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IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2024

CORAM: SACKEY TORKORNOO, CJ (PRESIDING)
OWUSU JSC
LOVELACE – JOHNSON JSC
AMADU JSC
ASIEDU JSC
GAEWU JSC
DARKO ASARE JSC

WRIT NO: J1/01/2025

12TH NOVEMBER, 2024

ALEXANDER AFENYO MARKIN ... PLAINTIFF

VRS

1. **SPEAKER OF PARLIAMENT ... 1ST DEFENDANT**
2. **THE ATTORNEY GENERAL ... 2ND DEFENDANT**

JUDGMENT

MAJORITY OPINION

DARKO ASARE JSC:

The controversy in this suit touches on the interpretation and enforcement of Article 97(1)(g) & (h) of the 1992 Constitution.

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On the 15th day of October 2024, the Plaintiff invoked the original jurisdiction of the Supreme Court under Article 2(1) (b) of the Constitution 1992 to seek the following reliefs: -

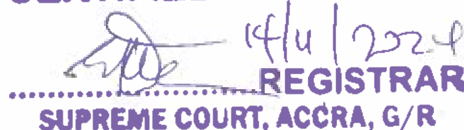
Reliefs

The reliefs endorsed on the Plaintiff's writ as subsequently amended are for the following: -

1. *A declaration that upon the true and proper interpretation of Article 97(1)(g) and (h) of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 55,97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996(C.I.16): -*

a) the filing of nomination of Hon Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an independent Member to join another party;

b) the filing of nomination of Hon. Cynthia Mamle Morrison the current New Patriotic Party's Member of Parliament for Agona West constituency in the Central Region with the Electoral Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of her seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member;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c) the filing of Hon. Kwadjo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member.

2. *An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving his political status as an independent candidate at the time of his election to Parliament to another party and leaving the party of which they were members at the time of their election to Parliament to become independent members of Parliament respectively.*

3. *An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.*

4. *Such further orders or direction(s) as this Honourable Court may seem meet.*

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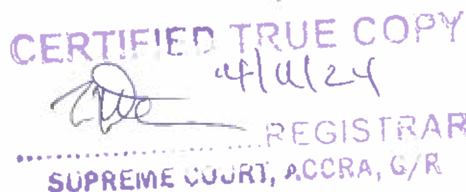
FACTS

This suit was ostensibly triggered by a recent controversy surrounding the filing of nominations by certain Members of Parliament (MPs) intending to contest the upcoming general elections either under different party tickets or as independent candidates. These MPs are the current independent Member of Parliament for Fomena in the Ashanti Region, Hon. Andrew Asiamah, who has filed to contest the Fomena Parliamentary seat on the ticket of the N.P.P for the 9th Parliament commencing in January 2025. Further, Hon. Cynthia Mamle Morrison, the current Member of Parliament for the Agona West constituency in the Central Region, has also filed her nomination to contest the Agona West Parliamentary seat as an independent candidate for the 9th Parliament commencing from January 2025. Plaintiff also refers to the case of the current Member of Parliament for Suhum in the Eastern Region, Hon. Kwadjo Asante, who has also filed nomination to contest the Parliamentary seat in December 2024 Suhum independent Parliamentary candidate for the 9th Parliament commencing in January. 2025.

The plaintiff originally came to this court contending that the filing of these nominations under a different party's ticket does not constitute a break in allegiance, requiring the MP to vacate their seat, under Article 97(1)(g) and (h) of the 1992 Constitution as was being contended by certain Members of Parliament on the floor of the House. The Plaintiff therefore initiated this action, invoking the Court's original jurisdiction under Articles 2(1) and 130(1) to interpret the provisions designated in the reliefs.

Had the facts remained in this enclave, they would not have interested any intervention by this court, since the jurisdiction of this court under article 2 (1) is not invoked by expected happenings, or continuing proceedings being undertaken in parliament, but by concrete 'acts or omissions by any person' alleged to be inconsistent with, or in contravention of a provision of the 1992 Constitution.



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However, in a further step taken two days after the issuance of this writ, the 1st Defendant issued a Statement captured in the Official Report on Parliamentary Debates of October 17, 2024. In the first ten pages of that official report, the 1st defendant elaborately delivered a 'response to a Statement made by the Hon Minority Leader' in which he recognized that he was making a formal response in relation 'to a matter of significant parliamentary and constitution importance'. He said that he had been called on to follow precedent and declare vacant, the seats of four Members of parliament pursuant to Article 97 (1) (g) and (h) of the Constitution, because certain members of parliament had taken actions that contravene the provisions of article 97 (1) (g) and article 97 (1) (h).

His statement was therefore to address the issue thoroughly. The 1st defendant went on to say that he was simply applying the provisions of the 1992 Constitution, the Parliament Act, 1965 Act 300, and the Standing Orders of Parliament 2024 and precedents. He then proceeded to state his understanding of article 97. After an elaborate review of this understanding which included concepts such as cross-carpeting and carpet crossing, defection or party switching in parliament, he also reviewed whether article 97 (1) (g) and (h) are to be understood prospectively and not to the current parliament, as had been argued by some Members of Parliament. He disagreed with that interpretation, set out why and concluded by proceeding to inform the House that by the notification of the polls, the named MPs, along with Peter Yaw Kwakye-Ackah, the MP for Amenfi Central, 'cannot be allowed by law, to continue to pretend to be representing their constituents', and the House was accordingly so informed. This is the Statement or 'act' that was brought to the Supreme Court to stay execution of, pending the interpretation of article 97 (1) (g) and (h) by the Supreme Court.

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Memorandum of Issues

The following issues were set down by the Plaintiff for determination: -

1. *Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Andrew Asiamah Amoako, the current independent Member of Parliament for Fomena Constituency in the Ashanti Region to contest the Parliamentary elections in December 2024 on the ticket of the New Patriotic Party for the next or 9 Parliament of Ghana commencing from 7 January 2025 amounts to cross carpeting in the 8 Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?*

2. *Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Cynthia Mamle Morrison, the current New Patriotic Party Member of Parliament for Agona West in the Ashanti Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of her current Parliamentary seat?*

3. *Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Kwadjo Asante, the current New Patriotic Party Member of Parliament for Suhum in the Eastern Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?*

4. *Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Peter Yaw Kwakye Ackah,*

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Democratic Congress Member of Parliament for Amenfi Central in the Western Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of current his Parliamentary seat?

5. *Whether or not upon true and proper interpretation of Article 97 clause 1 (g) and (h) in the light of the 1992 Constitution, the Speaker of Parliament has the power and jurisdiction to interpret Article 97 clause 1 (g) and (h) as having either current effect or futuristic/ prospective effect without resort to the Supreme Court under Articles 2(1) and 130 (1) of the 1992 Constitution?*

6. *Whether or not in the light of the same Articles 2(1) and 130 of the same 1992 Constitution and upon true and proper interpretation of Articles 97(1) (g) and (h), the filing of nomination by these four affected Members of Parliament to contest the 2025 parliamentary elections on different political identify is of current or prospective effect on their present parliamentary seats?*

7. *Whether or not the Speaker of Parliament was in breach of the rules of natural justice (i.e audi alterem partem rule) in declaring these four Parliamentary seats vacant without giving the four affected Members of Parliament a hearing?*

8. *Whether or not it is lawful for the four affected Parliamentary Constituencies to be denied representation from 17th of October 2024 to the dissolution of Parliament from the 17th of October 2024 to the mid night of 6th January 2025 through no fault of any of these affected constituencies?*

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The following issues were set down by the 2nd Defendant for determination: -

1. *Whether or not plaintiff s suit properly invokes the original jurisdiction of the Supreme Court.*

2. *Whether the filing of a nomination by an MP to contest a future parliamentary election with a political identity different from the one with which the MP currently sits in Parliament results in a vacation of his seat under article 97(g) and (h) of the Constitution.*

3. *Whether or not the declaration by the Speaker of Parliament of 4 vacancies in Parliament is subject to the Supreme Court's judicial review powers under the Constitution*

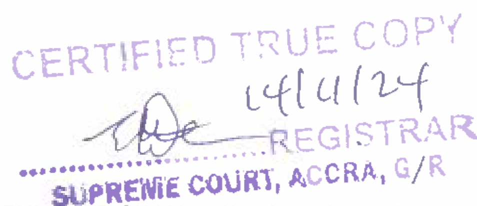
Notably the 1st Defendant filed no processes in answer to this action.

ARGUMENTS BY PARTIES

Both the Plaintiff and 2nd Defendant filed their Statements of Case, which, in essence, aligned with the reliefs sought by the Plaintiff in the writ. In brief, both Parties submitted that this Court's original jurisdiction was appropriately invoked, requiring a definitive interpretation of the provisions of Article 97(1)(g) and (h) of the Constitution.

Furthermore, the Parties' submissions coalesced around the notion that a purposive interpretation of Article 97(1)(g) and (h) confines the provisions' scope to mid-session carpet crossing in Parliament, excluding prospective affiliation shifts in future parliaments.

In conclusion, they implored this Court to reject the 1st Defendant's rival interpretation, arguing it would compromise the Constitution's democratic safeguards and imperil the electoral rights and freedoms of MPs and their constituents.



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CAPACITY OF PLAINTIFF

The Plaintiff indicates that the capacity in which he brings this action is as a citizen of Ghana, and in his capacity as the Member of Parliament for Efutu Constituency and the Majority Leader by virtue of which the above-mentioned Members of Parliament are members of his caucus.

Even though no issue has been raised with regards to the capacity in which this suit has been instituted, we would re-affirm the settled position of the law that the Plaintiff, being a citizen of Ghana, is entitled as of right to seek an interpretation of any constitutional provision in this Court or challenge any act or omission which is inconsistent with, or in contravention of, a provision in the Constitution. This right accords with the principle established in the line of cases exemplified by the decision of this Court in ***Sam (No. 2) v Attorney-General [2000] SCGLR 305*** that in an action under article 2(1) to enforce or interpret the Constitution, as distinct from an action to enforce a fundamental human right under article 33(1), a party need not show a personal interest in the litigation. In our view, a citizen's duty under articles 3(4)(a) and 41(b) to defend the Constitution constitutes a sufficient interest to invoke the Supreme Court's special jurisdiction under article 2(1).

JURISDICTION

The suit seeks to invoke the original jurisdiction of this Court under the provisions of Article 2(1) and 130(1) of the 1992 Constitution. That being the case, and as a matter of primacy, we need to satisfy ourselves as to whether our jurisdiction has been properly invoked. This is so because jurisdiction goes to the root of every court proceedings and even when the Parties themselves do not raise any jurisdictional issue, the duty lies on the Court first and foremost to satisfy itself that it has been vested with appropriate jurisdiction over the case.

The above principle of the law has been explained by Acquah JSC (as he then was) in the case of ***Attorney General (No. 2) vs. Tsatsu Tsikata (No. 2) [2001-2002] SCGLR 620,*** at page 646 where after affirming the time honoured proposition of the

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law that jurisdiction is so fundamental that its absence nullifies all ensuing proceedings, then went on to express himself as follows: -

> ***"It is therefore trite knowledge that the first duty of every judge in any proceedings is to satisfy himself that he has jurisdiction in the matter before him. For the issue of jurisdiction can be raised at any time, even after judgment. Thus, whether the parties raise the issue of jurisdiction or not, the court is duty bound to consider it."***

The resolution of the jurisdictional question on the facts of this instant case, involves the determination of a two-pronged query, first (i) whether the act or conduct complained against the 1st Defendant falls within the purview of our jurisdiction; and second (ii) whether a real and genuine issue of constitutional interpretation has arisen on the facts on record before us.

i) ***Whether the act or conduct complained against the 1st Defendant falls within the purview of our jurisdiction***

The foundational question we have to address is whether the acts or conduct complained against the 1st Defendant, are amenable to this Court's original jurisdiction under Article 2(1) and 130(1) of the Constitution or whether they fall under the practices and procedures of Parliament that are insulated from constitutional and judicial scrutiny by the Courts.

Now what act is the 1st Defendant accused of having done to precipitate this action for our intervention under this Court's original jurisdiction pursuant to Article 2(1) and Article 130(1) of the Constitution?

We commence the consideration of this question with a reference to the said articles of the Constitution.

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Article 2(1) of the 1992 Constitution states as follows: -

> *"2. (1) 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."*

Article 130(1) of the constitution also provides as follows:

> *"Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human rights and Freedoms as provided in article 33 of this Constitution, the Supreme court shall have exclusive original jurisdiction in—*
>
> *(a) all matters relating to the enforcement or interpretation of this Constitution; and*
>
> *(b) all matters arising whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution."*

From the facts contained in the pleadings accompanying the Plaintiff's writ issued in this suit, the Plaintiff had invoked the original jurisdiction of this Court under Article 2(1) and 130(1) to interpret whether or not the filing of nominations under a different party's ticket or as an independent candidate, constitutes a break in allegiance, requiring the MPs to vacate their seat, under Article 97(1)(g) and (h) of the 1992 Constitution. The facts further disclose that on the 17th of October 2024, the 1st Defendant ruled that the affected MPs, had indeed vacated their parliamentary seats due to break in party allegiances.

We must observe that notwithstanding that the 1st Defendant's statement of obligation by the named MPs not to be recognized and to have vacated their seat occurred

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subsequent to the issuance of the Plaintiff's writ, we consider it imperative to address this issue due to its intimate connection with our jurisdiction and its inextricable link to the pleaded facts and issues.

We note that the 1st Defendant did not file any Statement of Case in response to the Plaintiff's suit. However, in an affidavit filed in support of an application dated the 28th of October 2024 in support of an application to set aside the processes and proceedings in this suit, glimpses of his defences to this action could be gleaned therefrom.

In the first place he contended that this Court lacks jurisdiction to entertain this suit. The jurisdictional challenge was premised on Article 99, which, he contended, exclusively vests the High Court with jurisdiction to determine when a parliamentary seat is vacant, thereby ousting this Court's jurisdiction to hear the matter. 1st Defendant further contended that regardless of the manner in which an action has been clothed, where the real issues arising from a writ brought under article 2(1) and article 130(1) are in actuality, a cause of action of such nature that may be resolved by another court, and not one lying exclusively within the jurisdiction of the Supreme Court, the Supreme Court must decline jurisdiction over the suit.

We must say at once that the jurisdictional challenge raised by the 1st Defendant is not novel, having been previously considered and resolved by this Court in authoritative decisions such as ***Michael Ankomah Nimfa v James Gyakye Quayson*** **(writ No: J1/11/2022) dated 17th May 2023** where this Court, cited with approval the case of ***New Patriotic Party v. National Democratic Congress and others [2000] SCGLR 461*** and ***Republic v. High Court (General Jurisdiction 6) Accra; Ex parte Zanetor Rawlings [2015-2016] 1 SCGLR 53.*** In the *Michael Ankomah Nimfa v James Gyakye Quayson* supra, this Court reiterated the settled position of the law that this Court's original jurisdiction under Article 2(1) is not necessarily ousted just because there is within the same cause of action a concurrent jurisdiction vested in the High Court. This is what this Court per Amegatcher JSC said: -

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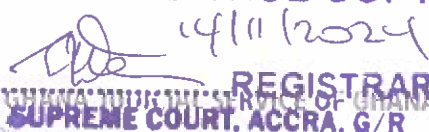
"On the other hand, it has also been the settled position of this Court that it is not precluded from engaging its exclusive jurisdiction to interpret and enforce the provisions of the Constitution where that jurisdiction arises under article 2 (1) and article 130 (1), even if there is within the same cause of action, a concurrent jurisdiction of the High Court to settle the validity of an election under article 99 of the Constitution." (emphasis)

An identity of reasoning informed the views of Gbadegbe JSC in the case of ***Sumaila Bielbiel (No.1) v Dramani & Ano. [2011] 1 SCGLR 132***, when he stated thus: -

"In my opinion the jurisdiction conferred on the court in making declarations under article 130.1 coupled with the ancillary power conferred on it under article 2(2) to "make such orders and give such directions as it may consider appropriate for giving effect, or enabling effect to be given, to the declaration so made" is an effective tool in ensuring and or compelling observance of the constitution. These provisions require us to measure acts of the legislative and executive branches against the constitution and where there is a violation to declare such acts unconstitutional provided the act in question does not come within the designation of a "political question". It is worthy of note that article 2(1) confers the right to seek a declaration that an act or omission of any person is inconsistent with or in contravention of a provision of the constitution while article 130(1) provides the means by which a person may exercise the right conferred on 7 him to seek relief in cases which provisions of the constitution have been breached. The special jurisdiction that this Court exercises in such cases is described by the constitution as original in contradistinction to the appellate or supervisory jurisdiction. I think articles 2(1) and 130(1) confer on us the jurisdiction of judicial review although there are no specific words in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the constitution to that effect. In my opinion, a preference of the meaning placed on the relevant constitutional provisions by the defendant would result in our shutting the door to the opportunity provided by the constitution to persons to give reality to its provisions by compelling observance with its carefully drafted provisions and rather unfortunately open the door to unchecked violations of its provisions."

In as much then that the 1st Defendant sought to say that Article 99 vests the High Court with exclusive jurisdiction to entertain this matter, we hold the firm view that the long line of cases exemplified by the case of ***Michael Ankomah Nimfah*** (supra) furnished a complete answer.

But more important is the need to emphasize that the dispute in issue arises solely from what the proper interpretation and application of article 97 (1) (g) (h) is to the fate of the affected MPs filing nominations to contest the next elections as Independents or on tickets of political parties that they do not currently represent. The suit essentially hinges on a pure question of law, specifically the proper construction of Article 97(1)(g) and (h), to establish the legal threshold for triggering its provisions, without delving into factual disputes regarding seat vacation in Parliament, which properly lies within the High Court's purview under Article 99 of the Constitution. Accordingly, to the extent that the exclusive preserve to settle a matter of interpretation under article 2 (1) and article 130 (1) and (2) lies with the Supreme Court, it is incumbent on this court to exercise jurisdiction and resolve the interpretation for the application of the High Court. The decision of this court in ***Ex Parte Zanetor (1)*** cited supra refers.

The 1st Defendant next contended that he had only exercised a procedural mandate under the Parliamentary Standing Orders, which therefore removes his actions, outside the jurisdictional ambit of this Court as far as its enforcement mandate under Article 2 is concerned.

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We do agree that in ***Tuffour v Attorney-General (1980) GLR 637,*** Sowah JSC, delivering the judgment of the Court of Appeal, sitting as the Supreme Court, stated thus:

> ***"The courts cannot therefore inquire into the legality or illegality of what happened in Parliament. In so far as Parliament has acted by virtue of the powers conferred upon it by the provisions of article 91(1), its actions within Parliament are a closed book."***

Following that decision, the Courts have typically refrained from intervening in matters subject to political accountability, where Parliament can address issues through its own processes. Additionally, the absence of clear legal standards for evaluating parliamentary procedures have often times been offered as additional reason for limiting the court's ability to regulate them.

In our present constitutional dispensation however, the notion that the processes of Parliament constitute a *"closed book"* has been determined not to be an inflexible rule of thumb. This is due largely to the fact that Article 91 of the 1979 Constitution, which formed the bastion upon which Sowah JSC's pronouncement was premised, has not been precisely replicated in form or substance in the 1992 Constitution.

Under the 1992 Constitution, Article 125(3) vests ultimate judicial power in the Judiciary and specifically provides that, *"neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power."*

The combined effect of Article 125(3) and Article 2(1) of the 1992 Constitution therefore relays that the *"closed book"* concept under the 1979 Constitution no longer has any traction under the 1992 Constitution. Thus, the concept of legislative supremacy, characteristic of the English legal system, finds no parallel in Ghana, where constitutional supremacy reigns.

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The Supreme Court has given long loud expression to the above proposition of the law in a rich line of cases.

