

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
(HUMAN RIGHTS DIVISION)
ACCRA - A.D. 2018

Filed on..... 24/12/2018
at..... 10:00 am/pm
.....
Registra
HIGH COURT, ACCRA
SUIT NO.....

IN THE MATTER OF ARTICLES 33 (1), 23, 42 and 296 of the CONSTITUTION, 1992

AND

HR/023/2019

IN THE MATTER OF AN APPLICATION BY **GABRIEL AZIAGLO AND DAN LOUIS NIKABO**
FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL HUMAN RIGHTS;

BETWEEN

1. **GABRIEL AZIAGLO** 3000017108
House NO. TAM 1134, Dodo Tamale
Kadjebi District
Volta Region
2. **DAN LOUIS NIKABO** 3000017109
Unnumbered House, Togbe Napors House
Avornyokope, Kadjebi District
Volta Region

APPLICANTS

AND

1. **ELECTORAL COMMISSION** 30000015007
OPPOSITE RIDGE HOSPITAL
EIGHTH AVENUE, RIDGE
ACCRA, GHANA

1ST RESPONDENT/RESPONDENT

2. **ATTORNEY GENERAL** 722
ATTORNEY GENERALS DEPARTMENT
MINISTRIES, ACCRA

.....
2ND RESPONDENT


MOTION ON NOTICE

APPLICATION FOR AN ORDER OF INTERLOCUTORY INJUNCTION RESTRAINING 1ST
RESPONDENT/RESPONDENT FROM PROCEEDING TO HOLD, HOLDING OR CONDUCTING
OR SUPERVISING REFERENDUM FOR THE CREATION OF NEW REGIONS ON THE 27TH OF
DECEMBER, 2018 PENDING A FINAL DETERMINATION OF SUIT


PLEASE TAKE NOTICE that this Honourable court will be moved by **ALBERT QUASHIGAH,**
ESQ LICENSE NO. GAR 15676/18 for and on behalf of the Applicants herein praying for an order of

Interlocutory injunction restraining 1st Respondent its privies assigns work men or however described from proceeding to hold, holding or conducting or supervising any referendum in the proposed six regions of the Republic of Ghana on Thursday, the 27th of December, 2018 pending a final determination of the suit on its merits.

Upon the grounds contained in the accompanying affidavit and for any or further order (s) which this Honourable Court may deem fair and just in the circumstances.

 THIS Honourable Court will be moved on ^{8th} day of ^{JAN} 2018 at 9 O'clock or so soon thereafter as this Honourable Court may be heard.

DATED AT KASSER LAW FIRM THIS 24TH DAY OF DECEMBER, 2018


ALBERT QUASHIGAH, ESQ
LAWYER FOR APPLICANTS
LICENSE NO. GAR 15676/18

LAW FIRM REGISTRATION NUMBER: PP0003976/18
TAX IDENTIFICATION NUMBER: P001842997

ALBERT QUASHIGAH, ESQ.
KASSER LAW FIRM
H/No. 2B, ANTERSON STREET
COMMANDOS ROAD, COMMANDOS
ADENTA - ACCRA
0248179702

THE REGISTRAR
HIGH COURT
(FUNDAMENTAL HUMAN RIGHTS DIVISION)
ACCRA

AND FOR SERVICE ON:

1ST RESPONDENT, ATTORNEY GENERAL
ATTORNEY GENERALS DEPARTMENT
MINISTRY OF JUSTICE
MINISTRIES
ACCRA

2ND RESPONDENT;

THE ELECTORAL COMMISSION
OPPOSITE RIDGE HOSPITAL
EIGGTH AVENUE
RIDGE-ACCRA

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
HUMAN RIGHTS DIVISION
ACCRA –A.D. 2018

24/12/2018
10:00 am/pm
Registrar
HIGH COURT, ACCRA
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AND
IN THE MATTER OF AN APPLICATION BY **GABRIEL AZIAGLO** AND **DAN LOUIS NIKABO** FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL HUMAN RIGHTS;

BETWEEN

- | | |
|---------------------|------------|
| 1. GABRIEL AZIAGLO | |
| 2. DAN LOUIS NIKABO | APPLICANTS |

AND

1. ELECTORAL COMMISSION OPPOSITE RIDGE HOSPITAL EIGHTH AVENUE, RIDGE ACCRA, GHANA	1 ST RESPONDENT/RESPONDENT
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2. ATTORNEY GENERAL ATTORNEY GENERALS DEPARTMENT MINISTRIES, ACCRA	2 ND RESPONDENT
---	----------------------------

**AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE FOR INTERLOCUTORY
INJUNCTION PENDING SUIT**

We, **GABRIEL AZIAGLO** of House No. TAM 1134, Dodo Tamale, Kadjebi District, Volta Region in the Republic of Ghana and **DAN LOUIS NIKABO** of unnumbered house, Togbe Napors House, Avornyokope, Kadjebi District .in the Volta Region of the Republic of Ghana do hereby make oath and say as follows;

1. That we are the deponents to the present affidavit and registered voters in the proposed Oti Region in the Volta Region of the Republic of Ghana and depose to the facts herein severally and jointly for and on our behalf which facts unless otherwise stated are within our personal knowledge information and belief and that same facts have come to our knowledge by reason of being registered voters in the proposed Oti enclave and entitled

to vote in the referendum for the creation of new regions on the 27th of December, 2018. Annexed hereto and marked as “**EXHIBIT A1 series**” are copies of our Voter ID cards.

