IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: ATUGUBA, JSC. (PRESIDING)
BROBBEY, JSC.
ANSAH, JSC
ADINYIRA (MRS), JSC
DOTSE, JSC
YEBOAH, JSC
ARYEETEY, JSC
GBADEGBE, JSC
AKOTO-BAMFO (MRS), JSC

WRIT
NO. J1 / 2 / 2011
23RD JUNE, 2011

1. **STEPHEN NII BORTEY OKANE - - - PLAINTIFFS**
2. **SHERIFF BORTEI BORQUAYE**
3. **ANUM KATTAH**
4. **ERIC TAWIAH**
5. **EDWARD BORKETEY**
6. **ALFRED MENSAH TAWIAH**

VRS

1. **ELECTORAL COMMISSION OF GHANA - - - DEFENDANTS**
2. **HON. ATTORNEY-GENERAL**

JUDGMENT

BROBBEY JSC:

The plaintiff in this case issued a writ invoking the original jurisdiction of this court. The reliefs sought in the writ were as follows:

"a) A declaration that Local Government (Creation of New District Electoral Areas and Designation of Units) Instrument L.I 1983 which came into force on 24th November 2010 was made in contravention of the Constitution 1992.

b) An order declaring the said L.I. 1983 null and void and of no legal effect.

c) An order directed at the 2nd defendant restraining the Commission from holding any District level and Unit Elections as scheduled to take place on 28th day of December 2010, based upon the said Local Government (Creation of New Districts Election Areas and Designation of Units) Instrument L.I. 1983 which came into force on 24th November 2010."

Before the action could be determined, counsel for the first defendant filed a motion for an order restricting the withholding of the District Assembly and Unit Committee Elections to the Ledzokuku-Krowor District. The plaintiffs did not oppose the motion. Rather, they asked that injunction be placed on the four new electoral areas which were added to Ledzokuku-Krowor District.

That motion was granted. The result was that the District Assembly and Unit Committee elections were held throughout the country with the exception of the four electoral areas added to the Ledzokuku-Krowor District.

The reason for that ruling was simply this: The target of the writ was the validity of the Legislative Instrument affecting only Ledzokuku-Krowor District. There was no basis to have held up elections in the other parts of the country where there was no dispute affecting the Legislative Instruments setting them up. The result was that the issues relating to four electoral areas added to the Ledzokuku-Krowor District remained outstanding.

Before considering the main question raised by the writ, it is necessary to recount the facts which precipitated the issuance of the writ. They are as follows: the Ledzekuku-Krowor District Assembly was made up of two constituencies of Ledzekuku for Teshie and Krowor for Nungua. The electoral areas for the two constituencies were twelve for Ledzekuku and twelve for Krowor, thus making a total of twenty four.

The Local Government (Creation of New District Electoral Areas and Designation of Units) Instruments, 2010 (LI 1983) was prepared and laid before Parliament. When LI 1983 was first laid before Parliament, it had twenty four electoral areas.

As required by the 1992 Constitution, art 11(7), such a Legislative Instrument had to be published in the *Gazette* and laid before Parliament for twenty-one days from the day of being published in the *Gazette*. When it was laid before Parliament, Parliament referred it to its Committee on Subsidiary Legislation, in accordance with its Standing Orders.

The rule is that after 21days, the LI automatically came into force. In the instant case, by the time the LI came into force, the number of electoral areas in Ledzekuku had been increased to 16 while the electoral areas for Krowor remained as twelve.

By increasing the numbers, Parliament, through the Subsidiary Legislation Committee had interfered with the LI as laid before Parliament. The main question raised in this case was how far Parliament could interfere with such legislation when it is laid before it for 21 days under the 1992 Constitution.

