

IN THE SUPERIOR COURT OF JUDICATURE,
IN THE SUPREME COURT,
ACCRA – A.D. 2024.

Filed on... 28/10/2024
2:50 pm
Registrar
SUPREME COURT OF GHANA

WRIT No. J1/01/2025.

BETWEEN

ALEXANDOR AFENYO MARKIN ...PLAINTIFF/RESPONDENT.

AND

1. SPEAKER OF PARLIAMENT ...FIRST DEFENDANT/APPLICANT.

2. ATTORNEY-GENERAL. ... SECOND DEFENDANT.

NOTICE OF MOTION.

APPLICATION FOR AN ORDER SETTING ASIDE THE PROCESSES AND PROCEEDINGS IN THE SUIT AND FOR AN ORDER VACATING THE ORDER OF THE COURT DATED 18TH OCTOBER 2024.

PLEASE TAKE NOTICE that this Honourable Court shall be moved by THADDEUS SORY ESQ., of MESSRS SORY @ LAW Counsel for and on behalf of the First Defendant/Applicant herein [the first Defendant) praying the Court for an order:

- i. setting aside the processes and proceedings in the Supreme Court in this suit.
- ii. vacating the order of the Court dated 18th October 2024.

On the grounds deposed to in the accompanying affidavit.

AND TAKE FURTHER NOTICE that the grounds for the application are as follows:

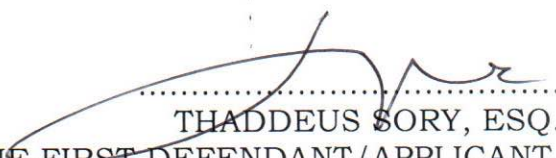
- i. the writ by which the Plaintiff has purportedly invoked the Court's original jurisdiction is incompetent.
- ii. the Court has no jurisdiction to entertain the suit before the Court.
- iii. the Court has no jurisdiction to stay execution of a ruling of the Speaker of the Parliament of the Republic of Ghana.
- iv. the processes and proceedings in the suit were filed and prosecuted in breach of the rules of natural justice.
- v. the orders of the Court dated 18th October 2024 were made in breach of the rules of natural justice.

- vi. the orders of the Court dated 18th October 2024 were made in breach of the rules of law and procedure, which regulate the Court's proceedings and orders.
- vii. the orders of the Court dated 18th October 2024 were made in breach of the rules which prescribe the manner for exercising every type of discretion as stated in the provisions of article 296(a) and (b) of the 1992 Constitution of the Republic of Ghana.
- viii. the orders of the Court dated 18th October 2024 were made on the basis of fraudulent misrepresentations by the Plaintiff/Applicant to the Court.

And for such further order(s) as this honourable court may deem fit.

COURT TO BE MOVED on the ... day of2024 at 9:00 O' clock in the forenoon or so soon thereafter as Counsel for the 1st Defendant may be heard.

DATED AT SORY @ LAW THIS 28TH DAY OF OCTOBER 2024.


 THADDEUS SORY, ESQ.
 SOLICITOR FOR THE FIRST DEFENDANT/APPLICANT.
 LICENCE No. eUWR00228/24.
 CHAMBERS LICENCE NO. ePP09232/24
 TIN OF CHAMBERS C0001356860.

THE REGISTRAR,
 SUPREME COURT,
 ACCRA.

SORY @ LAW
 H/No. 4, 2ND CLOSE
 BOUNDARY ROAD EXTENSION
 NEAR UBA BANK
 EAST LEGON, ACCRA
 TEL: 0303 - 941489

AND FOR SERVICE ON:

1. THE ABOVE NAME PLAINTIFF OR HIS SOLICITOR F. PAA KWESI ABAIDOO ESQ, WHOSE ADDRESS FOR SERVICE IS: DEHYENA CHAMBERS, DIGITAL ADDRESS NO. C25, 3RD AVENUE, 3RD DRIVE, RE-339-6534, ADJACENT BEULAH METHODIST CHURCH, ONYASIA CRESCENT, WEST LEGON ACCRA.
2. THE ATTORNEY-GENERAL, WHOSE ADDRESS FOR SERVICE IS: THE ATTORNEY-GENERAL'S DEPARTMENT, MINISTRIES, ACCRA.

**IN THE SUPERIOR COURT OF JUDICATURE,
IN THE SUPREME COURT,
ACCRA – A.D. 2024.**

28/10/2024
2:50 pm
Registrar
WRIT No. J1/01/2025.NA

BETWEEN

ALEXANDOR AFENYO MARKIN ... PLAINTIFF/RESPONDENT.

AND

- 1. SPEAKER OF PARLIAMENT ... FIRST DEFENDANT/APPLICANT.**
- 2. ATTORNEY-GENERAL ... SECOND DEFENDANT.**

**FIRST DEFENDANT/APPLICANT'S AFFIDAVIT IN SUPPORT OF
APPLICATION FOR AN ORDER SETTING ASIDE PROCESSES AND
PROCEEDINGS IN THE SUIT AND ALSO VACATING THE ORDER OF THE
COURT DATED 18/10/2024.**

I, NINA NWINURING BEL-NONO, of Unnumbered House, New Life Junction, Pokuase, in the Greater Accra Region of the Republic of Ghana, do hereby make oath and say that:

1. I am the deponent herein and a lawyer in the firm of solicitors known as Sory@Law whose Thaddeus Sory Esq., has been instructed by the first Defendant/Applicant (hereinafter simply referred to as "the first Defendant") to file this application for and on his behalf.
2. I have the first Defendant's instructions, authority, and consent to depose to this affidavit for and on his behalf in support of the instant application.
3. The facts I depose to in my present affidavit are within my personal knowledge, information and honest belief.
4. I acquired knowledge of the said information in the course of my duties as a lawyer working with Mr Thaddeus Sory Esq., on the instant application.
5. Statements of legal positions in this affidavit outline the understanding of both the first Defendant, himself a lawyer of long standing, as well as his Counsel who will elaborate on these matters of law in submissions to the Court for purposes of the instant application.
6. At the hearing of the application the first Defendant's counsel shall seek leave of the court to refer to all processes so far filed in this suit.
7. The first Defendant was served on Monday the 21st of October 2024 with an order of the Court dated the 18th of October 2024 CORAM: G.S. Torkornoo

(Mrs) CJ, Owusu, Asiedu, Gaewu and Darko Asare JJSC, a copy of which order is exhibited hereto and marked **A**.

8. The order of the court [exhibit **A**] was purportedly made, as stated in the proceedings of the day, following an ex parte application at the instance of the Plaintiff/Respondent [hereinafter simply called "the Plaintiff"] "**for Stay of Execution of the ruling of the Speaker of Parliament delivered on 17th October 2024 pending the determination of the suit**". A copy of the proceedings which was served together with the order of the Court is exhibited hereto and marked **B**.
9. A reading of the Plaintiff's writ, and accompanying processes a copy of which is exhibited hereto and marked **C** by which he purportedly invokes the jurisdiction of the Court will reveal that it was filed together with a statement of claim, which is not required by the rules of the Court to invoke the Court's original jurisdiction but also without an affidavit in verification of the facts relied on in the statement of case to prosecute the suit which is mandatorily required to properly invoke the Court's original jurisdiction.
10. Such non-compliance with the rules of practice and procedure for originating processes by which the Court's jurisdiction is to be invoked, renders the proceedings incurably null and void.
11. A reading of the purported originating processes by which the Court's jurisdiction is supposedly invoked [exhibit **C**] will reveal that the pith and substance of the Plaintiff's case simply requires a resolution of the question whether or not, on the **FACTS** of the case, the provisions of article 97(1)(g) and (h) apply to the Members of Parliament named in the purported processes.
12. The words used in article 97 (1) (g) and (h) of the Constitution are clear, unambiguous and have no disputed meaning and no basis exists in the processes filed for assuming that there is a dispute as to their meaning.
13. The words used in the provisions of article 97(1) (g) and (h) simply mean what they say, that is to say: where a Member of Parliament leaves the party on the ticket of which they are elected to Parliament to join another political party or to become an Independent Member of Parliament, or where a Member of Parliament elected as an Independent Member of Parliament joins a political party, they shall vacate their seats.
14. Under and by virtue of the provisions of article 99(1) of the 1992 Constitution, as interpreted in binding decisions of the Court, it is only the High Court that is clothed with jurisdiction to determine the issue of whether the seats of the four Members of Parliament shall be vacated, applying the constitutional provisions of article 97 (1) (g) and (h) to the facts.
15. There can be no doubt about the fact that to apply the provisions of article 97(1)(g) and (h) to any set of facts, the High Court to which jurisdiction is conferred by the Constitution, must express its understanding of the provisions of article 97 (1) (g) and (h) under consideration.

16. In expressing, its understanding of relevant constitutional provisions on whether the seat of a Member of Parliament is vacant in order to apply the constitutional provisions to any set of facts in the exercise of its jurisdiction under article 99 (1) of the Constitution, the High Court cannot be said to be exercising the Supreme Court's original jurisdiction to interpret the Constitution.
17. It is required under the said article 99 (1) that where the question whether a seat in Parliament is vacant arises, the suit is initiated in the High Court and if the High Court considers that a matter of interpretation arises, it is obliged to stay proceedings and refer the matter to the Supreme Court under article 130(2) of the Constitution.
18. Binding precedents of the Court have also firmed up the principle that where, as in this case, a matter is properly within the jurisdiction of another forum, the Court must not assume jurisdiction under the guise of constitutional interpretation to entertain the matter but must decline jurisdiction.
19. Before making the order exhibited hereto and marked **A**, the Court observed in exhibit **B** that the first Defendant had objected to the purported service on him of "the current action". 1st Defendant cannot find the basis on which the Court concluded that there was "proper service of process" on him.
20. The first Defendant takes issue with the Court's endorsement of the supposed service of the said processes on the first Defendant as "proper service of a process from the Supreme Court" on him because the said service was made in blatant breach of the statutorily and constitutionally prescribed and agreed [between Parliament and the Judicial Service] manner for serving processes emanating from the registry of the Court on Members and Officers including the first Defendant.
21. At all times material to the present application, Her Ladyship the Chief Justice of the Republic of Ghana, who presided over the Court, always knew that the supposed service on the first Defendant of the processes of the Court was made in breach of the provisions of articles 117 and 118 of the 1992 Constitution as well as the agreed protocols for serving the first Defendant with processes from the Supreme Court.
22. Exhibited hereto and marked exhibit **D** is a copy of a Judicial Circular dated 12th July 2024 in respect of service of processes on Members and officers of Parliament, including the first Defendant.
23. By virtue of exhibit **D**, Her Ladyship the Chief Justice confirmed to all registrars of the courts and **BAILIFFS**, the procedure agreed between Parliament and the Judicial Service for serving processes emanating from the courts, including the Supreme Court, on Members and other Officers of Parliament, as well as the first Defendant as constitutionally prescribed.
24. Exhibit **D**, as stated in it, was issued after the first Defendant drew the attention of Her Ladyship the Chief Justice "**to potential breaches**" of articles 117 and 118 of the Constitution "**by actions of some officers or**

some persons acting on behalf of the Judicial Service", which confirms that Her Ladyship the Chief Justice is fully conscious of the importance of collaboration between equal arms of Government to uphold the Constitution.

