IN THE SUPERIOR COURT OF JUDICATURE
THE SUPREME COURT OF JUSTICE
ACCRA A.D. 2014

CORAM: AKUFFO (MS), JSC (PRESIDING)
ADINYIRA (MRS), JSC
ANIN YEBOAH, JSC
BAFFOE BONNIE, JSC
AKOTO - BAMFO (MRS), JSC
BENIN, JSC
AKAMBA, JSC

WRIT
NO. J1/13/2014

15TH JULY 2015

BETWEEN

KWADJOGA ADRA - - - PLAINTIFF
HOUSE NO.15/10 ATSIAVIE
VOLTA REGION

AND

1. **THE NATIONAL DEMOCRATIC CONGRESS - - - 1ST DEFENDANT**
   NATIONAL HEADQUARTERS
   ACCRA.

2. **PAA NII LAMPTEY - - - 2ND DEFENDANT**
   GHANA HIGHWAY AUTHORITY
   DISTRICT OFFICE, WINNEBA

3. **ERNESTINA YAWSON - - - 3RD DEFENDANT**
   ADMINISTRATIVE OFFICER
   SWEDRU SENIOR HIGH SCHOOL
   SWEDRU

4. **GHANA HIGHWAY AUTHORITY - - - 4TH DEFENDANT**

MINISTRIES, ACCRA.

5. **ELECTORAL COMMISSION - - - 5TH DEFENDANT**
   HEAD OFFICE
   RIDGE, ACCRA.

6. **ATTORNEY GENERAL - - - 6TH DEFENDANT**
   MINISTRIES OF JUSTICE
   MINISTRIES, ACCRA.

JUDGMENT

BAFFOE-BONNIE JSC:-

The facts of this case are fairly simple and generally uncontroverted.

The 2ndDefendant is an employee of the Ghana Highway Authority(GHA), a member of the ruling NDC party andhe was registered to contest as constituency chairman.

The 3rd Defendant is an administrative officer with the Ghana Education Service(GES), specifically, with Swedru High School, a member of the ruling NDC, and had registered to contest for the position of the constituency secretary.

It is the case of the plaintiff that by virtue of the provisions of Article 94(3)(b) the 2nd and 3rdDefendants are not qualified to members of parliament and, since they are not qualified to be members of parliament, by virtue of Article 55(8) they do not qualify to contest for the positions they are seeking for, that is, constituency chairman and secretary respectively.

Plaintiff's submission is based on the premise that both second and third Defendants are civil servants.

The reliefs the plaintiff seeks are as follows:

i) A declaration that:

a). …. the inclusion of the 2nd and 3rd Defendants by the 1st Defendant to the list of candidates contesting in the constituency elections is inconsistent with Articles 55 and 94 clause (3) (b) of the 1992 Constitution.

b).On the true and proper interpretation of Articles 55(8) 94 clause (3) (b) of the Constitution, and section 68(2) of the Civil Service Act, 1993 PNDCL 327 the 2nd and 3rd Defendants being Civil Servants are precluded from participating in active politics to the extent of vying for executive positions in the upcoming constituency elections of 1st Defendant because they are not eligible as Members of Parliament and for that matter cannot hold any executive office in any political party.

c).That on the true and proper interpretation of the definition of Civil Service as defined under the Civil Service Act 1993 (PNDCL 327) the 4th Defendant is part of the Civil Service and as such, its members are precluded from participating in active politics. Therefore the permission granted to the 2nd Defendant to enable him contest as a candidate in the constituency elections of the 1st Defendant is null and void and of no effect as its sins against Article 94 clause (3) (b).

d).That as the 2nd and 3rdDefendants are precluded from participating in active politics by virtue of them being civil servants, the 5thDefendant contravened the Constitution when it included their names in the list of persons qualified to contest for executive positions in the 1stDefendant. The inclusion of the 2nd and 3rdDefendant by the 5thDefendant as candidates vying for executive positions in the 1stDefendant,particularly

sins against Articles 55, 94 clause (3)(b) and section 68(2) of the Civil Service Act (1993) PNDCL 327.