This was reiterated in the recent case of ***Justice Abdulai v. The Attorney General 11/07/2022 (9th March, 2022)***, where this Court asserted its unremitting mandate to interfere with procedural decisions reached by Parliament which conflict with the Constitution. In that case the correct position of the law was stated quite authoritatively, as follows: -

> ***"...no arm of Government or agency of the State, including Parliament, is a law unto itself because, without exception, everyone and everything in Ghana is subject to the Constitution. As a result, an allegation that Parliament has acted and/or is acting in a manner that is inconsistent with, in contravention of and/or ultra vires to the Constitution, will render Parliament, the actions, orders, rules or procedures in issue, amenable to the Jurisdiction of this Court."*** (emphasis)

The above sentiments expressed by this Court in the *Justice Abdulai* case re-echoed the earlier views of Acquah JSC (as he then was) in the case of ***Martin Alamisi Amidu v. President Kuffour and the Attorney General (2001--2002) SCGLR 138***, where this Court stated as follows: -

> ***"...It follows therefore that no individual nor creature of the Constitution is exempted from the enforcement provision of article 2 thereof. No one is above the law. And no action of any individual or institution under the Constitution is immune from judicial scrutiny if the constitutionality of such an action is challenged Thus the doctrine of the political question found mainly in the US Constitutional jurisprudence by which the courts refuse to assume jurisdiction in certain disputes because the subject-matter of those disputes are alleged to be textually committed" to that institution, is inapplicable***

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in our constitutional law because of the power granted to any person in article 2 of our Constitution to challenge the constitutionality of any action or omission of an individual or institution. For under the 1992 Constitution if even the body in question is independent from any other authority, the Courts can still assume jurisdiction in disputes alleging that that institution is acting in violation of the Constitution."

See also ***Tuffour v Attorney-General [1980] GLR 637, J H Mensah v Attorney General [1996-97} SCGLR 320*** to ***Adofo & others v Attorney-General & Cocobod [2005-2006] SCGLR 42*** and ***Ezuame Maanan v Attorney-General (unreported) judgment of 27th July 2023***

Despite the clear precedent set by this Court in the ***Martin Alamisi Amidu v. President Kuffour*** (supra) through to the ***Justice Abdulai***, (supra) cases emphasizing the subservience of parliamentary procedures to constitutional oversight and judicial scrutiny, the 1st Defendant is persisting in advancing what has been established to be a discredited constitutional proposition. That we find to be rather inappropriate

In the considered opinion of this Court, the case for the subservience of parliamentary procedures to constitutional oversight and judicial scrutiny is irrefutable, grounded, as it were, in the 1992 Constitution's foundational principles of constitutional supremacy, and separation of powers.

Consistent with established precedent therefore, this Court reaffirms its constitutional mandate to scrutinize parliamentary acts and practices that implicate constitutional and justiciable matters, thereby ensuring the preservation of constitutional supremacy, all the while being mindful of the delicate boundaries between law, politics, and ongoing processes that do not constitute acts properly so called.

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In as much as the 1st Defendant sought to say that the practices and procedures of Parliament are in all cases *"closed"* from this Court's judicial scrutiny, it is clear that he proceeds in certain error. On this score the 1st Defendant's jurisdictional challenge fails, and we so hold.

A thorough examination of the surrounding circumstances reveals an even more egregious constitutional flaw, indicating that the 1st Defendant's October 17th, 2024 declaration transcended mere procedural duty. In reality, in a ten-page statement he undertook a factual, constitutional and statutory assessment, concluding that the MPs had engaged in what in fact and law constituted a loss of allegiance to their parties and constituents, which met the Article 97(1)(g) and (h) threshold, requiring that they leave parliament, or to place in proper context, that their seats have become vacant

It is our view that given the legal evaluation necessary for a Ruling of the nature delivered by the 1st Defendant on the 17th October 2024, it is the High Court, which is constitutionally empowered to make such a declaration pursuant to Article 99, and definitely not the 1st Defendant. This is more so as the High Court has been given the constitutional mandate to conduct the fact-finding enquiries as to whether an MP has been validly elected, or has vacated their seat. The 1st Defendant's act of undertaking this exercise itself, provokes the jurisdiction of this Court on considerations of constitutionality of the action under Article 2 (1).

To the extent therefore that the 1st Defendant involved himself in a fact finding and legal determination of what constitutes a party switch, that formed the foundation for declaring that the MPs should leave their seats in parliament, we hold that his actions constituted a grievous and veritable overstep of constitutional authority, warranting this Court's interventions by way of interpretation and enforcement of constitutional boundaries.

In the end and after a thorough examination of all the materials on record in this case, this Court is bound to resolve the jurisdictional challenge raised by the 1st Defendant in the Plaintiff's favour, firmly holding that the 1st Defendant's conduct in declaring

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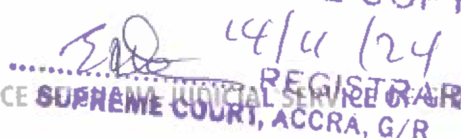

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those parliamentary seats vacant on the 17th of October 2024, purportedly under Parliament's Standing Orders, raises constitutional as well as justiciable issues, and thus susceptible to this Court's constitutional interpretation and enforcement mandate under the 1992 Constitution. We further hold, on sound authority borne out by a plethora of decided cases that this Court's exclusive jurisdiction to interpret and enforce the Constitution cannot be questioned.

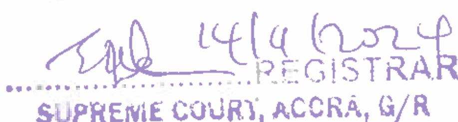
In the result we would answer in the affirmative the questions (1) and (2) set down in the 2nd Defendant's Memorandum of Issues and consequently declare that the declaration by the Speaker of Parliament dated the 17th of October 2024, of 4 vacancies in Parliament is subject to the Supreme Court's constitutional interpretation and enforcement jurisdiction, thereby justifying the invocation of this Court's original jurisdiction under Article 2(1) and 130(1) of the Constitution.

We would further respond in the negative to question (5) posed in the Plaintiff's memorandum of Issues, concluding that the 1st Defendant-lacked any jurisdiction to pronounce on the interpretation of the provisions of Article 97(1)(g) and (h) of the 1992 Constitution.

(ii) whether a real and genuine issue of constitutional interpretation has arisen on the facts on record before this Court.

This issue primarily calls for a determination of the question whether a real and genuine issue of constitutional interpretation has arisen on the facts on record

We must begin our inquiry by observing that the Supreme Court under Article 2(1) and 130(1) of the Constitution is vested with both enforcement and interpretative jurisdictions and are to be construed as disjunctive. In the case of ***KOR v A-G [2015-2016] 115,*** which departed from earlier decisions like ***Osei Boateng v National Media Commission [2012] 2 SCGLR 1038*** this Court observed as follows: -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"Certainly, it cannot be said that this court cannot compel the observance of a provision of the Constitution unless it first acquires the murkiness of ambiguity and is processed in the interpretative refinery of this court."

It further bears emphasis that the jurisdiction of the Supreme Court under Article 2(1) and 130(1) of the 1992 Constitution has been described as a special one that must be invoked in cases where a real or genuine issue of interpretation or enforcement of a provision of the Constitution properly arises.

The oft-quoted and lucid articulation of the governing principles in ***Republic v Special Tribunal; Ex parte Akosah [1980] GLR 592*** by Anin JA, has been accepted as the *locus classicus* on the above point. At page 605 of the Report, Anin JA stated as follows: -

"From the foregoing dicta, we would conclude that an issue of enforcement or interpretation of a provision of the Constitution under article 118(1)(a) arises in any of the following eventualities:

> ***(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or else mean something different from or more than what they say;***
>
> ***(b) where the rival meanings have been placed by the litigants on the words of any provision of the Constitution;***
>
> ***(c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision should prevail;***
>
> ***(d) where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation.***

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> ***On the other hand, there is no case of "enforcement or interpretation" where the language of the article of the Constitution is clear, precise and unambiguous. In such an eventuality, the aggrieved party may appeal in the usual way to a higher court against what he may consider to be an erroneous construction of those words; and he should certainly not invoke the Supreme Court's original jurisdiction under article 118. Again, where the submission made relates to no more that a proper application of the provisions of the Constitution to the facts in issue, this is a matter for the trial court to deal with; and no case for interpretation arises."***

See also: ***Gbedemah vrs. Awoonor-Williams, (1969) 2 G&G 438 Tait, vrs Ghana Airways Corporation (1970)2 G & G 527, Yiadom vrs Amaniampong (1981) GLR 3*** SC, ***Edusei vrs Attorney-General (1996-97) SCGLR 1***.

In this case there is no doubt that rival meanings have been placed on the provisions of Article 97(1)(g) and (h) of the 1992 Constitution by the Speaker's Statement on the floor of parliament and the Plaintiff, thereby displacing all lingering doubts that this is a proper case for invoking the original interpretative jurisdiction of the Supreme Court as established by an examination of the authorities above.

Furthermore, we agree with the learned Attorney General when he submits in his Statement of Case as follows: -

> *"......this is not a case where one can contend that the provision is so clear on account of having previously been interpreted by the Court and therefore, it only calls for an application by a lower court. In making this point, we are mindful of the provision in article 99(1)(a) of the Constitution which directs that the High Court shall have jurisdiction to determine whether the seat of a member of Parliament has become vacant. In our submission, that provision*

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does not oust the Supreme Court's original jurisdiction to interpret and enforce the Constitution where a genuine case of interpretation is made."

In our respectful view therefore, this is a proper case for invoking the original interpretative jurisdiction of the Supreme Court as established by an examination of the authorities above.

That being the case, and having sufficiently satisfied ourselves that our interpretative jurisdiction has been properly invoked on the facts before us, we would now proceed with the task of unravelling the true and proper interpretation of the language used in the text of the provisions of Article 97(1)(g) and (h) of the Constitution and in the process answer the question: which of the rival constructions advanced by the Parties herein, reflect the correct interpretation of the constitutional provision.

MEANING OF ARTICLE 97(1) (G) &(H)

Article 97(1)(g) and (h) of the 1992 Constitution provides as follows: -

97. (1) A member of Parliament shall vacate his seat in Parliament: -

(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or

(h) if he was elected a member of Parliament as an independent candidate and joins a political party"

Before delving into the applicable principle of the law required to properly and correctly construe the language used in Article 97(1)(g) and (h) we think we must first and foremost resolve that the two provisions do not create different conditions for an MP leaving a party to join another party and an MP seeking to remain independent.

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An interpretation of Article 97(1)(h) that suggests that independent MPs forfeit their seats immediately upon joining a party, would immediately create an unjustifiable distinction between independent and party-elected MPs.

The true scope of Article 97(1)(h) becomes apparent through an interpretation that prioritizes constitutional harmony and primarily affects independent MPs who join a party while in Parliament and seek to persist in their parliamentary office as members of the political party they have joined without first surrendering their seat or acquiring renewed electoral legitimacy.

This is consistent with the corresponding requirement under Article 97(1)(g) for partisan MPs, who must vacate their seats if they leave their party and seek to remain in Parliament on a different political platform. The two provisions, Articles 97(1)(g) and 97(1)(h), must be harmonized to give a consistent and fair meaning, applying to all MPs regardless of their initial platform. See the views of Acquah JSC (as he then was) in the case of ***National Media Commission vrs Attorney-General 2000 SCGLR 1***.

With this premise, we will now proceed to answer the question as to the proper interpretation to be placed on the provisions of Article 97(1)(g) and (h) and in so doing, this Court will be primarily guided by the principles of the law to which Evershed M.R. in the famous case of ***Ernest (Prince) of Hanover v. Attorney-General [1956] Ch. 188*** at p. 201, C.A directs attention, namely that a statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of them that made it.

Supplementing the aforementioned principle of statutory interpretation is the now widely accepted foundational rule of interpretation, which has become the cornerstone in judicial thinking, known as the modern purposive approach, eloquently expounded by Date Bah JSC in the case of in ***Asare v Attorney-General [2003-2004] SCGLR 823,*** at 834 to guide every statutory construction exercise. In that case, the eminent

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jurist cited with approval, a passage by Justice Aharon Barak in his essay "**A Judge on Judging: The Role of a Supreme Court in a Democracy" (2002) 116 Harv. LR 19 at p 66)**" as follows: -

> ***"the aim of interpretation in law is to realize the purpose of the law; the aim in interpreting a legal text (such as a constitution or a statute) is to realize the purpose for which the text was designed. Law is thus a tool designed to realize a social goal."***

Date-Bah JSC further continued at the same page 834 to distinguish between the subjective purpose and objective purpose of the Constitution as follows:

> ***"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 realization, through the given legal text, of the fundamental or core values of the legal system..."***

The purposive approach to interpretation has also been statutorily endorsed through **Section 10(4) of the Interpretation Act, 2009 (Act 792)**

Guided by the above principles of the law, the starting point for interpreting Article 97(1)(g) and (h) must be the text itself, understood in its ordinary and plain sense, with consideration given to the context and purpose of the provision. This guideline also forms the bedrock of sound statutory construction succinctly articulated by Sowah

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JSC (as he then was) in the time-honoured case of ***Tuffour v Attorney-General [1980] GLR 637*** at page 659-660, where it is stated as follows: -

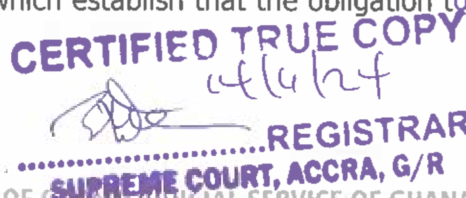
> ***"We start by reminding ourselves of the major aids to interpretation bearing in mind the goals the Constitution intends to achieve. Our duty is to take the words as they stand and give them their true construction having regard to the language of the provisions of the Constitution, always preferring the natural meaning of the words involved, but nonetheless giving the words their appropriate construction according to the context."***

As a preliminary step then, it is instructive first and foremost to refer to two key phrases *"leaves the party"* appearing in the text of Article 97(1)(g) and *'joins a political party'* appearing in the text of both Article 97(1)(g) and (h), which are particularly illuminating and critical to understanding the provisions.

Applying the known canons of interpretation including the purposive literalist interpretive approach, those phrases appearing in Article 97(1)(g) and (h), inherently imply a contemporaneous action by an MP to switch allegiance to a different party while in Parliament. They do not show any prospective or anticipatory connotation. Simply put, the language used in Article 97(1)(g) and (h), conveys present and immediate actions, reflecting immediacy and contemporaneity, rather than a prospective event or futuristic occurrence.

So, the factual question to ask will be whether the MPs in question have declared a present and immediate action of joining another party's group while in Parliament, or they have expressed the intention of filing nomination to contest on a future date as members of a party different from the one they represent in Parliament.

This reading and understanding of the provisions of Article 97(1)(g) and (h) is further bolstered by the phrases *'seeks to remain in Parliament'* and *'at the time of their election'* appearing in the text, which establish that the obligation to vacate a seat –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the subject matter of article 99 - arises solely from actions taken within a current parliamentary term, and not a future parliamentary term. '*If he leaves the party of which he was a member at the time of their election to join another party*' can only refer to the election that brought the said member of Parliament to Parliament, and definitely not an election that has not yet been conducted. And '*seeks to remain in Parliament as an independent member*' can only refer to seeking to remain in the Parliament that the election brought the Member of Parliament to, and s/he is a Member of, not a Parliament that is yet to be convened.

In its contextual framework therefore, the phrase *'seeks to remain in Parliament'* under Article 97(1)(g) and (h) unequivocally targets MPs transitioning between parties or to independent status and seeking to retain their seats in the current session of Parliament. The provision certainly does not target MPs signaling an intention to contest for nomination in a future parliament.

Fortifying the above interpretation, is the ordinary plain meaning ascribed to the word *"Parliament"* appearing in the text, which as ably contended by the learned Attorney General, can only refer to nothing beyond: -

> *"...........a session of Parliament duly convened after the holding of a general election (or recalled by the President during a state of emergency) and continuing until it is dissolved in accordance with articles 112 and 113 of the Constitution.*

It follows from the above therefore, that the only plausible conclusion which must necessarily flow from a holistic and contextual reading of Article 97(1)(g) and (h) is that an MP's seat shall be vacated upon departure from the cohort of his elected party in Parliament to join another party in Parliament while seeking to remain in that Parliament as a member of the new party. Similarly, an independent MP who joins the cohort of a party in Parliament, while they remain Members of the Parliament for which they were elected as Independent Member, will have to vacate the seat tagged as that of an Independent Member.

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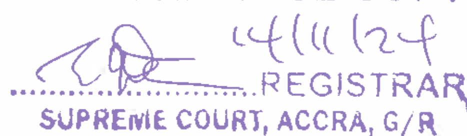

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In the result, we hold that upon a true and proper interpretation of Article 97(1)(g) the legal elements of that provision can be formulated as follows: (i) an MP must vacate his seat, (ii) if he leaves the party under which he was elected, to join another party or become independent, and (iii) seeks to remain in Parliament under their new political status.

Similarly, with regards to Article 97(1)(h) the proper legal elements can be formulated as follows: (i) an independent MP must vacate his seat, (ii) if he joins a political party in Parliament, and (iii) seeks to remain in Parliament under his new political status.

Consequently, Article 97(1)(g) and (h) must be understood within their contextual framework, with no implicit or explicit indication that they pertain to future electoral aspirations or intentions that would materialize in subsequent terms, such as an MP contesting under a different ticket in the next election cycle

As a corollary, in order for its threshold to be met, Article 97(1)(g) and (h) requires the MP to take proactive steps to abandon his party in Parliament during the tenure of the current term. In effect, the law's core concern is the literal *"crossing of the floor"*, by an MP.

The central issue thus intended to be addressed by Article 97(1)(g) and (h), is not merely declaring the intention to join another party or the intention to become an independent MP in another Parliament, but becoming Independent or becoming a member of another party while seeking to remain in Parliament during the term for which the MP was elected. This act violates the social contract with the electorate, a contract that spans the full four-year term, and only the electorate has the authority to alter it. If an MP wishes to change their political status while remaining in Parliament, they must vacate their seat and seek a new mandate from the voters

On the contrary, actions calculated to take effect after the term, like evincing an intention to join a party for a future election, do not interfere with the voters' mandate and do not therefore fall within the contemplation of the law. The law serves to

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preserve the trust voters placed in the MP when they were elected, based on the platform they represented at that time.

Apart from the above, it can be seen that Article 97(1)(g) & (h) of the Constitution is also concerned with actions that affect the numerical composition of the House of Parliament as presently constituted, aiming to avoid situations that disrupt parliamentary composition mid-term, altering its dynamics without voter input. This underscores the provision's distinct focus on maintaining parliamentary stability and respecting the proportional representation decided at the general election, rather than rigidly enforcing political loyalty. Hence filing nominations for a future election under a different party affiliation, does not fall within the law's scope, given its non-disruptive nature to the current parliament's composition.

The fact that the Constitution's primary aim is to prevent mid-term disruptions by MP party switches, receives further bolstering by the provisions of Article 97(2) of the Constitution which makes it clear that the Constitution allows certain political changes within the current parliamentary term, such as mergers or coalitions, without requiring MPs to vacate their seats. This confirms that the focus of the law is on mid-term shifts in membership of Parliament, and not on future political alignments or electoral plans, and a conjunctive reading of Article 97(1)(g) & (h) alongside Article 97(2) forcefully conveys this legislative intent.

Again, Article 97(1)(g) does not give political parties the power to disrupt the balance of Parliament by removing MPs based on internal party decisions.

We also evaluate the purpose of Article 97(1)(g) as aiming to guard against a scenario where majority members might unduly influence opposition MPs to join them, undermining parliamentary opposition and scrutiny of government action.