25. Apart from the first Defendant's objection to the service which the Court noted but disregarded, the evidence made available to the court by the Plaintiff showed that the supposed service of the processes in this suit on the first Defendant was made in clear contravention of the express directions contained in exhibit **D** and accordingly the provisions of articles 117 and 118 of the 1992 Constitution.
26. The reason for my deposition in paragraph 25 herein is that it is clearly stated in exhibit **D** that the first Defendant is only properly served with processes from the Court on Mondays, and the affidavit of service exhibited to the plaintiff's *ex parte* application before the Court, confirmed that the first Defendant was purportedly served on Wednesday.
27. In any event, based on the said *ex parte* application, the Court purported to make the following orders:

- "1. The **execution of the ruling of the Right Honourable Speaker of Parliament** Alban Sumana Kingsford Bagbin dated 17th October 2024 delivered on the floor of Parliament declaring vacant the seats of the following Members of Parliament
 - a. Honourable Peter Yaw Kwakye-Ackah, NDC MP for Amenfi Central.
 - b. Honourable Andrew Amoako Asiama, Independent Member of Parliament for Formena Constituency.
 - c. Honourable Kwadjo Asante, (NPP) MP for Suhum Constituency.
 - d. Honourable Cynthia Mamle Morrison, (NPP) MP for Agona West Constituency **is hereby stayed** (emphasis supplied) pending the final determination of this suit number **J1/1/2025** filed on 15th October 2024 titled **Alexander Afenyo Markin vrs Speaker of Parliament and Attorney-General**.
2. The **PARLIAMENT of Ghana is hereby directed** to recognise and allow the 4 affected Members of Parliament herein named to duly represent their constituents and conduct the full scope of duties of their offices as Members of Parliament pending the determination of this suit.
3. In view of the gravity of the issues raised in this instant suit and the urgency of this matter, this Court directed that,

pursuant to article 129(4) of the 1992 Constitution and Rule 5 of CI 16, the Defendants-Speaker of Parliament and the Attorney General are to file their statements of case within 7 days of service of this ruling.

4. The Parties are further ordered to file their joint Memorandum of Issues within seven days of filing their statement of case for the due hearing of this suit.”
28. In terms of orders staying of execution of rulings, the Supreme Court’s powers, under the 1992 Constitution of the Republic of Ghana and statute, to stay execution of rulings are limited to rulings of itself and of courts lower in the judicial hierarchy but do not extend to a ruling of the Speaker of Parliament who is not part of the judicial hierarchy.
29. With regard to the first Defendant’s **rulings in Parliament, a separate arm of Government**, therefore, such rulings **ARE NOT** rulings within the judicial hierarchy so as to be the subject matter of “an application for stay of execution” and a judicial order staying their execution.
30. Also, and specifically in relation to the Court’s jurisdiction to make orders in relation to matters before it, the Court’s orders are only properly made and within the Court’s jurisdiction where the matter before the Court can properly be entertained, not merely by a claim that there is a matter of constitutional interpretation.
31. Further, the 1992 Constitution of the Republic of Ghana provides for the well-known separation of powers doctrine whereby the scope of the powers of each arm of Government is set out and no arm of Government is expected to overstep its bounds.
32. With regard to the breach of the rule of natural justice, when proceedings are instituted against the Speaker of Parliament, notice of the said proceedings ought to be served on the Speaker to enable the Speaker to have the opportunity to be heard.
33. While, in regard to applications to stay execution of decisions of courts within the judicial hierarchy pending appeal, the courts may entertain and grant *ex parte* applications, there is a presumption that a decision of a lower court in the hierarchy sought to be stayed is valid until set aside and grant of a stay requires proof of exceptional circumstances.
34. In the circumstances under which the Court made the order, there was no reason to deny the first Defendant a hearing, especially as, to the knowledge of the Plaintiff, the next sitting of Parliament, at the time of the *ex parte* proceedings, which the court also had judicial notice of, was on Tuesday, 22nd October 2024 and the Court could have given the first Defendant a hearing, at the very least on Monday the 21st of October 2024.
35. Significantly, the Plaintiff had filed a motion on notice for an interlocutory injunction along with the writ in this case but abandoned this process in favour of the flawed application *ex parte* for a stay of execution. Exhibited

herewith marked **E** is the said motion paper filed by the Plaintiff. The unexplained shift from a motion on notice to a motion *ex parte* is what the Plaintiff used to prevent the court from hearing both sides.


36. I repeat paragraph 35 of my affidavit and depose further that, in not drawing the Court's attention to the pending application for injunction at the time of the hearing of the *ex parte* application, the Plaintiff offended a cardinal rule in *ex parte* applications, which is that the applicant must act in good faith and must draw the Court's attention to every relevant fact.
37. In terms of the Court's power on *ex parte* application for interlocutory injunction for instance, it is only permissible to grant such an application for up to ten days but not **pending the determination of the suit**. The court's order is unwarranted by any rule of law or procedure or practice.
38. Further, although the Court may make consequential orders after hearing an application, such consequential orders must flow from the application but not be distinct additional orders not covered by the scope of the application.
39. The application before the court contained a straightforward prayer for an order "staying execution of the ruling of the Right Honourable Speaker..." which the Court granted in terms of the motion paper but then, went on to grant additional and unsolicited orders.
40. The Court granting the *ex parte* application [exhibit **A**] on the ground that the first Defendant breached the right to hearing of the affected Members of Parliament involved a gross failure to appreciate that:
 - i. the right to a fair hearing is only properly asserted by the person whose rights have been so breached but not a third party like the Plaintiff who, in the case, is clearly a meddlesome interloper.
 - ii. in any event, as the affected Members of Parliament were in Parliament during the proceedings leading to the first Defendant's ruling but chose not to be heard such rights are deemed waived and the law recognises a person's right to waive such a right.
 - iii. the Court's consideration of the right to a hearing as fundamental is precisely why the Court should have given the first Defendant a hearing before making the orders that it made against him.
 - iv. the void nature of the order is evident from the fact that the order is also directed at Parliament which is not a party to the suit and was also not given a hearing, the Speaker being sued not as a representative of Parliament but on account only of his specific ruling.

41. The effect of the Court's ruling is to interfere with matters before the Parliament of the Republic of Ghana by seeking to regulate how Parliament must conduct its business.
42. There is the urgent need to ensure that the Court is not seen as interfering with Parliament's internal business, especially as Parliament has constitutional power to commit for contempt of Parliament which it may exercise in circumstances such as this.
43. It is important to add that some of what is in the ruling of the Court as the basis of its orders could only have resulted from either fraudulent representations by the Plaintiff or been purely speculative findings and not based on any evidence placed before the Court; for instance:
 - i. the Court's finding that the first Defendant's "ruling will also likely lead to the alleged thwarting of Government business in Parliament and plunge the due management of the affairs of the country into possession disruptions".
 - ii. the claim that "the Speaker of Parliament was aware that bailiffs of the Supreme Court had served the current action on him through the Legal Office of Parliament".
44. The Court's order that "Parliament [**which is not a party to the suit**] ... recognise and allow the 4 affected Members of Parliament [**who are also not parties to the suit and who are not shown to have authorised the Plaintiff/Applicant to act on their behalf in bringing the suit**]... to duly represent their constituents and conduct the full scope of duties of their offices..." also assumed facts which were not laid before the court and had not been determined to exist; the order, therefore, obviously lacked a basis in law.
45. It is impossible to understand how the Court could say "[o]n balance" when they were making orders *ex parte* without hearing the other side; no "**balance**" was possible in the situation where the court did not give itself the opportunity to hear from the Speaker before making such far-reaching orders.
46. The Court cannot also be said to have properly exercised its discretion within the meaning of the provisions of article 296 (a) and (b) when the Court failed to consider and respect the first Defendant's rights to due process as well as a fair hearing as also required by article 19(13) of the Constitution.
47. The conclusion that government business will be adversely affected if the application before the Court was not granted loses sight of the fact that our constitutional dispensation allows for a situation where the Executive may not have the majority in Parliament.

- 48. I am instructed by the first Defendant to express his expectation that, upon the attention of the Court being drawn to the obvious judicial overreach, including the various breaches of constitutional and statutory provisions as well as disregard of binding precedents, outlined above, involved in the orders to “**stay execution of the ruling of the Right Honourable Speaker of Parliament**”, the Court itself will readily set aside the orders it made on 18th October 2024.
- 49. Additionally, the first Defendant also expects the Court to set aside the processes and proceedings which led to the said orders so as to avoid being seen as seeking to overthrow the 1992 Constitution and/or as merely subjecting itself to the advancement of a partisan political agenda on the behalf of the representative of a political party; more so when the writ and processes before the Court had not properly invoked the jurisdiction of the Supreme Court.
- 50. Though a void order obtained may be vacated *ex parte* and even by the Court itself *ex debito justitiae*, I pray that the application be heard on notice to the Plaintiff by the Court ordering that the Plaintiff is immediately served notice of the application and ordered to appear for both parties to be heard.
- 51. WHEREFORE I depose to this affidavit as instructed by the First Defendant.


.....

DEPONENT.

SWORN AT ACCRA
THIS  DAY OF
OCTOBER 2024.

BEFORE ME


COMMISSIONER OF OATHS

In case of reply the number and date of this letter should be quoted.



REPUBLIC OF GHANA

**SUPREME COURT
P. O. BOX 119
ACCRA, GHANA**

My Ref. No. SCC(J) 01/2025/3
Your Ref. No.

21ST OCTOBER, 2024.....

**THE SPEAKER OF PARLIAMENT
PARLIAMENT HOUSE
ACCRA**

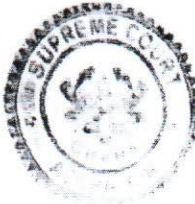
**ALEXANDER AFENYO MARKIN
VRS
1. THE SPEAKER OF PARLIAMENT
2. ATTORNEY – GENERAL**

I forward, herewith, a certified true copy of the **Order and proceedings** of the Court dated 18th October, 2024 in respect of the above mentioned case for your information and necessary action.

Accept my warm compliments.


FOR: REGISTRAR, SUPREME COURT

**REGISTRAR
SUPREME COURT
ACCRA, GHANA**
[Handwritten signature in red ink]
The instrument mentioned in the exhibit...
the affidavit...
sworn before me this...
day of...
COMMISSIONER FOR OATHS



IN THE SUPREME COURT OF GHANA
CERTIFICATE OF THE ORDER OF THE SUPREME COURT

CERTIFIED TRUE COPY

WRIT NO.
11/01/2025

BETWEEN

[Signature]
REGISTRAR
SUPREME COURT ACCRA C.R

ALEXANDER AFENYO MARKIN

PLAINTIFF/APPLICANT

AND

- 1. THE SPEAKER OF PARLIAMENT
 - 2. THE ATTORNEY - GENERAL
- DEFENDANTS.

