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. J8/31/ 2013

22ND JANUARY, 2013

1. NANA ADDO DANKWA AKUFO-ADDO
2. DR. MAHAMUDU BAWUMIA
3. JAKE OBETSEBI-LAMPTEY --- PETITIONERS/RESPONDENTS

VRS

1. JOHN DRAMANI MAHAMA --- RESPONDENTS/RESPONDENTS
2. THE ELECTORAL COMMISSION

NATIONAL DEMOCRATIC CONGRESS --- APPLICANT

R U L I N G

AKOTO-BAMFO,(MRS.) JSC

The prayer of the applicant, the National Democratic Congress is that an order be made for it to be joined to the proceedings commenced by the

petitioners herein, Nana Addo Dankwa Akuffo Addo, Dr. Mahamadu Bawumia and Jake Obestebi-Lamptey, the Presidential, Vice Presidential Candidates and national Chairman respectively of the New Patriotic Party in the December 2012 General Elections.

On the 7th and 8th of December 2012, the 2nd respondents, the Electoral Commission, the Constitutional body established under article 43 of the 1992 Constitution conducted the Parliamentary and Presidential elections in the various Constituencies across the length and breadth of this Country. At the end of the voting; the 2nd respondents, through its chairman, the returning officer, for the Presidential polls, declared the 1st respondent, President John Dramani Mahama as having been validly elected as President Elect of the Republic of Ghana.

Thereafter, on the 11th of December 2012, the Declaration of President-Elect Instrument, 2012, C.I. 80 was published under the hand of Dr. Kwadwo Afari-Gyan, the Chairman of the 2nd respondent.

Upon the said declaration of the results of the election, the petitioners filed the substantive petition, for a declaration that John Dramani Mahama was not validly elected President of the Republic of Ghana. They also prayed for a further order declaring Nana Akuffo Addo President of the Republic of Ghana, among others.

After service of the petition on the 1st and 2nd respondents they duly filed their answers within the statutory period.The instant application was subsequently filed together with the affidavits in support and

annexures. The petitioners served notice that they would resist the application by filing a 12-paragraphed affidavit.

The National Democratic Congress shall hereafter be referred to as the applicants and the Petitioners simply referred to as the respondents.

The thrust of the applicant's case is contained in paragraphs 3, 5 and 6 of the supporting affidavit. Its case is that it is the registered Political party which nominated and sponsored the 1st respondent, that the 1st respondent stood on the party's ticket in the Presidential elections, and that the declaration of the results culminated into the proceedings before this Court. Accordingly it had an interest and a stake in the matter and stood to be directly affected by the outcome. It was therefore necessary that it be joined.

Relying on Article 55 clauses 1, 2 and 3 of the 1992 Constitution, learned counsel for the applicant contended that since the role of political parties in shaping the political will of the people and particularly its role in the sponsorship of candidates for public elections were guaranteed under the Constitution, the interests of Justice would be better served if it were joined. For support learned counsel cited these cases;

1. Ekwan v Pianim. № 2. 1996-97 SCGLR 120 at 126
2. Tsatsu Tsikata v The Rep (2007-2008) 2SC GLR 702.
3. Montero v Redco Ltd (1984-86) 1GLR 710

For the respondents; learned counsel contended that the application was incompetent. According to him in so far as C.I.74 had no rules relating to joinder, the application was not properly before the Court.

He further submitted that the constitutional provisions relating to the election of the President, particularly Article 63 thereof was silent on the role of Political parties in the filing of the necessary documentation; the nomination was by a document with the requisite signatories within the areas of authority in each District Assembly. He further contended that since under Article 64 of the Constitution as amplified by Regulation 68 of C.I.74, only a citizen could file a petition, it followed that a political party could not be joined to the proceedings. According to him since there was neither a claim against the applicant nor was any relief sought against it, its presence was not necessary for the effectual adjudication of all the matters in dispute. The application, he concluded, was filed with the sole purpose of delaying the process.

To buttress his arguments, he cited;

- Sam v. Attorney-General (No 1) 2000 SC GLR 102
- Ransford France v AG. Unreported. Decision of Ansah JSC. Sitting as a single judge, dated 25/9/2012.

The application was brought under Rule 45(4) of the Supreme Court Rules CI.16 which provides "The Court may at any time on its own motion or on the application of a party, order that any other person shall be made a party to the action in addition to or in substitution for any other party".

Generally a plaintiff who conceives that he has a cause of action against a defendant is entitled to pursue his remedy against that defendant and cannot be compelled to proceed against other persons whom he has no desire to pursue. Nevertheless, a person who is not a party may be added as a defendant against the wishes of the plaintiff on his own intervention or on the application of the defendant or in some cases by the court of its own motion.

The court has power to add as a party to the proceedings any person not already a party but against whom there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the court it would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter. The main object of these powers is to allow persons to be added as parties to proceedings so as to prevent multiplicity of proceedings and to enable all necessary and proper parties to be brought to court who would be directly affected by the result of the proceedings.

Amon v Raphael Tuck & Sons Ltd [1956] 2 WLR 372 and Rule 45(4) of C.I 16

The test is whether the joinder would ensure that all matters in controversy would be effectively and conveniently determined and adjudicated upon.

On the issue of the joinder in our courts, to quote my respected brother Atuguba JSC in Sam v Attorney General No1, Supra "there has been much judicial wrestling in here and in England over whether this rule should be given a narrow or wide construction.

In Sam v Attorney General Ampiah JSC adopted the restrictive approach when he stated at page 104 thus, "Generally speaking, the court will make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute. In other words, the court may add all persons whose presence before the court is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter before it. The purpose of the joinder, therefore, is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend on the issue before the court, i.e. the nature of the claim"

This proposition found support in Sai v Tsuru III [2010] SCGLR 762 at 802.

In Ekwan No.1 [1996-97] SCGLR 117 however Kpegah JSC urged the wider approach when he ordered an ex parte application to be served on the New Patriotic Party because it would be affected.

In Tsatsu Tsikata v The Republic [2007-2008] SCGLR 702 at 712; Atuguba JSC stated that

> " It is clear that the law has reached the stage where, statute apart, a Court has the inherent jurisdiction to join a person to proceedings before it in which such person is interested as a party; or without such joinder, order the proceedings to be served on him to enable him to be heard on the matter, as such interested party or to be served on a person as an amicus curiae whether such person be interested in the subject-matter or not; and provided his presence can assist the court to resolve the issue at hand, such person can be invited by the court to be heard on the matter. The common test in all these situations, is the interest of justice"

Even though learned Counsel for the respondent's mounted an attack on the citation of rule 45(4) C.I.74 on grounds that it could not be invoked in an application under the amended Supreme Court Rules C.I.74, it is obvious that the attack was without any basis.

Under the 1992 Constitution, this Court is vested with jurisdiction in these matters;

1. Original jurisdiction in all matters relating to the interpretation and enforcement of the Constitution under Articles 2 and 130 (1) (a) and (b).
2. Supervisory jurisdiction under Article 132 and
3. Appellate and review jurisdictions under Articles 131 and 133

A salient feature of the procedure for invoking its original jurisdiction is the issuance of a writ, the filing of statements and a 'trial' or 'hearing'.

The procedure under CI 74 is essentially the same and indeed, it is clear from rule 4(6) of CI 16; that a challenge of the election of the President in Article 64 of the Constitution is classified under this Court's original jurisdiction.

Undoubtedly a declaration that the President was not validly elected is a constitutional matter, and the Court is therefore seized with its original jurisdiction in the enforcement of the Constitution. Rule 45 of CI 16 was therefore properly invoked for the purposes of this application.

The main issue for consideration is whether the applicant could be properly joined to these proceedings. In other words, is the applicant a necessary party to these proceedings?

The overriding principle is that all the necessary and proper parties should be before the Court so as to ensure that all matters in dispute may be effectively and completely determined and adjudicated upon.

