THE UG SRC JUDICIAL BOARD

IN THE MATTER BETWEEN

MARADONA ADJEI YEBOAH	Plaintiff
v.	
THE ELECTORAL COMMISSION (UG SRC)	1st Defendant
THE LEGAL ADVISOR (UG SRC)	2nd Defendant
AND	
EMMANUEL OWUSU AMPONSAH	1st Plaintiff
LAWRENCE EDINAM EGLEH	2nd Plaintiff
v.	
THE ELECTORAL COMMISSION (UG SRC)	1st Defendant
THE LEGAL ADVISOR (UG SRC)	2nd Defendant

(CONSOLIDATED)

ANTHONY CJ (PRESIDING)

OMANI-MENSAH JSC

KODSON JSC

TAMEKLOE JSC

ASAMOAH JSC

JUDGMENT OF OMANI-MENSAH, JSC.

I begin this judgment by recalling my own dictum in one of the most consequential lower court decisions of this 2023/'24 academic year, in ***Lesley Kotey v Electoral Commission of Alexander Adum Kwapong Hall & 3 Others***:

> The mandate to lead in any democratic dispensation springs from the sovereign will of the people, who from amongst their very selves, elect those they find worthy of this solemn duty. But in the sophistry of modern life, people across different societies have fashioned for themselves, institutions and rules by which their conduct is to be guided. These rules delineate the extent to which power is to be used and in fact, the manner in which those that seek to wield power are to be elected. It is why there are constitutions that govern societies, including constitutional and legislative acts or instruments that further make provision for more specific procedure, operating within the social contract of government. As such, when these rules are bent, glossed over or conveniently ignored, such infractions themselves become a usurpation of the people's will, as those people permit themselves to be governed by those rules and express their sovereign will with the knowledge that it is such rules that guide their conduct.

The case before this Board is one that invites our sacred, exclusive duty of constitutional interpretation and enforcement per **Article 44(1)(a)** of the UG SRC Constitution, in the aftermath of a disputed disqualification by the Electoral Commission of the UG SRC, undertaken under the authority of **Article 30(1)(a)** of the same Constitution. Mr. Maradona Adjei Yeboah and Mr. Lawrence Edinam Egleh were disqualified by the Commission based on the aforementioned provision, which consequently rendered both of their separate tickets invalid, in the face of the anticipated UG SRC elections. Both candidates are now before the Board in this consolidated suit, seeking the Board's interpretation of the provision in question, and an annulment of the said disqualification in light of what they assert is the more accurate interpretation of the provision.

The issues adopted by the Board for consideration are as follows:

1. *Whether or not Article 30(1)(a) permits non-resident students to contest UG SRC Presidential elections.*
2. *Whether or not the disqualification of the Plaintiffs was unconstitutional and discriminatory.*
3. *Whether or not the Constitutional Review Committee Reports of the UG SRC Constitution can be relied on in the interpretation of Article 30(1)(a)*.

I do not believe there lies any controversy in this Board's reliance on the Constitutional Review Committee Reports of the UG SRC Constitution, as the exercise of interpretation requires a painstaking excursion into the intent of the framers and the circumstances surrounding the enactment of the provision(s). As such, I outrightly answer it in the affirmative, and will undertake an assessment of the Report's remarks on the contended provision (and related matters) to make a determination on its effect with respect to Issue 1.

In light of this and the evident nexus between Issues 1 and 3, I will subsume my analysis of the latter in the former, and subsequently make my remarks on Issue 2.

1. *Whether or not Article 30(1)(a) permits non-resident students to contest UG SRC Presidential elections.*

Plaintiffs contend in their construction of **Article 30(1)(a)** that they are entitled to contest the UG SRC Presidential elections as non-resident students, as the provision in question does not expressly preclude students with such status from doing so, and that fundamentally, all students who are members of the UG SRC are entitled to contest UG SRC elections per **Articles 30(3) and 5(f)**. For the avoidance of donut, both provisions are reproduced below:

> Article 30(1)(a)
> (1) A student shall not be qualified for election to any executive office unless:
> (a) He is qualified to contest elections under his hall's Constitution, except that a provision requiring a student to be in at least his third year in this University shall not disqualify such a person from contesting for any office under this article.
>
> Article 30(3)

> Without prejudice to any provision of this Constitution, a student shall qualify to stand and contest elections to any Executive Office provided he is not a final year student.

> Article 5(f)
> For the avoidance of doubt, any student of the University of Ghana main campus, Accra City Campus, Medical School Campus, Ghana Atomic Energy Commission campus, Distance Education students and any other campus of the University shall be deemed a member of the SRC.

Furthermore, Plaintiffs assert that the provision in **Article 30(1)(a)** would only apply to persons who are residents of the various halls and seek to contest elections under the Constitution. As such, these provisions should not be applicable to persons who are non-residents, as they have not elected to be bound by the constitutions of any of the halls of residence, hence the inapplicability of **Article 30(1)(a)** in their case.