It may also be pertinent at this stage, to note that this review of Article 97(1)(g) and (h) is grounded in historical context. Historically, MPs have contested future elections on different political tickets without vacating their seats during their current term. For

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example, one of the first independent MPs of the fourth Republic, Honourable Gladys Nsoah (Kintampo), sought re-election in 1996 on the NDC ticket. Honourable Dr. William Akoto, who served as the NPP MP for New Abirem from 2001 to 2004, retained his seat while running as an Independent Candidate in the 2004 elections. Similarly, Honourable Joseph Osei-Owusu, who was an Independent MP for Bekwai from 2009 to 2012, later contested the 2012 election on the NPP ticket without vacating his seat. In that same term, Honourable Nana Yaw Ofori-Kuragu, the incumbent Independent MP for Bosome-Freho contested and lost in the NPP primary. Likewise, Honourable_Seth Adjei Baah, the 2008 NPP MP for Nkawkaw (2008), did not vacate his seat while running as an independent in the 2012 election. Another instance is Honourable_Teye-Nyaunu, the NDC MP for Lower Manya Krobo (2008), who also did not vacate his seat when he ran as an Independent Candidate in the 2012 election. These are notorious historical facts, which this Court under section 9(2) of the Evidence Act 1975 (NRCD 323) is permitted to take judicial notice, of.

These examples illustrate that partisan and independent MPs in Ghana have historically retained their parliamentary seats while contesting subsequent elections, either as independents or under a party ticket, without triggering any constitutional sanctions of being deemed to have become ineligible to remain in Parliament during the existing term.

Having therefore thoroughly reviewed all the materials placed on the record in this suit, it is sufficient to say that the provisions of Article 97(1)(g) and (h) must be purposively construed to uphold the democratic mandate of MPs, ensuring continuity and stability in Parliament, while preventing party-driven disruptions. A purposive interpretation of the provision must not seek to impose political stasis, but rather seek to maintain democratic accountability while allowing MPs the freedom to reassess their political alignments in a manner that respects the electoral process. Nor should the provisions be construed in a manner that gives political parties the power to disrupt the balance of Parliament by removing MPs based on internal party decisions. In the end, a purposive interpretation of the provision must avoid arbitrary upheavals that disrupt parliamentary composition mid-term, altering its dynamics without voter input,

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and at the same time ensure that the MP's social mandate with the electorate is unremittingly safeguarded in all circumstances.

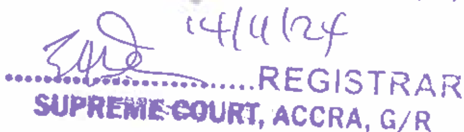
Based on our preceding analysis, we are constrained to respond in the negative to questions (1) through (4) posed in the Plaintiff's Memorandum of Issues, concluding that the impugned acts alleged against the affected MPs, neither constitute nor meet the threshold for cross-carpeting as defined under Article 97(1)(g) and (h) of the 1992 Constitution.

While our preceding analysis sufficiently disposes of this case in favour of the interpretation of Article 97(1)(g) and (h) urged on us by the Plaintiff herein, we nonetheless deem it essential to further explore the potentially adverse implications of the 1st Defendant's alternative interpretation, lest we fail to ensure a complete and definitive resolution of the issues raised in this suit.

Consequences of an application of 1st Defendant's Alternative Interpretation of Article 97(1)(g) & (h)

From the statement delivered by the 1st Defendant on the floor of Parliament on the 17th of October 2024, declaring four MPs' as ineligible to remain in their seats, his reading of Article 97(1)(g) and (h), is quite clear, devoid of any controversy, and it is this: that the provision's threshold is triggered where an MP files a nomination to contest a future election with a different political identity, i.e. changing the party of which he was a member at the time of his election as MP to join another party or to become an independent member or ceases to be an independent candidate in the next election.

A cursory examination however exposes the 1st Defendant's reading of Article 97(1)(g) and (h), as fraught with potentially untenable implications, undermining the principles of statutory interpretation, as established in authoritative precedents such as ***Agyei Twum v. Attorney-General and Another [2005-2006] SCGLR 732.***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To begin with, the 1st Defendant's interpretation of Article 97(1)(g) and (h) overlooks the fact that filing a notice to contest a future election under the mandate of a different political party or as an independent candidate is an administrative action. It cannot therefore be construed as an act leading to the MP 'leaving the party of which he was a member at the time of his election', or an act of 'seeking to remain in Parliament' in a different capacity. It should not therefore be misconstrued as a violation of Article 97(1)(g) or (h).

Whilst such filings are necessary for compliance with electoral processes and deadlines that occur during the current parliamentary term, they certainly do not indicate a present shift in political allegiance. Indeed, such filings must necessarily precede the general elections, and both precede the inauguration of the next Parliament. This perspective thus throws into very sharp relief, the fact that construing such filings as an allegiance switch, conflates disparate notions that will be contrary to democratic principles.

By extension, the 1st Defendant's interpretation will result in the anti-democratic rule that an MP cannot run for election in the next general election unless he does so on the ticket of his current party. Or that, to be able to run on a different ticket, he must be deemed to be ineligible to continue as a Member of Parliament.

Such an interpretation will essentially trap MPs within their current party affiliation throughout the life span of a term of Parliament, limiting their freedom to realign their political stance or represent evolving interests, resulting in the undermining of the democratic principle of choice both for the MPs and their constituents. It must also be appreciated that the Constitution made no room for a determination of the effect of such an action to emanate from the Speaker of Parliament, or through a decision from the floor of Parliament. That determination belongs to the High Court under article 99, by anyone with a cause of action, because it is a decision that affects the rights and entitlements of the Member of Parliament. What such a decision should mean to the political fortunes of a Member of Parliament should be left to elements outside of

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Parliament where they have not 'sought to remain in Parliament in a different capacity'.

We think that for such a decision to be left to Parliament as a body will be subversive of the democratic process and a covert assault on constitutional governance, seeing that it can alter Parliament's mid-term composition without electoral sanction. In effect, it is an interpretation that falls on the wrong side of the position of the law articulated by this Court per Bamford Addo JSC in ***New Patriotic Party v Inspector-General of Police [1993-94] GLR 459***, at 482 as follows: -

> ***"This Court is not permitted in any way to give an interpretation which seeks to tamper in any way with the fundamental rights but rather to see that they are respected and enforced"***

See similar views expressed by Wood CJ (as she then was) in the case of ***Ahumah Ocansey v The Electoral Commission & Centre for Human Rights & Civil Liberties v The Attorney General & Anor [2010] SCGLR 575***

Secondly, the 1st Defendant's interpretation of Article 97(1)(g) and (h), has the effect of being circular and paradoxical, because it will ultimately undermine the principle of political freedom. The crux of the paradox is that MPs are told they are "free" to choose the political platform on which they will stand on the opening of nominations for elections, yet exercising this freedom results in their disqualification from holding their current office. The act of filing an intention to run—ostensibly a step toward political participation—triggers a consequence (loss of the current seat) that nullifies the benefit of that participation. In effect, the condition for exercising this freedom leads directly to its denial.

This reasoning is circular because it turns back on itself: the very act that should enable MPs to participate in future elections (declaring their intention) simultaneously punishes them by forcing them out of office. In essence, the 1st Defendant's interpretation creates a situation where MPs are caught in an untenable position, a catch-22 situation as it were, wherein they are promised the constitutional freedom to

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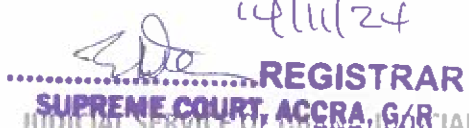
choose their political platform through the fundamental freedom of association, yet the exercise of that freedom automatically leads to a constitutional disqualification from their current office, rendering the freedom illusory.

The inherent circularity of this argument is fatal to its validity, as it subverts fundamental principles of political liberty, and betrays a profound legal and logical paradox, that warrants unequivocal rejection. In the premises, this Court is unable to attribute to the framers of Article 97(1)(g)(h), such an intention which cannot be explicitly or implicitly conveyed through its language. Our view is that an MP may only be subject to such a proposition if they personally choose to subject themselves to it, but not as a matter of law.

Thirdly, the reasoning behind the 1st Defendant's reading of Article 97(1)(g) and (h) is further vitiated by the fact that it seeks to effectively rewrite the 1992 Constitution, by positioning political parties as *de facto* owners of parliamentary seats.

By binding MPs to a singular party allegiance and restricting their ability to pursue future ambitions outside of that party at the end of a parliamentary term, it allows political parties to use Article 97(1)(g) and (h) as a tool to punish MPs who indicate that they will not tow party allegiance after parliament dissolves. This will fundamentally undermine the democratic principle that MPs serve their constituents, not their parties. This shift in interpretation moves power away from individual representatives and voters, entrenching party control over parliamentary seats in a manner that will be both undemocratic and contrary to established precedents.

It may be useful to observe at this stage, that different countries respond to floor-crossing in various ways. In some nations, particularly those with proportional representation systems, the seat is considered to belong to the party, and if a member leaves or is expelled, they lose their seat, with the party choosing a replacement. In other countries, like England and the United States, the seat belongs to the individual MP, allowing them to retain it even if they change parties. This approach strengthens the MP's role and their ties to their constituency. In some systems, where neither the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party nor the MP owns the seat, a by-election is held to fill any vacancy, allowing voters to express their will again. Ghana follows this model, ensuring that any change in parliamentary composition is driven by the electorate rather than internal party decisions. This is all the more reason why the 1st Defendant's alternative interpretation of Article 97(1)(g) & (h) is antithetical to the principles of democratic governance in Ghana.

Next, the 1st Defendant's interpretation of Article 97(1)(g) and (h) will create conflict when read together with other provisions of the Constitution, contravening the time-honored principle of interpretive consistency articulated in such cases as ***National Media Commission vrs Attorney-General 2000 SCGLR 1***, where Acquah JSC (as he then was) elucidated the principle of harmonious interpretation of statutes to avoid conflicts with other provisions. This is what he said: -

> ***"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 frame work. And because the frame work has a purpose, the parts are also to work dynamically, each workings accomplishing the intended goal."***

Thus, for instance, the 1st Defendant's interpretation, will automatically punish MP's by requiring their seats to be vacated in Parliament for indicating an intention to change their party affiliation in a future term. This will certainly be inconsistent with such provisions as Articles 21(1)(e), 55(1), 42 of the Constitution, which protect rights to political freedom, including the right to choose political platforms without undue restriction. See also article 25 of the International Covenant on Civil and Political Rights (ICCPR).

Beyond that, applying the 1st Defendant's construction of Article 97(1)(g) and (h) to the facts of this case, would precipitate a discordant reading, incompatible with Article 112(6) of the Constitution, which prohibits by-elections within three months before a

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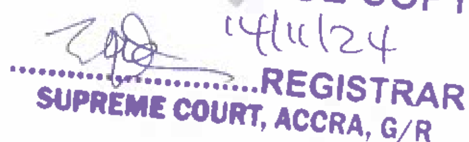
general election, thereby precluding the filling of vacancies created by MPs' intended party switches within this timeframe.

As already indicated above, the focus of a purposive approach to construing Article 97(1)(g) and(h), is to maintain electoral integrity, guaranteeing that where any MP's seat is declared vacant, constituents can exercise their democratic right to elect a representative who aligns with their values. In this sense any purposive and reasonable interpretation must consider the potential for a bye-election to facilitate that democratic continuity. By contrast, any interpretation that creates a vacancy without the possibility of bye-election, as it is in this case, undermines the democratic process. The framers of the constitution intended constituents to have uninterrupted representation throughout the parliamentary term, and any interpretation that undermines continuous constituent representation during a parliament's term is constitutionally untenable.

Seen from the above perspective, it seems plain that apart from generating an irreconcilable conflict with Article 112 (6), adopting the 1st Defendant's construction of Article 97(1)(g), (h), would on the facts of this case, also create an unconstitutional hiatus, leaving seats vacant and unfillable during the critical pre-election period. Indeed, we have found it inconceivable that the Constitution's architects contemplated such an anomaly and logical inconsistency among its provisions. To borrow the felicitous words of Taylor J (as he then was) in the case of ***Sam v. Comptroller of Customs and Excise [1971] 1 GLR 289*** at page 313, it cannot be that in the same Constitution, the framers *".... can exhibit such a split personality and be a veritable Dr. Jekyll and Mr. Hyde."*

In the end, we reiterate that on a true and proper interpretation, Article 97(1)(g), only requires that (1) An MP must vacate their seat, (2) if they leave the party under which they were elected, (3) to join another party or become independent, (4) and seek to remain in Parliament under their new political status. For independent MPs, article 97(1)(h) requires that that (1) An independent MP must vacate their seat, (2) if they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join a political party in Parliament, (3) and seek to remain in Parliament under their new political status.

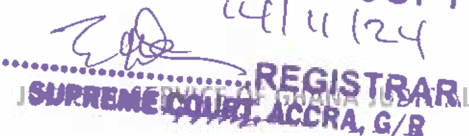
A purposive interpretation of Article 97(1)(g) and (h) of the Constitution confirms that their focus is on safeguarding the electoral mandate during the current parliamentary term, not on restricting MPs' political activities in the next electoral cycle. Historical examples, contextual interpretation, and the inclusion of Article 97(2) all point to the same conclusion: MPs' current parliamentary affiliation remains intact until they actively change their political allegiance during their term, not when they express future political intentions.

For these reasons, this Court will reiterate a purposive interpretation of Article 97(1)(g) and (h) and maintain the distinction between mid-term changes in political allegiance and future electoral plans, ensuring that MPs can serve their full term without interference from future political decisions. This interpretation is consistent with the text, history, and purpose of Article 97(1)(g)(h) and Article 97(2), and it upholds the democratic stability of Ghana's parliamentary system.

In the result, we reject the invitation to reinterpret or effectively rewrite these constitutional provisions to imply that an incumbent Member of Parliament shall not file nomination to contest on a platform different from the one on which he was elected unless he first vacates his current seat. Such a reading imposes an undue restriction on political freedom, a constraint not articulated in the original text of the articles. The constitutional language should be construed holistically and purposively, without imposing limitations that would curtail the fundamental freedoms of sitting MPs and ultimately sabotage the rights of the electorate.

CONCLUSION

It is in light of all the preceding discussions, that this Court determines that the Plaintiff's suit succeeds on the merits. In the result this Court grants the Plaintiff the relief 1 (a), (b) and (c) and makes the following further orders: -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1. An order declaring the interpretation placed on Article 97(1)(g) and (h) as inconsistent with the true meaning and import of Article 97(1)(g) and (h) of the 1992 Constitution.

(SGD.) **Y. DARKO ASARE**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **G. SACKEY TORKORNOO (MRS.)**
(CHIEF JUSTICE)

(SGD.) **M. OWUSU (MS)**
(JUSTICE OF THE SUPREME COURT)

(SGD.) **E.Y GAEWU**
(JUSTICE OF THE SUPREME COURT)

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CONCURRING OPINION

ASIEDU, JSC.

[1]. INTRODUCTION:

My lords, the main issue before this court is the true and proper meaning to be assigned to the provisions in article 97(1)(g) and (h) of the Constitution of the Republic of Ghana, 1992. This exercise has arisen because on the 15th of October 2024, the Plaintiff herein filed a writ before this court against the 1st and the 2nd Defendants herein to invoke the original interpretative jurisdiction given to this court under articles 2(1) and 130(1)(a) of the Constitution.

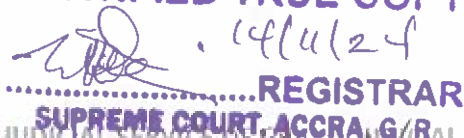
[2]. RELIEFS:

My lords, in his writ, the Plaintiff seeks the following reliefs against the Defendants:

1. A declaration that upon the true and proper interpretation of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1) and (e), 35 (1) and (5), 55, 97(1) (g), 130 (a), 296(a) and (b) of the 1992 constitution and Rule 45 of the Supreme Court Rules, 1996 (C.I. 16):

(a) The filing of nomination of Hon Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an independent Member to join another party;

(b) The filing of nomination of Hon Cynthia Mamle Morrison, the current New Patriotic Party's Member of Parliament for Agona West Constituency in the Central Region with the Electoral Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of her seat as a Member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of Parliament in the current 8th parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member;

(c) The filing of Hon. Kwadjo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member.

2. An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Hon Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving his political status as an independent candidate at the time of his election to Parliament to another party and leaving the party which they were members at the time of their election to Parliament to become independent members of Parliament respectively.

3. An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1) (g) and (h) of the 1992 Constitution during the pendency of this action.

4. Such further orders or direction(s) as this Honourable Court may seem meet.

The Plaintiff's writ was accompanied by a statement of the Plaintiff's case.

Given the urgency attendant to the matter, this court abridged the time within which the Defendants may file their statement of case and directed that the statement of case be filed within a period of seven (7) days. Unfortunately, the 1st Defendant

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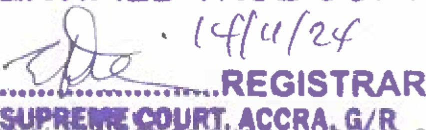
decided not to file his statement of case and therefore deprived this court of his input in a matter which may serve as a guide for generations to come. The 2nd Defendant, however, filed his statement of case. Subsequently, the Plaintiff and the 2nd Defendant filed their memorandum of issues detailing the core issue(s) for determination in the matter.

[3]. FACTS:

The facts of this case, my lords, are not difficult to unravel. Following the opening by the Electoral Commission of Ghana of nominations for eligible candidates to file and contest in the election for the seats of Members of Parliament for the 9th Parliament, four Members of Parliament in the current Parliament of Ghana, the 8th Parliament, filed their nominations to contest for the office of Members of Parliament. The said election is scheduled to take place on the 7th day of December 2024. One of the said contestants is the Member of Parliament for the Fomena Constituency in the Ashanti Region of Ghana, Honourable Andrew Asiamah, who is currently an independent Member of Parliament for the Fomena Constituency. The second person is Honourable Cynthia Mamle Morrison, who is currently the New Patriotic Party Member of Parliament for the Agona West Constituency in the Central Region. Honourable Cynthia Mamle Morrison has filed her nomination to contest as an independent candidate for the Agona West Constituency. The third person is Honourable Kwadjo Asante, the current New Patriotic Party Member of Parliament for the Suhum Constituency in the Eastern Region. Honourable Kwadjo Asante has filed his nomination to contest the up-coming election as an independent Member of Parliament for the Suhum Constituency. There is a fourth person whose name was left out of the Plaintiff's statement of case but captured nevertheless, in the motion filed for an order for stay of execution by the Plaintiff herein on the 18th day of October 2024. The name of this person is Honourable Peter Yaw Kwakye-Ackah currently, the National Democratic Member of Parliament for the Amenfi Central constituency in the Western Region. Honourable Peter Yaw Kwakye-Ackah has filed his nomination to contest as an independent Member of Parliament for the Amenfi central constituency. The Plaintiff's case is that the 1st Defendant ruled on the 17th October 2024, that by filing their nominations to contest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for the office of Member of Parliament as independent candidates, or in the case of Honourable Andrew Asiamah as a Member of the New Patriotic Party, these Members of Parliament have indeed vacated their seats in the current Parliament. In the words of the 1st Defendant as captured at page 10 of the Parliamentary Debates, exhibit B, which was exhibited to the motion for stay of execution filed on the 18th October 2024:

> *"Accordingly, I proceed to inform the House that by the notification of the polls, the following, Members of Parliament have by their actions vacated their seats in Parliament. The members are: (1) Honourable Peter Yaw Kwakye-Ackah, NDC MP for Amenfi Central in the Western Region now referred to as an independent Parliamentary candidate for the same constituency; (2) Honourable Andrew Asiamah, Independent Member of Parliament for Fomena constituency in the Ashanti Region now referred to as NPP Parliamentary candidate for the same constituency; (3) Honourable Kwadjo Asante, NPP MP for Suhum in the Eastern Region, now referred to as independent candidate for the same constituency, and finally Honourable Cynthia Mamle Morrison, NPP MP for Agona West Constituency in the central Region, now referred to as independent candidate for the same constituency"*

The Plaintiff disagrees with the interpretation placed on the relevant constitutional provisions by his own Speaker and has therefore run to this court for a true and proper interpretation of the said constitutional provisions.

