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IN THE SUPERIOR COURT OF JUDICATURE,
IN THE HIGH COURT OF JUSTICE WENCHI, BONO REGION,
HELD ON THURSDAY 30TH NOVEMBER, 2022,
BEFORE HIS LORDSHIP FREDERICK A.W.K. NAWURAH.

SUIT NO. C13/02/2021

IN THE MATTER OF ARTICLE 99 OF THE 1992 CONSTITUTION

AND

IN THE MATTER OF THE REPRESENTATION OF THE PEOPLE LAW, 1992 (PNDCL 284)

AND

IN THE MATTER OF PARLIAMENTARY ELECTION FOR THE TECHIMAN SOUTH CONSTITUENCY HELD ON THE 7TH DAY OF DECEMBER, 2020.

CHRISTOPHER BEYERE BAASONGTI OF H/NO. J146/2 NEW KROBO TECHIMAN – BONO REGION	**PETITIONER/ APPLICANT**
V.	
1. MARTIN KWAKU ADJEI-MENSAH KORSAH DIGITAL ADDRESS NO. BT-0104-7748	**1ST RESPONDENT**
2. THE ELECTORAL COMMISSION, HEAD OFFICE NO.2 RIDGE AVENUE, ACCRA.	**2ND RESPPONDENT**

JUDGMENT

Introduction

On 7th December, 2020, as part of the general elections under the 1992 Constitution, the Electoral Commission of Ghana (The 2nd Respondent) conducted the Parliamentary Elections for the Techiman South Constituency. On account of factors which largely account for the present suit, the declaration of the election results was delayed till the next day, that is, 8th December, 2020. The end of the proceedings of that day was however marred with chaos and acts of aggression

amongst the crowds of competing interests there assembled at the Collation Centre. The law enforcement agencies then intervened with force to quell the ensuing melee.

At the end of the process, the 2nd Respondent proceeded to declare the Parliamentary Candidate for the New Patriotic Party (NPP) (the 1st Respondent) as the winner of the Parliamentary Election for the Techiman South Constituency with the results published as follows:

Martin Kwaku Adjei Mensah Korsah (NPP)	49,682
Christopher Beyere Basongote (NDC)	49,205
Total Rejected Ballots	941
Total votes cast	99,828

It is the processes after the poll and leading to the declaration of these results for the parliamentary elections for the Techiman South Constituency, as well as the declared results in itself that have been challenged by the Parliamentary Candidate for the National Democratic Congress (NDC) (the Petitioner) and have thus come up for judicial scrutiny through this action.

In his amended petition (hereinafter referred to as the petition), the Petitioner, who was the Parliamentary Candidate of the National Democratic Congress (NDC) for the Techiman South Constituency in the 7th December Parliamentary elections, is seeking eight reliefs against the Member of Parliament of the New Patriotic Party (NPP) as the 1st Respondent and the Electoral Commission as the 2nd Respondent. The reliefs, which were subsequently modified by this Court, are as follows:

a) A declaration that the 2nd Respondent's Returning Officer's declaration of the 1st Respondent as the winner of the Techiman South Constituency Parliamentary Election conducted on 7th December 2020 is void;

b) A declaration that all the actions taken by the said Returning Officer as well as by the 2nd Respondent consequent upon the said declaration of the 1st Respondent as the winner of the parliamentary election are all void;

c) An order on the 2nd Respondent to do the collation or assembling of the results of the polling stations in the presence of the candidates or their representatives as provided for by regulation 43(1) of the

Public Elections Regulations, 2020 (C.I. 127) and to afford the candidates or their representatives the opportunity to verify and crosscheck the results from each polling station before signing the Parliamentary Election Results Collation Form as set out in Form One C of the Schedule to C.I. 127 as well as the Parliamentary Election Results Summary Sheet as set out in Form 1D of the Schedule to C.I. 127;

d) An order on the 2nd Respondent to publicly declare the Petitioner as having been validly elected as the winner with the highest number of votes of 50,306 in the parliamentary election in the Techiman South Constituency on 7th December, 2020;

e) An order on the 2nd Respondent to endorse on the writ specified in Form 1A and B of the Schedule to C.I. 127 the name of the Petitioner as having been validly elected as the Member of Parliament for the Techiman South Constituency;

f) An order on the 2nd Respondent to publish the name of the Petitioner in the Gazette as having been validly elected as the Member of Parliament for the Techiman South Constituency in the 7th December 2020 parliamentary election;

g) An order on the 2nd Respondent to inform the Clerk to Parliament that the Petitioner is the person who has been validly elected as the Member of Parliament for the Techiman South Constituency; and

h) Such further or other reliefs as may be just.

To begin with, it must be noted that **Article 99(1)(a) of the 1992 Constitution** confers on the High Court exclusive jurisdiction to hear and determine parliamentary election disputes. See also **Yeboah v. J.H. Mensah [1998-99] SCGLR 492 at 493 and 494.**

This constitutional provision in Article 99(1)(a) of the 1992 Constitution is reiterated in **section 16 of the Representation of the People Act, 1992 (PNDCL 284)** which states that:

> ***Section 16—Methods of Questioning Election.***
>
> *(1) The validity of an election to Parliament may be questioned only by a petition brought under this Part.*

(2) Every election petition shall be presented before the High Court for hearing.

Section 20 (2) (b) of the **PNDC 284** goes on to provide for the quantum and quality of evidence required to void a parliamentary election. The section states as follows:

> "Where at the hearing of an election petition the High Court finds that there has been failure to comply with a provision of this Act or of the Regulations, and the High Court further finds:
>
> (i) That the election was conducted in accordance with this Act and Regulations, and
>
> (ii) That the failure did not affect the results of the election,
>
> the election of the successful candidate shall not, because of the failure be void and the successful candidate shall not be subject to an incapacity under this Act or the Regulations."

The effect of this provision is that, to void an election, it is not enough to allege and indicate a failure to comply with the Act or Regulations but that it must also be demonstrated that the failure affected the results of the election. Thus, even if the Court were to find for the Petitioner that the 2nd Respondent failed to comply with the provisions of the Act or Regulations with regards to the collation process, it would still be incumbent on the Petitioner to prove that the failure did indeed affect the results of the election otherwise his case must fail.

The Petitioner's Case

The main grounds for the Petitioner's reliefs can be gleaned from paragraphs 4, 8, 12, 15, 22, 23, 24 and 33 of the petition in these stated terms:

> 4. That for the purpose of voting at the parliamentary election, the 2nd Respondent divided the Techiman South Constituency into 265 polling stations and the Petitioner as well as the 1st Respondent had polling agents at each of the polling stations who signed copies of the declaration contained in Form Eight A of C.I. 127 (hereinafter referred to as the pink sheets) which the 2nd Respondent made

available at each polling station for recording the results of the parliamentary election.

8. That at the close of polls on 7th December, 2020 and before the collation of the results from the various polling stations could be done, the votes from two polling stations were recounted at the constituency collation centre consequent upon earlier requests for recounting at each of the two polling stations concerned.

12. That after the recounting, the returning officer of the Techiman South Constituency used various excuses throughout the night to refuse to start the collation of the results up to the afternoon of the next day (i.e. 8th December, 2020) whilst the Petitioner's representatives at the collation centre kept waiting.

15. That at about 4:00 PM on 8th December, 2020 the returning officer of the 2nd Respondent attempted to declare the 1st Respondent as the winner of the parliamentary election without the collation of the results of the election.

22. That per the pink sheets the Petitioner got from his polling agents at each of the 267 polling stations, the Petitioner garnered 50,376 valid votes in the parliamentary election at the Techiman South Constituency whilst the 1st Respondent got 50,118 valid votes.

23. That despite the fact that the Petitioner garnered the highest number of votes in the parliamentary election and despite the fact that there was no collation of the results of the parliamentary election, the 2nd Respondent's returning officer nevertheless proceeded to declare the 1st Respondent as the winner of the parliamentary election at a place and date unknown to the Petitioner.

24. That the Petitioner vehemently protests against the 2nd Respondent's returning officer's declaration of the 1st Respondent as the winner of the parliamentary election as same is inconsistent with the actual results garnered by the two parliamentary candidates at the close of polls in the Techiman South Constituency on 7th December, 2020.