Reference was then made to the Constitutional Review Committee Report by Plaintiffs in support of their position. Plaintiffs argue that not all the recommendations of the Committee were adopted and that those that were adopted by the Committee are evident in the final provisions of the Constitution.

For instance, under the section titled 'Committees of the General Assembly', the Report states as follows:

> The Finance Committee has been re-modified to exclude the Treasurer as secretary to that committee. This is to improve the neutrality of the committee in the performance of its constitutional mandate of inter alia pre-auditing the SRC's finances.

Under **Article 57(2)(c)** of the Constitution however, we see a rejection of this recommendation:

> The SRC treasurer shall be a Secretary of the Finance Committee.

Plaintiffs then allude to the Report's suggestions on qualification for elections, which is reproduced below:

> The qualifications to contest an election as an Executive Officer has been modified to include inter alia, the requirement for attaining a Cumulative Grade Point Average (CGPA) of 3.0 or better, at the date of filing nominations to contest elections. A requirement that a candidate for election should have been a resident student for at least one academic year as well as the requirement that only graduate students who pursued their undergraduate studies in this university can contest elections has been expunged.

The requirement for a minimum CGPA of 3.0 is provided for in **Article 30(1)(b)** of the Constitution, showing an adoption of this new requirement.

Counsel for Mr. Maradona Adjei Yeboah then proceeds to rely on the latter part of the aforementioned extract from the Report, to suggest that there is no requirement for a student to be resident in the hall (or have any residential affiliation, or meet any requirements to contest residential JCR elections for that matter), as the Report has expunged the need to meet any such 'residential' requirements.

It is at this point that I must begin to set out the inconsistencies and fallacies that run riot in the argument of the Plaintiffs.

Article 30(1)(a) does in fact require candidates to qualify in a manner akin to the qualifications for contesting elections in their halls of residence. The error in the Plaintiffs' argument is to misconstrue 'should have been a resident student for at least one academic year' to mean the SRC Constitution absolves SRC electoral candidates from all the residential qualifications that may be enshrined in any of the JCR Constitutions.

For example, the Constitution of the Alexander Adum Kwapong Hall provides as follows in its Article 17(1):

> 1. A person shall not be qualified to hold an executive office unless:
>
> a. he is duly registered as a member of the Hall, **and has been a registered member of the Hall for at least one year preceding the elections**; (the emphasis is mine)
>
> b. his tenure of office shall not exceed his time of studentship of the University;
>
> c. he shall not interrupt his studies during his tenure of office; and
>
> d. he has not been removed from any student office in the University, on grounds that are inimical to the interest of any group of students.

The effect of the Constitutional Review Report (if we are to be guided by such suggestions in the first place), is that a student of Alexander Kwapong Hall for example, who is contesting election at the SRC level can proceed to contest elections albeit they may have been in residence in Kwapong for a time period below a year, which ordinarily, would disqualify them from contesting elections in Kwapong Hall. In light of the provision in **Article 30(1)(a)** of the UG SRC Constitution, such a candidate should not be qualified to contest UG SRC elections,

as they do not meet the primary qualification requirement in their hall of residence (Kwapong Hall). That notwithstanding, the guidelines of the Committee Report suggest that such specific metrics on the time frame spent in halls, will not preclude a candidate from contesting office at the SRC level. This does not however mean (as Plaintiffs erroneously suggest), that there is absolutely no requirement for candidates to meet the broad requirement of residency.

The next argument made by Plaintiffs then, is that such requirements howsoever construed would only be applicable to students who elect to be residents of halls and that to the extent that Plaintiffs are non-resident students, they would not be subject to the qualification requirements imposed by **Article 30(1)(a)**. Again, I find this proposition by Plaintiffs to be preposterous and untenable.

Before even undertaking an empirical assessment of the Constitution on this matter, notice must be taken of the absurdity that such a proposition would create. It would mean then, that any candidate with knowledge that they fail to meet their hall's qualification metrics (excluding that of time frame as aforementioned) can conveniently switch to non-residency to escape any such requirements. Such '*forum-shopping*' is not one that this Court should in good faith and conscience associate with, as it creates leeway for persons to determine their own standards of qualification, in seeking the highest student offices of our institution.

In any case, we already see the Constitution attempting to ease the qualification burden on students by suggesting a removal of the consideration for time frame spent in halls. This in my opinion, is an attempt to emphasise the need for some association with the halls of residence prior to seeking executive office at the SRC level. In easing this burden of establishing some legal connection and status with the halls of residence, the Constitutional Review Committee in its Report suggests a removal of the one year minimum time frame requirement. It means then, that it is imperative for students to gain some residential association with these halls if they indeed intend to seek executive office.

