpegah JSC*. The procedure of originating notice of motion adopted by the appellants might not only be to avoid the constraints of time fortuitously imposed on them by the rules of court if they had brought an application for a writ of ***certiorari***, but also *as a simple, convenient and pragmatic means of vindicating their rights*."
>
> x x x
>
> "*Per Sophia Akuffo JSC*. When article 33(1) gives to a person alleging that any of his rights and freedoms under chapter five has been, is being or is likely to be contravened the right to *apply* to the High Court for redress, there is an irresistible presumption that such a person may invoke the jurisdiction of the High Court by way of an application rather than by way of a writ of summons. *When fundamental human rights have been, are being or likely to be contravened, access to judicial redress must be as swift and timely as feasible to*

ensure that such rights or freedoms are not lost or irremediably damaged forever… It is clear to me that what article 33(1) seeks to assure, by making provision for access by an application rather than a writ of summons (a relatively sluggish process), is that such a complaint be disposed of by the High Court with the optimum dispatch… the High Court's jurisdiction under *article 33(1) is a special one; and by clear constitutional stipulation, it may be invoked by an application*."

Public Interest Human Rights Jurisdiction of the High Court

The plaintiff here however, is not seeking to enforce any infringements of its members' rights as at first I was also minded to hold. I agree with my learned and respected sister Mrs. Sophia Adinyira JSC that this action is not of that kind.

However I am of the view that by reason of the combined effect of articles 3(4), 12, 41(b) and 140(2) the plaintiff's action being one seeking to enforce the fundamental human rights and freedoms is properly within the jurisdiction of the High Court and not of this court.

I am clearly of the view that the jurisdiction of the High Court to enforce the fundamental human rights and freedoms is not restricted to the circumstances covered by article 33(1). In this connection it is necessary to explain that when article 12 provides that the fundamental human rights and freedoms "*shall be enforceable by the courts*" it does not contemplate that a multiplicity of courts have jurisdiction to do so. Those words are qualified by the words "*as provided for in this Constitution*." Since the judiciary consists of the courts it follows that the expressions "judiciary" and "courts" are interchangeable. In *Ababio II v. Boso Traditional Council* (1979) GLR 53 at 60 *Amua-Sekyi J* (as he then was) said: "*The jurisdiction in all matters*, including civil and criminal matters, *which article 102(2) confers on the judiciary is shared out among the various courts of which, according to article 102(4), the judiciary consists by the Courts' Act 1971 (Act 372), and other legislation*" Again in *Azorblie v. Ankrah IV* (1984-86)1 GLR 561 C.A at 564 Adade JSC delivering the Ruling of the court said of

article 114(2) of the 1979 Constitution: "*This article deals generally with the powers of the judiciary as a whole*, i.e. all the powers of all the constituent parts of the judiciary put together. *But the jurisdiction of each constituent unit is provided for separately by different articles. In the case of the Court of Appeal it is, as has been pointed out above article 122.*" Were this not so nothing could stop a person from seeking to enforce the fundamental human rights and freedoms in a Circuit or District Court. I have no difficulty therefore in holding that the enforceable jurisdiction of the courts over the fundamental human rights and freedoms referred to in article 12 is referable to articles 33(1), 130(1) and 140(2).

From the foregoing it is clear that where an individual's right is interfered with actually or arises in a ***quia timet*** situation, article 33(1) clearly governs the situation. But that does not mean that a public interest action to uphold the fundamental rights and freedoms cannot be brought in the High Court. It can. Otherwise as noted before, article 140(2) would be an idle provision. It is true that under article 130(1) reference to the High Court's jurisdiction to enforce these rights is anchored on article 33 only. That reference however does not repeal article 140(2). The ***expressio*** of article 33 alone in article 130(1) is not intended to be ***exclusio*** of article 140(2) which deals with the general enforcement jurisdiction of the High Court over the fundamental rights, or else there would have been no point at all in enacting article 140(2) in different language. In an analogous statutory situation in *Rv. Secretary of State for the Home Department* (1986)2 AIIE R 641 C.A at 649 Nicholls L. J said:

> "I come next to s. 13(1). For my part *I see difficulty in construing sub-section (3) as having the effect of cutting down the ambit of sub-section (1)*. Subsection (3) provides that the relevant convictions (that is convictions for which an order is made placing the offender on probation or discharging him absolutely or conditionally) *are to be disregarded for the purposes of particular enactments or instruments,* namely those imposing a disqualification or disability or authorizing or requiring the imposition of a disqualification or disability. *But to construe sub-section (3) as impliedly having the effect that the relevant*

convictions may, notwithstanding sub-section (1) still be regarded for the purposes of other enactments or instruments would be to rob sub-section (1) of its' intended generality ('shall be deemed not to be a conviction for any purpose'),and it would be to do so in the face of introductory words in sub-section (3) which on their natural heading were intended to remove any risk of sub-section (3) being treated as having that effect."

