

Supreme Court interprets Constitution | Eligibility starts at nomination filing | High Court decides election validity | Citizenship shows allegiance | Void processes rejected | Res judicata bars repeats | Intent not justiciable | Courts follow precedents and interpret Constitution as a whole using plain meaning.

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA - A.D. 2023

CORAM:

DOTSE JSC (PRESIDING)
AMEGATCHER JSC
OWUSU (MS.) JSC
TORKORNOO (MRS.) JSC
PROF. MENSA-BONSU (MRS.) JSC
KULENDI JSC
ACKAH-YENSU (MS.) JSC

WRIT
NO. J1/11/2022
17TH MAY, 2023

MICHAEL ANKOMAH NIMFAH

...

PLAINTIFF

VRS

1. JAMES GYAKYE QUAYSON
2. THE ELECTORAL COMMISSION OF GHANA
3. ATTORNEY GENERAL

}

DEFENDANTS

JUDGMENT

AMEGATCHER JSC:-

The controversy in this suit centers on the interpretation and enforcement of article 94 (2) (a). The plaintiff invoked the original jurisdiction of the Supreme Court under Article 2 (1) (b) of the Constitution, 1992 to seek the following declaratory reliefs:

1. A declaration that upon a true and proper interpretation of Article 94 (2) (a) of the Constitution, 1992 of the Republic of Ghana, at the time of filing his nomination forms between 5th -9th October 2020 to contest the 2020 Parliamentary elections for the Assin North Constituency, the 1st Defendant

was not qualified as a Member of Parliament.

2. A Declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 the decision of the 2nd Defendant to permit the 1st Defendant to contest the Parliamentary Elections in the Assin North Constituency when the 1st Defendant owed allegiance to a country other than Ghana is inconsistent with and violates Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana.
3. A Declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the election of the 1st Defendant as Member of Parliament for Assin North Constituency was unconstitutional.
4. A Declaration that upon a true and proper interpretation of Article 94(2) (a) of the Constitution, 1992 of the Republic of Ghana the swearing in of 1st defendant as Member of Parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.
5. Any further Orders and or Directions as the Court may deem fit to give effect or enable effect to be given to the Court.

Article 2(1) (a) and (b); article 130 (1) (a); 94 (1) and article 94 (2) of the Constitution, 1992 respectively read:

ENFORCEMENT OF THE CONSTITUTION

2. (I) A person who alleges that

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

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

ORIGINAL JURISDICTION OF THE SUPREME COURT

130 (I) 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 -

- (b) all matters relating to the enforcement or interpretation of this Constitution; and*
- (c) 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*

QUALIFICATIONS AND ELIGIBILITY

94. (1) Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless

(a) he is a citizen of Ghana, has attained the age of twenty one years, and is a registered voter;

(b) he is resident in the constituency for which he stands as a candidate for election to Parliament or has resided there for a total period of not less than five years out of the ten years immediately preceding the election State may regulate its own procedure. for which he stands, or he hails from that constituency; and

(c) he has paid all his taxes or made arrangements satisfactory to the appropriate authority for the payment of his taxes.

2) A person shall not be qualified to be a member of Parliament if he

(a) owes allegiance to a country other than Ghana; or

(b) has been adjudged or otherwise declared

(i) bankrupt under any law in force in Ghana and has not been discharged; or

(ii) to be of unsound mind or is detained as a criminal lunatic under any law in force in Ghana; or

(c) has been convicted

(i) for high crime under this Constitution or high treason or treason or for an offence involving the

PLAINTIFF'S STATEMENT OF HIS CASE

It is the case of the plaintiff that the 1st defendant was declared to be the winner of parliamentary elections organized by the 2nd defendant on 7th December 2020 in the

Assin North Constituency and through that, the Member of Parliament for the Assin North Constituency.

However, according to the plaintiff, the 1st defendant was not qualified to stand for parliamentary elections by operation of article 94 (2) (a), because between 5th and 9th October 2020, being the period within which he filed his nomination forms with the 2nd defendant to contest the said parliamentary election, 1st defendant was a citizen of both Ghana and Canada and held Ghanaian and Canadian Passports. It is the case of the plaintiff that 1st defendant, therefore, had dual nationality, *'owed allegiance to a country other than Ghana'*, contrary to article 94 (2) (a) and was not qualified under article 94 (2) (a) of the Constitution, 1992 to contest for the office of a Member of Parliament of the Republic.

Judicial Precedent on time for qualification and eligibility under article 94

Plaintiff went on to make the case that the Supreme Court has settled the question of the appropriate stage for determining the eligibility or qualification of a person to contest as a Member of Parliament in the case of **Republic v. High Court (General Jurisdiction), Accra; Ex Parte Zanetor Rawlings (Ashithey and National Democratic Congress Interested Parties) (No 2) [2015-2016] 1 SCGLR 92.**

In that case, Zanetor Agyemang Rawlings, Nii Armah Ashithey who was at the time, the MP of Klottey Korley Constituency, and one Nii John Coleman contested the NDC's Parliamentary Primaries for the Klottey Korley Constituency for the 2016 national general elections. Zanetor Rawlings was declared the winner of the party primaries. Nii Armah Ashithey and Nii John Coleman commenced proceedings before the High Court to challenge Zanetor Rawlings' election on the ground, inter alia, that she was not a registered voter and thus fell short of the eligibility requirements of Article 94 (1) (a) of the Constitution, 1992.

Zanetor Agyemang Rawlings filed an application to dismiss the suit on the basis that the action was premature and that the jurisdiction of the High Court had not been properly invoked. The High Court refused the application whereupon Zanetor Agyemang Rawlings invoked the supervisory jurisdiction of the Supreme Court for certiorari and prohibition against the High Court. The Supreme Court granted the application and suo motu set down the following issue for interpretation.

“When can it be properly said that a Ghanaian citizen is by reason of non-registration as a voter “not qualified to be a member of Parliament” within the meaning of Article 94(1)(a) of the 1992 Constitution of Ghana”

It is the submission of the plaintiff that although that case turned on the registered voter criterion in article 94(1) (a) of the Constitution, this Court considered article 94(1) as a whole to resolve the issue. Further, in that case, the National Democratic Congress (NDC), the 2nd interested party in the application before this court, had submitted that article 94 (1) (a) becomes operative at the time when the Electoral Commission, as the statutorily mandated body for elections commences the statutory processes for nomination and filing for parliamentary candidates and not at the time of primaries by political parties.

This court had been persuaded by this reasoning, and the Supreme Court speaking through Benin JSC held on pages 104 to 105 of the report thus: *“consequently, it is our view that the eligibility criteria set out in article 94(1)(a) come into force only when a public election of a Member of Parliament has been declared by the Electoral Commission and it has set the time to file nominations. Thus, a person who qualifies to enter Parliament must be a Ghanaian citizen, of twenty one years or beyond and a registered voter **as at the time he files his nomination papers within the time stipulated by the Electoral Commission for that particular election.** That is the true intendment of Article 94(1)(a) of the Constitution; the eligibility criteria come alive from time to time when the Electoral Commission sets the date to file nominations for parliamentary elections”.*

Counsel for the plaintiff also drew attention to the decision of this court in **New Patriotic party v National Democratic Congress and others [2000] SCGLR 461** without specifying the specific context of the determinations in that suit that he found referable to the present suit. In that suit, the majority of this court, speaking through Bamford Addo JSC had upheld a preliminary objection against the determination of the question of whether the declaration of intent of the 1st defendant to nominate the 2nd and 3rd defendants as parliamentary candidates breached article 94 (3) (b) because of their positions as Chief Directors of two ministries, on account of an intent not being justiciable.

However, on the question of whether the Supreme Court was the proper forum to

determine the qualification and ineligibility criteria under article 94 (3), the majority of the court was firm in their opinion that such an action fell within the interpretative and enforcement jurisdiction of the Supreme Court.