It must be stated that the person to be joined would depend on the facts, relevant substantive law and the Rules of procedure.

Who then is a necessary party? Under Rule 45(4) of CI.16 he is a party who ought to have been or whose presence in the action of a party is necessary to ensure that all matters in controversy are effectively and completely adjudicated upon.

Even though the respondent contended that political parties had no role in the nomination of the various Candidates, that such nominations were made by documents and that the candidates were nominated as citizens, in paragraph 1 of the petition appears the following;

> *"The petitioners are all Ghanaian citizens by birth and members of the New Patriotic Party (NPP), a political party duly registered under the laws of the Republic of Ghana. The 1st Petitioner was the presidential candidate of the NPP in the December 2012 elections; the 2nd Petitioner was the running mate of the 1st Petitioner in the December 2012 presidential election; and the 3rd Petitioner is the National Chairman of the NPP.*
>
> *The 1st Respondent was the presidential candidate of the National Democratic Congress (NDC) in the December 2012 presidential election and was the person declared by 2nd Respondent on 9th December 2012 as having been validly elected as president of the Republic of Ghana, following the December 2012 presidential election."*

It is evident that these averments tell a different story. It is obvious that the 1st petitioner, 2nd petitioner and the 1st respondent stood on the tickets of their respective political parties with their symbols, they must have been nominated and sponsored by them. That political parties are integral part of our democratic dispensation is beyond dispute. Article 55 of the Constitution guarantees the right to form political parties. Under clause 3, thereof; a political party is required to participate in shaping the political will of the people, to disseminate information on political ideas and to Sponsor Candidates for elections to any public office other than the District Assemblies.

In the definition Section of Act 574, the Political Parties Act; a political party is defined as a free association of persons, one of whose objects is to bring about the election of its candidates to public office.

It is a notorious fact that the parties i.e. the Petitioners and the 1st respondent were nominated and sponsored by their respective parties. They travelled the length and breadth of the country explaining their policies and programs to the generality of Ghanaians based on their manifestoes.

Furthermore as a people we have by article 35 of the Constitution embraced the democratic system of governance, with its attributes', the existence of parliament consisting of representatives of the people

chosen at regular elections with each individual entitled to vote, the right to offer one's self for any political office and the existence of majority rule among others.

Under this system of governance, political parties play a major role. Indeed under Article 55(3) of the constitution political parties are required to participate in shaping the political will of the people. The constitution thus guarantees their rights and existence.

Where the exercise of the political will of the people is called into question, it cannot be accurately argued that the political party has no interest and cannot therefore join a suit challenging the validity of the election of its candidate.

Having regard to the constitutional provisions Articles 35, 55 and sec, 33 of the Political Parties Law Act 574 it cannot be argued that the political parties have no role in the nomination and other processes leading towards the election of the candidates. They have a direct interest in the elected president; the party in power forms the government. It is given a mandate to execute its programs. A declaration that the president is not validly elected would undoubtedly directly affect the applicant. It could be said that their fortunes are tied together.

Indeed C.I.80, The Declaration of President Elect Instrument 2012 puts to rest any simmering doubts as to the relationship between the 2nd respondent and the applicant and therefore the latter's interest and stake in these proceedings.

"*In exercise of the powers conferred on the Electoral Commission under Article 63(9) of the 1992 Constitution of the Republic of Ghana, this Instrument is hereby made.*

MR. JOHN DRAMANI MAHAMA, the National Democratic Congress Party (NDC) presidential candidate having, in the Presidential election held on the 7th day of December, 2012, pursuant to Article 63(3) of the Constitution, obtained more than fifty percent of the total number of valid votes cast at the election is hereby declared elected as the President of Ghana at the election of the President"

Should the Court come to the conclusion that there should be a re-run there is no doubt that the political parties of the parties would go back to the electorate and feverishly canvass for their votes. In the circumstances would it be just to ask this entity with such a huge responsibility, constitutionally, to play the role of a spectator? I think not.

It could be argued, as indeed it was, that since as per Article 64 the validity of the election could only be challenged by a citizen and therefore a political party cannot file a petition he ought not to be made respondent .

It is a constitutional requirement that the petition be filed by a citizen of Ghana. It is my considered view that the said provision is designed at preventing the filing of frivolous applications particularly by non-citizens.

It is of significance that there are no restrictions as to who should be a respondent. Additionally the contention that the applicant cannot make any claim or seek any relief against the petitioners does not make the applicant forfeit its interest in the whole enterprise, and there unnecessarily part of these proceedings

The 3rd petitioner is the National Chairman of the New Patriotic Party; looking at the reliefs, there is no doubt that he is in court as it were to protect the interests of the party; He is directly interested in the proceedings since an order by this court would affect him in that capacity. If he is in court because he is directly interested in the outcome; it follows that should their prayer be granted the 3rd applicant's interest would be in the fact of his party winning. Extending the same right to the applicant cannot be a wrong exercise of the court's discretion.

Will the applicant be affected by the outcome?

Where 2 parties are in a dispute before a court of competent jurisdiction and the determination will directly affect a third party either in his pocket or right or would be required to make a contribution either in cash or in kind then the court ought to exercise its discretion in favour of the applicant since by so doing all matters would be effectually and completely determined between all those concerned in the outcome. Thus in Ekwam v Pianim No1 an order was made for an ex parte application to be served on the New Patriotic Party on the grounds that it would be affected. In the words of Kpegah JSC '' it is the duty of the

court to keep the door of the shrine of justice wide open rather than close it"

In Sam v. Attorney General No 1, in the approach adopted by Ampiah JSC it is clear that in the said pronouncement: the application of the rule defined matters in dispute in terms of the endorsement in the writ of summons, thus excluding the party whose presence may not be for the adjudication of the issues arising from the pleadings.

Applying this proposition to the facts of this case the applicant, whom not being a citizen and therefore cannot file a petition under 64 of the Constitution, but certainly having an interest in the issues before the court and therefore being likely to be affected in its legal right or pocket, should the doors of justice be shut against him? In my view, to ask the applicant, a political party, whose rights are enshrined in the Constitution and whose pivotal role in the nomination, selection and sponsorship of the subject of the petition cannot be denied, to only watch the proceedings from the touchline would as it were, would amount to an injustice. I am not unmindful of the Amon v Raphael Tuck & Sons Ltd line of cases which was followed in Bonsu v Bonsu 1971 2 GLR 242 and applied in Apenteng v Bank of West Africa [1961] GLR 81 and in Agyei v Apraku [1977] 2GLR 10 which undoubtedly constitutes a restrictive application of the rule.

The words of Denning MR in Gurtner v Circuit 1968 2 WLR 668 at 679 on Ord 15, r (2) (b) which is the equivalent of rule 45 (4) of the Supreme Court Rules CI 16 are instructive;

"The relevant rule is the new R.S.C., Ord. 15, r. 6 (2) (B). That rule is in substantially the same terms as the old R.S.C., Ord. 16, r. 11, and nothing turns on the difference in wording. There were many cases decided on it. But I need not analyse them today. That was done by Devlin J. in Amon v Raphael Tuck and sons Ltd. He thought that the rule should be given a narrower construction, and his views were followed by John Stephenson J. in Fire Auto and Marine Insurance Ltd. interpretation to the rule, as Lord Esher M.R. did in Byrne v Brown. It seems to me that when two parties are in dispute in an action at law, and the determination of that dispute will directly affect a third person in his legal rights or in his pocket, in that he will be bound to foot the bill, then the court in its discretion may allow him to be added as a party on such terms as it thinks fit. By so doing, the court achieves the object of the rule. It enables all matters in dispute "to be effectually and completely determined and adjudicated upon" between all those directly concerned in the outcome."

