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

PETITION NO: J1/5/2021

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

PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:

JOHN DRAMANI MAHAMA

NO. 33 CHAIN HOMES

AIRPORT VALLEY DRIVE

ACCRA GL-128-5622 **PETITIONER**

AND

ELECTORAL COMMISSION OF GHANA

8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO

HOUSE NO. 02 ONYAA CRESCENT

NIMA – ACCRA

2ND RESPONDENT

AFFIDAVIT IN OPPOSITION TO APPLICATION FOR REVIEW OF THE RULING OF 11TH FEBRUARY, 2021 IN RESPECT OF NOTIFICATION TO THE COURT BY RESPONDENTS THEY WOULD NOT BE CALLING WITNESSES

Permit
GH¢ 350

Deposit
GH¢ 100

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

1. I am the Chairperson of the 1st Respondent and the deponent herein and depose to this Affidavit in Opposition the facts which are within my personal knowledge, information and belief.

2. At the hearing of the Application, Counsel for the 1st Respondent shall seek leave of the Court to refer to the processes filed by the parties in this matter and the proceedings in the matter.

3. The 1st Respondent is opposed to the Petitioner's Application for review.

4. The Application discloses no exceptional circumstances as required under the rules of this Court and its settled practice.

5. I say further there is no error apparent on the face of the record which warrants a review of the Court's decision of 11th February 2021 for the purposes of correcting that error.

6. I therefore pray that the Application be dismissed.

7. Wherefore I depose to this Affidavit in Opposition.

SWORN AT ACCRA THIS
17TH DAY OF FEBRUARY, 2021

DEPONENT

BEFORE ME

JUSTINA CLOTTEY
COMMISSIONER FOR OATHS
P.O. BOX AC 39, ARTS CENTRE

COMMISSIONER OF OATH

THE REGISTRAR
SUPREME COURT

ACCRA

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

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

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

PETITION NO: J7/9/2021

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

AMENDED PRESIDENTIAL ELECTION PETITION

PRESIDENTIAL ELECTION HELD ON 7TH DECEMBER 2020

THE PETITION OF:
JOHN DRAMANI MAHAMA
NO. 33 CHAIN HOMES
AIRPORT VALLEY DRIVE
ACCRA GL-128-5622

APPLICANT

AND

ELECTORAL COMMISSION OF GHANA
8TH, RIDGE – ACCRA

1ST RESPONDENT

NANA ADDO DANKWA AKUFO-ADDO
HOUSE NO. 02 ONYAA CRESCENT
NIMA – ACCRA

2ND RESPONDENT

STATEMENT OF CASE OF THE 1ST RESPONDENT IN OPPOSITION TO THE APPLICATION FOR REVIEW OF NOTIFICATION TO COURT BY RESPONDENTS THAT THEY WOULD NOT BE CALLING WITNESSES

A. INTRODUCTION

1. On 8th February, 2021, after the Petitioner's third witness Robert Joseph Mettle Nunoo (PW3) was discharged, Counsel for Petitioner closed the Petitioner's case. The case for the Petitioner was accordingly closed.

2. Counsel for the 1st Respondent notified the court that with the evidence led by the witnesses for the Petitioner, the 1st Respondent did not intend leading any evidence and then closed its case accordingly. He invited the court to determine the petition based on the evidence before it. Counsel for the 2nd Respondent took the same stand.

3. This position taken by the Respondents was opposed by Counsel for the Petitioner who insisted that the Respondents cannot elect not to lead evidence after causing witness statements to be filed. The ordinary bench therefore set down notification not to lead evidence for argument the next day. As indicated in the ruling later delivered by the court, the crux of the argument of the Counsel for the Petitioner was that the respondents having caused witness statements to be filed cannot subsequently elect not to lead evidence.

4. Later in the arguments, Counsel for the Petitioner sought to rely on affidavits filed in the course of earlier interlocutory applications filed by the Petitioner as estopping the 1st Respondent from electing not to lead evidence at the trial and he also brought in the constitutional role of the Chairperson of the 1st Respondent.