[4]. CAPACITY OF THE PLAINTIFF:

The plaintiff brings this action in his capacity as a Ghanaian and as a Member of Parliament for the Efutu Constituency. Indeed, the Defendants have not challenged the Plaintiff's capacity to institute the instant action. Article 2 of the Constitution gives general capacity to Ghanaians to institute actions with the aim of protecting the integrity of the Constitution. See the case of **Tuffuor vs. Attorney General [1980] GLR 637; New Patriotic Party vs. Attorney General [1996-1997] SCGLR 729**.

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[5]. It has almost always been a matter of challenge in cases in which the original interpretative and enforcement jurisdiction of this court has been invoked as to whether the jurisdiction of the court in this regard has been properly set in motion by the Plaintiff. In my humble opinion, there are two modes by which a question of interpretation of a Constitutional provision may be brought before this court. The first of these modes is where a person perceives that a provision of the Constitution requires a definite pronouncement by this court as to the true and proper meaning to be placed on that provision or where a person perceives a breach of a constitutional provision or where it is alleged that an enactment has been made in excess of the powers conferred on Parliament (judicial review of legislation). In any such circumstances, that person is given the right to directly file an action by a writ under rule 45 of the Supreme Court Rules,1996, CI.16 and article 2(1) and 130(1) of the Constitution, 1992 for a declaration to that effect.

The second mode by which the original interpretative, or enforcement or the judicial review of legislation jurisdiction of the Supreme Court may be invoked is where the issue of interpretation or enforcement of a constitutional provision or the judicial review jurisdiction of the Supreme Court crops up or arises during the pendency of an action in a court lower than the Supreme Court. In this instant, article 130(2) of the Constitution enjoins any such court lower than the Supreme Court, to stay the proceedings in which that issue arose and refer the question to the Supreme Court for interpretation and thereafter, the lower court shall then apply the interpretation or the decision of the Supreme Court in that regard. This second mode of invoking the original interpretative, enforcement or judicial review of legislation jurisdiction of the Supreme Court is what I refer to as the indirect mode of invoking the original jurisdiction of the apex court.

It must be placed on record here and now that there is no provision in the Constitution that when a person perceives that a provision of the Constitution requires the interpretation or the enforcement of this court or that when it is perceived that a legislation has been made in excess of the powers conferred on Parliament, that person shall first have to institute a suit in the High Court before the High Court could

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refer the matter to the Supreme Court for interpretation. Such a stand will be very circuitous indeed. Any such condition imposed on Ghanaians is, in my view, and, with the greatest respect, not sanctioned by our Constitution.

[6] HAS THE ORIGINAL JURISDICTION OF THIS COURT BEEN PROPERLY INVOKED?

The question whether or not a Plaintiff has properly invoked the original interpretative or enforcement jurisdiction of the Supreme Court is a mix-question of law and fact. This is because it depends, to a large extent, on the relief sought by the Plaintiff. Various guidelines have been given by this court for the determination of this question as to the circumstances under which it could rightfully be said that the original jurisdiction of this court has been properly invoked. Articles 2(1) and 130(1)(a) of the Constitution, 1992 set the tone. These articles provide that:

> *"2. Enforcement of the Constitution*
> *(1) 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.*
> *130. Original jurisdiction of the Supreme Court*
> *(1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in*
> *(a) all matters relating to the enforcement or interpretation of this Constitution;*
> *(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution".*

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In **Republic vs. Special Tribunal, Ex parte Akosah [1980] GLR 592**, the Court of Appeal, sitting as the Supreme Court, had occasion to interpret article 118(1)(a) of the 1979 Constitution, a provision which is in pari materia with the provisions in article 130(1)(a) of the Constitution, 1992. At page 605 of the report, the court stated per Anin JA that:

> *"We would conclude that an issue of enforcement or interpretation of a provision of the Constitution ... arises in any of the following eventualities:*
> *(a) where the words of the provision are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double-meaning or are obscure or else mean something different from or more than what they say;*
> *(b) where rival meanings have been placed by the litigants on the words of any provision of the Constitution;*
> *(c) where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision shall prevail;*
> *(d) where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation".*

I must add that the above instances pursuant to which the court has settled the position of the law that an issue of interpretation or enforcement of the Constitution arises have been followed by this court in numerous cases where that question had been posed. Among these are Republic vs High Court (Fast Track Division), Accra; Ex parte Commission on Human Rights and Administrative Justice (Richard Anane Interested Party) [2007-2008] 1 SCGLR 213; Ackah vs Agricultural Development Bank [2017-2020] 1 SCGLR 226.

Article 97(1)(g) and (h) of the Constitution states in emphatic terms that:

> *"97. Tenure of office of members*

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(1) A Member of Parliament shall vacate his seat in Parliament

(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or

(h) if he was elected a Member of Parliament as an independent candidate and joins a political party".

[7]. The issue as to the existence of rival meanings attributable to the provisions in article 97(1)(g) and (h) was clearly acknowledged by the 1st Defendant herein in exhibit B when the 1st Defendant expressed himself in the following words:

"Hon members, at the core of the Minority Leader's Statement are the provisions of Article 97(1) of the Constitution of Ghana, 1992, which govern the circumstances under which a Member of Parliament (MP) shall vacate his/her seat in Parliament.

The relevant sub-clauses of this provision read as follows:

Article 97(1) states:

A Member of Parliament shall vacate his seat in Parliament-

(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or

(h) if he was elected a Member of Parliament as an independent candidate and joins a political party"

Hon Members, my humble view is that Article 97(1)(g) and (h) operate to prevent what the old school refers to as "cross-carpeting" or "carpet crossing", as witnessed in the early Legislative Councils and Parliament of the Gold Coast and the Republic of Ghana respectively. Cross-carpeting is now part of what is referred to as "defection" or "party switching", when a Member of Parliament who was elected on the ticket of one political party leaves that party to join another, or when an independent MP joins a political party after being elected as an independent member or a party member acts similarly.

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The concept of defection raises significant concerns about the integrity of political representation. When voters elect a candidate, they do so based not only on the individual's personal qualities but also on the political party platform they represent. Party-switching or deflection, therefore, can be seen as a breach of the mandate and social contract between the MP and the electorate, as it changes the political dynamics that the voters originally endorsed.

The prohibition of deflection, as reflected in Article 97(1) (g) and (h), serves several critical purposes in maintaining the integrity of Parliament, parliamentarians, and protecting the trust and will of the people.

The provisions of Article 97 (1) (g) and (h) are designed to safeguard the principles of party loyalty, voter representation, and political stability. Deflection is prohibited because it undermines the trust placed in Members of Parliament by their constituents and can lead to instability in Parliament. These constitutional safeguards ensure that Members of Parliament remain accountable to both their parties and the electorate, and they prevent Members of Parliament from engaging in behavior that could amount to fraud or disruptive of the functioning of Parliament.

Hon Members, it has been suggested by some members that the provisions of Article 97(1) (g) and (h), which address the vacating of a Member of Parliament's seat due to defection, should be understood prospectively – that is, they should apply only to future Parliaments and not to the term of office of Parliament when the act occurs.

While this argument may appear to offer a practical approach, it must be firmly dismissed as both untenable and inconsistent with the constitutional purpose of these provisions. One may ask, what is Article 97 purposed to do? The clear intent of Article 97(1(g) and (h) to my understanding is to preserve party

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loyalty, engender trust, and protect the mandate of the voter and representation throughout the MP's term of office.

These provisions are designed to prevent political instability as I stated, opportunistic behavior, fraudulent representations, and disruption of parliamentary composition during the term of a Parliament by ensuring that Members of Parliament remain faithful to the mandate given to them by the electorate at the time of their election.

To understand these provisions as only applying prospectively – meaning that they would take effect only in future Parliaments – would nullify the purpose of Article 97. The provisions of Article 97 under consideration are intended to address breaches of party loyalty and independent status as they occur, during a term, ensuring that the House's composition remains consistent with the electoral outcomes.

If Article 97(1) (g) and (h) were to apply only in future Parliaments, it would render these provisions effectively superfluous. By the time the next Parliament is constituted, any Member of Parliament who has defected or switched political allegiance during the current Parliament would no longer be in violation of the provision- they would start the next term aligned with their new party or as an independent MP. There will exist no defection, and the violation would effectively be wiped clean at the start of the term of the succeeding Parliament.

If the understanding of the provisions was futuristic, Members of Parliament could freely switch parties or become independent during the term of a Parliament, and pretend to be representing the interests of the people who elected him/her or the Party on whose platform he/she rode to Parliament while paying loyalty to a different party or group of people with no immediate consequences. This is precisely what Article 97(1) (g) and (h) are meant to prevent. The provisions exist to curb as I stated deflection as it happens, not

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to offer a free pass to Members of Parliament to change allegiance during their term and face no consequences even in future electoral cycles".

Under Article 97 of the Constitution of Ghana, there are indeed different modes through which a Member of Parliament shall vacate his or her seat. These can be broadly categorized into two groups: the (a) is the one that we refer to Automatic or Procedural and the (b) is a matter of determination of fact".

In my humble opinion, the views expressed by the 1st Defendant in exhibit B quoted above are a clear and candid admission by the 1st Defendant herein that rival meanings have been placed on the provisions in article 97(1)(g) and (h) of the Constitution, 1992. For, whereas the 1st Defendant thinks that the actions of the Members of Parliament mentioned herein mean that they have forfeited their seats in the current Parliament, he expresses the views of other members that the actions of the Members of Parliament herein look to the future and for that matter have no effect on their standing or status in the current Parliament. Herein lies the double or rival meanings that have been brought to bear on the provisions of the Constitution under scrutiny. This fact alone satisfies the conditions expressed in Ex parte Akosah (supra) as being a condition for a person to invoke the jurisdiction of the Supreme Court to determine the true and proper meaning of the provisions of article 97(1)(g) and (h) of the Constitution. Again, the rival meanings that have been attributed to the provisions herein qualifies as a condition enabling the Plaintiff to invoke the original interpretative jurisdiction of the Supreme Court.

Surprisingly, instead of the 1st Defendant ceding the matter to the Supreme Court for interpretation, he went ahead contrary to the provisions in article 2(1) and 130(1)(a), not only to interpret these provisions but also to enforce them by declaring the seats of the Members of Parliament concerned as vacant notwithstanding the provisions of article 99(1)(a) of the Constitution to the effect that:

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"99. Determination of membership

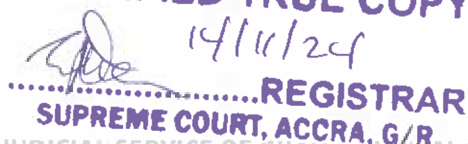
(1) The High Court shall have jurisdiction to hear and determine any question whether

(a) a person has been validly elected as a Member of Parliament or the seat of a member has become vacant"

In my opinion, the action instituted by the Plaintiff herein for a determination of the true and proper meaning of article 97(1)(g) and (h) of the Constitution is in complete accord and conformity with article 2(1) and 130(1)(a) of the Constitution, 1992.

[7.1]. IS THE SUPREME COURT'S JURISDICTION OUSTED?

One issue which needs clarification is whether the jurisdiction of the Supreme Court given under articles 2(1) and 130(1) (a) to interpret provisions of the Constitution, 1992, is ousted by the jurisdiction conferred on the High Court under article 99(1). My answer is in the negative. And this is so because, the two jurisdictions are entirely different. The jurisdiction of the apex court given under articles 2(1) and 130(1)(a) is to interpret and enforce provisions of the Constitution which include the provisions contained in article 99(1) whereas the jurisdiction given under article 99(1) of the Constitution makes the High Court the forum for the determination of the questions whether a person has been validly elected as a Member of Parliament or whether the seat of a Member of Parliament has become vacant. Under article 99(1), the High Court again is given power to decide the validity of the election of a person as Speaker of Parliament or whether a Speaker of Parliament has vacated his office as Speaker of Parliament. Thus, even in the process of determining any question arising under article 99(1), if an issue crops up with respect to the meaning of any of the provisions in article 99(1), the High Court is enjoined by virtue of the provisions in article 130(2) to stay proceedings and refer the said issue to the Supreme Court for interpretation. It follows therefore that the powers given the High Court under article 99(1) of the Constitution cannot, correctly and legally, be said to have ousted the jurisdiction conferred on the Supreme Court under article 2(1) and 130 of the Constitution. The power to interpret and enforce the provisions of the Constitution is exclusive to the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Supreme Court. See Adjei Ampofo (No.1) vs Accra Metropolitan Assembly) & Attorney General (No.1) [2007-2008] SCGLR 611; Republic vs High Court (General Jurisdiction), Accra; Ex parte Dr. Zanetor Rawlings (Ashittey and National Democratic Party Interested Parties) [2015-2016] 1 SCGLR 92.

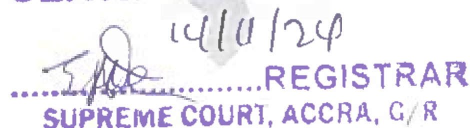
[8] ISSUES FOR DETERMINATION:

The Plaintiff filed the following issues in their memorandum of issues for determination by the court:

1. Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Andrew Asiamah Amoako, the current independent Member of Parliament for Fomena Constituency in the Ashanti Region to contest the Parliamentary elections in December 2024 on the ticket of the New Patriotic Party for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?

2. Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Ctnthia Mamle Morrison , the current New Patriotic Party Member of Parliament for Agona West in the Ashanti Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of her current Parliamentary seat?

3. Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Kwadjo Asante, the current New Patriotic Member of Parliament for Suhum in the Eastern Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts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to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?

4. Whether or not in the light of Article 97(1)(g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Peter Yaw Kwakye Ackah, the current National Democratic Congress Member of Parliament for Amenfi Central in the Western Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of current his (sic) Parliamentary seat?

5. Whether or not upon true and proper interpretation of Article 97 clause 1 (g) and (h) in the light of the 1992 Constitution, the Speaker of Parliament has the power and jurisdiction to interpret Article 97 clause (1) (g) and (h) as having either current effect or futuristic/prospective effect without resort to the Supreme Court under Articles 2(1) and 130(1) of the 1992 Constitution?

6. Whether or not in the light of the same Articles 2(1) and 130 of the same 1992 Constitution and upon true and proper interpretation of Article 97(1) (g) and (h), the filing of nominations by these four affected Members of Parliament to contest the 2025 parliamentary elections on different political identify (sic) is of current or prospective effect on their present parliamentary seats?

7. Whether or not the Speaker of Parliament was in breach of the rules of natural justice (i.e audi alteram partem rule) in declaring these four Parliamentary seats vacant without giving the four affected Members of Parliament a hearing?

8. Whether or not it is lawful for the four affected Parliamentary Constituencies to be denied representation from 17th of October 2024 to the dissolution of Parliament from the 17th of October 2024 to the mid night of 6th January 2025 through no fault of any of these affected constituencies?

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9. And any other issue(s) arising from pleadings in this matter as this Honourable Court may seem meet?

The 2nd Defendant also filed for the consideration of the court the following memorandum of issues:

1. Whether or not plaintiff's suit properly invokes the original jurisdiction of the Supreme Court.

2. Whether the filing of a nomination by an MP to contest a future parliamentary election with a political identity different from the one with which the MP currently sits in Parliament results in a vacation of his seat under article 97(g) and (h) of the Constitution.

3. Whether or not the declaration by the Speaker of Parliament of 4 vacancies in Parliament is subject to the Supreme Court's judicial review powers under the Constitution.

[9]. MEANING OF ARTICLE 97(1)(g) & (h):

In seeking the meaning of article 97(1)(g) and (h) of the Constitution, 1992 it is my humble opinion that the interpretation must be done within the context of the Constitution as a holistic document. Thus, whatever meaning that may be appropriately placed on the provisions of the article under discussion must harmonize with the other provisions of the Constitution since the Constitution is one supreme document which the people of Ghana have adopted to govern themselves. Thus, in **National Media Commission vs Attorney-General [2000] SCGLR 1**, this court expressed the view that:

> *"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*

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because the framework has a purpose, the parts are also to work dynamically, each workings accomplishing the intended goal."

In this regard, article 97(1) states that "a Member of Parliament shall vacate his seat in Parliament". Indeed, article 93(1) and (2) of the Constitution (as amended) states that:

> *"93. The Parliament of Ghana*
>
> *(1) There shall be a Parliament of Ghana which shall consist of not less than one hundred and forty elected members.*
>
> *(2) Subject to the provisions of this Constitution, the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution".*

The word "Parliament" is not defined in the Constitution, but it seems clear to me from the provisions in article 93 quoted above that Parliament is the Legislative body made up of elected Ghanaians recognized as a unit vested with the legislative power of Ghana which power shall be exercised in accordance with this Constitution. The Interpretation Act, 2009, Act 792 defines "Parliament" in section 43 thereof to mean Parliament as established under article 93 of the Constitution. The Constitution does not create permanent membership of Parliament. Hence, no person elected as a Member of Parliament has a right to be a Member of Parliament for an indefinite period. For that reason, article 97 which provides for the tenure of office of Members of Parliament states at clause (1)(a) thereof that:

> *"A Member of Parliament shall vacate his seat in Parliament*
>
> *(a) upon a dissolution of Parliament"*

This provision suggests that each Parliament has a term. Each Parliament has a beginning and an end. Each Parliament shall be dissolved at the expiration of the term of that Parliament. A particular Parliament may not be composed of the same members as the immediately preceding Parliament; and, this is due to the competitive nature

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of elections to the office of a Member of Parliament. Article 113(1) puts the matter beyond reasonable debate when it provides that:

> "113. *Dissolution of Parliament*
>
> *(1) Subject to clause (2) of this article, Parliament shall continue for four years from the date of its first sitting and shall then stand dissolved".*

[10]. It follows therefore that since each Parliament has a specific term, each Parliament is unique by itself. That being so, a decision taken by a current Member of Parliament which is mainly geared towards achieving his personal aspirations in respect of a succeeding Parliament should not be construed as affecting that member's standing in the current Parliament. It is my humble opinion that for a decision to affect the standing or the status of a Member of Parliament, the said decision must be taken with respect to the present status or the current standing of the member with respect to the current Parliament. The life of Parliament as a body begins from a specified date and ends on a specified date. Indeed, by virtue of the Constitution of the Fourth Republic of Ghana (Promulgation) Act, 1992, PNDCL 282, this Constitution came into force on the 7th January 1993 and that was the date that the first Parliament of the fourth Republic had its first session. From thereon elections have been held every four years to usher a new Parliament on the 7th January following the year in which general election was held. So, counting from the 7th January 1993, this Republic has had eight sessions of Parliament. That is the reason why elections are to be held getting to the close of the year 2024 in order that a new Parliament may be ushered in on the 7th of January 2025 on which date the life of the nineth Parliament may begin.

The meaning of the provisions in article 97(1)(g) and (h) of the Constitution, 1992 cannot be fully appreciated without reference to other provisions of the Constitution. In this regard, attention is drawn to article 3(1) of the Constitution which forbids Parliament from enacting any legislation with the aim of creating a one-party State. The said article provides that:

> *Article 3(1) "Parliament shall have no power to enact a law establishing a one-party State".*

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Party pluralism is guaranteed under the Constitution and every Ghanaian has the liberty to join or associate with any Political Party of his choice. Under article 55(1) to (5) it is provided that:

"55. Organisation of political parties

(1) The right to form political parties is hereby guaranteed.