And as Atuguba JSC stated in Tsatsu Tsikata v The Republic [2007-2008] SCGLR page 702 at 714, "From all the foregoing. It is clear that the law has reached the stage where, statute apart, a Court has the inherent jurisdiction to join a person to proceedings before it in which such person is interested as a party; or without such joinder, order the proceedings to be served on him to enable him to be heard on the matter, as such interested party or to be served on a person as an amicus curiae whether such person be interested in the subject-matter or not; and provided his presence can assist the court to resolve the

issue at hand, such person can be invited by the court to be heard on the matter. The common test in all these situations, is the interest of justice"

It is certainly in the interest of Justice that a party who would be directly affected by the outcome of the dispute before the court be joined to the proceedings.

For the foregoing reasons, I would grant the order as prayed.

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

ATUGUBA, J.S.C.

I have had the advantage of reading beforehand the lucid ruling of my esteemed sister Akoto-Bamfo J.S.C. and I agree with the same. Owing to the gravity of this case and the issues arising from this motion for joinder by the applicant I am driven to express some views as to some of them. On the 28th day of December 2012 the petitioners filed a petition in this court claiming as follows:

"(1) That John Dramani Mahama, the 2nd Respondent herein was not validly elected president of the Republic of Ghana.

(2) That Nana Addo Dankwa Akufo-Addo, the 1st Petitioner herein, rather was validly elected President of the Republic of Ghana.

(3) Consequential orders as to this court may seem meet."

On the 31st day of December 2012 the National Democratic Congress (hereinafter referred to as the applicant) filed an application praying to be joined to the suit as 3rd Respondent. Several submissions ensued from counsel on both sides at the hearing of this application on the 16th day of January 2013.

I propose to deal with the salient points arising from the said submissions. Mr. Phillip Addison, lead counsel for the petitioners contended that there is no provision in Part VIII of the Rules of this court, C.I. 16 for applications for joinder to a presidential petition, consequently this application for joinder under rule 45(4) of C.I. 16 which is under Part IV of C.I. 16 relating to the original jurisdiction of this court is misconceived. In any case the said rule 45(4) relates to application for joinder by a party but the applicant is not a party to the petition herein.

Rule 45(4) of C.I. 16 provides as follows:

" (4) The Court may, at any time *on its own motion* or on the application of a party, order that any other person shall be made a party to the action in addition to or in substitution for any other party."

Since this rule empowers this court " at any time *on its own motion*" to join further parties, it matters little whether the applicant

herein is " a party" or not. However rule 82 of C.I. 16 defines "party" as follows:

> " "party" *includes* any party to an appeal or other proceedings and his counsel." (e.s.)

It is trite law that the expression "include" except where there is manifested an intention that it should do so, does not have an exclusive connotation in a statutory definition, unlike the word "mean". There is no such manifestation of intent here. I should therefore hold that the word "party" in the context of this provision includes an interested party. See *Ekwam v. Pianim (No.1)* (1996-97) SCGLR 117 where this court (coram Kpegah JSC) held that although the application was brought ex parte he ordered that the New Patriotic Party (NPP) be "served *as an interested party* since it will undoubtedly be affected by the orders of this court."

Rule 45(4) under which the applicant comes, falls under "PART IV – ORIGINAL JURISDICTION" of C.I. 16 and it is clear from rule 4(6) under "PART 1 – GENERAL PROVISIONS" that a presidential election petition is within the original jurisdiction of this court. Although the normal rule of construction is that *Verba generalia specialibus non derogant* the *verba generalia* will extend to the *specialibus* if there be an intent to that effect. See *New Patriotic Party v. Rawlings* (1993-94) 2 GLR 193 at 212 per Aikins JSC. By the express provision of rule 4(6) of C.I. 16 the legislature evinces an intent that the *generalia* of Part IV should, as far as applicable, extend to a presidential petition specially dealt with under "PART VIII – CHALLENGE OF ELECTION OF PRESIDENT" of C.I. 16. I therefore conclude that the applicant has

rightly brought its application for joinder to this petition under rule 45 (4) of C.I. 16.

Articles 63 and 64

Mr. Phillip Addison further contended that the provisions of articles 63 and 64 relating to the nomination and election of a president are concerned with the individual involved and not any political party and therefore a political party cannot intervene in a presidential action. This submission, with respect, highlights once more the danger of reading a statute or any document for that matter disjunctively and in isolation from its other parts. Those articles have to be read together with, *inter alia*, article 55 particularly clause 3 thereof. It provides as follows:

> "55. Xxxxx
>
> (3) Subject to the provisions of this article, a political party is free to *participate in shaping the political will of the people*, to disseminate information on political ideas, social and economic programmes of a national character, and *sponsor candidates for elections to any public office other than to District Assemblies or lower local government units*." (e.s.)

Clearly this provision enables political parties to "sponsor" a candidate for the presidential election. Their right in this regard is to *"sponsor candidates for elections to any public office other than to District Assemblies or lower local government units."* The expression "public office" is defined by article 295(1) as follows:

> "295.(1) xxxxxxx

"public office" includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament; …"

Since the office of the President upon this including definition is the most public office in Ghana and is not an office in any District Assembly or lower local authority to which political parties are excluded from sponsoring candidates for election, it follows that the office of President is within the residue of the expression "*any public office*" to which a political party can sponsor a candidate for election. It follows that by dint of article 55(3) the document nominating a person as candidate for election to the office of president can validly indicate that those nominating him are nominating him as the flag bearer (to use an expression which is now a constitutional convention) or some such wording, of a certain political party. It is also quite clear that by this same line of reasoning article 55(3) also empowers political parties to sponsor candidates for parliamentary elections. This constitutional position is further buttressed by the provisions of article 297(c). It is as follows:

"297. In this Constitution and in any other law –

Xxxxxxx

(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;"

The stakes of the party in the presidency government are further highlighted by a realistic consideration of articles 76 relating to the Cabinet and 78 relating to the appointment of the majority of ministers from Parliament.

In *New Patriotic Party v. Ghana Broadcasting Corporation* (1993-94) 2 GLR 354 this court considered also the import of article 55(11) of the Constitution. It provides thus:

"55. xxxxxx

(11) The State shall provide fair *opportunity to all political parties to present their programmes to the public* by ensuring equal access to the state-owned media."

This court held with regard to this provision in head note (1) thus:

"*Held*: (1) (*Archer CJ, Francois and Edward Wiredu JJSC dissenting in part*) article 55(11) of the Constitution, 1992 defined with regard to political parties, both the object of state policy and the means to achieve it. The object was the provision of fair opportunity to *all political parties to present their programmes to the public*, and the means of achieving that was by ensuring that each party had equal access to the state-owned media. "Equal access" meant the same or identical terms and conditions for gaining entry into the state-owned media *for the purpose of presenting their political, economic and social programmes to the electorate and persuading them to vote for them at elections.*" (e.s)

All this has to be viewed in the light of article 55(2) and (10). They are as follows:

> "55. (2) Every citizen of Ghana of *voting age* has the *right to join a political party*.
>
> xxxxx
>
> (10) Subject to the provisions of this Constitution, every citizen of *voting age* has the right *to participate in political activity* intended *to influence the composition and policies of the Government*."

To summarise, it is quite clear that when article 55(2), (3), (10) and (11) are considered together the resultant position is that political parties have the constitutional right to organise politically towards capturing governmental power through their candidates for election to public office, including the Presidency of Ghana, to enable them implement their political programmes. Of course such programmes have to be consistent with the Constitution and other laws of Ghana, since article 55(5) provides thus:

> "55. xxxxxxx
>
> (5) The internal organization of *a political party* shall confirm to democratic principles and *its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law.*" (e.s.) See also sections 5 and 6 of the Political Parties Act, 2000, (Act 574)`.