This argument is bolstered by the Constitution's dictates in **Article 25(7)(a) (i) & (ii)**, which the Legal Advisor alludes to in making his submissions:

> Article 25(7)
> (a) In the event of the removal from office en-block of the Executive Officers under this article, the remaining members of the Executive Committee shall nominate and/or appoint:
>
> (i) One of the JCR Presidents of the Halls of residence as Acting SRC President;

(ii) One of the JCR Secretaries as Acting SRC Secretary, provided that such a Secretary shall not be appointed from the same JCR as shall be appointed from under (a) of this clause.

What the above provision emphasises, is that the UG SRC is a federation, under which the various JCRs of the student body are subsumed, despite their respective administrative autonomy. As such, in the formation of this federal body, there is an expectation that members who serve as leaders of its organs would, *mutatis mutandis*, be qualified to lead within its respective sub-units. This is evident in **Article 25(7)(a)**, which reveals the framers' intent to align the JCRs with the SRC in a manner that complements the construction of **Article 30(1)(a)** to include residential association.

Similar requirements are seen with the UG SRC Judicial Board in its composition, as another organ of this federal body. **Article 42(1)** states:

> There shall be a Judicial Board which shall comprise the Judicial Board Chairpersons of the various JCRs of the Halls of residence in this University. The members of the Judicial Board shall be called Justices.

We see a mirroring of the residential-association requirement in the above provision, reiterating the federal nature of the SRC and its regard for due prior recognition/ qualification within the JCRs. Evidently, this would exclude very gifted students of the University of Ghana School of Law from rising to sit on this Board, unless they are first duly recognised and appointed through their halls of residence. While the requirements here are substantially different than those for contesting executive office, the fundamental principle remains a common thread in both instances - that the Constitution is intentional about creating a federation of sorts in the composition of the SRC and its leadership.

I must also state that allusions cannot be made to previous practices where any such persons (non-resident students) may have ran for office at this level without question, as justification for this Board's support of such practice and the culmination of any legitimate expectation on the part of Plaintiffs. An illegality is void *ab initio* and cannot be grounds to plead the valid subsistence of an identified wrong. In fact, it is the duty of this Board (and any Court) to intervene when such acts are brought to its attention for its remedy and enforcement of the law.

Where such representations have previously been made by persons in authority - in this case the UG SRC Electoral Commission - such representations, if made without due regard for established law, constitute an *ultra vires* representation and cannot presently be relied on. Lord Steyn of the UK House of Lords in ***R. v Director of Public Prosecutions, Ex Parte Kebeline and Others***, aptly stated,

> It is difficult to see on what principle such a distinction rests. It gives the appearance of introducing into our public law categories of illegality.

Consequently, where there is a constitutional requirement, more so one that relates to an exercise as important as SRC elections, such provisions cannot be varied or glossed over in favour of common practice, that this Board finds to be contrary to law.

We must pay heed to not begin to twist and contort these constitutional provisions into convenient shapes that suit our whims and caprices, or sound pleasant to us, under the guise of purposivism as Plaintiffs have continually urged on the Board. The words of Wood CJ in ***Republic v High Court (Fast Track Division), Ex parte CHRAJ; Interested Party, Richard Anane (HC)*** [2007-8] SCGLR 340 remain instructive:

> The purposive rule is however, not a carte blanche for rewriting legislation ... and should never be used as a ruse, a cloak or guise to do so. The function of a court is to interpret legislation and give effect to it, even where the terms appear unpalatable. Care must be taken to avoid legislating under the guise of interpretation.

The Supreme Court in the case of ***Republic v Fast Track High Court, Accra; Ex Parte Daniel*** [2003-2004] SCGLR 364 repeated this warning not to wade into unchartered territory in the name of purposivism. The Court speaking through Prof Kludze JSC remarked:

> We cannot under the cloak of Constitutional interpretation rewrite the Constitution of Ghana. Even in the area of statutory interpretation, we cannot amend a piece of legislation because we dislike its terms or because we suppose that the lawgiver was mistaken or unwise. Our responsibility is greater when we interpret the Constitution. We cannot and must not substitute our wisdom for the collective wisdom of the framers of the Constitution.

The provisions of **Article 30(1)(a)** cannot be construed in the manner suggested by Counsel for Plaintiffs. Such a position does not find support in the Constitution's express provisions, the guidelines of the Report of the Constitutional Review Committee, the intent of the framers, or the make-up of the SRC as a legal unit gleaned from the UG SRC Constitution as a whole. In

light of these, I find that the disqualification undertaken by the Electoral Commission in the present case falls on all fours with the dictates of the Constitution.

2. *Whether or not the disqualification of the Plaintiffs was unconstitutional and discriminatory.*

Counsel for Mr. Emmanuel Owusu Amponsah in their submissions, argued that disqualifying the Plaintiffs was itself a discriminatory and unconstitutional act. I have already established the constitutionality of the disqualification of the Plaintiffs, in light of the express provision in **Article 30(1)(a)**. What I will now consider, is whether or not this act, in spite of its legality, is inequitable and discriminatory to non-resident students.