The plaintiff made the submission that in following the settled position of the law arising from the decision in **Zanetor Rawlings (No 2)** cited supra, the time for determining the qualification or eligibility of a person to contest parliamentary elections is at the time of opening of nominations by the Electoral Commission for that particular election, not earlier or later.

Citizenship and Allegiance

On the question of citizenship and allegiance, the plaintiff submitted that at the time of filing his nominations, the attention of the 2nd defendant had been drawn to the dual nationality of the 1st defendant. The response of 1st defendant was that he had commenced processes to renounce his Canadian citizenship and therefore did not owe allegiance to Canada. This position had found favor with the 2nd defendant which had led to their allowing the 1st defendant to contest the election, leading to a declaration that he had won the parliamentary seat of Assin North Constituency.

However, according to the plaintiff, the concept of citizenship and allegiance under the Constitution, 1992 had been found to be intertwined in **Asare v Attorney General [2012] 1 SCGLR 460**. After reviewing the two concepts in the light of the Report on the Committee of Experts (Constitution) On Proposals for a Draft Constitution of Ghana (presented to the PNDC, July 31, 1991), this court, speaking through Atuguba JSC in **Asare v Attorney General**, had determined that citizenship, allegiance and loyalty to a State are interwoven concepts. One cannot be a citizen of a country and claim not to owe allegiance to that country.

Looking beyond Ghana, the plaintiff postulates that the facts of this instant case are akin to the Australian case of **Re Gallagher [2018] HCA 17**. In that case, an Australian senator who had attempted to renounce her foreign (British) citizenship prior to her nomination, but whose application had not been processed by the British authorities until after her election, was disqualified by the High Court of Australia. The relevant provision in question was **Section 44 (i) of the Australian Constitution**.

The provision read:

“any person who;

(i) is under any acknowledgment of allegiance, obedience or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power Shall be incapable of being chosen or of sitting as a senator or a member of the House of Representatives.”

thus, the High Court of Australia took the view that the duties of the allegiance owed by a person who holds foreign citizenship remain engaged until the foreign state in question has confirmed and registered that person’s divestment of citizenship and thus of allegiance.

In concluding his submissions, counsel for the plaintiff urged that allegiance is a core attribute of citizenship and that to construe article **94 (2) (a)** to mean that allegiance to another country is synonymous with citizenship will be consistent with the spirit of article **94 (2) (a)**.

1ST DEFENDANT’S STATEMENT OF HIS CASE

The 1st Defendant did not immediately file the expected statement of case in response to the plaintiff’s statement of case filed on 31st January 2022 until 12th April 2022. And followed it up by filing an application to strike out the plaintiff’s writ under the inherent jurisdiction of the court on 25th April 2022. In his submission supporting the application to strike out the plaintiff’s suit, counsel for the 1st defendant stated the case of the 1st defendant.

The record shows that the 1st defendant does not dispute that he held Canadian citizenship in addition to Ghanaian citizenship prior to the time he filed his nomination as a parliamentary candidate with the 2nd defendant for the 2020 general elections. His position articulated by counsel for 1st defendant in his submissions, is that he commenced the renunciation process of his Canadian citizenship in 2019 although he secured his Renunciation Certificate in November 2020 after he had filed his nomination forms. He received the Renunciation Certificate before the 7th December 2020 election. He said that by the time he filed his nomination forms with the 2nd defendant, he had no allegiance to any country other than Ghana and was therefore eligible to contest the parliamentary elections of the Assin North Constituency.

He admitted a challenge to his qualification to be a Member of Parliament based on the claim that he owed allegiance to a country other than Ghana. The 1st defendant avers that he was invited by the 2nd defendant to ascertain the veracity or otherwise of the claim. The complainants however failed to prove their case and as a result, the 2nd defendant cleared the 1st defendant for participation in the 7th December 2020 election.

It is the assertion of the 1st defendant that he is the Member of Parliament duly elected by a majority of voters in the Assin North Constituency, gazetted as such by the 2nd defendant and subsequently sworn in as a Member of Parliament for the Assin North Constituency on 7th January 2021.

The 1st defendant alleged a distinction between article 94 (1) and 94 (2). In **article 94(1)** it is provided that:

"Subject to the provisions of this article, a person shall not be qualified to be a member of parliament unless-

(1) He is a citizen of Ghana, has attained the age of twenty one years and is a registered voter;"

He said that **Article 94(2) (a)** on the other hand makes no reference to nationality. What it provides for is clearly stated to be:

(2) A person shall not be qualified to be a member of parliament if he: (a) owes allegiance to a country other than Ghana...."

It is the assertion of counsel for the 1st defendant that the disqualification in **article 94 (2) (a)** is not anchored on dual nationality and if the framers of the Constitution had wished to make the disqualification in **article 94 (2) (a)** simply a matter of holding dual citizenship, they would have stated just that.

According to the submissions of counsel for 1st defendant, the expression "*shall not be qualified to be a Member of Parliament if he...*" which precedes the grounds of disqualification in **article 94 (2)** of the Constitution is crucial to the proper construction to put **on article 94 (2)**. The time of being "*a Member of Parliament*" is not when a person puts in his nomination to stand for election but rather when he is elected, gazetted and takes his seat in Parliament after "*taking and subscribing before the Speaker and in the presence of Members of Parliament, the oath of allegiance and the*

oath of a Member of Parliament set out in the Second Schedule of this Constitution” – as provided for by Article 100 (1) of the Constitution).

Counsel quoted **section 20 (1) (d) of the Representation of People’s Act, PNDC Law 284** which states that “(1) *the election of a candidate shall be declared void on an election petition if the High Court is satisfied:.... (d) that the candidate was at the time of his election a person not qualified or a person disqualified for election*”. The operative word according to counsel for the 1st defendant is “*at the time of the election*” and that it should not be interpreted to mean any other thing.

According to counsel for the 1st defendant, the Australian case of ***Re Gallagher (2018) HCA*** in which an application for renunciation of British citizenship by an Australian Senator had not been processed by the British authorities until after the election and, therefore, could not save the senator from disqualification, supports his contention about the interpretation of Article 94 (2) (a) of the Constitution; that the operative time is the time of the election.

In addition, the 1st defendant contended that the trial judge sitting in the High Court, Cape Coast erred when he stated in his judgment that “*article 94(2) of the Constitution has received judicial consideration and clarity by the Supreme Court which is by law, the highest court and the final court of appeal in Ghana in Republic vs High Court [General Jurisdiction, Accra; Ex Parte Dr. Zanetor Rawlings [Ashithey and National Democratic Congress as interested Parties]*”. It is the contention of counsel for the 1st defendant that **article 94 (2)** did not receive judicial consideration in the Zanetor Rawlings case, because, it was **article 94 (1) (a)** which was before the court.

APPLICATION TO STRIKE OUT PLAINTIFF’S WRIT

At the hearing of the writ, this court ruled that it would consider the preliminary points raised by the 1st defendant against the plaintiff’s writ together with the substantive cases before it.

The case of the 1st defendant in the application to strike out the writ stood on the following pillars:

2. That the plaintiff’s action is basically seeking to declare the election of the 1st defendant as invalid. However, this court does not have jurisdiction in respect of

issues involving the determination of the validity or invalidity of parliamentary elections, and so the present action is an abuse of the process of this court.

3. That the substance of the plaintiff's action had been raised and determined in an election petition before the High Court in Cape Coast, and so the present action constitutes forum shopping, particularly because the High Court decision declaring the 1st defendant's election void had also been appealed against by the 1st defendant.

