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

***Writ 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) AMENDED PRESIDENTIAL ELECTION PETITION PURUSANT TO LEAVE GRANTED BY THE SUPREME COURT DATED 14TH JANUARY 2021**

**Presidential Election held on the 7th day of December, 2020**

BETWEEN

**JOHN DRAMANI MAHAMA** — Petitioner
No. 33 Chain Homes,
Airport Valley Drive, Accra.
GL-128-5622

AND

1. **ELECTORAL COMMISSION** — 1st Respondent
   National Headquarters, Accra

2. **NANA ADDO DANKWA AKUFO-ADDO** — 2nd Respondent
   H/No. 2, Onyaa Crescent,
   Nima, Accra

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**2ND RESPONDENT'S AFFIDAVIT IN OPPOSITION TO PETITIONER'S MOTION FOR REVIEW OF THE RULING OF THE SUPREME COURT DATED 11/02/21**

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**I, KWAKU ASIRIFI** ESQ., of 67, Kojo Thompson Road, Adabraka, make oath and say that:



Remand
GH¢ 350

Deposit
GH¢ 100

1. I am one of the lawyers of 2nd respondent in this Petition and have the authority of 2nd respondent to depose to this affidavit in opposition in respect of matters that have come to my personal knowledge, information and belief, unless otherwise expressly stated.

2. At the hearing of this application, Counsel shall seek leave of the Court to refer to all relevant processes filed to date in this Petition as if same had been reproduced hereto and sworn to by me.

3. 2nd respondent has been served through his Counsel with Petitioner's Motion for Review of the Ruling of the Supreme Court dated 11/02/21 and is opposed to same, and I say that the application is misconceived, raises no exceptional circumstances that has occasioned a miscarriage of justice hence an abuse of the process of the Court.

4. In the circumstances, it is our prayer that the present application for review should be dismissed.

**WHEREFORE,** I swear to this affidavit in opposition.

**SWORN IN ACCRA THIS** 17th )
**DAY OF FEBRUARY 2021** )

.....
**DEPONENT**

**BEFORE ME**

**COMMISSIONER FOR OATHS**

REGISTRAR
SUPREME COURT
ACCRA, G/R

The Registrar,
Supreme Court,
Accra.

**AND TO THE ABOVE-NAMED:**

1. **PETITIONER OR HIS LAWYER, TONY LITHUR ESQ., LITHUR BREW & CO, NO. 110B, 1ST KANDA CLOSE, KANDA, ACCRA.**

2. **1ST RESPONDENT OR ITS LAWYER, JUSTIN AMENUVOR ESQ., AMENUVOR & ASSOCIATES, NO. 8 II ODARTEY OSRO STREET, KUKU HILL, OSU, ACCRA.**

**IN THE SUPERIOR COURT OF JUDICATURE**

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BETWEEN

**JOHN DRAMANI MAHAMA** Petitioner

No. 33 Chain Homes,
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AND

**1.ELECTORAL COMMISSION** 1st Respondent

National Headquarters, Accra

**2.NANA ADDO DANKWA AKUFO-ADDO** 2nd Respondent

H/No. 2, Onyaa Crescent,

Nima, Accra

**2ND RESPONDENT'S STATEMENT OF CASE IN OPPOSITION TO PETITIONER'S MOTION FOR REVIEW OF THE RULING OF THE SUPREME COURT DATED 11TH FEBRUARY 2021**

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**FACTS**

1. At the close of Petitioner/Applicant's ("Applicant") case, Counsel for 1st respondent announced to the court that the 1st respondent does not intend to adduce any evidence in the case and therefore wished to close its case. 2nd respondent's counsel also expressed to the Court an intention not to adduce any evidence in the matter. Counsel for petitioner objected to the announcement by counsel for 1st and 2nd respondents to close their case without adducing evidence. This made the Court invite oral arguments from counsel on the lawfulness of 1st and 2nd respondents' election not to adduce evidence following the close of petitioner's case. The Court delivered its ruling on 11th February 2021 and dismissed the objections to 1st and 2nd respondents' decision not to adduce evidence in the matter.
2. The instant review application is mounted under article 133 of the Constitution,1992, and Rules 54, 55 & 56 of the Supreme Court Rules (C.I.16) (as amended). 2nd respondent is opposed to the application and will proceed to argue his opposition to same.