(2) Every citizen of Ghana of voting age has the right to join a political party.

(3) Subject to the provisions of this article, a political party is free to participate in shaping the political will of the people, to disseminate information on political ideas, social and economic programmes of a national character, and sponsor candidates for elections to any public office other than to District Assemblies or lower local government units.

(4) Every political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions.

(5) The internal organisation of a political party shall conform to democratic principles and its actions and purposes shall not contravene or be inconsistent with this Constitution or any other law".

With the above provisions in place, it will generally be difficult for a group of people whose party is in power to enact laws cognizable under the Constitution of the Republic whose effect will be the creation of a one-party State. Nonetheless, human ingenuity cannot be foreclosed and so although de jure a one-party State cannot be created; de facto, it is not impossible to get Members of Parliament to leave the party on whose ticket they were voted to Parliament and join a major or a minor political party in Parliament to the dismay of the people who voted them to Parliament. Further, no Member of Parliament is voted qua Member of Parliament to represent himself. Every Member of Parliament is voted to that office by the people of his constituency to represent the people who voted for him and to advance the aspirations of the people through the exercise of the duties and functions imposed on the Legislative body as stated in article 93(2). Article 55(3), quoted above, allows political parties to draw up programmes of social and economic nature, among others, and disseminate such programmes to the people of the constituency. Therefore, having been voted

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into office at the back of a promise made generally by the programmes disseminated to the people, it will be very invidious for a Member of Parliament whether of a political party or an Independent Member of Parliament to be allowed to leave the party or the status on the strength of which he was voted as a Member of Parliament and join forces with another or a different party in Parliament. As a safeguard therefore, the Constitution provides in article 97 (1)(g) and (h), among others, that:

> *"97. Tenure of office of members*
>
> *(1) A Member of Parliament shall vacate his seat in Parliament*
>
> *(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an independent member; or*
>
> *(h) if he was elected a Member of Parliament as an independent candidate and joins a political party".*

It means, therefore, that the action of the Member of Parliament which shall have the effect of causing the seat of that Member of Parliament to be vacant should have the effect of affecting the current or the present status of the said Member of Parliament. Hence, it is not just any action of a Member of Parliament that has the effect of causing his seat in Parliament to be vacated. For instance, if a Member of Parliament declares his unwillingness to stand or contest the seat of a Member of Parliament in the next election, that declaration, in my humble view, should not cause him to lose his seat as a Member of Parliament. The other provisions of article 97 are in tune with the provisions in clause 1 sub-clauses (g) and (h). For example, if a Member of Parliament gets elected as a Speaker of Parliament, he can no longer represent the people of his constituency. This is so because, among others, under article 104(2) of the Constitution:

> "(2) The Speaker shall have neither an original nor casting vote".

It should not be forgotten that the people of a constituency voted for a person who can take part in the deliberations of Parliament in order to influence Government

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policies for the overall benefit of the people of that constituency. Therefore, if by getting himself elected as the Speaker, he thereby loses his right to vote, how can he influence Government policies in order to benefit his people?

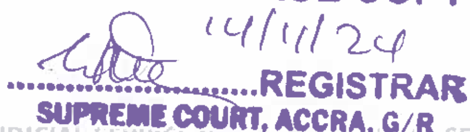
Under article 97(1)(c), if a Member of Parliament absents himself without the permission of the Speaker in writing for fifteen Parliamentary sittings of what use is he to the people of his constituency? And if he cannot provide any reasonable explanation for his absence, he ungraciously vacates his seat as a Member of Parliament. The action of absenting himself from the sittings of Parliament affects the work of that Member of Parliament in the current session of Parliament and so it is right that he vacates his seat so that the people of his constituency may get the chance to elect a more serious person to represent them.

[11]. If by misbehaviour or unparliamentary conduct a Member of Parliament is expelled from Parliament after being found guilty of contempt by a committee of Parliament, that action affects that Member of Parliament in the present Parliament and hence article 97(1)(d) requires that the said contemnor Member of Parliament vacates his seat. Here again, there is an effect of the action of the Member of Parliament on the present session of Parliament.

Article 94 lists a number of factors which are required of a person before he can contest the seat of a Member of Parliament. For instance, under article 94(1)(a)

> *"Qualifications and eligibility*
> *(1) Subject to the provisions of this article, a person shall not be qualified to be a Member of Parliament unless*
> *(a) he is a citizen of Ghana, has attained the age of twenty-one years and is a registered voter".*

If a particular Member of Parliament during the life of Parliament acquires the citizenship of another country or under article 94(2)(c)(i) is convicted of high crime under the Constitution or is convicted of the offence of treason or high treason or of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any of the offences listed in that provision, that Member of Parliament shall, under article 97(1)(e), vacate his seat as a Member of Parliament. It is not difficult to find that whatever action or conduct that may cause a Member of Parliament to lose his seat under article 97(1)(e) affects the status of the said member in the present or current session of Parliament.

If a Member of Parliament resigns from his office as a Member of Parliament by writing under his hand to the Speaker, article 97(1)(f) requires such a member to vacate his seat in Parliament. I dare say that the action in resigning his office, affects the status of the member in the present Parliament.

It follows as a matter of logic that if a Member of Parliament takes any step which has no effect on the present session of Parliament, that Member of Parliament cannot reasonably be said to have engaged in conduct which affects his seat and which calls for his expulsion from Parliament. To put it bluntly, if a Member of Parliament declares his intentions to stand and contest the next general elections on the ticket of a party different from the party at the back of which he was voted as a member of the current session of Parliament, that conduct looks to the future. That conduct does not in fact or in law affect his status as a member in the present Parliament. That conduct cannot be interpreted as amounting to that Member of Parliament leaving "the party of which he was a member at the time of his election to Parliament to join another party" Equally, if a Member of Parliament who came to Parliament on the strength of his membership of a political party expresses his desire to contest the next election as an Independent Member of Parliament, that conduct cannot be interpreted to amount to that Member of Parliament "seeking to remain in Parliament as an Independent member". An Independent Member of Parliament who desires to contest the next election on the back of a political party cannot in law be described as having left his status as an Independent Member of Parliament in the current session of Parliament. Such expression of intentions does not affect the status of the Member of Parliament in the present session of Parliament.

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[12]. However, if a person is voted as a Member of Parliament at the back of a political party and he resigns from that political party and joins a different political party or decides to remain in Parliament as an Independent Member, his status becomes changed because he no longer, from the date of his resignation or movement from Independent Member of Parliament, wears the hat in respect of which he was voted as a Member of Parliament. For that reason, he becomes disqualified from continuing to occupy his seat as a Member of Parliament and is therefore required to vacate his seat in Parliament.

[13]. In his book, A Handbook of the Constitutional Law of Ghana and its History, Sir Kofi Kumado sheds some light on the meaning of the provisions in article 97(1)(g) and (h) which is worth quoting. At page 170, the learned author states that:

> *"A member does not lose his seat if his party merges with other party(ies) or his party forms a coalition with other party(ies). However, when a member does not leave his political party but is de-selected at the party's primaries, it is not clear whether his seat becomes vacant under article 97(1)(g). What if he then joins another party, becomes a candidate for that party and is actively campaigning on the platform of that other party? In this case he is a member of his former party inside the House, but outside it he belongs to another because of the de-selection by his former party. It would seem unfair that his seat should be declared vacant, especially if he does not join another party. The consequences of the de-selection seem to be an issue which should be dealt with in any future revision of the Constitution.* ***For now, it seems a fair interpretation to state that article 97(1)(g) and (h) deals with what the member himself does in the House and not the actions or the politics in his party****. In this connection, we may also raise the issue of a situation where a President appoints a member who does not belong to his party or is an independent member to his government, e.g., as a minister, to promote inclusiveness. It is submitted that in such a situation, the member's seat should not be declared vacant although his acceptance of the ministerial position may irritate his party. Even if, out of such irritation, he is expelled from*

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his party, we will submit that his seat does not thereby become vacant under article 97(1)(g), so long as he does not expressly leave his party or seek to change his status as an independent member under article 97(1)(h)." [Emphasis is mine]

[14]. In respect of the concern raised by the learned author, if a Member of Parliament resigns or leaves the political party, at the back of which he was voted as a member and joins another political party during the session of the Parliament, he would have changed his status in the current Parliament and that action would surely infringe article 97(1)(g) and (h). Indeed, that action will surely cause the member to lose his seat in Parliament.

[15]. This court in several cases has upheld the Supremacy of the Constitution under which the governance of the country is conducted. The actions of every institution in the country, including the Executive and the Legislative branches, are measured against the standards set up in the Constitution. To the extent that any action of the Executive and the Legislative branches measures up the constitutional standards, the courts are enjoined to uphold such actions. However, the Constitution gives right to Ghanaians to call into question and seek declarations to that effect, any action of any institution or any person, for that matter, that amounts to an aberration or an infringement of the Constitution. The Parliament established under article 93 of the Constitution is not sovereign in the sense that actions and decisions taken in Parliament cannot be questioned in any court of law. Article 93(2) subjects the legislative power conferred on Parliament to the overriding power or supremacy of the Constitution. Hence it is provided in article 93(2) that:

*"(2) Subject to the provisions of this Constitution, **the legislative power of Ghana shall be vested in Parliament and shall be exercised in accordance with this Constitution".***

In view of the above provisions, Parliament shall ensure that whatever law that is passed by it shall conform with the provisions of the Constitution. Article 130(1)(b) of

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the Constitution gives power to the Supreme Court to measure Acts of Parliament and ensure that they remain obedient to the Constitution. Article 130 states in no ambiguous words that:

> 130. Original jurisdiction of the Supreme Court
>
> (1) Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in
>
> (a) all matters relating to the enforcement or interpretation of this Constitution.
>
> (b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.
>
> (2) Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination and the Court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court.

In **Tuffuor vs Attorney General [1980] GLR 637**, it was pointed out that:

> *"There is a long line of authorities which establishes two important principles governing the relationship that subsists or should exist between Parliament and the courts:*
>
> *(a) that the courts can call in question a decision of Parliament; but that the courts cannot seek to extend their writs into what happens in Parliament; and*
>
> *(b) that the law and custom of Parliament is a distinct body of law and, as constitutional expert, do put it, "unknown to the courts."*
>
> *And therefore, the courts take judicial notice of what has happened in Parliament. The courts do not, and cannot, inquire into how Parliament went about its business. These constitute the state of affairs, as between the legislature and the judiciary which have been crystallized in articles 96, 97, 98,*

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99, 103 and 104 of the Constitution. Of particular importance to us are the provisions of article 96 of the Constitution. They confer on Parliament freedom of speech, of debate and of proceedings in Parliament. The article also states categorically; "that freedom shall not be impeached or questioned in any Court or place out of Parliament." The courts cannot therefore inquire into the legality or illegality of what happened in Parliament. In so far as Parliament has acted by virtue of the powers conferred upon it by the provisions of article 91 (1), its actions within Parliament are a closed book".

See also the recent case of **Abu Ramadan & Nimako (No.2) vs Electoral Commission & Attorney General (No.2) [2015-2016] 1 SCGLR 1** where this court held that:

> "In the exercise of its original jurisdiction, articles 2(1) and 130(1) of the 1992 Constitution, the Supreme Court and no other court, had the onerous responsibility of determining whether or not legislation and /or any act or conduct of any person was within the boundaries of the Constitution"

Again, in **ADOFO AND OTHERS v ATTORNEY-GENERAL AND ANOTHER [2003-2005] 1 GLR 239** this court pointed, per Date Bah JSC, at page 245 to 246 of the report that:

> *"This constitutional provision unequivocally and authoritatively establishes a doctrine of supremacy of the Constitution, 1992 in the Ghanaian jurisdiction. This doctrine implies that the supremacy of Parliament is limited and Parliament's enactments and those of previous legislatures are subject to the supremacy of the Constitution, 1992. This supremacy of the Constitution, 1992 implies the assertion that constitutional clauses granting an effective indemnity against the provisions of the current Constitution, 1992 which exist under the terms of the transitional provisions of the Constitutions, 1969, 1979 and 1992 are also supreme. Those clauses therefore establish an effective indemnity.*

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The doctrine of the supremacy of the Constitution, 1992 should logically imply the power of judicial review of the constitutionality of legislation in order to enforce that supremacy. Thus, even if there had been no express power in the Constitution, 1992 for this court to strike down offending legislation, we would have been willing to imply one. Such implication is obviously unnecessary because of the explicit power conferred on this court by article 2(1) of the Constitution, 1992 which has been repeatedly described in this court as a special jurisdiction. This special jurisdiction to strike down legislation is made an exclusive one of this court by article 130 of the Constitution, 1992. The net effect of article 130(1) of the Constitution, 1992 is that, where a plaintiff seeks to obtain a declaration that a statute or part of a statute is void as "made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution, the Supreme Court has exclusive original jurisdiction in the matter".

These decisions should make it obvious to the proponents of Parliamentary sovereignty that none exists in this Republic and that actions of Parliament are subject to the constitutional yardstick.

[16] CONCLUSION:

In conclusion, I wish to state that a common thread runs through each of the provisions in article 97(1)(b) to (h) and that thread is a condition precedent without which a Member of Parliament cannot, in law, be said to have forfeited his seat in Parliament. The condition precedent is that the prohibited act or acts which can cause a Member of Parliament to vacate his seat in Parliament, must affect his status as a Member of Parliament in the current session of Parliament. The condition precedent cannot be an act which has an effect, or which may have an effect, not in the current session of Parliament but a future Parliament. In my humble view, therefore, it is incorrect and unconstitutional for the 1st Defendant to rule that the Members of Parliament concerned have vacated their seats in Parliament just for the reason that they have filed nominations to contest, as Members of Parliament, in the upcoming

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general elections on tickets other than those on which they were voted as members of the current Parliament. It is for these reasons that I voted to grant relief one endorsed on the Plaintiff's writ.

(SGD.) **S.K.A ASIEDU**
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

LOVELACE-JOHNSON, JSC:

In his writ filed on 15th October 2024 against the defendants herein the plaintiff states that as a citizen of Ghana he brings this action "pursuant to Article 2 of the 1992 Constitution of the Republic of Ghana asserting his right to challenge acts deemed unconstitutional and in his capacity as the Member of Parliament for Efutu Constituency and the Majority Leader by virtue of which the above mentioned Members of Parliament are members of his caucus and currently not ceased to be party members of the New Patriotic Party".

The reliefs sought by the plaintiff (some of which were abandoned during the hearing) have been set out in the record so there is no need to reproduce same. In respect of the reliefs not abandoned, plaintiff, in sum, is asking this court to declare that

1. The filing of nomination by independent candidate Andrew Asiamah Amoako to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party (NPP)

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2. The filing of nomination by NPP's member of Parliament, Cynthia Mamle Morrison to contest the Agona West Parliamentary seat as an independent candidate

3. The filing of nomination by NPP's member of Parliament in the Suhum constituency, Kwadjo Asante, to contest for the said seat as an independent candidate cannot be said to amount to a vacation of their seats as Members of the current Parliament.

The plaintiff in his memorandum of issues also raised the similar situation of Peter Yaw Kwakye Ackah the current National Democratic Congress member of Parliament for Amenfi Central who has also filed his nomination to contest the forthcoming Parliamentary elections as an independent candidate and seek a resolution of the issue of whether this action amounts to cross carpeting under the Constitution and a vacation of his current Parliamentary seat.

The plaintiff originally set down eight issues for resolution in his memorandum of issues but at the hearing stated that some of these were abandoned. He did not set down the issue of whether this court's jurisdiction has been properly invoked. The 2nd defendant set down three issues. The 1st defendant, though served, has as at the time of writing this judgment not filed any processes in this matter.

The first of the 2nd defendant's issues is whether or not the plaintiff's suit properly invokes the original jurisdiction of this court. It is their submission that this court's jurisdiction has been properly invoked. Counsel for the 2nd defendant describes this submission as an irresistible conclusion at page 14 of her statement of case.

The plaintiff grounds his capacity to bring this action on Article 2 of the Constitution. Article 2(1) states as follows:

"A person who alleges that

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(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, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect."

Article 130(1) also states as follows:

"Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in Article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in-

(a) all matters relating to the enforcement or interpretation of this Constitution; and

(b) all matters arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution.

(2) Where an issue that relates to a matter or question referred to in clause (1) of this Article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."

Clearly then the Supreme Court's exclusive power of enforcement and interpretation of the Constitution is not in doubt excepting the enforcement of the fundamental human rights and freedoms stated in chapter 5 of the Constitution, which is given to the High Court.

What is also clear is that the Constitution envisages a situation where the High Court, in exercising a jurisdiction given it, may need the interpretation of a constitutional provision and since such an exercise is the exclusive preserve of the Supreme Court,

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would have to stay its proceedings, refer the matter to this apex court, whose decision when sent back to the said court shall be used to dispose of the case.

See the case of **Nii Nortey Omaboe III & 3 ors v Attorney General suit No REF J6/1/2005** delivered on 21st June 2006 where the High Court in the midst of hearing a case saw a need for the interpretation of certain articles of the constitution and so adjourned the matter sine die and made a referral to the Supreme Court for interpretation. This was done by the Supreme Court and a response sent back to the High Court. See also the case of **Valentine Edem Dzatse v Mr Henry Akueteye (Volta Regional Chairman (NDC) & 3 ors. REF J6/1/2020**

The plaintiff and the 2nd defendant both filed memoranda of issues in compliance with Article 50(1) of the Supreme Court Rules 1996, C.I.16 whose purpose is stated as

> *"specifying the issues agreed by them to be tried at the hearing of the action"*

Apart from the 2nd defendant's first issue about whether this court's original jurisdiction has been properly invoked, the second and third were as follows:

> *2. Whether the filing of a nomination by an MP to contest a future parliamentary election with a political identity different from the one with which the MP currently sits in Parliament results in a vacation of his seat under Article 97(g) and (h) of the Constitution.*
>
> *3. Whether or not the declaration by the Speaker of Parliament of 4 vacancies in Parliament is subject to the Supreme Court's judicial review powers under the Constitution.*

The Plaintiff originally filed the following nine issues

1. *Whether or not in the light of Article 97 (1) (g) and (h) of the 1992 constitution, the filing of nomination by Hon. Andrew Asiamah Amoako, the current independent Member of Parliament for Fomena Consituency in the Ashanti*

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Region to contest the Parliamentary elections in December 2024 on the ticket of the New Patriotic Party for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?

2. *Whether or not in the light of Article 97 (1) (g) and (h) of the 1992 Constitution, the filing of nomination by Hon Cythia Mamle Morrision, the current New Patriotic Party Member of Parliament for Agona west in the Ashanti Region to contest the Parliamentary Elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of her current Parliamentary seat?*

3. *Whether or not in the light of Article 97 (1) (g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Kwadjo Asante, the current New Patriotic Party Member of Parliament for Suhum in the Eastern Region to contest the parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of his current Parliamentary seat?*

4. *Whether or not in the light of Article 97 (1) (g) and (h) of the 1992 Constitution, the filing of nomination by Hon. Peter Yaw Kwakye Ackah, the current National Democratic Congress Member of Parliament for Amenfi Central in the Western Region to contest the Parliamentary elections in December 2024 as an independent Member for the next or 9th Parliament of Ghana commencing from 7th January 2025 amounts to cross carpeting in the 8th Parliament under the 1992 Constitution and a vacation of her current Parliamentary seat?*

5. *Whether or not upon true and proper interpretation of Article 97 clause 1 (g) and (h) in the light of the 1992 Constitution, the speaker of Parliament has the power and jurisdiction to interpret Article 97 clause 1 (g) and (h) as having*

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either current effect or futuristic/prospective effect without resort to the Supreme Court under Articles 2 (1) and 130 (!) of the 1992 Constitution?