It must be noted that the omission of any reference in article 130(1) to article 140(2) is clearly ***per accidens***, a drafting slip. That there are such slips in the constitution is quite clear. For example, article 128(2) provides thus: "*The Supreme Court shall be duly* constituted for its work *by not less than five supreme Court Justices except as otherwise provided in article 133 of this Constitution."* This provision is patently ***per incuriam*** of article 134 which provides thus:

> "*A single Justice of the Supreme Court may exercise power vested in the Supreme Court not involving the decision of a cause or matter before the Supreme Court*, except that—
>
> (a) *in criminal matters*, where that Justice refuses or grants an application in the exercise of any such power, a person affected by it is entitled to have *the application determined by the Supreme Court constituted by three Justices of the Supreme Court;*
>
> and
>
> (b) *in civil matters, any order*, direction or decision made or given under this article may be varied, discharged or reversed *by the Supreme Court, constituted by three Justices of the Supreme Court.*"

Certainly no one contends that the omission of reference to this article in article 128(2) means that this article is thereby nullified. On the contrary it has been much exercised even as its predecessor under the 1979 constitution was exercised; see *Ekwam v Pianim (No. 1)* (1996-97)SC GLR 117. For another perceived constitutional omission, see *Agyei-Twum v. Akwetey & Attorney-General* (2005-2006) SC GLR 732.

It must not be forgotten that if a citizen of Ghana can bring a public interest action in the Supreme Court he is enabled to do so by article 3(4) which provides that "*All citizens of Ghana shall have the right and duty at all times*—

(a) *to defend this constitution*…"

This article is reinforced by article 41 which as far as relevant provides thus: "The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly, *it shall be the duty of every citizen*—

x x x

(b) *to uphold and defend this Constitution and the law*;"

By dint of such provisions this court has held that a citizen of Ghana needs no ***locus standi*** to bring an action under articles 2 and 130 of the constitution. See *Tuffour v. Attorney General* (1980) GLR 637 C.A and *Sam (No. 2) v. Attorney-General* (2000) SC GLR 305.

That being so I see no reason why when portions of the constitution are assigned by the constitution for enforcement by the High Court articles 3(4) and 41(b) should cease to apply. Additionally in the case of the fundamental human rights and freedoms article 12(1) gives special and particular ***locus standi*** for public interest actions in the High Court. The relevant part of it runs thus "The fundamental human rights and freedoms enshrined in this chapter shall be respected *and upheld* by the Executive, Legislature and Judiciary and all other organs of government and its agencies and, *where applicable to them, by all natural and legal persons in Ghana*…" When a luminous chance like this presents itself for the advancement of constitutionalism, which is the dominant theme of the constitution as can be gleaned from the preamble, articles 1 and 2, as well as the Directive Principles of State Policy in chapter 6 of the constitution, I see no reason why I should not construe article 12 in the way I have just done. If the fundamental human rights are to be upheld what other more effective way of upholding them would there be than by court action? A court must always construe a statute ***ut res magis valeat quam pereat*** . Thus in

Westminster Council v. Haywood (1996)2 AII ER 467 Robert Walker J, held as summarized in holding (3) of the headnote thus:

> "(3) The steps which the Pensions Ombudsman could direct under s.15(2) of the 1993 Act *included the payment of reasonable compensation for distress and inconvenience, notwithstanding the fact that the power to make such awards had not been expressly created by Parliament. Indeed,* if monetary compensation could not be awarded for non-monetary injustice, *many complainants might be left without an effective remedy and the statutory function of the ombudsman would be frustrated."*

Luckily also article 297(c) of the constitution like s.10(2) of the Interpretation Act, 1960(C.A. 4) provides thus:

> "(c) where a power is given to a person or authority to do or enforce the doing of an act or a thing, *all such powers shall be deemed to be also given as are necessary to enable that person or authority to* ***do*** **or enforce the doing of the act or thing;"** There is a constitutional precedent even if ***sub silentio*** on this.