**WHETHER THE APPLICATION SATISFIES THE CONDITIONS FOR THE GRANT OF A REVIEW**

3. Respectfully, My Lords, 2nd respondent submits that the instant application by petitioner does not properly invoke article 133 of the Constitution,1992, as well as Rule 54 of the Supreme Court Rules, 1996 (C.I.16). Under **article 133(1), *"The Supreme Court may review any decision made or given by it on such grounds and subject to such conditions as may be prescribed by rules of court."***

4. The grounds for review have been set out in Rule 54 of C. I.16 as follows:

   ***"The Court may review any decision made or given by it on any of the following grounds:***

   ***(a) Exceptional circumstances which have resulted in a miscarriage of justice***

   ***(b) Discovery of new and important matter or evidence which after the exercise of due diligence was not within the Applicant's knowledge or could not be produced by him at the time when the decision was given."***

5. With respect, My Lords, the scope of review applications has been determined by this Court in a long line of authorities. In ***Mechanical Lloyd v Nartey [1987-1988] 2 GLR 598 @ 664***, the Supreme Court per ***Adade JSC***, held thus:

***"The review jurisdiction is not intended as a try on by a party losing an appeal, neither is it meant to be resorted to as an emotional reaction to an unfavourable Judgment."***

6. The Supreme Court reiterated the legal criteria for review applications in ***Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398*** as follows:

> ***"The review jurisdiction is a special jurisdiction and not an appellate jurisdiction conferred on the Court and the Court would exercise that special jurisdiction in favour of an applicant only in exceptional circumstances. This implies that such an application should satisfy the Court that there has been some fundamental or basic error which the Court inadvertently committed in the course of considering its judgment and which fundamental error has resulted in gross miscarriage of justice."***

7. ***Wuaku JSC*** also emphasized this principle in ***Afranie v Quarcoo [1992] 2 GLR 561 at 591-592*** thus:

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

8. The Supreme Court again in ***Tamakloe v The Republic [2011] 1 SCGLR 29, holding 1***, where the Court held as follows:

"***The review jurisdiction of the Supreme Court was not an appellate jurisdiction, but a special one. Accordingly, an issue of law that had been argued before the ordinary bench of the***

***Supreme Court and determined by that court, could not be revisited in a review application, such as in the instant case, simply because the losing party had not agreed with the determination. Even if the decision of the ordinary bench on appeal from the judgment of the Court of Appeal, were wrong, it would not necessarily mean that the Supreme Court would be entitled to correct that error. That was an inherent incident of the finality of the judgment of the Supreme Court as the final appellate court."***

9. ***Date-Bah JSC*** summed up the principles governing the review jurisdiction in ***Internal Revenue Service v Chapel Hill Ltd [2010] SCGLR 827 at 850 especially 852-853 as follows***:

*"I do not consider that this case deserves any lengthy treatment. I think that the applicant represents a classic case of a losing party seeking to re-argue its appeal under the garb of a review application. It is important that this Court should set its face against such endeavour in order to protect the integrity of the review process.*

*This Court has reiterated time without number that the review jurisdiction of this court is not an appellate jurisdiction, but a special one.* ***Accordingly, an issue of law that has been canvassed before the bench of five and on which the court has made a determination cannot be revisited in a review application, simply because the losing party does not agree***

***with the determination***. *This unfortunately is in substance what the current application before this court is."*

10. The Court in ***Arthur (No.2) v Arthur (No 2) [2013-2014] 1SCGLR 569*** reiterated the guidelines to be considered in review applications as follows:

