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JUDICIAL COURT OF GHANA

**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

WRITTEN ADDRESS FILED ON BEHALF OF THE 1ST RESPONDENT
PURSUANT TO THE ORDER OF THIS HONOURABLE COURT DATED
11TH FEBRUARY, 2021

MY LORDS,

1. This Election Petition was filed on 30th December, 2020 challenging the results of the 7th December, 2020 Presidential Election as declared by the Chairperson of the 1st Respondent on 9th December, 2020.
2. It was filed pursuant to Article 64(1) of the Constitution and under Rule 68(1) of the Supreme Court Rules, 1996 (C.I. 16) as amended by C.I. 74 and C.I. 99. For the avoidance of doubt the relevant provisions are hereunder produced for ease of reference;

Article 64(1)

The validity of the election of the President may be challenged only by a citizen of Ghana who may present a petition for the purpose to the Supreme Court within twenty-one days after the declaration of the result of the election in respect of which the petition is presented.

Rule 68—Petition for Challenging Election of President.

(1) A Petition presented pursuant to Clause (1) of Article 64 of the Constitution shall state

- (a) the full name and address of the Petitioner and of his Counsel, if any, which shall be an address for service;
- (b) the grounds for challenging the validity of the election;
- (c) a statement of the facts relied on to be verified by Affidavit, and of the law in support of the petition;
- (d) the number of Witnesses to be called, if any; and
- (e) such other matters as the Court may determine.

3. The Petitioner prays this Honourable Court for the following reliefs;

- a. A declaration that Mrs. Jean Adukwei Mensah, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 was in breach of Article 63(3) of the 1992 Constitution in the declaration she made on 9th December, 2020 in respect of the Presidential Election held on 7th December, 2020
- b. A declaration that, based on the data contained in the declaration made by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 no Candidate satisfied the requirement of Article 63(3) of the 1992 Constitution to be declared President elect.
- c. A declaration that the purported declaration made on 9th December, 2020 of the results of the Presidential Election by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 is unconstitutional, null and void and of no effect.
- d. An order annulling the Declaration of President-Elect Instrument, 2020 (C.I. 135) dated 9th December, 2020, issued under the hand of Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent (sic) and the Returning Officer for the Presidential Elections held on 7th December, 2020 and gazetted on 10th December, 2020.
- e. An order of injunction restraining the 2nd Respondent (sic) from holding himself out as President-Elect;

- f. An order of mandatory injunction directing the 1st Respondent to proceed to conduct a second election with the Petitioner and 1st Respondent (sic) as the Candidates as required under Articles 63(4) and (5) of the 1992 Constitution.

4. The grounds for the Petition are stated as follows;

- a. That the purported declaration made on 9th December, 2020 by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent and the Returning Officer for the Presidential Election held on 7th December, 2020 violated Article 63(3) of the 1992 Constitution, and is therefore unconstitutional, null and void and of no effect.
- b. That in making the said declaration, Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent and the Returning Officer for the Presidential Election, violated the constitutional duty imposed on her by Articles 23 and 296(a) of the 1992 Constitution to be fair, candid and reasonable.
- c. That the said declaration was made arbitrarily, capriciously, and with bias in favour of 2nd Respondent, contrary to Article 296(b) of the 1992 Constitution.
- d. That the said declaration was made without regard to due process of law as required under Articles 23 and 296(b) of the 1992 Constitution.

5. The Articles of the 1992 Constitution referred to in the grounds for the Petition are also reproduced below;

Article 63

(3) A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his favour is more than fifty per cent of the total number of valid votes cast at the election.

(4) Where at a presidential election there are more than two Candidates and no Candidate obtains the number or percentage of votes specified in clause (3) of this article a second election shall be held within twenty-one days after the previous election.

Article 296

“Where in this Constitution or in any other law discretionary power is vested in any person or authority-

- (a) that discretionary power shall be deemed to imply a duty to be fair and candid;
- (b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and
- (c) where the person or authority is not a Justice or other judicial officer, there shall be published by constitutional instrument or statutory instrument, Regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.”

6. The 1st Respondent filed its Answer on 9th January, 2021 and averred that the election was conducted and the results declared in accordance with CI 127 and the 1992 Constitution. It also urged this Honourable Court to dismiss the petition summarily as it disclosed no reasonable cause of action.
7. On the 19th January, 2021 the following issues were set down for the determination of the petition;
 1. “Whether or not the Petition discloses any reasonable cause of action.
 2. Whether or not based on the data contained in the declaration of the 1st Respondent of the 2nd Respondent as President-elect no Candidate obtained more than 50% of the valid votes cast as required by Article 63 (3) of the 1992 Constitution.
 3. Whether or not the 2nd Respondent still met the Article 63 (3) of the 1992 Constitution threshold by the exclusion or inclusion of the Techiman South Constituency Presidential Election results.
 4. Whether or not the declaration by the 1st Respondent dated the 9th of December, 2020 of the results of the Presidential Election conducted on the 7th December, 2020 was in violation of Article 63 (3) of the 1992 Constitution.
 5. Whether or not the alleged vote padding and other errors complained of by the Petitioner affected the outcome of the Presidential Election Results of 2020.”

8. The Legal Arguments in support of the Preliminary Objection to the Petition as disclosing no reasonable cause of action was filed on 22nd January, 2021 pursuant to the order of this Honourable Court made on 20th January, 2021. Those submissions deal with Issue (1) of the issues set down for the determination of this Petition. The 1st Respondent still relies on the said submissions as if they were part of this Closing Address and proceeds to make these further submissions in respect of the remaining issues as set down by this Honourable Court.

JURISDICTION

9. My Lords, the jurisdiction conferred on this Honourable Court under Article 64(1) *supra* is a special one for one and only one purpose which is to challenge the validity of the election of a president. The Article 64(1) jurisdiction of this Honourable Court must be invoked and accordingly exercised for only that purpose. It cannot be invoked for any other purpose.
10. It is for this reason that we humbly submit that this Honourable Court's Article 64(1) jurisdiction is distinct from its interpretative and enforcement jurisdiction under Articles 1(2) and 130(1) in respect of other provisions of the Constitution including Articles 23 and 296 which are basis for *grounds (b), (c) and (d)* of this petition.
11. We therefore submit that this Honourable Court's jurisdiction has not been properly invoked and should not be exercised in respect of *grounds (b), (c) and (d)* of this Petition.
12. Not surprisingly, my Lords, none of the issues set down for the determination of the Petition relates to these three grounds. This leaves the only ground for determination as *ground (a)*.

BURDEN OF PROOF

13. This Petition is not challenging the validity of the election conducted by the 1st Respondent. It is challenging the validity of the results as returned by the Chairperson of the 1st Respondent on 9th December, 2020. It is about votes and their cumulative numbers.
14. My Lords, in delivering the lead judgment in the 2013 Presidential Election Petition: *Nana Akufo Addo & 2 Others v. John Dramani Mahama & 2 Others* [2013] SCGLR [Special Edition] 73, his Lordship Atuguba JSC in dealing with the burden of proof in election petitions stated at pages 123 - 124 of the report as follows;

“It is said that Election Petitions are peculiar in character hence the question of burden of proof has evoked various judicial opinions in the common law world. However, upon full reflection on the matter I have taken the position that the provisions of the Evidence Act, 1975 (N.R.C.D 323) with the appropriate modifications, where necessary, suffice.

Presumptive Effect Of The Instrument Of Declaration Of Presidential Results

Article 63(9) of the Constitution provides thus:

“(9) An instrument which,

(a) is executed under the hand of the Chairman of the Electoral Commission and under the seal of the Commission; and

(b) states that person named in the instrument was declared elected as the President of Ghana at the election of the President, shall be prima facie evidence that the person named was so elected.”

15. He proceeded to say that, "this means that unless the contrary is proved the president is presumed to have been validly elected. The legal effect of this is governed by ss. 18-21 of Evidence Act, 1975 (NRCD 323). On the facts of this case the relevant provisions are sections 20 and 21 (a), this not being a jury trial. The cardinal question therefore is whether the petitioners have been able to rebut the presumption of validity created by the Presidential Declaration of Results Instrument. The evidence led by the petitioners is almost exclusively that of the pink sheets".

16. In arriving at the above holding this Honourable Court adopted the reasoning of the Kenyan Supreme Court in; Petition No. 5 of 2013 between *Raila Odinga v. Uhuru Kenyatta* at paragraph 196 where it was held as follows:

"We find merit in such a judicial approach, as is well exemplified in the several cases from Nigeria. Where a party alleges non-conformity with the electoral law, the petitioner must not only prove that there has been non-compliance with the law, but that such failure of compliance did affect the validity of the elections. It is on that basis that the respondent bears the burden of proving the contrary. This emerges from a long-standing common law approach in respect of alleged irregularity in the acts of public bodies. *Omnia praesumuntur rite et solemniter esse acta*: all acts are presumed to have been done rightly and regularly. So, the petitioner must set out by raising firm and credible evidence of the public authority's departures from the prescriptions of the law."

17. In her supporting judgment, Her Ladyship Adinyira JSC, at page 218 of the report delivered herself on the burden of proof in Election Petitions as follows;

“Accordingly, the Petitioners bear the burden of proof to establish that there were violations, omissions, malpractices and irregularities in the conduct of the Presidential Election held on the 7th and 8th December, 2012 but also that the said violations, omissions, malpractices and irregularities, if any, affected the results of the election. It is after the petitioners have established the foregoing that the burden shifts to the respondents, to establish that the results were not affected. The threshold of proof should, in principle, be above the balance of probability.”