The submissions made in support of the first ground inviting the 'striking out of the writ' include the position that there are several decisions of this court that articulate that by virtue of **article 99** of the **Constitution, 1992** and **section 16** of the **Representation of People Act, PNDC law 284**, the jurisdiction to entertain a suit invalidating the results of a parliamentary election has been placed in the High Court, with a final appeal to the Court of Appeal. These decisions include **Yeboah v J H Mensah [1998-199] SCGLR 492**; **Republic v High Court, Koforidua**; **Ex parte Asare (Baba Jamal & Others Interested Parties) [2009] SCGLR 460**; **Republic v High Court Sunyani**; **Ex Parte Collins Dauda (Boakye-Boateng Interested Party, 2009 SCGLR 447**; **In re Parliamentary Election for Wulensi Constituency**; **Zakaria v Nyimakan [2003-2004], 1 SCGLR 1**, **Republic v High Court, Ho Ex Parte Attorney General (Professor Margaret Kweku & Others, Interested parties) Suit No. J5/21/2021, 5th January 2021**

A second submission built on the first one is that, it is a firmly established principle arising from the jurisprudence of this court that no matter how they are clothed, where the real issues arising from a writ brought under **article 2(1) of article 130** are in actuality, a cause of action of such nature that may be resolved by another court, and not one lying exclusively within the jurisdiction of the Supreme Court, the Supreme Court will decline jurisdiction over the suit. This position has been reiterated ad nauseam, in cases such as **Yiadom 1 v Amaniampong [1981] GLR 3**, **Edusei (No 2) v Attorney General [1998-1999] SCGLR 753**, and in **Bimpong-Buta v General Legal Council [2003-2004] 2 SCGLR 1200**,

Counsel for the 1st defendant urged at page 13 of Supplement to Statement of Case with Application to strike out Originating Writ filed on 13th July 2022 that '***it is not the raising of serious questions of law that is the test for whether this court has***

jurisdiction to entertain the writ but rather constitutional provisions governing the jurisdiction of this court. By the long line of binding decisions of this court, it is clear that this court does not have jurisdiction in respect of matters concerning determination of the validity of a parliamentary election'

The submissions of counsel for the 1st defendant went on to urge that the integrity of the judicial process would be severely undermined if this court did not follow its binding precedents on the above positions and strike out the writ invoking its original jurisdiction. He pointed out that it has also been the position of this court that it would act to give force to the Constitution even if an incident of the constitutional breach was not pointed out in the proceedings in the lower courts. He referred to the statement of this position in **Attorney-General v Faroe Atlantic Co Ltd [2005-2006] SCGLR 271**.

In a similar vein, this court acted to strike out proceedings found to have been built on processes that were a nullity such as a writ of summons that was not compliant with **order 2 rule 4(2) of the High Court (Civil procedure) Rules 2004 CI 47 in Standard Bank Offshore Trust Company Ltd v National Investment Bank Limited & 2 Others [2017-2018] 1 SCLRG 707**.

The decisions of this court in **Naos v Ghana Commercial Bank [1999-2000] 1 GLR 485, Republic v High Court, Accra; Ex Parte Allgate Co Ltd (Amalgamated Bank Ltd Interested Party) [2007-2008] 2 SCGLR 1041** reiterate the position that the court will not countenance proceedings built on processes that are inherently void.

He invited this court not to waive the lack of jurisdiction in the court involving the validity of a parliamentary election as provided for by **article 99 and Section 16 of Act 286**, but to find itself bound to follow its own precedents as provided for in article 129 (3) established in cases such as **Re Ntrakwa (Decd) In Re Bogoso Gold Ltd v Ntrakwa [2007-2008] SCGLR 389**

Counsel for 1st defendant described this action as an inversion of the judicial hierarchy to the extent that the plaintiff's action constituted an effort to make the Supreme Court the forum to enforce remedies given by the High Court following the hearing of the parliamentary election petition. It was his submission that similar to the circumstances

which led to this court holding in **Dahabieh v S A Turqui & Bros [2001-2002] SCGLR 498**, that parties are estopped from re-litigating a matter that has been determined by another court of competent jurisdiction, this court should find the issues raised in the present action as resolved by the lower courts with jurisdiction to hear it.

The Electoral Commission, as 2nd defendant, failed or refused to defend itself.

THE CASE OF THE 3RD DEFENDANT

Qualification

The 3rd defendant stated the position that a critical look at **article 94** indicates that the Constitution treats 'qualification and eligibility' as being the same in meaning and application.

On the time that eligibility and or qualification requirements of **article 94 (2) (a)** must arise, he submitted that it should be at the opening of nominations for parliamentary elections, and not some indeterminable time in the future. This was the position determined by this court in **Ex parte Zanetor Rawlings [2015-2016] 1 SCGLR 92 cited supra** when it pointed out that the qualification criterion under **article 94(1) (a)** to stand as a Member of Parliament must be read in conjunction with provisions in **article 45** and **article 51** that placed the responsibility of setting the time for conducting and supervising public elections on the Electoral Commission. The time for attaining the eligibility and qualification status of a parliamentary candidate therefore 'comes alive' and 'come into force' from the time the Electoral Commission sets the date to file nominations or parliamentary elections.

This position is supported by the decisions in **Yeboah v JH Mensah** and **NPP v NDC [2000] SCGLR 461** also supra.

The attorney General urged that the 1st defendant was fully aware of his disqualification when he filed his nomination because in **section 9 (3)** of the **Canadian Citizenship Act R.S.C., 1985 c. C-29**, it is provided that an application for renunciation of Canadian citizenship has to be approved and where it is approved, the Minister shall issue a certificate of renunciation to the applicant. It is on the expiration of the day on which the certificate is issued or such later day as the certificate may specify that the applicant ceases to be a citizen.

The 3rd defendant submitted that garb of legitimacy may not be thrown on an otherwise illegal endeavor because it is not for nothing that election forms require a person to affirmatively declare that he owes no allegiance to any country other than Ghana at the time of filing his nominations. Not having received a certificate of renunciation from the Minister in Canada, the applicant well knew that he still retained his Canadian citizenship at the time he filed his nomination as a parliamentary candidate. He urged that a similar situation arose in the case of Sumaila **Bielbiel (No 1) v Dramani and Another [2011] 1 SCGLR 132**

Allegiance

Regarding the concept of allegiance, the Attorney General submitted that 'allegiance' must be construed objectively in terms of Ghana law, and not subjectively, and that a proper interpretation of the laws of Ghana will lead to the conclusion that allegiance means the '*exclusive holding of Ghanaian citizenship*'.

He submitted that it would be impermissible for this court '***to embark on an intrusion into the minds and hearts of people claiming sole allegiance to Ghana, in order to ascertain their allegiance to Ghana. A determination of allegiance must be done objectively, taking account of the text and structure of the Constitution and other relevant laws.***'

When this is done, it was his submission that '*citizenship implies allegiance*' and the framers of the Constitution deem the holding of the citizenship of a country as indicative of allegiance to that country. He invited the court to examine the import of **article 8 (2)**, substituted through amendment by the **Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527)** which precludes citizens who hold the citizenship of any other country, in addition to that of Ghana from being appointed as

- a. Ambassador or High Commissioner
- b. Secretary to the Cabinet;
- c. Chief of Defence Staff or any Service Chief;
- d. Inspector-General of Police;
- e. Commissioner, Customs, Excise and Preventive Service;
- f. Director of Immigration Service; and

g. Any office specified by an Act of Parliament.

By referring to **article 94 (2) (a), article 8 (1) and (2)** which allow for the holding of dual citizenship while restraining persons with dual citizenship from holding certain offices respectively, within the same context as done in **article 94 (2) (a)**, the Attorney General submits that '**this is a recognition that article 8 (2) is dealing with the same subject matter as article 94(2) (a), i.e. offices**' to which dual citizens are disqualified from aspiring to.

He went on to submit that the Constitution clearly intended to treat the holding of dual citizenship as indicative of allegiance. As such, the most objective way of ascertaining whether a person owes allegiance to a country other than Ghana is by establishing whether that person holds the citizenship of another country. The issue of allegiance cannot be verified or ascertained through any form of subjective means, as this would be unreasonable and absurd.

Act 527 has coupled the meanings of the two constitutional provisions. And according to the Attorney General, it is clear that while article 8 (1) and 8(2) refer only to incidents of citizenship and is silent on allegiance, the coupling of its operation with article 94(2) regarding exemptions from the holding of certain offices mean that the two constitutional provisions draw from the same source of meaning.