> *"We are therefore constrained to send a note of caution to all those who apply for the review jurisdiction of this Court in respect of rule 54 (a) of C.I. 16 to be mindful of the following which we set out as a road map. It is neither an exhaustive list nor one that is cast in iron such that it cannot be varied depending upon the circumstances of each case.*
>
> *(i) In the first place, it must be established that the review application was filed within the time lines specified in rule 55 of C.I. 16.*
>
> *(ii) That there exist exceptional circumstances to warrant a consideration of the application.*
>
> *(iii) That these exceptional circumstances have led to some fundamental or basic error in the judgment of the ordinary bench.*
>
> *(iv) That these have resulted into miscarriage of justice (it could be gross miscarriage of justice or miscarriage of justice simpliciter).*

(v) *The review process should not be turned into another appeal against the decision of the ordinary bench.*

*It is only when the above conditions have been met to the satisfaction of the Court that the review should seriously consider the merits of the application."*

11. The Supreme Court has had numerous occasions to state the above principles. Therefore, a losing party is not entitled to use the review process to re-argue a case which he has lost fair and square, or to merely prevail upon the Court to have a second look at his case. A review is an invocation of the Court's ***special jurisdiction*** for a reconsideration of a decision based on very specific and limited grounds set out in Rule 54 of C. I. 16 and not its appellate jurisdiction.

12. The 2nd respondent submits that ***none of the grounds*** for a review of a decision of this Court has been invoked by the applicant. There is no new or important matter or evidence which has been adduced; neither has any exceptional circumstance been established for the grant of this application. Just as on the occasion of all other review applications by the applicant herein, what the Court will observe from the instant application is a party aggrieved by a determination of a legal objection by this Honourable Court seeking a second bite at the cherry. The applicant files this application and seeks to persuade the Court on the same points which he failed to persuade the Court on, during the hearing of his

legal objection. This, it is submitted, is insufficient for the invocation of the review jurisdiction of this Court.

13. It is submitted that all the matters raised by the applicant in this instant application, if not raised by the applicant and exhaustively dealt with in the ruling of the Court delivered on 11th February, 2021, are a weak attempt to improve on those arguments. We now turn to address the petitioner's grounds for filing the instant review application. We will be dealing with the grounds according to the order in which Counsel for petitioner addressed them. Grounds (a) & (b) will be argued together.

**a) the ruling of the Court in respect of 1st respondent not being called to testify was per incuriam section 26 of the Evidence Act 1975; and has occasioned a grave miscarriage of justice to the applicant.**

**b) the ruling of the Court was in fundamental error in failing to appreciate how the crucial constitutional role of the chairperson of the 1st respondent necessitated her being called upon to testify; and has occasioned a grave miscarriage of justice to the applicant.**

14. My Lords, the contention by Petitioner's Counsel that the ruling in respect of **1st Respondent not being called to testify was per incuriam Section 26 Of The Evidence Act 1975 is palpably misconceived and untenable.** In the first place, it is pertinent to

point out that this point canvassed in support of the review application is no new matter at all. When counsel for petitioner argued his objection to 1st and 2nd respondents' election not to adduce evidence, he strenuously pressed the estoppel argument concerning explanation by 1st respondent in her affidavit in opposition to earlier motion by petitioner for leave to serve interrogatories and cited **Sumaila Bielbiel v Adamu Dramani & A-G No.4** (2012) 1 SCGLR 374 in support thereof. Same was considered by this and found inapplicable and distinguishable from the facts of the instant case. The Court in fact, rejected the arguments of counsel as unpersuasive as it found no compelling reason to set up different rules of procedure for constitutional office holders. The strange and dangerous invitation by counsel for applicant herein was roundly rejected by the Honourable Court when the Court per Anin Yeboah CJ held at 6 of the Ruling:

> *"Counsel for petitioner cited to us the case of Sumaila Bielbiel v Adamu Dramani & A-G No.4 (2012) 1 SCGLR* ***374 in which this Court ordered a party to adduce evidence because that party had already adduced evidenced in the form of affidavit. This case is distinct from what is before us now and it must be read in context relative to the facts before the Court then.*** *In that case this Court was dealing with submission of no case in a trial admitting affidavit evidence unlike the current petition where this court is dealing with Witness Statements which are unsworn and are not yet evidence. Indeed, the distinction between that case and the current case is clearly demonstrated in the Ruling of Data Bah JSC*

*who delivered the Ruling of the Court. At page 357 of the Report the learned jurist delivered himself as follows: "it is the unanimous view of this court that the 1st Defendant should be called upon to open his defence in the interest of justice. This case does not have the ordinary characteristic of a trial, say the High Court, the procedure before this Court is such that, before commencement of oral testimony in this case, the 1st defendant had already put matters in evidence by affidavit. In this circumstance, it is artificial and hardly sustainable to disregard the evidence already adduced by the affidavit of the 1st defendant and proceed to an assessment of a submission of no case made on his behalf, as if the evidence is that of the plaintiff.' The distinction here is that in the petition before us the 1st respondent has not put before us any evidence in the form of affidavit or otherwise as already stated, learned counsel for the petitioner only referred us to the affidavit deposed to by the chairperson of the 1st respondent in opposition to interlocutory application to serve interrogatories. That Affidavit is not evidence in this petition to enable us compel the 1st respondent to mount Witness Box to be cross- examined".*

15. The contention that nowhere in the ruling did the Court consider the "estoppel argument" and the so-called affidavit deposition by chairperson is not only misleading but borders on intellectual dishonesty since the quotation from the ruling in the preceding paragraph amply demonstrates that the Honourable Court

considered the said submission by Counsel for petitioner but found same to be lacking in legal foundation.

16. We submit further, that, in any event, the Court is not bound to give nuance analysis or consideration to full spectrum of submissions made by counsel before it renders its ruling. All that matters is that the Court provided justification for its ruling. In its ruling dated 11/2/21, the Court justified its rejection of petitioner's objection to the election by 1st respondent and 2nd respondent not to adduce evidence primarily on the ground that no law permitted the Court to compel a party to testify by way of cross examination when no evidence in chief had been given by such a party. Additionally, the Honourable Court refused to recognize different rules of litigation for different category of parties.

16.It is our contention that the Court's ruling of 11th February, 2021 exhaustively dealt with the issue regarding "the constitutional role of the Chairperson of the 1st respondent necessitated her being called upon to testify" and same cannot be re-opened here particularly as when no grave miscarriage of justice has been occasioned.

15. In arguing his legal objection to 1st and 2nd Respondents' election not to adduce evidence, Counsel for Petitioner disingenuously contended at page 41 of the Record of Proceedings dated 9th February, 2021 that:

*"We are dealing with the matter of exercise of grave constitutional responsibility by someone who has been duly appointed to a high office of state. That person in my submission has a constitutional duty to give an account of what she has done in the conduct of her responsibility. ...The particular responsibility is no less than the responsibility to declare who has in accordance with the will of the people been elected President of Ghana that is no mean duty..."*

16. The Honourable Court unanimously rejected the strange and unfounded proposition contained in the Petitioner's counsel's submission alluded to in the preceding paragraph. Specifically, at page 5 of the Ruling dated 11th February 2021 the Court speaking through ***Anin Yeboah CJ*** *stated that:*

*"Counsel for the petitioner has argued that because the 1st respondent performs a very important constitutional duty, when it is sued in an action such as in this case different rules should apply. However,* ***Counsel failed to refer us to any provision of the 1992 Constitution or any statute which requires that the 1st respondent, being a constitutional body should not be subjected to different rules of the court and our industry did not unearth any such authority. The law is that parties before this court must always comply with the known rules of procedure and settled practice regulating the jurisdiction of this court regardless of the nature of the case.*** *See Oppong v A-G & Ors [ 1999-2000] 2GLR 402.* ***The 1st respondent is not subject to any different rules of procedure because it is a constitutional body.***"