18. My Lords, it is settled that this Honourable Court exercising its Article 64(1) jurisdiction will either vary or uphold the Presidential Election declaration made taking into account the totality of evidence made available to it at the end of a trial. Subsequent to the 2013 Presidential Election Petition, the Supreme Court Rules, 1996 (C.I. 16) as amended by C.I. 74 were further amended to make specific provisions regarding the filing, hearing and determination of Election Petitions.

19. Rule 69 (C)4(b) of the Supreme Court Rules C.I. 16 as amended by C.I. 99 provides as follows:

The Court may

- (a) Dismiss the Petition where the Petitioner fails to file the processes regarding the Petition within the specified time or
- (b) Hear and determine the Petition when the Respondents fail to file their answers or the processes regarding their answer within the specified time.

20. Rule 69(C)4(b) is a clear indication that there will be no default judgments in dealing with Presidential Election Petitions like the one before this Honourable Court. This particular rule is in consonance with this Honourable Court's position in respect of actions seeking declaratory reliefs as held in *Bank of Ghana (No3) v Sefa (No3) and others* [2015-2016] 1 SCGLR 741 and *Republic v. High Court, Ex Parte Osafo* [2011] 2 SCGLR 966.
21. As stated above, grounds (b), (c) and (d) of the Petition are irrelevant and outside the Article 64(1) jurisdiction of this Honourable Court. The remaining ground to be determined in this Petition is, "that the purported declaration made on 9th December, 2020 by Mrs. Jean Adukwei Mensa, Chairperson of the 1st Respondent and the Returning Officer for the Presidential Election held on 7th December, 2020 violated Article 63(3) of the 1992 Constitution, and is therefore unconstitutional, null and void and of no effect".
22. We submit that the Petitioner bears the burden to lead evidence to displace the presumption of regularity of the results as declared by the Chairperson of the 1st Respondent made on 9th December, 2020 and contained in the President – Elect Instrument, 2020 (C.I. 135) and tendered in evidence on behalf of the Petitioner as Exhibit "G".
23. My Lords relying on the holding in respect of the 2013 Presidential Election Petition case *supra*, it is only after sufficient evidence is led by the Petitioner to displace this presumption that the burden shifts to the 1st Respondent.
24. Article 63(3) of the 1992 Constitution provides as follows:
"A person shall not be elected as President of Ghana unless at the presidential election the number of votes cast in his

favour is more than fifty per cent of the total number of valid votes cast at the election.”

25. In tackling the burden to displace the presumption of regularity of the results declared and contained in the instrument made under the hand of the Chairperson of the 1st Respondent (C.I. 135), the Petitioner called three Witnesses, Johnson Asiedu Nketiah (PW1), Michael Kpessa Whyte (PW2) and Robert Joseph Mettle Nunoo (PW3) and who together put in evidence the following Exhibits;

“**A**” - A video recording of the declaration made by the Chairperson of the 1st Respondent

“**B**” - The Press Release issued by the 1st Respondent and posted on its website on 10th December, 2020 updating the results as declared earlier on 9th December, 2020.

“**C**” – was struck out together with paragraph 30 of the Witness Statement of PW1

“**D**” - Letter from the NDC, the Petitioner’s party, detailing their concerns addressed to the Chairperson of the 1st Respondent but admittedly never delivered. This same document was also described as Exhibit **MKW1**.

“**E**” - A spreadsheet of the 275 Constituency Presidential Election Result Summary Sheets (Form 10s) downloaded from the 1st Respondent’s website by the Petitioner’s 1st Witness (PW1).

“**F**” – A spreadsheet covering sample details from 26 Constituencies showing alleged voted padding.

“**G**” – Declaration of President – Elect Instrument, 2020 (C.I. 135)

“**MACMANU**” – A recording of an interview granted by Peter Mac Manu to Paul Adom Otchere.

26. My Lords, the three (3) Witnesses for the Petitioner led evidence and were cross – examined by Counsel for the 1st and 2nd Respondents. The Petitioner, acting through his Counsel, informed the Court on 8th February, 2021 that he has closed his case.
27. The evidence led on behalf of the Petitioner did not advance his case one whit. The only semblance of irregularity with the votes relates to Exhibit “F” attached to the Witness Statement of PW1. That exhibit made a faint attempt at attacking the figures returned by the Chairperson of the 1st Respondent by alleging vote padding of ‘4,693 votes in favour of the 2nd Respondent in 26 Constituencies. On the whole the Petitioner largely agrees with the figures returned by the Chairperson of the 1st Respondent and has produced no contrasting figures of his own to contradict the numbers as returned by the 1st Respondent Commission.
28. My Lords, in any event even if the alleged vote padding were true – which it is not – it would not change the outcome of the elections as the difference between the Petitioner and the 2nd Respondent was more than 500,000 valid votes.
29. The Respondents therefore elected not to lead any evidence and accordingly informed the Court. The Respondents prayed the Court to rely on the totality of the evidence before it at the close of the Petitioner’s case to determine the issues set down in this Petition.

ISSUE 2

Whether or not based on the data contained in the declaration of the 1st Respondent of the 2nd Respondent as President-elect, no Candidate

obtained more than 50% of the valid votes cast as required by Article 63 (3) of the 1992 Constitution.

30. My Lords, that the Chairperson of the 1st Respondent declared the results of the 7th December, 2020 Presidential Election on 9th December, 2020 is not in issue. The Petitioner's 1st Witness tendered in evidence Exhibit "A" which is a video recording of the declaration made by the Chairperson of the 1st Respondent.

31. The relevant portion of Exhibit "A" is transcribed as follows;
"The election was conducted in 38,622 Polling Stations across the country and in 275 Constituencies. I will now turn my attention to the reason why we are here. At the end of a transparent, fair, orderly and timely and peaceful Presidential Election, the total number of valid votes cast was 13,434,574 representing 79% of the total registered voters. Permit me to present the results in the order of appearance on the 2020 Presidential Ballot. At the end of the polls;

Nana Addo Danquah Akufo – Addo of the New Patriotic Party obtained 6,730,413 votes being 51.595% of the total valid votes cast. John Dramani Mahama of the National Democratic Congress obtained 6,214,889 votes being 47.366% of the total valid votes cast. Christian Kwabena Andrews of the Ghana Union Movement obtained 105,565 votes. Ivor Kwabena Greenstreet of the Convention People's Party obtained 12,215 votes being 0.093% of the total valid votes cast. Madam Akua Donkor of the Ghana Freedom Party obtained 5,575 votes being 0.042% of the total valid votes cast. Henry Herbert Lartey of the Great consolidated Popular Party obtained 3,574 being 0.027% of the total valid votes cast. Hassan Ayariga of the All People's Party obtained 7,140

being 0.054% of the total valid votes cast. Percival Kofi Apaloo of the Liberal Party of Ghana obtained 7,690 votes being 0.059% of the total valid votes cast. David Assibi Apesera of the People's National Convention obtained 10,887 being 0.083% of the total valid votes cast. Bridgette Akosua Dzorgbenuku of the Progressive People's Party obtained 6,848 votes being 0.052% of the total valid votes cast. Nana Konadu Agyemang – Rawlings of the National Democratic Party obtained 6,612 being 0.050% of the total valid votes cast. Alfred Kwame Aseidu Walker, Independent Candidate, obtained 9,703 votes being 0.074% of the total valid votes cast.....”

32. Below is a table of the votes obtained by each Candidate as declared by the Chairperson of the 1st Respondent in the video.

Candidate	Votes Obtained	%
Akufo-Addo	6,730,413	51.595%
Mahama	6,214,889	47.366%
Andrews	105,565	
Greenstreet	12,215	0.093%
Donkor	5,575	0.042%
Lartey	3,574	0.027%
Ayariga	7,140	0.054%
Akpaloo	7,690	0.059%
Apasera	10,887	0.083%

Dzogbenuku	6,848	0.052%
Agyeman-Rawlings	6,612	0.050%
Walker	9,703	0.074%

33. My Lords, when the Petitioner's first Witness (PW1) was cross examined as to whether the Petitioner has any figures contradicting those declared by the Chairperson of the 2nd Respondent on 1st February, 2021 he gave the following answers;

Q. I am putting it to you that the only evidence of election results that you have attached is your Exhibit 'A' the Declaration Form, Exhibit 'B' the Press Release, Exhibit 'C' the 11 Constituency Summary Sheet, Exhibit 'D' the Summary Sheet of Eastern Region, Exhibit 'E' the 275 Constituency Summary Sheet which you described as the spreadsheet of the constituency summary sheet released by 1st Respondent on its website?

A. Yes my Lords, I indicated that we chose to rely on the 1st Respondent's own figures thereby judging them by their own Bible.

Q. It means that you accept the information in those documents of the 1st Respondent?

A: The information suggest.....

Q. No, no, no. I have asked you a simple question. You are saying that you accept the information in those documents as the document of the election?

A. As per 1st Respondent account.

XXXXXXXXXX

By Court: Do you accept or not, that is the question you are being asked.

A. I have been advised by my lawyers that that is the information. No matter how flawed it is.

Q. We are not talking about what your lawyers advise you on, we are talking about you?

A. My Lords because we disagree with the data, that is why we are here.

Q. But you are using the same data in support of your claim?

A. The data must be internally consistent such that the declaration must be seen to be the product of aggregation of the data. And we are entitled as a participating party to look at the data available to us from which the 1st Respondent drew her conclusion. We are saying that the data they have submitted does not support the conclusions that have been drawn and that is why we are here.

