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

CORAM: WOOD (MRS), CJ (PRESIDING)

DR. DATE-BAH, JSC

OWUSU (MS), JSC

DOTSE, JSC

ANIN YEBOAH, JSC

WRIT

NO. J1/1/2009

3RD FEBRUARY, 2010

WILLIAM BROWN … PLAINTIFF

- VRS -

1. ATTORNEY-GENERAL
2. MINISTER OF FINANCE
3. CONTROLLER & ACCOUNTANT-GENERAL … DEFENDANTS

J U D G M E N T

WOOD (MRS), CJ:-

On the 7th August 2009 the plaintiff, William Brown, instituted these proceedings invoking the original jurisdiction of this court, in his dual capacity. First, as a concerned citizen of Ghana, pursuant to article 2(1) (b) of the 1992 constitution,

but second, and even more important, as the facts demonstrate, in his capacity as a retired Deputy Auditor –General and President of the Audit Service Pensioners Association. Contending that he stands adversely affected by certain actions of the Minister of Finance and the Controller and Accountant –General, he as a direct beneficiary of this action, caused this writ to be issued against the Attorney-General, the Ministry of Finance and the Controller and Accountant-General for the following reliefs:

1. "That on a true and proper interpretation of Articles 178(1) (a); 179(2) (b); 187(14); 189(2); 189(3) of the 1992 Constitution administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Services Commission are not subject to the approval of Parliament or the Minister of Finance.

2. That the practice of the Minister of Finance in reviewing downwards AND OR submitting estimates determined by the Audit Service Board under Article 189(3)(a) of the Constitution for Parliamentary approval is unconstitutional.

3. That the reduction by the Ministry of Finance, of the annual estimates of the administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service before submission to Parliament, and the presentation of such estimates by the Minister to Parliament for approval are unconstitutional.

4. That the subjection of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the Executive branch of Government including budget ceilings and hearings at the Ministry of Finance is unconstitutional as the Ministry is empowered to hear and provide ceilings on only expenses subject to annual appropriation.

5. That the invitation of the Audit Service by any Parliamentary Committee for discussions, hearings, justifications or defence of the estimates determined by the Audit Service Board under the Constitution is unconstitutional.

6. That the payment of pensions and gratuities of retired officers and employees of the Audit Service under the Social Security Fund instead of the Consolidated Fund as provided for by the 1992 Constitution is unconstitutional.

7. That the insistence by the Ministry of Finance for financial clearance before recruitment can be made by the Board under Article 189(2) and failure to put persons recruited under Article 189(2) of the Constitution on the payroll by the Controller and Accountant-General because the Ministry of Finance has not given financial clearance is unconstitutional.

8. Any other order or orders that the honourable court deems fit to give effect to the declarations sought by the Plaintiff in terms of Article 2(2) of the 1992 Constitution of Ghana."

The Plaintiff's case is simply that under the 1992 constitutional arrangement on finance, there are two broad ways in which moneys can be withdrawn from the consolidated fund as provided under article 178 (1), the first being expenditure that is charged on the fund by either the constitution or by an Act of Parliament. On this premise, his argument is that parliamentary approval is not required for payments specifically charged to the consolidated fund as provided under the articles 178 (1) (a) and 187 (14). Furthermore, he contends that, since by virtue of article 187 (14), the administrative expenses of the office Auditor- General, including all salaries, allowances, gratuities and pensions payable to and in respect of persons serving in the audit service is a direct charge on the consolidated fund, when the Audit Service Board, acting in consultation with the Public Services Commission as is mandated under article 189 (3), determines the terms and conditions of its serving officers and employees, these become automatically due for implementation on the effective date(s) and no person or authority has power to vary any part of the conditions of service so determined. Even more forcefully, he

urged that in terms of article 179(2), once the administrative expenses of the Service, have been determined in compliance with articles 189 (1), (2) and (3) of the 1992 constitution, the payment of these estimates are not in any way subject to a downward review by the executive branch of government, either by the President acting by himself or through his Minister of Finance or other accredited agents.

But perhaps, the more serious point flowing from these arguments, and which indeed was specifically urged on us is that, under article 179 (2), the constitutional requirement that estimates in respect of payments charged on the consolidated fund be laid before parliament, is in stricto senso, intended for the information of the members only and is not in any way subject to debate or their comments etc, let alone parliamentary approval, before payment could be effected. Stated differently, the contention is that once the administrative expenses of the Service has been determined, it becomes a charge on the consolidated fund and payment must, without more be effected. The further contention therefore is that subjecting the annual expenses of the Service to budget policy directives, ceilings and hearings at the Finance Ministry is clearly unconstitutional, so also the presentation of these estimates by the sector Minister to Parliament for their approval.

Additionally, he argued that the salaries, allowances, gratuities, pensions and allowances payable to employees of the Audit Service are determined by the Audit Service Board acting in consultation with the Public Services Commission and not the Fair Wages Commission or any other authority.

Closely allied to the above argument, is the contention that the recruitment of personnel is not subject to ministerial clearance or approval, and further that the refusal of the Controller and Accountant – General to place newly recruited personnel on the pay roll until such clearance has been obtained is clearly unconstitutional.

In view of the relief 6, plaintiff concluded his arguments on the emotive issue of pensions and gratuities for Audit Service retirees as follows:

"On account of Article 187 (14) and 189 (3) (a) of the Constitution, the Plaintiff contends that pensions and gratuities for employees of the Audit Service are to be determined by the Audit Service Board in consultation with the Public Services Commission and once determined, they are to be paid from the Consolidated Fund and from no other Fund or Pension schemes established by an Act of Parliament. It is therefore unconstitutional for the Ministry of Finance and Controller and Accountant-General to place retired officers (particularly those engaged after 31st December, 1971) of the Audit Service on the Social Security Pension Scheme as is currently the case."

In response, the defendants justify the actions of both the Minister of Finance, and the Controller and Accountant –General; on the grounds that as agents of the President, they have the responsibility of managing and controlling the country's finances, including its revenue, namely, the consolidated fund and all other public funds. This constitutional responsibility, he argued, includes preparing budget estimates, laying them before parliament, and securing parliamentary approval for the estimates of expenditure of all public offices and public corporations and payments charged on the consolidated fund as prescribed under article 179 (1) (2) and (b). An effective discharge of this constitutional remit, they postulated, requires that the estimates of all public entities, that is, all ministries, departments and agencies, including the Audit Service, must first be presented to him (Minister), so he could review these estimates administratively, bearing in mind the nation's total revenue. The review, he maintained, must necessarily take the form of downward adjustments, keeping in mind the overall objective of allocating national resources equitably and furthermore subjecting same to Presidential approval.

The upshot of this argument is that the Audit Service which forms part of government machinery can only be entitled to what the nation can afford, and for which reason the provisions relating to the independence of the office of Auditor General is to ensure their independence in relation to the performance of their duties rather than total financial independence.

Furthermore, while admitting that the salaries, allowances, gratuities etc of the Audit Service, are indeed a charge on the consolidated fund, the defendant's argument is that their determination must follow the course chartered for the entire public sector, and therefore, like other public sector employees, it must be negotiated within a tripartite mechanism made up of government, labour and other interest groups. Consequently, the Ministry of Finance has power not only to scrutinize the proposed salaries, but the President's approval must also be secured, in order that these proposed salary structures do not cause a disequilibrium in the national economy.

Finally, he justified the payment of pensions and gratuities by the SNITT and from the Social Security Fund, on the grounds that parts of their salaries are invested towards their pension.

I should think the following as set out in the memorandum relevant for a determination of the issues arising from this constitutional action.

"1. Whether or not the act or practice of the Minister of Finance or the office of the President in:

(a) causing annually the administrative expenses of the Ghana Audit Service including salaries, allowances, gratuities and pensions to be included in the annual Appropriation Bill of Government and introducing same under Article 179(2) (a) of the Constitution for debate and approval by Parliament offends or is inconsistent with or is in contravention of Articles 178(2)(a), 179(1)(b) and 187(14) of the Constitution.

(b) Reducing the administrative expenses of the Audit Service before submitting the reduced administrative expenses to Parliament, for approval constitutes a violation of Articles 189(3)(a), 178(1)(a), 179(2)(b) and 187(14) of the Constitution.

2. Whether or not the practice of the Minister of Finance in subjecting the administrative expenses of the Audit Service to budget policy guidelines, formats, financial ceilings, directives of Cabinet, as well as manpower and budget hearings at the Ministry of Finance towards the preparation of the annual Appropriation Bill offends Articles 179(2)(b), 187(14), 189(2) and 189(3)(a) of the Constitution.

3. Whether or not under Article 189(3)(a) of the Constitution the determination of conditions of Service of members of the Audit Service other than the Auditor-General by the Audit Service Board, acting in consultation with the Public Services Commission is subject to review, amendment or approval by the Office of the President, the Minister of Finance or any other authority before the conditions of service including revised salary structure are implemented.

5. Whether or not the inclusion of the Audit Service by the Fair Wages Commission in its mandate of determining salary structures in the public services other than those covered by Article 71 of the Constitution offends Article 189(3)(a) of the Constitution.

6. Whether or not the practice of the Controller and Accountant General in demanding financial clearance and approval from the Minister of Finance as a pre-condition for:

(a) implementing conditions of service of members of the Audit Service other than the Auditor-General, including revised salary structures and allowances determined under Article 189(3)(a) of the Constitution, and/or
(b) putting the names of persons appointed under Article 189(2) of the Constitution by the Audit Service Board, acting in consultation with the Public Services Commission on the government pay roll offends Articles 178(1)(a) and 187(14) of the Constitution.

7. Whether or not it is the constitutional duty of the Audit Service Board, acting in consultation with the Public Services Commission to determine pensions and gratuities of members of the Audit Service other than the Auditor-General as part of

the conditions of service stipulated by Article 189(3)(a) of the Constitution which pensions and gratuities are payable from the Consolidated Fund.

8. Whether or not the practice of the Minister of Finance and the Controller and Accountant-General to regard members of the Audit Service other than the Auditor-General as members of the Social Security Pension Fund for the purposes of pension payments and causing monthly deduction from the salaries of members of the Service to be made to the Social Security and National Insurance Trust for such payments on retirements is consistent with Article 187(14) and section 20 of the first schedule specified by Article 299 of the Constitution."

To my mind, the answer to the questions raised and even more pertinently, the constitutionality of the various acts complained of, particularly, laying the administrative expenses of the Audit Service before parliament for debate and approval, the reduction of these estimates by the Minister of Finance, and the inclusion of the estimates in the appropriation bill, clearly lies in the construction or interpretation which we ascribe to the constitutional provisions referred to, relevantly, the articles 187 (14) and 189 (a), and, in relation to the other provisions, their combined effect thereof. For the purposes of clarity I reproduce these 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. (1)….

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

(a)….

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

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" (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";

189. (2) The appointment of the officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission.

(3) The Audit Service Board shall acting in consultation with the Public Services Commission-

(a) determine the terms and conditions of the service of officers and other employees in the Audit Service; and

(b) by constitutional instrument, make regulations for the effective and efficient administration of the Audit Service."

The articles 178 (1) (a), 187 (14), 189 (2) and (3) of the 1992 constitution do not pose any interpretative challenges. I should be the first to admit that all citizens have a duty to uphold the supremacy of the constitution. But I must confess that beyond this, it is not so clear to me the reason behind the plaintiff's insistence that his pension and gratuity benefits be paid from the consolidated fund rather than the SNITT pension fund. Ordinarily, one would have thought that in practical terms, the interest of a retiree or pensioner would be limited to the quantum of benefits rather than the governmental fund from which the actual money is sourced. Be that as it may, it appears plaintiff is also deeply concerned with not only receiving his just entitlements, but from the constitutionally correct source as well. For which reason, given the meaning and combined effect of the articles 178 (1) (a) and 187 (14), he is certainly entitled to the relief 6.

Again, the article 189 (2) and (3) clearly stipulates that the constitutional authority mandated to appoint officers and other employees, other than the Auditor- General, in the Audit Service, is the Audit Service Board, acting in consultation with the Public Services Commission. The approval by some other authority such as the Fair Wages Commission is not a constitutional requirement. For this reason, it is unconstitutional for the Ministry of Finance to insist on financial clearance or for that matter some other clearance before the Service could undertake any recruitment exercise, or have the Accountant – General place the names of those recruited on the government payroll. The plaintiff is entitled to the relief 7.

The subjective purpose or purposive- literalist interpretation to which I have subjected the above constitutional provisions, means that the plaintiff must, inevitably be entitled also to the reliefs 2 and 3 and 4. In other words, the ministerial down ward review or reduction of the annual estimates of the administrative expenses of the office of the Auditor- General, and the deliberate submission of these estimates by the Ministry of Finance to parliament for express formal approval, is unconstitutional. In the same vein, given the undisputed meaning of these relevant constitutional provisions, the direct and express subjection of the annual administrative expenses of the Service to budget ceilings under Executive Branch of Government directives, is unconstitutional. I have based this conclusion on what I believe is the true constitutional or legal position. In due course, I will however touch on the propriety of the Board and the Service, even though not constitutionally mandated to, yet choosing to be guided by budget policy directives, which I have no reason to doubt, are made in the best interest of the nation.

What presents a real challenge and is central to this constitutional interpretation dispute relates to the proper construction on the Article 179 (2) (b), which reads:

"179. (1)….

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

(a)….

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

How do we construe the words "be laid before Parliament for the information of members of Parliament" as appears under article 179 (2) (b)? As advocated by the plaintiffs, ought we to construe the provision strictly, literally, leading inescapably to the conclusion that the sole purpose of laying the estimates before Parliament, is merely to notify the members, or merely bring to their attention the matters concerned. Is it the case that the objective purpose of the framers of the constitution is that the estimates so placed before members of parliament, cannot be questioned, queried, or open to any debate, rejected, or disapproved on some plainly legitimate ground?

This court has over the years so adeptly dealt with the vexed question of the proper approach to construing national constitutions that, the legal principles governing this area of the law, cannot be said to be uncertain. We have drawn from the rich storehouse of both domestic and foreign jurisprudence to fashion out the general principles that serve as interpretive guides to constitutional interpretation. As I observed in the case of Republic v High Court (Fast Track Division) Accra; Ex Parte Commission On Human Rights And Administrative Justice (Richard Anane Interested Party) [2007-2008] SCGLR 213, at 247, the literalist or strict approach, that is a mechanical approach that does not look to the purpose of the contested provisions as a legitimate part of the exercise, is clearly to be deprecated.

It appears to me that generally, in constitutional interpretation, when we speak of the purposive approach, we are referring to what is known as the purposive-strained or objective-based purposive approach. The purposive and literal approach is in proper context commendable, it is the purely mechanical or literal, that pays no heed to the legislative purpose or intent that has no place in this area of the law. On this important legal point, I will make reference to the observations of Professor Ocran JSC in Omaboe 111 v Attorney –General & The Lands Commission [2005-

2006] SCGLR579 and Dr. Date- Bah JSC in Danso-Acheampong v Attorney General SCGLR [2009] 353. Professor Ocran JSC expressed himself thus:

"We hereby recognise as we did in the Asare case, the utility of the purposive approach to the interpretation of the constitution, but with the clear understanding that it does not rule out the legitimacy of other techniques of interpretation in appropriate circumstances."