In her submissions, Counsel for Mr. Emmanuel Owusu Amponsah argued that there existed 'positive discrimination' strategies that exist in societies and are enshrined into law to achieve some specific policy rationale. One of these is seen in **Article 30(1)(b)**:

> (1) A student shall not be qualified for election to any executive office unless:
>
> (b) He has attained a Cumulative Grade Point Average (CGPA) of 3.0 as at the time of filing his nomination.

The obvious aim of this provision is to protect the fundamental business of academic work on the part of students and not 'burden those who are already burdened'. Counsel for Plaintiffs argues that such exclusionary criteria should be expressly provided for as done by **Article 30(1)(b)**, and that no such exclusion is provided for in the Constitution with respect to students with non-resident status. This is where I depart from Counsel's arguments. From the systematic analysis I have undertaken in my determination of Issue 1, one cannot in good faith (even if they do not agree with the position), suggest that there is no *prima facie* exclusion of non-resident students from contesting executive office in the SRC, discernible from **Article 30(1)(a)**. There is.

The argument I am inclined to side with, is that in light of recent developments - the rapid increase of our student population as a university and the perennial accommodation crisis - some consideration needs to be made for non-resident students as a significant bloc of our union. This is a position I wholeheartedly agree with and am willing to support. As one who

believes that our union should always be forward looking and taking an ever expansive approach in its growth, I find that it is past time to reconsider this position that seemingly turns a blind eye to this relevant segment of our union and denies them full participation in the leadership of its body politic. At the same time, I am duty bound as an arbiter of the law to respect procedure, which is as important as the substance of the law especially on an issue as steeped in procedure as elections. **Article 85** of our Constitution clearly stipulates the procedure for seeking amendment of its provisions, especially where we find them to be out of step with our evolving realities as an evolving people.

The argument urged on this Board by Plaintiffs is an attempt to lead the Board onto tangents beyond its jurisdiction, seeking whole amendments of provisions, couched as purposive interpretation. To fall for this would be to extend the province and duty of the Board, and stretch its power beyond interpretation and enforcement. Unpleasant as this may seem to some, this is the unvarnished truth. Archer CJ made this crystal clear in the acclaimed case of ***New Patriotic Party v Attorney General (31st December Case)*** [1993-94] 2 GLR 35,

> I have already referred to the doctrine of separation of powers which pervaded the Constitutions, 1969 and 1979 which now permeates the Constitution, 1992. The present Constitution, 1992 guarantees the independence of the judiciary which is subject only to the Constitution and this is reinforced by article 125(3) of the Constitution, 1992 which provides:
>
> '*The judicial power of Ghana shall be vested in the Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power.*'
>
> The Constitution, 1992 gives the judiciary power to interpret and enforce the Constitution, 1992 and I do not think that this independence enables the Supreme Court to do what it likes by undertaking incursions into territory reserved for Parliament and the executive. This court should not behave like an octopus stretching its eight tentacles here and there to grasp jurisdiction not constitutionally meant for it.

The concept of separation of powers is an inexorable part of jurisprudence across the globe. In the case of ***Youngstown Sheet & Tube Co v Sawyer (The Steel Seizure Case)***, 343 US 579 at 635 (1952), Justice Jackson said the following on the concept of the separation of powers:

> While the Constitution diffuses power … to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

Kpegah, JSC re-echoed those sentiments in ***Ghana Bar Association v Attorney General (Abban Case)*** [1995-96] 1 GLR 598, reflecting its roots in our jurisprudence:

> The Ghanaian Constitution, 1992 has been influenced not only by our past experiences but also by thinkers like Montesquieu, in the allocation of state power to the three branches of government—the executive, the legislature and the judiciary. The adoption of the concept of separation of powers by the framers of our Constitution, 1992 aims not only at the prevention of the exercise of arbitrary power with its attendant tyranny, but also aims at the promotion of efficiency and avoidance of friction or conflict between the various arms of government.

Further down his judgment in this same case, he states as follows:

> It was Justice Felix Frankfurter who wrote '*even the most rampant worshipper of judicial supremacy admits that wisdom and justice are not the test of constitutionality*'. In assuming jurisdiction to adjudicate in the matter, we shall certainly be entering upon policy determinations for which judicially manageable standards are not available.

As such, while I agree with Counsel for Plaintiffs that time may be ripe to expand the scope of **Article 30(1)(a)**, to do so within this case will be to assume jurisdiction that is not ours. As aforementioned, **Article 85** of the Constitution provides the appropriate fora and procedure for this development. As it stands, that is not the position of the law today and is not one I can accept.

