IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA, GHANA

CORAM: J. ANSAH JSC (PRESIDING)

CIVIL MOTION
J8/84/2012

19TH SEPTEMBER, 2012

RANSFORD FRANCE ... PLAINTIFF/APPLICANT

VERSUS

1. ELECTORAL COMMISSION
2. ATTORNEY-GENERAL ... DEFENDANTS/RESPONDENTS

[APPLICATION FOR INJUNCTION]

R U L I N G

ANSAH JSC:

The plaintiff brought a motion for the following reliefs:
"(i). an order restraining the Parliament of Ghana from considering the Representation of the People Parliamentary Constituencies Instrument, C.I. 73 until the hearing and final determination of the instant action;
(ii). An order directed at the 1st defendant restraining the 1st defendant from using the Representation of the People Parliamentary Constituencies Instrument 2012 C.I.73, in its preparation for the conduct of the 2012 General Elections until the hearing and final determination of the instant action;

(iii). any further orders as to this Honorable Court may seem meet".

I must observe that when this motion came up for hearing in this court, counsel for the applicant moved for the amendment of all references to the said CI 73 wherever it had appeared in the processes filed on the record for it had been withdrawn and replaced by a new Constitutional Instrument of the same title but numbered C.I. 78; the substance in the two instruments remained the same.
There being no objection to the amendment, it was readily granted; whereupon the motion was heard, with both counsel relying on their affidavits, and statements of case filed in support of or in opposition of the application.

In their viva voce submissions both counsel referred to and relied on *Wellford Quarcoo v Attorney General and another (unreported), Writ No. JI/6/2012, SC, dated 13th June, 2012*, in which the Honorable Dr. S.K. Date-Bah JSC summarized the law on interlocutory injunctions at page 2 of the short but powerful ruling referred to above.
What the learned justice said in connection therewith is so apt and accurate that I think it is so worthy of quotation that I do not only quote chunks of it He said:

"It has always been my understanding that the requirements for the grant of interlocutory injunctions are; first, that the applicant must establish that there is a serious question to be tried; second, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favor of granting him or her the interlocutory injunction. The balance of convenience of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates as here, to **a public law matter** (emphasis mine) particular care must be taken not to halt action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the *status quo"*

This is a good summary of the law on the grant of interlocutory injunction in an area of public law and I adopt it as my own.
It is beyond controversy that the acts in question are those of the Parliament of Ghana and the Electoral Commission, established by Article 43 of the

1992 Commission, and also that these are public bodies. The public interest is an important factor to consider in this matter. I believe I state the principle correctly that a public authority should not be retrained by interlocutory injunctions from exercising its statutory discretionary powers unless the plaintiff shows that there is a real prospect that he will succeed in his claim for a permanent injunction at the trial.
In *Republic v High Court (Fast Track Division) Accra; Ex Parte Ghana Lotto Operators Association (National Lottery Authority, Interested Party) [2009] SCGLR, SC, 372*, Atuguba JSC said at page 400 that:
"It is not surprising therefore that it has been held by this court that when a body is entrusted with statutory discretion the courts should be careful not to clog its exercise with injunctions: see *Attorney-General v Commission on Human Rights and Administrative Justice [1999-2000] I GLR 358, SC*. This however does not mean that an interim injunction cannot lie against the improper use of statutory discretion: see *Amoah v West African Examination Council [1971] 1GLR 63; Attorney-General v Commission on Human Rights and Administrative Justice [1999-2000] 1 GLR 359*, holding 1 of the head-notes to the report"
With these remarks I proceed to deal with the issue of whether to grant or refuse the application. An interim injunction is discretionary where a legal right can be asserted either at law or equity; the courts jurisdiction would be exercised where it is right, just or convenient to do so.

The first order quoted above is an invitation by the plaintiff for this court to retrain Parliament from considering CI 78 put before it. Whilst I remind myself that I am not called upon to decide the substantive action in this application before me, it is appropriate that I consider the rightness of the order sought from me (as contained in the first order before me). Without intending to write a monologue on it, it is sufficient to state that it was decided in *Tuffour v Attorney-General [1980 GLR] 637* where the Court of Appeal sitting as the Supreme Court, after holding that the plaintiff's action was justiciable and the court had jurisdiction to hear it, posed the issue as to how far the courts can question what had been done under the constitution in Parliament and said that:
"(a) the courts can call in question a decision of Parliament; but the courts cannot seek to extend their writs into what happens in Parliament; and
(b) That the law and custom of Parliament is a distinct body of law and, as constitutional experts do put it "unknown to the courts," see page 650.

