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.

PRESIDENTIAL ELECTION PETITION
WRIT

No. J1/6/ 2013

5TH FEBRUARY, 2013

1. NANA ADDO DANKWA AKUFO-ADDO

2. DR. MAHAMUDU BAWUMIA

3. JAKE OBETSEBI-LAMPTEY --- PETITIONERS

VRS

1. JOHN DRAMANI MAHAMA --- RESPONDENTS

2. THE ELECTORAL COMMISSION

3. NATIONAL DEMOCRATIC CONGRESS

1. **MOTION ON NOTICE FOR AN ORDER FOR FURTHER AND BETTER PARTICULARS OF THE PETITION (RULE 69A (4) OF C.I. 74)**

2. **APPLICATION FOR ORDER TO SERVE 2ND RESPONDENT WITH INTERROGATORIES**

R U L I N G

GBADEGBE,JSC; Read the ruling of the court as follows:

We have before us in these proceedings three consolidated applications relating to pre-trial discovery in the matter herein. While two such applications are for further and better particulars directed at the petitioners by the 1st and 2nd respondent, the petitioners also seek against the 2nd respondent an order for interrogatories. By rule 68 (3) (d) of CI 16, the Supreme Court Rules as amended by CI 74, a petition is required to include facts on which the petitioner relies on and in our thinking the facts to be contained in the petition have the same objective as those contained in a statement of claim and consequently it is right that discoveries be available in relation to them.It repays for this purpose to quote rule 68(3) (d) that is expressed as follows:

"The *petition shall state the facts relied on, to be verified by affidavit and the law in support of the petition"*

As the applications with which we are concerned in this ruling deal with requests for further and better particulars and interrogatories that are terms commonly associated with pleadings in the common law jurisdiction, it is in our thinking beneficial that we draw upon practice books for guidance. It does appear to us that the framers of the rules of this Court envisaged a gap in the rules regulating the practice and procedure in the Supreme Court by making a provision to that effect in rule 5 of C I 16. In this regard, we think that the

current rules of procedure of the High Court in our jurisdiction particularly Order 11 rule 12 and Order 22 of the High Court (Civil Procedure) Rules, CI 47 are beneficial to us by way of guidance as to the appropriate practice to prescribe in the course of our original jurisdiction. It is to be observed, however, that where the rules of this Court prescribe a different procedure then it supersedes the applicable rules of the High Court. One such rule is Rule 69A of CI 16 as amended by CI 74.That rule, unlike the procedure available in the High Court does not make an application for particulars to be preceded by a request to the other party. It provides thus:

"The Respondent may apply to the Court for further and better particulars of the petition on filing the answer"

As the law maker is presumed to know the current state of the law at the time of making CI 74, it is clear that the provisions of Order 11 rule 12(6) of the High Court (Civil Procedure) Rules, CI 47 that makes an application for particulars to be subsequent to a request to the other side is not intended to apply in the cases where the request is made in proceedings before us. Accordingly, in considering the applications before us, reference would only be made to practice books or the existing practice in the High Court in situations not expressly provided for by CI 16.

In Aitkin's Court Forms, 2nd Edition, and Volume 32(1985 Edition), it is provided at paragraph 58 at page 50 as follows:

"The *function of particulars is to carry into operation the overriding principle that the litigation between the parties and particularly at the trial should be conducted fairly, openly, and without surprises, and incidentally to reduce costs, but the more usual purpose of particulars is to make the opponent define precisely, and narrow, the issues and allegations in his pleadings on which he intends to rely at the trial*."

Reference is also made to the learned authors of Halsbury's Laws of England, Volume 36(Fourth Edition) on Pleadings. Paragraph 38 at page 28 providesto a similar effect thus:

"*The function of particulars is to carry into operation the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly and without surprises, and incidentally to reduce costs. This function has been vigorously stated, namely either to limit generality of*

the allegations in the pleadings or to define the issues which are to be tried and for which discovery is required. Each party is entitled to know the case that is intended to be made against him at the trial, and to have such particulars of his opponent's case as will prevent him frombeing taken by surprise. Particulars enable the other party to decide what evidence he ought to be prepared with and to prepare for the trial."