In *Tuffour v. Attorney-General* (1980) GLR 637 C.A at 649 Sowah JSC delivering the judgment of the court said:

> "The Constitution confers on every citizen of Ghana by article 1(3): "*the right to resist any person or persons seeking to abolish the constitutional order as established by this Constitution should no other remedy be possible.*" This means that every citizen of Ghana has the right, constitutional or otherwise, to see to it that the constitutional order as established by the Constitution is not abolished or sought to be abolished. *One method, by which it could be determined whether a person is seeking to abolish the constitutional order, is to seek for an interpretation of the Constitution as to the meaning or the effect of a particular provision or provisions of the Constitution*. In such a case, in essence, *there would neither be a defendant nor a plaintiff*---properly so called, as the terms are commonly employed in ordinary proceedings in these courts."

I therefore hold that the duty to uphold the fundamental human rights in article 12 and the duty to -defend the constitution under articles 3(4) and 41(b) include the power to invoke the jurisdiction of the High Court to enforce these rights as a public interest action.

Exclusiveness of the High Court's Jurisdiction over the Fundamental Rights and Freedoms

Previous Views

Owing to the phraseology employed in articles 33(1) and 130(1) with regard to the enforcement of the fundamental human rights there were initial views expressed in this court that this court has concurrent jurisdiction with the High Court over the fundamental human rights and freedoms, see *Edusei v. Attorney-General* (1996-97)SC GLR 97 and *Edusei (No. 2) v. Attorney-General* (1998-99)SC GLR 753.

In the latter case, at 798-799 I said that where the involvement of the fundamental human rights is only incidental the Supreme Court can entertain the action. I was explaining the import of counsel for the plaintiff's submissions. Even there the core principle deducible from the case of New *Patriotic Party v The Attorney-General (Ciba Case)* (1996-97) SC GLR 729 which I cited as an example is that its primary purpose was to strike down legislation as being unconstitutional, not merely applying the constitution. In my view the effect of striking down legislation as unconstitutional by the Supreme Court is to render that offending law void, as laid down in article 1(2). In other words such law becomes constitutionally repealed through the judicial pronouncement of this court. Such an action though involving the fundamental human rights is not an action primarily aimed at enforcing the fundamental human rights but at avoiding the legislation. However where the primary purpose of an action is to enforce the fundamental human rights it remains a fundamental human rights action even though to get relief for the infraction of the fundamental human right in question, one has to have demolished or interpreted some legislation by which the infraction is said to be supported. See *Benneh v. The Republic* (1974)2 GLR47 C.A(full bench),

Republic v. Director-General of Prisons; Ex parte Nti (1980) GLR 527 C.A, *Edusei v Attorney-General* and *Edusei (No. 2) v. Attorney-General*, supra. In the former situation only the Supreme Court has jurisdiction under article 2(1) (a) whereas in the latter situation the High Court has jurisdiction under article 33(1) subject to the referral duty in article 130(2).. So far that is the position. But it must not be forgotten that it was made clear in *Republic v Special Tribunal; Ex parte Akosah*(1980) GLR 592 C.A at 605 that where the words are clear a submission may relate "*to no more than a proper application of the provisions of the constitution to the facts in issue…a matter for the trial court to deal with; and no case for interpretation arises*." This is the situation in this case

Settled Construction of the Jurisdictions of the Supreme Court and High Court over Fundamental Human Rights and Freedoms.

It is a trite common law principle that the majority decision, where there is a division in a court, constitutes the decision of the court. Even though this court can depart from its previous decisions in fitting cases, this court has since the majority decisions in the *Edusei* cases, supra consistently held that where an action is one to enforce the individual fundamental human rights, in a personal particular, it is the High Court which has exclusive original jurisdiction to entertain the same. This position has been clearly upheld in *Adjei-Ampofo (No. 1) v. Accra Metropolitan Assembly & Attorney-General (No. 1),* supra.

Since that view is a sustainable view and well settled it would be ***pessimi exempli*** for this court to resurrect argument as to whether the other view regarding concurrent jurisdiction even if also sustainable, should still prevail.

In *Cassel & Co. Ltd v. Broome* (1972)1 All ER 801 at 809 H.L Lord Hailsham L.C said: "…*in legal matters, some degree of certainty is at least as valuable a part of justice as perfection*."

Indeed this court's settled position generally is that where original jurisdiction has been specifically conferred by the constitution on any court, that jurisdiction is exclusive of the Supreme Court. That position is premised on the ground as stated in *Wilkingson v Barking Corporation* (1948) IK B721 at 724 per Asqmith L.J thus: "It is undoubtedly good law that *where a statute creates a right and, in plain language gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal and not to others."* See *Yeboa v. J.H. Mensah* (1998-99) SC GLR 492 and *New Patriotic Party v National Democratic Congress* [2000]SC GLR 165, among others.