While Dr. Date-Bah JSC observed:

"These days, a literal approach to statutory and constitutional interpretation is not recommended. Whilst a literal interpretation of a particular provision may, in its context, be the right one a literal approach is always a flawed one, since even common sense suggests that a plain meaning interpretation of an enactment needs to be checked against the purpose of the enactment, if such can be ascertained. A literal approach is one that ignores the purpose of the provision and relies exclusively on the the alleged plain meaning of the enactment in question."

The purposive- literalist approach informed my interpretation of the articles 178 (1) (a) and 187 (14), culminating in the grant of the reliefs 2, 3, 6 and 7. Since the legislative intents are plain and credible, I had to accord full weight and expression to the plain meaning of the words in that context. The subjective-based purpose, as already noted, is however not the sole criterion for construing national constitutions. Indeed, in the more recent decisions of this court, the objective purpose or purpose –strained approach has influenced our decisions.

Sowah JSC (as he then was) may be credited with having laid the foundation for this approach, which he described as "the broad, generous and liberal spirit" approach. His famous dicta in the well known case of Tuffuor v Attorney –General [1980] GLR 637, at pages 647-648, has been cited with approval in many of the constitutional interpretation cases that have been decided in this court.

The importance of purposively reading a constitution, which is considered as a document sui generis, as a whole, not piecemeal, for the reasons set out by Acquah JSC, as he then was, in the National Media Commission v Attorney- General [2000] 1, cannot be over emphasised. He observed:

"Accordingly, in interpreting the constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the parts are also to work dynamically, each working towards accomplishing the intended goal."

In the Anane case, I emphasised the importance of avoiding a construction which does not give effect to all its part and would result in practical difficulties, absurdity, friction, confusion or uncertainty in the working system. In the proper context, the objective purpose approach would be the preferred approach, if the constitution must be read as a whole, in terms of both its explicit and implicit language, and read as a living document, with a view to actualising core societal values and meeting the hopes and aspirations of the people for whom it was crafted. The spirit of the 1992 constitution, a judicially established aid to interpretation, is embodied not only in the actual texts under consideration, but also the goals and objectives as captured in the preamble, the directive principles of state policy and indeed the entire document.

In the Anane case (supra) and indeed the more recent case of, Republic v High Court Accra ; Ex Parte Yalley (Gyane v Attor Interested Parties) 512 at page 519-20, I duly recognised the fine distinction between the purposive and literalist, also known as the subjective based approach, and purposive and strained, that is the objective based construction. It seems to me, from the more recent decisions of this court that a reference to the purposive approach, which in the earlier decisions essentially is the benevolent, liberal, generous and words to that effect, is reference to the objective based approach. (see for example Republic v Yebbi v Avalifo [2000] SCGLR149, Ampiah Ampofo v Commission On Human Rights and Administrative Justice [2005-2006] 227, Omaboe 111 case (supra), Ghana Lotto Operators v

National Lottery authority [2007- 2008] SCGLR at 1088. In the Anane case and indeed the Ex Parte Yalley case, I thought it expedient to detail the difference between the two purposes based approaches, and consequently how they work out in practical terms, and quoted with approval the dicta of Dr. Date- Bah in Asare v The Attorney –General [2003-2004] SCGLR 823 at page 834.

"The subjective purpose of a constitution or statute is the actual intent that the authors of it, namely the framers of the constitution, or the legislature, respectively, had at the time of the making the constitution or the statute. On the other hand, the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values, etc of the society for which he is making the law."

What then is the import of the article 178 b? Does a clear picture of the legislative intent emerge therefrom? As a first step, it does not appear to me from an even purposive-literalist approach, i.e. a subjective construction of the constitution, that ordinarily, an express constitutional provision mandates the legislature to formally approve the administrative expenses of the office of the Audit Service. The constitution does not also require that the estimates, which is charged to the consolidated fund, is to be subject to review by the Executive or annual appropriation. A few critical questions would, to my mind expose the danger that lies in using the subjective purpose approach in this instant case. We may legitimately ask what if parliament, as the constitutional body charged with authorisation of expenditure discover fundamental errors in relation to the information that has been laid before them, as for example, with specific reference to the terms and conditions of the personnel, that these were not determined as constitutionally mandated by article 189 (14) or even that figures have been doctored, or that they appear doubtful or in some other way not credible or reliable? If the purported estimates are meant for their information simpliciter, is it the case that they cannot raise or query these issues? Aside from salaries, allowances, pensions and gratuities, administrative expenses cover other such heads of expenditure as hotel accommodations, training and conference costs.

What if the estimates for salaries and allowances as determined under the constitutional provisions are so astronomically high and expenditure for hotel accommodation so outrageous or irrational that these requests, if allowed to pass are bound to cause a major disequilibrium or distortion in the national economy? Is it the case, as contended by the plaintiffs that, even under such circumstances, the elected representatives of the people, owners of the national wealth, can do nothing, and must keep mute, save perhaps as to wring their hands despairingly, or gnash their teeth in frustration, given the construction by the plaintiffs that the Audit Service is entitled without more to start drawing on the fund? After all what is the information for? One would have thought it is for digestion, processing and necessary action. How can it be said that parliament remains debarred from debating the information if there is a legitimate need for it, solely on the ground that no express constitutional power has been reserved in parliament to do so? Any argument that passivity is what is legally expected of them, that they lack the muscle to question or demand answers to patent or glaring anomalies, for example, cannot in my view be the objective intention of the framers of the constitution. I find it unwise to adopt any interpretation that would make the law or society unworkable, or create confusion in the larger interest of society.

Separation of powers and the equally salutary principle of checks and balances, with the aim of ensuring that all organs of state, as far as is possible operate harmoniously within the constitutional framework is a core value underpinning the 1992 constitution. It would be impossible for the nation to realise the noble economic goals and objectives enacted under the directive principles of state policy, if as, rightly argued by the defendant, this court failed to promote values and systems that would check excessive abuse of state resources and which to the contrary would not promote or ensure a fair and equitable distribution of national resources. These directive principles, which have been held by this court to be enforceable, are mandated to guide parliament, in applying the constitution. (article 34 (1) refers.) To my mind, article 36, serves as a useful guide in determining the proper approach to construing the constitutional provision under discussion. It reads:

"36. (1) The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy.

(2) The State shall in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include-

(a)….

(b)….

(c)….

(d) undertaking even and balanced development of all regions and every part of each region of Ghana, and, in particular improving the conditions of life in the rural areas, and generally, redressing any imbalance in development between the rural and urban areas;

True, external auditing remains one of the critical building blocks of good governance in any democratic system of government. It constitutes a key oversight accountability mechanism in public financial management in respect of or in relation to persons and institutions entrusted with state resources, hence the extensive provisions covering the office of the Auditor –General and the Audit Service, the constitutional oversight body mandated, under the direction of the Auditor- General, to carry out this important function. The constitutional provisions under reference underpin and secure their independence- political, administrative and financial- and insulate the service against all forms of external pressures. But, I do think that the independence relates more to political and administrative operations, whilst the financial independence, is in a way limited.

It follows that it is only when the estimates have in fact been determined in accordance with the due constitutional procedures, and appear reasonable in the light of other information available to parliament, in terms particularly of national revenue, that these become a charge against the consolidated fund. Otherwise, I think in the light of the interpretation I have outlined, parliament has implicit constitutional authority to approve the estimates and in those exceptional cases,

given the right to question the legitimacy of the estimates and disallow its charge on the consolidated fund, if the circumstances warrant it. This is why the pre-budget hearing is not only a constitutional requirement, but a very sound and useful policy.

I have in determining this case, drawn persuasive authority, from the learning of Aharon Barak in his book "Purposive Interpretation in Law." Under the rubric "Constitutional Interpretation. 1. The uniqueness of a constitution and how it affects interpretation" the learned judge-author writes:

"A constitution is a legal text that grounds a legal norm. As such, it should be interpreted like any other legal text. However, a Constitution sits at the top of the normative pyramid. **It shapes the character of the society and aspirations throughout history. It establishes a nation's basic political points of view. It lays the foundation for social values, setting goals, obligations, and trends. It is designed to guide human behaviour over an extended period of time, establishing the framework for enacting legislation and managing the national government. It reflects the events of the past, lays a foundation for the present, and shapes the future.** It is at once philosophy, politics, society and law. The unique characteristics of a constitution warrant a special interpretive approach to its interpretation," (Emphasis mine)

It is in the light of these reasons that I make the following comments. Tue, the audit Service is not constitutionally bound to be subjected to budget policy directives and ceilings of the Ministry of Finance in the sense that the Ministry does not determine their estimates; neither do they require express ministerial approval as concerns this matter. But, given the judicial determination that estimates which are excessive or patently unreasonable may be rejected, it would be good policy and in the interest of the Service not to refuse to be totally to be guided by the policy directives of the Ministry of Finance. To avoid unnecessary friction in the entire working system, this sound policy or practice would inure to their benefit if they held prior consultations with parliament, before their estimates are laid before it. This would give opportunity for all difficulties to be ironed out.

Therefore, answer to the relief 1 is that the administrative expenses being a direct charge on the consolidated fund, is not subject to annual appropriation or any amendment, i.e. reduction, before submission to parliament. But parliament has an implied authority under certain circumstances to reject administrative estimates as I have sought to explain, in which circumstances the pre parliamentary hearing is a requirement.

In conclusion, plaintiff is entitled to relief 1 in part, 2, 3, 4, 5 in part for the purposes outlined, 6, and 7.

G.T. WOOD (MRS)
CHIEF JUSTICE

DR. DATE-BAH, JSC:

This case raises a very interesting case of interpretation touching and concerning the tax and spending power of the State and how it may be exercised in relation to the administrative expenses of the Audit Service. The interpretation urged on this court by the Plaintiff in this case is based on the plain meaning of the language in certain provisions of the Constitution. In determining whether the interpretation of the Plaintiff is the right one, this Court will need to look at the other side of the coin and ask itself whether the alleged plain meaning accords with the spirit and "structure" of the Constitution.

As a distinguished American constitutional scholar, Professor Laurence Tribe of the Harvard Law School, has said, in relation to the Constitution of the United States of

America (in his American Constitutional Law (Foundation Press, New York, 2002) pp. 40-41):

> "The Constitution's "structure" is (borrowing Wittgenstein's famous distinction) that which the text *shows* but does not directly *say.* Diction, word repetitions, and documentary organizing forms (e.g. the division of the text into articles, or the separate status of the preamble and the amendments), for example, all contribute to a sense of what the Constitution is about that is as obviously "constitutional" as are the Constitution's words as such. The idea of "separation of powers" is textually confirmed, literally, only in the Constitution's organization."

In this vein, one of the propositions that are derivable from the structure of the 1992 Constitution of Ghana is that Parliament must approve all public expenditure made from the Consolidated Fund, with the exception of what the Constitution itself has directly authorised for payment without Parliamentary approval. Indeed, Article 174(1) comes close to asserting this proposition explicitly, but not quite. It provides as follows:

> "No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament."

This is one of the fundamental principles of the Constitution. In effect it ensures that there is "no taxation without representation", to use the slogan popularised by the American revolutionaries. The principle of "no taxation without representation" is an old one in English legal history. It means that Parliament has to authorise all taxes. This was a hard-won liberty that was established by the Bill of Rights 1689 of England which laid out certain basic rights for English subjects. This Bill of Rights (in its Article 4) provided that taxation without the authority of Parliament was unlawful. It in effect established freedom from taxation by Royal Prerogative.

The Ghanaian Constitution of 1992 has been described as a "hybrid". It derives ideas from both the tradition of the Westminster Parliamentary model and the

Executive Presidential model pioneered in the USA. As alluded to above, both these systems have as one of their core notions the idea that there should be no taxation without the democratic authorisation of the representatives of the people. It would therefore be reasonable to deduce from this common heritage a similar principle as underlying the Ghanaian Constitution. Indeed, I do find from perusing the totality of our constitutional arrangements that the substance of the principle that there should be no taxation without Parliamentary approval is one of the underlying checks and balances in the Ghanaian Constitution. It ensures the accountability of the Executive and the Judiciary to the Legislature on financial matters. From the principle of no taxation without Parliamentary approval, it would be reasonable to infer a cognate principle of no public expenditure without Parliamentary approval. It would be extraordinary, curious and illogical if, whilst no taxation can be imposed except by or under the authority of an Act of Parliament, there could, on the other hand, be expenditure of the tax revenue thus garnered without Parliamentary approval.

However, this proposition is what is at the centre of the Plaintiff's argument. He is essentially asserting that the Audit Service Board can raid the tax revenue gathered in the Consolidated Fund, without any Parliamentary approval. The literal language in the Constitution on which he relies to make this argument confers some plausibility on the argument. These provisions will be set out below and subjected to textual and contextual analysis. But before that, it is worth noting that the facts of this case trigger an interplay or conflict between two important principles of our Constitution, which need to be reconciled. The one principle that I have already discussed is the need for Parliamentary approval for the expenditure of tax revenues and the other is the need to uphold the independence of the Auditor-General and the Audit Service in order to underpin the accountability of our public bodies. The tension between these two principles is the backdrop against which this Court is called upon to interpret the particular provisions of the 1992 Constitution that I am about to set out.

Article 178(1) makes the following provision:

"No moneys shall be withdrawn from the Consolidated Fund except –

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

Article 179(2)(b) is in the following terms:

"(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 members of Parliament."

Article 187(14) provides that:

"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."

Sub-Articles 189(2) and (3) state that:

"(2) The appointment of officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission.

i. The Audit Service Board shall, acting in consultation with the Public Services Commission –

a. determine the terms and conditions of service of officers and other employees in the Audit Service, and

b. by constitutional instrument, make regulations for the effective and efficient administration of the Audit Service."

From the above provisions, it is clear that the framers of the Constitution intended to accord the Audit Service a large degree of insulation from the political arena. Its administrative expenses are declared to be a charge on the Consolidated Fund by article 187(14). Its annual estimates are thus not to be subjected to the usual debate carried out by Parliament on the estimates of other Ministries, Departments and Government Agencies. The issue that arises is whether the Audit Service is totally immune from Parliamentary approval of its estimates. Article 178(1) (*supra*) clearly enables moneys to be withdrawn from the Consolidated Fund to meet expenditure that is charged on that Fund by this Constitution or by an Act of Parliament. Thus, an exception to the need for Parliamentary approval for expenditure from the Consolidated Fund is authorisation of expenditure by the very provisions of the Constitution. The very provisions of the Constitution may thus be the foundation for allowing taxation without representation in this limited scenario. Given the constitutional language set out above, among the issues that arise for interpretation are: what is the meaning of "payments charged on the Consolidated Fund" (article 179(2)(b)) in relation to the "administrative expenses" of the Audit Service? When do these payments or "administrative expenses" become charged on the Consolidated Fund? When they are approved by the Audit Service Board or at a later date?