In regard to interrogatories, the learned authors of Atkin's Court Forms writing in Volume 22 (2nd Edition, 1980 issue) state as follows at page 451 on the heading "Power to order interrogatories."

"*A party to any cause or matter may apply to the court for an order giving him leave to serve on any other party interrogatories relating to any matter in question between the applicant and that other party in the cause or matter and requiring the other party to answer the interrogatories on affidavit within such period as may be specified in the order."*

Although at the next page the learned authors say that interrogatories are not ordered in election petitions and cited the English case of Wells v Wren (1880)5CPD 546 in support of the said contention, a careful reading of the case reveals that the limitation on the powers of the Court is derived from the applicable statutory provisions regulating the conduct of election petitions in England and as such the restriction is inapplicable to courts in our jurisdiction. There being no statutory fetter, so to say, on the power of the court in appropriate instances to order either further and better particulars or interrogatories, we proceed to consider the applications before us.

At the hearing of the applications, the court came to the viewthat they raised for our consideration common questions of fact and or law and as such had the applications consolidated and heard at the same time. The common question of fact and or law is whether the parties have provided sufficient particulars of the claims and answers thereto such as to enable the other side to well and properly know the case to meet. In so directing we were not without authority and it appears to us that that course of procedure would also facilitate an expeditious disposal of the matter herein.

To be the subject-matter of an order for further and better particulars and or interrogatories, the information required must be relevant to the issues to be

decided in the action. It need not be conclusive and is sufficient when it has a bearing on the issues to be tried between the parties. A request under either head should not be in respect of a speculative matter or a matter of conclusion that comes not within the scope of facts. Where the party sought to be interrogated has made a clear denial of a fact, a request in that behalf would be refused as it is made in bad faith. See: Abubakar v Yar' Adua [2008] 4 NWLR 465.The Yar 'Adua case just cited that arose out of a presidential election dispute has a great deal of discussion on particulars and interrogatories that are relevant to the issues confronting us in these applications. We observe that the said action like that before us was commenced by petition. A request for particulars would not be granted as a matter of course but according to well settled principles. In the case of Wanyinara v Bassan[1972] 2 GLR 277, the High court upon an application for further and better particulars being sought against a defendant who pleaded a purchase without any particulars as to the date or the purchase price of the property was ordered to state the date of purchase, mode of acquisition and the purchase price. In his ruling at page 280, the learned judge, Edusei J (as he then was) observed:

"It is correct that the defendant had stated that he bought the house from Ekra Kobina but the mode of purchase has not been stated, ie whether it was by a deed of conveyance or by customary law. The date of the sale is not known and the purchase price has not been stated. In my judgment these facts are necessary so that the opposite party can come to court well knowing the case he has to meet and he also will be prepared to answer the defendant's case."

There is, however, one matter that we wish to turn our attention to before pronouncing on the merits of the applications before us. It relates to the attitude of counsel regarding the substance of the applications for particulars and interrogatories, which were vehemently resisted by those to whom they were directed. While this is unexpected having regard to the stakes involved in this presidential election dispute, we are of the opinion that perhaps there was merit in some of the requests and that learned counsel in the discharge of their role as officers of the court should in the future take advantage of the entrenched culture of concessions at the bar, a practice that admirably marks us off fromother professionals, in order to move the action herein more

expeditiously towards its early disposal. We think that this is an obligation that we all owe to the good people of this country.

Regarding the applications for further and better particulars that are directed at the petitioners, the respondents to the application thought that the applications required them to provide evidence on matters that are contained in their petition. It is true that the court in an application for further and better particulars would not compel a party to provide answers in the nature of evidence but after giving careful and anxious consideration to the applications in terms of the requests, we think that the information sought is for the purpose of enabling the applicants to well prepare for the case that has been raised by the petitioners against them. For example, the petitioners have raised issues of irregularities against the 2nd respondent. Also raised are issues of over voting, padding. These matters are contained in the petition and we think that it is fair that the makers of those allegations are ordered to provide particulars in order that those who have to answer the charges can have some certainty about the polling stations to which they relate. On the whole,we think that although some of the requests for particulars are unusual, most of them pass the test that we have earlier on referred to in the course of this delivery. Applying the said standard to the applications for further and better particulars, we allow the following requests in the application of the 2nd respondent:

(A)Request numbered as Paragraph (a) Ground 1 in paragraph 20 of the Petition;

(B)Paragraphs (c) (d) and (e) of Ground 1 in paragraph 20 of the Petition;

(C) Paragraph (f) of Ground 1 in paragraph 20 of the Petition;

(D) Ground 2 in paragraph 20 of the Petition.