33. That even though there has been no collation of the parliamentary election results at the Techiman South Constituency, the 2nd Respondent has gone ahead to publish a notice on page 4148 of the Gazette dated 22nd December, 2020 by which the name of the 1st Respondent has been stated as the winner of the parliamentary election.

These said grounds appear to be inextricably linked to various alleged deviations from the prescribed procedures for the collation and declaration of the results of the Techiman South Parliamentary Elections which said deviations, according to the Petitioner, incurably vitiated the election and swearing in of the 1st Respondent as Member of Parliament for the Techiman South Constituency.

The Respondents' Case

The Respondents naturally denied the petitioner's claims and put him to strict proof of the averments therein. The 1st Respondent maintained that the election was conducted by the 2nd Respondent in accordance with law. He further stated that both he and the Petitioner were present with their representatives at the Collation Centre when the collation of the parliamentary results took place.

The 2nd Respondent, on her part, also maintained that the said parliamentary elections were conducted in accordance with law and the 1st respondent was declared winner of the poll. It is the case of the 2nd Respondent that the collation of the election results was done in the presence of the candidates and their representatives and the candidate who garnered the highest number of valid votes cast, the 1st Respondent, was publicly declared the winner of the 2020 parliamentary election for the Techiman South Constituency.

Issues for Determination

From the petition, the responses and list of issues filed thereto by all the parties, the Court crystallized the following issues for determination:

1. Whether or not the Returning Officer for 2nd Respondent assembled and collated the parliamentary election results of all 267 polling stations of the Techiman South Constituency;

2. Whether or not the Petitioner garnered the highest number of valid votes cast in the parliamentary election conducted in the Techiman South Constituency on 7th December 2020;

3. Whether or not 1st Respondent was properly declared by the Returning Officer for the Techiman South Constituency (Nana Dwamena Frempah) as the winner of the parliamentary election conducted in that constituency on 7th December, 2020;

4. Whether or not the 1st Respondent has been validly elected as Member of Parliament for the Techiman South Constituency in respect of the parliamentary election conducted in that constituency on 7th December, 2020;

5. Whether or not the petition discloses any reasonable cause of action; and

6. Any other issue arising on the face of the pleadings in this parliamentary election petition.

The 5th issue on whether or not the petition discloses any reasonable cause of action was however abandoned by the Respondents. The Court was thus left with only four main issues to determe.

Standard of Proof, Burden of Proof and Persuasion.

The standard of proof, burden of proof and burden of persuasion in election petitions in Ghana have been held to be the same as in civil cases. See: **John Dramani Mahama v. Electoral Commission & Nana Addo Dankwa Akufo-Addo [2021] DLSC 10003, per Annin-Yeboah CJ.** Thus, for election petitions, as in all civil cases, the standard of proof, burden of proof and burden of persuasion are those as laid out in **sections 10, 11 and 12 of the Evidence Act, 1975 [NRCD 323].** These sections provide thus:

> "**10. (1)** For the purposes of this Act, the burden of persuasion means the obligation of a party to establish a requisite degree of belief concerning a fact in the mind of the tribunal of fact or the Court.
>
> **(2)** The burden of persuasion may require a party

(a) to raise a reasonable doubt concerning the existence or non-existence of a fact, or

(b) to establish the existence or non-existence of a fact by a preponderance of the probabilities or by proof beyond a reasonable doubt

11. (1) For the purposes of this Act, the burden of producing evidence means the obligation of a party to introduce sufficient evidence to avoid a ruling on the issue against that party....

12. (1) Except as otherwise provided by law, the burden of persuasion requires proof by a preponderance of the probabilities...

(2) 'Preponderance of the probabilities' means that degree of certainty of belief in the mind of the tribunal of fact or the Court by which it is convinced that the existence of a fact is more probable than its non-existence".

When it comes to election petitions in Ghana, the burden of proof is on the Petitioner throughout. In **Akufo-Addo, Bawumia & Obetsebi Lamptey v. Mahama & Electoral Commission (No. 4) (2013) SCGLR (Special Edition) 73, S.O.A. Adinyira (Mrs.) JSC**, after analysing judicial practice from the Commonwealth, laid down the standard of the legal burden of proof in election petitions. She stated thus:

*From the foregoing it seems to me that **high standards of proof required in cases imputing election malpractice, appears to be the norm.** In this respect I refer to the Kenyan Supreme Court Case; Petition No. 5 of 2013 between **Raila Odinga v. Uhuru Kenyatta [2013]at paragraph 196:***

"We find merit in such a judicial approach, as is well exemplified in the several cases from Nigeria. Where a party alleges non-conformity with the electoral law, the petitioner must not only prove that there has been non-compliance with the law, but that such failure of compliance did affect the validity of the elections. It is on that basis that the respondent bears the burden of proving the contrary. This emerges from a long-standing common law approach in respect of alleged irregularity in the acts

of public bodies. Omnia praesumuntur rite et solemniter esse acta: all acts are presumed to have been done rightly and regularly. So, the petitioner must set out by raising firm and credible evidence of the public authority's departures from the prescriptions of the law."

Accordingly the Petitioners bear the burden of proof to establish that there were violations, omissions, malpractices and irregularities in the conduct of the presidential election held on the 7th and 8th December, 2012 but also that the said violations, omissions, malpractices and irregularities, if any, affected the results of the election. It is after the petitioners have established the foregoing that the burden shifts to the respondents, to establish that the results were not affected.

[Emphasis mine]

The Learned Jurist concluded by expressing the view that a higher standard of proof ought to be the case in election petitions imputing election malpractice. She stated thus: ***"The threshold of proof should, in principle, be above the balance of probability."***

[Emphasis mine]

Ansah JSC, in that same case, went on to explain the burden of proof in election petitions thus:

"...the law is well settled that: "the burden of proof in election petition lies on the petitioner; and a petitioner who sought to annul an election bears the legal burden of proof throughout the proceedings. In other words, he who asserts is required to prove such facts by adducing credible evidence in support and if he fails to do so his case must fail"

Gbadegbe JSC, in that same case, also stated thus:

The case of **Buhari v. INEC [2008] 4 NWR 546 at 565** also affirms the above pronouncements on the burden of proof as follows:

"Where a petitioner makes non-compliance with the Electoral Act the foundation of his complaint, he is fixed with the heavy burden to prove before the court, by cogent and compelling evidence that the non-compliance is of such a nature as to affect the result of the election. He must show and satisfy the

court that the non-compliance substantially affected the result of the election to his disadvantage."

This position on the burden of proof in election petitions was subsequently followed by the Supreme Court in the **John Dramani Mahama v. Electoral Commission & Nana Addo Dankwa Akufo-Addo case (supra)**, where the apex Court, speaking through the Chief Justice, Annin Yeboah, stated thus:

"Cases on election petitions in Africa and other common law jurisdictions give credence to the notion that in such cases where a petitioner seeks to annul an election or a declaration pertaining to an election, he bears the legal burden of proof throughout."

Having considered and deliberated upon the petition, the attendant responses, and the evidence at hand, I now make the following determination:

1. **Whether or not the Returning Officer for 2nd Respondent assembled and collated the parliamentary election results of all 267 polling stations of the Techiman South Constituency.**

The material provisions of the Regulations governing the declaration and publication of Parliamentary election results is **Regulation 43(1) of the Public Elections Regulations, 2020 (C.I. 127)** which states as follows:

Declaration and publication of parliamentary election results

43. (1) Subject to regulation 42, immediately after the results of the poll for all the polling stations in the constituency of the returning officer have been given to the returning officer the returning officer shall, in the presence of the candidates or the representatives of the candidate or not more than two counting agents appointed by each candidate

a) assemble the results from the polling stations without recounting the ballots in the ballot boxes, except where there is a challenge by a candidate or a counting agent in respect of a specific ballot box;

b) fill the Parliamentary Election Results Summary Sheet as set out in Form One D of the Schedule;

c) give public notice of the total number of votes cast for each candidate;

d) publicly declare as elected in a parliamentary election the candidate who had the highest votes;

e) request the candidates, or representatives or counting agents of the candidates to, together with the returning officer, sign the Parliamentary Election Results Collation Form as set out in Form One C of the Schedule and the Parliamentary Election Results Summary Sheet as set out in Form One D of the Schedule and post a copy at the constituency collation centre;

f) give each candidate, or the representative or counting agent of a candidate a completed and signed copy of the Parliamentary Election Results Collation Form as set out in Form One C of the Schedule and the Parliamentary Election Results Summary Sheet as set out in Form One D of the Schedule;

g) endorse on the writ specified in Form One B of the Schedule the name of the person elected; and

h) forward to the Commission, the endorsed writ and a note of the total number of votes cast for each candidate.

