IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: DATE-BAH, JSC (PRESIDING)
ANSAH, JSC
ADINYIRA(MRS.)
OWUSU (MS) JSC
DOTSE, JSC
YEBOAH, JSC
BONNIE, JSC
GBADEGBE, JSC
A BAMFO (MRS), JSC

WRIT NO J1/2/2010
8TH FEBRUARY, 2012

SUMAILA BIELBIEL

VRS.

1. ADAMU DARAMANI

2. THE ATTORNEY GENERAL

R U L I N G

DR. DATE-BAH JSC:

There are two kinds of burden of proof recognized by the common law and which are preserved in Ghanaian law by the Evidence Act 1975 (NRCD 323). In the common law, some cases and text writers have made the distinction between the "legal burden of proof" and the "evidential burden of proof". This distinction is mirrored in the Evidence Act 1975 by the distinction between "the burden of persuasion" and the "burden of producing evidence". The burden of persuasion

is defined in section 10(1) as: "the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the court." The burden of producing evidence is defined in section 11(1) as: "the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party".

The distinction between the two burdens of proof is important because the incidence of the burden of producing evidence can lead to a defendant acquiring the right to begin leading evidence in a trial, even though the burden of persuasion remains on the plaintiff. Ordinarily, the burden of persuasion lies on the same party as bears the burden of producing evidence. However, depending upon the pleadings or what facts are admitted, the evidential burden can move on to a defendant. The cumulation on the defendant of the evidential burden on the issues to be tried in a case can result in the right to open the case shifting to the defendant. For instance, where the burden of producing evidence on every issue in a case lies on the defendant, he or she will have the right to open the case, even if the burden of persuasion remains on the plaintiff.

On the facts of the present case, this Court indicated to counsel that it was inclined to invite the first defendant to begin the process of adduction of evidence, since it would appear that the burden of producing evidence on the issue of whether he had renounced British citizenship was on him, while, on the affidavit evidence, the fact that the first defendant had been issued with a British passport was admitted. The issue in contention is whether on the dates of the election in 2008 and his subsequent swearing into office as a Member of Parliament, the first defendant was still the holder of a British passport. The offerby this Court of the right to begin oral testimony to the first defendant was meant to be without prejudice to the burden of persuasion remaining on the plaintiff with regard to the facts necessary for the plaintiff to succeed in his suit. The Court, however, gave counsel for the parties and the plaintiff in person the opportunity to address it on this issue before a firm order would be made by the Court.

Counsel for the first defendant has strenuously resisted the offer to begin the adduction of evidence. In our view, it is not necessary to examine the minutiae of counsel's objection since what is being extended to the first defendant is a right or, as we referred to it in court earlier, a "privilege", and not an obligation; accordingly, if he is opposed to it, it should be withdrawn. The motivation behind the Court's offer to the first defendant to open his case first was one of efficient case management. However, if the first defendant is this strongly opposed to opening the oral hearing, he should not be compelled to. Whilst the first defendant is not obliged to open the oral hearing, his election not to open the case does not derogate from the incidence of the burden of producing evidence on any particular issue.It would not have been necessary to discuss this early the incidence of the burden of proof on the parties. Accordingly, with the withdrawal of the offer to the first defendant to begin, any discussion of the incidence of the burden of proof is not to be regarded as the final word on that issue. The conception of the responsibility to begin the adduction of evidence at a trial as a right or privilege and not as a burden is affirmed by the judgment of Lord Denman CJ in *Mercer v Whall* (1845) 114 ER 1318.

For the reasons stated above, we unanimously invite the plaintiff to open his case.

(SGD) DR. S. K. DATE-BAH
JUSTICE OF THE SUPREME COURT

(SGD) J. ANSAH
JUSTICE OF THE SUPREME COURT

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

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

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

(SGD) ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

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

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

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

COUNSEL:

PLAINTIFF APPEARS IN PERSON
YONI KULENDI WITH HIM EGBERT FAIBILLE JNR. AND DENIS ADJEI DWUMOH FOR THE 1ST DEFENDANT
SYLVESTER WILLIAMS (PRINCIPAL STATE ATTORNEY) FOR THE 2ND DEFENDANT.