The answer to this question was provided in paragraph 4 of the statement of case filed on behalf of the first and second defendants which read as follows:

> "As part of the said committee's work a lot of memoranda were received from the catchment area of the Ledzokuku – Krowor Municipal Assembly, These were in addition to representations made by interested parties in the same areas as well. These memoranda and representations assisted the committee enormously. The effect of these memoranda and representations was that the committee saw the need to add four more electoral areas to the Ledzokuku (Teshie), thus giving it sixteen (16) Electoral Areas instead of the original figure of twelve (12) Electoral Areas, whilst Krowor still has twelve Electoral Areas."

The exact wording of the 1992 Constitution, art 11(7) which regulates the making of the law in question is as follows:

> "11. (7) An Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall -
>
> (a) Be laid before Parliament;
>
> (b) Be published in the *Gazette* on the day it is laid before Parliament; and
>
> (c) Come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days, annuls the Order, Rule or Regulation by the votes of not less than two-thirds of all the members of Parliament."

In effect, what the Constitution mandates Parliament to do is to annul the Regulation in question. When that happens, the Regulation will have to go back to source from where it was prepared for such comments, suggestions or memoranda as Parliament or the Committee on Subsidiary Legislation will deem necessary to be considered in the making of the Regulation. In fact, it is that source which has the power to amend the legislation. This is supported by the 1992 Constitution, art 297(d) which provides that:

> "Where a power is conferred to make any constitutional or statutory Instrument, Regulations or Rules or to pass any resolution or give any direction, the power shall be construed as including the power exercised in the same manner, to amend or to revoke the constitutional or statutory instrument, Regulations or Resolutions or direction as the case may be."

This article affects the power which is making the regulation. The question to be considered is "Who is making the Regulation or who are the makers of the Regulation?" The makers of the Regulation are those who initiated the Regulation and actually drew up its terms. They are the source from where the Regulation was made. They comprise people on the ground who are conversant with the issues, facts and circumstances which informed the making of the Regulation. If suggestions, comments or memoranda are made, it is the makers who are in the best position to appreciate and consider them, their implications and ramifications before coming to the final determination on the form and content that the Regulation should take when it becomes law. That is why article 297(d), gives the power to the makers to make amendments to the Regulation.

The makers are different and distinct from Parliament. While article 297(d) empowers the makers to make amendments, article 11(7) empowers Parliament to annul Regulations. If the power to make amendments were to be given to Parliament, it would mean that Parliament could interfere with Regulations laid before it without the involvement of the very people who saw reason for initiating and bringing about the Regulation. That would be wrong. That cannot be taken to have been the intendment of the framers of the Constitution as far as article 11(7) is concerned.

In the instant case, what Parliament did by increasing the number on the electoral area of Ledzekuku from twelve to sixteen amounted to amending the Regulation laid before it. That amounted to usurping the powers of the makers as provided in article 297(d). There is no provision in article 11(7) quoted above for Parliament to amend the Regulation as laid before it. Parliament is authorized to annul the Regulations. To annul has been defined in the Annulment differs from amendment. Annulment, as defined in the Chambers 21st Dictionary, 1996 ed., at page 49 as:

> "To declare … publicly as invalid."

To amend is to alter or vary. The effect of annulment is to revoke, abolish or render legally nonexistent. The effect of amendment is to bring about a variation, alteration or change. The latter pre-supposes the continued existence of a fact or situation. The former pre-supposes the abolition of the fact or thing or its non-existence.

Amendment therefore differs from annulment. If the legislature intended to give power to Parliament to amend such regulations, it would have done so in no uncertain terms.