It is the Petitioner's case that, the Returning Officer for the Parliamentary Elections for the Techiman South Constituency failed to collate the Parliamentary election results for all the 267 polling stations of the Techiman South Constituency before proceeding to declare the 1st Respondent the winner of the said elections. The Respondents, on the other hand, vehemently deny the Petitioner's claim and maintain that the results of the Techiman South Constituency Parliamentary elections were duly collated before same was publicly declared. The 1st Respondent opted not to adduce any testimony before Court and, therefore, it is only the pleadings, evidence and closing address of both

the Petitioner and the 1st Respondent that this Court shall have recourse to in resolving this issue.

The Petitioner urges the Court that, in answering this question, the correct starting point is to examine the facts that have been proven during the trial and determine same on the strength of the evidence adduced.

The Petitioner's version of the events of the 7th and 8th of December, 2020 can be gleaned from paragraphs 8 to 21 of his witness statement. The conclusions to be drawn from these paragraphs are that, it is the Petitioner's case that the Returning Officer for the Techiman South Constituency Parliamentary elections deliberately delayed the collation of the poll results citing the fact that a number of the pink sheets (eleven in number) could not be traced.

The Petitioner maintains that on the 8th of December, 2020, despite persistent demands from his team for the collation to be done, the Returning Officer still remained adamant until around 15:35pm when he took a microphone and attempted to declare the results of the poll from an A4 sheet of paper. At this juncture, the Petitioner and his agents protested against the returning officer's attempt to declare the results without assembling and collating same but the security personnel at the collation centre drove them out of the collation centre.

The Petitioner's version of events regarding the issue of collation was fully corroborated by both PW1 (the NDC Elections Director for the Techiman South Constituency) and PW3 (the NDC Bono East Regional Secretary) who both claim to have been at the Collation Centre throughout the period in question.

From a thorough evaluation of the Petitioner's pleadings and his evidence (including that of his witnesses) in court, the Petitioner is not only alleging that the 2nd Respondent failed to comply with the provisions of the Act or Regulations with regards to the collation process but he is also alleging that the 2nd Respondent's Returning Officer, by deliberately failing to collate the results of the poll, rather brought in his own false set of results which he used to declare the 1st Respondent as the winner of the Parliamentary Elections. In essence, he maintains that the failure to collate the results affected the results of the election.

In both her pleadings and the evidence of her witnesses in court, the 2nd Respondent vehemently denied the absence of collation of the poll results and maintained that collation of the results was done in the presence of the Petitioner and his party representatives. Learned Counsel for the 2nd Respondent, in addressing this issue, urged on the Court the fact that the Collation Centre had been set up with a projector by the 2nd Respondent meant that the 2nd Respondent did a parallel collation of the results, i.e. manual collation alongside electronic collation.

I should point out that the conclusions being urged on the Court by Learned Counsel for the 2nd Respondent is not in consonance with the proceedings. Nowhere in their pleadings or evidence did the 2nd Respondent even vaguely state such a fact. In any case, the fact that the place was set up for such a process does not imply that collation did indeed take place. Thus, I am not inclined in the least to toe that line of reasoning as proof that the 2nd Respondent collated the results of the poll. Fortunately for the 2nd Respondent, she has no duty to prove the contrary of what the Petitioner alleges.

Learned Counsel for the Petitioner, in his closing address, relies on the inconsistencies and contradictions in the pleadings and evidence of the 2nd Respondent and her Returning Officer (PW6) who testified under *subpoena* in court to suggest that the said Returning Officer never actually collated the results of the poll.

Learned Counsel for the Petitioner thus draws the Court's attention to the fact that, in paragraphs 3 and 4 of his interrogatories (Exhibit D1), the Returning Officer (PW6) had stated that he had received the poll results of the Al Khariya Upper Atomic Road Techiman 1 polling station after 4:00pm on the 8th of December, 2020. Yet, under cross-examination by counsel for the Petitioner, he confirmed that he had received the said results on the 7th of December, 2020.

Learned Counsel for the Petitioner also relies on the fact that the 2nd Respondent stated in her pleadings that the original form One D assigned to the Techiman South Constituency Collation Centre had been **"destroyed"** in the subsequent melee at the Centre on the 8th of December, yet under cross-examination by Counsel for the Petitioner, her Returning Officer (PW6) stated that the said form **"was missing."**

I think this line of argument seems to take a rather simplistic view of the matter and it ignores the fact that the 2nd Respondent's Returning Officer (PW6), whose evidence is sought to be impugned, was *subpoenaed* by the Petitioner and treated as an adverse witness because of his temporal employment relationship with the 2nd Respondent during the 2020 elections. He was not a witness for the 2nd Respondent and the 2nd Respondent's pleadings could neither be said to be his pleadings nor was he the author of same.

Counsel for the Petitioner was granted leave (upon his request) to treat the witness that the Petitioner had called (PW6) as an adverse witness because of his temporal employment relationship with the 2nd Respondent during the 2020 elections and not because it was he who had answered the interrogatories, as Learned Counsel seems to think. If the interrogatories had been used as the basis for seeking to treat him as adverse, then the Court would have rather allowed him to be treated as a hostile witness but that was not the case. See: **In Re Okine (Decd.); Dodoo & Another v. Okine and Others [2004] DLSC983.**

I also do not subscribe to Learned Counsel for the Petitioner's view that the testimony of PW6 is to be considered as if he were a witness for the 2nd Respondent. This is never a basis for calling an adverse witness for cross-examination. An adversary may fail or refuse to testify in a case against him, and he has the right to do so. See: **In Re Ashalley Botwe Lands: Adjetey Agbosu v. Kotei (2003-2004) SCGLR 420.** When this happens, the other party has the right to *subpoena* him or any of his employees or close associates and cross-examine them as adverse witnesses under section 72(1) of the Evidence Act. It cannot be said, however, by any stretch of the imagination that the evidence of the adverse witness(s) is that of the adversary as that would obviously be contrary to the right of a party to refuse to testify. They continue to remain witnesses of the party calling them to testify, and the gains or losses that are made from taking such a risk directly affects the case of the party calling them.

In my opinion, except under unique circumstances, using an adverse witness as your spokesperson is simply not a compelling way to offer your evidence at trial, as the adverse witness testifying did not voluntarily take the stand and, more importantly, did not have the opportunity prior to examination by the opposing counsel to fully tell his or her story. The most compelling justification for calling an adverse

witness is when a necessary element of your case can only be established through that witness's testimony. Similarly, it might be most effective to offer a key admission from an adverse witness corroborating your witness's story.

In any case, I do not see how the distinction between the words "destroyed" as used by the 2nd Respondent and the word "missing" as used by the Petitioner's witness (PW6) in relation to the ballot that could not be traced should lead to the conclusion that the 2nd Respondent had something to hide from the Court.

Learned Counsel for the Petitioner again relies on the contradictions between the evidence of the 2nd Respondent's Techiman Municipal Director (PW5) and its Returning Officer (PW6) to conclude that the Returning Officer lied about the fact of collation when in fact there was none at all. In this regard, Counsel for the Petitioner, in his written address, urges the Court to examine the pages 176 to 177 (currently pages 182 to 183) of the record of proceedings and arrive at a finding that there was no collation before the Returning Officer declared the results of the poll.

The proceedings referred to here, which counsel for the Petitioner took pains to reproduce in his address, essentially deal with the Municipal Director's responses regarding how and when he had to go into the Techiman Constituency Parliamentary Collation Centre to instruct the Returning Officer to proceed with the collation of results of the poll. At pages 182 to 183 of the record of proceedings, the discourse between Counsel for the Petitioner and the 2nd Respondent's Municipal Director (PW5) goes thus:

Q. You agree that you returned to the Constituency Collation Centre to insist on the collation?

A. Yes.

Q. And you agree that when you returned the third time, it was after 3:00pm?

A. That may be true but I cannot be too sure.

Q. You agree that on that occasion you directed them to proceed with the collation even if the results of some polling stations had not been received by the Returning Officer but

both parties had their copies of Form 8A without any dispute as the Returning Officer could conveniently depend on that for the collation?