After setting out *in extenso* (*supra*) the various constitutional provisions relied on in the Plaintiff's case, let me now return to a basic narration of the facts of this case. On the 7th August 2008, the Plaintiff issued a writ against the Attorney-General, the Minister of Finance and the Controller and Accountant-General seeking the following declarations:

1. "That on a true and proper interpretation of Articles 178(1)(a); 179(2)(b); 187(14); 189(2); 189(3) of the 1992 Constitution administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service

Board in consultation with the Public Services Commission are not subject to the approval of Parliament or the Minister of Finance.

2. That the practice of the Minister of Finance in reviewing downwards AND OR submitting estimates determined by the Audit Service Board under Article 189(3)(a) of the Constitution for Parliamentary approval is unconstitutional.
3. That the reduction by the Ministry of Finance, of the annual estimates of the administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service before submission to Parliament, and the presentation of such estimates by the Minister to Parliament for approval are unconstitutional.
4. That the subjection of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the Executive branch of Government including budget ceilings and hearings at the Ministry of Finance is unconstitutional as the Ministry is empowered to hear and provide ceilings on only expenses subject to annual appropriation.
5. That the invitation of the Audit Service by any Parliamentary Committee for discussions, hearings, justifications or defence of the estimates of administrative expenses determined by the Audit Service Board under the Constitution is unconstitutional.
6. That payment of pensions and gratuitities of retired officers and employees of the Audit Service under the Social Security Fund instead of the Consolidated Fund as provided for by the 1992 Constitution is unconstitutional.
7. That the insistence by the Ministry of Finance for financial clearance before recruitment can be made by the Board under Article 189(2) and failure to put persons recruited under Article 189(2) of the Constitution on the payroll by the Controller and Accountant General because the Ministry of Finance has not given financial clearance is unconstitutional.

8. Any other order or orders that the honourable court deems fit to give effect to the declarations sought by the Plaintiff in terms of Article 2(2) of the 1992 Constitution of Ghana."

What are the facts of current practice which have caused the seeking of these declarations? The Plaintiff deposed to an affidavit declaring the facts contained in his Statement of Claim "regarding the conduct of the Minister of Finance in reducing downwards and or submitting estimates prepared by the Audit Service Board for parliamentary approval" to be within his personal knowledge. The Plaintiff avers in his Statement of Case that the annual estimates of administrative expenses of the Audit Service are subjected to the policy directives of the Executive branch of Government, including ceilings and hearings at the Ministry of Finance, He further avers that the Ministry of Finance reduces the annual estimates of the administrative expenses of the Office of the Auditor-General, including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service, before submitting them to Parliament for approval. The Plaintiff also says that the pensions and gratuities of retired employees of the Audit Service are paid under the Social Security Fund, instead of the Consolidated Fund, and that the Ministry of Finance insists on its financial clearance before the Board of the Audit Service can recruit staff. The Plaintiff is a retired Deputy Auditor General and President of the Audit Service Pensioners Association and is directly affected by the conduct of the Minister and Ministry of Finance complained of. The first defendant is sued as the principal legal adviser to the Government, but the actual dispute is with executive arm of Government, acting through the Minister of Finance, who is the second defendant.

The Defendants have not denied these facts and indeed affirmed them in their Statement of Case, which was verified by an affidavit sworn to by Cecil Adadevoh, a Senior State Attorney. In paragraph 7 of their Statement of Defendants" Case", they declare that: "As with all other government departments the Audit Service must prepare their estimates and present it to the Minister of Finance who must of necessity review it to be sure there is enough money in the purse to pay. It is noteworthy that the provisions relating to the Auditor General have been put in to

ensure their independence. However the independence of the service is more in relation to the performance of their duties and cannot be stretched to mean financial independence to the extent that their accountants cannot be scrutinized even by the Minister for Finance who manages the purse."

On the basis of these facts, the Plaintiff puts forward the following legal submissions: he argues, in his Statement of Case, that a "charge" means a debt or financial liability. He contends, therefore, that since article 187(14) of the Constitution makes the salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service a charge on the Consolidated Fund, these salaries etc., when determined by the Audit Service, are a direct debt of the State and become due for immediate implementation on their effective date and no person or authority has power to vary any part of the conditions of service as determined by the Audit Service. As he poignantly puts it (in para. 12):

> "The Plaintiff further contends that it is not open to a debtor to decide as of right how much if his debt he will pay. A debtor is obliged to pay his debt!"

His submission is therefore that by the plain language of the Constitution no approval, Parliamentary or otherwise, is needed before payments are made from the Consolidated Fund in respect of 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, which have been determined in compliance with Article 189(1), (2) and (3) of the 1992 Constitution.

The Plaintiff makes a further submission in paragraph 15 of its Statement of Case as follows:

> "The Plaintiff further contends that under the 1992 Constitution, moneys can be withdrawn from the Consolidated Fund in two (2) broad ways which have been specified under Article 178 namely:

(a) Expenditure that is charged on the Consolidated Fund by the Constitution (as in Article 187(14) of the Constitution) or by an Act of Parliament (as section 26 of the Audit Service Act 2000, Act 584).

(b) Where the issue of those moneys have been authorized by:

i An Appropriation Act by supplementary estimates approved by parliamentary resolution for that purpose.

ii Where the moneys to be withdrawn are pursuant to an Act of Parliament enacted under Article 179 of the Constitution.

iii Where the moneys to be withdrawn are pursuant to rules/regulations made under an Act of Parliament of trust moneys that have been paid into the Consolidated Fund.

In the situations envisaged under paragraph 15(b) supra, parliament is actively involved in arriving at those expenses to be withdrawn from the Consolidated Fund. Even here, where a specific enactment has charged expenditure on the Consolidated Fund, as provided for by Article 178(1)(a) of the Constitution, it does not need parliamentary approval again where the expenditure has been determined in accordance with that enactment."

In response to these submissions, the defendants in their Statement of Case raise concerns regarding whether an unsupervised access by the Audit Service Board to the Consolidated Fund could have been the purpose and intent of the framers of the Constitution. Their arguments are rehearsed in paragraphs 13 to 16 as follows:

"13. The constitutions of Kenya and Zimbabwe that the Plaintiff cited are hardly applicable in the present case. In those constitutions, it is

stated clearly that once the expense is a charge on the consolidated fund the persons involved are paid directly without recourse to parliament. However in the 1992 Constitution of Ghana, it is clearly stated in Article 178 that if the expense is a charge on the consolidated fund it has to be laid before Parliament for the information of the parliamentarians. However, it is also provided in section 27 of the Audit Service Act 2000 (Act 584) that after the estimates of the auditor general are presented to the president, the president is to present them without revision but with any comments to parliament for their information.

14. The above situation could clearly lead to an absurdity and chaos if the Audit Service alone can take as much funds as they please from the Consolidated Fund without recourse to other sectors of the economy. This kind of independence it is proposed could hardly be the kind envisaged by the framers of the constitution and the Audit Service Act.
15. The administrative autonomy of the Audit Service cannot be construed to mean responsibility for allocation of national resources. For example even though the judiciary and electoral commission are independent their estimates are scrutinized by the Minister of Finance who advises the president on economic issues before they are laid before Parliament. So also does this apply to the other independent bodies which have been set up by law.
16. It goes without saying that at any given time the resources in the nation are limited and have to be well managed to ensure fair distribution to all interests concerned. It stands to reason that that is why the constitution makes provision for a central body to manage expenditures."

Although the Plaintiff makes a cogent case, the issue of interpretation that arises is whether the constitutional provisions referred to above, if construed purposively in the light of the spirit and structure of the 1992 Constitution, can sustain the

plaintiff's interpretation. In other words, what is the intention of the framers of the Constitution, as purposively interpreted?

Put in yet another way, is there a basis for contending that it is implicit in the spirit and structure of the constitutional arrangements embodied in the 1992 Constitution that the Audit Service Board is required to procure some level of prior approval by Parliament of the administrative expenses of the Auditor-General's office before such expenses become a charge on the Consolidated Fund? Or is the Audit Service an exception to the general rule that underlies Ghanaian constitutional policy that there shall be no taxation without representation? What is in question here is an issue of democratic deficit. If the Audit Service Board could disburse funds from the Consolidated Fund without any approval from Parliament, there would be a deficit of democratic oversight over the body. It could be said to be an *imperium in imperio.* Where would its accountability be? This democratic deficit is not inevitable in bolstering the independence of the Auditor-General. Some other Commonwealth jurisdictions have achieved this independence through a different route. For instance, in Australia the independence of the Auditor-General is provided for by a section in the Auditor-General Act, 1997 (No. 151) which declares the Auditor-General to be: "an independent officer of the Parliament." (s.8). However, this independence does not preclude the need for the Auditor-General to obtain appropriation from Parliament for the expenses of his or her office. What the Act, however, guarantees is that any appropriation by Parliament is disbursed in full by the Executive. Thus section 50 of the Australian Act provides that:

> "The Finance Minister must issue drawing rights under section 27 of theFinancial Management and Accountability Act 1997 that cover in full the amounts that the Parliament appropriates for the purposes of the Audit Office."

I am not asserting necessarily that the Australian arrangements are preferable, but I cite them as an illustration of the preservation of the principle of no taxation without representation. There are similar provisions in the laws of South Africa, Canada and the United Kingdom, for instance, which require Parliamentary

appropriation of the budget of the office of the Auditor-General, in spite of these countries' recognition of the importance of the independence of the Auditor-General. However, if the framers of the Ghana Constitution were intent on departing from this principle in the case of the Audit Office, of course, this Court would have to honour that intent.

The question is whether the language, spirit and purpose of the relevant constitutional provisions can sustain the exception argued for by the Plaintiff. In this connection, it should be mentioned that there is a difference between the charging of the salaries and allowances of Article 71 office-holders on the Consolidated Fund and the charging of all the administrative expenses of the Audit Service on the Consolidated Fund. The determination of the salaries and allowances of Article 71 office-holders, including the Auditor-General, the Speaker and the judges of the superior courts, is by a process elaborated in the Constitution itself. Even though the determination is by the President, on the recommendation of a committee established by the President, acting on the advice of the Council of State, and therefore the decision is extra-Parliamentary, the process is more transparent and it is clear that the framers meant to depart from Parliamentary approval for such emoluments. In any case, the determination is by the President, who is also an elected public official, even though not a member of Parliament. The determination of salaries and allowances by the Board of the Audit Service is a far cry from this, since their members are unelected.

An illustration would clarify the issue of policy underlying the issue of interpretation under discussion. As already noted above, the Audit Service Board, pursuant to Article 189(3), has the authority, in consultation with the Public Services Commission, to determine the terms and conditions of the employees of the Audit Service. Now, let us postulate that the Board determines salaries for its employees which are ten times the average for employees of a similar grade and qualification in the Civil Service. Would it be lawful for these salaries to be paid from the Consolidated Fund, without the right of Parliament to reject these distorted salaries? This is a case which puts to the test the plain language of Article 179(2)(b) which provides that the estimates of the expenditure of all public offices and public

corporations, other than those set up as commercial ventures, shall, in respect of payments charged on the Consolidated Fund, be laid before Parliament for the information of members of Parliament. The issue that arises, upon such information being laid before Parliament, is whether the Members of Parliament are entitled to take any action other than merely digesting the information.

Did the framers of the Constitution intend Parliament to be a mere passive reader of the estimates or are there circumstances in which they intended Parliament to have the constitutional right to take some action in pursuance of the oversight role accorded it by the Constitution? If this court were to apply a purposive approach to the interpretation of Article 179(2)(b) in its context, it could well conclude that, while Parliament in general does not need to approve the estimates of the Audit Service before they become a charge on the Consolidated Fund, Parliament has the right to restrain abusive or unreasonable estimates from becoming charges on the Consolidated Fund. The general rule that Parliament is precluded from approving the normal estimates of the administrative expenses of the Audit Service before they become a charge on the Consolidated Fund would be an exception to the constitutional principle that there should be no taxation without representation, or, in other words, there should be no taxation, even if only in effect, without the approval of Parliament, but it is an exception flowing from the language of the Constitution itself. However, this exception itself will need to have an exception grafted onto it, for the reasons set out below. The interpretative space for engrafting this exception on to the exception is provided by the fact that the expression "laid before Parliament for the information of members of Parliament" in article 179(2)(b) itself relies on an implication to exclude Parliamentary intervention. The plain reading of the provision leads one to make the implication that since the estimates are laid for information, Parliament does not have the authority to approve them or reject them. In other words, there is no express provision that Parliament is precluded from approving or rejecting the estimates. Because the plain meaning reading itself relies on an implication, it is reasonable to qualify that implication with an implication derived from the core values and structure of the Constitution. The exception to the exception may be said, in the words of Prof. Tribe, earlier quoted at the beginning of this judgment, to be: "that which the text

shows but does not directly *say.*" In sum, in my view, the administrative expenses of the Audit Service become a charge on the Consolidated Fund only after they have been laid before Parliament, and not earlier. If Parliament has no valid grounds for challenging them, then they become a charge on the Consolidated Fund,

As I said in *Asare v The Attorney-General* [2003-2004] SCGLR 823 at p. 834, when delivering the unanimous view of the Supreme Court:

> "The subjective purpose of a constitution or statute is the actual intent that the authors of it, namely, the framers of the constitution or the legislature, respectively, had at the time of the making of the constitution or the statute. On the other hand, the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values, etc. of the society for which he is making law. This objective purpose will thus usually be interpreted to include the realisation, through the given legal text, of the fundamental or core values of the legal system."