AND IN THE MATTER OF

**MOTION EX-PARTE FOR STAY OF EXECUTION OF THE RULING OF THE
SPEAKER OF PARLIAMENT DELIVERED ON 17TH OF OCTOBER, 2024
PENDING DETERMINATION OF SUIT.**

This motion ex parte came on for hearing on 18th October, 2024 before **THEIR LORDSHIPS: G. S. TORKORNOO (MRS) C.J (PRESIDING), OWUSU (MS), ASIEDU, GAEWU & DARKO ASARE JJSC** in the presence of Paa Kwesi Abaidoo led by Joe Ghartey for the Plaintiff with John Bossman and Sandra Osei.

I HEREBY CERTIFY that an order was made as follows:

The Plaintiff/Applicant has presented this present ex parte application for stay of execution of a ruling of the Speaker of Parliament declaring vacant the seats of 4 MPs and ordering the current Members of Parliament to vacate their seats in Parliament on account of his declarations.

We have read the supporting affidavits and attached exhibits as well as the reliefs endorsed on the writ of summons filed on 15th October 2024 which provide the basis of the current application.

We note from Exhibit B, the Official Report on the Parliamentary Debates on Thursday 17th October 2024 pages 15, 16 and 17 that the Speaker of Parliament was aware that Bailiffs of the Supreme Court had served the current action on him through the Legal Office of Parliament. His objection to this proper service of a process from the Supreme Court was that it had not been done on a Monday.

CERTIFIED TRUE COPY

[Signature]
REGISTRAR
OF THE SUPREME COURT ACCRA G.H.

We appreciate the urgency and special circumstances presented to support the filing of this application.

The urgency and special circumstances lie in the effect of the impugned ruling which include:

- I. Depriving the four constituencies that said MPs represent namely
 - i. Honourable Andrew Asiama, MP for Fomena Constituency in the Ashanti Region and Current 2nd Deputy Speaker.
 - ii. Honourable Cynthia Morrison, current MP for Agona in the Central Region
 - iii. Honourable Kwadwo Asante, MP for Suhum in the Eastern Region
 - iv. Peter Yaw Kwakye-Ackah, MP for Amenfi Central, in the Western Region of representation.

The said four constituencies in Ashanti, Eastern, Western and Central Regions have been deprived of their basic democratic and constitutional right of representation in Parliament until the next Parliament by the said ruling.

Applicant urges and we appreciate that the said ruling will also likely lead to alleged thwarting of Government business in Parliament and plunge the due management of the affairs of the country into possible disruptions.

Further, the subject matter of this suit raises real questions of Constitutional interpretation and application of the most fundamental and democratic rights of Ghanaians being the right to be represented and heard in Parliament through their elected representatives.

If this impugned order and ruling is allowed to stand, it will render the grave issues raised in the substantive action nugatory.

On the balance of the law, exhibits and facts placed before us, we are satisfied that the duly elected representatives in question were not heard on the extremely critical issue raised and therefore we make the following orders;

1. The execution of the ruling of the Right Honourable Speaker of Parliament Alban Sumana Kingsford Bagbin dated 17th October 2024 delivered on the floor of Parliament declaring vacant the seats of the following Members of Parliament

CERTIFIED TRUE COPY

[Signature]
REGISTRAR
SUPREME COURT ACCRA G/R

- a. Honourable Peter Yaw Kwakye-Ackah, NDC MP for Amenfi Central
 - b. Honourable Andrew Amoako Asiama, Independent Member of Parliament for Fomena Constituency
 - c. Honourable Kwadwo Asante, NPP (MP) for Suhum Constituency
 - d. Honourable Cynthia Mamle Morrison, (NPP) MP for Agona West Constituency is hereby stayed pending the final determination of this suit numbered J1/1/2025 filed on 15th October 2024 titled Alexander Afenyo Markin vrs Speaker of Parliament and Attorney General.
2. The Parliament of Ghana is hereby directed to recognise and allow the 4 affected Members of Parliament herein named to duly represent their constituents and conduct the full scope of the duties of their offices as Members of Parliament pending the determination of this suit.
 3. In view of the gravity of the issues raised in this instant suit and the urgency of this matter, this Court hereby directs that, pursuant to article 129(4) of the 1992 Constitution and Rule 5 of CI 16, the Defendants – Speaker of Parliament and the Attorney General are to file their statements of case within 7 days of service of this ruling.
 4. The parties are further ordered to file their joint Memorandum of Issues within seven days of filing of their statement of case for the due hearing of this suit.

GIVEN UNDER MY HAND AND THE SEAL
OF THE SUPREME COURT
DATED THIS 21ST DAY OF OCTOBER, 2024.



(SGD.)

G. S. TORKORNOO (MRS)
CHIEF JUSTICE
(PRESIDING)

[Signature]
FOR: REGISTRAR, SUPREME COURT.
REGISTRAR
SUPREME COURT
ACCRA, G/R

This instrument marked
 exhibit of the affidavit
 sworn before me this
 day of
 COMMISSIONER FOR DEUTY

[Handwritten signature and scribbles in red ink over the stamp]

18-10-2024

IN THE SUPERIOR COURT OF JUDICATURE, THE SUPREME COURT (CIVIL DIVISION) SITTING IN ACCRA ON FRIDAY THE 18TH DAY OF OCTOBER, 2024.

CORAM: G. S. TORKORNOO (MRS) C. J (PRESIDING), OWUSU, ASIEDU, GAEWU AND DARKO ASARE JJSC.

WRIT
NO. J1/01/2025

ALEXANDER AFENYO MARKIN

VRS

1. SPEAKER OF PARLIAMENT
2. ATTORNEY - GENERAL

PARTIES

Plaintiff is present
Defendant absent

LEGAL REPRESENTATION

Paa Kwasi Abaidoo led by Joe Ghartey for the Applicant with John Bossman and Sandra Osei.


Mr. Abaidoo

We have an application Ex-Parte for Stay of Execution of the ruling of the Speaker of Parliament delivered on 17th October, 2024 pending the determination of this suit. We seek an order from this Court staying the ruling of the Rt. Honourable Speaker for ordering 4 members of Parliament namely:

1. Hon. Andrew Asiamah Amoako. Fomena Constituency , current 2nd Deputy Speaker of Parliament
2. Cynthia Morrison – Current Member of Parliament for Agona West
3. Hon. Kwadwo Asante, Member of Parliament for Suhum in Eastern Region
4. Peter Yaw Kwakye Ackah, Member of Parliament for Amanfi Central.

I move in terms of motion paper and supporting affidavit and exhibits.

CERTIFIED TRUE COPY


REGISTRAR
 SUPREME COURT, ACCRA C.E

We refer to paragraphs 4, 5, 6, 8 and 9 of our affidavit in support.

In paragraph 4 – Speaker of Parliament was served through legal Department with the Writ and Application for Injunction.

By presumption of law, he knew of the pendency of this action.

In paragraph 5, - Speaker at sitting on 17th October, 2024 disclosed that he had been informed by the Plaintiff/ Applicant herein that he had been sued by the virtue of his office.

He was very much aware that the question of Interpretation of Article 97(1)(g) and (h) were the subject of a suit for interpretation before this Court.

By this acknowledgement, he was required by law to restrain himself from pronouncements made.

We've come ex-parte because of the urgency of this matter and upon the conjoint reading of Article 29(5), and Order 19 (3) (3) of C.I 47 of High Court (Civil Procedure) Rules and where the subject of the application is likely to cause irreparable damage, a stay of execution must be granted.

We refer to paragraph 8 and the enumeration of 6 grounds.

- a. Ex-parte because of the likely mischief being a halt to the business of Parliament especially committees chaired by the current majority members.
- b) Likelihood of the current minority members doing everything in their power to halt business of government in these dying minutes of the period to 2024 elections.
- c) A delay of Government appropriation which could require the approval of Parliament.
- d) The ruling amounts to a denial of the Constitutional rights of these four constituencies to be lawfully represented in Parliament.
- e) Exhibit B – the ruling on page 3 - “In doing so...”

Clearly, the Speaker of Parliament was usurping the Original and Exclusive Jurisdiction of this Honourable Court and he himself recognized it. By over understanding of Article 97 (1) (h), (g) the step taken by these four

CERTIFIED TRUE COPY

[Signature]
REGISTRAR
SUPREME COURT

Parliamentarians were meant for the 9th Parliament of Ghana coming in a different identity.

It does not amount to crossing carpet in the current Parliament. The Speaker did not point to any communication from the MPs, they were not heard at all and so their right under rules of natural justice, the audi alteram partem rule and that of their constituents has been breached.

We can face mayhem if the pre ruling status quo is not maintained.

Granted a maximum of ten days, we shall repeat this application for the defendants to provide justification.

We pray accordingly.

Case stood down

BY COURT:

The Plaintiff/Applicant has presented this present ex parte application for stay of execution of a ruling of the Speaker of Parliament declaring vacant the seats of 4 MPs and ordering the current Members of Parliament to vacate their seats in Parliament on account of his declarations.

We have read the supporting affidavits and attached exhibits as well as the reliefs endorsed on the writ of summons filed on 15th October 2024 which provide the basis of the current application.

We note from Exhibit B, the Official Report on the Parliamentary Debates on Thursday 17th October 2024 pages 15, 16 and 17 that the Speaker of Parliament was aware that Bailiffs of the Supreme Court had served the current action on him through the Legal Office of Parliament. His objection to this proper service of a process from the Supreme Court was that it had not been done on a Monday.

We appreciate the urgency and special circumstances presented to support the filing of this application.

The urgency and special circumstances lie in the effect of the impugned ruling which include:

1. Depriving the four constituencies that said MPs represent namely:

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SUPREME COURT ACCRA

- i. Honourable Andrew Asiama, MP for Fomena Constituency in the Ashanti Region and Current 2nd Deputy Speaker.
- ii. Honourable Cynthia Morrison, current MP for Agona in the Central Region
- iii. Honourable Kwadwo Asante, MP for Suhum in the Eastern Region
- iv. Peter Yaw Kwakye-Ackah, MP for Amenfi Central, in the Western Region of representation.

The said four constituencies in Ashanti, Eastern, Western and Central Regions have been deprived of their basic democratic and constitutional right of representation in Parliament until the next Parliament by the said ruling.

Applicant urges and we appreciate that the said ruling will also likely lead to alleged thwarting of Government business in Parliament and plunge the due management of the affairs of the country into possible disruptions.

Further, the subject matter of this suit raises real questions of Constitutional interpretation and application of the most fundamental and democratic rights of Ghanaians being the right to be represented and heard in Parliament through their elected representatives.

If this impugned order and ruling is allowed to stand, it will render the grave issues raised in the substantive action nugatory.

On the balance of the law, exhibits and facts placed before us, we are satisfied that the duly elected representatives in question were not heard on the extremely critical issue raised and therefore we make the following orders.