Consequently, I find that the Electoral Commission did not err in its disqualification of Mr. Maradona Adjei Yeboah and Mr. Lawrence Edinam Egleh, as this was in line with the dictates of **Article 30(1)(a)**. Additionally, while I welcome the possibility of change from this legal position, this Board is not the appropriate forum for such developments and I urge members of our union to take this up with appropriate quarters as outlined in our Constitution, if they deem this necessary.

The Electoral Commission is hereby ordered to resume the electoral process and ensure the election of executive officers in conducted within a week from the date of this judgement.

ANTHONY CJ

I have read the judgement of my learned friend, Omani-Mensah JSC and I have nothing useful to add.

TAMEKLOE JSC

I agree.

JUDGEMENT OF KODSON JSC

Introduction;

The plaintiffs, Mr. Maradona Yeboah, Mr. Emmanuel Owusu Amponsah and Mr. Lawrence Edinam Egleh, are all students of the University of Ghana and members of the University of Ghana Students Representative Council (SRC). Mr. Maradona Adjei Yeboah and Mr. Emmanuel Owusu Amponsah filed nominations to contest for the office of the SRC President while Mr. Lawrence Edinam Egleh filed nominations to contest for the office of the SRC Vice President. All plaintiffs were aspirants until their disqualification from the race by the Vetting Committee of the Electoral Commission. The Plaintiffs in the substantive suit seek the following reliefs against the Respondents, who are the Electoral Commission as an independent body and the Legal Advisor of the SRC;

1. A declaration that on a true and proper interpretation of Articles 30(1)a, 5(f), 30(3) of the SRC Constitution, 2013, all members of the SRC regardless of their residence status qualify to stand for and contest elections for any of the executive offices.

2. A declaration that on a true and proper interpretation of Articles 30(1)a, 5(f), 30(3) of the SRC Constitution, 2013, the disqualification of the 2nd Plaintiff on the basis that he is a non-resident is unconstitutional.

3. A declaration that on a true and proper interpretation of Articles 30(1)a, 5(f), 30(3) of the SRC Constitution, 2013, the disqualification of the 2nd Plaintiff on the basis that he is a non-resident is discriminatory and constitutes an infringement of his fundamental human right to be voted for.

4. A declaration that on a true and proper interpretation of Articles 30(1)a, 5(f), 30(3) of the SRC Constitution, 2013, the disqualification of the 2nd Plaintiff should not affect the candidacy of the 1st Plaintiff.

5. An order declaring the disqualification of the Plaintiffs null and void and of no legal effect.

6. An order directed at the Electoral Commission to reinstate the Plaintiffs in the ongoing 2024 UGSRC presidential elections.

7. An order declaring the Vetting Panel's communique dated 16th August 2024 null and void to the extent that it disqualifies the Plaintiffs herein.

8. Any other order or further orders this Honorable Court may deem fit.

Facts of the case

The Electoral Commission is responsible for conducting and supervising elections of the UGSRC according to Article 36(1) of the UGSRC Constitution. Accordingly, the commission opened nominations to students of the University, by a communique dated 7th July, 2024, to file nomination forms to contest in the election which was to be held on 26th August, 2024. By a communique dated 1st August, 2024, the commission announced that the vetting of aspirants vying for Executive positions would be held on 2nd August, 2024. On Friday, 16th August, 2024, the Electoral Commissioner released a report of the Vetting Committee which indicated that two of the candidates from the Presidential aspirants and one candidate from the Vice-Presidential aspirants had been disqualified based on a purported interpretation the committee provided for Article 30(1)(a) of the UGSRC Constitution. The report suggested that students who do not "belong to any hall of residence" do not qualify to be Executive Officers of any hall of residence and consequently, do not qualify to be Executive officers of the UGSRC. This resulted in the disqualification of Mr. Maradona Yeboah and Mr. Lawrence Edinam Egleh. Mr. Emmanuel Owusu Amponsah was disqualified due to the fact that his running mate, Mr. Lawrence Edinam Egleh, was not qualified to contest the elections. The Plaintiffs filed a writ against the Electoral Commission and the Legal Advisor to seek an interpretation to the provision under Article 30(1)(a), as well as the other aforementioned reliefs they seek.

On the substance of this judgment, the issues adopted to be addressed by the court are;

(i) Whether or not non-resident students are entitled to contest elections on the SRC level according to Article 30(1)(a) of the Constitution.

(ii) Whether or not the disqualification of the Plaintiffs was unconstitutional and discriminatory.

(iii) Whether or not one can rely on the reports of the 2009 and 2013 Constitutional Review Committee reports made available in the UGSRC Constitution in interpreting Article 30(1)(a).

Issue 1: Whether or not non-resident students are entitled to contest elections on the SRC level according to Article 30(1)(a) of the Constitution.

Article 30(1)(a) of the SRC Constitution provides that;

" (1)A student shall not be qualified for election to any executive office unless:

(a) He is qualified to contest elections under his hall's constitution, except that a provision requiring a student to be in at least his third year in this University shall not disqualify such a person from contesting for any office under this article..."