A. Yes.

Q. You agree that at this point the collation had not begun?

A. Yes. If it had been done I would not have issued those instructions.

Q. You agree that chaos broke out at the Constituency Collation Centre within about five minutes after you gave that directive and left?

A. After that instruction I entered the room of the Regional Collation Centre. I cannot remember the exact duration before the chaos.

Q. But at least it was less than twenty minutes?

A. Yes.

Q. Therefore, if anybody should say that the results were collated in the early hours of 8th of December, 2020 that person would not be saying the truth?

A. I agree with you.

The conclusion that the Petitioner obviously seeks to urge on the Court from this discourse is that, the 2nd Respondent's Municipal Director (PW5) agreed with Counsel for the Petitioner's suggestion that the chaos at the Collation Centre began less than twenty minutes after he had returned to the Parliamentary Collation Centre for the third time to instruct the Returning Officer to do the collation of the poll results and, therefore, it could not have been possible for the collation to have been done within that little timeframe.

It should be observed here, however, that, whilst counsel for the Petitioner referred to collation not having **"begun"**, the witness (PW5) referred to collation not having been **"done"** as at that time. It is difficult to tell what exactly the witness meant when he stated that *"if it had been done I would not have issued those instructions"* in reference to the question as to whether collation had begun by then. Given that

collation is a process that runs over a period of time, I find it hard to accept that the witness specifically meant that collation had not commenced then.

It also needs pointing out that, in the face of conflicting evidence, recourse must be had to the explanation given by the witness. The explanation of the Returning Officer (PW6) on this issue collation must be considered in the light of the seeming inconsistencies in evidence. At pages 195 and 196 of the record of proceedings, the Returning Officer (PW6) explained his position thus:

> *Q. You agree that, from the evening of 7th December 2020, when the polls closed, up to 3:00pm of 8th December, 2020, you had not collated the results?*
>
> *A. I do not agree.*
>
> *Q. You agree that at about 3:30pm on 8th December, 2020, the Regional Director of the Electoral Commission came to the collation centre and instructed you to collate the results polling station by polling station, one at a time?*
>
> *A. The Regional Director came there but he did not come to tell me to start collation. When he came there we had already collated 257 polling stations and we were left with 10 polling stations to be added to complete the collation.*
>
> *Q. So you are saying that as at 3:30pm on 8th December, 2020, you had not completed the collation; not so?*
>
> *A. I have stated that we had completed collation of 257 polling stations and were left with only 10 polling stations to be added. I want the Court to know that as at 11:00 am we had completed the 257 polling stations, i.e., on the 8th of December, 2020. We were still in the process of collation when the Petitioner and his supporters entered the collation centre and began to shout that he had won so I should declare him the winner. I explained to him that we had not finished the collation so he should wait for us to complete and if he won I would declare him the winner. He did not also show me any figures or basis for his claim that he had won. They continued the noise and insults for about two and half hours. It was during that period that the Regional*

Director came to intervene and talk to them. So if the Regional Director came there that was the reason why he was there. It was because of the commotion they were making that made the collation delay until 3:30pm.

Thus, quite clearly, PW6's version of events differs from the answers PW5 was put to confirm with regards to the reason why PW5 went to see PW6. I am of the view that the version of events as presented by the Returning Officer (PW6) was not necessarily untrue. The two witnesses only differed in matters of detail. The explanation offered by PW6 to the effect that they were in the process of collating the results of the poll but same had been delayed by the issues with ten polling stations appears to me to be quite probable, especially as PW5 neither categorically stated nor was he made to confirm that there was no collation of the election results.

On this very point, it should also be noted that, even where the evidence of both witnesses are in conflict, there must be sound basis for accepting the one over the other. The rule in civil proceedings is that where the evidence of the parties boils down to the oaths of one party and his witnesses against the oaths of the other party and his witnesses, the decision of the Court may safely be based on the Trial Court's impression of the credibility of the parties and their witnesses. See **Praka v. Ketewa [I964] GLR 423, SC**; and see also **In re Yendi Skin Affairs: Yakubu II v. Abudulai (No 2) [1984-86] 2 GLR 239, SC**.

In the case of **In re Aryeetey (Decd.); Aryeetey v. Okwabi [1987-88] 2 GLR 444, CA**, the Court of Appeal admonished that whenever, the evidence led on an issue is conflicting, the trial court should make up its mind whether to accept one version or the other but reasons should always be stated for the preference.

Counsel for the Petitioner has given me no particular reason why I should accept the testimony of the 2nd Respondent's Municipal Director (PW5) who only occasionally went there to give instructions, who was generally diffident in his answers, and who says he wasn't sure of the particular timeframes, over that of the Returning Officer (PW6) who was right there in the very heart of the events unfolding.

Note must also be taken of the fact that these two witnesses, PW5 and PW6, were not testifying on behalf of the 2nd Respondent but were in fact and indeed witnesses for the Petitioner, even though under *subpoena*. Thus, any conflicts and inconsistencies in their evidence only goes to muddy the waters for the Petitioner's case.

On the issue of inconsistencies and contradictions in the witnesses' evidence, Learned Counsel for the Petitioner even went as far as to draw the Court's attention to the fact that the 2nd Respondent stated in paragraph 12 of her amended answer to the petition that the results obtained by the candidates were "... assembled and collated ... **in** the early hours of Tuesday 8th December, 2020 and in the presence of the representatives of the candidates ..." yet, in paragraph 7 of the evidence-in-chief of the DW1 (the 2nd Respondent's sole witness), the 2nd Respondent stated that the results were "... assembled and collated ... **from** the early hours of Tuesday 8th December, 2020 and in the presence of the representatives of the candidates ...". Counsel for the Petitioner relies on the above fact to suggest to the Court that this is one of many attempts by the 2nd Respondent to run away from their own pleadings and to obfuscate the issue at stake.

Based on these contradictions between the 2nd Respondent's pleadings and the evidence of her only witness (DW1), Learned Counsel for the Petitioner urges the Court to dismiss the 2nd Respondent's witness' testimony or evidence on the issue of collation for lack of credibility. He cites **the Dam Principle (Dam v. Addo [1962] 2 GLR 200 S.C.)** in support of his position.

It should be borne in mind that when dealing with conflicts and inconsistencies in the evidence during the trial, the conflicts and inconsistencies should relate to material evidence. Evidence offered to prove a matter not in issue or not probative of a matter in issue is immaterial and conflicts in such evidence can have no relevant bearing on the judgment. The accepted principle of law on this matter is that where the discrepancies are really material and make the version of the witness on the point or points at issue highly improbable when viewed against the general background of the dispute, then the Court may rightly disbelieve and reject what such a witness has testified about. See: **Republic v. Adekura [1984-86] 2 GLR 345, C.A.; RT Briscoe Ghana Ltd. v. Boateng [1968] GLR 9.**

With respect to Learned Counsel, I do not find the contradictions complained of as probative of the matter in issue so as to be considered material. The distinction between the use of the expressions "in the early hours of" and "from the early hours of" are in my view merely semantics, to say the least, and should not justify the wholesale rejection of the evidence to which it relates.

On this very point, I should also mention the case of case of **Effisah v. Ansah [2005-2006] SCGLR 943**, and the observations made in that case by Georgina wood JSC. (as she then was) in affirming that it is only major discrepancies that go to the root of testimonies that affect the weight that must be attached to evidence given at a trial. The learned judge expressed herself in the following terms (as stated in holding (6) of the headnote to the case):

> *"In the real world, evidence led at any trial which turned principally on issues of fact, and involving a fair number of witnesses, would not be entirely free from inconsistencies, conflicts or contradictions and the like. In evaluating evidence led at a trial, the presence of such matters per se, should not justify a wholesale rejection of the evidence to which they might relate. Thus, in any given case, minor, immaterial, insignificant, or non-critical inconsistencies must not be dwelt upon to deny justice to a party who had substantially discharged his or her burden of persuasion. Where inconsistencies or conflicts in the evidence were clearly reconcilable and there was a critical mass of evidence or corroborative evidence on crucial or vital matters, the court would be right to gloss over those inconsistencies."*

The next observation the Court makes, with particular interest, are the views of the Petitioner and his witness (PW3) regarding what collation of election results entails. At page 61 of the record of proceedings, under cross-examination by Counsel for the 1st Respondent, the Petitioner advanced his views on collation in the following discourse:

> *Q. You agree that collation is a summation of various results of polling stations of the Constituency?*
>
> *A. That is not so. Collation is all the parties coming together with their pink sheets to do one-on-one cross-check of the various figures in the pink sheets and agreeing to the*

figures. An individual sitting and entering his own results is not collation.

