IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA – A. D. 2013

CORAM: ATUGUBA, J.S.C. (PRESIDING)
ANSAH, J.S.C.
ADINYIRA (MRS), J.S.C.
OWUSU (MS), J.S.C.
DOTSE, J.S.C.
ANIN-YEBOAH, J.S.C.
BAFFOE-BONNIE, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS), J.S.C

CIVIL MOTION
NO: J8/44/2013

7TH FEBRUARY,2013

PRESIDENTIAL ELECTION PETITION

IN THE MATTER OF A PETITION CHALLENGING THE VALIDITY OF THE ELECTION OF JOHN DRAMANI MAHAMA AS PRESIDENT OF THE REPUBLIC OF GHANA PURSUANT TO THE PRESIDENTIAL ELECTION HELD ON 7TH AND 8TH DECEMBER 2012:

Article 64 of the Constitution, 1992 Section 5 of the Presidential Election Act, 1992 (PNDCL 285); and Rule 68 & 68 A of the Supreme Court (Amendment) Rules 2012, C. I. 74

BETWEEN

1. **NANA ADDO DANKWA AKUFO-ADDO**
   House No. 2, Onyaa Crescent, Nima, Accra
2. **DR. MAHAMUDU BAWUMIA**
   House No. 10, 6th Estate Road
   Kanda Estates, Accra
3. **JAKE OTANKA OBETSEBI-LAMPTEY**
   24, 4TH Circular Road, Cantonments, Accra … Petitioners/Applicants

AND

1. **JOHN DRAMANI MAHAMA**
   Castle, Castle Road Osu, Accra … 1st Respondent
2. **THE ELECTORAL COMMISSION**
   National Headquarters of the Electoral Commission
   6th Avenue, Ridge, Accra … 2nd Respondent

3. **NATIONAL DEMOCRATIC CONGRESS (NDC)**
Party Headquarters, Kokomlemle, Accra … 3rd Respondent

APPLICATION TO PRODUCE DOCUMENTS FOR INSPECTION AND TO MAKE COPIES THEREOF

RULING

SOPHIA ADINYIRA (Mrs. JSC:

The Petitioners in this application are seeking an order directed at the 2nd Respondent to produce for inspection and photocopying:

1. The Results Collation Forms for all the collation centers (constituencies) for the presidential election;
2. The Declaration Forms pink sheets for all 26,002 polling stations.

In the affidavit in support of the application the petitioners stated:

> "2. That I say that 2nd Respondent is the body established by Article 43 of the Constitution and the provisions of the Electoral Commission Act 1993 (Act 451) and mandated under Article 45 (c) of the Constitution to conduct all public elections, including presidential elections. 2nd Respondent is also under statutory obligation to keep the record of such elections for a minimum period of one year after any presidential election.
>
> 3. That by a letter dated 21st January 2013, the Petitioners requested the 2nd Respondent to indicate at what place, date and time within a day of receipt of the letter that Counsel for Petitioners could inspect and make photocopies of the Results Collation Form for the presidential election from all 275 collation centers (constituencies) and the minutes of all meetings of the 2nd Respondent between 2010 and 2012. The letter was delivered to Counsel for 2nd Respondent on the same day, 21st January 2013. Attached herewith is a photocopy of the letter marked Exhibit "A".
>
> 4. That I further say that the originals of the Results Collation Forms of the December 2012 presidential election, which is the subject of this petition, are in the official custody of the 2nd Respondent.

5. That I say that in paragraphs 3 and 23 of 2nd Respondent's answer to the petition, 2nd Respondent, 2nd Respondent referred respectively to copies of the Results Collation Forms and also the Declaration Forms ('pink sheets') in the following terms:

> 3. In answer to paragraph 9 of the Petition, 2nd Respondent repeats paragraph 2 hereof and says that copies of the election results, in accordance with established practice of the 2nd Respondent, were given to representatives of the political parties a the Constituency Collation Centers. In further answer to the said paragraph 9, the 2nd Respondent says that the allegation contained therein was denied by the Chairman of the 2nd Respondent says that the allegation contained therein was denied by the Chairman of the 2nd Respondent in a press release issued by him on December 8, 2012.
>
> 23. Prior to the declaration of results of the Presidential Election by the Chairman of the 2nd Respondent representatives of the NPP, in the presence of the National Peace Council, made representations to the Chairman of the 2nd Respondent claiming that there were discrepancies between the results declared at the polling stations in seven constituencies listed below and the results as declared by the 2nd Respondent:
>
> ……
> ……..
>
> It should be kept in mind that all Agents (of candidates) present at each polling station, were given copies of the certified results of the polling station. Based on the information presented by the representatives, as set out above, it was clear that the representatives had presented incomplete or inaccurate constituency data to sustain the allegation of discrepancies. Under the circumstances, the Chairman of the 2nd Respondent declined to halt the declaration of the results since unreliable evidence had been provided to him".