Even in this petition the petitioners have described themselves, unsurprisingly, in their party identities also. There is little wonder therefore that Regulation 12(1) of the Public Elections Regulations 2012

(C.I. 75), in order to give practical effect to these provisions in favour of political parties on the operative political ground provides as follows:

> "12. (1) *Where an election is contested*, *the Commission shall*, as soon as practicable *after the nomination day*
>
> (a) *allocate to a candidate who is sponsored by a registered political party the symbol, colour or combination of colours of the party*; or
>
> (b) allocate to a candidate *who is not sponsored by a registered political party* a symbol, colour or combination of colours chosen by that candidate; or
>
> (c) allocate a symbol, colour or combination of colours that the Commission considers appropriate *in any other case*.
>
> (2) For the purpose of subregulation (1) a symbol colour or combination of colours shall be chosen or assigned from among symbols and colours approved by the Commission for the purposes of election." (e.s.)

Thus in effect candidates are presented to the electorate according to their party sponsorship or their independent status. Indeed the Declaration of President Instrument C.I. 80 is in terms inter alia, of the National Democratic Congress Party's candidature.

This constitutional situation has been accepted and recognised by the courts in several cases in which they have described parliamentary and presidential candidates as the candidates of their respective sponsoring parties. See *Nyame v. Mensah* (1980) GLR 338, *Republic v. High Court; Koforidua, Ex parte Asare (Baba Jamal and Others*

Interested Parties (2009) SCGLR 460, *Republic v. High Court Sunyani Ex parte Collins Dauda (Boakye –Boateng Interested Party)* (2009) SCGLR 447. Indeed the parties themselves are conscious that they do "own" candidates for elections to public office. Thus in *New Patriotic Party v. National Democratic Congress and Others* (2000) SCGLR 461 the head note clearly depicts this fact as follows:

> "On 8 June 2000, *the New Patriotic Party (NPP), the plaintiff, one of the political parties contesting the 2000 Parliamentary and Presidential Elections in Ghana*, filed a writ under articles 2(1)(b) and 130 (1) (a) of the 1992 Constitution, invoking the original jurisdiction of the Supreme Court *against the National Democratic Congress (NDC), the first defendant, also a political party contesting the said elections*; one Opoku-Manu, the second defendant and the Chief Director at the Ministry of Finance; one Obeng Adjei, the third defendant, also a Chief Director at the Ministry of Mines and Energy; and the Attorney-General as a nominal fourth defendant, *for a declaration, inter alia, that the decision of the first defendant to put forward the second and third defendants as candidates of the first defendant in the 2000 Parliamentary Elections, was inconsistent with and in contravention of the 1992 Constitution*, in particular article 94(3) (b) thereof *and was accordingly null and void and of no effect*.
>
> In its statement of case accompanying the writ, *the plaintiff relied on a publication* in a National State-owned daily newspaper, *The Ghanaian Times*, dated 6 June 2000,

to the effect the first defendant has approved of the nomination of the second and third defendants as its candidates for the 2000 Parliamentary Elections; and that the second and third defendants were actively campaigning as such." (e.s.)

The lid of individual presidential candidature, where party sponsorship is involved, in elections for presidential office, was completely blown off by this court in *JH Mensah v. Attorney-General* (1996-97) SCGLR 320 at 361 when it stated per Acquah JSC as he then was thus:

" Now article 81 of the 1992 Constitution provides that the office of a minister or deputy minister becomes vacant if:

"(a) his appointment is revoked by the President; or

(b) he is elected Speaker or Deputy Speaker; or

(c) he resign from office; or

(d) he dies."

By the defendant's contention, it logically follows that a minister or deputy minister in a previous government whose appointment is not revoked before a new President comes into power, will continue to be a minister even under this new President, unless the said Parliament revokes the appointment. *And even if the succeeding President is of a different political party from that of the previous minister, that previous minister* will continue to be *a* minister under *the opposition party's President*. And unless the new President revokes the minister's appointment, the minister will continue to hold himself out as such and be entitled to

the salary and benefits attached to that office. Even when the new President appoints his own ministers, the previous ministers whose appointments still stand unrevoked by the new President (for the defeated President's mandate would have expired with his defeat) would, on the defendant's submission, be deemed to be in office. *Is this not absurd?*" (e.s.)

Again his Lordship bluntly stated at 363 as follows:

"*The 1992 Constitution therefore creates a government of an Executive President. And thus the term of office of the Executive President is the term of office of that government.* Of course, where the Executive President dies before the end of his term of office, the Constitution empowers his Vice-President to complete the term. Accordingly, the term of the Executive President is the term of those who constitute the government, that is the Vice-President, ministers and deputy ministers. Thus understood, it becomes clear that article 81 provides for circumstances under which the office of the minister or deputy minister will become vacant within the tenure of office of the government under which that minister or deputy minister is serving. The term of office of a minister or deputy minister does not extend beyond that of the Government which appointed that minister. If that government is re-elected into power, the minister or deputy minister may be reappointed to the same office. And that is why it is necessary for *the NDC Government* to announce

that some of the previous ministers were going to be re-appointed or retained." (e.s.)

The Test for Joinder

As to the test for joinder of an applicant to the petition herein (or to an original action in this court for that matter) I would say that a restrictive approach should be avoided. The general policy of the law with regard to litigation is *Interest rei publicae ut sit finis litium*. That being the case the holding of Kpegah JSC in *Ekwam v. Pianim (No.1)*, *supra* at 118 that "*it is the duty of this court to keep the door of the shrine of justice wide open rather than to close it*" is consistent with this maxim.

It must be borne in mind that the test for joinder applied by this court in *Sam (No. 1) v. Attorney-General* (2000) SCGLR 102 followed English decisions on a particular procedural statutory provision. That provision has been set out per Viscount Dilhorne in *Vandervell Trustees Ltd v. White and Others* (1970) 3 WLR 452 H.L. at 462. He said:

> "Whether in this case the Inland Revenue should be added, in my opinion *depends upon Ord., 15 r. 6(2) (b) of the Rules of the Supreme Court. So far as material that rule reads as follows*:
>
> "(2) At any stage of the proceedings in any cause or matter the court may on such terms as it thinks just and either of its own motion or on application … (b) order any person *who ought to have been joined as a party or whose presence before the court is necessary to ensure that all matters in*

dispute in the cause or matter may be effectually and completely determined and adjudicated upon be added as a party; but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as may be authorised."…" (e.s.)

It is therefore quite clear that the English courts were concerned about the correct construction of that particular rule of court. It is therefore not surprising that at 463 Viscount Dilhorne criticised Lord Denning's wide construction of it at the Court of Appeal level of that case. He said:

" In this case the Court of Appeal held that there should be a wide interpretation of the rule. Lord Denning said [1970] Ch. 44, 56-57:

"We will in this court give the rule a wide interpretation so as to enable any party to be joined whenever it is just and convenient to do so. *It would be a disgrace to the law that there should be two parallel proceedings in which the selfsame issue was raised, leading to different and inconsistent results.* It would be a disgrace in this very case if the special commissioners should come to one result and a judge in the Chancery Division should come to another result as to who was entitled to these dividends."

Whether this interpretation is wider than that stated by Devlin J. in the passage cited above, it is not necessary to consider. *My difficulty about accepting Lord Denning's wide interpretation is that it appears to me wholly unrelated to the wording of the rule.* I cannot construe the language of the

rule as meaning that a party can be added whenever it is just or convenient to do so. That could have been simply stated if the rule was intended to mean that. However wide an interpretation is given, it must be an interpretation of the language used. The rule does not give power to add a party whenever it is just or convenient to do so. It gives power to do so only if he ought to have been joined as a party or if his presence is necessary for the effectual and complete determination and adjudication upon all matters in dispute in the cause or matter. It is not suggested that the revenue ought to have been joined.

All matters in dispute in the action will, it seems to me, be effectually and completely disposed of without the Inland Revenue being added as a party. Their presence is not necessary to ensure that the court can effectually and completely determine whether Mr. Vandervell was entitled to the beneficial interest in the shares and whether, if he was, the deed operated retrospectively so as to deprive his executors of a right to the dividends paid before its execution." (e.s.)