Q. You have not provided any document of your own showing that neither party won the elections?

A. My Lords the information we are working with is the results that has been declared by.....

Q. I am saying that as a matter of fact that you, the General Secretary, who was directing and coordinating the presidential election, you have not produced a single piece of independent evidence supporting your claim that neither party won the election?

A. My Lords I need to understand what independent means so that I can proceed to answer the question.

Q. As you know, all the documents that the EC was using to collate the results from the Polling Station right up to the Regional Centre, you had carbon copies of them, didn't you?

A. Yes we do.

Q. And I am saying that you have not put together your carbon copies to show that indeed nobody won the elections?

A. Yes my Lords because that is not the purpose of our petition. We did not come to court to take over the work of the Electoral Commission. But we are entitled if we see the results are flawed, they are not borne out of the data, we are entitled to challenge and insist that we must have credible results and a declaration that is based on the votes that were cast at the Polling Stations.

Q. I am saying that you have not provided any basis of your own for your call for a runoff?

A. No my Lords, we have not brought that data here, we did not consider it necessary to bring any such data here.

34. My Lords, the above is a clear indication that the Petitioner has no figures contradicting the ones declared by the Chairperson of the 1st Respondent.

35. The Petitioner raises no issue at all with the Total Valid Votes obtained by him and by the 2nd Respondent in the declaration contained in the video tendered as Exhibit "A".

36. Article 63(3) of the Constitution refers to, "total number of Valid Votes cast at the election". What actually constitutes a valid vote at an election? Regulation 40 of the Public Elections Regulations, 2020 (C.I.127) provides as follows;

Rejected ballot papers

- 40. (1)** A ballot paper shall, subject to sub-regulation (2), be void and not counted if the ballot paper
- (a) does not bear the official mark of the Commission;
 - (b) is not thumb-printed by the voter to clearly identify the Candidate for whom the vote was cast;
 - (c) is not thumb-printed at all; or
 - (d) has on the ballot paper a writing or mark by which the voter could easily be identified.
- (2)** The presiding officer shall before rejecting a ballot paper as void,
- (a) take proper precautions to prevent a person from seeing the serial number printed on the ballot paper,
 - (b) show the ballot paper to each candidate or the counting Agent of the Candidate if present; and
 - (c) give the Candidate or the counting agent of the candidate an opportunity to express an opinion on the matter.

37. Though Regulation 40 of C.I. 127 does not directly provide us with what a valid vote means, it offers an understanding. A valid vote is therefore one that marks the ballot correctly such that the intention or choice made by the voter can be clearly determined. A valid vote is therefore attributable to one of the Candidates taking part in the election. Total valid votes are therefore a summation or aggregation

of the votes obtained by all the Candidates taking part in the specific election.

38. My Lords, emphasis must be placed on the fact that the Total Valid Vote cast is calculated based on data and not based solely on the words of the Returning Officer. It is especially so when there had been an admission that the figure as announced was an error. This Honourable Court therefore has the power to determine what exactly the Total Valid Votes is from the data as announced by the Chairperson of the 1st Respondent on 9th December 2020 which data has been made available to the Court by the self-same Petitioner.
39. From the announcement contained in the video tendered as Exhibit "A", the total number of votes obtained by all the Candidates as shown in the table in paragraph 31 above is **13,121,111**. The figure **13,121,111** is acknowledged by the Petitioner in paragraph 12 of his Petition as the total valid votes cast when he stated, "if the number of valid votes standing to the names of each of the Presidential Candidates is summed up, this would yield a total number of valid votes cast of **13,121,111**, a figure that is completely missing from the purported declaration.....".
40. My Lords, the said figure was also admitted by PW1 when he was cross examined by Counsel for the 2nd Respondent on 1st February, 2021 as follows;
- "Q. You also know that if you listen to your Exhibit 'A', that is, the press conference declaring who won the election, if you tabulate the total of all the votes obtained by the 12 candidates, you will get 13,121,111 votes, is that not correct?
- A. My Lords that figure was nowhere in any declaration.

Q. I am saying that if you tabulate the results by each of the 12 candidates and sum them up, you will get a total of 13,121,111, is that not correct?

A. My Lords as per the figures released by the Electoral Commission, that is correct.”

41. My Lords, per the data announced in Exhibit “A”, it is also clear that the total valid votes of 13,121,111 was the figure used as the denominator to calculate the percentages obtained and announced for the Candidates except that the 2nd Respondent’s percentage figure was announced as 51.595% instead of **51.295%**. The declaration speech released to the media by the 1st Respondent on 9th December 2020 bears the figure 51.295%. Indeed PW1 gave the following answers during cross examination on 1st February, 2021.

Q. Can you tell the court what is 6,730,413 as a percentage of 13,121,111?

A. My Lords is 51.29453 ad infinitum. So it can be rounded up to 51.295%

Q. So 51.295%, not so?

A. Yes.

Q. What about the Petitioner, his total valid votes are 6,214,889. What is this sum as a percentage of 13,121,111?

A. It is 47.365569 ad infinitum. So it can be rounded up to 47.366.

42. The figure of 47.366% as above was exactly the percentage announced for the Petitioner in Exhibit “A” and that figure can only be produced with 13,121,111 as the total valid votes (denominator) and not 13,434,574. Same applies to all the other Candidates.

43. In the 2013 Presidential Election Petition case *supra*, the Court stated per Atuguba JSC at page 132 of the report that,
“The certification of the results by the Polling Agents without any complaint at the Polling Station or by evidence before this court shows that certain recordings on the pink sheets should not readily be taken as detracting from the soundness of the results declared but rather point to the direction of administrative errors which at the worst, as demonstrated *supra*, can be corrected by the defaulting officials”.
44. The Petitioner’s Witness (PW1) admitted during cross examination that the total valid votes was based on the data presented by the 1st Respondent. It is submitted that the issue of what the total valid votes is in this Petition is not in issue and therefore it was not even set down as an issue for determination by this Honourable Court.
45. The valid votes obtained by the 2nd Respondent in the data contained in the declaration in Exhibit “A” is **6,730,413** being **51.295%** of the total valid votes obtained by all the Candidates, 13,121,111. This percentage was also confirmed by PW1 during his cross examination by Counsel for the 1st Respondent on 1st February, 2021 as follows;
- Q. Can you tell the court what is 6,730,413 as a percentage of 13,121,111?
- A. My Lords is 51.29453 ad infinitum. So it can be rounded up to **51.295%**

46. It is therefore our humble submission that the 2nd issue set down for the determination of the Petition is answered in the affirmative.
47. To prove that the above figures of the 1st Respondent were wrong, the Petitioner needs to lead credible evidence to convince this Honourable Court to arrive at the conclusion that the 2nd Respondent did not obtain more than 50% of the total valid votes cast, failing this, the Petition must fail.
48. My Lords this Honourable Court in *Ackah v. Pergah Transport Limited and Others*, [2010] SCGLR 728 at 736 held that;
“It is a basic principle of the law on evidence that a party who bears the burden of proof is to produce the required evidence of the facts in issue that has the quality of credibility short of which his claim may fail. The method of producing evidence is varied and it includes the testimonies of the party and material Witnesses, admissible hearsay, documentary and things (often described as real evidence), without which the party might not succeed to establish the requisite degree of credibility concerning a fact in the mind of the court or tribunal of fact such as a jury. It is trite law that matters that are capable of proof must be proved by producing sufficient evidence so that on all the evidence a reasonable mind could conclude that the existence of the fact is more reasonable than its non-existence. This is a requirement of the law on evidence under sections 10 and 11 of the Evidence Decree.”
49. My Lords, it is our submission that neither the Petitioner nor his Witnesses led evidence to prove that the valid votes obtained by

each of the Candidates in the data of the 1st Respondent was wrong or irregular. PW1 answered questions in this regard on 1st February, 2021 as follows;

By Court: Then I want to be very clear on these issues too. In all the figures that were mentioned as the valid votes cast and all those things, you were saying if the figures were correct and that there were inconsistencies in the figures. In your own calculations what were the total valid votes cast in the presidential election on 7th December 2020?

Witness: My Lords those calculations are reserved for a meeting for us to reconcile the figures because the 1st Respondent herself kept changing the figures.

By Court: Mr. Asiedu Nketia, help the court. When you started giving evidence, you said you had representatives across the 275 constituencies. You said you put agents and they were to collate the figures. Then he is asking you that from that, what figure did you get, you?

Witness: My Lords I have *not brought that figure to court*

By Court: Then from your own calculations what were the valid votes cast in favour of the Petitioner, to your knowledge?

Witness: When we discovered this discrepancy, it was difficult to even know which figures are correct.

By Court: You do not know?

Witness: I do not have them here.

By Court: What figures from your own calculations, did the 2nd Respondent get as the total valid votes cast in his favour?

Witness: My Lords I do not have those figures here.

