

IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA – A.D. 2026

CORAM: PWAMANG JSC SITTING AS A SINGLE JUDGE

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SUPREME COURT, ACCRA, G/R.
21/08/26

CIVIL MOTION

NO. J8/283/2026

21ST AUGUST, 2026

HON. KOJO OPPONG NKRUMAH, MP

..... **PLAINTIFF/APPLICANT**

VRS

- 1. THE CHIEF JUSTICE OF THE REPUBLIC OF GHANA**
- 2. THE ATTORNEY-GENERAL**

} **DEFENDANTS/
RESPONDENTS**

RULING

PWAMANG JSC:

On 14th August, 2026, the plaintiff filed a writ in the Supreme Court and prayed for the following reliefs;

- a. A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation is inconsistent with the letter and spirit of Articles 17(1), (2), 23 and 296 (a) and (b) of the Constitution, 1992 and therefore unconstitutional, null and void;

- b. A declaration that the action of the Honourable Chief Justice to promote and facilitate the hearing of "special criminal cases" in the legal vacation to the total neglect of other criminal cases [is] tantamount to selective justice which contravenes the letter and spirit of Article 17 (1) of the Constitution 1992 and therefore unconstitutional, null and void.
- c. A declaration that the warrants of the Honourable Chief Justice directing some judges to sit and conduct criminal trials in selected cases during the legal vacation violate the right to health of members of the Bar and judicial service who have been affected by the directive and is inconsistent with Articles 24(1), (2) and 36(10) of the Constitution 1992 and therefore unconstitutional, null and void.
- d. A declaration that Order 79 Rules 1 (1) and 2 of the High Court (Civil Procedure) Rules, 2004 (CI 47) to the extent that they allow the Honourable Chief Justice to select some cases for hearing during legal vacations in the same manner as ordinary court sittings, they are inconsistent with Articles 17 (1), (2), 23, 24(1), (2), 36(10) and 296 (a) and (b) and the Constitution, 1992 and therefore unconstitutional, null and void; and
- e. Any other order(s) or directions that this Honourable Court may consider appropriate for giving effect to the declarations and orders so made.

The writ was followed by a motion on notice for interlocutory injunction praying the Court to restrain the Chief Justice and two Judges sitting in the Specialised Courts, whose warrants to sit during the legal vacation are the subject matter of this suit, from giving effect to the warrants. The applicant wants the two Judges to be ordered to desist from conducting hearings in the criminal cases that are pending in their courts until the determination of this suit by the Supreme Court or, I believe, until the period of the legal vacation ends.

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The plaintiff's writ is accompanied with a statement of case. The plaintiff filed a statement of case in support of the application for interlocutory injunction and subsequently added a Supplementary Affidavit and Statement of Case in Reply to the Statement of case filed by the second defendant in opposition to the application for interlocutory injunction.

The second defendant has responded to the application by filing an affidavit in opposition accompanied with a statement of case.

The main grounds urged by the plaintiff in support of the application for interlocutory injunction are as follows; First, if the effect of the impugned warrants is not stopped pending the determination of the suit, binding proceedings would be undertaken by the Judges in the cases such that if finally the Court were to uphold the unconstitutionality of the warrants, the harm would be irreversible. Secondly, the plaintiff contends that on a balance of convenience, nothing would be lost to the defendants if the trials are halted and in the final analysis the warrants were determined to be constitutional. The trials would simply proceed, submits the plaintiff.

In response to the applicant's case for an order of interlocutory injunction, the second defendant starts by disputing some significant facts alleged by the plaintiff in his writ and statement of case. He denies that by the warrants being challenged, the Chief Justice authorized the Judges to conduct hearings in some selected cases only. He refers to the wording of the warrants which have been exhibited by the plaintiff and points out that the judges are to conduct hearings in all cases in their courts and no list of selected cases was stated in the warrants. The Attorney-General goes further to contend that the plaintiff's action is frivolous and vexatious and does not properly invoke the exclusive original jurisdiction of the Supreme Court. To the second defendant, the plaintiff has a 'clandestine desire' to advocate the personal human rights of known persons whose proper cause of action lies in the High Court. On the issue of balance of convenience, the second defendant

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states that the plaintiff stands to suffer no inconvenience if the trials proceed so his application should be dismissed.