6. *Whether or not in the light of the same Articles 2(1) and 130 of the same 1992 Constitution, and upon true and proper interpretation of articles 97 (1) (g) and (h), the filing of nomination by these four affected Members of Parliament to contest the 20255 parliamentary elections on different political identify is of current or prospective effect on their present parliamentary seats?*

7. *Whether or not Speaker of Parliament was in breach of the rules of natural justice (i.e audi alterem partem rule) in declaring these four Parliamentary seats vacant without giving the four affected Members of Parliament a hearing?*

8. *Whether or not it is lawful for the four affected Parliamentary Constituencies to be denied representation from 17th October 2024 to the dissolution of Parliament from 17th of October 2024 to the midnight of 6th January 2025 through no fault of any of these affected constituencies?*

9. *And any other issue(s) arising from pleadings in this matter as this Honourable Court may seem meet?*

In **Ghana Bar Association v Attorney-General (Abban Case) [1995-96] 1 GLR 598** Bamford-Addo JSC stated as follows:

> *"In deciding the issue of jurisdiction, matters to take into consideration include the statute which invests jurisdiction as well as the true nature of the claim having regard to the pleadings, issues and reliefs sought or the actual effect of the reliefs regardless of the words used or the manner in which the claim and reliefs are couched"*

The wording of the issues set down in the memoranda of issues above reproduced clearly show that the question at the heart of this matter is whether or not the seats

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of certain members of Parliament have become vacant. This is in spite of the fact that some of the issues set down call for a determination of some constitutional provisions.

It is my considered opinion that the determination of this question falls under Article 99(1) of chapter ten of the Constitution which deals with the Legislature. The Article states as follows:

> *"The High Court shall have jurisdiction to hear and determine* ***any question*** *whether-*
>
> *(a) a person has been validly elected as a member of parliament or the seat of a member has become vacant*
>
> *(b) ....*
>
> *(2) A person aggrieved by the determination of the High Court under article may appeal to the Court of Appeal."*

I am in no doubt that the High Court, by virtue of Article 99(1) is the exclusive forum clothed with jurisdiction for determining this matter relating to whether or not a seat in Parliament can be deemed vacated. As with all other cases, if the plaintiff's capacity is not questioned or is proved satisfactorily, and during the course of the hearing by the High Court, a need for an interpretation of a constitutional provision arises, then the court would stay proceedings, and refer such a question to the Supreme Court whose decision on the matter would be sent back to the High Court for use in the continued hearing of the matter.

The fact that this court is clothed with exclusive jurisdiction under Article 130(1) of the Constitution (subject to that given the High Court under Article 33) to deal with all matters relating to the enforcement and interpretation of the Constitution and any allegations that an enactment was made in excess of the powers of Parliament or any authority or person by law or under the Constitution (which jurisdiction, in any case, can be exercised upon a reference from the High Court in appropriate circumstances) does not mean the clear provisions of Article 99(1) which provides the forum for hearing and determining the core issue in this matter can be ignored.

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In **Yeboah v J H Mensah [1998-99] SCGLR 492** the plaintiff had issued a writ in the Supreme Court invoking its enforcement jurisdiction under articles 2 and 130 of the 1992 Constitution for a declaration that the defendant was not qualified to be a member of Parliament. In upholding a preliminary objection as to the forum, the court ruled that the action was in substance an election petition and so the plaintiff could not ignore the provisions of article 99(1) which stated the High Court as the appropriate forum for an election petition and resort to the enforcement jurisdiction of the Supreme Court. At page 498 this is what the court per Charles Hayfron-Benjamin had to say

> *"Two principles may be deducted from the authorities. First, that when a remedy is given by the Constitution and a forum is given by either the Constitution itself or statute for ventilating that grievance, then, it is to that forum that the plaintiff may present his petition"*

In a Practice Direction issued on 15th June 1981 by the then Chief Justice, per JUDICIAL CIRCULAR No 146/12 found in **1981 GLR page 1,** stated at point 6 as follows:

> *"It is also to be noted that where a cause or matter can be determined by a superior court other than the Supreme Court, the jurisdiction of the lower court shall first be invoked. The Supreme Court may dismiss any such cause or matter, with punitive costs to be paid personally by counsel or by the party responsible for bringing such cause or matter to the Supreme Court in the first instance"*

The tenor of the above suggests that where the Supreme Court and a lower superior court have concurrent jurisdiction in a matter, it is the jurisdiction of the lower superior court which is to be first invoked.

It is my opinion that in relation to a matter relating to the vacation or otherwise of a Parliamentary seat, a plaintiff has no choice in the matter. He has to go to the High Court. The jurisdiction of the High Court is exclusive.

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I am satisfied that the high court being the proper forum for this matter but the plaintiff having filed his writ in the Supreme Court, the jurisdiction of this court has not been properly invoked. I therefore see no need to go into the merits or otherwise of the other issues raised in the memoranda of issues. The action is accordingly dismissed.

(SGD.) **A. LOVELACE-JOHNSON (MS)**
(JUSTICE OF THE SUPREME COURT)

DISSENTING OPINION

TANKO AMADU JSC;

INTRODUCTION

1. My Lords, the jurisdictional issue provoked for determination as settled in the 2nd Defendant's memorandum of issues to wit: "***whether or not Plaintiff's suit properly invokes the original jurisdiction of the Supreme Court***" is not novel to our jurisprudence. Our constitutional law jurisprudence is replete with a rich line of decided authorities on the subject such that, unless this court overrules itself or departs from those decisions in accordance with law, they have become the settled position on our procedural law with respect to the commencement of actions in our courts.

2. In determining the question which is at the threshold, as it is foundational, fundamental and a gateway issue, it is important to state that both the Plaintiff and the 2nd Defendant who have submitted in their respective statements of case

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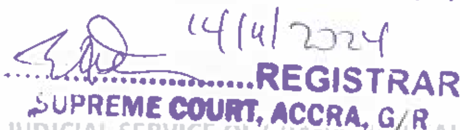

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that, the jurisdiction of this court has been properly invoked and therefore this court is the proper forum to determine the reliefs sought by the Plaintiff have a duty to surmount in accordance with the law. It is only when this critical jurisdictional question is answered in their favour will the substantive reliefs sought be considered and determined on the merits.

3. In other words, as this court has held in a plethora of cases including **REPUBLIC VS. HIGH COURT KOFORIDUA, EX-PARTE ASARE (BABA JAMAL & OTHERS INTERESTED PARTIES) [2009] SCGLR 460** where Dotse JSC articulated the position of this court as follows:

> ***"There is a clear intention on the part of the framers of the Constitution and (PNDCL 284) to raise the procedure for commencement of electoral disputes to a higher pedestal or level. This level is that of petition, which is a separate and distinct procedure from the generally accepted mode of initiating action in the High Court, which is stated in C.I 47 to be by writs of summons. In this regard, the Supreme Court, must consider these provisions as a manifestation of public policy. . ."***

   See also the cases of **THE REPUBLIC VS. HIGH COURT, HO; EX-PARTE ATTORNEY GENERAL (PROFESSOR MARGARET KWEKU & OTHERS, INTERESTED PARTIES) UNREPORTED CIVIL MOTION NO. J5/21/2021 DATED 5TH JANUARY, 2021** with respect to the exclusive jurisdiction of the High Court on any dispute within the context of Article 99 of the 1992 Constitution and **THE REPUBLIC VS. GHANA NATIONAL GAS COMPANY; EX-PARTE KINGS CITY DEVELOPMENT COMPANY; CIVIL APPEAL NO. J4/61/2021 DATED 15TH DECEMBER 2021.**

4. Therefore, if this court arrives at the conclusion that, its jurisdiction has been improperly invoked in terms of the reliefs sought by the Plaintiff, the result will be

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fatal to the Plaintiff's action and same will be dismissed in *limine* notwithstanding the merit or otherwise of the Plaintiff's case.

5. The consensus of judicial authority is that, this court cannot vest itself even under the guise of being a policy court with the jurisdiction the 1992 Constitution itself has vested in another judicial forum. Put differently, where the procedural law regulating invoking the jurisdiction of any court is a function of an act of Parliament or as in the instant case, the 1992 Constitution, that procedure of commencement of the action is as important as the substance of the action itself and must be complied with as a matter of fidelity to the Constitution.

6. In my dissenting opinion in **THE REPUBLIC VS. THE HIGH COURT, ACCRA (GENERAL JURISDICTION 11) EX-PARTE: ANAS AREMEYAW ANAS (KENNEDY OHENE AGYAPONG INTERESTED PARTY) CIVIL MOTION NO. J5/62/2020 DATED 14TH OCTOBER, 2020,** I stated that "[***i]n all jurisdictions and Ghana is no exception, judges occupy a sensitive and peculiar role in society***".

7. Our oath of office enjoins us to administer justice without fear or favour, for all persons are equal before the law. Further, as I said in **THE REPUBLIC VS. THE HIGH COURT, CAPE COAST, EX-PARTE: BRIGADIER GENERAL AUGUSTINE ASIEDU (EBUSUAPANYIN OPPONG KYEKYEKU INTERESTED PARTY) CIVIL MOTION NO. J5/54/2023 DATED 27TH JUNE, 2023:**

> ***"[A] cardinal characteristic of the 1992 Constitution, is the vesting of sovereign power in the people of Ghana. It is the people of Ghana who have delegated their powers to others in public offices to administer same on their behalf but within the framework of the laws of the land. It is equally pertinent to state that, no person including the Chief of Defence Staff (CDS); the instant Applicant, a Brigadier General of the Armed Forces; as well as Members of the Executive, the Legislature and***

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Judiciary should take undue advantage of their offices in pursuing private concerns to the detriment of their adversaries who have no access to the machinery of the state apparatus."

8. These statements made in the aforementioned decisions of this court emphasize the cardinal principle of our constitutional democracy which is anchored on the pillar of supremacy of the constitution and therefore, the Executive, Legislature and Judiciary are all subject to the Constitution. To that extent, this court cannot in exercising the power to interpret the Constitution do so outside the confines of the court's jurisdiction as conferred by the Constitution itself.

9. Article 1(1) of the 1992 Constitution of Ghana vests sovereignty in the people of Ghana, in whose name and on whose behalf the powers of government are to be exercised while Article 125 (1) provides thus:

> ***"Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution."***

10. In his reply to Professors Hart and Austin against the strict application of positive law, that;

> ***"...under some conditions the same conception of law may become dangerous, since in human affairs what men mistakenly accept as real, tends by the very act of their acceptance, to become unreal."***

(See **Lon L. Fuller, 'Positivism a Fidelity to Law-A Reply to Professor Hart" [1957-58], 71 Harvard Law Review 630 at 631.** Professor Lon Fuller recognised a pertinent characteristic of a good law to be the element of consistency. **Consistency and certainty in the position of the law** have shaped the common law, and the same, accepted in our legal system by this very

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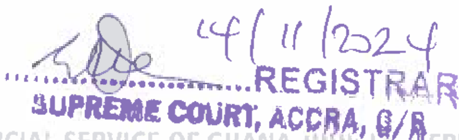

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court since its existence. (See **Lon L Fuller: The Morality of Law, New Haven and London: Yale University Press, Revised Edition, 1969 at 39)**.

11. Indeed, when Denning MR *(as he then was)* characterised some cases to be *hard,* it was as a result of a certain posture preempted from the House of Lords which did not align with his thoughts, and more so, the absence of any precedent to sustain his faculty at the time. However, when he described a case to be *great,* despite seemingly likening the same to *hard* cases, he opined that, their greatness could lead to bad law, as the decisions are rather grounded in enticements of feelings and not what the law says or even ought to be. He profoundly intoned this view in **NORTHERN SECURITIES CO. VS. UNITED STATES 193 US 177 [1904]** as follows:

> ***"Great cases, like hard cases, make bad law. For great cases are called great, not by reason of their real importance in shaping the law of the future, but because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment".*** (See page 400 of the Report).

12. My Lords, even though I find the instant case as one which can be described as a great case within Lord Denning's description, the situation we are confronted with in this action in my view is not a *hard* situation. It is a usual occurrence in our interpretative function as the highest court of the land. Fortunately, we have churned out enough jurisprudence in dealing with the issues raised in this suit. I must state from the outset that, it is these settled and consistent jurisprudence from this court which I hold firm in this delivery.

13. I do not hasten to proclaim that, I have apprehended with despair the majority's conclusion in this suit but I state, with utmost deference to the Hon. Chief Justice and the rest of my brethren in the majority that, not only do I fundamentally disagree with their conclusion, I, with all due respect, also find the decision an aberration to the established and accepted judicial position of this court which with

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profound respect, I hope in no distant future the resultant usurpation of the constitutional prerogative of the High Court incidental to the majority decision will be reversed.

BACKGROUND

14. Hon. Andrew Asiamah, Hon. Cynthia Mamle Morrison and Hon. Kwadjo Asante and Hon. Peter Yaw Kwakye Ackah *(the latter mentioned only once in the memorandum of issues settled by the Plaintiff)* were elected members of the 8th Parliament of the 4th Republic for Fomena, Agona West, Suhum and Amenfi Central constituencies respectively. While Hon. Andrew Asiamah joined the 8th Parliament of the 4th Republic as an Independent Candidate *(and was subsequently appointed the 2nd Deputy Speaker of Parliament),* both Honourable Kwadjo Asante and Honourable Cynthia Mamle Morrison were appointed Parliamentarians of the 8th Parliament for their respective constituencies on the ticket of the New Patriotic Party (NPP). Honourable Peter Yaw Kwakye Ackah, as described in paragraph 4 of the Plaintiff's memorandum of issues, is at all material times the Member of Parliament for Amenfi Central Constituency in the Western Region of Ghana on the ticket of the National Democratic Congress (NDC).

15. The Electoral Commission of Ghana opened nominations for the forthcoming parliamentary elections on Monday the 9th of September, 2024 and closed same on Friday, 24th September, 2024. During this period, Hon. Asiamah who entered the 8th Parliament as an Independent Parliamentary Candidate filed his nomination to contest again for the same Fomena Constituency but this time, on the ticket of the New Patriotic Party (NPP).

16. Both Hon. Cynthia Mamle Morrison and Hon. Kwadjo Asante who entered the 8th Parliament on the ticket of the New Patriotic Party (NPP) also filed their respective nominations to contest again for their respective constituencies but this time, as Independent Candidates.

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17. Under our parliamentary system, our electoral laws allow a person vying for a Parliamentary seat to be elected a Member of Parliament to do so, either on the ticket of a political party or without, in which case the person files as an Independent Candidate to contest the Parliamentary Election.

18. Under the above circumstances, while one of the affected Members of Parliament entered Parliament initially as an Independent Candidate, serving within the four (4) year term, he now decides to contest for the position of Member of Parliament in the forthcoming Parliamentary Elections on the ticket of a political party. The other Members of Parliament who currently hold their respective positions as representatives of their constituents on the ticket of their political parties have now manifested their intentions to contest as Independent Candidates, having filed their applications with the Electoral Commission.

19. Article 97 (1) of the 1992 Constitution provides the situations by which a Member of Parliament shall vacate his seat, or his seat is deemed vacant. The Article provides:

> *(1) A member of Parliament shall vacate his seat in Parliament-*
>
> ***(a) upon a dissolution of Parliament; or***
>
> ***(b) if he is elected as Speaker of Parliament; or***
>
> ***(c)if he is absent, without the permission in writing of the Speaker and he is unable to offer a reasonable explanation to the Parliamentary Committee on Privileges from fifteen sittings of a meeting of Parliament during any period that Parliament has been summoned to meet and continues to meet; or***

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(d) if he is expelled from parliament after having been found guilty of contempt of Parliament by a committee of Parliament; or

(e) if any circumstances arise such that, if he were not a member of Parliament, would cause him to be disqualified or ineligible for election, under Article 94 of this Constitution; or

(f) if he resigns from office as a member of Parliament by writing under his hand addressed to the Speaker; or

(g) if he leaves the party of which he was a member at the time of his election to Parliament to join another party or seeks to remain in Parliament as an Independent Member; or

(h) if he was elected a member of Parliament as an Independent Candidate and joins a political party.

(2) *Notwithstanding paragraph (g) of clause (1) of this article, a merger of parties at the national level sanctioned by the parties' Constitutions or membership of a coalition government of which his original party forms part, shall not affect the status of any member of Parliament.*

20. In his statement of case, the Plaintiff asserts that controversies have emerged with respect to the filing of nominations by the aforementioned Members of Parliament to contest the forthcoming parliamentary elections. According to the Plaintiff, per a purposive construction of Article 97(1) (g) and (h) of the 1992 Constitution referred to above, the seat of the said MPs can only be deemed vacant *(within the context of the present suit)* if the said MPs leave their political parties or change their political status as Independent MPs while serving their tenure as MPs. Plaintiff

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contends that, the relevant articles of the constitution do not apply to situations where an MP merely expresses interest to contest the next parliamentary elections with a different political party or as an independent candidate. For the Plaintiff, it will be discriminatory to literally construe the provision to debar the said MPs merely because they expressed their intention to join a particular political party or to contest as Independent Candidates.

21. Grounded on the above facts, on the 15th of October 2024, the Plaintiff invoked the jurisdiction of this court pursuant to the provisions of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) (e), 35(1) and (5), 55, 97(1) (g), 130(a), 296(a) and (b) of the 1992 Constitution against the Speaker of Parliament and the Attorney General, the latter being a nominal Defendant in all Constitutional actions. The Plaintiff sought the following reliefs:

1. *A declaration that upon the true and proper interpretation of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 55, 97(1)(g), 130(a), 296 (a) and (b) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996 (C.I. 16): -*

   a) the filing of nomination of Hon Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an Independent Member to join another party;

   b) the filing of nomination of Hon. Cynthia Mamle Morrison the current New Patriotic Party's Member of Parliament for Agona West constituency in the Central Region with the Electoral

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Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of her seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member;

c) the filing of Hon. Kwadjo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member.

2. *An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving his political status as an Independent Candidate at the time of his election to Parliament to another party and leaving the party of which they were members at the time of their election to Parliament to become Independent Members of Parliament respectively.*

3. *An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.*

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4. *Such further orders or direction(s) as this Honourable Court may seem meet.*

SUMMARY OF LEGAL ARGUMENTS BY THE PLAINTIFF:

22. In the Plaintiff's statement of case, it is submitted that the court's original jurisdiction under Articles 2(1) and 130(1) of the 1992 Constitution has been properly invoked. Plaintiff referred to the decision of this court in **OSEI BOATENG VS. NATIONAL MEDIA COMMISSION & APENTENG [2012] 2 SCGLR 1038** at **1067** wherein this court relying on the decision of **REPUBLIC VS. SPECIAL TRIBUNAL; EX-PARTE AKOSAH [1980] GLR 592** pointed out that, the interpretative jurisdiction under the Constitution will be triggered in the following situations:

   a. ***"where the words of the provisions are imprecise or unclear or ambiguous. Put in another way, it arises if one party invites the court to declare that the words of the article have a double - meaning or are obscure or else mean something different form or more than what they say;***

   b. ***where the rival meanings have been placed by the litigants on the words of any provision of the Constitution;***

   c. ***where there is a conflict in the meaning and effect of two or more articles of the Constitution, and the question is raised as to which provision should prevail;***

   d. ***where on the face of the provisions, there is a conflict between the operation of particular institutions set up under the Constitution, and thereby raising problems of enforcement and of interpretation."***

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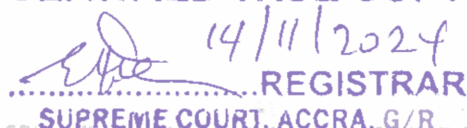
23. According to the Plaintiff, the present suit presents a situation that invokes the interpretative jurisdiction of this court within the contemplation of the ground for invoking the jurisdiction of this Court as pronounced in **Ex-parte Akosah (supra).**

24. The Plaintiff submitted further that, should the minority in Parliament invoke Article 97(1)(e) of the 1992 Constitution to call for the vacation of the seats of the affected members of parliament, they will lose their majority status to the minority party in Parliament. This situation, according to the Plaintiff will lead to political chaos and mayhem as there would be no clear understanding of these constitutional issues. It is the submission of the Plaintiff that, a literal interpretation of Article 97(1) will lead to discrimination against the affected members of parliament.

