IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – AD. 2024

CORAM: PWAMANG JSC (PRESIDING)
PROF. MENSA-BONSU (MRS) JSC
GAEWU JSC
KWOFIE JSC
ADJEI-FRIMPONG JSC

CIVIL MOTION
NO: J5/17/2025

27TH DECEMBER, 2024

REPUBLIC

VRS

HIGH COURT, (GENERAL JURISDICTION 13), ACCRA ... RESPONDENT

EX PARTE

1. **THE NATIONAL DEMOCRATIC CONGRESS**
2. **BABA SADIQ**
3. **EWURABENA AUBYNN**
4. **AMENORPE PHILIBERT FUMMEY ... APPLICANTS**
5. **EBI BRIGHT**
6. **CHRISTOPHER BEYERE**
7. **AKWASI ADUSEI**

AND

1. **THE ELECTORAL COMMISSION OF GHANA ... RESPONDENT/**

		INTERESTED PARTY
2. PATRICK YAW BOAMAH	**...**	**APPLICANT/ INTERESTED PARTY**
3. NANA AKUA OWUSU AFRIYIE	**...**	**APPLICANT/ INTERESTED PARTY**
4. FRANK ANNOH-DOMPREH	**...**	**APPLICANT/ INTERESTED PARTY**
5. CHARLES FORSON	**...**	**APPLICANT/ INTERESTED PARTY**
6. MARTIN KWEKU ADJEI MENSAH KORSAH	**...**	**APPLICANT/ INTERESTED PARTY**
7. ERIC NANA AGYEMANG AFRIYIE	**...**	**APPLICANT/ INTERESTED PARTY**
8. INSPECTOR GENERAL OF POLICE	**...**	**INTERESTED PARTY**

RULING

PWAMANG JSC:

My Lords, before the Court is an application for orders of Certiorari and Prohibition by the Applicants. The 1st Applicant is a registered political party that sponsored candidates to contest in the general elections conducted throughout Ghana on 7th December, 2024. The 2nd, 3rd, 4th, 5th, 6th and 7th Applicants contested in the general elections as parliamentary candidates on the ticket of the 1st Applicant in the following six constituencies: Okaikwei Central, Ablekuma North, Nsawam-Adoagyiri, Tema Central, Techiman South and Ahafo Ano North.

At the close of the poll there were declarations of polling stations results in all of the above constituencies and the election processes advanced to the collation of the polling station results at the constituency levels in order to determine and declare the winner of the parliamentary election in each of the constituencies. According to the Applicants, the collation in four of the above constituencies was carried out to completion and the candidates of the 1st Applicant emerged winners and were declared elected by the constituency returning officers of the Electoral Commission (EC). The interested parties on the other hand contend that in all of the six constituencies stated above, the collations were disrupted and did not complete. They say that the EC, 1st Interested Party herein, initially made arrangements for the collations to be completed but later stopped the processes without any explanation.

It was in this state of affairs that the 2nd to 7th Interested Parties on 17th December, 2024 filed series of motions in the High Court, Accra and prayed for orders of mandamus against the EC. Their common prayer was for the High Court to order the EC to undertake collation of polling station results in their constituencies and to make declarations of winners of the parliamentary elections there. They further requested the High Court to order the Inspector-General of Police to provide security for the collations. In the meantime, the applicants herein had earlier on 16th December, 2024 filed in the High Court, Accra an application for judicial review against the EC and prayed for declarations that they had already been declared as the elected Members of Parliament in their constituencies and for orders of injunction restraining the EC from undertaking another collation.

On 20th December, 2024, the applications by the 2nd to 7th Interested Parties herein for orders of Mandamus as well as that by the Applicants herein for Judicial Review were all listed before the trial High Court Judge herein for hearing. The first set of applications called were the Interested Parties' applications for mandamus. The EC did not file any affidavits in opposition and their lawyer indicated to the Court that they were not opposed to the applications by the Interested Parties. However, Mr. Godwin Edudzi Tameklo,

Counsel, who was in the same court for his clients' application for declarations and injunction against the EC stood up and informed the judge that his clients had an interest in the mandamus applications and that they had filed motions to be joined to them and he prayed the Court to be allowed to move the motions for joinder which had by then not been served on the other parties.