Undoubtedly, this matter is one which requires this honorable court to interpret the constitutional provision above. In other words, the matter requires a construction of the above

provision in a manner that, according to **Section 10(4) of the Interpretation Act, 2009 (Act 792**).

(a) Promotes the rule of law and the values of good governance,
(b) Advances human rights and fundamental freedoms,
(c) Permits the creative development of the provisions of the Constitution and the laws of Ghana and
(d) Avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and the laws of Ghana.

This brings us to the numerous approaches of interpretation or construction of provisions of law adopted and applied by courts. These include the literalist/textualist approach, the purposive approach, golden rule approach and the mischief approach.

The Literalist Approach – this approach involves interpreting the words of a statute according to their ordinary and grammatical meaning, without considering the intent of the legislators. This was adopted by Tindal CJ in the **Sussex Peerage Case (1844) 8 ER 1034,** where he stated that *"... the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."*

The Purposive Approach – This method of construction has been adopted in numerous Ghanaian cases which include **Professor Stephen Kwaku Asare v Attorney-General [2012] 1 SCGLR 460**. In that case, Atuguba JSC stated that the purposive approach to interpretation takes into account the words of the Act according to their ordinary meaning as well as the context in which the words are used.

The board will not go into what the other approaches are about rather, it intends to apply the literalist/textualist approach to interpret Article 30(1)(a) of the UGSRC Constitution.

According to the Sussex Peerage Case referenced above, the literal meaning of words should be focused on to arrive at an appropriate interpretation where the words are precise and unambiguous. Article 30(1)(a) states that a person is not qualified to contest unless he is qualified under *'his'* hall's constitution; this is quite straightforward and unambiguous. It is the opinion of the court that the framers of the constitution did not intend to prevent or bar non-resident students of the university from contesting for executive offices. The plain meaning of the pronoun 'his' suggests that the individual, if he belongs to or is associated with a hall, must be qualified to contest under the constitution of the hall to which he belongs to. Non-resident students are students who do not belong to any of the halls on the University of Ghana campus and so Article 30(1)(a) does not apply to such students, as the framers intended to limit qualification under a hall's constitution to students who belong to or are under a hall of residence on the university campus. The framers foresaw the need for non-resident students to also engage in the affairs of the SRC and thought it wise to remove the limitations on them. This position is clearly established under paragraph 2, *Chapter 6 of the Report of the Review*

Committee, 2009. This idea is given effect to by article 30(1),(a) of the constitution giving a clear indication, who falls under that provision. Article 30(1)(a) applies to students who belong to a hall of residence and not the student body as a whole, non-residents are thereby excluded from this scope. In any case, if the lawgivers meant to disqualify or exclude non-residents students from attaining executive positions in the university, they would not have minced words. In fact, they would have been sharp about it. The Constitutions of some Halls of Residence, such as the James Topp Nelson Yankah Hall constitution, makes residence in the hall a requirement to contest executive office in the hall. If the framers had excluded such a requirement from the constitution, then it would be reasonable to form the opinion that non-residents could contest elections in the aforementioned hall. Therefore, the interpretation given by the Electoral Commission does not appropriately reflect the intention of the framers of the UGSRC Constitution.

If a non-resident student decides to contest the election for an Executive Office, he is expected to meet the following criteria as provided under Article 30 of the UGSRC Constitution;

(a) he/she must have a CGPA of 3.0 or better at the time of filing nominations and
(b) He/she should not have been declared or adjudged by a judicial or quasi-judicial body to have misappropriated funds or conducted himself/herself in such a manner as to cause depreciation in respect of loss or otherwise in any cash or property entrusted to him or
(c) He/she should not have been found by any committee of inquiry in the university to be incompetent to hold office or has been found to have unlawfully acquired assets or defrauded the SRC or other body or misused/abused his office or acted willfully in a manner prejudicial to the interests of students and the findings have not been set aside on appeal or judicial review or
(d) He/she should not have been removed from any student office in the university, on grounds inimical to the interests of a group of students or
(e) He/she should not have previously held the position of an Executive Officer under the SRC Constitution.

Issue 2: Whether or not the disqualification of the Plaintiffs was unconstitutional and discriminatory.