The Petitioner went on to affirm this view thus:

Q. So you see, it is the Returning Officer who has the power to sum up the results, collate and declare the results, and the winner; not so?

A. That is not correct. He is to do the summation together with all the parties.

Q. And, in fact, in doing the collation, the Returning Officer can only rely on the certified and signed results of the party agents; not so?

A. That is not so. The essence of collation is for all to agree on the results before same is declared but the Returning Officer cannot do collation alone without involving party agents.

Again, at page 65 of the record, the Petitioner reiterated his position in the following discourse:

Q. On the last adjourned date you stated boldly that the Returning Officer has to meet the agents of political parties and reconcile the pink sheets before assembling and declaring results. Is that correct?

A. What I said was that both parties, together with the Returning Officer, have to cross-check the pink sheets one-on-one to ensure that the figures tally before the summation and declaration

Q. So, in effect, you are saying that until the contestants cross-check their pink sheets with the Returning Officer he cannot go ahead to assemble the results from the various polling stations and declare who has won?

A. Yes, without cross-checking to ensure that all parties agree, he cannot continue. And if any party has a problem, he has to take note of that issue and write same down.

Q. Is that your understanding of the electoral process as provided under C.I. 127 or what the law actually provides for?

A. It is what the law actually provides for.

Q. I put it to you that the Returning Officer is required to assemble the results of the polling stations and publicly declare the winner with the highest votes without recourse to any of the contestants.

A. That is not correct. Without recourse to the contestants means the Electoral Commission would not be doing collation and assembling. Assembling means a group of people coming together to put together bits and parts for a common purpose.

This view urged by the Petitioner broadly suggests that, if a party to the elections does not participate in the collation process or agree to the results collated by the Returning Officer, then the process is incomplete and it cannot be said that there has been a collation of results properly so-called. This begs the question as to why the Parliamentary Election Results Collation Form (Form One C) and the Parliamentary Election Results Summary Sheet (Form One D) make provision for candidates who disagree with the outcome of the collation or their representatives or counting agents to refuse to sign the forms and also to state why they refused to sign the forms.

The above position of the Petitioner was further amplified by the third witness for the Petitioner (PW3), who was the Bono East Regional Secretary for the NDC and a representative of the Petitioner and the NDC at the Collation Centre. Under cross-examination by Counsel for the 2nd Respondent, at pages 157 to 158 of the record of proceedings, PW3 explained his understanding of the collation process thus:

Q. So kindly walk us through Regulation 43 in respect of declaration and publication of results (parliamentary).

A. Regulation 43 of C.I. 127 mainly talks about parliamentary elections. It talks about, i.e. at the close of polls, what is supposed to be done by the Returning Officer, the candidate and his agents. It starts by indicating that, after the close of polls and after all ballot boxes from all the polling stations have been brought to the Collation Centre, it is only the Pink Sheets from the Polling Stations that are going to be assembled by the Returning Officer. No ballot box is

supposed to be opened at the Collation Centre unless there is a disagreement as to that ballot box. After all the Pink Sheets have been assembled in the presence of the candidate or his agents, then the Returning Officer would then transfer the results from each and every Pink Sheet to the Form 1C. After that, he would then collate all the results on the Form 1C. There is a column at the bottom for total number of votes for each candidate. After that he would transfer the summated results from the Form 1C to the Form 1D. The features of the Form 1D is peculiar to each constituency. After that, and all these should be done in the presence of the candidate or his agents. ***After the candidate or his agents have certified and are satisfied with the summated results on the Form 1D, they would then be given the opportunity to sign*** *and* ***then be given copies. Then the Returning Officer would pick the Form 1D (not on A4 sheet), publicly declare the results garnered by each candidate*** *(not each political party) and subsequently declare the one with the highest votes as the winner of the election. Unfortunately, all this was not done.*

From their exposition of the collation procedure, it appears to me that both the Petitioner and his team (particularly PW3) have mixed up the procedure for the collation of the results of the poll at the Constituency Collation Centre by the Returning Officer under Regulation 43(1) of the C.I. 127 with that for the counting of the votes cast at the polling station by the Presiding Officer under Regulation 39 of the C.I. 127. Per the procedure at the polling station, the candidates or their representatives or counting agents are required to sign a declaration on the Form Eight A (the pink sheet) before the Presiding Officer can announce the results of the voting at the polling station. This procedure is markedly different from that at the Constituency Collation Centre where the collation and declaration of the results are done before the candidates or their representatives or counting agents are requested to sign the Form One C and Form One D.

Regulation 43(1) of the Public Elections Regulations, 2020 (C.I. 127) provides for the role the Returning Officer is to play with regard to the declaration and publication of parliamentary election results. This obviously includes the collation process. The Regulation stipulates that

immediately after the results of the poll for all the polling stations in the constituency of the Returning Officer have been given to the Returning Officer the Returning Officer shall, **in the presence of** the candidates or the representatives of the candidate or not more than two counting agents appointed by each candidate:

a) **assemble the results from the polling stations without recounting the ballots in the ballot boxes,** except where there is a challenge by a candidate or a counting agent in respect of a specific ballot box;

b) **fill the Parliamentary Election Results Summary Sheet** as set out in Form One D of the Schedule;

c) **give public notice of the total number of votes cast** for each candidate;

d) **publicly declare** as elected in a parliamentary election the candidate who had the highest votes;

[Emphasis mine]

There is a difficulty in the Petitioner's position on the collation process which, in my view, would be fatal for his case even if it were shown that the Returning Officer collated the results of the poll without the active participation of the candidates or their representatives or counting agents. This difficulty stems from the fact that there is no specific provision in the Public Elections Regulations, 2020, that mandates the Returning Officer to collate the results **with** the candidates or their representatives or counting agents or to require their approval by their signing the Results Collation and Summary Forms before the results can be declared. The rules only mandate that the collation should be done **by the Returning Officer** and **in the presence of** the candidates or the representatives of the candidate or not more than two counting agents appointed by each candidate.

Of course, given that the Public Elections Regulations stipulates that the collation should be done by the Returning Officer and in the presence of the candidates or the representatives of the candidate or not more than two counting agents appointed by each candidate, it makes sense to assume that the declaration of the results must of necessity involve an open, transparent and public assembling and transposition of the poll results from the polling stations onto the Election Results Summary

Sheet (Form One D). This naturally affords the candidates or their representatives or counting agents the opportunity to cross-check the Returning Officer's entries onto the Form One D against their own copies of the pink sheets. This is obviously why the Collation Centre was set up with television and projection screens for public viewing of the collation process and to afford the candidates or their representatives or counting agents the opportunity to observe the collation.

Where a candidate or his representative or counting agent has any complaint, he can refuse to sign the declaration form and give reasons in the column provided on the Results Collation Form. Thus, the failure or refusal of a candidate or his representatives or counting agents to sign the declaration form does not imply that collation did not take place. In this particular instance, the melee that took place at the Collation Centre obviously prevented the candidates from signing the forms but it does not prove in any way that there was no collation of the poll results.

Another basis given by the Petitioner for his refusal to accept that there was collation and subsequent declaration of the results of the poll was his claim that the 2nd Respondent's Returning Officer (PW6) declared the results from an A4 sheet of paper. At pages 60 and 61 of the record of proceedings, the Petitioner, under cross-examination by Learned Counsel for the 1st Respondent, advanced this view thus:

> *Q. You also stated that there was no declaration; is that your case?*
>
> *A. Yes. I say that because the Returning Officer attempted to use an A4 sheet instead of the C.I. 127 mandated Forms 1C and D* ***to be filled for agents to sign first.*** *As same was not done, there was no declaration.*

[Emphasis mine]

Again, at page 88 of the record of proceedings, the Petitioner, under cross-examination by Learned Counsel for the 2nd Respondent, had this to say regarding the alleged use of the A4 sheet for the declaration of the results:

> *Q. So, during cross-examination by the 1st Respondent, you watched a video (Exhibit 1) and in that video you were seen rushing at the Returning Officer together with your*

supporters and you truncated the process; not so? That is, the procedure under C.I. 127?