Standing Order 2 which counsel for the defendants relied on does not empower Parliament to make amendments to such regulations.
To the extent that Parliament amended the Local Government (Creation of New District Electoral Areas and Designation of Units Instrument, 2010 (LI 1983) differently from what was laid before Parliament instead of annulling it, the LI is ultra vires article 11(7) of the 1992 Constitution. It is therefore void and of no legal effect.
The first two reliefs in the plaintiff's action succeed and are granted. The third relief was disposed of as already explained above.
What this decision implies is that all portions of LI 1983 as laid before Parliament for 21 days and in respect of which no questions or complaints were raised came into force after the expiration of the 21days from the day it was gazetted. That affected all the electoral areas mentioned in LI 1983 including the original twenty four under Lodzekuku and Krowor when LI 1983 was first laid before Parliament.
The LI cannot be in force in respect of the four additional electoral areas which are the subject matter of this judgment. They are

i. Oppong Gonno Industrial Area
ii. Teibibiano
iii. Ashitey Akomfra North and
iv. Martey – Tsuru.

S. A. BROBBEY
JUSTICE OF THE SUPREME COURT

ATUGUBA, J.S.C:

I have had the advantage of reading beforehand the lucid judgment of my brother Brobbey JSC and I agree with the same.

However owing to the constitutional virginity of this matter I feel it is necessary to set forth my thoughts as to the same. As he has recounted the facts I will not repeat them except where necessary. The resolution of this case depends on the powers of Parliament relating to the making of subsidiary legislation as laid down in article 11(7) of the 1992 Constitution, as follows:

"(7) Any Orders, Rules or Regulations *made by a person or authority under a power conferred* by this Constitution or any other law shall,

(a) be laid before Parliament

(b) be published in the *Gazzete* on the day it is laid before Parliament; and

(c) *come into force at the expiration of twenty-one sitting days* after being so laid *unless Parliament, before the expiration of the twenty-one days, annuls the Orders, Rules or* Regulations by the votes of not less than *two-thirds* of all the members of Parliament."(e.s)

In the face of this provision the plaintiff contends that Parliament can only annul delegated legislation laid before it before the expiration of 21 days but cannot amend the same. To this stance counsel for the 2nd defendant has contended that under article 297(c) and (d) and 103(3) Parliament can amend proposed subsidiary legislation.

Article 297 (c)

Article 297(c) is as follows:

"(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 necessary to enable that person* or authority *to do* or enforce the doing of *the act or thing*;**"**

Applying article 297(c), it will be seen that the power conferred on Parliament under article 11(7) relating to subsidiary legislation laid before it, is the power to annul the same before the expiration of 21 days.

Thus the incidental powers conferred on Parliament by article 297(c) are those that relate to that power of annulment. Such incidental powers include the power of the Parliamentary committee on subsidiary legislation to consider the matter and make recommendations on it to the House, pursuant to article 103(1), which provides as follows:

> "103 Committees of Parliament
>
> Parliament shall appoint *standing committees and other committees* as may be *necessary for the effective discharge of its functions*." (e.s)

Parliament may pass a resolution that the proposed legislation should not be annulled. Where, however Parliament finally decides not to annul the proposed subsidiary legislation it must leave it lying before it until it takes effect ***vigore consitutionis*** after 21 days.

Article 297 (d)

This provides as follows:

> "(d) where a *power is conferred to make* any constitutional or statutory instrument, Regulations or Rules *or to pass any resolution* or give any direction, the power shall be construed as including the power, exercisable in the same manner, *to amend or to revoke* the constitutional or statutory instrument, Regulations, Rules *or resolution* or direction as the case may be;"(e.s)

The opening words of this provision are crucial. They relate to "*a power ...to make*" thereby clearly showing that they are concerned with the maker of the various things

enumerated. The 1992 Constitution itself has in several provisions, such as articles 157(2), 158(2) and 230 conferred the power of subsidiary legislation on various persons or bodies and it is clear that it is those persons or bodies who would be the makers of the pursuant legislation. The opening words of L.I. 1983 itself show who it's maker is. They are as follows:

> "IN EXERCISE of *the powers conferred on the Minister responsible for Local Government* by sub-sections (3) and (4) of section 3 of the Local Government Act 1993 (Act 462) and with the prior approval of Cabinet *this Instrument is made this 19th day of October, 2010*."