The Attorney General submitted that this position aligns with the position in Canadian law and invited this court to look at the **Canadian Citizenship Act R.S.C., 1985 c. C-29** which provides the oath of citizenship, pursuant to **section 24** of the Canadian Citizenship Act for those who obtain Canadian citizenship. The oath taken requires swearing 'to bear true allegiance' to the Her Majesty Queen Elizabeth the Second, Queen of Canada and her heirs and successors.

Memorandum of issues

The plaintiff and 1st defendant filed separate memoranda of issues. The 2nd and 3rd defendants did not set down any issues for consideration by the court.

The issues set down by the plaintiff are:

- i. When can it properly be said that a person by reason of owing allegiance to a country other than Ghana is not qualified to be a Member of

Parliament within the meaning of article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana?

- ii. Whether or not upon a true and proper interpretation of article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana, 1st defendant was qualified to be a Member of Parliament?
- iii. Whether or not upon a true and proper interpretation of article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana, the election of the 1st defendant as Member of Parliament for the Assin North Constituency when he did not qualify as such was constitutional?
- iv. Whether or not plaintiff's writ properly invokes the original jurisdiction of the Supreme Court?
- v. Whether or not plaintiff's writ is a parliamentary election petition dressed in the garb of a writ to invoke the original jurisdiction of the Supreme Court?

The issues set down by counsel for 1st defendant are:

1. Whether this court has jurisdiction over the writ herein which seeks to challenge and invalidate the election of 1st Defendant as a Member of Parliament.
2. Whether, in the suit before the High Court, Cape Coast, numbered CRP/E/2021, the plaintiff raised the very same issues of the validity of the election of the 1st Defendant as a Member of Parliament that he raises in this suit.
3. Whether the decision of the High Court, Cape Coast, on 28th July 2021, in the said suit number CRP/E/2021, determining the validity of the election of 1st Defendant as a Member of Parliament estops this court *per rem judicatam* from entering upon the same inquiry, as plaintiff invites this court, by his writ, to enter upon.
4. Whether the plaintiff, having instituted an election petition in the High Court, Cape Coast, challenging the validity of the election of 1st Defendant as a Member of Parliament for the Assin North Constituency, is estopped from instituting this suit.
5. Whether there are factual issues to be resolved in this suit to determine whether the 1st Defendant owes allegiance to a country other than Ghana, which makes

the High Court the more appropriate forum for this suit.

6. Whether the plaintiff has, both in the High Court, Cape Coast, and the Court of Appeal, Cape Coast, resisted the reference to the Supreme Court of the question of the interpretation of Article 94(2)(a) of the Constitution on the grounds that there is no issue of interpretation of the said article to warrant a reference to the Supreme Court.
7. Whether there is an issue of interpretation which justifies the recourse to the Supreme Court, within the meaning of previous precedents of this court.
8. Whether the recourse by the plaintiff to this court in this suit is tantamount to forum-shopping and engaging in sheer manipulation of the judicial process to turn justice on its head.
9. Whether the writ herein is frivolous and vexatious, having been initiated in bad faith, and is an abuse of the process of the court.

In the event only that this court determines in respect of the above issues:

- a. that it has jurisdiction over this suit;
- b. that it is not bound by its own previous decisions that a suit involving a challenge to the validity of the election of a Member of Parliament is not within the original or appellate jurisdiction of the Supreme Court or that it is right to depart from those previous decisions;
- c. that plaintiff is not estopped from instituting this court;
- d. that this court is not estopped *per rem judicatam* by the decision of the High Court, Cape Coast, on 28th July 2021 in suit number CRP/E/2021 and is not an inappropriate forum for the factual issues in the suit to be resolved;
- e. that, upon consideration of issue 7 above there is an issue of interpretation in terms of previous decisions of this court;
- f. that, upon consideration of issues 6 and 8 above, the plaintiff is not merely forum-shopping and manipulating the judicial process to turn justice on its head;
or
- g. that the writ herein is not frivolous and vexatious, instituted in bad faith and an abuse of the process of the court;

The following further issues to be set down for determination:

10. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution of the Republic of Ghana, 1st Defendant was not “qualified to be a Member of Parliament” on account of his owing allegiance to a country other than Ghana at the material time for determining this issue.
11. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution, the determination of whether 1st Defendant “owes allegiance to a country other than Ghana” requires proof of the law of the country which it is alleged 1st Defendant owed allegiance to.
12. Whether proof of the law of the “country other than Ghana” can be undertaken by the court having recourse itself, for instance, to websites such as Wikipedia.
13. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution, if the 1st Defendant held another nationality at the material time for determining his qualification to be a Member of Parliament, that resolved the issue of his owing allegiance to a country other than Ghana.
14. Whether, if the holding of another nationality at the material time for determining 1st Defendant’s qualification to be a Member of Parliament resolves the issue of his owing allegiance to a country other than Ghana, the material time for determining the said issue was the time when the 1st Defendant was nominated to stand as a candidate for the election, the time when the election was held or the time when the 1st Defendant, having been elected, took the oath of allegiance as a Member of Parliament.
15. Whether plaintiff has satisfied the burden of proof and established that 1st Defendant owed allegiance to a country other than Ghana at the material time for determining 1st Defendant’s qualification to be a Member of Parliament.

Consideration and Analysis

Issues for Resolution

During our consideration of the issues for trial, we adopted for our determination all the issues filed by the plaintiff and the 1st defendant subject to our right to sift through the issues and deal only with those issues which we considered to be germane to resolving the claim before us. The matter before us being a writ invoking our original

interpretative jurisdiction, our consideration of the issues in this case, would be based on the relevancy of the issues to any act or omission on the part of any person that has a bearing on breaches of the Constitution.

From the issues raised by the plaintiff, we identify that Issues (ii), (iv), and (v) present proper legal disputes for resolution. We also think that issue (v) is addressed within (vi) and therefore issues (vi) and (v) will be merged in their consideration.

From the issues raised by the 1st defendant, we find Issue (1) as inviting us to determine the same issue raised in plaintiff issue (iv). We would therefore merge the two. Issue (2) is a statement that presents no valid legal conundrum for resolution within our interpretative mandate.

Issues (3) and (4) invite this court to resolve the legal conundrum of whether the decision of the High Court operates as estoppel per rem judicatam regarding the validity of the election of the 1st defendant as Member of Parliament. We appreciate that it invites this court to determine whether its jurisdiction has been properly invoked in this action. This is a salient issue in every suit before this court and will be set down for resolution. We also see that it merges into issue (iv) raised by the plaintiff and the two issues will be addressed together.

Issues (5) and (6) cannot be admitted by this court as appropriate for the invocation of our original jurisdiction. Issue (7) merges into the issue of whether this court's jurisdiction has been properly invoked and will be considered alongside issues (iv) and (v) of the plaintiff's issues. Issues (8) and (9) do not qualify to be appropriate for invoking this court's original interpretative jurisdiction. Issues 11 and 15 merge into issue 10, which shall be considered together with issues 13 and 14. Issue 12 presents no legal problem for this court's resolution jurisdiction.

The merged issues we will be resolving therefore are:

From the Plaintiff:

ii. Whether or not upon a true and proper interpretation of article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana, 1st defendant was qualified to be a Member of Parliament?

- iv. Whether or not plaintiff's writ properly invokes the original jurisdiction of the Supreme Court?
- v. Whether or not plaintiff's writ is a parliamentary election petition dressed in the garb of a writ to invoke the original jurisdiction of the Supreme Court?