A. *That is not true. The video did not show the collation of results as per C.I. 127 and it did not show Form 1D being filled but rather an A4 sheet which is contrary to Regulation 43 of C.I. 127 so I protested.*

Q. *So you saw in the video that the Returning Officer was holding a Public Announcement (P.A.) system and declared the 1st Respondent as the elected person to parliament?*

A. *Yes, I saw a purported declaration but once there was no collation same could not be done using an A4 sheet. That has never been done before and same was therefore wrong.*

For this claim to succeed, it must be demonstrated, first, that Returning Officer had no authority in law to use an A4 sheet or such other means to declare the results and, secondly, that his use of the A4 sheet of paper was deliberate and calculated to misrepresent the results so as to reduce the Petitioner's overall votes or increase that of the 1st Respondent.

Regarding this allegation, it has not been shown that, by resorting to alternate means of reading the election results before announcing same (if indeed that happened at all), the Returning Officer acted in bad faith or was influenced by irrelevant factors and considerations. In the absence of any clear proof, I cannot find a basis upon which to conclude, as a matter of fact or evidence that the use of the A4 sheet of paper, if at all, affected the results declared as a consequence of which the Petitioner, alone, as a Parliamentary Candidate suffered a disadvantage.

On the assessment of evidence adduced by the Petitioner regarding his claim that the 2nd Respondent failed to collate the results of the poll before declaring 1st Respondent as the winner, I find that neither the views of the Petitioner and his witnesses nor their exhibits meet the requisite standard of proof. I find the Petitioner's story not only speculative but also unsatisfactory. I accordingly hold that this head of claim regarding the absence or lack of collation of the results fails and I dismiss same accordingly. The 2nd Respondent is therefore presumed to

have duly collated the results of the poll for the 2020 parliamentary elections for the Techiman south Constituency in accordance with law.

2. Whether or not the Petitioner garnered the highest number of valid votes cast in the parliamentary election conducted in the Techiman South Constituency on 7th December 2020.

This was the fundamental issue that the Court had to painstakingly decide. This is because, if it turned out that the Petitioner had garnered the highest number of votes in the said election, **section 19 of the Representation of the People Act, 1992 (PNDCL 284)** vests the Court with power to declare, the election to which the petition relates as being void, and therefore of no effect whatsoever. In that event, a bye-election would have to be held in that particular constituency. However, where the infarctions against the electoral rules are not so serious as to result in the invalidating of the election, then, the Petitioner shall be declared as the winner of the election. See: **Enos v. Electoral Commission [1999-2000] 1 GLR 564.**

The Petitioner avers that it was rather he (the Petitioner) who garnered the highest number of valid votes cast in the parliamentary election and therefore he ought to have been declared the winner of the 2020 Parliamentary Elections for the Techiman South Constituency. He anchored his claims on the basis that nine (9) polling station results on the Parliamentary Election Results Collation Form (Form One C) had been wrongly recorded by the Returning Officer thus misrepresenting the actual valid votes cast for him. It is his case that it is the results contained in the duplicate copies of the pink sheets given to his agents at the polling stations by the Presiding Officers (Exhibit H Series) that represent the actual or right results of the said poll.

The Petitioner maintains that, if the results contained in the Parliamentary Election Results Collation Form (Form One C) (Exhibit C) for those nine polling stations are substituted with the duplicate pink sheets (Exhibit H Series) the outcome will be a win for the Petitioner.

Referring to the tallies in Form One C (Exhibit C), the Petitioner summed the number of valid votes cast for each candidate as follows: Christopher Beyere Baasongti (50,376), Martin Adjei-Mensah Korsah

(50,118), adding to a total of 100,494 valid votes cast. He then provided a chart showing the results of the disputed nine polling stations as entered in the form One C by the 2nd Respondent and the Results from these same polling stations as obtained from the summation of the results on the duplicate pink sheets given to his agents by the Presiding Officers at the polling stations.

It is on this basis, that the Petitioner maintains that it is the results as contained in the duplicate pink sheets for these nine polling stations that should be entered onto the Form One C because in his view the ones currently contained therein were manufactured by the 2nd Respondent's Returning Officer and do not have any bearing on the duplicate pink sheets whose originals were supposed to have been used for the collation of the results.

On this issue, the Petitioner was categorical that if the real or actual results garnered at those nine polling stations as contained in duplicate the pink sheets were entered onto the Parliamentary Election Results Collation Form (Form One C) in replacement of the wrong entries therein, his total tally will be 50,376 valid votes whilst the tally for the 1st Respondent will be 50,118 valid votes, thus making him the candidate with the highest number of votes in the election.

In response, the 1st Respondent denied the Petitioner's claim that he garnered the highest number of valid votes cast and submitted that it was rather he (1st Respondent) who won the parliamentary elections having garnered 49, 682 of the total number of valid votes cast.

The 2nd Respondent also denied the Petitioners claims and maintained that it was the 1st Respondent who won the highest number of valid votes cast in the said parliamentary elections. The only witness for the 2nd Respondent (DW1) urged the Court to take note of the fact that the Petitioner and other senior members of the NDC party had granted interviews making claims of having won the elections with varying results and thus, based on those inconsistencies, his claim ought to be dismissed.

In his written address to the Court, Counsel for the Petitioner submits that the 2nd Respondent failed to confront or cross-examine the Petitioner as far as his snapshots of the original pink sheets (Exhibit H series) for the nine disputed polling station results are concerned and

therefore the 2nd Respondent should be deemed as having admitted that those pink sheets are genuine. Counsel for the Petitioner further urges that, as the 2nd Respondents denial of the Exhibit H series was based on the fact that they did not originate from the 2nd Respondent, then the 2nd Respondent's implied admission of the validity of the said documents had necessarily dealt a deadly blow to the 1st Respondents refutation of the said snapshots of the original pink sheets.

Counsel for the Petitioner again urges that, as the contents of the Petitioner's duplicate copies of the nine disputed pink sheets (Exhibit G series) are the same as the contents of the snapshots of the original pink sheets (Exhibit H series), then it follows that the admission of either of them by the 2nd Respondent is enough for the Petitioner to prove that he had the higher number of votes. In my view, that may be so. But the reverse is also true for the 2nd Respondent in the sense that a refutation of one is a refutation of both.

With respect to Learned Counsel, the claim that the 2nd Respondent failed to challenge or cross-examine the Petitioner on the validity of his snapshots of the original pink sheets (Exhibit H series) for the nine disputed polling station results is untenable in the light of the record at hand. From the discourse between Counsel for the 2nd Respondent and the Petitioner, at pages 78 and 79 of the record of proceedings, there is no doubt that Counsel for the 2nd Respondent was challenging the Petitioner on the validity of his Exhibit H series. This is what transpired:

Q. I put it to you that Exhibit G series did not come from the 2nd Respondent.

A. That is not true. It was from the 2nd Respondent.

Q. I put it to you that in the course of changing the figures you had to change the whole document with correction fluid to garner more votes.

A. We cannot manufacture pink sheets. They are from the Electoral Commission.

*Q. I put it to you that in your attempt to deceive the 2nd Respondent and the Court you made photocopies of Exhibit G series. **H series is a product of G series in an attempt to mislead.***

A. That is not true. The G series are eight in number whilst the H series are nine in number. The difference of one is as a result of the snapshot not being clear enough to tender in court. If they were copies then we would have had equal copies.

Q. I put it to you that it is a grand scheme by you and the NDC to make up after the production of Forms 1C and D by the Court order.

A. That is not so. We earlier on attached copies of Form 8A (pink sheets) for all the polling stations. This we handed over to the Court before the Electoral Commission even submitted their own.

[Emphasis mine]

In any case, in evaluating the evidence at hand, it is important to note that as this is an election petition case, the onus of proof on the Petitioner is especially high and the Petitioner is expected to succeed on the strength of his own case and not on the weakness of the Respondent's case. See **Kodilinye v. Odu (1935) 2 WACA 336 at 337**. Therefore, however unsatisfactory or conflicting the defence may be, it cannot avail the Petitioner. See **Barima Gyamfi v. Ama Badu [1963] 2 GLR 596, SC**.

It is therefore incumbent on the Petitioner to prove to the satisfaction of the Court that he indeed garnered the highest number of valid votes cast in the elections. To this end it is to the evidence of both the Petitioner and PW1 who testified on this particular issue that we must have recourse to.