It is plain that this is an instance of the subsidiary legislative power contemplated by the very opening words of article 11(7) itself, namely, "Any Orders ...*made by a person* or authority *under a power conferred* by this Constitution *or any other laws* ..."

Quite clearly then the power to make L.I. 1983 is vested in the Minister of Local Government by the Local Government Act 1993 (Act 462) and he is the recipient of the provisions of article 296(d), inclusive of the power to amend, as far as the making of L.I.1983 is concerned. Thus in circumstances of verisimilitude with the present in *Amoako Atta II v. Osei Kofi II* (1962) IGLR 384 it is stated in holding (6) of the headnote thus:

> "(6) although section 3, subsection (2) of the Stool Lands Boundaries Settlement Ordinance, Cap. 139, (1951 Rev.) *which empowers the minister to make orders, does not expressly empower him to revoke any orders made, the minister was entitled by order E.I. 60/1960 to revoke orders L.N. 105/1956 and L.N. 214/1957; for where a statute confers a power to* appoint an officer *or make an order, that power implies a power to revoke the appointment or cancel the order;*"(e.s)

Even there, in *Butt v. Chapel Hill Properties Ltd* [2003-2004]I SCGLR 636 holding (5) of the headnote states as follows:

> "(5) *Obiter per Dr Date-Bah JSC* (Bamford-Addo, Baddoo and Prof Kludze JJSC concurring): Although the courts would treat subsidiary legislation as legislation and therefore such legislation had the power to amend earlier inconsistent legislation, there were constraints on the amending power of subsidiary or delegated legislation flowing from the doctrine of ***ultra vires.*** *Subsidiary legislation, made pursuant to enabling power in the principal legislation, might not be wide enough to authorise the amendment of delegated or subsidiary legislation under a different principal legislation*. For example, LN 140A was made by the Rules of Court Committee pursuant to its powers under section 107 of the Courts Ordinance, Cap 4 (1951 Rev). *It was very doubtful whether the enabling power in section 98 of the Courts Act, 1993 (Act 459), was wide enough to enable the repeal under its authority of the express rule made by the Rules of Court Committee in Order 42, r 15*."(e.s)

Though I do not necessarily share in that view the said holding (5) illustrates the point that even a person seised of delegated legislative authority with regard to a matter has to thread cautiously in making amendments with regard to that mater.

The incidence of the annulment power of Parliament over the Minister's proposed subsidiary legislation does not dislodge the Minister from his status as the maker of that subsidiary legislation. Thus in *Metcalfe v Cox* (1895) AC 328 H.L at 339-340 Lor Herschell in reaction to a contention that because a statutory power of making subsidiary legislation was subject, ***inter alia,*** **to parliamentary and Crown approval** the actual power did not reside in the Commissioners, said:

> "It is urged by the respondents that .... *it cannot be correct to say that the Commissioners have power to affiliate the college, and make it form part of the*

university, inasmuch as all the ordinances made by the Commissioners are ineffectual unless approved by the Queen in Council. I do not feel pressed by this argument. *Although it is true that an ordinance might be disapproved of, and might therefore never become effectual, yet, when approved of, that which is ordained by it takes effect by the act of the Commissioners,* and it does not seem to me inaccurate to say that the Commissioners have power to do everything which they can direct to be done by an ordinance, merely because that ordinance is made subject to the approval of the Sovereign. *It is a common case for appointments made by one public official to require the approval of another. Such appointments cannot take effect without that approval; but I do not think that any one would hesitate to say that the appointment was made by the person who selected and nominated the appointee.*"(e.s)

Similarly, at 351 Lord Macnaghten said:

"The learned counsel for the respondents ...dwelt mainly on the difference in language between sect. 15 and sect. 16. In the latter section they pointed out that the power of affiliation is given directly to the Commissioners. *In the former the Commissioners have only the power of making ordinances to extend any of the universities by affiliation. The ordinance is inoperative without* more. *The real power, they said, is in Her Majesty in Council. But there is a fallacy, I think, in that view. The power is in the Commissioners, though they do proceed by ordinance. The power, no doubt, is in suspense until the ordinance is duly published, laid before parliament, and approved by Her Majesty in Council. But when the final stage is safely reached whatever the ordinance does is the doing of the Commissioners*."(e.s)

