



MINORITY CAUCUS

Parliament House - Accra (Ghana)



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FOR IMMEDIATE RELEASE

MINORITY NDC MPS ON APPOINTMENTS COMMITTEE STATEMENT ON THE REASONING IN THE JAMES GYAKYE QUAYSON CASE

Thankfully, the reasoning in the James Gyakyee Quayson case has been delivered by the Supreme Court earlier than 7th June. This has afforded us the opportunity to review the reasoning. The nominee for post of Chief Justice (Justice Gertrude Araba Essaba Torkornoo) told the whole world that she is a textualist in her preferred approach to interpreting the Constitution of Ghana 1992.

What was the text in dispute in the case of Michael Ankomah Nimfah Vs James Gyakyee Quayson and Others? This is the famous James Gyakyee Quayson case. The text in dispute is article 94 (2) (a) of the 1992 Constitution and it reads;

“94(2) A person shall not be qualified to be a member of Parliament if he
(a) owes allegiance to a country other than Ghana”

The facts of the case, not disputed at any time, are that Quayson, at the time of being sworn in to become a member of Parliament, had successfully renounced all allegiances to any other country and his allegiance was to only the Republic of Ghana.

Fidelity to the text of the constitution of Ghana would have dictated that the controlling provisions in the resolution of the dispute are the words “qualified to be a member of Parliament”. Disappointingly, a professed textualist like our CJ nominee abandoned the text and chose to read into the text a replacement text “qualified to file nomination papers to contest for election as a member of Parliament”. This is exactly why the NDC Minority Members of Parliament on the Appointments Committee wanted to wait for the reasoning to see if the CJ

nominee, Justice Gertrude Araba Essaba Torkornoo, would be true to her publicly professed textualist approach to constitutional interpretation.

Whilst the clear language of the Constitution was dealing with qualification “to be a Member of Parliament”, the Supreme Court veered off and was dealing with “eligibility or qualification of a person to contest as a Member of Parliament”. Article 94 is not talking about eligibility to contest elections. It is about becoming a member of parliament. This only takes place at the point of swearing-in.

Instead of fidelity to the text of the Constitution, which the CJ nominee professed as her preferred approach to constitutional interpretation, she succumbed to what we believe was a flawed precedent set earlier by the Supreme Court in *Ex Parte Zanetor. Republic v. High Court (General Jurisdiction), Accra; Ex Parte Zanetor Rawlings (Ashithey and National Democratic Congress Interested Parties) (No 2) (2015-2016) 1 SCGLR 92*, which this current court relied on, was wrongly decided by an earlier panel of the Supreme Court. *Zanetor* would have been qualified anyway if the Supreme Court was to conclude that article 94 deals with qualification “to be a member of parliament” and not eligibility “to contest elections to be a member of parliament” which was what was in issue in the *Zanetor* case. Even if we admit that there should be some house keeping matters at the point of filing nomination papers, that should be the appropriate province of legislation and not judicial enactment.

James Gyakyé Quayson is gearing up to contest the bye-election in Assin North constituency which has been brought about by the Supreme Court’s decision. In that regard, we the members of the Appointments Committee representing the National Democratic Congress (NDC) will not withhold our approval of the Chief Justice nominee by consensus. Her curriculum vitae reveals a person of considerable experience having served as a judge from the High Court to the Court of Appeal and ultimately at the Supreme Court. Women who have acquitted themselves should be given opportunities to occupy key national offices. Even as we disagree with her jurisprudence, we find her qualified to occupy the high office of Chief Justice of the Republic of Ghana.

The image of the judiciary is not in a good shape. Several opinion polls show that. We hope that Justice Gertrude, as a lady Chief Justice, will restore the dignity of the judiciary.

END

Governs Kwame Agbodza, MP

Deputy Ranking Member of the Appointments Committee of Parliament and
The Chief Whip on behalf of the Minority NDC Members