5. The ordinary bench after considering the argument of the parties delivered its ruling on 11th February, 2021 upholding the position of the Respondents. The ruling is attached to the Petitioner's affidavit in support of this application as "REVIEW 1".

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

7. My Lords the 1st Respondent submits that it would address the Court only on the issues of whether or not the review jurisdiction of the Supreme Court has been properly invoked so as not to burden the court with matters that the ordinary bench had already heard and determined decisively by a unanimous decision on 19th January 2021.

B SUBMISSIONS OF THE RESPONDENT COMMISSION

Ground (a)

8. This ground seems to suggest that the 1st Respondent is estopped by Section 26 of NRCD 323 from electing not to lead

evidence because of earlier beliefs expressed in affidavits filed in response to applications by the Petitioner and also that the 1st Respondent had filed a witness statement in compliance with the Court's order. Section 26 of NRDC 26 provides as follow;

> **Except as otherwise provided by law, including a rule of equity,** when a party has, by his own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon such belief, the truth of that thing shall be conclusively presumed against that party or his successors in interest in any proceedings between that party or his successors in interest and such relying person or his successors in interest.

9. Section 26 of NRCD is a provision regulating general conduct with a proviso. It is not absolute, it provided for exceptions under both law and equity. This provision must be read as a whole taking notice of the proviso. It is our submission that Order 38 of C.I. 47 as substituted C.I. 87 which deals specifically with witness statements and how the courts and parties are to deal with same hence estoppel under Section 26 of NRCD 323 does to apply in the circumstances.

10. In any case, the 1st Respondent made no definite statement assuring the Petitioner that it will lead evidence. Since the filing of this Petition, the 1st Respondent intimated that the Petitioner will not be entitled to his reliefs even if he proves the allegations

contained in his Petition which was the grounds for its preliminary legal objection filed on 22nd January 2021.

11. Your Lordships, there is no law or practice which permits a court to compel a party to give evidence in support of his own defence let alone in support of his adversary's case. This is not the case even in criminal matters where liberty and life are at stake.

12. In paragraph 19 of the statement of case in support of this application, the Petitioner refers the Court to Section 58 of the Courts Act, 1994 (Act 459) which is totally non-applicable in this review. It deals with the court summoning witnesses at its own instance or that of the parties. It does not deal with the issue in dispute in this case which is whether a party can be compelled to give evidence in support of his own case even when he chooses not to do so.

13. It also needs to be noted that Counsel for the Petitioner did concede during the argument that a party can file a witness statement and decide not to rely on it. This was exactly what the Respondents sought to do in substance when they notified the court about their election not to call evidence. His attention Order 38 Rule 3(E)(1) of C.I. 47 as substituted by C.I. 87 as follows;

Order 38 Rule (3E)(1) provides in this regard as follows;

> If a party has served a witness statement and that party wishes to rely at the trial on the evidence of the witness who made the statement, that party shall call the witness to

give oral evidence unless the court orders otherwise or that party puts the statement in as hearsay evidence.

14. My Lords we set out below Counsel for the Petitioner's comments after he read the above provision in the proceedings dated 9th February, 2021;

> "**Counsel for Petitioner**: My Lords, if they do not intend to rely on the Witness Statements they should say so, it is as simple as that. My Lords, this is important because there are many options opened to us, if they say they are not relying on the Witness Statement we can apply to the court for a subpoena to call the Chairperson. For instance, we can apply to the court. The only reason why we did not take that course is of course because she is acting on behalf of the 1st Respondent, so it will be inappropriate to issue a subpoena on the opposite party she is representing.
>
> **By Court:** Mr. Tsikata, I thought it was implied by the nature of the application.

Ground (d)

15. Again, the case *Sumaila Bielbiel v. Adamu Dramani & Attorney Genera No. 4* [2012] 1 SCGLR 374 was thoroughly discussed and distinguished by your Lordships in the ruling of 11th February, 2021. The Applicant is seeking to re-argue the point as if he is on appeal. *Reference is made to Afranie v. Quarcoo* [1992] 2 GLR 561 @ 591-592, *Mechanical Lloyd Assembly Plant Ltd v. Nartey* [1987-88] 2GLR 598, *Internal Revenue*

Servie v. Chapel Hill School Ltd . [2010] SCGLR 827 @ 850, ***Quist v. Danawi* (Ruling), Supreme Court,** Review Motion No. J7/8/2015 dated 5th November, 2015.