Conclusion

After this long journey I conclude that it is ***pars partis*** to invoke the enforcement jurisdiction of the High court over the fundamental human rights and freedoms ***non solum pro privato commodo sub*** article 33(1) ***sed etiam pro bono publico sub*** article 140 (2). The only difference between these two forms of action is that in the former situation (of a private and personal action) the plaintiff, given ***locus standi***, enjoys the speedier procedure of bringing an application whereas in the latter case (of public interest action), the plaintiff, though not shackled by the requirement of ***locus standi***, must proceed by the slower procedures of the High Court such as an action. Since, aforesaid, the present action is of the latter kind and since the High Court's original jurisdiction over the fundamental human rights and freedoms is exclusive, it follows that this court has no jurisdiction to entertain this suit. Indeed it would be very inconvenient for public spirited persons and organizations who or which operate in various parts of the country to have to make a pilgrimage to the Supreme Court situate in Accra alone to enforce the fundamental human rights and freedoms as public interest actions.

The Plaintiff's Capacity

Since in my view this court has no jurisdiction over this case the issue of the plaintiff's capacity to institute this action does not arise. However since the matter was

extensively argued by the parties I desire, even if obiter, to state my views as to it. When I heard the submissions of counsel for the 1st group of defendants on this issue I had no doubt that they were made ***per incuriam*** of s.32 of the Interpretation Act, 1960(C.A.4) as follows: '"***person***" includes a body corporate whether a corporation aggregate or a corporation sole and *an unincorporated body of persons* as well as an individual.'

But for the foregoing reasons I would dismiss the plaintiff's writ for lack of jurisdiction.

W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

ADINYIRA (MRS), JSC:-

The plaintiff, describing itself as a citizen of Ghana and a registered youth federation under the laws of the Republic of Ghana, commenced an action, by a writ filed on 22 April 2009, invoking the original jurisdiction of this court against the first defendant, Public Universities of Ghana, the second defendant, the Ministry of education, the third defendant National Council for Tertiary Education and the fourth defendant, the Attorney-General for the following reliefs:

1. A declaration that the fee paying policy being implemented by the public universities of Ghana is inconsistent with, or in contravention of the letter and spirit of the 1992 Constitution and more particularly articles 17 (2) (3) (4) (a) 23, 25, (1) (c), 34 (1), 38 (1) (3) (a) (c) and 41(b) (d) thereof.
2. An order prohibiting any further implementation of the fee paying policy by the first defendants herein and quashing same.

I do not think that the plaintiff not being a natural person can call itself a 'citizen' of Ghana. In any event what I understand from the plaintiff's statement of case in support of the writ is that the implementation of the 'full fee paying policy' of the public universities which initially was reserved for foreign students (but the quota has never been filled by foreign students) has now been extended to cover Ghanaian students who have the means to pay full tuition fees though they do not meet the set aggregate entry requirements. The plaintiff claims this policy is depriving more

qualified but economically deprived students from gaining admission into these public universities. It stated in paragraph 13 of its affidavit in verification of the facts that:

> "….this policy of fee paying by the first defendants is as discriminatory as it amounts to granting advantage to some prospective students based on their economic status rather than their intellectual capacity".

It claimed further that the 2nd, 3rd, and 4th. Defendants have failed in their duty to ensure that the 1st defendants operate within principles and standards set up by the supreme law of the land bordering on accessibility of university education.

PRELIMINARY OBJECTION ON CAPACITY

The 1st defendants have filed their statement of case and raised a preliminary legal objection questioning the capacity of the plaintiff, on the grounds that it is not a registered body under the Companies Code. The Plaintiff however in response claimed it was a registered body and attached to its statement a Certificate of Incorporation under its acronym FEDYAG.

I have no difficulty in dismissing the legal objection as under section 32 of the Interpretation Act, C.A. 4; a "person" is defined to "include a body corporate whether a corporation aggregate or a corporation sole and an incorporated body of persons as well as an individual." See also **New Patriotic Party V. Attorney-General [1996-97] SCGLR 729.** Consequently, the plaintiff as a registered body has capacity to bring an action under article 2 (1) of the Constitution.

PRELIMINARY OBJECTION ON JURISDICTION

The 4th defendant has also raised a preliminary objection on jurisdiction which is my main concern in this opinion. The ground of the objection by the 4th defendant is:

> "That the action by the plaintiff before this honourable Court seeking for a declaration against discrimination by the defendants is essentially a Human Right claim masquerading as an action seeking an interpretation of the 1992 Constitution."

