IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF JUSTICE
ACCRA - A. D. 2021

PETITION NO: J7/9/2021

ARTICLE 64 OF THE 1992 CONSTITUTION AND SUPREME COURT RULES, 1996 (C.I. 16) (AS AMENDED BY C.I. 74 AND C.I. 99)

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:

JOHN DRAMANI MAHAMA
No. 33 Chain Homes
Airport Valley Drive
Accra GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, Ridge – Accra

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
House No. 02 Onyaa Crescent
Nima – Accra

2ND RESPONDENT

AFFIDAVIT OF 1ST RESPONDENT IN OPPOSITION TO MOTION ON NOTICE FOR REVIEW

I, JEAN ADUKWEI MENSA of No. E199/2 8th Avenue Ridge, Accra in the Greater Accra Region of the Republic of Ghana, make oath and say as follows:

1. I am the Chairperson of the 1st Respondent and the deponent herein.

2. The 1st Respondent has received service of the Applicant's application for review and is opposed to same.

3. I verily believe that the Applicant's affidavit in support does not show any exceptional circumstance necessitating the application for review herein. Besides, the Applicant has not raised any specific miscarriage of justice suffered by virtue of the decision of the court to refuse the application for interrogatories.

4. I believe further that the decision by the court to deny the application for interrogatories was made by the court in compliance with the dictates imposed by C.I. 99 of 2016 and that this court ought not to change its compliance with statute.

5. I verily believe that the application for review will not serve the interests of justice but rather obstruct the timely completion of the Applicant's own case in the court in accordance with C.I. 99.

6. The Applicant claims that his sole purpose for the proposed interrogatories is to facilitate expeditious trial but invites the court not to abide by C.I. 99 which was passed to achieve the same purpose with strict timelines.

7. The Applicant does not suffer any injury to his rights if the court dismisses the review application as he still has the opportunity to solicit the answers he seeks now during cross examination if he so wishes unless he is actually fishing and/or trying to delay the trial.

8. I verily believe that there are no exceptional circumstances or legal basis that warrant the intervention of this Honourable Court in this application for review.

9. Wherefore I swear to this affidavit in opposition to the application herein.

SWORN IN ACCRA THIS
22ND DAY OF JANUARY 2021
BEFORE ME

.....
DEPONENT

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
P.O. BOX AC 33, ARTS CENTRE, ACCRA

COMMISSIONER OF OATH

THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE APPLICANT OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON THE 2ND OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA

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NIMA – ACCRA

2ND RESPONDENT

STATEMENT OF CASE OF THE 1ST RESPONDENT IN OPPOSITION TO THE APPLICATION FOR REVIEW

A INTRODUCTION

1. The facts in the application are not in dispute. The Applicant applied to the ordinary bench of this Honourable Court to serve interrogatories on the 1st Respondent. The application was opposed by the 1st Respondent and then refused by the ordinary bench on 19th January 2021.

2. It is against this ruling that the Applicant has filed the present application for a review. It is our contention that the application herein is indeed an appeal in disguise.

3. The Applicant claims that the sole purpose for the proposed interrogatories was to facilitate expeditious trial, the very essence of C.I. 99.

4. The Petitioner does not suffer any injury to his rights if the application for review is refused as he still has the opportunity to solicit the same answers during cross examination unless it is his case that he does not have the full complement of his case and needs the answers to fill in.

5. My Lords the 1st Respondent submits that it would address the Court only on the issues of whether or not the review jurisdiction of the Supreme Court has been properly invoked so as not to burden the court with matters that the ordinary

bench had already heard and determined decisively by a unanimous decision on 19th January 2021.

B SUBMISSIONS OF THE RESPONDENT COMMISSION

Ground (a) The Court fundamentally erred in regarding CI 99 as rendering Order 22 of CI 47 inapplicable.

6. My Lords, the Applicant argues under this ground that: (1) in *Akufo-Addo & Others v John Mahama & Another (No. 2)* [2013] SCGLR (Special Edition) 50, this court held unanimously that CI 47 applied in the Supreme Court, and that the decision is binding on the court; (2) there is nothing to suggest that the Supreme Court (Amendment) (No 2) Rules, 2016, CI 99 does not support discovery processes, including interrogatories in election petitions; (3) interrogatories narrow down the issues for trial and expedite adjudication as required in CI 99. Therefore, Your Lordships erred when you disallowed the application for interrogatories in the name of CI 99.