In consonance with this approach, this Court held in *Agyei Twum v Attorney-General and Anor* [2005-2006] SCGLR 732 that where a literal reading of a constitutional provision would lead to an absurd result or to undesirable public policy consequences which are incompatible with the core values of the Constitution, this Court would apply a purposive approach to reach an interpretative result more in tune with the core values of the Constitution. From the following other recent judgments of this Court (decided within the last decade), it can now be safely asserted that, in the right context, the preferred approach of this Court to constitutional interpretation is the purposive: *NPP v Attorney-General (CIBA case)* [1997-98] GLR 378, especially at p. 386 per Bamford-Addo JSC ; *Sam No.2 v Attorney-General* [2000] SCGLR 305, especially at p. 523 per Bamford-Addo JSC; *Apaloo v Electoral Commission* [2001-2002] SCGLR 1, especially at pp. 12 and 19-22 per Bamford-Addo JSC, and pp. 38-39 per Kpegah JSC; *Republic v Yebbi & Avalifo* [2000] SCGLR 149, especially at p. 159 per Acquah JSC, as he then was; *Ampofo v CHRAJ* [2005-2006] SCGLR 227, especially at pp. 236-237 per Twum JSC

and at p. 237, per Date-Bah JSC; *Omaboe III v Attorney-General & Lands Commission* [2005-2006] SCGLR 579, especially at pp. 589 and 592 per Modibo Ocran JSC; *Ghana Lotto Operators v National Lottery Authority* [2007-2008] SCGLR 1088; *Mettle-Nunoo v Electoral Commission* [2007-2008] SCGLR 1250, especially at p. 1261 per curiam; *Republic v High Court (Fast Track Division) Accra; Ex parte CHRAJ (Anane Interested Party)* [2007-2008] SCGLR 213; *Republic v High Court, Accra; ex parte Yalley (Gyane & Attor, Interested Parties)* 2007-2008] SCGLR 512 per Wood CJ and per curiam; *Republic v High Court, Accra (Commercial Division); ex parte Hesse* [2007-2008] SCGLR 1230 per Wood CJ and per curiam; *Danso-Acheampong v Attorney-General & Abodakpi (*Unreported Supreme Court Judgment of 5th November 2008, Suit No. J1/3/2007, to be reported in [2009] SCGLR 453, especially at pp. 458-9; *Republic v High Court, Sunyani, Ex parte Dauda,(Boakye-Boateng, Interested Party)* unreported Supreme Court decision of 8th April 2009 (Civil Motion No. J5/12/2009) to be reported in [2009] SCGLR 545; *Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal and Ors Interested Parties)*, Civil Motion No. J5/23/2009, unreported judgment of the Supreme Court delivered on 15th July 2009, to be reported in [2009] SCGLR 545, where Atuguba JSC quoted with approval the following passage from the judgment of Acquah JSC, as he then was, in *National Media Commission v Attorney-General* [2000] SCGLR 1 at p. 11:

> "Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form rational, internally consistent framework. And because the framework has a purpose, the parts are also to work dynamically, each contributing towards accomplishing the intended goal."

The purposive approach permeates the other judgments read in the case. The approach of this Court, reflected in this long (but not exhaustive) line of recent cases, set out above, is summed up well by Prof. Ocran JSC in *Omaboe III v Attorney-General & Lands Commission* (*supra*) where he says (at p. 592):

> "We hereby recognise, as we did in the *Asare* case, the utility of the purposive approach to the interpretation of the Constitution, but with the clear understanding that it does not rule out the legitimacy of other techniques of interpretation in appropriate circumstances".

In this inclination towards purposive interpretation in the right context, this Court is in the good and illustrious company of several outstanding apex courts of Commonwealth jurisdictions. In *Republic v High Court (Fast Track Division) Accra; Ex Parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party)* [2007-2008] SCGLR 213, I cited the case of *S v Makwanyane* (1995) 3 S.A. 391 (CC) to illustrate the approach of the South African Constitutional Court. In this case, I would like to refer to the Indian Supreme Court case of *S.R. Chaudhuri v State of Punjab*. AIR 2001 S.C.2707, where the court observed (at p. 2717, quoted in Jain, Indian Constitutional Law, 2009, at p. 1568):

> "Constitutional provisions are required to be understood and interpreted with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full impact and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and spirit."

The second apex court to whose purposive approach I would like to make a brief reference is the High Court of Australia which, in *Nationwide News Pty. Ltd. v Wills* (1992) 177 CLR 1, held that freedom of political discussion was part of the basic structure of the Australian Constitution and therefore an implied fundamental right even though the Australian Constitution does not contain a Bill of Rights. It accordingly declared unconstitutional an Australian statute that infringed this freedom.

If Article 179(2)(b) is interpreted in the light of its objective purpose, as explained in the above quotation from the *Asare* case, it is clear that the framers could not reasonably have intended that the Audit Service Board be at liberty to determine very unreasonably generous conditions of service for its employees and, in the face of that, for Parliament, subsequently, to be completely powerless to intervene to halt such a mischief. In my view, the reasonable interpretation which is to be applied to the language of the provision is that estimates relating to the administrative expenses of the Audit Service that are ordinary and reasonable, when laid before Parliament for information, will become a charge on the Consolidated Fund. The framers clearly intended to underpin the operational independence of the Auditor-General, provided for in the Constitution (in Article 187(7)), with a large measure of financial independence. However, there is a limit to the application of this principle of financial independence, because Parliament has an implied power to prevent an abuse of power by the Audit Service Board. If the Audit Service Board were to determine conditions of service for its employees, which were fundamentally unreasonable in the light of the economic and other circumstances of the country, Parliament should, and in my view would, have the power to reject that determination. To sum up, if Parliament determines that the estimates laid before it by the Audit Service are fundamentally unreasonable, it will have the right to reject them. What is fundamentally unreasonable would be for the courts to determine, if Parliament and the Audit Service are unable to resolve any dispute between them. It would be good practice, however, for the Audit Service to carry out a prior consultation with Parliament before finally submitting its estimates to Parliament for its information. The mechanics for this prior consultation would be for the two bodies to work out.

It is necessary to limit Parliament's power of intervention to the control of only fundamentally unreasonable estimates by the Audit Service Board in order to avoid conferring upon Parliament a power almost equivalent to that of approval of the estimates. I do not consider that it was the intent of the framers of the Constitution to confer on Parliament a power of approval of the estimates put forward by the Audit Service Board. It should, in this connection, be recognised that there would be the potential for Parliament to cloak its assertion of a power of approval in the

language of reasonableness, if the criterion adopted by this court were to be reasonableness *simpliciter.* A standard of reasonableness *simpliciter* would predictably attract second-guessing from Parliament as to what estimates by the Audit Service Board are reasonable and would thus convert the exercise into one equivalent to securing the consent of Parliament. That is why I am prescribing a standard higher than reasonableness. However, I am convinced that the core values and structure of the Constitution cannot permit the Audit Service Board to abuse its constitutional right to make independent financial provision for the Audit Service by submitting fundamentally unreasonable estimates.

Accordingly, I am unable to grant in full the first of the declarations sought by the Plaintiff in this case, since there are circumstances under which the approval of Parliament may be required for the administrative expenses of the Audit Service. The declaration that I am willing to grant, and to which the plaintiff is entitled, is that the administrative expenses, including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Services Commission, are not subject to the approval of the Minister of Finance and are subject to the approval of Parliament only when they are fundamentally unreasonable. This declaration is compatible with sections 26 and 27 of the Audit Service Act, 2000 (Act 584), which provide as follows:

> "(26) In accordance with clause (14) of Article 187 of the Constitution, the administrative expenses of the office of the Auditor-General including the 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.
>
> (27)(1) The Board shall at least two months before the end of the financial year submit to the President the estimates of the Service.
>
> (2) The President shall at least one month before the end of the financial year cause the estimates to be laid before Parliament without revision but with the recommendations that the President may make on them."

Accordingly, I find these provisions of the Audit Service Act, 2000 to be consistent with the 1992 Constitution. Section 27 (*supra*) seems to be based on the assumption that the Audit Service Board does not have a *carte blanche* on budgetary matters and that Parliament may have some say in its budgetary estimates. I think that this assumption is correct, although in my view the Parliamentary power of intervention is only in exceptional circumstances, rather than ordinarily.

By way of comparative perspectives, I would like to cite the conclusions in a Report on Minimum Independence Requirements for the Auditor General, Report No. 33 of the Western Australia Legislative Assembly's Public Accounts and Expenditure Review Committee, published in 1996. This Report reaches the conclusion, *inter alia*, that while the Auditor General of Western Australia, and by extension in all the Australian States, should get Parliamentary approval for his or her Office's budget, the role of Parliament should be enhanced at the expense of that of the Executive. In response to a submission by the Australasian Council of Auditors General (at p. 6 of the Report) that: "The resourcing of the audit office should be a decision of the Parliament made on the recommendation of the Auditor General independent of the executive arm of government", the Western Australian Public Accounts and Expenditure Review Committee made the following observation by way of Western Australian context before reaching the conclusion I will be highlighting below (at p. 7 of the Report):

> "Currently the budget of the Office of the Auditor General is presented through the Treasury Department for review. The Office also has the power to report to Parliament on the adequacy of resources allocated to audit.
>
> The PAERC in its 1992 Report was not convinced that the resourcing through the normal Budget process provided the Auditor General with *sufficient flexibility and discretion with regard to the Office's organisational structure, accommodation, information technology, budgetary and expenditure controls, audit fees and financial autonomy".* The Committee subsequently

recommended that the Parliament should appropriate resources for the Auditor General to audit as he thinks fit and to take a role in determining the budget for the Office separate of the Executive.

The Commission on Government in its first report recommended that a Joint Audit Committee determine the budget and that staffing be subject to an annual review by this Committee. The Joint Standing Committee on the Commission on Government, set up to examine the report(s) of the Commission disagreed with an increased role by Parliament, preferring that Treasury retain its legislative role."

The Committee then concluded as follows (on p. 8):

> "With respect to the resourcing of the Audit Office, the Committee considers that Parliament should have an increased role in appropriating resources. It should be a decision of the respective Parliaments whether this role should be carried out on the advice of a Parliamentary Committee."

This conclusion is an interesting basis for comparison with the Ghanaian constitutional position. It makes the case for diminishing executive influence on decisions relating to the budget of the Auditor General, for the obvious reason of potential conflict of interest, and for increasing the role of the Parliament, in preference to the Executive, in that decision. The Ghanaian constitutional language, already set out, restricts the role of even the Parliament in the decision-making relating to the budget of the Auditor General. However, this Parliamentary restriction from intervention is not total, in my view.

From the foregoing discussion, it is evident that I am willing to grant the second, third and fourth declarations endorsed on the Plaintiff's Writ.

However, in the light of the legal analysis above, I am unable to grant the fifth declaration, since interaction between the Audit Service and Parliament is needed to ensure that the estimates to be laid before Parliament, for its information, are not fundamentally unreasonable.

Finally, the plaintiff is entitled to the sixth and seventh declarations, on the basis of the law as expounded above.

In the circumstances, the plaintiff's action succeeds in part.

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

OWUSU (MS), JSC:-

The plaintiff, a retired Deputy Auditor-General, as a concerned citizen of Ghana is before this court invoking the Original Jurisdiction of the court under Article 2 (1) (b) of the 1992 Constitution.
The said sub-Article reads as follows:
"A person who alleges that –

a. an enactment or anything contained in or done under the authority of that or any other enactment; or

b. any act or omission of any person is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

To this end, the plaintiff by his writ, seeks the following Declarations:

1. That on a true and proper interpretation of Articles 178 (1) (a); 179 (2) (b); 187(14); 189(2) 189(3) of the 1992 Constitution administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public

Services Commission are not subject to the approval of Parliament or the Minister of Finance.

2. That the practice of the Minister of Finance in reviewing downwards AND OR submitting estimate determined by the Audit Service Board under Article 189 (3) (a) of the Constitution for Parliamentary approval is unconstitutional.

3. That the reduction by the Ministry of Finance, of the annual estimates of the administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service before submission to Parliament, and the presentation of such estimates by the Minister to Parliament for approval are unconstitutional.

4. That the subjection of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the Executive branch of Government including budget ceilings and hearings at the Ministry of Finance is unconstitutional as the Ministry is empowered to hear and provide ceilings on only expenses subject to annual appropriation.

5. That the invitation of the Audit Service by any Parliamentary Committee for discussions, hearings, justifications or defence of the estimates of administrative expenses determined by the Audit Service Board under the Constitution is unconstitutional.

6. That payment of pensions and gratuities of retired officers and employees of the Audit Service under the Social Security Fund instead of the Consolidated Fund as provided for by the 1992 Constitution is unconstitutional.

7. That the insistence by the Ministry of Finance for financial clearance before recruitment can be made by the Board under Article 189(2) and failure to put persons recruited under Article 189(2) of the Constitution on the payroll by

the Controller and Accountant General because the Ministry of Finance has not given financial clearance is unconstitutional.

8. Any other order or orders that the honourable court deems fit to give effect to the declarations sought by the Plaintiff in terms of Article 2 (2) of the 1992 Constitution of the Republic of Ghana.

The plaintiff in a memorandum of issues filed on 15-05-2009 set down the following as issues for determination by the court:

1. Whether or not the act or practice of the Minister of Finance or the Office of the President in
    a) causing annually the administrative expenses of the Ghana Audit Service including salaries, allowances, gratuities and pensions to be included in the annual Appropriation Bill of Government and introducing same under Article 179(2) (a) of the Constitution for debate and approval by Parliament offends or is inconsistent with or is in contravention of Articles 178(1) (a), 179 (2) and 187 (14) of the Constitution.

    b) Reducing the administrative expenses of the Audit Service before submitting the reduced administrative expenses to Parliament, for approval constitutes a violation of Articles 189 (3) (a), 178 (1) (a), 179(2) (b) and 187(14) of the Constitution.

2. Whether or not the practice of the Minister of Finance in subjecting the administrative expenses of the Audit Service to budget policy guidelines, formats, financial ceilings directives of Cabinet, as well as manpower and budget hearings at the Ministry of Finance towards the preparation of the Annual Appropriation Bill offends Articles 179 (2) (b), 187 (14), 189(2) and 189 (3) (a) of the Constitution.

3. Whether or not under Article 189(3) (a) of the Constitution the determination of conditions of service of members of the Audit Service other than the Auditor-General by the Audit Service Board, acting in consultation with the Public Services Commission is subject to review, amendment or approval by the Office of the President, the Minister of Finance or any other authority before the conditions of service including revised salary structure are implemented.

4. Whether or not the conditions of service of members of the Audit Service other than the Auditor-General which are determined under Article 189(3) (a) of the Constitution constitute a debt owed to the members of the Service by the State by virtue of Article 187 (14) of the Constitution and that interest is exigible in the event of failure to pay these on their due dates.

5. Whether or not the inclusion of the Audit Service by the Fair Wages Commission in its mandate or determining salary structures in the public services other than those covered by Article 71 of the Constitution offends Article 189 (3) (a) of the Constitution.

6. Whether of not the practice of the Controller and Accountant General in demanding financial clearance and approval from the Minister of Finance as a pre-condition for:

    a) implementing conditions of service of members of the Audit Service other than the Auditor-General, including revised salary structures and allowances determined under Article 189 (3) (a) of the Constitution, and/or

    b) putting the names of persons appointed under Article 189(2) of the Constitution by the Audit Service Board, acting in consultation with the Public Services Commission on the government pay roll offends Articles 178 (1) (a) and 187 (14) of the Constitution.

7. Whether or not it is the Constitutional duty of the Audit Service Board, acting in consultation with the Public Services Commission to determine pensions and gratuities of members of the Audit Service other than the Auditor-General as part of the conditions of service stipulated by Article 189 (3) (a) of the Constitution which pensions and gratuities are payable from the Consolidated Fund.

8. Whether or not the practice of the Minister of Finance and the Controller and Accountant General to regard members of the Audit Services other than the Auditor-General as members of the Social Security; Pensions Fund for the purposes of pension payment and causing monthly deduction from the salaries of members of the Service to be made to the Social Security and National Insurance Trust for such payments on retirement is consistent with Article 187 (14) and section 20 of the First schedule specified by Article 299 of the Constitution.

In an affidavit attached to the plaintiff's statement of case, he averred that:

> "**The facts contained in the statement of case regarding the conduct of the Minister of Finance in reducing downwards and or submitting estimates prepared by the Audit Service Board for parliamentary approval are within his personal knowledge."**

These facts he set out in his statement of case particularly paragraph 1 (i– vii) which form the subject matter of the declaration he seeks in his reliefs 2 to 7.