1. The execution of the ruling of the Right Honourable Speaker of Parliament Alban Sumana Kingsford Bagbin dated 17th October 2024 delivered on the floor of Parliament declaring vacant the seats of the following Members of Parliament
 - a. Honourable Peter Yaw Kwakye-Ackah, NDC MP for Amenfi Central.
 - b. Honourable Andrew Amoako Asiama, Independent Member of Parliament for Fomena Constituency
 - c. Honourable Kwadwo Asante, NPP (MP) for Suhum Constituency
 - d. Honourable Cynthia Mamle Morrison, (NPP) MP for Agona West Constituency is hereby stayed pending the final determination of this suit

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numbered **J1/1/2025** filed on 15th October 2024 titled **Alexander Afenyo Markin vrs Speaker of Parliament and Attorney General.**

2. The Parliament of Ghana is hereby directed to recognise and allow the affected Members of Parliament herein named to duly represent their constituents and conduct the full scope of the duties of their offices as Members of Parliament pending the determination of this suit.

3. In view of the gravity of the issues raised in this instant suit and the urgency of this matter, this Court hereby directs that, pursuant to article 129(4) of the 1992 Constitution and Rule 5 of CI 16, the Defendants – Speaker of Parliament and the Attorney General are to file their statements of case within 7 days of service of this ruling.

4. The parties are further ordered to file their joint Memorandum of Issues within seven days of filing of their statement of case for the due hearing of this suit.

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

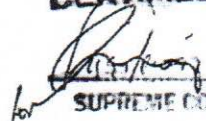
(SGD) **M. OWUSU (MS)**
JUSTICE OF THE SUPREME COURT

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

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

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

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SUPREME COURT ACCRA, G.H.

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SUPREME COURT, ACCRA C/P

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**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – AD 2024**

**WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPERME
COURT PURSUANT TO ARTICLES 2(1), 12(1) and (2), 17(1), 21(1)(b)(e),
35(1) and (5), 55,97(1)(g), 130(a), 296(a) and (b) OF THE 1992 CONSTITUTION
CONSTITUTION & RULE 45 OF THE SUPREME COURT RULES,
1996(C.I.16)**

SUIT No. 11/1/2024

BETWEEN

**ALEXANDER AFENYO MARKIN
THE MAJORITY LEADER
PARLIAMENT OF GHANA
OSU – ACCRA**

PLAINTIFF

AND

**1. THE SPEAKER OF PARLIAMENT
OFFICE OF PARLIAMENT
ACCRA**

1ST DEFENDANT

**2. THE ATTORNEY – GENERAL
ATTORNEY – GENERAL’S DEPARTMENT
MINISTRY OF JUSTICE
ACCRA**

2ND DEFENDANT

Notarized signature stamp: I, the instrument maker... sworn before me this... day of... COMMISSIONER FOR...

**IN THE NAME OF THE REPUBLIC, you are hereby commanded within
fourteen days after service on you of the statement of the Plaintiff’s case inclusive
of the day of service, that you are to file or cause to be filed for you a statement of
the Defendants’ case in an action of
ALEXANDER AFENYO MARKIN
THE MAJORITY LEADER
PARLIAMENT OF GHANA
OSU – ACCRA**

1936672
17-10-2024

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SUPREME COURT, ACCPA G.P

The nature of the reliefs sought are as follows:-

1. A declaration that upon the true and proper interpretation of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 55,97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996(C.I.16) :-
 - a) the filing of nomination of Hon Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an independent Member to join another party;
 - b) the filing of nomination of Hon. Cynthia Mamle Morrison the current New Patriotic Party's Member of Parliament for Agona West constituency in the Central Region with the Electoral Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of her seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member ;
 - c) the filing of Hon. Kwadjo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member.
2. An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating

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their seats on grounds of leaving his political status as an independent candidate at the time of his election to Parliament to another party and leaving the party of which they were members at the time of their election to Parliament to become independent members of Parliament respectively.

3. An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.
4. Such further orders or direction(s) as this Honourable Court may seem meet.

The capacity in which the Plaintiff is bringing this action is as follows:-

The Plaintiff, a citizen of Ghana, brings this action pursuant to Article 2 of the 1992 Constitution of the Republic of Ghana asserting his right to challenge acts deemed unconstitutional and in his capacity as the Member of Parliament for Efutu Constituency and the Majority Leader by virtue of which the above-mentioned Members of Parliament are members of his caucus and currently not ceased to be Party members of the New Patriotic Party.

The address for service of the Plaintiff is as follows:-

**OFFICE OF THE MAJORITY LEADER OF PARLIAMENT
PARLIAMENT HOUSE
OSU- ACCRA**

The address for service of counsel for the Plaintiff is as follows:

**DEHYENA CHAMBERS
DIGITAL ADDRESS NO. C25 3RD AVE, 3RD DRIVE
GE - 339- 6534
ADJACENT BEULAH METHODIST CHURCH
ONYASIA STREET, WEST LEGON
ACCRA**

The names and addresses of persons affected by this writ are as follows:-

1. **THE PARLIAMENT OF GHANA
OFFICE OF PARLIAMENT
OSU- ACCRA**

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[Signature]
REGISTRAR
SUPREME COURT, ACCRA, GHANA

2. THE ATTORNEY – GENERAL
MINISTRY OF JUSTICE
MINISTRIES, ACCRA

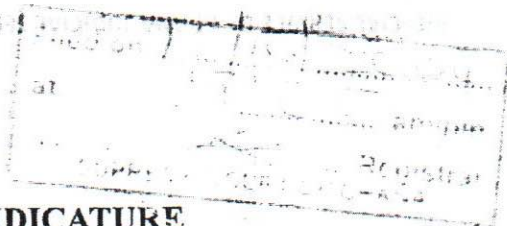
DATED THIS 14TH DAY OF OCTOBER, 2024 .

[Signature]

F. PAA KWESI ABAIDOO, ESQUIRE
SOLICITOR FOR PLAINTIFF
LICENCE NO. : e GAR 06319/24
CHAMBERS REG. NO. e PP09034/24

THE REGISTRAR
SUPREME COURT
ACCRA

AND TO THE ABOVE -NAMED DEFENDANTS



**IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA - AD 2024**

WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT ARTICLES 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 55, 97(1)(g), 130(a), 296(a) and (b) OF THE 1992 CONSTITUTION: RULE 45 OF THE SUPREME COURT RULES, 1996(C.I.16)

SUIT No. _____

BETWEEN

**ALEXANDER AFENYO - MARKIN
THE MAJORITY LEADER
PARLIAMENT OF GHANA
OSU - ACCRA**

PLAINTIFF

AND

- 1. THE SPEAKER OF PARLIAMENT
OFFICE OF PARLIAMENT
ACCRA**
- 2. THE ATTORNEY -GENERAL
ATTORNEY GENERAL'S DEPT
MINISTRIES, ACCRA**

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[Signature]
REGISTRAR
SUPREME COURT, ACCRA, G/F

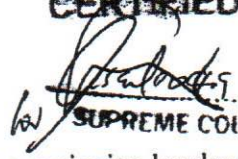
1ST DEFENDANT

2ND DEFENDANT

STATEMENT OF CLAIM

1. The Plaintiff is the current Member of Parliament on the ticket of the New Patriotic Party for the Efutu constituency in the Central Region of the Republic of Ghana.

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SUPREME COURT ACCRA C.D

2. The Plaintiff is at the same time, the majority leader of Parliament and has in his caucus all the current New Patriotic Party Members of Parliament and the Independent Member of Parliament for Fomena Constituency in the Ashanti Region
3. The 1st Defendant is by the 1992 Constitution, the leader of Parliament and the administrative head of Parliament of Ghana and presides over all sessional deliberations of Parliament save in instances when he delegates any of his two deputies to stand in his stead.
4. The 2nd Defendant is the chief legal advisor of the Government of Ghana and represent the Government of Ghana in all legal matters.
5. That some simmering legal contentions evolving from preparations towards the general elections in December 2024 for membership of the 9th Parliament of the Republic of Ghana whose tenure of office will start from January 2025 is likely to create chaos and disturb the peace and stability of the nation.
6. The first of such development is that with the opening of nominations for qualified Ghanaians who are prepared to be elected as Members of Parliament for the said 9th Parliament of Ghana starting from Monday the 9th of September, 2024 to Friday the 13th of September 2024, the filing of nomination of the 3 current Members of Parliament is likely to arouse disturbance over the last 3 months of the four (4) year span of the 8th Parliament when it re-convenes in October 2024.
7. The first of such reason is that the current independent Member of Parliament for Fomena in the Ashanti Region Hon. Andrew Asiamah Amoako has filed to contest the Fomena Parliamentary seat on the ticket of the N.P.P for the 9th Parliament commencing in January 2025.
8. The second being that Hon. Cynthia Mamle Morrison, the current Member of Parliament for the Agona West constituency in the Central Region has filed her nomination to contest the Agona West Parliamentary seat as an independent candidate for the 9th Parliament commencing from January ,2025.
9. Lastly the current Member of Parliament for Suhum in the Eastern Region, Hon. Kwadjo Asante has also filed nomination to contest the Suhum Parliamentary seat in December 2024 as independent Parliamentary candidate

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SUPREME COURT, ACCRA

for the 9th Parliament commencing in January, 2025.

10. The controversy surrounding the nominations of these three existing Members of Parliament's filing of nomination with the Electoral Commission to contest the December 2024 Parliamentary elections centers around Article 97 clause (1) (g) and (h) of the 1992 Constitution which provides that any existing member of Parliament who leaves the political ticket of the party on whose ticket he/she entered Parliament must vacate his seat.
11. Likewise, this same clause provides that a Member of Parliament who entered Parliament as an independent Member must vacate his seat when he joins a political party.
12. The Plaintiff as the current majority leader of Parliament holds the view that by true and proper interpretation of Article 97 clause 1 (g) and (h) is centered on a Member of Parliament leaving his political party or changing his political party or changing his political status as an independent member of parliament in the course of his tenure as Member of Parliament for the 4 years (ie the existing term of office of a Parliament) and does NOT extend to expression of interest to contest the next Parliamentary elections for the 9th Parliament in Ghana with different political identity and status.
13. That should the minority in Parliament invoke **Article 97 (1) (g) and (h)** to call for the vacation of these 3 Members of Parliament from their seats, it will mean the current Majority Caucus in Parliament having their seats reduced by 3, thus getting reduced from 138 to 135 members.
14. In such circumstance, the opposition NDC with 137 members intact would become the Majority Party in Parliament, a situation likely to lead to political chaos and mayhem for no clear understanding of these constitutional provision in controversy.
15. Meanwhile the literal interpretation of Article 97 (1) frowns on **Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1), and (5), 55, 97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution**. It will also amount to discrimination against these 3 Members of Parliament who have decided to change their political colours or identity in the next election.
16. The Plaintiff avers that the affected Members of Parliament who intend

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SUPREME COURT, ACCPA C/P


changing their political identity for the 9th Parliament of the Republic of Ghana commencing in January 2025 had no choice than to file their nomination during the last 9th month of the existing 4 years tenure of office of Parliament because the Electoral Commission opened nominations for filing of Parliamentary candidates on Monday the 9th of September 2024 and ended on the Friday the 13th of September 2024, without any reservation for existing members of parliament to file their nomination after their present term of office. Thus, failing to file by the given dates of the Electoral Commission would have meant self -denial, disqualification and extinguishment of their rights to contest the 2025 Parliament elections.