7. My Lords, the part of your decision that the Applicant impugns is as follows: 'We are strictly bound to comply with CI 99, and we will not apply Order 22 of CI 47 of 2004...' The Applicant contends that Your Lordships dicta in the above decision 'are binding on the court'. My Lords, this is not a fair rendition of stare decisis in Ghana. Article 129 of the 1992 Constitution mandates Your Lordships' Court to 'depart from a previous decision when it appears to it right to do so'.

8. My Lords in 2013 this Honourable Court heard and determined the Presidential Election Petition without the time constrains now imposed in CI 99. Parties therein were permitted to resort to external interlocutory mechanism such as interrogatories, discoveries, inspections and further and better particulars to assist the court speed up the trial. Such interlocutory applications were made under CI 47 and the court entertained them.

9. My Lords, unfortunately, that trial took eight months to reach a decision. A phenomenon which led the Rules of Court Committee to initiate reforms leading to the passing of C.I. 99 setting specific timelines and making provision for only further and better particulars as the only aid the Respondent could resort to in the name of assisting the court to expedite trial. See Rule 69(A) (5) of C.I. 16 an amended by C.I. 99.

10. My Lords, we submit that if the lawmaker had wanted to make provisions for interventions like interrogatories, discoveries, admissions and inspections the lawmaker would have said so expressly.

11. Departure from a previous decision under Article 129 of the 1992 Constitution of the 1992 Constitution is mandatory, not discretionary. This court must depart whenever circumstances necessitate a departure.

12. Your Lordships have held that CI 99 necessitates a departure from its previous decision reported in *Akufo-Addo & Others v*

John Mahama & Another (No. 2) supra; the 1st Respondent invites your Lordships to affirm your decision.

13. Following the change of the law in 2016, Your Lordships' court, as an election court, does not have the time or leisure that the High Court enjoys. CI 99 now demands that Your Lordships conclude election petitions in 42 days, for your Lordships to resolve the outcome of the election for the ship of state to raise anchor. Your Lordships explained that the changes introduced in CI 99 necessitates the application or disapplication of the rules hitherto applicable in CI 47. In *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*, there were no time constrains so interrogatories were *conveniently* made but under CI 99, they cannot be made conveniently. Order 22 of CI 47 empowers the court to grant leave to serve interrogatories on a matter 'in question' between the parties. The service of an application for leave to serve interrogatories, hearing and grant of the application, and the Respondent's answer do not fit conveniently into the timeframe in CI 99. The timelines in CI99 suggest that the need for interrogatories would arise only after the 10th day when the Respondent had appeared and filed an answer. Five days hence the Respondent must be in court for a pre-trial hearing. Order 22 r 6(2) provides that 'if a party against whom an order is made ... fails to comply with it, then, ... he shall be liable to committal for contempt.' Surely, no court would be quick to commit a party under such strict timeline situations.

14. The Respondent submits that the court was within its rights to depart from its decision in *Akufo-Addo & Others v John Mahama & Another (No. 2) supra*. Because of the interventions of CI99.

15. My Lords, the remedy of review is unavailable where the Applicant fails to establish exceptional circumstances resulting in miscarriage of justice. The Petitioner failed to show what miscarriage of justice he has suffered. Your Lordships' ruling is an interlocutory decision made in the case management of this case to respond to the time constraints imposed on the court under CI 99. Your Lordships' order does not preclude the Petitioner from asking the questions in the interrogatories in cross-examination if he so wishes.

16. In paragraph 27 of the application, the Petitioner states that "the facts to be interrogated relate directly to the acts of the 1st Respondent, particularly its Chairperson, Mrs. Jean Adukwei Mensa and could not be answered by any other person." Surely, that cannot be a legitimate ground for seeking an order for interrogatories because as your Lordships noted in the absence of the 1st Respondent's Chairperson any other person who deputises for her, shall prepare the answers to the questions. Interrogatories elicit facts, so does cross-examination. Your Lordships have spoken that time constraints on this court render interrogatories inconvenient.

So, let the Petitioner ask those questions in cross-examination if he so chooses.

17. Additionally the Petitioner in the Notice to Admit facts that he served on the 1st Respondent contravened the provisions of CI 47. This is because the Petitioner arbitrarily ordered the 1st Respondent to provide answers to the questions posed within three (3) days when no rules of either the High Court or the Supreme Court had set such timelines. The Petitioner sets his own imaginary timelines!