It is clear therefore that since rule 45 (4) of C.I. 16 is far from being in the same terms with the said English provision for joinder we in this court are not called upon even *ex comitate judicis*, to follow the English decision. Even if rule 45(4) of C.I. 16 were in the same terms as the English rule, Mr. Kwami Tetteh in his heavily learned book of gargantuan legal standing "CIVIL PROCEDURE A Practical Approach" has

demonstrated at length at 150 - 159 that in the Ghanaian Judiciary the test for joinder has oscillated between the wide and narrow construction of the same.

I would therefore endorse the views of Lord Denning in *Re Vandervell Trusts*, *supra*, which Viscount Dilhorne, owing to the express terms of the aforementioned English rule, disapproved . At page 500 of this *Vandervell* case reported in 1969 3 All ER 496 C.A. Lord Denning further said and I approve, as follows:

> "Suffice it that here the commissioners consent to be joined. The taxpayers – the executors of Mr. Vandervell – want them to be joined. It is true that the trustees do not agree and indeed firmly object. But their objection should be overruled. *The just and convenient course is for the issue – whom do these dividends belong – to be decided by the courts in one proceeding*. That can be done by joining the commissioners as parties. *It is to be noted that no relief is specifically claimed against them. But the importance of joining them is that they will be bound by the result.* For instance, if the trustees won the case, the commissioners could not afterwards come down on the executors for surtax. I would allow the appeal accordingly, and allow a joinder." (e.s.)

In the House of Lords some of their Lordships held the view that at least in regard to factual matters the commissioners of Inland Revenue would have exclusive jurisdiction and on that score further disagreed with Lord Denning's views as to jurisdiction. That aspect is irrelevant to our decision.

I would therefore further endorse with the fullest respect the erudite views of Lord Reid when he stated at (1970) 3 WLR 452 H.L., aforesaid at 455-456 which clearly show that barring any peculiarities in the English rule he would favour a wide and practical test for joinder of parties based on "*justice and convenience*". He said:

> "My Lords, this case raises a general question of procedure which is of considerable importance. I can state the question in general terms. *The revenue claim surtax on certain income from A on the ground that it was his income. A third party B asserts that this income was his income. So the single issue to be decided is whose income it was when it accrued. It appears to me to be obvious that both justice and convenience require that this issue should be decided in proceedings to which all three: the revenue, A and B are parties so that all shall be bound by the decision.*" (e.s.)

I therefore endorse the course of joinder pursued by this court in *Luke Mensah v. Attorney-General* (2003-2004) SCGLR 122 and *Tsatsu Tsikata v. The Republic* (2007- 2008) SCGLR 702 at 714 – 715. Needless to say that I would still follow Lord Denning MR and Lord Reid as to their test for joinder, whether assuming rule 45(4) of C.I. 16 were inapplicable, we were to proceed under rule (5) of C.I. 16 or the wording of rule 69A (3) (b) of C.I. 16, as amended by C.I. 74 which contemplates the joinder of other respondents other than those already joined to the petition. It is as follows:

> " **69A**. xxxxxx

(3) The respondent shall provide not less than seven copies of the answer for the use of the Justices of the Court and for service

Xxxx

(b) *on any other respondent or person directed by the Court*, …" (e.s)

The including definition of "respondent" in rule 71B(b) that " "respondent" *includes* the person whose election is challenged by a petition and the Electoral Commission where the petitioner complains of the conduct of the Electoral Commission", is of course not a restrictive one. I also agree that one does not have to be a citizen of Ghana to be a respondent as opposed to a petitioner in a presidential election petition.

For all the foregoing reasons I hold that the applicant has a very real interest as sponsor and facilitator of the candidature of the 1st respondent to be joined to this petition. Going by the electoral realities on the ground the applicant is the one better equipped than the 1st respondent, with the facts arising in this petition since it is the one that actively would negotiate electoral matters, procure and manage polling agents etc for and on behalf of the 1st respondent and therefore will better assist this court to unravel the facts in this case.

No doubt the third petitioner is in a similar position as the applicant and for this reason his joinder to this petitioner cannot be regarded as superfluous and therefore an abuse of the process. As to the number of witnesses that may be entailed by this joinder the court cannot be intimidated, in view of its controlling powers under inter alia,

sections 52 and 69 of the Evidence Act, (1975) NRCD 323. For all the foregoing reasons I would also grant this application for joinder.

I also register my appreciation to counsel on both sides for their industry, ingenuity and learning in arguing this motion for joinder and I hope that as the case progresses its proceedings will be more and more decaffeinated both in and out of court.

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

ADINYIRA (MRS.) JSC:

I had the privilege of reading beforehand the opinions of my sister Akoto-Bamfo (Mrs.) JSC, and my brother Atuguba JSC, and the dissenting opinion of my brother Baffoe-Bonnie. I am however impressed with the reasoning of Justices Akoto-Bamfo and Atuguba. I refrain from adding anything as it would be to repeat what they have lucidly set out in their opinions.

I accordingly agree with their conclusion that the application for joinder be allowed as it is just and convenient so to do, so that all the parties shall be bound by the decision of the Court.

Application for joinder is granted.

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

OWUSU (MS.) JSC.

I have had the opportunity to read the rulings of my respected brother, the president of the court and sister Akoto-Bamfo J. S. C. and I am in agreement with them that the application for joinder be allowed.

Grant of such application is discretionary but the discretion must be exercised judiciously but not in the vacuum.

I have therefore carefully considered the application on the strength of the affidavits both in support of and in opposition to the motion and submissions of both counsel.

The previous rulings read, have sufficiently touched on all the points raised in these affidavits and therefore find it needless to go over them except that I have a word or two of mine own to add.

The Applicant here is seeking to be joined on his own intervention and is therefore an intervener. To enable such a "person" to join as a party, the rule requires that the would-be intervener should have some interest

which is directly related or connected with the subject matter of the action. See order 15 rule 6/7A of the white Book, 1995 vol. 1.

The subject matter here, being the 2012 Presidential Election.

It is apparent on the face of the affidavits and the petitioners own petition, that the Applicant has some interest in the subject matter of the petition. For this reason, I find the Applicant to be such a necessary party in the determination of the petition.

If the 1st Respondent contested the election on the ticket of the Applicant, then as the previous rulings read have concluded, the Applicant is directly to be affected in his legal rights or in his pocket, in that he will be bound to foot the bill by the determination of the petition as Denning MR said in GURTNER VRS CIRCUIT [1968]2 WLR 668 at 679.

It is for these reasons that I am also inclined to grant the application.

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

DOTSE JSC:

I have read the lead opinion delivered by my esteemed Sister Vida Akoto-Bamfo, JSC and the other concurring opinion by my respected brother Atuguba JSC which I will describe as *"the Benediction is longer than the mass" and the* lead minority opinion delivered by my very well respected brother Baffoe-Bonnie JSC. For the reasons espoused in this

brief concurring opinion, I am unable to go along with the well thoughtout views stated in the lead minority judgment.
Even though I share the same opinion with the majority opinions, that the Application for joinder be granted, I agree more with the reasoning espoused by my Sister Vida Akoto-Bamfo JSC and will go along with her.
Applications for joinder ordinarily should not have aroused such strong legal objections as well as emotions and sentiments during the hearing of the application but for the competing interests in this election petition, it was however not unexpected.
A perusal of the relevant constitutional, statutory and subsidiary provisions/regulations i.e. article 63 of the Constitution 1992, Section 1 of the Presidential Elections Law, PNDCL 285, and regulation 68 (3) of the Supreme Court (Amendment) Rules 2012 C. I. 74 all give very clear indications that the citizen as a person is the fulcrum and the philosophical underpinnings to those constitutional and statutory provisions.
Taking those provisions in a literal and restricted meaning would invariably lead one to conclude that the Applicants a registered Political Party in Ghana whose Presidential candidate's results are being challenged should not be allowed to join.
However, since it is now the intention of courts everywhere in the democratic world to do substantial justice, it is my view that a lot of injustice will be done the Applicants and the development of the Law in this country if the Applicants are denied the chance to be joined to this Presidential Election Petition which I dare say affects them as a political party.
It is for the above reasons that I agree with the majority that the application for joinder by the N.D.C be granted.
As regards the fear and concerns of the Respondents to this application that the joinder will cause delay, I am of the view that apart, from the time that the Applicants will be given to file their answer, this court will have to put in place appropriate case management principles to minimize and or eradicate delay tactics from whatever source.
Save for the above comments, I agree that the joinder of the Applicants, the NDC be granted.