17. The Court did not render its ruling per incuriam of section 26 of Evidence Act as contended by learned counsel for petitioner. In any event, had the Court erred in declining to apply section 26 of the Evidence Act, as is erroneously alleged, it is our submission that it would not have occasioned any miscarriage of justice to petitioner since the Court could not compel the 1st respondent to testify when she had elected not to. It is instructive to recall what the Honourable Court stated at page 7 of its Ruling, the subject matter of instant review, that:

"... ***We take notice of the well settled practice that a defendant in a case has a right not to adduce evidence after the close of a plaintiff's case. This right which originates from the common law has been incorporated into civil trials in our jurisdiction through case law and has been applied in several cases in our courts.***"

16. Furthermore, it is well established that where the law prescribes a certain procedure to govern the Court's management of proceedings including election by a party not to adduce evidence, the Court is bound by it and can only depart from it for cogent reasons so stated. Thus, the Court was well within its jurisdiction in dismissing the unmeritorious objection by Counsel for petitioner to 1st and 2nd respondents' election not to adduce evidence. At this juncture it is instructive to rely on illuminating remarks of the Supreme Court in Fosuhene v Pomaa that:

> "Under the common law system of justice every court of record exercising judicial function has an inherent power to

regulate and provide its own practice and procedure, provided the practice or procedure is not inconsistent with statutory provisions or any practice or procedure which has crystallised by constant and consistent usage and become thereby precedent."

18. My Lords, on 16th February, 2021, you delivered a Ruling which is relevant in addressing the ground concerning your Ruling of 11th February 2021 as being per in curiam of section of 26 of Evidence Act. It is apposite to quote in extenso the last page of your Ruling delivered on 16th February, 2021. In the said ruling the Court speaking through Anin Yeboah CJ held:

> The Petitioner, in his submissions, made reference to Section 26 of the Evidence Act, 1975 [NRCD 323], which he says operates as estoppel against the 1st Respondent for failing or refusing to call a witness as contemplated by the filing of a witness statement. The section provides: ***"Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in proceedings between (a) that party or the successors in interest of that party, and (b) the relying person or successors in interest of that person".***

We respectfully submit that section 26 of the Evidence Act, which is on Conclusive Presumptions, is not applicable in this case in view of Order 38 Rule 3E (5). The rules permit a party to call or not to call a witness, irrespective of whether the prospective witness filed a witness statement, as the mere filing of a witness statement does not constitute an election to testify as we rightly held in our ruling on the 11th of February, 2021. Again, the Petitioner did not decide to close his case after the testimony of his third witness just because the Chairperson of the 1st Respondent had filed a witness statement. This is because, in law, a plaintiff or petitioner does not require evidence from his or her adversary, in an adversarial system as ours, to prove his or her case. The authorities are legion that a plaintiff or petitioner, succeeds on the strength of his or her own case but not on the weakness of his or her adversary's case.

c)**The ruling of the Court was in breach of article 19(13) and 296 of the Constitution and has occasioned grave miscarriage of justice to the applicant.**

19. This ground is incompetent to the extent that Counsel for petitioner is alleging violation of petitioner's right to fair trial merely because the Court acted in accordance with settled law by not compelling 1st respondent & and 2nd respondent to enter witness box and adduce evidence contrary to their unmistakable and unequivocal election not to adduce evidence. In our respectful

submission this did not occasion any miscarriage of justice to petitioner.