In his evidence, the Petitioner generally made broad assertions about his having won the highest number of valid votes. Per his pleadings, the Petitioner had initially claimed that wrong entries were made in respect of nine polling stations on the Form One C thus resulting in a lower margin of valid votes for him in the elections. He tendered exhibits, including exhibits G and H series, to support his assertion that his documents were the authentic poll results that ought to have been entered onto the Form One C. the Petitioner however failed in his evidence-in-chief to specifically guide the Court through the exhibits as to the linkage between his exhibits and his assertions of having

garnered the higher number of votes. He essentially left it all to the Court's speculation.

However, under cross-examination by Counsel for the 1st Respondent as to the source and authenticity of exhibits G and H series, the Petitioner suddenly deviated from his pleadings and alleged that in their audit of the pink sheets filed by the 2nd Respondent in her amended reply, they discovered that the pink sheets for nine of the polling stations in the Techiman south Constituency were forged documents.

The basis for this his claim of forgery was that, during their audit of the pink sheets, his polling agents who had been stationed at those nine polling stations and who had appended their signatures to the copies of the duplicate pink sheets (exhibit H series) for those polling stations had, upon examining the 2nd Respondent's pink sheets for those polling stations, asserted that those signatures had been forged to look like theirs.

Under cross-examination by Counsel for the 1st Respondent, at page 72 of the record of proceedings, the Petitioner stated thus:

Q. So, if I understand you, it means your agents for 9 polling stations gave you different results for those stations.

A. That is not so. The H series were from accredited Presiding Officers to accredited agents of mine.

Q. Did you enquire from your agents, at the time of your audit of the pink sheets, why 9 of the polling stations results that they had endorsed and signed had different results from what you alone were holding?

A. Yes, I did enquire and was told that the signatures on the H series given to us by the Presiding Officers at the polling stations are their correct signatures ***but the other ones attached as copies by the Electoral Commission were not their signatures, i.e., they were forged.***

Q. I believe you are aware that you have stated here that you do not even know the agents' names. So which of them informed you that his signature had been forged?

A. I remember saying that I visited some of them with the Election Director, and, at Mayanka, a male and a female stated that the H series bore their correct signatures but the latter ones attached by the Electoral Commission were not their signatures ("EC 5").

[Emphasis mine]

The Petitioner therefore maintains that, per his computations, if the entries on the Form One C for those nine polling stations are substituted with the entries on the copies of the duplicate pink sheets that were given to his agents at the polling stations (exhibit H series) for those same polling stations, he would garner the highest number of valid votes.

Unfortunately for the Petitioner, he had completely failed to specifically plead the particulars of the alleged forgery and so this Court, upon objection by both Counsel for the Respondents, stopped him from further espousing that line of evidence contrary to the **the Evidence Act, 1975 (NRCD 323)** and the rules of Court. **Section 13(1) of the Evidence Act, 1975** stipulates that where in a civil case crime is pleaded or alleged, the standard of proof changes from the civil one of balance of probabilities to the criminal one of proof beyond reasonable doubt. Forgery is a crime by virtue of **section 158 of the Criminal Offences Act, 1960 (Act 29)** and therefore any claim or imputation of forgery by the Petitioner must be proved beyond reasonable doubt.

In the case of **Fenuku v. John-Teye [2001-2002] SCGLR 985** the Supreme Court (as stated in holding 5 of the headnote) held that:

"The law regarding proof of forgery or any allegation of a criminal act in civil trial was governed by section 13(1) of the Evidence Decree, 1975 (NRCD 323) which provided that the burden of persuasion required proof beyond reasonable doubt..."

In **Aryeh & Akakpo v. Ayaa Iddrisu [2010] SCGLR 891 at 902**, the Supreme Court per Brobbey JSC had this to say about leading evidence on fraud in civil cases:

"A party who seeks to lead evidence to prove forgery in a civil trial must specifically plead the particulars of the forgery."

It follows that the claim of forgery, which forms the very basis for the Petitioner's refutation of the results of the poll as presented by the 2nd Respondent, essentially stands unsubstantiated and unproven.

The Petitioner's witness (PW1), who had all his facts and analysis at his fingertips, also failed in his evidence-in-chief to direct the Court as to the linkage between his claims and the exhibits tendered but reserved them for cross-examination. Thus, under cross-examination by Counsel for both Respondents, PW1 dexterously pointed out what he had identified as major flaws and discrepancies between the entries made by the 2nd Respondent for the nine polling stations on the Form One C and the copies of the duplicates of the pink sheets given to the Petitioner's agents for those same polling stations. According to him, these discrepancies in the entries on the form One C made the Form One C seriously suspicious.

Indeed, PW1 also supported the Petitioner's view that the pink sheets for those nine polling stations in dispute had been forged. Under cross-examination by Counsel for the 1st Respondent, at page 100 of the record of proceedings, he stated thus:

Q. The CMB Shed II Abanim that you just spoke of as seriously suspicious; your agent, Bashiru Ransford, attested and signed the pink sheets, not so?

A. Bashiru Ransford signed or attested to the genuine pink sheet and not the suspicious one. In fact, I met with him and showed both pink sheets to him and, according to him, on the pink sheet filed by the Electoral Commission there was an attempt to sign his signature but that is not his signature. He added that he would try meeting the Presiding Officer on this matter.

Q. The 2nd Respondent's pink sheets which you are referring to, I believe whey you see them you can identify them?

A. Yes.

Q. And you took your time to patiently audit all the said pink sheets?

A. Yes. And I have no doubt that these 9 pink sheets were completed by 2nd Respondent alone with the intention of deceiving the Court.

It follows that, as the basis for PW1's claim that the nine disputed polling station results were wrongly entered onto the Form One C is the same as that of the Petitioner, i.e. fraud or forgery, then the Court's conclusions regarding the Petitioner's assertion of fraud equally affect the evidence of PW1 and I need not say more in that regard.

PW1 even sought to draw a correlation between the differentials in the votes cast for the Presidential and those cast for the Parliamentary elections to suggest that there was something fishy about the results for the parliamentary. On this issue, I find that the reasons given by PW6 for such vote differentials is quite plausible and does not, in my view, imply fraud. It is quite possible, and indeed very common for people to vote for the presidential and fail to vote for the parliamentary and vice versa. This is akin to what has become known in Ghana as the "skirt and blouse" voting. Thus the hypothesis urged on the Court by PW1 cannot be substantiated by the evidence on record.

On the whole, the evidence of the Petitioner raises a number of serious questions that erode the certainty of his claim that nine of the pink sheets relied on by 2nd Respondent to tally the votes were forged and contained entries that affected the outcome of the poll to his detriment.

First of all, right from the time the Petitioner received the pink sheets from the 2nd Respondent and conducted an audit into same, no mention at all was made by him of the alleged fraud or forgery even though it formed the very basis of his rejection of the nine disputed pink sheets and *ipso facto*, the results of the poll. Indeed, there is nothing on the record to show that any sort of complaint had been lodged with the police about the alleged forgery. The Petitioner even failed to state the fact of the alleged forgery in his witness statement which was filed almost a whole month after he received the copies of the pink sheets from the 2nd Respondent.

On the 4th of June, 2021, the Petitioner filed a motion on notice for the appointment of a Court Expert on Handwriting. The basis of this application was that, of the nine disputed pink sheets, six of them bore the same serial numbers as the copies of pink sheets given to his agents

at the polling stations. He thus, prayed the Court to appoint an expert on handwriting to examine and determine which of those pink sheets were proper or genuine.

By this time the Petitioner and his team were already seised with a copy of the full set of the 2nd Respondent's pink sheets for all 267 polling stations in the Techiman South Constituency. They had by then obviously conducted their audit of the pink sheets and found nine of the results to be problematic because that was how they claim to have discovered the anomaly complained of. Yet, all that the Petitioner applied for was the appointment of a handwriting expert to examine and determine which of those pink sheets were proper or genuine. The application had nothing to do with any issue of forged signatures.