17. That the Plaintiff asserts that the Speaker of Parliament having in the past given a ruling on a Member of Parliament vacating his seat when he chose to go independent for the 2020 Parliamentary elections, the Plaintiff humbly prays this Honourable Court to restrain the 1st Defendant by this pending application from pronouncing on any such application which may come before him until the final determination of this matter by this Honourable Court.

WHEREFORE, the Plaintiff claims as per the underneath reliefs indorsed on his writ of summons-

1. A declaration that upon the true and proper interpretation of the 1992 Constitution in the light of Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and I, 35(1) and (5), 55, 97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution and Rule 45 of the Supreme Court Rules, 1996(C.I.16)
 - a) the filing of nomination of Hon. Andrew Asiamah Amoako, the current Independent Member of Parliament for Fomena constituency in the Ashanti Region with the Electoral Commission to contest the Fomena Parliamentary seat on the ticket of the New Patriotic Party in the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as an independent Member to join another party;
 - b) the filing of nomination of Hon. Mamle Morrison the current New Patriotic Party's Member of Parliament for Agona West constituency in the Central Region with the Electoral Commission to contest the Agona West Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to

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SUPREME COURT

vacation of her seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member ;

- c) the filing of Hon. Kwadjo Asante the current New Patriotic Party's Member of Parliament for Suhum constituency in the Eastern Region with the Electoral Commission to contest the Suhum Parliamentary seat as an Independent candidate for the next or 9th Parliament of the Republic of Ghana does not amount to vacation of his seat as a Member of Parliament in the current 8th Parliament of the Republic of Ghana as a New Patriotic Party Member to an Independent Member ;
2. An order restraining the Speaker of Parliament from pronouncing on any Motion in Parliament directed at Rt. Hon. Andrew Asiamah Amoako, the current Member of Parliament for Fomena in the Ashanti Region and 2nd Deputy Speaker of Parliament, Hon. Cynthia Morrison, the current Member of Parliament for Agona West in the Central Region and Hon. Kwadjo Asante the current Member of Parliament for Suhum in the Eastern Region in the current 8th Parliament of the Republic of Ghana from vacating their seats on grounds of leaving his political status as an independent candidate at the time of his election to Parliament to another party and leaving the party of which they were members at the time of their election to Parliament to become independent members of Parliament respectively.
3. An order of injunction barring any attempt by the Speaker of Parliament from enforcing the provisions of Article 97(1)(g) and (h) of the 1992 Constitution during the pendency of this action.
4. Such further orders or direction(s) as this Honourable Court may seem meet.

Dated at Dehyena Chambers, No. c25 Onyasia Street, Adjacent
Beulah Methodist Church, West Legon, Accra
this 14th day of October, 2024

F. P. A. Kwesi Abaidoo

F. PAA KWESI ABAIDOO, ESQUIRE
SOLICITOR FOR PLAINTIFF
LICENCE NO. : e GAR 06319/24
CHAMBERS REG. NO: e PP09034/24

THE REGISTRAR
THE SUPREME COURT OF GHANA
ACCRA

AND FOR SERVICE ON:-

- 1. THE SPEAKER OF PARLIAMENT OR ITS SOLICITOR, OFFICE OF PARLIAMENT, OSU, ACCRA.**
- 2. THE ATTORNEY-GENERAL & MIN. FOR JUSTICE, ATTORNEY GENERALS DEPT., MINISTRIES, ACCRA**

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[Signature]
REGISTRAR
SUPREME COURT, ACCRA, G/R

IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT OF GHANA
ACCRA – AD 2024

WRIT TO INVOKE THE ORIGINAL JURISDICTION OF THE SUPREME COURT ARTICLES 2(1), 12(1) and (2), 17(1), 21(1)(b) and (c), 35(1) and (5), 97(1)(g), 130(a), 296(a) and (b) OF THE 1992 CONSTITUTION: RULE 45 OF THE SUPREME COURT RULES, 1996(C.I.16)

BETWEEN

ALEXANDER AFENYO MARKIN
THE MAJORITY LEADER
PARLIAMENT OF GHANA
OSU – ACCRA

AND

1. THE SPEAKER OF PARLIAMENT
OFFICE OF PARLIAMENT
ACCRA
2. THE ATTORNEY -GENERAL
ATTORNEY GENERAL'S DEPT
MINISTRIES, ACCRA

SUIT No. _____

PLAINTIFF

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[Signature]
REGISTRAR
SUPREME COURT, ACCRA, GHANA

1ST DEFENDANT

2ND DEFENDANT

STATEMENT OF THE PLAINTIFF'S CASE PURSUANT TO RULE 46 OF
THE SUPREME COURT RULES 1996 (C.I. 16)

1.0 INTRODUCTION

1.1 **RESPECTFULLY MY LORDS.** the Plaintiff is a citizen of the Republic of Ghana and maintains his permanent residence in Ghana. He is the current

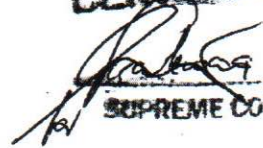
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SUPREME COURT, ACCRA

Member of Parliament for the Efutu Constituency in the Central Region and the current Majority leader of Parliament for which reason he presides over the Majority caucus in Parliament.

- 1.2 The 1st Defendant is by the 1992 Constitution, the leader of Parliament and the administrative head of Parliament of Ghana and presides over all sessional deliberations of Parliament save in instances when he delegates any of his two deputies to stand in his stead.
- 1.3 The 2nd Defendant is the chief legal advisor of the Government of Ghana and represent the Government of Ghana in all legal matters.
- 1.4 That some simmering legal contentions evolving from preparations towards the general elections in December 2024 for membership of the 9th Parliament of the Republic of Ghana whose tenure of office will start from January 2025 is likely to create chaos and disturb the peace and stability of the nation.
- 1.5 The first of such development is that with the opening of nominations for qualified Ghanaians who are prepared to be elected as Members of Parliament for the said 9th Parliament of Ghana starting from Monday the 9th of September, 2024 to Friday the 13th of September 2024, the filing of nomination of the 3 current Members of Parliament is likely to arouse disturbance over the last 3 months of the 4 year span of the 8th Parliament when it re-convenes in October 2024.
- 1.6 The first of such reason is that the current independent Member of Parliament for Fomena in the Ashanti Region Hon. Andrew Asiamah has filed to contest the Fomena Parliamentary seat on the ticket of the N.P.P for the 9th Parliament commencing in January 2025.
- 1.7 The second being that Hon. Cynthia Mamle Morrison, the current Member of Parliament for the Agona West constituency in the Central Region has filed her nomination to contest the Agona West Parliamentary seat as an independent candidate for the 9th Parliament commencing from January ,2025.
- 1.8 Lastly the current Member of Parliament for Suhum in the Eastern Region, Hon. Kwadjo Asante has also filed nomination to contest the Suhum Parliamentary seat in December 2024 as independent Parliamentary candidate for the 9th Parliament commencing in January. 2025.

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SUPREME COURT, ACCRA, GHANA

- 1.9 The controversy surrounding the nominations of these three existing Members of Parliament's filing of nomination with the Electoral Commission to contest the December 2024 Parliamentary elections centers around **Article 97 clause (1) (g) and (h) of the 1992 Constitution** which provides that any existing member of Parliament who leaves the political ticket of the party on whose ticket he/she entered Parliament must vacate his seat.
- 1.10 Likewise, this same clause provides that a Member of Parliament who entered Parliament as an independent Member must vacate his seat when he joins a political party.

2.0 CAPACITY OF THE PLAINTIFF

- 2.1 The Plaintiff as the current majority leader of Parliament and the leader of the Majority Caucus is invoking the interpretative and enforcement jurisdiction of this Honourable Court as enshrined in Article 2(1) of the 1992 Constitution (herein after referred to as the 'Constitution') which provides that a person may bring an action in the Supreme Court for a declaration that an enactment or act is inconsistent with, or in contravention of the Constitution. In such instances, the Supreme Court under Article 2(2), is empowered to make orders and give directions as appropriate for effectuating such declarations.
- 2.2 The Plaintiff as a Ghanaian citizen is vested with the right to invoke the original jurisdiction of this Honourable Court to challenge any enactment or act believed to be in contravention of the Constitution, as per the precedent established in some landmark cases including the unreported case of **DAVID KWADZO AMETEFEE VRS. THE ATTORNEY – GENERAL AND MARTIN ALAMISI AMIDU NO. J1/3/2017**. This case reaffirmed that any citizen of Ghana has the standing to approach this Honourable Court with a prayer for the interpretation and enforcement of the Constitution. Much more so, when the Plaintiff as the current Majority Leader of Parliament and the one who presides over the majority caucus has a personal interest beyond a commitment to the constitution itself because all the three current Members of Parliament affected by this suit are members of his Majority Caucus and again, he as a person is likely to lose his position as a Majority Leader when by an order of the Speaker of Parliament his party is moved to minority so as per **TUFFUOR VRS ATTORNEY – GENERAL [1980] GLR 637 – 667** a plaintiff need not have a personal interest beyond a commitment to the Constitution itself. This reinforces the right of every Ghanaian citizen to uphold the constitutional order.

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[Signature] REGISTRAR
SUPREME COURT ACCORDING TO

3.0 COMPETENCE OF THE SPEAKER OF PARLIAMENT AS THE 1ST DEFENDANT

- 3.1 By the express provision of **Articles 95 (1) and 101 of the 1992 Constitution**, the Speaker of Parliament is the leader of Parliament and primarily carries the responsibility of presiding over all Parliamentary deliberations unless he delegates any of his 2 Deputies to do so in his stead. The Plaintiff anticipates the likely situation where upon reconvening of Parliament for its last and final sitting for the last quarter of 2024 a motion could be placed before the Speaker on the basis of **Article 97 (1) (g) and (h)** that these three affected Members of Parliament have by filing their Parliamentary nominations on the ticket of the NPP and as Independent candidates respectively left the party on whose ticket they entered Parliament as Members of Parliament in the 8th Parliament and as such, must vacate their seats.
- 3.2 In such circumstance, any pronouncement on the matter by the 1st Defendant could affect the interest of the Plaintiff in this matter and this explains the Plaintiff's direction of his action against the 1st Defendant for an order restraining him from pronouncing on the matter until the determination of same by this Honourable Court. To the Plaintiff, any order directing the three affected Members of Parliament to vacate their seats would amount to a literal interpretation of **Article 97 (1) (g) and (h)** instead of a contextual and purposive approach to interpretation by which **Article 97 (1) (g) and (h)** refers to leaving of the political party on whose ticket the Member of Parliament entered Parliament in the current Parliament and not holds the view that by true and proper interpretation and not sheer expression of intention to change political identity of Article 97 clause 1 (e) is centered on a Member of Parliament leaving his political party or changing his political party or changing his political status as an independent member of parliament in the course of his tenure as Member of Parliament for the 4 years (ie the existing term of office of a Parliament) and does NOT extend to expression of interest to contest the next Parliamentary elections for the 9th Parliament of Ghana with different political identity and status.
- 3.3 Conclusively, the Plaintiff holds the respectful view that the involvement of Parliament as a defendant is indispensable for the just, full and final resolution of this case. This approach ensures the principles of accountability, transparency, and justice are upheld, in accordance with the Constitution. It is, therefore, respectfully posited that this Honourable Court admits the necessity of

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REGISTRAR
SUPREME COURT APPEALS

Parliament's inclusion as a party to this action, enabling a thorough examination and adjudication of the constitutional matters at hand, in service to the lofty ideals of our constitutional democracy.