It has been impressed upon us that the complaint is seeking an enforcement of a human right claim rather than a claim for the interpretation of constitutional provisions relating to the enjoyment of fundamental human rights, and as such this Court lacks jurisdiction. Counsel referred to the cases of ***Edusei (No. 2) v. Attorney-General [1998-99] SCGLR 729*** and ***Bimpong- Buta v. General Legal Council [2003-2004] 2 SCGLR 1200*** in support and prayed that this Court should strike out the plaintiff's writ as it ought to have been commenced in the High Court.

Counsel for the plaintiff in his response to the preliminary objection, submitted that the association is not complaining of any infringement of the human rights of its members. It is also not a representative action on behalf of a group of disgruntled students of public universities who might be members of the plaintiff association. The plaintiff has not complained that its members are victims of the full fee paying policy, and are such seeking an enforcement of their human right. The plaintiff claims this full fee paying policy in its implementation by the public universities is inconsistent with or in contravention of the letter and spirit of the Constitution and it can therefore properly apply to the Supreme Court to seek a declaration. They relied on the case of ***New Patriotic Party. v. Attorney-General (CIBA CASE) [1996-97] SCGLR 729***.

Is the Plaintiff's Action a Masquerade?

It is respectively provided by the 1992 Constitution, under articles 2(1), 33 (1) 130 (1) and 140 (2) that:

"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."

"33 (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."

> "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
>
> 140 (2) The High Court shall have jurisdiction to enforce the Fundamental Human Rights and Freedoms guaranteed by this Constitution.

Undoubtedly by the combined effect of articles 33(1), 130(1) and 140(2) supra the proper forum for the **enforcement** of the provisions of the Constitution relating to violation of fundamental human rights is within the exclusive jurisdiction of the High Court. There is weight of authorities from this Court that the Supreme Court has **no concurrent jurisdiction** with the High Court in the enforcement of the provisions of the Constitution relating to violation of fundamental human rights and freedoms. And that this jurisdiction is within the exclusive jurisdiction of the High Court under Articles 33 (1) and 140 (2) of the Constitution supra. In **Edusei *(No. 2) v. Attorney-General*** (supra) this was a specific issue raised for determination. In that case the crux of the plaintiff's claim was for the enforcement of his fundamental freedom of movement in his quest for the return of his seized passport.

The Supreme Court in previous cases has considered the relationship between articles 2(1) and 33(1) of the 1992 Constitution in the enforcement of the provisions of the Constitution. A clear distinction was made between public interest actions and personal interest actions, the locus standi of persons initiating the actions and the forum for such actions. In the case of **Sam (No. 2.) v. The Attorney- General [2000] SCGLR 305,** the eminent Joyce Bamford- Addo J.S.C (as she then was) in making a comparism of articles 2(1) and 33(1) of the 1992 Constitution held that in an action under article 2(1) the plaintiff's requirement of standing is that he be a citizen of Ghana and

"[O]other requirements like the existence of a "dispute" and "controversy" requirement or "personal interest" requirement are not necessary. However under 33(1) which deal with protection of Human Rights and Freedoms and other rights by the courts, the personal interest requirement is a prerequisite condition for standing which would enable a plaintiff to enforce his Human Rights and Freedoms. The said article 33 (1) reads:

> "33 (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened *in relation to him*, then, without prejudice to any other action that is lawfully available, *that person may* apply to the High Court for redress."(The emphasis mine)
>
> The words in "relation to him" and "that person" imply that a plaintiff must have personal interest in the litigation. Therefore it is only when a person seeks the enforcement of his fundamental human rights and freedom that he ought to have "personal interest" in the case and this would invariably mean that there must have arisen a controversy or dispute concerning an infringement or intended infringement of the plaintiff's said rights which he seeks to enforce through the High Court." At page314

In the case of **Adjei- Ampofo v. Accra Metropolitan Assembly &Attorney-General (No1) [2007-2008] SCGLR 611** the same distinction was made by Sophia Akuffo JSC delivering the unanimous opinion of the Court. She said at page 620 that:

> "Whilst the outcome of an action under article 2(1) is, invariably, primarily of benefit to the citizens in general, it may not necessarily
>
> inure to the direct or personal benefit of the plaintiff herein….For that reason therefore, every Ghanaian, natural or artificial, has *locus standi* to initiate an action in the Supreme Court to enforce any provision of the Constitution.
>
> In respect of article 33 (1), however, the objective is to facilitate the enforcement by any person of his or her individual fundamental human rights and freedom under Chapter Five of the 1992 Constitution through access to the High Court, in the first instance, for redress"