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

GBADEGBE, JSC

I have had the opportunity of reading the opinions just delivered by my worthy colleagues Akoto-Bamfo and Atuguba JJ.S.C. and I hereby express my acquiescence with the reasons and conclusions therein contained.

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

BAFFOE-BONNIE,JSC.

The facts in this application are fairly simple. Following the 7th December 2012 Presidential Elections, the first respondent His Excellency John Dramani Mahama, was declared validly elected by the 2nd respondent, the Electoral Commission, as President of the Republic of Ghana. He has been gazetted and subsequently sworn in. Feeling aggrieved the 1st petitioner, Nana Addo Dankwah Akuffo Addo who stood on the ticket of the New Patriotic Party as presidential candidate, his running mate and one other person filed a 33 paragraph petition challenging the declaration of the 1st Respondent by the 2nd respondent as the validly elected president. The reliefs that the petitioners seek are;

1. A declaration that John Dramani Mahama was not validly elected as president of the republic

2. A declaration that Nana Addo Dankwah Akuffo Addo, the 1st petitioner, rather was validly elected president of the Republic of Ghana.

3. Consequential orders as to this court may seem meet.

Both 1st and 2nd respondents have filed their responses to the petition. In this application before us, the applicant, National Democratic Congress (hereafter NDC), is seeking leave of the court to be joined to the action as respondents. Paragraphs 6 and 7 of their affidavit in support sworn to by Johnson Asiedu Nketiah, General Secretary of the NDC, gave their reasons for seeking to join their petition as follows:

'6. That the NDC, as the party on whose ticket 1st respondent contested the election has a direct interest and stake in the matter and would be affected by any decision of the honourable court.

7. That I have been advised by counsel and verily believed same to be true that, as a party which would be directly affected by the decision, the NDC is entitled to be joined as a party and to be heard in respect of the petition and seeks to be joined by the motion herein.

The applicant has since filed a 17-paragraph supplementary affidavit some averments of which will be referred to in the course of the ruling.. The petitioners have filed an affidavit in opposition.

In his submission before the court, Mr Tsikata draws the court's attention to the relationship that exists between the applicant herein and the 1st respondent. He refers to Article 55 of the 1992 constitution and The political Parties Act 2000 (ACT 574) to emphasize the role played by the applicant in the nomination and election of the 1st respondent. Colors and emblems or symbol identifying the 1st respondent on the ballot papers were those of the applicant NDC. Infact the respondent was sponsored by the NDC. The applicant NDCs fortunes are tied to that of the 1st respondent and therefore are interested persons entitled to be joined to the action. Counsel referred to a number of decided cases on joinder *and* concluded that the principles enunciated therein support the applicants' submission that they are necessary parties and ought to be joined to the action to defend their interest.

Tony Lithur for the 1st respondent associated himself with the submission of Mr Tsatsu Tsikata. In his brief but important intervention he said, the fundamental basis of the 1992 Constitution is pluralism which finds expression in multi partyism. The constitution therefore recognises people of diverse backgrounds coming together to form political parties to compete and contest elections. See Article 55 of the constitution. He refers to Justice Kpegah's observation in Ekwam V Pianim (No 1) to the effect that the main object of political parties is to come together as a party to contest for political power. The NDC can therefore not be excluded.

The application has been vehemently opposed by the petitioner both in his affidavit in opposition and his counsel's submission before the court.

I have had the benefit of reviewing the oral submissions of all counsel in this case and also to look at the cases cited to us. I have also had the benefit of reading before hand the opinion of my learned brother and president of the court, Atuguba JSC.

But I must say that I am still not convinced that the applicants are necessary parties that ought to be joined to the action as respondents. For reasons which I will give presently, I find the application for joinder unmeritorious and proceed to dismiss same.

The principles covering joinder of parties have been laid down in several cases. For the purpose of this ruling let me cite just a few;

In Apenteng v Bank of West Africa Ltd Ollenu J said;

> "To arrive at the correct answer…., where the application is by the defendant and not the plaintiff, the court must first of all, look at the plaintiff's writ of summons, his pleadings and the reliefs. **If the plaintiff makes no claim either directly or inferentially against the party sought to be joined or if the claim could succeed without the party sought to be joined being made a party, the application must be refused."(e.a)**

In Sam v Attorney General

"Generally speaking, the court will make all such changes in respect of parties as may be necessary to enable an effectual adjudication to be made concerning all matters in dispute. In other words**, the court may add all persons whose presence before the court is necessary in order to enable it effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter before it.** The purpose of the joinder therefore is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend upon **the issue before the court, i.e. the nature of the claim.(e.a)**

Aegis Shipping co ltd. V. Volta Lines ltd 1glr [1973] 483

"No matter the kind of construction which was put on Order 16, r. 11, whether wider or narrower, the court had absolute discretion in any given case to determine whether **having regard to the state of the pleadings and the issues raised,** the intervener was a person who ought to have been joined or he was a person whose presence would enable the court, effectually and completely to decide the issued between the partied in the cause or matter. Even when it was shown that the intervener was a necessary party within the rule, the court could **still refuse to join him if the action as then constituted could be well and properly contested by the parties."(E.a)**

In Montero v Redco Ltd [1984-86] 1/GLR 710 at pg 717, Abban J.A (as then was) said,

"order 16 r 11 gives the judge discretion in any given case to join any person whose presence before the court is necessary in order to enable the court to dispose of effectually and completely, all matters in controversy in the cause or matter (see Aegis Shipping Co Ltd v Volta lines Ltd (1973)1 GLR 438.

The common thread that runs through all these cited authorities are

- Nature of relief or claim as it affects the person sought to be joined.
- Avoidance of multiplicity of suits
- Is the person sought to be joined, or seeking to join, a necessary party i.e. one whose presence will lead to an effectual and complete adjudication of the matter in controversy before the court. Or one whose exclusion will see aspects of the cause or matter unadjudicated upon.

It has been urged on this court by the applicant that they are an interested party, having sponsored the 1st respondent and supported him with resources and personnel. Their interest in the action is captured in paragraphs 14-16 of the supplementary affidavit in support as follows;

14. That having on 9th December 2012 been declared the winner of the 2012 Presidential elections, 1st Respondent has on 7th January 2013, been sworn in as President of the Republic of Ghana and is exercising the functions of the said office.

15. *That 1st Respondent in consultation with Applicant on whose platform 1st Respondent contested and won the election is in the process of forming a government and Applicant is hereby seeking to protect its interest as the party in government.*

16. *That it is indisputable that, as the party which selected 1st Respondent to stand on its platform and on whose platform 1st Respondent did stand, the Applicant herein has a vital interest in this petition and deserves to be joined as Respondent and be heard in this Petition.*

The averments in the paragraphs just referred to in my view, only go show that the applicants are interested parties and no more. There is nothing there that shows that **they are necessary parties to the resolution of the matters in controversy.** Mere interest without more does not qualify one to be joined to an action as a party. What is it that they bring to the table that the 1st respondent does not bring? What interest do they have that cannot be taken care of by 1st respondent, who I dare say has a higher stake in the outcome of the action than the applicant seeing that it is his election which is being challenged? From the state of the pleadings what relief is being sought by the petitioner either directly or inferentially, against the applicant who is seeking to join? None! Absolutely no relief whatsoever. And the principle has always been that the court cannot compel a plaintiff to proceed against a party he has no desire to sue!