4.0 COMPETENCE OF THE ATTORNEY- GENERAL AS 2ND DEFENDANT

4.1 The Constitution, under **Article 88(1) and (5)**, establishes the Attorney-General as the principal legal adviser to the Government and the defendant in all civil proceedings against the State becomes a necessary party to every action against a state institution such as Parliament.

5.0 JURISDICTION OF THIS HONOURABLE COURT

5.1 My Lords, the Constitution makes it clear under **Article 1(1)** of the 1992 Constitution that:

"The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution".

2(1) A person who alleges –

That an enactment or anything contained in or done under the authority of that or any other enactment, or (b) that any act or omission of a person is inconsistent with ,or in contravention of, a provision of this Constitution may bring an action to the Supreme Court for a declaration to that effect. [Emphasis Added]

"130 (1) subject to the jurisdiction of the High Court in the enforcement of the Fundamental Human Rights and Freedoms as provided in article 33 of this Constitution, the Supreme Court shall have exclusive original jurisdiction in

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

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

5.2 My Lords, in the landmark decision of **OSEI BOATENG VRS. NATIONAL MEDIA COMMISSION & APENTENG [2012] 2 SCGLR 1038 at 1057**, this

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Honourable Court, drawing upon the wisdom of Anin JA in the seminal case of **REPUBLIC V SPECIAL TRIBUNAL; EX PARTE AKOSAK [1980] GLR 592 at 605**, outlined the conditions under which this Court's authority to interpret the Constitution is appropriately engaged. The Honourable Court elucidated that the interpretative jurisdiction under the Constitution is triggered in circumstances such as :

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

5.3 All these issues raised as the scope for invoking the original jurisdiction of this Honourable Court becomes applicable when **Article 97 (1) (g) and (h)** are interpreted in the light of **Articles 17, 21, 35 and 55 of the 1992 Constitution**. It is only by such contextual and purposive interpretation that one could arrive at the true meaning, import and effect of **Article 97 (1) (g) and (h)**.

6.0 LEGAL ANALYSIS OF THE DISPUTED MATTERS

6.1 That should the minority in Parliament invoke **Article 97 (1)(e) of the 1992 Constitution** to call for the vacation of these 3 Members of Parliament from their seats, it will mean the current Majority Party in Parliament (ie N.P.P) having their seats reducing by 3, thus getting reduced from 137 to 135 members.

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6.2 In such circumstance, the opposition NDC with 137 members intact would become the Majority Party in Parliament, a situation likely to lead to political chaos and mayhem for no clear understanding to these constitutional intrigues.

6.3 Meanwhile the literary interpretation of Article 97 (1) frowns on **Articles 2(1), 12(1) and (2), 17(1), 21(1)(b) and (e), 35(1) and (5), 97(1)(g), 130(a), 296(a) and (b) of the 1992 Constitution**. It will also amount to discrimination against these 3 Members of Parliament who have decided to change their political colours in the next Parliament.

6.4 **Article 97 (1) (g)** provides that **“a member of parliament shall vacate his seat in parliament if he leaves the party of which he was a member at the time of his election to parliament to join another party or seeks to remain in parliament as an independent member.”** From the constitutional history of Ghana this provision was to deal with the mischievous situation under the First Republic (1960-1966) when President Nkrumah lured MPs to cross-carpet to his party and gave them appointments while those who resisted were detained.

6.5 The problem with the above constitutional provision is that it expressly forbids MPs to behave independently on the floor of Parliament and to vote according to their conscience.

6.6 If indeed a constitution is a living organism that must grow with the times, then like human conditions there is more room for improvement. We can therefore adapt the constitution to changing times by timely amendments and judicial interpretations. Thus, compared with the previous constitutions of Ghana, the 1992 Constitution was unique in terms of the structure of government machinery that it has created when compared to the Independence Constitution of 1957, First Republican Constitution of 1960, the Second Republican Constitution of 1969, and the Third Republican Constitution of 1979 as constitutions that preceded the 1992 Constitution.

7.0 THE SCOPE AND IMPORT OF ARTICLE 97(1)(g) AND (h) OF THE 1992 CONSTITUTION OF GHANA

7.1 Article 97(1)(g) of the Constitution, 1992 provides thus:

A member of Parliament shall vacate his seat in Parliament:

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

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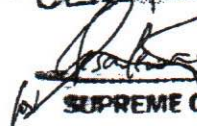
an independent member. Having reproduced in full length the provisions of **Article 97(1)(g) of the 1992 Constitution** of Ghana, I shall attempt to delve into its scope, meaning and purpose, and the circumstances under which it may be invoked.

7.2I submit that there are no hard and fixed rules to the interpretation of a national constitution like the 1992 Constitution. When it comes to constitutional interpretation, the various canons of interpretations that have evolved over the years are not binding on the courts. Any method of interpretation which would give effect to the intent of the framers of the constitution, without leaving room for manifest absurdity would suffice.

7.3 In tandem with the above, Lord Reid said in **MAUNSELL VRS. OLINS [1975] 1 All ER 16 at 18, HL**, in relation to the rules of interpretation thus: "They are not rules in the ordinary sense of having some binding force. They are our servants, not our masters. They are aids to construction: presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to be attached to any particular 'rule'." Same view was held by Date-Bah JSC in **ASARE VRS. ATTORNEY GENERAL, WRIT NO. 3/2002 28 JAN 2004**, where he opined that the rules of interpretation are not the ratio decidendi of a case, but they are mainly aids and or guides in deciphering the meaning of words they are required to interpret.

7.4 Accordingly, as a general rule, in interpreting constitutional language, one should ordinarily start with a consideration of what appears to be the plain and literal meaning of the provision. Where the provision is plain and unambiguous, and the application of its plain and ordinary meaning would give effect to the intent of the framers of the constitution, then, that meaning must be used. This was espoused in the case of **AGYEITWUM VRS. ATTORNEY GENERAL [2005-2006] SCGLR 732 AT 757**, per Date-Bah JSC, wherein the case of **TUFFOUR VRS. ATTORNEY GENERAL [1980] GLR 637 at 659-660**, was cited with approval. The court speaking through the famous Sowah JSC stated thus: "Our first duty is to take the words as they stand and give them their true construction having regard to the language of the provisions of the constitution, always preferring the natural meaning of the words involved, but nonetheless giving the words their appropriate construction according to the context." In a similar vein, Wood C.J in **REPUBLIC V. FAST TRACK**

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COURT, ACCRA EX PARTE CHRAJ (Richard Anane, Interested Party) **CIVIL MOTION NO. J5/10/2007** opined thus: “In my respectful view, in any constitutional interpretative dispute, involving the use of ordinary words or expressions, where no technical words or expressions of art have been employed, and where the Constitution is completely silent on the meaning to be assigned to those words or expressions, the first rule that should be invoked is the ordinary or plain meaning rule. Legitimate questions that must necessarily follow its application include the following: does it-the ordinary meaning- advance or defeat the purpose of the legislation or does it lead to a result at variance with the main purpose of the provision, or to some unjust, scandalous, incongruous, absurd, strange or extraordinary results.”

7.5 In light of the above extrapolations, it is my considered view that on a careful perusal of **Article 97(1)(g) of the Constitution, 1992**, two situations, which are far from coextensive were contemplated by the framers of the constitution 1992. These situations are:


A member of Parliament shall vacate his seat in parliament if he leaves the party on which he was elected to parliament to join another party whilst in Parliament.

A member of Parliament shall vacate his seat in parliament, if he was elected to parliament on the ticket of a particular party, but on going to Parliament, that member seeks to remain in parliament as an independent candidate.

7.6 The two situations as already indicated are not coextensive, and each would apply based on the peculiar facts of each case. I deem it fit to at this point to delve properly into the purposeful interpretation of **Article 97(1)(g) of the 1992 Constitution**. Accordingly, each situation would be separately delved into to determine its scope, purpose and the circumstances under which it may apply.

7.7 A member of Parliament Shall Vacate His Seat if He Leaves the Party on Which He Was Elected to Parliament to Join Another Political Party. This first leg of the meaning of **Article 97(1)(g) of the Constitution, 1992** seeks to postulate that where a member of Parliament was elected to Parliament on the ticket of a particular political party, and that member, whilst in Parliament, decides to leave that political party to join another political party, that member of Parliament shall lose his seat in Parliament and is thus required to vacate his seat.

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7.8 The operative phrase here is "...to leave his political party on which he was elected to Parliament to join another political party. It is therefore imperative to decipher the circumstances under which a person may be said to have left his party. Is there the need for express formal communication to the effect that he is leaving the party? Or a person may be said to have left his party by his own conduct? The constitution, 1992 does not provide any guidance as to the meaning to be placed on the phrase "...leave his party."

7.9 The word "leave" as defined by the Oxford English Dictionary of Lexico, means, to go away from, to withdraw from, to quit from, to abandon, etc. In effect, in applying the meaning attributed to the word "leave" in the context of **article 97(1)(g)**, is there the need for a formal and or express communication from the individual concerned to the party on which he or she was elected to parliament that he intends on leaving?

7.10 To my mind, I do not think so, and any attempt to interpret the word "leave" in a technical manner so as to require a formal or express communication before a person can be said to have left his party would in my view be erroneous. It is my considered opinion that a person can leave his party by his own conduct. Conduct in this sense connotes where the person in question does an act which a reasonable man with knowledge of the facts, would lead or draw the inevitable conclusion that the said person has left his party.

7.11 This position is in tandem with some provisions of the Constitution of the New Patriotic Party. For instance, **article 3(h)(1)** of the said constitution provides that a member of the Party who stands as an independent candidate against the officially elected member of the Party or who joins or declares his or her support for another Political Party, or for an independent candidate when the Party has sponsored a candidate in a general or by-election automatically forfeits his or her membership of the Party.

7.12 In this instance, it is apparent that a member of the party may lose his membership by his conduct of supporting another political party, even though there might not have been any express or formal notice of resignation. Therefore, save in situations where the constitution of the party expressly provides that a member shall give formal notice of his intention to quit his membership of the party (as is provided by article 8(9) of the Constitution of the National Democratic Congress), it is my respectful opinion that a person may leave the

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membership of his party by his own conduct.

7.13 The provision is that the person must leave his party to join another political party before the provision can be invoked. The Constitution is however silent as to what the fate of an MP would be if he leaves his party but does not join any other political party. Does that mean the said person should vacate his seat or does that mean he seeks to remain in Parliament as an independent candidate? This may be an interesting constitutional issue to be determined by the Supreme Court of Ghana in the days to come. However, in my own assertion, the provision is expressly clear and leaves no room for ambiguity and accordingly, it is suggested that the ordinary meaning of the provision should be adopted. Going by that therefore, for the provision to apply in the first situation, a member of Parliament who leaves his party whilst in parliament must necessarily join another political party before the provision can be said to apply.