The Judge decided to proceed with the determination of the applications for mandamus and in his rulings granting all six applications, he indicated that Mr. Godwin Edudzi Tameklo informed the Court that his clients filed motions and affidavits for joinder but since the motions were not on the case dockets, he would not take notice of them. It is those six rulings dated 20th December, 2024 that the Applicants have invited this Court to quash and to prohibit the trial judge from having anything to do with the applications.

The Applicants stated four grounds for the application as follows:

1. The impugned orders of the High Court were made in breach of the Applicants right to be heard and that of the Inspector-General of Police.
2. Apparent bias and partiality on the part of the judge.
3. The High Court judge committed a non-jurisdictional error of law by failing to exercise its powers under Order 55 Rule 5(2) of CI 47 to direct the Interested Parties to serve the mandamus application on the applicants herein.
4. Error of law apparent on the face of the record.

The Interested Parties filed affidavits in opposition with exhibits as well as statements of case in which they argued in answer to the case presented by the Applicants. Before Counsel for the Applicants could move the application, Mr. Gary Nimako, Counsel for the 2nd to 7th Interested Parties took an objection to the competence of the motion on the ground that when the Applicants filed the motion, they did not exhibit a copy of the decision complained about as required by Rule 61 of the Supreme Court Rules 1996 (C.I.16). The Court overruled the objection for the reason that the Applicants, subsequent

to the motion, exhibited the decisions to a supplementary affidavit in which they explained that certified copies of the rulings were not ready on the day they filed the originating motion which was 20th December, 2024, the very day the decisions of the High Court were given. We find the explanation by the Applicants reasonable and hereby waive the failure to strictly comply with Rule 61.

We have read closely the processes filed by the parties and heard their lawyers viva voce. In summary, the lawyers stated as follows; - The Lawyer for the Applicants submits that since at the hearings on 20th December, 2024 the trial judge was notified that the Applicants stood to be affected by the proceedings for the orders of mandamus, the judge ought to have joined them to the case in order that they could have filed affidavit in opposition to the grant of the orders of Mandamus and be heard at the hearings of the applications. He further submits that since their own application filed on 16th December, 2024 was listed before the judge for hearing that same day, the judge had knowledge of his clients contentions that collations had already been completed and declarations made in four of the constituencies so he ought to have permitted them to put that evidence before him in relation to the mandamus applications.

Additionally, the lawyer for the Applicants states that the procedure rules on Judicial Review in the High Court, which were applicable in the case of applications for Mandamus, being Order 55 of the High Court (Civil Procedure) Rules, 2004 (C.I.47) made ample provision for interested parties to be added to an application for Judicial Review but the trial judge failed to apply those provisions and to add his clients to the case. Counsel relied on a number of cases including **Republic v High Court, Bolgatanga & Anor; Ex parte Hawa Yakubu [2001-2002] SCGLR 311** and **Republic v Court of Appeal & Thomford; Ex parte Ghana Chartered Institute of Bankers [2011] 2 SCGLR 941** and submits that the right to a hearing is a fundamental right which has been raised to a constitutional right in the 1992 Constitution of Ghana, and a breach of it makes a decision of a court a nullity. He concluded by submitting that the trial judge violated the

applicant's constitutional right to a hearing so his rulings of 20th December 2024 were nullities and ought to be quashed by the Supreme Court.

In respect of the allegation of bias against the trial judge, Counsel for the Applicants submits that the trial judge exhibited bias against his clients not only by failing to admit them to the mandamus application but also by opting to hear the Interested Parties' applications for mandamus first, whereas their application for declarations and injunction against the EC was filed earlier in time.

In answer to the submissions of Counsel for the Applicants, Mr. Justin Amenuvor, of Counsel for the EC was very brief, and stated that he relied on their affidavit and statement of case in opposition to the application. He however pointed out that none of the individual applicants who contested the parliamentary elections deposed to an affidavit to complain of miscarriage of justice on account of the collation done on the backs of the High Court's orders.

On his part, lawyer for the 2nd to 7th Interested Parties stated that he was vehemently opposed to the application for Certiorari and Prohibition. He pointed out that the Applicants built their case on the failure of the trial judge to join them to the Mandamus applications but under the Rules of court, non-joinder of a party does not vitiate proceedings. He referred to the case of **Bobie v 21st Century Co. Ltd [2017-2020] 2 SCGLR 429.** He submits that under Order 55 of C.I.47 the judge hearing a Judicial Review application had been given discretion to join any person if in the opinion of the judge that person has an interest in the proceedings. In this case, the applications were targeted at the EC, a statutory body, to enjoin it to carry out its statutory duty and the judge did not consider the Applicants to have any role in the case. He submits that the trial judge exercised a discretion and in law the exercise of discretion is not amenable to be quashed by Certiorari. He referred to the case of **Republic v Court of Appeal; Ex parte Tsatsu Tsikata [2005-2006] SCGLR 612**. Counsel concluded by saying that this is not a proper case for the Court to exercise its Supervisory Jurisdiction and that if

the Applicants feel aggrieved, their remedy is to appeal against the exercise of discretion by the trial judge. He prayed the Court to dismiss the application.