6. That I say that the Results Collation Forms of the presidential election and the declaration forms ("pink sheets") are public records in the official custody on 2nd Respondent and I am advised by Counsel and verily believe same to be true that Petitioners are, by virtue of Article 21 (1) (f) of the Constitution, 1992, entitled to request to inspect and make copies of same.

7. That I say that on 25th January 2013, Counsel for Petitioners received a response from Counsel for 2nd Respondent declining to grant the request on the ground that pleadings have not yet closed. Attached herewith is a photocopy of the letter marked Exhibit "B".

8. That I am advised by Counsel and verily believe same to be true that pleadings need not close before a notice for produce documents referred to in the pleadings of a party may be served on that party and further that, in any event, in view of the expedited nature of proceedings contemplated under Part VIII of the Supreme Court Rules, 1996 (C. I. 16), as amended by the Supreme Court (Amendment) Rules, 2012 (C.I. 74), this is a proper occasion where this court ought to exercise its discretion to grant the application prayed for in order to ensure speedy determination of the petition.

9. That I say that the documents requested for a material to a fair and speedy determination of the issues in controversy in this petition."

The 2nd Respondent in response averred:

""2. That the Commission has been served with the Petitioners' "Application To Produce Documents For Inspection and to make Copies Thereof" filed on 31/01/2013 and I am authorized to swear to this affidavit on its behalf.

3. That in paragraphs 5, 6, 10 and 12 (set out below) of the Affidavit sworn to by the 2nd Petitioner on behalf of the three Petitioners and filed on 25/01/2013 in Opposition to the application by the 1st Respondent for Further and Better Particulars, and the 2nd Petitioner admits categorically that the Petitioners have copies of the documents for which they are seeking discovery.

"5. *That I say that, what is more, the matters in respect of which particulars are requested by 1st Respondent are in the main matters manifest on the fact of the declaration forms for the presidential election of which 1st Respondent also has copies."*

"6. That I say in further answer to the application for further and better particulars that in paragraph 20, Ground 3 of the Petition, Petitioners aver the "statutory violations and irregularities and/or malpractices" described under Grounds 1 and 2 herein are apparent on the Declaration Form ('pink sheets') thereby giving sufficient information of the facts of the case of Petitioners."

"10. That I say in answer to paragraph 10 of the application that the allocation of votes to be annulled as between the candidates is based on the allocation of votes inscribed on the face of the Declaration Forms ('pink sheets') copies of which were given to 1st Respondent at the polling stations throughout the country, just as the 1st Petitioner."

"12. That I say, in answer to paragraph 11(k) of the application, that the malpractices complained of in paragraph 24 of the petition are apparent on the fact of the "pink sheets" as compared to the results collation forms of the relevant collation centers."

4. That I am advised by the Commission's Lawyers and believe that the discovery requested in the instant application is not necessary, is oppressive, an abuse of the process of the court, and that it is not made in good faith."

Previous to this application the Petitioners on 21 January 2013 had written to the 2nd Respondent making a similar request. The 2nd Respondent refused stating the request was premature since pleadings have not closed.

The Supreme Court Rules, 1996, C.I. 16 has no provisions regarding discovery and inspection of documents. In accordance with rule 5 of C.I 16 we are therefore as a matter of practice adopting the provisions in the High Court (Civil Procedure) Rules 2004 C.I.47; Order 21.

The Petitioners submitted that the application is brought under Order 21 r. 8 (1) of C.I. 47 which states:

> "A party may at any time serve a notice on any other party in whose pleading or affidavit reference is made to a document to produce the document for the inspection of the party giving the notice and to permit the party giving the notice take copies of it."