Ampiah J.S.C. in the case of ***New Patriotic Party. v. Attorney-General (CIBA CASE) supra,*** succinctly stated at page 756 that:

> "Of course where there is a violation of a particular right and there is a request for enforcement, the courts have held that it is the High Court which has the jurisdiction to adjudicate on the issue…But where the action is for a mere declaration as to the contravention of or inconsistency with the provision of the Constitution then any person including a body of persons recognised under the Constitution has a right to seek that declaration… to maintain an action under Article 2(1) (a) of the Constitution"

The issue then to be determined in this ruling is whether the plaintiff has complained of a violation of the educational rights of any of its members and is therefore seeking redress. If such is the complaint then the proper forum is the High Court. But if the complaint is for a mere declaration as to the inconsistency of the full fee paying policy with the provision of the constitution then the proper forum is the Supreme Court. In order to determine whether the plaintiff's action is essentially a human right claim masquerading as an action seeking an interpretation of the 1992 Constitution, we must

look at the substance of the claim. For purposes of clarity I will restate only the first relief as the second relief is merely a consequential order. It reads:

> "A declaration that the fee paying policy being implemented by the public universities of Ghana is inconsistent with, or in contravention of the letter and spirit of the 1992 Constitution and more particularly articles 17 (2) (3) (4) (a), 23, 25, (1) (c), 34 (1), 38 (1) (3) (a) (c) and 41(b) (d) thereof."

From the statement of case filed by the plaintiff as summarised above, it does not appear to me that this is even a class action by members of a youth association complaining of any infringement relating to them personally and therefore seeking redress to enforce their fundamental right under the Constitution to equal educational rights. Looking at the substance of the claim, the plaintiff has not complained that any of its members has been personally discriminated against under the full fee paying policy and are thereby seeking redress to enforce their rights to equal access to university education under the Constitution The actual complaint is against the policy itself which according to the plaintiff, is discriminatory as it offers hitherto unqualified students to have access to tertiary education due to their economic status. The plaintiff further argues that the full fee paying policy is an infringement of the constitutional right of the citizenry of Ghana to equal access to education. This is the central issue raised in the statement of case. The merit or otherwise of this complaint in view of the other Constitutional provisions on educational rights is of no moment at this stage.

How can this Court (or the High Court if that was the forum), determine whether or not the full fee paying policy being implemented by the public universities is inconsistent or in contravention of the letter or spirit of the 1992 Constitution? The only method that this could be done is by an interpretation of the Constitution as to the meaning and or effect of the particular provisions of the Constitution. In that respect it is my considered opinion that the interpretative aspect of the plaintiff's claim is central to the relief sought rather than ancillary to an enforcement claim.

In sum it is my considered opinion that from the nature and substance of the complaint this case rather falls within those lines of cases where the central issue

involves the **interpretation of the provisions of the Constitution relating to the enjoyment of a fundamental human right in contrast to the enforcement of a fundamental human right by a victim of a breach of those rights**. And by virtue of the fact that this case borders more on the interpretation of constitutional provisions in relations to the acts or policies of public universities, the original jurisdiction of the Supreme Court can properly be invoked under articles 2(1) (b) and 130 (1) of the 1992 Constitution in the interest of public good. I need not say the obvious that once the claim is for interpretation of the Constitution this Court has jurisdiction regardless of the fact that the interpretation required affect provisions of fundamental human rights and freedoms under Chapter 5 of the Constitution.

It is my considered opinion that this action falls within article 2(1) (b) of the Constitution whereby any civic minded person is empowered to bring an action in the Supreme Court against any *act or omission of any person which is inconsistent or in contravention of a provision* of the 1992 Constitution. See articles 2 (1) (b) and 130 (1) supra.

This action is different from cases which are instituted under articles 2(1) (a) and 130(1) to strike down legislations which were considered to be inconsistent or in contravention with some provisions relating to fundamental human rights. Some of such cases are ***New Patriotic Party v. Inspector-General of Police [1993-94] 2GLR 459*** on interpretation and enforcement of article 21 (1) (d) in relation to the fundamental freedom of assembly including freedom to take part in processions and demonstrations, and where the Court held that sections 7, 8, 12(a) of the Public Order Decree, 1972 (NRCD 68) were inconsistent with article 21(1) (d) of the 1992 Constitution; ***Mensima v. Attorney-General [1996-97] SCGLR 676*** where the Court held that regulations 3 (1) of the Manufacture and Sale of Spirits Regulations, 1962 (L.I.239) was inconsistent with article 21 (1) (e) relating to the freedom of association and also the case of ***New Patriotic Party v. Attorney-General (CIBA CASE) [1996-97] SCGLR 729*** where a declaration was sought by the plaintiff a political party to the effect that the Council of Indigenous Business Associations Law,

1993, (PNDCL 312) was inconsistent with and in contravention of the 1992 Constitution especially articles 21(1) (e) on freedom of association, 35 (1) , 37 (2) (a) and (3).