25. The Plaintiff has further argued that, the provision under Article 97(1)(h) had to deal with the mischievous situation under the First Republic between **[1960-1966]** where there was carpet crossing by members of parliament of the opposition by virtue of appointments they benefited from, while those who resisted the enticement were detained.

26. The Plaintiff submitted that, the operative phrase is ***"to leave"*** and that any member of parliament can be deemed to have left the party or changed his political status based on his own conduct. Based on this proposition, Counsel for Plaintiff submitted that, ***"conduct"*** in this sense connotes ***"where the person in question does an act which a reasonable man with knowledge of the facts, would lead or draw the inevitable conclusion that the said person has left his party."***

27. Counsel for the Plaintiff further submitted that, a literal construction of Article 97(1)(h) will result in chaos and the same would not attain the objective purpose of the provisions. Plaintiff's Counsel placed emphasis on a distinction between the present parliament and future parliament and emphasised that, upon a true and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proper interpretation of the Constitution, if a member of parliament who was voted into parliament in a particular general election decides to contest in the next general election as an Independent Candidate or on the ticket of another political party, that does not amount to the said member of parliament seeking to remain in the current parliament either as an Independent Candidate or vice versa as the case may be.

28. According to Plaintiff's Counsel, what the parliamentarian will only be seeking to do is an exercise of his democratic right to freedom of association and participation in the democratic process in a manner that advances the hopes and aspirations of the Ghanaian people.

29. Finally, Plaintiff's counsel argued that the timing for the invocation of the said articles against the affected Members of parliament is improper. It was further submitted for the Plaintiff that, by virtue of our democratic system, every constituency deserves representation. Accordingly, to remove a member of parliament for a particular constituency at such a time where it is statutorily impossible to conduct a bye-election in order to find a replacement is to deprive the respective Constituents representation in Parliament. Plaintiff's Counsel justified this proposition by relying on Article 112(5)(6) of the 1992 Constitution and Regulation 4(1) of the Public Elections Regulations, 2016 (C.I. 91) wherein it is provided that, within three months to a general election, no form of elections can be held.

30. It must be placed on record that, the 1st Defendant, Speaker of Parliament neither filed a Statement of case as required by the rules of this court nor filed a memorandum of issues for determination by the court. It is also on record that at the hearing of the case on the 11th day of November 2024, neither the 1st Defendant, nor his lawyer was in court, nor were they represented. Notwithstanding the neglect of the 1st Defendant to file his statement of case nor appear in court to make any oral submissions, this court will proceed to determine this suit on the merits in accordance with law.

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ARGUMENTS OF THE 2ND DEFENDANT -THE ATTORNEY-GENERAL

31. In the statement of case of the Learned Attorney-General, he generally aligned with the legal submissions made by the Plaintiff. Also, relying on the ***Ex-Parte Akosah case***, he submitted that, there is no doubt that rival meanings have been placed on the words in issue in Article 97(1)(g) and (h) as between the Speaker and the Plaintiff hence, there is a genuine issue of interpretation warranting an invocation of the original jurisdiction of this Court.

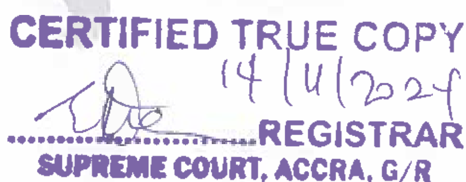
32. The Learned Attorney-General submitted that, this Court has not previously interpreted the provision in question. Mindful however that, under **Article 99(1)(a) of the 1992 Constitution,** it is the High Court which shall have jurisdiction to determine whether the seat of a member of parliament has become vacant. However, he contended that;

> ***"that provision does not oust the Supreme Court's original jurisdiction to interpret and enforce the Constitution where a genuine case of interpretation is made".***

The Learned Attorney-General justified this contention by relying on decisions such as **GBEDEMAH VS. AWOONOR -WILLIAMS [1970] 2 G & G 438, SUMAILA BIELBIEL (NO.1) VS. DRAMANI AND ANOTHER [2011] 1 SCGLR 132, REPUBLIC VS. HIGH COURT [GENERAL JURISDICTION, ACCRA; EX-PARTE DR. ZANETOR RAWLINGS (ASHITTEY AND NATIONAL DEMOCRATIC CONGRESS INTERESTED PARTIES) [2015-2016] 1 SCGLR 92.**

33. The Learned Attorney-General concluded on the jurisdictional issue when he submitted that:

> ***"[Considering the strong jurisprudence of the Court established over a period of over 50 years (some of which we have set out***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above), we are drawn to the irresistible conclusion that the original jurisdiction of the Court has been rightly invoked by the plaintiff herein to resolve the following important questions:

a. ***Whether an expression by an MP of an intention to contest a future parliamentary election on the ticket of a party different from the one an MP was a member at the time of his election, or as an independent candidate, results in a vacation of the seat of that MP in the current Parliament;***

b. ***Whether the filing of nomination by an MP to contest an upcoming parliamentary election with a different identity, i.e. as an independent candidate even though he is in the current Parliament as a Member of a political party, even though he is in the current Parliament as an Independent Member, results in a vacation of his seat."***

34. With respect to the merits of this case, the Learned Attorney-General summarised his arguments as follows:

i. ***A proper textual analysis of the Constitution, i.e. both the plain and contextual examination of same, leads to the conclusion that the Constitution intended to deny MPs the right to continue representing their constitutes if, in the current term of Parliament, they leave the party of which they were Members at the time of election to join another party or seeks to remain in Parliament as an Independent Member, a vacation of seat results.***

ii. ***Filing nomination to contest an upcoming election for a place in a future Parliament does not lead to a vacation of seat.***

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iii. ***The filing of nomination by a sitting MP to contest a future Parliamentary Election on the ticket of a political party when he had been elected for the life of the current Parliament as an Independent Candidate does not result in a vacation of seat.***

35. The Honourable Attorney General further argued that, on a holistic reading of the constitution, ***"Parliament"*** as used in Article 97 refers to a session of Parliament or the life of a particular Parliament and nothing more. He contended further that, any inhibition placed on an MP constraining the performance of his functions thereby resulting in a vacancy of seat must relate to acts specifically done and which have effect in the life of the particular Parliament as determined under the Constitution and not a future parliament of which subject to the decision of the people, that MP may not even be a member.

36. For the Learned Attorney General, the words ***"seeks to remain in Parliament"*** appearing in Article 97(1)(g) implies a situation of an MP engaging in acts with consequence in the life of the current Parliament, which is prohibited by the Constitution and which will result in a vacation of seat. According to him, the purpose is to prevent clear abuse of the mandate of the people given to an MP taking into account relevant considerations like the political party the candidate represented or his independent status at the time of election into the current parliament.

37. He submitted further that, the object of the Constitution -to prevent members from cross-carpeting during a session of parliament is achieved by construing Article 97(g) and (h) to cover a change of the political identity with which an MP enters parliament during the life of a particular parliament or cross-carpeting during a session of a particular parliament *(whose life is still in force),* and not an expression of an intention to contest a future election into a future parliament whose session has not commenced and which the MP is not even guaranteed to be a member of.

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38. The Learned Attorney General contended that a literal interpretation to the effect that, a member of parliament who merely files nomination to contest future election loses his seat will occasion manifest injustice and absurdity. He argued that, it is not disputed that nominations for general elections are only open during the life of the current parliament. Therefore, to interpret Article 97(g) and (h) to mean that sitting MPs cannot file nominations to contest an upcoming election with a political status different from what they are in parliament will be absurd as such MPs can never change their political status for an election. Thus, if they entered Parliament as Independent Candidates, they must forever file to contest all future parliamentary elections as independent candidates, except when they have lost an election and are not afflicted by the burden of Article 97(g) or (h). This, according to the Learned Attorney-General is not the intendment of the framers of the 1992 Constitution.

PRELIMINARY OBSERVATIONS

39. The second and third reliefs sought by the Plaintiff in this action are as follows: -

- ***An order restraining the Speaker of Parliament form pronouncing on any Motion in Parliament directed at Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving his political status as an Independent Candidate at the time of his election to Parliament to another party and leaving the party of which they were members at the time of their election to Parliament to become independent members of Parliament respectively.***

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- ***An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provision of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.***

40. Judicial notice can be taken of the fact that, while this matter was pending, the 1st Defendant had pronounced that the affected members of parliaments had vacated their seats and consequently have lost their parliamentary status. Indeed, the decision of the 1st Defendant was a subject of an interlocutory application before this court. This Court constituted by a panel of five (5) Justices made an order staying the execution of the decision of the 1st Defendant pending the final determination of this suit.

41. Clearly in my view, the facts informing the second relief have been rendered moot and the same is undeserving of consideration if the determination of this suit proceeds beyond the determination of the jurisdictional question. I do not arrive at this conclusion, oblivious of our firmly established position that, even though a matter or an issue may be considered moot, if it has the tendency of a recurrence, then it is appropriate that, the court interrogates same. Such a determination, must be based on the peculiar circumstances of each case. As observed by Acquah JSC (*as he then was)* in the case of **AMIDU VRS KUFUOR [2001-2002] 2 SCGLR 86 at 106,** as follows:

> ***"...As defined in Black's Law Dictionary (6th ed.), an action is generally considered moot when it no longer presents a justiciable controversy because issues involved have become academic or dead. This may happen when the matter in dispute has either been resolved already and hence there is no need for judicial intervention, or events happening thereafter have rendered the issue no longer live. In either situation, unless the issue is a recurring one and likely to be raised again between the parties, the courts would not entertain such a dead issue."***

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42. In similar circumstances, in **J.H MENSAH VS. ATTORNEY-GENERAL [1996-97] SCGLR 320 at 360,** this court held that:

> ***"If the question though moot, was certainly not likely to re-occur, the court would not waste its time to determine the question and the doctrine would apply. However, before refusing to decide a question on the ground that it was moot, it must be established that subsequent events had made it absolutely clear that the alleged wrong behaviour could not reasonably be expected to re-occur. Where it was not so established (as in the case before it), the court would go into the question to forestall multiplicity of suits."***

THE JURISDICTIONAL QUESTION

43. Quite strangely, even though the Learned Attorney-General did not fault the procedure by which the Plaintiff invoked the jurisdiction of this court, in the memorandum of issues filed by the office of the Learned Attorney General, the question has featured as the first and primary issue. I must place on record my admiration for the candour demonstrated by the 2nd Defendant in this respect. Having said that, it must be emphasised that, the said issue could have been raised by this court *suo motu* even if neither of the parties had settled same for determination in their memorandum of issues.

44. It has become the acceptable approach that, whenever the original jurisdiction of this court under Articles 2(1) and 130(1) of the 1992 Constitution is invoked to interpret provisions of the Constitution, the Court must assess, whether its jurisdiction has been properly invoked. In **BIMPONG BUTA VS. GENERAL LEGAL COUNCIL [2003-2004] 2 SCGLR 120** this court cautioned that:

> ***"Jurisdiction is always a fundamental issue in every matter that comes before the court, and even if it is not questioned by any***

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of the parties, it is crucial for a court to avert its mind to assure a valid outcome."

45. The policies informing a preliminary investigation of the jurisdiction of the Supreme Court on any alleged constitutional matter are diverse:

(i) *First, the court must not be seen to be usurping the regular and original jurisdiction of other courts, particularly the High Court as regards the enforcement of Fundamental Human Rights, and in the present context, the determination of parliamentary vacancies within the meaning of Article 99 of the 1992 Constitution. (See* ***IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY, ZAKARIA VS. NYIMAKAN [2003-2004] SCGLR 1).***

(ii) *Further, this court has in a number of decisions ruled against any supposition of having concurrent jurisdiction with the High Court as regards the enforcement of Fundamental Human Rights personal to the individual.*

(iii) *In* ***BIMPONG-BUTA VS. THE GENERAL LEGAL COUNCIL. (supra)*** *this court held that:*

> *"The Supreme Court's power of enforcement under Article 2 of the Constitution, 1992 by exercise of its original jurisdiction, does not cover the enforcement of the individual's human rights provisions; that power by the terms of Articles 33(1) and 130(1) of the Constitution 1992 is vested exclusively in the High Court.*
>
> *This court has gone further to decline jurisdiction in situations where a cause of action is presented as a constitutional issue, but the same substantially being an enforcement of the human rights*

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*of the individual. In the same **BIMPONG-BUTA CASE (supra)**, this court further held, that:*

*"Regardless of the manner in which they are clothed, where the real issues arising from a writ brought under Article 2 or 130(1) of the Constitution, 1992 are not in actuality, of such character as to be determinable exclusively by the Supreme court, but rather fall within a cause of action cognizable by any other court or tribunal of competent jurisdiction, this court will decline jurisdiction. (**YIADOM I VS. AMANIAMPONG [1981] GLR 3 SC; GHANA BAR ASSOCIATION VS. AG (ABBAN CASE) [2003-2004] SCGLR 250; EDUSEI (NO.2) VS. AG; AND ADUAMOAH II VS. TWUM II [2000] SCGLR 165)"**. See also the recent decision of this court in **CHILD RIGHTS INTERNATIONAL VS. THE ATTORNEY-GENERAL (J1/16/2022) DATED 28 FEBRUARY 2024**, where the following judicial pronouncements of abiding value were articulated."*

(iv) The court is not invested with jurisdiction which is not clearly spelt out in the constitution, and/or a statute consistent with the constitution such as the Courts Act, 1993 (Act 459) or even, its inherent jurisdiction.

*(v) Further, there is the need to avoid anarchy within the legal system as regards competing powers among the various levels of courts. As has often been done by this Court, it guards very jealously its constitutional power to interpret and/or enforce the constitution and disapproves of any attempt by lower courts to usurp those functions. (See **REPUBLIC VS. HIGH COURT EX-PARTE CHRAJ (ANANE INTERESTED PARTY) [2007-2008] SCGLR 340)**. It is in this same light, that, the court must also save itself from unnecessary interference into judicial arenas ultra vires its jurisdiction.*

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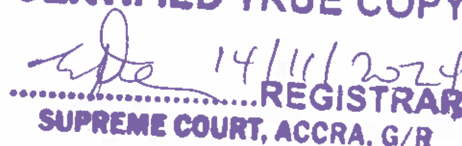
(vi) *The court is not a court to elicit opinions, or academic information but settles live disputes. Therefore, where a contention brought before the court especially, if the same is anchored on an invocation of the court's original jurisdiction is not live, is fanciful, and/or frivolous, it is a waste of judicial economy for the court to entertain same.*

(vii) *Further, the court must not be seen to be hiding under its interpretative function to be making laws as if it were parliament. Law making is a basic function of the legislature* ***(Article 93(2)).*** *See also* ***JUSTICE ABDULAI VS. THE ATTORNEY-GENERAL, WRIT NO. J1/07/2022 DATED 9TH MARCH 2022.***

(viii) *Truly, guided by the realist school, our pronouncements in appropriate situations become the state of the law. This is more so, since the court also directs the policy of the state. However, even in such a situation, the court must be careful not to be seen to be usurping the authority of the legislature, to ensure harmony among the various organs of the state.* ***[MENSAH VS. MENSAH [2012] SCGLR 391; QUARTSON VS. QUARTSON [2012] 2 SCGLR 1077].*** *As was further decided in* ***DEXTER EDDIE JOHNSON VS. THE REPUBLIC (2011) 2 SCGLR 601,*** *where this court quoted the Latimer House Guidelines for the Commonwealth, 1998 that:*

> ***"The legislative function is the primary responsibility of Parliament as the elected body representing the people. Judges may be constructive and purposive, in the interpretation of legislations, but must not usurp parliament's legislative function. Courts should have power to declare legislation as unconstitutional. In other cases, the appropriate remedy will be for the court to declare the incompatibility of a statute with the***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Constitution leaving it to the legislature to take remedial legislative measures".

See also **Azu Crabbe JSC,** in ***ASSIBEY III VS. AYISI [1974] 1 GLR 315 AT 316;*** **Kludze JSC,** in ***REPUBLIC VS. FAST TRACK HIGH COURT, ACCRA; EX-PARTE DANIEL [2003-2004] 1 SCGLR 364 AT 370.***

(ix) A corollary to the above, is that, the court is only interested, by constitutional jurisprudence in matters that are justiciable."

46. Guided by these policy considerations, I shall proceed to interrogate the fundamental issue of whether the jurisdiction of this court has been properly invoked by the Plaintiff. The authority or power vested or given a court to adjudicate over a particular dispute defines the jurisdiction of a court. (See; **YEBOAH VS. MENSAH [1997-1998] 2 GLR 245, SC; EDUSEI VS. ATTORNEY GENERAL [1996-99] SCGLR 1). In REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE LARYEA [1989-90] 2 GLR 99 at 101,** Amua-Sakyi JSC defined *jurisdiction* as ***"the power or authority of the Court or Judge to give a decision on the issue before it."*** This authority may emerge from statutory or constitutional provision, or a historical recognition from legal traditions, and best practices accepted among jurisdictions of an analogous system of jurisprudence especially within the common law jurisdiction. This includes the inherent jurisdiction of the court which is not a codified jurisdiction.

47. The word jurisdiction therefore, within the context of a subject matter is the authority the court has to decide matters before it or to take cognizance of matters presented in a formal way for its decision. Therefore, the authority which the court has and on which basis it entertains or determines matters presented before it has its very foundations from the very statute that brought the court into existence. This authority may include a constitutional provision which creates special jurisdiction for particular fora. Where this situation exists, no court including the Supreme Court can assume jurisdiction under the guise of an exclusive power where the power to entertain a particular cause of action is vested by the

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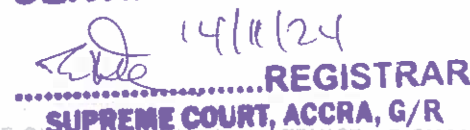

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constitution in another forum. That is what we call ***"Supremacy of the Constitution"*** which is not the same as the supremacy of any branch of government including the Supreme Court.

48. In our jurisdiction, the power to interpret and/or enforce the Constitution is vested in the Supreme Court by virtue of Articles 2(1) and 130 of the Constitution. This jurisdiction, is not without exceptions. There is indeed, hardly any dispute, be it of a criminal nature, land, or Human Rights action *inter alia* which will not directly or indirectly impact a provision of the Constitution. What this means is that, in exercising its interpretative and/or enforcement jurisdiction, this Court should be wary not to offend the policies informing that exercise especially by not slipping to assume that of any other court lower than the Supreme Court. Thus, the mere fact that an action is masqueraded as one which invokes the interpretative or enforcement jurisdiction of the Supreme Court may not necessarily result in the court assuming jurisdiction over same.

49. The 1992 Constitution is the fundamental law regulating our democracy and it clearly demarcates those exceptions when it insulated the enforcement of Fundamental Human Rights personal to an individual from the interpretative and/or enforcement jurisdiction of the Supreme Court. It is provided in Article 130(1) of the 1992 Constitution as follows:

> ***"Subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in Article 33 of this Constitution,*** *the Supreme Court shall have exclusive original jurisdiction in –*
>
> ***(a) all matters relating to the enforcement or interpretation of this Constitution; and***

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(b) all matter arising as to whether an enactment was made in excess of the powers conferred on Parliament or any other authority or person by law or under this Constitution."