The gravamen of the plaintiff's action is that the 2nd and 3rdDefendants are civil servants and their inclusion in the list of candidates contesting in the constituency assembly elections is inconsistent with Articles 55(8) and 94(3)(b) of the 1992 Constitution, since they are by the said Articles precluded from active politics. His contention is that since the Defendants are employees of the GES and the GHA respectively, they are civil servants and as such not eligible or qualified to engage in active political activities.

Article 55(8) of the Constitution provides as follow;

"A political party shall not have as a founding member, a leader or a member of its executive, a person who is not qualified to be elected as a member of Parliament or to hold any other public office"

Article 94 of the Constitution, which has its broad Heading **as 'QUALIFICATIONS AND ELIGIBILITY',**provides in clause (3)(b) as follows;

'A person shall not be eligible to be a member of Parliament if he is a member of the Police Service, the Prisons Service the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service the Parliamentary Service the Fire Service the Customs Excise and Preventive Service the Immigration Service or the Internal Revenue Service.'

Even thoughthe title of the case shows 6 Defendants, it can be seen from the reliefs being sought that the real defendants are the 2nd and 3rdDefendants. We will therefore treat the other Defendants as nominal Defendants. The action

against them will be resolved based on any declaration made in respect of the 2nd and 3rdDefendants.

The plaintiff's main plaint in this writ is for a declaration that the 2nd and 3rdDefendants are civil servants and are therefore disqualified from entering parliament and so by extension are disqualified from holding leadership positions in political parties.

Article 21 (3) of the Constitution, states that:

"All citizens shall have the right and freedom to form or join political parties and to participate in political activities subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with this Constitution"

Any law therefore that seeks to oust the enjoyment of the above fundamental human right and freedom must be couched in a clear, unambiguous and direct wording to that effect.

In the case of **Minister of Home Affairs &Anor V Fisher[1980]AC 319,Lord Wilberforce said**

" A constitution is a legal instrument giving rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language… and to be guided by the principle of giving full effect to those fundamental rights and freedoms with a statement of which the constitution commences".

Bamford Addo JSC put it more succinctly in the case **of NPP V IGP [1993-94] GLR 459** at 482. She said

"…..fundamental human rights are inalienable and can neither be derogated from nor taken away by anyone or authority whatsoever….This court is therefore not permitted to give an interpretation which seeks to tamper in any way with the fundamental human rights but see that they are respected and enforced"

Article 94(3) of the Constitution sets out to clearly and unambiguously oust some persons from the enjoyment of the right and freedom to participate in political activities. The provision is clear and unambiguous. For emphasis, Article 94(3) (b) states as follows:

> ***"(3). A person shall not be eligible to be a Member of Parliament if he…***
> ***(b). Is a member of the Police Service, the Prisons Service, the Armed Forces, the Judicial Service, the Legal Service, the Civil Service, the Audit Service, the Fire Service, the Customs, Excise and Preventive Service, the Immigration Service or the Internal Revenue Service; or***
> ***(c) Is a Chief"***

Why members of the listed services are disqualified from being members of parliament, and whether their disqualification is or is not discriminatory, is not the subject of this ruling.

It can also be seen that all the services listed under the Article are also listed as Public Services under Article 190 of the Constitution. Article 190 (1) provides as follows;

"The Public Services of Ghana shall include:

a. The Civil Service;

   The Judicial Service;

The Audit Service;

The Education Service;

The Prisons Service;

The Parliamentary Service;

The Health Service;

The Statistical Service;

The National Fire Service;

The Customs, Excise and Preventive Service;

The Internal Revenue Service;

The Police Service;

The Immigration Service; and

The Legal Service;

b. Public corporations other than those set up as commercial ventures.
c. Public Services established by the Constitution; and
d. Such other Public Services as Parliament may by law prescribe.

Even though the GES is listed as PUBLIC SERVICE, it is specifically excluded from the list of services whose members are disqualified from becoming members of parliament under Article 94(1). Though the GHA is not specifically listed it is a state owned corporate body and therefore comes under 190 (b).

Again, why some members of the public services such as Judicial Service, the Civil Service, Police Service, Prison Service etc., are disqualified while other members of the Public Service are not mentioned as disqualified, is not the complaint of the plaintiff.