The Vetting Committee in a communique to the University Community wrote that *"It further implies that where a person does not belong to any hall of residence (JCR) then that person does not qualify to be an Executive Officer of the hall of residence (JCR) and consequently not qualified or eligible to be an Executive Officer of the University of Ghana Students' Representative Council". Respectfully, the above quote is the most absurd, useless, and skewed understanding one can put to the provisions in article 30 (1)(a). For the avoidance of doubt, the relevant part of the provision in question states that "A student shall not be qualified for election to any executive office unless: (a) he is qualified to contest elections under his hall's Constitution….".*

Does this mean that a student who has no hall of residence cannot contest for SRC elections? This anology sounds absurd and laughable to understand, let alone taking the above provision to mean an outright disqualification for non-residents. In the case of ***Professor Kwake Asare vs***

AG as referenced above, when seeking to interpret the provisions of a constitution, the focus must not merely be on the words but instead on the purpose, aims and background of the provision. Therefore, it is wrong to say that the framers of the UGSRC constitution through article 30, meant to exclude non-resident students from attaining executive position.
Clearly from the facts, the applicants were disqualified based on their residency but the framers did not intend that residency be made a requirement to contest SRC elections.
As already held in the resolution of the first issue, the Electoral Commission's interpretation is unconstitutional and discriminatory, in the sense that it neither reflects nor represents the intention of the framers of the constitution and it seeks to bar or prevent a large chunk of the total number of students admitted into the University from contesting elections and participating in student governance, which forms part of the academic freedom of students as members of the academic community.
In essence, the Constitution does not require aspirants to be resident to be eligible to contest elections. Therefore, the disqualification of the applicants before the court is outrightly unconstitutional and discriminates against all non-resident students of the university, who bear that status by no fault of theirs.

Issue 3: Whether or not one can rely on the reports of the 2009 and 2013 Constitutional Review Committee reports made available in the UGSRC Constitution in interpreting Article 30(1)(a).

Page 16 paragraph 4 of the UGSRC constitution, referenced to the report of the Review Committee states that *"It is the belief of the Constitutional Review Committee that, should the reviewed constitution be adopted and enacted, and its provisions adhered to, it would see a new SRC that would be of the utmost relevance to the students of the University of Ghana".* That is the opinion of the committee to the importance of the additions and subtractions it has made to the constitution. The Preamble of the 2013 UGSRC constitution (which currently is in use), does give a clear indication of the adoption and enactment of the constitution in light of the Report of the Review Committee of 2009. The report of the Review Committee gives indications to the changes made in chapters 2, 3, 4, 5, 6, 7, 8 and 13, which are being enforced by the current constitution. This implies that we can clearly tell what the intentions of the framers were in light of the matter before this court.
The matter before this court is directly linked to the changes made to chapter six of the UGSRC Constitution pertaining to Elections and Qualifications, juxtaposed to article 30 1(a) of the constitution and its interpretation thereof. The second paragraph of chapter six under the report of the review committee which is of outmost importance to the board states that*; "The qualifications to contest an election as an Executive Officer has been modified to include inter alia, the requirement for attaining a Cumulative Grade Point Average (CGPA) of 3.0 or better, at the date of filing nominations to contest elections. A requirement that a candidate for election should have been a resident student for at least one academic year as well as the requirement that only graduate students who pursued their undergraduate studies in this university can contest elections has been expunged*." The court is being sought to reconcile this with Article 30(1)(a) of the same constitution which states that *"A student shall not be qualified for election to any executive office unless: (a) He is qualified to contest elections under his*

hall's Constitution, except that a provision requiring a student to be in at least his third year in this University shall not disqualify such a person from contesting for any office under this article…" the first question to be asked is what does the provision in Article 30(1)(a) mean?

A proper understanding of the provision implies that a student running for an executive office must meet the qualifications outlined in their halls constitution. However, even if the halls constitution requires a student to be in at least their third year, this requirement will not prevent a student who is otherwise qualified for running for office. In other words, the provision allows students who are not yet in their third year to still contest as long as they meet other requirements such as the GPA requirement stated in article 30 (1)(b) of the constitution.

The application of the above to the first issue which bothers around the residency status of the disqualified aspirants brings into light what the framers of the constitution set out to achieve under the report of the review committee, on pages 11 and 12 of the constitution. The EC's claims for the disqualifications was premised on the idea that the students were non-residents, not meeting the requirement of article 30(1)(a). Now after a careful consideration of this matter, it is our reasoning that the interpretation the Electoral Commissioner sought to give to justify their position on the matter is flawed in its entirety. A clear reading of article 30(1)(a) implies that the provision was aimed at a particular group of persons, namely; students wanting to occupy an executive position and who are also under a hall of residence. And as the report says that *"a requirement that a candidate for election should have been a resident student for at least one academic year as well as the requirement that only graduate students who pursued their undergraduate studies in this university can contest elections has been expunged*", makes the picture clearer.
The framers foresaw the need for non-resident students to also engage in the affairs of the SRC and thought it wise to remove the limitations on them and this is clearly spelt out under chapter 6 of the report of the review committee. This idea is given effect to by article 30(1),(a) of the constitution giving a clear indication, who falls under that provision. Article 30(1)(a) applies to students who belong to a hall of residence and not the student body as a whole, non-residents are thereby excluded from this scope.