50. Indeed, recognising that, a matter may result in a determination of a constitutional question, the framers of the constitution caveated the exercise of such power from any other court and reaffirmed the authority of the Supreme Court in that respect. Article 130(2) of the 1992 Constitution makes this clear when it provides that:

> ***"Where an issue that relates to a matter or question referred to in clause (1) of this article arises in any proceedings in a court other than the Supreme Court, that court shall stay the proceedings and refer the question of law involved to the Supreme Court for determination; and the court in which the question arose shall dispose of the case in accordance with the decision of the Supreme Court."***

51. In my view, implicit in Article 130 (2) is a recognition that, the High Court, and the Court of Appeal may adjudicate over any matter, by virtue of constitutional or statutory jurisdiction vested in them. In that process however, there may arise an issue which requires the interpretation of the Constitution. Therefore, the Supreme Court should not, as in the instant case be seen to be too keen in usurping the jurisdiction specially designed and vested in the High Courts or any other court only because a party has raised a constitutional or interpretative issue especially where the constitution has provided a procedure by which the interpretative and/or enforcement jurisdiction of the Supreme Court shall be invoked as in the case of the reference jurisdiction.

52. It must be emphasised that, only when the jurisdiction of the Supreme Court has been properly invoked, before this court can be said to be empowered with all the powers of every court in the land by virtue of Article 129(4) of the 1992

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Constitution and Section 2(4) of the Courts Act, 1993. See **QUIST (NO.2) VS. DANAWI (NO. 2) [2015-2016] 2 SCGLR 1461.**

53. It is settled that every court may exercise judicial power, but such exercise of that power is constrained by the jurisdiction vested in that court. Adinyira JSC drew the attention to the absence of a *carte blanche* jurisdiction in this court in **GHANA FOOTBALL ASSOCIATION VS. APAADE LODGE LIMITED [2009] SCGLR 100 at 105.** Her Ladyship underscored a distinction between jurisdiction and judicial power in the following words:

> ***"And perhaps the most distinguishing factors between "jurisdiction" and "judicial power" lies in the fact that judicial power is often exercised by all the courts in the exercise of their legitimate jurisdiction, but none of the courts possesses all the jurisdiction to enable it exercise judicial power."***

54. Relatedly, the Constitution has in its very enclave settled clearly a restriction on the Supreme Court from veering into certain arenas even if they may be presented as issues for enforcement or interpretation of the Constitution. Such instances, include the constitutional provision pivotal to the instant suit. That is the provision in Article 99 of the 1992 Constitution. The relevant provisions of the article are reproduced as follows: -

> *(1) "The High Court shall have jurisdiction to hear and determine any question whether –*
>
> ***(a) a person has been validly elected as a member of Parliament or the seat of a member has become vacant; or***
>
> ***(b) a person has been validly elected as a Speaker of Parliament or, having been so elected, has vacated the office of Speaker.***

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(2) *A person aggrieved by the determination of the High Court under this article may appeal to the Court of Appeal."*

55. Article 99(1)(a) of the 1992 Constitution is clear in mandatory terms, that the jurisdiction to hear and determine whether the seat of a member of parliament has become vacant is vested in the High Court. ***Stated differently, the present dispute, which invites this court to determine whether the seats of the members of parliament affected by the 1st Defendant's pronouncement have become vacant is vested in the High Court and not at all in this Court by any canon of interpretation. (emphasis mine).***

56. The 1992 Constitution as already referred to, has provided adequate yardsticks and mechanisms to control any attempt at usurpation of the authority of the Supreme Court in the interpretation of its provisions. Article 130(2) is the antidote. By assuming jurisdiction in the clearest instance of a matter which invites an answer to the question whether or not the seats of some Members of Parliament by reason of changing their political affiliations or statuses, this Court, while appearing to be asserting its interpretative jurisdiction is rather usurping the special and exclusive jurisdiction of the High Court on the issue, a situation which in itself is *per incuriam* the 1992 Constitution and potentially unconstitutional.

57. It is not in doubt that by constitutional provision, it is when such an action has been commenced at the High Court, and in the wisdom of the High Court or at the instance of the parties, the considerations for a constitutional reference determinable under the **Ex-Parte Akosah** principles have been satisfied that, the interpretative jurisdiction of this court would become live.

58. I am compelled to engage in an excurses of the application of the linguistic canon of interpretation *generalia specialibus non derogant* as directly applicable to this constitutional issue with the very decisions from this court on the subject for a better appreciation of this distinction. See the case of **IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY, ZAKARIA VS. NYIMAKAN**

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(supra). In this exercise, I have cautioned myself, that the aids to interpretation or linguistic canons of interpretation are mere aids, and not obligatory. In **MAUNSELL VS. OLINS [1975] 1 ALL ER 16,** Lord Reid observed on the point at page 18 of the report as follows:

> ***"They are not rules in the ordinary sense of having some binding force. They are our servant not our masters. They are aids to construction, presumptions or pointers. Not infrequently, one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular rule".***

Therefore, where the application of the maxim has led to some incongruity, absurdity or outrageous outcomes, especially regarding the interpretation of the Constitution, the same must be deviated from.

59. The Latin maxim *"generalia specialibus non derogant"* means that; ***"a general rule does not derogate from a special rule."*** It commands that, when there is a conflict between a general law and a special law, the special law should take precedence over the general. That is, when there is a conflict between general rules and special rules relative to the same subject matter, the special rules must override the general rule. The policy is one of an implied amendment of the general rule by the special/specific rule. See. **BONNEY VS. GHANA PORTS AND HARBOURS AUTHORITY [2013-2014] 1 SCGLR 436.**

60. The presumption against internal inconsistency or conflict may require an application of the rule to provide harmony. A Constitution, an Act of Parliament, or a written instrument should be construed as a whole to derive meaning out of the document. It is the presumption that the legislature did not intend to contradict itself in an Act, and the interpreter should give the Act or document a harmonious interpretation. The presumption also means that the law is supposed to work

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together both logically and purposefully, as part of a functional whole, and the parts must be made to fit together to form a rational, consistent framework.

61. In the interpretation of Constitutions, where there are situations of seeming conflicts the above rule has been applied to avoid conflicts and absurdities. In **FEDERATION OF YOUTH ASSOCIATIONS OF GHANA (FEDYAG) (NO.2) VS. PUBLIC UNIVERSITIES OF GHANA & ORS [2011] 2 SCGLR 1081,** Atuguba JSC, a celebrated Jurist of this jurisdiction, stated in applying the rule in the following words:

> ***"I shall therefore strive to give effect to both Articles 33(1) and 140(2), and in so doing I will call to aid another trite rule of construction. It is verba generalia specialibus non derogant. It is stated in various ways. But I find some of them particularly lucid. Thus, in CHURCHILL VS. CREASE (1828) 5 BING 177*** *at* ***180, Best C.J. said: 'I shall have thought... that where a general intention is expressed, and the Act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered in the nature of an exception.' Similarly, in PRETTY VS. SOLLY (1859) 26 BEAV 606 at 610, Romilly MR said: 'The rule is that where there is a particular enactment, and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would override the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.' Again, whenever two parts of a statute are contradictory, the court endeavors to give a distinct interpretation to each of them, looking at the context."***

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62. His Lordship then proceeded to hold on behalf of the court that:

> ***"Article 33(1) has made a special provision for the enforcement of fundamental Human Rights where an individual has suffered a breach of fundamental human rights and freedoms in a personal particular."*** See again **IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY, ZAKARIA VS. NYAMAKAN (supra).**

63. In the Parliamentary Election for Wulensi Constituency matter referred to above, Article 131 of the Constitution grants the right of appeal to a litigant in a matter commenced in the High Court of which there had been a determination by the Court of Appeal, unlike an appeal emanating from a court lower than the High Court, where there has to be leave of the Court of Appeal and upon refusal by the Supreme Court to the Supreme Court. Article 99 of the Constitution, however, specifically deals with parliamentary elections and challenges arising therefrom as well as the determination of the question whether or not a vacancy has emerged in parliament in the High Court and an appeal therefrom to the Court of Appeal.

64. Consequently, while considering the provision in Article 131 of the Constitution of the general right of appeal to the Supreme Court from the decisions of the Court of Appeal where no leave is required as provided by the Constitution, the issue which arose for determination was whether or not an appeal from the decision of the Court of Appeal in respect of any provision under Article 99 of the 1992 Constitution is available on further appeal to the Supreme Court.

65. By a majority decision, this court relying on the *generalia specialibus non derogant* maxim, held that, there was no further right of appeal from the decision of the Court of Appeal in respect of an appeal from an election petition determined by the High Court under Article 99(1) of the 1992 Constitution. This judicial position which remains good law was made notwithstanding the general appellate jurisdiction from the decisions of the Court of Appeal as provided under Article

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131(1) of the 1992 Constitution. This is clearly because Article 99(2) of the 1992 Constitution has expressly provided that a person aggrieved by the determination of an election petition by the High Court may appeal to the Court of Appeal, and thus, that provision as construed by this court being a special provision on Article 99 situations, had the effect of taking away the general right of appeal provided under Article 131 of the Constitution in respect of decisions of the Court of Appeal. By the same parity of reasoning, in the instant suit, by reason of the provision in Article 99 of the Constitution, this court cannot embark on an exercise tantamount to the usurpation of the special jurisdiction of the High Court by reason of this court's exclusive interpretative and enforcement jurisdiction under Article 2 (1) or Article 130 of the Constitution.

66. While it is true that Article 130 of the Constitution, 1992 has vested this court with the exclusive jurisdiction to interpret and/or enforce the constitution. It is also equally true, that it is the same constitution which in the wisdom of its framers which vested the High Court with the special jurisdiction to determine any question involving whether or not a vacancy has emerged in Parliament.

67. Clearly therefore, in a situation of an alleged constitutional issue which involves the question whether or not a vacancy has emerged, it is the specific jurisdiction of the High Court which must be invoked and not the interpretative jurisdiction of the Supreme Court. With profound deference to the majority therefore, the Supreme Court cannot assume the jurisdiction of the High Court to determine questions of vacancy of seats in parliament unless by way of reference to the Supreme Court at the instance of the High Court *suo motu* or the parties in dispute. Indeed, even if the High Court exercises the power to refer a provision of the Constitution for interpretation under Article 130 (2) of the Constitution, this Court upon exercising its interpretative power must remit the matter back to the High Court for the matter to be dealt with in a manner consistent with the interpretation of the provision in question.

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68. In my view, the clear and consistent thinking of this court has been to avoid entertaining suits which fall within the exclusive jurisdiction of other judicial fora. See for instance, **EDUSEI VS. ATTORNEY-GENERAL (supra); IN RE PARLIAMENTARY ELECTION FOR WULENSI CONSTITUENCY (supra).** Thus, as I have expressed in this delivery, the 1992 Constitution itself has a designed mechanism against the usurpation of the interpretative function of the Supreme Court. Therefore, this Court should not overly inundate itself with matters or causes where there is express mandatory constitutional direction vesting power in another judicial forum.

69. The conclusion I have arrived at should in no way be construed as suggesting that the Supreme Court is not the appropriate forum vested with jurisdiction to interpret and/or enforce the Constitution in appropriate circumstances. The point which I unequivocally emphasise is that, it is the same Constitution, 1992 which vested exclusive power in the Supreme Court in matters of interpretation and enforcement of its provisions which also designed the mechanism for this court to assume jurisdiction. Thus, although this court has a general jurisdiction to interpret and enforce provisions of the constitution, there are situations, such as in the instant case where the procedure adopted in invoking this court's interpretative and enforcement jurisdiction has deprived the court of the power to exercise that jurisdiction. This particular action clearly demonstrates more than any other case I have confronted in constitutional law jurisprudence the failure by a party to comply with mandatory constitutional provisions in invoking jurisdiction and it is destined to fail. The above statement is supported by the recent decision of this very court in **OWUSU-MENSAH VS. NAPTEX & ORS [2017-2020] 2 SCGLR 708 at 711:**

> ***"A court might have jurisdiction to entertain a cause or matter but the procedure invoking its jurisdiction might deny the court the jurisdiction. That would occur where a statute had specially laid down the procedure for redress."***

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70. Having held that this court's jurisdiction has not been properly invoked, I am unable to delve into the merits of the matter. As this court has consistently held, a point of jurisdiction when taken and successfully upheld should foreclose any consideration of the merits of any case. For there will be no foundation upon which the merits can stand. See **BIMPONG-BUTA VS. GENERAL LEGAL COUNCIL (supra); SOON BOON SEO VS. GATEWAY WORSHIP CENTRE [2009] SCGLR 78. AMIDU VS. KUFUOR & ANOR. [2001-2002] SCGLR 138,** where in the latter, this court held as a cardinal principle of law that;

> ***"when an issue of jurisdiction is raised, it is not proper for the court to decide on the merits of the case; this may prejudice a subsequent hearing of the case."***

71. In arriving at the above conclusion, I am not oblivious of the ruling delivered by the five (5) member panel which determined the interlocutory application filed by the 1st Defendant on the 30th day of October 2024. In that application, one of the grounds the 1st Defendant urged on the court was that the court's jurisdiction had not been properly invoked to entertain the substantive action and therefore, the action be dismissed *in limine.*

72. I have taken judicial notice of the fact that, the earlier panel dismissed the 1st Defendant's contention on the jurisdictional question. At the hearing of the substantive matter, the Learned Attorney-General drew the attention of this panel to the earlier ruling of the court contending that, the issue of whether this court's jurisdiction has been properly invoked has already been determined.

73. With all due respect to the Learned Attorney- General, while I take judicial notice of that position, the question of jurisdiction of any court can be raised at any time during pendency of proceedings. Secondly, there is settled authority that, the decision of a panel in an interlocutory proceeding is not binding on another panel in determining the same issue especially when the new panel is dealing with the substantive matter before it. I therefore find it expedient and proper to articulate

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my views on the jurisdictional issue as a member of this bench and determine same.

74. It is provided pursuant to Article 129(3) of the 1992 Constitution as follows:

> ***129 (3) "The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all courts shall be bound to follow the decisions of the Supreme Court on questions of law."***

75. There is no doubt from the above provision that this court is ordinarily bound by its previous decisions. However, an interlocutory decision by a five (5) member panel cannot operate to bind a seven (7) member panel of this Court when the latter panel had come to consider the merits of the substantive action. The issue which arose in the interlocutory application is not the same as that which was settled for determination by the seven (7) member panel which considered the substantive reliefs while bearing in mind whether the jurisdiction of the court had been properly invoked in terms of the reliefs sought. In our case law jurisprudence, a similar question confronted this court for determination in relation to whether or not the interlocutory decision of one panel of the Court of Appeal shall be considered binding on another panel within the meaning of Article 136 (5) of the Constitution, this Court answered the interrogatory in the case of **FARMERS SERVICES CO. LTD VS. JULISAM LTD & SALIFU [2007-2008] SCGLR 491** in following words:

> ***"The Court of Appeal was bound by its previous decisions in terms of Article 136(5) of the 1992 Constitution only when the decisions had been given on the merits in determining the issues before the court. A differently constituted Court of Appeal could not be expected to be bound by a ruling on an interlocutory application by another panel where the facts***

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forming the basis of the ground of appeal had not formed part of the record of proceedings before the panel in the substantive appeal. Consequently, the ruling of the Court of Appeal on the interlocutory application had no binding effect on the panel that had determined the substantive appeal."

76. Even more appropriately, in answering the contention of the Learned Attorney-General is the decision of this Court in the case of **REPUBLIC VS. HIGH COURT, ACCRA; EX-PARTE PUPLAMPU I [1991] 2 GLR 472** at **278** where Wuaku JSC articulated the correct position of the law as follows:

> "...***if in an interlocutory matter an order was made which wrongly appears to be a final order, and the next order following that order adjourned the substantive case for hearing on a latter date, it is obvious that the court had not or intend the order made in the interlocutory matter to be final. The fact that the court in its final judgment came to the same conclusion as its interlocutory decision does not make the court functus officio. The interlocutory order, whether it appears on the face to be final or not, merges into the final judgment of the court and the interlocutory order ceases to be the judgment or order of the court."***

77. The above clarification aside, as aforesaid, the issue of jurisdiction has also been set down by the Learned Attorney-General himself as part of the memorandum of issues warranting an evaluation by this seven (7) member panel, that interlocutory ruling notwithstanding. The issue of jurisdiction, it is trite that, being fundamental and can render proceedings otherwise perfectly conducted a nullity, it can be raised at any time during proceedings. It has come up in this substantive proceedings and the proposition that the ruling of the five (5) member panel of this court shall be binding on this panel determining the substantive reliefs is erroneous and with all due respect to the Learned Attorney-General totally misconceived.

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78. Indeed, in the same interlocutory ruling delivered by the five (5) member panel, the Honourable Lady Chief Justice, had acknowledged the constitutional procedure that the High Court must abide, in assuming its jurisdiction under Article 99 of the Constitution 1992. Her Ladyship expressed the position of the court at page 9 of her ruling as follows:

> ***"...Now clearly, with the disputed interpretations alleged in the Plaintiff's Statement of Case, even if the parties had gone to the High Court under Article 99, the High Court would have been compelled by Article 130(2), as happened in the case of Ex-Parte Zanetor Rawlings supra, to refer these contested meanings to the Supreme Court to determine the correct interpretation".***

79. Undoubtedly, the position expressed above is the same position I have articulated as the proper procedure for this court to assume jurisdiction on issues related to the determination of the question whether or not a seat has become vacant in parliament pursuant to Article 99 of the constitution where the High Court properly vested with jurisdiction to determine is compelled to make a reference to this court if a question of interpretation or enforcement of any provisions of Articles 97 to 99 of the Constitution has genuinely arisen for interpretation. Only in that situation is the High Court which is the proper forum is mandatorily bound by the provision in Article 130(1) (2) of the 1992 Constitution to refer that question of interpretation to the Supreme Court.

80. In concluding this delivery, I hold that:

   a. *Even though the Supreme Court is vested with the original jurisdiction to interpret and/or enforce provisions of the 1992 Constitution, that jurisdiction is circumscribed by the Constitution itself.*

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b. *Where the Constitution has specifically vested the High Court with the constitutional power to adjudicate over matters concerning the question whether or not a vacancy of a seat has emerged in parliament, the Supreme Court cannot assume jurisdiction under the guise of exercising the exclusive jurisdiction provided under Article 2(1) and 130(1) of the Constitution on its interpretative and enforcement power by virtue of the special provisions of Article 99 (1) (a) which vests the power to determine that question in the High Court.*

c. *The 1992 Constitution itself designed a mechanism to allow the Supreme Court to exercise its interpretative jurisdiction relative to the High Court's exercise of its jurisdiction under Article 99(1)(a). This mechanism is the reference procedure pursuant to Article 130(2) of the Constitution.*

81. Before I rest this opinion, let me refer to the statement of the law by one of the most respected retired justices of our Supreme Court in our modern era, Akamba JSC in the case of **F.K.A COMPANY LTD. VS. NII TEIKO OKINE (SUBSTITUTED BY NII TACKIE AMOAH VI) CIVIL APPEAL NO.J4/1/2016 DATED 13TH APRIL 2016** while articulating the unanimous decision of this court in an appeal on the effect of non-compliance with the rules of court *(not even a constitutional or statutory provision)* in the following words:

> ***"It is important to state that the adjudication process thrives upon law which defines its scope of operation. It is trite to state for instance that, nobody has an inherent right of appeal. The appeal process is the creature of law. Any initiative within the context of the adjudication process must be guided by the appropriate, relevant provision be it substantive law or procedural law. As courts, if we fail to enforce compliance with the rules of court, we would by that lapse be enforcing the failure of the adjudication process which we have sworn by our judicial oaths to uphold."***

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82. The Plaintiff having failed to properly invoke the jurisdiction of this court in terms of the reliefs sought, this action fails at the threshold and I accordingly dismiss same.

(SGD.) **I.O. TANKO AMADU**
(JUSTICE OF THE SUPREME COURT)

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