Mr Tsikata refers to the Constitution and the Political Parties Act, 2000 (Act 574) and makes so much capital about the importance of political parties in the whole electioneering process. He said the cornerstone of our constitution is pluralism and multi-partyism. So the interest of a presidential candidate of a party cannot be divorced from that of the political party on whose ticket he stands and that provided him with the platform to enable him win political power. He needs the support and presence of the political party to fight any challenge to his elections.

I have looked at the Political Parties Law, The Constitution and other statutes cited to us and I still do not see how any of those statutes make the applicants **necessary parties.** Infact after a careful reading of the provisions of the constitution and CI 74 I am more than convinced that the opposite is the intendment of the draftsman and that a challenge to presidential elections is expected to be a straight fight between human persons and not political parties or institutions.
Despite all the pluralism and multipartyism, Article 64 of the constitution and CI 74 make it clear that a political party cannot petition to challenge election results. The challenge has to be done by a citizen and for that matter, a human person. So a losing candidate who stands on the ticket of a party cannot call on the might or presence of his political party even though his political party has interest in the challenge. But if he found himself on the other side as the person whose election is being challenged, then because of pluralism and multipartysm, the party that sponsored him should be allowed to join the action because they have a stake in the outcome of the action. Surely this will be discriminatory and

a Constitution like ours, with its numerous provisions on equality and abhorrence for any form of discrimination, cannot be seen to be condoning such obvious discrimination! Does the applicant, being the party of the winning candidate, have any stake different from the political party of the losing candidate? I don't think so.

To me the applicant has only demonstrated that they have interest in the outcome of the petition but they have fallen short of convincing me that they are necessary parties without whose presence there cannot be an effectual and complete determination of matters in dispute.

Another ground for the rejection of this application is statutory.
Article 64(1) of the 1992 Constitution reads;

> ' 64(1) The validity of the election of the president may be challenged only by a citizen of Ghana."

Rule 68 of the Supreme Court (Amendment Rules, 2012) C.I. 74 reads;

> 68(1) A proceeding pursuant to clause (1) of article 64 of the Constitution shall be commenced by presenting to the Registrar a petition in the form 30 set out in part V of the schedule.
>
> 68(3) The petition shall state
>
> (a) The full name and particulars of the citizenship and how the citizenship was acquired.

These provisions make it clear that a political party or an institution cannot challenge the declaration of results as a petitioner. A petition challenging the validity of presidential results can be filed only by a human person.

By the rules of procedure a person can be joined to an action on his own application, a party, or even the court. Further, in the nature of things, when a person joins an action or is joined to an action as a defendant or respondent, he acquires all the rights and responsibilities as the original defendant. One of such rights is his right to counterclaim or cross-petition as the case may be. So if we were to go by the submissions of counsel we will find ourselves in a situation where the court can join an institution or a non citizen to a petition challenging the election of the president, but, unlike the original respondent, the law denies him the right to cross petition or counterclaim. This will be discriminatory and the Constitution frowns on it. Surely if you don't have the capacity to sue, you must lack the capacity to be sued!

In the interpretation clause attached to the C.I. 74, this is what is said of a respondent:

> 'Respondent includes the person whose election is challenged and the electoral commission where the petitioner complains of the conduct of the electoral commission."

Mr Tsikata has submitted that the word includes is not of exclusive effect. Therefore the word cannot operate to exclude the applicant NDC.

Ingenious as this argument sounds I do not think it answers the question. It is true that 'includes' when used in a legislation means any list that follows thereafter is not exhaustive. But the list definitely gives one an idea as to what can and ought to be included or excluded' For example, in C.I 74 respondent has been interpreted here to Include;

1. the person whose election is being challenged and
2. the Electoral Commission where the petitioner complains of the conduct of the electoral commission.

Even though the list is not exhaustive, it gives an indication as to who can or ought to be made a respondent. The first on the list is the person whose election is being challenged. Such a person has a stake in the petition and a claim will be made against him. The second is the electoral commission. But, here the caveat is that the EC will only be made a respondent when a specific complaint is made against their conduct. That, even the electoral commission cannot be respondents unless a specific complaint is made against its conduct, gives you an idea the restrictive nature of the persons who can sue or be sued in an election petition.

The common thread that runs through the two on the list is the reliefs of the petitioner and how it affects the respondents. They both have claims against them by the petitioner. This is where the word includes operates to exclude the applicant against whom no claim has been made by the petitioners.

In constitutional jurisprudence it is better to look at a document in its entirety. When one looks at the whole of chapter 8, the President of the Republic is set apart from everybody else.

Nowhere in the whole of chapter eight, from his election, through the appointments he can make, to his removal, is a political party mentioned. So whether the President decides to appoint team A or B or C or a blend of same, an all inclusive government or a government

skewed in a particular direction, the constitution says the buck stops with the President. Indeed, unlike a member of parliament who has to resign from parliament when he resigns from the political party on whose ticket it got to parliament, there is no such provision on the President who I dare say can resign from the party that he belongs to and still maintain his position as President. Such is the status of the Executive President. And it is to insulate him from the dictates and control of overbearing political parties that the elaborate provisions of Chapter 8 were made. A challenge to the election of the president is a challenge to the executive power of the nation and must be divorced from parties, be they sponsors or opposing!

Finally, before I land I will like to pose this question; Seeing that no claim has been made by the petitioners either directly or inferentially against the applicant, what are they going to respond to if and when they are joined to the action?

For all the foregoing reasons I find the application unmeritorious and same is dismissed.

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

ANIN YEBOAH,JSC

I agree with the opinion of my brother Baffoe-Bonnie, JSC. I however wish to add few words and address the issue of joinder. As I am dissenting from my respected colleagues, I have decided to give reasons in support of my dissent.

To appreciate the reasons for taking a dissenting opinion and for a fuller record, I have decided to give the facts of this interlocutory application.

The petitioners filed this petition seeking to challenge the Presidential election results declared on 09/01/2012. The petitioners are the Presidential Candidates of the New Patriotic Party, the Vice-Presidential Candidate and the National Chairman of the same party. The first respondent is now the incumbent President of Ghana who was at the time material to this petition was also the President-elect of Ghana. The second respondent is the Electoral Commission, an institution which under Article 45 of the 1992 Constitution is the sole body for conducting both presidential and Parliamentary Elections in Ghana. The basis for the petition in a nutshell is that the election which was conducted by the second respondent declaring the first respondent as the winner was fraught with gross electoral irregularities. Indeed, the petitioners have

catalogued several allegations of electoral irregularities against the second respondent to this petition. Upon service of the petition both respondents entered appearance and proceeded to lodge their respective answers to the petition denying all the allegations of the electoral irregularities leveled against the second respondent who conducted the elections.

On or about the 31/12/2012, before the first respondent could lodge his answer to the petition, the National Democratic Congress, a registered political party which presented the first respondent to the petition as its presidential candidate filed this application praying this court for joinder. The petitioners filed an affidavit in answer to the motion for joinder stoutly opposing the application as without any merits whatsoever. Subsequently the applicant filed another affidavit describing it as supplementary affidavit to bolster the application for the joinder.

When the application was moved on 16/01/2013, Mr. Tsatsu Tsikata who led for the applicant in an attempt to persuade us to grant the application referred this court to virtually all the local authorities on joinder. Indeed, he went to town! Relying on the affidavit of Mr. Johnson Asiedu Nketsia, the General Secretary of the National

Democratic Congress, the applicant herein, he forcefully contended that since the applicant stands to be directly affected by the outcome of this petition and for that matter an interested party whose presence would enable this court to effectually and completely adjudicate all the issues in controversy the court must grant the application. I have perused the depositions in the affidavit in support of the motion and I do not think that any of the factual depositions was denied by the first petitioner who swore to an affidavit in answer to it on 04/01/2013. It is not in dispute at all that the first respondent to the petition stood on the ticket of the applicant as its presidential candidate and that the party machinery provided the necessary support for his campaign. It is very probable that any evidence that would be led in support of his case would come from the applicant as a party. No wonder the proposed 4,800 witnesses.