20. We submit that the duty to be fair in the exercise ofg discretionary power under article 296 does not trump the right of a party to a petition not to adduce evidence, a right equally protected by common law and fortified by the article 11 of the Constitution, 1992. It is crucially important to emphasise that the adversarial character of litigation including Presidential election petition has not been abolished by the Constitution 1992. Thus, the Court committed no error when it stated in its ruling under instant review that **" we take notice of *the well settled practice that a defendant in a case has a right not to adduce evidence after the close of a plaintiff's case*"** Indeed, it is absolutely illogical for petitioner to insist that his right to fairness contemplated by article 296 of the constitution 1992 necessarily requires that the Court compels 1st respondent and 2nd respondent to mount witness box and testify contrary to their election not to adduce evidence. What the petitioner fails to recognize is that inherent in article 19 is the fundamental human right of a party to proceedings to remain silent and not be compelled to lead evidence, if he or she does not wish to. The Constitution is designed to protect the rights of all parties to court proceedings and not only a petitioner or plaintiff in a matter. To uphold petitioner's contentions will wreak havoc to the concept of equality of all persons before the law.

21. Far from petitioner's assertion that the Court did not exercise its discretion in accordance with article 296 of the Constitution, this Honourable Court judicially exercised its discretion after taking into consideration the affidavits filed and submissions of Counsel for all the parties. In doing so, the submissions of Counsel for 1st and 2nd respondents which addressed the requirements of relevance and issues in controversy were not lost on the Court. In particular, 1st respondent had set out in detail in its affidavit in opposition, the reasons why it was objecting to the interrogatories sought to be served. Petitioner's submissions on ground (c) are a rehash of the lengthy and laborious submissions made viva voce which did not find favour with the Court and must not be countenanced.

22. My lords, petitioner again does not demonstrate in his affidavit any particular way, how the refusal of the Court to compel 1st respondent to be cross examined when she had elected not to adduce evidence, has occasioned grave miscarriage of justice to him. This singular monumental failure by petitioner is irremediably fatal to the success of instant review application.

**d)The ruling of the Court was in fundamental error in seeking to distinguish its earlier ruling in Sumaila Bielbiel v Adamu Dramani while relying on the ruling in an English court case, the circumstances of which differed from circumstances in the instant case; and has thus occasioned a grave miscarriage of justice to the applicant.**

23. My Lords, this ground (d) is a reflection of a crass lack of appreciation of elementary principles of Ghana Legal System as the Honourable Court masterfully upheld the sacred principles of judicial precedent by clearly distinguishing its previous decision in **Sumaila Bielbiel v Adamu Dramani** from the factual context of the petition out which the instant review is emanating.

24. In our respectful submission the Court rightly identified factual procedural dimensions making **Sumaila Bielbiel v Adamu Dramani** easily distinguishable from the instant petition, a point completely lost on the petitioner. First and foremost, in Sumaila Bielbiel, the mode of trial was initially by affidavit evidence. However, in the instant case the mode of trial is by the conventional means. Evidence-in-chief is led by the witness before they are subjected to cross-examination. The only novel factor is that the proposed evidence-in-chief is filed in the form a witness statement. That witness statement is adopted by the Court after the witness has mounted the Witness box and taken an oath affirming the contents of the witness statement and swearing to speak the truth, the whole truth and nothing but the truth. Then, the witness is subjected to cross examination. The facts of this case will show that the witness statement had been filed but not yet adopted under oath in witness box. It is significant that two affidavits by 1st respondent which counsel for petitioner made a meal of, had been filed on separate occasions in opposition to two distinct applications. In so far as the said affidavits were meant for specific purpose of relevant applications before the Court, the content of the said affidavit by

1st respondent and for that matter any other party does not constitute part of the evidence before the Court, as far as issues formulated for trial of the petition are concerned. Secondly, in Sumaila Bielbiel, a submission of case was made which is fundamentally different from an election by a party not to adduce evidence. In the instant ruling under review what 1st and 2nd respondents did was not to make submission of no case but rather an unequivocal election not to mount the witness box and adduce evidence.

25. It is our contention that the distinction between the factual/legal aspects of **Sumaila Bielbiel v Adamu Dramani** and the instant petition made the ratio of **Sumaila Bielbiel v Adamu Dramani** not applicable to instant case. Any attempt to apply **Sumaila Bielbiel v Adamu Dramani** to the facts of this case, will not only be slavish and pedantic, but will do violence to the elementary principle of stare decisis.