From 1st defendant:

1. Whether the decision of the High Court, Cape Coast, on 28th July 2021, in the said suit number CRP/E/2021, determining the validity of the election of 1st Defendant as a Member of Parliament estops this court *per rem judicatam* from entering upon the same inquiry, as plaintiff invites this court, by his writ, to enter upon.
2. Whether the plaintiff, having instituted an election petition in the High Court, Cape Coast, challenging the validity of the election of 1st Defendant as a Member of Parliament for the Assin North Constituency, is estopped from instituting this suit.
3. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution of the Republic of Ghana, 1st Defendant was not "qualified to be a Member of Parliament" on account of his owing allegiance to a country other than Ghana at the material time for determining this issue.
4. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution, the determination of whether 1st Defendant "owes allegiance to a country other than Ghana" requires proof of the law of the country which it is alleged 1st Defendant owed allegiance to.
5. Whether, on a true and proper interpretation of article 94(2)(a) of the 1992 Constitution, if the 1st Defendant held another nationality at the material time for determining his qualification to be a Member of Parliament, that resolved the issue of his owing allegiance to a country other than Ghana.
6. Whether, if the holding of another nationality at the material time for determining 1st Defendant's qualification to be a Member of Parliament resolves the issue of his owing allegiance to a country other than Ghana, the material time for determining the said issue was the time when the 1st Defendant was nominated to stand as a candidate for the election, the time when the election

was held or the time when the 1st Defendant, having been elected, took the oath of allegiance as a Member of Parliament.

7. Whether plaintiff has satisfied the burden of proof and established that 1st Defendant owed allegiance to a country other than Ghana at the material time for determining 1st Defendant's qualification to be a Member of Parliament.

All of these issues will be resolved under the broad headings of **jurisdiction, qualification, allegiance, preliminary objections and consequential directions.**

Jurisdiction & Preliminary Objections

The plaintiff has indicated that he is invoking the exclusive jurisdiction of this court conferred by **article 2(1)** of the 1992 Constitution to interpret and enforce **article 94 (2) (a)** of the Constitution. On the other hand, the 1st defendant is submitting that there is no dispute regarding the interpretation and enforcement of constitutional provisions before this court and that it is essentially an action inviting this court to declare a parliamentary election invalid when that determination has already been made by the High Court in Cape Coast.

We disagree. We are afraid that the 1st defendant misses the very obvious difference between the suit heard by the High Court in Cape Coast and the present action. What this court has been called to do is to interpret and enforce **article 94 (2) (a)** with regard to the qualification of the 1st defendant to become and remain a Member of Parliament. In all the decided cases of this court referred to by counsel for the 1st defendant which dealt with procedure provided in the rules for performing an act or the court with proper jurisdiction for hearing and dealing with Parliamentary election disputes, this Court did not find any "act or omission" on the part of any person which warranted the invocation of its original interpretative jurisdiction. Some of these cases were: **Yeboah v J H Mensah [1998-199] SCGLR 492; Republic v High Court, Koforidua; Ex parte Asare (Baba Jamal & Others Interested Parties) [2009] SCGLR 460; Republic v High Court Sunyani; Ex Parte Collins Dauda (Boakye-Boateng Interested Party, 2009 SCGLR 447; In re Parliamentary Election for Wulensi Constituency; Zakaria v Nyimakan [2003-2004], 1 SCGLR 1, Republic v High Court, Ho Ex Parte Attorney General (Professor Margaret Kweku & Others, Interested parties) Suit No. J5/21/2021, 5th January 2021.**

The Court had no option but to decline jurisdiction in a number of cases filed to

interpret or enforce constitutional provisions and to refer the parties to the appropriate forum for resolution.

On the other hand, it has also been the settled position of this Court that it is not precluded from engaging its exclusive jurisdiction to interpret and enforce the provisions of the Constitution where that jurisdiction arises under article 2 (1) and article 130 (1), even if there is within the same cause of action, a concurrent jurisdiction of the High Court to settle the validity of an election under article 99 of the Constitution. See the decisions of this Court in **New Patriotic party v National Democratic Congress and others [2000] SCGLR 461** and **Ex Parte Zanetor Rawlings** cited supra.

Again, the ratio and facts of this suit are similar to the dispute situation in the case of **Sumaila Bielbiel (No 1) v Dramani and Another [2011] 1 SCGLR 132**, (the Bielbiel case) in which this court recognized the jurisdiction to settle questions relating to the qualification and eligibility criteria for members of Parliament under **article 94 (2) (a)**. Regrettably, the Bielbiel case which is on all fours with the current case was never discussed by the parties in this case apart from cursory reference to it by the counsel for the plaintiff and the 3rd defendant. The similarity of the facts in that case to the present one is evident from the facts and decisions of the case.

In that case the plaintiff caused a writ of summons to be issued at the High Court against the 1st Defendant Adamu Daramani, who was elected as the member of Parliament for Bawku Central Constituency in the November 2008 parliamentary election. The plaintiff claimed a declaration that the 1st defendant is a holder of a British Passport and, therefore, owes allegiance to a country other than Ghana and is, therefore, disqualified from holding the office of Member of Parliament of the Republic of Ghana and an order to compel him to vacate his seat in Parliament. The 1st defendant raised an objection challenging the High Court's jurisdiction to entertain the said suit on the basis that the suit before the High Court was a disguised election petition brought in the way the writ was couched in order to avoid the procedural obstacles he would need to clear if he had brought it as an election petition. The High Court dismissed the objection whereupon the 1st defendant appealed to the Court of Appeal. The 1st defendant subsequently obtained an order of stay of proceedings in the matter at the Court of Appeal.

The Court of Appeal decided the Interlocutory appeal filed by the 1st defendant, and set aside the writ of the plaintiff in the High Court, on the basis that the claims constituted an election dispute and that the action should have been commenced by a petition and not by a writ of summons and should have been presented twenty one (21) days after the date of the publication in the Gazette of the results of the election.

Following the Court of Appeal decision, the plaintiff invoked the original jurisdiction of the Supreme Court under **article 2(1)** and **article 130** seeking a declaration that, on a true and proper interpretation of articles 97(1) and 94(2)(a) of the Constitution, the 1st defendant who held a British Passport and therefore owed allegiance to a country other than Ghana was acting in contravention and in continuous violation of the 1992 Constitution for as long as he continued to sit in the Parliament of Ghana.

In his preliminary objection, as in this case to the jurisdiction of the Supreme Court, the 1st defendant argued that the suit was primarily a dispute regarding the validity of a parliamentary election and therefore it was the High Court that had jurisdiction to deal with it through an election petition. As such, the Supreme Court had no jurisdiction to entertain a parliamentary election suit which was on appeal to the Court of Appeal.

By a majority of 7-2, the Supreme Court was satisfied that to the extent that the dispute centered on a breach of **article 94 (2) (a)**, its jurisdiction was different in scope from the issues raised in the High Court, where an action commenced by writ to invalidate the election of the defendant had been struck out for incompetence. It was the exclusive jurisdiction of the Supreme Court to examine the facts and issues and determine whether there was a continued breach of the Constitution, and through that, enforce the Constitution.

Gbadegbe JSC speaking on behalf of the majority opined as follows:

'I have carefully examined the undisputed facts averred to by the plaintiff and have come to the conclusion without any disrespect to learned counsel for the defendant who has made considerable submissions on these grounds that what was before the High Court and appealed to the Court of Appeal is different in scope than what is now before us. The plaintiff in any event is contending that the defendant continues to breach the provisions of the

Constitution even after the decision of the Court of Appeal. In my view, the facts urged by the plaintiff are of a continuing nature like a nuisance therefore every moment that the defendant continues to take his seat in Parliament, or exercises the functions of that office, he is in breach of the constitutional provisions and as such there is a new cause of action consequent upon any such breach. This being the case, I do not see any force in the contentions on this ground.....

The learned justice then proceeded:

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

This court was deprived of the opportunity to sharply interpret **article 94 (2)** on this similar bed of facts because the Bielbiel case was not prosecuted beyond this holding that the court had jurisdiction to determine the meaning of **article 94 (2) (a)** and enforce same. We are mandated by article 129 (3) that while treating our own previous decisions as normally binding, may depart from a previous decision when it appears to us right to do so. None of the parties have urged on us any legal basis to depart from the Bielbiel decision and we find no reason to depart from this earlier decision to activate the jurisdiction under **article 2(1)** and **article 130** in order to settle the meaning of **article 94 (2) (a)** when it comes to members of Parliament holding '*allegiance*' to another country.