50. It is our further submission, My Lords, that neither the Petitioner nor his Agents raised any objections to the figures contained on the Summary Sheets as collated. May we remind the Court that copies of the said Summary Sheets were given to all the Agents at the various Polling Stations, Constituency Collation Centres and the Regional Collation Centres. Additionally the Regional Summary Sheet were given to the Candidates or their Agents at the National Collation Centre at the Head Office of the 1st Respondent for verification and endorsement. These Forms are the Polling Station Results Form for the Office of President (Form 8Bs), the Presidential Election Summary Sheet (Form 10s), the Presidential Regional Results Summary Sheet (Form 12s). It is important to note that the Agents also sign the Declaration of Presidential Election Results, National Summary Sheet (Form 13).
51. Form 13 is generated from the summation of all the results in the Presidential Regional Results Summary Sheet (FORM 12). The Petitioner has duplicate copies of the Presidential Regional Results Summary Sheet (FORM 12) as admitted by the two witnesses of the Petitioner.
52. Form 13B was generated by the 1st Respondent to aid the declaration of results obtained by all the Candidates by aggregating the results from the Presidential Regional Results Summary Sheet (FORM 12) for the 16 Regions, in a way that does not materially affect the form's substance, and not calculated to mislead any person.
53. My Lords, Section 30 of the Interpretation Act, 2009 Act 792 provides that "where a Form is prescribed or specified by an enactment, deviations from that form not materially affecting the

substance and not calculated to mislead shall not invalidate the Form used.”

54. It is our submission that the Form 13 used by the 1st Respondent did not hinder the accurate collation of the results which was a summation of the 16 Presidential Regional Results Summary Sheets (FORM 12). Indeed PW3 admitted that he had seen all the 16 Presidential Regional Results Summary Sheets (FORM 12), verified and certified 13 of them before he left the National Collation Centre around 4pm on 9th December 2020.

55. The following was what transpired when Mr. Robert Joseph Mettle Nunoo was cross examined by Counsel for the 1st Respondent on 8th February, 2021;

Witness: My Lords, I am referring to the 16 Regional Summary Sheets.

Counsel for Petitioner: And where did those summary sheets come from?

Witness: The summary sheets that I am referring to are summary sheets that were made available to my team in the strong room during the collation of the results from the regional level.

Q. The forms that you have before you, where you signed, there is a column that if you would not sign, you need to give reasons for your refusal or your failure to sign?

A. Yes, I see the column.

Q. I am putting it to you that all the forms that your Regional agents did not sign, they did not assign a single reason for their refusal to sign?

A. Could you repeat the question.

Q. I am saying that of all the forms your agents in the region did not sign, apart from what you certified, they did not assign any reason on the right column for their refusal to sign those forms?

A. On the face of the summary sheet, that is the situation. But that did not mean they did not have issues.

56. My Lords, the process of collation leading to the filling out of the Presidential Regional Results Summary Sheets (Form 12) that are faxed to the Headquarters of the 1st Respondent is outlined in Regulation 44 (7) – (10) of the Public Elections Regulations, 2020 (C.I. 127) as follows;

(7) Subject to regulation 41, immediately after the Returning Officer for the parliamentary elections receives the presidential election results of the poll for all the Polling Stations as set out in Form Eight B of the Schedule, the Returning Officer shall, in the presence of the Candidates or the representatives of the Candidates or not more than two counting agents appointed by each Candidate,

(a) assemble and collate the presidential election results from the Polling Stations as set out in Form Eight B of the Schedule without re-counting the ballots in the ballot boxes, except where there is a challenge by a candidate or a representative or a counting agent of a candidate in respect of a specific ballot box;

- (b) fill the Presidential Election Results Collation Form as set out in Form Nine of the Schedule;
- (c) fill the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule;
- (d) request the candidates or the representatives or counting agents of the candidates to, together with the Returning Officer, sign the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule and post a copy at the constituency collation centre;
- (e) give each candidate or the representative or counting agent of a candidate a completed and signed copy of the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule;
- (f) (f) publicly announce the presidential election results;
- (g) post a signed copy of the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule at the constituency collation centre; and
- (h) forward a copy of the Presidential Election Results Summary Sheet as set out in Form Ten of the

Schedule to the District Electoral Officer of the Commission.

(8) The District Electoral Officer shall, on receipt of a copy of the Presidential Election Results Collation Form as set out in Form Nine and the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule, forward the Presidential Election Results Collation Form and the Presidential Election Results Summary Sheet to the Regional Collation Officer appointed under subregulation (1) of regulation 38.

(9) The Regional Collation Officer shall, on receipt of the Presidential Elections Results Collation Form as set out in Form Nine of the Schedule and the Presidential Election Results Summary Sheet as set out in Form Ten of the Schedule from the District Electoral Officer, in the presence of the public and with not more than two counting agents appointed by parties contesting or the Polling Agents of the party if any,

- (a) assemble and collate the presidential results from the presidential results from the constituencies as set out in Form Ten of the Schedule;
- (b) fill the Presidential Regional Results Collation Form as set out in Form Eleven of the Schedule;
- (c) fill the Presidential Regional Summary Sheet as set out in Form Twelve of the Schedule;

- (d) request the representatives of the political parties and the candidates to sign the Presidential Regional Results
 - (e) *publicly announce the presidential regional results;*
 - (f) post a copy of the Presidential Regional Results Summary Sheet as set out in Form Twelve of the Schedule at the Regional Office of the Commission; and
 - (g) forward the Presidential Regional Results Summary Sheet as set out in Form Twelve of the Schedule to the Chairman of the Commission at the Head Office of the Commission.
- (10) The Chairman of the Commission shall, on receipt of the Presidential Regional Results Summary Sheet as set out in Form Twelve of the Schedule from the Regional Collation Officer, in the presence of the public and with not more than two counting agents appointed by parties contesting or the polling agents of the parties if any,
- (a) assemble and collate the presidential, election results from the regions provided by the various Regional Collation Officers as set out in Form Twelve of the Schedule;
 - (b) fill the Declaration of Presidential Results Form as set out in Form Thirteen of the Schedule;
 - (c) request the representatives of the political parties to sign the Declaration of Presidential Results Form as set out in Form Thirteen of the Schedule;

(d) declare the results of the election of the President;
and

(e) post a copy of the Declaration of Presidential Results Form as set out in Form Thirteen of the Schedule at the Head Office of the Commission.

(11) An instrument which

(a) is executed under the hand of the Chairman of the Commission and under the seal of the Commission; and

(b) states that the person named in the Instrument was declared elected as the President of Ghana at the election, is prima facie evidence that the person named was elected.

(12) The instrument referred to in subregulation (11) shall be published in the Gazette.

57. As clearly stated by law, Regulation 44 (10)(e) of C.I. 127, the Form 13 after been filled and signed by the Agents of the Candidates present at the Head Office of the 1st Respondent, is posted at the Head Office of the 1st Respondent. It is not given to the Agents of the candidates like the other Forms.

58. My Lords, as has been the practice the Returning Officer of the Presidential Elections constituted a team made up of senior officers at the Head Office to receive all the Forms 12s from the Regions in the presence of the Candidates or their Agents for vetting, review and certification of the results before the final authentication by the Returning Officer of the Presidential Elections. This is exactly what happened at the National Collation Centre (NCC), the "Strongroom."

59. As noted above, collation proceeds from the Polling Station to the Head Office of the 1st Respondent. The Candidates have Agents at every stage of the collation process to ensure transparency and accountability and to protect their respective interests. The Agents certify the results when they are satisfied with figures and note their objections when they are not. Regulation 21 of C.I. 127 which deals with Polling Agents provides as follows;

Polling Agents

21. (1) A Candidate for parliamentary election may appoint one Polling Agent to attend at each Polling Station in the constituency for which the candidate is seeking election.
- (2) A Candidate for presidential election may appoint one Polling Agent in every Polling Station nationwide.
- (3) An appointment under subregulations (1) and (2) is for the purpose of detecting impersonation and multiple voting and certifying that the poll was conducted in accordance with the laws and regulations governing the conduct of elections.
- (4) A presiding officer shall give a Polling Agent the necessary access to enable the Polling Agent to observe election proceedings at a Polling Station.
- (5) A candidate shall submit in duplicate to the Returning Officer in charge of the constituency in which the candidate seeks election, not later than four days to an election,
- (a) letters of appointment stating the name and address of each Polling Agent appointed by the candidate; and
- (b) the Polling Station to which a Polling Agent is to be assigned.

(6) The Returning Officer shall set a date on which the Polling Agents shall appear before the Returning Officer to swear an oath to the effect that the Polling Agent shall abide by the laws and regulations governing the conduct of elections.

(7) After the oath is taken by the Polling Agent the Returning Officer shall sign both the original and duplicate copies of the appointment letter and issue to the Polling Agent the duplicate copy.

(8) The Polling Agent shall present the duplicate copy of the letter of appointment to the presiding officer of the Polling Station to which the Agent is assigned on the day of the poll.

(9) Despite subregulation (7) a candidate may change an Agent under special circumstances and a new Agent appointed by the candidate shall swear an oath before the presiding officer in charge of the polling station where that Agent is assigned.

(10) If a Polling Agent dies or becomes incapacitated from acting as a Polling Agent the candidate who appointed the Polling Agent may appoint another Polling Agent.

60. The appointment and duty of these Agents is anchored in Article 49 of the Constitution which provides as follows;

"49. Voting at elections and referenda

(1) At any public election or referendum, voting shall be by secret ballot.

(2) Immediately after the close of the poll, *the presiding officer shall*, in the presence of such of the candidates or their representatives and *their* Polling Agents *as are present*, proceed to count, at that Polling Station, *the*

ballot papers of that station and record the votes cast in favour of each candidate or question.

(3) The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their Agents and the Polling Agents if any, shall then *sign a declaration stating*

(a) the Polling Station, and

(b) the number of votes cast in favour of each candidate or question, and the presiding officer *shall, there and then, announce the results of the voting at that polling station* before communicating them to the Returning Officer.”