2. That we are advised by our solicitor and verily believe same to be true that at the hearing of this Application, Applicants’ counsel will seek the leave of this Honourable court to refer to all process filed in this suit and to also refer to any relevant matter which might come to Applicants’ attention as if they were sworn to as depositions and annexed hereto as Exhibits.
3. That we are registered voters in the proposed Oti Region and are entitled to vote in the 27th December 2018 referendum and have the right to be treated fairly and reasonably in respect of the processes leading up to, during the voting and after the polls.
4. That pursuant to Constitutional provision, 1st Respondent made the **REFERENDUM (CREATION OF NEW REGIONS) REGULATION, 2018** to regulate the conduct of a referendum by the Electoral Commission for the creation of new regions.
5. That under the Regulation above precisely Regulation 59 which is the interpretation part, we fit in the category of persons described as “interested group”.
6. That the Constitutional Instrument mandates 1st Respondent to publish in the Gazette for purposes of official notice the list of places 1st Respondent has designated as polling stations in the various districts across the proposed regions for the purposes of the referendum. The Law requires this in mandatory terms when it uses “shall publish”.
7. That Applicants’ right to vote for purposes of this referendum encompasses the right to be registered as a voter and be given official notice of the polling stations at which Applicants must cast their ballot for or against the referendum question.
8. That the indispensable essence of the publication of the list of polling stations in the gazette we are advised by our solicitor and we believe same as true is two-fold; **ensuring that, the Applicants are aware of the number of polling stations and to assign**

polling agents and counting officers for monitoring and counting of votes respectively, and also; to prevent unauthorized polling stations springing up at the blindside of the interested group so that the right to monitor and ensure transparent polls is not defeated. The C.I 109 expresses the fear that there could be multiple voting and impersonation hence the need for polling and counting agents.

9. That when Applicants are given official notice of the polling stations in the gazette, Applicants who fall in the category of “interested group” i.e. persons registered and entitled to vote in the enclave of the proposed Oti Region and others across the country have the right to appoint a polling agent and a counting officer or a polling agent to perform both functions at each of the designated polling stations in the gazette on polling day.
10. That the purpose of the presence of the polling agents under the 1st Respondents’ own CI 109 is to detect impersonation and multiple voting and to certify that the poll was conducted in accordance with the laws and regulations governing the conduct of the polls.
11. That under C.I 109 ,the Applicants are given not later than 4 days to the polls to submit to the District Returning officer the names of the polling agents and counting officers with their addresses and specific polling stations where they are assigned. This is dependent on knowing the official polling stations.
12. That the absence of polling agents and counting officers on the behalf of an interested group because the interested group was not afforded a reasonable opportunity to designate polling and counting agents for each of the polling stations amounts to unfair treatment and a breach of their right to vote since multiple voting and impersonation when undetected will diminish the quality of Applicants’ one vote when pitched against unlawful multiple votes.

13. That Applicants' check at the Assembly press at which place a gazette of the list of polling stations ought to be made for giving notice officially to the public will show that no such notice had been given only days to the referendum. Annexed hereto and marked as "**EXHIBIT A2 series**" is a copy of receipt and copy of gazette evidencing that Applicants instructed visits to the Assembly Press, the government publishers in Accra as recent as 17th December, 2018.
14. That Applicants instructed their Lawyer, who in a letter dated 20th December, 2018 raised these and many other concerns to the 2nd Respondent, the Electoral Commissioner and her two Deputies in charge of everyday management of the Commission's affairs. Annexed hereto and marked as "**EXHIBIT A3**" series are copies of delivery on the commissioners.
15. That in that letter, Applicants' Lawyer upon Applicants' instruction gave the 1st Respondent an ultimatum of 24 hours to respond to the concerns raised and take immediate steps to remedy same by publishing the list of polling stations in the Gazette even if it means postponing the polls from the **27th December, 2018** as this would not be the first time the first time the 2nd Respondent will be ordered to hold on with an election when especially this is even on a smaller scale. The court will take judicial notice of District Assembly Elections which were as recent as 2 years ago or thereabout stopped by order of court because of the breach of law.
16. That the 1st Respondent conducted what it called limited voter registration for the purpose of this referendum unknown to any law same which exercise was intended to include names in the voter list that will diminish the quality of Applicants' one vote in the upcoming referendum.
17. That the right to register as a voter and to vote in a public election and referenda connotes the right to ensure that the registration and polls are conducted in strict compliance with



law without any overt or covert acts or interference or manipulation or the opportunity by anybody for same.