It is to be appreciated that if the meaning of a Constitutional provision is so plain that it raises no contest in interpretation, then every court in this country is enjoined to apply that meaning. However, if parties raise rival positions regarding the meaning and application of the text of the Constitution or the words of a constitutional provision are imprecise, unclear, or ambiguous, then the exclusive jurisdiction of this court is properly invoked for the resolution of the proper interpretation to place on the relevant provision under **article 130**. See the oft-cited decision in **Republic v Special Tribunal; Ex Parke Akosah 1980 GLR 592**. Again, if there is a breach of the Constitution, the enforcement jurisdiction of this court conferred in **article 2** is rightly invoked.

We also find the protests of the 1st defendant to the invocation of the exclusive jurisdiction of this court to interpret and enforce the Constitution especially curious since he is the same person whose counsel has urged on us that the qualification criteria determined as applicable to the provisions of **article 94 (1) (a)** in **Zanetor Rawlings** cited supra with regard to time, should be construed as operating differently from the qualification criteria in **article 94 (2) (a)**. As submitted by all counsel in this suit, the case of **Zanetor Rawlings** established that the time for showing qualification under article **94 (1) (a)** is at the time of the opening of nominations by the Electoral Commission in the discharge of their constitutional functions to conduct national and public elections as provided for under **article 45** and **article 51**.

While counsel for the 1st defendant admits that the time for being qualified under **article 94 (1) (a)** to be nominated for election as a Member of Parliament should be at the time nominations are declared open by the Electoral Commission, as declared by

this court in **Zanetor Rawlings** cited supra, he also urges that the time for being disqualified for owing allegiance to another country under **article 94(2) (a)** should be at the time of the election, and not nomination, because of the directions of **section 20 (1) of Representation of People Law, 1992 PNDC Law 284**.

If his position on how **article 94 (2) (a)** must be construed as being tied to **section 20 (1) of PNDC Law 284** is correct, then it is the jurisdictional remit of this court to determine whether the framers of the 1992 Constitution had different time frames for qualification to stand for public elections as a Member of Parliament in mind when they set out the qualification requirements in **article 94 (1) (a)** as opposed to the qualification requirements in **article 94 (2) (a)**.

Screening through the dicta of this court will establish that as much as the opportunity for resolving the time of operation of the conditions in **article 94 (1)** arose before Zanetor Rawlings was decided, it was in that hearing that this court took the opportunity *‘to interpret the provision in article 94 (1) (a) in order to bring out clearly the scope and intent of this provision of the Constitution, in particular, when the eligibility criteria become applicable to a parliamentary election’*.

In the same vein, apart from the lost opportunity in the **Bielbiel** case, the meaning of the concept of *‘owing allegiance to a country other than Ghana’* as provided for in **article 94 (2) (a)** has been inferentially clarified and applied by this court in **Asare v Attorney General [2012] 1 SCGLR 460**

The present case, therefore, affords this court the opportunity to stand on existing decisions not only to restate what it means to owe allegiance to a country other than Ghana in the context of qualification for election to be a Member of Parliament as provided for under **article 94 (2) (a)**, but to tie the operative time for owing allegiance to no other country but Ghana, as provided for in **article 94 (2) (a)**, to the time when this qualification is required, in the face of the obscurity that the 1st defendant seeks to introduce into the timelines of **article 94 (1) (a)** and **article 94 (2) (a)** with his references to the applicability of **section 20 (1) of the PNDC Law 284** when it comes to **article 94 (2) (a)**.

The salient questions for which we see that our jurisdiction has been invoked to interpret and settle therefore are:

'What does it mean to say that a person is not qualified to be a Member of Parliament because he owes allegiance to a country other than Ghana under article 94 (2) (a) of the 1992 Constitution'

'Pursuant to article 94 (2) (a), is the time for determining whether a citizen is qualified to be a Member of Parliament by reason of not owing allegiance to any country other than Ghana, the date on which a candidate files his documents with the Electoral Commission to contest parliamentary elections or the date when a candidate wins the election for Member of Parliament'.

Allegiance

What does it mean to owe allegiance to a country other than Ghana? When the framers of the Constitution introduced this word into article 94 (2) (a), and the Oath of Allegiance taken by a Member of Parliament pursuant to article 100 and found in the Second Schedule to the Constitution, what did they mean? What was the purpose of the word and what did they seek to achieve?

As stated earlier in this judgment, the meaning of the concept of *'owing allegiance to a country other than Ghana'* as provided for in **article 94 (2) (a)** has been inferentially clarified and applied by this court. The relevant case was **Asare v Attorney General [2012] 1 SCGLR 460**

The **Constitution of the Republic of Ghana (Amendment) Act 1996, Act 527** amended article 8 of the 1992 Constitution by substituting the said article with new provisions and directions. The new **articles 8 (1) and (2)** provide that:

Article 8 of the Constitution substituted

(a) Article 8 of the Constitution is repealed and the following

Dual Citizenship

8(1) a citizen of Ghana may hold the citizenship of Ghana

(2) Without prejudice to article 94 (2) (a) of the Constitution, no citizen of Ghana shall qualify to be appointed as a holder of any office specified in this clause if he holds the citizenship of any other country in addition to his citizenship of Ghana

(a) a. Ambassador or High Commissioner

- (b) *Secretary to the Cabinet;*
- (c) *Chief of Defence Staff or any Service Chief;*
- (d) *Inspector-General of Police;*
- (e) *Commissioner, Customs, Excise and Preventive Service;*
- (f) *Director of Immigration Service; and*
- (g) *Any office specified by an Act of Parliament.*

Parliament thereafter enacted the Citizenship Act 2000, Act 591. Section 16 (2) added six more offices to the list of public offices to which a dual citizen could not be appointed under Act 527. They included the Chief Justice and Justices of the Supreme Court, Commissioner, Value Added Tax, Director General of Prisons Service, Chief Fire Officer, Chief Director of a Ministry, the rank of a colonel or its equivalent in the other security services; and any other public office that the Minister may, by legislative instrument, prescribe.

The plaintiff in **Asare v Attorney General [2012] 1 SCGLR 460** commenced an action in this court complaining that **section 16 (2) of Act 591** should be declared null and void on account of contravening the spirit of **article 17** (guaranteeing equality and freedom from discrimination), and **article 15** (guaranteeing respect for human dignity) to the extent that Ghanaians with dual citizenship were specifically proscribed from holding the specified offices. He urged that it violated the principle of equal citizenship, a bedrock of the 1992 Constitution, as well as other claims.

This court unanimously dismissed the majority of the claims and pointed out that the impugned provisions of **article 8(2)** inserted by **Act 527** were not inconsistent with **article 17** or **article 15** of the 1992 Constitution because a State was entitled to adopt measures to secure the loyalty of its citizens to it. Prior to the enactment and amendment effected in **Act 527**, there was a complete constitutionally directed aberration for dual citizenship by Ghanaians in the 1992 Constitution. It was the view of this court in **Asare** that there was a policy reason why this was so, being a need to remove ‘*the risk of reliable allegiance to Ghana from a dual citizen*’. This court, per Atuguba JSC, noted that the impugned provisions seek to cater for two interests – the risk of allegiance and the need to allow for dual citizenship. In order to balance these interests, the amendment to the Constitution to allow for dual citizenship had been based on the need for security of allegiance to the State of Ghana, which must be

proportionate to the type of office of state involved. This balance was achieved by allowing dual citizenship subject to disallowing dual citizens from holding certain sensitive public offices.