In sum, the plaintiff's complaint is against the subjection of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the executive branch of Government and by specific acts of the Minister of Finance reviewing downwards the estimates determined by the Audit Service Board under Article 189 (3) of the Constitution.

That the annual estimates of administrative expenses of the office of the Auditor-General including all salaries, allowances, gratuities and pensions are reduced by the Ministry of Finance before submission to Parliament and the presentation of such estimate by the minister to Parliament for approval.

The plaintiff also finds unconstitutional the payment of pensions and gratuities of retired employees of the Audit Service under the Social Security Fund instead of the Consolidated Fund and the insistence of the Ministry of Finance on giving clearance for recruitment of staff by the Audit Service Board.

The first Defendant is sued as the principal legal adviser to the Government because the action is essentially against the executive arm of government acting through the Minister of Finance. The other Defendants are nominal Defendants whose actions are being challenged by the plaintiff.

The facts complained of by the plaintiff in principle have not been denied by the Defendants in their statement of case, verified by an affidavit sworn to by a senior Attorney with the authority and consent of the Attorney-General. Rather the statement sought to justify them.

The Defendants contend that the Minister of Finance is very important in dealing with the Consolidated Fund and that under the Financial Administration Act of 2003, (Act 654) the Minister is responsible for the management and control of the Consolidated Fund. He performs this task with the Controller and Accountant-General who under section 3 of the Financial Administration Act, is responsible for the compilation and management of the accounts prepared in relation to the Consolidated Fund.

Paragraph 4 of the statement of the Defendants refers to Article 178 of the Constitution which states that:

"(1) No money shall be withdrawn from the Consolidated Fund except –

(a) To meet expenditure that is charged on that fund by this Constitution or by an Act of Parliament; or

(b) Where issue of those moneys has been authorized –

i. by an Appropriation Act; or

ii. by a supplementary estimate approved by resolution of Parliament passed for the purpose; or

iii. by an Act of Parliament enacted under article 179 of this Constitution; or

iv. by rules or regulations made under on Act of Parliament in respect of trust money's paid into the Consolidated Fund

The statement also refers to Article 179(1) which enjoins the President to cause to be prepared and laid before Parliament the estimates of the revenues and expenditure of the Government for the following year at least one month before the end of the financial year.

Under Article 179 (2) (b) –

> **"The estimates of the expenditure of all public offices and public corporations, other than those set up as commercial ventures shall in respect of payments charged on the Consolidated Fund, be laid before Parliament for the information of members of Parliament."**

It is the case of the Defendants that the Audit Service forming part of the public services of Ghana must like all other Government Departments prepare its estimates and present it to the Minister of Finance who must of necessity review it to be sure there is enough money in the purse to pay. The Defendants admit that provisions relating to the Audit Service are to ensure its independence. They contend however that the independence is more in relation to the performance of its duties and cannot be stretched to mean financial independence to the extent that its accountants (sic) cannot be scrutinized even by the Minister for finance who manages the purse.

In effect the Defendants are calling upon the court, in view of the concerns raised in their statement of case to once again interpret "***be laid before Parliament for the information of members of Parliament*** by adopting a purposive approach to reach a result more in tune with the core values of the Constitution.

In other words, the literal reading of "be laid before Parliament for information of members of Parliament will lead to absurdity if it is interpreted to mean that administrative expenses including salaries, allowances pensions and gratuities of the Audit Service determined by the Audit Board in consultation with the Public Services Commission as a charge on the Consolidated Fund, are not subject to the approval of Parliament or the Minister of Finance as the plaintiff wants the court to declare.

Under Article 130 (1) (a) of the Constitution, the Supreme Court shall have exclusive original Jurisdiction in –

"all matters relating to the enforcement or interpretation of this Constitution; and ---

In this regard, the Supreme Court must exercise its exclusive original jurisdiction to give ***"meaning"*** to the provisions of the Constitution which contains within it the aspirations and hopes of the people of Ghana. The Constitution being the supreme law of the land. What interpretation then does the court place on ***laid before Parliament for information of members of Parliament***?

The plaintiff contends that the administrative expenses are laid before Parliament for information of members ***only***. Counsel for plaintiff in his statement of case referred to definition of ***"charge"*** in CHAMBERS 21st Century Dictionary as ***"a debt or financial liability"*** and therefore when the administrative expenses are determined by the Audit Board, acting in consultation with the Public Services Commission they become ***"a debt or financial liability"*** payable from the Consolidated Fund and no person or authority has power to vary any part of thereof.

In paragraph 12 of the statement, counsel contends that "***it is not open to a debtor to decide as of right how much of his debt he will pay. A debtor is obliged to pay his debt!"***

He submits the words of the Constitution are clear and unambiguous. That no approval be it Parliamentary or otherwise is required before such payments are effected.

At this stage, I pause to ask. Is this the intention of the framers of the Constitution? Will such an interpretation satisfy the WILL and ASPIRATIONS of the people of Ghana?

In the case of TUFFUOR VRS ATTORNEY-GENERAL [1980] GLR, the Court of Appeal sitting as the Supreme Court per Sowah J. S. C. (as he then was) stated that –

> **"A written Constitution such as ours, is not an ordinary Act of Parliament. It embodies the will of a people. It also mirrors their history. Account, therefore needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and further life. - - - its language - - - must be considered as if it were a living organism capable of growth and development."**

Again in the case of N. P. P. VRS ATTORNEY-GENERAL (the 31st December case) 1993 – 94 GLR 35, His Lordship Hayfron-Benjamin J. S. C. now of blessed memory also had this to say at p. 168 –

> **"My duty was to discover the "*intent and meaning*" of - - - our Constitution, 1992 and apply "*a broad and liberal spirit*" in its interpretation. There is no benefit in these modern times in applying a strict interpretation to modern democratic Constitutions. So to do would mean that we forget that Constitutions are made by men for the governance of men. The 1992 Constitution is therefore the sum total of our hopes, disappointments, experiences and expectations as a nation. If we therefore forget the historical development of our Constitution then we fail to recognise that "*it is a living organism capable of growth*."**

In line with this approach, this court has in recent times decided cases applying purposive interpretation, resulting more in tune with the core values of the Constitution. See the case of AGYEI TWUM VRS ATTORNEY-GENERAL and AKWETEY [2005 – 2006] SCGLR 732 at 738.

Again in the case of AMPIAH AMPOFO VRS. COMMISSIONER ON HUMAN RIGHTS AND ADMINISTRATIVE JUSTICE [2005 -2006] SCGLR 227 the court unanimously held that giving an interpretative opinion on a reference from the High Court; regulation 6(2) of the Constitution on Human Rights and Administrative Justice (Complaint Procedure) Regulations, 1994 (C17), which conferred investigative powers on a panel consist of a member of the commission of officers and employees of the commission other than the commissioner and his two Deputy Commissioners, was in accord with the spirit of the 1992 Constitution - - -

The question posed for determination by the court was ***"whether in the face of Article 216 which defines the commission, C. I. 7 can confer investigative powers on any other body like the panel defined in regulation 6 (2) of C17."***

My respected brother Dr. Date-Bah J. S. C. had this to say:

> **"Applying a purposive approach to the interpretation of the provisions of chapter eighteen of the 1992 Constitution and the**

Commission on Human Rights and Administrative Act, 1993 (Act. 456), I am of the view that the interpretation contended for by the plaintiff is not viable and not in keeping with the spirit and purpose (both subjective and objective) of the provision concerned."

My brother referred to the case of ASARE VRS. ATTORNEY-GENERAL [2003–2004] 2 SCGLR 823.

Admittedly, the Constitution states that the administrative estimates are to be laid before Parliament for information of members of Parliament. It does not go on to state **and their approval.**

Counsel referred the court to Constitutions of Kenya and Zimbabwe, the relevant provisions of which in both countries state as follows: (Article 102 (2) of the Zimbabwean Constitution.

"where any moneys are charged by this Constitution or an Act of Parliament upon the Consolidated Revenue Fund or any other public fund, *they shall be paid out of that fund by the Government to the person or authority to whom payment is due*. (e. s.)

The above quoted provision from both the Constitution of Kenya and that of Zimbabwe, was ably distinguished from the provision under our Constitution requiring the administrative estimates determined by the Audit Board in consultation with the Public Services Commission to be laid before Parliament for their information by counsel for the Defendants in his statement of case.

In the Constitutions of both countries, where any moneys are charged upon the Consolidated Revenue Fund - - - they shall be paid out of that fund by the Government to the person or authority to whom payment is due.

The provision does not state that the moneys charged upon the Consolidated Revenue Fund ***shall be laid before the National Assembly*** for information of its members.

A question that is agitating my mind is, if the estimates are laid before Parliament for information of members ***only*** as plaintiff would want the court to declare, is counsel saying that Parliament cannot ask any questions about the estimates so presented? I will say it can. What if the figures as stipulated do not work up to the final figure

arrived at? What if clarification is needed for the salaries of workers as determined by the Audit Board? There may be many questions which Parliament may want to ask. I do not think that the framers of the Constitution had intended to prohibit Parliament from making inquires on the estimates so laid before it. The golden rule of interpretation is that words must be given their literal and ordinary meaning unless the literal and ordinary meaning will lead to absurdity and in this case I am of the view that for information of members of Parliament if literally interpreted to mean information only may under some circumstances lead to absurdity. In the context of the instant case, the purposive approach to interpretation requires that implicit words be read into Article 179 (2) (b) of the Constitution to avert a manifest absurdity.

If the court should grant relief 5 of the plaintiff i.e. declare that the invitation of the Audit Service by any Parliamentary committee for discussion, hearing justification or defence of the estimates of administrative expenses determined by the Audit Service Board under the Constitution is unconstitutional, I am of the view, such a declaration may lead to absurdity and for that reason I will with haste decline to make such a declaration. The Audit Board and the Public Services Commission are made up of human beings whose infallibility cannot be guaranteed.

I find myself more comfortable with the purposive interpretation which I think makes section 27 sub-section 2 of the Audit Service Act 200 (Act 584) rather compatible with Article 179 (2) (b). The section reads as follows:

> **"The President shall at least one month before the end of the financial year cause the estimates to be laid before Parliament without revision but with the recommendations that the President may make on them."**

Section 27(1) requires the Board to submit to the President the estimates of the service at least two months before the end of the financial year.

Ordinarily, I will conclude that administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Services Commission as a charge on the Consolidated Fund are not subject to the approval of Parliament but when the estimates are laid before Parliament, Parliament can ask questions if need be.

To this extent I will grant the plaintiff's relief 1 subject to my remarks regarding Parliament's right to seek clarification on the estimates.

With regard to relief 2, 3, 4 and 7, the plaintiff has on the strength of his statement of case succeeded in establishing that the acts of the Minister of Finance complained of are under Article 189 (2) and (3) the language of which I do not think needs any interpretation, are unconstitutional. By these offensive acts of the Minister of Finance, he is usurping the position of the Audit Board.

Article 189 (2) and (3) state that –

> "**The appointment of officers and other employees in the Audit Service, other than the Auditor – General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission**
>
> 3. **The Audit Service Board shall, acting in consultation with the Public Services**
>
> **Commission –**
>
> **(a) determine the terms and conditions of service of officers and other employees in the Audit Service, and**
>
> **(b) by constitutional instrument, make regulations for the effective and efficient administration of the Audi Service."**

Payment of pensions and gratuities of retired officers and employees of the Audit Service are included in the administrative expenses of the service and as such, are a charge on the Consolidated Fund under Article 187 (14). These reliefs will also be granted and same are hereby granted.

R. C. OWUSU (MS)

JUSTICE OF THE SUPREME COURT

DOTSE, JSC:-

This case raises several issues of extreme constitutional importance. As a result it deserves to be given serious attention devoid of a strait jacket, restrictive and technical approach.

I have always held the view that in interpreting a constitution, one must resort to the constitution itself to determine the spirit the framers of the constitution intended to give it in its interpretation. Where the constitution contains guidelines or principles which can be used to interpret the constitution these must be applied. Where in the case of our Constitution, 1992, there are no such express guidelines, the Supreme Court itself must fashion out its interpretative principles on a case by case basis taking into account the contextual nature of the provisions concerned. It is however my firm conviction that in fashioning out these guidelines and interpretative principles which underpin the Constitution 1992, one must first and foremost look at the Constitution itself, that failing then resort will be made to previous decisions of the Supreme Court in the 1st 2nd and 3rd Republican Constitutions of 1960, 1969 and 1979 respectively.

I am also of the view that principles of constitutional interpretation and decided cases from foreign countries must be sparingly referred to and whenever these are used, the provisions of those constitutions upon which the cases have been decided must be thoroughly digested and analysed to prevent the wholesale and corrupted adoption of foreign rules of constitutional interpretation which have no nexus to our home grown situation.

For example, the Plaintiff, in the instant case argued that provisions relating to expenditure charged on the Consolidated fund are not peculiar to Ghana, and attached to his statement of case extracts from the Constitutions of Kenya and Zimbabwe evidencing similar provisions in the Constitution of other African countries. It has been stated by the Supreme Court, time without number, almost to the point of it being trite law that in construing the Constitution of our Country,

originality must be resorted to as the Constitution was drafted to suit the specific experiences and culture of the people. Therefore it might not always be helpful in looking at other jurisdictions to interpret or give full meaning to our National Constitution.

Even though the American Supreme Court decision in the celebrated case of **Marbury vrs Madison 1 Cranch (5 U.S.) 137 (1803)** argued on 11-2-1803 and decided on 24-2-1803 by a vote of 5-0 has been widely acclaimed as the foundation of judicial review of administrative action, not many decided cases have been referred to in that celebrated judgment.

It is significant to note that although the importance of **Marbury v Madison** has been expanded over time, the case remains one of the fundamental and monumental judicial opinions in American Constitutional history. That judgment correctly assessed the role of the judiciary in maintaining constitutional checks on legislative action; it also provided the reasons for subjecting statutes to constitutional scrutiny; The case also demanded of judges to abide by constitutional norms, and it recognised the limited jurisdiction of all other courts in the federation.

With this as a guide, I believe the time has come for this Supreme Court to come out with some broad principles of constitutional interpretation, be it based on the PURPOSIVE, LIBERAL, BROAD and RESTRICTIVE, NATURAL and ORDINARY approach.

The judgment of Sowah JSC(as he then was) in the locus classicus decision in **TUFFOUR v ATTORNEY-GENERAL [1980] GLR 637**, holding 5, up to the recent decision of the Supreme Court in the case of **AWUNI vs WAEC [2003-2004] 1 SCGLR 471** sets the parameters for some guidelines on constitutional interpretation. For example, it was held in the Tuffour v Attorney-General case in part as follows:-

> "The duty of the court in interpreting the provisions of article 127 (8) and (9) was to take the words as they stood and to give them their true construction having regard to the language of the provisions of the Constitution, always preferring the natural meaning of the words involved, but nonetheless giving

the words their appropriate construction according to the context. Thus the phrase "shall be deemed" in article 127 (8) (a legislative devise resorted to when a thing was said to be something else with its attendant consequences when it was in fact not) had been employed and used in several parts of the Constitution and thus an aid towards ascertaining its true meaning."