In the considered opinion of the Court, the crux of this application is whether, under the circumstances that the trial judge was faced with, he was entitled to have proceeded to determine the Mandamus applications without hearing the applicants in the form of affidavit evidence and legal submissions on whether the cases before him, notwithstanding the non-opposition by the EC, were proper cases for the grant of orders of Mandamus. It is very clear to us that it was made plain to the trial judge during the sitting on the applications for Mandamus by Mr. Godwin Edudzi Tameklo, that his clients stood to be affected by the proceedings, and so the least that the trial judge could have done was to grant them a hearing on the facts and the law upon which the applications were brought before him. Our courts and courts globally, especially throughout the common law world, have consistently held the *audi alteram partem* rule to be a fundamental and sacrosanct rule. As such, under the circumstances of this case we are of the view that the trial judge ought to have given a hearing to the Applicants irrespective of the provisions of Order 4 Rule 5(2) of C.I.47 on joinder generally and Order 55 Rule 5(2) of C.I.47 on joinder in applications for Judicial Review.

In the case of **Awuni v West African Examinations Council [2003-2004] SCGLR 471** the Supreme Court quashed the decision of an administrative body, that is, the West African Examination Council, for the reason that it failed to accord a hearing to candidates alleged to have been implicated in examination malpractices before sanctioning them. Sections 3 and 10 of the West African Examinations Council Law, 1991, (PNDCL 255] under which the Council sanctioned the candidates did not expressly provide that candidates to be sanctioned for examination malpractices shall be given a hearing. Nonetheless, the Supreme Court held that since the candidates stood to be affected by the decision, they were entitled by virtue of article 23 of the Constitution, 1992 to be accorded a hearing on the matters alleged against them. If the right to be heard was held to bind an administrative body, even in the absence of express statutory provision,

how much more must it bind a court of law whether conferred by the rules of court or not.

In the case of **Ex parte Hawa Yakubu (supra),** the High Court sitting in Bolgatanga made orders for recount of votes cast at a constituency election at Bawku Central constituency at which Hawa Yakubu participated as a candidate for the New Patriotic Party (NPP) and further restrained her from attending the recount. Hawa Yakubu was not joined to the application resulting in those orders and was not present when they were made. The Supreme Court quashed those orders reasoning that, though she was not made a party to the proceedings, the trial judge ought to have observed the *audi alteram partem* rule and joined her to the proceedings and given her a hearing before coming to a decision in the matter. Thus, the fact that a person has not been endorsed as a party or that a court with full knowledge of the interest of the person in proceedings refuses to join him, does not foreclose his constitutional right to be heard in the impugned proceedings. Where, as in this case, the facts show that the interested party was deliberately excluded from proceedings by a judge who had full knowledge of his interest, that would amount to a violation of the right to be heard and the decision may be quashed on that ground.

The Interested Parties contend that since the High Court judge allowed Mr. Godwin Edudzi Tameklo to speak during the case, that meant that the Applicants were given a hearing. But we wish to point out to the Interested Parties that the trial judge in his rulings put down Mr. Tameklo as a friend of court, meaning he was not representing his clients whose interest he brought to the attention of the court. The trial judge said he had no evidence before him of the matters Mr. Tameklo was talking about, but it was he who refused to allow Mr. Tameklo's clients to file affidavit and provide the evidence to the court. Thus, to say that the Applicants were heard by the trial High Court is an unfortunate misunderstanding of what would amount to a hearing under the circumstances of this case. Hearing, here, would have required that the Applicants were permitted to file

affidavits in opposition and make legal submissions to the court. None of this happened, so the trial judge violated the Applicant's constitutional right to a hearing.