In so far as Parliament has acted by virtue of the powers conferred upon it by the provisions of article 91 (1), its actions within Parliament are a closed book". See page 651.
The conclusion I come to is that injunctions may not be used to interfere with the processes of Parliament, and as regards to its proceedings within its own walls Parliament is completely privileged from judicial intervention; *see Administrative Law by H.W.R. Wade & CF Forsyth at p 557 (Eighth Edition)*
My decision is that it is not competent for this court to grant the first order sought in this application and same is refused.

I now come to consider the second order sought as stated above.
It is trite that the Electoral Commission is the only body clothed with constitutional authority to create constituencies under article 47 of the constitution. Clauses (2), (3) and (4) thereof prescribed the modalities for creating the constituencies.
If in exercising this power to create constituencies, the plaintiff was of the view that the first defendant did not comply with certain requirements, he could mount an action in the court for remedy. Such an action, I must be candid to point out, has been taken in Suit No J8/84/2012, to invoke the original jurisdiction of this court for declarations, inter alia, that:
"iv. An order of perpetual injunction restraining the 1st defendant from laying before Parliament any Constitutional Instrument creating new constituencies and or revoking the Representation of the People (Parliamentary Constituencies) Instrument, 2004 (CI 46), until and unless the 1st Defendant has laid before Parliament which sets out clearly regulates and governs the manner in which the 1st defendant intends to exercise its discretionary powers in creating new constituencies including particularly the specification of the formula and mechanism to be used in the creation of new constituencies and that Constitutional Instrument has come into force.
v. An order of perpetual injunction retraining the 1st defendant from laying before Parliament any Constitutional Instrument creating new constituencies and or revoking the Representation of the People (Parliamentary Constituencies) Instrument, 2004 [CI 46] until the hearing and final determination of this matter."

If these reliefs are granted by the court, it will nullify the impugned acts by the first defendant and consequently no irreparable damage will be caused the plaintiff should he fail in the interim, that is between now and when the

substantive action is heard and determined, to restrain the defendants from doing what they are allowed by the law to do.
On the other hand, if the application by the plaintiff succeeds here and the defendants are restrained from doing what has been complained against them, but the plaintiff fails in the substantive action the injury caused the nation will be irreparable; the national electioneering program for the year will grind to an abrupt halt. The balance of convenience tills in favor of the defendants and therefore the application for interlocutory injunction ought to fail. The additional reason is that granting the application will cause more harm to the nation as a whole than the applicant.

I also put it on record that a copy of CI 78 was attached to the plaintiff's supplementary affidavit in support of motion for interlocutory injunction filed on 17/9/2012. The plaintiff submitted that the preamble to this CI, was stated that the CI was made "*in exercise of the powers conferred on the Electoral Commission by article 47 clauses (1) and (5) and article 51 of the Constitution, these Regulations are made this 4th day of September 2012."*
This flattened the submissions that the CI 78 was not passed validly. Whether or not CI 78 was validly passed may be determined in the substantive suit, but not here. After all the CI has only been laid before Parliament under going the necessary metamorphosis to become a full grown law.

Therefore after studying the motion paper, the respective affidavits in support of and in opposition to the application, statements of case of the parties as well as their viva submissions in court, I find myself unable to grant the application, for it is not just and convenient to do so.
My decision is to dismiss it and it is hereby dismissed.

Hearing of the substantive action has been fixed for 4th October 2012.

,

,

[SGD] J. ANSAH

JUSTICE OF THE SUPREME COURT

COUNSEL;

HON. NANA JOE GHARTEY WITH HIM SAMUEL ATTA-AKYEA, MRS. EFUA GHARTEY , OSEI-OWUSU AND GODFRED YEBOAH DAME FOR THE PLAINTIFF/APPLICANT.

JAMES QUASHIE-IDUN WITH HIM ANTHONY DABI FOR THE 1ST DEFENDANT/RESPONDENT.

HON. BENJAMIN KUMBOUR (ATTORNEY GENERAL) WITH HIM MRS. MBROKOH EWOAL (SSA) AND SYLVESTER WILLIAMS FOR THE 2ND DEFENDANT/RESPONDENT