Twenty-four years down the line, the Supreme Court, yet in another case stated the following as the guiding principle of constitutional interpretation where Kpegah J.S.C stated as follows:-

" After carefully reading clauses (1 & 2) of article 33 together, I am firmly of the view that the words must be given **their literal and ordinary meaning;** and the simple and ordinary meaning I would ascribe to the word "redress" as it is used in clause (1) is "relief". And "apply" is wide enough to admit any procedure by which the court can be approached…My Lords, the breadth of language employed in the said article 33(1) should encourage us to follow the broad-minded approach and liberal interpretation adopted by the Privy Council in the case of *Maharaj v Attorney-General of Trinidad & Tobago* [1978] 2 WLR 902 where it was held that the award of some damages could be a component of the redress the court is entitled to give…"

WHAT ARE THE FACTS OF THIS CASE?

The facts of the case admit of no complexity whatsoever. The Plaintiff, a retired Deputy Auditor-General instituted the instant suit as a concerned citizen of Ghana pursuant to Article 2 (1) (b) of the Constitution 1992 of the Republic of Ghana.
The Plaintiff averred that as a retired staff of the Audit Service and President of the Audit Service Pensioners Association, whose gratuity and other benefits are determined by the Audit Service Board, he is directly and beneficially affected by the reliefs he is seeking before the court.
By reference to stated constitutional provisions of the Constitution 1992, of which reference will be made later, the Plaintiff contended that "charge" as used in the

Constitution 1992, with reference to the consolidated fund means a debt or financial liability payable from the consolidated fund.

The Plaintiff further contends that when the Audit Service Board acting in consultation with the Public Services Commission, determines the terms and conditions of service under Article 189 (3) (a) of the Constitution, they become due for implementation on their effective date and no person or authority has power to vary any part of the conditions of service so determined under this Article.

The relevant constitutional provisions are the following:

1. Articles 178(1)(a), 2. 179(2)(b), 3. 187(14), 4. 189(2) and 5. 189(3)

Based on the above constitutional provisions, the Plaintiff averred that money can be withdrawn from the consolidated fund in two broad ways which are provided for in Article 178 namely

(1) Expenditure that is charged on the consolidated fund or by an act of Parliament and

(2) Where it has been authorised by

(i) An appropriation Act

(ii) pursuant to an Act of Parliament under Article 179 of the Constitution

(iii) Where the moneys to be withdrawn are pursuant to rules/regulations made under an Act of Parliament of trust moneys paid into the Consolidated Fund.

The Plaintiff, based upon these constitutional provisions therefore contends that where payments are charged on the consolidated Fund by the Constitution or a specific enactment, the annual estimates relating to those payments are sent to Parliament for the information of members only and not for **DEBATE** or **APPROVAL**.

A close and critical appraisal of the reliefs of the Plaintiff and his statement of case gives one the strong impression that the Plaintiff demands from this court a liberal, benevolent and ordinary interpretation of the constitutional provisions hereinafter appearing.

Articles 178(1)(a) of the Constitution, 1992 provides as follows:

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

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

Article 179(2) (b) of the Constitution 1992 provides as follows:

2. (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 members of Parliament.**

3. Article 187 (14) of the Constitution 1992 provides as follows:

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.

4. Article 189(2) of the Constitution 1992 provides :

> (2) The appointment of officers and other employees in the Audit Service, other than the Auditor-General, shall be made by the Audit Service Board, acting in consultation with the Public Services Commission.

5. Article 189(3) of the Constitution 1992 provides as follows:

> (3) The Audit Service Board shall, acting in consultation with the Public Services Commission -
>
> > (a) determine the terms and conditions of service of officers and other employees in the Audit Service; and
> >
> > (b) by constitutional instrument, make regulations for the effective and efficient administration of the Audit Service.

RELIEFS CLAIMED BY PLAINTIFF

The Plaintiff invoked the original jurisdiction of the Supreme Court for a true and proper interpretation of the above articles. In his writ, the Plaintiff is seeking the following declarations:

1. That on a true and proper interpretation of articles 178(1)(a); 179(2)(b); 187(14); 189(2) and 189(3) of the 1992 Constitution, administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Services Commission are not subject to the approval of Parliament or the Minister of Finance.
2. That the practice of the Minister of Finance in reviewing downwards AND OR submitting estimates determined by the Audit Service Board under Article 189(3)(a) of the Constitution for Parliamentary approval is unconstitutional.
3. That the reduction by the Ministry of Finance, of the annual estimates of the administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service before submission to Parliament, and the presentation of such estimates by the Minister to Parliament for approval are unconstitutional.
4. That the subjection of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the Executive branch of Government including budget ceilings and hearings at the Ministry of Finance is unconstitutional as the Ministry is empowered to hear and provide ceilings on only expenses subject to annual appropriation.
5. That the invitation of the Audit Service by any Parliamentary Committee for discussions, hearings, justifications or defence of the estimates of administrative expenses determined by the Audit Service Board under the Constitution is unconstitutional.
6. That the payments of pensions and gratuities of retired officers and employees of the Audit Service under the Social Security Fund instead of the consolidated fund as provided for by the 1992 Constitution is unconstitutional.

7. That the insistence by the Ministry of Finance for financial clearance before recruitment can be made by the Board under Article 189(2) and failure to put persons recruited under Article 189(2) of the Constitution on the payroll by the Controller and Accountant General because the Ministry of Finance has not given financial clearance is unconstitutional.
8. Any other order or orders that the Honourable Court deems fit to give effect to the declarations sought by the Plaintiff in terms of Article 2(2) of the 1992 Constitution.

DEFENDANTS RESPONSE

In answer to the Plaintiff's statement of case, the Attorney-General argued that the President of the Republic who is vested with executive power under the Constitution could delegate some of those powers for efficiency, and as dealing with the Consolidated Fund, which is one of the public funds of Ghana, involves management of the country's revenue, it is the Minister for Finance who is responsible for the management and control of the Consolidated Funds among other public funds. The Minister does this in conjunction with the Controller and Accountant-General. The Attorney-General further argued that the resources of the country is to be distributed in an equitable manner, therefore the Minister has the right to adjust these estimates before the President lays them before Parliament.

Section 27 (1) & (2) of the Audit Service Act, 2000 Act 584 states as follows:

1. The Board shall at least two months before the end of the financial year submit to the President the estimates of the Service.
2. The President shall at least one month before the end of the financial year cause the estimates to be laid before Parliament without revision but with recommendations that the President may make on them.

Plaintiff's argument is that even before the President lays these estimates before Parliament, The Minster for Finance makes revisions to these estimates before laying them before Parliament. According to him, this is unconstitutional.

I have observed that the Plaintiff has filed some Memorandum of Issues based on the reliefs filed before this court. My opinion on the memorandum of issues so filed is that they are too repetitive and do not deal concisely with the real issues in controversy. I will therefore in an attempt to resolve the issues raised in this case rather deal with the reliefs being claimed by the Plaintiff vis-à-vis the arguments advanced by him in support and those by the Defendant in opposition.

RELIEF 1

It should be noted that the Constitutional provisions referred to in Relief 1 of the Plaintiff must be understood in the proper context. The context is that the Audit Service of Ghana is the constitutional body under the direction of a governing body, mandated to audit the public accounts of Ghana and all public offices, including the metropolitan, municipal and District offices and other public corporations and organisations established by an Act of Parliament and report those findings to Parliament. The Audit Service is therefore the monitoring and accountability organ of the state. In general terms, the Audit Service as established under the Constitution 1992 can be said to be an oversight body to promote good governance, ensure accountability and transparency in the entire public sector, reference Article 188 of the Constitution, 1992.

The Audit Service is therefore the only constitutional body mandated to monitor the use and management of all public funds and report on these activities to Parliament.

With the above as the core and critical constitutional mandate of the Audit Service, let me walk through the relevant constitutional provisions referred to in relief one (1) supra.

(a) Article 178 (1)(a)

This means that no monies shall be withdrawn from the consolidated fund except to satisfy payments that have been levied on the fund by the Constitution 1992 or under an Act of Parliament, duly enacted for that purpose. In this context, I agree

with the definition of charge as contained in the CHAMBERS 21ST CENTURY DICTIONARY as meaning **a debt** or financial liability. This therefore means that once the payments have been classified as a charge, they become due and owing automatically upon the consolidated fund anytime they fall due:

(b) Article 179(2)(b)

My understanding of the provisions of this article is that the estimates of the expenditure, of all public offices and public corporations (other than those set up as commercial ventures) and this by necessary implication includes the Audit Service, shall in respect of payments authorised from the Consolidated Fund be laid before Parliament for the information of members of Parliament. What then is the meaning of "information" in this context?

WEBSTERS THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED) 1961 page 1160 ascribes the following meaning to these words as follows:-

INFORM: - to communicate knowledge to:

Make acquainted,

TELL, ADVISE, ENLIGHTEN.

INFORMATION:- Communication or reception of knowledge or intelligence

2. something received or obtained through informing

(a) knowledge communicated by others or obtained from investigation, study or instruction,

(b) knowledge of a particular event or situation,

INTELLIGENCE, NEWS, ADVICE

The combined effect of all the above definition of "inform" and "information" is that the members of Parliament are to receive this knowledge about the amounts of expenditure charged on the consolidated fund. Why do I say so?

I say so because in most other provisions of the Constitution 1992, especially Chapter 13, which deals with FINANCE, the words expressly state that "with the approval of Parliament" or under the authority of an Act of Parliament".

For example, under Article 174(1) is the general principle of taxation or imposition of taxes which is stated as follows:-

> "No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament."

Article 174(2) of the Constitution also ends with the following words "… shall be subject to the **prior approval of Parliament by resolution**" and the same provisions end Article 179(8) of the Constitution as follows:- "… shall be laid before Parliament for its approval".

It is also interesting to observe and note that under Article 174(3) of the Constitution, the provisions are stated as follows:-

> "Parliament may by resolution, supported by the votes of not less than two-thirds of all members of Parliament, exempt the exercise of any power from the provisions of clause (2) of this article."

It is therefore clear that under Chapter 13 of the Constitution, which deals with FINANCE, different methods have been stated as the procedures by which Parliament takes action or should not take action. These are by or under an Act of Parliament, and this is usually preceded by a debate on the floor of the House.

The second is by resolution and the ratio or margin of acceptance of such a resolution is stated in clear terms, otherwise it should be deemed as being carried by simple majority.

The third is by or with the prior approval of Parliament. This also means that Parliament must also debate the issue and come out with the result approving it by

resolution or otherwise- See Article 104(1) of the Constitution which states as follows:-

> (1) Except as otherwise provided in this Constitution, matters in Parliament shall be determined by the votes of the majority of members present and voting, with at least half of all the members of Parliament present.

The fourth procedure outlined under this chapter thirteen of the Constitution is that the payments of expenditure so charged on the Consolidated Fund, being estimates of expenditure of the relevant state institutions concerned shall be laid before Parliament for the information of members thereof.

The last method to ascertain what Parliament can do is to be inferred from its own standing orders which has been given constitutional support in Article 110(1) of the Constitution, 1992 as follows:-

> "Subject to the provisions of this Constitution, Parliament may, by standing orders, regulate its own procedure."

Are there any provisions in the current standing orders of Parliament that deal with this situation? YES. Part Nineteen of the Standing Orders of Parliament deals with financial procedure. It is contained in Section 142(b) of the Standing Orders, made pursuant to Article 110(1) of the Constitution 1992 as follows:-

"The estimates of the expenditure of all public offices and public corporations, other than those set up as commercial venture ,

> (b) shall, in respect of Consolidated Fund payments, be laid before Parliament for the information of members of the House"

There is therefore some consistency between this section and the Constitution. It is therefore clear that a walk through the relevant constitutional provisions has not been in vain. I am emboldened after this constitutional journey to conclude this aspect of the matter by stating that, in the instances where payments are charged upon the Consolidated fund, i.e as envisaged under Article 179(2)(b) of the

Constitution 1992, Parliament is only to be informed by the communication of that knowledge to them. The charge in that respect on the Consolidated fund is like a first charge or priority on the Consolidated Fund, and unless these are met, no other expenses will be considered a liability to be paid out from the Consolidated Fund. Parliament in this case has no discretion whatsoever in the matter. It is to be considered however that, before any public institution prepares its estimates of expenditure for the purposes of laying it before Parliament for the information of members of Parliament, all the necessary background checks will have been done to ensure that the system is not abused. My own understanding of how the various institutions of state work is that there are mechanisms put in place under the Constitution and by the various statutes which created those institutions like the Audit Service to ensure that they are kept in tandem with general governmental fiscal policy such that there are no dislocations of government financial programmes.

(c) article 187(14)

The meaning of this article admits of no controversy in view of the discussions on the previous articles. What this means is that the administrative expenses of the office of the Auditor-General including the following, shall be a liability on the consolidated fund and this makes them qualify for priority payment from the fund. These are

(i) All salaries

(ii) allowances

(iii) gratuities and pensions

The above are made payable to staff of the Audit Service, period.

(d) article 189(2)

There is also no controversy about the above provisions. All employees in the Audit Service other than the Auditor-General shall be appointed by the Audit Service Board acting in consultation with the Public Services Commission. This is because

under Article 70(1)(b), the appointment of the Auditor-General has been separately provided for as follows:-

"The president shall acting in consultation with the Council of State, appoint

(b) the Auditor-General."

That being the case, the only criteria is that, for the appointment of the staff of the Audit Service to be valid, it ought to have been made by the Audit Service Board acting in consultation with the Public Services Commission. The basis of the appointment, position appointed to, the conditions and terms of the appointment must be well stated. There must be certainty about these conditions based on merit.

(e) article 189(3)

The provisions of this article make the governing board of the Audit Service, acting in consultation with the Public Services Commission, the authority mandated under the Constitution to determine the terms and conditions of service of officers and other employees in the Audit Service and that the Board shall regulate the effective and efficient administration of the Audit Service by constitutional instrument. This is particularly gratifying in the sense that if one considers the relevant constitutional importance that the office of the Audit Service is enjoined to perform as a governance institution, then it is important to ensure that as an institution, it is insulated and protected from undue governmental control and direction.

Based upon the discussions made above, it is my conclusion that the administrative expenses made up of (i) salaries, (ii) allowances (iii) pensions and gratuities of the Audit Service determined by the Board acting in consultation with the Public Services Commission are not subject to the approval of Parliament or the Minister of Finance for that matter.