I have listened to arguments by the lawyers of the parties. The lawyer for the plaintiff/applicant raised a preliminary point which he stated was for the direction of the Court. The Deputy Attorney-General announced himself as appearing as Counsel for the Chief Justice as well as the Attorney-General and in the view of Counsel for the plaintiff/applicant, the Chief Justice haven been sued on account of his administrative duties ought not to be defended by the Attorney-General. At the hearing the Court directed the case to proceed stating that the Attorney-General being a party in the case is entitled to make legal submissions in his own right so nothing would change whether he added the Chief Justice to his legal representation or not. The Court said it would provide further reasons in the ruling on the application for interlocutory injunction which I now do. In the case of Tastsu Tsikata v Chief Justice [2001-2002] SCGLR 437 the Supreme Court held as follows in holding (2) of the Headnote of the Law Report;

"The Chief Justice is a public officer appointed by the President acting in consultation with the Council of State and with the approval of Parliament. Since acts performed by the Chief Justice in pursuance of his functions are official acts, any attack or claim against the Chief Justice in the performance of his duties, as in this case, need to be defended by the Attorney-General on behalf of the state under article 88(5) of the 1992 Constitution. The Attorney-General is the proper defendant and although the Chief Justice has been joined in the action, the Attorney-General's Office has every right to swear to an affidavit verifying the facts deposed to in the defendant's Statement of Case."

Accordingly, the Deputy Attorney-General did nothing wrong in announcing himself as appearing for the Chief Justice in this case.

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Now to the merits of the application for interlocutory injunction. In order to set out the law on interlocutory injunctions, particularly in respect of a public law matter such as we are concerned with in this case, allow me to quote from some decisions of this court. Date-Bah JSC in the case of Welford Quarcoo v Attorney-General [2012] 1SCGLR 259 at page 260 of the Report said as follows;

"It has always been my understanding that the requirements for the grant of interlocutory injunctions are: first, the applicant must establish that there is a serious question to be tried; secondly, that he or she would suffer irreparable damage which cannot be remedied by the award of damages, unless the interlocutory injunction is granted; and finally that the balance of convenience is in favour of granting him or her the interlocutory injunction. The balance of convenience of course means weighing up the disadvantages of granting the relief against the disadvantages of not granting the relief. Where the relief sought relates, as here, to a public law matter, particular care must be taken not to halt the action presumptively for the public good, unless there are very cogent reasons to do so, and provided also that any subsequent nullification of the impugned act or omission cannot restore the status quo".

Then in the recent case of Michael Ankomah-Ninfah v James Gyekye Quayson & Ors" unreported ruling in Writ No J1/11/2022 dated 13th April, 2022, the Supreme Court stated as follows;

"...in considering an application for injunction, a court ought to consider inter alia the following factors;

- A. Whether the case of the Applicant is not frivolous. That is to say, whether the Applicant prima facie, has demonstrated a legal or equitable right that ought to be protected by the Court..." The Court goes on to list the other factors stated by Dateh-Bah in the Welford Quarcoo case supra.

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Again, in the case of Republic v High Court (Fast Track Division) Accra; Ex parte Ghana Lotto Operators Association (National Lottery Authority; Interested Party) [2009]SCGLR 372 Atuguba JSC said as follows at page 400;

"It is not surprising therefore that it has been held by this court that when a body is entrusted with statutory discretion, the courts should be careful not to clog its exercise with injunctions: see Attorney-General v Commission on Human Rights and Administrative Justice [1999-2000]1GLR 358, SC. This, however, does not mean that an interim injunction cannot lie against the improper use of statutory discretion"

So, the authorities establish that though Courts have jurisdiction to grant orders of interlocutory injunction in public law matters, the applicant for such an interlocutory injunction is required to first and foremost demonstrate that her substantive claim has very high prospects of success before the Court would consider the other factors. Having stated the law on interlocutory injunctions relevant to the instant application, I proceed to tackle the issue whether to grant or refuse this application.