Article 297(d) therefore cannot enable Parliament which is not the maker of L.I 1983 to amend it. However, as earlier stated, supra, Parliament has power to resolve that

subsidiary legislation laid before it should not be annulled. But having done so and being the maker of that resolution, article 297 (d) enables a change of mind by Parliament and reversal of the resolution (with the requisite votes) in favour rather of annulment or vice versa.

Article 103 (3)

As aforesaid, counsel for the second defendant also contends that article 103(3) justifies the amendments that were inserted by Parliament regarding the extra 4 electoral areas. Article 103(3) is as follows:

> "**103. Committees of Parliament**
>
> (3) Committees of Parliament shall be charged with such functions, including *the investigation and enquiry into the activities and administration of ministries and departments* as Parliament may determine; and *such investigation and inquiries may extend to proposals for legislation.*"(e.s)

It is a well settled rule of construction of statutes that ***verba generalia specialibus non derogant.*** And so it was laid down in *Barker v Edger* [1895-99] All ER Rep. 1642 P.C as per the headnote thus "*Where the legislature has given attention to a special subject and has provided for it, it cannot be presumed that a subsequent general enactment is intended to interfere with the special provision,* unless that intention is *very clearly manifested*." The constitution has made express provisions governing the situations in which the proposed legislation is actually before Parliament and therefore those are the proximate and operative provisions in such situations. Thus article 106(4) to (6) provide as follows:

> "**106. Mode of exercising legislative power**
>
> (4) *Whenever a Bill is read the first time in Parliament, it shall be referred to the appropriate Committee appointed under article 103 of this Constitution* which shall examine the Bill in detail and make all such

inquiries in relation to it as the Committee considers expedient or necessary.

(5) Where a Bill has been deliberated upon by the appropriate Committee, it shall be reported to Parliament.

(6) *The report of the Committee*, together with the explanatory memorandum to the Bill, *shall form the basis for a full debate on the Bill for its passage, with or without amendments*, or *its rejection* by Parliament."(e.s)

Quite clearly article 106(3) gives Parliament the dual power of **passing a bill** "*with or without amendments,* or *its rejection.*"

By contrast article 11(7) is the specific provision wherein a specific role has been carved out for Parliament with regard to **subsidiary legislation** laid before it.

Under this provision, **a one-way power of only annulment,** is given to parliament **with regard to pending subsidiary legislation; no additional power of amendments is given**. In fact Parliament has no power of passage of subsidiary legislation unless in an indirect and incidental manner. Thus if Parliament, within the 21 sitting days during which subsidiary legislation is pending before it, even unanimously resolves that it should not be annulled, such resolution has no force of passage of it unless the full period of 21 days passes whereupon it will "*come into force*" ***proprio vigore constitutionis***.

The contrasting provisions of articles 11(7) and 106(3) are explicable on the basis that **Parliament has power to make laws only** "*by bills* **passed by Parliament and** *assented to* by **the President**" as laid down in article 106(1). It follows therefore that whilst Parliament can delegate power to a person or authority to make subsidiary legislation Parliament by itself cannot make subsidiary legislation. Clearly then Parliament cannot amend what it cannot make.