61. PW1 admitted during cross examination and in an answer to this Honourable Court’s question that the Petitioner had Agents at all the 38,622 Polling Stations, 275 Constituency Collation Centres, 16 Regional Collation Centres and at the Head Office of the 1st Respondent.

62. Indeed, my Lords, CI127 introduced the Regional Collation Centres to add a further layer of scrutiny, transparency and accountability to the electoral process. As a result, instead of submitting the Presidential Election Results Summary Sheet (Form 10) directly to the National Collation Centre, NCC, it was submitted to the Regional Collation Centres where all the parties who participated in the elections had their Agents present to further scrutinize and review the Presidential Results Summary Sheets coming from the Constituency Collation Centres before the Regional

Presidential Summary Sheets are filled and signed by the Agents for onward transmission to the NCC.

63. The presumption is that these Agents of the Petitioner did their work diligently in certifying the results they certified and were accordingly given copies as required by law. This Honourable Court had occasion in the 2013 Presidential Election case *supra* to reiterate the role of Polling Agents in holding 3 at page 86 of the report as follows;

“In this case it would be unfair and fraudulent for the Petitioners to authenticate the results through their Polling Agents’ signatures and turn round to seek to invalidate on the purely technical ground of absence of the presiding officer’s signature”.

64. In that case the Petitioners were seeking to invalidate pink sheets signed by their own Agents on the grounds that the presiding officers had not signed. The court disagreed saying the signature of the Agents and the public glare of the count and declaration of the results and provision of the copies of the same to the Agents should satisfy the policy objective of Article 49(3) of the Constitution.

65. My Lords, having failed or refused to furnish this Honourable Court with evidence of the figures he obtained from his own tally of the Presidential Regional Results Summary Sheets, which PW3 admitted were in his custody during cross examination, the only reasonable inference to be drawn is that the tallies do not support the Petitioner’s case or that they confirm the case of the 1st Respondent hence the decision of the Petitioner not to make those Forms available to the Court.

66. PW3 gave the following answers when he was cross examined on 8th February, 2021 by Counsel for the 1st Respondent;

Q. And those duplicate pink sheets were received by the Agents appointed by the Petitioner at each constituency and for that matter, the Regional level, is that correct?

A. If you are referring to the pink sheets that were officially handed over at the end of the collation, yes that is correct. But in some other instances, many, many other pink sheets also started to appear.

Q. I repeat that at the time that you were leaving after 3:47 pm, the Northern sheet had come and all the other 15 sheets had come and you had seen them?

A. That is correct even though we had issues with some of the summary sheets.

The answers to the question above goes to show that the Petitioner in fact had all the necessary data, but had chosen not to provide alternate figures to challenge the results as declared by the Chairperson of the 1st Respondent.

67. After Counsel for the Respondents completed their cross examinations of PW3, this Honourable Court obtained the following answers from him;

By Court: You have also admitted that you signed most of the regional summary sheets, 13 of them out of 16?

Witness: That is correct.

By Court: Did you sign these summary sheets before you left to see the Petitioner?

Witness: Yes, I did sign the 13 before we went to see the Petitioner.

68. *Cadit Quaestio!!!* The evasive question of whether or not the Petitioner and his Witnesses had seen all the 16 Presidential Regional Results Summary Sheet (FORM 12) has finally been answered in the affirmative. PW3 admitted that he certified 13 out of 16 Presidential Regional Summary Sheets (Form 12s), 12 of which were certified by the Petitioner's Regional Agents with no complaints. PW3 also admitted that the 3 remaining Presidential Regional Results Summary Sheets were given to him but he did not sign them. He stated that these were not signed by the Petitioner's Regional Agents, but those Agents did not indicate any reasons for their refusal to sign as required by CI127.
69. This admission by PW3 contradicts the evidence of PW2 who denied that they the Agents of the Petitioner had seen all 16 Form 12s before they left the National Collation Centre of the 1st Respondent around 4pm on 9th December 2020.
70. The position of the law regarding Agents of Candidates signing pink sheets on behalf of their Candidates was dealt with in the 2013 Presidential Election Petition *supra* where this Court per Atuguba JSC held at page 134 of the report that,
- “The signatures of the Polling Agents to the declaration of results therefore have high constitutional and statutory effect and authority, which cannot be discounted”.
71. In respect of the three Presidential Regional Results Summary Sheets that were not signed by the Petitioner's regional Agents, the

said Agents did not also indicate the reasons for their refusal to sign the Forms as required by CI127. We submit that the absence of the Petitioner's Agents to certify the results was not a bar to the process of collation and declaration of the results. Those three (3) Form 12s were signed by the Agents of the other Presidential Candidates. Regulation 48 of C.I. 127 provides as follows;

48. (1) In these Regulations where an expression is used that requires, authorises, or implies that an act or thing is to be done in the presence of the candidates or the Polling Agents or counting Agents of the candidate, those expressions shall be construed as a reference to the presence of the candidates or the Polling Agents or counting Agents of the candidate authorised to attend and have attended at the time and place where the act or thing is being done.

(2) The non-attendance of the candidate or the Polling Agent or counting Agent of the candidate at the time and place shall not invalidate the act or thing done.

72. We humbly submit that the Petitioner is bound by the figures on all the Forms, whether his Agents signed them or not, as their absence could not prevent the collation and declaration of the results. In addition, he has failed or refused to put in evidence any figures to contradict those declared by the Chairperson of the 1st Respondent.

73. My Lords, on the basis of the answers provided above by PW1 & PW3 confirming the data available to the Petitioner, we humbly submit that the Petition as a whole must fail, the Petitioner having failed or refused to lead evidence to contradict the figures

announced in the declaration of 9th December, 2020 by the Chairperson of the 1st Respondent. This Honourable Court cannot give judgment in vacuum. Judgement of the court must be based on credible evidence.

ISSUE THREE

Whether or not the 2nd Respondent still met the Article 63 (3) of the 1992 Constitution threshold by the exclusion or inclusion of the Techiman South Constituency Presidential Election results.

74. This issue is the main thrust of the Petitioner's claim. The Petitioner alleges in paragraphs 15 & 16 of his petition that,
- “15. The Techiman South Constituency has a total registered voter population of 128,018, and if added to the total valid votes announced by Mrs. Jean Adukwei Mensa as cast (13,434,574), the resultant figure would now be 13,562,592.
16. Consequently, if all the votes of Techiman South Constituency were added to Petitioner's votes, 2nd Respondent's votes would remain the same at 6,730,413, now yielding 49.625%, while the votes of the Petitioner would increase to 6,342,907, now yielding 46.768%.”
75. It is based solely on the conclusions reached in paragraph 16 of the Petition that the Petitioner is inviting this Honourable Court to order a run-off of the 7th December, 2020 Presidential Elections. No further pleadings were made or evidence led to support this claim. The Petitioner relies on the content of Exhibit “A”.
76. My Lords, at the declaration on 9th December, 2020, the Chairperson of the 1st Respondent announced that the Presidential Election results were declared without results from the Techiman

South Constituency, which has a total registered voter population of 128,018, with the understanding that the said results would not have any effect on the outcome of the elections as declared.

77. The data contained in the declaration are as follows; “Nana Addo Danquah Akufo–Addo (the 2nd Respondent) – 6,730,413, John Dramani Mahama (the Petitioner) – 6,214,889 and total of the votes obtained by all the Candidates, 13,121,111. We note that the total number of registered voters in the Techiman South Constituency was 128,018.
78. It is our submission that the total valid votes obtained by all the Candidates during the declaration contained in Exhibit “A” is 13,121,111 is beyond dispute now. The said averment has been pleaded by the Petitioner in paragraph 12 of his Petition and admitted by PW1 during his cross – examination by Counsel for the 2nd Respondent on 1st February, 2021 as follows;
- “Q. You also know that if you listen to your Exhibit ‘A’, that is, the press conference declaring who won the election, if you tabulate the total of all the votes obtained by the 12 candidates, you will get 13,121,111 votes, is that not correct?
- A. My Lords that figure was nowhere in any declaration.
- Q. I am saying that if you tabulate the results by each of the 12 candidates and sum them up, you will get a total of 13,121,111, is that not correct?
- A. My Lords as per the figures released by the Electoral Commission, that is correct.”
79. We submit further that the total number of registered voters in the Techiman South Constituency is 128,018 is also beyond dispute

as no issue was raised with it by any of the parties to this action before the Court.

80. At the time this Petition was filed, the actual results of the Techiman South Constituency was known and the Petitioner's Witness PW1 tendered evidence exhibit E which had that result and even the detail of the total valid votes obtained by each Candidate in that constituency. PW1 admitted the actual results from the Techiman South Constituency and PW1 captured it as part of his Exhibit "E" on page 2 in the first row under the Bono East Region.
81. In Exhibit "E", PW1 seeks to complain about the tabulation of the total valid votes and the total votes cast. There was no complaint about the total valid votes obtained by any of the Candidates. The results were certified by agents of both the Petitioner and the 2nd Respondent.
82. My Lords as indicated earlier, there has been a couple of tabulation and computational errors which errors are amenable to correction without interfering with the votes obtained by any of the Candidates. This was what Atuguba JSC said in the 2013 Presidential Election Petition at page 218 of the law report *supra*:
- "The certification of the results by the Polling Agents without any complaint at the Polling Station or by evidence before this court shows that certain recordings on the pink sheets should not readily be taken as detracting from the soundness of the results declared but rather point to the direction of administrative errors which at the worst, as demonstrated *supra*, can be corrected by the defaulting officials."
83. My Lords at the time the declaration was made on 9th December 2020, the Techiman South Constituency Results were

excluded. This mean that the total number of the registered voters in that constituency would be added to the votes obtained by the Petitioner who was second at the elections. Even so the 2nd Respondent still obtained more than 50% of the valid votes. The numbers below explain the position further. The Total Valid Votes obtained by the Petitioner inclusive of Techiman South was 6,342,907 (6,214,889 + 128,018). This also would increase the total valid votes obtained by all the Candidates to **13,249,129** (13,121,111 + 128,108). The Total Valid Votes obtained by the 2nd Respondent will remain 6,730,413. Meaning that the 2nd Respondent obtained 0 votes in Techiman South. The votes obtained by the 2nd Respondent (6,730,413) expressed as a percentage of the new Total Valid Votes (13,249,129) then comes to **50.7989%**.