Ground (b) The Court fundamentally erred in determining that 'indeed, Rule 69(c)(4) of CI 99 ... implies that even amendments ought not to be sought and granted...' and thus occasioned a grave miscarriage of justice to Petitioner/Applicant.

18. The Petitioner argues under this ground that it is Rule 69A(6), not Rule 69(c)(4) of CI 99 that mentions amendments. Your Lordship's jurisdiction for review is invoked only where the Applicant seeking a review shows exceptional circumstances that resulted in miscarriage of justice to the Applicant. My Lords, the Petitioner seeks a review of your Lordships' decision dated 19 January 2021. The Petitioner does not say what 'grave miscarriage of justice' he has suffered from the pronouncement. Your Lordships are invited to dismiss this ground also.

Ground c) The Court fundamentally erred in failing to appreciate that its discretion ought to be exercised in accordance with Article 296 of the Constitution.

19. The Petitioner argues that Your Lordships 'fell into the fundamental error of misinterpreting the provisions of CI 99' resulting in an arbitrary and capricious exercise of discretionary power (paragraph 31). My Lords, this is the final court of this land; its pronouncements have the force of law. The court must not change its decisions upon a simple allegation by a party that the court is wrong. Your Lordships held that 'several statutory amendments have been made by CI 99 of 2016 which has restricted the practice and procedure of this court as regards an Election Petition. CI 99 states in plain words that a Presidential Election Petition shall be heard and completed in 42 days, also it specifies timelines for each stage of the proceeding. The Petitioner castigates your Lordships for 'fundamental error of misinterpreting the provisions of CI 99' but does not explain the alleged error. The Petitioner's conduct recalls the decision of this court in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC, per Adade JSC:

> "Let me say at once that, for all I know, virtually every judgment on this earth, arrived at as a result of evidence gathered from several sources, can be criticised. A Privy Council judgment put in the hands of any lawyer, along with the evidence grounding it, can be criticised in the same way as a High Court judgment

can be. A person who has lost a case will almost instinctively feel that the judgment must be wrong. And why not? If he had won, the decision would be right; so if he lost, how could the court be right? But the mere fact that a judgment can be criticised is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice. The review jurisdiction is not intended as a try-on by a party after losing an appeal; nor is it an automatic next step from an appeal; ***neither is it meant to be resorted to as an emotional reaction to an unfavourable judgment***." My Emphasis.

20. My Lords this court has held and rightly so that CI 99 had taken away the Court's discretion regarding the process of discovery in view to the strict timelines of the Presidential Election Petition.

21. The Petitioner's grievance in Paragraph 32 of the Statement of Case is unclear obviously because the paragraph totally ignores the context in which the dictum was made. The thrust of Your Lordships' decision is that CI 99 of 2016 has restricted

the practice and procedure of the Supreme Court as a Presidential Election Court, rendering the discovery processes under CI 47 inapplicable.

22. Indeed to borrow from Adade JSC supra, the reaction of the Petitioner to the ruling of 19th January 2021 is one of ***"an emotional reaction to an unfavourable judgment."***

23. My Lords, also in the unreported case of *Charles Lawrence Quist v Ahmed Danawi*; review motion NO. J7/8/2015 dated 5th November 2015, Dotse JSC, reading the lead judgment of the court said:

> "The authorities are quite settled that the review application is not a process for which a losing party in the Supreme Court may seek to have another bite of the cheery. Instead, an Applicant in a review application has to point out from the judgment reviewed from the exceptional circumstances which have resulted into a miscarriage of justice. None was however offered by the Applicant in this case.

24. My Lords it is for these reasons that we urge your Lordships to dismiss this application and proceed with the hearing of the Petition filed by the Petitioner in this Court.

25. We pray that the application herein be dismissed.

DATED AT #8 NII ODARTEY OSRO STREET KUUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA, THIS 22ND DAY OF JANUARY, 2021.

JUSTIN AMENUVOR #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR THE ELECTORAL
COMMISSION OF GHANA

AMENUVOR & ASSOCIATES
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THE REGISTRAR
SUPREME COURT
ACCRA

AND FOR SERVICE ON THE PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & COMPANY NO. 110B 1ST KADE CLOSE KANDA ESTATES, ACCRA

AND FOR SERVICE ON NANA ADDO DANKWA AKUFO-ADDO OR HIS LAWYER AKOTO AMPAW ESQ., AKUFO-ADDO, PREMPEH & CO., 67 KOJO THOMPSON ROAD, ADABRAKA – ACCRA