True Role of Parliament in Subsidiary Legislation

In a common law democracy Parliament usually has oversight control over the acts of the executive but it's controlling power over delegated legislation is often of a very restricted nature. It is in that vein that Ampiah JSC viewed the power of Parliamentary control over subsidiary legislation in Ghana in *Apaloo v. Electoral Commission of Ghana* [2001-2002] SC GLR 1 at 27 when he said:

> "As stated before, *the Electoral Commission is empowered to make regulations* for the effective performance of its duty. *That power, gives a discretion* to the commission; *the exercise of which shall not be arbitrary, capricious or biased. It is to avoid such situations that a constitutional instrument is required. This is to give the legislature, an opportunity to have a look at the intended constitutional instrument*. It is provided by article 11(7) that:
>
> "Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall –
>
> (a) *be laid before Parliament*;
>
> (b) be published in the Gazette on the day it is laid before Parliament; and
>
> (c) *come into force at the expiration of twenty-one sitting days* after being so laid *unless Parliament, before the expiration of the twenty-one days, annuls* the Orders, Rules or Regulations by the votes of not less than two-thirds of all the members of Parliament."(e.s)

In other words Ampiah JSC viewed parliamentary control over executive subsidiary legislation only as it is contained within the ambit of article 11(7) of the Constitution. Similarly in the monumental work, *Garner's Administrative Law*, Eighth edition, at pp. 86-89 the learned authors discuss the mode of parliamentary control over subsidiary legislation through the requirement of laying it before parliament. The authors demonstrate that such laying before Parliament may take one of 4 forms, namely (a) where to become law the subsidiary legislation is merely required to be

laid before Parliament, (b) where it is to be laid before Parliament subject **to the '*negative resolution*' *procedure***, (c) where it is laid subject to the '***affirmative resolution***' procedure and (d) where such laying before Parliament is to be **in draft subject to affirmative or negative resolution** procedures. It is obvious that brand (b) of laying before Parliament is what the 1992 constitution of Ghana has opted for under article 11(7). The authors make it emphatically clear that this brand, i.e, the "**negative resolution**" procedure of laying subsidiary legislation before Parliament **does not permit Parliament to amend or partially annul such subsidiary legislation**.

In their celebrated work, *Administrative Law*, Ninth edition at pp. 339-340 the learned authors *Wade and Forsyth* also reach the same conclusion with regard to the same type of subsidiary legislation. Consequently it is only the donee of subsidiary legislative power that can amend it and in so doing, must, in terms of article 297(d) follow the same procedure by which he can make it. This was strenuously pointed out by Kpegah JSC in *Apaloo v. Electoral Commission*, supra, at 34-35 as follows:

> "The plaintiff's case, as I understand it, is that *by its directives issued in the Gazette Notice on 27 November 2000, the Electoral Commission is indirectly amending regulation 30 of CI 15* by limiting a voter identification to Photo ID Cards only; *and this*, the plaintiff submitted *would be inconsistent with article 51 of the Constitution which requires the Electoral Commission to do so only by constitutional instrument, which instrument must comply with article 11(7) of the Constitution,* namely, be laid before Parliament for twenty-one sitting days and published in the Gazette. *To simply publish administrative directives in a Gazette Notice, as did the Electoral Commission in this case, and expect such directives to supersede a regulation made by a constitutional instrument is clearly inconsistent with article 297(d) of the Constitution which reads*:

"*where a power is conferred to make any constitutional or statutory instrument*, regulation or rule or pass any resolution or give any direction, *the power shall be construed as including the power, exercisable in the same manner, to amend or to revoke the constitutional or statutory instrument*, regulation, rule or resolution or direction as the case may be."

There can hardly be any answer to the plaintiff's case."(e.s)

This position is affirmed by analogy by this court's decision in *Brown v. Attorney-General (Audit Service Case)* (2010) SCGLR 183. In that case this court had to construe the following constitutional provisions:

"178.(1) No moneys shall be withdrawn from the Consolidated Fund except-

(a) to meet the expenditure that is charged on that Fund by this Constitution or by an Act of Parliament;..."