We believe that if the framers of the constitution wanted to disqualify members of all services listed under Public Services, they would simply have stated that “all

members of the Public Services" are so disqualified. They wouldn't have listed some of the services leaving others.

Confronted with a not dissimilar situation the Supreme Court in the case of, **Tehn-Addy V Attorney General [1996 97]SCGLR 589** said,per **Acquah JSC**(as he then was);

"Whatever the philosophical thought on the right to vote, article 42 of the !992 Constitution of Ghana makes the right to vote a constitutional right conferred on every sane Ghanaian citizen of eighteen years and above… As a constitutional right therefore, no qualified citizencan be denied of it , since the Constitution is the Supreme law of the Land"

Again in the case of **Ahumah Ocansey V Electoral Commission [2010] SCGLR 575,** this court upheld the right of prisoners to be registered and to vote. The Attorney General had argued that in the public interest prisoners be not allowed to vote. He argued thus

"The question for us to answer is whether it is in the public interest that such persons (prisoners) should have a role in the election of the President of this country* and Members of Parliament….. The public interest is paramount. It is in the interest *of the public that offenders are punished and that they are kept under lock and key….. The absence of the right to vote by prisoners is not a curtailment of their right under the constitution, but that in the attempt to get them to exercise the franchise, we do not forget the pain, the mental agony, despair, and experiences of a vast majority of Ghanaians, who have at one time or the other been victims of criminals and their hope, desire, and expectations that criminals pay for their crimes"

Lofty as these submissions sounded, the Court rejected it and unanimously held that the right to vote is a constitutionally guaranteed one, and it is subject only to the disqualifications under Article 42. **Per Anin Yeboah JSC at page 676**

"Under article 42 of the Constitution, it is a constitutional right which the framers of our constitution have entrenched in the Constitution to be enjoyed as a basic tenet to democratic governance in electing our leaders……..The provisions of PNDC LAW 284 restricting the registration of people to vote by insisting on the residence of the voter and thereby applying it to deny convicted and remand prisoners the right to register and vote…… runs counter to article 42 of the Constitution".

Even though the Tehn-Addy and The Ahumah-Ocansey cases were both on the right to register and vote as enshrined in the constitution, the principle applicable in them is the same as the case before us. The right to participate in political activities is a right specifically guaranteed by the Constitution, and any law or constitutional provision that seeks to limit this right must be clear and unequivocal.

Going by the maxim of ***exclusion uniusestesclusio alterius*** as an aid to interpretation therefore, we hold that even though the GES and the GHA are both Public Services, their members are not disqualified from becoming members of Parliament and also not disqualified from holding executive positions in political parties.

To navigate this legal quagmire in which he finds himself, the plaintiff chooses the shortest possible route by just referring to the 2nd and 3rd defendants as CIVIL SERVANTS. Hence his 2nd relief;

> (b) "On the true and proper interpretation of Articles 55(8) 94 clause (3) (b) of the Constitution, and section 68(2) of the Civil Service Act, 1993 PNDCL 327 the **2nd and 3rd Defendants being Civil Servants** are precluded from participating in active politics to the extent of vying for executive positions in the upcoming constituency elections of 1st Defendant because they are

not eligible as Members of Parliament and for that matter cannot hold any executive office in any political party.(emphasis mine)

But the question is, as members of the GES and the GHA, do the 2nd and 3rdDefendants belong to the Civil Service or any of the services disqualified under Article 94(3)(b) of the Constitution?

We do not think so. Merely referring to them as civil servants does not make them civil servants.

Let us first examine the provisions of the various establishing laws

Section 7 (1) of the Public Services Commission Act, 1994 (Act 482) provides as follows:

"The Public Services of Ghana include:

a. The Civil Service;
   The Judicial Service;
   The Audit Service;
   The Education Service;
   The Prisons Service;
   The Parliamentary Service;
   The Health Service;
   The Statistical Service;
   The National Fire Service;
   The Customs, Excise and Preventive Service;
   The Internal Revenue Service;
   The Police Service;
   The Immigration Service; and
   The Legal Service;

b. Public corporations other than those set up as commercial ventures.
c. Public Services established by the Constitution; and
d. Such other Public Services as Parliamentary may by law prescribe."