18. That by the inclusion of names of persons who had just turned 18 or were previously qualified in the purported limited voter registration exercise for the purpose of the referendum prior to the making of the Regulation for the referendum, 1st Respondent deprived Applicants the right as interested groups to scrutinize and ensure only qualified persons were included. Same exercise was not conducted under the watch of any political party as the limited exercise for the proposed regions was to Yes or No to an issue.
19. That at the time of filing this Application, there are only three clear days to the referendum across the proposed regions in the country.
20. That it is Applicants case that, 1st Respondent not having given a fair and reasonable opportunity for Applicants to know before hand or know at all by publishing in the gazette places it has designated as polling stations violates Applicants right to vote in public referenda especially the right to be given the opportunity to monitor the polls to avoid multiple voting, impersonation and to ensure that the polls are conducted in accordance with law.
21. That Applicants have no means of monitoring the polls and this will affect the quality of Applicants' votes when weighed against others cast through multiple voting and impersonation.
22. That by the totality of the processes before the court and this affidavit, Applicants have established a legal right which requires protection pending a final determination of the suit. **That there are also triable issues such as whether, the 1st Respondent's failure or delay to publish the list of polling stations in accordance with the requirement of law did not violate their right to vote and, also whether the conduct of 1st**

Respondent in relation to the publication did not amount to unfair and unreasonable treatment of Applicants.

23. That Applicants have demonstrated that there are triable issues and this makes it just and convenient to grant this application and that 1st Respondent will suffer no irreparable damage if the voting day is postponed for the case to be heard. For instance voting Materials that have been printed will not expire within the period, they will not become unusable, they can be preserved and 1st Respondent will not be breaching law because the 27th December, 2018 referendum day is not cast in stone in the Constitution or even the C.I 109.
24. That on the contrary once the right to vote on that day is lost or the quality of Applicants vote is diminished in relation to others because of multiple voting and impersonation no amount of compensation will be enough for the Applicants.
25. That it is just and convenient to grant this application to restrain the 1st Respondent from going ahead with the referendum on the 27th of December, 2018 because if the elections are held, and Applicants cast their ballot, they have no way of monitoring their vote because Applicants have been effectively denied their right to vote and this loss cannot be remedied with damages.
26. **WHEREFORE** I depose to this affidavit in good faith.

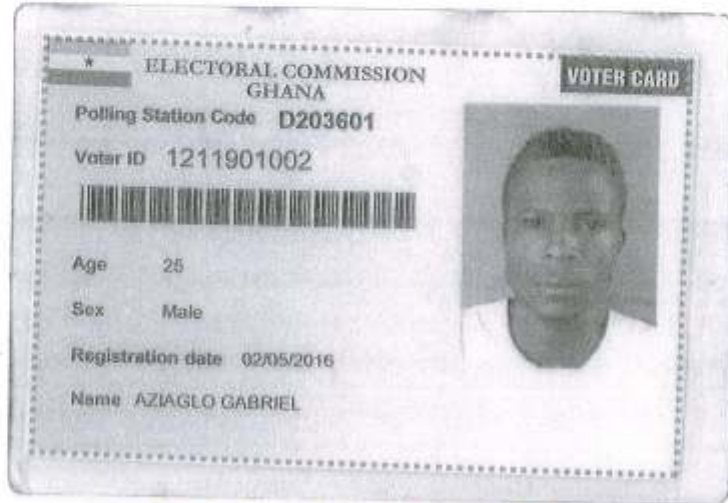
SWORN AT ACCRA THIS 24th
DAY OF DECEMBER, 2018


.....
DEPONENT

.....
DEPONENT

BEFORE ME

COMMISSIONER FOR OATH
JOHN AHETOH
COMMISSIONER FOR OATHS
P. O. BOX MP 1896
ACCRA

EXH. A1G1





THIS IS EXHIBIT / DOCUMENT
MARKED A1G1 REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS 24th DAY OF Dec 2018

BY G. Aziaglo
BEFORE ME

[Signature]
COMMISSIONER FOR GATH

EXH. A1(ii)

* ELECTORAL COMMISSION OF GHANA		VOTER CARD
Polling Station Code D181303		
Voter ID 1748013701		
		
Age	28	
Sex	Male	
Registration date	16/04/2012	
Name	DAN LOUIS NIKABO	



THIS IS EXHIBIT / DOCUMENT
MARKED A-1(ii) REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS 24th DAY OF Dec 20 18

BY G. Azuagbo
BEFORE ME


COMMISSIONER FOR OATH

THIS IS EXHIBIT / DOCUMENT MARKED A 2(i) REFERRED TO THE AFFIDAVITS SWORN AT ACCRA THIS 24th DAY OF Dec 2018.

EXH - A 2(i)

BY G. A. Aduagbo
BEFORE ME

COMMISSIONER FOR OATH

GHANA PUBLISHING COMPANY LIMITED

(ASSEMBLY PRESS)

P.O. Box 124, Accra Tel: 0302-664338/9

CASH SALES INVOICE

Name of Customer: 127-27-2018

Branch: 127-27-2018

Qty	Description	Unit Cost	Amount
1	992 153 155	150	450
	158		



Prepared by GHC

CPCE/A718/5006k3/50/9/2016

EXH. (A 2ii)

GHANA



GAZETTE

Published by Authority

No. 153

WEDNESDAY, 21ST NOVEMBER

2018

CONTENTS

Page

Notice of Publication of Legislative Instruments	..	..	..	..	..	..	2532
Notice of Publication of an Executive Instrument	..	..	..	..	..	..	2532
Appointment of Marriage Officers (Liberty Outreach Ministries)	..	..	..	..	..	..	2532
Appointment of Marriage Officers (Musama Disco Christo Church)	..	..	..	..	..	..	2532
Appointment of a Marriage Officer (Sanctuary Garden Ministry)	..	..	..	..	..	..	2532
Change of Names	..	..	..	..	..	..	2533
Change of Dates of Birth	..	..	..	..	..	..	2539
Confirmation of Dates of Birth	..	..	..	..	..	..	2542
Change of Place of Birth	..	..	..	..	..	..	2542

THIS IS EXHIBIT / DOCUMENT MARKED... A2ii... REFERRED TO THE AFFIDAVITS SWORN AT ACCRA THIS 24th DAY OF Dec 2018

BY G. Aziaglo BEFORE ME

[Signature] COMMISSIONER FOR OATH



EXH - A 3(i)

Track DHL Express Shipments

Here's the fastest way to check the status of your shipment. No need to call Customer Service – our online results give you real-time, detailed progress as your shipment speeds through the DHL network.