84. It is therefore our submission that with the exclusion of the Techiman South Constituency Presidential Results, the 2nd Respondent obtains 50.7989% of the valid votes cast and therefore meets the threshold of more than 50% of the Total Valid Votes cast as provided for under Article 63(3) of the Constitution.

85. It is our further submission that if assigning all the registered voters in the Techiman South Constituency to the Petitioner did not affect the 2nd Respondent's meeting of the threshold set by Article 63(3) of the 1992 Constitution, then it is logical to conclude that including the results by applying the actual votes obtained by each Candidate will not change the status quo.

86. My Lords, we submit that including the Techiman South Constituency Presidential Election Results means applying the actual valid votes obtained by each Candidate. The breakdown is as shown on Exhibit "E" and tabulated as follows;

ACTUAL TECHIMAN SOUTH PRESIDENTIAL ELECTION RESULTS

Candidate	Votes Obtained
Nana Akufo-Addo (2 nd Respondent)	46,379
John Mahama (Petitioner)	52,034
Christian K Andrews	720
Ivor K. Greenstreet	46
Akua Donkor	24
Henry Herbert Lartey	16
Hassan Ayariga	54
Kofi Percival Akpaloo	24
David Apasera	45
Bridget Dzogbenuku	19
Nana K. Agyeman-Rawlings	29
Alfred K. Asiedu Walker	46
Total Valid Votes	99,436

87. The inclusion of the actual results from Techiman South Constituency will therefore produce the following overall results;

Candidate	Votes Obtained
Nana Akufo-Addo (2 nd Respondent)	6,776,792
John Mahama (Petitioner)	6,266,923
Christian K Andrews	106,285
Ivor K. Greenstreet	12,261
Akua Donkor	5,599
Henry Herbert Lartey	3,590
Hassan Ayariga	7,194
Kofi Percival Akpaloo	7,714
David Apasera	10,932
Bridget Dzogbenuku	6,867
Nana K. Agyeman-Rawlings	6,641
Alfred K. Asiedu Walker	9,749
Total Valid Votes	13,220,547

88. Including the Techiman South Constituency Presidential results, the total votes obtained by the 2nd Respondent is (6,776,792) and as a percentage of the total valid votes cast (13,220,547) the percentage obtained by the 2nd Respondent becomes **51.260%**.

89. It is our submission that the analysis above show clearly that the 2nd Respondent still met the more than 50% threshold under Article 63(3) with both the exclusion or inclusion of the Techiman South Presidential Election Results. We further submit that the

above analysis answers Issue three (3) set down by this Honourable Court for the determination of this Petition in the affirmative.

90. My Lords, it is necessary to determine whether the conclusions reached by the Petitioner in paragraph 16 of his petition were even maintainable after the release of the Techiman South Constituency Presidential Election Results. Applying the wrong total valid votes as announced in Exhibit "A" (13,434,574) to the actual Techiman South Constituency Results would provide the following results. The total valid votes would be 13,534,010 (13,434,574 + 99,436) and the 2nd Respondent's votes obtained would be 6,776,792 (6,730,413 + 46,379). In this scenario, which is needless but necessary to determine the true intention behind this Petition, the 2nd Respondent still obtains 50.07% ($6,776,792/13,534,010 \times 100$) of what the Petitioner insists should be used as the Total Valid Votes, even though admittedly it was an error not supported by the data available to all the parties to this Petition.
91. We submit that at the point the actual results of the Techiman South Constituency were released, it was obvious that the Petitioner was aware that the conclusion in paragraph 16 of his Petition was disingenuous and false. Why then was this Petition filed?
92. My Lords, let us give the Petitioner the benefit of doubt including the fact that he was using the wrong figure of 13,434,574 as the Total Valid Votes. My Lords, despite the correction made and the Petitioner's own admission in Paragraph 12 of his Petition, the 2nd Respondent still won the election with more than 50% of the Total Valid Votes. The wrong total Valid Votes is 13,434,574 plus

the total Valid Votes of the Techiman South being 99,436 making a total of 13,534,010. The 2nd Respondent would still get 50.072%.

93. My Lords, this Petition looks more like an action to challenge the innocuous mistake made in the declaration of the Chairperson of the 1st Respondent rather than the validity of the election of the 2nd Respondent.
94. My Lords, if the Petitioner had any concerns about the declaration of the results as made on 9th December, 2020, those concerns were automatically determined the moment the Techiman South Constituency actual results were declared. More so when the Techiman South Constituency actual results was released long before the Petition was filed.
95. My Lords this Honourable Court in *Mettle-Nunoo v. Electoral Commission* [2007-2008] 2 SCGLR 1250 @ 1258 emphasised the point that a challenge to declarations cannot be the basis of a Presidential Election Petition. In that case the Plaintiff sought to challenge the declaration of President Kufour as winner of the 2004 Presidential Election on the grounds that the declaration did not include the details of the Total Valid Votes cast in favour of all the Candidates from each constituency. Date-Bah JSC in his judgement at page 1258 of the report said as follows:
- “If the Plaintiffs were to succeed in their contention on the first issue, although it would result in a declaration which in effect will mean that no President had been declared elected, it will not mean that the election itself of the President was invalid. The underlying election results could still be perfectly valid and

the Defendant's (EC) responsibility will be to declare them in the proper Form. The declaration would mean merely that a President had not yet been properly declared elected, without prejudice to the validity of the substantive election result themselves. In our view therefore the Plaintiffs' action is not an election Petition and the time limit specified in Article 64(1) does not apply to it"

96. It is therefore our humble submission that if the Petitioner had any genuine concerns, which we doubt, his recourse to the invocation of the Jurisdiction of this Honourable Court under Article 64(1) of the 1992 Constitution is totally misconceived.

ISSUE FOUR

Whether or not the declaration by the 1st Respondent dated the 9th of December, 2020 of the results of the Presidential Election conducted on the 7th December, 2020 was in violation of Article 63 (3) of the 1992 Constitution.

97. My Lords, we respectfully repeat our submissions in respect issue 2 above and further submit that the declaration made by the Chairperson of the 1st Respondent was not in violation of Article 63(3) of the 1992 Constitution.

ISSUE FIVE

Whether or not the alleged vote padding and other errors complained of by the Petitioner affected the outcome of the Presidential Election Results of 2020.

98. My Lords, the Petitioner had attached to a letter, two Presidential Regional Result Summary Sheets for the Eastern Region and alleged that the results from the Eastern Region could not be verified. That letter according to his own Witnesses was not delivered to the 1st Respondent. Even so, the issue was resolved by answers provided by PW1 using the very documents that he had tendered in evidence (Exhibit D) on 29th January 2021 as follows:

Q: You have attached to your letter two sheets from the Eastern Region, is that correct?

A.: That is correct my Lords.

Q.: On the first sheet your agents signed the Form, is that correct?

A: My Lords there are two sheets, I don't know which is first, and which is second.

Q: If you look at the Forms there is one, the one with the blue ink at the bottom your agents did not sign it.

A: Yes my Lords.

Q: The one which doesn't have the blue ink your agents signed.

A: Yes my Lords.

Q: If you put together all the valid votes assigned to each of the candidates that your agents signed, the total will be 1,196,751 and not the 1,236,940 that was written on the Form?

A: I have done the additions and I have realized that the totals on both sheets are the same figures but the figures that add up to the totals are different and the one marked in blue is actually accurate.

Q: We will come to the one marked in blue. I am saying that if you add the valid votes assigned to all the candidates from number 1 to number 12, on the Form that your agent signed, the total should be 1,196,751 and not the 1,236,940 that was written on it?

A. I can confirm that the totals are not the aggregates of the numbers there but I do not remember the actual figure that I got. If the court would permit me, we can add and find out what it is. I have **1,196,751**.

Q. Kindly deduct that figure from the figure written on the Form that is 1,236,940. What would you arrive at?

A. 40,189.

Q. Look at the last page of your Exhibit E which is the sheet that you attached to your evidence. There is a constituency there called Ayensu Ano. Do you see 40,189 over there?

A. Yes my lord.

Q. I am suggesting to you that the second sheet that your agent did not sign was corrected to include the Ayensu Ano Constituency results?

A. Well, I cannot testify to that because if there is any correction to be made on any declaration, those who are part of the declaration must be present for the corrections to be made.

Q. But you also are aware that where the person whom you have appointed to represent you leaves and refuses to be part of the process, those who are there sign onto the Form and the process continues?

A. **Yes I am aware.**

Q. I am putting it to you that when the Ayensu Ano results were added, all the candidates got the additional votes that they got in Ayensu Ano thus making extra gains to make the total valid votes 1,236,940?