In deciding on quashing of the orders of mandamus, the subject matter of this application, we have taken note of the fact that the Applicants did not contend that there had been earlier completed collations of results and declarations of winners for Nsawam-Adoagyiri and Ahafo Ano North constituencies as per paragraph 8 of the affidavit of Fiifi Fiavi Kwetey, General Secretary of the National Democratic Congress, and sworn to on 16th December, 2024 in support of the Applicants' motion for declarations and injunctions against the EC in the High Court. Since the orders which have been brought to this court to be quashed are separate and distinct, and since the Supreme Court's power to quash is discretionary, we shall have regard to the circumstances of each case in the exercise of our jurisdiction. Consequently, since it is in respect of four of the constituencies that the Applicants contend there were prior declarations of winners, we hereby order that the following orders be brought to this court for the purpose of being quashed, and same are hereby quashed. These are; the orders of mandamus made on 20th December, 2024 in respect of the constituencies of;

1. Okaikwei Central
2. Ablekuma North
3. Tema Central
4. Techiman South.

Accordingly, the collations of constituency election results and the declarations of winners by the EC in those constituencies on the back of the orders of the High Court on 20th December, 2024 are hereby set aside. For the avoidance of doubt, since there had been no previous declarations in Nsawam-Adoagyiri and Ahafo Ano North constituencies, the collations and declarations in those constituencies still stand.

Despite the quashing of the orders in the four constituencies, the applications for Mandamus that initiated the proceedings in the High Court are still alive. See **Barclays Bank DCO v Heward-Mills (1969) CC 132. CA.** Therefore, in line with our conclusions in this delivery, we shall come under Article 129(4) of the Constitution to assume the powers of the High Court in Order 55 Rule 5(2) of C.I.47 and join the Applicants as interested parties in the applications in respect of the four constituencies that the orders for Mandamus have been quashed. The Applicants are at liberty to file affidavits in opposition and statements of case. In view of the urgency of the matters in contention, we hereby abridge the time for filing both affidavits and statements of case by the Applicants herein to two days, starting from today, Friday. Upon service, the Interested Parties herein may respond to the processes and the time for doing so is abridged to one day for the reason of the urgency of the case. As already explained, the applications in the High Court need to be heard early, having regard to the constitutional and electoral calendar of the nation. We therefore direct that the four applications for Mandamus shall be heard by the High Court on Tuesday 31st December, 2024.

On the issue of bias on the part of the trial judge, we are not satisfied that sufficient evidence has been provided us, so as to establish bias against him, see cases such as **Republic v High Court, Accra; Ex parte Arch Adwoa Company Ltd (Auditor-General-Interested Party) [2019-2020] 1 SCLRG 781 (Adaare)**. Nevertheless, in order to maintain the integrity of the adjudication process of the court, and in line with the practice of this Court, we direct that the applications for Mandamus that are extant shall be placed before a different High Court judge for hearing and determination.

The effect of our decision is that, reliefs (a)(i), (a)(ii), (a)(iv) and (a)(v) endorsed on the applicants' motion paper are granted. Reliefs (a)(iii) and (a)(vi) are refused. Reliefs (b) and (c) are dismissed.

(SGD.) **G. PWAMANG**
JUSTICE OF THE SUPREME COURT

CERTIFIED TRUE COPY
28/12/24
.....REGISTRAR
SUPREME COURT, ACCRA, G/R

(SGD.) **PROF. H. J. A. N. MENSA-BONSU (MRS.)**
JUSTICE OF THE SUPREME COURT

(SGD.) **E. Y. GAEWU**
JUSTICE OF THE SUPREME COURT

(SGD.) **H. KWOFIE**
JUSTICE OF THE SUPREME COURT

(SGD.) **R. ADJEI-FRIMPONG**
JUSTICE OF THE SUPREME COURT

COUNSEL

GODWIN KUDZO TAMEKLO ESQ. FOR THE APPLICANTS WITH REINDOLF TWUMASI ANKRAH, SETH NYABA AND BEING LED BY DR. AZIZ BAMBA BAASIT, OSAFO BUABENG AND MARIETTA BREW APPIAH OPPONG

JUSTIN AMENUVOR FOR 1ST INTERESTED PARTY WITH HOPE AGBOADO

GARY NIMAKO MARFO FOR 2ND, 3RD, 4TH, 5TH, 6TH & 7TH INTERESTED PARTIES WITH DR. KWAKU AGYEMANG-BUDU, NANA AGYEI BARFOUR AWUAH, SHADRACK OBENG-YEBOAH AND NANA BENYIN ACKON