Of all the leading case cited, MONTERO V REDCO LTD [1984-86] 1 GLR 710 CA which was decided under the Order 16 rule II of the High Court Civil Procedure Rules, LN 140A of 1954, appeared to one to be the case in which the principles of joinder at a trial court was fully discussed. Before the Montero case (Supra), Justice Abban who delivered the opinion of the court had earlier in AEGIS SHIPPING CO. LTD V VOLTA

LINES [1973] 1GLR 438 expressed his opinion that the principles governing joinder appear not to be free from doubt.

It appears that some jurists advocate for the wider construction of the rules whereas others opt for the narrow construction. Locally, cases like COLEMAN V SHANG [1959] GLR 390, USSHER V DARKO [1977] 1 GLR 476 CA and EKWAM V PIANIN [№1] 1996-97] SCGLR 117 advocate for the wider construction of the rule. Some of the leading cases like BONSU & ORS V. BONSU [1971] 2 GLR 242 and APPENTENG V BANK OF WEST AFRICA [1961] GLR 81 applying AMON V RAPHAEL TUCK & SONS LTD [1956] 1 ALL ER 273 opt for the narrow construction of the rule.

Both the wider construction and the narrow construction of the rules of joinder are concerned with appear to aim at joining all persons whose presence would be necessary. This is acknowledged by the renowned authors in BULLEN & LEAKE & JACOBS: PRECEEDENTS OF PLEADING, 18TH edition at page 159 as follows;

> "The overriding principle governing parties to an action may be stated to be that all necessary and proper parties but no others

should be before the court so as to ensure that all matters in dispute in the proceedings may be effectively and completely determined and adjudicated upon"

It is trite learning that joinder application could be brought by either party to the action or the court on its own motion. Thirdly we have joinder applications from a person who comes by way of intervener and not at the behest of either the parties or the court on its own motion.

This is joinder of intervener. With due respect, at the hearing of this application this issue of intervener was not addressed. In this application, the National Democratic Congress is clearly seeking the joinder in the pending proceedings not at the behest of the existing parties or from the court proprio motu.

The test for joinder whether it is the narrow or wider construction appears to be different when it involves an intervener. In CIVIL PROCEDURE, A Practical Approach by S.K. Tetteh at page 151, the learned author whose invaluable contribution in Civil Procedure in Ghana is well known pointed it out as follows:

"The common test for joinder of a necessary party is the interest of justice and for the intervener the test is whether the joinder would ensure that all matters in dispute in the proceedings would be effectually and completely determined and adjudicated upon" [Emphasis mine]

In SAM V ATTORNEY-GENERAL Nº 1 [2000] SCGLR 102 this court was faced with the issue of joinder of an intervener and Ampiah JSC at page 104 said:

"The purpose of the joinder, therefore is to enable all matters in controversy to be completely and effectually determined once and for all. But this would depend upon the issue before the court, i.e. the nature of the claim" [Emphasis mine]

The more recent case on the subject is SAI v TSURU III [2010] SCGLR 782, in which my illustrious brother Dotse, JSC said at page 807 as follows:

"From a reading of the plaintiff's reliefs, it is difficult to appreciate how the co-defendant's addition to the suit would help in resolving the question of who has a better title to Obgojo lands. It is clear

that their presence would in no way facilitate the effectual determination of the matters in issue… [Emphasis mine]

In the Nigerian case of OYEDEJI AKANBI (MOGAJI) & OR V OKUNLOLA ISHOLA BABUNMI & OR [1986] 2 SC 471 the test for joining an intervener, as the applicant, herein (the National Democratic Congress) is seeking to do in this petition was laid down as follows:

1. That the intervener ought to have been joined in the first instance as a party
2. The joinder of the intervener as a party is necessary to enable the court effectually and completely adjudicate upon and settle all the questions involved in the cause or matter. Where all the facts necessary for the effectual and complete determination of the claim between the parties are before the court, non-joinder of the intervener will not affect the decision.

Also (3) an intervener must satisfy the court that his presence is necessary for the effectual adjudication of the matter; (4) that the plaintiff must have a claim against him and desire to pursue it and that his interest must be identical with that of the existing defendants." [Emphasis mine]

I am of the opinion that the applicant failed to satisfy the court on all the requirements above.

My respected colleagues in the majority are of the view that since the applicant is a necessary party the application ought to be granted. With due respect no attempt was made to define "necessary party". I have taken the trouble to go through the rules and the case law. The only case which defined "necessary party" is IGE v FARINDE (1994) 7-8 SCNJ (Pt.2) 284.

A necessary party to a suit is a party whose presence is essential for the effectual and complete determination of the claim before the court. It is the party in the absence of whom the claim cannot be effectually and completely determined. [Emphasis mine]

In this application under consideration, the applicant has not demonstrated that without its presence this court cannot effectually and completely determine the petition. Where in the affidavit was it deposed to that without its presence the court cannot effectually and completely determine the petition? If I may respectfully ask.

In my opinion both respondents by implication felt very comfortable with the parties as constituted. The petitioners also did not file any application to join the applicant under the same rule. The Rule 45(4) of CI 16 which regulates joinder application provides thus:

> "(4). The court may, at anytime on its own motion or on the application of a party, order that any other person shall be made a party to the action in addition to or in substitution for any other party". [Emphasis mine]

Looking at the rule itself, it does not provide any joinder of an intervener. This is absolutely clear, and one cannot multiply words to say that joinder under the rule could also be allowed by all intervener as in this place. If this court is invoking basic common law rules regulating joinder and allowing the applicant to join this petition, I will have no problem. My problem is that the rule does not provide for joinder by an intervener. All the leading cases cited by the president of the court appears to be joinder on the court's own motion or at the instance of a party in the proceedings. For example in the EKWAM V PIANIM (NO. 1) [1996-97] SCGLR 117 the order for joinder was rightly ordered by Kpegah, JSC and not at the behest of any of the parties.

An applicant like the National Democratic Congress seeking to join this petition as an intervener on the grounds that it has interest in the case is clearly not supported by case law as the application is seeking an intervention as a co-respondent.

I am on the considered opinion that in joinder applications, the test for ordinary joinder by the court suo motu and by the parties are different when the applicant come as an intervener. Indeed case law on the subject cited above illustrates this point.

In discussing the issue of joinder of intervener, FEDELIS NWADIALO in his invaluable book: CIVIL PROCEFURE in NIGERIA second edition at pate 168 said:

> "As already noted, the court will not compel a plaintiff to proceed against a party he has no desire to sue"

In support of this statement cases like DOLITUS MIEGETE COMPAGNIE S.A V BANK OF ENGLAND [1950] 2 ALL ER 605 and NORRIS v BEAZLEY [1877] 2 CPD 80 are cited as authorities in support.

In my respectful view, despite the interesting advocacy exhibited by counsel for the applicant, the presence of the applicant in this petition is unnecessary as the petition could be effectually and completely determined by the existing parties as constituted.

I will proceed to dismiss the application.

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT.

ANSAH JSC.

I have had the privilege of reading before hand the majority judgments of Akoto-Bamfo, and Atuguba, JJSC just read and the dissenting judgment of Baffoe-Bonnie JSC, concurred in by Yeboah JJSC and I agree with given for the conclusion that the application for joinder to the suit be dismissed.

I also think the action could be well and properly contested by the parties before us without the presence of the applicant.

J. ANSAH
JUSTICE OF THE SUPREME COURT.

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