A. My Lords, can you come again.

Q. I am putting it to you that the Ayensu Ano results that I have just shown you that if you take the difference that you got from the first sheet from what they had written, you get 40,189 and that 40,189 on your own spread sheet, Exhibit E, it is spread across all the candidates. The only person who did not get a gain was Hassan Ayariga. And I am saying if you put it together against that each candidate in Ayensu Ano, the total will now come to 1,236,940?

A. **Yes my Lords.**

Q. Therefore I am further putting it to you that the Eastern Region sheet had no problem for which you ought to have to written to the 1st Respondent?

A. I deny that my Lords.

99. My Lords, it is our submission that the issues about the Eastern Presidential Regional Results Summary Sheet (**FORM 12**) have been resolved by the above analysis during the cross examination using PW1's own exhibits D and E.

100. My Lords, again in paragraph 32 of the Petition, the Petitioner alleged vote padding in what he referred to as sample detail from 32 Constituencies. The alleged total padding in favour of the 2nd Respondent in those 32 Constituencies was 5,226 votes. This allegation was denied by the 1st Respondent in its Answer to the

Petition. To prove this, the first Witness for the Petitioner, Mr. Johnson Asiedu Nketiah, put in evidence as Exhibit "F" a spreadsheet of 26 Constituencies in which a total of alleged vote padding of 4,693.

101. My Lords, padding is a serious electoral fraud. The Petitioner however has not been able to provide any particulars of such fraud as alleged in his pleading. My Lords the learning is that any allegation of fraud must be specifically particularised in the pleading and this has been absent in this Petition.
102. The Petitioner was first required to at least provide evidence of deliberate action on the part of the 1st Respondent or its officers to engage in conduct that actually favoured the 2nd Respondent and secondly that the alleged padding, if proven, affected the outcome of the 7th December 2020 Presidential Election Results.
103. PW1 was cross examined on his Exhibit "F" by Counsel for the 1st Respondent on the Petitioner's allegation of vote padding on 29th January, 2021 and he gave the following answers;
- Q.** In your Exhibit "F" you claimed that there has been voter padding in the total sum of 4,693. Not so?
- A: My Lord, that is not our claim,** our claim is that there has been voter padding and we have samples to show that there was voter padding and that was what we demonstrated.
- By Court: Please, please respond to the question and then you can add.
- A: The figure stated there is the total number of votes that were padded.**

Q: So I am saying that in respect of your allegation of padding, the only document before this Court is your Exhibit "F". Is that correct?

A: That is correct.

Q: And I am saying that if you go to Exhibit "F", you will discover that the total figure that you alleged were padded is 4,693. That is what I am saying.

A: That is not correct, we said that is a sample, so the totals in the sample is what we have mentioned.

By Court: Please he is referring you to the Exhibit before the Court, so respond to it.

A: The Exhibit was attached to a Witness Statement and the purpose of the Exhibit was clearly stated in the Witness Statement.

Q: The figure that we have here is 4,693?

A: Yes my Lords.

Q: So when you attached this figure, did you do it with the consent of the Petitioner?

A: My Lords, I was to testify about matters in my personal knowledge.

Q: But you said here that you have come to support the case of the Petitioner. Is that not so?

A: That is so.

Q: So my question is, it is the case of the Petitioner that 4,693 votes were padded. Is that what the Petitioner said in his Petition?

A: The Petitioner said it was a sample.

104. Under further cross examination by Counsel for the 2nd Respondent relating to the alleged vote padding, PW1 gave the following answers:

Q: You will see that your Exhibit "F" has a pen drive copy, not so?

A: Yes my Lords, I have seen it.

Q: You will see that in that pen drive copy which we will ask the court to play, you will see that there are columns where you indicated padding for NDC that is not shown on the hardcopy. But in the pen drive that gives us a fuller picture, there are other columns where you indicated padding for NDC and there are other columns you indicated that padding for NDC and NPP and other columns you indicated padding for NPP, is that correct?

A: That will go to the heart of the credibility of the figures as declared by the Respondent. The question again.

Q: I am saying that the pen drive information is different from the hardcopy you have attached. Is that correct?

A: A pen drive attached to the Petition?

Counsel for 2nd Respondent: Yes Exhibit "F" of your Witness Statement of which you created a hardcopy. You will notice that what is in the pen drive is not fully what you have here as Exhibit "F" the hardcopy?

A: The hardcopy of Exhibit "F" and the pen drive?

Counsel for 2nd Respondent: Yes.

A: I have not discovered any such discrepancy.

Q: Have you looked at the pen drive?

A: Myself?

Counsel for 2nd Respondent: Yes you.

A: I looked at the hardcopy.

Q: Have you looked at the pen drive? Don't answer questions you have not been asked.

A: **No I have not looked at the pen drive.**

Q: You haven't looked at the pend drive?

A: No I haven't.

Counsel for 2nd Respondent: Good. My Lords if it is possible for us to show it to the Witness.

By Court: Can the document be expanded? Mr. Akoto Ampaw the document has been opened to the Witness.

Q: If you go to Ashanti Akyem North that is the fourth entry, you will see by it padded both.

By Court: Mr. Akoto Ampaw how be when we looked at it we couldn't find it. There is nothing.

Counsel for 2nd Respondent: Mr. Technician the name of the folder is padded.

Q: I am putting it to you that in Ashanti Akyem North, your own document admits that it is padded on both sides?

A: My Lords, I can't see what he wants us to read where it is indicated that it is padded for both sides and all that.

Counsel for 2nd Respondent: My Lords, is it possible to get someone to assist the technician because he is to open the folder and he is not able to do so. Because this is their Exhibit, it is not ours. And we are saying that when we opened it, we noticed these observations.

By Court: Those observations that you saw are not appearing here, is that not what you are saying?

Counsel for 2nd Respondent: Yes my Lords, because they have not yet opened the folder correctly, that is the point we are making. My lords, that folder is named 26 Constituencies.

By Court: Mr. Akoto Ampaw which file should he open within the folder called 26 Constituencies, within it are several files, which file do you want him to open?

Counsel for 2nd Respondent: We will like him to open the 26 Constituencies folder.

By Court: And all the files in there will just reflect as files?

Counsel for 2nd Respondent: We believe so.

Counsel for 1st Respondent: Your Lordships, the particular folder with the sub-title padded, there are about 26 constituencies with names in there, for example at the top Ablekuma West it is written padded beside it, Efigya Kwabre South - padded, Ashanti Akyem North - padded both, Nwabiagya North padded, Ayawaso East – padded, Ayawaso North both – padded, Cape-Coast North – padded, Ejisu – padded, etc.

Q. The pen drive that you have attached as Exhibit 'F', there are certain constituencies that you simply say vote padded and there you mean padded in favour of NPP but there are some constituencies where you say both padded. You mean both padded for NDC and NPP?

A. My Lords as I indicated, this is my first time of seeing this

Q. But it is your evidence?

A. There is a hard copy and there is this electronic copy and I was frank to tell the court I have not seen it. And you are showing it and I do not see any padded NDC or NPP on the screen.

105. My Lords, from the above exchanges, it is our submission that nowhere did Counsel for the 1st Respondent admit to vote padding in the cross examination of PW1 as is being bandied by the Petitioner. All Counsel did was to open the pen drive on his computer to assist the court and indeed the Witness himself said under oath that he had not seen the pen drive. PW1 said : **"I was frank to tell the court I have not seen it. And you are showing it and I do not see any padded NDC or NPP on the screen."**

106. It is our submission that the allegations of vote padding cannot be true. It is our further submission that any discrepancies alleged were resolved at the time the Presidential Election Summary Sheet (**FORM 10**) were received by the Regional Collation Officers ('RCO') who then filled out the Presidential Regional Results Summary Sheets (**FORM 12**) twelve of which were signed by the Regional Agents of the Petitioner and certified by PW3 in the "strongroom."

107. My Lords, vote padding is an election malpractice. In this regard, PW1 alleged in paragraph 36 of his Witness Statement that certain officials of the 1st Respondent gave the 2nd Respondent more votes than he had actually obtained. This evidence is based on the

same allegation contained in paragraph 32 of the Petition, however the Witness testified to 26 Constituencies and alleged that 4,693 votes were wrongfully added while the Petitioner alleged a total vote padding of 5,662 in 32 Constituencies in paragraph 32 of the Petition.

108. My Lords, in an election Petition where an allegation of vote padding in favour of a Candidate is made, the law sets out the burden of proof as was specified by Her Ladyship Adinyira JSC page 218 of the 2013 Election Petition case *supra* ;

“Accordingly, the Petitioners bear the burden of proof to establish that **there were violations, omissions, malpractices and irregularities in the conduct of the presidential election held on the 7th and 8th December, 2012** but also that the said violations, omissions, malpractices and irregularities, if any, **affected the results of the election.** It is after the Petitioners have established the foregoing that the burden shifts to the respondents, to establish that the results were not affected. The threshold of proof should, in principle, be above the balance of probability.” (Our Emphasis)

109. The Petitioner does not only have to prove that there was vote padding but he must also prove that the alleged vote padding affected the results of the election. After applying the Techiman South Constituency Results, the 2nd Respondent obtained 6,776,792 votes out of 13,220,547 valid votes representing 51.260% of the valid votes and the Petitioner obtained 6,266,923

votes. The difference in votes between the 2nd Respondent and the Petitioner is 509,869.

