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

CORAM: ATUGUBA, J.S.C. (PRESIDING)

AKUFFO,(MS.) J.S.C.
DATE-BAH, J.S.C.
ADINYIRA, (MRS.)J.S.C.
ANIN-YEBOAH, J.S.C.
GBADEGBE, J.S.C.
AKOTO-BAMFO (MRS), J.S.C.

WRIT

No. J1/6/ 2012

26TH JULY 2012

WELFORD QUARCOO ... PLAINTIFF.

VERSUS

1. **THE ATTORNEY-GENERAL**
2. **THE ELECTORAL COMMISSION ... DEFENDANTS**

J U D G M E N T

DR. DATE-BAH JSC:

The plaintiff invoked the original jurisdiction of this Court by a writ issued on 27th January, 2012 endorsed with the following reliefs:

i. "A declaration that section 1(2) of the Local Government Act, 1993 (Act 462) which provides that the President may declare an area a district and assign a name to the district by executive instrument is inconsistent with article 241(2) and 106(1) of the 1992 Constitution and is consequently void.
ii. A declaration that the Creation of Districts Instrument, 2011 (E.I. 80), Creation of Municipalities Instrument, 2011 (E.I. 81) and Declaration of Municipalities Instrument. 2011 (E.I. 82) all made by the President on 22nd November, 2001(*sic)* and gazette on 25th November, 2011 are inconsistent with Article 241 (2) of the 1992 Constitution and consequently void.
iii. A declaration that section 1(3) of the Local Government Act, 1993 (Act 462) which provides that the President shall in the exercise of the power under subsection (2)(a) of section 1 of the Local Government Act, 1993 (Act 462) direct the Electoral Commission is inconsistent with articles 45, 241(2) and 106(1) of the 1992 Constitution and is consequently void.
iv. An order restraining the Electoral Commission from acting in any way whatsoever pursuant to directions made by the President in furtherance of section 1(3) of the Local Government Act, 1993 (Act 462).
v. A declaration that sections 3(1) and (2) of the Local Government Act, 1993 (Act 462) which provide that the Minister shall, by legislative instrument, establish an Assembly for each district, municipality and metropolis which, in accordance with clause (3) of Article 241 of the Constitution shall constitute the highest political authority in the district and also provides for what shall be specified in the said legislative instrument respectively, are inconsistent with article 241(2) and 106(1) of the 1992 Constitution and are consequently void.
vi. An order restraining the Minister responsible for Local Government or any other Minister, from laying in Parliament any legislative instrument made

pursuant to section 3 of the Local Government Act, 1993 (Act 462) or pursuant to any other section or provision in any enactment.

vii. An order restraining the Speaker of the Parliament of the Republic of Ghana from permitting to be laid in Parliament for the consideration of Parliament by the Minister responsible for Local Government or any other Minister, any legislative instrument made pursuant to the section 3 of the Local Government Act, 1993 (Act 462) or pursuant to any other section or provision in any enactment.

viii. Any further order(s) that this Honourable Court may deem fit."

In the plaintiff's Statement of Case in support of his writ, he urges a purposive interpretation of article 241(2) of the Constitution that enhances the sovereignty of the people. In paragraphs 26 to 29 of his Statement of Case, he argues as follows:

> "26. If article 241(2) of the Constitution is interpreted to allow Parliament to delegate power to the President as in (*sic)* the case, to create districts, the article would have been interpreted narrowly and in a manner that undermines the sovereignty of the people. This is because the participation of the people, through their elected representatives, in Parliament will be fatally curtailed and restricted to a mere footnote. In two recent Supreme Court decisions: namely ***Okane & Ors v Electoral Commission and the Attorney-General,*** and ***Nii Tetteh Opremreh v The Electoral Commission and the Attorney-General,*** the restricted role of Parliament with regard to subsidiary legislation was made quite clear by the Court. Indeed these decisions clearly show that it cannot be said that Parliament makes subsidiary legislation.
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> 27. The approach to the interpretation of section 241(2) that we recommend, ensures the enhanced participation of the people of Ghana in the creation of districts through their elected representatives. A bill presented to Parliament can be improved and the general public is afforded the opportunity to participate through the submission of various memorandum to the Parliamentary Committee that considers the bill:

Judicial notice should also be taken of the fact that Committees of Parliament hold public hearings just not in Accra, but also around the country. People are allowed to appear before Committees and express the opinions. This informs the bill, enriches it and ensures the involvement of the people.

28. The question of creation of districts which directly affects the people surely must be done by the people through their elected representatives. It must be noted also that the interpretation we favour does not exclude the President from the process. First of all, because it is a bill that has financial implications it can only be introduced by the Executive and not by a private member. Secondly, the President after introducing the bill has another 'bite at the cherry'. The President must assent to the bill for it to become law and if the President disagrees with what has been passed by Parliament he can send it back to Parliament for reconsideration.

29. My Lords, it is this unconstitutional section of the Local Government Act, section 1(2) that created a snowballing effect that led the legislature from unconstitutionality to unconstitutionality. This section which has been the focus above was the basis for the other sections which we submit are unconstitutional."

These arguments (which were opposed by 1st Defendant in a Statement of Case filed on his behalf on 20th June 2012), however, cannot succeed in the light of the decision that this Court has just delivered today in *Naakarley Amegatcher v Attorney-General and Electoral Commission* (Suit no. J1/8/2012). The material issues in the present case are identical with those in the *Naakarley Amegatcher* case. In that case, this Court held that none of the contested provisions in the Local Government Act, 1993 (Act 462), which are the same as those impugned in the present case, was unconstitutional, because the legislative authorisation given to the President's executive action in the redrawing of the boundaries of districts was not unlawful. In the light of that precedent, this court has no option but to dismiss the plaintiff's action in this suit as well.

[SGD] DR. S. K. DATE-BAH

JUSTICE OF THE SUPREME COURT

[SGD] W. A. ATUGUBA

JUSTICE OF THE SUPREME COURT

[SGD] S. A. B. AKUFFO[MS.]

JUSTICE OF THE SUPREME COURT

[SGD] S. O. A. ADINYIRA[MRS.]

JUSTICE OF THE SUPREME COURT

[SGD] ANIN YEBOAH

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;

BRIGHT OKYERE-AGYEKUM (WITH HIM TETTEH JOSIAH) FOR THE PLAINTIFF.

SYLVESTER WILLIAMS (PRINCIPAL STATE ATTORNEY) FOR THE 1ST DEFENDANT .

JAMES QUASHIE-IDUN (WITH HIM ANTHONY DABI) FOR THE 2ND DEFENDANT.