What should be seriously noted is that once the constitutional requirements for doing an act, in this case, the appointment of the staff based on terms and conditions after due process have been complied with i.e. (the relevant decision having been taken and approved by the Board of the Audit Service, acting in

consultation with the Public Services Commission) then the decisions so taken have become iron cast decisions and once laid before Parliament become a liability or a debt due and owing on the Consolidated Fund. My attitude in interpreting the various constitutional provisions referred to supra have been informed mainly by the principles stated in **Tuffuor vrs Attorney-General** through to **Awuni v WAEC,** Supreme Court decisions referred to supra. I have tried to give the words their natural and true meanings, having regard to the language of the provisions of the constitution, taking into account the context in which they have been used. Where necessary, the procedure and the practice in use by the relevant state institution, in this case the standing orders of parliament have been called in aid to assist in arriving at the true, ordinary and natural meaning assigned to those words and phrases. This is because the standing orders are the procedural tools directed at giving meaning to the constitution. It is therefore my firm conviction and belief that a court like this Supreme Court must in interpreting constitutional provisions read and construe together all related provisions of the Constitution with a view to discovering the real, simple and ordinary meaning of those provisions. This court should not interpret related provisions of a constitution or statute in isolation and in the process destroy the true intended meaning and effect of the particular provisions ascribed to them.

The Audit Service, together with other institutions of state like the Judiciary, Electoral Commission, Commission on Human Rights and Administrative Justice (CHRAJ) and others play very important and core functions in the protection, preservation and sustenance of democratic governance in line with the Commonwealth (Latimer House) principles, on the three branches of Government . These include the entrenchment of good governance, based on the highest standards of honesty, probity and accountability.

It is in pursuit of the above objectives that I appreciate the importance of the constitutional provisions which have been discussed supra, concerning institutions that they are meant to insulate them from governmental control and manipulation to ensure that they perform their tasks without any financial strangulation. I believe this explains the basis and rationale for the administrative expenses of those

institutions especially the Audit Service, having been made a liability on the consolidated fund without any legislative encumbrance.

I have read the statement of case of the Defendants on the issue and it appears to me that their stand and position is flawed. Basically, what is being discussed here are constitutional provisions. Assuming the control of the consolidated fund and or country's revenue which they claim is exercisable by the Minister of Finance and the Controller and Accountant-General is cognisable under the Financial Administration Act, 2003 (Act 654), is valid, under Article 1(2) of the Constitution 1992, since the constitutional provisions are superior to any other law, the sections of Act 654 shall to their degree of inconsistency with the Constitution be declared null and void. For now, I will sound a note of caution that the interpretation given to the constitutional provisions prevail over and above the provisions in Act 654.

I will therefore accede to the Plaintiff's relief one that, on a true and proper interpretation of Articles 178(1) (a), 179(2)(b), 187(14) 189(2) and 189(3) of the Constitution 1992, administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Services Commission are not subject to the approval of Parliament or the Ministry of Finance.

RELIEF TWO (2)

It definitely follows that from an examination of Article 189(3)(a) of the Constitution 1992, together with other related and connected provisions of the Constitution 1992, on Finance that, the Minister of Finance has no discretion in reviewing downwards the estimates determined by the Audit Service Board provided those estimates deal only with the administrative expenses which have been stated to include the following,

i. all salaries
ii. allowances
iii. gratuities and pensions

What should be noted is that the framers of the Constitution must be deemed to have intended the constitutional provisions for the protection and insulation of the institutions of state in mind. For example, the procedure for approving the administrative expenses and development expenditure of the judiciary have been well set out, and this is significantly different from the provisions that deal with the Audit Service and the others. This is because, under and by virtue of Article 179(3) of the Constitution 1992, it is provided as follows:-

> (3) "The Chief Justice shall, in consultation with the Judicial Council, cause to be submitted to the President at least two months before the end of each financial year, and thereafter as and when the need arises.
>
> > (a) the estimates of administrative expenses of the Judiciary charged on the Consolidated Fund under article 127 of this Constitution; and
> >
> > (b) estimates of development expenditure of the Judiciary.
>
> (4) The President shall, at the time specified in clause (1) of this article, or thereafter, as and when submitted to him under clause (3) of this article, cause the estimates referred to in clause (3) of this article to be laid before Parliament.
>
> (5) The estimates shall be laid before Parliament under clause (4) by the President without revision but with any recommendations that the Government may have on them.
>
> (6) The development expenditure of the Judiciary, if approved by Parliament, shall be a charge on the Consolidated Fund."

The intention of the framers of the Constitution should not be taken for granted. The meaning ascribed to the different procedures outlined in the constitutional provisions for approving financial estimates be they administrative or development expenditure for the judiciary is clear.

Whilst in the case of the Audit Service the administrative expenses become an automatic liability or charge on the consolidated fund after being laid before Parliament, for information only, in the case of the judiciary, two different methods have been outlined.

These are

1. That in the case of administrative expenses, they are submitted to the President, who shall cause them to be laid before Parliament without any revisions, but with recommendations.
2. In the case of development expenditure, there is an element of approval by Parliament before it can be a charge on the Consolidated Fund.

However, a clearer picture of the difference in procedure is very clear when one reads articles 127(4)(5)(6) and (7) of the Constitution 1992, alongside the provisions in article 179(3)(4)(5) and (6) of the Constitution just referred to supra.

Whilst Articles 127(4) & (5) of the Constitution stipulate that the administrative expenses of the judiciary shall be a charge on the consolidated fund, article 127(6) provides that funds voted by Parliament or charged on the Consolidated Fund for the judiciary shall be released on quarterly basis. This therefore means that in the case of funds voted by Parliament, they are those that are approved, whilst those charged on the Consolidated Fund, are those that are submitted to the President, laid before Parliament without a revision but with recommendations only.

I have decided to make this comparative study of the two institutions, the Judiciary and the Audit Service to bring out the real intention of the framers of the Constitution 1992 that they meant different procedural regimes to govern each situation to enhance the importance and core values of the governance institutions concerned. With this as a guide and a basis, one does not need an eagle's eye to read and discern that the Minister of Finance does not have any power to review downwards the estimates of the administrative expenses determined and approved by the Audit Service Board under Article 189(3)(a) of the Constitution for Parliamentary approval. Any such conduct should be considered as unconstitutional,

unwarranted and in clear breach of the Constitution 1992, and the standing orders of Parliament. Relief 2 of the Plaintiff is accordingly granted.

RELIEFS 3 & 4

In view of the similarities involved, in reliefs 3 and 4, they will be considered and dealt with together.

Flowing from the analysis and arguments on the immediately preceding reliefs, it is my respectful opinion that there are basically two distinct procedures by which expenditure is approved for the Audit Service and in Ghana generally. These are

1. Expenditures charged on the consolidated fund, and
2. Those approved by Parliament under an Appropriation Bill, later to become an Act.

In view of the above, it is clear that the Constitution 1992 clearly intended to oust Executive or Ministerial control of the process that will approve the administrative expenses of the Audit Service staff. The reduction therefore by the Ministry of Finance of the annual administrative expenses of the office of the Auditor-General including salaries, allowances and gratuities of persons serving in the Audit Service before submission of same to Parliament, and the presentation of the said estimates to Parliament for approval by the Finance Minister are unconstitutional. In the same vein, I will grant relief 4 of the Plaintiff's writ.

RELIEF 5

In view of the foregone conclusions, it is clear that the constitutional regime which is operated in Ghana under the Constitution 1992, does not admit of a situation where any Parliamentary Committee can interfere with the process of validating the approval of the administrative expenses of the Audit Service already determined by the Governing Board of the Service, in accordance with the Constitution. It must be noted that once the Constitution has in its wisdom delegated the powers to the Board, these must be respected. Any attempt by

any committee of Parliament to circumvent this constitutional arrangement is therefore unconstitutional and I so declare.

It is also quite clear from Article 189(1)(a)(b) and (c) of the Constitution 1992 that the President, who is the Head of the Executive has the upper hand in the appointment of the members of the Board of the Audit Service. At any particular point in time, the President alone appoints five out of the seven member Board, including the Chairman. The two other members are the Auditor-General and the Head of the Civil Service or his representative. I take the view that, the President, if he is desirous of ensuring that the Audit Service Board does not cause any serious dislocations to the Government's fiscal policy must then ensure that the right, competent and capable persons are appointed by him to occupy such important positions as members of the Governing Board of the Audit Service.

It is my understanding also that, in the performance of their functions, to wit determination of the terms and conditions of staff of the Audit Service and in their appointment of staff as well to fill vacancies or the creation of new establishment positions, members of the Board will do the necessary background checks, investigations and consultations with the Public Services Commission as required under the Constitution, 1992. These are crucial to ensure that there is equilibrium in their working relationship with the executive to prevent a collision. Once there is this understanding that the President is the appointing authority of the majority of the members of the Audit Service Board, all other constitutional arrangements stipulated in the Constitution 1992 must be given their ordinary and literal meaning to let the Constitution work perfectly. If that is done, Relief 5, also is granted, to wit, that the invitation by any Parliamentary Select Committee to the Audit Service to budget hearings or justifications of their administrative expenses already determined by the Audit Service Board, in consultation with the Public Services Commission under the relevant constitutional provisions of the constitution 1992 is unconstitutional.

RELIEF 6

From a reading of article 187(4) of the Constitution, one gets the ordinary impression that administrative expenses which in this context includes **gratuities** and **pensions** payable to or in respect of staff serving in the Audit Service shall be a charge on the Consolidated Fund and no more.

Taking the ordinary meaning of **pension** defined in the SHORTER OXFORD ENGLISH DICTIONARY Vol. II page 1466 as "***an annuity or other periodical payment made especially by a government, company or an employer of labour, in consideration of past services or the relinquishment of rights, claims or emoluments***, and **gratuity** defined in the WEBSTERS THIRD NEW INTERNATIONAL DICTIONARY (UNABRIDGED) 1961 page 992 as "***a lump sum paid in addition to pension to a retiring employee especially under civil service***" respectively, one gets a clear impression that pensions and gratuities of retired staff of the Audit Service constitute a charge on the consolidated fund.

I am only not clear as to exactly what the Plaintiff meant that payment of pensions and gratuities of retired staff of the service under the Social Security Fund instead of under the Consolidated Fund is unconstitutional. This is because payment of pensions under the Social Security Fund as far as I understand it is jointly contributed to by the staff or employee and employer. If therefore the retired employee has already contributed to the Social Security Scheme and is due for retirement, then it follows that the said employee must be entitled to his due. Save for this classification, I will grant relief (6) as well and declare that payment of pensions and gratuities of retired officers or employees of the Audit Service must be charged on the Consolidated Fund as is provided for under Article 187(14) of the Constitution 1992.

RELIEF 7

It appears to me that the way and manner Relief 7 has been couched makes it speculative. This is because no evidence has been given or material document exhibited which amply supports the contention that the Ministry of Finance is refusing to put persons recruited by the Audit Service Board for the Audit Service pursuant to Article 189(2) of the Constitution 1992 on the payroll by the Controller and Accountant-General. This relief appears to me to be speculative in

nature. Save for the proviso that Article 189(2) of the Constitution 1992 actually mandates the Audit Service Board to recruit staff for the Audit Service, other than for the position of Auditor-General, it is to be noted that all other appointments if made by the Board in consultation with the Public Services Commission are lawful and any assumption to the contrary for clearance from the Ministry of Finance before validating same with the Controller and Accountant-General will be considered unconstitutional.

GENERAL OBSERVATIONS

It is to be noted that learned Counsel for the Defendants in paragraph 17 of their Statement of Defendant's case stated in the last paragraph as follows:-

> "There are other items in the estimates that can and are varied by the Ministry of Finance but **salaries**, **allowances**, **gratuities** and **pensions** are never touched. It is also clear that these are a charge on the Consolidated Fund"

The above is a clear admission by the Defendants that salaries, allowances, gratuities and pensions being administrative expenses are a charge on the Consolidated Fund and cannot be varied by the Executive or the Legislature.

This is in effect a tacit endorsement of the core reliefs that the Plaintiff is seeking before this court. Thus, if the administrative expenses of the Audit Service, submitted by the Audit Service Board has gone through all the constitutional procedures laid down in the Constitution 1992, the Defendant has admitted that neither the Executive nor Parliament has any power or discretion to vary the said estimates.

There is a lot of wisdom in the said provisions. This is premised on the fact that the Audit Service is the single most important institution of State mandated to ensure proper use and accountability of state resources entrusted into the hands of both the Government and the governed. It is possible that in the performance of their duties, the Auditor-General and his staff will step on powerful toes who might not be comfortable with their report, findings and or recommendations.

It is therefore to ensure that the independence that has been granted the Audit Service in the discharge of their functions is such that no organ of state or of Government uses financial control to muzzle them in the effective and efficient discharge of their functions.

It is in this respect that I disagree with the submissions of learned Counsel for the Defendants that the independence granted the Audit Service does not extend to financial autonomy. In my opinion, there can be no real independence without financial autonomy.

The constitutional provisions on the Audit Service requiring the Board of the Service to determine the terms and conditions of service as well as recruitment of staff other than the office of the Auditor-General himself, in consultation with the Public Services Commission must be given their ordinary and natural meaning. It is only when this is done, as I have sought to do in my discussions on the constitutional provisions supra that the real benefits intended for the protection of governance institutions like the Audit Service will be achieved.

Even though there is some element of risk involved in granting such sweeping powers to the governing Board of the Audit Service, to the extent that there is the likelihood of unreasonable conditions of service being granted the staff which has the potential of dislocating the fiscal policy of the executive, there are sufficient checks and balances put in place to ensure that such a situation, if it does occur is managed. For example, the membership of the Board has been made in such a way that the President always has the majority of the members on the Board at all material times.

Secondly, there is the intervention and consultation with the Public Services Commission. This is a very important intervention, which if not done renders any act done unconstitutional.

Thirdly, the Judiciary through the courts exist to settle any issue of any unreasonable conditions of service including payment of salaries, allowances and or gratuities and pensions to staff of the Audit Service. If therefore, the Executive and Legislative arms of Government should consider any estimate in the nature of

administrative expenses of the Audit Service, laid before Parliament for the information of members of Parliament as unreasonable, it is prudent not to give the power to determine whatever is unreasonable to Parliament or the Executive but to the Judiciary. The Commonwealth (Latimer House) Principles on the Three Branches of Government comment on the effective harmonisation of relations between the Legislature and Judiciary as follows:

"(a) Relations between Parliament and the Judiciary should be governed by respect for Parliament's primary responsibility for law making on the one hand and for the Judiciary's responsibility for the interpretation and application of the law on the other hand."

"(b) Judiciaries and Parliaments should fulfil their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner"

That being the case, it is safer, prudent and indeed in consonance with current democratic and governance tradition in the civilised world to entrust the resolution of conflicts between the Executive and other institutions of state to an independent, impartial, honest and competent judiciary such as this court or indeed the Ghana Judiciary.

In our quest to interpret and apply our constitution and statute laws, we must ensure some consistency between our own constitution and International Human Rights Conventions and principles. It is in the light of such an approach that I decide this case in its entirety in favour of the Plaintiff as follows:

CONCLUSION

Basing myself on the principles underpinning the decisions in **Tuffour v Attorney-General** and **Awuni v WAEC**, both already referred to supra, I will grant the Plaintiff's reliefs using the natural and ordinary meanings of the words used in the Constitutional provisions, and where appropriate, their purposive and or intended meaning as follows:-

1) On a true and proper interpretation of Articles 178(1)(a), 179(2)(b), 187(14), 189(2) and 189(3) of the Constitution 1992, the administrative expenses of

the Ghana Audit Service, made up of salaries, allowances, pensions and gratuities which have been determined by the governing board of the Audit Service acting in consultation with the Public Services Commission are not subject to approval of Parliament or the Minister for Finance.