7.14 In the words of Sophia, A.B Akuffo C.J in MARTIN KPEBU VRS. ATTORNEY GENERAL [2019] DLSC7731, when interpreting article 14(3) of the Constitution, 1992, opined thus: **"The language of Article 14(3) is clear and unambiguous and, in our view, "within 48 hours" means exactly that.** Although it would have been an easy matter for the drafters of the Constitution to have included in the provision words such as those the Defendant has invited us to read into Article 14(3), the fact remains that the provisions contain no words of exception and no matter how attractive the statute law of another jurisdiction might seem to the Defendant, we cannot adopt or use it as an interpretative tool when our superior law, the Constitution, is so clear in its language. We are, therefore, bound to give effect to the clear and unambiguous intentions of the framers of the Constitution by giving the words their plain and ordinary meaning." I cannot but succumb to this view by the learned Chief Justice, and it is also my respectful opinion that **article 97(1)(g)** means what it is and for it to apply, the person leaving his party must necessarily join another party.

7.15 The next question that begs for answers is whether this interpretation I have given would lead to absurd results or a situation which defeats the object and purpose of the said provision. To be able to answer the posited question, an excursus would have to be made into the intent of the framers of the Constitution, to decipher what they intended to achieve by the said provision.

7.16 In the circumstances therefore, I am impelled to apply the objective purpose of interpretation to decipher what probably could have been the intent of the

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framers of **article 97(1) of the Constitution, 1992**. The objective purpose approach to interpretation is not what the framers of the said article actually intended but what a reasonable hypothetical bystander would have anticipated or contemplated at the time of the drafting of the said article. In more apt terms, the learned Justice Date-Bah in the case of **ASARE VRS. ATTORNEY GENERAL (supra)**, underscored the said approach thus: "the objective purpose is not what the author actually intended but rather what a hypothetical reasonable author would have intended, given the context of the underlying legal system, history and values, etc of the society for which he is making law. This objective purpose will thus usually be interpreted to include the realization, through the given legal text, of the fundamental or core values of the legal system."

7.17 It is against this background in my humble opinion the purpose of **article 97(1)(g) of the 1992 Constitution** is construed as to ensure that members of Parliament who are elected to Parliament on the ticket of a particular political party, remain loyal to that political party throughout his tenure in office. The second probable reason may have been to prevent a situation where majority members in Parliament may connive and convince the minority to side with them in order to prevent strong opposition against the government in power.

7.18 Accordingly, reading these probable purposes of **article 97(1)(g) of the 1992 Constitution** the answer to a large extent would however depend on the circumstances under which the person left the party. Firstly, if the person leaves the party by his own will and volition, and expressly to the party on whose ticket he was elected, even if he does not join another political party, it might amount to a betrayal of the loyalty he owes to the party. And therefore, in that light, even though he may not have joined another political party, if he should remain in Parliament would mean he is being there as an independent candidate, and in that case, **article 97(1)(g) of the Constitution, 1992** may be invoked to compel him to vacate his seat.

7.19 However, where the circumstances were such that he was dismissed from the party or forfeited his membership due to some reasons, it is my considered view that such cannot be interpreted as seeking to remain in Parliament as an independent candidate or otherwise a betrayal of his trust to the party on whose ticket he was elected to Parliament. It is my thinking that the provision, (article 97(1)(g)) should only be invoked in voluntary cases, and not the reverse. To this extent, I do not consider that the position I have taken would lead to absurdity.

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Therefore, it is my considered submission that, for the first part of article 97(1) to apply, the member of parliament in question should have left his party and that on leaving, the Member of Parliament should have joined a different political party. Anything short of that would not suffice to warrant an invocation of the said **article 97(1)(g)**.


7.20 Regarding the second situation under **article 97(1)(g)** under which a Member of Parliament may vacate his seat. A Member of Parliament Shall Vacate His Seat in Parliament if on Being Elected to Parliament the Ticket of a Particular Political Party and He Seeks to Remain in Parliament as an Independent Candidate.

The second situation contemplated by **article 97(1)(g)** by which a member of parliament may lose his seat in parliament is where the said member is elected into parliament on the ticket of a particular political party, and the member on going to parliament seeks to remain in parliament as an independent candidate.

7.21 Taking this into account, the phrase "seeks to remain in parliament as an independent candidate" must be given its ordinary meaning and must be interpreted in the context in which it is used. Therefore, to my mind, the meaning that can be given to the phrase is that the phrase "seeks to remain in parliament as an independent candidate" applies to the current parliament and not any future parliament. Any attempt to give a different interpretation so as to include the future parliament would amount to a re-writing of the 1992 Constitution. If the constitution had intended the future parliament, the constitution would have said so expressly. The present parliament is used in the sense that the member of parliament on being elected to parliament, must dissociate himself from the party on whose ticket he was elected and remain as an independent candidate. **But I submit that where in the next-coming elections, he picks up forms to contest as an independent candidate, it does not amount to seeking to remain in the present parliament as an independent candidate.**

7.22 It is necessary at this point to remember the interpretative injunction that was underscored by Kludze JSC in the case of **REPUBLIC V FAST TRACK HIGH COURT ACCRA; EX PARTE DANIEL [2003-2004] SCGLR 364 AT PAGE 370**. The learned justice in sounding a warning on the use of the purposive approach to import words into the constitution observed as follows: "**We cannot, under the cloak of constitutional interpretation, rewrite the Constitution of Ghana. Even in the area of statutory interpretation, we cannot amend a**

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piece of legislation because we dislike its terms or because we suppose that the lawgiver was mistaken or unwise. Our responsibility is greater when we interpret the Constitution. We cannot and must not substitute our wisdom for the collective wisdom of the framers of the Constitution.”

7.23 Also, in the SUSSEX PEERAGE CASE (1844) 11 CI & FIN 85 Tidal C.J observed at 143 thus: “the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the law giver.” This passage was quoted with approval in N.P.P. V ATTORNEY-GENERAL [1993-94] 2 GLR 35 AT PAGE 102.

7.24 Similarly, in the RICHARD ANANE CASE(SUPRA), Chief Justice Wood observed that: “We need to remind ourselves that there is a great danger in reading or importing unnecessary words into a document such as a written constitution. This does not only amount to judicial legislation, but is a clear usurpation of the functions of the body clothed with jurisdiction to do so.” She proceeded thus: “...The purposive rule is however not a carte blanche for rewriting legislation, let alone our Constitution, and should never be used as a ruse, a cloak or guise to do so. The function of a court is to interpret legislation and give effect to it, even if where the terms appear unpalatable. Care must therefore be taken to avoid legislating under the guise of interpretation.”

7.25 Much earlier, Acquah JSC had cautioned in the case of ATTORNEY-GENERAL (NO.2) V TSATSU TSIKATA (NO 2) [2001-2002] SCGLR 620 that: “The majority’s insistence on putting words into article 139 (3) of the 1992 Constitution are not in the article, with a view to imposing restrictions on the exercise of the Chief Justices discretion is not a permissible function of the judicial function.” These pieces of quotations, clearly lend support for the fact that where the words of a provision in the constitution are clear and unambiguous, words need not be read into them. However, would the literal reading of the phrase “...seeks to remain in parliament as an independent candidate”, which I have interpreted parliament to mean the current parliament, lead to absurd results? In other words, does the picking up of forms to contest for the next elections as an independent candidate amount to seeking to remain in parliament

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as an independent candidate?. To my mind, the above questions are vexed questions which requires careful analysis and the matter must be solved by your Lordships. That notwithstanding, I shall attempt to provide answers as to what I consider to be the correct position in my opinion.

7.26 To begin with, I have already indicated in the course of this write-up that the word parliament, meant and was used in reference to only the current parliament and not the future parliament, and I shall proceed to justify same. **Article 55(2) of the 1992 Constitution of Ghana provides thus: “(2) Every citizen of Ghana of voting age has the right to join a political party. It is also provided in clause 10 of article 55 of the constitution thus: “Subject to the provisions of this Constitution, every citizen of voting age has the right to participate in political activity intended to influence the composition and policies of the Government.”**

Also, **article 35(9) of the Constitution, 1992 provides that: “(9) The state shall promote among the people of Ghana the culture of political tolerance. Lastly, article 21(1)(e) of the Constitution, 1992 provides that- All persons shall have the right to: (e) freedom of association, which shall include freedom to form or join trade unions or other associations, national and international, for the protection of their interest”.**

7.27 Accordingly, it is apparent from the above provisions that all citizens of Ghana of voting age, have the right to form or join a political party of his choice. **Article 55(2)** is to the effect that every citizen of voting age has the right to join a political party of his choice at any time or moment without any restriction whatsoever. And I am of the firm conviction that a person who was a member of a political party but later decides to join another political party for one reason or the other, should be permitted in that regard. This is reinforced by **article 55(10) of the constitution**, which allows every citizen of voting age to participate in any way possible, but in accordance with law, to shaping the political system of Ghana.

7.28 Even more interesting, is that of **article 21(1)(e)**, which allows for the freedom of association of every person, (in this context citizens of voting age) to participate or join or associate with any association of their choice. It is, thus, crystal clear that the 1992 Constitution envisages a situation where a person may leave one political party at any time to join another political party or contest elections even as an independent candidate.

7.29 In light of the foregoing, it is important to read the 1992 Constitution as a

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whole, especially the articles cited hereinabove together with article 97(1)(g) of the Constitution, 1992. A combined and a contextual reading to the constitution is required where there appears to be two conflicting provisions of the constitution. In such a case, a global reading of the constitution is required in order to arrive at a decision that is desirable and would meet the hopes and aspirations of the people.

7.30 Justice Kludze, in ASARE V THE ATTORNEY- GENERAL (SUPRA) in advancing on the need for a contextual and combined approach to interpretation underscored in the following words: **"I agree that we must adopt a purposive construction of the constitutional provisions. This means that we do not construe words in the abstract but within the context in which they are used. Language is a tool for expressing the wishes of the speaker, author, or writer. Therefore, regardless of the theoretical classification of the methodology of construction, the fundamental rule is for the court to construe every enactment with the purpose of effectuating the true intent of the framers of the 1992 Constitution. All other canons of construction have the ultimate purpose of achieving this goal. I do not think the mere recourse to dictionaries of the English language will resolve the issues which confront us or render any easier the task we are called upon to perform."**

7.31 Also, in NATIONAL MEDIA COMMISSION V. ATTORNEY [2000] SCGLR 1 at page 11, Acquah JSC articulated neatly the need for a combined reading of the constitution in the following words: **"But to begin with, it is important to remind ourselves that we are dealing with our national constitution, not an ordinary Act of Parliament. It is a document that expresses our sovereign will and embodies our soul. It creates authorities and vests certain powers in them. It gives certain rights to persons as well as to bodies of persons and imposes obligations as much as it confers privileges and powers. All these duties, obligations, powers and privileges and rights must be exercised and enforced not only in accordance with the letter, but also with the spirit of the Constitution"**.