More importantly, given that the alleged forgery formed the backbone of the Petitioner's refutation of the results of the poll, one would naturally have expected him to have amended his petition or pleadings to specifically plead fraud but he woefully failed in that regard. It is trite law that a party is bound by his pleadings and the only way he could free himself from the averments in a pleading is through amendments. See **Hammond v. Odoi (1982-83) 2 GLR 1215.**

Then again, there is the fact that the Petitioner and his party (the NDC) had on a number of different occasions put out varied results as the total votes obtained by the Petitioner in the elections. On five different occasions, the Petitioner and the NDC published results ostensibly from the very snapshots of the original pink sheets and copies of the duplicate pink sheets they so solidly stand behind as the true results of the elections. None of these figures published by the Petitioner's side reflects the current figure that he now claims to have won the election with, i.e. 50, 376 valid votes. This fact was not disputed by either the Petitioner or PW1. At pages 73 to 75 of the record of proceedings, and under cross-examination by Counsel for 1st Respondent, the Petitioner admitted these facts in the following discourse:

> *Q. You recollect that you and other NDC officials have given different accounts of the election, including the results you claim was used to win the election?*
>
> *A. Yes, I remember giving different figures.*

Q. You recollect that your flagbearer, John Mahama, also gave different accounts of the same elections?

A. Yes, he gave different figures from mine.

Q. You agree that the results contained in paragraph 23 of your evidence that you won by 50,376 votes is itself not consistent with the accounts you gave and that of your flagbearer as well as other NDC officers?

A. That is true. But, in all those instances of figures mentioned, I still garnered the highest votes. In the heat of the elections we used pen and paper so that it gave us different results but, per those stated in my evidence, we used Excel and I am 100% sure that that is the correct figure.

Q. So, with all the different results publically stated by you and your party people, including John Dramani Mahama, Asiedu Nketia, and your Director of Elections for Techiman South Constituency, which of the pink sheets were you relying on to inform the public that you had won the Techiman South Parliamentary elections.

A. The pink sheets supplied to us by the Presiding Officers at the polling stations. The essence of collation is because one might make a mistake but if all parties come together, we can correct same. We made mistakes earlier on but this current figure is that in my evidence.

Q. Do you mean that, in concluding that you had won with the figures put out there, exhibits G and H series formed part of your calculations?

A. Yes, since they came from the Electoral Commission.

.....

Q. Were exhibits G and H series part of the calculations when, at a press conference on 10/12/2020, the Director of Elections of the NDC Techiman South claimed that you had won by 50,569 and that 1st Respondent had lost by 49,874?

A. I did not make that announcement so I cannot tell.

Q. But you admit that you were at that press conference?

A. Yes. I was.

Q. On 21/12/2020, when you stated on Joy News that you had won with 50,420 votes, did you take exhibits G and H into consideration?

A. Yes.

Q. You agree that that figure of 50,420 is different from the figure you are now claiming in this court?

A. That is so.

Q. Again on 22/12/2020 you, in the company of NDC Parliamentary Minority Caucus, at a press conference claimed that you won with 50,306 votes?

A. That is so.

Q. Lastly, on 31/12/2020, you and the minority in Parliament, at a meeting with foreign envoys, claimed that you won with 50,368 votes.

A. That is so.

If the Petitioner's results as contained in his Exhibit H series were the real original results as he claims, then it beats the imagination as to why he and his party executives continuously kept changing the figures they claim to have garnered in the elections. The record is replete with several instances of different figures given by the Petitioner himself and his party at press conferences that do not have any correspondence whatsoever to the results they are now claiming in this petition.

Granted that these duplicate pink sheets (Exhibit H Series) had been in the Petitioner's possession from the very day of counting of the poll, that is, the 7th December, 2020, then it beats the imagination why they still kept getting their figures all wrong. Frankly, in my view, these conflicts and inconsistencies in the Petitioner's pursuit of his case do not auger well for his credibility.

The settled law is that a witness whose evidence on oath is contradictory of a previous statement made by him, whether sworn or unsworn, is not worthy of credit and his evidence cannot be regarded as

being of any importance in the light of his previous contradictory statement, unless he is able to give reasonable explanation: see **Gyabaah v. The Republic [1984-86] 2GLR 461; State v. Otchere [1963] 2 GLR 463**. Thus, in the absence of reasonable explanation, I find the inconsistencies and vacillations in the Petitioner's story and his sudden turn-around in court to allege fraud and forgery on the part of the 2nd Respondent in favour of the 1st Respondent as an afterthought which ought to be rejected as untrue and designed to throw dust into the eyes of the Court.

It is also settled law that where there are material conflicts or inconsistencies in the evidence offered to prove a fact in issue, they may result in disproving allegations of fact or impeaching the credibility of witnesses. See: **Kuo-Den alias Sobti v. The Republic [1989-90] 2GLR 203 at 213, SC**.

The legal implication of contradictory evidence on the party adducing same was succinctly stated in **Kofi Sarpong v. Jantuah [2014] 74 GMJ 46 at page 98**, per Mrs G. Torkornoo JA (as she then was) thus:

> *"It is a settled principle for the juridical responsibility of determining which case to uphold, that if a party, through his evidence, (in this case, additional ground of appeal and submissions) contradicts the case set up in his pleadings in a fundamental manner, the court ought not to hold him as entitled to the 'relief being sought... The basis of such a holding is that the party has departed substantially from his case and accordingly his case should not be given a favourable consideration..."*

When one considers the above observations in the light of the circumstances surrounding the various figures the Petitioner and his party put out at press conferences, etc. his story of his agents claiming that their signatures were forged clearly stands out as an afterthought. Quite obviously, the Petitioner kept making up his story as the trial went on without due recourse to the logic and consistency of his story.

On the assessment of the evidence led by the Petitioner regarding his claim that he garnered the highest number of valid votes cast in the election, I find that, it is not only scanty but also most unsatisfactory. In **Duagbor v. Akyea Djamson [1984/86] 1 GLR 697**, the principle is

stated that where the evidence is unsatisfactory, the judgment should be in the defendant's favour on the ground that it is the plaintiff who seeks the relief but has failed to prove what he claims. There is no gainsaying the fact that the Petitioner has failed to prove his claim of having garnered the highest number of valid votes cast in the election on the preponderance of probabilities.

From the foregoing I hold that the Petitioner has not discharged the burden of proof and this aspect of his claim also fails and is hereby dismissed.

3. **Whether or not 1st Respondent was properly declared by the Returning Officer for the Techiman South Constituency (Nana Dwamena Frempah) as the winner of the parliamentary elections conducted in that constituency on 7th December, 2020;**

4. **Whether or not the 1st Respondent has been validly elected as Member of Parliament for the Techiman South Constituency in respect of the parliamentary election conducted in that constituency on 7th December, 2020;**

On the third and fourth issues, I am on all fours with Counsel for the Petitioner that, as these issues are inextricably linked to the first and second issues, the determination of the former set naturally determines the latter set. The Court, has already determined that the presumption that the 2nd Respondent collated the results of the poll and that the 1st Respondent garnered the highest number of valid votes in the parliamentary election conducted in that constituency on 7th December, 2020, has not been rebutted. It therefore follows that and that the 1st Respondent was properly declared by the Returning Officer for the Techiman South Constituency as the winner of the parliamentary elections conducted in that constituency on 7th December, 2020, and that the election of the 1st Respondent as Member of Parliament for the Techiman South Constituency in respect of the parliamentary election conducted in that constituency on 7th December, 2020, is valid.

I therefore hold that the Petitioner has not discharged the burden of proof as regards these two issues and his claim as regards these categories also fails and is hereby dismissed accordingly.

In consequence, the orders granted by this Court as per section 19(c) of PNDCL 284, is that the Court dismisses the instant petition and declares the 1st Respondent as duly elected.

In compliance with section 22(1) of PNDCL 284, the court certifies its decision as declared above to the Electoral Commission of Ghana. The Registrar of this court is ordered forthwith to serve the Commission with the above certification and the Commission shall within 21 days on receipt of the certification, make the necessary arrangements and, publication.

Costs of fifty thousand Ghana Cedis (GH¢50,000) is awarded to the each of the Respondents against the Petitioner.

SGD.

H/L JUSTICE FREDERICK A.W.K. NAWURAH
JUSTICE OF THE HIGH COURT

COUNSEL

- JUSTIN PWAVRA TERIWAJAH ESQ. FOR PETITIONER/APPLICANT
- GARY NIMAKO ESQ. FOR FRANK DAVIS ESQ. FOR 1ST RESPONDENT
- EMMANUEL ADDAI ESQ FOR 2ND RESPONDENT