The case before us is similar in nature with the **Adjei- Ampofo v. A.M.A. & Anr**. case **supra,** where the complaint upon which the plaintiff a lawyer by profession, invoked the original jurisdiction of the Supreme Court under article 2 (1) of the 1992 Constitution was not against any legislation but rather against **the practice** whereby the first defendant employed certain persons to remove and carry on their head human excreta from residences in various parts of the Accra Metropolis. The plaintiff therefore sought a declaration that (a) the act or practice of the Accra Metropolitan Assembly, in making or causing Ghanaian citizens to carry human excreta in pans on their heads is an affront to the dignity of such persons, in particular and Ghanaians as a whole; (b) the act is cruel, inhuman and degrading and also detracts from the dignity of such persons; (c) the practice or act is inconsistent with and in contravention of articles 15 (1) and (2) of the 1992 Constitution; and (d) an order directing the first defendant AMA described as the worst offender of the practice and the second defendant, the Attorney-General, representing the State to cause an immediate abolition of the practice. In those circumstances the Court held the matter was properly before this court under Article 2 (1) and within the jurisdiction of the court under article 130(1) **as the plaintiff was not pursuing his own personal interest but that of the public interest**.

In the **Adjei Ampofo** v. **A.M.A.** case supra*,* the Court in overruling the preliminary objection by the 1st defendant to the plaintiff's action on the grounds of jurisdiction, observed inter alia, at page 622 that:

> "Although the High Court's jurisdiction in Article 140(2) appears to be very broad, the provision is nothing more than a practical restatement of the exception to the Supreme Court's jurisdiction, as defined by article 130(1) in cases brought under article 2(1). The High Court's enforcement power is therefore to be exercised within the scope of article 33(1), the language of which is clear. Hence the emphasis we must not loose sight of in article 33(1) is

the phrase "*in relation to him"* In other words, in the High Court, the actual, ongoing or threatened contravention of the fundamental human right or freedom must be in relation to the plaintiff and no one else. However where the human right or freedom sought to be enforced is not in relation to the plaintiff's personal rights and freedoms, but for the purpose of enforcing a provision of the Constitution under article 2 (1), the proper court is the Supreme Court. In the latter case, such a plaintiff would not have access to the High Court for lack of locus standi. Likewise the former would not have access to the Supreme Court because he or she would be seeking to invoke the original jurisdiction of the High Court to enforce his or her personal fundamental right or freedom. Thus the two jurisdictions are not concurrent. The jurisdiction of the Supreme Court is not ousted simply because of the provision sought to be enforced. The court's jurisdiction in such a case is determined by whether or not the plaintiff is pursuing a personal interest (as in the ***Edusei and Bimpong –Buta cases*** as well as the case of ***Oppon v. Attorney-General [2003-2004] 1 SCGLR 376***, for example), or the enforcement of a provision of the Constitution in interest of the public good (as in the ***CIBA case*** and ***Sam (No. 2) v. Attorney –General.***"

As a member of that panel I concurred in the opinion of my learned sister Sophia Akuffo JSC and I do not intend to depart from that line of reasoning. I am convinced that such an approach would serve to ensure that constitutional rights enjoyed the full measure of protection. Such an approach would rather allow more access to our Courts rather than to inconvenience the public as suggested in the opinion just expressed by my learned brother Atuguba JSC. This broader and liberal approach would rather allow civic minded persons whether natural or artificial to help ensure the effectiveness of the Constitution as a whole through legal action in the Supreme Court where they have a standing, as compared with the High Court where they have to show personal interest.

I accordingly hold that this action is not masquerading as an enforcement or interpretation of the Constitution but one raising real and genuine issues of interpretation that justifies the invocation of the court's original jurisdiction under articles 2(1) and 130(1) (a) of the Constitution. I do not think there should be any foot dragging in this matter. The issues being raised in this action is whether or not, on the proper interpretation of articles 17 (2) (3) (4) (a), 23, 25 (1) (c), 34 (1), 38 (1) (3) (a) (c) and 41(b) (d), the fee paying policy being implemented by the public universities infringes the fundamental human right of equality and freedom from discrimination and educational rights of Ghanaians. Such issues with due respect are matters of great public interest that any natural or artificial person in Ghana has a right to seek an interpretation and declaration before the Supreme Court.