2) Under Article 189(3)(a) of the Constitution 1992, estimates of the administrative expenses of the Audit Service, determined by the Audit Service Board should not be reviewed by the Minister for Finance downwards and its submission to Parliament for approval is unconstitutional
3) It is therefore unconstitutional to subject the annual estimates of the administrative expenses of the Audit Service to budget policy directives of the Executive branch of Government, since it is only estimates subject to annual appropriation that are subject to any budgetary controls, discussions and ceilings.
4) Based on the constitutional provisions referred to supra, it is unconstitutional for any Parliamentary Select Committee to invite the Audit Service Board and subject their estimates of administrative expenses and subject them to budget hearings, discussions, justifications and or defence thereof.
5) In view of the Constitutional provisions which mandate the payment of pensions and gratuities of staff of the Audit Service from the Consolidated Fund, it is unconstitutional to provide for the payment of same from the Social Security Fund, save for the proviso that the Social Security Scheme is a joint contributory scheme which the said staff may of their own volition join.
6) The insistence (if real or established by the Plaintiff) by the Ministry of Finance for financial clearance before recruitment of staff by the Audit Service Board under Articles 189(2) of the Constitution, 1992, and the failure to put such newly recruited staff on the payroll unless clearance is given by the Ministry of Finance is unconstitutional and in breach of the letter and spirit of the constitution 1992.
7) In view of the core and critical role the Audit Service performs in the entrenchment and sustenance of good governance and accountability, any dispute in respect of whether determinations made by the Audit Service Board and the Public Services Commission are unreasonable or outrageous

should be determined by the Judiciary, to wit, the Courts and not Parliament or the Executive.

J.V. M. DOTSE
JUSTICE OF THE SUPREME COURT

ANIN YEBOAH, JSC:-

The plaintiff herein who is a citizen of the Republic of Ghana and a retired Deputy Auditor-General at the time material to this action is invoking the original jurisdiction of this court for several declarations based on the 1992 Constitution. For a fuller record I hereby set out the reliefs sought on the writ:

1. That on a true a proper interpretation of Article 178(1) (a); 179(2) (b); 187 (14); 189(2); 189(3); of the 1992 Constitution administrative expenses including salaries, allowances, pensions and gratuities of the Ghana Audit Service determined by the Audit Service Board in consultation with the Public Service Commission are not subject to the approval of Parliament or the Minister of Finance.

2. That the practice of the Minster of Finance in reviewing downwards AND OR submitting estimates determined by the Audit Service Board under Article 189(3 (a) of the Constitution for Parliament approval is unconstitutional.

3. That the reduction by the Minister of Finance, of the annual estimates of the administrative expenses of the Office of the Auditor-General including all salaries, allowances, gratuities and pensions payable to persons serving in the Audit Service before submission to Parliament and the presentation of such estimates by the Minister to Parliament for approvals are unconstitutional.

4. That the subject of the annual estimates of administrative expenses of the Audit Service to budget policy directives of the Executive Branch of Government including budget ceilings and hearings at the Ministry of Finance is unconstitutional as the Minister is empowered to hear and provide ceilings on only expenses subject to annual appropriation.

5. That the invitation of the Audit Service by any Parliamentary Committee for decisions, hearings, justifications or defence of the estimates of the administrative expenses determined by the Audit Service Board under the constitution is unconstitutional.

6. That payment of pensions and gratuities of retired officers and employees of the Audit Service under the Social Security Fund instead of the Consolidated Fund as provided for by the 1992 Constitutions is unconstitutional.

7. That the insistence by the Ministry of Finance for financial clearance before recruitment can be made by the Board under Article 189[2] and failure to put persons recruited under Article 189[2] of the Constitution on the payroll by the Controller and Accountant General because the Ministry of Finance has not given financial clearance is unconstitutional.

8. Any other order or orders that the honourable court deems fit to give effect to the declarations sought by the plaintiff in terms of Article 2(2) of the 1992 Constitutions of the Republic of Ghana.

Before I proceed to discuss the issues raised in this case in the memorandum of issues, I have decided to address the capacities of the second and third defendants in this case. The first defendant is the Attorney-General and under Article 88(1) of the 1992 Constitution, the principal legal adviser to the Government. Article 88(5) states clearly that "The Attorney-General shall be responsible for the institution and conduct of all civil cases on behalf of the state; and all civil proceedings against the state shall be instituted against the Attorney-General as defendant."

The second defendant is the Minister of Finance and part of the executive arm of the Government performing functions assigned to it by the executive. In my view Article 88(5) of the Constitution does not allow a plaintiff seeking any interpretation of any constitutional provision to sue any ministry as it has been done in this case. Admittedly, the time-honoured procedure in civil litigation is for the court to endeavour to determine the rights of the parties before it. Nevertheless in a case in which the plaintiff is seeking the true and proper interpretation of certain constitutional clauses, the rights of the second and third defendants who are the Minister of Finance and Controller and Accountant General respectively are legally subsumed under the first defendant.

Under Article 88(5) of the 1992 Constitution and section 9(1) of the State Proceedings Act, Act 555 of 1998, the second and third defendants are not proper parties in this case even though any interpretation of the various articles referred to in this writ may effect them. I will strike out their names on simple grounds of misjoinder and proceed to determine the issues raised in this case between the plaintiff and the Attorney-General as the only parties in this suit.

After filing their respective statements of the case, the plaintiff set out eight issues for determination in his memorandum of issues filed on 19/02/2009. In respect of the first relief sought on the writ, it is the case of the plaintiff that administrative expenses including salaries, etc. determined by the Audit Service Board in consultation with the Public Service Commission should not be subjected to Parliamentary approval or the Minister of Finance.

In deciding this issue all the constitutional provisions referred to by the plaintiff must be examined in detail. Article 178(1) (a) to me does not call for any interpretation as the provisions are very clear and unambiguous. This provision merely provides a constitutional injunction against withdrawal of moneys from the Consolidated Fund except as provided under Article 178(1) (a) (b) and (2) of the 1992 Constitution. I remind myself of the time-honoured principle in interpretations of constitutions which is what where the provisions of the constitution are clear and

unambiguous, it is not the court's duty to embark on any interpretation. The role of the court is thus limited under such circumstances. See REPUBLIC Vs MAIKANKAN (1971) 2GLR 473 SC and GBEDEMAH V. AWOONOR WILLIAMS [1970] CC 2 SC.

If one considers Article 179(2) (b) of the 1992 Constitution, it becomes clear that reading it alone will not make any sense. However, on reading the whole Article 179, the procedure in preparing the estimates of the revenue and expenditure of the Government covering public offices and public corporations becomes clear. Indeed, 179(3) also dictates the procedure on determination of estimates for the Judiciary charged on the Consolidated Fund. The Constitution has, however, listed Public Services of Ghana under Article 190 and the Audit Service is part of the Public Services of Ghana. Article 187(14) merely states that 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.

In his statement of case, learned counsel for the plaintiff has sought to press on this court to adopt the dictionary meaning of the word "Charged" in interpreting the provisions of Article 187(14) of the 1992 Constitution.

I do not think that in all matters touching on the interpretation of a Constitution one has to resort to dictionary meaning without resort to general principles of constitutional interpretation. In my respectful opinion in this regard, I will refer to the dissenting opinion of Adade JSC in KUNYEHIA Vs ARCHER (1993-94) 2 GLR 525 where he said as follows:

> "But we are expounding a Constitution, not a penal code: a lot of flexibility is called for"

To interpret the word "charged" as a debt and by logical application construe the article in question to mean that salaries, allowances etc. are to be a debt on the Consolidated Fund will certainly lead to narrow and strict interpretation of the Constitution. This is what Supreme Court has avoided since 1993.

In my respectful opinion I do not think that the framers of the constitution intended this court to construe the word "charged" to be a debt on the Consolidated Fund but rather as an obligation which is imposed on the Consolidated Fund to be fulfilled.

Another article which the plaintiff presented for consideration is Article 189(2) of the 1992 Constitution. This provisions deal with the appointment of officers and other employees of the Audit Service. Apart form the Auditor-General whose appointment is covered by Article 187(1) of the 1992 Constitution, the rest of the employees are appointed by the Audit Service Board acting in consultation with the Public Service Commission.

Article 189(2) also in my opinion does not call for any interpretation as its provisions are clear and unambiguous. The remaining provision which is Article 189(3) of the 1992 Constitution which in my opinion gives some autonomy states as follows:

(3) The Audit Service Board shall, acting in consultation with the Public Service Commission –
(a) Determine the terms and conditions of service of officers and other employees in the Audit Service; and
(b) By constitutional instrument, make regulations for the effective and efficient administration of the Audit Service.

If Article 189(3) of the 1992 Constitution is read in conjunction with the Audit Service Act, Act 584of 2000, the functions of the Audit Service Board which are stated in section 4 gives the Board authority to determine the terms and conditions of the service even though such functions may be exercised in consultation with the Public Service Commission, the final decision on the matter is subject to the approval of the Audit Service Board. Section 4 of Act 584 merely expands the scope of operations of the Board spelt out under Article 189(3).

I have taken some time to go through the various articles in detail to demonstrate the autonomy of the Audit Service. Even though it is part of the Civil Service of

Ghana upon reading the Constitution as a whole it does appear that it is one of the very few public services entity which enjoys financial autonomy. In my view I think it is so for a purpose. The Auditor-General and the Audit Service perform a crucial role in our quest to attain our Freedom, Justice, Probity and Accountability spelt out in the preamble of the 1992 Constitution. As a country in which our history has taught us to hold office holders accountable, this could only be achieved if public servants constitutionally mandated to act as auditors of the institutions and individuals spelt out under Artic187(2) of the 1992 Constitution are given enough financial independence to carry out the mandate.

As a constitution, it must reflect the past and future aspiration of a nation. I can find no better words than to quote Sowah JSC (as he then was) in the famous case of TUFFOUR Vs ATTORNEY-GENERAL (1980) 637,647 "A written constitution such as ours embodies the will of a people. It also mirrors their history. Account therefore needs to be taken of it as a landmark in a people's search for progress. It contains within it their aspirations and their hopes for a better and fuller life".

It is in pursuance of probity and accountability that Article 187(1) makes it clear that the Auditor-General, who heads the Audit Service in performance of his functions spelt out in the Constitution and the Audit Service Act, Act 584 of 2000, shall not be subject to the direction or control of any person or authority.

In the statement of case of the plaintiff, is has been contended that the invitation by the Minister of Finance to the Audit Service to submit annual estimates of the administrative expenses for Parliamentary approval is unconstitutional. The plaintiff's case, if I understand it, is that, this procedure whereby the Ministry of Finance, which no doubt is part of the executive arm of the Government and represents the executive in all annual budgetary matters of the state, should be seen as unconstitutional intrusion into the autonomy bestowed upon the Audit Service Act by the 1992 Constitution, especially Article 187 and 189.

The Attorney-General in response to the argument canvassed by the plaintiff refers us to the position of the President under Article 57(1) of the 1992 Constitution. According to the Attorney-General, it is the Minister of Finance who by law, that is, The Financial Administration Act, 2003 (Act 654) controls or is responsible for the management of the Consolidated Fund and together with the Controller and Accountant-General are responsible for the compilation and management of the accounts prepared in relation to the Consolidated Fund and other public funds. By simple logic, the Attorney-General is of the opinion that as the Consolidated Fund is one of the public funds then by Article 179(1) of the 1992 Constitution, the President must cause it to be laid before Parliament as the administrative expenses are charged on the Consolidated Fund. It may appear to be logically sound from the Attorney-General, but we have been called upon to interpret provisions of the Constitution. I find from the various provisions of the articles referred to for interpretation, and I am of the view that no where in these articles of the Constitution could the logical argument of the Attorney-General be supported. Even though the Audit Service is under the Constitution, a public service, the Constitution does not specifically say that its administrative expenses including allowances, etc. should be placed before the Minister of Finance. It follows therefore that the Minister of Finance is not clothed with any constitutional authority to invite the Audit Service for any determination

of the estimates. Indeed Article 179(4) has specifically made provisions for how the President can in dealing with the estimates of the Judiciary (which under the same Constitution is also independent) cause the annual estimates to be laid before Parliament.

The President may make recommendations on the estimates of the Judiciary under Article 179(5). No where is it provided that the Audit Service should also go through the same procedure. In my respectful view, the executive, through the Minister of Finance is constitutionally disabled from having anything to do with the estimates complained of in the plaintiff's claim. For if the Constitutional framers had wanted it to be so it would have spelt same out like it did for the Judiciary in the provisions referred to above. Parliament of course can comment on the estimates of the Audit

Service as clearly stated in Article 179(2) of the Constitution in that the Audit Service is part of the public service and this is even supported by section 27(2) of the Audit Service Act, Act 584 of 2000. Parliament cannot alter the estimates as it has no power under the Constitution to do so.

In my respectful opinion, I am convinced that the plaintiff's relief (1) endorsed on the writ ought to be granted for the reasons canvassed above. For the same reasons reliefs 2, 3, and 4 are also granted as they are substantially the same based on the same provisions of the Articles referred to in the relief (1).
I have already stated above that Parliament has power under Article 179(2) to discuss the annual estimates, administrative expenses, etc. of the Audit Service as provided for by law under the Constitution and the Audit Service Act. On relief (6), a closer look at Article 187(14) offers an answer. The said article states as follows:

"(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 in the Consolidated fund".

I think this provision is clear and unambiguous. I do not find any reason for subjecting it to any interpretation to defeat the intentions of the framers of the Constitution. I accordingly grant the declaration sought. On relief (7) Article 189(2) of the 1992 Constitution confers powers on the Audit Service Board in consultation with the Public Service Commission to appoint officers and other employees into the Audit Service. No power has been conferred statutorily on anybody to do so apart from the Audit Service in the manner clearly spelt out in the Constitution. I will therefore grant relief (7) as sought on the writ.

I do not think that the framers of the Constitution envisaged a situation whereby the Audit Service would be given a 'blank cheque' in financial matters without any authority under the 1992 Constitution, questioning it. For me to endorse the stance of the plaintiff would be defeating the very concept of probity and accountability in the preamble of the Constitution. The framers never envisaged a situation whereby an agency of the Government by virtue of its peculiar functions under the

constitution is vested with such uncontrollable financial powers. I therefore reject relief (5) as without any constitutional basis.

In conclusion, save relief (5), the plaintiff is entitled to all the declarations sought on the writ.

ANIN YEBOAH

JUSTICE OF THE SUPREME COURT

COUNSEL:

ISAAC KWABENA ANTWI FOR THE PLAINTIFF.

SYLVIA ADUSU(MRS) P.S.A. FOR THE DEFENDANTS.