In the Supreme Court case of;

Ransford France v Electoral Commission & Attorney-General; unreported Civil Motion J8/84/2012 Ruling by Ansah, JSC sitting as Single Justice of the Supreme Court dated 19th September, 2012, the Court observed as follows at p 3;

"An interim injunction is discretionary where a legal right can be asserted either at law or equity; the court's jurisdiction would be exercised where it is right, just or convenient to do so....

Whilst I remind myself that I am not called upon to decide the substantive action in this application before me, it is appropriate that I consider the rightness of the order sought from me."

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Having reminded myself of the above quoted caution, I would consider how serious the issues posed by the plaintiff's writ are before considering the balance of convenience in order to decide whether it is right, just or convenient to grant or refuse this application.

The first constitutional provisions the plaintiff has planked his case on are Article 17(1) & (2) which state as follows;

(1) All persons shall be equal before the law.

(2) A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status.

From the plaintiff's statement of case, nothing has been said which suggests that the Chief Justice in giving the warrants to the two Judges has directed them to apply the law differently to persons who appear before them. The plaintiff concedes that the Chief Justice has discretionary authority to give warrants to Judges to sit on cases even in a legal vacation. His plaint is that in his opinion the discretion was not exercised properly in the matter of the two impugned warrants. The warrants enable the cases before the two judges to be heard earlier in time while other criminal cases pending before other judges are not being heard. I am unable to see how priority of hearing of cases even during legal vacation can amount to inequality before the law.

With regard to clause (2) on discrimination, the first point I wish to make is that it is factually inaccurate to say that the warrants required the Judges to conduct trials in "selected cases". It is plain on the face of the warrants that the Judges have been given authorization to conduct hearings in all cases pending in their courts. Secondly, it must be noted that it is not all differences in treatment that violate Article 17(2) of the Constitution. It is differences in treatment on account of the grounds stated in clause (2) of article 17 that the Constitution is concerned with. The plaintiff in his statement of case has not alleged that the Chief Justice's conduct in selecting the two Courts to give warrants to conduct hearings in the

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legal vacation was influenced by the gender, race, colour, ethnic origin, religion, creed or social or economic standing of the accused persons in those cases or their witnesses.

In *Nartey v Gati* [2010] SCGLR 745 at p 755 the Supreme Court stated as follows; "Article 17(2) makes it clear that not all discrimination is unlawful. It proscribes discrimination based on certain grounds. The implication is that discrimination based on other grounds may not be unlawful,"

See also Date-Bah's opinion in the case of *Professor Kwaku Asare v Attorney-General* [2012] 460 (The Dual Citizenship Case).

Therefore, for an action based on Article 17 to raise a serious question for consideration, it must alleged some of the unlawful grounds in Article 17(2). This the plaintiff has failed to do. I take judicial notice of the different types of cases that the Specialised Courts were established to handle. They include Narcotics, Auditor-General Surcharges, Cyber Crime, Galamsey, Corruption and corruption related cases. In those circumstances it is impossible for the Chief Justice to have targeted any particular gender, race, colour, ethnic origin, religion, or creed by his warrants.

Similarly, having regard to the very wide range of cases covered under the warrants, the high number of accused persons and witnesses who would be involved in these hearings, it would be difficult to impeach the Chief Justice's exercise of discretion pursuant to articles 23 and 296(a) and (b) without any evidence of ill will.