As quoted to us by counsel for the plaintiff and in reference to the decision of this court in **Asare v Attorney General**, Atuguba JSC referred to the **Report on the Committee of Experts (Constitution) On Proposals for a Draft Constitution of Ghana (presented to the PNDC, July 31, 1991)** with regard to its considerations on dual citizenship and loss of citizenship in Chapter Seventeen of the Report. He quoted from paragraphs 374 and 375 on pages 175-176 in these words:

374. *The Committee considered the recommendations in the NCD report that the question of prohibition of dual citizenship for Ghanaians as provided in the 1979 Constitution should be examined by it. Our law provides among others, that if a Ghanaian of full age voluntarily swears allegiance to another county and becomes a citizen of that country then he loses his Ghanaian citizenship. The issue before the Committee was whether there was any justification for altering this law so as to enable Ghanaians acquiring the nationalities of other countries to retain their status as Ghanaian citizens. On this opinion was divided*

375. *One view was that the Committee could not dismiss **the question of allegiance which is indeed at the root of citizenship**. A country owes specific duties to its citizens; for example it is its responsibility to evacuate them in times of war or crisis from any foreign land – There is reciprocal responsibility of the citizen not to engage in acts that would put the security of his country at risk, to mention just one duty. The question of allegiance should therefore not be taken lightly. As the Akufo-Addo report stated: **'we do not want an occasion where allegiance to Ghana is shared with allegiance to some other country'**.(emphasis ours)*

The opposite view was that such a dual citizenship could be justified.'

He went on to say on page 485 and page 487 respectively of the Report:

'to begin with, it seems to me, that citizenship is a matter of state sovereignty and has a unique and intricate character which has been specially dealt with in Chapter 3 of the 1992 Constitution'.

'In particular, the dual Ghanaian citizen is a unique creature of the Constitution as amended. He was hitherto proscribed by the Constitution (save in very limited situations) because he would pose a much greater threat to national loyalty since he would be torn in loyalty between two or more countries, and therefore the question of equality of rights in relation to him simply did not arise. What his rights should be upon being let into dual citizenship of Ghana can only depend on what has been conferred on him by the Constitution, with due regard for national security as evidenced by the limitations on the holding of certain offices.'

On page 489 he said *'Parliament as aforesaid, amended the 1992 Constitution of Ghana to admit dual citizenship without disregard for the element of risk to stable allegiance to Ghana. Hence even though article 94 (2) (a) is not an entrenched provision, it nevertheless did not delete it but expressly retained it.'*

On page 492, Atuguba JSC went on *'It is noticeable from the offices which cannot be held by a dual citizen of Ghana that they are all high profile or leadership positions (see article 286 (5) which involve confidentiality and unalloyed allegiance to Ghana and if some other countries do not consider them to be such, Ghana is not precluded from doing so. Dual loyalty has been denounced in the book of the Universe, the Bible'*

Pointing to the Memorandum that accompanied the Bill that became Act 527, Atuguba JSC quoted these words. *'The proposed article 8 (1) states that a citizen of Ghana may hold the citizenship of any other country in addition to his Ghanaian citizenship. However, one cannot overlook the fact that it is absolutely essential that certain offices must be held by persons who owe allegiance only to Ghana. For this reason, exceptions to this general provision have been provided in the proposed article 8 (2) in respect of specific crucial public offices'*

He concluded by saying *'I would therefore hold that the impugned provisions are intended to protect the interest of Ghana as far as crucial loyalty to Ghana is concerned....'*

We have taken the trouble to set out these words to show that as far back as 2012, this court was very clear that citizenship was bound up with loyalty to the State and allegiance to it. There is, therefore, no ambiguity when article 94(2) (a) refers to 'owing allegiance to a country other than Ghana'. In **Asare v Attorney General**, this court

assumed the words to mean being a citizen of a country other than Ghana. Citizenship and allegiance are bound up in the same spirit.

The evidence that Citizenship and allegiance are bound together is seen in the language used by the Legislature in the Citizenship Act 2000 (Act 591). Section 8 states clearly that "A person **shall not be registered as a citizen unless that person has taken the oath of allegiance.**" In the case of naturalization, section 13 of the Act provides as follows:

(1) The Minister may, with the approval of the President, grant a certificate of naturalisation to a person of age and capacity who satisfies the Minister as being qualified under section 14 for naturalisation.

(2) A person to whom a certificate of naturalisation is granted under subsection (1) **shall take the oath of allegiance and become a citizen by naturalisation from the date on which the oath of allegiance is taken. (emphasis ours).**

Apart from Ghana, jurisdictions such as Great Britain have a similar provision in their laws bounding allegiance to Citizenship. Section 42 of the British Nationality Act 1981, (as amended), provides that:

"A person aged over 18 cannot be registered or naturalised as British citizen unless he or she has made the relevant citizenship oath and pledge at a citizenship ceremony.

- A person aged over 18 cannot be registered or naturalised as a British Overseas Territories citizen unless he or she has made the relevant citizenship oath and pledge.
- A person aged over 18 cannot be registered as a British Overseas citizen or a British subject unless he or she has made the relevant citizenship oath.

In Schedule 5 to the 1981 Act, (as amended), the form of a citizenship oath and pledge for registration of or naturalisation as a British citizen is as follows:

Oath: "I, [name], swear by Almighty God that, **on becoming a British citizen, I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law.**" (emphasis ours).

Our review of other texts also reveals allegiance to be that of fidelity, loyalty, submission and acceptance of the authority and power of the sovereign, or State in

return for the protections, rights, privileges and resources given by the sovereign or State as a function of being a citizen. Allegiance is bound up with the fact and legal operations of citizenship.

GW Keeton, The Elementary Principles of Jurisprudence 39 (2d ed. 1949) defines allegiance as

'Allegiance implies submission to all properly authorized commands of the state, and acceptance of the tribunals of the state as a vehicle for determining and enforcing those commands. Protection and allegiance are indissolubly divided'

Black's Law Dictionary (Thomson Reuters 11th Edition, 2019, defines allegiance as *'A citizen's or subject's obligation of fidelity and obedience to the government or sovereign in return for the benefits of the protection of the state.'*

So, it can be seen from the oaths in the Second Schedule to the Constitution that the first oath set out in the schedule is the OATH OF ALLEGIANCE. Members of Parliament are required under the Constitution and pursuant to article 100 to swear this oath that includes the oath *'I will bear true faith and allegiance to the Republic of Ghana as by law established'*. The oath of allegiance is sworn to the Republic of Ghana. This infers strict fidelity to Ghana and no other country.

The above texts and more assist to clarify that the direction on allegiance within article 94 (2) (a) of the 1992 Constitution lies within the framework of nationality and holding the citizenship of Ghana. And the constitutional edict is clear.

(94) (2) *A person shall not be qualified to be a member of Parliament if he –*
(a) *Owes allegiance to a country other than Ghana*

In simple translation, a person shall not be qualified to be a Member of Parliament if he is a citizen of a country other than Ghana. Specific provision was therefore made under article 94 (2) for Members of Parliament not to owe allegiance to any other country.

With **Act 527**, the sharpness of the original aberration against dual citizenship was blunted by the provisions of the new article 8 admitting dual citizenship. But in this exercise, the amendment was clear to determine categories of national functionaries who cannot owe allegiance to another country, or put simply, cannot hold dual citizenship. They are listed in section 1 of Act 527. Article 8 under Act 527 then carefully

recognized that its operation was '*without prejudice to article 94 (2)*', meaning that the edict against Members of Parliament owing allegiance to any other country was unaffected in the amendment of article 8.

It will also be noted that article 94 (3), before the amendment to article 8 that became Act 527, had already set out that a person shall not be eligible to be a Member of Parliament if he holds certain public offices such as being responsible for the conduct of elections, and membership of the Police Service, Prisons Service, Armed Forces, Judicial Service, Legal Service, Audit Service, Parliamentary Service, Fire Service, Customs, Excise and Preventive Service, Statistical Service, Immigration Service, the Internal Revenue Service, or he is a Service Chief.