If the framers of the SRC constitution had intended to disqualify or exclude non-resident students from holding executive positions, they would have explicitly stated so. The constitutions of the various Halls of Residence, which require residency in the hall to qualify for executive office, are similar to Article 94(1)(b) of the 1992 Constitution of Ghana. This article stipulates that a person cannot run for parliament unless they either reside in or hail from the constituency they seek to represent. These constitutional provisions serve two key purposes. First, they prevent a "foreigner"—someone who is not a member of the hall—from contesting for a position within that hall. For example, these provisions ensure that a resident of Volta Hall cannot claim the right to run for an executive position in Commonwealth Hall, or that a resident of Nyamekrom Constituency cannot attempt to run for the MP seat in Ayawaso West Constituency. Secondly, they ensure that executive officers are geographically close to the people they serve. Beyond these two justifications, there is no other reason for making residence a requirement for JCR elections. In the case of non-resident students running in SRC

elections, the issue of "foreigners" does not apply. A non-resident student at the University of Ghana cannot be considered an outsider to the university. Thus, the concerns present in JCR elections are not relevant here.

The framers of the SRC constitution clearly intended to include all students of the University of Ghana, both resident and non-resident, when they opened with the phrase, "In the Name of the Almighty God, We the Students of the University of Ghana..." By "students," they meant to encompass everyone, including non-residents, which is why non-resident students are also required to pay dues to the SRC. Our belief that the drafters of the constitution did not intend to exclude non-resident students from participating in SRC politics is further strengthened by the fact that the most recent version of the constitution encourages their involvement. The SRC constitution was last revised during the 2009/2010 academic year, at a time when non-resident students outnumbered resident students. It is highly unlikely that the framers would have intended to disqualify such a large portion of the student body from participating in student governance. Therefore, it cannot be reasonably interpreted from Article 30 that non-resident students are barred from running for SRC elections. Such an interpretation lacks merit and utility. Moreover, contrary to the Vetting Committee's flawed interpretation, the framers clearly showed genuine concern for non-resident students by explicitly calling for their involvement in student politics. This is evident from the introduction of the 'Non-Resident Students' Affairs Committee' in Article 74 of the constitution, as part of the 2010 constitutional review chaired by Mr. Vitus Gbang.

In contrast to the Vetting Committee's assertion, our position is firmly grounded in the Constitutional Review Committee's rationale for establishing the Non-Resident Students' Affairs Committee. As stated on page fourteen (14) of the SRC Constitution, the Review Committee noted that *"A Non-Resident Students' Affairs Committee made up of only non-resident students has been created and mandated to address the numerous issues faced by non-resident students, who have, in recent times, outnumbered resident students. This Committee is further tasked with proposing solutions to the problems so identified"*. Given this, it is inconceivable that the framers, who placed such significant importance on the concerns of non-resident students, would simultaneously seek to disqualify them from executive positions merely due to their non-resident status. This interpretation cannot be supported.

Moreover, the Review Committee's report vindicates our position, as it affirms that at the time of drafting the constitution, non-resident students outnumbered resident students. Therefore, it is implausible that the framers would have intended to exclude such a significant portion of the student body from participating in student governance. Notably, the current number of non-resident students has only increased. Considering this context, the framers of the constitution did not intend to marginalize, exclude, or discriminate against students simply because they are non-residents.

Article 30, which addresses residency, was likely designed to ensure that SRC executives remain close to their duties. As I have argued, this concern has been adequately addressed by both practice and tradition. Consequently, the Vetting Committee's conclusion that "Upon a

comprehensive reading of the UGSRC Constitution, it is evident that the framers intended that, for an individual to qualify as an executive officer of the UGSRC, they must meet the criteria required to serve as an executive officer of their hall of residence (JCR)" is misguided and reveals a lack of understanding of legal interpretation. Therefore, the Committee's finding that "After a critical assessment of the qualification criteria, it has been determined that Mr. Maradona Adjei Yeboah and Mr. Lawrence Edinam Egleh do not meet the requirements of Article 30(1)(a) of the UGSRC Constitution, and thus, are not eligible to contest for an Executive Officer position within the University of Ghana Students' Representative Council (UGSRC)" cannot be sustained.

Disposition

Having carefully considered the submissions of both parties and examined the relevant provisions of the SRC Constitution, the Court finds merit in the Applicant's arguments. The disqualification of the applicants; Mr. Maradona Adjei Yeboah, Mr. Lawrence Edinam Egleh, as purportedly being non-residents, lacking the capacity to run of SRC elections lacks reasonable basis.
Furthermore, the interpretation the Vetting Committee sought to apply to article 30(1)(a) of the UGSRC Constitution are flawed in its entirety as they were made without proper jurisdiction and proper understanding of the provisions.

I will therefore grants the reliefs sought by the applicants.

ASAMOAH JSC
I have read the judgment of Kodson JSC and I agree entirely with his reasoning and conclusions.