110. My Lords, assuming without admitting that there was vote padding which allegation is denied, did the alleged vote padding on Exhibit "F" affect the outcome of the 7th December 2020 Presidential Elections? We submit that the answer to this question is NO. Deducting the 4,693 alleged padded votes from the total valid votes obtained by the 2nd Respondent (6,776,792) the result is 6,772,099 votes out of the total valid votes cast (13,220,547) representing a percentage of **51.220%**.

111. The above analysis shows clearly that the figures allegedly padded (4,693 votes) have no effect on the outcome of the elections. The Petitioner and PW1 are very much aware that this allegedly padded figure of either 5,662 or 4,693 has no effect on the outcome of the election. My Lords, our Courts do not rely on sampling to reach generalized conclusions; they rely on evidence put before them.

112. My Lords, in the 2013 Presidential Election Petition case *supra*, this Honourable Court referred to the case below at page 130-131 of the report and concluded thus;

"Indeed in *Mcwhirter v Platten* [1969] 1 All ER 172 serious discrepancies in the declared results of the Enfield borough local elections were taken up by an election agent called Harris and this led to the pursuit of criminal process. At 173 Lord Parker CJ said:

"On 9th May 1968 local elections took place, amongst other places, in the borough of Enfield. There are thirty wards, each returning two candidates, and in one of those wards, West Ward with which we are concerned in the present case, there is no doubt that the elected candidates were Conservatives. There were in addition two Labour candidates, two Liberal candidates and two Independent candidates, the two Independents being Mrs. Bradbury, who is one other appellants, and her husband, Mr. Bradbury. *The count in this ward took place in the presence of the election agents of the various candidates. The matter with which we are concerned came to light as the result of something that was said to Mr. Harris, who was the electing agent of the two Independent candidates.* The counting officer, or his deputy, told Mr. Harris at the end of the count that broadly speaking, subject to checking, the Conservative candidates had 2,600 votes each, the Labour candidates 170, and the two Liberal candidates had 140 votes. *So far as Mr. Harris's candidates, Mr. And Mrs. Bradbury, were concerned, he was told that subject to minor adjustment, Mr. Bradbury had got 525 and Mrs. Bradbury 519; in other words, they came second to the Conservatives and above the Labour and Liberals.*

To Mr. Harris's amazement, when the formal announcement was made of the result, he found that the two Labour candidates had been given votes which exceeded those in respect of Mr. And Mrs. Bradbury, in other words the Labour candidates had come second. As a result, the returning

officer, the respondent, looked into the matter, and he came across a very curious state of affairs- a shocking state of affairs really- as the result of which he felt constrained to make an announcement in the press, and on 24th May the following announcement was made by the respondent:

“Following publication of the detailed results of the recent Borough Elections my attention has been drawn to apparent arithmetical discrepancies in the figures for [not merely West Ward, but Craig park and High field Words] I have discussed these matters with the Agents of the candidates primarily concerned and such enquiries as I have been able to make, have regard to the provisions of Electoral Law designed to preserve the secrecy of the ballot, lead me to the following conclusions: (i) *There has been no case in which there has been a failure to include in the Count any votes cast, but the total number of votes appears to have been miscalculated, with the result that in two cases candidates as a whole appear to have been credited with more votes than were actually cast.* (ii) *In the third case candidates as a whole appear to have been credited with fewer votes than the total votes cast but in such proportions as not to affect their relative positions* (iii) *In no case does it seem that these matters affect the result of any election. ...*” (Emphasis Supplied)

This shows that the wrong tabulation of electoral results do not necessarily invalidate them when the real ascertainable truth can establish the contrary. So let it be with our pink sheets herein”.

113. Indeed, my Lords, the Petitioner and his Witnesses did not lead any evidence to prove their so-called allegation of vote padding. It is our submission that the Petitioner has failed to show that the alleged vote padding complained of affected the outcome of the election as set out above. This alone is sufficient to warrant an order of this Honourable Court dismissing the Petition.

114. My Lords, there is the issue of Exhibit "B" which is a press release issued by the 1st Respondent in respect of the results declared on 9th December, 2020. The question arises as to whether the 1st Respondent can correct its own innocuous computational errors? We submit that it can.

115. We are fortified in this submission by reference to paragraph 42 of our submissions above which we repeat for emphasis:

"In the 2013 Presidential Election Petition *supra*, the Court stated per Atuguba JSC at page 132 of the report that,

"The certification of the results by the Polling Agents without any complaint at the Polling station or by evidence before this court shows that certain recordings on the pink sheets should not readily be taken as detracting from the soundness of the results declared but rather point to the direction of administrative errors which at the worst, as demonstrated *supra*, can be corrected by the defaulting officials."

116. It is our further submission that the corrections effected related to 1,651 votes. These corrections were at four Constituency Collation Centres in the Greater Accra Region which then was submitted to the Regional Collation Centre and then to the Head

Office of the 1st Respondent. As shown on Exhibit "B", the corrections did not materially affect the outcome of the elections.

117. My Lords, an election Petition such as this one should challenge the validity of the election on the ground that the person declared as the winner did not get more than 50% of the valid votes cast. The law provides for:

- various reporting stages which include an inherent audit process involving the EC officials and the Agents of the Candidates who took part in the elections.
- All complaints are resolved at the level of a complaint being made by an aggrieved Agent or escalated to the next reporting level by the complaint being endorsed on the Form.
- The 1st Respondent's Headquarters where the Presidential Elections Returning Officer is stationed cannot receive the over 38,622 Primary and Secondary documents. It receives the Third level document in the Form of the Presidential Regional Results Summary Sheet (**FORM 12**) from the 16 Regions. By the time the results get to the third level, all preceding disputes would have been resolved. All outstanding objections are noted on the Form 12s and transmitted to the Head Office of the 1st Respondent.
- There were no such objection raised on any of the forms save Western North which had to do with a parliamentary issue and even so PW3 certified the results after having concluded that the reasons that the Regional Agent gave for not signing was not valid.

- The Petitioner should be bound by the acts of his agents especially PW2 and PW3 who were is representatives at the NCC.

118. My Lords the 7th December 2020 elections has been the most credible since the inception of the 4th Republic. Both domestic and international observers have attested to the credibility, transparency and integrity of the 2020 Elections.

- a. Through the bi-weekly Let The Citizens Know Platform the 1st Respondent provided the citizenry with regular relevant updates and information on all aspects of its work thereby demystifying the Commission and removing the cloaks that had hitherto shrouded its operations.
- b. Today citizens are not only provided with daily updates on voter statistics but they also have the Constituency and Regional Results of the elections on the website of the 1st Respondent. This is the first time this has happened.
- c. Recognising that the bedrock of a credible and acceptable elections is an accurate voter register, the 1st Respondent undertook a thorough and comprehensive voters registration exercise and succeeded in capturing over 17 million eligible Ghanaian voters. This feat was achieved over a 38-day period during the COVID 19 pandemic environment.
- d. It is important to note that despite the apprehension by sections of the society about the possible spread of the virus, the stringent measures put in place by the 1st

Respondent curbed the spread of the virus and the registration went on successfully.

- e. Today Ghana can boast of a Voters Register that reflects eligible Ghanaians only. It is important to note that the 1st Respondent used less than 6 months from the date of the registration to the Election. Despite the short duration of the exercise there has been no reports of disenfranchisement.
 - f. The elections have been hailed as highly successful and credible and by far been the most smooth and efficient Election in Ghana's history. Indeed, a broad section of the society have attested to the fact that the voting process lasted no more than 5 minutes resulting in the absence of queues in polling stations that characterised previous elections. Policies put in by the 1st Respondent including reducing the number of voters per polling stations, increasing the number of polling stations across the country and deploying robust and efficient equipment contributed to this.
 - g. Another significant achievement was the time within which the Presidential Election Results was declared. The declaration was the earliest in the history of the country coming some 48 hours after the close of the polls. Thereby reducing the tensions and suspicions that accompanied previous elections.
119. As part of the 1st Respondent's efforts to strengthen its electoral processes and build a further layer of accountability and scrutiny in its work, the 1st Respondent in collaboration with the Attorney General's Department and the Subsidiary Legislation


Committee of the Parliament of Ghana developed a CI (CI127) to govern the conduct of elections. CI127 introduced the Regional Collation Centres which provide an avenue for the involvement and participation of Candidates Agents in the collation of the Presidential Election Results at the Regional Collation Centres. This is a departure from the past where 275 constituency collation results were faxed directly to the Returning Officer at the National Collation Centre. Today the Returning Officer receives at the NCC only 16 Regional Results comprising all the constituencies in each Region. This is a major improvement and a tidier and more efficient results collation process.

120. It is unfortunate that an innocuous error made by the Chairperson of the 1st Respondent in the Declaration of the Results on 9th December 2020 which had no bearing on the outcome of the election results has triggered this Petition.

121. My Lords this case has been a strange one. The Petitioner has led no evidence whatsoever to challenge the election results and for that matter the declaration made by the 1st Respondent on 9th December 2020. At some point, litigation must come to an end. That point has been reached.

122. The 1st Respondent prays for a dismissal of the Petition.

DATED AT #8 NII ODARTEY OSRO STREET KUKU HILL (FRONTLINE CAPITAL ADVISORS BUILDING), OSU - ACCRA, THIS 17TH DAY OF FEBRUARY, 2021.


JUSTIN AMENUVOR ESQ #eGAR 01459/21
AMENUVOR AND ASSOCIATES
LAWYERS FOR 1ST RESPONDENT

THE REGISTRAR
SUPREME COURT
ACCRA

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