26. It bears emphasis to copiously quote from the Ruling of the Court to demonstrate the correctness of how the Court distinguished the much-trumpeted *Sumaila Bielbiel* case from instant petition and in particular the very Ruling under review. At page 7 of the Ruling the Court held:

> "Counsel for the Petitioner cited to us the case of **Sumaila Bielbiel v. Adamu Dramani & Attorney – General No. 4 (2012) 1 SCGLR 374**, in which this court ordered a party to adduce evidence because that party had already adduced

evidence in the form of an affidavit. That case is distinct from what is before us now and it must be read in its context relative to the facts before the court then. In that case this court was dealing with a submission of no case in a trial admitting affidavit evidence, unlike the current petition where this court is dealing with Witness statements which are unsworn and are not yet evidence. Indeed, the distinction between that case and the current case is clearly demonstrated in the ruling of Dr. Date-Bah, JSC who delivered the ruling of the court. At page 357 of the report the learned jurist delivered himself as follows:-

**" It is the unanimous view of this court that the first defendant, Adamu Dramani should be called upon to open his defence in the interest of justice. This case does not have the ordinary characteristics of a trial, say the High Court. The procedure before this court is such that, before the commencement of oral testimony in this case the first defendant had already put matters in evidence by affidavit. In this circumstance, it is artificial and hardly sustainable, to disregard the evidence already adduced by the affidavit of the first defendant and proceed to an assessment of a no case submission *made on his behalf, as if the evidence on record is that of the plaintiff."***

*The **distinction here is that in the petition before us the 1st Respondent has not put before us any evidence in the form of an affidavit or otherwise.** As already stated, learned Counsel for the Petitioner only referred us to an affidavit deposed to by the Chairperson of the 1st Respondent in*

*opposition to an interlocutory application to serve interrogatories. That affidavit is not evidence in this petition to enable us compel the 1st Respondent to mount the witness box to be cross-examined. The Sumaila Bielbiel case is clearly distinguishable on the facts and the law. ( with our emphasis)*

27. Your Lordships were absolutely on the right side of the law, doctrine and procedure when you were persuaded by the ratio of ***The Society of Lloyd's v. Sir William Otho Jaffray BT (2000) QBD Commercial Court and appropriately held that:***

***"... on the facts is similar in terms of procedure with the current case before us and cited by Counsel for the 2nd Respondent. In that case, all the witnesses had served their witness statements in accordance with pre-trial directions under the civil procedure rules but Lloyd's had decided not to call them to testify at the trial. An application was made to the court for an order requiring the opposing party to call the witnesses at the trial so that the Applicant could cross-examine them. Cresswell, J. held that in civil proceedings, the trial judge had no power to dictate to a litigant what evidence he or she should tender. There was no obligation to call witnesses. It was counsel's duty to decide what evidence was called and the order in which it was called. The instant court had no jurisdiction to make the orders sought.***

***The law, is therefore settled that a party will not be compelled to enter the witness box and testify in support of his or her case. It is a risk parties who decline to give evidence take knowing perfectly well that the court would be left with no option but to***

***proceed with the available evidence before it. Counsel for the Petitioner has strongly submitted to us that we should not apply the Society of Lloyds case to the peculiar facts of this petition because the 1st Respondent being a Constitutional body with defined responsibilities must be brought before this court to be cross-examined as a way of accounting to the people of this country for its stewardship.***

***The Society of Lloyd's case like this petition also deals with witnesses who had served Witness statements and have decided not to give evidence to be cross-examined"***

**e) The Court fundamentally erred in putting forward positions which were not what Counsel for respondents put before the Court in respect of their case, thus occasioning a grave miscarriage of justice to the applicant.**