So far I do not think there has been any authoritative interpretation by the Supreme Court on the provisions of educational rights in the Constitution. This action therefore presents an opportunity for the Supreme Court to do so. We cannot assume that the language contained in the constitutional provisions referred to in the plaintiff's writ is plain and unambiguous and accordingly an issue of interpretation does not arise. See the case of **Gbedemah v. Awonor-Williams [1970] 2 G&G 442 SC**. I wish to re-echo the words of Prof. Modibo Ocran of blessed memory in the case of **Republic v. High Court Ex parte Electoral Commission (Mettle-Nunoo 7 Others Interested Parties[2005-2006]SCGLR 515 at 556:**

> "For the moment I wish to acknowledge that there are instances of constitutional and statutory language whose meaning would be regarded by most reasonable people with the appropriate legal training as plain and unambiguous. Indeed the denial of the existence of plain-meaning words, sentences, and phrases will make interpersonal communication and professional discourse impossible.
>
> ***However an approach to constitution interpretation which starts with the conviction that the words and phrases we tend to read and hear are plain and unambiguous in meaning is bound to run its adherents***

into difficulties and subsequent disappointments. Extensive reading of cases in comparative constitutional law and international treaty law has turned some of us into sceptics of the notion that much law is plain and unambiguous. Words and phrases we had always assumed to be plain and unambiguous have been shown to be incurably ambiguous after being unravelled and de-constructed by the sharp minds of distinguished lawyers and judges. Indeed, some legal philosophers believe the law thrives on ambiguity."(The emphasis is mine)

The invitation by the plaintiff to the Supreme Court to assume jurisdiction in this matter is therefore legitimate. It is appropriate and within our exclusive jurisdiction and a matter of high constitutional principle to be seised with a **determinate and authoritative interpretation** of the said articles thereof rather than leave it for the High Court under the pretence that the claim is merely for an enforcement of a fundamental human right. We need not wait for this case to come to us on referral by the High Court under article 130(2) of the Constitution. That would be justice delayed.

In conclusion, the plaintiff in my considered opinion is not seeking an enforcement of a fundamental human right but rather a declaration from this Court that the full fee paying policy being implemented by the public universities is inconsistent with, or is in contravention of the provisions of the Constitution. This is a matter which is within the exclusive jurisdiction of the Supreme Court under articles 2(1) (b) and 130 (1) (a) of the 1992 Constitution.

Accordingly the preliminary objections raised by the 1st and 4th defendants respectively are without merit and ought to be overruled for the case to be heard on its merit.

Preliminary Objections overruled.

S. O. A. ADINYIRA (MRS)
JUSTICE OF THE SUPREME COURT

ANIN YEBOAH, JSC:-

I had the opportunity of reading beforehand the opinion of my learned sister Adinyira, JSC. I agree with her on the opinions expressed in her ruling.

ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

GBADEGBE, JSC:-

I also agree with the opinion expressed by my learned sister Adinyira, JSC and have nothing useful to add.

N.S. GBADEGBE
JUSTICE OF THE SUPREME COURT

AKOTO-BAMFO (MRS), JSC

I have had the opportunity of reading beforehand the learned opinions ably delivered by my learned brother and sister.

I am of the view that the real question which ought to be answered is whether the plaintiff is seeking an interpretation of the constitution in which case this Court is the proper forum or is merely seeking the enforcement of its fundamental rights in which case the High Court is the proper forum. This jurisdiction I believe is a special one which should be invoked only in suits raising genuine questions on Interpretation or enforcement.

Having regard to the fact that there is a specific remedy for redressing violations of the provisions on fundamental human rights and freedoms in chapter 5 of the Constitution, I hold the view that the Supreme Court must hasten slowly in assuming its enforcement jurisdiction under Article(s) 2(1) & 130(1) of the Constitution.

For these reasons I agree with the views and conclusions of my learned brother. Atuguba, JSC that the preliminary objection should be upheld and the action dismissed.

V. AKOTO-BAMFO (MRS)
JUSTICE OF THE SUPREME COURT

COUNSEL:

KOI LARBI & CO. FOR THE PLAINTIFF.
BENTSI-ENCHILL LETSA & ANKOMAH FOR THE 1ST, 2ND & 3RD DEFENDANTS.
CECIL ADADEVOH S.S.A. FOR THE ATTORNEY GENERAL.