Result Summary

Waybill: 2295146011

Signed for by: BOSSMAN ASARE
Get Signature Proof of Delivery

Friday, December 21, 2018 at 09:00

Origin Service Area:
ACCRA - ACCRA - GHANA
Destination Service Area:
ACCRA - ACCRA - GHANA

Friday, December 21, 2018		Location	Time
3	Delivered - Signed for by: BOSSMAN ASARE	ACCRA	09:00
2	With delivery courier	ACCRA - GHANA	08:10
Thursday, December 20, 2018		Location	Time
1	Shipment picked up	ACCRA - GHANA	16:15

If you would prefer to speak to someone personally about the location of your shipment, please contact DHL Express Customer Service.

Terms & Conditions
Tracking FAQs

Deutsche Post DHL Group

THIS IS EXHIBIT / DOCUMENT
MARKED... A3(i) ...REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS... 24th ...DAY OF... Dec ...20...18...

BY... G. Aziaglo ...
BEFORE ME

[Signature]
COMMISSIONER FOR OATH

THIS IS EXHIBIT / DOCUMENT
 MARKED A3(ii) REFERRED TO
 THE AFFIDAVITS SWORN AT ACCRA
 THIS 24th DAY OF DEC 2018

EXH-A B(ii)

BY G. A. Diago
 BEFORE ME

COMMISSIONER FOR OATH

PARAGON - GLOBAL310611AF 0118

Track this shipment: dhl.com

DHL Express Shipment Waybill
(Shipper responsible)

Valid until: **08/19** Shipment Waybill Number: **22 9514 6011** ORIGIN: **Acc** DESTINATION CODE: **ACC**

1 Transport and Insurance Payment Details
 Charge to: Shipper Consignee 3rd party Cash Cheque Credit Card
 Payer Account No.: Cash
 Shipment Insurance: Yes (insured value) No (not insured)
Not all payment options are available in all countries. GF reference code

2 From (Shipper) **BLOCK LETTERS recommended**
 Shipper's account number: Cash
 Shipper's Reference: Spencer & Co. Ven. hives - U.P.A
 Company Name: ALBERTI QUASHIGAH, LSG
 Address: KASER LAW FIRM
ALDORE ANTERSON SIREFI, COMMAND
 Postcode/Zip Code (required, if applicable): 00417902 Phone (Mobile preferred):
 E-Mail: 00417902

3 To (Consignee) **BLOCK LETTERS recommended**
 Company Name: KR. ERIC ACARE BOGEMAN
 Delivery Address (DHL does not deliver to a PO box): Residential address
(ERUFI CHAIR, EC)
KIDGE - ACCRA
 Postcode/Zip Code (required, if applicable): Country: PHONE (Mobile preferred)

4 Shipment Pieces and Weight
 Total number of pieces: 1 Total Weight: 0.5kg KG GR

5 Full Description of Contents and Quantity **BLOCK LETTERS recommended**
DOCUMENT

6 Non-Document Shipments Only (Customs Requirement)
 Shipper's VAT/GST Number: Consignee's VAT/GST or Shipper's EIN/SSN
 Declared Value for Customs (as on commercial/proforma invoice)

7 Shipper's Agreement (Signature required)
 Unless otherwise agreed in writing, I/we agree that DHL's Terms and Conditions of Carriage are all the terms of the contract between me/us and DHL and (1) such Terms and Conditions and, where applicable, these Waybill Convention limits and/or excludes DHL's liability for loss, damage or delay and (2) this shipment does not contain cash or dangerous goods (see reverse).
 Signature: [Signature] Date: 20/12/18
 Go Green - Visit dhl.com to register for Electronic Shipping Solution PTVUJ8 F20, W.A.M.P

3 Products & Services
 Domestic International Document
 International Non-Documents
 Products not all are available to send from all locations:
 EXPRESS 9.00
 EXPRESS 10.30
 EXPRESS 10.00
 EXPRESS WORLDWIDE
 EXPRESS ENVELOPE
 ECONOMY SELECT
 OTHER:
 Type of Export: Permanent Reimportation Temporary
 Broker Notification Export Declaration
 Optional Services (into where they apply):
 Secondary Delivery Held for Collection
 Direct Signature Extended Liability
 Other:
 Globalnet: Letter Packet Packet Plus
 Letter Plus Packet Plus
 CHARGES: Services, Other, Insurance, VAT
 CURRENCY TOTAL: Ghs 31
 PAYMENT DETAILS (Cheque, Card No.):
 No.: Type: Code: Expires:
 Picked up by: 6027
 Route No.: Time: 1:07 Date: 20/12/18



EXH. A 3 (iii)

Track DHL Express Shipments

Here's the fastest way to check the status of your shipment. No need to call Customer Service – our online results give you real-time, detailed progress as your shipment speeds through the DHL network.

