IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA A.D. 2012

CORAM: ATUGUBA AG. CJ (PRESIDING)
AKUFFO (MS) J.S.C,
BROBBEY J.S.C.
ANSAH J.S.C,
ADINYIRA(MRS) J.S.C,
YEBOAH, J.S.C,
BONNIE, J.S.C,
GBADEGBE J.S.C
AKOTO-BAMFO (MRS.), J.S.C

WRIT
NO. J1/9/2011

23RD FEBRUARY 2012

1. RICHARD ODUM BORTIER } PLAINTIFFS

2. DANIEL QUAYE

VS.

1. THE ELECTORAL COMMISSION } DEFENDANTS OF GHANA
2. THE ATTORNEY GENERAL

J U D G M E N T.

SOPHIA A. B. AKUFFO (MS) J.S.C;

The Plaintiffs, by their Writ filed on 22nd July 2011, claimed the following reliefs: -

a. "A declaration that upon a true and proper interpretation of Article 47 clauses (3) (4) and (7) of the Constitution 1992, the boundaries of Constituencies, as demarcated by the Electoral Commission of Ghana shall be made so as to ensure that it is in accordance with the egalitarian principle of fair representation solidly embodied in the Constitution

b. "An order directed against the Electoral Commission of Ghana to review the boundaries of all constituencies as they exist now by altering them in order to conform with Article 47 (3) and (4) emphasising more on population distribution in accordance with the egalitarian principle of fair representation solidly embodied in the Constitution.

c. "A further order directed against the Electoral Commission of Ghana to review the 230 Constituencies as they stand now by altering them following the publication of the enumeration figures after the holding of the 2010 Population Census in accordance with the egalitarian principle of fair representation solidly embodied in the Constitution."

In support of these claims, the Plaintiffs in their Statement of Case made various assertions which may be summarised as follows: -

a. Despite the dictates of article 47, particularly clauses (1), (3) and (7), the Electoral Commission of Ghana (hereinafter variously

referred to as "EC or 1st Defendant".) has since the year 2000 made alterations to constituency boundaries that are in contravention of these said provisions.

b. The practice adopted by the EC, as evidenced by the manner in which constituency boundaries had been drawn in previous years, fails to take into account "the philosophy behind representation of the people in a democratic process which is to ensure that the inhabitants of a nation are adequately represented in Parliament", and the same practice, moreover, contravenes the letter and spirit of Chapter 7 of the Constitution, dealing with the representation of the people, as well as other laws and Constitutional Instruments made by Parliament and the EC.

c. The past practice/conduct of the EC, has been arbitrary and inconsistent with the letter and spirit of the Constitution; such practice include:

    i. the insistence by the EC that each district of Ghana must have a constituency.

    ii. the EC's insistence on giving a 9 point weight to population and a 1 point weight to land size.

d. Such practices have a tendency to result in under-representation in some constituencies or over-representation in others, thereby failing to assure equal/fair representation. As a consequence of these anomalies Ghana's Parliament "can be described as mal-apportioned and disproportional" with a "wide discrepancy between the share of legislative seats and the share of population held by constituencies".

e. Since the EC has intentions to review the number of constituencies by creating 20 more through the application of factors which are inconsistent with the proviso to Article 47 (3), it is necessary for the Court to interprete Article 47 in such a manner as will foster the democratic principles under-pinning Chapter 7 by placing greater emphasis on Article 47 (3) rather than 47 (4), which is the exception, and ordering the EC to proceed accordingly.

Article 47 of the Constitution reads as follows: -

(1) Ghana shall be divided into as many constituencies for the purpose of election of members of Parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one Member of Parliament.

(2) No constituency shall fall within more than one region.

(3) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(4) For the purposes of clause (3) of this article, the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of

Ghana, whichever is earlier, and may, as a result, alter the constituencies.

(6) Where the boundaries of a constituency established under this article are altered a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

(7) For the purposes of this article, "population quota" means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided under this article.

Both of the Defendants have filed their statements of case in response to that of the Plaintiffs, and whilst the Plaintiffs, 1st Defendant and 2nd Defendant each filed their separate memorandum of issues, thereby presenting the Court with a welter of issues to ponder over in this matter, it is quite clear to the Court that the crux of the matter is whether or not the original jurisdiction of the Court has been properly invoked in this instance.

To start off with, there is no question as to whether the Plaintiffs have the locus standi to bring this action for interpretation and enforcement of the provisions of Chapter 7 of the Constitution. As citizens of Ghana, which they aver, and which averment has not been seriously challenged by either Defendant, they may bring such an action, given the proper circumstances.

As to whether they have brought a proper cause of action that is another matter, however. Firstly, it is rather late in the day to mount any serious challenge based on the manner in which the EC has performed its functions in the past. Secondly, and more importantly, the crux of the Plaintiffs action relates to the manner in which the EC has demarcated or is intending to demarcate constituency boundaries. Aside from the fact that the EC is yet to perform such task, and it is,

at present, entitled to the presumption that it will perform its functions in due form, there remain the clear provisions of Article 48 of the Constitution. Since it is axiomatic that, in reading or construing a Constitution, the Court is required (as with all other legal instruments) to read the entire provisions with a view to assure that every provision is given effect and any internal conflict is duly resolved without doing damage to any provision thereof, it is quite inexplicable that the Plaintiffs chose to ignore totally the impact of the Article on their case, and did not attempt to address the same, even in their reply to the 1st Defendant's statement of case.

Now, Article 48 states as follow: -

1. "A person aggrieved by a decision of the Electoral Commission in respect of a **demarcation of a boundary**, may appeal to a tribunal consisting of three persons appointed by the Chief Justice, and the Electoral Commission shall give effect to the decision of the tribunal".

2. "A person aggrieved by a decision of the tribunal referred to in clause (1) of this article may appeal to the Court of Appeal whose decision in the matter shall be final".

The Plaintiff's cause of action herein is one in respect of which the Constitution has prescribed a specific course of action, which clearly does not include the Supreme Court. Even though the declarations sought appear, largely to be based on basic Constitutional principles, we have no doubt that, in this case, what the Plaintiff seeks to dispute is the manner in which the EC has demarcated, is demarcating and might demarcate boundaries in the exercise of its power under Article 47. Such a challenge cannot be mounted in this court through an invocation of our original jurisdiction. This matter is, therefore, not properly before the court and the case is hereby dismissed.

Fortunately, the Tribunal stipulated by Article 48 has, after so many years of delay, been finally constituted, as the Chief Justice in November 2011 inaugurated the same. Therefore, the Plaintiffs are advised to mount their challenge in that proper forum.

(SGD) S. A. B. AKUFFO (MS.)
JUSTICE OF THE SUPREME COURT

(SGD) W. A. ATUGUBA
ACTING CHIEF JUSTICE

(SGD) S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

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

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

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