The request numbered as (5) and relating to paragraph 24 of the petition having been answered by the petitioners in their answer to the application for particulars is hereby refused as is that numbered as paragraph (6) which relates to paragraph 26 of the petition on the grounds that within the context

of the paragraph, the matters in respect of which the particulars are sought are expressions of comment and or conclusion.

We now turn to the request for particulars from the 1st respondent. Applying the same test outlined above, we grant the following requests:

Paragraphs 2(a);2(b);3(a);3(b); 4(a);4(b);5(a)and(b); 6(a) and (b);7(a) (b); 8 (a) (b); 9; 10; 11(a) (b); (e) (f)(g)(h) (i).

Earlier on in the course of this delivery reference was made to the affidavit of the petitioners in answer to the application of the 2ndrespondent regarding paragraph 24 of the petition as deposed to in paragraph 11 of their affidavit concerning the allegation of padding.We are of the opinion that this satisfies paragraph 8h-k of the request contained in the application filed by the 1st respondent. Having provided an answer to the requests, we say nothing further about whether it is a partial answer or otherwise as there are clear consequences that flow from the answer that are of no moment now beyond making a reference to Philipps (1878) v Philipps v Philipps (1878) 4 QBD 127 at 133 per Bret LJ.

This leaves us with the application of the petitioners for interrogatories directed at the 2nd respondent. The application has been resisted on the ground that it has the effect of allowing the requesting party, the petitioners to fish for information. If the said contention is correct, then the application must fail. We have carefully considered the application and we are of the view that the request does not come within the designation of the word " fishing" as pronounced by Greer LJ in the case of Rofe v Kevorkian [1936] 2 All ER 1334 at 1337 wherein he observed as follows:

"It *is, however, in the nature of fishing interrogatory, trying to get, for the purpose of the defendant's case, evidence which he has not already got. On these grounds, having regard to what has frequently been decided; that because any question is a proper question to put in cross-examination it is not, therefore necessarily a proper question to put in interrogatories, we have decided that interrogatory 3 also ought to be disallowed as being a fishing*

interrogatory by a man who is trying to make a case and has not already the evidence which would justify him making the case."

In our opinion, the limitation on "fishing" is intended to prevent a party from seeking particulars for the purpose of ascertaining the evidence by which his opponent proposes to prove his case at the trial. See: Aga Khan V Times Publishing Co, Dawson v Times Publishing Co [1924] 1 KB 675.Where the request would if acceded to have the effect of shifting the evidential burden provided for in the rules of Evidence, it would be refused. See: Abubakar v Yar 'Adua (supra) .We have carefully examined the application relating to the request of the petitioners and are satisfied that they are within the scope of permissible interrogatories.

Applying the principles discernible from the said case, we allow all the interrogatories that are requested for by the petitioners in their application that are numbered 1, 2, 3, and 4. We think that the answer provided by the 2nd respondent in paragraph 6 of its answer to the petition lacks specificity relating to the number of registered voters in the categories to which the interrogatories relate. Quite frankly, the answer referred to needed further details to be provided in order to provide an answer to the question of the total number of registered voters on the electoral roll for the disputed election.

(SGD) N.S. GBADEGBE

JUSTICE OF THE SUPREME COURT.

(SGD) W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT.

(SGD) J . ANSAH

JUSTICE OF THE SUPREME COURT.

(SGD) S. O. A ADINYIRA (MRS)

JUSTICE OF THE SUPREME COURT.

(SGD) R. C. OWUSU (MS)

JUSTICE OF THE SUPREME COURT.

(SGD) J. V. M. DOTSE

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