16. My Lords, the Applicant's unfortunate contention now is that, Your Lordships missed the ratio decidendi in *Sumaila Bielbiel v. Adamu Dramani & Attorney General No. 4* [2012] 1 SCGLR 374. This contention cannot be right because as the court sits to consider the evidence led in this Petition, it is only the pleadings and the evidence led so far that will be considered not the statements and beliefs contained in the various affidavits filed in support and opposition of applications. Even if the Petitioner's understanding of the decision was right, the court has the jurisdiction to depart from its own decisions which are otherwise normally binding.

17. My Lords, the remedy of review is unavailable where the Applicant fails to establish exceptional circumstances resulting in miscarriage of justice. The Petitioner failed to show what miscarriage of justice he has suffered. Your adversary electing not to give evidence cannot by any stretch of imagination be considered as an exceptional circumstance resulting in miscarriage of justice.

Ground (e)

18. Ground (e) of the application is most unfortunate as Counsel for the Petitioner had the opportunity and addressed the court on whatever laws or rules were raised, argued and considered in the determination of the notification given by the Respondent

including Order 38(3)(E)(1) of C.I. 47 substituted by C.I. 87. The argument about the court substituting the case of the Respondents is misconceived as the notification and the arguments that ensued were matters of law and not facts.

Grounds (b) & (d)

19. Ground (b) and (d) of this application were argued and rightly ruled upon by the ordinary bench of this Honourable Court. What the Petitioner seeks to do by this application is to re-argue these grounds as if the review jurisdiction of this court was an appellate one.

20. As pithily explained by Wuaku JSC in *Afranie v. Quarcoo* [1992] 2GLR 561 at pp. 591-592:

> "*There is only one Supreme Court. A review court is not an appellate court to sit in judgment over the Supreme Court.*"

21. My Lords, reading the application before this Honourable Court, we only see a rehashing of the arguments in the main action which arguments was unanimously dismissed by the Honourable Court. What error of law leading to a miscarriage of justice has occurred by the judgment of the court attached to this application by the applicant as "Review 1"? None!

22. My Lords, this is the final court of this land; its pronouncements have the force of law. The court must not change its decisions upon an unsubstantiated allegation by a party that the court is wrong.

23. Again, the Petitioner's conduct recalls the decision of this court in *Mechanical Lloyd Assembly Plant Ltd v Nartey* [1987-88] 2 GLR 598, SC, per Adade JSC:

> "Let me say at once that, for all I know, virtually every judgment on this earth, arrived at as a result of evidence gathered from several sources, can be criticised. A Privy Council judgment put in the hands of any lawyer, along with the evidence grounding it, can be criticised in the same way as a High Court judgment can be. A person who has lost a case will almost instinctively feel that the judgment must be wrong. And why not? If he had won, the decision would be right; so if he lost, how could the court be right? But the mere fact that a judgment can be criticised is no ground for asking that it should be reviewed. The review jurisdiction is a special jurisdiction to be exercised in exceptional circumstances. It is not an appellate jurisdiction. It is a kind of jurisdiction held in reserve, to be prayed in aid in the exceptional situation where a fundamental and basic error may have inadvertently been committed by the court, which error must have occasioned a gross miscarriage of justice. The review jurisdiction is not intended as a try-on by a party after losing an appeal; nor is it an automatic next step from an appeal; ***neither is it meant to be resorted to as an emotional reaction to an unfavourable judgment***." My Emphasis.

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

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

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

26. My Lords it is for these reasons that we urge your Lordships to dismiss this Application and proceed with the hearing of the Petition filed by the Petitioner in this Court. *"Interest res publicae ut finis sit litium"*.

27. We pray that the Application herein be dismissed.

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

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

THE REGISTRAR
SUPREME COURT
ACCRA

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

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