Result Summary

Waybill: 2295145996

Signed for by: SOLOMON QUARTEY
Get Signature Proof of Delivery

Friday, December 21, 2018 at 08:53

Origin Service Area:
ACCRA - ACCRA - GHANA
Destination Service Area:
ACCRA - ACCRA - GHANA

Friday, December 21, 2018		Location	Time
3	Delivered - Signed for by: SOLOMON QUARTEY	ACCRA	08:53
2	With delivery courier	ACCRA - GHANA	08:10
Thursday, December 20, 2018		Location	Time
1	Shipment picked up	ACCRA - GHANA	16:15

If you would prefer to speak to someone personally about the location of your shipment, please contact DHL Express Customer Service:

[Terms & Conditions](#)

[Tracking FAQs](#)

THIS IS EXHIBIT DOCUMENT
MARKED..... REFERRED TO
THE AFFIDAVITS SWORN AT ACCRA
THIS 24th DAY OF Dec 20 18

BY G. Aziaglo
BEFORE ME
COMMISSIONER FOR OATH

Deutsche Post DHL Group

EXH. (A 3 IV)

THIS IS EXHIBIT / DOCUMENT MARKED A 3 (IV) REFERRED TO THE AFFIDAVITS SWORN AT ACCRA THIS 24th DAY OF Dec 20 18

BY G. A. Arango BEFORE ME

SHIPPER'S COPY/RECEIPT

COMMISSIONER FOR OATH

SHIPMENT WAYBILL NUMBER: 22 9514 5996

ORIGIN: ACC

DESTINATION CODE: ACC

8 Products & Services:

- Domestic
- International Document
- International Non-Document
- EXPRESS 800
- EXPRESS 1030
- EXPRESS 1330
- EXPRESS WORLDWIDE
- EXPRESS ENVELOPE
- ECONOMY SELECT
- OTHER

9 Shipment Pieces and Weight:

- Total number of pieces: 1
- Total Weight: 0.5 kg
- GR

5 Full Description of Contents and Quantity: BLOCK LETTERS recommended. Documents

6 Non-Document Shipments Only (Customs Requirement):

- Shipper's VAT/GST Number
- Consignee's VAT/GST or Shipper's EIN/SSN

Declared Value for Customs (see on commercial/proforma invoice)

Bill Destination Duties/Taxes:

- Shipper
- Consignee
- Other

7 Shipper's Agreement (Signature required):

- Signature: [Signature]
- Date: 20/12/18

1 Transport and Insurance Payment Details:

- Charge to: Shipper Consignee 3rd party
- Payment Method: Cash Cheque Credit Card
- Fayer Account No.: Cashgillg
- Shipment Insurance: see reverse

2 From (Shipper):

- Shipper's account number: Cashgillg
- Contact Name: Albert Quashigahill Esq
- Company Name: KESLER LAW FIRM
- Address: 411028, ANTIKORH SIRKKE, COMMARI
- Postcode/Zip Code: 0242179702
- Phone: (Mobile preferred)
- E-Mail: [Blank]

3 To (Consignee):

- Company Name: MKS JEAR MELKATI
- Delivery Address: (ELECTIONAL COMMISSIONER) ELECTIONAL COMMISSIONER KIDGE - ACCRA
- Residential address: [Blank]
- Postcode/Zip Code: ACCRA
- Country: ACCRA
- Contact Name: [Blank]
- Phone: (Mobile preferred)
- E-Mail: [Blank]

PARAGON - GLOBAL 30017AP 0118

IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE
HUMAN RIGHTS DIVISION
ACCRA –A.D. 2018

24/12/2018
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FOR THE ENFORCEMENT OF THEIR FUNDAMENTAL HUMAN RIGHTS;

BETWEEN

1. **GABRIEL AZIAGLO**
2. **DAN LOUIS NIKABO** **APPLICANTS/APPLICANTS**

AND

1. ELECTORAL COMMISSION

OPPOSITE RIDGE HOSPITAL

EIGHT AVENUE, RIDGE

ACCRA, GHANA

1ST RESPONDENT/RESPONDENT

2. ATTORNEY GENERAL

ATTORNEY GENERALS DEPARTMENT

MINISTRIES, ACCRA

..... **2ND RESPONDENT**

**WRITTEN STATEMENT OF CASE IN SUPPORT OF MOTION ON NOTICE FOR
INTERLOCUTORY INJUNCTION PENDING SUIT**

1. INTRODUCTION

- a. Your Lordship, indulge me to be as brief as possible in this statement of the applicants' case in support of the current application for interlocutory injunction. My Lord, Applicants will proceed by stating the summary of the relevant facts and then

examine the legal basis for this all-important application and come to a conclusion on why the court should exercise its discretion in Applicants favour.