"179(2) *The estimates of the expenditure of all public offices* and public corporations, other than those set up as commercial ventures -

(b) shall in respect of payments charged on the Consolidated Fund, be laid before Parliament *for the information of the members of Parliament."*

"187(14) *the Administrative expenses of the office of the Auditor-General* including all salaries, allowances, gratuities and pensions *payable to or in respect of persons serving in the Audit Service shall be a charge on the Consolidated Fund."*(e.s)

The facts as per the headnote in that case are as follows:

"In his statement of case, the plaintiff argued, inter alia, that *on the strength of the provision specified in article 179(2)(b) of the 1992 Constitution (reproduced above), the annual estimates of the Audit Service, being payment*

charged on the Consolidated Fund, were required to be laid before Parliament for the information of members only and not for debate or approval."In his statement of case for the defence, the Attorney-General also argued, inter alia, that the President of the Republic, in the exercise of his executive powers under the 1992 Constitution, could delegate to the minister of Finance, acting in conjunction with the Controller and Accountant-General, some of those powers relating to the efficient management of the Consolidated Fund. The attorney-General further argued that the resources of the country should be distributed in an equitable manner. *The Minister of Finance therefore had the right to adjust the estimates of the Audit Service before the President could lay them before Parliament in terms of article 179(2)(b)*."(e.s)

The pertinent decisions of this court on the controverted issues of the case are per the headnote thereof as follows:

"(2) (*Per Georgina Wood CJ and Dr Date-Bah and R C Owusu JJSC (Dotse JSC dissenting in part and Anin Yeboah JSC dissenting)):* on a true and proper interpretation of articles 178(1)(a), 179(2)(b), 187(14) and 189(2) and (3) of the 1992 Constitution, the plaintiff was entitled to a declaration that *there was no express constitutional provision, mandating Parliament to formally approve the administrative estimates of the Audit Service*. In other words, the administrative expenses of the Audit Service including salaries, allowances, pensions and gratuities, being a direct charge on the Consolidated Fund, *were not subject to annual appropriation or any amendment, ie reduction before submission to Parliament*. However, that declaration was subject to the proviso that *Parliament had an implied authority in certain circumstances to reject those administrative estimates or to ask question or seek clarification on the estimates. Those circumstances would include: (i) fundamental errors in*

relation to the information laid before Parliament; and (ii) fundamentally unreasonable estimates.

(3) the court would unanimously grant reliefs (2)-(4) endorsed on the plaintiff's writ, namely, *the practice of ministerial downward review or reduction of the annual estimates of the administrative expenses of the Audit Service; the deliberate and specific submission of those estimates by the Ministry of Finance to Parliament for express formal approval; and the express and direct subjection of the annual administrative expenses of the Audit Service to budget policy directives of the executive were unconstitutional.*

(4) *Per Georgina Wood CJ, Dr Date-Bah, R C Owusu Anin Yeboah JJSC-Dotse JSC dissenting:* the court would refuse the fifth declaration sought by the plaintiff on the grounds that: (i) *interaction between the Audit Service and Parliament would be needed to ensure that the estimates to be laid before Parliament for its information was not flawed*; (ii) *the declaration sought might lead to absurdity; and* (iii) *the grant of the declaration would defeat the very concept of probity and accountability as stated in the preamble to the 1992 Constitution;* and (iv), *the framers of the Constitution never envisaged* a situation whereby *an agency of the government* by virtue of its peculiar functions under the Constitution *would be vested with such uncontrollable financial powers."*

It is clear that in the *Brown case* brand (a) supra, of laying before Parliament, (similar to subsidiary legislation), has been adopted in article 179(2) pertaining to public offices such as the Audit Service and non commercial public corporations. Again in *Manzah v Registrar of Co-operative Societies* (1972)2 GLR 103 the facts and relevant decision thereon as per the headnote are as follows:

"The plaintiffs by their solicitor sent an application to the Senior Co-operative Officer, Takoradi, for the registration of their society as a co-operative society. *On receiving a reply to their application for registration, the plaintiffs discovered that certain conditions had been imposed on them which had not been provided for by the Co-operative Societies Decree*, 1968(N.L.C.D. 252). The plaintiffs therefore brought the present application by an originating summons for the determination of the following: (a) *whether under N.L.C.D.252, para. 4 the Registrar of Co-operative Societies and the Senior Co-operative Officer, Takoradi, could impose on the plaintiffs the pre-requisites and the pre-conditions contained in their reply,* (b) whether such conditions are not *ultra vires*, (c) whether the plaintiffs have not complied with the requirements of N.L.C.D. 252 and (d) whether the plaintiffs are not entitled to have their proposed society registered.