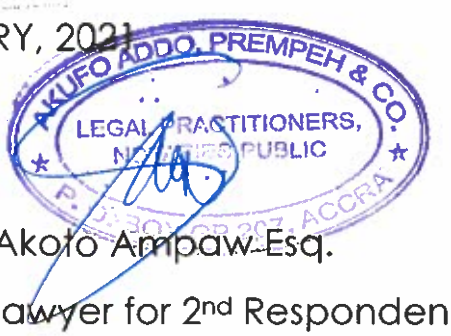
28. My Lords, ground (e) canvassed by Applicant is not only misconceived but another shocking misconception of one of the most elementary maxims of our civil justice system that the law lies in the bosom of the judge rendered in latin as ***lex in gremio ludicis.*** It is trite that whenever applications are argued before court, submissions urged by counsel in the case are only meant to assist the court in making determination whether or not to grant prayers or reliefs being sought. Indeed, a court may grant prayers sought per application without necessarily adopting the submissions by counsel hook, line and sinker.

29. In any event, it is palpably misleading for Counsel for petitioner to suggest that 1st respondent and 2nd respondent counsel did not in anyway allude to Order 38 rule 3E (1) of CI 47 as amended by CI 87. It is instructive that Counsel for petitioner is acknowledging that in the course of oral submissions, the Court interjected with questions and references to relevant law either cited or omitted by Counsel. Consequently, it is our humble submission that a judge being the repository of the law, so to speak, as the maxim goes, the law lies in the bosom of the judge no legal wrong was committed when the Court cited Order 38 rule 3E (1) of CI 47 as amended by CI 87 in its Ruling and more importantly no grave miscarriage justice was thereby occasioned to petitioner

**CONCLUSION**

30. From the ratio of the decided cases, it is immaterial if petitioner considers the decision of the ordinary Court to be wrong in law and holds any other reason apart from what is stipulated in Rule 54 of the Supreme Court Rules, 1996 (C.I. 16). Based on the strict conditions set out in Rule 54 of C. I.16 and the plethora of authorities that elucidate that rule, we submit that petitioner has not satisfied the Court that he ought to be granted a review of the ruling delivered on 11th February, 2021. We therefore pray that the instant application be dismissed with punitive costs.

DATED AT KWAKWADUAM CHAMBERS, ACCRA THIS 17th DAY OF FEBRUARY, 2021




Akoto Ampaw Esq.
Lawyer for 2nd Respondent
Akufo-Addo, Prempeh & Co.
Solicitors Licence No. *eGAR 01391/21*

The Registrar,
Supreme Court,
Accra.

AND TO THE ABOVE-NAMED:

1. PETITIONER OR HIS LAWYER, TONY LITHUR, ESQ, LITHUR BREW & CO, KANDA, ACCRA

2. 1ST RESPONDENT OR ITS LAWYER, JUSTIN AMENUVOR, ESQ, AMENUVOR & ASSOCIATES, NII ODARTEY OSRO STREET, OSU.

## LIST OF AUTHORITIES

1. **Article 133 of the Constitution,1992, and Rules 54, 55 & 56 of the Supreme Court Rules (C.I.16) (as amended).**

2. **Section 26 Of The Evidence Act 1975**

3. **Mechanical Lloyd v Nartey [1987-1988] 2 GLR 598 @ 664**

4. **Quartey v Central Services Co. Ltd. [1996-97] SCGLR 398**

5. **Afranie v Quarcoo [1992] 2 GLR 561 at 591-592**

6. **Tamakloe v The Republic [2011] 1 SCGLR 29**

7. **Internal Revenue Service v Chapel Hill Ltd [2010] SCGLR 827 at 850**

8. **Arthur (No.2) v Arthur (No 2) [2013-2014] 1SCGLR 569**

9. **Sumaila Bielbiel v Adamu Dramani & A-G No.4 [2012] 1 SCGLR 374**

10. **Oppong v A-G & Ors [ 1999-2000] 2GLR 402**

11. **Fosuhene v Pomaa[1987-88]2 GLR 105**

12. **The Society of Lloyd's v. Sir William Otho Jaffray BT (2000) QBD Commercial Court**