- b. Your Lordship, Order 25 of the Rules of the High Court, Civil Procedure Rules, C.I 47, 2004 provides that a party who wishes the court to exercise discretion in its favour for the grant of interlocutory injunction, must show that it is just and convenient to grant the application, that damages will not be able to compensate for the loss.
- c. Your Lordships, the Supreme Court in several cases has given expression to the true meaning of the grounds contained in the Rules for the grant of application of such nature. Respectfully, the cases make one principle clear when it comes to the grant of interlocutory injunction. **The Applicant must demonstrate that he has a legal right which should compel a court to protect that right pending a final determination of the suit and that if same was not protected, damages cannot compensate for the loss.** Respectfully, if Applicant is able to demonstrate that it has a legal right, then although the court exercises a discretion, the court must have a compelling need to grant the injunction application.
- d. Respectfully, if the Applicants are able to demonstrate that they have a legal right which is threatened then obviously there are also serious questions to be tried. In the substantive suit there are serious questions.
- e. My Lord Applicants' conclusion is that at the end of reading the facts of the case which admits of no controversy and the applicable law, the court will be in no doubt that Applicants have made a formidable case for the grant of this application for injunction.
- f. My Lord, the facts are set out below;

2. THE FACTS

- a. Respectfully, My Lord, Applicants herein are registered and entitled to vote in the Referendum for the creation of new regions scheduled for the 27th December, 2018 across the country but particularly in Applicants' case within the proposed Oti Region. **See Exhibits A1 series which is a copy of the voter ID cards for the 1st and 2nd Respondents.**
- b. Applicants say that, 1st Respondent has the Constitutional mandate to conduct all public elections and referenda and in pursuit of this, 2nd Respondent has the power to make Constitutional Instrument to regulate the conduct of public elections and referenda.
- c. 1st Respondent made Referendum (Creation of New Regions) Regulation, 2018, Constitutional Instrument 109.
- d. Regulation 16 of C.I 109 makes clear that 1st Respondent should publish in the gazette before the polls places 1st Respondent has designated as polling stations.
- e. On the knowledge of the polling stations, an interested group being persons registered to vote in the referendum will be able to appoint polling and counting agents and assign them the designated and gazetted polling stations.
- f. Applicants, desperate to designate polling agents and counting officers made attempts to find out if the gazette of the polling stations had been made. As late as 17th December, 2018 when Applicants made inquiries and even purchased copies of some gazette the said gazette was not available at the Assembly Press. **See Exhibit A 2 series which are copies of a receipt and cover pages purchased for gazette number 153, 155, 158. This is only to show that Applicants had gone there and made inquiries about the gazette of polling stations.**

- g. Alarmed by the turn of events and the imminence of the Referendum, Applicants instructed their Lawyer who wrote to the 1st Respondent and raised the issues of non-publication or delay of the publication of the gazette of polling stations.
- h. Although, Applicants' Lawyer gave a 24 hour ultimatum for the 1st Respondent to reply to the concerns of why the gazette had not been published, 1st Respondent characteristically did not respond. See **Exhibit A 3 series is a copy of delivery of the said letter on the Commission.**
- i. Applicants fear that their right to vote in a public referenda for the creation of regions as guaranteed will be violated as well as their right to be treated reasonably and fairly by 1st Respondent in the discharge of their duties.
- j. Applicants say that without the opportunity to designate polling agents and counting officers because of the delay and or failure to publish the polling stations any votes cast will be diminished by impersonation and multiple voting and the fact that the polls may be conducted in violation of law.
- k. Applicants therefore filed an originating summons for the enforcement of the fundamental rights to vote and to be treated fairly and reasonably and with it, an accompanying motion on notice for interlocutory injunction.

3. LEGAL GROUNDS OF THIS APPLICATION FOR INJUNCTION

Your Lordship,

- a. The grounds on which the courts will grant an Interlocutory Injunction have been settled by the Courts in Ghana. The requirements under Order 25 of C.I 47, 2004 which are that, it ought to be just and convenient, to hold the balance or status quo

have been ably expanded by case law. Quite often, injunction applications have been granted in private law matters.

- b. For the reason above, the most apposite authority in recent times is the Supreme Court decision in **G.I.B.A vs. AG and the National Media Commission [2016]101 G.M.J 171 S.C.** This case considered whether an injunction will be granted to halt the enforcement of a statute which constitutionality is yet to be determined. In plaintiffs' present case however the all-important and seminal question is, will this court allow the infringement of the 1st Respondent's own C.I which infringements threatens to take away the right to vote pending, the final determination of the legality of the 1st Respondent's conduct.
- c. The G.I.B.A Supreme Court in its unanimous decision granting an interlocutory injunction against the enforcement by the National Media Commission of LI 2224 against G.I.B.A members quoted the revered, Justice Date-Bah JSC (as he then was) in the case of **WELFORD QUARCOO v. ATTORNEY GENERAL [2012] ISGLR 259** as follows;

"It has always been my understanding that the requirements for the grant of Interlocutory injunctions are; first the applicant must establish that there is a serious question to be tried; secondly, that he or she should suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory is granted; and finally that the balance of convenience is in favour of granting him or her interlocutory injunction. The balance of convenience of course means weighing up the disadvantages of granting the relief and the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt the action presumptively for public good, unless there are very cogent reasons to do, and provided also that any subsequent nullification of the impugned act or omission or omission cannot restore the status quo."

d. Your Lordships apart from the above, the plaintiffs will also rely on the sentiments expressed by the Supreme Court in the case of KOJACH V MULTICHOICE [2014] 78 G.M.J 108 S.C. This will strengthen why the application should be granted. In this case (Ibid) the Supreme Court quoted the following with approval; ADINYIRA JSC in the case of OWUSU VS OWUSU ANASAH [2007-08] SCGLR 870 thus

“While agreeing that in an interlocutory application for an interim relief, the court ought to refrain from expressing an opinion on the merits of the case before the hearing, we are of the view that this does not absolve the trial court from considering the material before it in order to guide it to either grant or refuse the request before the court. The guiding principle in such application is, whether an applicant has by his pleadings and affidavit established a legal or equitable right which has to be protected by maintain...the status quo until the final determination of the matter.”