It was submitted on behalf of the defendant that the registrar was only asking such information as he was empowered to under N.L.C.D. 252, para. 4(2) and not imposing any pre-requisities or pre-conditions.

Held: (1) *Although the registrar has the power under paragraph 4 (2) to ask for any information that will assist him in considering an application for the registration of a co-operative society, the information sought in this case took the form of pre-conditions which were additional to those contained in paragraphs 3(1) and 34(1) of the Decree.* The plaintiffs had already complied with the conditions laid down by the Decree and *the registrar acted ultra vires in imposing further conditions*." (e.s)

Ministerial Adoption of Amendment

But Mr. Sylvester Williams (Principal State Attorney), with some courage and ingenuity has submitted that the Minister for Local Government (himself a member of Parliament) did not disapprove the amendments made by Parliament to LI 1983 and

therefore adopted them. They should therefore hold good. But this ingenious submission suffers from the virus of acquired immune deficiency of evidence. That matter was not even pleaded and no evidence was led thereon. Were evidence to that effect led, I for my part, would have been favourably disposed towards it. I should not think that anything in the common law principles of ratification should hinder the smooth and purposive functioning of the constitution. That is the healthy similar theme in the decision of this court in *Brown v Attorney-General,* supra.

On the contrary, however, the tenor of the 2nd defendant's statement of case is that the amendments were purportedly made ***per potestatem Parliamenti***, which I have already held, to be lacking. Another alternative for Parliament is what was suggested to the Registrar of Co-operative Societies in the *Manzah* case, supra, as per the headnote thereof as follows:

> "*Obiter*. *If the registrar thought these conditions are necessary pre-requities to registration, he should have recommended their, inclusion in the Decree to the Minister responsible for the Department of Co-operatives*. Perhaps the Registrar with his enormous experience in the field of co-operative movements in this country, may consider it necessary *to recommend to the appropriate authority to have the Decree amended to include such matters* as would promote the advancement of the co-operative movement in the country."(e.s)

Standing Orders of Parliament

Although we were referred to some standing orders of Parliament they were not made available to us. But preserving a recollection of their import, as counsel for the 1st defendant drew our attention to their contents, they only lend support to the construction I have put on the relevant articles of the constitution herein. Plainly no standing orders and not even Acts of Parliament can derogate from the true import of a Constitutional provision.

Conclusion

For all the foregoing reasons I conclude that **the provisions of article 297(c) and (d) can only be relied on by Parliament or any one else to supplement the provisions of the Constitution in a manner consistent with the letter and spirit of those provisions** and since reliance on them in this case does not conduce to such consistency they cannot avail the defence.

Since LI 1983 pended before Parliament for not less than 21 sitting days it took effect on the expiration of that period less the 4 offending *ex gratia* electoral areas enumerated by my brother Brobbey, JSC. The plaintiff's action therefore succeeds to that extent.

[SGD] W. A. ATUGUBA
JUSTICE OF THE SUPREME COURT

[SGD] J. ANSAH
JUSTICE OF THE SUPREME COURT

[SGD] S. O. ADINYIRA [MRS]
JUSTICE OF THE SUPREME COURT

[SGD] J. DOTSE
JUSTICE OF THE SUPREME COURT

[SGD] ANIN YEBOAH
JUSTICE OF THE SUPREME COURT

[SGD] B. T. ARYEETEY
JUSTICE OF THE SUPREME COURT

[SGD] N. S. GBADEGBE
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