It is therefore clear on a reading of article 94 (2) (a) and 94 (3) together with article 8 prior to its amendments, that the framers of the Constitution intended to shield the holding of membership of Parliament away from non-citizens, as well as shielding the holding of membership of Parliament away from the Public Service office holders and Service Chiefs. Following the amendment of article 8 by Act 527 which allowed dual citizenship, the lawmakers reiterated their position that persons who hold dual citizenship will still not qualify to be Members of Parliament and will not qualify to hold certain sensitive echelons of the Public Services.

In **JH Mensah v Attorney-General [1996-97] SCGLR 320** at 362 this court per Acquah JSC (as he then was) stated the accepted principle that '*a better approach to the interpretation of a provision of the 1992 Constitution is to interpret that provision in relation to the other provisions of the Constitution so as to render that interpretation consistent with the other provisions and the overall tenor or spirit of the Constitution*'. There must be constant reference to related provisions during the interpretative process.

In **Republic v High Court (Fast Track Division) Ex Parte CHRAJ (Anane Interest Party) [2007-2008] SCGLR 213**, Wood CJ intoned the fundamental position that in any constitutional interpretative dispute involving the use of ordinary words or expressions, and where the Constitution is completely silent on the meaning to be assigned to those words or expression, the first rule is to apply the ordinary or plain meaning of the words unless that meaning will defeat the purpose of the legislation,

lead to a result that is at variance with the main purpose of the provision or some incongruous or absurd results.

As pointed out by E. Kofi Abotsi on page 45 of '**Constitutional Law of Ghana: Texts, Cases & Commentary, 2017**', the boundaries of law and decision-making ought to be defined with substantial precision and clarity. The Latin maxim '*nihil in legr intolerabilius est, eandem rem diverso jure censer* – *nothing is more intolerable in law than that the same matter, thing or case should be subject to different views of law*' should guide us to a conclusion that allows the law to speak with integrity and harmony.

We state without any equivocation that **article 94 (2) (a)** means that to be qualified to be a member of parliament, a citizen of Ghana must not hold any other citizenship at the time when nominations are opened by the Electoral Commission for registration of candidates for election as Members of Parliament.

The effect of the renunciation of alternate citizenship

When does cessation of 'allegiance' occur when a Ghanaian citizen renounces their citizenship of another country? Is it on the date the person declares that renunciation, or does it occur as a matter of law from settled regulations?

The 1st defendant set down the following issues regarding the effect of renouncing the citizenship of another country. They are:

- *Whether, if the holding of another nationality at the material time for determining 1st Defendant's qualification to be a Member of Parliament resolves the issue of his owing allegiance to a country other than Ghana, the material time for determining the said issue was the time when the 1st Defendant was nominated to stand as a candidate for the election, the time when the election was held or the time when the 1st Defendant, having been elected, took the oath of allegiance as a Member of Parliament and*
- *Whether plaintiff has satisfied the burden of proof and established that 1st Defendant owed allegiance to a country other than Ghana at the material time for determining 1st Defendant's qualification to be a Member of Parliament*

We find the answer to these issues from the record before us, and the interpretation of the Constitution as has been evaluated.

According to the averments of the plaintiff, between 2nd and 5th October 2020 when the 1st defendant filed his nominations to contest the parliamentary seat, he had not

received his certificate of renunciation of Canadian citizenship. The 1st defendant said he had received the certificate of Renunciation in November and by the date of the election on 7th December and his taking the oath of allegiance as a Member of Parliament in January. This admission, verified from the findings of the High Court on page 42 of the judgment in **suit number CRP/E/3/21** informs us that the 1st defendant is well aware that beyond submitting to the Canadian authorities his intention of renouncing that citizenship, he needed a Certificate of Renunciation to complete that process of become a sole citizen of Ghana.

A necessary incident of the Constitution as a living document is that its interpretation and application must not lend itself to confusion and absurdity, but harmony and consistency in meaning.

Since citizenship is a matter of law and is determined by the law and the regulatory mechanisms of States, it is not a valid legal submission that a unilateral statement of renunciation of citizenship of another country should be recognized as severance of allegiance from that country. If that were plausible, persons who have complied with stringent conditions and borne considerable costs to become citizens of Ghana or another country could simply throw affidavits or Declarations at the State and deem themselves divested of citizenship if they find a reason to quickly remove the burden of that citizenship from themselves because of changed needs. There would be no need for the Certificate of Renunciation issued by the Canadian authorities to take effect from 26th November 2020.

In the same way that the obtaining of alternate citizenship is done through due process and by legal means, we are satisfied that without a legal record granted by the State that conferred the alternate citizenship, persons who present themselves as having renounced their alternate citizenship cannot be accepted as having done so, unless they show an official record stating so from the alternate State. To accept such a proposition will make a mockery of the weight that Ghana and States place on the grant of citizenship other than through birth and the rights and obligations that go with holding allegiance to the State.

This court has to, therefore, reiterate its earlier conclusion – that the qualification of holding only Ghanaian citizenship must be present at the time of nomination, and not any date thereafter – in this case by 9th October 2020.

We hold that by the requirements of **article 8** as amended by **Act 527**, and **article 94 (2) (a)**, any person, who has obtained citizenship of another country other than Ghana, and **who files for nomination** with the Electoral Commission to contest for election as a Member of Parliament will not be qualified to contest for elections unless and until they show a record from the alternate State that they no longer hold the citizenship of that State **as at the date of filing their nominations with the Electoral Commission**

Since the 1st defendant had not received his certificate of renunciation as a Canadian citizen as of 9th October 2020, then he was not qualified to be a Member of Parliament at the time that he filed his nomination papers, at the time he stood for elections, and at the time he was declared as elected Member of Parliament, because he owed allegiance to another country as at 9th October 2020, the date when he should have satisfied the qualification criteria.

Consequential directions

We grant the reliefs of the plaintiff and state that:

First, upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the 1st Defendant was not qualified at the time of filing his nomination forms between 5th -9th October 2020 to contest the 2020 Parliamentary elections for the Assin North Constituency as a Member of Parliament.

Second, upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 the decision of the 2nd Defendant to permit the 1st Defendant to contest the Parliamentary Elections in the Assin North Constituency when the 1st Defendant had not shown evidence of the cancellation of his citizenship of Canada is an act that is inconsistent with and violates Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana.

Third, upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the election of the 1st Defendant as Member of Parliament for Assin North Constituency was unconstitutional.

Fourth, upon a true and proper interpretation of Article 94(2)(a) of the Constitution, 1992 of the Republic of Ghana the swearing in of 1st defendant as Member of Parliament for the Assin North Constituency was unconstitutional, null and void and of no legal effect.

Fifth, Parliament is ordered to expunge the name of the 1st defendant James Gyakye Quayson as Member of Parliament for Assin North Constituency.

**N. A. AMEGATCHER
(JUSTICE OF THE SUPREME COURT)**

**V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)**

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

**G. TORKORNOO (MRS.)
(JUSTICE OF THE SUPREME COURT)**

**PROF. H. J. A. N. MENSA-BONSU (MRS.)
(JUSTICE OF THE SUPREME COURT)**

**E. YONNY KULENDI
(JUSTICE OF THE SUPREME COURT)**

**B. F. ACKAH YENSU (MS)
(JUSTICE OF THE SUPREME COURT)**

COUNSEL

FRANK DAVIES ESQ. FOR THE PLAINTIFF WITH HIM BRIGHT OKYERE AGYEKUM ESQ.

TSATSU TSIKATA ESQ. FOR THE 1ST DEFENDANT WITH HIM JUSTIN PWAVRA TERIWAJAH ESQ.

SETH ANANE-AMANKWAH ESQ. FOR THE 2ND DEFENDANT.

NANA ABUAA BRENYA-OKYERE (PRINCIPAL STATE ATTORNEY) FOR THE 3RD DEFENDANT

LED BY GODFRED YEBOAH DAME (ATTORNEY-GENERAL).