7.32 Accordingly, in interpreting the Constitution, care must be taken to ensure that all the provisions work together as parts of a functioning whole. The parts must fit together logically to form a rational, internally consistent framework. And because the framework has a purpose, the parts are also to work together

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dynamically, each contributing something towards accomplishing the intended goal. Each provision must therefore be capable of operating without coming into conflict with any other.

7.33 Much earlier, Justice Sowah, in TUFFOUR V. ATTORNEY GENERAL (SUPRA) underscored the law from the biblical point of view in the following words: "And so we must take cognizance of the age-old fundamental principle of constitutional construction which gives effect to the intent of the framers of this organic law. Every word has an effect. Every part must be given effect. Perhaps it would not be out of place to remember the injunction of St. Paul contained in his First Epistle to the Corinthians, Chapter 12, and verses 14-20 (King James Version). "For the body is not one member but many. If the foot shall, say because I am not the hand, I am not of the body; is it therefore not of the body? And if the ear shall say, because I am not the eye, I am not of the body; is it therefore not of the body? If the whole body were an eye, where were the hearings? If the whole body were hearing, where were the smelling...? But now are they many members, yet but one body." And so, a construction should be avoided that leads to absurdity. And when a particular interpretation leads to two, shall we say inconsistent results; the spirit of the constitution would demand that the more reasonable of the two should be adhered to. We must have recourse to the Constitution as a whole."

7.34 In the circumstances, it is my considered view that on a combined reading of article 97(1)(g), and on a true and proper interpretation of article 55(2), 55(10), 35(9), and 21(1)(e) of the Constitution, 1992, if a member of parliament who was voted into parliament in a particular general elections, decides to contest in the next general elections as an independent candidate or on the ticket of another political party, that does not amount to the said member of parliament seeking to remain in the current parliament as an independent candidate. What he is only seeking to do, is an exercise of his democratic rights to freedom of association and participation in the democratic process in a manner that advances the hopes and aspirations of Ghanaian people.

7.35 Therefore, to my mind, to say that Yaa, who was elected to parliament on the ticket of party X, is seeking to presently remain in parliament as an independent candidate, because she has decided to pick up nomination forms for the next general elections as an independent candidate is most erroneous and such an interpretation in my view is in conflict with article 55(2), (10), 35(9), and article 21(1)(e), and same in my view would not advance the course of our democratic

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process. And so, to do would be to set a bad precedent for our future democracy.

7.36 In my honest opinion, for the provision of article 97(1)(g), relating to the second situation to be properly invoked, there must be an indication that the member of parliament on being elected into parliament on the ticket of party X seeks to alienate from that party and remain in parliament as an independent candidate as if he was elected into parliament on his own ticket. Any other interpretation beyond this, would lead to absurd results.


8.0 CONCLUSION

8.1 Considering the above discussions in light of the background facts as enunciated above, does the conduct of the 3 affected Members of Parliament in filing their nominations to contest for the 2024 parliamentary elections amount to declaring themselves independent members in the present Parliament so as to warrant an invocation of Article 97(1)(g)?

8.2 In my candid opinion the answer is no. My reasons for such a conclusion have been advanced above. The fact that they have filed nominations to contest the future elections (2020 Elections to be specific) means that they intend to be elected to parliament in the next election as NPP candidates and independent candidate, and same is not true of the fact that by filing his nominations as an independent candidate respectively. They are not doing so in respect of the present parliament, (which has been in session since January 2020), as NPP Member and Independent members respectively. As already indicated, such an interpretation would lead to absurd results, and would not advance our aspirations to encourage people to participate by lawful means in our democratic process.

8.3 Again, the timing for the invocation of the said article (although I have already indicated the invocation of the article itself is erroneous), is improper in my opinion. This is because, by virtue of our democratic system, every constituency deserves a representation. Accordingly, to remove the Member of Parliament for a particular constituency at such a time where it would be highly impossible to conduct a bye-elections in order to find a replacement would be to deprive the people of Fomena Constituency, Agona West constituency and Suhum constituency from a representative in Parliament. From 112(5)(6) of the 1992 Constitution, it enshrined terms of elections that, within 3 months to a general election, no form of elections can be held. This is provided in REGULATION 4(1) OF THE PUBLIC ELECTIONS REGULATIONS, 2016 (C.I. 91).

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8.4 In light of the above observations, it is my candid opinion that these 3 affected Members of parliament, cannot be compelled to vacate their seat, since they are not seeking to remain in the current parliament as an independent candidate or switch political party identity but that of the future parliament which would take place in January, 2025.

My Lords, I am extremely grateful for your audience.

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2. The 1960 Republican Constitution of Ghana
3. The 1969 Republican Constitution of Ghana
4. The 1979 Republican Constitution of Ghana
5. The 1992 Constitution of the Republic of Ghana

Statutes

6. REGULATION 4(1) OF THE PUBLIC ELECTIONS REGULATIONS, 2016 (C.I. 91).

Cases

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8. TUFFUOR VRS ATTORNEY – GENERAL [1980] GLR 637 – 667
9. OSEI BOATENG VRS. NATIONAL MEDIA COMMISSION & APENTENG [2012] 2-SCGLR 1038 at 1057.

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10. REPUBLIC V SPECIAL TRIBUNAL; EX PARTE AKOSAK [1980] GLR 592 at 605
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17. SUSSEX PEERAGE CASE (1844) 11 CI & FIN 85
18. N.P.P. V ATTORNEY-GENERAL [1993-94] 2 GLR 35 AT PAGE 102.
19. ATTORNEY-GENERAL (NO.2) V TSATSU TSIKATA (NO 2) [2001-2002] SCGLR 620
20. NATIONAL MEDIA COMMISSION V. ATTORNEY [2000] SCGLR 1 at page 11

Articles


21. Dr. Kofi Asmah; "AMEND THE CONSTITUTION TO ALLOW CROSS CARPETTING"

**Dated at Dehyena Chambers, No. C25 Onyasia Street, Adjacent,
Beulah Methodist Church, West Legon, Accra
this 14th day of October, 2024**

~~F. PAA KWESI ABAIDOO~~

F. PAA KWESI ABAIDOO, ESQUIRE
SOLICITOR FOR PLAINTIFF
LICENCE NO. : e GAR 06319/24
CHAMBERS REG. NO. e PP09034/24

THE REGISTRAR
THE SUPREME COURT OF GHANA
ACCRA

VERIFIED TRUE COPY

REGISTRAR
SUPREME COURT, ACCRA, G/D

AND FOR SERVICE ON:-

- 1. THE SPEAKER OF PARLIAMENT OR ITS SOLICITOR, OFFICE OF PARLIAMENT, OSU, ACCRA.**
- 2. THE ATTORNEY-GENERAL & MIN. FOR JUSTICE, ATTORNEY GENERALS DEPT., MINISTRIES, ACCRA**

Exhibit B

In case of reply the number and date of this letter should be quoted



OFFICE OF THE JUDICIAL SECRETARY

P. O. Box 119

Accra, Ghana

12th July 2024

My Ref. No. SCR 9

Your Ref. No.

Tel. No 0302-663952 -Ext. 2017(Office)

0302-661810 (Direct)

REPUBLIC OF GHANA

TO ALL REGISTRARS OF COURTS AND BAILIFFS

CIRCULAR

ENFORCEMENT OF ARTICLES 117 AND 118 OF THE CONSTITUTION – IMMUNITY FROM SERVICE OF PROCESS AND ARREST

The Honourable Lady Chief Justice’s attention has been drawn by the Rt. Hon. Speaker of Parliament, to potential breaches by actions of some officers or some persons acting on behalf of the Judicial Service, of Articles 117 and 118 of the 1992 Constitution.

Articles 117 and 118 of the Constitution provides that:

117 “Civil or criminal process coming from any court or place out of Parliament shall not be served on, or executed in relation to, the Speaker or a member or the Clerk to Parliament while he is on his way to, attending at or returning from, any proceedings of Parliament.

118 (1) Neither the Speaker, nor a member of, nor the Clerk to Parliament shall be compelled, while attending Parliament to appear as a witness in any court or place out of Parliament

(2) The certificate of the Speaker that a member or the Clerk is attending the proceedings of Parliament is conclusive evidence of attendance at Parliament.”

These provisions ensure that the office holders listed above may not be served any process of court or compelled to appear as a witness in court, unless Parliament is not in session or the Speaker so certifies that the office holder in question is not on his way to, attending or returning from any proceedings of Parliament.

Attention has also been drawn to a circular issued on 22nd February 2021.

The Honourable Lady Chief Justice is informed that there have been attempts to serve court processes on Members of Parliament, the Clerk to Parliament and the Speaker of Parliament while these office holders are attending to the business of Parliament.

Handwritten signature and red scribbles over a stamp area.



In view of foregoing, the Honourable Lady Chief Justice has therefore directed that, in serving processes to the above-mentioned officials, the following should be adhered to henceforth.

No.	Personality/Institution to be served	How Service should be effected	Acceptable times of service	Remarks
1.	Rt. Hon. Speaker of Parliament	All Court processes should be served on the Legal Department of the Parliamentary Service.	<ul style="list-style-type: none"> • Mondays • During working Hours 	
2.	The Clerk to Parliament	All Processes should be served on the Clerk to Parliament.	<ul style="list-style-type: none"> • Mondays • Other weekdays (Tuesday-Friday) between 7:00a.m. and 8:00a.m. • When Parliament is on recess 	The Clerk of Parliament to advise the Judiciary of recess times of Parliament
3.	Members of Parliament	All Processes should be served on the Members of Parliament	<ul style="list-style-type: none"> • Mondays • Other weekdays (Tuesday-Friday) between 7:00a.m. and 8:00a.m. • When Parliament is on recess 	

Kindly take note for compliance.



JUSTICE CYRA PAMELA C. A. KORANTENG (JA)
JUDICIAL SECRETARY

CC: The Honourable Lady Chief Justice



IN THE SUPERIOR COURT OF JUDICATURE,
IN THE SUPREME COURT,
ACCRA - A.D. 2024.

WRIT NO. J1/01/2025.

BETWEEN

ALEXANDOR AFENYO MARKIN ... PLAINTIFF/RESPONDENT.

AND

1. SPEAKER OF PARLIAMENT ... FIRST DEFENDANT/APPLICANT.

2. ATTORNEY-GENERAL ... SECOND DEFENDANT.

CERTIFICATE OF EXHIBITS.

This is to certify that the documents exhibited to the affidavit in support of motion deposed to by NINA NWINURING BEL-NONO hereto and marked **A**, **B**, **C** and **D** are the documents deposed to in the affidavit in support of the application the details of which documents are as follows:

1. A copy of the order of the Court dated the 18th of October 2024 exhibited to the affidavit in support of the application and marked **A**.
2. A copy of the proceedings which was served together with the order of the Court exhibited to the affidavit in support of the application and marked **B**.
3. A copy of the Plaintiff's writ and accompanying processes exhibited to the affidavit in support of the application and marked exhibit **C**.
4. A copy of the Judicial Circular dated 12th July 2024 exhibited to the affidavit in support of the application marked exhibit **D**.

BEFORE ME



COMMISSIONER FOR OATHS