In contrast with applications for discoveries of documents under Order 21 rule 1 which can only be made after close of pleadings; applications for inspection of documents referred to in pleadings can be made at any time and not necessarily at the close of pleadings. We will however return to this issue of the timing of the application later.

Production to be ordered if necessary

The guiding principle in this sort of application is whether the order is necessary either to dispose fairly of the cause or matter or to save cost. Order 21 r. 11(1) of C.I. 47 states:

"An order for production of any document for inspection or to the Court shall not be made under any of these rules unless the Court is of the opinion that the order is necessary either to dispose fairly of the cause or matter or to save cost."

The Results Collation Forms and the Declaration Forms pink sheets (hereinafter documents) are public records in the official custody of the 2nd Respondent. The Petitioners as well as the 1st and 3rd Respondents like all other political parties and independent candidate that contested the presidential elections were given duplicate copies of the said documents through their representatives at the polling and collation centers and the so called strong room of the Electoral Commission in accordance with the provisions of C.I. 75.

It is our thinking that where a party is already in possession of a copy of a document mentioned in another party's pleadings it is unnecessary to apply or for the court to make an order for inspection and making copies of the document in question. By virtue of the Evidence Act, 1975, NRCD 323, section 166, the duplicate copies of these documents are admissible to the same extent as the originals in the custody of the 2nd Respondents.

Section 166 states:

"A duplicate of a writing is admissible to the same extent as an original of that writing, unless

a) A genuine question is raised as to the authenticity of the original or the duplicate, or
b) In the circumstances it would be unfair to admit the duplicate in lieu of the original."

The Petitioners have not raised any concerns about the duplicate copies given them at the collation centers and the strong room to necessitate this application. In the absence of any genuine question raised in the affidavit of the Petitioners about the duplicates in their possession, we find this request for production and inspection and photocopying of the originals superfluous and unnecessary.

As stated earlier in this ruling, applications for inspection of documents referred to in pleadings can be made 'at any time' and not necessarily at the close of pleadings. However we believe that the timing of this application is premature in view of the orders of the court made on 5 February 2013 and other pending applications.

The right to information

The other reason for this application by the Petitioners is their constitutional right to information under Article 21 (1) (f) of the Constitution, 1992.

Article 21 (1) (f) states:

"All persons shall have a right to-

(f) Information, subject to such qualifications and laws as are necessary in a democratic society."

This Court, affirms the right of all persons to information, as expressed in Article 21 (1) (f) of the Constitution, 1992. This right to information implies a right to access public documents. However, it seems to us that the reliance on Article 21 (1) (f) in support of this application is rather lame. For, it is undisputed that the Petitioners are in possession of duplicates of the said documents handed over to them and the other Presidential candidates, by the officers and or agents of the 2nd Respondent who is the official custodian of the originals after the collation of the election results at polling and collation centers and the strong room of the Electoral Commission.

In the circumstances, we hold that the Petitioners are sufficiently and well informed about the election results which had enabled them to mount this petition on grounds of malpractices in 4,709 polling stations based on the contents of these duplicate documents in their possession. The affidavit in support of the application does not disclose any need for the inspection and making photocopies of the originals of the documents. A refusal to grant this application would therefore not infringe their right to information under the said Article 21 (1) (f).

From the foregoing we hold that the Petitioners have failed to make out a case for us to exercise our discretion in their favour. The application fails and it is hereby dismissed.

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

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

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

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

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

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

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

COUNSEL

PHILIP ADDISON (WITH MS. GLORIA AKUFFO, FRANKDAVIS,ALEX QUAYNOR, AKOTO AMPAW,KWAME AKUFFO, NANA ASANTE BEDIATUO, GODFRED DAME YEBOAH, EGBERT FAIBILLE, JNR., AND PROF. KEN. ATTAFUAH) FOR THE PETITIONERS/APPLICANTS.

TONY LITHUR (WITH HIM MARIETTA BREW APPIAH OPPONG AND DR. ABDUL AZIZ BAASIT BAMBA) FOR THE 1ST RESPONDENT/RESPONDENT.

JAMES QUASHIE IDUN (WITH HIM ANTHONY DABI AND STANLEY AMARTEIFIO) FOR THE 2ND RESPONDENT/RESPONDENT.

TSATSU TSIKATA (WITH HIM SAMUEL CODJOE AND BARBARA SERWA ASAMOAH) FOR THE 3RD RESPONDENT/RESPONDENT.