4. With due respect Your Lordship, from the case law above and read together, the grounds that will be argued for the grant of this application are as follows;

- That the applicants in this case must establish that there is a legal right vested in them.
- That applicant in this case must establish that there is a serious question to be tried.
- That the applicants must show that they will suffer irreparable damage irremediable by award of damages
- The applicants must show that the balance of convenience, the applicants will suffer greater inconvenience upon the refusal.

2. **ARGUING THE GROUNDS.**

With your Lordship's leave, plaintiffs say that Grounds 1 and 2 will be argued together. My Lord Respectfully, in arguing the grounds, Applicants will rely on their affidavit contained in the affidavit in support of this motion for injunction and that in support of the motion for the enforcement of fundamental rights as well as the annexed exhibits.

a. THAT THE APPLICANTS HAVE A LEGAL RIGHT DESERVING OF PROTECTION PENDING DETERMINATION O SUIT

- i. Your Lordship, the right to vote in public elections and referenda are critical such that, the apex court has not countenanced any attempts to deny the right to vote in its totality. This is the point made in the cases of TEHN ADDY-ADDY VS ELECTORAL COMMISSION [1996-97] SCGLR 589 AND APALOO VS ELECTORAL COMMISSION OF GHANA [2001-2002] SCGLR 1.
- ii. Your Lordship, in the case of TEHN ADDY, the plaintiff sued for, Inter alia, for a declaration that the failure or refusal of the Electoral Commission to register him as a voter was inconsistent with and in contravention of article 42 of the Constitution, 1992 which provides “
- iii. Your Lordship, Article 42 provides that ; that **“Every citizen of Ghana of eighteen years of age or above and of sound mind has the right to vote and is entitled to be registered as a voter for the purposes of public election and referenda.”**
- iv. Your Lordship, the SC held that the effect of Article 42 was to vest in every Ghanaian citizen of eighteen years and above, the constitutional right to vote; that the exercise of that right was indispensable in the enhancement of the democratic process; and that it could not be denied in the absence of a constitutional provision to that effect. See S Y Bimpong-Buta in his book; The Role of the Supreme Court in the Development of Constitutional Law in Ghana” at pages 196-197.

- v. Respectfully, the TEHN-ADDY SC noted per ACQUAH JSC (as he then was) the important emphasis on suffrage as follows “*A heavy responsibility is therefore entrusted to the Electoral Commission under Article 42 of the Constitution in ensuring the constitutional right to vote...For in the exercise of this, the citizen is able not only to influence the outcome of elections ...but also is in the position to help influence the course of social, economic and political affairs thereafter*”.
- vi. My Lord, the facts in the originating motion, the affidavit in support of the motion for injunction will show that this is not exactly about the Right to be registered, **but the right to vote** which covers the processes and opportunity to vote and the right to ensure that the Applicants vote is not diminished in weight and quality compared to others which may have been put in the Ballot through over-voting and impersonation.
- vii. Clearly, Applicants right to vote and the opportunity to be allowed to **monitor the polls through its polling and counting agents have been denied by the 1st Respondents failure to gazette the polling stations as prescribed by Law.**
- viii. Respectfully, this is the main pith of the main suit seeking enforcement of Applicants right to ensure that Applicants have equal opportunity in respect of voting on the referendum day. By the failure/refusal or even neglect to publish in the gazette places designated as polling stations, Applicants have been denied directly and constructively the opportunity to protect their ballot by not being able to designate polling and counting officers. In their absence, the much feared state of affairs being multiple voting and impersonation will characterize the polls and diminish the quality and weight of Applicants’ vote thereby their right to vote and the vote treated equally as others. Unfortunately, if the election is not put on hold and the court grants Applicants reliefs in the main suit, same will become otiose and the opportunity to vote will not be restored and no amount of damages can compensate for the denial of the right to participate in

this all important referendum. These facts have been deposed to under paragraphs 21 to 25 in the affidavit in support of motion on notice for Interlocutory injunction.