The Ghana Education service Act, 1995 (Act 506) provides as follows:

"2. The Service shall be made up of –

a). the personnel of the Ghana Education Service existing immediately before the coming into force of this act;

b). teachers and non-teaching supporting personnel in pre-tertiary educational institutions in the public system;

c). managers of educational units and their supporting staff;

d). persons holding posts created as Ghana Education Service Posts by or under any enactment; and

e). other persons that may be employed for the Service."

Section 12(1) provides "There shall be appointed by the President in accordance with Article 195 of the Constitution a Director General of the Service, who is the Chief Executive of the Service"

Section 4 provides for the setting up of a governing council for the service; the membership of which is given in section 4(2). The membership includes …

4(2)(b) – a representative of the Public Services Commission not below the rank of director. And

4(2)(l) – the Director-General of the Service …

The GHA on the other hand is created by Act 540. Section 18 of that Act provides for the appointment of a chief executive who shall be responsible for the day to

day business of the Authority. The governing body of the GHA is also provided in section 5 of the Act. This includes the chief executive of the authority and others who are all appointed by the President in accordance with Article 70 of the Constitution.

Membership of the Civil Serviceis provided under Section 4 of Civil Service Act, 1993 (P.N.D.C.L. 327) as follows:

a). all persons serving in civil capacity in posts designated as Civil Service posts by or under this law in-

i. Office of the Head State other than the Secretary of the Office of Head of State;

ii. Ministries;

iii. Government Departments at the national level;

iv. Offices of Regional Co-ordinating Councils;

v. Departments of Regional Co-ordinating Councils

vi. Offices of the District Assemblies;

vii. Departments of District Assemblies and

viii. Any other Civil Service department established by law or under the authority of this law the emoluments attached to which are paid directly from the Consolidated Fund or other source approved by Government.

Section 5 (1) provides as follows

" … there is hereby established the office of the Head of the Civil Service"

Section 6(1) also provides

"There shall be a Head of the Civil Service who shall be appointed by the President, acting in accordance with the advice of the public service commission in consonance of article 193 of the Constitution"

The membership of the governing body of the Civil Service is provided under section 35 of the Civil Service Act and it includes the Chairman of the Public Service Commission, the Head of the Civil Service and others.

It is clear from these provisions, particularly the provisions under Public Service Commission Act, that the Civil Service and all the other services provided under that Act are treated as separate from each other. The GESand GHA are definitely not part of the Civil Service but rather are part of the Public Services whose members are public servants.

This can also be seen from their governing bodiesand the appointment of their Heads. The governing council of the Civil Service is the Civil Service Council and the Chief Executive of the Civil Service is the Head of Civil Service, who is appointed by the President with the advice of the Public Services Commission. The governing body of the Ghana Education Service on the other hand is known as the Education Service Council and its Head is Director-General of Education who is appointed by the President also with the advice of the Public Services Commission. The governing body of the Ghana Highway Authority as provided by the Act, is a Board of Directors and its Head is designated as Chief Executive, appointed by the President with the advice of the Public Services Commission.

The Head of the Civil Service is neither a member of the governing boards of the GES or the GHA, nor does he exercise any oversight responsibility over either of these services. In effect, neither the governing bodies nor the Chief Executives of these two Services is subject to the direct or indirect control of the Head of Civil Service or the Civil Service Council.

We believe the plaintiff's submission is based on an erroneous appreciation of the classification of the various public services and their relationship with the sector

ministries they relate to. Whilst members of a ministry, like the Ministry of Education, are members of the civil service, and the Minister of Education is also the sector Minister of the GES, members of the GES are public servants and not civil servants.

In the same vein whilst members of the ministry of Roads and Highways are civil servants, and the Minister of Roads and Highways is the sector Minister of the GHA, members of the GHA are public servants and not civil servants.

We believe that the plaintiff got it all wrong. The 2nd and 3rd defendants are not civil servants and they are not disqualified under article 94(3) from contesting for executive positions in any political party.

Consequently the plaintiff's action fails and same is dismissed.

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

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JUSTICE OF THE SUPREME COURT

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