The plaintiff has also alleged violation of Articles 24(1) & (2) of the Constitution which deal with the right to work under satisfactory conditions and Article 36(10) on the duty of the state to safeguard the health, safety and welfare of workers. The applicant states that conducting hearings during the legal vacation is likely to adversely affect the health and well being of the Judges, the Judicial Service staff

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and lawyer involved in those proceedings. These statements plainly fail to take account of the existing standard practice where judges who sit during legal vacation take their leave when the rest of the courts resume work. As for the Court staff, their leave from work is not in any way affected by legal vacation sitting. For the lawyers they are independent service providers in Court proceedings who are free to plan their leave at any time of the year. Being independent service providers, the responsibility for ensuring compliance with article 24(1&2) is in the hands of individual lawyers. Some choose to work during the legal vacation. Consequently, this ground of action fails to meet the threshold of a serious constitutional question so as to be the basis for a public law interlocutory injunction.

The last declaration sought on the plaintiff's writ concerns Order 79 of the High Court (Civil Procedure) Rules, 2004 (C.I.47). This order plainly permits the Chief Justice to direct hearing of civil cases during legal vacation and the plaintiff/applicant wants that authority declared unconstitutional. Since this rule has been in operation all these years, and since interlocutory injunction are to preserve the status quo, it means that pending the determination of the plaintiff's suit, the power should remain. But C.I.47 regulates civil cases and the subject matter of the plaintiff's complaint here are criminal trials. The Courts Act, 1993 (Act 459) and the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) have no statutory provisions that prescribe periods of legal vacations. Section 80 of Act 459 left it to the Rules of Court Committee which has made provision for legal vacation in the High Court for only civil cases. As such, although a practice in criminal proceedings in the High Court has evolved along the lines of the civil procedure rules as regards legal vacation hearings, there is no binding positive statute or precedent that can be held to be an injunction against a Chief Justice restraining him from authorizing hearings in a criminal case in the High Court during legal vacation. In fact, the applicant concedes that the Chief Justice has this authority. Therefore, to claim an existing legal or equitable right to such

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reprieve against the Chief Justice which may be protected with an order of interlocutory injunction is hard to establish.

Article 19(1) of the Constitution provides as follows;

- (1) A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

Thus, the Constitution has conferred a right to a person charged with a criminal offence to have his guilt or innocence established as early as the resources of the Courts would allow. In fact, the framers of the Constitution considered the right to hearing in criminal cases within a reasonable time so fundamental that under Article 14 (4) of the Constitution, they provided that if there is an unreasonable delay in the trial of a person in detention, he may be released either conditionally or unconditionally.

In my understanding, the warrants issued by the Chief Justice that the plaintiff has complained about are an effort to afford opportunity for more criminal cases to be tried expeditiously. The charge that the vacation hearings are not open to all criminal cases in the High Court does not mean that the administration of justice would not be advanced to some extent by these hearings. The fact that lawyers and accused persons involved in criminal proceedings in the High Court usually do not undertake hearings during legal vacation ought not to be the reason why an interlocutory injunction ought to be granted against the Chief Justice and stopping the expeditious hearings of cases such as narcotics, Auditor-General surcharges, cyber security, galamsey, corruption and corruption related. In my view, the administration of justice, which is in the public interest, would be better served if the hearings continue.

Therefore, for the reasons explained above, I do not find it right, just or convenient to grant the application prayed for by the plaintiff/applicant.

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(SGD.)

G. PWAMANG
(JUSTICE OF THE SUPREME COURT)

COUNSEL

FRANK H. K. DAVIES ESQ. FOR THE PLAINTIFF/APPLICANT WITH BRIGHT OKYERE ADJEIKUM ESQ. AND DIANA ASONABA DAPAAH ESQ.

DR. JUSTICE SREM-SAI (DEPUTY ATTORNEY GENERAL) FOR THE DEFENDANTS /RESPONDENTS WITH SARAH FAFA KPODO (CHIEF STATE ATTORNEY), REGINALD NII ODOI (STATE ATTORNEY) AND GIFTY DUMELO (ASSISTANT STATE ATTORNEY).

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