b. THAT THE APPLICANTS WILL SUFFER IRREPARABLE DAMAGE IRREMEDIAL BY AWARD OF DAMAGES

- i. Your Lordship, it will appear that, this ground has been touched largely in the course of addressing the first ground.
- ii. Applicants have indicated that they and several persons also Ghanaian citizens in their ilk, registered to vote and participate in the referendum to answer the question whether to create new regions or not will be denied the right.
- iii. Respectfully, my Lord if the injunction is not granted, 1st Respondent will go ahead with the process and conduct the referendum polls as scheduled on the 27th of December, 2018. By the time the suit is heard, the exercise would have taken place in the areas earmarked and if this Honourable Court determined that the 1st Respondent's failure to gazette polling stations was in breach of the rules that will amount to nothing. The 1st Respondent will lose nothing if the Court were to grant the injunction; the only thing is that the referendum date would only have been shifted forward. The 1st Respondent does not have to print any new ballot, and thus there will be no loss to the 1st Respondent as would be to the Applicants when 1st Respondent is ordered to bring a halt to the referendum on the 27th of December, 2018 pending a final determination of the all-important enforcement application.
- iv. The importance attached to the right to vote cannot be underestimated as that is what exemplifies participatory democracy. In **BUSH VS GORE, 531 U.S. 98 (2000)**, the federal Supreme Court granted an injunctive relief against the state supreme court of Florida which had ordered the Circuit Court of Leon County to do a manual

recounting/tabulation in certain counties including Miami –Dade County which had problems with electronic tabulation.

- v. In that case, the United States SC took the view that when the Florida Supreme Court ordered manual recount of votes without uniform standard across the four counties there was the danger that the quality of a vote will be treated differently and all votes were equal. Relying on the case of **REYNOLDS V. SIMS, 377 U.S. 533,555(1964)** the US SC, noted that “ **the right of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise.**”
- vi. On the basis, there is grave danger that the main suit will be moot if the referendum proceeds as scheduled and no amount of damages can compensate for being denied the right to participate and vote in the referendum.
- vii. For this grounds alone your Lordships, this court should grant the application to restrain the respondents in terms disclosed on the motion paper.

c. THE APPLICANTS WILL SUFFER GREATER INCONVENIENCE UPON THE REFUSAL.

- i. Your Lordships, in the G.I.B.A case, the SC quoted Dr. Date-Bah JSC as he then was. In the case of **WELFORD QUARCOO V ATTORNEY GENERAL** where the revered justice made the statement of the grounds for granting injunctions pending suit which G.I.B.A quoted with approval, he observed of the balance of convenience thus “...the balance of convenience of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting same.”

- ii. Your Lordship, what is the disadvantage to the Applicants and others like them (equated to G.I.B.A members who stood the risk of prosecution) when the court refuses to grant the current application?
- iii. Respectfully the answers are not far-fetched as Applicants have indicated that, once others like the applicant are not allowed to monitor the polls across all the regions, the right to participate is immediately extinguished. Again, seeing that state resources are being deployed for the exercise, if 1st Respondent is not stopped in the interim and allowed to apply the resources to a process which “**stands the risk of being set aside**”, the exercise would have been null and void and if the court ordered the entire process be set aside then the 1st Respondent would have to mobilize to the regions again at the cost of the Ghanaian tax payer Applicants inclusive.
- iv. *Your Lordship, 1st Respondent has a lot to gain rather than lose if the injunction is granted. Which is preferable? To engage in a process that could be set aside or defer the process for only a short while for the main suit to be determined?* There are no immediate direct, remote danger to the persons who have already been registered and entitled to vote. It is only a delay in the right. The state of Ghana will not incur any injury because the Court granted an injunction which only delays the period of the voter registration; the injunction by the president that referendum be conducted in 2018 will have no implication if it did not happen.
- v. On the basis of this and many more, plaintiffs will suffer more inconvenience cost to only come back again to challenge the entire referendum on constitutional grounds. By which time it might honestly be late in the day.

d. CONCLUSION

- i. Respectfully your Lordships, Applicants began this statement of case by saying that they will be brief. Indeed, this is brevity with all due respect.

- ii. Your Lordships, this case began by giving a short summary of the law and facts that should drive the injunction brought consequent upon. It is the fact that, the, matters contained in the application are quite novel but not far-fetched.
- iii. Applicants went on by referring to relevant decided authority which deals with the requisite for the grant of Interlocutory injunction more apposite in public law cases.
- iv. The applicants examined the requirements against the reliefs in the main suit in the broader context of the provisions of the C.I 109 and its implications for the constitutional provisions that ground the main suit and have come to the conclusion that, the Applicants have established that there is a legal right and therefore there is a question to answer in the main suit, and that while the main suit is yet to be heard, an injunction is granted in the interim.
- v. It is also the case of Applicants that, Respondent will suffer no inconvenience in particular any disadvantage only because the 1st Respondents processes would have been drawn back for good reasons.
- vi. Finally that the disadvantage rests more on the Applicants and others like them across the country because if the injunction is not granted, the 1st Respondent will finish the voting in a day on the 27th of December, 2018 there will be no other opportunity to vote in the referendum and no amount of compensation is sufficient for that lost opportunity to properly influence the course of events at the referendum through voting and having the polls properly monitored. Meanwhile the 1st Respondent, can always defer the voting to another day to comply with its own law. It will lose nothing and the potential voters will lose nothing.
- vii. Your Lordship, we respectfully submit.

DATED AT ACCRA THIS 14TH DAY OF SEPTEMBER, 2018.



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ACCRA.

AND FOR SERVICE ON:

1ST RESPONDENT;

THE ELECTORAL COMMISSION
OPPOSITE RIDGE HOSPITAL
EIGGTH AVENUE
RIDGE-ACCRA

2ND RESPONDENT

ATTORNEY GENERAL
ATTORNEY GENERALS DEPARTMENT
MINISTRY OF JUSTICE
MINISTRIES.